



ETUC response to the Commission's Green Paper on a EU approach to managing economic migration COM (2004) 811 final

Introduction:

- 1) ETUC is highly committed to fighting for a **Europe characterised by openness, solidarity and responsibility**, as expressed on numerous occasions. This position builds on previous ETUC resolutions and positions on this issue, adopted since the Helsinki congress 1999.¹
- 2) On 11 January 2005, the European Commission launched a public debate on economic migration, and invited all interested parties to submit their views on a 'Green Paper on an EU approach to managing economic migration', no later than 15 April 2005. ETUC wants to contribute to the debate with this position, as adopted in the meeting of its Executive Committee on 16 March 2005.

A. Challenges:

- 1) Europe took shape over the last few centuries through successive waves of migration: migration from one European region to another, and emigration from and immigration into European countries. In the course of a long and turbulent history of decolonisation and organized recruitment programmes, migrant and ethnic minority men, women and their families have arrived, gained European citizenship, and made a significant contribution to Europe's economic and cultural development and wealth. *In the future, Europe will need their contribution even more*, at all levels of society, in the context of demographic change and ageing populations, as recognized in the Lisbon strategy and the recent Commission's Communication on the Social Agenda.

¹ <http://www.etuc.org>

Helsinki, 1 July 1999: European Trade Unions without Borders

Brussels, 13-14 December 2000: Post-Nice enlargement of the European Union

Brussels, 10-11 October 2001: Towards a European policy on immigration and asylum

Brussels, 19-20 November 2002: Towards a European policy on immigration and asylum
(2)

Brussels, 16-17 October 2003: Action Plan for an ETUC policy on migration, integration and combating discrimination, racism and xenophobia.

At the same time, European societies are struggling to adapt to the increasing diversity of their populations, and are failing to offer migrants and their descendants opportunities to integrate and participate while respecting and valuing cultural difference. As a consequence, *their potential has not been utilized to the full, and is often undervalued.*

While young people in general are already among the most vulnerable groups on the labour market, facing higher unemployment and having to accept precarious and low wage jobs, for young people from a migrant or ethnic minority background the situation is even worse, as they are also faced with *discrimination and exclusion.*

- 2) In recent decades the EU has embarked on a continuous enlargement process north-, south- and eastwards in the interests of guaranteeing peace, political stability, and economic and social progress for all its citizens.

Although free movement and equal treatment of workers within the EU is one of the four fundamental freedoms established in the European Treaties, the latest enlargement eastwards has only been accepted by the majority of the 'old' Member States, driven by often unfounded fears held by their citizens, on the basis of conditions that restrict these freedoms (and equal treatment!) during transitional periods.

In the next decade, *achieving genuine free movement, equal treatment and mobility within the EU 25 (and more, in a few years time) will demand greater effort* to integrate the new Member States and their inhabitants into the notion of EU citizenship and identity. However, this will only be possible, if, at both national and local level, social cohesion is promoted and industrial relations systems, collective agreements and arrangements are respected and not called into question.

- 3) Millions of people are on the move across the world: many are fleeing war, conflict or prosecution; many are propelled by poverty and insecurity. They are trying to survive and looking for political and economic security for themselves and their families. Most are not simply looking for *better* living and working conditions and opportunities, but for a safe place to stay and *any* kind of work. They provide Europe with a *silent labour force that can easily be exploited* in low wage jobs and sectors, such as agriculture, construction and the various service sectors.

This labour force now contains *growing numbers of women* who, facing gender specific forms of violence and repression in their countries of origin, or as single parents taking on the responsibility of earning a living to support their children and relatives at home, provide European citizens and households with care services for children, the sick and the elderly that is often invisible but indispensable.

- 4) In recent years many EU Member States have adopted very restrictive asylum policies and '*zero immigration*' policies especially with regard to low skilled workers and as a result offered European citizens a false sense of protection.

In doing so, they have *increased the pressure* at the EU's external borders and the number of illegal immigrants (both asylum seekers that do not hold recognized status and migrant workers that are not in possession of the necessary permits) in EU labour markets, thereby indirectly promoting trafficking of human beings as a highly profitable enterprise.

