

## **When Will the Time Be Ripe for a European Legal Migration Policy?**

14. September 2018 by [Annalisa Buscaini](#)

*'I would also like to remind Member States again of the need to open legal pathways to the Union. I renew my call. We need skilled migrants. Commission proposals addressing this issue have been on the table for some time and must now be taken up.'* Jean-Claude Juncker, State of the Union Address, 12 September 2018.

In his State of the Union speech earlier this week, President Juncker called again upon Member States to make progress on the Commission's proposals on legal migration to Europe. What are these proposals about? And what happened to them?

### **Priorities**

In the spring of 2015 when the European Commission announced its European Agenda on Migration in the midst of the so-called refugee crisis, there was little reason for optimism. More than 3,500 people died that year attempting to cross the Mediterranean Sea. The sudden increase in the number of arrivals strained the unprepared reception systems of EU frontline countries, namely Italy and Greece, with appalling consequences for those who survived the journey to Europe's coasts.

In a domino effect, other European countries faced the challenge of more incoming people, as migrants and asylum seekers sought to travel beyond the country of arrival to reach their destinations further north. Under the mounting pressure, cooperation between Member States began to break down, and from 2015 onwards, it has been hit by cyclical moments of political crisis, with crossed accusations of southern versus northern, and eastern versus western, countries. Governments accuse each other of lack of solidarity, lack of responsibility towards EU obligations, lack of respect for national sovereignty, all very aware of the heightened public scrutiny on migration management.

Along with a more or less genuine concern for the lives lost in the Mediterranean (and at other EU's internal and external borders), the political concern arose that simply saving lives equalled more people landing in Europe – and less public opinion support.

Two priorities emerged in that context: preventing people from leaving, and finding a way to 'share the burden' of those who had arrived – and would, in spite of everything, continue to arrive. Improving channels for people to come to Europe legally and safely also surfaced on the EU's radar, but only intermittently.

### **Small rays of hope for a policy on legal economic migration**

The European Agenda on Migration put forward an immediate response plan, but also a four-pillar structure to manage migration better in the medium-term, and elements for a longer-term strategy. The focus was clearly on containing migratory flows and tackling irregular migration through enhanced border management and the fight against smuggling and trafficking. The other priority was to establish a mechanism to share the 'burden' of processing asylum claims across the EU – the unambitious and controversial 'relocation plan'. Yet, in addition to these priorities, the Agenda recognised the need for legal and safe pathways to Europe in order to effectively

reduce the incentive for irregular and perilous border crossing. That included a reflection on common policy instruments for legal, and specifically labour, channels as one of the four pillars, without which the overall migration structure of the EU would not hold together.

Decisions on the volume of admissions of labour migrants is the exclusive competence of Member States; thus the European Commission could not (and still cannot) propose a common EU labour migration policy – contrary to what happens in the field of asylum. It can however play a role in facilitating dialogue and exchange of best practices among Member States, and it has devised targeted instruments for the mobility of very specific categories of third-country nationals – primarily students, researchers and highly-skilled workers – such as the Blue Card directive<sup>1</sup>.

Under the ambitious name of ‘A new policy on legal migration’, the Commission essentially proposed to review the existing common instruments of legal migration. But it did dare to add that, in the longer-term, the EU should complement these instruments with a new model, allowing to create a pool of potential migrant workers, in order to match the needs of EU Member States’ labour markets.

Bolder signs in this direction came with the European Commission’s review of the Agenda on migration from September 2017. By then, the number of arrivals had decreased significantly due to the short-term policy of containment<sup>2</sup>. The ground seemed to be fertile for advancing on the other pillars of the 2015 Agenda, including the legal economic migration channels, which are presented in the review as a key element to address Europe’s demographic decline and skills’ gaps in its labour markets. The Commission put forward the idea of legal migration pilot programmes and offered coordination and financial support. Interested Member States would engage themselves to identify labour shortages together with the private sector, and offer the jobs to migrants in selected third countries, so that the selected workers could come legally<sup>3</sup>.

### **What happened to the legal migration pilots?**

It often occurred in the EU’s history that moments of crisis generated opportunities for cooperation and integration. Despite the political climate of division and ramping nationalism, the so-called refugee crisis is no exception. It gave rise to new mechanisms and fora for crisis management and new forms of coordination between institutions and with Member States<sup>4</sup>. But all of them were – and still are – directed to the short-term goals of the 2015 Agenda on migration. Even more so than the plan, its implementation focused on bringing the number of arrivals down as much as possible, disrupting the smuggling and trafficking networks, and discouraging people from migrating in the first place. On the medium and long-term measures, notably the legislative components of the Common European Asylum System and the review of labour migration

---

<sup>1</sup> “[...]it should not be forgotten that the Blue Card Directive was not designed primarily for the labour market needs of the EU. Rather, it was run to enhance European competitiveness by attracting highly-qualified third-country nationals, and this under quite restrictive conditions of salary and qualifications” Sona Kalantaryan and Iván Martin, [Reforming the EU blue card as a labour migration policy tool?](#).

<sup>2</sup> It should not be forgotten at what price: see for example Marianna Karakoulaki, [EU-Turkey deal: the burden on refugees in Greece](#) and Amnesty International, [Libya’s Dark Web Of Collusion: Abuses Against Europe-Bound Refugees And Migrants](#).

<sup>3</sup> “[...]while fully respecting Member States’ competences as laid out in the Treaties, the Commission is ready in 2018 to coordinate pilot projects with third countries, and provide related financial support, where Member States would engage themselves in receiving certain numbers of migrants coming through legal channels, in particular including for economic purposes. Initially, these pilot projects could be explored with selected third countries based on the quality of the partnership on migration management and the level of concrete cooperation on combatting irregular flows and readmission of irregular migrants.” European Commission, [Communication on the delivery of the European Agenda on migration](#).

