

## About the Green paper on economic migration

The eleventh of January, the Commission launched a “Green Paper” putting forward a European harmonization of economic migration management based on a utilitarian approach to migration policy. The Commission raises a series of questions and suggests public debates.

Refusing to lock ourselves within the constraints of this Green Paper, the signatories of the following comments are seizing the opportunity to demonstrate the threats which this approach to migration policy imposes on democracy, international policy and the universal rights of migrants.

### ***Preliminary***

#### *A release of citizen's tension that bypasses the parliamentary debate*

*The debate about the proposal for an EU constitutional treaty, has already led to the opening of a web site where citizens were invited to express their feelings and opinions without anyone knowing what would be the outcome of this consultation. The recipe is again used by the Green paper on economic migration. How could those media debates have had less validity amongst the European institutions?*

#### *The Member States and the European Council that bypass the parliamentary debate*

*The Green paper plans a European harmonization of policies on economic migration while leaving Member States' decisions a clear field. Member States have amply proved their ability to bypass the European Parliament in particular in watering down the directive on the right to family reunification for which an appeal has been issued by the European Parliament against the European Council.<sup>1</sup> The same formula is likely to recur in the elaboration of a policy on economic migration.*

#### *What's the point of looking into the Green paper?*

*The European Commission is uniting its voice with eulogists of utilitarian migration. The Green Paper raises a series of questions as worrying as they are contradictory. The very mechanism of such a Green paper raises concerns us about the effectiveness of European democratic institutions.*

*Refusing to lock ourselves within the constraints of this Green Paper, we are seizing the opportunity to demonstrate the threats which this approach to migration policy imposes on democracy, international policy and the universal rights of migrants.*

The “Green Paper on an EU approach to managing economic migration”<sup>2</sup> from the European Commission recognises “the impact of demographic decline and the ageing population on the economy” and underlines “the need to review immigration policies for longer term competitiveness”. “More sustained immigration flows will increasingly be required to meet the need of the EU labour market and ensure Europe's prosperity (...). This highlights the importance of ensuring that an EU economic migration policy delivers a secure legal status and a guaranteed set of rights to assist the integration policy of those who are admitted.”

For the past thirty years, the very low rates of admission of migrant workers into industrialised countries has only led to favouring the economic migration of undocumented migrants who are exploited by their employers. These countries implicitly recognise this trend either by regularizing waves of illegal migrants or by finally granting them legal status after many years. As the

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<sup>1</sup> Appeal registered on 22/12/2003, against the European Union Council by the Parliament (affair C-540/03) published by the Official Journal of the European Union, 21/2/2004, reference C 47/21.

<sup>2</sup> COM(2004) 811 final, Brussels, 11/1/2005

commission points out, this does not favour the European economy. For us, above all, it is contrary to Human Rights guaranteed by several international Conventions.

Since the acknowledgement of failure seems widely shared, it is the right moment for a deep reconsideration of European policy on immigration. In concentrating on the immigration of workers who are of use to the European economy, the “Green paper” misses this opportunity.

We are worried about the underlying logic behind the Green Paper because of the essential questions it raises about Human Rights as well as about European foreign policy:

- How is it possible to conceive of setting up access to work for economic migrants without wondering about the negation of the basic right of the migrants already living in the territory to work protected from discriminations: asylum seekers, members of the family of a migrant worker, students, undocumented workers restricted to insecure jobs?
- What gives the EU the right to choose some categories of workers favourable (or considered to be favourable at a certain point) to its economy, and thus necessarily encouraging them to leave their home countries?
- What about the free choice of individuals, for all those who choose to live in Europe without one of the skills selected by the European criteria?
- What will happen to the “useful” workers when they become “useless”?
- How is it possible to ensure “a secure legal status and a guaranteed set of rights to assist the integration policy of those who are admitted” in making their residence rights conditional on the continuation of a work contract or in keeping their status precarious hence preventing them from obtaining worthy employment and family reunification?
- How can European networks like EURES Job Mobility Portal from which employers can draw labour supply subject to their own provisional needs, substitute for a European policy of democratically discussed immigration?
- Can EU foreign policy and cooperation with a country be based on the departures or returns of this country dependent on European good will?

