

## Attempting the Impossible? The Prospects and Limits of Mobility Partnerships and Circular Migration



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### Summary

The emergence of a common EU immigration policy is marked by an increasing emphasis on border management and migration control. At the same time the EU is faced with important labour market shortages and needs to regulate the entry of foreign labourers in an efficient way. It is with this rationale that the Commission has presented a *Communication on circular migration and mobility partnerships between the European Union and third countries* in May 2007. This paper argues that such "partnerships" between highly unequal "partners" are difficult to sustain because it is unlikely that EU neighbourhood countries have the means and political will to implement all the commitments involved in the offered partnership at the same time. If mobility partnerships fail however, they are likely to lead to a double disadvantage: no legal channels for migration for third country nationals and a lack of cooperation in border management – hence an increase in irregular migration pressures. Circular migration may not appeal to migrant workers if a return to their country of origin is not matched with a concrete opportunity for future employment as happens for instance in seasonal migration schemes in agriculture. Migrant workers may have the incentive of staying on and going underground rather than going home with a vague promise that a future visa request will be facilitated. Mobility partnerships can be more effective if implemented at the local or regional level between city and regional authorities and with the participation of immigrant transnational organisations.

### An emerging common EU migration policy

A common migration policy in the European Union was effectively introduced by the Amsterdam Treaty although its legal base remains somehow pending until the ratification of the Lisbon Treaty. The EU migration policy took shape during the 5-year transition phase between 1999 and 2004, a period that saw many important developments in the field of migration (including the *Directive concerning the status of third-country nationals who are long-term residents* the much contested *Directive on the right to family reunification* and several measures concerning a common asylum policy). Notable has been the absence of EU legislation regulating labour migration. Indeed, despite the efforts of the European Commission to adopt two directives regulating migrant inflows for the purposes of dependent or independent employment, member state governments were not able to reach an agreement and preferred to reserve this area to national law. In fact, it remains debatable whether EU countries should seek a joint EU approach to labour migration, since national labour markets have different dynamics and needs and are related to different welfare regimes and labour regulations.

Given the impossibility to reach an agreement in this field, the Commission adopted two "plan B" strategies. On the one hand, it promoted a package of less ambitious directives regulating specific categories of migrants: special directives covering migrant students, researchers, intra-company transferees and high skill personnel. The famous *Blue Card* directive is however still in process as member states experience different needs for skilled migrants and tend to disagree on what qualifications should define a "high skill immigrant worker" for the purposes of this directive. Given the current economic and financial crisis it would not be surprising if the *Blue Card* scheme will be temporarily abandoned. There is also a plan for introducing a directive regulating seasonal labour migration. On the other hand, the European Commission has promoted since 2005 the adoption of the *Open Method of Coordination* in the area of migration, which has not (yet) proven fruitful.

Overall, the post-1999 period in EU migration policy has been marked by the failed application of the *Open Method of Coordination* and by a piecemeal approach to managing economic migration. The policy agenda has developed more actively though in the field of combating irregular migration where a Policy Plan was adopted in 2005. In July 2006, a Commission Communication has set a number of priorities in this field. The most recent development in this area is the (in)famous *Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals*, which has been strongly criticized by the academic community, civil society and NGOs for, among other things, the excessively long period of detention allowed (up to six months which however can be prolonged up to 18 months) for the purpose of removal of the irregular migrant from EU territory and for the possibility of allowing in exceptional circumstances for the detention of families including minors (articles 15-17 of the Directive).

The EU migration policy agenda has been shaped in recent times by an increasing emphasis on border control rather than on the actual management of migration flows in Europe. Indeed, border controls and security have been defined as the precondition on which the migrant integration policy is based.

This approach is not novel as several EU countries had adopted similar approaches of zero migration or zero tolerance to irregular migration in the past, defining these as pre-conditions of incorporating successfully the migrant populations that were already "in" these countries. It is precisely this past experience and the lesson learned that migration *cannot* be fully controlled and that *zero migration is neither feasible nor desirable* that make one sceptical when one ponders over initiatives such as the *European Pact for Immigration and Asylum* or the Commission *Communication on circular migration and mobility partnerships (COM (2007) 248 final)*.

