

ACTION PLAN ON MIGRATION

Adopted at the ETUC Executive Committee Meeting of 5-6 March 2013

INTRODUCTION

European migration policy is being deployed in a new institutional environment in which the European Parliament can intervene as co-legislator. It has opened doors to the greater involvement of civil society in a consultative role, from which the ETUC has benefitted as well.

The next five-year programme 2014-2018 of DG Home Affairs, replacing the Stockholm Programme, is expected to usher in a new narrative on the migration phenomenon in Europe: ETUC insists that this programme must lead to a coherent and comprehensive policy in which respect for individual fundamental rights, equal treatment and integration will be high on the agenda, producing actions and not just announcements.

The Europe 2020 strategy stresses the contribution of migrants to the EU economy for smart, sustainable and inclusive growth. The flagship initiative on the Fight Against Poverty acknowledges that third country nationals are often underemployed and closer to the edge of poverty.

The EU has directed all its efforts towards better controlling migration flows setting great store on selectivity (high skilled people) and circularity (for predetermined periods of time). This ideology overlooks the fact that about 20 million people live and work in Europe with the status of non-EU nationals. The number of foreign-born people is significantly higher because many have been nationalized or obtained citizenship. The European migration policy cannot achieve its integration objectives if it does not pay attention to the living and working conditions of these tens of millions of people.

Migration is considered as a tool to counter demographic decline and labour market shortages. However, EU policies should be based on solid analysis but currently aggregate statistics remain fragmented and heterogeneous. Trade unions can provide the facts to create a more reliable picture of the migration phenomenon.

The current economic downturn has also shown how precarious the situation of third-country nationals is in the labour market. The unemployment rate among third-country nationals is permanently and everywhere above the average for national workers. Furthermore, there is evidence of social dumping and discrimination regarding equal remuneration, over-qualification, and access to labour market facilities, just to mention the most obvious examples. Specific attention to the gender dimension of migration policies is also required.

The ETUC recognizes that attracting highly skilled/educated migrants is an important element in the global strategy for a more effective migration policy. But the ETUC exhorts policy makers to bear in mind that low-skilled migrants remain the largest majority of the third-country population in Europe and that they suffer from direct or indirect discrimination. The low-skilled migrants and their family members are at higher risk of social exclusion, especially in terms of access to the labour market, education and training and social services.

Making Europe attractive for the most highly qualified migrants remains a priority on the EU agenda. But, while enhancing its position in the global rush for “best brains”, the EU

should remain coherent with its fundamental values. On the one hand, EU and MS legislation should ensure attractiveness and proper entry into the labour market for the migrants, according to their competences. On the other hand, the EU, as a global actor, should prevent the brain-drain from contributing to the impoverishment of the labour market and becoming a threat to the social cohesion of the sending countries for example by guaranteeing ethical recruitment practices.

Irregular migration appears on the EU agenda in terms of repressive policies only. In recent times we have all witnessed the pushing back of migrants in violation of international standards betraying those fundamental rights on which the Union itself is founded. Other forms of criminalization of migrants result in unjustified restrictions on individual freedoms, such as the forced detention of migrants without documents.

ETUC POLICY AND ACTIONS

EU2020 strategy and the contribution of migrants to the EU economy

The ETUC rejects the idea that future migration policies could be driven solely by utilitarian aims. The ETUC supports the approach aimed at demonstrating the positive and concrete contribution that migrants already make to the European economy. At the same time, the ETUC underlines the need to consider migrants as workers of course but also and primarily as human beings, to whom equal human and social rights must be ensured to the same extent as those of its European citizens, as well as the right to free and fair mobility and to equal treatment in the workplace.

We expect that demography and labour market arguments will continue to influence EU policies in the migration field. It represents an area of engagement for the ETUC, as well. The ETUC will show how migrants already contribute to the sustainability of economies and welfare systems. The ETUC action will also be aimed at showing how much value migrants bring in terms of dynamism and a cultural enrichment of the local communities in which they settle.

A common EU policy should be designed that offers a wide range of instruments to suit different policy options, including harmonized legal frameworks for both stable and temporary migration. However the ETUC denounces an excessive stress on the concept of circular migration. The current European acquis, driven by a predetermined temporariness and selectivity of newcomers, hinders the implementation of the equal treatment of third-country nationals in the labour market and in the workplace. The shorter the permit to stay and work is, the lower the chances for migrants to see their rights recognized and respected or for social dumping to be prevented. The ETUC will advocate for the removal of factors of vulnerability of migrants in the labour market especially when they result from precarious short-term work/residence permits.

The ETUC would also raise the attention on the abuses in the employment of third-country nationals for short periods. Seasonal employment, especially in agriculture and construction sectors, records higher levels of exploitation of migrants. More effective and dissuasive sanctions should also include the exclusion from (or the pay-back of) subsidies received by the employer under European or national aid programmes (e.g. C.A.P.).

The integration in the labour market covers both the private and public sectors. In many member states, public employment of third-country nationals is not permitted. The ETUC will advocate in favour of removing obstacles for third country nationals to be admitted to the public services employment, at least as long as the exercise of public authority is not concerned.)

