

# Expanding Legal Labour Migration Pathways to the EU: Will This Time Be Different?

by Martin Ruhs

The European Commission's recently published "New Pact on Migration and Asylum" calls on EU member states to increase legal labour migration pathways, including for lower-skilled workers. To help achieve this goal, the Pact proposes greater and more effective cooperation with non-EU countries through so-called "Talent Partnerships".<sup>1</sup>

These proposals are not new. The idea of partnerships with non-EU countries that include expanded labour migration programmes was at the heart of the EU's "Global Approach to Migration" launched in 2005, and this approach has been further discussed and developed over the past 15 years.<sup>2</sup> These ideas, however, have never led

to a significant opening of European labour markets to lower-skilled non-EU workers.<sup>3</sup>

An obvious question therefore arises: Will this time be different? Will EU member states (which have primary competence in regulating labour immigration from outside the EU) engage with non-EU countries to develop new policies that expand legal labour migration opportunities in meaningful ways? Will these opportunities be inclusive of low- and medium-skilled workers?

<sup>1</sup> European Commission, *New Pact on Migration and Asylum* (COM/2020/609), 23 September 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0609>.

<sup>2</sup> See, for example, the "Stockholm Programme" in 2009 and the "EU Agenda on Migration" in 2015.

<sup>3</sup> The number of residency permits issued to non-EU nationals to facilitate employment for more than 12 months in the EU was just under 470 thousand in 2019, a little less than the corresponding figure in 2008 (511 thousand), with the vast majority of these permits issued to higher-skilled workers. See Eurostat, *First Permits by Reason, Length of Validity and Citizenship*, last update 23 November 2020, [https://ec.europa.eu/eurostat/databrowser/view/MIGR\\_RESFIRST\\_\\_custom\\_256989/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/MIGR_RESFIRST__custom_256989/default/table?lang=en).

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While there are clearly many reasons to be sceptical, the actual answer depends on whether there have been any changes in the fundamental dynamics and ideas that drive policymaking on labour immigration in EU member states, given that these have long discouraged increased immigration of low- and medium-skilled workers from non-EU countries.

I argue that there are two new, or at least newly appreciated, factors that may contribute to a revision of past approaches and gradually make room for a new opening for labour immigration in Europe: (i) a sharply increased imperative to cooperate more effectively with non-EU countries on irregular migration; and (ii), a growing policy concern about the “resilience” of essential services to external shocks such as COVID-19, and a greater acknowledgement of the potential role that migrants can play in shaping this resilience.

These changes in the external “policy environment” could potentially (although by no means certainly) encourage EU member states to consider and regulate low- and medium-skilled labour immigration in ways that go beyond the current “shortage approach”, which has resulted in little cooperation with other countries and very limited admissions of lower-skilled workers from outside the EU.

### **The challenge: Regulating labour immigration**

Most European and other high-income countries decide labour immigration policy based on the

(real and/or perceived) costs and benefits of particular measures for their citizens and national economies, without significant consideration of the interests of new migrants or their countries of origin. Public and policy debates are typically focused on the effects of migrant workers on the economy, public finance and public services, and on the distribution of income between different groups of citizens and other residents (e.g., employers, local workers).<sup>4</sup>

In practice, one of the core challenges of labour immigration policymaking is how to link the admission of migrant workers to “labour shortages” and “skills needs” of the national labour market. How to assess and respond to shortages is typically a highly contested question, partly because there is no universally accepted definition of a labour or skills shortage, and no single optimal policy response. Whether the best answer to a shortage is more immigration, higher wages, greater mechanisation or other alternatives depends on whose interests policy is meant to serve, and how competing interests are evaluated and managed.<sup>5</sup>

European and other high-income countries typically use two policy tools to help link low- and medium-skilled labour immigration to the needs of the labour market: “labour market tests” and “shortage occupation lists”. In the EU,

<sup>4</sup> Martin Ruhs, *The Price of Rights. Regulating International Labor Migration*, Princeton/Oxford, Princeton University Press, 2013.

