

**Ratification of the UN Migrant Workers Convention in the European Union**  
**Survey on the Positions of Governments and Civil Society Actors**

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## ***Introduction***

This year, we celebrate the 20<sup>th</sup> anniversary of the adoption of the UN Migrant Workers Convention<sup>1</sup> (ICRMW), one of the nine core international human rights treaties. This Convention establishes a comprehensive normative framework for the protection of the rights of all migrant workers and members of their families, at every stage of the migration process. It recognizes the specific vulnerabilities of migrant workers and promotes humane and lawful working and living conditions. It provides guidance on the elaboration of national migration policies based on respect for human rights and the rule of law.<sup>2</sup> One of the key innovations of the Conventions is that minimum standards are for the first time explicitly guaranteed for undocumented migrant workers.

Despite the many references to the respect for human rights as a core value of the European Union, to date, not a single EU Member State has signed or ratified the ICRMW.

For the first time, the positions of the governments of all of the 27 Member States of the European Union are brought together in one single publication.<sup>3</sup> Its purpose is to present an overview of the current positions vis-à-vis the Convention and to provide civil society actors and their allies with a tool upon which they can base their future advocacy efforts.

Such advocacy can also draw from the experiences and practices in which so many organizations were involved in over the past couple of years. This publication therefore also includes references to concrete actions – successes as well as failures – at the national, European and international level.<sup>4</sup>

Despite the fact that throughout 2010 we noticed a growing support for the call for ratification in the European Union<sup>5</sup> a lot remains to be done, especially in terms of raising awareness about the potential of the Migrant Workers Convention.

This study shows the continuous commitment of December 18, together with the European Platform for Migrant Workers Rights (EPMWR), in building a strong and multi-faceted support base for its advocacy work around migrants' rights. The time has come to finally achieve ratification in the European Union of this core international human rights instrument. Put in the words of Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe:

“I find it worrying that democratic countries governed by the rule of law, with significant numbers of migrants living in their societies, are hesitant to become a party to this core UN human rights treaty, and commit themselves to guaranteeing migrant workers their fundamental rights.”<sup>6</sup>

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<sup>1</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990. The Convention entered into force on July 1<sup>st</sup>, 2003.

<sup>2</sup> For more info on the Convention go to: [http://www.december18.net/un\\_migrant\\_workers\\_convention](http://www.december18.net/un_migrant_workers_convention).

<sup>3</sup> The publication is an updated of a similar mapping exercise carried out in 2006. See: EPMWR, The UN Migrant Workers Convention: Steps Towards Ratification in Europe. Positions of Civil Society Actors, Government Agencies and Policy Makers in the EU Member States, available at [http://www.december18.net/sites/default/files/EPMWR\\_The\\_UN\\_Migrant\\_Workers\\_Convention.pdf](http://www.december18.net/sites/default/files/EPMWR_The_UN_Migrant_Workers_Convention.pdf).

<sup>4</sup> Political Parties, Members of National Assemblies and the European Parliament, National Human Rights Institutions and Civil society organisations.

<sup>5</sup> See: [www.migrantsconvention.eu](http://www.migrantsconvention.eu).

<sup>6</sup> Letter from Commissioner Hammarberg dated 31 May 2010.

## ***Methodology***

To map the position of the various stakeholders, a questionnaire was sent to:

- Government officials
- Political Parties
- Members of National Assemblies and the European Parliament
- National Human Rights Institutions (NHRIs)
- Civil society organisations

Questions focused on the following areas:

- Official position of the Government
- Parliamentary questions and interventions
- Advice/opinions from NHRIs and civil society organisations
- National campaigns in favour of ratification
- Level of awareness about the Convention
- Legal, administrative or political obstacles to ratification

Over a period of six months, a total of 103 replies were received to the questionnaire. Complementary information was obtained through desk research, using in particular the Universal Periodic Review of the UN Human Rights Council and the examination of the Treaty Monitoring Bodies.

## ***International Overview***

On the occasion of the 20<sup>th</sup> anniversary of the Migrant Workers Convention a number of campaigns and actions for ratification were initiated at the international level.<sup>7</sup> The 2010 campaign started with a press conference on 12 November 2009 in Geneva organized by the members of the Steering Committee of the Global Campaign.<sup>8</sup> Calls for ratification of the ICRMW were also prominently raised at the IV World Social Forum on Migration, held in Quito - Ecuador from the 8<sup>th</sup> till the 12<sup>th</sup> of October 2010,<sup>9</sup> and also during the Civil Society Days held in parallel with the IV Global Forum on Migration and Development in Puerto Vallarta – Mexico, from the 8<sup>th</sup> till the 11<sup>th</sup> of November 2010.<sup>10</sup>

Over the past years, prominent UN officials and UN agencies have called for the ratification of the Migrant Workers Convention in the European Union.

In his address<sup>11</sup> to the Council of Europe on 19<sup>th</sup> October 2010, **UN Secretary General Ban-ki Moon** said the following: “Here in Europe, ratification of the Convention on the Rights of Migrant Workers and their Families has been disappointing. Twenty years after it was adopted, none of Europe’s largest and most wealthy powers have signed or ratified it. In some of the world’s most advanced democracies among nations that take just pride in their long history of social progressiveness migrants are being denied their basic human rights.” He, unfortunately, did not repeat this view as strongly in his address to the European Parliament, although he did emphasize his concerns about a dangerous trend that is emerging, a new politics of polarization, in which immigrants are accused of violating European values.<sup>12</sup>

During the **Universal Periodic Review** of the Human Rights Council, many States recommended to the country under review the ratification of the Migrant Workers Convention.<sup>13</sup>

The **Special Rapporteur on the Human Rights of Migrants** always recommended the ratification of the Migrant Workers Convention during visits in the countries that did not yet ratify it. For EU Member States this is the case of

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<sup>7</sup> E.g.: The Global Campaign for Ratification of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: [http://www.migrantsrights.org/migrants\\_day\\_09.htm](http://www.migrantsrights.org/migrants_day_09.htm) and Amnesty International: <http://www.amnesty.org/en/ratify-migrant-workers-convention>. Also the International Trade Union Confederation (ITUC) called several times for a global ratification of the Convention, see, as an example, Resolution on migrant workers, 2<sup>nd</sup> World Congress, Vancouver, 21 - 25 June 2010, § 15.a, available at [http://www.ituc-csi.org/IMG/pdf/2CO\\_11\\_Migrant\\_Workers\\_03-10-2.pdf](http://www.ituc-csi.org/IMG/pdf/2CO_11_Migrant_Workers_03-10-2.pdf), and the campaign “Migrants’ Rights are Workers’ Rights!”: [http://www.ituc-csi.org/IMG/pdf/World\\_Map\\_Migration\\_Ratification\\_Eng.pdf](http://www.ituc-csi.org/IMG/pdf/World_Map_Migration_Ratification_Eng.pdf).

<sup>8</sup> See: [http://www.migrantsrights.org/migrants\\_day\\_09.htm](http://www.migrantsrights.org/migrants_day_09.htm) The press release can be found here: <http://www.migrantsrights.org/material.htm>

<sup>9</sup> Quito Declaration, 11 October, “Pueblos en Movimiento por una Ciudadanía Universal: derrumbando el modelo, construyendo actores”, available at <http://www.fsmm2010.ec/userfiles/DeclaraciondeQuitoIVFSMM11OCTUBRE2010r.pdf> (in Spanish). The call for ratification was included even in the declarations of the former Social Forums: <http://www.fsmm2010.ec/en/ediciones-antiores-del-foro-social-de-las-migraciones.php>.

<sup>10</sup> The statement of the Civil Society Days is available at: [http://gfmd2010mexico.hsplatform.com/archivos/porta/doc\\_2\\_78\\_StatementCivilSocietyDays.pdf](http://gfmd2010mexico.hsplatform.com/archivos/porta/doc_2_78_StatementCivilSocietyDays.pdf). During the IV GFMD, in particular, the UN High Commissioner for Human Rights, Mrs. Navi Pillay, invited States that have not yet ratified the Migrant Workers Convention to do so and called for its effective implementation: <http://www.december18.net/article/un-human-rights-chief-urges-states-end-discrimination-against-migrants>.

<sup>11</sup> Secretary-General's Address to the Council of Europe, Strasbourg, 19 October 2010: <http://www.unbrussels.org/reports/212-strasbourg-19-october-2010-secretary-generals-address-to-the-council-of-europe.html>.

<sup>12</sup> Secretary-General's Address to the European Parliament, Strasbourg, 19 October 2010: <http://www.unbrussels.org/reports/213-secretary-generals-address-to-the-european-parliament-strasbourg-19-october-2010.html>.

<sup>13</sup> This is dealt with in detail in the sections on the individual Member States.

Romania and United Kingdom,<sup>14</sup> which he visited recently. The former Special Rapporteur Ms. Gabriela Rodríguez Pizarro did the same during her visits to Spain<sup>15</sup> and Italy.<sup>16</sup>

On 10 November 2010, at the IV Global Forum on Migration and Development in Mexico, UN **High Commissioner for Human Rights**, Mrs. Navi Pillay, invited States that have not yet ratified the Migrants Workers Convention to do so and called for its effective implementation.<sup>17</sup>

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<sup>14</sup> For more information refer to the specific part of each of these Countries.

<sup>15</sup> Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, visit to Spain, 14 January 2004, E/CN.4/2004/76/Add.2, § 86.a, available at [http://www.unhcr.ch/huridocda/huridoca.nsf/2848af408d01ec0ac1256609004e770b/5491ca51b7f6563f1256e6e00555bc3/\\$FILE/G0410250.pdf](http://www.unhcr.ch/huridocda/huridoca.nsf/2848af408d01ec0ac1256609004e770b/5491ca51b7f6563f1256e6e00555bc3/$FILE/G0410250.pdf).

<sup>16</sup> Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, visit to Italy, 15 November 2004, E/CN.4/2005/85/Add.3, §95, available at <http://www.unhcr.org/refworld/country,,,MISSION,ITA,,42d66e430,0.html>.

<sup>17</sup> Mrs. Pillay not only spoke as UN High Commissioner for Human Rights, but also on behalf of the Global Migration Group (GMG), an inter-agency group bringing together heads of agencies to promote wider application of all relevant international and regional instruments and norms relating to migration. Her speech can be found here: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10521&LangID=e>



## ***European Institutions and Stakeholders***

The European Union began to establish its common policy for asylum and migration in 1997, with the Treaty of Amsterdam,<sup>18</sup> giving the Council and the Commission the power to adopt measures in this field. The Treaty of Lisbon,<sup>19</sup> which entered into force on 1 December 2009, confirms the EU's commitment to the development of a common immigration policy, as asylum and migration procedures moved from the former "third pillar" to the "Area of Freedom, Security and Justice", with a shared competence between the Union and the Member States. Therefore, one could argue that the new system opens up new opportunities for EU decisions to potentially have an impact at the national level. But, the choice on whether or not to ratify the Migrant Workers Convention remains the sole responsibility of the EU Member States. Nevertheless, as we can see from the arguments used by the Member States, actions by the EU institutions could make the difference when it comes to ratification of the Convention in the European Union. It is therefore necessary to keep following the positions taken by European Institutions and the other actors involved at the EU level.

### **European Commission**

Although in the past the European Commission did recommend that the Member States should ratify the Migrant Workers Convention,<sup>20</sup> its position changed significantly during the first Barroso-led Commission and it has basically remained the same ever since. In 2007 for example, in his reply to the joint Comments of Christian Organizations on the Commission's Communication on "Policy priorities in the fight against illegal immigration of third-country nationals",<sup>21</sup> Commissioner Frattini stressed that he does not consider that illegal immigrants should generally have the same rights as legal migrants, therefore there is no intention for the Community to ratify the Migrant Workers Convention, which, in his view, does not sufficiently make this distinction.<sup>22</sup>

When December 18 raised the issue of the ratification of the ICRMW at a conference organized by the Belgian Presidency in October 2010, a representative of the European Commission replied that, because the EU itself cannot ratify the Convention,<sup>23</sup> it is the sole responsibility of each of the Member States.

### **European Parliament**

Contrary to the position of the European Commission, the European Parliament has in recent years adopted several resolutions in favour of the ratification of the Migrant Workers Convention,<sup>24</sup> as was the case in 2007.<sup>25</sup>

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<sup>18</sup> Treaty of Amsterdam, amending the Treaty on European Union, the treaties establishing the European Communities and certain related acts, 2 October 1997, available at <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0001010001>.

<sup>19</sup> Treaty of Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community, 3 December 2007, available at <http://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.en07.pdf>.

<sup>20</sup> See EPMWR, The UN Migrant Workers Convention, cit. p. 22.

[http://www.december18.net/sites/default/files/EPMWR\\_The\\_UN\\_Migrant\\_Workers\\_Convention.pdf](http://www.december18.net/sites/default/files/EPMWR_The_UN_Migrant_Workers_Convention.pdf)

<sup>21</sup> European Commission, Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals, COM/2006/0402 final, 19 July 2006, available at [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=COMfinal&an\\_doc=2006&nu\\_doc=402](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2006&nu_doc=402).

<sup>22</sup> The document is available at [http://www.december18.net/sites/default/files/frattini\\_letter.pdf](http://www.december18.net/sites/default/files/frattini_letter.pdf).

<sup>23</sup> There continues to be a discussion about this point. Some argue that because the ICRMW does not explicitly provide a clause allowing for its ratification by regional or international organisations, the Convention cannot be ratified by the European Union as such.

<sup>24</sup> For the former positions of the European Parliament, please refer to EPMWR, The UN Migrant Workers Convention, cit., p. 22. [http://www.december18.net/sites/default/files/EPMWR\\_The\\_UN\\_Migrant\\_Workers\\_Convention.pdf](http://www.december18.net/sites/default/files/EPMWR_The_UN_Migrant_Workers_Convention.pdf).

<sup>25</sup> European Parliament, Texts adopted, Resolution on the policy plan on legal migration, P6\_TA(2007)0414, 26 September 2007, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0414+0+DOC+XML+V0//EN>.

In January 2009, the European Parliament adopted a resolution which called on the Member States to ratify the Migrant Workers Convention, drawing their attention to the fact that most people who work without being in possession of the appropriate immigration documents are doing work which is legal and essential to Europe's economies, and calling on the EU institutions and Member States to stop using the term "illegal immigrants", which has very negative connotations, and instead to refer to "irregular/undocumented workers/migrants".<sup>26</sup>

In April 2009, the EP called on the Member States to ratify the ICRMW. This was part of a resolution on a Common Immigration Policy for Europe.<sup>27</sup>

And in November 2009 the EP emphasized the importance of granting migrants access to justice, housing, education and health care, in accordance with, inter alia, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.<sup>28</sup>

Most recently, the Committee on Civil Liberties, Justice and Home Affairs adopted a motion for a resolution calling on the EU Member States to sign up to and ratify the core Council of Europe and UN human rights conventions, including the ICRMW.<sup>29</sup>

## Members of the European Parliament

Because of the increased power of the European Parliament, it is important to look at the position taken by individual MEPs and the political groups they belong to. Below is an overview of the responses we received to the survey.

At the time of publishing this report, a total of 70 MEPs from 5 different political groups and coming from 24 Member States signed the Petition calling EU Member States to ratify the Migrant Workers Convention.<sup>30</sup> This shows, in our view, that MEPs are interested in the issue and are willing to collaborate with civil society actors with the aim to put the ratification of the Convention on the political agenda. The signatures provide a strong basis for further awareness raising and advocacy during the remaining period of the current legislature of the European Parliament.

### Group of the European People's Party (Christian Democrats)

MEP **Wim van de Camp (Christen Democratisch Appèl, the Netherlands)** stresses that the main reason for non-ratification by EU Member States is that the Convention confers rights to illegal immigrants as well, and this is a step too far for many ruling parties across the EU, as is the case for the Dutch government and the CDA.

With the entry into force of the Lisbon Treaty, the European Parliament can ask questions to the Commission and even hold the European Council and the Council of Ministers responsible. But first of all there has to be the political will to do this with respect to the Migrant Workers Convention, something which currently is not the case. In his

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<sup>26</sup> European Parliament, Texts adopted, Resolution on the situation of fundamental rights in the European Union 2004-2008, P6\_TA(2009)0019, 14 January 2009, §158, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0019&language=EN&ring=A6-2008-0479>.

<sup>27</sup> European Parliament, Texts adopted, Resolution on a Common Immigration Policy for Europe: Principles, actions and tools (2008/2331(INI)), P6\_TA(2009)0257, 22 April 2009, § 38, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0257>.

<sup>28</sup> European Parliament, Texts adopted, Resolution on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme, P7\_TA-PROV(2009)0090, 25 November 2009, §61, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2009-0090+0+DOC+XML+V0//EN>.

<sup>29</sup> European Parliament, Report on the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon, (2009/2161(INI)), Committee on Civil Liberties, Justice and Home Affairs, 1 December 2010. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2010-0344&language=EN>.

<sup>30</sup> All the signatures of MEPs can be seen at <http://www.december18.net/article/updated-list-signatory-meps>.

view, this means that the European Parliament should not take any initiative regarding the ratification of the Convention.<sup>31</sup>

### Group of the Progressive Alliance of Socialists and Democrats in the European Parliament

In a policy paper adopted in 2008 the Socialist Group in the European Parliament affirms that the EU should urge all Member States to ratify the Migrant Workers Convention.<sup>32</sup>

In the view of MEP **Proinsias De Rossa (Irish Labour Party)** the Convention should be ratified by all Member States because it provides an internationally-accepted definition of migrant workers and their families and recognizes that such workers are more than 'economic units' but have social rights, including that of family reunification. The Irish Labour Party is committed to ratifying the Convention and to enshrining its protections into domestic law, and the Labour Party delegation in the Socialists and Democrats Group supports this position.

Mr. De Rossa submitted two written questions to the European Commission about this issue, one in 2005<sup>33</sup> and the other in 2009.<sup>34</sup> In 2005 Mr Frattini replying on behalf of the Commission wrote that it is up to the Member States to explain their reasons for not ratifying the Convention. Mr. Frattini added that to the Commission's knowledge, one of the main obstacles to ratification by EU Member States seems to be that the Convention does not provide a clear distinction between migrant workers in regular situations and those in irregular situations. Furthermore, many of the rights listed in the Convention are also guaranteed at EU level for citizens and third-country nationals alike through other instruments such as the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights. In the current context of discussions, he concluded, an action aiming at achieving ratification of the Convention by all Member States is not foreseen.<sup>35</sup>

In 2009 Mr. Barrot replied on behalf of the Commission,<sup>36</sup> stating that, as indicated in the reply to the Honourable Member's previous written question E-2606/05, the Commission shares the objectives of the Convention and believes that the effective system of protection of migrants' rights has to be an integral part of the European legislation in this area. He continued enumerating the legislative steps taken by the Commission aimed at enhancing the rights of migrant workers.<sup>37</sup>

Mr. De Rossa believes that the entry into force of the Lisbon Treaty provides the potential to raise awareness on the Convention, because subjects coming under the 'ordinary legislative procedure' tend to receive greater attention in the EP than subjects which do not. He argues that the EP could try to repeat the call contained in its 2005 resolution on the EU's priorities and recommendations for the 61<sup>st</sup> session of the UN Commission on Human Rights in Geneva<sup>38</sup>

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<sup>31</sup> Reply from Wim van de Camp, Christen Democratisch Appèl, the Netherlands, 13 July 2010.

<sup>32</sup> Group of the Progressive Alliance of Socialists and Democrats in the European Parliament, "Inclusive Europe, Europe for all", p. 23, available at [http://www.socialistgroup.org/gpes/media3/documents/3563\\_EN\\_EN\\_Inclusive\\_europe\\_en\\_web.pdf](http://www.socialistgroup.org/gpes/media3/documents/3563_EN_EN_Inclusive_europe_en_web.pdf).

<sup>33</sup> European Parliament, Parliamentary Questions, Written Question E-2606/05 by Proinsias De Rossa (PSE) to the Commission, 14 July 2005, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2005-2606+0+DOC+XML+V0//EN&language=MT>.

<sup>34</sup> European Parliament, Parliamentary Questions, Written Question E-5343/09 by Proinsias De Rossa (PSE) to the Commission, 28 October 2009, available at <http://www.europarl.europa.eu/sides/getDoc.do?secondRef=0&language=MT&type=WQ&reference=E-2009-5343>.

<sup>35</sup> European Parliament, Parliamentary Questions, Answer given by Mr Frattini on behalf of the Commission, 9 September 2005, available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2005-2606&language=MT>.

<sup>36</sup> European Parliament, Parliamentary Questions, Answer given by Mr Barrot on behalf of the Commission, 16 December 2009, available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2009-5343&language=MT>.

<sup>37</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (OJ L 155, 18.6.2009); Directive 2009/52/EC of Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009); Directive 2008/115/EC of Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008).

<sup>38</sup> European Parliament, Texts adopted, P6\_TA(2005)0051, 24 February 2005, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0051+0+DOC+XML+V0//EN>.

on Member States to ratify the Convention, either in a specific resolution or more likely within other EP resolutions dealing with migration matters, because major steps would be achieved if the Commission and the Council were to call on Member States to ratify the Convention, or if the Commission were to propose that the EU ratify it.<sup>39</sup>

MEP **Rita Borsellino (Italian Democratic Party)**, is one of the first signatories of the petition “Europe: it’s time to Ratify the Migrant Workers Convention”,<sup>40</sup> launched by December 18 and the EPMWR, and she raised the issue inside the Civil Liberties Committee. Her delegation, the Democratic Party, and her group support the call for ratification. She believes that it is necessary to provide more information about the Convention because many MEPs are not aware of its existence and provisions. Given the fact that because of the Lisbon Treaty the European Parliament becomes a fully-fledged co-legislator, like the Council, MEPs have potentially more influence on the decision-making.<sup>41</sup>

#### Group of the Alliance of Liberals and Democrats for Europe

MEP **Sonia Alfano (Italia dei Valori - Lista Di Pietro)** is one of the first signatories of the petition “Europe: it’s time to Ratify the Migrant Workers Convention”, and she gave a strong support to December 18 in organizing events and meetings to promote the ratification of the Migrant Workers Convention.<sup>42</sup>

#### Group of the Greens/European Free Alliance

According to the European Greens, an EU regulation should be developed - in consultation with the unions and civil society organizations - that protects the rights of workers and prevents the tendency to link residency status with the economic needs of the host country. Currently, the European Greens continue their active work to amend the Commission proposals in the area of migration, asylum and border control policy. The aim is to achieve an upward harmonization based on the strongest protection standards.<sup>43</sup>

MEP **Judith Sargentini, GroenLinks (GreenLeft), the Netherlands**, is one of the first signatories of the petition “Europe: it’s time to Ratify the Migrant Workers Convention”, and she took part in the press conference organized by December 18 at the European Parliament to support the launch of the petition.<sup>44</sup>

#### Confederal Group of the European United Left - Nordic Green Left

In a 2008 publication, the GUE/NGL supported the idea of a European directive transposing the main lines of the Migrant Workers Convention,<sup>45</sup> and in 2009 they called on the Member States to ratify the Convention.<sup>46</sup>

MEP **Joe Higgins (Irish Socialist Party)** is in favour of the ratification of the Migrant Workers Convention by EU Member States, as he thinks it provides a basic framework for the rights of migrant workers, who are often severely exploited. In his view, the ratification of the Convention would represent an important step forward. Unionizing migrant workers, in particular, would be a vital step. The Socialist Party shares his position, and he would be willing to take some initiatives at the EP-level because with the changes introduced by the Lisbon Treaty, the European Parliament should be used as a platform to raise awareness about the Convention. He also believes that the Commission and the Council should take steps to support the ratification of the Convention.<sup>47</sup>

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<sup>39</sup> Reply from Proinsias De Rossa, Irish Labour Party, 5 November 2010.

<sup>40</sup> <http://www.migrantsconvention.eu/>.

<sup>41</sup> Reply from Rita Borsellino, Partito Democratico, (Italian Democratic Party), 23 June 2010.

<sup>42</sup> See for example: <http://www.december18.net/article/members-european-parliament>.

<sup>43</sup> Reply from the Office of the Vice-president of the European Parliament, Isabelle Durant, 8 June 2010.

<sup>44</sup> See: <http://www.december18.net/article/members-european-parliament>.

<sup>45</sup> Confederal Group of the European United Left - Nordic Green Left, Toward a Europe of Mixed Identities, 2008, p. 16, available at [http://www.guengl.eu/upload//MIGRATION\\_EN\\_reprint\(1\).pdf](http://www.guengl.eu/upload//MIGRATION_EN_reprint(1).pdf).

<sup>46</sup> Confederal Group of the European United Left - Nordic Green Left, The situation of fundamental rights in the European Union 2004-2008, 2009, available at [http://www.guengl.eu/upload//FundamentalRights\\_EN.pdf](http://www.guengl.eu/upload//FundamentalRights_EN.pdf).

<sup>47</sup> Reply from Joe Higgins, Irish Socialist Party, 19 July 2010.

German MEP **Cornelia Ernst (Die Linke)** is in favour of the UN Migrant Workers' Convention. She believes that the majority of the migrants living and working in the EU are in a vulnerable position because they are often left outside the legal provisions of their home country without gaining sufficient legal protection within the EU. She wants to promote humane and lawful work and living conditions for these people. Her party as well as her political group are in favour of ratification. During the last legislative period, the GUE/NGL group repeatedly asked for the ratification and also tried to include certain concepts of it in amendments to Reports and Opinions. Several members also called upon their Member States to ratify the Convention.

Since the beginning of the new legislative period Mrs. Ernst called for the ratification of the Convention during the negotiations of the Stockholm Programme and the discussions on the Single Permit report.

According to Mrs. Ernst, members of the LIBE committee are generally quite familiar with the Convention. But this is not the case for those MEPs who are not working on migration issues. Although the European Parliament does have increased competence in the field of migration, it will be hard to push for measures to improve the situation of migrant workers because of the current composition of the Parliament.

GUE/NGL also took the initiative for a Written Declaration which will be tabled on 15<sup>th</sup> December 2010 by the following four MEPs: Cornelia Ernst (GUE/NGL), Ska Keller (Greens/EFA), Sonia Alfano (ALDE) and Sylvie Guillaume (S&D).

Finally, Mrs. Ernst states that both the Council of the European Union and the Council of Europe should be encouraged to take steps towards ratification of the Convention.<sup>48</sup>

MEP **Cornelis de Jong** writes that the **Dutch Socialist Party** is in favour of the ratification of the Migrant Workers' Convention. In particular, the party agrees with the fundamental principle underlying the Convention, i.e. that fundamental human rights are applicable to all migrant workers, irrespective of their nationality or residence status. When he worked as a civil servant for the Dutch Government, he always tried to push for the ratification of the Convention, and this has had at least some effect. He argues that because of this preparatory work it has become clear that there are no legal obligations in the Conventions that the Netherlands cannot accept. It is therefore entirely a matter of political will.

He believes that MEPs should raise awareness about the Convention inside the EP and also raise the issue when discussing the working programmes with the Commission and the Presidency.<sup>49</sup>

In 2010, MEP **João Ferreira (GUE/NGL, Portuguese Communist Party)** submitted a written question to the European Council, asking if it had the intention to promote the Convention in the European Union and what the reasons are for the Member States' failure to ratify it.<sup>50</sup> In its reply, the European Council stated that: "Concerning the International Convention on the Protection of the Rights of Migrant Workers and their Families, ratification is the individual prerogative of each of the Member States".<sup>51</sup>

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<sup>48</sup> Reply from Cornelia Ernst, The Left, Germany, 13 October 2010.

<sup>49</sup> Reply from Cornelis de Jong, Dutch Socialist Party, 21 August 2010.

<sup>50</sup> European Parliament, Question for written answer to the Council, Rule 117, E-6138/2010, João Ferreira (GUE/NGL), 27 July 2010, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2010-6138&language=EN>.

<sup>51</sup> European Parliament, Answer to written question E-6138/2010, 4 October 2010, available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-6138&language=EN>.



## European Economic and Social Committee

Already in an own-initiative from 2004, the European Economic and Social Committee (EESC) proposed the ratification of the ICRMW by EU Member States, “with the aim of promoting migrant workers’ fundamental rights not only in Europe but worldwide.”<sup>52</sup>

In its 2008 Opinion on ‘EU immigration and cooperation policy with countries of origin to foster development’, the EESC stresses that it is surprising that EU Member States have yet to ratify the Migrant Workers Convention, and once again asks that the EU and its Member States ratify the Convention. The EESC proposes that the Commission, the Parliament and the Council promote, within the framework of its external policy, an **international legal framework for migration**, on the basis of the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. This international legal framework should also include the UN Migrant Workers Convention.<sup>53</sup> The Committee reiterated this proposal in its 2010 opinion on ‘Respect for fundamental rights in European immigration policies and legislation’.<sup>54</sup>

A similar position was taken by the EESC in its input to the discussions on the Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.<sup>55</sup>

## Committee of the Regions

In 2008, the COR supported the ratification of the Migrant Workers Convention.<sup>56</sup>

## Presidency of the EU

On 13 October 2009, Mr. Abdelhamid El Jamri, President of the Committee on Migrant Workers, the body of independent experts that monitors implementation of the Migrant Workers Convention, invited representatives of the Permanent Mission of Sweden, that held at that time the Presidency of the EU, to a bilateral meeting between the EU Member States and the Migrant Workers Committee, with the aim of discussing the Migrant Workers Convention. In March 2010 the Spanish Presidency of the EU replied to Mr. El Jamri that the Migrant Workers Convention covers areas that remain within the competence of the EU and of each Member State, and on the basis of informal consultations with Member States,<sup>57</sup> it was not in a position to accept his invitation.<sup>58</sup>

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<sup>52</sup> For this and the other former positions of the European Economic and Social Committee, please refer to EPMWR, The UN Migrant Workers Convention, cit., p. 23. See:

[http://www.december18.net/sites/default/files/EPMWR\\_The\\_UN\\_Migrant\\_Workers\\_Convention.pdf](http://www.december18.net/sites/default/files/EPMWR_The_UN_Migrant_Workers_Convention.pdf).

<sup>53</sup> Opinion of the European Economic and Social Committee on ‘EU immigration and cooperation policy with countries of origin to foster development’, 2008/C 44/21, OJ C 44, 16 February 2008, p. 5, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:044:0091:0102:EN:PDF>.

<sup>54</sup> Opinion of the European Economic and Social Committee on ‘Respect for fundamental rights in European immigration policies and legislation’, 2010/C 128/06, OJ C 128/29, 18 May 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:128:0029:0035:EN:PDF>.

<sup>55</sup> See: COM(2007) 638 final – 2007/0229 (CNS), §4.7, available at <http://eescopinions.eesc.europa.eu/eescopiniondocument.aspx?language=EN&docnr=1212&year=2008>.

<sup>56</sup> Opinion of the Committee of the Regions on A Global Approach to Migration: Developing a European Policy on Labour Immigration in conjunction with relations with third Countries, CONST-IV-014, 75th plenary session, 18 and 19 June 2008, available at [http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdri\const-iv\dossiers\const-iv-014\cdr296-2007\\_fin\\_ac.doc&language=EN](http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdri\const-iv\dossiers\const-iv-014\cdr296-2007_fin_ac.doc&language=EN).

<sup>57</sup> These informal consultations were held during the 17-18 March 2010 meeting of the High Level Working Group on Asylum and Migration (HLWG).

<sup>58</sup> European Union, Permanent Delegation to the International Organisations in Geneva, Permanent Mission of Spain, Letter to Mr. Abdelhamid El Jamri, Chairperson of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 29 March 2010, available at [http://www.december18.net/sites/default/files/el\\_jamri\\_letter.pdf](http://www.december18.net/sites/default/files/el_jamri_letter.pdf).

## Council of Europe

Although the Council of Europe (COE) is not a formal institution of the European Union, it is important to keep track of the developments at this level because of its potential influence on the EU institutions and the EU Member States.

The Parliamentary Assembly of the COE, in a 2006 resolution, noted that the Migrant Workers Convention is the most relevant international instrument which deals with the rights of irregular migrants, and invited the governments of member states of the Council of Europe to sign and ratify it, and to implement the relevant human rights instruments contributing to the protection of the rights of irregular migrants, including, *inter alia*, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>59</sup> The plans to hold a roundtable discussion on the status of ratification of the Migrant Workers Convention by Council of Europe member states<sup>60</sup> did not take place.<sup>61</sup> Despite this, the Committee of Ministers, with a view to promoting the use of the tools already available at the international level to further protect the growing numbers of migrant populations, and curb the influx of irregular migrants, invited those member states who have not yet done so to consider ratifying the Migrant Workers Convention.<sup>62</sup>

In 2008 the Parliamentary Assembly again called on the COE Member States to sign and ratify the Migrant Workers Convention.<sup>63</sup>

In his message of support for the petition launched by December 18 and the EPMWR, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg,<sup>64</sup> emphasized that all migrants have human rights and these should be respected. Rights should be guaranteed without discrimination between citizens and foreign nationals. Since European minimum standards already encompass a broad range of civil, political, social and economic rights, he recommended that the Member States of the COE accede to the Migrant Workers Convention.<sup>65</sup>

The European Commission against Racism and Intolerance (ECRI) recommended to EU Member States the ratification of the Convention on several occasions.<sup>66</sup>

## EU's External Relations

In 2008, the Euro-Mediterranean Parliamentary Assembly (EMPA), now Parliamentary Assembly of the Union of the Mediterranean (PA-UfM),<sup>67</sup> re-affirmed the need for the Parliaments in the Euro-Mediterranean region to ratify as soon as possible the Migrant Workers Convention, "also in light of the structural inadequacy of national political

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<sup>59</sup> Parliamentary Assembly of the Council of Europe, Resolution 1509 (2006), Human rights of irregular migrants, available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/ERES1509.htm>.

