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The Potential of Bilateral Migration Agreements

From Symbolic Politics to Practical Implementation

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Migration cooperation with third countries is thriving. Bilateral agreements with countries of origin, host countries and transit countries are increasingly seen as important instruments for overcoming the challenges associated with immigration. With the Special Commissioner for Migration Agreements, the German government has created a focal point to bring together the political objectives in the areas of return and labour recruitment into one comprehensive approach. Initial agreements were quickly reached in the hope of sending a clear signal to the electorate. Beyond their symbolic effect, the agreements have the potential not only to be the starting point for long-term, sustainable migration policy cooperation, but also to contribute towards the development of the countries of origin. In order to realise this potential, a better reconciliation of interests between the respective partner countries and Germany, capacity building in the area of recruitment and more consistency in external migration policy are required.

Reducing irregular migration and enabling regular (labour) migration is a declared goal of the current German government. Although the public debate is dominated by highly restrictive proposals such as the outsourcing of asylum procedures to third countries or even the abolition of the individual right to asylum, the Special Commissioner of the Federal Government for Migration Agreements (hereinafter the Special Commissioner), who was newly appointed in 2023, is pursuing a comprehensive approach: Germany's interests regarding recruitment and return are to be given

equal consideration when negotiating the practice- and partner-oriented agreements with countries of origin announced in the coalition agreement. Located within the Federal Ministry of the Interior and Community, the Special Commissioner has the important task of bringing together the various ministries responsible for migration policy, thereby contributing to a more coherent German migration diplomacy.



Current status of bilateral negotiations

Before Special Commissioner Joachim Stamp took office in February 2023, the German government had negotiated a formal bilateral mobility and migration agreement with just one country – India. Since then, formal agreements have been signed with Georgia, Kenya and Uzbekistan, and informal memoranda of understanding have been concluded with Morocco and Colombia. Exploratory talks and negotiations are also underway with Moldova, Kyrgyzstan, Ghana and the Philippines, among others.

Flexible formats

As migration is an inherently transnational phenomenon, it makes sense to address related challenges in cooperation with other states. National initiatives and bilateral formats, such as the comprehensive migration agreements with third countries outside the European Union (EU) that Germany is currently focussed on, are becoming increasingly important. Such agreements give governments the opportunity to pursue their own migration policy priorities in a more targeted manner.

The Special Commissioner's work to date has shown that, in some cases, the respective partnerships take the form of binding bilateral agreements (India, Georgia, Kenya and Uzbekistan), while in others they are designed as informal agreements for improved practical cooperation (Morocco and Colombia). This flexibility of formats makes it possible to take into account the domestic political sensitivities of the partner countries – for example in the event of public opposition to planned returns. Germany's priorities also differ depending on the partner country: For example, in the case of India and Kenya, the focus is on recruitment, whereas returns are the main objective in negotiations with some other countries.

The German government's strong interest in returns to Afghanistan and Syria will not be reflected in formal agreements, given the widespread condemnation of the re-

spective regimes. Informal agreements with these countries are also out of the question. The situation is different for negotiations with (neighbouring) countries that may be involved with the returns. Here, corresponding informal agreements are conceivable, beyond the standard clauses on return transfers that are included in the agreement with Uzbekistan.

Familiar contents

Many potential partner countries are interested in closer cooperation on labour migration. They often hope to use migration negotiations to strengthen bilateral cooperation with Germany. On the German side, on the other hand, there is a fundamental interest in both recruitment and return. According to estimates by the Institute for Employment Research, keeping the labour supply stable in the face of an ageing population will require net immigration of 400,000 workers per year until 2060. According to the Central Register of Foreigners, a total of around 227,000 people were required to leave the country as of 30 June 2024, of which around 44,000 were without exceptional leave to remain (*"Duldung"*). In both areas, the ultimate aim is to apply existing law more effectively. Regarding return, the provisions of international law on governments' obligation to readmit own nationals are clear. Migration partnerships are intended to support the implementation of this obligation through improvements in practical cooperation. Accordingly, the agreements often contain provisions outlining standardised operating procedures regarding returns, for example identity verification or physical transfer and handover.

