The benefits of granting third country nationals equal rights to work - April 2013

Editorial by Nicoletta Charalambidou, ENAR Vice-Chair

Welcome to this latest edition of the ENARgy webzine, focusing on the benefits of granting third country nationals equal rights to work. It starts with a reflection on how politicians and decision makers in Europe could transform the current negative discourse on third country nationals into a positive narrative. This is followed by an assessment of the expected impact on the European economy if third country workers were not actively contributing in the EU. It then examines some gaps in EU legislation that hinder equal rights to work for third country nationals and the specific impact the proposed EU Seasonal Workers Directive could have. Further articles introduce perspectives from the trade union movement and an NGO advocating for the rights of undocumented workers.

The integration of migrants from non-EU countries (so-called third country nationals) living in Europe is determined to a large extent by their opportunities to actively participate in gainful employment. Despite this, they often face barriers in accessing the European labour market and enjoying equality in the workplace (as well as in the wider society).

Certain EU policies and laws have enabled some progress in terms of access to employment and equal labour rights and conditions for certain third country workers: the Single Permit Directive, for instance, creates a set of rights for non-EU workers legally residing in an EU State; the Long-Term Residence Directive enables third country nationals' future perspectives and legal rights; and the 'Blue Card' Directive simplifies access for highly skilled non-EU workers. Many other policies, both at the EU and national levels, result in effectively restricting third country nationals' access to the EU labour market. This is evident, for instance, by the preferential hiring practices for EU citizens over third country nationals. Moreover, some policies hamper equality in the workplace (with lower wages, lower-skilled jobs, and glass ceiling effects), resulting in disadvantaging migrants from non-EU countries.

Such policies, unfortunately and often unintentionally, contribute to structural discrimination. This is further exacerbated when migrants' previous qualifications attained in their countries of origin are not recognised and when the soft skills migrants possess (bi- or multilingualism, intercultural competence, flexibility, etc.) go unvalued and are not acknowledged. The inability to have previous skills and qualifications attained outside of Europe recognised often results in unemployment and feelings of disempowerment, downward economic mobility, and lower self-esteem. Without this necessary formal recognition, migrants are typically prevented from working in their fields of expertise or from earning a salaried position comparable to their qualifications, commonly referred to as “brain waste”.

Ensuring equal rights for third country workers would be beneficial in terms of realising equality and maximising the positive potential of diversity in the European labour market. But beyond that, it would make economic sense. Migrants are not only needed to sustain European economies; they have long been making valuable economic and social contributions to Europe. The German Bundesbank, for instance, estimated that Germany would need approximately 200,000 migrants more per year to compensate for its ageing population and to support growth. Immigrants in France contributed €12.4 billion to public finances in 2009.
In times of economic downturn, the loss of talents incurred with these policies is especially damaging for Europe, in terms of both economic and social impacts. It is therefore essential to ensure that EU policies in the social, economic and migration fields do not foster structural discrimination, especially in employment. These policies should ensure equal access to the labour market and equality within the workforce for all and in particular for third country nationals and ethnic minorities. In parallel, we also need to encourage employers and trade unions to engage in diversity management policies, whilst also being strongly committed to preventing discrimination in their employment structures. By achieving this, we will ensure well-being for all in a more inclusive, equal and prosperous Europe.

How could politicians put a more positive spin on benefits of equality for third country nationals in the workplace and our society?

By Anna Ludwinek, Research Manager, European Foundation for the Improvement of Living and Working Conditions (Eurofound)

Anna Ludwinek from the European Foundation for the Improvement of Living and Working Conditions (Eurofound) offers a reflection on how politicians and decision makers - at European and national level - can lead the process of transforming the current discourse on third country nationals into a positive narrative on the benefits of equal rights to work for third country nationals in the EU.

Mass migration is one of the more visible consequences of increased globalisation. This trend is unlikely to change in the near and medium term future. Due to its relative political stability, its economic wealth and its developed welfare state, Europe is nowadays an attractive destination for migrants from all over the world. Despite the ongoing economic crisis, it seems that it will continue to attract migrants. At the same time, Europe is facing a significant long term reduction of its indigenous population due to its changing demographic structure. Therefore, with the combination of both trends, European societies will become more and more diverse in terms of nationality, ethnicity, race and religious beliefs of its citizens. This will be accompanied by increased cultural diversity. This challenge is enhanced as there is not only increased diversity between natives and migrants but also increased diversity between different migrant communities along ethnic, religious, racial, cultural, demographic and socio-economic lines.
When we look at the actual numbers, according to the latest figures and projections from Eurostat, the total share of foreign-born population will grow from just over 11% in 2011 to over 17% in 2031 with the most pronounced jump amongst those under 14, where the share will grow from just over 7% to well over 20% in the same period [1]. Worryingly however, even though non-EU citizens have contributed to half of the employment growth in the past five years, the employment levels of migrants are still of concern. The current employment level of third-country nationals stands at 55% (compared to 65% for nationals and 68.3% for other EU nationals). One of the most pronounced effects of the crisis is youth unemployment which also has a strong migration dimension even though it hasn’t been prominent in political debates. Recent research shows that young people with migration backgrounds are 70% more likely to become NEETs (not in employment, education or training) compared to nationals, and the consequences can be devastating not only from an economic point of view. Young people not in employment, education or training are at higher risk of being socially and politically alienated and excluded. They have a lower level of interest and engagement in politics and lower levels of trust.