<sup>60</sup> Parliamentary Assembly of the Council of Europe, Resolution 1755 (2006), Human rights of irregular migrants, available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/EREC1755.htm>.

<sup>61</sup> Reply from the Secretariat of the Committee of Ministers of the Council of Europe, 18 August 2010.

<sup>62</sup> Reply from the Committee of Ministers to Parliamentary Assembly Recommendation 1807 (2007), Regularisation programmes for irregular migrants, adopted at the 1021st meeting of the Ministers' Deputies (12 March 2008), § 7, available at <http://assembly.coe.int/Documents/WorkingDocs/Doc08/EDOC11550.pdf>.

<sup>63</sup> Parliamentary Assembly of the Council of Europe, Resolution 1618 (2008), State of democracy in Europe, Measures to improve the democratic participation of migrants, available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1618.htm>.

<sup>64</sup> Message of support from Thomas Hammarberg for the petition "Europe: it's time to ratify the Migrant Workers Convention", available at [http://www.december18.net/sites/default/files/Hammarberg\\_letter\\_of\\_support.pdf](http://www.december18.net/sites/default/files/Hammarberg_letter_of_support.pdf).

<sup>65</sup> Position Paper from the Council of Europe Commissioner for Human Rights on the rights of migrants in an irregular situation, 24 June 2010, available at <https://wcd.coe.int/ViewDoc.jsp?id=1640817&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

<sup>66</sup> See the part concerning each of the Member States.

<sup>67</sup> The Parliamentary Assembly of the Union of the Mediterranean (PA-UfM), formerly Euro-Mediterranean Parliamentary Assembly (EMPA), is the parliamentary wing of the 'Union for the Mediterranean' (UfM), the southern regional cooperation branch of the European Neighbourhood Policy. For more information see [http://www.europarl.europa.eu/parliament/expert/displayFtu.do?language=en&id=74&ftuld=FTU\\_6.4.5.html](http://www.europarl.europa.eu/parliament/expert/displayFtu.do?language=en&id=74&ftuld=FTU_6.4.5.html).

and regulatory instruments confronted by a phenomenon which is because of its own nature global and transversal and which is characterised by increasing complexity".<sup>68</sup>

## European Civil Society Organizations

On July 1<sup>st</sup>, December 18, together with the **European Platform for Migrant Workers' Rights (EPMWR)**, launched a petition specifically calling on the Member States of the EU to ratify the Migrant Workers Convention.<sup>69</sup> This is done in the context of the 20<sup>th</sup> anniversary year of the Convention. At the time of publishing this report, hundreds of civil society organizations and networks expressed their support, including amongst others: European Social Platform, European Network against Racism, Eurostep, European Anti-Poverty Network, Amnesty International, Human Rights Watch, and International Federation for Human Rights (FIDH), Picum, Solidar, and the Churches' Commission for Migrants in Europe.

The **European Federation of Public Service Unions (EPSU)**, the European branch of the **Public Services International (PSI)**, supports the ratification of the ICRMW and calls for a European framework on migrant workers' rights, based on the Convention.<sup>70</sup>

In its Action Plan adopted at the Seville Congress of May 2007, the **ETUC** expressed its commitment to intensify actions and campaigns at both European and national level in favour of ratification and application of all conventions and important instruments of the ILO, UN and Council of Europe conventions on the protection of the rights of all migrant workers and their families.<sup>71</sup>

Several European civil society networks called for ratification of the Convention, including: Solidar and Picum,<sup>72</sup> the Euro-Mediterranean Human Rights Network (EMHRN)<sup>73</sup> or the initiative: European year of churches responding to migration.<sup>74</sup>

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<sup>68</sup> Euro-Mediterranean Parliamentary Assembly, Draft Recommendation, 2008, available at [http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/dv/epemed20080312\\_recom\\_cult/\\_epemed20080312\\_recom\\_cult\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/epemed20080312_recom_cult/_epemed20080312_recom_cult_en.pdf).

<sup>69</sup> See [www.migrantsconvention.eu](http://www.migrantsconvention.eu).

<sup>70</sup> See Ver.di workshop on trade union work on migration: a European perspective, 28-29 June 2010, Berlin, available at <http://www.epsu.org/a/6576>, and PSI, European countries failing to provide adequate migrant support services: Public sector unions propose solutions, Press release 26 October 2010, available at [http://www.epsu.org/IMG/pdf/PSI\\_Euromed\\_Conference\\_media\\_release.pdf](http://www.epsu.org/IMG/pdf/PSI_Euromed_Conference_media_release.pdf).

<sup>71</sup> See: <http://www.etuc.org/a/4415>.

<sup>72</sup> Joint comments of ETUC, PICUM and SOLIDAR on expected commission proposals to fight 'illegal' employment and exploitative working conditions, 26 April 2007, §10, available at [http://www.etuc.org/IMG/pdf/joint\\_comments\\_ETUC\\_PICUM\\_SOLIDAR\\_2604507\\_EN\\_final.pdf](http://www.etuc.org/IMG/pdf/joint_comments_ETUC_PICUM_SOLIDAR_2604507_EN_final.pdf).

<sup>73</sup> See for example [http://en.euromedrights.org/index.php/news/emhrn\\_releases/emhrn\\_statements\\_2007/3530.html](http://en.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2007/3530.html).

<sup>74</sup> See: <http://www.migration2010.eu/>.



# AUSTRIA

## Government Position

In its reply to the questionnaire, the **office of the Federal Minister of Labour, Social Affairs and Consumer Protection** states that there is no need for a new instrument such as the Migrant Workers Convention because the rights set forth in it are already sufficiently protected under Austrian national law as well by directly applicable Community legislation. These rights are sometimes more broadly protected than in most other Member States of the United Nations. On the other hand, the Convention contains provisions that would threaten Austrian existing labour market regulations, especially the laws on employment of foreign labour. Moreover, the other EU Member States have similar concerns and share the Austrian government's position on this matter. They believe that the competence in this area is up to the Community and the nation states. Consequently, the EU Presidency's response to a recent request from the President of the UN Committee on Migrant Workers, Mr. Abdelhamid El Jamri, to discuss the introduction of the Convention in the European Union, maintains that there is currently no foundation for this kind of discussions.<sup>75</sup>

According to the Austrian Ombudsman Board's observations, the Federal Government is against a unilateralist approach and has repeatedly stated that the Migrant Workers Convention would lead to the equality between irregular and regular migrants because it does not sufficiently differentiate between legally and illegally residing persons in Austria. Furthermore, the Convention constitutes a significant incentive for an irregular stay in the country because it aims to completely legalize the illegal workforce. This, in the view of the Government, deprives countries that are the target of migration of the possibility to shape effective tools for the access and legal stay of migrant workers.<sup>76</sup>

## Political Parties

The **Green Party** would welcome the ratification of the Migrant Workers Convention because the ratification in Austria would act as model for other EU-countries to sign. They also consider the regulations and measures set forth in the Convention as an important step towards a more fair and realistic immigration policy, which also takes into consideration the everyday discrimination that migrant workers face in many countries.<sup>77</sup>

The improvement of the current living and working conditions of migrants in Austria is part of the Green Party's electoral program. The party put forward a resolution-proposal<sup>78</sup> to the Austrian Parliament requesting the ratification and implementation of the ICRMW. They argued that this would be a big step towards a more realistic immigration approach and would improve the situation of all migrant workers, including the "illegal" residents, which are a particularly vulnerable group.

Over the past years, Austria's immigration policy has become more and more restrictive. On average, the government sharpens its immigration-asylum-and citizenship laws every 2 years.<sup>79</sup> This demonstrates the absence of political will to grant more rights to migrant workers.

According to the Green Party, a strong advocacy by the European Union's institutions would increase awareness about the Convention and the significance of migrant workers rights. However, as long as Member States such as

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<sup>75</sup> Reply received on 20 July 2010. See also the part in this publication concerning the Presidency of the EU in the section on European Institutions and Stakeholders.

<sup>76</sup> Reply from the Austrian Ombudsman Board, 21 July 10.

<sup>77</sup> Reply from the Green Party, 16 June 10.

<sup>78</sup> Resolution-proposal 763/A(E) XXII. GP, 21.12.2005, available at :

[http://www.parlament.gv.at/PG/DE/XXII/A/A\\_00763/fname\\_054665.pdf](http://www.parlament.gv.at/PG/DE/XXII/A/A_00763/fname_054665.pdf) (in German).

<sup>79</sup> For more information see: The Organisation of Asylum and Migration Policies in Austria, European Migration Network, 2010, available at: <http://emn.sarenet.es/Downloads/download.do;jsessionid=5DB3E39282885BD8E9CA3D2D42385A73?fileID=724>.

Germany and France refrain from acceding to the Convention, it is unlikely that mere recommendations by EU institutions will be enough of a motivation for countries to ratify.

While the country's two right-wing populist parties, the **Alliance for Austria's Future (BZÖ)** and the **Freedom Party (FPÖ)**, make prominent use of anti-immigrant and xenophobic statements in their campaign activities,<sup>80</sup> the present governing parties – **Social Democratic Party (SPÖ)** and **People's Party (ÖVP)** – support the position of non-acceptance but the subject does not play an important role in their election campaigns.<sup>81</sup>

### NGOs

We did not receive any replies from Austrian NGOs.

### Trade Unions

In general, the Austrian **Trade Union Federation (ÖGB)** emphasizes the need to regulate as much as possible the access of foreigners, especially of third country nationals, to the Austrian labour market in order to avoid their influence on the workforce supply and indirectly the working conditions. Although the union finds it essential to ensure equal treatment of foreign workers in the areas of wages, working and social conditions, they did not provide us with their position on the Migrant Workers Convention.<sup>82</sup>

### National Human Rights Institution

The **Austrian Ombudsman Board** has not yet dealt with the Migrant Workers Convention and did not issue opinions/recommendations or carry out activities to raise awareness about the Convention.

The Ombudsman Board confirms that there are political groups and NGOs which favour the approach that, independent of whether the entry and stay of migrants was carried out legally or illegally, a complete legalization of their residence should be granted (Bleiberecht).

According to the Ombudsman, the ICRMW is not subject of the parliamentary debate. This is to be put in the context of the lack of a common position in the EU regarding rules for legal immigration of third country nationals. It is still within the mandate of EU Member States to define which conditions third-country nationals must fulfil in order to reside legally in the respective EU country. Austria has strictly limited the possibilities for legal immigration and changes to the current government's policy seem unlikely.

Finally, there are no significant efforts (national campaigns) to promote the ratification of the Convention.<sup>83</sup>

### United Nations

CEDAW encouraged the Government of Austria to consider ratifying the Migrant Workers Convention in 2007,<sup>84</sup> CERD did the same in 2008,<sup>85</sup> and CAT in 2010.<sup>86</sup>

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<sup>80</sup> See the International Helsinki Federation Annual Report on Human Rights Violations (2007): Austria, available at: <http://www.unhcr.org/refworld/publisher,IHF,,,469399b2d,0.html>, and the Austrian legislative election campaign posters, 2008: [http://en.wikipedia.org/wiki/Austrian\\_legislative\\_election\\_campaign\\_posters,\\_2008](http://en.wikipedia.org/wiki/Austrian_legislative_election_campaign_posters,_2008). The Committee on the Elimination of Racial Discrimination expressed concern about this in its Concluding observations on Austria: Seventy-third session, 28 July - 15 August 2008, § 16, CERD/C/AUT/CO/17, available at <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.AUT.CO.7.pdf>.

<sup>81</sup> Reply from the Austrian Trade Union Federation (ÖGB), 15 September 2010.

<sup>82</sup> Ibid.

<sup>83</sup> Reply from the Austrian Ombudsman Board, 21 July 2010.

<sup>84</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations on Austria, Thirty-seventh session, 15 January-2 February 2007, § 33, CEDAW/C/AUT/CO/6, available at: [http://www.unhcr.ch/tbs/doc.nsf/0/b0dfc453344be501c12572a400337731/\\$FILE/N0724344.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/b0dfc453344be501c12572a400337731/$FILE/N0724344.pdf).

## Council of Europe

On several occasions, the European Commission against Racism and Intolerance (ECRI) of the Council of Europe asked Austria to sign and ratify the Convention, but the Austrian authorities made it clear that they do not intend to do so.<sup>87</sup>

During his visit to Austria, in 2007, Mr. Thomas Hammarberg, Council of Europe Commissioner for Human Rights, called for the ratification of the Convention.<sup>88</sup>

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<sup>85</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations on Austria, Seventy-third session, 28 July - 15 August 2008, § 27, CERD/C/AUT/CO/17, available at

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.AUT.CO.7.pdf>.

<sup>86</sup> Committee against Torture, Concluding Observations on Austria, Forty-fourth session, 26 April-14 May 2010, § 28, CAT/C/AUT/CO/4-5, available at [www.bayefsky.com/doc/austria\\_t4\\_cat\\_44.doc](http://www.bayefsky.com/doc/austria_t4_cat_44.doc).

<sup>87</sup> ECRI (European Commission against Racism and Intolerance), report on Austria, 2 March 2010, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-IV-2010-002-ENG.pdf>.

<sup>88</sup> Council of Europe, Report by the Commissioner for Human Rights Thomas Hammarberg on his visit to Austria, 21 – 25 May 2007, § 10, available at <https://wcd.coe.int/ViewDoc.jsp?id=1225149&Site=COE>.

## **BELGIUM**

### Government Position

Although Belgium already guarantees the rights contained in the provisions of the Convention, political obstacles remain. Given the fact that no other EU Member State wishes to ratify the Convention, Belgium could find itself exposed to an “immigration pull effect” if it were to do so on its own.

Awareness raising and promotion activities at the EU level could be interesting if they go hand-in-hand with actions in all of the Member States. Indeed, in the field of labour migration, the latter have the sole responsibility, and they always highlight it.

During its Presidency of the EU, Belgium feels there is a window of opportunity, it would be delighted to undertake certain actions. Moreover, Belgium believes that in the medium term, with the development of Community law on asylum and migration the pressure will be more and more in favour of ratifying the Convention.<sup>89</sup>

In its reply to the list of issues of the Committee on Economic, Social and Cultural Rights<sup>90</sup> the Belgian Government states that: “In the light of the current status of the legislation governing the employment of foreign workers, Belgium is unable to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Belgium is nevertheless aware of the purposes of the Convention and continues to work together with its European partners to provide legal protection to migrant workers in the framework of general European policy on migration”.

Back in 2004 the Belgian Government affirmed its willingness to reconsider its position against the ratification in the light of the results of a scientific study produced by the University of Leuven and the University of Antwerpen,<sup>91</sup> that showed that although some articles of the Convention provide a wider protection of rights, internal regulations in force in Belgium follow, in practice, to a large extent the provisions of the Convention. Ratification of the Convention means that public authorities make a political choice of playing a role in the prevention and elimination of forms of exploitation of foreigners and in the fight against illegal immigration.

In 2008, the Centre for Equal Opportunities and Opposition to Racism and the King Baudouin Foundation organized a series of three debates on economic migration. During one of these the former Belgian Minister of Migration and Asylum, Annemie Turtelboom, stressed that the choice for legal economic migration could contribute to finding a balance between supply and demand of work in a more and more global market. She expressed the willingness to reopen the issue of ratifying the Migrant Workers Convention and said that she did not a priori see any insurmountable obstacles for ratification. She also said that she wished to discuss this with her EU colleagues and stated that the reasons for which the ratification process is temporarily blocked by host countries - including countries outside the EU - must be studied.<sup>92</sup>

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<sup>89</sup> Reply from the Federal Public Service Employment, Labour and Social Cooperation, 29 September 2010.

<sup>90</sup> Committee on Economic, Social and Cultural Rights, Thirty-ninth session, 5-23 November 2007, § 83-84, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/cescr39/E.C.12.BEL.Q.3.Add.1.pdf>.

<sup>91</sup> Study commissioned by the IMD Platform Flanders and made by Prof. Foblets (K.U. Leuven), Prof. Vanheule (U. Antwerpen) and Sander Loones (K.U. Leuven), available in Dutch at:

[http://www.december18.net/sites/default/files/IMD\\_Platform\\_study\\_Dutch.PDF](http://www.december18.net/sites/default/files/IMD_Platform_study_Dutch.PDF) and in French at:

[http://www.december18.net/sites/default/files/IMD\\_Platform\\_study\\_Fr.doc](http://www.december18.net/sites/default/files/IMD_Platform_study_Fr.doc). On this study, see also Prof. Foblets' intervention during the debates on economic migration organized by The Centre pour l'égalité des chances et la lutte contre le racisme and the King Baudouin Foundation in 2008, *Quelle politique de migration économique pour la Belgique ?*, 2009, pp. 48-50, available at [http://www.diversite.be/diversiteit/files/File//migratie\\_migrations/PUB-1912-migration.pdf](http://www.diversite.be/diversiteit/files/File//migratie_migrations/PUB-1912-migration.pdf) (in French).

<sup>92</sup> Centre pour l'égalité des chances et la lutte contre le racisme and King Baudouin Foundation, *Quelle politique de migration économique pour la Belgique ?*, 2009, pp. 40-42, available at [http://www.diversite.be/diversiteit/files/File//migratie\\_migrations/PUB-1912-migration.pdf](http://www.diversite.be/diversiteit/files/File//migratie_migrations/PUB-1912-migration.pdf) (in French).

During an interview in 2009 with the Radio 1812 team, Belgian State Secretary for Migration, Melchior Wathelet, said that there are difficulties, at international level, to ratify the Convention and that for the moment it is more important to guarantee that the rights that it provides for are really implemented at EU level.<sup>93</sup>

### Political Parties

**Ecolo and the European Greens**<sup>94</sup> are since many years advocating for the ratification of the Migrant Workers Convention as well as the relevant ILO Conventions (such as C143). This position is also reflected in their electoral programs.<sup>95</sup>

The EU's migration policy is since 2000 characterized by a focus on security – keeping unwanted migrants out – and welcoming migrants that are considered to be needed for the economy, as is the case with the so-called "blue card" Directive. This policy is a failure since it does not lead to reduced migration flows; it leads to increased "illegal" immigration and stronger networks for trafficking in human beings.

According to Ecolo, at the Belgian level, it is important to submit - as soon as possible – a parliamentary resolution asking the Belgian federal government to ratify the Migrant Workers Convention, in order to initiate similar initiatives in the rest of Europe.<sup>96</sup> Belgium should ratify the Convention as well as the relevant ILO Conventions. "We are resolutely opposed to the EU's instrumentalist migration policy."

The Migrant Workers Convention is particularly interesting for its idea that migrant workers must be protected, whether legally resident or not. Although the analysis of the text of the Convention indicates that a large number of rights are already protected in Belgium (e.g. by case law or through the international conventions which the country already ratified), some provisions would have an impact in Belgium in the event of ratification, particularly those concerning the rights of migrants in administrative detention.

Ecolo's Member of Parliament Zoé Genot – an expert on issues related to migration and social rights - has questioned the government on several occasions, as was the case with the Minister for Employment Joëlle Milquet during the debate on the employment policy note in the House of Commons (la Chambre).

Usually, the Belgian Government gives the following two reasons why it cannot ratify the Convention:

- Article 27 § 2 of the Convention provides for a refund of contributions made by migrant workers, which is contrary to the Belgian social security system that is based on the principle of solidarity;
- Article 52 § 3 requires states to provide free access to the labour market within a maximum of two years from the granting of work permits, which is not provided for under Belgian regulations for work permits.

Ecolo believes that these are not insurmountable issues. Why could Belgium not ratify the Convention with a reservation for Article 27§2? As to article 52 § 3, nothing would prevent Belgium to provide in its national law for the option to grant a work permit C (not limited to a specific employer) before the expiration of a permit B (2-year period). Ecolo is also of the opinion that the work permit B is likely to weaken workers' rights, because their right of residence is linked to their work permit B, whose renewal depends on the goodwill of the employer. This might lead to a situation where the workers accept difficult working conditions because they fear losing their right to stay.

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<sup>93</sup> Día Internacional del Migrante. Festejos en Bruselas, 2009, audio file is available at:

[http://www.radio1812.net/es/audio/2009/12/d%C3%ADa\\_internacional\\_del\\_migrante\\_festejos](http://www.radio1812.net/es/audio/2009/12/d%C3%ADa_internacional_del_migrante_festejos).

<sup>94</sup> See the part about MEPs.

<sup>95</sup> Concrete proposition, abstract of the Ecolo's Programme for Asylum and Migration, available at:

<http://web4.ecolo.be/?Favouriser-la-mobilite-des-migrants> (in French), the entire Ecolo's Programme for Asylum and Migration is available at: <http://web4.ecolo.be/?-Programme-Asile-et-Migrations,315-> (in French).

<sup>96</sup> Reply from the Office of the Vice-president of the European Parliament, Isabelle Durant, 8 June 2010.

Hence, Ecolo argues, it is preferable for workers to be able to move as quickly as possible out of a situation of dual dependency.

The argument used by the Belgian government that the EU has to deal with the issue of migration management is not correct. Yes, the EU has introduced legislation on economic migration, but access to the labour market has always remained an issue that Member States guarded fiercely without giving jurisdiction to the European authorities to legislate on this point. Belgium could therefore very well change its legislation on work permits to make it in line with the Migrant Workers Convention without contradict the relevant European law.<sup>97</sup>

In 2006 Ms. Olga Zrihen, of the **Socialist Party (PS)**, asked to the Minister of Employment, Mr. Peter Vanvelthoven about the possibility of a Belgian ratification. He replied that two articles of the Convention were problematic:

Article 27, paragraph 4, that provides for reimbursement of contributions paid by migrant workers. This is contrary to the Belgian social security system, based on the principle of solidarity. The government does not wish to discuss this principle during every monitoring of the implementation of the Convention in Belgium.

Article 52 requires States to allow free access to the labour market at least within two years after the granting of work permits. Belgian regulations concerning the employment of foreign workers collide with this article, particularly because we do not issue work permits for an indefinite period in such a short time.

He also stated that the government is aware of the pressure for the ratification of the Convention and that it will examine the issue within the European Union, where consultations are underway to explore possible joint management of economic migration. The ratification of the Convention could be an element of this common management. The question should be posed to the European Commission.<sup>98</sup> In 2009 Ms. Zrihen and Mr. Philippe Mahoux proposed a resolution to prioritize the concept of "decent work" in international politics conducted by Belgium, in which they called the government to ratify the ICRMW<sup>99</sup>. They submitted the same resolution in 2010 (this time together with the senator Marie Arena).<sup>100</sup> Both are currently under discussion in the Senate.

Ms. Fatiha Saïdi, during an intervention about the position of political parties on regulations policies at European level, affirms that the Socialist Party calls for a ratification of the Convention.<sup>101</sup>

In 2009, Ms. Sabine de Bethune and Ms. Els Schelfhout, senators of the **Christen-Democratisch en Vlaams (CD&V)**, in a proposition of resolution on the application of social and environmental norms in the framework of globalization, called on the Belgian government "to ratify and encourage partner countries to ratify the United Nations Convention on the Protection of Migrant Workers and Members of Their Families with the aim of gathering

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<sup>97</sup> Reply from Ecolo, 8 October 2010.

<sup>98</sup> Written question by Ms. Olga Zrihen to the Minister of Employment «The International Convention on the Rights of All Migrant Workers and Members of their Family» (n° 3-991), Sénat de Belgique, Annales, jeudi 9 février 2006, available at: <http://www.senate.be/www/?Mlval=/Registers/ViewReg&COLL=H&PUID=50334540&TID=50346797&POS=1&LANG=fr> (in French).

<sup>99</sup> Proposition de résolution afin de prioriser la notion de « travail décent » dans les politiques internationales menées par la Belgique, Document n° 4-1352/1, Sénat de Belgique, session de 2008-2009, 8 Juin 2009, available at <http://www.senate.be/www/?Mlval=/publications/viewPub.html&COLL=S&LEG=4&NR=1352&VOLGnr=1&LANG=fr> (in French).

<sup>100</sup> Proposition de résolution afin de prioriser la notion de « travail décent » dans les politiques internationales menées par la Belgique, Document n° 5-184/1, Sénat de Belgique, session extraordinaire de 2010, 24 September 2010, available at <http://www.senate.be/www/?Mlval=/publications/viewPub&COLL=S&LEG=5&NR=184&PUID=83886214&LANG=fr> (in French).

<sup>101</sup> CIRÉ - Coordination et Initiatives pour et avec les Réfugiés et Étrangers, Compte-rendu de la matinée d'étude consacrée aux politiques de régularisation en Belgique et en Europe, p. 8, June 2010, available at [http://www.cire.be/ressources/rapports/compte\\_rendu\\_regul.pdf](http://www.cire.be/ressources/rapports/compte_rendu_regul.pdf) (in French).



into a single text all the rights enjoyed by such persons".<sup>102</sup> The same resolution was voted on in the Chamber one year later.<sup>103</sup>

## NGOs

In their Joint Position Paper for the Global Forum on Migration and Development organized by Belgium on 10 and 11 July 2007, member organizations of the **CNCD-11.11.11** recommend the ratification of the UN Migrant Workers Convention.<sup>104</sup> They did the same in their statement for the World Forum on Migration and Development organized by the Philippines on 27-30 October 2008.<sup>105</sup>

In their "Background and vision statement on Migration and Development"<sup>106</sup> they express their commitment and efforts, in cooperation with other social actors (ORCA, December 18, migrant and refugee organizations, unions) to persuade the Belgian government to ratify the ICRMW. The government's arguments against ratification are very weak and are primarily motivated by fears of a pull factor of so-called "undesirable" migrants. The fact that the Flemish government has already expressed support for the adoption of the UN Convention is a hopeful signal.

CNCD-11.11.11 is also one of the coordinators of the **Belgian coalition for decent work**,<sup>107</sup> the ratification of the ICRMW is one of their fundamental demands.<sup>108</sup>

Benoît VAN DER MEERSCHEN, Secretary General of CNCD stresses that, to set an example, Belgium should promptly ratify the UN Migrant Workers Convention.<sup>109</sup>

In its Joint Parallel Report submitted to the Committee on Economic, Social and Cultural Rights the **Coalition of Belgian Civil Society for Economic, Social and Cultural Rights** stresses that there is no substantial contradiction between the existing Belgian legislation and the 1990 UN Convention on the Rights of Migrant Workers and Members of Their Families, so there are not major legal constraints for Belgium to ratify it.<sup>110</sup>

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<sup>102</sup> Proposition de résolution concernant l'application de normes sociales et environnementales dans le cadre de la mondialisation, Document n° 4 - 1329/1, Sénat de Belgique, session de 2008-2009, 14 May 2009, p. 7, available at <http://www.senate.be/www/?Mlval=/publications/viewPub&COLL=S&LEG=4&NR=1329&PUID=67110931&LANG=fr> (in French).

<sup>103</sup> Chambre des Représentants de Belgique, Résolution concernant l'application de normes sociales et environnementales dans le cadre de la mondialisation, Document n° 1948/005, 16 July 2010, available at <http://www.lachambre.be/doc/flwb/pdf/52/1948/52k1948005.pdf> (in French).

<sup>104</sup> CNCD-11.11.11, Document de position commune dans le cadre du Forum Mondial sur les Migrations et le Développement organisé par la Belgique les 10 et 11 juillet 2007, Journée de la société civile du 9 juillet 2007, p. 3, available at [http://www.cncd.be/IMG/pdf/Texte\\_de\\_position\\_-\\_GT\\_MD\\_du\\_CNCD.pdf](http://www.cncd.be/IMG/pdf/Texte_de_position_-_GT_MD_du_CNCD.pdf) (in French).

<sup>105</sup> CNCD-11.11.11, Common Position of the CNCD-11.11.11 Working Group Migration and Development on issues of migration and development, World Forum on Migration and Development organized by the Philippines 27-30 October 2008, p. 3, available at <http://www.cncd.be/IMG/pdf/081015-communique-GTMD-2e-FMMD-Manille-2008.pdf> (in French).

<sup>106</sup> 11.11.11, Achtergrond en visienota Migratie en Ontwikkeling, p. 5, available at [http://www.11.be/component/docman/doc\\_download/840-visienota-111111-migratie](http://www.11.be/component/docman/doc_download/840-visienota-111111-migratie) (in Dutch).

<sup>107</sup> The Belgian campaign for decent work is a continuation of a worldwide campaign for Decent Work ([www.decentwork.org](http://www.decentwork.org)) launched in January 2007 under the World Social Forum in Nairobi. See <http://www.travaildecent.be/>.

<sup>108</sup> Cahier de revendications de la coalition belge pour un travail décent, available at [http://www.cncd.be/IMG/pdf/081001\\_niveau\\_3\\_FR-2.pdf](http://www.cncd.be/IMG/pdf/081001_niveau_3_FR-2.pdf) (in French). The Dutch version is available at [http://www.cncd.be/IMG/pdf/081001\\_niveau\\_3\\_FL.pdf](http://www.cncd.be/IMG/pdf/081001_niveau_3_FL.pdf).

<sup>109</sup> See Centre pour l'égalité des chances et la lutte contre le racisme and King Baudouin Foundation, Quelle politique de migration économique pour la Belgique ?, 2009, p. 24, available at [http://www.diversite.be/diversiteit/files/File//migratie\\_migrations/PUB-1912-migration.pdf](http://www.diversite.be/diversiteit/files/File//migratie_migrations/PUB-1912-migration.pdf) (in French). For other resources from the CNCD-11.11.11 Working Group Migration and Development see their website: <http://www.cncd.be/spip.php?article540>.

<sup>110</sup> Comprehensive Joint Parallel Report, Committee on Economic, Social and Cultural Rights, 39th session (5 to 23 November 2007, p. 33, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/cescr39/ComprehensiveJointParallelReport.pdf>.

In its recommendations to the Belgian Presidency of the EU, **Caritas International** has asked Belgium to encourage EU Member States and the EU itself to ratify the Convention.<sup>111</sup>

**Caritas Belgium** states that it is difficult to assess the effectiveness of the campaigns asking for ratification: the fact that some public figures and politicians defend this ratification is encouraging, but they find that unfortunately the ruling parties are either opposed or do not see it as a priority. Trade unions, NGOs advocating for human and migrants rights, including Christian organizations, clearly defend the ratification of the Convention, but, the level of knowledge of this Convention is very low, including in organisations working in this field. The reason is simple: most people think it is useless to consider a legal instrument which is impossible to implement since it is not ratified. Obviously such an attitude will not advance things, that is why they stress that in future campaigns, to be conducted at both national and European level, is important to provide for clear and accessible information for NGOs, lawyers and civil society; to convince them that the ratification of the Convention could lead to a real progress of the situation of migrants both in a regular and irregular condition. This is an important step that will afterwards facilitate the work need to persuade a wider audience.<sup>112</sup>

The **CIRÉ - Coordination et Initiatives pour et avec les Réfugiés et Étrangers**, after discussions inside a platform in which trade unions and NGOs, including December 18, participated, published a study on the Convention, in which they clearly state that objections regarding a possible negative effect of the ratification on the integration of migrants legally residing, on the one hand, and on the fight against illegal migration, on the other hand, are not sufficiently justified. On the contrary, the Convention brings a real added value that no other international or European text grant, as it confers, in a binding way, the rights to all migrants regardless of their status or National origin. Its ratification would also strengthen the principle of equality, legal security and compatibility between residence policy and work policy.<sup>113</sup>

In 2009, the **Commission belge francophone et germanophone pour l'UNESCO**, together with December 18 and other international and non-governmental organizations, organised an international seminar on the ICRMW, focused on challenges to ratification by Belgium, with the aim to encourage the various authorities concerned to start the process of ratification in accordance with the commitment stated in their Declarations on Community and Regional Policy.<sup>114</sup>

### Trade Unions

We did not receive any replies from Belgian trade unions, but we know that the two main trade unions are supporting the ratification of the Convention, and Mr. Luc Cortebeeck – President of the **ACV-CSC**, signed the 2010 petition.<sup>115</sup>

### National Human Rights Institution

The **Centre for Equal Opportunities and Opposition to Racism**<sup>116</sup> has always advocated for the ratification of the Migrant Workers Convention.<sup>117</sup> In its view, the provisions with a possible direct effect would be those dealing with

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<sup>111</sup> Parole à l'exil, periodical of Caritas International devoted to the issue of migrants in Belgium, January-June 2010, Dossier : Quelle politique européenne d'asile et d'immigration après Lisbonne?, p. 25, available at [http://www.caritas-int.be/fileadmin/word/parole\\_vluchtschrift/6-2010-parole.doc](http://www.caritas-int.be/fileadmin/word/parole_vluchtschrift/6-2010-parole.doc) (in French).

<sup>112</sup> Reply from Caritas international België - Belgique, 3 August 2010.

<sup>113</sup> CIRÉ - Coordination et Initiatives pour et avec les Réfugiés et Étrangers, La convention des Nations unies sur les droits de tous les travailleurs migrants et des membres de leur famille, p. 15, August 2010, available at [http://www.cire.be/ressources/rapports/analyse\\_convention\\_NUetAnnexes.pdf](http://www.cire.be/ressources/rapports/analyse_convention_NUetAnnexes.pdf) (in French).

