

Migration issues in the EU's common foreign and security policy – selected aspects

Kwestie migracyjne w obszarze unijnej wspólnej polityki zagranicznej i bezpieczeństwa – wybrane aspekty

Миграционные вопросы в сфере общей внешней политики и политики безопасности ЕС – избранные аспекты

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Summary: In the discussion on the EU migration policy, it is impossible to evade the issue of the relation between this policy and the EU foreign policy, including EU common foreign and security policy. The subject of this study are selected links between migration issues and the CFSP of the European Union. The presented considerations aim to determine at what levels and in what ways the EU's migration policy is taken into account in the space of the CFSP as a diplomatic and political (and subject to specific rules and procedures) substrate of the EU's external action.

Key words: CFSP, migration policy, EU Global Strategy, EU external action

Streszczenie: W dyskusji na temat unijnej polityki migracyjnej nie sposób abstrahować od kwestii jej relacji względem unijnej polityki zagranicznej, w tym wspólnej polityki zagranicznej i bezpieczeństwa (WPZiB). Przedmiotem niniejszego opracowania są wybrane powiązania między kwestiami migracyjnymi a wspólną polityką zagraniczną i bezpieczeństwa Unii Europejskiej. Przedstawione rozważania zmierzają do ustalenia, na jakich płaszczyznach i w jaki sposób polityka migracyjna UE uwzględniana jest w przestrzeni WPZiB jako dyplomatyczno-politycznego i poddanego szczególnym zasadom i procedurom substratu działań zewnętrznych Unii.

Słowa kluczowe: WPZiB, polityka migracyjna, Globalna strategia UE, działania zewnętrzne UE

Резюме: При обсуждении миграционной политики ЕС невозможно абстрагироваться от вопроса о ее связи с внешней политикой ЕС, включая Общую внешнюю политику и политику безопасности (ОВПБ). Предметом данной статьи являются отдельные связи между вопросами миграции и общей внешней политикой и политикой безопасности Европейского Союза. Представленные соображения направлены на то, чтобы определить, на каком уровне и каким образом миграционная политика ЕС учитывается в пространстве ОВПБ как дипломатический и политический субстрат внешней деятельности Союза, подчиняющийся определенным правилам и процедурам.

Ключевые слова: ОВПБ, миграционная политика, Глобальная стратегия ЕС, внешняя деятельность ЕС

Introduction

According to data presented by Eurostat, in 2019 approximately 2,7 million non-EU nationals came to European Union (EU) countries.¹ At the same time, the issue of illegal migration draws attention. According to European Parliament experts, at the peak of the refugee crisis, the EU experienced over a million illegal border crossings, mainly by sea.² Despite the subsequent decrease in this regard,³ a concern is expressed that this downward trend may turn out to be temporary and the economic effects of the pandemic may trigger another wave of increased illegal immigration to the EU.⁴

Thus, the migration situation remains an extremely topical issue from the EU's perspective. In the discussion on the EU migration policy, the question of the efficacy of the EU solutions proposed and implemented in this matter remains an unalterably current issue. In this light, however, it is impossible to ignore the relation between the EU migration policy and the EU foreign policy and the role of the latter in achieving the EU's migration goals.

The subject of this study is how migration issues are positioned within the common foreign and security policy (CFSP) of the EU. The following considerations aim to determine at what levels and in what ways the EU's migration policy is taken into account in the CFSP as a diplomatic and political substrate of the EU's external action. Thus, considering the specificities of the CFSP itself, the links between the CFSP and EU migration policy will be analysed with reference to programming and strategy documents, CFSP instruments and at the organisational level.

At the same time, it should be noted that the presented arguments do not aspire to be a comprehensive analysis of the matter in question, but instead indicate key issues and may contribute to the development of an in-depth discussion on issues related to the CFSP or add to the existing *acquis* in this area.

¹ Eurostat Statistics Explained, Migration and migrant population statistics, https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics#Migrant_population:_23_million_non-EU_citizens_living_in_the_EU_on_1_January_2020 [access: 27.04.2021].

² See: K. Luyten, S.B. Smialowski, *Understanding EU Action against Migrant Smuggling*, European Parliamentary Research Service 2021, p. 2, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659450/EPRS_BRI\(2021\)659450_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/659450/EPRS_BRI(2021)659450_EN.pdf) [access: 24.04.2021].

³ Ibidem.

⁴ Ibidem.

