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# GREEN PAPER

# ON AN EU APPROACH TO MANAGING ECONOMIC MIGRATION

(presented by the Commission)

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## 1. INTRODUCTION

The aim of this Green Paper is to launch a process of in-depth discussion, involving the EU institutions, Member States and the civil society, on the most appropriate form of Community rules for admitting economic migrants and on the added value of adopting such a common framework. The Commission will organise a public hearing in 2005 to discuss this matter among all the different stakeholders involved.

This Green Paper concerns admission procedures for the economic migration of third country nationals and does not deal with the free movement of EU citizens within the Union. Discussion on completion of the Community labour market takes place in another context.

Article 63(3) of the EC Treaty provides that the Council is to adopt "*measures on immigration policy within the following areas: (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits"*. Since the Tampere European Council of October 1999, the Commission has already sought to launch an in-depth discussion on a strategic project on economic migration. In 2001 the Commission adopted a proposal for a Directive dealing with "*the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities*"[1]. Whilst the other European Institutions gave positive opinions[2], discussion in Council was limited to a first reading of the text.

The Commission believes that it is now time to revisit this issue in the light of developments in the immigration field over the past three years. At the political level, the Thessaloniki European Council of 19-20 July 2003 stressed "*the need to explore legal means for third country nationals to migrate to the Union, taking into account the reception capacities of the Member States […]*". The Treaty establishing a Constitution for Europe, agreed during the Brussels European Council of 17-18 June 2004, states: "*The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows* [...]"[3].

Meanwhile, recognising the impact of demographic decline and ageing on the economy, the Commission highlighted the need to review immigration policies for the longer term[4] particularly in the light of the implications which an economic migration strategy would have on competitiveness and, therefore, on the fulfilment of the Lisbon objectives. This trend in society has encouraged the debate on migration to the EU, while not impinging on the responsibility of Member States to decide on the numbers of immigrants to be admitted. In fact, even if the Lisbon employment targets are met by 2010, overall employment levels will fall due to demographic change. Between 2010 and 2030, at current immigration flows, the decline in the EU-25's working age population will entail a fall in the number of employed people of some 20 million. Such developments will have a huge impact on overall economic growth, the functioning of the internal market and the competitiveness of EU enterprises.

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1 COM(2001) 386.

2 Opinions of the: European Parliament of 12.2.2003 (A5-0010/2003); European Economic and Social Committee of 16.1.2002 (SOC/084, CES 28/2002); Committee of the Regions of 13.3.2002 (CdR 386/2001).

3 Article III-267

4 COM(2003) 336.

In this context, and while immigration in itself is not a solution to demographic ageing, more sustained immigration flows could increasingly be required to meet the needs of the EU labour market and ensure Europe's prosperity. Furthermore, immigration has an increasing impact on entrepreneurship. The EU must also take account of the fact that the main world regions are already competing to attract migrants to meet the needs of their economies. This highlights the importance of ensuring that an EU economic migration policy delivers a secure legal status and a guaranteed set of rights to assist the integration of those who are admitted.

Moreover, the need for a European strategic initiative is strengthened by the fact that, in its absence, migration flows are more likely to be able to bypass national rules and legislation. As a consequence, in the absence of common criteria for the admission of economic migrants, the number of third country citizens entering the EU illegally and without any guarantee of having a declared job – and thus of integrating in our societies – will grow.

In this context the Commission fully recognises that decisions on the numbers of economic migrants to be admitted in order to seek work are a matter for the Member States.. The draft Constitutional Treaty states that: "*This Article* [III-267] *shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed*". However, decisions to admit such third country nationals in one Member State affect others (right to travel within the Schengen area, to deliver services in other Member States, to move to other Member States once long-term residents status has been acquired; impact of the admission of third country workers on the EU labour market) and the EU has international obligations in relation to some categories of economic migrant. The Commission therefore believes that there is a clear case for agreeing transparent and more harmonised common rules and criteria at EU level for admitting economic migrants.

