Antitrust: Commission imposes binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and Eastern European gas markets

Commissioner in charge of competition policy, Margrethe **Vestager**, said: *"All companies doing business in Europe have to respect European rules on competition, no matter where they are from. Today's decision removes obstacles created by Gazprom, which stand in the way of the free flow of gas in Central and Eastern Europe. But more than that – our decision provides a tailor-made rulebook for Gazprom's future conduct. It obliges Gazprom to take positive steps to further integrate gas markets in the region and to help realise a true internal market for energy in Europe.And it gives Gazprom customers in Central and Eastern Europe an effective tool to make sure the price they pay is competitive.*

As always, this case is not about the flag of the company – it is about achieving the outcome that best serves European consumers and businesses. And the case doesn't stop with today's decision – rather it is the enforcement of the Gazprom obligations that starts today."

Gazprom is the dominant gas supplier in a number of Central and Eastern European countries. In April 2015, the Commission sent a Statement of Objections to Gazprom. It set out the Commission's preliminary view that the company breached EU antitrust rules by pursuing an overall strategy to partition gas markets along national borders in eight Member States (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). This strategy may have enabled Gazprom to charge higher gas prices in five of these Member States (*Bulgaria, Estonia, Latvia, Lithuania* and *Poland*).

Today's Commission decision puts an end to this behaviour by Gazprom. Furthermore, it imposes on Gazprom a detailed set of rules that will significantly change the way Gazprom operates in Central and Eastern European gas markets:

- **No more contractual barriers to the free flow of gas**: Gazprom has to remove any restrictions placed on customers to re-sell gas cross-border.
- **Obligation to facilitate gas flows to and from isolated markets:** Gazprom will enable gas flows to and from parts of Central and Eastern Europe that are still isolated from other Member States due to the lack of interconnectors, namely the Baltic States and Bulgaria.
- **Structured process to ensure competitive gas prices:** Relevant Gazprom customers are given an effective tool to make sure their gas price reflects the price level in competitive Western European gas markets,

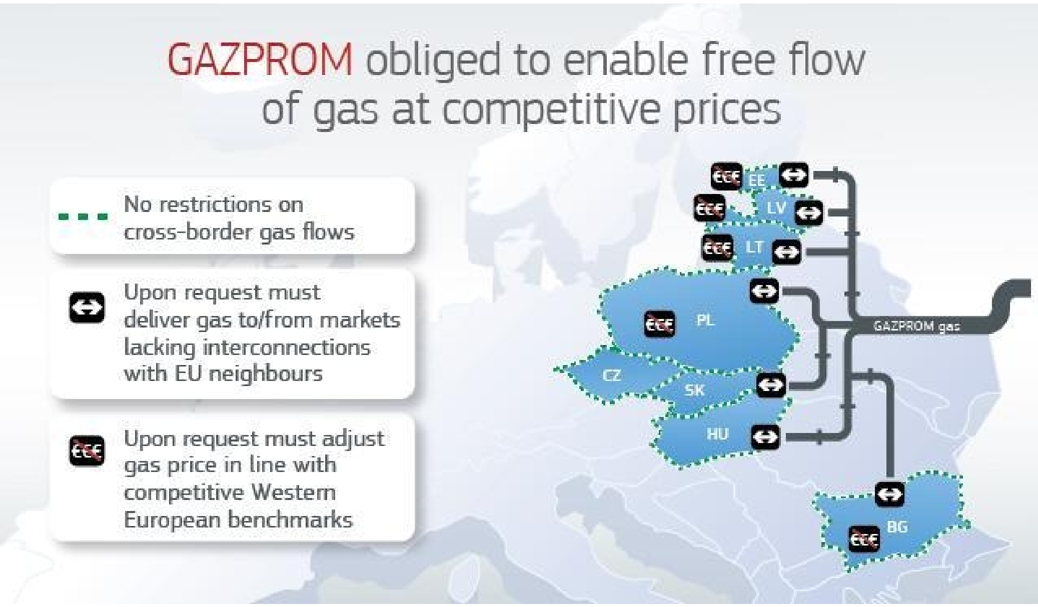
especially at liquid gas hubs.
- **No leveraging of dominance in gas supply**: Gazprom cannot act on any advantages concerning gas infrastructure, which it may have obtained from customers by having leveraged its market position in gas supply.

