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from:	Presidency
to:	Permanent Representatives Committee/Council
Subject:	Presidency Conclusions following the Conference on legal migration of 26 November 2010 entitled: "Which policy on legal migration for the European Union?"

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Delegations will find in annex a summary of the main outcomes of the abovementioned conference as drawn up by the Presidency.

**Which Policy on Legal Migration for the European Union?**

**Conference of the Belgian Presidency of the EU held on 26 November 2010,  
co-organised with the Economic and Social Committee and  
the Odysseus Academic Network**

**The demographic challenge**

The European Union is facing a structural demographic problem which poses three major challenges: first, the relative demographic weight of Europe in the world, second, the decline in its workforce and third, its cultural identity in the light of low birth rates and high levels of immigration. There are three strategies Europe can deploy to reverse its downward demographic trend: to enlarge, to establish a pro-birth policy or to develop policies for temporary or permanent immigration.

**1. The demographic weight of Europe in the world**

Ever since the European Community was founded its population has constantly grown, mainly due to successive enlargements. However, although in absolute terms its population has been growing, in relative terms the weight of the 27 Member States in the world has halved in 60 years. For instance, in 1952 the 27 States which now make up the European Union represented 14,5 % of the world population, with 380 million inhabitants, while today they represent only 7 % of the world population, with a total head count of 500 million.

2010 is a watershed year for Europe: for the first time the number of deaths will outstrip the number of births. This negative growth in the European population will serve to amplify the decline in the Union's demographic weight in the world, and all the more so given that, in contrast, the population of the African continent is set to double by 2050, by which time it will make up 22 % of the world population.

The Union's negative demographic growth can only be reversed by continued enlargement and/or applying migration policies. As far as migration is concerned, the strong population growth anticipated in Africa might swell migration flows from the African continent to Europe, especially as migration within the African continent itself is becoming increasingly difficult. In any event, even if we take the path of high migration levels, the weight of European Union countries in the world will continue to decline in relative terms. Under such circumstances it will be difficult for the Member States of the Union to hold on to disproportionate representation on the various governing bodies set up by the international community after the Second World War (the UN Security Council, the IMF Board, etc.).

## **2. Workforce decline and the threat to social security systems**

If there is no enlargement and no immigration policy is established, the European Union will lose 93 million people of working age by 2050 (a 27 % decrease in its workforce, while the global workforce is set to increase by 34 %). At the same time, the number of people aged 65 and over is increasing at a much greater pace in Europe than elsewhere. For the 2010-2050 period, the demographic dependency ratio in each Member State will be twice as high as the global average ratio. The combination of these two factors will place a heavy burden on social security systems. Three ways of tackling this challenge could be considered:

- Increase the economic activity of the population, mainly by increasing female workforce participation (but what effect would that have on the birth rate?) and reducing unemployment among second-generation immigrants.

- Raise the retirement age, individual health permitting (if the aim is to keep the demographic dependency ratio at its 2010 level, the retirement age will have to be fixed at the age of 75.7 in 2050 without immigration, and at 74 with immigration).
- Draw on temporary or permanent migration.

Permanent migration meets the population needs of today and tomorrow (by means of the birth rate). Then again, just like the native population, new migrants will all age and retire when their turn comes. Permanent migration therefore does not reduce the demographic dependency ratio. Temporary migration meets manpower needs. However, it does not solve the problems of the birth rate and the ageing population. It also has a limit: the need for a very high turnover of migrants. In fact, if the rate of the working population is to be kept at the same level as in 2010, no fewer than 85 million temporary migrants would be needed in 2050, which would constitute 25 % of the working population of the Union. Such a scenario would be socially and politically unacceptable: how could Europe allow so many people access to its territory without offering them any prospect of access to citizenship, and without allowing them to experience and join in a shared undertaking? There should therefore be room for permanent migration.

### **3. Low birth rate, high immigration and the cultural identity of Europe**

Will the low birth rate and high immigration Europe is experiencing permanently transform its cultural identity? Probably not. First, migrants are in a minority. Second, in general they accept and take on the values of their host country to a greater extent than they transmit the values of their country of origin. The Union's ideals and values are even exported to countries of origin. The argument that the society of host countries becomes fragmented is not convincing (take for example mixed marriages, mixed-race births, etc.).

## **4. Conclusion**

Over the last three years, gripped by economic recession, Europe has seen its unemployment rates rise and immigration fall. It would be hasty to conclude that the Union has a surplus workforce and has no need for migrant workers. Once the crisis has passed, the full force of Europe's structural demographic problem will be felt in the Member States. Migration is without doubt part of the solution to the problem of a declining workforce. It also ties in with the aspirations of the native population to gain access to better jobs. The course of demographics is slow, but predictable. The problem of pension funding currently facing some EU Member States could already be seen in age pyramids as early as 1980. The problem of the declining workforce is clearly apparent in the age pyramids produced today. We cannot leave it to the last minute to tackle this problem.

### **The economic challenge**

The following presentation is made up of three parts. The first part establishes some findings (1). The second and the third outline options and scenarios to be implemented in the short-term (2) and long-term (3).