1. The specificity of the CFSP as part of EU external action

The foreign policy of the EU remains an extensive and heterogeneous area. “External action” seems to be a central category in this respect and constitutes a separate treaty area of EU activity. It is worth pointing out that the regulations dedicated to this category have been included both in the Treaty on European Union (TEU)⁵ and in the Treaty on the Functioning of the European Union (TFEU).⁶ Thus, the structure of the EU's external action includes the CFSP regulated in the TEU (including the Common Security and Defence Policy [CSDP]), and the policies regulated in the TFEU (the so-called ‘integrated policy fields’).⁷ In this way, within one category, the set of policies which previously constituted the Community pillar of EU external action was brought together with the CFSP (the former II pillar of the EU).⁸ The systematic separation of the indicated matters and their location in the two treaties⁹ in itself seems to suggest their generic difference.¹⁰

Pursuant to Article 24 (1) TEU, the CFSP is subject to specific rules and procedures. This essentially means that its separateness from other components of the EU's external action is manifested in relation to the institutions and bodies involved in its programming and implementation, instruments available and applied, as well as decision-making procedures. The effect of the measures adopted in the TEU involves entrusting the European Council and the Council and the High Representative of the EU for Foreign Affairs and Security Policy (HR) with the main role in defining and implementing the CFSP. The catalogue of legal instruments available under the CFSP (Article 25 TEU) differs from the catalogue provided for in Article 288 TFEU (appropriate for the policies regulated by the TFEU, including policies covered by the AFSJ),¹¹ relying – apart from decisions – on instruments such as the general guidelines. Finally, the decision-making procedures are essentially

⁵ Treaty on European Union, OJ C 202, 7.06.2016.

⁶ Treaty on the Functioning of the European Union, OJ C 202, 7.06.2016. Cf. T. Dubowski, *Wysoki Przedstawiciel Unii do Spraw Zagranicznych i Polityki Bezpieczeństwa*, Białystok 2017, pp. 40–41.

⁷ T. Ramopoulos, J. Wouters, *Charting the Legal Landscape of EU External Relations Post-Lisbon*, Leuven Centre for Global Governance Studies, Working Paper No. 156, March 2015, p. 4, https://ghum.kuleuven.be/ggs/publications/working_papers/2015/156ramopouloswouters [access: 24.04.2021].

⁸ N. Verola, *The New EU Foreign Policy under the Treaty of Lisbon*, in: *Foreign Policy of the European Union. Assessing Europe's Role in the World*, eds. F. Bindi, I. Angelescu, Washington 2012, p. 41; T. Dubowski, *Wysoki Przedstawiciel Unii...*, pp. 41–42.

⁹ Both Treaties have the same legal force (Article 1 TEU).

¹⁰ T. Dubowski, *Wysoki Przedstawiciel Unii...*, p. 42.

¹¹ According to B. de Witte, among the acts indicated in Article 288 TFEU, only the decision seems to be binding under the CFSP, cf. B. de Witte, *Institutional Variation Across Policy Fields in the Evolution of European Union Law*, Maastricht Journal of European and Comparative Law 2013,

based on the unanimity rule (Article 31 [1] TEU) with some derogations in favour of a qualified majority (Article 31 [2] TEU).

In conclusion, it can be stated that in the case of the CFSP there has been a reversal of the imperative features compared to elements of external action regulated in the TFEU. On the one hand, the role of the European Parliament (EP) and the Commission, which play a key role in EU legislative procedures, has been clearly limited (Article 24 [1] TEU)¹². On the other hand, unanimity in the decision-making mechanism has been strengthened, while in legislative procedures it is the qualified majority that remains the rule.

These solutions, however, seem natural if interpreted in the context of the competences of the EU within the CFSP. Pursuant to Article 24 (1) TEU the EU's "competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security [...]." In this light, the reluctance of the Member States to provide independent institutions of the EU with broad decision-making powers within the CFSP – a sensitive area and traditionally associated with state sovereignty¹³ – becomes quite clear. In this context, it is also understandable that the Member States are attached to unanimity as a principle defining the shape of the decision-making within the CFSP. As a result, the CFSP appears to be a special area of cooperation between Member States (inter-governmental cooperation) – a sphere of the so-called 'high policy' covering the diplomatic and political dimension of the EU's foreign policy.¹⁴

vol. 3, pp. 468–469, DOI: 10.1177/1023263X1302000308, <https://vlex.co.uk/vid/institutional-variation-across-policy-875448217> [access: 24.04.2021].

