

***COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND  
HOME AFFAIRS - EUROPEAN PARLIAMENT***

***PUBLIC HEARING  
"THE EU AND THE CHALLENGE OF MIGRATION"***

**30 January 2007, 3 p.m. - 6:30 p.m.  
European Parliament, room ASP 3G2**

**COMMENTS BY IOM TO THE EUROPEAN PARLIAMENT'S COMMITTEE  
ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS ON THE  
COMMUNICATION FROM THE COMMISSION ON A POLICY PLAN ON  
LEGAL MIGRATION**

**1. General Comments**

The International Organization for Migration (IOM) welcomes the European Commission's December 2005 Communication to set out a roadmap for the remaining period of the Hague Programme (2006-2009) outlining the legislative initiatives and actions that the Commission intends to take with a view to developing a EU policy on legal migration. IOM recognizes the Commission's earlier efforts in this field, in particular its proposed July 2001 Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (COM(2001) 386), which did not find consensus in the Council of Ministers, and the Green Paper on an EU approach to managing economic migration (COM(2004) 811), issued in January 2005 and which forms the basis for the Commission's policy plan on legal migration. The IOM responded positively to the Green Paper and hopes that the policy plan, which was developed on the basis of subsequent consultations with a broad range of stakeholders, including EU Member States and third countries of origin, will result in positive outcomes. The development of a coherent EU policy on legal migration that can benefit all stakeholders, i.e. countries of origin, destination and the migrants themselves, would be in accordance with IOM's comprehensive approach to migration management and to promote humane and orderly migration.

With regard to the planned legislative proposals outlined in the policy plan, IOM welcomes the proposal for a general framework directive, which will aim to ensure equal treatment for existing legally resident third country nationals working in the territory of EU Member States as well as those lawfully admitted into Member States for the purpose of employment. In the view of IOM, it is important that this directive sets out a baseline of human and labour rights standards for all third country nationals lawfully employed on

EU territory regardless of their length of stay or category of employment. IOM also welcomes the development between 2007 and 2009 of individual directives that address the conditions of entry and residence of specific categories of workers based on identified labour market needs in EU Member States, i.e. the planned directives on highly skilled workers, seasonal workers, intra-corporate transferees, and remunerated trainees. The proposed Directive on seasonal workers, if adopted, would be a particularly positive development particularly if it regulates, in a coherent and equitable manner, the admission and treatment of lower-skilled and middle-skilled workers while recognizing also the clear demand for such workers in many EU Member States. This is especially important given that the sectors in which these workers are usually employed (particularly lower-skilled occupations) are where exploitation in the workplace is most likely to occur. In addition to facilitating the entry and stay of seasonal workers, IOM suggests that domestic workers and personal care workers are included in the proposal. These workers are often women, who meet labour market needs but who are particularly vulnerable to abuses because of the subordinated relationship between employer and employee and because this form of employment is often poorly regulated, if at all, by national labour laws.

IOM supports the proposed series of complementary non-legislative tools advanced by the European Commission for the better exchange of information on migration, namely the creation of an EU Immigration Portal, the expansion of the European Job Mobility Portal (EURES) to third-country nationals, and a review of the European Migration Network (EMN). Greater transparency in ensuring access to information on legal migration opportunities constitutes an important tool to preventing and reducing irregular labour migration. Indeed, this package of tools conforms to some of the activities outlined in IOM's recent International Migration and Development Initiative mentioned below and in IOM projects to facilitate legal and managed labour migration. IOM also welcomes the complementary activities foreseen in relation to integration and cooperation with countries of origin, which, as noted above, are in line with the understanding that the successful management of legal labour migration requires a comprehensive approach.

IOM is well placed to reflect upon the last mentioned activity relating to the EU's cooperation with countries of origin and the link between Migration and Development. It welcomes the proposals made in the policy plan relating to cooperation with third countries and migration and development. Given the importance of migrant remittances as a source of family and national income in third countries, the plan should include activities to reduce transfer costs. Regional dialogue between EU MS and third countries can be an effective tool for cooperation. IOM is engaged in facilitating such processes concerning EU MS in Asia, South Caucasus and North Africa.