Increasing diversity is inevitable and requires policies, programmes and activities as a roadmap towards a new integration policy, providing new ways and forms of economic and social integration of migrants. One of the main actors who are shaping the discourse and managing policies are politicians and policy makers - be it at the European, national and local levels. Whilst it is true that the European level has relatively little competence in this area, one could hope for more visionary and forward looking policies. It seems clear that where there is a will one can certainly see the results. One example being the work on anti-discrimination and how European actions have promoted progress at national level. But it is also fair to say that it is the national level that is crucially important. What is new however is the growing importance of the local level.

It is the local level and mainly urban areas that are at the forefront of increasing diversity and the accompanying societal change. Urban areas have been and will be attracting a higher proportion of new migrants than rural areas. At the same time they are facing higher fertility rates of second and third generation migrants.

What are politicians and policy makers doing to change the current political discourse (often dominated by anti-immigrant sentiments) into a more positive narrative? First of all there are certainly drawbacks as to the framework in which politicians, at any level, operate. In contrast to the long-term nature of integration processes, the political process in democratic societies requires short term results: within the period between elections. Politicians need a vision to go beyond these boundaries. Policy makers should at all costs avoid and certainly not be an active part of situations in which a political climate of anti-immigration and anti-immigrant sentiments translates into political movements and a politicisation of immigration and integration, often for short-term political gains. Furthermore, policies are defined

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politically by (majorities of) the receiving society. As mentioned already earlier on, policy makers should take a closer look at the changing fabric and make-up of the diverse society and run politics that address and take this change into account.

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Policy makers should also revisit the various parties they work with in the area of migration. Who is to be defined as relevant actors in policy making? Governmental agencies at the national and local level, but also other institutional actors in civil society at large can be defined as relevant, either as partners in governmental policies (more often at the local level), but also as institutions that have policies themselves: employers’ organisations, trade unions. The latter two being crucial in the world of work.

More concretely there are a number of areas in which policy makers could transform the current discourse into a more positive one. First of all there is clearly a need for more careful wording and labelling in the public domain on migrant status in the receiving society. For example, we are all too familiar with the populist discussions over the abuse of benefits and very little is done to gather and present correct facts and figures.

There is a need for policies and practices of “good governance” of integration policy at national or local level. This should be based on good and early provision of relevant information and analysis, effective mainstreaming and good coordination. Externally it requires engagement into an open partnership, power sharing and opportunities of participation on all levels of government and with all relevant local parties concerned, including migrant organisations and NGOs.

Results of several research reports confirm that the integration of migrants, including labour market participation, is an overarching challenge which covers all major life domains of migrants. It touches on the responsibility of many departments. It is a classical horizontal issue, which calls for an effective mainstreaming within different departments and between various committees.

At local level policy makers should give high priority to the issues of diversity management, non-discrimination and equal opportunities within the remit of their local integration strategies for migrants. In this context they should put a significant emphasis on the provision of access to employment and to adequate employment carriers of migrants in the city administration as well as in public utilities and other companies owned or controlled by the city. Adequate service provision through equal access and a good balance between general provision and targeted measures should be provided.

There is certainly a need for a wider intercultural opening of local and national administrations in order to support better intercultural relations. This should be a specific and integrated part of an overarching diversity strategy. It consists of several parts: (a) employing more staff with migrant background; (b) creating equal carrier opportunities; (c) developing intercultural competences of all staff in employment; (d) intercultural awareness regarding service provision. This can only be achieved if there is a political will, and a strong leadership amongst those at the top that can enforce a long-standing and lasting change.

Finally, the political class would be well advised to mirror a more diverse European population. Much more should be done to first make it possible for migrants to be able to actively participate in the democratic process, to be able to vote in the local, national or European elections, and to be able to have a say and to shape their future in Europe. It should also mean that all European citizens should have equal chances to choose a political career and be leaders for their communities. This is particularly important given that it is
especially young migrants that are growing in numbers. It is also true that these migrants seem to be disengaged and disillusioned with the current system, as indeed young people in general.

Allowing them to fully participate and fulfil their potential for the good of the entire continent would be to the benefit of all. This could not be more appropriate as 2013 has been declared the European Year of Active Citizenship.

[1] According to Eurostat, persons have a foreign background if they themselves or at least one of their parents were born abroad.

How would Europe survive without immigrants?

By Philippe Legrain, economist and author of "Immigrants: Your Country Needs Them"

This article considers what the impact would be for the European economy if there were no third country workers in Europe. Philippe Legrain argues that in an open world, more people will inevitably move across borders, and we should generally welcome them. They do the jobs we can’t or won’t do - and their diversity enriches us all.

Imagine for a moment that Europe had to make do without workers from outside the EU. No American actors. No Brazilian bar staff. No Chinese chefs. No Indian IT workers. No foreign footballers. No non-European doctors, nurses, teachers, engineers, scientists, street sweepers, farmworkers, food preparers, carers, cabdrivers, builders, businesspeople or workers of any kind – none. How would we cope?

Especially at a time of high unemployment, you might think that having fewer foreign workers around would be a good thing. Wouldn’t it mean more jobs for Europeans? No. The belief that there is a fixed number of jobs to go around is a fallacy. Just as the entry of many women into the labour market has not deprived men of jobs, nor do foreigners take jobs off Europeans. Why? Because every foreign (or female) worker doesn’t just take a job, they also create them. They create jobs when they spend their wages – in local shops, for instance. And they create jobs in complementary lines of work. So an American architect and Iraqi interior designer will create jobs for European builders and people who sell building supplies.

