

**COMMISSION GREEN PAPER ON AN EU APPROACH TO MANAGING ECONOMIC
MIGRATION****UNICE RESPONSE****Executive Summary**

European employers welcome the debate launched by the green paper on economic migration. EU countries are faced with the unprecedented economic and social challenges of demographic ageing which will result in a drastic rise in the number of old people over the next decades and a shrinking population of young people. Moreover, Member States are confronted with shortages of labour at both skilled and unskilled levels as well as with migration pressures from job-seekers from third countries. While a combination of policies is needed to address these challenges, economic migration can be part of the response. Last, but not least third country nationals legally residing and working in the EU can contribute to achieving the goals of the Lisbon growth and employment strategy and to enhancing the EU economy's competitiveness in a globalised world.

In UNICE's view, it is in the interest of European societies as a whole that immigration is managed in a properly organised framework. A coherent EU framework within which Member States can manage their admission systems is necessary for several reasons¹. Firstly, there are no border controls in the Schengen area. Secondly, there are EU rules whereby third-country nationals who are long-term residents have the right to residence and work, under certain conditions, in another Member State. Thirdly, such framework would help to facilitate cross-border mobility of third-country nationals already legally residing and working in an EU Member State. Fourthly, the EU Member States have under GATS common commitments in relation to temporary admission of certain categories of workers who are third-country nationals. Finally, a European framework would help reinforce the fight against illegal immigration.

In UNICE's view, EU rules on national admission procedures for third-country nationals for the purpose of employment should:

1. Respect the principle of subsidiarity: the number of economic migrants to be admitted in order to seek work, the types of their qualifications and skills as well as their country of origin lie with the competence of Member States. UNICE has strong reservations regarding an EU-level coordination method relating to those Member States which use national quotas as suggested in the green paper and would strongly oppose any attempt to quantify needs at EU level. The EU level should stay away from any quantitative approach to migration flows and should under no circumstances impose national quotas. This does not mean that Member States could not be allowed to apply such a mechanism.

¹ According to BDA, BDI and Medef there is no substantial visible added value in a common EU framework on economic migration for the time being. However, if an EU framework on economic migration is to be adopted, such a framework is only acceptable if it is preceded by the establishment of an "integrated management system for external frontiers", in line with the objective set out in article III-265 of the Constitutional Treaty.

2. Be flexible enough to allow national administrations to apply a wide range of admission mechanisms in order to respond quickly to the needs of companies and especially SMEs, and to respect compliance with bilateral agreements which establish more favourable admission conditions for citizens of certain countries. Given the diversity of local and national labour markets, the EU level should not impose a fast track procedure which would be activated if a certain number of countries obtain Council authorisation, nor a European selection system or a job-seeker permit. This does not mean that Member States cannot decide to apply such mechanisms at national level.
3. Be a horizontal framework covering all categories of economic migrants with more favourable provisions for trainees, intra-corporate transferees, contract service suppliers, business visitors, seasonal workers.
4. Focus on subjects that cannot be regulated at national level, namely the cross-border mobility of third-country nationals already legally residing and working in another Member State within the EU. This would allow a better use of the labour supply already existing in the EU and would contribute to integration. This can be achieved by:
 - promoting a system whereby procedures for admission of third-country nationals already legally residing and working in another Member State be carried out in that Member State without the need that the worker to return to his/her country of origin;
 - promoting a system to facilitate cross-border mobility within the EU of intra-corporate transferees, contract service suppliers and business visitors .
5. Promote the establishment of unbureaucratic, rapid and transparent procedures at national level and simplify administrative procedures, notably by introducing a one-stop-shop procedure for granting entry, residence and work permits to third-country nationals.
6. Facilitate admission of self-employed third-country nationals.

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MIGRATION****UNICE RESPONSE****I. Introduction**

1. On 11 January 2005, the European Commission published a green paper on an EU approach to economic migration. The aim of this document is to launch a process of in-depth discussion, involving the EU institutions, Member States and civil society, on the most appropriate form of Community rules for admitting economic migrants and on the added value of adopting such a common framework.
2. In 2001 the Commission adopted a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. Whilst the other European institutions gave positive opinions, no progress towards its adoption was made in the Council.
3. The green paper seeks to contribute to progress in this area. On the basis of the results of the debate launched by the green paper as well as best practices in Member States and their relevance for implementation of the Lisbon strategy, the European Commission plans to present before the end of 2005 a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market.

