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Accompanying the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

on A common Immigration Policy for Europe:
Principles, actions and tools

IMPACT ASSESSMENT

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1. INTRODUCTION

1.1. Procedural Issues and Consultation of Interested Parties

Lead DG: JLS

Directorate-General Justice, Freedom and Security

Agenda Planning reference:

Reference number 2008/JLS/216 of the Commission Legislative Work Programme 2008.

This impact assessment has been prepared among others on the basis of diverse impact assessments, including impacts assessments or staff working documents accompanying :

– the Communication from the Commission on policy priorities in the fight against illegal immigration of third-country nationals[1],

– the Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals [2],

– the proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment [3],

– the proposal for a Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State[4],

– the Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions – Report on the evaluation and future development of the FRONTEX Agency[5]; Examining the creation of a European Border Surveillance System (EUROSUR)[6]- Preparing the ext steps in border management in the European Union[7].

Joint Reports on Social Protection and Social Inclusion as well as Reports on Migration and Integration have also been used to frame this Impact assessment.

This report has been drafted with input from a number of consultations held between different directorates within the Directorate-General for Justice, Freedom and Security and other competent services, including EMPL, EAC, ECFIN, REGIO, TAXUD, TRADE, MARKT and SG. This input has been provided through various meetings held between Commission officials with responsibility for different files and written contributions. Meetings of the inter-service steering group on migration were held on 14 January 2008 (at Director General's

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1 SEC(2006)964.
2 SEC (2007)603.
3 SEC(2007)1403.
4 SEC(2007)1393.
5 SEC (2008)149.
6 SEC(2008)152.
7 SEC(2008)154.

level), on 17 March 2008 (at Director's level), on 7 April 2008 (at expert level) and on 28 April 2008 (again at Director General's level) with representatives of the abovementioned DGs as well as RELEX, DEV, AIDCO, ESTAT, SANCO, RTD, TAXUD and COMM attending.

The Impact Assessment was revised to take into account the opinions issued by the Impact Assessment Board on 7 May 2008 and 10 June 2008. All the comments made by the IAB were taken into consideration in the revised Impact Assessment: the IA report structure has been modified in order to come closer to the standard structure, especially through adding a section on objectives; a clearer link to the Lisbon Strategy has been inserted; it has been emphasized which principles were new and to which problems they responded, notably thanks to an overview table; necessity and added value of EU action has been systematically assessed, the problem definition has been completed and the references to resources needs have been clarified.

The Communication will primarily focus on suggestions for political principles and a vision for further policy development of a common EU migration policy. The operational bullet points are used mainly as a point of illustration only in order to clarify the further steps in implementing the principles. This accompanying report is therefore a simplified version of an impact assessment insofar as it only consists of a problem definition, an overview on the main orientations and objectives (explanatory memorandum) and an insight into the future methodology. This is without prejudice to the fact that forthcoming measures implementing the common principles will be subject to a full impact assessment, when appropriate.

1.2. Policy framework and context

Immigration is a complex issue and has become one of the most visible challenges posed by globalisation to EU Member States. Recognising that a common approach was necessary to manage migration more effectively, the Treaty of Amsterdam, adopted in 1997, foresaw the development of a common immigration policy as part of an EU-wide area of freedom, security and justice. To this end, a new Title IV was inserted into the EC Treaty, which included the legal base for EU measures in the field of immigration (Articles 62 and 63 EC).

Realising that a new approach to managing migration was necessary, EU leaders set out the elements for a common EU immigration policy at the October 1999 European Council in Tampere (Finland). The approach agreed in Tampere in 1999 was confirmed in 2004, with the adoption of the Hague Programme, which has set the objectives for strengthening freedom, security and justice in the EU for the period 2004-2009. This approach includes legislation, as well as practical cooperation, and requires close and constructive cooperation between all actors involved. This common policy is based on four principles:

- a comprehensive approach to the management of migration flows, by tackling all the different aspects of migration;
- fair treatment for third country nationals;
- the development of partnerships with countries of origin and of transit, including policies of co-development;
- a separate common policy for asylum.

Since the Tampere European Council of 1999, the EU has sought to develop a common immigration policy that would comprehensively address the phenomenon in all its main dimensions, i.e. legal and illegal immigration, integration and cooperation with the countries of origin of immigrants. In order to provide a coherent and efficient response to the challenges and opportunities related to migration, such a comprehensive policy has, for the first time, been defined by the European Council in December 2006, building on the Tampere conclusions, the Hague Programme and the Global Approach to Migration adopted by the European Councils in 2005 and 2006. This comprehensive approach focuses on all stages of migration, with the aim of harnessing the benefits of legal migration and includes policies to fight illegal immigration and trafficking in human beings. It is based on the general principles of subsidiarity, proportionality, solidarity, respect for the different legal systems and traditions of the Member States. It is also based on respect for human rights and fundamental freedoms of migrants, the Geneva Convention and due access to asylum procedures. It requires a genuine partnership with third countries and must be fully integrated into the Union's external policies.

In June 2007, the European Council emphasized the need to make rapid progress in developing such a comprehensive common policy and called on the Member States and the Commission to ensure that adequate human and financial resources are allocated, within the existing financial framework, in order to enable the timely implementation of this policy.

In December 2007, the European Council stressed that further developing such a comprehensive common policy remained a fundamental priority in order to respond to challenges and opportunities of globalisation. Underlining the need for a renewed political commitment, the European Council asked for further policy developments and rapid progress towards a Comprehensive EU Immigration Policy. This policy should, as underlined by European Council Conclusions also in June 2007, be based on common political principles, addressing all aspects of migration. These should serve as the platform for all future operational measures further developing this policy. The Lisbon Treaty, if entering into force in January 2009 as foreseen, will provide new tools and instruments, as well as a reinforced legislative base to achieve the objectives. One key innovation in this field will be the extension of the co-decision procedure, which is already the procedure utilised in all other areas of immigration, to the adoption of legal instruments in the area of legal migration. This will bring about an important change in the legal immigration field, as measures will no longer be subject to reaching unanimity of 27 Member States. In the past the unanimity requirement has lead to the adoption of minimum standards Directives, whose provisions often represent the lowest common denominator as they had to be acceptable to all Member States. The co-decision provision, coupled with the qualified majority voting in the Council, should allow the adoption of more ambitious Directives with a truly EU dimension and added value moving beyond minimum standards. Other important changes include the clear recognition of the importance of adopting common measures to define the rights of legally residing third-country nationals, to combat trafficking in human beings, to conclude readmission agreements and to support Member States' actions and measures aimed at fostering the integration of legal immigrants (article 63 a). In this respect, it is important to underline that measures in the aforementioned fields have already been adopted under the current legal base: however, such explicit wording in the Lisbon Treaty is an important recognition of the necessity of EU action in such a broad and multifaceted area. Other examples of change introduced by this Treaty concern (article 62) the gradual establishment of an integrated management system for external borders, the measures on short-stay residence permits and the provisions relating to passports, identity cards and residence permits, although the latter will remain under unanimity and simple consultation of the

European Parliament. The principle of solidarity and fair-sharing of responsibility between the Member States, including its financial aspects, shall be at the basis of borders, asylum and immigration policies, as explicitly underlined by article 63 b. In this case as well, the Lisbon Treaty recognises an already existing funding block of the common policy.

In this context, it shall be recalled that the area of borders and immigration is one where Member States and the EC have shared competence: this will not be changed by the Lisbon Treaty. When discussing and analysing the common policy and its future developments it is therefore necessary to be mindful that not all the measures that are, or will be, necessary to further develop and consolidate the comprehensive common policy will require EC intervention. In certain cases, they will fall under the exclusive competence of Member States, consequently, EU action could only take the form of political commitments, possibly supported by EU coordination and/or funding. An example of this is policy relating to the integration of legally staying third-country nationals, where, (even if the Lisbon Treaty enters into force) there would be no competence to adopt any legislative measures to harmonise laws or regulations in Member States. Notwithstanding the lack of a legal base, the Union has, since Tampere, been developing a common framework on integration, based on common basic principles agreed by the Council in 2004. It has also encouraged regular dialogue and exchange of best practices among the Member States, and financially supported their efforts to develop their integration policies and measures based on the common basic principles. Another example of shared competence is the labour immigration policy: the EU has full competence to adopt measures on the conditions and procedures for entry and residence of labour migrants, but Member States maintain full competence to determine the volumes of third-country nationals coming from third-countries in order to seek work. This means that directives on labour migration can be adopted, but that they can only set down eligibility criteria for admission, as the final decision on the application or the setting out of quotas will remain with the Member States.

Furthermore with the re-launch of the Lisbon Strategy, the European Union and its Member States, are committed to a new partnership aimed at securing sustainable growth and jobs. As recognised by the 2008 Spring European Council immigration has become an important factor for the development of the EU's **Lisbon Strategy**, acknowledging that appropriate management of economic immigration is an essential element of EU competitiveness. Moreover and while to a certain extent immigration may help to alleviate the challenges arising from population ageing, it will play a more crucial role in helping to address future labour and skill shortages as well as to increase the EU's growth potential and **prosperity,** complementing ongoing structural reforms.

One of the four priority areas is "investing in people and modernising labour market". One instrument which will assist in the achievement of this goal is to support migrants, notably by fostering skills development. Migration is also an emerging policy priority within the next three-year cycle of the Integrated Guidelines 2008-2010.

Box 1 Definition of an (im)migrant

Following much of the recent literature, in most of the following analysis an (im)migrant is defined as an individual that resides in another country than the one where he or she was born (i.e. a "country of birth" approach rather than nationality has been used to identify. The main reasons for this are that the foreign born concept gives a better picture of migrants by including naturalized immigrants and because of the fact that most of the more recent migration literature and research seems to favour foreign-born over foreign nationals when analysing migrant populations (see for example Munz and Fassmann (2004)).

However, a major practical drawback of this approach is that harmonised labour force survey data available from the European statistical authority (Eurostat) for Bulgaria, Ireland and especially Germany does not include information on specific country of birth, which has an impact of the representativeness of the results for the EU as a whole.

The total population resident in EU Member States can be divided into three basic groups based on place of birth, namely, those born in the Member State of residence ("native-born"), those born in another EU Member State ("other EU born") and those born outside of the EU ("non-EU born"). The latter two groups, although both foreign-born, may have different residence and labour market rights, and differ in terms of labour market outcomes.

2. PROBLEMS AND CHALLENGES TO TACKLE (PROBLEM DEFINITION)

In December 2007 the European Council asked for further policy developments and rapid progress towards a Comprehensive EU Immigration Policy on the basis of a renewed political commitment. This policy should be based on common political principles, encompassing all aspects of migration.

To achieve this, in the years to come, the EU and the Member States would need to tackle the following problems and challenges and to adapt the existing measures already devised in response to them:

2.1. SHRINKING EU POPULATION AND DEMOGRAPHIC AGEING

One of the most principal issues that must be taken into account and analysed when examining the future problems and challenges facing the EU is the impact of demographic ageing on EU societies and labour markets, and subsequently, the policies needed to address the consequences of this change.

2.1.1. Definition of the problem

As a result of diverse shifts in demographic features of the EU population, and further to the withdrawal from the labour market of the baby boomers cohort, the working age population is projected to face, in the coming years, a sizeable decline. This will have adverse consequences relating to pension expenses, health spending and long-term care, dependency ratio and more broadly to the dynamism of economy.

Fertility trends

Life expectancy is currently rated at 75.6 for men and 81.8 for women. Historically, progresses in life expectancy, linked to general socio-economic progress, public health measures and medical treatment, has been obtained through declining mortality rates in the early-life, and then in mid-life. The improvement of life expectancy is now mostly attained through improvement in the late- life.

Life expectancy is expected to continue increasing, although there is inevitably a degree of uncertainty as regards the pace of this change.

Size and composition of the EU population

As a result of a declining crude fertility rate, combined with a stable crude mortality rate, the population rate is not able to grow naturally.

Because of the rising life expectancy and current rates of migration, the total population size will remain broadly at the same level until 2050. However, as a result of both an increase in the total world population from 6.4 billion today to 9.1 billion in 2050, and the zero annual population growth rate in Europe, the share of the EU population relative to the rest of the world will be decreasing. According to the UN population projections (2004), the share of the EU-25 in the total world population is projected to go from 7% today to around 5%, compared to the share of 15% a century ago[8].

In addition to this loss of relative importance in terms of numbers, the structure of the EU population is projected to undergo serious shifts. According to Eurostat's baseline population projection, the median age of the EU citizen is expected to increase between 2004 and 2050 from 39 to 49 years. In parallel, according to Eurostat projections, the share of the total population over 80 is expected to rise from 4.1% in 2005 to 6.3% in 2025 and to 11.4% in 2050.

One of the most striking characteristics of this demographic change that will be most visible from an early point will be the declining age amongst the working population.

The decline of the working age population- economic and social consequences

Although the population of working age (aged 15-64) is already due to decline from around 2011 onwards, total employment in the EU-25 is expected to continue growing until approximately 2017, due to rising labour force participation, mainly from women and older workers[9]. According to the "baseline" scenario of Eurostat's 2004 population projections, the natural decrease of the population (already reported in some EU countries) is expected to be registered on a European scale as soon as 2011, whereas our competitors (USA, China and other emerging economies) would continue to demonstrate a more favourable outlook in terms of labour supply. The size of the working age population (15-64) is projected to be peak

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[8] A significant illustration of this loss of influence of the EU population compared to that of its neighbour is given by the examples of Italy and Egypt: in 1950 Egypt had less than half the population size of Italy; in the early 1990s, both countries were of equal size; by 2050, Egypt's population is likely to be about three times that of Italy's.

[9] Female participation is expected to rise from 55% today up to 65% by 2025, while older workers employment rates should increase from 40% to 47% for the same period.

approximately around the year 2010 (331 million) and then to decline to about 255 million by 2050.

The loss for the working age population is estimated to be 53 million (or 17%) by 2050 compared with 2005 levels (308 million). The balance between the working age population and the retired one will be therefore be deeply modified. The old-age dependency ratio, which compares the number of people over 65 to the number of people aged 15-64, would consequently rise from 25% at the present time, to 53% in 2050[10].

Finally, the reduction in employment is projected to result in a declining annual average potential GDP growth rate in the EU-25, from 2.4% in the period 2004 to 2010 to only 1.2% in the period 2031-2050. In fact, in the long-term, productivity improvements would be the sole contributor to economic growth.[11] Linked with an increasing number of older people, the doubling of the old-age dependency ratio, a growing pressure on the health-care and long-term care system, as well as the pension expenditure is projected. Social protection will have to adapt to this new situation.

The importance of migration

Against this backdrop, migration has become a major determinant of demographic evolution in the EU.

While overall the EU was an area of emigration during the 19th century, it became an immigration continent during the 2nd half of the 20th century. Migration was boosted by the economic boom in the 1950s and 1960s, and then was mainly fed by family migration during the 1970s, following the first oil shock and the subsequent rise in unemployment. Average annual net entries for the EU-25 more than tripled from around 198,000 people during the 1980s to around 750,000 people per year during the 1990s[12]. Net migration into the EU has then seen a substantial increase, rising threefold between the mid-1990s and early 2000 to reach around 1.5 to 2 million from 2002 onwards (although a sizeable part of this can be attributed to regularisation[13] of illegal immigrants, notably in Spain)[14]

Immigration has constituted the main element of EU demographic growth since 1992, and has far outweighed the contribution from natural change over recent years[15]. Despite this data, it is interesting to note that many Europeans still do not assume that immigration could turn into a necessary progress[16].

The main migratory movement is still, and is likely to remain, immigration into the EU from neighbouring countries, Africa and, increasingly, South America (into Spain).

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10 In some Member States of South Europe, according to projections, one third of workers will have to care for two thirds of old people.

11 See Economic Policy Committee and European Commission (DG ECFIN) (2006), 'The impact of ageing on public expenditure: projections for the EU25 Member States on pensions, health-care, long-term care, education and unemployment transfers (2004-2050)', European Economy Special Reports, No. 1.

12 Economic papers, DG Economic and financial affairs, Sept. 2006: Labour migration Patterns in Europe: Recent trends, Future Challenges, p.5-6

13 Also known as amnesty or legalisation of residence status in other Member States.

14 See figure 3 in annex 2

15 This trend is particularly marked in western Germany, eastern Austria, the north of Italy, Slovenia, the south of Sweden and regions in Spain, Greece and the United Kingdom.

16 What are the migrants' contributions to employment and growth? A European approach. HWWI, 2007

2.1.2. Existing responses

Demographic change is high on the European policy agenda. Following a major public debate launched by the Green Paper 'Confronting demographic change: a new solidarity between the generations' of March 2005[17] as well as discussions at the heads of state level and government at the Hampton Court informal summit of October 2005, the Commission presented its view on the demographic challenge in its 2006 Communication "The demographic future of Europe — from challenge to opportunity"[18].

That Communication explained that the current policies are not viable in the long term, in that they do not address the expected decrease in the active population and the prospect of slippage in public finances. The source of the problem is not higher life expectancy as such, rather it is the inability of current policies to adapt to the new demographic order and the reluctance of businesses and citizens to change their expectations and attitudes, particularly in the labour market. In short, the Member States are facing a problem of retirement rather than a problem of ageing. Of course, it falls above all to the Member States to formulate specific responses to the demographic challenge. This Communication, however, developed a reference framework at Community level for these policies from the Member States. The framework set out five areas that respond to a common perspective of restored confidence:

- Promoting demographic renewal in Europe
- Promoting employment in Europe: more jobs and longer working lives of better quality
- A more productive and competitive Europe
- Receiving and integrating migrants in Europe
- Sustainable public finances in Europe: guaranteeing adequate social security and equity between the generations.

According to this communication, immigration cannot be "the" solution to all the problems and challenges relating to demographic ageing of EU societies[19], but it has been stressed that therefore well-managed immigration is likely to bring numerous positive consequences tending to offset the negative consequences of population ageing, notably by increasing labour supply.

2.1.3. Objectives

In line with this 2006 Communication, the overall objective - from a migration point of view - is to ensure a well managed and transparent migration policy and to integrate newly arrived immigrants into European societies, which requires the design of a common policy on legal immigration, organising both legal immigration and the integration of immigrants, while taking into account the interests of the countries of origin.

These objectives are mainly reflected in principles 1, 2 and 3, partly in principles 6 and 9.

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17 COM(2005)94 final

18 COM(2006) 571, 12.10.2006

19 A study by the United Nations has shown that to prevent from population ageing, unrealistic massive flows of young migrants would be required19. For example, to keep the age structure in Germany unchanged, over 3 million migrants per year would have to be admitted.

2.1.4. Subsidiarity principle (see section 2.2.4 due to close inter-connexion with section 2.2 Labour and skill shortages)

2.2. LABOUR AND SKILLS SHORTAGES

2.2.1. Definition of the problem

At the present time, there are around three million vacant jobs in Europe and a number of Member States encounter labour and skills shortages[20], exacerbated by a low mobility of workers across the EU.[21]

The need for more both high-skilled immigration and low-skilled labour is on the rise and third-country migrants, already overrepresented at the highest skill levels and at the lowest skill levels, are expected to play an increasingly important role in meeting demands for labour at the low and high-skill ends of the labour market.

Skills and labour shortages

Partly as a result of economic globalisation and its consequent re-localisation and outsourcing, labour markets are polarizing toward the extreme ends of the skills scale.

Satisfying job vacancies in high-skill sectors, such as engineering, information technology, pharmaceuticals, healthcare and educational sectors is becoming increasingly troublesome in certain regions[22]. The growing importance of a knowledge-based economy, structural economic change, the growth of the service sector, the delocalization of labour intensive production, the outflows of nationals (brain drain) all contribute to these conclusions. Employment growth rates for those with a high level of educational attainment is therefore increasing[23]: between 1996 and 2003, it increased by 2.9%, while it was actually in the negative for those with low educational attainment. The same pattern is reported for employment growth rates[24] in high-education sectors[25], such as manufacture of office machinery and equipment, computers and related activities, education, health and social work, or activities of membership organizations.

From a long-term perspective, according to recent medium term forecasts of skills supply and analyses of possible labour market imbalances in Europe over the period 2006-2015 (CEDEFOP, 2007), substantial structural change is likely in the future, with continuing shifts away from the primary sector and traditional manufacturing, towards services and knowledge-intensive jobs. Of 13 million additional jobs generated between 2006 and 2015, distribution, transport, hotels and catering together are projected to see employment grow by 3.5 million,

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20 It needs to be recalled that labour shortages occur where the demand for workers in a particular occupation exceeds the supply of workers who are qualified, available, and willing to do that job. Within this definition, two types of shortages can be distinguished: aggregate labour shortage (where the labour market is near to full employment) and shortages due to a mismatch with the labour market (due to a skills shortage, regional or preference mismatch, information deficits).

21 Currently EU workers represent only 2,5% of the EU working age population. The recent migration flow to the EU of third-country migrants of working age (15-64) measured as a share of the EU working age population, has been significantly higher (around 2.5 times) than the recent flow of migrants from other EU countries (1.5% versus 0.6%).

22 In Germany for example, vacancies for engineers rose nearly 30% over the past year to around 23,000.

23 ISCED 5-6: tertiary education.

24 equal to 3% per year as compared to 1% in other sectors

25 I.e. sectors with at least 40 % of their workforce having attained higher education level

while employment in non-marketed services, including health and education, is projected to grow at a similar rate. Business and miscellaneous services have the best prospects for employment, with almost 9 million additional jobs expected to be created between 2006 and 2015.

The main implications for occupational employment will be continuing growth in demand for many high-skilled non-manual jobs such as management, professional work or technical support of those activities but also for some lower-skilled categories (service workers, especially in retail and distribution).

The key role of third-country migrants

The current contribution of non EU migrants to labour and skill shortages

Non-EU nationals already play an important role in meeting demands for labour at the low and high-skill ends of the labour market. At EU level, working age migrants from third countries tend to be slightly overrepresented at the highest skill levels and more significantly overrepresented at the lowest skill levels, suggesting that they potentially play an enhanced role in meeting demands for labour at the low and high-skill ends of the labour market.[26]. Immigrants' skills are, however, not evenly distributed between the EU Member States.

A number of countries have already set up specific schemes to attract highly skilled migrants[27] and the incidence of third-country nationals in the highly skilled occupations[28] is rapidly increasing. In 2004, the share of non-EU nationals in highly skilled employment was 2.3% in EU 15, compared to 1.8% in 1999. Third-country highly skilled workers incidence of total employment is even growing at a relatively higher rate when compared to the trend of highly skilled EU nationals[29].

On the other hand, most countries continue to accept rather large numbers of low-skilled migrants from outside of the EU[30]. Compared to native-born, a high share of third-country migrants are employed in hotels and restaurants, private household and construction sectors, and also, although to a lesser extent, in real estate rentals and business activities.