All of the above, together with a reflection on the added value of adopting measures at EU level, are the basic foundations upon which any action in this field must be built. In addition, any adopted measure should minimise the administrative burden for Member States and third-country nationals.

The purpose of this Green Paper is therefore not to describe policies in the EU25, nor to compare them with those of other world regions. It is to identify the main issues at stake and possible options for an EU legislative framework on economic migration. In doing so, the Commission has taken into account the reservations and concerns expressed by the Member States during the discussion on the 2001 proposal for a directive, and is putting forward suggestions for alternatives.

Finally, in The Hague Programme the European Council of 4-5 November 2004 stressed the importance of the debate on the Green Paper which – together with best practices in Member States and their relevance for the implementation of the Lisbon strategy – should be taken as a basis for "*a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market*"[5]. The Commission will present such a plan before the end of 2005.

[5] European Council conclusions, Annex I, point III 1.4.

## 2. DEVELOPING AN EU APPROACH TO LABOUR MIGRATION

The discussions on future European policy on economic migration should, in the Commission's view, focus on some key issues, which, though not exhaustive, are mutually dependent. The options proposed could be combined in several ways according to the final result to be achieved.

### 2.1. What degree of harmonisation should the EU aim at?

Given that access of third country nationals to the labour market is a highly complex issue, the Commission considers that a successfully operating Community policy in this field can only be put in place progressively, in order to facilitate a gradual and smooth move from national to Community rules. EU legislation on the admission of economic migrants should therefore be conceived as a "first step legislation" and lay down certain common definitions, criteria and procedures, while at the same time leaving to the Member States to respond to the specific needs of their labour markets. It is important to recall that the Draft Constitutional Treaty leaves the determination of the volumes of admission of persons coming to seek work to the Member States. However, a coordination method by which Member States making use of national quotas inform the Commission about the implementation and results of these policies could be beneficial in the assessment of the overall needs of the EU labour market and contribute to the shaping of a common EU legal migration policy and to a more efficient and better coordinated procedure which is both in the interest of Member States and of the persons concerned.

As to the scope of any future EU legislation, the Commission is faced with several options. A first possibility would be to **adopt a horizontal approach** along the lines of the original proposal, covering the conditions of entry and residence of any third country national exercising employed, self-employed or other economic activities for more than 3 months in the territory of a Member State. Specific provisions could cover the particular needs of certain groups, such as seasonal workers, intra-corporate transferees (ICTs), etc. The advantage would be the establishment of a comprehensive common framework on economic migration, with a high degree of flexibility.

Following the example of the proposals for a directive on the admission of students[6] and of researchers[7], an alternative could be a series of **sectoral legislative proposals**. This draft legislation could focus on seasonal workers, intra-corporate transferees, specially skilled migrants (not necessarily only highly qualified), contractual service suppliers and/or other categories, putting aside for the time being any overall common framework for the admission of third-country workers. The advantage in this case could be an easier adoption of common rules.

Other approaches could also be explored, for example the establishment of a **common fast-track procedure** to admit migrants in cases of specific labour and skills gaps, activated if a certain number of Member States obtain Council authorisation to do so via a very swift procedure. This would avoid unnecessary and potentially harmful competition between Member States in the recruitment of certain categories of workers.

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6 COM(2002) 548.

7 COM(2004) 178.

- To what extent should a European policy on labour migration be developed and what should be the level of Community intervention on this issue?
- Should a European migration law aim at providing a comprehensive legal framework covering almost any third country national coming to the EU or should it focus on specific groups of immigrants?
- Were the sectoral legislative approach to be chosen, which groups of migrants should be addressed as a priority and why?
- Do you consider that other approaches – such as a European fast track procedure – should be explored? Could you propose other options?

