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# **Review of the Implementation of OSCE Commitments related to migration by OSCE participating States**

## **Session II**

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# **Review of the Implementation of OSCE Commitments related to migration by OSCE participating States Session II**

**A Report prepared by the International Labour Office for the Organization for Security and Cooperation in Europe, for the 17<sup>th</sup> Economic and Environmental Forum, Athens, May 2009.**

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# I. Introduction: strengthening migration governance

## 1. Introduction

The theme of the 17<sup>th</sup> OSCE Economic and Environmental Forum is “Migration management and its linkages with economic, social and environmental policies to the benefit of stability and security of the OSCE region”. OSCE participating States, since the adoption of the Helsinki Final Act in 1975, have agreed on a substantial number of commitments in regard to migrants and migration. In part they cover new ground, in many instances there are calls to follow up on commitments made in other contexts such as the United Nations. In the OSCE Permanent Council Decision No. 857 regarding the 17<sup>th</sup> Economic and Environmental Forum of July 2008, the OSCE participating States agreed to review the OSCE commitments related to migration and to discuss the review in the 17<sup>th</sup> OSCE Economic and Environmental Forum. This would allow the states to recall the full picture of the commitments and developments during this period, and to understand them as a tool to cope with the current and future challenges.

This review of the OSCE Commitments on migration takes place as international migration becomes an increasingly important economic, social and political feature across the OSCE area. The background study included as a part of this review shows that, as of 2005, the countries of the OSCE were home to about 115 million *international migrants*, meaning persons living outside their country of birth or citizenship for at least one year. This is 9.5 percent of the population of OSCE countries and thus a sizeable presence.

Several millions more would be involved at any given time in seasonal or temporary migration programmes, or as students or temporary business transfers. Especially of note is that most of the working age adult migrants in this population -- are economically active, employed, self-employed or otherwise engaged in remunerative activities. Thus the proportion of foreign born in national workforces is even higher than the proportion of foreign born in the population as a whole.

The size, composition and direction of migration flows within and into the OSCE area have evolved considerably and in unforeseen ways since 1975, when the Helsinki Final Act was adopted and the first commitments on migration agreed upon. However, as migration features have evolved, the CSCE/OSCE process continued to give attention to it and participating States consistently expanded on their commitments to deliberately address migration.

## 2. Development of OSCE commitments on migration

The Helsinki Final Act<sup>2</sup> elaborated on economic and social aspects of labour migration. Asserting substantial growth in labour migration, in Part II, Title 3.1.11, the Act suggests a bilateral approach to dealing with the problems associated with migration. Collaboration between destination and origin countries should ensure orderly migration, protection of personal and social welfare, recruitment and provision of elementary language and vocational training. The document further mentions the need to ensure equality of rights between migrant workers and nationals of the host countries with regard to conditions of employment and work and to social security as well as the need to ensure satisfactory conditions, particularly housing conditions for migrant workers.

Further aspects mentioned concern equality of opportunity with regard to finding suitable employment in the event of unemployment; favouring the provision of vocational training to migrant workers and, as far as possible, free instruction in the language of the host country, in the framework of migrant workers' employment. Migrant workers should receive regular information in their own language on both their country of origin and the host country. Their children should have access to the education usually given there, under the same conditions as the children of that country and be permitted to receive supplementary education in their own language, national culture, history and geography. Family reunification should be facilitated as far as possible.

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<sup>2</sup> Final Act of the Conference on Security and Co-operation in Europe, Helsinki 1975

The document stressed the potential positive effect of return of migrants, who, after having acquired skills abroad, were moving back to their country of origin and suggested to facilitate the reintegration of returning migrants by the development of appropriate employment possibilities.

In order to facilitate travel for personal or professional reasons, the states agreed to gradually simplify and to flexibly administer the procedures for exit and entry, to ease regulations concerning movement of citizens from the other participating states in their territory and to gradually lower the fees for visas and official travel documents. The provision of consular services should be improved through appropriate conventions or agreements of understanding. Finally, the document reiterated that respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, apply to all without distinction as to race, sex, language or religion.

The conclusions and suggestions regarding migration are embedded in the chapter on economic cooperation. Migration thus is not being debated primarily with regard to human rights but as a factor of economic cooperation and development. The later documents do not focus on the economic aspect on migration as strongly as the Helsinki Final Act did but put a greater emphasis on the Human Dimension of Migration.

These commitments were reinforced in the Concluding Document of the Second Follow-up Meeting in Madrid in 1983.<sup>3</sup> Specific attention was laid on an intensified cooperation of the host countries and countries of origin to further improve the general situation of migrant workers and their families, in particular with regard to the special problems of the children of migrants. Again, the issue of language teaching in the mother tongue was addressed: “[The participating States] will also endeavour to provide or promote, where reasonable demand exists, adequate teaching of the language and culture of the countries of origin.”<sup>4</sup>

Further provisions concern the facilitation of the social and economic reintegration of returning labour migrants, the payment of pensions, the facilitation of regular family contacts, and family reunification. Where necessary, fees – including visa or passport fees – charged in connection with applications for family meetings or family reunification should be reduced.

The “Concluding Document of Vienna – the Third Follow Up Meeting”<sup>5</sup> of 1989 contains provisions regarding protection against discrimination based on language, religion, national origin and others as well as regarding cooperation between host countries and countries of origin to improve the conditions of migrant workers and their families legally residing in the host countries. The provisions reiterate the statements of the Madrid Meeting 1983 with a strong focus on ensuring the effective equality of opportunity between children of migrant workers and children of own nationals regarding access to all levels of education. In this context states are encouraged to facilitate supplementary teaching in the mother tongue of the children of migrant workers. Regarding the facilitation of travel for family reasons, states are encouraged to conclude agreements for issuing of multiple entry visa to facilitate circular migration.

A series of follow-up documents<sup>6</sup> reiterated the OSCE’s commitments in the field of antidiscrimination and with regard to the protection and promotion of the rights of migrant workers. They reaffirmed the commitment of the OSCE to the fostering of free movement and contact among the citizens of the participating States, in particular with regard to easing visa regulations and

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<sup>3</sup> Concluding Document of the Madrid Meeting 1980 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, held on the Basis of the Provisions of the Final Act Relating to the Follow-Up of the Conference, Madrid, 183.

<sup>4</sup> Madrid Document, Para 6, Economic and Social Aspects of Migration.

<sup>5</sup> Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, held on the Basis of the Provisions of the Final Act Relating to the Follow-Up of the Conference, Vienna 1989.

<sup>6</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990; Charter of Paris for a New Europe, 1990; Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991; Concluding Document of Helsinki – The Fourth Follow-Up-Meeting, 1992; Document of the Third Meeting of the CSCE Council, Stockholm, 1992; Document of the Fourth Meeting of the CSCE Council, Rome, 1993; Concluding Document of Budapest, 1994; Lisbon Document, 1996; Istanbul Document, 1999

implementing fast and fair visa procedures. With regard to integration the documents encourage the participating States to offer migrants measures to familiarize them with the languages and social life of the respective countries and to allow them to express freely their ethnic, cultural, religious and linguistic characteristics as long as they are consistent with the law and international standards.

