



An EU Approach to Labour Migration What is the Added Value and the Way Ahead?

Sergio Carrera & Marco Formisano

Abstract

An EU approach dealing with labour migration continues to be the missing element for the establishment of a truly common immigration policy. Until present there has been an unacceptable official reluctance to the liberalisation and adjustment of immigration policies to reflect the realities that the Union is facing. In 2004 the European Commission presented a Green Paper on an EU approach to managing economic migration, which intends to pave the way for an Action Plan to be presented on this issue at the end of this year.

Following the Commission's Green Paper this working document poses the question: What is the added value of an EU approach to labour migration? As the paper argues, a common approach is highly necessary in light of economic efficiency and social cohesion, and in order to provide an answer to some of the challenges that migration is posing to the receiving societies. Further, *economic* considerations must not prevail over *human* ones. The principles of non-discrimination, access to justice, fair treatment and solidarity should be at the roots of any transnational policy response. Finally, a pragmatic and respectful approach should guide the discussions and policy outputs of the current debate on an EU labour migration policy.

Sergio Carrera is a Research Fellow at CEPS and PhD candidate on migration law at the Faculty of Law, University of Maastricht. Marco Formisano is a Research Assistant at CEPS.

This Working Document is based on the written and oral evidence on economic migration presented by both authors to the UK's House of Lords EU Select Committee during their visit to Brussels on 5 July 2005. The authors would like to thank Prof. Elspeth Guild for her review and substantial comments. They would also like to thank Prof. Hildegard Schneider for her valuable comments.

CEPS Working Documents are published to give an indication of the work within various research programmes at CEPS and to diffuse relevant works from external experts in these fields. Unless otherwise indicated, the views expressed are attributable only to the authors in a personal capacity and not to any institution with which they are associated.

ISBN 92-9079-595-6

Available for free downloading from the CEPS website (<http://www.ceps.be>)

© Copyright 2005, Sergio Carrera and Marco Formisano

Contents

1. Introduction.....	1
2. An EU approach to labour migration: An achievable ambition or just a dream?.....	2
3. Why should there be an EU approach to labour migration and what is the added value?.....	4
3.1 Major demographic changes in the EU population.....	6
3.2 The nexus between regular and irregular migration	7
3.3 Tackling the underground economy and undeclared work.....	9
3.4 The equal and fair treatment paradigm.....	9
4. The degree of harmonisation suitable: Towards a pragmatic and respectful approach	11
4.1 Horizontal versus sectoral and high-skilled versus low-skilled approaches	11
4.2 The principle of Community preference	12
4.3 A single document and its shape	13
4.4 Granting equal rights.....	14
4.5 The co-decision procedure and qualified majority voting	15
5. Conclusions.....	16
References.....	16

AN EU APPROACH TO LABOUR MIGRATION

WHAT IS THE ADDED VALUE AND THE WAY AHEAD?

SERGIO CARRERA & MARCO FORMISANO

1. Introduction

The lack of a truly common immigration policy continues to pervade the European Union. Any ‘immigration policy’ requires shared rules on admission and labour migration as constitutive elements. Yet, until present there has been an unacceptable official reluctance at the EU level to the liberalisation and adjustment of immigration policies to reflect the realities that the Union is facing: an increasing human geographical mobility that is by nature not temporary, and which brings a multiplicity of social, cultural and economic challenges.

The member states’ representatives need to embrace the political courage to openly acknowledge these phenomena and provide a policy response. An EU approach to labour migration is highly necessary. This approach should primarily focus on the objective of facilitating and recognising a *de facto* labour migration while fully guaranteeing the protection of the principles of equality, non-discrimination, fair treatment and solidarity. Such an objective should become one of the strategic priorities towards the progressive building of an Area of Freedom, Security and Justice (AFSJ). The EU needs to provide the juridical mechanisms for the inclusion of third-country nationals into the receiving societies, particularly in their labour markets. But what level of policy harmonisation would be suitable? As we argue in this paper, a pragmatic and respectful approach must predominate. An overall horizontal perspective, which encapsulates all the different categories of third-country workers, versus one that only regulates certain segments of the labour market, would be preferable in view of economic efficiency and social cohesion.

In this context, particular emphasis should be placed on the transitional arrangements that substantially limit the rights of workers and service providers from some of the ten new member states. The latest enlargement of the EU should be genuinely completed as regards the labour mobility of EU citizens, before any enactment of legislation granting access to third-country nationals for the purpose of employment.

Discussions about the added value of developing a common immigration policy in the EU, and especially any policy centred on labour migration, need not to be blurred by exclusive economic considerations, which may too easily shift the status of migrants from being the *holders of human rights* to mere *economic units*. Indeed, the philosophy behind any policy intending to harmonise the field of immigration should be rooted on the *fair and equal treatment paradigm* rightly emphasised by the Tampere Programme as drafted by the European Council in 1999. The latter ambitiously called for a set of uniform rights “as near as possible” to those enjoyed by European citizens.¹ Equality of treatment and non-discrimination need to represent the cornerstone of any policy being developed in the field of immigration.²

¹ See the Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels, para. 21, which highlighted that “The legal status of third-country nationals should be approximated to that of Member States’ nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens;

This paper proceeds in three main sections: first we briefly examine the history of an EU policy on labour migration and the obstacles preventing the achievement of this goal. Second, we look at the main reasons why there should be an EU approach on labour migration and its added value. In the final section we consider the degree of harmonisation suitable and the way ahead.

2. An EU approach to labour migration: An achievable ambition or just a dream?

Following the ‘communitarisation’ of the area of immigration with the Amsterdam Treaty,³ the Council agreed on the first multiannual programme on justice and home affairs – the Tampere Programme – which raised the need for approximation of national legislations on the conditions for admission and residence of third-country nationals.⁴

In the light of this official consensus over the development of a ‘common approach’ in this sensitive area, the European Commission presented an ambitious proposal for a directive laying down the basic conditions and rules of admission of migrants for employment purposes in 2001.⁵ This initiative did not have much, or rather any, success inside the rooms of the Council, and political agreement among the member states was regrettably not possible.⁶

Among the multiplicity of reasons justifying this failure, several might have played a more important role. First, the sensitivity inherent to any discussion surrounding migration, especially labour migration, is well known. These issues are among those where the frontier between national sovereignty and European Union competences is very much at stake. As Guild (2004) expresses, there has been a fierce struggle of competence over the past 15 years, where the

e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence.”

² See para. 18, which states that “The European Union must ensure fair treatment of third-country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.”

³ The Treaty of Amsterdam entered into force in May 1999. “Visas, asylum, immigration and other policies related to the free movement of persons” came under the EC’s First Pillar (i.e. Community governance/method); see Arts. 61-69 EC Treaty.

⁴ See para. 20 of the Tampere Council Conclusions, which acknowledged “the need for approximation of national legislations on the conditions for admission and residence of third-country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin. It requests to this end rapid decisions by the Council, on the basis of proposals by the Commission. These decisions should take into account not only the reception capacity of each member state, but also their historical and cultural links with the countries of origin”.

⁵ See the proposal for a Council Directive on the conditions of entry and residence for the purpose of paid employment and self-employment activities, COM(2001) 0386 final, Brussels, 11.07.2001. For a detailed analysis of the proposal, see J. Apap and S. Carrera, *Towards a Proactive Immigration Policy for the EU?*, CEPS Working Document No. 198, CEPS, Brussels, December 2003.

⁶ Following Art. 1 of the proposal, the main goal of the measure was to establish common definitions, conditions and a single national application procedure leading to one combined title for both residence and work permits.

justice and interior ministers within the member states have sought to retain the power to select entrants among non-nationals (inclusion) and expel unwanted migrants (exclusion).⁷

Second, during the negotiations of this initiative at the Council there appeared to be a deep lack of consensus around one of its main innovative elements, i.e. providing a combined “residence permit – worker” that would encompass both a residence and work permit.⁸ Taking into account the diversity of national experiences and practices regarding this particular element, there was disagreement about the convenience of merging the residence and work permit into one single administrative act.