<sup>114</sup> Commission belge francophone et germanophone pour l'UNESCO, 20 ans après son adoption, vers une ratification de la Convention des Nations unies sur la protection des droits de tous les travailleur-es migrant-es et des membres de leur famille ?, available at [http://www.december18.net/sites/default/files/unesco\\_belgique\\_seminar\\_ICRMW.doc](http://www.december18.net/sites/default/files/unesco_belgique_seminar_ICRMW.doc) (in French).

<sup>115</sup> See <http://www.december18.net/article/unions-support-call-ratification>.

<sup>116</sup> Centre pour l'égalité des chances et la lutte contre le racisme – Centrum voor Gelijke Kansen en Racisme Bestrijding.



the obligation to ensure an application for the review of expulsion decisions and the adaptation of the regulations concerning residency and work permits.<sup>118</sup>

The Centre's Director Jozef Dewitte believes that the Convention is not well known and that there is a lack of awareness raising and social action, for example vis-à-vis the unions. Although the study produced by the University of Leuven and the University of Antwerpen gives an analysis of what is at stake, the Centre suggests that it would be good to have a grid showing the necessary adjustments to Belgian laws in case of ratification.<sup>119</sup>

In its 2008 annual report on migration the Centre stresses that "the Convention is a fundamental instrument for the protection of human rights. The opening of the construction of economic migration would be an excellent opportunity for Belgium to be a pioneer in leading the European Union in the process of ratification. The 2010 Belgian Presidency, which is already under preparation today, could provide such an opportunity".<sup>120</sup>

### United Nations

CESCR,<sup>121</sup> CEDAW,<sup>122</sup> CERD,<sup>123</sup> CRC<sup>124</sup> and CAT<sup>125</sup> encouraged Belgium to ratify the ICRMW.

### Council of Europe

ECRI recommends that Belgium signs and ratifies (...) the International Convention on the Protection of All Migrant Workers and Members of their Families.<sup>126</sup>

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in his report on his visit to Belgium in 2008, states that at the United Nations level, ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, would build on the commitments entered into by Belgium.<sup>127</sup>

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<sup>117</sup> See the website of the Centre: <http://www.diversite.be>. For the contribution of the Centre to the EC Green Paper on Economic Migration see: EPMWR, The UN Migrant Workers Convention

<sup>118</sup> Centre pour l'égalité des chances et la lutte contre le racisme, Annual Report on Migration 2008, p. 157, available at [http://www.diversite.be/diversiteit/files/File//publications/rapport\\_annuel/MIGRATION-2009\\_def\\_fr.pdf](http://www.diversite.be/diversiteit/files/File//publications/rapport_annuel/MIGRATION-2009_def_fr.pdf) (in French).

<sup>119</sup> Reply from Jozef De Witte of the Centre pour l'égalité des chances et la lutte contre le racisme, 28 June 2010.

<sup>120</sup> Centre pour l'égalité des chances et la lutte contre le racisme, Annual Report on Migration 2008, cit., p. 157.

<sup>121</sup> Committee on Economic, Social and Cultural Rights, Concluding observations, Thirty-ninth session, 5-23 November 2007, E/C.12/BEL/CO/3, § 40, available at: <http://www2.ohchr.org/english/bodies/cescr/docs/cescr39/E.C.12.BEL.CO.3.pdf>.

<sup>122</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Forty-second session, 20 October-7 November 2008, CEDAW/C/BEL/CO/6, § 51, available at: [http://www.iwraw-ap.org/committee/pdf/42\\_concluding\\_observations/belgium.pdf](http://www.iwraw-ap.org/committee/pdf/42_concluding_observations/belgium.pdf).

<sup>123</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventy-second session, 18 February -7 March 2008, CERD/C/BEL/CO/15, § 26, available at: [http://www.diversiteit.be/diversiteit/files/File//wetgeving\\_legislation/international/rapportcerd.pdf](http://www.diversiteit.be/diversiteit/files/File//wetgeving_legislation/international/rapportcerd.pdf).

<sup>124</sup> Committee on the Rights of the Child, Concluding observations, Fifty-fourth session, 24 May-11 June 2010, § 84, available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.BEL.CO.3-4.doc>.

<sup>125</sup> Committee against Torture, Concluding observations, Forty-first session, 3-21 November 2008, § 28, CAT/C/BEL/CO/2, available at: [http://www2.ohchr.org/english/bodies/treaty/CD\\_Concl\\_Obs\\_2008/CAT/41st%20session/CAT%20C%20BEL%20CO%202%20\(e\).doc](http://www2.ohchr.org/english/bodies/treaty/CD_Concl_Obs_2008/CAT/41st%20session/CAT%20C%20BEL%20CO%202%20(e).doc).

<sup>126</sup> European Commission against Racism and Intolerance (ECRI) report on Belgium, 26 May 2009, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_04/04\\_CbC\\_eng/BEL-CbC-IV-2009-018-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_04/04_CbC_eng/BEL-CbC-IV-2009-018-ENG.pdf).

<sup>127</sup> Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium, 15-19 December 2008, § I.1.10, available at <https://wcd.coe.int/ViewDoc.jsp?id=1458603&Site=CM>.

# **BULGARIA**

## Government Position

The Bulgarian Government argues that Bulgaria remains very attentive to the needs of migrants. Yet it has not ratified the Migrant Workers Convention because there is a substantive legal obstacle: the Convention does not make a distinction between the category of legal and illegal workers. All migrant workers wishing to benefit from equal treatment with European citizens must be in a regular situation. It is furthermore considered that the Convention would limit the sovereign right of states to decide upon who can enter their territory and for how long they can remain.

In the reply from the Ministry of Foreign Affairs we also read that Bulgaria takes into account the fact that the Convention's provisions fall within the domain of the European Union. Bulgaria is therefore ready to participate in any discussion on the Migrant Workers Convention that is initiated within the EU.<sup>128</sup> Even during the Universal Periodic Review, the delegation of Bulgaria affirmed that it should be able to adhere to the Convention once agreement had been reached within the European Union.<sup>129</sup>

## Political Parties

We did not receive any information from Bulgarian political parties. The Institute for Social and Trade Union Research writes that to their knowledge, political parties have not expressed any views on the ratification of the Convention, and it has never been part of any electoral program. There have been no debates and interventions in the Parliament.<sup>130</sup>

## NGOs

The **Legal Clinic for Refugees and Immigrants** says that unfortunately immigrants are not yet on the political agenda in Bulgaria and that there is no awareness about the Migrant Workers Convention among government officials, NGOs and other civil society groups, let alone the general public. NGOs working in the field naturally would support the ratification, but it is not an issue with the other actors. Their organization believes that national-level campaigns around the Migrant Workers Convention should be accompanied by work at the European level.<sup>131</sup>

**Caritas Bulgaria** confirms that the Convention has not yet been an issue, neither is it on the agenda of the government authorities. A reason for this could be the number of migrants in Bulgaria. Acknowledging that their country's position on this issue depends on the one of the EU, they believe that national-level campaigns around the Migrant Workers Convention should be accompanied by work at the European level.<sup>132</sup>

**Association for Integration of Refugees and Migrants (AIRM)** supports ratification of the Convention by Bulgaria. According to them one of the reasons why this issue is not included in any electoral program is the small number of registered migrants in Bulgaria (approximately 1% of the population).<sup>133</sup>

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<sup>128</sup> Reply from the Ministry of Foreign Affairs of the Republic of Bulgaria, 18 June 2010.

<sup>129</sup> UN Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review on Bulgaria, 1–12 November 2010, A/HRC/WG.6/9/L.7, § 32, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/A\\_HRC\\_WG.6\\_9\\_L.7\\_Bulgaria.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/BG/A_HRC_WG.6_9_L.7_Bulgaria.pdf). States that asked to Bulgaria to ratify the Convention were Algeria, Argentina, Bosnia and Herzegovina and Palestine.

<sup>130</sup> Reply from the Institute for Social and Trade Union Research (ISTUR), 8 September 2010.

<sup>131</sup> Reply from Legal Clinic for Refugees and Immigrants, 30 July 2010.

<sup>132</sup> Reply from Caritas Bulgaria, 6 August 2010.

<sup>133</sup> Reply from Association for Integration of Refugees and Migrants, 16 August 2010.

## Trade Unions

According to the **Institute for Social and Trade Union Research (ISTUR)**, the lack of interest in the Convention is due to the fact that Bulgaria is mainly a sending and not a receiving country. Bulgaria's absolute priority right now is the harmonization of its legislation with the EU standards. The fact that the ratification of the Migrant Workers Convention is not a requirement probably explains the lack of interest.

However, they argue, that some of the main provisions of the UN Convention are already introduced in Bulgarian legislation and policy as a result of the implementation of ILO Conventions and EU Directives related to migrant workers rights (see for example: labour legislation, employment legislation, national strategy on migration and inclusion 2008-2015,<sup>134</sup> 2008 Implementation Plan for national strategy on migration and integration).<sup>135</sup>

Trade unions in Bulgaria are increasingly focusing on issues related to the protection and promotion of the labour and social rights of Bulgarians working abroad. This can, in their opinion, be considered as an argument for Bulgaria to ratify the Convention.

The representatives of Bulgarian trade unions and employers' organizations which are members of the European Economic and Social Committee supported the Opinion "Respect for fundamental rights in European immigration policies and legislation" of the EESC, adopted at its 457th plenary session held on 4 November 2009,<sup>136</sup> in which the EESC reaffirmed its 2004 proposal for the ratification of the Convention.<sup>137</sup>

The largest trade union confederation in the country, the Confederation of Independent Trade Unions in Bulgaria (CITUB) initiated the signing of agreements with trade union confederations in the UK and Greece for the promotion of the rights of Bulgarian migrant workers. An information centre was set up in Bulgaria and Spain in the framework of the collaboration with Spanish trade unions.<sup>138</sup>

The level of awareness about the Migrant Workers Convention among government officials, NGOs and other civil society groups, and the public is relatively low. Some NGOs are active in the field of migrant workers rights such as the **Helsinki Committee**<sup>139</sup> and the **International Centre for Minority Studies and Intercultural Relations**.<sup>140</sup>

ISTUR comments that Bulgaria shall probably join the 1990 UN Convention, if such a decision would be adopted by the EU. However, the fact that not a single EU Member States has ratified the Convention shows that even these countries (the largest receiving countries) don't have a clear understanding of the advantages of joining the Convention. Thus, to overcome the obstacles for ratification, there must be a Europe-wide awareness rising campaign based on the support from and in partnership with all stakeholders such as public bodies, trade unions,

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<sup>134</sup> National strategy of the republic of Bulgaria on migration and integration (2008-2015), available at [http://ec.europa.eu/ewsi/UDRW/images/items/doc/7514\\_781471123.doc](http://ec.europa.eu/ewsi/UDRW/images/items/doc/7514_781471123.doc).

<sup>135</sup> Plan for the year 2008 on the implementation of the national strategy of the republic of Bulgaria on migration and integration (2008 – 2015), available at [http://ec.europa.eu/ewsi/UDRW/images/items/doc/7515\\_793025848.doc](http://ec.europa.eu/ewsi/UDRW/images/items/doc/7515_793025848.doc).

<sup>136</sup> Opinion of the European Economic and Social Committee on 'Respect for fundamental rights in European immigration policies and legislation', (2010/C 128/06), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:128:0029:0035:EN:PDF>. For more info see the paragraph on the EESC in the section: European Institutions and Stakeholders.

<sup>137</sup> Opinion of the European Economic and Social Committee on the 'International Convention on Migrants' (2004/C 302/12), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:302:0049:0052:EN:PDF>.

<sup>138</sup> Information on these activities is available on the EIRO – Dublin Foundation country page of Bulgaria available at: <http://www.eurofound.europa.eu/eiro/2010/country/bulgaria.htm>.

<sup>139</sup> See, as example, Helsinki Committee, Research of the Rights of Migrants in Bulgaria from a Human Rights Perspective, 2006, available at <http://www.bghelsinki.org/upload/resources/MigrantsRightsReportENG-1.doc>.

<sup>140</sup> International Centre for Minority Studies and Intercultural Relations, Undocumented Worker Transitions under the EU Sixth Framework Programme, 2007, available at [http://www.undocumentedmigrants.eu/londonmet/library/c24240\\_3.pdf](http://www.undocumentedmigrants.eu/londonmet/library/c24240_3.pdf).

civil and rights-protection organizations, the business community, researchers, European and international organizations.<sup>141</sup>

### United Nations

CERD<sup>142</sup> and CRC<sup>143</sup> recommended to Bulgaria to ratify the Migrant Workers Convention.

### Council of Europe

In its fourth report on Bulgaria, ECRI states that since its previous report, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force, on 1 July 2003. The Bulgarian authorities informed ECRI that ratification was not yet on the agenda, but that they were examining all the Conventions in this field and waiting for a common EU position. ECRI recommended that Bulgaria ratify the Migrant Workers Convention.<sup>144</sup>

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<sup>141</sup> Reply from the Institute for Social and Trade Union Research (ISTUR), 8 September 2010.

<sup>142</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventy-fourth session, 16 February-6 March 2009, § 21, CERD/C/BGR/CO/19, available at [http://www2.ohchr.org/english/bodies/treaty/CD\\_Concl\\_Obs\\_2009/CERD/74th/CERD-C-BGR-CO-19\(e\).doc](http://www2.ohchr.org/english/bodies/treaty/CD_Concl_Obs_2009/CERD/74th/CERD-C-BGR-CO-19(e).doc).

<sup>143</sup> Committee on the Rights of the Child, Concluding observations, 48th Session, 19 May-6 June 2008, § 73, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.BGR.CO.2.pdf>.

<sup>144</sup> European Commission against Racism and Intolerance (ECRI) report on Bulgaria, 24 February 2009, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-IV-2009-002-ENG.pdf>.

## **CYPRUS**

### Government Position

The **Permanent Representation of Cyprus to the EU** states in its reply to the questionnaire that Cyprus has not yet ratified the Migrant Workers Convention for a number of reasons. Firstly, the provisions of the Convention are covered by relevant EU Directives which have already been transposed in the national legislation. In addition, the Convention has been ratified only by a few countries which export migrants rather than receive migrants, as is now the case with Cyprus. It should also be mentioned that the Convention has not yet been ratified by any other EU Member State and that the possibility of ratification is subject of an on-going discussion at EU- Level in the Committee on Asylum and Migration.<sup>145</sup> Cyprus will act accordingly, if policy measures regulating the above subject are adopted at the EU level.<sup>146</sup>

The same position was stated by the Government of Cyprus in 2009 during the consideration of Cyprus under the UPR process at the United Nations: “This is an issue which requires further consideration among the competent Ministries, bearing also in mind the limitations posed by the European Union jurisdiction with regard to migrant workers, arising from the fact that the Council of the European Union has competency over measures on immigration and on the protection of the rights of third country nationals, in particular with regard to conditions of stay”.<sup>147</sup>

### Political Parties

Until very recently, immigration, let alone the ratification of the Convention, was invisible in the discourse and the election agendas of all political parties in Cyprus. However, during the last Presidential elections (February 2008) and the European Parliamentary Elections (May 2009), the issue was first put on the agenda of some political parties. Most notable example is that of **ELAM (National Popular Front)**, a newly emerged extreme right, chauvinistic and anti-immigrant party. Even though the issue of migration was not included in the **Progressive Party of Working People (AKEL)** party’s Presidential election programme, the current President of Cyprus made a statement that the “rights of migrants” should be respected. However, his government’s record so far has failed to honour this pledge. Interestingly, one of AKEL’s two MEPs, Mr. Kyriakos Triantafyllides, is amongst the first group of MEPs to sign the December 18’s petition asking EU Member States to ratify the Convention.<sup>148</sup>

The **Green Party** said that since Cyprus has not ratified the Convention the specific document has never come to their attention. There is a big lack of awareness in the country about the Convention. The party affirms its interest in developing an official position and will study the Convention carefully.

They think that one of the obstacles to ratification is the EU *acquis*, from which derives obligations for each Member State, especially concerning the employment of workers from non-EU countries. It is therefore important to take into consideration the opinions of the other EU Member States. The fact that Cyprus is one of the EU’s borders should also be considered carefully.<sup>149</sup>

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<sup>145</sup> See the part concerning the Presidency of the European Union in the section: European Institutions and Stakeholders.

<sup>146</sup> Reply from the Permanent Representation of Cyprus to the EU, 19 July 2010.

<sup>147</sup> Human Rights Council, Views on conclusions and/or recommendations, voluntary commitments and replies presented by Cyprus to the Working Group on the Universal Periodic Review, 15 March 2010, A/HRC/13/7/Add.1, p. 6, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.7.Add.1\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.7.Add.1_en.pdf). The answer was given in reply to Algeria, Argentina, Democratic Republic of the Congo, and Mexico, that recommended to Cyprus to consider the possibility of acceding the ICRMW. See UN Human Rights Council, Report of the Working Group on the Universal Periodic Review on Cyprus, 4 January 2010, A/HRC/13/7. Available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CY/A\\_HRC\\_13\\_7\\_CYP\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/CY/A_HRC_13_7_CYP_E.pdf).

<sup>148</sup> Reply from KISA, 21 November 2010.

<sup>149</sup> Reply from the Cyprus Green Party, 8 June 2010.

**The Democratic Rally** affirms that they are a party in the opposition and that ratification of the Convention is not an issue that has come to their attention.<sup>150</sup>

According to the **United Democrats**, members of the European Liberal Democrats (ALDE), “European migration policy should be fully compatible with the relevant human rights provisions”, but they did not explain what these provisions include.<sup>151</sup>

### NGOs

In the opinion of **KISA**, the present government of Cyprus does not have a hostile position towards the Convention, but rather it is reluctant to be the first EU Member State to ratify it. Cyprus, in principle, has a positive approach towards ratification of international human rights instruments. Problems arise though with their implementation. The Cyprus government does address migrants’ rights issues in some of the reports to the UN. However, these reports invariably do not adequately or sincerely address the weaknesses and limitations obtaining in Cyprus in relation to the granting and safeguarding migrants’ rights as they are provided for in the various instruments ratified by Cyprus.

The still embryonic stage of acknowledgement and effective lack of consultation with NGOs by the state, accentuated especially in the fields of migration, discrimination and racism, largely impacts this aspect of the work of NGOs.

KISA has already invited the other MEP of AKEL, Mr Takis Hadjigeorgiou, to sign December 18’s petition asking EU Member States to ratify the Convention and to exercise his influence among other MEPs, especially of the European United Left group, to sign the petition. KISA also wrote to a number of key MPs in the House of Representatives and other politicians.

KISA also contacted PEO (Pancyprian Federation of Labour), the largest trade union umbrella organization in Cyprus, urging them to sign the petition and to lobby the Cyprus government to put the matter on the EU agenda. They circulated the petition widely to other trade unions, NGOs, human rights organizations, migrant associations and communities.

On the occasion of this year’s *Rainbow Festival*, under the theme of “Cypriots and Migrants United against the Crisis”, the biggest multicultural anti-racist event in Cyprus, now in its 13<sup>th</sup> year, organized by KISA in cooperation with migrant communities, Greek Cypriot and Turkish Cypriot human rights and anti-racist NGOs, KISA promoted the necessity for the ratification of the Convention and the present campaign and petition. A number of activists and representatives of NGOs already signed the petition.

The only campaign that has ever been undertaken in Cyprus is the one by KISA, on the aftermath of the meeting of the EPMWR in March 2007 in Brussels. The campaign consisted of a number of meetings with politicians and the distribution of the Convention. Due to an extremely hostile environment and arduous circumstances, including the financial strangulation that KISA has been subjected to since then (including prosecutions, persecutions, arrest, and harassment by the police and the authorities in general), the campaign was temporarily shelved. With the petition, KISA has resolved to activate the campaign.

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<sup>150</sup> Reply from the Democratic Rally, 8 September 2010.

<sup>151</sup> Reply from the United Democrats, 12 September 2010. They added that their position on migration can be seen on the opinion of Jan-Kees Wiebenga, former MEP and vice-president of the European Parliament, chairman of the VVD-European Affairs Committee, available at: <http://www.eldrfocus.eu/2010/08/european-migration-policy-the-need-for-fairness-and-balance/>.

KISA stresses also that generally speaking, awareness in Cyprus about the Convention is not at the desired levels. They argue that national campaigns are always strengthened when accompanied by European-level action. In view of the limitations of small national organisations, European campaigns are also very useful practically in that they provide the necessary material which is instrumental in national campaigns.<sup>152</sup>

#### Trade Unions

We did not receive any replies from Cypriot trade unions.

#### United Nations

CESCR<sup>153</sup> and CEDAW<sup>154</sup> encouraged Cyprus to ratify the ICRMW.

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<sup>152</sup> Reply from KISA, 21 November 2010.

<sup>153</sup> Committee on Economic, Social and Cultural Rights, Concluding observations, Forty-second session, 4-22 May 2009, § 14, E/C.12/CYP/CO/5, available at <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-CYP-CO-5.doc>.

<sup>154</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Thirty-fifth session, 15 May-2 June 2006, § 38, CEDAW/C/CYP/CO/5, available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9a80c8bf5025ab65c125723e008c821d/\\$FILE/N0638461.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9a80c8bf5025ab65c125723e008c821d/$FILE/N0638461.pdf).



## ***CZECH REPUBLIC***

### Government Position

We did not receive a response to our questionnaire. However, the position of the Czech Republic was stated clearly in its replies to various UN agencies.

In its list of issues in connection with the consideration of the 6th and 7th periodic reports of the Czech Republic, the UN Committee on the Elimination of Racial Discrimination asked if it envisaged ratification of the Migrant Workers Convention.<sup>155</sup> The Government replied that the Convention has been ready for signature and ratification since December 1990, but so far none of the European Union Member States figure among the States parties to the Convention, and as yet there is no indication that any EU member state is preparing to sign or ratify it. Nevertheless, over the last few years the European Union has increasingly paid attention to international migration issues because of its impact on socio-economic development both in the countries of origin of the migrants and in the countries where they stay. The EU has assumed a progressive stance towards the issue of migration and asylum policy and has adopted numerous measures.

The rights of migrant workers and their family members are effectively protected in the Czech Republic not only by existing national law, but also by international human rights documents to which the Czech Republic is party. Even so, the Czech Republic is prepared, within the European Union, to become actively involved at the international level in a political dialogue on the theme of migration and development, and to contribute to an exchange of knowledge and experience concerning migration-related matters. At present, there are no plans for the Czech Republic to ratify the Convention in question. A decision on whether to ratify the Convention should be part of a discussion within the European Union.<sup>156</sup>

The Government reaffirmed its position in its replies to the recommendations included in the 2008 Report of the Working Group on the Universal Periodic Review: "Presently, the signature of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990 which, to date, has been ratified by only 37 states, is not being considered. It is to be noted that the rights of migrant workers and their families are comprehensively protected under existing national legislation and the Czech Republic's international commitments".<sup>157</sup>

### Political Parties

Migrant workers are not mentioned in the election programmes of the parties of the new "centre - right" Government (appointed on 10<sup>th</sup> August 2010).<sup>158</sup>

### NGOs

**In 2008, Amnesty International** recommended that the Czech Republic ratify the Migrant Workers Convention.<sup>159</sup>

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<sup>155</sup> Committee on the Elimination of Racial Discrimination, questions put by the rapporteur in connection with the consideration of the 6th and 7th periodic reports of the Czech Republic, Seventieth session, 19 February – 9 March 2007, § 6, available at <http://www2.ohchr.org/english/bodies/cerd/docs/LO-70CzechRepublic.pdf>.

<sup>156</sup> Committee on the Elimination of Racial Discrimination, Written replies to questions put by the rapporteur in connection with the consideration of the 6th and 7th periodic reports of the Czech Republic, Seventieth session, 19 February – 9 March 2007, § 6, available at [http://www2.ohchr.org/english/bodies/cerd/docs/70writtenreplies\\_czech\\_republic.doc](http://www2.ohchr.org/english/bodies/cerd/docs/70writtenreplies_czech_republic.doc).

<sup>157</sup> UN Human Rights Council, Response of the Czech Republic to the recommendations included in the Report of the Working Group on the Universal Periodic Review, 25 August 2008, A/HRC/8/33/Add.1, § 28, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/CZ/A\\_HRC\\_8\\_33\\_Add1\\_CzechRepublic\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/CZ/A_HRC_8_33_Add1_CzechRepublic_E.pdf). During the consideration of Czech Republic under the UPR process, Algeria and Mexico asked to adhere to the ICRMW. See UN Human Rights Council, Report of the Working Group on the Universal Periodic Review on the Czech Republic, 23 May 2008, A/HRC/8/33, § 44.7, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/CZ/A\\_HRC\\_8\\_33\\_Czech\\_Republic\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/CZ/A_HRC_8_33_Czech_Republic_E.pdf).

<sup>158</sup> Reply from the Czech-Moravian confederation of trade unions (CMKOS), 2 September 2010.



## Trade Unions

The **Czech-Moravian Confederation of Trade Unions (CMKOS)** argues that the Czech government took interest in migrant workers issues mainly during the period when the migrant workers from countries outside of the EU were needed because of a shortage of skilled workers in the Czech Republic. At that time, the government tried to attract migrants to the country and therefore adopted a special “green card” programme which was to be the main tool for an active management of immigration flows. The CMKOS was against the introduction of this programme. These workers were among the first victims of the global crisis and lost their jobs. The government even adopted a special programme to provide for "voluntary" return to their countries of origin. CMKOS has always supported the principle of equal conditions as regards to employment, remuneration and treatment of migrant workers.<sup>160</sup>

## National Human Rights Institution

The **Public Defender of Rights** has never dealt with the Migrant Workers Convention. It can only recommend changes in the national legislation or ratification of the Convention if its recommendation is based on findings that result from dealing with complaints, and it never received complaints regarding this Convention. They are working together with national human rights institutions in other EU Member States, but ratification of the Convention has never been a subject of cooperation or discussion.<sup>161</sup>

## United Nations

CERD<sup>162</sup> and CEDAW<sup>163</sup> encouraged the Czech Republic to ratify the ICRMW.

## Council of Europe

In its third<sup>164</sup> and fourth<sup>165</sup> reports ECRI recommended that the Czech authorities ratify the ICRMW.

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<sup>159</sup> UN Human Rights Council, Summary of stakeholders' information, 16 April 2008, A/HRC/WG.6/1/CZE/3, § 1, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/CZ/AI\\_CZE\\_UPR\\_S1\\_2008\\_AmnestyInternational\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/CZ/AI_CZE_UPR_S1_2008_AmnestyInternational_uprsubmission.pdf).

<sup>160</sup> Reply from the Czech-Moravian confederation of trade unions (CMKOS), 2 September 2010.

<sup>161</sup> Reply from the National Institute for the Protection of Human Rights, 23 July 2010.

<sup>162</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventieth session, 19 February – 9 March 2007, § 22, available at <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CZE.CO.7.doc>.

<sup>163</sup> Committee on the Elimination of Discrimination against Women, Thirty-sixth session, 7-25 August 2006, Concluding Observations on Czech Republic, CEDAW/C/CZE/CO/3, § 35, available at [http://www.unhchr.ch/tbs/doc.nsf/0/50a930533a8ea63ac12572280038d1d6/\\$FILE/N0648060.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/50a930533a8ea63ac12572280038d1d6/$FILE/N0648060.pdf).

<sup>164</sup> European Commission against Racism and Intolerance (ECRI) report on the Czech Republic, 8 June 2004, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/CZE-CbC-III-2004-22-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/CZE-CbC-III-2004-22-ENG.pdf).

<sup>165</sup> European Commission against Racism and Intolerance (ECRI) report on the Czech Republic, 15 September 2009, available at [http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech\\_Republic/CZE-CbC-IV-2009-030-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-IV-2009-030-ENG.pdf).

## **DENMARK**

### Government Position

In its reply, the **Ministry of Refugee, Immigration and Integration Affairs** states that Denmark does not presently consider becoming a party to the Migrant Workers Convention primarily because a number of its provisions are not compatible with provisions in the Danish Aliens Act, the Administration of Justice Act as well as the Criminal Code. The Government emphasizes that in Denmark the rights of lawfully residing migrant workers are already adequately protected by national legislation and by Denmark's existing commitments under international law such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the UN Convention against Torture. Moreover, migrant workers (who are lawfully residing in Denmark) are - apart from some exceptions - given the same rights and obligations as Danish citizens, e.g. regarding education, housing and freedom of association. Furthermore, in the view of the Danish Government the endowment of rights to illegal migrants as prescribed in the Migrant Workers Convention is counterproductive to the struggle against illegal movements of people and could potentially create a "pull factor" for illegal migration. The rights granted in the Convention to illegal migrants go beyond what is necessary to protect the basic human rights of migrants. Hence, an action from the European Union would not convince them to engage in the ratification process.<sup>166</sup>

### Political Parties

The **Danish People's Party** is opposed to the ratification of the ICRMW, as they are of the opinion that migration policies should be dealt with by national authorities only. So, even an action from the EU would not lead them to be in favour of ratification.<sup>167</sup>

### NGOs

In 2005, the Danish section of **Amnesty International** sent a letter to the Ministry of Employment and called on the Danish Government to sign, ratify and implement the Migrant Workers Convention. The Ministry of Employment replied in a letter of 1 March 2006 that among the European countries it is only Azerbaijan, Bosnia-Herzegovina and Turkey which have ratified the Convention, that none of the EU Member States did so and that the Danish Government did not presently consider becoming a party to the Convention. The Ministry of Employment argued that why Denmark wishes to keep out of the Convention is the fact that a number of the provisions would not be compatible with provisions in the Danish Aliens Act.<sup>168</sup>

**Mixeurope** says that the issue of ratification is not on the political agenda and there is really little awareness about this, even among NGOs. So, first of all awareness raising campaigns are needed, at national and European level.<sup>169</sup>

### Trade Unions

We did not receive any replies from Danish trade unions.

### National Human Rights Institution

According to the Danish **Institute for Human Rights** migrant workers in Denmark benefit from the necessary safeguards of their rights under other legal instruments. To their knowledge, no specific statements have been put forward by political parties, civil society actors and other stakeholders on the importance of ratifying the

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<sup>166</sup> Reply from the Ministry of Refugee, Immigration and Integration Affairs, 1 July 2010.

<sup>167</sup> Reply from Pia Adelsteen, MP, Danish People's Party, 2 June 2010.

<sup>168</sup> Reply from the Ministry of Refugee, Immigration and Integration Affairs, 1 July 2010.

<sup>169</sup> Reply from Mixeurope, 9 August 2010.

Convention. Moreover, no thorough analysis of the Convention has been conducted by independent researchers. They believe that in order to support ratification of the Convention among EU Member States it would be quite useful to conduct an analysis of the legislation at the EU-level and in all of the Member States.<sup>170</sup>

#### United Nations

CEDAW<sup>171</sup> and CERD<sup>172</sup> encouraged Denmark to ratify the ICRMW.

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<sup>170</sup> Reply from the Danish Institute for Human Rights, 18 June 2010.

<sup>171</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations, Forty-fourth session, 20 July-7 August 2009, CEDAW/C/DEN/CO/7, § 46, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.DEN.CO.7.pdf>.

<sup>172</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations, Seventy-seventh session, 2 –27 August 2010, CERD/C/DNK/CO/18-19, § 20, available at [http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-DNK-CO-18\\_19.doc](http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-DNK-CO-18_19.doc).

# **ESTONIA**

## Government Position

According to the **Ministry of Foreign Affairs**, the Estonian Government has not yet formed its official position regarding the ratification of the Migrant Workers Convention as the matter needs further comprehensive analysis to assess its compliance with the EU legislation as well as national legislation. It is possible that actions of the EU would have an effect on the actions regarding the domestic ratification procedure.<sup>173</sup>

## Political Parties

Ratification of the Migrant Workers Convention is not mentioned in the documents of the **Estonian Greens**, but after receiving our questionnaire, Ms. Merisaar, Member of Parliament, forwarded this proposal for discussion to their membership list as well as to the board and working group on social policies.

Ms. Merisaar thinks that the level of awareness of the Convention is probably not very high among the general public, although while relevant organisations and institutions are very well informed.

She does not know of any legal, administrative or political obstacles in Estonia to ratify the Convention, as the Parliament is constantly adopting numerous single law amendments improving the working and living conditions for the migrant workers or students in Estonia. The only possible reason, in her view, could be the costs to administer the implementation of a new Convention. A similar argument has often been put forward when the Green Party draws attention to some environmental Convention waiting to be signed or ratified.<sup>174</sup>

## NGOs

Ms. Kovalenko, of the Legal **Information Centre in Human Rights (LICHR)**, asked the Ministry of Internal Affairs for a status update on the ratification. Its response clearly shows that Estonia does not plan to ratify the Convention and does not see the need for a discussion since none of the European Member States ratified it and the EU does enough to provide for equal treatment of third country nationals.

She states that none of the political parties has ratification of the Convention as part of the electoral programme, neither had anybody made any interventions or raised parliamentary. There are no NGOs other than the LICHR working on migration issues and addressing immigrants in general. One could certainly say that awareness about the Convention is really low.

