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Annex to the:

Communication from the Commission

Policy Plan on legal Migration

IMPACT ASSESSMENT

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1. Procedural issues and consultation on interested parties

In November 2004, the European Council asked the Commission to present a policy plan on legal migration by the end of 2005 that would build on the result of the public consultation that was about to be launched on an EU approach to managing economic migration of third-country nationals. Due to the very limited time available between the contribution to the public debate and the conceptual developments of the policy plan, no inter-service steering groups were established within the Commission. The Commission considered that a broad public debate, implying the consultation of all the interested (and relevant) stakeholders was the correct and most transparent way to gather the information needed to analyse the issue and as a result put forward concrete and realistic proposals for future action in the field of legal immigration, and in particular of economic immigration.

In line with the objectives of the Hague Programme, on 11 January 2005 the Commission therefore adopted a Green Paper *on an EU approach to managing economic migration* (COM(2004)811 final), launching a wide public debate on the future of the common legal migration policy, and more specifically on which rules should be adopted at EU level for the admission of third-country nationals for employment, as well as on the added value of having such a European approach. The purpose was to discuss with the relevant stakeholders their needs and concerns, as well as to hear their views and receive input on the strategy which the European Union should adopt in respect of labour migration, in order to find common shared solutions.

The Green Paper addressed the main issues at stake through a series of concrete questions on the following issues: the degree of harmonisation the EU should aim at; admission procedures for paid employment (preference for the domestic labour market and admission procedures) and for self-employment; applications for work and residence permit(s); possibility of changing employer/sector; rights of the third-country nationals; "accompanying measures" (integration, return and cooperation with third countries). A public hearing took place on 14 June 2005.

The response to this open consultation went far beyond expectations and the Commission received approximately 130 written contributions from Member States and Acceding Countries, social partners, non-governmental organisations, national parliaments, third-countries (both of origin and of immigration), academia, and regional and local authorities. All written contributions, including the opinions by the European Parliament, the Economic and Social Committee and the Committee of Regions have been published on the JLS website[1] to ensure the transparency of the

[1] http://europa.eu.int/comm/justice_home/news/consulting_public/economic_migratio

consultation.

Some clear elements emerged from the consultation, i.e. the need for EU common rules regulating at least the conditions of admission for some key categories of economic immigrants (highly skilled and seasonal workers), coupled with the request to ensure a secure legal position to all immigrants in employment. These two categories – for which many Member States have special schemes already in place – were actually considered vital for EU competitiveness. Another clear request was to propose simple, non-bureaucratic and flexible solutions.

In respect of the "accompanying measures", the vast majority of stakeholders expressed concern that such measures would not be given sufficient consideration in the Policy Plan, despite their obvious importance[2]. A clear request came from nearly all stakeholders for more information on immigration issues, for building strong integration policies and for further developing the relationships and dialogue with countries of origin in order to better manage economic immigration to the advantage of all the parties concerned.

The contributions to the Green Paper clearly highlighted that only a comprehensive policy mix, aimed at providing adequate common instruments to improve the management of future migration flows, would represent the way forward in this sensitive policy area.

2. What issue/problem is the policy plan expected to tackle?

The Policy Plan on legal migration, including admission procedures for third-country nationals seeking work in the EU, represents the necessary and comprehensive response to a number of interrelated and complex issues which – despite the steady developments in this policy field, remain open, particularly in the field of economic migration.

Since the entry into force of the Treaty of Amsterdam in 1999, a number of common measures have been adopted in the areas of immigration. In particular, four directives dealing with the conditions of entry and residence of third-country nationals[3], as well as two recommendations, have been adopted:

(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);

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n/news_contributions_economic_migration_en.htm.

2 This was due to the fact that in the Green Paper only one of the policy sections was devoted to these measures.

3 Provisions on access to the labour market are also contained in the asylum acquis : for details, please see Annex III of the Policy Plan on Legal Migration.

(3) 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 (applicable as of 12 January 2007);

(4) Council Directive 2005/71/EC of 12 November 2005 on a specific procedure for admitting third-country nationals for purposes of scientific research (applicable as of 12 November 2007);

(5) Recommendation 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research;

(6) Council Recommendation 2005/762/EC of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community

Despite such important steps forward in the creation of a common policy on legal migration, no common measures exist to admit third-country nationals entering the EU territory for employment. This is all the more surprising considering that the admission of economic migrants represents the cornerstone of any immigration policy[4].

In attempting to fill this critical gap, in 2001 the Commission adopted a 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)386 final), proposing a general framework covering all typologies of economic migrants. This proposal did not however receive the necessary support from the Council.

