

# **UACES 42<sup>nd</sup> Annual Conference**

**Passau, 3-5 September 2012**

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**Circular Migration and New Modes of Governance: So What Are the  
Consequences?**

**Exchanging Ideas on Europe 2012**

**Old Borders – New Frontiers**

**3-5 September 2012, Passau, Germany**

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## **Introduction**

This paper concerns circular migration (CM) which is one of an array of new modes of governance which started to emerge in the 1990s. This was in response to the view that many of the European Union's traditional modes of governance had proved ineffective. In the case of migrant flows across the internal and external EU's borders no single actor has the power to solve the problem of managing the flows and dealing effectively with multilevel actors. The nature of the interdependent world means that in order for policy to be enacted successfully there is a need for cooperation between across borders and between the different areas of governance. However, this cooperation comes at a cost because of the very nature of the compromises that are required to make it work effectively. The instruments of governance are designed to deal with the very different situations that arise across the 27 member states (soon to be 28) and are seen as a way of supplementing established methods of governance (the community method) where attaining agreement may be difficult.

The paper examines the application of CM as a new mode of governance, as it applies to the movement of seasonal workers between third countries and the EU, with a special emphasis on the case of short-term migration from Morocco to Southern Spain. It challenges the "triple win" hypothesis that suggests that CM provides an improved outcome for migrants, employers and states. It demonstrates that, whilst appearing to be even handed and respecting the human rights of the participants, it achieves its effectiveness by ignoring the rights of individual workers and has created a system which strongly favours employers.

CM schemes have proved difficult to replicate because each member state has its own issues and protects its own sovereignty, despite the potential gains from cooperation. Indeed many of the aspirations concerning the ability of these schemes to create a stable migration environment have not been achieved in the teeth of the recession. Whilst CM seemed to offer a way forward to help resolve the issue of continuing high levels of irregular migration<sup>1</sup>, this is an issue that has started to be resolved by the depth of the recession. Therefore it would appear as if this new mode of governance is deeply flawed and does not provide a solid basis for developing future initiatives.

Finally, the very high rates of unemployment in Spain, the highest in the EU at 24.8% in June (Eurostat, 2012) 2012, means that conditions are such that it is no longer viable for migrants to remain there. There are signs that many migrants from countries like Morocco are now starting to return home in significant numbers. There are clear signs that this is an initiative which may have run its course. The elegance of the model cannot overcome the practical difficulties of running a scheme which does not fit the needs of the time.

## **The Migration Problem**

The problem of how to regulate the flow of workers into the European Union (EU) at a time of slow economic growth and recession whilst appearing to remain open and receptive to business has been on the agenda for some time. Especially since the completion of the single market and the implementation of the Schengen Agreement there have been increasing

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<sup>1</sup> The terms irregular migration and illegal migration tend to be used interchangeably in the literature

concerns about the growing number of opportunities for irregular migrants from third country states to move across borders. At the same time there has been a tendency for migrants stay in places long after the need for the additional labour has gone. But eventually, conditions do become untenable for migrants so they do start to return home, not spurred necessarily by incentives but more because the severity of the recession.

For the EU as a whole, there has been some agreement about the need for action to deal with what was seen as excessive flows of migrants. Whilst free movement of workers is an issue which was embedded in the original treaties, migration from third states is an area of shared competence. Individual states are by and large able to decide who enters their country from outside the EU, despite a common visa list. Member states also determine their own citizenship rules and hence access to the status of European citizenship. Against such a background the EU Treaties can have only a limited impact and the diversity of views on an appropriate strategy means there is insufficient consensus to enact binding legislation. The policy making field with respect to migration is too complex to be credibly harmonised in an adequate way.

In 2005 the European Council noted;

“... the increasing importance of migration issues for the EU and its Member States and the fact that recent developments have led to mounting public concern in some Member States. It 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.” (Council of the European Union, 2006)

In response the Commission produced its Global Approach document which called for a comprehensive European migration policy (European Commission, 2006). In 2007 the Commission strongly advocated CM and Mobility Partnerships as part of its approach; they suggested that CM could create an opportunity for workers from third countries to come to the EU temporarily for work, but then return back to their country of origin. (European Commission, 2007). The theme was then repeated by the Commission as part of their Global Approach, Mobility Partnerships where mobility partnerships were described as being an innovative and sophisticated tool (European Commission, 2009, p. 4).

This was followed by numerous policy initiatives and a readdressing of the problem in 2011 with another review of the Global Approach which aimed to update the issue taking into account the developments in the Southern Mediterranean (European Commission, 2011B). This new burst of policy action was in part stimulated by the environment for migration

becoming increasingly hostile. One reason was the threat of significant migrant flow emanating from the Arab Spring in 2011 and 2012; although it is clear these flows were not as large as were first feared. In May 2011 the Commission produced a paper dealing proposing a response to the situation in the Southern Mediterranean (European Commission, 2011A, p. 10). It made the point that each state needed to determine its own willingness to admit economic migrants, including facilitated legal frameworks for labour migration, including CM of seasonal workers.

