Economic migration to the EU

Report with Evidence

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## CONTENTS

<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>7</td>
</tr>
<tr>
<td>Chapter 1: Introduction</td>
<td>1 9</td>
</tr>
<tr>
<td>Chapter 2: The wider context</td>
<td>7 11</td>
</tr>
<tr>
<td>Economic effects of immigration</td>
<td>7 11</td>
</tr>
<tr>
<td>Fiscal effects</td>
<td>7 11</td>
</tr>
<tr>
<td>Innovation and growth</td>
<td>9 11</td>
</tr>
<tr>
<td>Employment and welfare</td>
<td>10 12</td>
</tr>
<tr>
<td>The “demographic deficit”</td>
<td>12 12</td>
</tr>
<tr>
<td>Free movement of persons within the EU</td>
<td>13 13</td>
</tr>
<tr>
<td>Variations between Member States</td>
<td>17 14</td>
</tr>
<tr>
<td>Enlargement</td>
<td>20 15</td>
</tr>
<tr>
<td>Transitional arrangements</td>
<td>20 15</td>
</tr>
<tr>
<td>United Kingdom experience</td>
<td>22 15</td>
</tr>
<tr>
<td>Implications for the EU</td>
<td>24 16</td>
</tr>
<tr>
<td>Future accession</td>
<td>27 17</td>
</tr>
<tr>
<td>Implications for immigration from outside the EU</td>
<td>29 18</td>
</tr>
<tr>
<td>The international dimension</td>
<td>30 18</td>
</tr>
<tr>
<td>Globalisation and the implications for the provision of services</td>
<td>30 18</td>
</tr>
<tr>
<td>Implications for countries of origin</td>
<td>33 19</td>
</tr>
<tr>
<td>The United Kingdom situation</td>
<td>38 21</td>
</tr>
<tr>
<td>Conclusion</td>
<td>42 22</td>
</tr>
<tr>
<td>Chapter 3: Forms of control of migrant workers</td>
<td>44 24</td>
</tr>
<tr>
<td>Free movement of workers</td>
<td>45 24</td>
</tr>
<tr>
<td>Work permits</td>
<td>48 25</td>
</tr>
<tr>
<td>Sectoral schemes</td>
<td>51 26</td>
</tr>
<tr>
<td>Quotas</td>
<td>54 26</td>
</tr>
<tr>
<td>Green Cards</td>
<td>57 27</td>
</tr>
<tr>
<td>Points systems</td>
<td>60 28</td>
</tr>
<tr>
<td>Relative Merits</td>
<td>63 28</td>
</tr>
<tr>
<td>Conclusion</td>
<td>64 29</td>
</tr>
<tr>
<td>Chapter 4: The Commission’s Green paper: the case for an EU policy</td>
<td>65 30</td>
</tr>
<tr>
<td>Background</td>
<td>65 30</td>
</tr>
<tr>
<td>Earlier proposals</td>
<td>66 30</td>
</tr>
<tr>
<td>The United Kingdom’s position</td>
<td>70 31</td>
</tr>
<tr>
<td>EU policies</td>
<td>74 32</td>
</tr>
<tr>
<td>The Green Paper</td>
<td>75 33</td>
</tr>
<tr>
<td>Is there an EU labour market?</td>
<td>76 33</td>
</tr>
<tr>
<td>Intra-EU mobility</td>
<td>77 34</td>
</tr>
<tr>
<td>The case for an EU policy</td>
<td>79 34</td>
</tr>
<tr>
<td>Community preference</td>
<td>83 35</td>
</tr>
<tr>
<td>The scope of an EU policy</td>
<td>85 36</td>
</tr>
<tr>
<td>The self-employed</td>
<td>87 37</td>
</tr>
<tr>
<td>Regularisation</td>
<td>88 37</td>
</tr>
</tbody>
</table>
Chapter 5: Migrant workers’ rights
Existing instruments
UN Convention on the Protection of Migrant Workers
Council of Europe
European Union: Long-term Residents Directive
Chapter 6: Conclusions and Recommendations
Appendix 1: Sub-Committee F (Home Affairs)
Appendix 2: Call for evidence
Appendix 3: List of Witnesses
Appendix 4: EU 25: Population, Growth and Unemployment
Appendix 5: Glossary of Acronyms
Appendix 6: Other Relevant Reports from the Select Committee

ORAL EVIDENCE
Immigration Law Practitioners’ Association (ILPA),
Ms Nicola Rogers and Mr Bernard Ryan
Written evidence
Oral evidence (8 June 2005)

MigrationWatch UK, Sir Andrew Green, KCMG,
Mr Andrew Dennis and Mr Dirk van Heck
Written evidence
Oral evidence (8 June 2005)
Supplementary written evidence (1)
Supplementary written evidence (2)
Comments on MigrationWatch UK’s oral evidence from
Mr Len Cook, National Statistician and Registrar General,
Office for National Statistics

Joint Council for the Welfare of Immigrants (JCWI), Mr Don Flynn
Written evidence
Oral evidence (15 June 2005)

Professor Kees Groenendijk, Professor of the Sociology of Law and
Chairman of Centre for Migration Law, Radboud University, Nijmegen
Oral evidence (15 June 2005)

Home Office, Tony McNulty, MP, Minister of State, Immigration, Citizenship
and Nationality,
Written evidence
Oral evidence (29 June 2005)
Supplementary written evidence, Home Office

Department for Work and Pensions,
Rt Hon Margaret Hodge, MBE MP, Minister of State for
Employment and Welfare Reform, and Mr Bill Wells
Oral evidence (29 June 2005)
Supplementary written evidence, Department for Work and Pensions

European Parliament, Dr Joanna Apap
Oral evidence (4 July 2005)

Union of Industrial and Employers’ Confederation of Europe (UNICE), Ms Lorena Ionita
Oral evidence (4 July 2005)

European Trade Union Confederation (ETUC), Ms Catelene Passchier
Oral evidence (4 July 2005)

European Commission, Mr Vladimir Špidla, Commissioner for Employment, Social Affairs and Equal Opportunities
Oral evidence (4 July 2005)

European Commission, Directorate-General, Justice, Freedom and Security, Immigration and Asylum Unit, Ms Stefania Pasquetti, and Mr Jordi Garcia Martinez
Oral evidence (4 July 2005)

European Commission, Madame Odile Quintin, Director-General, Employment, Social Affairs and Equal Opportunities
Oral evidence (5 July 2005)

Centre for European Policy Studies (CEPS), Mr Marco Formisano and Mr Sergio Carrera
Written evidence
Oral evidence (5 July, 2005)

Confederation of British Industry (CBI), Ms Susan Anderson and Mr Anthony Thompson
Written evidence
Oral evidence (13 July 2005)

Professor Andrew Geddes, Professor of Politics, University of Sheffield
Written evidence
Oral evidence (13 July 2005)

Trades Union Congress (TUC), Mr Nick Clark, Mr Owen Tudor and Ms Sofi Taylor
Oral evidence (20 July 2005)

International Labour Organization (ILO), Lord Brett and Mr Patrick Taran
Oral evidence (20 July 2005)

WRITTEN EVIDENCE

British Hospitality Association and Business in Sport and Leisure (BHA and BISL)

Cleaning and Support Service Association (CSSA)

Commission for Racial Equality (CRE)

Construction Confederation
NOTE: Pages of the report are numbered in bold type; pages of evidence are numbered in ordinary type. References in the text of report are as follows:
(Q) refers to a question in oral evidence
(p) refers to a page of written evidence
ABSTRACT

- Migrant workers make a significant contribution to the economies of the receiving countries; and the United Kingdom’s experience of enlargement shows that they do not reduce job opportunities for the indigenous workforce.
- The EU is committed to a common immigration policy but so far has made little progress in arriving at a consensus on what the EU’s role should be in relation to admission for employment or self-employment.
- The Commission’s Green Paper is a useful contribution to this debate.
- Most regulation of economic migration, including controls on admission and admission procedures should remain at Member State level. There is no need for a common policy on amnesties for illegal immigrants.
- The role of the EU should be in setting standards, in particular in relation to the rights of migrant workers, including their ability to change employers and to move to another Member State.
- Full free movement rights should be extended to the new Member States as soon as possible.
- The United Kingdom should participate fully in immigration measures under Title IV of the Treaty. In particular, it should opt into the Long-term Residents Directive. Non-participation disadvantages long resident third country nationals in the United Kingdom.
Economic migration to the EU

CHAPTER 1: INTRODUCTION

1. Economic advantage has long been one of the main stimulants to migration—both for the individual workers seeking economic betterment and for the States attracting workers to fill labour shortages and skills gaps. With globalisation and the rapid growth in ease of travel, economic migration has become an increasingly significant phenomenon world-wide. The International Organization for Migration estimates that there are 80 million economic migrants worldwide. Few States are unaffected by it, whether as sending or receiving countries. A fair and effective immigration policy seeks to balance the interests of the various parties—both States and individuals—concerned.

2. This report considers economic migration to the European Union (EU) and the level at which it should be regulated. It is concerned with legal migration; it does not examine illegal immigration, except insofar as illegal migration may impact on legal migration policies and vice versa, nor does it look at asylum.¹ It is primarily concerned with migration into the EU rather than movement within it. But we considered some aspects of intra-EU movement in so far as they were relevant to economic migration from outside the EU and to the rights of migrant workers.

3. Our inquiry was prompted by a Green Paper published by the European Commission in January 2005, An EU approach to managing economic migration.² The Green Paper was intended to stimulate a debate about economic migration to the EU, on the basis of which the Commission plans to bring forward firm proposals towards the end of 2005. We hope that this report will contribute to that debate and subsequent consideration of the Commission’s proposals. The central question is whether the increasing economic integration of the EU requires some form of common policy on economic migration or whether the Member States should remain free to make decisions in this area independently of each other. Underlying this question are some fundamental issues relating to the economic effects of immigration and its social benefits and costs.

4. We consider this wider context in Chapter 2, in particular the economic considerations, the implications of globalisation, the effects and experience of enlargement of the EU, and the United Kingdom’s particular circumstances; and in Chapter 3 we look at different ways of regulating economic migration. In Chapter 4 we describe the background to the current proposals—the Commission’s Green Paper and related proposals—and examine the case for an EU policy; and in Chapter 5 we consider how the interests of migrant workers can best be safeguarded.

5. The inquiry was undertaken by Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union, whose membership is shown in Appendix 1. We issued a call for evidence in March

² Document No. 5436/05.
2005, which is reproduced in Appendix 2. In conducting our inquiry we took written and oral evidence from a wide range of interested parties. We held 16 sessions of oral evidence: our witnesses included Mrs Margaret Hodge MP, Minister of State for Employment and Welfare Reform, Department for Work and Pensions, and Mr Tony McNulty MP, Minister of State, Home Office, responsible for immigration; representatives of the Confederation of British Industry (CBI), the Trades Union Congress (TUC), the International Labour Organization (ILO) and MigrationWatch UK; and academic and NGO experts in the field, from both the United Kingdom and other Member States. On 4 and 5 July Members of the Sub-Committee visited Brussels, where we took evidence from Mr Vladimir Špidla, the Commissioner for Employment, Social Affairs and Equal Opportunities, and Madame Odile Quintin, his Director-General; officials of the Directorate-General for Justice, Freedom and Security; and representatives of the European employers’ and employees’ organisations (UNICE and ETUC) among others. We are very grateful to all those who provided information and views on the subject so readily, and particularly to those who assisted our inquiry by giving oral evidence.

6. We are also greatly indebted to our Specialist Adviser, Professor Elspeth Guild, Professor of European Migration Law, Radboud University, Nijmegen, for the depth of her knowledge of the subject matter of our inquiry and her wise advice.
CHAPTER 2: THE WIDER CONTEXT

Economic effects of immigration

Fiscal effects

7. Research on the fiscal effects of migration is limited. In 2002 the Home Office published a report entitled *The Migrant Population in the UK: Fiscal Effects*. It estimated that in 1999/2000 immigrants to the United Kingdom contributed £31.2 billion in taxes and consumed £28.8 billion in benefits and state services, a net contribution of £2.5 billion. The study attracted some criticism for its methodology and also on the ground that it had failed to apportion the whole cost of the immigration system to migrants. (The latter criticism seems misconceived: the costs of controlling immigration should not fall wholly on the immigrants.) More recently, the Institute for Public Policy Research published a paper entitled *Paying their way: the fiscal contribution of immigrants in the UK*, which reviewed the evidence, taking into account the methodological criticisms of the previous report. The findings of the IPPR study confirmed those of the Home Office study, and indeed concluded that the relative net contribution of immigrants to public finances increased between 1999 and 2004. It estimated that total revenue from immigrants grew in real terms from £33.8 billion in 1999-2000 to £41.2 billion in 2003-2004, a 22 per cent increase (compared with a six per cent increase from people born in the United Kingdom). The study also found that immigrants make a relatively greater net fiscal contribution than people born in the United Kingdom and have become proportionately greater net contributors to the public finances than non-immigrants.

8. The economic consequences of migration, however, go beyond the fiscal effects. The debate here consists of four main elements:

- the effect of migration on innovation and growth;
- its effect on employment and welfare;
- its implications in respect of the changing demographics of Europe; and
- its consequences for countries of origin.

In all these areas there was a strong measure of agreement among most of the witnesses, perhaps surprisingly given the controversial nature of the subject. We discuss the first three of these issues below, and the consequences for countries of origin in paragraphs 33-37.

Innovation and growth

9. According to the Government’s evidence, Treasury estimates suggest that migration accounts for ten per cent of trend growth forecasts. This positive

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5 Sriskandarajah, Cooley and Reed, IPPR, April 2005.
6 p 53.
assessment of the effect of immigration on growth and innovation was strongly supported by the witnesses we heard in Brussels. The EU’s Lisbon Strategy, launched in 2000 to improve the competitiveness of the EU economy, including through research and innovation, recognises the importance of immigration to the achievement of these objectives. Even MigrationWatch, an organisation that lobbies for a reduction in immigration to the United Kingdom, acknowledged the positive economic effect of immigration (while maintaining that it did not outweigh the arguments for greater restrictions on immigration).\(^7\) Ministers told us that they regarded the United Kingdom’s decision to permit (subject to a registration requirement) free movement of workers from all the 2004 Accession States as evidence of a successful policy.\(^8\) We discuss the effects of enlargement and its implications in paragraphs 13–21.

*Employment and welfare*

10. As for the effects of migration on employment, the Government were firmly of the view that, rather than competing with the resident population for jobs, migrants expand sectors and create opportunities. Margaret Hodge MP, the Minister of State for Employment and Welfare Reform, told us that “migration has supported prosperity and growth and added value to the UK domestic product and to jobs”.\(^9\)

11. It is commonly asserted that immigrants are a drain on the benefit system. On the contrary, the studies referred to in paragraph 7 above show that overall immigrants contribute more in taxes than they receive in benefits. Moreover, the assertion about benefits is even less justified in the case of economic migrants than of immigrants generally since they are by definition admitted for employment or self-employment; and in the United Kingdom economic migrants from outside the European Economic Area (EEA) have no entitlement to welfare benefits. Under section 115 of the Immigration and Asylum Act 1999, a person subject to immigration control is precluded from claiming non-contributory benefits. Those admitted for employment or self-employment become eligible for contributory benefits only when they have the necessary national insurance contribution record.

*The “demographic deficit”*

12. The demographic challenges facing the EU are also often referred to in the debate on economic migration. Labour migrants tend to have younger age profiles than the average population. According to Eurostat, the Commission’s statistical office, by 2010 deaths in the EU 25 will outnumber births. For a time immigration will compensate for this “demographic deficit”, but by 2025 the beneficial demographic effects of inward migration

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\(^7\) Q 48.
\(^8\) Q 139.
\(^9\) Q 144.
\(^10\) The benefits excluded in this way are: Attendance Allowance, Child Benefit, Council Tax Benefit, Disability Living Allowance, Disabled Person’s Tax Credit, Working Families Tax Credit, Housing Benefit, Income Support, Job Seeker’s Allowance, Invalid Care Allowance, Severe Disablement Allowance, and housing provided by local authorities. Emergency NHS treatment is free of charge for anyone who needs it, regardless of how long they have been, or intend to stay, in the United Kingdom. Those who come to the United Kingdom to work, either as an employee or self-employed person, are entitled to free NHS hospital treatment.
(calculated on current rates) will no longer outweigh the natural decrease, and the total population of the EU—albeit with wide variations between Member States—will start to decline gradually. A table showing the current population of each of the Member States and projections for 2025 and 2050 is at Appendix 4. It is estimated that, on current trends, by 2025 there will be a 20 million shortfall of workers across the EU. One of the challenges facing EU Member States is determining how to satisfy pension requirements among populations with increasing numbers of retired people and decreasing numbers of participants in the labour force as a result of these demographic changes.

Free movement of persons within the EU

13. Free movement of persons for economic purposes is one of the four fundamental freedoms of the EU, along with free movement of goods, services and capital. The EU has strongly embraced the principle that the movement of persons for economic purposes is a central part of the internal market. This position, first adopted in the Treaty of Rome, has been consistently strengthened with each revision of the treaties. Nor has this been exclusively limited to EC nationals (later EU citizens). Even in its original form the Treaty provided for the adoption of secondary legislation to bring third country national service providers based within the Community within the scope of this free movement right. Encouraging free movement of persons has been and continues to be a high priority of the EU institutions, as Madame Quintin, the Director-General for Employment, confirmed to us in emphasising that the Commission's approach up to now had been primarily one of removing obstacles to mobility.

14. The underlying premise is that movement of persons for economic activity is not only necessary in the interests of EU market integration but positively beneficial to growth and innovation in the EU. It is also considered an important contributor to achieving higher levels of labour market participation. However, as currently constructed, the right of free movement of persons has two important limitations: first, it is territorially limited to the Member States of the EU (though subject to continuing expansion as a result of successive enlargements); and secondly, it is subject to a limitation on the basis of nationality—only nationals of the Member States and their family members (of any nationality) are entitled to exercise these rights in their personal capacity (this class also increasing with each enlargement).

15. The EU’s general approach to immigration policy is underpinned by a belief that globalisation in the sense of cross border movement of economic activities—goods, persons, services and capital—is prima facie economically beneficial. Consistently with this position the EU has taken a similar approach in international trade fora, notably the World Trade Organization (WTO). A notable example of this is the EU position in the Doha round of the re-negotiation of the General Agreement on Trade in Services (GATS), which is intended to promote market liberalisation in the provision of services. In June 2005 the EU made a revised offer which, among other

12 Article 59 of the EEC Treaty, now Article 49 TEC.
13 Q 355.
things, would enable services companies in 21 sectors to transfer skilled employees to the EU, including the new Member States, for six months at a time (and management trainees for 12 months).

16. Within the EU’s internal market, competition among the Member States for qualified workers and innovators depends on employers attracting the right staff to their enterprises; for workers and innovators from outside the EU the situation is different. Here national immigration policies are an important factor in facilitating or hindering the access of individuals to the territory and labour market. Some Member States are seen as competing with others for certain classes of workers from outside the EU by means of their immigration regulations.

Variations between Member States

17. Among the factors to be taken into account in this regard are the differences in the economies of the Member States and in their labour needs. While the EU’s internal market is, in law, a single market, this does not prevent substantial variations in economic performance between the Member States. For instance, in March 2005 the unemployment rate in the “old” Member States ranged from 10.0 per cent in Spain, 9.9 per cent in Greece, and 9.8 per cent in France and Germany to 5.0 per cent in Austria, 4.8 per cent in the Netherlands, 4.6 per cent in the United Kingdom and 4.3 per cent in Ireland. The table at Appendix 4 shows the unemployment rates and the GDP growth rates for all 25 Member States.

18. Further, as Mr Marco Formisano of the Centre for European Policy Studies (CEPS) pointed out, there is very substantial variation in the type of economic migration which EU Member States consider that they need, ranging from highly skilled to unskilled workers. Most Member States appear to have schemes which are designed for different skill levels though greater emphasis appears to be placed on some categories than others. For example, in the United Kingdom the Government’s five year strategy for immigration and asylum indicates a substantial preference for highly skilled migrants. The needs of other Member States, such as Spain, which have large agricultural sectors, include substantial numbers of unskilled workers, though southern Europe is also subject to exceptional migration pressures from North Africa and elsewhere.

19. Among the biggest challenges to a common policy on EU economic migration are the large differences in growth and employment rates between Member States, and in the labour shortages or gaps at the national level. It is clear that any common EU policy on economic migration would have to build into its basic design sufficient flexibility to accommodate national and indeed regional variations. The ability of the EU to achieve a common position in the field of services suggests that a similar consensus on broad guidelines for economic migration might be attainable, but it is unlikely that the Member States would accept it.

14 Q 396.

15 Controlling our borders: Making migration work for Britain, Home Office, 7 February 2005.
Enlargement

Transitional arrangements

20. On 1 May 2004 ten new Member States joined the European Union. The nationals of two of them, Cyprus and Malta, had full free movement rights throughout the EU from the date of accession. But it was open to each of the existing Member States to decide, in relation to nationals of the other eight new Member States (often referred to as the “A8” (accession eight)), whether to accord them full free movement rights from the outset or withhold them for a series of transitional periods totalling seven years. In the event all the “old” Member States, except for the United Kingdom, Ireland and Sweden, decided not to give nationals of the A8 countries the right to work immediately, in order to protect their domestic labour markets. The United Kingdom gave them the right to work from the outset, but in the face of public concern about the effects of doing so, instituted shortly before 1 May measures requiring them to register under the Worker Registration Scheme and restricting access to benefits.

21. The new Member States themselves naturally pressed for their nationals to have the full benefits of EU membership from the outset and have continued to urge that the transitional periods be kept as short as possible. They understandably resent discussion of freer entry for third country nationals when their own nationals are still subject to restrictions. As Professor Groenendijk put it, “the eight new Member States will not agree to any rules on the admission of third country nationals so long as their own nationals are still experiencing all kinds of barriers in most of the old Member States”.

United Kingdom experience

22. The Worker Registration Scheme has provided detailed information about the effects of enlargement on economic migration from the A8 countries to the United Kingdom, and the Government have issued regular accession monitoring reports based on it. The most recent report records that in the 14 months from 1 May 2004 to 30 June 2005 there were 232,000 applicants to the scheme, many of whom—up to 30 per cent—were already in the United Kingdom before 1 May 2004. Ninety-seven per cent of workers were working full time, the great majority of them young and single. Eighty-two per cent were aged between 18 and 34 and only two per cent had dependants under the age of 17 with them. The majority of workers were in unskilled occupations, but there were also significant numbers in professional occupations and in public services, notably as care workers (5,500). More than half of the applicants were Polish, with Lithuanians the second largest national group (15 per cent). The applicants were spread throughout the country with the largest number (19 per cent) in London, but the proportion

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16 See paragraph 25.
17 Chairman of the Centre for Migration Law, Radboud University, Nijmegen.
18 Q 111.
applying to London fell from 26 per cent in the second quarter of 2004 to 13 per cent in the second quarter of 2005. There were very few applications for benefits: of 1700 applications for income support and job seeker’s allowance only 50 were allowed to proceed to further consideration.

23. The number of A8 nationals seeking employment in the United Kingdom following accession has greatly exceeded official estimates made beforehand.\(^{20}\) This may have been due partly to the fact that, apart from Ireland and Sweden, other existing Member States have not yet opened their doors to nationals of the A8 countries. Nevertheless the evidence from the accession monitoring reports is that these workers have filled vacancies, without any significant effect on wage levels or the overall unemployment rate. According to Mrs Hodge, accession of the A8 countries and their nationals’ free access to the United Kingdom labour market “has been of benefit to the British economy in terms of our competitiveness, productivity and growth, with no impact, as far as we can tell so far, on either wage rates or employment rates”.\(^{21}\) To that extent the United Kingdom has benefited economically from the fact that these workers were unable to secure employment so readily in other Member States. Nor has the influx of mainly young, single Eastern European workers had any significant disadvantages that were brought to our attention.

**Implications for the EU**

24. As explained above, the numbers of A8 workers coming to the United Kingdom following accession are likely to have been inflated by the fact that only three of the “old” Member States accorded them free movement rights from the date of their accession. They would no doubt have sought employment opportunities more evenly across the EU if they had had equal access across all the Member States. Nevertheless the lesson for the EU as a whole seems clear. **There is little to fear—and much to gain—from the extension of freedom of movement rights to the new Member States.** Movement within the EU is driven primarily by economic considerations: it is no coincidence that the A8 countries from which most workers have come to the United Kingdom are those with two of the highest unemployment rates—Poland and Lithuania.

25. All those we spoke to in Brussels on the subject were strongly of the opinion that the transitional restrictions on the A8 Members States should be lifted as soon as possible. Dr Apap, an adviser to the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs (the LIBE Committee) told us that that was the view of the European Parliament;\(^{22}\) the European Trades Union Confederation (ETUC) agreed.\(^{23}\) Mr Formisano of CEPS described the transitional measures as “useless”\(^{24}\), as in his view they had been in the previous enlargement of Spain and Portugal: most Member States had applied transitional measures to the A8 countries despite studies

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\(^{20}\) A report commissioned by the Home Office before enlargement estimated that for the period up to 2010 net migration as a result of Eastern enlargement might range between 5,000 and 13,000 a year: *The impact of EU enlargement on migration flows*, Home Office Online Report 25/03.

\(^{21}\) Q 139.

\(^{22}\) Q 202.

\(^{23}\) Q 272.

\(^{24}\) Q 395.
by the Commission showing that they were unnecessary. Commissioner Špidla, the Employment Commissioner, told us that he was convinced that it would be in line with the Lisbon Strategy to waive the remaining transitional periods. He explained that there would be an initial evaluation of them by the Commission in 2006. In the light of that evaluation the Member States will decide whether to lift the restrictions or retain them for a further three years. At the end of that period a Member State still applying restrictions may ask the Commission to extend them for a further two years if it can show serious disturbances in its labour market or the threat of them. The transitional measures could therefore last for a total of seven years.

26. **We believe that it would be in the EU’s interest to extend full free movement rights to the A8 countries as soon as possible. Until that happens, it would be inappropriate—and inconsistent with the need for solidarity with the new Member States—to relax controls on the admission of third country national workers.** The new Member States themselves would, reasonably enough, be likely to be reluctant to consider such relaxation.

*Future accession*

27. Similar questions about the free movement of workers arise in relation to the next accession—of Bulgaria and Romania—currently set for 1 January 2007. The accession agreements with these countries contain the same transitional provisions as for the A8, which means that it could be 2014 before their nationals have full freedom of movement rights throughout the EU—one of the fundamental freedoms of the EU. **We believe that, on the evidence of the last enlargement, there is a strong case on economic grounds for according nationals of new Member States free movement rights as early as possible following accession, and for there to be a concerted position across the existing Member States with limited opportunity for them to operate different transitional periods.**

28. The opening of accession negotiations with Croatia and Turkey has recently been approved. The application of free movement rights to the citizens of those countries will be an important and sensitive issue in the negotiations with them, particularly with Turkey given the size of its population. Negotiations with Croatia are likely to be shorter, perhaps in the region of four years. However, the EEC Turkey Association Agreement already provides, through its subsidiary legislation, rights of continued residence and employment for Turkish workers lawfully within the EU. The gradual extension of these provisions to encompass more extensive free movement rights over what is likely to be a lengthy period of negotiations and transition will need careful handling. **Managing the migration aspirations of nationals of candidate countries, coupled with investment in infrastructure and jobs in the candidate country, is the best way to avoid fears of disruption to the labour market in the period following accession.**

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25 Q 297.
26 Q 299.
27 64/732/EEC.
Implications for immigration from outside the EU

29. It is sometimes assumed that enlargement, creating an economic area with a total population of some 460 million, reduces—or even removes—the need for immigration from outside the EU, apart from those with certain specialised skills. Sir Andrew Green, the Chairman of Migration Watch, argued that enlargement was a good reason for reducing the inflow of migrants from the rest of the world.28 At first sight the movement of A8 workers to the United Kingdom following enlargement may appear to support that view. But that is unlikely to be the case. That movement seems to have been stimulated largely by high rates of unemployment and lower levels of economic opportunity in the sending countries, which may not continue as membership of the EU brings a greater measure of economic convergence. Moreover, the populations of the new Member States are ageing as quickly as the pre-accession 15, more so in some cases. So there is unlikely to be a continuing pool of young workers from the new Member States to fill vacancies in the EU as a whole. The accession of Turkey may change the situation, but in the meantime economic migration from outside the present EU will in our view continue to be needed.

The international dimension

Globalisation and the implications for the provision of services

30. As we have already noted, the effects of globalisation on EU economies is not uniform. As Appendix 4 shows, growth and unemployment rates vary substantially across the Member States. The increasing importance of services as a major contributor to GDP, however, holds true across the EU. Studies by the Organisation for Economic Co-operation and Development (OECD) show that most of the variation in employment rates across OECD countries is accounted for by the services sector. The OECD considers that services, which account for an even higher share of employment in the United Kingdom than in the Eurozone, offer considerable job creation potential.29 It has also pointed out that by and large services markets have remained segmented: the integration of services markets lags far behind that of goods.

31. Moves to liberalise controls on service providers (i.e. companies providing services) place some constraints on Member States’ freedom to regulate admission for employment. The broad aim of these initiatives is to create a level playing field for service providers—in terms of their ability to transfer employees freely from undertakings in one country to another. These moves derive from two separate sources: the WTO’s General Agreement on Trade in Services (GATS), to which we have already referred,30 which applies worldwide; and the draft Services Directive currently under discussion within the EU, which is intended to ensure equal treatment for service providers across the EU. We published a report on the draft Directive in July 2005.31

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28 Q 49.
30 Paragraph 15.
The GATS, currently under renegotiation in the Doha Round with a view to further liberalisation of the services market internationally, indicates a widely held view that services are a priority sector. Some see the movement of service providers and their personnel to carry out economic activities across borders not only as an opportunity for job creation but also as a risk to national labour markets. Ms Catelene Passchier of the ETUC referred to increasing concern in some countries about cross-border movement. However, the more prevalent view of our government and Commission witnesses, also shared by UNICE, was that liberalisation in this area would not undermine Member States’ policies. Tony McNulty, the Immigration Minister, said that GATS was essentially a trade agreement, which “does not override our ability to control things within the context of the national immigration rules”. The Commission’s Directorate-General for Justice, Freedom and Security thought that GATS would not affect policies on economic migration for the rather different reason that service providers and their personnel do not enter the labour market of the host Member State. Madame Quintin, the Employment Director-General, also took the view that GATS had nothing to do with immigration or access to the employment market because it was concerned only with the temporary provision of services by workers who were returning to their country of origin. It seems likely that over time the movement of workers resulting from the liberalisation of services will become a more significant element of transnational migration. But the broad consensus of our witnesses was that it was unlikely in the foreseeable future to impinge very directly on Member States’ economic migration policies or to affect the arguments for and against the case for an EU policy in this area.

Implications for countries of origin

Discussion of economic migration tends to focus on the benefits and costs to the receiving countries. There is, however, an alternative perspective on the movement of persons for economic activity, and this is the consequence for countries of origin, particularly those in the developing world, of the emigration of their people. The export of surplus unskilled or low skilled labour is likely to be in the interests of the sending country as well as the receiving country, but the developed world is equally if not more interested in recruiting skilled workers, who may also be in short supply in the sending country, which will not recoup the training costs involved. This problem is particularly acute in the health sector. A particularly striking example was given to us by Patrick Taran of the International Labour Organization (ILO), who had been told when in southern Africa recently that half the wards in the national public health hospital in the capital of Botswana had been closed down because of shortages of nursing staff, who had been recruited to work in the United Kingdom and other western countries. A similar situation can

32 Q 287.  
33 Q 247.  
34 Q 153.  
35 Q 325.  
36 Q 367.  
37 Q 512.
arise in Europe. Madame Quintin noted that Romania was losing many doctors, who were well trained but badly paid, to the old Member States.38

34. While there was substantial concern among our witnesses about the effects of highly skilled workers leaving developing countries, there was no unanimity on what should be done. The phenomenon of “brain drain” was invoked mainly as an argument for inhibiting economic migration from the developing world. In no case was it presented as a reason for preventing emigration from the developed world. A recent report by the World Bank estimated that nearly one sixth of working age, British born graduates (1.44 million) live and work overseas, proportionately more than any other country.39 It was also interesting to note that those who expressed concern about brain drain *vis à vis* developing countries were reticent as regards economic migration from those same countries but limited to the unskilled. It was argued that economic migration from the developing world, whether skilled or unskilled, had a number of virtuous consequences, not least the opportunity of gainful employment for the unemployed, utilisation of expensively acquired but underutilised skills for the underemployed, and the development of new skills for all economic migrants.

35. Of particular importance are the sums remitted to migrants’ home countries, which Don Flynn of JCWI saw as a key way to permit economic migrants to make choices about how to invest in their countries of origin. The World Bank estimated that in 2004 $120 billion—a sum far exceeding levels of development aid—was sent home by migrant workers to their families in developing countries.40 The level of outward remittances from the United Kingdom is estimated as between three and four billion pounds a year.41 As Sir Andrew Green of MigrationWatch pointed out, this amounts to some £10 million pounds a day but does not compensate developing countries for the loss of key people.42

36. Both Mr Flynn and Sir Andrew Green suggested that there might be scope for some form of compensation for countries losing expensively trained workers in, for example the health sector. Mr Flynn referred to a scheme operated by the Department for International Development, which assists Malawi directly to keep nurses working there. In general, however, few of our witnesses favoured the option of tying economic migration to aid as a way of compensating the loss of skilled workers in developing countries. Commissioner Špidla said that he could not “conceive” of compensation for third countries.

The Commission has recently published a communication on migration and development, which identifies a number of practical ways of improving the impact of migration on development.43 These include facilitating the transmission of remittances, encouraging “circular migration”, and mitigating the adverse effect of brain drain.

38 Q 373.
40 Q 504.
41 *House of Commons Official Report*, 10 November 2004, Col 827. See also *United Kingdom Balance of Payments Pink Book 2005*, where “Other payments by households”, which consists largely of workers’ remittances, totalled £4.082 billion in 2004 (Table 5.1); the equivalent figure for “other receipts of households” was £2.667 billion (ibid).
42 Q 74A.
43 Migration and development: Some concrete orientations: COM(2005) final, 1.9.05.
37. This is a large and complex issue to which there are no easy solutions. A combination of approaches is required. First, given the importance of remittances, it is crucial that ways of facilitating their transmission are developed, as the Green Paper proposes; and we welcome the proposals on this in the Commission’s recent Communication. Secondly, as the Sussex Centre for Migration Research proposed, there is a need to make international codes of conduct in international recruitment more effective.\footnote{p 197.} Thirdly, we would not rule out as readily as Commissioner Špidla did the idea of some form of compensation in strictly defined circumstances, such as apply in the Malawian example. But the main instrument to assist developing countries is in the context of negotiating association and co-operation agreements where, as Mr Flynn of JCWI argued, the migration dimension should always be an element\footnote{Q 105.}. It is essential however that in this process the needs of the sending countries are fully recognised, and that the focus is not simply on ensuring that they co-operate in, for example, taking back illegal immigrants.

**The United Kingdom situation**

38. There has long been a regular flow of economic migrants to the United Kingdom. The flow accelerated in the second half of the 20th century, initially mainly from Commonwealth countries. But until recently there have been few “positive” immigration programmes designed to encourage people with particular skills to come to the United Kingdom for settlement—in contrast with countries such as Australia, Canada and the United States. The work permit scheme has been the main instrument used to fill specific vacancies which could not be filled by indigenous—or EU—workers. And inward migration was often balanced or exceeded by outward migration. However, since 1993, when there was a small net outflow of migrants, inward migration has consistently exceeded outward migration by varying amounts. The differences were relatively small up to 1997, but have increased since then. In 2004 an estimated 223,000 more people migrated to the United Kingdom than migrated abroad, compared with 152,000 in 2003.\footnote{International Migration 2004, National Statistics, October 2004.}

39. Forecasts in this area are notoriously unreliable, but, taking account of these trends and of current policies, the Government Actuary’s Department has assumed an annual level of net inward migration of 130,000 a year in its central projection of future population growth. It has also published variant projections on the basis of high and low levels of net migration of 190,000 and 70,000 a year respectively.\footnote{p 29.} On the central projection, the population of the United Kingdom would increase by 6.1 million in the period from 2003 to 2031, some five sixths of this increase being attributable to either the migrants themselves (3.6 million of the increase) or their effect on births and deaths (1.5 million). MigrationWatch argued on the basis of these figures that additional restrictions on immigration were required, simply to prevent...
overcrowding of an already crowded island, with the accompanying pressures on services, particularly in south-east England.48

40. Immigration is a complex phenomenon and it is not possible to produce a comprehensive assessment of its economic and social costs and benefits. We discussed the economic aspect earlier in this chapter and concluded that there is a broad consensus that the immigration of low-skilled and unskilled workers does not generally depress wages or take away jobs that would otherwise be done by indigenous workers. On the contrary, economic migration tends to stimulate further economic activity and create additional jobs. The social consequences are more difficult to quantify. On the one hand, unplanned immigration, as experienced with the peak arrivals of asylum seekers in the United Kingdom between 2001 and 2003, can add to problems in local communities and impose additional pressures on services; and large scale immigration, if concentrated on particular areas of the country, such as south-east England, can add to the strains on the local infrastructure. The TUC witnesses drew attention to the effect on housing, schools and health services in some rural areas where industrialised farming had developed with a need for unskilled labour without adequate planning.49 On the other hand, immigration brings social benefits too, providing skills that are in short supply and filling gaps in essential services like the NHS and in other sectors, such as the construction and hospitality sectors.50

41. We were concerned that immigration of low-skilled workers could be used by employers as a cheap substitute for training the indigenous work force and could adversely affect schemes designed to improve the skills of disadvantaged young people. On the training side we were reassured by the figures that the CBI gave us of the amount invested in training and development by British industry;51 and on youth unemployment by the information that Mrs Hodge gave us on the effects of the Welfare to Work Programme.52 But it is important to remain alert to these dangers, particularly in the event of a less favourable economic climate.

Conclusion

42. At the risk of stating the obvious, economic migration is largely driven by economic considerations. Many migrants will return home after a period of economic activity in the host country, either because of a down turn in the economy or because they have saved enough money to meet their needs at home, at least for a period of time. Mr Don Flynn of the JCWI gave a striking example of this phenomenon. He told us that of the 27 million Turks who migrated to Germany in the 1960s some 25 million returned to Turkey.53

43. We do not believe that it is possible to set an overall limit for net immigration, as MigrationWatch has argued, based on some arbitrary

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49 QQ 478-479
50 Construction Skills estimates that one in ten building workers is a migrant (p 190); and according to the British Hospitality Association there was a shortage of 100,000 workers in the hospitality industry in 2004-05.
51 p 140.
52 Q 144.
53 Q 88.
assessment of the optimum population of the United Kingdom. There are too many imponderables, not least, as the Government Actuary has pointed out,\textsuperscript{54} in relation to future projections of net immigration, which are notoriously uncertain. While immigration controls allow at least a degree of control of inward migration, there is, rightly, no parallel control of people leaving the country. Levels of net immigration have fluctuated widely in the past and, as mentioned above, have often been negative. The current relatively high levels are associated with a long period of uninterrupted growth and prosperity, which is unlikely to be a coincidence. Overall we endorse the Government’s view that national economic considerations should remain the primary determinant of the level of economic immigration, provided that this is not at the expense of the interests of the other parties involved, notably the sending countries and, most importantly, the migrant workers themselves, whose rights must not be infringed.

\textsuperscript{54} pp 28–29.
CHAPTER 3: FORMS OF CONTROL OF MIGRANT WORKERS

44. In order to consider the respective roles of the EU and Member States in regulating economic migration, it is helpful to examine the different forms of immigration control of economic migrants available to EU Member States. Within the EU there is free movement for EU citizens (and their family members). For third country nationals coming from outside the EU there is a variety of schemes, many of which overlap in various ways. We have categorised them under five main headings: work permits, sectoral schemes, quotas, Green Cards, and points systems. But first we discuss free movement of workers in view of its importance as a form of managed migration and its application beyond the nationals of the Member States.55

Free movement of workers

45. The most liberal regime governing the movement of workers is one where, within an area such as the EU and the Common Travel Area between the United Kingdom and Ireland, nationals of the States comprising it are free to move to take up or seek employment virtually without restriction. This approach is based on a strong underlying premise that the movement of workers is beneficial both to the economies and to the individuals and their families who are affected by it. It overrides the right of the State to protect its national labour market against the arrival of workers from other countries seeking employment. Any worker from a country within the scheme is entitled as a matter of law to move to seek employment anywhere else within the territory of the participating countries. In the EU the Member State authorities are entitled to interfere with that right only on grounds of public policy, security or health, none of which may be used to protect the economic interests of the State.

46. As free movement of workers within the EU may be restricted only on these limited grounds, this model is administratively straightforward. The authorities do not need to employ staff to assess applications from individuals and companies regarding the movement of people for economic purposes. It also has the advantage that it places the power to make the decision whether or not to move in the hands of the person who will be most affected by the choice. The individual does not become trapped either in his or her home State, unable to move to seek employment elsewhere, nor in the host State, on the grounds that if he or she leaves it will be impossible to return (for instance on account of the expiry of a work permit). Thus the individual can work for as long as there is a job available for him or her and return home when there is no work available, but come back and try again at a later point when the labour market is more favourable. It also places the individual in a relatively strong position as regards bargaining with the employer. As will be seen, in some of the other models the economic relationship between employers and employees can be distorted by the employee’s immigration status, which he or she can acquire only with the good will and assistance of the employer.

47. The main disadvantage of this system for the State is that it loses control over economic migration, leaving it to market forces. The State’s power to control

55 In addition to family members, free movement rights extend to nationals of certain third countries (Iceland and Norway) as the result of specific agreements.
the population on its territory is restricted to the protection of public policy, public security and public health. The market alone makes the choices regarding employment, whether of own nationals or labour migrants.

**Work permits**

48. Work permits are the most prevalent mechanism for controlling economic migration. As operated in the United Kingdom, a work permit is issued to a business based in the United Kingdom which is able to demonstrate to the authorities that it satisfies three main conditions:

- that it is unable to find an employee to fill a vacancy from the domestic and EU labour market;
- that the vacancy is at a sufficiently highly skilled level to bring it within the scheme; and
- that the proposed foreign employee is sufficiently highly skilled to qualify under the scheme.

49. In many other EU Member States the criteria for work permits are more flexible, normally consisting of a test of the labour market without a skills or seniority requirement. In some, including Ireland, the decision is simply a certification that the third country national worker qualifies for admission to the country. Ireland has also experimented with delegating the decision to the companies themselves. In the Netherlands, with three small exceptions, salary level alone is used as the criterion for issue of a work permit. Other Member States also differ from the United Kingdom in issuing the work permit to the individual rather than to the enterprise seeking to hire him or her. In such circumstances the work permit is usually issued to the individual to take employment with any business within an economic sector. This is advantageous to the worker, but difficulties can arise as regards the classification of sectors under such systems.

50. The key merit of work permit schemes is that they are directly related to labour needs as perceived by employers. There is a degree of responsiveness to corporate interests which is only exceeded by the system of free movement of workers. Among the disadvantages are that they are administratively relatively cumbersome, and the assessments made by public authorities will not always satisfy the corporate sector and its views of its need. Under the United Kingdom scheme there is no flexibility to deal with low skilled labour needs, and the individual is tied to the employer for the duration of the work permit or a period determined by the Government. This may distort the relative bargaining power of the migrant worker in relation to the employer. Unless the migrant worker accepts the conditions which the employer offers, the employer may threaten to dismiss the worker, which will then result in him or her no longer being entitled to remain in the State. Tying an employee to a specific employer has had particularly unfortunate consequences, including physical abuse, for some domestic workers, as the evidence from Kalayaan UK graphically illustrates.\(^{56}\)

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\(^{56}\) pp 201–204
Sectoral schemes

51. This form of control reflects the segmentation of the labour market. The principle behind it is that mobility between different sectors of the labour market is limited. Thus, it is unlikely that shortages in one sector will be compensated for by excess labour in other sectors. On this premise labour migration is permitted but limited to the sector which is suffering the shortage.

52. The main advantage of this form of control is that, if accurately targeted, it is clearly responding to labour market needs as expressed by employers, while at the same time protecting those parts of the labour market where there is an excess of capacity among workers who are EU citizens. When employers in one area express concerns about labour shortages, the State authorities can open up labour migration in the category to satisfy the needs of industry.

53. There are, however, several disadvantages to sectoral schemes. First, there is the difficulty for the authorities of satisfying themselves that a labour shortage in a sector actually exists. The data on which the authorities work is usually, at least to some degree, out of date and the variations in data on regional databases can be substantial. Secondly, sectoral schemes create problems of mobility. Migrant workers become trapped in one sector when they may have other skills or have developed other skills which are in demand elsewhere in the economy. A subcategory of this problem is promotion: depending on how the sectoral scheme is designed, it may pose a problem both for the employer and the migrant worker if an opportunity for promotion arises which would place the individual outside the scheme. Thirdly, sectoral schemes presuppose low mobility among sectors which may have adverse consequences for training programmes. Finally, they encourage the differentiation of rights between workers, with workers in low skilled sectors usually receiving fewer rights than those in high skilled sectors. The British authorities have embraced sectoral schemes in the low skilled sectors in the past, but the Government’s five year strategy for asylum and immigration, published in February 2005, envisages that low-skilled migration schemes will be phased out in the light of new labour available from the EU.  The reason given was that the schemes have become rife with abuse.

Quotas

54. Quotas raise a rather different set of considerations as regards labour migration. They fall into two main groups: in the first group are quotas which are random, like one element of the United States Green Card scheme, which is, in the words of the Immigration Minister, a “lottery”. Quotas of this kind are founded on two principles: that diversity in the immigrant population is beneficial to the State, and that it is more equitable to give some of the foreigners seeking to come to the country a chance irrespective of their qualifications. (In the United States the quota is not, of course, the only means of gaining admission to work.) The second group of quotas are those which are superimposed on some other form of control, for instance a sectoral scheme, with a cap on the number of labour migrants who can be permitted entry in the category each year.

57 Controlling borders: Making migration work for Britain (CM 6472).
58 p 73.
55. The advantage of quotas in the first category is that they are easily defended against charges of discrimination on the basis of nationality or other grounds. There is certainly an element of fairness towards the individual in a lottery type of system, at least insofar as the authorities can justify the system on the basis of equal access to the lottery. The second type of quota provides some reassurance to society that there is an upper limit on the number of labour migrants who will be entering the country in any given period.

56. The disadvantages of quotas are more numerous. As regards the first type, the principle of a need for diversity in the migrant population may not be accepted by public opinion. Moreover, the system does not satisfy any of the normal requirements for labour migration; it is certainly not designed to fill vacancies in the labour market as there can be no way of knowing who will win the lottery, or whether that person’s skills will be in demand. The second type of quota is also an ineffective way of responding to labour market needs since, when the quota limit has been reached, a business needing to recruit from abroad will have to wait until the next quota period opens. The British Hospitality Association (BHA) gave as an example the sector-based scheme offering work permits for lower level jobs in hospitality. The quota was 10,000 in 2003–04 and 9,000 in 2004–05 against a shortage estimated by the BHA at 100,000. It adds an extra layer of complexity to the administration of immigration controls. It also raises complicated questions, such as whether family members of persons admitted under the quota who themselves have access to the labour market should be counted in the quota.

Green Cards

57. This form of control is most commonly associated with the United States, although Germany introduced a Green Card system for the IT sector for a limited period from August 2000. The distinctive feature of Green Card systems is that they address a perceived need for labour migrants. Those labour migrants who are targeted are offered a superior status—normally security of residence and family reunification—at an earlier stage than other migrants. Applicants for a Green Card are usually given preference on the basis of their skills or experience. Having acquired the status, they have substantially greater flexibility as regards employment, self-employment and mixing economic activities in the host country and elsewhere than is possible under other systems.

58. The key advantage of this system is that it permits the authorities to attract economic migrants in categories which they consider need to be developed rather than at the behest of business. When the authorities consider that the development of an economic sector is in the interests of the economy in general but the country does not have sufficient skills in the field, this kind of migration programme can be useful. This was the rationale behind Germany’s Green Card scheme.

59. Among the disadvantages of this system is its inflexibility. On the one hand, if the conditions are too restrictive, the system may not be attractive enough to those with the skills that are targeted. According to Mr Taran of the ILO, in the German case the authorities were able to fill only 3000 places of the quota of 10,000. On the other hand, once workers have been admitted on a
Green Card basis, they are protected against termination of their immigration status when the economy takes a downturn in the sector. Further, the system is based on discrimination between groups of economic migrants as regards the acquisition of rights within the State. This may be difficult to defend.

**Points systems**

60. Points systems are based on the premise that some people, by reason of characteristics which can be measured objectively by the authorities, are particularly desirable as residents in the state. These individuals are then identified from among those seeking to come to the country and their entry facilitated. Applying this type of system to economic migration means identifying those characteristics which render a potential migrant an asset to the labour market. In this system the State grades potential migrants on the basis of objective criteria such as educational achievement, language capacity, and previous earning capacity as a percentage of average wages in their country of origin, and where a sufficiently high mark is achieved the individual is granted admission.

61. The main advantage of a points system is that the authorities can claim that there is a substantial degree of transparency in the mechanism by which some individuals are permitted entry and others are rejected. So long as the criteria for assessment are public, a would-be migrant may evaluate for him or herself the likelihood of obtaining entry. Such a system also releases the authorities from dependence on the private sector to inform them of the labour market needs. The uncertainty which is inherent in waiting for businesses to advise the authorities of their labour needs is diminished.

62. The key problem with points systems is one which from another perspective is an advantage—the fact that it is cut free from labour market needs. There is no assurance that a points system will in fact fulfil labour market needs and that businesses will be able to fill their labour needs by hiring individuals who have arrived under a points system. Another aspect of this problem is the degree of confidence which the authorities must have in their ability to set the criteria on the basis of which economic migrants are chosen. Do those criteria actually identify those individuals who will be successful migrants? There is the further difficulty of determining how to assess who is a successful economic migrant.

**Relative Merits**

63. Each of the categories of control set out above has both merits and disadvantages. The easiest to administer and the most market friendly is, of course, free movement of workers. At present this is a concept most developed within the EU, although there is some movement towards similar arrangements in other economic groupings of states, such as the Mercosur group in South America and the Confederation of Independent States in the former Soviet Union. Mr Taran told us that the ILO was also advising groups of countries in East Africa, West Africa and the EuroMed region on possible schemes of free movement. And the wide range of association agreements that the EU has concluded with neighbouring countries often include an element of free movement for workers. Even a gradual move towards some form of global free movement of workers would not be politically viable, although a move in this direction for those States from
which the majority of EU labour migrants come, such as Turkey (with whom accession negotiations have now been opened), might be worth exploring at some stage in the future. In weighing the merits and drawbacks of the other five forms of control, it is apparent that no one form will be satisfactory on its own.

**Conclusion**

64. The Commission’s Green Paper discusses several of these control systems in the context of the EU dimension to economic migration. In particular, it invites comments on the relative merits of control on a sectoral as against a “horizontal” approach. It is not our remit to pronounce definitively on the best form of control: all have advantages and disadvantages and each may be suitable in particular situations. The broad conclusion we draw from this brief analysis of the different forms of control—work permits, sectoral schemes, quotas, Green Cards and points systems—is that all are difficult for State authorities to operate efficiently, if only on account of incomplete knowledge of the labour needs of different sectors of their own economy and differing objectives relating to them. In our view it would be much more difficult, if not impracticable, to operate any of these methods of control at EU level. It is in the light of that conclusion that we consider in the following chapters what it is appropriate to try to regulate at Member State level and EU level respectively.
CHAPTER 4: THE COMMISSION’S GREEN PAPER: THE CASE FOR AN EU POLICY

Background

65. The Commission published its Green Paper in January 2005 as the start of a consultation process on “the most appropriate form of Community rules for admitting economic migrants and on the added value of adopting such a common framework”. In the light of the comments received, the Commission plans to present before the end of the year “a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market”.

Earlier proposals

66. This is not the first attempt to establish common EU rules on admission for employment and self-employment. As early as 1991 the Maastricht European Council called for the harmonisation of policies on admission, in the light of which the Member States adopted a Resolution in 1994 on admission of third country nationals for employment. The Resolution called for limitations on admission for employment to be maintained or tightened up: temporary admission for employment should be considered only in exceptional circumstances. It set out non-legally binding guidelines on, among other things, admission criteria, admission procedures, period of admission and extension of stay. Subsequently Article 63 of the Treaty establishing the European Community (TEC), introduced by the Treaty of Amsterdam, required the Council to adopt measures on “conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion”.

67. The Conclusions of the Tampere European Council in October 1999 called for:

“the approximation of national legislations on the conditions for admission and residence of those identified as third country nationals, based on a shared assessment of the economic and demographic developments within the Union as well as the situation in the countries of origin”.

In response to the Tampere conclusions, the following year the Commission presented a Communication on a Community Immigration Policy. In a report on these proposals we expressed broad support for a common approach, while urging resistance to any drift towards Community involvement in areas beyond the scope of the EC Treaty, especially admission policy. We also voiced concern about the excessively bureaucratic approach envisaged by the Commission, which was unlikely to meet the needs of business. Measures have since been adopted in relation to most categories of admission, including admission as a visitor, as a student and for family reunion, as well as on illegal immigration.

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68. In 2001, partly in response to the Lisbon Strategy of March 2000, the Commission followed up the Communication with a draft Directive laying down the basic conditions and rules of admission of migrants for employment purposes. The measure failed to make progress because of lack of support from the Member States, for whom the right to decide on who should be admitted for employment and in what numbers has always been a politically sensitive issue. As Professor Groenendijk put it, “the largest Member States ... have a constant policy of keeping the EU out of admissions policy and wanting to have a free hand in this area”. The sensitivity of this aspect of immigration policy was reflected by the decision taken by the Council in December 2004 under Article 67 TEC on which of the policy areas covered by Title IV of the Treaty (visas, asylum, immigration and other policies related to free movement of persons) should in future be governed by the procedure prescribed in Article 251 of the Treaty (i.e. qualified majority voting (QMV) and co-decision with the European Parliament) instead of unanimity and consultation with the Parliament. The Council decided that most areas of immigration and asylum policy should be transferred to QMV and co-decision with the significant exception of measures relating to legal migration.

69. The Constitutional Treaty reflects this same sensitivity: Article III-168, which provides that the Union “shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows ...”, contains a specific saving to the effect that “this Article shall not affect the right of Member States to determine volumes of admission of third country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed”.

The United Kingdom’s position

70. The United Kingdom, together with Ireland, is in a special position as regards both border controls and the adoption of measures on immigration and asylum, by virtue of the two protocols to the Treaty that it negotiated at Amsterdam in 1997. The first enables the United Kingdom to retain border controls at frontiers with other Member States. This reflects the view of successive governments that it is not in the United Kingdom’s interests to be full members of Schengen and be part of an area without internal border controls. As a result it cannot participate in “Schengen building” measures. This has led to difficulty recently in relation to two measures: the External Borders Management Agency (FRONTEX) and a measure relating to the inclusion of biometric identifiers in travel documents. The United Kingdom has sought to participate in both these measures but has been unsuccessful. It is currently challenging its exclusion in the European Court of Justice.

71. The second Protocol relates to the adoption of measures covered by Title IV of the EC Treaty (visas, asylum, immigration and other policies related to the
free movement of persons). This enables the United Kingdom to choose, on a case by case basis, whether to participate in such measures. So far the United Kingdom has opted into measures relating to asylum and illegal immigration but not into measures relating to economic or other forms of legal immigration.69 70

72. We have consistently argued, both in our scrutiny work and in previous reports that the United Kingdom should give up its opt-out on immigration and asylum policy.71 The Government’s response has been that the opt-out is essential to enable the United Kingdom to retain control over its borders and over whom it admits to the country. We do not believe that these arguments are valid. Giving up the opt-out on immigration policy would not affect the United Kingdom’s frontiers position, which is covered by a quite separate opt-out, which we accept enjoys a large measure of cross-party support. We asked some of our continental witnesses for their view of the British position. Commissioner Špidla said that it would be in the interests of the United Kingdom to participate fully in the development of EU immigration and asylum policy,72 and representatives of the Justice, Liberty and Security Directorate-General said that the Commission would prefer the United Kingdom to opt in.73 Professor Groenendijk said that the general public perception was that the United Kingdom did not participate in these areas of policy at all and that within the EU there was a growing impatience with the United Kingdom’s position, particularly because of its perceived unfairness vis-à-vis the new Member States which have been required to sign up to the full Schengen acquis.

73. We agree with Commissioner Špidla. We again urge the Government to participate fully in EU immigration and asylum policy. We believe that it would be to the advantage of the United Kingdom to do so. It is damaging to be seen as only partially engaged in this important area of policy. The United Kingdom’s recent exclusion from measures in which it would be in its interests to participate underlines the increasing difficulty of maintaining its present position and bears out, we regret to say, the warnings that we have given to this effect in the past.

EU policies

74. The EU is committed to the development of a Community immigration policy: as explained above, Article 63 TEC requires the Council to adopt measures on “conditions of entry and residence”. Measures are now in place governing family reunification and admission as visitors and students. The only significant category of admission not to some extent subject to EU regulation is admission for employment, which has always been the most sensitive aspect of immigration policy for the Member States.

69 For convenience we refer to this procedure as an “opt-out”, although strictly speaking it is for the United Kingdom to decide on each occasion whether to “opt into” the measure in question.
70 Denmark is in a separate special position, having negotiated a total opt-out from immigration and asylum measures.
72 Q 312.
73 Q 320.
The Green Paper

75. In the Green Paper the Commission identified seven key issues on which it invited comments:

- The degree of harmonisation: the Commission envisages a gradual process with “first step legislation” laying down common definitions, criteria and procedures. It invites comments on whether future EU legislation should adopt a horizontal approach covering the conditions of entry and residence of any third country national economic migrant or a sectoral approach.

- Admission procedures for paid employment: the main issues here are whether the “Community preference” principle (preference for the domestic labour market) should be retained and, if so, whether it should be granted to third country nationals already present in the Member State, or in another Member State; and whether only to long-term residents or to all third country national workers. The other main issue under this heading is whether third country nationals should be admitted only to fill a specific vacancy or whether a more flexible system, such as a green card, would be preferable.

- Admission procedures for self-employment

- Applications for work and residence permits: the questions here are fairly technical ones about whether there is a case for combining work and residence permits.

- Possibility of changing employer/sector

- Rights: including whether there should be differentiation of rights between temporary workers and long-term residents.

- Accompanying measures: integration, return and co-operation with third countries, including mitigating the adverse effect on third countries.

We examine most of these issues in the following paragraphs, but first we consider the EU context within which a common policy would operate and the broad justification for it. As mentioned above the Commission will present its policy plan towards the end of the year.

Is there an EU labour market?

76. We asked most of our witnesses to what extent there was a genuine EU labour market. Many, including Mrs Hodge,74 were of the opinion that there was a set of overlapping and interrelated labour markets: local, regional, national, EU and, indeed, global for some industries. The IT industry was cited by Lord Brett, the London Director of the ILO, as an example of such an industry.75 The TUC, which also saw the labour market as differing according to the industrial sector, identified health as another sector where there was a global market. UNICE was of the opinion that there was not really a European labour market, and Madame Quintin agreed: she said, “there is not a European labour market, there are national labour markets,
but with the completion of the internal market, there is more and more interaction of the labour markets.\textsuperscript{76}

\textit{Intra-EU mobility}

77. Although there is a European labour market in the sense that (subject to the transitional restriction on citizens of the new Member States, to which we have referred) EU citizens have the right to move freely to another Member State to work, the extent to which this right is exercised is relatively small. Commissioner Špidla told us that only 1.5 per cent of workers work in a different Member State from where they were born.\textsuperscript{77} The low level of intra-EU mobility has been a source of concern, with comparisons drawn with the much higher rate of mobility in the United States, the suggestion being that this is a significant factor in the United States' stronger long-term economic performance. In recognition of this concern 2006 has been designated the European year of mobility. However, it is not surprising that the rate of mobility is lower within the EU than in the United States, given the greater cultural and language differences here. As Mr Patrick Taran of the ILO put it, “People like to be with their families, their culture, their home, where their context is, and most people we see moving from elsewhere in the world do not move because they want to or simply to get a better life here, but they move because they do not have a choice”. Our witnesses from the Centre for European Policy Studies noted the paradox that EU citizens, who enjoy free movement rights, are much more inclined to stay at home than third country nationals who do not.\textsuperscript{78}

78. There would probably be economic advantage to the EU if the level of labour mobility within the EU were higher, and it is important that any barriers to mobility should be removed, but in the light of past trends, a substantial rise in intra-EU mobility seems unlikely. If so, the effect on the EU’s economic performance will remain marginal. We examined issues relating to intra-EU mobility in a report in 2002, \textit{Working in Europe: Access for all}.\textsuperscript{79} We noted then the absence of any evidence on the number of people who wanted to move but were frustrated from doing so by artificial barriers to mobility, and that low levels of mobility might simply reflect personal preferences. We also pointed out that increasing geographical mobility was only one way of improving the flexibility of labour markets and that other measures might be more effective. These points remain valid.

\textit{The case for an EU policy}

79. Four main arguments have been advanced for an EU policy on economic migration: economic, demographic, internal market, and human rights related. We were told by Commissioner Špidla that the movement of workers was an unavoidable consequence of globalisation and that economic migration was essential to stimulate growth and contribute to the Lisbon strategy.\textsuperscript{80}

\textsuperscript{76} Q 355.
\textsuperscript{77} Q 298
\textsuperscript{78} Q 383.
\textsuperscript{79} 2001-02, 15th Report, HL Paper 88.
\textsuperscript{80} Q 297.
80. Others have pointed to the long-term decline in the working population of most of the Member States and the need to fill the “demographic deficit” by third country national workers if living standards are not to decline. According to Mr Taran, a survey conducted in 2004 by the ILO’s actuarial service suggested that, if current trends continued, by 2050 Western Europe’s standard of living measured by GNP income per capita would be only 78 per cent of what it is today, a decline of 22 per cent.\(^{81}\) As we have already mentioned, it is argued that it is fruitless to look to the new Member States to plug the gap, despite the United Kingdom’s experience post-enlargement, since most of them also face the prospect of a declining population, in many cases more extreme than the pre-accession fifteen. The ILO told us that, according to their projections, any benefit of labour mobility arising from enlargement will disappear after two or three years because of the declining birth rate and rapid ageing of the population in Eastern European countries. It is not suggested that immigration could of itself correct the demographic imbalance, since it has been shown that to restore the ratio between the employed and retired populations (the “dependency ratio”) would require massive continuing immigration on a scale many times greater than at present, and it would be necessary to continue it indefinitely in order to replace in due course the migrants who themselves moved into the retired population. But it could help to ameliorate the situation in the short term.

81. The third set of reasons—less applicable to the United Kingdom—relates to the Schengen area since, once a person is admitted to one of the Schengen Member States, there are no physical barriers to prevent their moving on to another State. It is argued that there is a need for measures to protect migrant workers on an EU-wide basis, on both human rights and internal market grounds, to prevent one Member State gaining an unfair economic advantage over another by applying lower standards of protection. Finally, it is also suggested that providing more legal channels for economic migrants will reduce incentives for illegal immigration.

82. All of these reasons in favour of a programme of economic migration have some substance, but the crucial question is the extent to which they call for regulation at EU level. As Professor Geddes put it, “a more robust explanation needs to be provided of how exactly EU action would overcome these difficulties, and prove added value.”\(^{82}\) Overall, while accepting that there is a role for the EU in this area in setting out some guiding principles, particularly in providing protection for migrant workers, we see no case for micro-management of admission for employment at EU level. Given their very different economic situations, Member States need to retain the ability to respond flexibly and promptly to their labour market needs, which are unlikely to coincide across the EU. This is more likely to meet the needs of companies than a cumbersome central bureaucracy.

**Community preference**

83. Community preference is the principle whereby in filling posts employers are required to give preference to EU nationals over third country nationals on

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\(^{81}\) Q 504.  
\(^{82}\) p 154.
the same basis as to their own nationals. Views were divided on the extent to which Community preference operates effectively in practice, and whether it needs to be strengthened. Some, such as Dr Apap, thought that it was already “quite strong”. Others, including Professor Groenendijk, who described it as “symbolic”, were more sceptical. UNICE and the CBI argued that the burden of proof should not fall on the employer. Commissioner Špidla argued that Community preference should be extended to resident third country nationals.

84. There is inevitably a practical limit to the extent to which vacancies can be brought to the attention of job-seekers in every Member State. The main instrument for disseminating information about vacancies throughout the EU is EURES—a system for registering vacancies online throughout the EU. Both the Commission and the Department for Work and Pensions considered it worthwhile, albeit in need of development. Madame Quintin told us that it was being increasingly found to be a useful tool. Mrs Hodge said: “We think it adds value”, and pointed to the fact that the NHS had successfully recruited 1000 nurses through EURES. UNICE thought that EURES could be useful, but that employers should not be obliged to publish all vacancies on the EURES website to avoid making the recruitment process too burdensome. Community preference is an important principle supporting the fundamental freedom of movement of workers, and we support its extension to resident third country nationals. Its practical effect is inevitably limited by the low level of labour mobility within the EU. It is important to avoid excessive bureaucracy, and additional burdens should not be placed on employers.

The scope of an EU policy

85. There were considerable differences of view among our witnesses about the scope of an EU policy. No one suggested that there should be control at EU level of Member States’ admission policies, let alone of the numbers admitted. The Commission’s Action Plan on the Hague Programme favours a policy that covers “admission procedures and criteria”. Vice-President Frattini, the Commissioner for Justice, Freedom and Security, speaking at a public hearing on the Green Paper in Brussels on 14 June, seemed to go further than this in advocating the harmonisation of admission procedures and a Green Card Scheme which would allow admission for job seekers for a limited period. The European Parliament has also supported a Green Card Scheme. The most common view among our witnesses was that there might be a place for an EU policy which set out a “framework” of general principles, criteria and minimum standards.

83 Q 200.
84 QQ 113.
85 QQ 237, 438.
86 Q 305.
87 QQ166–167.
88 Q 355.
89 Q 166.
90 Q 235.
86. **In view of the wide differences between the economies of the Member States and their need for economic migrants, we are sceptical of the case for any detailed regulation at EU level of admission for employment or self-employment.** We believe that the main scope for EU intervention in this area is in ensuring that the schemes operated by Member States are sufficiently transparent, and protect the rights of migrant workers effectively. We discuss this in more detail in the following chapter.

*The self-employed*

87. The traditional tool of EU third country agreements in the field of movement of persons has been in respect of the movement of the self-employed and the rights of companies to move their personnel between the participating States. Full respect by the Member States for the rights contained in many of the EU’s third country agreements to move in order to exercise self-employed activities and of businesses to move their personnel for economic purposes provides an adequate mechanism for economic migration of this kind. **There is no need for the EU to become engaged in the detailed regulation of general self-employed migration.**

*Regularisation*

88. On a related issue the Green Paper raises the question whether there should be some central co-ordination of “regularisations”, i.e. the granting of amnesties to certain categories of illegal immigrants. As we argued in our report on illegal immigration, it is important that the authorities limit illegal immigration, and in particular illegal working, since otherwise policies on legal migration can be completely undermined. 92 On the other hand, it is undesirable on both economic and social grounds that illegal immigrants should remain working in an irregular situation on a long term basis, exposing themselves to exploitation. Some regularisation programmes are needed from time to time, but large scale regularisations have become a fairly frequent occurrence in the southern European States (most recently in Spain, where it was said that some 700,000 people were involved) raising fears, as the Directorate-General for Justice, Freedom and Security argued, that they may encourage further illegal immigration. 93 There is general agreement that they should not be a long term solution 94 or a substitute for a proactive policy. 95 Sir Andrew Green of MigrationWatch, who described amnesties as a “very silly idea”, argued that this was one area where action at EU level would be desirable—to prevent Member States granting them. 96 On the other hand, due recognition needs to be given to the exceptional pressures on southern European States from North Africa and elsewhere.

89. If there were a common policy on admission for employment, it would clearly circumvent it if Member States were free to regularise illegal workers on a large scale. However, even in the absence of a common policy it is argued that there is a need for co-ordination because of the knock-on effect

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93 Q 349.
94 CEPS, QQ 403–404.
95 Dr Apap. Q 212.
96 Q 72.
of large scale regularisation on neighbouring Member States. Concerns on this score among some Member States as a result of the Spanish example mentioned above have already led to an informal early warning system being set up, and this is a reasonable precaution. But we do not believe that in practice regularisation is likely to lead to substantial movement of those regularised to other Member States, certainly in the short term. Mr Sergio Carrera of CEPS told us that the fears raised by the Spanish regularisation programme proved unfounded: he thought that even the early warning system was unnecessary. As was pointed out by Nicola Rogers of the Immigration Law Practitioners’ Association, once a person is given a legal status he or she has a greater interest in staying put.\footnote{Q 39.} Don Flynn of the JCWI made the same point: it would be perverse for an illegal immigrant granted legal status in one Member State to seek immediately to move to another where he or she would be again illegal.\footnote{Q 104.} It is true that under the Long-term Residents Directive a legally resident third country national would have the right to move to another Member State, but only after five years, by which time most migrants are likely to be settled in the Member State to which they first migrated.

\textbf{90. While an informal early warning system may provide some reassurance to Member States, we see no need for a more direct control of regularisations at EU level. There is no reason to think that regularisations lead to immediate large scale movement to other Member States.} Only after five years’ legal residence in a Member State would a person who had been regularised have the right to move to another (unless it was one like the United Kingdom, which had not signed up to the Long-term Residents Directive).
CHAPTER 5: MIGRANT WORKERS’ RIGHTS

Existing instruments

91. Determining the rights to which migrant workers should be entitled is the subject of numerous international commitments of the United Kingdom and other Member States of the European Union. In this chapter we review the main international treaties which deal with the issue, examine how the rights of migrant workers have been dealt with at the EU level so far, and consider what contribution a common policy on economic migration could make.

UN Convention on the Protection of Migrant Workers

92. The starting point for consideration of these issues is the 1990 UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. It sets out a basic level of rights, specifying a higher level of rights for legal migrants (and members of their families) and a lower level for those who are present or working irregularly. The Convention entered into effect on 1 July 2003 and is currently in force in 33 States. No EU Member State has signed or ratified it, although the European Parliament\textsuperscript{99} and the European Economic and Social Committee (EESC)\textsuperscript{100} have strongly encouraged ratification by Member States.\textsuperscript{101}

93. Studies of the failure of States to ratify the Convention indicate that the main obstacles to ratification are political ones: a perception that migrants’ rights are already protected; the fact that countries do not wish to be the first to ratify in their region; concerns regarding increasing strains on the social welfare system; public and media perception of issues relating to immigration; and perceptions of the Convention’s impact on States’ policies and practices in the field of migration.\textsuperscript{102} Mr McNulty informed us that the Government had no plans to ratify the Convention notwithstanding the fact that they shared its aims.\textsuperscript{103} The Minister gave two reasons for the Government’s reluctance to ratify: first that it would undermine the United Kingdom’s system of frontier controls; and secondly that it would require the extension of access to public funds and services to migrant workers on a non-discriminatory basis in comparison with British citizens. The first argument strikes us as weak, since the Convention does not deal with border controls at all. It does not impinge on the sovereign right of States to determine the admission of foreigners to their territory or labour market. The second argument seems somewhat stronger, although it is difficult to form a clear view without more detailed analysis of the cost implications of compliance set against the benefits of participating in international standard setting in this field.

\textsuperscript{99} Resolution of 24 February 2005, paragraph 22.
\textsuperscript{100} The EESC is a non-political body that gives representatives of Europe’s socio-occupational groups and others a formal platform to express their views on EU issues.
\textsuperscript{101} Opinion of 30 June 2004 (SOC/173).
\textsuperscript{102} Antoine Pécoud and Paul de Guchteneire, Migration, human rights and the United Nations: an investigation into the late ratification record of the UN Migrant Workers Convention, Global Commission on International Migration, Global Migration Perspectives No. 3, October 2004.
\textsuperscript{103} p 74.
94. Under the United Kingdom’s current immigration system, most migrant workers are eligible for indefinite leave to remain after four years’ residence. At this point they are entitled to a large degree of equality with British citizens as regards access to social benefits. Thus the period under contention is that first four year period. However, as one of the requirements for the continued extension of leave to remain and work for migrant workers is that they continue to be in employment, the main social benefits to which they would be entitled are only those which apply to persons in work.

95. It is important to note that most international human rights instruments apply to all persons within the jurisdiction of the contracting States. Thus migrant workers benefit from the protection of international human rights standards to which the United Kingdom has subscribed such as the International Covenant on Civil and Political Rights and that on Economic, Social and Cultural Rights, both of 1966, the International Convention on the Elimination of All Forms of Racial Discrimination 1966, and the UN Convention against Torture 1984.

96. More specifically in the field of migrant workers, the United Kingdom is a party to the International Labour Organization Convention No 97 concerning migration for employment. Among the important rights for migrant workers which the United Kingdom has accepted through this Convention is equal treatment with own nationals as regards:

- remuneration (including family allowances);
- trade union membership;
- accommodation;
- social security (with specific provisions on benefits paid out of public funds);
- employment taxes; and
- legal proceedings.

ILO 97 also provides that migrant workers who are admitted on a permanent basis shall not be returned to their country of origin because of unemployment resulting from illness or injury, and has provisions on the right to export or transfer wages or savings.

97. In the light of its accession to this Convention, the United Kingdom Government’s argument against the UN Migrant Workers Convention on housing and social security grounds seems somewhat less convincing. We accept that there are arguments both for and against acceding to the Convention, but it is unsatisfactory that it should simply be left on the shelf. **We recommend that the Government should commission research into the likely costs and consequences of acceding to it and seek to develop a political consensus towards it, both within the United Kingdom and across the EU.**

**Council of Europe**

98. The United Kingdom has also entered into commitments in respect of migrant workers through its membership of the Council of Europe. The European Convention on Establishment, to which the United Kingdom acceded in 1969, provides, on the basis of reciprocity only with other
signatories of the Convention, that nationals of any contracting party are entitled to engage in any gainful occupation on an equal footing with nationals of the State, provided that they (a) have been gainfully occupied in the territory for five years; (b) have resided lawfully in the territory for ten years; or (c) have been admitted for permanent residence. The Convention also provides for equal treatment in wages and working conditions. The United Kingdom is also a signatory State of the European Social Charter 1961, which provides for a number of rights for migrant workers in addition to general rights applicable to all workers. Article 19 obliges States to secure for migrant workers lawfully in their territory treatment not less favourable than that of their own nationals as regards:

- remuneration and working conditions;
- membership of trade unions;
- accommodation;
- employment taxes;
- facilitation of family reunification;
- guarantees against expulsion (subject to a national security proviso); and
- transfer of earnings and savings.

99. The main Council of Europe Convention on migrant workers of 1977 has, however, not been signed by the United Kingdom. This Convention was opened for signature in 1977 and entered into force in 1983. It has been signed and ratified by six Member States (France, Italy, Netherlands, Portugal, Spain and Sweden) and signed by another four (Belgium, Germany, Greece and Luxembourg). The Convention is based on the principle of reciprocity—the obligation of contracting States to accord the treatment specified extends only to nationals of other contracting States. In addition to provisions regarding the right to leave a state of origin and to enter another State once administrative formalities for work have been completed, the Convention sets out a list of rights which must be accorded to migrant workers. These include:

- the right to change employment after one year;
- the right to remain in the territory in the event of illness, accident or involuntary unemployment for a period of no less than five months;
- the right of appeal in the event of withdrawal of a residence permit;
- the right to family reunion with spouses and minor unmarried children;
- equal treatment with nationals in access to housing;
- equal treatment with nationals in access to education, vocational training and retraining for the family;
- recognition of previously acquired experience and diplomas;
- equal treatment with nationals in conditions of work;
- the right to transfer earnings or savings abroad;
- equal treatment with nationals in access to social security;
- equal treatment with nationals in social and medical assistance;
equal treatment with nationals in taxation on earnings; and

the right to organise.

This floor of rights provides a sound basis for the treatment of all migrant workers admitted to a State. We urge the Government to reconsider the case for acceding to this Convention.

**European Union: Long-term Residents Directive**

100. At the European Union level, substantial progress has been made towards assimilating the position of long-term resident third country nationals to that of migrant citizens of the Union. Two directives have been adopted outlawing discrimination on the basis of race and other grounds contained in Article 13 TEC.\(^{104}\) These apply to the United Kingdom as they are not Title IV measures. However, the main measure in this area is the Long-term Residents Directive. The Conclusions of the Tampere European Council in 1999 called for the assimilation, as far as possible, of the position of third country nationals who have been long resident in a Member State to that of nationals of the Member States. In response to this initiative the EU adopted in 2003 a Directive concerning the status of third country nationals who are long-term residents, which applies to all third country nationals residing legally in the EU (with the exception of those residing in Denmark, Ireland and the United Kingdom) with only small categories excluded.\(^{105}\) The status is acquired after five years' continuous and legal residence. With that status the third country national acquires the following rights of equal treatment with nationals in the territory of the host State:

- access to employment and self-employed activities;
- conditions of employment and remuneration;
- education and vocational training including study grants;
- recognition of professional diplomas;
- social security, assistance and protection (though this may be limited to core benefits);
- tax benefits;
- access to goods and services and supply of goods and services including procedures for obtaining housing;
- freedom of association and affiliation; and
- free access to the entire territory.

101. The third country national is protected by the Directive against expulsion, which may be authorised only on limited security related grounds. Importantly, third country nationals also acquire the right to reside in the territory of any other Member State to exercise an economic activity (employed or self-employed), to pursue studies or for other purposes. They


\(^{105}\) Students, though these are included after ten years' residence, refugees and other persons resident on the basis of international protection, au pairs, seasonal workers, service providers and diplomats.
may acquire long-term residence status in the second Member State when they move there. Where family reunification was already effected in the first host Member State, those family members are entitled to accompany the third country national to the new Member State. If not, then the Directive on family reunification for third country nationals applies (again the United Kingdom has opted out of this measure). The transposition period for implementation of the Long-term Residents Directive ends on 23 January 2006. That for the Family Reunification Directive ended on 3 October 2005.

102. We consider that the United Kingdom should review its opt-out from both these measures, which together provide an excellent foundation of rights for migrant workers in the EU. They do not have any consequences for its position on border controls, and would enhance the position of third country nationals resident in the United Kingdom. When the Long-term Residents Directive comes into effect, third country nationals in the United Kingdom, for instance US or Indian nationals who have resided here for five years, will not be able to take advantage of the Directive’s provisions to move, for instance, to Paris or Frankfurt. They remain blocked in the United Kingdom. This is neither in their interests nor in the United Kingdom’s. Moreover, assimilating the position of long-term third country nationals’ rights to that of migrant citizens of the Union, including by enabling participation in the political life of the country, is not only a matter of improving their living and working conditions: it is also a matter of fostering their harmonious integration into society.

103. However, not all workers are covered by the Long-term Residents Directive. While third country national posted workers (i.e. persons employed in one Member State and sent by their employer to perform services in another Member State) gain the benefit of the Posted Workers Directive, which guarantees a large measure of equality with nationals of the host state, they are excluded from the Long-term Residents Directive. Further, seasonal workers and au pairs who tend to be among the most vulnerable groups of workers in the Union are also excluded from the scope of Long-term Residents Directive. In evidence we heard substantial discussion of the relative merits and disadvantages of differentiating levels of rights depending on the level of qualification and skill of migrant workers. There was a broad consensus, however, that only in the event of very good justification should rights be accorded in a discriminatory manner. We are not persuaded that such a good justification exists for excluding some categories of migrant workers from the rights in the Directive based on their skills levels. Further, there is a residual category of third country nationals who are in the course of acquiring the rights under the Directive but have not yet done so. In our opinion, differentiating between some migrant workers and others on the basis of the length of their residence in the territory can only be justified where there are very specific reasons.

104. Students are included in the Long-term Residents Directive, but they must complete ten years’ residence in the territory of a Member State in order to qualify. As the mobility of students studying at universities in the Union is a high priority of the Commission’s activities in education and research, (for

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instance under the Erasmus and Socrates programmes) third country national students will have an unpleasant choice. Either they forego the possibility of participating in mobility programmes which include a year of study in another Member State in order not to prejudice the possibility of acquiring the long term residence right, or they study in more than one Member State and forego the possibility of acquiring the rights. This seems to be particularly counter-productive.

105. Among the benefits which the Long-term Residents Directive provides are the right:

- to move and return from one Member State to another as the economic and family situation of the third country national dictates;
- to a large measure of equality with nationals of the Member States in key fields;
- to security against expulsion; and
- to free access to economic activities.

The rights apply to all third country nationals lawfully residing irrespective of their skill levels. All of these rights are critically important to ensuring mobility and equality of economic migrants in the EU. **We once again urge the Government to opt into both the Long-term Residents Directive and the Family Reunification Directive. Such a move would strengthen the rights of the United Kingdom’s economic migrants and enable them to enjoy equality with economic migrants in the rest of the EU.**

106. **In order to address the categories of economic migrants who do not benefit from the Long-term Residents Directive, we recommend that further provision be made to grant to all third country national migrant workers:**

- the right to change employers after 12 months’ continuous lawful employment;
- the right to a reasonable period (not less than six months) to seek employment in the event of the termination of previous employment; and
- equality as regards social rights (at least core benefits).

107. The broad conclusion of this inquiry has been that there are cogent reasons for retaining responsibility at national level, or indeed regional or local level (as in Scotland), for the assessment of labour market needs, which forms the basis of decisions on the admission of third country national workers. **But we see little justification within a single market for differentiating at national level as regards the rights of migrant workers. We recommend that the provision of a common core of rights for migrant workers should be the focus of an EU policy on economic migration.**
CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

108. We believe that economic migration is essential to the economies of the Member States and the EU as a whole and is likely to be an increasingly important factor in their economic performance. This migration needs to be regulated in the interests of the receiving countries, the sending countries and the migrants themselves. At present most of this regulation—particularly as regards who should be admitted and how many—is the responsibility of the Member States and should remain so. But there is a role for the EU, not so much in terms of making an assessment of labour needs on an EU basis: the economies of the Member States and their requirements are too diverse to make that a practical reality. The role of the EU, reflecting its internal market responsibilities, and the fact that once workers are admitted to one Member State they may in time become eligible to move to another, should be in setting standards, in particular in relation to the rights of migrant workers.

109. Our specific conclusions and recommendations are as follows.

110. Any common EU policy on economic migration would have to build into its basic design sufficient flexibility to accommodate national and regional variations. The ability of the EU to achieve a common position in the field of services suggests that a similar consensus on broad guidelines for economic migration might be attainable, but it is unlikely that the Member States would accept it (paragraph 19).

111. There is little to fear—and much to gain—from the extension of freedom of movement rights to the new Member States (paragraph 24).

112. It would be in the EU’s interest to extend full free movement rights to the A8 countries as soon as possible. Until that happens, it would be inappropriate—and inconsistent with the need for solidarity with the new Member States—to relax controls on the admission of third country national workers (paragraph 26).

113. On the evidence of the last enlargement, there is a strong case on economic grounds for according nationals of new Member States free movement rights as early as possible following accession, and for there to be a concerted position across the existing Member States with limited opportunity for them to operate different transitional periods (paragraph 27).

114. Managing the migration aspirations of nationals of candidate countries, coupled with investment in infrastructure and jobs in the candidate country, is the best way to avoid fears of disruption to the labour market in the period following accession (paragraph 28).

115. Economic migration from outside the present EU will continue to be needed (paragraph 29).

116. We do not believe that it is possible to set an overall limit for net immigration (paragraph 43).

117. We endorse the Government’s view that national economic considerations should remain the primary determinant of the level of economic immigration, provided that this is not at the expense of the interests of the other parties involved, notably the sending countries and, most importantly,
the migrant workers themselves, whose rights must not be infringed (paragraph 43).

118. All forms of control of economic migration—work permits, sectoral schemes, quotas, Green Cards and points systems—are difficult for State authorities to operate efficiently, if only on account of incomplete knowledge of the labour needs of different sectors of their own economy and differing objectives relating to them. It would be much more difficult, if not impracticable, to operate any of these methods of control at EU level (paragraph 64).

119. We again urge the Government to participate fully in EU immigration and asylum policy. We believe that it would be to the advantage of the United Kingdom to do so. It is damaging to be seen as only partially engaged in this important area of policy. The United Kingdom’s recent exclusion from measures in which it would be in its interests to participate underlines the increasing difficulty of maintaining its present position and bears out, we regret to say, the warnings that we have given to this effect in the past (paragraph 73).

120. While accepting that there is a role for the EU in setting out some guiding principles, particularly in providing protection for migrant workers, we see no case for micro-management of admission for employment at EU level. Given their very different economic situations, Member States need to retain the ability to respond flexibly and promptly to their labour market needs, which are unlikely to coincide across the EU. This is more likely to meet the needs of companies than a cumbersome central bureaucracy (paragraph 82).

121. Community preference is an important principle supporting the fundamental freedom of movement of workers, and we support its extension to resident third country nationals. Its practical effect is inevitably limited by the low level of labour mobility within the EU. It is important to avoid excessive bureaucracy, and additional burdens should not be placed on employers (paragraph 84).

122. In view of the wide differences between the economies of the Member States and their need for economic migrants, we are sceptical of the case for any detailed regulation at EU level of admission for employment or self-employment. We believe that the main scope for EU intervention is in ensuring that the schemes operated by Member States are sufficiently transparent, and protect the rights of migrant workers effectively (paragraph 86).

123. There is no need for the EU to become engaged in the detailed regulation of general self-employed migration (paragraph 87).

124. While an informal early warning system may provide some reassurance to Member States, we see no need for a more direct control of regularisations at EU level. There is no reason to think that regularisations lead to immediate large scale movement to other Member States (paragraph 90).

125. The Government should commission research into the likely costs and consequences of acceding to the United Nations Convention on the Protection of Migrant Workers and seek to develop a political consensus towards it, both within the United Kingdom and across the EU (paragraph 97).

126. We urge the Government to reconsider the case for acceding to the Council of Europe Convention on migrant workers (paragraph 99).
127. Differentiating between some migrant workers and others on the basis of the length of their residence in the territory can only be justified where there are very specific reasons (paragraph 103).

128. We once again urge the Government to opt into both the Long-term Residents Directive and the Family Reunification Directive. Such a move would strengthen the rights of the United Kingdom’s economic migrants and enable them to enjoy equality with economic migrants in the rest of the EU (paragraph 105).

129. In order to address the categories of economic migrants who do not benefit from the Long-term Residents Directive, we recommend that further provision be made to grant to all third country national migrant workers:

- the right to change employers after 12 months’ continuous lawful employment;
- the right to a reasonable period (not less than six months) to seek employment in the event of the termination of previous employment; and
- equality as regards social rights (at least core benefits) (paragraph 106).

130. We see little justification within a single market for differentiating at national level as regards the rights of migrant workers. We recommend that the provision of a common core of rights for migrant workers should be the focus of an EU policy on economic migration (paragraph 107).

131. In view of the importance of the issues raised in this report we recommend it to the House for debate.
APPENDIX 1: SUB-COMMITTEE F (HOME AFFAIRS)

The members of the Sub-Committee which conducted this inquiry were:

- Lord Avebury
- Baroness Bonham-Carter of Yarnbury
- Earl of Caithness
- Lord Corbett of Castle Vale
- Lord Dubs
- Baroness Henig
- Lord Marlesford
- Earl of Listowel
- Viscount Ullswater
- Lord Wright of Richmond (Chairman)

Professor Elspeth Guild, Professor of European Migration Law, Radboud University, Nijmegen, and Partner, Kingsley Napley Solicitors, was appointed as Specialist Adviser for the inquiry.
APPENDIX 2: CALL FOR EVIDENCE

Sub-Committee F (Home Affairs) of the House of Lords Select Committee on the European Union is conducting an inquiry into economic migration to the EU based on the Commission’s recent Green Paper, An EU approach to managing economic migration. The inquiry will examine the issues raised in the Green Paper.

The central question is whether there should be a common EU policy on economic migration or whether Member States should remain free to make decisions in this area independently of each other. Underlying this question is the view taken of the effect of immigration on the economies of Member States and the nature of that migration. Other questions on which the Sub-Committee would particularly welcome comments include the following:

(i) Should a Community approach attempt to set common rules on the admission of third country nationals for employment or should it address each sector of the labour market separately?

(ii) Would there be a place for quotas in a common policy?

(iii) Do the same considerations apply to self-employment as to employment?

(iv) To what extent do enlargement and free access to the labour market for workers from the new Member States affect a common policy?

(v) Should the “Community preference” principle be maintained? Should it apply to third country nationals legally resident in the EU and, if so, to all workers or only long-term residents?

(vi) What rights should third country workers have? Should there be any differentiation between workers admitted on a conditional basis and long-term residents?

(vii) Should there be a common EU policy on the “regularisation” of illegal workers (amnesties)?

(viii) Should measures be taken to protect third countries from—or compensate them for—the loss of skilled workers?

(ix) What considerations should the Government take into account in deciding whether to opt into a common EU policy?
APPENDIX 3: LIST OF WITNESSES

The following witnesses gave evidence. Those marked * gave oral evidence.

- British Hospitality Association and Business In Sport and Leisure (BHA and BISL)
- Centre for European Policy Studies (CEPS)
- Cleaning and Support Services Association (CSSA)
- Commission for Racial Equality (CRE)
- Confederation of British Industry (CBI)
- Construction Confederation
- ConstructionSkills, Construction Industry Training Board (CITB)
- European Commission, Commissioner for Employment, Social Affairs and Equal Opportunities
- European Commission, Directorate-General, Employment, Social Affairs and Equal Opportunities
- European Commission, Directorate-General, Justice, Freedom and Security, Immigration and Asylum Unit
- European Parliament, Directorate-General 2 (Internal Policies of the Union), Policy Department C (Citizens’ Rights and Constitutional Affairs)
- European Trade Union Confederation (ETUC)
- Profess Andrew Geddes, University of Sheffield
- Saskia Gent and others, Centre for Migration Research, University of Sussex
- Government: Home Office and Department for Work and Pensions
- Professor Kees Groenendijk, Professor of the Sociology of Law and Chairman of Centre for Migration Law, Radboud University, Nijmegen
- Immigration Advisory Service (IAS)
- Immigration Law Practitioners’ Association (ILPA)
- International Labour Organization (ILO)
- International Organization for Migration (IOM)
- Joint Council for the Welfare of Immigrants (JCWI)
- Kalayaan UK
- MigrationWatch UK
- Office for National Statistics (ONS)
- Trades Union Congress (TUC)
- Union of Construction, Allied Trades and Technicians (UCATT)
- Union of Industrial and Employers’ Confederations of Europe (UNICE)
### APPENDIX 4: EU 25: POPULATION, GROWTH AND UNEMPLOYMENT\(^{108}\)

<table>
<thead>
<tr>
<th>Country</th>
<th>Population (1,000 inhabitants)</th>
<th>GDP: Volume Growth 2004</th>
<th>Seasonally Adjusted Unemployment: March 2005</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>2004</td>
<td>2025 (forecast)</td>
<td>2050 (forecast)</td>
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<tr>
<td>EU-25</td>
<td>456,815</td>
<td>470,057</td>
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<tr>
<td>EU-15</td>
<td>382,674</td>
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<td>Austria</td>
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<td>Belgium</td>
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<td>Cyprus</td>
<td>730</td>
<td>897</td>
<td>975</td>
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<td>Czech Republic</td>
<td>10,212</td>
<td>9,812</td>
<td>8,894</td>
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<td>Denmark</td>
<td>5,398</td>
<td>5,557</td>
<td>5,430</td>
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<tr>
<td>Estonia</td>
<td>1,351</td>
<td>1,224</td>
<td>1,126</td>
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<td>Finland</td>
<td>5,220</td>
<td>5,439</td>
<td>5,217</td>
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<td>France</td>
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<td>64,392</td>
<td>65,704</td>
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<tr>
<td>Germany</td>
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<td>74,642</td>
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<td>Greece</td>
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<td>11,394</td>
<td>10,632</td>
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<tr>
<td>Hungary</td>
<td>10,117</td>
<td>9,588</td>
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<td>Ireland</td>
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<td>4,922</td>
<td>5,478</td>
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<td>Italy</td>
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<td>57,751</td>
<td>52,709</td>
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<td>Latvia</td>
<td>2,319</td>
<td>2,068</td>
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<td>Lithuania</td>
<td>3,446</td>
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<td>2,881</td>
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<td>Luxembourg</td>
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<td>643</td>
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<tr>
<td>Malta</td>
<td>400</td>
<td>468</td>
<td>508</td>
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<tr>
<td>Netherlands</td>
<td>16,258</td>
<td>17,429</td>
<td>17,406</td>
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<tr>
<td>Poland</td>
<td>38,191</td>
<td>36,836</td>
<td>33,665</td>
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<tr>
<td>Portugal</td>
<td>10,475</td>
<td>10,730</td>
<td>10,009</td>
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<td>Slovakia</td>
<td>5,380</td>
<td>5,237</td>
<td>4,738</td>
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<tr>
<td>Slovenia</td>
<td>1,996</td>
<td>2,014</td>
<td>1,901</td>
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<td>Spain</td>
<td>42,345</td>
<td>45,556</td>
<td>42,834</td>
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<td>Sweden</td>
<td>8,976</td>
<td>9,769</td>
<td>10,202</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>59,652</td>
<td>63,792</td>
<td>64,330</td>
</tr>
</tbody>
</table>

\(^{108}\) Source: Eurostat
### APPENDIX 5: GLOSSARY OF ACRONYMS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A8</td>
<td>Accession 8 countries</td>
</tr>
<tr>
<td>BHA</td>
<td>British Hospitality Association</td>
</tr>
<tr>
<td>BISL</td>
<td>Business in Sport and Leisure</td>
</tr>
<tr>
<td>CBI</td>
<td>Confederation of British Industry</td>
</tr>
<tr>
<td>CEPS</td>
<td>Centre for European Policy Studies</td>
</tr>
<tr>
<td>CITB</td>
<td>Construction Industry Training Board (ConstructionSkills)</td>
</tr>
<tr>
<td>CRE</td>
<td>Commission for Racial Equality</td>
</tr>
<tr>
<td>CSSA</td>
<td>Cleaning and Support Service Association</td>
</tr>
<tr>
<td>EC</td>
<td>European Community</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area</td>
</tr>
<tr>
<td>EEESC</td>
<td>European Economic and Social Committee</td>
</tr>
<tr>
<td>ETUC</td>
<td>European Trades Union Confederation</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EURES</td>
<td>European Employment Services</td>
</tr>
<tr>
<td>FRONTEX</td>
<td>External Borders Management Agency</td>
</tr>
<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>IAS</td>
<td>Immigration Advisory Service</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>ILPA</td>
<td>Immigration Law Practitioners’ Association</td>
</tr>
<tr>
<td>IOM</td>
<td>International Organization for Migration</td>
</tr>
<tr>
<td>JCWI</td>
<td>Joint Council for the Welfare of Immigrants</td>
</tr>
<tr>
<td>LIBE</td>
<td>European Parliament’s Civil Liberties Committee</td>
</tr>
<tr>
<td>NGO</td>
<td>Non Governmental Organisation</td>
</tr>
<tr>
<td>NHS</td>
<td>National Health Service</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>ONS</td>
<td>Office for National Statistics</td>
</tr>
<tr>
<td>QMV</td>
<td>Qualified Majority Voting</td>
</tr>
<tr>
<td>TEC</td>
<td>Treaty Establishing the European Community</td>
</tr>
<tr>
<td>TUC</td>
<td>Trades Union Congress</td>
</tr>
<tr>
<td>UCATT</td>
<td>Union of Construction, Allied Trades and Technicians</td>
</tr>
<tr>
<td>UNICE</td>
<td>Union of Industrial and Employers’ Confederations of Europe</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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</table>
APPENDIX 6: OTHER RELEVANT REPORTS FROM THE SELECT COMMITTEE

Session 2003–04
Annual Report of the EU Select Committee 2004 (32nd Report, HL Paper 186)

Relevant Reports prepared by Sub-Committee F

Session 2001–02

Session 2004–05
The Hague Programme: A five year agenda for EU justice and home affairs (10th Report, HL Paper 84)
Minutes of Evidence

TAKEN BEFORE THE EUROPEAN UNION COMMITTEE (SUB-COMMITTEE F)
WEDNESDAY 8 JUNE 2005

Present: Avebury, L
Caithness, E of
Corbett of Castle Vale, L
Dubs, L
Henig, B
Listowel, E of
Ullswater, V
Wright of Richmond, L (Chairman)

Memorandum by Immigration Law Practitioners’ Association (ILPA)

INTRODUCTION

We welcome the decision of Sub-Committee F of the Select Committee on the European Union to undertake an inquiry into European Union policy on economic migration.

This submission draws upon our response to the Commission’s Green Paper on an EU Approach to Managing Economic Migration (COM (2004) 811). A copy of that response is annexed to this submission*.

The central question

The “central question” identified in the call for evidence is “whether there should be a common EU policy on economic migration or whether Member States should remain free to make decisions in this area independently of each other”.