The Commission has thus examined whether and for which reasons a common policy in this field would be necessary, by evaluating the following elements:

- interrelation of national immigration policies;
- the EU labour market and demographic change;
- the outcome of the public consultation on the Green Paper on managing economic migration (see section 1).

2.1. Interrelation of national immigration policies

Admission of economic migrants in a Member State can have an impact on other Member States and/or on the Community as a whole. Indeed, the absence of border

[4] Please note that all quoted directives include provisions on access to employment and one in particular (admission of researchers) addresses the conditions of admission and residence of a peculiar – and limited in numbers of persons benefiting from it – sub-category of third-country workers.

checks in the Schengen area, the common visa policy, the tight economic and social relations between EU Member States and the development of the common immigration policy in recent years have as an indirect consequence the fact that immigration measures taken by one Member State are more likely to have an impact on other Member States. For instance, a very restrictive migratory policy in one Member State may deviate migration flows to its neighbours; and a regularisation procedure may attract illegal immigration into one Member State, from which regularised migrants could afterwards move easily to other Member States. Another relevant and even more specific example is represented by the provisions of the above mentioned Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, applicable as of January 2006. This directive provides that once a migrant established in a Member State has acquired long-term resident status in that Member State, he/she will have the right – subject to certain precise conditions – to move for study, work or other reasons to another Member State for more than three months without losing the rights and obligations linked to the long-term resident status (he/she will become long-term resident of the second Member State). Other directives (students and researchers) also have provisions addressing intra-EU mobility for the respective categories of third-country nationals. While it is not possible for the time being to estimate the volumes of third-country nationals who will make use these provisions once applicable, it is likely that intra-EU mobility will be affected and will grow as a direct effect of EU legislation.

2.2. The EU labour market and demographic change

On 22 and 23 March 2005 the European Council endorsed the revision of the Lisbon Strategy as proposed by the Commission, approving the simplified governance arrangement with one set of Integrated Guidelines for growth and jobs (2005-2008) dealing with macro-economic, micro-economic and employment issues, mainly based on the priority action areas as identified in its Lisbon mid-term review. Assessing that there had been limited progress in Member States at the half-way point to the 2010 target, the Commission prepared a fundamental revision of the original strategy and proposed focusing partnership with Member States on growth and jobs, introducing a Lisbon Action Plan that outlines actions to be taken at EU and at national level.

Among the integrated guidelines, 2 are of particular relevance for economic migration:

(1) Integrated guideline 12: "To increase and improve investment in R&D, Member States should further develop the mix of measures to foster business R&D through: […] ensuring a sufficient supply of qualified researchers by attracting more students into scientific, technical and engineering disciplines and **enhancing** the career development and the **transnational** and intersectoral **mobility of researchers**." A Council directive concerning facilitating the admission of third-country researchers has been adopted by the Council on 12 October 2005 and will be implemented at the latest by 12 October 2007.

(2) Integrated guideline 20: "**Improve matching of labour market needs through**: the modernisation and strengthening of labour market institutions,

notably employment services; greater transparency of employment and training opportunities at national and European level to facilitate mobility across Europe; better anticipation of skill needs, labour market shortages and bottlenecks; **appropriate management of economic migration**."

In view of the above, it is clear that the Lisbon Agenda explicitly recognises that an appropriate management of economic immigration is an essential element of the EU strategy for competitiveness. It should be noted, however, that under no circumstances should the admission of economic migrants be regarded as "the solution" to EU labour market needs. It should rather be viewed as one of the several options comprising the already mentioned comprehensive package of measures aimed at increasing the competitiveness of the EU economy by first of all tapping into and valorising the existing human resources, i.e. EU nationals and third-country nationals already residing in the territory of the Member States.

Another element which must be considered in evaluating if and to what extent there should be common rules for economic immigration are the projections on demographic change. Already in the 2003 Communication on "*Immigration, Integration and Employment*" (COM(2003)336 final), the Commission highlighted the future trends in demographic change and the consequences in terms of ageing of the EU population and consequent skills gaps which could negatively affect the competitiveness of the EU economy in the next twenty years. The issue was further stressed and examined in the Green Papers "*on an EU approach to managing economic migration*" (COM(2004)811 final) and on "*confronting demographic change: a new solidarity between the generations*" (COM(2005)94 final), as well as in the recently adopted Communication on "*European values in the globalised world: Contribution of the Commission to the October Meeting of Heads of State and Government*" (COM(2005)525 final), adopted in view of the European Council of Hampton Court of 27 October 2005, and in its immediate follow-up, the Communication on "*Priority actions for responding to the challenges of migration: first follow up to Hampton Court" (* COM(2005)621 final).

