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Research Article

## Reversed Conditionality in EU External Migration Policy: The Case of Morocco

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## Abstract

Mobility partnerships between the European Union (EU) and third countries are usually viewed as reflecting asymmetric power relations where development aid, trade relations and visa policies are made conditional upon the cooperation by third countries with an EU agenda of migration control. Drawing on Cassarino's notion of 'reversed conditionality', this article advocates a more balanced view of EU-third country relations and argues that mobility partnerships are also instrumentalised as part of the domestic agendas of third countries. The argument is illustrated by an analysis of the case of EU-Morocco relations with a specific focus on the National Strategy for Immigration and Asylum in Morocco. The analysis illustrates how soft law instruments such as mobility partnerships have significant legal and political implications for third countries and can provide important external support for the development and implementation of national political priorities.

## Keywords

Mobility partnership; EU external action; Reversed conditionality; Morocco; Migration policy

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Mobility partnerships are non-binding instruments concluded between the EU, interested member states and a third country with the objective of cooperating with third countries on migration and asylum issues. Despite its non-binding nature, several authors have observed that mobility partnerships can have concrete legal implications, especially with regard to visa facilitation and readmission (Carrera, Faure Atger, Guild and Kostakopoulou 2011: 6). The logic behind this is that mobility partnerships often combine interests from both EU, such as an effective readmission policy of third country nationals, and third countries, such as access for their nationals to the territory of the EU through visa facilitation.

Since the Arab Spring uprising and increasingly today with the 'migration crisis', the EU needs third countries' assistance in order to manage migration flows. In the 'European Agenda on Migration', the Commission suggests that the EU and the member states should 'work together with partner countries to put in place concrete measures to prevent hazardous journeys' (European Commission 2015). Subsequently, the EU put forth a communication establishing a new Migration Partnership Framework (MPF) with third countries under the European Agenda on Migration, saying it was important 'to provide capacity building to the host communities and relevant institutions' (European Commission 2016a: 6). The European Agenda on Migration as well as the MPF are based on the principles of the Global Approach to Migration and Mobility (GAMM), which is embodied in mobility partnerships. Mobility partnerships have been criticised for achieving the 'disguised' externalisation of migration control for the EU (Euromed Rights 2014). Brocza and Paulhart (2015: 6) concur with this argument and describe mobility partnerships' first interests as expanding the EU's migration scope of influence and externalising its borders.

Relations with third countries are often viewed as being one-sided where instruments such as mobility partnerships make development aid, trade relations and visa policies conditional upon third countries cooperating with the EU agenda of migration control (e.g. Brocza and Paulhart 2015;

Carrera, Cassarino, El Qadim, Lahlou and den Hertog 2016; Carrera, den Hertog and Parkin 2012). Only a few scholars have observed that such conditionality can also be 'reversed' and tie the EU more significantly to the interests of the third country (e.g. Cassarino 2007). In other words, the relations between different parties to a mobility partnership may be more symmetric than is often assumed and serve not only the interests of the EU and its member states but also those of the third country. This article applies the notion of 'reversed conditionality' to the analysis of the conclusion and implementation of mobility partnerships between the EU, its member states and third countries. I show how mobility partnerships can be used as a tool to support a domestic political agenda in a third country. The argument is illustrated by an analysis of the case of EU-Morocco relations with a specific focus on the National Strategy for Immigration and Asylum (NSIA) in Morocco.

The article is structured as follows. First, the flexible nature of mobility partnerships is discussed with a specific emphasis on the potential legal and political implications for third countries. Then, conditionality and reverse conditionality are considered in light of the EU's external migration policy. Subsequently, after illustrating the rationale for this study, the EU-Morocco mobility partnership is introduced and the context of the NSIA is described. The analysis focuses on some key mobility partnership projects of legal and political relevance that support the implementation of the NSIA. The article ends with some reflections on the broader implications of these findings.

#### **LEGAL AND POLITICAL RELEVANCE OF MOBILITY PARTNERSHIPS FOR THIRD COUNTRIES**

This section discusses how, first, the EU can influence the legal and policy frameworks of a third country through the implementation of soft law instruments, in this case the mobility partnership; and, second, how third countries also instrumentalise mobility partnerships as part of their domestic political agenda.

Non-binding instruments offer a safe way to deal with uncertainty (Dupuy 1991: 423) as they are flexible (Andrade 2013: 277) and can be adapted to changes in policy priorities and circumstances (Van Vooren 2012: 209). In the EU context, flexibility is becoming an important feature as EU competences grow and the legislative process becomes increasingly more burdensome (Terpan 2015: 89). With regard to external migration relations, flexibility is particularly relevant in the context of multi-level decision-making involving the EU, its member states and third countries (Reslow and Vink 2015).

Carrera and Hernández I Sagrera (2009: 31) have observed that member states decide to participate in a mobility partnership because the aim of the negotiations is in line with their own national policies and the projects they propose reflect their policy preferences (cf. Reslow 2012a: 226-227). The list of projects proposed in the Annex to the mobility partnership can evolve in line with emerging policy priorities and new projects can be proposed if new policy priorities arise. Therefore, the mobility partnership can play a role in continuing discussions between the EU and third countries. New policy priorities on both the EU and third countries' side can lead to negotiations about the implementation of new initiatives.

