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Ferran Camas Roda

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THE APPROACH OF THE EUROPEAN UNION TOWARDS ECONOMIC IMMIGRATION FOR WORK PURPOSES

RÉSUMÉ

L'objectif de ce document est de traiter de l'approche qui sous-tend les politiques de l'Union européenne relatives à l'entrée de travailleurs migrants. Cet article étudie les politiques sur les migrations de travail adoptées par l'UE et ses États membres, la manière dont elles peuvent être restrictives ou favoriser certains travailleurs migrants. L'objectif est de déterminer s'il existe un modèle permettant de canaliser les intérêts des travailleurs migrants en Europe. Dans ce cadre, plusieurs mesures de prévention des migrations irrégulières vers l'Europe seront analysées. Enfin, des propositions seront formulées afin que l'Union européenne puisse se conformer au Pacte mondial pour des migrations sûres, ordonnées et régulières.

MOTS CLÉS: *Migrations de travail, travailleurs hautement qualifiés, Agenda Européen en matière d'immigration, Pacte mondial des Nations Unies.*

ABSTRACT

The aim of this paper is to address the approach underpinning European Union policies that deal with the entry of non-EU migrant workers. It will define to what extent labour migration policies adopted by this international organisation and its member states are restrictive, or whether preferences exist in granting certain migrant workers authorisation to work. In short, its aim is to identify whether a model for channelling the interests of migrant workers in Europe exists. Within this framework, several measures already on the table for preventing irregular migration to Europe will be analysed. Finally, proposals will be made for the European Union to achieve compliance with the UN Global Compact for safe, orderly and regular migration.

KEYWORDS: *Labour Migration, Highly-Qualified Migrants, European Agenda on Migration, UN Global Compact.*

The latest data provided by international institutions point to a relentless increase in the number of people migrating worldwide.

In 2017, the number of migrants reached 266 million people¹, including refugees and migrants with different and varied motivations and legal status. Multiple reasons exist for migration, among which migration for economic purposes is worth highlighting. Reasons for economic migration may range from investing in for-profit or non-profit activities to creating businesses. Obviously, labour migration, either as an employee or in a self-employed capacity, is included among these reasons. This paper will focus on work-related migration.

The main international institutions have recognized that the leading factors influencing migration are work-related. In other words, what drives migrants to leave their countries is the search for work and, consequently, the prospect of better living conditions². In fact, in 2015 the International Labour Organization (ILO) estimated that migrant workers accounted for 150 million of the world's 207 million working-age migrant population (15 years or over), of whom 11.5 million were domestic workers (women migrant workers, to be more precise). These figures led the ILO to confirm the significant scope of labour migration in different regions and production sectors, and to express the hope that their analysis would help better understand the inter-play between migration, labour market policies and the future of employment.

The underlying reasons for international work-related mobility are related to the living conditions in host countries (pull factors) and sensitive issues in the countries of origin (push factors). Both perspectives tend to form two sides of the same fundamental problem. Thus, to explain migration flows in search of better living and working conditions, several factors must be taken into consideration.

Firstly, income inequality between countries should be taken into account, particularly when low-income individuals suffer disproportionately greater social deprivation than individuals from high-income countries (a factor for migration that is further promoted when the two types of countries are immediate neighbours). Similarly, sending countries may have difficulties absorbing their rapidly growing populations. This is matched in receiving countries by the demographic imbalance caused by an ageing population, especially in Europe.

1 D. Ratha, S. Plaza, S. De, K. Schuettler, G. Seshan, N. D. Yameogo and E. Ju Kim, *Migration and Development Brief 29*, World Bank Group & Knomad: <http://www.knomad.org/publication/migration-and-development-brief-29>

2 International Labour Organisation, Organisation for Economic Cooperation and Development, World Bank Group, *The contribution of Labour Mobility to Economic Growth*, 2015: <http://www.ilo.org/wcmsp5/groups/public/>

However, special attention should be paid to one specific push factor, crucial for understanding migration movements in the decades to come. A World Bank Report has warned that the working-age population in low-income countries is set to reach 2 billion by 2050, while the employment created (800 million jobs at most) will not fulfil this labour need. The resulting imbalance will undoubtedly lead to an increase in economic migration.