The untapped employment potential of third country residents

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26 While the high skilled ratio of the immigrant population born in a country outside the EU-27 is slightly higher than the one of the natives, the medium-skilled ratio of the foreign-born is significantly lower and the low skilled rate significantly higher: What are the migrants' contributions to employment and growth? A European approach. HWWI, 2007

27 The proportion of recent third country working age migrants with tertiary education exceeds 25% in Belgium, Cyprus, the Czech Republic, Denmark, France, Poland, and particularly in Sweden (almost 40%, which exceeds the share of high-skilled EU born by 12.5 percentage points)

28 According to ISCO 88 classifications, categories 1, 2 and 3.

29 Between 1999 and 2004, in EU 15, the share of highly skilled workers (ISCO categories 1, 2 and 3) coming from third countries as compared to total number of employed increased at an average annual growth rate of 4.8% (0,8% for EU nationals)

30 More than 40% of the non-EU born of working age who arrived within the last 6 years to Austria, Belgium, Cyprus, Denmark, Greece, France, Italy, Portugal and Spain had not attained an education equivalent to upper secondary school. The gap in the share of low skilled between EU born and recently arrived non-EU migrants is most pronounced in Austria, Belgium, Denmark, Finland, Greece and Italy (where shares differ by more than 10 percentage points).

In order to cope with these skills and labour shortages, harnessing the unused employment potential among third-country nationals is a key priority. Indeed, in many countries, the unemployment rate of non- EU-nationals is almost twice as high for non-EU nationals (17%) as for EU nationals (9%) and sometimes three times higher than those for native-born.[31]

However, migrants' labour market outcomes differ widely across Member States. Two groupings of Member States can be identified with regard to employment of non-EU migrants relative to native-born. In the new immigration countries (Italy, Greece, Portugal and Spain) and the new Member States, third country migrants have higher employment rates than EU born, while in old Member States (and Poland) the reverse is true[32].This grouping is not so apparent when comparing the non-EU born who have been resident for less than six years to EU-born. Nevertheless, there is a high correlation between employment rates of recent non-EU migrants and long-term established non-EU migrants, suggesting that relative performance in terms of ease and rapidity of migrants' integration into employment has effects that persist into the longer term labour market outcome for migrants.

These differences in employment outcomes have to be linked to the various entry channels for immigration, since non-economic migrants did not prepare their access to labour market, also possibly hindered by legal restrictions. The composition of migrants inflows vary significantly from one Member State to another. In most Member States a significant part of immigration continues to be labour migration, but family formation and reunification together with immigration on humanitarian grounds have taken over as important driving forces for immigration in Europe in recent decades, accounting in part for differences in the gender mix of migrants[33].

Moreover, differences in educational level go some way toward explaining the employment gaps. In EU-15 in 2005 around 28% of men of working age with EU nationality had only a basic level of education, while the figure for non-nationals was 42%. 28% of men with EU nationality had tertiary education, and only 19% of non-nationals. Figures for women show lower rates but similar patterns.

But a number of other drivers contribute to this situation, since while observing the highest employment rates for the highest educated persons across EU Member States, for most of them (except for the UK) the employment rate gap between highly educated recent migrants, and highly educated EU-born, significantly exceeds the employment gap between lowest educated migrants and non-migrants[34].

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31 This is the case in Austria, Belgium, Finland, France, Luxembourg, the Netherlands and Sweden.

32 in countries, like Belgium, Denmark, Finland, the Netherlands, Poland and Sweden, the employment rate differential to natives is more than 15 percentage points and the difference between employment rates for recent migrants and natives is even more marked, particularly in Austria, Belgium, Finland, France, the Netherlands and Sweden (all with gaps of more than 20 percentage points).

33 According to the OECD SOPEMI 2007 report, the main reasons for immigration33 into EU Member States in 2005 were family and work-related. However, there were very wide variations across individual Member States. For example, 30% of new arrivals in the UK to around 60% in France arrived for family reunification, while 40% or more of migrants arrived for work-related reasons in Belgium, Denmark, Portugal and the UK; as for humanitarian migration, this accounted for 15% or more in the Netherlands, Sweden and the UK.

34 This tendency is confirmed in all OECD countries: see A profile of immigrants populations in the 21st century, OECD, 2008

Gender and cultural background are key drivers too: female non-EU nationals face particular difficulties compared to their EU-national counterparts, in particular for highly skilled women where the difference between employment rates for non-EU and EU nationals exceeds 20 percentage points. This differential may be increased by cultural patterns[35]. Age is another factor, since young people with a migrant background are disproportionately affected by unemployment (12-25 percentage points). Difficulty in harnessing diplomas acquired overseas and discrimination measures are other crucial factors to take into consideration. The correlation between the employment performance of non-EU born and EU-born needs also to be underlined, showing that migrants' performance in the labour market is also a reflection of the overall labour market situation in general. In addition, the lower employment rates in the old Member States probably reflects a lower acceptance of irregular work, and different welfare state systems compared to other Member States with higher employment rates for migrants (where less generous systems may put greater pressure on migrants to work in order to survive).

Although improving the labour market performance of non EU residents needs to remain a priority, generating a greater social cohesion and avoiding costly dependence on welfare payments, "external" human resources will be also needed.

Attracting new migrants

- Highly skilled workers[36]

In the future, the EU will not be able to rely exclusively on national human resources. In fact, in the EU, people with high educational attainments have actually reached high employment rates[37]. Furthermore, the different measures foreseen by the revised Lisbon Strategy, including the reduction of unemployment levels and the improvement of educational attainments of many young people, require investment and time to deliver.

Hence, to be able to adjust labour demand and supply on a relatively short notice, the possibility of sourcing skills outside of the EU will be crucial, while paying attention to the prevention of possible adverse consequences of such a demand in terms of "brain drain" on source countries.

However, the share of skilled migrant workers remains low, compared to other OECD countries. It is evaluated by 1.7% in the EU, compared to 9.9% in Australia, 7.3% in Canada, and 3.2% in the US. Highly skilled migrants continue to pursue North America as their main destination[38]. These data reveal a substantial challenge for the EU in attracting highly qualified workers from third countries with respect to the main worldwide benchmarks.

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35 some immigrant women, notably from Turkey, countries of the Middle East and North Africa who witness the lowest employment rates in EU, are reluctant to enter the labour market for cultural or religious reasons.

36 For a detailed analysis of the labour market situation and trends in the high segment of the labour market, as well as on the impacts of admission and intra-EU mobility of third-country highly skilled workers, see the impact assessment accompanying the proposal for a Directive on highly skilled employment (COM(2007)637 and SEC(2007)1403 of 23.10.2007).

37 In EU 15, the employment rate of highly educated people was 82.5% in 2004 However, it is worth noting that labour shortages and high unemployment rates can co-exist in the labour market (e.g. Germany and Sweden)

38 A profile of immigrants populations in the 21st century, OECD, 2008.

Different factors account for this situation, among which: historical ties, the language preferences, the high previous labour demand for low skilled workers in the European manufacturing sector, the institutions and expected income differences. An important element influencing the attractiveness of the EU, with respect to highly qualified workers, is represented by the barriers to EU intra-mobility, which is a driver of both the demand and the supply side of highly qualified workers. The possibility to work trans-nationally is also crucial, by moving back and forth between the source and the receiving country without losing rights.

It is also important to take into account the growing demand from multinational companies regarding the possibility to transfer temporarily skilled workers to other offices or affiliates. In that respect, the WTO General Agreement on Trade in Services (GATS) already foresees favourable treatment for managers and specialists temporarily transferred within a multinational group ("intra-corporate transferees") within the framework of the provision of a service. However, in the absence of rules providing the conditions of admission for these workers, the implementation of these GATS provisions is only partial.

Another important factor to factor in to draw highly skilled workers is the perception of EU from outside. From prospective immigrants' view, the EU appears too often as a "fortress with closed gates", despite shifts in immigration policies performed in some Member States. In order to reverse this perception, a higher level of information on legal pathways and rights granted to immigrants is required.

- Non qualified workers

Typically, this category of workers is offered poor working conditions: high work uncertainty, poor working conditions –notably more risks of accidents at work and more frequent access to unhealthy occupations[39]- part-time jobs and low wages.

While the role of non-EU immigrants is likely to expand in the future in these growing sectors rejected by local workers, this sectoral concentration of immigrants may lead to the reinforcement of the reluctance of nationals to take these jobs and an accentuation of the segmentation of the labour market, worsening discrimination and make create difficulties for migrants to climb the social ladder. Moreover, this trend might trigger adverse effects on particular groups or sectors, since empirical findings point towards the concentration of undesirable effects on blue-collar workers in manufacturing industries and on unskilled labour in services[40].

In this context, a differential of rights between native and migrant workers is an aggravating circumstance for this segmentation, generating unfair competition.

2.2.1 Existing responses

Regarding economic migration, a stocktaking of the existing measures evidences a reluctance displayed by Member States to limit their sovereignty on this matter. This was demonstrated through the 2001 Proposal for a Council Directive on the conditions of entry and residence of

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39 Literature study on migrant workers, 2008, European Agency for safety and heath at work

40 What are the migrants' contributions to employment and growth? A European approach. HWWI, 2007; European Integration Consortium (2001) The impact of Eastern Enlargement on Employment and Labour markets in the EU member States

third-country nationals for the purpose of paid employment and self-employed economic activities[41] which proposed a general framework covering all types of economic migrants did not receive the necessary support from the Council. This proposal was the first attempt to define a common legal framework at EU level specifically concerning economic migrants.

Apart from the Directive on the researchers[42], the debate fully resumed in January 2005, when the Commission re-launched the debate regarding the need for common rules on the admission of workers from third-countries through a Green Paper on economic migration[43]. Building upon this consultation, the Commission released a policy plan on legal migration in December 2005[44], announcing five legislative initiatives that would be presented between 2007 and 2009.

In October 2007 the Commission presented the two first legislative proposals: the general Framework Directive[45] aims at simplifying procedures for admission of third-country workers and granting a common set of rights to all third- country workers already admitted and legally working in a Member State; the Directive on the admission of highly qualified migrants creating the EU Blue Card[46], aiming at supporting Member States' efforts in attracting and – where necessary – retaining the highly qualified third-country workers needed in their labour markets, including not only a fast-track admission procedure based on common criteria and favorable conditions for residence and family reunification, but also a possibility for exercising demand-based intra-EU mobility without being penalized in terms of family life and of the period necessary to acquire EC long-term residence.

The remaining proposals on seasonal workers, intra-corporate transferees and remunerated trainees will follow in autumn 2008.

2.2.3. Objectives

Against this background, and in line with the purely demand-driven policy pursued to date, the global objective is to manage migration in order to alleviate sectoral and occupational shortages of labour, while giving full effect to the Community preference and and fully tapping and valorising the labour market contribution of third-country workers already legally resident in the EU.

The specific objectives consist of:

– a comprehensive assessment of present and future labour market needs and the setting up of migration profiles, providing a clear picture of the migrants' employment potential, with a view to enhance the matching of labour market needs; this orientation will pave a new way in migration policy;

– enhancing the employment potential of third-country nationals (notably through measures aiming at upgrading their educational attainments, enhancing their training to match their skills with labour market needs, allowing for a better recognition of qualifications, fighting against discrimination and illegal work and promotion of employment for immigrant

41 COM(2001) 386 final.
42 Council Directive 2005/71/EC.
43 COM (2004)811 final.
44 SEC (2005)1680.
45 COM(2007)638. See also section 2.2.1..
46 COM(2007)637.

women, also by means of granting them access to the labour market within the shortest delays);

– the establishment of a legal framework defining clear rules of admission and residence for third-country workers, allowing a swift reaction to labour market needs, enhancing the attractiveness of Europe for workers and business and granting a common set of rights to non EU workers;

– an intensified partnership with third countries in order to better conciliate the interests of originating and receiving countries;

– awareness-raising measures, targeting on the one hand the host societies to enhance their awareness of migrants' contributions and their acceptance (in this connection, the demonstration of a strong will to fight against illegal immigration will help advance this process), on the other hand to the prospective migrants to encourage them to come.

These objectives are mainly reflected in principles 1, 2, 3, 6, 9, 10 and 11.

2.2.4 Subsidiarity principle

Legal basis

The legal basis for EU action is to be found in Article 63 of the EC Treaty and in Article 79 of the Lisbon Treaty.

Necessity for an EU intervention

A policy implemented in one Member State can generate an indirect impact on other Member States; moreover, the lack of homogeneous rules and coordination, and the absence of a clear message at an EU level, bring about adverse consequences and consequently call for European action (in particular in the Schengen area):

– the lack of knowledge regarding the migration skill composition at an EU level and the needs of diverse labour markets can result in contradictory, non rational ("sub-optimal") decisions and under-harnessing of EU citizens or third-country residents (e.g. encouraging inflows of new migrants while neglecting the employment potential of migrants already settled in another Member State)[47];

– differences between national legislation on workers (in terms of definition, entry and residence conditions) can produce distortions in the selection mechanisms through which the third-country nationals decide where to localize in EU territory (i.e. they can be more attracted either by an easy system of accession or by a wider system of recognised rights rather than by a demand of occupation);

– differences in terms of access to the labour market of third-country nationals who have been admitted for reasons different from employment, but who nonetheless have a right of access to the labour market (family members, students, etc.) may also create important

[47] see also conclusions of the European Council of 13/14 March 2008, point 14 ("it invites the Commission to present a comprehensive assessment of the future skills requirements in Europe up to 2020")

distortions in terms of labour market efficiency. Where standards have been fixed at EU level, EU intervention is necessary to modify them;

– especially in the case of highly skilled workers, the obstacles to internal mobility for third-country nationals may be a key discouraging element in their decision of entering the EU economy, although this is by no means the only element driving immigration choices of this category of workers; by the same token, the parceling of rules across Europe may deter multinational companies to establish a affiliate or a headquarter in Europe, knowing that the transfer of their employees will be a time-consuming and burdensome process;

– in those Member States where a low level of rights is granted to third-country workers, employers could benefit from the recognition of poor working conditions (the rights gap), as they would avoid a set of responsibilities and related costs. These situations would create an unfair competition between EU Member States and would affect the proper functioning of the internal market.

– Finally, the actions of individual Member States with regard to cooperation with third countries is not sufficient and may be contradictory (see chapter 2.5 for further developments).

Added-value of an EU intervention

– the EU is in a better position than each individual Member State to establish an overall assessment of migration profiles allowing for a complete picture of the labour market situation and the details of the composition of the labour supply;

– the building of a legal framework aiming at providing homogeneous rules across Europe in terms of entry and residence conditions and introducing intra-EU mobility at least for certain categories of workers will be better achieved (or can only be achieved) at EU level;

– a common message towards prospective migrants will be clearer and more effective released by EU;

– EU as a block of 27 Member States is also in a stronger position to negotiate with third countries than individual Member States.

2.3. INSUFFICIENT INTEGRATION OF LEGAL IMMIGRANTS

As a consequence of increasing inflows of immigrants, European societies are today more acutely faced with the question of diversity. Although some Member States experienced the phenomenon earlier, the whole of Europe has now gradually become a destination for immigrants. In 2006, 18.5 million third-country nationals were registered in Europe, equivalent to just under 3.8% of the total population. If one focuses on migrants rather than on foreign nationals, the number is 27.3 million, representing 5.6% of its total population[48].

A fundamental element of a well-managed migration policy is the successful integration of legally residing immigrants, which results in stronger economies, greater social cohesion, an increased feeling of security and cultural diversity, finally stepping up the Union's position in the world. Although a growing number of Member States recognise the vital importance of

[48] COM(2007)780. Romania and Bulgaria are considered as EU nationals.

integration policies, which fall within their competence, and despite the increasing supporting role played by the EU, many integration challenges remain and call for a new step change.

2.3.1. Definition of the problem

Mainstreaming

Mainstreaming integration has become an integral part of policy making and implementation across a wide range of EU policies. However, effective sharing of information, coordinating with all tiers of authorities and stakeholders and paying due attention to the mainstreaming of gender equality and to the specific needs of migrant youth and children, are still major challenges.

Evaluation and indicators

More detailed data can help to avoid confusion and improve the visibility of immigrants' contribution to the host society's development. Yet, the capacity to collect, analyse and disseminate integration-related information, including gender disaggregated statistics, is still not available. Monitoring, evaluation of integration policies and programmes and identification of specific indicators are to date insufficient.

Management of diversity

Integration of third-country nationals has been the subject of a debate focussing on discrimination phenomena and cultural and religious diversity. In some cases, dramatic events were crucial in influencing the public perception of immigration.

Structural initiatives targeting the host population to reinforce its ability to adjust to diversity are still underrepresented in national strategies.

Education and empowering immigrants

Average educational attainment of non-nationals is generally substantially lower than that of nationals[49], which raises concerns about their future personal and professional development[50].

In addition, improving the knowledge of the host society and of its language by immigrants is a major challenge.

Shared values

Not enough is done to actively ensure that all residents, including immigrants, understand, respect, benefit from, and are protected on an equal basis by the full scope of values, rights, responsibilities, and privileges established by the EU and Member State laws, including respect for the principles of liberty, democracy, respect for human rights and fundamental

[49] See chapter 2.2

[50] Yet, as seen above, in several countries, because of the presence of high-skilled migrants, the situation is reversed for tertiary education. An important factor which accounts for the varying ability of the education system to make converge the level of foreign-born population is the different composition of the foreign population in individual countries, in terms of the national origin and socio-economic, educational and linguistic background of the immigrant population.

freedoms, and the rule of law, the concepts of dignity, freedom, equality and non-discrimination, solidarity, citizen's rights, and justice.

Employment

The integration of immigrants into the labour market remains a major challenge of integration policies. It is notably related to recognition of qualifications, discrimination at the work place and specific difficulties encountered by immigrant women.

Social aspects and access to services

As reported in a number of *National Action Plans for Social Inclusion* and through EU studies, there is considerable evidence of the gaps in social outcomes that persist between the host country nationals and migrants, albeit at a different scale according to other factors such as country of origin or motives for migration.

At EU level, non-EU migrants face much higher risks of poverty than people born in the host country (30% against 16%). The gap is even greater for households with children.[51]

Although in a growing number of cases the capacity of service providers to interact with immigrants and initiatives on equal access to public institutions are launched, many immigrants still face barriers when trying to access social protection and essential services (health care, housing, etc.) that are key for a successful integration.[52] Cultural and language barriers, lack of knowledge about the existing system, poverty are among the drivers which account for this situation. Some reports also highlight a lack of awareness of anti-discrimination legislation among health professionals and administrative staff. Equality of treatment in terms of health and safety at the workplace is another important dimension, especially when considering that immigrants are employed more often than nationals in the so-called "3D" jobs (dirty, dangerous and demanding work).

Participation and citizenship

While participation of immigrants in the democratic process is increasingly perceived as a significant aspect of successful integration, migrants' representatives are not often involved in the elaboration/implementation of integration policies.

Host societies and discrimination

Migrants often face negative stereotypes, which are expressed directly or indirectly. The promotion of non-discrimination and equal opportunities for all is key integration issue. In this last respect, the European Union Agency for Fundamental Rights[53] witness the prevalence of direct and indirect ethnic discrimination, such as discrimination in recruitment and redundancy practices and views that different rates of unemployment, at least partly reflect forces of discrimination, rather than simply reflecting factors such as differences in education

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51 Source: EU-SILC 2005. The size of families, unemployment, low wages, and poor working conditions mainly contribute to this situation.

52 as highlighted during the CLIP conference of Conference European cities integrating migrants of 7 April 2008

53 Annual report, 2006

or skill levels. This conclusion is shared by the European Agency for safety and health at work in a recent study[54].

2.3.2. Existing responses

The successful integration of lawfully residing third-country nationals in the societies of Member States is one of the greatest challenges of immigration policy and a key element in promoting cohesion within the EU. In the 2004 Hague Programme, EU Heads of State and member state Governments requested the establishment of a coherent European framework for integration. Following the adoption of Common Basic Principles on integration by the JHA Council in November 2004, the Commission presented, in September 2005, a communication with proposals for a common framework (handbooks, website, annual reports, NCP meetings, ministerial conferences, integration forum, integration fund, etc.) within which, through concrete measures both at EU and national level, these principles should be put into practice. An Integration Fund has been created in 2007 to financially support integration policies at national and EU level.

Moreover, EU legislation provides a strong framework of anti-discrimination legislation[55]. The European Year of Equal Opportunities for All in 2007, and the European Year of Inter-cultural Dialogue in 2008, have contributed to raise awareness in these matters, but further efforts are needed.

With regard to the social security rights, the EU has had a quite decisive impact on the situation of migrants through the existing provisions or proposals in the field of social security coordination concerning third country nationals (through extending the EU coordination provisions to third country nationals; through association agreements, or community instruments). In 2003, the European Parliament and the Council adopted Regulation 859/03[56] which extends the provisions of Regulation 1408/71 to third country nationals who are legally residing in the EU and in a cross border situation. The objective of this Regulation is to provide third country nationals, who fulfil the abovementioned conditions, the same treatment as EU nationals as regards coordination of social security schemes across the EU. As Regulation 1408/71 will be replaced by Regulation 883/04, the Commission adopted, in July 2007, a proposal extending the provisions of Regulation 883/04 to third country nationals who are legally residing in the EU and in a cross border situation (COM (2007)439). This proposal will have to be adopted before the regulation becomes applicable in order to avoid a significant setback for the equal treatment of legally residing immigrants with regard to their social security contributions.

As concerns the broader issue of granting equal treatment as yet another mean of improving immigrant's integration into the labour market and the host society, in October 2007 the Commission presented a legislative proposal (the so called "general Framework Directive[57]") which sets down a minimum common level of rights for immigrant workers in terms of equal treatment in a series of areas. Such equal treatment with nationals of the host Member State entails: working conditions (including pay and dismissal), health and safety at the workplace,

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54 Literature study on migrant workers, 2008

55 Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

56 OJ L 124 of 20.05.2003

57 COM(2007)638. See also section 2.2.1.

education, vocational training, recognition of qualifications, social security (including health care), export of pensions once they are paid, access to goods and services (including procedures for housing) and tax benefits. Once adopted, this proposal will – amongst other things – contribute to improve the legal status of legally workers third-country nationals.

2.3.3. Objectives

In line with the "Common Basic Principles for Immigrant Integration Policy in the EU", the overall objective of European policy is to improve the dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States.

This objective involves:

- to develop a more coherent approach to integration,
- to reinforce the sharing of information and best practices as well as the coordination between all stakeholders;
- to better monitor and evaluate integration policies;
- to set up targeted language classes and tuition to facilitate integration at school;
- to focus on introduction programmes, including language and civic orientation courses for newly-arrived;
- to prevent unemployment through education and training, a better recognition of qualifications, fight against discrimination and illegal work and promotion of employment for immigrant women;
- to foster anti-discrimination and information measures and cooperation between governmental stakeholders and engagement of companies in debates on integration;
- to provide specific help and information to allow migrants' access to services, especially health services;
- to reflect on active citizenship and naturalisation processes as elements to strengthen opportunities for involvement in the host society.

