

Caritas Europa

4, Rue de Pascale, B-1040 Brussels

CCME – Churches' Commission for Migrants in Europe

174, Rue Joseph II, B-1000 Bruxelles

**COMECE – Commission of the Bishops' Conferences of the European Community
- Working Group on Migration -**

42, Rue Stévin, B-1000 Bruxelles

ICMC – International Catholic Migration Commission

43, Rue de la Charité, B-1210 Bruxelles

QCEA – Quaker Council for European Affairs

50, Square Ambiorix, B-1000 Bruxelles

**Comments on the European Commission's proposals on
instruments regulating labour migration to the European Union**

Introduction

Our organisations represent Churches throughout Europe - Anglican, Orthodox, Protestant and Roman Catholic - as well as Christian agencies particularly concerned with migrants, refugees, and asylum seekers. These comments have been developed in close cooperation particularly with the Brussels' office of the Protestant Church of Germany EKD. As Christian organisations, we are deeply committed to the inviolable dignity of the human person created in the image of God, as well as to the concepts of the common good, of global solidarity and of the promotion of a society welcoming strangers.

For a long time Churches have been asking for an EU labour migration policy safeguarding human rights, providing a secure legal status and a guaranteed set of rights in accordance with the respective ILO and UN Conventions and Council of Europe instruments, focusing on the integration of those who are admitted. We definitely feel that it is time to face the challenges posed by migration in a constructive way, while investing less in border controls and other deterrent mechanisms.

Therefore we welcome the initiatives launched by the European Commission on labour immigration into the EU. We are aware that these proposals could initiate an important step forward, considering the political rejection of the Commission's proposal for a comprehensive horizontal directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities in 2001.

Already in our comments on the 2005 Green Paper "*An EU approach to managing economic migration*", COM (2004) 811, we stressed our support for the efforts of the EU towards a joint policy to manage migration and to create a common and transparent framework concerning access to the labour markets of the EU Member States. The establishment of open and transparent EU admission channels and procedures, as well as the availability of readily accessible information on employment-related migration opportunities to prospective migrants in third countries, are vital to curb channels of irregular immigration and related phenomena, such as smuggling and trafficking in human beings. Moreover, opening up legal migration

channels is beneficial for the migrants, for countries of origin and for the EU itself. It increases the chances for migrants to choose the country they want to live and work in, to find employment according to their skills and qualifications and to increase their standard of living. At the same time, it allows EU societies to enjoy the cultural, social and economic benefits of migration. Policies facilitating international workers' mobility may also prevent people from risking their lives in order to enter the EU. Finally, labour migrants entering legally will not be forced to seek employment in the shadow economy and will be less vulnerable to abuse and exploitation by certain employers, landlords and other "service providers".

We are aware of the political challenges related to setting up a Common European Migration Policy and we agree that a step-by-step approach seems politically more promising. We are nevertheless disappointed about the sectoral approach chosen by the European Commission: it could be counter-productive with regard to the objective of having more transparent admission channels as it complicates the system and contributes to further labour market segregation. We also see the risk that an approach aiming at highly-qualified work force, remunerated trainees and intra-corporate transferees might lead to divergent sets of rights depending on the level of qualification; this would mean granting privileges to some, while disregarding the needs of others. Except for the planned directive on seasonal workers, no other proposal on legal labour migration channels for semi- and low skilled migrants is envisaged. Although entire sectors of the economy depend on foreign semi- and low skilled labour, it is symptomatic that the only solutions offered at the EU level to deal with this challenge, is through the draft directive on employers' sanctions. Any other solutions for irregular migrants are absent from the European political agenda

We have the impression that the political courage to change the migration debate into a positive one is lacking. In general, we are convinced that economic considerations should never overwhelm ethical and human aspects when new instruments or initiatives in the field of migration are devised. We call upon the Commission, the Presidency of the European Council as well as the Members of the European Parliament, to make good use of the influence they have on public opinion, by adopting a new terminology in the context of the debate on migration. In fact, it would be beneficial for the needed "paradigm shift" in the debate if the same terminology could be used as the one concerning migration of EU citizens: e.g. (international) mobility of workers, freedom of movement, work experience abroad as an opportunity, etc., and programmes facilitating such experiences for third country nationals could be developed.

1. Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State ("Framework directive"), COM (2007) 638 final

We acknowledge the EU's efforts to develop a comprehensive, fair and rights-based immigration policy. We also appreciate the fact that the draft directive corresponds to our demand for full access to the EU labour market for all citizens of the European Union and all third country nationals legally residing in the EU, including refugees (Art. 3.1). We are very much in favour of introducing a single application procedure as well as a single residence/work-permit. In this regard, the proposal illustrates the Commission's willingness to simplify administrative procedures by cutting red tape and to close the "rights' gap" between third-country workers and EU citizens by granting the former employment-related rights. It is important that the proposal grants legally residing third-country nationals equal treatment with EU nationals when it comes to basic socio-economic rights, e.g. in the field of working

conditions, education and vocational training, recognition of diplomas, social security and housing.