The European Union and its Member States should acknowledge the importance of migration flows for economic and work-related reasons. The first section of this paper will address existing mechanisms in EU legislation and EU policies directed specifically at economic migration **(I)**. The second section will focus on analysing UN initiatives precisely to encourage the opening up of legal migration channels for labour migration movements **(II)**.

I - ECONOMIC MIGRATION MANAGEMENT IN THE EUROPEAN UNION

Managing economic migration specifically for work reasons is a competence which is not contemplated by the European Union (EU) in its founding treaties. More importantly, where labour migration is concerned, it is the Member States that are assigned the powers to decide the number of migrants they can accept.

To put this into context, it is worth remembering that the development of a common immigration policy falls under the competence of the EU. Underlying the conception and implementation of this policy, two fundamental principles should exist: solidarity and the equitable distribution of responsibilities among Member States, including economic responsibilities (Article 80 of the Treaty on the Functioning of the European Union, TFEU). Both principles are being called into question in the face of the European migration crisis in recent years, thus demonstrating the difficulties the EU has in clearly defining them³.

No mention has been made of human dignity in the anchoring of a common immigration policy. This shortfall should be corrected taking into account the value attached to human dignity as one of the founding principles of the European Union. On the one hand, the EU Charter of Fundamental Rights places the individual, regardless of nationality (or legal status, if we are referring to foreigners), at the centre of its actions. On the other, Article 21 of the Treaty on European Union makes a direct reference to respect for human dignity as one of the guiding principles for its actions in the wider world. This should be taken into account when EU foreign actions intersect with the implementation of EU migration policies. This is particularly relevant in the adoption of migration partnerships and agreements with third countries that entail the granting of visas, the fight against illegal immigration, or the readmission of returnees.

Nonetheless, the TFEU lays down in Article 79 that «the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in

3 H. Labayle, « La crise des politiques européennes d'asile et d'immigration, regard critique », *RFDA, L'Immigration et l'Union Européenne*, special issue, 2017, p. 897.

human beings». As previously pointed out, this precept is not aimed directly at regulating the channelling of migratory movements. However, we may consider it to be implicitly assumed if we understand this type of migration as being included in the objective of guaranteeing «effective management of migration flows». Nor is labour migration mentioned directly in the areas in which the European Union are called upon to intervene in order to harmonize Member State legislation: conditions of entry and residence, and standards on the issue of long-term visas and residence permits by Member States; the definition of the rights of third-country nationals residing legally in a Member State; illegal immigration and unauthorised residence, or combating trafficking in persons, in particular women and children.

The literal reference to labour migration in the TFEU is actually to assign responsibility, to a large extent, to Member States. The European Union limits its own powers to establish «volumes of admission» of third-country nationals coming from third countries to seek work, whether as an employee or in a self-employed capacity. This is the responsibility of each Member State. Accordingly, the historical assumption that migration is an issue emanating from the sovereign power of the State is protected. However, this historical view, vigorously defended by the States, should currently be seen as an outdated policy. The deep-seated acceptance that neither the EU nor Member States can manage great migration flows in isolation should serve as an incentive to reformulate the original EU Treaty in order to clarify the assignment of exclusive powers to States to determine the number of economic migrants they can accept.

Although Member States have been assigned competences in the TFEU to determine the number of migrants entering their territory in search of work, the EU also has legal instruments for channelling migration. The intervention level of the EU in Member State competences is in numbers of admissions, not in the regulation of conditions of entry for migrant workers seeking authorisation to enter the European Union. As the European Economic and Social Committee pointed out, the right of Member States to establish volumes of admission of EU migrant workers does not in itself mean that the Union is unable to attain «a high degree of legislative harmonization on the admission of economic migrants, which should be put in place progressively to facilitate an adjustment period for Member States»⁴.