Third, the proposal appeared to present an overly bureaucratic framework that did not match the various procedural and administrative systems of the member states. Moreover, the decision-making strategy advocated by the European Commission seemed to be hard to digest by some member-state representatives.⁹ This aspect showed once again the difficulty of bringing the different, and at times divergent, national philosophies and legal systems framing the field of migration under the same umbrella. As Scheve and Slaughter (2001) point out, “there is general agreement that systematic differences in [immigration] policies across countries depend on varying political institutions, divergent national histories of settlement and colonialism, and the different effects of a changing international context”.¹⁰

Owing to the little success experienced by this proposal, an approach dealing with labour migration remains the missing element for the establishment of a truly common immigration policy in the EU. Taking into account the urgency to fill in this gap, in 2004 the European Commission presented a Green Paper on an EU approach to managing economic migration.¹¹ The Green Paper is not a legally binding act, but aims at fostering the debate among the EU institutions, member states and civil society about the most appropriate form of Community rules for admitting third-country nationals for employment purposes, as well as on the added value of adopting a legislative framework. A public hearing was organised by the European Commission in June 2005 with the intentions of discussing the Green Paper further and gathering contributions among all the main stakeholders involved. After the positive response given by governments, civil society and other stakeholders during the public consultation

⁷ See E. Guild, “Mechanisms of Exclusion: Labour Migration in the European Union” in J. Apap (ed.), *Justice and Home Affairs in the EU – Liberty and Security Issues after Enlargement*, Cheltenham: Edward Elgar, 2004, pp. 211-55.

⁸ See Art. 2.d of the proposal, which stipulates that a “residence permit – worker means a permit or authorisation issued by the authorities of the Member States allowing a third country national to enter and reside in its territory and to exercise activities as an employed person”. Art. 4 provides that “a residence permit – worker shall only be issued if, after verification of the particulars and documents, it appears that the applicant fulfils the requirements for obtaining a residence permit – worker in accordance with Articles 5 and 6, subject to any limitations imposed by a Member State in accordance with Articles 26, 27 and 28”.

⁹ From some of the interviews carried out during the preparatory phase of this paper with member state representatives responsible for migration issues, we found that some of them perceived the proposal for the Directive presented by the European Commission in 2001 to be overly technical and detailed. It seems that they were not fully ready and willing to discuss the highly sensitive issue of labour migration in the EU in such a tight timescale.

¹⁰ See K.F. Scheve and M.J. Slaughter, “Labour Market Competition and Individual Preferences over Immigration Policy”, *The Review of Economics and Statistics*, Vol. 83, No. 1, February 2001, p. 134.

¹¹ See the Green Paper on an EU approach to managing economic migration, COM(2004) 811 final, Brussels, 11.1.2005.

procedure that had taken place prior to this public hearing,¹² new momentum was found for re-launching the debate on an EU labour migration policy. Indeed, this new strategy by the European Commission – consisting of a search for wider discussion and reflection, thus enabling member states to assimilate the issue and to contribute to the debate beforehand – seeks to enhance the legitimacy of a future proposal and the smooth enactment of common rules on regular migration.¹³

Although we salute this strategic planning as an effective attempt to reach a large compromise where failure was the most characterising feature in the past, it is not at all clear how the European Commission will manage to circumvent the dramatic fact that some member states are still questioning the added value of regulating access to employment for third-country nationals at a transnational level. In that respect, much of the resistance by member states is dictated by domestic economic stagnation, high unemployment rates and political discourses that raise fears of increasing social welfare expenditure and competition for jobs. These factors are in addition to the generalised popular mistrust in the receiving societies towards the acceptance of ‘the other’ as equal.

The reluctance shown by some member states to reach a higher degree of policy convergence in this field is also revealed in the second multiannual programme on policies dealing with freedom, security and justice – The Hague Programme.¹⁴ This programme, which sets out the objectives for the development of an AFSJ for the next five years, is less pioneering and innovative than its predecessor agreed at Tampere.¹⁵ In particular, the Council now emphasises that the actual determination of volumes for the admission of labour migrants remains an exclusive competence of the member states, and calls on the Commission “to present a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market before the end of 2005”. It is highly regrettable that the Council did not take this unique opportunity to adopt a more ambitious position (i.e. by calling for a proposal for binding legislation) in determining the objectives for the next five years for an AFSJ.¹⁶ A stronger position in The Hague Programme concerning the field of regular migration would have represented a real push towards the strengthening of freedom and justice in an enlarging EU.

3. Why should there be an EU approach to labour migration and what is the added value?

The regulation of labour migration through a harmonised EU approach is probably needed today more than ever. This need increases with time, along with the evolving nature and constant

¹² The European Commission acknowledged around 130 contributions (retrieved from http://europa.eu.int/comm/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm).

¹³ For a study of the Community action on regular migration see F. Pastore, “Visas, Borders, Immigration: Formation, Structure and Current Evolution of the EU Entry Control System” in N. Walker (ed.), *Europe’s Area of Freedom, Security and Justice*, Oxford: Oxford University Press, 2004, pp. 89-142.

¹⁴ European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 2005/C53/01, OJ C53/1, 3.3.2005.

¹⁵ See S. Peers, “Key Legislative Developments on Migration in the European Union”, *European Journal of Migration and Law*, Vol. 7, No. 1, 2005, pp. 87-118.

¹⁶ See H. Schneider, “Towards a European Migration Policy: From Maastricht to Amsterdam, from Tampere to The Hague” in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe’s Future*, Vol. II, Forum Maastricht: The Netherlands, 2005.

reconfiguration of the European Union. There are substantial, operational and common arguments that support a harmonised approach. We highlight two of the main arguments below.

First, the goal of progressively establishing an AFSJ involves a series of processes that call for a common strategy for ‘migration’. These processes have deeply transformed, and partly diminished, traditional perceptions of state sovereignty. The abolition of border controls at the internal frontiers, the consolidation of the freedom of movement of people and the creation of a common immigration and asylum policy represent some of the key challenges to the monopoly of power ‘to include and exclude’ as traditionally exercised by the state. These elements foster strong transnational interdependencies at economic, political and societal levels. They provoke a denationalisation of policies, particularly those related to visas, borders and immigration. The creation of an AFSJ leads to a mechanism of externalisation by which any measure adopted at the national level may bring a cascade of effects at the transnational level. As pointed out by the European Parliament, “any change in the immigration approach in a Member State affects migratory flows and developments in other Member States”.¹⁷

Second, with regard to the debate about whether an ‘EU labour market’ actually exists, we should respond to the question by affirming its existence on the basis of a *germane paradox*: despite considerable steps undertaken at the EU level to facilitate the free movement of workers (being primarily persons holding the nationality of an EU member state and thus EU citizens) and, on the other hand, tighter immigration policies towards third countries since the middle of the 1970s, there is a surprisingly low level of intra-EU mobility for employment purposes by EU citizens, while there is a growing human mobility into and within the EU labour market by non-EU nationals.¹⁸ Hence, a sort of single cross-border labour market certainly does exist in the Union, but only for third-country nationals, who are more prone to move and adapt to specific market needs in economic, geographical and social terms.¹⁹

In addition, according to some authors,²⁰ the EU may be perceived as a “single migration system” based on several common features of the member states, such as: a) congruence (although shallow) of their immigration policies; b) close economic and political ties; c) comparable levels of economic development; d) geographical proximity; e) a similar change-over from emigration to immigration within recent memory; and f) widespread worry about high levels of immigration and an equivalent degree of public concern.²¹

¹⁷ See the European Parliament Draft Report on the Green Paper on an EU approach to managing economic migration, PROVISIONAL 2005/2059(INI), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Ewa Klamt, Brussels, 28.6.2005.

¹⁸ See A. Turmann, *A New European Agenda for Mobility*, CEPS-ECHR Task Force Report, CEPS, Brussels, April 2004.

¹⁹ In addition, as the CEPS-ECHR report shows (Turmann, 2004), one of the main reasons for the low degree of labour market mobility by EU citizens is that 81% of them declare that they are quite satisfied with their lives and place of residence (p. 12).

²⁰ See H. Zlotnik, “Empirical identification of international migration systems” in M.M. Kritz, Lin Lean Lim and H. Zlotnik (eds), *International Migration/A Global Approach*, Oxford: Clarendon Press, 1992, pp. 19-40; see also D.S. Massey, J. Arango, G. Hugo, A. Kouaouchi and A. Pellegrino, *World in Motion: Understanding International Migration at the end of the Millennium*, Oxford: Oxford University Press, 1992.