Since the Document of the Third Meeting of the CSCE Council in Stockholm (1992)<sup>7</sup> the documents express particular concern at mass migratory movements in the CSCE region due to war, armed conflict, civil strife and human rights violations like “ethnic cleansing” or mass deportations, which characterised the Balkan wars and armed conflicts in the CIS countries in the 1990s. Thus the documents of the 1990s focus on involuntary migration and refugee tragedies while labour migration issues receded into the background.

In its Decision No.2/05 “Migration” of December 6, 2005,<sup>8</sup> the OSCE Ministerial Council passed the last major document on migration. Acknowledging the increasing importance and diversity of migration and its transnational character, the document asks for increased cooperation at the national, regional and international level. The document stresses the need for all States to adopt effective national frameworks to manage migration and points out the economic, social and human effects on both host countries and countries of origin. Integration policies including respect for cultural and religious diversity and the promotion and protection of human rights and fundamental freedoms are depicted as a factor to promote stability and societal cohesion. According to the document, ‘illegal’ migration should be fought and its root causes addressed. The document welcomes the cooperation between the OSCE, the Office for Democratic Institutions and Human Rights (ODIHR), the Office of the Co-ordinator of OSCE Economic and Environmental Activities (OCEEA) and other international organisations and asks the Secretary General and all relevant OSCE institutions to continue their work on migration issues.

The OSCE Ministerial Statement on Migration made in Brussels in December 2006 (MC.DOC/6/06) reinforced the attention of participating States to fulfilling commitments and to carrying out the 2005 Decision. This consensus document called for the OSCE to facilitate, within its comprehensive approach to security: dialogue, partnership and cooperation between its participating States and the Mediterranean Partners on migration-related issues. This Statement also acknowledged the OSCE-IOM-ILO *Handbook on Establishing Labour Migration Policies* to be an effective tool for capacity-building in labour migration management.

### 3. Highlights of OSCE commitments

The OSCE commitments on migration are directed at fulfilling the commonly agreed policy objectives of protecting the migrant non-citizens on their territory as well as their citizens abroad, optimising the benefits of migration and mitigating its adverse impact in both the countries of origin and of destination and fostering international cooperation. The OSCE participating States comprise destination, origin and transit countries or a mixture of these.

With respect to **protecting migrant workers**, the main commitments are to:

- protect and promote their fundamental human rights, including economic, social and cultural rights, and their social welfare, including their living conditions;<sup>9</sup>
- condemn discrimination on the ground of race, colour and ethnic origin, and prevent intolerance and xenophobia against migrant workers;<sup>10</sup>

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<sup>7</sup> Document of the Third Meeting of the CSCE Council, Stockholm, 1992

<sup>8</sup> Decision No.2/05 “Migration”, December 6, 2005, MC.DEC/2/05, Ljubljana.

<sup>9</sup> See the Helsinki Final Act 1975, the Madrid Document 1983, the Copenhagen Document 1990, the Charter of Paris for a New Europe 1990, the Moscow Document 1991, and the Vienna Document 1989.

<sup>10</sup> See the Moscow Document 1991, the Budapest Document 1994, the Ministerial Council Decision No. 4/03 on Tolerance and Non-Discrimination, and the Permanent Council Decision No. 621 on Tolerance and the Fight against Racism, Xenophobia and Discrimination, annexed to the Ministerial Council Decision No. 12/04 on Tolerance and Non-discrimination.

- ensure equality of rights of legally residing migrant workers with the nationals of the host countries with regard to conditions of employment and work and to social security;<sup>11</sup>
- promote equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for legally residing and working migrant workers;<sup>12</sup>
- facilitate the reuniting and regular contacts of legally residing migrant workers with their families.<sup>13</sup>

Moreover, specific commitments have also been made to ensure effective equality of opportunity between the children of migrant workers and children of nationals regarding access to all forms and all levels of education.<sup>14</sup>

In terms of optimising the **benefits of migration** and meeting the needs for labour skills in both origin and destination countries, the commitments are principally directed to

- comply with the international agreements to which they are parties;<sup>15</sup>
- consider adhering to relevant multilateral instruments as well as concluding additional agreements in order to improve the consular, legal and medical assistance for migrants;<sup>16</sup>
- adopting effective national frameworks in order to manage migration;<sup>17</sup>
- ease regulations concerning the movement of citizens from the other participant States in their territory, with due regard to security requirements.<sup>18</sup>
- creating conditions to foster integration and greater harmony in relations between migrant workers and the rest of the society in which they reside, including by raising awareness about the enriching contribution of migrants to society and by enabling migrant workers to participate in the life of the society where they lawfully reside;<sup>19</sup>
- providing elementary language and vocational training for migrant workers;<sup>20</sup>
- facilitating the social and economic reintegration of returning labour migrants in their countries of origin, for instance by attracting their savings with a view to increasing opportunities for employment or by ensuring with appropriate legislative means or reciprocal agreements the payment of pensions;<sup>21</sup>
- fighting ‘illegal’ migration and addressing its root causes;<sup>22</sup>
- increase the possibilities of employment in countries of origin, for instance by developing economic co-operation suitable to both host and origin countries.<sup>23</sup>

In addition, a number of commitments encourage **bilateral and multilateral cooperation** by urging the participant States to:

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<sup>11</sup> See the Helsinki Final Act 1975.

<sup>12</sup> See the Helsinki Document 1992.

<sup>13</sup> See the Helsinki Final Act 1975, the Madrid Document 1983, and the Vienna Document 1989.

<sup>14</sup> See the Helsinki Final Act of 1975 and the Vienna Document of 1989.

<sup>15</sup> See the Helsinki Final Act 1975.

<sup>16</sup> See the Vienna Document 1989 item (23).

<sup>17</sup> See the Ministerial Council Decision No. 2/05 on Migration.

<sup>18</sup> See the Helsinki Final Act 1975.

<sup>19</sup> See the Moscow Document of 1991, the Helsinki Document 1992, the Budapest Document 1994, the Ministerial Council Decision No. 4/03 on Tolerance and Non-Discrimination, and the Permanent Council Decision No. 621 on Tolerance and the Fight against Racism, Xenophobia and Discrimination, annexed to the Ministerial Council Decision No. 12/04 on Tolerance and Non-discrimination.

<sup>20</sup> See the Helsinki Final Act 1975 and the Madrid Document 1983.

<sup>21</sup> See the Helsinki Final Act 1975, the Madrid Document 1983 and the Vienna Document 1989.

<sup>22</sup> *idem*

<sup>23</sup> See the Helsinki Final Act 1975.

- ensure orderly movements of workers through collaborations between host and origin countries;<sup>24</sup>
- deal jointly with the problems arising from the migration of workers;<sup>25</sup>
- cooperate to further improve the general situation of migrant workers and their families.<sup>26</sup>

Furthermore, the 13th Ministerial Council encouraged the OSCE itself to contribute by “facilitating dialogue and co-operation between participating States, including countries of origin, transit and destination in the OSCE area” and by “assisting the participating States ... to develop effective migration policies and to implement their relevant OSCE commitments.”<sup>27</sup>

These commitments apply to origin, destination and transit countries as appropriate.

#### **4. Reference to legal and policy frameworks for migration regulation and governance**

Certain commitments urge participant States to comply with international agreements to which they are parties and to consider adhering to relevant multilateral instruments. The Ministerial Council Decision of 2005 proposes that participant States adopt effective national frameworks in order to manage migration,<sup>28</sup> the challenge being to manage migration for the benefit of countries of origin, destination and transit, as well as of migrants and their families.