Combined, these obligations address the Commission's competition concerns and achieve its objectives of enabling the free flow of gas in Central and Eastern Europe at competitive prices.

Therefore, the Commission has decided to **make these obligations (so-called "commitments") legally binding on Gazprom** (under Article 9 of the EU's antitrust Regulation 1/2003).

If a company breaks any of these obligations, the Commission can impose a fine of up to 10% of the company's worldwide turnover, without having to prove an infringement of EU antitrust rules.

More generally, effective competition in Central and Eastern European gas markets does not only depend on the enforcement of EU competition rules but also on investment in gas supply diversification, well-targeted European and national energy legislation and their proper implementation. This is why it is a key priority of the Commission to build a European Energy Union.



Details on Gazprom's obligations

To address the Commission's competition concerns, Gazprom has to comply with a set of obligations aimed at ensuring the free flow of gas at competitive prices across Central and Eastern Europe. These obligations on Gazprom will be in place for eight years.

They reflect feedback from stakeholders in a market test, which the Commission launched in March 2017 on an earlier version of the proposal. This market test resulted in a significant number of replies from a wide range of stakeholders, including governments, national competition authorities, gas wholesalers, industry associations and academics, which helped to clarify and ensure the effectiveness of the final obligations.

1) Gazprom has to remove barriers to the free flow of gas in Central and Eastern Europe

The Commission was concerned that Gazprom imposed territorial restrictions in its supply agreements with wholesalers and some industrial customers in all eight Member States (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia). These restrictions include export bans and clauses requiring the purchased gas to be used in a specific territory (destination clauses) and other measures that prevented the cross-border flow of gas.

In response, the Commission decision requires Gazprom to **remove all such contractual barriers to the free flow of gas** in Central and Eastern European gas markets, regardless of whether they make cross-border sales impossible or merely financially less attractive. Gazprom will also not re-introduce such clauses in the future.

Furthermore, Gazprom has to adapt provisions in its contracts regarding the **monitoring and metering of gas in Bulgaria**, which have isolated the Bulgarian gas market from neighbouring EU gas markets. This will allow the transfer of control from Gazprom to the Bulgarian operator of the gas transmission infrastructure. Following the market test, Gazprom clarified a number of technical elements to ensure the obligation would be fully effective.

These obligations will remove contractual obstacles created by Gazprom, which stand in the way of the free flow of gas in Central and Eastern Europe.

2) Gazprom has to take active steps to integrate gas markets in Central and Eastern Europe

For gas to actually flow freely across Central and Eastern Europe, it is also necessary to have infrastructure in place for its transport, namely interconnectors that link national gas markets with each other. Such infrastructure already exists in the Czech Republic, Hungary, Poland and Slovakia. However, infrastructure connecting Bulgaria, Estonia, Latvia and Lithuania with neighbouring EU gas markets is not yet sufficiently available. This limits the ability of Gazprom’s customers to re-sell their gas to and from these countries, even if they have spare volumes.

Gazprom will now “replace” the lack of interconnection by **giving relevant customers an option to deliver gas to and from these countries.** In particular, customers that have bought gas, originally for delivery to Hungary, Poland or Slovakia, can choose to have Gazprom deliver all or part of it to Bulgaria and/or the Baltic States instead (and vice versa):

- **Swaps offered to a wide range of Gazprom customers:** Gazprom has to make this option available to relevant customers that have (or will have) gas contracts for the delivery of gas to certain delivery points in Central and Eastern Europe. Following the market test, this will apply to contracts with a duration of at least 18 months. The mechanism would not be workable for shorter contracts, since the minimum duration for gas delivery to a new delivery point is twelve months preceded by a four-month notice period to Gazprom.

- **Swaps available in both directions, to and from isolated markets:** Relevant Gazprom customers have the possibility to ask Gazprom to deliver their gas to the Baltics and Bulgaria instead of the originally agreed delivery points (from Poland or Slovakia to the Baltics and from Slovakia or Hungary to Bulgaria). Following the market test, such swaps will be possible in both directions. This will make the mechanism more effective and lead to a better integration of Central and Eastern European gas markets.
- **Fixed and transparent service fees for the delivery**: The fees that Gazprom can charge for this service are fixed and transparent. Following the market test, they were significantly reduced to make the mechanism financially attractive.
- **Flexibility for Gazprom's customers to exercise this option**: Following the market test, Gazprom's customers can exercise these options for smaller quantities of gas (50 million m^3) and at shorter notice (four months).
- **Limited grounds for Gazprom to refuse to perform the swap**: Following the market test, Gazprom can only refuse to perform the swap if there is no transmission capacity. This will be closely monitored by an independent trustee.