In the area of recruitment, on the other hand, the German government is focussed on making greater use of existing legal immigration channels, which were expanded last year by the amended Skilled Immigration Act. Unlike countries such as Italy and Spain, which offer concrete immigration quotas in negotiations on migration agreements, Germany's legal framework does not

provide for any agreement on the recruitment of large numbers of labour migrants from abroad via quotas – although there are a few exceptions, such as for seasonal work, short-term employment or within the framework of the Western Balkans regulation. Partner countries, on the other hand, often expect commitments for labour migration on a substantial scale.

Domestic political signalling effect

In Germany, expectations concerning the new bilateral migration agreements are high. In view of the heated domestic political debate on irregular migration and the further strengthening of the far-right – and in parts right-wing extremist – party Alternative für Deutschland (AfD), they are primarily intended to demonstrate the government's ability to deliver results in the area of return. At the same time, the government wants to show that it is serious about labour shortages, which in numerous sectors constitute a structural obstacle to growth, and that it can also swiftly respond to sector-specific deficits by recruiting workers from abroad.

Against this backdrop, both the start of negotiations with key countries of origin and transit, but even more so the successful conclusion of agreements, fulfil an important domestic political function: They serve to publicly signal the government's initiative in an important policy field. In addition, the dynamics of the negotiations are shaped by the goal to successfully conclude as many agreements as possible before the next federal elections. However, there are many open questions regarding practical implementation.

Priorities for an improved external migration policy

The current focus on quickly concluding a large number of bilateral migration agreements is accompanied by the risk that the impact of the individual agreements is largely limited to their declaratory nature.

In order to ensure the practical relevance of the agreements reached, it is essential to increase efforts in three areas.

Improved context analysis for a sustainable balance of interests

With the term “partner-oriented”, the coalition agreement has formulated a requirement for German bilateral migration agreements that can be justified not only normatively but also instrumentally. If agreements adequately reflect the interests of both sides, this not only increases their chances of being implemented effectively, but also the likelihood that they will outlast changes of government.

When entering into bilateral negotiations, a detailed understanding of the role that cross-border mobility plays in the development model of the partner country is required. German development organisations working on the ground and development policy officers at the embassies in particular can contribute to the necessary analysis. The following questions, among others, must be answered: Is there a preference for temporary or permanent migration? How important is family reunification? How great is the need for education and training components within migration programmes?

However, it is often not possible to carry out such a differentiated analysis with the capacities currently available. For example, the interest of potential partner countries in expanding labour migration to Germany is usually taken for granted. This is not always the case: In some countries, for example, the recruitment of health care professionals in particular is viewed critically, while in countries that are themselves affected by an ageing population, there is a general rethink regarding the emigration of labour. The blanket assumption that there is a convergence of interests in the area of labour migration is particularly counterproductive if it hinders a comprehensive understanding of the partner countries' objectives in other areas.

It remains to be seen whether the German government will follow through with

its July 2024 proposal to transfer the legal construct of the Western Balkans regulation to other third countries. If the German side continues to be unable to offer quotas, this will reinforce the need to closely analyse the concerns of partner countries in other policy areas.

In-depth knowledge of the interests of partner countries is also helpful for improved cooperation in the area of return, although it is generally true that the readmission of rejected asylum seekers is not in the interest of most governments. The questions to be answered with regard to this topic are therefore different: What political and operational hurdles exist? What incentives can the German government use to increase the willingness of countries of origin to cooperate? What are the goals of authoritarian states that cooperate in matters of return? It is particularly important to be clear about this with regard to ostracised regimes such as those in Afghanistan and Syria, for which any kind of international cooperation means an increase in legitimacy. A broad repertoire of offers and incentives that match partner countries' increases the likelihood of achieving more cooperation, even on the difficult issue of returns.

Investing in implementation

Both the return of rejected asylum seekers and migrants without a valid residence permit and the recruitment of urgently needed labour from abroad are difficult issues that often fail due to practical challenges. Within Germany, similar hurdles exist in both areas and include complex bureaucratic requirements, a fragmented federal distribution of tasks, outdated communication channels and inadequate staffing. With regard to both return and recruitment, these domestic obstacles are well known and need to be addressed by modernising procedures and making targeted investments.