<sup>5</sup> Martin Ruhs and Bridget Anderson, *Who Needs Migrant Workers? Labour Shortages, Immigration, and Public Policy*, Oxford/New York, Oxford University Press, 2010.

labour market tests require employers to provide evidence of efforts to search for domestic and other European Economic Area (EEA) workers before recruiting a non-EEA worker. How to design these tests to make them work effectively has been a major policy challenge across different countries.<sup>6</sup>

Shortage occupation lists include jobs for which the government has identified a labour shortage, so employers with vacancies for these jobs do not need to undergo a labour market test before being allowed to recruit migrant workers. As a result, jobs included on this list are up for debate between employers, trades unions and the government. Both these policy tools are essentially designed to give domestic and other EEA workers a right to preferential access to the European labour market vis-à-vis non-EEA workers.

This “shortage-model” and the larger cost-benefit approach do not always (or even mostly) achieve their desired objectives. But they are clearly well-established ways of thinking about the regulation of labour immigration, especially of low- and medium-skilled migrant workers. Therefore, it is not surprising that we have seen much greater openness to highly-skilled migrants than lower-skilled migrants, who are often associated, sometimes wrongly, with fewer economic benefits,

<sup>6</sup> See, for example, UK Migration Advisory Committee, *Review of Tier 2. Balancing Migrant Selectivity, Investment in Skills and Impacts on UK Productivity and Competitiveness*, London, December 2015, <https://www.gov.uk/government/publications/migration-advisory-committee-mac-review-tier-2-migration>.

greater fiscal costs and worse impacts on the lowest income earners among residents.

This also explains why we have seen little cooperation with countries of origin and relatively little harmonisation of labour immigration policies across EU member states (as labour shortages and the broader economic and fiscal effects of immigration can vary considerably across EU countries).

To overcome this status quo and provide more openness to lower-skilled migrant workers and greater cooperation with origin countries requires the emergence of new factors and ideas that influence national politics and policymaking on labour immigration, moving beyond this conventional shortage approach.

### **Making linkages: More legal labour migration in exchange for greater cooperation on irregular migration?**

The large increase in unregulated arrivals of asylum seekers and other migrants in the EU in 2015–16 has added to the perceived urgency, on the side of European policymakers, to cooperate more effectively with non-EU countries on migration, and specifically on reducing irregular migration and facilitating the return of irregular migrants.

The average return rate, i.e., the share of return decisions that are actually enforced, fell to under a third in 2019.<sup>7</sup>

<sup>7</sup> European Commission Director-General for Migration and Home Affairs, *2019 Annual Activity Report*, June 2020, p. 10, [https://ec.europa.eu/info/sites/info/files/home\\_](https://ec.europa.eu/info/sites/info/files/home_)

Effective enforcement of returns has thus become a major political and policy challenge for many European governments. While there are many reasons for the low return rate, including international legal obligations not to send migrants back to places where they could face serious harm (the principle of *non-refoulement*), the lack of cooperation from some countries of origin or transit is clearly among these factors.<sup>8</sup>

Following years of limited progress in forging comprehensive partnerships on migration, there appears to be a growing realisation that effective cooperation on irregular migration with non-EU countries requires not only financial assistance or punitive “less-for-less conditionality” approaches (e.g., threats to reduce access to visas unless there is cooperation on return and readmission), but also meaningful measures that create real and visible opportunities for legal migration to the EU.

The political and economic importance attached to labour migration pathways will vary across non-EU countries. But there is little doubt that it could make a significant difference to some countries’ willingness to cooperate with the EU on other migration issues including return and readmission.

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<sup>8</sup> Matthias Lücke et al., *European and African Perspectives on Asylum and Migration Policy: Seeking Common Ground*, 2020 MEDAM Assessment Report on Asylum and Migration Policies in Europe, Kiel, Institute for the World Economy, April 2020, <https://www.medam-migration.eu/publications/assessment-reports/european-and-african-perspectives-on-asylum-and-migration-policy-seeking-common-ground-14200>.