The “Convention on the Protection of Rights of All Migrant Workers and Members of their Families” confirms the universality of Human Rights for all migrant workers undocumented or documented. It specifies some complementary rights for all documented migrant workers regardless of their skill or the length of their stay. **Guided by these rights for *all* migrant workers, we claim that the grounds for a European policy on immigration ought to be universal Human Rights instead of economic needs.**

In order to be constructive, a democratic debate should address the whole of EU immigration and asylum policy. It is at the very least worrying to see an emerging so called “positive” policy towards only economic migrants while the “common” rights of migrants are constantly revised downward and the hindrances to free movement are regularly increased. European cooperation with neighbouring countries is systematically conditioned by repression against migrants (readmission agreements, liaison officers, police control of borders), practices made official by the Hague Programme<sup>3</sup> which states “EU policy should aim at assisting third countries (...) using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration (...) build border-control capacity, enhance document security and tackle the problem of return”. Currently there is a tremendous cacophony between Member States’ initiatives, between mass regularization in Spain questioned by Germany or Holland, the new British law filtering the access of highly skilled migrants to the detriment of other candidates and new Member States fears of having to bear the heavy responsibility of control at the eastern borders of Europe.... **Without radically changing course, one might question the opportunities of going on with the**

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<sup>3</sup> The Hague Programme, Presidency conclusions – Brussels, 4/5 November 2004, annex 1.

harmonization of European policy on immigration and asylum ... and to talk about the Green Paper.

## COMMENTS

### Previous history

Since 1994, the European Council has adopted resolutions on economic immigration, notably introducing Community preference. In order to control admission of workers coming from third countries and in order to check the economic need of employment and the lack of EU candidates in competition, the network EURES<sup>4</sup> – European Employment Services – was created.

Since the Treaty of Amsterdam, the European commission has guided the harmonisation of policies on immigration and asylum.

In November 2000, a communication – quoted below as COM2000 – laid the foundations of a new policy of economic immigration<sup>5</sup>. In July 2001, the Commission presented to the Council a proposal for a directive on economical immigration<sup>6</sup> guided by the previous communication – quoted below as COM2001.

Since then, the harmonisation of EU policies on immigration and asylum has moved forward notably with the adoption of several directives in relation to migrants – always more restrictive than the first drafts. As for the directive on economic immigration, it has not yet been adopted. Following the Hague Programme, the Green Paper is supposed to be taken as a basis for “a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for the migrant labour market” which should be ready for the end of 2005. It might also revive a future directive on economic immigration.

### About our comments

We comment on the issues tackled by the Green Paper which we consider as most important, setting them in the framework of European policy on immigration and asylum, deliberately going beyond the questioning of the Green Paper. For clarity, these comments are organized under three headings which are not independent: admission of migrant workers, rights of migrant workers, foreign policy.

## I. Admission of migrant workers

### I. 1. From the zero immigration to economic and demographic needs

- From 2000, the Commission noticed the failure of zero immigration :

“Economic migration has been said to be closed since the 1970s; given the economic opportunities now available in the EU, this no longer seems appropriate. Many economic migrants have been driven either to seek entry through asylum procedure or to enter illegally. This allows for no adequate response to labour market needs and plays into the hands of well organised traffickers and unscrupulous employers”.

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<sup>4</sup> <http://europa.eu.int/eures>

<sup>5</sup> Communication from the commission to the council and the European Parliament on a community immigration policy COM(2000) 757 final – 22/11/2000.

<sup>6</sup> Proposal for a council directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self employed economic activities – COM(2001) 386 final, 11/7/2001.

- In 2003, demographic ageing was added:  
 “Under the assumption of moderate immigration, demographic ageing will cause the EU-25 working age population to fall from 303 to 280 million by 2030 [...while] the number of people [aged 65 and over] will increase from 71 million in 2000 to 110 million in 2030” (Communication de from the Commission<sup>7</sup> – quoted below as COM2003).