This mechanism enables gas to flow to and from the Baltics and Bulgaria, as if gas interconnectors with EU neighbours existed already. It will allow Gazprom's customers to seek new business opportunities even before interconnectors become available, to the benefit of consumers and businesses in Bulgaria and the Baltic States.

3) Gazprom is committed to a structured process to ensure competitive gas prices in Central and Eastern Europe in the future

The Commission was concerned that Gazprom may have been able to charge **higher prices** in five Member States (*Bulgaria, Estonia, Latvia, Lithuania* and *Poland*).

In response, the Commission decision gives Gazprom's customers with long-term contracts in these countries an effective tool to make sure the gas price they pay in the future is competitive:

- **Customers can demand lower price when their gas price diverges from competitive Western European price benchmarks**: Gazprom's customers will have a contractual right to ask for a lower gas price, if the price they pay diverges from competitive Western benchmarks, including prices at liquid hubs. They can exercise this option at frequent intervals (every two years), with an additional “joker” every five years. Following the market test, existing customers can exercise this right immediately after the Commission decision and Gazprom must offer this right also to new customers.
- **New gas price must be set in line with price level in competitive**

Continental Western European gas markets: The new price must reflect competitive Continental Western European price benchmarks, including prices at liquid hubs. Following the market test, this guidance was considerably improved to explicitly refer to the price level in competitive Continental Western European gas markets, including prices at the most relevant liquid hubs in Continental Europe, namely TTF in the Netherlands and NCG in Germany. The new lower price will be applied retroactively from the date of the price revision request.
- **Arbitration if Gazprom does not agree within a strict deadline:** If Gazprom and its customer do not agree on a new price within 120 days, the dispute can be referred to an arbitrator. The arbitrator will then impose a competitive gas price that takes full account of the above-mentioned Western European benchmarks. Furthermore, arbitration must take place within the EU. Arbitration tribunals in the EU are under an obligation to respect and apply EU competition law. The Commission has the right to intervene in such cases as amicus curiae.

This will ensure competitive gas prices in these regions and avoid that gas prices under the oil-indexed contracts significantly diverge from competitive price benchmarks in the future. The obligation applies to all contracts with a duration of three years or more as the pricing concerns in this case are only relevant for long-term contracts where new developments over time can lead to a significant deviation from competitive benchmarks.

4) Removing demands obtained by leveraging of market position

Finally, the Commission was concerned that Gazprom leveraged its dominant market position on the gas supply market to obtain advantages with regard to the access to or control of gas infrastructure. The Statement of Objections raised concerns in relation to the South Stream project in Bulgaria and the Yamal pipeline in Poland.

- As regards **South Stream**, the decision makes clear that Gazprom will not benefit from advantages that it has obtained. Gazprom will not seek any damages from its Bulgarian partners following the termination of the South Stream project. This is without prejudice to whether such claims would have been valid in the first place.
- As regards the **Yamal Pipeline**, the Commission’s investigation has shown that the situation cannot be changed by this antitrust procedure, as gas relations between Russia and Poland are determined by intergovernmental agreements. In any event, a decision by the Polish Energy Regulator in May 2015 did not confirm allegations that Gazprom would have foreclosed the Polish gas market with regard to the Yamal pipeline. The regulator found that the owner of the Yamal pipeline, Europolgaz (which is co-owned by Gazprom), is not able to delay or block investments on the pipeline: all investments, such as those enabling reverse flows from Germany, have been implemented as planned by the certified transmission service operator (Gaz-System).

Finally, to better deal with future intergovernmental agreements, the Commission put forward a legislative proposal to make intergovernmental agreements on gas and oil subject to prior scrutiny by the Commission. This proposal has entered into force in 2017.

More information on today's decision will be available on the Commission's competition website in the public case register under the case number AT.39816

ESMA updates Benchmarks Regulation Q&As (May 2018)

The overall BMR Q&A provides a new answer regarding the following topic:

· How prospectuses should include reference to the register of administrators and benchmarks.

