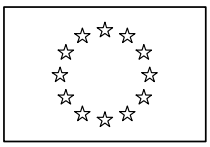

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.6.2004
COM(2004) 412 final

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

TABLE OF CONTENTS

INTRODUCTION

This Communication is the study requested by the European Council on the links between legal and illegal migration. It explores, for the first time at EU level, whether or not legal avenues for the admission of migrants reduce incentives for illegal migration and, more specifically, to what extent policy on legal migration has an impact, first on the flows of illegal migrants and then on cooperation with third countries in fighting against illegal migration.

This mandate derives from the conclusions of the Thessaloniki European Council of June 2003, which stated that the EU needed to explore "*legal means for third country nationals to migrate to the Union, taking into account the reception capacity of the Member States, within the framework of an enhanced co-operation with the countries of origin*." In this context, at the informal JHA council in September 2003, the Italian Presidency suggested to "*its partners to conduct a study to define a legal migration quota system for Europe to be offered to the countries of origin and transit of the main legal migration flows in order to obtain their co-operation in reaching an agreement on readmission (...).* Subsequently, in October 2003, the European Council enlarged the scope of the study and concluded that, *"while recognising that each Member State is responsible for the number of legal immigrants admitted to its territory, in accordance with its law and reflecting its specific situation, including labour markets, the European Council takes note of the Commission's initiation of a study into the relationship between legal and illegal migration, and invites all Member States, Acceding States and Candidate States to cooperate fully with the Commission to this end."*

The short time frame within which the study had to be finalised did not allow its externalisation to research institutes. The Commission decided, therefore, that the study should be limited to a fact-finding exercise conducted in cooperation with the Member States' experts. It has been based in the first place on existing research in the area, complemented by information supplied by these experts at two meetings organised by the Commission and the responses to a Commission questionnaire. The representatives of the Member States and the New Member States on the Commission's Committee on Immigration and Asylum followed the work in progress on a regular basis.

In the first part, the Communication focuses on the management of existing channels for legal labour migration including the use of bilateral agreements and - taking into account the initial intention of the Italian Presidency - the possible use of quotas or ceilings in this context. This has been illustrated by identifying some interesting examples of policy in the case-studies. The second part concentrates on the relationship between legal and illegal migration flows with a focus on co-operation agreements with third countries. Finally, the Communication draws some conclusions and recommendations. It should be noted that for the most part reliable statistical data on these issues are largely inexistent at both EU and national level.

PART I – EXISTING WAYS OF MANAGING LEGAL MIGRATION

1.1 Admission Regulations for Economic Migrants

The admission of third country nationals for the purpose of employment is a matter which is governed by the legislation of the Member States and admission policies therefore differ between them since they have developed in response to various migration trends over the past

decades. In the post-war period migration was widely encouraged to fill key labour shortages. However, following economic decline in the 1970s and increasing illegal immigration flows in the 1980s and 1990s, admission controls were tightened in order to protect the domestic labour market and in some Member States, the recruitment of foreign nationals was frozen.

The objective of current policies and procedures is to provide routes of entry to fulfil the needs of the labour market, whilst at the same time protecting the interests of the domestic workforce. Third country nationals wishing to work in the EU are required to provide evidence to demonstrate that they meet certain criteria: such as an offer of employment, sufficient financial resources to support themselves, adequate health insurance. Sometimes employers in the Member States are responsible for applying for work permits on behalf of the third country national, and must be able to demonstrate that the worker will provide skills which are not available on the domestic labour market. Some Member States also admit self-employed persons, but again strict criteria must be fulfilled, particularly proof that applicants possess sufficient means to support themselves, and that the activity they wish to exercise will be of benefit to the Member State concerned. Most economic migrants are initially admitted on a temporary residence permit, which may last from between one to five years. These permits are renewable as long as the applicant continues to fulfils the necessary criteria - most importantly that he/she is still employed and that his/her skills are still required.

Since the mid 1990s new routes for economic admission have emerged in many Member States to respond to labour market shortages and fast-track or preferential procedures have been put in place in some countries especially where there is a need to fill certain skills shortages such as in the healthcare sector. Attracting highly skilled workers is generally recognised as an important means of sustaining economic growth and avoiding bottlenecks within domestic economies. Experience has shown that it is not always easy to attract as many skilled persons by these specific routes of entry as required. There are a variety of reasons for this, but it must be noted that to some extent Member States are in competition with each other when seeking to attract specific categories of third country nationals to their workforce.

It is not only highly skilled workers who are in demand. Many Member States, particularly those of Southern Europe which are more recent countries of immigration, have experienced a need for low-skilled workers. Many have chosen to regulate the admission of low-skilled workers through opening specific routes of admission or drawing up bilateral labour agreements.

Case Study: German Green Card System

Germany introduced a **Green Card** scheme in August 2000 aimed at specifically recruiting IT specialists to respond to a predicted national shortage. Following a survey of IT employers and employment projections, the scheme allowed the recruitment of up to 20,000 IT specialists between 2000-2005. Under the scheme, applicants are permitted to stay for a maximum of five years, during which time they are entitled to bring family members with them. However, applicants are not permitted to apply for permanent residence once in the country. Applications for the scheme can either be made directly to a German company or via means of an online job fair. Approximately half of the 20,000 permits have been issued to date.

Case Study: UK Highly Skilled Migrant Programme

The **UK** launched a **Highly Skilled Migrant Programme** at the end of January 2002 to create an individual route of entry for highly skilled individuals who have the skills and experience required by the UK to compete in the global economy. Applicants do not need to have secured a work contract, and instead are admitted to look for work or be self-employed initially for a one-year period. As long as the applicant remains economically active they may remain in the UK, and will eventually be able to apply for permanent residence. Admission is based on a points system, as well as immigration criteria. Points are scored in the following five main areas: educational qualifications, work experience, past earnings, achievements in the applicant's chosen profession, and the skills and achievements of the applicant's partner. There has been a relatively high take up of the scheme.