Our general assessment is that the economic and demographic imperatives of Member States mean that significant lawful migration to Europe is likely to remain a necessity. Equally, economic and demographic circumstances in other parts of the world mean that significant irregular migration is likely to occur in the absence of effective legal channels.

We recognise that it is legitimate for Member States to wish to retain control over decisions concerning admission for economic purposes, so as to be able to respond to their specific labour market needs and conditions.

However, we also take the view that there is a conflict between the single market principle and the absence of a legal framework with respect to economic migration at the EU level. We therefore support action at the EU level with one or more of these objectives: the creation of legal rights of mobility for third country nationals between Member States, the protection of fundamental rights (including social rights), the avoidance of regulatory competition between Member States, and the co-ordination of relations with third states.

1. Should a Community approach attempt to set common rules on the admission of third country nationals for employment or should it address each sector of the labour market separately?

We are not convinced that there is a case for EU intervention in order to discourage or restrict Member State policies which tend to favour the admission of third country nationals for economic purposes. Member States should be free to allow economic migration in response to their own circumstances.

We would argue however that there may be legitimate reasons for EU intervention to discourage Member States’ policies which restrict admissions. This is because individual Member States may limit inward migration in ways which are detrimental to the wider EU economy. This would be even more the case if economically active third country nationals had more extensive rights to move between Member States than is currently the position.

Specifically, we propose the recognition at the EU level of the principle of labour market need, so that Member States would be expected to admit workers where a labour market test was met.

* Not printed here.
We also propose the recognition at the EU level of the possibility to switch status. Where a labour market test is met, the fact that an individual is already in the state on a different basis ought not to be an obstacle to their admission as an economic migrant.

2. **Would there be a place for quotas in a common policy?**

We are sceptical as to the merits of quotas in relation to economic migration. Where a labour market test is being applied, and a quota is operated in addition, the implication is that a gap in the host state economy is not being addressed. In our view, any EU policy should seek to avoid the rigidities implied by quotas, whether at EU or Member State levels.

3. **Do the same considerations apply to self-employment as to employment?**

Our view is that migration for employment and self-employment raise closely related issues. There is significant overlap between the categories, in that essentially similar activities can be carried out on either basis. In addition, the policy issues posed by employment and self-employment are quite similar, since the central question in either case is whether there is an economic need for the individual in the given state.

4. **To what extent do enlargement and free access to the labour market for workers from the new Member States affect a common policy?**

Legally, the Act of Accession requires the older Member States to “give preference to workers who are nationals of the Member States over workers who are nationals of third countries as regards access to their labour market”. This applies even where the older Member States are applying “national measures”. The 2004 enlargement can be expected to lead to some fall in demand for economic migration from outside the EU. Nevertheless, it is inevitable that there will continue to be significant numbers of third country nationals working within the EU. For that reason, the 2004 enlargement does not affect the case for a more developed legal framework with respect to economic migration by third country nationals.

5. **Should the “Community preference” principle be maintained? Should it apply to third country nationals legally resident in the EU and, if so, to all workers or only long-term residents?**

(i) **EU, EEA and Swiss nationals**

At present, that principle of preference is a legal obligation with respect to EU nationals—and therefore EEA and Swiss nationals—by virtue of Articles 1-6 of Regulation 1612/68. We have no objection to that.

(ii) **Third country nationals**

Section 2.2.1 of the Commission Green Paper relies on the definition of “Community preference” set out in the Council resolution of 20 June 1994. That resolution required that a system preference be extended from EU nationals to “non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State’s regular labour market”.

That approach is reflected in Article 11(1)(a) of Directive 2003/109 which confers on long-term residents a right of equal treatment in access to employment. This guarantee only applies however after a minimum of five years’ residence in the given Member State, and is not applicable to Britain, Denmark or Ireland.

Our view is that the current rules do not respect the principle of non-discrimination in the labour market. We would argue for the system of preference to be extended to any third country resident who is free to take the employment in question.
6. What rights should third country workers have? Should there be any differentiation between workers admitted on a conditional basis and long-term residents?

(i) Generally

We take the view that there is a strong case for setting out a framework of minimum rights of migrant workers at the EU level. This is desirable both because upholding the rights of migrant workers is a legitimate objective in itself at the EU level, and because it is necessary to avoid any tendency to regulatory competition between member states in their treatment of migrant workers.

We agree with the proposition in section 2.6 of the Green Paper that “Third country workers should enjoy the same treatment as EU citizens in particular with regard to certain basic economic and social rights before they obtain long-term resident status”.

We suggest that the list of social rights set out in Article 11(1) of Directive 2003/109 could form the basis for EU action in relation to third country workers. That Article recognises *inter alia* the following:

- equal treatment in access to employment and self-employment
- equal treatment of conditions of employment
- equal treatment in vocational training
- equal recognition of professional qualifications
- equal treatment in housing, social assistance, social security and taxation
- equal access to and participation in workers’ organisations and representative bodies.

(ii) The right to change employer

We would highlight in particular the right of migrant workers to change employer, discussed in section 2.5 of the Commission Green Paper. This right is implicitly recognised for long-term residents by Article 11(1)(a) of Directive 2003/109, but is not protected for other third country nationals.

The right of a worker to resign and to change employer is a basic labour market principle. Without it, a migrant worker is vulnerable to exploitation by their employer, including in particular the failure to pay the going rate for the job, the refusal to honour contractual commitments, and the denial of labour rights.

We therefore agree with the statement in the Green Paper that workers who are not admitted on special (temporary) labour market schemes should be free to change employer. We do not agree however that they should have to meet again the test of labour market need in order to do so.

As regards those on temporary schemes, we do not agree with the suggestion that they should be excluded from the right to change employer, as these workers are often among the most vulnerable in the employment relationship. At the very least, the right to change employer should be recognised among employments covered by the scheme in question.

(iii) Protection against discrimination

We would also call attention to the lack of protection in EU law for third country nationals against discrimination by employers on grounds of nationality or immigration status. Again, this right is protected for long-term residents, but not others, by Article 11(1)(a) of Directive 2003/109.

In our view, the lack of protection against discrimination on these grounds is a serious omission from the EU’s extensive code of protection against discrimination in employment. We propose that this omission be rectified through a specific directive, adopted under Article 137 EC. This would ensure a minimum set of standards applicable to all Member States.

7. Should there be a common EU policy on the “regularisation” of illegal workers (amnesties)?

The lack of discussion of the position of unauthorised workers is in our view a weakness of the Green Paper. Unauthorised work appears to be a significant phenomenon in at least some sectors and states within the EU. A situation of unauthorised work is undesirable for those Member States, which find their immigration, tax and labour laws undermined. It is undesirable for legal workers and their employers, as they are forced to compete with others who breach those laws. It is also undesirable for unauthorised workers themselves, given their greater vulnerability to abuse by employers and intermediaries.
Against that background, our view is that recognition should be given at the EU level to the right of Member States to introduce regularisation policies where they deem it necessary in the light of their own circumstances. The choice of criteria and time periods should also be a matter for them. It is inappropriate to attempt to place limits on this possibility at the EU level.

We would also argue that there may be a case for EU level requirements in this area, in order to respect the rights of all migrant workers, while avoiding regulatory competition between Member States in their policies towards unauthorised workers. We support an EU requirement that unauthorised workers be covered by key labour and social rights, including entitlements linked to the employment relationship, health care and some forms of social provision. We also support recognition of a duty on Member States to grant regularisation in defined circumstances, such as a proven period of residence in that state.

8. Should measures be taken to protect third countries from—or compensate them for—the loss of skilled workers?

We agree with the spirit of section 2.7 of the Green Paper, that it is important to respond to the possible negative impacts on less developed states of economic migration to the EU. We take the view that in general outward migration need not be economically damaging to states of origin, particularly because of remittances and the potential benefits when emigrants later return.

The most difficult issue in this area concerns migration by persons who have been educated or trained at state expense in the state of departure.

In our view, it is neither desirable nor realistic to attempt to prevent individuals from moving to take up the opportunities available to them. We are not persuaded either by the idea of a system of compensation by states of destination, since it is not clear how the amount of such compensation would be determined, and government to government transfers might have the effect of encouraging education for emigration.

Instead, we would favour an extension to the EU level of the approach followed in Britain, which aims at preventing recruitment activities in key sectors in less-developed states. In our view, this is an area in which it is particularly desirable to have EU level action, in order to ensure coherence in the relationship with third countries, while preventing any regulatory competition between Member States.

9. What considerations should the Government take into account in deciding whether to opt into a common EU policy?

Our view is that Britain should be an active participant in the development of law and policy at the EU level in relation to economic migration. This would involve opting in to Directive 2003/109, while being prepared to agree to future initiatives which follow from the Green Paper.

We would highlight in particular the potential benefits to Britain of its being covered by the principle of cross-border mobility for economically active third country nationals. This would give British employers access to a pool of workers resident in other Member States. The possibility of moving on to other Member States at a later date would encourage third country nationals to locate in Britain. It would also allow migration to other Member States in circumstances where there was a reduced demand for skills of a particular kind in Britain.

We would also argue that there is a British interest in participation in measures which lay down minimum standards and which avoid regulatory competition. Through such participation, the Government would have the opportunity to influence the content of measures to be adopted. Its participation in EU action would also protect its position as a state which wishes to have high standards as regards the treatment of migrant workers.

May 2005
Examination of Witnesses

Witnesses: Ms Nicola Rogers, Barrister, and Mr Bernard Ryan, Senior Lecturer, Law School, University of Kent, Immigration Law Practitioners' Association, examined.

Q1 Chairman: Good morning and welcome to both of you. For the sake of the microphones I should welcome you by name, except I think I will ask you to introduce yourselves. This session is on the record and is being televised, and you will, of course, in due course, receive a transcript for your confirmation. Could I perhaps ask you to introduce yourselves first, and then I will explain what the purpose of this inquiry is?

Ms Rogers: I am Nicola Rogers, I am a barrister by training, I co-convene the ILPA sub-committee that deals with European Union issues.

Mr Ryan: I am Bernard Ryan, I am a senior lecturer in the Law School at the University of Kent, and I am a Member of the European Committee of ILPA.

Q2 Chairman: Thank you very much. I should just, for everybody’s information, explain again what the purpose of this inquiry is. It is an examination of economic migration into the European Union, and I should perhaps also emphasise it is not an inquiry into either asylum or illegal immigration; it is an inquiry into economic migration. It has been prompted by a Green Paper published by the European Commission in January, and the central issue is the extent to which there should be a common EU policy on economic migration, which at present is primarily a matter for the Member States. Would you like to make an opening statement?

Ms Rogers: No, I think it probably would be appropriate to go straight into questions.

Q3 Chairman: First of all I should thank you for the written evidence which you have sent us, which is extremely useful. From the evidence we have received, both from you and from others so far, it is clear that there is quite a diversity of opinion about the EU labour market. I would really like to ask you, at the risk of asking you to repeat some of the things you have said in your written evidence, first of all, how should we regard the EU labour market: local, regional, national or EU-wide? Which of you would like to try that one?

Mr Ryan: I think I will address that question. I am not sure it is possible to give a straightforward answer to such a question, if we are talking about the actual labour market as it functions. Clearly, all of those things are true in some sense; there are local labour markets, regional and so on. I think our perspective is more one of looking at the legal framework which governs labour markets, and that, to some extent, we think is independent of the actual conditions that prevail within labour markets.

Q4 Chairman: How feasible is it to leave it to state authorities to regulate labour migration? How far should they have in mind the need to protect the domestic workforce?

Mr Ryan: Could I ask for clarity about what you mean by “feasibility”?

Q5 Chairman: In your view, is it right to leave it to the state authorities to regulate economic migration? How much weight should they put on the effect of migration on the domestic workforce?

Mr Ryan: I think, in terms of the first part of that, as things stand in the European Union at present, we would say that the focus of legislative effort and EU action should not be on the question of admission to the labour markets. In other words, to that extent, we would say it is feasible for Member States to deal with the admission questions and that it is probably, certainly as things stand, less desirable for economic ... and I intervention in admission decisions; we think the focus of efforts as things stand should be on how migrants are treated once admitted to the European Union. That may be a slightly indirect way of answering the question. As regards the question of protection, it is obviously legitimate for states to be interested in the conditions in their labour markets, and I do not think anyone is arguing that immigration should be a means to bring about deterioration in living standards for other sections of the population. Certainly at a general level it is legitimate for states to take an interest in protection.

Q6 Earl of Listowel: On a related point, do you recognise the concern, given that in this country we have, among OECD countries, one of the poorest performances in terms of keeping 16-19 year-olds in education, employment or training, that uncontrolled migration might act as an impediment to motivating Government and business in terms of engaging those young people and trying to work with them and improve their numeracy and literacy rather than simply taking people from the Continent or from elsewhere who might be more motivated? Do you recognise the point?

Mr Ryan: If I might say, it is something of a large jump between the two sides of the equation.

Q7 Earl of Listowel: I suppose I see them related inasmuch as there is a clear concern about undercutting of wages, and so on, for resident citizens, and I am simply taking it one step further. I am not so much concerned about that immediate concern but about the training and development of
young people entering the job market and whether less control of the migration flow might actually be a disincentive to Government and to employers to educate and train that workforce, which can be a very difficult nut to crack.

Ms Rogers: If I might come in on that question, I think the answer to that is complicated. However, looked at at one level, provided there is a free market within which the local labour market and the immigrant labour market are placed on an equal footing, there cannot be an imbalance as between the rights and the conditions of employment of migrants and the local population. If you place them on an equal footing, in fact, you are just placing them within a competitive market not a market which you describe as undercutting the local market. That is one solution: you create a situation in which they are treated equally. That is very much the concern of ILPA: that there should not be any undercutting or opportunities for employers to exploit an immigrant labour force by making it more attractive to them to use an immigrant labour force because it is cheaper or there are fewer obligations associated with it. The second point is that I do not think there is any research that demonstrates that it is simply the admission of immigrants that creates circumstances in which 16-19 year-olds are not taking employment or are not being trained properly. I doubt there is any research out there that makes that point. On the contrary, an immigrant labour force can create diversity and competition that, in fact, by example, could give an incentive to a local population to get up and do some work. If you create the right circumstances an immigrant labour force should not be seen in a negative way vis-à-vis the local labour market at all; it can be seen in a positive way.

Q8 Chairman: Do you want to add anything to the answers to previous questions?
Ms Rogers: Whilst Bernard Ryan rightly pointed out that, at this stage in EU development of these policies, the prospect of the EU regulating admission at a regional level is perhaps ambitious, we have to be very concerned about the conditions in which people are admitted: the conditions of their stay and the protection they are afforded after they have entered the European Union. That, at this stage, seems to me to be a feasible and achievable aim that could be set at an EU level. As an organisation, whilst we can have aspirations towards the abolition of border controls and we can have aspirations towards generous migration policies, one must be very acutely aware that this has been the area of failure for EU; they have been able, at some level, to make agreement about the admission or conditions and treatment of asylum seekers, they have been able to make agreement about the treatment of illegals. However there is a great gaping hole, at the moment, and that is in the area of legal migration and the conditions for legal migration, and that is our area of concern, obviously.

Q9 Lord Avebury: There is a legitimate concern about one aspect of this problem, and that is that legal immigrants are employed preferentially in certain occupations, which the native workers are not prepared to undertake (I am thinking of the catering and hotel industries, agriculture and domestic service). The danger that one can see is that these sectors would be occupied entirely by a migrant labour force which is prepared to accept conditions that are far inferior to those that would be tolerated by the native population, and because they are a distinct labour force you never get any interaction between them and the settled population, except that obviously, in the end, people try to escape from those underpaid, under-resourced occupations into something that will give them a better life.
Ms Rogers: I think that is a problem of creating conditions that are different and worse for a particular migrant group. One of ILPA's major concerns in this area is that in fact migrant groups should not be treated differently and should not be placed in a worse position vis-à-vis own nationals or vis-à-vis other immigrant groups who are migrating for another particular reason. One way of dealing with that is ensuring that they have rights to change their employers and rights as regards ability to change their status from one category to another. I think that is very important, and it would keep employers on their toes as regards the conditions that they place on a migrant population. It comes to my attention all the time that particular categories of employee are being placed in positions where they are being exploited because they know and the employer knows that they must stay with that employer and must stay in that employment otherwise they will be, effectively, illegal and may have to leave the UK. That is very problematic, and it places the employer in a position where they can very easily exploit. What should be aimed for is that conditions whereby employers can exploit employees must be eliminated, and if you give the ability for the employee to change employer that would resolve some of those problems.

Q10 Lord Avebury: So should the European Union have rules which provide that, where a migrant worker comes in to undertake a particular job under a work permit system, after a given period he or she would be free to move to another job, and that that period would be a uniform one throughout the whole of Europe?
Ms Rogers: One can see a precedent for this, actually. It is not alien to the European Union; one sees a precedent for this in the Turkey Association Agreement, whereby Turkish nationals may have been admitted for one particular time period,
perhaps, for one particular form of employment or to work for one particular employer and, after a time, some flexibility is given to them to change employer and eventually type of employment. So that kind of system is not alien to the European Union.

Q11 Viscount Ullswater: You used the word “exploitation” in your answer. I am trying to understand what you mean by “exploitation”. Is it that people are not being paid their wages legally or is it that they are performing work according to a contract which is not perhaps what the resident population would wish to do? I am trying to get at how you would define “exploitation”.  
Mr Rogers: I think it is possibly both, in my experience; it is that sometimes they are made to sign up to contracts that the resident population would not dream of signing up to, and they are put in a position where they have no choice about that, and I think there are other circumstances where they are not being paid. I have come across clients, time and time again, who, because the employer knows that the employee needs the employer to sign another work permit application, for instance, or needs the employer to obtain work and registration certificates, are not paid, and what can the employee do? It is a choice between remaining in bad conditions or leaving the UK, and sometimes they choose to remain.

Q12 Lord Dubs: I am very interested in the answers you have been given. I suppose another area where we are all conscious of immigrant workers having an impact is in the building industry. There, of course, am I right in saying, they must be self-employed and they are competing very well because they offer more competitive rates for doing the work? The other thing is there do not seem to be any cowboys coming from Bosnia or Poland, and therefore they set high standards. Is that right?
Ms Rogers: I cannot comment on the quality of output, my Lord, but I think, in answer to that question, that where people are able to be self-employed there is less room for exploitation, of course, and of course they set the standard at which they provide their services and they set their wages. That is not to say that there is not exploitation within that particular industry; I think there is plenty of room for exploitation within that particular industry. One point that it is necessary to make is that not only is it important to create a situation where employees can switch their employer and, therefore, avoid conditions that are exploitative or contrary to their rights, but it is also important for there to be sufficient flexibility and generosity within an admissions policy that means that when people no longer are able to obtain employment that easily they do not feel they have to remain in the territory of that Member State at all costs. I think that is an important point. One has seen this with the example of Eastern Europe. Pre-accession, I think it is fair to say, because the UK had quite a restrictive policy as regards who would be admitted, people would remain at all costs, and that would mean they may have agreed to conditions that were exploitative. If, however, they know, as they know now, that they can go and come back again in six months’ time when labour conditions are such that they might obtain better employment, that flexibility—that knowledge that it is not their only chance to be in the territory of that Member State—means that they will not necessarily agree to conditions which are poor or exploitative. I am sorry I have taken a very long time on this question.

Q13 Chairman: Mr Ryan, you clearly wanted to add something to the previous discussion.
Mr Ryan: Could I, firstly, return to the building industry example? It is a good one to illustrate one of the points we have been trying to make in our submission, which is that you cannot here entirely separate immigration law questions from employment law questions. If there are practices which are considered objectionable in the building industry which are linked to migrant workers then maybe the answer is not within immigration law but, rather, to look at the employment law regime which applies in that sector, whether it is health and safety or bargaining or whatever. There may be a variety of elements. I think that is the general point.

Q14 Lord Dubs: My point was that from hearsay evidence some of the people in the building industry—plumbing and bricklaying and so on—who have come from Eastern Europe, both within the EU and outside it, are setting very high standards, in terms of their work.
Mr Ryan: To return to the general question, again, it is our submission that the social consequences are something to be taken into account, but as I said, not necessarily to be addressed solely through the admission decisions which have been taken but to be addressed in their own terms. I know that is very general but does that meet the point?

Q15 Lord Dubs: Partly. If we have labour migration which is regulated and if it is only regulated on the basis of the perceived needs of the economy, imprecise as that is, then what about the social consequences of having people come in from other countries and making a big impact on the job market, possibly to the detriment of the local population?
That is the way it is seen by some opponents of too much migration.

Ms Rogers: I think, in part, we have answered that already in relation to the impact on the local workforce, but in terms of the social consequences, if one is looking beyond just the impact on the local labour force, some might argue that the admission of any migrant has with it social consequences in terms of impact potentially on social security systems and so on. I think ILPA's very firm view on this is that there are social obligations that are attached to any migration, and no migration policy should be blind to that; that: in fact, if the State is going to benefit from the admission of migrants and their labour—and the admission of these migrants is not just the benefit to the employer, it is a benefit to the State as a whole—there may be social consequences, and that, as the European Court of Justice has already identified in relation to other areas, is tough. A State has to take the consequences of having reaped the benefits of having a migrant labour force. Again, one also goes back to the other question, which is if there is flexibility and people can come and go more easily then it may be that people do not choose to stay when circumstances are such that they may be seen as being of more negative benefit to the local economy or local state.

Q16 Lord Dubs: I think you have largely answered my next question, but I will ask it anyway just in case there is any further point you want to add. The point is that where we have a buoyant economy, as we have here, of course, it is easy to attract migrant workers because we have job vacancies which they fill. However, if a recession were to hit us then the question is whether the migrant workers would be less likely to move on, and is this a problem of having a free market approach? I know you have partly answered it by saying they should be free to move elsewhere, but if the whole of the EU were adversely affected by a recession that might still have an implication which you have not dealt with.

Ms Rogers: I am talking not only about flexibility to move within the European Union; of course, a flexible and more generous admissions policy generally to the EU would mean that during a recession period individuals might return to their own countries of origin and then come back in again. One has seen that example where there are good circumstances or it is easier for individuals to come in and out of the EU. The point I was making is that if States make it so hard for people to get in in the first place they will remain at all costs, even during a recession when they are not doing so well. A recession, of course, hits a migrant population as well as the local population, and it hits hard for the migrant population because they do not necessarily have the social support to survive that easily. I am not necessarily just talking about access to welfare, I am talking about a family network or a community network necessary to survive more easily during a recession period, although equally they may be more ingenious in methods to try to make themselves economically able to survive. However, if it is not so difficult for them to come in that they take the view that they must remain at all costs, that can deal to some extent with that problem.

Mr Ryan: Can I add something briefly? I think the experience of European countries is that anything like a guest worker mentality does not really work. If you admit a category of workers or group of workers in the expectation that when the economic circumstances change they are somehow meant to push off back to where they came from or on to somewhere else, all the experience is that that is not a policy which functions. So that, in the end, you are left with trying to work out what are the correct principles and what is the correct framework to apply to economic migration, independently of some of these variations which we have heard.

Q17 Lord Avebury: You have not got any evidence, I imagine, that, if the European Union as a whole did adopt a policy such as you are recommending, where someone had already been here then, in the circumstances of a recession, he returned to his country of origin, he would somehow get preferential treatment for readmission when the economy began to pick up again? You have got no evidence, I venture to suggest, that if people knew that they were going to have a chance of getting back in they would be much more ready to depart when there was not the work.

Ms Rogers: I think we have the evidence in experience from what has happened post-accession, which is that people know that they can come and go and so they do come and go, and when they do not find a job that suits them or they do not want to take the conditions offered to them then they do return to their own country in the knowledge that they can come back again—undoubtedly in the knowledge that they can come back again because, of course, now they are European Union citizens.

Q18 Lord Avebury: You are assuming that because this happens within Europe it would also apply to migrants from third countries?

Ms Rogers: I cannot see why that would not work. Different migrant groups are different and we cannot make generalisations that apply to absolutely everyone. Some people would choose to remain at all costs, as it were, and would not leave; others would be very keen to return to their own country in circumstances where they are not doing that well here or in another European Union country and I cannot see why that would not work.
Q19 Chairman: Of course, there is one distinction between migration within the EU and migration from outside the EU, and that is the economic effect of accession, which I think, as the evidence shows, has encouraged quite a lot of migrant workers to go back to their own countries within the European Union.

Ms Rogers: Yes, and their positions are possibly being filled by other migrant groups now who are willing to accept the less favourable conditions that prior to accession those accession nationals accepted.

Q20 Viscount Ullswater: This leads on to my question. We are now in a post-accession state and there has been a lot of new legal migration, both in and out of, particularly, this country. Do you feel that the enlarged EU should be sufficient to provide most of the labour needs of the Member States, apart from some special skills, without recourse to large-scale immigration from outside the EU?

Mr Ryan: A point which has just been made is that it is sometimes very difficult to generalise, and here we are not only talking about all immigrant categories and groups, we are also talking about all countries in the European Union. Again, to go back to the point about principles and framework, it is presumably true that the new Member States—their nationals—can take up some of the slack in the labour markets of the previous Member States. So, to some extent, yes, one would anticipate a reduction in demand, for third country workers. Nevertheless, there will continue to be demand for third country workers, and if you look at the experience in this country, even though it is one of the very few that has permitted the nationals of newer Member States to work, nevertheless there continue to be other schemes for non-EU citizens. In the future, I think we can anticipate there will be less migration from the new Member States to the United Kingdom. It is partly people who are here already. Britain is one of the few countries that have opened its labour markets and you can anticipate development, growth, in those economies. If already we continue to have schemes in this country which go beyond those states, I think we must anticipate that that will continue to be the case into the future.

Q21 Viscount Ullswater: One suggestion that has been put forward is that the EU might have a role in preventing Member States from adding new restrictions to labour migration. Do you think there is any justification in the EU having a role there?

Ms Rogers: I think it touches on things we have already spoken about. If individuals are given only one chance to come into the European Union they might remain at all costs, and there are EU-wide consequences of that, and therefore there is legitimacy in the EU being involved in ensuring that there is not a race to close the door on migration to the EU. There is also another side of this: if, as we are Advocating, there is a role for the EU to create the conditions and rights of those who are admitted, if Member States consider those on reflection to be too onerous because previously they did not apply those rights and conditions to a migrant labour force, they might be tempted to say, “Fine, we will give those rights and conditions to the people we admit; we are only going to admit five people though”. That is an extreme but it is a good reason for the EU ensuring that there is, at least, a sort of standstill at which Member States cannot then add new restrictions to their admissions policy, so that no one benefits from the new rights and EU level of admission. I think that is an important point.

Q22 Viscount Ullswater: We touched on the question of sectoral regulation earlier when we talked about the building industry, for instance. It has been presented by some observers as being incompatible with equal treatment. Do you agree with that and do you in any way think that it might be able to target labour shortages more effectively?

Ms Rogers: This ties in to some extent with an idea about quotas or restrictions in particular categories. It is very difficult to anticipate at any level a particular migration need. That changes. It changes with the economy; it changes with all sorts of things. If you make migration restrictive and restrict it to a particular sector or a particular number, you do not build in the flexibility and protection for the individual. I do not think we are in favour of sectoral regulation in the same way that we are not in favour of quotas because they create an inflexibility. There must be a level playing field for all migrant workers and the way they are treated by an employer should be equal to a domestic labour force. Those are the only conditions under which one then could start to deal with the questions that were raised about undercutting and so on.

Q23 Lord Avebury: You have mentioned quotas as being inimical to the protection of individual workers. I do not entirely follow that reasoning, I must say, and I would be grateful if you would elaborate on it because it seems to me, that, whether you have quotas or work permits, as long as the situation of workers in a particular industry is regulated without regard to whether or not the employees come from this country or somewhere else, then you have still got the same protection for all however the individual worker arrived at his job.

Ms Rogers: I think it goes back to the question of flexibility and not closing the door so that people can come in or go out, and if you have a quota system then potentially once you are in that is your last chance to be in, as it were. As to the question about
quotas at an EU level, determining a quota at an EU level to my mind would be largely about politics if the quota were to be set by the Commission and then negotiated by Council. I cannot see how that would respond to the needs of any particular labour market or the needs of employers, or indeed of the employees in question. Setting those kinds of quotas at an EU level, even at a national level, would be so inflexible and so bureaucratic that I can quite see how it could turn into quite an arbitrary process whereby the Commission, based on historical data, tried to work out what the quota should be for the EU generally. Then it would need to be negotiated at Council level and Member States might suddenly think they did not want too many people so they negotiate the quota downwards and others negotiate upwards for other reasons. One can see how it would become pretty arbitrary and not responding to any need but just a figure that is plucked out of the air. I cannot see how quotas work at that level.

Lord Avebury: Could you not imagine that the quotas could be determined by some European algorithm which is dependent on a number of variables, such as the known unemployment figures within that particular sector, in the building industry, for example? The figures would be collectable across the whole of the European Union so as how many jobs were vacant in the building industry and how many building workers were unemployed, and those could be built into, as I say, a European algorithm which would not rely on reference to the Commission or the Council of Ministers. It would be an automatic process.

Q24 Chairman: Bernard Ryan, you look as though you are itching to answer this question.

Mr Ryan: I want to say generally about quotas that the way they seem to work is that you have substantive criteria which have to be satisfied and then there is a cap, so then you can slow the process, and that is why we are sceptical about them, whatever the context, whether it is Member States or the EU, because you are by definition saying that the substantive test is satisfied. Then why not admit the worker if that is the case? In reality they tend to be presented as caps rather than quotas. The admission algorithm is a nice idea but we are not really making a very strong case as things stand for the regulation of admission at the European Union level and if you try to imagine how that would work it would not really be a scientific process; it would be a heavily politicised one, and that probably is not desirable either.

Q25 Lord Dubs: I would like to pursue the quota point a little bit more. First of all, are you saying that the American green card system, which is after all a quota system, is not working well or is not right? Secondly, you talk about quotas being bureaucratic. A work permit, in my experience of trying to help people who were seeking work permits, is incredibly bureaucratic with the tests the employer has to go through to demonstrate that there is nobody in the EU who qualifies for a particular job. It is fairly cumbersome and I would have thought a green card system was simpler.

Ms Rogers: It depends on whose bureaucracy we are looking at. For the employer let us suppose that there is a quota system and, as Bernard correctly points out, it is really a cap, and that the cap has been reached and the 20,000 to be admitted have been admitted and the employer looks around his employee base and says, “I really need another IT consultant”, and he applies and the answer is, “Sorry; we have met the cap now and there can be no flexibility”. Nothing could be more bureaucratic for the employer in those circumstances. I think he would rather be able to fill in the paperwork related, if we are going to talk about paperwork bureaucracy, than meet what he would see as an arbitrary limit and a limitation on his ability to be able to attract the right kinds of employees or the employees that he says he needs. Nothing could be more bureaucratic than that.

Q26 Lord Dubs: If it is arbitrary the presumption surely has to be that it is based upon at least a sensible view of the needs of the labour market and, secondly, it would be quite possible to have your quota or cap and say that on top of that there could be work permits. I do not see why it should not be quite flexible.

Ms Rogers: But then you might as well just have work permits. One could have a sort of base line cap but I think in reality Member States would not sign up to a system there is a cap but it is not really a cap because in other circumstances X number of others will be admitted. Member States tend to be very sceptical of each other and to the policing by each other and I can see that, I am afraid, across the board. I think Member States would look at their neighbours quite sceptically and say, “I do not trust you to apply this fairly. In fact, it will not be a cap so why do we have one because we know that you or the other Member States would be more generous?” There are problems with that.

Q27 Baroness Henig: Can I return to something we touched on earlier, which was the rights of migrant workers? First of all, on what basis do you think should it be decided when labour migrants should acquire particular rights?

Mr Ryan: We start from the principle that the key rights we are talking about, the right to equal treatment, also the right to change employer, are matters which in principle ought to be available to
migrant workers and therefore, in answer to the question of when, we would say as early as possible. There is a political process presumably which will take these decisions.

Q28 Baroness Henig: You think they should be built into some overarching set of rights?  
Mr Ryan: If we are talking about the focus of European Union action, and perhaps we are over-repeating this point, we think the focus should be on treatment, and on key questions about treatment such as equality and access to other employers. Access is something which perhaps has not really come out, the link between access to other employments and access to other Member States. If we are talking about a single labour market, at least from a legal perspective, and that is obviously the position for European Union citizens, then at the very minimum we think that at the moment at which a migrant worker has the right to change employers within a Member State they surely therefore ought to be treated legally as part of the wider labour market and be free to move to other Member States too.

Q29 Baroness Henig: In this issue then about the right to change employers, and we touched on that earlier, would that not defeat the object of the work permit system?  
Mr Ryan: I think it depends what you consider the object of the work permit system.

Q30 Baroness Henig: Controlling numbers, I would imagine, controlling flows.  
Mr Ryan: If I can put it slightly differently, ensuring there is a need in the economy for the labour which is coming in, and that is not linked to particular employers. That is a sectoral or labour market consideration which is wider than a particular employment relationship. If you do not give the right to change employer the danger is that it opens up the possibility of abuse. We might disagree about how to define it but on any conception of abuse that is the possibility which is opened up.

Q31 Baroness Henig: Of course, if there is the right to change employers you lose the capacity to keep tabs on what is happening. You are then going to fuel a whole number of fears about what then would happen to that situation in terms of keeping tabs on your migrant workers.  
Mr Ryan: Perhaps that can be addressed through notification requirements, a requirement of permission.

Q32 Baroness Henig: So maybe we are looking to regulate that right in some way?  
Ms Rogers: Yes.

Q33 Viscount Ullswater: I am trying to reconcile statements in your paper with what you have just said. To quote from your paper, “It is legitimate for Member States to wish to retain control over decisions concerning admission for economic purposes”. That is quite well understood. But then you go on to say, “We support action at the EU level for the creation of legal rights of mobility for third country nationals between Member States”. One statement seems to me to be that Member States should have control over those immigrants from third countries coming into a state, but then the moment they are in you say they should have the right to be able to spread out among the 25 states. Is there an illogicality there? Perhaps not.  
Mr Ryan: In general terms we have been differentiating admission decisions from the treatment of migrants once admitted and the right to move between Member States. We are classifying that as a treatment question. You are essentially classifying it as an admission decision by the second Member State. It is then up for grabs as to which side of the line that falls. The case we would make is that, first, we already have an EU labour market for EU nationals, so if individuals are admitted to that labour market then, on the principle of equality, once the qualifying period has been satisfied they ought to be treated in the same way as their peers in the national labour market they are in. It has important social and symbolic consequences to say, for example, in this country that non-European citizens have no European Union rights to go and live in other Member States. That can be perceived as a second-class status which they are in.

Q34 Viscount Ullswater: But then how do you demonstrate that a Member State has control over its own policy? Surely it must be a collective policy that you are advocating because if you say that it is legitimate for Member States to wish to retain control they lose control surely once a third country immigrant comes into another country and then has immediate access to their labour market?  
Mr Ryan: The European Union is a framework within which states have somehow or other common destinies. They are to some extent tied together, so
this is just a working out of that principle in a specific context. They are essentially recognising the admission decision taken by another Member State after some appropriate period has elapsed. Obviously, from what we are saying, the Member State would retain control over those initial admission decisions, but I guess they would have mutual recognition of one another’s admission decisions.

**Q35 Earl of Listowel:** In her submission to us our Specialist Adviser, Professor Guild, said, “Another somewhat surprising assumption of many of the submissions is that the UK’s administration of labour migration regulations is successful”. Is the current regulation to protect migrant labour being effectively and adequately implemented and is there a role for the EU in ensuring that Member States are properly administering regulations in their own countries, in relation to the protection of perhaps vulnerable migrants, and is there an adequate monitoring process to see that migrant workers’ rights are being met?

**Ms Rogers:** In the context of the UK, which is the context in which we have experience, undoubtedly Professor Guild is right that the UK does not monitor adequately what happens to people once they have been admitted. It is almost as if the admission is everything and what flows afterwards is inconsequential, when plainly it is not inconsequential. It has massive consequences for society as a whole as well as, of course, for the individual. That comes back to where our beginning position is, which is that there is a role for the EU in this. There is no point having policies or regulations and rules if there is no monitoring of the implementation of that, and the EU can provide better policing than the national authorities can for themselves because there is an extent to which the EU can more effectively police and have perhaps a vested interest in policing that a national authority might wonder if we might turn the situation on its head. I think that is a very important point.

**Q36 Earl of Caithness:** We have touched on this in Viscount Ullswater’s supplementaries, but you say in your evidence that there should be a right for Member States to introduce regularisation policies where they deem them necessary. Do they not have that right already?

**Mr Ryan:** Certainly they do.

**Q37 Earl of Caithness:** Then why is it in here?

**Mr Ryan:** We included it in the submission only because of the recent dispute about the Spanish regularisation scheme where several other Member States, through the Council of Ministers expressed concern about that step which the Spanish government had taken, and a mechanism for sharing information before such measures appears now to have been introduced at the Council of Ministers level. So we are expressing our concern—and the Spanish case is a very good example of a state which finds itself with a large number of unauthorised workers—that it ought at least to be recognised that they have the right to respond to that circumstance in such a manner by regularising their status.

**Q38 Earl of Caithness:** If they have that right then what right should other Member States have to know about that and to be able to influence it because it has knock-on consequences for them?

**Mr Ryan:** We are not so convinced about this supposed link between the states, at least as things stand in the European Union. This is something that is included in the Commission’s Green Paper as a possible argument that because there are rights of travel and ultimately a right of movement then there is legitimate interest on the part of the other states. However, the right to travel is only that. It is not a right to stay. As things stand in the European Union and under European law it is only after five years’ residence in one Member State that a migrant is entitled to move to others and we think that is a very long period to justify very precise concern over regularisation schemes.

**Q39 Lord Avebury:** Did the regularisation of illegal migrants in Spain lead to a flow of workers into other European countries? Were those illegal migrants, having been given regularisation, encouraged by the state of the labour markets in the different countries in Europe to migrate, for example, to the UK where there is high employment?

**Ms Rogers:** I have absolutely no evidence of that. I wonder if we might turn the situation on its head. Is it not the legitimate interest of other Member States to be aware that no action is being taken to regularise a large group of known illegal migrant workers, particularly within Schengen, where in fact those illegals have no interest in staying in one particular Member States because they are equally illegal there as they might be in another Member States? Is there not some interest in the Member States as a whole trying to move away from having acknowledgement of but not dealing with a large illegal migrant community? If I were a Schengen country I would be concerned that I knew that over the border there were large groups of illegals who had no vested interest in remaining in Spain because they have no status there, and might equally come over the border and will not be controlled from doing so. Whilst each Member State undoubtedly thinks it is better at policing than
the Spanish are or than the next Member State they all must acknowledge at one level that each Member State has a large and probably ever-growing illegal migrant workforce.

Q40 Earl of Listowel: You suggest that there should be action at European Union level to prevent recruitment in key sectors in less developed states, but is this consistent with your view that outward migration need not be economically damaging to countries of origin? How could firms be prevented from recruiting in these sectors?

Ms Rogers: One has to look at what the situation is and what it could be. The situation is that in most Member States recruitment of key personnel would be such that such a person would be brought into the territory of a Member State and that might be their only chance of being there. They might therefore remain in that Member State at all costs. That is not inconsistent with the position that that does not need to be the case. If one has a position where people can more easily come and go it does not necessarily need to be damaging because they can return (and may be very keen to return) to their own Member State. The fact is that they may wish to move for a whole variety of reasons. They may wish to have the experience of moving and to get the experience, for instance, of working in the UK. They may wish to obtain further skills or qualifications in relation to their specific skills. They may perceive the employment conditions to be better. However, if you allow them the flexibility to return to their own country then it does not need to be necessarily damaging to the country of origin. There is a huge gap, however, between what the situation is now and what it really ought to be.

Q41 Earl of Listowel: You argue that the UK should be an active participant in EU developments on economic migration. Is there any prospect of this, given the government’s expressed determination to retain control over admission of third country nationals to the UK?

Ms Rogers: This is an area of great concern to ILPA. The UK Government’s position on what it will opt into and what it will not opt into is becoming increasingly the source of some concern. I think, by other Member States and one has seen this demonstrated by the refusal of other Member States to allow the UK, for instance, to participate in the EU border agency, and now that is subject to some litigation. It is not desirable in our view for the UK to continue to state that it must retain control over the admission of third country nationals and that means that it will not sign up to the kinds of measures that we have been looking at. Let us take the example of one of the directives that has been agreed to in a related area, the Long Term Residents Directive, which the UK has failed to sign up to. That is about the rights of people who have already been admitted to the European Union, after a not inconsiderable period of residence, and lawful residence at that. The UK refuses to sign up because they say that it is about control of the admission of third country nationals, but we would argue that it is not about control of the admission of third country nationals to the EU in general; it is about the rights of individuals. It creates a situation whereby our third country nationals who are resident in the UK, and who we have given the ability to remain for a not inconsiderable period, will have no ability to move into the European Union. Whereas the government’s position has been, “We may come to a stage where we could recognise the long term residence in other Member States if we choose”, so they could admit them but there is no indication that that would be reciprocated for our own third country nationals and that is an extreme disadvantage for our own third country nationals who are resident here. Eventually it may mean that employers consider that, because of that inflexibility and the inability of third country nationals to move from the UK to elsewhere in the European Union, they do not want them admitted to the UK as a first admission; they want them admitted elsewhere and that will make us uncompetitive economically. It is about rights, and everything we have been advocating in this area has been very much to do with the rights of those legal migrants, in this case migrants for work, that flow from their admission, and the UK’s non-participation in that means that third country nationals in the UK will be disadvantaged. Furthermore, there are signs that the rest of the EU is becoming a little bit disgruntled with the somewhat inconsistent position of the UK. Furthermore, it means that we do not have the same watchdog over our regulations and policies. It means that the protection that might be afforded by the European Commission being the overseer of the implementation of any regulations is not going to apply in the UK and that is a dangerous position and, whilst the government might have arguments about admission of third country nationals, what answer will it give to why it resists putting third country nationals on an equal footing, providing them with sufficient rights and good conditions for their stay and having the oversight of the European Commission? I invite you to put it to them.

Q42 Chairman: Nicola Rogers, Bernard Ryan, thank you both very much indeed again for your written evidence and for answering our questions so fully and frankly. If, when you see the transcript, it occurs to you that there is anything further you want to put in, for instance, possibly something extra on
Memorandum by MigrationWatch UK

SUMMARY

1. There should not be a common EU policy on economic migration. The principle of subsidiarity dictates that labour market policy should remain an area of competence for national governments. If a common EU policy on economic migration is adopted, the UK should exercise its opt-out in respect of it. Failure to opt out would result in a serious loosening of British immigration controls which could well place a strain on community relations.

2. The admission of self-employed economic migrants should be based on a proven entrepreneurial track record or a capital investment.

3. Member States that are experiencing a considerable net inflow or outflow of workers as a result of EU enlargement must be free to determine levels of economic migration from outside the EU accordingly.

4. The Community preference principal should be maintained but it should apply only to long-term residents (irrespective of citizenship). This is absolutely essential to ensure that if other member states open up their labour markets to non-EU workers then it does not, by default, become a back door route to entry to the UK. We would suggest a minimum residence qualification of 10 years.

5. In the absence of such a minimum qualifying period, there should be a common EU policy namely that such amnesties should not take place, since they encourage further illegal immigration and may have consequences for other Member States.

6. An ethical framework should be established to protect third countries from and compensate them for the loss of skilled workers. This framework should be co-ordinated with overseas aid policy.

7. In considering whether to opt into a common EU policy, the Government’s chief considerations should be the needs of the economy and community relations. The reality is that Britain is already second only to Holland as the most crowded country in the EU; it does not need large scale immigration. This might well be the effect of opting in and would lead to a serious social strains.

DETAIL

Should there be a common EU policy on economic migration?

8. Article 63(3) TEC provides for the Council to adopt “measures on immigration policy within the following areas: a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term residence visas and residence permits”. This need not be construed as a mandate for the progressive harmonisation of labour migration throughout the European Union, which is the meaning placed on it in the Green Paper.

9. Despite the implementation of Economic and Monetary Union, the labour market needs of national economies within the EU reflect different conditions in each Member State, including: demographics; education; the balance between economic sectors; stage in the business cycle; levels of unemployment and economic inactivity; and also, for Member States that are not members of the euro zone, interest rates. Economic migration is thus a competence that is better exercised at Member State level, and the principle of subsidiarity should apply.

10. Whether economic benefit accrues to the host community from economic migration depends on its characteristics. Studies of economic migration do not produce uniform results; for example, a recent publication by the Institute for Public Policy Research suggests that “the fiscal impacts of immigrants are relatively healthier than the UK-born”, but admits that “Net fiscal impacts only represent part of the economic impacts of immigration”. No major studies encompassing the overall economic impact of economic migration

1 Paying their way: The fiscal contribution of immigrants in the UK, April 2005.
have been undertaken in the UK, but a study by the Netherlands Bureau for Economic Policy Analysis, part of the Dutch Ministry for Economic Affairs, concluded in a study of June 2003 that labour immigration has the following effects:

(a) GDP will increase, but that increase will accrue largely to the immigrants in the form of wages;

(b) The overall net gain in the income of the host population is likely to be small and may even be negative.

These results are similar to those of major studies in The US and Canada. They all indicate that the economic benefits of large scale immigration are very limited—of the order of 0.1% of GDP per head per year. In the UK that is approximately £25.

11. Furthermore, immigration is a policy area that is highly sensitive to public opinion and it is liable to affect community relations. Such considerations are better taken account of at national level, since both relate to political cultures and patterns of ethnicity that are specific to individual Member States.

12. If a common EU policy on economic migration is adopted, the United Kingdom should exercise its opt-out under the Title IV Protocol agreed at the Treaty of Amsterdam. The exercise of this opt-out would be essential to maintaining the effectiveness of the UK’s border controls and of its opt-out from the Schengen Agreement. Furthermore, a common EU policy on economic migration is unlikely to suit conditions in the UK for the following reasons:

(a) demographics: Total fertility rates (TFR) vary widely across the EU. The UK, along with France and the Scandinavian countries, has fertility rates which are significantly above EU averages but Germany and the Southern European nations and many of the new EU members from Eastern Europe have very low fertility rates. The following bar chart shows the TFR for selected EU states: The latest data from the ONS shows the UK’s TFR increasing further to 1.79 and increases are also reported from France where it is thought that the TFR is now close to the replacement level of 2.05.

The impact of this variation on future population is significant. The following graph shows the pattern of population growth/decline which would take place in these countries, and in the EU as a whole, if there were no migration. As can be seen the population of the UK would only start to decline from about 2030 and even by 2051 it would be at 95% of its current level. In contrast the population of Germany would start to reduce in the near future and it would lose 25% of its population by 2051. These different demographic trends point to very different immigration needs across the EU states.

2 Eurostat estimates used in 2004-based population projections.
(b) population density: the UK has a population density of over twice the EU average. Most immigration is concentrated on England (and London and the South-East in particular) and England has a population density of over 3 times the EU average and second only to the Netherlands and Malta in the 25 nation EU. Appendix 1 shows the population densities of the EU states. Congestion is therefore a much more significant factor in the UK than elsewhere and points to a very clear need for the UK to be able to limit immigration by controlling its own borders and having its own immigration policy.

(c) historical flows: the UK has traditionally experienced and continues to experience considerable migration from the Commonwealth and the English-speaking world with which we have close cultural and linguistic ties. In the 10 years from 1994–2003 nearly half of all immigration to the UK was from these countries.3

(d) EU labour market: unemployment rates vary significantly across the EU, from less than 5% in Ireland, Luxembourg, Austria and the UK to 9.8% in France and Germany and over 18% in Poland.4 This again points to very different immigration needs across the EU

(e) national labour market geography: deprived parts of the UK still suffer from high levels of unemployment and economic inactivity. National policy has sought to address these geographical inequalities. Now that EU structural funds have largely been redirected away from the UK’s deprived areas, it is more likely that a coherent policy approach to tackling these inequalities can be formulated at national level;

(f) social consequences: many of the UK’s existing immigrant communities are well established in British society but present rates of immigration are already producing strains. It is essential that immigration policy be retained at national level and carefully managed so as to avoid jeopardising community relations.

Do the same considerations apply to self-employment as to employment?

13. No. Any common EU policy on economic migration by the self-employed should be aimed at economic stimulation and based on either an entrepreneurial track record or a capital investment within EU territory by the applicant. The presentation of a business plan is insufficient to show that a self-employed individual will benefit the prospective host community.

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3 ONS international migration MN30—total gross inflow from Commonwealth countries and the USA 1.84 million out of a total inflow of 4.10 million.

To what extent do enlargement and free access to the labour market for workers from the new Member States affect a common policy?

14. Enlargement and free access to the labour market for workers from the new Member States mean that some of the existing Member States, such as the UK, are experiencing a considerable net inflow from the EU and conversely, some of the new Member States, such as Poland, are experiencing a considerable net outflow. It is essential, therefore, for Member States to be able to adjust their national policies on economic immigration from outside the EU in order to take account of the intra-EU flows, over which they have no control except for the temporary retention of labour market restrictions as provided for by the accession treaties.

Should the “Community Preference” principle be maintained? Should it apply to third country nationals legally resident in the EU and, if so, to all workers or only long-term residents?

15. Yes, the Community Preference principle should be retained. By giving preference to resident and Community workers, the principle helps to prevent the depression of wages by an expansion of the labour supply from third countries through immigration policy. It should, however, apply only to long-term residents of the EU. There is a risk otherwise that other EU states which decide to operate a policy of liberal access to their labour markets will open up a back door route for entry into the UK. This would pose a particular risk to the UK because of its special attraction as a gateway to the English-speaking world and because of its traditional ties to many developing countries.

Should there be a common EU policy on the “regularisation” of illegal workers (amnesties)?

16. The only common policy that is required is one that limits the rights of free movement and access to labour markets to long-term legal residents, for example those who have been legally resident for at least 10 years. Failing that, there should be a common EU policy against amnesties of illegal workers. Amnesties are an expedient short-term measure which tends to encourage further illegal economic migration in the long term by shifting the balance of risk in favour of such migration. Further, an amnesty in one Member State may affect other Member States since those subject to the amnesty will enjoy free movement rights thereafter.

Should measures be taken to protect third countries from—or compensate them for—the loss of skilled workers?

17. Yes, an ethical framework for recruitment from and fair compensation of third countries for the loss of valuable human capital should be co-ordinated with overseas aid policy in order that economic migration may be conducted on a responsible and sustainable basis that does not undermine development efforts.

What considerations should the Government take into account in deciding whether to opt into a common EU policy?

18. The major considerations should be the distinctive nature of the British economy. Unlike some EU partners, Britain simply does not need large scale immigration. Furthermore, public opinion is opposed to any ceding of competence by Parliament in the field of immigration. The loss of such control could threaten community relations—an outcome that is to be strenuously avoided.

Sir Andrew Green KCMG
15 May 2005
APPENDIX 1

POPULATION PER SQ KM OF THE EU MEMBER STATES (EXCLUDING MALTA) AND ENGLAND

<table>
<thead>
<tr>
<th>Country</th>
<th>Population per SQ KM</th>
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<tbody>
<tr>
<td>Netherlands</td>
<td>450</td>
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<tr>
<td>England</td>
<td>350</td>
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<tr>
<td>Belgium</td>
<td>300</td>
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<tr>
<td>UK</td>
<td>250</td>
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<tr>
<td>Germany</td>
<td>200</td>
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<tr>
<td>Italy</td>
<td>150</td>
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<tr>
<td>Luxembourg</td>
<td>100</td>
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<tr>
<td>Czech Republic</td>
<td>100</td>
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<tr>
<td>Poland</td>
<td>100</td>
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<td>Denmark</td>
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<tr>
<td>EU</td>
<td>100</td>
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<td>Slovakia</td>
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<td>France</td>
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<td>Portugal</td>
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<td>Hungary</td>
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<td>Austria</td>
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<td>Cyprus</td>
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<td>Greece</td>
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<td>Spain</td>
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<td>Sweden</td>
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<tr>
<td>Finland</td>
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Examination of Witnesses

Witnesses: Sir Andrew Green KCMG, Chairman, Mr Andrew Dennis, Head of Research, and Mr Dirk van Heck, Research Consultant, MigrationWatch UK, examined.

Q43 Chairman: Can I welcome you on behalf of the committee? Thank you very much for appearing today and also for your very helpful written evidence. I perhaps ought to repeat the fact that we are recorded and televised and explain, I am sure unnecessarily, that the purpose of this inquiry is an examination of economic migration to the EU; it is not an inquiry into either asylum or illegal immigration, but I know that is well understood from your written evidence. Perhaps I could ask you first to introduce yourself and your colleagues.

Sir Andrew Green: Thank you, my Lord Chairman. I am the Chairman of MigrationWatch UK. Mr Andrew Dennis is our Head of Research and Mr Dirk van Heck is our consultant with a particular knowledge of European matters.

Q44 Chairman: You are all very welcome. From the evidence that we have received so far there is quite a diversity of opinion about the EU labour market. Are we talking about a labour market that is local, regional, national or EU, or perhaps a mixture of the lot?

Sir Andrew Green: Could I open with three broad points just to set the parameters?

Q45 Chairman: Yes, of course. I am so sorry; I should have asked you if you wanted to do that.

Sir Andrew Green: I think you will find our evidence is completely different from our predecessors.’
**Q46 Chairman:** I perhaps should have invited them to stay to hear yours.

Sir Andrew Green: The only point with which I agreed was that other members of the European Union are deeply sceptical of each other and I think it is worth bearing that in mind. This, as you say, my Lord Chairman, is about economic migration. We challenge the basic assumption that large scale immigration is desirable. We are not opposed to limited immigration, clearly that is valuable in both directions, but we believe there is no economic case for large scale immigration to Britain. It is interesting that the government keep changing their justification for this. They have actually put forward six different reasons, none of which has been properly examined and all of which we challenge, and I shall be very glad to elaborate on that later in our evidence. Secondly, we challenge the suggestion that an EU immigration regime for work permits should apply to Britain. It is another case, we believe, where one size does not fit all for fundamental reasons of demography and geography. Demographically, most EU countries face a decline in population over the next 30 years. We face an increase of six million over the next 30 years, five million as a result of immigration, that is to say, five times the population of Birmingham. That in turn means that one in three new households will be as a result of immigration and we will have to build roughly one and a half million houses. If we are going to go down that road we need some very good arguments, I suggest, to support it and we do not believe that they exist. Geographically Britain, and especially England, is heavily overcrowded. England is second only to Holland as the most crowded country in Europe. Our third broad point is that we believe that insufficient account has been taken of the social impact of large scale immigration. The government’s own Cohesion Panel have written a report on this. It is not just us speaking; it is not just some think-tank. These are 200 experts who the government assembled and they have studied for, I think, 14 months, and they came to the conclusion, to quote one sentence, that the pace of change (and they are talking about city centres) “for a variety of reasons is simply too great in certain areas at present”. They have been ignored. It follows, my Lord Chairman, that in our view an EU-wide system is completely inappropriate to the UK, that it would open a massive back door to Britain with 24 keys to it, and it would add substantially to the strains which our society already faces. We conclude that it would be extremely unwise to go down this road. We should maintain our opt-out and I hope that your committee will urge the government to do so.

**Q47 Chairman:** Thank you very much. I do not know whether you want to revert to my first question or move on to the second. To some extent you have answered the first question.

Sir Andrew Green: May I pick up your question about the labour market because, in our view, the central issue is not the effect on the labour market, which is likely to be small anyway. We have a workforce of nearly 30 million people, so any conceivable amount of immigration is going to have only a marginal effect. At the moment foreign immigration, that is, net—those who come minus those who go—is running at quarter of a million a year. Clearly that is imposing a very substantial effort of integration on the people concerned, but even at that level it is not large compared to a 30 million work force.

**Q48 Chairman:** Surely that depends on the sector you are talking about, does it not?

Sir Andrew Green: It depends on who the immigrants are first of all and this is changing rather rapidly. Our estimate for 2003, and you can only make estimates because the government figures of their nature do not give you accurate numbers, was that only one in five immigrants came here originally for the purpose of work. The others would be family members or people who came originally as asylum seekers and were granted ILR (indefinite leave to remain). That proportion will change because of the very large number of work permits that are now being issued and, of course, by reason of Eastern European immigration which we will come to. I return to the point that, in our view, the labour market effect is not the main issue. The central issue I suggest is whether the economic benefit of significant immigration outweighs the costs in terms of congestion and social cohesion. I have mentioned social cohesion. Congestion I think speaks for itself. Our roads are packed with cars, our trains are packed with people. It is hard to find a place to put a new runway. There are questions about water supply in the South East and so on. All that, of course, has economic costs and we believe that those costs and the social costs I have mentioned need to be balanced against the economic benefit. We argue very firmly that the balance is not in favour of large scale immigration. Again, it is not just ourselves. I would like to quote briefly from Professor Mark Kleinman, who was writing for the IPPR, who describe themselves as a progressive think-tank, in the Political Quarterly. He wrote this: “In broad terms the economic impact of migration is positive for the destination country but the size of the impact is not great and there are distributional consequences to consider”. This is the key point: “The economic arguments alone will not and should not be decisive”. That I think is crystal clear. We therefore believe that work-related migration should be restricted and that restricting it satisfactorily requires national control; it cannot be done on an EU basis. One thing that came out of your earlier discussion was the difficulties which that runs into. On the more specific question of the labour market
that you mentioned you know, of course, that the Department for Work and Pensions have just done a study on the impact of East Europeans on our labour markets in which they found that there was a small but significant impact on local markets; again your point: it depends which market, and many of these people are in agriculture or fisheries. The broader point is the wider impact. I would like to quote Lord Layard, one of your colleagues, who, as I am sure you know, helped to design the government’s Welfare to Work programme. He is very close to the present government and is a considerable expert. He wrote to the Financial Times on 20 May 2002, “There is a huge amount of evidence that any increase in the number of unskilled workers lowers unskilled wages and increases the unskilled unemployment rate. If we are concerned about fairness we ought not to ignore these facts. Employers gain from unskilled immigration but the unskilled do not”. Eighty per cent of the East Europeans, according to the same report, are earning less than six pounds an hour, so clearly—and indeed the DWP report recognises—that in those particular areas and industries at the very least there is, I think they said, a small but significant impact on the local market. Of course, this is year one. We have to look further ahead and we have to look, as I say, at the overall benefit to the economy, which is minimal, and at the social impact, which is serious. Just to take a last general point that needs to be made, it is this question of the overall impact on the economy. Obviously, if you bring in additional workers you get additional production and your GDP goes up, but of course you are also bringing in additional people and therefore you have to make a reduction as it were in order to get the GDP per head. The Prime Minister, no less, quoted a figure in his speech to the CBI last April in which he said that growth would have been nearly half a per cent less had it not been for net immigration. You may remember that speech. That statement was at best misleading because the accurate figure from the Treasury is 0.4 per cent. The extra people involved add 0.26 per cent to the population, so the increase in GDP per head is about 0.14 per cent, which is roughly £25 a year. That is a very small benefit, it seems to me, and we need to bear in mind that we are not alone. The major studies that have been made—there are not many: the United States, Canada, Holland—all come to the same conclusion, that the benefit to the host population is very small. Most of the benefit goes to the immigrants, of course, that is why they come, and much of the other benefit goes to the employers, who naturally are getting cheap labour, flexible labour, labour already trained. Again I come back to the central point: is there a serious economic justification for significant economic migration? If not (and we argue not), there is no point in going into a massive Euro system of economic migration with all the complications that are involved, especially as it would amount to moving sideways into Schengen in the sense that anyone who got an EU work permit would then, if we went in for this, have the right to come here, so we would effectively, and I think it was the point that Viscount Ullswater was making, lose control over a significant element of immigration, and an element furthermore which is of crucial importance to the electorate, to the worker. A rise in unemployment may not matter unless it is your job.

Q49 Chairman: Two questions arise from that. First of all, what do you think state authorities ought to do about it in terms of regulating migration? Secondly, you talk about costs and the effect on employment but my understanding is that there is very little evidence that increased migration has led to increased unemployment rates. You talked about unskilled unemployment. Is there evidence that the jobs that are being taken by migrants would otherwise be taken by resident unskilled workers?

Sir Andrew Green: May I reverse those two questions? On the second one the quote from Lord Layard was about the low skilled. Skilled are a different matter which I will come to. As far as the unskilled are concerned the real problem here is the benefits trap. It is not that there are not people to do unskilled work. There are two million people on the government’s own figures whom they would like to move from welfare to work. A large part of the reason why some may not be willing to move is that the amount they would earn in the unskilled labour market is not much more than they would get on benefits, especially if they have families. What we should be aiming to do, I suggest, is raise wage levels and productivity for the less skilled in order that there is a proper incentive for the people who are at present on benefits to move into work, and to the extent, therefore, that you encourage the admission of unskilled you are holding wages down and discouraging people from moving into the labour market. That is a point which the Governor of the Bank of England has made once or twice. The reasons why it appears that the government is able to run the economy at a fairly high rate without wage inflation are various. Some are structural and financial, but one of them may be the arrival of a significant number of East European workers, particularly in specific fields such as construction. In so far as unskilled labour is concerned we believe that we are going in the wrong direction by admitting large numbers of unskilled workers. Indeed, to the extent that we have now expanded the European Union and are taking significant numbers from Poland in particular, that seems to us to be a very good reason for reducing the inflow of workers from other parts of the world, given the obvious political and strategic advantages of bringing Eastern Europe
up to the level of the rest of Europe. There are clearly wider considerations . . . I certainly do not have to tell you, my Lord Chairman, that there are wider advantages in integrating Eastern Europe. That, we think, is perfectly justifiable and the right way to go but we do not believe that large scale migration, whether skilled or unskilled but certainly unskilled, is the right way to go.

Q50 Lord Corbett of Castle Vale: You have several times used the expressions “significant immigration”, “large scale immigration”. Can you explain what you mean by those expressions?
Sir Andrew Green: Yes. The present rate of immigration is, as I mentioned, a quarter of a million in terms of foreign immigration. These are round numbers: it is exactly 236,000, I think. In order to get the number of extra bodies in Britain you have to subtract British emigration, which is of the order of 100,000, so the net addition to our population is running at 150,000 a year. That does not sound a lot but the effect of that over 30 years, as I say, is to add five million to our population; indeed 84 per cent of the population increase is down to new immigrants and their descendants, and that is five times Birmingham. Roughly 70 per cent go to London and the South East and, as I have mentioned, they will require one and a half million houses, so I would call that significant immigration. It has also, by the way, trebled since 1997.

Q51 Lord Avebury: Are these your 2003 figures?
Sir Andrew Green: The last figures available are 2003, yes.

Q52 Lord Avebury: So you do not take into account the decline in asylum since then?
Sir Andrew Green: It will not have a huge effect on that because—

Q53 Lord Avebury: Yes, it will.
Sir Andrew Green—the population projections do not take account of failed asylum seekers, or indeed any of them. Can you correct me on that?
Mr Dennis: The population projections assume net immigration of 130,000 a year and the actual net immigration, as Sir Andrew has mentioned, has averaged 157,000 over the last six years, and in that 130,000 figure, which is the Government Actuary’s projection of what immigration is going to be, no account whatsoever is taken of failed asylum seekers.

Q54 Lord Avebury: But since your 2003 figures asylum has fallen by 47,000 a year, so you should cut 47,000 off your net addition in the population.
Mr Dennis: Asylum fell from 100,000 to 60,000 in 2003 and yet the net migration figure—

Q55 Lord Avebury: The 2004 figure is 30,000.
Mr Dennis: Yes; it has fallen further since then.

Q56 Lord Avebury: Yes; it is still falling.
Mr Dennis: The point I was going to make is that it fell from 100,000 to 60,000 but the net migration figure stayed pretty much constant.

Q57 Lord Avebury: With that sort of fall it could not have done.
Sir Andrew Green: The point is that there are several elements, of course, in the migration figures, and although asylum has fallen other elements have gone up, including work permits and family reunion, which are the other two major ones. Our expectation—and at the moment it can only be done on the back of an envelope because the statistics run 18 months late, as you know—is that the level of net migration will continue, so far as we can see, at about 150,000 a year, which is rather above the GAD projection, which is 130,000. I do not want to get too technical, my Lord Chairman, but the bottom line is that a fall in asylum, which there has certainly been, does not affect the numbers I have just given you.

Q58 Earl of Listowel: I am aware that you may be concerned about timing, my Lord Chairman, so I will endeavour to be brief in my questions and perhaps we could have a brief response as well and further elaboration in writing if you feel there is a gap. First of all, are you perhaps discounting the very positive benefits of migration, not in terms of economic benefits but in terms of, for instance, some schools with an injection of migrants who find that the experience of their teachers and their educational outcomes improve as a result of that? Secondly, you referred to the shortage of skills. My understanding is that business in this country is very concerned about the lack of capacity in our workforce in terms of skills and particularly basic numeracy. My concern is that uncontrolled migration might result in a disincentive on business and the government in terms of investing in education and elsewhere to ensure that these basic skills are established along with more sophisticated skills. Is that something that you recognise? For instance, we have the highest prison population in the European Union and very many of those do not have the ability to read and write. Perhaps if there was more emphasis put on investment in education over the long term that would be different.
Sir Andrew Green: I agree on both points. I will be more brief in my own answers, my Lord Chairman, because I have set out some of the main points. Net immigration is a quarter of a million. Teachers are about 5,000, medics are 15,000–20,000, so these are special categories. We do not want to in any way devalue the benefit of limited immigration in both
directions. It is when it gets to a scale which affects our whole society and the whole scale of our population that it is a different matter.

**Q59 Lord Dubs:** My question I think you have largely answered, but just in case you want to add anything, to what extent should regulation of labour migration be driven entirely by economic considerations, regardless of possible social consequences? Your view, as I understand it, from what you said earlier, is that the social consequences loom very large and the economic benefits are small. I do not want to put words in your mouth. Would you like to develop that?

**Sir Andrew Green:** I understand the social consequences do loom large. That is the view of the Cohesion Panel. I commend its report to you as a very important document. I think we have to look ahead on this. All those who were on doorsteps during the last Election have come back saying that they are very conscious that immigration was a matter of widespread concern and that is for good reasons, so we do need to get this balance right. The CBI themselves say—and it ties in with the Earl of Listowel’s point—that in the longer term only training and retraining can fill the skills gap. It comes back to the point that we have a 30 million labour force. You cannot possibly make up the skills gaps by immigration. The CBI backs a policy of managed migration “which meets the needs of the UK labour market while remaining at a level that enables immigrants to be successfully integrated into society”. We entirely agree with that. They go on to say that “in the longer term only training for the UK workforce can resolve such skill shortages”. Our point is the same one, of balance between economic advantage, which is largely to the employers and immigrants themselves, and the costs of congestion and social strain.

**Q60 Lord Dubs:** You mentioned that immigration loomed large in the Election. I think I probably knocked on as many doors during the election campaign as anybody you are likely to meet, in several constituencies. Yes, it was there. I think it was there because the Conservative Party used immigration as a key issue and it was the feedback from what the Conservative Party was saying rather than any inherent sense about immigration that people had, but maybe we should be looking beyond that. I am trying to understand what your assessment is of the likely needs of our labour market. The enlarged EU constitutes a substantial labour market and you have quoted the demographic trends across the EU Member States and you have said that ours was different from the others where there was going to be a decline.

**Sir Andrew Green:** Absolutely.

**Q61 Lord Dubs:** Do you not think that there is likely therefore to be a continuing need for immigration from outside the EU into the EU even if not into the British labour market?

**Sir Andrew Green:** Oh, probably. If you look at page 4 of our evidence you will see completely different graphs. The Germans are going to lose something like 25 per cent of their population. We are going to add 10 per cent. You could hardly have a more different situation. It is one of the fundamental reasons why we say keep out of a European system. It does not fit. They are in a totally different situation.

**Q62 Lord Avebury:** I agree with you that the figures you give in your graph on page 4 show that there are major differences between various European countries but without regard to that would you not nevertheless accept that if there are EU policies which combat illegal immigration there have also to be EU policies which deal with legal migration?

**Sir Andrew Green:** There have to be policies but I do not think they have to be EU policies. I think the two are separable. Illegal immigration is more a lack of border control than anything else, and also enforcement on employers who are exploiting people because they know that they are illegally present. That is quite a separate issue from the regulation of admission and, for the reasons I have given, I think that should be on a national basis.

**Q63 Lord Avebury:** What do you think about the advantages of a quota system as opposed to work permits?

**Sir Andrew Green:** I am not quite sure what is meant by a quota system. We would be happy with work permits that were applied for by the employer but we would put a limit on the number of work permits, so maybe you would call that a quota, and the reason we would do that is that in our view you cannot have an employer-driven immigration policy because obviously, if you can get someone from abroad who is already trained, who is not unionised, who will take minimum pay, there will be no end to it. What is very interesting is that I mentioned the six arguments of the government that had fallen down. The latest one is that there are 600,000 vacancies that need to be filled. If that is so, why is it that in the last three years we have had nearly half a million net immigration and vacancies have gone up, not down? It is extraordinary that they still trot out that argument. The reason is that although immigrants (those who work, which is not by any means the majority of them) produce, they also add to demand and therefore the argument that because there are labour shortages we must have more immigrants and thus will fill those vacancies is completely false. I
commend to you an article by Martin Wolf in the *Financial Times* on 27 January in which he says that this is a totally false argument and it is leading in fact to an endless cycle of further immigration, “Marvellous for the employer, not for society”. I really think that we must look again at the whole scale of this, the arguments for it, and who is actually benefiting. The answer is that it is not the ordinary British person and that, with respect to Lord Dubs, benefiting. The answer is that it is not the ordinary British person and that, with respect to Lord Dubs, benefiting. The answer is that it is not the ordinary British person and that, with respect to Lord Dubs, benefiting. The answer is that it is not the ordinary British person and that, with respect to Lord Dubs, benefiting.

**Q70** Lord Avebury: So how would you regulate the work permit system so as to admit the number you think is necessary from the social point of view once the consequences of enlargement have fully worked their way through the system?  
**Sir Andrew Green:** Enlargement does not involve work permits because they have the right to come.

**Q69** Lord Avebury: That is what I am saying, that once the consequences of enlargement have worked through and we have a steady state system and the movement of workers from Eastern Europe into the West is stable, how would you then determine the level of work permits that should be granted or the number that you would allocate to the quotas?  
**Sir Andrew Green:** I would start at the other end. I would say how many people do you want on this island? We now have 60 million people, which is the highest in our history, and I would say that that is probably enough, given particularly the concentration in London and the South East with 70 per cent of immigrants. I would say that, in a perfect world, we have enough people on this island. Therefore, we will admit to it roughly the number who leave. About 100,000 Brits leave every year, so you would aim to manage down the numbers towards that level.

**Q70** Lord Avebury: But you are talking about the global levels of immigration, including dependants and asylum seekers, so if you limited it to 100,000 you would probably have nothing left of the work permit holders at all and you would not even be able to import the teachers and the doctors who you say are necessary.  
**Sir Andrew Green:** This is a matter of administration. You cannot achieve it like that, obviously, and you would have to be aware of the administrative difficulties that you have mentioned, but I would remind you that the number of work permits issued in the mid nineties was about 30,000 or 40,000 a year. It is now 140,000. There is no reason in principle why we should have that massive number of work permits, none at all. We want to get that down in my view. Let me reverse the question if I may. Where do we stop? Are we going to have another five million and then another five million and then another five million? It makes no sense. This is a small island. We are not Germany. We are twice as crowded as Germany, four times as crowded as France, 12 times as crowded as the United States, I think 120 times as crowded as Australia. You have to ask the other question: when do we become so congested that
finally we do something about it? I am saying let us look ahead; let us think ahead, let us not stumble—and frankly I think the government have stumbled in their present policy—into a worse policy whereby the European Union has a huge key to our back door.

Q71 **Viscount Ullswater:** Perhaps I could move away from admission towards circulation because you suggest a minimum residence qualification of 10 years before third country nationals can take advantage of the Community preference principle. Is that not excessive when the UK legally resident third country nationals can apply for citizenship after five years?

**Sir Andrew Green:** Once they are EU citizens they are free to come anyway. The object of this proposal is to discourage secondary immigration. The thinking is that after 10 years somebody will probably have put roots down in whatever country they are in. They will have somewhere to live, maybe children at school, and they will be less eager to move on to a further country. Fine. If they are in Spain and they are happy, great. Why should we worry?

Q72 **Viscount Ullswater:** So it is a means of discouraging movement between EU countries of nationals from third countries?

**Sir Andrew Green:** Secondary movement, yes. It ties into the question that you were discussing earlier of amnesties. Amnesties are, I am inclined to say, a very foolish idea. The Italians have had four amnesties in the last 20 years; it has not done them any good at all. The Spanish have had, I think, three. They have just given the right of residence to 700,000 people plus their dependants. That is nearly a million people. In Spain you can become a citizen in between two and 10 years, depending where you come from, but if you are from Latin America you get citizenship in five years, so that could become, if they go on having these amnesties and if large numbers come from Latin America to Spain, a significant route of entry into the European Union, including the UK, because they would have citizenship.

Q73 **Viscount Ullswater:** That rather pre-empts my next question about regularisation. What you have suggested in your paper is that there should be a common policy against amnesties, whereas in a lot of the other parts of your paper you believe there should not be a common EU policy on economic migration.

**Sir Andrew Green:** Absolutely. We do not have to have a common policy on everything but we should have it where it affects other Member States and this is one of those instances.

Q74 **Baroness Henig:** Can I shift the emphasis to the effects on third countries because in your written evidence you suggest that measures should be taken to protect third countries from the loss of skilled workers, and you come up with the proposal for an ethical framework for recruitment. I wonder if you could expand on how that would operate. I am thinking that to some degree those countries are compensated by remittances from overseas workers, so there is that element anyway. I was interested in this concept of an ethical framework and I wondered if you could say something about that.

**Sir Andrew Green** Of course, it depends which particular field you are looking at. You would probably need a code of practice in the more sensitive fields, and I am thinking of medicine primarily and possibly teaching, and one that is much more effective. In 2002–03 one in four non-EU nurses were recruited from countries on the proscribed list. That is an outrageous breach of the intent of the code of practice. Secondly, I think that compensation should be paid to the country of origin, especially if that worker is working in the British state sector. The flow of outward remittances is about 10 million pounds a day to the Third World and that is quite useful to some of those countries but it does not compensate for the loss of absolutely key people, not just key people in their professions but key in their society. I would advocate that we move to a system whereby we offer visas for only five years to medical staff from the Third World and we impose a requirement and penalties if they do not return, because if you look at the whole international medical situation there is a roundabout but nobody ever goes back to the Third World. They start here, they go to Canada, they go on to America, and you have an absurd situation where in parts of Africa there are about three doctors per 100,000 and we are taking them here and we have got 66 per 100,000. It is indefensible. We have failed to train the number of doctors we need. In Britain 31 per cent of doctors are foreign born. In France and Germany it is 5 per cent. That is a sheer administrative failure which we should be ashamed of and it underlines the broader point that we should be training our own people to do our own work and not robbing them from elsewhere. Not only medics but key people from all these countries are going off in search of higher incomes. I do not blame them for that. I blame us for permitting it.
that country might then train them and then pinching them back again?
Sir Andrew Green: I think there is a scheme in relation to Malawi run by DfID whereby they give ring-fenced money to strengthen recruitment and retention in the medical field. I think that is a good idea and I think that kind of thing should be developed. What should be developed even more is the training of doctors in Britain. We have that recourse in that we should be paying for that. We should not be robbing other countries.

Q76 Earl of Listowel: Do you feel, given the Prime Minister’s concern about HIV/AIDS in Africa and addressing particularly the needs of children in Africa with the risk of developing HIV and so on, that point you have just made is particularly important? Would you feel particularly concerned about that issue?
Sir Andrew Green: Yes, I think we are hypocritical.

Q77 Earl of Listowel: Moving on to a question I think you may have answered when you spoke with Lord Ullswater earlier, you advocate that the UK should exercise its Title IV opt-out from any EU policy on economic migration. Are there not disadvantages to this position, for example, in preventing long term resident third country nationals in the UK from moving to other Member States to take up employment?
Sir Andrew Green: That is a fair point but it is a very small point compared to the major issues we have discussed today. If somebody is here as a third country national working they can always apply for a work permit in Germany if that is what they want to do, or they can go home and apply, but the numbers are small, the problems are small. The real issue is first of all how many people do we want in this country? Secondly, do we actually think that in the light of that we need any significant economic migration, and, thirdly, we need to balance that against the social costs. On that scale of issues, the odd third country national is not a major point.

Q78 Viscount Ullswater: Just as a philosophical question, are you concerned about immigration to the UK as being an entry to the English-speaking world, and is that a particular worry, that they should be coming from all over the world to the UK as the entry point for the English-speaking world?
Sir Andrew Green: There is no question that the English language is a major pull factor, that the existence of communities from many countries is another pull factor, and the possibility of moving on to North America may be a third one. Chairman, nobody has asked me about the six government reasons that do not stand up. Is nobody interested in them?

Q79 Chairman: We would be very interested, as you will have heard me say to our previous witnesses, if in the light of this meeting today you think we would benefit from anything further in writing please feel absolutely free to put it in.
Sir Andrew Green: I think I might do that if I may because it is quite extraordinary how no-one has challenged these arguments. We have made them available to a major newspaper and a major television station and nobody wants to look at them.

Q80 Chairman: I should say in spite of that we have found this a very challenging meeting. I am very grateful to the three of you for coming. Again, thank you for the written evidence that you have sent so far. On a personal note, Andrew, it is very nice to see you again.
Sir Andrew Green: Ditto.
3. Although there has been a small dip in net migration over the last two years to 153,000 in 2002 and 151,000 in 2003, the main reason for this is that British net emigration has been at record modern levels in these two years. Net migration of EU citizens (including Irish but excluding the Eastern and Southern European States which joined the EU in May 2004) has remained at very low levels. In contrast net immigration from non-EU sources has grown from under 100,000 in 1997 to a peak of 233,000 in 2002 before falling slightly to 222,000 in 2003. The following graph shows the three sources of migration to or from the UK and the total figure.

4. The cause of some of the increase in net migration over the period 1997 to 2003 was the upsurge in asylum claims. However, the large fall in claims between 2002 and 2003—from 103,000 to 60,000 including dependants—was not reflected in a corresponding fall in net non-EU migration. This only fell by 11,000. The reason for this is that there has been a rapid rise in other forms of migration—predominantly family formation and reunion and work-related migration—to the UK. The following graph shows the trends. (Net asylum migration is calculated as the number of applications less removals and less an allowance for voluntary unrecorded departures of 10 per cent of failed asylum appeals which the Office for National Statistics uses in its International Migration statistics).
5. 2004 saw a further reduction in asylum claims to 40,000 resulting in a net asylum migration into Britain of about 20,000 after removals and voluntary unrecorded departures are taken into account. Even so, net migration from outside the EU (as constituted prior to May 2004) is likely to rise further primarily due to the influx of migrants from the new EU member states. We anticipate that this will result in overall net migration staying around the 150,000 mark for the next few years. As the impact of the last phase of EU enlargement diminishes we may start to see a fall unless the UK gives working rights more beneficial than other member states to new waves of EU entrants (such as Bulgaria and Romania).

6. Government Actuary population projections assume (based on current trends) a net migration rate of 130,000 a year. There is no allowance within this for failed asylum seekers whom they assume will have their decisions heard and dealt with (ie removed if not given asylum or discretionary leave) in less than a year. On their assumptions the population of the UK will rise by 6.1 million by 2031 of which 5.2 million will result from immigration (that is immigrants and their descendants).5

7. Current trends suggest that the 130,000 a year projection is likely to prove quite conservative. Government policy will, of course, be critical in determining the actual outcome.

Sir Andrew Green KCMG
10 June 2005

Supplementary memorandum (2) by MigrationWatch UK

IMMIGRATION: THE GOVERNMENT’S SEVEN ARGUMENTS

In the past three years the government has kept changing its arguments for large scale immigration as each one is shown to be faulty. They are set out below:

1. “LEGAL IMMIGRATION WILL REDUCE FALSE ASYLUM SEEKERS”

This was first floated by Mr Blunkett in a speech to the Social Market Foundation on 26 June 2002. Migrationwatch pointed out that the 10 countries which produced the most asylum seekers and the 10 countries that produced the most applications for work permits were entirely different—except for China where both asylum seekers and work permits had increased.

In May 2004 the National Audit Office, reporting on asylum statistics, said that “There is no significant statistical relationship between the number of work permit applications and asylum applications over the period”.

The Government have now dropped this argument.

2. “IMMIGRANTS ARE NEEDED TO PAY OUR PENSIONS”

The House of Lords Economic Affairs Committee dismissed this argument in November 2003. They reported “We conclude that . . . it is neither appropriate nor feasible to attempt to counter the trend towards a more aged society in the UK through a manipulation of immigration policy”.

The UN World Economic and Social Survey put it even more strongly in November 2004:

“Incoming migration (to Europe) would have to expand at virtually impossible rates to offset declining support ratios, that is, workers per retirees”.

3. “IMMIGRANTS MAKE A NET FISCAL CONTRIBUTION OF £2.5 BILLION PER YEAR”

An investigation by Robert Rowthorn, Cambridge Professor of Economics, concluded that the outcome depended on the assumptions made but that the impact was probably neutral.

The authors of this estimate themselves said that the tentative nature of the estimate should be emphasised. The IPPR has since described this claim as “meaningless”. They have produced a further calculation which Migrationwatch are examining.

4. "Immigrants Comprise 8 per cent of the Population but Contribute 10 per cent of GDP"

This is just a simple miscalculation. The Government have omitted from the immigrant population their dependant children who were born in the UK. If included, the immigrant share of the population is 10 per cent which is also their contribution to GDP.

5. "Growth Would be Nearly ½ per cent Lower Without Net Immigration"

This was the Prime Minister’s claim to the CBI on 27 April 2004. In fact, the Treasury’s figure (which is based purely on the addition to the working age population) is 0.4 per cent but the population is also increased by 0.26 per cent so the benefit in terms of GDP per head is, on this basis, more like 0.14 per cent. (Even this small benefit is reduced as migrants have children and eventually retire, both of which add to the dependant population). This is a result consistent with studies in the US, Canada and Holland. In the UK this amounts to about £25 per head per year. (See also The Spectator article of 5 June 2005).

6. "600,000 Vacancies Need to be Filled"

Between August 2001 and 2004 net immigration was about ½ million but vacancies went up, not down.

The reason is that immigrants also generate demand. So the argument from “shortages of labour” creates open-ended demand for more immigration (see Martin Wolf in the FT, 27 January 2005).

7. "Immigrants Earnings are 17 per cent Higher than Those of Indigenous Workers"

True—for those in work, but participation rates are lower and unemployment higher. Correcting for these differences makes the average wages of immigrants about the same as for the population as a whole.

Sir Andrew Green KCMG

June 2005

Letter from Mr Len Cook, National Statistician and Registrar General, Office for National Statistics

Dear Mr Rawsthorne

Thank you for your letter of 24 June which asked for comments on MigrationWatch UK’s oral evidence and supplementary paper that referred to current levels of net inward migration to the UK and the effect that such levels, if continued, would have on population size over the next 30 years. This response combines comments from the Office for National Statistics (ONS) who are responsible for official estimates of international migration, and of the Government Actuary’s Department (GAD) who are responsible for official national population projections. I cannot comment on the implications for housing supply and demand, which is a matter for the Office of the Deputy Prime Minister. Equally I cannot comment on the estimate of outward remittances as I have no information about the basis of the estimate.


A detailed explanation of the methods and sources used to estimate international migration inflow, outflow and net flow is provided in the document Methodology—Total International Migration since 1991, which can also be found at http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=507.

The MWUK comments on the effects of migration on future population growth are based on an analysis published by GAD, which is available at http://www.gad.gov.uk/Population/2003/methodology/mignote.htm, and was also included in Population Trends 118 (page 11). This analysis reported that, based on the annual level of net inward migration of 130,000 a year assumed in the principal projections, the population of the UK would increase by 6.1 million in the 28 year period from 2003 to 2031.
Some 3.6 million of this increase is directly due to the assumed number of net migrants and a further 1.5 million results from the net effect of this assumed level of net migration on births and deaths. This is the source of the comment in the memorandum that 5.2 million (the numbers do not sum precisely because of rounding error) of the projected increase results from immigrants and their descendants.

Paragraph 6 of the memorandum notes that the assumption of 130,000 net migration a year takes no account of failed asylum seekers who remain in the UK. This is correct. However, the forthcoming 2004-based national projections (due for publication in October 2005) will make such an allowance. They will also take account of the fall in asylum applications since the last projections were published.

We have the following specific comments on the MWUK oral evidence:

Q48. MWUK stated that one in five in-migrants cited work related reasons as the main reason for migration. This figure is broadly correct—the actual percentage in 2003 was 22 per cent. However in listing the other reasons for in-migration, MWUK did not mention those migrating for formal study. In 2003, 26 per cent of in-migrants stated formal study was their main reason for coming to the UK. The numbers of in-migrants for whom formal study is the main reason for migration has increased rapidly in the latest two years.

Q57. In addition to the principal (central) projection based on assumed net migration of 130,000 a year, GAD publishes variant projections based on alternative high and low assumptions. In the 2003-based projections, these variants assumed levels of 190,000 and 70,000 a year respectively. These are intended as plausible alternative scenarios and not as upper or lower limits. It cannot be over emphasised that estimates of future migration are subject to huge uncertainty. Therefore the difference between an assumption of a 150,000 a year and of 130,000 a year, while certainly not negligible in its effect on future population size, is small in the context of projection uncertainty.

Q65. The MWUK response comments on migration between the UK and the (pre-accession) EU14. In the years 1999 to 2003 the UK has experienced a period of net out-migration to the (pre-accession) EU, ranging from a net outflow of 4,000 in 1999 to a net outflow of 36,000 in 2002. In the years 1994 to 1998 there were small net inflows each year.

Copies of this letter go to the Government Actuary and David White in the Home Office, as they were copy recipients of your letter.

Len Cook

12 July 2005
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EUROPEAN UNION COMMITTEE (SUB-COMMITTEE F): EVIDENCE

WEDNESDAY 15 JUNE 2005

Present
  Avebury, L
  Corbett of Castle Vale, L
  Dubs, L
  Henig, B
  Listowel, E
  Marlesford, L
  Wright of Richmond, L (Chairman)

Memorandum by the Joint Council for the Welfare of Immigrants (JCWI)

1. JCWI welcomes the European Commission’s Green Paper on economic migration to the European Union as a helpful review of the main issues to be considered when formulating an EU approach to migration.

2. Between a “horizontal approach” and “sectoral legislative proposals” we strongly favour the former. We consider the latter approach as having much in common with the form of managed migration policies which the UK government has pursued since 2001, and of which we are critical.

3. A horizontal approach to common policies should concentrate on establishing the basic framework for the way in which migration should be managed in Europe, with sufficient scope and flexibility to allow national authorities to adapt this structure to their own specific needs.

4. Common EU policies should avoid policies which generate complexity and bureaucratic over-regulation. They should strive for a relatively simple framework of fundamental principles which will allow migration management to be understood by employers, migrants, and other key stakeholders.

5. The issue of the rights of migrant workers should be dealt with in EU common policies to ensure that European labour markets do not fragment along the lines of those with access to vulnerable, under-protected workers, and those supporting the reasonable social costs of the workforce. The range of rights offered in the EU’s own legislation covering persons exercising free movement rights, ILO Conventions, and the International Convention on the Rights of Migrant Workers, should be considered the basic source documents for determining the character of the “EU Charter of Migrant Worker Rights”.

6. If developed along these lines, EU common policies will constitute a “new paradigm” for the management of economic migration. As Europe makes the transition to this new paradigm it should resolve the outstanding problems generated by the old systems of management by instituting policies allowing for the regularisation of irregular migrants.

7. A wide range of social, economic and development policy objectives need to be incorporated into the new paradigm for managing migration. This will require multi-party negotiations to ensure that these objectives are clearly defined and met. The parties involved will include non-state actors such as migrant association, trade unions, community, faith and human rights associations.

Detailed submission to the Select Committee Inquiry

The Joint Council for the Welfare of Immigrants (JCWI) is the only national, independent non-governmental organisation in the United Kingdom working in the field of immigration, asylum, European Community free movement, and British nationality law. Established in 1967, JCWI has a network of over 1,000 participants and support from national trade unions, human rights and legal defence groups, faith organisations and the anti-racist movement.

It has participated in Europe-wide discussion on the shape and direction of migration policy for the last 15 years and is currently active in the European Migration Dialogue, the European Platform for the Rights of Migrant Workers, and the Platform for International Cooperation on Undocumented Migrants.

1. THE EU APPROACH: COMMON RULES OR SECTORAL POLICIES?

1.1 The Green Paper poses this question by referring to a “horizontal approach” or “sectoral legislative proposals” as the two options for European policy. JCWI has observed the emergence of the equivalent of sectoral policies in the context of the UK’s “managed migration” policies in recent years. Our criticism of this approach is that it has led to the proliferation of a scheme of great complexity in which the region of 22 separate migration categories are set out in order to attend to the needs of the economy for specific types of labour, operating on a variety of contracts of employment. These include:

- skilled workers filling specified long-term employment vacancies;
- highly skilled workers admitted to seek employment or business opportunities, without restrictions on sector;
- highly skilled workers admitted to seek employment or business opportunities, in sectors using e-technologies;
- business people investing at least £200,000 in a UK business;
- seasonal agricultural workers;
- unskilled workers with job offers in the hospitality and food processing sectors;
- young Commonwealth citizens on working holidays;
- Commonwealth citizens with ancestral connections to the UK;
- UK university graduates with science and technology degrees;
- graduates of Scottish universities with any type of degree seeking employment in Scotland;
- various miscellaneous categories of employment deemed to be “permit free”; and
- various nationalities permit entry for employment for cultural purposes.

This list is not exhaustive.

1.2 The immense complexity of this scheme produces the considerable drawback of generating differential rules and regulations for each category, which have a tendency to proliferate with each new adaption. It is difficult to administer, with few immigration officials having a ready grasp of the conditions attached to each separate category. Migrant workers and employers seldom have a clear understanding of what is entailed by being a worker under each of these separate headings, generating scope for inadvertent breaches of immigration status and the consequent growth of irregular residence status. The momentum imparted into policy-making by the sectoral approach seems to favour the entrenchment of complex hierarchies of rights and obligations which then become a barrier to the goal of integration and equality pursued in other areas of employment and social policy.

1.3 The Government has now acknowledged the negative features of this approach and has committed itself in its recently published strategy paper to a simplification of economic migration schemes. Regrettably its policy proposals advocate a complex four-tier “points-based” scheme destined to reproduce the confusion and complexity of current policies under a new heading.

1.4 In our view this is a danger inherent in any approach to immigration policy that aims for an alignment of sectoral demand for migration to differential channels regulating employment and self-employment opportunities. Schemes which operate on this basis frequently presume that some categories of migrant workers can be treated less favourably than others in such areas as labour market rights, social welfare protection, family reunification, and long-term residence and integration prospects. If this approach is adopted the European Union will see this danger multiply as the sectoral approach is adapted to meet the different conditions which operate in each of the member states. We think that the complexity of rules and regulations which result will be unsustainable, and will not therefore be a useful way for the EU to proceed.

1.5 We favour the “horizontal approach” as, in principle, offering an opportunity to structure policy around agreed standards of rights and obligations, irrespective of skill level, nationality, age or gender. The horizontal approach holds out better prospects for a well-designed scheme that is run on principles capable of being understood by migrants, employers, administrators, and other parties coming into contact with migrant workers and their families. The horizontal approach also has the potential for building on the proposition set out in the penultimate paragraph of the Green Paper into its basic structure; namely, that European migration policies “should function in the interests of all parties involved: the migrants, the sending countries and the receiving countries.”

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1.6 A horizontal approach could be adapted flexibly as a set of basic common principles which member states would be required to honour in the specific form of immigration policies adopted at the national level. This would mean defining the principles governing the general character of the immigration regime across Europe. Such policies would address issues like procedures for the issue of visas, admission at the external borders, periods of residence, scope for changing employment, for extending periods of staying, for obtaining long-term residence rights, for family reunification, for access to training and education, for family reunification, and access to social and welfare services. The benefits of common rules on this range of issues is that member states would not be permitted to reduce the standards of its immigration regime below that prescribed by the regulations. It would, however, remain open to states to offer better conditions of entry and residence than those applying in the common rules if they felt that this was appropriate.  

1.7 We understand the case the Green Paper makes for the right of member states to give content to the details of migration policy and can accept that is likely to vary across the countries and regions. In some areas there will be scope for a competitive set of policies, intended to positively attract workers who might otherwise seek employment opportunities in other regions, and these might cover such issues as “fast track” rights to permanent settlement, family reunification on a par with EU nationals exercising free movement rights, or access to certain welfare benefits or grants. Other states and regions, with a flatter level of demand for migration, may not feel it so imperative to offer a competitive package of policies. However, all member states should be required to frame whatever migration policies they do adopt within the common basic principles of an EU horizontal approach.

2. Should There be a Place for Quotas in a Common Policy?  

2.1 We see little in quota systems which add to the effectiveness of managed migration. Even at the level of single states the business of setting quotas involves extensive research and negotiation between stakeholders. They generate high levels of grievance on the part of organisations who feel that their interests have not been taken fully into account. If applications are refused on the sole grounds that quotas have been reached for that year it is likely that the whole system will become very controversial in political terms. We would expect that to be even more the case if there was a sense that quota levels were being set in, or influenced by decisions made in Brussels rather than by national authorities.  

2.2 There are also long-established concerns that quota-based schemes load costs on to businesses and prospective workers, in that knowledge of how they operate tends to be concentrated on “experts” in recruitment agencies and legal advisors. Whilst many of these provide a legitimate and professional service, for an appropriate price, there are also many who are unscrupulous in their dealings with client groups. We are reluctant to see European policies generating opportunities for the services of agencies and other groups of middlemen for the dubious benefits that might be obtained by quotas.  

2.3 Having said this, we acknowledge that the logic of our preference for a system which concentrates on common rules defining the basic objectives to be achieved and the principles underpinning its operation would not rule our member state using quota schemes if they wish to go by that route. We believe that any state which wished to do this would be burdening itself with an inefficient and cumbersome set of policies, but providing this does not have a detrimental effect on the overall operation of labour migration to the EU their adoption would produce negative consequences limited to its own jurisdiction. The benefit of common policies would be felt in the fact that any state which does recognise its need for migrant workers would at that point be obliged to offer terms and conditions of entry and residence which conforms to European standards. This would ensure that migrant workers in all parts of the EU could live and work with the assurance that their basic needs and fundamental rights are protected by common standards and procedures.

3. The Self-employed  

3.1 We favour a “common rules” approach to the admission of the self-employed, rather than sector-based for similar reasons to those argued in section 1 of this submission. We feel that the EU is better-suited to defining the broad objectives to be achieved by policies of this nature, and, in general terms, the procedures to be followed to achieve these objectives, rather than micro-managing the details of application.  

3.2 We also feel that quotas have little to offer policies on the admission of the self-employed. We have little confidence in the ability of the immigration authorities to reach sound decisions of the appropriate numbers of self-employed people to be admitted each year and feel that these are decisions better made by service providers and entrepreneurs calculating the likelihood of an appropriate return on their investment.
4. **The Effect of Enlargement on Common Policies**

4.1 Because we believe that the EU institutions should not seek to set levels of migration to either the EU territory in general or any member state we do not think enlargement has a bearing on a discussion about common policies. The fact that in the period immediately ahead a higher proportion of the EU’s need for labour will be met by accession state nationals exercising free movement rights has no bearing on the issues of principle which could be usefully settled by common policies dealing with the migration of workers from third countries.

4.2 Of course, if the Union were to decide against a common policies approach, and in favour of a sectoral policies, or the use of quotas, the issue of enlargement would be relevant because sectoral schemes would, presumably, need to be designed with a view to calculating the extent to which the demand for migration might be met by people exercising free movement rights. The recent experience of the UK in respect of attempts to predict the movement of workers from accession countries illustrates the difficulties in doing this with any degree of accuracy. The unpredictableness of factors of this nature would add to the complications already inherent in the sectoral approach and is another reason why we could counsel against going in that direction.

5. **The “Community Preference” Principle**

5.1 The question here is whether or not the concept of Community Preference remains relevant to the management of migration in Europe in any shape or form. It has already been breached in the form of the Long-term Residence directive, which comes into force in the majority of member states in 2006, allowing migrant workers resident for five years or more to seek employment without a work permit in other member states.

5.2 The experience of the UK suggests that it only has a weak application in existing policy. In considering applicants for work permits the UK authorities are supposed to consider whether appropriate measures have been taken to fill the vacancy with citizens of other member states. This is usually considered as being met whenever the employer has advertised the vacancy in a journal which circulates in other member states. This is not a very onerous requirement and is deliberately set low for practical reasons; namely that a higher standard would introduce new complexities into the administrative scheme that would generate unwanted levels of bureaucracy, costs, and delays. We are unaware of any migration scheme operating in other member states that takes a fundamentally different approach on this issue.

5.3 In our view an administrative scheme that attempts to impose a more rigorous test of Community preference on job vacancies would prove to be impractical and burdensome. At the skilled end of the labour market, competitiveness in the recruitment of key workers would be eroded if employers were required to demonstrate that they had made more exhaustive efforts to fill vacancies on the basis of community preference. For these reasons we would favour a subordinate role for the concept of Community preference, certainly no stronger that that which currently exists in the migration management schemes of most member states.