Such a framework could be derived from a “comprehensive and co-ordinated policy approach which attempts to tackle all dimensions of the phenomenon”, engaging “not merely the participation of governments, but also the social partners and civil society” (OSCE/IOM/ILO 2006, 164-165), which has also been recommended by the Global Commission on International Migration (GCIM 2005, 35).

Specifically, policy statements on migration need to be placed within the context of an overall labour and employment strategy with appropriate interaction with other development policies such as education, foreign affairs, trade and investment. Such a policy should also be sufficiently flexible to respond to the changing dynamics of the labour migration phenomenon and, given the transnational nature of labour migration, it should be firmly rooted in bilateral, regional and multilateral mechanisms, which inform and supplement national approaches (OSCE/IOM/ILO 2006, 23-24).

In the light of the core OSCE commitments on migration the main areas of policy concern for governments and stakeholder partners (e.g. employment agencies, employers’ organisations, workers’ organisations, civil society bodies and migrants themselves) are:

- setting legal foundations based on relevant international norms;
- establishing an explicit policy framework through stakeholder consultations;
- establishing regular migration channels;
- building knowledge and institutional capacity;
- regulating the labour market efficiently;
- ensuring protection of human and labour rights;
- addressing social welfare (i.e. health, education, housing, social security etc.) and integration and social cohesion;
- optimising development impact;
- preventing irregular migration
- facilitating circulation, return and reintegration.

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<sup>24</sup> See the Helsinki Final Act 1975.

<sup>25</sup> See the Helsinki Final Act 1975.

<sup>26</sup> See the Madrid Document 1983.

<sup>27</sup> Ministerial Council Decision No. 2/05 on Migration.

<sup>28</sup> Ministerial Council Decision No. 2/05 on Migration.

These areas of policy concern at the same time also reflect the guidelines for policy and practice highlighted in the ILO Multilateral Framework on Migration agreed in 2006.<sup>29</sup>

## 5. Observations on the evolution of commitments

A full list of the verbatim commitments related to migration and migrants is provided in Annex 1 below. Reviewing it a number of observations become evident.

A thematic and chronological ordering of the commitments shows that a number of specific concerns have been addressed, as has a broad concern with the protection of migrant workers against curtailment of their economic, social and cultural rights. This has largely extended to their families. The ordering also shows that when the cold war ended, the concerns shifted towards acknowledging that immigration had led to settlement and migrant workers needed to be protected against discrimination and racist violence. A degree of expectation on migrant workers to assimilate became evident, although at first without clarity on the distinctions between assimilation and integration.

Initially there was a concern for the situation of workers presumed to be abroad temporarily. This remained predominant until the late 1980s. Renewed attention to these issues may be warranted given that similar movements have been occurring in and between OSCE countries in the past decade, and considering also that participating States have been instituting new legislation aimed at satisfying labour needs through short-term stays.

The limitation of protections and concerns to migrants with legal residence was first made in 1989 and maintained since. Complementary provisions taking into account the fact that migrants without legal authorization have been accruing long periods of stay and a degree of protection under Human Rights provisions, especially in Council of Europe Member States, remain, as it were, hidden in the “human dimension”. The OSCE, jointly with specialist international organisations, might make an effort to offer participating States more comprehensive support and, perhaps, suggestions for practicable solutions in this area. Such solutions would address remedying or regularizing the situation of migrants without authorization who are contributing to host communities and cannot reasonably be expelled.

The connection between migration and development fell into abeyance together with the return topic, at the end of the 1980s. Development was acknowledged as a means to enhance the potential of origin countries to reabsorb returning migrant workers and their families. However, while there was some recognition of the contributions migration makes to destination country economic development and well-being, the contributions migration makes to origin country economic and social development as well as to political stability were overlooked.

From about 1989, the wording of commitments has been somewhat more confident, especially concerning the issues and aims. This is not usually matched by equally confident wording of the means or by an increase in the frequency of suggesting the means that might be useful in achieving the ends.

Interestingly there is little on actual movement across borders. There was a commitment to orderly movement, in 1975, and not to obstruct family unification, but it might have been expected the OSCE participating States would see fit to find some common ground especially on international migration between them but perhaps also from outside the OSCE area.

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<sup>29</sup> Towards a fair deal for migrant workers in the global economy: Report VI, International Labour Conference, 92<sup>nd</sup> Session 2004. Geneva: ILO.

## **II. Meeting the Challenges: A summary of the key dynamics of migration in the OSCE region**

### **1. Determinants of Labour Migration in the OSCE Region**

#### **a) Presence, role and distribution of migrants in destination countries**

As of 2005, the countries of the OSCE were home to about 115 million migrants, i.e. persons born in another country. This is 9.5 percent of the population of OSCE countries and thus a sizeable presence. More than one third of all migrants, 44.5 million, were residing in Canada and the U.S., another 39 million in the EU-15 countries of 1995 and the four European Free Trade Association (EFTA) countries, approximately 26 million in the CIS-countries, about 3 million in the 12 newer EU member countries, i.e. those that joined in 2004 and 2007, and less than 3 million in other OSCE participating States. Consequently, migrants made up more than 13 percent of the population of Canada and the U.S., about 10 percent in the EU-15 and EFTA countries, about 9 percent in the CIS countries, and about 3 percent, both, in the newer EU member countries and in other OSCE participating countries.<sup>30</sup>

Within each of these country groups population shares varied again. In the U.S., in 2003, immigrants made up about 12 percent of the population while in Canada, in 2006, they accounted for about 20 percent of the total population, i.e. one in five, the highest proportion of immigrants recorded in Canada in 75 years. According to UN data, shares within the 15 European Union member countries of 1995, in 2005, varied between about 3 percent in Finland and about 15 percent in Austria with Luxemburg exceeding that by far and reaching about 37 percent. The four EFTA countries had shares between about 7 percent in Norway and about 23 percent in Switzerland. In the newer EU member countries they were between less than 1 percent in Romania and close to 9 percent in Slovenia with Cyprus, Estonia and Latvia ranging between about 14 and about 20 percent. In the CIS the range extended from about 2 percent in Azerbaijan to about 17 percent in Kazakhstan, but the Russian Federation, although only 8.4 percent of its population were immigrants, hosted nearly half the migrants in the CIS. In South-Eastern Europe and Turkey it stretched from about 1 percent in Bosnia-Herzegovina to about 6 percent in the former Yugoslav Republic of Macedonia with Croatia reaching close to 15 percent. In most cases these UN figures refer to persons born in another country, in some cases to citizenship.<sup>31</sup>

According to UN estimates the migrant population in the OSCE, between 1995 and 2005, grew by about 19 percent from 97 million to 115 million. At 33 percent the largest growth was in the EU-15 and EFTA countries, i.e. from about 29.4 million to about 39.2 million. Likewise in the U.S. and Canada the immigrant population grew by almost 33 percent, from 34.5 million to 44.5 million. In the newer EU Member states the immigrant population declined by about 17 percent, from about 3.5 to 2.9 million, and in the CIS countries by about 6 percent, from 27.3 to 25.7 million. In other OSCE participating States there was a decrease by about 6 percent, from 3.0 to about 2.7 million. These trends probably continued until 2008 but may change in the recession, at least temporarily.