¹² The jurisdiction of the Court of Justice of the European Union (CJEU) with respect to provisions on the CFSP is also visibly limited – Article 24 (1) TEU.

¹³ S. Keukeleire, T. Delreux, *The Foreign Policy of the European Union*, Basingstoke 2014, pp. 3–4.

¹⁴ In opposition to the so-called 'low politics'. For more on 'high' and 'low politics' and the distinction indicated see S. Hoffmann, *Obstinate or Obsolete: The Fate of the Nation-State and Case of Western Europe*, *Daedalus* 1966, vol. 95, no. 3, pp. 862–915; P. van Elsuwege, *Law versus Politics: The Limits of Judicial Review in EU External Relations*, Working Paper Annual Research Network Conference 2010, p. 3; P. Gauttier, *Horizontal Coherence and the External Competences of the European Union*, *European Law Journal* 2004, vol. 10, no. 1, p. 24, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-0386.2004.00201.x> [access: 20.04.2021]; J-V. Louis, *The European Union: from External Relations to Foreign Policy?*, *EU Diplomacy Papers* 2/2007, p. 4; C. Carta, *The European Union Diplomatic Service. Ideas, Preferences and Identities*, London–New York 2012, p. 19. Cf. J. Haaland Matlary, *EU Foreign Policy: "High politics", Low Impact – and vice versa?*, in: *Rethinking Foreign Policy*, eds. F. Bynander, S. Guzzini, Abingdon–New York 2013, pp. 137–149.

2. EU migration policy and CFSP in the area of their planning and strategy

In November 2016, J. Schmidt ascertained that “[...] the refugee crisis represents a very demanding and all-encompassing foreign policy challenge”, pointing out that the strengthening of the CFSP and applying appropriate instruments “with unity, vision and courage”¹⁵ are part of the solution to the problem. The author recognises the imperfections and shortcomings of the CFSP in its current shape as a policy that is unable to provide the EU with the ability to “stabilise its neighbourhood and the regions beyond.”¹⁶ She notices, however, that the CFSP has a chance to become an appropriate tool for reacting to migration challenges faced by the EU.

The comment corroborates the relation between the success of the assumptions of the EU migration policy and the effectiveness of action under the CFSP. It should certainly be repeated that the CFSP is not the only element of EU foreign policy that is relevant from the perspective of migration issues. As a political and diplomatic activity, however, it also has a significant role to play here.

In terms of the EU's programming/strategy documents, this relation is manifested in a quite decisive and direct way. In this context, two documents should be mentioned – one relates to the EU's foreign policy, and the other to its migration policy.

From the CFSP perspective, the key document is the EU Global Strategy (EUGS)¹⁷ presented in June 2016. Most certainly, a closer analysis of the strategy demonstrates that its scope is not confined to the CFSP only – it seems to cover basically all aspects of the EU's external action, defining its principles and priorities. It should be, however, recognized that the CFSP, as a diplomatic, political and defence element of these actions, is strongly exposed in the EUGS, also in reference to the phenomenon of migration.

In the part of the EU Global Strategy dedicated to state and societal resilience to the EU's East and South, for instance, an excerpt dedicated directly to migration has been distinguished. It indicates that the EU's action will focus on the origin and transit countries of migrants and refugees. In this respect a desire to develop common tailor-made approaches to migration was expressed. However, the significant role of diplomacy – the essence of the CFSP – has been clearly recognised in this regard (apart from issues of, inter alia, border management, readmission and return).

¹⁵ J. Schmidt, *Seeing the bigger picture: The refugee crisis and the link to CFSP*, <https://www.epc.eu/en/Publications/Seeing-the-bigger-picture-The~1d0d80> [access: 28.03.2021].

¹⁶ Ibidem.

¹⁷ *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for European Union's Foreign and Security Policy*, https://eeas.europa.eu/sites/default/files/eugs_review_web_0.pdf [access: 14.04.2021].

Diplomacy and, importantly, the CSDP as an integral and largely operational component of the CFSP also appear in the excerpts of the EUGS concerning cooperative regional orders. With reference to regions of the Mediterranean, the Middle East and – in particular – Africa, the necessity for uninterrupted support for peace and for the strengthening of security was indicated, which is significant from the perspective of the migration phenomena and their impact on the EU. Also in this aspect, the role of diplomatic tools and the common security and defence policy was emphasised.