Unscrupulous employers are taking advantage of the thousands of undocumented workers who are denied any legal existence, exploiting them and making them work and live in conditions that are often inhumane. When uncovered, the workers rather than the employers are generally penalized and victimised. This situation is exacerbated by the unwillingness of most Member States to offer illegal immigrants ways to regularise their situation, and by legal prohibitions to provide support to undocumented workers or to organise them in trade unions – a flagrant contravention of the fundamental right of freedom of association guaranteed to every worker under international law.

- 5) While publicly advocating 'zero immigration' policies, many Member States have silently adopted '*open border*' policies for third country nationals with *high qualifications* and much-needed skills, in competition with other industrialised countries on the global labour market. As a result, the skilled workers and professionals that are needed for development are being *drained* from developing countries. At the same time, asylum seekers that might have the qualifications much needed in the EU labour markets are overlooked with the argument that they should not be 'rewarded' for their lack of status.
- 6) Moreover, the development towards *more freedom to provide services*, encouraged on the global level by the WTO through the GATS (General Agreement on Trade in Services), and promoted within the European Union by the draft Directive on Services in the Internal Market, leads to a great variety of migratory movements of third country nationals on temporary assignments, from managerial staff to posted workers, who in theory 'do not permanently enter national or local labour markets' but in practice *may very well disrupt* these labour markets *by not respecting the host country rules* and regulations, leading to unfair competition.
- 7) Europe's workers are faced with *increasing pressure and insecurity because of rapid changes* in economy and society. They feel threatened by globalisation and the way it is managed by governments at national and EU level. Restructuring and outsourcing threaten their employment perspectives, proposals to cut down on public expenditure, social security and pensions threaten the security of their income. Failure to manage the challenges of integration and social cohesion at local community level and especially in the big cities causes distress and sentiments of abandonment.

Proposals to unilaterally promote *global competition and free market mechanisms, without proper counterbalances* that safeguard national labour markets and their industrial relations systems, may increase these feelings of insecurity.

These pressures and insecurities in many countries give rise to *xenophobic sentiments*. Irregular migrants and asylum seekers become the scapegoats of European workers' nightmares, and regular migrants, refugees with recognized status and ethnic minorities with EU citizenship are increasingly treated with similar contempt and overt racism.

- 8) At national and EU level, *contradictory messages* are sent out to Europe's citizens. On the one hand, there is the message that more immigration is needed and that new immigrants should be recruited to address labour market shortages, trying to sell the idea that more immigration is the *solution* to Europe's demographic problems. On the other hand, there is the message that there are enormous problems with the integration of migrants and their families, and that thousands of asylum seekers and migrant workers without status or documents, (who have sometimes been living in the EU for many years), are not welcome and should be expelled, creating an atmosphere in which migration is seen as a major *problem*.
- 9) While most international and European instruments on human rights, including ILO Conventions, apply to migrant workers, regardless of their (regular or irregular) status, the EU and its Member States are still *struggling with a rights-based approach* to migration. Most of them have *not ratified any of the major UN or ILO conventions* for the protection of migrant workers and their families. However, a resolution adopted by the ILO in 2004 reaffirmed that all migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour, *cover all migrant workers, regardless of legal status*.
- 10) ETUC is faced with a manifold challenge: providing European citizens and workers, including its current immigrant and ethnic minority inhabitants, with the perspective of a sustainable social Europe; and contributing to a fairer globalisation process, in which economic and social progress go hand in hand in all parts of the world.

B. Key elements of a pro-active approach

ETUC is convinced that it is high time to adopt a more pro-active EU policy on migration and integration in the interest of Europe's current and future population that is based on the recognition of fundamental social rights of current citizens as well as newcomers, and that is embedded in strong employment and development policies.