6. **The Rights of Migrant Workers**

6.1 The approach of the European Union since the days of its inception as the European Economic Community has presumed that workers migrating within the territory of member states should do so with the assurance that they are entitled to the protection of their basic rights. These are provided for in Council Regulation 1612/68 and included the guarantee of equality of treatment in all matters concerning access to employment and the workplace, tax and “social advantage”. The right to family reunification is also set out in Art. 10 of the Regulation. We think that rights of a comparable order need to be established in the common policies of the EU. If this is not provided for there is a danger that labour markets will be segmented on the basis of a workforce with diverging levels of rights. Sectors of manufacturing and services organised around access to workers with relatively few rights will tend to develop exploitative working practices which will not be tolerated in other sectors where the labour force has a higher level of protection in law and employment practices. The recent report on forced labour in agriculture and the food production industries published by the TUC (Anderson and Rogaly 2005) suggests that this tendency towards segmentation is already strongly marked in the UK. The adoption of common policies in the EU would provide an opportunity to reverse this unwelcome trend.
6.2 The reason for granting rights to migrant workers is to strengthen their position in the labour market vis-à-vis that of employers to reduce the prospect of exploitation and their containment in low productivity, poorly managed sectors. In addition, rights should also be allocated in respect of the position of migrants vis-à-vis national authorities administering the migration system, to limit the current capacity to produce inconsistent and poor decision-making.

6.3 JCWI’s experience is that the multiplicity of different agencies operating within the immigration control system (Work Permits UK, Integrated Casework Directorate, Immigration Service and UK Visas, etc) are often poorly co-ordinated and, at the practical operational level, share little in the way of a common understanding of the ways in which basic policy should be implemented. The infamous episode involving the conflicting views of Entry Clearance Officers operating in Sofia and Bucharest and Work Permits UK over the issue of the issue of entry clearance under the terms of the European Community Association Agreements, which resulted in the forced resignation of the then immigration minister, illustrated in a particularly dramatic way the capacity of the conflicting components of the immigration control system to fall out with one another. But the absence of clarity and direction is far more characteristic of immigration law and policy than is generally understood.

6.4 This situation can only be remedied, in our view, with the adoption of a comprehensive “Charter of Migration Rights” which would impose on immigration officials a clear obligation to perform to a higher standard than currently prevails. A legally-enforceable benchmark of rights which reduced the capacity of the various fragments of the control system to dispute the proper approach to law and policy would increase certainty and reduce the powerful sense of injustice which exists amongst migrants.

6.5 We would submit that the starting point for the consideration of the rights which are appropriate to the situation of migrant workers are those set out in the International Convention on the rights of migrant workers and their families, the regulations of the ILO, and the additional provisions of international and European human rights law which have a bearing on the position of migrants. In our view the International Convention and other relevant international agreements represent a bottom line for the discussion of migration rights, which will need to be adapted in the context of the European single market to ensure that migrants are protected in the specific circumstances of European society, and that the rights conferred on them do not fall below the levels of protection available to EU national workers. We would urge the dimension of the International Convention be incorporated into discussions on policy during the five year period of the Hague Programme.

6.6 The question of whether rights might differentiate between migrants on a conditional basis of residence and long-term residence can only be properly addressed if there is an agreement about the purpose of establishing a rights-based system in the first place. In our view this must be to reduce the vulnerability of migrant workers in the labour market and to enhance their capacity to resist exploitation and forced labour. A serious investigation of the issue from this perspective would allow the issue of differential rights for short and long-term migrants to be properly considered. Our view is that if it was decided that differentiation was justifiable, there should be provisions allowing migrants admitted on the basis of temporary schemes to negotiate their entry onto long-term migration programmes where there are clear and objective reasons for facilitating this change.

7. THE REGULARISATION OF UNDOCUMENTED MIGRANTS

7.1 The phenomenon of irregular migration in Europe today is strongly associated with poorly designed and managed systems of immigration control in the member states. (Duvall and Jordan 2003) All national control procedures have persistently underestimated the levels of demand in their domestic economies for the employment of migrants and this has led to the creation of a parallel system alongside official controls, which has facilitated the recruitment of workers by unofficial means. This problem is likely to become more pronounced in the future as economies become more diverse as new types of goods and services emerge.

7.2 If Europe is to make a transition to more rationally managed immigration policies it will need to adopt a wholly new paradigm which engages more constructively with the whole range of stakeholders who have an interest in working with migrants. The current debate about the principles underpinning common policies in Europe might prove to the occasion for this transition, and if this is the case a common approach to dealing with the legacy of the old, ineptly run, systems should be agreed. We think that there would be wide scope to agree amnesties for those migrants who are essentially the victims of increasingly discredited policies.
7.3 Until such time as agreement can be reached on regularisation at the European level we would support initiatives being taken by the government of member states to resolve long-standing problems by way of “amnesties” and other appropriate policies.

8. THE INTERESTS OF THIRD COUNTRIES IN MIGRATION TO EUROPE

8.1 We strongly support the proposition that migration flows be managed in cooperation with the countries of origin “taking into account their needs and realities, as stated in the Green Paper. The list of suggested items as it what might constitute “needs and realities” in the paper is very brief and we would suggest that in addition to the “brain drain” issues a European policy also needs to consider the role which migration could play in:

- Promoting the welfare of migrant workers and their dependants.
- Promoting the redistribution of wealth and overcoming poverty.
- Promoting "network gains", as migrants gain contacts which facilitate the growth of trade and commerce.
- Upgrading the skills of migrant workers.
- Challenging racism and xenophobia and promoting cultural diversity.
- Addressing issues of gender inequality.
- General issues of economic development.
- Promoting democracy and eroding authoritarian regimes.
- Promoting human rights.
- Addressing issues emerging from rapid environmental change and the depletion of resources in local regions.

8.2 We feel that a European policy should be prepared to acknowledge that problems in addressing needs and realities are likely to arise from the current imbalance in power and relative influence between developing countries sending migrants, and developed countries receiving them. A great deal of EU policy-making to date has sought to take advantage of these imbalances by ensuring that the migration policy agenda offered to developing countries reflects the predominant interests of the developed nations. The work done in relation to the promotion of agreements on readmission is an example of the unscrupulous use of greater power and authority by the EU member states, with the interests of the sending countries being discounted wholesale. Mechanisms will need to be found which restrain the developed nations from taking this approach and ensure a more even-handed policy agenda.

8.3 There also needs to be an acknowledgment that the range of interests listed above is not necessarily best represented in policy negotiations by the governments of sending countries. There are many ways in which the needs and realities of migrant workers conflict with those of some governments of sending countries—particularly where their democratic accountability and the probity of state institutions is open to question. Scope should therefore exist for the direct representation of migrant interests through appropriate associations, NGOs, trade union, faith organisations, women’s associations, etc, as appropriate. This is particularly the case in considering an aspect of the transfer of resources gained from the labour of migrant workers to the countries of origin.

8.4 In principle we are attracted by the idea that cooperation agreements might provide a framework for developing migration policies. The idea appeals because it would provide a mechanism to relate immigration directly to the promotion of trade and commerce and broader development issues. We are concerned that such an approach might, however, divide developing countries into those fortunate enough to have reached a cooperation agreement and those who have not. In principle this problem might be overcome if some mechanism providing for the right to a cooperation agreement might be established, to be triggered, for example, whenever trade with the EU reaches a certain percentage of the gross GDP of the country concerned. This being the case, an interim migration agreement would automatically come into play until such time as a detailed, specific measure could be negotiated.
9. Considerations for Opting-into a Common EU Policy

9.1 The main argument in favour of common EU policies is that they would add value to the overall management of migration. The establishment of a framework of basic principles for operating immigration policies could assist the UK government in making the transition it has proclaimed as being key to its own approach since the 2002 White Paper—namely that of “managed migration”—in a way which has not yet been possible to negotiate from within the perspective of a purely national approach. National politics has required that the terrain of immigration be presented to public opinion as one in which the possibility of totally effective control can be asserted. The components of “total control” are essentially those of police measures at the borders and in the enforcement of regulations against individuals admitted to the country. In practice “total control” is well-beyond the capacity of the state to deliver and the delusion that it can will only lead to cynicism and mistrust on the part of public opinion.

9.2 In our view the UK government would be much wiser if it accepted a view of migration as a public space in which competing interests are represented and where the role of the authorities is to negotiate agreement and compromises in order that the benefits obtained from the management of the movement of people across national frontiers be optimised for the widest range of interests. This appears to require a level of detachment from considerations of pure national interest which the UK government is unlikely to be able to attain if relying exclusively on its own resources and inputs. In our view the EU, in principle, at least, provides a structure which might be able to attempt a more useful engagement with the issues than has been possible to date. In setting out a framework of common policies at the EU level there would still be sufficient scope for the member states to consider local interests in the ways in which it applied and adapted the European approach to its own needs.

10. Conclusion

10.1 We feel that there is a great deal in the Commission’s Green Paper which is very useful for the discussion which needs to be commenced in the member states on the future of migration policy. From the issues it offers up for this discussion, we would favour an approach which hinges on the following principles:

— A “horizontal approach” to policy, which builds on the EU’s capacity to set enforceable standards for immigration policies administered by the authorities of the member states. (paragraphs 1.1–1.7)

— The issues of quotas and community preference, if they are to be used at all, to be a consideration for the governments of the members states, permitted only insofar as they do not conflict with the framework of principles established by common policies based on the horizontal approach. (paragraphs 2.1–2.3 and 5.1–5.3)

— The rights of migrant workers would be provided for in EU common policies, both to secure basic human rights standards, but also to prevent sectors of the economy operating on the basis of super-exploitation and forced labour. (paragraphs 6.1–6.6)

— The regularisation of existing undocumented migrants to be agreed as the EU progressively adopts new paradigms for the management of migration. (paragraphs 7.1–7.3)

— The interests of third countries to be secured in negotiations with the EU institutions, but in addition a range of other objectives which well-managed migration policies might promote also to be brought into the range of discussion. (paragraphs 8.1–8.4)

9 May 2005

References:

Examination of Witness

Witness: Mr DON FLYNN, Policy Officer, Joint Council for the Welfare of Immigrants, examined.

Q81 Chairman: Mr Flynn, good morning and welcome. Thank you very much for appearing before us. Can I also thank you for your written evidence, which we found extremely helpful and which will, no doubt, be the backdrop for our questions to you today. I do not know whether you want to say anything to start with, but perhaps I ought to say, for the benefit of the cameras and the recording, that, as you know, this is on the record; there will be a transcript of this meeting which you will be sent to check before it is issued. I should also register the subject of this inquiry, which is an examination of economic migration to the European Union, prompted by a Green Paper published by the Commission in January. The central issue is the extent to which there should be a common EU policy on economic migration, which at present is primarily a matter for the Member States. I should add this is not an inquiry concerned with either asylum or illegal immigration. May I ask: would you like to make an opening statement?

Mr Flynn: Just, very quickly, to thank you for the opportunity to appear before the Committee to elaborate on our views; it is something we always appreciate the opportunity of doing. Otherwise I hope the submission that we have made is an adequate introduction to our views, and I am happy to respond to questions.

Q82 Chairman: Can I start by saying that the evidence we have so far received shows there is quite a diversity of opinion about the EU labour market. In your view, do you think the EU labour market should be seen primarily as local, regional, national or EU-wide?

Mr Flynn: I hope it will not be seen to be too much of an evasion of answering a question of that nature to say that I suspect it is a bit of everything. There is a sense in which the labour markets of Europe are profoundly local—I havenrecently had the opportunity to look at the situation almost on a London borough basis and see the way in which that is distinguished between Greater London and the rest of the UK. At the same time, there clearly are common issues in terms of the regulation of labour movement—that there should be good order and good regulation—which means it is appropriate to talk about a national labour market and even a European Union labour market, and we hope that our comments address themselves to that last point.

Q83 Chairman: I think that is a very fair point to make. How feasible do you regard it for state authorities to regulate labour migration, and how far should they pay attention to protecting the domestic workforce?

Mr Flynn: It depends on exactly what they are intending to regulate when they regulate labour migration. If it is a question of achieving good order in labour markets, which I think is primarily a question of ensuring that accurate information is sent to all the appropriate parties about employment opportunities, investment opportunities, business opportunities and so on, and the basic rules and regulations are in place to allow people to respond to those issues, then it certainly is possible to regulate labour markets, and we should be looking to see rules and regulations which allow us to do that. I think the great problem is that immigration policy over the years has simply loaded too much into its concerns and its priorities; there are bits of just about everything, from economic considerations and national security to social cohesion, which have produced an extremely cluttered and immensely complex agenda, and there is an urgent need to step back from that and to ask the question about what exactly are we attempting to achieve with a migration policy with deals with labour migration. As far as protection of the domestic workforce is concerned, the view of JCWI is that it is clear that there are conditions that are in place in order to ensure that exploitation does not arise in the context of labour markets, and important issues to do with the enforcement of minimum wage standards, health and safety conditions and so on. We would obviously be keen to ensure that the mode of labour migration that took place did not undermine those basic conditions.

Q84 Lord Dubs: My question actually follows on quite closely, although you have answered part of it, and that is this: in regulating labour migration should that be driven entirely by economic considerations regardless of possible social consequences, or should there be some balance between the two, and how should that be achieved?

Mr Flynn: The answer is no, it should not be driven purely by economic considerations. I think we are very much alert to the fact that, when economic plans are made on the presumption that you are dealing with factors of production, people are often surprised to find that they get human beings responding under some of those categories. There are always social consequences. In fact, I think the thing that it is necessary to unpick from that question is that the very term “economic considerations” also implies social considerations at the same time. The question of whose economic interests are being pursued by migration is a very moot point, from our point of view. We are used, in recent years, to the Government
representing economic considerations as being migration in the interests of British businesses, and we simply think that even under the heading of “economic considerations” there are other issues to be taken into account which relate to issues of development, the welfare of the migrant labour force, and so on. Once again, there are layers of complexity within this question and our view is that the question of social considerations or social consequences has to be regarded as being to the foremost in any immigration policy that is constructed.

Q85 Lord Dubs: That might deter a willingness by governments to have a lot of labour migration on the grounds that the social consequences loom large and, politically, that might be hard for them to handle.

Mr Flynn: I think that implies that we have to have a discussion about exactly what are the social consequences of migration. Again, I think that one of our criticisms of current policy is that the social consequences of migration tend to be confined by government to the simple fact that migration is not particularly popular, certainly in electoral terms, and the only social consideration that is taken into account there is the potential damage that might be done during the course of an election campaign. Of course, there are other social consequences: the fact that our National Health Service, for example, is largely dependent upon being able to attract migrant workers. Whole areas of infrastructure—the public services—which sections of the native population are dependent upon, are provided by immigrants. So these, for us, are also social consequences, and they have to be taken into account by governments as well.

Q86 Lord Avebury: I want to ask you, in this connection, whether you have looked at the Green Paper (or is it a White Paper?) Controlling Our Borders: Making Migration Work for Britain, and in particular the exclusive concentration in the paragraphs dealing with employment on the economic interests of this country? Particularly, when you look at the points system which is set out there, the idea is that we will cease to allow anybody to come here in an unskilled category because we think that all the vacancies that are likely to arise there would be filled by people from the accession countries. Do you accept that that is a reasonable point of view?

Mr Flynn: We certainly have looked at the Government’s five-year plan. In fact, within the last week we have published a detailed statement, which I would be very happy to provide you with a copy of. I think that the comments that you have made about the points scheme are very accurate in that respect. The Government has presented a points scheme as being a simplification of existing, managed migration procedures and, frankly, we are extremely doubtful as to whether that is going to be achieved. It is quite clear that there are a great deal more than the four levels of the points scheme which are being discussed, because at least two of those levels have sub-levels within them. So in those circumstances, we question whether the points scheme actually addresses that basic issue of the pressing need for simplification of the system, and also it is based upon presumptions which, as you say, we think are dubious. Although it is the case that many of the so-called unskilled categories—agricultural workers, food processing, and workers in catering and hospitality—have come from the A8 accession countries in recent times, I think there is already a discernible pattern that these workers are, in fact, migrating from those sectors of the economy, and we anticipate there will be shortages—not this year or next year but certainly within the period of the five-year plan—and that it will no longer be safe to presume that migrant workers from the A8 countries are going to be obliging us by confining themselves to the level 3 category.

Q87 Earl of Listowel: On the social consequences of labour migration and on the complexities of this, should there be an economic downturn and a long period of stagnation, is it reasonable to have a concern that governments and employers might be less willing to invest in socially excluded groups and uneducated people, indigenous people and, perhaps, migrants who have settled here, and more willing to take in migrants from abroad who are well-motivated but perhaps unskilled, or skilled migrants? Do you see that as a concern to have? If so, how might one avoid that in considering policy in this area?

Mr Flynn: The research on the skill level and educational level of the migrant labour force—research which has recently been published by IND and is on the Home Office website—does clearly indicate that, by and large, migrant workers are probably better educated and have a wider range of skills than the median level of the rest of the population. So we certainly ought to be viewing migrant workers as being a skill resource for the country. In terms of what happens in the event of downturns and economic recessions, I think one of the issues that strikes us as people who have been working on the detail of the issue of immigration policy is the extent to which under existing policies migrant workers simply do not have the opportunity to respond to the signals that are being sent to them by the labour markets that there are fewer opportunities for work at the moment. Labour migration is very often presented as a sort of hurdle race, in which you have a very high set of hurdles to leap over in order to gain admission into the country, and once you have actually got here it does not
become sensible to contemplate running the hurdle race in reverse simply because you find yourself temporarily unemployed. I think one of the things, perhaps, we ought to be looking for in a simplified labour migration policy, in which people do have a responsibility to take stock of employment opportunities and have accurate information about employment opportunities, is that they can go home during the period of recession without the sense that they are inflicting a penalty on themselves; that, in going home, on the next occasion that the economy countries do not have that, so once they have gone, they are inflicting a penalty on themselves; that, in whereas people who have migrated here from other countries during the period of recession without the sense that and return freely, so they have that confidence, whereas people who have migrated here from other countries do not have that, so once they have gone, they have no way back.

Lord Dubs: That, of course, points to the difference between those coming from the accession countries and those coming from outside the EU, because the accession country people can go back and return freely, so they have that confidence, whereas people who have migrated here from other countries do not have that, so once they have gone, they have no way back.

Mr Flynn: I think that is our point, and the virtue that the Government—and the European Union—is clearly trying to secure for itself under a managed migration scheme—that a labour market which is much more flexible and in which workers are able to respond in a much more flexible way to employment opportunities is best secured by a regime in which movement across frontiers is relatively open. I think we ought to be looking for opportunities to organise our third country labour migration policies, which, of course, is what this Green Paper is all about, so as to adopt as many of the lessons and models that exist within free movement as we possibly can.

Q88 Lord Dubs: My question follows on very closely from that. How likely is it that, if there were to be a recession, migrant workers who have been attracted here by our buoyant labour market would actually move on? Is it not likely they would want to stay here on the grounds that the opportunities for them here might still be better than going back to their own countries, particularly as some of the other EU countries have closed their doors to them?

Mr Flynn: Some will. It is certainly the case there is a historic tendency, measured over the space of decades, for what might originally be conceived as temporary migration to become permanent migration. I think there are some other factors that we have to bear in mind. If we look at migration during the course of the 1960s, when across Europe policies were organised on a different basis, there were something like 27 million Turkish people who migrated to Germany during that period, of whom 25 million went back to Turkey, leaving behind a population of 2 million, who are now an important feature in the life of Germany. It is the case that there is evidence that where people have the opportunity to organise their lives in an appropriate way then migration will be in all sorts of different directions. I think we are beginning to see some evidence of that starting to arise in the context of the expanded European labour market in relation to the A8 countries. Some of the evidence is pointing to the fact that a lot of the immigration that is coming from eastern and central Europe is of a temporary nature; it is young people coming for the opportunity to work for three or six months or so, perhaps with other things in mind, such as improving their English language skills and so on. However, when it seems appropriate for them to return to their home countries in fact they are doing so. We would expect that in a relatively free situation of managed migration there would be a lot more return migration than there is at the moment.

Q89 Lord Dubs: That, of course, points to the difference between those coming from the accession countries and those coming from outside the EU, because the accession country people can go back and return freely, so they have that confidence, whereas people who have migrated here from other countries do not have that, so once they have gone, they have no way back.

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Q90 Lord Marlesford: On this question of recession, you did indicate that quite a proportion of jobs in the public sector are occupied by migrant workers, particularly I think you referred to the health service. Would it not be the case that in a recession employment in the public sector of that sort is in general protected and, therefore, these people would be under much less pressure or need to go home because they no longer have their jobs?

Mr Flynn: I think that is the case, yes. I am by no means an economist but I understand that economists frequently talk about public sector employment as being counter-cyclical—that it tends to rise, in fact, never mind remain stable during periods of recession, as government spending expands in order to mop up the difference. If it is the case that migrant workers are oriented towards employment in the public sector then that might be the case, but I do not think that that fundamentally changes our view of the matter. If it is the case that we are talking about migrant workers who have found a position for themselves in a useful niche of the labour market and that is enduring (it is robust enough to survive periods of recession), then there is no detrimental effect on the overall operation of the labour market.

Q91 Lord Marlesford: You referred to the Turkish example in Germany, which of course is a very well-known one. I think these figures you gave are very interesting; I think you said that of 27 million 25 million went back and 2 million remained. Are there...
any studies to indicate from which sectors the 2
million who remained came?
Mr Flynn: I am sure there are. I am afraid I am not
aware of them. I would be very happy to look into
that and if I can provide you with a reference I will
certainly do that, yes.

Q92 Lord Avebury: Just going back to the question
Lord Dubs asked previously and the answer you
gave, would not a points system ideally
accommodate this problem of the difference between
workers who are coming from the A8 countries and
workers who are coming from outside the European
Union, in that if somebody had come here and
worked for a certain period of time and acquired the
English language and skills, and then because of a
recession had gone back to the country outside the
European Union, could he not have extra points so
that he would be at the front of the queue coming
back? Is that not one of the advantages of a points
system?
Mr Flynn: Yes. My critical remarks about the points
system were not against the notion of a points system
in principle. I think the response to the five-year plan
that we have produced says that we could imagine
circumstances in which a points system would be a
useful instrument. You have given an indication of the
way that might possibly happen. One of the ideas
that we have been playing around with and asking
people to consider in the past is that at the point
where people have demonstrated that they qualify as
migrant workers—that they have a high probability
of being able to find employment or establish
themselves in self-employment—at that point that
becomes a permanent feature of their immigration
status, and if at some point in the future they wish to
return to countries of origin or to move on to third or
fourth countries they will have an opportunity to do
that without jeopardising their status as an economic
migrant at a point in future, which I think would
probably be accommodated by your suggestion that it
should be reflected in the points scheme, when
people who have successfully completed periods on
work permit schemes or other schemes ought to be
able to bank a set of points which will add to their
total on future occasions. That would be an
interesting idea.

Q93 Lord Corbett of Castle Vale: Mr Flynn, the
evidence we have had does not show a great deal of
support for a common EU policy on labour
migration. You have put the stress on what you call
“basic common principles” which would apply
across the whole of the EU but Member States could
operate these flexibly. You then go on to give
examples of what this might cover, like visa
procedures, periods of residence, family
reunification and the rest of it. Are you not there beginning to build
up a detailed policy rather than simply a set of
principles?
Mr Flynn: It depends, really. What we had in mind
when we posed the issue in these terms were practices
that already exist within the European single labour
market and the effect of a piece of legislation like
Regulation 1612/68, which is the basic legislation
which underpins the position of the free movement of
workers within the European Union. That is not
detailed in the sense that it prescribes particular forms of action that positively need to be taken by the
authorities of each country; it simply defines the ends
which are to be achieved. First of all, people have a
right to cross frontiers as labour migrants, but once
they have been admitted there will be a guarantee
that they will have rights to family reunification and
following Article 7—dealing with the question of
equality of treatment—that they will not be
discriminated against on the basis of nationality. I
suppose we are talking, at some point, about—in the
paper we mentioned the charter of migrant worker
rights—something along those lines, that the point at
which a Member State has agreed that it is going to
admit a particular applicant as a migrant worker then
in those circumstances it ought to be regarded as a
common set of basic rights that apply whether they
have been admitted into Latvia or the United
Kingdom, or whatever. They will certainly cover
such issues as equality of treatment and family
reunification issues.

Q94 Baroness Henig: Mr Flynn, in your written
evidence you strongly favour a horizontal approach
over a sectoral approach, and your argument is that
in that way you avoid complexity. Might not sectoral
regulation target labour shortages more effectively?
Mr Flynn: I think the difficulty with sectoral
regulations within the sheer overwhelming
complexity of the European Union is that there is no
end to the sectors that have to be considered and, not
only that, the way in which sectors function in
different ways in different countries. For example,
there is the question of the health care sector, which
in the UK clearly acts as a strong, attracting force or
a strong pull factor for migrant workers. But this may
not be the case in other countries. In those
circumstances, we think it is very difficult to imagine
that people working in Brussels, or whichever city
they base themselves, are going to be able to review
the sectoral demands for migration right across the
European Union and prescribe what admission
policies might be and the differential range of rights
that might apply to doctors as opposed to carpenters
and central heating engineers, or whatever. For that
reason our view is that we should back away and we
should advise that the European Commission backs
away from that approach as much as possible and
concentrates on what it can usefully do, which in my
view is guaranteeing rights, guaranteeing that one of the elements that is not allowed to come into a common European system is a competitive edge which is based upon more ruthless exploitation of particular groups of migrant workers. That is a useful role for the European Union, and we would like to see policy making concentrated around that.

Q95 Baroness Henig: In a sense, it is all a question of balance between what is done at state level and what can effectively be done there and what the Europeans—

Mr Flynn: A very familiar refrain, I think, as far as the European Union is concerned.

Q96 Baroness Henig: Thank you for that. You are against a more vigorous application of the Community Preference principle. Might it not encourage more labour migration within the European Union?

Mr Flynn: Our reason for being against it being more vigorous than exists at present is that it simply is going to add to the layers of complexity which we are so anxious to avoid, to be imposing upon employers a more rigorous check that prior to offering employment to a particular third country national that they really have trawled around the labour exchanges in Riga and wherever is simply too burdensome, and we suspect that in fact it is not used in that way. I do not believe there is any great enthusiasm within the EU that that should be happening. I presume when you say “encourage more labour migration within the EU” you are saying that that would be a good thing and it is something we ought to be positively striving for. I agree with that. I suspect that that is going to have to be based upon employers in different sectors of the economy actually coming up with competitive packages amongst themselves which will make it attractive for people to move from one country to the other. I do not think reinforcement of the Community Preference principle is going to add an awful lot to that process.

Q97 Lord Marlesford: Can I follow up part of your answer to Lady Henig’s first question when you were saying that you thought the EU should focus more on methods of avoiding exploitation? I am sure we would all agree that it is important—essential—to avoid exploitation, but it does not seem to me self-evident that, given the differences between all these countries and the different forms of exploitation that might exist, that is the sort of action that is best taken at an EU level at all. I would have thought, in the case of the UK, it was a great deal more sensible to have the British Government making sure that there is not exploitation because you have a much clearer idea of the intricacies of how the labour market works in Britain.

Mr Flynn: It is certainly the case that the responsibility for enforcing protection standards is going to fall to national authorities primarily. In the last resort, we can envisage a role for the European Court of Justice, but in most international human rights’ legislation it is a responsibility that is imposed upon national authorities. I think the issue is just agreeing that there should be common standards. Our expectation of the period ahead of us is that there is going to be intense competition between developed countries for labour migration, and we are concerned that, in entering into this, countries, national governments, do not seek to take advantage of the traditional relationships that they have with particular regions of the globe. There is a whole range of different ways in which they might want to support their industries and their services to ensure that migrant workers are brought into the country in a way which is going to leave them particularly vulnerable to exploitation in each national context.

We do think that there is a role—on very basic human rights’ arguments—for the EU. In the last resort the enforcement of Article 3 of the European Convention on Human Rights, on torture and inhuman and degrading treatment, depends upon the commitment and the will of each individual country, but it is of inestimable value that there actually should be an Article 3 so that everybody knows the importance of the standards that they are supposed to be aiming at and what they have to secure in their national legislation. That is a principle which very much applies to the way in which we think that labour migration rights ought to exist.

Q98 Lord Marlesford: As you say, Article 3 exists and is applicable throughout the EU. It does not seem to me to follow that you need the EU to lay down regulations to prevent cases in violation of Article 3 occurring. It is for the countries to decide how they will prevent such transgressions occurring and, perhaps, for the EU to ensure that there are at least methods by which an appeal can be made if necessary where there are transgressions. It still seems to me not at all self-evident that the EU needs to get involved.

Mr Flynn: I think our point is that certain migrant workers are vulnerable in a whole range of different contexts, not because—as in the case of human rights—they are vulnerable human beings but there is an additional level of vulnerability which comes from the fact they are migrants: that they have been removed from the national context in which they would normally presume they are going to receive protection from human rights violations and they are living in a different country in which issues to do with family reunification, forced labour—a whole range of
different issues which are normally there within the European Convention on Human Rights—very rarely take the dimension that the person we are dealing with is a migrant worker. As a consequence of that we have plenty of examples of case law coming from the European Convention on Human Rights where migrant workers are told that the remedy to the violation of their human rights is that they cease to be migrant workers and they go back to their countries of origin where they will not be subjected to bonded slave labour and they will not be tortured or they will have the opportunity to enjoy their basic human rights. That is not good enough in our view.

Our view is that people as migrant workers, people who have entered the UK labour market and who have placed themselves in employment and who are working and paying taxes, need to have their human rights secured without jeopardy to their immigration status. A way of achieving that might well be through the horizontal approach that we are suggesting.

Q99 Lord Marlesford: But is that for the UK? You are not happy the UK Government can give protection? Are you saying that perhaps some other countries cannot give protection and therefore the EU should involve itself with all countries because of those third countries within the EU where that protection does not exist or do you feel that the British Government is not able to provide protection and is strengthened by the EU measures?

Mr Flynn: I feel at the moment within the UK there is not adequate protection for the basic human rights of migrant workers, and perhaps a reference point for that would be the standard of rights which is envisaged within the International Convention on migrant workers and their families which the UK Government along with other European governments is very loath to consider becoming signatory to. As a result of that there is a whole set of circumstances where migrant workers are seriously disadvantaged. The value of international legislation is no magic wand. The mere fact that it has been adopted by an international body does not mean that these issues are automatically going to be resolved. The advantage is that it defines common targets and standards which everybody has to aspire to. It greatly clarifies the situation as far as civil society is concerned and for organisations like my own, and I suspect as well for lawyers who are active in the field, knowing what is meant by measures to be taken so that people are not vulnerable to forced labour. A robust body of international law which has reviewed this situation across a number of different jurisdictions would be a tremendously valuable tool in being able to deal with the issue in the UK.

Q100 Chairman: How far are qualifications still a problem within the EU? I am thinking of medical or academic qualifications. Does a medical degree from any of 25 Members of the EU qualify the holder to practise in any of the others? I am asking the question from ignorance.

Mr Flynn: I regret that I am not an expert on these procedures. The JCWI has always concentrated its work purely on the immigration side—the issues to do with crossing borders and getting immigration status. My understanding is that there are procedures which doctors who are qualified abroad are required to undergo in terms of language qualifications; and, where it has been identified that their medical degrees do not cover areas that would have been covered in the UK context, then they are required to undertake supplementary courses of study and examination. I am not expert on that issue. I am sure other witnesses could give better advice.

Chairman: My apologies. Lady Henig?

Q101 Baroness Henig: Can I move on to quotas. Again in your evidence you see considerable disadvantages to quotas although you would not rule them out altogether. Would they not be a fairer and less bureaucratic alternative to a work permit system?

Mr Flynn: There are a number of problems with quotas and one—the issue of setting them in the first instance—is whether governments and national authorities can really be confident, particularly when the nature of the knowledge-driven growth within economies and a proliferation even within long-established sectors of subdivisions of economies, that it really is going to be possible to predict over a period of time that labour migration is going to be required of a particular order. More specifically, the discernible effect that we notice as far as quotas are concerned is that it hugely increases the cost of migration for migrants themselves. The quotas are complicated. There suddenly becomes a huge incentive to having advance knowledge about where quotas are going to be set and what the qualifying requirements are for being able to get into the quota system. It means a lobbying system then takes place in order to influence government thinking there in which there are winners and losers. Some people are in a strong position to influence government thinking and policies are skewed in their favour. Other sectors of the economy are relatively less privileged. For example, there are the recent discussions we have been having with the Bangladeshis’ Association who feel themselves to be very much excluded from a lot of the advantages that operate within the work permit system. There are difficulties at that level. It often means that people are not able to contemplate making an application for a visa unless they have got a whole ream of so-called expert advice in filling in forms and generally assembling the evidence that is going to be needed, which in a lot of countries comes at a very heavy cost; it is extremely pricey indeed. For that
reason we are not madly enthusiastic about quotas. Our view is that the basic principle that operates is where an individual is able to make out a plausible case that they are equipped with skills and work experience in order to make them competitive in the UK labour market then the presumption ought to be that they should be allowed to have their try.

Chairman: Thank you very much for that.

Q102 Earl of Listowel: Mr Flynn, I would like to ask you further detail about the rights of migrant workers. On what basis should it be decided when labour migrants should acquire particular rights? Which rights, such as the right to change employers, might reasonably be subject to some differentiation?

Mr Flynn: This in many ways is the most important question of them all and it is one in which JCWI is very, very keen to see a lot more discussion and research about what might be involved in this approach. I think the general principle that we would lay down is that the period in which a migrant worker is integrated into the broad range of economic and social rights that are available to the rest of the population should not be allowed to be one which becomes protracted over many years, which it is in some instances. We think that the gateway to rights ought to be economic activity where people are able to place themselves in employment or in a self-employed activity and pretty much on the model of the European Union law make a distinction between work seekers and workers—people who have actually placed themselves in a job—who at that point fall within the provisions of Regulation 1612/68 and become entitled to all the rights that are available there. That is the approach that we would be taking and that we would be advocating. We are also very much aware that there are other groups that do not fit in naturally into this scheme of an employment or economically driven, rights based approach, and as an organisation that considers itself operating within the human rights ethos we would certainly want to bear that in mind as well that there are rights such as family reunification, such as the right to protection from inhuman and degrading treatment and so on which are certainly applied from day one as soon as people arrive in the country and they ought to be engaged with.

We have only found ourselves having the opportunity, the springboard that has become available in a lot of discussions that are taking place at the moment to be thinking about these issues. We are beginning to draft memos in order to submit to various inquiries that are going on at the moment. One is at the Royal Society of Arts Commission on Migration which is doing some important work and we submitted a memorandum on some of these issues. I would be very happy to make that available to this Committee if you think it might be useful to your work.

Chairman: That would be very helpful. Thank you very much, Lord Avebury?

Q103 Lord Avebury: I was just reminded by your remark about the transfer of workers from one job to another about the interest that was taken in the past by JCWI on the question of domestic workers and the fact that many of them were imprisoned within a household in which they were virtually employed as slave labour for very long hours and in poor conditions. Does that situation still exist and do you have any views on how domestic workers would be treated under the tier three points system should it come into effect? Should we be looking at the importation of any domestic workers at all or is it not the business of migration policy to assist very rich people to live the life to which they think they are accustomed?

Mr Flynn: Our view is that we would not necessarily wish to rule out domestic workers being an avenue for migration. It seems clear that a lot of the discussions that are taking place about supporting an adult working population where households consist of two working adults are issues to do with the arrangements that are needed to look after children or elderly people and so on. It seems there is vast scope here for domestic worker migration. A lot of people are discussing the need for a new sector of domestic workers which hopefully will not be organised on the old basis of a servant class. There will be a great deal more freedom for people to design proper professional careers for themselves as domestic workers. That seems likely to be happening in the future and if migrant workers qualify for admission within that range of employment then we think that should be happening. We understand—and you are very right to make the point—about the importance of the opportunity to change employment, which was established for domestic workers under the existing provisions and commend the work of Kalayaan, which is the most important representative organisation of domestic workers. They report it as being literally a lifesaver for the people that they are working with and I think there is a great deal of concern about this right continuing. Their understanding of the implications of domestic work being included in level three is that there would be the loss of this opportunity for changing employment and they are very concerned about this and they intend to approach the policy makers and government departments to see what scope there is for getting this properly examined. So, yes, hopefully that deals with your points.

Earl of Listowel: If I might ask a brief supplementary to this particular question.

Chairman: We must move on.
Q104 Earl of Listowel: I will move on in that case. I would like to move on to regularisation of immigration. You suggest that there should be wide scope to agree amnesties. Is there not a danger that widespread use of amnesties will encourage further illegal immigration? To what extent do Member States have a legitimate interest in action taken by neighbouring countries to regularise the stay of illegal immigrants?

Mr Flynn: Is there not a danger that widespread use of amnesties will encourage further illegal immigration? We have looked for the evidence of this. This is something that is asserted by just about everybody who stops and thinks about the scheme. Having had discussions with our colleagues and various researchers in countries which have used amnesties, such as Spain very recently, and Italy and other countries over a longer period of time, it seems that they do not discern a relationship between amnesties and irregular migration in their countries. The attractive feature for migration is the opportunity to work. It is by far and away the most you talk about the idea that co-operation agreements through the migration process. I do not think that is can they go back and say we want to put a new clause anything other than irregular migrants all the way already got an association agreement with Algeria, migrants, who have got no other ambition to be agreements? I am sorry I do not know. If you have

Q105 Lord Avebury: In paragraph 8.4 of your paper you talk about the idea that co-operation agreements might provide a framework for domestic migration policies. I wonder first of all whether you think there should be an amendment to existing association agreements, for example with the Maghreb countries or some of the Latin American countries with whom we have strong trade relations or whether you think of such employment, not what might possibly be in or some of the Latin American countries with whom amnesty policies, they will be orientated towards agreements, for example with the Maghreb countries countries which are not normally noticeable for should be an amendment to existing association agreements. Is there not a danger that widespread use of amnesties will encourage further illegal immigration? To what extent do Member States have a legitimate interest in action taken by the authorities with a view to expanding opportunities for trade in goods and services and capital investment. Migration ought automatically to be a chapter within the course of time finding that they have fallen outside the regulations. I think this is a function of the over-complexity of immigration policy. Again our experience at JCWI is that there are very few people who arrive at Heathrow Airport with a work permit stamped in their passport who actually know and could give you an accurate description of what is expected of them and the areas where they might find themselves acting in breach of their immigration conditions if they do not watch themselves or take advice from a lawyer. That is a function of complexity and it underscores once again our view that we should be consciously striving for a degree of simplicity in immigration policy so that it is capable of being understood by the ordinary migrant herself.

Q106 Lord Avebury: Do you happen to know whether it is possible to amend association agreements? I am sorry I do not know. If you have already got an association agreement with Algeria, can they go back and say we want to put a new clause into this?

Mr Flynn: They can. That was attempted and there are a lot of people sitting around this table who I know are a great deal more expert than I am on this.
The attempt to re-visit the provisions for the services within the Maghreb co-operation agreements was attempted in the EuroMed process in reviewing the whole range of policies. I think at some point within that agenda there was the opportunity to have a much clearer and more transparent mechanism allowing business people and traders to operate within a single market embracing the whole of the EuroMed area. As I understand it, that is one of the other areas of European policy that has got bogged down and not a great deal of progress has been made there. My understanding is that in principle there are opportunities to go back and do this. You raised the issue of countries which are not covered by co-operation agreements. Of course the Sub-Saharan African region is very important in this context. It might possibly be addressed by way of the European Union/African-Caribbean-Pacific agreements, which ever since the days of the Lomé Conventions have had a chapter on migration within them, which has tended to deal with issues of equality of treatment for migrant workers of the ACP nationalities in the EU countries. This has been picked over for decades now to see exactly what its legal effect has been, and, by and large, as I understand the position, the view is probably not very much at the moment: it is more of a declaratory statement rather than giving a much clearer prescription to governments. But it has some potential, I think, in terms of the conventions being reviewed on a periodic basis and a much keener interest is being taken in migration. It is something that perhaps could be usefully raised within the context of the Millennium Goals for Africa. If the desirability of being able to exchange the greater opportunities for people acquiring skills and career enhancement through migration is recognised, something could possibly emerge from that. It is an idea which I think is only at the very beginning of being considered at the moment but it does seem to me something that ought to be more actively investigated. In terms of the compensatory mechanisms that I suggest I think that fairly clearly the case. I think that some sort of formula ought to be possible so that, where there is a demonstrable negative effect on some aspect of labour migration for the countries which are sending migrants, then a mechanism ought to be available in order to address that. An example of that that I know of is the position of nurses from Malawi where I understand that DFID plays a useful role in dealing with this issue by compensating the Malawi authorities. I think I am right on this and if I am not I apologise. The general scheme that they operate is a proportion of the wages of nurses in Malawi are met from the aid programmes which are administered by DFID. That is a very interesting example and it is one that we might look to see if it could be more generally applied.

Chairman: Thank you very much. I think we had better take the last two questions at a bit of a gallop.

Q107 Lord Dubs: You have referred several times to the complexity of UK immigration policy. What makes you think that EU policy would be less bureaucratic and complex?

Mr Flynn: It is a hope at the moment. What we find valuable about being able to discuss these issues in the context of European policy is that it gives us the opportunity to go back to an imaginary year zero starting with a new entity to see what we could have done if we had not made all the mistakes which JCDI feels have been made in immigration policy over the last 30 or 40 years and to start again from scratch. We are immensely aware of all the political difficulties within the Europe Union at the moment but, nevertheless, we have been set a task and invited to think in The Hague Programme and Lisbon Objectives about a whole range of different things about the type of migration policy that would be appropriate to the European Union. Our hope in principle is we see no reason why we should not be thinking of a scheme which is a great deal less bureaucratic, more straightforward, less complex and more aware of its obligation to ensure that a bigger range of interests are represented within immigration policy than are present at the moment.

Q108 Lord Marlesford: What lessons can we learn from the United States Green Card system?

Mr Flynn: I think probably a basic approach to the issue that it is a policy which is born in the very long understanding that migration makes a positive contribution both in economic terms and also in the context of the United States in its culture and its self-image as being a nation that is born out of immigration and is very proud of that fact. We have to bring over a big element of that into the way in which we are approaching policy within the UK. My view is that it is simply one of a number of measures that we ought to be looking at. There are examples in many countries at the moment of attempts being made to liberalise immigration policy. The examples we are always being invited to look at are of course Canada and, to some extent so far as labour migration is concerned, Australia as well. I would certainly say that there are aspects of the United States' experience that we ought to learn from, and looking at the Green Card scheme would be a useful thing to do.

Chairman: Thank you, Mr Flynn. I apologise if I appear to have rushed you. You have given extremely helpful answers to our questions. Thank you again for your written evidence. It has been a great pleasure to have you here. It has been a great help to us and our inquiry.
Examining the Migration Flow from Mediterranean Countries

Q109 **Chairman:** Professor Groenendijk, welcome and thank you very much for coming. I am very glad that you were able to be here for some of the last session but particularly our thanks to you for coming from the Netherlands for today’s meeting. We have of course seen your curriculum vitae but would you like to open by telling us a little of your role in the migration issue?

**Professor Groenendijk:** Let me first take the opportunity to thank you for the honour of inviting me to give evidence over here and to commend your Committee for the role that it has played in promoting public debate on justice and home affairs issues all around Europe. In the recent debate before the referenda both in France and in my country one of the complaints was that there was no transparency and no public discussion. I think your Committee has very well illustrated that national parliaments can contribute to this if they want to invest a bit of time and a bit of money in it. I think you have played an important role and are doing so still in Europe. I started my professional life practising law at the Bar in Amsterdam in the early 1970s when the Dutch Government tried to regulate and reduce labour migration from Mediterranean countries. From the mid-1970s I have been working at the University of Nijmegen and studying the regulation of labour migration in the Netherlands and in other European countries. I am a Professor of Sociology of Law and the Chairman of the Centre for Migration Law of the Radboud University Nijmegen.

Q110 **Chairman:** Some of the questions we are about to ask you will strike a familiar note if you were paying attention when we were questioning Mr Flynn.

**Professor Groenendijk:** Would you allow me to make four very short points?

Q111 **Chairman:** Certainly, please.

**Professor Groenendijk:** First, I think we should be aware that most EU Member States will continue to need labour from outside the EU if only for demographic reasons. On the other hand, we should be aware that there are enormous differences between the labour markets of the Member States. We only have to keep in mind the differences between the unemployment figures in your country and in France and in Germany, which are three times as high. I think the idea of having a common admissions policy should be questioned seriously. If we do have one, it will be a very vague and flexible and symbolic policy. Secondly, I think we should also be aware of the political reality. With unanimity being required for the adoption of rules in this area surely the eight new Member States will not agree on any rules on admission of third country nationals so long as their own nationals are still experiencing all kinds of barriers in most of the old Member States. We should also be aware that the largest Member State and the Member State with most of the immigration had a constant policy of keeping the EU out of admissions policy and wanting to have a free hand in the admission of migrant workers from outside the Member States from the mid-1970s right until the Treaty of Amsterdam and the Constitutional Treaty. I think that is a reality we should not forget. In the press bulletin on the latest Justice and Home Affairs Council of 3 June the last sentence on this issue summarising the debate very much stresses the principle of subsidiarity and no infringement by the Union on the rights of Member States to regulate migration flows. My third point is that, since there is little possibility of a common admission policy in this area, a first step should be a policy on the rights and status and treatment of admitted workers from third countries. There we have already had 25 years of experience with similar rules in Decision 1/80 from the EEC-Turkey Accession Council. So there is experience in that field. My last introductory comment is that I was surprised that in the Commission’s Green Paper there is only half a page on the rights of migrant workers and there is no reference whatsoever to the international obligations of Member States under international instruments like the ILO Conventions on Migrant Workers and the European Convention on the Legal Status of Migrant Workers, which clearly set limits on the rules that Member States can adopt. These instruments are not even mentioned in a footnote, which I think is an indication of the Commission’s perspective.

Q112 **Chairman:** That is a useful point and we will be returning to the question of rights in a moment. I think in a way you have probably answered my first question which is should the EU labour market be seen as local, regional, national or EU-wide? You have talked about those Member States who would like to keep the EU out of the question of migration. Have you got any comments to make on the differing aspects?

**Professor Groenendijk:** Yes I think one could say that in certain sectors, like for instance IT or research academics, there is a kind of European labour market, with people moving from one university to another between the Member States. Generally, however, I think one of the typical things in Europe in comparison with the US is the very low labour
mobility within the Member States and between the Member States. As long as that does not change I do not think there will be more than a regional labour or national labour market at best.

Q113 Chairman: Is there one reason for that low level of mobility?
Professor Groenendijk: I think it has to do with culture, with language and with social security systems, the fear of losing your rights, and it has also to do with governments not really pressing. This relates to the debate about Community preference. I think that is symbolic politics, apart from the eight new Member States, who of course will stress Community preference because their nationals are in a second-class position as Union citizens at this moment. For the rest I do not think the EURES system has produced a great deal of mobility within Europe compared with the informal links that exist for certain groups and help them to move around Europe. That is very typical of Europe where we have very low labour mobility.

Q114 Chairman: You talk about the variety of unemployment figures between Member States. Insofar as migration is a matter for Member States rather than for the EU as an organisation, how much attention should Member States be paying to the domestic labour force?
Professor Groenendijk: Of course, it is a political question you are asking me and I am not an expert, you are the experts on political questions, but domestic workers are voters and their interests have to be taken into account. However, I do not think only the interests of domestic workers should be taken into account but the interests of the migrant workers as well. I think one should also be clear that protection of national workers does not make them accept jobs. Often the idea is that if we keep the migrant workers away then our unemployed will take those jobs. But as long as either for cultural for legal or practical reasons they do not, the protection does not help in the direction you were suggesting.
Chairman: No. Lord Dubs?

Q115 Lord Dubs: Thank you. Should the regulation of labour migration be driven entirely by economic considerations, regardless of possible social consequences or is there a better way of arriving at a better balance between these two considerations?
Professor Groenendijk: The last part of your question suggests that there has to be a balance between the two, with the Union not only being an economic market but also trying to be a community of common values. I think there have to be some basic values and some basic norms that apply both to the domestic workers and to the migrant workers. The case law of the Court in Strasbourg—I am thinking of the judgment of 1996—makes it very clear that there have to be very weighty reasons to justify the differences in treatment between national workers and immigrant workers. So whatever policy is made the rights of migrant workers have to be taken into account.

Q116 Lord Dubs: Thank you. In times of economic buoyancy migrant workers are attracted because of opportunities for them in the labour market, but when there is a recession they may be the person least likely to move because of the lack of mobility they have. Do you accept that argument and is this a problem of having a free market approach to labour migration?
Professor Groenendijk: Yes, but I think one should differentiate. The higher skilled workers probably in such situations will move on because to keep their skills up-to-date they have to have a job somewhere. So basically it is a problem in relation to the lower skilled workers. There it is more of a problem the longer they have worked in the country, the farther away their country of origin is and the less their chances of coming back to the host country. The issue has already been dealt with before this morning, but I think it is illustrated by the difference in behaviour between Polish and Ukrainian migrants before EU enlargement. The simple fact is that you do not need a visa any more as a Polish worker to allow you to work in the Union. Since I May last year this allowed Polish workers to come and work for three, six or eight months, return, spend their money at home and they knew they could come back any time their employer needed them, while the Ukrainian workers have to overstay if they want to work and have to try to earn as much money as they can, because it may be their last opportunity to enter the EU. They probably will not get a visa any more. So the possibility of return being excluded will determine the length of the stay and will determine the behaviour you are suggesting.

Q117 Lord Corbett of Castle Vale: Professor, you made clear in your introduction that you think it is very unlikely there is going to be an agreement on any meaningful EU labour migration policy. Is this about the only area of immigration policy within the EU for which there is no form of regulation?
Professor Groenendijk: Yes, I think you are right. I have written an article which I just gave to your Clerk analysing the provisions on access to employment in seven Directives that cover most of the immigrant groups. The only categories I can imagine that are not covered apart from migrant workers are migrants coming for medical treatment or retired persons or playboys, the ones with enough money of their own. For all the other groups there are EC rules on access
Professor Kees Groenendijk

and treatment after admission. So you are right, this is the only group that is not covered.

**Q118 Lord Corbett of Castle Vale:** Thank you, that is very helpful. We look forward to reading that. In the debate about economic migration what do you think—and as I say we know what your view of the likelihood of this happening is—the guiding principles of a common policy might be?  
**Professor Groenendijk:** I think first not to concentrate on admission because there are not going to agree. Another reason to turn as a first step to rights and treatment and status of migrant workers after admission is to make the whole issue (this has been discussed before this morning already of course) viable. There is a natural tendency both among migrants and among governments to disregard the social costs of admitting migrants. I think if you have a clear status and you know what the consequences are of admitting people you might be a bit more careful about disregarding them. So I think that is another political reason why the EU should start with the status of admitted workers, not only because there are more chances of getting agreement or even allowing the Union to use its competence but also as a warning not to think too easily on admission for employment.

**Q119 Lord Corbett of Castle Vale:** Okay, thank you. To what extent are the General Agreement on Trade in Services (GATS) rules on freedom of movement for service providers likely to supersede national immigration rules on the admission of workers?  
**Professor Groenendijk:** I have to confess I am not as much of an expert on GATS as your special adviser, but my experience, in the Netherlands and what I know from the United Kingdom, is that the effects of GATS so far have been zero because the national rules are more liberal. GATS could start to play a role if we take up the idea of extending the period (now it covers only a three-month period) to six or 12 months and if the sectors or the professions or branches where the GATS rules apply are extended, then it could have a serious effect. So far I have not seen it.  
**Chairman:** We will talk to our special adviser later. I suspect she drafted this question for us. Lady Henig?

**Q120 Baroness Henig:** Some organisations in their evidence to us have expressed a strong preference for a horizontal as opposed to a sectoral approach to regulating economic migration, and indeed we have touched on this earlier. Do you agree with this or do you think that sectoral regulation would target labour shortages more effectively?  
**Professor Groenendijk:** I have already expressed my doubts about horizontal rules generally. Sectoral rules could work but on a national level and not at the European level for the foreseeable future. Whether this would be effective I do not know. Even if you could agree on sectoral rules, as long as our governments are not prepared, for quite understandable reasons, to really promote mobility within the Union it will not work. Whether you have a horizontal or a sectoral policy it will not be effective.

**Q121 Baroness Henig:** You are suggesting that these sorts of economic issues need to be looked at in terms of practical, political imperatives of how that would work out? Presumably that is your experience of how these things actually work?  
**Professor Groenendijk:** Yes.

**Q122 Baroness Henig:** Do you see any advantages in a quota system? Might quotas be a fairer and less bureaucratic alternative to a work permit system?  
**Professor Groenendijk:** My impression is that the main advantage of quotas is that they create the impression that governments control migration. Migration is under control because we have a quota and we are administering a quota. I think the experience in Europe makes me rather sceptical about quotas. In the 1960s in the Netherlands the quotas were raised each time the employers’ organisations asked for more. Or the quotas were not filled, like the German Green Card scheme and the Hong Kong scheme when Hong Kong re-entered China. Or the example of Spain and Italy where there are very detailed immigration rules on the admission of workers?  
**Professor Groenendijk:** The main reason why the EU decided to adopt quotas is to really promote mobility within the Union it will not work. Whether you have a system of work permits or registration to count whether the quota is filled or not, so I am quite sceptical about it.

**Q123 Baroness Henig:** There is an element of cynicism about this. You have obviously seen them work over the years and you are somewhat sceptical as to the reason why they are adopted.  
**Professor Groenendijk:** It is nice instrument for politicians to tell their voters “we are in control; you can go to bed”.

**Q124 Lord Dubs:** I wonder if I could follow up and ask a little bit more about that one. If one puts oneself in the position of a worker in a far away country who would like an opportunity to work in Europe, surely (unless I have misunderstood the way in which the two different schemes are operating) if there were to be quota and that person, say somebody in the
Philippines, went to the appropriate EU embassy, the British embassy, to apply, then they would know there is an open system whereby there were a certain number of vacancies available for the particular skill that they have to offer. With a work permit I do not see how that would work. The work permit is at this end as to whether the employer has a vacancy which cannot be filled within the EU and then the employer is allowed to go elsewhere. Surely, the quota system is more open and fair to migrant workers who want to come to Europe?

**Professor Groenendijk:** Yes, it would be fair if it was administered in a fair way and if most of the workers did not enter in another way, either through the road of asylum or the road of family reunification or the road of illegal immigration. If this was the only real opportunity to enter Europe and there was a chance that in the foreseeable future you would really be admitted, then of course the system would be fair, but I think the reality is different. In theory, you are completely right but the only Member State, to my knowledge, that administered very strictly the quotas used it to keep as many people outside and keep very long queues with the number already being filled in March and for the rest of the year there are no entrants. So in theory I think you are right but in everyday life, at least in Europe, I have not seen it working that way. Maybe the best system where most of the effort was made to administer it in a good way was Germany in the late 1980s and the first half of the 1990s when they had this system of the Werkvertragsarbeiter, which was mainly workers from Central European countries with very high quotas—50,000 to 100,000 at the peak period—and they were allowed to come for two years, then they had to go back and could come back after a year again. Then again, there were a lot of loopholes and other ways to come in and whether it really increased fairness I do not know. If you are interested in quotas I think that would be the most seriously administered system to my knowledge in the last two decades in Europe—the Werkvertragsarbeiter in Germany—but these were people coming from a neighbouring country. You mentioned the Philippines. The expenses of coming and preparing are different from the migration between Poland and Germany.

**Q125 Lord Avebury:** Did the United States not have a quota system for many years? Has it still not got a national quota system?

**Professor Groenendijk:** Sure, it has several quota systems for different groups but I am not in a position to inform you about how they work.

**Q126 Lord Dubs:** Most of our witnesses seem to oppose quotas and they prefer work permits. I understand what you are saying that nobody has administered a quota system in a way that works fairly and properly—and I hope I am not putting words in your mouth—but that does not mean necessarily that could not be done and from the point of view of somebody outside Europe who would like an opportunity it seems to me they have no opportunity under the scheme you advocate except to come as an asylum seeker or to come illegally whereas at least quotas offer the prospect of a proper and legal way in which people in those distant countries can have an opportunity which they then try to fulfil by applying. That is the attraction.

**Professor Groenendijk:** I see the attraction but I am not convinced that it will work in practice and it will require at least quite some administration. You will have to specify all kinds of qualifications on the demand side and on the offer side. I do not think it is an easy system to administer. The idea is that it will work so long as there is a reasonable prospect that you will be able to get an entry ticket within a reasonable period, and I am afraid it will work like the visa from the Indian Sub-Continent system that Britain operated some decades ago where you had to wait four or five years in a queue before you got your certificate and then I do not think it will work.
find a domestic worker and that creates a lot of case law and quarrels, but I think on the whole it has worked rather smoothly where there was a real need and there was no real alternative.

Q129 Lord Marlesford: My question is fairly closely related to this. Okay, you discussed the quota thing but with the enormous variation in unemployment within the EU, I could see there being quotas used to fill jobs that exist in high employment countries and to keep people out in high unemployment countries. What I do not really understand is why there is not more economic migration within the EU to compensate for these big differences in unemployment?

Professor Groenendijk: I think the language, it is the culture. It is not like in the US tradition where you move from Texas to Arkansas to Washington and then you find a job somewhere else. Moving between the Member States is still something exceptional. The social security systems are different and the governments do not really press for cross-border mobility. I do not know whether a British labour authority would tell somebody from London to move to Scotland to take up an employment offer there, but he surely would not press somebody to take up a job in the Netherlands; he would not even think of it.

Q130 Lord Marlesford: Polish people are coming to Britain; why are French people not coming to Britain?

Professor Groenendijk: They are not coming because neither the EURES, nor their governments press them to do so. There are the ones that are highly qualified or the ones that find an opportunity in a restaurant and want to have the experience of living in Britain. I think the reality is even more complicated than you are saying. For Germany with its very high unemployment has had large numbers of seasonal workers even before the enlargement from the Central European countries. There have been up to 200,000 or 250,000 seasonal workers from Central Europe coming to do seasonal jobs each year, even at a period of very high unemployment. In the Netherlands almost all the highly subsidised schemes that were supported by all kinds of consultancy firms and that were intended to bring unemployed people to do seasonal jobs in harvesting have failed bitterly, either because the Polish work better or simply because there was a complete mismatch between the qualifications and experience of the unemployed and what the employer really wanted.

Q131 Earl of Listowel: Returning to the rights of migrant workers, Professor, on what basis should it be decided when labour migrants should acquire particular rights, such as the right to change employers and to seek work in another Member State?

Professor Groenendijk: I think the length of lawful employment has been the basic measure in the EU and also in wider Europe. I have mentioned already Council Decision 1/80 of the Accession Council EEC Turkey where under the one-year rule you can continue with the same employer if he still has work, under the three-year rule you can work with another employer in the same sector if you can find a job, and after four years you are free to accept whatever job you choose. Then there is in the European Convention on the Legal Status of Migrant Workers (a Council of Europe Convention from 1977) a rule that a migrant worker should not be bound to the same employer for more than a year. So that is already a rule and if the EU makes their own rules, it will be hard to have a lower standard than the Council of Europe standard. As to the second part of your question about working in another Member State, we have seen the discussions in the Council on the Directive on Long-Term Residence where several Member States, especially Germany, Austria and Greece, opposed the possibility of third country nationals moving to another Member State for employment even after five years of lawful residence in one Member State. They introduced both a labour market test and an integration test to be able to block this mobility. The idea of having freedom of movement earlier than five years right now and for the foreseeable future will not be a very popular idea with these Member States. What I think could be a helpful and feasible first step is developing the mobility in similarity with the Schengen visa where, once you have a residence permit or visa in one Schengen country, you are allowed to circulate, which is the technical term, in other Schengen countries for three months. One could imagine that once you have a work permit in one Member State that you were entitled to work for four or six weeks in another country without having to go through all the trouble of posting people or disguising it as a service provider and both sides could just have a trial. I think that could possibly be another avenue rather than reducing the five-year period which was already so difficult with the Long-Term Residence Directive.

Q132 Earl of Listowel: Thank you. Moving on to regularisation, what is your view of amnesties? Is there a danger that widespread use of amnesties will encourage further illegal immigration? To what extent do Member States have a legitimate interest in action taken by neighbouring countries to regularise the stay of illegal immigrants?

Professor Groenendijk: First, the idea of widespread amnesties sounds a bit of a contradiction in terms because usually amnesties happen on very special occasions—the introduction of a new immigration
law, a new government which wants to have a clean desk or very specific occasions like for instance the terrorist events in Madrid. In the Netherlands one of the last regularisations was when an Israeli plane dropped on a neighbourhood near Schiphol Airport and it became clear that some of the victims were undocumented residents of the neighbourhood and this triggered a regularisation campaign. Generally, I think illegal migration does not result from amnesties but results from people being restricted from working legally. Of course, some amnesties have the effect that some of the regularised workers are then dismissed because they become too expensive because they are more costly now they are no longer working on the black market and the employer has to pay taxes and social security contributions and then the employer tries to find a new illegal worker. The idea that if there is a large regularisation as in Spain, illegals will then come to the Netherlands or to France or to Britain with the idea of being regularised at some unknown time in the future, that is not really how it works. One of the interesting things is that the northern Schengen Member States forced the southern Schengen Member States as a condition before they could enter the Schengen system to regularise the illegal migrants in their countries. The regularisations of the mid-1990s in southern Europe were forced by the original Schengen states. The other argument I could imagine is that if you allow too large an illegal workforce to work in your country this would be unfair competition because you might have cheaper labour than us. I have never heard that argument being used so far in the EU although, in theory, that could be an argument.

Q133 Lord Corbett of Castle Vale: Professor, do you think the EU should take action to compensate third countries in some way for the loss of skilled workers trained at public expense? If you do, how might that work?

Professor Groenendijk: Again, I am a bit sceptical. Where I have seen political programmes trying to link labour migration to development aid generally they have failed bitterly. There is a lot of talk but very few concrete effects. I think developing countries generally are better helped with debt consolidation and reducing trade tariffs than with this kind of very specific sectorally determined aid. Apart from the medical sector I do not think it is only a brain drain but also a brain exchange or using brains as an export product. Some of the developing countries train a lot more academics than they can employ themselves and I think the case of IT in India is a very good example. Exporting some of your IT engineers to the United States might be a very good idea and then make them invest in your own IT industry at home. I would rather support those kinds of schemes than paying compensation. Of course it is true the education has been paid in less rich countries but I do not think in the end it has always a negative effect.

Q134 Lord Avebury: The United Kingdom has always opted out of EU measures related to legal opposed to illegal immigration. Can you tell us how that is perceived in other Member States and do you think it is likely to give rise to difficulties if further measures are agreed by the European Union?

Professor Groenendijk: I think one should distinguish between how it is perceived by the general public and by politicians. I think the image among the general public is that the UK is out of Schengen and the UK is out of the justice and home affairs co-operation. The leading Dutch newspaper when writing about the outcome of the recent Swiss referendum had a picture of which countries were in and countries were out and of course Britain was out. The general public is not aware that Britain has opted into most of the Schengen criminal law and police co-operation acquis and into almost all the EC asylum measures. The general perception is that Britain is out. Among civil servants and politicians involved in the negotiations I have the impression that there is a change of mood, that up until now the attitude towards Britain and Ireland was “opt in, join in as much as you want and in the end you will opt into everything”. But I think there is beginning to be an impatience with the idea of pick and choose for Britain and to a certain extent for Denmark as well. I think that has become visible through the exclusion of the United Kingdom from the Border Agency Regulation where Britain wanted to opt in but the other Member States did not allow it. There is another recent case where the other Member States did not allow the UK to opt in. Britain has brought an action in the Court in Luxembourg on both issues. I think this is an indication that the other Member States are to a certain extent saying, “You have had your time and you should make up your mind.” You also see it in the Treaty Agreement between the EC and Denmark on Eurodac. The main reason for Denmark having its protocol in Amsterdam was not to have anything to do with the Court in Luxembourg any more on immigration matters and the main condition to be allowed to use Eurodac was that Denmark had to accept the jurisdiction of the Court and that is now in the Agreement. I think it is a sign of a similar change in attitude in these circles. I think that the change is brought about by two things—first the unfairness of the difference in treatment of the new Member States who have had to swallow the whole acquis while there are some old Member States who can pick and choose. The other reason is that some of the Member States experience disadvantages. Both Norway and Sweden had problems with Denmark not being in the Dublin and Eurodac system. They could not return asylum
seekers who had come through the country back to Denmark because Denmark was not in the system and could not enter fingerprints. So it is the idea of fairness and the price of allowing diversity that both will increase the tendency to reduce the diversity in this field. That is a prediction. It is my feeling that there is a changing mood.

Q135 Lord Avebury: Can I ask you how these issues are viewed in the Netherlands? Is there a problem of unfair competition. So you can have immigrant seekers who had come through the country back to Denmark because Denmark was not in the system workers but they should be paid the same salaries and also they should have the same costs to the and could not enter fingerprints. So it is the idea of fairness and the price of allowing diversity that both will increase the tendency to reduce the diversity in this field. That is a prediction. It is my feeling that there is a changing mood.

Professor Groenendijk: As to your first question, the whole policy in the Netherlands over the last three years with regard to immigrants has changed from a moderate liberal policy to an extremely restrictive policy somewhat similar to Denmark. The reason our present Dutch Government cannot follow all the Danish examples is because of the new EU Directives which set certain standards and we cannot go below those standards any more. This of course was triggered by the List Pim Fortuyn Party which has made visible that in the Netherlands, like in other European countries, 15 per cent of the electorate will vote for xenophobic, anti-immigrant policies. This has made all the established parties very insecure. This explains, at least partly, the present very restrictive policy of the Netherlands. As to the referendum, in the Netherlands there were two immigration-related issues, apart from the idea that a No vote against the Constitution was partly a No vote against Turkey's entry. The first had to do with social dumping. We can have Polish workers but they should not be paid less than our workers to avoid unfair competition. So you can have immigrant workers but they should be paid the same salaries and also they should have the same costs to the employers. I think that is also another answer to your question on the idea of excluding migrant workers in the first months or years of employment: it has the side effect that it makes them cheaper. That was why the Werkvertragsarbeitnehmer which I just referred to were so attractive to German employers. Because they paid contributions for Polish, Hungarian and Czech social security benefits and these of course were much lower. That is the flip side of the coin. If you do not want equal treatment but you have fewer rights in social security, the migrant workers are cheaper and you get unfair competition with the domestic workers. So that was the first element. The other element was quite interestingly in France, like in the Netherlands, the extreme right and left wing were very much opposed to the Treaty. Both were very nationalistic. The extreme right-wing politician Wilders who was in the VVD, our conservative party, was thrown out of the party and continued as an independent MP on an anti-immigration ticket. One of his arguments for the No vote was that then there would be renegotiation and the Netherlands could negotiate for a protocol like the Danish one so that the Netherlands would no longer be bound by the EC migration rules and could then stop migration. I do not know whether any of the voters really got that argument and also got the dead-end street character of that argument, because other Member States will not have more Danish protocols than they have already. However, that was the other argument; the EU might stop us from restricting immigration.

Chairman: Professor Groenendijk, can I thank you very much indeed for your evidence, given, if I may say so without impertinence, in extraordinarily fluent English. I see from your CV you also speak German, Russian and French and I am sorry we cannot test you on those as well!
WEDNESDAY 29 JUNE 2005

Present
Avebury, L
Caithness, E
Corbett of Castle Vale, L
Dubs, L
Henig, B

Listowel, E
Marlesford, L
Ullswater, V
Wright of Richmond, L (Chairman)

Memorandum by the Home Office

CENTRAL QUESTION(s):

1. Should there be a common EU policy on economic migration or should Member States remain free to make decisions in this area independently of each other?

In our view a demonstrable need for a common EU policy remains to be made. Any European Policy on labour migration can only be developed to the extent that it provides sufficient responsiveness and flexibility to allow individual Member States to manage the demands of their own labour markets. Any Community intervention must also allow for this requirement, and, as has already been acknowledged by the Green Paper, would need to minimise the administrative burden on the Member States and on third country applicants.

2. What view is taken of the effect of immigration on the economies of Member States and the nature of that migration?

The issue of economic migration and the effect that it has on economies is a very complex and diverse issue when viewed in a European context. In order to be accurate this response will focus on the UK view of economic migration.

The Government believes that well-managed migration boosts the economy, brings welcome cultural diversity and can have benefits for migrants’ home countries.

The Government is committed to managed migration. This means having responsive economic migration routes, where they are in the interests of the UK and continually respond to the UK labour market and the skills needs of the UK.

The UK is a key player in a competitive global economy, and it is essential that we can attract the people and skills we need for our businesses to be able to compete successfully and for our economy to continue to grow. HM Treasury estimates suggest that migration accounts for over 10 per cent of trend growth forecasts. We need migrants to help with recruitment difficulties, to bring innovation, enterprise and capital to the UK, which can improve UK productivity. Recent independent research by the IPPR has shown that migrants contribute relatively more to the public finances than non-migrants. Research on the labour market effects of migration in the UK has shown that migration does not have an adverse effect on the wages and employment of the existing workforce. This suggests that rather than competing with the resident population for jobs they can expand sectors and create opportunities. By opening up ways for people to come and work here legally we also help tackle illegal working and abuse of the asylum system.

It is not a one-way street, however, as migrants’ home countries also benefit. Migrants may return with improved finances, experience and language and professional skills that will benefit source country economies. There are also short-term benefits derived from the money that migrants send home in remittances.

The UK does not have a policy of mass immigration. The amount of managed migration will increase or decrease in line with the needs of the UK.

Managed migration is not an alternative to developing the skills and employment opportunities of our existing population but rather a complement to our ongoing work to achieve that.

**Supplementary Questions:**

3. **Should a Community approach attempt to set common rules on the admission of third country nationals for employment or should it address each sector of the labour market separately?**

The concept of common rules has some appeal. In reality any such system is likely to be unwieldy and unable to react to the needs of individual Member States. Member States may wish to pitch their labour migration schemes at particular skill levels, to meet particular sectoral or regional needs, and/or to strike a particular balance between the filling of specific vacancies with overseas workers and a more general objective of attracting human capital. Focusing on specific groups of migrants could allow for greater flexibility, and would enable Member States to ensure that they had access to those workers that are needed most.

4. **Would there be a place for quotas in a common policy?**

In our recently published 5-Year Strategic Plan entitled: “Controlling our borders: Making Migration Work for Britain” it is made clear that there is no place for a rigid or arbitrary quota, except in the context of very specific schemes designed to meet the temporary labour needs of particular sectors. The UK will continue to welcome immigration when it is in this country’s interest. Economic migrants will be granted entry when it can be shown that they are able to fill labour market vacancies that cannot be filled from the UK population or where they can make a significant contribution through the skills they bring. Any formal policy proposal would be reviewed in line with this position. It is important to note however that the Green Paper makes no reference to the use of quotas.

5. **Do the same considerations apply for self employment as to employment?**

In principle the considerations are the same. However, the United Kingdom’s experience has been that evaluating whether or not an individual is genuinely self-employed can be very difficult. At this point the United Kingdom holds the view that a set of common rules, whether for self-employment or all employment routes, would need to meet the same requirements. Any set of rules governing this category would need to build in very robust verification and evaluation tools.

6. **To what extent do enlargement and free access to the labour market for workers from the new Member States affect a common policy?**

The operation of a common policy would be dependant on the extent to which enlargement facilitates and encourages intra-EU mobility. The volume and type of migration (economic, family reunion) between Member States would need to be taken into account, along with evidence of the skill levels and sectors in which migrants are locating. Even if all Member States opened their labour markets fully to workers from Accession countries, it is unlikely that there would be uniform effects in receiving States. This again, points to the need for flexibility to allow individual Member States to manage the demands of their own labour markets. Additional information regarding the effect of enlargement on migration of workers from the new Member States to the UK, and the operation of the Worker Registration Scheme is enclosed at Appendix A. In addition, general background information on numbers of people by nationality and on labour market participation is attached at Appendix B.

7. **Should the “Community preference principle” be maintained? Should it apply to third country nationals legally resident in the EU and, if so, to all workers or only long term residents?**

The Community Preference Principle is still relevant and is consistent with the United Kingdom’s views as expressed in its recent 5-Year Strategic Plan. In principle therefore it should be maintained. The UK Government is committed to ensuring that entry into the UK is only granted to those economic migrants who are filling jobs that cannot be filled from our own workforce, or those who can make a significant contribution through the skills they bring. In our response to the Green Paper the UK Government acknowledges that any common policy must provide Member States with the freedom to determine which types of migrant workers might not be subject to the Community preference principle. The important point is to ensure that Member States retain the flexibility to identify areas within their labour markets where there is a need to waive the Community preference principle.
8. **What rights should third country workers have? Should there be any differentiation between workers admitted on a conditional basis and long term residents?**

The UK Government is clear that legal third country nationals should be protected by law and indeed the UK provides all legal migrant workers with certain minimum rights. In the UK temporary legal migrant workers are not entitled to benefits except certain in-work or contributory benefits and then in the case of the latter, generally only after having made National Insurance contributions. They are entitled to free school age education and to some healthcare. Insofar as other rights, above and beyond those referred to above, are concerned that is a matter for individual Member States to determine.

9. **Should there be a common EU policy on the “regularisation” of illegal workers (amnesties)?**

The UK Government regards the decision whether to regularise the position of illegal migrant workers as a matter for individual member states. Clearly, a large scale regularisation programme in one member state has the potential to impact on migration flows across the borders of neighbouring states, particularly where the beneficiaries of the regularisation acquire residence rights that may be transferred to other member states. Nevertheless, national governments are best placed to determine whether regularisation should take place and on what scale, based on the social, economic and political factors in the country concerned. To this end the European Commission has been tasked with producing a proposal for a system of mutual information exchange between Member States.

10. **Should measures be taken to protect third countries from- or compensate them for- the loss of skilled workers?**

Various ideas for compensation have been floated over the years; but all seem to raise a host of difficult conceptual and implementation issues: who should pay (the receiving country, the employer or the migrant concerned?); how should compensation be calculated?; how should resources be channelled and what conditions attached to their use?; what administrative machinery and monitoring arrangements would be required? The UK considers that other policy options are likely to be more effective in strengthening capacity in developing countries to help them manage the impact of skilled migration.

11. **What considerations should the Government take into account in deciding whether to opt into a common EU policy?**

At this point in the process no decision has been made on whether there will be a proposal for a formal common EU policy. The UK government has clearly stated, in the response to the Green Paper, that any formal policy plan must be based on a demonstrable need. The UK maintains an opt in right in relation to legal migration issues. In the past the UK has opted out of measures that were perceived as undermining our ability to control our borders. Any future proposals will be reviewed against this position.

**APPENDIX A**

— Arrangements to allow citizens of eight of the new EU Member States (Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovakia, Slovenia) to work in the UK are working well.

— Currently 78 per cent of applications to the Worker Registration Scheme are being processed within 10 days of receipt of the application. Applicants’ passports are returned, recorded delivery, within 48 hours of receipt at the Worker Registration Scheme.

— Management information for 1 May—31 December 2004 shows that just over 130,000 people applied to register with the Worker Registration Scheme and 123,000 applicants were issued with a Worker Registration Card and certificate.

— Full details are contained in the Accession Monitoring report, available at www.homeoffice.gov.uk. The next report will be published on 26 May 2005.

— Up to 40 per cent of applicants (around 50,000) were in the UK before 1 May—a significant proportion of whom will have been able to legitimise their status, move into the formal economy, and benefit from the protections of our employment laws;

— The evidence shows that citizens from the new Member States continue to come to the UK to work, not claim benefits.
— Between May and December 2004, we estimate registered workers contributed approximately £240 million to UK GDP.

— Migrants from the new MS have supported sustained employment growth in the UK labour market over the past year. The economy continues to perform strongly, unemployment remains low (at 4.7 per cent). An early assessment of the impact of workers from central and Eastern Europe on the UK labour market will be published on 26 May 2005.

— Nearly all applicants (96 per cent) to the Worker Registration Scheme are in full time employment and doing jobs in sectors where there are key skills shortages and recruitment difficulties (hospitality and catering; administration, business and management, agriculture; health; construction).

— Workers are employed in key shortage occupations: hospital doctors and consultants, bus drivers, teachers, care assistants, dentists and social workers all registered between July and December 2004.

— Citizens from the new Member States are contributing to our public services. Very few have applied for benefits, and even fewer are eligible. The profile of registered workers is predominantly young and single. This suggests they are not heavy users of education and hospital services. Many workers are contributing to our public services by working in health, education, transport, social work.

— Workers are based throughout the UK—not just in London and the South East but also in East Anglia, South Central England, the Midlands and elsewhere.

— The Government has taken account of the availability of labour from the Accession countries in the Five Year Strategy on Immigration and Asylum: existing low-skilled schemes for sectors in which large numbers of Accession country nationals working will be phased out.

APPENDIX B

STATISTICAL ANNEX

Migration in the UK: Population and Employment

Chart 1 displays the proportion of the UK population by country of origin. It can be seen that migrants have made up a gradually rising proportion of the UK population with the increase particularly pronounced amongst foreign born migrants from outside the EU-15. In the last year the proportion of the UK population originating from the new accession countries (A10) has risen from 0.41 per cent to 0.46 per cent while migrants as a whole now make up 7.9 per cent of the UK population compared to 6.2 per cent in 1998. This corresponds to just over 4.6 million migrants now living in the UK. The UK-born population however still accounts for over 92 per cent of the UK population.
Chart 2 shows how employment of migrants and the UK born population has evolved in recent years. All groups have experienced a rise in their employment rate in the last 12 months and only Maltese and Cypriot migrants (a very small migrant group) have not seen a significant rise in their employment rate since 1998. There has been a significant rise in A8 employment rate since accession in May 2004.

Chart 3 shows how the share of overall employment growth has developed in recent years with migrant workers accounting for a significant part of the rise in employment. It should be noted that while the number of UK-born workers in employment has fallen in the last 12 months, this reflects underlying population changes rather falls in the employment rate of people born in the UK.
Examination of Witnesses

Witnesses: Rt Hon Margaret Hodge, MBE, a Member of the House of Commons, Minister of State, Department for Work and Pensions, Mr Tony McNulty, a Member of the House of Commons, Minister of State, Home Office and Mr Bill Wells, Divisional Manager, Economy and Labour Market Division, Department for Work and Pensions, examined.

Q136 Chairman: Ministers, welcome to you both. It is very good of you to come. If I may say so, it is of particular value for us to have ministerial representation from both the Home Office and Work and Pensions. You are both extremely welcome. Could I ask you to introduce your official?
Margaret Hodge: Bill Wells is in the Department for Work and Pensions. I do not know his job title.
Mr Wells: I am a senior economist on the economy and labour markets.

Q137 Chairman: Thank you very much. I should register that this is on the record and you will be sent a transcript of this meeting for you to comment on, if you wish to. I should also register what this inquiry is about and indeed what it is not about. It is an inquiry into economic migration to the European Union and it is not about asylum or illegal immigration. It has been prompted by a Commission Green Paper published in January. I should in that context thank you for the written evidence which we received in May together with the Government’s response to the Commission Green Paper. It is very much an interim response because it makes the point that no decisions or proposals should be put forward until after the consultation period. I cannot remember when the consultation period was supposed to end, but I know we have missed the deadline. I think perhaps a lot of people missed the deadline. Can I ask if either or both of you would like to make an opening statement?
Margaret Hodge: No.

Q138 Chairman: Please decide between yourselves whether one or both of you wishes to answer the questions. It is quite clear from everything that we have received as a Committee that there is quite a diversity of opinion about the European Union labour market. I just wanted to start by asking you whether you see the EU labour market primarily as local, regional, national or EU-wide, or it may be a little bit of all of them.
Margaret Hodge: We had a discussion before we came in. We thought the first set of questions might be more relevant to me, with Tony McNulty coming in as and when, and then I think he becomes the star of the show because most of them relate to his area of responsibility. Perhaps I may deal with the first one. I think we would say that you have to look at the labour market both at local, regional, national and EU level and they are all inter-related. Clearly our prime responsibility is to promote the interests of the national labour market and we are doing particularly well here, but there is a very strong relationship between our performance and the migration we get both from the EU and further afield. It is quite heartening to think that 90 per cent of British local authorities have an employment rate above the EU average. If you look at our areas of need and labour market difficulties, they are concentrated in the cities, in the urban areas, which is not surprising.

Q139 Chairman: Insofar as one regards the labour market as a national question, how much scope do you think there is for Member States to regulate the labour market, taking into account the domestic labour force?
Margaret Hodge: I think we would argue that the economic strength and prosperity and consistent growth that we have had in the UK comes from the greater flexibility in our labour market regulation and policies and the ability of the labour market really to respond to the demands of the economy. If you look particularly at the migration issue, we have encouraged a freer labour market than other countries in the EU, especially with the expansion of the eight new “A8” countries into the EU. We think or proposals should be put forward until after the consultation period. I cannot remember when the consultation period was supposed to end, but I know we have missed the deadline. I think perhaps a lot of people missed the deadline. Can I ask if either or both of you would like to make an opening statement?
Margaret Hodge: No.

Q140 Chairman: Conversely, do you think that those Member States which have put restrictions on migration within the EU have suffered from those restrictions?
Margaret Hodge: Far be it for me to pass judgment on the national policies of other EU countries.

Q141 Chairman: We will nevertheless invite you to do so!
Margaret Hodge: I am being very reticent, as you can tell! I would simply point to the labour market indicators. We are doing far, far better in all parts of the labour market. The scourge of youth unemployment has disappeared from the British scene. We are now starting to look at how we can
raise employment levels among those who were traditionally inactive in the labour market. We are having some success around lone parents. We are beginning to look at disabled people and people not working due to long term ill health and older workers who in the past might have retired at 50 and beyond. All those areas are looking good. I look at some of the other countries and think they have got high unemployment levels, we have not had a recession and we have had steady growth, so we are doing well. The flexibility that we have encouraged in our labour market policies has contributed to that economic strength and job growth.

Chairman: Thank you very much.

Q142 Earl of Listowel: In discussing labour migration the Government’s five-year strategy on immigration and asylum focuses exclusively on the economic benefits to employers. Should regulation of labour migration be driven entirely by economic considerations, regardless of possible social consequences, both the impact on the resident population and the social benefits immigrants provide such as care for the elderly?

Margaret Hodge: The answer is no. You need to look at the impact of your labour market policies in the round on both social and economic consequences. The evidence so far is that, both through inter-European migration and through the Work Permit Scheme that is run by the Home Office, we have achieved two things. If you look at inter-European migration, particularly the new Accession countries, what has happened there is that the people who have come to work in the UK have actually on the whole tended to be younger, lower skilled and lower paid people filling some of the jobs in the agricultural and other sectors. If you then look at the Work Permit Scheme, that has tended to fill the skill shortages in the more highly paid areas like health and education. Both have benefited the UK economically and socially. For example, lots of the Health Services might not have survived the expansion that we have been able to fund and the better service that we have been able to give to British citizens if we had not benefited from both the doctors and consultants that we have attracted from abroad.

Q143 Viscount Ullswater: When the Accession countries were allowed to send people in under the Worker Registration Scheme, obviously there were some that registered who had been working here already. The Access Monitoring report which you provided for us, recently published, indicates that there has been quite a flow of people in who might not otherwise have come in from the A8 countries. Did that show a corresponding dip in the requirement for work permits or was this an additional flow of people from the Accession countries?

Mr McNulty: As Margaret was saying, much of the non-EU work permit elements were in the higher skilled sectors. Much of the flow from the Accession countries has come at the lower levels and pretty much specific levels: agricultural, hospitality and those sorts of areas. The two have not had that much of an impact on each other. They are essentially two separate pools of potential labour into the UK.

Margaret Hodge: The statistics I have got suggest that 2.5 per cent of all the working age migrant population come from the Accession countries, so it is still a very small proportion of the overall migrant population in the UK. That is a very broad definition. I do not think it has had that impact. I do not know if Bill Wells wants to add anything.

Mr Wells: It is as the Minister said. Essentially, there are generally two different routes in and they will be complementary rather than separate routes.

Mr McNulty: The growing stereotype now which is used of Polish or Lithuanian young people coming in to the hospitality sector certainly in London, and other urban areas and, to a broader extent, the agricultural areas elsewhere is borne out by the statistics. I think over 50 per cent of those now registered are from Poland. It goes up to 57 or 60 per cent if you include the Lithuanians. It is starkly different from the typical highly skilled migrant on the Work Permit programme, such as medical staff from the Sub-Continent and Africa. It is two very different sources of labour. There is not this massive reservoir of highly skilled Polish doctors desperate to come over and prop up the Health Service; they are two distinct pools.

Q144 Earl of Listowel: You referred to employing hard to reach young people and people with disabilities for instance. How will you prevent labour migration acting as a disincentive to business and Government to invest in the education and training of those hard to reach young people, especially during an economic downturn? With the independent labour market advisory group will there be representation there perhaps of people from the New Deal and so on who might be able to say, “We can skill up some young offenders to do this work. You don’t need to go to the Continent to get pipe layers” and so on?

Margaret Hodge: I have got to start by saying that the proud record of this Government is that we have had sustained stability and growth and so the issues you have raised are hypothetical and not real. We monitor this extremely carefully with the research report, which I hope that the Committee has had sight of, produced by officials in the Department, and all the evidence demonstrates that migration has supported prosperity and growth and added value to the UK domestic product and to jobs. Of course we want to raise opportunities for our young people and
particularly those that have been inactive in the labour market, hence our ambition to increase the employment rate to 80 per cent from its already very high levels. We will continue with our policies, for example, on the New Deal for young people which has been so successful and we will continue with our policies for trying to raise qualification and education levels of young people. Indeed the proportion of young people who traditionally were outside education, employment and training I do not think has increased. The percentage that is now in the “NEET” group has reduced from 18 per cent to 16 per cent of the age group. It is still a worrying figure, there is still a lot of work to do, but we will pursue both our labour market policies to ensure the engagement of young people and our education and training policies to raise the qualification and skills level of the young people. I actually see migration as a benefit to that endeavour because of the added value it brings and the wealth to the country. There is a net value to us from migrant workers which gives us more money to spend on things like the education of the young.

Q145 Lord Corbett of Castle Vale: Minister, you did not pick up the point about young offenders getting overlooked in all of this, particularly given the Government’s ambition to reduce re-offending. There is a possibility—that is all that is being said—that workers are coming in, they are doing jobs which with a bit more thought we could try and get some young offenders into, like with TransCo.

Margaret Hodge: It is a very difficult area. I have already had discussions over the six or seven weeks I have been in the job with my counterparts both in the DfES and Patricia Scotland in the Home Office to see whether or not we can have a joint initiative to try to do better, particularly by young offenders, to ensure that they complete the qualifications they often embark on and do not complete because they are shifted from institution to institution and then to ensure that we help them into work. We now have Jobcentre Plus inside young offender institutions, in fact I think probably in a whole range of prisons as well, to try to sort a route out into work before people complete their sentence. The more we can do about that the better. I think the greatest problem here is that in prisons or young offender institutions the average time of stay is so short. I know from when I went to Feltham three years ago that the average time even there was about a fortnight.

Q146 Lord Corbett of Castle Vale: That is just the governors!

Q147 Lord Marlesford: Can you give us some idea of the proportion of migrant workers who go into the construction industry and perhaps some idea of the proportion of people in the construction industry, say in London, who are migrant workers?

Margaret Hodge: I cannot off the top of my head, but what I will do is go away and have a look and see if I can write to you with that sort of detail.

Mr McNulty: I do not have the figures to hand. Certainly in the London labour market context, as someone of Irish extraction, I know lots of builders and construction people and they revel in the fact that the Irish are now the business owners and contractors, and it is invariably, especially at the lowest level, Eastern Europeans who are doing the labouring work. I would say the answer is that they are a significant proportion, especially at the casual end, but we will try to seek out the detail on that.

Q148 Lord Marlesford: They very much relieve pressures that might otherwise exist.

Mr McNulty: Very much so. They are not displacing indigenous labour opportunities for people; they are filling a very needy gap, absolutely.

Margaret Hodge: I do not think we would turn away Polish plumbers!

Q149 Lord Avebury: If we are being successful in training these young workers and the vacancies that are arising in industries, such as construction, are being satisfactorily filled from Poland or Lithuania, why is it in the last few years there has been a steadily increasing number of people coming from outside the European Union?

Margaret Hodge: Coming from outside into construction jobs?

Q150 Lord Avebury: I am not saying into construction jobs. The figures that were given to us by MigrationWatch in particular show that there has been a steady rise over the last few years in the number of people admitted for work. If we are training all these young people and we are getting others from Eastern Europe, how come we still need all those people from elsewhere?

Margaret Hodge: What I would draw to your attention is the different job occupations that migrants come to from different areas. The EU migrants, particularly the Accession country migrants, tend to come in to fill some of these rather lower skilled, lower qualification level jobs. Those from other countries outside the EU tend to come in...
to those more highly skilled, professional jobs in health, in education and those sorts of sectors. I think the reason for it is that there is a huge time-lag for those high professions between embarking on training more people and their completing their training. With a consultant it is about eight or 10 years before you get through all the training. We have invested such a massive increase in resources in the Health Service because we want an immediate impact on patients and the citizens of Britain, and the way to respond to that has been through the wider market. Tony talked about the Irish. If you look back at the statistics over time, there was a time when probably the highest number of migrants for work into the UK came from Ireland. If you now look at the EU stats, it is France and Germany that they are coming from and there are fewer coming from Ireland. So those things do change over time and that reflects their local labour market. There is a fear that those countries which have lower wage levels and higher unemployment levels will tend to export their workers to the UK and thereby challenge and undermine our wage levels and opportunities for work. I think the interesting thing is that if you look at somewhere like Greece where the GDP is still half what it is here in the UK, there has not been a massive migration of workers from Greece to the UK, although probably actually language is the greatest inhibitor there for them to access jobs.

Mr McNulty: You will know that the Agreement confers qualified entry rights for workers employed overseas to enter the UK to supply a specific service. Things do change over time and that reflects their overseas to enter the UK to supply a specific service. It does not preclude the UK from imposing certain national immigration rules. Local unemployment will tend to export their workers to the UK and thereby challenge and essentially a trade agreement and it does not override our ability to control things within the context of national immigration rules.

Mr McNulty: Increasingly, despite the backdrop of what the EU may or may not have control over in terms of migration, which I know is part of your brief, we are facing the openness now of the EU area, working on a wider basis of Community Preference. In the context of a downturn then it would be that outer non-EU pool of labour that would “suffer” first as opportunities decline and it would be left to the pool of labour inside the EU. That prompts your next
point, which is that those who are already here from that third category will have less of an incentive to go home. I think things get more complex there in the sense that it depends on which sector they are operating in and it depends on whether they have established their work patterns are in that particular sector. I would find it highly unlikely that there would be an absolute overturn in every sector, and a squeeze on the labour opportunities across the piece. I think it is more a function of the inability perhaps in a downturn for those in the non-EU pool of labour to have opportunities to come in further rather than what may or may not happen to those who are already here, who are well established and on more than short-term work permits.

_Margaret Hodge:_ Anybody who comes in from outside the EU territory requires a work permit. If that work permit expires they will be expected to return to their country of origin. The Home Office is getting better and better at ensuring that those permissions are complied with properly.

_Mr McNulty:_ We would hope to pick that up eventually with a relatively flexible approach to the points system that we are developing and alluded to with the announcement of the five year plan last February. That would hopefully be flexible enough to pick up those nuances both within sectors and across the broader national economy. As Margaret was saying, this is almost planning for what vacancies or otherwise there will be in particular sectors in discussions with businesses et cetera, et cetera for years to come rather than simply being reactive and reflective purely on what the economy and the sectors within it are like at any given moment.

**Q156 Lord Avebury:** Mrs Hodge said that you are getting better and better at removing people who have had work permits and their term of effectiveness has come to an end. Do you find that it is necessary to take any compulsory measures to remove people who come to the end of their work permits as you do with asylum seekers?

_Mr McNulty:_ I do not have the figures to hand, but I think the answer is no. In the main people regularise their situation one way or the other. In other words, at the end of the work permit or on the termination of the work permit they go back to their country and in many cases re-apply for a subsequent opportunity, and in many cases they move on to other areas and regularise it with a subsequent work permit before the termination of the job with the first permit. I am not entirely sure of the exact situation on the basis a rich and varied seven week experience in the Home Office: there is a whole lot going on in terms of forced removals of those who overstay beyond their work permits. I will double-check on that.

**Q157 Chairman:** Would it be unkind to suggest that perhaps it is not the Home Office that is getting better and better but rather immigrants are getting better and better at following the rules?

_Mr McNulty:_ It is both. The Home Office have developed greater clarity in terms of the rules rather than confusion and people have happily understood that clarity and know how to work within it.

**Chairman:** I am not trying to downplay Mrs Hodge’s comments about that.

**Q158 Lord Avebury:** If you are so good at persuading people who require work permits to leave this country without any compulsion, why do you not examine that system and see whether it would apply to asylum seekers so you do not have to have thousands of them in detention centres?

_Mr McNulty:_ I know that goes slightly beyond the remit of your current inquiry. It is intensely more complicated than that in terms of the state and nature of the country they are potentially returning to and in terms of whether they are third country removals in the sense that they are going to somewhere other than their original country. We have had the debate—and I am not encouraging anybody to go down this route at all—about Mugabe, Zimbabwe and all that sort of stuff, you can read it on the front page of _The Independent_ today, but I think it is even more complex in that regard than telling people at the end of a work permit, “Thanks very much. You need to go now,” there being no restrictions on their ability to come back with a subsequent post.

**Q159 Lord Dubs:** Let us say somebody is on a work permit and their job comes to an end or whatever it is. The policy then is that they should go and yet there could be opportunities for them in other sectors for which at that point they do not have to have a work permit. Is there an argument for flexibility? Instead of saying to people, “You’ve got to go. You’ve got no chance of looking for a different job,” would it not give them a greater sense of their worth in this country if there was flexibility?

_Mr McNulty:_ There has certainly been discussion not only on the principle of greater flexibility but on the notion that if we accept, in terms of control and everything else, they have to go back, can we have a rough equivalent of what the post office does for a new passport applicant, where for £2 or £3 they will make sure everything is entirely in order before you send it off rather than having the laborious response from the passport people telling you that you have made mistakes. There are those who say they may have to re-apply for control reasons for the work permit, but let us sort out all the details for the work permit for the next potential position before they go and so it becomes just a matter of us controlling what we need to in terms of entry clearance on the visa side.
of things. Let us make it a far smoother process in terms of the visa and the subsequent employment end of the equation.

Q160 Lord Dubs: Is that how it works or is that how you want it to work?
Mr McNulty: I am merely saying that that is a further elaboration of what people have certainly discussed with me. Rather than saying absolutely, “Okay, you can stay in this context and apply for the subsequent one to suit our entry control,” and there might still be arguments for saying they should go back, a middle ground could be to sort all the paperwork and all the details out on the work permit and the employment side prior to the departure, to sort everything out then in terms of the visa entry clearance requirements side of things as that is far shorter a process than going back and into the lottery of applying again with all that entails in terms of bureaucracy when applying from that third country. We are exploring those areas. I am not suggesting that that is the way we are going. I offer that as an example of a recent discussion I have had in the context of your very reasonable question.

Q161 Lord Avebury: Would there not be an obvious advantage if you had somebody who gets to the end of a work permit and that particular job is not remaining open, but he has acquired a facility for dealing with public authorities in this country, he has got a house and his children are at school and so on, if you could then transfer his work permit to another employer without him going back? Surely it would be a much less bureaucratic procedure and much more advantageous from the employer’s point of view as well because he could interview the person in this country.
Mr McNulty: I think all these elements that are about the interaction of entry clearance and visa travel requirements with work permits on the employment side of things are elements that we do need to explore in more detail as we develop the points systems as part of the five-year plan. We are hoping, with a fair wind, to have the first consultation paper on that out prior to the summer and then an extended consultation period, which will enable feedback to be received after the summer break, with a view to taking things on with a range of people with interests throughout the autumn. How these two elements conflate and relate to the points system are elements that we will have to look at.
Margaret Hodge: We should emphasise that the work permit system is based on the employer requiring the person, which is very different from an individual wanting to enter the country. If there were another employer who wished to offer that particular person, because of their skills and qualifications, a job and there was nobody locally appropriate to fill that job, then how you would administer that, which is what Tony was talking about, comes into play and how we can do it speedily, in the interests of both the employer and the individual, are important.