²¹ Zlotnik also reported the similarity in cultural background as another element of the homogeneity of the system, which probably characterises the EEC but is undeniably not applicable to the EU-25, where cultural diversity is much greater. For a counterargument to this theory of a single core of migration systems in Europe, see M. Baldwin-Edwards, “Immigration after 1991”, *Policy and Politics*, No. 19, 1991, pp. 199-211, where he argues that there are four subsystems linked to different policy regimes: a semi-peripheral Mediterranean regime, a mainland continental regime, a Scandinavian regime and a

What is the added value of having an EU approach to labour migration? As a consequence of the dynamic and ever-evolving context of international migration, common concerns transversally affect all the member states of the EU. Four key issues can be particularly identified on which intervention at the EU level is of utmost importance: the demographic decline, a response to irregular migration, the tackling of the underground economy and undeclared work, as well as the attribution of a 'secure legal status', discussed below.

3.1 Major demographic changes in the EU population

The so-called 'demographic deficit' that the EU is increasingly facing is now well known. Between 2010 and 2030, at current fertility rates, the decline of the working age population in the EU-25 will entail a fall of some 20 million in the number of employed people.²² In addition, according to data on demographic trends provided by Eurostat in 2004, the economically active population in the EU-15 (1980-2020) will drop by 20.7%, while the elderly population will increase by 19.1%.²³ All the new member states and candidate countries are also victims of the demographic deficit.²⁴ As reported by the European Commission in March 2005, the situation in the candidate countries accentuates the 'demographic contrasts'. Forecasts for Bulgaria and Romania indicate negative growth (-21% and -11% respectively by 2030).²⁵ Meanwhile, virtually most of the world's population growth is taking place in developing countries.²⁶

Although there are considerable impediments to deriving accurate projections or 'predictions' to facilitate policy planning to meet labour supply requirements,²⁷ it should be taken into account that the current expectations about the decline of the active population will render rather improbable that the EU will ever achieve the ambitious goals set out in the Lisbon Strategy in 2000.²⁸

British-Irish regime, to which we should add today an Eastern European regime, centred on specific relations with the new EU neighbouring countries.

²² See the Green Paper on an EU Approach to Managing Economic Migration, COM(2004) 811 final, Brussels, 11.1.2004.

²³ See Eurostat, *The Social Situation in the EU 2004*, European Commission, Brussels, 10.6.2005.

²⁴ See D. Gros, *Breaking the Reform Deadlock, 6th Annual Report of the CEPS Macroeconomic Policy Group*, CEPS, Brussels, July 2004.

²⁵ The Commission also argues that the population of Turkey is set to rise by more than 19 million between 2005 and 2030 (+25%). See the Commission Communication, Green Paper confronting demographic change: A new solidarity between the generations, COM(2005) 94 final, Brussels, 16.3.2005.

²⁶ According to the United Nations Population Division, the estimated fertility rates between 2000 and 2005 range from 1.4 in Europe and 2.5 in Latin America and the Caribbean, to 3.8 in the Arab States and 5.4 in Sub-Saharan Africa. See the report of the Global Commission on International Migration (GCIM), *Migration in an interconnected world: New directions for actions*, GCIM, Geneva, October 2005, which states that "Sub-Saharan Africa's population has grown faster than any other region over the past 40 years. According to UN Statistics, Africa's total population is expected to increase from 794 million in 2000 to 1.1 billion in 2025."

²⁷ As R. Münz highlights, "This is partly linked to problems with predicting phenomena which are influenced by complex, often volatile economic factors, and which may also be significantly affected by unforeseeable policy developments in the years to come". See R. Münz, *Migration, Labour Markets and Migrants' Integration in Europe: A Comparison*, Paper prepared for the EU-US Seminar on Integrating Immigrants into the Workforce, Washington D.C., 28-29 June, Migration Research Group, HWWA, Hamburg, 2004.

²⁸ See European Council, Presidency Conclusions of the Lisbon European Council Presidency, 23-24 March 2000, Brussels; see also the European Commission's Communication to the European Council in

Moreover, some sectors of the labour market are already facing considerable shortages. This situation is the case as regards, among others, construction, IT, medical care, nursing care and agriculture.²⁹ Even though it is clear that migration would not provide a global solution to all these various challenges *per se*, it may nevertheless play a fundamental role in tackling some of them. As Apap (2002) has rightly said,³⁰ policies on the regular migration of labour should also be coupled with other broader labour market reforms, such as promoting the employment of women and other vulnerable groups, ensuring a longer period of participation in the labour market and modifying pension plans.³¹

3.2 The nexus between regular and irregular migration

Clearer and more transparent harmonised rules on the admission of migrants for the purpose of employment and self-employed activities will also have direct repercussions on irregular migration flows. As the European Economic and Social Committee made clear in one of its recent Opinions,³² there is a clear link between the lack of legal channels for economic migration and the increase in irregular immigration.³³ This idea has also been sustained by the European Commission, which posed the question in its study on the links between legal and illegal immigration in 2004 as to whether legal avenues for the admission of migrants may reduce incentives for irregular migration.³⁴

A common and comprehensive approach on regular migration (i.e. a regulated labour market in the EU) would indeed partly contribute to the prevention of irregular migration. The establishment of an institutional and organisational framework for the admission and access to a

Barcelona, The Lisbon Strategy – Making Change Happen, COM(2002) 14 final, Brussels, 15.1.2002, which identified as a goal that the EU “becomes the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion, a Union where the economic and social aspects of the ageing population become more evident and where the labour market for immigrants and refugees represents a crucial component of the integration process”; and see the Report from the High Level Group chaired by W. Kok, *Facing the Challenge: The Lisbon strategy for growth and employment*, November 2004.

²⁹ See M.I. Baganha and H. Entzinger, “The Political Economy of Migration in an Integrating Europe: An Introduction”, in M. Bommers, K. Hoesch, U. Hunger and H. Kolb (eds), *Organisational Recruitment and Patterns of Migration*, Special Issue 25/2004, Institut für Migrationsforschung und Interkulturelle Studien (IMIS), IMIS-Beiträge, University of Osnabrück, December 2004, where the main results of the “PEMINT Project: The Political Economy of Migration in an Integrating Europe” were provided. The objective of the project, funded under the 5th Framework Programme by the European Commission’s DG Research, was to understand how decision-making processes concerning labour recruitment by national and multi-national firms lead to different outcomes in terms of labour mobility and international migration under different welfare provisions and fiscal systems, as well as policy, institutional and regulatory frameworks.

³⁰ See J. Apap, “Shaping Europe’s Migration Policy – New Regimes for the Employment of Third-Country Nationals: A Comparison of Strategies in Germany, Sweden, the Netherlands and the UK”, *European Journal of Migration and Law*, Vol. 4, 2002, pp. 309-28.

³¹ See also the contribution by the European Trade Union Confederation (ETUC) to the debate started by the European Commission’s Green Paper on “Confronting demographic change: A new solidarity between the generations”, as adopted on 14-15 June 2005 (retrieved from <http://www.etuc.org>).

³² See the Opinion of the Commission Communication, Study on the links between legal and illegal migration, COM(2004) 412 final, Rapporteur: Pariza Castaños, Brussels, 2004.

³³ In addition, see the Tapinos’ table on the channels of entry for third-country nationals (Table 1).