Carrera (2011) makes the point that mobility partnerships<sup>2</sup> are political declarations that fall outside the classical remits of European law or International law. They need to be seen as an experimental method of external governance. They are not legally enforceable and are an attempt at Europeanization through policy coordination on migration management. They do allow flexibility and for member states to have different strategies. The same applies to CM schemes that are associated with these initiatives. Carrera, suggests that the unbalanced nature of the partnerships may explain the lack CM schemes operated by the member states (Carrera, 2011, p. 20)

### **New Modes of Governance**

The EU's Aeneas programme along with others was an EU funded a scheme to promote cooperation and coordinate CM between Cartaya in Spain and Morocco. The programme, was quoted as an example of how well CM can work, and by implication, reduces the extent of illegal (informal) migration. (Aiolfi, 2011) There were of course different CM schemes in operation throughout Southern and Eastern Europe so the AENEAS-Cartaya scheme cannot be regarded as a uniform example, but it offers an important lesson as a case study of how such schemes work. CM has been promoted by the EU as an innovative solution to resolve one of the pressing political problems facing the member states. The scheme had many aspects of what are described as new modes of governance, in that there was a hierarchy of decision makers involved, including the EU, a member state, a third state, regional authorities and private employers. No scoreboard of comparative achievement was involved, although the extent to which participants in the scheme actually returned home was an important indication of success. Curiously though, the numbers of individual participants reappearing as part of the migration process was not an important indicator of success.

No single actor has the power to solve the problem of migration across the internal and external borders of the EU and deal with effectively with multilevel actors. The nature of the interdependent world means that in order for policy to be enacted effectively there is a need for cooperation between across borders and between the different areas of governance. In the most recognisable sense, agreement for legislation in traditional domains is the most recognisable form of conducting business. In a more exotic form there may be public and private institutions taking part and this may mean cross border cooperation. These are seen as a way of speeding up cooperation where member states are unwilling to cooperate on a

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<sup>2</sup> There are three mobility partnerships in force Moldova, Cape Verde and Georgia, although partnerships with Armenia, Tunisia and Morocco may emerge.

formulated plan of action. In some case they may be hostility to the initiative or simple regard it as something not worthy of their consideration.

The EU is an organisation which has had to innovate in order to meet challenges of governance. One way of dealing with the multiplicity of decision points within the EU is to recognise the diversity and need for subsidiary but at the same time try to keep to the common EU objectives by following innovative schemes. The hope is that if the outline of the scheme is well understood, then there can be learning about the outcomes and where there has been success, other states might emulate the methodology employed. In this way policy can move forward without fragmentation but at the same time the need for centralisation of policy is avoided, until at such time there is agreement as to where policy should lead. However, new modes of governance should not be the sole instrument of policy, but a useful set of possible tools to move the agenda forward. So behind them would be EU regulations and directives as well as structural funds, social dialogue and action programmes.

The problem with new modes of governance such as CM imitative is that there are many variants of the scheme, which means that procedurally things can be very different in the different states and regions. At the same time it is not clear how convergence can take place in a practical sense because it is not clear on the bigger stage if there is a desire to see the uniform policies developing or a range of consistent outcomes. Finally, new modes of governance may be seen as a way of avoiding new social legislation.

The need to reform the way that the EU makes its' decisions has been a constant theme throughout the organisation's history. This led to the treaty changes that took place over time, but of course there have always been limits to the extent that this might work to resolve the EU's governance issues. The 2001 the White Paper "European Governance" (European Commission, 2001) proposed greater opening of the decision making process to more people and organisations in order to promote greater transparency, effectiveness, and accountability. The paper proposed greater EU consultation as well as greater flexibility into how legislation could be implemented in a way which took account of regional and local conditions. Importantly, this could be done by promoting the greater use of different policy tools. These tools might well involve a; "dialogue with governmental and non-governmental actors of third countries when developing policy proposals with an international dimension" (European Commission, 2001, p. 27).

New modes of governance cover a wide range of initiatives which help to solve the complexity of decision making in the EU without recourse to formal legislation, at least in the early stages of policy development. In the case of CM, as in other areas it is applied where the EU has the least degree of legitimacy (Heretier, 2002). In effect, new modes of government, where they are successful, allow the Commission to expand its' area of competence without having to face the same level of hostility from the member states. Migration is a policy area where there is shared competence and where the EU's powers to legislate are very limited. Importantly, the power to permit entry lies with the member states. Migration issues tend to involve multilevel actors and illustrate the problem of policy making in an interdependent world. The EU, having sponsored a number of CM schemes and made a

number of proposals to integrate initiatives into a legislative form, has given the impression that the Commission has the right of initiative in an area well beyond its normal competence (Mosher & Trubeck, 2003)

In this case we are discussing the links between the EU, Spain's regional government, employers and a Moroccan Agency. There are therefore co-regulators involved with the private sector being responsible for the support of migrants as well as the state. Although attempts have been made to regulate CM at an EU level, the cases that are dealt with are very different and winning agreement is very difficult. For example the differing views about the need to regulate seasonal workers entry into the EU from third countries.