Q162 Lord Dubs: Perhaps I can move on to a different area. The Government has so far been cautious about a common EU policy on labour migration and yet we do accept a common policy on other aspects of legal migration, such as family reunion and the admission of visitors and students, but not on labour migration. Baroness Scotland said in a debate on the Hague Programme on 20 June, “none of us acting alone can meet the challenges of managing migration”. So we have different ways of handling different types of legal migration. Is it possible to have an effective policy on illegal immigration without a common policy on legal migration?
Mr McNulty: I think those are all entirely fair points. You will know from the written evidence that the best description is that we have reserved our judgment on whether the case has been made and demonstrated in terms of a completely integrated EU policy on labour migration because, as you indicated at the beginning, the consultation on the Green Paper finished in April or whatever and things are being worked up. I think towards the back end of the year we will see exactly what the Commission’s plans look like. We are not saying that what we do and how we do it in terms of migration and labour markets are none of your business in terms of the EU, that clearly would not be the case. We do understand there are potential benefits in achieving greater transparency across the EU, but I think we remain to be convinced that a fully fledged, integrated system is the way to go forward. We also need to bear in mind the UK’s opt-in protocol. The key condition would therefore be that we assess any legislation proposal against the position that we will not opt in to anything which harms our ability to control our own borders. It is a sort of Schengen and non-Schengen thing, geography dictates. We feel that, whilst we might run alongside Schengen in terms of border controls, we are not at this stage, nor are we likely to be in the very near future, ready to join Schengen. Our border controls element is very important and part of that overall process. I think another essential condition would be the concern that most new members have expressed and which we share and that is that the Green Paper separates out the question of intra-EU mobility. We would want to see the principle of Community Preference addressed and also another key condition would be around Member States’ ability to decide on the rights of legal migrant workers, your point towards the end. There may well be three or four overlapping things: there is the Schengen/non-Schengen border control issue, there
is each individual state’s right to determine what the rights of legal migrant workers are in that sense, but I think the closer we can get to some sort of accord that at least has each state responding to a broad framework that we are working within the better. I think we do reserve rights on borders and subsequently on managed migration and control to assert the rights of individual Member States over the EU as a whole.

Chairman: I should remind you that the supplementary question that Lord Dubs put reflects a point that we made in our report on the Hague Programme and your Secretary of State’s response. One of the few points which she took issue with was our suggestion that an effective policy on illegal immigration did require a common policy on legal migration. Thank you for responding as you did.

Q163 Earl of Caithness: Minister, there has been a large number of inaccurate and contradictory statements by the Government on migration and immigration over the last three years. Are we not about to get another of these? In responding to your need to respond better to labour market conditions in your evidence you favour a sectoral approach over a horizontal approach, but in your 5-Year Strategic Plan you seem to be backing away from that. Is not a sectoral approach highly complicated?

Mr McNulty: I think I would take issue, with the greatest respect, with the opening preface of your question, I do not think there has been that degree of confusion.

Q164 Earl of Caithness: I can list you seven in the last three years.

Mr McNulty: Maybe we will do that another time, rather than during the Committee’s hearing. The five year plan and all that flows from it is the culmination of a coherent approach to asylum and immigration. The Committee may know that next Tuesday the legislative elements we required for the five year plan will have their Second Reading in the other place with the Immigration, Asylum and Nationality Bill. It is not another all singing, all dancing omnibus that we are selling as solving all the UK’s problems in terms of asylum and immigration, but there are many elements of the five year plan that require legislative building blocks to take the five year plan forward. The points system, for example, is not in there, that is more to do with rule changes rather than primary legislation. In the Green Paper the Commission has put in three possible options for the way forward on the common policy. As you indicated, there is the horizontal approach by which they mean all types of economic migration covered by a common policy, the sectoral approach where the focus is on certain sectors, and then this fast track element to facilitate the rapid entry of migrants. The point I want to make here is that the UK’s position on the concept of common rules is that it should be for individual Member States to determine the number and type of economic migrants they admit and any common policy must have at its core that which is a matter for individual Member States. Maybe there is scope—I will not know until we see their proposals—for an over-arching element as the way forward, but we do think at the core there must be the key element of control by the individual Member States. I think what we are trying to do with the points system that we will be developing is picking up the best of that which has gone before. The reality is probably some notional horizontal approach with those sectoral elements happening underneath it. If the premise of the points system is, albeit with the Community Preference element involved, to fill in the gaps with migrant labour that the domestic labour market cannot fill then at least in part there must be a sectoral dimension to that as well as an overall approach to a starting premise that says we favour managed migration and we understand fully the contribution of migrants over time to the economy. We disagree vehemently with those who have been before you who suggested that this is all nonsense and the migrant contribution is not large at all. There are overall rules and there are ways we would deal with sectoral shortages within that. It is probably a bit of both in the end rather than backing away from one or the other.

Q165 Earl of Caithness: How many sections in the sectoral approach do you reckon there is going to be? At what stage does it become horrendously complex and convoluted and unintelligible to most people?

Mr McNulty: That is precisely the process we are going through now as we review some of the sector-based schemes and which ones to close down and which ones to carry on. You will know that the busiest are those like, as we were saying, hospitality and food processing in terms of the middle or lower end of the skills process. I suppose there could be a debate that says, given that in many instances the highly skilled migrant programme fills gaps in particular areas rather than across the piece, that that is a horizontal or a general programme, but in reality we need a series of smaller sectoral programmes. As Margaret was saying, health is a dominant highly skilled migrant programme. We need to set out very clearly the direction we think we are going in with the points system, but I hope we will do that prior to the summer, then we need extensive engagement with the business community, the economic players, to see where they think the skills gaps are within sectors, and then we need to get to a stage where, rather than replicate a previous sectoral programme, we have got a points system that is very clear in what its objectives
are and very clear that as and when there are gaps in particular sectors it is flexible enough to respond to them. I take the point that you could get to a stage where you have such a segmented response under the points system to a whole range of gaps not just within a sector but within specific gaps of a sector that it could become horrendously complex and we are trying to avoid that. I am sure the Committee wishes us well in doing so!

Q166 Earl of Caithness: How relevant is the Community Preference principle and how do you apply it in practice? Does the EURES system work? 
Mr McNulty: The Community Preference principle is applied by the resident labour market test. In order to obtain a work permit the employer must show that the vacancy is one that they cannot fill in the first instance by UK domestic labour or by the wider EU labour force before going out there beyond the EU. We think it is a principle that comes with the territory in terms of the broadening of the labour market to an EU basis. On EURES, I am told here I must refer to my colleague from the Department for Work and Pensions.
Margaret Hodge: Thank you. I think I would argue that EURES is another tool that employers can use if they are trying to fill vacancies. Recently the NHS Trust recruited 1,000 nurses through EURES. We had 400 Polish workers placed through the EURES system. We have got people who support UK employers if they want to use the EURES facility. It is just another tool. I think it will grow over time. Hopefully it will become more and more effective, but it is having a good impact insofar as it exists so far.

Q167 Earl of Caithness: How effective is it now?
Margaret Hodge: It is effective by those who use it. Is it well known? Not as well as one would like. As it embeds I assume it will become more effective and more widely employed and therefore of great assistance to employers in filling their vacancies. All these public employment agencies now have the EURES information on their systems and to the extent to which those public agencies are effective at linking in to employers, it will grow. I think it is one of those things that will grow over time. It is still relatively new. We think it adds value.

Q168 Lord Avebury: In your response to the Green Paper you said that it is important to ensure that Member States have an ability to identify areas where there is a need to waive the Community Preference principle and you talked a lot about the Health Service. What other areas are there in which it is necessary to do this? IT, for example?

Mr McNulty: Maybe, but in a far more fluid sense. I think things go up and down far more readily in the IT sector than they would for the health sector. It just depends on how long it takes to train people up in the health sector. Health would be the most predominant one.

Q169 Lord Avebury: Is there a formal process by which you say we are going to waive the Community Preference principle in this particular area? That is how I read this response to the Green Paper.
Mr McNulty: I think there is, but the finer details of it I am not entirely sure of. I will write to the Committee. Clearly the highly skilled migrant programme sits outside our Community Preference in that sense.
Margaret Hodge: With a previous Government hat on, I had responsibility in the early days for the work permit system. There are regular reviews of the labour market and vacancy rates and skill shortages so that those areas where—and that will be reflected and translated in the way that we devise the points system—there is a present shortage of a particular skill that is required in the UK labour market will get more points in the new system, but under the old system they would have had the likelihood of a work permit. We have got to constantly adjust and re-adjust.

Q170 Baroness Henig: Can I raise the issue of quotas? I know that the Government does not favour quotas, that came out in the evidence. How would you respond to the argument that they would be a fairer and less bureaucratic alternative to a work permit system?
Mr McNulty: I simply do not think they would be. A quota by definition implies, certainly in an area where there will be many gaps to fill but that bore no relation to the quota, they are turned into a lottery, not unlike the sort of open-ended Green Card lottery system that the US has. It starts from the premise that the economy and the needs of the economy are dynamic, constantly changing and the economy is a living creature rather than stuck in rigid little boxes, which is what a quota would imply. In the limited experience we have had of some quota-based systems, like some of those small sector-based schemes, the difficulty is when the quota is full, but clearly there is still much demand that has not been satisfied. If it is that rigid and sclerotic that you cannot respond to that then it rather defeats the object. Underpinning the points system will be as much flexibility as we possibly can have rather than, as I was suggesting to the Earl of Caithness, essentially a sectoral-based system wrapped up as a flexible points system that was not a terribly flexible system at all. I do not think that the bureaucracy and the arbitrariness that comes along with a quota...
system, whether focused on a sector or more generally, is appropriate in responding to the dynamic needs of the economy.

Margaret Hodge: I would argue very strongly from a labour market perspective that a key driver of our continuing growth has been the flexibility of the labour market. When we go down the quota route you lose that flexibility.

Chairman: Lord Marlesford, a question you were going to ask later on is highly relevant to this and I wonder whether you would like to ask this question at this point?

Q171 Lord Marlesford: I would like to come in anyway. The Government has made it very clear that they are very unconvinced by the Green Paper approach, and the Minister has made it very clear that an important part of our economic policy is contributed to by the particular ways we deal with the matter. What I am trying to get into my mind is where are the pressures for these changes really coming from? Is it the Commission or is it some of the Member countries who have influenced the Commission to say they want to further the so-called European social model, with all the things that are happening in France? That, in other words, they see us as a pretty unattractive competitor because we are so much more successful, with our very low rate of unemployment, compared with, say, France or Germany and a number of other EU countries? What is the genesis of this great European initiative to try to have a standard system?

Mr McNulty: I think the short answer is that the genesis is accession and the pool of potential labour for labour markets throughout the EU being now 25 countries, and however many million people that means, rather than the narrow confines of the 15. I think that has prompted a debate that says if the labour market and the pool of potential labour within the Union is now so large what does that do for individual states? What does it do? I think underneath that is the balance between the accession states—which, at least for now, in many areas have been the suppliers of labour rather than having that demand from them. So in the broader sense I would say it is the accession and that, almost, big bang of 10 extra countries. Quite how that fits in with everything has prompted going in this direction. They have clearly thought of that before the big bang on 1 May. That has run almost in parallel with—without encouraging the Committee to start talking about referenda either—the debate that says (and ends with the constitution): “How does a Europe of 25 work purely in this administrative and organisational sense to make decisions in most processes, rather than one of 15?” I would say, in a one-word answer which has taken me about 200 words to state: accession and the pressure that brings.

Q172 Lord Marlesford: Can I follow that up? At least eight out of the 10 countries who acceded are, as it were, of our persuasion; they are our sort of economies—a great deal closer, anyway, than to the European social model. Maybe you can confirm, or say you do not want to comment, but I suspect that some of the “old Europe” is trying to somehow constrain the sort of growth which the Minister has so rightly paid tribute to.

Margaret Hodge: It is a broader question but I think in the debate, which both the Prime Minister and the Chancellor have embarked upon, around economic reform in Europe one of the central issues will be the flexibility of the labour market. Within that, how that debate will roll forward in the current climate, we will have to wait and see. However, I think both the Prime Minister and the Chancellor have made it absolutely clear—and I think the Chancellor is making a speech today on this very issue—that the importance of economic reform, including our attitude to labour markets, will be central to the holding together of Europe as an entity, and an effective entity in the wider global economy over time. We will just have to see how that debate goes.

Q173 Lord Marlesford: My Lord Chairman, I apologise and come back to ask the question you wanted me to ask, which is the extent to which you feel Green Cards have anything to teach us.

Mr McNulty: I think, as I alluded to in answer to an earlier question, in essence, the Green Card, which has worked well for the USA, is in the end a migration lottery, and is simply capping quotas aside from any other standard of how it works for particular sectors. It works for the US, which is perfectly fine as it is an entirely different economy from ours, in many, many ways. We, I think, without pre-empting the consultation process, will eschew that sort of approach and go for managed migration through, at least as a starting point, the economic drivers and the sectoral gaps that lie underneath that. What does our economy need as a contribution from a managed migration scheme? I think it is entirely different from the Green Card.

Q174 Chairman: Have we done quite a detailed study of the American Green Card system?

Mr McNulty: Back to my quite extensive, six weeks’ Home Office experience, I could not say yes or no, but I will find out. As I say, I am assuming it is in the context of whether it works for us, not necessarily in the context of the EU. I think it works as a system perfectly well for the US, or appears to, but if there is any substantive research on that I will happily give the Committee the reference.
Chairman: Thank you very much.

Q175 Baroness Henig: The Government have made it clear that they have no intention of giving up the UK’s ability to choose which immigration and asylum policies to participate in. Does not our exclusion from the Border Management Agency and the Visa Information System show that this approach is becoming increasingly difficult to sustain?
Mr McNulty: I do not think so. That goes back to one of our themes today, and that is about asylum, immigration and all that side of the control process—and Schengen and being outside Schengen—I think we disagree with the interpretation of the UK protocols that have led to our exclusion from the Border Agency regulation, and we consider we have been wrongly excluded from participating in the adoption of the Border Agency regulation and we have mounted a challenge to the ECJ in order to clarify that position.

Q176 Chairman: Do we know when that is likely to come before the Court?
Mr McNulty: I do not, unless anybody here does. I might get some helpful poke in the back and a date! Certainly if we have that information elsewhere I will let the Committee know. We have also challenged our exclusion from the regulation on minimum security standards on passports, and you will know the debate we had just yesterday in terms of ID cards. Even though the development of second-generation biometric passports is a Schengen requirement, we have decided to go in that direction anyway. We continue to participate in a wide range of immigration and asylum measures, and regardless of ECJ challenges we will continue to contribute actively to the EU work on strengthening the EU’s external borders including the improvement of the security travel documents. There are some areas like those that we would like to make a priority to achieve progress under our Presidency, including other issues like relations with the Ukraine and some of the Maghreb countries in terms of the immediate pressures coming into the EU areas. We do not dispute—let me just say on the VIS—our exclusion from the Visa Information System. We accept we cannot participate in the Visa Information System regulation, as drafted, because its primary purpose is to facilitate common visa policy, and as a non-participant in common visa policy we could not implement the measure sensibly, so we understand that exclusion. However, the Commission has acknowledged that we have the right to participate in the VIS for Dublin II purposes—if that makes sense! It goes back to this tension between Schengen, border control, asylum and immigration control and the overlay in the labour market as well. So they are fairly complex. As I say, please do not push me to put a date on which we may or may not join Schengen as I think it would be down the line some, but it does make perfect sense to track Schengen as much as we can to do get involved in those areas.

Q177 Viscount Ullswater: I would like to turn to the rights of migrant workers, if I may. On what basis should it be decided when labour migrants should acquire particular rights? Is it not desirable that they should acquire the right to change employers fairly early to reduce the risk of exploitation? If I could fill in there, if there is a demonstrated need for a particular work permit, because there is a hole in the labour market, is there not something to be said for adopting the workers’ registration scheme, which means that you just would need to register the change of employer and your work permit would last for a certain number of years, or months, or whatever, and would allow the flexibility which could be taken up in the market?
Mr McNulty: As I say, in terms of the development of the points system, we are exploring where to get flexibility in the process, but it does need to sit alongside what we are trying to do in terms of maintaining entry controls as well. You will know, before a work permit is granted the employer must be able to demonstrate that there is a vacancy that cannot be filled in the UK and the EU, and that is a fundamental starting point for the rest of the labour test. Labour migrants are able to change employer and there is no time restriction attached to this, provided they are able to satisfy the requirement of a work permit system, so there are elements of flexibility within it. Legal economic migrants who change employers once they have entered the UK should be subject, we would say, to the same checks and controls as those who are seeking entry and this requirement ensures that labour migrants are able to benefit from the same rights and protects them from exploitation. So it is slightly more complex, but I do accept the premise that we need to build in as much flexibility to the system as we can, whilst retaining the right in terms of entry control. So it is a clash on those terms. Perhaps we will explore it more when we come to the development on the points system.
Margaret Hodge: May I supplement that a little bit, because we want flexibility of the process for both the employer and the work permit holder. We have to constantly keep in mind—and this almost goes back to the beginning of the relationship with national, European and then more global economies—that our interests must always be to protect our domestic labour market. So the idea that once you have got a work permit you can then roam around the UK labour market without an employer wanting or needing you to fill a particular vacancy would not, I think, be acceptable to us.
Q178 Viscount Ullswater: I remember when I had a certain responsibility for the work permit scheme in the Department of Employment, as it was then, there seemed to be an endless demand for Halal butchers. I always wondered whether that was just an exploitation of the work permit system.
Margaret Hodge: I think there is a robust system to ensure that the rights of migrant workers are being respected in this country.
Mr McNulty: At the moment, and I think it is only a temporary phenomenon, it is bands playing at G8 concerts!

Q179 Earl of Listowel: May I ask, can you assure us that there is close monitoring of the rights of migrant workers so that in practice they are being respected? Is there a robust system there to ensure that the rights of migrant workers are being respected in this country?
Margaret Hodge: I think there is a robust system to ensure that the statutory rights of all UK workers—all workers in the UK—are properly promoted and protected. I think we have a good record in strengthening that across the board to prevent exploitation. Again, the research data (and I do hope you have this report) demonstrates that so far there has not been evidence of exploitation or of any refusal to meet those statutory rights in employment of anybody working in the UK.
Mr McNulty: I would say, in general, if I may, that the greater clarity there is in the management of the migration system and the greater clarity there is in what the rules are for legal migration, the greater chance we have of keeping people within the legitimate system rather than in the murkier world of the informal economy—for want of a better phrase—where your concerns about exploitation are far more readily apparent. I think that is part of the task of the development of the five-year plan.

Q180 Lord Avebury: It might be appropriate for me to ask a later question at this stage, because it follows on what you have just said. Why have the Government not ratified the UN Convention on Migrant Workers? You say there are statutory systems to protect these workers, so what stops you from signing the Convention? Can I also ask you to say something in particular about domestic workers who, to my knowledge, have been grossly exploited in the past, and that may have been proved? Are we still going to admit domestic workers under your new system or are they covered by the exclusion of unskilled persons in your new formulation?
Mr McNulty: I think the point remains the same. If gaps in the labour market for domestic workers cannot be filled either domestically or in the EU then there is still scope to go beyond that. It is an interesting point, in the sense that, however complex, it is easier to manage the processing of a doctor’s ability to fill a gap for a particularly highly-skilled post with all the incumbent qualifications and everything else than it is to say there is a gap at the other end. I think it touches on the point I made before: the more we have that flexibility to go beyond the EU for some of these gaps and vacancies—and I think it is in the informal sector where most of the abuse of domestic workers you talk about occurs—the more we can get that demand satisfied in the formal and regulated area we are talking about and the less chance there is for them to fall into that informal area and the subsequent abuse. I take your point entirely about the abuse of domestic workers.
Margaret Hodge: Can I add a bit to that? Those legitimate workers who come here will be covered by legislation like minimum wage, health and safety, and all those things. I think what you are alluding to is an issue, for example, of under-age people being brought in and exploited. There is work going on. I know, across Government to try and ensure that at the point of immigration, really, we try to spot and identify that exploitation, particularly of young people, to try to prevent it. It is illegal and we have to use our best endeavours, working with the police, the immigration service and social services and others, to firmly stop it happening. It is a very, very difficult area of public policy because of the difficulty of identifying where it happens.

Q181 Lord Avebury: And the Convention?
Mr McNulty: You will know that as that starts to dip into the murky world of human trafficking, and all that informal undercurrent I was referring to, we have made that one of our key priorities for the forthcoming Presidency (which I can say for about another three days and then it starts). That is as much about prevention as it is about the link at the other end of the catenary, if you like, to serious crime and all that follows from that on an EU basis.

Q182 Lord Avebury: And the Convention on Migrant Workers?
Mr McNulty: I think that is one of the key elements that we are referring to. I think we are still looking at how signing that and doing something about it works in the context of our control over our own domestic affairs, and simply that, thus far. For example, we are doing the same with the memorandum—or whatever it is—on trafficking, too. So it is a balance between signing and feeling good about it or signing and seeing where it fits in and what you can actually do with it. Again, I think, because that is not entirely satisfactory, I will do the Committee a separate note on that, if I may.
Chairman: Thank you very much.
Q183 Viscount Ullswater: I will go back to the rights of migrant workers and ask whether the Government will review its opt out from the Directive on long-term resident third-country nationals, as a result of which third-country nationals in the UK are discriminated against by comparison with their counterparts in other Member States? It seems to me a rather dog-in-the-manger type of attitude towards Europe which we could, perhaps, negotiate away?

Mr McNulty: Let me say that we will certainly look at it. I do not think I accept that just because we do not do things here as they do in other countries that discrimination is, perhaps, quite the right word in that context, but I think the issue is an important one which we will keep under review.

Q184 Lord Avebury: On the subject of regularisation, you have made it clear that you see decisions on this matter as entirely for Member States, but you acknowledge they could impact on other states in the European Union. Is there a likelihood that regularising somebody’s status in one country could encourage them to seek to enter a neighbouring one, either legally or illegally, and have an impact on their own labour market? Do you see a danger that, in particular, the widespread use of amnesty, such as the recent one in Spain, will encourage further illegal immigration into the European Union?

Mr McNulty: I think it may if there was a broader assumption of “today Spain” they would get to other countries in the end simply because of the regularisation. At least understanding where people are and who they are is better than having a sort of undercurrent of people who are in the irregular world—for want of a better phrase. I guess it might be a pull factor in terms of “Just get here, [ie the EU], keep your head down, try your best in the informal economy and an amnesty will be coming along soon.” It might well act as a pull factor, as I say. I cannot remember the details of how Spain are regularising but they are talking about up to 700,000 people; that is an extra 700,000 people in the labour pool in the EU now. I do not know the array of skills or whatever else comes with those 700,000 people, but that must have, even in a very, very large potential labour market, an impact. So it is one worth watching. The last time we sought to regularise in any sort of way (we do not use the word amnesty) was the family ILR exercise, where there were people who had been within the system with families applying before 2000, by 2003 not a whole lot was going through and we are now pushing those through as much as we can, purely, I think, on a fairness and humanitarian basis if nothing else. There are something like 18,000 to 20,000 people going through that process—far more than we thought. In part, if I was being frank, which I always am, at least some have come from the informal sector and have been recognised again—there whereabouts not having been entirely known—because they want regularisation. So it is a sort of two-edged thing, is it not? There are great benefits all round for regularisation but the notion of it being a pull factor for those who would seek to come illegally and just keep their head down and wait for the next amnesty or regularisation is an important point as well.

Q185 Lord Avebury: Do you think there is a case or a need for European Union states to notify each other where they propose to undertake a regularisation exercise?

Mr McNulty: I would say, absolutely, yes, not least because, depending on the skills mix, the impact of 700,000 on the broader EU market could be very, very significant. I would put it round the other way, almost, and say that our plan, over the five-year plan and the points system and everything else, is to get to a stage where we can shrink as much as possible the illegal working because there is clarity and opportunity afforded in the regular and managed migration system. I would hope that the publication of the consultation document does what there has not been a whole lot of in this country, certainly not during the election campaign, and that is a grown-up, mature debate on managed migration and the contribution of migrants to our economy now and in the future. I would relish that.

Chairman: That, we hope, is the business of this Committee.

Q186 Lord Corbett of Castle Vale: Can we have a look at the effects of labour migration on third countries? You say in the written evidence that there are “other policy options” which are likely to be more effective than some form of compensation in strengthening the capacity of developing countries to help them manage the impact of skilled migration. Can you give us some idea what kind of thing you have in mind?

Mr McNulty: I think this is a very, very live issue. We have spoken for most of the session, at various stage, about highly-skilled migrants, about essential doctors, nurses and others coming here. I think we need to work up and think about reciprocal policies that are not just about compensation but are about managing to both fill our gaps and address some of the development and skills issues at the other end. This, again, is not a policy that is formulated but there must be at least some way in which we can see where, for example, failed asylum seekers, with apparent skills, have to return to their country where it is safe to do so. Are there skills packages, training and other elements we can do for those particular people so that they can make a contribution when they get back to their home country? Areas like that,
I think, we need to explore rather than it simply being a chess game of will. The fear in part two, I think—and this certainly has not happened in the health sector yet but it may in others—is what happens when either the demand is satisfied or there is now a supply of indigenous workers (if I can use that phrase) that will satisfy that demand and you tell the third-country, highly-skilled workers: “You can go now”, without any other standard of what may or may not be their contribution back home in terms of those particular sets of skills they have developed in this country. We need to complete the circle and see what we can do, working with DFID and across the piece, to start the process of filling the gaps left behind because we have highly-skilled workers here, or facilitating, where possible, those highly-skilled workers going back to develop the infrastructure back in their own countries. It is a vexed question. We cannot continue with cherry-picking the best of the highly-skilled elites from other developing countries and saying “Thank you very much. Hope your home country gets on fine without you.” We need to get a fuller picture. I accept the import behind the question, in that sense.

Q187 Chairman: I see in the press this week the British Medical Association put forward some sort of idea of a transfer fee. Has your department formed a view on that?

Mr McNulty: It is very, very early days in terms of that. I think I am saying that we recognise there are these issues and problems but I need to have further discussions—which I will do on a tri-lateral basis with FCO and DFID—to start filling the whole picture up, to take a (it is a word which has fallen out of favour now) holistic approach to the whole thing rather than saying: “There’s a gap; filled it; never mind the consequences or the gap that is left behind in the home country.”

Q188 Lord Marlesford: When, on Friday, the UK takes over the Presidency of the EU what are your strategies for immigration and asylum? In fact, as we are the Home Affairs Committee, covering the whole of EU matters, we would like to hear about other Home Office areas and matters concerned with criminal justice and anything else that comes under our remit. Give us a feel for what you are trying to achieve.

Mr McNulty: Much of the work on asylum and immigration is fairly low-level, in the sense it is developing a progression of work already in train rather than any huge big bang, in the sense that, as I indicated earlier, we will try to develop more readily relationships specific to asylum and immigration with the Ukraine and the Maghreb countries in terms of those outer borders of the EU. I think one of the very first activities we have as Presidency is that next Monday I am hosting, with Andy Burnham, my colleague, a seminar for the other countries on refugee settlement, at one end, and regional protection, at the other end, which is EU-ese for: “Can we do development and other things in many of the countries that are high up on our list in terms of asylum seekers to get infrastructure, capacity and all those other elements to dissuade people from using the asylum route, when they are clearly economic migrants?” So, on the regional protection and resettlement angle we will be doing more with the high-level working group on the links between migration and development generally. As we were saying with those highly-skilled gaps, it is time we closed that circle and looked at the full element of development and migration. Then, in more general terms, we support the development of Frontex, the European borders agency, and that will be taken forward a bit in terms of settling down, now that it is in Warsaw; we need to take forward work on the security of travel documents, notwithstanding what I said about Schengen and others, and take work forward in terms of the Visa Information System; manage more work on the Schengen Visa Co-operation, including adjustments to the common visa list, visa facilitation and common visa applications, and develop, again, work on new detection technology and the use of passenger data for border control purposes. So, as I say, nothing earth-shattering but all important work that needs to roll forward. The same in terms of some work on local border traffic, air borders, taking forward co-operation on the return of immigration offenders and, crucially, working with the Commission to develop a joint strategy on human trafficking, and all that that means in terms of organised immigration crime—it is not just trafficking it is also facilitation, which is not quite trafficking—and those who would facilitate people using illegal mechanisms. More broadly, in counter-terrorism, we are trying to take forward a framework decision on the European Evidence Warrant, trying to get to common standards on the retention of telecommunications data, improve the exchange of information in terms of law enforcement and agree an EU programme to protect critical infrastructure. On serious and organised crime we are proposing the enhancement of the sharing of information of law enforcement agencies needing to fight crime, support of the intelligence-led operation by the development of a European criminal intelligence model, and, again, trying to come up—from that end—with a European plan of action to tackle human trafficking. There are other areas in terms of civil justice, drugs and fundamental rights we need to take forward. I think the interesting thing is we are trying to get to a stage where all those apparent little boxes and silos are far more readily integrated. We are now working on the Home Office asylum and immigration spine, the criminal justice spine, the police/counter-terrorism
spine, and more and more the overlap and interplay between the three is simply growing and growing. And I think that is what we will find at the EU-wide level during our Presidency. I would love to say: “It is this, and then we are going to try and get it all gift-wrapped in a little box and have this done in the JHA area by the end of the Presidency”, but it is not like that, there are lots of undercurrents going on. We had a very useful informal G8 in Sheffield last week, or the week before, and there were some very, very good bilaterals with Germany, France and Italy within that, as well as with Russia. Andy Burnham, my colleague, has been to Poland to talk directly to their minister, and they are happy to facilitate further talks with us under our Presidency and the Ukraine, in terms of that quite porous but very, very serious issue about the border between the Ukraine and some of the other former Soviet republics and the EU—that eastern border with the EU. So lots of fun, lots of good things going on, starting with, as I say, the whole issue of refugee resettlement and regional protection, which I think is the very first thing happening in the Presidency—I do not know—but that is next Monday, with UNHCR and others there as well. So we are trying to take that forward.

Chairman: Thank you very much.

Q189 Lord Corbett of Castle Vale: Mr McNulty, that is a very ambitious agenda and I wish you luck with it. At a more pragmatic level, can I tell you that an international lorry driver friend of mine has told me that in the last 10 days—and he goes through Coquelles fairly regularly—the three static machines there which are supposed to poke into vehicles to detect whether they have got any human beings on board, have been unmanned and inoperable. Could you find out whether that is so, and if so why? We are getting much better at deterring illegal immigration but if the French are not taking this as seriously as they should—because people try harder when the walls get higher. Would you be able to do that and let us know, please?

Mr McNulty: I think the polite response is I shall. I have got a less polite response in my head but I will save that for the officials when I go back.

Q190 Lord Avebury: You mentioned the Maghreb as a particular area of interest, and of course there has been a tremendous amount of migration, both legal and illegal, from those countries. We have association agreements, I think, with all of them now and the Algerian one has been ratified and we have existing agreements with Tunisia and Morocco. Under those agreements, there is provision for the human rights to be examined by a sub-committee, but we do not seem to have taken that forward, in the sense that I have had an answer to a question asking for dates for these meetings and none have been scheduled. If you were going to co-operate with the Maghreb countries in planning migration more carefully between their countries and the European Union is not the question of the human rights of those countries of origin of supreme importance? How can we take that forward during our Presidency?

Mr McNulty: I would agree with that. I think in specific terms we need to do more with Libya. I am not sure if there is an association agreement—I do not think there is—and that is something we need to work on—Libya and the Ukraine are the key two—and then to look at a broader approach for the EU with the Maghreb, as we do, hopefully all the time, take the issue of human rights very, very seriously. You are right, it is an enormous (and some countries argue about it) transit through to Europe or the source of a good deal of migration—as you say, both legal and illegal. I would guess, many of the 700,000 in Spain will be from there and we all know about France’s traditional links as well. So it is not all a massive illegal route; there are legal and illegal routes from there. That plus the Ukraine and eastern border are areas worth exploring but I would say that human rights must be key to that, absolutely.

Q191 Chairman: Minister, I think we have imposed quite enough on your time and patience. We agreed earlier not to press the point of Zimbabwe deportees because it is not the business of this inquiry. Can I just say, on a personal basis, that I have never, in my 10 years in the House of Lords, witnessed such unanimity as there was after Baroness Scotland repeated the statement on Zimbabwe in the House of Lords on Monday—a unanimity of concern. I am delighted to see that the Government have responded, if only on a very limited time basis. Can I express the personal hope that the Government will think very carefully indeed before resuming deportations to Zimbabwe? The normal thing is to say, “I make no apology for saying this”, but I do apologise for it. But I cannot resist the opportunity of a Home Office Minister sitting before us without making that point. Having said that—

Mr McNulty: A flagrant abuse of the Chair, if I may say so!

Q192 Chairman: A total abuse of the Chair, absolutely! Can I thank you both—and indeed Mr Wells—very much indeed for coming today; it has been extremely helpful. I repeat my thanks for the written evidence that we had earlier. It is very good of you. I am sorry, we have probably extended the time that you expected to spend with us but it has been very useful. I am most grateful to both of you for your very full and frank replies to our questions.

Mr McNulty: Thank you for allowing me to take my jacket off!
Supplementary memorandum from the Department for Work and Pensions

When I appeared before the committee on 29 June I undertook to respond to Lord Marlseford’s question about the proportion of migrant workers who go into the construction industry and the proportion of people in the construction industry in London who are migrant workers.

In terms of the proportion of people in construction who are migrant workers, information from the Labour Force Survey shows that construction employs just over 2.25 million people in the UK, of whom around 5 per cent (113,000) were born outside the UK. This is a lower proportion than the UK economy for a whole, in which about 9 per cent of people in employment were born outside the UK.

In London there are currently around 230,000 people employed within the construction sector, of whom 28 per cent (65,000) were born outside the UK. While this is significantly above the national average, it is below the figure for the London labour market as a whole, where roughly a third of all people in employment were born outside the UK.

On the question of what proportion of migrant workers choose to enter construction, we have some information on this, for EU accession countries, as part of the Workers Registration Scheme. Between 1 May 2004 and 31 March 2005, 7,755 migrants from the new EU accession states applied to the Worker Registration Scheme listing the construction sector as their area of work. This is equivalent to four per cent of all worker registrations since accession. In London the corresponding figures are 2,335 applications and five per cent of all registrations for work in London since accession.

Margaret Hodge
14 July 2005

Supplementary memorandum from the Home Office

I am writing to follow up on some of the issues that were raised during the oral hearing on 29 June, to which I was unable to respond on the day. I have also taken the opportunity to respond to some of the points raised in the evidence submitted to the Committee by MigrationWatch.

Lord Corbett of Castle Vale raised the issue of young offender policy, and I am pleased to be able to provide the following response:

We know that offenders are less likely to re-offend if they get and keep a job. That is why the Government has included in its National Reducing Re-offending Action Plan, a number of key actions relating to improving the employment, training and education of offenders. Offender Managers at a regional level are producing regional reducing reoffending strategies that reflect the key actions in the national plan.

One of the key actions in the National Action Plan is to produce a strategy for making an effective business case to employers for employing offenders. To encourage employers to recruit offenders, a case will need to be made to employers that offenders can make suitable employees, and that by engaging with prisons and probation services, employers will have access to a source of potential job ready, or near job ready recruits.

A joint Prison and Probation Service Employer Engagement Strategy was produced in October last year, and is currently being updated to take account of changes relating to the establishment of the National Offender Management Service.

This strategy outlines how the National Offender Management Service (NOMS), and the Prison and Probation Services, will engage with employers in sectors that have significant job opportunities that are suitable for many offenders. The sectors were identified following consultation with the CBI, other employer organisations and Jobcentre Plus. The sectors that are being targeted are:

— Construction
— Utilities
— Catering and hospitality
— Industrial cleaning
— Sport and fitness
— Transport and distribution
— IT
— Horticulture
NOMS is working with other Government agencies, such as the Department for Education and Skills, Jobcentre Plus, Learning and Skills Councils and Regional Development Agencies to promote the case with employers at both national and regional level, that offenders, with suitable training and support, can meet some of their workforce needs.

The National Grid Transco Offender Programme, which involves training prisoners for employment in the gas industry, is a good example of how offenders can meet the workforce needs of employers. Over 200 prisoners have to date been employed in the gas industry. NOMS is working with NGT, and with other major employers, to develop similar initiatives with other sectors.

At regional level, NOMS is working with the Learning and Skills Councils to prototype a number of regional projects to train offenders to meet the needs of employers in their regions. The lessons from these projects will inform the development of the new Offender Learning and Skills Service.

NOMS is also in discussion with Business in the Community (BITC) to see how it could use its employer contacts to build on work that is being developed with employers at a regional level. BITC is looking to organise a number of regional Seeing is Believing visits to prisons and employer breakfast events to promote the case for employing offenders.

Lord Marlesford asked a detailed question concerning both the proportion of migrant workers who enter the construction sector, and the proportion of construction sector employees within London who are migrants. My understanding is that my colleague Margaret Hodge, the Minister of State for Work, has addressed this issue in her own response to the Committee.

Lord Avebury asked whether we found it necessary to take any compulsory measures to remove people who come to the end of their work permits, and I am happy to provide the following response:

Work permits applications for permission to employ an overseas national in the UK can only be submitted by a UK based employer. All applications are assessed against a strict criteria. We normally only issue work permits for posts which require National Vocational Qualification (NVQ) level 3 or higher, and where the employer has demonstrated, usually through advertising, that there is no resident or European Union labour available to undertake the work.

Once the approved period on a work permit has been completed, there is currently no compulsory removal of overseas nationals from the UK. Evidence shows that in most cases the individuals will either regularise their stay in the country with a further work permit application, or return to their home country.

In instances where individuals remain in the UK without obtaining further approval, they will be liable for removal by the Immigration Service.

An additional point raised by Lord Avebury related to the Community Preference Principle, specifically the possibility of exempting particular sectors. The position of the UK government is that it is vital that individual Member States retain the flexibility to identify areas within the labour markets where it is necessary to waive the Community preference principle. We also recognise that where we have identified migration routes which are not subject to the preference principle we must also maintain our commitment to mitigating the International impacts of migration to the UK. Under our work permit system, of course, the general principle is that employers must first seek to fill vacancies from the resident and EU labour force. However, where there are recognised, accepted, shortages in specific professions employers are not required to demonstrate that there is no resident or EU labour available for the position.

I also agreed to provide the Committee with details of any in-depth study into the US Green Card system carried out by my department. The short answer is that no detailed study on this point has been undertaken. As part of the on-going work on the new points based system research was carried out on immigration systems from around the world, the details of this research can be found within the recently published consultation paper *Selective Admission: Making Migration Work for Britain*. It is important to note that the Green Card system is an Immigration lottery that is designed to meet very specific needs, it is not comparable with the objectives of economic migration to the UK.

I am pleased to be able to provide an update on the action launched by the UK to the European Courts of Justice: The UK launched an ECJ challenge against our exclusion from participation in adoption of the Border Agency Regulation on 14 February 2005. Council’s defence has been received and we are now at the written procedure stage when interventions are made to which the UK and the EU Council have the opportunity to respond. This will last for around six months (from July–December 2005). Once that stage is complete we will wait for a date for the Court hearing. This is estimated to be sometime in summer or autumn 2006. After the
Court hearing we will wait for the Judgement (likely to be six to 18 months later so from end 2006 to early/mid 2008).

Lord Avebury made reference to the UN Convention on the Protection of Migrant Workers and their families. I believe the following information will provide the Committee with greater clarity on the government’s position:

We have no plans to ratify the UN Convention: although the aims of the Convention are laudable and shared by the UK. Incorporating the full terms of the Convention into our law would mean fundamental changes to legislation and would undermine the UK’s system of frontier controls. The Convention would give migrants the same access to public funds and services as British citizens, regardless of their length of stay in the UK. For example, they would be entitled to equal access to housing, education and social services with UK nationals raising major cost implications. The UK’s difficulties with this Convention are shared with most developed countries. At present no EU or G8 states have signed or ratified the Convention. The government believes that the right balance has been struck between the need for immigration control and controlled access to public funds and services on one hand, and the protection of the interests and rights of migrant workers and their families on the other.

Lord Corbett also drew attention to the issue of border controls, a separate letter addressing the points raised has been sent to Lord Corbett and I include a copy at Annex B.

I would also like to take this opportunity to thank the Committee for offering the opportunity to comment upon the evidence submitted by MigrationWatch. My response is attached at Annex A.

I look forward to seeing the Committee’s conclusions once the inquiry into economic migration is completed.

Tony McNulty
27 July 2005

Annex A

Response to MigrationWatch evidence

KEY QUESTIONS ON THE GOVERNMENT’S ALLEGED ARGUMENTS FOR IMMIGRATION

Allegations have been made that, over the past three years, the government has kept changing its arguments for large-scale immigration as each one is shown to be faulty. They are set out below with our responses.

Migration seeks to support wider government economic objectives of economic growth and increased productivity. Migration policy therefore needs to be carefully designed in order to bring in the migrants who can best contribute to these objectives. In particular these migrants are highly skilled who through their knowledge and earnings can raise economic growth, productivity and the welfare of the population as a whole. Migration policy is also used to fill important gaps in the labour market to ensure that the UK economy remains as dynamic and flexible as possible.

Many of the statistics which MigrationWatch criticise have not been used as justifications for migration but to illustrate that the policy has been having some success. The five year strategy is about building upon and improving this in the context of other objectives around simplification and improved control mechanisms. In many cases MigrationWatch’s interpretation of the statistics is inaccurate—as set out below.

It should also be noted that the government does not have a policy of seeking “large-scale” migration. The UK is a growing economy and it is essential that we have the people and skills we need for our businesses to be able to operate in a competitive global economy.

1. LEGAL IMMIGRATION WILL REDUCE FALSE ASYLUM SEEKERS

This was first floated by Mr Blunkett in a speech to the Social Market Foundation on 26 June 2002. MigrationWatch pointed out that the 10 countries which produced the most asylum seekers and the 10 countries that produced the most applications for work permits were entirely different—except for China where both asylum seekers and work permits had increased. In May 2004 the National Audit Office, reporting on asylum statistics, said that “There is no significant statistical relationship between the number of work permit applications and asylum applications over the period”.

Response: This point was raised by the then Home Secretary with respect to the possible introduction of low-skilled routes. As such, MW's comment re the nationality of work permit holders (who are more highly skilled) is largely missing the point. The Home Secretary was talking about creating a legal route to respond to employer demand for low-skilled workers, which might also reduce the numbers trying to come here illegally, not people using the Work Permit route. The quote MW take from the NAO report is similarly focusing on the different issue of work permits and this part of the NAO study was investigating and dismissing the claim some had made that "the reason asylum numbers were going down was that the HO was simply giving them work permits. Again, different to the point the Home Secretary was making.

2. IMMIGRANTS ARE NEEDED TO PAY OUR PENSION

The House of Lords Economic Affairs Committee dismissed this argument in November 2003. They reported “We conclude that . . . it is neither appropriate nor feasible to attempt to counter the trend towards a more aged society in the UK through a manipulation of Immigration policy”. The UN World Economic and Social Survey put it even more strongly in November 2004: Incoming migration (to Europe) would have to expand at virtually impossible rates to offset declining support ratios, that is, workers per retirees”.

Response: The government’s position is that migration may be able to play a part in helping address the challenges of an ageing population (there is some evidence that National Insurance contributions would have to be higher under lower migration scenarios). However, the Government has always recognised that addressing these challenges requires a whole range of policy responses, including most importantly extending working lives and reform of the pension system. Migration policy is not specifically designed to address demographic issues.

3. IMMIGRANTS MAKE A NET FISCAL CONTRIBUTION OF £2.5 BILLION PER YEAR

An investigation by Robert Rowthorn, Cambridge Professor of Economics, concluded that the outcome depended on the assumptions made but that the impact was probably neutral. The authors of this estimate themselves said that the tentative nature of the estimate should be emphasised. The IPPR has since described this claim as “meaningless”. They have produced a further calculation which Migrationwatch are examining.

Response: The fiscal element is only one part of migrants’ economic contribution. It is true that the absolute number will vary from year to year and in accordance with the budget cycle. The IPPR said it was “meaningless” not to put the figure in this wider context—it did not describe the finding itself as “meaningless”. However, the key finding from this piece of research was that migrants make a relatively greater contribution to the public finances than non-migrants. This gap in relative contributions has indeed been shown to have widened in recent research by IPPR which confirmed and updated the earlier HO work. The research inevitably requires a number of assumptions to be made—these are very clearly set out in the original report. The simple facts are that migrants are more likely to be of working age and have higher average earnings; so it is likely that under any plausible assumptions they will yield a net benefit.

The study includes the dependent UK boat children of migrants—likely to be a net fiscal cost. Defining migrants as the foreign-born, and consequently excluding their UK-born dependents, would raise the estimated net fiscal contribution from £2.5 billion to £5 billion.

4. IMMIGRANTS COMPREHEND 8 PER CENT OF THE POPULATION BUT CONTRIBUTE 10 PER CENT OF GDP

This is just a simple miscalculation. The Government have omitted from the immigrant population their dependant children who were born in the UK. If included, the immigrant share of the population is 10 per cent which is also their contribution to GDP.

Reports: The correct Home Office and HMT statement is that migrants comprise 8 per cent of the working age population and yet contribute 10 per cent to GDP. It is the working age population which are relevant to GDP. Whether or not migrants have dependant children is simply not relevant to this point (though it is to the point on fiscal contribution above). Migrants contribute disproportionately to GDP due to their higher than average productivity.
5. **Growth Would be Nearly \( \frac{1}{2} \) per cent Lower Without Net Immigration**

This was the Prime Minister’s claim to the CBI on 27 April 2004. In fact, the Treasury’s figure (which is based purely on the addition to the working age population) is 0.4 per cent but the population is also increased by 0.26 per cent so the benefit in terms of GDP per head is, on this basis, more like 0.14 per cent. (Even this small benefit is reduced as migrants have children and eventually retire, both of which add to the dependant population). This is a result consistent with studies in the US, Canada and Holland. In the UK this amounts to about £25 per head per year. (See also The Spectator article of 5 June 2005).

**Response:** MW seem to agree this figure (the first part of their comment is that the true figure is 0.4 per cent when the PM said “nearly 0.5 per cent”) which is based purely on HMT’s published trend growth forecasts. It is true that this does not in itself capture GDP per head though MW’s calculation still produces a GDP per head benefit. In any case it is likely that the 0.4 per cent is an under-estimate of migrant contribution to GDP because migrants are more productive than the non-migrant population (higher skills, higher salaries and more likely to be of working age) and through having positive spillover effects.

6. **600,000 Vacancies Need to be Filled**

Between August 2001 and 2004 net immigration was about 34 million but vacancies went up, not down.

The reason is that immigrants also generate demand. So the argument from “shortages of labour creates open-ended demand for more immigration (See Marlin Wolf in the FT, 27 January 2005).

**Response:** The fact that there are 600,000 vacancies to be filled is not the only or indeed the main reason for migration. It is true that there is not a fixed stock of labour. This is partly demonstrated by the evidence that migration has not had an adverse impact on the labour market outcomes of the domestic labour force. Rather, as the experience of EU accession has shown, labour has been generally flowing to sectors that have been experiencing recruitment difficulties and the main effect has been to boost output and employment in these sectors.

Furthermore, Migrationwatch seem to argue that migration is the sole cause of demand for labour. This is not the case—migration may create some jobs (a positive effect) but the main reason for the large numbers of vacancies is the health of the UK economy.

However, of these 600,000 vacancies a significant number are described by employers as hard to fill. Our migration policy can, alongside other policies and efforts by employers help to deal with the short-term disequilibria in the labour market, and avoid shocks and volatility in the economy. Government’s approach is a balance between a focus on helping priority groups, such as lone parents, people on incapacity benefits and over 50s back into the labour market, but also recognising that there is likely to be a continuing need for some migration to meet demand for labour in certain sectors or parts of the country, either from within the EU or from outside it. It is important that migration supports the smooth operation of the labour market—through meeting demonstrated needs that cannot be met from elsewhere—and does not unnecessarily disrupt it.

7. **Immigrants Earnings are 17 per cent Higher than Those of Indigenous Workers**

True—for those in work, but participation rates are lower and unemployment higher. Correcting for these differences makes the average wages of immigrants about the same as for the population as a whole.

**Response:** What MW say about migrants’ participation and unemployment rates is true—this is why the government has extensive policies to assist this, for example on refugee integration and helping other groups disadvantaged in the labour market. It is a separate issue that migrants who are in work on average earn more than non-migrants (the most up to date figure we have on this is 13 per cent more) indicating that they are more highly skilled and more productive. The fact that migrants in work overall earn this much more illustrates that our managed migration policies are successfully targeting high skilled and high paid migrants. This is something the five year strategy intends to build on.

Tony McNulty, MP
Minister of State, Home Office

27 July 2005
MONDAY 4 JULY 2005

Present
Avebury, L
Corbett of Castle Vale, L
Henig, B
Listowel, E
Ullswater, V
Wright of Richmond, L (Chairman)

Examination of Witness


Q193 Chairman: Thank you very much for coming.
Dr Apap: Thank you for inviting me.

Q194 Chairman: I think you know what the subject of our inquiry is, which is basically economic migration, and it was partly stimulated by the Commission’s Green Paper. We hope to produce our report by the end of October in the knowledge that this is well beyond the Commission’s original timetable. We are very grateful to you for coming. I will ask my colleagues to ask you questions. I do not know whether you have had warning of our questions?
Dr Apap: Yes, I have.

Q195 Chairman: Our aim is to find out from you where the European Parliament stands and particularly your Committee. Can I start off with that question, what is your Committee’s general position, if Parliament has one position, on this question of economic migration? Secondly, have you made any contribution yet to the debate on the Green Paper? If not, when do you plan to do so?
Dr Apap: I have to give you a qualified answer to that because, indeed, there has been a report, which was approved in the last plenary in Strasbourg which itself served as the position of the Committee. It is the Patrick Gaubert Report. I have brought you a copy and maybe you would like to keep it for your reference. It was adopted in the last session in Strasbourg and is about legal and illegal migration into Europe. This is what has been adopted so far at the level of our Committee, though Ewa Klampt— who is a German EPP MEP—also decided on her own initiative to produce a report. It will be presented to the Committee first. She will finish it next week: you are a week too early unfortunately. I tried to get it but she is still not ready, and it still needs to be voted in the committee. That will happen in the first session of Strasbourg in September; there are two Strasbourg sessions in September. Then it should be presented in the plenary for full adoption in the second September session. That will be the real report on economic migration for the EU. Any more than the Gaubert Report, I do not have at the moment.

Chairman: Thank you very much, that is very helpful.

Q196 Lord Corbett of Castle Vale: Can you just explain to us how much scope you think there is for Member State authorities to regulate labour migration? How much regard should they have to trying to protect the domestic workforce?
Dr Apap: The whole principle so far is that there will be a common framework, as in a common set of standards or minimum standards, set at European level, so that Member States do not diverge too much from the diversity which exists already, so as to try to guarantee a certain minimum level of rights to migrants who are coming in for economic purposes. The idea is not at all that this should be regulated from “Brussels”; it is completely upholding the principle of subsidiarity. It is for Member States to define what their needs are in complete dialogue with the local regional authorities as well as employers. I think employers will play a very, very important role in defining what the needs of the labour market are at national, regional and local levels also. It is up to Member States entirely to decide whether they even need to issue quotas, let alone what the quotas should be.

Q197 Chairman: In forming your own Committee’s view, have you taken evidence from business and, if so, in what shape or form?
Dr Apap: So far there have been some informal meetings, especially with NGOs. We have listened to what the trade unions and business have said and we have read their reports, but we have not formally started a whole procedure.

Q198 Lord Corbett of Castle Vale: Against what you just said in response to the earlier question, do you see any role for the Commission in trying to stimulate more efficient labour migration across the Union? The Commission itself, putting the emphasis on national policies.
Dr Apap: Yes, to define what the common lines should be, what the common threads should be across the different national policies and what the guarantees should be also for rights eventually.

Q199 Lord Corbett of Castle Vale: Forgive me, but that is not the same as the Commission being active in trying to stimulate economic migration.
Dr Apap: The Commission has set out a whole series of proposals for directives; some have already been adopted. In my view, and I think my colleagues’ views, this will eventually constitute, to a great extent, what will become the package, therefore the framework, of a common migration policy. Notwithstanding that, I think there will also be a White Paper building on the Green Paper on economic migration and the November 2000 Communication on immigration, saying what is understood and how to define certain standards and principles.

Q200 Lord Corbett of Castle Vale: There is Community preference for EU nationals at the moment; do you think that should be strengthened and do you see a case for applying it to third country nationals?

Dr Apap: I think the preference for EU nationals, as in having access to rights in the labour market over that of third country nationals, is really quite strong as it is. Indeed, there normally need to be checks that, in fact, a post cannot be filled by EU nationals. However, the reality, and what studies seem to show, is that at all levels of the labour market there is a need for posts to be filled despite the levels of unemployment currently in the Member States. Also, there is no real proof that the newcomers would enter into direct competition with the unemployed. I think the two policies should complement each other, therefore really addressing, more punctually, the question of unemployment through a more precise type of training for unemployed, trying to see what the labour market is and, therefore, adapting the training towards unemployed people who are then participating in certain training courses while on social benefits whilst still seeking employment. They could eventually have the hope of securing a good job as a result of the training they undergo, which I do not think is the case so far, at least not in a certain number of Member States. I think so far there is a kind of precondition that people who are on unemployment benefits need to show some initiative towards a salary to be eventually paid for taking on certain jobs either. We also see clearly through studies that migration itself is part of a development policy: the remittances sent by migrants contribute much more at times than EU aid or US aid has contributed as a percentage of GDP. Therefore in itself it is a very beneficial mechanism for the countries of development.

Q201 Earl of Listowel: Thank you very much for what you said. On the issue you raised, we have programmes in our country: the New Deal for the Unemployed, New Deal for Lone Parents and Young Offenders. Are you concerned that there might be, inadvertently, some disincentive for employers and Government to train up these hard to reach groups if there is no real proof that the newcomers would enter in direct competition with the unemployed. I think so far there is a more liberal migration policy? I think you covered this to an extent in what you said, but do you recognise that as a possibility?

Dr Apap: In Belgium, for example, there is a system called CPAS. I am not saying it always works perfectly, but it certainly goes in a good direction. It could be looked at as a starting point for other countries and I am sure maybe in your country as well. It is a kind of contribution to employers, towards a salary to be eventually paid for taking on someone who has been unemployed, to help those who have certain qualifications and have been seeking a certain type of job. You address two situations at the same time.

Q202 Lord Avebury: Can you sum up, very briefly, what your committee thinks about the case for a common European Union policy on economic migration?

Dr Apap: Officially it does not have an opinion yet, therefore I cannot say as yet. There are still divergent views on it. There will be quite interesting debates in September on the matter. There is the concern about the unemployed not being neglected, and that transition periods for EU citizens of new Member States should try to be lifted as soon as possible to allow jobs to be taken by the citizens of the new EU Member States. However, there is also a very, very strong feeling that legal immigration is needed, not only because of demography and innovation, but
also the high level of tragedy linked to illegal migration. People are using other means, at times at the cost of their own lives, to come in and there is a certain toleration by governments of illegal migration or, let us say, cheap labour which shows very clearly that there are jobs for migrants and this is not something to be tolerated because we need people to have rights. That is the starting point for our committee. Also, it is the question of equality, if we want to say we are living in a democracy. We must make sure the people who are employed and are working in our country have rights, especially equal access to economic and social rights, civil participation and, as much as possible, political rights to make their status as close as possible to that of EU citizens moving across the Union.

**Q203 Lord Avebury:** As you say, this is a very controversial subject and Member States may have different views on it. You will have seen that at the Commission’s public hearing on 14 June Vice-President Frattini is reported to have advocated an ambitious policy on economic migration, going into such details as harmonising admission procedures, and a Green Card system, which would enable third country nationals to be admitted to look for work. Is that a realistic set of ideas?

**Dr Apap:** I think what he means there is that he would not like one Member State to appear more attractive, therefore attracting a certain flow towards it over others. Also, with the removal of internal borders in the EU—and to a great extent this is also a reality—there needs to be some convergence of policy. Across the EU there are common needs and this is a situation which is quite common to the whole of the EU. Also, it is a part of EC law now: Article 63 gives competence to the Commission to initiate—and it has initiated already a lot of—legislation in this field. By no means does Frattini mean that he would like to issue quotas at EU level, to impose them on Member States: that has not been discussed.

**Q204 Lord Avebury:** There would only need to be this convergence if you foresee that third country nationals admitted to one country were later on migrating to a different country, thereby preventing that third country from having a properly planned labour force. Is there any evidence on that? Do you see people who have been admitted to country A, for certain purposes, then migrating to country B for some completely different purpose?

**Dr Apap:** Some migration like that within the EU could happen, and we have a directive for long-term established residents which is now in force, and why not if there are labour market positions not being filled in the second country and that person is capable of filling them? However, there are language problems, family links, etc. If a person moves to another country it is a very big challenge. These persons would have to learn the system in that country and it takes a lot of courage, I believe, and then maybe their family joins them. These are big steps and would not attract a mass exodus from one country moving to another country just like that.

**Q205 Baroness Henig:** In light of the current difficulties in the Constitutional Treaty, what impact does the Parliament think that will have on the development of EU policies in this area?

**Dr Apap:** Officially, the Constitutional Treaty is still on the table. Normally six countries have to say “no” and until five countries say “no” there is still a decision and possibilities still exist. It has not been declared completely on the shelf. I understand the question. The answer is in two parts. I do not want to contradict what I said before. As I said, there is no intention to develop EU quotas at EU level and impose quotas from Brussels. However, in the treaties as they stand today there is nothing forbidding this from happening; whereas, if the Constitutional Treaty was to enter into force—then there is a complete forbidding of this—it is clearly stated that quotas cannot be determined at EU level, it is up to the Member States. For example, the UK may not wish to ever risk Brussels imposing quotas itself—which so far is not the intention at all—but then it has an interest in making the Constitutional Treaty enter into force.

**Q206 Baroness Henig:** Talking about quotas, does the Parliament see any place for quotas? Might it not be fairer and less bureaucratic than, say, a work permit system in terms of the individual sending countries?

**Dr Apap:** In the past the Parliament was advocating what is called a “voluntary system of quotas”. It means a centralisation of these quotas at European level just to make the mechanism more efficient. As a complement to what the Commission was advocating for using EURES—the European Employment System Database—which shows online what jobs exist, what vacancies exist, it was to publish these quotas so other countries could see what the targets or placement possibilities were in other countries and therefore try to create jobs through employment agencies. Also, it would be an incentive especially for those third country nationals who have secured the right of free movement, especially for the long-term resident migrants who are within the scope of the Directive which is already in force, and then they could easily find a job and move to another country.

**Q207 Baroness Henig:** You are saying there might be some practical advantages?
**Dr Apap:** Yes. They see it as a very practical thing and, also, for them to be able to see how it is working as a part of the scrutiny process.

**Q208 Baroness Henig:** Does the Parliament have a preference between a sectoral and a horizontal approach?

**Dr Apap:** Not yet.

**Q209 Baroness Henig:** But in September even, if you could foretell?

**Dr Apap:** It is not clear yet.

**Q210 Baroness Henig:** There are views on both sides on this one?

**Dr Apap:** It may be a question of timing, but I do not know because there has not been an exchange of views at all in our committee about this.

**Q211 Lord Avebury:** One of the key steps to achieve harmonisation of economic migration for EC nationals was to have a standstill provision preventing further divergence of national legislation. Does the Parliament favour such an option in relation to the admission of third country nationals?

**Dr Apap:** We would like to see certain minimum sets of rights guaranteed to try to make sure that no country treats economic migration less well. However, the discussion is still evolving about how this should be conceived because I think there is a risk. If you create a uniform set of rights across the board and then develop further policies and rights for EU citizens, you do not want to create something too stagnant where you increase the gap which we are always trying to bridge between the rights of third country nationals and those of EU nationals. We are still thinking about how to present this carefully because, once again, we are trying to prevent discrimination. We do not want to institutionalise discrimination by creating something too rigid. It is in favour, in general, of having a minimum set of rights, a common framework of rights, across the board in the EU to make sure that certain levels of rights are respected.

**Q212 Lord Avebury:** To a certain extent this follows on from what I asked you earlier, and it is about the Parliament’s view of regularisation. Do you think that is a matter of common concern given that regularisation initiatives may impact on neighbouring states? Is there a danger that if there was any widespread use of amnesties it would simply tend to encourage further illegal immigration?

**Dr Apap:** The Gaubert Report does not raise the alarm in that way so much. It does not see regularisations as a real solution to the needs of labour migration and does not see amnesties as a substitute for a more proactive policy for labour migration. That is stated very clearly in the report by Patrick Gaubert. Certain regularisation processes, particularly those held in Southern Europe, do not grant a permanent legal status to the migrant in question. Therefore following the expiry of the permits received, if this is only for a definite period of time, the person concerned would fall back into an irregular situation of stay. In fact whenever there is a collective amnesty (ie not on an individual basis through a permanent procedure by letter to the minister on one’s own initiative) a formal procedure is announced setting out a certain number of criteria and a deadline within which one needs to submit a dossier to prove that one fulfils the criteria of eligibility; this addresses a wider number of people in an irregular situation of stay. Normally, during such a procedure, a lot of countries tend to reinstall, their internal borders temporarily on the basis of Article 22 of the Schengen acquis, to try to prevent traffickers bringing in new migrants quickly by giving people the wrong information. Also, the country carrying out the regularisation procedure would try to inform, as widely as possible, what the criteria of eligibility to participate in such programmes, so that it is clear to potential illegal migrants still out of the country that they will not be eligible. What is stated in the Gaubert Report is that it could be of interest to inform other countries in view of the early warning system, but it does not see regularisations as a big source of concern. Rather the concern is the lack of having a proactive policy on legal migration. This is what is making people go via traffickers or using the asylum channel to enter especially if they know ... on the basis of Article 2.2 of the Schengen acquis, to try to prevent traffickers bringing in new migrants quickly by giving people the wrong information. Also, the country carrying out the regularisation procedure would try to inform, as widely as possible, what the criteria of eligibility to participate in such programmes, so that it is clear to potential illegal migrants still out of the country that they will not be eligible. What is stated in the Gaubert Report is that it could be of interest to inform other countries in view of the early warning system, but it does not see regularisations as a big source of concern. Rather the concern is the lack of having a proactive policy on legal migration. This is what is making people go via traffickers or using the asylum channel to enter especially if they know they can still work for some time in the more informal sector of the labour market. What the report also states very clearly is that, if amnesties must be used in the short-term before we really have proper proactive migration, it should be a one-off and not have this being used too widely as a substitute and a reason to further delay having a proactive migration policy.

**Q213 Chairman:** As you know our inquiry is into economic migration not illegal immigration, but are there other areas in which the wrong policies on economic migration could lead to an increase in illegal migration? In other words, how do you see the interaction between the two? You have covered it already to some extent, but it is quite an interesting area. I am not necessarily saying we will want to address it in our inquiry.

**Dr Apap:** Illegal migration takes place either because people come in illegally or because they overstaying illegally after having entered the country legally. In most cases the purpose behind it is for economic reasons, therefore, a proactive economic migration policy could help address to a certain extent the problem of illegal immigration. If you want to address and counteract the work of traffickers in a
very concrete and pragmatic way, it is economic migration which you need to look at. By focusing on immigration controls rather than immigration policy, one does not find the real answer. If one looks at the nineties, they have been dubbed—I am sure you are all familiar with the term—“Fortress Europe”. Look at the statistics of migration: we have never had as much migration into Europe, ironically so, but it was either of the illegal sort or via the asylum system—though in the case of the latter type, a certain number of asylum seekers were indeed genuine ones. Therefore, I think this should really speak volumes; just to focus on migration control, without a proactive immigration policy with governments informally still tolerating cheap labour, as we have seen at various times, especially in South Europe, does not work. Amnesties in Southern Europe have been very much orientated towards addressing the black labour market and the backlog of getting statistics. This is an important point to be made because we see big divergences sometimes in the rights achieved through a regularisation procedure, for those who pass successfully through it, between Northern and Southern Europe. A lot of the time Southern Europe does not really address the question of the illegal situation of stay for the long-term for the simple reason that usually they only give them a permit of one or two years and then these people are back into illegality.

Q214 Chairman: It would not affect their rights? Their rights do not come with the regularisation?
Dr Apap: Of course they could have the right to stay and work during those two years, there are rights there, but they will not accrue further rights in such a limited time. They do not have a structured package of rights to move towards, let us say, to eventually gain an autonomous right of residence in their own name having come from an insecure situation. On the other hand, in Northern Europe one gets a better status; one gets an indefinite leave to remain in most countries and, therefore, there is no need for a work permit once you get that. Also within a certain number of years one could then ask for citizenship of the host country. However, the criteria of eligibility for a regularisation procedure are much tougher and fewer people get regularised

Q215 Lord Avebury: I was thinking of a slightly different angle and that is if you have large scale regularisations, although they are not a substitute for a planned intake of workers to fill particular jobs, if there is a large enough number in the group, say it is 700,000 in Spain, there will be a sizable proportion of those who will be eligible for the vacancies which exist and to that extent it will have an impact on whatever numbers you had put into your planned economic migration strategy. You would have to alter the numbers in the planned strategy to take account of the fact that some of the skills you were looking for have been advantageously filled by the people to whom you gave the amnesty.
Dr Apap: I do not think things go hand in hand like that immediately because, first of all, for them to be able to move they need to come within the qualification of long-term resident migrants, which is normally five years residing in that particular Member State where you are legal. Therefore, these people would have a permit of two years unless they are involved with another procedure and still get another two years so they still have to apply like other people. In my view they will be applying almost like newcomers from the outside. I do not see that it is going to jeopardise a quota system in such a way. However, if the jobs do exist and they have the right qualifications, then it is partly the answer to Europe’s needs. I think Europe needs to have the political courage to admit, very clearly, that this is the situation, that Europe needs migration also as much as migration in itself is also part of a development policy in its own right with respect to how it can benefit the sending countries. Also, Europe should think more clearly on how it should, to some extent, compensate the countries of origin to make some payment to them for the manpower preparation of the people who have certain skills, because countries do invest, for example, in preparing doctors and then, of course, they lose them if they are attracted to quotas abroad. Already one good idea, is the idea of preferential treatment for those who would like to go back to the country of origin should they wish. This is very pragmatic. A lot of persons, who have overstayed their entry visa, firstly entering legally but remaining illegally, are afraid of leaving the new territory because they are afraid they will not be able to get back in. That is what pushes people into staying for very long periods of time in illegal limbo, which is quite sad. I think it is a very important thing to bear in mind. I think this idea of preferential treatment is positive to those who have already contributed to our economies and then for them to be able to come back in, should they wish, after having gone back to their country of origin. I would add to that, we must try to see how to invest, more clearly, not just through the remittances the migrants send but also we have to create jobs in the countries of origin, through some development fund, so those who wish to go back could have a motivating job possibly in their sector to go back to, also using new skills/ methods/ experience acquired in Europe. When they go back, should they wish to return, they would help their own country’s development. That would really create a more active symbiosis and would help to address this fear of brain-drain.
Chairman: Effects on third countries is something we will want to come back to in a moment. Perhaps I can ask Viscount Ullswater to ask the next question.
Viscount Ullswater: Interestingly what you are just discussing may already be taking place with the A8 countries because those who were illegal in countries are now legal and it may indicate that they may go back again, they may come back home again but they may go rather more readily than they would have done otherwise because they were illegal before.

Chairman: I think there is some evidence that they are now.

Q216 Viscount Ullswater: There is some evidence and that may be a consideration to take into account. My question is about the rights of migrant workers and you have already touched on this. The Green Paper itself does not devote very much space to the rights of economic migrants or even the obligations of employers. You talked about the common framework: does the Parliament consider that rights—and, if so, what rights—should be granted to migrant workers? Should that be part of a common framework which would have an EU-wide basis?

Dr Apap: So far that is the general feeling. Also, in the Gaubert Report it has been mentioned that with respect to economic and social rights they would like to give full access to these rights to third country nationals residing in a particular Member State. I do not know whether this is to be achieved by making the status as close as possible to the rights of the nationals of that particular Member State or by creating a uniform status of rights for third country nationals across Europe. That has not been decided upon so far. The aim is to give access to rights—economic and social rights and as much as possible civil and political rights, to third country nationals which is comparable to that of EU citizens.

Q217 Viscount Ullswater: When you are talking about rights, are you also talking about rights to move employment, because if you have a permit to work for one employer, would you see it as being a sine qua non that you could move to another employer?

Dr Apap: The whole purpose of this debate is about how to create a less fragile status for the employee, for the migrant coming in, where the work permit does not belong to the employer but belongs to the employee. That really has created till now, a very precarious situation for the migrants because the residence permit was also linked to their work permit. For any one of us being EU nationals, you never know how a new job could evolve, even if you get a good impression during the interview, things can evolve later on. For a migrant that was creating a very tough situation because it did not mean only losing the job, but also losing the right to stay and after all that effort it is a bigger blow. The question was how to be fairer to the migrant in view of the fact that we also need migration, creating a certain type of work permit where the holder is the employee and not the employer any more. That is also hinted at in the Gaubert Report and this is what we are moving towards.

Q218 Viscount Ullswater: You are not worried about the abuse which might be made by employers using it as a way of bringing in people and then they immediately move on? It is a sort of opening for coming into the European Union. If the employer can prove a demand for a sector, like the building industry or the catering industry or whatever it is where there are jobs, they could act as agents rather than individual employers.

Dr Apap: There will be controls. In fact, for example, the initial directive proposed by the Commission of 11 July 2001—which I think will be taken up again following the Green Paper, but in a modified form—informed the thinking of the Commission and what will follow up in the debate. That is why the proposed 180 days are needed, to some extent, before the permit is issued. Employers themselves were saying this was too slow for industry when we need skills quickly to fill a certain sector. Across the board abuse happens today, even with EU nationals in general. It is a minority only though that commits such abuses; however, we must not focus on the fear of abuse but rather on the progress that such a proactive immigration policy would make on the current situation. We must see that this will bring benefits to both sides and it is an important move and an absolute cornerstone. Indeed, as declared in the Gaubert Report, without such a move, we cannot claim to be indeed moving towards a proactive immigration policy and getting rid of the past idea of Fortress Europe. I think we have to go forward and make sure there is a lot of scrutiny, bringing in parliaments and courts also to make sure rights and obligations are fulfilled at all levels. I do not think we should focus too much on this fear before we move forward. I think there is more abuse and risk now by not doing anything rather than doing it.

Chairman: Can we return to the question of effect on sending countries? I will ask Lord Listowel to ask the next question.

Q219 Earl of Listowel: Should the EU take action to compensate third countries in some way for the loss of skilled workers trained at public expense? What specific measures could it take? I am thinking, perhaps, particularly of sub-Saharan Africa and HIV Aids and the health workers from there, that is just one example. Can one really say one can train up a Nigerian health worker in this country and then expect them to return to Nigeria? Would one really expect that to happen?
Dr Apap: In the Gaubert Report one article is especially clear about this and touches upon it again and again. The response is, yes, we should think of how to help. First of all, give some compensation to the sending countries; also how to help remittances be channelled back and make sure they reach their destination. I would add to that, maybe we need more projects on the ground because so far this has been the problem. When we send money over to developing countries, we were never sure that it was really invested where we intended it to be invested. This needs to be accompanied by more supervision on the ground to make sure it arrives and does what the migrants who have sent the money wish. Also, we need to see, through development corporation funds in the EU, how to help set up jobs there. What is also clear in the Gaubert Report—we have to be very pragmatic about this—is that migration policy needs to be accompanied by a very clear and coherent integration policy. The success of a healthy integration process will be that people may like the country where they stay. You have to think of this therefore at two levels: some people may wish to return and we can try to assist them to have job channels to motivate them and use the expertise which they have acquired in the EU and make them part of a complete interactive development policy back in their country, should they wish to return but also, accepting pragmatically that some people may wish to stay. They may form families here, have friends and therefore how these persons acquire further rights, by way of a structured package of rights over time, needs to be taken into account.

Q220 Chairman: There have been some initiatives, for instance—I do not know very much about this—the British development policy towards Malawi of trying to compensate for the brain-drain from Malawi. Do you know of other initiatives by other national governments?

Dr Apap: I know there have been discussions with banks on how to help remittances be channelled back. I hope they will not ask for too much payment for the service. I know some NGOs who are trying to help out with migrants. I think it could be an important study to see what practices exist across the EU and at what levels we are taking the initiative to compare this.

Chairman: The British Medical Association produced some proposal last week which they called a “transfer fee”. I do not know how far this has been developed; indeed I have not read the proposal itself.

Q221 Earl of Listowel: The next question is related to the UK position. So far the UK has exercised its right to opt out of EU measures relating to legal as opposed to illegal immigration. Does the Parliament see the UK’s position as damaging to efforts to develop a common policy?

Dr Apap: When I discussed this informally with colleagues in the Parliament they expressed a bit of surprise that the UK should opt out of measures on Article 63. Normally the opt out is within measures on Article 62 which deal with immigration control, whereas here we are discussing immigration policy. It is not the control of movement across borders, but I can see where some persons may see a link. There is not a common position yet in the Parliament about this. This may come out in the discussions in September. Within the Secretariat it was felt that, yes, it would be a pity if we do not all start moving together towards a common goal because we think this is an important thing for Europe. The UK has been quite active already at the level of its own policies moving in line with this form of thinking. With respect to the territory of the UK, the control will still be in the hands of the UK Government to decide what quotas, whom to allow in, in which sectors, etc. What the Parliament would really like to see—and this is found also in the Gaubert Report—is a centralised database of skills which are/will be present in EU Member States. It is also a big concern that we have people who have been granted refugee status, or are even in the process of waiting for asylum, who have a lot of skills; by not being allowed either to work or participate fully and not being given certain access to the labour market because of lack of equivalence or recognition of their professional qualifications, we are completely losing out and they also lose out on the opportunity of using the skills they have studied for. Therefore, how can we make it less cumbersome, with also the recognition of professional and academic qualifications, to allow people who are already on our territory to be able to access the labour market and fill certain placements in the labour market?

Q222 Chairman: To sum up, you referred twice to Fortress Europe and the dangers of adopting Fortress Europe, would you like to make any comments about the prospects of Turkish accession and its relationship to migration policy?

Dr Apap: In my name or in Parliament’s name?

Q223 Chairman: In your name. If you can speak for the Parliament, please do, but we recognise that may be difficult for you.

Dr Apap: I will speak only in my name. Turkey is one of the few countries where one has a positive demographic balance at the moment, whereas other countries are having less and less children. It is a difficult question.
Q224 Chairman: It is a difficult issue. 
Dr Apap: It is a difficult issue. Of course there will be some costs. I think there will be long transitional periods for free movement of workers imposed on Turkey considering what has been imposed on the new Member States already. On the other hand, there are mixed agreements with Turkey. There are a number of Turkish workers working in Cyprus (not counting previous migration to Western Europe), so to some extent, Turkish workers already today have a certain access to the EU labour market.

Q225 Chairman: There is a very interesting statistic which I think should be wider known and I am not sure I am going to get it right. Is it that 25 million migrated to Germany, of whom 23 million have returned to Turkey? Have I got those figures right? Or is it that 27 million have migrated and 25 million returned? Whatever it is, it is only two million of that very large number who migrated into Germany remained in Germany.
Dr Apap: There is the whole question about family links. Despite the fact that they earn less people often prefer not to move to stay where they have their family, their friends, where they speak the language very well and where they know the system. It is a hard thing to move unless one is under a huge duress. There are fears of mass exodus. Also we heard about the sudden enlargement in the early nineties and then now also. These predictions did not take place.

Q226 Earl of Listowel: An issue which comes to my mind is the issue of housing and housing pressures, which we have not really discussed. In the south east of England there is a tremendous shortage of housing. 100,000 families in temporary accommodation. Is this something which you are keeping very much in mind as you are considering a migration policy over Europe? Maybe it is an issue for the UK particularly and it is not so much across Europe, but it does seem to me that it is something which needs to be very much kept in mind. That is something I would just like to highlight in the circumstances.
Dr Apap: When we talk about social rights, if we want to give equal access then it has to be borne in mind. Maybe employers could facilitate some form of access to accommodation or find accommodation for people coming from abroad because it is not easy for a newcomer to find accommodation. As long as it is consistent with the right level of dignity because unfortunately there have been cases in certain receiving countries where it has been quite shameful what employers have decided to call housing.

Q227 Lord Avebury: I just had a glance through the Gaubert Report. I noticed in paragraph 23 that it urges all EU Members States to ratify the UN Convention on the rights of all migrant workers and members of their families. To what extent would that satisfy the requirements for perception of migrant workers without further legislation? If Member States did ratify the UN Convention and embodied it in their domestic law would that be sufficient, in your opinion, to give adequate protection for migrant workers coming in from outside or would there have to be further measures by the Commission and by Member States to bring these migrant workers up to European standards of protection?
Dr Apap: I would be surprised if this was perceived to be the only kind of measure, in the minds of the Parliament which needs to take place to guarantee rights. This is important symbolically for the Member States to show that they have certain principles, but then you need a hard EU law also to bring Member States under the control and scrutiny of the Parliament and the ECJ in this field. In the First Pillar we have the competence of the Parliament and the ECJ to make sure Member States uphold EU legislation in addition to fully respecting the UN Convention.

Q228 Chairman: Dr Apap, thank you very much indeed. You have been extremely helpful. Of course we will send you the transcript of this meeting for you to comment on, and in due course we hope to be able to send you our report.
Dr Apap: In September you will receive a report from us also.
Chairman: Thank you very much. We are very grateful to you for coming.
Lord Corbett of Castle Vale: Chairman, would it help if we offered a copy of the report we got on what has happened to the UK labour market since accession?

Q229 Chairman: Yes, certainly.
Dr Apap: Yes, I would like that.

Q230 Lord Corbett of Castle Vale: There are lots of figures in it and it is very interesting, showing the countries from which most of the people have come. Dr Apap: I have seen some quotes but not the direct report. I would appreciate it very much.
Chairman: Thank you very much again.
MONDAY 4 JULY 2005

Present

Avebury, L
Corbett of Castle Vale, L
Dubs, L
Henig, B

Listowel, E
Marlesford, L
Ullswater, V
Wright of Richmond, L (Chairman)

Examination of Witness

Witness: Ms Lorena Ionita, UNICE (Union of Industrial and Employers’ Confederations of Europe), examined.

Q231 Chairman: Welcome. Thank you very much for coming to talk to us and answer our questions. Just to explain, I am the Chairman of this Subcommittee. I will not ask everybody to introduce themselves, their names are written on their name cards. As you know, we are conducting an inquiry into economic migration, primarily into the European Union but also within the European Union. We are not concerned with illegal migration or asylum. We are very grateful to you for coming to help us with our inquiry. Would you like to start by perhaps telling us a little about your organisation, what you do and, indeed, who you represent, the point which Lord Corbett was interested in?

Ms Ionita: Thank you for inviting UNICE here. My name is Lorena Ionita. I am an adviser with the Social Affairs Department of UNICE. UNICE stands for the Union of Industrial and Employers’ Confederations of Europe. I deal with immigration, more specifically with the labour market aspects of immigration because this is our core business as employers in this policy area. Also, I deal with employment and social protection. In two words: my organisation is the European employers’ organisation. Our members are national employers and industry federations, so we do not have sectoral organisations as members. We represent cross-sector industries and companies. We have 39 members which are national employers’ federations, and they come from 33 countries. We represent all 25 EU Member States but, also, we have members in other countries, including Norway, Iceland, Switzerland, Turkey, Romania and Bulgaria so far, so we are wider than the EU. Our organisation has existed since 1958, so we have accompanied all the European integration processes. UNICE has two functions: we are a lobbying organisation for business and we are also European social partners recognised by the EU Treaty also. In this respect we negotiate with trade unions, etcetera, but I will not enter into details.

Q232 Chairman: I think you have probably answered that question by saying that you see it as EU plus.

Ms Ionita: I think it is difficult to use the term European labour market. Of course we have an internal market, but in terms of labour markets I think it is not a homogeneous labour market. There are different needs at local, regional and national levels although there are certain European commonalities. But I do not think we can use the term European labour market.

Q233 Lord Dubs: My question follows very closely from what you have just said. How feasible do you think it is for state authorities to regulate labour migration? A follow up from that: how much regard should they have to protecting the domestic workforce?

Ms Ionita: As you know we are in a situation today in almost all EU Member States where you have, on the one hand, high unemployment rates and, on the other hand, you have skill gaps, so there is no match. Of course immigration is a very sensitive issue and has economic aspects, and it is a very complex issue also, and we have to take other aspects into account, like humanitarian and social aspects. It is a very complex issue. As for protecting the workforce, of course Member States should look at the interests of their nationals and should fight unemployment, etcetera, but given the skills gap and the ageing population, I think labour migration can be part of the response. It is not the solution, but it can be part of the response because other solutions, like training the unemployed or providing people with the right skills needed on the labour market, can be some of the policies to be followed but they only bear fruit in the long run.

Q234 Lord Dubs: How efficiently do you think labour migration operates within the European Union at present? What can be done to improve the efficiency assuming you think it is necessary?

Ms Ionita: Efficiency can be improved. You know about The Hague Programme and all the policies which were put in place. I think looking now from the European level perspective Member States have tended to concentrate on fighting illegal immigration
and on border controls. Progress is lagging behind on legal migration. I think it is very important also to have EU policies on legal entry into the EU. Efficiency would come by having well managed legal migration in place not only fighting illegal immigration. The issue is also about what belongs to the EU and what the national competence is, that is a very difficult question. There is a large degree of subsidiarity here when you talk about immigration. Member States remain responsible for the numbers of immigrants, the right skills of immigrants and the country of origin. We can talk later about what should be done at European level.

Q235 Earl of Listowel: How does Community preference for EU nationals work in practice? Is there any evidence that it has any effect? How effective is the EURES system?

Ms Ionita: From an employer’s point of view, I think what is important is that the burden of proof does not fall on the employer, meaning that you should not have to demonstrate to authorities: “I have received thousands of applications, 500 are from nationals of the EU, 100 are from India, and I have shortlisted 50 people who are composed as follows, and this is why I chose this person”. For us it is important that the burden of proof of demonstrating the need should not lie with employers. Companies should not be obliged to explain their recruitment policies in a burdensome way; for us that is important. On the EURES system, I think the European Employment Service Network can be instrumental, for instance, in providing information on access to the labour market by third country nationals in various Member States: how the applications are presented, et cetera. When there is an individual job vacancy, we agree that the employer should publish the advertisement and the job notice on public employment services, but it should not be published obligatorily on the website of several public employment services or on EURES. Where companies publish their announcement depends very much on the public targeted or on the potential employees targeted, and on the territorial scope of the announcement. If you oblige employers to put it out in several Member States, they can receive many CVs which are not relevant from people who are unsuited, and that makes the recruitment process even heavier. For us, EURES can provide information, but employers should not be obliged to publish all notices on the EURES website.

Q236 Viscount Ullswater: Going slightly back on what you were saying about putting the burdens on the employers. Have I got it right that you felt employers should not have to demonstrate to the authorities that they had tested the national labour market before asking for a permit for somebody to come in from a third country?

Ms Ionita: Yes, that is more or less what I meant. For instance, you might know that in 2001 there was a European Commission proposal for a directive on the admission of third country nationals for the purpose of employment. There the European Commission proposed that the employers provide a lot of information to the authorities, like a copy of the advertisement they put out, copies of the CVs they received from the people they shortlisted, so there was a lot of documentation which you had to provide to the public authorities to show that you really needed a third country national. That is very burdensome. One should draw inspiration from best practice in Europe. For instance, in Belgium it is the Public Employment Service who should demonstrate that you can find someone else on the national labour market who is not a third country national. If you have to demonstrate this with real evidence of copies of CVs and declarations, that is very burdensome for the employer.

Q237 Lord Marlesford: This was a directive which was proposed by the Commission in 2001, but it did not get anywhere?

Ms Ionita: Exactly.

Q238 Lord Marlesford: Can you tell us how they stopped it?

Ms Ionita: I think there was a lot of reticence on the Governments’ side. The Commission proposed it, and normally it would go to the Council, which has to approve it, but it did not even go through the First Reading because there was a reticence of certain Member States to have this issue dealt with at EU level. That is why we have this Green Paper now on an EU approach to managing economic migration because the Commission is trying to make progress in this area.

Q239 Lord Marlesford: It never got as far as either the European Parliament or the Council of Ministers?

Ms Ionita: The European Parliament issued an opinion on this.

Q240 Lord Marlesford: What did the European Parliament say?

Ms Ionita: They were pretty positive vis-à-vis economic migration. Of course they wanted to see others things in terms of the rights of immigrants and the integration of immigrants, but they were in favour of this.

Q241 Lord Marlesford: Who was the Commissioner who put it forward?
Ms Ionita: The proposal of 2001 came from the services of justice and home affairs; it was Commissioner Vitorino at that time, the former commissioner.

Q242 Lord Corbett of Castle Vale: Can you clarify this burden of proof point? I understand what you are saying that you do not want employers to have to prove that they have trawled through nationals and they cannot find anybody. Did you then go on to say that this should be the responsibility of state employment services? In other words, they would look at the applications and say: “There are half a million unemployed plumbers here, why do you want one from Poland”?

Ms Ionita: For us it is important because once you have Community preference you have a sort of waterfall or you have to go through all the categories. A big multinational employer can probably do that, but an SME cannot go through all this; they do not have the human resources to do such things. For us it is important that we are not obliged to demonstrate the needs ourselves. I gave the example of how it is working in Belgium; we can look at other solutions. For us, it is important that the employers should not go through burdensome procedures.

Q243 Viscount Ullswater: Should the skills gap be identified by the National Employment Service? If we are short of people in the health service or in care homes or something, should that be identified so you can then get a permit if you are running a home, for example?

Ms Ionita: It can be done at national level but it can be done at lower levels also. It depends on the Member States. I imagine in Italy regions are very important because we have the north/south division, and in Germany as it is a federal state, and in Spain, where again the regions are very important. It can be done at a lower level also.

Q244 Earl of Listowel: Should regulation of labour migration be driven entirely by economic considerations regardless of possible social consequences?

Ms Ionita: Definitely not.

Q245 Earl of Listowel: For instance, concerns about the availability of housing? You mentioned the unemployment rates and the skills gaps. Are you concerned that too liberal an approach might disincentivise a real tough stance as regards to skilling up those people who lack skills in the country?

Ms Ionita: You should look at the social consequences also, not only the economic considerations, of course. Each country has a certain capacity for welcoming people and that is important to respect because afterwards you get social tensions. It is important to look at all the dimensions of economic migration. Economic considerations are important because all countries today are faced with skills gaps, they lack low-skilled personnel and high-skilled personnel. It is important to have an economic rationale, but also to look at the social considerations and the possible social tension and to alleviate that tension and to foster positive attitudes, that is important.

Q246 Lord Corbett of Castle Vale: To what extent do you think it is possible and desirable to establish a common approach at EU level on labour migration? What should be the guiding principle governing that? Perhaps, more clearly, should this simply be about basic minimum standards or should it go further?

Ms Ionita: This is a very complex question and it gets into the crux of the matter. To what extent is it possible to have an EU level policy? I think there is a need for a new framework on economic migration for several reasons. You all know we have Schengen—the UK is not in Schengen—there are no border controls in the Schengen area. You know that there is a need for a new framework on Long-Term Residence, granting third country nationals long term residence, so we have rules for them. Then EU Member States have commitments under the GATS—the General Agreement on Trade in Services—and these commitments relate to certain categories of temporary legal workers. I think there is a need to address the situation of today where, for instance, it is easier to recruit an Indian from India to France than an Indian already residing and legally working in Germany. We have to look at the cross-border mobility of third country nationals already established and legally working and residing in the EU. I think an EU framework would help fight illegal immigration. For all these reasons I think there is a need for an EU framework. This is our position, but we have to say that within our membership certain members have a different analysis. For instance, our French and German affiliates believe there is no visible and substantial value-added for having an EU framework on economic migration for the time being, but they think that if such a framework is to be adopted it will be only acceptable if it is preceded by the establishment of an integrated management system for external borders. I wanted to give you these nuances in our membership analysis. This being said, we are for an EU framework on economic migration, and, as I said, such a framework should respect the subsidiarity principle because Member States remain responsible for the number of immigrants, for the skills and the country of origin. There should not be a tendency to have any sort of quantative approach.
at EU level to economic migration nor there should be any attempt to quantify labour needs at EU level. The subsidiarity principle is very important. I think such EU framework should be flexible enough to leave Member States with the possibility to apply a wide variety of admission tools, be it Green Cards, an individual or economic means test, for instance, or any other system. It should be flexible enough to allow Member States to take into account the differences between labour market needs, skills gaps or company requirements. I can go into more detail as to what should be in such an EU framework, but I do not know if I should do it at this stage.

**Q247 Chairman:** Yes, please do.

**Ms Ionita:** I think also I addressed another question as to whether such an EU framework should be a horizontal one or a sectoral one. From our point of view it is difficult to reason in terms of sectors because it would be difficult to establish beforehand an exhaustive list of sectors where there is a skill gap. We would prefer a horizontal framework covering all categories of workers. As I said before, such an EU framework should deal with matters which are better dealt with at EU level and have a cross-border aspect. I am talking here about the cross-border mobility of third country nationals who are already legally residing and working in the EU. I think one can do that by establishing a procedure whereby a third country national, who is already legally working and residing in a Member State, can apply for a job in another Member State without going through his or her country of origin, that is also important. Also for us it is important to have a system to facilitate cross-border mobility, for instance, of corporate transferees or business visitors. I am talking about the categories of temporary personnel covered by GATS: business visitors, intra-corporate transferees or a contract service suppliers. I think such a framework should not be overloaded with rules, for instance, on integration or on working conditions or social security rights. For us the rights are important elements and, also, promoting the integration of third country nationals is very important. We believe we should not have provisions on rights or on integration in an instrument talking about the admission of third country nationals because it just makes dealing with the issue too complicated. We would address too many issues in the same instrument, and it would be very difficult to negotiate amongst Member States. It is very important that the EU rules on national admission procedures put in place are quick, simple and transparent. One can do that by establishing a one stop shop, for instance, having a single procedure for admission, work and residence. That would be useful.

**Q248 Lord Marlesford:** I think to some extent this question has been answered already. If we look at Vice-President Frattini’s proposals for harmonising admission procedures and introducing a Green Card system, I got the impression that you felt, one, you are against harmonisation and, two, on the Green Card, if countries want to do it let them, but they should not all have to do it, is that right?

**Ms Ionita:** Green Cards can be one of the instruments available for Member States to apply, but any instrument for admission should not be imposed from the EU level. I think Member States should have a wide variety of tools at their disposal, but one should not impose Green Cards or any other instrument.

**Q249 Lord Marlesford:** If, as recently as 14 June, Mr Frattini is putting forward these ideas, and we heard earlier on that the new Commission is much less interventionist and much less inclined to impose things. Do you think he is going to get his way or is he starting to take notice of what you are saying?

**Ms Ionita:** I think he is probably starting to take notice of what the Member States are saying. It is laudable that the Commission wants to set up an EU framework on economic migration because it can be a positive element for the economy and can sustain growth. As I said, from our point of view there should not be any tendency to assess needs at EU level or to impose, for instance, quotas. Quotas can be applied by Member States, but should not be imposed on them. Generally speaking, we believe quotas too often are an inflexible instrument to deal with labour market needs and changing labour market needs. From our point of view, imposing certain admissions from an EU level is not the solution, it is not feasible.

**Q250 Lord Marlesford:** You think it is possible to have a framework without it leading to harmonisation?

**Ms Ionita:** Of course. Also, I did not directly answer your question, Lord Corbett, on minimum requirements. Yes, there should be minimum requirements on rules on national admission procedures. We should have certain principles and minimum requirements, but we should leave enough room for Member States to devise admission policies which take into account the labour market needs at various levels, as we talked about before. It is important not to have pre-cooked solutions at EU level. There should be solutions which are flexible enough.

**Q251 Viscount Ullswater:** What is UNICE’s view of the problems with the ratification of the Constitutional Treaty? Would it make it more difficult to develop EU policies in this area?
Ms Ionita: The constitutional crisis would impact on the subject to the extent that it impacts on all the others. As I said, this subject of immigration is very much a sensitive political subject. The situation created by the referenda on the Constitution reinforces the need to have policies which promote the understanding of society and the general public and to foster a positive attitude towards economic migration. In terms of timing, how the constitutional crisis would affect immigration, as I said, it is hard to tell, but this policy is as affected as any other policy. Policymakers should take the time to reflect on the content of their policy and on the impact for the citizens. Where a lot of progress has to be made is in terms of communicating EU policies and establishing the link with the citizens. Of course immigration is something which directly concerns the citizens. Having a wide debate and fostering positive attitudes in society is important.

Q252 Viscount Ullswater: This EU framework, which you mentioned and was mentioned by a previous individual, I wonder whether the problems which are encountered now are going to hinder that adoption and promotion of an EU framework?
Ms Ionita: That is a difficult question to answer.

Q253 Viscount Ullswater: Perhaps it does not matter, perhaps it is irrelevant?
Ms Ionita: I do not think we can say it does not matter, but it is difficult to answer to which extent it will be affected. I think EU policy-making should go ahead, we should not freeze it. An EU leader said that we should reflect on the future of Europe and debate amongst ourselves. That could be an element and part of the discussion, but in terms of the calendar it is difficult to say exactly what will happen. I think the European Commission will go ahead with its plan. For instance, we have this Green Paper which launched a wide consultation and on the basis of the answers to this Green Paper the Commission will draft a policy plan on legal migration by the end of this year. The Commission intends to go ahead with this timetable and we will have to see afterwards.

Q254 Chairman: Has UNICE given its evidence to the Commission on the Green Paper yet?
Ms Ionita: Yes, we have prepared a position paper on the Green Paper.

Q255 Chairman: What you have told us today reflects what you said?
Ms Ionita: Exactly. Also, we were invited to the public hearing on 14 June, and we spoke there.

Q256 Lord Marlesford: Can we have a copy of your evidence?
Ms Ionita: Absolutely. I will send it right away.

Q257 Viscount Ullswater: I think my next question has been extensively answered. But I would like to continue on this issue because it deals with the different economic and labour market conditions that make it very difficult to adopt a common policy. What is your view about having just a purely common entry policy which allows people in, however the market dictates, in each of the European Union countries and allowing that individual from the third country then to move within that country or the European Union if they find that the job for which they have been brought in proves to be unsatisfactory or they cannot get on with the employer, so that the permit belongs to the employee rather than the employer?
Ms Ionita: This question of whom the work permit should belong to is something which should be decided at national level by each Member State. You are talking about mobility here. I think restrictions to the mobility of third country nationals also should be decided at a national level. Given the needs for labour market flexibility, I think restricting the work permit to a certain region could be counter-productive, but more than that, from an EU perspective, it is difficult to say. As I said, rules on this should be decided at national level. We should have EU rules on national admission procedures, but the details of that should be established at national level.

Q258 Lord Avebury: Can I ask you about the development of the GATS rules on freedom of movement for service providers and whether you think these could undermine or conflict with any national immigration controls on the admission of workers?
Ms Ionita: Regarding the GATS rules, here we are talking about the admission of temporary legal workers. It is done in the context of a service provision, so in a way this category of workers under GATS is not entering the regular labour market. Here we would like to see the admission of these temporary workers under mode 4 of GATS facilitated, which is what we call for, because there is a need for companies to manage their workforce and organise themselves in a globalised world. In a way they are not to be seen as “normal” economic migrants, they are a specific category. In that respect, it does not undermine any possibility of Member States devising immigration policies because there is a specific category of workers who do not enter the normal labour market.

Q259 Lord Marlesford: Does the Services Directive have any implications on economic migration?
Ms Ionita: I would not make a direct link between the Services Directive and economic migration. There is an article in the Services Directive related to third country nationals who are posted in certain Member States, from one Member State to another, in the context of cross-border provision of services. That would be a link, but I would not make any further link than that.

Q260 Lord Avebury: We understand that at a recent public hearing which the Commission held there was a strongly expressed view that the place for EU rules was in the rights for migrant workers, although that did not feature prominently in the Green Paper as you know. What are your views on that?
Ms Ionita: From our point of view, in an EU framework on economic migration, we should not have extensive provisions on rights on working conditions and social security rights because for us that does not belong in the EU rules on admission procedures.

Q261 Lord Avebury: Where should that be dealt with then? The question of workers’ rights after they have been admitted, in what context is that?
Ms Ionita: Already there is EU legislation and national legislation on rights. For instance, recently Regulation 1408 from 1971 on Co-ordination of Social Security for Migrant Workers has been extended to third country nationals. That helps their integration and enhances their rights. There are other EU instruments dealing with the rights of third country nationals and there are Anti-Discrimination Directives which apply to them as well. We think the EU framework on admission is not the place to have extensive provision on rights. We are not against rights for third country nationals and having provisions for that. Of course integration is also important, you cannot let people in and afterwards nothing happens. Talking about admission, that does not belong here.

Q262 Lord Avebury: Would you support the recommendation in paragraph 53 of the Gaubert Report that EU Member States should sign the United Nations Convention on the Rights of Migrants Workers?
Ms Ionita: UNICE does not take a position on UN Conventions since our focus is EU policy-making.

Q263 Chairman: Can I ask you a final question: have you got any comments, either personal or on behalf of UNICE on the question of Turkish accession and its connection with the question of legal migration?
Ms Ionita: To begin with, I think we should distinguish EU enlargement from immigration. We would very much like to make this distinction. If we do not, you exacerbate the fears even more against EU enlargement. For us there are two things in the context of enlargement, immigration and the free movement of workers, which should be clearly distinguished. If you want me to give you an idea about Turkish membership, that is another thing but I would not link it with immigration. That is something we want to underline very clearly.

Chairman: Unless my colleagues have any other questions they want to put to you, can we thank you very much indeed for coming to give evidence to us and for the very full and frank way in which you have dealt with our questions. We are most grateful to you.