Such policy should, in an integrated approach,

- 1) be based on a clear framework of rights for all the workers concerned, as provided for in all the relevant international conventions and instruments, recognizing that migrant workers and their families are human beings and no merchandise ², and building on the ILO "Resolution concerning a fair deal for migrant workers in a global economy" adopted in June 2004, calling for a rights-based approach to labour migration;
- 2) be established in close consultation with social partners;
- 3) guarantee the free movement of all persons who are either citizens of an EU Member State or third country nationals who are legal residents, in a framework of non-discrimination and equal treatment;
- 4) provide for a clear legal framework of equal treatment in working conditions for all lawfully employed third country nationals as compared to nationals, and respect for the host country's rules and regulations and industrial relations systems;
- 5) prioritise investing in the capacities and qualifications of unemployed or underemployed EU citizens including those from a migrant or ethnic minority background, as well as legally resident third country nationals including recognized refugees, as a first priority in tackling labour market shortages;
- 6) increase efforts to combat racism and xenophobia, and promote the full integration of immigrants and ethnic minorities into European labour markets and societies, whilst respecting cultural and religious diversity, and recognizing their positive contribution and potential;
- 7) attribute social and political citizenship rights to migrant workers and their family members;

² Declaration of Philadelphia 1944: " The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that
(a) labour is not a commodity; "

- 8) open up possibilities for the admission of economic migrants, by providing a common EU framework for the conditions of entry and residence. It should be based on a clear consensus between public authorities and social partners about real labour market needs, and at the same time prevent a two-tier migration policy that favours and facilitates migration of the highly skilled while denying access and rights to semi- and low skilled workers;
- 9) be tough on employers using exploitative employment conditions and focus on prevention and on sanctioning those who profit from these abusive situations, including traffickers in human beings, rather than penalizing the workers who are their victims;
- 10) create 'bridges' out of 'irregular situations' for undocumented immigrant workers and their families, including asylum seekers who have been denied a refugee status, while respecting their basic human rights;
- 11) promote cooperation and partnership with third countries and in particular developing countries.

Last but not least, such policy should acknowledge the major importance of strengthening the European social model in providing and maintaining basic protection for all Europe's inhabitants, to counter increasing feelings of social insecurity by millions of workers that may feed into racism and xenophobia, and to help the trade union movement play its cohesive role.

C. Comments on the Green Paper:

General remarks

- 1) ETUC welcomes the Commission's Green Paper, which addresses an issue that is at the top of the political agenda in many Member States.
- 2) It agrees with the remarks made in the Introduction, that "while immigration in itself is not a solution to demographic ageing, more sustained immigration flows could increasingly be required to meet the needs of the EU labour market and ensure Europe's prosperity". Any discussion on economic migration should therefore be linked to the Lisbon strategy, and embedded in EU employment policies. Close cooperation on national as well as EU levels between the Ministers and Commissioners for Employment and Social Affairs and Justice and Home affairs is therefore key.
- 3) Because the management of migratory flows has to be taken within the context of global migratory movements, the reasons for migration, the situation in countries of origin, and the overall responsibility of the EU for the global decent work agenda, a strong involvement of and close cooperation at national and EU levels with the Ministers and Commissioner for Development is also required.

- 4) ETUC also welcomes the reference in the Introduction to the need for a European strategic initiative to establish common criteria for the admission of economic migrants, to reduce 'illegal' migration.
- 5) However, ETUC is **disappointed about the overall emphasis in the Green Paper on the economic aspects and utilitarian arguments** of the issue, and the fact that it does not pay enough attention to the following important aspects:
- a) The Green Paper includes no reference at all to the relevant international and EU treaties and conventions³. ETUC believes that any policy for economic migration should be based on a clear framework of rights for all the workers concerned.
 - b) Very little attention is paid to the key issue of integration. Where the issue is addressed, a very one-sided approach is taken, only mentioning introduction programmes, language courses etc, that should 'adapt' the immigrant to the host country, ignoring the indispensable other side of creating more openness and tolerance in host societies for cultural diversity, the positive contribution that migrants can make, and the need to invest in their potential.
 - c) There is no reference to the important role that Social Partners and social dialogue can play at all relevant levels in assessing labour market needs, promoting sustainable policies for economic migration, addressing and preventing exploitative working conditions of migrant workers, and promoting their integration and non-discrimination in the labour market and the workplace.
 - d) The perspective of the labour migrant is absent; it speaks of win-win situations for sending and receiving states, but does not include any reference to the perspective of the migrant worker and his/her family, his or her rights and his or her needs and wishes. Government policy cannot successfully 'manage' the movements of