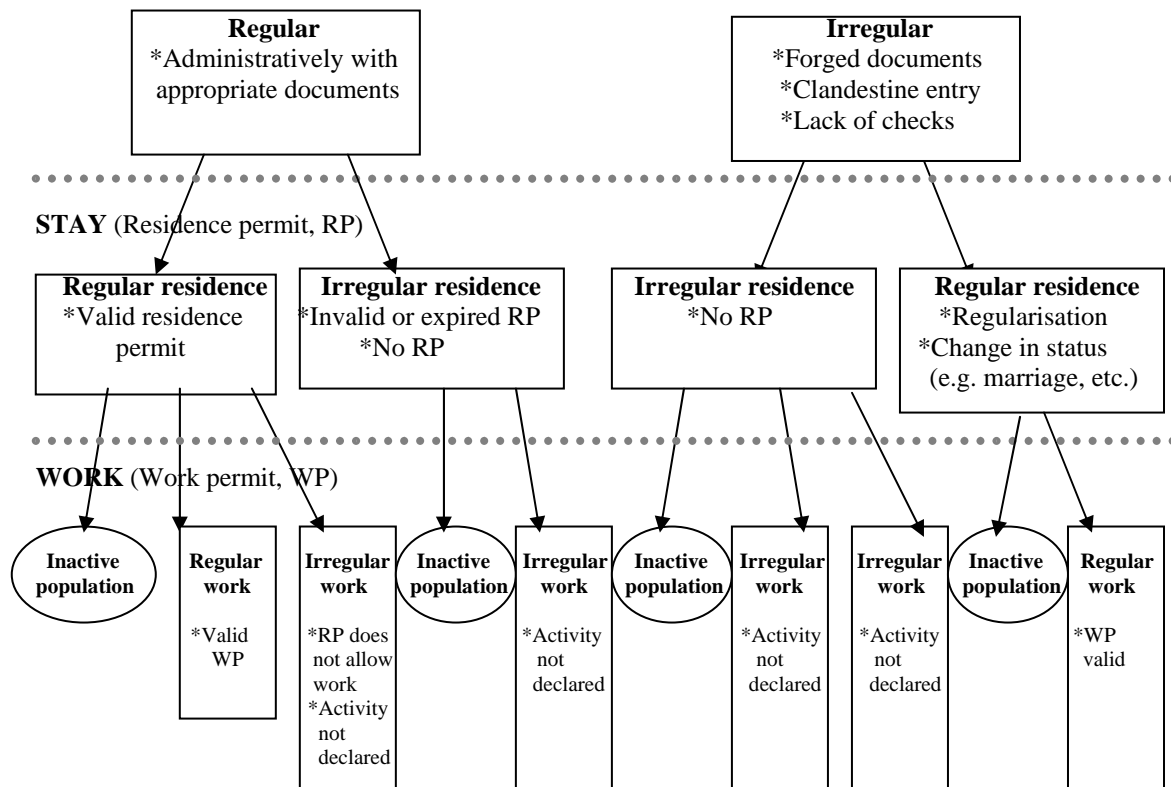
³⁴ Commission Communication, Study on the links between legal and illegal migration, COM(2004) 412 final, Brussels, 4.6.2004.

‘secure status’ by irregular workers who are bound by clandestine and exploitative circumstances might be a key element for providing an optimal solution.

To bring more evidence to this assessment, we briefly analyse the phenomenon of irregular migration using the table proposed by Tapinos (1994)³⁵ as revised by Venturini (2004),³⁶ which shows how irregular entrance and work have different origins and potentially shifting natures, while being closely intertwined (Table 1). An individual may seek irregular entrance in a member state, reside and work irregularly, but this is not the only simple flow of irregular migration. Individuals who entered regularly may also overstay or simply start working with his or her status undeclared. Conversely, irregular entrance and residence may turn into a recognised legal status through the so-called ‘amnesties and regularisation procedures’.³⁷ Hence, migration policy options should take into account the manifold crosscutting combinations of regularity and irregularity in the three layers of entry, residence and work.

Table 1. Entry, stay and work for third-country nationals

ENTRY



Sources: Tapinos (1994) and Venturini (2004).

³⁵ See G.P. Tapinos, “International Migration and Development”, *Population Bulletin of the United Nations*, No. 36, 2004, pp. 1-18.

³⁶ See A. Venturini, *Post-war Migration Patterns in Southern Europe, 1950-2000*, Cambridge: Cambridge University Press, 2004.

³⁷ See J. Apap and S. Carrera, *Spain’s New Regularization Procedure: Is this the way forward?*, CEPS Commentary, CEPS, Brussels, February 2005; see also J. Apap, P. de Bruycker and C. Schmitter, “Regularization of Illegal Aliens in the European Union: Summary Report of a Comparative Study”, *European Journal of Migration and Law*, Vol. 2, Nos. 3-4, 2000, pp. 263-308.

According to the analysis provided by Venturini, stricter controls at the borders in order to prevent the irregular flow of people, described as *preventive policy*, and persecution of the irregular residents, described as *repressive policy*, are extremely costly and highly ineffective. They are costly in terms of the budget, equipment and human resources marshalled in the “militarization of borders”, police investigations and deportations; and they are ineffective as they have shown scarce results in view of the exponential efforts expended towards prevention or repression (or both). In addition to these conclusions are the human rights implications that the preventive or restrictive policies may have for the individuals involved.

Enacting EU-defined, harmonised rules on admission, the granting of an unambiguous (secure) legal status and firm rights to third-country nationals would significantly contribute to attracting people towards the path of regular migration, regular residence and jobs, and would represent an effective sort of *preventive* and *open policy* option.

3.3 Tackling the underground economy and undeclared work

One of the major effects that a common EU framework on labour migration may induce is a cutback in the size of the underground economy and undeclared employment. According to the European Commission’s study on the link between legal and illegal migration,³⁸ there is clear evidence of a constant relationship between irregular migration and the underground economy, which the study reports to represent 7-16% of the EU’s GDP. Although the underground economy is not exclusively related to irregular migrants, it is of great significance in some low-skilled sectors such as construction, agriculture, cleaning and housekeeping services, where in some member states the employment of third-country nationals can cover up to 92% of the market. Additionally, these workers bear higher risks in terms of exclusion from healthcare, social rights and protection, and encounter obstacles to integration in the hosting community. Further, the simple fact of having an irregular status in a country increases exposure to recruitment by organised crime. Once more, clear common rules for entering and accessing the labour market may encourage employers and third-country nationals to declare jobs. This move will in turn have positive effects for the state (adding income taxes to its treasury), for employers who will fall into regularity and for migrant workers who will enjoy pension schemes as well as other social rights.

3.4 The equal and fair treatment paradigm

Ultimately, we should emphasise what could be assumed to be the most important consequence of an EU labour migration policy: the granting of an unequivocal and solid package of rights and freedoms to the migrant. The attribution of a clear, uniform, secure status will to a great extent solve many of the concerns arising from migration in general. Any legislation on labour migration should foresee the attribution of rights such as equal treatment, non-discrimination on the ground of nationality and social inclusion of the migrant worker.³⁹ As Münz and Holzmann (2004) rightly argue,⁴⁰ both temporary and permanent migrants, as well as their families, should

³⁸ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Study on the links between legal and illegal migration, COM(2004) 412 final, Brussels, 4.6.2004.

³⁹ See S. Carrera, *Integration as a process of inclusion for migrants? The case of long-term residents in the EU*, CEPS Working Document No. 219, CEPS, Brussels, March 2005.

⁴⁰ See R. Holzmann and R. Münz, *Challenges and Opportunities of International Migration for the EU, its Member States, Neighbouring Countries and Regions: A Policy Note*, Institute for Futures Studies, 2nd Stockholm Workshop on Global Mobility Regimes, Stockholm, 11-12 June, Intellecta Stralins, 2004, p. 42.

benefit from social protection and have access to services provided by educational and health care institutions in the receiving society on the basis of similar rights and equal treatment. To this extent the EU regulatory framework in the field of labour and social rights should be applicable to third-country nationals.

In particular, the two EC Directives on equal treatment, the Employment Equality Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation⁴¹ and the Racial Equality Directive (2000/43/EC) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin⁴² should also duly apply to all categories of migrants in order to prevent any discriminatory action on the basis of nationality since their entrance into the receiving state. This principle is crucial when addressing the issue of social cohesion. If we look for instance at Art. 3.2 of Directive 2000/43, the act does not cover differences of treatment based on nationality and is “without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals”.⁴³ As Guild (2004) points out, these two Directives reinforce the suspicion that the EU remains rooted in the idea of a Europe that hides its unacceptable practices of exclusion in the category of (permissible) nationality discrimination.⁴⁴

Hence, in order to tackle European social fears of a supposed “non-integration of the migrant communities”, and to overcome national and disruptive perceptions of “we” and “the others”, the EU needs to advocate a “security and equality approach”,⁴⁵ granting a set of recognised rights that will encourage the migrant to avoid ghettoising him/herself, fearing either exclusion or discrimination, and becoming prey to frustration, instability or *social in-cohesion*.

Political and media discourses that use expressions such as ‘jobs taken by migrants’ and foster the perverse idea of competition for jobs between nationals and ‘the others’ should be abandoned and strongly condemned. The fear and insecurity raised at national levels about the need to protect ‘our’ domestic workforce from migration, as well as the risks associated with ‘social welfare tourism’ are not supported by any empirical or economic studies, but by political and public discourses that are misused at times of national elections and before each EU enlargement process that has taken place.⁴⁶ In fact, the current domestic labour shortages do benefit from migration. Immigrants positively complement unskilled and skilled workers, and eventually generate job creation.⁴⁷

⁴¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 0016-0022.