Examination of Witness

Witness: Ms CATELENE PASSCHIER, confederal secretary of the European Trade Union Confederation, examined.

Q264 Chairman: Good afternoon, and welcome. Thank you very much indeed for coming to give evidence to us. We are really very grateful to you for coming here. I will not ask my colleagues to introduce themselves, their names are written on these pieces of paper. Just for the record, I would reiterate that our inquiry is into economic migration within and into the European Union, and it is not concerned with illegal migration or asylum procedures. We very much look forward to hearing what you have to tell us. Perhaps I can start by asking whether you see the EU labour market as primarily EU-wide, national or regional. How would you describe the labour market in the European Union?
Ms Passchier: Thank you very much for the invitation to come here and be with you. I think it is important that you get a wide perspective on the issue and, of course, we are happy that you have invited ETUC to give evidence to you. I am not sure if you received our position paper on the European Commission’s Green Paper on economic migration?

Q265 Chairman: No.
Ms Passchier: I have 10 copies with me, I hope that will be enough. You will be able to find more detail about the issue there.

Q266 Chairman: That is very kind of you. Please will you assume that we will not have had time to read it, but that is very helpful. Thank you very much.
Ms Passchier: That is exactly what I thought. I think the question raised is an important one, and probably we would not have a very simple answer because our experience as trade unions is that labour markets are very often very local and regional and, at the same time, there is a lot of influence from the national and
European level. I would not be able to give a very clear answer.

Q267 Chairman: That is fair enough.
Ms Passchier: There is a question on how European is our labour market, that is the same question we have.

Q268 Chairman: Yes, indeed.
Ms Passchier: Let us say, there is an increasing effect of European legislation and European policies on local and regional labour markets which gives workers the feeling that there is a lot of moving around in their labour market.

Q269 Chairman: Given that situation, how feasible is it for state authorities to regulate their own labour markets, and how much attention should they pay to the effects of migration on their own domestic labour force?
Ms Passchier: Our opinion is that there are a lot of effects of mobility and migration on the local and the regional labour markets for local and regional workers, and it is impossible not to pay any attention to that. We think governments are maybe not paying enough attention to it and are not looking forward enough at that. They may give workers the false idea of protection by saying: “Let us close the borders, let us have a very restrictive policy and we will protect you from everything that is coming from outside,” while in reality that is not happening. They do not always live up to their own words because very often they have more open policies for certain groups of workers. High skilled workers are very often easily allowed in and for certain jobs there is enormous recruitment of migrant groups of workers. In our view, there is a need for a more coherent and proactive policy to give workers—local and regional workers and migrant workers also—a clearer perspective of what their rights and their possibilities are.
Chairman: Thank you very much. We will probably return to the question of rights.

Q270 Lord Dubs: How efficient do you believe labour migration is within the EU at the moment? If it can be improved, what can be done to achieve that?
Ms Passchier: Efficiency is linked to the question of what kind of efficiency you would like to see. The current situation may be efficient from certain points of view, but it is not efficient from the point of view of addressing the combination of labour market shortages and unemployment. Nowadays, there is the big debate on whether we need more migration for demographic reasons or because we have certain labour market shortages. A lot of our affiliates would say let us first invest in everybody who is around. We have lots of unemployed young workers and there is an increasing amount of second and third generation young migrant workers who cannot find any jobs. We should really make an effort to give them the right training and to do more to fill the gaps with those people who are around. Although you said we are not discussing illegal migration here, in our view it is impossible not to discuss irregular migration if you are discussing regular migration. There are tens of thousands, maybe millions, of workers around in the European Union without the right documents, and there seems to be a little bit of a contradictory policy in Member States who are saying that we should throw out all these illegal migrants but we should take in or recruit new ones. We think there may be a need for a more coherent policy on that.

Q271 Lord Avebury: You say that hundreds of thousands of young workers are unemployed, and that is clear. Is enough being done to encourage the movement of qualified workers from countries where there is high unemployment into countries where there are lots of vacancies?
Ms Passchier: Do you mean within Europe?

Q272 Lord Avebury: Yes.
Ms Passchier: First of all, we would have to address the question of the old and the new Member States and the existing barriers which still exist for free movement of workers within the old and the new Member States. We are of the opinion, as an ETUC, that we would like to see the transitional measures and the limits to free movement of workers within the EU abolished as soon as possible. That is for several good reasons. We think there is a negative effect of creating a situation where you have first, second and third-class citizens in your labour market: those with normal rights, those with reduced rights and those with no rights at all, which has a perverting effect on your labour market. In the enlargement process it is important to abolish, as soon as possible, the transitional measures, but at the same time to make sure that we have a clear legal framework for all workers in the same workplace. In our view, if we ensure that workers working in the same workplace have the same rights, then there is less fear that they can be used against workers for unfair competition, which is one of the major concerns which workers have at the moment when they are looking at all the migratory movements. Also, partly because of enlargement it is mainly the fear that workers are not only coming in but will compete with local workers on lower wages and worse working conditions. It is not just the simple idea that people have that migrants will take your job, but they will cause a deterioration in your working conditions also. We think the high road to mobility and migration is to have a clear framework for equal treatment which forces employers to look at foreign and national
workers on the same basis and hire the one who is qualified for the job.

Q273 Chairman: In effect, are you arguing for widespread regularisation of illegal migrants?
Ms Passchier: That is a difficult question. We are arguing for having a different approach towards illegal migration. At the moment, illegal migrants are seen as undesired, they should not be there, and we are not addressing the fact that they are all working and most of the work they are doing is legal work. It is work which is useful and should be done by workers. In many countries women are doing care work for the elderly, they take care of children, there is work in agriculture, in construction, so it is all work which needs to be done. If there is a real scarcity, then that should be addressed, but then why not allow legal migrants to do that work? The reason illegal workers are doing the work is because employers like to have illegal workers who can pay lower wages to, they like to keep them in the undocumented space. We think we need to address that problem because it is increasingly happening in many labour markets of the EU. One of the ways to do that is to say: “Let us start the other way around, we should really prosecute employers much more when they use illegal labour,” but if workers come up and demand their rights, there should be a minimum of rights for those workers so they can speak up about their exploitative situation.

Q274 Chairman: I am sorry, I am probably pre-empting questions which my colleagues want to put. Are you then, in effect, saying that the work permit system should go, should be abolished?
Ms Passchier: That is a question to raise. To do that from one day to another it is probably a bridge too far as it is the total opposite of the current situation. We do not live in utopia or somewhere on another planet. What we are arguing is that there needs to be a different approach on migration, and let us start by saying that you could allow for more forms of legal migration, and not only for high skilled workers, which then would take away some pressure from the migration which is now there in the form of illegal migration. Another pressure is there because we are, let us say, a labour market with a lot of work and a decreasing amount of workers, and around Europe there are a lot of societies with a lot of young people without work, we cannot deny that pressure will continue and increase in the next 10 or 20 years. There needs to be a policy which invests in those countries to make sure the people there have perspective and do not need to come to Europe. On the other hand, we cannot stop them looking for work, and if there is work in Europe, then we better regulate that instead of acting as if we are not seeing the reality.

Q275 Earl of Listowel: How does Community preference for EU nationals work in practice? Is there any evidence that it has any effect? How effective is the EURES system?
Ms Passchier: We are not very happy with the EURES system at the moment. We think it needs to be worked on and become more efficient, more open and more transparent. However, we think also that even if we increase its effectiveness it would probably be better used for higher or qualified workers. There is a question about how that can address low-skilled work and low-skilled workers and if you can manage all forms of migration via a EURES system. There has been a debate on whether you should not allow for job-seeking permits, which has been an issue raised by the Economic and Social Committee also, so that you would allow people to have a certain period in which they can look for a job. It is an issue which we have raised also in our reply on the Green Paper saying: “Maybe we can consider giving those job-seeking permits to lower skilled workers.” This is partly because in the low wage area there are a lot of personnel services where people would like to see a person before they hire them. You may be aware that, for instance, in Italy for almost all care at home for the elderly there is a very low developed care system in terms of the elderly in homes, but all these people who are staying at home do not have a lot of family to take care of them. They are totally dependent on migrant labour for these care facilities. They would never like to hire from an Internet site. You can imagine that if you allowed job-seeking permits for that kind of work it would take away a certain pressure.

Q276 Lord Dubs: On the job-seeking permit, how long would somebody have a job-seeking permit during which they can look for a job? If they do not find a job, then that is it finished for them, is that how it works?
Ms Passchier: You choose a certain time in which you say you can look for a job. In our position on the Green Paper we have said for instance 6 months.

Q277 Viscount Ullswater: Are you suggesting then that if there was an identified sector of the market which required more workers—and you identified one as a domestic care worker or care for the elderly—having identified that would you then say it was right to allow people in with a work permit for a number of years to work in that market, or how do you see people coming in to look for a particular job when they could be looking for any job?
Ms Passchier: The question is whether it is possible to limit people to certain sectors or professions. They are human beings, they come to search for work, and the problem we see is that there is a lot of domestic work done by migrant workers who have much
higher skills than doing domestic work. They may come in for domestic work, with which they earn much more than what they would earn with their skilled professions in their country of origin. The question is then whether you can limit them to always doing domestic work and never using their real skills which may be useful for Europe also. I have been reading the document from the UK to the Commission and on the second page it says that “its policy would be to allow immigration when it is in the country’s interest and prevent it when it is not.” We have big question marks about such an approach. The question is, if you are able to select people, which is the current approach of many Member States at the moment,—should you select on the basis of a points system, find the right people, and then tell all the others that they are not welcome? Is that possible, can you limit those people to only do exactly what you need? Because they are human beings, they bring their families, they develop themselves and the fact that they do so is also in the interest of the country.

Q278 Lord Avebury: It is obvious that in the care homes, with the care of the elderly, in particular, which you mentioned, all workers come from overseas, but is it necessary to contemplate bringing all of those people in from outside the European Union or should the EU itself be doing more to promote the migration of workers from low income accession countries, for instance, to pick up these jobs? Is that not that part of the Community preference?

Ms Passchier: The background of that idea would be that the new Member States could miss all those people in the long run. But the demographic pictures show that the new Member States are having the same future as the old ones. They are not going to see major population increases, they will see ageing populations and a shrinking amount of workers also to take care of them. We also do not think that the solution is to rob the Philippines and other countries of all their mothers and women, we do not think that is a sustainable solution but at the moment it is like that. Also, it is not fair to deny that a lot of care is done by all these women. First of all, we should deal with the current reality. Secondly, I think I read in one of the papers, maybe it was one of your questions, the fact that we do not have enough people to do care work. If you compare certain countries, like the Nordic countries with the Southern European countries, you will see that where there has been a deliberate policy to make care work something which is valued, both in terms of how it is respected and paid, then you will see also that you can interest workers of your own nationality in doing the work and develop it into a proper job, which is partly what we should be doing. It is investing in the workers we have and offering them proper jobs. We have a lot of wives of migrant workers, let us say, from the older generation of migrants, and we discuss their integration in our labour market. A lot of them would be ready to do those jobs, so we do not have to rely as much as we do on women from I think in the UK it is probably workers from the Caribbean and in other countries it is more from the Mediterranean area or the Philippines. That is partly because we do not properly address those labour market shortages.

Q279 Lord Corbett of Castle Vale: Can you tell me, please, do you have affiliated unions from each of the Member States?

Ms Passchier: Yes.

Q280 Lord Corbett of Castle Vale: Every one?

Ms Passchier: Yes.

Q281 Lord Corbett of Castle Vale: And beyond?

Ms Passchier: Yes, because we also affiliate the EFTA countries, which are Norway, Iceland and Switzerland and all accession countries, such as Romania, Bulgaria, Croatia and Turkey. As soon as they somehow get into a relationship with the European Union they can become a member of the ETUC and if not they can affiliate to the ICFTU or WCL which are the global trade union organisations.

Q282 Chairman: Did you say you included Turkey?

Ms Passchier: Yes, they have been members since the 1980s.

Q283 Lord Corbett of Castle Vale: Thank you for that. Can I pick you up on a point you were making about the Philippines. I take your general point about the developed world plundering the developing world for labour, particularly skilled labour. It is a fact of the matter, is it not, that in the Philippines they deliberately train more nurses than they know they can employ because they go into other countries and to take care of them. We also do not think that the remittances home are an important part of those solutions. I am not arguing with you about the substantial point you made, but I think in that case there is a logic in it.

Ms Passchier: There is a logic in it. But recently I heard somebody else talk about another logic, if you compare the Philippines with Korea or other countries where they decided to invest in activities in their own countries and develop themselves.

Q284 Lord Corbett of Castle Vale: The point I am making is they deliberately train more than they know they can employ. They choose this route and other countries choose to do it a different way because they are at different stages of their economic development.

Ms Passchier: Yes, but in the long run it is not a sustainable route.
Q285 Lord Corbett of Castle Vale: You were talking in the context of economic migration, the need for a more coherent policy. By that do you mean simply basic minimum standards across the EU with any national additions which national countries want or should that cross-EU framework go beyond that?
Ms Passchier: As a starting point, let us take the issue which is also in the draft constitution—which is far away from being ratified by everybody—that for the time to come it will probably be up to national sovereignties to decide how many people you let into your country. At the same time, we think that being an EU with an internal market you cannot deny that you need a European framework for these issues. There is quite a need to discuss several linked developments in our labour markets. Seeing that the EU is about an internal market and having a lot of competences on market issues, not so many on social issues, and still developing competences on migration issues, if we do not use those competences we create a false idea that we can still manage everything with regard to social policy and labour market migration on the national level. In our view that is not true, if you look at the different policies of certain Member States with regard to the free movement of people from the new Member States, that creates a certain effect on people in other Member States. If it is easy to go to the UK and not so easy to go to another country, you would probably get more people from a certain new Member State because they would prefer to go to your country if they want to migrate. All these policies have a broader effect. The same counts, for instance, if you compare policies on the free movement of services and the free movement of workers. Very often they are seen as separate issues, as if they have no link with each other. For example, a Finnish company can establish itself in Estonia or it can ask a service provider from Estonia to provide services to the Finnish territory or it can hire workers from Estonia; companies do all those things. If we do not have a coherent policy at European level on how to respect the national labour law system or the industrial relations system, then you create a lot of effects which workers are very frightened of. They see migration, illegal migration and the draft Services Directive as a threat. As an ETUC, we think we should not foster those fears but we should create proper systems to say: “What we need is an internal market, but what we need also is a more proper framework to deal with whatever form of cross-border working is required”.

Q286 Lord Corbett of Castle Vale: What are the four or five essential ingredients of that common framework, from your point of view?
Ms Passchier: Certain issues would not be too popular in the UK.

Q287 Lord Corbett of Castle Vale: We have broad backs!
Ms Passchier: There has been a long debate in past years on minimum regulations on temporary agencies. Agencies play quite a problematic role with regard to irregular migration and, also, with regard to migration from the new Member States, which is not called migration but mobility. Recently the UK adopted a Gangmasters Bill to deal with very real problematic things happening in the UK. If you look at the Services Directive and how it would work with regard to the Gangmasters Bill in the UK, it would create a situation where you could demand that a UK established gangmaster be registered, but that a non-UK established gangmaster could operate freely on your labour market. This is just an example to show that if you want things to work properly and you do not want to close borders—we do not want to close borders, we are not against the free movement of workers or the free movement of services—you will have to provide Member States, for their social inspections and labour inspections, with proper minimum rules of the game, with proper systems of enforcement, with recognition and co-operation between your inspection and the Polish inspection, for example, on how to deal with certain forms of cross-border working. In the current situation we think that is not considered appropriate, it is not recognised as of major importance. We think it is of major importance if you want to go forward to open borders, to free movement of workers and to manage migration because you will have to provide local and regional labour markets which are experienced as local, and regional, where there are local and regional structures of protection, community structures and collective bargaining, with a minimum of a protective framework to do their work. Increasingly we see for instance that the people in Finland, Sweden, Denmark, increasingly fear negative effects of any cross-border movement. It is attractive for employers not to apply the local or regional rules of the game, to start discussing if the collective agreement is also applicable to those people, and that creates a lot of resistance. A lot of workers start to see all migratory movements as threatening and they do not want to accept all that. We think that is very bad, it is bad for Europe and it is also bad for the workers, but that is not easy to explain.

Q288 Lord Avebury: The provision of short-term contract workers in, for example, the IT industry is, to my knowledge, bedevilled with enormous amounts of bureaucracy already, and if it is going to be made more difficult for the suppliers of that contract labour, particularly where they are offering workers from another European Union country, then it will severely inhibit economic potential which arises from the mobility of those workers, will it not?
Ms Passchier: If you need to make it simpler for certain professions where there is a need for workers, the question is where should they be recruited from. From within the European Union I have just argued that it should be much more open and free. The other possibility is from outside the European Union. Our first answer is, let us start to see if we have not enough potential within the EU to train them, to have a more long-term perspective and not only, let us say, recruit migrants as if you can just fill the holes with them and then as soon as you do not need them you throw them out again. We have to really do something which is more sustainable. On the other hand, if there are real needs then you probably should recruit workers or should allow that, but also allow them to develop and not say: “These are just like Kleenex, we do not recognise them as human beings which can develop and start to like being in the UK, develop themselves into something more interesting than an IT worker,” which could be good for the UK.

Q289 Viscount Ullswater: At a Commission public hearing on 14 June, Vice-President Frattini put forward proposals for harmonising admission procedures and introducing a Green Card system, which would enable third country nationals to be admitted to look for work—which I think is going back to your proposition of these job-seeking permits really—but there are a lot of Member States who are firmly opposed to EU regulation on this first admission. What is the ETUC’s view of this Green Card idea and of the subsidiarity aspect of regulation of first admission to Member States?

Ms Passchier: As an ETUC we are a bit careful on that issue because I am not, as I said, from Mars and I know that among our affiliates there are quite a lot of question marks about whether you really would be able to have a European system. Let us say, from a trade union point of view the idea is that the social partners, when it is about economic migration, should be much more involved on proper levels to discuss if you really need to have more explicit recruitment. The debate on joint criteria or a Green Card system is more of a general opening of the migration system. We would, in general, be in favour of European harmonisation not only on procedures but also on appeals, for instance, that for people who are denied access, it is clear where to go, that there is more transparency for migrant workers when they apply and how they will be treated by EU countries. A certain minimum of rules, procedures and possibilities to get redress and to have appeals would give a more transparent picture of the European Union for the outside world. It is a little bit complicated how that will relate to the sovereignty of Member States to decide on numbers because how would you relate a general system with rules regarding how many to allow in? This immediately gets to the question of quotas. Certain Member States would say: “Let us say this year we can have so many.” We do not have a clear position on quotas. We have stayed away from the question of whether we think it is a good thing or a bad thing. However, maybe it is not too bad, it is better than what is happening now in many situations because it is a clear signal that you allow a certain amount of migrants in and that you do that on certain terms which are also clear. We think it is really necessary to have a more rational approach to the fact that there is a lot of migration. We cannot tell our people that there is no migration; zero immigration is a fiction. We have to invent a system which allows Member States enough room to develop with their own social partners. We think the social partners should be included when it is economic migration and, at the same time, have a clear message to the outside world, “Under certain terms you can migrate to the European Union, but then there will be rules also, there will be demands and when you migrate there will be an investment in you. You may learn the language but you should also do something yourself to integrate yourself”.

Chairman: Viscount Ullswater, we are running a bit short of time and we must not keep you too long. I will ask my colleague to ask their questions rather rapidly. You have answered with admirable conciseness so far but we ought to keep an eye on the clock.

Q290 Lord Marlesford: Given that there are very different economic and social conditions and labour markets in different countries, it is a little difficult to see how you can have a single framework. Let me ask you a straight question because I would be fascinated with your explanation. Unemployment in Germany is currently 11.7 per cent, in France it is 10.2 per cent and in Britain it is 4.7 per cent, what is your explanation of that?

Ms Passchier: You have raised two questions and I will start with the first one. I agree, there are major differences between countries and there will be major differences in how people perceive the need to deal with migration. I have travelled almost all the 25 EU Member States to discuss how to deal with racism and xenophobia, and migration was increasingly part of the debate. There is no country in the EU which does not ask itself questions on migration because nowadays they are all faced with it and they are all looking for answers. They will not allow Brussels to tell them how many to let in, that is not the situation. There may be a good case for minimum regulations on procedures and how to deal with basic rights. The question is how you can offer a framework to Member States and migrants, not only to the governments but to the migrant workers themselves also, to deal with the issue better. If the unemployment rates in the countries you mentioned
have something to do with their migration policy, that would be a very difficult question to respond to. What I know is that Germany has integrated one of the “new Member States” (thereby becoming part of an old one) and has really had to adapt itself to major changes in that respect. Germany has taken in an enormous amount of recruited migrants from the 1960s and 1970s and also an enormous amount of asylum seekers in the late 1970s and 1980s. These people have created a lot of economic prosperity, so I would not be able to relate one issue to the other. If the UK has a low level of unemployment, I congratulate the UK, but we also have different opinions with some UK players about the reasons for that situation.

Q291 Lord Marlesford: You gave a very interesting answer on the migration point in Germany, what about France with 10.2 per cent unemployment?

Ms Passchier: I cannot give you an explanation on the EU. This could be an approach which may be about France with 10.2 per cent unemployment? Ms Passchier: I cannot give you an explanation on the relationship between their unemployment and their migration policies. Also, France has seen a major influx of people from the old colonies, from Algeria and they have had an enormous amount of asylum seekers, the UK has also. These are three countries which have dealt with enormous amounts of migrants and ethnic minorities. I cannot tell you how much these people contribute to the economic success or create unemployment. If you are better at integrating young migrants in your labour market than France is, I do not know.

Q292 Chairman: Ms Passchier, I think you have already answered quite a number of the other questions we wanted to ask you. I suspect that for those questions which you have not answered we shall find your answer in the paper which you very kindly gave us. Can I use the Chairman’s prerogative to ask you the last question which is, under Decision 1/80 adopted under the EU Turkey Association Agreement, Turkish migrant workers have protection of their right to continue work and residence after 12 months’ employment. Is there a basis here for third country employment rules?

Ms Passchier: We would say that if we allow people in—let us say, taking the situation of someone who legally migrated to the EU—then when the job is over we should not be too quick in thinking that all of a sudden every right of that person has disappeared, they could continue being useful to the European Union and should be allowed to look for a way in which he or she can continue to earn money in the EU. This could be an approach which may be interesting to explore. In our position on the Green Paper on economic migration we suggested something similar, ie a jobseeking permit for say 6 months, also for those whose first contract of employment has expired.

Chairman: May I thank you very much again for coming. I apologise if I have rushed everybody at the end, but I am afraid the timetable is becoming awkward. Thank you most sincerely not just for coming but for the very helpful and frank way in which you have answered our questions.

Examination of Witness

Witness: VLADIMIR SPIDLA, Commissioner for Employment, Social Affairs and Equal Opportunities, examined.

Q293 Chairman: Good afternoon, Commissioner Spidla, thank you very much for coming to give evidence to us today. I will not introduce my team as we have put our name plates in front of us. As you know, we are a European Sub-Committee of the House of Lords. We are engaged in an inquiry into economic migration, primarily into the EU, but also within the EU. We are not concerned with illegal immigration or with asylum procedures. Employment and social affairs are both equally involved in the question of migration. I would like to thank you very much indeed for receiving us and, again, apologise for being a few minutes late. We had a few security problems getting into the building. Can I, perhaps, open the discussion by asking you how you see the whole question of the European labour market? Do you regard it as an EU question, a national question, a regional question, or a mixture of them all perhaps?

Commissioner Spidla: Thank you very much for this opportunity of meeting you, and thank you for this opportunity to discuss these questions which I think are extremely important. There is no point in wasting time, so let me answer your questions. If I can put my answer this way: I could ask, do you think the economy is regional, national or international, it is another way of putting the same question. In the globalised world the labour market is globalised, it is a single market, but some elements of the market are undoubtedly purely regional, other aspects and other elements are national. It is also obvious that there are many significant elements which pertain to the European Union as a whole. And we must be aware that some words might be misleading. The word “national” is, of course, misleading because it refers as much to Andorra as to China.

Q294 Chairman: Given that position, how feasible do you think it is for state authorities themselves to regulate the labour market? How far should they take into consideration the need to protect their own domestic labour force?
Commissioner Spidla: At a European level it is very important to use the concept of a European Union reference as a starting point. “Domestic” should be understood as meaning “European Union”. Member State authorities cannot prevent free movement of citizens of other Member States, with the exception of the transitional arrangements for the new Member States. Free movement of persons within the EU is one of the fundamental values of the Union. When it comes to protection of the domestic labour force from non-EU competition, the principle of Community preference must be upheld. Also, we protect European jobs by protecting and promoting fair competition. We should not allow domestic work to be exposed to unfair competition.

Q297 Earl of Listowel: The Lisbon Strategy recognises the importance of labour migration to economic development. To what extent does EU immigration policy reflect the Lisbon objectives?

Commissioner Spidla: So far there is no European immigration policy but the discussion of a framework of such a policy has been launched. We are talking here about migration of workers. The Green Paper merely mentions certain approaches which could be co-ordinated or rendered compatible, bringing together the approaches of the individual Member States. Personally, I am convinced that is in line with the Lisbon Strategy. It would also be in line with the Lisbon Strategy to waive the remaining transitional periods for citizens of the new Member States, although, once again, I emphasise that decision is up to the individual Member States themselves.

Q298 Lord Dubs: I do not speak Czech, I am afraid I have forgotten my Czech, so I shall have to speak in English. I have got two questions and my first question is this, what can be done to stimulate more efficient labour migration in the EU? Have any measures been taken to encourage intra-Member State movement of EU nationals?

Commissioner Spidla: My first point is that we should not overestimate the scale of labour mobility in the EU. What we see, at the moment, is that only 1.5 per cent of workers work in a different Member State from their own, from where they were born and only 0.4 per cent cross borders to work. We can see that there is no great tendency to cross borders to be mobile in this way. I think it is fairly easy to explain that. We need to bear in mind that we need to change languages several times we move. That is very different from the US, where it only takes about two days for someone to understand the English spoken by people elsewhere. That is one point. The second point is that there is more mobility of higher skilled workers. There is a very good and positive trend here. In this way we can see that people with interesting ideas are moving around the EU. What do we do? We can get rid of the remaining transitional periods for citizens of new Member States. It is very obvious that that will gradually happen. Secondly, we should get rid of obstacles which stand in the way of mobility. Portability of supplementary pensions is very important here. We need to bear in mind ageing and demography. We need to realise that the lack of portability of supplementary pensions is an enormous brake on mobility. People lose an awful lot in terms of pension funds by moving around. That is one problem. Furthermore, it seems to me that we need to work harder on mutual recognition of qualifications, as there is still space for improvement there. Then there is education and training: we need to emphasise the need for better linguistic preparation in our educational systems. What we can also do is make use of the multinational approach to the framework for the labour market. These are points where we can seek to improve the degree to which workers move around from region to region and from Member State to Member State. Once again, what I would like to emphasise is that the scope for mobility is always complementary; this is just one partial aspect of the equilibrium of the labour market. What is decisive is the professional reasons for mobility.

Q299 Lord Dubs: My question follows clearly from the answer you have given, although I am a little bit surprised at the very low levels of movement which you have quoted. Certainly, following enlargement, we felt there was quite a significant inflow of workers to the UK from the eight countries of Central and Eastern Europe. We think those are positive and beneficial effects for us. I wonder when we can expect to see full freedom of movement of workers within the EU?

Commissioner Spidla: There has not been any change yet, but the United Kingdom has made a good start. The results have been positive: 40 per cent of the people who entered your labour market were already in the UK before. There was a degree of regularisation I suppose. Apparently there were 150,000 people registered in the United Kingdom, nothing enormous, but it has certainly made a contribution to your pension system which is by no means negligible. At the moment there are certain signals that in about 2006 there will be an initial evaluation of the transitional periods, but some countries will waive the remaining transitional period. It appears they are likely to do so. Shall we say there will be free movement of workers by 2007?
I think that is the earliest possibility, with perhaps one or two countries not taking part.

Q300 Earl of Listowel: Should regulation of labour migration be driven entirely by economic considerations regardless of possible social consequences? For example, are there concerns we should consider about housing supply or about the training of young people who are unskilled and the additional efforts which should be made to provide them with skills rather than recruiting migrant labour?

Commissioner Spidla: This really gets down to the heart of the matter. It is obvious that labour mobility is about people not things. So we are dealing with the individual characteristics of people, their cultural characteristics, their fears, their happiness, et cetera. We have got to take account of other circumstances; we cannot focus purely on economic aspects. Therefore, what is extremely important is this. We should never forget that economic migration has to be linked with integration because it is naive and wrong to think that someone can go to a country for four years or so, unpack his case and simply settle down, that somehow that person will fit in just like that. I repeat, it is never a purely economic matter, there are always social aspects here. It is nonsensical to think otherwise.

Q301 Lord Corbett of Castle Vale: On 14 June, at the public hearing on the Green Paper, Vice-President Frattini advocated a very ambitious policy on economic migration including proposals to harmonise admission procedures, introducing a Green Card system, et cetera, which would enable third country nationals to be admitted looking for work. Given that a number of Member States are firmly opposed to EU regulation, how will this be achieved?

Commissioner Spidla: Commissioner Frattini used a metaphor, Green Card, which is a rather infelicitous choice of word because it has a particular American context. It is rather difficult to extract it from that context here. Let us consider what exactly he was talking about and then let us consider the circumstances surrounding the admission of job seekers. A fast-track procedure could be used for the influx of workers in certain sectors. I do not think there is wide support for this idea—there is some support, but some Member States do not agree with the idea. It is the same really with all basic European decisions, either there is a consensus, so everyone will be in favour and this goes ahead, or there will be strong or weak arguments against the idea put forward by some Member States and nothing will happen. The treaties and European precedents do not really allow us to proceed except by unanimity here. The Treaty is clear, we simply co-ordinate a policy. It is simply a question of agreeing that this particular procedure is appropriate, it is the right way forward and then all Member States will put this idea into practice independently. All we can do is co-ordinate that. It is still a very distant prospect.

Q302 Baroness Henig: Do you think the current problems in relation to the Constitutional Treaty will make it more difficult to develop EU policies in this area?

Commissioner Spidla: No, I do not think so. The problems with the Constitutional Treaty are genuine problems, and undoubtedly they impinge on European policy in general, but they do not impinge specifically in this area. There was no debate in France about this particular subject; that did not really influence the votes in the referendum.

Q303 Baroness Henig: Can I ask you a more internal matter. How is responsibility for the regulation of economic migration divided between your Directorate-General, Vice-President Frattini’s and the Internal Market Directorate General?

Commissioner Spidla: Mr Frattini and I share this responsibility, the Internal Market DG has less influence. Mr Frattini is in charge of aspects which have to do with police activities, procedures, et cetera, whereas my competence is more to do with integration and the social results. We work very smoothly and we work very well together.

Q304 Lord Marlesford: Commissioner, given that the new European Union has at least two different economic and labour systems, the so-called French social model and the so-called Anglo-Saxon model, would it be possible to have common policies which are flexible enough to allow them both to continue?

Commissioner Spidla: I am not entirely convinced about the idea that there are two such different systems. These, however, are not such fundamental differences as the one between, say, Communist systems and democratic, free-market societies. You can rather talk about the Anglo-Saxon model as one of the variations of the general Euro-American model; the model of Germany, which is a world export leader, is another example of a variation, and so is the Nordic model. In my opinion, the systems of all the Member States are different variations of one basic model.

Q305 Lord Marlesford: Can you summarise the reaction you have had so far to your Green Paper?

Commissioner Spidla: I am a co-author of the text. The reaction has been diverse; on the whole it has been positive. The EURES network has been favourably received. This network provides information about the labour market, information about what the European job centres have to offer, so there has been
a favourable reaction. The EURES people have suggested an expansion of this EURES network so as to include information for migrants from third countries. Also, there is agreement that it would be a good idea to have joint applications for work permits and residence permits, although there is some disagreement on whether the work permit and residence permit should actually be one document. Spain, for example, thinks there should be a single document, but not all Member States agree with that idea. Then there is the emphasis on the principle of Community preference, which you have already talked about, to give preference to someone from a Member State over a third country national. There is a further view here, which I myself share, that we should also give preference to citizens from third countries who have already worked in the European Union. What is the point, how would this work? Let us say someone works in the EU for five years, he goes back home and then decides to come back to the EU. Here there would be a preference given to people like that. The reason is this: at the moment, someone who works in the EU and goes away loses his position, so he cannot come back very easily. That is something which discourages people from leaving the EU because they cannot get back afterwards. I think we could have a two-way flow in this. It is not obvious, though, that this view will prevail. Furthermore, there is the point which I was advocating a few moments ago. I am convinced that mobility of the labour force has to be linked with the integration of these and they have to go hand in hand. That roughly is the result which we have had so far. We can think about going ahead further, but, of course, there are different opinions, so different that it is difficult to summarise them.

**Q306 Chairman:** Commissioner, thank you very much for that. As a committee we have, of course, seen the British Government’s response to your Green Paper. Are you prepared to tell us if there is anything in that which worries you?

**Commissioner Spidla:** No. The British Government does not worry me. There is a general reservation on its part, shall we say, and then there are approaches on which we can work together. I rather expected that answer, but the British answer does not prevent a discussion. We can go ahead and discuss matters nonetheless.

**Q307 Viscount Ullswater:** Commissioner, the Commission’s recent action plan on the Hague Programme favours an immigration policy covering admission and procedures and criteria. Does this not pre-empt, in some way, the outcome of the consultation on the Green Paper recently circulated?

**Commissioner Spidla:** No, I do not think it would pre-empt the consultation process, although, of course, I have heard these opinions. All the questions are open, and only when we reach a conclusion will all these things be implemented.

**Q308 Viscount Ullswater:** Commissioner, perhaps I can ask you what you see as the next steps by the Commission following the consultation process?

**Commissioner Spidla:** That depends on the outcome of the consultation process, whether it reaches some kind of a definitive stand or not, but we expect it to be based on consultations. We will have worked out an action plan by the end of this year. This action plan will be either a major document, if the outcome of the consultation allows that, or it will be a less decisive, less important document if the outcome of the consultation is not that ambitious. I would not like to pre-empt too much, but I have already said something about the EURES network, the joint application for residence permits and work permits and the importance of integration programmes as well as all the points about co-operation with Third World countries from which we accept migrants. All of these things, I think, will be reflected in the action plan as proposals. That can be specified to a greater extent, but I would not like to guess what the outcome of the consultations will be. In a number of areas the opinions are not yet united, so we will see.

**Chairman:** Commissioner, perhaps I can give you an identical response to the question, what is our committee going to report? We have not, of course, made up our minds yet. We have heard a great deal of evidence already and the evidence we are receiving today is also very helpful. I should explain, we have actually done an inquiry into the Hague Programme already and we are now looking at the action plan for the Hague Programme. I hope we will be in a position to report on economic migration in October. Although it is not, in itself, a response to the Commission Green Paper, nevertheless, your Green Paper has very much provided a stimulus to our inquiry. I hope, very much, that when our report is produced you will find it helpful.

**Q309 Lord Avebury:** Can I ask about the Commission’s Green Paper’s lack of any reference to the rights of economic migrants and the Member States’ existing commitments under the ILO and the Council of Europe Conventions and the possibility that most Member States will accede to the United Nation’s Convention on the Rights of Migrant Workers—none of which are referred to in the Green Paper—or, indeed, the obligations of employers generally. Why is that?

**Commissioner Spidla:** This is a question of an overall approach because in politics, in general, we always have to seek to strike the right balance between
analysis and synthesis. I do not know who said this, I am sure it was a British author who once said: “One has to be sufficiently thin to be able to squeeze through”. We are looking for borders within which we can finalise the discussion in order to reach conclusions which we can work with. The questions you asked are very important. There always has to be a balance between rights and obligations and there are also phrases there which really state that there has to be equality, so it is there. Perhaps it is not completely explicit. Why did we not make it into an explicit question? Well, of course, one can argue that it would be better to word it in a more explicit way, but we tried to define the field in such a way it can be realistically dealt with.

**Q310 Lord Avebury:** It was really only for cosmetic reasons that you did not want to raise the question of the obligations of employers, not because you did not think employers should have those obligations?

**Commissioner Spidla:** No, not cosmetic. The human language is a very fine instrument indeed. Of course when you have got a burnt face then a cosmetic operation is very important. If you just want to get rid of a little pimple, maybe it is not so important from a cosmetic point of view. I would not say cosmetic changes, but tactical might be the word.

**Q311 Lord Avebury:** Can I ask you about the effects on third countries? Do you think the European Union should take action to compensate third countries in some way for the loss of skilled workers who are trained by them at their public expense? If we should take such measures, what do you think specifically they should be?

**Commissioner Spidla:** I do not think we should give compensations, but I think in our policies, especially in the active components of our policies, we should take account of the fact that there can be a brain-drain. Indeed, for some Third World countries this can be especially harmful in a significant way. We have to integrate this question into the policies. Personally, I would prefer to see an important compensation for people from Third World countries who leave the EU and then come back to look for work because that creates a movement and a benefit which goes both ways. Someone who gains experience here can go back to his or her own country and use the experience there at home. Otherwise, as for compensation I cannot conceive of any such thing and I have never advocated anything like that.

**Q312 Chairman:** Commissioner, can I turn now to something which, in a way, reflects my earlier question about whether the British Government’s position causes you any concerns. The particular question which has concerned this Committee in a number of our reports is the question of the British opt-out. Can you tell us how far the exercise of the British opt-out, on both legal and illegal immigration, in your opinion, damages the UK position in your attempts to develop a common policy? Is it likely to give rise to increasing difficulty as further measures are agreed?

**Commissioner Spidla:** The issue of opt-out, of course, does not strengthen the effort of creating a common policy. It is in the interest of the UK to take part in this policy. Generally, the opt-out principle, which is often used by the UK, is not directly an obstacle. Of course Schengen is also taking place without the UK. In some areas it is possible to go forward even without the UK. My main aim is to co-operate and look for areas of consensus as much as possible as far as it goes. It is also important to point out one thing. In fact, the immigration policy is in the national remit, so, in fact, an opt-out can be done by any Member State, not just the UK. Not all countries have to be in the Schengen area, not all of them have to accept everything, but still I think the main idea which is in the Green Paper is the right idea. It is beneficial and we are very much interested that the UK co-operates and is actively engaged.

**Q313 Chairman:** Thank you very much for that reply. We are now four days into the UK Presidency of the EU, and you yourself have just been in the UK for the opening of the Presidency. Can you give us any personal reaction to the likely programme of the UK Presidency and what priorities the British Government should be pursuing in this area? I am sorry, that is an unscripted question.

**Commissioner Spidla:** Indeed it is an unscripted question, so my opinion here cannot be private because we are meeting here officially, but it should not be too official either. My basic approach is the following. As I have said, the British model is a part of a wider model and the UK is a country with great cultural potential. It is impossible not to use the half year of the UK Presidency as much as possible. We will try to find common ground wherever it is possible to maximise its potential. I think there are a number of such common areas, such as the labour market, the area of active social inclusion of disadvantaged groups of people in the labour market. These are often disabled people, but, also, there are many other reasons why these people are disadvantaged. Another thing which is important to me is the idea of non-discrimination. In the year 2007 we would like to have a year of equal opportunities for all. I have asked my British colleagues for support here.

**Q314 Chairman:** Commissioner, thank you very much for that reply and for all your replies. We are all extremely grateful to you for sparing time in your
extremely busy schedule and for receiving us. Can I not only thank you for the very helpful, frank and full way in which you have replied to our questions, but, also, if it is not impertinent, may I wish you good luck.

Commissioner Spidla: Thank you.

Examination of Witnesses

Witnesses: Ms Stefania Pasquetti, and Mr Jordi Garcia Martinez, Immigration and Asylum Unit, Directorate-General, Justice, Freedom and Security, European Commission, examined.

Q315 Chairman: Can I thank you both very much indeed for receiving us. You have explained to me privately and very politely that your Director-General is not here, but it is a great pleasure for us to meet both of you. Thank you for undertaking this. I will not ask my colleagues to introduce themselves; we have put their names in front of them. We are, as you know, a House of Lords Sub-Committee. We are conducting an inquiry into economic migration, not illegal migration or asylum. Although it is, in a sense, a self-started inquiry, nevertheless, the Commission Green Paper is very much a stimulus for us. When we produce our report, which I hope will be in October, we will, of course, address the questions, among others, which are raised in the Commission Green Paper. Thank you very much for receiving us. If we may, we will put some questions to you.

Ms Pasquetti: Thank you very much. I apologise on behalf of my Vice-President, Mr Frattini, who is in Strasbourg—as you know it is a Parliamentary Session—and also for my Director-General, Mr Faull, and my Director, Mr de Brouwer, who are both on mission and thus cannot be present. I am really sorry but this meeting will just take place at services level. My name is Stefania Pasquetti. I deal with economic migration and with the Green Paper in particular. My colleague is Mr Jordi Garcia Martinez. Mr Lutz is sick, so he could not come. Mr Garcia Martinez is dealing with regularisations and statistics in the field of migration as well. I hope we will be able to reply to your questions.

Q316 Chairman: I should say that I am a member of the European Select Committee of the House of Lords also, and in that capacity I had the pleasure of meeting Mr Frattini in London. I would ask you, please, to convey to him my respects and regards.

Ms Pasquetti: My pleasure.

Q317 Chairman: Can I start by asking a question which we have put to quite a number of your colleagues and that is: how do you think the EU labour market should be seen? Is it seen as EU-wide, national, regional? How do you see the EU labour market?

Ms Pasquetti: This is not an easy question to reply to. It should probably be addressed more to Mrs Quintin, Director-General responsible for employment policies. The way we are trying to see it, from an immigration point of view, is to take into account that there are differences in the EU, not only in the labour markets and at national level but, also, as you well know, at regional and sectoral level. We do not consider the EU labour market as one single labour market because it is not. At the same time, we need to remember that we have four fundamental freedoms which are recognised by the EC Treaty, and to a certain extent this does affect the internal market, in fact, it creates the internal market. We need to take into account the freedom of movement, at least for EU citizens. There will be a right of movement for third country nationals once they become long-term residents under the Directive, which will come into force next year. Of course, this will not really affect the UK, since the UK has not opted into that Directive. At least from a general point of view, we need to take into account these facts. As I said, it is a really difficult question to reply to. We try to keep in mind that so far there are still big differences in the labour markets.

Q318 Chairman: The Lisbon Strategy reflects the importance of economic migration for economic development. How far does EU immigration policy, as it stands at the moment, reflect the Lisbon objectives? How far in the process of consultation on the Green Paper do you see those Lisbon objectives being fulfilled?

Ms Pasquetti: As far as the present situation is concerned, we have been trying to take into account the Lisbon objectives in the EU legislation already approved. This concerns the students Directive, for example, and the researchers Directive. In these cases as well the UK has not opted in. The researchers Directive will be officially adopted on 15 July—if I am not wrong—and the students one has already been adopted. In these two sectoral initiatives we have been trying to take into account the Lisbon Agenda by facilitating, in one case, the mobility of researchers in the European research area and, in the other case, by allowing for a fast track procedure for the admission of students from third countries and limited intra-EU mobility also for them. For workers there are the integrated guidelines for growth and jobs which have just been adopted. For example, one

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2 Note by the witness: Formal adoption by the Council has been postponed to September 2005.
of the guidelines (the 12th) concerns the mobility of researchers, so on this point I think the migration policy has responded in the correct way to what the Lisbon Strategy asked the Commission to do. For the rest we have two other guidelines, which are the eighteenth and the nineteenth. The first one says that we need to reduce the unemployment gaps between EU nationals and non-EU nationals. This is one of the things which is still under the competence of the Member States and, the Commission is trying to take it into account in revising the Economic Migration Strategy. The second one calls for the proper management of economic migration. On this specific point, the Commission is aware that there will probably be a growing need for immigration in the coming year—that is what we said in the Green Paper—for different reasons: demographic reasons, skills gaps, sectoral gaps, et cetera. At the same time, we do not consider migration is the only solution to these problems, ie competitiveness, demographic ageing, et cetera. We think the first solution is to tap into our existing resources, be it EU nationals or third country nationals. Another solution is to improve the management of migration and try to attract the migrants we need. I think this is more or less the same way we are trying to fulfil the Lisbon Agenda. As I said, unfortunately, the reflections are still ongoing, so it is not always easy to reply to you and give indications on the future steps.

Q319 Chairman: You referred to the UK opt-out. Can I ask a question which I was going to reserve until later. How far do you think the British opt-out from both legal and illegal immigration policy is damaging the prospects of achieving some form of common European policy on economic migration? Ms Pasquetti: This is more of a political question than a technical question, maybe you should ask my Director-General.

Q320 Chairman: How do you think your Commissioner would answer it? Ms Pasquetti: I would like to be in his mind some times, but unfortunately I am not! Apart from the jokes, this is a choice. The UK, Ireland and Denmark have specific positions and the Commission understands and respects them. This is more or less the only answer I can give you. Of course, the Commission would appreciate if the UK was to decide to opt in to the various directives on migration that we are adopting at EU level, for example, the researchers Directive, which could help extending this common research area. But, of course, it is up to these Member States, Ireland and the UK (because Denmark has a complete opt-out), to decide on which basis they want to opt-in or not.

Chairman: Thank you for a very broad, balanced reply.

Q321 Lord Corbett of Castle Vale: Given the variety of avenues for admission to EU Member States, how much scope is there for Member State authorities to regulate labour migration? How do you do this while, at the same time, protecting the workforce within the individual countries? Ms Pasquetti: To answer the first question: at the moment every Member State has an economic migration policy. I think there is full scope for the moment, as there are no specific EU laws on economic migration, apart from some articles in the various directives dealing with asylum and immigration and access to work. To give you examples: we have access to work in the family reunification Directive, in the long-term residents Directive, in the students Directive and, of course, in the researcher Directive, even if research is a little bit special as a field of work. As regards a future policy in the EU, Member States will remain completely free to decide the volume of admission of third country nationals seeking entry into the EU for work purposes, both employed and self-employed. This will stay with the Member States anyway. The public consultation on the Green Paper showed that there was no support for stipulating in a really specific way at EU level the conditions of accession of third country nationals for work purposes because we need to have a certain degree of flexibility. Member States will have, at the minimum, a certain degree of flexibility, if legislative measures at EU level will be adopted. As for the domestic workforce, of course, it is already protected under national and EU immigration policies because if you look at references to the labour market test, it applies a principle in the EU legislation called Community preference. It says in a Council recommendation of 1994 that a third country national should only be admitted if there is proof that a post cannot be filled by an EU national or by a third country national resident in the country, which is a protective approach for the national labour market. We already have safeguards for our nationals. The other safeguard which the Commission considers a safeguard are the conditions of employment of third country nationals. If we guarantee that third country nationals are employed under the same conditions as our nationals, we are protecting our nationals; otherwise it becomes a lot cheaper to hire somebody from abroad. That is what the Commission says. If you have the same conditions or the same regulations, you are protecting EU nationals.

Q322 Lord Corbett of Castle Vale: Commissioner Spidla told us—I think I am right in saying—that 1.5 per cent of the workforce across the EU is working in another country, a very small percentage of the workforce. Do you see a need to stimulate more
labour migration within the EU, and if so, how do you think that can be done?

Ms Pasquetti: This is a question for DG Employment because they are responsible for intra-EU mobility of EU citizens. In theory, I think the reply is through the Lisbon Agenda. Migration in EU jargon is only the migration of third country nationals, the rest is the freedom of movement of EU citizens. Mrs Quintin would probably be more able to reply tomorrow. We are working with them all the time, but this is really their field.

Q323 Lord Corbett of Castle Vale: Does that mean they are the better people to ask the question about Community preference of EU citizens rather than you? Do you know how effective that and the EURES system are?

Ms Pasquetti: Regarding the EURES system, I know DG Employment is saying that they need to improve it, this is what they have been telling me at least. Apparently it has been working better and better in the last few years. As for Community preference, I did not really understand the question.

Q324 Lord Corbett of Castle Vale: There are circumstances where existing EU citizens get preference within the Union. I just wonder is that working? Is it making any significant difference?

Ms Pasquetti: It varies from Member State to Member State. Usually, in general terms, Member States ask that a given job vacancy is published for a given time, which could be two weeks or one month, et cetera. If the employer says he has not found anybody in the EU—either in the national market or in the EU more generally—who is fit for the job, then he can ask to recruit from abroad. It is really left to Member States’ competence how to implement it in practice.

Q325 Earl of Listowel: What are the implications of the GATS rules on freedom of movement for service providers for national immigration rules on the admission of workers? What is the Commission’s position on the further liberalisation of the movement of services agreed in the Doha Round?

Ms Pasquetti: I am sorry, this is more a question for DG Trade, for Mr Mandelson’s services. What we are trying to do as Commission is to separate migration rules from GATS rules. These are two different issues and we are trying to separate them. I know that freedom of movement for service providers is often seen as a back door for immigration. I know my colleagues from DG Trade are looking into it during the negotiations, to ensure that this does not become a back door for immigration. At the same time, I know they have submitted an EU offer and they are quite willing to negotiate and try to improve the freedom to provide services. Unfortunately, it is difficult for me to be more precise because I am not following the details of the negotiations. What I can tell you is both DG Trade and DG JLS consider GATS mode 4 as a specific issue, and we need to treat the common migration rules separately. We need to monitor it attentively so that it does not become, as I said before, the back door for immigration, the way to turn immigration rules around. At the same time, there is a strong request from a lot of third countries to be more open when it concerns intra-company transferees or service providers or business visitors.

Mr Garcia Martinez: I know DG Trade asked for a study to be prepared on the numerical ceilings to GATS mode 4, and this has been prepared by an Irish professor, Jerry Sexton. This report is online on the DG Trade website. It contains a lot of data and information as to how the EU could, in the future, set a numerical ceiling for these kinds of people coming into the EU.

Q326 Lord Dubs: I am not entirely sure that these two questions are right for you, so you will be safe. My first question is this, is there a case for a common EU policy on labour migration?

Ms Pasquetti: You mean if we should have or should not have an EU policy on labour migration?

Q327 Lord Dubs: What is the argument for having a common policy on labour migration across the EU?

Ms Pasquetti: Our arguments are substantially what I said before. Forecasts say that in the next 20 years in the EU, as an average, we will probably experience a gap of 20 million workers due to demographic ageing. As a Commission we do not think we should fill in such competitive gap just with migration, this does not mean we need 20 million new immigrants. As I said before, we need first to tap into our existing resources and bring back those people to work. At the same time, in this context, we need to rethink the labour migration policies in the Member States. As I said, this might not really affect the UK because of this peculiar position, but, at the same time, we have a series of EU rules which touch upon the freedom of movement of third-country nationals. We have the Schengen area: people are free to move, and we have the freedom to provide cross-border services. Next year, in January 2006, the Long-Term Residents Directive will come into force, which means there will be a possibility for long-term residents, for example, living in Germany to go and work in Sweden. There will be a limited mobility for third country citizens. In the end, this means that the decision to admit a third country national into one Member State is not anymore just the business of that Member State, but it affects the others as well. That is why we are trying to see if there is a way to agree on some common rules, even if they are minimum common rules. For
the first time the Commission adopted in 2001 a proposal for a directive but did not get any support from the Member States. That is why the Commission came back with this Green Paper on economic migration, which is not giving any solution, it is just proposing options and trying to understand what the different requests and ideas are, from the Member States, the social partners, etc. Now we will have to reflect on whether there is a way forward and what that could be, but, at the same time, we did not encounter the same reluctance from the Member States as there was in 2001.

**Lord Avebury:** You list a figure of 20 million, I do not remember it in the Green Paper?

**Q328** Viscount Ullswater: It is on the first page of the Green Paper.

**Ms Pasquetti:** It is in the introductory part.

**Q329 Lord Avebury:** Are there any calculations showing that 20 million?

**Mr Garcia Martinez:** EUROSTAT made some estimates at the beginning of this year, I think, which are online on the EUROSTAT site and they have calculated this projection of 20 million people. There are many other projections. This is the main information, but there are other statistics which are interesting. Also, you can see that some Member States would already have demographic decrease without migration and that others will be in the same situation in the near future.

**Q330 Lord Dubs:** This is to do with something which Vice-President Frattini said on 14 June, when he was reported to have advocated an ambitious policy on economic migration, including proposals for harmonising admission procedures and introducing a Green Card system which would allow third country nationals to be admitted to work. A number of Member States are firmly opposed to EU regulation on the first admission of economic migration. Is what Vice-President Frattini says realistic? Is it feasible and will Europe accept it?

**Ms Pasquetti:** As I said before, we did not encounter the same strong opposition which we had in 2001, so it is probably feasible at least to discuss it. We are having a discussion now which we did not have in 2001. Already this is a step forward. At the same time, going through the contributions from the Member States, many have asked for some common rules at least. We probably will not have an ambitious policy, but, at the same time, we can probably at least try to discuss concrete minimum standards/common rules and see if there is a case for it. In the end, the experience of the Commission is that until you put something on the table which is quite concrete and you start discussing, you can never know if it is going to be accepted or not. At least this time we think there is a possibility. You mentioned the Green Card, but it was not mentioned in the sense of a card just to get into the EU and look for a job. Imagine it as a fast-track procedure. There could be some fast-track procedures agreed at EU level for certain categories of workers, for example, high-skilled workers. It would not be anything different from what a lot of Member States have, ie fast-track procedures for highly skilled workers. I think you mentioned the job-seekers permit. Again, that is another thing which may be proposed, but we are still reflecting on that for certain categories of workers. As I said, for us this is a little bit of a difficult moment because Vice-President Frattini gave some ideas and first impressions during the hearing, but, at the same time, we are still discussing internally in the Commission, so we do not have anything concrete at the moment.

**Q331 Lord Dubs:** Would it be possible to harmonise admission procedures without having a Green Card system? I just wonder whether this is going to incur so much opposition from some of the Member States that it is hardly worth proceeding with?

**Ms Pasquetti:** Yes, but what do Green Cards mean? In the United States there is one meaning, Germany used it as a fast-track procedure for IT specialists and they called the system “Green Card”. There is no one single meaning. It is often used as a term to say fast-track procedure or as a specific procedure. I do not know what you mean when you talk about Green Card because for us it is a term we do not really like, just because it has so many meanings.

**Q332 Lord Dubs:** I am interested to know what Vice-President Frattini meant.

**Ms Pasquetti:** He spoke about a fast-track procedure for high-skilled workers and he mentioned the fact that a lot of people and articles in the newspapers called it “the European Green Card”. That is why he made a reference to it. A lot of people are calling it that way, but we are thinking about a possible fast-track procedure.

**Q333 Viscount Ullswater:** Is the reference in the Green Paper to Green Cards related to the admission system? Is that the same procedure for fast-track admission or is it more the German model?

**Ms Pasquetti:** It was quite general in the sense of saying any kind of fast-track, quick procedure. We used it in a really general way.

**Q334 Lord Marlesford:** How do you divide the responsibility for the regulation of economic migration between your Director-General and the Employment and Internal Market Directors-General?
Ms Pasquetti: We deal mainly with the condition of admission of third country nationals and with visas also, anything to do with immigration policy in the stricter term, that is what the DG JLS is doing. DG Employment is looking after what is more labour market related, for example, EURES, Community preference, these kinds of issues. Internal market: we are just starting to talk with them and we are looking mainly at the issue of recognition of qualifications and diplomas, for example. It is really a sector by sector approach, but we are trying to collaborate in order to have a global approach.

Q335 Lord Marlesford: Your side does not look at migration as an instrument of policy at all, perhaps as a means of trying equalise the very high unemployment in Germany, France and Spain compared with low unemployment in, say, Britain? You are not concerned with that at all?  
Ms Pasquetti: In theory this is the Lisbon Strategy, so it is not DG JLS. We are trying to direct our work towards the objectives of the Lisbon Strategy. We are trying to stay in that framework. DG JLS only deals with the admission procedures, what are really migration policies in the strict sense.

Q336 Baroness Henig: The Commission’s action plan on the Hague Programme favours an immigration policy covering admission procedures and criteria. Can this not be seen as pre-empting the outcome of consultation?  
Ms Pasquetti: In a way not, in the sense that the action plan on the Hague Programme is based on the Hague Programme, which clearly states that “the European Council, taking into account the outcome of the discussion of the Green Paper on labour migration, best practices in the Member States and its relevance for the implementation of the Lisbon Strategy, invites the Commission to present a policy plan on economic migration including admission procedures”. This is something the Heads of State and Government asked the Commission to do. To find an effective way to respond to these concrete requests from the European Council is another thing. We will have to try to find the best proposals we can. It is a clear request from the Member States to present this policy plan including admission procedures. That is what the Commission is trying to do now. We are going through all the contributions, trying to see where there can be a consensus, and then we will draft this policy plan and we will discuss it internally and present it by the end of the year. I imagine there will be a further discussion with the Member States on what the Commission is proposing in the policy plan. We do not see that as pre-empting, this is what we have been asked to do. We will try to do it and then if Member States will not accept it, we will start again our reflections.

Q337 Baroness Henig: Is it a constant process of negotiations?  
Ms Pasquetti: The Commission’s task is to try to propose what we think is the best solution and then, yes, the real negotiations start.

Q338 Baroness Henig: Does the Commission have a preference between a sectoral and a horizontal approach?  
Ms Pasquetti: We have had this question internally for a long time. There are advantages in one case and in the other. We think the horizontal approach could be more logical in the sense of certain common basic rules. Just to give you an example, if you look into the immigration acquis you will see that sometimes there are practically the same articles in the students Directive, the researchers Directive, et cetera, dealing with rights or other conditions. It would be easier both for the third country national wishing to enter the EU and for national administrations. At the same time it will probably be more difficult to agree on common standard rules. The sectoral approach may be easier to agree to, at least we have the experience that it is easier to find a compromise and try to find a common interest. There are pros and cons in both. As I said, it is unfortunate to pose these questions at this moment because we are right at the beginning of our reflection of what we will propose at the end of the year.

Q339 Baroness Henig: Does the Commission see any place for quotas? Do you think they might be a fairer and less bureaucratic alternative to a work permit system?  
Ms Pasquetti: Apart from what my colleague was saying about GATS mode 4, for the rest volumes of admission of third country nationals seeking work remain under national competence, so there has never been a concrete idea of having European quotas. We are not discussing this, it is up to Member States. We had a discussion, if I remember correctly, during the Italian Presidency about this. We discussed some of the pros and cons of quotas in the study on legal and illegal immigration which was published last year, in July 2004. At the same time, the Commission is not really taking a stand on this as it is national competence.

Q340 Lord Avebury: It looks to me as though the Green Paper devotes very little, if any, attention to the rights of economic migrants or to the obligations of employers. Can you tell us why that is?  
Ms Pasquetti: I am just talking about EU legislation, national legislation is another thing. It was fundamentally for two reasons. Under the EU legislation migrants already have a series of rights under labour directives or labour regulations, so we did not really need to go into certain details. From the
other point of view, it was a deliberate choice. In 2001, the Commission consulted the social partners, several other actors and stakeholders involved, before drafting the new proposal for a directive and the answers received were quite conflicting when we spoke about rights, in this case employment related rights. We really did not want to pre-empt the debate, but get a reply from the different stakeholders on which rights should be granted. That is why we do not say which ones. It was a choice and we got quite interesting and diverging replies. It is not because we ignored this issue, absolutely, rights are very high on the agenda.

**Q343 Lord Marlesford**: Do you think it is feasible to have regulations which each State implements to say people can change employer but not sector? Do you think it is possible because I do not?

Ms Pasquetti: I do not think it is possible for a normal horizontal admission procedure, but it can be possible. If you admit somebody under a facilitated procedure, for example, instead of waiting three, four or five months, he/she enters the country in 10 days. This is the system in some Member States, because there is a need for nurses, for example.

**Lord Marlesford**: I am sorry, I am following up what you said. You said sector of employment, I can give you a dozen examples of where it is totally arguable for a court as to whether or not you are part of the same sector or not. It just seems to me a wonderful example of the EU seeking to do something which is totally undoable. I can see changing employer, yes, but to say you cannot change sector. Are you seriously saying that the EU is considering introducing legislation to limit the extent to which people can change sectors?

**Q344 Chairman**: I think our specialist adviser may be able to help you out. She says that it is a bit of a technical question. If you are thinking about going down that route, have you had a study done on Article 6(1) second indent of Decision 1/80 under the EC Turkey Association Agreement because there Turkish workers who have worked for one year get a right to extension of their working labour permits for a further period of three years, but they are allowed to change job within the sector after three years and then they get a right to free access to the labour market after four years. If you are trying to see whether or not it is possible or how the EU deals with sectoral changes within a sector, you could carry out a study on how Member States implement Article 6(1) second indent of the EC Turkey Association Agreement, which addresses this problem exactly. Certainly, in the UK it has come up, with exactly the consequences which Lord Marlesford was referring to. Do you want to try to pursue this or shall we leave the question on the table for you? I would just like to make a comment which has arisen before and that is that I think I am right in saying that the British experience has been that a very large number of our migrants into Britain have pursued careers or jobs well below their skills. We all know the story of PhDs as bus conductors, and it seems to me very questionable whether you should limit such people to that form of employment for their whole time. Do you want to pursue this?

Ms Pasquetti: Just a point for clarification. It is true that we mentioned this point in the Green Paper and it is true that the Commission is reflecting on it, but, first of all, it would never be for their whole entire life, that would be absolutely impossible. It would be
against EU legislation. After five years, if a third country national becomes a long-term resident, then he/she has the same rights, at least from this point of view, as an EU national. It could be for the first years in order to limit abuses in certain sectors, if you have a fast-track procedure. That is an issue and our only question mark is how to try to limit abuses, but no decision has been taken yet.

Q345 Lord Marlesford: I am not talking about the timescale, I am talking about the concept. It seems to be a wholly false concept because a sector is simply not definable for employment purposes. Of course you can take an example of a coal miner and a nurse and say they are different sectors, but equally you can take an unlimited number of variations of jobs where you can argue until—as we would say in England—the cows come home as to whether or not it is the same sector. I am really worried to hear that you are even considering introducing legislation to limit, for any period of employment, people changing from one sector of employment to another. I really would like to know—if you cannot tell us now, if you can tell us in the future, by writing—whether your Commission is seriously thinking of that?

Ms Pasquetti: We are reflecting upon it but, as I said, it would not be for all sectors of the economy. The only reflection we did is if we allow a quicker facilitated entry because there is a skills gap, for example.

Q346 Lord Corbett of Castle Vale: The point my colleagues are making is that there must be cases, not just in the United Kingdom, where economic migrants legally come in and get a job way below their skills simply because they want to get in.

Ms Pasquetti: I agree.

Q347 Lord Corbett of Castle Vale: They think: “That has done that, now I want to bring my family in, but to do that I need a job which utilises the skills I have got, which the economy needs”. It is that kind of position as well which we are asking you to think about.

Ms Pasquetti: We will think about it.

Q348 Chairman: I think we should leave that point on the table for you, and if you want to come back and add anything, please do.

Ms Pasquetti: As I said, it is one of the things we are reflecting upon when linked to special schemes, not to a normal procedure. The only reason we are reflecting upon it is to try to limit abuses. That is the only reason. Also, it is for a limited period of time. Nothing has been decided, we will have to see how it works. Also, we have to take into consideration that quite a lot of Member States do it.

Q349 Viscount Ullswater: The Green Paper does not really talk much about regularisation, but should decisions on regularisation remain a matter for Member States or is there some form of common policy because of their potential impact on neighbouring states? You talk a little bit about return and co-operation with third countries, is this something you see, that individual Member States should inform other Member States of what their policies are on regularisation? Do you see a danger that widespread use of amnesties may encourage further illegal immigration into the countries which perhaps grant amnesties?

Mr Garcia Martinez: I will answer this question as I have been looking into regularisation lately. The Commission’s position is in the 2004 “Communication on the links between legal and illegal migration”. We said in that paper that there are positive elements in regularisation. For example, you have a number of illegal people and when they are regularised these people start paying taxes, they have security for themselves also, so it is good management of the population. On the negative side, this study on the EU regularisation schemes discovered that usually the countries that use regularisations tend to be perpetuating illegal immigration in effect. After two or three years again they have a million illegal people there and they have to regularise them and again three years later and again. The black economy was there and it did not disappear. We had a discussion in the Council in October, I think, where the Dutch Presidency prepared a short paper and Member States discussed it. There was a big difference between southern countries: Spain, Portugal, Italy, Greece, and then you have Germany, the Netherlands, even France, who are really opposed to this, whereas the southern countries are using this mechanism. This makes us think that it is not possible to have a common EU approach now because the differences are so big. The only thing we think we can do is at least to establish an information system which would cover not only regularisations but, also, other measures taken by Member States on the immigration and asylum area which could have an impact on the others. There were Council conclusions on this in April 2005, and we are about to present a proposal to establish this kind of prior information and consultation system. It is no use informing the others when the measure is already there and adopted. It could be useful to inform them at an earlier stage.

Q350 Viscount Ullswater: From your answer you are saying that regular amnesties seem to encourage illegal immigration into that country. Is that what you are saying the study shows?
Mr Garcia Martinez: Yes. There were some studies conducted. I looked into a study which was produced this year and the conclusion is that regularisations have an encouraging effect on illegal immigrants. Some of these illegal migrants become legal and so they are in the legal system, I would say, but then these countries will receive illegal migrants again and again, thus perpetuating illegal immigration.

Q351 Viscount Ullswater: Is that a lack of wish on that particular Member State to ask employers not to employ people who have not got proper papers?  
Mr Garcia Martinez: I am Spanish myself so I know a little bit about it.

Q352 Viscount Ullswater: Perhaps you can tell us about it?  
Mr Garcia Martinez: I know the problems are not only with migrants, there is a big black economy sector which does not only employ migrants, it employs nationals illegally, also, without permits, without proper salaries, without social security, and so on. It is a problem which goes further than migration. If these countries manage to solve this general problem of the black economy, then the migration part of the problem will disappear also.

Q353 Viscount Ullswater: It is a different problem to solve.  
Mr Garcia Martinez: It is not only migration, it is a problem much bigger than migration in these countries.  
Chairman: Can I thank you both very much indeed. I am conscious of the fact that we have put quite a lot of questions to you which you might have expected your Director-General to answer. Also, I am conscious of the fact that we put quite a lot of questions to you that I think your Director-General would have told us was the responsibility of another Director-General. Thank you very much indeed. You have been very helpful and you have given us very frank and full answers to our questions. I am most grateful to you for having spared the time to see us.
TUESDAY 5 JULY

Present

Avebury, L
Corbett of Castle Vale, L
Dubs, L
Henig, B

Listowel, E
Marlesford, L
Ullswater, V
Wright of Richmond, L (Chairman)

Examination of Witness

Witness: Mrs Odile Quintin, Director General, Employment, Social Affairs and Equal Opportunities, European Commission, examined.

Q354 Chairman: Good afternoon. It is very good of you to spare the time. We had an interesting meeting with Commissioner Spidla yesterday. It is a great pleasure to meet you. You know what we are, we are a Lords Sub-Committee doing an inquiry into economic migration, very much the stuff of your daily life, I imagine.

Mrs Quintin: One of my daily lives.

Q355 Chairman: I think you have been provided with some questions which we want to ask you. The first question really is whether you see the labour market as a European Union market and to what extent is it a national or regional market? If you can combine that with some thoughts for us as a Committee, we would be grateful. We hope to produce our report in October, but if you have any broad thoughts about the sort of issues which concern you and which you think should concern us, issues we really ought to be focusing on, I think it would be extremely helpful to have your advice. If we may, we will go through the questions, but I think the broader we can make the discussion, the happier we shall be.

Mrs Quintin: Thank you very much. First of all, I am very happy to meet with you because, as you said, it is clear that it is a very important subject. I am very happy to give you this information in the broader context of the future of the labour market in Europe because it is one of the key components. To start with your broad question: I would say there is not a European labour market, there are national labour markets, but with the completion of the internal market there is more and more interaction of the labour markets. With the Economic Migration Green Paper—and, more widely, with the mobility action plan which was adopted in the Barcelona European Council some years ago and on which we are still working—we really think that amongst the other problems of the labour market there is a real deficiency in mobility, in general, in terms of both geographical and occupational mobility. By the way, both of them are more and more interlinked. Our approach is really to try to remove the obstacles to mobility and try to promote—as part of a more adaptive labour market, in particular in the context of globalisation—more mobility. We do it in two ways. The first is with legal instruments, which is free movement. We have an initiative—which, by the way, is very much in line with the UK policy in this context—which is to improve the portability of occupational pensions. Unfortunately, this is not the case in Europe: it works for the legal schemes, but not for occupational schemes which are, of course, developing. The other is to promote an employment strategy, and the Economic Migration Green Paper is affiliated to it, to promote occupational mobility through support mechanisms. Firstly, we have support mechanisms: EURES—I see you have a question on that—is a tool to help people get better opportunities in the labour market. EURES is extremely important in providing information to those people. Then we have the so-called co-ordination of employment, which is part of the integrated approach of the Lisbon Strategy, whose aim is to promote occupational mobility by trying to have objectives which indicate that it is a key component of improving labour supply and of developing more adaptable labour markets. In this context and the context of the demographic challenge—which we are already facing and will face strongly in the next 20 years to come and still more after that—economic migration is part of the same approach in the labour market. In the wide context it is the way I would put it. We think a kind of European labour market has to be developed more and more which is why we need to have some common approaches and minimum rules with a view to make this more favourable to this very important labour market.

Chairman: That is very helpful and, incidentally, your remarks about labour mobility remind me to thank you for the evidence you gave this Committee in a previous inquiry, I am afraid before any of us were Members of it, and which I am told was extremely valuable. Also, it has reminded me that we must go to our files and remind ourselves of our colleagues’ inquiry into labour mobility. I have heard very good reports of the help you gave in that context.

Q356 Lord Dubs: Thank you very much. I hear what you say that there is not a single EU labour market, only interconnected national labour markets.
Nevertheless, in 1999 the Commission had a proposal on the liberalisation of services and had the idea of a service providers’ card. Why did the Commission abandon that?

*Mrs Quintin:* To be frank, because there was not great enthusiasm from Member States for it. What we have done, which is another side of it, is a European card on health insurance, which was also agreed, by the way, at Barcelona. That was difficult to accept, but it was strongly supported at that time during the Spanish Presidency by Prime Minister Aznar. As you know, on the one hand, we are people who want to have an initiative and, on the other hand, we have a lot of pragmatism, and when something does not work we have to recognise that. That was the case at this particular time.

**Q357 Lord Dubs:** Can I widen that a bit. What measures are being taken to encourage intra-Member State movement of EU nationals?

*Mrs Quintin:* Intra-Member State mobility is mainly supported by, first of all, financial support which we give to projects, especially in the case of restructuring an organisation—as you have had recently in the UK with the case of Rover—which is part of change which is necessary. We try to support the employability of workers who are affected by these changes, in particular with the European Social Fund, which supports training schemes and job creation schemes including the development of SMES. We try to provide the support which people need to be able to move when they are forced; that is for the difficult cases. For day to day life, we support networking also, for example, of social partners, employers with local authorities. With a view to being able to identify places and areas where you have general opportunities, where jobs are developing with a view to being able to anticipate—which is one of the things we are trying to promote—a better matching of supply and demand. Of course, within Member States we do not really have a Community competence, so it is much more support to what the country can do and support to what partners can do. We have experience, for example, in a number of countries, especially in the case of the new Member States, of a lot of differences between regions and job opportunities in regions. It is where the Structural Fund, the original fund, is trying to develop and support the development of a region and the Social Fund is providing these mechanisms for training, job creation and adaptability of workers. Combining the two, we try to rebalance the original development and for that we need a lot of mobility. I am going to Poland next week, and we see in Poland that the eastern area does not have a very high level of employment. It does not have much industry and has restructuring which is difficult, so it is a huge problem. If we can combine support by trying to develop, for example, new SMEs, new sectors and trading activity, then you can rebalance it. Ireland is a very good example of that because Ireland, which is a model of economic development, as you know, still has—though it has worked a lot on it—regional imbalances with Dublin being the main area and the West of Ireland being a bit more complicated. What we have done to support, for example, all the innovation and the new technology area in Connemara, in Galway, was exactly the kind of thing you can do to encourage mobility by promoting regional development.

**Q358 Lord Marlesford:** What sort of size is the Social Fund compared with the Structural Fund? Can you say anything about how much of it has been and is being spent, for example, in the UK and on what sorts of things?

*Mrs Quintin:* I do not have all the figures. In regions which are not convergent areas, regions which are nonetheless developed, we have about 50 per cent from the Regional Fund and 50 per cent from the Social Fund. In the UK, apart from Northern Ireland, Wales and Scotland, which are Objective 1 regions, it is about that. For the regions of convergence, for Objective 1 regions, the percentage of the fund is around 21/22 per cent Social Fund and 79 per cent Regional Fund. In our proposal for the financial perspectives, apart from the general debate, we have proposed that for the non-convergence regions it should be 50/50. For the new Member States, for the regions lagging behind, we have not proposed a proportion. Now, as we strongly link the future of the structural funds to the Lisbon Strategy, the structural funds should support the Reform Strategy agreed at Lisbon more and more. We have clearly put an interpolation between the Lisbon Strategy, including the employment part, and the Structural funds, so we have very much encouraged innovation, research, education and training. The new percentage of the fund can change. What do we do in the UK when we have this kind of percentage? In the UK, the UK has used the Social Fund a lot for promoting support of employment opportunities for those people who have difficulty accessing the labour market: the inactive, the excluded people and people with disabilities. The added-value in the UK—which is different from other countries, which is interesting—has been more on that side, if only because we have been doing a lot in the UK and have seen the adaptability of the focus. Again, I take the Rover case, the Social Fund has been a good instrument to support training and job opportunities. Everything that was done with job centres and Job Centre Plus in the UK for Rover was done with the support of the European Social Fund.
Q359 **Lord Marlesford:** Do you have a feel for the amount of the Social Fund which is spent in the UK?  
**Mrs Quintin:** To be frank, I do not have the full figures for the UK. The only thing I can say is about 50 per cent is Social Fund and 50 per cent is Regional Fund. For Wales, Scotland and Northern Ireland, it is about 26 per cent Social Fund and 74 per cent Regional Fund. I am sorry to say I do not have the full figures for the UK.

Q360 **Lord Dubs:** Can I ask a question about what you said, which is very interesting. I do not want to air our British internal problems here, but if, in fact, people in Britain knew what you had just said about Rover, their views about some of the funds would possibly be better. Whose responsibility is it to let that be known?  
**Mrs Quintin:** Can I be quite frank?

Q361 **Chairman:** Please.  
**Mrs Quintin:** The Government. It is a problem which is not only a UK problem, because I had a very similar discussion with a country which the UK has difficulties with, which is France. We had an exactly similar case. I was very interested because recently we created a big formal structure on how to support a positive approach to change and to take care of the difficulties of people who are affected by that structure. We had an excellent presentation by the UK Government Office for the West Midlands which presented Rover and indicated to everybody that the Social Fund had worked very fast. The same day, *The Financial Times* had a very good article on Rover and how the Social Fund was supportive there, but not a word about the structural funds, not a word. I mention that to you because you are representing the UK House of Lords, but it is the same in a number of countries. When you look at Ireland on the other hand—which is, as you know, a big success with the Structural Fund, but in particular with the Social Fund because Ireland has built its competitiveness on skills, innovation and research, and linking the three. You were asking for the proportions: in the beginning they used 40 per cent of the Structural Fund which was devoted to the Social Fund. There were huge unemployment problems and problems with immigration at that time in the eighties. They strongly supported all the skills, so now they have a well trained workforce which is very attractive for companies, for flexibility and tax policies. In Ireland, you see support of the Social Fund everywhere, in the UK, it is a bit less and in France, not at all. In Belgium, I take the country where I live, there is not much. It is a more general problem, I agree with you. If people know better what we do in concrete terms instead of having this interesting debate about legislation, I think that will help a lot.

**Lord Dubs:** You have given us a little bit of a political agenda there.

Q362 **Chairman:** It is very, very helpful to have those frank remarks, and I think we must accept that the responsibility for publicising what the Social Fund does in any of our countries rests primarily with our Governments, but there must also be a challenge for the European Union representative. We have just received a new representative in London, this is absolutely no comment on the previous one, who was excellent. This is perhaps straying rather far from your portfolio, but how effective is the information service within the European Union? I am a retired diplomat, and I am used to the idea of guidance telegrams and sending out messages for our diplomats to propagate around the world. There must be a system. How effective do you think it is?  
**Mrs Quintin:** First of all, it is one of the huge issues which the Commission is presently tackling. You know we now have a Vice-President who is in charge of communication, Mrs Wallström, and she has been presenting a new strategy to the Commission. We will deliver a White Paper on the future of communication policy. Why a White Paper? Exactly for that reason, because that is shared responsibility between the national, the regional on a local level, and the EU. She will be proposing a number of things. How effective is it? I think the national representations are very important especially because a lot happens at national level. Of course, the communications are not exactly the same when you communicate with the UK or with Greece and when you communicate with Germany and Lithuania. You need to know better what the needs of each country are, and this is where the national representations are extremely important, and it will be important to play an important role in the UK. One of the proposals of Mrs Wallström is to strengthen the decentralisation of communication. The second part is, of course, that the journalists who are based in Brussels are more interested in hot news about the Services Directive or the Working Time Directive—all these hot issues—which we are delighted about. They are not interested so much in the more regular news about what happens on the ground, so there is a problem there. The third problem is what I said, which is—as a former Commissioner used to say—“When it is raining it is Brussels, and when it is sunny it is the national sectors”, there is a bit of that. If we try to solve this problem, maybe with the political crisis now—I am going a bit out of our context, but that is part of your question—there will be a debate in the UK Presidency in the summer about the future of the communication policy. I think we need joint forces for everything, we need a good balance between the central level and decentralisation so that everybody plays their role. We are very conscious, and President
Barroso is very conscious, that it is a key issue for Europe, and we will pay much more attention to that. 

**Chairman:** The trouble is that the British press are more interested in the straight bananas than in the Social Fund.

**Q363 Lord Corbett of Castle Vale:** I should say, I am from Birmingham and certainly in the city we are well aware of the help the Commission has been able to offer over the Rover crisis. There has been very good team-working there. It is a classic example of local authorities, trade unions, employers and all the rest of it, and that Rover taskforce which has been in place for some long time. Perhaps I should just explain, there is a great lag in the closure and people are either taking up new jobs or retraining. That is because one of the peculiarities of our redundancy payment scheme is if you get a job too early you lose some of that redundancy; I think it is about eight weeks or something. Thank you for your comments on that. To return to EURES, have you got any data on how EURES is functioning? Is it your judgment that it is working better in some places than others perhaps?

**Mrs Quintin:** On EURES: I really think it is an extremely valuable tool. First of all, because it is accessible to everybody and, secondly, because it is really related to—what you said in the beginning and to return to that in a way—a good use of the subsidiarity principle, which is that we give support to the national authorities and to the customers for job opportunities. How is it functioning? The main difficulty of EURES is that the euro advisers, who are the nucleus of the support for EURES, are not always strongly supported by their national employment services. In the UK, by the way, it works reasonably well because in the UK, more than in other countries, you have a culture of mobility, you have a slightly better culture than in Spain, for example: it is not perfect, but slightly better. I mentioned Poland, which internally has no mobility; the Czech Republic is another example; Spain is very bad on mobility, which is why their Prime Minister is so interested in supporting that. The UK’s new agency is quite co-operative, others are less. Germany has a culture contrary to what you have, because they have a tradition of companies trying to keep their people and their schemes—the retirement schemes—inhibit mobility. In those countries which are less interested in mobility the public employment services do not pay enough attention to EURES, that is why we try to promote—at the same time as supporting the EURES system and improving our portfolio, our websites, and so on and so forth—co-operation between the employment services. We have had a meeting twice a year with the heads of political services in the country which has the Presidency to discuss that and, also, to involve them more in the European Employment Strategy so that the full picture is in that. That is the judgment I would have now on the functioning of EURES. Having said that, now we have 19 employment services out of 25 which are connected in real-time to the EURES platform which is an improvement, so the prospects are a bit better. This time last year we were showing an average stock of 20,000 EURES job vacancies in total; in February 2005 it was 19,000 vacancies, so there is clear progress. By the end of February we had 250,000 vacancies available for particular jobs in real-time. There is a strong increase. In the social agenda, which the Commission proposed at the beginning of the year in relation to the Lisbon devised strategy, we put a stronger effort on mobility. 2006 will be the European year of mobility. It is linked in time with the end of the first transitional phase for the free movement of workers for the new Member States. Also, we would like to have, if possible, a passionate debate about it, have a better look at what the flaws are, what the needs are and what the prospects are. During this year we intend to advertise EURES much more and show how EURES can help. For that you need a bit more political development of the national employment service. As I said, the UK is one of the positive ones.

**Q364 Lord Corbett of Castle Vale:** Under the EC Turkey Agreement there is a Community preference for Turkish workers. Have you got any evidence as to how that is working out? Is it any help? Is it achieving its objectives?

**Mrs Quintin:** To be frank, we do not have any complaints with this. I saw the Turkish Prime Minister some weeks ago and there were no real complaints about it. It is difficult to say whether it works or not because we normally know how it is working when we have complaints. In this case, it seems to be alright, so no news is good news, hopefully.

**Q365 Earl of Listowel:** Director-General, moving on to the Commission’s Green Paper, some of the evidence we have received indicates a strong preference for a horizontal as opposed to a sectoral approach to regulating economic migration. Is that in line with the outcome of your consultation process? Might not sectoral regulation target labour shortages more effectively?

**Mrs Quintin:** Of course, it is one of the important issues of the Green Paper. In the responses we had when we had a hearing some weeks ago we saw that many NGOs were suggesting that the horizontal approach would ensure equal treatment of migrants and avoid what they are afraid of, which is discrimination. They thought, also, that it would increase transparency and simplify matters. However, we also had advocates of the sectoral
approach, and they claimed this approach would provide greater flexibility. If we look at Member States’ approaches now, we see that we have a slight majority for a horizontal approach; we know the UK prefers a sectoral approach but there is a slight majority for the horizontal one. Many suggest that the combination of both approaches may bring the required solution because it would combine this idea of transparency and non-discrimination, and the idea of flexibility. A number of submissions highlighted that one approach does not prevent, at the same time, another one. What we are looking at now, on the basis of the various submissions, is how we can better combine transparency and non-discrimination on the one hand and flexibility on the other. That is why at this stage we do not have a fixed position, we are looking at a combination because we are very interested by the submissions which show that one does not necessarily exclude the other and how we can better advise on this.

Q366 Lord Marlesford: Temporary employment, would that be accommodated under an EU scheme, and if so, how?

Mrs Quintin: Again, the approach which we have taken is not to separate temporary employment from the rest as a potential scheme. It will depend, of course, on what we have just discussed, which is horizontal versus sectoral or a combination of the two. Also, it is reasonable, I think, to have specific schemes, for example, for the regular influx of temporary work, and seasonal workers. We do not have any definitive proposal and we have not taken temporary work separately. We know there are areas, especially for seasonal workers, for which it is useful, and it is related to the sectoral versus horizontal. I think that the broader approach—the potential combination of sectoral and horizontal—is highly related to temporary work.

Q367 Earl of Listowel: Director-General, how does the Commission’s position on GATS and economic migration, in the form of service provision, impact on proposals for EU policies in this area? Might the development of GATS rules on freedom of movement for service providers undermine national immigration controls on the admission of workers?

Mrs Quintin: In a way, there are two separate questions in this question. I think there might be a common misunderstanding which is important to clarify. GATS is never about immigration nor about access to the employment market, GATS only deals with the temporary provision of services by workers who are returning to their country of origin when their short-term contract comes to an end. In particular, I think this comes out very clearly from the annex to the GATS on the movement of natural persons, which states: “The Agreement shall not prevent a member from applying measures to regulate the entry of a natural person into its territory”. This applies exclusively to visas, which all EU members can continue to require. Therefore, GATS does not undermine national immigration cultures. On the first question it is probably too early to provide for a specific answer because we are still reflecting on that. You may know that the Green Paper on economic migration gave rise to over 100 contributions at a public hearing, so we still need to look at these areas which are quite sensitive. We are really looking at it, but I think it is important to clarify a bit of the misunderstanding which occurs sometimes between the countries and between the people.

Q368 Baroness Henig: What are the implications of the Service Directive for economic migration? What are the views of the Internal Market Directorate General?

Mrs Quintin: It is probably better to ask them, but normally we have a common approach in the Commission after discussions. First of all, the Services proposal should have no effect or implications for economic migration as such because it does not concern the free movement of workers. What it does, rather, is set out provisions which are aimed at facilitating the posting of workers employed by a service provider which is established in another Member State, and that is in the context of temporary cross-border provision of services. The Services proposal deals with the posting of workers of both EU nationals and third country nationals who are lawfully employed by a service provider. At the same time, we have an existing Posting of Workers Directive which, by the way, is not affected by the Services Directive. The Posting of Workers Directive remains unchanged by the Services Directive, which has a specific objective and should not have much of an effect on economic migration.

Q369 Baroness Henig: One of the key steps which the Community took to achieve harmonisation of economic migration for EC nationals was to start with a standstill provision which prevented further divergence of national legislation, but this option is not discussed in the Green Paper and I wonder why that is?

Mrs Quintin: It is useful to clarify the approach of the Green Paper on that. The idea of the Green Paper was to launch the debate in a positive way with facts and by listening to all the stakeholders on how to manage third country migration for economic purposes. We have considered the Green Paper as a comprehensive document where existing approaches can be discussed and can be identified and then the pros and the cons. As you hinted with your question,
the systems which have been developed at national level in the EU to admit certain nationals are very diverse. Of course, a standstill provision might, for example, allow employers further reflection, but would not really reflect the approach adopted. As we have been mentioning on several occasions—Vice-President Frattini and Commissioner Spidla indicated that in the presentation of the Green Paper—the principal aim we have at this stage of the process is more to provide Member States with a toolbox or else with a set of instruments which can be chosen depending, of course, on the needs and preferences of the Member States and the national situation of the Member States. This idea of a toolbox is something which we would like to develop further after the results of the Green Paper because we think it is quite an important element to support both diversity and common challenges.

**Q370 Lord Marlesford:** Do you see a quota system as being a useful way of controlling migration into the EU from outside the EU? How does it compare with the work permit system for bringing people in, in your opinion?

**Mrs Quintin:** Again, it is really an area where you have pros and cons. A quota system exists in a number of countries. You have other ways of having a selective approach than quotas. We know in some Member States there is a green card system. For example, in Germany, it is not a quota system, it is a selective immigration system. Again, we have not finalised our views on that. It is probably an area where there are different traditions and approaches of Member States. We are not against it, but we are not necessarily for it as a final position. Of course, another approach can be a permit system which is based on another principle. Again, we have not finalised our view. We know that when you talk about economic migration it is normally in the context of a selective approach, whether on a sectoral or horizontal basis, which is another story. The selective approach: either the Commission—as I said, it is still very much under discussion—will take a definitive view about this quota system being better than another or we might have another view which is more to suggest a variety of approaches which can be used again as a toolbox. We will see at the end of the consultation process, it is very much a political choice by the Commission.

**Q371 Lord Marlesford:** I suppose the Turkish system, in a sense, is a quota system?

**Mrs Quintin:** It is a kind of quota system. We have never had a quota system as such, until now, at European level, but we have systems which can lead to a quota system.

**Q372 Lord Marlesford:** If you have a quota system, would it have to be based on countries? If you are giving special preference to Turkey, for the reasons we are all aware of, is the idea of the EU favouring certain countries as sources of economic migration one which you think should be developed or do you think it is too interventionist and contrary to economic efficiency?

**Mrs Quintin:** I think it is very difficult to have a quota without a national system because of the political approach of the EU vis-à-vis future enlargement and vis-à-vis neighbourhood policy. If we go for a quota system, I do not see how you can avoid a national approach, Turkey being an interesting example. Then we have the whole debate about the Balkan countries, those which are clearly completed for accession now and those which are not. I see difficulties in combining official candidates for accession, potential candidates for accession and new neighbourhood policy countries in a single approach, so very probably, yes.

**Q373 Lord Marlesford:** This quota thing is quite important. One could conceive of a quota thing as being a way of preventing undesirable, if you like, exploitation of countries. For example, importing a lot of doctors from countries which need their doctors. You could say that the EU should say: “It is wrong for the EU to have more than a certain number of doctors from this particular country” or if they come, they should then have to go back again. Is there any mileage in that sort of approach for the future?

**Mrs Quintin:** Again, it goes back to the basic question which was put about sectoral and horizontal because with certain approaches you can have, on the one hand, discrimination which is a difficult principle at European level because the general philosophical approach of the EU is based on anti-discrimination. It has got to be dealt with. At the same time, as I said, when you talk about economic migration you talk, implicitly if not explicitly, about a facilitative approach. We will do it profession by profession, and the doctors’ issue is a very complex issue at the moment at European level for a lot of reasons. Will we have quotas for specific categories or not if we go for that approach? Of course, it is sensible in the context of the needs which exist in the receiving countries. On the other hand, it may have a discriminatory effect and, also, there is a potential effect on the sending countries. We know, for example, that for the time being nurses are badly needed in a number of countries, with doctors it is much more diverse. At the same time, you have a brain-drain in some countries. Romania, which is the next accession state, is a very important example of the brain-drain of doctors because they have excellent doctors, their training is excellent and they
are badly paid. In Romania they all rush to other Member States. It can be very useful for some of the old Member States which have, in some cases, doctors’ gaps, but what about the future of Romania, in the context of the EU, if their hospitals are terrible because they do not have any more doctors? We have to see that in the broader context of the balance of EU development including those countries that are less developed, which is a case of a number of new Member States and the accession states.

Q374 Viscount Ullswater: Director-General, if I might turn to the rights of migrant workers themselves: on what basis should it be decided when labour migrants should acquire particular rights, such as the right to change employers and seek work in another Member State? Can you answer the question posed in the Green Paper: who should be the holder of the permit?

Mrs Quintin: First of all, interestingly enough, from the responses we got it seems that Member States have not deliberated much on this question related to the rights of migrants. The input which has been received from civil society has been more developed, which is not totally surprising. By the way, I chaired a round table on that, which was quite diverse. When we looked at the contribution to the Green Paper, we clearly saw—and the round table confirmed it—that no agreements currently exist on which types of rights—social, administrative and other—should be the rights of the economic migrant. The question remains totally open in relation to whether and to what extent—it is one of the questions you had recently on temporary schemes—the rights of migrants should be based on the length of their stay. If we have another right which is a right to change employer, we have two questions. First of all, whether the job permit should be issued to foreign workers and not to the employer, and that was clearly raised by the people in the civil society, and, secondly, whether the foreign worker can change without the need to repeat the economic needs test? There is no common agreement among Member States: some are in favour and some are opposed to each of these respective parts. We are trying to develop, at Commission level, our own understanding of the respective implications of both issues, but, again, we are very much looking at all these responses we do not yet have a position. I would say that most of the contributions we have received pointed out the need to protect the foreign workers from potential abuses of the employer. We share the view that dependency situations should be avoided. In relation to seeking work in another Member State, the Directive on Freedom of Mobility shall apply from January 2006, but, as you know, not in the UK because it did not opt in. The issues we have been tackling in the Green Paper do not touch upon the issue of working in another Member State. Nevertheless, we have one of the existing regulations at European level which is the regulation about social security for migrant workers, known as Regulation 1408, which is now Regulation 883. This has been extending the rights on social security for migrant workers benefiting from contributions by third country nationals legally residing on the Community territories.

Q375 Viscount Ullswater: We understand that at a recent public hearing held by the Commission there was a strongly expressed view that the place for EU rules, in the field of economic migration, was in prescribing rights for migrant workers, although in the Green Paper there was only a very small section on this aspect. Do you see this as a possibility? We heard from some other witnesses yesterday that there may be a desire for a common framework. Do you think that is the right place for these rights to be identified?

Mrs Quintin: At this public hearing, which took place less than a month ago, on 14 June, both Vice-President Frattini and Commissioner Spidla—whom you met yesterday—referred in their opening presentations to the key issues which have been addressed in the Green Paper, and to general observations which can be made after the first analysis. One of the points which has been mentioned relates to the fact that the Commission has not paid enough attention to the rights of migrant workers in the Green Paper. During the hearing the two Commissioners took the opportunity to clarify that the Commission attributes great importance to the respect of fundamental rights. I mentioned anti-discrimination, for example, as one of the fundamental rights which we are promoting. It is mainstreamed in a number of EU policies. In particular, what they both highlighted was the importance of ensuring adequate integration of third country nationals legally residing in the Member State. What I mentioned about Regulation 1408 is a good example of that. I think it was very important that we clearly indicated that we do not envisage the possibility of discussing economic migration without referring to integration strategies. That is very clear. Having said that, we have not clearly indicated, and there was no real mention of what the role of the EU could be in prescribing rights for migrant workers. I think we have to wait a bit. We have examples, and I gave one, of such rights, but it is a highly sensitive issue. The integration issue can be done with rights, on the one hand, but with policies on integration also on the other hand. We have come back a bit to what we discussed at the beginning on employment, how to promote better social inclusion and employment integration of these people. You can base yourself on rights and base yourself on more support policies. Again, we have not finalised our view on that.
European Union Committee (Sub-Committee F): Evidence

5 July 2005 Mrs Odile Quintin

Q376 Viscount Ullswater: Earlier in the discussion you laid great stress on the fact of trying to encourage mobility within the whole of the EU labour market, yet, when it comes down to individual rights they seem to be rather prescriptive and tend to put a block on the ability of third country nationals to move around between employers and that sort of thing. Do you see a slight divergence between the two views expressed?

Mrs Quintin: I am not talking about potential future initiatives. The existing rights are really rights which try to give an individual the right to move by removing the obstacles to his or her mobility. I mentioned this, because it is probably one of the most developed examples, the right of a third country national to get social benefits when he or she is legally residing in EU territory, the right to get his or her pension when he or she moves from the UK to the Netherlands is exactly that; it is removing the obstacles to his or her mobility by him or her having a right to a pension or health care or all forms of social security. The approach we have been taking until now has been an approach of removing the obstacles to mobility. It is mainly internal for the time being because it is the approach of free movement of workers under the Treaty, but we are beginning to expand it to certain country nationals. As I have said, at this stage we have not finalised our position on whether it should be changed or whether it should be extended. That has been the approach which we thought was strongly in line with the Treaty, which requires us to remove any obstacles to the free movement of many things, including people and services, which is a big debate now, and that was the philosophy. Whether we have to change the philosophy by promoting a new set of rules for third country nationals remains to be seen.

Q377 Chairman: Director-General, you have been extremely generous with your time. I do not want to delay you much further, but I have two quick questions. The first is moving from the question of the rights of workers to obligations of governments. All Member States are, of course, members of the ILO and the Council of Europe, and that membership carries with it certain obligations related to economic migration. Do you favour the idea of bringing those obligations under EU law?

Mrs Quintin: As far as the ILO is concerned, what we have been doing, generally—not, by the way, with this particular convention—is strongly supporting the ratification by Member States of most ILO conventions and we strongly support the idea in general. As far as economic migration is concerned, it is rather complicated because the views are, to say the least, widely diverse through the Member States. We are still considering that and we have been doing that for a lot of areas of governance. As far as the Council of Europe is concerned, we recently had a summit in Brussels about better articulation between the work of the Council of Europe and the work of the European Union and the social partners—economic migration partners are part of that—to try to further better integration between our countries. In the future action plan which we are discussing with the Council of Europe it might well be an element but, again, it is under consideration and not finalised. As a general approach, we do not seek to integrate the international instruments in our law, but we have more a way of supporting ratification and implementation by Member States. In this case, it is a bit more complicated than the others so we are still considering that.

Q378 Chairman: My last question relates to Turkey. Under the Turkish Association Agreement, Turkish migrant workers have protection of their rights to continue work and residence after 12 months’ employment. Does this give us a precedent, do you think, for other third country national economic migrants?

Mrs Quintin: On that, I think we really have to see precisely what kind of rights the Turkish workers have in the agreement. Currently, they enjoy the kind of legal status in the EU which is between that of EU nationals and those of third country nationals. When the Turkish workers are admitted into the labour market of Member States, they enjoy a number of rights with regard to working conditions and remuneration. First of all, they have the right to the extension to work and residence permits in the host Member States after one year of legal employment if a job is available. After three years of legal employment, and subject to the priority given to the workers of EU Member States, they have the right to respond to another employment, and, after fours years of employment, free access to the labour market of the host Member State. It is quite broad, but, at the same time, there is no provision under the EC/Turkey law which would enable Turkish workers to enjoy internal mobility between EU Member States. Member States remain competent for that. The question of whether it could be applied to third country nationals, we would like to point out that this issue has been addressed in connection with the Long-Term Residence Directive, which was adopted in 2003. Under this Directive, third country nationals who have obtained the status of long-term resident in a particular EU Member State will be entitled to equal treatment and must be granted full access to any employed or self employed activity in the host Member State. The long-term residence statute requires that the person has legally and continuously resided for at least five years in the territory of the EU Member State. We see that the Turkish Association Agreement is more favourable to Turkish employees...
5 July 2005

Mrs Odile Quintin

than the long-term residents. For the time being the approach is a slightly different one.