In addition to initiatives such as Migration for Development in Africa (MIDA) and other ongoing IOM programmes and with the aim of contributing to sustainable and coordinated efforts of the international community and private sector to find appropriate ways to maximize the development benefits of international labour migration and minimize its negative impacts, IOM has developed a proposal for an International Migration and Development Initiative: Labour Mobility for Development (IMDI) (attached as Annex I).

This proposal was circulated by IOM at an IMDI side event at the United Nations General Assembly High-Level Dialogue (HLD) on International Migration and Development in September 2006 to initiate discussion on the concept.

Labour migration to EU MS has brought development benefits to third countries in the form of remittances and access to labour markets. This access appears to be shrinking with preference given to EU MS nationals from the new MS in the enlarged EU. Very little or no research has been done with regards to the impact of EU enlargement on labour migration flows from third countries and its development impact. Therefore IOM proposes this as an important area of research, which should accompany the development of EU proposals in this area.

## **2. Comments on the four specific directives**

***Importance of detecting, assessing and predicting shortages of labour:*** Regardless of the type of labour migration system used in a particular country, its fundamental *raison d'être* is to address a perceived labour shortage. Accordingly, the starting point for designing any migration system has to include an evaluation of how such labour shortages are detected, assessed and predicted. The perceived importance and duration of a labour shortage motivates authorities to introduce a labour migration system. However labour shortages are not easy to measure and forecast. Sources to detect labour shortages include trends in national statistics on the number of registered vacancies by sector of employment and occupational category; employer surveys; and the use of occupation shortage panels and special studies.

***Facilitating admission of migrant workers to fill shortage occupations:*** Several countries make exceptions to the labour market test in respect of categories of workers where there are shortages, such as health workers, engineers, and IT specialists either by not applying the test or by relaxing the rules. Clearly this more liberal approach has considerable economic advantages, since it enables a more speedy and efficient admission of migrant workers who will fill shortages in important employment sectors. While the identification of shortage occupations and related facilitation of admission should continue to focus on national labour markets, the establishment of a coordination mechanism at the EU level would provide added value to national efforts. Moreover in the case of occupations that are in shortage throughout the EU (e.g. health workers) the easing of admission can be done on an EU wide basis.

***Mitigating the adverse impact of the emigration of skilled human resources:*** Clearly, when there is a skill shortage or when skills are difficult to replace, the cost of skilled migration is high for the country of origin. Promotion of ethical recruitment and creation of voluntary systems to recoup loss of investment in countries of origin, with the involvement of donor governments and the private sector, should be strongly encouraged. The development of an EU-wide ethical code of conduct regarding recruitment of skilled labour from developing third countries would be helpful in connection with the proposed directive on highly skilled workers. Useful references here are the Commonwealth code of

practice for the international recruitment of health workers and the Commonwealth protocol for the recruitment of teachers.

***Allaying concerns in the host society:*** Large sections of the host population are opposed to lower skilled migration. Information dissemination on migration realities showing the small proportion of workforce that migrants constitute and their important contribution will help allay concerns. At the same time controlling irregular migration and implementing laws to reduce irregular migration while increasing legal migration opportunities will reinforce people's confidence in the migration system. The imposition of yearly ceilings at the national level on the intake of migrants for new labour migration schemes is also helpful in this regard.