In absolute numbers the Russian Federation, in 2003, had the second largest immigrant population in the world, after the United States, while Germany was third, Ukraine was fourth, France was fifth and Kazakhstan ninth (United Nations 2005, 30). In other words, OSCE countries, in global terms, play an extremely important role as hosts to international migrants.

ILO estimates show that, on average, nearly half of the entire foreign born population – most of them working age adult migrants – are employed, self-employed or otherwise engaged in remunerative activity. This generally means that the foreign born proportion of the work force is even higher than it is of the population as a whole.

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<sup>30</sup> Computed from data provided by the UN Population Division <http://www.unpopulation.org>.

<sup>31</sup> See <http://www.unpopulation.org> for detailed data and definitions.

Included in the total 115 million born abroad are approximately 2.7 million recognised refugees that lived in OSCE countries in 2006, down from an estimated 4.5 million ten years earlier. The decline in persons holding refugee status is partly due to return migration but for the most part it results from naturalisations. The EU-15 are home to half of all refugees in the region while slightly more than one third live in the U.S. and Canada. The share of refugees in all migrants is around 2.3 percent.<sup>32</sup> The number of asylum applications rose from about 408,000 in 1996 to about 600,000 in 2001 and declined to 386,000 in 2006.<sup>33</sup> This decadal see-saw movement is not new and is likely to continue in the future.

Migration flows both into and within the OSCE, at least in recent decades, have been predominantly south to north and east to west, although there have also been important movements in the contrary direction. Intra-OSCE migration has been very important in CIS and South-east European countries, and has contributed a major share of the immigrants living in the EU and in Canada. Nonetheless there is a fairly clear separation between migration in the CIS and migration in the EU. This is likely to be due both to historical separation and to the EU's Schengen system, developed since the mid-1980s, which has contributed to freer movement within the EU and to stricter controls at the EU's external borders. Finally, it should be noted that the disintegration of states, especially of the Soviet Union but also of Yugoslavia and Czechoslovakia, has made a substantial contribution to the number of migrants in the OSCE area. Large numbers of formerly internal migrants formally became international migrants over night both statistically and legally.<sup>34</sup> Below we will be taking a quick tour of some salient facts on the migratory interconnectedness of OSCE participating States.

Data republished by the World Bank (2009, 150) indicate that in the European and Central Asian OSCE participating States outside the EU-15 and EFTA 91 percent of the immigrant population originates from that same group of countries and another 7 percent from other OSCE countries, 98 percent in total. In the EU-15 and EFTA countries about 29 percent of the immigrant population is from within the group and about one quarter from other parts of the OSCE, adding up to 56 percent of the entire immigrant population. In Canada about 47 percent of the immigrant population originates from other OSCE countries including only 5 percent from the neighbouring U.S., while in the U.S. a mere 20 percent of the immigrant population is from other OSCE countries including about 3 percent from Canada. For the U.S. the most important origin countries are to its south, i.e. Mexico, Central America and the Caribbean, where about 37 percent of the immigrants were born, and Asia, where about 25 percent were born.<sup>35</sup> In the EU Africa has been the most important non-OSCE area of origin from where about one in six of the immigrant population originated including Morocco and Algeria as the most important individual origin countries outside the OSCE.

When ten new member countries joined the EU on 1 May 2004 transition rules applying to the freedom to take up employment were agreed for eight of them, and likewise for the two countries that joined at the beginning of 2007. The transition rules do not apply to self-employment or to the freedom of movement and settlement. For the first two years (2004 to 2006), only Ireland, Sweden, and the UK granted free access to the labour market. All others of the EU-15 except Germany, Austria and France lifted the restrictions in 2006 or 2007. The main source countries for intra-EU East-West migration are Poland, Lithuania, Estonia, Latvia and Romania. In the UK, over 508,000 applications for the Worker Registration Scheme, specially introduced for the eight new Eastern European Member States of 2004,<sup>36</sup> were filed between 2004 and mid-2007. Among them 58 percent were Polish citizens, followed by Lithuania (13 percent), and Slovakia (11 percent). 362,000 persons from the new

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<sup>32</sup> Calculation based on United Nations, Department of Economic and Social Affairs, Population Division 2006: International Migration 2006. United Nations Publication, Sales No. E.06.XIII.6; UNHCR Statistical Yearbook 2005 and 2006.

<sup>33</sup> Data compiled by ICMPD based on: UNHCR Statistical Yearbook 2005 and 2006.

<sup>34</sup> It is for this reason that Estonia and Latvia have a share of around 30 percent immigrants in their population, and Kazakhstan, Ukraine, and Belarus of 15 to 20 percent.

<sup>35</sup> Percentages calculated from: US Census Bureau, The Foreign Born Population in the United States 2003. <http://www.census.gov/population/www/socdemo/foreign/cps2003.html>, 2009-02-12.

<sup>36</sup> Due to their membership of the Commonwealth, citizens of Cyprus and Malta already had free access to the United Kingdom.

EU Member States entered Ireland between 2004 and 2007 to take up work, and in Germany about 250,000 seasonal workers from Poland are registered annually (Council of Europe 2008, 46).

OSCE countries have been key sources of migrants to some destination areas outside the OSCE. About 54 percent of the immigrant population of Australia and New Zealand was born in OSCE countries, largely in the EU-15 and EFTA, and in Latin America 35 percent of the immigrant population were born in OSCE countries, including about 20 percent in the EU-15 and EFTA countries and about 12 percent in the U.S. In the high-income Middle Eastern and North African countries 18 percent of immigrants are from OSCE countries including 15 percent from European and Asian countries not members of the EU-15 and EFTA (World Bank 2009, 150).

The Russian Federation is the most important source country of emigrants, Ukraine is third, Kazakhstan seventh, and Uzbekistan tenth in the world. Countries with large shares of expatriates include Armenia and Kazakhstan with each around 30 percent. Belarus, Georgia, and Moldova have expatriate populations of around 20 percent (Mansoor/Quillin 2007, 25). Until 2003, Ukraine, Azerbaijan and Moldova experienced a net migration loss less than or around 5 percent of the 1989 population, Uzbekistan and the Kyrgyz Republic less than 10 percent, and Tajikistan, Armenia, Georgia, and Kazakhstan around 20 percent. The Russian Federation experienced a 5 percent and Belarus a 1 percent gain (Mansoor/Quillin 2007, 33).

About 320,000 (34 percent) of the around 936,000 migrants leaving CIS countries other than Russia between 2000 and 2003 moved to Russia, about 160,000 (17 percent) to other CIS countries, and about 280,000 (30 percent) to Western Europe. Of the about 430,000 emigrants from Russia nearly two thirds (273,000) moved to other CIS countries and 85,000 (20 percent) to Western Europe (Mansoor/Quillin 2007, 35). 75 percent of the 425,000 immigrants Russia received between 2000 and 2003 originated from other CIS countries. Russia is a net recipient of migrants from the whole CIS region. Between 1989 and 2003, Kazakhstan and Uzbekistan contributed more than half of all immigrants to Russia, followed by Georgia, Azerbaijan, Tajikistan, the Ukraine, and the Kyrgyz Republic (Mansoor/Quillin 2007, 47). Among CIS countries only Ukraine and Moldova are also origin countries of significant numbers of migrants to Western Europe (Mansoor/Quillin 2007, 36).

