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Strengthening Co-operation with Countries of Origin

Corinne Balleix

JEL Classification: F22, F53, F55, N44

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Strengthening Co-operation with Countries of Origin

Corinne Balleix (Sciences Po Paris)

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ABSTRACT

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A previous version of this paper was presented and discussed at the OECD Working Party on Migration in June 2015. The paper presents the main instruments for co-operation with third countries in the area of labour immigration – policy instruments constituted by the mobility partnerships, financial instruments, as well as legal instruments. For each of them, the study examines the reference sources underpinning the activity, the manner in which labour immigration is organised, and the ways of promoting ethical recruitment. The paper then draws up a frame of reference on these instruments, followed by specific references to the labour immigration policies of certain Member States, and certain third countries, serving to illustrate the arguments.

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STRENGTHENING CO-OPERATION WITH COUNTRIES OF ORIGIN

Introduction

1. Labour migration constitutes a tool for supporting economic growth in the European Union, in a setting where the working population is ageing and there is a mismatch between labour supply and demand. In the terms of the EU 2020 strategy¹, the European Union must try to attract skills in an ethical manner.
2. To what extent does the European Union's ongoing co-operation with third countries, and with developing countries in particular, contribute to meeting the labour needs of the EU, without thereby depriving developing countries of their skills? What impact does this co-operation have on the positioning of the European Union in terms of the "race for skills" within the worldwide system of labour immigration?
3. EU co-operation with third countries in the area of labour migration is based on the **strategic documents of the EU** in the area of justice and home affairs: in the 1999-2004 **Tampere programme**², the European Council called for mounting information campaigns, in close co-operation with countries of origin and transit, on the real possibilities of legal immigration. The **Stockholm programme**³ covering the period 2010-2014 stressed that "labour immigration can contribute to increased competitiveness and economic vitality. In this sense (...) the Union should encourage the creation of flexible admissions systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State and enable migrants to take full advantage of their skills and competence". The **strategic guidelines adopted by the European Union in June 2014**⁴ for the coming years emphasise the fact that "to remain an attractive destination for talents and skills, Europe must develop strategies to maximise the opportunities of legal migration".

¹ European Commission, Communication from the Commission, Europe 2020, A strategy for smart, sustainable and inclusive growth, COM (2010) 2020, 3.3.2010.

² Tampere European Council, 15 and 16 October 1999, Presidency Conclusions. The Hague Programme of December 24 declared that "legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to implementation of the Lisbon strategy. It could also play a role in partnerships with third countries". Cf. Brussels European Council, 4 and 5 November 2004, Presidency Conclusions.

³ Stockholm European Council, An open and secure Europe serving and protecting citizens, 2010/C 115/01, 4 May 2010.

⁴ European Council, 26-27 June 2014, Conclusions.

4. More specifically, the bases for co-operation with third countries are defined in the Global Approach to Migration and Mobility (GAMM) formulated in 2005⁵ and revised in the wake of the “Arab Spring”, with a view to organising migration more effectively.⁶ This approach strives to combine several issues for negotiation, so that the stakeholders involved (European Union, third countries) can accept reciprocal commitments, and to ensure that, overall, negotiations will be seen as a variable sum game and not a zero-sum game in which the EU’s determination to combat illegal immigration comes into conflict with third countries’ attempts to expand legal access for their nationals within the European territory. Thus, since 2011, the four objectives that figure in the negotiations are: 1. Organising legal immigration and mobility; 2. Combating illegal immigration and human trafficking; 3. Promoting international protection and asylum policies in third countries; and 4. Efforts to maximise the development impact of migration and mobility. The organisation of legal migration and mobility constitutes for third countries the most attractive aspect of the global approach to migration and mobility.

5. With respect to labour immigration, more specifically, the goal of EU co-operation with countries of origin and transit is to promote a “triple win”, in the sense of: 1. **Meeting the needs of the European labour market through active selection of migrant workers**; 2. Enhancing the status of migrants within the European Union; and 3. Promoting the development of the countries of origin, especially by reducing the risks of a “brain drain”.⁷

6. This overall approach to migration and mobility has been featured in the various **migration dialogues that the European Union maintains with the rest of the world**, whether in a worldwide, regional or bilateral context.

7. In the global context, the European Union, which has been endowed with legal personality since the Lisbon Treaty, is in a position to take part in worldwide dialogue on migration. Thus, it contributed actively⁸ to the second **high-level dialogue on international migration and development** that took place in October 2013 at the United Nations General Assembly in New York. As the EU hoped, that dialogue agreed on the need for greater recognition of the economic contributions of immigration, as well as the importance of developing safe and orderly channels for legal migration and for combating unethical recruitment practices.⁹

8. In a similar vein, the European Union has been active within the **Global Forum on Migration and Development** (GFMD), a high-level dialogue sponsored by the United Nations that periodically brings governments together on an informal basis to discuss migration and development questions. During the

⁵ Brussels European Council, 15 and 16 December 2005, Presidency Conclusions

⁶ European Commission, 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, 18.11.2011.

⁷ European Commission, Maximising the Development Impact of Migration. The EU contribution for the UN High-Level Dialogue and next steps towards broadening the development-migration nexus”, COM(2013) 292 final, 21.5.2013.

⁸ European Commission, Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions, Maximising the development impact of migration. The EU contribution for the UN High-level Dialogue and next steps towards broadening the development-migration nexus, COM(2013) 292 final, 21.5.2013.

⁹ United Nations, General Assembly, Declaration of the High Level Dialogue on international migration and development, 1st October 2013.

Stockholm meeting in May 2014, it called for facilitating international labour mobility. That forum is also a key player in providing operational support for migration-related development co-operation.¹⁰

9. The European Union's involvement in these dialogues serves to boost its presence on the world stage, even if these global dialogues tend to produce declarations rather than operational actions.

Regional dialogues

10. The European Union is engaged in eight regional dialogues, some of which overlap: to the east, the "Eastern Partnership"¹¹ associates the EU with Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine; the Prague Process¹² involves 19 partner countries in the East (Russia, the countries of the Eastern Partnership, the countries of Central Asia, the Western Balkans and Turkey); the Budapest Process¹³, together with the "Silk Routes Partnership", comprises more than 50 countries, including the Western Balkans, the Eastern Partnership, Central Asia, Afghanistan, Iraq, Russia, Pakistan and Turkey, in addition to nearly a dozen international organisations. In addition to these Eastern partnerships there are also, in Africa the Africa-EU Partnership¹⁴ on migration, mobility and employment, the ACP-EU Dialogue¹⁵ on migration, the Rabat Process¹⁶ which relates to West African migration routes, and, for the countries of the Horn of Africa, the Khartoum Process which was launched in Rome in November 2014 and has focused initially on questions of human trafficking and the smuggling of migrants¹⁷. Lastly, the European Union

¹⁰ Thus, in collaboration with the International Labour Organisation (ILO), the EU has instituted a "Global Action Programme on Migrant Domestic Workers and Their Families", with a budgetary envelope of €4.2 million, and the objective of supporting implementation of the ILO Convention on domestic workers.

¹¹ Dialogue on migration within the Eastern Partnership, launched in 2009, takes place within the Panel on Migration and Asylum created in 2011. Cf. European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on implementation of the Global Approach to Migration and Mobility 2012-2013, COM (2014) 96 final, 21.2.2014.

¹² Activities under the Prague Process are based on the Joint Ministerial Declaration (Prague 2009) and the Action Plan 2012-2016.

¹³ The Budapest Process was initiated in 1991 as a consultative forum. Under the banner of the Budapest process, the Silk Routes Partnership for Migration was established at the Ministerial Conference held in Istanbul on 19 April 2013.

¹⁴ The Africa-EU Partnership was launched in 2007 at Lisbon. In 2010, an action plan was adopted in Tripoli for the period 2011-2013, containing 12 concrete initiatives in the areas of migration, mobility, employment and higher education.

¹⁵ Cf. Article 13.3 of the Partnership Agreement between the members of the African, Caribbean and Pacific group of States of the one part and the European Community and its Member States of the other part, signed in Cotonou on 23 June 2000: "The treatment accorded by each Member State to workers of ACP countries legally employed in its territory shall be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals".

¹⁶ The Rabat Process was launched in July 2006 at Rabat, and aims to enhance dialogue and co-operation between countries of origin, transit and destination along the West African migration route. In November 2013, the Rome Strategy was adopted for 2015-2017.

¹⁷ Declaration of the Ministerial Conference of the Khartoum Process (EU-Horn of Africa Migration Route Initiative) Rome, 28 November 2014.

maintains a structured, comprehensive dialogue on migration with Latin America and the Caribbean (CELAC).¹⁸

11. When it comes to labour migration, these regional partnerships make it possible to establish migratory profiles that offer a snapshot of flows between EU countries and the migrants' countries of origin.¹⁹ They also allow for the exchange of experience and good practices with respect to the organisation of legal immigration²⁰, and the development of guidelines in the area of labour immigration. Those guidelines may sometimes result in the adoption of action plans²¹ or of labour immigration manuals and circulars.²² In particular, they seek to provide better information to prospective migrants on their real employment prospects in Europe, and to facilitate the matching of employment offer and demand.²³ Lastly, questions dealing with the organisation of mobility are also discussed in the context of these partnerships.²⁴

12. These dialogues between the EU and the various regions can facilitate policy discussion between the EU and countries of origin and transit on questions of legal immigration. However, their operational impact will be limited unless they are championed by a group of States, as is the case in the Prague and Rabat processes.²⁵ Above all, in the absence of substantial financial incentives, these policy dialogues tend to drag on without producing any concrete projects, with the result that the Commission has suggested suspending some of them (EU-CELAC) or confining them to temporary initiatives.²⁶

¹⁸ The EU-CELAC Structured and Comprehensive Dialogue on Migration was launched in June 2009 following the mandate of the EU-LAC Lima Summit (2008), and is implementing an EU-CELAC Action Plan 2013-2015.

¹⁹ For example, migration profiles for Peru, Ecuador, Jamaica and Nicaragua have been prepared in the context of the EU-CELAC dialogue. As well, an ACP Observatory on migration was instituted in 2010 as part of the ACP-EU dialogue, to gather data on South-South migration in ACP countries.

²⁰ See for example the Budapest Process Meeting and Activity Calendar 2014, https://www.budapestprocess.org/images/documents/BP_Meeting_and_Activity_Calendar_2014.pdf. Similarly, under the Rabat Process, the European Union provides technical assistance to partner countries to strengthen their capacities and to exchange information on legal immigration, <http://processusderabat.net/web/index.php/activities/technical-assistance>

²¹ Cf. for example the EU-Africa Declaration on migration and mobility, Fourth EU-Africa Summit, Two and 3 April 2014, at Brussels, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/fr/ec/142098.pdf. On labour immigration, the declaration contains this undertaking: "We agree to advance legal migration and mobility, by better organising legal migration and fostering well-managed mobility between and within the continents".

²² Cf., in the context of the Prague Process, http://www.pragueprocess.eu/fileadmin/PPP/Prague_Process_TI_in_2013_EN_2014-02-19.pdf

²³ For example, the Prague Process (2013).

²⁴ For example, under the Eastern Partnership, an agreement was signed between the European Community and Ukraine to facilitate visa issuance, Official Journal of the European Union Nr L 332/68 of 18 December 2007.

²⁵ European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Report on the implementation of the Global Approach to Migration and Mobility 2012-2013, COM (2014) 96 final, 21.2.2014.

²⁶ Commission, COM (2014) 96 final, op. cit.

Bilateral policy dialogues

13. The bilateral dialogues that the European Union pursues with third countries of origin and transit may be viewed as a more targeted subset of the regional policy forums mentioned above, and their purpose is, once again, to resolve the confrontation between the EU and third countries on questions relating to illegal immigration, in particular through readmission agreements versus the willingness to grant legal access to European territory. They can also be viewed in the context of implementing the association agreements (AA), partnership and co-operation agreements (PCA), framework agreements (FA), and other instruments concluded by the EU. Moreover, since the Arab Spring of 2011, the European Union has sought to **develop bilateral dialogues on “migration, mobility and security” (MMS)** with the countries along the southern coast of the Mediterranean.²⁷ With a select number of large countries (Russia, India, China, United States), the EU has established specific dialogues on visa liberalisation and facilitation. In the case of the Western Balkan countries, and to some extent Turkey, the prospect of accession, and with it the promise of free movement of persons within the European space, may constitute a specific incentive for involving third countries in these bilateral dialogues.

14. There are three instruments of dialogue on migration that may be considered ambitious, to a greater or lesser extent: the **Mobility Partnerships (MP)**, which will be specifically examined here, constitute the broadest and most advanced framework for bilateral dialogue on migration, and they always include a proposal for visa facilitation or liberalisation, in parallel with a plan for readmission. The **“migration, mobility and security” dialogues (MMS)** with countries of the Mediterranean south coast, which allow for fairly informal policy dialogue on migration, can lead to mobility partnerships. After concluding mobility partnerships with Morocco, Tunisia and Jordan²⁸, the European Union has launched an MMS dialogue with Lebanon, and plans to initiate similar dialogues with Egypt and Algeria. Lastly, the EU is seeking to develop **Common Agendas for Migration and Mobility (CAMM)** with third countries with which its relationship is less close and with which it does not wish to discuss visa liberalisation or facilitation.²⁹ These dialogue frameworks are presented as “alternatives” to MPs, as they are not normally intended to result in an MP, and they do not include the visa facilitation/liberalisation aspect. A first CAMM was signed in March 2015 between the European Union and Nigeria, and a second could soon be signed with Ethiopia. These two frameworks – MP and CAMM – are based on policy declarations negotiated by the European Commission, which create a political (but not a legal) commitment on the part of the European Union, the Member States that choose to sign on, and the third country concerned.

15. This, then, represents a rough sketch of the **political frameworks** specifically in place for organising labour immigration to the European Union and the mobility partnerships. However, there are two other types of instruments that relate to professional mobility toward the European Union and the ethical recruitment of migrants: these are the **foreign aid programmes of the Union**, which can help to organise labour migration between the EU and third countries, and **the rules** that have been introduced or are now under discussion for organising labour immigration.

²⁷ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, a Partnership for democracy and shared prosperity with the southern Mediterranean, COM (2011) 200 final, 8.3.2011.

²⁸ The EU signed mobility partnerships with Morocco in June 2013, with Tunisia in March 2014, and with Jordan in October 2014.

