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Beyond Talent Partnerships: Boosting Legal Mobility under the New EU Migration Pact

Jan Schneider

Head of Research Unit

Expert Council on Integration and Migration,¹ Berlin

On 11 June 2021, the European Commission launched its Talent Partnership Initiative, coined as a key endeavour under the New Pact on Migration and Asylum to promote mobility for third country nationals seeking employment or training in the EU. This happened almost 20 years (19 years and 11 months, to be precise) after the Commission had suggested a far-reaching harmonization of the admission by tabling a draft Directive on the “Conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities” (COM(2001) 386 of 11 July 2001). As is well known, this legislative proposal, included a single application procedure for a residence permit – “worker,” did not have sufficient support among the Member States and was officially dropped a few years later.

In the meantime, however, the EU’s influence on legal migration routes was by no means negligible. Since 2003, a series of directives were passed, laying down the conditions and standards for entry and residence of third-country nationals in a number of particular domains, most prominently highly skilled workers, family members, students and researchers. This gradual harmonization eventually became what could be considered as quite extensive – possibly one reason why Member States in recent years have shown little appetite to cede sovereign rights to the community with regard to their national admission policies.

Talent Partnerships: Game Changer or “More of the Same”?

The New Pact on Migration and Asylum, introduced on 23 September 2020 as a programmatic document that focuses primarily on measures to improve border security, streamline the asylum and return systems, and thus prevent irregular migration (COM(2020) 609 final), relies heavily on cooperation with international partners, i.e. third countries, in order to achieve these migration and asylum management goals. Thus, it primarily caters to the “external dimension” of the common migration policy. The talent partnership initiative is supposed to provide direct support for mobility schemes as well as associated capacity building between designated partner countries and EU Member States, with the goal of matching skills of workers from third countries with the labour market needs inside the EU. Thus, it marks a more “friendly” counterweight to the otherwise control-oriented objectives of the Pact and was promoted as a “new approach to migration partnerships” and a “comprehensive EU policy framework.” Ever since the 2001 initiative, European Commissions have grappled with the goal of promoting pathways for legal migration towards work and training, establishing the Global Approach for Migration (GAM) in 2005, which was revamped as the Global Approach for Migration and Mobility (GAMM) in 2011. Within the GAMM, Mobility Partnerships became a concrete tool for establishing bilateral cooperation frameworks with third countries. However, offering legal migration opportunities was only a subordinate facet to seeking better migration control. The Talent Partnership initiative certainly does

¹ The views set out in this article are solely those of the author and do not reflect the opinion of the Expert Council on Integration and Migration.

not represent a quantum leap in this respect. As many scholars and observers have noted, it remains part of the EU's wider set of external migration policy instruments. Thus, the proposal "continues to frame the external dimension of EU migration policy, primarily as a means to achieve internal policy objectives. This resembles previous approaches to establishing 'comprehensive' agreements with third countries" (Rasche, 2021: 3).

Fostering Legal Migration: Different Rationales

Upon launching the Talent Partnership initiative, Vice-President and Commissioner Margaritis Schinas suggested that "well-managed, legal migration can bring great benefits to our society and the economy [and] play an important role in reducing the skills gap and boosting EU innovation potential. Talent Partnerships are a 'triple win' for all the parties involved." By doing so, Schinas directly referred to the labour market and economic interests of both the EU and its Member States as well as third countries and their individual citizens, respectively. The second responsible Commissioner, Ylva Johansson, however, said that "replacing irregular migration with legal pathways should be our strategic objective,"² thus indicating that the relationship between the two can be engineered and calibrated. This logic might be deemed overly optimistic in two ways. First, there is – so far – hardly any robust empirical evidence that the creation of legal avenues has brought about a reduction in irregular migration (cf. Beirens et al., 2019: 14-15). Second, despite the fact that legal migration can be seen as a shared competence between the European Union and its Member States, the Commission has no power whatsoever to propose legal instruments that have a direct impact on the number of workers or trainees to be admitted into Member States' labour markets (cf. Article 79(5) TFEU).

Empirically, policies to promote legal migration for employment and training can have very different objectives. At least three rationales can be differentiated (cf. Beirens et al., 2019: 12-17). Destina-

tion countries in the EU enable the legal immigration of workers from third countries, *firstly*, if the demand for labour cannot be met from within the EU. Such a need is the basic prerequisite for European states to become involved – unless the mobility scheme in question serves purely developmental assets or bilateral goals of friendship. This would address a *second* set of motives. Facilitating the entry of citizens of another country is often an instrument of international diplomacy that intensifies relations between countries, affirms historical ties and fosters developmental goals or economic cooperation. In development cooperation, the case for legal migration is made on the basis of the expected benefits for countries of origin, such as remittances or skills transfer. *Third*, opening legal routes is often motivated by the desire to reduce irregular migration. The assumption here is that, according to the principle of communicating ves-

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sels, the use of irregular migration routes can be reduced or even prevented if legal migration channels for work and education purposes are expanded. However, this logic has considerable limitations, as legal pathways tend to be opened rather selectively, and usually against a restrictive background (in contrast to a principle of free movement, which largely abolishes the binary logic of "regular/irregular migration"). Furthermore, the selective approach usually involves both qualitative and quantitative matching problems in the sense that would-be migrants cannot fulfil the defined criteria within these schemes or that the quotas fall short of the demand. In partnerships with third countries, following a "carrot and stick" approach, new mobility schemes are often used as bargaining chips for enhanced cooperation on issues such as border control, return and readmission.

