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ON POLICY COHERENCE IN MANAGING INTEGRATION: THE CASE OF IRREGULAR MIGRATION & EMPLOYMENT

AN ANTI-RACISM & DIVERSITY INTERGROUP LUNCH

PROCEEDINGS

6th June 2007 – Brussels

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ON POLICY COHERENCE IN MANAGING INTEGRATION: THE CASE OF IRREGULAR MIGRATION & EMPLOYMENT

Concept paper and Programme

*Brussels - EP: Room ASP A1E1
Interpretation EN & FR*

6 June 2007, 12:00-14:00

This Intergroup lunch will consider the proposal for an EU directive providing for sanctions against employers of third-country nationals who are irregularly staying or working in breach of their residence status, published by the European Commission on 16 May 2007. The aim is to address the question of policy coherence in the area of irregular migration and employment.

Migration and integration are at the fore front of the public debate in Europe today. However it is clear that across the European Union there are a wide variety of approaches to migrant integration, and many question have emerged. Who are we integrating? Integrating into what? Is citizenship a reward or precondition for integration? There is no common European answer to these questions, but the European Union is having a bigger and bigger impact on integration policy across all member states. Integration as a phenomenon is integrally linked to questions of inclusion and exclusion and the type of societies we live in. However a lack of policy coherence between the areas of migration, integration, social inclusion and anti-discrimination has in many cases led migrants to fall through the gap left by such a vacuum, exposing them to social exclusion and discrimination.

According to a recent ENAR survey, the lack of policy coordination appears to be most serious at the national and European levels, suggesting that policy coherence diminishes the further removed policy-makers are from those most directly affected, and that therefore there is a need for efforts to reinforce consultation and participation processes.

Nowhere is the incoherence between integration and migration more evident than in the case of policies aimed at controlling irregular migration. For instance action in the field of irregular employment, often seen as a catalyst for irregular migration, focuses almost exclusively on repressive measures, without accounting for the impact of these measures on the rights of migrants, the imperatives of integration, or the attitudes of majority populations.

Repressive measures to fight irregular migration do not address the vulnerability of undocumented workers to abuse and exploitation by their employers. International treaties (e.g. ILO and UN conventions) and national

legislation in many EU member states do grant considerable rights to all workers, regardless of their legal status. However, in practice very little is done by authorities to enforce undocumented workers' rights. Quite on the contrary, the link with migration control very often results in workers receiving harsher punishments than employers (such as being deported and deprived of rights such as the right to back wages).

Repressive actions to combat the irregular labour market risk bringing about quite negative and unintended outcomes if no attention is paid to the protection of undocumented workers' rights. The irregular labour market will go further underground rather than disappear, making it even harder for workers to address abuse and exploitation. Workers' rights are human rights, therefore to be enjoyed by everyone regardless of legal status or nationality. It is the duty of every authority to see to it that these rights are protected, especially when repressive measures towards irregular employment are taken.

If EU policies to address the irregular employment of undocumented workers are primarily developed targeting employers and workers, without clearly defining measures to safeguard undocumented workers' rights, such policies risk contributing to the social exclusion and further exploitation of a sizeable sector of the population as well as undermining workers' rights in general. It also risks the creation of a climate of discrimination and racism within society that affects not only undocumented workers but all minority populations.

PROGRAMME

Opening Words – 12:00

Mrs Jean Lambert, MEP Words of Welcome
*Vice-president of the Anti-Racism
& Diversity Intergroup*

Mr Claude Moraes, MEP
*President of the Anti-Racism &
Diversity Intergroup*

Mr. Manfred Weber, MEP Policy priorities in the fight against irregular
immigration – EP report and introduction to the
Return Directive (apologised)

Presentations 12:25 – 12:45

Policy coherence and irregular migration: Challenges raised by European civil society networks

Mr. Luciano Scagliotti
ENAR Board Member – Italy

Mrs Michele LeVoy
Director of PICUM

EU policy measures to fight irregular migration and employment 12:45 – 13: 20

Mr. Martin Schieffer Employer sanctions: a tool for integration?
*European Commission, DG
Justice, Liberty and Security*