While the rights-based approach chosen by the European Commission is to be appreciated, a reference to the ILO and UN Conventions on workers rights as well as to the articles of the European Charter of Fundamental Rights of the European Union concerning the rights of workers is missing. Despite the objective of the proposal to create a level playing field for all third-country nationals legally working within the EU we would like to express our criticism about the exclusion of seasonal workers (Art.3.2(d)), asylum seekers and people under subsidiary protection (Art.3.2(e) and (f)) from the scope of the directive. We consider this approach as discriminatory. By not setting any limitation to the possibility of extending (in exceptional circumstances) the time limit to process the application and adopt a decision for the issuing of the single permit the proposed directive leaves room for excessive or even abusive extensions of the period foreseen in Art. 5.2. Moreover we are concerned about the fact that Art. 5.3 does not specify the language in which the decision should be notified to the third-country national. Another problem is contained in Art. 8.2: this provision allows challenging before the courts of the Member States concerned, any decision rejecting the application, not granting, modifying or renewing, suspending or withdrawing a single permit but does not provide for a suspensive effect of the eventual appeal.

Furthermore we are concerned that it is largely left to the Member States' discretion to grant equal treatment with regard to working conditions and freedom of association only to those who are employed (Art.12.2(d)). A right to a similar protection should also be granted to job seekers in the recruitment phase. The exceptions contained in Art. 12.2 would also heavily limit the scope and the effectiveness of the directive, which is intended to be a nucleus of "basic rights".

Referring to the above mentioned reservations we would like to underline that the other proposals in the area of international mobility of workers must be read in the context of this proposal for directive. Because of its political importance this directive should therefore be adopted before or together with the other legislative proposals.

2. Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment ("Blue Card Initiative"), COM (2007) 637 final

It is positive that the Commission acknowledges the necessity of a paradigm shift towards migrants in stressing the labour market's need for highly-skilled workers, and the necessity to be attractive to workers from outside the EU. Nevertheless this paradigm shift has to be part of a broader public debate conveying a facts-based and comprehensive picture on migrants, involving Churches and civil society in order to prevent distorted perceptions and misunderstandings. In order to remain credible it is also important to enhance the capacities and qualifications of EU citizens to reduce labour and skill shortages in times of high unemployment and to continue to bring people back into the labour market. Therefore it is of the highest importance to inform public opinion about the necessity and the benefits of international migration of workers while avoiding a utilitarian approach.

We also welcome the fact that the proposal takes into account the danger of "brain drain" (Art. 3.3) by assuring ethical recruitment in certain sectors and by protecting and strengthening human resources in developing countries, e.g. through investment aimed at improving access to education. In order to be successful, this approach should be complemented both by policies and programmes creating decent jobs in countries of origin and by EU labour market

mechanisms ensuring access to employment according to the skills and qualifications so as to prevent “brain-waste”.

Considering this, we regard the “demand-driven” approach chosen by the European Commission as an important step, which aims at offering highly-qualified migrants attractive working and residence conditions in the EU by providing a common fast-track procedure for the admission based on common definitions and criteria. We especially welcome the provisions allowing family reunification at the latest within six months from the date on which the application was lodged (Art. 16.3), granting them equal treatment with nationals with regard to socio-economic rights (Art. 15) and allowing them the freedom of movement within the EU after two years of legal residence in the first Member State as holder of an EU Blue Card (Art. 19.1). We also appreciate the other provisions contained in article 16 which foster family reunification: in particular paragraph 5, facilitating access to the labour market for the migrants’ family members, as well as to paragraphs 2 and 6. However we would like to underline that family reunification should be facilitated not only for highly skilled workers, but for all migrants as a general principle.

We also welcome those provisions which facilitate circular migration opportunities by allowing Blue Card holders to return to their country of origin for up to 24 months (Art. 17.4), as well as the proposal allowing to cumulate periods of residence in different Member States (Art. 17.2). In our contribution to the Green Paper “*An EU approach to managing economic migration*”, COM (2004) 811 we underlined that circular migration can encourage circulation of know-how if persons are given the opportunity to come and work for a certain period of time, and to return to their home country for a successive period without losing the acquired rights (e.g. as long-term resident third-country national).

An aspect which we consider to be very problematic is that the proposal is presented at a time when there is no freedom of movement for all EU citizens, with several restrictions still in place for citizens of new EU Member States even going as far as 2015. This unequal treatment reserved to millions of EU citizens clearly contradicts the principle of community preference. At the same time we would like to underline that the scope of the proposal should be extended to refugees (Art. 3.2), beneficiaries of subsidiary protection and asylum seekers, granting them access to the labour market. By doing so, not only “brain drain”, but also “brain waste” would be avoided. Policies and instruments covering all categories of workers can be implemented more efficiently and contribute to avoiding red tape and excessive bureaucracy.

Besides we see the urgent need for further progress in concluding agreements between Member States and immigrants’ countries of origin with a view to transferring acquired social security rights. Given the increasing globalisation of the labour market and the international mobility of workers, a new approach regarding the portability of acquired social security rights would be advisable. Developing systems calculating social security rights on the basis of the (international) professional career of the individual worker, independently from his/her nationality or citizenship, the country he/she worked in or the “nationality” of the company he/she works for will be inevitable. Also with regard to the mutual recognition of qualifications the status quo is absolutely unsatisfactory (even among EU Member States) and further improvements are urgently required. Otherwise the aim of reducing cumbersome bureaucracy will remain unachievable. In this respect we recommend to assess the existing bilateral and multilateral agreements on transfers of social security rights between EU member states and third countries.