EU mobility partnerships are presented in the literature as soft law instruments or defined as being of a 'soft legal nature' or 'non-legal nature' (Carrera and Hernández I Sagrera 2009: 28; Koutrakos 2011: 164-165; Van Vooren 2012: 209-210). As noted by Senden (2005: 23), one of the main criteria defining soft law is the existence of legal effects. In her definition of soft law, she distinguishes between the norm's 'legal effects' and its bindingness, an idea also explored by Snyder who argues that legal effects are not linked to the fact that an instrument is legally binding (1996: 461-463). The external legal effects of soft law relate to the legal effects in the legal orders of third countries (van

Vooren 2012: 181). The external effects of EU law have been discussed from different perspectives. A first example is 'territorial extension' where the EU tries to impose EU law on activities that are happening abroad (Scott 2013). Secondly, Bradford (2012) discusses the normative power of the EU at the global level, also called 'The Brussels Effect'. Thirdly, the EU can actively try to impose its norms on third countries (Lenz 2012) or, by contrast, third countries can voluntarily adopt the EU's institutional model (Jetschke and Murray 2012). Lavenex (2004: 89) has observed the existence of external effects for eastern and central European countries related to European integration. The enlargement had direct consequences for these countries, since it required reforms to their border regime, for example, as part of the EU accession conditionality.

The exercise of conditionality by the EU and its member states vis-à-vis third countries without a realistic membership scenario draws on other sources of power, for example development aid, which can have direct consequences for migration policies in third countries. Lavenex and Uçarer (2003: 11) note, however, that although in some cases third countries are put under pressure to adapt to EU policies, this does not mean that such adaptation is always opposite to the domestic priorities of the third country. When applying these distinctions to mobility partnerships we can consider that they can have a 'differentiated relevance'. Differentiated relevance means that in some cases legal and policy changes can be imposed by the EU, while in other cases they can be supported by the EU according to the will of the third country. The level of influence of the EU in the legal and policy developments, as well as in the content of the new legal acts or policies, can be differentiated depending on external factors. One of these factors is the power of negotiation of the third country. The influence of this factor on the relevance of the mobility partnership with Morocco is the focus of my analysis.

## CONDITIONALITY AND REVERSED CONDITIONALITY

Several authors argue that mobility partnerships are not balanced partnerships and that there is no real cooperation between the EU and member states and the third country. Chou and Gibert (2012), for example, argue that the EU uses an 'our-size-fits-all' approach with third countries or what Reslow and Vink (2015) would call a 'take it or leave it' approach. Reslow (2012b: 395) highlights the 'take it or leave it' approach taken in the cases of Moldova, Cape Verde and Senegal, where the same mobility partnership text was unilaterally proposed by the EU to these third countries with little room for negotiation. This view is supported by Lavenex and Stucky (2011: 132) who argue that the 'scope for third countries to express their concerns [is] limited' in the negotiations of the mobility partnerships. Triandafyllidou (2013: 8) argues that mobility partnerships replicate power relations 'where the EU sets the rules of the game and third countries have to abide by these rules'.

The first mobility partnerships were concluded with third countries with a weak leverage vis-à-vis the EU and only after the Arab Spring did this pattern change. Nevertheless, the relations between different parties to a mobility partnership may be more dynamic than is often assumed. Reslow (2012b: 394) argues that third countries are prominent players in the EU's migration policy. Taking the example of Cape Verde and Senegal, she discusses the role of domestic preferences of the third country in its decision to participate in a mobility partnership with the EU and the cost/benefits calculation of their cooperation with the EU. Others have also pointed out that third countries have their own priorities when negotiating with the EU and the member states (Chou and Gibert 2012; Sayad 2004).

Schimmelfennig and Sedelmeier (2004: 661) note that the use of conditionality by the EU in its relations with third countries is a way to disseminate its norms and stimulate third countries to adopt new laws or different behaviour on specific issues. Political conditionality is defined by Smith

(1998: 256) as the ‘perceived benefits for another state (such as aid [trade concessions, cooperation agreements, political contacts, or international organisation membership]), to the fulfilment of conditions relating to the protection of human rights and the advancement of democratic principles’. In practice, the application of conditionality by the EU has been limited with regard to Southern Mediterranean countries (Balfour 2012: 16). This can be explained by the importance of migration control in the region as well as other strategic and security priorities which made it difficult for the EU to adopt a strong position towards countries with which strategic cooperation was needed (Cassarino 2007: 191-192). Cassarino calls this phenomenon ‘reversed conditionality’ (2007: 192). He illustrates his argument with the refusal, until 2006, of Morocco to sign an EU Readmission Agreement (EURA) unless the EU concluded further EURAs with other countries in Africa (Carrera et al. 2016: 5-7; Wolff 2014: 69).

Since the Arab Spring, political cooperation between the EU and Southern Mediterranean countries has gained significant political appeal. The new ‘more for more’ conditionality includes financial and technical assistance, trade and mobility incentives (Balfour 2012: 21). Mobility partnerships are a good example of this approach, as they can enhance mobility for third country nationals, but also draw financial means for specific projects and capacity building initiatives which are financial and technical incentives (Balfour 2012: 21-22). In practice, the partnerships can be used as a tool to materialise conditionality since they are presented by the EU as a way to enhance mobility for third country nationals, as they include incentives to move, but they also provide financial means for specific projects and many capacity building initiatives which are financial and technical incentives. For example, the SPRING programme (Support for the Partnership, Reforms and Inclusive Growth) can finance specific projects included in a mobility partnership, aiming at supporting concrete reforms in the third country (Balfour 2012: 21).