²⁹ European Commission, 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, 18.11.2011.

16. The objective of this study is to present the main instruments for co-operation with third countries in the area of labour immigration, namely the policy instruments constituted by the mobility partnerships (I), the financial instruments (II), and lastly the legal instruments (III). For each of these instruments, the study will examine the reference sources underpinning the activity, the manner in which labour immigration is organised, and ways of promoting ethical recruitment. A frame of reference on these instruments will then be drawn up. Specific references to the labour immigration policies of certain Member States and certain third countries will be used to illustrate the arguments.

I. MOBILITY PARTNERSHIPS (MPs), A POLICY FRAMEWORK FOR ORGANISING LABOUR IMMIGRATION TO THE EU

1. MPs development and characteristics

1.1 Co-operation policy framework

17. The idea of adopting a co-operation policy framework covering all migration issues between the European Union and third countries was set forth along with the development of the global approach to migration at the beginning of the years 2000: in 1999, the Tampere programme had recommended an approach to migration that would not be focused solely on questions of security but would also include legal and occupational immigration.³⁰ Europeans tended to view migration as a problem, whereas the countries of origin derived significant benefits from it (migrant remittances, in particular, which represented three times the volume of official development assistance³¹), and it was important for European countries to move beyond merely wielding the “stick”, focused solely on combating illegal immigration, and to try to make their demands acceptable by offering “carrots”, particularly in terms of legal immigration for the benefit of third countries.

18. Beginning in 2006, this idea was also promoted by France in the context of its “agreements on concerted management of migratory flows”, which were based on three pillars: the organisation of legal migration, combating clandestine immigration, and promoting solidarity development.³²

³⁰ Carrera and Hernandez i Sagrera (2009).

³¹ In 2014, migrant remittances amounted to \$436 billion, while official development assistance from members of the Development Assistance Committee (DAC) of the OECD stood at \$135.2 billion. Cf. World Bank, “Remittances to developing countries to stay robust this year, despite increased deportations of migrant workers, says WB”, 11th April 2014, <http://www.worldbank.org/en/news/press-release/2014/04/11/remittances-developing-countries-deportations-migrant-workers-wb> and: OECD, “Development aid stable in 2014 but flows to poorest countries still falling”, <http://www.oecd.org/dac/stats/development-aid-stable-in-2014-but-flows-to-poorest-countries-still-falling.htm>.

³² 13 agreements of this type have been signed with Senegal (2006), the Republic of Congo (2007), Benin (2007), Tunisia (2008), Cape Verde (2008), Burkina Faso (2009), Mauritius (2008), Macedonia (2009), Montenegro (2009), Serbia (2009), and the Russian Federation (2009). On agreements for the concerted management of migration flows, see “General presentation of bilateral agreements”, <http://www.immigration.interieur.gouv.fr/Europe-et-International/Les-accords-bilateraux/Presentation-generale-des-accords-bilateraux>

19. In October 2006, drawing lessons from the failure of confrontation-style migration policies, Nicolas Sarkozy and Wolfgang Schäuble, the Interior Ministers respectively of France and Germany, proposed a new migration policy³³ that would offer “mobility packages” to third-country partners.³⁴ This idea was taken up by the European Council in December 2006: “while **respecting the competences of Member States** in this area, consideration will be given to how **legal migration** opportunities can be incorporated into the union’s external policies in order to develop a **balanced partnership** with third countries **adapted to specific EU Member States’ labour market needs**; ways and means to facilitate **circular and temporary** migration will be explored”.³⁵

20. But it was the **May 2007 communication from the European Commission** on circular migration and mobility partnerships between the European Union and third countries³⁶ that set forth the basis of mobility partnerships most clearly.

1.2. Characteristics and anticipated advantages of the MPs

21. These partnerships are **offered only to third countries that have clearly demonstrated their commitment to combating illegal immigration**, such as through readmission agreements, and to curbing the trafficking in migrants, to strengthening control of their borders, and to promoting decent employment so as to reduce the temptations for illegal immigration.

22. As a counterpart to their commitment to control their borders, the European Union and Member States involved in this partnership undertake to **enhance the opportunities for legal immigration** for the nationals of these countries, through various support actions.

23. At the present time, **eight mobility partnerships** have been signed with Cape Verde (2008), Moldova (2008), Georgia (2009), Armenia (2011), Morocco (2013), Azerbaijan (2013), Tunisia (2014) and Jordan (2014). Another MP could be signed with Belarus on the occasion of the JHA Council in June 2015. MMS (migration, mobility and security) dialogues are under way with Lebanon, and could soon be opened with Algeria, with a view to negotiating MPs.

24. Although one of the first MPs was signed with Cape Verde, the most recent MPs involve only **neighbouring countries**, as will those negotiated in the future. In the wake of the Arab Spring, the European Union has sought to give priority to addressing the structural migration challenges facing the countries in its immediate neighbourhood, especially to the south of the Mediterranean, with their young populations that are frequently well-trained but unemployed.³⁷

³³ “New European Migration Policy”, a Franco-German plan presented by Mr Nicolas Sarkozy and Mr Wolfgang Schäuble to the G6 immigration ministers’ meeting in the UK, 26 October 2006.

³⁴ Carrera and Hernandez i Sagrera (2009).

³⁵ European Council, Presidency Conclusions, Brussels, 14/15 December 2006.

³⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on circular migration and mobility partnerships between the European Union and third countries, COM(2007) 248 final, 16.05. 2007.

³⁷ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A partnership for democracy and shared prosperity with the southern Mediterranean, COM (2011) 200 final, 8.3.2011. See also: European Council, Extraordinary European Council 11 March 2011, Declaration; European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A dialogue for migration, mobility and security with the

A highly flexible framework

25. Mobility partnerships are being developed not only within the European Union’s areas of competence (immigration policy³⁸) but also in those of the Member States (employment policy³⁹). That is why they take the form of “common declarations” of a **policy** nature, which create no rights or obligations under international law.

26. Member States can choose to participate or not, in light of economic, migration or political considerations or even their desire to establish a co-operation presence in a third-country. France’s involvement in the MPs with Morocco and Tunisia obviously reflects the long-standing migration relationship that France has had with these countries. Germany’s interest in highly skilled migrants underlies its commitment to the MP with Tunisia and its choice of the activities that it will support in this framework. It plans, for example, to develop a project to offer language courses as well as training positions to Tunisian experts in order to facilitate their hiring by German employers.⁴⁰ Poland had no historical relationship with Tunisia comparable to that of France, and its participation in the EU-Tunisia MP testifies to its willingness to establish co-operation in that country.⁴¹ The varied geometry of Member States’ participation in developing mobility partnerships avoids the complications of having 28 Member States pursuing co-operation in areas where European competences are limited.

27. Such agreements can also be considered as “**umbrellas**”⁴² **under which bilateral activities and agreements** between a third-country and a Member State can be pursued. For example, Italy is currently conducting an information project on legal immigration channels in Europe and the risks of illegal immigration, and is doing so within the framework of the EU-Tunisia MP, with national financing. In the context of the same MP, Tunisia is seeking to negotiate bilateral agreements with all remaining Member

southern Mediterranean countries, COM (2011) 292 final, 24.5.2011; European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Communication on Migration, COM (2011) 248 final, 4.5.2011; European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, The Global Approach to Migration and Mobility, COM (2011) 743 final, 18.11.2011.

³⁸ TFUE Article 79, which extends the ordinary legislative procedure to “the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and residence in other Member States”, makes it possible to address the question of their employment indirectly, inasmuch as legally resident foreigners must in principle, at one point or another, work in order to live and, in this context, may have to circulate within the Union.

³⁹ Article 5.2 of the Lisbon Treaty (TFEU) provides that “[t]he Union shall take measures to ensure co-ordination of the employment policies of the Member States, in particular by defining guidelines for these policies.” This area thus remains primarily within the purview of the Member States.

⁴⁰ Under the EU-Morocco MP, Germany sponsors a portal for qualified migrants, “Make it in Germany” (www.make-it-in-germany.com) with information on sectors in need of qualified workers and on the modalities of legal immigration to Germany.

⁴¹ Poland is helping to strengthen the labour market management capacities of Tunisia by supporting public and private employment agencies in their ability to provide information and counselling services to citizens seeking to work abroad.

⁴² Commission of the European Union, Mobility Partnership as a tool of the Global Approach to Migration, 2009, op.cit.

States on social security and the transferability of social rights for Tunisian citizens living there legally.⁴³ In a similar way, the MPs can also help to foster **regional dialogue**, and thereby strengthen **migration governance at several levels**. For example, under the EU-Tunisia MP, the Commission is preparing a project in which Member States and the European Union will help to strengthen the Tunisian authorities' capacities for managing trade-related migration and mobility. The European Union is also providing funding to the International Organization for Migration (IOM) over the period 2012-2015 for a project to stabilise at-risk communities and to reinforce migration management in transition countries such as Tunisia, Egypt and Libya.⁴⁴ In its first evaluation⁴⁵, the Commission notes that the MPs constitute **laboratories for co-operation**. In addition to third-country stakeholders, they have enlisted the European Union and the Member States of **European agencies** such as the European Training Foundation (ETF) and the European Agency for the Management of External Borders (Frontex) to co-operate in the four areas of the Global Approach to Migration and Mobility (legal immigration, combating illegal immigration, development promotion, and international protection). The combination of these various issues, championed by different stakeholders, is intended to produce reciprocal commitments or "**package deals**" among them, and the four aspects of the Global Approach are supposed to be developed in a balanced way through implementation of the MPs.

28. Dialogue within the MPs should then help to **strengthen the coherence and the complementarity of migration and development policies**, to the extent that a balance can be achieved among the four areas of the GAMM. From the Commission's point of view, this should result in an **overall improvement in co-operation** with the third countries involved in the MPs, and encourage the partner countries to assert ownership over this instrument.⁴⁶ The process of building trust among stakeholders could however take some time before it produces concrete results.⁴⁷

29. The **actions undertaken in the context of the MPs appear in annexes** that cover the four pillars of the GAMM, and that constitute the living and evolving core of the MPs: in fact, from a simple mapping of national and European projects (75 projects are listed in the Annex to the EU-Morocco MP) they come in a subsequent phase to reflect a **process of co-ordination and joint planning between the European Union and the Member States**. Along with the legal instruments (visa facilitation/liberalisation agreements) negotiated under the MPs, the programmes and projects in support of labour migration policy will require funding, either from the European Union or from the Member States.

Financing the MPs

30. The bulk of national and European financing with respect to labour migration comes from the development assistance budget, which is managed by the **Directorate-General for International Co-operation and Development** (DevCo) of the European Commission.⁴⁸ It can be drawn from the

⁴³ Poland, for example, extended its temporary immigration system to Moldova in 2009, allowing Moldovans to work for up to six months in Poland without having to apply for a work permit.

⁴⁴ On the theory of migration governance, see Badie, Brauman, Decaux, Devin and Wihl de Wenden (2008).

⁴⁵ Commission of the European Union, Mobility Partnership as a tool of the Global Approach to Migration, SEC(2009) 1240 final, 18.09.2009.

⁴⁶ European Commission, Commission Staff Working Document, EU 2013 Report on Policy Coherence for Development, SWD(2013) 456 final, 31.10.2013.

⁴⁷ Commission of the European Union, Mobility Partnership as a tool of the Global Approach to Migration, 2009, op.cit.

⁴⁸ Permanent Mission of France to the European Union, *L'aide extérieure de l'Union européenne 2014-2020*, http://www.rpfrance.eu/IMG/pdf/2014_01_30_brochure_instruments_aide_exterrieure.pdf

geographic line items: funding for activities in the area of migration and mobility is earmarked for the period 2014-2020 in the European Development Fund (EDF), for the countries of Africa, the Caribbean and the Pacific, in a total amount of €30.5 billion, and in the European Neighbourhood Instrument (ENI), for neighbouring countries to the east and south of the European Union, for a total amount of €14.4 billion. Within the European Development Co-operation Instrument (DCI), which supports development in the countries of Latin America, Asia, Central Asia, the Middle East and Southern Africa, there are two **thematic budget items** that can be used to finance programmes or projects in the area of labour immigration: one concerns global public goods, which include migration issues (€344 million for 2014-2020), and a “Pan-African” programme that finances trans-regional and continent-wide activities (€17.5 million).

31. As of 2014, the **funds managed by the DG for Home Affairs** of the European Commission can also be used to finance **external** activities in the migrations area. The amounts earmarked are however modest in relation to those of the DG DevCo, and these funds, which are managed for the most part by the Member States, are intended to address their national needs and priorities. However, the Commission has reserved €5.5 million over two years for an “MP facility” to support activities in the context of the mobility partnerships.⁴⁹

32. Lastly, under the MPs, **financing provided by Member States** can supplement or be combined with Community funding for bilateral or joint activities. Thus, certain bilateral activities of Member States that might have been pursued outside the MP context will take on, under its umbrella, a European dimension that can result in an improvement in local European co-operation on migration.

2. The mobility partnerships and the ethical satisfaction of European employment needs

2.1. Meeting the labour market needs of Member States

33. The European Union and the Member States participating in the mobility are committed to **support third countries in managing their migrations**. A portion of European support may serve to meet European employment needs: in the context of the MPs, information programmes have been developed dealing with the labour market situation in Member States and the conditions for legal migration or professional mobility in those markets; support for the mobility of students, researchers and young professionals who may wish to work in the EU; language, cultural or technical training for labour migration candidates.

34. The Member States are also committed to facilitating the issuance of **short-term visas** for nationals of third countries covered by a mobility partnership, for example through the adoption of visa facilitation agreements for certain categories of persons. The possibility of negotiating visa facilitation agreements is also a distinguishing feature of mobility partnerships compared to the Common Agendas for Migration and Mobility (CAMM).

⁴⁹ This funding, specifically earmarked for the MPs, comes from the Internal Security Fund – Police instrument in the amount of €1 million, from the ISF Borders and Visa instrument (€1 million) and from the Asylum, Migration and Integration Fund (€3 million).

2.2. *The MPs should also contribute to ethical recruitment*

35. The European Union and its participating Member States are committed to **combating the brain drain**.⁵⁰ At the request of third countries, sectors “under stress”, i.e. in which there is a shortage of workers, can be excluded from the sectors in which Member States do their recruiting.