It should be noted that not all third country nationals admitted to the labour market enter through the selective procedures described above. Admission of migrants for employment purposes is the main category for admission of third country nationals in only two Member States. In all other Member States the majority of admissions are of those seeking family reunification and those who have been recognised as requiring some form of humanitarian protection. In several Member States migrants admitted for family reunification account for well over half of those admitted. Labour migration could represent less than 15% of the number of persons admitted who will actually enjoy access to the labour market.

1.2 Regulating the numbers of economic migrants and forecasting needs

Inflows of third country nationals admitted for employment purposes to Member States have increased since the mid 1990s (with growth of 20% in Denmark, UK and Sweden, reflecting strong economic growth and shortages in the skilled sectors). Data on the total number of migrants admitted to the EU for employment purposes are not available. Although EU statistical data on migration flows has improved in recent years, problems are still encountered in measuring legal flows due to differences between sources and definitions, methods of data collection and legislative practices in the Member States.

Member States have different methods for deciding how many economic migrants to admit each year. The number is usually based on a national and/or regional assessment of labour market needs. A few Member States have quota systems but the way they are used differs from country to country. Some set a general total for the number of third country workers to be admitted each year, whilst others set more specific quotas for each sector of work or even for types of workers e.g. seasonal workers. Others set quotas on an annual basis after a review of the needs of the labour market, and consultation with labour and employer organisations.

In most Member States it is necessary to carry out a thorough assessment of the domestic labour market situation, before admitting third country workers. This principle of "Community preference" was expressly recognised as a guiding principle for selecting third country workers in the *"Council Resolution on limitations on admission of third-country nationals to the territory of the Member States for employment*" of 20 June 1994[1]. The way in which Member States implement this principle differs from one country to another.

Overall employment projections point to labour shortages in the EU due to the ageing of the workforce and its contraction after 2010. Research also indicates that immigration flows are unlikely to decline for the foreseeable future. Several studies have examined whether or not

[1] OJ C 274 of 19.9.1996, p. 3.

immigration is a solution to this predicted demographic decline. The Commission Communication on immigration, integration and employment[2] acknowledged that immigration would be increasingly necessary in the coming years to meet the needs of the EU labour market. However, at the same time it is generally acknowledged that immigration is not the solution to ageing populations and that higher net immigration will not exempt policy makers from implementing structural and other changes to cope with the impact of ageing populations.

Many studies have noted the difficulties of matching immigration to labour market needs. On the one hand labour market forecasts are by no means infallible, and may not always accurately predict labour market trends. On the other current immigration flows do not on the whole correspond to the predominant labour market demands for high or specific skilled labour. Whilst the tendency in many Member States for immigrants to work in the low-skilled sectors is confirmed, this is not necessarily a reflection of their skills as some of them are overqualified for the jobs.[3] Past experiences of immigration have demonstrated that it is extremely difficult to keep track of the length of stay of migrants and of their geographical and occupational mobility. Labour forecasts also have to take into account other categories of migrants to which selectivity may not necessarily apply (admission for international protection, family reunification reasons). Finally this study shows there is a clear need for better integration policies to harness the full potential of migrants.

1.3 Bilateral Labour Agreements

There are a wide variety of bilateral labour agreements signed by Member States and New Member States for the admission of third-country nationals. They are mainly designed to respond to labour shortages in the receiving country, but there are several secondary motives for signing such agreements. These can broadly be categorised as: to open new channels for migration, to improve relationships with third countries, to facilitate historical links and cultural exchange, to manage migration flows better and to combat illegal migration. Often a combination of these factors is present.

A geographical distinction can be drawn between the Member States in their approaches to bilateral agreements. **Northern European countries** first drew up bilateral schemes in the post war period to respond to specific shortages on their labour markets. Many of these were agreed with Southern European countries prior to their entry to the EU. Although they were largely labour-market oriented, there were other motives, for example, to maintain "special relationships" with former colonies. Many of these early bilateral schemes were discontinued after the 1970s due to the economic downturn. Bilateral schemes signed more recently tend to be focussed on the admission of seasonal workers who come to work primarily in agriculture, construction, tourism and catering, where there is a continued demand for this type of worker. Some of these new seasonal bilateral schemes were created to provide legal channels for previously illegal flows of seasonal workers notably in the agricultural sector. Bilateral schemes have also been used to foster better relations with neighbouring countries, and especially with the Accession Countries during the 1990s, which contributed to their economic alignment to the EU. Several new Member States have also signed bilateral

---

2 European Commission – Communication from the Commission on immigration, integration and employment COM(2003) 336.

3 European Commission – Communication from the Commission on immigration, integration and employment COM(2003) 336.

agreements with eastern neighbouring states. These have experienced varying degrees of success.

Southern European countries have been more active in recent years in signing bilateral agreements which admit temporary or seasonal workers. This in part has been to respond to labour shortages in certain sectors in these countries. However, some agreements aim to open up new legal routes for economic migration from key source countries of illegal migration and to strengthen the general framework of cooperation with third countries to improve the fight against illegal migration.

Case Study – Spain

Spain has signed bilateral agreements with six third countries[4], many of which were key source countries for illegal migration flows, with a view to strengthening the general framework of cooperation and to prevent illegal migration and the exploitation of workers. The agreements follow a standard format and allow for the recruitment of both permanent and seasonal workers and trainees, usually aged between 18-35 years of age. These agreements also contain chapters on selection procedures, working conditions and social rights, the return of the migrants and provisions on the fight against illegal migration and trafficking of human beings. For seasonal workers there are special provisions which require them to sign a commitment stating that they will return to their country of origin at the end of their contract. Seasonal workers are also required to present themselves at the Spanish Consular office in their country of origin within one month of their return. Most of these agreements have worked well in practice, particularly in respect of seasonal workers. Numbers of workers admitted are determined by quotas which are set for each sector of work, rather than by nationality.