With the conclusion of mobility partnerships in the Southern Mediterranean region, the externalisation of the EU’s migration policy seems to have taken a new turn. The EU accomplished this shift by means of subsidising an approach of externalisation of the reception of migrants and refugees in neighbouring third countries (Carrera et al. 2016). The introduction of ‘more for more’ conditionality, together with the increased interdependence between the EU and a third country on border management and the fight against irregular migration, has shifted power relations in favour of some third countries. I argue that some countries with a high power of negotiation can impose reversed conditionality on the EU. The reversed conditionality towards the EU can be embodied by the refusal to conclude agreements with the EU or to comply with the expectations raised by the EU’s external migration policy. It is generally agreed in the literature that mobility partnerships are one-sided and put more pressure on the third country than on participating member states (Carrera and Hernández I Sagrera 2009 and 2011; Limam and Del Sarto 2015). However, since third countries bring specific interests to the table, they may also strategically exploit what they can offer in terms of the objectives of the EU’s external migration policy. Given that the EU prioritises the control of migration, third countries that cooperate with this control agenda gain a more strategic position from which to negotiate their own conditions. In concrete terms, the negotiation of a readmission agreement can be a strong bargaining chip for a third country and allows it to negotiate a broader spectrum of positive incentives through the mobility partnership. Such a situation where the third country takes over the bargaining initiative and demands financial and political support in return for cooperation with the EU can be seen as ‘reversed conditionality’. The use of reversed conditionality thus provides third countries with the possibility to put forth their own interests and the ability to counterbalance the disadvantages linked to their cooperation with the EU, leading to more dynamic relations between the EU and a third country than is often pictured.

Cooperating with the EU provides benefits not only for the EU but can also give political leverage to the governments of third countries. First, the conclusion of a mobility partnership suggests the

willingness to negotiate an EU Readmission Agreement, even though there is no obligation to conclude one. Since 1999, the EU has strived to conclude EURAs with third countries including the obligation to readmit third country nationals. The conclusion of these agreements has subsequently been a political priority for the EU (Trauner and Kruse 2008). Mobility partnerships can be seen as tools to provide leverage to the negotiations of EURAs with third countries by proposing a whole set of initiatives. As a response to the 'migration crisis', new financial instruments (EU Regional Trust Fund in Response to the Syrian Crisis, EU Emergency Trust Fund for Africa, Facility for Refugees in Turkey) have been created to help support the policy of externalisation of immigrants and refugees' reception. The latter instruments are aimed at involving third countries in the procedure of reception of asylum seekers (European Commission 2005) and sharing the 'burden' of asylum seekers and refugees with neighbouring third countries (Lavenex and Wichmann 2009: 91). Certainly, the increased reliance of the EU on third countries to fight against irregular migration and cooperation on border control has a price; third countries are gaining a strategic position giving them the authority to pose their own conditions to the EU and member states. Similarly, neighbouring countries of Syria have been using migration as a bargaining chip in their relations with the EU since the outbreak of the migration crisis, Turkey being a blatant example. Özler (2012: 51) argues that Turkey was using reversed conditionality in its negotiation of a EURA with the EU, affirming that they would only conclude it if the EU would offer them visa liberation in exchange. Finally, a report by the Advisory Committee on Migration Affairs (ACVZ 2015: 25-26) shows that reversed conditionality was the main reason countries of origin do not cooperate on forced return.

In summary, mobility partnerships are soft law instruments with potential legal and political relevance for third countries. They are flexible instruments that can be adapted to new political priorities and while they are commonly presented as one-sided and reflecting asymmetric power relations between the EU and third countries, there is room for third countries to negotiate with the EU on a more equal level, on the basis of reversed conditionality, and present their own conditions in their cooperation with the EU.

#### **CASE SELECTION, DATA AND METHODOLOGY**

As this discussion so far suggests, this article analyses the legal and political relevance of EU mobility partnerships in a third country context, by investigating the case of the mobility partnership between the EU and Morocco. The scope of the article is limited to the MENA region after the Arab Spring. The rationale for this is that, after the Arab Spring uprisings in Southern Mediterranean countries in 2011, the EU had to adapt its strategy, considering the increasing migration flows coming from the region as well as the potential security threats that could arise from the political unrest. There are two main reasons to choose Morocco as a case study. First, Morocco was the first Arab state in the Mediterranean to conclude a mobility partnership. This agreement is notable due to Morocco's known reluctance to conclude a EURA with the EU (Carrera et al. 2016: 5-7; Wolff 2014). The conclusion of a mobility partnership implies agreement from the third country to negotiate a EURA, which could create a new dynamic between the EU and Morocco. Second, Morocco has strong bilateral ties with some member states such as France and Spain. The potential influence of these bilateral ties on the implementation of the mobility partnership and the production of legal or political effects makes it a striking case study.

In order to identify the most relevant projects aiming at supporting the NSIA, analysis of the projects in the Annex (Council of the European Union 2013) and in the corresponding scoreboard has been conducted. A scoreboard is an Excel document used to 'monitor' the implementation of the different projects proposed. The scoreboards for Morocco have been provided by DG Home Affairs, the EU

Delegation in Morocco and the German Ministry of the Interior, with the latest version being from September 2015. In the Annex to the mobility partnership to Morocco there are 105 projects. The scoreboard for Morocco is composed of 115 projects, of which 21 are new. New projects are projects proposed after the conclusion of the mobility partnership.

The main source of information for the analysis of political and administrative dynamics in this article are a total of 38 interviews held in Europe and Morocco for a larger research project, of which 16 set of interviews are used here (see Annex 1).<sup>1</sup> The interviewees were EU representatives involved in the conclusion or implementation of the mobility partnership with Morocco as well as staff members of international organisations, such as the United Nations, in charge of the implementation of specific projects. On the Moroccan side, interviews were held with officials of ministries directly involved in the negotiation and implementation of the mobility partnership and involved in the development of the NSIA as well as representatives of sub-Saharan migrants' associations, which are the main beneficiary group of the NSIA. The results of these interviews were used in the analysis of the implementation of the NSIA, providing preliminary insights about transit and permanent migrants in Morocco. Further data was obtained from primary sources (i.e. official statements, reports, newspaper articles or legal documents) and secondary sources.