³ ILO:

- Migration for Employment Convention (revised), 1949 (n°97)
- Migration for Employment Recommendation (revised), 1949 (n°86)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (n°143)
- Migrant Workers Recommendation, 1975 (151)
- Articles 24 and 26 of the ILO Constitution
- Resolution concerning a fair deal for migrant workers in a global economy, June 2004

Council of Europe:

- European Social Charter, 1961 (no. 35) and Revised European Social Charter 1996 (no. 163)
- European Convention on the legal status of Migrant Workers, 1977 (n°93)

European Union:

- The EU Charter of fundamental rights, 2000 (Part II of the Constitutional Treaty, 2004)

United Nations:

- Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live, 1985
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (n°158)

labour migrants if this policy does not include reference to their interests and perspectives.

- e) The Green Paper does not show any gender awareness. Increasingly, labour migrants are women, working in public healthcare, nursing homes or private households, providing for care for children, the sick and the elderly. This should be explicitly taken into account when discussing the opening up of possibilities for economic migration.

On the questions raised

6) *What degree of harmonisation?*

ETUC acknowledges the Commission's view that a successful Community policy in the area of economic migration can only be put in place progressively, taking into account the fact that the access of third country nationals to EU labour markets is a highly complex and sensitive issue.

EU legislation on the admission of economic migrants should therefore be conceived, as stressed by the Green Paper, as a 'first step legislation', laying down certain common definitions, criteria and procedures, while leaving to the Member States to respond to the specific needs of their labour markets and to determine the volumes of admission of persons, in line with the Constitutional Treaty.

At the same time, it cannot be denied, that there is a growing interdependence between Member States with regard to decisions taken in the area of immigration, which demand for more harmonization at EU-level.

First of all, because of the already existing mobility of workers and services. Further harmonisation, not only of immigration law, but also regarding minimum working conditions and equal treatment in situations of cross border working, is necessary to bring about a European internal labour market, and to prevent social dumping.

Secondly, national policies with regard to asylum and with regard to the entrance of certain groups of migrant workers (such as high skilled workers) do have already an impact on the labour markets of other Member States, because of regulations with regard to mobility of long term third country nationals.

Thirdly, the increased competition between industrialised countries on the global labour market for workers with high skills or scarce professions demands for European coordination to provide for a sustainable framework, that benefits as well EU Member States, as the workers concerned and their countries of origin.

ETUC is in favour of a EU immigration policy that takes account of long-term demographic developments and long-term labour market needs.

However, immigration should not be seen as a lazy solution for all short-term labour market frictions and shortages, and especially not as an excuse to avoid improving poor working conditions and/or inadequate vocational training.

Priority should be given to utilizing the untapped and often undervalued potential of those who are already present on the national and EU labour market, EU-citizens as well as third country nationals, including irregular migrants.

With regard to the scope of any future EU legislation, ETUC is in favour of taking a horizontal approach, along the lines of the original proposal, rather than coming up with a series of sectoral proposals. One important argument against a sectoral approach is that this would increase the divergence in rights for several groups of workers and may contribute to a two-tier migration policy with less rights and protection for the lower skilled and low paid migrants.

ETUC stresses the need for strong social partner consultation and involvement on any EU initiatives taken. Also at national level, social dialogue should be a priority option for assessing and addressing labour market needs and promoting consensus between public authorities and labour market actors on the policies and instruments to be adopted. Migration policies and strategies should be closely linked to and embedded in employment and labour market policies.

European migration legislation should preferably cover all third country nationals, without general preferences or privileges, except for a possible preferential treatment of citizens of neighbouring countries on the basis of the EU neighbourhood policies (see below), and preferential treatment based on bilateral agreements that are often based on historical links between host country and country of origin.

7) *Admission procedures for paid employment*

With regard to the general principle of "Community preference", ETUC is in favour of working on the basis of the previously agreed *acquis* that gives preference to Community workers and legally resident third country nationals over newcomers.