The recognition of diplomas and professional qualifications remains a concrete tool for faster integration into the labour market. It goes along with access to employment services, as well as to lifelong learning and requalification paths, for those who remain unemployed or who want to change employer during the period of validity of their work permit. For young migrants, equal treatment should imply access to apprenticeships and other ways of combining education and work. For migrants and their children and family members the right to access to public education and training should be ensured, regardless of their regular or undocumented status. Furthermore, full equal access to education and training should be ensured for third country nationals and EU citizens who move across EU countries.

The EU is currently negotiating or about to start negotiations on, a number of bilateral and multilateral trade agreements, which have as their subject or which include provisions on the trade involving services. Whereas the trade involving services involving cross-border labour mobility often make valuable contributions to the economy of Member States and can be of great importance to the competitiveness of European companies, it also includes the risk of migrant workers receiving wages and working conditions below host country standards. Trade agreements entered into by the EU must allow for the effective enforcement of the equal treatment principle, including making cross-border mobility conditional on equal treatment in terms of wages and working conditions.

The new five-year programme 2014-2018 of DG Home Affairs

The definition of the EU Programme 2014-2018 in the area of freedom, security and justice will set the key policy framework in the field of migration. The ETUC will be involved in the preparation, implementation and monitoring of such a programme.

The ETUC will prioritise the following:

A rights-based approach and equal treatment: It is necessary for the rights-based approach to be mainstreamed in all dimensions of the migration policy. The Charter of Fundamental Rights of the European Union and all relevant international standards of the ILO, UN and Council of Europe point out a set of individual rights that must be embodied in the EU legislation. The principle of equal treatment is fundamental in order to tackle both the non-discrimination and integration paths, as well as to avoid social dumping and to support the regularization processes. It must be mainstreamed throughout the EU acquis relating to labour migration and it must be fully ensured at the different levels (European, national, sectoral, company), as well as in all legal frameworks, in any kind of collective bargaining agreements and in the access to public services and social protection benefits.

Legal channels: The single-permit procedure should be enhanced as far as it increases transparency and accessibility of procedures for admission. All the existing and future EU legal tools in this field should be better coordinated and should implement the equal treatment principle in a coherent and homogeneous way. This objective has to be better achieved through a proposal for a framework directive on conditions of work and equal treatment for third country nationals.

Integration of migrants: This policy must be reinforced and become a complement to the EU legislation. It means that measures and facilities for integration must be mainstreamed into all aspects of the migration policy. On the other hand, it must be ensured that the same measures and facilities (i.e. cultural and linguistic tests, compulsory attendance at training courses, etc.) for integration are not misused with the intention of introducing obstacles to the implementation of the rights of third-country nationals or their families (e.g. the right of family reunification).

International dimension: The EU must be the bulwark against the drift towards populism and xenophobia and be faithful to its fundamental values when acting in the ILO, the UN and other relevant international bodies. The ETUC, in accordance and cooperation with the ITUC, will also make the EU voice speak words of social dialogue and social progress within international governmental bodies with specific responsibilities in the migration fields.

Undocumented migrants: The EU common policy should also ensure a minimum level of protection for undocumented migrants and their families, for instance, access to healthcare services, education and other fundamental public services as called for by Protocol 26 on services of general interest and the Charter of Fundamental Rights. Family members deserve specific measures as empirical evidence shows a greater rate of social exclusion among these groups.

A new direction is needed in the Common migration policy aimed at exploring possible European framework-setting criteria for the regularisation of or granting of amnesties to undocumented migrants. While fully respecting Member State prerogatives, this framework should be aimed at building mutual trust among Member States and at clarifying the conditions and criteria under which individual undocumented migrants can benefit from regularisation/amnesty schemes.

Partnership principle: Permanent consultation with trade unions must be maintained and enhanced to achieve more effective European legislation and integration policy.

The ETUC agenda for integration and inclusion

The ETUC will advocate the two-way process¹ of integration and a greater participation of migrants in the civic, cultural, economic and political life of hosting communities. However, integration into the labour market should be a key priority for the trade union movement.

Moreover, the integration of migrants must be pursued beyond the labour market. The right to vote in local elections will be promoted both as a fundamental right and as the recognition of a successful path toward a complete integration in the hosting community. The Convention of the Council Europe n.144, Chapter C, goes in this direction and stands as a valuable legal reference for all Member States. The integration process should encourage the achievement of long-term residence status and citizenship must be seen as the formal final act in the integration process.

The achievement of the Long-Term Residence Status represents the highest level of protection under EU legislation, but there are evident failings in the implementation of the EU Directive 2003/109. Its enforcement could be improved by removing some persisting discriminatory factors such as intra-EU mobility, access to the labour market and employment in the public sector as long as the exercise of public authority is not concerned. If necessary, the Directive may be revised to speed up the harmonization of national legislations in this field.

The ETUC will advocate the prompt restoration of a suitable level of public expenditure to provide services to migrants, such as integration facilities, assistance to migrants and permit/visa delivery. Well-funded public services represent a necessary platform for integration that should be complemented by services provided by mainstream organisations in civil society.

¹ *The terms 'two-way process of integration' and 'integration through participation' identify two pillars of the EU integration policy. The two-way process of integration is a dynamic process of mutual accommodation by all immigrants and residents of Member States'*

Trade union membership is a path towards integration through participation. Trade union activism, from simple membership to active participation in the life of the organisations, represents a concrete step towards the deeper inclusion of migrants in the hosting communities.