Mrs Catelene Passchier The perspective of trade unions
*Confederal Secretary – European
Trade Union Confederation
(ETUC)*

Mrs. Leonida Ambrocio Irregular work: an experience of ‘dis’-
Samahan, Filipino migrants’ integration
organization in Belgium

Plenary discussion 13:20 – 13:45

Conclusions 13:45 – 14:00

Mrs. Françoise Pissart (*Network of European Foundations – NEF*) & Mrs. Jean
Lambert, MEP

OPENING WORDS

Claude Moraes, MEP:
President of the Anti-Racism Intergroup



Mr Moraes welcomed the speakers and the participants in the present Intergroup session, reminding about the importance to further the implementation of migrants' rights.

Mrs Jean Lambert, MEP
Vice-President of the Anti-Racism Intergroup

Integration is supposed to be a two-way path and meant to be realised by Member States. However, it is experienced by many of us as a one way street.

Obviously employment is, for some, a pull factor but when it comes to issues of illegal immigration, things grow more complex in the sense that there are all sorts of ways in which people become irregular (delays by authorities...).

Other issues of concern to be mentioned are the negative perceptions of people coming to 'take our jobs', or the way employers use exploitation to undercut the wage market. This kind of exploitation also stirs problems with the system of regulation and enforcement of labour law across the board – for all.



Lots of other issues need to be answered, including the question, how does one become 'regular'? There are a number of questions about access to rights. We hope that the Commission will address those concerns or that the Parliament will pick them up at a later stage.

ON POLICY COHERENCE IN MANAGING INTEGRATION: THE CASE OF IRREGULAR MIGRATION & EMPLOYMENT

Luciano Scagliotti
ENAR Board Member

Reflections on policy coherence and irregular migration.

ENAR has been for some time concerned about the issue of coherence and consistency at European and national levels, in particular from the point of view of National Coordinations, with regard to the negative impact of non-discrimination or immigration policies or other related policies that apply to everyone whatever their status.

Mr. Scagliotti offered two examples of incoherence in Commission communication:

1 – Although the anti-discrimination Directives, especially the Race Equality Directive, are seven years old, we are living in a constant nonsense as this last Directive excludes all immigration legislation and policies from its scope. However, it is clear that immigration policies can and do create situations of discrimination against people residing in the EU.

2 – In the explanatory memorandum on the employers sanctions Directive, we are told that this Directive is about immigration policy and not employment & labour policies – what does this mean?



When talking about coherence, the lack of clear link between immigration, employment, and non-discrimination policies has a massive impact on the ability to implement social, employment and immigration policies. For example, in the field of social cohesion in the EU, it leads to the exclusion of many people from social rights participation, in particular undocumented migrants.

The examples of good practices exist, as highlighted by the ENAR seminar on “Realising integration: policy seminar on migration, integration, social inclusion and anti-discrimination”. M. Scagliotti proposed some examples of good practice coming from Italy. New orientations are expressed in a draft law being examined in Parliament on the responsibilities of employers and the kind of sanctions that can be used against them. It holds a clause excluding enterprises exploiting migrants from public procurements.

Parallel to that, the Italian government informed the head of police that undocumented migrants in situations of exploitation have the right to receive a residence permit for social protection. It was usually linked to protection measures against human trafficking, but it is now applied to any kind of

exploitation and violence. Victims do not have to denounce and collaborate with police to benefit from protection. This is a clear example of coherence between immigration, non-discrimination and labour market policies.

As final recommendations, M. Scagliotti urged MEPs to take care to provide that there is clear distinction between the tasks of different law enforcement authorities. It is not of the responsibility of labour inspectors to apply immigration laws: they should only take care of labour laws and not confuse the two.

The EU and the Member States need to ensure that migrants, documented and undocumented, regardless of their status, can enjoy the rights of association, to form and join trade unions because the situation of workers is the same if they hold or not a residence permit.