## 2.2. Admission procedures for paid employment

Generally, before admitting a third-country worker, Member States require proof that no one already part of the domestic labour market can fill the vacancy concerned (economic needs test). Some Member States admit special categories of workers – e.g. highly skilled or workers in sectors/occupations where shortages already exist – through special schemes such as fast track procedures, green cards, etc. Such approaches could be explored at EU level. The EU should also draw upon the experience of other world regions[8].

### *2.2.1. Preference for the domestic labour market*

The "Community preference" principle is defined as "*Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State's regular labour market*"[9]. However, many Member States exempt from Community preference some types of economic migrant (intra-corporate transferees of key personnel, performing artists of international reputation, etc.) from this requirement.

The main issue is whether such preference should be granted to third-country manpower already present in a Member State over newly arriving third country nationals. It is important to remember that from 2006 long term residents will enjoy preference over newly arriving migrants in the Member State of residence and will have the possibility to move and settle in a second Member State for study, work or other purposes[10]. In addition, should such preference be extended to third-country nationals residing in a Member State different from the one where the labour shortage arises (in addition to long term residents)? This would not limit the right of the second Member State to decide who to admit to its territory, but would facilitate recruitment, helping to fill more rapidly and effectively the labour and skills gaps where they arise. The EU could then count on a "stock" of manpower that has already started to integrate.

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8 "Efficient Practices for the Selection of Economic Migrants" (http://europa.eu.int/comm/employment_social/employment_analysis/immigr_new_stud_en.htm): see annexe.

9 Council Resolution of 20 June 1994, in connection with Council Regulation (EEC) No 1612/68. It should be noted that the Treaty of Accession of 16 April 2003 gives preference to workers who are nationals of the Members States over workers who are nationals of third countries as regards access to their (Member States) labour market.

10 Council Directive 2003/109/EC.

This preference might also be extended to those who have already worked for some years in the EU before returning temporarily to their own country. This could in fact encourage "brain circulation", by allowing third-country workers to try to re-integrate in their own country knowing that they will receive more favourable treatment in terms of readmission if they later wish to come back to the EU to work.

- How can we ensure that the principle of "Community preference" is applied in an effective way?
- Is the existing definition of Community preference still relevant? If not, how should it be changed?
- To which other economic migrants (apart from intra-corporate transferees of key personnel) might the logic of community preference not apply?
- Apart from long-term residents, which categories of third-country nationals – if any – should be given preference over newly arriving third-country workers?
- Should a priority right – subject to precise conditions – be granted to third-country nationals who have temporarily left the EU after having worked there for a given period?
- Would facilitating mobility of third country workers from one Member State to another be beneficial for the EU economy and national labour markets? How could this be put in practice in an effective way? With which limitations/facilitations?
- How can the European Public Employment Services (PES) and the EURES Job Mobility Portal[11] contribute to facilitate labour migration of third country workers?

### *2.2.2. Admission systems*

Apart from the system, there is a specific point which must be discussed first: should the admission of third-country nationals to the EU labour market be allowed only if there is a specific job vacancy or could there also be more flexible systems such as green cards, etc, aimed at attracting workers to fill the short and long term needs of the labour market? There is also the question as to what procedure to follow for those third-country nationals who seek entry to the EU to carry out an economic activity (e.g. pursuant to a services contract concluded between their overseas employer and a client in the EU), but who do not actually enter the EU labour market.

- Should the admission of third-country nationals to the EU labour market only be conditional on a concrete job vacancy or should there also be the possibility for Member States to admit third-countries nationals without such a condition?
- What procedure should apply to economic migrants who do not enter the labour market?

[11] The Public Employment Services (PES) of the Member States are coordinated at EU level through the EURES (European Employment Services) network. EURES has set up a European Job Mobility Portal (http://europa.eu.int/eures) where all European publicly registered vacancies will be accessible via a single IT platform based on web services technology as from 2005.