⁴² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, pp. 0022-0026.

⁴³ As A. Tyson argues, the maintenance of differences in the treatment of migrants in the social protection regimes of each member state was one of the main reasons this kind of discrimination based on nationality was excluded from the scope of the Directive. See A. Tyson, “The Negotiation of the European Community Directive on Racial Discrimination”, *European Journal of Migration and Law*, Vol. 3, No. 2, 2001, pp. 199-229.

⁴⁴ See E. Guild, *The Legal Elements of European Identity: EU Citizenship and Migration Law*, The Hague: European Law Library, Kluwer Law International, 2004, pp. 201-14.

⁴⁵ See S. Peers, “Aliens, Workers, Citizens or Humans? Models for Community Immigration Law”, in E. Guild and C. Harlow (eds), *Implementing Amsterdam: Immigration and Asylum Rights in EC Law*, Oxford: Hart Publishing, 2001, pp. 291-309.

⁴⁶ See S. Carrera, “What does free movement mean in theory and practice in an enlarged EU?”, *European Law Journal*, forthcoming in Vol. 11, No. 6, November 2005.

⁴⁷ See K.F. Zimmermann, “Tackling the European Migration Problem”, *Journal of Economic Perspective*, Vol. 9, No. 2, Spring 1995, p. 55.

4. The degree of harmonisation suitable: Towards a pragmatic and respectful approach

What then is the degree of harmonisation that may be most suitable for the EU, taking into account the different options? In this section, we look at the practical options and policy implications of the proposals put forward in the European Commission's Green Paper on an EU approach to managing economic migration. Our analysis is carried out through a double lens. First it frames the discussion under a 'pragmatic angle', which provides realistic policy options, both in terms of the concrete possibility of consensus at the Council and of efficient outcomes. Second, it uses what could be defined as a 'respectful approach', which would qualify the migrant as a *human rights holder* rather than an *economic unit*. This approach is based on full compliance with EU and international human rights commitments, such as those presented by the European Convention of Human Rights (ECHR), and more specifically, the International Convention on the Protection of the Rights of All the Migrant Workers and Members of Their Families⁴⁸ and the European Convention on the Legal Status of the Migrant Workers.⁴⁹

4.1 Horizontal versus sectoral and high-skilled versus low-skilled approaches

Which approach should be preferred? Among the different policy options concerning the target group of future EU legislation on labour migration, the European Commission opened the debate in the Green Paper as to whether a wide horizontal approach, embracing all categories of workers, should be preferred to a more focused one, exclusively affecting certain, selected professional qualifications. If we analyse all the factors involved in such an important choice, an overall horizontal approach emerges as preferable for the sake of social cohesion and economic efficiency.

Following the Opinion issued by the European Economic and Social Committee on 9 June 2005,⁵⁰ "if the European Council were to opt for a sectoral approach [this] would be discriminatory in nature". Regulating only certain segments of the market will in fact create direct discrimination of those not falling within the employment category privileged by the potential legislative framework. The same applies, as we are argue further on, to those migrants not falling within the privileged category of the highly skilled.

Moreover, a rigid sectoral approach is not a long-term solution. It encapsulates those particular sectors that may be in need of labour in a given timeframe, but which in the long run may vary according with the ever-evolving nature of the economy. Thus, even if a simple adjustment mechanism could be foreseen in order to adapt the EU sectoral approach to new economic

⁴⁸ The International Convention on the Protection of the Rights of All the Migrant Workers and Members of their Families was adopted by the UN General Assembly at its 45th session on 18 December 1990 (A/RES/45/158) and entered into force on 1 July 2003. For a good analysis on the signature and ratification process by Western industrialised countries, see D. Vanheule, M.-C. Foblets, S. Loones and S. Bouckaert, "The Significance of the UN Migrant Workers' Convention of 18 December 1990 in the Event of Ratification by Belgium", *European Journal of Migration and Law*, Vol. 6, No. 4, 2004, pp. 285-321.

⁴⁹ The European Convention on the Legal Status of the Migrant Workers was adopted by the Council of Europe in its Strasbourg session on 24 November 1977. For an analysis on the value and importance of the Convention, see E. Guild, *The European Convention on the Legal Status of the Migrant Workers (1977): An analysis of its Scope and Benefits*, University of Nijmegen, 1999.

⁵⁰ See the Opinion of the European Economic and Social Committee on the Green Paper on an EU approach to managing economic migration (COM(2004) 811 final), SOC/199, Rapporteur: Pariza Castaños, Brussels, 9 June 2005.

exigencies (i.e. empowering the European Commission to adopt straightforward decisions), the process may not respond efficiently owing to unavoidable decision-generating hurdles and time-consuming administrative procedures, which will inevitably lead to asymmetries between economic realities and policy responses. These considerations equally affect the proposed common fast-track procedure envisaged as an option by the Commission's Green Paper.⁵¹

Given the divergent economic needs (as regards for instance sectoral shortages) and the strategies and priorities of each member state, the EU should try to reach an agreement on a regulatory skeleton that has ample room to breathe, providing a common policy framework on admission for the purposes of employment and self-employed activities.⁵²

Coming to the other dilemma, about whether member states should jointly decide to admit only high-skilled rather than low-skilled labour, we believe that a flexible approach is preferable. Three main reasons may give substance to this choice. First, member states present different, and sometimes opposing, concerns. Germany, the UK and to some extent France mainly require high-skilled labour, particularly in IT and medical occupations. Italy, Spain and Greece have shortages in the low-skilled sectors, such as construction, housekeeping and nursing care for the elderly. Once more, if intra-community mobility were made fluid enough, there would be no need for "external recruitment".⁵³ Acknowledging the large and different spectrum of needs of the member states, no consensus will be reached if one of the two options is put on the table before the Council of Ministers. Second, and yet again, economic adaptability would be aided by the avoidance of crystallising such preferences into a rigid juridical setting. Third, and more generally, the choice of admitting one particular category of worker would automatically discriminate against others, creating disparities of treatment among third-country nationals. If a formula emphasising the highly skilled prevailed, a door would be closed at the start to low-skilled workers who could have improved their skills in one of the EU member states and increased their professional capabilities while contributing to the welfare of the hosting country.

4.2 The principle of Community preference

Should the preference for EU citizen workers apply? If the principle of Community preference is considered as a real policy option, it should apply to all European citizens (without any distinction made between the nationals of the EU-15 and the new member states). It should also apply to third-country nationals who are long-term residents or have legal permission to reside and work within the EU, or who have resided and worked within the EU territory and who return on a temporary basis to their country of origin.

The issue of the restrictive measures (i.e. transitional arrangements) concerning the free movement of workers coming from the new member states is particularly sensitive in respect of Community preference.⁵⁴ The Accession Treaty enables the EU-15 member states to

⁵¹ See the Commission's Green Paper on Economic Migration, p. 5 (op. cit.).

⁵² For a discussion of the various strategies that have been developed for recruiting, selecting and admitting economically active immigrants, see D.G. Papademetriou and K. O'Neil, *Efficient Practices for the Selection of Economic Migrants*, Paper prepared for the European Commission, DG Employment and Social Affairs, Migration Research Group, HWWA, Hamburg, 2004.

⁵³ See R.B. Freeman, "Are European markets as awful as that?" in E. Phelps and G. Zoega, *The European labour markets: The search for routes to better economic performance in continental Europe*, CESifo Forum, Munich, Vol. 5, No. 1, 2004, pp. 34-39.