The rights granted to workers under these schemes vary according the objective of the agreement and the terms and conditions negotiated between the sending and receiving countries. Most ensure that workers admitted are entitled to the same working conditions and rates of pay as nationals. Some incorporate provisions to ensure the return of workers at the end of their stay, such as by transferring social security contributions, and in some instances requiring employers to pay a deposit for each worker admitted, which is refundable only if the worker returns. Family reunification rights are not granted to seasonal workers, which is an additional means of securing their return. For many third country nationals, participating in bilaterals agreements is beneficial and many make their living from participating in such schemes on a regular basis. It is estimated that most workers send at least 50% of their earnings abroad back home. Bilateral schemes are an attractive way for workers to develop their skills, experience better working conditions and to earn some hard currency, as well as experience life in another country.

Responsibility for the administration of bilateral schemes appears to be shared between both immigration and employment ministries at local, regional and national level. There is often a partnership between many interested parties, such as trades unions, employers, labour offices and central government. In some Member States, regional administrations have become increasingly active in the recruitment of foreign workers. As many of the workers admitted under the bilateral schemes are recruited to small and medium sized enterprises, regional labour offices are better placed to respond to the specific needs of the local economy. For

[4] Romania, Bulgaria, Ecuador, Colombia, Dominican Republic, Morocco.

well-established schemes, many employers and private agencies are actively involved in the recruitment of workers. Some receiving countries have set up offices in the third countries in order to recruit and even provide training for workers to be admitted. In some cases, companies themselves have become involved in this process and now send out personnel to sending countries in order to train and recruit workers so that they will be more easily integrated into enterprise when they arrive in the Member State.

1.4 Use of quotas to regulate bilateral schemes

Quotas have been used by several Member States in bilateral agreements, although the numbers of workers admitted varies according to the objective of the scheme and the sending country. Governments set quotas on an annual basis in consultation with relevant bodies such as industry, employers, trades unions and labour offices, to take account of labour market needs. Usually quotas are set for each employment sector, although some countries specify quotas for each geographical region, and in some cases by country of origin of the applicant. Some Member States set quite high quotas for seasonal workers, as it has proved very difficult to find domestic workers who are willing to carry out the tasks required, or to move within the country to the area where they are needed.

Case Study - Italy

Italy has a well-developed quota system which has been in place since 1998. Under legislation introduced at that time, the Government is required to publish an annual decree listing the quotas broken down by region, and sector of employment. The quotas are established following the agreement of several different bodies including the Ministry of Labour, local and regional offices, trades unions and employers. The totals for the quotas are estimated according to local employment rates. So-called "privilege quotas" are included within the decree which set ceilings for third country workers from specific countries[5]. In some ways these quotas are seen as being outside labour market calculations, and are set at a sufficiently low level so that they can be easily absorbed into the labour market (up to a maximum of 3000 workers per year per country). These quotas are offered to third countries in return for their cooperation on readmission and reducing illegal migration flows. Such quotas may, and have been reduced if the third country is considered not to be co-operating fully. The quota for Morocco was reduced in this way in 2001.

Several Member States are critical of the potential inflexibility of offering bilateral labour quotas as incentive for better cooperation of third countries in the fight against illegal migration. It is feared that quota-based bilateral agreements could limit states' abilities to respond to the needs of the labour market. Although it may be acceptable to reduce quotas as a sanction for non-cooperation by a third country, it could prove to be difficult to reduce quotas in the same way for political and/or labour market reasons. Another factor to consider is the potential discriminatory effect of preferential quotas on those countries with which such agreements are not signed. Whilst such schemes aim to facilitate co-operation with certain third countries, those countries which are not offered similar treatment may see this as a reason to frustrate cooperation with the EU. In this way, it could be said that preferential quotas may in the short term facilitate co-operation with target third countries, but have the potential to frustrate cooperation with other third countries in the long run.

[5] Albania, Tunisia, Morocco, Egypt, Nigeria, Moldavia, Sri Lanka, Bangladesh, Pakistan.

1.5 Regularisation Measures

The fact that many third country nationals reside and work illegally in Europe and that some Member States establish programmes to "regularise" them demonstrates the current limits of the measures in place to manage the existing channels for legal immigration. Although not a standard objective of immigration policy, regularisations have become more of a feature in Member States, with over 26 operations taking place since the 1970s. The use of, and the motivations behind, regularisations in Member States are diverse; in some they are never used, whilst they have been a more frequent phenomenon in others. The frequency of regularisation operations has shown a marked rising trend since the middle of the 1990s. The New Member States, being in general relatively new countries of immigration, have not carried out regularisations, except on a case-by-case basis. It is useful to distinguish between temporary regularisations, under which regularised persons are issued a residence permit for a limited duration, renewable only if certain conditions are fulfilled and definitive regularisations in which migrants are issued with permanent residence status. In most cases, Member States tend to issue renewable temporary permits, which means that it is possible for the holders to fall back into illegal status if they later cease to fulfil the conditions of the permit. This may result in some migrants being regularised again under subsequent regularisation programmes.

Case Study – Belgium

Belgium has carried out two large-scale regularisation programmes, one in 1974 and the other in 1999. The 1999 regularisation was intended to be a "one-shot" operation and aimed at bringing an end to the marginalisation of those who, although illegal, were nonetheless integrated into economic and social life in Belgium. The other main motivation was to build social cohesion and to tackle criminal networks which exploited illegal migrants. In practice, the regularisation allowed the government to regularise those whose medical condition prevented them from being returned, those who had been illegally residing in Belgium for a long time who were well integrated, and also those who had been waiting for a decision on an asylum application for more than three years. Applicants were given a three-week period to submit their applications during which time Belgium temporarily reinstated its border controls in order to prevent an influx of hopeful illegal migrants from neighbouring Member States.