Both the *European Pact for Immigration and Asylum* (adopted in October 2008 by the European Council) and the Commission's *Communication on circular migration*

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and mobility partnerships between the European Union and third countries (published in May 2007) are documents of a consultative and political character. They are not legally binding and do not require any action by member states. Their aim is nonetheless important as they seek to set the stage for successive policy making initiatives. This paper does not assess the pros and cons of the Pact for Immigration and Asylum – this has been done already and indeed thoroughly elsewhere (Bertozzi, 2008; Guild and Carrera, 2008; Collett, 2008). The objective here is rather to discuss the advantages and disadvantages of mobility partnerships and circular migration.

### Mobility partnerships and circular migration

The *Communication on circular migration and mobility partnership* had as its primary aim to foster legal migration opportunities for non-EU workers to find employment in the EU, mainly through schemes of circular and temporary migration and through the so-called mobility partnerships. The two aspects developed in the Communication are distinct even if inter-related as the Commission intends to develop new instruments for managing legal migration and combating irregular migration.

#### Mobility partnership

The general aim of the mobility partnership approach is to ground cooperation on a "balanced partnership with third countries adapted to specific EU member state labour market needs". The first instrument proposed to give legal shape to these partnerships is the idea of developing "mobility packages", i.e. legal schemes that would frame legal migration, preferably of a circular or temporary character. The Communication specifies that such legal schemes will be complex as they will have to duly balance and regulate the components of these schemes that will belong to the remit of the EU and those that will be in the remit of the member states.

An important part of the Communication is dedicated to explaining how third countries will be motivated – or rather obliged – to implement these temporary mobility schemes. While third countries are named "partners" with the EU in the context of these schemes, they are certainly not on an equal footing. As the Communication specifically notes: "Mobility partnerships [...] will be tailored to the specifics of each relevant third country, to the ambitions of the country concerned, and of the EU, and to the level of commitments which the third country is ready to take on in terms of action against illegal migration and facilitating re-integration of returnees, including efforts to provide returnees with employment opportunities". It is clear from the vocabulary used in the Communication that these partnerships are highly unequal. They reflect power relations where the EU sets the rules of the game and third countries have to abide by these rules. However, third country governments will only have a genuine interest in implementing these partnerships if they can influence, at least to a certain extent, their content and scope, in line with their own interests and needs. Too much weighing of EU interests in this respect is contradictory to the idea of forging a "partnership" with neighbouring countries.

While the Communication clarifies that mobility partnerships will take different shapes and will depend on the specific situation, a long list of commitments expected from the third country concerned are listed in point B of the Communication (p.4). These commitments are all related to readmission of own nationals as well as

third country nationals, efforts to improve border control and security of travel documents, to cooperate with the EU on border management issues and to take up concrete measures combating trafficking and human smuggling. A last commitment is also added that relates to the third country's obligation to promote "productive employment and decent work" as a means, among others, to reduce incentives for irregular migration. Moreover, the above will have to be implemented in full respect of human rights. Reading this list one wonders which third country in the Eastern and Southern European neighbourhood has the capacity to fulfil these commitments. In other words, these commitments are desirable but not realistic.

The long list of obligations that "partner" third countries will have to fulfil in order to be "rewarded" with a mobility scheme risks making the policy impossible to apply. This is one of the main flaws of the mobility partnership idea. If third country authorities and public administrations were so well organized and effective, they would have probably solved many of their political and economic problems, thus reducing the motivations for migration already at its source. Some countries of origin may lack the technical know how or indeed the human and economic capital to invest in this cooperation with the EU, regardless of their political will to do so or not. In other words, the mobility partnership concept may be unrealistic as it asks too much from the EU's neighbouring countries.

Migrants leave their homelands not only because of severe economic hardship, they often also leave because they see no future in their country for themselves and their children, because they do not trust the state and often feel insecure and at the mercy of their very own government. It is thus logical that prospective emigrants will not consult their state authorities before leaving. To put it differently, third country authorities are not the right or at least not the sole actors with whom to sign a mobility partnership agreement. Migrants are likely to mistrust their own governments, consider them as "hurdles" to overcome just like the restrictive immigration policies of the destination countries.