⁵⁴ The inclusion of transitional arrangements in the most recent enlargement processes does not represent an 'exception'. In the Brussels European Council Conclusions of December 2004, the opening negotiations with Turkey have been conditioned on the possibility of introducing "long transitional periods, derogations, specific arrangements or permanent safeguard clauses...for areas such as freedom of

temporarily restrict access to their labour markets for nationals of Poland, the Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Hungary and Slovenia.⁵⁵ In order to reach a consensus at the Council of Ministers about an EU framework on labour migration, those member states that are currently applying the transitional measures need to stop applying them as a matter of priority. Further, new member states subject to this contested derogation may in fact legitimately block the adoption of rules that will favour the access of third-country nationals to EU jobs, while their nationals still suffer from substantial restrictions. Besides the technical hindrances in the adoption of common rules on labour migration, the paradoxical situation that could be spawned from the maintenance of transitional arrangements, whereby third-country nationals could sit in a better position than EU citizens, is simply unacceptable, and should be properly addressed.⁵⁶ Unfortunately, the insertion of such vicious clauses into the Accession Treaty with Romania and Bulgaria,⁵⁷ as well as those foreseen in the European Commission's negotiating framework for Turkey,⁵⁸ demonstrates that member states are still far from banishing their unfounded fears of mass migration from new countries acceding to Union.

4.3 A single document and its shape

Should the work permit be combined with a residence permit? On what basis should labour migrants be able to acquire particular rights, such as the right to change employers or seek work in another member state? On the format of the EU work permit, a single document encompassing a work and residence permit will reduce administrative burdens and facilitate the correspondent procedures of issuing, suspending or withdrawing the document. Competences should be given in a coordinated way to national ministries of the interior, labour and social affairs. The single document option will also prevent the odd situations of regular workers having an irregular residence status or vice versa,⁵⁹ simplify controls by the competent authorities and streamline appropriate administrative management.

Nevertheless, once the single document is granted, the life of the two incorporated permits (work and residence) should become divorced. In fact, to avoid the predicament whereby the person involved automatically slips back into an irregular status once the work permit has expired, the residence permit should grant a wider margin for manoeuvre. As the European Trade Union Confederation (ETUC) has advocated, one policy option would be to grant a residence extension period of at least six months after the expiration of the original work permit in order to allow enough time for the individual to search for another job.⁶⁰ This approach would

movement or persons". See para. 23, European Council, Presidency Conclusions of the Brussels European Council, 16-17 December 2004, 16238/1/04, Brussels, 1 February 2005. Moreover, the Accession Treaties signed with Bulgaria and Romania also provide for the possibility of applying transitional measures and substantially restricting the free movement of workers and service providers. See Accession of the Republic of Bulgaria and Romania to the European Union – Act of Accession and its Annexes, Council of the European Union, 7411/05, Brussels, 29.4.2005.

⁵⁵ See the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, Act of Accession, Part Four: Temporary Provisions, Title 1: Transitional Measures, signed in Athens on 16 April 2003.

⁵⁶ For further discussion on this point, see S. Carrera and A. Turmann, *Towards the Free Movement of Workers in an Enlarged EU?*, CEPS Commentary, CEPS, Brussels, April 2004.

⁵⁷ See the Accession Treaty with Bulgaria and Romania, Act of Accession Annex VII, Section 1.

⁵⁸ See the Negotiating Framework proposed by the European Commission on 29 June 2005, Art. 12.

⁵⁹ See *supra* section 3, paragraph 3.2.

⁶⁰ See the ETUC Response to the Commission's Green Paper on an EU approach to managing economic migration, COM(2004) 811 final (retrieved from <http://www.etuc.org>).

help workers to re-establish themselves in a less traumatic way, retain them in the labour market and eliminate distressing administrative procedures for both workers and national administrations. Another possibility would be for instance to admit migrant workers to national programmes for re-qualification and training in order to increase their chances of finding another job.

What appears to be of major importance, however, is that the grant of a residence and work permit should not be rigidly linked to an exclusive employer, a specific sector of the labour market or professional qualification. Again, rigid schemes may lead to results that are socially and economically counterproductive. Starting from a *human perspective*, the permit holder must always be the third-country national and not the employer. This perspective would combat the obvious possibilities of abuse and exploitation. The right of the migrant worker to easily change jobs and employers should be granted without any discrimination as compared with national workers. The third-country national should also be able to improve his/her professional skills and ameliorate his/her position by having the ability to take up other job offers, regardless of the sector in which s/he worked on arrival (e.g. a worker in construction who, after qualification courses, receives an offer as to work as a project manager in a team of engineers). Therefore, linking the migrant worker to a specific sector or employer is an intolerable policy strategy. Among the few requirements that should be envisaged with regard to a change of employer is the need to notify and duly inform the national authorities issuing the residence and work permit.

4.4 Granting equal rights

Should the regulation of labour migration be driven entirely by economic considerations, regardless of the possible social consequences? A key tenet for guiding the development of a proficient and steady regulation on the admission of labour migration should be the utter dismissal of the idea that the migrant is merely human capital to be displaced according to the economic needs of the hosting country (*migrants as economic units*). In order to ensure social cohesion within the EU, third-country nationals have to be considered as individuals holding the set of human rights recognised by common international and European legal instruments, such as the ECHR, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, the ILO Conventions, etc. (*migrants as human rights holders*).⁶¹ Economic considerations clearly affect the conditions for entry and stay but they must not prevail over a comprehensive set of human rights such as non-discrimination, access to justice and the principle of equality, fair treatment and solidarity.

The new EC legal framework on anti-discrimination established by the Race Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) need to be observed and efficiently implemented at the national level. As Geddes (2003) points out, the new supranational legislation implemented in the form of these Directives is of great importance because it does not fit in easily with the policies of many member states and because it creates Europeanised forms of social and political power that have the potential to make a real difference to migration and ethnic minority groups in the EU.⁶² Indeed for these reasons, it is crucial to ensure close scrutiny of the adequate and timely national implementation of these two measures, which form the EC framework on antidiscrimination put forth by the European Commission.

⁶¹ See P. Alston, *Labour Rights as Human Rights*, Oxford: Oxford University Press, 2005.

⁶² See A. Geddes, *The Politics of Migration and Immigration in Europe*, London: Sage Publications, 2003, pp. 126-48.

4.5 Co-decision procedure and qualified majority voting

While all the other policies that are part of Title IV of the EC Treaty are already benefiting from the use of qualified majority voting (QMV), the field of labour migration continues to be subject to the unanimity rule and falls outside the co-decision procedure. Through a decision on 22 December 2004 the Council agreed to act by QMV on measures under Arts. 62.1.2.a and 3 EC Treaty, which include abolishing internal border controls on persons, standards for checks on persons at the internal borders and freedom to travel within the EU for three months for third-country nationals.⁶³ In addition, it applies QMV to Arts. 63.2.b. and 3.b EC Treaty, concerning burden-sharing among member states with regard to asylum seekers and illegal immigration, and the residence and repatriation of illegal residents.⁶⁴ None of the other fields of immigration, such as regular migration-related issues, are included. Bearing in mind that a comprehensive and cohesive EU immigration policy is today needed more than ever, it seems unacceptable that this field remains subject to the unanimity requirement. Apart from the evident reasons of lack of efficiency,⁶⁵ the unanimity rule is the direct expression of questionable maintenance of individual sovereignty powers within the Council.

In the field of migration, Barbou and Oger (2005) refer to member states as preachers of the “control assumption”.⁶⁶ The latter is defined as the belief of being able to influence migrant workers through national legislative mechanisms, as states are independent actors that freely adopt immigration rules, and refusing to transfer this power to EU institutions. “In other words – affirm Babrou and Oger – Member States are portrayed as the actors that master migration and migration law.”⁶⁷ Very interestingly, these two authors bring arguments about the generalised tendency towards common minimum denominators in EU regulations on migration that leave national decision-makers substantial room for manoeuvre at times of national implementation.

On the other hand, while QMV could bring greater efficiency to the overall decision-making process, it would not solve the wider problem of the lack of legitimacy and high-quality standards from which most of the EU migration-related policies suffer at present. Some commentators criticise the great flexibility left to member states in the specification of norms stemming from EC directives, the constant reference to national law and the generally poor impact on harmonisation.⁶⁸ Moreover, some acts being proposed and adopted dealing with immigration at the EU level have raised a number of human rights disputes based on doubts about their compliance with recognised international and European human rights commitments (such as the ECHR and the Charter of Fundamental Rights and Freedom in the Union).⁶⁹

⁶³ Council Decision providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Art. 251 of that Treaty of 22 December 2004, 2004/927/EC, OJ L 396/45.

⁶⁴ See S. Peers, “Transforming decision-making on EC immigration and asylum law”, *European Law Review*, Vol. 30, No. 2, April 2005, pp. 285-96.

⁶⁵ It is obvious that in an ever-enlarging EU the veto power given to every negotiator within the Council seriously affects the working method and the outcome of the negotiations.