Over 37,146 applications for regularisation were submitted, involving a total of over 50,000 individuals, of which 80% were recognised. Preliminary evaluations of the regularisation programme indicated that the flows of illegal migrants actually increased following the measure; indeed the measure is considered to have sent an erroneous signal to potential illegal migrants, that their stay would ultimately be tolerated. A subsequent rise in family reunification applications was noted to have been a consequence of the regularisation; applications rose from 2122 in 1999 to 4500 in 2003.

Most Member States recognise that for pragmatic reasons the need may arise to regularise certain individuals who do not fulfil the normal criteria for a residence permit. By carrying out regularisation operations, governments attempt to bring such migrants into society rather than leaving them on the margins, subject to exploitation. Certain countries refuse to carry out regularisations at all, except on a case by case basis in exceptional circumstances. They prefer to carry out so-called humanitarian or protection regularisations aimed at granting a right of residence to specific categories of persons who are not eligible to claim international protection, but who nevertheless cannot be returned to their country of origin. These types of regularisations are often related to asylum policy. Some Member States have carried out

targeted regularisation programmes of this type aimed at groups asylum seekers from countries from which they have had significant inflows, but who have been present in their territory for a long period (for instance those who had fled from the conflict in the Former Republic of Yugoslavia).

Other Member States are prepared to carry out ***"fait accompli"* regularisations**. Some have carried out single "one-shot" measures, but others have needed to carry out such measures more frequently. "*Fait accompli*" programmes involve the regularisation of illegal migrants, usually those who are already illegally employed. The fact such regularisations need to take place highlights the existence of a dynamic hidden economy in many Member States and they are in part economically motivated. Similar regularisations carried out in one Member State were actually driven by employers, in recognition of the fact that some sectors, particularly domestic services, had become dependent on illegal labour which it is desirable to bring into the formal economy. The development of this sector is indicative of new openings in the labour market, linked to the ageing population and to the new needs for care services towards elderly people. Wide scale regularisations have implications for many areas of society since it is necessary for governments to obtain support for the measures amongst key actors, e.g. employers and trades unions, whilst at the same time introducing further measures to tackle illegal migration in order to maintain public support.

The study looked at the **effectiveness of regularisation programmes** not only for the migrants concerned, but also for the state. Firstly they allow better population management, enabling governments to have a clearer picture of those who are present on their territory. They also serve to tackle illegal working and increase government revenue through taxation and social security payments by bringing illegal workers into the regular labour market, provided that the persons concerned manage to maintain or obtain such employment. However, it must be noted that the effectiveness of regularisations on reducing the extent of the unregulated labour market has been questioned. On the other hand, it is believed that to a certain extent regularisations offer a form of encouragement to illegal migration. This has been experienced in Member States which have carried out wide-scale regularisation programmes and such measures appear to be self-perpetuating in that often further wide-scale measures are required only a few years later. A study of regularisation programmes in eight Member States concluded that they take place on average every 6.5 years, indicating the persistence of immigration and the replenishment of certain stocks of illegal migrants.

PART 2 – RELATIONSHIP BETWEEN LEGAL AND ILLEGAL MIGRATION FLOWS AND RELATIONS WITH THIRD COUNTRIES

There are many forms of illegal migration. Some migrants enter the territory of a Member State illegally by land, air or by sea. Some use false or forged documents, others try to enter either on an individual basis or using organised criminal networks, active in particularly in the two most odious forms of illegal immigration, namely the networks of smugglers acting for non-humanitarian reasons and the exploitation of foreign nationals in the form of trafficking in human beings. A significant share of illegal residents enters legally with a valid visa or under a visa-free regime, but "overstays" or changes the purpose of stay without the approval of the authorities. Some, such as failed asylum seekers, enter into an illegal status if they do not leave the country once all consideration of their asylum applications has been exhausted.

The problems of identifying the size and characteristics of migrant populations and recorded flows, both legal and illegal are well documented. By definition, as illegal migrants do not identify themselves to the authorities, it is difficult to establish a clear picture of the scale of illegal migration in the Member States of the European Union. Estimates of illegal migration flows can only be derived from existing indicators linked to the phenomenon, such as the numbers of refused entries and removals, apprehensions of illegal migrants at the border or in the country, rejected applications for asylum or other forms of international protection, or applications for national regularisation procedures. To these numbers must be added the considerable number of those who do not apply for any form of international protection, either because they entered legally or they "overstay". From these indicators, estimates of annual inflows of illegal migration into the EU are thought to reach over six figures. More precise figures cannot be considered reliable. Moreover, such estimates do not add to the understanding of the complexities of illegal migration and are open to misinterpretation. The scale of illegal migration is nevertheless considered to be significant, and the reduction of illegal migration flows is a political priority at both national and EU level. It is therefore important to have an understanding of who illegal migrants are, and why they come to the EU in order to establish effective policy solutions to combat the phenomenon.

Research on **the profile of illegal migrants** is fairly scarce. However, there is evidence to suggest that the highest percentage of illegal residents is males between the ages 20 and 30, who are young, mobile and willing to take risks. An increase in the numbers of young women migrants and a far smaller share of elderly people of both sexes have been noted amongst illegal migrants. Some information available in Member States indicates that illegal migrants are generally low skilled, and therefore do not generally match the shortages in the declared labour market. However, other research suggests that an increasing number of illegal migrants are educated, and choose to migrate as they are in search of a better life. Usually there are a range of **motives behind decisions** to come to the EU; economic considerations are by no means the only factors. Decisions to migrate are based on an individual assessment of a number of push factors such as unemployment or permanent low-wage levels; natural disasters or ecological devastation and of pull factors such as informal sector and employment with higher level of wages**;** political stability, maintenance of the rule of law and effective protection of human rights**;** different labour market conditions. Illegal migrants make their decisions despite various other factors, which have a deterrent effect, such as high costs for facilitation services, and risk of interception and prosecution by border authorities, amongst others.