Ultimately, it should be added that with regard to the methods of achieving the objectives of the EUGS, a postulate of a so-called “joined-up Union” was distinguished. One of its underlying objectives was the intention to make different external policies and instruments migration-sensitive. The role of the CFSP was clearly emphasised in this context too. It was stated that EU diplomacy and the CSDP are also to become more oriented towards the needs of the EU migration challenges and in this sense it seems that the CFSP itself is to become more sensitive to migration issues.

Thus, it should be recognised that at the level of EU programming documents regarding the broadly understood foreign policy of the EU, the relation between the CFSP and the EU migration policy is relatively clearly emphasised. One might even get the impression that the CFSP is a tool for the implementation of the EU’s migration objectives – perhaps not the only one, but certainly important (in combination with other components of the EU’s external action).¹⁸

Considering documents dedicated to the migration policy itself, the EU’s New Pact on Migration and Asylum¹⁹ naturally draws attention.²⁰ Of course, this document is clearly focused on the EU’s migration policy. Although this policy is qualified as internal, its close relationship with foreign policy is beyond doubt and a belief that “the internal and external dimensions of migration are inextricably linked:

¹⁸ On certain achievements of the EU in this field see e.g. *The European Union’s Global Strategy. Three Years on, Moving forward*, https://eeas.europa.eu/sites/default/files/eu_global_strategy_2019.pdf [access: 23.04.2021].

¹⁹ Communication from The Commission to The European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on a New Pact on Migration and Asylum, COM/2020/609 final, Brussels, 23.09.2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:609:FIN> [access: 24.04.2021].

²⁰ This document is treated here as an example of a broader category of strategy documents in area of freedom, security and justice, cf. J. Monar, *The External Dimension of the EU’s Area of Freedom, Security and Justice. Progress, Potential and Limitations after the Treaty of Lisbon*, SIEPS Report 2012, no. 1, pp. 50–55, <https://core.ac.uk/download/pdf/9552294.pdf> [access: 24.04.2021].

working closely with partners has a direct impact on the effectiveness of policies inside the EU”²¹ was also clearly expressed in the pact.

In the pact, direct and literal references to the EU's foreign policy or the CFSP itself are in principle negligible. However, when evaluating the pact, it is difficult to take no account of the content of the EUGS in terms of the matters analysed here. It seems that the sphere of external relations and their significance for migration were also noticed in the pact.

Section 6 of the pact may serve an example here, in which the issue of cooperation with international partners was broadly commented on. Limiting the issue to the necessary minimum, it is worth noting that one of the pact's objectives in this respect is the intensification of relations with third countries in order to address migration and its root causes, among other objectives. The priorities here include efforts to “develop and deepen tailor-made comprehensive and balanced migration dialogues and partnerships with countries of origin and transit, complemented by engagement at the regional and global level.”²² It seems that, even in this aspect, the way to apply EU diplomatic tools (CFSP) remains open. Admittedly, it should be noted that the key activities of the EU under cooperation with international partners distinguished in the pact assume the implementation of those instruments that fall outside the scope of the CFSP. Development assistance, trade or investment policies, which are a part of external action, can be mentioned here. However, this does not change the fact that the CFSP, with its political and diplomatic capability, is becoming an important ground for the EU's activities in the area of migration.

3. The EU's migration policy and the CFSP's instruments

According to Article 25 TEU, the CFSP is conducted by: defining general guidelines, adopting decisions²³ and strengthening systematic cooperation between Member States in the conduct of this policy. It should also be added that, from the perspective of the EU's migration policy, the tools of the CSDP may be of specific

²¹ Communication from The Commission to The European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on a New Pact on Migration and Asylum, COM/2020/609 final, Brussels, 23.09.2020, <https://eur-lex.europa.eu/legal-content/EN/TX-T/?uri=COM:2020:609:FIN> [access: 24.04.2021], p. 2.

²² Ibidem, p. 24.

²³ Which define: actions to be undertaken by the EU, positions to be taken by the EU and arrangements for the implementation of the decisions on Union actions and positions.

importance.²⁴ Within the scope of CFSP, the EU may also conclude international agreements (Article 37 TEU). In this light, it should be determined how and to what extent the EU's migration policy perspective is present within the CFSP. An extensive and in-depth analysis of all CFSP instruments in this context is obviously not possible due to the limited scope of this paper. The following comments will therefore be limited to selected instruments and aim to give a general idea of how the migration component may be situated in the CFSP area.