The principle 3 elaborates on this general objective, although integration into the labour market is mainly targeted in principle 2.

2.3.4. Subsidiarity principle

Legal basis

The legal basis for EU action is to be found in Article 63 of the EC Treaty and in Article 79 of the Lisbon Treaty.

Necessity for an EU intervention

Immigration is a permanent feature of European society. If the flow of immigrants is orderly and well-managed, Member States reap many benefits. Taken together and across all Member States, these benefits advance the European process and strengthen the Union's position in the

world. A critical aspect of managing migration is the successful integration of legally residing immigrants and their descendants. The failure of an individual Member State to develop and implement a successful integration policy can have, in different ways, adverse implications for other Member States and the European Union. For example, intercultural challenges faced in a Member State after a dramatic event might spread to neighbouring States, as proven by the example of the Danish cartoons.

Moreover, following patent failures to implement successful integration strategies in the past (see dramatic events in Denmark, Netherlands and UK), Member States started a process of revision of national integration strategies and strongly asked for exchange of information and best practice at EU level so as to learn from each other's mistakes and successful experiences in this area. New Member States, which are just now facing integration challenges, can also greatly benefit from the long experience of other Member States.

The policy proposed by the Commission with respect to integration also responds to requests from the European Council (as regards educational field, see conclusions of the EC (13/14 March 2008), point 15 ("improve the achievements levels of learners with a migrant background"), or more broadly EC of 14 December 2007, point 25 ("integration is a pivotal element of the comprehensive European migration policy. The European Council calls for better coordination between migration and integration policies"), or EC conclusions of 14/15 December 2007, point 24 e).

Added-value of an EU intervention

The precise integration measures a society chooses to implement should be determined by individual Member States, however, mainstreaming of national policies and exchange of best practices is better achieved by measures taken at the EU level. An EU intervention allows also through the Integration Fund to provide for a common framework and to attenuate the differences between Member States approaches.

Given that integration is a process which has to take place in Member States – at national, regional or local level -, most of the actions implementing the Common Basic Principles will have to be taken by Member States. However, the possible failure of individual Member States in successfully integrating third-country nationals can have severe negative implications for the other Member States and the European Union as a whole. It is therefore in the common interest of all that, throughout the EU, effective integration strategies are being pursued. For this reason, the issue of integration has gained increasing importance on the European agenda, commencing in 2002/3 with the JHA Council's request to establish National Contact points on Integration and the Thessaloniki European Council's invitation to the Commission to present Annual Reports on Migration and Integration. At the explicit request and/or approval of the European Council, a number of further actions and measures have been taken at the EU level, such as the elaboration of handbooks for practitioners, the organisation of annual Ministerial conferences, the creation of an European Website or the setting up of a European Integration Fund. The increased recognition of the added-value of EU interventions is also reflected by the Lisbon Treaty which, in Article 79 (4) TFEU, will introduce an explicit legal base for all EU measures that provide incentives and support Member States in their efforts to promote the integration of third-country nationals residing lawfully in their territories. This is however limited to legislative measures that do not harmonise the laws and regulations of the Member States which distinguishes this policy area from other components of the EU's common immigration policy.

2.4. CONTINUOUS PRESSURE OF ILLEGAL IMMIGRATION

2.4.1. Definition of the problem

In spite of the important legislative framework and a number of measures taken, at the national or European level, to combat illegal immigration, this phenomenon is still a major concern across Europe, triggering a wide array of adverse consequences that are unsatisfactorily dealt with by current policies.

Diverse impacts of the phenomenon

Whilst difficult to evaluate, indicative statistical data has put forward a total number of illegally staying migrants of several million and the number of annual inflows into the EU at several hundreds of thousands[58]. A number of drivers are likely to further increase the magnitude of the phenomenon: environmental degradation, possible natural disasters, increasing numbers of facilitators that organize the smuggling of human beings and continued conflicts. Moreover, the continuing high population growth in Europe's neighbourhood, especially in Africa, combined with poor economic performance and political instability, could act as a strong push factor.

In spite of efforts, made either individually by Member States, or in co-operation with other Member States at European level, illegal immigration continues to flourish in the EU, under its different forms: illegal entry into the European Union, often on the basis of false or forged documents and with the support of organised criminal networks of smugglers and traffickers; overstaying of third-country nationals having entered legally –e.g. at the expiry of their visa or their residence permit or once their asylum request has been definitively rejected; abuse of procedures allowing legal entitlement for residence (e.g. false marriages/family reunifications, false visa applications, misuse of the student status).

Illegal immigration is a serious concern from different points of view.

From a security perspective, illegal immigration may be linked with terrorism, trafficking in human beings, drug smuggling, smuggling of weapons, exploitation, slavery-like working conditions and other serious crimes which therefore pose a major threat to European societies.

Besides these security issues, illegal immigration is often associated with humanitarian tragedies, linked to the conditions of entry into the EU territory, with the help of criminal networks. It is worth noting that a great number of detected illegal immigration by sea takes place through the use of small craft or dinghies which are not seaworthy and are therefore seriously jeopardising the lives of their occupants. It needs also to be noted that migrants without residency status (asylum seekers and undocumented migrants) have no or limited access to services that are essential to guarantee fundamental human rights (e.g. effective access to education for children of illegal migrants, access to health care).

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[58] The estimates of the total number of illegal migrants in the EU include two to three million (Global Migration Perspectives 2005), 4.5 million (IOM 2000) and seven to eight million (United Nations' Trends in Total Migrant Stock: The 2003 Revision). The estimates of annual increases of illegal immigrants into the EU include 500 000 (Wiener Zeitung 2005) and 350 000 (Global Migration Perspectives 2005). However, aggregating available estimates for 21 individual Member States suggests that there is an annual inflow of illegal migrants to the EU of between 893 000 and 923 300. It needs to be noted that most estimates that are available relate to the period prior to 2004 and the accession of the EU-12, where nationals from those countries were considered as third country nationals.

Moreover, illegal entry, transit and stay of third-country nationals who are not in need of international protection, undermines the credibility of the common Europeans and the Member States', immigration policy. Effective countermeasures against such infringements are therefore necessary, and any regularisation programme should take into account the risk of creating any pull factors.

The prevalence of this phenomenon, which does not take into account the reception capacities of the Member States, results in multiple and diverse social costs, including costs of assistance and health care (whilst varying across individual Members States) in the absence of legal livelihood; loss of tax revenue, social security systems, legal employment opportunities and unfair competition owing to illegal employment; and added costs of inspection and ultimately return procedures. Amnesties/regularisations, even when a work contract is required, do not ensure that the migrants who benefit are those which are most needed by labour markets added to which their long-lasting occupational inclusion is often problematic.

A weak number of returns

When efficiently tackling illegal immigration, the return process is of crucial concern. The full compatibility of measures taken being compliant with fundamental rights, including refugee protection and human rights obligations derived from the European Convention of Human rights, has to be ensured. In that respect, voluntary returns which ensure a dignified return for returnees should be given preference, and are, in fact, increasing. It is also in the interest of the Member States as it is the most cost-effective process. Yet, forced returns are the most frequent, which encounter several barriers, such as: lack of reliable documentation which leads to difficulties identifying the third-country national; practical difficulties to organise return operations; and reluctance of third-countries to readmit their nationals, often linked to the absence of readmission agreements. The lack of coordination and harmonisation at the European level, against contrasting situations in terms of legislation, practices and burden-sharing across Member States, also gives rise to specific problems. Member States' legislation on returning illegal third-country nationals differs widely, as regards terminology, as well as substantive provisions applying to return, removal, use of coercive force, temporary custody and re-entry. This diversity yields a distorting effect on the distribution of illegally staying immigrants within the EU and weakens the effects of a return decision. For example, when a MS does not implement its decision refusing a residence permit to a third-country national, it has a potential implication on the territory of all other Member States, owing to the absence of internal borders. The weak impact of the return decision on the European scale is another concern in this area: in the absence of mutual recognition of the return decisions taken by a Member State, the third-country national may comply with his/her obligation to leave by simply moving to another Member State, which leads to uncontrolled secondary movement among Member States and may lead to further illegal presence in another Member State.

Power of criminal networks: smuggling and trafficking of migrants

The crossing of the external borders, transit through or illegal stay on the territory of Member States of the European Union is often facilitated by criminal networks. Third-country nationals who are looking for a better life pay such facilitators amounts of money that often exceeds many times an average annual salary in their country of origin. Illegal immigrants are also susceptible to human trafficking, for the purpose of sexual or labour exploitation, domestic servitude, begging, or forced marriage. Human trafficking is a serious crime against persons. Moreover, high profits from labour and sexual exploitation are often subject to money laundering and may enable traffickers to engage in other criminal activities which

could lead to the achievement of economic, social or even political power. This often has a transnational dimension, as numerous trafficked persons move, or are brought, across external borders. Migrant smuggling and human trafficking are linked by the fact that they are frequently organised by internationally operating criminal networks, and are part of organised crime phenomena linked with the demand for cheap and illegal services. Many victims, or potential victims, of human trafficking are women, children and individuals belonging to ethnic and minority groups who may be subject to discrimination in their country of origin.

Pull factor: illegal employment

Another factor that encourages illegal immigration into the EU is the possibility of finding work. Within the EU, undeclared work is estimated to account for between 7-16% of EU GDP, although this is of course only partly performed by illegally residing third-country nationals or legal third-country nationals working in breach of their residence status. Avoidance of tax and administrative burdens and the low awareness of sanctions constitute, according to a recent survey, two main drivers of undeclared work[59].

Illegally staying migrants work mostly in low-skilled sectors such as construction, agriculture, catering or cleaning and housekeeping services to support themselves. Often they are hired for the so-called "3 D"- jobs (dirty, dangerous and demanding work), which are rejected by the domestic labour force. Their wages are often below the official minimum and differ greatly.

Despite progress reported in a number of Member States in these areas, there is wide scope for improvements in the diverse policy branches. A review of the national schemes show that the core problem is related to enforcement of the law rather than the absence of legal rules, as evidenced by the fact that the legislation in most EU Member States already provides penalties (ranging from public procurement contracts, to limitations on future recruitment, to criminal sanctions, and to the obligation to bear return costs) and preventive measures (e.g. imposing a burden on employers to verify the immigration status of third-country nationals before offering employment; obliging employees to be able to identify themselves in the work place). The risk of being detected by competent authorities is currently very low, both for the employer and for the employee. Yet, people who consider the risk to be small are more likely to be involved in undeclared work. Enforcement of the sanctions is impeded by the following shortcomings: lack of coordination between actors responsible for combating illegal work (social security organisations, labour inspectorates and trade unions), insufficient human and financial resources allocated to enforcement bodies, lack of information to undertake effective controls and lack of data to assess the outcome of the inspections.

The insufficient international cooperation, and the insufficient cross-border enforcement of sanctions, especially regarding non-criminal fines, are other main concerns, flowing from a growing cross-border business which is at the same time becoming more complex. This phenomenon also gives rise to abuses in the provision of services aimed at benefiting from a lower cost of work and social contributions. Often in connection with cross-border activities, new developments in the labour market (agency work, sub-contracting, false self-employment) have not always been taken into account through a legal framework and control bodies. A continuous updating of the information relating to illegal work is all the more a concern as this phenomenon tends to become less transparent and more complex, as policies are toughening.

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[59] Special Eurobarometer survey (N° 284)

As a result, undeclared work is not, at large, in the decline. It could even be on the rise in several Member States according a recent study. Furthermore, the growing demand for household and care services could contribute to extending the range of undeclared work.

Pull factor: prospect of a regularisation (amnesties)

A number of regularisation programmes have been launched recently, often of a large-scale. Besides a possible immediate decrease of illegal work, such decisions may trigger two effects: in the short term, a "spill-over" effect, namely the entry of regularised third-country nationals into the territory of other Member States as a consequence of the abolition of internal border controls within the Schengen area; and potentially, a pull effect on other third-country nationals in their countries of origin.

2.4.2. Existing responses

The development of a common policy to fight illegal immigration has been shaped by a number of Commission Communications, the last of which was presented in July 2006 (Communication on Policy priorities in the fight against illegal immigration of third-country nationals).

The EU strongly advocates a comprehensive policy in this field. This includes, among other policy instruments, a common return policy. In line with this, Council Directive 2001/40/EC of 28 May 2001, on the mutual recognition of decisions on the expulsion of third country nationals has been adopted, with the aim of allowing the recognition of an expulsion decision issued by one Member State against a third-country national present within the territory of another Member State. Learning from the loophole of these provisions, namely the lack of obligation on a Member State to recognise a return decision issued by another Member State and the lack of corresponding IT tools, next steps have been taken. In September 2005, the Commission presented a proposal for a Directive on common standards and procedures for returning illegally staying third-country nationals, which is due to be adopted in the course of 2008. The objective of this proposal is to provide for clear, transparent and fair common rules concerning return, removal, use of coercive measures, temporary custody and re-entry, which comply with the fundamental freedoms of the person. Contrary to the system foreseen in the Directive, on the mutual recognition of expulsion decisions, the proposed return Directive therefore obliges Member States to systematically enforce return decisions vis-à-vis any illegally staying third-country national (the illegally staying third-country national, subject to return from a Member State, will not be able to abscond to another Member State), also provides the systematic issuing of an entry ban accompanying a return decision and allows for inclusion of this information in the Schengen Information System (SIS) in order to enhance its effectiveness. The generalisation, at the European scale, of the effects of national return measures intends to have a preventive effect and foster credibility in a truly European return policy.

These actions are accompanied by a systematic dialogue with third countries on the management of migration, and the conclusion of Community readmission agreements, such as those in force with Hong Kong, Macau, Sri Lanka, Albania, Russia, Ukraine, Moldova and the Western Balkans countries. The December 2006 European Council explicitly requested to improve cooperation on return and readmission with third-countries and to step up negotiations on EC readmission agreements. Cooperation in other areas focus on developing the use of biometric technologies to make travel or identity documents more secure and the fighting of smuggling and trafficking of migrants. In this latter field, besides international

instruments, a 2004 Directive defines the conditions for granting a residence permit to third-country nationals who are victims of human trafficking, or who have been subject of an action to facilitate illegal immigration and who cooperate with the authorities. The EU also adopted a Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, adopted by the Council on 1 December 2005, which proposes an array of measures aimed at the prevention of trafficking and protecting victims. Further to this Plan, the Commission services presented Recommendations on the identification and referral to services of victims of trafficking in human beings, calling for the establishment of a national mechanism aimed at early identification and assistance to victims. On 18 October 2007, an 'Assessment Manual on Measuring responses to THB' was also presented by the Commission services in order to help Member States self-assess their anti-trafficking policy on the basis of comparable criteria.

Other important measures concern social and economic actors more directly, for example with respect to combating undeclared work and carriers' liability. A Council Recommendation was adopted on 22 December 1995 with a view to harmonising means of combating illegal immigration and illegal employment. Illegal work is also a part of a comprehensive policy led through the framework of the European Employment Strategy and the employment guidelines. The objective is to transform undeclared work into formal work, as announced in the Council Resolution of 20 October 2003, and to mix preventative measures and sanctions. A communication was presented on 20 October 2007 in order to step up the fight against undeclared work. In May 2007, the Commission presented a proposal for a Directive on sanctions for employers of illegal immigrants. The European Council, in June 2007, explicitly stated to be convinced that illegal employment is one main pull factor driving illegal immigration.

Other important initiatives include the establishment of the Rapid Border Intervention team (RABITs), further strengthening of the Borders Agency (FRONTEX) and examining the set-up of a European Patrols Network and European Surveillance system for external borders. To support the EU's return policy, a European return fund started operating in 2008, on the basis of the principle of integrated return management, and with a view to supporting a fair and effective implementation of common standards on return, as established under Community legislation on returns. Its total budget reaches €676M.

Addressing regularisation is also a priority, in order to both remove a pull factor and to avoid secondary movement of migrants within the EU. Following several regularisation programmes, many Member States have voiced their concern regarding the absence of coordination of such measures, whose action is discretionary and taken by the concerned governments. In response to these concerns, a mutual information system on national measures in the area of migration and asylum was set up in 2007, pursuant to which, Member States must communicate information on measures considered likely to have a significant impact on other Member States or on the European Union as a whole. A web-based network is a central element of the information mechanism. However, this tool is not satisfactory. Although the Council Decision provides that the communication of relevant information should take place at the latest when the measures concerned become publicly available, and encourages Member States to transmit it as soon as possible, Member States neglect to use this tool and the objective of mutual cooperation is therefore not met. In addition, it should be noted that the Commission is conducting a study on regularisation programmes in Member States which shall serve as a basis for future discussions on this issue with the Member States, and which may lead to further initiatives in the coming years.

2.4.3 Objectives

The overarching objective is to pursue current policy aimed at tackling both push factors and pull factors of illegal immigration, which can be further broken down into the following specific objectives:

– stepping up the fight against the smuggling of migrants and trafficking in human beings, pursuing a human rights centred approach (which requires: amendments to the legal framework in order to improve the status of trafficked persons once they escape the traffickers and to adapt to new kinds of crimes; prevention strategies specific to vulnerable groups such as women and children; improvement of the investigation of human trafficking, notably through better national and international cooperation; more effective implementation of international instruments through reinforced EU action at regional and international level)

– continuing to combat illegal work (through: the adaptation of Community legal framework to foresee common sanctions; a better enforcement of sanctions, through adapted national human and financial resources and more effective national and trans-national coordination; a more thorough knowledge of the phenomenon across Member States, thanks to diverse instruments ranging from statistics, risk analysis tools, new kinds of fraud, comparative learning; development of incentives toward declared work)

– establishment of an effective return policy (through: conclusion of further EC readmission agreements and the creation of common standards reinforcing the effect of a national return decision (Directive); improved cooperation and coordination among Member States, including joint return operations; an intensified partnership with third countries).

These objectives are detailed in principles 9, 10 and 11.

2.4.4. Subsidiarity principle

Legal basis

The legal basis for EU action is to be found in Articles 62 and 63 of the EC Treaty and in Articles 77 and 79 of the Lisbon Treaty.

Necessity for an EU intervention

– illegally staying third-country nationals can move (including secondary movements) to the Member States that treat them most favourably, whatever efficient their external border control may be; this situation may among other negative consequences entail distortions of competition within the single market;

– coordinated operational actions are also needed to fight efficiently against illegal immigration (e.g. networks of information);

– trafficking in human being is often an transnational crime and requires even more coordinated policies and measures. A stronger common EU approach in respect of the different responses to be put in place so better combat this crime and ensure protection of victims is also needed in order to traffickers not to take advantages of the different legal frameworks and to ensure that victims are equally protected throughout the EU.

– the actions of individual Member States with regard to cooperation with third countries are not sufficient and may be contradictory;

– burdens lie unevenly with Member States while fight against illegal immigration requires an homogenous reaction.

EU added-value

– EU as a block of 27 Member States is in a stronger position to negotiate with third countries than individual Member States, e.g. readmission agreements;

– Coordinated operational actions (e.g. networks of information; organisation of joint return flights) can be better achieved through actions at EU level;

– An EU intervention allows reallocating resources according to the need of the Member State through the Return and Border Fund and to provide for a common framework preventing secondary movements and distortion of competition;

– In a view to tackling the problem at the root, an EU action enables to send a clear message to third-country nationals designed to reduce the impetus for them to leave their home countries for an illegal job in the EU. A similar message can be sent to criminal networks engaged in trafficking of human beings.

2.5. AN INSUFFICIENT PARTNERSHIP WITH THIRD COUNTRIES

2.5.2. Definition of the problem

In the last decades of the 20th century European Union has become a destination continent for immigrants from various parts of the world, but especially from Africa, Asia and Eastern Europe. As presented by subsequent UN calculations, the volume of this migration has been growing and until early 2000s. Since the legal gateways to Europe have been limited, illegal immigration grew in volume, reaching over 1% of the total European population according to the OECD estimates. In 2006 alone Spain intercepted 45,000 undocumented immigrants at its sea borders (mostly coming from Africa). Even though migrants come to Europe from various parts of the world, the push factors driving their mobility are very similar.

As is broadly acknowledged in literature[60], economic reasoning underpins all decisions to migrate, however the process is complex and susceptible to a number of additional factors. Three broad categories of push factors can be identified: economic, cultural, and migration policy-related.

People migrate to Europe in search of better livelihoods than those available at home. This concerns mainly people from the middle strata of the society, who have enough financial capital and/or skills to undertake the migration project. [61] Very often it is a family project, where one person goes abroad on the collective funds. Later the migrant is expected to remit enough financial means to meet the needs of the whole family. These migrants cannot find

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60 See e.g. the groundbreaking article by Douglas S. Massey et al. (1993). "Theories of International Migration: A Review and Appraisal." Population and Development Review 19: 431-466.

61 This group of migrants constitute the highest share of illegal flows to Europe. The main countries of origin are Morocco, Ukraine, Vietnam, Moldova, China, and Russian Federation, Serbia and Montenegro.

enough possibilities to develop a sustainable livelihood at home (as stable employment perspectives, investment in SMEs), for a whole array of reasons. The most important push factors include weak and underperforming governance, bad business climate due to corruption and instability, disrupted labour markets. The inability of many governments to meet the Millennium Development Goals leaves little hope for an immediate change in many countries, especially of sub-Saharan Africa.

Another push factor of economic migration is related to the development of individual human capital. In the situation where the acquired skills are not used, or cannot be used, in the home country, people will seek opportunities to apply and even improve them elsewhere. This is the case with researchers, physicians and other highly-skilled migrants, who often respond to legal offers of employment abroad as they are unable to perform their profession at home – mostly due to the lack of facilities and limited funds. Underdevelopment of specific sectors requiring highly-skilled employees is a persistent problem in sub-Saharan Africa and Eastern Europe, but also in other regions of the world.

The most extreme push factor for migration is the loss of livelihood. It can occur due to natural disasters and conflicts. In these cases, the person faces an imminent life-threatening danger. Draughts, floods, aridity due to overuse of fertilizers can drive people from their homes in hope of survival. These factors concern all strata of society and usually do not result in immediate international migration, but could indirectly influence propensity to migrate. With climate change, the world will see more environment-induced migration. It must be stressed that the relation between climate change and migration has not been thoroughly studied yet, however, according to available studies, for many people, especially in the poorest countries of the world, climate change could significantly change their living conditions and eventually push them to migrate. With the temperature rising by two degrees centigrade in the next few decades we could witness up to additional ten million people being affected each year by the coastal floods. With the rising sea levels, we might witness the disappearance of some island nations - extreme examples are the Maldives and Tuvalu, which, according to the studies, could disappear in the next 40 years. Also the impact on agriculture might be especially significant – in Africa, the food production per capita has already decreased by 12% since 1981 for a variety of environment-related reasons.