## **I. 2. Economic needs given a rough ride by European preferences**

According to these new economic needs, the objective of facilitating the admission in the EU of migrant workers is declared, notably improving EURES running. “Admission policies for economic migrants must enable the EU to respond quickly and efficiently to labour market requirements” (COM 2000).

The proposal for a directive on economic migration (COM2001) has the advantage of being clear: only one status, a combined “resident permit – worker”; uniform rules for applications; an explicit list of preferences for the labour market ...

However, the admission into the EU of paid workers on criteria of economic need has a very low efficiency. For instance, in France, while 128 791 third-countries’ nationals obtained in 2003 a first work-residence permit, only 6 500 had followed this procedure. Moreover, insecure contracts increase enormously, concerning mainly seasonal workers deprived of the social rights linked with residence; contracts whose renewal is subject to departure for a few months and employer’s needs.

### **Access to a first work-residence permit granted in France to third-countries nationals in 2003<sup>8</sup> on respective motives**

Salaried employees: 6 500

Self employees: 406

Family reunification: 26 728

Members of the family of a French national: 61 489

Other grounds of private and family life – regularisation after ten years living in France and others: 18 019

Refugees: 11 123

Sick persons: 3 827

Others: 659

Total: 128 791

Privileged status: scientists – 1 162, artistic and cultural profession – 375.

Moreover, 45 793 students have been granted a residence permit: they may rather easily be allowed to work half-time.

The assessment is similar in most EU countries under various shapes: restricted access of legal workers counterbalanced by regularizations.

**Is it not the right time to open the filter of preferences filtering the admission in Europe of new workers? Is it not the right time to record that immigration should not be restricted to few jobs which are selected as beneficial to European trade?**

## **I. 3. The protection against discriminations given a rough ride by economic or social quotas**

<sup>7</sup> Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment - COM(2003) 336 final, Brussels, 3/6/2003.

<sup>8</sup> Haut conseil à l’intégration – Rapport 2002-2003 de l’observatoire des statistiques de l’immigration et de l’intégration.

In spite of the poor record of the admission of migrants based on economic needs, quotas of migrants are suggested in different countries under different words and contents.

In 2000, the idea is mentioned, the words “indicative targets” being privileged:

“The need for a flexible approach to changing economic needs would suggest that quotas are impracticable and that an appropriate system of indicative targets would be preferable. This would be closely related to labour market needs but would also take into consideration agreements in place with country of origin and a range of other factors (e.g. public acceptance of additional migrant workers...)”.

The proposal for a directive COM2001 (article 26) goes further allowing quotas of immigrants with possible selected exceptions:

“Member States may decide to adopt national provisions limiting the issuing of [residence permit – worker] to a set ceiling (...) taking into account the overall capacity to receive and to integrate third-country nationals on their territory or in specific regions thereof (...). These national provisions shall state in details which groups of persons are covered by, or exempted from, the measure”.

How would these quotas be determined? Possibly, according to demographic and economic characteristics of the host country. Possibly, according to agreements with home countries swapped for an intensified police control of migrants out of quotas, nationals or in transit. But most likely, according to economic needs specified by the economic world without any democratic control.

**Whether they concern criteria based on qualifications or on nationality, whether these criteria are assessed by the administration or by the employers, whether they are named “quotas” or not, these mechanisms run Human beings like goods. Shall we let the protection against discrimination limited to certain people according to criteria varying in time and space, to EU nationals for instance?**

#### **I. 4. Democracy and Migrants’ Rights given a rough ride by Employers’ Rights**

At the beginning of 2005, Spain is regularising masses of ... illegal employers. Indeed, except for domestic staff, the employers are the only ones in charge of the applications to the administration and introductions of work contracts. They are the only ones who agree or refuse to legalize labour relations, while illegality permits them to exploit a cheap and undemanding labour force; the interest in regularization is for instance doubtful for farmers of Andalusia who keep their undocumented salaried workers almost enslaved. Even if the employer proceeds to regularize he will remain omnipotent as he is the only one, when the contract ends, to decide whether the employment is still useful hence if the work-residence permit ought to be renewed. Hence the worker benefiting from the regularization remains dependent of his employer’s good will and subject to an additional means of pressure.