The next section briefly describes the content of the NSIA. Subsequently, the relationship between the NSIA and the mobility partnership with Morocco is analysed with a view to the different interests during the negotiation and implementation of these instruments.

### **MOROCCO'S NATIONAL STRATEGY FOR IMMIGRATION AND ASYLUM (NSIA)**

In 2013, major changes in Morocco's position towards migration and asylum occurred. First, in July, the National Human Rights Council (CNDH), the Interministerial Delegation for Human Rights and the International Organisation for Migration in Rabat, published a critical paper on the state of migrants' rights in Morocco (2013). In addition, the CNDH published a report putting forth measures to improve the situation of refugees and asylum seekers, of irregular migrants and the fight against human trafficking (CNDH 2013: 8-11). The conclusions of this report were presented to the King, Mohammed VI, on 9 September 2013; the next day the King announced a series of 'High Orientations'. In October, the Moroccan Ministry for Moroccan Residents Abroad and Migration Affairs (MCMREAM) was created as the first national institution dealing with migration issues. On 6 November, the King called for a new global policy on immigration and asylum and recognised Morocco, for the first time, as a country of immigration, declaring that there was a need to review the migration and asylum policy. The regularisation of asylum seekers in November 2013 as well as the launch of the regularisation campaign held from January to December 2014 are direct consequences of this new policy. It is in the frame of this new policy that the NSIA was launched in December 2014 and supported by three new (proposed) laws, on migration, human trafficking and asylum. Law 27-14 on human trafficking has already been adopted.<sup>2</sup> Bill 26-14 on asylum and Bill 95-14 on migration have not been adopted at the time of writing. The NSIA has been divided into 27 specific objectives and 81 actions that have been defined in eleven programmes (Stratégie Nationale d'Immigration et d'Asile 2014). A significant component of the NSIA is the integration of the newly regularised migrants and refugees.

The strategy significantly impacts the Moroccan policy and legal framework on migration and asylum issues: legally, because it aims at developing and adopting three new laws on migration, asylum and human trafficking; practically, through the modification of policy and therefore the behaviour of Moroccan authorities towards immigrants and refugees. Following the launch of the new migration policy, two main developments occurred: the UNHCR in Morocco started examining asylum claims

and issuing refugee cards to successful applicants (interview 9) and a regularisation campaign for migrants was introduced. By the end of the regularisation period in December 2014, 17,916 out of 27,332 migrants had been regularised (Abushi and Arroud 2016) and 643 out of 2,937 asylum seekers had been granted refugee cards by the UNHCR (UNHCR 2015). A second regularisation campaign was introduced in December 2016 and lasted until December 2017.<sup>3</sup>

Finally, before moving to the analysis of the political dynamics between the NSIA and the EU-Morocco mobility partnership, it is important to set out the main projects proposed in the mobility partnership by the EU and the member states to support the implementation of the NSIA. First, two MIEUX projects are included in the mobility partnership and aim at strengthening the capacities of the Moroccan authorities in the implementation of the NSIA. MIEUX is a facility funded by the European Commission and implemented by the International Centre for Migration Policy Development (ICMPD). It facilitates capacity building and peer-to-peer knowledge sharing. The first project concerns support for the drafting of a strategy for the reception and integration of refugees. The ICMPD works with the CNDH and the MCMREAM in the mapping of the integration of refugees and the creation of a refugee profile. The second project aims at supporting the drafting of a Protocol on human trafficking (legal relevance). Additionally, the project, 'Promoting the Integration of Migrants in Morocco' is key and has clear political relevance for immigrants and refugees in Morocco as it aims at supporting the MCMREAM with the implementation of the NSIA. This project was introduced into the mobility partnership in 2015 and benefited from ten million EUR. Finally, the Sharaka project influences the lifting of the authorisation requirement for access to the labour market for migrant workers.

#### THE NSIA AND THE EU-MOROCCO MOBILITY PARTNERSHIP

When analysing the relationship between the mobility partnership and the NSIA, it is crucial to identify clearly the sequential order of the relevant political developments. The mobility partnership was concluded first. Shortly after, the King launched a series of new policies on immigration and asylum that would later materialise under the NSIA. Even though the EU had pushed for this direction for several years (interview 6), it was globally accepted by the interviewees that the mobility partnership did not influence the new policy orientations. Concurrently, EU officials were surprised by the launch of the strategy (interviews 6 and 7). One official added that during the negotiation of the mobility partnership, the reference to the Geneva Convention was a problem because Morocco did not agree on its dispositions in relation to migrants' rights or asylum rights (interview 7). The launch of the NSIA seemingly implies a complete reversal of the position of Morocco during the negotiations of the mobility partnership.

The understanding that the EU takes a reactive position, by supporting its implementation *a posteriori*, rather than a proactive role, is shared by both the EU and Moroccan interviewees, officials and academics (interviews 5, 6, 7, 13, 16 and 17). Indeed, Morocco sets its policy orientations and indicates its needs to implement the NSIA effectively. Morocco is using reversed conditionality in order to influence the EU and member states to propose projects that would financially or technically support the NSIA as a condition for effective implementation of the strategy. Spain argues that as the NSIA was not foreseen, it had to change all the projects proposed in the framework of the mobility partnership because it has a high interest in the strategy as it prevents migrants going to Europe (interview 17). New projects were included in the mobility partnership after its conclusion in order to support the NSIA, a policy development initiated by the Moroccan King.