The general guidelines of the EU become the basis for programming and implementation of the CFSP by the Council, through appropriate decisions, and by the HR, through appropriate actions (Article 26 TEU). The General Guidelines do not seem to have a uniform character and to take the form of a separate act. It is indicated that they are located within, and become part of, the conclusions of the European Council.²⁵ At the same time, the conclusions are not exclusively reserved for the issue of the CFSP (or external action as a whole). Consequently, an examination of the relationship between the general guidelines of the CFSP and migration policy requires the relevant issues to be identified within the individual conclusions. By doing so, it is possible to demonstrate this link. An example can be found, *inter alia*, in the conclusions of the European Council of 19–20 March 2015.²⁶ The section on external action clearly states that the EU's action against irregular immigration should focus on supporting the countries of origin and transit. This support – in addition to the instruments of external action regulated in the TFEU – clearly seems to require the application of diplomatic instruments specific to the CFSP. Another example, also from the peak of the migration crisis, are the conclusions of 28 June 2016.²⁷ They indicate, *inter alia*, that from the point of view of preventing illegal migration, and relevant mechanisms in that respect, an important role is to be played by the HR, who is to implement the proposed mechanisms. Given that the HR is the body responsible for implementing the CFSP, the link between this policy and migration issues becomes clear again.²⁸ Therefore, if we look for links between the CFSP and the EU migration policy these links, in the light of selected conclusions,

²⁴ This mainly concerns missions within the CSDP – the specificity of the CSDP as an operational component of the CFSP (Article 42 [1] TEU) allows them to be singled out.

²⁵ Cf. S. Keukeleire, T. Delreux, *The Foreign...*, pp. 159–160.

²⁶ European Council meeting (19 and 20 March 2015) – Conclusions, <https://data.consilium.europa.eu/doc/document/ST-11-2015-INIT/en/pdf> [access: 28.04.2021].

²⁷ European Council meeting (28 June 2016) – Conclusions, <https://www.consilium.europa.eu/media/21645/28-euco-conclusions.pdf> [access: 28.04.2021].

²⁸ More on the HR's role – see the next section.

become clear.²⁹ It should be recalled, however, that the General Guidelines themselves are a kind of starting point, a basis for the Council decisions necessary for defining and implementing the CFSP – also in relation to migration issues.

In the case of decisions taken within the CFSP, it may be stated that the analysis of their content confirms that the migration policy might be a part of the process of CFSP implementation. An example in this regard may be the Council decision of December 2011 appointing the European Union Special Representative for the Horn of Africa.³⁰ It indicates, inter alia, that the mandate of the Special Representative is based on the EU policy objectives in relation to the Horn of Africa which assume an active contribution to “regional and international efforts to achieve lasting peace, security and development in the region” (Article 2 [1]). Thus, given how strongly security and development issues are linked to migration issues (as echoed, inter alia, in the policy papers cited above), the tenets of the Special Representative’s mandate confirm how strongly this decision is linked to migration issues. Moreover, the Special Representative should closely follow the regional dimension of the Somali crisis, including refugee and migration flows (Article 3 [1] [g]). Also, this direct reference in the CFSP decision to the sphere of migration issues points to an obvious link between the two policies under consideration.

Finally, it should be noted that from the perspective of the EU’s migration policy, the instruments inherent to the CSDP may also present a certain significance.³¹ In this context the CSDP missions based on Article 42 (1) (4) and 43 (2) of the TEU seem to be a key element. An example of linking the CFSP (through the CSDP) with migration issues in this light is, inter alia, the Council Decision of 18 May 2015.³² This crisis management operation (also called Sophia) based on this decision was

²⁹ Referring to the latest EC Conclusions of December 2020, the migration issue is also addressed there with a strong link to EU external action issues (e.g. relations with Turkey), see: European Council meeting (10 and 11 December 2020) – Conclusions, <https://data.consilium.europa.eu/doc/document/ST-22-2020-INIT/en/pdf> [access: 19.04.2021].

³⁰ Council Decision 2011/819/CFSP of 8 December 2011 appointing the European Union Special Representative for the Horn of Africa, OJ L 327/62, 9.12.2011. This Decision remained in force until 29.02.2020: Council Decision (CFSP) 2018/905 of 25 June 2018 extending the mandate of the European Union Special Representative for the Horn of Africa, OJ L 161, 26.6.2018, pp. 16–21.