## **1. Findings**

### **1.1. Impact of the crisis**

Before the economic crisis hit, the outlook was positive. For two decades there had been renewed interest in work-based immigration. Furthermore, 60 % of jobs created in the first seven years of the second millennium were occupied by new migrants.

The crisis, the effects of which really started to make themselves felt in 2009, put an end to this trend.

A decline in work-based immigration has had a huge impact on countries which had drawn heavily on legal immigration. Adjustments made by employers mainly affected temporary migration. Temporary migration is an aspect which must be taken into account since, although we have every means at our disposal to manage such migration, it must be stressed that permanent immigration can work only on the basis of temporary migration and a change in the status of workers. In short, even though the downward trend has not been completely across the board, the crisis has transformed the migratory landscape.

## 1.2. When growth restarts

When the economic situation improves, our countries will once again have a need for manpower. 2015 will be a turning point for OECD countries as the size of the working-age population will either decrease or stagnate. Although there will be a boom in work-based immigration in some countries, family reunification will also be an important factor that should be borne in mind. On the one hand, because some Member States will still have a high rate of family reunification, and on the other hand, because it is an important factor in attracting skilled and low-skilled workers.

## 2. Short-term options

It is important to think in terms of scenarios which are on a small scale for the immediate future, and to take into account aspects relating to the integration of migrants.

### 2.1. Actions relating to unemployed migrants

The crisis has heavily impacted on migrants and their families who have been hard hit by unemployment. Several processes must be set in motion to help this vulnerable group. These include strengthening integration policies, taking account of professional qualifications and experience, and adopting measures to calm the public debate, which is fuelled by false information surrounding migration issues, to give the general public a more realistic picture of the situation of migrants.

## 2.2. Managing illegal migrants

Unemployed migrants find themselves in illegal situations as a result of failed return policies. And illegal situations can be dangerous.

## 2.3. Better thought-out recruitment policies for skilled and low-skilled workers

There is very little discussion of low-skilled workforce immigration. On the other hand, there is great interest in skilled workforce immigration. Not all sectors of work are affected in the same way. Reflection on recruitment policies should also address low-skilled workforce immigration, while taking care to avoid confusion between temporary and permanent immigration.

## 3. Medium and long term: charting the way ahead

### 3.1. Making allowance for Member States' specific circumstances

It should first be pointed out that the Commission is not in charge of everything. It has then to be borne in mind that Member States are not all in the same situation as regards immigration. They do not share the same past or migration culture and are not subject to the same geopolitical pressures. Allowance needs to be made for their specific individual circumstances so as to assist some Member States and avoid enacting legislation catering for five or six Member States only. Lastly, Member States should be left some latitude in framing rules on legal immigration.

### 3.2. Consulting employers and the social partners

Consultation of employers and the social partners is important. There is a need to involve them in discussions in order to introduce systems which work and obtain a clearer picture of needs as well as information on qualifications and job-change training. They also need to be consulted in the context of cooperation with non-member countries. In the latter area there is a need to avoid causing a brain drain and not to recruit more than 10 % to 15 % of people trained in non-member countries.

### 3.4. Two aspects to be considered

The idea now is to find a way of organising more clearly defined immigration, in both qualitative and quantitative terms. It should also be borne in mind that immigration is not the answer to all development problems.

The sectors in which labour shortages arise are engineering, health care, construction and information technology. The shortages concern both quantity and quality. Some sectors make use of temporary immigration (construction, agriculture and transport), others of long-term immigration (health care, research and specialist areas). Unauthorised employment is higher in the construction industry, agriculture and health care.

Shortages are pinpointed and ways of dealing with them found by a number of means, such as studies, forecasting and administrative data. Shortages may be established by way of identification of sectors and activities, assessment of skills and recognition of qualifications.

Three needs were pointed to in conclusion: more thorough policies, a change in attitudes, particularly in terms of the integration of migrants, and provision of better information for migrant workers.

## **The political dimension**

Immigration policy can in theory involve two familiar forms: temporary migration and permanent migration. Circular migration is merely a variant on temporary migration, carried out repeatedly by the same people.

While temporary migration is a practice followed at national level, it also seems to be encouraged at European level, under a flexible policy responding to economic needs. In the European legal armoury, however, there are two constraints on formulation of a temporary immigration policy which need to be taken into account, even though they emerged without any overall view of European immigration policy. The first is Member States' granting of the right of family reunification (under Directive 2003/86/EC), which provides an incentive to settle in the host country and is thus a factor serving to make temporary immigration permanent. The second is Directive 2003/109/EC on long-term residents, which basically confines any temporary immigration policy to periods of up to five years, after which migrants become entitled to permanent residence.

Permanent immigration, a practice not directly followed by any Member State, is only indirectly encouraged at European level by way of initially temporary immigration which may then become permanent under the Directive on long-term residents or residents with a range of other statuses still available at national level. The demographic aspect is not, however, reflected in that pragmatic policy with a short-term focus.

Circular migration is engaged in on only a very small scale, under pilot schemes carried out by a few Member States, but has become a reality between some old and new Member States, under the latest enlargement. It calls for free movement, *de jure* or *de facto*, if it is to develop, but seems hard to arrange under a state migration policy. Its development was once again heralded in the Stockholm programme, for 2012, seven years after the idea was first launched by the European Commission. All in all, circular migration is not an alternative strategy to temporary or permanent immigration, but at best a limited further form.