Nonetheless, and to conclude, the current framework for economic migration necessarily calls for political dialogue between the Union and Member States. It cannot be left to the whim of economic cycles.

Ensuring Member States have the last word on the admission of migrant workers has resulted in them becoming an insurmountable hurdle in the adoption of labour laws in times of economic recession. In periods of economic stress, States tend to strengthen their protectionist policies in preference for the domestic labour market to fill job vacancies, thus preventing migrants from gaining access to employment. Hence, the decline in States accepting robust EU labour migration laws has become a tangible reality in recent years⁵.

4 European Economic and Social Committee, «El planteamiento de la UE sobre la gestión de la inmigración económica», *Libro Verde*, COM (2004) 811 Final, 9/06/2005: http://eurored.ccoo.es/comunes/recursos/99999/doc1754_Dictamen_del_CESE_694-2005.pdf

5 «Migration, human rights and governance», Handbook for Parliamentarians no. 24, *Inter-Parliamentary Union*, 2015.

These protectionist policies are faced with two kinds of problems. Firstly, since economic migration is generally the most important form of migration worldwide (apart from the frenzy of the refugee crisis a few years ago, which, by the way, included many strictly economic migrants), restricting access means constructing an insurmountable barrier to migration for work-related purposes, and consequently, to immigration in general. This has had a direct impact on the increase in illegal immigration.

Secondly, lack of access to Member State territories is not the same for all economic migrants. Some are worst affected than others in their chances of gaining entry to Europe. While highly-qualified or affluent migrants **(A)** can easily overcome the bureaucratic hurdles to enter State territories, the same is not true for medium or low-skilled migrant workers, or those that lack financial backing or job sponsorship **(B)**, who make up the majority.

A - THE EU PROMOTION OF HIGHLY-SKILLED VERSUS UNSKILLED LABOUR MIGRATION

Since the 2005 Policy Plan on Legal Migration was passed, the EU has not opted for a horizontal legislation model, applicable in general to all migrant workers, but instead has passed sector-based directives applicable to specific categories of immigration for work-related purposes⁶.

These Directives include: Directive 2009/50/EC for the purposes of highly-qualified employment; Directive 2014/36/EU for the purpose of employment as seasonal workers; Directive 2014/66/EU for workers in the framework of an intra-corporate transfer, or Directive 2016/801, which is not strictly work-related but linked to this issue, directed at migration for the purposes of research, studies, training, voluntary service and au pairing.

The EU has failed to address both situations adequately. To begin, in areas where a common immigration policy has been developed, a sector-based, fragmentary approach to labour migration has been implemented. As an exception to this fragmentation, it is worth mentioning Directive 2011/98/EU of the European Parliament and of the Council, of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. The importance of this Directive is that it establishes a «simplified common procedure» for citizens who apply to reside and work in the territory of a Member State as well as guaranteeing third-country nationals working in EU Member States the right to equal treatment in relation to certain social issues (working conditions or Social Security coverage, for example).

6 See E. Rojo Torrecilla, F. Camas Roda, I. Camós Victoria, F. Esteve García, M. Illamola Dausà, S. Rodera Sans, «Inmigración y mercado de trabajo en la era de la globalización», in E. Rojo Torrecilla (coord.), *Lex Nova*, 2006; M.L. Rodríguez Copé, «La política comunitaria de inmigración. Los extranjeros en el marco de la legislación laboral europea», in F. Navarro, M.C. Rodríguez-Pinero, J.M. Gomez (coord.), *Manual de Derecho Social de la Unión Europea*, Tecnos, 2011.

In order to subjectively define the scope of granting equal treatment to non-EU foreign workers, a «third-country worker» is actually defined as «a third-country national who has been admitted to the territory of a Member State and who is legally residing and is allowed to work in the context of a paid relationship in that Member State in accordance with national law or practice». Accordingly, although this definition of a «third-country worker» is confined to the purpose of this Directive, which, as we have seen, grants foreign workers a common right to equal treatment, it also has great importance for other workers protected by other Directives since, from the moment that their application follows the procedural route required by Directive 2011/98/EU, they will also be entitled to the right to equal treatment.