The Green paper opens the door wide to such transfer while considering in some selected sectors that the employer might hold the permit – alone or jointly with the worker.

**Throughout this economic immigration system, from the evaluation of economic needs or quotas to the migrants’ rights controlled by the employers, there is a worrying transfer of responsibilities on immigration from the State to the employer. Who will grant workers rights if the State does not fulfil its duty of protection for the “weakest”? Which democratic control can supervise these mechanisms? Shall we allow economic interests to dispossess democracy?**

#### **I. 5. European “brain drain”**

Rather than quotas, a door opened wide to the elite?

“It would be illusory to think that the future needs of the labour market by sector and occupations can be accurately forecast. The migrants most likely to help match demand and supply are those adaptable enough to face changing conditions, in view of their qualifications, experience and personal abilities. The selection mechanism must be geared towards these would-be migrants and offer them sufficiently attractive conditions” (COM2003).

This is the guiding line of the new British law on immigration offering a wider admission for highly qualified migrants while restricting it to the others. This is also the guiding line of the French law allowing:

- since 1984, exemptions from the rule of employment's opposability for employment in case of wages at least 1300 times higher than the legal minimum wage for one hour<sup>9</sup>;
- a “privileged” status for scientists ;
- for young qualified people, special dispensations on the provisional restrictions for nationals from new EU member States.

The Green Paper considers a « green card » following the model adopted by United States and exempting from economic needs tests under various criteria : high wages and/or qualifications; sectors or regions privileged by a Member state; quotas of workers linked to conventions with third-countries.

**The adoption of a set of special favourable measures to “selected” economic migrants will obviously increase the drifts of a general European policy focused towards closing borders and rejecting “other migrants”.**

## **II. Rights of migrant workers**

### **II. 1. The principle of equality of rights given a rough ride by the European “principle” of differentiating rights according to the length of stay**

“All human beings are born free and equal in dignity and rights” declares article 1 of the Universal Declaration of Human Rights.

The international Convention on the Protection of Rights of All Migrant Workers stands back on this point as it accepts a gap between the rights ensured for all the migrant workers and those of all the documented migrant workers.

Yet, the European legislation differentiates migrants' rights according to length of stay. The Commission even turns it into a “principle”.

“The underlying principle on an EU immigration policy must be for different purposes that persons admitted should enjoy broadly the same rights and responsibilities as EU nationals but that these may be incremental and related to the length of stay”. This principle “has a long tradition in the Member States and this is referred in the Tampere conclusions” (COM2000).

The Green Paper relies in turn on this “principle”. “Migrant workers must have a secure legal status » and « should enjoy the same treatment as EU citizens in particular with regard to certain basic economic and social rights, before they obtain long-term resident status. This status implies a more extensive set of rights, in line with the principle of the differentiation of rights to length of stay”.

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<sup>9</sup> Circulaire du 21/12/1984 (J0 du 12/1/1995).

Following this “principle”, there are everywhere talks about “flexibility” and about the “legal status for temporary workers leading eventually to a permanent status for those who meet certain criteria” (COM2000).

The proposal for a directive on economic immigration (COM2001) follows this “principle” as it only grants free access with preferences to the labour market and free choice of employment and employers after a purgatory of three years.

**Thus, the European trends confirmed by the Green Paper link more and more the residence rights of a migrant to holding and being able to keep employment or, even worse, to the good will of the employer. It creates a category of vulnerable workers who are more subordinate than other workers.**

**If the residence permit is lost when the job is lost, it only results in converting these migrant workers to undocumented and exploited workers.** The commission itself acknowledges that “past experiences (...) have demonstrated that it is extremely difficult to sustain temporary immigration schemes, because people who want to stay generally find ways of doing so” (COM2003).

