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Towards a Real European Policy on Immigration and Asylum

Background paper: immigration cannot be managed as a mechanical operation

Introduction

Mobility, i.e. migration, is a natural and human phenomenon and is acknowledged by the Universal Declaration of Human Rights (1948). Immigration is as old as human history and is not a simple issue. The Romans regarded the Franks and also the Germans as invaders. One does not have to go back in history to concede, that modern Europe as it began with Christopher Columbus, rather played the role of a conqueror and colonialist and became used to exploit entire parts of the rest of the world (America, Asia, Africa).

We have to make all efforts to remember, a task which all European peoples have with regard to their former colonial politics and we have to become aware of the boomerang effect which we experience today, when poor peoples of the south seek prosperity in our latitudes.

Finally, we have to analyse the two most important factors causing migrations today and yesterday. The first factor is of political nature: The problems of refugees and asylum seekers, who are in fear of their life, whether they flee war or suffer persecution on the basis of their sex, colour, or belief.

The second factor is of economic nature: The peoples of the south look for work which is not available where they live.

EU member states have spent the last two decades trying to reduce immigration to the minimum both immigration for asylum reasons and labour immigrants.

An examination of migration flows into the European Union over the last 15 years clearly shows that the total number of immigrants (both legal and illegal) is far from having fallen. While the number of illegal immigrants has shot up temporarily, the number of regular migrants has dropped and this is largely because many of them have been made illegal by restrictive laws. - The myth of 'zero immigration' and its corollary, the 'all-repressive' approach, have had tragic consequences:

They have not achieved the declared objective of a reduction in immigration flows

They have led to an increase in illegal immigration, forcing hundreds of thousands of people to become illegal immigrants, often enslaved by gangs of traffickers in human beings.

The EU needs not only policies regarding the admission of refugees and other migrants, but also policies which tackle the causes of migration.

The world economic system continues to allocate resources from the South to the North. It constitutes an inescapable totality and is the foremost reason for the existence of autocratic regimes and for deadly conflicts in many of the poorer regions of the world, which likewise constitute the main reason for forced migration both within these regions and, to a much lesser degree, to the industrialised countries. The fact that it is almost exclusively the so-called triad of countries (EU, USA, Japan) that profit from the World Economic System should mean that those countries have an obligation to face the negative impact of that system.

In fact, it is the whole question of the mode of development and the distribution of wealth on our planet that arises. Migration pressures on Europe can, as a consequence of the continuing impact and interaction of different 'push-pull' factors - poverty and worldwide decline in living-standards, wars for control of natural resources, civil wars, dictatorships and political persecutions, ecological catastrophes, etc, be expected to continue undiminished for the foreseeable future. Such a challenge requires the EU to have a global approach and a clearer, more transparent, more humane and more realistic harmonised policy so that a sustainable and beneficial answer is provided to the societies of origin as well as to host countries.

The work of the UN organisations is crucial in this respect. Member states should not just pay lip service to them, but increase their contributions, especially to the UNHCR.

I. Immigration Policies

The current immigration policies in Europe are failing. So we need a radical revision towards a true and fair immigration policy. But there is no easy solution to an unfair situation.

A responsible and sustainable migration policy must thus consider both the situation in the countries of origin and the rights of migrants living in Europe.

Asylum and family reunification are the only legal channels for permanent immigration into the EU member states. It is possible for a limited number of third-country nationals to work and stay in an EU member state but only temporarily and on strict conditions. They must be highly qualified and are selected to fill specific job vacancies which cannot be filled by EU nationals.

Obviously, the number of third-country nationals who wish to live and work in the EU is much larger and includes low- and non-qualified workers. These people have no option but to apply for asylum or to enter illegally and live as 'sans-papiers'.

Since the pure and simple opening of borders based on the principle that everyone has the right to free immigration is not feasible at present, the question then arises of what criteria should serve as a basis for the EU's future migration policy.

The lack of legal channels open to potential immigrants favours the development of illegal networks, with the disastrous results that are visible (e.g. social vulnerability, people ending up in the grip of criminal organisations, illegal employment)

The establishment of legal and accessible channels of immigration, although not sufficient on its own, is a necessary precondition if the aim is to discourage trafficking in human beings and all forms of exploitation that generate discrimination and exclusion. It is unacceptable to devise a selective migration policy based solely on the needs of our own societies or on the 'merits' of potential immigrants.

Migration policy must not be determined solely by labour market developments. Granting work permits only to people with certain specified qualifications contributes to the 'brain drain' from

developing countries, benefiting the wealthiest countries. Of course this form of migration also generates positive effects when migrants financially support relatives at home or return to their countries of origin with new skills and experience.

For this reason, any migration policy should be accompanied by development efforts in the countries of origin. Exchange of knowledge and experience should be promoted : and migrants living in the EU should have the opportunity to inform themselves about career perspectives in their country of origin. This would be enabled by a flexible visa policy, allowing return trips without the loss of the right to return to EU.