However, the conditions for the admission and residence of low - and medium - skilled third-country nationals are not specifically covered by Directive 2011/98/EU. Naturally, like the rest of migrants, low - and medium - skilled foreign workers can enjoy certain sets of rights regarding equal treatment and procedural safeguards under the protection of this Directive. However, their rights are not established under any specific EU admission scheme. In other words, no harmonized EU instrument exists for the admission of low - and medium - skilled workers⁷ (as is the case, for example, with the entry regulations for highly-skilled migrants). In this sense, the EU bodies responsible for assessing this situation have concluded that the consequences of the lack of harmonized regulations for admission and residence to attract low - and medium - skilled workers to the EU are difficult to evaluate in view of the different needs that Member States have regarding these groups of third-country nationals⁸.

The set of approved sector-based Directives mentioned above have different subjective scope since not only are they directed at specific migrant groups, excluding low - and medium - skilled workers, but they also distinguish the requirements for entry, jobs that can be done and conditions of residence. Taking this into account, I believe that, faced with the challenges posed by migration and labour policies in the EU, it might be advisable to reconsider a return to a horizontal Directive on conditions of entry and residence for foreigners wishing to enter EU territory in search of work, like the one that was unsuccessfully piloted in 2001 due to the rejection of Member States.

In this respect, the European Economic and Social Committee has opted for a (horizontal) global legal framework that lays down entry and residence conditions for third-country nationals entering the Member State territory for the purpose of paid employment, self-employed work, or other economic activities for a period of more than 3 months⁹.

7 «Legal Migration Fitness Check Final Evaluation Report - Supporting study», *European Commission*, written by ICF Consulting Services Limited, June 2018, p. 84.

8 *Ibid.*

9 See EESC proposals in the already mentioned position paper on *European Immigration Policy of 3 September 2014*.

We need to assess the importance of a single set of streamlined laws that ensure rational and uniform rights, protecting periods of stay or residence for which workers have been authorized. Nonetheless, a balance in the numbers of migrants admitted, whatever their category, needs to be struck. It is precisely this balance that is currently lacking. Conditions governing the entry of highly-qualified personnel or intra-corporate transferees to Member State territories are incomparably more favourable than for other categories of migrants (such as unskilled workers).

Member States can, in fact, implement their own national legislation in parallel with the European Directive as far as these types of beneficiaries are concerned. This is to ensure easier entry conditions for these migrants, who, in addition, are not subject to employer preference for workers of national origin in their search for employment. In other words, «volumes of admission» have not been established for these workers.

This legal framework has been further strengthened by the 2015 European Agenda on Migration¹⁰. It is based on four main pillars, which are: reducing incentives for irregular migration; securing external borders; a strong asylum policy, and finally, what its secondary scope points to in relation to the other pillars; the adoption of a legal migration policy.

Nonetheless, within the framework for this legal migration policy, the 2015 European Agenda on Migration has maintained the strategy of previous years, committed to «skilled» immigration. The European Commission has worked from the premise that Europe is heading towards demographic decline, and has a labour market increasingly lacking in skilled workers, especially in sectors such as science, technology, engineering and healthcare. Against this backdrop, the Agenda has promoted several initiatives to encourage work mobility and the recognition of qualifications. It has also amended the EU Blue Card Directive on highly-skilled workers in order to attract a greater number of third-country nationals in this category. In my opinion, the key issue continues to be the opening up of legal migration channels that tip the balance in favour of other categories of migrants being able to enter the European Union to work.

Despite this commitment, I believe that efforts should be made to channel the admission of low-skilled workers to Europe. Several statistical studies, with an impact on the EU itself, have shown that the need still exists for low - or medium - skilled workers, although a diversity of scenarios can be detected among the Member States. While some require workers for low- and medium-skilled jobs (especially in agriculture, fishing and care services), others are facing labour shortages in highly-skilled employment¹¹.