In her view, ratification campaigns should be maintained both at national and European level. Many countries agree to ratify an international convention only when they are told to do so by the EU.<sup>175</sup>

## Trade Unions

Trade unions seem to not have any position on the Convention.<sup>176</sup>

## United Nations

CEDAW<sup>177</sup> and CERD<sup>178</sup> encouraged Estonia to ratify the ICRMW.

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<sup>173</sup> Reply from the Minister of Foreign Affairs, 5 July 2010.

<sup>174</sup> Reply from Ms. Maret Merisaar, MP, Estonian Greens, 16 July 2010.

<sup>175</sup> Reply from Ms. Julia Kovalenko, Legal Information Centre in Human Rights (LICHR), 25 August 2010.

<sup>176</sup> Ibid.

<sup>177</sup> Committee on the Elimination of Discrimination against Women, Concluding comments, Thirty-ninth session, 23 July-10 August 2007, § 35, CEDAW/C/EST/CO/4, available at <http://www.universalhumanrightsindex.org/documents/826/1204/document/en/pdf/text.pdf>.

ECRI recommends that Estonia ratifies the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>179</sup>

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<sup>178</sup> Committee on the Elimination of Racial Discrimination, Seventy seven session, 2 –27 August 2010, § 21, CERD/C/EST/CO/8-9, available at <http://www2.ohchr.org/tbru/cerd/CERD-C-EST-CO-8-9.pdf>.

<sup>179</sup> European Commission against Racism and Intolerance (ECRI), Fourth report on Estonia, 2 March 2010, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Estonia/EST-CbC-IV-2010-003-ENG.pdf>.

## **FINLAND**

### Government Position

The **Ministry of Migration and European Affairs** argued in its reply that because the Migrant Workers Convention has been accepted as legally binding by relatively few governments it lacks the authority of other human rights treaties that are ratified by the majority of countries. Finland carefully considered the question of ratification of the Convention on two occasions, first at the beginning of the 1990's and more recently in 2004. Both times a broad consultation process was carried out in order to seek the opinion of all the relevant stakeholders.<sup>180</sup>

In 2004, the Minister for Foreign Affairs received the parliamentary written question 6/2004, in which Mrs. Roosa Meriläinen, who is a former member of the **Green Parliamentary Group**, asked about the ratification of the Convention by Finland.<sup>181</sup> The Minister answered that the scope of application can be considered as one of the deficiencies of the Convention. It is based on the concept of migrant worker, which is not compatible with current views on the causes for migration and on the status of immigrants. Finland does not consider immigrants as migrant workers but as people who move with or without their families. Migrants should not be seen as a separate group but they should in principle enjoy the same rights as the citizens of the country of their destination and they should be treated equally. The Convention aims at covering migrant workers' rights on a very broad basis and in great detail. In this respect, the provisions of the Convention overlap with those of other human rights conventions that are already binding on Finland; especially the European Convention on Human Rights. Therefore, the Migrant Workers Convention was not considered to bring any significant added value to the fulfilment of migrant workers' human rights. The Minister stressed also that none of the other EU Member States have acceded to the Convention and that it includes also inter-state obligations to establish a fair migration management. Although the fulfilment of immigrants' rights is regularly discussed when drawing up reports on human rights in Finland, it may be appropriate to discuss whether a separate monitoring system could have an effect on promoting migrant workers' rights.

The same reply was given in 2007 by the Minister of Migration and European Affairs to a letter sent by the president of **Emmaus International**<sup>182</sup> asking for ratification, and by the representative of Finland during the 2008 review of the Universal Periodic Review.<sup>183</sup>

In the 2009 government report on the human rights policy of Finland, even if the same reasons for no ratification are underlined, it is stated that from the point of view of employment legislation, ratification of the Migrant Workers Convention would not probably pose any problems, but before any ratification procedure is started the question must be thoroughly examined.<sup>184</sup>

For these reasons the Minister of Migration and European Affairs affirms also that even an action from the EU would probably not lead to ratification in Finland.

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<sup>180</sup> Reply from the Ministry of Migration and European Affairs, 22 June 2010.

<sup>181</sup> The text of the question and the reply of the Government are available at [http://www.eduskunta.fi/faktatmp/utatmp/akxtmp/kk\\_6\\_2004\\_p.shtml](http://www.eduskunta.fi/faktatmp/utatmp/akxtmp/kk_6_2004_p.shtml) (in Finnish).

<sup>182</sup> Reply from the Ministry of Migration and European Affairs, Astrid Thors, to Emmaus International, 13 July 2007, available at [http://www.december18.net/sites/default/files/reponse\\_astrid\\_thors.pdf](http://www.december18.net/sites/default/files/reponse_astrid_thors.pdf).

<sup>183</sup> Reply of the representative of Finland to some States Parties (Algeria, Bolivia, Ecuador, Egypt and Mexico) to the ICRMW that asked it to consider ratification. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review on Finland, 23 May 2008, A/HRC/8/24, § 33, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/FI/A\\_HRC\\_8\\_24\\_Finland\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/FI/A_HRC_8_24_Finland_E.pdf). The same reasons for not ratification were stressed by the Finnish Minister for Foreign Affairs in its Mid term report on the implementation of UPR recommendations: [http://www.upr-info.org/IMG/pdf/Finland\\_mid-term\\_review\\_11Jun10.pdf](http://www.upr-info.org/IMG/pdf/Finland_mid-term_review_11Jun10.pdf).

<sup>184</sup> Government report to Parliament on the human rights policy of Finland 2009, publications of the Ministry for Foreign Affairs 14/2009, available at: <http://formin.finland.fi/public/download.aspx?ID=54271&GUID={DC098A23-3E89-4F42-89E9-5C8B43E86B8F}>.

## Political Parties

The **Finnish Social Democratic Party** does not have an official position regarding the ratification of the Migrant Workers Convention. There has been no reason to take such a precise political stance at a party level on the ratification of one specific International Convention. Regarding the awareness about the Convention, it is not very well known in Finland, especially not by the general public. They believe that there are no direct obstacles to ratification: the leading code of conduct has been in Finland that immigrants' rights are already covered by other human rights instruments and by its own national legislation. It also seems to be clearly the rule that if a decision for ratification were to be made at the EU-level, all Member States would ratify the Convention.<sup>185</sup>

Ms. Päivi Räsänen, **Christian Democrats**, notes that the matter of ratification has been briefly discussed in Finland.<sup>186</sup>

The Finnish Refugee Advice Centre inquired the government parties and the biggest opposition party on the issue of ratification. All of the responses were negative. None of the political parties has the ratification on their electoral program.<sup>187</sup>

## NGOs

The **Finnish Refugee Advice Centre** argues that based on the reasons the government provides for non-ratification, it seems that the content of the Convention is not understood well, because Finnish legislation is not covering the Convention entirely.

In Finland there is no ongoing or former national campaign in favour of ratification and they think that the push for ratification would be more effective with campaigns at the European level. In their opinion, in Finland, the most powerful actors would probably be the trade unions.<sup>188</sup>

## Trade Unions

Trade unions are well aware of the Convention and they are continuously urging for its ratification. See for example the **Finnish Confederation of Professionals (STTK)** and the **Central Organisation of Finnish Trade Unions (SAK)** in their comments for the proposal for the renewal of the Aliens Act.<sup>189</sup>

## National Human Rights Institution

According to the constitution of Finland (*Section 109 - Duties of the Parliamentary Ombudsman*) the **Ombudsman** shall ensure that the courts of law, the other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. In the performance of his or her duties, the Ombudsman monitors the implementation of basic rights and liberties and human rights, therefore the question does not fall in the Ombudsman's mandate.<sup>190</sup>

## United Nations

CERD<sup>191</sup>, CEDAW<sup>192</sup>, CESCR<sup>193</sup> and CRC<sup>194</sup> encouraged Finland to ratify the ICRMW.

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<sup>185</sup> Reply from the Finnish Social Democratic Party, 23 August 2010.

<sup>186</sup> Reply from Ms. Päivi Räsänen, Christian Democrats, 12 August 2010.

<sup>187</sup> Reply from the Finnish Refugee Advice Centre, 30 August 2010.

<sup>188</sup> Ibid.

<sup>189</sup> See <http://www.sttk.fi/Page/b7245ae0-0812-4142-9f8b-6a4f3492887d.aspx?groupId=e0c6393c-7b82-489b-a343-6a6f6e716ceb&announcementId=ee503e39-93de-437f-a71f-ef4f686c43b0> and <http://www.sttk.fi/Page/b7245ae0-0812-4142-9f8b-6a4f3492887d.aspx?groupId=0080d8b2-d6fa-48ad-a777-fd0d92a9e5e1&announcementId=c5ae398f-f250-4383-8e71-6d0563c28442> (in Finnish).

<sup>190</sup> Reply from the Parliamentary Ombudsman of Finland, 19 August 2010.

<sup>191</sup> Committee on the Elimination of Racial Discrimination, Nineteenth periodic reports of States parties due in 2007, Finland, 16 August 2007, § 14, available at <http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD.C.FIN.19.doc>.

## Council of Europe

The Finnish authorities' unwillingness to ratify the ICRMW is stated also in the report of the European Commission against Racism and Intolerance (ECRI), which asked to Finland to reconsider its position.<sup>195</sup>

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<sup>192</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Forty-first session, 30 June-18 July 2008, § 198, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-FIN-CO-6.pdf>.

<sup>193</sup> Committee on Economic, Social and Cultural Rights, Concluding observations, Thirty-eighth session, 30 April -18 May 2007, E/C.12/FIN/CO/5, § 31, available at <http://www.universalhumanrightsindex.org/documents/827/1277/document/en/pdf/text.pdf>.

<sup>194</sup> Committee on the Rights of the Child, Concluding observations, Fortieth session, CRC/C/15/Add.272, 20 October 2005, §53 (b), available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/15/Add.272>.

<sup>195</sup> European Commission against Racism and Intolerance (ECRI), Third report on Finland, 24 May 2007, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/FIN-CbC-III-2007-23-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/FIN-CbC-III-2007-23-ENG.pdf).



## FRANCE

### Government Position

In its report to the UPR<sup>196</sup> the Government of France stated that it was not in a position to ratify the Migrant Workers Convention for two reasons: (1) the Convention does not draw a distinction between regular and irregular migrant workers, this does not encourage legal residence; (2) France can only sign the Convention jointly with its European partners.

In its reply to Egypt, that recommended accession to the Convention,<sup>197</sup> France added that the Convention brings together principles already contained in other treaties, in particular the human rights covenants and conventions as well as those of the ILO and the Council of Europe, which France has ratified and is currently implementing.<sup>198</sup>

In its response to the opinion expressed by the Commission nationale consultative des droits de l'homme (CNCDH) on the Convention, the Ministry of Foreign Affairs noted the absence of ratification by Member States of the European Union and the existence of technical difficulties (tax provisions) which precluded its ratification. The ministry also said it had called for further ministerial meetings before setting up a consultation at the European level. It pledged to keep the CNCDH informed about any progress made.<sup>199</sup>

At the Fourth Arab-European Human Rights Dialogue of National Human Rights Institutions, held in March 2009,<sup>200</sup> the CNCDH put forward a detailed response to the arguments for non-ratification used by the French Government.

### Political Parties

Some of the members of the **Socialist Party (PS)** have taken individual initiatives in favour of ratification, such as the interventions by Ms. Sandrine Mazetier<sup>201</sup> and Ms. George Pau-Langevin<sup>202</sup> at the National Assembly. However, the PS never stated its official position.

Both the **Green Party** and the **Communist Party** have a clear position in favour of the Convention and supported the work of French NGOs and associations for ratification by France.<sup>203</sup> Mr. Robert Bret from the **Communist group** submitted a written question to the Ministry of Foreign and European Affairs asking for ratification.<sup>204</sup>

Representatives of other leftist parties<sup>205</sup> repeatedly called for the ratification of the Convention and submitted questions to the government on this issue. Examples are: Mr. Patrick Braouezec (**Fédération pour une alternative sociale et écologique**)<sup>206</sup> and Mr. Roland Muzeau (**Communist Party**).<sup>207</sup>

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<sup>196</sup> UN Human Rights Council, National Report submitted by France, A/HRC/WG.6/2/FRA/1, 2 May 2008, § 13, available at [http://www.upr-info.org/IMG/pdf/nat\\_report\\_E.pdf](http://www.upr-info.org/IMG/pdf/nat_report_E.pdf).

<sup>197</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review on France, A/HRC/8/47, 3 June 2008, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/A\\_HRC\\_8\\_47\\_France\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/A_HRC_8_47_France_E.pdf). The same recommendations were made also by Algeria, Azerbaijan, Albania and Senegal.

<sup>198</sup> UN Human Rights Council, Response of France to the recommendations made during the Universal Periodic Review on 14 May 2008, A/HRC/8/47/Add.1, 25 August 2008, § 2, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/A\\_HRC\\_8\\_47\\_Add1\\_France\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/A_HRC_8_47_Add1_France_E.pdf).

<sup>199</sup> Reply from the Commission nationale consultative des droits de l'homme (CNCDH), 23 June 2010.

<sup>200</sup> Fourth Arab-European Human Rights Dialogue of National Human Rights Institutions, Migrant Workers' Human Rights, The Hague, The Netherlands, 11-13 March 2009, pp. 140-8, available at <http://aehrd.info/file/01.pdf>.

<sup>201</sup> Assemblée nationale, XIII<sup>e</sup> legislature, ordinary session 2009-2010, 17 June 2010, available at : <http://www.assemblee-nationale.fr/13/cr/2009-2010/20100225.asp> (in French).

<sup>202</sup> Commission des lois constitutionnelles, de la législation et de l'administration générale de la République, Compte rendu n° 69, 25 June 2008, available at : <http://www.assemblee-nationale.fr/13/cr-cloi/07-08/c0708069.asp> (in French).

<sup>203</sup> Collectif Migrant, petition « Migrant, pas esclave ! », <http://www.migrantpasesclave.org/petition.php?li=d#lc>.

<sup>204</sup> Written question n. 01010, published on the Official Journal of the Senate of the 19 July 2007, p. 1272, available at : <http://www.senat.fr/questions/base/2007/qSEQ070701010.html> (in French).

The **Left Party (Parti de Gauche)** and its leader, Jean-Luc Mélenchon, supported the petition launched by December 18 and the EPMWR calling on EU Member States to ratify the Convention.<sup>208</sup>

## NGOs

**Amnesty International (AI)** called on France to sign and ratify the Migrant Workers Convention.<sup>209</sup>

On December 18, 2008 **Amnesty International France** launched the campaign a year of action in order to present a petition to the French Minister of Foreign Affairs, asking to ratify the Convention. 21,544 signatures have been collected and were presented to the Ministry of Foreign Affairs on Friday, January 8, 2010.<sup>210</sup>

In 2007, the platform **Migrant, Pas Esclave!**<sup>211</sup> launched a campaign for ratification with an open letter published in the newspaper *Liberation* on 16 July 2007.<sup>212</sup>

Other organisations that always asked for ratification are **FIDH**,<sup>213</sup> **France Terre d'Asile**<sup>214</sup> and **Emmaüs International**. In 2008, hundreds of European and African organisations called for the ratification of the Convention at the Conference "Des ponts - pas des murs".<sup>215</sup>

## Trade Unions

We did not receive any replies from French trade unions.

## National Human Rights Institution

The **Commission nationale consultative des droits de l'homme (CNCDH)** encourages the ratification by France of the Convention and, more widely, supports the idea of ratification in the European Union. CNCDH stated its position in its opinion on the Convention<sup>216</sup> and, more recently, in a general opinion on human rights.<sup>217</sup> The CNCDH believes that a common position of the European Group of NHRIs would send a strong signal to governments of all EU

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<sup>205</sup> Democratic and Republican Left (French: Gauche démocrate et républicaine, *GDR*), French parliamentary group in the 13th Assembly, website: <http://www.groupe-communiste.assemblee-nationale.fr/> (in French).

<sup>206</sup> Assemblée nationale, XIII<sup>e</sup> legislature, 2<sup>nd</sup> extraordinary session, 18 September 2007, available at: <http://www.assemblee-nationale.fr/13/cr/2006-2007-extra2/20072002.asp> (in French).

<sup>207</sup> Written question n. 4443, 4 December 2007, available at <http://questions.assemblee-nationale.fr/q13/13-4443QE.htm> (in French).

<sup>208</sup> See <http://www.lepartidegauche.fr/editos/vues-dailleurs/2940-campagne-pour-les-droits-des-travailleurs-migrants-dans-lunion-europeenne>.

<sup>209</sup> Amnesty International, UPR submission, January 2008, London (UK), p. 1, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/AI\\_FRA\\_UPR\\_S2\\_2008\\_AmnestyInternational\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/FR/AI_FRA_UPR_S2_2008_AmnestyInternational_uprsubmission.pdf).

<sup>210</sup> AI France compiled also information against Government's argumentation for non-ratification. For more info see: [http://www.amnesty.fr/index.php/agir/campagnes/refugies\\_et\\_migrants/actions/la\\_france\\_doit\\_ratifier\\_la\\_convention\\_sur\\_la\\_protection\\_des\\_droits\\_des\\_travailleurs\\_migrants](http://www.amnesty.fr/index.php/agir/campagnes/refugies_et_migrants/actions/la_france_doit_ratifier_la_convention_sur_la_protection_des_droits_des_travailleurs_migrants) (in French).

<sup>211</sup> Composed of : ATMF (Association des Travailleurs Maghrébins de France), CIMADE (Service œcuménique d'entraide) CRID (Centre de Recherche et d'Informations pour le Développement), EMMAUS INTERNATIONAL, EMMAUS France, FORIM (Forum des Organisations de Solidarité Internationale issues des Migrations), GISTI (Groupe d'information et de soutien des immigrés), LDH (Ligue des Droits de l'Homme), MRAP (Mouvement contre le Racisme et pour l'Amitié entre les Peuples).

<sup>212</sup> Pour un Kyoto des migrants : <http://www.liberation.fr/tribune/0101107382-pour-un-kyoto-des-migrants> (in French).

<sup>213</sup> <http://www.fidh.org/Europe-it-s-time-to-ratify-the-Migrant-Workers>

<sup>214</sup> <http://www.france-terre-asile.org/que-faisons-nous/integration-des-migrants/une-societe-daccueil-tolerante> (in French).

<sup>215</sup> <http://www.despontspasdesmurs.org/spip.php?article81>.

<sup>216</sup> CNCDH, Avis sur la convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille et réponse du gouvernement, 23 June 2005, available at : [http://www.cncdh.fr/article.php3?id\\_article=152](http://www.cncdh.fr/article.php3?id_article=152) (in French).

<sup>217</sup> CNCDH, Opinion adopted by the Plenary Assembly on February 7<sup>th</sup> 2008, Diplomacy and Human Rights, p. 8, available at: [http://www.cncdh.fr/IMG/pdf/CNCDH\\_diplomacy\\_and\\_human\\_rights.pdf](http://www.cncdh.fr/IMG/pdf/CNCDH_diplomacy_and_human_rights.pdf).

Member States and would also indicate that steps should be taken at the European level because this issue partly falls within the competence of the Community.<sup>218</sup>

#### United Nations

CERD,<sup>219</sup> CRC,<sup>220</sup> CESCR<sup>221</sup> and CEDAW<sup>222</sup> called on France to ratify the ICRMW.

#### Council of Europe

ECRI recommended to France to ratify the ICRMW in both its third and fourth report.<sup>223</sup>

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<sup>218</sup> Reply from the Commission nationale consultative des droits de l'homme (CNCDH), 23 June 2010.

<sup>219</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, 77th Session, 2 - 27 August 2010, CERD/C/FRA/CO/17-19, § 21, available at <http://www2.ohchr.org/tbru/cerd/CERD-C-FRA-CO-17-19.pdf> (French unedited version).

<sup>220</sup> Committee on the Rights of the Child, Concluding observations, 51st session, 25 May - 12 June 2009, CRC/C/FRA/CO/4, § 104, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-FRA-CO-4.pdf>.

<sup>221</sup> Committee on Economic, Social and Cultural Rights, Concluding observations, 40th session, 28 April - 16 May 2008, E/C.12/FRA/CO/3, § 52, available at <http://www2.ohchr.org/english/bodies/cescr/docs/co/E.C.12.FRA.CO.3.doc>.

<sup>222</sup> Committee on the Elimination of Discrimination against Women, Concluding comments, 40th session, 14 January - 1 February 2008, CEDAW/C/FRA/CO/6, § 44, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.FRA.CO.6.pdf>.

<sup>223</sup> European Commission against Racism and Intolerance (ECRI), Fourth report on France, 15 June 2010, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-IV-2010-016-ENG.pdf> and Third report on France, 15 February 2005, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/FRA-CbC-III-2005-3-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/FRA-CbC-III-2005-3-ENG.pdf).

# GERMANY

## Government Position

In replying to the questionnaire, the **Minister of Labour and Social Affairs** wrote that the German government's position vis-à-vis the ICRMW can be found in the responses to the questions asked in parliament.<sup>224</sup>

In his reply to a written question from MP Sevim Dağdelen from Die Linke, the State Secretary in the Federal Ministry of Labour and Social Affairs, Gerd Hoofe, said that the issue of ratification of the Migrant Workers Convention should be addressed at EU level, because it also concerns EU competences. He also noted that there is unwillingness among Member States to ratify the Convention, because the rights it provides for are already covered by the other core human rights treaties and by national legislation. Ratification would only lead to a repetition of rights already guaranteed.<sup>225</sup>

The Federal Government furthermore explained its opposition to ratification on the argument that it would lead to equality between irregular and regular migrants, thus creating incentives for irregular migration. States would also be deprived of their power to decide access and stay of migrant workers in their territory. The Convention contains regulations that do not comply with German law and finally that in ratifying they would act in isolation from the other EU Member States.<sup>226</sup> The same reasons were raised by the German government in its reply<sup>227</sup> to the list of issues from the Committee on the Elimination of Racial Discrimination<sup>228</sup> and to comments made by some State Parties of the Migrant Workers Convention during Germany's review under the Universal Periodic Review process.<sup>229</sup>

## Political Parties

In general, awareness about the Migrant Workers Convention is rather low amongst the traditional political parties. Only **Die Linke** and **Alliance '90/The Greens** (Bündnis 90/Die Grünen) intervened in the parliament.<sup>230</sup> An MP of the *Freie Demokratische Partei* (**Free Democratic Party, FDP**), argued that the human rights provided by the Convention are the same covered by other conventions and agreements, and, even if labour market rights are not covered, these are not a particularly vital area of concern.<sup>231</sup>

## NGOs

Some civil society actors endorse the ratification. **Forum Menschenrechte (JS2)** in a Joint statement submitted during the 2009 consideration of Germany under the Universal Periodic Review process affirmed that "Germany

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<sup>224</sup> Reply received on June 18, 2010.

<sup>225</sup> Bundestag publication 17/1342, 9 April 2010, p. 22, available at: <http://dip21.bundestag.de/dip21/btd/17/013/1701342.pdf> (in German).

<sup>226</sup> See parliamentary intervention n. 16/6787, 24 October 2007, made by Alliance '90/The Greens (Bündnis 90/Die Grünen), available at: <http://dip21.bundestag.de/dip21/btd/16/067/1606787.pdf> (in German). For further information on Government's reservations against ratification and counter-arguments see the study of the German Institute for Human Rights.

<sup>227</sup> Written reply from the Federal Republic of Germany to the list of issues of the Committee on the Elimination of Racial Discrimination, 31 July 2008, § 23, available at

<http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/ReplyLOIGermany73.pdf>.

<sup>228</sup> Committee on the Elimination of Racial Discrimination, questions put by the rapporteur in connection with the consideration of the sixteenth to eighteenth periodic reports of Germany, 28 July- 15 August 2008, § 23, available at <http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/CERDGermanyLOI73.pdf>.

<sup>229</sup> These States were Algeria, Azerbaijan, Ecuador, Egypt, Mexico, Morocco and Senegal. See UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Germany, A/HRC/11/15, 4 March 2009, § 81, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/DE/A\\_HRC\\_11\\_15\\_DEU\\_E.PDF](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/DE/A_HRC_11_15_DEU_E.PDF) and addendum, A/HRC/11/15/Add.1, 20 May 2009, p. 2, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/DE/A\\_HRC\\_11\\_15\\_Add1\\_DEU\\_E.PDF](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/DE/A_HRC_11_15_Add1_DEU_E.PDF).

<sup>230</sup> The Greens, in particular, asked the Federal Government not only to ratify the Convention, but also to work for ratification at EU level, and argued against Government's reasons for not ratification.

<sup>231</sup> FELICITAS HILLMANN AND AMANDA KLEKOWSKI VON KOPPENFELS, Migration and Human Rights in Germany, in Migration and Human Rights, The United Nations Convention on Migrant Workers' Rights, Edited by Paul de Guchteneire, Antoine Pécoud and Ryszard Cholewinski, UNESCO Publishing, Cambridge University Press, January 2010, p. 337.

should ratify the UN Convention on Migrant Workers and base its migration policy on human rights".<sup>232</sup> Also **Amnesty International**<sup>233</sup> and the **German Nationwide Activist Coordination Group Combating Trafficking in Women and Violence Against Women in the Process of Migration (KOK)**<sup>234</sup> urged Germany to sign and ratify the Convention.

In the past, the **Komitee für Grundrechte und Demokratie** (Committee for Basic Rights and Democracy, CBRD) carried out a campaign for ratification. It states that it does not expect ratification, but wanted to raise awareness about the poor conditions of migrant workers, including undocumented workers.<sup>235</sup>

### Trade Unions

Even if Trade Unions began to show a certain interest towards migrants, ratification of the Convention is not on their agenda.<sup>236</sup>

### National Human Rights Institution

The **German Institute for Human Rights** stated in its reply to the questionnaire that it is of the opinion that Germany should ratify and implement the Convention. For the time being, even without ratification, the Government must take into consideration the rights enshrined therein when implementing the other human rights instruments Germany is a party to.<sup>237</sup> The German Institute asked for ratification several times, for example in a study published in 2007<sup>238</sup> and more recently in a statement made in the context of Germany's review under the Universal Periodic Review process.<sup>239</sup>

### United Nations

CERD<sup>240</sup> and CEDAW<sup>241</sup> called on Germany for the ratification of the ICRMW.

### Council of Europe

ECRI recommended to Germany to ratify the ICRMW in both its third and fourth report.<sup>242</sup>

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<sup>232</sup> Forum Menschenrechte (JS2) is a coalition of 51 German human rights NGOs, founded 1994. See Joint NGO Submission, UPR on Federal Republic of Germany, February 2009, § 42, available at [http://forum-menschenrechte.de/cms/upload/PDF/ab\\_05-2008/UPR\\_GERMANY\\_FMR.PDF](http://forum-menschenrechte.de/cms/upload/PDF/ab_05-2008/UPR_GERMANY_FMR.PDF).

<sup>233</sup> Amnesty International, Germany, Submission to the UN Universal Periodic Review, Fourth session of the UPR Working Group of the Human Rights Council, February 2009, p. 8, available at:

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/DE/AI\\_GER\\_UPR\\_S4\\_2009\\_AmnestyInternational.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/DE/AI_GER_UPR_S4_2009_AmnestyInternational.pdf).

<sup>234</sup> German Nationwide Activist Coordination Group Combating Trafficking in Women and Violence Against Women in the Process of Migration (KOK), NGO Submission, UPR on Federal Republic of Germany, February 2009, § 18, available at: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/DE/KOK\\_GER\\_UPR\\_S4\\_2009\\_GermanActivistCoordinationGroupCombatingTraffickinginWomenandViolenceagainstWomenintheProcessofMigration.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/DE/KOK_GER_UPR_S4_2009_GermanActivistCoordinationGroupCombatingTraffickinginWomenandViolenceagainstWomenintheProcessofMigration.pdf).

<sup>235</sup> HILLMANN AND KLEKOWSKI, Migration and Human Rights, *cit.*, pp. 330-1.

<sup>236</sup> See *ibid.*, p. 333.

<sup>237</sup> Reply from the German Institute for Human Rights, 28 July 2010.

<sup>238</sup> German Institute for Human Rights: The UN Migrant Workers Convention. An Instrument to Strengthen Migrants' Rights in Germany, 2007. Available at: [http://www.december18.net/sites/default/files/Summary\\_final.pdf](http://www.december18.net/sites/default/files/Summary_final.pdf). For the German version see: [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/studie\\_die\\_wanderarbeitnehmerkonvention\\_der\\_vereinten\\_nationen.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/studie_die_wanderarbeitnehmerkonvention_der_vereinten_nationen.pdf).

<sup>239</sup> Statement by the German Institute for Human Rights, Human Rights Council, 11<sup>th</sup> session, 2 – 18 June 2009, available at [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/UN-Dokumente/UPR\\_zu\\_Deutschland/upr\\_dimr\\_statement\\_june\\_2009\\_de.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/UN-Dokumente/UPR_zu_Deutschland/upr_dimr_statement_june_2009_de.pdf).

<sup>240</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventy-third session, 28 July - 15 August 2008, CERD/C/DEU/CO/18, § 29, available at <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.DEU.CO.18.pdf>.

<sup>241</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Forty-third session, 19 January-6 February 2009, CEDAW/C/DEU/CO/6, § 65, available at [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Pakte\\_Konventionen/CEDAW/cedaw\\_state\\_report\\_germany\\_6\\_2007\\_cobs\\_2009\\_en.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/CEDAW/cedaw_state_report_germany_6_2007_cobs_2009_en.pdf).

## **GREECE**

### Government Position

For the Greek Government, migrants' rights are fully protected under migratory national law 3386/05. Ratification of the Convention is a national responsibility, although the inclusion of the Convention's provisions in the EU regulatory field would be seen as a positive development. There is already a common EU approach concerning migrant's rights (EU Council Conclusions, Nov. 2009<sup>243</sup>). Furthermore, the implementation of the Stockholm Program will lead towards a framework of migrant's rights comparable to those of the EU citizens.

The **Ministry of Interior, Immigration and Social Integration** replied that the Convention's ratification by Greece could pose incompatibilities with both national and EU law. Moreover, the Greek Government argues that the principle of non-discrimination between third country nationals and EU nationals is expressed without any provisions, on the contrary, in other international instruments states are provided with the option to gradually apply the provisions depending on their financial abilities.<sup>244</sup>

### Political Parties

The parliamentary party **Coalition of the Left (Syriza)** is in favour of ratification and has submitted parliamentary questions.<sup>245</sup>

Both the "**Democratic Renaissance**" and the "**Green Party**" are also supporting the call on Greece to ratify the Convention.<sup>246</sup>

### NGOs

**Antigone** thinks that for national-level campaigns around the Migrant Workers Convention to be effective, they should be accompanied by work at the European level.<sup>247</sup>

In September 2009, on the occasion of the last national elections, the **Greek Section of Amnesty International** circulated a questionnaire to all candidate political parties with the view to record their intentions/program regarding major human rights issues. One of the questions was related to the rights of migrant workers and the intention to ratify the UN Migrant Workers Convention. This was against the background of the murder attack against the Bulgarian trade unionist Mrs Konstantina Kouneva.<sup>248</sup> Two of the parties, which in the end were not

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<sup>242</sup> European Commission against Racism and Intolerance (ECRI), Fourth report on Germany, 26 May 2009, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_04/04\\_CbC\\_eng/DEU-CbC-IV-2009-019-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_04/04_CbC_eng/DEU-CbC-IV-2009-019-ENG.pdf) and Third report on Germany, 8 June 2004, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/DEU-CbC-III-2004-23-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/DEU-CbC-III-2004-23-ENG.pdf).

<sup>243</sup> Council of the European Union, Draft Council Conclusions on Labour Migration and its Development Potential in the Age of Mobility, Brussels, 19 November 2009, 15823/09, available at <http://register.consilium.europa.eu/pdf/en/09/st15/st15823.en09.pdf>.

<sup>244</sup> Reply from the Hellenic Republic Ministry of Interior, Immigration & Social Integration, Directorate of Migration Policy, Department of Migration Policy, 9 July 2010.

<sup>245</sup> Reply from Antigone, 2 September 2010.

<sup>246</sup> See further, section on NGOs.

<sup>247</sup> Reply from Antigone, 2 September 2010.

<sup>248</sup> Konstantina Kouneva is a Bulgarian migrant worker and militant union organizer, general secretary of the Panattic Union of Cleaners and Domestic Personnel, well known for her stance against various abuses. See: <http://www.december18.net/article/greece-konstantina-kuneva-talks-about-her-experiences-gender-violence>.



elected to the Parliament, the “Democratic Renaissance” and the “Green Party”, were explicitly in favour of ratification.<sup>249</sup>

In 2006, on the occasion of the International Day against Racism, Amnesty International Greek Section organised a public event to collect signatures for the ratification of the Migrant Workers’ Convention.<sup>250</sup>

Migrants’ rights as such have caused intense public debate. Examples include national legislative initiatives regarding 2<sup>nd</sup> generation migrants, electoral rights for migrants or access to asylum procedures.

In the view of the **Human Rights Defence Centre (KEPAD)**, the level of awareness about the Convention is low. For human rights learning and awareness raising, efforts at national level can be strengthened if accompanied by work at European/international level.<sup>251</sup>

### Trade Unions

We did not receive any replies from Greek trade unions.

### National Human Rights Institution

The **Greek National Commission for Human Rights (GNCHR)** already recommended ratification of the Migrant Workers’ Convention back in 2002<sup>252</sup> and is still in favour of this recommendation.