CIS countries are also important in transit migration from within and outside the CIS towards the U.S., Canada, and Central and Western Europe but very little is known about transit migration or transit migrants. Some of them realise that it is unrealistic to reach their target and settle in the transit country. Turkey's experience is similar, as was also true of Bulgaria before it joined the EU. Significant numbers of transit migrants are to be found in Azerbaijan, Russia, and Ukraine. A major factor inhibiting their onward movement is thought to be a lack of information about the rules and regulations for entry to their planned destination country (Mansoor/Quillin 2007, 41, 43).

In South-eastern Europe there is a substantial number of displaced persons from neighbouring OSCE participating countries in Serbia, about 400,000 by some estimates. A similar situation prevails in Croatia. In other parts of the former Yugoslavia the numbers are smaller but most of the population born in other countries was indeed born in other parts of the former Yugoslavia. In Turkey there is an incipient migration from the southern CIS kindled by formal and informal labour recruitment. Turkey's and Albania's importance as source countries for some EU and EFTA countries has already been noted. About 38 percent of the population born in Bosnia-Herzegovina, and about 30 percent of the population of Albania and Slovenia have left (Mansoor/Quillin 2007, 25). Serbia is another substantial origin country, especially for the German speaking parts of Europe, and to a lesser degree for Canada and the U.S.. Much of this emigration has resulted in naturalisation in the countries of destination and is no longer discernable in citizenship statistics.

East- and southbound migration, as far as is known, has been having distinct features. It has in part been return migration of at least three different kinds. One is the return of workers and this may have intensified in the current economic crisis, a second one is the involuntary return of emigrants expelled from destination countries, and third there are within-company transfers of occupationally qualified emigrants. Fourthly, the non-return migration has tended to be managerial and technical, i.e. highly skilled and fulfilling very particular functions intended to be temporary until sufficient local capacity has been created. The latter two migration components may have decreased and perhaps even been reversed in the recession. The fact, though, is that little is known about the size and selectivity of

return migration, and consequently even less can be said confidently about its impacts on either the origin or the destination countries.

Overall, in the Americas, in the western part of Europe, and in the eastern part of the OSCE the major migratory movements have been south to north. Only within the EU-27 has there been a substantial east-west movement from the late 1980s. In a sense it may be regarded as a substitute for the earlier migration from northern Mediterranean countries to parts of western Europe, and like them it is being followed by substantial return migration. This return migration may likely decline as efforts by the U.S. and the EU to strengthen their southern borders appear to be reducing irregular entries.

## **b) Labour force declines, demographic determinants, economic disparities**

As noted above, large portions of the foreign born populations are economically active in host countries. Although migration may help to remedy future shortages of labour and skills, it cannot fully replace the ageing European population. From 1995, net inflows into the EU-15 of around 1 million per year would have been required to keep the population stable, and around 1.5 million per year to keep the working age population stable. This is being achieved. In order to keep the old-age dependency ratio constant inflows of around 700 million immigrants during the period from 1995 from 2050 would be necessary, or nearly 13 million per year (Münz et al 2006b, 30f). This is not being achieved. In the eastern member countries of the OSCE the required levels of immigration are being achieved even less.

Fertility decline and demographic ageing are widespread phenomena in the OSCE region. Whereas fertility rates in the U.S. have been rising and reached 2.1 children per woman in 2008,<sup>37</sup> the overall demographic development in the European Union is characterised by low fertility (around 1.5 children per woman) and increasing life expectancy (75.1 for men and 81.2 for women, in 2004) (Münz et al 2006a, 2). In Canada, too, fertility is below the replacement rate (1.57) (CIA 2008<sup>38</sup>), and life expectancy is somewhat ahead of the EU average (78 for men and 82.7 for women, in 2005).<sup>39</sup> The CIS region displays a varied picture with fertility rates well below the EU average (Ukraine 1.12, Moldova 1.23, Russian Federation 1.33) to countries well above the replacement rate (Kyrgyz Republic 2.71, Turkmenistan 2.76, Tajikistan 3.81), average female life expectancy ranging from 66.3 (Tajikistan) to 74.3 (Georgia) and average male life expectancy ranging from 57.8 (Kazakhstan) to 67.9 (Armenia).<sup>40</sup>

The age structure of the population of the EU is undergoing rapid change. Presently, every sixth EU citizens is over 65 years of age. The expectation is that by 2020 every fifth and by 2050 every fourth will be over 65, while half of the population will be over 50 years old (Council of Europe 2008, 37). In 2000, the relation between the 20-39 age group and the 40-59 age group in Western and Northern Europe was 1.1, while by 2015 it will be 0.9. Since 2005, the older age group (40-59) has been making up a greater share in the European labour force than the younger age group (20-39) (Council of Europe 2008, 33).

The relation between natural demographic growth and immigration varies considerably. A recent report (Salt 2005, 5; Council of Europe 2008, 38) showed how, in 2002-2003, the Member Countries of the Council of Europe were distributed across six clusters:

- Decline in population due both to a natural population decrease and to net emigration: Estonia, Georgia, Latvia, Moldova, Poland, Romania and Ukraine;
- Decline in population due to a natural population decrease not offset by net immigration: Belarus, Bulgaria, Croatia, Hungary, Serbia and Montenegro;
- Decline in population due to net emigration exceeding natural increase: Armenia, the former Yugoslav Republic of Macedonia;

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<sup>37</sup> CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html>, 2009-02-11.

<sup>38</sup> <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html>, 2009-02-11.

<sup>39</sup> Statistics Canada, <http://www40.statcan.gc.ca/101/cst01/health26-eng.htm>, 12.02.2009

<sup>40</sup> Stockholm School of Economics. Economic and Social Data rankings, <http://dataranking.com/index.cgi?LG=e>, 2009-01-12.

- Population growth due both to natural increase and net immigration: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Ireland, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and the United Kingdom;
- Population growth due to natural increase exceeding a negative migration balance: Albania, Azerbaijan, Iceland;
- Population growth due to net immigration exceeding a natural population decrease: Czech Republic, Germany, Italy, Russia, Slovakia, Slovenia.

Gaps in incomes, salaries, decent work, social security patterns and standards of living stimulate migration flows from less prosperous to more prosperous states. The profiles and the distribution of migrants are relatively closely linked to the structure and demands of the labour markets of the destination countries. In the 1950s and the 1960s, a high demand for labour in agriculture, construction and industrial production led to large-scale, mainly low-skilled migration to Western Europe (Council of Europe 2008, 32). This specific recruitment history is still reflected in the skills composition of the migrant population. In the OECD countries of Europe, by 2000, there were about 11 million expatriate adults with low levels of education (nine years of schooling or less), nearly six million with a secondary school education, and slightly less than five million with a tertiary education. By contrast, foreign born adults in North America have substantially higher levels of educational attainment (Katseli et al 2006, 14). No similar estimates seem yet to exist for immigrants in CIS countries.

### **c) Particular labour and skills demands in specific sectors and occupations**

There seems to be a certain tendency for immigrant workers to either be employed in capital-intensive industries characterised by high salaries, employment stability, and high social status, or in low skilled and low paid jobs. Migrants have been found to accept employment in low skilled jobs more readily than natives for at least two reasons. They may construe it as a biographical exception from which they will later return to their “normal” occupation and “normal” social status in the origin country, an impression often directly supported by the legal position the destination country keeps them in, and wages may be higher and more reliable than in their home-countries or their economic home-sectors. For migrants there are large opportunities for low skilled employment, particularly in agriculture, catering, and domestic services including care-giving for the elderly (Council of Europe 2008, 33) often in spite of political and regulatory efforts to the contrary. European Mediterranean countries, for instance, have been absorbing recent immigration from the south and the east in agriculture, construction and service industries, partly through a large-scale informal sector, as is also true elsewhere. Low-skill employment in manufacturing has been moving between countries rather than gradually diminishing and disappearing, as is often claimed. In the countries it moves to it often attracts migrant labour again, if not sooner then later.