Nor, contrary to popular perception, do immigrants depress local wages. Study after study finds that they have little or no negative impact on Europeans’ wages. At the lower end of the pay scale, minimum wages support people’s pay, as do unions and collective-bargaining agreements more generally. Moreover, newcomers and locals rarely compete directly for the same jobs. Few Spanish people want to pick strawberries in the sun, so Moroccan farmhands scarcely affect their earning power. In the construction industry, German builders who have done a domestic apprenticeship, speak fluent German and know the local market well do different tasks that are better paid than those that Russian construction workers do.
Often, newcomers complement the efforts of local workers, enhancing their productivity and their wages. Thus a British nurse may be more productive thanks to the efforts of hard-working Indian doctors and Congolese cleaners. Even when European workers do the same task with the same skillset as foreign ones do – side by side in a factory, for instance – an increase in the labour force tends to stimulate higher investment, supporting productivity and wage levels. As the evidence from around the world marshalled in my book, “Immigrants: Your Country Needs Them”, shows, the fear that immigrants harm local workers’ living standards is scarcely substantiated.

Think instead of the positive contribution that foreigners make. Britain’s National Health Service would collapse without its foreign doctors and nurses. French fruit would go unpicked without seasonal workers from North Africa. Japanese car companies would produce elsewhere if they could not bring in Japanese managers to oversee their factories. Elderly Italians might go uncared for without their Albanian helpers. The City of London would be a local financial centre, not a global one, without bankers and other professionals from around the world. We would all have a much more limited diet without Thai, Lebanese or Mexican restaurants. It is unlikely that Chelsea would have won the Champions League without Côte d’Ivoire’s Didier Drogba – and the competition as a whole would be duller without all the foreign talent on display. Think how much poorer we would all be had Britain denied entry to two Russian physicists, Andre Geim and Konstantin Novoselov, who went on to win a Nobel prize for their discovery at the University of Manchester of graphene, a supermaterial with all sorts of potential industrial uses. Or consider Skype, launched in 2003, when Estonia had yet to join the EU, by a Swede, a Dane and three Estonian software developers.

We underestimate the contribution that immigrants make to our economies, our societies and our culture. Nearly one in ten people in the EU is foreign born and two-thirds of those – 32.4 million people – were born outside the EU. While many of those have now acquired EU citizenship, 20.5 million people in the EU are citizens of non-EU countries. They include more than 2 million Turks, nearly 2 million Moroccans and just over a million Albanians. We would be much worse off without them.

Immigrants fill a vital role in doing the jobs that not enough Europeans can do or want to do. Their efforts often complement those of local people. Their diverse perspectives and experiences help stimulate new ideas and their dynamism helps turn those ideas into new businesses that create new jobs and desirable new products and services for others.

The potential is huge: just look at Silicon Valley, where more than half of recent internet start-ups were co-founded by immigrants, including big names like Google, Yahoo!, eBay and PayPal. Just think how much we could achieve in Europe with our diverse talent base and a bit of Silicon Valley-style entrepreneurial magic. After all, Pierre Omidyar, who went on to found eBay in the United States was born in Paris to Iranian immigrant parents.

The contribution that newcomers and their children will make to Europe is inherently unpredictable. Nobody would have guessed, when he arrived in the United States as a child refugee from the Soviet Union, that Sergey Brin was going to go on to co-found Google.
Asymmetrical Employment Rights for Non-EU Nationals - Addressing the Gaps in the Next Generation of EU Labour Migration Policy

By Katharina Eisele, Researcher at the Centre for European Policy Studies (CEPS), Justice and Home Affairs Section

The asymmetry of rights that third-country nationals are confronted with in the field of employment creates problems of transparency and jeopardises legal certainty, legitimate expectations and access to justice. This contribution explains the different rules and sets of rights concerning access to employment and working conditions of third-country nationals, and provides policy suggestions to address the asymmetry third-country nationals are confronted with in the next generation of EU labour migration policy. [1]

Currently, many EU Member States face economic recessions, and the EU finds itself at a decisive point in time. The Europe 2020 Strategy tackles the economic crisis in that it envisages creating a competitive economy with higher employment levels, such as by establishing a forward-looking, comprehensive and demand-driven EU labour migration policy. This ambitious aim was previously included in the 2009 Stockholm Programme, which defined the priorities for 2010-2014 in the Area of Freedom, Security and Justice (AFSJ).

In reality the picture is more nuanced. There have been few EU policy developments in the last three years apart from the idea of an “EU immigration code”. [2] The EU’s labour immigration law and policy is, as it stands today, inherently fragmented. This fragmentation results in asymmetrical employment rights for third-country nationals (non-EU nationals). The term “asymmetrical” is used in this context to describe the differential treatment of third-country nationals in the field of employment under EU law. The cause for such differential treatment are the different sources of EU law applicable to third-country nationals: first, the EU Directives in the area of legal migration each stipulate specific employment rules for the third-country nationals who fall within their respective scopes. [3] Second, third-country nationals who can rely on specific association and cooperation agreements, such as EEA, Swiss and Turkish nationals, benefit from preferential employment rights. [4] Third, the EU Charter of Fundamental Rights (EU Charter) has introduced a rights’ catalogue largely applicable to everyone.

Employment plays a key role in the integration process of immigrants as recognised by the EU’s common basic principles for immigrant integration policy. Significantly, these principles understand “immigrants” as legally residing third-country nationals to the exclusion of irregular migrants. [5] Research demonstrates that direct and indirect discrimination against migrants in access to employment is a widespread phenomenon constituting a serious impediment to migrants finding work. [6] But the position of migrant workers in the labour
market is vital too. [7] How has the EU equipped (or failed to equip) itself to ensure equal rights and combat discrimination for third-country nationals in matters of employment?