³¹ Cf. *Migration – How CSDP Can Support*, eds. S. Biscop, J. Rehl, Vienna 2016, https://eeas.europa.eu/sites/default/files/bmlvs_esdc_egmont_migration_final_online.pdf [access: 28.04.2021]. Regarding the role of CSDP (and Sophia mission) in the context of migration crisis see also: S. Blockmans, *New Thrust for the CSDP from the Refugee and Migrant Crisis*, CEPS Special Report 2016, no. 142, <https://www.ceps.eu/download/publication/?id=9532&pdf=Thrust%20to%20CSDP%20S%20Blockmans%20CEPS%20Special%20Report.pdf> [access: 20.04.2021].

³² Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED), OJ L 192, 19.05.2015, pp. 31–35. Decision remained in force until 30.03.2020, see: Council Decision (CFSP) 2020/471 of 31 March 2020 repealing

calculated to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean (Article 1 [1]). This objective was intended to be achieved “by undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers, in accordance with applicable international law” (Article 1 [1]). At the same time, already in recital 2 it is indicated that the decision aims at “strengthening the Union’s presence at sea, to preventing illegal migration flows and to reinforcing internal solidarity and responsibility.” The detailed mission mandate (Article 2 [2]), on the other hand, directly and specifically refers to the methods and phases of achieving the stated objective. Thus, once again a clear link can be seen between the CFSP (this time its integral, operational element in the form of the CSDP) and the objectives of the migration policy.³³

The above findings give a brief overview of the integration of migration issues within the CFSP framework. Obviously, they do not include all possible EU activities within this policy. As S. Keukeleire and T. Delreux point out, the CFSP is also a set of actions that seem to be a part of everyday diplomacy and include hundreds of statements and declarations, deliberations and meetings at various levels of political dialogue.³⁴ They are based on the elements set out in Article 25 of the TEU. Thus, in the range and diversity of actual actions undertaken based on general guidelines and CFSP/CSDP decisions, accents referring to the migration policy may certainly be sought.

In addition to the above considerations, one further issue is worthy of mention. Attention should be drawn to the fact that instruments that fall outside the catalogue indicated in Article 25 TEU (including those more strictly related to the supranational regime), which remain strictly tools of the EU migration policy, in their essence also often refer to the EU foreign policy and are incorporated therein.

The instrument of mobility partnerships as agreements concluded by the EU with third countries is certainly worth attention in this context. These partnerships remain outside the catalogue of CFSP instruments provided for in

Decision (CFSP) 2015/778 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), OJ L 101, 1.04.2020, pp. 1–3.

³³ For an interesting analysis of the Sophia mission – also from the perspective of rule of law and human rights – see: A. Bendiek, R. Bossong, *Shifting Boundaries of the EU’s Foreign and Security Policy. A Challenge to the Rule of Law*, SWP Research Paper 2019, vol. 12, https://www.swp-berlin.org/fileadmin/contents/products/research_papers/2019RP12_bdk_bsg_Web.pdf [access: 28.04.2021].

³⁴ S. Keukeleire, T. Delreux, *The Foreign...*, pp. 164–165.

Article 25 TEU.³⁵ Their essence, as specific (non-binding)³⁶ tools, essentially boils down to the promotion of legal migration and the elimination of illegal migration³⁷ through an appropriate formulation of relations with third countries. In this light, mobility partnerships – precisely because of their bilateral character and the need to cooperate with third countries that underlies them – seem to be visibly related to the EU's foreign policy as a whole (and thus also to the CFSP). Such agreements have been concluded by the EU with, inter alia, countries of the Eastern Partnership (e.g., Armenia, Azerbaijan, Georgia, Moldova), and with countries such as Morocco.³⁸ The so-called EU-Turkey deal from 2015, which is essentially devoted to migration issues, can also be assessed from a similar perspective. This agreement (Joint Action Plan and EU-Turkey Statement from 2016) as a political-legal instrument also remains outside the scope of Article 25 TEU. However, it too – through its bilateral nature and its focus on cooperation with a third country – seems to remain closely related to EU foreign policy. In this light, the EU's migration policy seems to be undergoing a process of a kind of externalisation, and in this sense there is a certain coupling between it and the EU's foreign policy. Responding to the migration challenges requires the EU to shape its external relations in a specific way. Foreign policy, therefore, has to take into account the migration challenges, and migration policy, in turn, has to “use” the instruments of foreign policy. Hence both policies seem to be complementary and mutually penetrating. Of course, it is not possible in this paper to indicate (let alone analyse) all the threads that are

³⁵ They are also, in principle, attributed to the EU's migration policy, see: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The Global Approach to Migration and Mobility, COM/2011/743 final, Brussels, 18.11.2011, pp. 1–25, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex-%3A52011DC0743> [access: 24.04.2021].