The failure of the EU to live up to past promises of expanding labour migration opportunities, e.g., in the context of the 2015 EU Agenda on Migration and the “Valletta Summit” between African and European leaders, has been a major source of frustration among African countries, thus undermining EU efforts to encourage greater cooperation on irregular migration and other migration issues.

If the expanded legal access for low- and medium-skilled workers to European labour markets facilitates more effective external cooperation on other migration issues, the wider benefits for EU member states may change their national politics in a way that makes the development of more open and cooperative labour immigration policies more likely.

Clearly, this is by no means a certainty but it is a plausible scenario as the pragmatic realisation of more effective cooperation requires more creative problem-solving and bargaining.

### **COVID-19 and the new policy goal of “systemic resilience”**

A second and more recently emerging factor that has the potential to change the politics of labour immigration in EU countries is the growing concern about the resilience of the provision of essential goods and services to external shocks such as COVID-19.<sup>9</sup>

<sup>9</sup> My discussion of this issue draws on Bridget Anderson, Friedrich Poeschel and Martin Ruhs, “Covid-19 and Systemic Resilience: Rethinking the Impacts of Migrant Workers and Labour Migration Policies”, in *EUI/RSCAS Working Papers*, No. 2020/57 (2020), <https://hdl.handle.net/1814/68235>.

The almost complete absence in the New Pact of any discussion of the effects of the pandemic on labour immigration policymaking is both curious and a missed opportunity. The EU's plan reads as if the pandemic had had only minor and temporary implications for migration and migration policy.

Protecting the provision of essential goods and services, e.g., health services, food production and social care, quickly became one of the central public policy challenges during the pandemic. Although the shares of migrants in these sectors differ across countries, COVID-19 has shone a light on the fact that migrants play an important role in the provision of essential services in many European countries.

As a consequence, migrants doing essential work, including those typically considered lower-skilled workers such as care assistants and food processors, have in many countries been declared "key workers", whose employment needs to be protected and in some cases even expanded.

For example, in early 2020 the Italian government provided migrant workers employed irregularly in agriculture and the care sector with temporary legal status. Austria and Germany admitted migrants for farm and care work, exempting them from international travel bans. The UK decided to automatically extend the expiring visas of migrant doctors and nurses.

The fact that many "essential workers" are migrants, and often employed in lower-skilled jobs, has also received widespread public attention. The

health crisis clearly has the potential to increase the importance that societies attach to what is typically known as lower-skilled work in essential jobs. It will be interesting to see whether and how this apparent public re-evaluation and appreciation of essential workers will lead to longer-term changes in public attitudes – and policies – with regard to lower-skilled migrants in essential jobs.<sup>10</sup>

Whether and to what extent systemic resilience becomes a longer-term goal of public policies, including immigration policies, rather than just a short-term concern during the pandemic remains to be seen. While longer-term thinking about systemic resilience would certainly be desirable from a societal point of view, the politics of public policies are often dominated by short-term concerns. It is also important to emphasise that the resilience of the provision of essential services to external shocks is determined by a range of institutional factors (e.g., the institutional design of the health and care systems), and that migrants and migration policies may, in principle, have positive or negative effects on systemic resilience.

Nevertheless, it is possible – and arguably likely – that the pandemic, and the new policy goal of systemic resilience will lead at least some EU countries to rethink the impacts of migrant workers and the design of

<sup>10</sup> For more discussion on this issue, see Lenka Dražanová, "Public Attitudes to Migrant Workers: A (Lasting) Impact of Covid-19?", in *MigResHub Commentaries*, No. 3 (November 2020), <https://migrationpolicycentre.eu/docs/migreshub/MigResHub-commentary-No3.pdf>.

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labour immigration policies in a way that moves beyond the conventional shortage approach, and favours instead a more long-term and strategic outlook.

To catalyse such a rethink by member states and to support its proposals on new pathways for labour migrants, the European Commission needs to more explicitly articulate the links between labour migration and systemic resilience on the one hand, and more effective cooperation with non-EU countries on wider migration issues on the other.

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