A three month period to look for a new job (Art. 14.1) is definitely too short and unrealistic. We recommend extending this period. We are also concerned that some Member States which are not convinced of this approach might undermine the logic behind the proposal by either

setting a very high threshold for the minimum gross monthly salary or by reducing the volume of labour migration to zero.

Moreover, we would like to underline that if the Blue card proposal is intended to compete with other famous examples, like the green card successfully used in the United States, the EU proposal lacks ambition and falls short of creating a competitive instrument.

Most importantly, in order to ensure the proposal's success we feel that a facts-based public debate should be launched with the involvement of all stakeholders: it should not lead to a short-term solution for labour market needs but boost the credibility of migration policies, e.g. by providing integration measures and programmes. In this respect Churches are willing to contribute and share the expertise they have gained in the past.

3. Communication on circular migration and mobility partnerships between the European Union and third countries, COM (2007), 248 final

First of all, we would like to welcome the Commission's approach: it aims at strengthening and deepening international cooperation and dialogue with countries of origin and transit in a comprehensive and balanced manner by exploring ways to facilitate circular and temporary migration and by suggesting to introduce the concept horizontally in legislative proposals. We also appreciate the efforts to address the "...*changing patterns of migration around the world*".

We are of the opinion that opportunities for international mobility of workers, also through well-managed circular migration, can potentially bring benefits to all partners involved. It is worthwhile to test the concept of mobility partnerships including circular migration between the EU Member States and third countries by way of pilot partnerships - which should build on the existing bonds between states and provide for close cooperation with all relevant stakeholders, including the migrants themselves.

It is vital to monitor and evaluate the implementation of such projects, like Spain-Mali, but also those funded by the World Bank (between Moldova and Greece, Italy and Albania, Ukraine and Portugal) if the concept is to be successful. Nevertheless, the concept's importance should not be overestimated, as it is only one mosaic stone in a wider picture.

Mobility partnerships could represent an innovative approach capable of bringing added value to the implementation of aspects of the Global Approach to Migration. We welcome the references to the necessity of schemes facilitating economic and social reintegration of returning migrants and of efforts (including co-operation mechanisms) to facilitate the transfer of migrants' remittances. We fear however that due to the fact that the partnerships are supposed to be broad, tailor-made and balanced, security concerns and the priority given to the fight against irregular migration might unduly influence the contents of individual mobility partnerships and lead to an imbalanced approach. Safeguards must be put in place in order to avoid that the prospect of legal migration opportunities be misused, for instance, as a trade-off for readmission agreements. The priority-aim of the initiative also needs further clarification: is it placed on fostering development in third countries or on preventing irregular migration? The "triple win situation" as expressed in the UN report 2006 on migration and development should be the guiding principle for the development of mobility partnerships.

Circular migration, also as a component of the mobility partnerships can be useful in promoting the development of countries of origin or in mitigating the adverse effect of "brain drain". Moreover it could allow migrants to gain skills and savings while abroad. We agree with the Council that well-managed, incentive-based movements between countries of origin and destination can foster the positive effects of the contribution of migrants to development when

they visit or return to their country of origin on a temporary basis. Still we are concerned about the lack of a legal definition and would recommend further clarification.

It is evident that circular migration can only be facilitated by a legal framework that promotes mobility, access to information and reintegration. Multi-entry visas, portable benefits and flexible residency, for example, could play a crucial role in helping to maintain ties with the country of origin. Therefore we advocate for integration measures for those who come to the EU, even on a temporary basis: language courses, cultural, skills and entrepreneurial training should not only be offered in the pre-departure period, but also continued and intensified after the arrival. These measures, in combination with integration measures aiming at EU citizens will contribute to social inclusion and equal treatment. We also regret the lack of any reference to family life and family reunification: in our opinion this aspect should be considered central for the chances of integration of migrants.

Finally, a set of incentives and safeguards is needed to ensure a successful implementation of circular migration. In particular re-integration assistance should be fostered¹. In any case, only an environment that helps migrants to reach their goals is most likely to foster return².

Conclusion

We welcome the new dynamics which the European Commission's proposals bring into the deadlocked debate on a Common European Migration Policy. We acknowledge the efforts being made to trigger political action and we are aware that concessions need to be made, even though the debate is only at the beginning. However it is of paramount importance that the highlighted shortcomings are tackled and that the required clarifications are provided. As stated above, the courage is needed to say that Europe needs and will have more migration.

¹ Caritas Europa, ICMC and partner organizations currently implement an EC co-funded project aimed at facilitating reintegration of returning migrants, with the support of partner organisations in countries of origin, see www.erso-project.eu

² Dovelyn Rannveig Agunias-Kathleen Newland, *Circular Migration and Development: Trends, Policy Routes, and Ways Forward*, Migration Policy Institute, Policy Brief, April 2007.