The purpose of this Q&A is to promote common supervisory approaches and practices in the application of BMR. It aims at providing investors and other market participants with clarifications on the applicable requirements.

ESMA will periodically review these Q&A and update them where required.

ESMA updates Benchmarks Regulation Q&As (May 2018)

The overall BMR Q&A provides a new answer regarding the following topic:

· How prospectuses should include reference to the register of administrators and benchmarks.

The purpose of this Q&A is to promote common supervisory approaches and practices in the application of BMR. It aims at providing investors and other market participants with clarifications on the applicable requirements.

ESMA will periodically review these Q&A and update them where required.

Statement by Commissioner Vestager on Commission decision imposing binding obligations on Gazprom to enable free flow of gas at competitive prices

Check against delivery

Today, the Commission has adopted a decision imposing on Gazprom a set of obligations. These obligations will significantly change the way Gazprom operates in Central and Eastern European gas markets. To the benefit of millions of European consumers who rely on gas to heat their homes and cook their food. And to the benefit of European businesses that rely on gas for production.

To recall: the Commission sent Gazprom a Statement of Objections in 2015. We set out our competition concerns that Gazprom pursued an overall strategy in its long-term contracts with customers to partition gas markets. This happened in eight Member States – Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia. This strategy may have enabled Gazprom to charge higher gas prices in five of these Member States.

Today’s decision puts an end to this behaviour by Gazprom. It removes obstacles created by Gazprom, which stand in the way of the free flow of gas in Central and Eastern Europe.

Because all companies doing business in Europe have to respect our rules on competition. No matter where they are from.

But more than that – our decision provides a tailor-made rulebook for Gazprom’s future conduct. It obliges Gazprom to take positive steps to further integrate gas markets in the region and to help realise a true internal market for energy in Europe.

And it gives Gazprom customers in Central and Eastern Europe an effective tool to make sure the price they pay is competitive. In other words, customers can ensure that their gas price will now be driven by the competitive gas prices that already exist in Western Europe.

As always, this case is not about the flag of the company – it is about achieving the outcome that best serves European consumers and businesses.

Details of Gazprom’s obligations

So, how exactly will Gazprom’s behaviour in the region change after the decision?

There are three parts to Gazprom’s obligations: That Gazprom’s customers are free to decide what happens with the gas they have bought, that they have more flexibility on where they want Gazprom to deliver it, and that they pay a competitive price for the gas.

So, the **first two parts** are about enabling gas to flow freely in Central and Eastern Europe.

First, Gazprom has to remove any contract provisions that prevent customers from re-selling gas across national borders. As well as any other provision that reduces a customer's incentives to re-sell gas across borders, such as clauses that give Gazprom a share of the re-sale profit.

In future it will be for the customer – and not Gazprom – to decide what happens to the gas they have bought. That is an important condition for gas to be traded effectively by Gazprom's customers.

But for gas to actually flow freely across Central and Eastern Europe, it is also necessary to have the infrastructure for its transport, namely interconnectors that link national gas markets with each other. Unfortunately, the availability of such interconnectors is still insufficient in parts of the region, namely in the Baltic States and in Bulgaria.

That is why we made sure Gazprom's obligations don't stop at just removing contractual barriers: the **second part** requires Gazprom to take positive steps to further integrate these gas markets.

For example, Gazprom must give customers an option to change where they want their gas delivered to. Customers that bought gas, originally for delivery to Hungary, Poland or Slovakia, can have all or part of it delivered to Bulgaria or the Baltic States instead. Gazprom must offer these swaps in both directions for a fixed transparent fee.

This means that gas can flow to and from the isolated markets as if the gas interconnectors existed already. It will allow Gazprom's customers to seek new business opportunities even before interconnectors become available, to the benefit of consumers and businesses in Bulgaria and the Baltic States.

These obligations on Gazprom will increase cross-border competition and lead to better integrated markets, which should help keep down gas prices.

But we wanted to enable customers directly to ensure that prices in the region will be competitive. That's because one of our competition concerns was that Gazprom was charging higher prices in five countries, namely Bulgaria, Estonia, Latvia, Lithuania and Poland.

We were concerned that customers in those countries faced higher prices than could be justified, compared to competitive gas prices in Western Europe.