**Such vulnerability of migrant workers favours the deterioration of migrants’ social rights and allows for the degradation of social standards of all the workers in the labour market.**

## **II. 2. The “principle of differentiation of rights” incorporated into the directives**

Two recently adopted directives follow this “principle” on basic rights of migrants.

- According to the **directive on the right to family reunification**<sup>10</sup>, the sponsor must hold a residence permit for a period of one year or more and “reasonable prospects of obtaining the right of permanent residence” to benefit from the right to a reunification with his spouse and minor children. There are other possible impediments to this right: for a child aged over 12 years a “condition for integration” might be requested; Member States may require the sponsor to have stayed legally in their territory for two years; access to employment might be delayed during one year... This is a straight negation of the real right to a family life, granted to everyone by the European Convention on Human Rights.

- According to the **directive on third-country nationals who are long term residents**<sup>11</sup>, to enjoy almost equal treatment and rights as nationals, migrants must have resided legally for five years and possess stable and regular resources.

With the focus of “selective immigration”, the Green paper views “incentives – e.g. better conditions for family reunification or for obtaining the status of long term resident – to attract certain categories of third-country workers”.

**After differentiating rights of migrant workers according to the length of stay, are we going to differentiate rights according to qualification and status?**

**It is surprising that, under these various differentiations, a principle of discrimination is established, yet conflicts with equality of rights of Human beings claimed by the EU for around twenty years and by many international basic instruments (Universal Declaration of Human Rights, European Convention of Human Rights, European social Charter...).**

## **II. 3. Integration given a rough ride by temporary situations**

The integration of migrants is one of the objectives constantly asserted.

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<sup>10</sup> Council directive 2003/86/EC of 22 September 2003 on the right to family reunification.

<sup>11</sup> Council directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

“Successful integration policies need to start as soon as possible after admission and rely heavily on partnership between the migrants and the host society” (COM2000).

“The measures taken must be accompanied by strong policies to integrate migrants admitted”.

“The EU must continue its efforts to foster the better integration of present and future immigrants, both in the labour market and into the host society in general” (Green Paper).

Once more, the gap between the proclaimed objective (integration) and the reality of its implementation) is wide. Examples:

- “Some countries mention that one of the major barriers to successful integration is the fact that the immigrant is unemployed and thereby implying that employment is one of the key ways of integrating immigration society” (COM2003) : key way which asylum seekers and Migrants resident without work permit would be happy to find...

- “The right to family reunification is, by itself, an indispensable instrument for integration” ... but to grant family reunification “Member States will be entitled to require, for the exercise of this right, that third-country nationals comply with integration measures” (COM2003) which, in many Member States, includes stable and secure employment.

**How, indeed, might the integration of migrants be possible with an insecure status imposed over a period of several years and without the prospect of family reunification? A purely vicious circle!**

### **III. The EU foreign policy given a rough ride by its policy on immigration.**

#### **III. 1. “Brain drain”**

A few lines after advocating “brain drain” (see I.5), COM2003 does not hesitate to contradict itself:

“The recourse to immigrants should not be detrimental to developing countries, particularly to the brain drain”.

Same contradictory and hypocritical statement in the Green Paper, after a long investigation of incentives to attract highly qualified workers:

“Developing countries [might] be compensated for their investment in human capital leaving for the EU” or “EU [might] encourage brain circulation and address the potentially adverse effect of brain drain” for instance facilitating the readmission in the EU of “brains” in case they would return to their home country.

But the highly qualified and adaptable people that the EU could find and attract toward lands where the standard of living is much higher than the standard of their home countries rarely return home because of political and economic conditions, because of their own decision or also because their right of residence in Europe would no longer be guaranteed. More basically, who might force them to leave and by which right would it be possible? What financial compensation might cancel the incentives for the elite to leave its country?

