

The Externalisation of the EU's Labour Immigration Policy Towards Mobility or Insecurity Partnerships?

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Abstract

This paper looks at the dynamics affecting the external dimensions of the EU's labour immigration policy. It assesses the role and functions of mobility partnerships as a mechanism for governing circular migration schemes that allow the temporary movement of individuals for employment purposes between EU member states and non-EU countries. The paper argues that given the actual origins, rationale, conditional nature and kinds of circular migration policies advocated by these partnerships, they should be considered 'security' partnerships for the participating EU member states and to a limited extent for the non-EU countries. At the same time, they could be regarded as 'insecurity' partnerships for the coherency and legitimacy of the EU's labour immigration policy, as well as the liberty and security of the third-country workers.

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THE EXTERNALISATION OF THE EU'S LABOUR IMMIGRATION POLICY TOWARDS MOBILITY OR INSECURITY PARTNERSHIPS? *CEPS WORKING DOCUMENT No. 321/OCTOBER 2009* SERGIO CARRERA AND RAÛL HERNÁNDEZ I SAGRERA *

1. Introduction

This paper looks at the dynamics affecting the external dimensions of the EU's labour immigration policy. It assesses the role and functions of mobility partnerships as a mechanism for governing circular migration schemes that allow the temporary movement of individuals for employment purposes between interested EU member states and third countries. The paper considers the implications of these partnerships for the liberty and security of the third-country workers as well as the coherency of the EU's immigration policy.

Originating in a Franco–German initiative for a new ‘European migration policy’ in 2006, and then transferred to the EU's ‘global approach to migration’, mobility partnerships are now presented at the EU official level as a key and most promising policy tool for the integration of labour migration measures into the EU's external relations. Two mobility partnerships have been launched so far as pilot projects – with Moldova and Cape Verde in May 2008. The European Commission has just published a preliminary evaluation of the pilot phase of the mobility partnerships with Moldova and Cape Verde (September 2009), in which it qualifies these instruments as “the most innovative and sophisticated tool to date of the Global Approach to Migration”.¹ Mobility partnerships constitute joint declarations negotiated between the Commission (based on political guidelines from the Council and on behalf of a group of interested EU member states) and a third country, under the condition that the latter has shown a strong commitment to cooperate with the EU on the management of irregular migration flows. The official goal purported by the European Commission for the mobility partnerships appears to be that of moving beyond EU policy priorities that focus exclusively on the security concerns associated with human mobility and borders. Instead, the priority is on a new framework facilitating regular channels for the temporary and ‘circular’ mobility of persons between the signatories’ states for various purposes (including work), and allowing for a triple win for the member states, the non-EU state and third-country nationals (TCNs).

This paper challenges these assumptions and argues that from the perspective of labour migration policy, mobility partnerships rather constitute ‘security partnerships’ for the participating states (especially for EU member states but to a certain extent also for the selected

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¹ European Commission, *Mobility Partnerships as a Tool of the Global Approach to Migration*, Commission Staff Working Document, SEC(2009) 1240, Brussels, 18 September 2009(b).

third countries). The reason they are security partnerships for EU member states is not just because their origins and prevailing emphasis continues to be on security (the control of irregular migration through readmission agreements, border controls, the security of travel documents, the exchange of information among law enforcement authorities and capacity building for migration management). The kind of labour immigration policy they present is fundamentally driven by economic interests, the perceived labour market and needs/demands of the participating EU member states. This favours a policy facilitating the mobility of *only* those TCNs who are deemed ‘useful’ or profitable for the economic security of the receiving state because of their skills, competences or capacity to fill labour market shortages. Thus, mobility partnerships are also ‘insecurity partnerships’ for TCNs and the very coherency of the EU’s labour immigration policy.

Meanwhile, the sovereignty of EU member states also remains largely untouched and therefore very much secured. The Directorate-General for Freedom, Security and Justice (DG JFS) of the European Commission only plays a coordinating role in the negotiations. The interests of third states are also at the heart of the rationale behind these instruments, although their interests are placed in a secondary position compared with those of the EU member states. This is evident when looking at the conditionality or levels of commitment that third countries will need to demonstrate to the European Community (EC) to benefit from the regime envisaged by the partnerships. They receive EC funding for implementation and are generally eager to regain their human capital (national workers). Hence, third states show great interest in issues related to the mobility partnerships and discussions on circular migration – presented at the EU official level as promoting their development and mitigating the adverse effects of brain drain.

Furthermore, mobility partnerships cannot be comprehensively understood from a purely state-centric approach. The role that other intergovernmental actors (such as the International Organisation for Migration, IOM) have played since their inception has been prominent. Consequently, mobility partnerships offer security to all those actors involved in the implementation of EU and member state immigration policies that receive substantial funding for their activities in this context.

Whose security and mobility are at the centre of mobility partnerships? These agreements represent insecurity partnerships for TCNs for three main reasons. First, the kind of labour mobility they provide falls under the concept of ‘circular migration’, which has been defined by the Commission as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries. Mobility partnerships advocate a normative framing of the phenomenon of migration driven by the public policy ambition of controlling the human movements of foreigners in a way that prevents their social settlement, permanent residence and social integration. Instead, mobility partnerships promote a form of management destined to keep migration temporary and even circular, based on a utilitarian logic of selecting those movements that serve the financial and labour market interests of participating states. TCNs are not treated as workers and human rights holders, but as economic units at the service of the demand and supply of participating states. Mobility partnerships leave the liberty and security of the individual subject to these new policy processes and fail to acknowledge the unexpected sociology surrounding any act of human mobility beyond narrow policies pretending to manage it in a circular or temporary fashion. Mobility partnerships conceive migration as something seasonal. The management strategy predicated by mobility partnerships is one implementing temporary and selective labour migration policies, in which ‘return’ is a crucial aspect. The concept of circular migration developed at the EU level cannot succeed without effective policies ensuring that the return or readmission of the third-country workers actually takes place after the expiration of the legality of stay and work (residence and work permits). This is yet another reason justifying the obsession of mobility partnerships and circular migration debates with return and non-settlement. The circularity of the regime adds even more

precarity to the migrant worker's security of residence and access to rights under a system that inevitably leads to expulsion from the EU.

Second, mobility partnerships are also insecurity partnerships for the individual in light of the general principle of legal certainty in EC law and more broadly that of the rule of law, which constitutes one of the foundations upon which the EC legal system has been built. Mobility partnerships have been presented as joint declarations and thus they fall within the category of 'soft law'. This means that they are policy instruments lacking any legally binding or enforceable nature upon participating member states. The partnerships offer a shopping list of projects, political priorities and bilateral agreements practised by each participating member state, which makes it difficult to ensure the certainty and legal security of the individual subject to these transnational policies. The soft juridical nature of mobility partnerships may represent an attempt to extend Europeanisation by using alternative mechanisms of governance to those provided by the EC Treaties. But this objective comes at the expense of increasing the vulnerability of the third-country worker – whose security and social protection are those at stake – as well as the rule-of-law principles of the EC legal system (democratic control and judicial accountability).

Third, the relationship between mobility partnerships on the one hand and international/EU labour and human rights standards on the other is equally contested. The selection of certain third countries to benefit from a temporary system of human (labour) mobility opens up a whole series of questions in relation to the differential treatment being established for individuals, depending on their nationality. Even so, holding the 'appropriate' nationality will not be enough to fall within the personal scope of the partnerships, as the skills and usefulness of the worker to the receiving state will also apply as another distinguishing factor. Only those nationals from the non-EU state regarded as part of the privileged category of 'temporary migrants', 'seasonal migrants' or 'highly skilled' will be allowed to benefit from the (circular) labour migration system. While the context and focus of mobility partnerships are held to be based on the current state of the EU's external relations with a particular third country (and are tailored to the specifics of each one), it should be underlined that what is actually being discussed will have profound implications for the rights and protection of foreign workers.

Finally, we argue that mobility partnerships are insecurity policy tools undermining the coherency and consistency of a future EU policy on labour immigration. They can be considered a new mechanism of external governance challenging the traditional decision-making and institutional arrangements provided by the Treaties and the foundations of EC law. The large degree of differentiation characterising the sort of EU policy coordination covering these partnerships endangers the policy coherency of both the internal and external dimensions of the EU's immigration policy. Moreover, this differentiation or variable geometry in their arrangements (especially as regards the participation and commitment of EU member states) challenges the legitimacy of the partnerships in light of the progressive building of a linkage between the *common* EU immigration policy and its uniformity in external relations policies.

The paper starts by contextualising the role of mobility partnerships in the wider EU approach to migration in section 2. We offer a genealogy of the origins and major transformations affecting the concepts of circular migration and mobility partnerships in the EU's policy discourse since the transfer of the immigration domain to shared competence between the EC and the member states in 1999. This genealogy aims at providing a foundation for assessing the extent to which these new concepts and policy tools truly constitute a transition from a common policy centred on the security concerns of the EC and member states towards one allowing for regular channels of labour mobility for nationals of third countries. Section 3 examines the actual content of the two partnerships already launched between the EU and Moldova and Cape Verde, from the perspective of their labour migration provisions and projects, and the way in

which they envisage the workability of circular migration schemes in practice. Section 4 reflects on some of the main deficits of mobility partnerships in three areas: policy coordination, differentiation and policy coherency, as well as the rights of migrant workers. Section 5 presents a series of conclusions.

2. Genealogy of mobility partnerships and circular migration in the EU's labour immigration policy

This section offers a genealogy of the EU's official discourse on circular migration and mobility partnerships since 1999, when migration was transferred to shared competence between the EC and the member states. Our assessment covers the last 10 years of EU integration processes in the progressive development of the common EU immigration policy. Our purpose is to identify the origins of and main discursive transformations influencing the functionality and concepts of circular migration and mobility partnerships across the various policy processes dealing with the external dimension of the EU's labour immigration policy. More specifically, we look at the integration of policies dealing with the conditions for the entry, stay and rights of TCNs for employment purposes into external relations.² The genealogy seeks to trace the underlying logic and some of the prevailing interests. It enables us to ascertain the extent to which the official rationale of mobility partnerships – i.e. of going beyond security (management of irregular immigration and border controls) and allowing legal channels for labour mobility into the EU – does indeed constitute the main driving force behind their intended public goal.

2.1 Circular migration

Following the entry into force of the Amsterdam Treaty in May 1999 and the consequent insertion of Title IV on “Visas, asylum, immigration and other policies related to free movement of persons” in the EC Treaty, the European Council adopted the first multi-annual programme towards building a Union of freedom, security and justice on 15-16 October 1999 – the Tampere programme.³ The latter provided the political guidelines and principles for EU policy over domains such as migration for a five-year period (1999–2004). Partnerships with countries of origin were identified by the Council as among the so-called ‘Tampere milestones’. In particular, the programme called for the adoption of a “comprehensive approach to migration” addressing political and human rights alongside development issues in third countries and “a greater coherency” between the internal and external policies of the EU.⁴

The Presidency Conclusions adopted at the European Council of Seville on 21-22 June 2002 took up the baton and paid special attention to the integration of immigration policies into the

² This paper does not examine policies related to self-employment, training or educational activities.

³ Council of the European Union, Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels, 1999.

⁴ Ibid. The Council expressly agreed in para. 11 that

[t]he European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. *Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development.* (Emphasis added.)

EU's relations with third countries.⁵ The perspective that predominated at the Seville Council was shaped by the priority of combating "illegal immigration" and building it into the EU's external relations, through the conclusion of readmission agreements with third countries and cooperation on improved border controls. The conclusions went as far as stating that "any future cooperation, association or equivalent agreement which the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration".⁶ As later discussed, this securitarian approach to human mobility and borders, promulgated under the auspices of the Spanish presidency, has since formed a persistent element in a majority of the subsequent discourses, policy responses and political priorities substantiating the progressive development of the external dimensions of the EU's immigration policy.

The General Affairs and External Relations Council (GAERC) of November 2002 adopted conclusions on "intensified cooperation on the management of migration flows with third countries".⁷ In these conclusions, the GAERC confirmed its wish "to intensify EU partnership with countries and regions of particular relevance". It went on to state that the overall objective was to strengthen cooperation in the field of irregular migration with special emphasis on the conclusion of readmission agreements. The GAERC even identified a group of third countries with which the initiation of cooperation was considered essential.⁸ It went deeper in the 'Seville approach' and conceived as a political priority the full integration of "the external dimension of the JHA [justice and home affairs] issues in the existing and future relations of the EU with third countries". The GAERC confirmed that all existing and future dialogues with third states should cover subjects such as return, readmission and documentation, agreements on the management of migration flows, preventive policies and institutional capacity building.

In December 2002, the European Commission published a Communication bearing the title, "Integrating migration issues in the European Union's relations with third countries" (COM(2002) 703).⁹ The Commission's discourse was one advocating the need to bring the migration debate back "to a broader context", not just covering the security dimension (irregular immigration and border controls) promoted by the Seville Presidency Conclusions. Still, it is worth quoting a passage of the Communication, which shows what the rationale might have actually been for opening up the content of the dialogue with third countries from one solely focused on the readmission of irregular immigrants and border controls towards another that

⁵ Council of the European Union, Presidency Conclusions of the Seville European Council, 21-22 June 2002, 13463/02, Brussels, 24 October 2002.

⁶ *Ibid.*, para. 33 of the conclusions. In addition, para. 36 stated that

[i]f full use has been made of existing Community mechanisms but without success, the Council may unanimously find that a third country has shown an unjustified lack of cooperation in the joint management of migration flows. In that event, the Council may, in accordance with the rules laid down in the treaties, adopt measures or positions under the Common Foreign and Security Policy and other European Union policies, while honouring the Union's contractual commitments but not jeopardising development cooperation objectives.