² https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2921

What Way Forward?

The cooperation with third countries within the New Pact on Migration and Asylum, despite some novelty elements, can thus be considered a new performance of an old play. The EU remains committed to its logic of conditionality and combines offers for legal migration with the willingness of third countries to cooperate in other areas – or it focuses mobility initiatives on regions that are conspicuous in terms of irregular migration.

... for the European Union

As Commissioner Johansson's quote above shows, the idea of "simply replacing" irregular migration with legal migration is still prominent, although the Talent Partnership approach seems to be making some progress away from such wood-cut pictures. Admittedly, when it comes to the European Commission's ambition to design schemes for legal migration for work and training, the elephant in the room is its inability to act in legal terms and thus make any arrangements binding. The EU's hands remain considerably tied – and the Talent Partnership initiative does not suggest that this will change fundamentally. There is still a lack of ideas concerning the role of the EU vis-à-vis the Member States, beyond funding, moderating, monitoring and evaluating individual Member States' engagement with third countries. One of the challenges is to (better) manage expectations and make policy goals transparent. There are unrealistic ideas as to what can be achieved by launching and financing partnerships at EU level, particularly with regard to the number of individuals covered by these programmes. Thus, a key mistake is to set the gross budget of a project (sometimes several million euros) against the beneficiaries from third countries who eventually migrate – because this may sometimes lead to phantastic sums per migrant (making it easy for populist right-wing parties to condemn any initiative), while the qualitative, institutional and capacity-building dimensions remain somewhat unnoticed.

Furthermore, with regard to the significant financial resources earmarked for new projects, there are

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good chances for free riding, i.e. Member States submitting initiatives they would already be running under a common EU umbrella and co-financing them from the EU budget. While it is to be expected that Member States will favour as much flexibility as possible and minimal control from the Commission,³ the latter should try to define reasonable conditions and common goals that are suitable for the purpose – in order to emphasize its added value, but without putting the states involved in a Procrustean bed. Several considerations would be worthy of more intensive examination in the context of this highly demanding task:

- The EU could move further away from a *quid pro quo* logic of migration control, avoid negative conditionality and define functioning pathways towards employment and training for third-country nationals of all skill levels as an end in itself – primarily from demographic, labour market and development cooperation perspectives. Particularly, the rationale of fostering mobility for the sake of development and wellbeing in partner countries may – in the long run – prove to be an effective strategy to reduce global inequality and thus also to curb migratory pressures (cf. Fachkommission Fluchtursachen, 2021: 131-135). Understood as a framework that fosters development, the Talent Partnership initiative could be shaped more in the sense of the Global Skills Partnership (cf. Clemens, 2014), which has made its way into the catalogue of recom-

³ In that vein, a joint non-paper tabled by Belgium, Germany and Spain in June 2021 warned that programming within the framework of Talent Partnerships should be less rigid and bureaucratic than what Member States had experienced under the Mobility Partnership Facility.

- mended actions in the Global Compact for Migration (GCM).
- Perhaps the EU would be well advised to make future talent partnership projects more sector-specific (rather than skills-specific). Particularly in the context of the Mediterranean neighbourhood and African continent, a focus on resilient and sustainable sectors such as green energy, digital services, agriculture and food production, health and nursing, but also construction and engineering, as well as tourism and hospitality might be appropriate. In order to mitigate the brain drain and enable skills transfer, the demographic and labour market structures in the countries of origin, as well as their education and vocational training systems with regard to each individual “pilot sector” would have to be adequately taken into account.

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- The EU could also increasingly work towards a paradigm shift within the framework of its Talent Partnerships initiative, away from the image of “recruiting (already fully) qualified professionals” in a context of global competition for skilled workers, towards an idea of “training young talent.” This could result in admitting motivated young people with potentially poor vocational and professional perspectives in their countries of residence, who are *not yet* skilled, but who will receive vocational education, on-the-job training or upskilling – to make them either “home-grown skilled workers” with a perspective of full integration, or “returning experts” with a high potential for brain gain. Indeed, this perspective still seems to be underexposed, and it

could be advisable to increase the involvement of the respective VET (Vocational Education and Training) systems and the associated public and private stakeholders in developing talent partnerships – both in EU Member States and in third countries.