There are several ongoing conflicts in the world today, such as the Iraq war, [62] conflict in Darfur, sudden upsurges of violence in Kenya or Zimbabwe, which happen on various grounds, and each of them is a major push factor for migration. They can produce hundreds of thousands of displaced persons. These temporary refugees do not become long-term international migrants and tend to go back home when the conflict is resolved. Long-lasting conflicts, as the ones in Palestine, Afghanistan, Chechnya, or Sri-Lanka also serve as a strong push factor. Internal political struggle, especially under authoritarian and totalitarian regimes such as in Myanmar, Tibet, and North Korea leads to persecution of individuals and groups, which then seek refuge from the imminent danger. Failure to introduce democratic rules creates a push factor persistent in almost all regions of the world.

The culture of migration, which can develop in the localities of the long history of economic migration, is the social construction independent of the actual economic factors. The studies

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[62] Currently the Iraqis constitute the largest group of asylum seekers in Europe – in 2007 over 18% of all applications were lodged by Iraqis. Other top countries include Russian Federation, Serbia and Montenegro, Pakistan, Turkey, Afghanistan, Somalia, Iran, China, Nigeria, the Democratic Republic of the Congo, and Bangladesh.

of some regions in Eastern Europe (especially Moldova and Ukraine), North Africa (Egypt), Sub-Saharan Africa (Ghana), Asia (provinces of China), and Latin America (Mexico) often enumerate culture as one reason to migrate. For many localities international migration has become the easiest and the most natural way to earn livelihood. This is the direct result of strong migration networks linking distant localities and facilitating exchanges. People can acculturate to migration patterns as an economic strategy and tend to replicate it with the help of the international network – often the only network they have. Moreover, the social pressure to migrate and prove oneself (especially for men) is sometimes stronger than actual economic need. In some cases, especially in Eastern Europe, migration can be seen as a method for emancipation of women.

Push factors can also be produced by a conscious migration policy of the source country. The examples of India and Philippines provide strong evidence that a source country can induce emigration by providing a range of incentives for emigrants. When emigration is a stable element of development policy, push factors will persist. Of course, these policy-encouraged flows are usually limited to a given sector (nurses, doctors, IT specialists) and are predominantly legal, thus their pressure on the EU is not uncontrollable.

The above factors build up to a significant migratory pressure on Europe, which is unlikely to cease in the foreseeable future. Emigration pressures will remain high in countries which continue to suffer from political instability, lack of good governance and the rule of law, lack of employment and income opportunities, and high levels of corruption and crime as well as human rights violations. Political, social and economic aspects are often overlapping and intertwined, which requires a process of dialogue and awareness raising in close cooperation with the governments in some third countries. The attenuation of the root-causes of migration is thus an important element of the Global Approach, which should be developed. The partner countries should thus be supported in their efforts to limit emigration and strengthen capacity to reap benefits from migration and development agenda. The added value of closer cooperation through partnership lies in the increased joint abilities to monitor, assess, steer and manage migration flows in the interest of the European Union, as well as in the interest of the partner countries.

2.5.2 Current responses

In the late 1990s, the EU response focused on border management and the fight against illegal immigration, thereby addressing only the end-product of the complex migratory process. The Global Approach went beyond this to address the root causes of migration. The Global Approach to Migration, launched in 2005, and refined in 2006, aims to formulate comprehensive and coherent policies that address a broad range of migration-related issues, bringing together justice and home affairs, development and external relations in an effort to enhance dialogue and cooperation on migration in partnership. This broader strategy draws together all relevant aspects, including asylum, border control, visa policy, readmission and return, migration and development, and measures against trafficking and smuggling of human beings. In addition, streamlined financial instruments such as the Thematic Programme on Migration and Asylum (successor of AENEAS programme), have been reserved in order to put the objectives into practice and operational results. Much of this support has been focusing on institutional capacity building in partner countries, as well as adding a Community dimension to Member State financing of migration management of relevance to the external relations.

In the first phase, the Global Approach was mainly focusing on cooperation with countries in the Southern Mediterranean and sub-Saharan Africa. Subsequently, it was also extended to cover the regions to the East and South East of the Union as well as parts of Asia[63].

A broad tool box has been developed within the framework of the Global Approach to Migration, including the concepts of mobility partnerships, circular migration, migration profiles, migratory routes and cooperation platforms[64]. In the particular context of the migration and development nexus, measures and financing have focused on making remittances more efficient for development; facilitating the voluntary contribution of members of the diaspora to development of their former home countries; and mitigating brain drain and brain waste.

Specific political progress has been achieved in placing the Global Approach on the international policy agenda. Two main examples are the ministerial conferences during 2006 in Rabat, focusing on regional migration, and in Tripoli, which was the first all-African and all EU ministerial dedicated to migration. Follow-up work of these ministerials, including through their related Action Plans, have translated into an ambitious range of measures and initiatives. Related work includes migration information centres and the establishment of a remittance institute as well as migration observatories in migrant source countries.[65]

2.5.3. Objectives

In line with the Global Approach, the overall objective consists of consolidating and deepening partnerships with third countries in order to improve positive consequences of migration for both countries of origin and countries of destination, including: fostering circular migration and brain circulation (through broad strategies addressing the general conditions in source countries; recognition of a priority for the migrant's further residences in Europe; ethical recruitments; social security agreements allowing exports of pensions; fight against brain waste); improving the management of remittances; enhancing the voluntary contribution of diasporas; better supporting voluntary returns and economic reintegration of migrants; focussing on the matching between labour supply and demand; addressing employment and decent work in developing countries; further developing policies to fight illegal immigration

These objectives will be met through:

– a better implementation of current instruments (which requires in turn: a better coordination; increased or more efficient use of human and financial resources; more joint activities);

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63 See COM(2007)247 final "Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union"

64 In particular, see COM(2007)248 final "On circular migration and mobility partnerships between the European Union and third countries"

65 By the end of 2007, the first Euro-Mediterranean Ministerial meeting on Migration in November, and the Partnership on migration, mobility and employment, in the framework of the First Action Plan of the Joint Africa/EU Strategy, adopted at the Africa-EU Summit in December, marked other major policy developments that will need to be continued in terms of operational measures with some funding implications. A second EU-African Ministerial Conference on Migration and Development is scheduled to be held in Paris in October 2008 and will lead to further implementation requirements.

– a further integration of migration policy into the Union's development cooperation and other external policies;

– a transformation of the geographic meaning of the approach, gradually shifting from a region-based perspective to a country-by-country perspective.

These objectives are mainly reflected in principle 6.

2.5.4. Subsidiarity principle

Legal basis

The legal basis for EU action is to be found in Article 63 of the EC Treaty and in Article 79 of the Lisbon Treaty.

Necessity for an EU intervention

– the actions of individual Member States with regard to cooperation with third countries are not sufficient and may be contradictory;

– individual Member States are not empowered to negotiate the clause covering the readmission of third country nationals (i.e. nationals of other countries than the EC and the country signing the Agreement) and stateless persons;

– individual Member States will face difficulties to expel third country nationals illegally residing in their territories if these persons have not entered the EU through these Member States, which occur frequently given the absence of internal frontiers and easy circulation of third country nationals between the Member States;

– the process of monitoring the application of a readmission agreement is difficult in absence of coordinated action at EU level;

EU added-value

The Community as a whole has more weight when dealing with particular third countries, which normally results in a better negotiated outcome. The process of monitoring the application of a readmission agreement is also more efficient due to the fact that all (24-26 – depending on the position of the UK and Ireland) Member States are represented by the Commission in the contacts with particular third country. Thanks to this, the EC provides the third country with a clear and coherent line on particular problems, which facilitates often the process of their solution.

2.6. INSUFFICIENT ADAPTATION OF BORDER MANAGEMENT AND VISA POLICY TO THE NEEDS OF A GLOBALIZED WORLD

2.6.1. Definition of the problem

The passenger flows at the external borders of the European Union have been growing and will continue to increase in the future. There are around 300 million EU27 annual external

border crossings[66] at designated border crossing points. It is estimated that 160 million of these border crossings are made by EU citizens, 60 million[67] by third-country nationals not requiring a visa and 80 million by third-country nationals requiring visas. Taking into account the forecasts for international travel and its development in the mid-term[68], the current infrastructure at border crossing points, in particular at the airports, will face even greater challenges when dealing with the growing numbers than they do today.

Given that border controls are a key component in the fight against illegal immigration and in countering cross-border crime such as terrorism, trafficking in human beings, drug smuggling, smuggling of weapons, etc., it is indispensable to the EU to ensure an efficient and extensive border control. At the same time, most of the passengers do not pose any threat to security and should be able to cross borders in a streamlined manner, whilst ensuring the external border crossing is not too burdensome for them.

An insufficient contribution to the fight against illegal immigration

Efficient, extensive and effective border control makes a significant contribution to the level of security in the Member States.

In the light of the current situation, two areas are of particular importance to ensure the efficiency of borders controls: identification of overstayers and strengthening of surveillance at borders.

Border controls do not cope efficiently at the present time with the phenomenon of "overstaying". According recent data there were up to eight million illegal immigrants within the EU in 2006, over half of which entered the EU legally but became illegal or irregular due to exceeding their right to stay. This finding underlines the importance of the border check and suggests that entry and exit dates be recorded and related to an alert system when the third-country nationals overstays. Indeed, it is today very difficult to identify those third-country nationals who have overstayed their visa or visa free period. In theory, it should be possible to calculate the time a third-country national has spent in the area of the Member States upon reading the stamps on the passport. However, they may be illegible or the target of counterfeiting. In addition, there is no record of the time spent in the Schengen area for third-country nationals. Due to these reasons, at the moment there is at the border crossing point no easy, manageable and reliable means of determining if a third-country national has overstayed their right to stay, no consistent record of entries and exits of travellers from the Schengen area, (which could help to improve border management) security and planning and no possibility to gather information on overstayers.

Another shortcoming in the border controls are the few parts of the borders that are subject to surveillance. For the time being, owing to technical and financial limitations, national border

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66 IA SEC(2008)153. The figure was calculated by adding the number of trips of EU residents outside EU27 with the number of third-country nationals travelling to EU27.

67 The figure was calculated on the numbers of trips made into Europe by the most important countries.

68 http://tinet.ita.doc.gov/view/f-2000-99-001/index.html. In 2006, the United States hosted 51 million international visitors, a 4 percent increase from 2005. The arrivals forecast for 2007-2011 predicts that by 2011, international arrivals will reach 61 million, an increase of 20 percent between 2006 and 2011. Forecasts are derived from Global Insight, Inc. econometric travel forecasting model and are based on key economic and demographic variables as well as DOC consultation on non-economic travel factors. The rates of the United States are used, because there does not exist comprehensive estimations from Europe.

surveillance systems are covering (with permanent and mobile surveillance means) only a few selected parts of the EU external borders. This situation is not satisfactory, since as soon as border controls in one area have been reinforced, or one illegal immigration route has been closed down, the smuggling networks use other methods and techniques or re-route their operations, and so the transfer of the migratory pressure to other Member States or third country not prepared to face them[69].

Consequently, the surveying of the entire length of the Union's external borders is not ensured so far, especially concerning the southern maritime and eastern land external borders.

Too cumbersome procedures for bona fide travellers

Most of the passengers are so called bona fide travellers and are granted entry in compliance with the existing Regulations and rules. Yet, current integrated border management does not allow the distinguishing of them from other passengers, and to decrease the intensity of the check. Crossing the external border is thereby not enough simple for bona fide travellers, which are subject to time-consuming, burdensome and costly checks at borders (entry and exit).

Several Member States have developed pilot programmes and projects at various airports throughout the EU[70], however, the different national Registered Traveller schemes are not interoperable across EU Member States, in absence of common standards and guidelines.

The concept of an integrated border management refers to an array of measures regarding third country nationals. While the Commission has taken forward important initiatives towards a greater degree of harmonisation of the common visa policy through the proposal for a visa code, the approach of national visas giving access to the entire Schengen territory do not allow for fully equal treatment of all applicants, nor a fully harmonised application of the criteria for security checks. National visas continue also to pose problems in individual cases, in regard to which Member State is competent for dealing with the application, depending on the main Member State of destination or entry into the Schengen territory.

Moreover, in a number of countries applicants may have to travel long distances in order to reach a consulate of a Member State. Not all Member States are represented in all countries meaning that sometimes applicants may have to travel to another third country just to be able to submit their application.

2.6.2. Existing responses

Since 1999, a number of common measures have been adopted to manage the external borders of the European Union in accordance with Article 62 (1) and (2) of the EC Treaty. In particular, four Regulations have been adopted:

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69 For instance, in 2006, after tightened border control measures in Ceuta and Melilla as well as in Morocco, migration flows have partly shifted to Italy, mainly to Lampedusa, but also to Malta. In parallel, Sub-Saharan nationals and traffickers have found a new route leading to the Canary Islands.

70 For example, in the UK at Heathrow, Gatwick, and Birmingham airports; in the Netherlands at Schiphol airport; in France at Charles De Gaulle airport; in Germany at Frankfurt airport; in Portugal at Lisbon airport.

– Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

– The European Parliament and the Council Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

– The European Parliament and the Council Regulation (EC) No 1931/2006 laying down rules on local border traffic at the external borders of the Member States and amending the provisions of the Schengen Convention.

– The European Parliament and the Council Regulation (EC) No 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers.

There are also several other Regulations that are particularly relevant in this field, notably the European Parliament and the Council Regulation (EC) on the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas.

In addition, the Commission Recommendation establishing a common Practical Handbook for Border Guards was adopted on 6 November 2006. As regards visas facilitations, the Commission has presented a proposal to provide a legal framework for common application centres allowing Member States to cooperate more closely, with a view to ensuring presence in all third countries. It has also sought to support pilot projects to this effect, the take up of which has however been limited so far.

The external borders fund (EBF) was set in place on 23 May 2007, which, on the basis of the principle of solidarity, supports Member States with specific requirements for checks and surveillance of long or difficult stretches of external borders, and Member States confronted with special and unforeseen circumstances due to exceptional migratory pressures on their external borders. The EBF is operational already 2007 and it will apply for the financial period 2007-2013 with €1.82 billions.

Addressing at the first the outcomes with respect to operational cooperation at the external borders, it should be noted that FRONTEX has faced high expectations from EU institutions, Member States and the public at large to take forward operational coordination to counter illegal immigration, in particular for the coordination of operations at the southern maritime borders. During the years 2006 and 2007 FRONTEX has conducted 33 joint operations and 10 pilot projects. However, this increase in FRONTEX powers is not sufficient to meet the challenges posed. Because of their short term duration, operations conducted in high risk areas in 2006 and 2007 were not able to ensure effective border controls and surveillance which implies a permanent nature of the joint operations at specific high-risk areas. Moreover, whereas one of the tasks of FRONTEX is to provide the necessary assistance for organising joint return operations of Member States, the Agency has only been involved in the organisation of nine joint return operations, concerning 361 returnees. With respect to risk analysis, which is central in the fighting against illegal immigration, the level of cooperation with other law enforcement agencies such as Europol, Interpol and relevant counterparts in third countries is lagging behind. So far only a single joint risk analysis has been carried out with Europol. Finally, cooperation with third countries, which constitutes a key component of

the integrated border management model contributing to the successful implementation of joint operations, enhancing the added value of risk analysis, and supporting capacity building in third countries, yielded modest results. To date, this cooperation has translated into only three working arrangements.

Drawing on these shortcomings, and in a broader response to the challenges posed by 21st Century travel and movement of people, three Communications have been put forward by the Commission the 13 February 2008[71], aiming at the reinforcement of all dimensions of efficient and managed entry into the territory of the European Union. They include facilitating border surveillance, reinforcing the operational coordination between Member States through FRONTEX, launching a discussion on an entry-exit system to facilitate better oversight of persons entering/exiting the Schengen space, and on a Registered Traveller Programme for quick and easy travel for frequent travellers from third countries who satisfy a pre-screening assessment.

2.6.3. Objectives

The overall objectives are to reinforce all dimensions of border controls and at the same time to facilitate and harmonize control checks and visa procedures for certain categories of travellers, as described in the border package of 13 February 2008.

These general objectives translate into the following specific objectives:

– establishing a European border surveillance system (through improvement in cooperation between Member States and use of new technologies);

– reinforcing the Frontex Agency;

– analysing the feasibility of an entry-exit system allowing for the identification of overstayers;

– enhancing cooperation with third countries, in particular located on the southern shores of the Mediterranean Sea, in terms of detection, apprehension, reception and further processing and readmission of migrants;

– preparing the setting up of common application visa centres and issuing of truly European short-stay visas, guaranteeing equal treatment of all visa applicants and easier access;

– analysing the feasibility of a registered traveller programme to facilitate border checks for certain frequent travellers (pre-screening; automated checks);

These objectives correspond to principles 7 and 8.

2.6.4. Subsidiarity principle

Legal basis

The legal basis for EU action is to be found in Article 62 of the EC Treaty and in Article 77 of the Lisbon Treaty.

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[71] COM(2008)67 final Report on the evaluation and future development of the Frontex Agency; COM(2008)68 final Examining the creation for a European Border Surveillance System (EUROSUR); COM(2008)69 final Preparing the next steps in border management in the European Union

Necessity for an EU intervention

– Isolated Member States are not able to fight against overstaying;

– As it is not tolerable that some Member States do not comply with their obligations and given that the control of the 6.000 km of land border and about 85.000 km of coastline lie unevenly with Member States, financial solidarity mechanisms, resources and human pooling are necessary;

– National visas approach does not allow for fully equal treatment of all applicants nor a fully harmonised application of the criteria for security checks; national consulates are not regularly established across third countries;

EU added value

Effective border control can be better achieved through a coordinated action at EU level. The EU is also in a better position to initiate the establishment of common centres allowing economies for Member States and improving the quality of service provided to third-country nationals, as well as to establish common rules with respect to visas giving access to the entire Schengen territory.

2.7. UNSATISFACTORY GOVERNANCE OF MIGRATION

Asylum and immigration measures taken by one Member State are more than likely to have an impact (both direct and indirect on other Member States, this is a consequence of the absence of border checks in the Schengen area, the common visa policy, the tight economic and social relations between EU Member States and the development of common immigration and asylum policies since the entry into force of the Treaty of Amsterdam. For instance, a very restrictive migratory policy in one Member State may redirect migration flows into a neighbouring Member State, whereas a regularisation procedure may attract illegal immigration into one Member State, from which regularised (= legally staying) migrants could afterwards more easily move to other Member States. Other national asylum and immigration measures, including, among others, changes in procedures for granting international protection, determination of safe countries of origin, admission programmes for third-country nationals (including quotas), and integration measures may also have an impact on other Member States or on the Community as a whole.

A parallel and harmonious development of national and Community asylum and immigration policies is therefore needed. This conclusion happens to converge with the will expressed by EU citizens: according to a recent Eurobarometer poll of November 2007, one third of European citizens want immigration-related issues to be emphasized at EU level.

Yet, a number of constraints have hindered such a development, relating to the policy-making process, lack of coordination, insufficient solidarity and mainstreaming.

Difficulty in decision-making and lack of public debate

Regarding legal migration, the unanimity rule in the Council has slowed down, or even blocked, the adoption of some proposals. This is the case for the 2001 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 which did not receive the necessary support from the Council. With respect to integration, the absence of clear legal

basis was a significant handicap for the Community which can only act as a driver for the exchange of information and good practice in order to be acceptable to all Member States. This is, for instance, the case regarding the Directive on family reunification, which leaves much room for national discretionary power regarding the conditions of admission or the rights granted to family members.

Moreover, the European Parliament's limited role has confined the range of public debate and this tendency has been worsened by the insufficient involvement of social partners in Title IV TEC policies, although they are recognised by the Treaty in a specific role, based on their capacity to provide input to policy-making in the social field, and to take own action in the areas of employment and working conditions, which may have an impact on migrant workers and their families.

Insufficient coordination between Member States

Due to the interplays between Member States migration situations, exchange of information between Member States and the Commission on important new measures taken by all Member States is necessary, to prevent the development of divergent, and even contradictory, national policies. Yet, the mutual information mechanism[72] set out in 2006 and aimed at facilitating the exchange of different types of information between Member States, in the areas of asylum and immigration, has not met expectations, owing to a lack of political support and practical use by Member States.

Establishment of common definitions, statistical standards and guidelines are also needed to allow the exchange of information between Member States and to improve practical cooperation. However, harmonised and comparable Community statistics on migration and asylum on the basis of the new 2007 statistics regulation will not be available before 2010.[73]

Need for an increased solidarity

The financial burden arising from the introduction of an integrated management of the Union's external borders and from the implementation of common policies on asylum and immigration is uneven from one Member State to another, according to their geographical, historical and economic position. A fair share of responsibilities between Member States is therefore needed to achieve an even implementation across Europe and to avoid inconsistencies.

In summer 2007, the Framework Programme on Solidarity and Management of Migration Flows has been adopted. The main objective of this new financial instrument is to address the issue of a fair share of responsibilities between Member States in the introduction of integrated management of the external borders of the Member States of the European Union and from the implementation of common policies on asylum and immigration. It provides financial support to Member States in proportion to the efforts they undertake for the benefit of the Community as a whole. The Framework Programme consists of four specific instruments, namely: the European Refugee Fund, the External Borders Fund, the European

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72 Council Decision of 5 October 2006 (2006/688/EC)

73 Following a series of "gentlemen's agreements", Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection has been adopted with a view to ensure, in a uniform manner, regular, timely and rapid delivery and dissemination of harmonised data.

Fund for the Integration of Third-country nationals and the European Return Fund. The overall amount foreseen for the Framework Programme on solidarity and management of migration flows is €4,020.37 million for the period 2007-2013.

The allocation of financial resources to Member States within each Fund is based on specific and objective criteria, which reflect the current and forthcoming situation of the Member State, with regard to the obligations undertaken on behalf of, or for, the overall benefit of the Community for the policy area concerned. For this purpose, the instruments foresee the use of Community statistics, and where these are not available, national statistics, in compliance with the new regulation on migration statistics. Provisions have been made, not only to avoid any kind of duplication between Funds, but also to ensure the development of synergies wherever possible[74]. The same provisions have been defined for the operation of the four instruments: multiannual strategic programming cycles (with two periods defined as 2007-2010 and 2011-2013) on the basis of guidelines communicated by the Commission, annual allocation of resources and operational programming, multiannual evaluations.

In light of this first period of implementation, and considering previous comments on the difficulty to obtain reliable and homogenized statistical data, the relevance of the total appropriations of this recent Programme, as well as the distribution key to the Member States, will have to be assessed and possibly be subject to modifications.