Once in the EU many illegal migrants are able to find work in the hidden economy, demonstrating that there is a clear link between illegal migrants and the unregulated labour market. Within the EU, the shadow economy is estimated to be between 7-16% of EU GDP[6], although this is by no means entirely made up of illegal migrants. Illegal migrants work mostly in the low-skilled sector such as in construction, agriculture, catering or cleaning and housekeeping services to support themselves. Often they are hired for the so-called "3 D"-jobs (dirty, dangerous and demanding work), which are not sought after by the domestic labour force. The tendency for illegal migrants to be employed in the low-skilled shadow economy is not only due to the fact that they do not have the appropriate status, qualifications or the required language skills for other jobs. Skilled illegal migrants may find it difficult to work in the sector in which they were trained not only because they lack appropriate work permits, but also because their qualifications are not recognised within the EU. These people

[6] Council Resolution on transforming undeclared work into regular employment, October 2003.

work illegally in the low-skilled sector in a Member State due to their lack of proper documentation and often the salary is much higher than that for their skilled job in the country of origin.

2.1 Impact of bilateral labour agreements on illegal migration flows

First of all it is important to distinguish between bilateral schemes which admit seasonal workers and those which admit temporary or permanent workers. Many of the early schemes which admitted the latter were designed predominantly to address labour market shortages. These schemes are considered by some Member States to have had the effect of increasing migratory pressure, due to the fact that many of those admitted became permanent residents and subsequently submitted applications for family reunification.

For those Member States which signed bilateral schemes motivated in part to reduce illegal migration flows, assessments of the impact are mixed. Most do not see a direct link between the introduction of bilateral schemes and a reduction in illegal migration flows. Many have found that it is difficult to identify the impact of bilateral agreements on illegal migration flows, as there are often many other factors at play which contribute to a reduction in illegal migration. In several Member States, bilateral schemes have only been introduced fairly recently and it is therefore too early to determine if such measures have had a sustained impact on reducing illegal flows. Some have found that signing bilateral agreements has not in itself reduced illegal migration, but has rather helped develop co-operation with third countries on migration issues in general.

Only one Member State considers the introduction of bilateral labour schemes to have had a direct impact on reducing illegal migration flows. However, in this instance the impact cannot solely be attributed to the bilateral schemes in question, as they were offered as an incentive to the signing of readmission agreements, and were part of a package of measures to facilitate co-operation with third countries, which also included financial assistance, police co-operation, training and capacity building. Furthermore in the period in which the decrease in illegal flows took place, it was generally perceived that there was an overall decrease in illegal migration towards the EU.

It must be recognised that some illegal migration will take place whatever legal channels are put in place since there will always be some pull or push factors which are not affected by them. Some migrants wishing to come to the EU will not be eligible to participate in such schemes, or there will not be sufficient capacity in the schemes to allow all those who wish to participate. Furthermore, as mentioned above, the reasons why migrants decide to come to the EU are complex, and not only economically motivated. Some migrants who end up residing illegally in Member States have left their countries for reasons linked to conflict or instability in their country of origin, but do not individually qualify for humanitarian protection.

In summary the impact of bilateral labour agreements on illegal migration flows to some extent depends upon the motivation behind the scheme. Even for those schemes which have the primary objective of reducing illegal migration flows, it is not possible to conclusively isolate their impact, given the many other factors involved.

2.2 Impact of visa policy on illegal migration flows.

Apart from bilateral labour agreements, most Member States and New Member States have had a limited experience of using other legal migration measures to reduce illegal migration

flows. One way in which migrant flows have traditionally been regulated is through changes in visa policy. Since the Treaty of Amsterdam came into force (1999) the Community has competence over visa policy in the Member States (with the exception of the UK and Ireland). This includes agreeing a list of which third country nationals should be subject to or exempt from visa requirements[7]. This decision is made following *"a thorough evaluation on a case by case basis of several criteria linked amongst other things to illegal migration, public order and security as well as the EU's external relations with third countries, whilst at the same time taking into account regional coherence and reciprocity"*.

Modification of these lists is decided by a qualified majority of the Council on a proposal by the Commission, and after consultation with the European Parliament. Since the lists were established only a few countries have been transferred between them. In 2000 the Commission proposed that Bulgaria and Romania should be moved from the negative to the positive list in recognition of the closer relations between these countries and the EU, and in the spirit of free movement of citizens. The Council agreed in March 2001, after the consideration of two detailed reports on measures taken to combat illegal migration flows, border controls and visa policy. The visa restrictions were lifted from January 2002.

In March 2003, the Council decided[8] to move Ecuador from the positive list to the list of third countries whose nationals must be in possession of visas when crossing external borders. This decision was primarily based on considerations relating to proven risks of illegal immigration, underpinned by figures and statistics from a number of Member States. The impact of this decision has not yet been assessed due to the short period of implementation. This assessment will be essential and could confirm whether or not there is a direct link between the imposition of visa requirements and a slowing down of illegal migration. On the contrary, it seems quite difficult to prove a link between the lifting of visas requirements and a subsequent increase of illegal migration. Experiences have been different and seem to show that there are several other factors which can come into play in favour of or against an increase in flows.

As far as the visa policy of third countries is concerned, one notable example is the change to visa regimes made by Bosnia-Herzegovina, which was a key transit country for illegal migration to the EU. When the authorities introduced visa regimes for Iranian and Turkish nationals, this led to a marked drop in the number of migrants from these nationalities arriving illegally in the EU via Bosnia-Herzegovina.

2.3 Impact of co-operation with Third Countries on illegal migration flows

The Tampere European Council and several subsequent European Councils have underlined the need for a comprehensive approach to migration, addressing human rights, political and development issues in countries and regions of origin and transit. Partnership with third countries was considered to be one of the key elements for the success of such a policy. Since Tampere, the Commission has made special efforts to integrate migration policy into the EU's external policies and programmes. The Communication on the integration of migration in relations with third countries[9] emphasised the potential of greater synergy between migration and development policies. The European Councils of Seville and Thessaloniki both paid

---

7 Council Regulation (EC) n°539/2001.
8 Council Regulation (EC) n° 453/2003 of 6.3.2003, JO L 69 of 13.3.2003.
9 COM(2002) 703 of 3.12.2002.

specific attention to the efforts third countries would need to undertake in fighting illegal migration. The General Affairs Council of 8 December 2003 established a so-called monitoring and evaluation mechanism. The Commission is invited to report annually on cooperation with third countries and its first report is expected by the end of 2004. The report will contain an overview of the efforts third countries are making in fighting illegal migration and the technical and financial support provided by the EU and its Member States.