⁷ See General Affairs and External Relations Council, 2463rd Meeting of the General and External Relations Council, 14183/02, Brussels 18 November 2002. The Council stated that "the overall objective of the initiatives taken is to offer strengthened cooperation with such countries within the migration field in order to further improve the capacity of these countries to fulfil their roles in the international endeavours to deal with the many-faceted problems caused by illegal migration".

⁸ In this context, Albania, China, the Federal Republic of Yugoslavia, Morocco, Russia, Tunisia, Ukraine and Libya were specifically mentioned.

⁹ European Commission, Communication on integrating migration issues in the European Union's relations with third countries, COM(2002) 703 final, Brussels, 3 December 2002.

also includes “legal immigration for employment purposes”. In particular, the Commission underlined that when dealing with the issue of readmission agreements,

[e]xperience so far has taught that the time needed to negotiate a readmission agreement, which is seen as being in the sole interest of the Community, should not be underestimated and no quick results should be expected. *They can only succeed if they are part of a broader cooperation agenda*, which takes duly into account the problems encountered by partner countries to effectively address migration issues. This is the reason why the Commission considers that the issue of “leverage” – i.e. providing incentives to obtain the co-operation of third countries in the negotiation and conclusion of readmission agreements with the European Community – should be envisaged on a country-by-country basis, in the context of the global policy, cooperation and programming dialogues with the third countries concerned.¹⁰ (Emphasis added.)

EC readmission agreements aim at imposing a reciprocal obligation on the contracting parties to readmit, upon application and without any further formality, their nationals if they do not or no longer fulfil the conditions for entry, presence or residence in the territory of the requesting state. This obligation covers non-nationals or stateless persons (or persons of another jurisdiction) if it is proven that they hold (or at the time of the entry held) a valid visa or residence permit issued by the requested state, or that they entered the EU after having stayed on or transited through that state. We remind the reader that since 1999, readmission agreements have been a political priority in the view of the Council and certain EU member states for dealing with the phenomenon of irregular immigration. Indeed, since then the Council has repeatedly urged the Commission to conclude as many as possible and in a timely manner.¹¹

By and large, the Commission has encountered a number of difficulties in the negotiations of the agreements. One of the obstacles has been based on the inclusion of non-nationals and the obligation for the signatory to readmit persons who transited through their territory towards the EU, which was a major concern in the course of the negotiations. Yet, according to the officials consulted for the elaboration of this paper, practice shows that these initial fears were not justified, as readmissions of transit nationals appear to have proceeded smoothly so far.¹² The above-mentioned Communication on integrating migration issues (COM(2002) 703) stressed that there would be some countries for which the accompanying financial support would not be sufficiently attractive for them to sign the agreements and therefore “supplementary types of incentives”, such as “increased quotas for migrant workers”, could constitute further

¹⁰ Ibid., p. 25.

¹¹ Since 1999, the Council has given the green light to the European Commission to enter into negotiations on multilateral readmission agreements with the following countries: Albania, Algeria, China, Hong Kong, Macao, Morocco, Pakistan, Russia, Sri Lanka, Turkey and Ukraine. On 21 July 2006, this mandate was expanded to include Bosnia and Herzegovina, Montenegro, Serbia and the Former Yugoslav Republic of Macedonia. Only seven readmission agreements have been agreed to date: Hong Kong (2003), Macao (2004), Sri Lanka (2005), Albania (2005), Russia (2007), Ukraine (2007) and Moldova (2007). See N. Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights*, Leiden: Martinus Nijhoff Publishers, 2009; see also F. Trauner and I. Kruse, *EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood*, CEPS Working Document No. 290, Centre for European Policy Studies, Brussels, 2008.

¹² See A. Roig and T. Huddleston, “EC Readmission Agreements: A Re-evaluation of the Political Impasse”, *European Journal of Migration and Law*, Vol. 9, No. 3, 2007, pp. 363-387. See also M. Schieffer, “Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations”, *European Journal of Migration and Law*, Vol. 5, No. 3, 2003, pp. 343-357.

compensatory measures. The Commission recommended a strategy driven by a “partnership on migration” based on ‘common interests’ with third countries.¹³

As a follow-up to this Communication, in May 2003 the Council adopted conclusions on “migration and development”, which identified the link between these two policies as one of the central aspects of the “comprehensive approach towards migration” and stated that “establishment of a successful migration policy requires the development of a real partnership with third countries”.¹⁴ The conclusions stated that the EU’s action around migration and development should be based on a set of principles. These would include the development of an “integrated, comprehensive and balanced approach to manage migration flows” but address how “to tackle the root causes of illegal immigration and to combat smuggling and trafficking in human beings” as the most important, long-term objective. Yet again, it invited the Commission to step up its efforts to conclude EC readmission agreements,¹⁵ and to present new proposals on

[w]ays of regulating, in conformity with the needs of the labour market of the Member State concerned as assessed by that Member State in accordance with its competencies in the labour market sector, demand and supply and organising access of labour, e.g. through *temporary* residence – work permits...[and] [w]ays to facilitate *brain and high skilled labour circulation*, e.g. through promoting outsourcing arrangements from EU Member States to developing countries.¹⁶ (Emphasis added.)

The mandate of the 1999 Tampere Programme expired at the end of 2004. It was then that the Council adopted the second multi-annual programme on an Area of Freedom, Security and Justice (AFSJ) – The Hague Programme,¹⁷ which provided the policy priorities and agenda for the EU’s immigration policy between 2005 and 2009. The programme dedicated one section to the external dimension of immigration policy, in which it emphasised once again the need for the “timely conclusion of readmission agreements” with third countries, and stated that

¹³ See European Commission (2002), op. cit., p. 46. Although they fall outside the scope of this paper, the introduction of visa facilitation agreements are notable as additional incentives offered by the EU to conclude readmission agreements with third countries. The origin of such visa facilitation agreements, which foresee the reduction of visa taxes for specific groups such as students or researchers, is found in the EU–Russia St. Petersburg Summit in 2003. Russia proposed the conclusion of a visa facilitation agreement to balance the burden inherent in the implementation of the readmission agreement. Since then, these have also been concluded in the cases of Ukraine and Moldova. Lavenex and Schimmelfennig emphasised the ‘package deal’ linkages between visa facilitation and readmission agreements in their study, S. Lavenex and F. Schimmelfennig, “EU Relations with the Wider Europe”, *Journal of Common Market Studies*, Annual Review, No. 46, 2008, p. 157.

¹⁴ Council of the European Union, Council Conclusions on migration and development, 8927/03, Brussels, 5 May 2003.

¹⁵ *Ibid.*, p. 9.

¹⁶ *Ibid.*, pp. 8-9. In this last ‘integration-related’ element, the Council stated that emphasis should be put on measures likely to afford them rights and obligations comparable to those of citizens of the European Union and aimed at enhancing language skills, knowledge of the legal and social system in the Member States concerned as well as on policies which should also promote non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia; education and training of legal migrants living and working in the EU, including their vocational integration. Special attention must be paid in this context to socially vulnerable groups.

¹⁷ See Council of the European Union, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, OJ C 53/1, 3.3.2005(a). See also T. Balzacq and S. Carrera “The Hague Programme: The Long Road to Freedom, Security and Justice”, in T. Balzacq and S. Carrera (eds), *Security versus Freedom: A Challenge for Europe’s Future*, Farnham: Ashgate Publishing, 2006, pp. 1-34.

EU policy should aim at assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return [*sic*].¹⁸

The Commission provided “some concrete orientations” as to the ways in which the link between migration and development policies could be implemented in practice in the Communication on migration and development (COM(2005) 390) of September 2005.¹⁹ The Communication dealt with material topics and put forward “possible actions that could be carried out at the EU level, in partnership with developing countries of origin” to ensure that “the integration of migration aspects should respect the overall coherence of EU external policies and actions”. Among the features highlighted by the Commission were the concepts of “circular migration” and “brain circulation”:

Migrants’ return, even temporary or virtual, can play a useful role in fostering the transfer of skills to the developing world, together with other forms of brain circulation. Facilitating circular migration could also play a key role in this respect... Policies to maximise the developmental impact of temporary migration, in addition to the general recommendations on remittances, *should focus on encouraging circular migration*, by giving a priority for further temporary employment to workers who have already worked under such schemes and have returned at the end of their contract, and also on offering appropriate rewards to participating migrants.²⁰ (Emphasis added.)

This statement was the first occasion on which circular migration officially appeared in the European Commission’s discourse. In it, we can already see that the paradigm of circularity was very much rooted in and dependent upon the principles that migration is temporal and entails the return of third-country workers. Annex 5 of the Communication provided a working definition of circular migration as a form of mobility in which “migrants tend to go back and forth between the source country and the destination country”. This recurrent movement of labour would mainly depend on the needs, shortages and demands of EU member states. The Commission proposed “to maximize the potential of temporary migration” by encouraging a kind of circular migration that gives “priority for further temporary employment to workers who have already worked under such schemes and have returned at the end of their contract, and also on offering appropriate rewards to participating migrants”.²¹ Annex 5 also stressed that the Commission would study the possibility to present a new legislative proposal “defining a general framework for the entrance and short-term stay within the common area of seasonal migrants”.²² Furthermore, the Communication proposed, among others, the following two elements: first, reinforcing coordination among member states and the exchange of state (and

¹⁸ See section 1.6 of the programme (Council of the European Union, 2005a).

¹⁹ European Commission, Communication migration and development: Some concrete orientations, COM(2005) 390, Brussels, 1 September 2005(a). For a critical account on the migration–development nexus refer to P. Raghuram, “Which Migration? What Development? Unsettling the Edifice of Migration and Development”, *Population, Space and Place*, Vol. 15, No. 2, 2009, pp. 103-117.

²⁰ European Commission (2005a) op. cit.

²¹ *Ibid.*, p. 26.

²² *Ibid.* Annex 5 of the Communication also mentioned “temporary or virtual return” and “[d]iaspora skills databases”, along with the issue of virtual return relying on electronic communications.

EU) policy practices/experience;²³ and, second, enhancing “the dialogue based on partnership with interested developing third countries and their regional organizations”.

It is important to highlight that the Communication on migration and development (COM(2005) 390) made express reference to the Green Paper on an EU approach to managing economic migration (COM(2004) 811),²⁴ which the Commission published in November 2005. The Green Paper sought to foster a public debate among EU institutions, member states and civil society about the ‘added value’ and the most appropriate approach to guide EU rules for admitting TCNs for employment-related purposes after the withdrawal of the 2001 Commission proposal for a directive on the employment of TCNs in the EU.²⁵ The Commission identified cooperation with third countries as an important accompanying dimension to the EU’s approach on economic migration and elaborated that possible policy measures could be

to provide up-to-date information on the conditions of entry and residence in the EU; to establish recruitment and training centres in the countries of origin for skills which are needed at EU level, and for cultural and language training; to create databases per skill/occupation/sector (portfolio of competences) of potential migrants; to facilitate the transfer of remittances; to compensate third countries for the educational costs of migrants leaving for the EU. *Another issue is whether certain third countries could be granted a preference for the admission of their nationals in the framework of reinforced cooperation agreements.*²⁶ (Emphasis added.)

At their informal meeting at Hampton Court on 27 October 2005, European heads of state and government again stressed the importance of developing a “‘comprehensive approach’ to tackle immigration issues” and demanded that the European Commission present “a list of priority actions for improving global migration, with a special focus on the African region”.²⁷ In November 2005, the Commission adopted a Communication entitled “Priority actions for responding to the challenges of migration: First follow-up to Hampton Court” (COM(2005) 621).²⁸ The Communication did not stress regular and labour migration aspects, and instead gave overwhelming priority to the management of migration with a particular regional emphasis on the Mediterranean area and Africa. The Commission highlighted that “the EU will develop approaches on migration to optimise the benefits of migration for all partners in a spirit of partnership”. These approaches are to include the following elements: “fostering the linkages

²³ Ibid. Annex 7 of the Communication stated that

[t]he Commission is in favour of initiating a multidisciplinary dialogue with and between Member States on migration and development, in which Member States’ Ministries dealing with migration in its various aspects – Development, Employment, External Relations, and Justice and Home Affairs – would be represented. This dialogue would aim at reinforcing coherence between the two policy areas...in doing so, contributing to improve overall coherence of these activities, in particular to maximise EU leverage at the global level (p. 35).

²⁴ European Commission, Green Paper on an EU approach to managing economic migration, COM(2004) 811 final, Brussels, 1 November 2005(b).

²⁵ See European Commission, Proposal for a Council Directive on the conditions of entry and residence for the purpose of paid employment and self-employment activities, COM(2001) 0386 final, Brussels, 11 July 2001. See also S. Carrera and M. Formisano, *An EU Approach to Labour Migration: What is the Added Value and the Way Ahead?*, CEPS Working Document No. 232, Centre for European Policy Studies, Brussels, 2005.

²⁶ European Commission (2005b), op. cit., p. 11.

²⁷ See the press release by the UK Prime Minister’s office at 10 Downing Street, “Press conference at EU informal summit Hampton Court” (retrieved from <http://www.number-10.gov.uk/output/Page8393.asp>).

²⁸ European Commission, Communication on priority actions for responding to the challenges of migration: First follow-up to Hampton Court, COM(2005) 621 final, Brussels, 30 November 2005(c).

between migration and development, e.g. by promoting safer, easier and cheaper remittance transfers; facilitat[ing] the role of diasporas as agents for development; [and] *explor[ing] options for temporary or circular migration; mitigat[ing] the impact of skill losses in vulnerable sectors*".²⁹ (Emphasis added.)

The Communication identified as a specific policy priority the inclusion of migration issues in the political talks with the African, Caribbean and Pacific (ACP) countries, paying particular attention to issues such as remittances, capacity building in the management of migration flows and improving integration in destination countries. As regards this last item, it was stated that a priority would be dialogue with key countries of origin, for which

the Commission will provide an overview of the possibilities and procedures for legal migration to the Member States, and will evaluate possible methods to raise awareness thereof in countries of origin. The EU and the respective countries of origin should *identify and support projects through which the legal movement of students, researchers and workers, on a permanent or temporary basis, can be favoured*.³⁰ (Emphasis added.)