10 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. «A European Agenda on Migration», COM (2015) 240 final, Brussels: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/Europeanagenda_migration/backgroundinformation/docs/communication_on_the_european_agenda_on_migration_en.pdf

11 «Legal Migration Fitness Check Final Evaluation Report - Supporting study», *European Commission*, written by ICF Consulting Services Limited, *op. cit.*, p. 164.

These studies recognize that third-country nationals can play a key role in the EU, covering sectors with a lack of workers, especially in home care services, agriculture, transport, construction and tourism-related services, such as hotels and restaurants. More specifically, an increase in the demand for low- and medium-skilled workers is expected, especially in the retail trade and distribution sector.

Furthermore, although employment is expected to decrease in certain occupational categories, particularly manual labour and workers in general, the estimated net losses of employment will be compensated by the need to replace workers that have reached retirement age¹².

The essential issue concerning these data continues to be the opening of legal channels for migration that tip the balance in favour of granting other categories of migrant workers (not only the highly-skilled) the possibility of entering the EU to work.

The first problem arises from the fact that the Directives fail to define what a low - or medium - skilled worker is. The Blue Card Directive defines «highly skilled employment» as the employment of a person who «has the required adequate and specific competence, as proven by higher professional qualifications», thus linking the job done with the accreditation of qualifications in such a way that the accredited professional skills of the worker are evaluated. However, this precept does not define foreign workers who migrate to work in low- and medium-skilled employment, unless their qualifications (or skills, or competences) fail to meet the expected requirements as set out in the Blue Card Directive¹³.

In view of the above, and as a preliminary conclusion, I want to start by saying that common ground or complementarity should be sought between the *acquis* of legal migration for work purposes requiring certain qualifications and other EU policies, especially with regard to obtaining recognition of educational or professional qualifications¹⁴. Nonetheless, and in my opinion a priority issue, a formula should be adopted by Community legislation on third-country nationals seeking employment in EU Member States to categorize workers on the basis of their high, medium, or low-level qualifications. Aimed at anticipating future needs for low - or medium - skilled workers, the demand for vacancies in jobs of this type could be met.

In fact, voices are already warning that, in the current context of labour needs in the EU, the EU's legal migration *acquis* may not be relevant enough to address these future demands for skills¹⁵. In the face of this forecast, some wonder if harmonizing policies at EU level would be an effective way of addressing this issue. On the one hand, some argue that the entry and residence of workers is better regulated at the national level since national legislation can react more quickly to labour market changes. On the other hand, some have also suggested that the EU has the means to incorporate flexibility into the legislative framework, allowing EU involvement in policies for the admission of low-skilled workers¹⁶.

12 *Ibid.*

13 «Commission staff working document. Fitness check on EU Legislation on legal migration», {SWD (2019) 1056 final}, Brussels, 29/03/2019 SWD (2019) 1055 final, part 2/2, p. 166.

14 «Legal Migration Fitness Check Executive Summary of the supporting study», European Commission, June 2018, p. 116.

15 *Ibid.*

16 *Ibid.*, p. 90.

I consider that, faced with the social and labour challenges affecting the EU as a whole, and common to it (demographic ageing, the impact of the current technological revolution on its labour market, as well as the consequences of climate change)¹⁷, actions to address the channelling of labour migration flows should also be regulated by the EU from a broad perspective, with common minimum standards and in a harmonized way, including low- and medium-skilled workers (in other words, «poor» migrants). Only from a common, harmonized position, and not based on the individual interests of each State, can labour market challenges of such magnitude be faced. Not only are there social or labour policies to achieve this, but migration policy is one of the instruments that can be used to address these problems that are already occurring in the European market.

B- POLITICAL STRATEGY REGARDING THE OPENING OF LEGAL ROUTES FOR LABOUR MIGRATION

Developments in the doctrine set out in Commission Communications on the European Agenda on Migration point to the recognition of a long-term approach to opening up legal channels for migration. In fact, Communications of September 2017¹⁸ and March 2018¹⁹ on the implementation of the Agenda state that the Commission is prepared to coordinate pilot projects in third countries and provide financial support so that Member States commit to receiving a certain number of migrants through legal channels, «in particular including for economic purposes». This is a step forward in the recognition of the importance of this type of migration. However, no mention is made of what category of worker would benefit, although it is clearly work-related mobility that is being referred to.