36. More generally, according to European pronouncements, **circular migration and mobility**, which includes the circulation of third-country nationals established in a Member State of the EU and the circulation of persons residing in a third country, is supposed to **meet the employment needs** – in particular the seasonal or temporary needs – **of Member States** without depleting the third country’s human resources. In fact, migrants are supposed to return to their country of origin bolstered by the working experience acquired in the European Union, and in this way contribute to the development of their own country. Thus, **recruitment will be ethical because it will be temporary**.

37. Steps can be taken, then, to support the mobility of different socio-professional categories such as business people, teachers, seasonal workers, students and researchers, or to support returning migrants in their reintegration into their country of origin. All of these steps will have an ethical dimension.

38. The fact that the strategic guidelines adopted by the European Council in June 2014⁵¹ **provide for dialogue with the business community and social partners** on migration issues, and in particular labour migration issues, can be seen as **contributing in an ethical way to meeting the EU’s employment needs**⁵²: labour unions, especially those in Italy and Spain, are generally committed to supporting the rights of migrant workers, and have an interest in ensuring that those workers enjoy equal treatment with nationals, if only to avoid social dumping. Moreover, the unions can play a role in facilitating integration through work in the countries of destination, and providing candidates for emigration with information on the rights of migrant workers and the outlook for labour migration.⁵³ Businesses, for their part, have a pragmatic view of migrant workers, uninfluenced by populist political pronouncements that tend to surface in times of crisis. Their concern is to facilitate high-quality and low-cost recruitment, and thereby eliminate as far as possible the various barriers (including administrative barriers) to the hiring of migrants. Even before adoption of the June 2014 strategic guidelines, networks were developing in a pragmatic way to match international supply and European demand for labour.⁵⁴

⁵⁰ European Commission, Communication [...] on circular migration and mobility partnerships between the European Union and third countries, COM(2007) 248 final, 16.05. 2007, p. 7.

⁵¹ European Council of 26-27 June 2014, “Conclusions”.

⁵² Interviews at the European Commission.

⁵³ Finnish unions have distributed brochures to Estonian workers arriving by ferry from Tallin. The European Union is also preferred to the Gulf States as a destination, because it protects labour union rights effectively.

⁵⁴ Interview at the European Commission. For example, as part of a project under the EU-Tunisia MP, Italian and Tunisian business associations such as the Tunisian-Italian Chamber of Commerce and Industry are co-operating to promote circular migration of young Tunisian workers seeking to upgrade their skills, especially in the agriculture and tourism sectors.

3. It is still difficult to evaluate the net outcome of the MPs with respect to labour migration

3.1. Labour migration occupies an uncertain place in the balance of negotiations

39. As some researchers see it⁵⁵, **the overarching objective of the MPs**, from the viewpoint of the EU and its Member States, is still **to block illegal immigration** from third countries and the readmission of illegal migrants. Under these circumstances, intervention proposals in other areas – labour migration, development support and asylum systems – are merely sops offered by European countries without any real willingness on their part to move forward effectively in these areas. Moreover, in the MPs the possibilities of legal immigration are strictly defined in light of the labour market needs of Member States, as assessed by them, and they must fully respect the principle of Community preference in favour of EU citizens.⁵⁶

40. The annexes to the MPs, which spell out the actions planned at a given time under the four pillars of the GAMM, include **provisions for labour immigration and ethical recruitment that are not easy to evaluate**: 6 out of a total of 19 projects in Armenia, 7 out of a total of 25 projects in Cape Verde, 14 out of a total of 35 projects in Georgia, 17 out of a total of 75 in Morocco, etc. However, among these projects some involve study trips that have no direct impact on labour migration, while others will lead in the end to joint actions with other Member States and will disappear as such. Not all will be implemented, for lack of financing.⁵⁷ The amounts earmarked for each of these projects are, moreover, not necessarily significant: alongside support for employment or vocational training services, which can entail heavy funding requirements, regulatory measures that are cost-free can have a major impact on labour migration to the European Union.⁵⁸

41. When it comes to financing, the DG DevCo tries to ensure that all the funds it manages are targeted at actions, including the labour migration field, that can have a lasting impact on the development of third countries. As the financing managed by the DG DevCo far exceeds that handled by the DG Home Affairs, **the funds earmarked for development can be used to finance border infrastructure** just as readily as activities in the employment field;⁵⁹ The idea is, in effect, that good border management is vital for combating smuggling and trafficking of all kinds that can destabilise national economies. However, because this financial support for border controls has no direct impact on the development of the beneficiary country, its classification as development assistance is open to debate.

42. The quest for balance and coherence **among the four dimensions of the GAMM** thus constitutes a permanent challenge in the context of the mobility partnerships.

43. Lastly, even if a proper balance were to be struck among the four pillars of the GAMM, and labour migration were to be truly promoted, the more favourable treatment reserved for countries that have a

⁵⁵ Carrera and Hernandez i Sagrera (2009). See too Reslow (2010), Parkes (2009), Maroukis and Triandafyllidou (2013), Pascouau (2013).

⁵⁶ European Commission, Communication [...] on circular migration and mobility partnerships between the European Union and third countries, op. cit. 2007.

⁵⁷ Interview at the European Commission.

⁵⁸ Reslow (2010).

⁵⁹ For example, development assistance funds have been used to finance border infrastructure in southern Morocco.

Mobility Partnership may raise the question of the **overall coherence of EU migrations policy vis-à-vis countries not covered by an MP**.⁶⁰

3.2. Synergies among MP stakeholders can be difficult to achieve

44. It would seem essential, first, to secure **the commitment of third countries** in the mobility partnerships. Those proposed to Senegal in 2008 and to Ghana in 2010 were never finalised, for lack of agreement on the objectives.⁶¹ Similarly, implementation of an MP requires that the partner country exert ownership over this mechanism, something that can be hard to achieve where a country is unhappy with the balance between the four pillars of the GAMM.⁶² Although MP negotiations take place between governments and the EU, meetings are regularly organised with civil society stakeholders, and with migrants in particular, to ensure that the MP responds fully to migrants' needs. Yet some commentators have complained that civil society is not a full participant in these negotiations, and they have called for quadripartite negotiations between the EU, its Member States, the partner country, and civil society organisations.⁶³ Such participation by civil society – which in the case of Tunisia has been vocal in demanding broader legal access to EU territory in general and to the European labour market in particular – can turn MP negotiations into a confrontation in which the European insistence on strict control over the entry of migrants is challenged.

45. **European co-ordination** remains a challenge. While the European Commission considers that this falls within its responsibilities in principle⁶⁴, the task is complex in areas such as labour immigration, where European competencies are greatly restricted and where the sensitivity of Member States, in particular those facing high unemployment levels, is very great.

46. Co-ordination takes place at two levels: in **Brussels**, strategic decisions concerning the MPs are taken within the Council's High-Level Working Group (HLWG) on Asylum and Migration, while their financing and implementation is monitored in meetings chaired by the European Commission. Member States are constantly requesting information on implementation of the GAMM and of the MPs in general, and on the possibilities of proposing activities that could be financed by the EU in particular. The institutional arrangements in Brussels are now being reviewed.⁶⁵

47. **In third countries**, the EU delegations are supposed to prepare meetings on the MPs, and the EU presidency is to co-ordinate the work of the Member States.⁶⁶ The absence or thinness of certain Member States' diplomatic representation in third countries can impede local co-ordination among Member States. Moreover, the EU delegations in third countries are not always sufficiently staffed with personnel competent to handle justice and home affairs issues. The suggestion has therefore been made to strengthen

⁶⁰ Parkes (2009). See also: Carrera and Hernandez i Sagrera (2009).

⁶¹ Commission of the European Union, Mobility Partnership as a tool of the Global Approach to Migration, SEC(2009) 1240 final, 18.09.2009; Maroukis and Triandafyllidou (2013).

⁶² Italian efforts to strengthen Albania's capacities to organise legal immigration and to combat illegal immigration have had little effect, mainly because the Albanian authorities have not asserted ownership over the process. See Chaloff (2006).

⁶³ Carrera and Hernandez i Sagrera (2009).

⁶⁴ European Commission, Communication [...] on circular migration and mobility partnerships between the European Union and third countries, op. cit. 2007.

⁶⁵ Interview with the European Commission.

⁶⁶ Commission of the European Union, Mobility Partnership..., op. cit., 2009.

the EU delegations in the JHA area, and in the meantime to field specialists from capitals for steering the MP process.⁶⁷

48. When co-ordination is inadequate, the MP's Annex may come to resemble a mere listing of national and European projects; in the absence of synergies, the exercise may produce no joint programming that would rationalise and give added value to European action, and coverage of the four pillars of the GAMM may be unbalanced. The task of local co-ordination, notably in Morocco and Tunisia, where the MP annexes are very thick, would seem to be crucial. Moreover, because they sometimes prefer a combination of financing from Member States and the EU, rather than more streamlined action, third countries do not always encourage this co-ordination between European players.⁶⁸

49. The capacity of third-country parties to the MPs to negotiate with their European partners (Member States and/or the European Commission) seems variable: all of them have an interest in gaining facilitated access to the labour market in Member States, but at the same time they are competing among themselves for that access, and the weakness of regional organisations (for example the Union of the Arab Maghreb) does little to enhance the collective defence of their interests vis-à-vis their European partners.

3.3. As a nonbinding instrument, the Mobility Partnership cannot guarantee the sustainability of the actions negotiated

50. However, the willingness of the European Commission to standardise the benefits granted to third countries under the MPs allows for the **incremental development of some of the rights granted** to third countries through the mobility partnerships: for example, the definition of categories of persons eligible for visa facilitation under previously negotiated agreements⁶⁹ could be taken as a legal precedent in negotiations for visa facilitation agreements with new countries (Morocco, Azerbaijan, Tunisia and Jordan).⁷⁰

3.4. The financing for mobility partnerships is mechanically constrained

51. Since 2008 there has been rapid growth in the number of MPs. Two were negotiated in 2008 (Cape Verde and Moldova), one in 2009 (Georgia), one in 2011 (Armenia), two in 2013 (Morocco and Azerbaijan) and two in 2014 (Tunisia and Jordan). Other countries (Lebanon and Belarus) have expressed interest in opening dialogues on migration, mobility and security with a view to negotiating mobility partnerships. Despite their limitations, the MPs are in fact seen in neighbouring third countries as the framework for co-operation with European partners that offers the best prospects for financing. However, European and national financing in support of third-country employment systems has not been growing as fast as the number of countries hoping to benefit from it. Greater synergies will therefore have to be found among the existing sources of financing, failing which the MP tool could lose its attraction and its effectiveness for third countries.⁷¹

⁶⁷ International Organization for Migration (IOM).

⁶⁸ Interview at the European Commission, DG DevCo.

⁶⁹ In most visa facilitation agreements, diplomatic passport holders are generally exempt from visa requirements.

⁷⁰ Interview at the European Commission, DG Home Affairs.

⁷¹ The Council has also asked the Commission and Member States to ensure that adequate financing resources are allocated to the GAMM. See Draft Council Conclusions on the implementation of the Global Approach to Migration and Mobility, 8443/14, ASIM 34, RELEX 298, DEVGEN 79, 2 April 2014.

52. Whatever the case, the mobility partnerships are nothing more than policy platforms for co-operation within which bilateral or multilateral agreements and activities can be developed, as much to satisfy the employment needs of Member States as to ensure the ethical nature of recruitment. They constitute but one dimension of EU co-operation with third countries in the area of labour immigration. It is important, then, to consider financial instruments (II) as well as legal ones (III) for this co-operation, which could be developed within the MPs or could in fact precede them.

II. INSTRUMENTS FOR FINANCING LABOUR IMMIGRATION CO-OPERATION WITH THIRD COUNTRIES

53. The European Union and the Member States offer several types of financial support to promote the employability of migrant workers within the European Union as well as to ensure the ethical nature of recruitment. Some examples of these activities are discussed below, along with their limitations.

1. Activities in third countries intended to enhance the employability of migrants in Europe

54. In a 2013 study⁷², the European Training Foundation (ETF) analysed labour migration from three countries – Morocco, Georgia and Armenia – to demonstrate the gulf that exists between these employment markets and the European market: employment in the agriculture sector in those countries is as high as 40%, the informal sector is very important, and the unemployment rate is high, ranging from 10 to 18%.

1.1 Strengthening third countries' capacities to manage their labour migration

55. In countries where emigration occurs spontaneously and is in part “irregular” there is a need, first of all, **to bring migration policy within the scope of public policies**. The legal framework is often highly inadequate.⁷³ Co-operation must therefore begin with an assessment of that framework, and must then help the local authorities to define a migration policy, completed with strategies and national action plans. In this respect, it is important to identify the ministry or the public institution primarily responsible for conducting the policy, to train its personnel, and to promote interagency co-ordination on issues of labour migration. European support in building third countries' migration management capacities should also seek to satisfy national employment market needs before promoting labour migration to European Union countries.⁷⁴

56. In **Moldova**, for example, European co-operation contributed to the adoption of Law 180 of 10 July 2008 on labour migration.⁷⁵ Poland, Hungary, Germany and Slovenia, drawing upon European financing from the TAIEX programme⁷⁶ or on national financing, have also helped to strengthen the Moldovan

⁷² Collyer, Bardak, Jansova, and Kärkkäinen (2013).

⁷³ Interview with the ICMPSD.

⁷⁴ EUROMED Migration III. Peer-to-peer meeting on legal migration. Labour migration in the Mediterranean region: identifying common ground, Paris, 27-28 February 2013. Meeting report and options for future co-operation.

⁷⁵ Trebis (2014).

⁷⁶ TAIEX is the Technical Assistance and Information Exchange Instrument managed by the Directorate-General Neighbourhood and Enlargement Negotiations of the European Commission. It supports public administrations with regard to the approximation, application and enforcement of EU legislation as well as facilitating the sharing of EU best practices. It is largely needs-driven and delivers appropriate tailor-made expertise to address issues at short notice.

authorities' capacities in the migration field, and in the drafting in 2011 of a national strategy on migration and asylum, followed by the adoption of a national action plan for implementing it.⁷⁷ Czech co-operation has provided support for Moldova's national employment agency in the production of statistics that will assist in the definition of policies.