There may be good reasons to consider extending this preference to third country nationals who have already worked for some years in the EU before returning temporarily to their own country. This may stimulate and support migrants, who would prefer to come only for one or more limited periods of time, to go back to their country of origin. It may also encourage 'brain circulation'.

EURES may become an important instrument to improve the efficiency and transparency of application and recruitment. However, the system needs to be further developed to be able to play that role to the full.

In general, ETUC is in favour of a general and transparent system for economic migration. Procedures should be established that protect workers from discrimination and offer them the possibility of compensation in case of unjustified rejection and/or discriminatory treatment.

However, there may be a need to create several different routes and systems that are available at the same time to allow for different realities, as long as they do not create a two-tier migration policy that indirectly brings about unequal treatment and discriminates against the lower skilled and low paid.

ETUC sees particular problems arising from the suggestion in the Green Paper, that there may be groups of workers who come to the EU in the framework of a services contract, and according to the Green Paper 'do not actually enter the EU labour market'. ETUC believes that the distinction made is a false one, as especially those workers posted for longer periods to EU countries are becoming part of European labour markets. Even now, the distinction made creates confusion with regard to the new Member States, as the transitional measures (except in the case of Germany and Austria) do not cover the free movement of labour in the framework of services.

The issue of how to deal with migratory movements in the framework of services should be addressed separately and more in-depth. For ETUC, the key principle that should govern these situations is respect for the labour law and collective bargaining systems of the host country.

ETUC therefore denounces the proposals in the Draft Directive on Services in the internal market and especially the introduction of the country-of-origin-principle, which in its current form also affects labour law and collective bargaining.

The ETUC suggests the Commission to come up with a separate Green Paper, addressing all relevant aspects of cross border working in terms of labour law, mobility and migration, also including working conditions of self-employed service providers, which should address the need for a more accessible and transparent legal framework while respecting national industrial relations systems and collective bargaining.

8) *Admission procedures for self-employment:*

With regard to harmonised conditions for the admission of self-employed, ETUC wants to warn against a situation in which it may be significantly easier to enter as self-employed than as a worker, which already now in several countries leads to an increase in the exploitation of false self employment.

With regard to self-employment in the framework of 'services', ETUC refers to its remarks made under point 7.

9) ***Applications for work and residence permits:***

ETUC is of the opinion that this area is a very suitable one to be addressed by EU regulation through standardised work and residence permits and simple and transparent procedures.

10) ***Possibility of changing employer:***

The permit holder should always be the worker to prevent abuses and forms of modern slavery. There may be a case for allowing a new migrant to initially only be employed in a specific profession or to fill a specific vacancy, but 'tying' the migrant to his or her employer for a longer period is not an acceptable policy. If the employer wants to keep the migrant (or any worker!), he should make an effort to be an attractive employer and not rely on the dependency and vulnerability of his migrant workforce.

The ETUC would like the Commission to explore under which conditions it would be feasible to introduce specific temporary permits to enter the EU, or to stay in the EU, to search for a job, for instance for 6 months.

A similar 6 months searching period could be allowed to migrants who want to change employer after their initial contract.

Also asylum seekers who after an initial period of legality (temporary status, or waiting procedure) have lost their status, or have been denied refugee status, could be allowed to apply for such job-search permits, with or without specific conditions, which could provide them with a 'bridge' out of irregularity.

11) ***Rights***

ETUC regards equal treatment of migrant workers and EU citizens as a key principle to underpin EU migration policies. This should prevent the creation of first, second and third class citizens, the undercutting of wages and employment conditions, and discrimination and racism, and should promote social cohesion.

ETUC agrees with the remarks made in the Green Paper, that migrant workers must have a secure legal status, irrespective of whether they wish to return to their countries of origin or to obtain a more permanent status, but would like to add that this must also apply to their family members.

The ETUC regrets that the Green Paper does not refer at all to the relevant international conventions that provide a clear legal framework for migrant workers and their families, notably of the ILO, UN and Council of Europe, and calls on the Commission to promote their ratification and application by the EU Member States.