If admission is to be conditional on a specific job vacancy (economic needs test), and assuming a horizontal EU approach to economic migration, a possibility could be to proceed via an "individual assessment": if employers have published a job vacancy for a minimum time period and if they have not received an acceptable application from within the EU labour market, they would be allowed to recruit from abroad. This system – conditional on a tool such as EURES, to spread information on vacancies throughout the EU – would allow for a certain control on recruitments, so as to limit abuses. An additional point is whether or not this test should be repeated when a short term contract has expired and the employer wishes to renew it.

- Do you consider that the economic needs test is a viable system? Should it be applied in a flexible way, taking into account for instance regional and sectoral characteristics or the size of the company concerned?
- Should there be a minimum time period during which a job vacancy must be published before a third-country applicant can be considered for the post?
- In what other way could it be effectively proved that there is a need for a third country worker?
- Should the economic needs test be repeated after the expiry of the work permit, if the work contract – by means of which the third country worker has been admitted – has been/will be renewed?

Several optional systems could grant more flexibility: a Member State could deem the economic needs test to be met above a certain annual income and/or skill level, and/or no proof of shortage could be required for certain sectors or regions, determined by the Member State concerned (green cards). The same concept could apply to quotas of workers, thus allowing the Member States to keep their international commitments to third countries.

- What alternative optional systems could be envisaged?

Another possibility would be to apply an EU selection system to respond to the needs for specific skills, particularly in a long term perspective. A common framework at EU level could be established (e.g. years of experience, education, language skills, existence of a work offer/labour shortages, family members in that Member State, etc) and then each Member State could choose whether to apply it and, if so, how to shape it to the needs of its labour market. Alternatively, there could be several systems, e.g. one for low skilled workers (e.g. preference to years of experience in a certain sector) and one for medium/highly skilled workers (e.g. preference to education, then to experience), and Member States could decide which one to apply. Such a system could co-exist with both the "individual assessment" philosophy and the "green cards". Finally, Member States wishing to introduce "job seeker permits" for certain skills, sectors, etc, could do this.

In this context, a "clearing-house" system, for instance based on the services provided by EURES, could be envisaged whereby an employer could consult the curricula of applicants for the whole EU when the need for third country workers arises. When a suitable candidate is found, the third country national could verify via the Member State's website whether he/she fulfils the criteria and initiate the procedures for the permits.

- Could a selection system work as a possible general rule at EU level for admission of economic migrants to the labour market and what should be the relevant criteria?
- How could employers be provided with comprehensive access to the CVs of applicants in the whole EU and how should EURES be enhanced in this context?
- Should the possibility to grant a "job seeker permit" be foreseen?

### 2.3. Admission procedures for self-employment

Harmonised conditions for admission of third country nationals for self-employment could also be introduced at EU level. Such conditions would differ from those of section 2.2: for example, a third country national could be requested to present a detailed and financially viable business plan, demonstrate his/her financial means and prove the beneficial effect of these activities on employment or on the economic development of the Member State concerned. Various degrees of flexibility could be introduced, such as the possibility for the Member States to exclude or promote certain sectors, etc.

- Should the EU have common rules for the admission of self-employed third country nationals? If yes, under which conditions?
- Should more flexible procedures be possible for self-employed persons who wish to enter the EU for less than one year to fulfil a specific contract with an EU client? If so, which?

### 2.4. Applications for work and residence permit(s)

A single national application procedure leading to one combined residence and work permit (one stop-shop procedure) could simplify the existing procedures. When an entry visa is required, Member States could either continue to require an initial entry visa, or consider that the issuing by its consulate of this combined title is sufficient.

The title would not interfere with the internal practices of national administrations nor with the conditions of admission. In most Member States, third-country nationals need to be in possession of a work permit prior to the examination of the application for the residence permit: there could therefore be the impression that the issuing of a residence permit – based on different criteria from the work permit – would become almost automatic under the combined procedure, which is not the intention of the Commission.

The alternative option would be not to regulate this issue at EU level. A compromise position would be to propose a single application for both the work and the residence permits, even though the end result would be two different permits issued according to national rules.