57. **In Armenia**, with European assistance, the Armenian employment agency has been transformed into a public entity, integrated into the Territorial Administration Ministry. It now participates, within an interministerial framework, in defining national employment policies in their domestic and international dimensions.⁷⁸

58. Under the **TEAM project** supported by the European Union, *Pôle emploi France* and GIP International have been working since 2011 with the employment services of five target countries from which the project derives its acronym: Tunisia, Egypt, Algeria, Morocco and Mauritania. They have helped with implementation of the international divisions of the employment agencies of Tunisia (ANETI) and Morocco (ANAPEC), they have hosted training workshops, and they have contributed to the development of labour migration information networks among employment agencies.⁷⁹

59. In **Morocco**, the Sharaka project, with €5 million in European financing, seeks to strengthen the capacities of the ministry responsible for Moroccans residing abroad and for Moroccan migration policy, as well as the National Employment Agency (ANAPEC) for working on four complementary themes: maximising the impact of projects by creating synergy between migration and development; strengthening government capacities to mobilise Moroccans living in Europe; allowing ANAPEC to offer proper coaching to legal immigrants in gaining entry to the Moroccan labour market, following new Moroccan migration legislation, and supporting the international placement of Moroccans seeking to emigrate for professional reasons; and lastly, supporting Moroccan civil society institutions and organisations dealing with the reintegration of returning Moroccans.

60. To the extent that the authorities of third countries are better able to manage migration flows, and to allow their nationals to find legal and appropriate channels for working in the European Union, this should also reduce the numbers of unsubstantiated claims for asylum and of rejected visa applications.

1.2. Giving potential migrants better information about employment opportunities in Europe

61. Information for migrants is provided both by the European Union and by Member States.

62. The Czech Republic and Germany have established **information guides** for Moldovan immigration applicants, dealing with the situation on their labour markets and rules governing legal access to those markets.⁸⁰ A **migrants' resource centre** has been created in the Indian state of Hyderabad, with funding provided by the European AENEAS programme, and it has been so successful that it is now regarded as a model for replication in other states of India.⁸¹

⁷⁷ International Organization for Migration, (2012).

⁷⁸ Charpin and Aiolfi (2011).

⁷⁹ EUROMED Migration III. Second peer-to-peer meeting on legal migration. Enhancing labour migration co-operation in the Euro-Mediterranean region, Athens, 6-7 March 2014. Meeting report and options for future co-operation.

⁸⁰ International Organization for Migration, (2012).

⁸¹ Charpin and Aiolfi (2011). The migrants' resource centre created at Hyderabad in 2009 provides telephone advice to candidates for migration and to persons returning to India, focusing in particular on the

63. The co-operation agencies of Poland, Romania and Sweden have organised **call centres, websites** and information **seminars** for potential migrants in Moldova, while Germany and Italy have sponsored job **fairs**.⁸²

64. To make the European labour markets more transparent, a **European Immigration Portal**⁸³ was launched in 2010 to provide information via the Internet on the legal procedures for accessing the labour market in EU Member States. Since 2012, the **European Skills Panorama** website⁸⁴ has been providing quantitative and qualitative information on short and medium-term skills needs, skills supply and skills mismatches in the European Union. Although this information is macroeconomic in nature, it can enlighten immigration candidates as to their chances of finding a job in a given economic sector in Europe.

65. The **EURES Portal**, which is intended to help match employment supply and demand by networking public employment services in countries of the European economic space, under the co-ordination of European Commission, could be opened to nationals of third countries following a review of its regulations.⁸⁵

1.3. Training potential migrants to adapt to the labour market needs of Member States.

In migrants' countries of origin

66. In some countries of origin, the authorities offer training to assist migrants in their departure. In Sri Lanka, for example, immigration candidates are offered training in financial management, which can help them in subsequently transferring funds or investments to Sri Lanka.⁸⁶

67. To facilitate recognition in Europe of their nationals' diplomas and occupational training, some countries such as Algeria, Morocco and Tunisia are striving to adapt their higher education systems to the Bologna Process, which since 1999 has aimed to facilitate convergence and transparency among the various European systems of higher education.⁸⁷

difficulties encountered by Indian migrants in other countries (the Gulf States): "Extension of migrant resource centre sought", *Times of India*, September 25, 2011.

⁸² An EU-funded study in 2011 pointed to a 40% increase between 2009 and 2011 in visits to an information site established by Swedish co-operation, and concluded that there had been a clear improvement in Moldovan migrants' knowledge of legal immigration conditions in the European Union. See <http://www.legal-in.eu/enarchive/106-migration-tendencies-and-peculiarities-of-moldovans>.

⁸³ [http://ec.europa.eu/immigration/tabHome.do?language=9\\$fr](http://ec.europa.eu/immigration/tabHome.do?language=9$fr)

⁸⁴ "Commission launches EU Skills Panorama to tackle skills mismatches", Press Release, 7 December 2011.

⁸⁵ European Commission, Proposal for a regulation of the European Parliament and of the Council on a European network of employment services, workers' access to mobility services and the further integration of labour markets, COM (2014) 6 final, 17.1.2014.

⁸⁶ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

⁸⁷ "The Bologna process: setting up the European Higher Education Area", http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/c11088_en.htm. A 2011 study showed that, in countries of the Maghreb where higher education systems are fairly similar, there is a clear tendency to move forward in accordance with the Bologna principles. In some Middle Eastern countries, convergence with the Bologna process is less pronounced, perhaps because their higher education systems were historically influenced by the Anglo-American model. Cf. Education, Audiovisual and Culture Executive Agency (EACEA), 2010.

68. **Member States** also provide training in the countries of departure. Thus, under the terms of a bilateral agreement on labour migration between Italy and Moldova, supported by the IOM and financed by the European Union, Moldovan migrants are offered training, including language instruction.⁸⁸

69. The **Tempus Programme**, funded by the European Union, is helping to modernise higher education in the partner countries of Eastern Europe, Central Asia, the Western Balkans and the Mediterranean region, and to bring about convergence of the higher education systems of partner countries with those of the EU.⁸⁹ In Egypt, for example, this programme has financed modernisation of a Master's programme to train professionals in water management at the national level. This "Euro-compatible" training can be used at home as well as, at least potentially, in the European Union.

70. The **FRAME** programme, which is supported by the European Training Foundation⁹⁰ and seeks to adapt the skills available in a State to the challenges of coming years, is being applied in several third countries. For example, it is supporting lifelong learning in Turkey.

In Member States

71. In order to enhance the acculturation of migrants, some Member States are offering them training in their own country. For example, the German co-operation agency GTZ financed funded training courses in 2013 for 100 Tunisian engineers in the area of information and communication technologies, including instruction in German language and culture⁹¹: 65 of these engineers subsequently received offers of employment in Germany.

72. **Students** also benefit from training programmes in the European Union, and some may subsequently be recruited in Member States.

73. The programme now known as "**Erasmus +**"⁹², for example, is intended to promote the European Union as a world-scale space of academic excellence and to develop partnerships between European and non-European institutions that will allow mobility for persons through a system of bursaries or study grants. For example, the number of Moldovan students benefiting from this programme rose from 60 in 2007 to 173 in 2010.

2. European support programmes seek to promote ethical recruitment

2.1. Short-term mobility

74. Short-term mobility, which is supposed to permit the transfer of knowledge, should serve the objectives of ethical recruitment and combating the brain drain.

⁸⁸ International Organization for Migration, 2012.

⁸⁹ http://eacea.ec.europa.eu/tempus/programme/about_tempus_fr.php

⁹⁰ http://www.etf.europa.eu/web.nsf/pages/Frame_project

⁹¹ EUROMED Migration, op. cit., 2014. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), "Ensuring the availability of qualified professionals", <https://www.giz.de/expertise/html/12158.html>

⁹² <http://www.agence-erasmus.fr/page/erasmus-mundus>

75. It is in fact one of the objectives of the **Erasmus +** programmes⁹³ to allow short-term mobility in European institutions so that students and researchers can put to use the working experience gained in the European Union for the benefit of their home country.

76. Similarly, on the basis of **bilateral agreements**, some 20 Moldovan researchers go to study every year in Romania, Poland, the Czech Republic and Hungary.⁹⁴

2.2. Recognition of diplomas and professional qualifications is another challenge for ensuring ethical recruitment and limiting “brain waste”

77. To address this challenge, institutions such as the European Training Foundation (ETF) are working to establish **training standards** for certain professional activities that will not only help to improve training but will also permit recognition in the European Union. The challenge is particularly important when this training has an informal dimension. For example, in 2011 common standards were approved for four professions in Moldova.

78. The ETF is also planning to provide assistance for harmonising current professional qualifications in Tunisia and Morocco in the tourism and construction sectors with those of European countries, in order to enhance labour mobility and the recognition of skills.⁹⁵

3. Uncertainties and limitations in actions to date

79. However, there is some uncertainty as to the overall impact of the support financed by the European Union and Member States. Despite the implementation of programmes such as MED-Stat and MED-Hims (Mediterranean Household International Migration Survey), the **statistical data** collected on labour migration flows are still incomplete and not fully comparable.⁹⁶

3.1. Third countries’ migration policies are still weak

80. Because of this, they do not always contribute to matching international supply with European demand for labour.

81. Despite the European support received, third countries’ capacities to manage their migrations are still limited, and this goes a long way to explaining why much of the migration volume – legal or illegal – continues to go unrecorded.

⁹³ The Erasmus + programme for 2014-2020 has absorbed several former programmes, including Tempus. Cf. ERASMUS+ : a new programme for education and training (2014-2020), <http://www.agence-erasmus.fr/actualite/564/erasmus-a-new-programme-for-education-and-training-2014-2020>

⁹⁴ This paper will not go into detail on the many programmes intended to involve the diasporas in the development of their home country, through financial transfers, investments or encouragement of their return, as they are not directly related to the problem of ethical recruitment in the European Union.

⁹⁵ Annex to the EU-Tunisia MP and the EU-Morocco MP.

⁹⁶ EUROMED Migration III. Peer-to-peer meeting on illegal migration. Labour migration in the Mediterranean region: identification of common ground, Paris, 27-28 February 2013. Minutes of the meeting and outline of a study for future co-operation. See also Charpin and Aiolfi (2011).

82. Moreover, the authorities in third countries often appear to have little sense of **ownership** over institutional support programmes for managing migrations.⁹⁷ As a result, the actions taken are short-lived and their impact tends to fade once European financing comes to an end.⁹⁸

83. In Moldova, for example, efforts at institutional capacity building, particularly in the National Employment Agency, have been undermined by high turnover among its staff, some of whom take advantage of their position to find jobs in international organisations or abroad.

3.2. These information programmes reach relatively few potential migrants

84. Because European support is most often geared to building institutional capacities in third countries for managing their migrations, rather than being targeted at the migration candidates themselves⁹⁹, there has been little significant increase in the information and training available to potential migrants before their departure.¹⁰⁰

85. Similarly, information and emigration preparation programmes are generally conducted in **urban centres and capitals**. Yet significant numbers of migrants come from the countryside, and rural migrants have little access to public information sites and counselling on migration.

86. The information offered often places great stress on the **risks** inherent in illegal immigration, and it is too general and too little targeted at the employment concerns of migration candidates.

87. Thus, only 6% of potential migrants in Armenia, 8% in Georgia and 11% in Morocco were aware of the existence of information programmes for migrants. Moreover, only 3% of Armenian candidates, 5% of Georgians and 6% of Moroccans actually took advantage of such programmes. Most migrants' organisations maintain that the impact of information programmes is negligible, and that **migrants obtain most of their information from friends or family members**.¹⁰¹

88. **To address this challenge**, some have proposed developing **individualised coaching** for emigration candidates in the countries of origin, provided by a network of liaison officers in embassies, consulates and delegations of the EU.¹⁰²

3.3. Pre-departure training programmes are difficult to evaluate

89. Pre-departure training programmes are designed primarily to boost the working skills of potential migrants and ensure that those skills are recognised in Member States.

90. Users of these programmes, however, expect that they will help them **actually find a job in a Member State of the EU**. This is the case for three-quarters of Armenians and Georgians, and for two-

⁹⁷ Interview with the European Training Foundation.

⁹⁸ On the Albanian case, see Chaloff (2006).

⁹⁹ Interview with the European Training Foundation.

¹⁰⁰ Chaloff (2008).

¹⁰¹ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

¹⁰² EUROMED Migration III. Second peer-to-peer meeting on legal migration. Enhancing labour migration co-operation in the Euro-Mediterranean region, Athens, 6-7 March 2014. Meeting Report. A state of play and way forward.

thirds of Moroccans. They also expect support in handling administrative formalities (13% of Armenians, 12% of Moroccans and 11% of Georgians). Lastly, they expect an improvement in their language skills.¹⁰³

91. Among the Armenians, Moroccan and Georgians interviewed, however, three-quarters of those who had actually migrated had found a job through their network of family members or friends, and not through any European training programme.¹⁰⁴ The placement services of European countries ranked second among recruitment modalities. More broadly, even when high-quality training has been provided through European programmes, there are few agreements between home and host countries that allow non-European workers to find employment in a Member State of the EU.¹⁰⁵ Thus, the usefulness of pre-departure training programmes would seem to be limited, unless they are associated with a placement programme, as is the case with the bilateral sector agreements between a country of origin and a Member State.¹⁰⁶ The outcome can be frustrating for those who believed that such training would help them succeed in migrating for work. Lastly, the expenditures involved in providing these training programmes are largely wasted if they do not achieve the stated objective.

92. **What is missing in pre-departure training programmes**, then, is the establishment of a **link with a European employer**. Even without considering the conditions prevailing on the labour market in a given sector, an employer will decide to hire someone if he has developed a bond of trust with that person. This will be the case whether he knows the candidate personally, or whether that person belongs to a network with which he is familiar, or whether he is in a position to judge the reputation of the training or the skills acquired by the person.¹⁰⁷ Yet such information is scarce on the international employment market, and this makes recruitment more difficult.

93. **Business** participation in defining strategies to “maximise the opportunities of legal migration”, as called for in the June 2014 strategic guidelines¹⁰⁸, will not by itself establish a direct contact between migrants and employers, but it can help. More systematic involvement of employers in the follow-up to measures for organising labour immigration – e.g. job fairs, information days – can on the other hand have a direct impact on the effectiveness of these measures in terms of recruitment.¹⁰⁹

3.4. Recognition of diplomas and qualifications remains a stumbling block

94. In this area, there are few recent data available. In the case of Moldova, however, studies by the European Training Foundation showed that “**brain waste**” was **widespread**, and seemed to constitute the rule rather than the exception until 2008.¹¹⁰ While stressing the recent nature of programmes to combat “brain waste”, the stakeholders interviewed, and migrants’ associations in particular, could point to no

¹⁰³ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

¹⁰⁴ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

¹⁰⁵ Charpin and Aiolfi (2011).