Q379 Chairman: Director-General, on behalf of the Committee, can I thank you very much indeed. You have been very generous with your time. In fact, we have overrun by a few minutes, for which I apologise. I think you and I must take joint responsibility for that, but thank you very much. One of the first things I am going to do when we get home is to look up the Mobility Inquiry which our predecessors conducted and read your evidence, which I think will help us a great deal. Thank you very much, you have been very helpful. Of course, we shall send you a transcript of this meeting and in due course we shall send you our report. Mrs Quintin: Thank you very much. I think your report is very important to us, so I will be delighted to see the report as it is a very important piece of evidence. Chairman: Thank you very much.

Memorandum by the Centre for European Policy Studies (CEPS)

INTRODUCTORY REMARKS

The globalisation process and the incipient increase of large-scale mobility will continue to have profound economic, political, social and cultural consequences all around the world. The EU is not immune to all these processes and it must be prepared to face them with comprehensive, vigorous and globally oriented responses.8

Further, the integration processes fostered by the EU machinery have direct consequences on what has been denominated as “migration” and the perception of “the other”. The future of the European migration space is directly linked with the process of European policy integration and the continuous redefinition of the EU external borders and identity along with the enlargement processes.

The historical achievement of an EU internal market, as set out in the Single European Act (SEA)—comprising a space without internal frontiers, in which the principle of free movement of persons is guaranteed—has brought a deep reconsideration and reconceptualisation of the traditional visions and division between the national and the supranational.

The power to control borders, which until recently used to reside exclusively within the national realm of sovereignty, has been now mutated into a supranational structure. The dismantling of border controls as well as the increased permeability of frontiers has also led to doubts as regards the self-sufficiency of national policies on freedom and security. National attitudes, philosophies and approaches to human mobility advocated by one EU member might potentially have positive or negative effects on the other members of the club.

Immigration is taking on a new profile and political rhetoric inside the EU. It is now widely recognised that the ongoing demographic ageing of society, labour shortages, the functioning of the labour market as well as the need for more competitiveness of EU enterprises cannot be properly addressed without greater attention to comprehensive policies on “regular migration”.9

While the latter is indeed a necessity for Europe’s development and future, five years after the Presidency Conclusions at Tampere10 a truly common EU migration policy continues to be an unmet goal. A common policy on economic migration that directly addresses these issues, while fully guaranteeing diversity, human rights, equal treatment and social inclusion, remains a policy challenge. This lack of a common strategy deeply undermines the very existence of a common immigration policy in the EU.

Immigration is fraught with national fears, rival ideologies and competing political sensitivities. These sensitivities explain partly why comprehensive and effective responses are hard to achieve and maintain. This difficulty is also compounded by the fact that decisions in these areas have, until very recently, been governed by a strict unanimity rule. This is notwithstanding the fact that since the Maastricht Treaty was signed in 1992, Member States have pledged progressively to depart from a purely inter-governmental method to deal commonly with these challenges.


9 Under the concept of “regular migration” we may include policies dealing with admission, stay/residence and inclusion (fair and equal treatment) of those not holding the nationality of an EU member state. This wide range of areas has at times been wrongly qualified as “legal migration”.

After the failure experienced by the Proposal for Council Directive laying down the basic conditions and rules of admission of migrants for employment purposes was presented by the Commission of 2001, the European Commission published a new Green Paper in January 2005 which intends to pave the way to a public discussion in this sensitive field. The European Commission will present a Policy Plan on regular migration, including admission procedures at the end of 2005. This paper contributes to this ongoing debate and tries to present a comprehensive set of answers to the main questions raised by the Select Committee on the European Union of the House of Lords.

1. Mapping the road towards a common EU economic migration policy

By virtue of the Treaty of Amsterdam, the area of “visas, asylum, immigration and other policies related to the free movement of persons” was moved into Community competence—EC First Pillar (ie Title IV of the EC Treaty, “Visas, Asylum, Immigration and Other Policies related to Free Movement of Persons”). In addition to the firm commitment to abandon the unanimity rule within a period of five years after the entry into force of the Treaty of Amsterdam in May 1999, the Council was required to adopt, inter alia, “measures on immigration policy within the following areas: (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion, (b) illegal immigration and illegal residence, including repatriation of illegal residents.”

The Tampere European Council of 15 and 16 October 1999 (thereafter the Tampere Conclusions) provided the political impetus for the programme. The Council Conclusions of the Finnish Presidency sought to lay down a roadmap leading to the establishment of a common immigration policy. This was set in the framework of a five-year programme that aimed at crystallising a proper balance between freedom, security and justice. It also presented a timetable (the Tampere Scoreboard) that outlined deadlines and gave structure to the agenda in this area. The Council organised immigration, around three axes: (a) partnership with countries of origin; (b) fair treatment of third country nationals; and (c) management of migration flows. The ambitious character of the Tampere Conclusions was often and rightly mined by substantial criticisms regarding the slow and unsatisfactory implementation process and “meeting the deadlines” originally agreed.

Among the package of objectives presented in the Tampere milestones, fair treatment of those identified as third-country nationals was presented in paragraph 8 as an essential ingredient in an area of freedom, security and justice (AFSJ). Moreover, the Council recognised in paragraph 20 of the Presidency Conclusions:

the need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin.

Based on the Tampere agenda and in order to contribute to the debate on the progress of an EU migration policy, the Commission published a Communication on an open method of co-ordination for the Community immigration policy, COM (2001) 387 final. The proposed open method consisted in a complementary tool to the legislative framework, aimed at providing the necessary “policy mix to achieve a gradual approach to the development of an EU policy”. Namely, the key elements and main instruments may be resumed as follows: the approval by the Council of multiannual guidelines, accompanied by specific timetables for achieving the goals set in the short, medium and long term; the set up of Action Plans; the regular evaluation of the Community Immigration Policy as well as the promotion of a wider involvement of the European Institutions and the Civil Society in the conception and implementation of the objectives that should be attained in the field of EU migration.

The open method would have secured a flexible and accountable tool able to organise the harmonised management of migration flows, the establishment of coherent and transparent policies and procedures for opening the labour market to third country nationals and the integration of migration issues into relations with countries of origin. Regrettably, the suggested scheme remained a dead letter, following the watering down of the 2001 Commission’s proposal for a Directive on Labour Migration (See section 2 below).

The European Council at Thessaloniki of 19–20 June 2003 revisited the open call given at Tampere by stressing “the need to explore legal means for third country nationals to migrate to the Union, taking into account the reception capacities of the member States”.

11 Art 63.3 EC Treaty.
5 July 2005

On this same occasion, the Commission’s Directorate-General on Justice, Freedom and Justice as well as the one on Employment and Social Affairs presented a Communication on Immigration, Integration and Employment—COM(2003) 336 final. The Commission called for a proactive EU immigration policy paralleled by a holistic integration policy of immigrants into the receiving state. It restated that the successful integration of immigrants would be both a matter of social cohesion and a prerequisite for economic efficiency in Europe. The Commission advocated for a holistic approach towards the integration of both established and future immigrants. A series of elements should be taken into account in this holistic strategy such as having access to employment, education, language training, health and social services, along with involvement in the social and political life in the EU member states. Finally, the Communication underlined the need to improve the overall policy coherency and synergies between immigration, integration and employment policies. This would lead to better and increased cooperation among all the relevant actors at the EU, national, regional and local levels.

Subsequently, on different mandates from the European Council,13 the Commission issued a Study on the link between legal and illegal migration COM (2004) 412 final14, analysing the possibility of reducing incentives for illegal migration through the enhancement of legal instruments for the admittance of third country nationals. In particular, reference was made to the impact of any existing linkage between positive regulation of migration flows towards the EU and the fight of illegal migration, human beings trafficking and exploitation of an unregulated labour market. Allusion was also made to the possibility of strengthening co-operation with third countries in order to tackle the ever increasing number of flows of illegal migrants.

The main point that should be highlighted from the Commission’s study consists in the demonstrated evidence of a constant relationship between illegal migration and hidden economy, which the study reports to reach 7–16 per cent of the EU GDP. Although the latter is not exclusively composed by illegal migrants, it becomes of great significance in some particular areas of the low-skilled sector such as in construction, agriculture, cleaning and housekeeping, where the employment of third country nationals can cover up to 95 per cent of the market. These workers bear higher risks in terms of exclusions from social rights and protection, as well as from integration in the hosting community. Moreover, the simple fact of being under irregular status in a country, increases the exposure to recruitment by organised crime.

Nevertheless the study concludes that the relations between legal and illegal migration is a complex and indirect one, involving a series of different factors, and that the single intervention in the sense of regularizing economic migration cannot have a decisive impact. A more comprehensive policy is therefore needed, particularly through the strengthening of information exchange, consultation and co-operation between EU Member States.

The Hague Programme agreed by the European Council on 4 and 5 November 2004 sets the new agenda for the next five years.15 It deals, by and large, with the issue of migration. It outlines the objectives of a second multiannual work programme towards the development of an Area of Freedom, Security and Justice (AFSJ). The Hague Programme reiterates and structures the need to develop a “comprehensive approach, involving all stages of immigration, with respect to the root causes of migration, entry and admission policies and integration and return policies.”16

The European Commission agreed on 10 May 2005 an Action Plan implementing the Hague Programme,17 which identifies 10 specific priority areas for intervention upon which the Commission considers efforts should be particularly concentrated. Amongst the 10 policy priorities which will prevail in the AFSJ for the next five years, the Commission underlines the need to define “a new balanced approach to migration management, dealing both with legal and illegal migration and a common immigration policy addressing the situation of legal migrants at Union level”. The Commission continues by saying that “while the decision as to how many future immigrants. A series of elements should be taken into account in this holistic strategy such as having access to employment, education, language training, health and social services, along with involvement in the social and political life in the EU member states. The Commission advocated for a holistic approach towards the integration of both established and future immigrants. A series of elements should be taken into account in this holistic strategy such as having access to employment, education, language training, health and social services, along with involvement in the social and political life in the EU member states. The Commission underlined the need to improve the overall policy coherence and synergies between immigration, integration and employment policies. This would lead to better and increased cooperation among all the relevant actors at the EU, national, regional and local levels.

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13 See the Presidency Conclusions of the Thessaloniki European Council, 20–21 June 2003, paragraph 30; the informal JHA council in September 2003, where the Italian Presidency suggested to “its partners to conduct a study to define a legal migration quota system for Europe to be offered to the countries of origin and transit of the main legal migration flows in order to obtain their co-operation in reaching an agreement on readmission (...); the Presidency Conclusions of the Brussels European Council, 16–17 October 2003.
immigration policy, covering admission procedures and criteria and delivering a secure legal status and a guaranteed set of rights to assist the integration of those who are admitted”. Moreover, the Action plan provides that “immigration plays a fundamental role in the economies and societies of Member States as well as of countries of origin and transit, which also justifies the need for a common approach based on a rational use of an immigrant workforce”.


The launch of the Lisbon strategy in March 2000 identified as a goal for the next decade that the EU “becomes the most competitive and dynamic knowledge-based economy in the world; capable of sustainable economic growth with more and better jobs and greater social cohesion, a Union where the economic and social aspects of the ageing population become more evident and where the labour market for immigrants and refugees represents a crucial component of the integration process”.18

There seems to be a general consensus that solid policy responses need to be developed at the transnational level in order to frame human mobility (ie migration and asylum) in the common European territory. An agreement at EU level as regards conditions and rules of admission of migrants for economic purposes represents a key element for the facilitation of the actual processes of inclusion of migrants into the labour markets of the Member States. Yet, until present there has been an unacceptable official reluctance to the liberalisation and adjustment of immigration policies in order to reflect these realities and needs.19

A proposal for Council Directive laying down the basic conditions and rules of admission of migrants for employment purposes was presented by the Commission in 2001.20 This initiative did not have much success at the Council and political agreement among the Member States was regrettably not possible.21 Among the main reasons justifying this “failure” we may underline three: first, the lack of consensus around a single document merging the residence and work permit (the so-called “residence permit worker”—See Art 2 and 4 of the Proposal); second, the initiative appeared to present a too bureaucratic framework which did not take into account the different procedural and administrative system of the Member States; and finally, the political considerations due the sensitiveness inherent to any discussion concerning the issues of access to labour market to non-nationals.

Taking into account the necessity to complete an economic migration strategy establishing a common approach to labour migration in the EU, the European Commission presented on 11 January 2005 a Green Paper on an EU approach to managing economic migration involving the EU institutions, Member States and the civil society.22 The Green Paper aims at fostering the debate about the most appropriate form of Community rules for admitting economic migrants and on the added value of adopting such a common framework taking into account the demographic and labour market situations in Europe.

The Green Paper is primarily based on the current difficulties that the EU is facing as regards dramatic economic and social change characterised by labour shortages in some fields though still accompanied by high unemployment and accelerating demographic change through the increase in average age of the EU population. The Commission states that even if the Lisbon employment targets are met by 2010, overall employment levels will fall as a result of demographic change. Between 2010 and 2030, at current immigration flows, the EU-25’s working age population will suffer a decrease in the number of employed persons of some 20 million.

A public hearing took place in June 2005 organized by the European Commission with the intention of discussing the Green Paper among all the main stakeholders involved. This aims to facilitate the presentation of a policy plan on regular migration, including admission procedures, at the end of 2005.

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21 Following Art 1 of the proposal, the main goal of the measure was to establish common definitions, conditions and a single national application procedure leading to one combined title for both residence and work permits.

5 July 2005

LIST OF QUESTIONS:

1. LABOUR MARKETS AND LABOUR MIGRATION

1. From the evidence we have so far received, there is a diversity of opinion regarding the EU labour market. In your view how should the EU labour market be primarily understood as local, regional, national, or EU-wide?

— Starting from the point that the EU Labour market is economically segmented and socially fragmented, we should nevertheless agree on certain common features, at least among certain continental countries (France, Italy and Germany) of interdependence, instability and rigidity that affect transversally its structure.

— The existence of an EU labour market may be affirmed on the base of a fundamental paradox: despite considerable steps undertaken by the EU to facilitate the free movement of workers on the one hand, and on the other, tighter immigration policies towards third countries since the middle of the 1970s, there is very low intra-EU mobility for employment purposes (by European citizens), and there is a growing mobility into and inside the EU labour market by third country nationals.23

2. How feasible is it for state authorities to regulate labour migration? How much regard should they have to protecting the domestic work force?

— There is currently a significant diversity as regards administrative capacities and bureaucratic schemes in each of the Member States. This is directly related to the capacity to efficiently manage and regulate migration flows. A harmonized EU system of admission of third country nationals would potentially provide an improved, global, transparent and more comprehensive response to the multidimensional challenges that all the member states’ authorities are currently facing while dealing with the field denominated as “labour migration”.

— As highlighted by the European Commission in the Communication on immigration, integration and employment (2003/336),24 “in the overall economic and social context characterized by a number of skill and labour shortages, competition for the highly skilled in a globalized economy and accelerating demographic ageing, immigration is taking on a new profile in the EU”. Further, as recognized in the Green Paper on an EU approach to managing economic migration (2004/811) “even if the Lisbon employment targets are met by 2010, overall employment levels will fall due to demographic change. Between 2010 and 2030, at current immigration flows, the decline in the EU’s 25 working age population will entail a fall in the number of employed people of some 20 million”.25

— According to data on demographic trends provided by Eurostat in 2004, the active population in the EU-15 (1980–2020) will drop by 20.7 per cent,26 while the elderly population will increase by 19.1 per cent.

— In the light of this, jobs taken by migrants are in most cases complementary to the domestic labour market situation, and not substitutes to the latter. This implies that there is not increase in competition or loss of jobs at national level as a consequence of mobility for the purposes of paid employment or self-employment activities. On the contrary, the current domestic labour shortages do benefit from it. Immigrants complement unskilled and skilled workers.27

— Fears raised at national level concerning the need to protect domestic work force from migration, and the risk of so-called “social welfare tourism” are not supported by any empirical/economic study, but by political and public discourses misused at times of national elections and before every EU enlargement process.

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The fact that the only three EU Member States (the UK, Ireland and Sweden) not applying “transitional arrangements” to the mobility of nationals from the new Member States have not been flooded by “job-seekers” from the new Member States provides supplement evidence for this thesis. In addition to the uncertain justification and economic logic of these restrictive arrangements in view of the expected migration flows from these countries and the labour-market effects, the transitional periods applied to workers coming from the new EU Member States should also be abolished in conformity with the right of equal treatment and non-discrimination on grounds of nationality, as enshrined by the EC legal framework and the proactive case law of the ECJ.

3. What can be done to stimulate more efficient labour migration in the EU?

— Having common and smooth rules for admission and access to employment/self-employment by third country nationals, and a truly common immigration policy;
— Provide a secure status to temporary as well as permanent employed and self-employed persons coming from third countries, and the non-application of “mandatory integration conditions” in order to have access this status—and the rights attached to it—as well as for entering the EU common territory;
— Having as a basis the principle of equality and fair treatment between European citizens and third country nationals as highlighted in the Tampere European Council Conclusions of 1999 and the creation of equal opportunities to participate fully in society as professed by the Hague Programme;
— Not conditioning the access (inclusion) into the labour market of the receiving state to the accomplishment of a set of tight conditions and requirements, such as high standards skill tests; and
— Facilitate the conditions for a truly family reunification and the respect of family life as provided by Art 8 of the European Convention of Human Rights.

4. Should regulation of labour migration be driven entirely by economic considerations, regardless of possible social consequences?

— A key element to guide a proficient and steady regulation on the admission of labour migration shall be the dismissal of the idea that the migrant is merely human capital to be displaced according to the economic needs of the hosting country (migrants as economic units);
— In order to ensure social cohesion and inclusion inside the EU, third country nationals have to be considered as individuals holding the set of human and fundamental rights as recognized in the common international and European legal instruments, such as the European Convention of Human Rights, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, the ILO Conventions, etc (migrants as human rights units);
— Economic considerations may affect the conditions for entry and stay but they must not prevail over a comprehensive set of social and human rights such as non-discrimination, access to justice and the principle of equality and solidarity.

2. EU Policies

5. Why there should be a common EU economic migration policy?

— Because of the shrinking of the EU population, with the significant decline of the active workers supposed to sustain the increasing elder segment of the dependent population.

28 As regards the UK, the latest quarterly statistics provided by the Home Office (Immigration and Nationality Directorate) show that since May 2004 a total number of 176,000 nationals from the new MS have applied to the Worker Registration Scheme (WRS)—that was set up specially to monitor the impact of workers from these countries. Many of which have only stayed inside the UK for a limited period of time, and the majority were already inside the country working in a de facto “irregular status”. As regards Ireland, from May 2004 to April this year 85,114 people from the 10 accession countries have been allocated Personal Public Service Numbers in the country. This statistics could be therefore indicative of the numbers of people from these countries who have come here to work since 1 May 2004.
5 July 2005

— Tackling the labour shortages and the lack of competitiveness by EU enterprises as highlighted in the Lisbon Strategy (2000);

— Contribute to prevent the existence of irregular migration, trafficking and smuggling of human beings, facilitating equal access to rights and freedoms (access to a secure status) by the irregular workers bound by clandestinity and exploitation. As the European Economic and Social Committee made clear in one of its recent opinions, there is indeed a clear link between the lack of legal channels for economic migration and the increase in illegal immigration.

— Bring to surface the submerged economy, with beneficial effects for the State, the employer and the worker;

— Ensure the principle of non-discrimination of third country nationals—same rights as other EU workers.

— The development of a common EU immigration policy is a clear priority for the sake of Europe’s future. Failing to provide long-term planning and a comprehensive legislative framework which facilitates inclusion, equality, fair treatment and social cohesion (liberty), and which directly fights against social exclusion, discrimination, racism and xenophobia may lead to an unsustainable and serious situation.

6. EU policies are in place covering asylum, admission for studies and research, and family reunion. Is admission for employment the only main area of immigration policy not subject to some form of EU regulation?

— Under the classical migration theory the three main ways of migrating towards a third country are primarily based on: (a) humanitarian reasons; (b) family reunification and (c) employment considerations. Concerning policies on EU regular migration, due to the failure of the Commission’s Proposal laying down the basic conditions and rules of admission of migrants for employment purposes of 2001, a common approach managing economic migration remains one of the most important unmet goals towards a common immigration policy.

— Admission laws represent the core roots of any common immigration policy.

— The most relevant policy measures and legal instruments dealing with the field of regular migration been adopted are the following:


5. The Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000/43, and


31 See the opinion of the Commission Communication, study on the links between legal and illegal migration (COM(2004) 412 final.
32 Under the concept of “regular migration” we may include policies dealing with admission, stay/residence and inclusion (fair and equal treatment) of those not holding the nationality of an EU member state. This wide range of areas has at times been wrongly qualified as “legal migration”.
constructive agreement on labour or economic migration as well as on admission conditions needs to be given a priority status. The full inclusion of third country nationals into the receiving labour markets is a need for the sake of social cohesion and the future of the EU.

7. Do you think that the current cloud over the Constitutional Treaty will make it more difficult to develop EU policies in this area?

— The Treaty establishing a Constitution for Europe signed in Rome on 29 October 2004 would have introduced major changes. Following Article III-396, QMV would become the major rule governing all policies in relation to EC immigration law, including regular migration. In addition, the European Parliament would become more directly involved in the decision-making process thanks to the application of the co-decision procedure as provided in Art III-396. Taken together, these measures would have facilitated the whole system and given more legitimacy with the direct involvement of the European Parliament.

— By a decision of 22 December 2004 the Council agreed to act by QMV as regards measures under Articles 62.1.2a and 3 EC Treaty—which include abolishing internal border controls on persons, standards on checks on persons at the internal borders and freedom to travel within the EU for three months for third country nationals. In addition, it applies QMV to Articles 63.2.b. and 3.b, burden sharing regarding asylum seekers and illegal immigration, residence and repatriation of illegal residents. None of the other EU fields of immigration, such as regular migration issues, are included. They remain subject to the unanimity requirement. The efficiency that QMV could bring into the decision-making system would not solve however the wider problem of lack of legitimacy and quality from which most of these policies are suffering.

8. What are the implications of the GATS rules on freedom of movement for service providers for national immigration rules on the admission of workers?

— As pointed out by the European Trade Union Confederation (ETUC) in its response to the Commission’s Green Paper, “the development towards more freedom to provide services, encouraged on the global level by the WTO through the GATS (General Agreement on Trade in Services), and promoted within the European Union by the draft Directive on Services in the Internal Market, leads to a great variety of migratory movements of third country nationals on temporary assignments, from managerial staff to posted workers, who in theory ‘do not permanently enter national or local labour markets’ but in practice may very well disrupt these labour markets by not respecting the host country rules and regulations, leading to unfair competition.”

3. The Commission’s Green Paper

9. There seems to be a strong preference for a “horizontal” as opposed to a sectoral approach to regulating economic migration. Do you agree with this? Might not sectoral regulation target labour shortages more effectively?

— An overall horizontal approach is preferable for the sake of social cohesion and economic efficiency. Following the Opinion issued by the European Economic and Social Committee on 9 June 2005, “if the European Council were to opt for a sectoral approach it would be discriminatory in nature.” Regulating only certain segments of the market will in fact create direct discrimination of those not falling within the employment category, privileged by the legislative framework. The same applies to those migrants not falling within the category of the high skilled.

— Given the divergent economic needs of each particular Member State (as regards for instance skills requirement and sectoral shortages), the EU should agree on a regulatory framework providing a common policy framework on admission for the purposes of employment and self-employment activities;


A rigid sectoral approach is not a long-term solution. It encapsulates those particular sectors which may be in need of labour force in a particular timeframe, but which in the long-term may vary accordingly with the evolving nature of the global economy.

In the case that the principle of community preference is considered as a policy option, it should apply, among others, to all European citizens (without any distinction between the nationals of the traditional and the new Member States), third country nationals who are long-term residents, third country nationals with legal permission to reside and work inside the EU and third country nationals who have resided and worked within the EU territory and who come back in a temporary basis to their country of origin.

10. Do you see any advantage in a quota system? Might quotas be a fairer and less bureaucratic alternative to a work permit system?

The transfer at EU level of the competence to determine the volumes of admission of labour migrants is not a matter under discussion in the framework of a common EU approach on regular migration and admission of economic migrants.

The proposed Treaty establishing a Constitution for Europe states in fact in Art III-267 para 5 that “This Article (concerning the establishment of a common immigration policy) shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed”.

Furthermore, the Hague Programme more incisively states in point 1.4 on Legal migration and the fight against illegal employment that “the European Council emphasizes that the determination of volumes of admission of labour migrants is a competence of the Member States”.

4. Rights of Migrant Workers

11. The Commission’s Green Paper devotes very little space to the rights of economic migrants or to the obligations of employers. What aspects of migrants’ rights would it be appropriate to cover at EU level?

As the Commission’s Directorate-General on Freedom, Security and Justice as well as the one on Employment and Social Affairs advocate in the Communication on Immigration, Integration and Employment (COM(2003) 336 final), there is a need for proactive EU immigration policy paralleled by a holistic integration policy of immigrants into the receiving state. The Commission advocates a holistic approach towards the integration of both established and future immigrants. A series of elements should be taken into account in this holistic strategy such as having access to employment, education, language training, health and social services, along with involvement in the social and political life in the EU member states.

Right to family reunification and respect of family life. The Council Directive 2003/86 on the right to family reunification provides the possibility for non-EU nationals residing lawfully in the territory of Member States to be reunited with their family members who do not hold the nationality of one EU Member States. European Parliament has challenged three provisions of the Directive on the ground that they do not conform to Art 8 of the European Convention on Human Rights (ECHR) that guarantees the right of family life. These are:

1. Member States are permitted under the Directive to exclude children over 12 if they have not complied with an integration requirement;
2. Children over 15 may be excluded altogether from family reunification;
3. Member States may restrict or exclude family reunification where the sponsor has been living less than two years on its territory.

This Council Directive should be revised accordingly with the international and European human rights legal commitments.

44 Art 4.1, 4.6 and 8.
— Any policy intending to frame this field should instead look at it as a *compendium of processes of inclusion* tackling social exclusion. These processes should seek to guarantee *equal rights and obligations* to those not holding the nationality of the receiving society. Facilitating equality of treatment and full access to a set of economic, political, social and cultural rights and duties should be the real goal pursued.

— The provisions contained in Art 5 and 15 of the Directive on the *[long-term resident status](2003/109)* regarding integration conditions should be revisited. These articles offer the member states overly wide discretion to ask migrants to comply with mandatory integration requirements in order to have access to the package of rights that it covers. The migrant will first need to pass a forced integration test and cover the financial costs of it before having secure access to the benefits and rights conferred by the status of long-term resident. The introduction of the conditionality of integration in order to have access to basic economic, social, cultural and political rights may equally undermine the prohibition of discrimination and unequal treatment.46

— The new Council directives on *[anti-discrimination](2000/43)* and *[Employment Equality Directive](2000/78)* need to be observed and efficiently implemented at national level.

12. **On what basis should it be decided when labour migrants should acquire particular rights, such as the right to change employers and to seek work in another Member State?**

— The grant of a residence and work permit does not have to be rigidly linked to an exclusive employer, nor to a specific sector or professional qualification. The permit holder must always be the third country national, not the employer. This would fight against abuses and exploitation;

— Linking the migrant worker to a specific sector and employer is an unacceptable policy strategy. A degree of flexibility would prevent that the person involved automatically falls into an irregular status. A policy option would be for example to grant a period of time of at least six months in order to search for another employment (see the ETUC response to the Commission’s Green Paper);47

— Among the few requirements to be followed in case of changing of the employer would be the need to notify and duly inform the national authorities issuing the residence and work permit.

5. **Regularisation**

13. **What is your view of amnesties? Is there a danger that widespread use of amnesties will encourage further illegal immigration? To what extent do Member States have a legitimate interest in action taken by neighbouring countries to regularise the stay of illegal immigrants?**

— Taking into consideration the different philosophies and strategies advocated by each of the EU Member States, a common approach on regularization is not a credible option. In addition, amnesties have never been discussed at EU level and are certainly not a mechanism that would constitute a proactive legal migration policy, but rather a reactive and *ad hoc* one.

— Regularisations are not effective responses to the multidimensional challenges that our societies are currently confronted with. Regularisations are homeopathic and temporary approaches to addressing the symptoms rather than the cause.48

— Even under a pure economic perspective, regularization is not beneficial and it often resulted as detrimental in addressing the issue of the black market economy. Employers do not fear to employ illegally and continue to exploit the insecure migrant, while on the other hand more migrants are encouraged to enter the territory irregularly or are at least not discouraged from becoming irregular (through the common practice of overstays). Nevertheless, the EU should take into account the current large population of irregular migrants who are already present inside the territory of one


47 See above footnote n 33.

Member States while dealing with the question of what has been denominated as “economic migration”.

— The Commissioner of Freedom, Security and Justice, Franco Frattini, and the Luxembourg Minister of Foreign Affairs and Immigration, Nicolas Schmit jointly drafted a letter addressed to the Justice and Home Affairs Council meeting of 24 February 2005, stressing the need to set up a European exchange of information and “early warning” system on relevant responses to immigration being adopted by the member states. The establishment of an exchange system on national immigration policies might be a useful tool in order to prevent surprises. However, regularisations are purely a matter of national sovereignty and member states are under no legal obligation to consult with their counterparts before launching such a procedure in their respective territories. At present, only national legislation exists dealing the conditions of entry and residence.

6. Effects on Third Countries

14. Should the EU take action to compensate third countries in some way for the loss of skilled workers trained at public expense? What specific measures could it take?

— Compensation policies are needed in order to avoid building up new obstacles to development;
— In particular compensatory measures would include for example:
  1. Facilitating the transfer of remittances;
  2. Fostering the development aid and investment programmes, as well as strengthening the economic and social dimensions in the countries of origin. The EU should in particular contribute to improving the education, training and research activities in the countries of origin (see the opinion of the European Economic and Social Committee of 9 June 2005);
  3. Preventing the loss of the “secure status” based on the access to economic, social and resident rights acquired, when deciding voluntarily to return to her/his country or move to another third state.

Marco Formisano and Sergio Carrera

July 2005

Examination of Witnesses

Witnesses: Mr Marco Formisano and Mr Sergio Carrera, Centre for European Policy Studies, examined.
but may emerge in the form of an action plan at the end of this year and, also, the position of the Parliament and the Council on the possible outcome of a potential Directive on EU admission of third country nationals for the purpose of employment and self-employment. We have just started this research recently because we waited for the public hearing organised by the Commission which took place on 14 June.

Q381 Chairman: Sorry, a public hearing with your Centre?
Mr Formisano: No, it was the public hearing of the Commission on the Green Paper.

Q382 Chairman: I beg your pardon.
Mr Formisano: They issued a Green Paper at the beginning of this year asking for contributions, and once they got the contributions they had a public hearing to debate on this argument. Now, we want to analyse the different positions and see what the outcome could be.

Q383 Chairman: Thank you for this paper which, no doubt, answers many of the questions we are about to ask you. That will not deter us! Perhaps I can start with a general question of perspective and that is how you see the labour market. Do you see it as an EU issue, or regional, national or what?
Mr Formisano: These are very good questions in the sense that the answer that comes from our analysis is very interesting. There is an analysis which has been conducted by CEPS which demonstrates how a EU labour market exists and can be explained in a paradox, which is the following: you have very low EU mobility among EU citizens, although there are many policies which have been put in place for fostering these mobilities at EU level, while, on the contrary, you have great mobility of third country nationals who can come to the EU. This means the EU labour market exists as a single market, EU-wide, only for third country nationals, who are more apt to go and fill in the shortages, where the economic needs are throughout Europe, without the barriers which European citizens have to face in different terms. The most common one, which was analysed by Eurobarometer is about the fact that normally EU citizens are satisfied with their lives in their own country and are not willing to move or adapt to another language and other cultural barriers, while, on the contrary, third county nationals who are not satisfied with their lives or, under another perspective, an economic perspective, want to reduce the risk of security at home, in social life, are more willing and more able to move everywhere across Europe. My answer would be, yes, there is an EU-wide labour market but only for third country nationals and not for EU citizens, although the EU is trying to develop much more EU mobility, but this has not happened so far.

Q384 Chairman: But you rather implied—perhaps I am mis- quoting you—that there are no barriers to third country nationals. Surely visas and work permits are very significant barriers?
Mr Formisano: Indeed, they are, but concerning mobility and a single EU labour market, it is when you get all the requirements to apply for a visa, a skills test—

Q385 Chairman: Then you can move?
Mr Formisano: Then you can move.

Q386 Lord Marlesford: I think probably much of our inquiry is going to be based on the question as to whether or not the EU has any role in regulating economic migration or whether, under the principles of subsidiarity, it can best be done by state authorities. When state authorities do it, do they, for example, take account of the need to protect their domestic workforce? I would like you to give a view on that crucial question as to the justification for an EU role.
Mr Carrera: This is one of the fundamental issues we discussed also about: do we really need an EU common migration policy? Why do we need a policy at EU level dealing with these issues? If we look back at the history of European integration, we find the legal foundations of a common immigration policy in the Amsterdam Treaty, Article 63; then the Tampere European Council comes and gives a call for the European institutions to move this policy onwards and develop a proactive immigration policy. The reality is that since then we have seen how many obstacles have been encountered while developing this policy. We have few legal measures being adopted as regards regular migration issues. We may highlight, for example, the Council Directive on long-term resident status, the Council Directive on the Right to Family Reunification, which is at the moment pending before the European Court of Justice. The European Parliament presented that challenge based on human rights considerations, so we have all these issues, which give strength to the question of why do we need a common policy if we are facing all these difficulties. However, on the other hand, we see that with the establishment of an internal market in the European Union, with the Single European Union Act and the Schengen Agreement we have, in principle, potentially, no internal border controls in the European Union. One of the arguments pro a common EU policy at EU level would be that—not with the traditional methods, border controls do not exist anymore—we
Mr Marco Formisano and Mr Sergio Carrera

need to also provide common solutions to common challenges. We have these issues raised in the so-called Lisbon Strategy which has been criticised and questioned many times, but which basically called for development, looking at the economic situation in the European Union, the economic challenges which we seem to be facing, for example, demographic ageing—we all know this very well now—and labour shortages. We need to provide a common framework providing common solutions to common concerns of the European citizens. Of course, one of the main issues for any common immigration policy is access—admission rules, admission laws, having access to the territory and the state from people who want access to a territory—and we see that it is really difficult to reach an agreement at the Council of Ministers on a common policy. As you mentioned, each Member State, at the moment—and this is something that is very interesting to look at—has its own history, philosophy and strategy dealing with immigration, and this depends very much on historical aspects. You may find, for example, the issue of regularisation being used in southern European countries. We have heard about the latest regularisation procedure in Spain and all the questions this has raised. Again, it shows the divergence in attitudes and philosophies towards migration. However, looking at the way in which the Council presents the issue of legal migration, regular migration and, specifically, the issue of labour migration, what the Council and the Commission seem to be advocating is not to completely harmonise or provide a global response to every single aspect dealing with immigration policy. What the Commission is implying and what the Council is stating quite clearly in, for example, the Hague Programme is to provide common standards only as regards, let us say, admission. So, not a complete or global harmonisation, having a complete or fully common immigration policy without taking into account the differences which exist, at the moment, in each of the Member States, but providing common ground for admission and providing common policies and common solutions to these challenges.

Q387 Chairman: When you talk about a common policy on the standards of accepting migrants, does that take into account historical connections, for instance, imperial connections, if I can put it that way? The fact is that the French Government are likely to look with rather closer interest on Algerian immigration, while the British Government would have more of an interest in Indian immigration. Do you think those historical perspectives are taken into account when you talk about common standards?

Mr Formisano: Yes, in a way. The different states will negotiate in the Council according to their historical background. You probably know this because you were also asking about different ways of regulating migration. As you said, Germans, for example, are more linked to the ethnic Germans which came after the dissolution of the Soviet Empire; likewise the French are more attached to North Africa and other former colonies, the British as well. On the other hand, they will have other positions to defend. For example, Italians do not have colonies but are attached to the regularisation programmes because they have huge illegal markets. Of course, all these historical backgrounds result in different approaches, so Germany will defend the Green Card and the guest worker system because it is their system, as the UK, I believe, would defend the high skilled test, and everybody will go for their own view. But a good point would be to reach a compromise and reach a consensus in the Council, and we should see to what extent that can be achieved. We need a single framework for admission, but then we have to discuss to which stage of integration we need a common setting of rules.

Q388 Earl of Listowel: What can be done to stimulate more efficient labour migration in the EU? I think you have alluded to some of the issues relating to that question already.

Mr Formisano: Yes, indeed. First of all, a degree of harmonisation will allow for the alleviation of the administrative burden of some Member States which cannot cope with all the demand for work permits and residence permits. If—as most probably will be the proposal and was the proposal in the 2001 Commission’s attempt to issue some legislation in this field—there will be a single work and residence permit, so a single document, which, at the moment, does not exist, to my knowledge, in any of the EU Member States. This would facilitate immigration and the administrative tasks of the authorities of EU Member States. Having a single framework decided at EU level could help. Then, of course, we should try and get a clear and secure status of the migrant, so the migrant who comes should be entitled to certain rights and be subject to certain obligations. We should be clear enough and that should be the application of the principle of non-discrimination and equal treatment of the migrant worker compared to native workers, let us say. This implies that there should not be any mandatory requirements, for example an integration test, before coming to the country. Although integration is an important issue when dealing with migrants, we should separate, in our analysis, the admission for economic reasons, the question of integration and the question of fighting illegal immigration. As you were also pointing out at the beginning, we should really take into account only the economic aspect, but without making these economic requirements prevail over the fundamental rights of the migrant worker. This was highlighted.
also by the Tampere European Council Conclusion about the inclusion of migrant workers within the receiving society, the receiving state.

**Q389 Chairman:** Has your Centre done any research into the economic effects of migration from third countries?

*Mr Formisano:* I conducted some research, although I am a lawyer, on the economic side of the issue. The debate is centred only on economic tests, although we will undeniably stress the point that economic needs are not the only test you should apply when dealing with economic migration, but you should take into consideration the rights of the migrant worker, especially if there is discrimination vis-à-vis the native workers. This has implications in the sense that if the migrant comes—and in some countries, like the southern countries, they come irregularly into the country—or is subject to irregular work which transversely affects native workers as well as non-native workers, if the migrant is subject to a one-year work permit and then loses his job and his work permit has expired, then he is more exposed to irregular work and even recruitment by organised crime, because he completely loses his status. We are really stressing the need for granting secure, transparent and clear status for the migrant in order to prevent negative social consequences.

**Q390 Chairman:** The point I am really making is that there is a popular belief that for migrants to come in and take jobs, whichever country we are talking about, is somehow damaging the local labour market. In fact, I think the statistics show quite the contrary, that inward migration rather curiously increases the opportunities for work, but I do not know whether people have done serious research into the figures.

*Mr Carrera:* Indeed, we are lawyers, but from time to time we look at numbers as well, and we have done some research on the transitional arrangements applicable to workers coming from eight of the 10 new Member States and the implication for the three Member States that have not applied these restrictions to free movement of workers, among which we find the UK. There is data provided, and you may find it in the documents which are available to you. The latest data provided by the Government shows the fact that the UK has not been flooded by jobseekers from these countries. What we say, and coming back to what Marco was raising previously, is there is one idea which we want to stress really clearly and that is while we acknowledge the need to take into account economic considerations, in addition to that we really need to stress the importance of providing a secure status, equal treatment, the principle of non-discrimination between EU citizens and third country nationals and, particularly, looking at these transitional arrangements. In our view, in addition to the lack of financial justification for applying these restrictions to the new EU citizens from these eight countries, to move freely is to benefit from one of the most important freedoms and liberties granted by the status of a European citizen. In addition to that, these limitations go against the principle of discrimination. We have a wonderful legal framework, at the moment, two Directives being adopted at EU level on anti-discrimination—the Race Discrimination Directive and the Directive on equal treatment in employment. This needs to be, basically in our view, the grounds of any policy dealing with migration regarding economic grounds, access to employment and self-employment.

*Mr Formisano:* To answer your question about who conducted research. There is a famous economist called Klaus Zimmerman who produced empirical studies which prove scientifically that migration is never detrimental to, let us say, the hosting country's economy, because it fills the shortages or eventually produces indirect benefits because the migrant worker has to find a house and spend money in the country. Normally, by empirical economic studies, around 50 per cent of the salary is sent back to the country, which is also a form of compensation to the country, but the rest is spent in the receiving country.

**Q391 Chairman:** Where can one find that research?

*Mr Formisano:* It is quoted in the paper, and you have the reference to this Professor. He wrote extensively on this subject.

*Mr Carrera:* In addition, we have seen from our research—we have done empirical research on this at national level—that at times of national elections and every single time preceding every EU enlargement fears are raised about “social welfare tourism” and this competition issue. We think this is what we need to fight against. We need to fight against these political discourses which put migrants as enemies, as competing individuals. This is completely unfounded and based on an unreal image of what it is to be European and what it is to be, for example Spanish nowadays. Usefully, Marco also raised the issue of integration. It seems now that the integration of migrants seems to be the main philosophy followed and shared by any single migration related policy. We need to be really, really careful with this because if you look at one of the few Council Directives dealing with immigration, the one on the long-term resident status, in Article 5 and in Article 15 you will see that all the rights which potentially will be given to migrants who reside for five years in the territory of the Member State will be completely conditional on successfully passing an integration test. In our view, this may, again, undermine the principle of non-discrimination and will also be negative as regards
the principle of equality as raised in the Tampere Conclusion: equal and fair treatment of third country nationals and giving them a secure status cannot be conditioned in any way, having access to rights cannot be conditional on passing an integration test which is based on a traditional image at national level of the culture which seems to be reigning at the time.

**Q392 Lord Dubs:** Can you say a little bit more about the integration test, I am not aware of it? We have talked about it in Britain, about people speaking the English language and so on, but that is for becoming a citizen not just for working in the country.

**Mr Carrera:** This issue is very interesting. It is really interesting to look first at its evolution, since it was first raised and given importance by the Thessaloniki European Council, Thessaloniki in Greece, where the Council of Ministers got very interested in the issue of integration. The Commission presented a Communication on immigration, integration and employment. In the document we have provided you have an explanation of what it means and what it contains. Whilst some have considered the importance given to integration as a positive move away from the emphasis on security migration policies after the events of 11 September and, particularly, under the Spanish Presidency, we need to be careful at the way in which this integration philosophy is integrated in every legal measure being adopted at EU level. After the Greek Presidency, it seems that all measures, most importantly the rights conferred by these measures, not only by the Directive on Long-term resident status but also the Directive on Family Reunification, are negatively conditioned to what they call an integration test. This will be left to the discretion of each Member State to decide what it means. Theoretically there are different models of integration; some theorists have divided it into a multicultural model and an assimilation model, really a variety of models. It is very interesting to look at the different histories and philosophies of the different Member States. In our view, it would be dangerous to condition the rights provided at EU level to the mandatory need to pass a first integration test. Also, interestingly, it will be for the migrant, him or herself, to cover the financial costs of this integration test. In the Netherlands, we see a surprising policy development by linking the need to be integrated into what is considered nowadays to be “Dutch” before even entering the Netherlands. Then, you are linking policies on admission with policies which supposedly would foster the inclusion of the migrant in the resident society. Again, while I would definitely agree with policies strengthening the inclusion of a third country national in all social and economic levels of the resident society, we need to criticise very highly the way in which integration has been introduced in these measures. Also, if any legal measure is going to be adopted on the admission of third country nationals into the Member States for employment or self-employment activities, we need to prevent this condition being introduced at the very last moment at the Council by some Member States. We need to criticise this highly in order to prevent this conditionality of integration taking place in any potential legal measure in this field.

**Q393 Earl of Listowel:** Should regulation of labour migration be driven entirely by economic considerations regardless of possible social consequences? Clearly, there are great social benefits from migration, that has been clear from what you said, but, for instance, we have not really had evidence of housing supply, which is a burning issue in London and the South East, and the impact of migration on that. Also, we heard yesterday about the Nordic States’ experience of childcare. In our country we have very poor levels of training for those working in childcare and in children’s homes and so on. In Denmark and Germany, it is a highly qualified profession. Is there a danger that more flexible migration policies will encourage States to be lazy and negligent towards, for instance, social care because they know they can get motivated migrants in to do this difficult work rather than setting up a framework for such important social care where there is good professional training, good ongoing support and good resourcing? Perhaps this is a little far from your particular experience and I apologise for that.

**Mr Carrera** Indeed, one of our main arguments is that a common policy could potentially solve these problems. By bringing the transnational into the national sphere, you are also bringing the sphere of international and European legal commitments which guarantee and give a framework of protection to the sorts of rights we have. There are times when Member States have a general amnesia about these international human rights obligations, these legal obligations, but they are there and they need to be taken into account. It is not only the European Commission on Human Rights, it is also the ILO Conventions, the United Nations, this strange convention which nobody seems to want or is even considering ratifying, the Charter of Fundamental Rights and also EC legislation on anti-discrimination regarding access to any sector at national level. By developing—and, again, this is a really positive view on the need to develop an EU migration policy—this EU migration policy it may provide solutions to current problems we may see at national level, for example the one you were raising.

**Mr Formisano:** It is a very stimulating question. We should ask ourselves why EU citizens do not want to do certain jobs any more and how effective any policy
would be of stimulating people to study, get trained or get highly skilled in these sectors. I think there is a mix of economic reasons and social reasons. In fact, the economic reason may be that people are aiming at higher salaries or higher positions, and here we have the mix with the social setting. I am Italian, and I ask myself why Italians do not want to harvest their crops any more, they just deliver them to somebody else. In construction and in some low skilled fields they dismiss these jobs also. In my view, you can try to have training or a positive policy on announcing professional qualification in those fields, but through this policy you cannot really cope with everything, with the economic and social aspects of why some part of the population does not want to deal with these jobs any more. In my personal view, the important element is how to fill the shortages because you still need workers in those fields. On the other hand, Member States may be in favour of actively engaging in policies to stimulate interest by native workers, but I am not sure if those policies would be really effective in the end.

Mr Carrera: I do not know if you have had the opportunity to hear about this open method of co-ordination which the Commission presented after the Tampere European Council in 1999. In 2000 the Commission presented a very good Communication calling for the establishment of an open method of co-ordination at EU level regarding immigration. This could also potentially provide a solution to these issues. The Commission was advocating taking into account the differences that exist at national level—as regards each Member State’s labour market, historical ties and its particular sector of third country nationals—and from that comparing the strategies adopted and identifying what they call best practices. Basically, it is getting people together who are involved in these sectors, trying to reach a framework, providing solutions and also taking into account the divergences and the particular needs of each Member State, but under the umbrella of a co-ordination method which will bring all Member States together. This has been forgotten, I do not know why really. It has not been forgotten by everyone, but at least in the legislative framework it has been since 2000. It has been implied in some measures but has not been brought out so clearly. Maybe this could provide a solution.

Q395 Lord Marlesford: It has in the sense that it encapsulates much more than was contained in the question on the desirability and feasibility of having an EU-wide policy. The message I keep getting from most of your answers—not a surprising one, perhaps—is that it is a highly political issue in every nation state in two ways, one is that the electorate will demand action by their own governments to protect them, often irrationally, and, secondly, any idea that the EU may be imposing rules on a nation state in such a sensitive area is very dangerous ground for the image of the EU. Can you reconcile that there are certain things which are reasonable and desirable with the fact that there are political difficulties in doing them? Britain is in a particularly good position along with, I think, Ireland and Denmark, and we have certain formal opt-outs anyway; other countries do not have those. Would you like to talk about reconciling the political difficulties and where there is a real need for EU action?

Mr Formisano: As we stated at the beginning, you have different reasons why you act as the EU, because you have common problems, like the ageing of the population and the fact that the active population who will support the elder segment of the dependant population in the future will drop tremendously in figures. A UN report on demographic population studies as well as a EUROSTAT Report shows that in 2050 you will
have around 21 million fewer active workers, while you will have a high increase in the number of elderly people who will then be a burden on the social welfare. This is an argument which can be sold, let us say, to the electorate when addressing the issue. There is a question: is migration beneficial or not to the economy? As Sergio said before, it is often difficult for the electorate as they are not aware of what the beneficial consequences for themselves are on the economic side. Then, there is no campaigning for raising the social element of migration, for example, like myself and the others, how can we integrate in a common society. There are other reasons why we need an EU action. For some countries—it is most evident in the southern countries—it is about fighting the black market economy, the submerged economy, trying to bring this to light, which is beneficial to the state, which will receive income taxes from a regular labour market and for the worker, him or herself, who would be entitled to claim social rights and social welfare, etc. What are the political difficulties? Sometimes politicians do not use the positive arguments in trying to sell the product: that we need economic migration and it is beneficial for this and that reason. They try to use it, as was the case, for example, in negotiating transitional arrangements, which were useless. History proved that they were useless in the previous enlargement of Spain and Portugal. There was no mass influx of migrants. There were scientific studies provided by the Commission just before the enlargement in order to convince Member States not to resort to this transitional measure, but governments of some Member States—not Britain—used them because they wanted to use the argument of immigration, sometimes in a political campaign. This was the case in the recent election in Britain where immigration was high at the top of the agenda. Therefore, governments should promote not only EU action—if they agree there should be EU action, and they probably will because according to Commission officials it is the Member States which ask for regulation on economic migration—but they should also act nationally in promoting their national migration policies. This was the case for Britain as well. You have this five year action plan for migration which was launched last year; this is a way of promoting it. Of course, the message you give depends on the government and on how you want to tackle migration. Again, an EU migration policy for so-called regular migration will not be a single policy; it will be a harmonised policy for admission mainly. Mr Formisano: it will be a harmonised policy for admission mainly. so-called regular migration will not be a single policy; maximise flexibility. I wonder if you have got any thoughts on that. Again, an EU migration policy for these approaches might be combined in some way to tackle migration. Again, an EU migration policy for these approaches might be combined in some way to promote it. Of course, the message you give depends on the government and on how you want to tackle migration. Again, an EU migration policy for so-called regular migration will not be a single policy; it will be a harmonised policy for admission mainly. Mr Carrera: I think maybe we should move from the economic rationale and start from a premise which is a reality at the moment. We have a diverse Europe, we have diversity and we have something called inter-culturalism which is happening at the moment. Without the globalisation processes there is no way of increasing large scale mobility. We need to provide answers to this and we need to provide a framework. We cannot just ignore what is happening. We need to recognise that at the moment we are Europe. The European project is based on inter-culturalism, the mobility of people. Firstly, you need to recognise that you need to facilitate a framework and the best framework seems to be at EU level. At the moment, if one remains at national level, providing national responses to this global phenomenon, it may not lead to comprehensive responses. The European Union, if we are committed to a European project in which liberties are provided—and this liberty dimension, as we advocate, should be progressively expanded not only to European citizens but also to third country nationals residing and wanting to have access to all the sectors at national level—potentially the Member States need to set aside their national political agendas. I know it is difficult, but otherwise the future will be a rather chaotic situation whereby you will have inter-cultural societies which are not framed in a set of legislation which basically provides and fights against discrimination, racism, xenophobia and all of these issues.

Q396 Baroness Henig: The Commission’s Green Paper expresses a strong preference for a horizontal approach as opposed to a sectoral approach to regulating economic migration. I notice in your paper you endorse that. In fact, you say that a sectoral approach is not a long-term solution. I wonder if you would like to elaborate on that. Also, we heard in our last session of the possibility that these approaches might be combined in some way to maximise flexibility. I wonder if you have got any thoughts on that. Mr Formisano: As we state in the paper, and it is our main position, if you encapsulate and give crystallisation to some sectors of the market and incorporate them in a legal provision, it will be hard to change it, although you can provide, for example, authority and competence to the Council to decide,
with a qualified majority, to choose other sectors or change a sector or eventually give this power to the Commission, so that it could be changed by a simple decision at Community level. It would take a time lag before the economic needs would arise and before they could be evaluated and the policy adapted. The other strong point is that this will create discrimination for the sector you are regulating and the sector you are not. For example, if there is a shortage in construction, but it is not very important to Germany—I am just guessing, and it is not the case anyway—and the other northern countries and Cyprus and you do not want to regulate construction, but construction is important for Italy, Spain and another country, then the workers in construction will not benefit from the Directive, so they will not have the same access, the same work permit and residence permit and they will not have the same rights and equal treatment which allegedly the Directive should provide for. It would be discriminatory to choose a sector, especially at EU level, with the very minimum common standards in the Council. You will not get a position of consensus of all the different Member States, it would be very hard to achieve. I foresee that the horizontal approach will be a very flexible approach, open to any kind of job sector, so not to give a static definition of the legal framework. This goes with the question of high skilled labour and low skilled labour. There are countries like Germany which do not need low skilled labour at the moment—that is another reason, the timeframe could change also, for low skilled and high skilled—while Italy do, for example. We come back to the very first question, why do Germans not go to Italy and the Italians move to Germany? That is the reason why there is very low intra-EU mobility, otherwise we would not discuss all of this here. Therefore, we should have a comprehensive approach, not distinguishing between high skilled and low skilled, although I know Britain is very much attached to high skilled labour migration. I do not think that at EU level you can reach a position on, “yes, high skilled” or “no, low skilled” because Member States have very different needs and to adapt to the different needs you must be flexible. That is why we stand for a horizontal approach.

Q398 Chairman: We have talked a bit about rights of migrant workers. There is a comment in our questionnaire that the Commission Green Paper says very little about the rights of economic migrants or the obligations of employers. Do you think there are aspects of migrant rights, such as the right to change employer or to seek work in another Member State, that ought to be covered at EU level?

Mr Carrera: Basically, what we have advocated in this paper regarding the possibility, for example, of one very specific right, the right to change employer, is that it is a very important aspect. We think that rigidly prohibiting the migrants from changing their employer would not prevent abuses and exploitation, through irregular status, for example. The migrant needs to be the one holding the rights and holding, what we call, the residence and work permits. This is a fundamental aspect which needs to be, in our view, inserted in any potential policy measure being developed. A degree of flexibility needs to be granted in order to prevent the person involved falling again into an irregular status by, for example, changing employer. The rights aspect is a very interesting question also. The Commission has recognised many times the need to provide equal access to rights not only to employment but also to education, training, vocational training, housing, social services. Of course, in practice, when the Council of Ministers meet here in Brussels it is really difficult to get agreement on these: which rights should any policy measure dealing with employment contain? The right to family reunification, for example, and the right to family life are things which, in principle, we have in the Council Directive being adopted on family reunification, but, at the moment—and we need to raise this issue—it is before the European Court of Justice because of human rights considerations and because the European Parliament, rightly, in my
Mr Marco Formisano and Mr Sergio Carrera

opinion, considered that the Directive does not comply with Article 8 of the European Convention on Human Rights, which guarantees the right to family life. This will be an essential aspect. Again, anti-discrimination comes into play. We have these two Directives in which the principle of equal treatment is ensured at EU level. We have the Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000/43 and the Directive establishing a general framework for equal treatment in employment and occupation, 2000/78. Again, the issue of anti-discrimination should be raised expressly by any legal measure dealing with employment. The issue of integration, in terms of conditioning access to rights to an integration test, should also be removed from any measure being developed. Basically, the main philosophy would be the principle of equality and solidarity. This has been raised and agreed not only by the Tampere European Council, which settled the first multi-annual programme on an area of freedom, security and justice in 1999, but by the Hague Programme also. The Hague Programme also goes for equality and comparable treatment between the European citizens and third country nationals.

Q399 Chairman: Do you think the right to change employer should be unqualified or limited to a certain sector?
Mr Formisano: I do not think you should ever be prevented from improving your professional qualification and changing your field of activity as well. Again, we do not have to treat the migrant as a human capital unit which has to be placed, worked and then either stays or returns. I think there should be open possibilities of improving your skills either on your own or through programmes and then changing your job completely, for example going from being a nurse to become a doctor if you take university degrees, etc. It is hard to foresee how you can set this at a national level to restrict changing from one professional qualification to another. When employers issue vacancies they are looking for certain profiles. If you have taken another job because it is for native workers and you did not get a job closer to your qualification, you should be entitled, anyway, to change and move to another job.

Q400 Chairman: Certainly, it is a proven fact in Britain that a lot of migrants, particularly from West Africa, come to take up jobs which are well below their skills base. I am not quite sure where that argument takes us.
Mr Formisano: That is a matter of the recognition of qualification which is now developing at EU level. There is a new Directive on the mutual recognition of professional qualifications. For example, this is a major problem with new Eastern Member States, where there is still a number of people who are not able to get their professional qualification recognised. That is why people are prone to get a job, because they are not satisfied with their life in their own country of origin. They come to Britain, for example, and take lower jobs but they should not be prevented from getting access once the system of mutual recognition is in place.

Q401 Chairman: You are very nearly arguing that there should be no constraints on third country migration at all, are you not?
Mr Carrera: In the written paper we take into account, for example, the position of the European Trade Union Confederation and the Economic and Social Committee which intend to present a policy option as flexible as this. For example, they mention that there will be a need to notify and inform the authorities at national level of a change in the employment situation. Also, ETUC, the European Trade Union Confederation, in their response to the Green Paper, raised this issue as a policy option again. We have taken into account that at least it will be an option for a period of time in which this person can search for another employment, so not unlimited, but a framework to allow this to happen.

Q402 Chairman: This is very similar to the Turkish precedent, is it not, that after a certain period of working you have the right to change employment or change status?
Mr Formisano: What is applied at the moment with the citizens of the Eastern Member States is that after 12 months they are entitled to change in the countries which apply transitional measures.

Q403 Viscount Ullswater: The Green Paper does not really say anything about regularisation. What is your view of amnesties and regularising the status of third country nationals within—I think you mentioned very early on—the southern European states, particularly Spain and Italy? Do you see it as encouraging further illegal immigration? Do you feel that it might have a knock-on effect to neighbouring countries and, therefore, at the minimum they should be informed that an amnesty is about to take place or do you even believe that they should be consulted before an amnesty takes place?
Mr Carrera: This year we have been doing research on regularisations and we have looked at the case of Spain. Also, we have looked at all the legal requirements—which were not few—for third country nationals to regularise in Spain in this last regularisation procedure. There was an interesting list of requirements. To start with, for the whole procedure to start the person needed to go with his or her employer and show proof of many elements, for
example being registered in the municipality, in the region, for a period of time before the regularisation procedure started. The question of regularisation has been dealt with by many experts, and there seems to be a shared opinion on the fact that they do not offer long-term solutions. Regularisations, by definition, provide short-term approaches and some have been in the nature of “homeopathic” approaches that address the symptoms rather than the cause of the issue. Starting from there, you may find these regularisation procedures taking place in southern European countries. Again, it shows the differences in philosophies and strategies towards dealing with third country nationals and with access to social and economic rights. After the Spanish regularisation procedure took place, many EU leaders raised—as you may already know—several criticisms on the potential consequences of this procedure. We thought, and share the view, that these fears were unfounded. Again, most of the people being regularised were already working under irregular status in the country, in Spain, and most of these people did not want to leave. There was even somebody mentioning the Long-term resident Directive. They could not have access to the easiest status of long-term residence by any means because they would need also to pass all the requirements stated in this Directive. The current Commissioner for Justice, Freedom and Security, Franco Frattini, together with the Luxembourg Minister of Foreign Affairs and Immigration, Nicolas Schmit, raised the need to settle an early warning system about these issues. They were saying that this would facilitate transparency, exchange of information and so on. While exchange of information would be a positive element—and this would also be part of this so-called open method of co-ordination—we are not sure about the real effectiveness and need for this system. 

De facto—and we have been discussing this until now—admission laws remain, at the moment, at national level, so it is the competence of each Member State to determine or decide unilaterally, as has been the case with Spain, to regularise 700,000 third country nationals. If, on the one hand, we find positions which criticise the lack of a common EU policy, but, on the other hand, we have this struggle between transferring or not this competence to EU level, then we may find a solution and a view to justify a common approach on several issues.

**Q404 Viscount Ullswater:** What is the view of Spain itself on regularisation? Does the country believe that it encourages further illegal immigration from South America or other Spanish speaking countries or does it just demonstrate, perhaps, a thriving black economy?

**Mr Carrera:** The existence of a considerable black economy is a fact in Spain. We may need to take into account the current situation in Spain after the events of 11 March: the new government taking position and the opposition by the Popular Party from then until the present, in which some people considered the opposition by the Popular Party as not being “clean” in a way. After this regularisation took place, you could find representatives of this particular political party raising fears about the consequences of this regularisation and raising doubts about the potential inflow of migrants. Again, getting into political discourse we see the fears of the potential massive inflow of migrants from neighbouring countries and beyond. This did not take place. Coming back to the black economy, the fact is that we have this; this is going on, this is happening in Europe and it is leading to exploitation, to human rights violations and to discriminatory behaviour towards third country nationals. I do not particularly agree with regularisation, as I said, but I believe that a common long-term solution to these issues needs to be provided.

**Q405 Lord Corbett of Castle Vale:** Does the Spanish regularisation include the right to vote, do you know? 

**Mr Carrera:** I do not really think so.

**Q406 Lord Corbett of Castle Vale:** For the short-term? 

**Mr Carrera:** It is very short-term. It only gives secure status for one year; after that you may fall again into irregularity.

**Q407 Viscount Ullswater:** They become illegal again. 

**Mr Formisano:** That is a good point. When I was talking to a representative of the Spanish Labour Ministry, she was really over-enthusiastic about regularisation, although she was really cautious that this was only a temporary measure to bring people out of the submerged economy and, for example, grant a work permit, not other rights. In Spain you can be irregular and yet be inscribed in the municipality and the police have not the right to stop and apprehend you.

**Q408 Lord Corbett of Castle Vale:** Like the French “sans papiers”.

**Mr Carrera:** As you say, it is a rather peculiar situation.

**Mr Formisano:** That is why in the Spanish regularisation you should be inscribed in the municipality before—if I do not get it wrong—7 August. Although you are irregular, you can be regular in a way.

**Q409 Chairman:** Some are more irregular than others!
Mr Formisano: You have to take into consideration that Italy and Spain regulated five times in the last 30 years while Portugal did it three times and Greece twice. When you talk about regularisation with a German, he will not talk to you anymore. In this conference, where this representative was speaking, a German raised the point: “— but for us an illegal migrant is illegal, full stop, you do not have to regularise; it is just illegal and if we catch somebody we will bring them in—”. This is the difference of perception of the Member States. It is not a question of tolerance, it is a fact that there is a black market which affects, again, differentially natives and third country nationals and you have to cope with it. Under a pure economic perspective regularisation is not a good policy. It has been demonstrated that, on the one hand, the employer will not be afraid of taking the risk of employing somebody illegally and, on the other hand, the worker will come because they will wait for the amnesty to come. The efficient way of managing amnesties is not to publicise them, but it is impossible to do so. From the time you start talking about amnesty to the time you get the amnesty, you have two years. What is very interesting to analyse is how we can deal with people already present in the territory. Whether they are regularised or not, it does not matter; what will we do with them concerning access to employment, should we privilege them because they are already in? Again, for inclusion’s sake should we give a privilege to those already here, for example to give the same access to employment as EU nationals, or should we just make a policy for third country nationals independently, whether or not they are already residing? This is a very sensitive issue which cannot be solved and will not be solved at EU level because regularisation will never enter into the legal framework. Germany is the country most against it, but the UK and other countries are not in favour also. Germany did regularise once, but on a sectoral basis and only for the IT services, during the eighties. France did as well for its ex-colonies, but they were not satisfied with the result.

Q410 Viscount Ullswater: This is really changing the subject altogether. Should the EU take action to compensate third countries in some way for the loss of skilled workers trained at their public expense? What specific measures could it take?

Mr Formisano: I think as a general statement you cannot prevent—and this is the fundamental right of every human being—someone from leaving their country for whatever reason they might decide to, although you have been trained at public expense by your university: like us—we have experience in that. This is a general statement. Another question may be whether you should compensate third countries. There are ways to do so. It is not economic compensation, of course, although, again, studies show that half of the salary of the migrant is sent back to the country, which is a sort of compensation. You should act especially on the external dimension of migration. Here, again, the Hague Programme, for example, stressed the external dimension of co-operation with third countries in the field of freedom, security and justice and in any specific field you should promote, at EU level, development aid and training programmes, for example, in third countries. There are already existing programmes for that and there are exchange programmes for students or for researchers. You can act on this at macro policy level. We would like to stress, as the right of the migrant, the need to enable the migrant to transfer his remittances to his own country. This means: if you want to return to your country you should be entitled to bring with you not only the economic benefits you acquired in the receiving countries, but you should also be entitled to retrieve your rights, so all the rights you have acquired during your path in the receiving countries. You should be able to bring them with you either if you return to a country or if you move to another Member State or another third country. This is some kind of compensation, not to the state but to the individuals who are indirectly beneficial to the state.

Q411 Chairman: There were suggestions from the British Medical Association a week ago that there might be some sort of transfer fee arrangement. Are you aware of other initiatives in other Member States which have been put forward about compensating countries for the loss of skilled workers?

Mr Formisano: On the bilateral level, no, I do not.

Q412 Lord Dubs: So far, as you know, the UK has exercised its right to opt-out of EU measures relating to legal as opposed to illegal immigration. How has this been perceived by other Member States? Is it likely to give rise to difficulty as further measures are agreed?

Mr Formisano: The UK opted out of everything except on asylum and the fight against illegal immigration. I do not think—this comes from a British public statement—they will contribute to the discussion on regulating the issue of access to economic migration for reasons of employment, but at this stage they have declared already that they will not opt-in to those measures, so they will participate but they will not opt-in. How will this affect the other countries? We did not get the position of the other Member States individually, we just dealt with it at EU level, so I cannot tell you what the influence or general perception of certain countries is of the UK opt-out. In a way, I believe it is alleviating the decision-making process, in a sense, that if you declare from the beginning that you will not opt-in,
you have less power of negotiating because you are already saying that you will not adopt the measure anyway. Member States could be relieved by the UK’s position in the Council, although, of course, the political statement can always be changed even in the course of the negotiation process. In a way, I do not think, at the moment, as I read the public statement from the Government, the UK has done much in gaining power concerning this issue, but, as they say, they will participate in the discussions. In a way, they may exercise the power because they might opt-in at a later stage.

Chairman: Mr Formisano, Mr Carrera, you have been very generous with your time, your advice and your responses. Thank you very much indeed. It will be extremely helpful for us when we come to put together our report. I shall read the paper you have given us with interest, which I am afraid I have not had time to look at yet. Thank you very much for coming to this. I wish you good luck.
MEMORANDUM BY THE CONFEDERATION OF BRITISH INDUSTRY (CBI)

SUMMARY

1. The CBI believes that positive net migration is likely to remain necessary for some years to come for many EU Member States. However, the numbers admitted should remain under the control of the Member States themselves. The necessity of managing flows so that they meet the needs of Europe’s diverse labour markets means that the choice of immigration system applied should also remain at national level. Furthermore, in a global race for talent, the UK is competing for key skilled workers with many nations, including our EU colleagues, and a standardised European system could damage the UK’s ability to attract these people.

2. We accept that there is a limited role for EU action in areas where national-level regulation is not workable. The most obvious of these is the rights of third country nationals to free movement once they have legally settled in one Member State. There are other issues that would benefit from regulation at European level.

3. In response to the select committee’s request for views, the CBI argues that:
   — managed third country immigration to the UK is likely to remain necessary . . .
   — . . . but the need for different numbers and skill profiles varies across Member States and labour markets—the proposed EU constitution rightly acknowledges that control of immigration should remain at Member State level
   — individual Member State management of the system employed is both more appropriate and more efficient than EU-level regulation
   — there is a role for the EU level action in economic migration, but this should be limited to those issues that cannot be adequately managed at local or Member State level

MANAGED THIRD COUNTRY IMMIGRATION TO THE UK IS LIKELY TO REMAIN NECESSARY

The ageing population and higher dependency ratio will exacerbate labour shortages

4. The first report of the Pensions Commission made clear the scale of the demographic challenge that the UK faces. Government Actuary’s Department figures suggest that the dependency ratio (the number of 20–64 year olds supporting those aged 65+) will rise from 27 per cent now to 50 per cent by 2050. The Pensions Commission suggests that this is likely to be quite a conservative estimate of the trend. A mix of responses will be required to ensure that this change in the age structure of the UK workforce does not result in large-scale labour shortages.

5. The main answer to this problem is to increase the length of working lives both before and after 65. In 2004, the average age of exit from the workforce for a man was 63.8, with a significant number becoming economically inactive well before that. Strategies aimed at enabling those who need to work up to 65 to do so are the necessary first step in any strategic response to the demographic challenge. Extending working lives beyond 65 will also play an important role in the longer term, and the CBI has suggested adjusting the State Pension Age to 70 over the period between 2020 and 2030 as part of this strategy. As people live and remain healthy for longer, it is fair for them to maintain the proportion of their lives that they spend working, unless they can afford to retire early or are incapacitated.

6. Immigration cannot answer long-term demographic challenges, as the immigration levels that would be required to cause anything more than a small reduction in the dependency ratio in 2050 would be very high—the Pensions Commission estimate that net inward migration of 300,000 a year would decrease the dependency...

ratio in 2040 from 47.3 per cent to only 42.1 per cent. Even this small benefit would only be a temporary fix unless immigrant communities had significantly higher birth rates than the existing population.

7. However, a managed migration system that maintains net positive immigration has a role to play in addressing specific shortages. In this respect the UK is no different to many of the other members of the EU, in fact it is in a better position than many of them. By 2030 the EU will be short of 20.8 million people of working age, with the ratio of economically active to inactive people as low as 2:1, while Europe will have 18 million fewer children and young people than today. For Europe as a whole, working longer will be a necessity, but inward immigration will also have a role to play.

In the short term, skill shortages are likely to persist

8. The UK’s employment record has been a huge success over recent years. High levels of employment and record lows in unemployment have led to a tightening of the labour market. Claimant unemployment is at its lowest point for almost thirty years and is the second lowest among industrialised countries. This has led to a demand for more immigrant labour in certain key sectors.

9. The CBI’s most recent Employment Trends Survey\(^5\) underlines this demand for workers from the EU and further afield. The 2004 survey shows 25 per cent of firms were looking to recruit from the old EU members, 27 per cent from the new EU states and a further 12 per cent of companies were looking outside the EU. Construction firms are most likely to be seeking skills outside the UK—not surprising given the fact that three times more construction firms report skill shortages than the national average. Half of construction firms expect to recruit from within the EU but a third were looking wider still. And with people shortages starting to bite at lower skill levels, 40 per cent of firms in the retail sector were planning to recruit from the new EU Member States.

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Source: Employment Trends Survey 2004, CBI

10. These figures make plain the continuing need for immigration in the short-term. But we should not fall into the trap of thinking that immigration is a panacea for the UK’s skill problems. It cannot be seen to be an alternative to improving the skills of the home grown workforce—nor should immigration be seen as negating the need for effective active labour market policies to tackle the problem of economic inactivity.

11. Our priority must be to invest in and develop the skills and abilities of the existing population. Poor literacy and numeracy are key factors in constraining business performance and shrinking the pool of employable labour. It is not acceptable that 20 per cent of the UK workforce lacks appropriate levels of functional numeracy and literacy—raising the skill levels of this group would help to ease recruitment difficulties faced by employers. UK employers are committed to playing their part, spending more on training per year than almost all our European partners: £23.5 billion per annum.\(^5\)

12. The New Deal and other active labour market policies have also been successful in reconnecting many young and long-term unemployed people with the labour market. Older workers with poor basic skills are severely limited in their employment opportunities and employers want to work with Government to increase the participation rate of older workers who have left the labour market. Action is being taken, but progress is slow, and migrant workers can fill short-term gaps.


And we cannot rely on third countries for all our labour market needs in perpetuity

13. It is important to understand that immigration has an impact on the country of origin as well as the destination country. Critics have argued that immigration from poorer countries can damage growth potential and services in the home state. This need not be the case—working in the EU helps people to develop skills that they can take home with them. Also, it is not just human capital that flows back to home nations—monetary capital can also return. For example, money spent in Bangladesh by members of the Bangladeshi community in the UK can help develop consumer markets in Bangladesh.

14. Developed nations cannot avoid competing in global labour markets. For both developed and developing nations, migration at a managed level can be beneficial—although this should not be at the expense of skill development in the home workforce of either nation. CBI members accept that outflows of key workers from poorer states, especially into public services such as health, can be damaging and they agree that governments should not rely on migrant workers to deliver key services. We should also focus on solving skill shortages through training our own workforce, rather than relying entirely on migrant skills. In this way, migration can be kept at a managed level that benefits both the country of origin and the country of destination.

The need for different numbers and skill profiles varies across Member States and labour markets

The differences between labour markets make it difficult to assess needs at an EU level

15. In the CBI’s view, managed migration from third counties is likely to be one of the strategies employed by many Member States to meet the needs of their labour markets in forthcoming years. This does not, however, justify the creation of EU-level systems of entry or controls on immigration. Despite the likely need of many Member States for positive migration flows, the level of need and the specific skills required will continue to vary widely across the union. At present, for instance, the high levels of employment and skill shortages in the UK contrast with the higher levels of unemployment among some other Member States whose need for skilled and unskilled workers is considered lower. It is essential that national control is maintained over numbers to reflect this.

16. The need for national-level assessment of immigration also reflects the diversity of different labour markets within the European Union. Examples of the need for different approaches for different Member States can be found in the different reactions of Member State governments to the management of immigration. In the UK, a job-seeker visa was successfully introduced (the Highly Skilled Migrants Programme) whereas in Italy the job seeker visa was abandoned amid fears that it encouraged illegal working. Often, even national level controls on third country migration need to be tailored to the specific needs of regions or sectors—the UK’s long-standing Seasonal Agricultural Workers Scheme is a case in point.

Accession affects different nations in different ways

17. The accession of eight former communist states in Central and Eastern Europe on 1 May 2004 gave a vivid example of the differences in attitudes to migration among Member States. It has emphasised the need for the immigration policies of Member States to be flexible and reactive to each country’s particular needs. Each country has been able to apply a mode of regulating inflow that suits their own labour market, with the UK taking one of the more flexible policies in this area. Our labour shortages and good record on diversity made this tenable.

Migrant workers should enjoy the same employment rights as citizens once entry is granted

18. Once migrant workers have legally entered the labour market, the CBI supports their receiving the same employment rights as comparable workers from the home state in question. Where admission is granted for a certain period of time, employment rights should lapse once this period has expired, along with employment, unless the visa is renewed. This is a matter for national employment legislation, however, and not an issue for either national or European admission legislation.

19. The CBI also supports the position of the UK Government that third country economic migrants be able to support themselves without recourse to the state for a period after their arrival. It is important that any EU framework respects the right of Member States to control the design of their social protection systems. Like entry itself, these decisions are best made at national level.
The proposed EU Constitution rightly leaves control of migration numbers at the Member State level

20. The CBI believes that it is necessary to keep control over the immigration system at the level at which it can best be managed. In the case of economic migration, Member States are better positioned to assess their needs and adapt entry systems accordingly. Because of this, we have welcomed the statement in the proposed EU constitution that:

“This article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territories to seek work, whether employed or self-employed”.

proposed EU Constitution Article III-267 (5)

21. The CBI believes that this statement gives control over all third country immigration to individual Member States. We believe that this should be taken as the starting point for the creation of any European policy on immigration, as foreseen by Article III-267 (1) of the proposed EU constitution.

INDIVIDUAL MEMBER STATE MANAGEMENT OF THE SYSTEM EMPLOYED IS BOTH MORE APPROPRIATE AND MORE EFFICIENT THAN EU-LEVEL REGULATION

Member States must have a wide range of tools available to them in reacting to managing the numbers they allow in

22. Member States of the EU have employed a wide range of systems to manage immigration. Many, for instance, employ a quota system that allots a certain number of places for each year and often gives quotas to individual sectors to match labour market needs. By contrast, the UK system has, to date, used a case-by-case work permit system with no overall quota. This has reflected the willingness of the UK Government to ensure that the labour needs of the UK economy are met, even where shortages exist domestically, whereas policy priorities in other states may differ. The CBI believes that there can be no place for quotas in an EU level policy, as they are unsuitable to many European labour markets. While the CBI does not oppose national-level quotas in the UK in principle, members fear that quotas could constrain both business’ ability to recruit freely and the system from reacting speedily to the needs of the labour market.

23. Overall, the UK provides an excellent example of why Member States must retain a wide range of tools to deal with specific issues in the labour market. Within the past five years the UK has used quotas for low-skilled migrants in key sectors (via SAWS and the Sector Based Scheme); developed a job-seeker permit for highly skilled migrants based on a points test and applied specific schemes to those entering the country to set up a new business (the innovators’ scheme). All of these schemes operated alongside the sponsored work permit system and legacy schemes related to the UK’s links with the Commonwealth (the Working Holiday Scheme). Together, these schemes provided a unique blend of immigration routes, tailored to both the needs of the UK labour market and residual commitments to other countries. We are sceptical of the added value any European schemes could provide to this.

Any European entry scheme is likely to be unwieldy and bureaucratic

24. The CBI rejects the idea of a European selection system. Given the differences between local and national labour markets and the need to respond quickly to changing economic needs, a European level system would not be practical, as it would be too slow to react to needs. For similar reasons, the EU level should not impose a job seeker permit. This does not mean that Member States would not be able to continue to apply such mechanisms, merely that they would not function best at European level. The CBI, for instance, mentions a European “fast track” procedure that could be activated by a certain number of Member States requesting it. But such a procedure would be undermined by the length of time that it would take to go through the process that triggers it and the fact that states may be adversely affected if a European permit was not granted. Other European-level systems, such as a European “Green Card” would suffer from similar issues with bureaucracy and the inability to efficiently connect systems to labour market needs.

25. We are also concerned that proposals to create more European-level controls on immigration will place unreasonable burdens upon employers to demonstrate that it is necessary to hire a third country national. The CBI supports the continuing use of “community preference” but only if the burden of proof of need is not added to. “Community preference” should apply to third-country nationals resident in other Member States once they have qualified for the right to free movement after five years. There should be no expectation placed on the employer that they advertise the position via EURES, or any other Europe-wide portal, however. The
13 July 2005

current UK system, where jobs must be advertised in one of a list of approved publications, is more than sufficient. Also, the length of time that such a position has to be made public must not be so long as to damage the competitiveness of the company concerned. Two weeks is a sufficient amount of time.

26. The CBI has called for any European system on migration to respect both the principle of subsidiarity and the need to be reactive to labour markets. In our view, this means leaving control of the systems of immigration control and work permit allocation in the hands of Member States.

There is a Role for the EU Level Action in Economic Migration, but this Should be Limited to Those Issues that Cannot be Adequately Managed at Local or Member State Level

27. The CBI does accept the case for action in a number of areas at EU level. Several factors have made this necessary, notably the removal of border controls in the Schengen area and the common commitments of Member States under the General Agreement on Trade in Services (GATS) rules. In addition, the recently adopted Directive on third country nationals who are long-term residents in one Member State grants free movement across the Union after a qualifying period of five years, making the entry systems of Member States increasingly interdependent.

28. There is no justification for harmonising entry mechanisms at European level, however.

A European policy must respect the following key principles:

— it must respect the principle of subsidiarity, and leave final control over numbers admitted and system employed at national level, where they can be efficiently managed to meet the needs of the labour market
— it must add value by focussing on those subjects which either cannot be, or are difficult to manage at national level
— it must promote unbureaucratic, rapid and transparent procedures at national level and help to simplify administrative procedures.

Develop regulation in areas that cannot be well-served at Member State level

29. The recent Directive on the movement of third country nationals who are long-term residents of one Member State is an example of the type of legislation where EU intervention could be useful. Levels of mobility between Member States of the EU remain low by comparison with long-distance mobility in the US. As part of its strategy for tackling this, the EU framework for migration should seek to improve levels of inter-state mobility of third country nationals further. The rights of these individuals could be regulated and managed at EU level.

Facilitate exchange of good practice between Member States

30. Member States of the EU have diverse immigration needs and while it is not appropriate to set up any kind of European entry system, nor for the type of immigration system in use to be controlled by the EU framework, the CBI could envisage a role for the EU framework on migration in encouraging the spread of good practice.

31. There are several areas in which this kind of process could add value—one example would be regularisation strategies for illegal working. Such a policy should not go so far as the Commission suggests in its Green Paper—the collection and monitoring of data on national quotas. It may be possible to achieve the exchange of good practice through the “Open Method of Co-ordination”.

Promoting the sharing of vacancies and inter-state mobility

32. Any European framework should also have a role in ensuring that the European labour market functions as efficiently as possible for citizens and third country nationals alike. The CBI supports the continuing use of portals such as EURES to disseminate information about job opportunities across the EU and the inclusion of third country nationals under “community preference”.

Human Resources Directorate

April 2005

52 OECD figures.
Examination of Witnesses

Witnesses: Ms Susan Anderson, Director of Human Resources Policy, and Mr Anthony Thompson, Head of Employment and Pensions, Confederation of British Industry, examined.

Q413 Chairman: Good morning, Susan Anderson and Anthony Thompson. Thank you both very much for coming to give evidence. First of all, I would like to thank you for the written evidence which you have already provided and which is extremely helpful for the purpose of this meeting and for our inquiry. This meeting is of course on the record and televised so I should say for the record that the purpose of our inquiry is to examine economic migration into the European Union. It is not concerned with asylum or illegal immigration. It was prompted by a Green Paper published by the Commission in January and the central issue of our inquiry is the extent to which there should be a common European Union policy on economic migration, which at present is primarily a matter for the Member States. Would you like to make any statement to start with?

Ms Anderson: If that would be possible just for a few moments. Obviously we welcome very much the opportunity to give written evidence to your Lordships and are very pleased to come along here today and give oral evidence. Obviously we are coming at this issue from a business perspective. We believe economic migration brings real benefits to the UK. Obviously with unemployment at real lows in the UK we are experiencing skills shortages and therefore we know our members are looking both to the EU—the new Member States as well as the old—as well as countries outside the EU to meet the skills gaps and shortages that they have. We do think that migrants bring real benefits to the UK. I know that the Home Office’s recent study suggested it was around £2.5 billion per annum. That is a real benefit. We do think there is a need for discussion both at the national and the EU level and we have welcomed the European Commission’s Green Paper. We have also welcomed the Government’s own paper on this issue and will be responding to that later in the year. In terms of the Commission’s Green Paper, I think we would say that it is at all levels. If we look at geographical mobility, clearly we are talking about something that is EU-wide as well as national, regional and indeed local, but certainly the EU-wide dimension to mobility has been at relatively low levels. Clearly in the UK we have seen (because we have taken a less prescriptive approach to our colleagues in Europe) much more mobility coming into the UK, and clearly because we have more need for labour then we have opened up our labour market in a way that other Member States have chosen not to do. In terms of geographical mobility, we do see the labour market operating at a European level. I think when we look at the Member States we have common issues, but we would tend to characterise the labour market as a patchwork quilt of different labour markets, with very different experiences in terms of skills, for example, and with very different levels of qualifications in the Member States—for example, very high levels in Germany compared to lower levels in the UK. There are very different practices when it comes to collective bargaining and wage flexibility. In terms of working patterns, obviously we have seen very different approaches to hours in France compared to the UK.

Q414 Chairman: Thank you very much. Do you wish to add anything?

Mr Thompson: No, I agree with everything that Susan said.

Q415 Chairman: Well done! Can I just ask a supplementary on that. Have the CBI put in any written evidence to the Commission in response to the Green Paper?

Ms Anderson: On this matter we have gone through the federation of European employers’ organisations, called UNICE and they have put together a response that reflects the views of all the employer organisations of the Member States. We could certainly let you have a copy of that if you are interested.

Q416 Chairman: I think we have already seen it, thank you very much. Can I ask the first question which really to some extent is answered in your written evidence. In particular, you say that the choice of immigration systems should remain at national level. There is quite a diversity of opinion about the EU labour market and the extent to which it should be seen as local, regional, national or EU-wide. Are there any additional comments that you would like to make on that point?

Ms Anderson: I think we would say that it is at all those levels. If we look at geographical mobility, clearly we are talking about something that is EU-wide as well as national, regional and indeed local, but certainly the EU-wide dimension to mobility has been at relatively low levels. Clearly in the UK we have seen (because we have taken a less prescriptive approach to our colleagues in Europe) much more mobility coming into the UK, and clearly because we have more need for labour then we have opened up our labour market in a way that other Member States have chosen not to do. In terms of geographical mobility, we do see the labour market operating at a European level. I think when we look at the Member States we have common issues, but we would tend to characterise the labour market as a patchwork quilt of different labour markets, with very different experiences in terms of skills, for example, and with very different levels of qualifications in the Member States—for example, very high levels in Germany compared to lower levels in the UK. There are very different practices when it comes to collective bargaining and wage flexibility. In terms of working patterns, obviously we have seen very different approaches to hours in France compared to the UK.

I think the labour markets are probably characterised by as many differences as similarities. I think it is very
much a patchwork quilt. That said, obviously we do have some minimum standards across Europe, whether it is on parental leave, employee involvement or working time, and from the CBI perspective we fully accept that there should be those minimum standards. Whether there is such a thing as a European social model is probably another question which I am not going to debate here. Suffice it to say that most Member States have high levels of welfare and social protection and want to keep them, but there is increasing debate about whether excessive labour market regulation should be part of that European social market. I think there are some very interesting questions to be raised but probably we could not do justice to them in the time that we have got available, and we do want to discuss migration issues.

Q417 Chairman: You argue very strongly in your evidence that numbers of migrants should remain under the control of individual states. How should states determine what is in the best economic interest of the country and how much regard should they have—and again I think this is a point you have just answered to some extent—to protecting the domestic workforce?

Ms Anderson: I think in terms of looking at the impact on the economy of migrant workers, it is not rocket science. Clearly one needs to look at the fiscal benefits in terms of the tax contributions made by those migrant workers set against anything they might be receiving in terms of benefits and any increased costs through goods and services, whether it is education and health. Again, I am sure you are aware of the recent Home Office report that says we are having a net fiscal benefit. If we can do those calculations, it is not rocket science, and Member States can do them. Obviously they have reached different conclusions depending on the extent of what is happening in their labour market but also in some of the definitions that are used. It is a question of how you define economic migrants and migrant workers more generally. As I say, it is not rocket science. We can determine at Member State level what the economic benefits of migration are but in terms of this protection of the domestic workforce, again this is one of the more contentious issues, and those who suggest that migrant workers are taking the jobs away from UK nationals, hopefully here we would generally accept that to be based on a fallacy. If we are attracting workers into the particular skills needs or skills gaps because either the UK workforce has not got those skills or because they are not interested in those jobs, I do not think we are damaging the employment situation of those workers. Obviously if they have not got the skills we need to address that, and I am sure that is an issue which you want to go into in more depth. It is not a question of taking jobs away. The other argument that is often made in terms of protecting the domestic workforce is that somehow migrant workers coming in depresses the wages of workers who are in direct competition. I know you are having evidence from academics. Again, you can get different answers depending on which academics you speak to. We would argue that, by and large, there is not that much of an impact. Where you do see an impact is where the wages of certain groups—and construction would be an example—have perhaps not risen as high as they might have done had there been even more drastic shortages, where then those workers could argue that they would have received much higher wages in the absence, say, of Polish plumbers or construction workers. Whilst they might make that argument, I think the general public might be very pleased by the fact that they are getting those services cheaper than they otherwise would have done. I do not believe people could argue that plumbers and construction workers are underpaid. I think the net benefits to the UK of migrant workers are obvious and we would not accept that there are issues that we need to do more of in terms of protecting our domestic workforce, other than looking at some of those skills issues.

Chairman: Thank you very much. Lord Listowel?

Q418 Earl of Listowel: Should regulation of labour migration be driven primarily by economic considerations regardless of the possible social consequences? May I say how welcome what you said in your information about continued concentration on skills and capacity building is, but perhaps particularly in the area of social care and other similar areas there are worries about bringing lone parents and young excluded people into the labour market, and also on housing supply ensuring that there is sufficient housing. Is there a role for business and government to play dispersing migrant labour somewhat to reduce pressure on housing supply?

Ms Anderson: If we are talking about migrant labour as economic migrants, we are talking about people who are coming into this country to meet specific skill needs. If the skill needs happen to be in areas where we do have problems with housing, then there is not much point in saying we will go and put them up north where the jobs are not. So obviously people who are coming in as migrants are going where the jobs are and they are often areas where we already have problems with housing. However, I think that those problems are not caused by migrant workers and they are issues that we need to be addressing in the UK, particularly in the South East for example. I think the migrant worker issue would only account for a small part of the pressure. Certainly on housing the Government is looking at that issue, but I think migrant workers is only a small part of the problem. You particularly asked about social care and we have...
spoken to those members and we are not really aware that that is an area where large numbers of workers are coming in. Obviously in construction and health services we are aware that there are very high demands from those sectors. Where employers are looking in that particular sector of social care for workers, they are telling us that they are as much interested in getting UK workers into those jobs, particularly in social care. There is very high demand now for people. There are requirements that these individuals should have particular skills levels and I have to say those employers are busy training as many people as they can. They are particularly focusing on getting UK young people into those jobs rather than looking abroad because it is going to take them three years to get somebody up to qualified electrician status or plumbing status. With those levels of skills it is relatively easy to train the local workforce to do those jobs. We are not talking about skills that take years and years to develop. Anthony, did you want to make a comment?

Mr Thompson: No, I think that covers all the points. Clearly it is very difficult for us to get into the area of housing because we are not policy experts in that area. When we are doing this work and when we are talking to the members and talking to Government and other politicians, we are very clear about the social consequences as well. It is just that we prioritise the economic factors because that is where our expertise is from, but we do that fully aware of the social ramifications.

Q419 Earl of Listowel: Thank you very much. We had not heard much about housing in our evidence so far so it is very helpful to have you say something about it. I appreciate you going that little bit extra further for us. You point out that levels of labour mobility between Member States are low by comparison with the United States. What could be done to increase labour migration in the EU?

Mr Thompson: From our perspective it is an area where we have built up quite a lot of expertise. This came out of looking at studies as between Europe and the United States in particular. If you look at the levels of mobility within European Member States compared to the United States, it is very difficult to make comparisons, but from some of the figures we got from academics, in 1998 for example, we were looking at about 3 per cent of the population of the US moving to a different state within the US. In the UK we are quite good at intra-country transfers. We have got about 2 per cent of people moving within the UK but if you look at France or at Italy the figures start to come down quite a bit, to 1.5 per cent and 0.5 per cent respectively. When you take that to a European level you are talking about very, very small numbers of people living in a different Member State to which they are a Member State national. We see this as a key area where the European Union can act. That is where the focus should be rather than looking at what is happening at national Member State level, to look at the actions it can take, to facilitate more transfers and more mobility within the European Union because that is a clear area where we have fallen down in the past. We spent quite a bit of time in 2001 carrying out a report on geographical mobility in the European Union and we tried to identify some of the key areas where we could see action from the Commission and Union, and I think those issues still hold true today. Those would be the transferability of pension rights and social security rights. If you look at things like vesting periods, without getting too much into the detail, in the UK we have relatively low vesting rights compared to other countries. If you look to Member States like Germany they have very high vesting periods, and it is very difficult then to encourage and facilitate movements out of that system.

Q420 Chairman: It would be very helpful for us if you could let us see this work.

Mr Thompson: We can certainly send copies over to each Member. That will not be a problem.

Q421 Chairman: Thank you very much.

Mr Thompson: One of the crucial issues, a long-standing issue of which many people are aware, is the transferability of qualifications and making sure qualifications are very transparent, so people understand what those qualifications are and what qualifications employers are requiring. Thirdly, we spent a great deal of time in this report looking at what companies could do to try to develop good practice and facilitation of learning and exchange of information between companies to try and overcome some of the barriers you have, such as housing and whether to rent or to buy if you are moving Member States; such as cultural differences between different countries, some of those softer issues that often do not get brought to the top in this debate but are actually quite crucial. We see that as a clear role for companies to have in exchanging good practice and developing their policies there. The other issue, without broadening the scope of your inquiry too much Chairman, is to look at another political issue at the moment; the Services Directive. Whilst we have a very well-structured internal market in terms of finished goods, when we come to services we are not quite there on the internal market. Obviously the CBI is supportive of the current text on the Services Directive and that could certainly have a key impact in this area. I know your Lordships will be following that debate very closely within the context of this inquiry.
Q422 Lord Marlesford: It is really a follow-up in a way. From what you have just been saying major differentials in rates of unemployment in EU countries do not really seem to feed through into differential rates of migration. Is that true?

Ms Anderson: That is because of the barriers that Anthony has been talking about. We had not mentioned language but clearly language is a barrier. In the past, for example, we have seen British workers go over on German construction sites, so there is a certain amount of mobility, but language certainly can be a barrier. Vocational qualifications can be a barrier that is erected as a way of preventing workers going to other Member States. If you are looking to protect certain groups of workers you will make it so difficult to get somebody’s qualification recognised that you can put up a barrier to people moving around. I am not sure that other Member States buy in as much as we do to this concept that a) mobility is something that is good and that b) by welcoming people in you grow the market rather than undermining the work of the existing workforce. I think many other Member States see migrant workers as a threat.

Q423 Lord Marlesford: I know you said that you did not really want to get into the European social model but in a sense I would conclude from all the things you have both been saying that where the European social model is firmly established—Germany and France being good examples—and where the rates of unemployment are still pretty high, in comparison with countries such as Poland where there is not a similar social model and where there is a desire to find jobs, the social model is of itself a pretty considerable obstacle to economic migration within the EU. Would you agree with that?

Ms Anderson: I would say it is probably as much a barrier to the workforce of those Member States that have very restrictive employment law, for example—a barrier to people within their own country getting jobs. Typically very restrictive labour regulation has hindered groups such as women, older workers and younger workers from entering the labour market because there is so much protection applied to the labour market insiders, particularly if I may be so bold to “male and pale” and often older workers as well. They are well protected and it is very difficult for other groups to break into the labour market. That said, we have seen some of those barriers coming down so, for example, Germany has removed some of its restrictions on fixed-term work and is looking further at freeing up on agency work as well, so we are seeing Member States looking themselves in terms of some of the barriers they have set up but those are more the barriers to people entering work who are already nationals. Obviously those barriers also have the impact of deterring mobility within Europe.

Q424 Lord Avebury: I was just wondering in the last answer you gave to Lord Listowel whether the failure to implement the full equivalent qualifications meant that multi-national companies operating in more than one Member State had difficulty in moving their own employees from one country to another. For example, if you are an oil company employing engineers in the UK and you wanted them to transfer to France, would there be any problem in that because the French did not recognise the particular engineering qualifications that that employee had?

Ms Anderson: That tends to be less of an issue with companies moving around. We do not get companies telling us that they have that problem. I think it is more the individuals who are seeking to go off and be acknowledged and recognised as a qualified hairdresser in other Member States, or even a teacher. It is quite a rigmarole to get your qualifications recognised. It does not tend to be the people moving within companies that have the biggest problem.

Mr Thompson: In terms of problems boiling to surface, it is more likely to come to the fore with individuals rather than those in companies. Where your point is probably relevant is where you have a third country national or non-EU citizen in an oil company—if you take the oil company example—wanting to transfer, then those problems might come to the fore. That is where we would like to see some more progress but certainly if you have got an EU national transferring from the UK to France within a company it is not going to be a problem in terms of qualifications but it becomes a problem within a company scenario where you have third country national—or can become a problem, but, as Susan says, it is not an issue that we get phone calls on a day-to-day or week-by-week basis from members so we are not aware at the moment of any specific problems.

Q425 Earl of Listowel: Would it be helpful to have a quick definition of what you mean by a “vesting period”? We have not come across that term so far.

Ms Anderson: It means the period that has to elapse before you get a right to the pension that you have been promised. In the UK the vesting period is typically two years. They can be one year and sometimes pensions can be vested immediately. Under the two-year rule it is only after two years that you get entitlement to a pension going forward. You will get a refund of contributions before that. In Germany you have to wait 10 years before the company in the occupational pension scheme has to give you a pension, so you will work for a company
for 10 years before you will get an entitlement to a pension.

Q426 Baroness Henig: If I can move now to issues at European Union level. You are strongly opposed to regulation of economic migration at EU level, but you do acknowledge in your evidence that there are some areas where there is a limited role for that. In fact, you give as an example the recent Directive on the movement of third country nationals to long-term residence of one Member State as the type of legislation where EU intervention could be useful. Is the logic of that then that we should be opting into that Directive? Would you perhaps not go as far as that? What do you see then as the role of the EU in relation to regularisation?

Mr Thompson: I think on the Long-Term Residence Directive, that comes down to Government decision rather than an opinion from the CBI. From our perspective there are a lot of different factors going on here because obviously if you remain in the UK—if you take the UK as an example within the context of the Directive—for four years consistently (it will take a few short breaks, without going into the details) you can apply for citizenship. The UK Government has come to the opinion that they want to maintain controls in that area and they see the Long-Term Residence Directive as weakening those controls and going under that four-year threshold. From our point of view, for long-term third country nationals we think in principle it would be a positive thing, but again it comes back to where our members’ priorities are, and they say that the Government’s position at the moment is not too distant from where we are with the Long-Term Residence Directive and therefore we would say that would be a Government decision. On issues such as regularisation it is a new concept in many ways at the European level, and certainly if you look at recent examples in Spain, for example, there has been an amnesty of legal workers. The figures that we have suggest that around 700,000 people were regularised into the Spanish labour market. We do not see there being a role for the EU preference, but only if the burden of proof is not met. So we can learn from each other. We can learn from particular schemes—have they worked or why have they not worked, as Anthony said, or what should we be doing about illegal working? So we can learn from each other, but I think EU intervention by way of Directives is probably inappropriate, whether they are quotas or specific Directives telling EU states how to define different categories, for example. We think there is very limited scope for EU-level intervention. I think we have to recognise that this is an area that Member States feel very strongly about. In some Member States the whole issue of migration is fraught with difficulty. It is not an easy issue in the UK, although I like to think that we have probably got a better record than most in terms of integration and inclusion of migrant workers and welcoming economic migrants in particular. I think these are very difficult political issues. I think it is almost too difficult for the European Commission to get involved. Our view is that they would be better off staying out of it but facilitating discussions about some of the processes and practicalities.