II. General comments

4. European employers regret the lack of progress in Council discussions on the Commission proposal for a directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment. They welcome the debate launched by the green paper and hope that it will smooth the path for swift progress in discussions at EU level.
5. EU countries are faced with the unprecedented economic and social challenges of demographic ageing which will result in a drastic rise in the number of old people over the next decades and a shrinking population of young people. Moreover, Member States are confronted with shortages of labour at both skilled and unskilled levels. A combination of policies is needed to address these challenges. Increased availability of labour from third countries can be part of the policy-mix since:
 - it can contribute to growth of working age population and thereby help alleviate the adverse effects of the ageing population;
 - it can address immediate shortages on labour markets and consequently ease the pressure on economic growth.
6. Last, but not least third country nationals legally residing and working in the EU Member States can contribute to achieving the goals of the Lisbon growth and employment strategy and to enhancing the EU economy's competitiveness in a globalised world. For example, in the last few years economic growth in Ireland

could not have been sustained at the same level without the contribution of foreign workers.

7. Significant progress has been achieved in implementation of the Tampere agenda with respect to fighting illegal immigration, border controls and asylum, but progress is lagging far behind regarding the setting-up a Community policy on legal migration. In UNICE's view, it is in the interest of European societies as a whole and of migrants themselves that immigration is managed in a properly organised framework. A coherent EU framework within which Member States can manage their admission systems is necessary for the following reasons:
 - border controls in the Schengen area have been removed;
 - according to a recently adopted directive on third-country nationals who are long-term residents have the right, under certain conditions, to reside and work in another Member State. In this respect, entry and admission systems by one Member State have an impact on number of migrants and admission to another Member State once third-country nationals become long-term residents;
 - there is a need to facilitate mobility across the EU of third-country nationals already legally residing and working in a EU Member State in order to make better use of the labour supply already existing in the EU;
 - EU Member States have under GATS common commitments in relation to temporary admission of certain categories of workers from third-country nationals.

III. Specific comments

On the extent of a European policy and the level of Community intervention

8. The Commission believes that a coordination method whereby those Member States making use of national quotas inform the Commission about the implementation and results of these policies could be beneficial in assessment of the overall needs of the EU labour market and contribute to the shaping of a common EU legal migration policy.
9. European employers insist that the EU framework should respect the subsidiarity principle. In this context, UNICE has strong reservations regarding such an EU-level coordination method. Labour market needs should be assessed in Member States at the appropriate level as close to the bottom of the scale as possible. Any attempt to quantify needs at EU level is neither feasible nor desirable given the differences between labour markets, companies' requirements and skills gaps across Europe.
10. Moreover, UNICE insists that the number of economic migrants to be admitted in order to seek work is a matter for the Member States. The EU level should stay away from any quantitative approach to migration flows and should under no circumstances impose national quotas. Such a mechanism would be too inflexible to react to changing labour market circumstances. This does not mean that Member States could not be allowed to apply such a mechanism.
11. Given the different situations on national and regional labour markets, it is essential that EU rules on admission procedures leave enough room for Member States to develop tailor-made solutions which take into account their specific situation and which enable them on the one hand to compete on a global scale to attract additional workers, especially highly skilled personnel, and on the other hand to

manage migration pressures. In addition, the common rules should not prevent Member States from applying more favourable rules.

12. EU rules on national admission procedures for third-country nationals for employment purposes should in particular:
- focus on subjects that cannot be regulated at national level, namely facilitating cross-border mobility within the EU of third-country national already legally residing and working in another Member State;
 - be broad enough to take into account differences and developments in labour markets, companies' requirements and skills gaps across Europe;
 - allow national administrations to apply a wide range of admission mechanisms in order to respond quickly to needs of companies and especially SMEs, and to face the migration pressures;
 - promote unbureaucratic, rapid and transparent procedures at national level and simplify administrative procedures, notably by introducing a one-stop-shop procedure for granting entry, residence and work permits to third-country nationals.
13. The Commission underlines that any EU-adopted measure on economic migration should minimise the administrative burden for Member States and third-country nationals. UNICE insists that the EU rules should also minimise the administrative burden on companies wishing to recruit workers from outside the European Union.