#### **III. 2. Swaps suggested by the Green Paper**

*- A quota of unskilled workers admitted to the EU in exchange for the exodus of competence or for the return of workers becoming “useless” in Europe*

As we mentioned in the preamble, European cooperation with home or transit countries of migrants to the EU is currently systematically conditioned on repression of those countries against migrants in order to put in check their will to leave for Europe.



In the Green Paper, it is even suggested that “home and host countries [might] have an obligation to ensure the return of temporary economic migrants” and at the same time to grant “a preference in terms of admission to certain third countries”. A new swap!

- *“Win-win” tools for recruiting?*

How would it be “win-win” to “establish recruitment and training centres in the countries of origin for skills useful at EU level, and for cultural and language training” or to “create databases per skill/occupation/sector (portfolio of competences) of potential migrants”?

Really “win-win”? Surely winning for recruiting officers or other middlemen as well as for potential employers. Who else?

- *Which “aid” to the home countries?*

The transfer of a portion of the remittances of migrant workers - which de facto constitutes aid to their home countries - is stated in an ambiguous way. While it should be an unconditional right freely exercised by migrant workers and while the priority ought to be given to making such transfers easier by attacking financial middlemen shamefully exploiting this lucrative line, one might fear the suggestion to “facilitate the transfer of remittance” if it takes the shape of constraints imposed on temporary workers. Any kind of labour remuneration conditioned upon a prior return to the home country - or a compulsory deposit of a considerable amount of money only repayable after having returned - is not acceptable, from the point of view of the basic right of free ownership of goods as well as that of the basic standards of labour rights and remuneration.

**If an “aid” to the home countries - whose terms ought to be drawn up by a real political debate - would effectively be settled by the EU, it should in no way come from an unthinkable deduction of salaries while it should be financed by the Union’s budget.**

## Conclusion

- “Preferences” blocking arbitrarily the access to employments in the EU in spite of the objective claimed.

- Rights of admission differentiated according to qualifications and/or according to quotas arbitrarily fixed by Europeans.

- Rights of migrant workers differentiated according to the time of stay, the qualification and the European trade market.

- Main responsibilities on immigration transferred to the economic world without any democratic control.

- Workers’ immigration grounded on economic needs and European preferences to the detriment of the third countries thus polluting foreign policy with a relationship of domination.

This policy of economic immigration is quite far from the universality of Human Rights of which the EU claims to be the standard bearer.

## Signatories

### *Europe*

**EAHR** – European Association for the protection of Human Rights  
**European Coordination for foreigners' right to family life**

### *Belgium*

**Association Romani Phuu** (Bruxelles)

### *France*

**AEFTI** – Association pour l'Enseignement et la Formation des Travailleurs Immigrés et de leurs familles

**Agir ici**

**ASIAD** – Association de Solidarité d'Information pour l'Accès aux Droits

**ATF** - Association des Tunisiens de France

**ATMF** - Association des Travailleurs Maghrébins de France

**CATRED** – Collectif des Accidentés du Travail, Handicapés et Retraités pour l'Egalité des Droits

**CNAFAL** – Conseil National des Associations Familiales Laïques

**Coordination Française pour le Droit des Etrangers à Vivre en Famille**

**CRID** – Centre de Recherche et d'Information pour le Développement

**ENAR France** – European Network Against Racism

**FASTI** – Fédération des Associations de Solidarité avec les Travailleurs Immigrés

**Femmes de la terre**

**FTCR** – Fédération des Tunisiens pour une Citoyenneté des Deux Rives

**GISTI** - Groupe d'Information et de Soutien des Immigrés

**GRDR** – Groupe de Recherche et Réalisations pour le Développement Rural

**IDD** - Immigration Démocratie Développement

**LDH** – Ligue des Droits de l'Homme

**MRAP** – Mouvement contre le Racisme et pour l'Amitié entre les Peuples

**RACORT** – Rassemblement des Associations Citoyennes des Originaires de Turquie

**SNPM** – Service National de la Pastorale des Migrants

**Fédération des syndicats SUD Education**

**Union syndicale SOLIDAIRES**

### *Portugal*

**CPPC** - Collectif Portugais pour une Pleine Citoyenneté