Already in 2004, the population in the EU increased by 2.3 million (459.5 million on 1 January 2005 compared to 457.2 million in 2004, i.e. annual rate of +0.5%) mainly because of net migration of 1.9 million[5]. The forecasts provided for by Eurostat[6] clearly indicate that the EU population should continue to increase thanks to net migration until 2025: after this date, net migration will no longer outweigh the natural decrease. This demographic trend will have serious consequences on the active population, since from 2004 and 2050 the working age population is estimated to decrease by 52 million. As an EU average, the decline in the working age population will start in 2011. These are projections and average figures which must be considered with caution[7], but they clearly indicate a serious common trend: even though not all the Member States will be affected in the same way and at the same time, the problem is

[5] STAT/05/136 of 25 October 2005 and Eurostat, Statistics in Focus, Population and Social Conditions, 15/2005, "Population in Europe 2004 – First results".

[6] STAT/05/48 of 8 April 2005 and COM(2005)94 final.

[7] The Eurostat set of population projections is one among several scenarios of population

common and should be addressed coherently and in a coordinated way by the Member States and the EU institutions. In this context, it has to be recalled that employment is not the main reason of admission to the EU in recent years, the principal reason being family reunification (where there is a EU directive applicable).

Apart from the above long-term projections, the EU is already experiencing labour and skill gaps, as demonstrated by the available statistics on immigration to the EU in previous years[8]: immigration could thus be part of the response to the demographic decline and aging of the EU population, even though it is clear to all key players that, for social and economic reasons, it cannot be the only solution, as already explained in this paper.

Finally, there is a need to approach economic migration from a global point of view: measures such as information, sharing of best practices, integration policies, stronger cooperation with the countries of origin in order to better manage migratory flows, co-development have been gaining more and more importance over the last years.

2.3. Subsidiarity

Title IV of the EC Treaty on visas, asylum, immigration and other policies related to free movement of persons confers powers on these matters on the European Community. These powers must be exercised in accordance with Article 5 of the EC Treaty, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

The primary objective of this policy plan is to lay down future legislative and non-legislative measures to be proposed by the Commission in the remaining period of The Hague Programme, i.e. from 2006 to 2009. While the respect for subsidiary will have to be evaluated for each concrete proposal in the preparatory phase, from the argumentations in sections 2.1. and 2.2. (and from the clear request by Member States and other relevant stakeholders – section 1) the clear need for an EU joint action in order to have a coordinated management of labour immigration emerges, both within the EU and vis-à-vis third-countries. Currently national administrative rules and procedures regulating this field differ widely between Member States. Taking into account the significant divergence of national provisions and regulatory approaches in Member States, the establishment of a coherent legal framework can only be achieved at Community level. This is even more the case as far as intra-EU mobility for third-country nationals is concerned, which can only be enacted through common EU action.

It must be recalled that the determination of the numbers of economic migrants seeking access to the EU labour markets is under the competence of the Member States: for

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evolution based on assumptions of fertility, mortality and migration. The trend scenario does not take into account any future measures that could influence demographic trends and comprises four variants: the 'baseline' variant, the results of which are presented here, as well as 'high population', 'low population' and 'zero-migration' variants.

[8] See annex IV of the Policy Plan on legal migration

example, Member States wishing to introduce or maintain labour market quotas should be able to continue to do so. EU policy in this field would thus not address volumes of admission, but should focus on conditions of admission and residence.

3. What main objective is the policy expected to reach?

According to The Hague Programme, adopted by the European Council on 4/5 November 2004, "*legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy. It could also play a role in partnerships with third countries*." For this reason, the European Council has asked the Commission to prepare before the end of 2005 a policy plan on legal migration, "*including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market*". The overall aim of the different measures to be proposed in the Policy Plan on legal migration is to respond to this clear objective by developing a number of instruments that will support the effective management of future economic migration flows towards the European Union.

A more specific objective is to devise "*admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market*", i.e. capable of effectively and quickly filling in labour market gaps, also with a view to addressing the consequences of the demographic trends in Europe.

Other specific objectives are: to foster knowledge building and information sharing on different aspects of migration (necessary for having a more complete picture of the phenomenon); to improve, within the limits of EU competence, the integration of immigrants, in particular immigrants in employment; and finally to foster cooperation with countries of origin in order to achieve a better management of the migration flows at the advantage of all actors involved (immigrants, Countries of origin and Member States).

The achievement of the specific objectives mentioned above will be pursued within the broader objective of developing coherent and complementary initiatives, in close connection with existing policies and legislation.