On the scope a Community framework

14. Regarding the scope of an EU framework, the Commission suggests:
- either a horizontal approach with specific provisions to cover the particular needs of certain groups, such as seasonal workers, intra-corporate transferees (ICTs), etc., or
 - a series of sectoral legislative proposals focusing on seasonal workers, intra-corporate transferees, skilled migrants (not necessarily only highly qualified), contractual service suppliers and/or other categories, putting aside for the time being any overall common framework for the admission of third-country workers.
15. In UNICE's view, given changing economic needs, it is not possible to determine in advance at EU level an exhaustive list of categories of workers by the level of skills or by professions and therefore a horizontal EU framework covering all categories of economic migrants is necessary. Such a framework should include specific provisions for trainees, intra-corporate transferees, contract service suppliers, business visitors, seasonal workers given the particular characteristics of their situation as follows²:
- paid trainees are persons whose presence is limited in duration and is directly connected with increasing their skills and qualifications, and who undertake a paid traineeship;
 - seasonal workers are employed in a sector of activity dependent on the passing of seasons under a fixed-term contract;
 - intra-corporate transferees are third-country nationals working within a legal entity and are being temporarily transferred to an establishment of that legal entity on the territory of a Member State,
 - contractual service suppliers are third-country nationals coming to client sites in a Member State to fulfil a service contract;

² Please also refer to the ESF response to the green paper which focuses on admission of these categories of workers (www.esf.be)

- business visitors are business people entering the territory to explore the EU market and examine the possibility of establishing a partnership or commercial presence.

On other approaches

16. The green paper also suggests that other approaches could be explored, for example the establishment of a common fast-track procedure to admit migrants in cases of specific labour and skills gaps, activated if a certain number of Member States obtain Council authorisation to do so via a very swift procedure.
17. Given the differences between labour market needs, companies' requirements and skills gaps across Europe, a European fast-track procedure is not feasible. Moreover, since it would only be activated if a certain number of Member States obtain Council authorisation, it would not make it possible to respond quickly enough to changing economic needs. In UNICE's view, Member States should be free to apply such fast-track procedures at any time should they so wish.

On admission mechanisms

18. In UNICE's view, admission should be based on labour market needs whether there is a specific job vacancy or whether there are sector-specific needs such as for IT specialists, seasonal workers. Member States should have at their disposal a variety of flexible tools for establishing the need for economic migration and for regulating it, enabling them to respond quickly to the needs of companies from various sectors and regions irrespective of their size. Such admission tools could include mechanisms such as individual economic needs test, green cards, an income and/or skill threshold or similar conditions to be complied with by the employers to be determined in Member States, above which the economic need would be deemed to be proved, etc.
19. Admission should be facilitated for intra-corporate transferees, contract service suppliers, business visitors and trainees since they do not enter the regular labour market. Their admission should be based on speedy and simple admission procedures. Moreover, mobility of these categories throughout the European Union should be facilitated. Furthermore, access to work by the spouses of intra-corporate transferees should be facilitated, as it is difficult convincing staff to take assignments of a longer duration if spouses are not allowed to seek employment in the receiving country.
20. The green paper suggests that another possibility would be to apply an EU selection system (e.g. years of experience, education, language skills, existence of a work offer/labour shortages, family members in that Member State, etc.) to respond to the needs for specific skills, particularly on a long-term perspective. Each Member State could choose whether to apply it and, if so, how to shape it to the needs of its labour market. Alternatively, there could be several systems, e.g. one for low-skilled workers and one for medium/highly skilled workers and Member States could decide which one to apply. In the Commission's view, such a system could co-exist with both the "individual assessment" philosophy and "green cards". Finally, Member States wishing to introduce "jobseeker permits" for certain skills, sectors, etc., could do this.
21. In UNICE's view, given the differences between local and national labour markets and the need to respond quickly to changing economic needs, a European selection system would not be feasible. For similar reasons, the EU level should not

impose a jobseeker permit. This does not mean that Member States should not be able to choose to apply such mechanisms.

22. The green paper asks whether a priority right should be given to third-country nationals who have already worked for some years in the EU before returning temporarily to their own country. In the Commission's view this would encourage "brain circulation" by allowing third-country workers to try to re-integrate in their own country knowing that they will receive more favourable treatment in terms of readmission if they later wish to come back to the EU to work.
23. UNICE believes that it would be difficult to justify preference for people no longer residing in a Member State. Moreover, it is difficult to see what in the Commission's view would constitute a "temporary" return since at the same time the aim is to encourage re-integration in the country of origin.

On admission of third-country nationals already legally residing and working in an EU Member State

24. Mobility of third-country nationals legally working in an EU Member State across the EU should be facilitated. The EURES Job Mobility Portal could be instrumental in this respect notably by providing information regarding admission of third-country nationals to the employment market of various Member States.
25. The EU rules on national admission procedures should promote a system whereby a Member State allows that procedures for admission of third-country nationals already legally residing and working in another Member State are carried out in that Member State without the need that the worker to return to his/her country of origin. This would remove obstacles to employment of many third-country nationals already legally residing and working in a Member State and would contribute to their integration.