³⁶ Concerning the legal nature of mobility partnerships – see e.g. F. Tittel-Mosser, *Reversed Conditionality in EU External Migration Policy: The Case of Morocco*, Journal of Contemporary European Research 2018, vol. 14, no. 4, pp. 351–352, <https://www.jcer.net/index.php/jcer/article/view/843/826> [access: 24.04.2021].

³⁷ Cf. S. Brocza, K. Paulhart, *EU Mobility Partnerships: A Smart Instrument for the Externalization of Migration Control*, European Journal of Futures Research 2015, vol. 3, p. 14, <https://link.springer.com/content/pdf/10.1007/s40309-015-0073-x.pdf> [access: 20.04.2021].

³⁸ Cf. F. Tittel-Mosser, *Reversed Conditionality...*; see also L. Den Hertog, *Funding the EU-Morocco 'Mobility Partnership': Of Implementation and Competences*, European Journal of Migration and Law 2016, vol. 18, no. 3, pp. 275–301, https://brill.com/view/journals/emil/18/3/article-p275_2.xml?trend-md-shared=0&ebody=pdf-49903 [access: 24.06.2021]; S. Carrera, J-P. Cassarino, N. El Qadim, M. Lahlou, L. den Hertog, *EU-Morocco Cooperation on Readmission, Borders and Protection: A model to follow?*, CEPS Paper in Liberty and Security in Europe 2016, no. 87, <https://www.ceps.eu/download/publication/?id=9256&pdf=EU-Morocco%20Cooperation%20Liberty%20and%20Security%20in%20Europe.pdf> [access: 24.09.2021].

related to the above mentioned phenomena. Although they exceed the framework of this study, it is important to highlight these problems.

4. EU migration policy and the CFSP – a problem of coherence

Already at the level of the analysed programming documents concerning the EU migration policy and its external action, including the CFSP, the issue of EU policy coherence (and its importance) is consistently raised. In this context, organisational methods of linking the foreign and migration policies of the EU as essentially separate fields of EU activity are an important element. In this regard the functioning of the HR and the way it is embedded in the institutional system of the EU seems to allow for a linkage of both spheres.

The core functions of the HR are to put the CFSP into effect (Article 24 [1] and Article 26 [3] TEU) as well as to ensure the consistency of the EU's external action (Article 18 [4] TEU). Moreover, the HR is "responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action" (Article 18 [4] TEU). In the light of these provisions the following observations can be made.

At the institutional level, the consistency of the EU's external action – given its relatively broad scope – is ensured, inter alia, by embedding the HR within the European Commission. As a result, the HR is not only active within the CFSP. It is also active at the level of those elements of EU external action, which do not fall within the scope of the CFSP and, as policies subject to the Community/EU regime, fall within the competence of the Commission. Moreover, it should be emphasized that the Commission exercises certain powers also in the areas of policies classified as internal, including the migration policy of the EU.

In accordance with Article 18 (4) TEU, the HR remains one of the Vice-Presidents of the Commission. As such, the HR has been entrusted with a mission, a significant element of which remains to ensure best coordination between the internal and external dimension of the EU's policies, and in this respect HR's strict cooperation with all Members of the College of Commissioners seems to become a necessity.³⁹

³⁹ T. Dubowski, *The Position of the High Representative of the EU for Foreign Affairs and Security Policy in the European Commission. Recent Developments*, Teka Komisji Prawniczej 2020, vol. 13, no. 1, p. 110.