The European Union, which has difficulty in seeing itself as a land of immigration, despite welcome recognition of the contribution made by economic immigration, needs to consider developing some forms of permanent immigration alongside its temporary immigration, while taking care lest the anti-European and anti-immigration lobbies join forces.

### **The external dimension**

EU action on legal immigration has to be seen within the broader setting of the response to globalisation of migration issues. Given that further European integration internally needs to be reflected externally, the EU has to ask itself whether it is able to engage in external action on legal immigration under the Treaties. The difficulties met with in establishing that policy internally will, of course, resurface when it is projected externally, being increased by the involvement of non-member countries in negotiations and by the sensitive nature of employment and immigration issues at a time of economic crisis.

After the emergence of the external dimension of migration policy in the EU's political rhetoric in Tampere and the unilateral line taken in Seville and The Hague, the need to incorporate legal migration into cooperation with non-member countries was not clearly identified until the adoption of a comprehensive approach in 2005 and the Commission communications in 2007 and 2008. Effective management of migration flows calls for partnership with non-member countries, including opportunities for legal migration and use of these to assist in home countries' development. This approach was confirmed in the European pact on immigration and asylum and in the Stockholm programme, but is clearly coupled with Member States' watchfulness as to numbers of migrant workers admitted and the principle of Community preference, without any real relevant action subsequently being observable.

That finding as to the political importance of an external side to legal migration raises the question of its governance. This is where mobility partnerships emerge as a prime means of better organising legal migration between the EU and a non-member country, by combining the opportunities offered by the EU and its Member States in return for partners' commitments on tackling illegal immigration, readmission and border control.

The legal classification of that tool is complicated by migration policy being an area of shared competence. In the specific case of legal economic migration, Article 79(5) of the TFEU preserves exclusive national competence, which has prompted the EU and Member States to reach a kind of mixed agreement without any legally binding force. Mobility partnerships seem to be of unquestionable value as a tool for cooperation and dialogue with non-member countries (soft law), for bringing together different settings for EU action (e.g. the European neighbourhood policy for Moldova or Georgia) and for joint planning both by the EU and the non-member country and by the EU and its Member States. However, the two sides' expectations are clearly not evenly matched or balanced, with legal migration coming to be seen by the EU and its Member States as an adjustable lever with which to secure cooperation in combating illegal immigration, whereas non-member countries regard legal migration and development as the major issues. While this is a welcome tool, such soft law will not always suffice, since there is a need for hard law to provide migrants with security in recognition of vocational qualifications, portability and transfer of pension entitlements etc.

Progress here requires external competence for the purpose. However, the Lisbon Treaty does not make life simple. While it has clarified competence as regards readmission, there is still no general head of competence explicitly conferred on the EU for legal migration, even if the theory of implicit competence may be applicable. There is thus a dichotomy between pious assertion of the need for external organisation of legal migration and Member States' repeated, systematic stonewalling on numbers to be admitted, as spelt out in Article 79(5) of the TFEU.

The complications in governance of the external dimension of legal migration are also due to the need to build relationships involving a number of partners (the EU and its Member States; the EU, its Member States and non-member countries) and to the coordination required of the EU, both internally (justice and home affairs/external relations, employment and common foreign and security policy) and with Member States. Brisk external action by Member States such as France or Spain shows there to be a need either for clarification or for better coordination. For instance, France has already signed nine "new-generation" agreements, dealing with the three components of the comprehensive approach (combating unauthorised immigration, legal migration and development), and has set itself the target of bringing this up to 20 by 2012.

Member States should also bear in mind the "mirror-image effect", in that they need to be able to deal with concealed work and their own labour markets before they can call for a similar effort from developing countries.

There is also a need not to let political issues be the enemy of governance issues, but to realise that the two are interrelated. Internally, it has to be accepted that some areas are the EU's exclusive competence, others are for Member States alone, while others again require close coordination between the EU and Member States. Externally, dialogue with non-member countries can opt to show flexibility, but must be under no illusions as to each side's role. At the same time, it has to be noted that such dialogue is conducted solely between states, to the exclusion of civil society and of migrants themselves.

In short, it is time to move on from words to deeds, to try and become effective before reality catches up with the EU and to inject some unity into external action.

**In his concluding address, State Secretary Wathelet put forward two specific proposals on the Belgian Presidency's behalf:**

Firstly, consideration should be given to setting up a multidisciplinary groups of experts to think through the formulation of a temporary and permanent immigration policy, including the demographic aspect, for the post-Stockholm period (2014 to 2030/50). There seems a need to establish such a group in order to round off the work of the Europe 2030 group and in future ensure better integration of immigration policy into the EU's long-term strategy, such as the present 2020 strategy, following on from the Lisbon strategy.

Secondly, some thought should be given to the need to devise a migration profile for each EU Member State, just as we advise non-member countries to do externally, for the purpose of framing a policy based on clear data which will also enable us to look ahead to the future.

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