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Unequal access to employment for third-country nationals

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Importantly, EU immigration law only applies to third-country nationals, not to EU nationals. Each of the EU Directives in the field of legal migration sets forth specific rules concerning labour market access for the categories of third-country nationals covered. For instance, the EU Blue Card Directive (that provides for an EU-wide admission scheme for highly qualified workers) requires Blue Card applicants to present a work contract of at least a year, and meet the salary threshold. Holders of a single permit (which combines residence and work permit and guarantees a common set of rights in the EU) are allowed to exercise a specific employment activity in accordance with national law. Significantly, the Member States reserved the right to determine how many third-country nationals may be admitted to their territories. [8] In addition, researchers have a right of entry under the Researchers’ Directive.

EEA, Swiss and Turkish nationals enjoy more favourable employment rights than other third-country nationals on the basis of their nationality. The EEA Agreement concluded by the EU with Iceland, Norway and Liechtenstein in 1992 essentially extends the free movement rights of EU citizens to the nationals of the aforementioned three states. [9] Likewise, Swiss nationals enjoy extensive free movement rights by virtue of – as the name indicates – the EU-Switzerland Agreement on the Free Movement of Persons signed in 1999. [10] As a result, EEA and Swiss nationals may enter, reside and work in an EU Member State.

The Member States may regulate the entry of Turkish nationals as well as the conditions under which they may take up their first employment. Yet, Turkish nationals who are already integrated into the labour force of a Member State can rely on a temporal framework that allows for gradual access to the labour market under the EU-Turkey association law. [11] Notably, the jurisprudence of the Court of Justice of the European Union has clarified the relevant legal provisions, and thereby considerably strengthened the legal position of Turkish nationals in the EU. [12]

Generally speaking, nationals of Algeria, Morocco and Tunisia do not enjoy entry, employment or residence rights on the basis of the respective Euro-Mediterranean Agreements. [13] By contrast, such nationals benefit from equality of treatment in the area of social security, as specified in case law and implementing decisions. [14] Similarly, Israeli nationals (just like Croatian and Macedonian nationals) do not have a right of entry on the basis of the respective association agreement for the purpose of work but they have the right to equal treatment in social security matters. [15]

Thus, although the Treaty of Lisbon safeguards the Member States’ right to determine the number of third-country nationals coming to the EU to seek work, EU law in fact already sets out a framework of standards, rights and principles for third-country nationals relating to access to employment. [16]
Equal treatment for third-country nationals in working conditions

The principle of equal treatment for migrant workers, which places the latter on the same level as national workers, has to be the cornerstone of any migration policy because it prevents social dumping and leads to a decline in discrimination, exploitation and human trafficking. [17]

The EU Directives governing legal migration contain provisions securing equality of treatment with nationals in working conditions, such as the Long-Term Residence Directive [18], the Blue Card Directive [19], the Researchers’ Directive [20], and the Single Permit Directive [21]. In addition, two EU Directives of 2000 enhance the protection against discrimination for all persons: the Employment Equality Framework Directive introduced a general framework for combating discrimination on various grounds, such as disability and age, in the field of employment. The Racial Equality Directive lays down a framework for combating discrimination on the grounds of racial or ethnic origin. Both Directives apply as regards the public and private sectors, in relation to inter alia conditions for access to employment and employment conditions, including dismissals and pay. [22]

Many association agreements concluded by the EU with third countries provide for equal treatment in working conditions, such as the aforementioned agreements but also other agreements, such as the Cotonou Agreement that the EU concluded with the ACP states. [23]

Unlike rules on access to employment, the EU Charter does guarantee the right to equivalent working conditions for third-country nationals. [24] The EU Charter also provides for protection against unjustified dismissal and guarantees the right to fair and just working conditions. [25]

Conclusion and policy suggestions

“A labour immigration policy that concentrates on migrants and their rights would directly benefit migrant workers, improve their position in the Member States’ labour markets, and thereby promote their integration into the host country.”

AFSJ. As this contribution has highlighted, however, the EU policy on labour migration existent today is highly dispersed, as evidenced by the various sources of law that apply to third-country nationals because of their nationality and other criteria, and disregards irregular migrants.

While the Member States have been keen to preserve their competence to determine the number of admitted third-country nationals, there are exceptions under EU association agreements that provide certain third-country nationals with more favourable employment rights. Equality of treatment in working conditions for third-country nationals is now guaranteed by the various legal instruments, including the EU Charter and the anti-discrimination Directives. As a consequence, employment rights under EU law are granted
to third-country nationals in a highly asymmetric fashion. How can this legal fragmentation be overcome for the purpose of creating a common EU labour immigration policy?

The introduction of an EU immigration code as suggested in 2009 by the Commission could ensure the consolidation of the existing EU legislation in the field of labour migration under one umbrella document if certain conditions are met. The code would increase the awareness of the different set of rules making up the EU migration law acquis, make such rules more transparent and thus accessible for migrants, enhance legal certainty and accessibility of rights and remedies for non-EU nationals, and accommodate legitimate expectations. It is crucial though that such a consolidation would not lead to a lowering of the existing standards. It is not clear how the Member States would appraise such an immigration code. In case approval for a binding code could not be achieved, an immigration code of a soft-law nature could alternatively be considered by the Commission. Such a soft-law code would considerably add to the transparency of the EU migration law acquis despite lacking legally binding force. Similar to Directive 2004/38/EC that codified standards and jurisprudence for EU citizens in one document, the soft-law code could serve as a basis for future, more far-reaching action, such as legislative harmonisation at EU level.

Finally, the problems relating to the lack of legal certainty and access to justice could be tackled with an EU labour immigration policy that is migrant-centred and based on fundamental rights and freedoms. For this purpose, the Treaty of Lisbon has created a favourable institutional setting along with adjusted decision-making mechanisms. A labour immigration policy that concentrates on migrants and their rights would directly benefit migrant workers, improve their position in the Member States' labour markets, and thereby promote their integration into the host country.