It should be pointed out that within the Commission, the HR chairs the Commissioners' Group on a Stronger Europe in the World. The Group comprises Commissioners responsible for Neighbourhood and Enlargement, Crisis Management and International Partnerships.⁴⁰ It should be noted that among the members of the Group there is no Commissioner responsible for migration issues.⁴¹ There is no doubt, however, that the areas for which the members of the Group are responsible involve migration challenges.⁴² In this context it is also worth noting that the HR is required to provide a weekly update on foreign policy to the College,⁴³ which should ensure the systemic inclusion of external action to the Commission's decision-making process. It is also worth mentioning that an important factor strengthening the coherence of the EU foreign policy and its internal policies, including the migration policy, is the existence of the so-called Group for External Coordination (EXCO). The activity of this preparatory body is aimed at ensuring a more strategic and coherent external action. Its task is to "prepare the external aspects of College meetings on a weekly basis and ensure full political coordination and coherence on external action matters."⁴⁴ In this way, the activities of EXCO are intended to link the internal and external aspects of the Commission's work. EXCO is co-chaired by the Diplomatic Adviser of the President and the Deputy Head of HR's Cabinet.⁴⁵ This in turn means that HR, as the body responsible for implementing the CFSP, participates at the level of the Commission in efforts to coordinate its activities in the context of EU external action. This coordination may also include the sphere of the EU's migration policy – at least in those aspects of it which contain a certain external potential.

As a result, the coherence between the CFSP and the migration policy of the EU finds an important institutional factor in the form of the HR. Its competences and tasks within the CFSP, in conjunction with his position in the Commission (Vice-President, head of one of the Commissioners' groups) provide an opportunity

⁴⁰ The Trade Commissioner (Phil Hogan) was also part of the Group until 2020.

⁴¹ For more on the position of the HR within the Commission 2014–2019 see T. Dubowski, *The Position...*, p. 107.

⁴² These are essentially left under the responsibility of the Vice-President of the Commission, in charge of the Group: Promoting Our European Way of Life (Margaritis Schinas) and (to a certain extent) – the Commissioner for Home Affairs (Ylva Johansson).

⁴³ Communication from the President to the Commission. The Working Methods of the European Commission, P/2019/2, Brussels, 1.12.2019, p. 7, <https://ec.europa.eu/info/sites/default/files/working-methods.pdf> [access: 16.04.2021].

⁴⁴ Ibidem, p. 14.

⁴⁵ Ibidem.

to effectively strengthen coherence between the indicated Union policies, which is certainly not without influence on their effectiveness.

Conclusion

The above deliberations lead to the following conclusions. First, an assessment of the links between migration issues and the CFSP requires considering the specific nature of the latter. It remains an intergovernmental policy and, consequently, its programming and implementation are based on instruments and procedures that are different from those of the TFEU regime and on entrusting key competences to intergovernmental institutions. It should be noted, however, that the specific character of the CFSP does not prevent it from incorporating elements of the EU's migration policy, even though the two policies are fundamentally different in nature.

It should be noted that migration issues are linked to the CFSP already in area of programming both policies. The New Pact on Migration and Asylum and the EUGS were given as examples in that respect. Indeed, one may have the impression that perhaps the links between the migration policy and this particular diplomatic and political component of the EU's external action are not always articulated in a direct or decisive manner. However, the CFSP remains an element of the EU's external action and thus already at the level of its programming it is neither possible nor desirable to abstract from it. Consequently, in relevant documents one can distinguish elements that link (although not always directly) the assumptions of the EU migration policy with the CFSP.

Migration elements are also present within CFSP instruments. These issues are present both at the level of the programming tools for the development of the CFSP (general guidelines) and at the level of its implementation tools – from decisions taken within the CFSP to the instruments of everyday diplomacy. The CSDP decisions on EU missions are particularly noteworthy in this context. It would appear that this specific, operational instrument of the CFSP is relatively useful from the perspective of the EU's migration policy. In addition, it is worth mentioning that certain instruments outside the CFSP toolbox (focused on migration-related issues) are also present in the EU's foreign policy area, mainly due to their nature as bilateral agreements that assume a specific model of cooperation with third countries and a specific external activity of the EU in this area.

Finally, it should be noted that given the formal and generic distinctiveness of the two policies in question, the problem of their coherence remains an important

issue. In this respect, it has been pointed out that there are solutions in the EU's organisational structure that support such consistency. One of them is embedding the HR within the CFSP and, at the same time, empowering her/him within the Commission. This creates an interesting and potentially effective organisational mechanism for linking the CFSP with other Union policies that have an external context, including EU migration policy.

Thus, the links between CFSP and the EU migration policy are clearly discernible. It seems that the realisation of the EU's migration objectives without the use of the diplomatic and political components of the EU's external action would be at least far more difficult, if not impossible entirely.

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