### **2.2.1 Conditions of entry and residence of highly skilled workers**

EU MS have to compete with the United States, Canada, Australia and New Zealand for the recruitment and retention of highly skilled workers. Conditions for entry and residence therefore need to be competitive. This means putting in place employment based immigration systems facilitating the permanent stay of highly-skilled migrants, which have been established in recent years in a number of EU MS (Czech Republic, Germany, Netherlands and the UK). An EU-wide framework, which would facilitate, on a procedurally uniform basis, the admission of highly-skilled migrants into certain occupations in all EU MS while taking account of "brain drain" concerns in third countries through the aforementioned ethical code of conduct on recruitment, is much needed and would strengthen the EU's position as a pole of attraction for highly-skilled migrants globally. Such a measure would complement the efforts already undertaken at the EU level to facilitate the admission and residence of scientific researchers from third countries.<sup>1</sup> The establishment of a points system based on objective criteria would be the most transparent way of admitting permanent migrant workers. This could run concurrently with an employer generated admission programme as long as permanent migration options remain open for the skilled worker, as in comparator countries.

### **2.2.2 Conditions of entry and residence for seasonal workers**

While highly skilled workers more often than not are in a position to protect them from exploitation in the recruitment process, this is usually not the case for lower skilled workers. A common form of abuse is the charging of high and illegal fees by recruiters and intermediaries. Therefore, there is a need to ensure regulation of the recruitment process in countries of origin as well as preparation of migrant workers in the form of information dissemination and pre-departure orientation. Reputable bodies, such as the IOM, which have wide experience in migrant application processing and services, can also be called upon for the selection and preparation of workers.

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<sup>1</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ 2005 L 289/15.

Following recruitment, two issues in particular need to be focused on: ensuring that temporary migrant workers return to their country of origin and guaranteeing fair treatment for them in the destination country, given their less secure employment and residence status. With regard to fair treatment, as noted above, a minimum baseline of human rights and labour standards should be ensured in the proposed Framework Directive. From the point of view of return it is common to impose limits or conditions on family reunification as a means of ensuring that temporary workers are less likely to want to stay in the destination country and thus return home at the end of the employment contract. It is also a common practice to have travel costs partly or wholly borne by the employer as well as for the employer to provide housing.

The IOM is not in favour of putting a limit on the number of years a worker can avail of a seasonal worker programme. However, the establishment of development programmes that address the root causes of migration and create economic opportunities where people live, thereby providing choices and undercutting the need for economic migration, should be strongly encouraged.

Seasonal worker programs often operate in the framework of a bilateral labour agreement (BLA). BLAs formalize each side's commitment to ensure that migration takes place in accordance with agreed principles and procedures and can be a useful tool both for protecting the rights of migrant workers as well as ensuring cooperation on return and circulation of labour.

### **2.2.3 Intra-corporate transferees (ICT)**

This category of workers is usually seen as less controversial while particularly important for the domestic economy. Indeed, ICT visas usually cover very specific types of workers, such as executives, managers and employees with specialized knowledge, which limit de facto the number of potential applicants. In addition, ICTs are usually considered as temporary migrants, moving for a limited period of time to one country before taking up another assignment in a different country. In the proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (COM(2001) 386), ICTs were considered (Art. 2(h)) as “third-country nationals working within a single legal entity and being temporarily transferred into the territory of a Member State, either to the principal place of business or to an establishment of that legal entity”.

In addition, the possibility for a firm to move its personnel in one country is seen as a key element both for attracting and retaining a multinational company in one country, as well as for benefiting from reciprocal agreements that currently permit domestic corporations to transfer their employees abroad. About 80 percent of global admissions under the category of intra-company transferees take places among OECD member states.

However, a view emerging in some countries is that firms are using the ICT category to

transfer a wide range of professional employees rather than limiting these transfers to top-level personnel, thus circumventing immigration laws aimed at protecting domestic employees from the potential adverse employment effects associated with an increase in the number of foreign workers. Indeed, ICTs are normally not subject to a labour market test as they are supposed not to seek employment in the domestic labour market, and their entry is therefore facilitated compared to other types of workers.