Almost half of the 200 million migrants worldwide (World Bank 2009, 150), estimated for 2008, are women. An increasing number of women are not migrating as spouse or family member, but independently. Women take up both skilled and less-skilled employment. As skilled migrants, women most often work in social and welfare professions, in education, and nursing. As less skilled workers they are mainly employed in domestic services or as care workers, in garment manufacturing, or in the hospitality sector. In the Southern European countries, the Gulf States, and the Middle East the domestic sector is by far the largest employer (OSCE/IOM/ILO 2006, 19).

Demand for qualified personnel of the research and development sectors in many technologically advanced industries cannot be met by the local or national labour market. Existing education patterns often do not fully meet the demands of the expanding knowledge-based industries, thus vacancies are filled by recruitment of highly skilled workers from elsewhere. There is now a complex pattern of movement by professional, managerial and technical staff involving most states. The main stimuli for this development were multi-nationals, governments introducing skill-based immigration regimes, and the health-systems of some countries competing for medical and nursing staff. The shortage of IT workers, in particular, led European governments to adopt more proactive policies in this field (Salt 2005a, 29). This development has resulted in a degree of international competition for skilled labour (Council of Europe 2008, 34).

Making the best use of migrants' skills is a major challenge for many destination countries. Credentials, qualifications, skills and experience obtained abroad are not easily recognised by regulatory agencies and employers. This has led to disproportionate levels of over-qualification of employees on the one hand (Dumont/Monso 2007; OECD 2008b, 139), and non-employment of qualified immigrants. In all European countries studied by the OECD<sup>41</sup> at least 25 percent (and nearly 50 percent on average) of skilled migrants were non-active, unemployed or consigned to jobs below their level of qualification (Council of Europe 2008, 91).

So far there is no common skill recognition system for skills acquired in third countries in the EU. Only few countries have introduced provisions for skill recognition. Italy's legislation provides that "within the framework of a national integration programme, and on the basis of agreements with local and regional authorities, educational institutions must promote (...) study tracks leading to the compulsory education certificate or the upper secondary school diploma which would take account of education obtained in the country of origin (and) criteria for the recognition of qualifications obtained in the country of origin, in order to facilitate integration into the school system" (OSCE/IOM/ILO 2006, 138).

Immigrants are also active in business. Often they provide services to other migrants or start up other small businesses. Entrepreneurship and self-employment tend in part to be a reaction to the lack of employment or career-options on the formal labour market.

#### **d) Economic and other pressures compelling migration**

ILO data indicates that the absence of decent work, or any employment opportunities at all, is a major factor driving migration today.

In large part the workers originate from rural agricultural areas as economic development, mechanisation, replacement of family farming by industrialized agro-export business, and environmental deterioration including desertification necessarily shrink farm populations while the major part of jobs in other industries is usually created in urban areas rather than in rural ones. When manufacturing or service activities are difficult to start or maintain, then the new job centres could easily be in urban areas abroad rather than locally. In Europe the transfer of employment and population from agricultural to manufacturing and service activities was largely completed by about 1960. In some cases this took place considerably sooner, in others it continues into the present, as for instance in Poland and Turkey. Outside the OSCE China is certainly the most spectacular contemporary case for observing this unavoidable process. In parts of the former Soviet Union it is also still evident today.

Poverty in itself is not a sufficient cause for migration. According to a Turkish study, negative or halted development and the individual's perception of halted development lead to a higher propensity to emigrate (Içduygu et al 2001, cited in Council of Europe 2008, 58). Not the poorest individuals but rather those with access to information about employment possibilities abroad and ability to obtain the financial means for the initial emigration costs leave the country. Typically, they have at least some education and work experience (Council of Europe 2008, 58).

An important aspect of labour migration, too often overlooked, is that the migrants earn their income not for themselves alone but for the family or household left behind. Migrants themselves are only one part of the migration experience. The larger part comprise of those that depend on the migrants' income without migrating themselves. Migration for work is not so much a solution to an individual's problem as to a family's. The breakdown of social security systems in some countries, left households and families, were they not to fall into utter destitution, with no other choice than to delegate one reliable member of the family into a more prosperous labour market.

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<sup>41</sup> Belgium, Denmark, Finland, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Switzerland and the UK.

Political upheaval and political uncertainty also tend to contribute to emigration as was evident in the late 1980s and early 1990s when the Communist regimes were being replaced. Civil warfare and armed conflict have also resulted in forced displacement and migration in parts of the OSCE area.

## **2. Migration, Economic Growth and Development**

### **a) Contribution of migration to destination countries**

On the whole, the impact of migration on the wider economy in countries of destination seems to be somewhere between broadly neutral and mildly positive (Salt 2005b, 11). For the European Union, very small negative results on the employment and wage levels of natives have been reported, offset by the creation of additional employment due to economies of scale and spill-over effects (Münz et al 2006b, 7). Several OECD studies done between 1984 and 1995 concluded there was no negative impact of immigration on local unemployment. Other studies found an increase in employment of native workers as a result of economic growth associated with immigrant recruitment. Furthermore, the openness of the labour market seems to have an influence. In Greece, Spain, Portugal, and Ireland – countries granting non-EU-citizens somewhat easier access to the labour market than other EU countries do – unemployment of third country nationals has been reported to be lower than that of nationals (Münz et al 2006b, 8). In addition, wage effects are reported to be minimal. Studies have been reporting either very small negative effects, slightly positive effects for highly skilled native workers, or no significant effects at all (Council of Europe 2008, 41).

The main reason why migration has only a minimal impact on wages and employment of the native workforce is that for the most part migrant workers complement national workers rather than substituting for them. They are more likely to compete with immigrant workers who arrived earlier than with native workers. In most countries of destination immigrant workers are active in sectors where national workers are in short supply. While this is widely, though not unanimously, accepted to be true for the higher skills it has also been true at the lower end of the skills spectrum. Usually migrants are in competition only with marginal sections of the national labour force (Council of Europe 2008, 41). If the non-competition is achieved by means of distinctly poorer working conditions and wages for migrant workers this usually backfires. The employment of migrant workers tends to be accepted as long as the non-competition is based on differences in occupation while equality of working conditions is maintained. To achieve this often requires a credible threat against employers, not workers, of workplace inspections. Trade unions and journalists have important roles in maintaining the equality.

In many countries, immigrants and their descendants are setting up businesses. In 2005, immigrants accounted for 12 percent of self-employment in the UK, 13 percent in Belgium, France and Germany, and over 14 percent in Sweden (Council of Europe 2008, 92) in spite of their absence from farming which is a mainstay of non-immigrant self-employment.

There is no clear picture with regard to welfare use of immigrants. Whereas in some countries (e.g. Denmark, the Netherlands, Belgium, France, Austria, and Switzerland) welfare support is greater for immigrants than for natives other studies have found that immigrants contribute more to government revenue than they receive in benefits (Council of Europe 2008, 44). This is an area that has been suffering from a severe lack of adequate data that is not at all easy to remedy, especially not in the short run.