That's why the **third part of Gazprom's obligations** is about giving customers in these countries an effective tool to make sure the price they pay is competitive.

In future, these customers will have the right to get their gas price adjusted, if it diverges from competitive benchmarks. These explicitly refer to prices quoted on Western European liquid gas trading hubs in Germany and in the Netherlands. If Gazprom does not agree to the customer's demand within 120 days, an arbitrator is appointed that will impose a competitive gas price that takes full account of these benchmarks.

This will make sure that customers in these countries will never again face gas prices that are not competitive compared to the prices in Western Europe.

Finally, the obligations also address the concern that Gazprom may have used its market position in gas supply in Bulgaria to obtain favourable treatment concerning gas infrastructure. In particular, Gazprom cannot seek any damages from its Bulgarian partners following the termination of the South Stream project.

So, our decision today imposes on Gazprom a strict set of rules on how to do business in Central and Eastern Europe. It imposes clear obligations on Gazprom and gives effective rights to Gazprom's customers. Combined, this will enable the free flow of gas at competitive prices.

Feedback from market test

We reached this decision also thanks to extensive input from a wide range of stakeholders – governments, national competition authorities, gas wholesalers, industry associations and academics. We had asked for their views on an earlier version of the proposal in March last year, and I would like to thank each and every one of them for their contribution.

It helped us in our intensive discussions with Gazprom since the market test, leading to this final set of obligations we imposed today. A lot of different big and small pieces needed to come together, like cogs in a machine, for these obligations to be effective.

To name just a few of the improvements we made: More customers will be able to benefit from the option to have Gazprom deliver part of or all their gas to Bulgaria or the Baltic States, instead of the destination they had initially agreed. Or the other way round. And these customers are given much more flexibility and safeguards. They can swap smaller quantities of gas at shorter notice. Plus, the fees that Gazprom may charge for this service are fixed at a low level to make the swap financially attractive. They are about 30% lower than in the initial proposal. Finally, Gazprom can only refuse to perform the swap if there is no transmission capacity.

Another example for an improvement concerns the right of customers with long-term contracts to adjust their gas price. Now, Gazprom has to give this right not only to its existing but also to future customers in the countries concerned.

Imposing obligations versus a fine

So, we have come a long way to get to this solution. In line with our standard rules, we can implement such a solution because it fully addresses our competition concerns. But I know that some would have liked to see us fine Gazprom instead, no matter the solution on the table.

However, a fine would not have achieved all of our competition objectives in this case. We can only make sure that Gazprom takes positive steps to integrate isolated gas markets, if Gazprom commits to do so. And we can only offer Gazprom's customers an effective right to adjust their gas price, if we bind Gazprom to a structured process.

With today's decision Gazprom has accepted that it has to play by our common European rules, if it wants to sell its gas in Europe. In fact, it has accepted to play by a rulebook that is tailor-made to ensure that European consumers can benefit from the free flow of gas at competitive prices.

If Gazprom fails to comply with any of its obligations, the consequences would be serious. The Commission can then impose a fine of up to 10% of the company's worldwide turnover. We can do so without having to prove an infringement of EU antitrust rules. In 2013, for example, we fined Microsoft over half a billion euros when the company broke its obligations on choice of web browsers. In other words, the case doesn't stop with today's decision – rather it is the enforcement of the Gazprom obligations that starts today.

So this decision reaches the outcome that best serves European consumers and businesses.

Energy Union

And it also matters to our climate. If we want to achieve our ambitions from the Paris Agreement we need to increase the share in our energy mix of renewable energy, such as wind and solar. That also means we need gas as a flexible back-up capacity for the days when the sun is not shining and the wind is not blowing.

At the same time, effective competition in European gas markets of course cannot be achieved by the enforcement of competition rules alone. It also depends on how much you invest into gas supply diversification. As well as on legislation to complete our Energy Union. My colleagues Maroš Šefčovič and Miguel Arias Cañete have made a lot of progress on this already.

That also shows why we have both regulation and competition enforcement. Because it is when competition enforcement and regulation each fulfil their role that we get gas markets that really serve European consumers and businesses.

Factsheet: European Commission and African Union Commission step up their

cooperation to support young people, jobs and peace

These initiatives follow up on the commitments made at the 5th AU-EU Summit, which was held in November 2017 in Abidjan, notably deepening and expanding cooperation in science and technology; agribusiness and renewable energy, blue and green economy; skills and education; governance and election observation and peace and security.

