Attesting 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
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.

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**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
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. 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.
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 particular 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.

Further Readings