Q427 Baroness Henig: You are citing regularisation as one area of added value, in a sense, at EU-level? Ms Anderson: We think there is a relatively small number of areas on immigration where the EU can add value and we think it is very unlikely to be through coming up with Directives. We are not attracted to the particular proposal they have come up with and I think it is fair to say that neither are our colleagues in other EU states. We should not be complacent. We can learn from each other. We can learn from particular schemes—have they worked or why have they not worked, as Anthony said, or what should we be doing about illegal working? So we can learn from each other, but I think EU intervention by way of Directives is probably inappropriate, whether they are quotas or specific Directives telling EU states how to define different categories, for example. We think there is very limited scope for EU-level intervention. I think we have to recognise that this is an area that Member States feel very strongly about. In some Member States the whole issue of migration is fraught with difficulty. It is not an easy issue in the UK, although I like to think that we have probably got a better record than most in terms of integration and inclusion of migrant workers and welcoming economic migrants in particular. I think these are very difficult political issues. I think it is almost too difficult for the European Commission to get involved. Our view is that they would be better off staying out of it but facilitating discussions about some of the processes and practicalities.

Q428 Earl of Caithness: You say in your evidence that you support the continuing use of Community preference but only if the burden of proof is not added to. Can you expand on that?

Mr Thompson: Absolutely. In terms of the burden of proof, at the moment there are certain requirements that you have to go through to show that you are recruiting from a decent-sized labour market, a decent pool of the labour market, and at the moment I think our members, when we get into the detail of the immigration rules, suggest that that burden of proof is not met. So the evidence that you have to provide to show that you have actually done a proper and full search in the immediate labour market is quite a difficult and onerous thing for them to do before they can go through the work permit system. What we would say in that regard is that we do not think that that burden of proof should be extended into other areas of the
European level, for example, requiring certain searches or facilitations to be made through the European employment search network, EURES, or other new mechanisms that might come to the fore in the Commission’s thinking. We feel that at the moment the burden of proof, the evidence, that you have to provide to show that you have done a decent and sufficient search in your labour market, is enough at the moment, and actually there could be a debate as to whether that should be reduced. For example, if we talk to people in the regions, they might put an advert for a job vacancy in a national paper or local regional paper. They know at the local level what the labour market is like and how likely they are to get somebody of the expertise, experience and calibre that they need for the role that they are trying to recruit into. The anecdotal reports we get back from the members is that any of what they would classify as bureaucratic steps that they have to go through to prove they have done a search are exactly that. They are not adding value to their search process, they are not adding value to the business. They are a bureaucratic hoop that they have to go through. That is what we mean by the burden of proof.

Q429 Earl of Caithness: You mentioned in your reply EURES. Do you think it is working and how effective is it?
Mr Thompson: I think EURES have had a pretty bad reputation in the UK, amongst those people who know about it. I should say. I think if you walked out on to the street and said EURES to somebody, they would—

Q430 Earl of Caithness: They are not talking about it outside!
Mr Thompson: Absolutely. I think it has had a very low profile and we need to do more to raise that profile. The other more substantive issue behind that is that actually those people who know about it do not see it as adding any value. I think the core issue for us is to get the product right. Get EURES right, before it is communicated. We think the Commission is moving in the right direction. I do not know if your Lordships are aware but the UK Employment Service will be putting their vacancies on the EURES website, as will the French public employment service, and the Commission feel that once those two employment services are advertising their vacancies on the site then we will have about one million vacancies on the EURES network and we might get some critical mass in there to make it more worthwhile. There are two issues we would ask the Commission to focus on. Firstly, making sure that the EURES product is right and is substantive and effective, but also that it is then communicated out to the wider world. I do not think your average Joe Bloggs on the street necessarily needs to know about EURES but certainly within the HR profession of companies there is not the visibility of such a large network there, and there should be.

Q431 Earl of Caithness: Thank you, that is helpful. You are pretty strong in your dislike of anything bureaucratic and unwieldy in the way of an entry system. Would you prefer a work permit system or quotas?
Mr Thompson: I think we have tried to take a balanced view in this whole area. It is fraught with political difficulties of which we are very well aware. What we have made clear certainly over recent months—as many of you will be aware—is that we want a system that is responsive to the needs of the labour market primarily but also to companies as well, and to individuals, and to have a system which is transparent, which is fair, which is easy for people to understand, and speedy and effective in the administration process. We would not necessarily be opposed to the notion of quotas in principle but all our innate concerns and the evidence that we have seen suggests that it is a less flexible approach and a less transparent approach, both for those inside the country and those outside the country than something based around the work permit system or a points-based system which we are happy that the Government is now starting to look at. They are the points of principle that we start out on, not from a dogmatic stance that we do not like quotas or we prefer work permits, but everything that we have seen suggests that work permits (or even better from our perspective a points-based system) is more transparent, flexible, effective, and easy to understand than a quota system.

Ms Anderson: I think the key consideration for employers is if you have a skills need and you want somebody because you cannot get the right engineer or you cannot get the right IT expert, then you want somebody as quick as you can get them and under a quota system if the guy down the road happens to get his call in for an engineer before you, then you are stymied. If it is based on either a points or work permit there might be a little bit of red tape to go through but you know you are going to get somebody if you can prove you have got a need and you cannot get the worker from the existing workforce. So you will happily fill in a few forms but what you want is that person behind the desk or in the field as soon as you can get them. The difficulty with the quota system is that if that quota has been taken up then you cannot get the worker you want and therefore your performance and your company’s competitiveness is going to suffer. From a company perspective that is the more important factor. Can I get somebody when I want them and the right person for me?
Mr Thompson: We want the UK to be an attractive place for people to come to at all levels, particularly high-skilled but low skilled as well, and a work permit system or points-based system makes it that much more possible to make the UK an attractive place to come because it is very clear what the criteria are and if you meet those criteria you will be welcomed into the UK. On a quota basis it is very unclear what the criteria are. As Susan says, you might happen to be 1,001 in the queue and then we do not want you, and it does not send out a fantastic message about whether the UK is an attractive place to come and work or come and do business.

Lord Dubs: On the other hand, for people from outside the country they do not know if they have ever got a chance of coming to the UK because they may never know whether their particular skill is going to be advertised because the employer has gone through the system of demonstrating there is nobody in the UK who can do the job. It is a bit hard for people outside the country. They could sit forever waiting without any opportunity.

Mr Thompson: If we move to a points-based system, which is a system we have been advocating, you would have a list of critical skills and those critical skills would have higher points attached to them, so that you would know you would be highly valued in the UK. You would not necessarily need a specific job or a job offer to come into the country. If you were in a critical skill area and you had the right skills and right experience you would be welcomed into the country. Certainly in countries where they have adopted this approach like Canada and New Zealand, and to some extent Australia, those benefits are starting to come through in the system. We would really advocate that to you.

Ms Anderson: It can be particularly attractive to smaller firms as well because they are less able, for example, to go out and do international recruitment, so if you are a smaller firm and if you operate on a points system and you have got a particular need for certain skills then those people will be coming into the UK, and you will have a shot at them and a shot at employment. Larger firms at the moment tend to have the money and expertise to go off and recruit abroad, whether it is from the new EU Member States, to which members are going out, to recruit construction workers or indeed bus drivers, and they can afford to do that. If you are a smaller firm, you just have not got the ability to do that so a points system would be particularly beneficial for smaller firms who have less resources than their larger colleagues.

Lord Avebury: Would not the smaller firms tend to use the generally accepted domestic means for recruitment such as magazines like Computer Weekly or Computing, to take IT, which would automatically be read by a great many people abroad? If they did not succeed in getting people from advertisements, would they not tend to use recruitment agencies which have tentacles all over the world and thereby get round the fact that they are not based in other countries?

Ms Anderson: If you are a small legal firm, an offshoot of a large American parent, you may well have the resources. If you are a small British engineering firm, for example, you may not have the resources to be able to call on recruitment consultants whose charges are very high. You are more likely to want to poach them once they are in the country rather than to be able to afford the services of a recruitment consultancy. That is the way it tends to operate for smaller firms.

Viscount Ullswater: I think in your evidence, certainly in the evidence that Susan Anderson has given us today, we have touched on the rights of migrant workers, and I think you have stated that they should have the equivalent rights to nationals. I am not sure that you or your evidence answered the question that was mooted in the Green Paper about whether there was any right to change employers. Would this, in your view, undermine the work permit system? Perhaps you could explain who should be the holder of the work permit, the employer or the employee?

Ms Anderson: Just in terms of general employment rights, we are not suggesting that migrant workers should have any different employment rights to the permanent workforce, the UK national workforce. I think it is very important that we clarify that. In terms of whether the permit goes with the worker or goes with the employer is a moving feast, is it not, Anthony?

Mr Thompson: I think the short answer to your question is, yes, it would undermine the work permit system because the current work permit system says you are allowed into the country to do a particular job for that employer and if you are not working for that employer you do not have the right to be in this country. As Susan said, the evidence was seeking to make the point that we do not differentiate between the domestic, indigenous workforce and foreign workers on employment rights, but there is this issue about change of employer. If you are here on a work permit we do think it is sensible that that is held by the individual but it is stipulated against an employer, and then if the person no longer works in that company or for the same employer then the Home Office is entitled to take that work permit back and ask them to leave the country. I think our broader concern in this area is that many of the things that we have seen coming out of the Home Office over the past 12 or 24 months have been building up the level
of responsibility and onus and risk-taking that companies have to take when employing migrant workers. What we would say in this area, to answer your point about the individual or the company, is that the work permit is essentially attached to the individual. The work permit would not exist if an individual was not in the country, and the employer is just facilitating their being in the country. Obviously the employer has a role to play and obviously the employer has responsibilities and duties to ensure that they have safe employment and adhere to all of the employment rights, and that if they know there is something unlawful happening to communicate that to the authorities, but we do have a broader concern about the level of responsibilities being built up on employers which could tip the balance so far as to make migrant workers unattractive in the long term. I hope that answers your question but, as Susan says, it is a bit of a moving feast.

Q435 Viscount Ullswater: But you would not see a role for the EU in this? You would rather leave it to the nation states to determine?
Ms Thompson: Yes.
Ms Anderson: It is a moving feast in a sense because when people have come over on a permit, if they have then been poached to do another job because that employer is equally able to make a case that they have got a particular skills shortage, then in practice it has often been a bit more flexible than it might have appeared. If you are going to be coming in on a work permit to fill a particular skills shortage in the UK, then it is equally likely that other employers who are looking to poach that employee can prove a skills shortage. There has always been a certain amount of flexibility, and typically the Home Office is not sending somebody back to their home country of origin in order that they can come back in again. So there is a certain amount of flexibility. This idea that the employer should be providing bonds for their employees, for example, is something that we would have real difficulties with.

Q436 Lord Marlesford: On this subject, we were in Brussels last week and we were told by Commission officials that they are considering introducing EU-wide regulation limiting the sectoral changes which migrant workers are allowed if they have come in on any sort of work permit. Had you heard about this and what is your view of it?
Ms Anderson: It is certainly something they put forward in their Green Paper as a sectoral approach, and I have to say I do not think it would work. It may work in some labour markets where there is a much more rigid approach to the labour market—where you are an engineer and you are going to stay an engineer forever. In the UK, we do not tend to have quite such sectoral differentiation and we would think that would be a wholly inappropriate approach. As I say, one can see in certain Member States where the sector is all that they would want to have such an approach. Certainly construction skills tend to be unique to construction but engineers can move from the oil industry to the engineering industry without too much difficulty, so I think going too far down the sectoral approach is not helpful.

Q437 Lord Dubs: I notice that the CBI’s position is that you do support the Government’s action when eight of these 10 countries came in in not opposing a transitional period on the admission of workers from those countries. Do you think the Government should follow the same course in respect of future enlargements?
Mr Thompson: Of course they did introduce some arrangements for the enlargement rather at the last minute through hastily convened regulations, but there is something called the Worker Registration Scheme which means that all people from the new Member States have to register with the Government, and the employer has a role to play in facilitating that. Certainly from our perspective within our membership there have not been too many teething problems with that new system. Notwithstanding that, we are aware within certain sectors, particularly agriculture, there have been particular problems with the administration of mass applications. I know people have been making representations to the Home Office on that. Notwithstanding the fact the Government introduced a Worker Registration Scheme we would say they did take the right approach to the accession states. If we are going to have a truly free internal market within the European Union and we are going to enlarge to 25 new states, we think that employers should have access to those workers and those individuals and citizens should have access to the rest of the European Union. We did not see a strong argument for introducing any substantial transitional arrangements in the way that they did in other Member States at the time. Certainly we will have to see what the impact has been. I know that the Home Office is collecting figures on a quarterly basis in this area. You are looking at about 170,000 people so far in the first year. I think we would have to make a really thorough assessment of how that is impacted. We would not see an argument in principle for taking a different approach for any further enlargement than the Government has taken to date.

Q438 Lord Dubs: On the 170,000 would you not agree—and it has been a contentious point—that many of them were people who were already here and who were using the Worker Registration Scheme to
regularise their position? They were not people who had arrived in Britain after 1 May.

Mr Thompson: It could very well be and it could very well be people who have come and gone and have not registered and it could very well be people who have come and not registered and are still here. From our perspective, it is a good thing and if anybody has registered they were here beforehand, the fact is that now they are legally entitled to be here in the UK, although the UK Government might have some powers available to it to make transitional arrangements. Now we know about them, and what we have heard anecdotally from members is that those people where they are aware they did that are pleased to be able to register and to know that they are legally here in the UK, so we would not necessarily see that as a negative thing.

Ms Anderson: On a point of principle we were always an advocate of having a relaxed approach and the Worker Registration Scheme was very much a Government response to political concerns about the impact of being one of the few Member States that were opening our markets. When we looked at what had happened in previous enlargements where it had been feared that somehow the Portuguese or Spanish were going to be flooding out of those countries, I think generally the political community took a look at that and said, “Those fears did not materialise, we should take a very balanced approach.” I think there was a broad political consensus that it was the right thing to do. In practice it has been the right thing to do. In some senses the Registration Scheme has been a bit of a distraction. I think it is a political response to an issue, not one that we requested. In terms of looking ahead one would hope that we would take an equally balanced perspective. I have to say one can understand that the different Member States might take different views according to the state of their labour markets, and in the particular situation we are at with a buoyant labour market with high unemployment and low unemployment we were in a relatively easy position to be relaxed about it. Things might look very different 10 years ahead when we might be in a very different circumstance although one would hope not. Our presupposition on principle is that we would take a relaxed approach for all of the reasons we identified earlier on. Migration, particularly economic migration, has been of benefit to the UK and we accept there are humanitarian reasons why we might want to welcome refugees and asylum seekers, but when it comes to economic migration we think those benefits usually outweigh any costs and I think in principle we probably expect that to be the same going forward.

Chairman: You have been helpful and thorough in your replies. We are now moving into rather more general questions which I am afraid we are going to have to take at a bit of a gallop.

Q439 Lord Avebury: Looking at the variety of schemes that have operated in the last five years, in paragraph 23 of your report you say this is a unique blend of immigration routes. Has it not also perhaps led to confusion and a barrier to employers and would-be workers because of the complexity and variety of these schemes? Could you at the same time say what you think of the Government’s five-year strategy which seems to be moving more towards a generic points-based scheme, and in particular whether you agree with the phasing out of the facilities for bringing in non-skilled migrant workers?

Ms Anderson: If I deal with the first bit and leave Anthony to deal with the five-year plan, I think employers live with what they have got. It was a relatively complex set of different schemes but, that said, they responded to particular local needs and sectoral pressures and, by and large, employers live with them. So they may have had niggles at the National Farmers’ Union about the Holiday Working Scheme or whatever but, by and large, they worked and companies got used to them, and because they got used to them they were not the sort of things that members raised with us when they were banging on about red tape, for example, or the burden of bureaucracy. If you had to jump through a few hoops to get the workers that you wanted, well, so be it. So employers were living with the system and because they had lived with it for many years it generally worked out okay. As I say, there were some niggles, but that is not to say that having a more fundamental review, particularly with recent experience in mind, is not a good thing. I do not think we had employers crying out and saying this is causing us damage to our competitiveness. That is not to say in a brave new world with a new set of proposals that we cannot make things work better, which is Anthony’s part of the equation.

Mr Thompson: I am conscious of the time so, if I may, I will send in a more detailed brief on the five-year plan and also keep you up-to-date as to our responses over the summer period. I will leave you with two major issues for us in that. One is obviously, as I said earlier in the evidence session, that we would favour a move to a points-based system, and over the long term we see that (for the reasons that we outlined) as wholly beneficial, not only for employers and individuals but for the economy more broadly. We will put that in a more detailed brief for you. The other issue which is of concern to us, and one that you raised, is about low-skilled workers. We do feel that even in the medium to long term, not only the short term, we need to keep open some avenues for entry to the UK for low-skilled migrant workers. We see that as a key issue. If you look at certain sectors at the moment you only have to look at what they are doing and who they are employing to see that there are significant skills shortages. That could happen again
Mr Thompson: This is one where we would hand it over to the Government because we are not experts in immigration and asylum, and neither would our members want us to be. From our perspective, we have got no concerns at the moment about how it is being exercised. That is probably as far as our expertise on this can go.

Q441 Chairman: Susan Anderson and Anthony Thompson, thank you both very much indeed. You have been extremely helpful to us. Thank you, again, for your written evidence. Thank you even more sincerely for your oral evidence which has been very helpful to us. You will be sent a copy of the transcript and it is open to you to comment upon it. We hope to be producing our report towards the end of October for which your evidence will be of considerable help.

Ms Anderson: We look forward to seeing your report. Thank you very much.

Memorandum by Professor Andrew Geddes, University of Sheffield

1. The Commission Green Paper on Economic Migration is a welcome attempt to think in more pragmatic and flexible terms about the scope, content and direction of EU migration policies and the relationship between EU action and the policies pursued in the 25 member states. It encourages us to move “beyond fortress Europe” in discussion of the relationship between migration and European labour markets and welfare states. In policy terms, it encourages us to consider the issues of entry, residence, the issuing of long-term visas and residence permits. It also contributes to a broader debate about the role that economic migration will play in EU member states and in relation to EU objectives, such as the Lisbon Process.

2. The key point of principle is whether there should be an EU approach or whether national policies should prevail. At the moment EU competencies in the area of economic migration are limited. The distinction between national and EU approaches may, however, be too sharp. This is because rights already acquired as a result of European economic and political integration such as within Schengen or as a result of other free movement provisions blur the distinction between the national and the European. Moreover, labour markets may not necessarily respect national boundaries and jurisdictions. One reason why competencies in the area of economic migration remain weak is that EU action in this area has been dominated by security concerns and has been particularly focused on those forms of migration defined by state and supranational policies as unwanted, such as asylum-seeking and irregular migration flows.

3. Arising from the point of principle, the basic questions that necessarily underpin a discussion of economic migration are, first, “who gets what, when and how”, which touches upon questions of regulation and distribution within and between countries; and, second, “who are we” which touches upon notions of identity, belonging and entitlement within EU member states and at EU level. The resolution of these issues, as with all migration questions, is made evident at Europe’s borders. However, when we discuss migration we tend to think about territorial borders and the conditions for crossing them. The Green Paper points to the importance of other types of borders. These are organisational borders of work and welfare and conceptual borders of identity, entitlement and belonging. The debate about economic migration is thus nested within a much broader debate about the future of work and welfare. Migration is at the margins of this debate, but it is an issue about which debates can be particularly intense.

4. The essence of the discussion initiated by the Commission in the Green Paper is the “value added” to be gained from the pursuit of a common European approach to economic migration. The Green Paper is designed as a discussion document. At this stage it raises more questions than answers. It does not yet present a robust case for EU action in this area. This may be made in the mooted policy plan to be presented later in 2005. These are also potentially treacherous waters for the EU because of the sensitivity of migration issues. It is one in which EU institutions will need to tread cautiously.

5. There seem to be four justifications advanced for the Green Paper for EU action in this area.
Migration could help in the attainment of the economic reform objectives agreed at the Lisbon summit. At the November 2004 European Council meeting the member states stated that “legal migration will play an important role in enhancing the knowledge-based economy in Europe, advancing economic developments, and thus contributing to the implementation of the [Lisbon] strategy.

The longer-term effects of population change require a more co-ordinated approach to migration policy.

The implicit assumption that national policies have failed to meet labour demands and have delivered sub-optimal outcomes for migrants and for EU member states.

The implicit assumption that “beggar thy neighbour” policies are unlikely to deliver outcomes that maximise benefits for the Union as a whole.

In each of these areas a more robust explanation needs to be provided of how exactly EU action would overcome these difficulties and provide “added value”.

6. It is important to consider the tone of this debate. The issues are framed in rather utilitarian terms linked to the needs of European labour markets and the European economy. There is a need for consideration to be given to the ways in which EU member states position themselves in the global competition for skilled migrant workers and the relations between EU member states and the countries that send migrants.

7. There is also a need for the debate as it progresses to differentiate between types of migrants. In terms of patterns of employment and labour market conditions a very basic distinction can be made between male and female migrants, although this distinction is not made in the Green Paper. The feminisation of migration is an important aspect of recent migration to Europe. Women tend to work in different parts of the labour market to men and may be open to abuse and exploitation. It is important that the gender dimension is integral to any future discussion of economic migration to the EU.

8. The UK position with regard to free movement, immigration and asylum centres on the opt-out from the provisions of Title IV of the Amsterdam Treaty. The UK government has chosen a flexible approach to EU developments with the government choosing to opt into the more coercive EU measures and opting out of those that extend rights such as the directive on family reunion and the directive on the rights of long-term residents. The Prime Minister called this “getting the best of both worlds”. Given this approach it seems likely that the UK government will opt out of any proposals in the area of economic migration should they emerge on the basis of the discussion initiated by the Green Paper. The UK is, of course, unable to opt out of some of the rather more profound issues associated with labour market and welfare state change that are closely connected to this debate about economic migration.53

9. The UK position has also been profoundly affected by the May 2004 enlargement. Official figures show that 176,000 workers from the eight central and east European accession states moved to the UK in the first 10 months following enlargement.54 UK migration policy has been redefined by enlargement, a fact recognised in the 2005 Strategy paper Controlling Our Borders: Making Migration Work for Britain, which sees migration from central and east European member states as a ready pool of labour able to plug many labour market gaps.

10. In the Green Paper the Commission discusses “horizontal”, “sectoral legislative proposals” and “fast track” procedures. In my view it is important that a common EU approach proceeds from a point of principle. A potential difficulty with sector specific schemes is that they create a complex system that can make recruitment more difficult and can leave those migrants in lower status and lower skilled occupations in a more tenuous position. An EU approach should be based on a clear set of principles expressed “horizontally” that are related to key concerns such as rights, welfare protection and family reunion. States could then tailor their policies to meet their particular labour market needs, but on the basis of Europe-wide principles. The International Labour Organisation’s Convention on the Rights of Migrant Workers would provide a solid basis for an horizontal EU approach.

11. When considering a sectoral approach the differences between sectors need to be considered. Comparative European research into the ICT, health care and construction sectors has recently been conducted. This research focused on the recruitment decisions by employers in each of these sectors. All are sectors with a sizeable presence of migrant workers. One key finding of the research was that different sectors have markedly different characteristics. Within the ICT sector there is a lot of mobility of staff within multinational

53 A Geddes, “Getting the best of both worlds: Britain the EU and migration policy”, International Affairs, July 2005.
organisations within what is a strongly international sector. There was a significant European dimension to the construction sector because of EU provisions for free movement for service providers. Health care was strongly national based because welfare states and health care systems remain primarily national in terms of their organisational base. This research pointed to the diversity of sectors, but also to the ways in which different sectors can have national, European and international dimensions that clearly affect any discussion of “managed migration”.55

12. Quotas seem unlikely to be an effective tool of a common EU approach in the absence of a far stronger knowledge base concerning labour market needs. It also seems to be the case that when quotas have been discussed, such as by the Italian government, there has been an “external” dimension to this discussion with quotas seen as a way of trying to curb flows of migrants from particular countries.

13. The principle of “Community preference” has already been challenged by the directive on the rights of long-term residents. It would be useful to discover during the debate about economic migration the extent to which this principle is (a) operative and (b) useful. Rigid application may well be overly burdensome and defy the approaches to economic migration from third countries that are being discussed in EU member states and at EU level.

14. The issue of whether third countries should be compensated for loss of migrant workers is a difficult issue. Some countries such as the Philippines see the training of health care workers for migration as an important means of generating future remittances. Moreover, any intervention that seeks to regulate arrangements between states is likely to be subverted by the role of agencies and other labour market intermediaries that can also deliver workers. There are, however, some important ethical issues associated with labour migration that relate to the (often unequal) relationship between EU member states and sending countries. This is an issue that should be integrated into migration relations with third countries and an effective migration dialogue.

15. It is difficult to see a common policy on regularisations/amnesties given that some member states have employed them on a regular basis while others will not countenance the idea. This seems likely to remain a matter for member states, but one that clearly has a wider EU resonance because of interdependencies between member states. This also raises the more general issue of the relationship between regular and irregular migration flows. The Green Paper posits a relationship between strict controls and irregular flows. A more solid evidential base for such a claim would be useful, particularly as it seems to run counter to the discussion in the Commission’s own report on the relationship between regular and irregular flows, which sees the relationship as “complex and certainly not a direct one”.56

Andrew Geddes
Professor of Politics, University of Sheffield
June 2005

55 Some findings from this research are available at http://pemint.ces.uc.pt/overview.htm

Examination of Witness

Witness: Professor Andrew Geddes, Professor of Politics, University of Sheffield, examined.

Q442 Chairman: Professor Geddes, thank you very much for coming today. I do not think I was present at your previous appearance before this Subcommittee; indeed there was another Peer of Richmond in the Chair, a different Richmond. Thank you very much for coming today. Thank you also for your written evidence, your memorandum, which is extremely helpful. I do not think I need to repeat the subject of our inquiry, which you know very well, because we are on the record and I have already described it. Can I ask you, would you like to start with an opening statement?

Professor Geddes: Thank you, my Lord Chairman. At the start, I would just like to thank you for giving me this opportunity to present evidence to the Committee and also to say from my own experience, and from speaking to colleagues across Europe, how valuable the work of this Committee is and how it makes a very important contribution to the understanding of questions such as migration in the European Union.

Q443 Chairman: Thank you very much. Could I start with a question which to some extent is dealt with in your memorandum, and that is how should the EU labour market really be seen, as national, regional, local or EU-wide? You say there is a key point of principle of whether there should be an EU approach or whether national policies should prevail. Would you like to say anything more about this key point of principle?
Professor Geddes: This seems to me to be absolutely at the core of this whole discussion of economic migration. For the last three years I have been involved in a research project with colleagues in six other European countries looking at recruitment decisions and recruitment of migrants in the IT sector, the healthcare sector and the construction sector. What we see in this research is that we need to think about labour markets in the plural. What we found, for instance, when it came to healthcare was that labour recruitment is often quite nationally based and linked to government priorities. In the IT sector, the global sector, we find a lot of transfer of employees within organisations. In the construction sector we find some impact of European provisions in the movement of workers using EU provision, but also patterns of irregularity and economic informality in that sector. What I would say, and maybe it is not a very good answer to the question, my Lord Chairman, is that we need to think about labour markets in the plural and one of the key challenges when considering the proposals for a European approach is to think about the relationships between different kinds of labour markets, national policies and also, because in European societies we are also talking about welfare states, different kinds of welfare arrangements. The key point in this is that when we discuss economic migration we are also discussing diverse types of labour markets and also the impact on social arrangements and welfare states which provides some contrast perhaps with approaches adopted in the United States where there is a more market driven approach, and in Europe we need to think about the welfare dimension.

Q444 Chairman: We will come to the social dimension in a moment. Before we do that, how far do you think migration should be dealt with by individual states with a view to their protecting the domestic workforce?

Professor Geddes: I think the question here is this issue of protection, regulation and the form that European policy should take. I think it is entirely feasible for European states to regulate migration. The evidence is that European countries do retain a fairly formidable capacity to regulate migration. What I would say is that when it comes to the discussion of what kind of system should be in place, I think the emphasis should be placed on a system in which there is more emphasis on enforcement and compliance of the labour markets within the Member States rather than a system that is perhaps more front-loaded and bureaucratic, which is something that personally I think is lacking in the Green Paper and could be developed within the discussion of economic migration.

Q445 Chairman: Thank you very much. Have you put in any evidence to the Commission on the Green Paper?

Professor Geddes: No, I did not.

Q446 Chairman: Your views will be adequately reflected, I hope, when we put in our report.

Professor Geddes: I hope so.

Q447 Lord Marlesford: You mentioned the social dimension in the regulation of migration of labour. To what extent do you balance the economic considerations with the social? We rather got the impression that the economic is paramount but does social have a role? Can you give us any examples where the social dimension would determine policies?

Professor Geddes: My Lord Chairman, I think that the lessons of recent European history need to be born in mind here and the guest worker and post-colonial migration that was seen across Europe in the 1950s and the 1960s. Europe recruits workers but it gets people, so you cannot detach the discussion of economic migration from the discussion of social implications of that migration. Migrants themselves will have social needs and will be contributors to the welfare states, they will settle and may well bring family members with them. I think it is very important to link any discussion on economic migration to the discussion on integration. I think we can point to action at European Union level within this area. For instance, the application of the open method of co-ordination to social policy has seen some consideration of the position of migrants and some recognition of the exclusion of previous generations of migrants and the potential for the exclusion of future migrants coming to Europe. It is paramount to consider that and I think some consideration has been given to these questions already.

Q448 Lord Marlesford: In a sense following on from that, the EU has quite elaborate policies reflecting asylum, admission for studies and research, family reunion and all that. At the moment it does not have any pan-European regulations or Directives, which is what the Green Paper is all about. Would you like to comment on the fact that this is not a subject at the present time? There is a big difference of view we have picked up that many people think leave well alone, let the national level do it.

Professor Geddes: There is an argument for legal completion. Maybe there is a functional argument that would be more legally neat if other areas were included too, given that we see provisions on asylum, on family reunion and other things as well. Obviously, in a sense the Green Paper raises more questions than answers but the issue is what kind of
system. If the argument is to be made that EU action is to be developed in this area, there needs to be a more robust explanation of on what basis, what kind of system. At the moment I see a lot of questions—necessarily, because it is a Green Paper, it is a discussion document—and I think a more robust explanation could be provided, from my own opinion, as to how it comes to the development of the European approach, if it were to be developed, it would be enforced and implemented in Member States, how it could ensure compliance with decent working conditions, labour market standards and protection of the rights of migrants and other workers. To me, this discussion seems to be very important and is an area in which further elaboration perhaps is needed of where European Union added value could occur.

Q449 Earl of Caithness: You have answered the question that I was going to ask you later in large part but perhaps I could just add a supplementary and we can then move on. Who could make that case in an intelligible form? Is it possible to make that case in an intelligible form and, if it is, who is the right person or the right body to do it? 

Professor Geddes: In terms of competence reach, the European Commission is in a position where it can co-ordinate, gather information, get a better understanding of practices in Member States, but when I think of some of the important issues to do with compliance, enforcement, decent working conditions, protection for rights of migrants and of native workers, then those questions often rebound to the Member States. As with many issues in the European Union, implementation structures in the Member States are very important. Going back to an earlier question, the capacity of states to regulate and, in a sense, to put in place structures of good governance in their labour markets is very important here. The Commission does have a role to play, is playing a role, and that role potentially could be strengthened on the basis of these kinds of proposals, but ultimately many of the issues that are most important in relation to migration flows do depend to a considerable extent, for instance, on the workplace inspections in Member States and those kinds of procedures.

Q450 Baroness Henig: In a way that covers probably the first of my questions. If I could move on to the second one: you welcome the Green Paper as encouragement to move beyond “Fortress Europe”. Given Europe’s need for labour, I wonder whether you saw economic migration as potentially a major breach in the concept of Fortress Europe. 

Professor Geddes: My Lord Chairman, I think that Fortress Europe is a mentality rather than a reality. Europe has never been a fortress in the literal sense. When European countries decided to stop labour migration in the early 1970s—Britain in the 1960s—family migration continued, so in a literal sense Europe cannot be a fortress and it is not a fortress. Liberal states are not a fortress in that way. I think there is perhaps a mentality which is more restrictive and exclusive. What I would suggest here is that the discussion of economic migration encourages us in a sense to think about the future of Europe, about the future of the welfare states, the types of labour markets. The challenge to the whole idea of Fortress Europe is a more fundamental challenge which is a debate about the kinds of labour markets in European States, the kinds of welfare states that can be sustained. It seems to me that migration seems to be part of that debate. It is not a solution, it is not going to destroy the welfare state or rescue the welfare state, but I think a lot of these debates are most intense when migration is the issue and I think it tells us quite a lot about these issues. The question of Fortress Europe seems to me to be where we see in public debate a mentality when we can see across the European Union a hostility to migration and perhaps scepticism about these kinds of proposals about the European Union moving into what are politically sensitive questions, which is why I think the case needs to be made robustly. I think there is a case but, as we know, this is a hot political issue across the European Union.

Q451 Baroness Henig: Can I throw one question in which is on the Green Paper. You make the point that the Commission does not differentiate on gender issues and perhaps that is an area where it should think more in terms of addressing some of the issues. I wondered whether you could say something about that and what you hope to see in the future in the area of gender differences and how they play out.

Professor Geddes: What we can see in terms of pattern of migration to Europe is the increased presence of women migrants. Women have always been present in migrant flows but women migrants tend to go to different sectors of the labour market where they may be open to abuse and exploitation of a different form from the abuse and exploitation that male migrants may occasionally encounter. This is an area to which attention needs to be paid and in the context of the Green Paper and a discussion about economic migration I think that kind of distinction is useful and also could be included in discussions in relation to social inclusion of migrants more generally to make a distinction. Immigrants are often dealt with rather homogeneously. In fact, when we come to the issues of social inclusion it tends to refer to certain kinds of migrants and we can distinguish as well within those. I think a gender distinction could be usefully made.
Q452 Earl of Caithness: Could I ask you to expand a bit more on the evidence you gave us in paragraph 10 of your paper. If we have an EU approach of horizontal principles, are there not a substantial number of differences in the labour market, different sectors within the labour market, that the horizontal approach cannot deal with properly and would not a sectoral regime tackle those shortages more adequately?
Professor Geddes: I think this was an issue which in evidence I had to think long and hard about. What I tried to do in my paper, and perhaps did not do particularly well, was distinguish between what I would see as useful in relation to recruitment of migrants, which is an employee driven approach, and the need for common basic principles. While I think that economic migration could be quite closely tied to the requirements of particular sectors, I also think that there could be scope in order to protect the rights of the migrant workers entering Member States and in a way to reassure workers already in those sectors that basic standards and principles are in place. If I could refer you to page 10 of the Green Paper which does discuss this question of rights. I think the point made in the Green Paper is quite useful, that third country workers should enjoy the same treatment as EU citizens, in particular in regard to certain basic, economic and social rights, whilst recognising that rights do accrue over time. What I tried to do, and perhaps did not do particularly well, was distinguish between the method of recruitment and a system which I think could give some credibility to common action or co-ordination in this area based on common principles for, in effect, what could be called shorter term residents because after five years longer term residents do acquire rights within the European Union. I think that was the point I was trying to make.

Q453 Viscount Ullswater: You have touched on your views on integration and the need for some form of policy for integration. Do you see that as being something that a nation state should undertake or do you see room for an EU approach in this area?
Professor Geddes: My Lord Chairman, I think that the EU approach in this area has to some extent already developed. There are the Anti-Discrimination Directives, the Directives on the Rights of Long-Term Residence and the Directive on Family Reunion, not all of which apply in the UK but across the European Union you can see some attention to this. Perhaps I could draw your Lordships’ attention to a research project in which I was recently involved with the British Council. We tried to map patterns of inclusion and participation of migrants, particularly in relation to the labour market across the EU 15 prior to the May 2004 accession. We can see a European framework that is in existence and we can see patchy implementation of that framework. I would argue that integration is an issue that needs to be considered at European level in relation to European economic objectives and to the European objectives in relation to social policy. I think that you can distinguish between the labour market questions, access to the labour market, types of employment, patterns of unemployment, and we tried to look at those in the research that we have done recently.

Q454 Chairman: Has that British Council study been published?
Professor Geddes: Yes. I can make it available to you if you would find it of use. We looked at questions to do with labour market access, implementation of anti-discrimination legislation and we also looked at the question of nationality, which is not strictly within the remit of the European Union but is clearly relevant to the position of migrants and minorities. Also, within the European Union more generally the use of indicators and targeting could be applied in these areas as well so that integration policies can be applied rather more specifically to certain areas of economic and social life to give a clearer picture of what is actually going on. That was what we tried to do in the research that the British Council in Brussels co-ordinated, to give a clearer picture because we have very divergent practices and often these issues of integration are closely linked to national models and national ideas about belonging and citizenship and identity but I think there is now an important European dimension.

Q455 Viscount Ullswater: In your evidence you see quota systems as likely to be ineffective. Might quotas not be a fairer and less bureaucratic alternative to a work permit system? You also say that quotas are seen as a way of trying to curb flows of migrants from particular countries. Is that your view or is that a commonly held view?
Professor Geddes: I was looking at the experience of Italy, for instance, which employs a quota system and uses those quotas to manage its migration relations with sending countries. I think that quotas could be used to manage bilateral relations between states and I think that is the Italian approach to the idea that you can prevent irregular flows by having some regular flows and trying to organise migration relations on that basis. More generally on the issue of quotas—this was obviously a discussion at the recent General Election—my own opinion is that quotas are likely to be reactive rather than proactive and there are other systems where we can look at traditional immigration countries, like Canada and the United States which have got different approaches, which allow more flexibility than a quota system, which I think could encounter difficulties. I suspect it might
be reacting to conditions that previously applied and I think more flexible approaches could be adopted.

Q456 Viscount Ullswater: Your first answer intrigued me in that you were detaching, were you not, the experience of Italy of quotas of migrants from any economic activity in your reply. Is that so? Professor Geddes: I am not an expert on Italian immigration, but I have spent time in Italy and followed the debates. I would not like to pretend that I am a great authority on Italian immigration. What I do know is that the context in Italy is rather different and perhaps tells us interesting things about a common European approach. Italy is more exposed perhaps to flows from the Balkans, South East Europe and North Africa, more exposed to regular flows, has a different kind of welfare state and more employment of migrants in the home, in domestic work, where we find women migrants present. The Italian debate has also been influenced by the presence in the government of the Northern League and the National Alliance which did steer policy in a more restrictive direction. I do not think there is an attempt to detach migration from the labour market so much as an attempt to deal with some of the issues of irregularity and illegal immigration and some of the source countries for that, but perhaps in a political climate which was becoming more hostile to immigration and imposed more restrictions and did limit the rights of migrant workers in Italy.

Q457 Lord Marlesford: Italy is a very interesting example. Has there actually been any evidence that quotas in such countries have limited the irregular flow at all? Professor Geddes: That is a very good question. In this area I always find that evidence can often be lacking. I suppose it is academic special pleading to say we need more research but sometimes in these areas more research would be useful. All I do know is the Italian Government argued that they have worked and during their Presidency in 2003 there was the argument that this kind of approach could function as a European approach. In terms of whether this has been an effective policy, I am afraid I could not really say.

Q458 Lord Avebury: You do not think it will be possible to arrive at a common policy on regularisations and amnesties because of the variety of schemes that have been applied by different Member States in the past, but you also say there is inter-dependency between Member States. I would like to ask you how regularisation in one Member State would be likely to affect employment in the rest of the European Union over the medium term. Obviously we are not looking at what happens this year in relation to the 700,000 people being regularised in Spain, but should we not bear in mind, or attempt to ascertain, what would be the effect of such large scale regularisations on the employment situation in other countries, not necessarily those immediately next door?

Professor Geddes: My Lord Chairman, this is an important issue. In the UK this issue becomes more pertinent in the light of estimates of the population of illegal immigrants that were recently published. The Spanish regularisation is interesting because it introduces anxiety in countries that do not regularise and there is, I suppose, what could be called the bus stop theory of amnesties where there is the idea that migrants will come along because there will be another amnesty along soon. I think the conditions that generate irregular migration are also linked to the way in which the economies of countries like Spain and that in the UK operate. In a sense, the other side of the debate about a dynamic, flexible, competitive European economy is the flexible labour force that can generate the services and products that people need. I think the debate about irregular migration is very important. We can see that it does demonstrate the way in which migration is functional to the operation of labour markets. This may be an area in which other witnesses have been able to provide more evidence. I am not aware of evidence to say whether the amnesty in Spain affects the labour market in France in either a negative or beneficial way. Perhaps other witnesses have been able to elaborate on that point. I think it could be quite interesting. I think the idea is that it is potentially damaging but possibly it may be beneficial and I suppose that most people who regularise have done so because they are settled in the country in which they have regularised.

Q459 Lord Avebury: Whether it is beneficial or not, surely the European Union should have some facilities for taking it into consideration because out of those 700,000 people who come into Spain a sizeable fraction will enter the labour market either in Spain or another EU country. To that extent, it will be an unplanned addition to the labour forces in countries which think they have arranged their economic migration policies to exactly match the needs of the employers in their countries and suddenly find an additional inflow of people who are not considered in that equation. Is there not another factor in this, in that if you get lots of amnesties and regularisations this will simply encourage further flows?

Professor Geddes: I think that is a point that does concern countries that do not employ amnesties or regularisations. This is where I think the research evidence is unclear because personally I am not convinced so much that it is the amnesty which brings in the migrants as the way that the economies
function in countries that have amnesties; perhaps it is a combination of both of these factors. In Italy, Spain, Portugal and Greece, which have had amnesties recently, they do have large informal economies which rely on migrant workers also. I think that the Athens Olympics would have been rather different had the stadiums not been built and migrant workers helped build those stadiums. I know in Portugal for the European Football Championships migrant workers were extensively involved in the stadiums for that event as well.

Q460 Viscount Ullswater: Do you mean illegal migrants? That is an interesting point.
Professor Geddes: There is research evidence that in the construction sector in Portugal there is a heavy presence of irregular workers and also of the Portuguese Government employing irregular workers. In the recent Portuguese amnesty, for instance, surprisingly they found large numbers of Ukrainians and Moldovans, obviously countries to which Portugal does not have strong historical ties, who have in a sense communicated with migrant networks the availability of employment and the ability to work without being checked, or if you are checked you are moved to a different site the next day.

Q461 Chairman: When you are employed by the government do you become a regular worker?
Professor Geddes: I would refer you back to the first answer I gave that in the construction sector you are often employed by—

Q462 Chairman: Authorities.
Professor Geddes:—a man with a white van and a mobile phone. Because of sub-contracting the construction companies tend not to do much building, they tend to manage projects, and that is one of the complexities—it is not so much an EU issue—of labour markets and the regulation of those markets.

Q463 Earl of Listowel: Returning to rights of migrant workers, you say in your evidence that in your view an EU approach should be closely tied to rights. On what basis should it be decided when labour migrants should acquire particular rights, such as the right to change employers and to seek work in another Member State?
Professor Geddes: My Lord Chairman, I think this is an important issue and it was one that I was considering. It exposes the fact that my background is politics rather than law. Perhaps what it seems to suggest to me is that this is fundamentally a debate about the kind of labour market and flexibility of labour market. The ability of somebody to change employment and the ability of somebody to move within the European Union exposes these very important issues about the kinds of labour markets within the European Union and their flexibility. Tying a migrant to a particular employer is used in EU Member States and perhaps it allows you to observe more effectively the conditions experienced by that migrant, but at the same time there is also research evidence that tying migrants to employment tends to increase the chances of exploitation and abuse of that migrant because they face the possibility of if they were to lose their employment they would have to leave the country. I would say that in these areas an approach which gives more secure residence and more rights in relation to employment, switching employment, can create a stronger framework in terms of the rights of migrants and perhaps reassurance for workers in the country to which they move as opposed to a situation where migrants are tied to employment. The precise discussion of the legal framework causes me some anxiety as I am not a lawyer and I think there are probably others better qualified to discuss the precise content of legislation. As I said, I do think it goes to this perhaps more fundamental set of issues about the flexibility of markets. It does bring to mind, in my view, the American very market driven approach, more flexible approach, more employer driven and that kind of debate causes anxiety in some EU Member States. It could become a problem if migration is seen in some Member States as a Trojan horse for liberalisation, and as we see in some of the debates at the moment about Europe that could be the case.

Q464 Viscount Ullswater: Would you not see what you are discussing now as being a way of undermining the work permit scheme? I know you can demonstrate maybe there was a failure in the marketplace which needed to be filled by the work permit scheme, but if they had the ability to change employers once they came here then it might be seen as being a fairly liberal scheme whereas the work permit scheme is fairly tight.
Professor Geddes: That is very true. These are the kinds of issues that the Green Paper raises that go very much, as I said in the previous answer, to the kinds of labour markets that we have and the kinds of regulations we put in place in what you could call the good governance of migration. The US approach, as I said earlier, is a far more liberal approach. The approach adopted towards economic migration in the UK tends to follow the Canadian points system, the human capital approach to migration, and that has been reaffirmed this year. There are some potential drawbacks with a liberal approach to economic migration if migrants are seen as perhaps undermining standards in the labour market, which is why I said earlier the issue that is very important,
and is perhaps not discussed in the Green Paper, is enforcement of good standards in the labour market. As I thought about these issues, in my view the Commission’s approach tends to focus on the front end of the system, how it will operate, what mechanisms will be in place, and it does not discuss so much how standards will be enforced in Member States, mechanisms to ensure compliance and what would be expected, for instance, in terms of wages, working conditions, perhaps investment in training schemes and training programmes as well. In some traditional immigration countries, such as in the United States, there are attestations of labour condition contracts which employers enter into which do specify conditions, perhaps investment in training programmes as well. Within the discussion in the Green Paper these kinds of issues could be more thoroughly discussed because they do relate very centrally to the experience of migrants after they enter. In a way, this is where often the political debate becomes most real and most apparent.

**Q465 Lord Dubs:** You refer in your memorandum to the UK having exercised the right to opt-out of certain of EU measures and, in fact, you go on to suggest that you think we will opt-out in this area, that is to say legal as opposed to illegal immigration. Do you think this is a reasonable approach for the Government to adopt? Do you think it will cause any difficulties as further measures evolve from Brussels?

**Professor Geddes:** My Lord Chairman, it is a consistent rather than necessarily approach. It is consistent with what I think the Prime Minister described as the British attempt to get the best of both worlds; to opt into those EU measures which are seen to tally with domestic priorities in relation to asylum and irregular migration while allowing flexibility to pursue other forms of economic objections in relation to other forms of migration. To me it seems that the issue—this has become apparent as the EU framework has developed—is that Britain is not separate from the Schengen system, it is not separate from the kinds of measures that are developing at European level. It cannot isolate itself from the European development and also it is very difficult to isolate itself from the real world in a sense. Britain is very closely tied to the European marketplace and if European developments were to occur in these areas they would have implications for Britain. At the moment my opinion, and obviously this is just my own personal view, is that the UK would be sceptical about these kinds of developments and would be likely to opt-out but there would be implications that spread economic migration to impact upon the economic reform agenda and on social policy. Britain is not opted-out of these linked issues and cannot opt out of those.

**Q466 Lord Dubs:** Thank you. May I move on to enlargement. You refer in your memorandum to the impact on the UK of the enlargement last May. Do you support the action the Government took in not imposing a transitional period on the admission of workers from the new Member States? Should we follow the same course in respect of further enlargements, particularly Bulgaria and Romania?

**Professor Geddes:** My Lord Chairman, I do support the approach that was adopted. It is interesting in terms of numbers that a recent report by the Office of the Deputy Prime Minister showed that 176,000 people from the eight Central and East European countries came to the UK in the first 10 months following accession and their economic contribution was substantial. This is an issue that we have been discussing in Sheffield with local service providers. The absolute impact of migration more generally has been most evident in London but there is a very strong relative impact of this migration outside London on rural areas, such as Lincolnshire. While I would support the approach and the continuation of that approach, I think that this relative impact on rural areas, areas that have not previously experienced migration, is something to which attention should be paid. I do know that service providers from South Yorkshire and Lincolnshire, from my own experience, are now encountering some of the issues associated with European migration. It seems to me in the Government’s strategy plan for migration, published this year, there seems to be an emphasis on migrants from other EU Member States and attention needs to be paid to the effect of this and also to ensure that the social consequences, the social implications of this, are considered and dealt with.

**Q467 Lord Dubs:** You mentioned a figure of 176,000, but is it not the case that at least a proportion of those were in the country before 1 May and they used the opportunity to regularise their position rather than they were new people who came after 1 May and, therefore, the impact on the areas you have talked about—not just London but Lincolnshire and so on—would actually have been felt earlier in terms of people working even if the awareness of how many there were came after 1 May?

**Professor Geddes:** Yes. As far as I understand it, about 40,000 or 50,000 people were already present in the UK, so in a way that seems a de facto regularisation of workers already present in the UK. You could also add to that the fact that this workforce may be more mobile, they have the opportunity to move within the European Union, so in addition to those who are already here there will be those who have come and gone. When we discuss migration there is always the numbers game and you could say 176,000 but, as you rightly point out, some are already here and are now regularised, some may have come and some may have
gone. What I do know from South Yorkshire and Lincolnshire is that after a year they are entitled to access social benefits and in a sense are beginning to settle, to become members of the communities in which they have now lived for a year. I think the diversity of migration, the possibility that this new migration from Central and Eastern Europe may not necessarily correspond with old patterns in terms of movement then leading to integration, means people may move backward and forward, become Ryanair migrants perhaps, who have more opportunities to come to the UK and return to Holland or whatever is their country of origin.

**Q468 Chairman:** This is probably an impossible question to answer, but has the Government’s comparatively liberal attitude towards admitting people from the new accession countries had a restrictive effect on migration from outside the EU?

**Professor Geddes:** I think it has. UK policy is now becoming geared to a pool of workers from accession states who will take the place of many of the shorter term seasonal programmes that previously existed. There has been a reorientation of British migration policy which used to be post-colonial, in a way, and British migration is now becoming more decisively European which goes very much to the discussions of this Committee. There is an openness in Britain to European migration but not an openness to European economic migration policy.

**Q469 Chairman:** Would it be possible to put any statistics on that?

**Professor Geddes:** On?

**Q470 Chairman:** On the effect of this liberal attitude to migration from elsewhere?

**Professor Geddes:** I am afraid not off the top of my head at the moment.

**Q471 Chairman:** No, I would not expect you to know off the top of your head but I wondered whether anybody had done this.

**Professor Geddes:** The immigration statistics should give some evidence of this, as well as labour force survey data, because I think it has become an important aspect of British migration policy. That data should be available.

**Q472 Earl of Listowel:** Does your knowledge of what has been going on in Yorkshire and Lincolnshire suggest to you that the Government might need to give more thought to planning for housing supply relating to this issue?

**Professor Geddes:** This week I was attending some meetings with local service providers in South Yorkshire and Lincolnshire and discussion about social housing is now on the agenda. I could not say what the implications of that for housing stock are and provision in particular towns, all I do know at this stage is that there is some evidence in some towns of rather surprising patterns of migration: the Albanian Association in Barnsley, for instance, states who took me by surprise. This really does show the changes in migration to Britain. I am afraid I cannot quantify precise implications for housing. Certainly it is an issue that is now on the agenda of local authorities and those officers in those authorities who deal with these questions of migration and integration.

**Q473 Chairman:** Professor Geddes, thank you very much indeed. I would like to thank you again for your written evidence, but in particular I would like to thank you, if I may without condescension, and congratulate you on the very clear and concise way in which you have answered our questions, that is very helpful. We hope to produce our report probably towards the end of October. You will be sent a transcript of this meeting. Thank you very much, you have been extremely helpful.

**Professor Geddes:** Thank you, my Lord.
WEDNESDAY 20 JULY 2005

Present
Avebury, L
Caithness, E
Dubs, L
Henig, B

Listowel, E
Marlesford, L
Ullswater, V
Wright of Richmond, L (Chairman)

Examination of Witnesses

Witnesses: Mr Nick Clark, Policy Officer, European Union & International Relations Department, Mr Owen Tudor, Head of International Relations, and Ms Sofi Taylor, General Council Member, Trades Union Congress, examined.

Q474 Chairman: Good morning. Thank you very much for appearing before us. I will welcome only the TUC delegation for the moment, although our later witnesses are sitting at the back. You will get a welcome later! Thank you very much for coming to give evidence to us. I should state for the record, since this is on the record and being televised, what you already know and that is that the purpose of this inquiry is to inquire into economic migration into the European Union. It is not an inquiry into illegal immigration or into asylum, it is very much a base stimulated by the Commission’s Green Paper which was produced in January this year. I wonder whether I could ask you, first of all, to introduce yourselves and then if you wish to make an opening statement, you are very welcome to do so.

Mr Tudor: Thank you very much indeed. My name is Owen Tudor. I am the Head of the European Union International Relations Department at the TUC which has overall responsibility for European Union matters and also migration generally. With me is Nick Clark who is the Policy Officer dealing with migrant worker issues and he is a TUC member of the Gangmasters Licensing Authority, and Sofi Taylor is from the TUC General Council and is a member of the Unison National Executive. Sofi works as a nurse specialising in ethnicity and culture.

Q475 Chairman: Thank you very much indeed. You very kindly sent us just within the last day or two some replies to our questions. Please do not assume that all the Committee have had time to read those replies. Could I ask you, in replying to the questions that we will put to you, as far as possible not to duplicate what you have sent us in writing but to expand on it if you wish, or if you decide to leave your written reply on the record, that is alright by us. Could I please start by saying that the evidence we have received shows there is quite a diversity of opinion about what the EU labour market really is. Is it EU-wide, should it be looked at in the context of a EU-wide labour market or at local, regional or national levels? Which of you would like to try that?

Mr Clark: We are not convinced that it helps us to think about the labour market as one discrete unit. There is quite clearly a whole range of overlaps and we have pointed to a couple of examples in our response. Certainly from the British point of view, which I guess we are best qualified to comment on, we see that the kind of labour market we are dealing with differs according to the industrial sector we are dealing with and in some cases perhaps even the region and the particular skill. If we take, for example, the food industry, we find that a lot of labour demand is being met from migrants from, for example, Poland and Portugal, neither of which would be considered ordinarily as having a common border with Britain, but clearly these geographical distances are much shrunken these days. In the health industry, for example, we are dealing with a global labour market rather than purely an EU one in terms of labour supply.

Ms Taylor: I am a migrant worker myself. I came to Scotland in the 1970s in response to the Government’s call for more help with the health sector. I am a nurse and I also organise health sector workers up in Scotland, specifically migrant workers from all over the world. In terms of health, education, social services and IT, we do recruit wider than the EU. We look at the issue of Pilipino recruits and we look at the recruitment coming from India and China, we look at teachers recruited from the Caribbean, in social services, people coming from Africa and the IT workers coming from India. Economic migration today is very much a global issue for us all.

Q476 Chairman: Thank you very much. I think we shall want to return to the question of the effect on sending countries, particularly perhaps in the health field, but I will not pursue that for the moment. It is something I would like to cover before we finish our questioning. What should be the role of state authorities in regulating labour migration? How much regard should they have to protecting the domestic workforce?
Mr Clark: Our concern primarily, and I think it is one which is often rather neglected, is the issue of conditions of employment and the experiences of the workers themselves. Most approaches to regulation of migration focus basically on business and borders. The interests of the workers themselves very rarely creep into this equation and that really troubles us. One of the key areas of regulation which needs a lot more attention is the relationship that workers have with employers at both ends of the equation, sometimes in the sending country as well as in the receiving country and the role particularly of intermediaries, such as recruitment and temping agencies, who appear to us to be able to operate with relative impunity, certainly even within the domestic labour market. Once you get an agency recruiting in another country, maybe even outside of the EU, the lack of regulation is really to the disadvantage of the workers. Our principal concern is that there should be regulation of what happens in the labour market to give migrant workers themselves some power.

Q477 Lord Dubs: In your written submission you have partly dealt with the point I was going to raise, namely should the regulation of labour migration be driven entirely by economic considerations, regardless of possible social consequences. In your evidence you have said very clearly that social consequences should be taken into account and it is that point I would like to question you further on. You said that filling increased demands for labour, where there might be limited infrastructure, such as housing, health care and so on, should not be done without seeking to relieve any resulting increased pressure on resources. I understand why you are saying that, but is it not somewhat difficult because it is hard to make the relationship between providing more housing as people are coming in to a particular area? Is that a workable policy?

Mr Clark: The alternative is very much unworkable. It is certainly clear in some rural areas that the demand for labour by some local employers, which has increased massively, particularly as the food industry has become much more industrialised, has put a great deal of strain on housing because there is virtually no social housing available. Employers and agencies are buying up properties to rent in very exploitative situations for their own workforce. There appears to be no planning attention given to the need for medical care, such as GPs and dental cover. All of these are key issues. What concerns us about those issues is that if you do not deal with them you leave the field open to the xenophobic right to exploit the subsequent problems that arise. If there is a problem about housing then deal with the housing problem, do not try and lay it at the door of the migrants. That is really what we are concerned about.

Q478 Lord Dubs: Are you saying that such a crisis point has been reached?

Mr Clark: I would not like to describe it as a crisis point, but there clearly are problems. I do not particularly want to start highlighting problems because I know there is always a media thirst for sensation in this field. We have come across areas where the large influx of migrant labour to service one or two large employers has left severe strains on, for example, schools, health services and certainly problems over accommodation come to us time and time again. These are just the practicably measurable things. I know Sofi wants to talk a little bit about other social consequences which often do not get considered as well.

Mr Tudor: Perhaps I could just say a word on the housing issue. It is not just the housing implications for the domestic population that is a problem, a lot of the migrant workers that we find we are dealing with are living in grossly overcrowded circumstances. It is not as though they are putting pressure on the existing housing stock. There is not enough housing available for those people. You need to make sure that there is adequate housing just to deal with that overcrowding problem let alone any knock-on effect.

Q479 Viscount Ullswater: I was interested in what you said about migrant workers, but the same applies, does it not, to EU migrant workers as it does to those coming in from outside? If you are familiar with the gangmasters in East Anglia, I happen to live in East Anglia, you will know we have had scandals of large numbers of people living in completely unsuitable accommodation and obviously that must be dealt with by the local authority. You would not draw a distinction between the EU migrants and those coming in from outside, or would you?

Mr Clark: I do not think I would in terms of the consequences. Popular perception is rarely subtle and sophistication is not much encouraged by the media approach to it either. Very often if you ask a local populous where they think the migrant workers come from they will have a great deal of difficulty in telling a Portuguese person. They may say they are Eastern European or Russian or refugees because they do not speak English. The distinction does not exist in popular perception and, to be perfectly honest, to a lot of the employers a pair of hands is a pair of hands. Our concern is trying to make public policy consider workers as more than just simply economic units but rather as people with a whole load of requirements of their own. If we look at the issue of housing, the local authority has its hands tied in many ways. They could say these are houses of
multiple occupancy, they have not been properly licensed, they have not got the appropriate facilities and so we will close them down, either giving them an obligation to house them, if they happen to be EU nationals from, for example, the EU 15, but if they are from Poland they do not have an obligation to house them because they have no recourse to public funds, so destitution is the consequence and I think that is an impossible position to put public authorities in.

Q480 **Chairman:** Would you like to add anything?  
**Ms Taylor:** I think the issue about accommodation is pivotal. We are not going to sensationalise. I have come across nurses who were recruited by nursing homes and they actually ended up living in the nursing homes. They were unable to access cooking facilities or cleaning facilities or bathing facilities and it is not because they wanted to do that, it is because the access and the knowledge of what is out there is not available. The availability of accommodation is a big issue for them. What I really wanted to say in this case is that we cannot ever walk away. Migrants, whether they are from within the EU or outside of the EU, are fundamentally human beings and denying them their human rights is wrong. For me the biggest issue in terms of the health sector is that the health sector is one that we have recruited from massively, but what we have as a consequence is called the out of uniform problem. When you are in uniform you are accepted as a valuable person, you are giving care and you are accepted as part of the community, but the minute you come out of uniform the whole image of what a migrant is has gone completely wrong. You are then subjected to racist attacks and discrimination. We are not dealing with institutional discrimination which is built into the system, we are dealing with going out there and being spoken to and being given services. I think the social consequence is that we do not help the public image of the contribution of this group of people at all.

Q481 **Earl of Caithness:** There are huge problems for UK residents in housing, health care and education in various parts of the country for all sorts of reasons. I would like to put your concerns into context. What percentage of the migrant population are facing these problems and where is it most acute, because one can take what you have been saying, which is that it is a problem for every migrant worker, or are there special cases that you are highlighting?  
**Mr Clark:** It is very dangerous to stray into the territory of pretending that you know numbers and plenty of people do it, and if anyone even suggests you use this methodology and you can come up with a figure we will see the figure as being the headline in the newspapers. Can I give you a proportion? No. Very few migrant workers present themselves to us to announce that they have no difficulties. Most of the people who come to us are those with problems. However, I can say that there is no shortage of them. We have a massive caseload of dealing with problems that present themselves to us. They are only the people who have the courage or the capacity to come and draw themselves to our attention. We do know it is widespread. My own feeling is that it is particularly intense in some of the rural areas in which there has been a very rapid increase in the demand for certain types of labour which one might describe as flexible or super exploited in areas of distribution, food packing and processing for the supermarkets and so on. There has been an increase in the industrialisation in areas where previously there was very little and the strains are much more noticeable. In cities, because the travel-to-work areas are much more diffuse, although the problems are there, they are less easily identifiable. There are parts of the South-West, the East Midlands, parts of the North-West and north Wales where traditionally you would not have expected these problems to have presented themselves but all of a sudden these issues are arising. There is also very little experience of accommodating the changes of people who may not speak the language, although a lot of public service workers are doing fantastically well to try and respond to that. They are starting from a relatively low base of knowledge. Our colleagues in the regions are telling us that there are areas where people have had no experience of attempting to resolve these problems, where they are dealing with integration issues previously and then somebody finding themselves with a massive issue on their plate. There are some very intensely localised issues, but housing is a problem particularly for low paid migrant workers, although it is not only the low paid. It is really quite noticeable for us as being a relatively new issue tied closely into the employment relationship.

Q482 **Earl of Listowel:** Certain sectors have long been neglected. Joint Chief Inspectors of services for children have highlighted recently residential childcare and the neglect of the staff. Is there a danger of poorly managed migration perpetuating poor employment conditions? I think this harks back to the previous question. There are also social consequences of not providing good care, for instance in residential childcare or care for the elderly. On the Continent, in the Nordic countries, in Denmark, residential childcare is a highly qualified profession and well recognised and it is easy to recruit people. Do you not think good rights, a good minimum wage and perhaps more accreditation are important here to prevent areas which have been historically neglected not rising up and being modernised because of the availability of cheap migrant labour?
Mr Clark: I think you are still putting these two issues together, the issue of workplace regulation and workers’ rights and immigration control. If you want to deal with abuse in the workplace you have to deal with abuse in the workplace and not hope that it will magically disappearing because you are attempting to tighten up on border controls. We do not see that as being an effective technique. Childcare is a skilled job here, it is just not very well rewarded. It is no less skilled here than it is in other countries but it may not be so well paid. There are problems there. The care sector has got requirements, for example, for a minimum of an NVQ2 but whether that is always seen through is another point. We do have some questions about enforcement of some of these issues because a consequence of stern enforcement could be something quite severe in terms of supply.

Ms Taylor: Immigration in this country is a national security issue, but economic migration is an employers’ issue and it is a workers’ rights issue. I want to go back to the last question in terms of one point. The migrant workers who work in the health care sector provide the health care but they also pay towards the health care and they use the health service. As a nurse I have a very complex relationship with state institutions. We provide the health care directly, but what about outside, where does that come into play? The question you have asked is very difficult and you are right, when we recruit in Britain we do not always recognise the skills that people bring. We recruit on the basis of exactly what you say, to reduce or to try to squeeze the last ounce of work out of an individual. We have workers that work 40 hours a week and on their two days off they are asked to volunteer an extra day. Some workers are required to volunteer three days of their annual leave and if you do not do it you are seen to be a bad worker and then you are subjected to pressure from your work mates. Is that to do with how we manage our way of working? It has to do with how we perceive these people. All I can say is that there is something wrong. It is the employers who are exploiting these people. It is the employers that are recruiting these people. I think the answer is there somewhere.

Q483 Lord Avebury: The message I was getting from your earlier answers was that when employers take on labour from outside the European Union they impose certain costs on the Community and primarily those are costs of accommodation which create strains in the local authorities which have to foot the bill. Do you think it would be possible within the European Union to impose those costs on employers, for example, by means of a levy on work permits or in some other way recovering the costs from the employers who are imposing them on the Community?

Mr Tudor: We do not see any distinction between the way migrant workers should be treated and domestic workers in as much as any employer who takes on any worker is in some senses taking on some responsibilities for housing, for health and for childcare. There are a lot of debates going on at the moment about exactly what responsibility employers should have for childcare and so on. The answer as far as we can see is that in reality in those sorts of senses that is what employers pay taxes for, it is to make sure that the social consequences of the economic undertaking that they are pursuing is paid for in some way through general taxation. I am sure you would not advocate the idea that any employer who takes on a woman of child bearing age should pay a special levy towards the costs of education or child rearing or something like that. The more you tie those costs to specific groups of workers the more you skew—I hesitate to say this as a Trade Unionist, obviously—the free market in the employment relationship. Put bluntly, we are not keen on the idea of levies on permits and that is partly because of the principal position that we do not see that migrant workers should be treated differently from other workers.

Q484 Lord Dubs: Can I pursue the last point you have made? I understand fully the principle and obviously I am very sympathetic to the principle. The question is how one does it. Lord Avebury talked about a levy to deal with the particular situation of migrant workers. You have said we should not treat them differently. How should the powers that be, whether Government, local government or the health service, address the housing point you have made, which is a valid one, in a way that is realistic? One does not know when the migrant workers are coming in. One does not know if an employer needs more workers and they might not be migrant workers, they might be local workers. How do you give effect to what you want to achieve?

Mr Clark: If we look at some of the expansions that have gone on in some of the rural areas, in major food processing factories, for example, it seems to me that the consequences of the expansion of that production facility have not been taken into account in the planning. That is to say, they know there is going to be a bigger facility, they may look at the transport, although the reports I have heard back from some areas are that even the increase in transport has not really been fully taken into account, but where the workers are going to come from is not really dealt with. These are often in areas where registered unemployment is less than 2 per cent, in other words there is almost no background unemployment. Most of those workers in my experience have already passed through the doors of those companies and for one reason or another been determined as not...
suitable. It is clear that the new workforce is going to come to the area and not from the area. The consequences are not being dealt with. The worry for us is that if it is not dealt with at the planning stage and by local authorities and employers thinking about how things work, the consequence of not having done so is laid at the doors of the migrants, the least powerful group of people in the whole equation. It is not a matter of paying for it, it is about thinking about how these things happen. If you do not have any responsibility for providing housing and so on, as increasingly seems to be the case with local authorities, there are going to be consequences and they have to be faced up to.

Q485 Lord Dubs: I notice you have dealt with this next question in your submission. The question is, do you think it would be desirable for there to be a greater degree of labour migration in the EU and, if so, how might it be encouraged? I appreciate your view is that mobility should be freely chosen by the workers themselves, but I wonder if you would like to develop your answer?

Mr Clark: We do not really have a position. It has been hotly debated whether or not greater or lesser mobility of labour is economically efficient. We do not see that as our core business. What we are concerned about is the consequences of it. It is quite clear that it is not a very efficient process for many workers. It could take in something like, for example, social security contributions and the benefits that you buy with them. If you move around Europe a lot it is quite difficult to keep track of what you might have paid for and how that fits in. In theory it is supposed to be seamless but I can tell you that in practice it is not. Very few people in the benefits system in Britain understand what benefits you might be entitled to as a result of contributions paid in another country before you come to Britain. For third country nationals it is even worse and it seems to be that people are paying into a social security system from which they have almost no prospect of ever deriving any benefit and that seems to us to be wholly unjust to them, but it could scarcely be said in the long run as contributing to a well functioning labour market. Our concern is really whether or not it is possible for people to do this and whether or not the benefits are evenly distributed between most countries and the workers themselves. It is clearly the case that if lots of people are paying into a social security system from which they will never ever get any benefit then they are the losers in that equation.

Q486 Lord Marlesford: In the question about the extent to which it is possible and desirable to have a common approach at EU level, on labour migration you have said that you believe there are common rules needed which prevent workers from abroad being disadvantaged by comparison to those of the host country. First of all, could you tell us a little more about what you mean by disadvantaged with some examples? Secondly, by common rules do you mean rules throughout the EU? Is it possible to have the same rules throughout the EU to deal with the particular problem you are spotting?

Mr Clark: It would be possible. In our paper we quote the Posting of Workers Directive which does have some effect in some Member States but sadly it does not have very much effect in Britain because of the nature of the collective agreements we have. None of them has been accorded the status by our own Government which would allow them to apply to workers from other countries. We have seen examples of workers from other Member States and beyond coming to work in construction where there are national agreements which set minimum terms, minimum rates of pay and a whole range of working practices which have been agreed over the years between trade unions and employers as making a better regulated and safer workplace. As the Posting of Workers Directive does not appear to apply to all workers in Britain you do see employers or contractors attempting to pay rates of pay less than what it should be. The minimum wage may be £2 or £3 an hour lower than the minimum agreed rate for the industry which means there is a disparity between one group of workers and another and that is largely determined by their nationality. That in itself is rather an unpleasant issue to produce into the workplace, but it also introduces a whole load of other questions about levels of qualifications, competence and safety and how you can intervene to ensure that people get their wages and so on. That is an example of what goes on in the workplace. When a problem arises even more difficulties can come about. If you are here on a work permit your presence in Britain is contingent on you remaining in the job for which the permit was issued and working for the employer to whom the work permit was issued. If you have a problem which results in the breaking of that relationship, either because you have to leave as a result of it being intolerable or because you are fired, for whatever reason, your permission to remain in Britain ceases to apply. In order to enforce your rights in Britain as an individual worker you have to raise that complaint through an increasingly cumbersome and long-winded employment tribunal system, and if you cannot present at the employment tribunal, which may take place some five months after the incident arose, you will not have your evidence taken into account.

Q487 Chairman: Would you be in favour of a system whereby a migrant coming here on a labour permit was able to change employment without having to return to his or her home country?
Mr Clark: A number of our unions have got much further down the line with the details of this than the TUC has as a whole. Some unions are more in favour of that sort of Green Card system. It is quite clear to us that you if you lose your right to be in the country as soon as you have lost your job you are disadvantaged and we need to address that quite seriously. We have attempted to get the Home Office to agree in those circumstances that if they were to be detected they would not be removed and the Home Office has been most reluctant to do that.

Q488 Chairman: You referred to the Posting of Workers Directive. Is this a Directive out of which the British Government have opted?
Mr Clark: No. It was scarcely necessary. The Posting of Workers Directive assumes that there are industry-wide collective agreements or regulations which provide minimum terms and conditions which should apply to all workers in that industry or sector, and in many European countries that is a wholly reasonable assumption to make because it is in fact the case. In Britain it is not because the agreements are seen as voluntary, not binding and not generally applicable. The Government could decide to make the agreements in construction, for example, to give them that status of being generally applicable because they are signed by the most representative union’s employer, but it has chosen not to do so. So it is kind of an opt out based on the fact that the volunteer system of British industrial systems makes it very important.

Q489 Lord Marlesford: You have not answered the definition of disadvantaged, although you appear to have given some examples of it. How would you describe disadvantaged?
Mr Clark: Let me give you another example. A Polish worker in Britain has been here for six months and he finds that his rate of pay is different from a British worker alongside of whom he is working. Now, to raise that as a complaint in a tribunal would almost certainly end in a broken relationship. As that Polish worker has no recourse to public funds to leave the job results in destitution. A British worker would or ethnic origin. There are consequences of trying to drive down wages by forcing workers to compete with each other and we are completely unapologetic about that. We do not think that is a benign pressure on wages.

Ms Taylor: When you come from within the EU you have no access to public funding for a year, but when you come from outside the EU it is four years. To work continuously for four years when you cannot access sickness benefit and when you are paying full tax and National Insurance is quite hard. The other thing is that the work permit in my experience has been used as a threat to some of the workers that we have come across in that if they do not work with
much more flexibility they will then be subjected to disciplinaries. We have a case of somebody having a cup of coffee before their shift and being told if they do not become more flexible they will be reported. When you are reported how do you seek recourse? Seeking recourse when you are unjustly dismissed is a big issue when you cannot sustain yourself and then you can use that as a consequence of a threat. We also have people who have left employment, having been recruited by an agency, four weeks before the end of the agreement and they have as much as 50 per cent deducted from their wages. We have people who have worked the last month without any pay. They should have the same wage. The other issue for us is if you work additional hours and overtime you should be paid the same amount of additional wages that I would be paid (I work for the NHS), but a lot of people who work additional hours are paid a flat rate and so in a way they are being disadvantaged from the process. It is sometimes not just the basic wage, sometimes it is all the additional wages that you are entitled to that you are not given.

Q492 Lord Marlesford: In reply to question 6, in relation to Community preferences, you have suggested that you do not like this very much for the reasons you have given about the possible discrimination. Is the consequence of that position that you have described that you believe that there should be no greater rights for people to migrate to work in the UK or within the EU than there is for people to migrate from third countries?

Mr Clark: There should be no greater right?

Q493 Lord Marlesford: Are you saying that a system which allows greater migration for work within the EU is itself wrong if you are not giving similar opportunities to people from outside the EU?

Mr Clark: I think the question arises from the points which are made by the Commission’s Green Paper which deals specifically with legally present people from third countries outside the EU. In other words, it is not about people coming in, it is about people who are already here. The issue that we have highlighted is that it is commonplace in some parts of the health service is that job offers can be made to people who have completed their studies in Britain but it is then withdrawn and given to someone else purely on the grounds that the other applicant is an EU applicant and this person has completed their studies in the UK is not. That is not somebody who has come into Britain in order to get that job, it is some body that has completed their studies here.

There is discrimination between sectors of the legally present population and that is what we are trying to address here. We have not said anything about moving into the labour market from outside in terms of preference, but there are particular problems with

the Community Preference policy as it applies to people already here.

Q494 Lord Marlesford: So you accept the principle of a Single Market within the EU for the migration for work?

Mr Clark: Absolutely.

Q495 Baroness Henig: The Commission’s Green Paper identifies a choice between a “horizontal” and a sectoral approach to regulating economic migration. In their evidence to us UCATT were strongly opposed to a sectoral approach. Your evidence very much supports that. You are also very opposed to a sectoral approach and you have given a very full answer. Is there anything you want to add?

Mr Clark: I do not think so, no.

Q496 Baroness Henig: You are not happy with the sectoral approach for all the reasons you set out. We can leave that one. Again, you are not happy about quotas for the reasons that you spell out. I am interested that you say that some affiliated unions favour the Green Card concept. I wonder whether you want to expand on this a little because I thought that was an interesting alternative.

Mr Clark: The reason they are in favour of the Green Card is because it is held by the worker and not by the employer; that is primarily the difference.

Baroness Henig: That is the crucial issue that really we need to focus on. Thank you for that.

Q497 Lord Avebury: You have already said in your written reply that the TUC does not have any policy on regularisation, although some individual unions do. Have you studied the effect on domestic labour of the amnesties which have been granted in certain other country countries and whether these have an impact on the domestic labour forces in those countries?

Mr Clark: I have to listen to what my colleagues in those countries tell me and by and large they are in favour of these programmes for the reason that it allows them to enforce the minimum rights that those workers ought to have. They genuinely believe that that minimises the downward pressure on pay and conditions which otherwise would be a consequence. It would be arrogant for any of us to say that we know better than colleagues in Spain and Italy how to represent their members’ interests and indeed the workforce as a whole. They have been in favour of it.

Our experience of regularization as a result of enlargement has been that it certainly resulted in a large increase in the number of problems being presented, but it has also given us some means to rectify them.
Q498 Lord Avebury: You have already said that migrant workers should have the same rights overall as EU citizens, but you also say that you have not yet got to a position on when the residents' rights should kick in. Why is that? Why do the TUC not have a policy on that matter?

Mr Clark: We do not make policy itself. We have a congress every year still and our affiliated unions decide what gets put on the agenda. Sometimes it is a matter of them deciding what is a priority and although issues relevant to migration have come up quite a lot of late, we have not gone into this degree of detail. In response to the Government's five-year plan now we will have to come up with some responses on these areas and I have no doubt that many of our members, who are themselves migrants against whom this might weigh quite heavily, will have quite a strong view to put on.

Q499 Viscount Ullswater: If I may, I think the two questions which I am due to ask have been pretty as well answered by your written evidence. I would like to go back to the answer you gave to a previous question about the permit belonging to the employee rather than to the employer. If that is so, surely you must have system views as to when it would be right for somebody coming in to seek work from another employer. Is it from the moment they set foot in this country and, therefore, what rights? Should the permit be for a certain length of time and after that time they would have to return? You have answered one question but that throws up one or two other questions as well.

Mr Clark: Lady Henig was asking me about the views of a number of our affiliates. The TUC at the moment, although it participates in some of the sector panels of the work which regulates work permits, has not come to a clear conclusion. Every time we deal with the issue the problem of the work permit being in the possession of the employer cuts up this issue of workers' rights and restricts their capacity to enforce their rights. That is a real problem. It is not about coming down in favour of timing, it is about coming down in favour of how we can best protect the workers' rights. Our principal concern here is that it is only when you have ensured that those workers have the same rights and the same capacity to enforce them that you can minimise the damaging effect that some unscrupulous employers may have on the labour market by seeking to exploit those workers. We do not think it is primarily a matter of numbers, we think it is a matter of rights. We have to keep reiterating that. We are not starting from the point of view of how we control migration but rather how we empower workers in the workplace.

Q500 Earl of Caithness: I have read and re-read and re-read yet again your answer to question 14. Are you in favour of the UK’s ability to opt out of EU immigration and asylum policies, yes or no?

Mr Tudor: I understand the need for speed in this case, but it is also important to have clarity and I am not entirely certain that a yes or no answer provides the clarity which may literally appear from the directness of the answer. I get very worried about issues which require yes or no answers.

Q501 Chairman: Can I remind you that it was an answer to another Lord in Evelyn Waugh’s book which produced the answer “Up to a point, Lord Cockerill!”

Mr Tudor: Perhaps I could try and make it as clear as possible. Our view is that we would wish UK immigration and asylum policy to be at least as good as, if not better than, EU policy. In some cases adopting EU policy would make British policy worse than it is at the moment and in other cases it would make it better. We would favour an approach which allowed us, as is the general custom with the EU legislation, to have policies which are no worse than what exists across the whole of Europe but does allow us to improve matters.

Q502 Chairman: Thank you very much indeed. May I thank you not only for that reply but for the very helpful and frank way in which you have dealt with our questions. I wish you good luck. We will send you a transcript of this session and it will be up to you to send us any comments you want.

Mr Tudor: Thank you.
Examination of Witnesses

Witnesses: Lord Brett, a Member of the House, Director, ILO London, and Mr Patrick Taran, Senior Migration Specialist, International Migration Programme, International Labour Organisation, examined.

Q503 Chairman: I am sorry to have kept you seven minutes over time. May I welcome both of you. It is particularly nice to welcome a fellow member of the House of Lords. It is not an experience we have very often.

Lord Brett: It is not an experience I have had before either.

Q504 Chairman: Thank you both for coming to give evidence. I will not repeat the subject of the inquiry which is already on the record. I really would like you to introduce yourselves and if you want to make any initial statement, either or both of you, please feel free to do so.

Lord Brett: Thank you very much. I am the Director for the International Labour Organisation for the United Kingdom and the Republic of Ireland, so my role is to liaise with and service the constituents who are the employers and the workers’ organisations of both countries and importantly, of course, the governments in both countries. My colleague, Patrick Taran, is the expert in this field. He is a Senior Migration Specialist in our headquarters in Geneva and, therefore, he will take the responsibility of making the statement.

Mr Taran: Thank you. I would like to make just a couple of quick introductory comments and then I am at your disposal for the questions you would like to pose. I note that if I am an expert or a specialist it partly reflects the fact that next year will be my thirtieth year of professional work in the field of refugee re-settlement, immigration policy and migrant integration both in the United States, my home country, and now 15 years in the international arena. In fact, it is from that experience that we note that labour migration is clearly becoming one of the singular defining issues of international policy discourse and in fact on international relations in a number of arenas and it is perhaps for good reason because migration is clearly becoming a major feature of ensuring global and regional economic progress and social welfare for people in countries throughout the world. We note, as you are well aware, that migration already makes important contributions to the economies and the social welfare in both home and host countries. We like to speak of migrants as agents of development. We note that last year the World Bank estimated that $120 billion was sent home by migrant workers to their families in home countries in developing regions of the world. We cannot yet fully define the development impact, but we know that most of the expenditures of these remittances go towards essentially improving the situations in education, health, nutrition and housing of the families and communities where people come from and that clearly contributes to the improvement of human capital in many countries around the world. We note, on the other hand, that migrant labour is an increasingly important component of workforces in Western Europe, North America and even in countries in Africa and Asia. The average in Western Europe is 10 per cent of the workforces of countries of the European Union are foreign born. We also want to suggest the future importance that immigration or migration may have by citing a prediction or a projection that our actuarial service did last year using methodology we have used over the last 10 years to predict rather accurately the future performance of social security systems. We assume that current trends will continue for the purpose of this survey to the year 2050, that is to say that demographic aging and decline, female participation in the workforce, current retirement age, relatively modest economic and productivity growth rates and relatively modest immigration rates would remain as they are. What was the result? The survey suggested that if these trends continue as they are the standard of living in Western Europe as measured by the per capita income of Gross National Product will be about 78 per cent of what it is today, that is to say 22 per cent lower. Clearly we would not suggest that immigration is the answer, but de facto the reality shows that both increased irregular and regular labour migration is already a relatively permanent feature of the economic wellbeing of many Western European countries and certainly this country. I would note that, as you may know, it has become a central question for the ILO itself. Last year the general discussion at our international labour conference focused on labour migration and migrant workers and, somewhat to my surprise, the 177 member countries that were represented there reached a consensus agreement on a set of conclusions and a plan of action for the work of our constituents in the ILO itself in the area of labour migration. These Conclusions provided a fairly comprehensive global analysis of what are the issues, challenges and benefits of labour migration. They addressed the question of what are some of the main general principles that would apply internationally to managing and regulating labour migration for the benefit of home and host countries and migrants themselves. Finally, they provided some clear direction for our own work over the next few years. I hope that gives a little bit of an introductory background to where we are coming from on this. I will be pleased to answer the questions you have
suggested in advance or other questions you may have.

Q505 Chairman: That is very helpful, and particularly helpful because one of the purposes of this inquiry is to try to establish whether there are, or should be, some common principles for migration within the EU. You have talked of the much wider problem of trying to establish common problems internationally. I just wondered, from your much wider ILO view, what would be your brief answer to the question should there be a common EU policy or could there be a common EU policy on migration?

Mr Taran: I think our basic view is that in terms of the standards that govern the conditions of work for migrant workers, some guidelines on the parameters for admission and certainly generally the upholding of existing EU policy and issues of fair treatment, anti-discrimination and so on, can and should be part of a common EU policy guideline. I believe that, in fact, the work that the European Commission has been doing in debating, encouraging Member discussion of and putting forward not only the Green Paper but the Conclusions, the recommendations and so on towards a common asylum and migration policy, are certainly steps in that direction.

Q506 Chairman: To what extent do you see migration into the EU as a contribution towards solving our demographic problems of ageing populations?

Mr Taran: Our estimate is not so much that migration is the solution to demographic problems. Where migration, particularly labour migration, is important is in addressing the increasing imbalances and lacuniae in the composition and nature of the workforce itself. By composition, I mean not only age composition but skills, low skilled needs and other characteristics that the current demographic and other trends are clearly changing as technological changes are also changing the needs for different skills in the European Union.

Q507 Chairman: Within the EU, how effective and important do you regard the General Agreement on Trade in Services?

Mr Taran: We expect it will be extremely important. Our concern is that as the GATS process moves into the negotiations for the mode four element, which specifically addresses the movement of so-called natural persons, essentially persons who will be the service providers under that mode, the question is that service providers as natural persons are human beings and we do not yet see adequate attention to the fact that as human beings there need to be certain guarantees or certain conditions set that ensure they will be treated as human beings, that their labour and human rights will be reasserted and upheld and that they will be the subject of the process rather than simply the commodified object. By that, I would pick up on the concern that, as we see it, it is extremely important for individuals who are moving in whatever category to have jurisprudence, if you will, over their permits, that they have some option to retain their documents, their permits, and to negotiate a change in their status or ability to escape employment that is not acceptable, if necessary.

Q508 Chairman: Lord Brett, although you described Mr Taran as the expert I hope you will not hold back from making any supplementary points.

Lord Brett: I have a personal aspect on this. I sat on this, which was the World Commission on the Social Dimension of Globalisation, which was an ILO inspired rather than ILO controlled body. It was chaired by the President of Tanzania and the President of Finland. I have to say we ducked the issue. We talked about the fact that for a free movement of trade, free movement of finance and the need for fair globalisation you have to have a fair movement of people. Then we suggested there should be a number of multilateral agreements to bring that about. During the course of the two years of that a couple of things hit me particularly. One was a conversation with the then Minister of Labour for India who said: “Demographically you have a problem of healthcare in Europe. We have an ability, with assistance, to provide whatever you need by way of skilled labour in that area, but what we would like is a system whereby we got it back. We could have maybe 10 years in Europe and then be able to entice back the people to enhance the healthcare system in India”. That was an interesting idea and the kind of idea that would have to be thought through because the myth that many of us have is that expansion into Eastern Europe will provide the labour which is not there in Western Europe because of the falling birth rate, but if anybody looks at the birth rates in Eastern Europe they will find they are lower than those in Western Europe, so clearly the answer is not going to come from within Europe. In that sense we have to do some lateral thinking which can only be done, frankly, looking at the problem 30 years ahead. If you look at the problem tomorrow you get tied up in all the difficulties that the media exploit. The kind of debate you are having here, which allows you to look further forward, is a valuable contribution. We have to be innovative in some of the ways we think of getting the skills that we are going to need.

Q509 Lord Avebury: Could I just ask about the 30 year study that Mr Taran mentioned in his introductory remarks. That assumed that all the existing parameters remain the same, such as retirement rates and rates of migrant labour coming into different countries. Have you got a model that...
enables you to test variations in those assumptions? For example, here we detect an increase in the retirement age in certain occupations to help deal with the shortages. Would it be possible to look at this model from the point of view of feeding in various assumptions and seeing what difference it makes to the end result?

Mr Taran: I think you pose a very valid question. It is not the first time the challenge has been raised. Our model does allow us to look at variables, but in order to do so in credible ways requires a degree of resources that we have not yet been allocated to re-running this model varying each or several combinations of the variables. Where we derive our conclusion that immigration is likely to be an element of responding to that challenge in the future is the fact that it is also clear that most Europeans who are in the labour market today, at least, are not quite willing to see the retirement age raised to 80. It is very clear if you are going to raise female participation in the workforce that will require either a further lowering of the birth rate or an increase in immigration to provide for the au pairs or the domestic support that will allow both parents to be away from the home and still raise children. One can look at other factors, such as there has never been a significant jump in either economic growth rates or productivity rates in the 50 years since the end of World War II. There have been ups and downs, and you see certain countries like Ireland that have experienced relatively higher growth rates for a few years, but generally those do not seem sustainable over a longer period of time. Our sense is that, yes, we need to do the research but probably we are still going to find that there needs to be some tinkering with almost every one of those elements in order for us to reach a potential outcome of saying at least the standard of living in 45 years will be similar to what it is today. We may not have a lot of hope that it will be much better but certainly we do not want it to be much worse.

Q510 Lord Dubs: You have partly dealt with this, but do you think that there is an identifiable EU labour market? You have talked about the desirability of safeguards for people within such a labour market, but do you think there is actually an EU labour market?

Mr Taran: In preparing to answer this question we struggled with that. The best answer I can give is the definition of the European Union itself is that it has been elaborated as a common market, a common market in goods, in technology, in services, in trade, in capital movement and so on. It would also seem to imply that it is a common labour market, however distinct from most of the other areas I have mentioned the regulation of labour remains much more the purview of national administrations than EU Regulations and Directives. I think we are somewhere in-between. We have an internationalisation of the labour market through the fact that for some 30 years there have been agreements on freer circulation of labour of second country or EU nationals, but we have also seen at the same time that the total movement of EU nationals is somewhere in the region of one to 2 per cent, it is a very small number, which is one of the reasons why it is quite clear even the potential labour movement from accession states is not going to solve current, let alone future projections of labour needs in the EU.

Q511 Lord Dubs: Do you think that a higher level of labour migration, either globally or within the EU, would in itself be desirable?

Mr Taran: I would answer that it is probably inevitable. Migration rates as a whole are increasing. Clearly what we have seen in our own research in southern Europe is that the increasing presence of migrant workers is largely filling jobs that are not even contended for by national workers, they are filling the low paid, the low skilled, what we often call the 3D jobs—dirty, dangerous and degrading. Given that you have some degree of social welfare and unemployment compensation, and higher expectations by European nationals, there are very few natives, if I can call them that, who want to take these jobs and yet they still exist. You cannot export the construction of your buildings here in London; you cannot export to a certain degree the healthcare of aged people unless you want to start exporting your aged; you cannot export cleaning services. There is still a significant degree in the European Union to which countries are committed to maintaining some agricultural production on their own soil. Agricultural work is one where there are very few natives willing to do it. Our sense is that the need is going to increase and the supply, if I can put it in those terms, is not going to significantly increase, in fact it will decrease if you look at the current projections that suggest that Italy’s population in 2050 will be 25 per cent less than it is today and the median age will be much higher. I think the question is how you manage it and whether you consider it desirable or not, it is going to be there in some degree.

Q512 Earl of Listowel: You mentioned healthcare. I recognise there are some jobs that British people are not wanting to do and maybe never will want to do, but I am concerned that, for instance, in healthcare and care for the elderly one does not end up in a situation where poor conditions and poor training carry on because of the supply of migrant labour that is partly due to that, whereas in some other countries childcare, for instance, and that sort of care work is much better recognised, much more professional, the input into the person being cared for is more highly
skilled. Do you recognise that as a concern, that one needs to be careful? Maybe the hardest things, crops or buildings—buildings are slightly different again—are maybe something that is more amenable to that response to the problem, but looking for a response to the problem in terms of healthcare for the elderly, or care generally, by looking at people who are willing to do dirty, dangerous and so on jobs from abroad, is there not a danger of lumping those three together, if you see what I mean?

Mr Taran: I think there is a risk, you are right, but I would note two nuances in responding to your question. One is the premise of treatment of migrant workers, those of regular status, is that they be in equal conditions to national workers. There are a variety of reasons for that. One is you do not want to encourage unfair competition by suggesting there is a group that can be treated worse and paid less and, therefore, encouraging employers to say, “Let us go there because we have to lower our costs”. Drawing from that, I think the skills that will be required to provide good healthcare have to be validated and they have to be validated both through training and pay. The other nuance I would like to suggest, particularly related to healthcare workers, is we are engaged at the international level in quite a discussion on the other side of recruiting healthcare workers from countries in the south and its consequences locally. I have been in southern Africa recently and one of the stories told to me was that half of the wards in the national public health hospital in Gaborone, the capital of Botswana, have been closed down primarily because there are no longer nursing staff to work on those wards because they have all been recruited to the UK and other western countries. Where that is particularly a poignant challenge is the fact that Botswana is one of the countries that is facing close to a 30 per cent infection rate of HIV/AIDS and, therefore, has a very large population in need of hospital and healthcare, more than might be the case in some other situations. That simply comes back to looking at the fact that migration is necessarily an international phenomenon. What you suggest or what you propose as your need, or increased need, may have consequences elsewhere. We might come back to that because I think there was a question that one of you wanted to look at, but I will leave it there.

Lord Brett: I think it is a question of national choice. In Switzerland, childcare is very, very, very expensive and of a very, very, very high standard where the number of staff required for a crèche, for example, is very high in terms of carers versus those to be cared for. It seems to me you make a national choice and put a priority on it and a premium on it. It has to be said in the United Kingdom—I have a daughter who is manager of a healthcare home—whether it is the state or the private sector, we have not put a premium on it sufficient to skill up the workers. Maybe we want the workers but we want them on the cheap. Accreditation and higher standards really mean higher recompense and that means higher costs, and unless we face that—I speak more as a Brit now than I do as an international civil servant—each country has that choice and once we make those choices we should not blame migration or anything else for the choices we choose to make.

Q513 Baroness Henig: What do you think should be the role of state authorities in regulating labour migration? How much regard should they have to protecting the domestic workforce?

Mr Taran: This is a reflection of our own history and the experience of our constituents. We think that state authorities should have a significant and visible role in both regulating and managing labour migration, all the way from determining admissions based on assessing what the labour needs are through labour force surveys to setting the conditions of entry, the conditions of employment, through labour inspection, conditions of work, pay and so on, to uphold the fair and equal treatment that I spoke about earlier. The second part of your question was?

Q514 Baroness Henig: The second part was about protecting the domestic workforce.

Mr Taran: Our general premise is that the best way to protect the domestic workforce is to regulate migration and to regulate conditions of work across the board in the economy. We have some stories and evidence that suggest that when you regulate migration, you ensure people are treated equally and you undermine or disincentivise the possibility that unscrupulous employers will try to encourage the employment of irregular migrants precisely in order to lower conditions which then is immediately going to lead to a lowering of protection and a lowering of standards for the domestic workforce which I think is a concern which I heard earlier here today and certainly we see is a general concern. The other side of that is that the inspection element in upholding conditions across the board also reduces the possibility that we see actually happening in many countries that in certain sectors where there is very little labour inspection or very little control of whether conditions are actually upheld, you have situations that are just abominable. I would suggest, from my intimate knowledge of the recent events in this country, that the factors that led up to the adoption of the Gangmasters Act, the Morecambe Bay tragedy and others, are good examples of what happens when you do not have adequate regulation and how migrant workers become not only exploited, but even encouraged to come in in an irregular status in order to do the work which, if it can be done at a
lower cost, some people will always try to do no matter what the law says.

_Lord Brett:_ I think the Gangmasters Act is innovative and it does lend itself, I think, to extension. It is not just the industries which are covered by the Gangmasters Act which actually see exploitation of migrants. If you look at the construction industry, if you look at the Kilburn High Road on any morning, you will see the white vans picking up migrant workers, some legal, some illegal, taking them to building sites where I am told the going rate paid by the contractor to the sub-contractor is about £10 per hour, whereas the amount of money being paid to the individual who is in the white van is half that amount or less and sometimes not paid at all. It seems to me that once the regulations of the Gangmasters Act are in place, it would be very useful to look at whether it could be extended to areas where migration, whether it is legal or illegal, is being exploited and it would be an innovative Act which could be made. I think, more widespread than just the two narrower industries that it covers at the moment.

**Q515 Baroness Henig:** Is there scope for extending freedom of movement arrangements? We understand that the ILO is involved in a project concerning freedom of movement in the EuroMed area.

_Mr Taran:_ I think in fact that greater freedom of circulation of labour will be key to future development in and throughout Africa, in Latin America and in Asia, as it has already been here in Europe. You refer to a project which we are implementing in not only the EuroMed area, but West Africa and East Africa which is financed by the European Union which in fact is emphasising and focusing on assisting, for example, the East Africa community which is Kenya, Tanzania and Uganda to put in place this year a protocol on the free movement of persons. That will in some ways, I think, echo what the EU did a number of years ago. They have begun to recognise that as the common market of East Africa came into effect at the beginning of this year with the implementation of the Customs Union, they have free circulation of capital, goods, technology and services, but not of labour and they are beginning to see some of the same contradictions that we referred to earlier, that you have certain skilled workers in Kenya that are not needed there, but are needed in Uganda and so on. Similarly, we will be convening next week in Dakar a ministerial-level conference among eight West African countries with the express purpose of mobilising or revitalising the protocols that were actually adopted 30 years ago in the context of the Economic Community of West African States, ECOWAS, but which have not adequately been implemented. Again even today, despite the turmoil in the Côte d’Ivoire, the Ivory Coast, something like 25 per cent of the entire workforce of that country until recently was producing cacao, which is the raw material for cocoa, and it was provided by Malians, residents and others, who were living short- and long-term in that country. Clearly the scope for increasing that circulation is there and again we need to look at the mechanisms of how that can be done. One of the particular efforts we will be looking at over the next five years in the EuroMed context is how to increase the circulation in that area precisely because the EuroMed accords, already agreed between the Mediterranean European countries and the Maghreb countries, call for a gradual implementation of the free market area by 2010 or so. One of the elements that has been the main concern of the Maghreb countries is, “If we are opening our markets for greater access by European goods and services, our product is labour, so we would like to see greater access at least in southern European countries in exchange”.