¹⁰⁶ In fact, however, bilateral training agreements do not always result in more jobs. This was notably the case with an Italy-Moldova training programme, which did not result in a single recruitment.

¹⁰⁷ Interview with the European Training Foundation.

¹⁰⁸ Conclusions of the European Council, 27 June 2014.

¹⁰⁹ EUROMED Migration III. Second peer-to-peer meeting on legal migration. Enhancing labour migration co-operation in the Euro-Mediterranean region, Athens, 6-7 March 2014, op. cit.

¹¹⁰ ETF (European Training Foundation), Black Sea Labour Market Reviews: Moldova Country Report, Turin: ETF, 2009; ETF (European Training Foundation), HCD Review: Relationship Between Human Capital Development and Equity in the Republic of Moldova, Torino: ETF, 2011.

reduction in this phenomenon, but they noted that the question was now being addressed through the mobility partnership. The European Training Foundation, for its part, is running a programme to promote and recognise Moldovan skills and qualifications.¹¹¹

95. **If programmes for recognition of qualifications** are to function properly, there must be reliable procedures for evaluating the training offered a given country and ensuring that international standards are applied, and the persons graduating from that system must have been able to demonstrate their skills in the host country. All of this will require **in-depth reforms to education and training systems**, and the actions taken (often of short duration and inadequately championed by the third-country authorities) do not always bring about structural changes in education systems. Thus, the ETF notes that in the areas of agriculture, tourism and construction, Egyptian migrants have difficulty in gaining recognition of their skills, for they are seen as lacking autonomy and a sense of safety and hygiene¹¹², cultural elements that are not taken into sufficient account in the reforms of their training system.

96. It is important, then, that pre-migration training should take a broad approach to the skills to be acquired, and should include a dimension of acculturation to the usages of the European States of destination, coupled with instruction in languages and legal procedures.

97. It is in fact the most highly skilled persons who seem most affected by the failure to recognise their qualifications. An ETF study of Moroccan, Armenian and Georgian migrants¹¹³ found that the level of education among the Moroccan contingent seemed lower (80% had only a primary or basic education) while a quarter of Georgians and Armenians had some level of higher education. Yet the Moroccans found employment more easily in the EU, in areas suited to their level of training, such as agriculture, construction, personal services, commerce, transportation, hotels and restaurants, and factories. Conversely, immigrants from Eastern Europe, often well trained, tended to take work for which they were overqualified, and were able to find employment at a level corresponding to their qualifications only when they resided permanently in the EU.¹¹⁴

98. On the whole, it emerges from an OECD study that a high level of training allows some migrants to find a job more readily, and that the employment rate for migrants has been rising in all OECD countries, averaging 65% in 2010, or 2.6% lower than the rate for the native-born¹¹⁵. However, Eurostat shows that one migrant in three between the ages of 25 and 54 years is overqualified for his or her job, compared to one person in five among native Europeans.¹¹⁶

99. Beyond the need for greater adaptation to European requirements, problems with the recognition of qualifications also stem from the **discrimination that immigrants face**.¹¹⁷ Under these circumstances, highly qualified persons who enjoy partial recognition of their skills in Europe may prefer, when they

¹¹¹ International Organization for Migration, The European Union-Republic of Moldova Mobility Partnership, op. cit.

¹¹² European Training Foundation, *Skills Matching for Legal integration in Egypt*, European Training Foundation, December 2010.

¹¹³ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

¹¹⁴ Kahaneč, Zimmermann, Kurekova, and Biavaschi (2013).

¹¹⁵ OECD, (2012),.

¹¹⁶ Eurostat: "One in three foreign-born persons aged 25 to 54 over qualified for the job, compared with one person in five among the native-born", Eurostat news release 180/2011, 8 December 2011.

¹¹⁷ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

choose to emigrate, to take their chances outside the Member States of the European Union, for example in Canada, the United States or Australia.

100. A number of proposals have been put forward to promote better recognition of diplomas and qualifications:

101. The creation of a “qualifications promotion fund”¹¹⁸ has been proposed as a way of **supporting reforms to the training systems** and offsetting losses associated with the brain drain. The Moldovan Academy of Sciences suggests that the Moldovan diaspora could finance such a fund, as a contribution to the country’s academic life.¹¹⁹

102. More broadly, ministries of education in third countries should strive to strengthen their relations with vocational training institutions and employers’ associations in the host countries, so as to adapt training to labour market needs in those countries.¹²⁰

103. Another way to **encourage better recognition of qualifications** would be to establish a “clearinghouse” of migrants’ qualifications from their home country, in which all Member States would take part.¹²¹ As well, because labour unions have an interest in combating the undervaluation of migrants’ skills, which constitutes a form of social dumping for European workers, closer involvement by unions in negotiations on the recognition of diplomas and qualifications would be good news for migrants.

3.5. The impact of circular migration is uncertain and debatable

104. **Circular migration involves an unknown but fairly modest proportion of migrants.** In 2010, of 89,822 Moldovans residing legally in the European Union, 80 of them were living in France as circular migrants, with a residency permit of less than one year, while the equivalent figures for Italy and Poland were 3 453 and 6 540, respectively.¹²² Some nationalities – e.g. Armenians and Georgians – seem content with this type of migration, while Moroccans aspire to longer-term migration.¹²³

105. More generally, the ETF and the World Bank¹²⁴ both report that mobility programmes are few in number, not well known, and cover only a small number of migrants.

¹¹⁸ Martin (2013)

¹¹⁹ International Organization for Migration, The European Union-Republic of Moldova Mobility Partnership, op. cit.

¹²⁰ One example for consideration is that of South Korea, which has pursued close co-operation with the national employment agencies of some 15 countries of origin, thereby allowing training to be adapted to the needs of the Korean economy, including Korean language and culture modules, and providing for online selection of immigration candidates, who are then accorded rights equal to those of Korean workers. See Charpin and Aiolfi (2011).

¹²¹ International Organization for Migration, The European Union-Republic of Moldova Mobility Partnership, op. cit.

¹²² International Organization for Migration, (2012).

¹²³ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

¹²⁴ Alquézar Sabadie, Avato, Bardak, Panzica, Popova (2009).

Circular migration has its downside as well

106. Circular migration is less likely than long-term residency to facilitate the acquisition of linguistic skills, much less integration into the host country. Moreover, it is hard to reconcile with a normal family life, as the children are generally excluded from such mobility.

107. In fact, circular migration is more applicable to relatively unskilled seasonal workers in agriculture and tourism than to highly qualified persons.¹²⁵ The latter group are also more reluctant to accept it. Above all, in order to attract them, Member States and the EU offer longer residency permits, with the possibility of family accompaniment (see below). Thus, although it is claimed to facilitate the transfer of skills and know-how, circularity in fact poses a constraint in these areas.

3.6. The impact of programmes to combat the brain drain is uncertain

108. In the context of the mobility partnerships, the number of programmes dealing with this issue is relatively low. While some programmes concern the voluntary return of highly qualified, legal residents, others in effect seek to encourage the voluntary repatriation of illegal migrants. A programme promoted by Germany for the return of Moldovan experts resulted in the return of only five highly qualified persons.¹²⁶

109. It would seem, then, that combating the brain drain will require **broader measures of economic or governance support** for countries that export highly qualified workers. If they are to be less tempted by exile, these persons will need more attractive prospects in their home country (in terms of salary, working conditions, and political governance), either to dissuade them from leaving or to encourage them to return and teach or work in the private or public sector, thereby ensuring that their migration can have a positive impact on the development of their home country.¹²⁷

110. More broadly, the financial instruments of co-operation with third countries, which are supposed to promote labour migration, will not result in a job in the European Union unless the **Member States are open politically to such recruitment**. Given the current economic crisis in many of those countries, while they may be interested in the immigration of highly qualified persons (see below), they are certainly not broadcasting a demand for foreign workers.¹²⁸

111. Under these circumstances, what use are foreign aid programmes in the area of labour migration? Do they constitute **yet another market**, in which Member States will try to promote their national operators without any real intention of boosting the recruitment of migrants? Yet these programmes do contribute to the preparation and facilitation of labour migration through the development of exchanges and linkages between the players involved.¹²⁹

112. The Member States in fact remain key players in this area, and they have numerous **legal, European or national instruments** at hand to organise migration in ways that will best suit their needs. These are the legal instruments that will be described in the last section of this study.

¹²⁵ Maroukis and Triandafyllidou (2013).

¹²⁶ International Organization for Migration, (2012).

¹²⁷ Dhananjayan (2005). See also: Skeldon (2010); Clemens (2009).

¹²⁸ Interviews with the European Training Foundation, European Commission, ICMPD.

¹²⁹ Interviews with the European Commission and the European Training Foundation.

III. LEGAL INSTRUMENTS FOR ORGANISING LABOUR IMMIGRATION

113. The legal instruments adopted by the European Union (1), without having created a European employment market, have tended to organise labour immigration in the European Union. The essential rules governing labour immigration are, however, the preserve of the Member States (2).

1. European instruments regulating labour immigration

114. Article 5.2 of the Lisbon Treaty (TFEU) provides that “[t]he Union shall take measures to ensure **co-ordination of the employment policies of the Member States**, in particular by defining guidelines for these policies.” Employment issues seem to be politically very sensitive in many Member States affected by unemployment¹³⁰, and consequently they remain primarily within national competence.

115. Nevertheless, TFEU article 79 extends the ordinary legislative procedure to “the definition of the rights of third-country nationals **residing legally** in a Member State, including the conditions governing **freedom of movement and residence in other Member States**”, and allows the question of their employment to be addressed indirectly, in the sense that foreigners residing there legally will sooner or later have to work in order to live, and may thus occasionally have to move within the Union.

116. **Union-level regulation of labour immigration is recognised as appropriate and useful** in that it allows multinational companies to bring their employees from third countries into Europe to work and to circulate freely. On the other hand, the persistence of diverse national rules risks making Europe seem complicated and may discourage these firms from pursuing activities in the EU. Common European rules also seem useful for organising competition among Member States to attract highly skilled nationals of third countries (this has been the policy in the Czech Republic since 2003, in Germany since 2004, and in France since 2006): divergent national rules can in effect cause “secondary movements” by migrants, which may be destabilising for the labour markets in Member States. Lastly, for some categories of migrants (seasonal workers in particular), regulation at the European level is intended to guarantee their basic rights.

117. The European Commission has adopted the objective of either harmonising residency permit criteria and labour rights, or encouraging mutual recognition of national rules. Basically, its aim is to promote free movement of third-country workers within the EU, and to grant those persons equal treatment with Community citizens.

118. **Yet the Commission is running into strong resistance from Member States** that do not accept common rules beyond certain **specific sectors of activity**, and are broadly opposed to a “horizontal” approach covering labour immigration across the board.¹³¹

119. The existing European rules can be classified into three categories: those that seek to encourage short-term mobility (1.1.), those intended to attract highly skilled persons (1.2.), and those aimed at promoting ethical recruitment (1.3.).

¹³⁰ Carrera, Faure Atger, Guild and Kostakopoulou (2011).

¹³¹ A proposed “horizontal” directive floated in 2001 following the Tampere programme of 1999 had to be abandoned in the face of fierce opposition from Germany, Austria, Greece and the Netherlands.

1.1 Promoting short-term labour mobility

120. There are two texts of specific importance in this area: the Schengen visa code and the “seasonal workers” directive.

European visa policy

121. The Schengen visa code¹³², which stemmed initially from the border control policy, establishes “procedures and conditions for issuing visas for transit to or intended stays in the territory of the Member States not exceeding **three months in any six-month period**” (Article 1.1). Persons coming to the EU to work may be granted a multiple entry visa with a period of validity of between six months and five years (article 24.2) allowing stays of less than three months in the Schengen area during the validity of their visa. These visas are well-suited to business persons, civil servants engaged in regular official contacts with Member States and EU institutions, seafarers, and representatives of civil society organisations travelling for the purpose of educational training, seminars and conferences; theatre troupes may also use visas of this kind for European tours.

122. In April 2014, the European Commission issued a proposal¹³³, now under discussion, that would encourage **modernisation of European visa policy** by facilitating access to visas for bona fide visitors (to be achieved by streamlining procedures and shortening waiting times, in particular).

123. In addition, the European Union has negotiated **13 visa facilitation agreements** with third countries, essentially neighbouring ones¹³⁴, together with agreements on readmission, testifying to the EU’s determination to promote mobility. These visa facilitation agreements often constitute the first step toward liberalisation, i.e. an exemption from the visa requirement.¹³⁵ Lastly, for third countries beyond the EU “neighbourhood”, the list of countries whose nationals are eligible for a **visa exemption** has been extended recently to include Peru, Colombia, and the United Arab Emirates.¹³⁶

¹³² Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas.

¹³³ European Commission, Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code), COM (2014) 164 final, 1.4.2014.

¹³⁴ Under visa facilitation agreements, the conditions for granting a visa are relaxed (with respect to waiting time, cost, ease of access to multiple entry visas, etc.). Visa facilitation agreements have been concluded with the Russian Federation (25 May 2006), Ukraine (18 June 2007), Republic of Moldova (10 October 2007), Serbia (18 September 2007), the former Yugoslav Republic of Macedonia (18 September 2007), Montenegro (18 September 2007), Bosnia-Herzegovina (18 September 2007), Albania (18 September 2007), Georgia (17 June 2010), Cape Verde (25 September 2012), Armenia (October 2013), Azerbaijan (29 November 2013), and Turkey (16 December 2013). The visa requirement was lifted on 19 December 2009 for nationals of Montenegro, Serbia and the former Yugoslav Republic of Macedonia, and on 15 December 2010 for nationals of Albania and Bosnia-Herzegovina.

¹³⁵ The visa requirement was lifted on 19 December 2009 for nationals of Montenegro, Serbia and the former Yugoslav Republic of Macedonia, and it was lifted on 15 December 2010 for nationals of Albania and Bosnia-Herzegovina. Negotiations for the eventual liberalisation of visas are now underway with Georgia, Kosovo, Turkey and Ukraine; negotiations with Russia were suspended in March 2014, in the wake of the Ukraine crisis.