The public discourse on undocumented migrants is highly problematic and it has to be met by the EU and the EP. Indeed, it uses terms such as 'illegal immigration', 'clandestine migrants', etc to entertain a confusion between different legal statuses leading, as a result, to the identification of everyone without a residence permit as an 'illegal resident', regardless of the reasons of the absence of a permit and because of his/her being 'illegal', also identified as a criminal.

Michele LeVoy,
Director of PICUM

Undocumented migrants in Europe and contradictory messages


Over the years, stricter measures against undocumented migrants have been enforced – focussing particularly on border control, while there is no evidence that this reduces their numbers. We see the same human dramas replayed on a yearly basis (Malta, Spain,...).

Although there are no official figures, it is estimated that 10-15% of immigrants in Europe are undocumented, with estimates being from 5.5 to 8 million undocumented migrants in Europe.

The EU constantly refers to fundamental rights, including of undocumented migrants, but its focus remains on border control and return measures. Recent Commission press releases say that policy should be based on fundamental rights, but, in the meantime, EU member states restrict access to social support as a method of preventing further immigration – leading to new waves of destitution of rights.

As a consequence, migrants are criminalised on the one hand and exploited on the other. People have rights on paper indeed, but are systematically abused.

Mrs LeVoy provided some examples of rights based policies:

1. Use of terminology: EU institutions refer to ‘illegally staying third-country nationals’ whereas ‘illegal’ is associated with criminality and consequently stigmatised. The ILO and other international organisations refuse to use the term ‘illegal’, which makes the EU position very isolated. PICUM recommends that it be changed to at least ‘irregular’ or, better, ‘undocumented’.
2. Protection and promotion of fundamental rights: recognising that it is difficult to implement for undocumented migrants (as invisibility leads to exclusion, marginalisation and exploitation) does not mean that it should be overlooked. Presently the burden to ensure access to rights rests on service providers and NGOs – teachers, social workers, etc. For example, the right to healthcare is granted (or not) in very different ways by member states to undocumented migrants (ranging from obtaining health care services on a payment basis to receiving subsidized care on the same basis as nationals).


The same goes for the rights to access to education, health & housing or social services. Including undocumented migrants/workers as named target groups in social inclusion strategies is definitely part of a rights based approach.
3. Regularisation measures: a study on this topic was ordered some time ago by the Commission but no reference to this study was found in any of the coverage on the new policy measures. It needs to be part of the debate as regularisation removes one of the biggest barrier to exercising one’s rights while being undocumented: the fear that coming into contact with official entities will result in deportation.
4. Rights based approach to irregular employment: this is absolutely required to avoid exploitation and abuse. PICUM working group on employment conditions will look carefully at the proposed directive.

Indeed this directive proposes a number of problematic features:

1. It says that employers are required to undertake checks before recruiting 3rd country nationals. This may result in discriminating against all workers. For example, there is already a 21-year long history of employer sanctions in the USA, and it was found out that this contributed to discrimination against individuals in the U.S. who “look or sound foreign,” including U.S. citizens.
2. The directive provides for criminal sanctions where employers are ‘particularly exploitative’ with no suggestion of how this will be defined in practice. This could lead to a lack of redress for those whose rights are exploited in less dramatic way.

As a conclusion, Mrs. LeVoy re-iterated the right to equality before the law for undocumented workers, the right to organise themselves and the right for civil society NGOs not to be criminalised or penalised for providing assistance to undocumented migrants.

Mr. Martin Schieffer,
Head of Sector "Immigration", Immigration and Asylum Unit,
EC DG Justice, Freedom and Security

Employer sanctions: a tool for integration?

The proposals presented two weeks ago by the EC met a lot of interest from all directions.

The document issued by the EC is not only the text of the Directive, but accompanied also by additional non-legislative proposals (CSWG), an extended impact assessment and a summary impact assessment.

The impact assessment, an element of particular importance, sheds light on important policy aspects. It proposes comparative data on situations of sanctions in the different MS as well as cost estimates for authorities and employers and analysis of different policy options.