In the context of the Lisbon strategy, for example, the initiatives to be proposed in the area of economic immigration are seen as complementary to the broader framework identified by the integrated guidelines for growth and jobs – where both macro and micro economic policies are clearly identified to foster the competitiveness of the EU. In the area of employment policy in particular, the initiatives relating to economic migration from third countries are to be placed in the broader objectives to attract more people into employment, improve the adaptability of workers and enterprises as well as the flexibility of labour markets and increase investment in human capital.

Making reference to another overarching and long term goal of the European Union, i.e. the sustainable development strategy agreed at the European Council in Göteborg in 2001, the reviewed Strategy focuses on some key issues, among which "Social

exclusion, demography and migration". In this context, it is clearly recognised that the effective management of migration flows, including the integration of immigrants and their families, should form part of the response needed to "prepare Europe's economy and society for the onset of ageing".

4. What are the main policy options available to reach the objectives?

As already underlined, the Commission intends to follow a holistic approach to legal immigration, by addressing all dimensions of this phenomenon. The policy options described below are the most relevant ones. As the Policy Plan aims to be a comprehensive document, addressing several aspects of economic migration (and not only possible future legislative options), many intermediate options could be thought of, just changing one or the other of the elements. In the presentation of the main options, emphasis will be put mainly on the legislative measures. Even though other measures are considered to be equally important, feasibility studies are necessary for a clear definition of many of them. It is also fundamental to have a definitive outcome of the on-going negotiations on the financial perspectives, in order to know under which fund – and with which precise amounts – actions can be supported.

Option 1

The minimalist option would consist in maintaining the current situation, in which there are common rules concerning admission to the EU and access to the labour market for certain categories of third-country nationals (family members, students, researchers, long-term residents, refugees and asylum seekers), but the admission of economic immigrants is completely left to Member States (or almost, as researchers can be considered a special sub-category).

Option 2

Another option would consist of continuing along the lines of the policy on immigration followed so far, i.e. to present a series of specific instruments, addressing the conditions of admission and residence of key categories of immigrants. As for the other issues included in the Green Paper on economic immigration ("accompanying measures"), continue with what has already been foreseen.

Option 3

A more advanced option would be to combine option 2 with a proposal for a horizontal framework directive concerning all typologies of immigrants in employment, not only those concerned by the special schemes. This legislative instrument would not address conditions of admission, which would remain for the time being under the national legislation, but would establish some provisions which should be common to all labour immigrants, irrespective of their category, such as a secure legal status and the single work/residence application and permit. As for the other issues (integration, information, EURES, development, circular and return migration, etc), several measures could be proposed: these actions should be built on existing and/or foreseen

policies and funds, adapting them to the specific situation of third-country nationals in employment. According to the outcome of the ongoing negotiations on the financial perspectives, and in particular of the different relevant funds, further actions and priorities could be added and developed in the years to come.

Option 4

A more ambitious option would be to present an overall, comprehensive legal instrument, addressing the conditions of entry, residence and intra-EU mobility for all economic immigrants, along the lines of the 2001 proposal for a directive. As for the other issues (integration, information, EURES, development, circular and return migration, etc), the line stated in option 3 above should be followed: with the existing legal base and the current financial instruments, no additional steps in these areas appear possible for the time being.

None of the four options above has been discarded at an early stage of the analysis, i.e. at the time of the drafting of the *Green Paper on an EU approach to managing economic migration*, which constitutes the starting point of the process leading to the Policy Plan (and to its future implementation). A clear political choice was made at that time to leave all options open, so as not to influence the public consultation.

5. what are the impacts – positive and negative - expected from them?

The following analysis of the options proposed cannot but address in a quite general way the impact of the envisaged operative and legislative measures on the EU economy and competitiveness: this is a policy plan, and therefore provides precise – but at the same time broad – guidelines and measures for future development and study. A complete analysis can only be done at the time of proposing the different concrete and detailed measures, as the consequences of specific measures on the economies, labour markets and societies of the Member States and of the EU are more easy to ascertain. This section will thus briefly outline the advantages and disadvantages of the general policy options, and it will also attempt to compare the options proposed.

Option 1

Impacts on third-country nationals

In a common area of freedom, security and justice, third-country nationals legally residing in a Member State will have rights which no longer confine them to the Member State of first admission. In specific terms, the existing directives in the field of legal immigration (on long-term residents, students and researchers[9]) contain provisions that, once applicable, will allow these third-country nationals to move to a

[9] Council directives 2003/86/EC on long-term resident status, 2004/114/EC on students and 2005/71/EC on researchers allow third-country nationals to move to a second Member State to work or study, under the specific conditions set out in each of the three legislative instruments.

second Member State for work or study (so called "intra-EU mobility") under more favourable conditions than those they would have to fulfil if they were still outside the EU.