- Should there be a combined "work-residence permit" at EU level? What are its advantages/disadvantages?
- Or should a single application (for both work and residence permits) be proposed?
- Are there other options?

## 2.5. Possibility of changing employer/sector

The possibility of changing employer and/or sector during the first period of work in the EU is closely linked to the issue of who holds the permit and to the conditions of admission of the worker (section 2.2). If a third country national has been admitted under a special scheme, his/her mobility could be temporarily limited in order to avoid abuses of the admission conditions. On the contrary, no real problem for the economy of the host country would arise if the worker has been admitted outside such schemes and is offered a more rewarding job (subject to the economic needs test, if necessary). Concerning the permit, if the permit holder is the employer, the worker could be exposed to the risk of being unduly controlled, or even "owned", by his/her future EU employer.

- Should there be limitations to the mobility of the third country worker inside the labour market of the Member State of residence? If so, which (employer, sector, region, etc.), under what circumstances and for how long?
- Who should be the holder of the permit? The employer, the employee, or should it be held jointly?

## 2.6. Rights

Migrant workers must have a secure legal status[12], irrespective of whether they wish to return to their countries of origin or to obtain a more permanent status. Third country workers should enjoy the same treatment as EU citizens in particular with regard to certain basic economic and social rights before they obtain long-term resident status. This status implies a more extensive set of rights, in line with the principle of the differentiation of rights according to the length of stay.

- What specific rights should be granted to third country nationals working temporarily in the EU?
- Should the enjoyment of certain rights be conditioned to a minimum stay? If so, which rights and for how long?
- Should there be incentives – e.g. better conditions for family reunification or for obtaining the status of long term resident –to attract certain categories of third-country workers? If yes, why and which ones?

[12] Community legislation already provides for a number of rights, e.g. those provided for in Council Directive 2003/109/EC (long-term residents), Council Regulation (EC) No 859/2003 extending provisions of Regulation (EEC) No 1408/71 (co-ordination of social security) and in the two anti-discrimination directives (Directives 2000/43/EC and 2000/78/EC). Furthermore, Community Directives on issues such as occupational health and safety or working conditions are in principle applicable to all workers, irrespective of their nationality. The same goes for most of the articles of the European Charter on Fundamental Rights.

## 2.7. Accompanying measures: integration, return and cooperation with third countries

As stressed in several Commission communications[13] and in the Council Conclusions on migration and development of 19 May 2003, a successful EU policy on economic migration requires that migration flows are managed in cooperation with the countries of origin and transit, taking into account their reality and needs. The measures taken must be accompanied by strong policies to integrate migrants admitted.

Consequently, cooperation with third countries to facilitate legal migration and the social and economic integration of potential migrants must include a number of issues, such as the brain drain, the fact that the countries of origin invest in developing the skills of people who will then leave the home economy and society, the difficulties for migrants to keep social and cultural ties, etc. It is important to reflect on how to address such issues and also on measures to facilitate the return of temporary workers at the end of their contracts and to reintegrate them into their home society. Possible measures to encourage "win-win" situations, and/or to compensate for negative situations which may arise, could be: to provide up-to-date information on the conditions of entry and residence in the EU; to establish recruitment and training centres in the countries of origin for skills which are needed at EU level, and for cultural and language training; to create databases per skill/occupation/sector (portfolio of competences) of potential migrants; to facilitate the transfer of remittances; to compensate third countries for the educational costs of migrants leaving for the EU. Another issue is whether certain third countries could be granted a preference for the admission of their nationals in the framework of reinforced cooperation agreements.

Furthermore, as highlighted in the First Annual Report on Migration and Integration, the EU must continue its efforts to foster the better integration of present and future immigrants, both in the labour market and into the host society in general. Introduction programmes for newly arrived immigrants – mainly covering language training, civic education and information on the basic norms and values of the host society – are gaining importance in all Member States.