The success of the Commission regulatory initiatives depends upon how well individual schemes work. From these, there can be an aggregation of good practice which feeds into a willingness legislation and the mainstreaming of policy by the adoption of appropriate directives. But there is no guarantee that these schemes will enhance the legitimacy of EU policy. (Idema & Kelemen, 2006). The schemes can be very diverse so that attempts to aggregate policy in a way which addresses all needs can be said to amount to reductionism. The trenchant defence of the powers of the nation state by the use of the principle of subsidiarity is most likely to be found in cases where policy initiatives are very diverse. If there is significant evidence that the pilot schemes appear to be flawed with unanticipated outcomes, then support from key groups may be withdrawn. Finally, as Cran (2011, p. 649) points out, it could be that some new modes of governance may act as a fig-leaf for undemocratic practices by enhancing the role of unelected institutions.

### **Circular Migration**

CM is seen as an important development in the armoury of the EU and the member states in their wish to promote a more balanced approach to managing migration. It involves dialogue at the EU; member states, third countries and private organisations to bring schemes to fruition. The Commission claimed for example that as long as appropriate safeguards are in place that CM of third-country national seasonal workers: "will potentially benefit the country of origin, the EU host country and the seasonal worker him/herself." (European Commission, 2010, p. 10) By dealing with the different levels of interest governing seasonal migration a more flexible policy can emerge that is sensitive to the needs of all parties.

CM as a term started to appear in the literature as early as the 1960s and 1970s and referred mainly to migration within states. Since that time the term has evolved to encompass cross border migration and can be seen in operation in different regions of the world having been proposed as part of the solution to deal with illegal migration into the United States for example (Newland, 2009, p. 6). It should be seen as a way of ensuring that migration takes place via a means of choice rather than by compulsion (Newland, 2009, p. 4)

CM initiatives involving the EU, member states, third countries and regional organisations may reasonably be described as part of the wave initiatives which are called new modes of

government<sup>3</sup>. There were a number of pilot schemes in operation sponsored by the EU starting at the beginning of the new millennium (European Commission, 2007) These pilot schemes and the policy promotion of the Commission saw CM as a favoured policy response to problems of illegal (informal) migration.

It was an approach which was said to have a number of practical benefits. This article is concerned with the type of CM which has been defined by the EU:

“...as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries.” So that “CM could create an opportunity for persons residing in a third country 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.” (European Commission, 2007, p. 9)

Therefore CM (CM) is characterised by a repeating cycle of temporary migration in which workers move backwards and forwards between their home country and a host nation, to perform temporary work contracts. This is often linked with seasonal work usually more affluent host countries, where large numbers of workers are required at specific times. There is no exact and formal definition of what CM is, because it can take different forms based on the specific circumstances of the time and place. However, in a European context it can generally be taken to be the ability of employers to take on workers from outside the EU, with the prospect that they will return as needed after their contract has been completed. This therefore implies that workers can also return back at another time, should they choose to do so and given that they have behaved in a way which is acceptable to their hosts (Terrazas1, 2009).

The tendency is to see CM as being something of a partnership, where it is hoped that both the donor and the receiving country gain as well as the individual migrant worker. In this sense, it is envisaged that, because the same individuals could be involved over several years, there may be a payoff to the training of workers. Newland and Terrazas make the point that; “Employers have little interest in training a migrant whom they will never see again for higher skills or responsibility.” (2009) CM is therefore said to have a triple benefit. The host nation receives the workers it wants; the migrant will have additional income and may acquire new skills, whilst the economy of the donor country may benefit from remittances sent home and perhaps an enhanced workforce.

### **The Developing Circular Migration Strategy**

The development of policy with respect to CM happened over a period of time, responding to Treaty changes, external and internal political events and the pressure of migrants attempting to enter the EU have done so for a number of economic, social and political reasons. In economic terms, despite ever more sophisticated monitoring devices and careful controls, it was always been difficult to achieve a reasonable balance between the numbers who wish to

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<sup>3</sup> Along with the Open method of Coordination, self-regulation, voluntary agreements and economic instruments.

migrate into the EU and the numbers needed to meet labour market shortfalls. Administrative methods of control could not take account of the ingenuity and in some cases the desperation of migrants to achieve work in the country of their choice. Family ties, income levels, cultural understanding and opportunism have all played their part in incentivising migrants to circumvent restrictions, especially when, even complying with regulations has meant rejection. The flow of economic migrants into the member states have often hit a peak when the receiving economy is expanding but these migrants have rarely wished to return in sufficient numbers when there is a setback. This therefore suggested that if the numbers of migrants were to return to a satisfactory level for the receiving country, there needed to be a better way of managing the flows. The voluntary return of temporary or permanent migrants has generally been seen as being a positive aspect of overall economic development. In the ideal world at least, many of the returning migrants should have acquired new skills and resources which they may be prepared to devote to the country of their origin.

