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on the Policy Plan on Legal Migration

Committee on Civil Liberties, Justice and Home Affairs

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1. The political context

The legal migration policy, which is the cornerstone of a common immigration policy, as defined by the Tampere European Council in 1999, has for years been a hostage to different national policies. The electoral concerns of national governments, the importance given to such issues by the media, Member States' fears about each other's laxist policies and the fear of losing national sovereignty, political independence and cultural diversity are some of the factors which have so far prevented Europe from moving towards a genuine legal migration policy.

In the absence of an EU common immigration policy, European countries have in recent years adopted radically differing policies with regard to the legal entry of third-country nationals for employment reasons, some applying restrictive policies and others taking a laissez-faire approach, introducing quotas or introducing a posteriori regularisation. Moreover, not all Member States are experiencing the same type of migratory pressure and not all of them consider immigration to be a priority issue.

There are two paradoxes in this area: the first concerns the free movement of persons inside the Schengen area. The abolition of border checks tends to make it easier for illegal immigrants to move around the area and thus to enter illegally into countries which have adopted more restrictive laws. This shows that, in addition to harmonised checks at the European Union's common borders, uniform admission policies are needed.

The second paradox concerns the attitude shown by some Member States, which refuse to consider rules on admission and management of migratory flows as a European competence while, at the same time, often advocating that the European Union condemn the regularisation policies applied by some national governments.

What is also missing at European level is an appropriate communication strategy, which is an essential means of properly informing citizens on the need for an EU common entry and integration policy. For instance, according to a Eurobarometer poll, almost one out of two European citizens believes that immigrants are exploiting the welfare system. Immigration can in fact be an important factor in tackling the problem of maintaining the European social model at a time when the population is ageing. For the past ten years the achievement of the Lisbon Agenda growth objectives and demographic considerations have led the Commission to consider immigration as a means of keeping the welfare system alive and an opportunity for the European labour market. The importance of migration for the latter is illustrated by the constant requests from companies and employers for an increase in the quotas established at national level.

A common policy does not mean indiscriminately opening up borders to uncontrolled immigration. On the contrary, it is an essential means of dealing with a structural problem at international level which cannot possibly be managed effectively at national level. Moreover, by opening up legal immigration channels, Europe will be providing itself with an important means of combating trafficking in human beings, organised crime and the black market.

Immigration also provides our societies with a means of cultural, social and political enrichment. The European Parliament has, on several occasions, stated[1] in this connection that

a European strategy on the integration and inclusion of migrants should be defined, involving all the relevant EU policy sectors. In addition to facilitating access to the labour market, education, and health and welfare services, steps should be taken to promote migrants' participation in political and social life, within a common framework of rights and responsibilities.

The definition of a 'positive' immigration policy is also closely connected with Europe's role in supporting economic, social and political development and democratisation and promotion of human rights in third countries and, in particular, in African countries with which the Union has strong political partnership links.

2. Historical background and description of the Commission proposal

At the Tampere European Council meeting in October 1999, the Member States defined the objectives of a coherent and balanced European immigration policy, based on four fundamental elements: the definition of a legal migration policy, the fight against illegal immigration, cooperation with third countries and the integration of immigrant workers.

The terrorist attacks of 11 September 2001 disrupted the international and European agenda as a whole, including the 'positive' immigration policy, which was halted as a result. Thus, at the subsequent European Council meetings, in Seville (June 2002) and the Hague (November 2004), discussions dealt almost exclusively with the fight against illegal immigration and trafficking in human beings. A number of important legislative instruments on combating illegal immigration were admittedly introduced but did not result, in this area as in others, in the formulation of a coherent common policy.

It was only in 2006, thanks in particular to constant pressure from the European Parliament, that the issue of legal migration came back onto the agenda, notably on the occasion of the informal Lahti Summit in November 2006 and the Brussels European Council, which followed in December 2006: for the first time since the Tampere Summit, EU cooperation with third countries of origin and transit with a view to opening legal channels reappeared on the agenda. In December the Brussels European Council asked the Commission to submit a communication on the subject.

The Policy Plan published in 2005 thus enabled the Commission to present an initial practical response on the issue of legal immigration following a period of stagnation of more than five years.

However, as early as 2001, the Commission had submitted a directive on conditions of entry and residence of workers from third countries, which, after several years' stalemate in the Council, had been finally withdrawn by the Barroso Commission.

This proposal[2] was never approved by the Council. In view of the political climate, in particular as a result of 11 September 2001, the Commission felt it more appropriate to alter its strategy

[1] See the Lambrinidis report on the Commission communication on the integration of immigrants, T6-0318/2006, adopted by the European Parliament on 6 July 2006.

[2] Proposal for a 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)0386). Terron i Cusi report, T5-

by taking a step backwards. In January 2005, therefore, it issued a Green Paper to initiate a wide-ranging consultation process with a view to determining what approach should be taken in dealing with economic migration. This public consultation process showed that there was broad consensus in favour of an EU common policy. However, answers differed on what approach to take; even the Klamt report, which the European Parliament adopted in October 2005, failed to present a unified view on the matter[3].