The Directive and its policy context

It is an instrument to fight illegal immigration and is not meant to be an integration or social policy instrument. The Commission tried to strike a balance between the need to fight illegal employment and the distortion of competition between MS. The Directive is only on 3rd country nationals, it does not concern EU citizens working on the informal market. It is based on the fact that the possibility to easily find work on the informal market is a major pull factor for illegal immigration. As far as the timing is concerned, the Directive stemmed from a request from the EU Council in December 2006. It was not planned in the Hague programme but identified as a future priority in the Commission's communication on illegal immigration of 19 July 2006.

The Commission envisages this new Directive as a consistent set of proposals. Its main structure is composed of 3 building blocks – prevention, sanctions, enforcement.

It starts first by imposing notification and verification duties. When an employer wants to recruit a 3rd country national, s/he will have to check his/her residence status and see if there is a valid authorisation. The employer does not have to check for a work permit. If the employer is acting in the course of his/her business, s/he has to notify any recruitment to immigration authorities. In case of non respect of these provisions, sanctions split between financial sanctions (including back payment of outstanding remunerations, social security fees, etc.), and in aggravated cases criminal sanctions (for which no details are provided with regard the maximum or minimum, potential imprisonment, etc.).

With regard to enforcement, the Commission is preparing discussions with a number of stakeholders. During its impact assessment, it learnt that one

problem is the weak enforcement of existing labour and immigration laws in a number of Member States. So the risk to the employer of being detected when exploiting is zero. There must be a realistic threat of being caught for employers. Parallel to that, the EC is obliging MS to undertake a risk assessment as all areas are not equally affected.

What is the workers' role?

The EC did not lose sight of them. For those apprehended in particularly exploitative situations, it is foreseen that they should not be returned before outstanding remuneration is paid. If they cooperate, the Directive proposes to grant them a protection status as that available for those affected by human trafficking. For others than those suffering particularly exploitative conditions, return is proposed as a normal consequence, unless it is found within the specific MS migration policy toolbox a way to grant residence permit for other reasons. There is no EC law that prevents this.

The personal scope of application of the Directive caused some legal problems during the drafting phase. It applies only to those employing illegally staying 3rd country nationals. A second category also plays a role and needs to be considered: 3rd country nationals legally residing but working in violation or in excess of their residence conditions – e.g. students, tourist visa holders. Presently, the EC legal base does not cover these situations, so they are not covered by this proposal.

There are also some practical problems that had to be solved. For example, there is a need to make a clear distinction with posted workers, i.e. those 3rd country nationals lawfully recruited in a particular MS then sent to another MS to work. This depends upon the provisions of services and has nothing to do with immigration. When doing future labour inspections, controllers will have to distinguish between these people and others.

Catelene Passchier,

Confederal Secretary – European Trade Union Confederation (ETUC)

The perspective of trade unions

When we talk about economic migration, we should talk about it in a broad perspective. With regard to initiatives of the European Commission, the ETUC has complained in recent times that even if the legal base has nothing to do with labour law, one cannot deny that an issue like ‘employers sanctions for illegally employing migrant workers’ has a direct relationship with employment and social policy, and therefore social partners should be involved in the debate and properly consulted.

This new Directive raises concerns in the ETUC. Trade unions cannot avoid anymore to be involved in the debate on migration and employment. A lot of our members are very concerned, many do not understand what is actually happening and how to judge developments, many may not have very helpful or positive ideas, many maybe voting for parties with right wing extremist policies.

The ETUC has to be aware of this, while demanding for policy cohesion. If we do not combine integration and migration with social policy and social inclusion, we will never be able to tackle the rise of xenophobia within the EU.

There is an old saying that one can judge the level of civilisation of a country by how it treats its prisoners. Today, we could say a similar thing, judging how it treats its migrants.

Many of us have been migrating from one region or country to another, and many have migrants in their ancestry.

In all the EU countries, one finds people very concerned with what is going on with the globalisation of economics, while at the same time it seems as if an increasing amount of workers are working in feudal and semi-slavery situations which remind us of the 19th Century. Member States do not seem to be able to develop proper responses to provide workers and employers with proper conditions for open borders and markets.