It is time to address the issue of regularisation and amnesty for undocumented migrants in a more open and frank debate. Granted that a person's migration status should not influence his or her labour law status, the ETUC will advocate measures aimed at helping millions of third-country nationals to make the transition to a full regular status. Member States when seeking to ensure the transition to regularity of undocumented migrants must be selective and favour those who have shown great potential for integration, for living and working in a regularised situation.

The migration policy should also be integrated into a more far-sighted and compelling common policy for asylum seekers, refugees and fugitives. It is a long-standing issue and it is time for Member States to show greater respect for the protection and dignity of human lives, especially minors. Closer cooperation with the origin and transit countries must be at the core of the fight against the trafficking and smuggling of human beings.

ETUC actions

The ETUC will increase its dialogue with institutional actors and civil society on the preparation, implementation and monitoring of the next five-year programme of DG Home Affairs. Such a dialogue will be aimed at advocating the priorities and positions agreed in this Action Plan and in the background Orientation Document. The Executive Committee will be informed about the possible contents of the five-year programme, and the following ETUC actions.

For that purpose, an analysis of the EU acquis on labour migration must be carried out with the aim of mainstreaming social rights and equal treatment in EU legislation. This exercise shall re-launch the proposal for a framework directive for setting minimum rights and equal treatment of third-country nationals working in a Member State.

This mainstreaming exercise will be developed in progressive steps starting from directives subject to a legislative process (e.g. Seasonal Migrants, Intra Corporate Transferees, Unremunerated Trainees and Volunteers, Researchers, School Pupils and Students). Attention will then shift to Directives whose transposition laws and enforcement rules are under assessment: the Family Reunification Directive and Long-Term Residence Directive must be top priorities. The social aspects of some other Directives must be mainstreamed once a significant period has passed after their entry into force such as the Return Directive and the Employers' Sanction Directive.

The ETUC will advocate the enforcement of all international acts on migration, including the ILO Convention n.97 (Migration for Employment, 1949 revised), the ILO Convention n.143 (Migrant Workers, Supplementary Provisions, 1975), the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention of the Council of Europe and the Council of Europe's Convention n.144 on the Participation of Foreigners in Public Life at Local Level.

The ETUC will take the initiative, along with the European Commission, to explore possible action to encourage Member States towards a coordinated and quick

ratification of the ILO Convention on Domestic Work. The European Commission will ask the Council to adopt the nulla osta to the ratification, but this is not enough. Cooperation between the ETUC, DG Employment and DG Home Affairs may lead to further action including a soft law act to enable the ILO Convention to be transposed more quickly, embodying an EU extra value.

The ETUC will follow the broad debate that is currently engaging European actors on the contribution of migrants to the EU economy. A step forward will be the publication of the Indicators of Migrants' Integration developed by DG Home Affairs. They will fill in some of the gaps in the statistical collection of data and reliable analysis.

The European Integration Forum will remain a relevant consultative platform for making our positions heard. The ETUC will work to ensure a larger involvement of its members and trade union-related actors in the Forum.

Migration is already recognised as a field of action for social dialogue. European social partners at cross-sector and sector level can jointly address mobility and economic issues linked to migration, as well as promote the integration of migrant workers in the labour market and at the workplace. In this sense, the **EPSU- HOSPEEM code of conduct and follow-up on Ethical Cross-Border Recruitment and Retention in the Hospital Sector stands as a good practice**. Within the framework of the Work Programme 2012-2014 the ETUC and its affiliates will promote further actions in support of the integration of migrants and their contribution to the sustainability of the European Economic and Social model.

The ETUC will collect and spread best practices of collective bargaining as an instrument to improve diversity management in the workplace and adjust current rules bearing in mind the implications of a larger presence of third-country nationals in the workplace and in the labour market.

The ETUC agenda must also include an autonomous programme for integration, including concrete measures and measurable results. Such a programme should be based on the increased capacity of trade unions to increase the membership of migrants in trade unions, on the enhanced capacity of migrants to take part in democratic life, including through their presence in elected positions. It will constitute a benchmark for the effectiveness of trade union action in approaching and offering membership to migrant populations.

On this basis, the ETUC will establish a European network of trade union contact points for integration providing assistance to migrants. The network will be based on the existing contact points and facilities for the integration of migrants by ETUC members and will encourage other ETUC members to benefit from best practices in this field. The European dimension of the network will improve the accessibility and visibility of the services and facilities that trade unions make available to the migrant population in Europe. The first convention of trade union contact points for migrants in Europe will be organised in 2014. The ETUC secretariat will explore opportunities provided by the EU budgets to raise funds to implement this network.

ETUC ORIENTATION DOCUMENT ON MIGRATION²

The institutional context

The EU2020 strategy stresses the contribution of migrants to the EU economy: a smart and sustainable growth will need third-country nationals to fill shortages in the labour market, mainly to offset labour force decline. The ETUC supports this approach aimed at demonstrating the positive and concrete contribution that migrants can provide to the European economy, but at the same time the ETUC underlines the need to consider migrants first of all as human beings, to whom equal human and social rights must be ensured to the same extent as the European citizen, as well as the right to free and fair mobility and to equal treatment in the workplace.