It is dangerous as well as pointless to specify an exact number of applicants to be accepted, their origins or their qualities. A 'pro-active' immigration policy should be working with a phenomenon that anyway we cannot really control. The Greens/EFA Group welcomes the Commission's approach whereby labour migration at European level would be managed by adopting a flexible legal framework with common standards and procedures that will establish uniform rights and responsibilities of immigrants in all Member States. Harmonisation of work and residence entitlements leading progressively and quickly to full economic, social and political integration, will increase equality of opportunity for labour migrants regardless of the Member State in which they are settled.

Instead of the current vacancy-based and temporary labour migration, Member States could give employers the possibility to recruit non-EU personnel, skilled as well as unskilled. After one year of working and residing legally in a member state, the migrant should be free to look for another job and to continue his/her stay. Although there is no reason to exclude temporary stay, permanent stay should be the premise, and integration into the host country's society the core element, of such an immigration policy.

- 'Demand'-driven immigration should be complemented by a legal channel for "supply"-related immigration. This would allow people to migrate into the EU for economic or personal reasons. Here again, the premise is permanent stay, full integration and equal rights.

Unlike the Commission, the Greens/EFA Group does not believe that further stepping-up of checks at EU external borders can be an effective means of combating illegal immigration. Rather, in addition to opening up lawful immigration channels - in the interests of EU citizens and immigrants alike - the right approach is to ensure that employers comply no less scrupulously with statutory employment-law provisions when dealing with those holding third-country nationality.

- The Greens/EFA Group supports the Commission's current proposal for a directive on the right of reunification of families which will, in certain circumstances, entitle both labour migrants and asylum-seekers to bring in adult children, parents and grandparents. The fundamental right to family life is not a privilege exclusive to EU citizens. Consequently, any attempt to violate international law standards by reducing to six years the maximum age at which children may be brought in must be decisively resisted. Family reunification must moreover include same-sex partners.

II. **Asylum Policies**

The right to seek asylum is for people suffering persecution in their country of origin a fundamental and inalienable individual right, which is acknowledged at the international level and should be protected and strengthened.

The 1951 Geneva Convention on Refugees should be the basis of any EU asylum policies and should be incorporated into the EU Treaty at the next Inter-Governmental Conference as a political principle of the European Union. The UNHCR Handbook should be the Member States' binding guide in interpreting the Convention.

The proposal for a directive on minimum standards in procedures in Member States for granting and withdrawing refugee status submitted by the Commission in autumn 2000 is a step in the right direction. Despite the restrictive legal basis (Title IV of the EC Treaty) laid down by the Council, this proposal for a directive succeeds in drafting a conclusive and just joint asylum scheme: The Greens/EFA Group expressly welcomes the guarantee of individual-case assessment and of legal assistance in all three statutory reviewing bodies, including in the event of entry from a so-called 'safe third-country' or 'safe' country of origin. The proposed procedural guarantees for asylum seekers, the right to legal assistance free of charge, and the removal of the option for EU border authorities to deport asylum seekers on the sole grounds of their choice of 'wrong' escape route will significantly raise asylum-seekers' chances of actually being recognised as such.

Even so, the retention of border procedures - in particular inhumane airport procedures - remains unacceptable to the Greens/EFA Group. That and other restrictive measures like the Council's new EURODAC Regulation, which provides for the creation of a fingerprints database of all asylum seekers in the EU - will result in the inadmissible criminalisation of human beings seeking protection. EURODAC stands in logical contradiction to the harmonisation of the granting of asylum by individual Member States because the legislative approximation is supposed to make the often life-endangering secondary movements of asylum-seekers within the EU (so-called 'asylum shopping') superfluous. There will thus be no need to pursue asylum-seekers like criminals across the territory of the EU.

A modern interpretation of the Convention must moreover also include:

persecution by non-state actors

gender-related asylum claims (by women, homosexuals and transsexuals)

the individual assessment of the asylum application of each member of a family.

If one of them is granted asylum his/ her status should be extended to the whole family. This would avoid members of the same family being granted different statuses, which is detrimental to a family's stability.

The Green/EFA Groups supports the Commission's efforts to extend the standards applicable to asylum procedure to other forms of protection that - on however generous an interpretation - cannot be said to derive from the Geneva Convention on Refugees. It is important to make the granting of temporary protection dependent not on acts of mercy but on solid legal foundations.

The Aznar-protocol to the Treaty of Amsterdam, which makes it very difficult for citizens of one member state to apply for asylum in another member state, should be deleted.

The Commission is currently submitting a number of proposals for directives in an attempt to harmonise national asylum policies by way of uniform asylum procedures, equal reception conditions and by establishing a common refugee status. The Council is being called upon in that connection to adopt minimum provisions on the basis of a non-restrictive interpretation of the Geneva Convention. Such an interpretation is the best means of resisting a form of harmonisation that would be tantamount to reduction to the lowest common denominator.

These minimum standards should guarantee rapid and fair procedures, and reception conditions which include at least work, education, accommodation which respects personal privacy and financial support, financial support, and more generally, a life in human dignity.