[1] The author would like to thank Sergio Carrera for helpful comments on this article.


[5] Irregular migrants often find themselves in an extremely vulnerable position, and they are, especially when employed in domestic work, at a high risk of exploitation and abuse, see European Union Agency for Fundamental Rights, “Migrants in an irregular situation employed in domestic work: Fundamental Rights Challenges for the European Union and its Member States” (Luxembourg 2011).


[9] See Article 28 in conjunction with Annex V of the EEA Agreement.

[10] See in particular Articles 1, 3 and 4 of the EU-Switzerland Agreement on the Free Movement of Persons.


[16] See Article 79(5) TFEU.


[22] The EU anti-discrimination Directives apply to third-country nationals but the prohibition of discrimination does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their
access to employment and occupation; nor does the prohibition of discrimination cover any treatment which arises from the legal status of the third-country nationals and stateless persons concerned, see Article 3(2) and Recital 12 of the Employment Equality Framework Directive as well as Article 3(2) and Recital 13 of the Racial Equality Directive.

[23] See Article 28(2) EEA Agreement; Article 7(a) of the EU-Switzerland Agreement on the Free Movement of Persons; Article 10(1) of Decision No 1/80 of the EC-Turkey Association Council of 19 September 1980 on the development of the Association; Article 67 of the Euro-Mediterranean Agreement with Algeria; Articles 64 of the Euro-Mediterranean Agreements with Morocco and Tunisia; Article 13(3) of the Agreement amending the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part (Cotonou Agreement II, OJ L 209, 11.8.2005, p. 27).


Debunking the myths of the EU Seasonal Workers Directive

By Claude Moraes, Member of the European Parliament and Anny Bhan, Parliamentary Assistant

This article focuses on the proposed EU Seasonal Workers Directive, which aims to give seasonal workers from non-EU countries easier access to work permits and to set out basic payment, employment, and social rights to which these workers should be entitled. MEP Claude Moraes, Rapporteur on this draft legislation in the European Parliament, debunks the myths surrounding seasonal workers’ protection and gives insight into the potential impact of the Directive in terms of achieving equal labour rights for these third country workers.

State of play

If adopted, the Seasonal Workers Directive will, for the first time, create a single EU-wide legal route of entry for low-skilled, migrant workers. The Directive is currently being negotiated and all institutions are hopeful that it may be finalised under the current, Irish Presidency of the EU.
This Directive is particularly important as it is a means to tackle the current exploitation of low-skilled migrant workers. We currently have a situation where businesses in the EU have a demand for low-skilled temporary work that is not fully filled by local workers. Yet there is no single legal route of entry into the EU for migrant workers willing to carry out tasks such as agricultural work, to use one example.

The current situation is characterised by an irregular market, fuelled by demand from EU businesses, the exploitation of migrant workers, who are being paid lower wages than local workers, are often living in dire accommodation, are being forced to work in dangerous conditions and have no avenues to seek redress for mistreatment.

Equal Treatment

When work started on this Directive, concerns were raised in some quarters that the directive would simply allow migrant workers to enter the EU and undercut local workers. However, that is quite the opposite of the aim of this Directive.

“We are seeking to ensure that migrant workers are paid the same wages as local workers. Currently, on the irregular market, migrant workers are easily exploited and paid less than local workers. This legislation aims to tackle just that problem. In negotiations, we - on the European Parliament side - are striving to ensure that, whether local or migrant, the principle of equal pay for equal work is applied.

The European Parliament is also pushing further in negotiations to establish, in addition, equal treatment with regard to working conditions, the minimum working age, working hours, the freedom of association and the right to strike, amongst others.

Accommodation

Another concern of many is that the presence of temporary migrant workers will lead to an abundance of makeshift accommodation, such as the poor living conditions that have been witnessed in Rosarno, in Italy, and the contribution it made to social tensions that came to a head in 2008. However, the social impact of poor accommodation on the local community is just one side of the coin. No person, regardless of their immigration status, should be forced to live in makeshift shacks or tents. Furthermore, employers often provide accommodation when hiring seasonal workers - especially when that work is agriculture for example. This brings with it many risks. In some cases the employers automatically deduct the rent from the wages of the employees which makes it particularly difficult if the worker wishes to make a complaint regarding the accommodation, or query the price of the rent.

That is why in this Directive we are fighting to ensure that we have the best possible provisions on accommodation for the worker. Where the accommodation is to be provided by the employer, Parliament is striving to ensure good minimum standards are in place, and that effective checks are in place to ensure that the employer is held responsible should there be a breach of the standards to be laid down. Moreover, if the accommodation is arranged by the employer, the rent should not to be automatically deducted from the seasonal worker’s wages, and it should be proportionate both in relation to the wages paid and in relation to the standard of the accommodation provided.

At the same time, we are insisting that seasonal workers have autonomy from their bosses. We are negotiating provisions to ensure that seasonal workers can always have the option to arrange their own accommodation, so that they are never obliged to accept what is on
offer from their employer.

Sanctions

All of those rights - equal wages, decent accommodation standards, and the right to strike - can only be effectively implemented in practice if they are accompanied by a strong set of sanctions for cases where the Directive is breached. Without a comprehensive set of provisions on sanctions, which do not indirectly jeopardise the rights of workers, the Directive will simply remain a ‘paper tiger’.

We are therefore closely examining the balance to be struck between, on the one hand, holding employers responsible for any breaches of the legislation while, on the other, not making the sanctions so harsh as to punish employers or workers unnecessarily for small - and unintentional - infringements. As the negotiations currently stand, all of the EU institutions appear keen to establish strong sanctions which will be effective, proportionate and dissuasive.