How to develop a more proactive migration policy that is coherent with open market and geared towards managing mobility and migration? How to offer old and new migrants and everyone else equal rights and opportunities in our societies? How to get the support of Europe's populations for this?

Migration is like the rain, it falls in its own moment, sometimes you need it, sometimes you have too much, sometimes not enough, but you have to start coping with it.

Some lessons from the past need to be born in mind. In the course of the 17th & 18th century, at the time when nation states were formed, rules regarding guilds and taxes that were different from town to town had to be changed to a common system of national size. Europe as a whole is now in a similar situation, and it needs to realise that it has to bring social rules, tax rules, etc. to the level of the European single market.

Another painful lesson, at the start of the industrial revolution, can be drawn from the history: at the beginning of the industrial revolution workers were destroying their machines because they saw them as a direct threat that would take away their workplaces. With hindsight, we can see that it was not such a good idea, and that industrialisation ended up with giving many workers a job. But it took more than 100 years to build structures to manage the negative side effects, and make sure that gains are more evenly spread. The lesson learned is that if you do not regulate the social dimension of this EU single market, then workers will turn against workers. We have already seen it in Spain and other places. That is why trade unions have to be at the heart of the debate. It is all about workers that are potentially set up against each other, but instead should cooperate in solidarity against governments, employers, etc.

Things have to be dealt with also at EU level and MS's have to discuss migration policies that look not just at the conditions of entry and only discuss policies of cherry picking. Currently, MS's only seem to support an EU competence when it facilitates their possibility for selecting the people they need and keeping out those they do not need. However, the reality shows that Europe attracts migrants at all skills levels, because there is work available at

all skills levels. But because there are almost no legal channels for migration in unskilled work, most of those migrants work as undocumented workers, are easily exploited, and are paid such low wages, that this is indeed unfair competition.

Campaigns and awareness raising showing the positive contribution of migrants to our economies and societies is an indispensable activity. Awareness raising about their right to social & political citizenship is also a must. We also need more open discussions on labour markets needs and demographic changes? How to include employers in debates on those issues more strongly? They also need to take responsibility in these matters. They don't like unfair competition, but they profit enormously from downward pushes on wages. We collectively need to address this and get them on board.

About the current proposals on employers sanctions, the ETUC has developed with PICUM and SOLIDAR a list of joint concerns. The major one being that the priority order of issues raised by the Commission is currently wrong. If the EU wants to punish employers for irregularly employing workers, is this really going to prevent irregular migration and put the burden on employers, or will it mainly victimise irregular workers, when the proposal does not offer legal channels for migration in the low skilled and low paid areas and sectors of the economy, and does not deal with the future of the people that would be 'smoked out'.

ETUC is therefore definitely concerned by the lack of coherence of this proposal with other policies, notably social policies and fundamental rights. There are also a few important and positive features in the proposals, such as the recognition that migrants have not only human rights but also trade union rights. Also the definition of exploitation is definitely a step in the right direction. But the major problem is: taking account of the context in which it has to be implemented, this proposal can only lead to further disaster.

Mrs. Leonida Ambrocio

Samahan, Filipino migrants' organization in Belgium

Mrs Ambrocio painted a particularly moving portrait of her personal and family history which brought her from the Philippines in the late 1980s with the view to get better wages to offer better education to her children. A certified accountant in her home country, she ended up working as a domestic worker facing an irregular situation, health problems and depression due to harsh hurdles faced in their daily life. After a long awaited breakthrough that came after a regularisation of her family's status, she was able to engage herself with Samahan and trade unions to develop a support network for undocumented workers.



Jean Lambert thanked Mrs Ambrocio for her address which gave a human face to the discussion, reminding that the whole debate is about people from a huge range of backgrounds, skilled and unskilled, living a

number of complex situations. Legislation has to take account of that huge breadth.