As early as 1994, the Commission expressed the view that EU immigration policies should favour legal migration as against illegal migration (European Commission, 1994). With the entry into force of the Amsterdam treaty in 1999 and the Tampere Special European Council (Council of the European Union, 1999), the main components of the creation of an area of freedom, security and justice started to be put into place.

The Council called for the creation of an area of freedom security and justice, which by the nature of things meant better management of the flow of migrants. To create such an area there needed to be careful monitoring of the EU's external borders to enable internal barriers to be removed. This was an acceptance that the existing approaches to migration were not appropriate. There was a need to move beyond regarding migration policy as part of the approach free movement of labour and to establish a common EU asylum and immigration policy. It recognised the principle that such a policy must encompass co-operation with the third countries. This should involve a dialogue with the governments and the migrants and take account of the development needs of the country of origin (European Commission, 2000).

The process of dealing with illegal migrants across the EU's external borders became particularly pressing in the new millennium and this led inevitably to moving forward an agenda based upon cooperation with the EU's neighbours. The European Council held in Seville in June 2002 suggested that;

“...an integrated, comprehensive and balanced approach to tackling the root causes of illegal immigration must remain the European Union's constant long-term objective. With this in mind, the European Council points out that closer economic cooperation, trade expansion, development assistance and conflict prevention are all means of promoting economic prosperity in the countries concerned and thereby reducing the underlying causes of migration flows. The European Council urges that any future cooperation, association or equivalent agreement which the European Union or 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.” (Council of the European Union, 2002, p. 33)

The Commission called for an effective legal migration policy involving the management of flows by third countries. There was to be a special emphasis on the equal treatment of legally employed foreign workers. The use of temporary working permits was seen as one of the ways of regulating the demand and supply of low skilled labour and reducing the flow of illegal migration into the EU (European Commission, 2002, p. 23). In order engage third countries it was acknowledged that there had to be incentives to reward engagement by the third countries being willing and able to engage in the process (European Commission, 2002, p. 4)

As the new millennium progressed, so did concerns about how to manage migration, in part because of the perceived security threat following the terrorist attacks in New York on 11 September 2001 and Madrid in March 2004. There was also growing concern about the level of illegal migration and the extent of fatalities as migrants tried unsuccessfully to penetrate the EU’s southern and eastern borders.

One of the solutions which emerged from the EU in the new millennium was the concept mobility partnerships and operating within this context schemes to promote CM. The November 2004 European Council (Council of the European Union, 2004) endorsed The Hague Programme and called for;

“... a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market” (Council of the European Union, 2004, p. 10)

Such a policy, would not involve any significant loss of sovereignty, as it was always recognised that any proposals could not undermine the right of the member state to determine which third country nationals from third states entered their country (Commission of the European Communities, 2005A, p. 4).

CM (of different types) could, it was believed, maximise temporary migration to the benefit of the donor and receiving countries. Such schemes would give priority for future temporary migration to workers, who had returned voluntarily at the end of their contracts. (European Commission, 2005A, p. 7) These schemes were a great deal more feasible given the growth of more affordable air transport and the speed at which job opportunities could be communicated (European Commission, 2005A).

In its 2005 Policy Plan on Legal Migration, the Commission proposed that a directive be produced which set out the conditions of entry and residence of seasonal workers (also one for highly skilled workers). It was acknowledged that seasonal worker would be needed in sectors such as agriculture, construction and tourism, largely because many of these jobs were of little interest to many workers in the member states. Multi seasonal permits were

thought to be a good idea to avoid workers falling into illegality (European Commission, 2005B, p. 7).

In December 2006, the European Council asked the Commission to produce proposals to integrate opportunities for legal migration into the EU's external policies in order to create a balanced partnership between third countries and the member states' labour market requirements needs. In particular the Commission was asked to suggest ways to ensure the effective protection for vulnerable migrant groups while respecting the competences of Member States. They were asked to give consideration as to how:

“..legal migration opportunities can be incorporated into the Union's external policies in order to develop a balanced partnership with third countries adapted to specific EU Member States' labour market needs; ways and means to facilitate circular and temporary migration will be explored;” (Council of the European Union, 2007, p. 9)

The Commission's response was to propose that mobility partnerships be negotiated between the EU and third countries to manage migration flows and to fight illegal migration in exchange for enhanced possibilities for mobility (European Commission, 2007). The Commission proposed that there be a limited number of pilot partnerships to test the concept's feasibility. They recognised that many of the arrangements for these mobility partnerships would require close cooperation between the EU and the member states and that legal migration from third states would fall within the remit of the individual member states. In particular they felt that third states must be prepared to accept the return of their own migrants and discourage illegal migration. Of course the Commission called for a commitment of third countries to promote productive employment and decent work and improve social and economic conditions so as to reduce the incentive for irregular migration. This of proposal would suggest that development issues of third states could be easily resolved.