The co-operation of third countries is vital if illegal migration flows are to be reduced and in this context evaluating the impact of the various measures and incentives which have been used is important. The experience of Member States and New Member States in improving cooperation with third countries to control illegal migration flows by informal means appears to be limited. Some have found it more effective to sign police co-operation or border guard agreements, within which a readmission element is included, rather than formal readmission agreements. Such agreements have allowed Member States to develop useful mechanisms for the exchange of information and joint training, which have not necessitated the use of incentives. These agreements often include provision of technical support which has proved very useful on a practical level. Other Member States have entered into informal co-operation with transit countries to tackle particular flows from third countries without drawing up formal readmission agreements. Ad hoc co-operation in this way can produce beneficial results in responding to specific flows from countries which may otherwise be reluctant to enter into formal readmission agreements. Member States and New Member States have also been active in signing both formal and informal readmission agreements with third countries in order to facilitate the return process. In the context of formal national readmission negotiations, as it is an international obligation for third countries to readmit their own nationals, Member States are not prepared to offer incentives to third countries in order to sign an agreement for this purpose. However, some are prepared to do so in cases where agreements readmit both own and third country nationals, as it is recognised that signing readmission agreements is generally more advantageous to Member States than to third countries. The different types of incentives offered include technical support and assistance in controlling migration flows, border control training and police co-operation, and the provision of technology and equipment, which contribute to the third countries' capacity to manage migration flows. The provision of incentives is not normally included in the text of the readmission agreements themselves, to ensure that the implementation of the agreements does not become conditional on the incentives. One Member State has offered bilateral labour quotas to third countries. The impact of this policy has been analysed in section 1.4 above.

Given the current state of negotiations, a different approach to incentives for signing Community readmission agreements may be required. In the course of these negotiations, third countries are asking, among others, for better integration of their nationals in the European Member States, lifting of visas restrictions, visas facilitation for certain categories of persons, quotas for permanent workers or seasonal workers. Incentives which have been offered so far in the conclusion of Community agreements include visa facilitation, law enforcement co-operation, and financial and technical support. The merits of these incentives will be examined in more detail in the forthcoming Commission report on the priorities for the successful development of a common readmission policy. However, it is clear that a flexible range of incentives will be necessary in order to secure future agreements.

Increasingly the countries neighbouring the EU are confronted with migration problems. The presence of an ever growing foreign population can lead to social tensions within these countries and receiving countries are confronted with the need to step up their efforts in managing migration. The issues of **transit migration and neigbouring countries** becoming

countries of destination are being discussed between the EU and the third countries concerned. The EU is providing and envisages further technical and financial assistance under relevant Community instruments (Tacis, Meda, Eneas) to support these countries in their efforts to better manage migration, including an effective and preventive policy in the fight against illegal migration. In addition, the New Neighbourhood Instrument which is being developed by the Commission to promote cross-border cooperation will include management of migration as one of the priority areas for cooperation. Some neighbouring countries have developed action plans specifically targeted at illegal migration and the EU is ready to support their implementation.

PART 3 - THE WAY FORWARD

3.1 Reinforcing consultation and information exchange at EU level

This study has revealed that there is a clear **lack of reliable and comparable data at EU level**. Measures are already being taken to improve the collection and analysis of Community statistics. The Commission has now undertaken to produce an annual statistical report on migration including a statistical analysis of the main migration trends in the Member States. Based on the action plan for Community statistics in the field of migration[10], a proposal for an EU regulation on the collection of Community statistics on migration, citizenship and asylum, will be put forward in June 2004, to be followed by a series of implementing measures.

The findings of the study illustrate the need to make a **more intensive and targeted use of consultation and information exchange** in specific areas, which have a significant impact on several Member States or on the EU as a whole. In its November 2000 Communication on a Community Immigration Policy[11] the Commission made a proposal for meeting this need, and gave further details in its two 2001 Communications[12]. The 2001 Laeken European Council explicitly called for an enhanced exchange of information in the field of immigration and asylum. In response to this call, the Commission established in 2002 an expert group, known as the "Committee on Immigration and Asylum" to lead a communication and consultation procedure to spread best practices and achieve greater convergence of asylum and immigration policies. Regular meetings of the Committee on Immigration and Asylum now take place.

These arrangements are complemented by the European Migration Network which aims to build up a systematic basis for monitoring and analysing the multidimensional phenomenon of migration and asylum by covering a variety of its dimensions - political, legal, demographic, economic, social, and identifying its root causes. The information made available or processed is intended to help provide the Community and its Member States with an overall view of the migration and asylum situation when, in their respective areas of competence, they develop policies, take decisions or decide on action. The initial pilot project was endorsed by the Thessaloniki European Council in June 2003. After its evaluation in the course of 2004, the Commission will examine the possibility of setting up a permanent structure with an appropriate legal basis bearing in mind a parallel initiative which is being examined within the framework of the Council of Europe.

---

10 Communication from the Commission to the Council and the European Parliament to present an Action Plan for the collection and analysis of Community Statistics in the field of migration. COM(2003) 179.

11 COM(2000) 757 final of 22.11.2000.

12 COM(2001) 387 final and COM(2001) 710 final

Other steps have been taken to enhance the exchange of information in specific areas, notably the establishment of a network of National Contact Points for Integration. The Thessaloniki European Council endorsed this initiative stressing the importance of developing co-operation and exchange of information within the network with a view in particular to strengthening co-ordination of relevant policies at national and European level. Shortly after, the national contact points agreed on an intensive work programme of exchange of information and best practices within three policy fields, namely the introduction of newly arrived immigrants, language training, and participation of immigrants in civic, cultural and political life. They decided to develop a handbook on integration for practitioners and policy makers. These developments will be highlighted the first Annual Report on immigration and integration that the Commission is preparing.