Morocco's new policy is a strategy of opening up towards EU and Africa. First, it improves its image. Indeed, there was a strong international mobilisation on the issue of the mistreatments of sub-Saharan migrants in Morocco, relayed by several reports from civil society and international organisations and through documentaries. Morocco was accused of severe breaches of human rights and mistreatment of migrants. The northern region of Morocco in particular constantly attracted media and activists' attention. Morocco wanted to appear to the EU as a 'good student' (Abushi and Arroud 2016).

The Moroccan policy shift was also a way to win a better image internationally and show sub-Saharan countries that it improved the treatment of sub-Saharan migrants. Having good relations with Africa is a new priority for Morocco (Aman 2016), which wants to be a major interlocutor on African issues and strengthen its economic relations with the African continent (interviews 10 and 12). This is in line with Morocco's 'Politique Africaine' (Royal Institute for Strategic Studies 2015). Improving relations with African countries of origin was one of the main reasons for the adoption of such a strategy in the first place (interviews 5 and 6).

Finally, Morocco is using reversed conditionality to benefit from important amounts of EU and member state funding for the implementation of the NSIA. Morocco is taking advantage of the interest of the EU in the implementation of the NSIA by requesting funds in exchange for making progress in the implementation of the strategy. From the very beginning, the CNDH (2013: 9) underlined the necessity of financial aid from the EU and added that this should be a priority of the mobility partnership. Indeed, the SPRING programme unlocked ten million EUR, specifically for one new project to support the implementation of the strategy. Moreover, a new programme of 35 million EUR aiming at supporting Morocco's migration policy and the NSIA was accepted in December 2016 (European Commission 2016b). Part of the funding of this project is subject to the EU condition of the adoption of the new law on migration. Morocco has long since taken the opportunity to modernise its own equipment and benefit from foreign expertise when cooperating with the EU or individual member states, particularly on border management (Wolff 2012: 138-139). Through the mobility partnership, Moroccan staff working in relevant ministries or civil services can benefit from training and capacity building financed by the EU on issues such as international law, refugee rights and capacity building to give them the tools to implement the three new laws following their adoption. As we saw previously, since the launch of the NSIA, funding has increased extensively as immigration issues became more policy relevant but also because Morocco was in a better position to ask for funding.

Looking from the other side, it appears that there are two main benefits for the EU. First, the EU wants to avoid irregular immigrants or asylum seekers from reaching its territory. To achieve this goal, the EU uses its policy of externalisation of immigrants and refugees' reception. For over a decade, the EU externalised some of its migration control to neighbouring third countries to fight the entry of irregular migrants onto its territory, converting them into the EU's 'gate-keepers' (Lavenex 2004: 94). The implementation of the Regional Protection Programme (RPP), in line with the European strategy of externalisation of refugees' reception, aims at involving third countries in the procedure of the reception of asylum seekers (European Commission 2005). As noted by Lavenex and Wichmann (2009: 91), the RPP is a way for the EU to share the 'burden' of asylum seekers and refugees with neighbouring third countries such as Morocco. Boswell puts it plainly and declares that the EU supports 'refugee protection in countries or regions of origin, so that they would not be obliged to seek asylum in Europe' (2003: 624). The EU's support for Morocco's new strategy can therefore be seen as a way for the EU to externalise its migration and refugees' reception, keeping Morocco in its usual role of 'gate-keeper'. Indeed, the Moroccan strategy, by regularising immigrants and improving their access to work and basic rights such as minimum health care, access to the labour market and education, could influence migrants to settle in Morocco.

These migrants may have initially only intended to transit through Morocco in the hope of entering Europe. However, the strengthening of borders combined with an improvement in the immigrants' situation and rights, has transformed the transit situation into a more permanent settlement (interviews 5 and 18).

In some way, accepting reversed conditionality is the price to pay for the EU to maintain a good relationship with Morocco. Mobility partnerships are a means of dialogue with third countries, according to an EU official, who adds that even though the results of the implementation of the NSIA are not major, it is necessary for the EU to keep on supporting the strategy because of the signal that it conveys (interview 30). In practice, Morocco's reversed conditionality might be even stronger than the EU's conditionality. According to two EU officials, the new programme of 35 million EUR, previously mentioned, should have been launched following the adoption of the three new laws (interviews 6, 7 and 30). However, the project was ultimately launched without this EU condition being met.

The second interest of the EU lies in the conclusion of a EURA with Morocco including third country nationals. Morocco has rejected such an agreement for almost two decades (Carrera, den Hertog and Parkin 2012: 14). Mobility partnerships can be seen as tools to provide leverage to the negotiations of EURAs with third countries. Indeed, they can propose a full set of initiatives including migration and development and legal migration possibilities, to counter-balance the burden of a EURA including third country nationals. An EU official emphasises that the EU realised that they needed a more balanced approach to give the EURA a chance to work (interview 29). Member states did not want to give any positive incentive if Morocco had not accepted the resumption of the negotiations of the EURA; while, inversely, Morocco did not want to restart the negotiations if no positive incentive was forthcoming from the member states (interview 29). The mobility partnerships therefore provided the EU the opportunity to give the negotiations of the EURA a more balanced perspective. Indeed, it was the first time that the EU proposed a visa facilitation agreement to a Southern Mediterranean country (Wolff 2014: 72), going hand in hand with the conclusion of the EURA. As such, the proposal of a visa facilitation agreement to Morocco is 'revolutionary' (interview 6) showing evidence of a third country leveraging its position to win major concessions from the EU. This has resulted in some costs for the EU, which has been criticised for striving to conclude a EURA with a country that does not respect migrants' rights, nor has a proper asylum statute. Indeed, the European Parliament (Cogolati, Verlinden, and Schmitt 2015) drew attention to the fact that in some cases EURAs do not conform to human rights obligations. Nevertheless, the NSIA can contribute to having a well-functioning asylum system recognising the status of asylum seekers and refugees and recognising their rights; the new law on asylum will help the strategy materialise. Thus, the EU has an interest in supporting the NSIA as it will enhance its legitimacy to negotiate such an agreement.