⁶⁶ See S. Babrou and H. Oger, “Making the European Migration Regime: Decoding Member States’ Legal Strategies”, *European Journal of Migration and Law*, Vol. 6, No. 4, 2005, p. 355.

⁶⁷ See *idem supra* note 45.

⁶⁸ See P. De Bruycker, “L’émergence d’une politique Européenne d’immigration” in *The Emergence of a European Immigration Policy*, Brussels: Bruylant, 2003, pp. 1-95 and also J. Niessen, *Five Years of EU Migration and Asylum Policy-making under the Amsterdam and Tampere Mandates*, Migration Policy Group, Brussels, 2004.

⁶⁹ See S. Carrera and T. Balzacq, *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, CEPS, Brussels, 2005.

5. Conclusions

Migration will continue to be one of the key areas of concern for the EU. There needs to be an official recognition that geographic human mobility will increase, and that all the EU member states are, or will become, migration destinations. In this paper we have sustained that a common EU approach to labour migration is highly necessary in light of economic efficiency and social cohesion, and in order to provide an answer to some of the challenges that migration is posing to the receiving societies.

The progressive creation of an AFSJ and the existence of an EU labour market mostly based on the mobility of third-country nationals are the two main reasons that justify the harmonisation of labour migration in the Union. This cross-border labour market reflects a *germane paradox*: there is low intra-EU mobility for employment purposes by EU citizens, while there is growing mobility by third-country nationals. Therefore, this paradox gives more strength to the added value of reaching a compromise about a common EU framework on labour migration.

A regulatory framework at the EU level is also required in order to complete the goals agreed by the Council in the Tampere Programme of 1999 and to tackle the common concerns that transversally affect the EU-25. A truly common immigration policy may positively, though not entirely, help to overcome the effects of the approaching demographic deficit among the economically active members of the labour force, tackle irregular migration, address the problem of the underground economy and, last but not least, grant equal rights and fair treatment to migrant workers. As this paper has argued, in the development of an EU approach to labour migration, *economic* considerations must not prevail over *human* ones. The principles of non-discrimination, access to justice, fair treatment and solidarity should be at the roots of any transnational policy response.

At the same time, a Community preference for employing EU citizens should be extended to all the workers from the new member states in Central and Eastern Europe, who may otherwise face the odious and intolerable situation of finding themselves in a worse position than non-EU workers. The current transitional arrangements represent a real and unnecessary obstacle to the principles of free movement of persons and non-discrimination on grounds of nationality, which lie at the very roots of the concept of EU citizenship. Nationals coming from the new eight member states to which these arrangements apply need to have the same treatment in law. Hence, the lifting of temporary derogations to the freedom of movement of workers who are presently affected by them should be the priority for action before any legislation favouring the access of third-country nationals for purposes of employment is enacted in the EU.

What degree of harmonisation would be most suitable? A *pragmatic and respectful approach* should guide the discussions and actual policy outputs of the current debate on an EU labour migration policy. A horizontal and flexible perspective with regard to the inclusion of different categories of workers would be preferable to simply finding common ground among the different national strategies and models on migration. Such a perspective is also needed to duly guarantee non-discrimination between migrant workers (i.e. high- versus low-skilled workers).

Finally, the quality of openness would also be beneficial in terms of the ability to adapt to an ever-changing economic environment. Striking the right equilibrium between economic considerations and human rights is one of the main challenges lying ahead. It will now be up to all the institutional actors involved (and especially to some of the member states) to reach a consensus on a common policy that is open to labour migration, and to at last begin building a truly common immigration policy for the EU.

References

- Alston P. (2005), *Labour rights as human rights*, Oxford: Oxford University Press.
- Apap, J. (2002), “Shaping Europe’s Migration Policy – New Regimes for the Employment of Third-Country Nationals: A Comparison of Strategies in Germany, Sweden, the Netherlands and the UK”, *European Journal of Migration and Law*, Vol. 4, pp. 309-28.
- Apap, J. and S. Carrera (2003), *Towards a Proactive Immigration Policy for the EU?*, CEPS Working Document No. 198, CEPS, Brussels, December.
- (2005), *Spain’s New Regularization Procedure: Is this the way forward?*, CEPS Commentary, CEPS, Brussels, February.
- Apap J., P. de Bruycker and C. Schmitter (2000), “Regularization of Illegal Aliens in the European Union: Summary Report of a Comparative Study”, *European Journal of Migration and Law*, Vol. 2, Nos. 3-4, pp. 263-308.
- Baldwin-Edwards, M. (1991), “Immigration after 1991”, *Policy and Politics*, No. 19, pp. 199-211.
- Babrou, S. and H. Oger (2005), “Making the European Migration Regime: Decoding Member States’ Legal Strategies”, *European Journal of Migration and Law*, Vol. 6, No. 4, pp. 355-59.
- Baganha, M.I. and H. Entzinger (2004), “The Political Economy of Migration in an Integrating Europe: An Introduction” in M. Bommers, K. Hoesch, U. Hunger and H. Kolb (eds), *Organisational Recruitment and Patterns of Migration*, Special Issue 25/2004, Institut für Migrationsforschung und Interkulturelle Studien (IMIS), IMIS-Beiträge, University of Osnabrück, December.
- Carrera, S. (2005), “What does free movement mean in theory and practice in an enlarged EU?”, *European Law Journal*, Vol. 11, No. 6, November (forthcoming).
- (2005), “Integration as a process of inclusion for migrants? The case of long-term residents in the EU” in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe’s Future*, Forum Maastricht: The Netherlands, pp. 109-138.
- Carrera, S. and T. Balzacq (2005), *Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy*, CEPS, Brussels.
- Carrera, S. and A. Turmann (2004), *Towards the Free Movement of Workers in an Enlarged EU?*, CEPS Commentary, CEPS, Brussels, April.
- Chiswick, B.R. (2005), *The economics of immigration: Selected papers of Barry R. Chiswick*, Northampton: Edward Elgar.
- De Bruycker, P. (2003), “L’émérgence d’une politique Européenne d’immigration” in *The Emergence of a European Immigration Policy*, Brussels: Bruylant, pp. 1-95.
- Dustmann, C. and A. Glitz (2005), *Immigration jobs and wages: Theory, evidence and opinion*, CEPR, London.
- European Commission (2002), Communication to the Spring European Council in Barcelona, The Lisbon Strategy – Making Change Happen, COM(2002) 14 final, Brussels, 15.1.2002.
- (2004), Commission Communication, Study on the links between legal and illegal migration, COM(2004) 412 final, Brussels, 4.6.2004.

- (2004), Green Paper on an EU Approach to Managing Economic Migration, COM(2004) 811 final, Brussels, 11.1.2004.
- (2005), Commission Communication, Green Paper confronting demographic change: A new solidarity between the generations, COM(2005) 94 final, Brussels, 16.3.2005.
- European Council (1999), Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels.
- (2000), Presidency Conclusions of the Lisbon European Council, 23-24 March, Brussels.
- (2004), Presidency Conclusions of the Brussels European Council, 16-17 December, 16238/1/04, Brussels, 1 February 2005.
- (2005), The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 2005/C53/01, OJ C53/1, 3.3.2005.
- European Parliament (2005), Draft Report on the Green Paper on an EU approach to managing economic migration, PROVISIONAL 2005/2059(INI), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Ewa Klamt, Brussels, 28.6.2005.
- European Trade Union Confederation (ETUC) (2005), Contribution to the debate started by the European Commission's Green Paper on Confronting demographic change: A new solidarity between the generations, as adopted on 14-15 June 2005 (retrieved from <http://www.etuc.org>).
- Eurostat (2005), *The Social Situation in the EU 2004*, European Commission, Brussels, 10 June.
- Freeman, R.B. (2004), "Are European markets as awful as that?" in E. Phelps and G. Zoega, *The European labour markets: The search for routes to better economic performance in continental Europe*, CESifo Forum, Munich, Vol. 5, No. 1, pp. 34-39.
- Geddes, A. (2003), *The Politics of Migration and Immigration in Europe*, London: Sage Publications, pp. 126-48.
- Global Commission on International Migration (2005), *Migration in an interconnected world: New directions for actions*, GCIM, Geneva, October.
- Gros, D. (2004), *Breaking the Reform Deadlock, 6th Annual Report of the CEPS Macroeconomic Policy Group*, CEPS, Brussels, July.
- Guild, E. (1999), *The European Convention on the Legal Status of the Migrant Workers (1977): An Analysis of its Scope and Benefits*, University of Nijmegen.
- (2004), "Mechanisms of Exclusion: Labour Migration in the European Union" in J. Apap (ed.), *Justice and Home Affairs in the EU – Liberty and Security Issues after Enlargement*, Cheltenham: Edward Elgar, pp. 211-55.
- (2004), *The Legal Elements of European Identity: EU Citizenship and Migration Law*, The Hague: European Law Library, Kluwer Law International, pp. 201-14.
- Holzmann, R. and R. Münz (2004), *Challenges and Opportunities of International Migration for the EU, its Member States, Neighbouring Countries and Regions: A Policy Note*, Institute for Futures Studies, Stockholm, June.
- Jandl, M. (2004), *The Estimation of Illegal Migration in Europe*, Studi Emigrazione/Migration Studies, Vol. XLI, No. 153, March, pp. 141-55.