Other measures to reinforce information exchange have taken place in the area of illegal immigration. These initiatives are focused on the exchange of operational information within the framework of the Council's ad hoc working party, CIREFI. An early warning system has been created in order to exchange information on clandestine immigration and the routes used by smugglers of human beings. This system will be updated by the creation of a "secure web-based Information and Co-ordination Network for management migration services"[13].

The Commission intends to reinforce information exchange and consultation in line with the priorities set out above within the framework of the Committee on Immigration and Asylum. At a later stage – in the light of further experience with this procedure – the usefulness of proposing a concrete legal basis to formalise its operation and to ensure coherence and complementarity between the different fora will be considered.

3.2 Development of new policy initiatives within the framework of the common immigration policy

3.2.1. On legal migration

All Member States have channels for the **admission of labour migrants**, notably for third country nationals with specific skills. Most Member States suffer shortages of skilled labour and are developing specific recruitment schemes, as shown in the case studies on Germany and the UK. To a certain extent these Member States are in competition with each other in recruiting suitable labour from third countries. The Commission believes that due to the effect of demographic decline and ageing, recruitment of third country national workers and immigration for economic reasons into the EU is likely to continue and increase. On the other side, third countries are repeatedly asking for more legal migration channels. Nevertheless, the proposed EU Directive on this issue[14] tabled in 2001 received no support from the Council. Therefore, some basic questions need to be addressed in order to understand whether or not the admission of economic migrants should be regulated at EU level. Issues which need clarification include the degree of harmonisation to aim at; the scope of the proposal and whether or not the principle of Community preference for the domestic labour market should be maintained. As far as the Commission is concerned, the answers to these questions have to built upon two basic principles: on the one hand, the draft Constitutional Treaty which confirms European competence in migration policy, but leaves the determination of the number of migrants to be admitted to the Member States and, on the other hand, the necessity

[13] COM(2003) 727 final of 25.11.2003.

[14] Ibid.

that any measures taken in this field has to be based on one exclusive criteria which is the added value of taking the measure at EU level.

The Commission is planning to launch, later this year, a comprehensive consultation process on this subject which will help to answer these questions. As a first step, a green paper will be presented later this year which will review the choices made by the Commission in the draft Directive and will re-examine the difficulties raised in Council. A public hearing will be organised at the end of 2004 to bring together all relevant stakeholders: institutional, economic and non-governmental organisations.

The study has shown that wide-scale **regularisation measures** which have been taken by some Member States have allowed them, in one go, to deal with the presence of significant numbers of illegal migrants in their territory. Such programmes are not, however, seen to have a long-term effect in reducing the levels of illegal migrants, instead they may serve as an additional pull factor for illegal migrants, as the Belgian case study seems to show. Furthermore, such wide-scale measures also have implications for other Member States of the EU due to the abolition of internal border controls. However, it is also unacceptable for States to allow durable illegal residence by significant numbers of third country nationals.

The Commission could propose the development of a common approach to regularisation so that wide-scale regularisation measures can be avoided or limited to very exceptional situations. The study gives weight to the view that regularisations should not be considered as a way of managing migration flows as in reality they often appear as a negative consequence of migration policy in other areas. Nevertheless, there is a need to further analyse regularisation procedures with a view to identifying and comparing practices. Taking into account the potential consequences of regularisations on other Member States, should a Member State decide to carry out a wide-scale regularisation programme, the others should be informed well in advance. The Member States should also be consulted on the scale of the measure envisaged, the number of persons likely to be concerned, the criteria to be used and the possible impact on other Member States. From this mutual information and transparency, common criteria could be drawn up. This exchange could take place within the framework of the Committee on Immigration and Asylum.

The study has confirmed that paradoxically at a time when the perspective of shortages in certain sectors of the labour market in Member States reveals the need for a new immigration policy, the unemployment rate of third country nationals already residing in the Member States remains significantly high. **Strengthening the integration of third country nationals** legally residing in the Member States is an essential objective for EU immigration policy. It is also one of the demands third countries make during discussions on migration issues. The majority of these countries have undertaken to defend the interests of their own nationals, even if they live overseas. Legal immigration channels must be complemented by measures to promote integration. The first annual report on immigration and integration, to be presented to the European Council in June 2004, will describe recent developments in this field.

As regards **integration into the labour market**, the European Employment Strategy provides the political framework for the reforms to be carried out at the national level. In particular, the 2003 guidelines for employment invite the Member States to promote the integration of persons disadvantaged in the labour market and to fight against any discrimination of which they may be subject. These new guidelines fix in particular the objective of reducing the unemployment gap between nationals of third countries and EU nationals. In 2002 the employment rate for non-EU nationals in EU-15 was significantly

lower than that for EU nationals (52.7% as against 64.4%). The report on Employment in Europe 2003 confirms that such divergences remain important, although they vary greatly between Member States.

Promoting sustainable integration in the labour market and greater mobility in the EU labour market has been a constant concern within the Employment Strategy in order to sustain labour supply, maximise adaptability and respond to sectoral and regional shortages. Migrant workers could contribute to this objective so it is desirable to make further progress in **facilitating the mobility of third country nationals within the European Union**. The Directive on the status of long-term residents, which was adopted on the 25 November 2003, introduced the principle of mobility for those who had been resident in a Member State for more than five years. Mobility has also been facilitated through the adoption of the extension of regulation 1408/71 to third country nationals. A degree of mobility is also foreseen in the Commission's proposal for the admission of foreign students which should shortly be adopted[15] and for the admission of researchers[16]. This principle could be extended to other categories of third country nationals. Furthermore, the proposal for a Directive on services in the internal market should facilitate the posting of workers who are third country nationals for the provision of cross-border services.