The Commission had existing experience with providing assistance to third countries in mobility partnership schemes and gave the example of the MEDA project to support the Moroccan National Agency for Employment and Skills (ANAPEC). Other schemes with various member states ranged from those covering the Western Balkans, Egypt, Tunisia, Colombia and Ukraine (European Commission, 2007) indicating that the Commission was well on the way to developing CM methodology prior to official policy pronouncements.

Whilst the experimentation with CM went ahead and produced some interesting results the advent of the recession and a growing public disquiet about the level of migration, especially into the EU, led to the European Pact on Immigration and Asylum. This was a statement of purpose and called for an annual discussion on migration issues in the Council of Ministers (Council of the European Union, 2008)

In 2010 the Commission produced a further draft directive dealing with the issue of migration of seasonal workers; which would give fair and transparent rules for entry and residence, but at the same time ensure that migrants return home (European Commission, 2010) The issue was considered to be important, despite the recession, because it was felt that there would be

a more permanent need for short-term unskilled labour because national workers found these tasks unattractive. Also it was these sectors which were prone to hiring illegal workers. The proposal was said to comply with that of all EU policies which required a high level of human health protection and respect for human rights and be non-discriminatory. The aim was to provide a common legal framework for seasonal workers across the EU. The proposed directive did not contain anything which suggested the right of entry of workers, only the conditions which by which they were to be treated. The period of time for the workers to remain was suggested as a maximum 6 months, so that the work covered was genuinely seasonal. Single season or multi-seasonal permits (up to three years), where the work was stable, could be issued.

The EU's justification for intervention was fourfold. The first was that one member state's decision on migrants could impact on other member states. The second was that Schengen requires rules to reduce the risk of overstaying. The third concerned the need to overcome exploitation of workers. Finally, there was a need to ensure that the need to have a global approach when dealing with third countries. However, migration is a policy area where competence is shared between the member states and the EU, in which case EU intervention had to be justified by the principle of subsidiarity (House of Lords European Union Committee, 2010, p. 4). In the UK's case, it was felt that where there was a need for seasonal migrants, they could rely upon migration from within the EU, a process which should become relatively simple once the post 2004 accession restrictions run their course. However, Spain has relied upon workers from within the EU, Latin America and crucially (for seasonal work) from North Africa. For the UK therefore the process could be managed mainly by market forces, although the UK did control the activities of gang masters to try and limit the danger of exploitation in its domestic legislation. From the House of Lords' perspective, EU legislation was unnecessary and contravened the principle of subsidiarity. In particular, attempts to control this area contravened the rights of member states to regulate which third country nationals entered their territory.

For Spain, the choices generated by the EU labour market are less, and there is a need for seasonal workers from outside the EU who are required to return home. EU law with respect to working conditions applies to all labour that is hired, but access to benefits varies for non-EU citizens, depending upon their country of origin. Also the actual process of hiring of labour depends upon the member state concerned. So focus of attention tends to be on the labour market requirements of that state, rather than the needs of the actual migrants. In this respect the migrant's needs are essentially an afterthought, and although negative outcomes for migrants are not sought, they may still arise.

### **Bringing the Migrants to Europe - Taking Part in the Scheme**

It is easy to understand the economic imperative for participating in CM. Only 52% of Morocco's population was reported as being economically active, with 61% of the agricultural labour force being women (World Bank, 2011). About 40% of the population work in agriculture, where traditionally there is a high degree of underemployment. The level of unemployment in Morocco appears comparatively low. It was reported to be standing at

8.7% by the end June 2011 which was under half the level for Spain, but with substantial underemployment, especially in the countryside. But 30.2% of Moroccans less than 34 years old were unemployed and unemployment in the cities was reported to be 13.5%. (News, 2011)

Morocco's gross national income (GNI) per capita was \$2850 US per capita in 2010, compared to Spain's at \$31,650 US, although the Moroccan economy recovered from the recession relatively quickly compared to Spain. However, the main intensive agricultural areas like Huelva in Spain are generally located in one of the impoverished regions where average incomes are much lower. Even though workers only earn €37.06 for a 6.5 hour working day, this represents a massive increase in their individual earnings potential compared to what they might expect to get in Morocco<sup>4</sup>. They are expected to work at least 39 hours per week, during the strawberry season (officially from 15th March to 15th June) Sunday is considered a working day. Workers are typically employed for between 2 to 8 months.

Farmers are expected to anticipate their need for migrant workers in advance, although the process cannot be entirely precise because of the vagaries of the weather and the availability of domestic labour. Once they have decided what they want in terms of numbers. The selection of the workers participating in the CM scheme discriminates against certain groups of workers and the process does not comply with Spanish equality laws. Moroccan workers taking part in the 2007-8 seasons organised by the AENEAS-Cartaya programme were required to be female, between 18 and 40, from a rural area with agricultural experience, be in a good physical condition, married, divorced or widowed and with dependent children under the age of 14 (GAATW) Global Alliance Against Traffic in Women.