Impacts on Member States and on the economy

Once the long-term resident status has been acquired, the possibility for a third-country national to move to another Member State[10] for work reasons (and therefore to become a long-term resident of a second Member State), clearly implies that the decisions to admit (and also to regularise) a third-country national no longer falls within the remit of a single Member State, as it can have clear consequences for the others. But presently every Member State has its own rules for labour immigration, and they often greatly differ between each other. Given the current state of the EU integration, keeping exclusively national rules for the admission and residence of third-country workers has the risk of creating pull factors and increasing unwanted competition among the Member States. The effect could be that the admission of economic immigrants, instead of contributing to the growth of the EU economy, would become a further cause of tension between the EU economies.

Link to policy developments

Therefore, given the ongoing development of common European asylum and immigration policies, its relevance for the achievement of the Lisbon Agenda, the impact of the freedom of travel within the Schengen area, the existence of the internal market and the subsequent interrelation between national economies, and the impact that a national measure may have on other Member States or on the Union as a whole, at least some common minimum rules are necessary.

Furthermore, there is also a clear need (and a request from the public consultation on the Green Paper) for more information on immigration issues, for building strong integration policies and for further developing the relationships and the dialogue with the countries of origin in order to better manage economic immigration to the advantage of all the parties concerned.

Maintaining current state cannot therefore be considered an optimal choice.

Option 2

Impact on Member States and on the economy – impact on third-country nationals

Regarding legislative measures, an approach covering specific sectors of the economy would not be feasible because of the differences in labour market gaps, structures and needs and could result into an unwanted stiffening of the national EU labour markets: this should therefore be considered for the time being a matter falling into subsidiarity. On the contrary, the EU could limit its common action to certain key categories of immigrants, such as highly skilled and seasonal workers, intra-corporate transferees

[10] Directive applicable as of January 2006.

(ICT) and remunerated trainees (the non-remunerated being covered by the student's directive).

Even in a period of high unemployment, these categories of workers are needed in the EU economy and rarely conflict with EU resident manpower: few EU citizens and residents are willing to engage in seasonal activities (with the only exception of some occupations in tourism) and the issue of defending local workers is not at stake for ICT and for trainees (see below). As for highly skilled, evidence shows that there are increasing gaps in the Member States' labour markets pools of highly qualified workers.

More importantly, the public consultation highlighted a strong interest for the first two categories (highly skilled and seasonal workers), which are vital for the EU competitiveness and for which many Member States have special schemes already in place. In general terms, as Member States already admit such immigrants and as decisions on the numbers of economic immigrants seeking entry into the labour markets are under the competence of the Member States, it is not possible to quantify the positive and negative economic and social impacts of possible common schemes. The aim would be to better regulate their entry and so try to respond to the recognised needs of most labour markets in the EU, at least within the limits of what is possible from a political realistic point of view and taking into account current differences in labour markets' trends and needs.

In particular, for highly skilled workers, international competition from the US, Canada and Australia is really strong and the EU needs to put in place a series of attractive conditions if it intends to encourage top-end migrants to choose Europe instead of going to these other States. Including a form of intra-EU mobility should allow an easier and more efficient reallocation of already residing highly skilled third-country nationals in function of the fluctuating demands of the Member States' labour markets. From the point of view of the third-country nationals concerned, intra-EU mobility would allow them to increase their competences and experiences, and to take up a job where they are most needed, without having to go through lengthily and cumbersome procedures. Attracting excellence is one of the ways of fostering the EU competitiveness. Furthermore, common rules would avoid potentially harmful competition among Member States to attract such migrants.

For seasonal workers, it is necessary to ensure that this particularly weak category of workers is protected as much as possible from discrimination and exploitation, by granting them fair and transparent admission procedures, as well as rights. Since the needs for seasonal workers do not change dramatically year after year, the idea of having a "multi-seasonal" work/residence permit is important to encourage these workers not to fall into illegality at the end of their yearly period of legal work in the EU, because they are already in the EU territory and they are aware of the difficulties of obtaining new permits. It has to be recalled that, once a migrant is in a Member State, it is relatively easy to move within the Schengen area (at least until there is no EU "entry-exit system"[11] in place): a seasonal worker who overstays because he/she has no founded expectations of being readmitted in the future may decide to look for a