Finally, member states with strong bilateral ties with the third country play a prominent role in the proposal of projects shaping the content of the mobility partnership and have their own interests in the NSIA. The main reason why the Commission must accept member states' preferences lies in the nature of mobility partnerships itself; member states are free to participate or not. To have enough member states participating in a mobility partnership, proposing and implementing projects, the Commission must give priority to member states' preferences (interview 29). Carrera and Hernández (2009: 31) argue that national migration policies are at the heart of mobility partnerships. This argument has been confirmed both on the part of the member states and of Morocco (interviews 8, 10, 13, 14, 16 and 17). In other words, a member state would agree to participate only if it furthers its national policy. An EU official declared that Spain and France exploited the mobility partnership to promote and implement their own national policies (interview 29). Both have a long history with Morocco and firmly established interests in the country. They also share primary concerns; the fight

against irregular migration and internal security threats. This explains why they have been willing to support the implementation of the NSIA. However, the interest of member states is not limited to those with pre-existing historical ties. With the Arab Spring, the way of thinking about EU-Moroccan relations started to change and the EU and the member states had to give a strong signal to Morocco (interview 29). Nonetheless, EU support came at a price. The condition was for Morocco to put its promises into practice or it would lose the EU's financial and political support (European Commission 2011; Limam and Del Sarto 2015: 11). Yet, since the EU was not able to make a credible threat, as an EU official pointed out, due to limited political support, the conditionality mechanism was weak and ineffective (interview 29).

## CONCLUSION

This article has evidenced how the EU and its member states support the development and implementation of a new national migration strategy in Morocco, through the implementation of the mobility partnership. The mobility partnership is a flexible instrument and new projects aiming at supporting Morocco's new strategy are being included at later stages. The EU takes a reactive position by supporting the implementation of the NSIA *a posteriori*. Indeed, the adoption of the NSIA was surprising for EU officials and member states representatives, which needed to adapt their activities to their new interest in supporting the NSIA.

This study has shown that mobility partnerships are soft law instruments with potential legal and political implications for third countries. Moreover, they are flexible instruments allowing their content to be adapted to new political priorities. The Annex of proposed projects is a living document and therefore mobility partnerships can play a role in continuing discussions between the EU and third countries. This is what happened in the case of Morocco. New projects supporting the NSIA have been included in the mobility partnership at a later stage, following Morocco's priority changes. Then, the importance of financial conditionality proposed by the EU to the third country, through the 'more for more' approach was discussed. Conditionality, however, is not limited solely to EU relations with a third country and we saw that third countries can use 'reverse conditionality' to negotiate with the EU. The importance of migration issues and particularly of the negotiation of readmission agreements, puts Morocco in a stronger position to demand increased EU funding. Even though mobility partnerships are considered one-sided, the case of Morocco and the NSIA illustrates that third countries can make use of reversed conditionality to strengthen their domestic political agenda.

While limited to the Moroccan case, this article aims to provide inspiration for future studies and advocates more research on reversed conditionality and the strategic position third countries can have in negotiations with the EU. With the 'migration crisis' and the greater interest of the EU for the externalisation of its migration control, the notion of reversed conditionality can play an increasing role. The findings of this article provide insights into the dynamic relations between the EU and third countries in the implementation of a mobility partnership. Indeed, third countries can use the mobility partnership tool to support the development of their own national strategies for migration and asylum. Further analysis of the case studies of Cape Verde and Tunisia, for example, could be interesting as they have both concluded a mobility partnership and launched a similar national strategy. The analysis of different but related case studies could generate new insights into the dynamic cooperation patterns between the EU and third countries in the field of migration policy.

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## ENDNOTES

<sup>1</sup> Full list is available upon request.

<sup>2</sup> Dahir n° 1-16-127 du 21 kaada 1437 (25 août 2016) portant promulgation de la loi n°27-14 relative à la lutte contre la traite des êtres humains [promulgating law no. 27-14 relating to the fight against the trafficking of human beings].

<sup>3</sup> Official numbers of regularisations are not yet available.

## REFERENCES

Abushi S. and H. Arroud (2016). 'A Migration Bubble? Reading the New European Neighbourhood Policy in the Moroccan Context', Heinrich Böll Stiftung <https://eu.boell.org/en/2016/06/15/migration-bubble-reading-new-european-neighbourhood-policy-moroccan-context> [accessed 09 August 2018].

ACVZ (2015). 'The strategic country approach to migration', advisory report addressed to the Minister for Foreign Trade and Development Cooperation and the State Secretary of Security and Justice. [https://acvz.org/wp-content/uploads/2015/07/Report\\_42-web-versie-Engels.pdf](https://acvz.org/wp-content/uploads/2015/07/Report_42-web-versie-Engels.pdf) [accessed 09 August 2018].

Aman A. (2016). 'Why Morocco Really Wants Back in the African Union'. *Al-Monitor*, 27 July 2016. <http://www.al-monitor.com/pulse/originals/2016/07/morocco-join-african-union-western-sahara-dispute-egypt.html> [accessed 09 August 2018].

Andrade P. G. (2013). 'The Legal Feasibility of the EU's External Action on Legal Migration: The Internal and the External Intertwined'. *European Journal of Migration and Law*, 15(3): 263-281. <https://doi.org/10.1163/15718166-00002036>.