Mobility partnerships as proposed, although innovative as a policy idea, do not seem to act in the right direction. Instead of targeting the source of the problem, notably the lack of economic and political opportunities in the countries of origin and the lack of human and financial security, they target the symptoms of it, notably the inability of both source countries outside the EU and destination countries in the EU to manage their borders and prevent unauthorised entry and stay. Mobility partnerships seem to put the carriage in front of the horse. They externalise the implementation of border management to third country governments instead of giving priority to EU policies for social and economic development in neighbouring regions (which will collaterally also reduce migration pressures towards the EU).

#### Circular migration

This brings us to the second part of the Communication that deals with the notion of circular migration. A working definition of circular migration has emerged in the relevant scientific literature in the post-1989 period mainly to describe and analyse new forms of migration that have emerged in the wider European space during the last decades. Circular migration refers to forms of human mobility that are economically motivated, last for

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a short period of time (between a few weeks and several months) and are repeated. Circular migration is different from seasonal migration in that it does not follow a seasonal pattern but resembles forms of repeated seasonal movements. It involves moving back and forth between the country of origin and the country of destination. The relevant literature (see for instance Wallace 2003; Kotic and Triandafyllidou 2003; Metz et al. 2008, Vertovec 2007) suggests that such forms of migration tend to assume a long term character – they last for several years – leading to a relative alienation of the migrant involved from either country as they live in neither and participate in neither society fully.

The Commission, by contrast, seems to neglect these negative aspects of circular migration and rather considers it as potentially beneficial both to the EU, because it can respond faster to labour market shortages in high skill sectors, and to countries of origin, as they can avoid brain drain effects. Moreover, the Communication argues that the promotion of circular migration will have beneficial effects for the involved persons as they will be able to spend limited periods of time in the EU acquiring new skills, improving their training and professional experience or indeed earning extra money.

The whole concept is based on the idea of a well regulated circular migration that is monitored both by the EU and the country of origin and that involves strong incentives also for the individual migrant to comply with the idea of returning back to her/his country when her/his working/training time in the EU is up. These individual incentives are similar to the state incentives for participating in mobility partnerships: the individual who participates in circular migration and complies with the rules may benefit from facilitated and repeated entries in the future. In other words, people who have stayed in the EU and worked or trained there will find it easier to return to an EU country for purposes of employment or study provided they have respected the conditions of circular migration. The notion of circular migration also foresees schemes promoting reintegration of third country nationals into their country of origin after a stay in the EU. While these are important measures foreseen in the Communication, it remains to be seen how "real" these benefits of return will be for migrants, given that the idea of returning to the EU in the future will remain an abstract concept rather than a concrete option in the near future (as it is in seasonal migration in agriculture).

While the proposal for developing circular migration schemes targets the individual workers and responds to the rapidly changing conditions in EU labour markets, it remains to be seen how such a scheme could be effectively enforced. It is likely that medium or high skill professionals will prefer to migrate to countries which allow them to make long term plans if they wish to settle (US, Canada, Australia etc.). Concerning skilled and semi-skilled professionals the idea of circular migration is unlikely to help the EU compete in the global labour market for the best and brightest. The German experience with the IT experts' scheme is a good example of how such controlled mobility cannot work, especially for people who feel they have other migration options available. When Germany launched its IT expert invitation scheme, it stated clearly that the people involved would be allowed to stay and work in the country for five years, after which period they would be invited to leave. This rather unwelcoming attitude and the fact that many skilled professionals from Asia or Africa do

not speak German (while they speak English) have made the scheme so unattractive that its 5,000 positions were not even filled. Later Germany has had to modify the scheme and allow for third country nationals completing a degree in German universities to apply.

### Conclusions and recommendations

The close connection that the Commission's *Communication on Circular Migration and Mobility Partnerships* seeks to create between legal and irregular migration is misconceived. It is unclear in what ways irregular and legal flows are inter-related. It may be reasonable to assume that when restrictive policies and highly bureaucratic procedures are in place, making legal migration impracticable, as happens for instance in several southern European countries, migrant workers and their native employers will prefer irregular entry and work.

Hence, it is clearly necessary that EU member states have to make sure that their legal entry channels are simple and fast so that migrant workers can satisfy the demands of domestic labour markets in several sectors where shortages are identified. A step in this direction has been implemented since 2006 in Spain, when a long list of jobs has been exempted from a labour market test. This has simplified and shortened the procedure for inviting a migrant worker for employment in these sectors. Britain had in 1999 actually liberalised its economic immigration policies by allowing employers to issue themselves work permits, notifying only afterwards the appropriate department of the Home Office.