Underlying these projects is the link between legal channels of migration for economic purposes and the cooperation of sending countries to stem irregular migratory flows and readmit migrants that have been expelled or returned from the country they are in. Thus, the EU policy approach to promoting legal channels of migration has been to establish agreements on economic migration issues with previously selected countries based on the control these countries have over illegal immigration and their willingness to readmit returnees from the European Union.

The 2018 Communication highlighted the fact that pilot projects for legal migration could be explored with some Member States that had shown interest in temporary and long-term migration, based not only on their labour needs, but those of certain third countries. In this respect, Member States have been called upon to make concrete offers in order to enter into negotiations with these third countries, with a special focus on Africa.

17 In the European Commission Staff working document on environmental degradation and migration accompanying the 2013 Communication on climate change, environmental degradation and migration, labour migration is seen as a good instrument to counter the effects of mass movements of people (Working document SWD-2013 Final).

18 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Delivery of the European Agenda on Migration, Brussels, 27.9.2017 COM (2017) 558 final.

19 Communication from the Commission to the European Parliament, the European Council and the Council: Progress report on the Implementation of the European Agenda on Migration, Brussels, 14.3.2018 COM (2018) 250 final.

To sum up, specific labour mobility agreements addressing strictly work-related issues and matters of interest for labour markets or the labour requirements of migrant workers have been discarded. The strategy for policy-making involves accepting economic migration subject to constraints from the immigration authorities; basically, the avoidance of illegal immigration.

However, in addition to the above, another issue concerns the European Union. Legal entry channels will only be activated once EU labour market needs have been identified and shortages detected. An evaluation must also be made of how agreed migrant quotas can help to cover these shortages, while guaranteeing more effective labour market integration.

This evaluation should consider whether the system responds effectively to labour demands in Member States to compensate skills gaps and demographic challenges, such as the increase in the old-age dependency ratio.

II - THE CONTRIBUTION OF THE UNITED NATIONS TO SAFE, ORDERLY AND REGULAR MIGRATION

In May 2016, the United Nations Secretary-General issued his Report «In Safety and Dignity: Addressing Large Movements of Refugees and Migrants»²⁰. It is based on the fact that, given our increasingly global and interdependent world, international migration will become more prevalent in the future **(A)**.

This Report puts forwards the measures to be adopted to address large-scale international migration based on three pillars: to uphold safety and dignity in large movements of both refugees and migrants; to adopt a global compact on responsibility-sharing for refugees, and what interests us here, to ensure a global compact for «safe, orderly and regular migration». To this end, the Secretary-General called upon Member States to develop a global compact based on the recognition that all migrants, regardless of their status, must receive the protection, respect and fulfilment of their human rights as provided for by the core human rights instruments **(B)**.

A - THE 2016 NEW YORK DECLARATION FOR REFUGEES AND MIGRANTS

On 19 September 2016, The United Nations General Assembly adopted the New York Declaration for Refugees and Migrants²¹ on the basis of this Report. Regarding commitments for protecting migrants, signatory states commit to cooperating closely «to facilitate and ensure safe, orderly and regular migration, including return and readmission, taking into account national legislation». It can be understood from this statement that the only beneficial migration for all parties is regular migration; that is, migration through legal channels.

20 United Nations, General Assembly, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, Report of the Secretary-General, 9 May 2016.

21 Resolution adopted by the General Assembly on 19 September 2016 (A/71/L.1)], *New York Declaration for Refugees and Migrants*: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1

Similarly, the Declaration states that «migration should be an option, not a necessity». Thus, the UN undertakes to take actions aimed at implementing the 2030 Agenda for Sustainable Development. Its goals include the eradication of extreme poverty and inequality; the promotion of peaceful, inclusive societies based on respect for the rule of law and international human rights; the creation of the conditions needed for balanced, sustainable and inclusive economic growth and employment, and actions to combat environmental degradation and ensure more effective responses to natural disasters and the adverse effects of climate change.