Furthermore, the EU2020 strategy recognizes the vulnerable position of migrants in the labour market. When calling for an effective integration of migrants in order to enable them to take full advantage of their potential, the flagship initiative Fight Against Poverty, acknowledges that third-country nationals are often underemployed and close to the edge of poverty.

The EU policies for a greater participation of migrants in economic growth must be implemented in a renewed institutional environment. EU competences in the migration field have recently evolved and, after the Lisbon Treaty, the European Parliament acts as co-legislator in migration-related issues. It has opened doors to a larger involvement of civil society in a consultative role, from which the ETUC has benefitted as well. The new institutional setting has brought new impetus to the EU Commission's initiative.

The Stockholm Programme (A roadmap for European Union (EU) work in the area of justice, freedom and security for the period 2010-14) has been an attempt to move towards a global approach to migration. The ETUC has recognized herein an attempt to change the "narrative" of the European Pact on Asylum and Migration that in 2008, under the French Presidency, had forced the EU migration policy in the so-called 'circular' and 'selective' approach to migration and overemphasised the mainly repressive approach to undeclared migration.

The directives already adopted (such as the Blue Card Directive and the Single Permit Directive) and the proposed directives (such as the Seasonal Migrants Directive and the Intra-Corporate Transfers Directive), which impose criteria of temporariness in the migration flows, were an example of that.

The economic downturn has not helped. The right of migrants and their families to a dignified life is actually undermined by public sector cutbacks that have constrained access to services and assistance. The austerity measures have the effect of undermining human rights and exposing more migrants to deliberate discrimination. Populist political forces have manipulated information concerning the impact of third country nationals on the EU economy for their own purposes. It has fuelled a false perception of the role that migration has played, and is still playing, in the current economic crisis. This has pushed the European institutions to involve unions and civil

² In this document the word migrants refers to third country-nationals who have settled or who move in and out of EU territory. Migration refers to the movement of people crossing EU borders while the free movement of workers concerns intra-EU labour mobility. People exercising the free movement of workers, whether they are EU nationals or not, come under the concept of mobile workers.

society in a larger debate on the contribution that migrants make to the European economy.

In 2014, the Stockholm Programme will end, and the debate on priorities and actions for the next five-year programme will open.

DG Home Affairs' EU agenda on migration, for the period 2015-2019, will probably focus on putting forward a migration policy aimed at opening channels to encourage legal migration, to address labour market shortages especially in relation to demographic evolutions. The new agenda is also expected to design a strategy for a more structured dialogue with the origin countries, prioritize the integration and inclusion of migrants, recognize the need for a wider and harmonized legislation for labour migration and strengthen a common asylum policy.

But if the objectives are to meet a wide consensus, it must be recognized that a greater coherence must be restored between what is announced and what is implemented. The economic implications, demographic challenges and rights' building must be part of an unique long-term strategy for migration. That is what this orientation document is intended to do. It is easy to predict that some Member States will hesitate to engage themselves in a genuine common migration policy. On the contrary trade unions consider that Europe still needs a common policy on migration and this document explores the challenges, orientations and political options that will help the common migration policy to be an engine of social progress.

Demographic change, labour market and migration

Since unemployment rates are now at their highest in the single market's history, third-country nationals are now recording unemployment rates rather higher than domestic EU workers. This is creating a permanent threat to social cohesion when their lower level of protection in the labour market is taken into consideration. Other societal challenges must be dealt with, keeping in mind the social disruption that the economic crisis may cause in the labour market and for those less protected in the labour market. Economic analysis and demographic trends cannot lead to an utilitarian approach to migration. They must however be a component of what is mutually understood to be the challenges that the EU needs to address in the near future and must help when planning policies. Such policies must put individual rights and the protection of migrants at the centre.

Coherence must be restored between the indications emerged in demographic/labour market predictions and migration policies.

Concerning demography, the aggregate projection shows a stable but ageing EU population. It will exacerbate the effects on the total dependency ratio, which in many parts of Europe will soon reach one 'dependent person' for every two active workers³.

The evolution of the EU demography has a strong regional connotation. Demographic studies show that the European regions with a sustained decline rate⁴ will probably need more stable and integrated migration, while overpopulated regions will be orientated more towards policies for attracting skills that are lacking or towards circular forms of migration.

Another recurrent argument stemming from demography is that the population group aged 24-44 years will shrink by -15%, a general trend which is assumed to be irreversible for the next three decades. It is the population group estimated to have a

³ Projections from EUROPOP and OECD.

⁴ 98 regions are supposed to decline by 6% or more, while 183 are estimate to grow in terms of population. A scenario with zero net migration will mean a throughout decline of population in almost all Regions of Europe (EUROPOP).

higher education level but doomed to provide insufficient supply to the more dynamic labour market area. The Europe 2020 assumption that “16 million more jobs will require high qualifications, while the demand for low skills will drop by 12 million jobs” is not coherent with other international statistic sources (e.g. OECD and IOM Linet analysis). These sources, while recognizing a rising labour demand for highly skilled workers, acknowledge that, in the last few decades, labour demands for very low skilled jobs have quickly increased producing a sharp polarization of the labour market.