Balfour R. (2012). 'EU Conditionality after the Arab Spring'. *European Institute of the Mediterranean*. [http://www.epc.eu/documents/uploads/pub\\_2728\\_papersbalfour\\_for\\_euromesco16.pdf](http://www.epc.eu/documents/uploads/pub_2728_papersbalfour_for_euromesco16.pdf) [accessed 09 August 2018].

Boswell C. (2003). 'The "External Dimension" of EU Immigration and Asylum Policy'. *International Affairs*, 73: 619-638. <https://doi.org/10.1111/1468-2346.00326>.

Bradford A. (2012). 'The Brussels Effect'. *Northwestern University Law Review*, 107(1): 1-67.

Brocza S. and K. Paulhart (2015). 'EU mobility partnerships: a smart instrument for the externalization of migration control'. *European Journal of Futures Research*, 15(3): 1-7. <https://doi.org/10.1007/s40309-015-0073-x>.

Carrera S., JP. Cassarino, N. El Qadim, M. Lahlou and L. den Hertog (2016). 'EU-Morocco Cooperation on Readmission, Borders and Protection: A Model to Follow?' *CEPS Papers in Liberty and Security in Europe*: 1-18.

Carrera S., A. Faure Atger, E. Guild and D. Kostakopoulou (2011). 'Labour Immigration Policy in the EU: A renewed Agenda for Europe 2020'. *Policy Brief No 240, CEPS*: 1-15. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1898653](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1898653) [accessed 09 August 2018].

Carrera S. and R. Hernández I Sagrera (2011). 'Mobility Partnerships: "Insecurity Partnerships" for Policy Coherence and Migrant Workers' Human Rights in the EU'. In R. Kunz, S. Lavenex and M. Panizzon (eds). *Multilayered Migration Governance: The promise of partnership*. London and New York: Routledge: 97-115.

Carrera S. and R. Hernández I Sagrera (2009). 'The externalisation of the EU's labour immigration policy: Towards mobility or insecurity partnerships?'. *CEPS Working Document* 321: 1-43. <https://www.ceps.eu/system/files/book/2009/10/WD321%20Carrera%20and%20Sagrera%20e-version%20final.pdf> [accessed 09 August 2018].

Carrera S., L. den Hertog and J. Parkin (2012). 'EU Migration Policy in the Wake of the Arab Spring What Prospects for EU-Southern Mediterranean Relations?' *MEDPRO Technical Report* 15: 1-29. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2135477](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2135477) [accessed 09 August 2018].

Cassarino, J.P. (2007). 'Informalising Readmission Agreements in the EU Neighbourhood'. *The International Spectator*, 42 (2): 179-196. <https://halshs.archives-ouvertes.fr/hal-01232695/document> [accessed 09 August 2018].

Chou, M.H. And M. Gibert. (2012). 'The EU-Senegal mobility partnership: from launch to suspension and negotiation failure'. *Journal of Contemporary European Research*, 8(4): 408-427.

CNDH (2013). 'Foreigners and Human Rights in Morocco: for a Radically New Asylum and Migration Policy', (July 2013).

Cogolati S., N. Verlinden, and P. Schmitt (2015). 'Migrants in the Mediterranean: Protecting human rights'. Study, DG for External Policies, Policy Department, European Parliament, PE 535.005, 2015.

Council of the European Union (2013). 'Joint Declaration Establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and Its Member States', 6139/13 ADD 1 REV 3 12, Brussels, 2013.

Délégation interministérielle aux droits de l'Homme, Conseil national des droits de l'Homme, Bureau de l'Organisation Internationale pour les Migrations [Interministerial Delegation for Human Rights, National Council for Human Rights, International Organisation for Migration] (2013). 'Argumentaire du séminaire régional "Gouvernance des migrations et droits de l'Homme"' [Argument of the regional seminar, "The Governance of migration and human rights"], Rabat, 15 July 2013.

Dupuy PM. (1991). 'Soft Law and the International Law of the Environment'. *Michigan Journal of International Law*, 12: 420-435.

Euromed Rights (2014). *EU-Morocco Mobility Partnership: border control at the expense of human lives?* <http://www.euromedrights.org/publication/eu-morocco-mobility-partnership-border-control-at-the-expense-of-human-lives> [accessed 09 August 2018].

European Commission (2005). 'Regional Protection Programmes'. COM (2005) 388 final, Brussels, 1 September 2005.

European Commission (2011). 'Joint statement by EU High Representative Catherine Ashton and Commissioner Štefan Füle on Morocco's Future Constitutional Reform'. MEMO/11/155, Brussels, 10 March 2011.

European Commission (2015). 'A European Agenda on Migration'. COM (2015) 240 final, Brussels, 13 May 2015.

European Commission (2016a). 'Establishing a new Partnership Framework with third countries under the European Agenda on Migration'. COM (2016) 385 final, Strasbourg, 7 June 2016.

European Commission (2016b). 'Décision d'Exécution de la Commission du 15.12.2016 relative au programme d'action annuel 2016-partie 3 en faveur du Maroc à financer sur le budget général de l'Union' C (2016)8836 final.

Jetschke A. and P. Murray (2012). 'Diffusing Regional Integration: the EU and Southeast Asia'. *West European Politics* 35(1): 174-191. <https://doi.org/10.1080/01402382.2012.631320>.

Koutrakos P. (2011). *European Foreign Policy: Legal and Political Perspectives*. Cheltenham: Edward Elgar Publishing.