Overall, most contemporary research argues that immigration generally supports economic growth and development. Some of the wealthiest countries in the world also have the highest proportion of immigrant workers (ILO 2004, 31). A recent study of 15 European countries, for the period 1991 to 1995, found that every 1 percent increase in a country's population through immigration was connected to a 1.25 to 1.5 percent increase in GDP (Council of Europe 2008, 42).

## **b) Contribution of migration to origin countries**

The effects of migration on the origin countries have become an important topic of research and politics in recent years. As migration entails costs as well as benefits for the source countries it is crucial to understand the effects of migration on development, growth and poverty reduction. The evidence is contradictory and fragmentary. The international community increasingly has agreed that migration issues need to be integrated and mainstreamed into development policies and measures to alleviate poverty and into national employment and labour market policies in order to lead to positive effects for both origin and destination countries (Katseli et al 2006, 9).

Remittances are frequently cited as the main benefit of migration to source countries. Their recorded volume has increased from US\$ 57 billion in 1990 to US\$ 207 billion in 2006 (World Bank 2007) (Update to 2007 or 8). In 2006, remittances reached twice the level of official development assistance (US\$ 104 billion) and were equal to two thirds of foreign direct investment (FDI) flows of US\$ 325 billion (Council of Europe 2008, 63).

In the OSCE region remittances have grown considerably in recent years and stood at US\$ 46.8 billion in 2007. The vast majority of the outflows (US\$ 42.6 billion) originates in America. The EU-15 generate a net outflow of approximately US\$ 12.2 billion, and the non-EU-states in Europe a net outflow of approximately US\$ 16.6 billion. The largest net receivers in the OSCE are the 12 newer EU Member States (US\$ 21.2 billion) and the Western Balkans (US\$ 9.9 billion). The CIS, which until 2000 was a net receiving area, has generated about US\$ 6.9 billion net remittances to other countries, chiefly CIS members, in 2007. Between 2000 and 2007, net remittances sent to the 12 newer EU member countries grew twelve-fold and to the Western Balkans 2.5-fold.<sup>42</sup>

According to World Bank and IMF figures net remittances, in 2003, were equivalent to over 75 percent of Albania's exports, and over 50 percent of exports from Bosnia and Herzegovina. They amounted to 22.8 percent of Moldova's GDP, 18.4 percent of the GDP of Bosnia-Herzegovina, and 15.6 percent of the GDP of Albania (OECD 2005, cited in Council of Europe 2008, 63).

At the World Bank it has been concluded that remittances are now "an important and stable source of development finance" (World Bank 2003, 11). Remittances fluctuate less with economic cycles than capital flows, and this is likely to remain true in the current crisis. Although they are expected to decline, they are at the same time expected to be larger than foreign direct investment. Further, direct investments and remittances tend not to go to the same countries. They are correlated only poorly and negatively.<sup>43</sup> Migrant remittances go directly into the household consumption of families, mainly into improved housing, nutrition, schooling and health care. Thus remittances create human capital by financing the education of children and health expenses, while improving nutrition security for poor households. In countries with patriarchal family patterns, particularly girls profit from remittances, as the money facilitates their schooling which otherwise would not have been funded (Council of Europe 2008, 65). An initial assessment of the impact of the global financial crisis is provided below in subsection 'd'.

One way to enhance and maintain the level of remittances is to provide matching funds on the condition that they are put to effective developmental use (Global Commission 2005, 29). Emigrant networks also can be supportive in bringing newly arrived immigrants into employment and thus secure the transfer of further remittances. For example, 60 per cent of Moldovan migrants claim to have had a job lined up for them through network contacts before they emigrated (IOM 2008, 345).

Return migration and emigrant contacts transfer information, ideas, knowledge, and contacts from the country of residence to the country of origin. These "social remittances" help to transform the economy, culture and everyday life of origin regions and thus are a stimulus for behavioral and social change (Council of Europe 2008, 66). Important agents for these "social remittances" are transnational migrant associations active in both countries of origin and of destination. The activities and behaviour

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<sup>42</sup> World Bank staff estimates based on the International Monetary Fund's Balance of Payments Statistics Yearbook 2008. Data compiled by ICMPD.

<sup>43</sup> Using data on net remittances and workers compensation as well as net foreign direct investment for 2005 as provided in the World Bank's World Development Indicators 2007 the correlation across 135 countries is  $r = -0.35$ .

of returning migrants and the information transmitted by migrants can trigger social innovations (Council of Europe 2008, 67). These may be welcomed by sections of the population and frowned upon by others. Some source countries, like Mexico, gradually installed and widened broad programmes fostering the links between emigrants and the country of origin, e.g. by granting voting rights.

Circular and return migration may also foster the development of the country of origin when they involve the return and utilisation of skills and capital. Basic preconditions for positive effects are options of employment and entrepreneurial initiative and an encouraging environment for returning migrants. “Sustainable return”, defined by the Council of Europe as “a situation, where the migrant returns with sufficient resources (additional skills, financial and social capital) and has no reason to migrate again” (Council of Europe 2008, 71), is sometimes argued to need a period of being abroad long enough and conditions of employment favourable to the acquisition of skills and the accumulation of social and/or financial capital, and return should take place still at a productive age (Council of Europe 2008, 72). On the other hand there is evidence that even sojourns of a few months or a year can be highly beneficial for individual migrants with a clear aim. Interviews with returnees from the UK to Slovakia who had been au pairs, students, interns and the like show them to exhibit enhanced confidence including occupational and business confidence, and to value highly the progress they made in the use of English (Williams/Baláz 2005).

Emigrant populations can be major providers of knowledge and resources for development in the origin countries. Commonly migrants organise in their country of residence based on local origin, language, faith or other criteria on which to base community. Many are involved in funding and supporting developmental activities in the country of origin by collecting funds for schools, hospitals or investments in infrastructure. Emigrant organisations often also participate in the social and political life of the source community often using their financial muscle in particular. In conflict situations in areas with a sizeable number of emigrants it has therefore become crucial to involve the emigrant communities in peace-building efforts (Bercovitch 2007; Skrbis 2007; Tölölyan 2007).

Migration also augments international trade. According to a recent study on bilateral trade between the UK and 48 selected trading partners immigration from non-Commonwealth countries had a significant effect on trade with them (Münz et al 2006b, 42). A 10 percent increase in the immigrant population raised UK exports to those countries by 1.6 percent. Similar results have been obtained for the effects of immigration to Spain on bilateral trade with 40 trading partners between 1991 and 1999 (Münz et al 2006b, 43).

An example for a deliberate return policy can be found in Portugal’s support schemes for emigrants or their children providing them with opportunities in the country of origin. The government-run “Train in Portugal” scheme assists the return of young people of Portuguese origin between the ages of 18 and 30 holding a technological qualification and unemployed in the host country by helping them enter working life through traineeships with companies (Council of Europe 2008, 73).

Tajikistan is the origin country in Central Asia with the largest out-migration. One in four families has at least one member working abroad. The amount of remittances sent home by labour migrants from Tajikistan through official channels was US\$ 240 million, which is much higher than the country’s annual budget. Most of the remittances are used to cover the immediate needs of the migrants’ families, and investment in sustainable economic activities is limited.