Need for an enhanced mainstreaming

Since it is a cross-cutting policy, migration should aim to become an integral part of policy making and implementation across a wide range of EU policies. In fact, mainstreaming migration into other policies is indeed already a concern and a reality in EU policy[75].

This comprehensive approach of migration issues must be pursued and further explored. An example can be made with respect to links between employment and migration policies. Indeed, synergies have been insufficiently developed (both at EU and national level) to date, this must change in order to ensure, as far as possible, complementarities between migrants and labour markets, and accordingly reap full gains of migration. Due to this lack of linkage between employment and migration policies, the employment potential of new-comers, when admitted on family or asylum grounds, is in many cases not used and valorised as it could.

Need for a better evaluation

As recognized by The Hague Programme (2004)1, "evaluation of the implementation as well as of the effects of all measures is, in the European Council's opinion, essential to the effectiveness of Union action"[76].

Existing monitoring and evaluation mechanisms are indeed too fragmented and need to be merged into one coherent and comprehensive mechanism for evaluation of EU policies on freedom, security and justice. For instance, unlike the legal migration instruments, none of the existing directives in the area of illegal immigration provides for systematic reporting with

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74 Particular attention has thereby been given to the issue of complementarity and synergy of actions between the Integration Fund and the European Social Fund (ESF), both in the definition of the objectives of the Integration Fund and in its implementation

75 See, regarding the specific area of integration, the Third Annual Report on Migration and Integration, COM(2007)512 final

76 Annex 1 to the Presidency Conclusions of the Brussels European Council, November 2004

regard to its application in practice. According to the Action Plan, implementing The Hague Programme, a Communication was presented with a view to developing an evaluation mechanism at EU level[77]. This mechanism encompasses both monitoring implementation, which consists of reviewing progress on carrying out policies, and evaluation of the results, defined as "*judgement of interventions (public actions) according to their results, impacts and the needs they aim to satisfy*"[78]. This proposal seeks to remedy the current lack of evaluation culture and overall evaluation mechanisms, which notably translate into insufficient consultation of the diverse stakeholders, insufficient availability of statistics, analysis ability as well as absence of indicators, and is intended to allow a comprehensive assessment of the results achieved on freedom, security and justice, from a quantitative and qualitative perspective, while contributing to the general EU objectives of transparency and better regulation. A three-step progressive mechanism is proposed in the aforementioned Communication, building on information and subject to consultation, then to a reporting mechanism and an in-depth evaluation. This information is underpinned by overall policy objectives and a set of indicators. It should also be specified that the Open Method of Coordination provides a framework for the monitoring and evaluation of social inclusion policies. In the context of the 2008-2010 policy cycle Member States have agreed to mainstream the social aspects of migration in all their activities, including specific monitoring on the social situation of migrants. This monitoring and evaluation framework is going to be reinforced in the context of the forthcoming communication on strengthening the OMC.

Finally, it is worth noting that, with more and more legal instruments in the area of immigration being adopted and entering into force, monitoring their transposition by the 27 Member States is becoming more and more challenging, especially for the European Commission. Reinforcing the human resources allocated to this task is a necessity, in order to ensure that, also in this policy area, the Commission will continue to live up to its institutional role as the "Guardian of the Treaty". However, outsourcing of at least the factual data collection parts may prove to be a resource saving complementary action, while bearing in mind that the legal and political assessment of the transposition situation in Member States will always remain the exclusive responsibility of the Commission, which cannot be transferred to any other body or entity[79]. Moreover it is important to recall that also "outsourcing" is not for free and would require at least some additional resources in order to follow the external work and to manage the contractual procedures underlying this work.

3. WHAT ARE THE MAIN POLITICAL ORIENTATIONS AND OBJECTIVES? (EXPLANATORY MEMORANDUM)

Based on the needs and problems analysis outlined in Section II, and on the EC legal and political framework in the immigration and borders policy area, a series of objectives for the further development of the common policy shall be set out. Such objectives must respond to the overarching global objective of further developing a comprehensive European

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77 Communication form the Commission to the Council and the European Parliament, 28 June 2006, (2006)332 final, Evaluation of EU Policies on Freedom, Security and Justice

78 SEC(2000) 1051

79 The possibilities offered by outsourcing were first tested in 2007 when a contract was signed with an external contractor to do a first substantive conformity checking of measures of transposition with respect to 10 directives from the immigration and asylum field. This study, which was released at the beginning of 2008, will allow an in-depth monitoring of the current immigration and asylum legislation adopted in Member States, facilitate the drafting of application reports and possible infringement procedures. Further studies of this kind will have to follow in the future.

immigration policy, as clearly requested by the European Council on several occasions, notably in its conclusions of December 2007. In the latter, it was stated that "*Further developing a comprehensive European migration policy complementing Member States' policies remains a fundamental priority in order to meet the challenges and harness the opportunities which migration represents in a new era of globalisation. The European Council accordingly underlines the need for a renewed political commitment*"[80]. They must be funded on the clearly recognised fact that "*The European migration policy builds on the conclusions of the Tampere European Council in 1999, The Hague Programme of 2004 and the Global Approach to Migration adopted in 2005. It is based on the solidarity, mutual trust and shared responsibility of the European Union and its Member States. It is also based on respect for human rights and fundamental freedoms of migrants, the Geneva Convention and due access to asylum procedures. It requires a genuine partnership with third countries and must be fully integrated into the Union's external policies*"[81].

Against this background, it is clear that European Council already decided on a number of objectives and policy options with regard to the further development of the Common EU immigration policy. Indeed, with two exceptions, all of the objectives – or principles – of this policy have already been fixed at the highest political level, starting from the Tampere Conclusions of 1999. The only objectives not yet considered by the Council or European Council relate to the issue of regularization, and the active involvement of social partners and regional and local authorities. These two objectives have also been translated into principles in order to address all problems described in section 2.

These objectives have been compiled and summarised below in eleven principles which aim at covering all aspects of Immigration (as demonstrated in annex I)[82] . Each of these principles shall be translated in concrete policy options and operational measures, which should constitute the contribution from the Commission's side to the major policy debate which shall take place in 2009 in order to define what shall be the specific contents of the successor of The Hague Programme (2009-2014) in the field of immigration. These concrete policy options and measures shall therefore be assessed more in detail in the coming years, including by analysing their concrete impact on human and financial recourses and whether they can and should be put in place by means of EU action, or whether they fall under Member States' competence.

Principle 1 – Clear rules

Owing notably to demographic, economic and political factors, migration flows are not expected to decline over the coming years. Building on that certainty, migration should be managed in the interest of all interested parties, host societies, sending countries and third-country nationals.

Drawing up clear and transparent rules is a pre-requisite for the definition of an efficient and effective migration policy. This could be done in several ways. Firstly, migrants should decide to head for Europe on the basis of realistic prospects and securely-founded hopes. As already called for in the Tampere conclusions, they should be provided with objective and clear information on the diverse existing legal channels to be admitted in Europe, however, to

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80 Presidency Conclusions of the European Council of 14 December 2007, paragraph 16.

81 Presidency Conclusions of the European Council of 14-15 December 2006, paragraph 22.

82 These 11 principles have been merged into 10 principles in the Communication on a Common Immigration Policy for Europe

date, existing channels of information (family network, smugglers) are biased towards more rosy and unrealistic interpretations. Moreover, they should be aware that these legal possibilities are all-comprehensive and that illegal immigration is not an alternative to the legal pathway. Setting up clear and transparent rules for entry and residence also means that (potential) immigrants and applicants for legal immigration should be made fully aware of their rights when they will become legal residents, and which rules they have to comply with if they intend to remain in the EU. The latter information should not only cover residence conditions, rules under which the residence permit may be withdrawn or not renewed, appeal rights and procedures, but also explain the realities of life in the EU, the need to respect the basic values of the European Union, such as rule of law, equality, antidiscrimination, solidarity, openness, participation and tolerance.

Information is a necessary, but not a sufficient, measure. As much as possible, migrants shall also be provided with concrete and realistic possibilities to fulfil the requirements enabling them to be issued with a visa and a residence permit, for instance through linguistic courses when linguistic skills are required as pre-requisite for entry. This is particularly important when it comes to exercising the right to family reunification.

The objective of better integration will also follow from an enlarged set of rights. To the extent possible, third-country nationals should benefit from the same rights as an EU citizens, as called for in the Tampere European Council conclusions of 15-16 October 1999. Besides the direct impact on the economic ability of migrants, these measures would be an important signal that the host society recognises the positive contribution of third-country nationals to the European economy and its societies. From the host societies' perspective, a pedagogical exercise is also crucial. Rejection of migrants is often fuelled by ignorance and phantasms. Raising awareness of the diverse contributions from migrants to European societies will pave the way to a better acceptance by the receiving societies and consequently to a better integration of the foreign nationals.

Principle 2 – Economic migration

Against the background of a decreasing working age population in Europe and forthcoming growing labour shortages, migration is one of the possible solutions aimed at compensating adverse demographic tendencies. Beyond the demographic and economic challenges, migration policy, actively involving social partners, must strike the balance between the interests of third-country nationals, sending countries and host societies and endeavours to meet short-term needs, while anticipating long-term impacts.

This policy therefore accompanies employment and educational policies seeking to reduce unemployment of national citizens and third-country nationals already legally residing in the EU, notably through raising of the level of educational attainment, granting further economic rights, including training and education, as soon as possible, as suggested in the proposal for a framework Directive, making best use of the attainment of third-country nationals thanks to a better recognition of qualifications and reducing the attractiveness of illegal work. The contributions of the foreign-born entrepreneurs to the European economy should be better assessed, and encouraged through a removal of the obstacles they may encounter. Fighting against discrimination at the work place remains also a priority. Within the framework of this policy, consisting of the harnessing of existing potential, efforts should focus on the female immigrants who display low employment rates and suffer the most from "over-qualification".

In this context, Member States will also be encouraged to further enhance their action towards improving the labour market situation of migrants in the context of the Structural Funds[83] and to strengthen their labour market infrastructures, above all public employment services (PES), in a way that takes account of the opening of legal pathways to economic migration. Furthermore, within the European Employment Strategy, comprehensive lifelong learning strategies will be promoted to ensure the continual adaptability and employability of workers, particularly the most vulnerable; effective active labour market policies that help people cope with rapid change, reduce unemployment spells and ease transitions to new jobs, as well as modern social security systems that provide adequate income support, encourage employment and facilitate labour market, will be encouraged**.**

This policy must however be carried out in full respect of the principle of community preference, which should translate consequently and first of all into the removal of the transitional barriers to access the labour market as soon as possible.

This policy should also be carried out in parallel with other complementary actions in order to avoid negative side-effects. As regard to the negative consequences for the sending countries, the effect of brain drain should be reduced thanks to measures aimed at encouraging training, harnessing the educational potential of third-country nationals and fostering temporary or permanent return.

Additionally, it is crucial to take advantage of the enhanced mobility of migrants, and to allow an intra-EU mobility where appropriate, in order to maximise the benefits of migration. It is fundamental for the EU labour markets to be able to fulfil relatively quickly changing needs in the labour markets of Member States: to make this happen, mobile third-country workers should not only be granted enhanced mobility, but also, they should not be penalised in comparison to non-mobile third-country workers in respect of family life or the acquisition of permanent residence. A first step in this direction has already been taken with the Commission proposal on entry and residence conditions for highly qualified workers.

The largest benefits of migration will be reaped on the condition that migrants and host society be complementary. The issue of migration cannot be limited to a quantitative problematic: increased prosperity, rather than an increased size of the economy, should be the end result.

Benefits of migration are maximized when the economic needs of the host society are taken into consideration, without, of course, prejudice to forms of migration other than labour migration, such as family reunification, students, etc. As regards economic migration, conditions of admission should, as far as possible, build on a needs assessment and labour matching policies, which require enhanced information directed towards third-country nationals and possible training in countries of origin. This more effective matching between labour needs and necessary skills will provide a crucial contribution to the promotion of labour utilisation and labour productivity, and therefore also growth and jobs. At Community level, the EU will encourage the coordination of forecasting instruments at both national and European levels, to ensure a closer adequacy between labour demand and supply. Given the high demand for highly skilled workers across Europe, simplified and non-bureaucratic procedures, such as the scheme proposed in the EU Blue Card Proposal for a directive, should

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[83] Over the last years, the ESF has financed many actions in favour of immigrants and ethnic minorities. Present estimates suggest that the ESF trains or supports more than 600.000 immigrants and ethnic minorities per year.

be put in place to facilitate their entry. Low skilled workers are also indispensable, notably to meet the growing needs for childcare and elderly care. An efficient management of migration requires, in any event, a strengthened coordination between EU and national levels, with a view to preventing inconsistencies.

Systems for admission should be able to satisfy shifting labour needs, and to provide accordingly a swift reaction in response to this demand, as clearly underlined in The Hague Programme. In order to take efficient and informed decisions regarding policy and legislation, it is therefore crucial that policy makers in the EU become fully aware of the real needs and gaps in the national labour markets, of course, to the extent possible, as these needs may change – also quickly – over time. The first comprehensive assessment of the future skills requirement in Europe until 2020 called by the European Council of Spring 2008 will underpin future immigration policy. On the basis of this assessment, immigration profiles could be set up, providing a clear picture of needs at a European level. Symmetrically, an in-depth knowledge and understanding of the skills composition of the migratory flow will underlie the reviewed management of migration. Beyond the direct matching of demand in the labour markets, the guiding principle of the policy should be the promotion of labour adaptability and mobility, in order to prevent any ulterior mismatch and to improve labour market efficiency.

Principle 3 – Integration

Integration of third-country nationals is a process of mutual accommodation by both the host societies and the immigrants, and an essential factor in realising the full benefits of immigration. There can be no immigration without integration.

Integration policies should allow migrants to fully participate in society, to acquire knowledge and skills and to integrate on the labour market. This requires a multi-faceted approach (access to the labour market, access to housing, social protection, education, training, etc) also based on non-discrimination, equal opportunities and diversity management.

The EU policy framework is the 'Common Agenda for Integration', implementing the 'Common Basic Principles for Immigrant Integration Policy in the EU' established by the Council. The implementation of the EU framework for integration needs to be further consolidated. A strong political commitment is needed to achieve further progress. In the future, EU co-operation should go beyond the exchange of information and practice.

There is a common understanding that the Commission has to pursue its integration agenda with determination, focus and coherence. The mainstreaming approach based on the Common Agenda for Integration has already been followed and should be further strengthened. In accordance with one of the most important elements of good governance, both mainstreaming and targets are necessary to achieve progress. That is why, at the same time, strengthening migration/integration in other relevant policies is needed, as well as targeting this area and target group of immigrants in a specific instrument.

The integration of legal immigrants shall be improved by strengthened efforts from host Member States and contributions from immigrants themselves (“two-way-process”). At each step of the migrant journey, and of the integration process, different provisions must be taken for backing the efforts of the migrants towards integration and providing for the condition of equal opportunities. The Member States already recognised such need when, in The Hague Programme, they stated that "*the European Council calls for the creation of equal*

opportunities to participate fully in society. Obstacles to integration need to be actively eliminated".

The implication for the host society should be recognised, with the formation of specific integration programs for newcomers, who should not only be directed the correct way to go, but also granted the means to follow it, possibly varying according to their length of stay. In this connection, implications of new forms of migration such as circular migration with regard to integration policies should be further explored. Language tuition and an efficient orientation programme, also from the employment services, could be provided by the receiving country. Adaptation of public services to migrants particularities, in order to enable them to make the best use of these provisions, fight against discrimination, promotion of diversity management at the work place and awareness raising amongst all actors concerned, fall under the obligations of the host society. Gender issues should be paid specific attention, given on the one hand, the disadvantages that can be faced with respect to unemployment and over-qualification, and on the other hand, the central role of migrants mothers regarding the socialisation of the children.

Development of indicators and regular evaluation is an indispensable prerequisite for improving the situation, as illustrated by many studies. Community action will thus continue supporting, notably through The European Integration Fund, national actions dedicated to measures of performance.

A crucial element for the successful integration of immigrants is the exercise of the right to family reunification. Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability, facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty. The basic conditions under which such right can be exercised by third-country nationals legally residing in the Member States are set out in Council Directive 2003/86/EC, which in its Article 19 also foresees that the Commission shall report on its application and, if necessary, propose amendments (clause of rendez-vous). Such a report is due to be presented in the course of 2008.

Principle 4 – Political solidarity, mutual trust, transparency, shared responsibility and information

In order to achieve efficiency and coherence in migration policies at national and EU level, it is necessary to further strengthen coordination between the different competent tiers.

Coordination requires that, at Member State level, as well as at the EU level, migration policy is designed and implemented in a transparent manner, and in full compliance with the competencies of each level. To that end, best use must be made of the Mutual Information System mechanism, created in 2006. The utilisation of this tool must be both more frequent, and earlier in the process, of policy-making in order to enhance its efficiency.

Exchange of information, as well as exchange of best practices, should be further promoted, through working groups including representatives of EU and of Member States, as well as wider fora, allowing for the participation of civil society in the debate. This continuous debate is a pre-requisite for the establishment of mutual trust, and an indispensable condition for releasing a clear and univocal message at a world level, by means of taking a concerted approach in all aspects of immigration policy.

Coordination necessitates appropriate and adequate resources within all relevant national and Community financial instruments, constant review, aiming at prevention of any overlaps, pooling of technical means and human resources and interoperable systems.

Principle 5 – Solidarity

The development of the area of Freedom, Security and Justice requires adequate financial resources and appropriate burden-sharing, which translated into the framework programme "Solidarity and management of migration flows" for 2007-2013.

Financial solidarity is a valuable tool ensuring a similar application of the community legislation, and policies, without imposing a disproportionate task on individual Member States. Furthermore, financial solidarity promotes mutual trust through cooperation, dissemination of best practice and enhancement of knowledge on border management and migration policy. When implementing, it is necessary to ensure that EU funds are used for mutual benefit, to face common challenges, and achieve results in the interest of all Member States. This is particularly true in respect of the External Borders' Fund, where a high degree of coordination and interoperability is a necessary prerequisite to achieve efficient control of the external borders of the EU.

With a view to ensuring the effectiveness of action, a first evaluation on the operation of the framework programme will be carried out in 2010, at the time of the review of the Hague Programme; the results of this evaluation will also feed back into the management and operation of the programme. Evaluation of the results of the multiannual programmes under the Funds will be made available in 2012.

As the programme is a flexible tool which is likely to adapt to evolving needs and priorities, the financial distribution keys in the areas of integration and external borders will possibly be reviewed, notably, in the case of integration, in light of the results of the final evaluation of preparatory actions initiated in 2005.

Designed as a flexible instrument, implementation of the Programme needs to be carried out at regular intervals. Total appropriations of the Programme, in the context of the budget review 2009, as well as the distribution key for the allocation of the resources to the Member States, could be reassessed following an evaluation of the implementation, with a view to adapt to new national situations.

Principle 6 – Need for a genuine partnership with third countries

An effective management of migration flows requires a genuine partnership with third countries. This implies that the EU needs to further develop and deepen its relations with selected third countries[84]. The EU needs to work much closer during the coming years with

[84] "*The European Council underlines the importance of closer cooperation with third countries in managing migration flows. Specific partnerships on migration with third countries could contribute to a coherent migration policy which combines measures aimed at facilitating well managed legal migration opportunities and their benefits – while respecting Member States' competences and the specific needs of their labour markets – with those fighting illegal migration, protecting refugees and tackling the root causes of migration while at the same time impacting positively on development in countries of origin. The possibility of mobility partnerships should be further explored as well as possibilities for circular migration in the light of the Commission's communication of 16 May 2007; in this context the European*

partner countries on opportunities for legal mobility, building capacities for migration management, protecting fundamental rights and fighting irregular flows. The EU and its Member States will need to invest more human and financial resources into developing mutual trust and a sense of ownership in the partner countries with a view to helping them develop policies for well-managed migration, as requested by the European Council[85]. This work will also include a focus on employment and labour market policies for improved assessment of the match between national labour market trends and human capital development, bringing education and vocational training systems more in line with national, regional and global labour market needs.

Moreover, more resources will be focused on compliance with good standards work, and in line with 2007 Council Conclusions, the EU will further develop policies on ethical recruitment and how to prevent, avoid and mitigate brain drain and brain waste. Other initiatives will continue to focus on how to harness the development potential of remittances, supplementing the involvement of the diasporas in promoting the development of their countries of origin, and facilitate returnee entrepreneur businesses. Attention will also focus on facilitating real possibilities for circular migration, by setting up or strengthening legal and operational measures, granting legal immigrants the right, or a priority, for further legal residence in the EU, and by ensuring that brain circulation becomes a viable alternative to brain drain, in identified key shortage sectors. Furthermore, sustainable voluntary return and social as well as economic reintegration in migrants' source countries will require more focused work in the border-area between migration and development policies.

Exploratory work is taking place through the concept of mobility partnerships. The establishment of a growing number of such partnerships in the coming years may require additional resources[86]. Some of these partnerships should be paving the way towards firm arrangements for the management of labour immigration, with selected long-term strategic allies, geared towards mutual benefit.

The European Union will also further develop its leading role in the global governance of migration, and fully engage in existing and future mechanisms for dialogue and cooperation, in order to ensure full implementation of existing commitments in multinational forums. This will also include further integration of EU activities, and presence, into regional cooperative processes of relevance for migration.

In sum, the further deepening and strengthening of external cooperation on migration with third countries will have to focus, to a large extent, on the concept of partnerships. Further policy developments will require a consolidation of what has already been embarked upon in terms of a policy framework, mainly through the Global Approach, but also with a view to further integrate and mainstream migration into other external policy areas, such as foreign and development policies, but also relatively unexplored areas, such as trade, agriculture and fisheries and finance policies. This will also be in line with the next generation of the Global Approach, and the further refinement of its toolbox of instruments, so that Community and

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Council endorses the Council conclusions of 18 June 2007.", Presidency Conclusions of the European Council of 21-22 June 2007, paragraph 17.

85 "*The European Council calls on the Member States and the Commission to ensure that adequate human and financial resources are allocated, within the existing financial framework, in order to enable the timely implementation of the comprehensive migration policy*", Presidency Conclusions of the European Council of 21-22 June 2007, paragraph 16.

86 Idem.

Member States resources are used efficiently, in solidarity and pooled in a coherent and consistent manner.

Principle 7 – Enhance security and facilitate the entry of bona fide travellers

The development of the integrated four-tier access model, such as was described in the Communications and impact assessment forming part of the border package of 13 February 2008.