job in the black market of another Member State. The hoped impact on the Member States' labour markets in the sectors making more use of – or even living on – seasonal work (mainly agriculture, building and tourism) of the proposed common rules would therefore be to ensure a pool of seasonal workers and to contribute to the fight against illegal employment and illegal migration. These are major objectives of the employment and immigration strategies of both the EU and of the Member States. The impact on illegality would most likely be limited, but such a directive would at least help tackle some of the most important pools of illegal work in the EU. As for the impact on the host society, such workers are admitted for a very limited period (usually 3-6 months a year) and are not given the possibility to modify their permits in order to reside and work in a more permanent way in a Member State. Moreover, as already underlined, immigrants admitted to carry out seasonal work rarely "take the jobs" of EU nationals and residents. The impact of their admission in terms of new migrants on the EU territory appears therefore quite limited (and anyhow numbers are decided by Member States), while the positive impact of regulating in the proposed way the entry and residence of such workers should be important. Such scheme will also help the development of the countries of origin by the salaries that the workers will be sure to gain for a certain number of years.

As for ICT (high management/executives and specialists having uncommon knowledge and skills necessary to the company), provisions on intra-EU mobility for these workers would be beneficial to multinational companies established in Europe while not penalising EU nationals and residents, since the persons concerned are not considered as entering the EU labour market.

Finally, facilitating the exchanges of trainees through clear EU procedures would be beneficial for both the EU and the countries of origin. Clear limits and safeguards would have to be put in place to combat abuses having perverse impacts on the labour market, for example to avoid that an EU company could keep on employing trainees who would in reality be used as low-cost temporary manpower.

Impact on policy development

Addressing these key categories of immigrants as a priority would have the advantage of reaching more easily a political consensus, in a sector, where unanimity of Member States is the rule. On the other hand, the clear disadvantage of this option is that it would leave outside the scope of any EU rule probably the bulk of economic immigrants entering the EU each year[12]. It is thus to be considered as not fully optimal.

Option 3

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11 Communication from the Commission on *Improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs*, COM(2005)597 final.

12 In 2003, estimated net migration (i.e., the difference between immigration into and emigration from the area during the year) in the EU-25 was of 2091.5 thousand people. For details, please see Table 3 in Annex IV of the Policy Plan.

This option consists in combining option 2 (specific proposals for directives plus actions in the other fields – see option 2 for clarifications) with an additional element, i.e. a proposal for a framework directive addressing horizontal issues, as a common definition and list of rights for immigrants in employment and the single work/residence application and permit. This additional element of the package would address all typologies of immigrants in legal employment, not only those concerned by the special schemes. With the exception of the single application for a joint permit, this instrument should not address admission conditions and procedures for economic immigrants.

Impact on Member States and on the economy – impact on third-country nationals

This option would have the advantages of option 2 (please, see impact of that option), plus the advantage of providing a ground level playing field for all immigrants accessing the EU labour markets, at least for what concerns the important aspect of obtaining a secure legal status throughout their stay and other horizontal measures (for example, the single application for a work/residence permit). This will encourage immigrants to go where their work is really needed, without this decision being too much influenced by considerations of obtaining more benefits and/or being more protected in the workplace. It is in fact a measure aimed at ensuring at least a minimum common level of rights across the EU to third country nationals in employment – no matter the Member State they are residing and working in – in particular with a view to protecting legal workers from abuses and/or inappropriate working conditions and to granting them at least the basic benefits. Furthermore, granting equal conditions with the EU nationals as of working and remuneration conditions will not only be fair toward persons that contribute with their work and tax payments to our economies and national budgets, but will also protect the EU labour force from the possible consequences of cheap foreign labour (i.e. in cases where regular third-country nationals do not enjoy the same level of protection, and thus are more subject to exploitation on the workplace). Particular attention must be paid to protect the rights of immigrant women on the workplace, who may face specific problems linked to their gender.

As for the other measures provided for in the Policy Plan, measures in the field of better information, fostering the EURES network, integration, circular and return migration, as well as enhanced cooperation with the countries of origin are in fact necessary and fundamental to ensure an efficient and effective management of the immigration flows to Europe, as well as to assist third-country nationals in their process of integration not only on the labour market, but also in the host society.

Should they return, a well-thought through insertion in their country of origin can be supported and can be the necessary precondition when the return is totally voluntary, as in the case of those who will become long-term residents. In this respect, it must be clear that a situation in which the immigrant is "forced" to stay in the EU otherwise he/she will loose all acquired rights and/or the possibility of continuing to work in the EU, it is not always in the interest of the immigrant him/herself, not to say of the economies and societies concerned (of residence and of origin). Provisions and policies

addressing circular migration can give the immigrant the possibility of returning to his/her country of origin in order, for example, to set up a business and then benefit from more favourable conditions to come back to Europe to work, should he/she wish/need to do so. The EU labour market would thus benefit from a likely increased turnover of third-country immigrants (some of them having already experience in working and living in a Member State), while the countries of origin could take advantage of the new skills of the returnee and/or of his/her capacity to invest in the home country.