The follow-up to the above-mentioned Green Paper (COM(2004) 811) materialised in the adoption of a policy plan on legal migration, which listed the actions and legislative initiatives the Commission envisaged presenting before the end of 2009 in the area of labour immigration.³¹ The policy plan foresaw that in 2007 the Commission would submit a proposal for a directive aimed at establishing a common general framework of rights for all immigrants who are in legal employment and who have already been admitted to the EU territory.³² In addition, the plan advocated a sectoral or selective approach to labour immigration, instead of covering without distinction all the categories of immigrant workers with a horizontal measure. This approach is taking shape in the specific legislative proposals dealing respectively with the conditions for the admission and residence of the following categories of third-country workers: highly qualified workers, seasonal workers, intra-corporate transferees and remunerated trainees.³³ The policy plan included a section dealing with "Cooperation with Countries of Origin", in which the Commission took on board the priority for the EU to

actively pursue efforts to design *temporary migration schemes* that could help maximise benefits for all interested parties, i.e. responding to labour needs in Member States while contributing, through eventual return, to the development of countries of origin and offering skills and other gains to participating migrants.³⁴ (Emphasis added.)

²⁹ Ibid., p. 6.

³⁰ Ibid.

³¹ European Commission, Communication on a policy plan on legal migration, COM(2005) 669, Brussels, 21 December 2005(d).

³² This materialised in the European Commission's Proposal for Directive 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, COM(2007) 638 final, Brussels, 23 October 2007(a), which has not been yet adopted by the Council.

³³ The two first proposals for a directive were presented on 23 October 2007, dealing respectively with the conditions of entry and residence of highly qualified employment, as well as a single application procedure and a common set of rights for third-country workers. The Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment was adopted on 25 May 2009. (See Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155/17, 18.6.2009.)

³⁴ European Commission (2005d), op. cit., p. 11.

The Council Presidency Conclusions of December 2005 formally adopted the EU's official discourse, which had been articulated since 1999 by both the Council and the Commission, on the need to ensure a global stance in the EU's immigration policy.³⁵ Subsequently, the conclusions have been identified as the point at which the Council officially adopted the global approach to migration. The conclusions viewed the "global approach" as consisting of a set of priority actions intending "to reduce illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees, and build capacity to better manage migration, including through maximising the benefits to all partners of legal migration, while fully respecting human rights and the individual's right to seek asylum".³⁶ It is important to underline that beyond this political statement, the priority actions identified by the Council in the conclusions did not include an express reference to regular or labour immigration measures.

2.2 Mobility partnerships

The idea of partnerships and agreements with third countries covering (among others) migration-related policies that offer legal channels for labour mobility has been around in the Commission's discourse for some time. Still, it was not until the end of 2006 that the idea of EU partnerships offering circular immigration schemes to third countries became an attractive policy tool for Nicolas Sarkozy and Wolfgang Schäuble (then the ministers of interior of France and Germany, respectively) as a strategy to reduce irregular immigration flows into the EU.³⁷ The actual origins of mobility partnerships as another managerial tool at the service of the EU's immigration policy can be found in the Franco-German initiative for a "New European Migration Policy" of 26 October 2006:

*We do not want uncontrolled immigration into our labour markets and our social security systems. In order to promote circular migration, quotas should be set for the migration of labour into certain occupations...in order for the concept of circular migration to succeed, it is important that migrants return to their countries of origin after their stay in an EU member state. ...Finally, we also have to make sure that the countries of origin unconditionally comply with their obligation to readmit those migrants who do not want to return voluntarily.*³⁸ (Emphasis added.)

³⁵ Council of the European Union, Presidency Conclusions of the Brussels European Council of 15 and 16 December 2005, SN 15914/01/05, 30 December 2005(b). See specifically Annex 1 of the conclusions, "Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean". Para. 8 of the conclusions states that the Council

underlines the need for a balanced, global and coherent approach, covering policies to combat illegal immigration and, in cooperation with third countries, harnessing the benefits of legal migration. It recalls that migration issues are a central element in the EU's relations with a broad range of third countries, including, in particular, the regions neighbouring the Union, namely the eastern, south eastern and Mediterranean regions, and notes the importance of ensuring that the appropriate level of financial resources is allocated to these policies. The EU will strengthen its dialogue and cooperation with all those countries on migration issues, including return management, in a spirit of partnership and having regard to the circumstances of each country concerned.

³⁶ Refer to Council of the European Union, Note from the Presidency on a Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean, 15744/05, Brussels, 13 December 2005(c).

³⁷ S. Angenendt, "Circular Migration: A Sustainable Concept for Migration Policy?", Comments, Stiftung Wissenschaft und Politik (SWP), Berlin.

³⁸ "New European Migration Policy", a Franco-German plan presented by Nicolas Sarkozy and Wolfgang Schäuble to G6 immigration ministers meeting in the UK, 26 October 2006, p. 4.

The most important political priority of the bilateral initiative was clearly the need to control and contain what they deemed “the migratory pressure” from southern Europe. It also called for more support for the European Commission in the negotiations of readmission agreements with third countries, through quotas and permits for temporary workers. The initiative reaffirmed the need for stronger cooperation with the countries of origin and referred to the possibility for member states to coordinate “bilateral partnerships...on the basis of a uniform European treaty” with a certain country of origin. It argued that “the sum of all such partnerships would result in a European partnership with a large number of countries of origin”.³⁹ It therefore called on the Commission to conclude “such partnership agreements between EU Member States and migrants’ main countries of origin, and to present the Council with a plan for development partnerships”.

It was also during 2006 that migration became an important component of the EU’s strategy for Africa and the political dialogue between the two regions.⁴⁰ This first materialised in a Joint Africa–EU Declaration on Migration and Development, adopted in Tripoli, 22–23 November 2006.⁴¹ The Declaration emphasised that “selective migration approaches in developed countries could constitute an additional threat to African social and economic development” and that it was necessary to develop “mechanisms and channels that facilitate circular migration as well as recruitment policies that take into account the specific needs of countries of origin and destination”. It is worth remembering that the Joint Declaration reiterated the recommendation put forward by the 23rd Assembly of Heads of State and Government of Africa and France in Bamako of 3–4 December 2005, which had invited EU member states to conclude agreements or conventions on border management, residence conditions and the granting of work permits.⁴²

Amid these policy processes, and as a response to the call of the 2005 Council conclusions to report on progress in implementing the first phase of the global approach to migration (with a focus on “Africa and the Mediterranean”), on 30 November 2006 the Commission published a Communication on the situation “one year on” (COM(2006) 735).⁴³ The Communication aimed at presenting ways “to make the EU’s approach truly comprehensive” and suggested other areas not originally covered by the 2005 global approach adopted by the Council, but which in its view should include “measures on legal immigration and integration”.⁴⁴ Two concrete initiatives were emphasised: migration centres and “mobility packages”. In relation to migration centres, the Communication called for the EU to financially support the setting-up of centres providing information about the legal possibilities for working in the EU in partner countries, which materialised for instance in the establishment of the Migration Management and Information

³⁹ Ibid., p. 5.

⁴⁰ Council of the European Union, Presidency Conclusions of the Brussels European Council, 15–16 December 2005, 15914/05, Brussels, 30 January 2006.

⁴¹ See the Joint Africa–EU Declaration on Migration and Development, Tripoli, 22–23 November 2006.

⁴² See the document on the website of the French embassy, *Conférence des chefs d’état et de gouvernement d’Afrique et de France – Communiqué final*, 4 December 2005 (retrieved from <http://www.ambafrance-uk.org/Conference-des-chefs-d-etat-et-de.html>).

⁴³ See European Commission, *Communication on a global approach to migration one year on: Towards a comprehensive European migration policy*, COM(2006) 735, Brussels, 3 November 2006.

⁴⁴ Ibid. The Communication stated, “[i]n this way, partnership with third countries will address the full range of issues of interest and concern to all involved” (p. 2). The Commission proposed that the ‘comprehensive approach’ should be built around three main principles: first, solidarity among the EU member states; second, partnerships with third countries; and third, protection of TCNs (p. 4).

Centre in Mali in October 2008.⁴⁵ Concerning circular migration, the Commission recommended reinforcing the 'labour management capacity' of the countries of origin,⁴⁶ stating,

Once certain conditions have been met, *such as cooperation on illegal immigration and effective mechanisms for readmission*, the objective could be to agree *Mobility Packages* with a number of interested third countries, which would enable their citizens to have better access to the EU. Mobility packages would provide the *overall framework* for managing such movements and *would bring together the possibilities offered by the Member States and the European Community*, while fully respecting the division of competences as provided by the Treaty.⁴⁷ (Emphasis added.)

The Presidency Conclusions of the Brussels European Council of 14-15 December 2006,⁴⁸ under the Finnish presidency, continued with the traditional EU discourse that had been developed until then and according to which a 'comprehensive' EU migration policy required a 'genuine partnership' with third countries and should be fully integrated into the EU's external policies. In particular, the conclusions advocated a strengthening of international cooperation and dialogue with third countries. For the first time since 1999, the Council requested that the Commission present detailed proposals on how to better organise and provide information on the various forms of legal movement between the EU and third countries. In May 2007, the Commission presented a Communication on circular migration and mobility partnerships between the EU and third countries (COM(2007) 248).⁴⁹ The Communication identified circular migration and mobility partnerships as two key elements or "novel approaches to improve the management of legal movements of people between the EU and third countries". The body of the Communication was divided into two main sections (one on mobility partnerships and the other on circular migration) and it contained an annex with details about projects, some of which covered circular migration initiatives.

It was the first time that the Commission used the term 'mobility partnerships' instead of 'mobility packages'. The Communication tackled two important issues in relation to the partnerships: their legal nature and content. It highlighted that they would present an inherently complex legal nature. It was proposed that the negotiation of the partnerships would be based on political guidelines provided by the Council and following a recommendation from the European Commission, and that they should also provide a "follow-up mechanism". The content would depend on the current state of the EU's external relations with the particular third country (and would be tailored to the specifics of that country), as well as the level of commitment that the third country would be ready to make "in terms of action against illegal immigration and facilitating the reintegration of refugees".⁵⁰ The content was then structured around commitments from the third country on the one hand, and the EC and the participating

⁴⁵ Ibid. The Communication stated that "[s]uch centres could also play a role in facilitating the management of seasonal workers, the exchanges of students and researchers and other forms of legal movement of people".

⁴⁶ Ibid. In addition to "capacity building of the national employment services responsible for labour migration management, capacity building of the national employment services in third countries and the development of intermediation establishments as well as the implementation of pre-immigration plans in countries of origin" (p. 7).

⁴⁷ Ibid.

⁴⁸ Council of the European Union, Presidency Conclusions of the Brussels European Council, 14-15 December 2006, 16879/1/06, Brussels, 12 February 2007(a).

⁴⁹ European Commission, Communication on circular migration and mobility partnerships between the European Union and third countries, COM(2007) 248 final, Brussels, 15 May 2007(b).

⁵⁰ Ibid., p. 3.

member states on the other. The Commission stressed that the EC would expect from third countries a commitment on “fighting illegal immigration...where appropriate in the framework of an EC readmission agreement”. The latter would include the readmission of their own nationals, TCNs and stateless persons who entered the EU through their territory – readmission agreements. They would also include a range of security initiatives destined to discourage irregular immigration (through information campaigns), improve border controls and the security of travel documents, cooperation in the exchange of information among law enforcement authorities and measures on the smuggling and trafficking of human beings. The conditions for being offered the possibility to conclude a mobility partnership would therefore be close degree of cooperation in the field of security from the perspective of the EU and its member states, in which the EU readmission policy would play a fundamental role.⁵¹

Among the commitments on the part of the EC and member states that the Communication highlighted was one related to mechanisms offering improved opportunities for regular migration for nationals of the third country, based on the labour needs of interested member states. In the view of the Commission, this preferential treatment could take two forms. The first would be a consolidated offer by several member states, which would then constitute an ‘EC offer’ to the partner country in question. National offers could consist of labour quotas or instruments facilitating labour matching. The second would be more favourable treatment in terms of the admission of certain categories of TCNs.

The second section of the Communication was dedicated to circular migration as “an alternative to illegal immigration”.⁵² The Commission points out that “[i]f not properly designed and managed, migration intended to be circular can easily become permanent and, thus, defeat its objective”. The Commission confirmed the definition of circular migration that it had already offered in its previous Communication on migration and development (COM(2005) 390), and clarified that the kind of circular migration of TCNs that the EU would be wishing to facilitate would be one foreseeing the opportunity

to come to the EU temporarily for work, study, training or a combination of these *on the condition* that, at the end of the period for which they were granted entry, *they must re-establish their main residence and their main activity in their country of origin*. Circularity can be enhanced by giving migrants the possibility, once they have returned, *to retain some form of privileged mobility* [to] and from the Member States where they were formerly residing, for example in the form of simplified admission/re-entry procedures.⁵³ (Emphasis added.)

Along with giving incentives to promote circularity, the Communication argued that, to make certain that it is effective, TCNs would be required to return to their country of origin after their permits (or legality of stay according to national immigration law) expired. The Commission even went as far as proposing that one possible measure could be

the requirement for a *written commitment* by migrants to return voluntarily to their countries of origin once their contract expires. In case that migrants stay illegally on EU territory instead of returning voluntarily after the expiration of their permit, *readmission by the country of origin should take place*. This would be easier to achieve

⁵¹ Ibid. Another commitment that deserves to be underlined is that “to promote productive employment and decent work, and more generally to improve the economic and social framework conditions, [which] should also be sought from the third country concerned as they may contribute to reducing the incentives for irregular migration” (p. 4).