ETUC also agrees that third country workers must enjoy the same treatment as EU citizens, before they obtain long-term resident status, in particular with regard to their employment and working conditions and other rights related to their position as workers, such as social security rights and other benefits. This is not only important from the perspective of protecting the migrant worker against exploitation, but would also ensure that the working conditions of the domestic workforce were not unfairly undercut, and would ensure that decent employers were not undermined by unscrupulous ones.

Therefore, the ETUC proposes the Commission to take initiatives leading to a clear EU legal framework of equal treatment in working conditions for all lawfully employed third country nationals as compared to nationals, within the framework of explicit respect for the host country's rules and regulations and industrial relations systems.

Employment and working conditions, and protection in the workplace, should never be conditioned to a minimum stay.

Short term or seasonal migrant workers with a temporary permit should not be exempt from social security contributions, to prevent unfair competition on wage-costs.

Where minimum qualification periods would lead to a situation in which in practice they would never be able to enjoy any benefits, it could be considered to set aside the premiums paid for them in a special fund which would provide them with a payment when they return to their country of origin.

Migrant workers should also be provided with other economic and social rights, in line with the relevant ILO and UN conventions and Council of Europe instruments, such as access to education, housing, vocational and social services.

The right to family reunification, being a basic human right, should apply equally to all third country nationals, without privileging one group of migrants over the other.

The ETUC particularly wants to highlight the need to attribute social and political citizenship rights to long-term resident migrants and their families.

Finally, the EU and its Member States should more explicitly acknowledge that all international and European instruments on human rights apply to migrant workers, regardless of their legal status. Undocumented workers should receive protection against exploitation, and should be allowed to join trade unions, in line with the fundamental right to freedom of association.

12) *Accompanying measures:*

Integration

In ETUC's opinion, the Green Paper does not pay enough attention to the importance of integration policies, to make it possible for migrant workers and their families to adapt to the living and working environment in EU societies, and to allow EU societies to adapt themselves to new groups of citizens.

The Commission itself stressed in its Communication on immigration, integration and employment of June 2003 that the successful integration of immigrants is both a matter of social cohesion and a prerequisite for economic efficiency.

As stated many times in recent EU communications on the issue, genuine integration is a two way process, that demands from both sides respect for cultural and religious difference and the value of diversity while agreeing on a minimum of joint basic norms.

However, access to employment and education are the best ways to integration. It is of particular importance here to refer to the Lisbon Strategy and the European Employment Strategy, seventh Guideline, saying *"Member States will foster the integration of people facing particular difficulties on the labour market, such as ...immigrants, and ethnic minorities, by developing their employability, increasing job opportunities and preventing all forms of discrimination against them"*. In addition, the Member States have to recognize their qualifications as well as improve the quality of education and training for them.

The EU should consider raising awareness about the positive contribution that migrant workers and their families are making to the EU labour markets and societies and may use the workplace and social partners as entry points.

Social partners at EU level can contribute to this process, in the framework of the update of the Florence declaration 1995, on combating racism and xenophobia in the workplace, which is foreseen in the social partners work programme for 2005.

Return

Third country nationals should have full access to training and enhancing professional skills. They should be allowed to return to their country of origin without immediately losing all acquired rights and should have the possibility of return to the EU, to promote 'brain circulation' and win-win situations. Maintaining links with the country of origin should not be seen as a lack of interest in integration in the host-country.

The EU should provide support to developing countries through development aid and assistance in all forms of education. Also, the transfer of remittances should be facilitated.

Cooperation with third countries

As stressed above, a European regulatory framework on economic migration should preferably cover all third country nationals, without general preferences or privileges. However, it may be reasonable to include more favourable labour migration provisions in agreements with countries, which neighbour the EU, within the framework of the EU neighbourhood policies. These are of major importance to the economies and societies of especially the new Member States, because of historic links between countries and communities within these regions. They are justifiable within the framework of the Neighbourhood policy of the EU, as they move in the direction of securing greater security and stability in the region, by preparing for the extension of internal market rights, including free movement of persons.

Also, more favourable labour migration policies could be included in bilateral agreements, which may be based on historic links between EU countries and other regions in the world, for instance former colonies and/or countries sharing a common language, etc.