Strict rules should be in place and enforced, but we also have to make sure that the Directive, as a whole, does not actively discourage employers from using it. We are well aware of the risk of rendering the Directive ineffective on implementation through either a lack of sanctions or sanctions which are misplaced or too burdensome. Finding the right balance is therefore an imperative for us.

The way forward

Through this Directive we have an opportunity to tackle the mistreatment of low-skilled, temporary migrant workers and the often inhumane conditions in which they find themselves. Blocking channels of legal migration, such as that to be established by this legislation will only serve a status quo of irregular markets and exploitation of workers.

The reality is that there is a demand from the EU for low-skilled migrant workers but no single legal mechanism by which they can enter the EU. We cannot stifle demand, nor can we fully seal our borders to stop any migrant workers from entering the EU. By ignoring the problem, the balance would remain very much tilted in favour of maximum profits for business and minimum rights for workers, be they local or migrant.

EU migration policy has to shift away from its current focus on discouraging entry into the EU entirely. Preventing migration into the EU is an unrealistic goal and one which - as much of the evidence shows - is not desirable. We need to manage migration, not simply focus on blocking it and ignoring the results of irregular migration. Such an approach only helps traffickers, fuels the irregular market, feeds social tensions and leaves migrants vulnerable to exploitation.

It is high time for policy makers across the EU institutions to push for human rights to be at the core of our migration policy. The further we strengthen the rights of migrant workers and make them equivalent to local workers, the less room we leave for their exploitation and the resultant undercutting of local workers. In that way, we also present businesses with a single legal means by which to meet their needs for seasonal workers.
A trade union perspective on migration and equal rights at work for third country nationals

By Marco Cilento, Adviser on migration issues, European Trade Union Confederation (ETUC)

This article gives the perspective of trade unions on granting equal rights to work for third country nationals, and highlights the role they can play in ensuring greater inclusion of migrants in the labour market.

Migrant workers are first and foremost human beings, to whom equal human and social rights must be ensured to the same extent as those of European citizens, including the right to free and fair mobility and to equal treatment in the workplace. This is the key message on which European trade unions have unanimously agreed in a recent position adopted by the European Trade Union Confederation.

The issue of equal treatment is central to the trade union movement. It is a complex challenge, as the principle of equal treatment must be mainstreamed within the different aspects of the working life of third-country nationals.

The implementation of a free movement area for EU citizens has shown how difficult it is to put the equal treatment principle at the centre of EU legislation. A lot remains to be done, but nowadays EU citizens who settle in another country to work are “mobile” workers with a well-defined and enforced set of rights. This is a Europe of opportunities.

Just like EU citizens, third country nationals emigrate to achieve certain goals in life. Their migration project might be temporary or permanent but in either case Europe is not always a land of opportunities. When they arrive in Europe they can still suffer from different forms of discrimination, the extent of which can vary from one country to another.

“Even if resistance to change is a natural reaction among citizens, xenophobic political forces have used this sentiment to encourage a false image of how migration impacts on their own communities.”

Despite the resistance of Member States to give way to the EU institutions, a common policy is still desirable. It is desirable not only for enhancing trust among countries joining the Schengen area or for continuing the utilitarian approach followed so far. From a trade union point of view, we Europeans share a common responsibility for ensuring that third-country workers do not become a reserve of cheap labour for European enterprises.

The EU2020 strategy, when stressing the contribution of migrants to the EU economy, recognizes the vulnerable position of migrants in the labour market. Calling for the effective integration of migrants, the flagship initiative Fight Against Poverty acknowledges that third-country nationals are often underemployed and close to the edge of poverty.
Equal treatment is primarily a question of rights

The current European acquis, driven by a predetermined temporariness and selectivity of newcomers, does not help in fully implementing equal treatment of third-country nationals in the labour market and in the workplace. Experience shows that the shorter the permit to stay and work, the lower the chances for migrants to see their rights recognized and respected.

The emphasis on temporariness and circularity is misplaced. Coherence must be restored between the indications shown in demographic/labour market predictions and migration policies. The aggregate projection shows a stable but ageing EU population. It will exacerbate the effects on the total dependency ratio, which in many parts of Europe will soon reach one ‘dependent person’ for every two active workers [1].

Moreover, the evolution of the EU’s demography has a strong regional connotation. Demographic studies show that the European regions with a sustained decline rate [2] will probably need more stable and integrated migration, while overpopulated regions will be more orientated towards policies for attracting migrants.

A common EU policy should be designed that offers a wide range of instruments to suit different policy options, including harmonized legal frameworks for stable migration.

Another recurrent demographic argument is that the population group aged 24-44 years will shrink by 15%, a general trend which is assumed to be irreversible for the next three decades. This is the population group estimated to have a higher level of education but which cannot provide sufficient supply to the more dynamic labour market area [3].

A valuable combination of hard and soft skills, that actually matches the needs of European businesses, can only be found through work experience and participation in the local labour market. The race for skills can be better attained through the improved integration of migrants in the labour market.

Skills’ matching represents a key shortcoming in the labour market. In Europe 1.5 job vacancies in 100 remain unfilled even in a time of soaring unemployment. If the aim is to create a real European labour market, restraining the intra-EU mobility of third-country nationals can represent a limiting factor and runs the risk of preventing 24 million migrants (when deprived of long-term residence status) from exercising free movement.

The EU legislation should take the issue of equal treatment more seriously. Migrants too often suffer from discrimination and overexposure to abuses and exploitation, even in our civilised Europe. A few examples can show how disruptive it is to deviate from the equal treatment principle.

In Europe, highly-skilled migration does not necessarily result in highly-skilled jobs. Furthermore, indicators show that third country nationals tend to earn less than native-born with the same level of qualifications [4].