Member States are free to adopt national laws that are more favourable than the EU minimum standards. Additionally, a standstill clause should be included in every new piece of EU legislation prohibiting member states to lower the level of current legislation to the EU minimum.

Financial solidarity

Harmonised asylum procedures should be complemented by financial solidarity. The refugee fund that was adopted last year is a first step towards solidarity, but it is necessary for this fund to become more substantial in the future.

New instruments should complement the Geneva Convention:

In the event of a massive influx of people fleeing from wars, crisis situations and conflicts, they should be granted a legal status of temporary protection. This status should not in any way close the door to asylum procedures.

Subsidiary protection should be granted to people not protected by the Geneva Convention but who must not, for humanitarian reasons or because they would be in grave danger, be sent back to their country of origin.

Refugees who require special protection

Furthermore, victims of prostitution networks or human trafficking networks should be eligible for protection from centres offering specific services.

Measures which give unaccompanied foreign minors the right to protection, health care and education, whether or not they have the right to be on the national territory, should be introduced. Minors who are victims of traffickers should also be protected in centres offering specific supervision. Prohibition of the expulsion of minors should be respected.

The drafting of an EU asylum policy must be used as an opportunity to adapt it to the humanitarian needs of refugees and displaced persons, taking into account the diversity of experiences of refugees and asylum seekers.

III. Equality of Rights

The future European Policy on immigration must focus on two issues: The lifting of 'zero immigration' goes hand-in-hand with a more flexible visa policy (short- and long-term stay) and therefore a freedom of movement policy giving a right to travel that facilitates return trips and therefore removes one of the reasons for illegal stay.

A politics of integration requires an anti-discriminatory policy based on equal rights and treatment for all citizens and legal residents, based on residence criteria and not nationality.

The European Union immigration policy must be based on the following prerequisites:

- a huge campaign in all EU Member States to regularise all 'sans-papiers' (including economic migrants, de facto refugees and people who have been refused refugee status).

- "sans-papiers" should be able to access basic services such as health care and children's education without the risk of being reported. In order to put an end to the shameless exploitation of sans-papiers, member states should make sure that employers respect labour law provisions.
- According to the principle 'non bis in idem', double penalties (sentence + expulsion) and sometimes triple penalties because of readmission agreements (+ prison at arrival) must be dropped.
- There is an urgent need to solve the current problem of contradictory situations arising where a person can neither be expelled nor regularised, and thereby recognise the right to live as a family.
- European **Union citizenship** should, on completion of a minimum residence requirement, (be open to any person residing legally in the EU
- Whatever their status, they must enjoy equal social, cultural, economic and political rights including freedom of movement and settlement in any European country of his/her choice, the right to work and to social protection, access to health care and to education. As the right to live as a family must become a reality, it is logical that the rules relating to family reunification must become more flexible and include same-sex partners.
- In the spirit of articles 12 and 13 of the TEU the EU should protect all persons against discrimination on the basis of their nationality, race or ethnic origin.
- In the spirit of articles 12 and 13 of the TEU the EU should protect all such persons against discrimination on the basis of their nationality, race or ethnic origin. Thus, any person residing legally in a Member State, whatever his/her status, must enjoy equal social, cultural, economic and political rights including freedom of movement and settlement in any European country of his/her choice, the right to work and to social protection, access to health care and to education.
- As the right to live as a family must become a reality, it is logical that the rules relating to family reunification must become more flexible and include same-sex partners.
- A more flexible naturalisation procedure would also ensure full citizenship for residents of foreign origin who desire it.
- Regarding the sensitive question of voluntary and forced return:

voluntary return to the country of origin should as far as possible be favoured;

Return should only be allowed if the situation in the country of origin is such as to ensure the physical safety, legal security and respect for basic rights of the person concerned.

If a person returns, it is necessary to assist his or her reintegration in the country of origin. This assistance should be a combination of individual support, by means of training or a financial allowance, and support to the region of origin.

Conclusion

At a time when EU countries are suffering from illegal immigration but are considering once again the benefits of immigration, well-defined and fair regulation is necessary to limit attempts to exploit the South for the benefit of the North .

The challenge facing the EU now is to manage migration in a way that respects human rights, so that neither countries of origin nor host countries will suffer.

Conflict prevention, stronger international rules on the arms trade and promotion of sustainable development and democracy in countries of emigration must be the pivots of an ambitious European development policy.

Similarly, the EU should not create a favourable climate for the development of racist and xenophobic reactions. Racist and xenophobic incidents in EU Member States have demonstrated that immigration is not only an external phenomenon that has to be regulated, but also an already worrying situation within EU countries. It raises the question of integration.

Human rights and equal rights for all citizens residing in Europe have to be the basis of the struggle against racist and xenophobic tendencies. In that connection the Greens/EFA Group will campaign strongly for fundamental change, at both national and EU level, in the kind political approach adopted to the issue of immigration and asylum. The group condemns any attempt to raise political capital from xenophobic attitudes, and advocates more openness and honesty in the debate on immigration - which must mean dropping the illusion that immigration can be managed as a mechanical operation.

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