The cost of travel to and from Spain is met by the employers, although the cost of the work permit (€66) must be met by the worker (a potential source of indebtedness). Once workers arrive in Spain they are bused to the centre where they are to work – a cost met by the employer). At that point they sign their work contract, although this is in Spanish and therefore not comprehensible to many of the women who participate in the scheme<sup>5</sup>. Workers are paid €37.06 per day and work a 6.5 hours a day and 39 hours per week. Very basic barrack type accommodation of a reasonable standard is provided by the employer on site.

Within the context of the European Union, it can be seen that CM is also perceived as an effective method of combating illegal immigration. Illegal migrants are replaced with temporary workers who are able to legally enjoy on-going employment benefits linked to the labour requirements of the host nation.

## **Circular Migration: Spain and Morocco**

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<sup>4</sup> They might earn three times the annual average Moroccan wage in the six months that they work in Spain, with relatively low living costs.

<sup>5</sup> There is also a high level of illiteracy in Arabic

The potential for CM can be illustrated by the movement of workers between Spain and its former colony Morocco. Traditionally, workers have migrated illegally from Morocco to participate in Spain's seasonal work, such as harvesting. Farmers have found it expedient to hire illegal workers, partly because they can be employed on a flexible basis, matching the farmer's uncertain and variable requirements. There was a financial advantage in employing illegal workers because they typically commanded considerably lower wages than legally employed workers. This practice has continued despite government action to curtail illegal migration into Spain (e.g. the new Immigration Act approved on the 26th June 2009, which seeks to prosecute "those who instigate and support illegal immigration"). However, the enforcement of labour laws has suffered from a shortage of Labour Inspectors in the past. (Domínguez, García, & Delgado, 2009)

CM schemes have been implemented as a solution to the problem of illegal immigration relating to agricultural work. An example of this is the AENEAS-Cartaya programme, which started operation between Spain and Morocco in 2005, allowed for the CM of Moroccan workers into Cartaya (Huelva), southern Spain, to engage in seasonal strawberry harvesting work (European Commission, 2009). An EU funded scheme "programme de gestion intégral de l'immigration saisonnière (2005/103564)" had operational dates of January 2006 to June 2008 with the lead partner being the Municipality of Cartaya. The project was estimated to cost €1.495.000 of which €1.196.000 came from the EU's AENEAS 2004 budget.

The aim was to establish a legal system to manage the seasonal migration of Moroccan workers to assist the planting and harvesting of the strawberry and citrus fruit crops. In particular employer-worker relations were to be managed and be assured that workers returned home at the end of the season. Two "Seasonal workers Centres" in Benslimane and Cartaya were established, and an Internet server was put in place for communication between these two centres. An NGO was created to ensure that the programme was sustainable.

The agricultural economy in Huelva requires about 90,000 seasonal workers. One third of this demand is met by local inhabitants; another third comprises Spanish workers from other regions, or resident immigrants with work permits who travel to Huelva. The remaining third was in the past, sourced from foreign workers recruited in their country of origin, including Moroccans participating in the AENEAS-Cartaya-Morocco programme. Typically, these workers deliver 300,000 tons of strawberries during the harvest season (Jimenez, 2009) However, the first years of this programme highlighted a major concern with CM: in 2005, only 10% of the Moroccan workers who migrated actually returned to their home country at the end of their seasonal contracts. In 2006, again, only 50% of migrants returned home. The workers who remained simply became the illegal immigrants that the Spanish government had sought to replace.

There were in fact considerable incentives for workers to return to Morocco under the AENEAS-Cartaya programme. Workers were "guaranteed" to be able to return in subsequent

years, and after several years could potentially earn residency rights in Spain<sup>6</sup>. The failure of workers to return was linked with the fact that mainly young men were recruited into the programme. In order to try to combat this problem, subsequent years saw the exclusive recruitment of young women with children. These young mothers left their children in Morocco, and travelled to Spain to work for periods of several months. This development of the scheme really amounted to using the family as a hostage to ensure the worker's return. It was considered much more likely that these women would return home at the end of their seasonal contracts, in order to be reunited with their children, but if they do not, then they face problems of trying to reunite at a later date and they would be unlikely to be able to return under the CM scheme.

In 2007, 12,000 women travelled from Morocco to Huelva to work under this programme, and 95% returned voluntarily at the end of their contract; a considerable improvement compared to previous years. The substitution of male workers to female workers with children has effectively solved the problem of workers not returning home. Moroccan females are also perceived as good workers by their Spanish employers, partly because they are traditionally familiar with agricultural work, and are considered to produce higher quality work than their male counterparts. In 2008, the programme expanded further with more than 18,000 women participating (Andrew J. and Jiménez, 2010). The women workers displaced many of the male African informal migrants, who might have taken up such roles in the past. (Bozonnet, 2010)

Spain's worsening economic situation caused the government into a major reduction in participants in the scheme, so that the numbers dropped from 183,600 in 2007 to less than 20,000 in the country as a whole in 2009. The number of legal fruit pickers in the Huelva area, which were the largest group, dropped, from 16,500 in 2009 to 4,500 in 2010 (Bozonnet, 2010). This demonstrates that the introduction of CM also further politicised the process of temporary migration by introducing limits which are heavily influenced by the levels of domestic unemployment. It is tempting to see the controlling of migrant flows as the main driver behind the programme, rather than the participant's welfare.