The Commission therefore chose to abandon the cross-cutting approach and the idea of a single directive on conditions of entry and residence applicable to all categories of immigrant workers. It opted instead for a gradual and differentiated approach through four sectoral directives aimed solely at defining admission conditions and procedures for specific categories of immigrants. The four proposals will not be presented at the same time, but successively over the next three years, in relation to the following categories:

- highly skilled workers (submission in September 2007)
- seasonal workers (submission in 2008)
- intra-corporate transferees (submission in 2009)
- remunerated trainees (submission in 2009).

In addition to these four specific proposals, the Commission will submit a general framework directive, whose purpose will be to guarantee a common framework of rights for all immigrant workers legally employed in a Member State but not yet entitled to the long-term residence status[4]. Unfortunately, the schedule for adoption of this directive by the Commission has not yet been established.

In developing the Policy Plan, the Commission has also recently proposed (in addition to defining 'mobility packages' in cooperation with third countries of origin) establishing a European portal by the end of 2007 to inform potential migrants about legal employment opportunities in the Union and admission procedures. For the same purpose, the Commission also plans to set up specific centres in third countries to facilitate access to legal channels and discourage illegal immigration.

Institutional aspects

When, on 1 January 2005, the Council finally, much later than planned, implemented the provisions of the EC Treaty on the application of codecision and qualified majority voting to 'all or part of Title IV matters', EU Ministers unfortunately decided to exclude legal migration and integration from the scope of the measure.

Parliament has on several occasions criticised the intergovernmental approach taken by the Council and has called for the Article 67 'bridge clause' also to be applied in the case of measures relating to legal migration and integration.

If the Constitutional Treaty had been adopted, the normal voting procedure would have been extended to this area as a whole. It should be noted, however, that the Treaty, reflecting the

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0050/2003 of 12 February 2003.

[3] Parliament adopted the Klamt report on the Green Paper, T6-0408/2005, on 26 October 2005.

[4] This status is acquired after five years, under Directive 2003/109/EC.

post-11 September scepticism, contained a new provision which could be seen as restrictive. The paragraph added by the Intergovernmental Conference stipulates that European policy 'shall not affect the right of Member States to determine volumes of admission of third country nationals [...] in order to seek work, whether employed or self-employed'.

It is in fact difficult, even on the basis of the existing treaties, to extrapolate from the EU's general competence in the matter of 'conditions of entry and residence' a specific set of rules allowing unified management of entries into the Member States. This remains a national competence.

The rapporteur's position on the Policy Plan

The rapporteur welcomes the Commission's Policy Plan, which it considers to be a first step towards the definition of a common legal migration policy. However, she regrets the decision not to opt for a cross-cutting approach which would have made it possible to define common minimum standards for all Member States and all categories of migrants. It is extremely important to define a common policy in order to prevent migratory flows from being diverted from their initial destination by widely differing policies of Member States.

The European and national political classes should be able to take appropriate action by thinking beyond purely electoral considerations and taking a global and integrated view of immigration policy, as recently suggested by the Commission itself.

The fight against illegal immigration must also be considered in this context.

The following points should be looked at more closely:

- Staggered adoption of the sectoral directives: the five directives proposed in the Policy Plan should be considered as a single package. The proposal for a framework directive on the rights of migrants not yet entitled to the long-term residence status should be drawn up as a matter of urgency.

- Proposal for a directive on highly skilled work: a balance should be found between promoting the entry of highly skilled workers into Europe and the need to prevent the brain drain from developing countries. The Commission proposal on 'circular migration' still needs to be fleshed out.

- Definition of the 'highly skilled workers' category in the absence of common criteria for a recognition of qualifications.

- The sectors proposed are not the only ones, nor the top priorities, for Community action; notable examples include health care, catering and construction work.

- Consideration should be given to the actual feasibility of establishing a 'European Green Card' for workers in sectors covered by the directives and other areas.

- Consideration to be given to bureaucratic procedures facing highly skilled workers: they should be made more flexible, in the same way as transfers within multinationals.

- An assessment should be made of the possibility, on the basis of specific criteria, of converting seasonal workers' seasonal work permits into a long-term residence permit or a job seeker's permit.

- Similarly, with regard to the proposal for a directive on conditions of entry and residence of remunerated trainees, provision should be made for a job seeker's permit to be issued on expiry of the traineeship permit.

- The proposal put forward by Franco Frattini, Vice-President of the Commission, at the Tripoli Conference on Migration and Development on 22 November 2006 on the possibility of setting up at European level 'legal entry quota packages' to be offered to third countries in exchange for more effective control of illegal migration and readmission of illegal immigrants is particular interesting. An assessment should now be made of the specific proposals which the Commission intends to submit.

- In view of the unanimity requirement, there is a genuine risk, as in other sectors, that the acts adopted by the Council will merely represent a 'lowest common denominator', often resulting from a watered-down compromise, thereby limiting Europe's added value.