⁵² Ibid., p. 8.

⁵³ Ibid., p. 9.

where there are *readmission arrangements* in force between the EC or the Member State in question and the country of origin.⁵⁴ (Emphasis added.)

Once again, it is apparent how the principle of expulsion through readmission constituted one of the main worries of the Commission in its desire to guarantee the success of the expected circularity and temporal nature of human mobility for labour-related purposes. In this way, circularity has become an opposing concept to that of permanent settlement. Its workability depends fully on the lack of security of residence and social integration of third-country workers in the receiving state. The continuing relevance of the securitarian approach towards migration and borders (made clear in Seville in 2002) is evident when the Commission refers to the utility of circular migration for ensuring return in the event that the third-country worker does not comply with the imposed 'circularity' and instead wishes to continue residing in the receiving country under an irregular administrative status.

The GAERC meeting of 17-18 June 2007⁵⁵ adopted conclusions on migration in which it welcomed the Communication on circular migration and mobility partnerships (COM(2007) 248), and confirmed that these concepts and tools could contribute towards the EU's "comprehensive approach to migration". It reiterated that "active consideration must be given to how legal migration opportunities can be incorporated into the Union's external policies in order to develop a balanced partnership with interested third countries". Yet, the conclusions show certain precautions in contrast with the previous Council policy responses and discourse. The Council, which took place under the auspices of the German presidency, was of the opinion that mobility partnerships would only be used when they brought added value to both the EU and the third country. When listing the measures and policies that make up the content of the partnerships, the Council did not include regular migration as a component.⁵⁶ It was only in the final paragraph of the conclusions that it said,

[t]he Council agrees that legal migration opportunities, including well-managed circular migration can *potentially* benefit all partners involved. All possibilities for a well-managed circular migration should therefore be *explored* in close cooperation with all relevant stakeholders.⁵⁷ (Emphasis added.)

The European Council's Presidency Conclusions of 21-22 June 2007 underlined yet again the importance of international cooperation in the management of migration flows.⁵⁸ In contrast to the previous Council conclusions, they went a bit further:

⁵⁴ Ibid., p. 12.

⁵⁵ General Affairs and External Relations Council, 2808th Meeting of the General Affairs and External Relations Council, 17-18 June 2007, Luxembourg, 10654/07 (Press 137), June 2007(a).

⁵⁶ Ibid. Among the very broad range of items for potentially coverage by the mobility partnerships, the Council mentioned the following:

the enhancement of the links between migration and development, i.e. to facilitate productive use of the resources of migrant communities and to promote co-development projects; the pooling of support measures in capacity building in order to better manage and control migration; the promotion of the reintegration of returnees; visa facilitation in accordance with the common approach, taking into account the experiences in the implementation of the current agreements; the enhancement of the protection of human rights in the fight against illegal immigration, in readmission and return policies and in the reception of migrants and asylum seekers; and the protection of refugees in accordance with international standards (para. 10).

⁵⁷ Ibid., para. 12.

⁵⁸ Council of the European Union, Presidency Conclusions of the Brussels European Council, 21-22 June 2007, 11177/1/07, Brussels, 10 July 2007(b).

Specific partnerships on migration with third countries could contribute to a coherent migration policy which combines measures aimed at facilitating *well-managed legal migration opportunities* and their benefits – *while respecting Member States' competences and the specific needs of their labour markets* – with those fighting illegal migration, protecting refugees and tackling the root causes of migration while at the same time impacting positively on development in countries of origin. *The possibility of mobility partnerships should be further explored as well as possibilities for circular migration.* (Emphasis added.)

It was in the GAERC conclusions on mobility partnerships and circular migration in the framework of the global approach to migration of 10 December 2007 that the mobility partnerships were affirmed as “a novel approach capable of bringing added value” to the EU’s immigration policy.⁵⁹ For the first time, the Council invited the Commission (in cooperation with EU member states and the presidency) to open dialogue with Cape Verde and Moldova, with a view to launching pilot mobility partnerships. The conclusions stated that exploratory discussions would also be taken forward with other interested third countries.⁶⁰ The Commission was asked to report on progress in this regard no later than June 2008. In a departure from the previous conclusions, here the Council included “an adequate framework to promote circular migration” and “partnerships between labour market agencies of partner countries and member states to better match supply and demand” among the possible ingredients of mobility partnerships.⁶¹ Furthermore, the Council invited the Commission and the member states to ensure that Community law on legal migration would not impede circular migration.

During the second half of 2008, the French presidency identified migration as one of its political priorities. It proposed a “European pact on migration and asylum”, which was finally adopted by the European Council on 15-16 October 2008. The pact identified as a guiding principle of the future EU migration policy the creation of “a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development”.⁶² It called for speeding up the deployment of tools pertaining to the EU’s global

⁵⁹ See General Affairs and External Relations Council, 2839th Meeting of the General Affairs and External Relations Council, 10 December, Brussels, “Global approach to migration – Circular migration – Council conclusions”, 16326/07 (Press 288), Brussels, December 2007(b). The conclusions stated that “the contents of individual mobility partnerships may vary considerably from one country to another, reflecting the specific characteristics of each situation and the respective objectives, priorities and security concerns of both the EU, its Member States and individual third countries”.

⁶⁰ *Ibid.*, para. 12. The conclusions said that

[e]xploratory discussions will be taken forward with a number of other interested third countries with a view to the possibility of launching additional pilot mobility partnerships... In this respect, special consideration will be given to those third countries that have indicated their willingness to open such dialogue and are willing to work with the EU and its Member States on effective migration management...the development of future mobility partnerships should take account of the experience gained from the pilot projects. Based on these further exploratory discussions, the Council may request that dialogue be opened with a view to launching pilot mobility partnerships.

⁶¹ *Ibid.*, para. 16.

⁶² See Justice and Home Affairs Council, 2887th Meeting of the Justice and Home Affairs Council, 24-25 July 2008, Brussels, 11653/08, Presse (205), July 2008; see also Council of the European Union, European Pact on Immigration and Asylum, 13440/08, Brussels, 24 September 2008(a); and also S. Carrera and E. Guild, *The French Presidency's European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanism? Security vs. Rights?*, CEPS Policy Brief No. 170, Centre for European Policy Studies, Brussels, September 2008.

approach to migration, such as mobility partnerships and circular migration programmes “to ensure a balance between the migration routes from the South and those from the East and South-east and take account of the lessons learned in these matters when negotiating EU and bilateral agreements on migration and readmission with countries of origin and of transit”. On the same occasion, the European Commission published a Communication entitled “A common immigration policy for Europe: Principles, actions and tools” (COM(2008) 359) in June 2008.⁶³ In this document, the Commission presented a set of 10 common principles that in its view should also guide the future development of a common immigration policy, which it grouped under three general headings: prosperity, security and solidarity. Partnerships with third countries were included under the heading of solidarity, for which mobility partnerships and circular migration were identified as their most important constituents.⁶⁴

Under the Czech presidency, a ministerial conference on “Building Migration Partnerships” was held in Prague on 27-28 April 2009, which was to link, according to the officials consulted, migration with security issues in the eastern and south-eastern dimensions of the EU's global approach.⁶⁵ The output of the Conference was the adoption of a Joint Declaration by the participating states, which included the following ones: i) all EU member states as well as Norway, Liechtenstein, Switzerland and Turkey; ii) Moldova, Albania, Croatia, Kosovo and Bosnia and Herzegovina; iii) other countries such as the Russian Federation, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan, Azerbaijan, Ukraine and Montenegro; and iv) the European Commission (DG JFS).⁶⁶ According to the Joint Declaration,

[migration] partnerships *will take different forms according to migration challenges, migratory routes and priorities of the partners*. They will address the following objectives: to prevent and fight illegal migration, to promote readmission, voluntary return and sustainable reintegration, to address legal migration with a special emphasis on labour migration, to further promote the integration of legally residing migrants in their host societies, and to make migration and mobility positive forces for development. (Emphasis added.)

To our knowledge no more concrete developments around these ‘migration partnerships’ have taken place so far.⁶⁷ It is not clear what actual differences these kinds of partnerships would contain in contrast with mobility partnerships. In any case, looking at the ways in which the Joint Declaration frames and justifies the implementation of migration partnerships, the arguments put forward in section 3 of this paper in relation to mobility partnerships are most

⁶³ European Commission, Communication on a common immigration policy for Europe: Principles, actions and tools, COM(2008) 359, Brussels, 17 June 2008.

⁶⁴ *Ibid.* In particular, the Communication stated the EU and member states need to

[a]gree, together with interested Member States, mobility partnerships with partner countries, paving the way for management arrangements for labour immigration with long-term strategic partners as well as cooperation on return issues; and provide real possibilities for circular migration, by setting up or strengthening legal and operational measures granting legal immigrants the right to priority access to further legal residence in the EU (p. 10).

⁶⁵ European Commission, Communication on applying the global approach to migration to the eastern and south-eastern regions neighbouring the European Union, COM(2007) 247 final, Brussels, 16 May 2007(c).

⁶⁶ Council of the European Union, Ministerial Conference “Building Migration Partnerships” in Prague, 27-28 April 2009, 9283/09, Brussels, 29 April 2009(a).

⁶⁷ The final para. of the Joint Declaration states the following: “With regard to this and to the follow up, we mandate our senior officials to further elaborate the agreed principles and elements for our migration partnerships, including an impact assessment for those elements which have already been implemented, and we propose to organize a second Ministerial Conference in due time” (p. 12).

pertinent.⁶⁸ Moreover, also under the auspices of the Czech presidency, in May 2009 the Eastern Partnership⁶⁹ was launched, which vaguely envisages – on a voluntary basis – platforms for multilateral cooperation between the EU and its Eastern European neighbours.⁷⁰

The Swedish presidency will adopt the successor to The Hague Programme before the end of 2009. The third multi-annual programme on an AFSJ – the Stockholm Programme – will present the general principles and policy priorities guiding EU policy for the next five years. The European Commission published its contribution to the Stockholm Programme on 10 June 2009 in the Communication entitled “An Area of Freedom, Security and Justice serving the citizen (COM(2009) 262).⁷¹ Among the ‘successes’ that the Commission identified in relation to the progress achieved during the last 10 years of the EU’s AFSJ were “partnerships with non-Union countries”.⁷² The Communication highlighted that dialogue and partnership on migration issues with third countries are important factors for the consolidation of the ‘global and comprehensive approach’. It called for the strengthening of “partnerships for mobility” and the conclusion of new agreements “covering the three dimensions of the comprehensive approach: controlling illegal migration (including readmission and support for voluntary return and reintegration), promotion of mobility and legal immigration, and support for development on the lines of the partnerships for mobility”.⁷³

2.3 From security towards mobility?

The way mobility partnerships and circular migration have been promoted at the EU level has been through a discourse arguing that they offer innovative strategies for making the EU approach to migration ‘more global, balanced and comprehensive’. This is accomplished through the inclusion of not only security measures but also other policy initiatives facilitating legal channels for the mobility of TCNs for employment purposes. The EU’s official discourses have argued that mobility partnerships exemplify a transition from a policy approach exclusively worrying about security towards one intending to favour labour mobility into the

⁶⁸ Perhaps one important difference with mobility partnerships is para. (c) of the Joint Declaration, which calls for these migration partnerships to promote the protection of refugees. Yet as discussed in section 3 of this paper, this aspect is completely lacking from the scope of the partnerships concluded with Moldova and Cape Verde, and “the integration of legally residing migrants”. The precise wording provided by the Joint Declaration on Migration Partnerships is as follows:

These partnerships should contribute to fulfilling the obligations towards refugees resulting from international documents by which countries are bound, such as the Convention relating to the Status of Refugees of 1951 as amended by the Protocol of 1967, in particular with full respect for the principle of non-refoulement, and of the obligations towards other persons in need of international protection resulting inter alia from the European Convention for the Protection of Human Rights and Fundamental Freedoms, and promote protection, assistance and durable solutions for these persons (p. 6).

⁶⁹ See Council of the European Union, Joint Declaration of the Prague Eastern Partnership Summit, 8435/09, 7 June 2009(b).

⁷⁰ For an analysis of the process leading to Eastern Partnerships and its shortcomings, refer to H. Wallace, *The European Union and its Neighbourhood: Time for Rethink*, ELIAMEP Thesis 4/2009, Hellenic Foundation for European & Foreign Policy, Athens, May 2009.

⁷¹ See European Commission, Communication on an Area of Freedom, Security and Justice serving the citizen, COM(2009) 262, Brussels, 10 June 2009(a). S. Carrera and E. Guild, *Towards the Next Phase of the EU’s Area of Freedom, Security and Justice: The European Commission’s Proposals for the Stockholm Programme*, CEPS Policy Brief No. 196, Centre for European Policy Studies, Brussels, August 2009.

⁷² European Commission (2009), op. cit., p. 3.

⁷³ *Ibid.*, p. 24.

EU. This line of rhetoric has most probably been the reason these agreements or joint declarations have been officially labelled as 'mobility' partnerships and not 'security' partnerships. By qualifying them in the context of mobility, the EU strategy has presented them in a more attractive fashion to third states, which perhaps would not be so keen to cooperate if the partnerships were presented as dealing with more of the same: i.e. the security of the EU and its member states (readmission, return and border controls).

That notwithstanding, the transition from security to mobility is difficult to sustain based on the analysis conducted in this paper. The relationship between the partnerships and mobility is a misleading one and obscures their actual rationales and intended public goals. Indeed, the main policy processes and arguments sustained by the Council, some member states and the Commission on the connection between the EU's labour immigration policy and external relations illustrates that mobility partnerships have not brought about any profound shift from security to mobility in EU policy. These partnerships clearly reflect how the EU and its member states conceive and construct their own security from the perspective of irregular immigration and border controls, as well as labour market security and financial needs. Therefore, mobility partnerships rather constitute *security* partnerships because they address the security concerns of the EU and the member states, which also cover labour immigration policies from a utilitarian, selective and temporal perspective.

