



Statewatch

Viewpoint: Our “freedom”, their labour: a “tradesman’s entrance for Fortress Europe

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The new European Commission “Policy Plan on Legal Migration” will introduce fast-track migration with settlement rights for skilled workers and temporary admission with no rights for unskilled workers.

“Strengthening freedom” (from “illegal” immigrants)

It is getting difficult to remember what to call EU Justice and Home Affairs (JHA) policy. Having started life in 1991 as the rather ominous sounding “Third Pillar” of EU cooperation, JHA was renamed the “Area of freedom, security and justice” in the 1997 Amsterdam Treaty. With increasing criticism of the overemphasis on “security” it was recently renamed the “Area of freedom, justice and security”. But despite the spin, JHA policy remains predominantly about “security”.

This is problematic for the EU because it is still ostensibly committed under the Treaties to strengthening “freedom” and “justice” as well. It is therefore always interesting to see how the EU purports to do this - having recently introduced the mandatory fingerprinting for EU all passport holders, the mandatory retention of all EU telecommunications traffic data and the mandatory surveillance of all air travellers, the EU can hardly start defining “freedom” in terms of civil liberties.

Under the heading “strengthening freedom”, the latest EU “operational programme” reads:

“In 2006 work will continue under this part of the Action Plan on promoting the right of all EU citizens to move and reside freely in the territory of the Member States. This calls for a focus on the associated question of further developing policy on asylum, migration and border controls” (16065/05).

There is no mention of any other value, principle or policy. “Freedom” for EU citizens simply means being able to live and travel in “Fortress Europe”, which means increasingly repressive measures against refugees and undocumented economic migrants (and never mind if citizens’ residence and movement is less and less “free”). In 2006 the EU will thus continue work on restricting refugees’ access to Geneva Convention protection, preventing illegal immigration and trafficking into the EU, strengthening border controls, developing law enforcement databases such as SIS II and the Visa Information System, and the increased vetting and surveillance of visa applicants and holders. All of this is listed in the operational programme, together with further external action on “global migration management”.

In spite of these restrictive policies and this particular vision of “freedom” the EU is increasingly dependent upon migrant labour. On the one hand it requires highly skilled labour to maintain the competitive advantage of European economies and on the other it requires “casual” labour to maintain production and do the jobs EU citizens are unwilling to do. Until now, the member states have been unwilling to address this issue at the EU level.

Towards an EU policy on “legal migration”

In January 2005 the European Commission produced a “Green Paper” calling for a “broad discussion” on an “EU approach to managing economic migration”. It began by recognising that falling birth rates and ageing populations in the EU make the admission of economic migrants a political imperative. It also noted that the “main world regions are already competing to attract migrants to meet the needs of their economies”.

In response to the consultation the Commission received “approximately 130 responses”, 40 of which came from civil society groups and NGOs calling unanimously for a more liberal EU approach to immigration and migrants’ rights (1). Unfortunately, the writing was already on the wall. First, the EU member states had already shown no interest in adopting the relatively liberal Commission proposal on economic migration of 2001 (2). Second, the scope for EU policy would be limited significantly because of agreement in the draft EU constitution that it would be up to individual member states to decide on the volumes of economic migrants they admitted from third countries (3). Third, the Commission Green Paper itself offered a very narrow basis for discussion of economic “migration management”.

In December 2005, the Commission produced a “Policy Plan on Legal Migration” (4). “The public consultation”, it suggested, “drew the attention to possible advantages of a horizontal framework covering conditions of admission for all third-country nationals seeking entry into the labour markets of the Member States” but - entirely predictably - “the Member States themselves did not show sufficient support for such an approach”.

A class-based system

The EU is already committed to the “Community preference principle”, meaning that non-EU nationals should only be admitted for employment purposes if the vacancies cannot be filled by “national or Community manpower” - men or women from EU member states. However, this principle only really affects low-skilled migrants since most member states exempt highly skilled workers and corporate employees. In the light of the Community preference principle, the admission of ten new member states significantly reduces the need for labour from outside the EU, particularly from Asia and Africa where many current “economic migrants” originate. Put crudely, it is a preference for white European labour over black Third World labour.

This hierarchy is reflected in the status and rights accorded to different groups of people in the EU. Human rights are supposed to be universal, but in practise non-EU citizens do not enjoy the same rights as citizens. There is further distinction between a host of categories including long-term resident third-country nationals, short-term residents, refugees, temporary entrants, asylum applicants and illegal migrants - each group enjoying fewer rights the last, down to the “illegal alien”.

In its “policy paper” the Commission says it intends to introduce a general framework directive to guarantee “rights to all third-country nationals in legal employment already admitted in a Member State, but not yet entitled to the long-term residence status”. What this actually means is:

“A single application for a joint work/residence permit - held by the worker and containing the most advanced biometric identifiers - could be proposed. While not significantly affecting national internal procedures, it would simplify procedures for immigrants and employers. In order to limit abuses and to fight against illegal employment, the financial responsibility of the employer could be engaged, as in the researchers directive. The validity of such a document should be inextricably linked to the existence of a legal work contract; exceptions to this principle could be foreseen under specific conditions of nationals [sic] labour markets, and will be addressed in the specific directives.”

