

**OPINION OF THE EXPERTS GROUP ON TRAFFICKING IN HUMAN BEINGS OF
THE EUROPEAN COMMISSION**

**ON THE GREEN PAPER ON AN EU APPROACH TO MANAGING ECONOMIC
MIGRATION PRESENTED BY THE COMMISSION
(Brussels, 11.1.2005 COM (2004) 811 final)**

Considering the Green Paper on an EU approach to managing migration and the invitation to all interested parties to comment in writing;

Considering the importance of launching an in-depth discussion of all EU institutions, Member States and civil society with a view of elaborating the most appropriate rules and procedures for admitting economic migrants in the EU territory;

Considering the need for a rights based approach to migration, including the need to safeguard the human rights of migrants and to protect them against exploitation and the related phenomenon of trafficking in human beings, in line with the principles expressed in the Charter on Fundamental Rights of the European Union;

Considering the demographic decline and ageing of EU populations, its impact on the economy and the need to establish facilities for the recruitment of economic migrants;

Considering the potential nexus between EU-policies on economic migration and trafficking in human beings;

Recalling the Report presented on 22 December 2004 by the Experts Group on Trafficking in Human Beings of the European Commission;

The Experts Group on Trafficking in Human Beings of the European Commission issues the following opinion with a view to the discussion in the public hearing to be organized by the Commission on 14 June 2005 on this matter among all the different stakeholders involved.

OPINION

Despite the different commitments by the EU (i.e., the Hague Programme, 2004 EC Communication on Tampere), many governments continue to respond to migration demands with a restrictive approach to migration and immigration policies. The effects of these policies have not decreased migration, but rather have left migrants more vulnerable to irregular forms of migration, including smuggling and trafficking for labour and other forms of exploitation. The promotion of regular and managed migration and standards-based working conditions has the potential to offer migrant workers a mechanism that is safer and guarantees their human and labour rights.

The globalised economy is enabling increased movements of labour and employment. Policies have tended to favour deregularisation, resulting in informalisation and opening of markets. The vast majority of smuggled and trafficked persons are migrants who end up being abused and exploited in the informal, unregulated and unprotected sectors. This happens with

prostitution and other traditionally female designated informal sectors such as domestic labour, and in previously formal sectors, such as construction or agriculture, where subcontracting or contract work is leading to informalisation. Increasing informalisation and deregulation of the labour market has left informal sector workers, particularly irregular migrants, more vulnerable to exploitative working practices and trafficking.

Regular and managed migration should enable shortages in the workforce and opportunities for migrant workers in countries of destination to be identified and to match these with the potential of available migrant workers in countries of origin. However, it is important that such policies do not deplete the workforce of countries of origin to their detriment (by, for example, only taking skilled workers) and that such policies apply to all areas where there is demand for migrant workers, including unskilled and informal sectors, and do not simply operate a quota for skilled workers. Managed migration policies should be used in a way that benefits migrants, countries of origin and destination.

Member States should maintain their commitments made at Tampere in 1999 and reiterated in the Hague Programme, in terms of promoting regular and managed migration policies, based on demand and need, including the demand for unskilled labour, which are gender sensitive and imply the establishment of clear and comprehensive laws and administrative arrangements to ensure that migration movements occur to the mutual benefit of migrants, society and governments.

Moreover, Member States should provide a standard based approach to trafficking in human beings, smuggling of migrants and migration, including the following:

- The protection of migrants' rights and international standards of protection of all migrants (both legal and illegal) as key to ensuring safe migration. States should ratify and implement the appropriate conventions, in particular the 1990 UN Convention on the Protection of the Rights of all Migrant Workers and their Families;
- Ratification and application of the relevant ILO instruments, in particular Convention No. 29 on forced labour and Convention 182 on the worst forms of child labour;
- The application of standards in both formal and informal sectors through a combination of education, self-regulation and enforcement;
- Awareness raising and training on labour standards and their connection with the prevention of trafficking of those responsible for labour policies, including policymakers, labour inspectors and Unions.
- Encouragement of both formal and informal organisation of workers in the formal as well as informal sectors, including self organisation.

The EU should continue to move towards implementing those parts of the Thessaloniki, Tampere and The Hague agendas that aim at the promotion of regular and managed migration and integration of third country nationals. Both the needs in countries that people wish to migrate from and the requirements in countries people wish to migrate to should be considered, enabling legal migration and integration of migrants and migrants' rights while addressing the root causes of migratory flows. The policy should be open and accessible to all and include the following:

- Regulation of travel/employment/au pair agencies;
- Provisions criminalizing the retention of passports, visa, work permits or other documents by persons other than the document holder;
- Visas or work permits should not be linked to a specific employer or type of employment;

- Education, information and promotion about safe migration possibilities and practices;
- Gender sensitiveness, in order to address the unequal position with regard to information on migration and access to established migration routes and networks of women. Women are more vulnerable to trafficking as many of the sectors to which they traditionally are relegated - for example the sex sector and domestic labour – are less likely to be regulated and thus more vulnerable for trafficking and the related forced labour and slavery like practices.

Moreover, Member States should promote the introduction of a broad range of administrative controls in pre-border, border and in-land areas, with due respect to human rights considerations and fundamental rights of persons, including the freedom of movement.

Member States should encourage a pro-active regulating and monitoring of vulnerable sectors such as construction, sweat shops, agriculture, domestic labour and the sex industry by multi-agency groups. This would counter-act the invisibility of exploitation.

Member States should proactively cooperate with countries of origin in order to improve the living conditions of potential migrants e.g. by increasing their development aid. To this end an improved cooperation between stakeholders responsible for the migration sector and the development sector should be implemented.