The proposed ICT directive would need to find an appropriate trade-off between control and facilitative measures. The first should focus on prevention of inappropriate competition with local workers and abuse of immigration rules (through minimum employment requirements prior to transfer,<sup>2</sup> including a clear definition of the categories covered), while the second type of measures should ensure swift access to the professionals needed<sup>3</sup> (through, for example, ensuring that applications are processed within a certain time line). In view of the objectives of the Lisbon Agenda to transform Europe into the most competitive economy by 2010, and in order to facilitate the creation of businesses at the regional level, it would also be important, as mentioned in the policy plan on legal migration, to facilitate the mobility of ICTs EU wide through the granting of a residence permit which could be transferred or recognized in any EU MS.

The Doha Round of world trade negotiations is currently stalled and little progress on GATS Mode 4 (movement of service providers) is to be expected in the near future. The European Commission did make commitments for four broad categories of service providers under Mode 4, including ICTs, for which no economic needs test will be required (the duration of stays for ICTs vary). The EU will need to consider the commitments made under the GATS when drafting and negotiating the directive.

#### **2.2.4 Remunerated Trainees**

The creation of a directive for this special category aims at filling a gap in the regulatory framework, as there are no EU common rules covering this category (as opposed to unremunerated trainees which are covered by the 2004 directive<sup>4</sup>).

The first step required would be to define what kind of trainees should be considered as remunerated trainees, as there is no universal definition of this category. Remunerated trainees are generally persons, who carry out a traineeship, which either forms an obligatory part of their training or study programme or is carried out in continuation of a preceding education or training programme. Two remarks can be made. First, who constitutes a trainee under an immigration system will very likely depend on the

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<sup>2</sup> The above-mentioned draft directive, was, in its Article 2(h), requesting that ICTs “have worked for the legal entity concerned for at least the 12-month period immediately preceding the transfer”.

<sup>3</sup> As ICTs are often called upon to carry out specific tasks to be accomplished immediately and within a limited amount of time, the admission of ICTs should allow as much as possible firm responsiveness in accepting work offers on the basis of their international capacity.

<sup>4</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ 2004, L 375/12.

vocational, apprenticeship, higher education systems and regulations of professions of each country. Second, while some EU countries consider remunerated trainees as workers (and require them to hold a work permit) others do not distinguish between remunerated and unremunerated trainees in their immigration regulations. The common feature in EU countries is that training is temporary in nature, and usually the maximum duration of a traineeship varies between 12 months to 3 years (e.g. the Netherlands).

Many European countries offer training opportunities (especially under bilateral arrangements) sometimes limited by a quota. However, these quota often remain unfilled. Indeed the language level, age limits, and the limited period a person can stay (which impact on the level of remuneration one can expect), act as impediments.

Remunerated training can be a positive mechanism for acquiring skills and knowledge which can be used back in the country of origin by the trainee, and therefore promotes North-South transfer of knowledge and technology. However, training should also be envisaged as a means for third-country nationals to upgrade their skills in order to match the entry requirements of one country's immigration system for regular work. This is important at two levels: firstly, to provide alternatives to irregular migration and illegal employment: and secondly, to prevent brain waste, which occurs when foreigners enter the EU labour market below their level of competences due to the difficulties in having their qualifications recognized. In order to achieve these different objectives, the directive, when defining criteria, should take into consideration the profile of third country trainees (general level of education and language proficiency), and focus on making vocational and language training accessible to them in addition to "on the job" training.

Finally, a remunerated trainee is a category which has proved in many parts of the world to be particularly at risk of exploitation. This is especially true in countries with limited access to labour immigration where employers and employees have only this route to respond to their employment needs. Proper safeguards need to be in place to ensure that trainees are not simply replacing local workers without employers paying the real salary costs and offering the same conditions of employment. Such safeguards are necessary to protect the interests of the trainees, the domestic labour force and, when applicable, other migrant workers lawfully employed in similar occupations.

**Note:** For further details regarding some of the ideas expressed in Section 2, please consult the IOM-ILO-OSCE Handbook on Establishing Labour Migration Policies (May 2006), available at <http://www.iom.int/jahia/Jahia/cache/bypass/pid/8?entryId=5993>