The GNCHR states that it is working together with other NHRIs in the framework of the European Group and that of the meetings with the EU’s Fundamental Rights Agency. Although ratification of the Convention has been brought up, it never was the main point of any collaboration. They believe that the promotion of the ratification would be helped if the group of European NHRIs addressed the issue as a common issue across the European Union. But, if the majority of EU Member States oppose ratification, it would probably have a negative effect on a single Member State that would favour ratification.<sup>253</sup>

### United Nations

CERD<sup>254</sup> and CEDAW<sup>255</sup> called on Greece for the ratification of the ICRMW.

### Council of Europe

ECRI recommended to Greece to ratify the ICRMW in both its third and fourth report.<sup>256</sup>

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<sup>249</sup> Answers to AI Greece’s questionnaire are available on their website: <http://www.amnesty.org.gr/party-answers-to-questions-from-amnesty-international> (in Greek).

<sup>250</sup> AI Greece press release: <http://www.amnesty.org.gr/day-against-racism-human-rights-abuses-of-migrant-workers> (in Greek).

<sup>251</sup> Reply from Human Rights Defence Centre (KEPAD), 6 September 2010.

<sup>252</sup> National Commission for Human Rights, Proposal on the Ratification of International Conventions on the Protection of Migrant Workers, 12 December 2002, available at [http://www.nchr.gr/media/keimena\\_agglika/ILO\\_Conventions.doc](http://www.nchr.gr/media/keimena_agglika/ILO_Conventions.doc).

<sup>253</sup> Reply from the Greek National Commission for Human Rights, 7 July 2010.

<sup>254</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventy-fifth session, 3 - 28 August 2009, CERD/C/GRC/CO/16-19, § 19, available at <http://www.universalhumanrightsindex.org/documents/824/1748/document/en/pdf/text.pdf>.

<sup>255</sup> Committee on the Elimination of Discrimination against Women, Concluding comments, Thirty-seventh session, 15 January-2 February 2007, CEDAW/C/GRC/CO/6, § 40, available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/239a466c03ee0db0c12572a4003ca7bf/\\$FILE/N0724374.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/239a466c03ee0db0c12572a4003ca7bf/$FILE/N0724374.pdf).

<sup>256</sup> European Commission against Racism and Intolerance (ECRI), Fourth report on Greece, 15 September 2009, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-IV-2009-031-ENG.pdf> and Third report on Greece, 8 June 2004, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/GRC-CbC-III-2004-24-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/GRC-CbC-III-2004-24-ENG.pdf).

## ***HUNGARY***

### Government Position

The **Ministry of the Interior** replied that given the fact that the subject matter of the Migrant Workers Convention belongs to shared competence, it is necessary to clarify at first place which areas belong to the competence of the European Union and that of the Member States. The EU has not yet elaborated a common position on the ratification of the Convention.

For this reason Hungary is of the view that at this stage it is rather premature to form an official position regarding ratification; especially since the shaping of the framework of a common European migration policy is currently being negotiated in the Union (e.g. proposal for a single application procedure, proposals on seasonal employment, intra-corporate transferees). In this respect, it also needs to be underlined that the European Commission is charged with the task to ensure the EU's external representation, having a sole right of initiative in this area.

Hungary is of the view that the Convention does not differentiate on the basis of the legal position of migrants, thus in principle applies equally to migrant workers staying legally and those staying illegally in the receiving State. This is not reconcilable with the strategic objectives of the European Union, nor with the legislative instruments already adopted in the field of migration. The EU immigration acquis, in adopting a coherent approach, makes a clear distinction between the two before-mentioned categories of persons.

The rights comparable or equal to EU nationals are conferred on third country national migrants only in the event that their stay in the given EU Member State is 'legal', thus s/he was admitted to the territory of the Member State and was issued residence permit in accordance with the relevant EU and national legislation. Thus, the legal position of the migrant represents a core criterion for differentiation. In this context, it is to be underlined that the EU is pursuing a coherent and rigorous policy, which is aimed at preventing and tackling the phenomenon of illegal immigration (see among others the Employers Sanctions Directive). Accordingly, there is a fear that ratification of the Migrant Workers Convention would send the wrong message whereby illegal stay and employment in the EU is tolerated.

Moreover, the fact that the material scope of the Convention extends to the entire migration process, covering also the preparation, departure, transit as well as return phases, also raises concerns as to its applicability in the EU context.

Furthermore, it is to be noted that almost all of the rights provided by the Convention are covered either by relevant EU legislative instruments, mainly by the Charter of Fundamental Rights of the EU, or the other core international human rights treaties. This raises concerns as regards the added value of the ratification of the Convention as well as duplication of efforts in this field.

Given that the subject matter of the Convention belongs to shared competence, Hungary is of the opinion that it might prove useful elaborating a common EU position on the question of accession. Hungary is, however, not planning to take any actions to address this issue during its rotating presidency in the Council which starts on 1st January 2011.<sup>257</sup>

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<sup>257</sup> Reply from the Ministry of Interior, 18 November 2010.



## Political Parties

Political parties have not pronounced views on this issue. Migration and related issues are hardly ever dealt with in political debates.<sup>258</sup>

According to the Parliamentary Diary<sup>259</sup> the issue of labour migration appeared only marginal on the political agenda, for example in the context of discussions around seasonal workers, simplified labour contracts and labour inspection of migrant workers. There were no references to social security or ratification of international treaties. There were, however, at the Parliament more calls for restrictive visa requirements as well as controls by police and labour authorities.<sup>260</sup>

## NGOs

The Migrant Workers Convention and its ratification are according to **Menedek** not on the agenda of the Government. There is also very little interest with political parties or civil society's organizations, although people working in the field of migration and labour affairs are aware of the Convention. Others are much less knowledgeable about this international instrument.<sup>261</sup>

The **Hungarian Helsinki Committee** argues that NGOs and faith-based organizations dealing with refugees/migration issues have not yet dealt with this issue, and trade unions probably do not even know about the existence of the Convention. This is an extremely marginal issue in Hungary for obvious socio-economic reasons (extremely small foreign population and few migrant workers, largely xenophobic public opinion, etc.).

The Hungarian Helsinki Committee is involved in the reporting process for the UN human rights conventions which Hungary has ratified, but in this context it deals mainly with asylum, statelessness and certain human rights-related aspects of migration (mainly family union and rights of the child). Economic or work-related migration – as a general rule – does not fall under its mandate. The issue of migrant workers is usually not dealt with in the official reports which the Hungarian government submits to the various UN monitoring bodies. If migration issues are raised in these reports, then they are often related to immigration detention, asylum, or the situation of unaccompanied minors.<sup>262</sup>

A similar opinion is expressed by **ENAR Hungary** which confirms that only a limited number of single-issue organizations are aware of the Migrant Workers Convention.<sup>263</sup>

The **Mahatma Gandhi Human Rights Organisation** is in favour of the ratification of the ICRMW by Hungary.<sup>264</sup>

## Trade Unions

We did not receive any replies from Hungarian trade unions.

## National Human Rights Institution

The **Ombudsman for Civil Rights** - responsible for racial equality, social, children' and labour rights - supports the ratification of the Migrant Workers Convention together with regional agreements protecting migrant workers. This would provide for a moral and legal basis for social protection of Hungarian citizens employed abroad and, on the

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<sup>258</sup> Reply from the Hungarian Helsinki Committee, 2 September 2010. Also Menedek and ENAR Hungary affirm that political parties are not aware about the Convention, see further, NGOs section.

<sup>259</sup> [www.mkogy.hu](http://www.mkogy.hu).

<sup>260</sup> Reply from the Ombudsman for Civil Rights, 29 July 2010.

<sup>261</sup> Reply from Menedek, 2 September 2010.

<sup>262</sup> Reply from the Hungarian Helsinki Committee, 2 September 2010.

<sup>263</sup> Reply from ENAR Hungary, 19 September 2010.

<sup>264</sup> Reply from the Mahatma Gandhi Human Rights Organisation, 6 September 2010.

other side, improved integration and protection of third country nationals in Hungary (expanding the legal protection that currently only hold for EU/EEA nationals and their family members residing in the country).<sup>265</sup>

#### United Nations

CESCR<sup>266</sup> and CEDAW<sup>267</sup> called on Hungary to ratify the ICRMW.

#### Council of Europe

Since ECRI's third report<sup>268</sup> the Migrant Workers Convention has been translated into Hungarian and made available for consultation. ECRI recommended that Hungary ratifies the Convention.<sup>269</sup>

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<sup>265</sup> Reply from the Ombudsman for Civil Rights, 29 July 2010.

<sup>266</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Thirty-eighth session, 30 April-18 May 2007, E/C.12/HUN/CO/3, § 55, available at <http://www.universalhumanrightsindex.org/documents/827/1276/document/en/pdf/text.pdf>.

<sup>267</sup> Committee on the Elimination of Discrimination against Women, Concluding comments, Thirty-ninth session, 23 July-10 August 2007, CEDAW/C/HUN/CO/6, § 37, available at <http://www.universalhumanrightsindex.org/documents/826/1212/document/en/pdf/text.pdf>.

<sup>268</sup> European Commission against Racism and Intolerance (ECRI), Third report on Hungary, 8 June 2004, available at [http://hudoc.ecri.coe.int/XMLEcri/FRENCH/Cycle\\_03/03\\_CbC\\_fre/HUN-CbC-III-2004-25-FRE.pdf](http://hudoc.ecri.coe.int/XMLEcri/FRENCH/Cycle_03/03_CbC_fre/HUN-CbC-III-2004-25-FRE.pdf) (in French).

<sup>269</sup> European Commission against Racism and Intolerance (ECRI), Fourth report on Hungary, 24 February 2009, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-CbC-IV-2009-003-ENG.pdf>.

## ***IRELAND***

### Government Position

The reasons given by the Government of Ireland for non-ratification are that it would require significant changes of existing legislation, which would also have implications for EU commitments and the operation of the Common Travel Area between Ireland and the UK. The government also argues that the rights of migrant workers and their families, while they need to be kept under active review, are already protected under existing national legislation and under the Irish Constitution, as well as under EU law. In addition, the rights of migrant workers and their families are also addressed by Ireland's commitments under international human rights instruments to which the State is already a party. These international instruments include, for example, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Nevertheless, the position regarding the I Migrant Workers Convention will be kept under review.<sup>270</sup>

More recently, the Government also mentioned that no EU Member State has signed or ratified this Convention.<sup>271</sup>

### Political Parties

The **Labour Party** has called on the government several times over the last number of years to ratify the Convention. Their main reasons for ratification are that the Irish Human Rights Commission recommended it, that its ratification would ensure international legal protection for migrants and their families, and ensure the government's accountability in this regard.

They believe that there is a low awareness about the Convention and that the EU plays an important role, particularly as the EU is harmonising its policies.<sup>272</sup> In 2007, the Labour Party, who is currently in opposition, committed itself to ratification of the ICRMW if elected.<sup>273</sup> The party raised the matter in parliament in 2008.<sup>274</sup>

**Sinn Féin** supports the Migrant Workers' Convention and has called for the ratification of same by both the British and Irish Governments so as to end the exploitation of migrant workers. They believe that workers' rights are human rights and as such all workers are entitled to expect equal access to, and enforcement of, their rights.

Sinn Féin spokesperson on Trade and Employment, Arthur Morgan TD called on the Irish Government to ratify the Convention in 2005.<sup>275</sup> In his address to the party's national congress in 2006, Sinn Féin party President, Gerry Adams, said that the government and other parties, by their ongoing refusal to ratify the Convention lack of commitment to the rights of migrant workers.<sup>276</sup> In 2006, Sinn Féin also put forward a motion in the Dáil that would enshrine workers right, including the ratification of the Convention.

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<sup>270</sup> See Human Rights Committee, Consideration of the third periodic reports submitted by Ireland, 4 September 2007, CCPR/C/IRL/3, p. 66, available at <http://www.unhcr.org/refworld/docid/47060d912.html>.

<sup>271</sup> Committee on the Elimination of Racial Discrimination, Third and fourth periodic report submitted by Ireland, CERD/C/IRL/3-4, 14 June 2009, pp. 19-20, available at [http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD-C-IRL-3\\_4.doc](http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD-C-IRL-3_4.doc).

<sup>272</sup> Reply from the Labour Party, 19 July 2010.

<sup>273</sup> See 2007 Labour Party's Manifesto, p. 74, available at: <http://michaelpidgeon.com/manifestos/docs/lab/Labour%20GE%202007.pdf>.

<sup>274</sup> <sup>274</sup> Labour Party, Press release, 20 November, 2008, available at <http://www.labour.ie/press/listing/122719522913388.html>.

<sup>275</sup> See: <http://www.sinnfein.ie/contents/4327>. See also <http://www.sinnfein.ie/contents/5237>.

<sup>276</sup> See: <http://www.sinnfein.ie/contents/6063>.

Sinn Féin believes that in defending its refusal to ratify, the Government continues to hide behind the Common Travel Area, although anyone who has tried to enter this state from Britain in the past six or seven years knows that the Common Travel Area is dead in the water anyway.

They believe that there is a low awareness about the Convention and there needs to be greater pressure exerted on those countries that refuse to ratify the Convention.<sup>277</sup>

The last General Elections were held in Ireland in 2007. The Election Manifestos of the two current partners in Government, Fianna Fáil and the Green Party, contained no reference or commitment to the Migrant Workers Convention and the ratification of the Convention is not part of the existing Programme for Government.<sup>278</sup>

### NGOs

The **Immigrant Council of Ireland (ICI)** has always called for the ratification of the Convention, most recently in its submission to the consultation process on the protection of the human rights of migrant workers on the island of Ireland, launched by the Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights Commission.<sup>279</sup>

### Trade Unions

In 2002, the **Irish Congress of Trade Unions (ICTU)** launched a campaign “Ratify!” to bring pressure on the Government to ratify the ICRMW and other ILO Conventions.<sup>280</sup>

### National Human Rights Institution

The **Joint Committee** of Representatives of the Two Human Rights Commissions on the Island of Ireland (the **Northern Ireland Human Rights Commission** and the **Irish Human Rights Commission**) always supported the ratification of the ICRMW and urged both the Irish and UK Governments to ratify this important treaty. They recently launched a consultation with a wide range of organizations with experience of these issues on what needs to be achieved in convincing both governments to ratify the Convention.<sup>281</sup>

At its thirty third meeting in Dublin in October 2010, the Joint Committee of Representatives of the two Human Rights Commissions on the Island of Ireland (the Joint Committee), called on both the UK and Irish Governments to commit to key international human rights standards identified as part of its ongoing review of human rights protection north and south of the border. In particular, the Joint Committee called for the signature, ratification and implementation of key United Nations instruments, including the Migrant Workers Convention.<sup>282</sup>

### United Nations

CERD encouraged the Government of Ireland to examine possible ratification of the ICRMW.<sup>283</sup>

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<sup>277</sup> Reply from Sinn Féin, 6 September 2010.

<sup>278</sup> Reply from the Immigrant Council of Ireland (ICI), 4 October 2010.

<sup>279</sup> Reply from the Immigrant Council of Ireland (ICI), 4 October 2010. ICI response to the Consultation Paper is available at [http://www.immigrantcouncil.ie/images/stories/Response\\_to\\_the\\_Consultation\\_Paper\\_on\\_the\\_Migrant\\_Workers\\_Convention.pdf](http://www.immigrantcouncil.ie/images/stories/Response_to_the_Consultation_Paper_on_the_Migrant_Workers_Convention.pdf). About the consultation process, see further, NHRIs section.

<sup>280</sup> See <http://www.ictu.ie/globalsolidarity/workersrights/nodiscrimination.html>.

<sup>281</sup> See: <http://www.ihrc.ie/newsevents/press/2009/12/03/human-rights-commissions-launch-consultation-on-th/>.

<sup>282</sup> Joint Committee press release, 15 October 2010:

[http://www.nihrc.org/index.php?page=press\\_news\\_details&category\\_id=2&press\\_id=430&Itemid=65](http://www.nihrc.org/index.php?page=press_news_details&category_id=2&press_id=430&Itemid=65).

<sup>283</sup> Committee on the Elimination of Racial Discrimination, Third and fourth periodic report submitted by Ireland, CERD/C/IRL/3-4, 14 June 2009, pp. 19-20, available at [http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD-C-IRL-3\\_4.doc](http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD-C-IRL-3_4.doc).

## Council of Europe

ECRI recommended to Ireland to ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.<sup>284</sup>

The Commissioner for Human Rights, Mr. Thomas Hammarberg, invited the Irish authorities to reconsider adhering to the ICRMW.<sup>285</sup>

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<sup>284</sup> European Commission against Racism and Intolerance (ECRI), Third report on Ireland, 24 May 2007, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/IRL-CbC-III-2007-24-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/IRL-CbC-III-2007-24-ENG.pdf).

<sup>285</sup> Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg, on his visit to Ireland 26 - 30 November 2007, § 9, available at <https://wcd.coe.int/ViewDoc.jsp?id=1283555&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

# ITALY

## Government Position

In 2008 the Inter-ministerial Committee of Human Rights of the Ministry for Foreign Affairs stated that the ratification of the Migrant Workers Convention was among the issues included in the work programme of the Italian Government and that the Minister for Social Solidarity expressed the need of considering signing the Convention in various occasions. The Convention was mentioned in the three-year plan for migration flows (2007-2009) and following the resolution introduced in the Committee for Foreign Affairs in July 2007, the Government started a preliminary activity with the purpose to examine the impact of the ratification of such legal instrument. But new international commitments concerning migratory policies cannot be considered out of the European framework, and at the present none of the other European countries has ratified the Convention.<sup>286</sup>

Most recently, in 2010, the Government declared that while remaining attentive to the needs of migrants, Italy is not in a position to ratify the Convention because the Italian legislation already guarantees most of the rights contained in this Convention. This Convention, however, does not make a distinction between regular and irregular migrant workers. Moreover, ratification could only be planned jointly with the other EU partners as many provisions of the Convention fall within the European Union domain.<sup>287</sup>

## Political Parties

The Lega Italiana dei diritti dell'uomo (LIDU), member of the FIDH (International Federation for Human Rights), prepared two drafts of parliamentary questions and on September 2, 2010, transmitted them to Senator Luigi Compagna, member of the Group of the Government Party, **Il Popolo della libertà** (The People of Freedom), that already submitted it to the attention of the Italian Senate (Senato della Repubblica)<sup>288</sup>; and to MP Francesco Nucara, leader of the Italian Republican Party (**Partito Repubblicano Italiano**), that will submit it to the attention of the Chamber of Deputies (Camera dei deputati). After defining the Convention as a "good tool to overcome many problems related to migration, as it encodes a regulatory framework now scattered in various acts of minor extent", the texts ask if the Prime Minister, the Minister of Foreign Affairs and the Minister for European Relations do not consider it appropriate to ensure that the Government requests the European Commission, given the provisions of the Treaty of Lisbon on the European Union's legal personality, to ratify the Migrant Workers Convention and by an act of the Community to ratify and fully implement it, in the form of a Directive, which obliges Member States to implement its provisions in their legislation.<sup>289</sup>

## NGOs

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<sup>286</sup> Inter-ministerial Committee of Human Rights, Ministry for Foreign Affairs, reply to list of issues to be taken up in connection with the consideration of the report of Italy to the UN Committee on the Elimination of Racial Discrimination, January 2008, (CERD/C/ITA/15), p. 48, available at

<http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/cerditaly72.doc>.

<sup>287</sup> See: UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Italy, 18 March 2010, A/HRC/14/4, § 6, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IT/A\\_HRC\\_14\\_4\\_Italy.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IT/A_HRC_14_4_Italy.pdf) and Addendum, Response of the Government of Italy to recommendations in the report of 11 February 2010 of the Working Group on the Universal Periodic Review, A/HRC/14/4/Add.1, 31 May 2010, p. 2, available at

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IT/A\\_HRC\\_14\\_4\\_Add.1\\_Italy.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IT/A_HRC_14_4_Add.1_Italy.pdf). States parties to the ICRMW that asked to Italy to ratify it were Algeria, Azerbaijan, Chile, Egypt, Islamic Republic of Iran, Mexico, and the Philippines. Noting that Italy has been recommended to ratify a number of international human rights obligations, including the ICRMW, Denmark asked how Italy does plan to respond to the recommendations.

<sup>288</sup> Senato della Repubblica, Legislatura 16 Atto di Sindacato Ispettivo n° 2-00269, seduta n. 440, 19 October 2010, available at <http://www.senato.it/japp/bgt/showdoc/showText?tipodoc=Sindisp&leg=16&id=509557> (in Italian).

<sup>289</sup> The two drafts of parliamentary questions, in Italian, are available at:

[http://www.december18.net/sites/default/files/lidu\\_camera\\_dei\\_deputati\\_-\\_nucara.doc](http://www.december18.net/sites/default/files/lidu_camera_dei_deputati_-_nucara.doc) and at [http://www.december18.net/sites/default/files/lidu\\_senato\\_della\\_repubblica\\_-\\_compagna.doc](http://www.december18.net/sites/default/files/lidu_senato_della_repubblica_-_compagna.doc).

**Franciscans International (FI)** stated that “Italy should consider ratifying the Migrant Workers Convention, comparing the State’s present treatment of migrants with the standards set out in that Convention”.<sup>290</sup>

The **Lega Italiana dei diritti dell’uomo (LIDU)**, member of the FIDH (International Federation for Human Rights), thinks that efforts to induce governments and parliaments to ratification should be shifted to the EU level, because of the provisions of the Lisbon Treaty concerning the common foreign and security policy, external relations and migration, that allow for a ratification of the Convention by the European Union. In addition there should be a Directive to whom Member States’ jurisdictions have to conform with. For this they worked together with members of the Parliament who submitted parliamentary questions.<sup>291</sup> From LIDU’s point of view, the level of awareness about the Convention is really low, even among civil society organizations.<sup>292</sup>

**Associazione Nazionale oltre le frontiere (ANOLF)** believes that Government officials’ awareness about the Convention has always been low, that political parties are not interested in this issue and that national campaigns for the ratification should be accompanied by actions at EU level.<sup>293</sup>

**ARCI** several times called on the Government to ratify the Convention,<sup>294</sup> but they believe that for the moment no political party or civil society organization is interested in this issue.<sup>295</sup>

**Punto di partenza**, member of the European Network of Migrant Women, believes that Italian political parties normally do not include in their programs strong positions in defence of immigrants because they fear losing support from the electorate. There is a really low awareness about this Convention and actions for ratification have to be led at the EU level. But also the European Parliament and the European Commission should push Member States for ratification.<sup>296</sup>

The International and European Research on Immigration (**FIERI**) confirmed the points listed above.<sup>297</sup>

### Trade Unions

After the 2005 petition for ratification,<sup>298</sup> conducted with “Diritti senza confini”, the **Confederazione Generale Italiana del Lavoro (CGIL)** asked for ratification during its meeting with the president of the Chamber of Deputies (Camera dei deputati), Gianfranco Fini, on 18 December 2009 (International Migrants Day), but the president of the Chamber replied that Italy is not politically prepared for ratification.<sup>299</sup>

### United Nations

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<sup>290</sup> Franciscans International (FI), submission to the 7<sup>th</sup> session of the Universal Periodic Review (UPR), Italy, February 2010, § 12, available at

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IT/FI\\_UPR\\_ITA\\_S07\\_2010\\_Franciscans%20International.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IT/FI_UPR_ITA_S07_2010_Franciscans%20International.pdf).

<sup>291</sup> See above, in political parties section.

<sup>292</sup> Reply from Lega Italiana dei Diritti dell’Uomo (LIDU), 3 September 2010. The full reply of the LIDU to our questionnaire is available at

<http://www.liduonlus.org/lettere%202010/Risposta%20quesiti%20AEDH%20sulla%20Convenzione%20delle%20Nazioni%20Unitarie%20sui%20lavoratori%20migranti%20rev%201.pdf> (in Italian). In it, LIDU’s director, Mr. Arpaia, gives a wide description of the situation of migrants in Italy.

<sup>293</sup> Reply from ANOLF (Associazione Nazionale oltre le frontiere), 29 June 2010. In the ANOLF’s website is also available an Italian translation of the Convention: [http://www.anolf.it/download/Convenzione\\_%20ONU\\_sui\\_%20diritti\\_18\\_12\\_03.pdf](http://www.anolf.it/download/Convenzione_%20ONU_sui_%20diritti_18_12_03.pdf).

<sup>294</sup> See for example

[http://www.arci.it/speciale/comunicati\\_stampa/18\\_dicembre\\_giornata\\_internazionale\\_dei\\_migranti\\_litalia\\_ratifichi\\_la\\_convenzione\\_onu/index.html](http://www.arci.it/speciale/comunicati_stampa/18_dicembre_giornata_internazionale_dei_migranti_litalia_ratifichi_la_convenzione_onu/index.html).

<sup>295</sup> Reply from ARCI, 6 July 2010.

<sup>296</sup> Reply from Punto di partenza, 8 July 2010.

<sup>297</sup> Reply from Forum of International and European Research on Immigration (FIERI), 6 September 2010.

<sup>298</sup> See <http://www.dirittisenzaconfini.it/?q=node/3>.

<sup>299</sup> Reply from CGIL (Confederazione Generale Italiana del Lavoro), 8 July 2010. The text of the intervention is available at: [http://www.december18.net/sites/default/files/18\\_dicembre\\_cgil.doc](http://www.december18.net/sites/default/files/18_dicembre_cgil.doc) (in Italian).

CERD<sup>300</sup> encouraged Italy to ratify the ICRMW.

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<sup>300</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventy-second session, 18 February-7 March 2008, CERD/C/ITA/CO/15, § 23, available at <http://www.universalhumanrightsindex.org/documents/824/1302/document/en/pdf/text.pdf>.



# ***LATVIA***

## Government Position

Latvian authorities reported to the European Commission against Racism and Intolerance (**ECRI**) that they have no immediate plans for signature or ratification of the Migrant Workers Convention.<sup>301</sup>

In its reply to the survey, the **Ministry of Welfare** stated that currently, there are no discussions within the Ministry about the UN Migrant Workers' Convention and its possible ratification by Latvia.<sup>302</sup>

## Political Parties

We did not receive any replies from Latvian political parties.

## NGOs

The **Latvian Centre for Human Rights** would welcome ratification of the Convention by Latvia as well as all EU Member States. In some ways, since Latvia is presently more of a sending than a receiving state, there would theoretically be arguments for the government (or at least the Foreign Ministry) for ratification. However, it is very unlikely that Latvia would go further than the majority of EU Member States.

In the opinion of the LCHR, there is a great lack of awareness about the Convention; immigration-related topics are clearly not enjoying popular support. Coordinated actions at the European level would probably be the only way to make progress in this matter.<sup>303</sup>

## Trade Unions

The **Free Trade Union Confederation of Latvia** asserts that Latvia has ratified ILO Conventions, the European Social Charter and European Union Directives which regulate, on the one hand, the legal status of migrant workers with a view to ensuring that they are treated no less favourably than workers who are nationals of the host state in all aspects of living and working conditions and, on the other hand, the social advancement of migrant workers and their families. So, in their view, migration is already regulated effectively by these instruments and through specific national policies. In Latvia, the rights of migrant workers coming from other EU member states are the same as those of Latvian citizens. Third country nationals have even better conditions if compared with locals. For example, for local workers, employers are obliged to pay the minimal wage, for third country workers the average wage in the country.<sup>304</sup>

## United Nations

CESCR<sup>305</sup> recommended ratification of the ICRMW.

## Council of Europe

ECRI recommended to Latvia to ratify the ICRMW as soon as possible.<sup>306</sup>

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<sup>301</sup> European Commission against Racism and Intolerance (ECRI), Third report on Latvia, 12 February 2008, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/LVA-CbC-III-2008-2-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/LVA-CbC-III-2008-2-ENG.pdf).

<sup>302</sup> Reply from the Ministry of Welfare, 24 September 2010.

<sup>303</sup> Reply from the Latvian Centre for Human Rights (LCHR), 15 September 2010.

<sup>304</sup> Reply from the Free Trade Union Confederation of Latvia, 6 September 2010.

<sup>305</sup> Committee on Economic, Social and Cultural Rights, Concluding observations, Thirty-eighth session, 30 April-18 May 2007, E/C.12/LVA/CO/1, § 60, available at <http://www.universalhumanrightsindex.org/documents/827/1275/document/en/pdf/text.pdf>.

# **LITHUANIA**

## Government Position

**The Migration Department of the Ministry of the Interior** replied that the position of Lithuania is not to ratify the Migrant Workers Convention for the following reasons:

- a) the rights of migrant workers and their family members are protected by the international conventions already ratified by Lithuania, EU and national legislation;
- b) some provisions of the mentioned Convention contradict with national law;
- c) the implementation of some provisions would require additional financial resources which would put a burden on Lithuania.

The Lithuanian government furthermore argues that the Migrant Workers Convention is more restrictive than other international legal instruments because it does not allow countries to choose the measures to implement the provisions of the Convention (especially those in the field of education, social and medical services).

Lithuania believes that the decision whether or not to ratify the Convention is the competence of every single member state of EU.

In Lithuania, there have never been any parliamentary questions asked about the ratification of the Convention, nor have civil society actors submitted opinions or suggestions.<sup>307</sup>

## Political Parties

We did not receive any replies from Lithuanian political parties.

## NGOs

We did not receive any replies from Lithuanian NGOs.

## Trade Unions

We did not receive any replies from Lithuanian trade unions.

## United Nations

CAT<sup>308</sup> and CEDAW<sup>309</sup> called for ratification of the ICRMW.

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<sup>306</sup> European Commission against Racism and Intolerance (ECRI), Third report on Latvia, 12 February 2008, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/LVA-CbC-III-2008-2-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/LVA-CbC-III-2008-2-ENG.pdf).

<sup>307</sup> Reply from the Migration Department, Ministry of the Interior, 22 June 2010.

<sup>308</sup> Committee against Torture, Concluding observations, Forty-first session, Geneva, 3-21 November 2008, CAT/C/LTU/CO/2, § 24, available at <http://www.universalhumanrightsindex.org/documents/828/1461/document/en/pdf/text.pdf>.

<sup>309</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Forty-first session, 30 June-18 July 2008, CEDAW/C/LTU/CO/4, § 93, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-LTU-CO-4.pdf>.

# **LUXEMBOURG**

## Government Position

In its response, the **Ministry of Foreign Affairs and Immigration** emphasized that important legal obstacles related to the existence of Community competences in the field of migration do not allow Luxembourg to consider ratification of this Convention.<sup>310</sup> The same opinion was put forward during the UPR examination, although the government delegation also said that it would try to propose a more in-depth study within the European Union to determine whether solutions could be found for the ratification of the Convention.<sup>311</sup> This shows that in Luxembourg's view ratification needs to be approached in a European context and that a common approach among EU Member States should be aimed for.

## Political Parties

The **Luxembourg Socialist Workers' Party (LSAP)** believes that ratification of the Convention by Luxembourg is not necessary at this time. In their view, the rights of migrant workers are protected by other existing treaties as well as national laws. Ratification of the Convention could require considerable resources, without any real improvement of the rights of migrant workers. Finally, it is rather difficult to assess the impact of the Convention, particularly as regards its compatibility with the objective of combating illegal immigration in Europe. Because the policies on immigration and protection of rights of third country nationals fall within the competence of the European Union, ratification of the Convention should be part of a dialogue aimed at achieving a common EU approach. The LSAP believes that Luxembourg's decision will depend on the position of the EU and its Member States. According to the LSAP, except from state authorities, trade unions and NGOs working in the field migration filed, the Convention is not well known in Luxembourg.<sup>312</sup>

## NGOs

**Caritas Luxembourg** states that there is a really low awareness about this Convention. They are in favour of ratification and believe that the same could be said for civil society in general. However, ratification is currently not an issue in Luxembourg.<sup>313</sup> For this reason they argue that although campaigns at the European level are important, it is necessary to first act at national level.<sup>314</sup>

## Trade Unions

We did not receive any replies from trade unions in Luxembourg.

## National Human Rights Institution

We did not receive any replies from the Commission Consultative des Droits de l'Homme du Grand-Duché de Luxembourg (CCDH).

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<sup>310</sup> Reply from the Directorate of Immigration, Ministry of Foreign Affairs and Immigration, 21 June 2010.

<sup>311</sup> UN Human Rights Council, Response of Luxembourg to recommendations of the Working group on the Universal Periodic Review, 17 March 2009, A/HRC/10/72/Add.1, p. 2, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/LU/A\\_HRC\\_10\\_72\\_Add1\\_Luxembourg\\_F.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/LU/A_HRC_10_72_Add1_Luxembourg_F.pdf) (in French). During the UPR examination, some States parties to the ICRMW asked to Luxembourg to ratify it: Azerbaijan, Mexico, Algeria, Egypt and Turkey, see [http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/LU/A\\_HRC\\_10\\_72\\_Luxembourg\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/LU/A_HRC_10_72_Luxembourg_E.pdf).

<sup>312</sup> Reply from the Luxembourg Socialist Workers' Party (LSAP), 5 July 2010.

<sup>313</sup> Reply from Caritas Luxembourg, 8 September 2010.

<sup>314</sup> Ibid.

## United Nations

CEDAW<sup>315</sup> recommended ratifying the ICRMW.