In relation to visa policy, in the long-term, it is necessary to build on the achievements currently under way with a greater degree of harmonisation, through the proposed visa code and increased cooperation between Member States, through common application centres. From this perspective, only development towards truly European short-stay visas will ensure an equal treatment of all visa applicants. This goal was already included in the Tampere Programme, and would entail a full harmonisation of the criteria for the issuing of a visa, as well as of the practical implementation of those criteria. A logical and necessary development towards managing the visa applications at common European visa centres should accompany the move toward European visas, gradually replacing the issuing of visas at national consulates. The pooling of resources, and economies of scale that would be achieved, would also ensure easy access of applicants to the premises where such visas would be issued, as such European centres could be set up in all third countries. The further development of these centres will need to be coordinated with the developments of the Common External Action Service..

Principle 8 – Integrity of Schengen territory

The Community policy in the field of EU external borders aims at an integrated management, ensuring a uniform and high level of control, which is a necessary pre-condition to the free movement of persons within the European Union and a fundamental component of an area of freedom, security and justice.

The measures needed to take forward border checks and new systems, the establishment of a European border surveillance system and the reinforcement of the FRONTEX Agency were analysed in the impact assessments accompanying the border package of 13 February 2008. This package included measures to reinforce all dimensions of border controls, that is, border checks, border surveillance and operational coordination:

- measures to develop border surveillance, by improving cooperation between Member States and by using new technology;

- reinforcement of operational coordination between Member States through FRONTEX by fully exploiting the current mandate of the Agency, in particular by further intensifying joint operations between Member States including sea border patrols;

- the introduction of an entry-exit system to record the dates of entry and exit of each third-country national admitted to the Schengen area using biometric identifiers. This will verify that a person is not overstaying;

- a registered traveller programme to facilitate border checks for certain categories of frequent travellers from third countries, by pre-screening travellers wishing to

be part of such a programme and by introducing automated checks to speed up their border crossing;

– launching a discussion on whether a system requiring an electronic authorisation to travel before arriving at the border itself could be introduced for people not requiring a visa.

It is, however, also necessary to ensure coherence between internal and external policies in the field of border management. Properly managed borders in neighbouring regions can enhance European security, as well as facilitate travel for third-country nationals, while improving access to international protection for those in need. A more strategic approach in selecting key partners for this purpose is needed, with a clearer definition of comprehensive long-term objectives that go beyond mere technical assistance. The setting of objectives should take into account the role of effective border management in improving the stability of certain regions, as well as crisis management. A coherent approach to search and rescue activities in the maritime domain must involve closer cooperation with third countries, taking into account migratory pressure. Moreover, better coordination between measures taken at national, European and international level must be put in place.

The financial dimension is not only relevant for supporting the cooperation with third countries described above. The mechanisms for ensuring burden-sharing and mutual solidarity between Member States in managing the EU's external borders must also be continuously refined. These mechanisms must take into account the need to support investments and capacity-building, as well as a burden-sharing component for the operational costs incurred in the daily management of the borders, costs which due to the functioning of the Schengen area, are not evenly distributed.

Principle 9 – Enhancing the fight against illegal employment and undeclared work

Illegal immigration is driven by a range of push and pull factors, among which the presumption that the work will reap higher wage levels (including informal employment). These phenomena are fairly spread, and they have negative implications affecting the objectives of the Lisbon Strategy, particularly with regard to employment, social cohesion and credibility of legal migration policies. Combating illegal employment of illegal third country nationals, and undeclared work of lawful residents, is therefore as important as integration efforts and should complement them.

Initiatives in this area should focus on prevention, sanctions and enforcement and must involve European institutions and Member States, as well as key stakeholders, such as social partners, at all relevant levels. In relation to the employment of third-country nationals in an irregular position, an important step forward will be made with the adoption of the proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals[87], currently under negotiation in the European Parliament and in the Council. This will bring about positive effects in the form of reduced losses to Member States public finances, less pressure on working conditions and less distortion of competition between EU businesses.

As confirmed recently by a Eurobarometer survey, high levels of taxation, social security contributions and administrative red-tape are the main drivers of undeclared work, in

[87] COM(2007) 249 final of 16.05.2007

particular for atypical and seasonal work. Thus, it should be further discussed with Member States how they could bolster incentives towards declared work, including, for example, further improvements of the tax and social security system. Exchange of experiences and best practices in this respect should be enhanced by EU.

Further efforts to enforce sanctions should be undertaken, materialising in additional national financial and human resources, including the establishment of specialised control bodies, risk tolls analysis, enhanced coordination (if needed though international cooperation agreements[88] and possibly under the form of a European platform) and a better evaluation of controls. Moreover, legislation, monitoring and sanctions schemes must adapt to new kinds of fraud such as sub-contracting and false self employment and encourage, with a view to curbing efficiently the phenomena. In full compliance with their respective competencies, the EU has a role to play in fostering exchange of good practices and organising the trans-national cooperation.

Principle 10 – Fighting smuggling of migrants and trafficking in human beings

Combating migrant smuggling and trafficking in human beings is a central part of the fight against illegal immigration and reinforces the protection of human rights.

It requires appropriate legislation adapted to new forms of criminality, actual law enforcement, enhanced international cooperation and central attention paid to victims.

National and community legislation must be reviewed in order to better reflect new criminal phenomena and to offer a enhanced protection to victims. Accordingly, existing legal framework on the facilitation of illegal entry and stay as well as the sexual exploitation of children should be strengthened and adapted to today's realities. In the light of the twin aim to allow the trafficked person to complete his/her recovery and to achieve a long-term social inclusion (either in the country of origin or in the host Member State), and in full respect of the existing Community legislation, the additional cases where the Member States should grant a temporary or a permanent residence permit to the victim should be also assessed, taking into account the personal situation of the victim concerned. In this respect, the Commission intends to report on the application of Council Directive 2004/81/EC and, if necessary, propose amendments (clause de rendez-vous included in Article 16 of the Directive).

Design of comprehensive regulations is the first step to combat smuggling and trafficking, but the practical implementation of the legal material requires most attention. Firstly, it should be ensured that investigative techniques, civil society organisations funding, more generally all prosecution and protection measures are endowed sufficient resources by Member States. Secondly, owing to the cross border nature of the phenomenon, regional and international level of EU action should be increased, especially making use of international instruments against human trafficking that are in place at regional and international level. The EU should take a stronger role in assisting countries of origin of trafficked people, especially those where the financial and administrative capacity is not sufficient to the task.

Building on minimum standards of assistance measures provided by Community and international instruments, unconditional assistance should be provided to all victims of

[88] Commission recommendation of 31 March 2008 on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services

trafficking, regardless of their interest in the criminal justice process, in a non-discriminatory manner and in compliance with basic principles derived from international human rights norms, in particular the respect for privacy, confidentiality, self-determination and freedom of movement. The safety and protection needs of the victims must be ensured. Following an individual needs assessment, tailored assistance should be offered and be based on a cross-cultural and gender-sensitive approach, including insights about the effects of physical and sexual abuse. Given the particular vulnerability of children, special additional rights must be also granted to them, including the representation by a legal guardian or equivalent authority as soon as a child victim is identified and the assistance by specialised personnel, in the best interest of the child. Service providers for trafficked persons should develop standards based on clear and measurable indicators, to regularly monitor and assess the quality of their services.

Principle 11 – Sustainable and effective return policy – regularisations

Along with the consolidation of legal channels and the long-term work on the root causes, and besides improvement of border management, fight against criminal networks and undeclared work, return policy is a crucial component of the fight against illegal immigration. These measures contribute also to the acceptance by the EU citizens of a more open legal migration policy.

An effective readmission and return policy, whilst respecting the human rights and fundamental freedoms of the person concerned, requires an improved operational co-operation among Member States, intensified cooperation and partnership with third countries and the setting up of common standards.

Community rules are in particular indispensable for addressing cases where a third-country national who is already the subject of a return decision, removal order and/or re-entry ban issued by one Member State, is apprehended in another Member State or tries to enter another Member State. The mechanism of a "re-entry ban", as foreseen in the proposal on common standards and procedures in Member States for returning illegally staying third-country nationals, has a dissuasive impact and would in principle accompany removal orders.

As a number of return decisions cannot be implemented because the returnee has no documentation, emphasis will be put on measures aiming at facilitating identification of undocumented returnees and preventing identity theft.

With respect to joint returns, the implementation of the legislative framework[89] must be improved and the role of FRONTEX in supporting joint return operations must be strengthened, in line with the request from the conclusions of the Council of June 2007.

Furthermore, experience has shown that is indispensable to go beyond the Council Decision of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration. Improving the mutual exchange of information through a more timely communication of all relevant information is a minimum requirement. This is in particular very important when it comes to regularisation

[89] Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air and Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals

measures enacted by Member States, which could have spill-over effects on other Member States. In this respect, early information sharing should be improved as a first step.

4. FUTURE METHODOLOGY: BETTER GOVERNANCE OF IMMIGRATION

4.1. Coordinated and coherent action

Immigration, being a complex and multifaceted phenomenon, requires a mixture of policy actions which covers a wide range of issues and fields: demographic constraints, economic needs, social expectations, health impacts, trade commitments, development musts, education opportunities, security dimension, etc. Any further development of the common Immigration Policy, in order to be effective, will have to ensure that migration issues are factored ("mainstreamed") into all related policies. Moreover, as a consequence of a shared competence policy area and taking into account this variety of issues, coordination between the EU and the national level, especially in the area of economic, social and development policies, must be significantly fostered.

Timely, transparent and systematic consultation of all relevant stakeholders on further policy developments has to be ensured. In the immigration area, stakeholder consultation between each others Member States' experts, third countries, international organizations, but also civil society with the non-profit sector, the industry (namely through public-private partnerships), academia, relevant EU agencies such as the European Union Agency for Fundamental Rights or the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) is essential. These stakeholder consultations should also be used to gather and cross-check relevant information.

4.2. Common methodology

Any further policy development will have to take into account the immigration situation in each Member State with regard to stock and flow data. To this end, specific immigration profiles should be developed for each individual Member State, in order to establish the skills composition of the existing immigrant population, and possible future labour needs. The comprehensive overview needed for drawing up such profiles would have to be fuelled by a multitude of sources, including state agencies, social partners, academic expertise, international organisations, immigrant associations and civil society.

On the basis of individual immigration profiles, multiannual guidelines and objectives should be defined in order to ensure that, in future, the skills available within the existing immigrant population and the concrete labour market needs of the host Member State better match. Setting up clear guidelines and objectives covering a multiannual period constitute important steps towards further common action as they give a meaning to the day-by-day policy.

Once the multiannual guidelines and objectives are set, it is also necessary to devise evaluation and monitoring mechanisms providing regular feedback to policy makers. To allow for policy improvements, quantifiable performance indicators and benchmarks should be developed, ideally per Member State. Availability of statistics and of the necessary analytical capacity is a key component in the development of any evaluation system. Indeed, statistics will be required as baseline data to assess whether existing needs are being addressed and, ultimately, to be able to draw conclusions about the impact of policies. Improvements should be made in three areas: quality, availability and analysis. The overall

aim of better evaluation and monitoring should be to ensure a more determined enforcement of political commitments and legislative obligations.

Annual immigration reports by the European Commission should be presented to provide a comprehensive overview, analyse possible labour market needs and allow the Council to make a political assessment and issue policy recommendations. Submission of these reports to the European Council should be envisaged, preferably to the Spring European **Council** to strengthen the link with the Lisbon Agenda.

ANNEX 1 – OVERVIEW TABLE

Problem	**Existing measures**	**Objective**	**Corresponding principl and solutions**
Challenge: *shrinking EU population and demographic ageing*			
decline of the working age population and increasing number of old people, translating into a growing pressure on the health-care and long-term care system, pensions expenditures and a decline of growth rate	-2005 Green Paper -2006 Communication on the demographic future of Europe	Designing a common policy on legal immigration, organising both legal immigration and the integration of immigrants, while taking into account the interests of the countries of origin	- mainly principles 2 and but also partly principles 6 and 9
Challenge: *labour and skill shortages*			
Labour and skills shortages	- directives on family reunification, on the admission of students and researchers, and on the status of long term residents -2005 Policy Plan on Legal Migration -2007 Proposals for the general Framework Directive and the Directive on the admission of highly qualified migrants	To manage migration in order to alleviate sectoral and occupational shortages of labour: - assessment of present and future labour market needs - enhancing the employment potential of third-country nationals - legal framework defining clear rules of admission and residence for third-country nationals - intensified partnership with third countries - awareness-raising measures targeting both the host societies and the prospective migrants	-mainly principles 2 and but also partly principles 6, 7, 9, 10 and 11

Challenge: *a better integration of legal immigrants*			
insufficient integration of foreign-born nationals	-2004: Common basic principles -2005 Common Agenda Communication -2007 Integration Fund -anti-discrimination legislation - Annual reports on migration and integration - Handbooks for practitioners (2 editions) - 2006 – 2008 Development of an Integration website - Regular NCP meetings - Ministerial Conferences on Integration (Groningen 2004, Potsdam 2007)	To improve the dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States - to develop a more coherent approach to integration to reinforce the sharing of information and the coordination between all stakeholders - to better monitor and evaluate integration policies - to set up targeted language classes and tuition to facilitate integration at school - to focus on introduction programmes, including language and civic orientation courses for newly-arrived - to prevent unemployment through education and training, a better recognition of qualifications, fight against discrimination and illegal work and promotion of employment for immigrant women - to foster anti-discrimination and information measures and cooperation between governmental stakeholders and engagement of companies in debates on integration - to provide specific help and information to allow migrants' access to services, especially health services - to reflect on active citizenship and naturalisation processes as elements to strengthen opportunities for involvement	Mainly principle 3

		in the host society	
Challenge: *continuous pressure of illegal immigration*			
High level of illegal immigration, posing security, humanitarian problems, undermining credibility of the immigration policy and generating diverse social costs	-regulations on mutual recognition of expulsion decisions, on the prevention of the facilitation of unauthorised entry, transit and residence, on residence permits granted to victims of trafficking or smuggling, on joint flights, creation of Frontex, -2005 Proposal for a Directive on return -2007 proposal for a Directive on sanctions against employers -2006 Communication on illegal immigration -2007 Communication on undeclared work -creation of a web-based information network, MIM and ICONet - readmission agreements -2007 Border Fund, Return Fund	to pursue current policy aimed at tackling both push factors and pull factors of illegal immigration - stepping up the fight against the smuggling of migrants and trafficking in human beings, (amendments to the legal framework to improve the status of trafficked persons and to adapt to new kinds of fraud; prevention strategies specific to vulnerable groups; improvement of the investigation of human trafficking, notably through better national and international cooperation; more effective implementation of international instruments) - continuing to combat illegal work (adaptation of Community legal framework to foresee common sanctions; better enforcement of sanctions, through adapted national human and financial resources and more effective national and trans-national coordination; more thorough knowledge of the phenomenon across Member States; development of incentives toward declared work) - establishment of an effective return policy (creation of common standards reinforcing the effect of a national return decision; improved cooperation and coordination among Member States, including joint return operations and regularisation; intensified partnership with third	Mainly principles 9, 10 a 11 but also part principles 1, 2 and 6

		countries).	
Challenge: *An insufficient partnership with third countries*			
significant migratory pressure on Europe, flowing from an array of factors	The Global Approach to Migration launched in 2005 and refined in 2006 aims to formulate comprehensive and coherent policies that address a broad range of migration-related issues	In line with the Global Approach, the overall objective consists of consolidating and deepening partnerships with third countries in order to improve positive consequences of migration for both countries of origin and countries of destination, including: fostering circular migration and brain circulation; improving the management of remittances; enhancing the voluntary contribution of diasporas; better supporting voluntary returns and economic reintegration of migrants; focussing on the matching between labour supply and demand; addressing employment and decent work in developing countries; further developing policies to fight illegal immigration These objectives will be met through: - a better implementation of current instruments (which requires in turn: a better coordination; increased human and financial resources; more joint activities); - a further integration of migration policy into the Union's development cooperation and other external policies; - a transformation of the geographic meaning of the approach, gradually shifting from a region-based perspective to a country-by-country perspective.	Mainly principle 6

Challenge: *insufficient adaptation of border management and visa policy to a streamlined management of migration*			
Insufficient contribution of border controls to the fight against illegal immigration and too burdensome border crossing for the passengers do not pose any threat to security	-regulations establishing Frontex, a Schengen Borders Code, creating the Rapid Border Intervention Teams, regulation on the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas, Schengen convention -2006 Commission Recommendation establishing a common Practical Handbook for Border Guards -The external borders fund (EBF) was set in place on 23 May 2007	To reinforce all dimensions of border controls and at the same time to facilitate and harmonize control checks and visa procedures for certain categories of travellers - establishing a European border surveillance system (through improvement in cooperation between Member States and use of new technologies); - reinforcing the Frontex Agency; - analysing the feasibility of an entry-exit system allowing for the identification of overstayers; - enhancing cooperation with third countries, - preparing the setting up of common application visa centres and issuing of truly European short-stay visas, guaranteeing equal treatment of all visa applicants and easier access; - analysing the feasibility of a registered traveller programme to facilitate border checks for certain frequent travellers	principles 7 and 8

ANNEX 2 – STATISTICAL DATA

Figure 1 - Projected working-age population and total employment, EU25

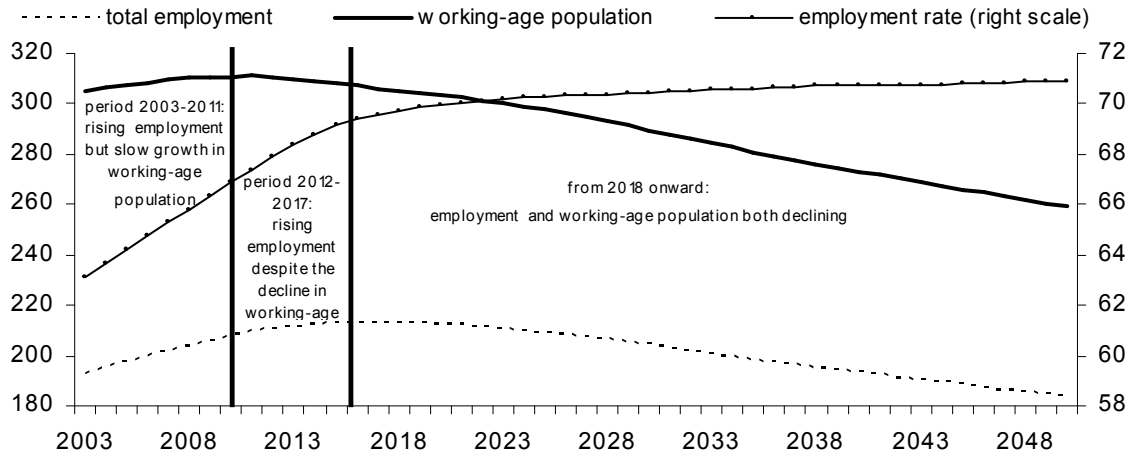


Figure 2 - Projected working age population (aged 15-64) in the EU-25, 2005 to 2050

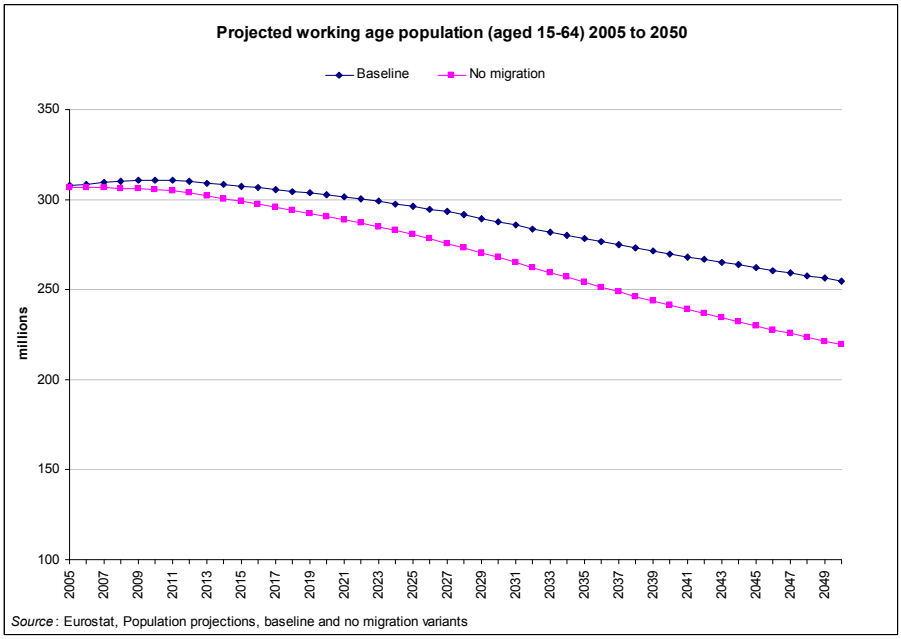


Figure 3 - Net migration to the EU-25, 1980-2007

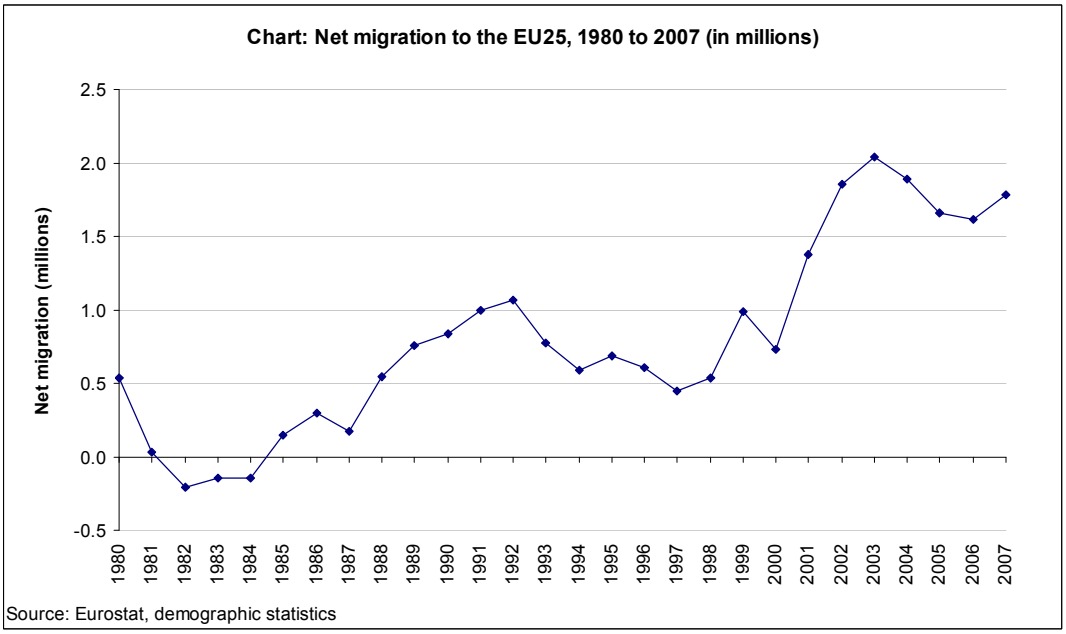


Table 4 - Populations by groups of citizenship, 1.01.2006

Annual Data collection

Source: Eurostat

	Total Population (1.01.2006)	Non Nationals	Citizens of EU 27 Member States	Citizens of non EU countries
Belgium	10 511	:	:	:
Bulgaria	7 719	:	:	:
Czech Republic	10 251	258	94	164
Denmark	5 428	270	74	196
Germany	82 438	7 289	2 212	5 077
Estonia	1 345	:	:	:
Ireland	4 235	314	:	:
Greece	11 125	:	:	:
Spain	43 758	4 003	1 326	2 676
France	62 886	:	:	:
Italy	58 752	2 671	539	2 132
Cyprus	766	98	59	39
Latvia	2 295	457	6	451
Lithuania	3 403	33	2	31
Luxembourg	460	182	:	:
Hungary	10 077	156	92	64
Malta	404	:	:	:
Netherlands	16 334	691	239	452
Austria	8 266	814	:	:
Poland	38 157	:	:	:
Portugal	10 570	:	:	:
Romania	21 610	:	:	:
Slovenia	2 003	49	3	46
Slovak Republic	5 389	22	12	10
Finland	5 256	114	39	75
Sweden	9 048	480	216	264
United Kingdom	60 210	3 066	1 174	1 892
EU 27	492 695	:	:	:

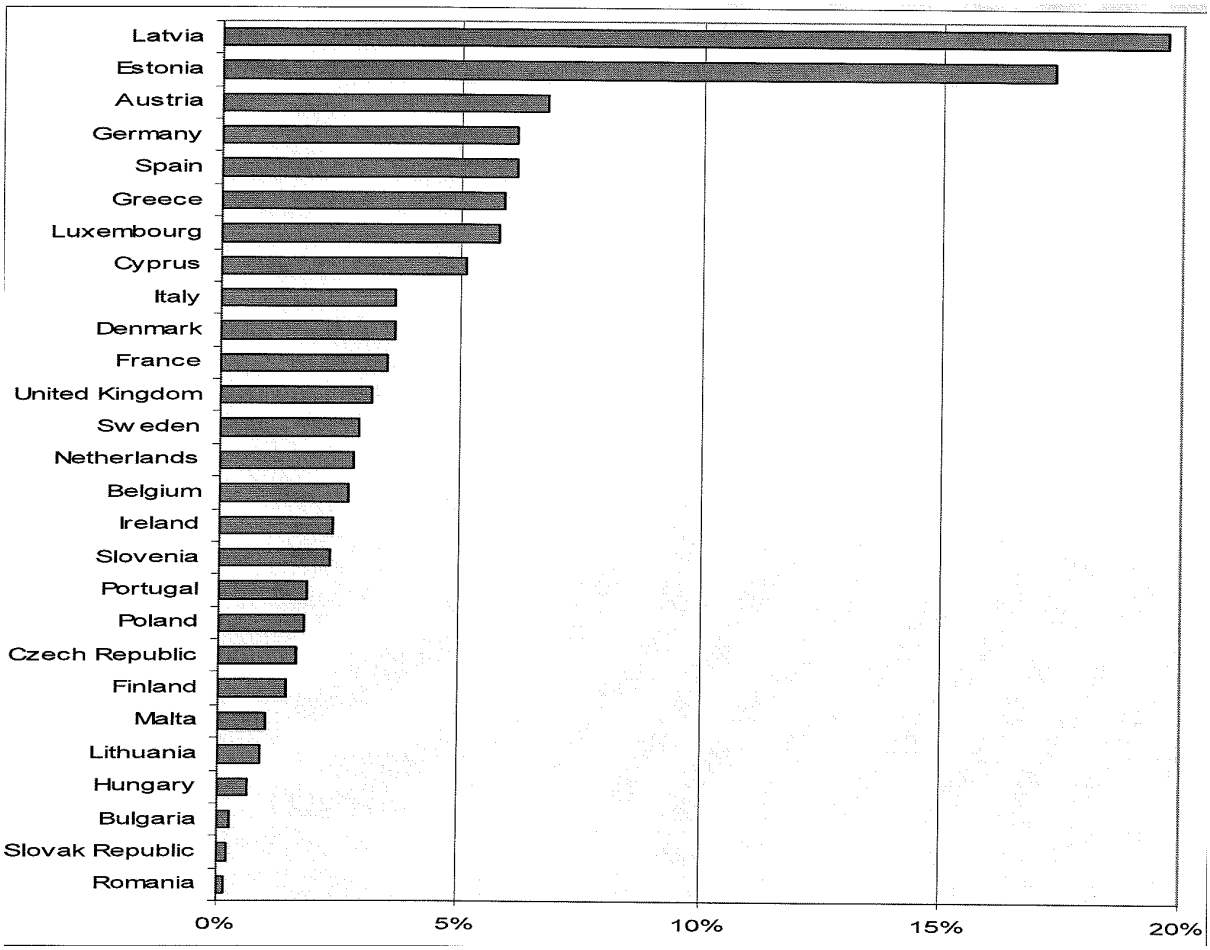
Table 5 - Indicators of the recent feminisation of migration flows

	% of women among immigrants arrived for 10 years or less 2004	1994
Austria	56	48
Belgium	54	52
Czech republic	54	..
Germany	53	48
Denmark	48	42
Spain	51	..
Finland	53	..
France	54	54
Greece	52	54
Hungary	54	...
Ireland	50	51
Italy	55	49
Luxembourg	51	46
Netherlands	53	48
Norway	56	..
Poland	61	..
Portugal	57	57
Sweden	53	50
United Kingdom	50	54

Notes: Data for Germany are for 1992 and for Austria and Sweden for 1995

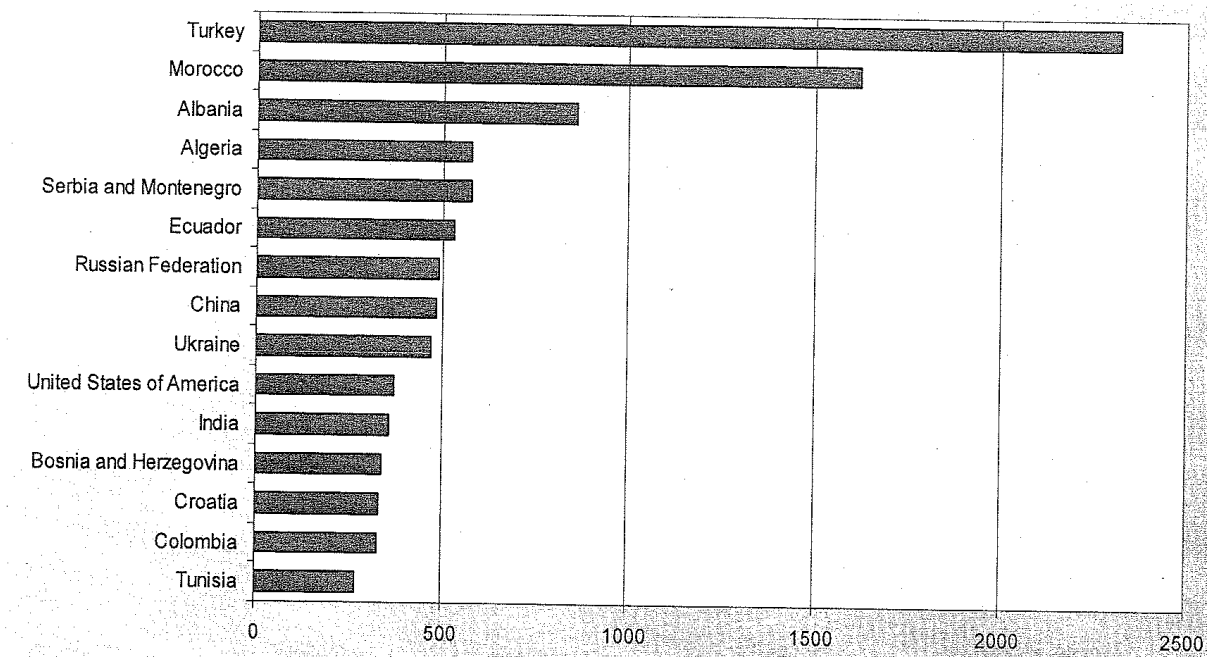
Source: Oso and Garson (2005)

Figure 6- Percentage of Non-EU citizens in EU Member States



source: Eurostat

Figure 7- Most numerous groups of non-EU citizens in EU, 1.01.2006



Source: Eurostat

Figure 8- Immigration to EU25 in 2005 by previous country of residence

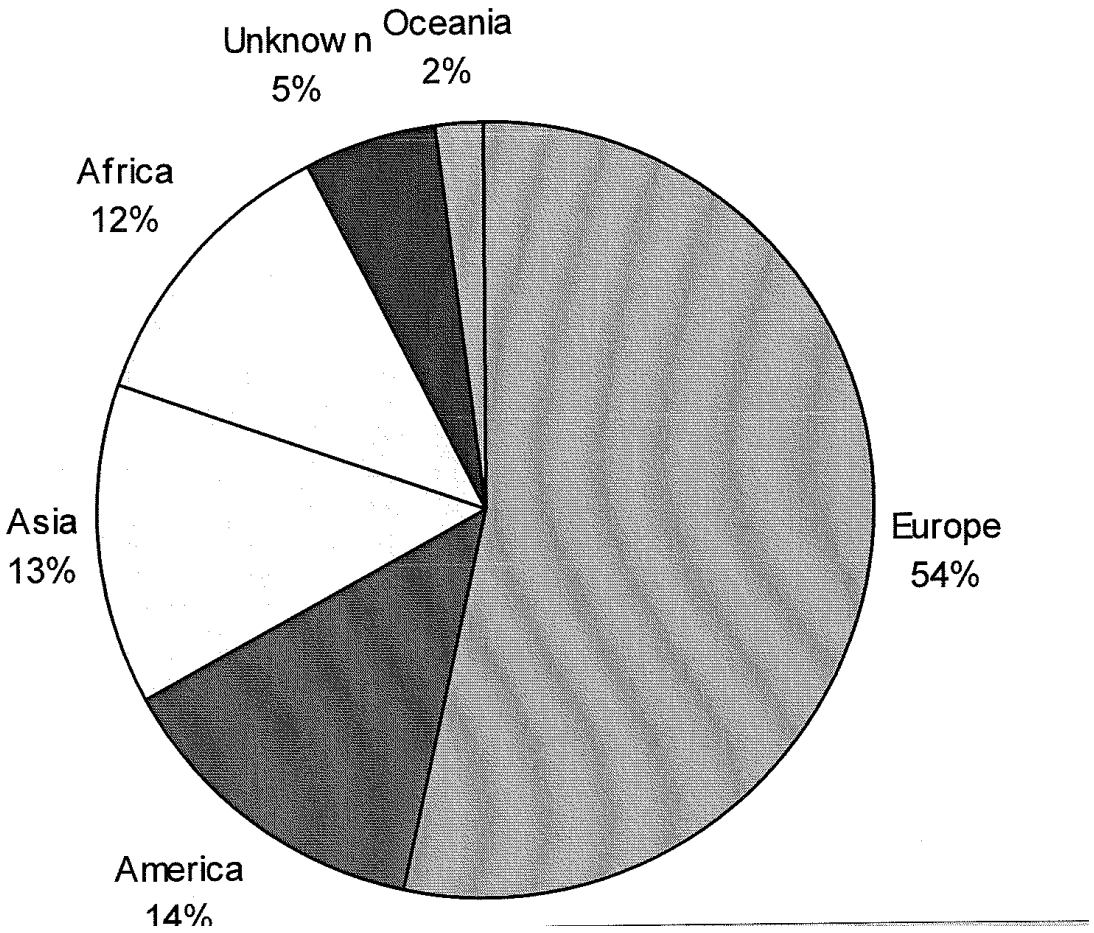


Figure 9 - International migration by category of entry, 2005

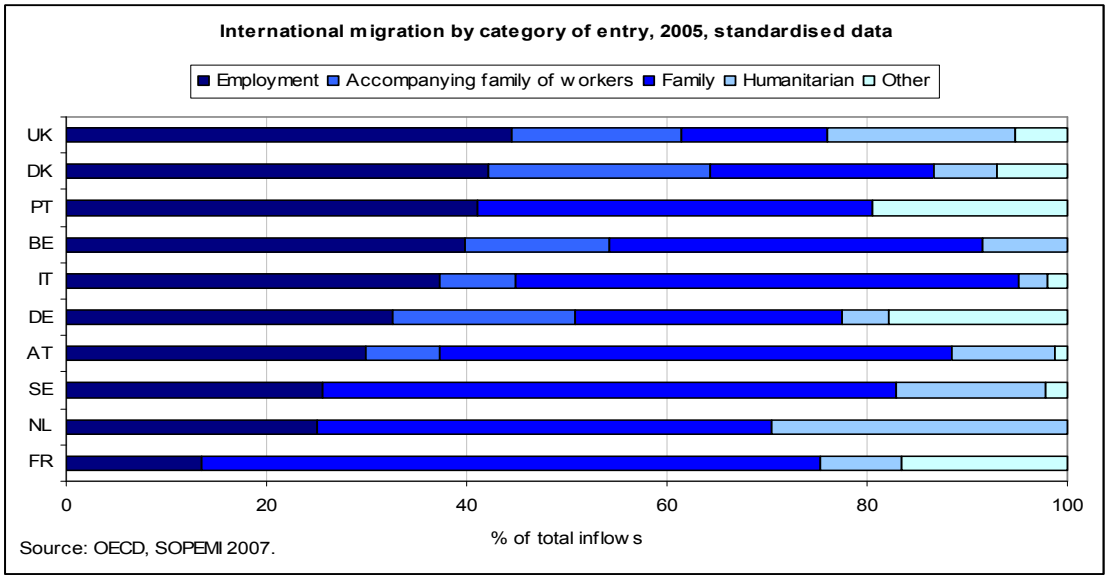


Figure 10 - Share of foreign nationals in resident working-age population, 2005

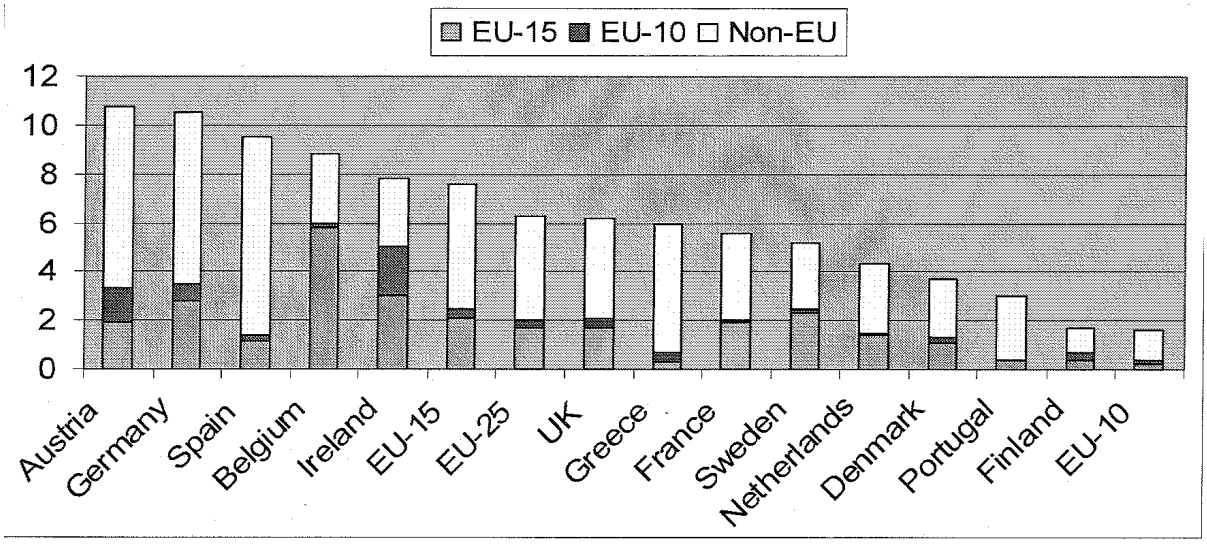
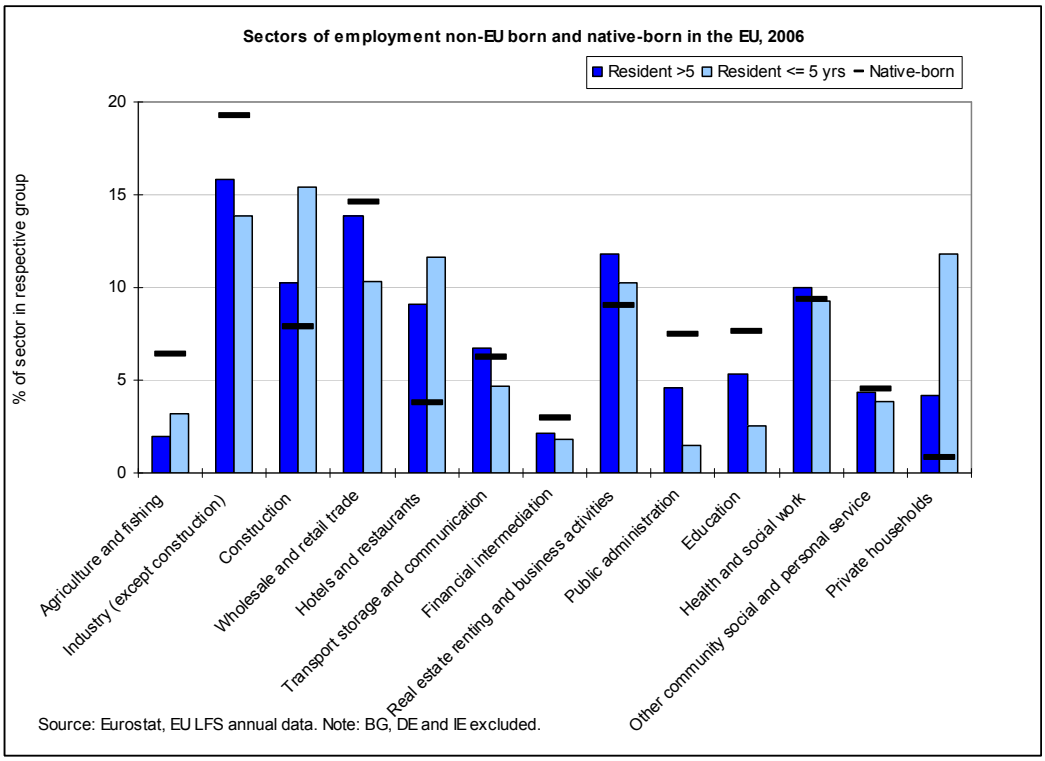
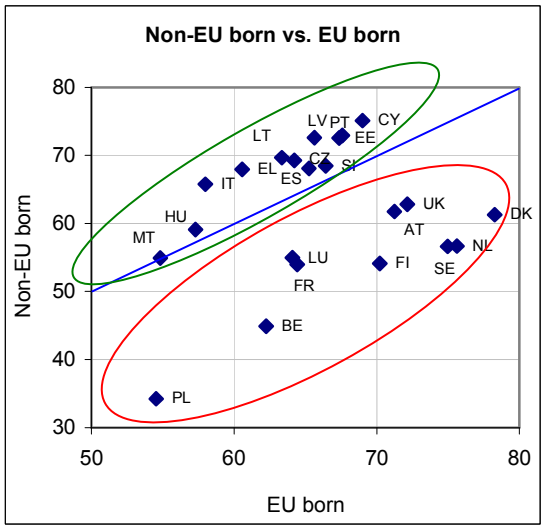
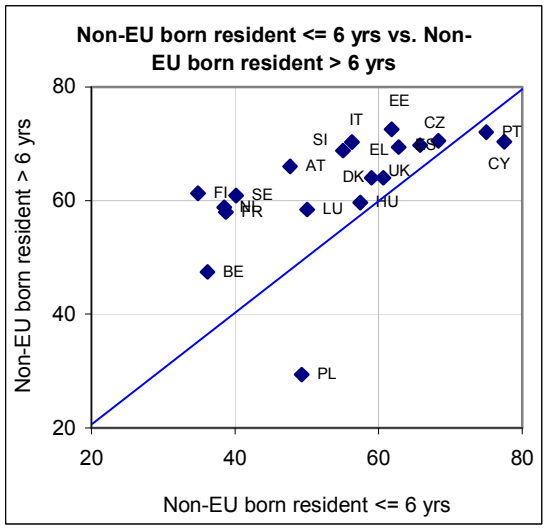


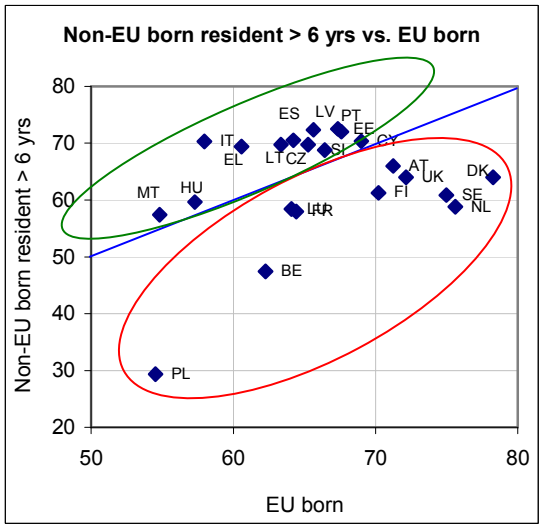
Figure 11 – Sectors of employment non-EU born and native-born in the EU, 2006

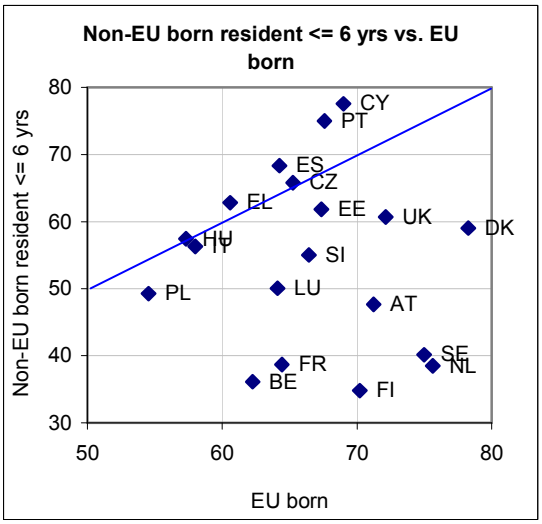


Figures12 – Employment rates of non-EU migrants relative to native-born, 2006









Source: Eurostat, EU LFS, annual data.