- Last but not least, the Commission should strive to make promising schemes as “European” as possible, e.g. by trying to engage more than just two countries in partnerships. These could be EU Member States and third countries with similar sector-specific labour demands, vocational (training) systems, geographic locations or language regimes. In that sense, the German-led THAMM project (“Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa”), established under the EU Trust Fund for Africa, is a promising example, as it involves Belgium and potentially other Member States too; Egypt, Morocco and Tunisia as partner countries; as well as the IOM and ILO as international implementing organizations.

However, evaluations of the labour migration pilot projects run under the mobility partnership facility as well as under the EUTF indicate that – while expectations were (too) high – the actual outcome in terms of beneficiaries was rather small (from several dozen to a couple of hundred mobilities per project), while transaction costs and coordination efforts were high (Rasche, 2021; Stefanescu, 2020). It would be presumptuous to assume that talent partnerships will multiply the number of participants.

... and for EU Member States

While the Talent Partnership initiative can bring about (financial) incentives for EU Member States to engage, provide a developmental impetus for third countries and devise models that can be replicated, the highest potential for boosting legal mobility for third country nationals continues to lie with the EU Member States’ legal and institutional frameworks. Germany might be an illustrative example in that sense.⁴ Its general regime for labour mobility

⁴ For a comparative perspective with France, Italy, Spain and Sweden see Beirens et al. (2019).

and the admission of third country nationals for remunerated activities has become increasingly universal and open over the past two decades – meaning that non-ascriptive markers (particularly skills and educational attainment) have become the paramount criteria for selecting workers, and that access was liberalized by lowering salary thresholds for the highly qualified and including skilled workers with equivalent training certificates (cf. Kolb 2017). However, particularly in the aftermath of the so-called refugee crisis in 2015/16, Germany started to foster labour mobility for nationals of selected third countries. This *source-country particularism* (through which nationals from particular third countries are preferred over others by law, regulation or other agreements) in some instances has multiplied the volume of mobile third country nationals from particular states. For reasons of space, only four examples are briefly presented here:

- The most prominent scheme, the so-called Western Balkans regulation, was introduced in 2015 as a result of a bargain in domestic politics based on how restrictions in Germany’s asylum policy towards nationals of Albania, Bosnia-Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia could be “compensated” for. Thus, it was a political attempt to “trade” the asylum channel for a labour channel, to the benefit of nationals of these important source countries for asylum seekers. Under this extremely liberal framework, labour migrants have to demonstrate neither language ability nor formal skill sets or qualifications in order to be granted a (renewable) visa for work purposes. The key prerequisite is a valid job offer and subsequent approval by the Federal Employment Agency. Currently, up to 25,000 workers can be admitted per year.
- The “Triple-Win Migration” project was launched in 2013 and targets countries with a surplus of professionally trained nurses whose qualifications can be (partly) recognized in Germany, in order to alleviate the significant labour shortage in the nursing care sector. Candidates undergo linguistic and intercultural training. Once in Germany, they benefit from a swift procedure for recognizing their certificates and some undergo further training to adapt to the required standards. Ever since 2013, more than 3,000 (semi-) skilled workers from Serbia, Bosnia-Herzegovina, Tunisia and the Philippines have taken up work or adaptation training in Germany since 2013, most of them with the option of a longer-term or permanent stay. Beyond that, in line with the new Skilled Immigration Act, which came into force in March 2020, a “Skilled Worker Agency for Health and Care Professions” founded by the Federal Government started its work at the beginning of 2019 to further support the recruitment of care workers. For 2020 alone, there were call-off quotas for more than 1,200 skilled nurses, primarily from the Philippines and Mexico, to be referred to healthcare and nursing facilities.
- As a latest example, motivated by demands from the food-producing industries and in line with the EU’s seasonal workers Directive (2014/36/EU), Germany, for the first time in decades, signed a bilateral agreement with a third country (Georgia) for the recruitment of agricultural seasonal workers in 2020. Planned as a slightly cautious pilot scheme with 500 recruits, the initiative was boosted after the Corona pandemic had severely aggravated demand for harvest helpers on the farms: the quota was increased tenfold for 2021, allowing 5,000 Georgians to work in Germany for the season.
- Finally, public and private stakeholders are seriously exploring the possibilities for setting up pilot skill partnerships for vocational training with third countries, which would cover particular sectors (potentially with countries such as Ghana and the Republic of Kosovo; cf. Sauer and Volarević 2021; Rother and Setrana 2021). Provided that the numerous hurdles can be overcome and funding secured, the launch of such a scheme could take place as early as in the coming months.

This brief analysis shows that the Talent Partnerships initiative is providing important impetus for the debate within the EU, but that the Member States are where the action is. This is unlikely to change unless the latter are ready to forgo more of their sovereignty over admitting workers, in favour of more harmonized EU legislation.

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