These assumptions have provided arguments for a circular and selective migration policy, which is summarized by the slogan that “Europe must win the contest for best-brains globally”. The ETUC recognizes that attracting high skilled-educated migrants is a point in the global migration policy. The fact that the international race for the best brains leaves room for unethical recruitment practices cannot be ignored. The search for qualified workers in third-countries should not deprive the labour market in those countries of the skills and competences they have invested in. Unethical recruitment causes inequalities and unnecessary burdens on the public services (e.g. health care) that are vital to the welfare systems in both origin and destination countries. Ethical recruitment should take into account the accessibility of fundamental public services and enhance transparency and monitoring of recruitment practices. It should also encourage migration programmes that are agreed and monitored by the social partners in order to ensure the mutual benefits stemming from an exchange of practices, knowledge and experience⁵.

The ETUC also stresses that the fight for higher skills can be won starting with the migrant population already resident in the EU. A valuable combination of hard and soft skills, that actually matches the needs of European businesses, can only be captured through work experience and participation in the local labour market. The race for skills can be achieved more effectively through better integrating migrants into the labour market. But access to the investment in better human resources must be for all. Migrants cannot become a reserve of cheap labour for European enterprises⁶.

Skills’ matching represents a key shortcoming in the labour market. In Europe 1.5 job vacancies in 100 remain unfilled even in a time of peaking unemployment. It also underscores the relevance of labour mobility as an instrument for a better performing labour market. If the aim is to create a real European labour market, restraining the intra-EU mobility of third-country nationals can represent a limiting factor and runs the risk of preventing 24 million migrants (when deprived of long-term residence status) from exercising free movement.

However a good migration policy needs an enhanced capacity to monitor both labour market shortages and migration flows. Statistics do not offer reliable quantitative and qualitative information on migration flows nor a breakdown by characteristic of flows nor of living condition of resident migrants. A better knowledge of the phenomenon would help provide greater coherence between migration flows and labour market developments. Furthermore, statistics may be misleading when depicting the reality of the migrant population. Trade unions enjoy a privileged observation point: anecdotal evidence provided by trade unions must become a necessary complement of the official statistics.

⁵ *The EPSU- HOSPEEM code of conduct and follow up on Ethical Cross-Border Recruitment and Retention in the Hospital Sector stands as a good practice. It is available on www.epsu.org/a/3715*

⁶ *IOM-LINET elaboration.*

Migrants suffer from discrimination and overexposure to abuses and exploitation

An indication of the overexposure of migrants lies in the unemployment rates among third-country nationals. Many data undoubtedly show that the crisis has hit migrant workers harder than native-born. Moreover, statistics tend to underrate unemployment among migrants as those admitted on temporary basis lose their right to participate in the labour market together with their jobs.

High-skilled migration does not necessarily mean occupation in high-skilled jobs. Over-qualified third-country nationals employed in low-skilled jobs are a widespread reality throughout the EU⁷. There are many factors explaining this phenomenon. One of them is the lower protection of migrants on the labour market and a lack of integration into local communities at large. The factors of the vulnerability of migrants in the labour market must be removed especially when they result from precarious short-term work/residence permits.

More evidence of low protection comes from data, which shows a wage gap between third-country nationals and EU nationals, especially among less-skilled migrants. Furthermore, indicators show that third country nationals tend to earn less than native-born with the same qualification level⁸.

In addition, different forms of direct and indirect discrimination become an obstacle that hinders family members (especially children) from participating in the educational or vocational training paths, thus creating disadvantages for this sector of the population compared with the native one. For instance, the access to employment in the public sector (and often in State-owned companies) of third country nationals permitted to work in the territory of a Member state is restricted on the basis of citizenship. This remains an area of unjustified discrimination for third-country nationals.

Austerity measures have not spared migrants. Member States have curtailed resources and public services for migrants. The release or renewal of visas and permits is becoming more expensive while the capacity of competent migration offices to process applications has been reduced. Public services and facilities for third-country nationals, including integration facilities, have been fallen under the axe of the austerity measures as well. In particular, the offer of language training for third-country nationals must be preserved in order to improve social inclusiveness and integration. Fewer public services will primarily hit women as experience shows that they have less chance to work or to be integrated in the hosting community.

While a better enforcement of EU legislation will help to remove a wide range of discrimination factors, the Charter of Fundamental Rights should be better used to enlarge the sphere of rights granted to migrants as individuals despite the nationality they hold.

In the meantime, the current European acquis, driven by a predetermined temporariness and selectivity of newcomers, does not help to fully implement the equal treatment of third-country nationals in the labour market and in the workplace. The shorter the permit to stay and work is, the lower the chances for migrants to see their rights recognized and respected.

⁷ *The only country in which the number of migrants occupying high-skilled jobs outnumbers those in low-skilled jobs is the UK but this is just because the lower segment of the labour market is occupied by EU mobile workers.*

⁸ *Results from the LINET IOM Network.*

Long-term residence status (Directive 2003/109/EC) is the EU instrument that is the closest equivalent to citizen status for migrants. But, unfortunately, the most recent EU legislation makes it more difficult for migrants, when admitted with a temporary and unchangeable permit, to earn the right to long-term residence status⁹. Furthermore, provisions ensuring free movement for holders of a long-term residence permit have been badly transposed and contravene either the letter or the spirit of the European rules.