The external dimension of the EU's immigration policy has been mainly developed since 1999 following the security agenda set by the Council and some EU member states, and subsequently transferred to the EU discourse by the DG JFS. It is true that the securitarian approach adopted at the 2002 Seville Council has been subject to various transformations in later EU policy responses dealing with the integration of migration policy in the political dialogue and cooperation with third countries. The EU's global approach to migration now presents legal or labour immigration policies as one of its components. Yet it would be difficult to argue that these changing dynamics have actually implied that security no longer functions as the fundamental factor driving the EU's agenda in the external dimension of its labour immigration policy. Security has not just been a core element in the origins of the linkage between mobility partnerships and the concept of circular migration – it now represents one of their features. This is evidenced by the accent put on management of irregular immigration and borders as the most important condition for the EU to agree to cooperate on labour immigration with any interested third country and by the 'circular' nature of the labour immigration policy that mobility partnerships appear to promote.

We argued in section 2.1 above that the inclusion in the EU's discourse of the need to offer legal channels for labour mobility in international agreements finds its roots in the difficulties experienced by the DG JFS in promoting the conclusion of readmission agreements. Broadening the scope of migration issues in the EU's external relations to cover labour policies was considered a necessary incentive and compensatory measure for convincing third countries to negotiate readmission agreements and digest the EU approach to curbing irregular immigration. The diplomatic barriers experienced by the Commission when trying to make third countries' authorities sign readmission agreements led to a realisation at the EU level of the need for new policy strategies beyond financial issues/aid. Third states were particularly interested in the provision of regular channels of immigration, including those for employment. This is precisely what mobility partnerships and circular migration schemes were intended to grant.

The security-driven agenda underlying mobility partnerships equally emerges when assessing the evolution of this policy tool in the 2006 Franco–German initiative discussed above. This was the first occasion on which the ministries of interior of two leading EU member states advocated the development of EU partnerships with third states in conjunction with circular migration schemes. The Franco–German initiative conceived mobility partnerships as a possible

response or alternative to the phenomenon of irregular immigration and a solution to the migratory pressure (especially from Africa) experienced by southern and south-western Europe. The French and German representatives maintained that the quotas and temporary permits for third-country workers provided by the partnerships would be an effective way to support the European Commission in the negotiations of readmission agreements with targeted third countries. This understanding on the part of the ministries of interior – according to which circular migration would be an alternative to irregular immigration and an incentive for readmission – was later on confirmed by the Commission Communication (COM(2007) 248) on circular migration and mobility partnerships.

Security is also very much embedded in the provisions of the partnerships themselves. The preferential treatment that they are said to provide is only conferred to those states showing robust commitments in the management of irregular immigration, notably concerning the signature of readmission agreements. The conditions for having access to the kind of circular mobility stipulated in mobility partnerships is therefore showing a willingness to cooperate in the field of security as it has been classically understood by the EC and its member states. As explained by the Communication COM(2007) 248, the EC would expect from third countries a commitment to “fighting illegal immigration...where appropriate in the framework of an EC readmission agreement”.⁷⁴ This commitment would cover other security measures to prevent irregular immigration, such as improving border controls, the security of travel documents and cooperating in the exchange of information among law enforcement authorities.

In addition to the more traditional security policies overlapping with immigration, this paper argues that *the kind* of labour immigration policy promoted by mobility partnerships is also driven by a prevailing securitarian approach, mainly from the viewpoint of the EU member states. What kind of legal and labour immigration policy has been developed within the partnership framework? Since 2003, the European Commission has argued that the kind of human mobility to be promoted in the context of external relations would be of a temporary and circular nature. The latter was already present the first time the Commission referred to the concept of circular migration in the Communication on migration and development (COM(2005) 390). The concept of circularity is one that views migration as predominantly temporary, whereby return to the country of origin of the migrant worker remains a central factor. The EC offer, comprising for instance labour quotas and matching or more favourable treatment for legal admission, has been infused with the political priorities (irregular immigration) and economic needs (labour market shortages) of the participating EU member states. Hence, there is a mismatch between the Commission’s interest in promoting the global approach and the economic interests of member states.

Therefore, the labour immigration policy that is being developed in the external dimension is one in which the security of the Union and particularly that of its member states remains a priority. Circularity constitutes another strategy to manage mobility in a temporary manner by the state and the EC. This management strategy does not have freedom of movement or mobility at the heart of its ambitions, but rather acts as another mechanism for controlling migration in a temporary and non-permanent fashion. As stated by the European Commission in the Communication on circular migration (COM(2007) 248), third-country workers “must re-establish their main residence and their main activity in their country of origin”.⁷⁵ Circular migration actually means a security policy arguing for the temporary and ‘recurrent’ employment of workers; settlement and social inclusion are not at the centre of the discussion and are actually conceived as an undesired result that challenges the objectives of the policy.

⁷⁴ European Commission (2007b), op. cit.

⁷⁵ Ibid.

3. Putting circular migration into practice? The mobility partnerships with Moldova and Cape Verde

It is striking to see how the policy discourses and political ambitions calling for the development of circular migration and the inclusion of labour policies in cooperation efforts with third countries through mobility partnerships have so far had difficulty in materialising in actual normative outputs. Up to now, only two pilot partnerships have been concluded – with Moldova and Cape Verde. The one with Georgia is still under negotiation and it appears that the one with Senegal is currently experiencing some obstacles preventing any progress. It is thus important to evaluate the ways in which the existing mobility partnerships have framed circular migration and developed legal channels for third-country workers into the EU. This section analyses the main circular migration initiatives and structures dealing with employment-related policies in the partnerships with Moldova and Cape Verde. It reviews the ways in which circular migration schemes are meant to be put into practice through these two partnerships. The Commission scoreboard originally foreseen for June 2009, offering an evaluation of their first year of implementation, was presented on 18 September 2009 in the Commission Staff Working Document on “Mobility Partnerships as a tool of the Global Approach to Migration” (SEC(2009) 1240).⁷⁶ While acknowledging the early stage of partnerships, it is surprising to see how the latter actually constitutes a political (non-independent) assessment promoting the added value of mobility partnerships that is far from an actual ‘evaluation’ of the workability and effectiveness of all the activities and projects provided by the partnerships. Our analysis therefore mainly focuses on the scarce information provided by the Joint Declarations and the Commission Staff Working Document, as well as some of the outputs from the interviews that were conducted with EU officials and practitioners in Brussels in the context of this paper.

The adoption of the Joint Declarations on mobility partnerships with Moldova and Cape Verde in May 2008⁷⁷ provided the legal foundations for the possibility to develop circular migration schemes. Moldova and Cape Verde share one characteristic as pilot countries for the launch of the mobility partnerships, which is their willingness to cooperate with the EC. This might have constituted a major factor justifying their selection as the first set of third countries to inaugurate the process. Nonetheless, Moldova and Cape Verde differ substantially in their associated frameworks of cooperation with the EC, with the former being a partner in the European Neighbourhood Policy (ENP) and the latter a member of the ACP countries. Both countries can be considered among the ‘best students’ of the class among the group of states participating in each of these policy frameworks, particularly concerning cooperation on migration and security. Moreover, Moldova has already achieved a substantial degree of cooperation on migration with the EC. The conclusion of readmission and visa facilitation agreements and the opening of the Common Visa Application Centre are illustrative of the intensity of EC–Moldovan relations in this domain.⁷⁸ Furthermore, since December 2007, the EU has had a special partnership with Cape Verde.⁷⁹ Yet the level cooperation on migration has been mainly channelled and

⁷⁶ See the Commission Staff Working Document (European Commission, 2009b), op. cit.

⁷⁷ See Council of the European Union, Joint Declaration on a Mobility Partnership between the European Union and Moldova, 9460/08, Brussels, 21 May 2008(b), and also Council of the European Union, Joint Declaration on a Mobility Partnership between the European Union and Cape Verde, 9460/08 Add 2, Brussels, 21 May 2008(c).

⁷⁸ See the Council Decision on the Conclusion of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization, 13765/07, Brussels, 20 November 2007. For information on the Common Visa Application Centre refer to <http://www.cac.md>.

⁷⁹ See the European Commission’s website on “Development and relations with African, Caribbean and Pacific States” (at <http://ec.europa.eu/development/geographical/regionscountries/countries/country>

developed by one member state – Portugal – with whom Cape Verde shares colonial ties, implying close trade cooperation and the presence of the majority of the Cape Verdean diaspora on Portuguese soil.

Concerning the negotiations leading to the adoption of the Joint Declarations with Moldova and Cape Verde, the political mandate from the Council was granted to the Commission in December 2007, after both states showed interest in becoming pilot countries in the adoption of the mobility partnerships by submitting ‘non-papers’ to the DG JFS. Moldova was quite active when presenting its candidature for a pilot mobility partnership. It submitted three non-papers to the European Commission. The first two were presented before Moldova was actually selected as a candidate for a partnership in December 2007. The first non-paper dates from 29 June 2007, just one month after the Commission Communication on circular migration and mobility partnerships (COM(2007) 248) was published in May 2007. In this first non-paper, Moldova expressed its interest in the launch of negotiations and in becoming one of the pilot countries for the mobility partnerships and “the emerging policy on circular migration”.⁸⁰ The non-paper also stressed the importance of all the institutional reforms that it had already undertaken in the migration field (“efficient management of migration flows”) towards the implementation of the 2005 ENP Action Plan.⁸¹

In the second non-paper issued on 24 August 2007, and in the drafting of which the IOM was presumably involved, Moldova presented a proposal for the mobility partnership and a list of elements as a basis for negotiating the package, following the content of the May 2007 Communication. It needs to be recognised that the IOM has greatly contributed to the conceptual background behind the development of the circular migration model.⁸² The second non-paper centred on the ways in which the concept of circular migration could be developed and implemented in the context of the EC–Moldova pilot partnership. Among the measures proposed, it referred to the promotion of circular migration schemes for Moldovan citizens settled in the EC and those residing in Moldova, the development bilateral programmes of temporary work, training and study schemes with specific EU member states, and the conclusion of bilateral agreements with EU member states on circular migration, labour migration and social protection. It added that circular migration schemes would need to be developed with a wide range of actors from governmental, civil society, NGO and international organisations such as the IOM.

Indeed, the circular migration scheme proposed by the second non-paper included several references to the IOM and its role in the implementation of (circular) labour migration

[profile.cfm?cid=cv&type=short&lng=en](#)). Refer also to Council of the European Union, Council Decision authorising the Commission to open negotiations for the conclusion of a readmission agreement between the European Community and the Republic of Cape Verde, 10461/09, 29 May 2009.

⁸⁰ The first non-paper, on initiating the negotiations on the pilot circular migration and mobility partnership between the European Community and Moldova, was issued on 29 June 2007 (Chisinau). The second non-paper, on Moldovan proposals on launching the EU–Moldova mobility partnership and the pilot implementation of circular migration, was issued on 24 August 2007. The third non-paper, on the Moldovan position on the Moldova–EU mobility partnership, was issued on 18 February 2008.

⁸¹ See the reference documents for the ENP at http://ec.europa.eu/world/enp/documents_en.htm.

⁸² See International Organization for Migration, *World Migration 2005: Costs and Benefits of International Migration*, IOM, Geneva, 2005; refer also to the Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action*, GCIM, Geneva, October, 2005.

schemes,⁸³ and here it was proposed as one of the key agents taking part in the recruitment and assistance provided to selected workers participating in circular migration schemes. Once the negotiations with Moldova officially started, however, it appears that some EU member states (and Moldova itself!) were against the deployment of circular migration schemes, and as discussed below, only the Czech Republic and Cyprus finally proposed to implement circular migration initiatives. Indeed, the third non-paper issued by Moldova after the conclusion of the mobility partnership, which specified the main starting points of the package, included no express mention of circular migration.⁸⁴

Until the date of formal adoption of the mobility partnership, the Commission campaigned for the involvement of as many member states as possible in the initiatives. The participation of EU member states was rather divergent when comparing the partnership with Moldova with that of Cape Verde. In the case of Moldova, 15 member states decided to join in, while in the partnership with Cape Verde only 4 member states initially participated. The reason underlying this differentiation might have to do with the fact that there are only a few EU member states with any interests in Cape Verde. These were namely Portugal, Spain, France and Luxembourg. In any case, both Joint Declarations specifically state that the mobility partnerships are conceived as “an open-ended or long-term framework based on political dialogue”, which will therefore evolve over time and which remains open to any other member states wishing to participate.⁸⁵ For example, the Netherlands joined the mobility partnership with Cape Verde a few months after its signature, as it is also one of the EU member states with a major Cape Verdean community on its soil.

As regards the general content of the mobility partnerships, the two Joint Declarations start with the same preamble. It states that the signatories (i.e. the EC, participating EU member states and the third country) confirm their commitment to facilitate the movement of persons between the EU and the third state “whilst working to ensure better management of migration flows including illegal migration flows”. Furthermore, the preamble highlights that the partnerships are based on the principle of reciprocity and that they bear the objectives

of facilitating the movement of persons between their territories, as well as legal migration, *in particular circular and temporary migration*, developing genuine cooperation on migration and development, and preventing and combating illegal immigration, smuggling of migrants and trafficking in human beings, *including the promotion of an effective readmission and return policy*, while respecting human rights and taking into account the situation of migrants and the socio-economic development of the Signatories.⁸⁶ (Emphasis added.)

Both partnerships also begin with a similar corpus of migration-related themes, around which the level of cooperation is expected to be developed. In particular, they identify three policy domains where more dialogue and cooperation will take place: first, “mobility, legal migration and integration”; second, “migration and development”; and third, “border management,

⁸³ According to the non-paper, this would include for instance recruitment requests placed by employers with selected recruitment agencies and the IOM. The latter would carry out the pre-selection process and the final selection would be conducted by the employers themselves.