The **recognition of professional qualifications of third country nationals** is another subject which could be tackled. One possibility would be to look for appropriate means to extend to all third country nationals the benefits of the directives on the professional recognition of qualifications (this concerns in particular the professional recognition of qualifications obtained by third-country nationals in other Member States or of third country qualifications already recognised by another Member State). In addition to the above mentioned recognition of qualification, teaching routes could be provided which would allow them to obtain equivalent levels of qualification without having to start their studies over again.

3.2.2. On illegal migration

The study has shown that some level of illegal migration is likely to take place whatever legal channels are put in place, fighting illegal migration, therefore, must remain an essential part of migration management.

The fight against illegal migration starts with preventive measures and the suppression of its main incentives. Undeclared work in several countries or regions is a significant pull factor for illegal migration. Tackling the unregulated labour market is therefore a common objective which touches not only the area of immigration but also that of employment. Those who work in the hidden economy are often subject to exploitation, and denied the rights of other workers. The problem of undeclared work has been addressed in the European Employment Strategy since 2001. In 2003 the Commission underlined the need for policy aiming at **transforming undeclared work into regular employment** and called for the setting of targets. This issue is one of the ten priorities in the 2003 Employment Guidelines[17]. On the basis of the 2003 National Action Plans (NAPs), an evaluation of national actions aiming at transforming undeclared work into regular employment was given in the draft Joint

---

15 COM(2002) 548 final of 7.10.2002.

16 COM(2004) 178 final of 16.3.2004.

17 Council Decision of 22 July 2003 on guidelines for the employment policies of the Member States, OJ L 197/13 of 5.8.2003.

Employment Report, which was presented by the European Commission in January 2004[18]. Several Member States mentioned in their NAPs special measures directed at foreign workers or illegal immigrants. Further monitoring of action by the Member States will be undertaken by the Commission in the context of the European Employment Strategy.

The common fight against illegal migration and the **development of a Community return policy** are priorities amongst the development of other policy instruments necessary to alleviate migratory pressure. Within the context of a managed immigration policy the only coherent approach to dealing with illegal residents is to ensure that they return to their country of origin. As one element of the Community return policy the Commission proposes to establish preparatory actions for a financial instrument for return management for the years 2005 and 2006. These actions will cover voluntary return, forced return and support for the return of irregular migrants in transit countries. They will aim, through proper coordination with the relevant existing instruments, at sustainable return and durable reintegration in the country of origin or former residence. The focus will be on the return of the designated target group in its various dimensions, pre-return assistance, travel arrangements, transit and reception organisation, and on proper coordination with relevant existing instruments for post-return and reintegration assistance. In addition, the Commission will present in the first semester of 2004 a proposal for an EU Directive on minimum standards for return procedures and mutual recognition of return decisions.

3.2.3. On co-operation with third countries

This study has confirmed that **stepping up cooperation with countries of origin or transit** is an effective means of reducing illegal migration flows. However, our relations with third countries cannot be based on unilateralism. Experience shows that real partnership is the key element if such co-operation is to be successful. The EU needs to have a clear understanding of the situation in the country and the problems it faces so as to promote an open dialogue which takes into account the interests and expectations of both sides. Many countries of origin and transit are now ready to take responsibility and to make greater efforts to prevent illegal immigration. However this needs to be done within an overall approach to migration and, in certain cases, require incentives and financial and technical support from the EU.

As a first step, it is important for the Union to put together all the information available on legal migration channels for third country nationals. This **pooling of information** should first concern the number of migrants admitted by nationality in order to present to each third country a clear view of the migration pattern of their nationals for the whole of the EU. This could be done in the framework of the Committee on Immigration and Asylum which could make an inventory of all bilateral agreements signed by individual Member States with a specific third country, the number of migrants concerned by these agreements and the number of migrants admitted outside of these agreements and the reasons for admission. It could be used in the long term to develop greater synergy between Member States concerning the numbers of labour migrants admitted to the Union. With this overall presentation, a clear answer to the third countries' requirements could be provide in the framework of the political dialogue established on migration issues or during negotiations on readmission agreements.

Moreover, the idea of recruiting workers and developing training programmes in countries of origin in skills which are needed by the EU could be explored. Such programmes could

[18] COM(2004) 24 final/2 of 27.1.2004.

incorporate social, cultural and language training needed for the stay of migrants in Europe. Certain Member States have already put into place this type of programme and these will be studied more closely. Pilot projects could be financed under the technical and financial assistance programme for third countries (ENEAS).

The study has shown that, as regards several third countries, **visa policy measures** have a preventive impact on illegal migration flows. It is especially important for categories of persons who are potential overstayers. However, there are categories of persons who do not represent any risk from the point of view of illegal migration and who have no intention to abuse short stay possibilities. For these categories, to be defined country by country, the possibility of considering some kind of facilitation in the delivering of visas could be explored, taking into account the efforts of the country concerned to cooperate with the EU in the fight against illegal migration. The Commission would therefore propose to explore the question of negotiating visa facilitation for certain categories of persons (such as, permanent representatives from third countries involved in structural dialogue; sportsmen etc.). A pilot exercise will be the adoption of a mandate for the negotiation of visa facilitation with Russia.

CONCLUSION

This study has been carried out in a very short period and, while several aspects deserve to be deepened, a number of clear messages can be drawn from it. There is a link between legal and illegal migration but the relationship is complex and certainly not a direct one since a variety of different factors has to be taken into consideration. No measure taken on its own can be seen as having a decisive impact. This does not, however, prevent particular actions from having specific impacts. Quotas for instance can be seen as having an impact but they are not acceptable to all Member states. The pooling of offers of legal immigration to third countries could, in this context, be an interesting possibility to develop. In this perspective, the Commission has identified a number of measures which could be further explored. In any case, the implementation of such measures must be based on the strengthening of information exchange, consultation and co-operation between the Member states of the European Union.