Long-term residence status is the best condition under which migrants can be integrated into the labour market and can contribute to matching the jobs' and skills' shortages, as well as to supporting European economic growth. Furthermore, to the extent that long-term residence promotes full equal treatment as well as free movement for migrants, it can also prevent the phenomena of social dumping.

There are several million irregular migrants in the EU Territory. The adjective 'irregular' (or even worse, 'illegal') is used to indiscriminately qualify several conditions concerning either the employment status, the compliance with migration rules during the permanence, compliance with rules concerning visas and entries or the illegal crossing of the borders. In this sense the majority of irregular migrants should not be considered as criminals – "undocumented migrants" is the more correct term and the one that should be used for defining them as the UN Resolution 3449 and the ILO Conventions already do.

An EU policy that is not able to distinguish between the different cases will never be able to tackle the issue of undocumented migration in its entirety.

The irregular crossing of borders often has a lot to do with humanitarian crises. The uprisings on the southern shore of the Mediterranean have made this region more unstable and once again the 'boats of hope' have started to cross the sea in precarious conditions. The ETUC has always condemned the pushing-back of migrants carried out by some Member States, often in violation of the international conventions on migrants and rights of refugees. The ETUC also condemns the increasing practice of detaining asylum seekers or fugitives, often in violation of international conventions. The ETUC has also urged a stronger solidarity among Member States in this field. The issue of greater cooperation among member states on asylum and the international protection of fugitives is a long-standing feature of migration policy and it is time for Member States to show greater respect for the protection of human lives and dignity, especially for minors. A closer cooperation with the origin and transit countries must be at the core of the fight against the trafficking and smuggling of human beings.

The EU wants to encourage more transparent and accessible channels for regular immigration. The EU acquis on the condition of entry and work for third country nationals is going in the right direction, standing the reserves raised above on the excessive fragmentation of the EU legislation. But it is unrealistic to think that presence of undocumented migrants on the EU territory can be tackled through border patrolling and forced returns only.

Moreover, in the recent years we have witnessed the indiscriminate disregard of the fundamental international rules for asylum seekers and refugees as well as violations of the UN Geneva Convention. Member States cannot waive their responsibility vis-à-vis the international community and even more importantly vis-à-vis the obligation to respect human lives for those seeking protection or asylum.

⁹ Report from the Commission to the European Parliament and the Council on the application of the Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM (2011) 585 final.

Many third-country nationals get into irregular situations after having already settled in the territory of a Member State. It often happens because of excessive red tape or the unaffordable costs of renewing visas/permits. Furthermore, national legal frameworks do not permit migrants who have become unemployed to remain in the EU for even a limited period in order to look for new job opportunities. Employers too often attempt to take advantage from people in need and force the migrants to work illegally.

Certain areas are more exposed than others because of their geographical position (e.g. Greece, Malta, Spain, Italy) or because of a dominance of low-cost labour-intensive economies (agriculture, construction, domestic work, etc.). But Europe cannot permit the exploitation of human beings on its territory. Once a third-country national is discovered working in a low protected and undeclared job, it is unacceptable that the more vulnerable party, – the migrant worker – is treated in the same way as the employer and expelled from EU territory, without giving him/her the time and the opportunity to find another job.

If the recruiting of migrants is driven by the logic of the search for cheap labour, all migration policies will end up by being undermined. In this sense, labour intermediation remains an area very open to a great deal of abuse and exploitation. EU legislation in particular, should fix strict rules for cross-border labour intermediation, also taking into account standards provided in the ILO Convention n.181 on Private Employment Agencies when providing legal channels for labour migration.

Integration of migrants

A large presence of immigrants brings changes to the socio-economic environment of the hosting community. In several Member States, the foreign-born population is close to or above 10% of the total population and this has already triggered relevant societal changes that each community must be able to accept and manage.

If resistance to change is a natural reaction among citizens, xenophobic political forces have used this sentiment to encourage a false image of how migration impacts on their own communities. A feeling of unrest towards migrants is also sometimes visible in the workplace.

A new narrative of the migration phenomenon is needed. While the economic crisis is deploying its effects. There is no evidence showing a correlation between the migration flows and the effects of the crisis on the labour market. Nor has a correlation demonstrated between high rates of unemployment and the presence of migrants in the current economic crisis.

That is why the concept of integration as a two-way process is gaining ground. It means that migrants should be helped to integrate in the hosting communities while citizens must be supported in understanding the change they are going through. Of course all integration policies must be aimed at ensuring unity and social cohesion removing the risks, uncertainties or misplaced reactions that all forms of change imply.

Integration is a relevant component of a migration policy aimed at stabilizing the presence of migrants on the territory of a Member State and at avoiding any kind of dumping or discrimination phenomena. Concrete policies are needed at all levels, in order to support integration paths at economic, social and cultural level.

With regard to the right to family reunification, it is not only a fundamental right but also an overwhelming factor for integration. The current EU legislation (Directive

2003/86/EC) has been judged to offer too much room for Member State to restrict the right to family reunification and to allow a misleading use of integration facilities¹⁰.