In addition, different forms of direct and indirect discrimination become an obstacle that hinders family members (especially children) from participating in educational or vocational training paths, thus putting this part of the population at a disadvantage compared to the native one.
While the better enforcement of EU legislation will help to remove a wide range of discriminatory factors, the EU Charter of Fundamental Rights should be used more effectively to enlarge the sphere of rights granted to migrants as individuals regardless of the nationality they hold.

The opposite of equal treatment can be seen in the condition of undocumented migrants. Many third-country nationals get into irregular situations after having already settled in the territory of a Member State. They are driven into irregular situations because of the lack of opportunities stemming from different forms of discrimination. National legal frameworks do not permit migrants who have become unemployed to have access to the labour market, to benefit from the services they have paid for, to use welfare nets they have contributed to. Employers too often attempt to take advantage of people in need and force migrants to work illegally. It is unacceptable that the more vulnerable party – the migrant worker – is made responsible for the irregularities of the job relationship in the same way as the employer and that he/she is expelled from EU territory, without giving him/her the time or the opportunity to find another job.

Furthermore, it is unrealistic to think, as envisaged in the EU Pact for Asylum and Migration, that the presence of undocumented migrants on EU territory can be tackled through forced returns only. A new direction is needed in the Common Migration Policy with the aim of exploring possible European framework-setting criteria for the regularisation of or the granting of amnesties to undocumented migrants. But equal treatment is also a matter of integration. Being “equal” is a precondition for integration and not its result.

“Collective bargaining can provide new solutions to enhance the rights of non-national workers in the workplace.”

A large immigrant presence brings changes to the socio-economic environment of the hosting community. In several Member States, the foreign-born population is close to or above 10% of the total population and even this level triggers relevant societal changes that each community must be able to accept and manage.

Even if resistance to change is a natural reaction among citizens, xenophobic political forces have used this sentiment to encourage a false image of how migration impacts on their own communities. A feeling of unrest towards migrants is also sometimes visible in the workplace.

Trade unions want to make a strong contribution to taking concrete steps to improve the ability of migrants to integrate. Trade unions as grassroots organizations are better placed to notice change and to represent it at the institutional level. For trade unions this represents both a responsibility and an opportunity.

Trade union activism, from simple membership to active participation in the life of the organization, represents a concrete step toward a greater inclusion of migrants in the hosting communities. Best practices are recorded throughout Europe that bear witness to the efforts made by trade unions to provide assistance and support to migrant workers. Shop stewards have been trained to approach migrants in the workplace and to gain their confidence, and at the same time migrants have become trade unionists and have been elected onto the political bodies of unions in many countries. There are several examples of collective bargaining having evolved in a way that provides responses to migrant needs. Some unions have developed networks to provide services and assistance tailored to the needs of migrants.
To sum up, it is time for Europe to ensure fully-fledged equal treatment to the 32 million workers who work in a country of which they are not nationals. It is a complex challenge that includes defining rights and enforcing them, active policies that are coherent with the EU socioeconomic outlook and integration paths which start with the labour market and expand into all aspects of migrants’ lives. Trade unions must actively contribute too. Collective bargaining can provide new solutions to enhance the rights of non-national workers in the workplace. Trade union services should be better adapted to a changing society in which the existence of an increasing number of foreign workers and their families creates new demands that will need to be met.

[1] Projections from EUROPOP and OECD.

[2] 98 regions are supposed to decline by 6% or more, while 183 are estimate to grow in terms of population. A scenario with zero net migration will mean a decline of population in almost all Regions of Europe (EUROPOP).

[3] The EU2020 assumption that “16 million more jobs will require high qualifications, while the demand for low skills will drop by 12 million jobs” is not coherent with other international statistic sources (ex. OECD and IOM Linet analysis) that, even with a raising labour demand for highly skilled workers, recognize that in the last decades labour demands for very low skilled jobs has quickly increased producing a sharp polarization in the labour market.

[4] Results from the LINET IOM Network.

The case for equal labour rights for undocumented migrant workers

By Pablo Rojas Coppari, Strategic Advocacy Officer, Migrant Rights Centre Ireland (MRCI)

Irregular migration is a phenomenon affecting all Western countries. A significant amount of irregular migrants become so as a consequence of poorly-devised labour market and migration policies. Such policies do not take into account the realities of the market, in particular the demand for essential skills and the difficulties in supplying these from within the internal market – even when this spans across several countries as is the case in the European Union.
Undocumented migrants have a high level of participation in the labour market and as such irregular migration should be seen as an issue of mismanaged labour migration which is deeply embedded in most Western economies. Irregular migrants suffer from a high-level of social exclusion and lack of visibility. This, coupled with the lack of legal protection in several areas, makes it increasingly more difficult for them to access fundamental rights such as healthcare, education, shelter and employment rights. Children of irregular migrants are particularly vulnerable due to the irregular status and lack of corresponding rights.

Granting equal employment rights can help alleviate some of the difficulties experienced by this category of migrants, yet governments tend to be fiercely opposed to the idea. They argue that granting rights to undocumented migrants serves as a pull factor. Yet, there is no evidence to back this argument.

What we do know is that limiting the labour rights of one group of workers can prove very disruptive to the labour market, and has a potential to worsen standards for the entire workforce, including the indigenous population. Granting equal rights to undocumented migrants helps regulate the imbalances of the labour market, and as such should be considered as an effective measure.

Ireland – A case in point

The Migrant Rights Centre Ireland (MRCI) has always worked to improve labour standards for all migrants, including irregular migrants. As such, we have focused on the most vulnerable sectors of employment such as agricultural work, domestic work and restaurant work. Due to the unregulated nature of these sectors, and the lack of unionisation of their workers, labour exploitation is more prevalent, as well as the phenomena of irregular migration and trafficking for forced labour.