PLENARY SESSION

Participants were invited to ask questions:

Question: Is there a need for specific measures to prevent or combat employment of ‘illegally residing 3rd country nationals’? Who are they? Many have entered the EU legally: asylum seekers whose claims have been rejected in many cases after incorrect or unfair procedures, those in the process of prolonging residence permits – some people have to apply each year for a new permit, and it takes a year to get a new one – procedural lack of standards results in person being ‘illegally residing’. Another category includes the victims of trafficking or exploitation, not just for sex labour market, but for other purposes, as the domestic workers.



Who are the illegally employed? Nationals can be and are illegally employed as are other EU nationals or legally residing 3rd country nationals with long term-residency status who don't have labour contract. One of the reasons quoted for that is the fact that no legal employees are available. So why not bring people in legally? Why not regularise undocumented migrants?

Why not improve working conditions, as good salaries will attract more people? There is still a lot of work to be done to enforce minimum wages and efficient social protection of workers.

What will be the impact of this Directive on legally residing 3rd country nationals? Employers may not take the risk and reject applications from all 3rd country nationals.

There are 2 specific challenges to be dealt with: (1) exploitation in labour market and (2) – sanctions for private employers including those of domestic workers – but how to sanction them, specifically in the case of diplomats?

Question to the Mr Schieffer:

- Was a gender impact assessment conducted on the proposed directive? How are the needs and rights of migrant women being dealt with in the proposed directive?

- Many migrant women are working as domestic workers in houses as carers. In many countries, there is no regularisation at all in that area (no employment contracts or ways for employees to advocate for rights). How can a family ask for a residence permit if there is no legal framework around caring facilities?

Mr Schieffer's response:

Only the general impact assessment (concerning social impact etc) was conducted, but no specific gender or health related impact assessment was realised.

The EC will also bring forward measures on legal migration aiming at harmonising rules for highly skilled migrants & lawfully admitted migrant workers. In any case, the declared intention of the Commission is to open up legal migration.

CONCLUDING REMARKS

*Mrs Françoise Pissart
Network of European Foundations (NEF)*

Focus of the project – integration

There is an increased involvement of various stakeholders in the field of integration and the reflections on the link between national, European and local levels in that area. The present NEF project is about to achieve its first phase and are considering of developing a second stage.

The NEF-EPIM project includes a grants programme and in this framework it had the pleasure of supporting projects from ENAR, PICUM etc. It is not articulated as an international policy agenda: the NEF's main motivations are to be involved in social justice. The focus is those most affected, so it is important to highlight this as a starting point as when it gets into a large policy debate, one can lose sight of this.

The role of foundations

There is a lot of controversy in this area and very little support in public opinion. The political situation is difficult. As a foundation, we can make a difference as we have experience of this area. It is important to know what is happening at national level in order to work out national or European policy with accuracy.



NEF foundations are politically neutral and they think that they can participate in promoting ideas. Finally, NGOs can gain a certain respectability from associating with foundations, which helps others to get their message across. The topic of migration is currently high on the agenda. What can foundations do? Lots of people and organisations already work on the topic, but NEF would like to cover those areas which are not sufficiently examined and other subjects more taboo. It also thinks that it can endorse strategies.

It is important to continue working on that subject and civil society has a very important role to play and this must not only be supported by European authorities, but also by national authorities.

It is also important to work on the coherence between different geographical areas alongside institutional coherence. It is very important to bear in mind the necessity of preserving human rights and that undocumented migrant workers have access to migrant workers rights in general. It should be done in cooperation with NGOs and cannot be done outside the context of migration policies in general. It is important to say and repeat that migrants are here, many have no documents, and a lot still needs to be done.

The Anti-Racism & Diversity Parliamentary Intergroup gathers more than 150 MEPs from the main political groups of the Parliament. It seeks to enhance the collaboration between Members of the European Parliament, political groups, and other stakeholders such as NGOs, trade unions and other European institutions on issues related to racism and equality. It believes in promoting respect for diversity, equal treatment regardless of ethnic origin and pursuing the best practices in integration policies.

See: <http://www.enar-eu.org/anti-racism-diversity-intergroup/>

The European Network against Racism (ENAR) acts as the Coordinator of the Intergroup. It is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.

See: www.enar-eu.org

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