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<sup>315</sup> Committee on the Elimination of Discrimination against Women, Concluding comments, Fortieth session, 14 January-1 February 2008, CEDAW/C/LUX/CO/5, § 36, available at [http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.LUX.CO.5\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.LUX.CO.5_en.pdf).

## **MALTA**

### Government Position

During the examination of the UPR, some countries recommended to Malta to consider acceding to the Migrant Workers Convention,<sup>316</sup> but Malta replied that it does not intend to do so, at least for the time being. The government delegation did not provide any explanation for this position.<sup>317</sup>

### Political Parties

The two main political parties agree on a strict migration policy as well as the detention policy vis-à-vis asylum seekers.<sup>318</sup>

### NGOs

**People for Change Foundation (PfC)** states that the adoption of the ICRMW has not been discussed in any political forum. The unwillingness to adopt the Convention is in line with Malta's position regarding European Union instruments which grant more rights to migrants. This reluctance is usually explained on the basis of the number of migrants arriving in Malta through irregular channels with a view of seeking asylum. Malta has consistently insisted that the European Union should offer real support in dealing with this situation, most notably through a system of responsibility sharing.

PfC notes that whilst Malta has been reluctant to subscribe to international obligations in this regard, and whilst legal provisions remained rather stringent, in practice many migrants receive rights and benefits that go beyond the strict provisions of the law. This has not, however, been accompanied by improvements in the policy framework.

In their opinion it is unfortunate that the Migrant Workers Convention is rarely used as by NGOs as lobbying tool vis-à-vis the Maltese government, and the provisions of the Convention are hardly ever mentioned at conferences or meetings. This might be explained by the fact that migration NGOs in Malta are focused (almost) exclusively on asylum seekers and therefore use other legal instruments to support their lobbying efforts. Very few organizations address labour migration itself and even in these limited cases, they do so only marginally. Moreover, the promotion of a rights-based approach is relatively recent for Malta. Finally, when international instruments are quoted, emphasis has tended to be on European legal instruments as opposed to UN Conventions (with the exception of the Refugee Convention).<sup>319</sup>

The **International Commission of Jurists (ICJ)** called on the Working Group of the UPR to recommend to the Human Rights Council that Malta become party to Migrant Workers Convention.<sup>320</sup> No similar actions were, to our knowledge, taken by Maltese organizations.

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<sup>316</sup> These States were Algeria, Brazil, Burkina Faso and Mexico. See: UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Malta, 4 June 2009, A/HRC/12/7, § 80, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MT/A\\_HRC\\_12\\_7%20Malta\\_e.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MT/A_HRC_12_7%20Malta_e.pdf).

<sup>317</sup> UN Human Rights Council, Response of Malta to the recommendations contained in paragraph 80 of the report of the Working Group on the Universal Periodic Review (A/HRC/WG.6/5/L.6), A/HRC/12/7/Add.1/Rev. 1, 17 June 2009, p. 2, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MT/A\\_HRC\\_12\\_7\\_Add1\\_Rev1\\_MLT\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MT/A_HRC_12_7_Add1_Rev1_MLT_E.pdf).

<sup>318</sup> Reply from People for Change Foundation, 21 November 2010.

<sup>319</sup> Ibid.

<sup>320</sup> International Commission of Jurists (ICJ), submission to the Universal Periodic Review of Malta, November 2008, § 2.2, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MT/ICJ\\_MLT\\_UPR\\_S5\\_2009\\_InternationalCommissionofJurists.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MT/ICJ_MLT_UPR_S5_2009_InternationalCommissionofJurists.pdf).

**SOS Malta** states that migration is a big issue in Malta, but political parties use it for their own benefits to gain more support from the electorate. They think it would be a good idea if national level campaigns around the Migrant Workers Convention could be accompanied by work at the European level as this would give impetus to the campaign.<sup>321</sup>

#### Trade Unions

We did not receive any replies from Maltese trade unions.

#### Council of Europe

ECRI recommended to Malta to ratify the ICRMW in its third report.<sup>322</sup> It is unfortunate that the Maltese authorities dismissed the report as being unconvincing, biased and disregarding Malta's vital national interests.

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<sup>321</sup> Reply from SOS Malta, 10 September 2010.

<sup>322</sup> European Commission against Racism and Intolerance (ECRI), Third report on Malta, 29 April 2008, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/MLT-CbC-III-2008-22-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/MLT-CbC-III-2008-22-ENG.pdf).

## NETHERLANDS

### Government Position

The **Minister of Justice** argues that even though the Netherlands supports the intention that lies at the basis of the Migrant Workers Convention, which is enhancing the protection of human rights of migrant workers, signing the Convention remains a difficult issue, because it contains elements that may be contradictory to the Dutch system. Moreover, they suggest that the existing human rights conventions apply to everyone, so they already offer protection to migrants. Worldwide implementation of these conventions is essential.<sup>323</sup>

In its reply to recommendations made during the UPR examination of 2008,<sup>324</sup> the delegation from the Netherlands stressed that it has not signed the ICRMW because it is opposed in principle to rights that could be derived from it by aliens without legal residence rights.<sup>325</sup>

A similar position was elaborated in March 2009 by Mr. Arjan Hamburger, Dutch human rights ambassador. He added that this view in no way implies that the Dutch Government considers the protection of rights of migrant workers as less fundamental; it recognizes that their human rights and labour rights need to be protected. He concluded by adding that he finds it somewhat ironic that the criticism for not ratifying the Convention often comes from countries where abuse of migrant workers rights unfortunately is abundant, countries that often have not ratified the Convention themselves.<sup>326</sup>

In its combined fourth/fifth periodic report on the International Covenant on Economic, Social and Cultural Rights, the Government of Netherlands replied to the Committee that it has no intention to accede to the ICRMW and that “this is, inter alia, related to the Benefit Entitlement (Residence Status) Act (*Koppelingswet*), which entered into force on 1 July 1998 and which distinguishes between foreigners with and without legal residence status, and the consequences of that distinction for entitlement to social security benefits.” Furthermore, it should be noted that only States that can be characterized as countries of origin of labour migrants have ratified the Convention, while countries of destination have been reluctant to do so.<sup>327</sup>

Although the Netherlands already for many years takes this position against ratification, in 2006 it did state that: “If other western countries were to ratify the Convention, that could precipitate a review of the current position”.<sup>328</sup>

### Political Parties

We did not receive any formal responses to our survey, but MEPs from Groenlinks and Socialistische Partij signed the petition calling on the EU Member States to ratify the ICRMW.

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<sup>323</sup> Reply from the Minister of Justice, 13 July 2010.

<sup>324</sup> Algeria, Egypt and Peru asked to the Netherlands to accede to the ICRMW : UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, the Netherlands, 13 May 2008, A/HRC/8/31, § 78.7, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/A\\_HRC\\_8\\_31\\_Netherlands\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/A_HRC_8_31_Netherlands_E.pdf).

<sup>325</sup> UN Human Rights Council, Response of the Kingdom of the Netherlands to the recommendations it received during the universal periodic review on 15 April 2008, A/HRC/8/31/Add.1, 25 August 2008, § 7, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/A\\_HRC\\_8\\_31\\_Add1\\_Netherlands\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/A_HRC_8_31_Add1_Netherlands_E.pdf).

<sup>326</sup> Fourth Arab-European Human Rights Dialogue of National Human Rights Institutions, Migrant Workers’ Human Rights, The Hague, The Netherlands, 11-13 March 2009, pp. 40-1, available at <http://aehrd.info/file/01.pdf>.

<sup>327</sup> Economic and Social Council, Combined fourth and fifth periodic reports submitted by Netherlands, 17 July 2009, E/C.12/NLD/4-5, § 8-9, available at <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-NLD-5.doc>.

<sup>328</sup> Committee on Economic, Social and Cultural Rights, Thirty-seventh session, 6-24 November 2006, E/C.12/NLD/Q/3/Add.1, p. 6, available at [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/8c034b185cde1597c12571e100498f2e/\\$FILE/G0643957.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/8c034b185cde1597c12571e100498f2e/$FILE/G0643957.pdf).

According to the Dutch Equal Treatment Commission, political parties in the Netherlands have an unclear position with respect to the ratification of the Convention; they did not publicly state if they are in favour of the ratification or not.<sup>329</sup>

## NGOs

In the parallel report that **Stichting LOS** submitted to the Committee on Economic, Social and Cultural Rights, together with the International Commission of Jurists (NJCM) and other organizations, they regret the position of the Dutch government against ratification of the ICRMW. They also express their profound concern about the Benefit Entitlement Act (*Koppelingswet*), and the fact that it explicitly excludes certain people within its territory or jurisdiction from enjoying basic economic, social and cultural human rights.<sup>330</sup>

Stichting LOS states that amongst migrant groups and migrant support groups the Convention is known but in most cases not seen as a serious lobby-issue.<sup>331</sup>

**Amnesty International the Netherlands** called for ratification of the Convention in their plea to end human trafficking in 2006.<sup>332</sup>

In 2008, **Amnesty International** recommended to Netherlands the ratification of the ICRMW.<sup>333</sup>

**Respect Network** actively campaigns for the ratification of the ICRMW.<sup>334</sup>

## Trade Unions

We did not receive any replies from Dutch trade unions.

## National Human Rights Institution

The Dutch Equal Treatment Commission (Commissie Gelijke Behandeling – CGB) has not formulated a position regarding the Migrant Workers Convention. This is probably because the Commission deals with equal treatment only while the ICRMW has a much broader scope. The issue of ratification of the Convention has not been part of its collaboration with NHRIs from other EU Member States.<sup>335</sup>

## United Nations

CERD,<sup>336</sup> CEDAW,<sup>337</sup> CESC<sup>338</sup> and CRC<sup>339</sup> encouraged the Netherlands to ratify the ICRMW.

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<sup>329</sup> Reply from the Dutch Equal Treatment Commission (ETC), 8 July 2010.

<sup>330</sup> Joint Parallel Report to the Combined Fourth and Fifth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights, 28th October 2009, available at <http://www.njcm.nl/site/uploads/download/351>.

<sup>331</sup> Reply from Stichting LOS, member of PICUM, 9 August 2010.

<sup>332</sup> Amnesty International the Netherlands, *Kies voor Mensenrechten!*, 2006, available at [http://www.amnesty.nl/documenten/diversen/kies\\_voor\\_mensenrechten.pdf](http://www.amnesty.nl/documenten/diversen/kies_voor_mensenrechten.pdf) (in Dutch).

<sup>333</sup> Amnesty International, Submission to the UN Universal Periodic Review, First session of the HRC UPR Working Group, 7-18 April 2008, p.1, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/AI\\_NLD\\_UPR\\_S1\\_2008\\_AmnestyInternational\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/AI_NLD_UPR_S1_2008_AmnestyInternational_uprsubmission.pdf).

<sup>334</sup> See R.E.S.P.E.C.T Network submission to the United Nations Human Rights Council (UNHRC), Committee on Migrant Workers, Office of the High Commissioner for Human Rights, UNOG-OHCHR, October 14, 2009, available at [http://respectnetworkeu.org/index.php?option=com\\_content&view=article&id=103&Itemid=162](http://respectnetworkeu.org/index.php?option=com_content&view=article&id=103&Itemid=162).

<sup>335</sup> Reply from the Dutch Equal Treatment Commission (ETC), 8 July 2010.

<sup>336</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventy-sixth session, 15 February – 12 March 2010, CERD/C/NLD/CO/17-18, § 16, available at <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-NLD-CO-18-20.doc>.

<sup>337</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Forty-fifth session, 18 January-5 February 2010, CEDAW/C/NLD/CO/5, § 50, available at <http://www.vvao.nl/html/document.php?ID=2581>.



## Council of Europe

ECRI recommended to the Netherlands to ratify the ICRMW in its third report.<sup>340</sup>

The Commissioner for Human Rights, Mr. Thomas Hammarberg, encouraged the Netherlands to ratify the ICRMW.<sup>341</sup>

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<sup>338</sup> Committee on Economic, Social and Cultural Rights, Thirty-seventh session, 6-24 November 2006, E/C.12/NLD/Q/3/Add.1, p. 6, available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/8c034b185cde1597c12571e100498f2e/\\$FILE/G0643957.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/8c034b185cde1597c12571e100498f2e/$FILE/G0643957.pdf).

<sup>339</sup> Committee on the Rights of The Child, Concluding observations, Fiftieth session, CRC/C/NLD/CO/3, 27 March 2009, § 82, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-NLD-CO3.pdf>.

<sup>340</sup> European Commission against Racism and Intolerance (ECRI), Third report on the Netherlands, 12 February 2008, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/NLD-CbC-III-2008-3-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/NLD-CbC-III-2008-3-ENG.pdf).

<sup>341</sup> Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg, on his visit to the Netherlands, 21 - 25 September 2008, available at <https://wcd.coe.int/ViewDoc.jsp?id=1417061&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

## **POLAND**

### Government Position

The Government of Poland affirms that it does not consider the ratification of the Migrant Workers Convention, stressing that Polish law guarantees most of the rights envisaged in the Convention. It adds also that the changes needed to adapt Polish law to the requirements of the Convention would mean a change of approach to the issue of immigration of foreign workers to Poland, and a significant cost for the State budget. The government also argues that Poland does not pursue a labour migration policy; its labour market is not fully opened – except for EU citizens. In its response, the government outlines some of the serious legal obstacles to the ratification of the Convention, particularly regarding the right to the assistance of an interpreter and rights guaranteed in education, unemployment, family reunification.<sup>342</sup> The same reasons against ratification were given by Poland in its responses to recommendations made during the UPR examination.<sup>343</sup>

In 2006 Karol Karski (Law and Justice) submitted to the Minister for Foreign Affairs an interpellation,<sup>344</sup> asking if Poland planned to join the Convention. In her reply, Ms. Anna Fotyga, former Minister of Foreign Affairs, stated that the Republic of Poland does not intend to ratify the Convention. This position derives from the analysis of the content of the Convention made in July 2004 by the Ministry of Social Policy, about the compliance of the provisions of this international agreement with Polish domestic laws. This analysis, after consultation with other interested ministries and organizations of social partners, served as a basis for the official position not to ratify as it shows that there is broad non-compliance between Convention's provisions and Polish law. She affirmed that to be bound by the Convention would require equality of illegal immigrants with legal ones in a wide range of rights (Articles 8 to 35 of the Convention), which would amend the current immigration policy of the state. Grant the above-mentioned rights to illegal immigrants would not only be contrary to the principle that no one can be rewarded for breaking the law, but would also result in a considerable burden to the State budget expenditure. It would entail, inter alia, the need to ensure migrant workers and members of their families access to benefits from social insurance, social assistance, unemployment allowances and the allocation of social housing on the rules applicable to Polish citizens. She continued saying that another burden would be the need to draw up periodic reports to the Committee evaluating the Migrant Workers Convention; a Committee which in her view consists mainly of representatives from migrant sending countries.

For the Minister, the introduction into Polish legislation of special rights to migrants residing illegally in Poland may act as a stimulus for illegal migration, and thereby contribute to the increase of the number of people residing and working without the required permits. This would be detrimental to both the Polish State, as well as migrants themselves. More, it would also be inconsistent with the European Union's migration policy, which implies opposition to illegal migration and the selective admission of legal migrants to the European job market.

She affirmed that members of the European Union are in favour of maintaining national control over the influx of economic migrants and Community action has been taken only in relation to the adoption of specific groups of professionals (e. g., highly qualified professionals).

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<sup>342</sup> Reply of the Ministry of Labour and Social Policy, 28 June 2010.

<sup>343</sup> Mexico recommended to Poland the ratification of the Convention, UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Poland, 23 May 2008, A/HRC/8/30, § 24, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PL/A\\_HRC\\_8\\_30\\_Poland\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PL/A_HRC_8_30_Poland_E.pdf). The reply of Poland can be seen in UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Response of Poland to recommendations, 25 August 2008, A/HRC/8/30/Add.1, § 19, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PL/A\\_HRC\\_8\\_30\\_Add1\\_Poland\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PL/A_HRC_8_30_Add1_Poland_E.pdf).

<sup>344</sup> Interpellation n° 3734, 3 July 2006, available at: <http://orka2.sejm.gov.pl/IZ5.nsf/main/096650A6> (in Polish).

In addition, she stated that it should be noted that during discussion at a meeting of the High Level Group for Asylum and Immigration on 23 May 2006, representatives of the Austrian Presidency and the European Commission appealed to EU member states to take a single, negative position on accession to this Convention.

At the time, the then-Minister affirmed that most of the rights provided for in the Convention shall be protected by other instruments of international law (including the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Fundamental Freedoms).<sup>345</sup>

### Political Parties

In the view of the **Democratic Left Alliance** the Convention is very comprehensive and versatile, it covers the elementary rights of migrant workers as well as their families, therefore it should be supported by all progressive forces in the world. The reason for non-ratification by Poland could to some extent be explained by the fact that the country is mainly a transit country and therefore the whole problem is not a great challenge.

The Polish social democrats are in favour of ratification. They believe that the whole campaign should be organized in the framework of the Council of Europe, especially in the Committee on Migration, Refugees and Population of the Parliamentary Assembly.<sup>346</sup>

In 2006 Karol Karski (**Law and Justice**) submitted to the Minister for Foreign Affairs an interpellation, asking if Poland planned to join the Convention.<sup>347</sup>

### NGOs

In 2008, **Amnesty International** urged the Polish government to ratify the Convention.<sup>348</sup>

### Trade Unions

We did not receive any replies from Polish trade unions.

### **National Human Rights Institution**

In a research programme commissioned by the **Commissioner for Civil Rights Protection** and carried out by professor Jo Carby-Hall, of the University of Hull and Honorary Consul at the Consulate of the Republic of Poland, it is stated that there is no reason why EU Member States should not ratify the UN Migrant Workers Convention and it therefore recommends Poland to do so.<sup>349</sup>

### United Nations

CESCR,<sup>350</sup> CERD<sup>351</sup> and CEDAW<sup>352</sup> encouraged Poland to sign and ratify the ICRMW.

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<sup>345</sup> Reply of the Minister of Foreign Affairs, Ms. Anna Fotyga, to Interpellation n° 3734, 31 July 2006, available at: <http://orka2.sejm.gov.pl/IZ5.nsf/main/49812C0F> (in Polish).

<sup>346</sup> Reply from Tadeusz IWIŃSKI, MP (Democratic Left Alliance), 16 August 2010.

<sup>347</sup> See above, Government's position section.

<sup>348</sup> AI submission to the UN Universal Periodic Review, First session of the UPR Working Group, 7-18 April 2008, p. 1, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PL/AI\\_POL\\_UPR\\_S1\\_2008\\_AmnestyInternational\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PL/AI_POL_UPR_S1_2008_AmnestyInternational_uprsubmission.pdf).

<sup>349</sup> J. R. CARBY-HALL, « The treatment of Polish and other A8 economic migrants in the European Union Member States », research programme prepared for Commissioner for Civil Rights Protection of the Republic of Poland, 2008, p. 321.

<sup>350</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations, Forty-third session, 2–20 November 2009, E/C.12/POL/CO/5, § 37, available at <http://www2.ohchr.org/english/bodies/cescr/docs/co/E-C12-POL-CO-5.doc>.

<sup>351</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations, Seventy-fifth session, 3-28 August 2009, CERD/C/POL/CO/19, § 12, available at [http://www2.ohchr.org/english/bodies/treaty/CD\\_Concl\\_Obs\\_2009/CERD/75th/CERD-C-POL-CO-19\(e\).doc](http://www2.ohchr.org/english/bodies/treaty/CD_Concl_Obs_2009/CERD/75th/CERD-C-POL-CO-19(e).doc).

<sup>352</sup> Committee on the Elimination of Discrimination against Women, Concluding Comments, Thirty-seventh session, 15 January-2 February 2007, CEDAW/C/POL/CO/6, § 37, available at

## Council of Europe

In its fourth report, ECRI states that it has been informed that Poland does not intend to ratify the ICRMW because it believes that it grants rights to undocumented immigrants, in contradiction to Polish policy that seeks to have them removed from its territory. ECRI insist in encouraging Poland to ratify the Convention, which could also be a tool to address the problems facing its numerous immigrants who are still in an irregular situation.<sup>353</sup>

## ***PORTUGAL***

### Government Position

The Portuguese government states that since the Amsterdam Treaty, migration issues are a European Community competence. Even if this matter is not an exclusive EU competence, one should take into account that the European Court of Justice has long considered that the consequences of the legislative communitarian activity have a strong repercussion on the EU's external competence. Therefore, the Member States are limited in their capacity to take on international commitments by the relevant European legislative initiatives.

It is also important to add that as far as human rights are concerned, Member States are bound by the European Convention on Human Rights as well as the EU Charter of Fundamental Rights. Thus, the communitarian standards, constitutional or derived, which are imposed on the Member States because of the primacy of Community Law, are already widely covering the rights of migrant workers.

For these reasons, in the view of the Government of Portugal, none of the EU Member-States has ratified the UN Migrant Workers Convention because, by doing so, they would be bound to the international juridical order, risking violating, on the same matter, the Community Law. Therefore, the judgement of the opportunity to ratify this Convention will have to come from the definition of the EU interests in this matter, rather than from a unilateral option from a Member State. Any decision regarding ratification of this Convention should be taken in coordination with the European Union and the Member States.

Given all this, Portugal cannot ratify the Convention, because it is a communitarian competence, and the rights of migrant workers and their families are safeguarded through national legislation and the other international instruments that Portugal is a part of.

Portuguese legislation guarantees the basic rights of all migrant workers and their families, regardless of the regularization of their status, on subjects such as health and education.<sup>354</sup> The government adds that Portuguese national legislation regarding victims of human trafficking is considered to be particularly advanced and that the protection and integration of immigrants in Portugal has been internationally highlighted as a "good example to follow", a "best practice." Portugal was considered as the country with the best policies and services regarding support and promotion of immigrants' rights by the United Nations Human Development Report of 2009.<sup>355</sup>

In the presentation of the Portuguese National Report to the Universal Periodic Review mechanism of the UN Human Rights Council, on December 4<sup>th</sup> of 2009, several States recommended the ratification of the Migrant Workers Convention, but this recommendation was rejected by the Portuguese Government because of the reasons outlined above.<sup>356</sup>

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<sup>354</sup> Reply from the Office of the Minister of Labour and Social Solidarity, 23 July 2010, and from the Permanent Representation of Portugal to the EU, 29 July 2010.

<sup>355</sup> UNDP, Human Development Report 2009, Overcoming barriers: Human mobility and development, available at <http://hdr.undp.org/en/reports/global/hdr2009/>.

<sup>356</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Portugal, 4 January 2010, A/HRC/13/10, § 60, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/PT/A\\_HRC\\_13\\_10\\_PRT\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/PT/A_HRC_13_10_PRT_E.pdf). States that encouraged Portugal to ratify the Convention were: Algeria, Argentina, Egypt, Nigeria and the Philippines. Pakistan asked why Portugal had not signed the Convention on the Rights of Migrant Workers.

## Political Parties

The **Parliamentary Group of the Portuguese Communist Party** has presented several proposals to the Portuguese Parliament regarding the ratification of the Convention; the latest one dates from December 2009 and is still under consideration. A similar proposal was rejected by the Portuguese Parliament in 2008<sup>357</sup>

The **Democratic and Social Centre - People's Party** has not taken any position on this issue. The UN Migrant Workers' Convention is not amongst the political priorities of the party, nor in the political debate in Portugal (the general level of awareness about the Convention is very low). Although ratification depends on each national State concerned, a "wave" phenomenon might occur either in favour or against. And, of course, because of the freedom of circulation inside the EU and the other aspects related with the Schengen area, the broad European implications of the Convention need to be carefully taken into consideration.<sup>358</sup>

Apart from the two left wing parties, the other parties seem to be aligned with the government's point of view, i.e. against ratification.<sup>359</sup>

## NGOs

In April 2009, **Amnesty International - Portugal** called on the government to immediately ratify the Migrant Workers Convention.<sup>360</sup> This was preceded by a letter sent to the Government in February 2009, inquiring about the non-ratification of the Convention. The answer that the Government provided at the time was along the same lines as stated above in the Government's position section.<sup>361</sup> The organization writes that as far as they know they are the only organization lobbying for ratification. There is a general lack of awareness about the Convention.

National-level campaigns around the Migrant Workers Convention, in their opinion, must be accompanied by work at the European level.<sup>362</sup>

## Trade Unions

We did not receive any replies from Portuguese trade unions.

## National Human Rights Institution

The Immigration Observatory of **ACIDI**, the **High Commission for Immigration and Intercultural Dialogue**, published a study on the Convention,<sup>363</sup> in which conclusions it noted that there are notable obstacles to ratification by Portugal. But in its view, a modern interpretation of the Convention accompanied by slight adjustments to Portugal's legislation could allow for ratification. It is however understood that the country's position is subject to significant restrictions because it is a member of the European Union. The Observatory states that more than the legal obstacles, it seems that there is a lack of political will to move forward with ratification.

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<sup>357</sup> Reply from the Office of the Minister of Labour and Social Solidarity, 23 July 2010, and from the Permanent Representation of Portugal to the EU, 29 July 2010.

<sup>358</sup> Reply from José Ribeiro e Castro, MP, Democratic and Social Centre - People's Party, 9 September 2010.

<sup>359</sup> Reply from Amnesty International Portugal, 13 September 2010.

<sup>360</sup> Amnesty International, Portugal: Submission to the UN Universal Periodic Review, 20 April 2009, p. 5, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/PT/AI\\_PRT\\_UPR\\_S06\\_2009\\_AmnestyInternational.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/PT/AI_PRT_UPR_S06_2009_AmnestyInternational.pdf).

<sup>361</sup> Reply from the Office of the Minister of Labour and Social Solidarity, 23 July 2010, and from the Permanent Representation of Portugal to the EU, 29 July 2010.

<sup>362</sup> Reply from Amnesty International Portugal, 13 September 2010.

<sup>363</sup> GONÇALO SARAIVA MATIAS, PATRÍCIA FRAGOSO MARTINS, A convenção internacional sobre a protecção dos direitos de todos os trabalhadores migrantes e dos membros das suas famílias: perspectivas e paradoxos nacionais e internacionais em matéria de imigração, p. 172, available at [http://www.oi.acidi.gov.pt/docs/Col\\_EstudosOI/OI\\_25.pdf](http://www.oi.acidi.gov.pt/docs/Col_EstudosOI/OI_25.pdf) (in Portuguese).

## United Nations

CEDAW<sup>364</sup> encouraged the Government of Portugal to ratify the ICRMW.

## Council of Europe

In its third report on Portugal ECRI states that it has been informed by the Portuguese authorities that they are not planning to ratify this Convention, indicating that this is in line with the common position taken by Member States of the European Union, and ECRI recommended to Portugal to ratify the ICRMW.<sup>365</sup>

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<sup>364</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations, Forty-second session 20 October-7 November 2008, CEDAW/C/PRT/CO/7, § 52, available at <http://www.universalhumanrightsindex.org/documents/826/1418/document/en/pdf/text.pdf>.

<sup>365</sup> European Commission against Racism and Intolerance (ECRI), Third report on Portugal, 13 February 2007, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/PRT-CbC-III-2007-4-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/PRT-CbC-III-2007-4-ENG.pdf).

# ROMANIA

## Government Position

The Government states that Romania is an active promoter of the observance of human rights in the world. Romania remains committed to the advancement and protection of human rights, the protection of all individuals, including the protection of the rights of migrant workers and their families. In this spirit, at the suggestion of Mr. Jorge Bustamante, the Special Rapporteur on the Human Rights on Migrants, following his visit to Romania in June 2009, the Romanian Government conducted an assessment of the opportunity to ratify the Migrant Workers Convention.

The Special Rapporteur stressed that the progress made by Romania in the protection of human rights in the context of migration is noteworthy. During his visit, he observed efforts made by the authorities in such areas as: the protection of children left behind by migrating parents; improved detention conditions of irregular migrants in short-term holding centres; combating transnational organized crime, including trafficking in persons; temporary evacuation of refugees to Romania; and institutional reforms to increase the efficiency in the management of migration.

With respect to the Migrant Workers Convention, the Romanian Government stated its position as follows:

a. Romania considers that the Convention does not create new rights for migrants but, in fact, it reiterates rights already provided for by international instruments to which Romania is a party. It is without doubt that the Convention innovates in certain areas, by providing for a set of rights tailored to the specific economic needs of migrant workers or their family members, such as: protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment etc. Such rights are, to a great extent, already enjoyed by the migrants working on its territory, with a view to ensure their smooth economic integration into the labour market.

b. The ongoing process of building a common Europe should be taken into account – which clearly includes the protection of migrant workers. The European perspective cannot be seen as separate processes, country to country, working on a bilateral basis. The heart of the concept of a Europe of Asylum and the objectives of the Lisbon Strategy are aimed at setting up in the European Union rules that foster a high level of mobility and protection of workers who are third-country nationals. All the same, we wish to highlight that the numbers of migrant workers show that Romania is not a main target of economic migration (from countries having currently ratified the Convention).

c. The European Union has taken a steady interest in how to best regulate migration, so as to adequately integrate economic migration. The Hague Programme, adopted by the European Council on November 2004, recognized that legal migration plays a significant role in enhancing the knowledge-based economy in Europe, advancing economic development and thus contributing to the implementation of the Lisbon Strategy - aimed at making the European Union's economy the most competitive and dynamic knowledge-based economy in the world. At the core of the EU legislation lies the principle of equal treatment of third-country nationals regarding the access to employment, employment and working conditions without discrimination on grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief. Migrant workers enjoy a completely secure legal status in the EU.

d. As a responsible member of the European Union, Romania is bound to guarantee to migrant workers at least the minimum level of protection granted by the EU. European legal acts are all applicable on Romanian territory. Migrant workers are thus benefiting of a level of protection which can in no case go below the EU-established standards. Romania is a party to almost all major international and regional conventions and protocols in the field of human rights. Therefore, as part of its national legislation, Romania guarantees the rights deriving from these conventions and applies them flawlessly to all individuals, regardless of their economic status.



e. The immigration policy - which touches also upon the aspects pertaining to the protection of migrant workers - belongs to the European Union level. Romania considers that its actions must be coordinated with the actions taken at the Community level, as well as the actions of the other Member States. Hence, Romania cannot act alone as a vanguard of migrant workers' rights, as it risks to infringe its obligation of cooperation assumed towards the EU.<sup>366</sup>

In his report from June 2009, Mr. Bustamante observed a number of misconceptions regarding what is perceived by the Romanian authorities as obstacles to the ratification of the Migrant Workers Convention. In relation to the added value of the Convention, the Special Rapporteur recalled that one of the Convention's main values is that it makes explicit how the rights contained in the International Bill of Human Rights apply to migrants, including to those who are in an irregular situation, underlining the particular importance of this argument in the European context, especially in light of the national implementation of the European Union Return Directive.

In relation to a possible incompatibility with standards adopted at the European Union level, the Special Rapporteur stated that no insurmountable or even major legal or administrative barrier exists to the ratification of the Convention. In that connection, the Special Rapporteur invited the Government to give a close reading to the text of the Convention regarding, for example, article 79 (that affirms the right of each State Party to establish the criteria governing admission of migrant workers and members of their families).

The Special Rapporteur listed many reasons that call Romania to ratify the Convention:

Romania should uphold and strengthen the rule of law by ensuring that legal norms define the basis of labour migration policy, its implementation and its supervision, and that this policy complies with universal standards adopted in the framework of the United Nations and not only with European norms;

Ratifying the Convention will also help Romania to strengthen social cohesion by conveying a clear signal on the protection of migrant workers and their families, the Convention discourages the "commodification" and consequent abuse of migrant workers by legally asserting their human rights, this is linked to the need to reduce irregular migration by eliminating incentives for labour exploitation, work in abusive conditions and unauthorized employment that fuel trafficking in persons and smuggling of migrants;

After ratification States parties may benefit from the review by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>367</sup>

#### Political Parties

We did not receive any replies from Romanian political parties.

#### NGOs

In 2008, **Amnesty International** called on Romania to sign and ratify the Migrant Workers Convention.<sup>368</sup>

#### Trade Unions

We did not receive any reply from Romanian trade unions.

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<sup>366</sup> Reply from the Minister for Foreign Affairs, 1 July 2010.

<sup>367</sup> Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to Romania, 15.20 June 2009, A/HRC/14/30/Add.2, available at <http://www.universalhumanrightsindex.org/documents/852/1789/document/en/pdf/text.pdf>.

<sup>368</sup> Amnesty International submission to the UN Universal Periodic Review, Romania, Second session of the UPR working group, 5-16 May 2008, p. 1, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/RO/AI\\_ROM\\_UPR\\_S2\\_2008\\_AmnestyInternational\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/RO/AI_ROM_UPR_S2_2008_AmnestyInternational_uprsubmission.pdf).

## National Human Rights Institution

The **Advocate of the People** has never expressed an opinion on the advisability of signing and ratifying the Convention. It will do so if and when the competent authorities request it. Issues regarding migrant workers were discussed at bilateral meetings with other NHRIs, but the focus of the exchanges was on national legislation.<sup>369</sup>

## United Nations

CERD<sup>370</sup>, CRC<sup>371</sup> and CEDAW<sup>372</sup> encouraged Romania to consider ratifying the ICRMW.

During the examination of Romania under the UPR, Algeria and Mexico called for the ratification of the Convention.<sup>373</sup>

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<sup>369</sup> Reply from Advocate of the People, 15 July 2010.