Lavenex S. (2004). 'Justice and Home Affairs and the EU's New Neighbours: Governance beyond Membership?'. In K. Henderson (ed.) *The Area of Freedom, Security and Justice in the Enlarged Europe*. London: Palgrave Macmillan: 89-109.

Lavenex S. and R. Stucky (2011). 'Partnering for Migration in EU External Relations'. In R. Kunz, S. Lavenex and M. Panizzon (eds). *Multilayered Migration Governance: The promise of partnership*. London and New York: Routledge: 116-143.

Lavenex S. and E. Uçarer (2003). *Migration and the externalities of European integration*. Lanham, MD: Lexington Books.

- Lavenex S. and N. Wichmann (2009). 'The External Governance of EU Internal Security'. *Journal of European Integration*, 31(1): 83-102. <https://doi.org/10.1080/07036330802503932>.
- Lenz T. (2012). 'Spurred Emulation: The EU and Regional Integration in Mercosur and SADC'. *West European Politics*, 35(1): 155-173. <http://dx.doi.org/10.1080/01402382.2012.631319>.
- Limam M. and R. Del Sarto (2015). 'Periphery under Pressure: Morocco, Tunisia and the European Union's Mobility Partnership on migration' *EUI Working Paper RSCAS 2015/75*.
- Özler Z. (2012). 'Breaking the Vicious Circle in EU-Turkey Relations: Visa Negotiations'. *Turkish Policy Quarterly*, 11(1): 121.
- Reslow N. (2012a). 'Deciding on EU External Migration Policy: The Member States and the Mobility Partnerships'. *Journal of European Integration*, 34(3): 223-239. DOI: <https://doi.org/10.1080/07036337.2011.584346>.
- Reslow N. (2012b). 'The role of Third Countries in EU Migration Policy: The Mobility Partnerships'. *European Journal of Migration and Law*, 14(4): 393-415. DOI: 10.1163/15718166-12342015.
- Reslow N. and Vink M. (2015). 'Three-Level Games in EU External Migration Policy: Negotiating Mobility Partnerships in West Africa'. *Journal of Common Market Studies*, 53(4): 857-874. DOI: 10.1111/jcms.12233.
- Royal Institute for Strategic Studies (2015). 'la Politique Africaine du Maroc', 26 October 2015. [http://www.ires.ma/documents\\_reviews/politique-africaine-maroc/](http://www.ires.ma/documents_reviews/politique-africaine-maroc/) [accessed 09 August 2018].
- Sayad A. (2004). *The Suffering of the Immigrant*. Cambridge, UK | Malden, MA, USA: Wiley.
- Schimmelfennig F. and U. Sedelmeier (2004). 'Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe'. *Journal of European Public Policy*, 11(4): 661-679. DOI: 10.1080/1350176042000248089.
- Senden L. (2005). 'Soft Law, Self-regulation and Co-regulation in European Law: Where do they Meet?'. *Electronic Journal of Comparative Law*, 9(1): 1-27.
- Scott J. (2013). 'Extraterritoriality and Territorial Extension in EU Law'. *American Journal of Comparative Law*, 62(1): 87-125.
- Smith E. (1998). 'The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?'. *European Foreign Affairs Review*, 3(2): 253-274.
- Snyder F. (1996). 'Interinstitutional Agreements: Forms and Constitutional Limitations'. In G. Winter (ed.), *Sources and Categories of European Union Law: A Comparative and Reform Perspective*. Baden-Baden: Nomos: 453-466.
- Stratégie Nationale d'Immigration et d'Asile (2014). <http://www.marocainsdumonde.gov.ma/fr/le-minist%C3%A8re/affaires-de-la-migration/strat%C3%A9gie-nationale-dimmigration-et-dasile> [accessed 09 August 2018].
- Terpan F. (2015). 'Soft Law in the European Union: The Changing Nature of EU Law'. *European Law Journal*, 21: 68-96. <https://doi.org/10.1111/eulj.12090>.
- Trauner F. and I. Kruse (2008). 'EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood.', *CEPS Working Document No. 290*, Centre for European Policy Studies, Brussels.
- Triandafyllidou A. (2013). 'Circular migration: introductory remarks'. In A. Triandafyllidou (ed.), *Circular migration between European and its neighbourhood: choice or necessity?* Oxford: Oxford University Press: 1-22.
- UNHCR (2015). Morocco Factsheet, 1 April 2015. [https://reliefweb.int/sites/reliefweb.int/files/resources/4c907df39\\_1.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/4c907df39_1.pdf) [accessed 09 August 2018].
- Van Vooren B. (2012). *EU External Relations Law and the European Neighbourhood Policy: A paradigm for coherence*. London and New York: Routledge.
- Wolff S. (2012). *The Mediterranean Dimension of the European Union's International Security*. Basingstoke: Palgrave Macmillan. DOI 10.1057/978023036942.

Wolff S. (2014). 'The Politics of Negotiating the EU Readmission Agreements: Insights from Morocco and Turkey'. *European Journal of Migration and Law*, 16: 69-95. DOI: 10.1163/15718166-00002049.

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- 6 EU Delegation, Rabat, 13 January 2016
- 7 EU Delegation, Rabat, 13 January 2016
- 8 French Embassy, Rabat, 14 January 2016
- 10 Expertise France, Rabat, 15 January 2016
- 13 Moroccan Ministry of Labour, Rabat, 19 January 2016
- 14 GiZ \*, Rabat, 20 January 2016
- 16 MCMREAM \*, Rabat, 21 January 2016
- 17 Spanish Embassy \*, Rabat, 22 January 2016
- 29 DG Home Affairs, Brussels, 26 October 2016
- 30 DG Near, Brussels, 27 October 2016

\*Two respondents attended.