Impact on policy development

Finally, from the point of view of EU integration, the disadvantage of this option is that the Member States will continue to admit the majority of the economic immigrants by national rules. On the other hand, an important step toward building a common policy on economic immigration would be achieved. Since this option would combine specific schemes for the admission of certain key categories of economic immigrants (option 2) with a framework directive addressing horizontal issues and with measures addressing other very important aspects of the immigration policy, it appears more adequate than option 2.

Option 4

Impact on Member States and on the economy – impact on third-country nationals

This option would have the advantage of establishing common and comprehensive rules for the entry and residence of all the economic immigrants to the EU (employed and self-employed), possibly along the lines of the 2001 proposal for a directive or even further. Given that – at the current state of the *acquis* and as extensively explained in the previous sections of this paper – it is clear that the admission of a third-country national may have consequences for Member States other than the Member State of first admission, the establishment of a common playing field for all immigrants entering the EU labour market would be a clear asset. It would also limit possible discriminations among the various typologies of immigrants, even though a realistic comprehensive legal instrument must include special schemes for certain categories of immigrants (for example, seasonal workers, remunerated trainees, etc). However, from the economic point of view, a comprehensive framework would probably not be able to respond to the different needs of the EU economies and risk stiffening the labour markets in the EU, as explained when discussing option 2.

Impact on policy development

The advantage of this policy would be to establish a comprehensive common policy on economic migration, as it would address the conditions and procedures for entry and stay of all third-country nationals seeking entry to the EU labour markets for paid and self-employment. It would be a major step forward in the common policy on legal immigration.

The most evident political disadvantages for the time being would be the lack of sufficient support from the majority of the stakeholders and the requirement of unanimity in Council for legal immigration directives. In fact, it clearly appeared from the negotiations under the 2001 proposal for a directive, as well as from the public consultation on the Green Paper on economic migration, that there isn't an unanimous support from the Member States to such a comprehensive instrument. Even if such directive was adopted, it would most likely end up being a "minimum common denominator" directive, with far too many exceptions to the general rules. Its EU added value appears thus questionable: therefore the option can be considered not optimal.

6. Comparison of the options and assessment of the preferred policy option

The advantages and disadvantages are outlined above and can be compared as follows (the table is not exhaustive and does not summarise all the impacts discussed in section 5):

	Impacts on target group	Impacts on EU economies and labour markets	Impacts on the development of a common immigration policy

[13] Only the family members of a long-term resident can benefit from provisions on intra-EU mobility when they accompany the long-term resident (Council directive 2003/109/EC).

Option 1 "Status quo"	**existing directives, once applicable, will enable certain categories of third country nationals (long term residents, students, family members and researchers) to be admitted under common rules and to move to other Member States under more favourable conditions[13] - common EU rules do not cover third-country nationals in employment (except for long-term residents and researchers): big differences in the conditions of entry and residence between the Member States	* some likely increase in intra-EU mobility for work and study purposes -- no common rules for economic immigrants risk creating pull factors and unwanted competition between Member States	* some minimum common rules introduced --- important loophole on the common immigration policy

[13] Only the family members of a long-term resident can benefit from provisions on intra-EU mobility when they accompany the long-term resident (Council directive 2003/109/EC).

Option 2 "Legislative approach concerning admission and residence of key categories of immigrants"	**common EU rules for admission in the EU, including a set of clear rights, for key categories of third-country workers -- protection only for certain categories of third-country workers	** fill significant gaps in the labour market pools of highly qualified workers; contribute fighting exploitation and illegal work in the seasonal activities; increase EU competitiveness - would only address certain gaps in the labour market	** addressing key categories of immigrants should provide for easier adoption of common rules - Member States to continue admitting the majority of economic immigrants by national rules
Option 3 "Approach per categories (as above) + Framework Directive concerning all typologies of immigrants in employment"	positive impact under option 2 plus: *** create level playing field concerning legal status of all third-country nationals in employment	positive and negative impact under option 2 plus: ** creating a level playing field concerning legal status of all third-country nationals in employment should encourage choices of destination made on the basis of available work, more than on social benefits	positive impact under option 2 plus: *** important step towards building a common policy on legal immigration - Member States to continue admitting the majority of economic immigrants by national rules (except for legal status and joint permit)