On this basis, one of the Declaration's most important commitments has been to launch a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration in an intergovernmental conference to be held in 2018. This commitment has the backing of all the States that make up the General Assembly, with the exception of the US, who has withdrawn.

As stated in Annex II of the Declaration, this Global Compact could include several elements, of which the most important is the potential opportunities that migration provides. Other elements include respect for the human rights of migrants, regardless of their status and the facilitation of migration by implementing planned and well-managed migration policies, including the creation and expansion of safe, regular pathways for migration.

Worth mentioning in this area is the Report of the Special Rapporteur on the human rights of migrants of June 2017²². The idea of developing a 2035 Agenda for facilitating human mobility within the framework of the United Nations was launched in this Report, and will run parallel to the 2030 Agenda for Sustainable Development. To address the issue of migrants' rights, the Special Rapporteur has favoured recognizing real labour needs and significantly increasing visa opportunities for migrant workers with all levels of qualifications. According to the Report, «with appropriate selection and organization, the numbers would be entirely manageable».

Special mention is made by the Rapporteur to the opening up of unskilled labour migration channels, and they insist that States should recognize and address the so-called pull factors, such as acknowledging labour needs in economic sectors that cannot be met by the local population. Accordingly, States should provide safe, regular, accessible and affordable mobility options to cover the demand for unskilled labour.

On the other hand, in December 2017 the United Nations Secretary-General presented an interesting report entitled «Making migration work for all»²³, aimed at promoting this global compact. Underlying this Report is an emphasis on its links to the 2030 Agenda for Sustainable Development. Basically, it highlights the importance of migration in reducing inequality between States, including gender inequality, especially when a significant part of the migrant population is made up of women.

22 *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, General Assembly, United Nations (April 2017): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/102/34/PDF/G1710234.pdf?OpenElement>

23 *Making migration work for all*, Report of the Secretary-General, 12 December 2017: https://refugees.migrants.un.org/sites/default/files/sg_reporten.pdf

B- THE 2018 GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

The Report establishes four fundamental considerations to take into account for the Global Compact for safe, orderly and regular migration. These are: maximizing the benefits that migration has for everyone; strengthening the rule of law to promote regular migration; setting up new security systems, and finally, meeting the challenge of large movements of people.

Focusing on the promotion of regular migration, the future compact should be based on the need to strengthen the rule of law. Migrants are required to abide by legal migration channels and move from one country to another in an orderly way. However, in order to achieve this, governments must open up regular migration routes in line with the realities of labour supply and demand. Promoting regular migration is easily justifiable for the UN Secretary-General. If Member States open up more diverse and accessible channels for regular migrants with different levels of skills, meeting the demand for properly managed labour markets, as well as promoting cooperation among states to connect foreign labour supply and demand, the number of irregular border crossings would be reduced. Similarly, the number of migrants working illegally and the abuse that many undocumented migrants face would also decrease.

In short, the Secretary-General has set out a global compact that provides a framework for a general policy to which Member States can commit. It is directed at increasing fair and reasonable legal access for both skilled and unskilled migrant workers, matching the number of migrants with labour market needs. Other motivations for migration, such as family reunification and education, have also been taken into account. In addition, the Report calls for support for specific practices that ensure decent work for migrant workers, while initiatives, such as regularization programmes should also be promoted for migrants in an irregular situation.

The Global Compact for Safe, Regular and Orderly Migration became a reality when it was adopted at an intergovernmental conference held in Morocco on 10 and 11 December 2018. Regarding economic migration, which is the subject of this article, the starting point should be the premise that is expressly contained in the Compact itself; that is, to delimit the regime for refugees and for migrants in general. Although individuals included in both categories have the same universal human rights and fundamental freedoms, migrants and refugees are different groups, governed by separate legal frameworks. Concretely, only refugees are entitled to specific international protection as defined by international refugee law. In contrast, the Compact (directed at migrants, not refugees) is respectful of the sovereignty of each country regarding the admission of migrants, since it reaffirms «the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction in conformity with international law».