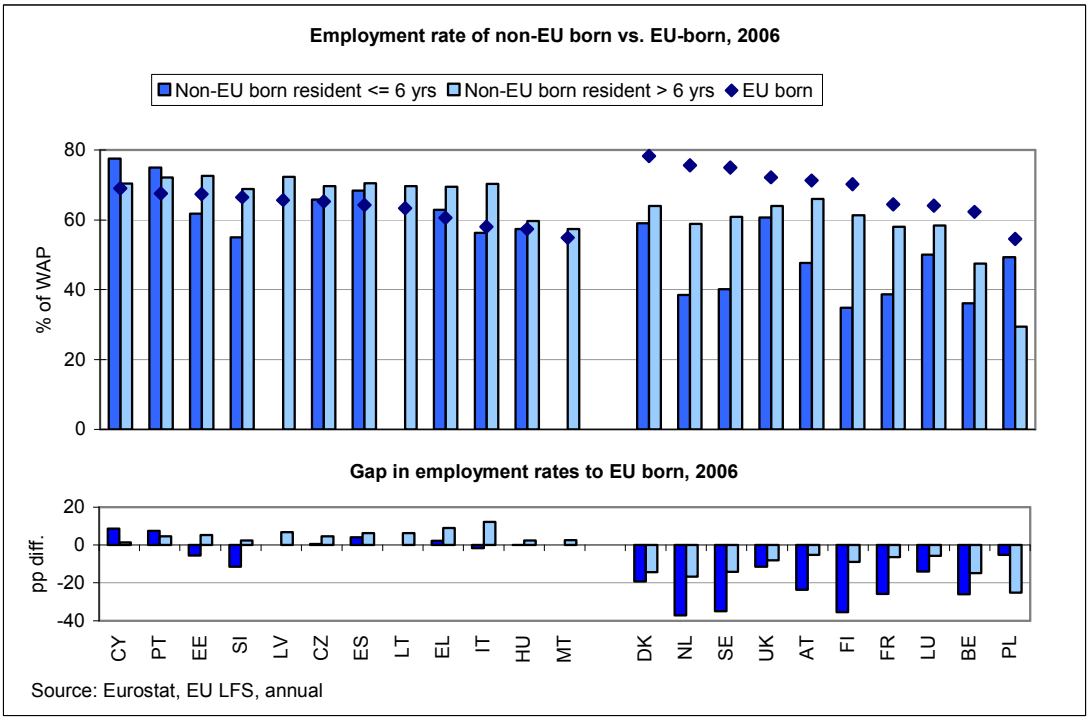


Table 13

Shares of employment, employment, unemployment and activity rates, 2006

	Share of employment			Employment rates				Unemployment rates				Activity rates			
	Non-EU born				Non-EU born				Non-EU born				Non-EU born		
	Total	Resident <= 5 yrs	Resident > 5 yrs	Native-born	Total	Resident <= 5 yrs	Resident > 5 yrs	Native-born	Total	Resident <= 5 yrs	Resident > 5 yrs	Native-born	Total	Resident <= 5 yrs	Resident > 5 yrs
BE	5.3	0.8	4.6	62.7	44.9	35.1	47.1	7.0	23.5	31.1	22.0	67.4	58.7	51.0	60.4
CZ	0.6	0.1	0.5	65.4	68.1	63.2	70.0	7.1	9.0	:	8.8	70.4	75.0	67.9	77.0
DK	3.9	0.8	2.1	78.4	61.3	(59.7)	(63.3)	3.7	8.3	(10.1)	(8.1)	81.4	66.9	(66.3)	(68.9)
EE	14.4	:	14.0	67.4	72.6	:	72.5	5.6	7.8	:	7.9	71.5	79.0	:	79.0
EL	6.5	1.1	5.5	60.5	67.9	61.7	69.3	8.8	9.2	11.5	8.8	66.5	74.8	69.7	75.9
ES	10.3	4.1	4.9	63.9	69.2	(66.7)	(71.4)	8.0	12.7	(14.1)	(12.3)	69.6	79.3	(77.6)	(81.4)
FR	6.7	0.8	5.9	64.4	54.0	35.9	57.8	8.7	18.2	30.0	16.3	70.6	66.1	51.2	69.2
IT	6.2	1.2	5.0	57.9	65.8	52.5	70.1	6.6	8.4	13.1	7.1	62.0	71.8	60.4	75.5
CY	11.1	6.4	4.7	69.3	75.1	77.5	72.0	4.3	5.2	(5.1)	(5.3)	72.6	79.2	81.7	76.1
LV	10.5	:	10.3	65.7	72.6	:	72.4	7.0	5.9	:	6.0	70.7	77.1	:	76.9
LT	4.1	:	3.9	63.3	69.7	:	69.7	5.5	(7.6)	:	(7.9)	67.1	75.4	:	75.8
LU	5.0	0.9	4.1	60.0	55.0	48.7	58.3	3.3	15.7	:	(12.8)	62.0	65.3	61.1	66.9
HU	0.5	0.1	0.4	57.3	59.1	57.8	59.5	7.5	:	:	:	61.9	63.8	59.1	65.0
MT	3.0	:	2.8	54.8	54.9	:	57.0	7.2	:	:	:	59.1	59.7	:	61.9
NL	7.9	0.4	7.5	75.8	56.7	37.2	58.3	3.7	11.8	18.7	11.4	78.7	64.2	45.7	65.8
AT	10.0	1.5	8.5	71.6	61.8	45.6	65.9	3.8	11.5	19.7	9.9	74.4	69.8	56.7	73.1
PL	0.2	(0.1)	0.1	54.6	34.2	(52.2)	30.1	13.9	:	:	:	63.5	37.4	(54.7)	33.3
PT	6.0	1.5	4.5	67.6	72.9	75.3	72.1	7.5	9.5	7.5	10.1	73.4	80.6	81.5	80.4
SI	6.9	(0.1)	6.8	66.6	68.5	(53.3)	68.7	5.9	7.1	:	7.1	70.8	73.7	(56.4)	74.0
SK	:	0.0	:	59.5	:	:	:	13.4	:	:	:	68.7	(67.6)	:	(70.0)
FI	1.4	(0.2)	1.3	70.2	54.1	(33.1)	59.6	8.6	23.4	(43.3)	20.0	77.0	70.7	58.4	74.4
SE	7.8	0.9	6.9	75.1	56.6	39.4	60.0	6.1	16.8	25.9	15.5	80.1	68.1	53.1	71.1
UK	7.6	2.2	5.4	72.0	62.8	60.7	63.8	5.0	8.6	10.3	8.0	75.9	68.8	67.6	69.5

Source: Eurostat, EU LFS annual data. Note: ":" Data not available. Data in brackets uncertain due to small sample size. The total shares may differ from the sum of shares by groups due to 'No answers' regarding the length of stay in the country.

Figure 14– Participation rates by gender, 2004

	Native-born	Foreign-born	*difference*
Men			
BE	72,9	70	*-3*
DK	85,1	74,1	*-11*
DE	79,1	78,8	*0*
GR	76,1	89,8	*14*
ES	79	87,8	*9*
FR	75,1	77,6	*3*
IE	78,5	77,7	*-1*
IT	74,5	89,8	*15*
NL	85	76,2	*-9*
AT	76,7	79,1	*2*
PT	79	85,5	*7*
SE	80,7	74,6	*-6*
UK	82	78,5	*-4*
Women			
BE	57,4	45,5	*-12*
DK	77,4	61,9	*-16*
DE	66,9	54,9	*-12*
GR	50,6	57,3	*7*
ES	54	64,2	*10*
FR	64,5	58,2	*-6*
IE	57,8	57,3	*-1*
IT	48,6	55	*6*
NL	71,2	56	*-15*
AT	64,1	60,1	*-4*
PT	66	74,8	*9*
SE	76,9	68,4	*-9*
UK	69,6	59,3	*-10*

Note: 2003 data for Belgium, Greece, Spain, Ireland, Italy, Portugal
Source: OECD

Figure 15-: Education of EU born and non-EU born, 2006

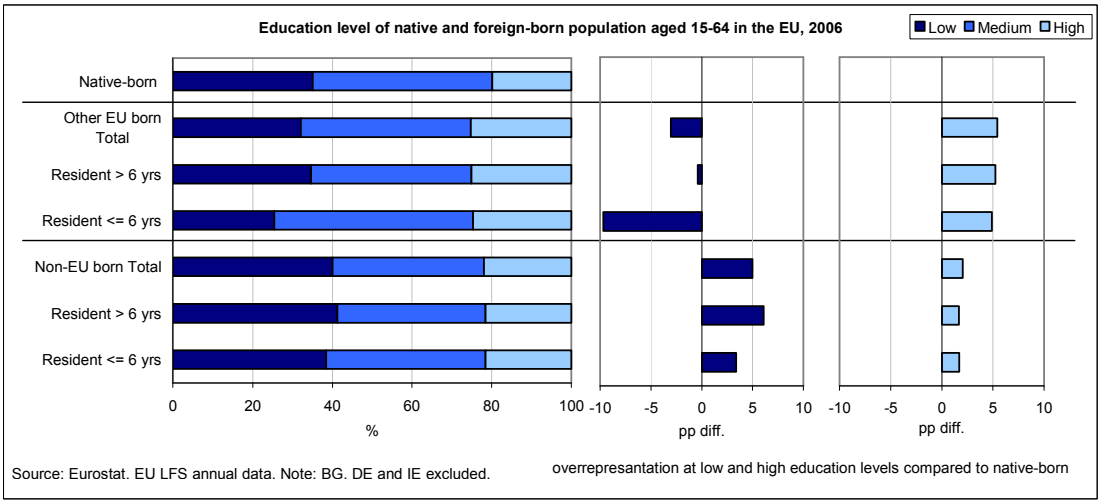


Figure 16- Shares of tertiary education among EU-born and non-EU born, 2006

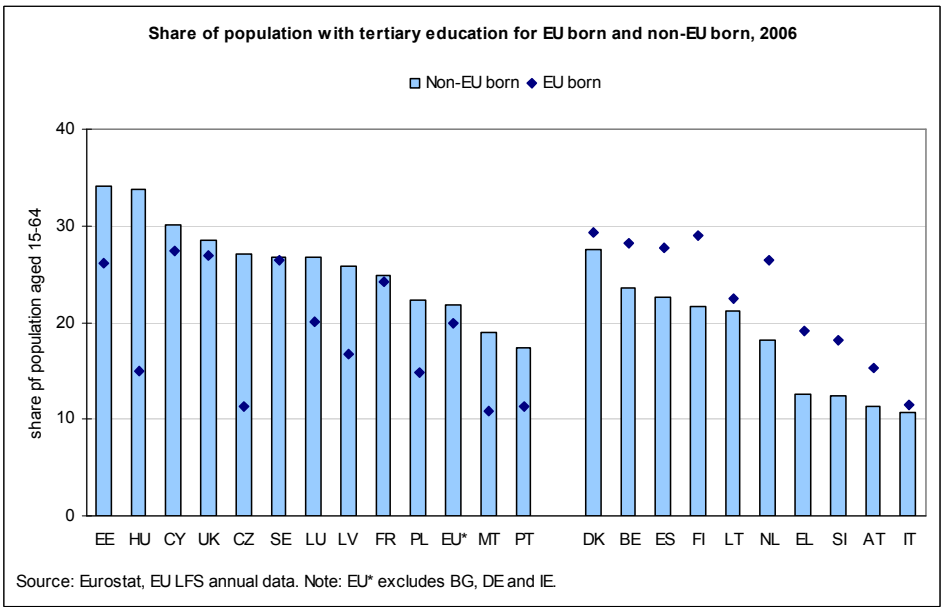


Table 17– Occupational structure in EI by main occupational grouping (as % share of total employment)

Main occupational grouping	2000	2005	Change 2000-2005
High-skilled non-manual	35.8	38.7	2.9
Low-skilled non-manual	25.9	24.9	-1.0
Skilled manual	29.3	26.8	-2.6
Elementary occupations	9.0	9.7	0.7

Source: Eurostat, LFS spring result

Table 18– Highly Skilled Workers non-EU national as percentage of total HSW, 1995-2004

MS	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Avarage annual Growth Rate (1999-2004)
BE	0.9%	1.2%	1.0%	1.2%	1.0%	1.3%	1.1%	1.2%	1.0%	1.2%	4.4%
DK	0.9%	0.9%	1.1%	1.5%	1.1%	1.2%	1.1%	1.3%	1.2%	1.3%	3.8%
DE	2.3%	2.4%	2.2%	2.4%	2.7%	2.7%	2.7%	2.8%	2.8%	2.8%	0.6%
IE	0.0%	0.0%	0.0%	0.6%	0.5%	1.0%	1.4%	1.8%	2.3%	2.2%	32.3%
EL	0.7%	0.6%	0.6%	0.7%	0.6%	0.9%	0.7%	1.0%	1.0%	1.0%	10.4%
ES	0.5%	0.4%	0.4%	0.6%	0.9%	0.8%	1.4%	1.6%	1.7%	2.2%	19.7%
FR	1.5%	1.6%	1.7%	1.7%	1.7%	1.5%	1.6%	1.7%	1.4%	1.3%	-5.0%
LU	2.0%	2.9%	2.4%	3.4%	2.8%	2.9%	3.4%	2.8%	3.5%	2.9%	1.2%
NL	0.0%	0.0%	0.0%	0.0%	0.8%	0.8%	0.9%	1.2%	1.0%	1.0%	4.4%
AT	3.1%	3.1%	2.7%	3.0%	2.3%	2.6%	3.2%	2.5%	3.2%	3.2%	6.7%
PT	0.0%	0.0%	0.0%	0.0%	0.7%	1.2%	1.3%	1.5%	0.9%	1.1%	7.5%
FI	-	-	0.6%	0.4%	0.6%	0.7%	0.7%	0.9%	0.9%	0.6%	-0.4%
SE	-	-	1.3%	1.2%	1.1%	1.2%	1.6%	1.6%	1.5%	1.3%	3.0%
UK	2.0%	2.1%	2.3%	2.5%	2.3%	2.7%	3.0%	3.3%	3.6%	3.9%	10.5%
Total	1.6%	1.7%	1.6%	1.8%	1.8%	1.9%	2.1%	2.2%	2.2%	2.3%	4.6%

Source: Eurostat, LSF 2006

Table 19 – Employment rates of non-EU nationals population with high education, as percentage of relative population, 1995-2004

MS	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Avarage annual Growth Rate (1999-2004)
BE	40.0%	46.7%	43.0%	54.2%	43.4%	62.6%	49.4%	50.3%	49.5%	57.5%	5.8%
DK	64.1%	58.4%	59.9%	65.5%	64.3%	56.1%	49.2%	53.7%	53.6%	62.3%	-0.6%
DE	59.5%	58.7%	57.4%	-	61.9%	60.7%	64.5%	62.3%	61.4%	58.1%	-1.3%
IE	-	-	-	-	70.6%	68.6%	71.0%	70.6%	65.3%	65.6%	-1.5%
EL	64.7%	66.5%	65.9%	65.0%	65.5%	74.9%	68.7%	70.5%	69.1%	72.9%	2.2%
ES	57.1%	63.4%	54.5%	67.6%	76.8%	69.5%	75.4%	70.6%	71.0%	70.2%	-1.8%
FR	52.3%	57.3%	56.9%	54.8%	50.7%	54.6%	57.2%	56.5%	55.1%	54.2%	1.3%
LU	50.1%	77.1%	62.0%	-	57.9%	68.0%	71.0%	61.7%	64.5%	64.2%	2.1%
NL	-	-	-	-	48.9%	58.1%	68.2%	65.0%	51.5%	56.2%	2.8%
AT	84.6%	74.8%	75.6%	74.9%	71.0%	76.9%	79.9%	79.5%	76.6%	80.6%	2.6%
PT	-	-	-	-	87.4%	78.3%	95.2%	77.9%	84.1%	80.0%	-1.8%
FI	100.0%	53.9%	33.3%	32.5%	55.5%	55.4%	58.9%	65.9%	45.1%	55.3%	-0.1%
SE	-	-	51.5%	53.7%	58.3%	55.0%	67.3%	65.1%	63.1%	61.2%	1.0%
UK	70.1%	69.6%	76.0%	-	73.3%	76.7%	75.0%	80.9%	75.4%	76.1%	0.7%
Total	59.9%	60.9%	60.6%	58.1%	61.9%	64.3%	67.0%	67.0%	65.1%	65.4%	1.1%

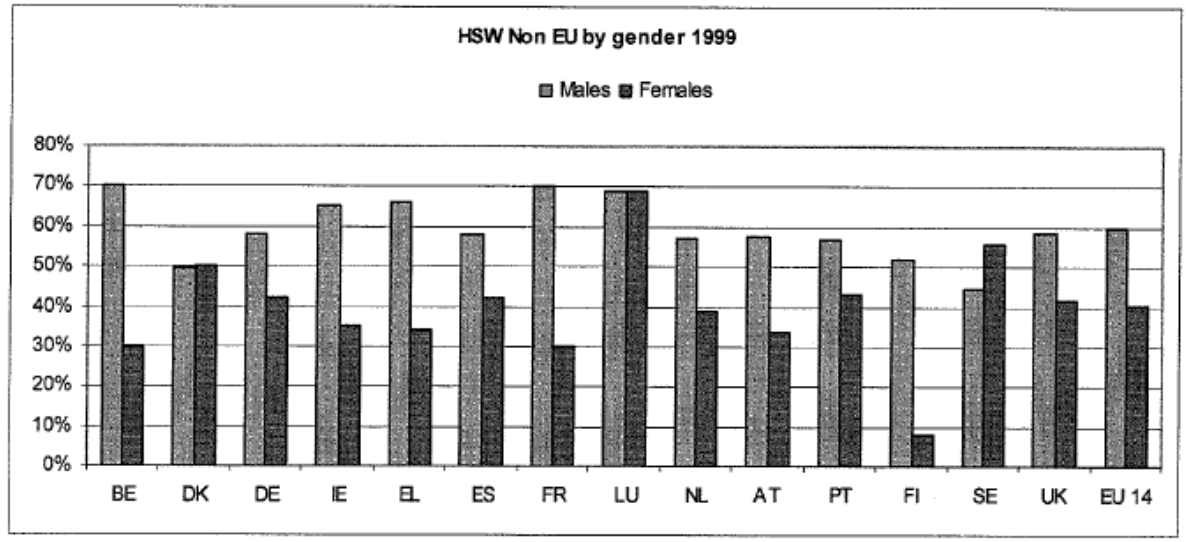
Source: Eurostat, LSF 2006

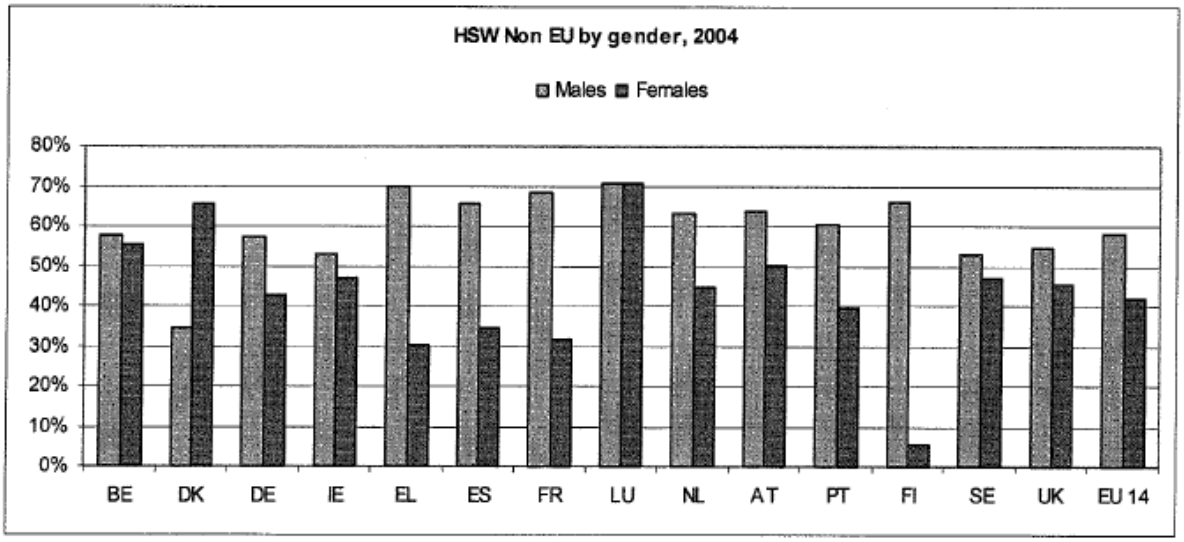
Table 20 – Highly Skilled Workers non-EU nationals as a percentage of total employed non-EU nationals, 1995-2004

MS	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
BE	21.9%	28.5%	25.3%	28.3%	22.7%	28.5%	24.8%	30.7%	23.3%	30.0%
DK	39.5%	28.5%	29.7%	32.6%	29.9%	29.3%	29.0%	29.8%	28.0%	29.2%
DE	16.1%	16.1%	16.1%	17.9%	19.0%	19.4%	19.1%	19.7%	20.5%	20.7%
IE	-	-	-	55.6%	55.4%	55.5%	40.3%	35.8%	33.4%	31.8%
EL	12.9%	11.6%	8.3%	5.7%	5.1%	7.3%	5.1%	5.6%	5.3%	5.3%
ES	27.0%	15.0%	16.2%	19.2%	18.2%	12.1%	13.5%	10.2%	8.2%	8.7%
FR	17.6%	18.6%	20.4%	19.3%	19.4%	18.1%	18.6%	19.7%	20.8%	18.5%
LU	25.5%	29.4%	26.6%	35.9%	28.6%	28.3%	29.3%	22.3%	36.2%	34.1%
NL	-	-	-	-	25.8%	19.3%	21.7%	27.4%	26.5%	24.9%
AT	10.9%	12.0%	10.0%	11.9%	9.3%	10.7%	13.0%	11.1%	13.3%	21.0%
PT	-	-	-	-	18.3%	15.0%	17.0%	15.6%	9.7%	12.2%
FI	0.0%	0.0%	38.3%	30.2%	35.5%	38.7%	37.1%	38.2%	33.2%	29.1%
SE	-	-	30.6%	25.6%	24.8%	23.6%	28.5%	31.2%	29.9%	28.9%
UK	42.5%	47.9%	44.4%	44.2%	45.1%	44.5%	45.0%	45.2%	46.6%	45.0%
Total	19.7%	20.2%	21.0%	22.0%	21.8%	21.8%	21.8%	21.8%	21.4%	21.3%

Source: Eurostat, LSF 2006

Figure 21 – Composition of Highly Skilled Workers non-EU nationals by gender, 1999-2004.





Source: Eurostat, LSF 2006