¹³⁶ Regulation (EU) 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EC) 539/2001 of the Council listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from the requirement.

124. However, recognising that the three-month stay allowed by the Schengen visas would restrict the activities that third-country nationals are able to conduct in Europe, in April 2014 the European Commission put forward the idea of a “**touring visa**”.¹³⁷ This visa would allow stays exceeding 90 days in several Member States in any 180-day period, and its validity could be extended to two years. This type of visa would facilitate longer visits in Europe by students, researchers, artists and culture professionals, business persons and service providers, in particular. Negotiation of this visa has however encountered great difficulties, as Member States fear that it would encourage illegal immigration.¹³⁸ There seems to be a firm determination to exert very close regulation over recruitment from beyond the European Union, while preserving the principle of Community preference.

The “seasonal workers” directive¹³⁹: a model for organising mobility for third-country nationals?

125. This directive, which will come into force on 30 September 2016, provides **incentives and guarantees** to prevent a temporary stay from being transformed into a permanent stay.

126. Seasonal workers will follow a single application procedure allowing them to obtain a permit that constitutes both a short-stay visa and a work permit (article 13).

127. In principle, they retain their place of principal residence in a third-country (article 2).

128. To be admitted into a Member State, they must have a fixed-term work contract or a binding job offer mentioning the essential elements such as pay and working hours (articles 5 and 6).

129. Depending on the length of their seasonal employment (up to or exceeding 90 days), they will receive either a short-stay visa issued for purposes of seasonal work (article 12) or a visa for a stay of between five and nine months in any 12 month period (article 14).

130. To encourage circular migration, they will have the possibility of extending their stay (article 15) and of facilitated re-entry to stay or work in the EU (article 16).¹⁴⁰

131. In addition to the European rules promoting mobility of third-country nationals, there are other rules designed to attract highly skilled persons to the EU.

1.2. Attracting highly skilled persons to the EU

132. The European directives – “blue card”¹⁴¹, “intra-corporate transfer”¹⁴², “students”¹⁴³, and “researchers”¹⁴⁴, the last two of which are currently being revised¹⁴⁵ – are specifically intended to attract

¹³⁷ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a touring visa and amending the convention implementing the Schengen Agreement and Regulations (EC) 562/2006 and (EC) 767/2008.

¹³⁸ Interview with the DG Home Affairs.

¹³⁹ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

¹⁴⁰ Member States may, for example, exempt seasonal workers from the requirement to submit certain documents, they may issue several seasonal worker permits in a single administrative act, and they may resort to an accelerated procedure for handling applications.

¹⁴¹ Council Directive 2009/50/EEC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. Known as the “Blue Card” directive, it seeks to facilitate the entry and stay of highly qualified persons, defined as persons who can present a work contract attesting that they will receive a salary of at least 1.5 times the average gross annual salary in the Member

highly qualified persons needed in the European Union to achieve the objectives of the Europe 2020 strategy. These directives contain provisions for attracting the targeted categories:

The length of the stay permit is supposed to be attractive

133. **Highly qualified** workers receive a “blue card”, the validity of which may run from 1 to 4 years (article 7 of Directive 2009/50/EC).

134. **Students** receive a residence permit for a period of at least one year, and it is renewable (article 12 of Directive 2004/114/EEC). The same holds for researchers (article 8).

135. For persons covered by a **temporary intra-corporate transfer**, the minimum duration is one year and the maximum length of the transfer is three years for managers and specialists, and one year for trainee employees (articles 12 and 13 of Directive 2014/66/EU).

Family reunification

136. The holder of a **blue card** may bring the members of his family into the EU even if he does not have reasonable prospects of obtaining the right of permanent residence, and he must receive a response within six months after the date on which the application was lodged (article 15 of Directive 2009/50/EC).

137. **Researchers** also have the right to family reunification, and issuance of a residence permit to members of their family must not be made dependent on the requirement of a minimum period of residence of the researcher (article 9 of Directive 2005/71/EC).

138. **Persons covered by a temporary intra-corporate transfer** are entitled to family reunification, without having to demonstrate that they have reasonable prospects of obtaining the right of permanent residence or have completed a minimum period of residence

139. **Long-term resident status is facilitated**, in particular for holders of a **blue card**, who may cumulate periods of residence in different Member States (article 16 of Directive 2009/50/EEC). In the case of intra-corporate transfers, the relevant directive does not provide for facilitated issuance of a long-term residence permit, but only for long-term mobility (article 22 of Directive 2014/66/EU).

State concerned, or 1.2 times the average gross annual salary in professions facing a labour shortage (article 5 of Directive 2009/50).

¹⁴² Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. This directive has the support of large multinational firms seeking to facilitate intra-European mobility for their personnel, who are often specialists with skills in great demand. It will come into force on 29 November 2016.

¹⁴³ Council Directive 2004/114/EEC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, under the integrated training or voluntary service.

¹⁴⁴ Council Directive 2005/71/EEC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

¹⁴⁵ European Commission, Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing.

Facilitation of movement within the European space

140. Movement of a **blue card** holder within the European space is facilitated: after a stay of 18 months in another Member State, the person may apply for a blue card in that second State, and bring his family there (articles 18 and 19 of Directive 2009/50/EC).

141. Under certain circumstances defined by the Member States, **students** are entitled to mobility within the EU (article 8 of Directive 2004/114).

142. **Researchers** are also entitled to mobility within the European Union provided they acquire a new hosting permit to carry out research in another Member State if that work is to exceed three months, (article 13 of Directive 2005/71/EC).

143. Persons covered by **an intra-corporate transfer** are entitled to mobility within the European Union under conditions that are more or less constraining depending on whether the mobility is of short duration (to a maximum of 90 days within any 180 day period) or of longer duration (articles 20 to 22 of Directive 2014/66/EU).

Labour market access for students and researchers

144. Under the terms of the 2004 directive, **students** may take employment under conditions defined primarily by the Member States: States may, during the first year in particular, determine the maximum number of working hours per week, which may not be less than 10 hours per week, with a ceiling of their choice, and with due regard to the situation of their labour market (article 17 of Directive 2004/114/EC).

145. In principle, **researchers** have the right to teach, at least for a certain number of hours (article 11 of Directive 2005/71/EC).

146. **As the provisions of directives 2004/114/EC on students and 2005/71/EC on researchers were considered** not to be sufficiently attractive, the Commission floated a proposal on 25 March 2013 to revise those two directives.¹⁴⁶ The new proposal is designed to:

- **speed up procedures** for the granting or refusal of a visa or a residence permit within at most 60 days (article 5 of the proposed directive);
- **facilitate mobility** for researchers **within Europe**, in order to allow them to participate in common research programmes such as the Marie Curie programme;
- extend students' **right to workup** to 20 hours a week; and
- open the possibility for researchers and students, under certain conditions, **to remain in the territory** for 12 months after the conclusion of their studies or research, in order to look for work or to set up a business (articles 22 to 24).

¹⁴⁶ European Commission, Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing, 2013/0081 (COD).

The single work and residence permit

147. To facilitate the entry of migrant workers into Europe, whether they are skilled or not, and to limit the fragmentation of their conditions of entry and residence that results from the proliferation of sector directives (possibilities for highly qualified workers, as opposed to seasonal workers, to move freely within the European Union and to benefit from family reunification), a “single permit” directive¹⁴⁷ was adopted in December 2011. That directive seeks to simplify administrative procedures for third-country nationals coming to work in the European Union by establishing a **single work and residence permit** (article 11 of Directive 2011/98/EU).

1.3. Guaranteeing conditions for ethical recruitment*Equality of treatment with nationals of Member States*

148. **Equal treatment with nationals of Member States** not only serves to limit social dumping but also guarantees to migrant workers’ rights, including social rights, that are comparable to those enjoyed by the nationals of Member States. The ethical nature of recruitment is thereby assured.

149. After two years of residence, the holder of a **blue card** is entitled to equal treatment with nationals of the Member State, notably as regards freedom of association (articles 12 and 14 of Directive 2009/50/EC).

150. **Researchers** are also entitled to equal treatment with nationals of the host country, in particular as regards: (a) recognition of diplomas, (b) working conditions, including pay and dismissal, and (c) certain branches of social security (article 12 of Directive 2005/71/EC).

151. Following some difficult negotiations, **intra-corporate transferees** now enjoy at least the same treatment as workers posted in the framework of the provision of services (including maximum periods of work, minimum duration of paid vacations, and salary rates).¹⁴⁸ They also enjoy equal treatment with nationals of the Member State in which the work is carried out, with respect to (a) freedom of association, (b) recognition of diplomas, and (c) certain provisions of national law regarding the branches of social security (article 18 of Directive 2014/66/EU). Moreover, the pay offered them must not be less favourable than that offered to nationals of the Member State in which the work is carried out occupying comparable positions (article 5).

152. In principle, **seasonal workers** also enjoy equal treatment, particularly as concerns the minimum working age, the conditions of work (salary, dismissal, working hours, leave and holidays, health and safety in the workplace), the right to strike and take industrial action, and as regards the branches of social security, retirement, training, and employment offices and other public services (article 23 of Directive 2014/36/EU).

153. The holders of a **single permit** are in principle entitled to equal treatment with national workers as regards working conditions, participation in a labour union, education and vocational training, recognition of diplomas, social security and tax benefits (article 12 of Directive 2011/98/EU).

¹⁴⁷ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

¹⁴⁸ Article 18 of Directive 2014/66/EU refers to Directive 96/71 BC of the European Parliament and of the Council of 16 December 1996, concerning the posting of workers in the framework of the provision of services.

Recognition of professional qualifications

In order to promote **recognition of professional qualifications**, Directive 2005/36/EC, revised in November 2013¹⁴⁹, establishes the conditions under which qualifications acquired in third countries may be recognised in the European Union. In particular, “evidence of formal qualifications issued by a third-country shall be regarded as evidence of formal qualifications if the holder has three years’ professional experience in the profession concerned on the territory of the Member State which recognised that evidence” (article 3).

Definition of a common basis of rights

154. The **directive on seasonal workers** also defines a **common basis of rights** to which seasonal workers are entitled during their stay in the EU in order to prevent their economic and social exploitation. They must in particular benefit from accommodation that ensures an adequate standard of living (article 5 of Directive 2014/36/EU). The work contract that they are to present for purposes of admission must also specify the **number of weekly or monthly working hours** (article 6).

155. In the proposed **recasting of the “students” and “researchers” directives**, the European Commission has attempted to improve the overall protection of other categories of third-country nationals, such as school pupils, unremunerated trainees and volunteers, au-pairs and remunerated trainees. Thus pupils, volunteers and unremunerated trainees, who were previously covered by optional rules that left a wide margin of discretion to Member States, would now benefit from harmonised rules that are binding on all Member States. The same situation would apply to au-pairs and remunerated trainees, hitherto excluded from the scope of previous directives (article 2 of the proposal), for whom the Commission intends to define a basic set of minimum rights applicable in all Member States.

Countering the brain drain

156. To **counter the brain drain**, the Blue Card Directive provides that “Member States may reject an application for an EU blue card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin” (article 8.4 of Directive 2009/50/EC). As well, “whereas” clause 22 of the directive calls for the development of ethical recruitment policies and principles applicable to public and private employers in sectors where there are personnel shortages in developing countries.

157. The Council and the Member States adopted on 14 May 2007 a **European programme of action**¹⁵⁰ to address the severe shortage of health personnel in developing countries, and in November 2007 they asked for the adoption of comparable measures in the education sector.¹⁵¹

158. Lastly, the seventh **framework programme of research and development** calls for a mechanism for the mandatory return of researchers from the South to their country of origin after some years of work in Europe.¹⁵²

¹⁴⁹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, and Directive 2013/55 EU of the European Parliament and of the Council of 20 November 2013 on the recognition of professional qualifications.

¹⁵⁰ Communication from the Commission to the European Parliament and the Council: a European Programme for Action to tackle the critical shortage of health workers in developing countries (2007-2013).

¹⁵¹ EU Council: Conclusions of the Council and the Representatives of the Governments of the Member States Meeting within the Council on coherence between EU migration and development policies, 20 November 2007.

Sanctions against abusive employers

159. Under the terms of the **seasonal workers directive**, Member States are to impose effective, proportionate and dissuasive sanctions on employers who are in serious breach of their obligations under that directive (article 17 of Directive 2014/36/EU).

160. More generally, the **framework decision of July 2002**¹⁵³ stipulates that each Member State shall take the measures necessary to ensure that acts of human trafficking are “punishable by custodial sentences with a maximum sentence of not less than eight years”.

161. Finally, the directive adopted in June 2009¹⁵⁴ calls for **punishing employers who hire illegally staying nationals of third countries**. Common minimum standards for sanctions (article 5 of Directive 2009/52/EC) are stipulated, including payment of the costs of return of those persons, and payment of any outstanding remuneration to them (article 6). The infringement becomes a criminal offence when it is persistent, when it concerns a significant number of foreigners, and when it is accompanied by particularly exploitative working conditions (article 9).

162. Thus, the European Union has developed a broad set of rules intended to make it attractive for certain categories of migrant workers, while ensuring the ethical nature of the conditions under which these persons are recruited.

1.4. However, the scope of the EU rules on attractiveness and ethics seems limited*Many obstacles in the quest for attractiveness*

Attractiveness is subordinated to European preference

163. Under the terms of TFEU article 79.5, “this article shall not affect the right of Member States to determine **volumes of admission** of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.”

164. The **Blue Card Directive** allows Member States to impose quotas on highly qualified workers (article 6 of Directive 2009/50/EEC), to verify whether the concerned vacancy could not be filled from the national or Community work force (article 8), to restrict changes in employer during the first two years of stay (article 12) and to withdraw the blue card after three months of unemployment.

National rules persist alongside European rules

165. Each of the directives discussed above contains an article, worded identically, specifying that the directive in question is “**without prejudice to more favourable provisions of bilateral or multilateral agreements** concluded between the Community/Union or the Community/Union and its Member States and one or more third countries” or “bilateral or multilateral agreements concluded between one or more

¹⁵² Cf. Annex XII Decision 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013).