Regarding cooperation with partner countries, on the other hand, the obstacles that arise in both areas are different – and accordingly there are fundamentally dis-

tinct needs for action. The success of returns depends on the political will of the countries of origin to fully cooperate. The basic agreement on readmission is only the first step (with the readmission of third-country nationals in particular being highly controversial politically). The second step is to ensure that this approval by the partner country translates into a willingness to carry out readmissions in practice – instead of related efforts being frustrated due to delays and bureaucratic hurdles. Ultimately, suitable incentives are needed to encourage partner governments to cooperate. Corresponding offers can, for example, consist of support for reintegration or the facilitation of legal migration options.

Even though the topic of recruitment is less politically sensitive than return, it requires a more complex implementation structure in the countries of origin. Particular challenges include the often inadequate compatibility of vocational training systems, language acquisition (a competitive disadvantage that hampers recruitment to Germany compared to English-speaking countries) and disproportionately long waiting times for the recognition of qualifications and the issuing of visas. Due to these structural hurdles, the legal changes achieved through the reform of the Skilled Immigration Act alone are not enough. In order to maximise the potential of the expanded legal migration options, measures are required in the following areas:

(1) Facilitating self-organised migration: Recruitment efforts such as the Triple Win Programme, which is implemented by the Federal Employment Agency (BA) and the German Agency for International Cooperation, and projects by the Federal Ministry for Economic Cooperation and Development (BMZ) to support regular labour migration provide an important impetus for the fair recruitment of workers. However, they are difficult to scale up and therefore usually only result in a few hundred workers being brought to Germany. Against this background, more measures should be taken to facilitate self-organised labour migration. In addition to the exist-

ing online services for information on regular labour migration, the Centres for Migration and Development established by the BMZ in some countries can make a contribution in the form of a personal support service. Diaspora organisations based in Germany can also be involved in information campaigns if they are interested.

(2) *Better coordination of relevant German actors and institutions in partner countries:* To date, German actors and programmes relevant to the promotion of labour migration in the countries of origin have not been sufficiently coordinated. Depending on the country, these can include the German embassy or consulate, Chambers of Commerce, Goethe Institutes, the Centres for Migration and Development as well as relevant development projects and German companies. Their activities must be better interlinked. This applies to all steps, from the provision of legal information to vocational training and language acquisition programmes, specific support services for application processes and the recognition of professional qualifications, right through to the issuing of visas. The same holds true for the recruitment efforts of individual federal states and ministries. In view of the fact that the Federal Foreign Office recently assumed responsibility for the recruitment of skilled labour in 10 priority countries, it makes sense to entrust the respective local embassy with the coordination role.

(3) *Greater private-sector involvement:* In response to calls from companies as well as business and trade associations to recruit foreign labour, the German government has expanded its activities in this area. This raises the question about an appropriate distribution of costs and responsibilities between the government and the private sector. Even if state actors play an important role in piloting and providing start-up funding for recruitment initiatives, in the medium term they should concentrate on further accelerating centralised processes, such as the issuing of visas, and eliminating other administrative bottlenecks. The bulk of the costs for language acquisition, professional development and general adminis-

trative fees, on the other hand, should be borne by the companies that directly benefit from the additional workers. However, small and medium-sized companies in particular will continue to need organisational support when recruiting abroad. Greater prioritisation of corresponding tasks in the Federal Ministry for Economic Affairs and Climate Action could make an important contribution.

(4) *Improved engagement and oversight of private recruitment actors:* Private recruitment agencies in third countries represent an alternative to a completely self-organised approach for workers interested in migration. One important advantage is that they often have experience and can therefore act quickly and cost-effectively. However, accompanying measures that guarantee fair and safe migration are indispensable – especially in private recruitment, which is often characterised by dubious actors and unethical practices. The protection of labour migrants against abusive recruitment methods and placement in jobs with exploitative working conditions should be ensured in cooperation with the partner countries. This includes supporting relevant institutions in the partner country so that they can better monitor private recruitment actors. It also requires more attention in Germany: Irregular working conditions and exploitation can lead to undesirable side effects such as wage dumping, and thus reduce the public's acceptance of labour migration in Germany. Experience has shown that this protection is crucial not only, but especially for female labour migrants. Transnational trade union associations can also take an important supervisory role here.