- What kind of accompanying measures should be envisaged to facilitate admission and integration of economic migrants, both in the EU and in the countries of origin?
- In line with EU development policies, what could the EU do to encourage brain circulation and address the potentially adverse effects of brain drain?
- Should developing countries be compensated (by whom and how) for their investment in human capital leaving for the EU? How can negative effects be limited?
- Should host and home countries have an obligation to ensure the return of temporary economic migrants? If so, in what circumstances?
- How can return be managed for the mutual benefit of host and home countries?
- Should a preference in terms of admission be granted to certain third countries and how?

[13] COM(2004) 412 and COM(2002) 703.

- Could such preferences be linked to special frameworks, such as the European Neighbourhood Policy, pre-enlargement strategies?

## 3. CONCLUSION

The Commission believes that the admission of economic migrants is the cornerstone of any immigration policy and that it is therefore necessary to address it at European level in the context of the progressive development of a coherent Community immigration policy. In this Green Paper, the Commission has tried to outline the main issues at stake and has put forward a number of different options which could be part of a common EU framework. This system should be transparent, non-bureaucratic and fully operational. It should function in the interests of all parties involved: the migrants, the sending countries and the receiving countries. When intensifying its policy aimed at attracting economic migrants and facilitating their admission, the EU and its Member States must pay serious attention to the possible negative effects of such an outflow on the country of origin.

The primary aim of the Green Paper is to call for reactions and to launch a broad discussion among all relevant stakeholders. The Council, the European Parliament, the European Economic and Social Committee, the Committee of the Regions, national, regional and local authorities, the social partners (including employers' associations and trade unions), non-governmental organisations, the candidate countries, third country partners, academia and other civil society organisations and individuals are invited to contribute. Once this comprehensive consultation process is completed, the Commission will present a policy plan on legal migration, including admission procedures, by the end of 2005, as set out in The Hague Programme.

In order to prepare for a public hearing on economic migration in 2005, the Commission invites all interested parties to comment in writing no later than 15 April 2005 to:

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## ANNEX

**BIBLIOGRAPHY**

### *A. Legislative instruments and proposals*:


(1) Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (applicable as of 3 October 2005);

(2) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (applicable as of 26 January 2006);

(3) Proposal for a Council Directive on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service - COM(2002) 548; political agreement reached in March 2004;

(4) Proposal for a Council Directive on a specific admission procedure for third country researchers - COM(2004) 178;

(5) 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;

(6) Council Regulation (EEC) n°1612/1968 on freedom of movement for workers (in particular, article 19(2) for the "Community preference");

(7) Council Resolution of 20 June 1994 on limitations on admission of third-country nationals to the territory of the Member States for employment;

(8) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

(9) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

(10) Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.


### *B. Commission Communications:*


(1) Communication from the Commission "Study on the links between legal and illegal immigration" - COM (2004) 412 final;

(2) First Annual Report on Migration and Integration - COM(2004) 508 final;

(3) Communication from the Commission on immigration, integration and employment - COM(2003) 336 final;

(4) Communication from the Commission on integrating migration issues in the EU's relations with third countries - COM(2002) 703 final.

***C. Studies:***

(1) Studies on labour migration, Migration Research Group, Hamburg Institute for International Economics (HWWA), Germany; papers prepared for the European Commission, DG Employment and Social Affairs, June 2004, available at: http://europa.eu.int/comm/employment_social/employment_analysis/immigr_new_stud_en.htm. The papers examine best practice regarding recruitment of labour migrants, projecting future labour needs and labour market integration in the European countries as well as in other industrialised countries. They were prepared by experts from the MRG, in cooperation with the Migration Policy Institute, Washington DC.

(2) Admission of third-country nationals for paid employment or self-employed activity, European Commission, Directorate General for Justice and Home Affairs, 2001, ISBN 92-894-1689-0. The study, undertaken by Ecotec Research and Consulting Limited between November 1999 and May 2000, analysed and compared the legal and administrative frameworks in the EU-15 concerning the admission of third-country nationals to the EU Member States for the purposes of paid employment and self-employment.