⁸⁴ The priority areas highlighted were foreign direct investments, reintegration and return programmes, investments in education, investments of migrants’ remittances and local area support, consolidation of the national migration management system, a visa dialogue package and diaspora consolidation.

⁸⁵ See paras. 12 and 13 of the mobility partnership with Moldova (Council of the European Union, 2008b), *op. cit.* and paras. 14 and 15 of the mobility partnership with Cape Verde (Council of the European Union, 2008c), *op. cit.*

⁸⁶ Council of the European Union (2008b and 2008c), *op. cit.*

identity and travel documents, [and the] fight against illegal immigration and trafficking of human beings”. Regarding the nexus between circular and labour migration, the official discourses used in the partnerships when explaining the content of the first two policy domains are very similar. Both texts state the political priority of “promot[ing] a better framework for legal mobility”, which would be supported by the provision of information, integration and protection for migrants “while exploiting and matching labour market opportunities”.⁸⁷ The partnership with Moldova has added to that a further important phrase: “fully respecting Member States’ competences in this field and taking into account the different labour market situations in the Republic of Moldova and the Member States”.

The way the mobility partnerships frame the issue of “migration and development” in relation to labour migration policy is also identical. They refer to the need to mitigate the negative effects of brain drain and the emigration of those labelled as ‘highly skilled or qualified persons’ and call for the promotion of temporary and return migration. The partnership with Cape Verde even proposes the development of permanent return policies of “highly qualified Cape Verdean migrants and European nationals of Cape Verdean origin”.⁸⁸ The partnership with Moldova alludes to the possible adoption of “codes of ethical recruitment”.⁸⁹ Both instruments underline the need to facilitate the recognition of qualifications and skills, training, and temporary exchange and work programmes. Finally, they emphasise the importance of supporting “voluntary return” by putting into place appropriate mechanisms. In this same point, the partnership with Moldova expressly refers to tailored circular migration schemes.⁹⁰

The annexes attached at the end of the mobility partnerships present the list of proposed initiatives and activities conceived for the implementation of the political priorities identified in the preamble and the main body of principles. What are the precise proposals dealing with circular and labour migration?

Circular migration initiatives are almost absent in the mobility partnership with Moldova. So far, the only project dealing explicitly with this concept that has been foreseen is a proposal by the Czech Republic and Cyprus, which is supposed to offer circular migration projects bearing in mind support for the reintegration of returning migrants.⁹¹ This same proposal is envisaged as being partially carried out in the context of another initiative that would involve 11 of the 15 participating member states.⁹² The latter is aimed at strengthening Moldova’s capacity to manage labour and return migration, mainly through the provision of information on routes for legal migration to the EU and employment in the EU member states.⁹³ More specifically, it aims at addressing information on legal entry and stay in the EC and the Schengen area, and “employment referral mechanisms, job counselling, mediation and information on work opportunities in cooperation with the employment services of certain participating Member States”.⁹⁴ The only extra information provided by the political evaluation conducted by the

⁸⁷ See p. 3, para. 1 of both mobility partnerships (Council of the European Union, 2008b and 2008c), *op. cit.*

⁸⁸ See para. 7 of the partnership with Cape Verde (Council of the European Union, 2008c), *op. cit.*

⁸⁹ See para. 7 of the partnership with Moldova (Council of the European Union, 2008b), *op. cit.*

⁹⁰ *Ibid.*, para. 6 of the partnership with Moldova.

⁹¹ *Ibid.* – see the Annex on the proposed activities of the EU–Moldova Joint Declaration on a Mobility Partnership, p. 11, point 4(ii).

⁹² *Ibid.*, p. 10, point 3(i). The countries involved in this initiative are Bulgaria, Cyprus, Hungary, Lithuania, Italy, Germany, Greece, Poland, Romania, Slovakia and Sweden.

⁹³ Refer to the website on “Strengthen Moldova’s capacity to manage labor and return migration” (at <http://www.legal-in.eu>).

⁹⁴ *Ibid.*

European Commission in the Staff Working Document on “Mobility Partnerships as a tool of the Global Approach to Migration” (SEC(2009) 1240) is that “some Member States offered to change their national legislation to facilitate circular migration of Moldovan citizens”.⁹⁵

As regards other activities related to labour migration schemes, the mobility partnership with Moldova includes a proposal by Romania and the Veneto Region to launch active measures in support of labour migration for the benefit of Moldova. Also included are proposals by Italy, Sweden and Poland, involving initiatives dealing with access by Moldovan workers to their labour markets. The only information provided by the annex is the following: Italy has proposed a project providing support for potential migrants and promoting a sector-specific approach. Similarly, Poland has proposed to offer admission to the Polish labour market for temporary work without the need to hold a work permit. The Swedish proposal consists of the development of a pilot project disseminating information about the recruitment of Moldovan workers in certain sectors.⁹⁶ In section 6, which deals with “[d]iaspora consolidation and co-development”, one proposal by Germany consists of extended absences being allowed to legally residing Moldovans without loss of rights of residence.⁹⁷ Finally, on “labour market matching”, the mobility partnership includes three initiatives. One of these entails “the intention of the Moldovan public employment services to provide incentives regarding local job opportunities for its citizens, notably the young, and to improve labour market matching with the support of Sweden”. Another one is a proposal by the Czech Republic to support private and small enterprises in order to create labour opportunities in rural regions. A third one is a proposal by Romania to conclude bilateral projects for small and medium-sized enterprises to promote the creation of job opportunities in tourism and rural development.⁹⁸

An analysis of the proposed activities in the framework of the mobility partnership with Cape Verde provides a rather different picture from that of Moldova. Circular migration patterns seem to operate already between Portugal and the insular state. On the one hand, Portugal is willing to continue its support to “DIAS de Cabo Verde – DIASpora for Development of Cape Verde”,⁹⁹ a project promoted by the Instituto das Comunidades de Cabo Verde (IC) and which is already co-funded by the EC under the AENEAS Programme¹⁰⁰ and the Portuguese government. The

⁹⁵ Refer to p. 5 of the Commission Staff Working Document (European Commission, 2009b), *op. cit.* It appears that Germany is among these member states.

⁹⁶ Refer to p. 12 of the partnership with Moldova (Council of the European Union, 2008b), *op. cit.*

⁹⁷ *Ibid.* The precise wording is “Proposal by Germany to offer Moldovans who legally reside in Germany, and who meet the relevant conditions, special leave for extended absences without loss of rights and residence” (p. 13).

⁹⁸ See para. 8(iii) of the mobility partnership with Moldova (Council of the European Union, 2008b), *op. cit.*

⁹⁹ The project aimed at “strengthening the capacity and the competencies of the professionals working in key development sectors in Cape Verde, through the promotion of the Diaspora’s role in Portugal, Italy and The Netherlands to act as development agents”. One of the main activities of the project was to set up a database “to store the competences and skills of Cape Verdeans living abroad and the needs identified in the country of origin”. The database offers the possibility to any member of the Cape Verdean community in Portugal, Italy or the Netherlands falling within the category of ‘skilled professional’ in certain sectors (education, health, infrastructure and tourism) to register their “professional competences” and apply for vacancies in the selected group of EU member states. Refer to the general factsheet of the project (retrieved from <http://www.diasdecaboverde.org>).

¹⁰⁰ The AENEAS Programme covered financial and technical assistance for migration and asylum between 2004 and 2006, which has since been replaced by the Thematic Programme of Cooperation with Third Countries in the Areas of Migration and Asylum (see http://ec.europa.eu/europeaid/how/finance/dci/migration_en.htm).

project is implemented by the IOM and aims at fostering the circular migration of highly qualified migrants. Spain has proposed to contribute to “these [same] efforts” by supporting another IC project called “Mobilising Cape Verdean Skills Abroad”. On the other hand, Portugal intends to foster the admission of “certain categories of Cape Verdean workers, particularly on a temporary basis and with a view to circular migration” with the signing of a new protocol amending the existing one between the countries on the temporary migration of Cape Verdeans to work in Portugal, dating back to 18 February 1997.¹⁰¹ In the same vein, France proposed to open a number of professional activities to migrants from Cape Verde and to “no longer maintain objections based on the employment situation in the sectors concerned”, which was expected to become one of the components of a bilateral agreement between the two countries.¹⁰² Finally, Luxembourg has also proposed to launch circular migration schemes with Cape Verde, but no further specifications are provided about these schemes in the mobility partnership.¹⁰³

The annexes on “proposed activities” in both partnerships include other initiatives that may also have direct or indirect implications for labour and temporary migration schemes. Among others, the following ones can be highlighted:

- *Projects supporting administrative capacity or capacity building, technical assistance and information provision.* For example, the mobility partnership with Moldova foresees some proposals for developing the Moldovan labour market, which have as a general objective “optimizing the labour market of Moldova, promoting student and professional exchanges and improving the economic conditions for returning migrants”. By way of illustration, initiatives falling under this objective cover horizontal support (e.g. two projects led by Sweden on the reform of vocational training and another one – in cooperation with Romania and Lithuania – aimed at strengthening support for the public employment service) and enhancing the capacity of higher education institutions (e.g. promoting exchange programmes).¹⁰⁴

The partnership with Cape Verde includes the expansion and development of the competences of the existing “Centro de Apoio ao Migrante no País de Origen” (CAMPO).¹⁰⁵ Under the mobility partnership, the project would extend its coverage to the provision of information to would-be migrants on legal migration possibilities in the participating EU member states, on employment opportunities there, pre-departure preparation and training services.¹⁰⁶ The instrument also calls for the further development of existing partnerships between the University of Cape Verde and higher education institutions in the participating EU member states “to promote the exchange of students and teaching staff, particularly through the award of grants”.¹⁰⁷

¹⁰¹ See p. 9, point 2(ii) of the mobility partnership with Cape Verde (Council of the European Union, 2008c), op. cit.

¹⁰² Ibid., para. 2(v).

¹⁰³ Ibid., p. 10, point 2(viii).

¹⁰⁴ See points 8(i) to 8(iv) of the mobility partnership with Moldova (Council of the European Union, 2008b), op. cit.

¹⁰⁵ For further information, see the CAMPO website (<http://www.aipaglobal.com>).

¹⁰⁶ See para. 2(i) of the partnership with Cape Verde (Council of the European Union, 2008c), op. cit.

¹⁰⁷ Ibid., para. 2(vi).

- *Bilateral agreements.* The partnership with Moldova contains a proposal (having a conditional nature) by Bulgaria to sign an agreement on the regulation of labour migration and another by Romania to conclude a convention on local border traffic.¹⁰⁸ Furthermore, Bulgaria proposed to conclude a bilateral treaty with Moldova on social insurance, as did Romania on social security.¹⁰⁹ The partnership with Cape Verde includes a proposal by Portugal to develop bilateral cooperation instruments to simplify and boost the efficiency of worker migration procedures between the Portuguese Republic's Institute for Employment and Vocational Training and its Cape Verdean counterpart.¹¹⁰
- *Training activities, seminars, study visits and exchange of information.* Greece proposed in the partnership with Moldova a technical training workshop on residence and work permit legislation for civil servants from Moldova. Hungary also envisaged 'capacity building' (including seminars, information exchange and study trips).¹¹¹
- *Integration facilities.* The partnership with Moldova provides an initiative by Greece to offer "pre-departure training for Moldovans planning to migrate" and a proposal by Italy "to elaborate and disseminate a handbook on entry procedures and integration policies".¹¹² In the partnership with Cape Verde, there is a proposal by Luxembourg to develop a programme on "Migrating with Open Eyes", in order "to familiarize future Cape Verdean migrants under family reunification with the social, linguistic and other realities of life in Luxembourg".¹¹³
- *Social support.* According to the partnership with Moldova, Italy proposed to address the social dimension of migration in Moldova "by focusing on teenagers and by supporting centres/operators that provide assistance to teenagers left in [the] country by migrant parents".¹¹⁴ The partnership with Cape Verde includes an initiative by Spain to develop a schools/workshops programme "aimed at facilitating the integration of apprentices, particularly through training actions tailored to the Cape Verdean labour market, to meet labour needs identified by that country...and to support initiatives by women".¹¹⁵
- *Websites.* In the partnership with Moldova, Greece, Poland, Germany and Lithuania proposed to create a website on legal migration.

¹⁰⁸ Refer to point 4(iii) of the mobility partnership with Moldova (Council of the European Union, 2008b), op. cit.

¹⁰⁹ Ibid. – see para. 7(ii); see also para. 10(i), in which Portugal proposed to conclude a bilateral agreement on the exchange of information, technical assistance and training in the areas of document security and border controls.

¹¹⁰ Para. 2(iii) of the partnership with Cape Verde (Council of the European Union, 2008c), op. cit.

¹¹¹ Para. 2(ii) of the partnership with Moldova (Council of the European Union, 2008b), op. cit. Para. 2(v) also deals with the "sharing of knowledge and best practices" and includes a joint proposal by the Czech Republic, Hungary, Poland, Romania, Slovakia and Sweden to organise study visits and exchanges of experience among their respective administrations.

¹¹² Ibid., point 3(ii) of the partnership with Moldova (Council of the European Union, 2008b), op. cit.

¹¹³ See para. 2(ix) of the partnership with Cape Verde (Council of the European Union, 2008c), op. cit.; see also the website of the Luxembourg ministry of foreign affairs (<http://www.mae.lu/fr/Site-MAE/Actualites/Visite-de-travail-au-Luxembourg-de-Jose-Brito-ministre-des-Affaires-etrangeres-du-Cap-Vert>).

¹¹⁴ Para. 7(iii) of the mobility partnership with Moldova (Council of the European Union, 2008b), op. cit.