**Q516 Lord Marlesford:** Your answer to the domestic workforce question was interesting, but from what you are saying in answer to that second question, does it mean that the Community preference for labour is really meaningless because the amount of people who are prepared to move is very small and, therefore, in order to get the type of migration you are talking about, it should be put much wider and people should be able to recruit virtually from wherever the skills they require are found?

_Mr Taran:_ I would suggest the term is inadequate and it does lend itself, I think, to extension. It is not just the industries which are covered by the Gangmasters Act which actually see exploitation of migrants. If you look at the Kilburn High Road on any morning, you will see the white vans picking up migrant workers, some legal, some illegal, taking them to building sites where I am told the going rate paid by the contractor to the sub-contractor is about £10 per hour, whereas the amount of money being paid to the individual who is in the white van is half that amount or less and sometimes not paid at all. It seems to me that once the regulations of the Gangmasters Act are in place, it would be very useful to look at whether it could be extended to areas where migration, whether it is legal or illegal, is being exploited and it would be an innovative Act which could be made. I think, more widespread than just the two narrower industries that it covers at the moment.

**Lord Brett and Mr Patrick Taran:**

*20 July 2005*
they were offered an opportunity to do so to western Europe. People like to be with their families, their culture, their home, where their context is, and most people we see moving from elsewhere in the world do not move because they want to or simply to get a better life here, but they move because they do not have a choice. There is no job at all, let alone a poor job where they might want to look for something better. One little piece that I would just throw in here is that the ILO estimates that every year worldwide 40 million people join the workforce of the world, net increase. The job creation rate replacing jobs that are lost and changed and so on is almost near the global level. We are seeing an increase of people who do not have access to any kind of employment in the formal economy around the world, notwithstanding our figures which suggest that only about two million people are moving from the south to the north today on an annual basis, immigrating and looking for work, so there is a much bigger problem that still has to be solved elsewhere.

Q517 Chairman: That is very interesting.
Lord Brett: If you looked at the millennium development goals which are supposed to be implemented as policy by 2015, the word “employment” and the word “jobs” do not appear, there is not one reference. How are we to eradicate poverty when we are not in a position to engineer by whatever means the creation of those jobs, and that is on a global scale? If we do of course, we then just increase the problems we have here in Europe when the migrant labour force one is seeking to get is engaged elsewhere.

Chairman: Lord Caithness, I am sorry, I shot one of your foxes!

Q518 Earl of Caithness: That is all right, I have got lots of other questions. Going back to your projections and looking ahead, just taking the UK, where are the pinchpoints going to be in 30 years’ time when we have this shortage of labour? Is it going to be skilled, the high-skilled, the low-skilled, the unskilled, men or women, or are those the right categories even for considering this problem? If our report is going to be a help for politicians to plan for the future, where should we be thinking that there is going to be the major problem?
Mr Taran: Well, I will have to hazard a bit of speculation rather than give you hard facts and projections specific to the UK. Certainly it seems to me from what we are seeing over the last 20 or 30 years in Europe and in other industrialised regions that there will be a need spread from the most high-skilled, particularly in information and computer technology, to the low-skilled service jobs. Clearly areas that we will have to be looking for are services, domestic service, food and commercial service, hotel and tourism service workers. These are all areas that I can just suggest will probably be areas of need or increasing need no matter what educational and demographic policies are pursued in this country. The other difficulty we see in the high-tech area is that most often it takes quite a long time for national educational systems to change priorities and to change emphases in terms of skills that they are sharing while at the same time the rate and dimension of technological change, as we have just seen where five years ago we hardly used mobile phones and now everybody uses them, they change and the needs for the technology to do those kinds of things seem to be changing much faster than often the national systems can provide enough people to meet those needs. Now, the challenge there is one of how you ensure that you can draw from other countries that may have advanced in one particular area without draining all of the skilled people that that country will need to move forward. It comes back to the response I was making about healthcare workers, but it becomes a broader issue. Some countries, like India, have foreseen the need much earlier than others and produced more IT workers and programmers and specialists than they can absorb into their domestic economy, so they have been the net supplier and have basically built Silicon Valley in California. If you go now to Dublin, you see a remarkable number of Asians who look like they are professionals as well as a remarkable number of Asians who are probably service workers. The point is that we can probably presume a range of needs across a range of specifications and levels. Beyond that, I would not be too precise yet and I do not even know if the models exist to be able to predict because technological changes are happening so fast.
Mr Taran: Could I just jump in and add to that because I think that suggests the extent to which regulation, notwithstanding the laws of supply and demand, is pretty integral to migration movements as well as to other aspects of a modern-day globalised capital economy and that is to say that IT technicians can write their tickets precisely because the supply is sufficiently limited and the demand is sufficiently huge to engender pretty fierce competition. A good example of what happens when you are not willing to
play the competition game is the German experience four years ago when they first issued their quota for, I think it was, 10,000 IT workers and it took them two years to get 3,000 and then most of them did not stay because the German initial restrictions on IT were such that they could not bring their families, they would only get two-year permits and they would have to leave at the end of the period, while at the same time they were being offered a Green Card and permanent residence in the US, so you can see what happens when the basic laws of supply and demand kick in.

Q519 Earl of Caithness: That brings me on to my next question which is: should countries, particularly Britain in our case, regulate economic migration and, if they should, should it be on a horizontal or sectoral basis?

Mr Taran: I think yes, there has to be some regulation until conditions are similar enough that people between different regions of the world have the option to stay at home rather than be compelled to go somewhere else. Some regulation is needed simply to say, “You need to encourage the admission and provide the permits and provide the protections for those workers that are particularly needed in your economy”. On the other hand, I do not think we are quite ready, although there is some discussion in international circles, about maybe it is time to start talking about free movement of workers or free movement of people. I think that may be a little bit farther off and let’s look at developing the regional mechanisms. As far as the question of how to make the selection, how to move people, I can cite the Canadian experience where they moved from having a number of years ago admissions that were pretty specifically tied to identified needs sector by sector, saying, “What we really need is the admission of people who have a level of education and skills or a range of skills, like a degree, that can be applicable in different places”, because again you might admit people in one year and 10 years ago you might have admitted people for steel work and now steel work in the last 10 years has become more automated or delocalised, so if you have somebody who is admitted solely on a very specific basis, it may not be very helpful. Let me digress slightly to suggest what we are actually being presented with by some of our European member governments. Both the Italian and Spanish Governments have approached us recently to ask us to help set up a kind of intake and assessment process in countries like Equador, Morocco, Tunisia, Egypt, Romania and Dominican Republic to begin to identify who are the people and have in some way, obviously in order to survive, built up relationships, built up roots in that country and what are the skills that might be available for work in a foreign country with the idea that over time what we would be trying to do is assist the governments of the home countries and the governments of Italy and Spain to link that data with the national labour force surveys and their national employment registers or national employment job registries in order to begin to see where they can either admit people as groups because we know that there is quite a need in this area or even, for some a preferred option, to link jobs and specific offers with specific candidate profiles. Now, that is a medium- and long-term approach, but I think it comes back to the question you were posing because we do need to look at mechanisms to identify more efficiently and link labour supply and demand and to make sure that it is linked so that when you are admitting people, there is some prospect they will find jobs if they do not have them and that you will be meeting the more immediate needs of your labour market without, on the one hand, bringing too many people for one area and not enough for another.

Q520 Lord Avebury: I wonder if States should consider the inputs from regularised migrants as part of their national labour force surveys. You have been asked to help with these studies in particular countries, providing specific skills for EU States, but in those studies would you take into consideration the inputs they will get from regularised migrants if they decided to go down that route and does the ILO have any general views on the desirability of these periodic amnesties and their effects on the labour forces of the countries concerned?

Mr Taran: Your first question I find particularly interesting and coincidental precisely because the proposal we are discussing with the Spanish Government is specifically related to their recent regularisation of some 700,000 migrants. Two important components of the project that we may be developing or may be implementing would be, one, skills assessment and training to the workers in that specifically tied to identified needs sector by sector, but to go somewhere else. Some regulation is needed period of their national labour force surveys. You have been people who may want, instead of going doing that route and does the ILO have any general views on the desirability of these periodic amnesties and their effects on the labour forces of the countries concerned?
not helpful for economic regulation and it is not helpful for protection and social cohesion in the community to have significant populations of people who are not protected by the law, who are not covered by social insurance, who are not paying into the tax system and who are subject, because of their lack of status, to being told, “I am not going to pay you minimum wage. Take what you get and be quiet or we will call the immigration service and you will be out of the country the next day”. Therefore, the personal sense I would offer is that regularisations, particularly of populations that have been able to survive, and that is a pretty big population in a number of countries, is, in the best interests of the State, it is in the best interests of the economic progress or economic productivity and it is in the good interests of social cohesion.

 Lord Brett: The reason why the ILO has not developed policy in this area is because it is highly political and the ILO itself is a highly political organisation with 25 per cent of the seats at the conference and in the governing body held by the employers of the world, 25 per cent by the trade unions of the world and only 50 per cent by the 177 governments, so getting a consensus on something like this is going to be quite difficult. One anecdotal piece of evidence that came to me when I was on the Welfare Commission was in evidence from the International Organisation of Migration and I asked an IOM official, “Which country has had the most successful migration policy in the post-war period?” and he said, “There hasn’t been one. However, the US gets nearest because what they have is a policy that does not seem to work and they only have amnesties and irregularised people”. I think that for much of the argument that Patrick has put about regularising, as I know from the Minister of Colombia whom I was talking to a couple of years ago in Spain, there were 70,000 Colombians in Spain and it was thought helpful to both governments to regularise that situation and give them to Spain, given Colombia’s other great export, apart from labour, which is one which we are not quite so keen on. I think there is no formal policy in the ILO, but there is a lot of sentiment in many of the parts of the house and I think amongst the members at the conference for regularising people who are being exploited.

 Chairman: Now, I think we should move on rapidly, but happily, to the area in which you are, I think, probably the world’s leading expert, namely the rights of migrant workers. Lord Avebury?

 Q521 Lord Avebury: Can I ask you about the Commission’s Green Paper which devotes very little attention, as you know, to the rights of economic migrants or to the obligations of employers. Have you any comments to make on that and what aspects of migrants’ rights do you think it would be appropriate to cover at the EU level?

 Mr Taran: My first comment is that we understood the Green Paper to be trying primarily to provoke debate on the economic dimension and the economic contributions that immigration may be, shall we say, responsible for in the near and further future of European Union economic growth and progress. I was disappointed that they did not say at least that you have to also consider the conditions that the people you want to bring, or that you may want to bring, also have to be a factor in the elaboration of a policy package. If I can go a bit further on the question of what would be a framework, I note that there are three international instruments that basically define what would be considered the basic human and labour rights of migrants. You have the ILO Convention 97 on Migration for Employment which, I am happy to say, the UK was one of the leaders in being among the first to ratify in the early 1950s and that, by the way, establishes both equality of treatment and suggests parameters for when, for example, after two years a person might be able to change their employer. You also have Convention 143 of the ILO which looks more particularly at dealing with issues of irregular migration and then integration of those who stay, and then you have the 1990 International Convention on the Protection of Migrant Workers. I would note just quickly that some 71 countries have now ratified at least one of these instruments and we consider them together a kind of charter on migration management because they not only deal with rights, but they deal with the conditions and parameters for inter-state dialogue and co-operation on migration management, on reducing irregular migration and ensuring, if you will, co-operative agreements between States on migratory movements. I would hasten to note that there is a broader set of rights that apply universally. You may have heard about the ILO’s Declaration on Fundamental Rights and Principles of Work which specifies eight basic conventions against discrimination, against forced labour, for gender equality, for—

 Lord Brett: For freedom of association and collective bargaining.

 Mr Taran: Yes, thank you.

 Lord Brett: It is engraved on my heart!

 Mr Taran: The Declaration which was adopted by all Member States of the EU basically says that these fundamental principles apply to all persons, all workers in all societies and, therefore, we would suggest that they be applied to migrant workers regardless of status. International jurisprudence, particularly in the ILO, but elsewhere in the Inter-American Court for Human Rights, has upheld the notion that, by and large, international labour standards across the board also apply to all workers
Chairman: Lord Ullswater, I think Mr Taran has probably dealt with your first question.

Q522 Viscount Ullswater: He certainly has and I think very comprehensively too. Perhaps I could ask whether migrant workers should have the same employment rights as domestic workers and I think you have already touched on that considerably, but you have just mentioned in your last answer perhaps a timetable, so when should they be free to change employers and to seek work perhaps in another Member State? We are wrestling with this one, I think, at the moment and a lot of people seem to have various ideas as to whether they are going to avoid immigration control by making it too free or whether it is too restrictive because they want to protect their domestic workforce, so I would very much like to hear your views.

Mr Taran: In fact, in reply to the first part of your question, I would note that the ILO Convention 97 which I cited earlier is very specific in saying that regular migrant workers should have, or should enjoy, equality of treatment in employment and occupation and related issues with national workers. In a sense, I would almost answer the question for the UK because, as a party to that Convention since 1953, it should be essentially the law of the land. The second question is a little bit more nuanced in that Convention, but that Convention also deals with it. I think it suggests or indicates that after a period of two years, regular migrant workers, I think it is stated as something in the order of, “after continuous residence and employment in a particular country” should have the option to change employers or seek alternative employment as a matter of course. However, if you will, it should have the option and it does not say clearly that that is an iron-clad rule and some countries, in ratifying the Convention, have said, “Well, our customary national practice is three years or four years, so we take that particular provision under advisement”.

Q523 Viscount Ullswater: What about seeking work in another Member State because that almost predicates that each Member State should be able to abide by that two-year qualification period, otherwise they move States and suddenly find that they are illegal?

Mr Taran: Well, that poses for me three questions, and one is: to what extent is there a European labour market? At present, that kind of regulation remains more in the purview of States and clearly so far what is established is that if you abide strictly by the provisions of this instrument, you would suggest that there could be movement within that particular State. Now, I do not have a clear answer to that question simply because this is one of the issues which I think is part of defining where the European Union itself is going on common labour policy and how it is responding to the fact that labour needs change pretty quickly. I think one of the concerns in the Green Paper is to say that once someone is admitted on a regular or permanent basis for reasons of labour, they are like nationals of the European Union and part of that European Union workforce rather than simply a national workforce and that if you are going to have labour where capital needs it, you may need to include a broader pool of labour because you have so few European Union nationals moving from one country to another. I think it is maybe much more a question of political judgment and economic assessment than that there is any hard-and-fast international guidance on it.

Q524 Lord Marlesford: I think there is just a final question which is whether you feel that the EU should compensate third countries when they take their skilled workers who have been trained at public expense? It is a very controversial question and I am thinking of, for example, doctors and some other health workers.

Mr Taran: Well, Lord Marlesford, I very much enjoy that question because it is one of the burning issues in the international discussion and particularly right now in negotiations both in the ACP process and between the African States and the European Union precisely in part because of the questions of the bringing of health workers. There, I am not sure that “compensation” itself is quite the right word, but one of the concepts we have been toying with is the idea of suggesting that international aid, particularly to education, should in some way be related to the number of persons with particular skills admitted for a particular country to another country so that if indeed you are taking advantage of the investment that a particular country’s national education budget has made in training health workers, that does not become a net and unfair loss to the country of origin because you are saying, “Okay, we recognise that some country somewhere has invested in the $10,000, $20,000 or $100,000 which it has taken to provide this person with specialisation, so we will ensure that the education system in the home country can, on the
one hand, produce enough people for domestic consumption, if you will, and, if it is of interest, can produce more for international needs”. It might be in some ways more interesting simply because you do not have a lot of candidates for nursing education in the UK to allow the possibility for people to come from elsewhere, but it cannot be at the expense of draining the national education budgets.

Q525 Chairman: Do you know whether the British development aid applies to the horrific problem you described in Botswana?

Mr Taran: Well, we are directly in touch with DFID on this and other issues and I am sure Bill can elaborate, so what I will simply note is that I think DFID itself was involved in promoting this recently adopted Commonwealth Code on Ethical Recruitment which we think is an exemplary practice that we would hope could be replicated elsewhere.

Lord Brett: In general terms of course the problem in Botswana and a number of other African countries is the HIV/AIDS pandemic. Here of course the UK has made a major financial commitment and DFID, in the organisational terms it has to, does its part for each individual country, so there is in a sense a direct line there. The ILO itself is part of UN-8, but our involvement is more on the social vaccine side, in other words, prevention in the workplace. We found in South Africa, for example, mineworkers would not listen to managers, but they would listen to the South African Mineworkers Union and now in South Africa, in the Pretorian car factories, HIV/AIDS anti-viral drugs are given as part of health and safety which avoids the stigma which goes with so much of this, so I think in those terms the UK is a very active player on the international scene and one with some considerable influence.

Q526 Chairman: Thank you very much. I think we have really tried your patience for probably too long, but I would like to thank you very warmly for the extremely helpful and professional way you have dealt with our questions. If I may say so, I think we have been privileged to have you here to talk to us. I believe and hope that you are both joining me for lunch later.

Mr Taran: If I may, Lord Wright, can I just thank you also for this invitation and opportunity to exchange views. It, for me, was also an honour and I feel privileged to have been here. I would also like to leave you something. I have prepared some very brief material on the projects we discussed and so on which I will leave with the Clerk and also, for the records of the Committee, our anthology on labour migration which was a comprehensive study we put together last year.

Chairman: I shall look forward to reading it. Thank you very much.
Written Evidence

TAKEN BEFORE THE EUROPEAN UNION COMMITTEE (SUB-COMMITTEE F)

Memorandum by the British Hospitality Association and from Business In Sport and Leisure (BHA and BISL)

1. The British Hospitality Association is the national association for the hotel, restaurant and catering industry, representing some 40,000 establishments with over 500,000 employees and a total annual turnover of around £20 billion.

2. Business In Sport and Leisure is an umbrella organisation for over 100 companies in the private sector sport and leisure industry. Members of BISL listed on the London Stock Exchange have a combined market capitalisation in excess of £40 billion.

3. Total employment in the hospitality and leisure industry is around two million (roughly 50–50 part time/full time and two-thirds female: source—Labour Force Survey). At any one time, we estimate that the industry has around 100,000 vacancies (source: Jobcentre Plus data). The main vacancies in hospitality tend to be for kitchen porters/catering assistants, bar staff, chefs/cooks and waiting staff.

4. The industry workforce tends to be young (for example, around 60 per cent of restaurant and pub workers are under 30), but demographic trends have made young people a comparative rarity. The industry has therefore needed to fill the recruitment gap from overseas.

5. In recent years, there have been several “carrot and stick” initiatives to help the UK industry address its labour shortage and to discourage illegal working. The BHA was a member of the Home Office’s Illegal Working Stakeholder Group during the previous Parliament. The main carrot was the Sector Based Scheme, offering work permits to non-EU nationals taking up lower level jobs in hospitality. The Scheme was quota limited: 10,000 in 2003–04 and 9,000 in 2004–05. The reduction reflected the number of entrants in the first year of the scheme who came from the “A8” Eastern Europe EU accession countries and who could enter the UK from 1 May 2004 without requiring permits.

6. The scheme was and remains very helpful to the industry and we have pressed the Home Office to continue it, but a quota of 9,000 will not make more than a dent in a total shortage of around 100,000. Clearly, A8 arrivals since May 2004 have helped: we estimate there are around 30,000 currently working in our industry (source: Home Office Worker Registration Scheme data). However, the rapid growth of the tourism industry in most of the A8 countries means that their citizens are unlikely to make an increasing and long term contribution to the UK hospitality and leisure industry.

7. On the “stick” side of the equation, the government has tightened up considerably on the prevention of illegal working, with new rules on the documents to be checked under section 8 of the Asylum and Immigration Act and, to come, the prospect of automatic fines for employing illegal workers.

8. It is on the basis of the above factors that we are responding to the Commission’s Green Paper.

9. The Sector Based Scheme took some time to set up, even after it was first envisaged in the Secure Borders, Safe Haven White Paper in early 2002. We are sceptical in the extreme about the suggestion that a Community wide approach could deal in a timely and efficient way with sectoral shortages.

10. We are also doubtful about the impact of a Community approach on such schemes as the Working Holidaymakers Scheme for young Commonwealth citizens.

11. We believe the United Kingdom took the right decision (along with the Irish Republic and Sweden) to admit A8 nationals without using the transitional provisions to delay admission. Clearly, if a Community wide policy were to be in force when countries such as Bulgaria, Romania and Turkey join the EU in due course, that could have an impact on the UK’s ability to operate an “open door” policy for their citizens.

12. We do not object to “Community preference.” Indeed, the Sector Based Scheme has a requirement to advertise on the EURES system as a central feature, though we understand that some businesses seeking work permits for prospective employees had difficulty in understanding and conforming to this requirement. We have no firm view on whether third country workers already resident in the EU should have precedence over those newly arriving. We would be concerned about any increased bureaucracy that this could create.

13. Generally, third country workers should be treated in the same way as long-term residents. For the most part, they already are, with the most significant employment rights (National Minimum Wage and Working Time Regulations plus laws on discrimination in the workplace) applying regardless of origin. The exception...
to this relates to the ability to change job or employer and we would be inclined to the view that, where a time
limited work permit applies, it is not unreasonable for restrictions to apply.

14. We would be wary of an EU-wide amnesty policy, which might lead employers previously penalised for
employment of illegal workers to feel unfairly treated.

15. We do not think compensation to third countries is appropriate in our industry where the workforce is
often mobile. For example, we expect many A8 citizens now working in our industry in the UK to return home
to good jobs in a growing domestic industry. In short, their stay in the UK will have been beneficial to them,
to the UK industry and to the development of the industry in their own countries.

16. We should be pleased to give further evidence, if requested.

Martin Couchman
Deputy Chief Executive, British Hospitality Association for
British Hospitality Association and Business In Sport and Leisure
May 2005

Memorandum by the Cleaning and Support Services Association (CSSA)

The following responses refer to the questions raised in Document 5436/05—Inquiry into the Economic
Migration to the EU. The responses summarise a short survey of views of members of the CSSA and
incorporate CSSA experience as a member of the European Federation of Cleaning Industries (EFCI).

1. Although it may present considerable advantages, we have some doubts on the feasibility of a sectoral
approach to the access of third country nationals to the labour market. First of all, it would mean that each
industry would need to evaluate its individual requirements in this area, which may be quite difficult,
particularly to contribute to an overall total. Furthermore the sector would then have the challenge of
retaining these new employees in the sector. However, industries can play a major role in the integration of
migrant workers on their respective labour markets in other ways, in close cooperation with public authorities
(language training, basic professional training, etc).

2. In case of immigration, it would be quite difficult to establish quotas as a function of the country of origin
and to justify them. However quotas may be the only way of establishing control over migration from third
countries as a whole. The management, control and costs of any quota system should be borne by the EU.

3. Self-employed individuals should be treated in the same way as employees. However self-employment is a
very complex issue. In certain countries (like Belgium or Germany) self-employment in the cleaning industry
is one of the easiest ways to avoid the application of social legislation and collective agreements (instead of
employing X workers, a contractor would sub-contract to X self-employed persons). However, self-
employment is the only way to start a business and should therefore be encouraged. There is ample evidence
to support this view already in the UK cleaning industry from UK nationals. Certain countries, like Belgium,
have established rules of minimum competence to be achieved before creating a company (basic language
skills, basic knowledge of the legislation—social, accounting, taxes etc). This may be a way forward.

4. There have been quite important migration flows of nationals from “applicant” counties in the EU in the
past. Surveys from the EU Commission show that these flows have decreased significantly when approaching
the formal EU membership of the concerned countries. In summary one may say that, when some eastern
European nationals recovered the freedom of movement, they “escaped” from very difficult economic
situations. The economic situation in these countries having quite significantly improved, this need to find
work abroad disappeared. Some experts even foresee that a number of migrants who came to the EU 15 may
go back to their country of origin as economic conditions improve. Problems regarding new member states’
nationals are more linked to the risks of “social dumping” (ref the debates on the EC draft directive on
services) rather than to migration as such.

5. Limiting it to long-term residents may be quite difficult and put persons in absurd situations (once you have
legally entered a country, how could you survive X years before being in a position to benefit from this
preference?).

6. If not harmonised, measures regarding regularisation should be at least strongly co-ordinated between
member states. For instance, Spain has recently “legalised” thousands of illegal workers. According to the
Spanish Government, this only concerns access to the Spanish labour market. In practice, this is unrealistic.
These persons can (rightly) use their freedom of movement within the EU.

7. We would not recommend this approach. The diverse range of current migrants and applicants to member
states results from culturally historic links and one member state may view some migrants in a completely
different way from another member country.
8. This would result in unfortunate side effects. It could encourage mal-treatment of citizens of a third country in order to rid themselves of certain “undesirables” whilst reaping financial reward for doing so.

9. Undoubtedly we should consider our own national interests. Our welfare system is probably the key driving force in attracting third country migrants (there are many other free-speaking states today) and recent events demonstrate that, if we are not careful, we will take on more and more responsibility for the world’s health and welfare problems.

Martyn Vesey
Director General
CSSA
May 2005

Memorandum by the Commission for Racial Equality (CRE)

1. The CRE welcomes both the opportunity to contribute to the debate initiated by the EU Green Paper and to the discussion on labour migration generally.

INTRODUCTION

2. The Commission for Racial Equality (CRE) was established in the UK under the Race Relations Act 1976 with the duties of working towards the elimination of racial discrimination and the promotion of equality of opportunity and good relations between persons of different racial groups.

3. The following briefly lays out our key concerns before addressing the Committee’s questions.

SUMMARY

4. Migration is a complex and multi-dimensional debate: policies on labour migration cannot be separated from policies aimed at the integration of new communities. The references to “rights” and to “accompanying measures” in the EU Green Paper are therefore welcome but in the view of the CRE, must be seen as more integral to policy development.

5. The CRE considers economic migration to the EU to be positive and to the benefit of the EU. However, migrants remain among the most vulnerable groups in the EU, and any economic benefits of labour migration must go hand in hand with a policy approach that ensures integration is a priority.

6. Integration encompasses both the greatest possible equality of access (to information, advice, jobs, services and rights) and to the promotion of good race relations. In the UK, the Race Relations Act 1976 (as amended in 2000) places a positive duty on public authorities (including national and local government, housing and education providers) to prevent unlawful discrimination, promote equality of opportunity, and promote good race relations. This may take the form of “preparing” settled communities for new arrivals or measures to prevent and resolve conflict, as well as ensuring that migrants have access to the services to which they are entitled.

7. The Race Relations Act also protects migrants from race discrimination at work. Yet the evidence suggests that there is some way to go before migrants in the UK (and in other parts of the EU) get the protection and support they need to achieve economic, social, and cultural integration. The CRE suggests that the EU should place a higher premium on addressing integration concerns in its labour migration policy.

8. The public debate on immigration across Europe is often characterised by xenophobia and a negative framing of the issue. This is damaging to good race relations and hampers the integration of new communities. The solutions to this issue are complex and achievable only with a long-term commitment to change. The public debate is a crucial issue for migrant communities but also for the necessary acceptance of labour migration policies across the EU.

9. Finally, addressing racial discrimination, which is also one of the key barriers to the integration of migrants, is core to our work. However, the Green Paper does not appear to give it the attention it deserves and measures tackling discrimination should be more strongly reflected in policy.
Approaches to labour migration

10. The CRE favours an approach that provides migrants, as far as possible, with rights in order to underpin the integration process. The CRE suggests that of the options proposed, the comprehensive legal framework provides the best guarantee that migrants can enjoy rights to settlement and integration. This would be more in line with “common rules” suggested by Question (i).

11. A further concern is the lack of reference to employers within the models proposed, either in terms of the process (quantifying labour demand), or to any undertakings employers should have vis-à-vis migrants.

Admission procedures

12. The admission procedures for paid employment offer a number of different models. We would make the following observations.

13. Firstly, admission procedures must be fully cognizant of the broader integration agenda, including the Common Basic Principles on Integration agreed under the Dutch Presidency in November 2004. The target and the level of integration must be addressed. Temporary migrants—for example seasonal workers—must be included in “integration” equations during the period of their stay. We suggest that neither third country nationals nor EU citizens moving from one EU country to another can be ignored for the purposes of integration (as they may face barriers in accessing jobs and services and in their relations with other residents). Integration must also be mainstreamed, as far as it is possible, into admission procedures, for the benefit of good race relations.

14. In that context, the CRE proposes that every migrant worker should be issued with a clear statement of their rights and responsibilities alongside their work visa. This would benefit not only the individual migrant but also employers and service providers. The statement would also go some way to reducing the complexity and bureaucracy of national systems.

15. Second, when introducing new policies, the CRE suggests an “impact assessment”. By “impact assessment” we mean that a policy should be assessed for its potential impact on minority communities and if there is an adverse impact which cannot be justified, this must be addressed.

16. The process of impact assessment also requires research and consultation and to ensure its effectiveness, requires ongoing monitoring by EU Governments and institutions.

17. Finally, the CRE sees no reason not to combine the residence and work permit regulations, which would simplify bureaucracy and provide essential clarity as well as promoting integration.

Rights

18. The CRE suggests that the security afforded by rights is fundamental to the integration process and, as far as it is possible, should be considered in the process of awarding permits. We urge consideration of rights to family reunion in respect of the primary economic worker and that permit holders can access essential services, such as health.

19. The CRE also observes that visas that unreasonably limit settlement and residence, for instance to a period too short to enable the worker to repay the cost of migrating, may create an incentive to over-stay in the country with an uncertain status, undermining integration and contributing to “illegality”.

20. The CRE considers that all migrants—including short-term, temporary migrants—must be part of the integration process during their stay and that rights underpin the integration process.

Integration and return and co-operation with third countries

21. The CRE urges further consideration to the ways in which the proposals could take fuller account of the integration agenda. Accompanying measures may include a revitalisation of civil society and local integration; work with employers and unions on integration; and strong support from National Governments.

22. The Race Equality Duty (RED) may serve as a useful lever to ensure public authorities pay necessary attention to integration.

23. Civil society can support the active integration of migrants through language support, help and guidance with social orientation and projects that improve social capital and relieve tensions, such as mentoring initiatives. Migrant Community Organisations and faith groups can help build bridges with local
communities. Finally, the voluntary sector—often in partnership with local public services—can facilitate access to services and offer help with finding employment.

24. Employers can contribute particularly in terms of language development but also in other areas, such as housing. Trade Unions are instrumental in raising awareness of rights and also run language and skill adjustment programmes. The social partners are an underutilised resource that could be mobilised to play a larger role.

25. Regional and National Governments can underpin this with a firm commitment to integration and strategies to support that commitment. The EU Common Principles on integration agreed in Amsterdam offer a useful backbone to debates on integration.

CONCLUSION

26. The CRE welcomes the discussion on economic migration. We hope this contribution to the debate draws specific attention to several aspects we believe to be fundamental that are not given enough attention or space within the current consultation.

27. The CRE would particularly like to draw attention to a lack of mainstreaming of integration and race equality into the intended policy framework. Furthermore, there needs to be a wider consideration of the barrier of a lack of public acceptance of immigration, the solution to which will require a long and sustained commitment to changing the terms of public debate and to building bridges across communities at the local level.

28. Finally, we argue that the integration agenda must be considered crucial to labour migration policies, both in terms of access to information and rights (we propose a clear statement of rights and responsibilities for all migrant workers) and in terms of preparing settled communities across EU.

Will Somerville
Senior Policy Officer, Asylum and Immigration
CRE
May 2005

Memorandum by the Construction Confederation

INTRODUCTION

1. The Construction Confederation represents the interests of building and civil engineering contractors. The industry’s annual output is £93 billion, just over 8 per cent of GDP and total employment in construction and construction-related activities is 3 million. The Confederation represents over 5,000 member companies carrying out over 75 per cent of the construction industry’s turnover.

GENERAL COMMENTS

2. The Construction Confederation understands that the European Commission’s aim through the Green Paper on and EU Approach to Managing Economic Migration (COM(2004)811 final) is to launch a process of broad discussions and to call for reactions, and once such a comprehensive consultation process has been carried out, to present a “policy plan”. The Confederation would encourage the House of Lords Report to indicate that full justification, including a sound evidence base, must be forthcoming from the Commission in the event of any future policy proposals at the EU level.

3. It is noted that the Green Paper concerns admissions procedures for the economic migration of third country nationals and does not deal with the free movement of EU citizens within the EU. In recent years, the influx of foreign workers in the construction industry has come from the EU Accession States, but project managers have also been recruited from third countries such as Australia and South Africa. Construction has always had a mobile workforce. The phenomenon of Irish workers working in Germany is well known. Labour travels to where the best job opportunities lie. The Confederation therefore wants to see flexible policies for both intra and extra migration.

4. The central question posed by the Inquiry is whether there should be a common EU Policy on economic migration, or whether Member States should remain free to make decisions in this area independently of each other. The Construction Confederation is firmly of the view that Member States should remain free independently to make decisions concerning economic migration into the their individual country. The
Commission states in the Green Paper (page 4) that it “fully recognises that decisions on the numbers of economic migrants to be admitted in order to seek work are a matter for the Member States”.

5. It is important to understand that the Construction Confederation, and its constituent members, fully support the free movement of labour within the EU. Indeed the UK construction industry has, over recent years, been underpinned by migrant workers, many of whom have come to the UK as “self-employed” independent workers.

6. The UK construction industry has enjoyed several years of buoyancy, which has exposed a significant shortfall in our manpower and skills base. Without the contribution made by migrant workers it would not have been possible to achieve the levels of output currently enjoyed, which in particular are delivering the Government’s capital spending programmes, including new schools and hospitals.

7. The Construction Confederation believes that recent public concern about levels of general immigration has been largely unfounded and based more on ignorance than fact. Latest statistics indicate that the UK economy has fewer non-UK-born workers than the majority of other EU countries. The UK has 8.3 per cent compared with France at 10 per cent, Sweden at 12 per cent, Germany at 12.5 per cent and Switzerland at 22.4 per cent. The UK is also well below the US which has an overseas-born population of 12.3 per cent.

8. These statistics would indicate that the UK has potential capacity to absorb greater numbers of migrant workers and the construction sector certainly has the capacity to provide employment in both skilled and semi-skilled roles. It is perhaps worth noting that the current EU pressure to reduce working hours could further exacerbate the situation.

SPECIFIC QUESTIONS

9. Question (i): Should a Community approach attempt to set common rules on the admission of third country nationals for employment or should it address each sector of the labour market separately? The Construction Confederation believes that different EU Member States and sectors are faced with different issues, which suggest that each Member State should be free to adopt a policy most appropriate to prevailing circumstances.

10. Question (ii): Would there be a place for quotas in a common policy? Policies need to be flexible and able to react to prevailing economic and market changes. In this respect quotas can easily become out of step with market requirements and create barriers to economic growth.

11. Question (iii): Do the same considerations apply to self-employment as to employment? The same considerations should apply to both directly employed and self-employed individuals. The construction sector is plagued with “bogus” self-employed and the self-employed route has been used as a back door into employment in the UK.

12. Question (iv): To what extent do enlargement and free access to the labour market for workers from the new Member States affect a common policy? Research suggests that the largest share of workers from new Member States are employed in the construction sector, followed by the hospitality sector. Both sectors have welcomed these workers however, many may be likely to return to their own countries should economic conditions improve in their country of origin.

13. Question (v): Should the “Community preference” principle be maintained? Should it apply to third country nationals legally resident in the EU and, if so, to all workers or only long-term residents? The community preference principal should be maintained.

14. Question (vi): What rights should third country workers have? Should there be any differentiation between workers admitted on a conditional basis and long-term residents? Workers should all enjoy the same employment and legal rights irrespective of the basis upon which they are admitted into the UK.

15. Question (vii): Should there be a common EU policy on the “regularisation” of illegal workers (amnesties)? Different EU countries are faced with different circumstances regarding illegal workers and therefore should be free to adopt policies most appropriate to their circumstances. By way of example Germany is understood to experience an influx of Ukrainians whereas Greece experiencing migration from the Balkan countries.

16. Question (viii): Should measures be taken to protect third countries from—or compensate them for—the loss of skilled workers? The Confederation does not believe it appropriate to “compensate” third countries for the loss of skilled workers. Skilled workers from third countries may, for example, be supporting a family in their country of origin and therefore creating a flow of funds back to that country.
17. Question (ix): What considerations should the Government take into account in deciding whether to opt into a common EU policy? The Confederation does not believe it appropriate to create a common EU policy on migration. Member States should remain free independently to make decisions concerning economic migration into their individual country.

*June 2005*

**Memorandum by ConstructionSkills**

ConstructionSkills welcomes the opportunity to submit evidence to the Select Committee on the European Union Sub-Committee F (Home Affairs) Inquiry into Economic Migration to the European Union.

As the Sector Skills Council for construction we recognize that the “movement” of labour is an important issue for the construction industry, particularly as it has implications for its future performance; its ability to facilitate productivity gains and increase the value received by clients (of which Government is the largest).

Whilst ConstructionSkills ventures to share its knowledge on the “movement” of labour, we are not able to directly comment on questions (i) to (ix), and suggest that these are best asked of industry, via employer organisations such as the relevant Trade Unions and the Federations.

Our submission covers in detail the wider economic and labour market context of the construction industry, and more specifically includes summary findings from three research projects that have collected data on Overseas (non-UK citizens) and non-English speaking workers within the construction industry.

We have also appended details of the Sector Skills Agreement (SSA) being developed by ConstructionSkills, which includes details of a collaborative solution to assist the effective integration of migrant workers into the UK construction industry.

1. **Economic and Labour Market Context**

1.1 Construction covers a wide range of sectors in the development and maintenance of the built environment. It represents about 8 per cent of the national economy in terms of GDP, and has been over the last 10 years, a significant employer.

1.2 In the UK as a whole, the sector employs over 2.1 million people, has 201,100 enterprises, generates £149 billion of turnover (GDP) and nearly £52 billion of value added. Excluding electrical wiring and fitting (SIC 45.31) and plumbing (SIC 45.33), just over 1.8 million people are employed in the construction contracting sector (SIC 45). A further 225,000 are employed in professional consultancies (SIC 74.2). The industry is the second highest in terms of the proportion of its workforce composed of small and medium-sized enterprises (SMEs) and self-employment (80 per cent).

1.3 The construction process is a complex one starting with design and planning through to ongoing maintenance and refurbishment. Construction work is almost entirely done on a project by project basis, whereby contractors will draw together teams of people who often work for quite a short period of time and then move on to another location or disperse. Much of the work is managed by a main contractor who deals with the client but who subcontracts part of it to smaller firms who specialise in a particular aspect of the process.

1.4 The level of fragmentation in the construction sector can be seen as both a strength and a weakness: on the positive side, it is likely that it has the flexibility to deal with the highly variable workloads linked to changes in economic cycles; on the negative side the extensive use of sub-contracting has brought contractual relationships to the fore and hindered team-working, supply chain integration and strategic management.

1.5 Analysis by Davis Langdon Consultancy and University College London undertaken for DTI demonstrates that the UK construction sector, in productivity terms, is comparable with US, France and Germany or at least far nearer than other areas of the economy. In Labour Productivity (LP) the UK is within 15 per cent of the performance of the best (US) and in Total Factor Productivity (TFP) it is comparable with the US, France and Germany. Compare this with UK manufacturing which is 29 per cent below the worst and 55 per cent below the best.

1.6 The industry has seen sustained growth over the last 10 years—both output and total employment have increased by 30 per cent over that period. Initially the industry had considerable excess capacity, with over 50 per cent of companies reporting that lack of demand was restricting output in the mid 90s, but lack of demand has halved to around 20 per cent and is now almost balanced by those citing labour shortages as restricting output.
1.7 Although the situation has improved, all sectors, but particularly professional services firms are concerned that there are insufficient graduates with the appropriate knowledge, skills and understanding entering the industry. Through the recent Construction Industry Council (CIC) survey practices have also voiced a more general concern about the skills gaps of their existing workforce.

1.8 The industry appears to face strong demand over the next five to 10 years, with prospects underpinned by Government aspirations for health, education, housing, transport and other infrastructure. This has translated into sustained growth albeit with variations across subsectors; substantial increases in output for public and private housing and public work being balanced by decreases in infrastructure and commercial work.

1.9 In addition to the quite distinct sectoral outputs there are also considerable differences in the contribution of each country and region to construction output within the UK, ranging from 15 per cent in London and the South East to 3 per cent in Northern Ireland.

1.10 Typically, major contractors and house builders manage projects and do not employ craftspeople or workers in specialist trades. These skills are provided by sub-contractors, usually on short-term contracts. With extensive sub-contracting the industry is the second highest in terms of the proportion of its workforce composed of SMEs and self-employment (over 80 per cent). Overall, estimates are that 37 per cent of the industry’s workforce is self-employed. The self-employment is at all levels and is just as prevalent amongst professional consultancies as it is for trade occupations. However self-employment is particularly high in the main craft trades where it averages over 60 per cent of the workforce. A major piece of research has been commissioned to better understand this significant group and the findings should be available for consultation purposes during the third quarter of 2005.

1.11 The age profile of the construction industry like that of many UK industries is mature and has undergone significant change over the past 10 years. For both manuals and non-manuals in the industry, the workforce has been distinguished by a sharp decline in the share of the younger age groups in total employment and an analogous rise in those aged 45 years and over. However, it has an age profile that is significantly biased towards the 30–39 age bracket.

1.12 A key demographic issue is the loss of key skills due to retirement, and the addition of new skills through recruitment in the lower age groups. In the industry as a whole, 378,120 people, or 17.4 per cent of the industry are within 10 years of the statutory retirement age. This is balanced by those entering the workforce within the younger age groups. The 16–29 age groups are traditionally identified as the industry’s optimal entry age range. In the UK 484,620, or 22.3 per cent of the workforce is represented by the 16–29 age groups.

1.13 Labour force statistics show a dip in numbers in the 25–29 age group. This has been attributed to a fall-off in recruitment in the early 1990s possibly due to the industry recession.

1.14 The long-term concern for the industry is to ensure there are sufficient numbers joining to replace those that are leaving. The supply of people in the 16–19 age group, traditionally the entry point into manual portions of the industry is a particular concern and a growing constraint due to the rise in uptake of post-16 education options. The size of this age group in UK manual construction occupations in 1990 was over 145,000, compared to 92,000 in 2003; a decrease of more than a third. The increase in retention of pupils in post-16 education, and similarly at degree level is reducing the recruitment pool of high quality candidates in these ages, and because individuals with academic qualifications often have other aspirations than to work in manual trades, they may be lost to the industry for good. The increased popularity of higher education, will continue to reduce the available people for vocational training and direct employment.

1.15 Currently women account for approximately 10 per cent of the total employment in the industry, but only 1 per cent of manual employment and 30 per cent of non-manual employment. This makes the manual portion of the sector amongst the most gender imbalanced in the UK economy.

1.16 The proportion of ethnic minorities in construction employment has nearly doubled from a low of 1.5 per cent in 1994 to 2.8 per cent in spring 2004. However, this is still significantly lower than the 6.9 per cent present in the total working population.

1.17 For both women and ethnic minorities the representation at professional level is higher than that for manual workers but is still an under-representation compared with the workforce as a whole.

1.18 With more women than men in both the economically active and general populations, and ethnic minorities expected to account for half the growth in the workforce over the next 10 years, these groups will form an increasingly important share of the labour force. Consequently, attracting new workers from these groups must remain a priority.
1.19 The mounting demographic pressures will result in industry having to recruit from non-traditional labour pools such as those provided by women and ethnic minorities. A view highlighted in a recent investigation by the Equal Opportunities Commission (EOC)\(^9\). In its report the EOC concludes that there is a clear link between skills shortage sectors, such as construction, and the under-representation of women, and that widening recruitment pools to include more women offers a solution.

1.20 It is anticipated that continued advances in innovation and technology will to some degree offset the decline in the numbers of individuals joining the construction industry; by enabling a greater output from lower inputs. However, if the uptake of innovation does not gather sufficient momentum—it is currently quite low within the sector\(^10\)—there are clearly limitations to what can be achieved through such processes.

1.21 Consequently, in the short-term (at least) the single largest factor determining whether the industry is able to respond to future demand remains the supply (or not) of skilled labour.

1.22 The mobility of the construction industry workforce is relatively high. Indeed recent research\(^11\) supports the widely held assumption that the construction workforce is indeed very mobile and to that end flexible.

1.23 The mobility of the workforce is obviously influenced by the relationship of workload to workforce, and naturally a distinct lack of workforce brings people in from outside the region, and country.

1.24 Whilst there is much anecdotal evidence of the increasing use of migrant workers in particular areas of the UK there is a general paucity of data in official statistics. What data there is only represents legal migrant workers and the issue of illegal migrant workers is an even more complex one. A recent survey\(^12\) undertaken for ConstructionSkills indicated that 4 per cent of employers had taken on non-UK passport holders in the last 12 months, and that 36 per cent of companies employing non-UK citizens expected the proportion of non-UK citizens to grow.

1.25 The economy is the greatest single factor impacting the future size of the construction sector. The level of activity in the economy drives the numbers of people employed in the construction workforce, and with the economy showing sustained growth there is an increasing demand for additional people.

1.26 Demand for trained construction workers will increase further beyond the capacity of the current supply, and even if that supply is increased challenges remain in attracting the right calibre of people.

1.27 Without action, employers may respond by hiring unsuitably skilled labour, which will reduce the quality of outputs, impede productivity gains and reduce the value received by clients (of which Government is the largest).

### 2. Skills Shortages as a Driver for the Use of Migrant Workers

2.1 Skills shortages are the inability to recruit people with the appropriate skills at an appropriate wage. The symptoms of skills shortage include long-term unfilled vacancies and understaffing. The knock-on effects of this can include long working-days and working-weeks and high overtime rates. Companies' performance can also be affected, including their capacity to bid for and fulfil new work.

2.2 Shortages in trades and crafts people particularly affect short-term and project-based recruitment. Shortages can be highly acute but usually short-term, they can affect the performance of the company on specific projects particularly those requiring specialist skills.

2.3 A recent study by CITB-ConstructionSkills established that finding suitably skilled staff is the most common key business challenge reported by employers. Indeed one in four of those employing staff (and 15 per cent of the self-employed) spontaneously cited this is one of their key business challenges. However, it is also more of an issue for large rather than small firms—a third of those with 100 plus staff across the UK say finding suitable staff is a key business challenge compared with a quarter among those employing between 2–24 staff\(^13\).

2.4 In terms of occupational structure, manual workers dominate and they are likely to earn more than manual workers in other sectors—a condition that has applied since 1995 and could indicate that skills shortages are leading to wage inflation. Manual wages in construction are currently running at more than 12 per cent over national norms.

2.5 Given the current rate of growth in UK construction output with a demand scenario of around 3 per cent growth rate, this implies either a massive step-change is achieved in labour productivity by greater and more efficient investment in human capital, or it implies labour force growth of around 3 per cent per annum.
2.6 It seems unlikely, even with substantial increases in relative construction wages, that the industry can solely rely on “domestic” sources of labour, although the link between salaries, conditions and recruitment needs to be explored. The alternative is to “import” labour on a large scale. Aside from political sensitivities to charges of “swamping”, this raises difficult questions about the impact on investment in human capital, skill levels, wages and salaries and labour productivity. The danger is that the short-term solution that government and firms will adopt will be to imitate what has happened in the USA in the 1960s and 1970s—ie replace increasingly scarce, productive but high-paid labour by abundant, less skilled and less productive but much lower paid migrant labour. In the US this was the start of a subsequent long “vicious circle” in which construction industry labour productivity and relative wage rates have chased one another downwards—with lower wages reducing incentive to invest in either fixed or human capital14.

2.7 The CITB-ConstructionSkills study15, “Employer Attitudes and Motivations to Learning and Training” indicated that currently only 4 per cent of employers (excluding the self-employed) said they had employed any non-UK citizen in the last 12 months. Predictably, size of company is a key determinant, with larger firms much more likely to have recruited such staff. Perhaps more surprisingly, Professional service firms were more likely than Construction firms to have employed such staff.

2.8 The research showed that overall, non-UK citizens account for 2 per cent of the total current workforce (6 per cent among the largest firms employing 250 or more across the UK).

2.9 Very few firms indicate that they are or have recently employed non-UK staff because they are more skilled than those applying from the UK (12 per cent), though many recognise that non-UK staff are generally more motivated (54 per cent). Most of those using non-UK appear to do so out of preference rather than necessity (only a third say they employ non-UK staff because they are having difficulty finding the workers from the UK that they need).

2.10 One issue that may need further investigation is the issue of comparative pay rates between UK and non-UK staff. Findings here suggest that in most cases employers using non-UK workers are not getting the non-UK labour at cheaper rates (only 24 per cent said using non-UK workers meant they got good workers at competitive rates).

2.11 In summary, the evidence is that there is no case for believing that the re is going to be a radical switch in either the size or skill mix of the workforce in the short-term, but that work does need to be done to ensure that labour availability and the skills mix is sufficient to exploit the opportunities as they become available.

3. Summary Analysis on Migrant Workers in the UK Construction Industry Provided by Jim Miekle16

3.1 There is much anecdotal evidence suggesting that the issue of migrant workers in the UK construction industry requires further understanding. According to a recent survey “one in 10 builders are migrants” (Construction Confederation, 2004). The survey of some 300 construction sites across the UK found that 10 per cent of workers spoke English as a second language with many workers coming from Central and Eastern Europe. The survey found that few of these workers have work permits although many pay tax because of an anomaly in the system (the issue of temporary Registration Cards (CIS 4) regardless of nationality).

3.2 The difficulty in establishing the real extent of the migrant labour issue is that on examining the official statistics it becomes apparent that there is general paucity of data and the significant time lag between data collection and publication. Furthermore, it should be noted that the official statistics represent legal migrant workers; the issue of illegal migrant workers is an even more complex one, although it’s probably fair to say that much of the anecdotal evidence refers to both legal and illegal migrants.

3.3 The Home Office suggests that there are an estimated one million illegal immigrants in the UK, but there are no official estimates of the numbers working in the construction industry. The one million represents 1.5 per cent of the population and, say, 3 per cent of the workforce. Anecdotal evidence, including media reporting, suggests that the main activities of illegal migrants include agriculture, tourism and construction. It seems plausible that the proportion of illegal migrants in the construction workforce could be 5 per cent or more.

3.4 The table below shows the number of legal migrant workers in the UK construction industry for the years 2000 and 2001 (currently the only years available) according to Eurostat17 (the EU Statistical Office). The figure for total migrant employment of 61,206 represented approximately 5 per cent of the total UK construction (SIC 45) labour force in 200118.
MIGRANT WORKERS IN THE UK CONSTRUCTION INDUSTRY (SIC 45)

<table>
<thead>
<tr>
<th></th>
<th>Employees</th>
<th>Self-employed</th>
<th>Total Migrant Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EU Migrants</td>
<td>18,626</td>
<td>11,718</td>
<td>30,344</td>
</tr>
<tr>
<td>Other Migrants</td>
<td>19,164</td>
<td>11,698</td>
<td>30,862</td>
</tr>
<tr>
<td>Total Migrants</td>
<td>37,790</td>
<td>23,416</td>
<td>61,206</td>
</tr>
<tr>
<td>2000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EU Migrants</td>
<td>21,008</td>
<td>9,737</td>
<td>31,287</td>
</tr>
<tr>
<td>Other Migrants</td>
<td>17,497</td>
<td>4,453</td>
<td>21,950</td>
</tr>
<tr>
<td>Total Migrants</td>
<td>38,505</td>
<td>14,190</td>
<td>53,237</td>
</tr>
</tbody>
</table>


3.5 Interestingly, the data suggests that, in 2001, there was a virtually equal share of both EU migrants and migrants from other countries entering the industry. While the numbers of EU migrants has remained relatively stable over the period the numbers of migrants from other countries has increased dramatically, by some 40 per cent, although how much of this is due to sampling errors remains to be seen. Furthermore, most of this increase seems to have occurred in the self-employed category.

3.6 These findings run counter to those reported by the Home Office (2001), which suggest that in 1999 migrant workers in the UK construction industry were predominantly EU nationals (what they call the “Irish effect”), in fact they accounted for almost three quarters of foreign nationals employed. However, when the Irish are excluded non-EU nationals are more likely to work in the sector than EU nationals. More specifically, this source goes on to suggest that, of the other nationalities, those from the Indian sub-continent are more likely than other foreign groups to work in the sector.

3.7 This may be a daring assumption but given recent anecdotal evidence, in addition to the findings from this brief analysis, it seems reasonable to suggest that the make up of migrant workers in the UK construction industry is changing from predominantly EU nationals to those from non-EU countries. In other words, EU nationals represent a declining share of migrant labour in the UK construction industry. Generally what we would expect.

3.8 However, these estimates are based on 2001 data and given the recent accession of new member countries to the EU the picture may well be changing. It would seem that the evidence or lack thereof points to a need for a comprehensive study of migrant labour in UK construction “as it presently is”. This should be both quantitative (numbers, geographic origins, levels of pay and productivity) and qualitative (formation, skill levels, terms of employment, employment relations, recruitment).

3.9 The construction industry has a long tradition of employing migrant labour. Given the current rate of growth in UK construction output with a demand scenario of around 3 per cent growth rate, this implies either a massive step-change is achieved in labour productivity by greater and more efficient investment in human capital (a challenge for the Sector Skills Council), or it implies labour force growth of around 3 per cent pa.

3.10 It seems unlikely, even with substantial increases in relative construction wages, that the industry can solely rely on “domestic” sources of labour, although the link between salaries, conditions and recruitment needs to be explored. The alternative is to “import” labour on a large scale. Aside from political sensitivities to charges of “swamping”, this raises difficult questions about the impact on investment in human capital, skill levels, wages and salaries and LP. The danger is that the short term solution that government and firms will adopt will be to imitate what has happened in the USA in the 1960s and 1970s—ie replace increasingly scarce, productive but high-paid labour by abundant, less skilled and less productive but much lower paid migrant labour. In the US this was the start of a subsequent long “vicious circle” in which construction industry labour productivity and relative wage rates have chased one another downwards—with lower wages reducing incentive to invest in either fixed or human capital.

4. SUMMARY FINDINGS ON NON-ENGLISH SPEAKERS AND HEALTH AND SAFETY ISSUES TAKEN FROM WORKFORCE MOBILITY AND SKILLS IN THE UK CONSTRUCTION SECTOR

4.1 Prior to the main study a pilot exercise was conducted on three sites in London and the South East. At one London site, it was evident that there was a relatively high incidence of non-English speakers (or at least cases where their English was not sufficient to undertake an interview). For the pilot study this fact was merely noted.
4.2 Clearly a high incidence of non-English speakers has important implications, not least for health and safety. Hence for the London and South East element of the study, an attempt was made to include non-English speakers. When talking to the main contractor—employer contact about the site, we asked whether they had a significant number of non-English speakers working there, and if so what languages this covered. The plan was then to collate information on the range of languages spoken, and then translate the questionnaire into the main languages encountered and then have a native speaker conduct the interview or the respondent fill in the questionnaire themselves.

4.3 Practical issues made this task relatively problematic, at least collecting a significant number of interviews in a cost effective manner. In total 12 contractors of the 133 involved in the work in London and the South East indicated that they had a significant number of non-English speakers on site. When re-contacted after the site visit to get details of the languages and numbers concerned in order to consider a return visit in a number of cases these workers were no longer on site and the “significant proportion” often translated into a small absolute number of workers in specific languages. In only one instance was there a significant number of non-English speakers, this at a large central London site. Here it was estimated that there were approximately 20 Kosovans. The questionnaire was translated into Albanian, sent to the site manager who agreed to hand them out, collect them back and return them, but as of writing the report (five weeks after sending them, and with regular chasing) none had been returned.

4.4 In order to gain some understanding of health and safety issues, on the first phase of the project (covering London and the South East only), the 12 contractors reporting a significant number of non-English speakers were re-contacted and asked about how health and safety issues were handled given they had people working at the site they described as non-English speakers. Interviews were achieved with 10 of these employers (seven of these were in London, where the prevalence of non-English speakers was higher).

4.5 Non-English speakers were most often employed in an unskilled capacity: seven of the 10 employers interviewed said these workers were working on site as labourers. Other trades mentioned more than once included groundworkers and dry liners. The number of non-English speakers on site is typically relatively small in absolute terms (25 or less), though one employer indicated that a third of his 500 strong workforce was made up of Eastern European, Turkish and Portuguese workers. “Eastern European” was the most often cited answer in terms of where non-English speakers had originated from, and often employers could rarely be more specific (some were not sure what languages were spoken by these workers). The main reason for this was that for most of the main contractors we spoke to, the non-English speakers were employed and were the responsibility of sub-contractors working on their site.

4.6 When contacting employers to re-interview those that initially told us about their having a significant number of non-English workers on site, it became clear that some meant this in terms of English not being the first language of the workers. Perhaps because the issue of health and safety was raised, a common response from the employers/contractors was that all or most of these workers had some English. One example: “the majority speak some English. One or two have very good English.”

4.7 The example quoted illustrates another more general theme, in that it was common for employers to say that health and safety issues were tackled by one or two of the foreign workers who spoke good English being in charge of a gang of foreign workers, and acting as a go-between where necessary. From a health and safety perspective this is clearly less than ideal.

4.8 In terms of how health and safety issues were described as being dealt with the following covers the range of responses given:

— All employers said they gave such workers a health and safety induction (how this was given for non-English speakers was not always clear though the implication was that it would be provided/translated by a worker able to speak the language).

— Two made all workers sit written health and safety tests (in English) which they had to pass to work on site. Again the implication is that all workers had a minimum level of English, hence “non-English speakers” in these cases is really referring to their not being fluent.

4.9 The dangers in regard to health and safety are apparent in that one of the 10 sites had recently experienced a bad accident involving one of its foreign workers. At the time of interview the internal inquiry being carried out pointed towards communication difficulties as one of the reasons behind it.

4.10 The general point to note is that the survey covers only those workers able to speak English to a level that enabled our interviewers to conduct an interview. It is worth noting that our sample included a significant number whose first language was not English, especially people from a number of Eastern European countries. The main body of the report details the proportion of workers originating outside the UK.
5. **SUMMARY FINDINGS ON OVERSEAS (NON-UK CITIZEN) WORKERS TAKEN FROM EMPLOYER ATTITUDES AND MOTIVATIONS TO LEARNING AND TRAINING**

5.1 Only 4 per cent of employers (excluding the self-employed) said they had employed any non-UK citizen—passport holder in the last 12 months (in fact the figure was 4 per cent among the self-employed). Predictably, size of company was a key determinant here, with larger firms much more likely to have recruited such staff. Perhaps more surprisingly, Professional service firms were more likely than Construction firms to have employed such staff.

<table>
<thead>
<tr>
<th>Whether employed any non-UK citizen—passport holder in last 12 months</th>
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<tbody>
<tr>
<td>Self-employed</td>
</tr>
<tr>
<td>2–9 employees in the UK</td>
</tr>
<tr>
<td>0–24</td>
</tr>
<tr>
<td>25–99</td>
</tr>
<tr>
<td>100–249</td>
</tr>
<tr>
<td>250+</td>
</tr>
<tr>
<td>Construction</td>
</tr>
<tr>
<td>Professional Services</td>
</tr>
</tbody>
</table>

5.2 Firms in London (14 per cent) and in Yorkshire and Humberside (15 per cent)—each on a base of just under 100 interviews—were more likely to report employing non-UK citizens/passport holders than elsewhere. In comparison in each of Wales, Scotland and Northern Ireland less than half a per cent had done so, and in the North East, the East and the South West 1 per cent reported employing such staff over the last 12 months.

5.3 Overall, non-UK citizens account for 2 per cent of the total current workforce (6 per cent among the largest firms employing 250 or more across the UK).

5.4 For a majority of those that employed non-UK citizens (78 per cent), at least some of these staff had English as a second language.

5.5 A minority felt that any training implications had arisen as a result of taking on staff with English as a foreign language:

- 14 per cent of those with staff having English as second language indicated they took steps to meet language problems/barriers, for example by providing language training or putting them in a team with a person able to speak their first language who could also speak English. A small number mentioned translating booklets or using an interpreter.

- 11 per cent needed to provide training on UK health and safety/UK codes of practice, the implication here that this not a language issue per se but arose more from employing people not familiar with UK construction practices.

5.6 The following charts summarises attitudes to employing non-UK passport holders/citizens.

### Attitudes to employing non-UK citizens

- **Non-UK workers more motivated**: 54%
- **Expect the % of non-UK workers to grow**: 36%
- **Only really take on non-UK as can’t find UK staff**: 33%
- **Using non-UK providers good workers at competitive rates**: 24%
- **Non-UK workers more highly skilled**: 12%
5.7 Very few indicate that they are or have recently employed non-UK staff because they are more skilled than those applying from the UK (12 per cent), though many recognise that they are generally more motivated (54 per cent). Most of those using non-UK appear to do so out of preference rather than necessity (only a third say they employ non-UK staff because they are having difficulty finding the workers from the UK that they need).

5.8 One issue that may need further investigation is the issue of comparative pay rates between UK and non-UK staff. Findings here suggest that in most cases employers using non-UK workers are not getting the non-UK labour at cheaper rates (only 24 per cent said using non-UK workers meant they got good workers at competitive rates).

6. Appendix 1—Sector Skills Agreement for Construction

6.1 ConstructionSkills has been chosen to be one of four Pathfinder Sector Skills Councils (SSCs) charged with developing a Sector Skills Agreement (SSA) for their sector.

6.2 The ConstructionSkills Sector Skills Agreement, a collaborative agreement between construction employers, training providers and Government, ensures the delivery of the right training in the right format for employers and individuals in the workforce, so that the skills needs of the future are met. It covers the whole construction industry, from craft to professional, both new build and repair and maintenance, across the whole of the UK.

6.3 The Sector Skills Agreement being developed by ConstructionSkills gives construction the opportunity to realise the vision of “a fully skilled and professional UK construction industry working safely and delivering value”.

6.4 A collaborative solution to assist the effective integration of migrant workers into the UK construction industry.

CHALLENGE AREA: ASSISTING THE EFFECTIVE INTEGRATION OF MIGRANT WORKERS

<table>
<thead>
<tr>
<th>Collaborative Solution</th>
<th>Success Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>To map and evaluate foreign qualifications against UK national occupational standards. This will enable UK construction employers to be confident in the skills level of potential employees. Also, the translation of health and safety training into additional EU languages.</td>
<td>A migrant labour integration package developed and implemented that enables safe and effective use of migrant labour to bridge skills gaps. English language requirements are met by migrant workers to aid safe working conditions on site.</td>
</tr>
</tbody>
</table>

Background to Solution

The construction industry, like many other industries, has witnessed an increase in the use of migrant labour to plug skills gaps, a process intensified by the expansion of the EU. As a result the industry needs to tackle the challenge of an integrated multi-language workforce, in particular the need to address major issues of health and safety and comparability of qualifications.

Progress

A recently completed mobility study undertaken in the South East has provided some initial data on the use of migrant labour and a further language study has highlighted some of the issues that need to be addressed particularly related to health and safety.

ConstructionSkills has collaborated with DfES and LSC to provide translators for foreign workers taking the construction Health and Safety Test. The test itself and the revision booklet have also been translated into Romanian and Punjabi.

Discussions are underway with labour agencies to improve the integration of foreign workers into the construction workforce, including access to ESOL training, and consideration is being given to how services could be provided in countries of origin.

Investigation into how foreign qualifications can be evaluated against UK National Occupational Standards and how mutual recognition could be offered for our Vocational Qualifications is underway.

Work has been completed with the Home Office on the development of a toolkit to aid construction employers when employing migrant workers. ConstructionSkills, in conjunction with the Home Office, Unions and federations, is now developing a five-point plan to help employers effectively integrate migrant workers into the industry. This tackles on issues such as language, health and safety and worker rights.
### Targets

<table>
<thead>
<tr>
<th>Partners:</th>
<th>Contributions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers</td>
<td>— Contribute to research necessary to better understand the size and implications of the migrant workforce in construction.</td>
</tr>
<tr>
<td></td>
<td>— Assist in developing and piloting an integration package.</td>
</tr>
<tr>
<td></td>
<td>— Enable access to appropriate language and skills training.</td>
</tr>
<tr>
<td>Government</td>
<td>— Contribute to research to establish the scope of the challenges to be addressed.</td>
</tr>
<tr>
<td>LSC</td>
<td>— Contextualised and funded ESOL provision through the proposed regional centres.</td>
</tr>
<tr>
<td>RDA</td>
<td>— Contribute to research to establish the scope of the challenges to be addressed.</td>
</tr>
<tr>
<td>Others</td>
<td>— Join the team developing the integration package for immigrant workers.</td>
</tr>
<tr>
<td>Trade Unions</td>
<td></td>
</tr>
</tbody>
</table>

### References

11. IFF Research and University of Warwick on behalf of ConstructionSkills, the Engineering Construction Industry Training Board (ECITB) and the Department of Trade and Industry (DTI), Workforce Mobility and Skills in the UK Construction Sector, 2005.
15. IFF Research, Employer Attitudes and Motivations to Learning and Training, 2005 (Unpublished).
19. IFF Research and University of Warwick on behalf of ConstructionSkills, the Engineering Construction Industry Training Board (ECITB) and the Department of Trade and Industry (DTI), Workforce Mobility and Skills in the UK Construction Sector, 2005.

**Memorandum by Saskia Gent, Sussex Centre for Migration Research, University of Sussex**

The individuals signing up to this letter wish to contribute their comments, concerns and recommendations outlined below, to the inquiry into economic migration to the EU, carried out by the House of Lords Select Committee on the European Union, based on the European Commission’s Green Paper Com (2004) 811 final.
We welcome the Committee’s invitation to discuss the proposed rules for admitting economic migrants and would like the comments below to be taken into consideration.

Overall we believe that opening up the debate on the management of economic migration is a positive step towards a more balanced and thoughtful approach to migration issues. It allows the EC and member states to consider policy coherence across a number of different areas to the benefit of a range of actors.

Below we summarise the areas in which we wish to contribute to the debate, drawing in particular on our collective academic expertise. We wish to stress that the views we express are those of us as individuals and not the collective view of the University of Sussex or of the Sussex Centre for Migration Research.

1. Overview

1.1 Developing country interests and the rights of migrants

The introduction to the EC’s Green Paper outlines the Commission’s justification for revisiting the issue first proposed in 2001. It outlines the political background for such an approach, the demographic, economic and competitive justifications for tackling this issue and the likelihood that the proposals can have an impact on illegal (often referred to as irregular or undocumented) migration. We would like to stress that there are also arguments to be made for economic migration from the perspective of sending countries or from the perspective of migrant workers. The importance of developing country interests are recognised but the paper could go further in establishing the rights of migrants and countries of origin as a guiding principle.

1.2 Representation of migrant groups and countries of origin

The extensive consultation with migrant groups and representatives of third countries at the Tampere stage of developing an EU asylum and migration policy was very beneficial to the process, and it would be useful to ensure that current consultation efforts lead to an effective representation of these groups within forthcoming policy documents.

2. Common Rules or Sectoral Approach

The different approaches outlined in the legislation, could be more or less beneficial for migrants and countries of origin depending on the principles under which they are established. The core aims of providing robust rights for migrants and taking into account the effect on countries of origin should be a clearly established principle in making decisions about different schemes.

3. “Community Preference” or Preference for Resident Third Country Nationals

In general we support measures that would promote circulation as desirable for countries of origin. There is some research evidence that people who are able to exit and re-enter countries where they have been working are less likely to become “illegal” (or irregular) migrants by overstaying their permits, and so remain less vulnerable to employment abuse. Evidence on the link between employment abuse and different immigration statuses in the UK can be found in Anderson & Rogaly (2005).

Most of the evidence in this area is qualitative and we would strongly encourage investment in quantitative research. Specifically, looking at the experience of particular schemes could shed light on the effects of circulation and how to design future schemes that would be beneficial for migrants and their countries of origin as well as the EU.

4. Rights for Third Country Workers

4.1 Limitations on mobility and “ownership” of work permits

As the Green Paper suggests, tying work permits for low-skilled migrants to a particular job is likely to lead to abuse and exploitation of workers. If the permit is issued to employees and expanded to include the right to work anywhere in the sector, measures must also be taken to stop employers preventing movement within the sector by “blacklisting” employees. These measures could include the use of independently sanctioned intermediaries who could provide references for workers wishing to move jobs. The most beneficial approach from the perspective of enhancing migrants’ rights is to allow the permit to grant access to the whole job.
market, giving workers the right to apply for any vacancies. Post-entry mobility within, or more so, between sectors is likely to help in skills acquisition and promotion, resulting in positive consequences for migrants and both receiving and sending countries.

4.2 Minimum rights

Many current schemes for labour migration run by individual states set standards for migrants’ rights which are below that established in the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the UN in 1990 and entered into force in 2003 (Morris, 2004). The rights enshrined in the Convention should be set as a minimum standard before any sliding scale of rights is considered for those with differing duration of stay or skills levels.

Adoption of the Convention as the minimum level is not only a question of human rights but is likely to make the migration experience a more beneficial one both for individual migrants and their countries of origin, as those with a clear understanding of secure rights are more likely to be able to make productive and independent decisions to capitalise on employment opportunities and skills enhancement.

4.3 Return of temporary workers

It is unlikely that any obligation to promote return would be effective, as research shows that there are numerous factors influencing whether return will happen and whether it will be sustainable (Black and Gent, 2004). Two key factors that are worthy of further policy and research attention are the role played in return by the legal status of migrants in destination countries, and the significance of conditions in the countries of origin (see Anderson and Rogaly 2004 and Black, Koser and Munk, 2004).

5. Relations with Third Countries

5.1 The Power of States

The Green Paper emphasises the reality and needs of countries of origin and transit which is to be commended and it is an approach that we strongly endorse. However, when considering the negotiation of agreements with developing countries it is important to acknowledge that not all states have equal power in these negotiations, which can result in unsatisfactory outcomes for the less powerful states. Developing policy on migration for the EU may enhance its negotiating power without acknowledging competing demands and requirements from other states. Some other policy processes have attempted to address these conflicting requirements (Winters, 2005). In addition it is important to remember that developing country governments are not always representative of their populations and may enter into agreements that could compromise the well-being of poorer and more vulnerable citizens, including some migrants.

5.2 Brain Drain

In considering how the negative effects of “brain drain” can be limited, it is important to look at the conditions of employment and provision of training and uptake of training in sending countries to see how it relates to international mobility. The movement of trained professionals out of developing countries can be a symptom of working conditions and not purely the result of demand from developed countries. There is a role for reviewing codes of conduct in international recruitment to see why they have failed to be effective so far and how they could be overhauled and applied across the EU.

6. Provision of Information to Migrants

A useful method of improving the benefits of migration to poor people is the provision of information about realistic employment opportunities, costs and risks of migration and employment sectors. However the way in which this information is provided will be key to its beneficial effect. The Green Paper suggests EURES, which may be able to promote mobility between member states but is unlikely to be able to reach out to those poorer migrants who are most in need of information. The drawback of EURES is not least that it is a web-based system and most potential migrants in developing countries will not have access to the internet (Collyer, 2004). One possible route for broadening provision of information is at visa application stage where, with increased capacity, visa officers could be charged with counselling potential migrants about the realities of the labour market and the limits to state support in the event of failure. In this way any costs incurred by migrants
are done so with an accurate picture of the likely risks. Another route to empower migrants through information, albeit after arrival, could be through provision of training in rights and entitlements (Black, 2004).

7. Conclusion

We feel that the consideration of an EU policy on economic migration could offer the opportunity to enhance the rights of migrant workers and to benefit the developing countries which provide many workers who support the economy of the EU. However, to ensure that these benefits reach the poorest, there is a case for further research effort to understand the complex relationships between international migration and poverty from a sending country perspective.

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Signed,

Professor Richard Black
University of Sussex

Dr Mike Collyer
University of Sussex

Ms Saskia Gent
University of Sussex

Ms Christina Oelgemoeller
University of Sussex

Dr Ben Rogaly
University of Sussex

For more details contact: Saskia Gent, Policy Officer, Development Research Centre on Migration, Poverty and Globalisation, Sussex Centre for Migration Research, C333, University of Sussex, Falmer, Brighton BN1 9SJ, UK tel: 0793 1173888 email: s.e.gent@sussex.ac.uk

6 May 2005

Memorandum by the Immigration Advisory Service (IAS)

IAS RESPONSE TO CALL FOR EVIDENCE

We have pleasure in submitting our evidence and we affirm that there should be a common EU policy on economic migration rather than Member States remaining free to make decisions in this area independently of each other. We maintain that this is in the best interests of the Member States in ensuring that domestic vacancies are filled by economic migrants who do not pose a threat to immigration control and does not encourage more economic migrants than are necessary for their economies.

1. Should a Community approach attempt to set common rules on the admission of third country nationals for employment or should it address each sector of the labour market separately?
Common rules covering the conditions of entry and residence of any third country national exercising employment, self-employed or other economic activities for more than three months in the territory of a Member State should ensure that a state admit third country nationals where labour market tests have been satisfied. Although it is appreciated that this approach may be more difficult on which to gain agreement we feel that the sectoral approach is too imprecise especially as some sectors may merge with others.

2. **Would there be a place for quotas in a common policy?**

Quotas are relevant only in ensuring that a particular sector is not represented in available labour more than it is needed and to reassure public opinion that migration is controlled. Yet it is very difficult to assess the needs on which a quota might be based other than through market forces. This raises the question of who sets the quota and on what information. National governments may not best be suited to do this unless informed by representative bodies of the sectors involved. Quotas may have to be changed in the light of change in need. Quotas encourage large numbers of applications from those eager to be included and lead to disappointment if they fall outside the quota. Quotas can inhibit an employer gaining a specified worker with particular skills. The problems surrounding the quota controlled Sectors Based Scheme for low-skilled sectoral workers in the UK led to its suspension. There is also the problem of low common standards.

3. **Do the same considerations apply to self-employment as to employment?**

It is artificial in many respects to distinguish between employment and self-employment in meeting labour market needs. Self-employment has the benefit that it may be more flexible in meeting any shortages to be met through both employment and self-employment. We concur with the suggestion that a third country national should be requested to present a detailed and financially viable business plan, demonstrate his/her financial means and prove the beneficial effect of these activities on employment or on the economic development of the Member State concerned.

4. **To what extent do enlargement and free access to the labour market for workers from the new Member States affect a common policy?**

It is difficult to assess this so soon after accession of the new Member States. The evidence so far is that labour migration between Member States has not satisfied legitimate labour needs. Certain sectors may well not find a sufficient pool of labour within the expanded European Union. In the UK the latest data under the workers registration scheme for accession state nationals shows that some 130,000 registered of whom 40 per cent are thought to have been in the UK already prior to 1 May 2004. It is unrealistic, therefore, of the UK Government to expect low-skilled labour needs to be met from within the European Union. Enlargement should not affect a common policy for workers needed from outside the European Union.

5. **Should the “Community preference” principle be maintained? Should it apply to third country nationals legally resident in the EU and, if so, to all workers or only long-term residents?**

The principle should be maintained and should apply to all third country nationals. Long-term residents may be less likely to be prepared to move around and be available to meet labour needs in other Member States.

6. **What rights should third country workers have? Should there be any differentiation between workers admitted on a conditional basis and long-term residents?**

It is wrong in principle as well as administratively difficult to differentiate between the rights of short and long-term workers and could lead to unwelcome discrimination. Migrant workers are vulnerable and therefore need certain rights to protect them from abuse.

7. **Should there be a common EU policy on the “regularisation” of illegal workers (amnesties)?**

Despite an apparent greater reluctance among northern Member States to make use of amnesties than in southern ones such regularisation has taken place in the past. It is in the best interests of public confidence in migration control for there to be accurate data on the state of illegal migration so that this can inform any changes in migration control to obviate incentives for illegal migration, accepting that regularisation in itself may act as an incentive. We are unaware of evidence to suggest that this is a genuine fear. Criteria should include the length of time a person has remained, contribution to the economy, establishment of family life and absence of ties in country of origin, absence of criminal record, etc (the UK immigration rules allow permanent residence for an illegal migrant who has remained for 14 years or more).

8. **Should measures be taken to protect third countries from—or compensate them for—the loss of skilled workers?**

In an age of increased migration and portable skills it is counter-productive to seek to prohibit both immigration and emigration on the basis of particular skills where these are needed. The shortage of nurses in the UK, for example, is not least due to the number of trained nurses who find employment in other countries such as the United States of America. Rather than seeking to compensate third countries for loss of
such skills those countries which attract migrant labour with skills which are in demand in countries of origin should consider mechanisms integrated with foreign aid and development in encouraging those with such skills both to remain in countries of origin and to return there with certain guarantees as to income.

9. What considerations should the Government take into account in deciding whether to opt into a common EU policy?

The UK should be concerned to ensure that there is a mechanism whereby legitimate demands for labour can be satisfied from within the European Union including third country nationals in times of both national economic strength and weakness thereby reducing pressures for illegal migration from outside the European Union and the consequent need for policing it. It should be vigilant about any lowering of standards and the dangers of quotas as well as such a policy being determined more for political rather than economic reasons.

Keith Best
Chief Executive

May 2005

Memorandum by the International Organization for Migration (IOM)

1. The International Organization for Migration (IOM) welcomes the initiative of the European Commission (EC) to launch a discussion on a European Union (EU) approach to managing economic migration. Over the last 35 years, the number of persons living outside their country of birth has more than doubled, and today amounts to over 175 million people. Migrant workers are estimated at just over 80 million. The driving forces behind growing migratory flows suggest that labour migration will be an increasingly important aspect of globalization. This poses new challenges for European policy makers as a restrictive policy will not be a realistic option and not economically advisable in view of the current and prospective demographic and economic trends in Europe. In a 2000 Commission communication, it was recognised that economic migration has generally played a positive role in economic development in Europe and that a “zero immigration” policy was not an adequate response to labour market needs and resulted in economic migrants trying to enter through the asylum system or illegally.

2. The EU is facing new demographic and economic challenges. Low fertility rates and increasing life expectancy in the EU 25 MS contribute to the aging of European societies which in turn impact on the level of the available domestic workforce. This trend will be accentuated in the coming years. It is also acknowledged that European countries are experiencing labour shortages in high skill sectors (e.g., nursing), as well as in low skills sectors (such as agriculture, construction, domestic work, hospitality).

3. It could be argued that free movement of labour within the EU and the recent enlargement will provide sufficient labour to meet market demands. However, there is evidence to suggest that this is not the case. Currently free movement of labour of European citizens is rather low (5 percent or lower) and the intentions of new EU nationals seem not to favour migrating to another country. Furthermore, the example of the Mediterranean accessions in the 1980s have shown that the anticipated large scale migration did not materialise, rather that emigration decreased as a result of joining the EU. In addition, several studies materialise, rather that emigration decreased as a result of joining the EU. In addition, several studies demonstrate that the new EU MS are facing the same demographic problems of an aging society and diminishing labour force, and that the income differential is not important enough to stimulate large scale internal movement towards the old member states. Indeed, some new EU MS are already countries of immigration and it is foreseen that the others will turn into, in more or less the medium term, immigration countries as well. As a result the migration of third country nationals is considered a potential solution to demographic ageing and skills shortages.

4. There is a general feeling amongst researchers at present that migration alone cannot solve the problem of an aging population, due to the fact that migrants may provide a boost to the labour force but will eventually age themselves and contribute to demographic challenges. However, receiving countries can maximise the benefit of labour migration to the economy by promoting circular migration. Labour migrants, particularly

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4 Even with free movement of labour, the mobility of labour within the EU has been limited. Research findings indicate 5 per cent or lower rates of mobility. This is partly due to the ageing of the workforce. See ILO Presentation to the National Council for Economy and Labour, Rome 2001, by Piyasiri Wickramasekara.
5 A recent Eurobarometer survey showed that only 1 per cent of the population of the new member states express firm intentions to migrate to another country. See Kreiger, Hubert Migration Trends in an Enlarged Europe 2004.
those coming to work in low skilled positions, can come to the UK for a reasonably short, limited period of time and contribute to the economy, pay taxes, send remittances and return to invest their earnings, thus responding to British socio-economic needs and enhancing the development of their home country upon return. By promoting a circular pattern of migration, a receiving country can utilise low skilled labour migration to maximum effect, encouraging migrants to come, work, contribute and return, thereby avoiding the problems of increasing the aging migrant population and of the social friction of long-term migration. For more highly skilled migrants it may be desirable to encourage longer term or permanent migration in order to retain the skills they have brought to the host society and to avoid losing those skills to a third country. For other foreign workers, particularly those who have already spent a number of years working in the receiving country because of a more structural demand in certain sectors of the labour market, there should also be opportunities for longer term integration and residence.

5. The sixth report of the House of Commons International Development Select Committee “Migration and Development: How to make migration work for poverty reduction” views circular migration as a highly advantageous model of economic migration, due to its beneficial effects both direct and indirect. It acknowledges that many migrants would like to return home after working in a developed country and that short term migration reduces many of the political issues surrounding immigration into developed countries. It states that “well-designed mechanisms to facilitate temporary and circular migration could reduce the incidence of illegal immigration, and could act as an incentive for labour-sending countries to assume more responsibility for countering illegal migration”. An important practice in this area is enhanced cooperation with sending countries to ensure that this type of migration is organised in a way that takes into account the interests of sending and receiving countries’ economies as well as of individual migrants. In this latter regard, particular attention should be devoted to ensuring the equal treatment of foreign and national workers in respect of their employment and employment-related rights.

6. One consequence of an ageing population and high unemployment rates in the EU is the lack of viable solutions that will sustain welfare systems across the region. Economic migration would boost and reinforce welfare, health and social assistance and pension schemes as long as migrants are absorbed into a legal and gainful employment system. It is now widely believed that, if the political framework of the welfare state is to be maintained, “supplies of foreign labour are necessary to sustain the current level of welfare in society. This new approach emphasizes the role of immigrants as producers of welfare”.7

7. Looking back at the past 30–40 years of labour migration to various EU Member States (EU MS), we can conclude that the economies of both sending and receiving countries benefited greatly from economic migration. If managed effectively and comprehensively as a part of an overall approach to migration management, economic migration represents an enormous potential for individual migrants as well as for countries at both ends of the migration spectrum. For countries of destination, labour migration can help limit labour scarcity, facilitate occupational mobility, maintain the current workforce level, and add to the human capital stock. For countries of origin, economic migration can provide critical support to development and achievement of the UN’s Millennium Development Goals. In particular, remittances often help to reduce the poverty of families in the country of origin by assuming the function of a social safety net and are used to finance community projects or as investments in business ventures. Other benefits to countries of origin, such as the transfer of know-how and creation of business and trade networks, can help foster innovation, increase learning processes and realize the full potential of their most precious resource—their citizens.

May 2005

Memorandum by KalayaanUK

Kalayaan welcomes the interest expressed by the Sub-Committee F of the House of Lords EU Select Committee in the situation of migrant domestic workers in the UK, and is grateful for this opportunity to contribute to the inquiry.

Kalayaan is a registered charity that offers advice and support to Migrant Domestic workers in the UK. It was founded in 1987 specifically as a campaign group aiming to change the immigration rules that prevented migrant domestic workers from leaving an abusive employer without facing deportation. The campaign was won in 1998.

Kalayaan would like to address two specific points of the inquiry:

1. Ensuring the continued right of domestic workers to change employer.
2. The continued existence of a domestic worker visa.

7 Grete Brochmann, University of Oslo, Policy Brief Number 4, “Is Immigration a Threat to the Traditional Welfare States of Western Europe?”, Migration Policy Institute, May 2003.
Both of the above are important human rights gains, and were won in recognition of the abuse which can occur when an employee cannot leave an employer or when employees are not legally recognised. They were implemented in order to legalise the status of Migrant Domestic Workers in the UK and to recognise them within UK law. Kalayaan believes that to reverse either of the above would be a backwards step in the promotion of human rights, and would greatly increase the vulnerability of individuals working in private households in the UK.

THE RIGHT OF MIGRANT DOMESTIC WORKERS TO CHANGE EMPLOYERS: TWO CASE STUDIES

A comparative analysis of Kalayaan’s casework for two domestic workers suffering from similarly abusive situations will illustrate the multiple negative repercussions of tying one worker to one employer. We use a case of a Domestic worker employed by a Diplomat as the law still currently prevents Domestic Workers employed by diplomats to change employers outside of that diplomatic mission.

“A” came to register at Kalayaan with the help of a compassionate stranger, who acted as interpreter. She had been working for a diplomat for nearly two years. She was paid the equivalent of £50 per month, and her salary was not paid to her, but sent directly to her family in her country of origin, at irregular intervals. She did not receive any money at all in the UK. She worked 14 hours per day, with no days off. She was never allowed to go out or talk to anybody. She had two short breaks a day to eat her meals, which consisted of the family’s leftovers. She was made to sleep on the floor besides the children’s bed. The children were insulting and aggressive to her, they often kicked her and the oldest child hit her daily. The parents condoned the children’s behaviour and when she complained she was shouted at and threatened with being thrown out. The employer’s wife was abusive to her and used to pull her hair when she was unhappy with her work.

She lived in a state of constant psychological abuse. Nevertheless, she remained because she had no money, spoke no English and did not know where else to go. Only two years into her employment, after having been beaten up by the employer’s wife, she waited for her employers to go on a trip, and ran away escaping from a window. A passer-by of the same nationality found her crying in a nearby park and eventually brought her to Kalayaan.

She came in the hope of finding alternative employment, but a Kalayaan advisor explained to her that the rules regarding domestic workers in diplomatic households do not allow her to find another job, except if it were within the same diplomatic mission, which was unlikely and potentially dangerous having run away from someone within that mission.

The advisor also had to inform her that without being employed as a live in domestic worker within that mission it would be impossible for her to renew her currently valid visa.

She is currently staying with the compassionate stranger and Kalayaan donated her a small sum of money to buy some food.

She will not be able to stay at her current accommodation for long and will probably become homeless. It will be difficult for her to find refuge, as she has no recourse to public funds. Kalayaan’s limited funds will not allow for many more donations.

As she now knows that we cannot advise her to look for work, she might stop coming to our centre and disappear, to enter the world of the undocumented: exposed to danger, abuse, and exploitation.

“B” had worked for her employer for one year. The employer shouted at her, insulted her and beat her. Sometimes she threw objects at her. The children kicked her. She had to be up at 5.30 in the morning and would finish work at midnight. She slept on the floor, in a basement, together with other workers. She was only allowed to eat the leftovers, while clearing the table. She had no day off. She was paid £250 per month, cash in hand. The employer did not pay tax and NI contributions. When she asked for an increase in her salary and assistance in getting a NI number, the employer threatened to throw her out and send her back to her country if she made more demands.

One day “B” ran away and contacted another domestic worker she had met several times in a local shop. Her friend allowed her to stay with her and took her to Kalayaan. Her English was very limited so her friend acted as interpreter. In spite of having a valid visa, she refused to report her employer to the police for physical and psychological abuse, because she was afraid they might be able to deport or to hurt her. The Kalayaan advisor informed her of her right to change employers, and advised her to join the organisation’s job system to look for another live in position. On the third occasion in which she used this service she secured an interview and was then offered the job. The new employer agreed that she would help her apply for a NI number.
On her next visit, “B” asked the Kalayaan advisor to provide the employer with information on tax returns and national insurance contributions. Her position has now been regularised and “B” has a NI number with her employer making NI contributions. She receives £220 per week and works 8–10 hours a day. She has proper meal breaks and one day off per week. She has a bed in the children’s room. Although her working conditions are still demanding and the wage is very low, she has secured some minimum conditions that allow her to live safely and decently. The experience of being able to improve her living conditions empowered her. She has become aware of the legal mechanisms that are in place in the UK to protect a worker’s human and employment rights and will be able to use them.

She is aware that she will need to renew her visa well before it expires. She frequents the centre regularly, and has joined the waiting list for English classes. She remains a visible, documented, productive presence in the UK.

**Evidence from Past Campaigns**

In 1984 the organisation CFMW (Commission for Filipino Migrant Workers) began to notice the number of “undocumented” workers who had fled from abusive employers. These workers were living and working illegally, suffering from similar problems—no passport, unpaid wages, no belongings and disturbing reports of brutal conditions (Anderson 2000:88). CFMW pinpointed “immigration status” as the key factor behind the abuse suffered—they could not change employers legally, and if forced to run away (often with their passports being withheld from them) they could not work for anyone else legally. This meant that, having escaped from one abusive situation, workers were very vulnerable to exploitation by secondary employers who could take advantage of their immigration status with poor working conditions, low pay and further abuse.

Kalayaan was formed in 1987 to work for the rights of all migrant domestic workers and specifically to campaign for the right to change immigration status that recognised their standing as workers, their right to change employers, and their right to normal work benefits and health care. It was established with the support of Waling Waling, a self-help group of migrant domestic workers. The campaign focused heavily on human rights focusing on individual cases of abuse, people’s stories and then drawing out the role of immigration legislation in facilitating this abuse and showing the possibilities for change.

— 15 October 1989: MP David Evenett introduced an Early Day Motion to the House of Commons. It was signed by 104 MPs and read:

“That this house notes with concern the plight of some overseas domestic workers brought into the UK by their employers; and calls upon the Secretary of State for the Home Department to ensure that all domestic workers from overseas are provided with a suitable immigration status that enables them to work legally and change employers whilst in the UK and which will help to end the maltreatment and abuse of overseas domestic workers by some employers.”

— 24 July 1990: the Home Office announced its regret that cases of abuse and exploitation should have occurred and imposed new controls to minimise abuse. This included requiring that all domestic workers obtain entry clearance before entering the UK.

— December 1994: the Home Office announcement new regulations. These included a requirement upon employers to give a written undertaking to provide adequate maintenance and accommodation, and write out main terms and conditions of employment.

— 1997: the incoming Labour administration indicated that there would be a substantive change in the immigration status of migrant domestic workers and that those who had entered the UK under the concession could have their immigration status regularised.

— 23 July 1998: the Home Office announced that once in the UK domestic workers will be allowed to change domestic employment to another employer. They also announced the proposal to:

“Regularise the stay of those overseas domestic workers, who, because of the shortcomings of the provisions in the past, find themselves in an irregular position through no fault of their own.”

(Reply by Mike O’Brien to parliamentary question for a written answer to changes to the arrangements for overseas domestic workers who accompany their employers to the UK.)

The above outlines the steps that were taken to regularise and recognise the rights of Migrant Domestic Workers in the UK. The change in legislation was implemented as a response to substantial evidence that tying domestic workers to their employers was a sanction of abuse akin to slavery and could not be tolerated in the UK.
IMPORTANCE OF MIGRANT DOMESTIC WORKERS REMAINING REGULARISED

As evidence from Waling Waling, CFMW (Commission for Filipino Migrant Workers) and Kalayaan, extensive work by Bridget Anderson, and the very need for the past concession for Migrant Domestic workers show, whether a Migrant Domestic work visa exists or not, wealthy families or individuals coming to live, work or visit the UK will bring domestic workers with them. Immigration restrictions, rather than stopping movement, force migration into irregular channels and beyond state control and protection.

Lack of documentation is never in the worker’s interest, only increasing their vulnerability to their employers. Although the British government is tightening the laws and increasing the possible penalties for employers hiring undocumented workers the worker will still be the one who stands to lose most. Kalayaan has come across no examples where the employer has incurred significant penalties for employing an undocumented Migrant Domestic Worker. In fact the potential risks the employer may be taking in employing an undocumented worker could increase their bargaining power in relation to their employee; as the law tightens and employment becomes more difficult for an undocumented worker to obtain any employer willing to employ a worker without papers could argue for longer hours, worse conditions and less pay in response to the “risks” that they are taking. If undocumented workers’ rights are abused they have no recourse to authority, giving their employers a great hold over them.

Important economic arguments have also been made in favour of the visa, as Lord Reay, speaking for the government when arguing for the concession for DW visas, said in 1990:

“Looking at our national interest, if wealthy investors, skilled workers and others with the potential to benefit our economy were unable to be accompanied by their domestic staff they might not come here at all but take their money and skills to other countries only too keen to welcome them.”

There is an ageing population within the UK and Western Europe. This therefore creates a demand for personal care services that can be provided by the State, families, care homes or individual carers. However we believe the latter will be used increasingly given the following factors:

— Privatisation and withdrawal of state in provision of services.
— The current move towards empowering care service users by giving them cash payments for services.
— Mistrust of private care homes given stories of abuse.
— Feminisation of the labour force.
— Changing lifestyles and family structures (families increasingly dispersed).
— Lack of people in the UK willing to take jobs in personal social care.

Moreover, there is also a specific demand for migrant workers:

— Living-in—this is an advantage for migrants but always a disadvantage for citizens.
— Pre-existing relationships.
— Nature of the relationship (this can create dependency—which gives additional power to the employer and therefore in order to avoid exploitation there should be a possibility to stay or switch employers).

Kalayaan also believes that A8 nationals are not willing to fill this demand. According to the published figures regarding workers registration, the number of A8 nationals taking up live-in and live-out domestic work represent less than 4 per cent of the total. Interviews with au pair agencies and host families reveal their concern that A8 nationals are not prepared to take live-in work. It seems to be premature to assume that A8 nationals will fill the shortages that would appear in this section of the labour market were migration not to be maintained.

CONCLUSIONS

The recognition of the right to change employer has been a significant step forward in the protection of the human rights of marginalized and vulnerable people. Kalayaan calls on the House of Lords to defend this achievement. Removing this right would be contrary to the UK commitment to the respect and promotion of human rights.

20 July 2005

Memorandum by the Union of Construction, Allied Trades and Technicians (UCATT)

(i) Should a Community approach attempt to set common rules on the admission of third country nationals for employment or should it address each sector of the labour market separately?

1. There has always been migration in sectors such as the construction industry, but at present there is no dialogue or consultation on the needs of the economy. There is a need to balance a positive approach to accepting economic migrants and encouraging workers already resident in Member States to enter sectors with skills needs. Migrant workers should not be used as a cheap exploited labour force, recruited by employers to undermine industry collective agreements. The Posted Workers Directive should be improved to provide real protection for migrant workers.

2. UCATT is not convinced that a sector-by-sector approach would be the right way to address the admission of third country nationals. In practice workers switch between different sectors of the economy. A sectoral approach could lead to a divergence in the rights of workers across the economy.

(ii) Would there be a place for quotas in a common policy?

3. UCATT is opposed to set quotas as part of a common policy. The needs of employers will vary from country to country and sector to sector. There would need to be flexibility in any admissions policy that takes into account the needs of individual Member States through social partner involvement and dialogue.

(iii) Do the same considerations apply to self-employment as to employment?

4. In sectors such as the construction industry, there is already a problem of mass false self employment. UCATT, along with other industry representatives, are working with the Inland Revenue to ensure that the employment status of workers is correctly classified. UCATT would be extremely concerned if it was significantly easier for someone to gain admission because they were self-employed.

(iv) To what extent do enlargement and free access to the labour market for workers from the new Member States affect a common policy?

5. The enlargement of the EU has helped to regularize the immigration status of many workers already working in the UK economy. In our view this is a positive development that in the long run will help the new Member States integrate into the EU. However, there is a need to underpin existing minimum standards to ensure that migrant labour is not used to undermine industry collective agreements. A failure to address these concerns will undermine efforts to adopt a common policy.

(v) Should the “Community preference” principle be maintained? Should it apply to third country nationals legally resident in the EU and, if so, to all workers or only long-term residents?

6. UCATT agrees that the “Community preference” principle should be maintained and include legally resident third country nationals ahead of new entrants.

(vi) What rights should third country workers have? Should there be any differentiation between workers admitted on a conditional basis and long-term residents?

7. There should be equal treatment of migrant workers in pay and conditions at work and migrant workers should have access to training. Migrant workers should have a secure legal status so that they are not subject to exploitation by an agency or an employer. Employment protection should not be subject to a minimum stay before workers’ rights can be enforced. Third country migrant workers should have the same right to family reunification as other migrant workers. Agencies should be regulated to prevent abuses of migrant workers and the Temporary Agency Workers Directive should be introduced with rights from day one. Third country workers should be allowed to join a trade union in line with ILO conventions on the freedom of association.
Should there be a common EU policy on the regularization of illegal workers (amnesties)?

8. Measures which regularize the workforce are to be welcomed. The enlargement of the EU in May 2004 created a space for workers already working in the UK to regularize their immigration status. However, there are lessons that can be learned from this experience. The linkage of registration to an employer can leave workers in a vulnerable position. Where possible measures to regularize migrant workers should be targeted at individual workers rather than relying on the support of an employer.

Should measures be taken to protect third countries from—or compensate them for—the loss of skilled workers?

9. The management of migratory flows has to be taken in a broader global context than the needs of EU as a whole. Migration policy should not disadvantage developing countries by cherry picking the skilled workforce throughout the world. The EU should also provide support to developing countries through aid and assistance to offset the losses as a result of emigration.

What considerations should the Government take into account in deciding whether to opt into a common EU policy?

10. A common framework of rights will help create a level playing field for business and help to prevent the exploitation of migrant workers. By creating more stability in migration policy throughout the EU, workers can develop their skills which will contribute to a more productive European economy. By taking positive measures to integrate migrant workers while maintaining and respecting existing industrial relations arrangements a common policy can help social cohesion within the EU.

Alan Ritchie
General Secretary
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