This situation was not well received by the employers who suggested that there would be a shortage of suitable workers. Despite the high level of unemployment in 2011, the Secretary of Social Policies in Huelva (UGT), Francisco Javier Perez, suggested that Huelva farmers had asked for 4,800 CM workers, a similar number to last year." (Globedia., 2011)

However with very high levels of unemployment in Spain, many Moroccans started to return home. The process started as early as 2006 and 2007, but by 2012 unemployment amongst the 780,000 Moroccans based in Spain was running at over 50% and large numbers started to return back to their home country (Saidi, 2012).

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<sup>6</sup> The fact that workers were rarely resident long enough to qualify for this benefit was generally overlooked.

### **How much of a “triple gain”?**

The programme has brought tangible social benefits to the Spanish and Moroccan communities. Firstly, it has helped to combat racist sentiments in Spain, by replacing fear with a largely positive experience of migrant communities. Secondly, it promoted the employment of women in Morocco, which has traditionally been restricted. The AENEAS-Cartaya has helped to emphasise positive aspects of the employment of women. Finally, it has helped to maintain ancillary employment in areas where there was a lack of locally based labour for the harvesting of crops.

The success of this programme is further reflected in the farmer’s requests to continue the programme after the economic downturn. Following the serious rise in unemployment in Spain after 2008, the government has sought to curtail CM programmes in favour of unemployed nationals. This development has not been supported by farmers: as Marañón-Abreu et al. point out, strawberry farmers prefer to minimise uncertainty in the production cycle. This is because of the large “up front” costs: planting in the most expensive part of production. Farmers perceive the local labour force to be unreliable and unaccustomed to hard physical work, and fear that the investment of planting may not be converted into profitable harvest if they are reliant on local planters and pickers. Farmers in Huelva preferred the reliable Moroccan workers provided by AENEAS-Cartaya, to the extent that they reduced planting in response to reductions in availability of CM workers (Rafael Marañón-Abreu, 2011)

The strength of the CM schemes is that it is claimed that everyone who participates in it gains. The EU and the individual member states look as though it is still open to migrant workers, so there should be less reason to risk participation in illegal and informal migration. However we know that only those who can be “trusted” to return home are recruited. This means that CM is targeted at precisely those workers who are less likely to engage in illegal migration in any case. However, CM should reduce the temptation of employers to employ illegals, although the main disincentive should be the rigorous enforcement of labour laws, with high fines for those who transgress.

### **Vulnerability and Abuse**

The situation of many women in Morocco is generally not good. Attempts have been made to improve the status of women in Moroccan, but it is still essentially a patriarchal society where women tend to be excluded from public roles. Indeed, prior to 1993, Moroccan women required marital authorisation to enter employment. The removal of this restriction represented a step to gender equality in employment law. Despite the removal of legal barriers, inequality persists with almost two thirds of Moroccan women being unemployed (Jadidi, 2008) In spite of greater independence being given to married women they still require permission from their husbands before engaging in CM. Women who work abroad also risk bringing shame to themselves and families (Nieto, 2009)

Despite the very positive aspects of CM, and AENEAS-Cartaya in particular, some serious and perhaps sinister aspects of these programmes have started to emerge. Employers, despite

the regulation of the sector, are in a much more powerful position. They can insist upon informal conditions which might well be totally unacceptable in a normal open market situation. Working conditions are harsh in the open fields and in the polyurethane tunnels where the crops are grown, certainly not at all acceptable to many Spaniards, hence the need for the migrants in the first place. The migrant workers, who receive the same minimal wages as their Spanish counterparts, are expected to work hard, within their regulated hours and in the odd, extreme case, they may even be expected to provide sexual favours. Moroccan women do not have a feminist mentality which might enable them to resist this kind of abuse.

Questions have been raised concerning the ethics of deliberately separating young mothers from their families in order to fulfil other socio-political objectives. Groot and Verberne consider that “mobility can include direct costs, opportunity costs and psychological costs” (1997). The potential psychological consequences of participating in CM schemes can be enormous. The women have to leave their children and husbands in order to be eligible for this kind of project, and there are effects on their families themselves. For example, Saida Zwin, a mother of four, is on her third season picking strawberries but not satisfied with her temporary status. Speaking in Arabic through a translator, she stated, "My husband is going crazy, left all alone." (Gerson, 2007)

Certainly, the participants in this programme are essentially forced and vulnerable migrants: “forced job mobility seems to be more prevalent among weaker groups of workers” (Vandenbrande, 2004) who often find it difficult to adapt to their situation in the new country. There are several reasons for this: problems with a foreign language; exclusion, as locals may be less accepting of migrants (sometimes linking immigration to crime and insecurity, or with an alleged loss of identity); and lack of appropriate infrastructure in small communities to accommodate such large numbers of new temporary inhabitants.