¹¹⁵ Para. 2(iv) of the partnership with Cape Verde (Council of the European Union, 2008c), op. cit.

4. 'Insecurity' partnerships for policy coherency and the rights of migrant workers

This section examines the main deficits characterising the nature and effects of mobility partnerships from the perspective of a (circular) labour migration policy. There are three major issues of concern, stemming from the analysis carried out in section 3 above: first, policy coordination; second, differentiation and policy incoherence; and third, migrant workers' rights.

4.1 Policy coordination and soft law

Mobility partnerships are articulated as joint declarations, which represent new policy tools at the EU level of a non-legally binding nature for the participating EU member states. These partnerships are not sources of international law but rather fall within the category of 'soft law' (or even soft policy) and constitute an alternative and new mechanism of governance intending to move Europeanisation forward through methods different from those already provided by the Treaties.¹¹⁶ The role of the DG JFS is mainly to conduct the negotiations with third countries, after receiving the green light from the Council and in cooperation with the presidency, and trying to ensure the overall coordination and consistency of the combined EC offer based on the individual proposals and political priorities expressed by each participating member state.

At first glance, the juridical softness of mobility partnerships may be surprising in view of the EC legal competence to conclude international agreements covering migration aspects. Indeed, as highlighted in section 2 of this paper, the EC has already concluded various readmission agreements with third countries, which have been grounded on Arts. 63.3(b) and 300.3 of the EC Treaty.¹¹⁷ It would be difficult to sustain that the EC has a recognised implicit competence only to conclude agreements with non-EU countries on irregular immigration, including (in the words of the Treaty) the "repatriation of illegal residents" and not on labour immigration policy based on Arts. 63.3(a) and 63.4 of the EC Treaty.¹¹⁸ As the European Court of Justice (ECJ) has held on several occasions, the Community's power to conclude international agreements is not only based on the express powers conferred by the Treaties, but can also be implicit in other articles of the Treaties or from other legislative measures adopted at the EC level.¹¹⁹ Furthermore, the ECJ has confirmed that there will be implicit competence in those cases where public European responses would be necessary to attain one of the objectives enshrined in the

¹¹⁶ On the concept of governance in the external dimension of the EU's justice and home affairs policies, refer to T. Balzacq, "The Frontiers of Governance: Understanding the External Dimension of EU Justice and Home Affairs", in T. Balzacq (ed.), *The External Dimension of EU Justice and Home Affairs: Governance, Neighbours, Security*, Palgrave Studies in European Union Politics, London: Palgrave, 2009, pp. 1-32.

¹¹⁷ See S. Peers, "Irregular Immigration and EU External Relations", in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Immigration and Human Rights: Theoretical, European and International Perspectives*, Leiden: Martinus Nijhoff Publishers, 2004, pp. 193-219; see also S. Peers and N. Rogers (eds), "EC Readmission Agreements", Ch. 31, *EU Immigration and Asylum Law*, Leiden: Martinus Nijhoff Publishers, 2006, pp. 881-895.

¹¹⁸ Art. 63.3(a) states that the Council shall adopt measures on immigration policy covering "conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion". Art. 64 stipulates that the Council shall adopt "measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States".

¹¹⁹ See M. Cremona, *EU External Action in the JHA Domain: A Legal Perspective*, European University Institute Working Papers Law 2008/4, European University Institute, Florence, 2008(a); see also M. Cremona, *Circular Migration: A Legal Perspective*, CARIM Analytic and Synthetic Notes 2008/30, Circular Migration Series, European University Institute, Florence (2008b).

Treaties, and this would be the case even in those situations where there is not an express allocation of competence.¹²⁰

The main approach in the format for developing the external dimensions of the EU's labour immigration policy is that of intergovernmentalism. The political nature of mobility partnerships as declarations of intent is a direct expression of the great care at the EU official level to make clear to the participating member states that any externalisation processes relating to labour immigration policy will 'strictly' comply with the division of competences between the EC and member states, as well as the different labour market situations and needs in each one. The academic literature has already extensively addressed the tensions between nationalism, intergovernmentalism and Europeanisation in the harmonisation of labour immigration policies at the EU level.¹²¹ These are policy domains where political priorities and official discourses at the EU level have had difficulty in manifesting into actual normative outputs. An example of the resistance by EU member states to transferring one further drop of their domestic competences and discretionary powers to the EU level was the Decision (2004/927/EC) adopted by the Council in December 2004. According to that Decision, all the areas falling within the scope of Title IV of the EC Treaty, with the sole exception of those related to legal migration, would benefit from the co-decision procedure and qualified majority voting provided in Art. 251 EC Treaty.¹²² While the internal dimensions of the EU's labour immigration policy remain contested, their external facets are subject to similar or even larger dilemmas.

The normative softness inherent in the rationale of the mobility partnerships was therefore considered a fundamental condition for having 'more Europe' in the inclusion of (circular) labour migration provisions in the externalisation processes of the EU's immigration policy. Yet, the policy coordination system that underlies their soft nature presents profound implications in relation to their effectiveness. The partnerships with both Moldova and Cape Verde only state that "with a view of implementing the Mobility Partnership, the Signatories confirm their intentions with regard to the initiatives set out in the Annex, subject to their available financial means".¹²³ The joint declaration regime prevents the European Commission from guaranteeing the enforcement of any of the activities and initiatives proposed by the EU member states. Their national sovereignty remains utterly intact in the context of these partnerships. The technical and political monitoring mechanisms that have been foreseen do not

¹²⁰ Refer for instance the ECJ Opinion 1/76 [1977] ECR 741, Opinion 2/91 and Opinion 1/2003 of 7 February 2006.

¹²¹ See S. Carrera, *Building a Common Policy on Labour Migration: Towards a Comprehensive and Global Approach in the EU?*, CEPS Working Document No. 256, Centre for European Policy Studies, Brussels, 2007; see also B. Ryan, "The European Union and Labour Migration: Regulating Admission or Treatment?", in A. Baldaccini, E. Guild and H. Toner (eds), *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*, Oxford: Hart Publishing, 2007, pp. 489-515; and also K. Groenendijk, "Access of Third-Country Nationals to Employment under the New EC Migration Law", in F. Julien-Laferriere, H. Labaye and O. Edström (eds), *The European Immigration and Asylum Policy: Critical Assessment Five Years after the Amsterdam Treaty*, Brussels: Bruylant, 2005, pp. 141-174; and E. Guild, "Mechanisms of Exclusion: Labour Migration in the European Union", in J. Apap (ed.), *Justice and Home Affairs in the EU: Liberty and Security Issues after Enlargement*, Cheltenham: Edward Elgar, 2004, pp. 211-34.

¹²² See Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure set out in Art. 251 of that Treaty, OJ L 396/45, 31.12.2004.

¹²³ See para. 15 of the mobility partnership with Moldova (Council of the European Union, 2008b), op. cit. and para. 17 of the one with Cape Verde (Council of the European Union, 2008c), op. cit.

overcome this vulnerability.¹²⁴ The degree of discretion and margin of appreciation by national authorities is simply too large to ensure any coordinated effort at the EU level.

Joint declarations endanger a good relationship between mobility partnerships and the rule of law and the principle of legal certainty. The related negotiations and implementation have marginalised any sort of democratic accountability at the EU and national levels. It is striking to see that the European Parliament was completely absent in any process leading to the conclusion of the mobility partnerships with Moldova and Cape Verde. In addition to this clear democratic deficit, the extent to which these partnerships can be subject to any judicial control exercised by the ECJ or national tribunals is also doubtful. The principle of legal certainty is an issue of concern as well. This general principle of EC law demands that individuals need to know the legal consequences of their actions and that the quality of the law is as high and objective as possible in order to prevent exceptionalism by public authorities beyond any restraints of legality.¹²⁵ It is not clear that the partnerships meet these conditions or that a person affected by abusive or illicit practices by the public authorities of a participating EU member state will have a right to seek an effective remedy.¹²⁶ As long as the partnerships constitute an EC offer coordinated by the European Commission, the latter is also under the obligation to verify that the principles of the rule of law and legal certainty are duly met in their practical implementation – which at present remains far from clear.

The political desire of moving Europeanisation forward in these areas might have justified the rapidity when moving ahead in their negotiations without perhaps properly assessing the legal and human consequences. This is not an exception in EU integration processes, where to date the idea of a ‘Europe of results and achievements’ has been the guiding logic, sometimes without paying too much attention to the effects that urgency in policy-making may have for the liberty and security of the individual and policy coherency. The policy coordination regime envisaged in mobility partnerships and their complex legal nature fundamentally challenge the system of guarantees and mechanisms of protection (and legal security) that have been conferred to the EC system by the Treaties. Indeed, while mobility partnerships now represent a tangible example of EC policy-making in a kind of external dimension of the EU’s migration policy, aiming at the combination of security and mobility, from a rule-of-law perspective they bring about more insecurity in terms of effectiveness and legitimacy.

4.2 Differentiation and policy incoherency

Mobility partnerships include different groups of member states that have shown interest in cooperating with the particular third country concerned and a series of proposals intended to put into practice (circular) labour migration policies in the EU’s external relations. What are the

¹²⁴ For instance, para. 16 of the mobility partnership with Cape Verde states that “[t]he partnership will be implemented at the operational level by the Local Monitoring Group set up under the Special Partnership and to which the various other actors involved in the Mobility Partnership will be associated as appropriate” (Council of the European Union, 2008c), *op. cit.* Refer also to section 5, entitled “The Monitoring Structure” of the Commission Staff Working Document (European Commission, 2009b), *op. cit.*, pp. 5-6.

¹²⁵ Refer to Art. 49 of the Charter of Fundamental Rights of the European Union, 2007/C 303/01, 14.12.2007. For a brief analysis of relevant ECJ case law on the principle of legal certainty, see P. Craig and G. de Búrca, *EU Law: Text, Cases and Materials*, Fourth Edition, Oxford: Oxford University Press, 2008, pp. 551-558. For the role of the general principles of EC law in the context of EU immigration law, refer to S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU*, Leiden: Martinus Nijhoff Publishers, 2009.

¹²⁶ E. Brouwer, *Digital Borders and Real Rights: Effective Remedies for Third-Country Nationals in the Schengen Information System*, Leiden: Martinus Nijhoff Publishers, 2007.

effects of this differentiation on the coherency and goals purported by the common EU immigration policy internally and externally?

The various speeds or variable geometry applied in the context of mobility partnerships in terms of EU member states' participation is purely driven by their political and economic interests in relation to the non-EU state involved. The partnership with Moldova counts the participation of 15 EU member states and the one with Cape Verde only 5. We have qualified Moldova and Cape Verde as the 'good students' of the class taking into account their eagerness to cooperate with the EC and that they are not considered major sources of irregular immigration towards the EU. The international arena, however, is composed of 'other students'.¹²⁷ The African and Mediterranean regions continue to be framed as a political priority at the EU level in the scope of the global approach to migration and particularly in the context of readmission and border control policies. Therefore, one might wonder about the extent to which the conditions for negotiation and EU member state participation – the exportability of the mobility partnership model – is going to end up being a lost battle when dealing for instance with other African countries that do not meet the eligibility criteria. As stated by the European Commission in its Staff Working Document SEC(2009) 1240, these criteria are “the geographical balance between Eastern Europe and Africa, the importance of migration flows from or through the country to the EU, the readiness to cooperate on readmission and fight against illegal immigration, the interest of EU Member States to cooperate with the country in question and its interest to enter such a partnership”.¹²⁸ The differentiation of participation by EU member states and in the lists of proposals in the partnerships could become huge, which would make the regime and purposes of mobility partnerships simply unsustainable in the long term.

In addition, these partnerships cannot be comprehensively understood from a purely state-centric approach. The picture is far more complex. The external dimensions of the EU's immigration policy go beyond pure state-to-state and EC institutional interests. The early and continuing role played by other intergovernmental and non-governmental actors (such as the IOM, International Centre for Migration Policy Development and the Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas) has been very important. Their involvement adds to the complexity and obscurity of the mobility partnership regime in light of the multiplicity of the interests, agendas and actors involved in the transnational governance of migration. As discussed in the previous sections of this paper, the role of the IOM in promoting the concept of circular migration has been evident since 2005. There is a wide patchwork of non-state and non-EU institutional actors driving the circular migration agenda at the EU level and putting the mobility partnerships into practice. The mandate and status of these actors place them among the main beneficiaries of EC and member state funding for making the mobility partnerships and circular migration schemes work on the ground in the third country. This situation has been further promoted by the Commission Staff Working Document SEC(2009) 1240, in its preliminary assessment of the pilot phase of the partnerships with Moldova and Cape Verde: “It is also foreseen that local coordination should be extended to other actors (such as NGOs and international organisations) active [in] migration in the third countries concerned.”¹²⁹

Furthermore, as explained above, mobility partnerships constitute a mechanism offering the possibility to all EU member states to cooperate with a given third state and bring under the common EC umbrella enshrined in a joint declaration a package of fragmented cooperation

¹²⁷ D. Bigo and E. Guild, *La Mise à L'Écart des Étrangers: La Logique du Visa Schengen, Cultures & Conflits*, Paris: L'Harmattan, 2003.

¹²⁸ See p. 3 of the Commission Staff Working Document (European Commission, 2009b), op. cit.