<sup>4</sup> See Elizabeth Collett and Camille Le Coz, [After the Storm: Learning from the EU Response to the Migration Crisis](#)

schemes, the crisis had the opposite effect of catalysing national interests and positions, slowing down negotiations and birthing sub-optimal compromises.

The fate of the legal migration pilots seems to be even darker. Hit by one of the endless cyclical moments of political crisis - with upcoming elections in Italy first and the incoming government's stance on disembarkation in the Italian ports and the government crisis in Germany afterwards - the progress made in late 2017<sup>5</sup> abruptly stopped in spring 2018. In the progress report on the implementation of the Agenda on Migration from March 2018, in the short paragraph dedicated to the legal migration pilots, rather than progress, we can read the Commission's call for 'concrete offers' from Member States. After a brief moment when legal migration seemed to 'emerge from oblivion'<sup>6</sup>, it went back to the bottom of EU's priorities: no mention of legal pilots in the Commission's note<sup>7</sup> ahead of the extremely tense European Council's meeting of June 2018 – and no signs that legal migration was considered at all during the summit<sup>8</sup>.

Is that surprising given the deteriorated political climate of the last six months? Probably not. Legal migration has always been the Cinderella of EU asylum and migration policies, the one for which the time was never right. The argument, espoused by both far-right and mainstream parties these days – and which influences the EU institutions' thinking to a large extent – is that irregular migration must not just decrease, but cease altogether in order to stimulate the appetite for widening channels for regular migration<sup>9</sup>. More, easier and safer legal ways to Europe could instead be the essential missing ingredient in the fight against irregular migration and smuggling, as they may be an effective tool to replace the often-despicable way in which smugglers match the labour demand and offer across states and continents.

After three years and vast resources spent on its 'containment policy'<sup>10</sup>, has the time come for a European legal migration policy? Or has this strategy contributed to crystallising migration as an inherently irregular phenomenon in EU and national policy-makers' eyes (despite the fact that millions already come to Europe legally every year, for example through family reunification channels)? And what are we losing while waiting for the 'right time' to come?

### **Who needs legal migrants anyways?**

It is often said that Europe needs migration to address the fact that its population is aging and thus its working age population is declining. It turns out that it's not really the case. Recent research conducted by the Centre of Expertise on Population and Migration<sup>11</sup> shows that Europe does not 'need migrants for demographic reasons'. Indeed, Europe's working population would continue to decline if migration is kept at the current levels in the next 45 years. However, that's only true if we also keep the same average rate of labour force participation. The latter rate varies significantly across the EU. If all Member States had the same policies for women's participation

---

<sup>5</sup> After the pilots were announced in the review of the Agenda from September 2017, the [November progress report](#) mentioned positive developments. The [Roadmap](#) from December 2017 planned for the first pilots to be launched by May 2018.

<sup>6</sup> Anna Knoll and Noemi Cascone, [The EU's migration agenda - what about legal migration pathways?](#)

<sup>7</sup> European Commission, [Managing Migration in all its aspects](#)

<sup>8</sup> European Council [conclusions](#), 28 June 2018

<sup>9</sup> An impossible scenario for legal (the right to asylum) and practical (the EU's sea and land borders with non-member states, as well as other routes such as those used by visa over-stayers) reasons.

<sup>10</sup> For example, 3 billion euros transferred to Turkey to fund the EU-Turkey deal and 4,3 billion euros earmarked for EU Emergency Trust Fund for Africa, which largely focuses on "improved migration management" (See Deutsche Welle, [Follow the money: What are the EU's migration policy priorities?](#)).

<sup>11</sup> The CEPAM is jointly run the Joint Research Centre of the European Commission and the International Institute for Applied Systems Analysis.

to the labour force as Sweden, the decline of working population in the next 45 years would be insignificant, even with the current levels of migration<sup>12</sup>.

But is 'do we need migrants' the question we should ask ourselves? Migration to Europe is likely to continue, driven by conflicts, climate change as well as economic, cultural and social drivers that we can investigate but are extremely hard to predict. Labour force shortages will continue to exist in the EU's labour market, if left unaddressed. The fundamental question is whether we want to make migration part of the solution, or continue to point at it as the problem. Demographic decline, labour force shortage, skills' gaps in the labour market... they could be addressed by a variety of policy solutions. Determining the 'best' policy combination depends on what we define as the best outcome. Economic growth? Full employment? Reducing levels of socioeconomic inequality?

### **The question we don't dare to ask**

Theoretically, the 2015 European Agenda on migration presented the fight against irregular migration and the need for legal migration schemes as complementary pillars of Europe's migration policy structure. But three years of 'containment policy' showed how financially and institutionally demanding it is to curb irregular migration. Even more so, it proved how difficult it is to reconcile labour migration policies with the pounding discourse of migration crisis and fight against irregular migration.

It is time to explicitly ask a more fundamental question - should the EU focus on putting obstacles to migration or accompanying it? The answer will not come from demography, nor economics. Migration can be part of the solution to Europe's demographic decline (and many other problems), but it is not the panacea. Ultimately, the answer depends on the vision of society we are pursuing. From that perspective, what Europe is losing while waiting for the 'right moment' for legal migration policies goes well beyond labour skills and working age population. We might lose migration as part of the solution, and with that the idea that diversities can complement each other and enrich us. In other words, we are losing the core of the European Union's fragile, young identity.

---

<sup>12</sup> Wolfgang Lutz, [Does Europe need migrants for demographic reasons?](#)