The Global Alliance against Traffic in Women (GAATW), which promotes the rights of women migrant workers, and trafficked persons, believes that ensuring safe migration and fair workplaces should be at the core of all anti-trafficking efforts. GAATW has conducted research into the effects of the CM programme operating in Huelva on the migrant workers who participate, and published their conclusions in a report “Female Temporary CM and Rights’ Protection in the Strawberry sector in Huelva, Spain”. Their investigation included interviews with the AENEAS-Cartaya programme director and staff (including cultural mediators), trade unions, non-governmental organizations (NGOs), farm owners in Cartaya, and academics. Their key conclusions are that the main beneficiaries of this programme are the farm owners, that the model has a discriminatory basis (only women with dependents). The ‘losers’ are those women who do not fit the profile, and male migrants. They mention the reinforcement of a restrictive view of human mobility, and doubt whether the programme will be effective in controlling migration due to its temporal nature (Global Alliance Against Traffic in Women, 2010).

The GAATW report does not go so far as to mention alleged sexual abuses suffered by many of the women employed by AENEAS-Cartaya. In 2010, two cases of sexual abuses were brought against five Spanish employers, by eight Moroccan women aged between 18 and 30.

The emergence of these cases has encouraged further discussion of the abuse of vulnerable workers, alleged sexual harassment and forced prostitution, and other humiliations. As Diego Cañamero (Secretary General of the Union of Workers) stated; “silence is a logical consequence: these women have debts, children, but not a feminist mentality. They fear being blamed for the maltreatments”. There is some evidence that systemic abuse is being covered up: “Everyone has heard about abuse: judges, politicians, businessmen, journalists and Civil Guard, but is not a topic of conversation; the strawberry is the livelihood of half of the province”. (Andrew J. and Jiménez, 2010) (Huelva is the main producer of strawberries in Spain and Europe, it has been described by Merino-Pacheco (2008) as the ‘red gold’, and it has helped the economy of Andalusia tremendously, when this region was traditionally one of the poorest ones in Spain. Strawberry farming brings in an annual profit in the region of 320 million Euros).

A series of documentaries in France and Germany, have attacked the working conditions in Huelva. A delegation of MEPs visited Huelva fields and described the situation as “tragic”. Green MEP H. Flautre protested about the lack of drinking water, overcrowded and “complicated” situation of women, “very vulnerable and utterly dependent on their employers. A stroll through the town’s law offices reveals a showcase of horror stories” (Vadrot, 2009). In spite of these problems, the Moroccan women interviewed by Bosco in 2009 seemed content to continue: they make ten times more money during the season of strawberry picking than what they would make in their home country. However, it is a choice made primarily against the background of their poor living conditions in Morocco (Bosco) When these women were interviewed their worst-case scenario was that they would be to be denied work in Spain (Zeneidi, 2011)

## **Conclusions**

One of the central issues with respect to new modes of governance is that it is not always clear what they are. We believe that CM qualifies as a new mode by the fact that it has been so heavily promoted as a means of solving one of the EU’s most pressing dilemmas. That is how to control migration without undermining the rights of member states to act independently. There are of course no targets to achieve and there is no monitoring of outcomes. CM does however offer a framework for a solution to the problem. It means that the EU can claim that it is open for migration and that there are mechanisms in place to ensure workers are treated in a way that is acceptable in terms of standards which would be deemed compatible with Community standards.

The EU policy documents paint a picture of a well-intentioned development which could well be adopted by all the member states, even trying to standardise the way that such migrants are dealt with across the EU. However, as we see, the UK government does not wish to standardise the treatment of seasonal workers because in their case their country of origin is within the EU, so one way forward might not be to try to adopt EU wide schemes at all in the future because of the sheer diversity of national circumstances.

There are more serious concerns with the adoption of extensive CM schemes. The longest recession for many decades has resulted in high levels of unemployment, which make the

promise to future migrants the right of readmission to seek work a politically difficult commitment. From the point of view of the qualifying migrants, the schemes do offer essential employment opportunities, but on conditions which make the migrant highly dependent on the employer. The consequence of this is that there is a real danger of abuse. To achieve compliance, the preference for married women with dependent families, not only makes those women highly vulnerable, it also denies their male counterparts employment opportunities.

The outcome is that CM is not the ideal solution that it first appears to be. There is a lack of democratic control and whole scheme lacks transparency. We need to look more closely at what is being proposed in such schemes which appear to be high minded but in the last resort, seem to be driven by expediency. Policy makers are given a great deal of autonomy, by such schemes and they can result in the circumvention of the normal checks and balances of the political process

We would suggest that in some cases the advocates of CM are claiming benefits that simply do not exist, but it could also be the case that there are few better alternatives to CM. CM schemes may not be either good or bad, essentially it may depends upon how they are designed The variety of schemes which exist across the EU means that we have an opportunity to learn from them what might be better ways of permitting CM for lower skilled workers.

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