€400 million to support continental and interregional development in Africa

In support of the Africa-EU Partnership, the EU has launched the second phase of the Pan-African Programme for an amount of €400 million (2018-2020). Projects at continental or interregional level in Africa will focus on three main strategic areas:

1. It will boost the **AU-EU political dialogue** in areas of joint interest, including migration, and advocate for an **effective system of good governance at pan-African level**. For instance, initiatives will support the work of the AU institutions in the fields of human rights, election observation and on combatting corruption.
2. Special focus will be given to enhancing young people's **employability and mobility**, and promoting **technological innovation**. The funding will for example reinforce exchange programmes among African universities based on the Erasmus experience and support the recognition of qualifications and the harmonisation of **higher education** in Africa, inspired by the EU's Bologna Process.
3. Supporting African **continental economic integration**, the programme will facilitate **trade and investments** and the development of **inter-regional infrastructure**. For instance, it will support the establishment of the African Continental Free Trade Area through programmes focusing on lowering technical barriers to trade and harmonising African policies, standards and regulations, including in the digital and air transport markets.

The Pan-African Programme is the first ever EU programme in development and cooperation that covers Africa as a whole. It was adopted in 2014 for a total budget of €845 million, as a dedicated financial instrument to support the Africa-EU Partnership. The first phase of the programme 2014-2017 helped to progress on the operationalisation of the AU Human Rights system. Moreover, it played a significant role in promoting migration dialogue and in supporting the AU Programme for Infrastructure Development in Africa. Through its second phase, the Pan-African Programme will continue its support to these and new projects with an added value for both the African and European continent.

The Memorandum of Understanding on peace and security

In light of today's increasingly complex threats and the need to address their root causes, Africa and the EU have a joint interest to strengthen their partnership on peace and security, and to enhance strategic cooperation on global challenges. The European Union and the African Union Commission agree on a Memorandum of Understanding (MoU), which will become the main tool dealing with peace and security challenges and their response strategies. This will bring the EU-AU dialogue to a more structured level.

The MoU covers a wide number of areas in peace, security and governance, including tackling root causes, crisis management, mediation, cross border security, conflict resolution and support in electoral matters. The MoU establishes a specific Counterterrorism Dialogue and provides for twice yearly consultations at Senior Official level to ensure planning and implementation of the provisions in the MoU.

The EU continues to be the first supporter of the African Union and regional economic communities to pursue the objective of 'African solutions to African problems', especially in the peace and security area. More than €2.7 billion has been committed to the African Peace Facility since 2003, thereby allowing for the development of the African Peace and Security Architecture and its further contribution towards the prevention, management and resolution of conflicts.

The Taskforce Rural Africa

The European Commission will set up a Task Force of experts on rural Africa to provide expertise, advice and possible recommendations to the African Union Commission partners in relation to agriculture, agri-business and agro-industries. Food and farming have a prominent role to play in strengthening the partnership with the African Union. Unleashing the potential of the sector can contribute to economic growth and generate decent employment opportunities for Africa's increasing young population. The institutions of the EU and AU indeed have been engaging in regular policy dialogue in this sector. The EU-AU Agriculture Ministerial Conference "Making Sustainable Agriculture a future for youth in Africa" of 2017 being a good example of stronger cooperation.

The joint EU-AU task force on digital economy

To deepen the AU-EU cooperation in the field of digital economy, the two Commissions will set up a joint task force. It will be comprised by African and European decision-makers, entrepreneurs and civil society representatives that will steer the future work on this subject.

Strategic orientations and priorities for the continental dialogue on migration

The European Commission and African Union Commission agree on strategic orientations and priorities for a continental dialogue on migration and mobility, complementary to other existing frameworks such as the Rabat and Khartoum Processes and the Joint Valetta Action Plan. The dialogue will provide a platform which will address and respond to continental issues pertaining to migration and mobility between the EU and Africa, including their root causes.

For More Information

Press release 'EU and African Union Commissions step up their cooperation to support young people, jobs and peace'

Pan-African Multiannual Indicative Programme

Factsheet 'EU's key partnership with Africa'

Joint Africa-EU Strategy

Africa-EU Partnership