<sup>370</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations, Seventy-seventh session, 2–27 August 2010, CERD/C/ROU/CO/16-19, § 21, available at [http://www.december18.net/sites/default/files/cerd\\_c\\_rou\\_co\\_16-19.pdf](http://www.december18.net/sites/default/files/cerd_c_rou_co_16-19.pdf).

<sup>371</sup> Committee on the Rights of the Child, Concluding Observations, Romania, Fifty-first session, 25 May - 12 June 2009, CRC/C/ROM/CO/4, § 99, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ROM-CO-4.pdf>.

<sup>372</sup> Committee on the Elimination of Discrimination against Women, Concluding Comments, Thirty-fifth session, 15 May-2 June 2006, CEDAW/C/ROM/CO/6, § 36, available at <http://www.universalhumanrightsindex.org/documents/826/977/document/en/pdf/text.pdf>.

<sup>373</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Romania, 3 June 2008, A/HRC/8/49 available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/RO/A\\_HRC\\_8\\_49\\_Romania\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/RO/A_HRC_8_49_Romania_E.pdf).

# **SLOVAKIA**

## Government Position

According to the Permanent Representation of the Slovak Republic to the European Union, Slovakia perceives the issue of migrant workers in the context of the common European area and continues to fulfil its obligations and to harmonise its legislation in the spirit of the common European Immigration and Asylum Policy. The Slovak Republic views multiculturalism as enriching and in general does not resist legal (labour) immigration also with respect to the needs of the domestic labour market.

At the same time, the Slovak Republic is fully aware of its commitment to support the universal ratification of human rights conventions; a commitment it made on the occasion of Slovakia's candidacy for the UN Human Rights Council.

Nevertheless, the Slovak Republic considers the Migrant Workers Convention as problematic mainly because the Convention defines the rights of migrant workers regardless of whether they stay in the host country legally or illegally.

The principle of equal opportunities and equal treatment of foreigners is anchored in several human rights documents of the EU to which the Slovak Republic acceded. However, in some spheres the scope of the rights defined in the Migrant Workers Convention is wider or exceeds the framework of the EU documents. Some definitions of the Convention do even offer above-standard rights, which are not comparable to the rights of the citizens of EU/EEA Member States. This could ultimately lead to positive discrimination of the citizens of third countries in comparison with the citizens of the host country. We currently consider securing of rights of migrant workers included in several articles of the Convention as complicated, if not unrealistic and hardly feasible.<sup>374</sup>

During the **UPR process**, some State parties to the Migrant Workers Convention recommended to Slovakia to ratify/accede/adhere to the Convention.<sup>375</sup> Slovakia replied that it would carefully consider the possibility of accession.<sup>376</sup>

## Political Parties

During the parliamentary elections of June 2010, ratification of the Convention did not appear in any of the programs of the political parties.<sup>377</sup>

## NGOs

**People against racism** affirms that this theme is not high on the agenda and since none of the other EU Member States ratified the Convention, the Slovak government does not feel the necessity to articulate any position at all.

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<sup>374</sup> Reply from the Permanent Representation of the Slovak Republic to the European Union, 23 July 2010.

<sup>375</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Slovakia, 5 June 2009, A/HRC/12/17, § 89, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/SK/A\\_HRC\\_12\\_17%20Slovakia\\_e.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/SK/A_HRC_12_17%20Slovakia_e.pdf). The States parties calling for ratification were Algeria, Argentina, Azerbaijan and Mexico.

<sup>376</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Slovakia, Written views of Slovakia on recommendations contained in paragraph 89 of the report of the Working Group on the Universal Periodic Review (A/HRC/12/17), 14 September 2009, A/HRC/12/17/Add.1, p. 2, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/SK/A\\_HRC\\_12\\_17\\_Add1\\_SVK\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/SK/A_HRC_12_17_Add1_SVK_E.pdf).

<sup>377</sup> Reply from People against racism, 12 July 2010.

According to them, there are very few organisations working on migrants issues; trade unions are weak and faith-based organizations focus on local issues or missionary tasks. There is no awareness about the Convention and there are no advocacy campaigns.

They strongly encourage the ratification of the Convention and emphasize that national campaigns should be accompanied by work at the European level. In Slovakia, there is a low level of willingness to actively promote any human rights Conventions and Slovakia usually refuses to take up a pioneering role in such matters. The pressure of international society always proves to be the best means for advocacy.<sup>378</sup>

#### Trade Unions

We did not receive any replies from Slovakian trade unions.

#### National Human Rights Institution

We did not receive any reply from the Slovak National Centre for Human Rights.

#### United Nations

CAT<sup>379</sup> and CEDAW<sup>380</sup> encouraged Slovakia to become part of the ICRMW.

#### Council of Europe

ECRI recommended to Slovakia to ratify the ICRMW.<sup>381</sup>

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<sup>378</sup> Ibid.

<sup>379</sup> Committee against Torture, Concluding Observations, Forty-third session, 2–20 November 2009, CAT/C/SVK/CO/2, § 23, available at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.SVK.CO.2.doc>.

<sup>380</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations, Forty-first session, 30 June-18 July 2008, CEDAW/C/SVK/CO/4, § 53, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-SVK-CO-4.pdf>.

<sup>381</sup> European Commission against Racism and Intolerance (ECRI), Fourth report on Slovakia, 26 May 2009, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_04/04\\_CbC\\_eng/SVK-CbC-IV-2009-020-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_04/04_CbC_eng/SVK-CbC-IV-2009-020-ENG.pdf).

# **SLOVENIA**

## Government Position

The position of the Government of the Republic of Slovenia vis-à-vis the Migrant Workers Convention was explained in 2010 in the Report of the Republic of Slovenia to the Universal Periodic Review.<sup>382</sup>

the government is still considering the ratification of the Migrant Workers Convention;

Slovenia already guarantees most of the rights contained in the Convention to migrant workers and their family members present on its labour market and shares the objectives of the Convention;

the government believes that the effective system of protection of migrants' rights has to be an integral part of the European legislation in this area;

Slovenia is also a party of both international human rights covenants and several conventions, including two ILO Conventions (C97, C143) and the European Social Charter (revised), which ensure a broad framework of protection of migrant workers.

The scope of the Migrant Workers Convention touches upon the jurisdiction of individual states as well as that of the EU (e.g. the rights of family members of migrant workers are regulated by Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Official Journal of the European Union, No. 251 as of 3 October 2003, page 12).

A special characteristic of the Convention is that the majority of its provisions are already included in other UN human rights conventions which EU Member States are already a party to.

The issue of ratifying/signing the Migrant Workers Convention has been intensively dealt with at the EU level. The March 2010 meeting of the **High Level Working Group on Asylum and Migration**<sup>383</sup> established that numerous fields regulated by the Convention fall under national regulation of Member States or areas of mixed competence.

As regards **legal obstacles**, the Slovenian government gives the issue of non-profit housing as an example. National laws and regulations establish the criteria for Estonian citizens to access these social housing schemes. Article 160 of the Housing Act determines that upon fulfilling the principle of reciprocity and under the conditions of the housing legislations, the right to rent non-profit housing, receive help in payment of rent as well as beneficial loans through the Housing Fund, and housing savings within the framework of the national housing savings scheme, is available to EU nationals with permanent residence in Slovenia.

In its response to the survey, the **Ministry of Labour, Family and Social Affairs** points out that the definition of the term **“migrant worker”** as stated in the Convention is inaccurate and too broad, and as such differs from the definition provided by national legislation and EU regulations.

Article 48 of the Convention states that migrant workers and dependant members of their families shall be equal to state nationals with regard to taxation of income and employment. But, the Slovenian tax legislation relating to taxation of income (Personal Income Tax Act) does not use the term "state national" but relates to residents and non-residents, with the taxation of income earned by residents generally regulated differently than taxation of

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<sup>382</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Slovenia, 15 March 2010, A/HRC/14/15, § 83, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/SI/A\\_HRC\\_14\\_15\\_Slovenia.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/SI/A_HRC_14_15_Slovenia.pdf). The answer was given to Colombia, which asked whether Slovenia was considering the possibility of signing and ratifying the Convention on the Protection of the Rights of All Migrant Workers and Their Families, and to Algeria, Argentina, Bosnia and Herzegovina and Egypt, that recommended ratifying the ICRMW.

<sup>383</sup> See the paragraph on the European Presidency in the section: European Institutions and Stakeholders.

income earned by non-residents. This shows that the Convention as laid down now is inappropriate and contradictory to the regulations provided by the Slovenian national legislation.

There is a growing awareness of the dangers posed to modern society by this phenomenon of violation of fundamental human rights and freedoms, including the rights of migrant workers in Slovenia. The scope and aim of the Convention is well known among civil society organizations and the Ombudsman of Human Rights of the Republic of Slovenia, as well as competent ministries.<sup>384</sup>

### Political Parties

The **Slovenian Democratic Party** supports all efforts to promote the principle of equal treatment and to ensure human rights. In principle, the Party does not oppose the adoption of the Migrant Workers' Convention, although it has not been particularly emphasized in their electoral program. The SDP does state that the numerous areas which this Convention aims to regulate are already sufficiently dealt with in other conventions.

According to the SDP, a specific feature of the Convention is that although the majority of its provisions are already enshrined in other UN conventions on human rights, the Convention does add new features, such as the provision that State parties to the Convention must guarantee the principle of equal treatment not only to migrant workers, but also to their families in numerous areas, such as access to education, accommodation, social rights, and medical rights. Considering that the creation and establishment of a uniform migration policy is one of the key policies of the European Union, the SDP believes that a general consensus on the ratification of the Convention among the EU Member States is indeed necessary.

The SDP mentions the discussions at the **High Level Working Group on Asylum and Migration (HLWG)**<sup>385</sup> in March 2010 during which the initiative of the UN Committee on Migrant Workers to convene a meeting on the Convention with the European Union was rejected, and that all Member States, except Hungary, rejected the possibility of signing/ratifying the Convention.<sup>386</sup>

### Trade Unions

The **Slovenian Association of Free Trade Unions** emphasises the positive (potential) role of the Migrant Workers Convention and recalls the recommendation of the European Economic and Social Committee (2004/C 302/12) calling upon the Commission and the Council Presidency to undertake the necessary political initiatives to ensure speedy ratification of the Convention.<sup>387</sup>

### National Human Rights Institution

The **Human Rights Ombudsman** supports ratification of the Convention, however it never expressed opinions/recommendations or carried out activities to raise awareness about it or to promote its ratification. There has never been any collaboration on this matter with NHRIs from other EU Member States.<sup>388</sup>

### United Nations

CERD<sup>389</sup> and CEDAW<sup>390</sup> encouraged Slovenia to ratify the ICRMW.

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<sup>384</sup> Reply from Ministry of Labour, Family and Social Affairs, 23 September 2010.

<sup>385</sup> See section: European Institutions and Stakeholders.

<sup>386</sup> Reply from the Slovenian Democratic Party, 9 September 2010, and from MP Eva Irgl, 14 September 2010.

<sup>387</sup> Association of Free Trade Unions of Slovenia, Response to ICMPD TU Questionnaire, 2008, from International Centre for Migration Policy Development (ICMPD), REGINE Report, Regularizations in Europe, p. 71, available at [http://ec.europa.eu/justice\\_home/doc\\_centre/immigration/studies/docs/regine\\_report\\_january\\_2009\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/immigration/studies/docs/regine_report_january_2009_en.pdf).

<sup>388</sup> Reply from the Human Rights Ombudsman, 29 July 2010.

<sup>389</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventy-seventh session, 2 –27 August 2010, CERD/C/SVN/CO/6-7, § 16, available at <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-SVN-CO-7.doc>.

## Council of Europe

ECRI recommended to Slovenia to ratify the ICRMW.<sup>391</sup>

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<sup>390</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Forty-second session, 20 October-7 November 2008, CEDAW/C/SVN/CO/4, § 41, available at <http://www.universalhumanrightsindex.org/documents/826/1419/document/en/pdf/text.pdf>.

<sup>391</sup> European Commission against Racism and Intolerance (ECRI), Third report on Slovenia, 13 February 2007, available at [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/SVN-CbC-III-2007-5-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/SVN-CbC-III-2007-5-ENG.pdf).

# SPAIN

## Government Position

Although Spain did not respond to the survey, the government's position can be seen from its report submitted to the Working Group on the Universal Periodic Review: "Spain, in common with all other developed countries that are destinations for international migratory flows, is not a signatory to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. No European Union member State has yet consented to be bound by this Convention. The main reason for this is that part III of the Convention confers rights on all workers and their families without distinction, i.e. regardless of whether or not they are in a regular situation (arts. 8 to 35). Existing Spanish legislation clearly differentiates between migrants in a regular situation and those in an irregular situation, and although the 1978 Constitution recognizes all fundamental rights for all persons located within its jurisdiction, Organization Act No. 2/2009 of 11 December, amending Organization Act No. 4/2000 of 11 January, on the rights and freedoms of aliens in Spain and their social integration, specifies (a limited number of) rights applicable only to migrants in a regular situation".<sup>392</sup>

Giving this, Spain rejected recommendations to ratify the ICRMW.<sup>393</sup>

## Political Parties

**Izquierda Unida** is in favour of the ratification of the Convention. Migrants are a vulnerable group and should have all the labour rights granted in the host countries.<sup>394</sup> A call for ratification was included in the manifesto for the 2008 general elections<sup>395</sup> and in the programme for the 2009 European elections.<sup>396</sup> In 2008, the **Parliamentary Group of Esquerra Republicana, Izquierda Unida and Iniciativa per Catalunya Verds (ER-IU-ICV)**, submitted to Parliament a non-legislative proposal for the ratification of the Convention by Spain.<sup>397</sup> In 2009, Mr. Llamazares Trigo submitted a first question to the Congress, asking which measures and deadlines the government imposed on itself to implement the parliamentary agreement for the ratification of the Convention.<sup>398</sup> The Government replied that the said Convention has not been ratified by any member of the European Union, because the subject requires the

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<sup>392</sup> UN Human Rights Council, National Report submitted by Spain to the Working Group on the Universal Periodic Review, 19 February 2010, A/HRC/WG.6/8/ESP/1, § 20, available at [http://www.upr-info.org/IMG/pdf/A\\_HRC\\_WG-6\\_8\\_ESP\\_1.pdf](http://www.upr-info.org/IMG/pdf/A_HRC_WG-6_8_ESP_1.pdf).

<sup>393</sup> UN Human Rights Council, Replies provided by Spain to the Working Group on the Universal Periodic Review, 8 September 2010, A/HRC/15/6/Add.1, § 1-2, available at

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/A.HRC.15.6.Add.1\\_SPAIN\\_sp.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/A.HRC.15.6.Add.1_SPAIN_sp.pdf) (in Spanish). The recommendations were made by Algeria, Argentina, Azerbaijan, Bolivia, Burkina Faso, Guatemala, Indonesia, Nicaragua, Nigeria, Palestine, Pakistan, Paraguay and Peru, see UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, 16 June 2010, A/HRC/15/6, available at [http://www.upr-info.org/IMG/pdf/A\\_HRC\\_15\\_6\\_E.pdf](http://www.upr-info.org/IMG/pdf/A_HRC_15_6_E.pdf).

<sup>394</sup> Reply from Mr. Gaspar Llamazares Trigo, Izquierda Unida (United Left), 3 June 2010.

<sup>395</sup> Izquierda Unida, Programa elecciones generales 2008, p. 132, available at <http://izquierda-unida.es/sites/default/files/doc/Programa%20generales%202008.pdf> (in Spanish).

<sup>396</sup> Izquierda Unida, Programa Electoral Europeas 2009, p. 44, available at [http://izquierda-unida.es/sites/default/files/doc/Programa%20IU%20Europeas%202009\\_0.pdf](http://izquierda-unida.es/sites/default/files/doc/Programa%20IU%20Europeas%202009_0.pdf) (in Spanish).

<sup>397</sup> Proposición no de Ley sobre ratificación de la Convención internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares, adoptada por la Asamblea General de la Organización de las Naciones Unidas en su resolución 45/158, de 18 de diciembre de 1990, 162/000079, Boletín Oficial de las Cortes Generales, N° D-33, 13 June 2008, p. 7, available at [http://www.congreso.es/public\\_oficiales/L9/CONG/BOCG/D/D\\_033.PDF](http://www.congreso.es/public_oficiales/L9/CONG/BOCG/D/D_033.PDF).

<sup>398</sup> Congreso de los Diputados, Pregunta al Gobierno con respuesta escrita, 184/066819, Autor: Llamazares Trigo, Gaspar, Medidas y plazos para dar cumplimiento al acuerdo parlamentario de firma de la Convención de Naciones Unidas de trabajadores migrantes, Boletín Oficial de las Cortes Generales, N° D-279, 26 October 2009, p. 49, available at [http://www.congreso.es/public\\_oficiales/L9/CONG/BOCG/D/D\\_279.PDF](http://www.congreso.es/public_oficiales/L9/CONG/BOCG/D/D_279.PDF).



establishment, in advance, of a common position on immigration policy as provided for in article 63-3 of Title IV of the Treaty of the European Community, built by the Treaty of Amsterdam.<sup>399</sup>

Finally, in 2010, the Congreso de los Diputados decided not to discuss the proposal and to withdraw it.<sup>400</sup> Again, in May 2010 Mr. Llamazares Trigo asked to the Congress what measures the Government took in order to comply with the 2008 mandate of the Congress of Representatives.<sup>401</sup> The Government of Spain replied<sup>402</sup> that the Convention was drafted by countries of origin, without any input from countries of destination; that this Convention does not draws a sharp distinction between immigrants in “legal” or “illegal” situation; that the rights included in the Convention are already contained in the other core human rights treaties ratified by Spain; that migrants’ rights are well protected in the Spanish national law and finally, that this subject comes under the responsibility of both EU Member States and the European Commission. This is why, it concluded, both the Commission and the remaining 26 EU Member States stated in April 2010, in a letter to the Chairman of the Migrant Workers Committee, Mr. El Jamri, to be against studying a possible ratification of this Convention.<sup>403</sup>

Awareness about the Convention is very poor, few know it and those who do, do not promote it for ideological or electoral reasons. There are no obstacles to the ratification of this Convention and with the explicit mandate of the Congress, the Government should take the Presidency of the EU to advance its ratification by Spain and the largest number of EU member states.<sup>404</sup>

A call for ratification of the Migrant Workers Convention was included in the **Spanish Socialist Workers' Party** manifesto for the 2008 general elections.<sup>405</sup> PSOE argues that the ratification has to be done in the context of a European consensus.<sup>406</sup>

**Convergència i Unió (CiU)** argues that the ratification of the Convention is not a priority in its immigration policy program.<sup>407</sup>

## NGOs

On 24 July 2008 **Xarxa 18 de desembre-Catalunya** held a panel discussion on the ratification and implementation of the Convention in Spain, during which they presented a study that analyzes the compatibility of international law

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<sup>399</sup> Congreso de los Diputados, Contestación del Gobierno, Pregunta al Gobierno con respuesta escrita, 184/066819, Autor: Llamazares Trigo, Gaspar, Medidas y plazos para dar cumplimiento al acuerdo parlamentario de firma de la Convención de Naciones Unidas de trabajadores migrantes, Boletín Oficial de las Cortes Generales, N° D-322, 8 January 2010, p. 607, available at [http://www.congreso.es/public\\_oficiales/L9/CONG/BOCG/D/D\\_322.PDF](http://www.congreso.es/public_oficiales/L9/CONG/BOCG/D/D_322.PDF).

<sup>400</sup> Congreso de los Diputados, Proposición no de Ley 162/000079, Boletín Oficial de las Cortes Generales, N° D-334, 11 February 2010, p. 10, available at [http://www.congreso.es/public\\_oficiales/L9/CONG/BOCG/D/D\\_334.PDF](http://www.congreso.es/public_oficiales/L9/CONG/BOCG/D/D_334.PDF).

<sup>401</sup> Congreso de los Diputados, Pregunta al Gobierno con respuesta escrita, 184/082989, Autor: Llamazares Trigo, Gaspar, Medidas y plazos para la incorporación de España a la Convención de Derechos de los Trabajadores Inmigrantes de Naciones Unidas, Boletín Oficial de las Cortes Generales, N° D-408, 14 June 2010, p. 37, available at [http://www.congreso.es/public\\_oficiales/L9/CONG/BOCG/D/D\\_408.PDF](http://www.congreso.es/public_oficiales/L9/CONG/BOCG/D/D_408.PDF).

<sup>402</sup> Congreso de los Diputados, Contestación del Gobierno, Pregunta al Gobierno con respuesta escrita, 184/082989, Autor: Llamazares Trigo, Gaspar, Medidas y plazos para la incorporación de España a la Convención de Derechos de los Trabajadores Inmigrantes de Naciones Unidas, Boletín Oficial de las Cortes Generales, N° D-459, 14 October 2010, p. 310, available at [http://www.congreso.es/public\\_oficiales/L9/CONG/BOCG/D/D\\_459.PDF](http://www.congreso.es/public_oficiales/L9/CONG/BOCG/D/D_459.PDF).

<sup>403</sup> See the paragraph on the European Presidency in the section: European Institutions and Stakeholders

<sup>404</sup> Reply from Mr. Gaspar Llamazares Trigo, Izquierda Unida (United Left), 3 June 2010.

<sup>405</sup> Partido Socialista Obrero Español (PSOE), Programa elecciones generales 2008, p. 44, available at <http://www.psoe.es/download.do?id=141749>.

<sup>406</sup> Reply from Xarxa 18 de desembre, 15 September 2010. They make reference to the reply of the President of the Spanish Government, Mr. José Luis Rodríguez Zapatero, to the Comisión General Justicia Y Paz, that in 2007 send to the Government a letter asking for ratification of the ICRMW. The document can be seen at [http://www.december18.net/sites/default/files/respuesta\\_zp.doc](http://www.december18.net/sites/default/files/respuesta_zp.doc).

<sup>407</sup> Ibid.

already ratified by Spain and the Migrant Workers Convention, as well as a comparison between Spain's national legislation on foreigners and the Convention.<sup>408</sup>

Xarxa 18 de desembre-Catalunya carried out effective advocacy campaigns at the regional Catalan level which had as a result that the Catalan Parliament took a position in favour of the ratification.<sup>409</sup>

In general it can be said that in addition to the strong interest at the Catalan level, civil society actors across Spain are in favour of ratification. This is a good sign because the decision to ratify is with the Spanish government and parliament. In addition, it is necessary to develop actions at the European level.<sup>410</sup>

In 2010 **Amnistía Internacional** launched a web action to call on Prime Minister Zapatero to ratify the Migrant Workers Convention, in order to place the rights of migrants in the heart of migration policies, and strengthen legal protection, thus helping to combat discrimination, to promote fair living and working conditions, and ensure the rights of all migrant workers, regardless of their administrative status.<sup>411</sup> **Amnistía Internacional Madrid** produced a video to promote this initiative.<sup>412</sup>

**ACOGUE Andalucía** requested the ratification of the Convention on several occasions. They are of the view that local campaigns for ratification should be coordinated at European level.<sup>413</sup>

Spanish Workers' Union (Union Sindical Obrera, USO), Asociación Pro Derechos Humanos de Andalucía (APDH-A), Red ACOGE and Comisión Española de Ayuda al Refugiado (CEAR), signed a document in 2008 advocating for Spanish authorities and political parties to change their approach on how to deal with migration. One of the points was the ratification of the Convention.<sup>414</sup>

**Comisión Española de Ayuda al Refugiado (CEAR)** called for ratification of the Convention several times.<sup>415</sup>

**Federación Estatal De Asociaciones De Inmigrantes Y Refugiados En España (FERINE)** also called on Spain to ratify.<sup>416</sup>

During the UPR process, the organizations grouped under joint submission 3 (JS3)<sup>417</sup> and Amnesty International<sup>418</sup> expressed concern that Spain has not ratified basic instruments for the protection of human rights, such as the Migrant Workers Convention.

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<sup>408</sup> Xarxa 18 de desembre, Informe sobre la necesidad y oportunidad de la ratificación por España de la Convención internacional de la organización de las Naciones Unidas de 1990 sobre la protección de los derechos de todos los trabajadores migratorios, available at [http://www.idhc.org/esp/documents/20080724\\_Informelmmigracio.pdf](http://www.idhc.org/esp/documents/20080724_Informelmmigracio.pdf).

<sup>409</sup> Resolució 130/VII del Parlament de Catalunya, sobre la signatura i la ratificació de la Convenció de les Nacions Unides per a la protecció dels drets de tots els treballadors migrants i llurs familiars, 24 October 2004, available at <http://www.parlament.cat/getdocie/7001912>.

<sup>410</sup> Reply from Xarxa 18 de desembre, 15 September 2010.

<sup>411</sup> Amnistía Internacional, Respeten los derechos de las personas migrantes: <http://www.es.amnesty.org/actua/acciones/derechos-migrantes/> (in Spanish).

<sup>412</sup> <http://www.youtube.com/watch?v=Eg-TWWgMiCQ>.

<sup>413</sup> Reply from ACOGE Andalucía, 29 June 2010.

<sup>414</sup> Decálogo para un cambio de discurso sobre la inmigración, 30 May 2008, available at [http://unicornio.freens.org/profpcm-aux/ficherossubidos/Decalogoinmigracion\\_RedCEAR\\_APDHA\\_USO.pdf](http://unicornio.freens.org/profpcm-aux/ficherossubidos/Decalogoinmigracion_RedCEAR_APDHA_USO.pdf).

<sup>415</sup> See, as an example, Comisión Española de Ayuda al Refugiado, Segundo libro blanco de la integración sociolaboral de refugiadas, refugiados e inmigrantes, Ciudadanía y derechos humanos, 2007, p. 20, available at <http://www.cear.es/files/II%20libro%20blanco.pdf>.

<sup>416</sup> Comisión Española de Ayuda al Refugiado, La situación de los refugiados en España, INFORME 2007, p. 125, available at <http://www.cear.es/upload/Informe%202007%20de%20CEAR%20.pdf>.

<sup>417</sup> These Organisations are: Instituto de Derechos Humanos de Catalunya - Observatori DESC – Comité Español de Representantes de Personas con Discapacidad - Observatori del Sistema Penal i dels Drets Humans - Coordinadora de Organizaciones de Agricultores y Ganaderos - Organización de Consumidores y Usuarios de Catalunya - Plataforma Som lo que Sembrem - Ecologistas en Acción - Observatorio de la Deuda en la Globalización - Associació ProHabitatge. See JS3 Submission to the UN Universal Periodic Review, Spain, "Presentación conjunta Examen Periódico Universal 8ª Sesión - Mayo 2010 – España,"

## Trade Unions

**Spanish Workers' Union (Union Sindical Obrera, USO)** in 2009 sent a letter to the Government of Spain asking for the ratification of the ICRMW.<sup>419</sup>

**Ela Inmigrazioa** is an active member of the Red Eskuz Skua, an integrated platform, mostly by organizations of immigrants and refugees, whose overall objective is to inform, analyze, report and mobilize against the causes of social exclusion, political, economic, labour, etc., of migrants and refugees, in Euskal Herria (Bask country). The platform is working for the ratification of the Convention. They question if the statements by politicians in favour of ratification are more than just mere words.<sup>420</sup>

## National Human Rights Institution

We did not receive any reply from **the Office of the Ombudsman**.

## United Nations

CRC,<sup>421</sup> CAT<sup>422</sup> and CEDAW<sup>423</sup> encouraged Spain to ratify the ICRMW.

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p. 8, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/JS3\\_UPR\\_ESP\\_S08\\_2010\\_JointSubmission3.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/JS3_UPR_ESP_S08_2010_JointSubmission3.pdf) (in Spanish).

<sup>418</sup> Amnesty International, Spain, Submission to the UN Universal Periodic Review, Eighth session of the UPR Working Group of the Human Rights Council, May 2010, p. 8, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/AI\\_UPR\\_ESP\\_S08\\_2010\\_AmnestyInternational.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/ES/AI_UPR_ESP_S08_2010_AmnestyInternational.pdf).

<sup>419</sup> Union Sindical Obrera (USO), USO pide al Gobierno la ratificación de la Convención de las NNUU sobre migración, 12 February 2009, available at <http://www.uso.es/content/view/12012/33/>.

<sup>420</sup> Reply from Ela Inmigrazioa, 9 September 2010.

<sup>421</sup> Committee on the Rights of the Child, Fifty-fifth session, Concluding observations, 1 September – 13 October 2010, CRC/C/ESP/CO/3-4, § 65, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.ESP.CO.3-4.doc>.

<sup>422</sup> Committee against Torture, Concluding observations, Forty-third session, 2–20 November 2009, CAT/C/ESP/CO/5, § 30, available at <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-ESP-CO-5.doc>.

<sup>423</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Forty-fourth session, 20 July–7 August 2009, CEDAW/C/ESP/CO/6, § 36, available at <http://www.universalhumanrightsindex.org/documents/826/1604/document/en/pdf/text.pdf>.

## **SWEDEN**

### Government Position

The reply from **the Minister for Integration and Gender Equality** states that Sweden is presently of the position not to ratify the Migrant Workers Convention.<sup>424</sup> This position was presented to the Swedish Parliament in the National Action Plan for Human Rights 2006-2009, with the explanation that the rights provided for by this Convention comply with those already listed in the other core UN human rights conventions. The government therefore considers ratifying the Migrant Workers Convention not as necessary. It argues that the work of protecting the rights of migrant workers in Sweden should be concentrated on ensuring compliance with the other six core UN conventions. However, the question of ratification of the Convention will be looked at in connection with the drafting of the next national action plan on human rights.<sup>425</sup>

The same position was repeated during the Universal Periodic Review in 2010.<sup>426</sup>

The Swedish Government emphasizes that migrant workers already enjoy equal rights with citizens in Sweden in all important aspects. It argues that Sweden has introduced, or is about to introduce, a number of measures that are in line with the general purpose of the Migrant Workers Convention and which in some respects go further than the Convention. These include efficient and flexible rules for labour migration to Sweden from countries outside the EU (a new legislation entered into force in December 2008), stronger legal protection against discrimination, a proposal for extending the right to education to all children in Sweden irrespective of their legal status, an inquiry with the purpose of looking into how, with reference to Sweden's international obligations, an expanded right to health care of asylum-seekers and irregular migrants can be implemented as well as the establishment of a parliamentary committee on circular migration.

The Swedish Government states that fundamental human rights are universally applicable to all persons. Its priority is the effective implementation of the human rights instruments that Sweden has already ratified, and it is its opinion that these instruments provide effective protection for all persons, including migrants. In the light of this, the Convention does not add protection to migrant workers and their families. Equal rights and duties of (regular) migrants and citizens is a fundament of Swedish labour market policy.

The Swedish Government underlines that the Swedish system for migration is – like that of all other EU Member States – built on the notion of orderly migration including the fight against illegal immigration. Despite the fact that the Migrant Workers Convention states that signatory states shall collaborate with a view to preventing and eliminating illegal migration, the effect of providing irregular migrants with a wide range of rights (of which not all could be regarded as fundamental rights) is that a signatory to the ICRMW signals that it tolerates irregular migrants and workers on the black market. The most important obstacle to a ratification of the ICRMW is the far-reaching rights that the ICRMW grants to irregular migrants. It is not controversial that all persons, regardless of legal status, are guaranteed fundamental human rights. However, Sweden sees serious problems both on a practical level and as a matter of principle in granting irregular migrants and their families equal rights with citizens. Sweden is also sceptical to a separate reporting and monitoring procedure for the rights of migrant workers since the rights contained in the ICRMW are already monitored by the committees established under the other relevant UN human

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<sup>424</sup> Reply from the Minister for Integration and Gender Equality, 30 June 2010.

<sup>425</sup> Ministry of Integration and Gender Equality, A National Action Plan for Human Rights 2006-2009, p. 30, available at [http://www.sweden.gov.se/download/36e631ca.pdf?major=1&minor=83474&cn=attachmentPublDuplicator\\_0\\_attachment](http://www.sweden.gov.se/download/36e631ca.pdf?major=1&minor=83474&cn=attachmentPublDuplicator_0_attachment).

<sup>426</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Sweden, 16 June 2010, A/HRC/15/11, § 64, available at [http://www.upr-info.org/IMG/pdf/A\\_HRC\\_15\\_11\\_E.pdf](http://www.upr-info.org/IMG/pdf/A_HRC_15_11_E.pdf). During the UPR process Algeria, Argentina, Bosnia and Herzegovina, China, Islamic Republic of Iran, Nigeria, Pakistan and the Philippines encouraged Sweden to become party of the ICRMW.

rights conventions. Moreover, there is the risk of coming up with different interpretations of the same rights as the result of having different committees overseeing the implementation of the provisions in the different conventions.