More consistency in external migration policy

Ultimately, a coherent approach by the Federal Government is crucial for German bilateral migration agreements to actually work. Progress has certainly been made in this regard, including the recent agreement on 10 priority countries for the recruitment

of skilled labour, the selection of which is based on the BA's analysis of potential. By convening regular interministerial meetings to prepare the negotiation of migration agreements, the Special Commissioner is making an important contribution to a whole-of-government approach. However, this does not eliminate the fundamentally different objectives of the individual players. The Federal Ministry of the Interior and Community, which has the lead for the migration agreements and the Skilled Immigration Act, focusses on return issues, while the Federal Ministry of Labour and Social Affairs and the Federal Foreign Office tend to focus on recruitment. The Federal Ministry of Health is involved in the recruitment of health care and nursing staff, while the Ministry of Economic Affairs and Climate Action has so far been hesitant to get involved. BMZ, on the other hand, focusses on the development effects of regular labour migration and aims to prevent brain drain. The resulting diverging interests with regard to the content of migration partnerships must be reconciled in a way that is acceptable to all ministries involved. One danger associated with this is an overly rigid understanding of the ensuing agreements as documents in which individual ministries' priorities and positions are permanently enshrined. It would be more expedient to view the agreements as the starting points for dynamic cooperation that continually adapts to practical requirements and offers room for shifting interests and the increased involvement of companies in the area of recruitment. If this does not succeed, it is likely that individual ministries will pursue their respective goals in parallel processes, which can lead to thematic contradictions and inefficiencies.

The last year of the current legislative period offers an opportunity to take stock of Germany's efforts to strengthen migration cooperation. Despite the progress made in the form of bilateral agreements, the question of which ministry is best suited to assume primary responsibility for this area is unresolved. If it does not remain with the Federal Ministry of the Interior and Com-

munity, the Federal Foreign Office and the Chancellery could be considered as alternatives. Factors in favour of the Federal Foreign Office include not only the key role that the respective embassy or consulate plays in supporting implementation, but also the fact that the capacities of the Federal Foreign Office in the area of recruitment have been significantly expanded since mid-2024 – in the form of a dedicated division as well as additional personnel capacities through restructuring. An argument in favour of the Chancellery is the more direct enforceability of the decisions it makes vis-à-vis other ministries. In any case, the position of the Special Commissioner should be transferred to the lead ministry and upgraded in the hierarchy. In addition, the Commissioner's office should be given adequate resources to enable it not only to initiate and coordinate the negotiation of new agreements, but also to support their implementation in the long term. In order to better take into account the perspectives of partner countries and potential labour migrants, the BMZ's expertise in this area should be drawn upon more systematically.

Outlook: Establishing sustainable long-term cooperation

The comprehensive migration agreements that the German government is currently pursuing constitute an alternative to both bilateral negotiations that focus exclusively on returns and migration deals at the European level, which aim to outsource border controls and asylum procedures. Their dual focus on returns and recruitment reflects the tensions resulting from a heated public debate that is focussed on restriction and deterrence, while at the same time promoting labour migration to Germany. The migration agreements therefore hold the potential for a differentiated understanding of the complexities of migration-related tasks, and for dealing with them constructively and in a development-oriented manner, together with the countries of origin.

At the same time, there is a risk that they will be used to cater to purely restrictive demands – such as the frequently demanded outsourcing of asylum procedures to third countries.

In principle, the successful conclusion of an agreement is not enough to establish sustainable migration cooperation; it is crucial that any agreement be accompanied by a long-term partnership – according to current projections, the demand for labour in Germany will remain high for decades to come. This, in turn, requires two things in addition to the need for action identified above in the areas of partner orientation, implementation structures and improvements in the coordination of different ministries:

Firstly, there needs to be a comprehensive cultural change at all administrative levels, in the course of which migration cooperation comes to be recognised as an important goal of German policy. This would mean that all stakeholders use their full scope of decision-making to contribute towards facilitating labour migration to Germany.

Secondly, robust bilateral working structures must be established. Periodic reviews of the agreements' effectiveness would allow for continual readjustments, if necessary. In addition, partner countries could receive targeted support in the area of migration governance by development cooperation actors.

In the future, it would be desirable if the approach of comprehensive migration cooperation were not limited to national initiatives, but were transferred to the European level. A coordinated approach within the EU would strengthen the negotiating power of member states vis-à-vis countries of origin – which could not only contribute towards progress in the area of return, but also be of increasing importance in the context of intensifying global competition for labour. The next European Com-

mission should focus on bringing together the migration cooperation instruments of individual member states with those of the EU.



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