There is no further mention of how the economic, social and political rights of the “worker” are to be guaranteed. Will they be able to change job or move country, for example? The status quo, coupled with the proposal that the employer could be “financially responsible”, suggest that this is very unlikely. At present, few member states link residence and employment so explicitly (Spain and Germany are best known for doing this through their quota and ‘gastarbeiter’ (guest-worker) schemes).

The “highly skilled”

The “exceptions” to this general framework are to be set out in four further directives. The Commission says its intention is to “strike a balance between the interests of certain Member States - more inclined to attract highly skilled workers - and of those needing mainly seasonal workers”. What this means is that different classes of economic migrants will be admitted under different conditions.

First, the global competition for highly skilled workers means that the EU is to offer them “attractive conditions”:

“The vast majority of Member States need these workers, because of shortfalls in the labour markets pool of highly qualified workers. Furthermore, recent studies highlight for example that 54% of Med-MENA [presumably Mediterranean Middle Eastern and North African] first-generation immigrants with a university degree reside in Canada and the USA, while 87% of those having a lower than primary, a primary or a secondary level education are in Europe. In response to this situation a common special procedure to quickly select and admit such immigrants, as well as attractive conditions to encourage them to choose Europe could be devised. In this respect, it will be further evaluated whether to include intra-EU mobility or to opt for a more ambitious proposal, i.e. an EU work permit (EU green card), issued by one Member State but valid throughout the EU, on the understanding that rules regulating access to the national labour markets will be fully respected.” (emphasis added)

Another directive will cover “the entry into, the temporary stay and residence of Intra-Corporate Transferees (ICT)”. This is “in order to enable the reallocation of international companies’ key personnel and specialists within Europe”. In short, fast-track admission and full rights for the well educated, well trained and well paid.

The “seasonal worker”

For the low skilled, things are rather different:

“Seasonal workers are regularly needed in certain sectors, mainly agriculture, building and tourism, where many immigrants work illegally under precarious conditions. The scheme will propose a residence/work permit allowing the third-country national to work for a certain number of months per year for 4-5 years. Entry and exit stamps should prevent abuses.

The aim is to provide the necessary manpower in the Member States while at the same time granting a secure legal status and a regular work prospective to the immigrants concerned, thereby protecting a particularly weak category of workers and also contributing to the development of the countries of origin. Even in presence of high unemployment, this category of immigrant workers rarely conflict with EU workers as few EU citizens and residents are willing to engage in seasonal activities.”

By basing the scheme on temporary admission and temporary employment contracts it remains to be seen how the Commission intends to provide this lowest class of migrant workers with a “secure legal status”, particularly since neither the member states nor the employers have shown themselves at all willing to improve their lot. Long-term resident status, which is dependent under EU law upon five years *continuous* residence, will clearly be out of reach.

A final directive will cover “remunerated trainees”. Students, volunteers and researchers are already covered by legal migration rules, leaving what the Commission calls a “legislative gap”. “Allowing third-country nationals to acquire skills and knowledge through a period of training in Europe can be a way to encourage brain circulation, beneficial for both the sending and receiving country”. But as the Commission points out, “safeguards will be necessary to avoid abuses, i.e. trainees who are in reality underpaid temporary workers”. This is certainly the case already for many paid traineeships in the member states.

Human rights, economic wrongs

The Commission’s Green paper promised to improve the lot of migrant workers. If it genuinely intended to this, why was there no mention whatsoever, in either the Green Paper or the Policy Plan, of ratifying international conventions designed for precisely this purpose (the Migrant Workers

Convention being the most obvious example). The answer, as noted above, is that the member states are not interested in migrants' rights - only migrant labour.

From this starting point (and because the admission of economic migrants is essentially a national matter) EU policy was never going to be about admitting or rearing the migrant workers on whom its economies depend, but rather about controlling and coercing them. "Fortress Europe" is generally associated with keeping migrants and refugees out of the EU but it has long had an internal dimension geared toward the surveillance and control of those already here. As Dario Melosi has pointed out in *Statewatch* (vol 13 no 5), the construction and criminalisation of the "illegal" migrant is about the: "subjectification" of recruits into a new draft of the European working class".

This particular form of social control is extremely costly because it requires the vast apparatus of modern policing to be employed against those fleeing poverty and persecution, people who generally have no choice but to enter illegally. In this sense, "Fortress Europe" uses violence and coercion in the same way as modern nation-states - through surveillance, policing, laws and detention. But there is an extra dimension to "Fortress Europe": expulsion, a threat faced by migrant workers with both regular and irregular immigration statuses. This ultimate sanction is crucial because it hands additional coercive powers to employers, both legal and illegal, by institutionalising a kind of "bonded labour" in which residence is dependence upon continuous employment and good behaviour. Temporary and illegal workers in particular are vulnerable to "super-exploitation".

Such a system is both unjust and irrational. As the EU member states busy themselves trying to meet ambitious expulsion targets at phenomenal cost - tens of thousands of people every year in some member states - it might be asked why not offer these people employment where shortages exist. After all, the only crime they have committed is to come here to try to live and work, or to be with their families. Sadly, the European Commission has once again demonstrated the gulf between the rhetoric and reality of "freedom, security and justice" in the EU.

(1) See Commission website:

http://europa.eu.int/comm/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm

(2) COM (2001) 386

(3) Art. III-267

(4) COM(2005) 669: <http://www.statewatch.org/news/2006/jan/com-policy-plan-legal-mig-669.pdf>

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