- Jandl, M. and M. Hoffman (2004), “Expected Short-Term Effects of EU-Enlargement on Migration – The Case of Austria” in *Der Donauraum*, No. 4, July, p. 37.
- Krieger, H. (2004), *Migration Trends in an Enlarged Europe*, Foundation for the Improvement of Living and Working Conditions, Dublin, March.
- Kok, W. (2004), *Facing the Challenge: The Lisbon Strategy for Growth and Employment*, Report from the High Level Group chaired by Wim Kok, November.
- Massey, D.S., J. Arango, G. Hugo, A. Kouaouchi and A. Pellegrino (2005), *World in Motion: Understanding International Migration at the end of the Millennium*, Oxford: Oxford University Press.
- Morgenroth, K., P. Vaiss and J. Farré (eds) (2003), *Les Migrations du Travail en Europe*, Bern: Peter Lang.
- Münz, R. (2004), *Migration, Labour Markets and Migrants’ Integration in Europe: A Comparison*, Paper prepared for the EU-US Seminar on Integrating Immigrations into the Workforce, Washington D.C., 28-29 June, Migration Research Group, HWWA, Hamburg.
- Niessen, J. and Y. Schiebel (2005), *Immigration as a labour market strategy: European and North American perspectives*, Migration Policy Group, Brussels.
- Niessen, J. (2004), *Five Years of EU Migration and Asylum Policy-making under the Amsterdam and Tampere Mandates*, Migration Policy Group, Brussels.
- Oger, H. (2005), *Integration in Tension in Immigration Law: Mirror and Catalyst of the Inherent Paradox of Nation State*, EUI Working Papers, RSCA No. 2005/01, European University Institute, Florence.
- Omelaniuk, I. (2005), *World Migration 2005: Costs and Benefits of International Migration*, International Organisation for Migration, Geneva.
- Papademetriou, D.G. and K. O’Neil (2004), *Efficient Practices for the Selection of Economic Migrants*, Paper prepared for the European Commission, DG Employment and Social Affairs, Migration Research Group, HWWA, Hamburg.
- Pastore, F. (2004), “Visas, Borders, Immigration: Formation, Structure and Current Evolution of the EU Entry Control System” in N. Walker (ed.), *Europe’s Area of Freedom, Security and Justice*, Oxford: Oxford University Press, 2004, pp. 89-142.
- Peers, S. (2005), “Transforming decision-making on EC immigration and asylum law”, *European Law Review*, Vol. 30, No. 2, April, pp. 285-96.
- Peers, S. (2005), “Key Legislative Developments on Migration in the European Union”, *European Journal of Migration and Law*, Vol. 7, No. 1, pp. 87-118.
- Peers, S. (2001), “Aliens, Workers, Citizens or Humans? Models for Community Immigration Law” in E. Guild and C. Harlow (eds), *Implementing Amsterdam: Immigration and Asylum Rights in EC Law*, Oxford: Hart Publishing, pp. 291-309.
- Phelps, E. and G. Zoega (2004), *The European labour markets: The search for routes to better economic performance in continental Europe*, CESifo Forum, Vol. 5, No. 1, pp. 34-39.
- Scheve, K.F. and M.J. Slaughter (2001), “Labour Market Competition and Individual Preferences over Immigration Policy”, *The Review of Economics and Statistics*, February, Vol. 83, p. 134.

- Schneider, H. (2005), "Towards a European Migration Policy: From Maastricht to Amsterdam, from Tampere to The Hague" in H. Schneider (ed.), *Migration, Integration and Citizenship: A Challenge for Europe's Future*, Vol. II, Forum Maastricht: The Netherlands.
- Tapinos, G.P. (1994), "International Migration and Development", *Population Bulletin of the United Nations*, No. 36, pp. 1-18.
- Traser, J. (2005), *Report on the Free Movement of Workers in the EU-25*, ECAS, Brussels, September.
- Turmann, A. (2004), *A New European Agenda for Mobility*, CEPS-ECHR Task Force Report, CEPS, Brussels, April.
- Tyson, A. (2001), "The Negotiation of the European Community Directive on Racial Discrimination", *European Journal of Migration and Law*, Vol. 3, No. 2, pp. 199-229.
- Vanheule, D., M.-C. Foblets, S. Loones and S. Bouckaert (2004), "The Significance of the UN Migrant Workers Convention of 18 December 1990 in the Event of Ratification by Belgium", *European Journal of Migration and Law*, Vol. 6, No. 4, pp. 285-321.
- Venturini, A. (2004), *Post-war Migration in Southern Europe, 1950-2000*, Cambridge: Cambridge University Press.
- Zimmermann, K.F. (1995), "Tackling the European Migration Problem", *Journal of Economic Perspective*, Vol. 9, No. 2, Spring, p. 55.
- Zimmermann, K.F. and T. Bauer (2002), *The Economics of Migration*, Cheltenham: Elgar Reference Collection.
- Zlotnik, H. (1992), "Empirical identification of international migration systems" in M.M. Kritz, Lin Lean Lim and H. Zlotnik (eds), *International Migration/A Global Approach*, Oxford: Clarendon Press, pp. 19-40.

About CEPS

Founded in 1983, the Centre for European Policy Studies is an independent policy research institute dedicated to producing sound policy research leading to constructive solutions to the challenges facing Europe today. Funding is obtained from membership fees, contributions from official institutions (European Commission, other international and multilateral institutions, and national bodies), foundation grants, project research, conferences fees and publication sales.

Goals

- To achieve high standards of academic excellence and maintain unqualified independence.
- To provide a forum for discussion among all stakeholders in the European policy process.
- To build collaborative networks of researchers, policy-makers and business across the whole of Europe.
- To disseminate our findings and views through a regular flow of publications and public events.

Assets and Achievements

- Complete independence to set its own priorities and freedom from any outside influence.
- Authoritative research by an international staff with a demonstrated capability to analyse policy questions and anticipate trends well before they become topics of general public discussion.
- Formation of seven different research networks, comprising some 140 research institutes from throughout Europe and beyond, to complement and consolidate our research expertise and to greatly extend our reach in a wide range of areas from agricultural and security policy to climate change, JHA and economic analysis.
- An extensive network of external collaborators, including some 35 senior associates with extensive working experience in EU affairs.

Programme Structure

CEPS is a place where creative and authoritative specialists reflect and comment on the problems and opportunities facing Europe today. This is evidenced by the depth and originality of its publications and the talent and prescience of its expanding research staff. The CEPS research programme is organised under two major headings:

Economic Policy

Macroeconomic Policy
 European Network of Economic Policy
 Research Institutes (ENEPRI)
 Financial Markets, Company Law & Taxation
 European Credit Research Institute (ECRI)
 Trade Developments & Policy
 Energy, Environment & Climate Change
 Agricultural Policy

Politics, Institutions and Security

The Future of Europe
 Justice and Home Affairs
 The Wider Europe
 South East Europe
 Caucasus & Black Sea
 EU-Russian/Ukraine Relations
 Mediterranean & Middle East
 CEPS-IISS European Security Forum

In addition to these two sets of research programmes, the Centre organises a variety of activities within the CEPS Policy Forum. These include CEPS task forces, lunchtime membership meetings, network meetings abroad, board-level briefings for CEPS corporate members, conferences, training seminars, major annual events (e.g. the CEPS Annual Conference) and internet and media relations.