Indeed, innovative policies and cutting down the red tape is crucial in promoting legal channels of migration. Actually, past experience probably suggests that while common standards and principles are possible at the EU level, policies and practices need to remain tailored at the national level as public administration structures and practices remain national too. What can be transferred in this respect is know how both technical and legal, lessons learned from the success or failure of a given policy (taking of course due account of the national context in which it was implemented). One-size-fits-all labour migration schemes or categories are unlikely to be implemented any time soon and may be harmful rather than beneficial to individual member states or the EU as a whole.

Having said this, it is not yet clear how specific forms of legal temporary migration will on the whole discourage irregular movements. A mobility partnership and the opportunity for legal circular migration will affect differently migrants with different types of human, social and economic capital. People who have relatively high social and human capital are likely to be encouraged to wait for an opportunity to migrate legally, but the cost-benefit calculation for low skill migrants may not be altered much by these partnerships. People with low social and human capital may find that the mobility partnership regime in place is not giving them any chance to migrate legally and hence may continue to try the irregular migration route. If this turns out to be the case, one fears that the mobility partnerships will have largely missed their target.

Moreover, it remains unclear whether countries of origin or of transit are able to implement both policies at the same time: to institute and take advantage of mobility partnerships while also ensuring increased levels of enforcement and close cooperation with the EU in the area of migration control and border management. It is

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interesting to note that in the early 2000s Spain signed agreements of cooperation with important countries of origin in particular Colombia and Poland (then still a candidate country for EU accession). Spain reserved its annual immigration quotas for citizens of these countries. Despite the fact that the two countries had no past historical or cultural ties, the scheme worked well with Poland for a few years, as Polish authorities had the administrative capacity to cooperate with their Spanish counterparts. By contrast, Colombia that has strong historical and cultural links with Spain and shares a common language was unable to implement the agreement due to red tape. This shows that we should not overestimate the source and transit countries' capacity to govern and shape their citizens' plans. Therefore, mobility partnerships need to include a strong element of administrative capacity building through concrete measures, which is not yet foreseen in the Communication.

In short, mobility partnerships and circular migration schemes are not likely to work in the way the Commission hopes they would. Many if not most non-EU member states will be unable to comply with the agreements and implement them. At the same time, it is also uncertain that combating irregular migration will work, as source countries may have no incentive to cooperate. In order to counter these deficits two things seem particularly important.

First, ideas of mobility partnerships could work if they target the local and regional level on both sides, the EU and the third country, responding thus to local labour market dynamics and to local/regional contexts of governance. We have seen such forms of co-development programmes between cities or between provinces in the United States and Mexico. Local or regional authorities and transnational migrant organisations have proven to be more effective in putting

the migration networks' work into legal channels – i.e. in matching labour offer and demand through the available migration schemes. They have also been involved in channelling remittances to investment plans (rather than consumption goods). They have contributed to increasing the human capital of non-immigrants at home through language courses or professional training. These are some examples of what local/regional cooperation schemes could achieve. Migration receiving cities or regions may also engage into co-development strategies through favouring investments in the areas of origin of migrants, using migrants as a source of transcultural capital to create and promote mutual business opportunities. They could also engage into information campaigns in the areas of origin highlighting the dangers of irregular migration and providing concrete advice about how to use legal opportunities for migration.

Second, one should not tie schemes of legal migration to the efficiency of the source country in combating irregular migration, as this is both economically irrational and politically questionable. If a source country is unable to implement the commitments required by the EU concerning border management and control of irregular migrations, this does not mean that there is no scope for promoting specific schemes for legal migration for specific periods or in specific sectors of the labour market. If neighbouring countries fail to implement the partnerships this may lead to a double disadvantage for EU member states: they may have no credible cooperation partners in their efforts to manage immigration flows and at the same time having curtailed the opportunities for legal migration they will indirectly increase irregular migration pressures. The idea of linking border management and control of irregular migration with the management of labour market shortages through legal economic migration may be too risky a strategy that in the end will not pay off.

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### Further Readings

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