¹⁵³ Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

¹⁵⁴ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Member States and one or more third countries”, as well as “**the right of Member States** to adopt or retain more favourable provisions” for persons to whom the directive applies.¹⁵⁵

166. These **systematic provisions reduce considerably the scope of efforts to harmonise European rules**, as national arrangements are likely to predominate if they appear more favourable. Thus the Blue Card Directive, intended to attract highly qualified persons into the European Union, is scarcely applied except in Germany and Luxembourg, and indeed the new Commissioner responsible for immigration is planning a “fitness check” of that directive that could well lead to its revision.¹⁵⁶ Overall, the competition between the common European rules and the national rules of different Member States gives an **image of great complexity to the European rules** applicable in the area of labour immigration, **and does little to promote Europe’s attractiveness.**

Minor simplifications and harmonisations

167. Efforts to reduce the fragmentation of the conditions for the entry and stay of third-country nationals in accordance with the categories of labour migrants, as contained in the “single permit” directive, are in fact modest: **the scope of application of that directive seems restricted**, in that it does not include third-country nationals who are posted or transferred, seasonal workers, applicants for refugee status, or holders of a long-term residence permit (article 3.2 of Directive 2011/98/EU). This directive, then, does not fully reinforce European attractiveness through simpler and more uniform rules. The European Commission is planning to evaluate the directive in 2015, and could potentially decide to revise it.

Restricted mobility within Europe

168. Mobility within Europe, the purpose of which is to develop a unified European labour market that will be more attractive to multinational enterprises, appears to be strictly confined. For example, in the Blue Card Directive, mobility is possible only after a stay of 18 months in the first Member State, and a new blue card application must be submitted in the second host state (article 18 of Directive 2009/50/EEC). In the “intra-corporate transfer” directive, the second Member State may require notification of the intended transfer if it is for less than three months (article 21 of Directive 2014/66/EU) and it may require a new stay permit, if the transfer exceeds three months (article 22). Member States are in fact reluctant to recognise the initial admission procedure, for they fear that firms will choose to establish themselves in Member States with the softest admission rules, and they consider that they would lose control over entry into their own territory if free circulation were to apply without restriction.

Limitations to the development of ethical recruitment rules

There are no common rules for certain categories of migrants

169. In the absence of a European immigration code, a great many categories of migrants are not covered by any Community provision. This is the case, for example, with au-pairs and remunerated trainees: Member States have so far resisted their inclusion in the proposed “students-researchers”

¹⁵⁵ Cf. article 4 of Directive 2004/114/EEC on students; article 4 of Directive 2005/71/EEC on researchers; article 4 of Directive 2009/50/EEC on the “blue card”; article 13 of Directive 2011/98/EU, “single permit”; article 4 of Directive 2014/36/EU on seasonal workers; article 4 of Directive 2014/66/EU on intra-corporate transfers; article 4 of the proposed directive on students and researchers.

¹⁵⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2015, A New Start, COM (2014) 910 final 16.12.2014.

directive.¹⁵⁷ National rules will continue to apply for the protection of these categories of migrants. The European Commission's objective of creating a common European basis of rights for vulnerable categories has been shunted to the future.

Weak efforts to combat the brain drain

170. Europe's attractiveness for the most highly qualified migrants does not always guarantee a strong commitment on the part of European governments to counter brain drain by organising and supporting the return of highly qualified migrants to their country of origin although this does not mean there is a lack of commitment to ethical recruitment. Countries with the lowest level of development continue to be affected disproportionately by brain drain.¹⁵⁸ An ethical code of conduct on the recruitment of highly qualified persons, as called for in the Blue Card Directive, has yet to be adopted, for lack of support among Member States.¹⁵⁹

171. As well, the new European research and development programme, "Horizon 2020", promotes mobility for researchers but, in contrast to the seventh CPRD, it no longer speaks of the mandatory return of migrant researchers to their country of origin.¹⁶⁰ This constrains the capacity of these researchers to contribute to the development of their home country, where research infrastructure will certainly not be comparable to that available to them in Europe.

Modest efforts to promote the social rights of migrant workers

172. Thus, the directive on "**seasonal workers**", given the temporary nature of their stay, exempts Member States from according them equal treatment with regard to unemployment and family benefits, among others, and allows them to restrict equal treatment with regard to tax benefits and access to education and vocational training (article 23.2 of Directive 2014/36/AU).¹⁶¹

173. Similarly, under the "**single permit**" directive, States may limit the extent of rights regarding education and training (notably study grants), family allowances (for certain temporary workers), tax benefits and access to social housing (article 12.2 of Directive 2011/98/EU).

¹⁵⁷ Interviews with the European Commission.

¹⁵⁸ Notwithstanding the 2007-2013 programme to address the shortage of health workers in developing countries, there were more doctors from Malawi in the city of Manchester in 2009 than in their home country. Malawi's ability to combat HIV/AIDS was thus compromised. Cf. CONCORD Europe, "Migration and Development: the Predominance of EU-Centred Interests over Migrants' Rights", Spotlight on Policy Coherence, Report 2009, p. 22-27, www.concordeurope.org. On this topic see also Dayton-Johnson et al., 2007.

¹⁵⁹ Interviews at the European Commission.

¹⁶⁰ "International co-operation is also essential for frontier and basic research in order to capture the benefits from emerging science and technology opportunities. Promoting the international mobility of researchers and innovation staff is crucial for enhancing this global co-operation." Cf. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Horizon 2020: the Framework Programme for Research and Innovation, COM (2011) 808 final, 30.11.2011.

¹⁶¹ *Europe liberté sécurité, justice*, (2014). See also AEDH [European Association for the Defence of Human Rights] (2014).

174. The “**intra-corporate transfer**” directive allows Member States, if they wish to discourage the transferee from bringing his family with him, to decide that persons transferred for a period of nine months or less shall not be entitled to family benefits (article 18.3 of Directive 2014/66/EU).

Sanctions against employers can be reduced

175. Directive 2009/52/EC on sanctions against employers of illegally staying third-country nationals in effect prescribes only minimal and optional common standards. Moreover, Member States may decide to reduce the applicable penalties when the employers are natural persons and the employment is for their private purposes (including domestic service), and no particularly exploitative working conditions are involved (articles 5 and 7). These provisions do not bespeak any strong commitment to combating clandestine labour. The European Commission plans to review the implementation of this directive in 2015.

176. An examination of the provisions of the various European directives suggests, then, that Member States are determined to preserve some wide manoeuvring room for managing labour immigration from third countries.

177. National rules therefore remain a determining factor in the governance of labour immigration.

2. National rules in the area of labour immigration

2.1. Rules governing recruitment from third countries

178. EU Member States’ policies governing recruitment from third countries generally rely on two types of regulation. One relates to policies based on supply, which may take the form of points systems allowing migrants to be selected in light of their skills: policies of this kind are highly appropriate when countries are looking to attract certain categories of highly qualified migrants in particular. The second involves policies based on the demand of businesses and of States, leading (after an examination of the local labour market situation) to the setting of trade-specific or overall quotas.¹⁶² In practice, these two approaches are often combined.¹⁶³

Demand-based policies

179. Policies based on demand and on quotas have been adopted in various Member States. Since 1993, for example, **Spain** has set an annual quota for migrants, and may reject an application for a temporary work permit in light of the situation on the labour market. Given the country’s current economic crisis, the quotas have been reduced.

180. **Portugal** adopted a policy of setting indicative quotas on visas for third-country workers in 2007. The quota for 2009 was fixed at 3 800 and was not filled, as the economic crisis rendered Portugal unattractive for migrants. In 2012, however, there was a slight increase in the number of work visas.

181. **Italy’s** migration policy, instituted in 1990 and confirmed by a legislative decree of July 1998, is based on annual quotas for third-country nationals, including seasonal workers and persons trained abroad.¹⁶⁴ However, Italy has signed immigration agreements, with Moldova among other countries,

¹⁶² Centre d’analyse stratégique, *Besoins de main d’oeuvre et politique migratoire*, Report, May 2006.

¹⁶³ OECD, *International Migration Outlook*, December 2014, www.oecd.org

¹⁶⁴ French Senate, “Immigration légale et répression de l’immigration illégale”, *Étude de législation comparée*, No 2011, 5 January 2011.

governing legal migration.¹⁶⁵ In 2013 and 2014, several legislative reforms were implemented. One of these, aimed at attracting students, allows the duration of their stay permit to cover their entire study cycle and permits them, at the end of that cycle, to convert their studies permit to a work permit. Government jobs are open to certain categories of migrants. Lastly, a visa policy reform is intended to attract highly qualified persons and investors.¹⁶⁶ These last items relate to a supply-based policy.

Supply-based policies

182. Other Member States, however, have adopted economic immigration policies based more on the supply side.

183. **In the United Kingdom**, the Labour government first adopted a policy for attracting highly qualified workers, in the form of a “Highly Skilled Migrant Programme” in 1997. A points-based system (“PPS”) was created in 2008 and makes qualified workers who speak English and have a sponsor and an employment contract eligible for a stay permit. In 2013, a third of migrants residing in the UK were highly qualified workers.¹⁶⁷ As well, since 2004 the United Kingdom has been open to workers, often less qualified, from the new Member States, and from Poland in particular.

184. In May 2010, however, the conservative government of David Cameron decided to reduce the number of economic migrants. In July 2011, restrictions were placed on study visas for non-European students, to the consternation of British universities. The number of visas issued to highly qualified persons and to skilled workers with an employment offer also fell by 41% in 2013¹⁶⁸, and the overall number of persons authorised to reside permanently in the UK dropped by 22.2% between 2011 and 2013. The new immigration law that came into effect in the spring of 2014 pursues the objective of reducing the number of migrants to the “tens of thousands”, by facilitating the expulsion of unemployed migrants and stiffening the requirements regarding knowledge of the language and way of life in the United Kingdom. Thus, the British system now combines a points system with a quotas system.

185. **In France**, a law of 24 July 2006 on immigration and integration¹⁶⁹, essentially a supply-side policy, was intended to promote “selective” immigration suited to the country’s hosting capacities and economic needs. A new “skills and talents” card has been adopted for the immigration of highly qualified foreigners. The immigration law of 16 June 2011¹⁷⁰ also facilitates family reunification for highly qualified persons. The facilitation of students’ access to the labour market again reflects a supply-based system, while the plan to establish an annual quota for the acceptance of foreigners, following a parliamentary debate, stems from the demand-based system. The draft immigration law presented in July 2014 also promotes selective immigration: foreigners legally in the country for one year will be able to obtain a multiyear residence card valid for 2 to 4 years, which will then be replaced by a 10-year residence card. As well, a “**skills passport**”, issued under facilitated and simplified conditions, will allow highly qualified foreigners and their families to reside in France for four years. Lastly, in order to facilitate short-term

¹⁶⁵ International Organization for Migration, 2012.

¹⁶⁶ OECD, 2014

¹⁶⁷ OECD, 2014

¹⁶⁸ OECD, 2012a

¹⁶⁹ Law 2006-911 of 24 July 2006 on immigration and integration.

¹⁷⁰ Law 2011-672 of 16 June 2011 on immigration, integration and nationality.

mobility, work permit requirements for employees coming to France for less than three months will be eliminated.¹⁷¹

186. **In Germany**, a “green card” was introduced in July 2000, as part of the supply-side system, as a means of attracting foreigners highly skilled in new information and communication technologies. In June 2011, the government adopted the “concept of reserving a skilled labour pool”, intended to sustain the medium and long-term supply of highly qualified workers. On the other hand, the immigration of workers with little or no qualifications is strictly controlled: the law of 30 July 2004, amended in 2009, allows a long-term residence permit with the right to work to be issued only for immigrants who can present a firm employment offer in a sector not subject to authorisation by the labour authorities. Moreover, the authorities maintain a list, updated every six months, of trades in which there are labour needs that can be satisfied by foreigners. A new regulation (*Beschäftigungsverordnung*), which came into force in July 2013, allows employers to hire third-country nationals for certain groups of professions in which there is a shortage of qualified workers in Germany.¹⁷² Thus, for example, Germany has launched a training and recruitment programme in Vietnam for geriatric nurses in order to meet the German demand in this area.¹⁷³ The German system, then, combines supply-side and demand-side policies.

187. **In Poland**, the Interministerial Commission on Immigration issued a recommendation in July 2011 to increase the number of categories of persons eligible for facilitated immigration: workers with skills lacking in Poland, students, researchers, and immigrants of Polish descent. Cross-border mobility agreements have been signed with neighbouring countries (with Moldova in 2009¹⁷⁴, with the Russian Federation in 2012), allowing migrants from those countries to work for up to six months in Poland without having to apply for a work permit.¹⁷⁵ Lastly, in April 2012, the law promoting the employment of highly qualified foreign workers transposed the European Blue Card Directive into Polish law. A law that came into force in May 2014 extends from 2 to 3 years the validity of temporary residence and study permits. It also allows secondary school graduates to extend their stay up to one year in order to seek employment.¹⁷⁶

188. Member States have also signed **bilateral agreements on labour migration** with third countries. In this way, for example, Morocco has had labour migration agreements in place since the 1960s with Member States of the EU, the destination for 84% of Moroccan migrants.¹⁷⁷

2.2. *There are several types of measures that could lend an ethical dimension to recruitment:*

189. Beyond the many **bilateral agreements on recognition of diplomas and qualifications**, it is noteworthy that **Germany** began in April 2012 to implement a **new law** on the recognition of foreign qualifications that establishes a standardised system by nationality for recognising qualifications obtained abroad, and in this way helps to combat “brain waste”.

¹⁷¹ Draft Law on the rights of foreigners, 23 July 2013, <http://www.immigration.interieur.gouv.fr/Immigration/Les-projets-de-loi-relatifs-au-droit-des-etrangers>

¹⁷² OECD, 2014

¹⁷³ Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), “Training nurses from Viet Nam to become geriatric nurses in Germany”. Cf. <https://www.giz.de/en/worldwide/18715.html>

¹⁷⁴ International Organization for Migration, 2012.

¹⁷⁵ Cf. Zdanowicz (2014).

¹⁷⁶ OECD, 2014.

