

EU immigration policy: act now before it is too late

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The Lisbon Treaty, in a repetition of the 1999 Tampere European Council conclusions, states “the Union shall develop a common immigration policy”. This entails addressing issues related to legal migration, irregular migration and integration.

Imbalanced policies

Almost 15 years after the Tampere conclusions, EU action has proven to be rather imbalanced. Issues related to border management, visa and irregular migration have been extensively addressed. EU legislation covering these fields is substantial, as illustrated by the adoption of regulations setting up a Schengen Border Code and a Visa Code. Moreover, EU action dealing with the operational level is quite integrated. The establishment of the FRONTEX Agency and the adoption of a Visa Information System, a database on Schengen visas issued and refused, are examples of this strong trend.

However, legal migration issues, in particular admission for work purposes, are not addressed in a detailed and coherent manner. While family reunification and enhanced rights awarded to long-term residents are covered by two Directives, EU rules regarding admission for work purposes have been scattered among a series of texts addressing specific categories of worker, setting different conditions for admission and awarding different rights. In addition, all of these rules are based on Directives which, in the vast majority of cases, leave significant margins of manoeuvre to the member states. Hence, those rules do not put national sovereignty into question and leave primary responsibility for dealing with admission issues to the member states.

This situation may be considered satisfactory due to the economic, social and labour-market differences between member states, which are arguments against further harmonising national rules regarding admission of migrant workers. On the other hand, the situation could be seen as disappointing in that it does not help to address current and future challenges.

Unanswered challenges

On the one hand, the current situation – in which legal migration is addressed in a patchwork manner and irregular migration is deeply developed – portrays a picture of EU action that is miles away from a so-called “common immigration policy”.

On the other hand, and more importantly, the current rules are unlikely to help tackle demographic shrinking and labour/skill-shortage problems. From 2015 onwards, demographic shrinking in the EU will create two different types of need: to replace pensioners in the job market, and to fill new jobs created to serve an ever-growing number of old people, particularly in the care sector.

With respect to labour/skill shortages, the situation should be looked at under two different periods. Thus far, member states have experienced labour or skill shortages in specific sectors. The economic crisis has hit some national labour markets hard and alleviated pressure on the demand side, which has consequently reduced shortages. However, this situation is temporary. Once the economic recovery gets underway, structural labour and skill shortages will reappear. The phenomenon will be amplified by the declining demographic trend.

Bearing in mind the logic of a Union based on a single market and “aiming at full employment and social progress” (Art. 3 TEU), as well as a globalised world in which workers are increasingly moving, particularly to emerging economies, responding to labour market challenges is definitely not a national but an EU issue. However, the current legal situation is unlikely to meet this challenge. Rules regarding admission of migrant workers remain mostly the preserve of the member states and intra-EU mobility, i.e. the right for legally-residing migrants to move to another state, is partially offered and not always implemented.

If the EU and its member states want to be key players in this global game by becoming attractive destinations in order to address current and future needs, then they need to provide common answers.

Addressing labour migration challenges now

Several types of action should be put into motion to complete EU immigration policy and make the Union one of the most attractive regions in the world for all types of migrant worker.

First, a common policy in the field of legal migration should aim to overcome the current selective approach and adopt common conditions for the admission of migrant workers to the EU. While member states are highly reluctant to do so, several arguments make this move realistic and positive. First, it would help to establish a common EU policy. Second, it will bring some coherence as for the time being, migrant workers who do not fall within the scope of existing EU rules are confronted with 27, and tomorrow 28, different national legislations setting different conditions for admission. Hence, having common rules setting common conditions applicable in all member states would portray the EU as a unique and coherent area. This would also make the EU more attractive and help it to compete with other regions in the world, not least for much-needed talent. Thirdly, the definition of common conditions does not imply that member states are losing sovereign competences. If the conditions are harmonised, member states will still decide on applications, as is currently the case in the field of short-term visas. Finally, making such a leap should not be a big problem. According to the OECD Migration Outlook 2013, the majority of European countries have already established the same type of labour migration system, i.e. demand-driven systems where migrant workers are entitled to migrate in so far as they have a job offer. Hence, moving towards a common scheme would not be impossible.

Second, alongside admission schemes, intra-EU mobility rules should be enhanced. The possibility for one person to move to another member state for work purposes is currently very limited and governed by different conditions. More precisely, EU rules address selective third-country nationals (long-term residents; highly-skilled workers; and researchers and students) and contain different conditions for each category. Migrants who do not fall within one of these categories may move to another member state but only under national rules. In the end, the right to move is divided between EU and national rules. Enhancing intra-EU mobility is therefore crucial if the EU wants to be attractive and considered as a single area in which job opportunities across member states can be filled by a large number of legally-residing migrant workers. This movement should be accompanied by the development of labour-matching and recruitment tools.

Third, maintaining the EU as an attractive area to study should remain a priority. Rules on admission should be accompanied by the definition of common rules regarding the possibility for graduates to access the labour market. The European Commission has recently tabled a proposal in this regard. However, and given the current climate, member states may prove unenthusiastic and impose the adoption of an overly administrative procedure, hampering the right to access the labour market. Conferring to students an EU-wide right to access the labour market is crucial. It addresses already integrated highly-skilled migrants, reduces the risk of competition between member states and makes the EU more attractive, particularly if this right is accompanied by intra-EU mobility opportunities.

Finally, all of these developments should be backed up by the definition of rights and obligations enabling the proper integration of migrant workers. This implies granting (as far as possible) the same social rights as those granted to nationals. The right to family reunification should remain a core right and must be promoted. Integration policies and measures should always aim at social inclusion and never be used to weaken the position of migrants or for social exclusion. Ultimately, rights awarded to migrants should not be turned into duties. In particular, this concerns the right to move, which may never be turned into an obligation due to economic reasons.

Moving before begging?

While the world is rapidly changing, member states still refrain from engaging in an EU-wide labour migration policy. In the short run the economic recovery, demographic shrinking and the ageing population will produce their effects, and new needs for migrant workers will appear. If the situation remains as it stands today, the EU will not be able to attract all the migrant workers it needs. EU and member-state representatives may well find themselves begging these workers to come to the EU. While extremely painful, such an exercise in contrition may also prove to be inefficient because it will be too late.

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