The ETUC also calls for an extensive right to vote in local elections (active and passive) for third country nationals who hold a permanent resident permit. The right to vote should accompany active measures aimed at encouraging migrants to participate in the political life of the hosting communities. Article 6 of the Convention of the Council of Europe on the Participation of Foreigners in Public Life at Local Level sets out the common criteria for allowing foreigners to vote in local authority elections.

This is a step towards a gradual acquisition of citizenship, which in any case should be guaranteed, as a free choice, to children of migrants (second generation) when born on the territory of a Member State. Paths to the acquisition of citizenship should be left open to those who have gone to school/finished their schooling (study cycle) in a Member State.

The ETUC wants to contribute strongly to taking concrete steps to improve the ability of migrants to integrate. Trade unions as grassroots organizations are better placed to notice change and to represent it at the institutional level. It helps institutions to develop according to the way in which their communities do. For trade unions it represents both a responsibility and an opportunity.

Trade union activism, from simple membership to active participation in the life of the organization, represents a concrete step toward a deeper inclusion of migrants in the hosting communities. Trade unions have strong links with migrant associations. Migrants should represent a relevant target for trade unions' membership. Shop stewards have been trained to approach migrants in the workplace and to gain their confidence, and at the same time migrants have become trade unionists and have been elected onto the political bodies of unions in many countries. There are several examples of collective bargaining having evolved in a way that provides responses to the migrant needs. Some unions have developed networks to provide services and assistance tailored to the needs of migrants.

ETUC demands and priorities

The ETUC has always argued that migrants already make a positive contribution to the EU economy: they contribute to the tax and benefit systems, often paying more than that which they get back. Their contribution cannot be seen only in terms of 'additional workforce'. They make society a more vibrant, multicultural place to live in and help our society to be more open and tolerant

Since the last ETUC Congress, migration policies and labour mobility has stood high on the ETUC agenda.

ETUC has to set up its own agenda based on the following priorities:

- Recovering a correct balance between the right to free movement of labour and the protection of social standards;
- Fighting against social dumping and wage competition and all forms of discrimination condemning non-national workers to poor working and living conditions;

¹⁰ It emerged clearly during the VII meeting of the European Integration Forum, held in Brussels on 31st May and 1st of June 2011.

- Advocating a right-based and equal treatment-oriented approach, especially when legislative initiatives at European level are at stake. A common EU policy should be designed that offers a wide range of instruments to suit different policy options, including harmonized legal frameworks for both stable and temporary migration. Circular migration must always respect international and fundamental labour standards;
- Improving the trade union presence in the field of migration and cooperation with origin countries;
- Encouraging the exit of undocumented migrants from their irregular condition or undeclared employment;
- Promoting effective integration policy. Well-funded public services are a necessary platform for integration that should be complemented by services provided by civil society organisations, as well as enhancing the ability of trade unions to provide services and assistance to migrants;
- Supporting collective bargaining as an instrument for improving diversity management in the workplace or it will be used to adapt the current rules to accommodate a larger presence of third country nationals in the workplace and in the labour market.
- Increasing trade union membership of migrants and their participation in trade union life and decision-making.
- Migration concerns the movements of third-country nationals settling in a Country for the purpose to work as well as workers seconded or made available to another employer in another State.

The ETUC has to support its members in making their action more effective and more visible at European level. It should also help the spread of best practices in countries that have advanced less in terms of membership and assistance to migrants. In particular, a specific added value may reside in the networking of services provided to migrants with the aim of enriching the range of services offered, and of making them more visible and accessible.

Towards better EU legislation for migration

The EU policy is still excessively fragmented. Priority has been given to directives tackling migrants' irregular employment status (Employers' sanction directive) or irregular entries (Return Directive). When irregular migrants are not able to obtain a permit to stay, measures should be taken to ensure their safe return to the country of origin and, if possible, assistance for re-establishment in co-operation with the country of origin. Co-operation with origin countries must be enhanced by investing more in structured dialogue and, where possible, through mobility partnership agreements. Structured dialogue or mobility partnerships will be more effective if open to the contribution of the social partners.

However the ETUC stresses the point that the directives mentioned in the previous paragraph pursue the illusory objective of a massive return of irregular migrants. So doing, policies aimed at tackling the irregular situation of migrants or at supporting integration have been overlooked.

The EU Commission has also tried to enhance the EU legislation by promoting a common set of rules establishing conditions of entry, stay and work in the Member

States. The two main achievements are the Blue Card Directive and the Single Permit Directive, while two directives are on the way to finally being adopted: the Seasonal Migrants Directive and the Intra-Corporate Transfer Directive.

The legislative approach has pushed the ETUC to demand a more balanced and coordinated legislation, in order to tackle existing limits and problems, as follows:

- The EU legislation should be respectful of the individual choice to settle in a Member State and support local authorities in avoiding circular migration and in encouraging a more stable settlement of migrants;
- The EU legislation should set out the conditions of entry and work providing third-country nationals with a shelter against discrimination and social exclusion in the workplace and in the labour market and with equal treatment at any level; the EU legislation must not hinder social clauses in public contracts for private providers in the context of public procurement procedures aimed at preserving the principle of “equal pay for equal work in a given territory”;
- The EU legislation should remove obstacles to the intra-EU mobility of third country nationals regularly residing in a Member State, but without a long-term resident status;
- The EU legislation, instead of being exclusively focused on regulating flows, should address the situation of those that already live and regularly work in EU territory (e.g. integration facilities, conditions and costs of renewing permits, rights and opportunities of family members, access to labour market facilities including unemployment benefits, pension rights and other social benefits, as well as the recognition of qualifications, management of remittances and conditions of voluntary return to the country of origin or change of residence to a new country, etc.);
- Shortfalls in the legislation at European level concerning integration and the social issues linked to migration should be made up and such priorities should be implemented in a more coordinated way. The European Commission has recognized that such a problem exists and has launched, a debate on the possible revision of most of the EU *acquis* on economic migration. The social partners’ role in this exercise will be vital¹¹.