On individual assessment

26. UNICE agrees that when admission is based on an individual assessment, the specific job vacancy has to be made public for a period of time (this should not be longer than two weeks).
27. Nevertheless, European employers insist that the places where the announcement is published depend on the group of applicants targeted and the territorial scope of publication. In this way, employers can avoid receiving too many and unsuitable applications. There should therefore be no obligation to publish the advertisement via the employment services of several Member States (for example on the EURES network).
28. Moreover, the burden of proof for the need to recruit a third-country national should not lie with the employer. Companies should not be obliged to explain their recruitment choices.
29. Furthermore, the process should not be repeated upon expiry of a work permit since this would increase the administrative burden on companies and would increase the workload of national administrations. The renewal of a work permit should be automatic if the work contract is renewed or permanent.
30. Finally, should a third-country national employee holding a valid work authorisation leave the post, the employer should be allowed to fill the position with another third-

country national from outside the EU without a proof of the need. The period of validity of the work permit for the replacement third-country national will be at a minimum the remainder of the original person's permit.

On admission procedures for self-employment

31. To fulfil the Lisbon strategy on growth and employment, EU needs to remain an attractive place for entrepreneurs including from third countries. Self-employment can have a beneficial effect on the economy and contribute to job creation and fighting unemployment. The admission of self-employed third-country nationals should therefore be facilitated. Moreover, given the freedom to provide cross-border services in the internal market, broad minimum EU rules on national admission procedures for self-employed third-country nationals are necessary.
32. The EU broad framework could foresee as a general principle that a third-country national is requested to present a financially viable business plan and demonstrate his/her financial means. It could also promote the establishment of more flexible procedures for self-employed persons who wish to enter the EU for less than one year to fulfil a specific contract with an EU client.
33. Nevertheless the EU rules should not go beyond these criteria. They should be broad enough to leave room for Member States to devise further admission criteria which take into account the needs on their labour markets at national, regional and local levels.
34. The green paper suggests that a detailed business plan should be submitted by the third-country national concerned. UNICE insists that the degree of detail and the amount of documents to be submitted should reduce the administrative burden on the applicant and national administration. Moreover, the definition of concrete requirements regarding the business plan should be left at national level.

On applications for work and residence permit(s)

35. From the outset, employers would oppose any proposal which would result in the addition of or multiplication of administrative procedures making legal admission of third-country nationals for the purpose of employment more difficult than today.
36. A "one-stop shop" and a single national procedure for admission, residence and work should be established. This would simplify application procedures and would reduce their duration. Although desirable, the single procedure does not necessarily have to result in one single permit. There could be two different permits.
37. UNICE insists that the duration of the procedure for granting admission should not exceed 6 weeks. The 2001 Commission proposal foresaw that the procedure would last up to 180 days. Such a period would be unacceptable since an employer cannot keep an unfilled vacancy for so long.

On possibility of changing employer/sector

38. Limitations to the mobility of the third-country national with respect to a specific sector or employer for a certain period has to be decided upon at national level depending on the admission mechanism (to cover a specific job vacancy or specific sector needs). Nevertheless, restricting the mobility to a specific region could be counterproductive in terms of labour market flexibility.

39. The answer to the question of who should be the holder of the permit - the employer, the employee or both - has to be given in Member States depending on the admission mechanism and the limitations on the mobility of third-country nationals.

On rights

40. Mobility across the EU of third-country nationals already legally residing in one Member State should be facilitated. Nevertheless, provisions on issues such as working conditions and social security rights do not belong in European rules on admission procedures. Moreover they are already covered by EU and national legislation.

On accompanying measures

41. European employers would like to stress the importance of developing support for integration of third-country nationals resident in EU Member States. In this respect, facilitating mobility of third-country nationals from the labour market of one Member State to another would contribute to their integration.
42. The free movement of persons is an integral part of the “acquis communautaire” and should be implemented and enforced by acceding countries and Member States alike as soon as possible after accession. Preparation for enlargement can be smoothed by regarding the future EU countries as a key source of labour supply.
43. Nevertheless, provisions on integration measures beyond those mentioned in paragraphs 41 and 42 above do not belong to an EU initiative on admission procedures. Moreover, there are EU initiatives aimed at setting up a legislative framework for the integration of migrants such as the regulation extending Community coordination of social security schemes to third-country nationals and the directive on family reunification.