However, I believe that despite the recognition of state sovereignty in matters of migration, two issues should not be overlooked. First, international law (emanating from both the United Nations and the International Labour Organization) to which States are also subject, is also applicable in key issues in migration processes, such as respect for certain rights of migrant workers in the country of destination (see ILO Conventions no. 97 or no. 143, for example), or even in a matter that is often approached over-zealously by States; that is defining when migrants are regular or irregular, and linking this categorization to the recognition of rights as laid down in the 1990 United Nations Convention on the Protection of all Migrant Workers and Members of their Families. Second, the Compact complements the acceptance of state sovereignty by presenting a «cooperative framework» that addresses migration in all its

dimensions. This means that, in my opinion, although the Compact confirms state sovereignty in the regulation of migration flows, it fails to strengthen it. In fact, the idea underlying the adoption of measures in migration matters, as set out in the Compact, is that these measures should preferably stem from multilateral agreements, rather than unilaterally.

The essentially multilateral nature of agreements has an important purpose in the issue of regular migration for economic reasons. On the one hand, its very name indicates that the migration movements it serves (i.e. the ones that receive support from the agreement reached) are regular, not the migration that takes place outside the legal framework of each state. Yet, having said that, I believe that the Compact seeks to promote regular migration for economic reasons, something that is not currently taking place. Thus, the 5th Objective of the Compact has been adopted to «enhance availability and flexibility of pathways for regular migration». Included in this objective is the following commitment adhered to by the signatory parties: «We commit to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration».

In short, the Compact highlights the need to open (regular) routes for labour migration, or, put another way, countries must open regular access channels for migrants seeking employment. Incidentally, this is the best way to prevent the increase in irregular migration flows.

In addition to this, special attention is paid in the Compact to migrants in situations of vulnerability. To prevent their exploitation, the Compact's 6th objective is to «facilitate fair and ethical recruitment and safeguard conditions that ensure decent work». On this point, the signatories accept the need to review existing recruiting mechanisms to guarantee that they are fair and ethical and «to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination». Note that the protection of «all migrant workers against all forms of exploitation» in this commitment must necessarily include irregular migrants because the decent work principle is also applicable to them. In other words, they are entitled to enjoy fundamental rights derived from the inherent dignity of the human being; in the case of work, undocumented migrants, like the rest of the workers, cannot be deprived of their labour rights.

Conclusion

The European Union must acknowledge the importance of a common policy to provide legal channels for economic migration. The policies implemented in this area have not been a top priority in the European Agenda on Migration, but rather have taken second place. Moreover, when labour migration has been addressed, it has received a diffuse, sector-based approach. This has led, among other consequences, to facilitating the entry of highly-skilled workers or intra-corporate transferees, while preventing the entry of unskilled migrant workers. The failure to accept unskilled economic migrants, partly due to EU Member States implementing their own national legislation to refuse admission – a practice which is accepted under the Founding Treaties – has led to an increase in irregular migration.

The development of the European Agenda on Migration is helping to pinpoint the importance of economic migration. Legal channels for this type of migration must be based on third countries, especially from Africa, agreeing to meet certain requirements in this regard. This is a first step, although aspects such as which categories of workers should be admitted by Europe remain unresolved. However, the labour market challenges facing the European Union should lead to a revision of its legislative *acquis* in order to permit the entry of low - and medium - skilled workers as well. Legislative harmonization on the part of the EU can be a useful tool in dealing with the common problems facing each Member State. Yet, voices have also been raised from the United Nations to promote regular migration routes for migrants seeking employment. The latest proposal was the important 2018 Global Compact, in which signatories have undertaken to adapt regular migration pathways to facilitate labour mobility.

FERRAN CAMAS RODA

Full Professor of Labour and Social Security Law and Director of the Chair of Immigration, Rights and Citizenship, University of Girona

Research Topics: Immigration, Decent Work, the Future of Employment, the Future of Work.

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