Sweden is of the opinion that the question of the ratification of the ICRMW lies within EU Member States' national competence. While the competence in the field of migration to some extent is shared between Member States and the European Union, the *acquis* in the field of labour migration is still limited. Having said this, Sweden still considers that there is *de facto* already a common position within the EU and that none of the Member States has expressed its intention to ratify the ICRMW.<sup>427</sup>

Swedish position against ratification is also stated in a report recently submitted to the Swedish Government by the Parliamentary Committee on Circular Migration and Development (CiMU), established in 2009.<sup>428</sup>

### Political Parties

The Convention is mentioned in an agreement on migration between the **Left Party**, the **Social Democratic Party** and the **Greens**: "Furthermore, we will examine the conditions for Sweden to be able to sign the UN Migrant Workers Convention and to work internationally for its implementation".<sup>429</sup>

In 2006 three parliamentarians of the **Green Party** submitted a motion<sup>430</sup> that called for ratification of the ICRMW. They argued that Sweden was one of the countries taking part in the drafting process of the Convention, and that the Convention creates a common international standard establishing how migrant workers must be protected and the obligations and responsibilities of host countries. They made a particular reference to the conditions of berry pickers in Sweden. In their opinion, awareness about the Convention is not high, and there are no particular legal, administrative or political obstacles for Sweden to ratify the Migrant Workers Convention.<sup>431</sup>

A similar position is taken by the **Left Party** which has already for several years pushed for Sweden to ratify the ICRMW. They affirm that if several EU countries ratify it, the usual argument against ratification that "nobody else has ratified it" would completely lose its meaning.<sup>432</sup>

The **Social Democratic Party** wants to investigate the preconditions for Sweden to be able to sign the ICRMW. The party notes that although ratification has to be agreed at the national level, the common migration policy and free movement of people within the EU should be considered.<sup>433</sup>

The **Moderate Party** is not in favour of ratification because Swedish law already fulfils the most important requirements. They are also opposed to the far reaching rights that the Convention grants to irregular migrants. This would send the signal that irregular migrants and workers on the black market are acceptable. The party argues that rights are already covered by other UN conventions and they are sceptical about a separate reporting and monitoring procedure for the rights of migrant workers.<sup>434</sup>

The **Centre Party** believes that the ratification of the ICRMW would not make a noticeable difference regarding the human rights of migrant workers and their families. In some parts, their rights would even deteriorate (e.g. as concerns trade union rights). In their opinion the rights provided by the Convention are largely covered by other

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<sup>427</sup> Reply from the Minister for Integration and Gender Equality, 30 June 2010.

<sup>428</sup> Parliamentary Committee on Circular Migration and Development (CiMU), Government Official Reports, SOU 2010:40, 28 May 2010, p. 237, available at <http://www.regeringen.se/content/1/c6/14/67/77/60c3ebd9.pdf> (in Swedish).

<sup>429</sup> Red-green immigration policy 2011-2014, p. 11, available at <http://www.rodgron.se/wp-content/uploads/2010/09/Migrationspolitik.pdf>.

<sup>430</sup> Motion 2006/07:U247 FN:s konvention om migrantarbetare, 30 October 2006, available at <http://www.riksdagen.se/webbnav/?nid=410&typ=mot&rm=2006/07&bet=U247> (in Swedish).

<sup>431</sup> Reply from the Swedish Green Party, 10 August 2010.

<sup>432</sup> Reply from the Left Party, 10 September 2010.

<sup>433</sup> Reply from the Social Democratic Party, 8 October 2010.

<sup>434</sup> Reply from the Moderate Party, 18 June 2010.

human rights instruments. Furthermore, ratification would increase the administrative burden without bringing noticeable benefits. They conclude by stating that although ratification not explicitly depends on the European Union, the Convention must stand the test of EU law.<sup>435</sup>

### NGOs

During the preparations of the 2<sup>nd</sup> Swedish National Action Plan for Human Rights 2006-2009, the Church of Sweden and some other organizations encouraged Sweden to ratify the ICRMW. The Government replied that the rights contained in the ICRMW to a large extent were already covered by the six other central human rights conventions as well as by ILO conventions.<sup>436</sup>

The **National Federation of International Immigrant Women's Associations (RIFFI)** believes that national-level campaigns around the Migrant Workers Convention should be accompanied by work at the European level, including the exchange of approaches, methods and experiences.<sup>437</sup>

### Trade Unions

We did not receive any replies from Swedish trade unions.

### National Human Rights Institution

The position of **Swedish Equality Ombudsman** is that legal migrants in Sweden as well as the members of their families are protected by national legislation to a degree that, in general, could be seen as equivalent to the ICRMW. The ratification of the Convention would probably have limited impact on the protection of legal migrants. From the Swedish perspective, the main issue is the situation of the so called undocumented migrants. In this regard it is certainly not unproblematic that Sweden has not ratified the ICRMW.

The Swedish Equality Ombudsman was established on 1<sup>st</sup> January 2009 after a merging of four different ombudsman institutions. One of the previous ombudsman institutions – The Ombudsman against Ethnic Discrimination - has made the government aware of the fact that the issue of Sweden's ratification of ICRMW was raised in the international arena.<sup>438</sup>

According to what is stated in the National Action Plan for Human Rights 2006-2009,<sup>439</sup> "the question of ratification of the Convention will be reconsidered as necessary in connection with the drafting of the next national action plan on human rights". The evaluation of the old Action Plan (2006-2009) is now in process and a governmental inquiry will present its conclusions as well as a new draft plan at the end of 2010. The Equality Ombudsman does not intend to raise the issue until the new draft Action Plan will be presented.

Discussing the issue with colleagues from other countries may be useful. However, it is difficult to estimate to what extent a transnational collaboration would be effective.<sup>440</sup>

### United Nations

CRC,<sup>441</sup> CESCR,<sup>442</sup> CERD,<sup>443</sup> CEDAW<sup>444</sup> and CAT<sup>445</sup> encouraged Sweden to ratify the ICRMW.

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<sup>435</sup> Reply from the Centre Party, 3 July 2010.

<sup>436</sup> Reply from the Minister for Integration and Gender Equality, 30 June 2010.

<sup>437</sup> Reply from National Federation of International Immigrant Women's Associations (RIFFI), 15 September 2010.

<sup>438</sup> The Minister for Integration and Gender Equality stated also that the Swedish Ombudsman against Ethnic Discrimination asked to the Government why Sweden has not ratified the ICRMW, but it has not specifically proposed that Sweden ratify the Convention. Reply from the Minister for Integration and Gender Equality, 30 June 2010.

<sup>439</sup> See: Ministry of Integration and Gender Equality, A National Action Plan for Human Rights 2006-2009, p. 30

<sup>440</sup> Reply from the Equality Ombudsman, 15 July 2010.



# UNITED KINGDOM

## Government Position

According to the **Minister of State at the Foreign and Commonwealth Office**, the UK Government's policy is not to ratify the Migrant Workers Convention and this decision is not under review. The UK Government argues that within the UK the rights of migrant workers are already protected in domestic legislation, including under the 1998 Human Rights Act. It adds that the UK's position is in line with that of most developed countries that are a prime destination for migrant flows, irregular as well as regular.<sup>446</sup> The same position was already taken in 2008 during the UPR process, where the government argued that in the United Kingdom the rights of children and family members of migrants and refugees are already protected by United Kingdom legislation and by the United Kingdom's commitments under International Law. The Government affirmed that, as the laws and systems to protect the health and safety, human rights, and employment rights of United Kingdom nationals extend to foreign nationals, the United Kingdom has no plans to sign the ICRMW.<sup>447</sup>

Back in 2005, the Minister of State for Employment and Welfare Reform of the time, Mr. Tony McNulty, stated that the UK's Government had 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 UK law would mean fundamental changes to its legislation (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) and would undermine the UK's system of frontier controls.<sup>448</sup>

The same position was stressed during the Special Rapporteur's visit in 2008, when the United Kingdom Border Agency (UKBA) emphasized that the UK requires a restrictive approach to labour migration, particularly to irregular migration. The Special Rapporteur stressed that the ratification of the Convention does not limit the right of the State to determine the admission of migrant workers and their family members, as stated in its article 79. He added that ratification of the Convention is not incompatible with the Government's policy goals since, even if the United Kingdom wishes to adopt a restrictive approach to irregular labour migration, the State is under the general

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<sup>441</sup> Committee On The Rights Of The Child, Concluding observations, Fifty-first session, 12 June 2009, CRC/C/SWE/CO/4, § 73, available at <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-SWE-CO-4.pdf>.

<sup>442</sup> Committee on Economic, Social and Cultural Rights, Concluding observations, Forty-first session, 3-21 November 2008, E/C.12/SWE/CO/5, § 36, available at [http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.SWE.CO.5\\_EN.doc](http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.SWE.CO.5_EN.doc).

<sup>443</sup> Committee on the Elimination of Racial Discrimination, Concluding observations, Seventy-third session, 28 July - 15 August 2008, CERD/C/SWE/CO/18, § 23, available at <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-SWE-CO-18.pdf>.

<sup>444</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Fortieth session, 14 January-1 February 2008, CEDAW/C/SWE/CO/7, § 44, available at <http://www.universalhumanrightsindex.org/documents/826/1386/document/en/pdf/text.pdf>.

<sup>445</sup> Committee Against Torture, Concluding observations, Fortieth session, 28 April-16 May 2008, CAT/C/SWE/CO/5, § 27, available at <http://www.universalhumanrightsindex.org/documents/828/1403/document/en/pdf/text.pdf>.

<sup>446</sup> Reply from the Minister of State at the Foreign and Commonwealth Office, 28 July 2010.

<sup>447</sup> See UN Human Rights Council, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the United Kingdom of Great Britain and Northern Ireland to the Working Group on the Universal Periodic Review, 25 August 2008, A/HRC/8/25/Add.1, § 63. Recommendations to accede the ICRMW were made by Algeria, Ecuador and Egypt.

<sup>448</sup> European Union Committee, House of Lords, 14th Report of Session 2005-06, Economic migration to the EU, 16 November 2005, p. 74, available at <http://www.publications.parliament.uk/pa/ld200506/ldselect/lddeucom/58/58.pdf>. About the first argument, that ratification 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 Committee stated that 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. In reference to the second reason, that ratification would undermine the United Kingdom's system of frontier controls, the European Union Committee argued about its weakness, since the Convention does not deal with border controls at all, and it does not impinge on the sovereign right of States to determine the admission of foreigners to their territory or labour market. About the second reason, in the same document, p. 39.

obligation to treat migrants, regardless of their immigration status, in accordance with international human rights standards.<sup>449</sup> He also referred to the commitments presented by the UK to the General Assembly during its campaign for re-election as a member of the Human Rights Council, particularly to the one of “tackling inequality and discrimination, to ensure that every individual is able to fulfil their potential through the employment of equal opportunities, rights and responsibilities”.<sup>450</sup>

### Political Parties

The **Liberal Democrats**, who were committed to ratification in 2004, did not make any reference to it in their 2010 manifesto.<sup>451</sup>

In 2005 the **Green party** included ratification of the ICRMW in its election program,<sup>452</sup> but did not do so again in its 2010 Manifesto.<sup>453</sup>

### NGOs

The public doesn’t know the ICRMW (even that December 18 is International Migrant Day is totally unknown and never covered in the mainstream media). Many NGOs and trade unions are part of the Migrant Rights Network,<sup>454</sup> which supports ratification of the Convention. National-level campaigns around the Convention should be accompanied by work at the European level.<sup>455</sup>

**Joint Council for the Welfare of Immigrants (JCWI)** supports the ratification of the ICRMW.<sup>456</sup> The organisation states that awareness about the Convention is very limited, even among civil society groups. JCWI is trying to raise awareness, and the implications of ratification are covered in their forthcoming book on the Points Based System and their critique of the existing migration management system in the UK.<sup>457</sup>

In 2008, **Amnesty International** recommended that the UK ratify the ICRMW.<sup>458</sup>

### Trade Unions

The **Trades Union Congress (TUC)** has always supported the ratification of the ICRMW and asked the UK Government to ratify it.<sup>459</sup>

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<sup>449</sup> Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to the United Kingdom of Great Britain and Northern Ireland, 22–26 June 2009, A/HRC/14/30/Add.3, § 14 and 15, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.30.Add.3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.30.Add.3_en.pdf).

<sup>450</sup> General Assembly, United Kingdom campaign for re-election as a member of the Human Rights Council, Pledges and commitments in human rights, A/62/730, 10 March 2008, § 4 (ii), available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/62/730&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/62/730&Lang=E).

<sup>451</sup> As regards migration, they focus more on incorporating the UN Convention on the Rights of the Child into UK law, ending the detention of children for immigration purposes, securing Britain’s borders and introducing a regional points-based system to ensure that migrants can work only where they are needed. See Liberal Democrat, Manifesto 2010, p. 75, available at [http://network.libdems.org.uk/manifesto2010/libdem\\_manifesto\\_2010.pdf](http://network.libdems.org.uk/manifesto2010/libdem_manifesto_2010.pdf).

<sup>452</sup> See EPMWR, The UN Migrant Workers Convention, cit. p. 19:  
[http://www.december18.net/sites/default/files/EPMWR\\_The\\_UN\\_Migrant\\_Workers\\_Convention.pdf](http://www.december18.net/sites/default/files/EPMWR_The_UN_Migrant_Workers_Convention.pdf).

<sup>453</sup> Green party, General election Manifesto 2010, available at [http://www.greenparty.org.uk/assets/files/resources/Manifesto\\_web\\_file.pdf](http://www.greenparty.org.uk/assets/files/resources/Manifesto_web_file.pdf).

<sup>454</sup> <http://www.migrantsrights.org.uk/>.

<sup>455</sup> Reply from Nicola Piper, Associate Director at the Centre for Migration Policy Research, Swansea University, 11 July 2010.

<sup>456</sup> In the past there was a coalition supported by JCWI, Kalaayan, Anti-Slavery International, Oxfam and the TUC that called for ratification.

<sup>457</sup> Reply from the Joint Council for the Welfare of Immigrants (JCWI), 9 September 2010.

<sup>458</sup> Amnesty International, Submission to the UN Universal Periodic Review, United Kingdom, First session of the HRC UPR Working Group, 7-18 April 2008, p. 1, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/AI\\_GBR\\_UPR\\_S1\\_2008\\_AmnestyInternational\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/AI_GBR_UPR_S1_2008_AmnestyInternational_uprsubmission.pdf).



## National Human Rights Institution

The **Equality and Human Rights Commission (EHRC)** encourages the UK government to ratify all UN human rights treaties, as ratification of human rights instruments affords better protection to vulnerable populations.<sup>460</sup> The Commission promotes the welfare of migrants domestically and internationally. In October 2008, for example, the EHRC launched an inquiry into recruitment and employment in the meat and poultry processing sector in England and Wales. The report from the inquiry revealed evidence of the widespread mistreatment and exploitation of migrant and agency workers in the sector, and makes recommendations to the key bodies - supermarkets, agencies, processing firms, government, regulators and unions.<sup>461</sup> The Commission regularly publishes reports on migration-related issues, as was the case in May 2009<sup>462</sup> and in January 2010.<sup>463</sup> But, there are no references to the ICRMW in these reports.

At its 33<sup>rd</sup> meeting in Dublin in October 2010, the **Joint Committee of Representatives of the two Human Rights Commissions on the Island of Ireland (the Joint Committee)**, called on both the UK and Irish Governments to sign, ratify and implement the key United Nations instruments, including the Migrant Workers Convention.<sup>464</sup>

## United Nations

CESCR,<sup>465</sup> CRC<sup>466</sup> and CEDAW<sup>467</sup> encouraged the UK to ratify the ICRMW.

## Council of Europe

ECRI recommended to the UK to ratify the ICRMW.<sup>468</sup>

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<sup>459</sup> See, as an example, Trades Union Congress (TUC), Tackling Race Inequalities Consultation, a TUC response, May 2009, § 6.7, available at <http://www.tuc.org.uk/equality/tuc-16463-f0.pdf>.

<sup>460</sup> Reply from the Equality and Human Rights Commission (EHRC), 1 July 2010.

<sup>461</sup> Equality and Human Rights Commission (EHRC), Employment and recruitment in the meat processing industry: a formal inquiry, March 2010, available at <http://www.equalityhumanrights.com/legal-and-policy/formal-inquiries/inquiry-into-the-meat-and-poultry-processing-sectors/>.

<sup>462</sup> Equality and Human Rights Commission (EHRC), Room for manoeuvre? The options for addressing immigration-policy divergence between Holyrood and Westminster, May 2009, available at [http://www.equalityhumanrights.com/uploaded\\_files/room\\_for\\_manoeuvre.pdf](http://www.equalityhumanrights.com/uploaded_files/room_for_manoeuvre.pdf).

<sup>463</sup> Equality and Human Rights Commission (EHRC), The UK's New Europeans Report, January 2010, available at <http://www.equalityhumanrights.com/news/2010/january/eastern-european-migrant-employment-patterns-reviewed/>.

<sup>464</sup> Joint Committee press release, 15 October 2010:

[http://www.nihrc.org/index.php?page=press\\_news\\_details&category\\_id=2&press\\_id=430&Itemid=65](http://www.nihrc.org/index.php?page=press_news_details&category_id=2&press_id=430&Itemid=65).

<sup>465</sup> Committee on Economic, Social and Cultural Rights, Concluding observations, Forty-second session, 4-22 May 2009, E/C.12/GBR/CO/5, § 46, available at

<http://www.universalhumanrightsindex.org/documents/827/1545/document/en/pdf/text.pdf>.

<sup>466</sup> Committee on the Rights of the Child, Concluding observations, Forty-ninth session, CRC/C/GBR/CO/4, 20 October 2008, § 81, available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>.

<sup>467</sup> Committee on the Elimination of Discrimination against Women, Concluding observations, Forty-first session, 30 June – 18 July 2008, CEDAW/C/UK/CO/6, § 299, available at

<http://www.universalhumanrightsindex.org/documents/826/1594/document/en/pdf/text.pdf>.

<sup>468</sup> European Commission against Racism and Intolerance (ECRI), Fourth report on the United Kingdom, 2 March 2010, available at [http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/United\\_Kingdom/GBR-CbC-IV-2010-004-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/United_Kingdom/GBR-CbC-IV-2010-004-ENG.pdf), and Third report, 14 June 2005, available at [http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/GBR-CbC-III-2005-27-ENG.pdf](http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle_03/03_CbC_eng/GBR-CbC-III-2005-27-ENG.pdf).

## ***Summary and Conclusions***

Back in 2007, we published the results of a small survey on the positions vis-à-vis the UN Migrant Workers Convention of civil society actors, government agencies and policy makers in the European Union. Now, three years later, we released an update to the original survey, with for the first time presenting information on each of the 27 EU Member States.

Over these three years, there clearly emerged a common position against ratification of the ICRMW, with each of the Member States putting forward the same arguments.

In our view, however, these arguments show a misunderstanding about the provisions and intentions of the Convention. They also demonstrate the lack of political will to move forward in the direction of ratification. It is also clear from the responses to the questionnaire that ratification of the ICRMW in the European Union absolutely requires long sustained advocacy work at the national as well as European level, involving as wide a range of stakeholders as possible. The most commonly used arguments against ratification are summarized and commented on below.

### Distinction between regular and irregular migrant workers

In the opinion of the governments the Convention does not draw a distinction between regular and irregular migrant workers, providing undocumented migrants with too many rights. This would therefore discourage legal immigration<sup>469</sup> and could potentially create a “pull factor” for irregular migration.<sup>470</sup>

The Convention, however, maintains a clear distinction between migrants in a regular or in an irregular position, dedicating part III to the human rights of *all* migrant workers, and part IV to other rights of migrant workers that are documented, or in a regular position. Part III establishes just a few new rights specific to the condition of migrant workers (e.g. the right to transfer remittances, art. 32, or to have information on the migration process, art. 33). Most of the rights it provides for are already contained in the other human rights treaties<sup>471</sup>. The ICRMW gives a more precise interpretation of their applicability to migrant workers, similar to what other international human rights instruments do for the protection of particular vulnerable groups, such as women and children. The ratification of the ICRMW would, on the contrary, reduce irregular migration,<sup>472</sup> because it clearly demands that states who ratify it contribute to the elimination of labour exploitation, abusive conditions of work and unauthorized employment and that this happens in a context of collaboration across the migration cycle (art. 68 and 69). The reinforcement of the rights of migrants is a better way to fight against migration in irregular conditions and trafficking and smuggling of human beings.

### Other human rights treaties provide adequate protection

Another argument used by EU Member States against ratification is that the ICRMW is unnecessary, because the norms it provides for are already set out in other human rights conventions and/or the rights of migrants are sufficiently protected by both national laws and directly applicable Community legislation.<sup>473</sup>

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<sup>469</sup> France, the Netherlands, Austria, Bulgaria, Denmark, Germany, Hungary, Italy, Poland, Slovak Republic, Sweden, Spain.

<sup>470</sup> Denmark, Poland.

<sup>471</sup> For more information regarding the protection of the rights of migrants by the other core human rights Treaties, please refer to December18 and ICMC, The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat, 2007, available at [http://www.december18.net/sites/default/files/The\\_UN\\_Treaty\\_Monitoring\\_Bodies\\_and\\_Migrant\\_Workers\\_a\\_Samizdat.pdf](http://www.december18.net/sites/default/files/The_UN_Treaty_Monitoring_Bodies_and_Migrant_Workers_a_Samizdat.pdf).

<sup>472</sup> Please, note that art. 35 of the Convention states: “Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation...”.

<sup>473</sup> Austria, Belgium, Czech Republic, Denmark, Finland, Greece, Hungary, Ireland, Italy, Lithuania, the Netherlands, Finland, Germany, Ireland, Poland, Portugal, Romania, Sweden, UK.

This contradicts with the first argument used for non-ratification. Legal experts have argued that the other core international human rights instruments indeed apply to all human beings, including migrant workers and regardless of their status. Further research is needed to show how the EU Member States are addressing the situation and protection of migrants in the reports they submit to the various treaty monitoring bodies.<sup>474</sup> We are, however, of the opinion that there continues to be a need for such a complementary instrument as the Migrant Workers Convention: it establishes a complete normative framework for a particular vulnerable group, and it constitutes a basic and universal instrument for national migration policies. An instrument that calls for migration policies to be based on international human rights law and on the promotion of equitable, humane and fair migration conditions.

Although it stated that there are still legal obstacles and despite its doubt about the need to ratify, Slovenia is the only EU Member State that is still considering ratification of the Convention.

#### Ratification is a Community or shared competence

Member States of the European Union also argue that the Convention can be signed only jointly with the other Member States, that no other EU member State has ratified it and that the issue is a Community or shared competence.<sup>475</sup>

Bulgaria, for example, replied that it is ready to participate in any discussion on the ICRMW initiated within the EU. The Government of the Republic of Estonia states that the matter needs further comprehensive analysis to assess its compliance with EU legislation as well as national legislation, and that it is possible that actions of the EU would have an effect on the actions regarding domestic ratification procedure.

Although it is true that since 1997, with the Treaty of Amsterdam, asylum and migration matters were transferred to the competence of the Community, but EU legislation in this area represents just a minimum standard; it does not prevent Member States from the adoption of more favourable national provisions. Moreover, ratification remains an individual prerogative of each of the Member States, as recently stated by the European Council.<sup>476</sup> This argument has indeed an important political value, because it means that EU institutions could make the difference for the ratification of the ICRMW by the Member States by taking initiatives to improve awareness about the Migrant Workers Convention.

#### Incompatibility with national law

Some of the Member States also affirm that the Convention contains provisions that would threaten existing labour market regulation, especially the laws on employment of foreign labour,<sup>477</sup> that the ICRMW is incompatible with national law or/and EU law.<sup>478</sup>

Lithuania argues that ratification would mean that the state would no longer be free to choose the measures to implement the provisions of the Convention, e. g. with respect to education, social and medical services.

These issues can be dealt with relatively easy because the ICRMW has a certain flexibility (it often uses expressions such as “in accordance to national laws”, “states may”, if states “consider necessary” or “deem appropriate”) and

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<sup>474</sup> December 18 initiated such a research in the past, see The UN Treaty Monitoring Bodies and Migrant Workers: a Samizdat, 2007, available at

[http://www.december18.net/sites/default/files/The\\_UN\\_Treaty\\_Monitoring\\_Bodies\\_and\\_Migrant\\_Workers\\_a\\_Samizdat.pdf](http://www.december18.net/sites/default/files/The_UN_Treaty_Monitoring_Bodies_and_Migrant_Workers_a_Samizdat.pdf).

<sup>475</sup> France, Austria, Bulgaria, Cyprus, Czech Republic, Germany, Hungary, Ireland, Italy, Luxembourg, Portugal, Romania, Sweden, Spain.

<sup>476</sup> See the part regarding European Institutions and Stakeholders.

<sup>477</sup> Austria, Belgium, Poland.

<sup>478</sup> Greece, Lithuania.

States Parties have the possibility to make reservations, e.g. excluding one or more articles that they find incompatible with their laws (art. 91).<sup>479</sup>

### Above-standard rights

The Slovak Republic argues that some of the provisions in the ICRMW offer above-standard rights when compared with the rights of its nationals or citizens of EU/EEA Member States.

Research, however, shows that EU law in general provides nationals of EU Member States with rights that go far beyond the minimum standards enshrined by the Convention.<sup>480</sup>

### Limitation to sovereignty

Other Member States fear that the implementation of the ICRMW would limit the sovereign right of States to decide upon who can enter their territory and to set time limits to the length of stay granted,<sup>481</sup> although the Convention clearly states that it will not affect the right of each State Party to establish admission of migrant workers and members of their families.<sup>482</sup>

### Convention ratified only by countries of origin

The Netherlands and Cyprus emphasize that **only** countries of origin of labour migrants have ratified the Convention, while countries of destination have been reluctant to do so. This is only the case to some extent. Some states that ratified the ICRMW are at the same time countries of origin, transit and/or destination, such as Argentina, Ecuador, Mexico, Morocco, Senegal and Turkey. International labour migration is not a static phenomenon but a process that is constantly influenced by a wide range of national, regional or international developments. More, referring to the provisions of the UN Convention which provide some constraints on the States of origin,<sup>483</sup> the receiving countries could benefit from the adoption of the Convention.

### Conclusion

The results summarized above, and the replies obtained by the other stakeholders, clearly demonstrate that one of the most important tasks for civil society organizations is to **raise awareness** about the Convention.

The actions undertaken by civil society until now, have undoubtedly led to some progress: ratification is back on the political agenda of both the European Union and the national Member States. However, a lot remains to be done to deepen governments' knowledge about the ICRMW and to raise awareness amongst the migrants themselves, the civil society sector and the public at large (e. g. through the media).

There is an urgent need to set up **national campaigns across the European Union**, campaigns that include all of the stakeholders and are accompanied by **coordination at EU level**. Achieving ratification in the European Union is not simply a dream, it is both a necessity and an achievable goal. For this, however, we will need the financial human and institutional support from all those countries that already ratified the ICRMW as well as from UN institutions.

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<sup>479</sup> For more information see PAUL DE GUCHTENEIRE and ANTOINE PÉCOUD, *Migration and Human Rights*, cit. pp. 17-19.

<sup>480</sup> For more information see EUAN MACDONALD and RYSZARD CHOLEWINSKI, *The ICRMW and the European Union*, in *The United Nations Convention*, UNESCO Publishing, *cit.*, pp. 369-383.

<sup>481</sup> Bulgaria, Germany, UK.

<sup>482</sup> Art. 79, "Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families."

<sup>483</sup> This refers, for example, to the assistance that countries of origin have to provide to migrant workers and their families in order to allow their return and reintegration (art. 67), the obligation to facilitate the participation in the public life of the country of origin (art. 41), and to the commitments of cooperation and collaboration to prevent and eliminate illegal and clandestine movements and employment of migrant workers (art. 68 and 69).

The European Union has always presented itself as a defender of human rights and several of its Member States contributed significantly to the drafting process of the Migrant Workers Convention.<sup>484</sup> By finally ratifying this comprehensive international human rights treaty, EU Member States would send a strong signal and show that they are willing to be held accountable internationally for the ways they are contributing to the protection of the rights of all migrant workers and members of their family.

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<sup>484</sup> The MESCA group (composed by: Finland, Greece, Italy, Norway, Portugal, Spain, Sweden and France) made substantial contributions to the final text of the Convention. See, for example, Rights of All Migrant Workers (Part III of the Convention), Travaux Préparatoires, available at <http://www2.ohchr.org/english/issues/migration/taskforce/docs/draftinghistoryrev1.doc>.

## ***Annex 1: Responses to the Questionnaire***

<b>AUSTRIA</b>	Federal Minister of Labour, Social Affairs and Consumer Protection
	Green Party
	Austrian Trade Union Federation (ÖGB)
	Austrian Ombudsman Board
<b>BELGIUM</b>	Federal Public Service Employment, Labour and Social Cooperation
	Ecolo
	Office of the Vice-president of the European Parliament, Isabelle Durant
	Caritas international België
<b>BULGARIA</b>	Centre pour l'égalité des chances et la lutte contre le racisme
	Ministry of Foreign Affairs
	Legal Clinic for Refugees and Immigrants
	Caritas Bulgaria
	Association for Integration of Refugees and Migrants
<b>CYPRUS</b>	Institute for Social and Trade Union Research (ISTUR)
	Permanent Representation of Cyprus to the EU
	Cyprus Green Party
	Democratic Rally
	United Democrats
<b>CZECH REPUBLIC</b>	KISA
	Czech-Moravian confederation of trade unions (CMKOS)
<b>DENMARK</b>	National Institute for the Protection of Human Rights
	Ministry of Refugee, Immigration and Integration Affairs,
	MP Pia Adelsteen, MP, Danish People's Party

Mixeurope

Danish Institute for Human Rights

## **ESTONIA**

Minister of Foreign Affairs

MP Maret Merisaar, Estonian Greens

Legal Information Centre in Human Rights (LICHR)

## **FINLAND**

Ministry of Migration and European Affairs

Finnish Social Democratic Party

MP Päivi Räsänen, Christian Democrats

Finnish Refugee Advice Centre

Parliamentary Ombudsman of Finland

## **FRANCE**

Commission nationale consultative des droits de l'homme (CNCDH)

## **GERMANY**

Minister of Labour and Social Affairs

German Institute for Human Rights

MEP Cornelia Ernst, The Left (GUE/NGL)

## **GREECE**

Ministry of Interior, Immigration & Social Integration, Directorate of Migration Policy,  
Department of Migration Policy

Antigone

Human Rights Defence Centre (KEPAD)

National Commission for Human Rights

## **HUNGARY**

Ministry of Interior

Menedek

Hungarian Helsinki Committee

ENAR Hungary

Mahatma Gandhi Human Rights Organisation

Ombudsman for Civil Rights

## **IRELAND**

Labour Party

Sinn Féin

Immigrant Council of Ireland (ICI)

MEP Joe Higgins, Irish Socialist Party (GUE/NGL)

MEP Proinsias De Rossa, Irish Labour Party (S&D)

## **ITALY**

Lega Italiana dei Diritti dell'Uomo (LIDU)

ANOLF (Associazione Nazionale oltre le frontiere)

ARCI

Punto di partenza

Forum of International and European Research on Immigration (FIERI)

CGIL (Confederazione Generale Italiana del Lavoro)

Rita Borsellino, Italian Democratic Party (S&D)

## **LATVIA**

Ministry of Welfare

Latvian Centre for Human Rights (LCHR)

Free Trade Union Confederation of Latvia

## **LITHUANIA**

Migration Department, Ministry of the Interior

## **LUXEMBOURG**

Directorate of Immigration, Ministry of Foreign Affairs and Immigration

Luxembourg Socialist Workers' Party (LSAP)

Caritas Luxembourg

## **MALTA**

People for Change Foundation

SOS Malta

## **NETHERLANDS**

Minister of Justice

Dutch Equal Treatment Commission (ETC)

Stichting LOS (member of PICUM)

MEPs Wim van de Camp, Christen Democratisch Appèl (EPP)

Judith Sargentini, GroenLinks (Greens/EFA)



**POLAND**

Ministry of Labour and Social Policy

MP Tadeusz IWIŃSKI, Democratic Left Alliance

**PORTUGAL**

Office of the Minister of Labour and Social Solidarity

Permanent Representation of Portugal to the EU

MP José Ribeiro e Castro, Democratic and Social Centre - People's Party

Amnesty International Portugal

**ROMANIA**

Minister for Foreign Affairs

Advocate of the People

**SLOVAKIA**

Permanent Representation of the Slovak Republic to the EU

People against racism

**SLOVENIA**

Ministry of Labour, Family and Social Affairs

Slovenian Democratic Party

MP Eva Irgl, Slovenian Democratic Party

Human Rights Ombudsman

**SPAIN**

MP Gaspar Llamazares Trigo, Izquierda Unida

Xarsa 18 de desembre

ACOGUE Andalucía

Ela Inmigrazioa

**SWEDEN**

Minister for Integration and Gender Equality

Swedish Green Party

Left Party

Social Democratic Party

Moderate Party

Centre Party

National Federation of International Immigrant Women's Associations (RIFFI)

Equality Ombudsman

**UNITED KINGDOM**

Minister of State at the Foreign and Commonwealth Office

Nicola Piper, Associate Director at the Centre for Migration Policy Research, Swansea University

Joint Council for the Welfare of Immigrants (JCWI)

Equality and Human Rights Commission (EHRC)

## ***Annex 2: Acronyms***

CAT	Committee Against Torture
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
COE	Council of Europe
COR	Committee of the Regions
CRC	Committee on the Rights of the Child
EESC	European Economic and Social Committee
ECRI	European Commission against Racism and Intolerance
EP	European Parliament
EU	European Union
MEPs	Members of the European Parliament
NGOs	Non-Governmental Organisations
NHRIs	National Human Rights Institutions
UPR	Universal Periodic Review