¹⁷⁷ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

Protecting the social rights of migrants

190. To combat social dumping, Sweden adopted new legislation in August 2014 to prevent the exploitation of migrant workers by forbidding them to be paid less than their Swedish counterparts.¹⁷⁸

191. However, the most important contribution to the ethical recruitment of third-country nationals is to be found in **bilateral agreements in the area of social security**. The key point here is to avoid the situation where a migrant worker is compelled to pay social contributions in his country of origin and in the host country, but is not entitled to benefits in a Member State after his return to his home country. The portability of social rights thus constitutes an essential tool for encouraging circular migration and boosting its benefits¹⁷⁹, and it is also a priority for the EU's partner countries. Thus, for example, in 2009 Tunisia signed bilateral social security agreements with nine Member States.¹⁸⁰ Similarly, Moldova signed social security agreements with seven Member States of the European Union (Bulgaria, Portugal, Romania, Luxembourg, Austria, Greece and the Czech Republic) between 2008 and 2012 and was negotiating such agreements with Poland, Belgium, Lithuania and Hungary.¹⁸¹

2.3. Yet the recruitments allowed by national rules are still few, and they are not always fully ethical*Some recruiting is still difficult*

192. Even with this new generation of bilateral labour agreements, administrative **formalities for hiring migrants are considered to be too cumbersome**¹⁸² and thus to hold back recruitment.

193. The legislative provisions of Member States or of bilateral employment agreements for promoting **circular migration** between countries of origin and countries of the European Union also seem inadequate, as they rely for the most part on small-scale pilot initiatives.¹⁸³

194. The **requirements relating to the integration of migrants and their families** may in some cases have a dissuasive effect on the most highly qualified persons.

195. **Language** can be another obstacle to recruitment: Germany has trouble attracting highly qualified persons – engineers from India, for example – who prefer to go to English-speaking countries.¹⁸⁴

The limitations of ethical provisions

196. Bilateral agreements for the transfer of social rights seem to be of **limited scope**: in 2012, the seven Member States that had concluded social security agreements with Moldova took in only 20% of Moldovan migrants, while Member States that received the greatest numbers of Moldovan workers (Italy,

¹⁷⁸ OECD, 2014.

¹⁷⁹ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

¹⁸⁰ Alquézar Sabadie, Avato, Bardak, Panzica, Popova (2009).

¹⁸¹ International Organization for Migration, 2012.

¹⁸² EUROMED Migration III. Second peer-to-peer meeting on legal migration. Enhancing labour migration co-operation in the Euro-Mediterranean region, Athens, 6-7 March 2014. Meeting Report. A state of play and way forward.

¹⁸³ International Organization for Migration, 2012.

¹⁸⁴ Interview with the ICMPD. See also OECD, 2013.

United Kingdom, Spain, France, Germany and Latvia) were reluctant to commit themselves to such agreements.

197. In tough economic times, moreover, **Member States may be less generous in the context of their bilateral social security agreements**: for example, during renegotiation of its social security agreement with Morocco, the Netherlands argued that the amount of pensions paid to Moroccan workers should not be calculated in accordance with Dutch criteria if those workers took their retirement in Morocco, where the cost of living is much lower. For the same reasons, it wanted to recalculate the amount of family benefits paid to Moroccan workers with children living in Morocco.¹⁸⁵ However, there is a provision in the EU-Morocco Association agreement that makes pension rights portable. This decision is now in the final stage of adoption, after which it will take precedence over national law. In some cases, therefore, third countries could be encouraged to negotiate social security agreements with the EU rather than on a bilateral basis with Member States, as the rights accorded their nationals could be more favourable.

198. The **number of persons effectively benefiting from social transfers** (including pensions) **also seems very low**: in 2012, only 29 Moldovans were drawing such benefits, for a very small amount of money (€25,900). Shortcomings in the administrative structures of third countries may go some way towards explaining this finding.¹⁸⁶

199. However, **given the economic difficulties** they have faced since 2009, many Member States have **not been very open to recruitment in third countries**. Through the application of various rules, Member States have been able to rein in the legal migration of workers from third countries¹⁸⁷, even if they have not really succeeded in controlling illegal immigration.¹⁸⁸

¹⁸⁵ Interview with the ICMPD.

¹⁸⁶ Collyer, Bardak, Jansova, and Kärkkäinen (2013).

¹⁸⁷ In the case of legal migration, Member States can wield three types of levers: salaries, and language or administrative requirements. Cf. Chaloff (Jonathan), in: Charpin and Aiolfi (2011).

¹⁸⁸ Kahanec, Zimmermann, Kurekova, and Biavaschi (2013).

CONCLUSION

200. Mobility partnerships constitute an open and flexible political framework for co-operation that can foster dialogue among the many stakeholders involved in labour migration toward the European Union. They can stimulate both bilateral and European co-operation, serving at the same time to enhance the employability of migrant workers and to enforce respect for ethical recruitment rules. They can also help make migrants more employable so that they can help meet European labour market needs.

201. Co-operation with third countries can, first of all, contribute to the development of public policies governing labour migration that will provide candidates with better information on their prospects for legal emigration: pre-departure training in legal, cultural or linguistic matters can be of particularly great help.¹⁸⁹ More broadly, however, adapting their diplomas and vocational training to the demands of European markets would seem to be very important in enabling them to find a job in a Member State.

202. The visa code, the various kinds of visa facilitation agreements, and the directive on seasonal workers also contribute to short-term labour mobility within the European Union: indeed, the seasonal workers directive is sometimes cited as a model in this area.

203. A set of rules in the “EU Blue Card”, “students”, “researchers” and “intra-corporate transfers” directives (covering length of stay, family reunification, long-term residency permits, intra-European mobility, and the labour market for students and researchers) are intended to make the European Union more attractive for these categories of highly qualified persons. The simplifications introduced by the “single permit” directive (simultaneous issuance of a work and stay permit) are also designed to boost the economic attractiveness of the EU. Lastly, the bilateral agreements on recognition of diplomas, on sectoral recruitment and, especially, on local border traffic also play an important role in the recruitment of third-country nationals.

204. As well, there are **a number of actions and measures designed to strengthen the ethical nature of recruitment**. Thus, the Mobility Partnerships will in principle exclude certain sectors such as health and education when third countries are facing a labour shortage in these sectors¹⁹⁰; recognition of diplomas and professional qualifications should help to curb “brain waste”; European rules according migrant workers equal treatment with nationals of the host state, or those defining a minimum basis of rights for certain categories of migrants (e.g. seasonal workers) also have an ethical dimension. The same holds for rules governing the circularity of migrations, particularly for highly qualified persons, who are encouraged to transfer their know-how to their country of origin; and lastly, employers who infringe the ethical rules governing the employment of migrant workers are subject to defined minimum sanctions.

¹⁸⁹ However, these pre-departure programmes entail heavy costs, and this constraint must be taken into account in any plan for expanding them.

¹⁹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on circular migration and mobility partnerships between the European Union and third countries, 16.05.2007, page 7.

205. Yet the European provisions that are supposed to encourage labour immigration into the EU, while highly elaborate and costly, see few people are actually recruited within that framework. The ability of Member States to impose quotas on the hiring of migrant workers or to apply national preference rules reduces the number of persons who can actually be recruited. Recognition of diplomas and professional qualifications remains a major challenge for migrants, who find it easier to win the confidence of European employers through their family or social network than through the institutional or legislative provisions in place for this purpose. The visa policy, the first objective of which is border control, does allow third-country nationals to pursue occasional economic activities in the EU (business trips), but the mobility allowed by business visas (issued for three months) is not designed to meet the persistent structural employment needs in Member States. Finally, the European rules, which apply only to certain categories of migrant workers, have yet to be fully harmonised and they leave a broad margin of discretion to Member States for regulating their labour immigration. The result is a legal labyrinth of European directives superimposed on national rules, one that, viewed from beyond the EU, makes the situation even more complex than it would be if there were only national rules to contend with.

206. **Moreover, the scope of the European measures taken to guarantee the ethical nature of recruitment seems limited:** the failure of the proposed code of ethics in the recruitment of highly qualified persons, which was supposed to be adopted in the context of the Blue Card Directive, bespeaks a tenuous European commitment in this field. Furthermore, ethical recruitment cannot hide the fact that many of the EU's partner countries, such as Tunisia, are faced with a surplus of skilled workers who cannot find a job in their home country, and who are driven to apply for labour immigration as highly qualified workers. Efforts to combat the brain drain in developing countries often require broader actions in the areas of development, such as support for university and research infrastructure, salaries and good governance in these third countries, in order to encourage highly qualified persons to involve themselves in the development of their home country. The spotty record of the European programme of action for addressing critical shortages of health professionals attests to these difficulties. As well, many categories of professional migrants are not covered by minimum common rules, and in some cases the national rules applicable to them may offer more protection than the minimum European rules. But what happens when there are no national rules in place, or when they offer very little protection? The social rights granted to certain categories of migrants (seasonal workers, intra-corporate transferees and single permit holders), in particular, have been strictly limited in the wake of difficult negotiations. Lastly, sanctions against the employers of illegal migrants may in some cases be reduced.

207. Thus, the mobility partnerships and the financial and legal instruments inherent in them are having only a modest impact on the actual recruitment of migrants and on the ethical nature of such recruitment in Member States. It is symptomatic that first residence permits issued for employment numbered around 500,000 a year over the period 2011-2013, representing less than 20% of all residence permits issued, while close to 650,000 residence permits were issued annually for family reunification, 700,000 on asylum grounds, and 450,000 for studies.¹⁹¹ Generally speaking, labour migration does not seem to be specifically promoted within the European Union, and it is the other routes of legal immigration (family reunification¹⁹², asylum¹⁹³ and studies¹⁹⁴) that in the end offer greatest access to the European labour

¹⁹¹ Eurostat, "Better managing labour migration at the EU level", *Discussion Paper No1*, informal Expert Group on Economic Migration, DG Home Affairs, 2015.

¹⁹² Cf. article 14.2 of Directive 2003/86/EC of 22 September 2003 on the right to family reunification: "Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity".

¹⁹³ After nine months, these persons have access to the labour market of the host country. Cf. article 15 of Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for

market. As to the illegal immigration of persons seeking employment on the European “black market”, this was estimated in 2008 at between 1.9 and 4.5 million.¹⁹⁵

How can these findings be explained?

208. In the context of co-operation with third countries, it must be stressed that labour migration falls within the “legal migration” aspect of the Global Approach to Migrations and Mobility, which has been pursued since 2005 in an effort to end confrontation between the EU and third countries on questions of border control and readmission. From the third-country viewpoint, labour migration constitutes a **key objective** of migration co-operation with the European Union, whereas from the EU viewpoint, apart from a few categories of migrants who are in demand in Member States, labour immigration is seen above all as a **concession that is conditional** on third-country efforts with respect to border control and readmission, and on the labour market needs of Member States. Progress as regards third-country border surveillance and readmission still appears difficult to achieve: negotiations on a readmission agreement with Morocco have been under way since September 2000¹⁹⁶ without bearing fruit, and even when readmission agreements have been concluded (as with Pakistan) they are still hard to implement effectively.¹⁹⁷ Under these circumstances, Member States would seem to have little incentive to give concrete expression to this co-operation in the area of labour migration, especially when their domestic labour market has been weakened by the economic crisis. This explains why this migration co-operation has been defined and used in a way that is aimed essentially at allowing Member States to control labour immigration. The paradox here is that this attempt to control labour immigration is almost as ineffectual as those co-operation instruments that are supposed to promote it – labour immigration, whether legal or illegal, takes place largely outside the instruments of co-operation organised by the European Union.

209. **It will be interesting to watch the impact that greater involvement of the social partners may potentially have** on strategies affecting labour immigration. Will those players, who are in a sense remote from concerns over border control and readmission, allow for a more pragmatic approach to co-operation with third countries, leading eventually to more effective and more ethical regulation of labour migration into the European Union, and assuring the EU’s attractiveness in the worldwide race for talent? In a context where the European Union will lose 30 million people from its labour market by 2035, and where

international protection (recast), which came into force in July 2015: “Member States shall ensure that applicants have access to the labour market no later than nine months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.” See also Eurostat Press Release 82/2015 of 12 May 2015: “EU Member States granted protection to more than 185,000 asylum seekers in 2014”.

¹⁹⁴ Cf. article 17 of Directive 2004/114/EEC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service: “outside their study time and subject to the rules and conditions applicable to the relevant activity in the host Member State, students shall be entitled to be employed and may be entitled to exercise self-employed economic activity. The situation of the labour market in the host Member State may be taken into account.” See also: UK Home Office figures (2015) showing that 25% of students from third countries admitted in 2004 were still residing legally in the United Kingdom five years later.

¹⁹⁵ Results of the Clandestino project supported by the Union and implemented by the International Centre for Migration Policy Development. These figures represent the cumulative total at the time the study was conducted (2008-EU 27) <http://clandestino.eliamep.gr>

¹⁹⁶ European Commission, “Readmission Agreements”, Memo/05/351, Brussels, 5 October 2005.

¹⁹⁷ European Commission, *Evaluation of EU Readmission Agreements*, COM (2011) 76 final, 23 February 2011.

the ratio of retirees to workers will shift from 1 in 4 to 1 in 2, there are a number of channels¹⁹⁸ whereby the instruments of co-operation with third countries in the area of labour migration could result in more effective and ethical recruitment:

- If the supply of labour from third countries is to match European demand more closely, an **in-depth reform of third-country training systems** would seem indispensable. It could be of great use in this regard to involve businesses of EU Member States and the diasporas in programmes for reforming the training systems of third countries, where they could respectively express and transmit European labour market needs.
- **Training programmes** should be **associated with programmes for placement** with European employers, in the context of bilateral and sectoral recruitment agreements. Some savings could be achieved here by leaving aside training in areas that are known to offer little chance of employment in Europe and are likely to evoke frustration among candidates for immigration.
- **Development assistance**, and in particular the support of **university and research facilities**, as well as third-country **governance** could be reinforced to contribute more effectively to the mobility of highly qualified persons and to enhance their involvement in the development of their home countries.
- A **European skills certification Bureau**, comparable to the one that exists in Canada¹⁹⁹, could be established within the EU to verify the skills of immigration candidates before they arrive in Europe.
- Lastly, as an idea that deserves closer examination, the European Commission, in the context of the European immigration agenda²⁰⁰, has proposed the creation of a “**Europe-wide pool**” of **qualified candidates** pre-selected against objective criteria, in which employers and Member States could recruit migrants in accordance with rules and procedures that would remain national and would be based on the labour market needs of Member States..

¹⁹⁸ For a complete and very concrete set of proposals, see Migration Policy Centre team with the contribution of Peter Bosch, “Towards a pro-active European labour migration policy”, March 2015.

¹⁹⁹ Enviro-nics Research Group, (2014).

²⁰⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, *A European Agenda on Migration*, COM(2015) 240 final, 13.05.2015.

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