MRCI has a long-standing record of advocating on behalf of exploited migrants, regardless of their legal status. This has been done through different advocacy strategies such as formal and informal mediation, and litigation in the employment courts. MRCI has been successful in recouping substantial monies in wages owed for migrant workers and while doing this, has raised the standards of employment in the aforementioned sectors as well as setting legal precedent.

From as early as 2003, MRCI has taken cases to the employment tribunals on behalf of undocumented migrants, and the Rights Commissioners have vindicated their entitlements under the different employment laws in spite of their lack of legal status. The idea was that even in the absence of a valid employment permit, the employer-employee relationship was still existent and therefore, our employment standards should be upheld.

This progressive position of the Labour Court allowed for exploitative employers to be punished and sent a strong message to other employers that the State would not tolerate
such exploitation. This, in turn, helped set standards which benefited other employers. It also helped MRCI in advocating for a regularisation mechanism for exploited workers who were rendered undocumented as a consequence of exploitation. This regularisation mechanism is still in place and has benefited thousands of undocumented workers. It is also expected to feature in the forthcoming Immigration, Residency and Protection Bill.

But all these achievements have been jeopardised and put on hold since the High Court Ruling in the Case of Amjad Hussein -v- The Labour Court and Mohammad Younis [2012] No. 194 J.R.in September 2012. The case concerned Amjad Hussein, trading as Poppadom Restaurant, challenging a decision of the Labour Court with respect to Mohammad Younis, who was awarded €92,000 for breaches of employment law.

Mohammed Younis entered Ireland on a Work Permit in 2002 to work as a chef at the Poppadom Restaurant. His work permit expired in 2003. The legal responsibility for renewing the Work Permit under the Employment Permit Act, 2003 rested with the employer, Amjad Hussein. The failure to renew the Permit rendered Mohammed undocumented in the State. For many years, Mohammed Younis was paid well below the minimum wage, 55 cent per hour. He worked extremely long hours (77 hours per week) with no day off. He was subjected to threats and severe exploitation amounting to modern day slavery. Due to the chronic treatment that Mr Younis suffered the MRCI identified him as a victim of trafficking for forced labour, but the Irish authorities failed to do so.

In the High Court decision Justice Hogan found that Mr Younis was “… the victim of the most appalling exploitation…” but his employment contract was “substantially illegal” so that it left him with no recourse under Irish Employment Law. He stated “there must be some concern that this legislation will produce consequences which were not foreseen or envisaged. Specifically it may not have been intended by the Oireachtas that undocumented migrant workers should be effectively deprived of the benefit of all employment legislation by virtue of his illegal status…” Judge Hogan, therefore, quashed the Labour Courts’ decision but in doing so, chose to submit his ruling to the Oireachtas (the Irish Parliament) for its consideration on the matter.

This is an issue of concern

The High Court has acknowledged that Mr Younis was a victim of severe labour exploitation but that due to his lack of legal status he was unable to claim the compensation that he would otherwise have been entitled to. It has done so by highlighting so-called “illegality of contract”. Mr Younis and his legal team will be appealing this judgement to the Supreme Court. The impact of the judgement has been far reaching for many vulnerable workers.

Some employers are using the High Court decision as a defence to avoid paying out money they owe to workers under Labour court decisions. Cases waiting to be heard in the employment courts have been adjourned indefinitely pending clarification on the matter. All of the estimated 30,000 undocumented workers in Ireland (of which the majority are workers) no longer have recourse to legal routes to vindicate their employment rights. It is now hard to mediate on their behalf, since employers know they have very little to fear.
MRCI has noted an increased number of undocumented workers who are being laid off without reason, despite having worked for their employer for many years and having paid their taxes. They are not granted any redundancy benefit as their employers are quoting the Younis judgement to ‘get out’ of paying the working what they are entitled to.

**Why and how to remedy this?**

A successful appeal to the Supreme Court will vindicate Mr Younis’ search for justice but it is a lengthy process that can take years. The Government has an obligation to amend our current legislation to allow for all breaches of employment legislation to be remedied regardless of legal status in accordance to our international obligation laid out by the International Covenant on Economic, Social and Cultural Rights, the International Convention for the Protection of the Rights of All Migrant Workers and the ILO-Convention No. 143.

There are two significant opportunities that could remedy this situation for other workers. The Employment Permit Legislation is currently being reformed and a provision can be inserted here to close off the loophole that has emerged due to the High Court case. Likewise, the Workplace Relations Bill which will reform the employment structures should include a provision that reasserts workers’ rights to legal redress regardless of their legal status.

Undocumented migrants have a high level of participation in the labour market and as such irregular migration should be seen as an issue of mismanaged labour migration which is deeply embedded in most Western economies.

It is critical that the Government take these steps as if irregular migrants have no remedy against exploitation, the standards of employment for all workers will be eroded. Restricted employment rights push workers into poverty which in its turn creates social problems which cannot be ignored by the Government. It means people have more difficulties accessing basic services such as healthcare and children are being forced to live in dire conditions. These are overall issues of social unease which can have a contagion effect.

It is also an issue of concern for us who access services provided by undocumented migrants, whether knowingly or not. We cannot choose to ignore the labour rights of the people cooking our food, cleaning our buildings and minding our children.

Legislating for equal employment rights is a response to a shortcoming in legislation that has serious implications for the overall society. It shows maturity and sends a strong message that exploitation is not to be tolerated and that it does not go unpunished. Access to justice and redress coupled with pathways to regularisation mechanisms represent a pragmatic response to the changing demands of our labour market.