The months to come will be dedicated to the new five-year programme of DG Home affairs. It will be an ideal occasion to draft a common migration policy in which, in the innovated institutional context, a global approach to migration can finally be expressed in a coherent package of policy and legislative initiatives.

We expect that the European Commission, together with the Parliament, will prioritize those politics that will establish protection and equal treatment for migrants, in logic of dialogue with the ETUC (as already envisaged in recent Communications and action plans). A framework directive on migrants’ rights and protections remains a high priority on the ETUC agenda.

¹¹ The European Commission has recently launched a Consultation on the right to family reunification of third-country nationals living in the EU (Directive 2003/86/EC) and a Consultation on the future rules on the entry and residence of non-EU national researchers, students, school pupils, unremunerated trainees and volunteers in the EU (Directives 2004/114/EC and 2005/71/EC). The Report on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents has highlighted shortcomings in the implementation of this important directive.

The EU should act as an example at global level. The ETUC will continue to pay attention to the international dimension of migration policies and, in cooperation with the ITUC, will increase its influence in international bodies and forums. The ETUC will advocate the ratification of the UN Convention on the rights of migrants and the ILO Convention on Domestic Work. The latter establishes a legal framework for a category of workers that are mostly migrants and women. The ETUC calls for the ratification of the ILO Conventions on migrant workers (C97 and C143). The European Union, on the occasion of the UN General Assembly, has to demand that a high level social dialogue becomes a pillar of the policies on international migration and development. The EU is also urged to play a positive role within the process launched by the ILO with the aim of confirming its mandate and the appropriateness of its legislative instruments in the field of migration. The ETUC calls on its affiliates to actively lobby towards Member States in order to achieve these objectives.

The ETUC has noted shortcomings in the transposition of the Long-Term Status Directive and calls for a revision that would remove obstacles to the attainment of the long-term resident status and ensure a more uniform application of rights and protections of third-country nationals in all Member States.

The ETUC calls for a revision of the Directive on family reunification aimed at clarifying which members of the family can have access to this right, ensuring that this right cannot be limited by a misuse of pre-departure integration facilities, and that bureaucracy would not become too heavy a burden on the sponsor, especially as far as costs of permits and applications are concerned.

It is time to provide a common legal framework for the regularization or amnesty of third country nationals who live or work in one of the Member States in irregular situations so that, while remaining within the full competence of Member States, any possible regularisation or amnesties, when decided, may take place within a climate of mutual trust among countries.

Moreover, neither third-country nationals nor members of their families, whatever their status, can be deprived of the possibility to have access to fundamental services and benefits that allow them and their family members to live with dignity (i.e. access to health care structures, school education, justice, etc.). Migrants should benefit from suitable facilities to overcome any linguistic and cultural barriers to access to services. Migrants should be ensured a proper supply of training and education to help their actual integration in the hosting community and to promote inclusiveness. In particular language courses must be made accessible to all migrants. Special active policies should be designed for women.

An active dialogue between migrants and the public administration must be seen as an investment whose return lies in a more efficient use of the labour regulatory control resources and higher tax revenues and improved competitive conditions for business. The ETUC will oppose the current attempt to criminalise migrants and denounces the forced detention of undocumented migrants for not holding valid identification papers, which should be an administrative, not criminal, offence.

Supporting a proactive social dialogue and social partners' action in the field of migration

Social dialogue can help these processes. Social partners are better placed to provide a shared analysis on labour market shortages and migration. At cross-sectoral or sectoral level, they may decide to point out policy options and priorities that are a better fit with the mutual interests of employees and enterprises. Migration is already

recognized as a field of action in which European social partners can jointly address mobility and economic migration issues and promote the integration of migrant workers in the labour market and at the workplace (Work programme of the European social partners 2012 – 2014). Tripartite and bipartite dialogue is a core tool for tackling migration issues and for supporting the integration of migrants, as well as their contribution to the European economic and social model.

In order to act in line with the expectations of its affiliates, the ETUC has to establish a regular and effective communication channel with them. As a priority, the ETUC will explore all possible solutions to implement concrete action for enhancing trade union assistance and support to migrants. It includes projects aimed at networking services for assistance and integration for migrants and their families.

The ETUC will explore possible sources of funding to involve affiliates that are interested in:

1. Sharing know-how and capacity building concerning labour mobility and integration facilities;
2. Promoting migrants' membership and participation in the internal life of TUs;
3. Creating a Europe-wide network to facilitate the exchange of practices, also co-managing existing and new services;
4. Improving visibility and accessibility of services provided by trade unions also using a common EU label;
5. Improving collection of data to better monitor flows and stock of migrants.