¹²⁹ *Ibid.*, p. 8.

initiatives promoted by some member states. A number of these proposals are supposed to cover not only temporary and circular migration policies, but also issues as diverse as projects supporting administrative capacity, technical assistance, information provision and exchange, bilateral agreements, training, seminars, study visits, integration facilities and policies, social support and even the set-up of websites. The European Commission has highlighted in the same Staff Working Document that

as the experience has shown, the partnerships risk being a collation of new and already planned activities and additional effort should be made so that the package offered to a partner is an effective and coordinated offer bringing added value to existing cooperation, as the future aim should be to reinforce coordination and bring real added value to the existing cooperation.¹³⁰

Indeed, the price that the European Commission has had to pay to have some degree of ‘Europe’ in this policy dimension has been to allow mobility partnerships to become a tool at the service of the member states’ security and domestic interests. Yet, do these priorities correspond with the goals of the EU immigration policy? While the preamble and main body of the partnerships seek to be coherent and present a common set of objectives to guide their development, the annexes attached to each one bring about an over-elastic and diversified menu of activities, which end up being a shopping list of distinct and hugely divergent domestic priorities. Also, the description provided in each of the specific proposals and activities is so limited that it is difficult to envisage how and according to which criteria their effectiveness, success and added value are going to be measured and objectively evaluated.

This combination of differentiation in participation and heterogeneity in the objectives and nature of the activities proposed by the mobility partnerships creates divisions on multiple levels that pose serious problems for the policy coherency of this regime. Such risks are further substantiated when looking at how the partnerships cover and seek to put into practice regular channels for (circular) labour migration. The translation into law of the political discourses studied in section 2 of this paper, in which circular migration is connected with mobility partnerships, is another area of concern, which is likely to grow as soon as the EC starts negotiating such partnerships with other third countries viewed as sources of irregular immigration. The desire to integrate regular and labour-related migration provisions in the framework of the EU’s external relations – from the perspectives of circular migration and the linking of migration and development – has so far only materialised in the two partnerships with Moldova and Cape Verde. Furthermore, as shown in the previous section, even within the context of these two partnerships, the extent to which circular migration initiatives have been included remains very limited and in a majority of cases inexistent.

All this leads to a general picture undermining the coherency and legitimacy of the EC, and its migration policy within its borders and abroad. Mobility partnerships thus represent insecurity policy tools for the EU’s labour immigration policy. The differentiation entailed puts at risk the coherency of the EU’s labour immigration policy, as well as the uniformity and legitimacy of mobility partnerships themselves, in light of the progressive building of a linkage between the internal and external facets of the EU’s common (regular) immigration and external relations policies.

4.3 ‘Moving in circles’ and the rights of third-country workers

In this section, we go back to the question raised in the introduction of this paper: Whose security and mobility are at the heart of the mobility partnerships? The intertwining of mobility

¹³⁰ Ibid., p. 5.

partnerships and circular migration measures at the EU level puts the third-country worker in a vulnerable and insecure position in relation to the EC and its member states, as well as his/her state of origin.¹³¹ These instruments represent insecurity partnerships for TCNs because of two features of their underlying logic:

First, a temporal view of migration. The concept of circular migration aims at regulating human mobility in a 'recurrent' and temporary way.¹³² The intended public goal behind it views permanent residence, family reunion and social integration as deviations challenging the policy's effectiveness.¹³³ Return and readmission are fundamental conditions for the circularity to work in practice. Mobility partnerships seek to implement a managerial strategy over human mobility, which intends to keep labour immigration a seasonal or temporary phenomenon for certain categories of workers.¹³⁴ Circular migration is a return to the public authorities' illusion that migration can be controlled as a temporary phenomenon, and now even as a circular one for people to go back and forth from their respective countries of origin. The third-country workers will be expected 'to move in circles'. In the negative phase, the circular or circulating migrants will be obliged to go back to their country of origin after the expiration of the temporary residence and work permit in the EU member state involved. Those workers who might benefit from one of these (circular) labour migration initiatives and who do not voluntarily comply with the predetermined circular migration scheme (and overstay in an irregular status in the EU member state) will be penalised by expulsion from the EU and potential sanctions in their home country.¹³⁵ These sanctions will range from no longer being able to benefit from circular migration schemes to facing the penalties envisaged in national law for the phenomenon of irregular immigration, which in some third countries is deemed a criminal offence. There have been certain arguments sustaining the idea that as long as there seems to be some evidence showing that international human mobility is increasingly temporal, the concept of circular migration could work well as a policy option.¹³⁶ But the fact that people are increasingly mobile does not mean that all human mobility towards the EU for employment-related purposes should be put into the basket of 'circularity' and managed by the state as an inherently temporary circumstance.

¹³¹ For an overview of some of the wider issues emerging from circular migration policies from the perspective of migrants, see S. Vertovec, *Circular Migration: The Way Forward in Global Policy?*, International Migration Institute (IMI) Working Papers, IMI, University of Oxford, 2007.

¹³² On the different possible meanings of the concept of circular migration refer to F. Pastore, *Migration Circulaire, Note pour la Réunion d'Experts sur la Migration Légale*, Réunion d'Experts sur la Migration Légale préparatoire à la 2^e Conférence Ministérielle Euro-Africaine sur Migration et Développement, Rabat, les 3 et 4 mars 2008 (retrieved from http://dialogueuroafricainmd.net/archivos/4007_fr_migration_circulaire_fpastore1.pdf).

¹³³ H. Schneider and A. Wiesbrock, *Circular Migration and Mobility Partnerships*, Briefing Paper for the European Parliament, DG Internal Policies, Brussels, 2009.

¹³⁴ For a synthesised overview of seasonal migration from the perspective of circular migration policies, refer to K. Newland, D. Rannveig Agunias and A. Terrazas, *Learning by Doing: Experiences of Circular Migration*, Insight, Migration Policy Institute, Washington, D.C., September 2008.

¹³⁵ The 'enforcement approach' has even been argued by some experts, as in this excerpt from Rannveig Agunias and Newland (2007): "Employment programmes that have departure as a condition of participation must rely on [a] harder, enforcement-oriented approach that provides both workers and employers with strong disincentives for breaking the rules". (See D. Rannveig Agunias and K. Newland, *Circular Migration and Development: Trends, Policy Routes and Ways Forward*, Policy Brief, Migration Policy Institute, Washington, D.C., April 2007.)

¹³⁶ See G. Hugo, *Circular Migration: Keeping Development Rolling?*, Migration Information Source, Migration Policy Institute, Washington, 2003; see also Rannveig Agunias and Newland (2007), op. cit.

Second, the rationale of selection. Mobility partnerships only cover a limited number of categories of third-country workers who would be able to benefit from facilitated mobility into the participating EU member states. These partnerships and circular migration policies are driven by the labour market forces of demand and supply as perceived by the EU member states. TCNs are therefore not treated as workers and holders of human rights, but rather as financial units (or numbers) at the service of the economic and labour market needs of the states. The sociology surrounding the mobility and settlement of individuals, the interests of third-country workers and the measures preventing exploitation and guaranteeing proper working conditions are not at the centre of debates on circular migration and mobility partnerships. Only those nationals from the non-EU state falling within the privileged categories of temporary migrants, seasonal migrants or the highly skilled will be allowed to benefit from the (circular) labour migration system and the rights to equality and protection once admitted for employment. Having the appropriate nationality will not be enough to fall within the personal scope of these instruments, as the skills and usefulness of the worker for the receiving state will also apply as further distinctions determining access to certain working conditions, protection and assistance, as well as other related fundamental human rights.¹³⁷ The narrowness of the personal scope also puts into question how much this circular system will at all reduce the incentives for irregular immigration among the rest of TCNs who are not qualified as ‘circular workers’.¹³⁸ Moreover, as Cholewinski (2006) has pertinently noted,

[t]he growth in temporary work opportunities for migrants has resulted in a number of difficulties in ensuring their protection...migrant workers admitted on a short-term basis encounter obstacles, in particular to liberalise their employment opportunities and to access a secure residence status and the full range of social security in the country of employment. Therefore...the increase in temporary migrant labour is often accompanied by the proliferation of a confusing array of different legal statuses, which tend on the whole to dilute further the protections afforded such migrant workers in the country of employment.¹³⁹

The temporary (and circular) nature emerging from the system of labour mobility provided by these partnerships along with the differential treatment it conveys opens up a whole range of questions about how the labour and human rights standards provided by various international and European human rights instruments are going to be protected on the ground. Among others, we highlight the relevance of the European Convention on the Legal Status of Migrant

¹³⁷ Refer for instance to the Charter of Fundamental Rights of the European Union, OJ C 303/01, 14.12.2007. Art. 21.1 states that “[a]ny discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”. Art. 15.3 stipulates that “[n]ationals of third countries who are authorized to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union”. See also Arts. 27-35 of Title IV on “Solidarity” in the Charter.

¹³⁸ For a critical account on the effects that circular migration is expected to have on irregular immigration, refer to A. Triandafyllidou, *Attempting the Impossible? The Prospects and Limits of Mobility Partnerships and Circular Migration*, ELIAMEP Thesis 1/2009, Hellenic Foundation for European & Foreign Policy, Athens, January 2009.

¹³⁹ See R. Cholewinski, “International Labour Law and the Protection of Migrant Workers: Revitalizing the Agenda in the Era of Globalization”, in J. Graig and S. Lynk (eds), *Globalization and the Future of Labour Law*, Cambridge: Cambridge University Press, 2006, pp. 409-444. This was based on the findings of a previous study offering a review of the legal status of migrants admitted for employment purposes in a selection of European countries. See also R. Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment*, Oxford: Clarendon Press, 1997.

Workers,¹⁴⁰ the International Labour Organisation (ILO) Conventions 97¹⁴¹ and 143,¹⁴² and the European Social Charter.¹⁴³ Furthermore, the continual political resistance expressed in a substantial majority of EU member states towards acceding to and ratifying these instruments (along with other international and European instruments on labour migration and the human rights of third-country workers, e.g. the UN Migrant Workers Convention)¹⁴⁴ reveals the weakness at the nexus of circular labour migration and the mobility partnership regime at the EU level. More specifically, the overriding policy priority is fostering the security of the participating states and setting aside the rights of third-country workers.

5. Conclusions

This paper has examined the policy processes affecting the integration of EU labour immigration policies into the EU's external relations, and more specifically the concept of circular migration emerging in the framework of mobility partnerships. Developments in the nexus between circular (employment-related) migration schemes and joint declarations with third countries on mobility partnerships have been justified at the EU official level as part of a necessary transition. The EU approach has moved from a classical, security-oriented one on international cooperation with third states on migration (focused on the management of irregular immigration – readmission – and border controls) towards a more 'global, balanced and comprehensive' one, which also includes initiatives facilitating legal channels for the labour-related mobility of TCNs into the EU. We have argued that given the actual origins, rationale, conditional nature and kinds of (circular) labour migration policies advocated by mobility partnerships, the latter should be considered 'security' partnerships for the participating EU member states and to a limited extent the third countries. At the same time, they could be regarded as 'insecurity' partnerships for the coherency and legitimacy of the EU's labour immigration policy, as well as the liberty and security of the third-country workers.

The strategy to include labour immigration elements in the external facets of the EU's immigration policy has mainly taken place because of the obstacles encountered by the European Commission in convincing non-EU countries to sign readmission agreements. Labour mobility is thus being instrumentalised in the EU's external relations as a complementary

¹⁴⁰ Council of Europe, European Convention on the Legal Status of Migrant Workers, Strasbourg, 24 November 1977. Refer for instance to Arts. 16 on "Conditions of Work" and 24 on "Expiry of Contract and Discharge". Art. 16.2 states that "[i]t shall not be possible to derogate by individual contract from the principle of equal treatment referred to in the foregoing paragraph". Refer to E. Guild, *The European Convention on the Legal Status of Migrant Workers (1977): An Analysis of its Scope and Benefits*, DO. CDMG (99) 11, Council of Europe, Strasbourg, 1999.

¹⁴¹ See Art. 6 of the International Labour Organization (ILO) Convention concerning migration for employment, No. 97, revised 1949, Geneva.

¹⁴² See Part II on "Equality of Opportunity and Treatment" in the ILO Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers, No. 143, 1975, Geneva.

¹⁴³ See Council of Europe, European Social Charter, European Treaty Series No. 163, 3 May 1996, Strasbourg, Art. 19 on "The right of migrant workers and their families to protection and assistance".

¹⁴⁴ See the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, adopted by General Assembly Resolution 45/158 of 18 December 1990. See also the Global Campaign for Ratification of the Convention on the Rights of Migrants, *Guide on Ratification of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families*, International Steering Committee, 2009 (retrieved from <http://www.migrantsrights.org>). According to this report, as of March 2009, 41 states had ratified the UN Migrant Workers' Convention and 48 had ratified the ILO Conventions (Nos. 97, 23 and 143).

incentive in the promotion of the EU's readmission policy. Indeed, since their inception, circular migration and mobility partnerships have been seen as potential responses, and even alternatives, to the phenomenon of irregular immigration. The predominance of security in the driving rationale of these partnerships is also evident in the levels of commitment that any non-EU country will need to show to meet the eligibility criteria for a 'mobility partner'. The readiness to cooperate on readmission and the management of irregular immigration functions as conditions for the non-EU country to benefit from any privileged treatment. Furthermore, the paper has argued that the kind of labour mobility foreseen in the framework of mobility partnerships can also be viewed as security-oriented. The mobility for employment purposes envisaged by the partnerships is guided by a logic that views mobility as circular, temporary and subject to selection – which mainly serves the national interests and political agendas of the participating EU member states while increasing the vulnerability of third-country workers.

An evaluation of the circular migration initiatives for employment in the mobility partnerships with Moldova and Cape Verde has provided further evidence for our argument that they represent 'insecurity' partnerships in terms of the EU's immigration policy and the rights of TCNs. These instruments give rise to major dilemmas for policy coordination, differentiation and coherence. The soft-policy nature of the joint declarations referring to the partnerships makes the European Commission's task of coordinating them and ensuring their compatibility with the principles of rule of law and legal certainty a difficult one. The high degree of flexibility and differentiation in EU member state participation in these partnerships (along with the number of cooperation initiatives and bilateral agreements) challenge the consistency and legitimacy of the EU's labour immigration policy, both internally and externally.

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