Option 4 "Comprehensive instrument addressing condition of entry, residence and intra-EU mobility for all economic immigrants"	*** common playing field: clear advantage for immigrants entering the EU labour markets	--- would not effectively respond to different needs of the EU labour markets and therefore risks stiffening labour markets in the EU	** if achieved, would make significant progress toward creating a common immigration policy --- if proposed, it risks receiving no support from Member States or would most likely end up being a "minimum common denominator" Directive

*Advantages: * (weak) to *** (strong)*

Disadvantages: - (weak) to --- (strong)

The preferred option is therefore a "package" of legislative and operational measures, Option 3. These measures will be gradually put forward during the remaining period of The Hague Programme, i.e. from 2006 to 2009, according to the indicative timetable contained in Annex I of the Policy Plan on Legal Migration. This Policy Plan does not contain any concrete measure, but clear guidelines and ideas on which the Commission will further reflect and conduct studies before putting forward concrete proposals. This structure has been thought as the best way to reply to the request of the European Council of 4-5 November 2004, which was to present by the end of the year a policy plan on legal migration, including admission procedures for economic immigrants. It addresses the most relevant aspects of economic immigration in a comprehensive way, even though further actions could be proposed by the Commission in due time.

The Policy Plan is divided in 4 main sections of equal importance:

(1) legislative measures for the conditions of entry and residence of third-county workers and possible future amendments to the existing instruments in the field of legal migration. This package of legislative measures should be composed by:

- a proposal for a "light" framework directive, which will address horizontal issues such as the rights of third-country nationals in employment and the single work/residence permit. This proposal will not address conditions and procedures for admission (apart from the single work/residence permit),

- four specific proposals for directives regulating the admission and residence of some key categories of third-country workers: highly skilled

and seasonal workers, intra-corporate transferees and remunerated trainees, including intra-EU mobility where necessary,

Other equally important legislative and operational measures will address the remaining issues at stake, reinforcing and complementing the above legislative instruments, in order to have a comprehensive approach to labour migration. The main areas of intervention will be:

(2) measures aimed at fostering knowledge building and information sharing on the immigration phenomenon by developing the necessary tools, i.e. studies, the EURES network, streamlining the current bodies and sources of information, etc,

(3) concrete measures and actions aimed at supporting the integration of third-country workers into the labour market and into the host society in general,

(4) measures fostering dialogue on immigration with the Countries of origin or measures which need the cooperation of the Countries of origin of immigrants to be put effectively in place.

All the measures proposed are aimed at tackling the problems outlined in section 2, as discussed when explaining the impact of option two and three.

The Communication from the Commission on "*Priority actions for responding to the challenges of migration: first follow up to Hampton Court*" (COM(2005)621 final), underlined that: "*The Commission recognises the need for a coherent, overall and balanced approach on migration issues, and the fact that setting up a clear and consolidated EU immigration policy adds to the credibility of the EU on the international stage and in its relations with third countries. In this respect, an action plan on legal migration will be presented by the Commission by the end of 2005. While immigration should be recognised as a source of cultural and social enrichment, in particular by contributing to entrepreneurship, diversity and innovation, its economic impact on employment and growth is also significant as it increases labour supply and helps cope with bottlenecks. In addition, immigration tends to have an overall positive effect on product demand and therefore on labour demand*."

The mandate given in The Hague Programme and the clear statement quoted above, together with the diversity in needs and trends in Member States' labour markets, fully justify the process launched with the Green Paper on *an EU approach to managing economic immigration*. Given the need for the EU policy on economic immigration to be developed gradually, the legislative and operational measures proposed in the policy plan can only constitute a first response to the problems outlined the previous sections. They must enrich and complement the other policies carried out by the EU and the Member States (i.e. policies in areas as: employment, development, internal market, enterprises, education, trade, etc) and build on existing policies and legislative instruments.

As explained in the Policy Plan, further studies and analysis are needed before putting forward concrete proposals for implementation. The Policy Plan, although containing a roadmap for future action, is not self-implementing and needs a series of measures – legislative and operational – to be concretely put in place. Separate monitoring and evaluation – including impact assessments where required – will be carried out for every measure in due time, as a clear evaluation of the impact of every measure on the labour market can only be done against concrete and detailed measures.

7. Monitoring and evaluation

The monitoring and evaluation of the implementation of the preferred policy option will be an important element to ensure the effectiveness of this Policy Plan on legal migration.

The roadmap in Annex I of the Policy Plan provides an indicative and non-exhaustive timetable for work, in terms of actions envisaged in order to implement the Policy Plan. Full evaluation and monitoring of each proposed measure will be important.