In partnership with UNDP, IOM started a programme in Tajikistan promoting the investment of remittances in viable livelihoods for families. In coordination with local development committees small business and agricultural loans were extended to labour migrant households investing a matching amount from remittances. The total investment amounted to approximately US\$ 80,000.

Loans were linked to business training and preparation of business plans. In addition, labour migrants made matching contributions to repair community infrastructure (schools, clinics, bridges, transformers) (OSCE/IOM/ILO 2006, 78).

In some situations remittances tend to be focused on the richer households thus increasing inequality. This may be a temporary phenomenon arising from the richer households being the first ones to be able to finance migration or long-distance migration with the poorer households following only later. The gap would thus initially open and might then close again. A frequent complaint has been that a relatively small portion of remittances is used for business investment. It is hard to see, though, why or how remittances should or could be invested if the same is not true of other income, or why households would become entrepreneurially ambitious or competent when they were not before. Even if they were, the legal and economic circumstances and infrastructure also need to be conducive to small business. The lack of an attractive investment and business climate, also holds back those households that might provide services to the remittance receiving households. It is this aspect that is economically crucial, not the question what exactly the receiving households themselves use the income for. In addition, high transfer fees and poor exchange rates have also been diminishing the potential impact of remittances (Newland 2003, 2). The developmental impact of remittances, as with any inflows of money, thus depends on the local circumstances but is distinguished from other inflows by being entered immediately into the circulation of goods and resources among local households. This increases the chances for local development but is not in itself a guarantee.<sup>44</sup>

Family reunification and integration policies of the destination countries have direct and indirect impacts on the generation of remittances. If family reunification is restricted by law, it is likely that sending remittances to family members abroad is preferred to family reunification in the host country. On the other hand, demands put on immigrants, including investment in occupational or language training or in improved housing, may reduce their capacity to send remittances (Council of Europe 2008, 99).

### **c) Costs of migration: skills deficits, imbalances, family disruption**

The loss of human resources – particularly trained professional personnel, but also bright students and other talents who decide not to return – to other countries is debated as a major cost of migration for source countries. Brain drain may lead to a lack of human resources in key areas and hamper the advance and competitiveness of the economy and the social institutions of developing countries. There are several examples of massive brain drain cited in the literature. Many of them concern medical professions.

- Albania lost one-third of its qualified people in the decade after the collapse of communism (Newland 2003, 2).
- Approximately 30 percent of Ukrainian scientists – most of them in the middle of their career – are estimated to have left the country in the last ten years (Council of Europe 2008, 69).
- Over 500,000 persons with an academic degree have left Bulgaria since 1995 (Council of Europe 2008, 69).

Depending on the circumstances the loss of skilled personnel may impact negatively on development. Likewise, depending on how education and training are financed, these investments may be lost to the country of origin. Further, depending on the income opportunities of the educated and the trained or potentially generated by them and on the tax regime, there may be a loss of tax-revenue. In an extreme case brain drain could destroy an entire sector of the economy when the educational system is not capable of replacing the emigrants. The evidence so far is inconclusive on whether emigration triggers additional demand for education and training (Commander et al 2003, 2004). Converting any additional demand for training into supply also depends on sufficient training facilities. On the other hand, skill exports may, if well managed, have advantages. Several international organisations run

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<sup>44</sup> See, for example, on Albania King/Vullnetari 2003, 49-50.

programmes supporting the transfer of knowledge to the country of origin of immigrants. Another means of tackling the issue are migration-development partnerships intending to obtain some degree of cooperation towards equalising the benefits of migration for source and destination countries.

An example of origin-destination partnership is the Mali-France Consultation on Migration, established in 2000. It provides for annual discussion at ministerial level on the integration of immigrants from Mali in France, co-management of migration flows and developmental cooperation. France supports the Malian education sector, and the skills of Malians living in France are registered by a French-Malian committee to be integrated into development projects. Information on jobs and living conditions in France is provided to Malian citizens before immigration, and consulates in France provide assistance to Malian expatriates (Council of Europe 2008, 77).

Migration can have important impacts on family life. Transnational families have been defined as those “that live some or most of the time separated from each other, yet hold together and create something that can be seen as a feeling of collective welfare and unity, namely ‘familyhood’, even across national borders” (Bryceson/Vuorela 2002, 3, cited in IOM 2008, 154). The impact of migration on family members left behind seems to depend in part on the division of labour between the sexes and whether the migrant is a female or a male member of the household. A recent study conducted in Bangladesh, an important migrant origin country for a number of OSCE participating States, examined the impacts of male migration on family members, specifically on wives left behind. In the majority of the observed cases, women, along with their children, experienced an increase in their standard of living as a result of the remittances sent by their migrant husbands. On the other hand, the migration of women appeared to have a particularly strong impact on the children left behind. In some cases the mother’s absence was felt to contribute to the decline in her children’s school attendance while, in others, the remittances sent by the mother enabled her children to benefit from better schooling. There was also evidence that some children suffered emotionally from the absence of their mothers, particularly when the fathers did not or could not make up for it (IOM 2008, 155).<sup>45</sup>

The effects of migration on development have been recently studied with regard to Armenia (ILO 2008a), the Kyrgyz Republic (ILO 2008b) and Tajikistan (ILO 2008c). The three studies show very diverse patterns with regard to the effects of migration on the respective countries.

According to the report on Armenia (ILO 2008a), 14.5 percent of Armenian households were involved in migration activities. Since 2002, about 55,000 migrants have returned to Armenia and decided not to leave again, at least in 2008. In general, and probably for a variety of reasons, returnees have been tending to do better in terms of employment and salary non-migrants. While returnees had a positive influence on skills and technology transfer for the company hiring them, their contribution to the origin country in terms of investment, job creation and business development appeared to be limited.

The report on the Kyrgyz Republic (ILO 2008b) gives a mixed picture. During the last decade Kyrgyzstan became a country of origin of labour migration for CIS countries, and the third largest Central Asian supplier of labour migrants to Russia (after Uzbekistan and Tajikistan). The country is highly reliant on migrants’ remittances. Recorded remittances in 2006 were US\$ 7.39 billion or 27.4 percent of the GDP. Interestingly, the demand for skilled manpower in the Kyrgyz Republic and the main destination countries, Kazakhstan and Russia, is similar. Given that Kyrgyzstan is also experiencing a shortage of skilled labour the national labour market is competing with foreign markets for the same category of labour but is losing due to the huge income differentials. Salaries in Kazakhstan and Russia are several times higher than the average salary in the range of US\$ 100 to

<sup>45</sup> Similar observations on Albania are provided by King/Vullnetari 2003, 53-54.

200 in the Kyrgyz Republic. Thus there is nearly no incentive for highly skilled emigrants to return.

The study on Tajikistan (ILO 2008c) gives detailed information on the effects of return migration. The survey findings revealed that 64 percent of respondents acquired additional skills abroad. For a sizeable group of returnees these skill gains led to an improved position on the labour market. 39 percent of respondents said that after migration it was easier for them to find a well-paid job. For 43 percent nothing had changed, and 18 percent felt that after their return it had become more difficult for them to find a well-paid job. Their effect on business innovations seems to be felt most in small companies, particularly in the service sector.

#### **d) Impact of the financial crisis**

Migrants tend to be among the workers most hit by economic downturns for several reasons. Migrant labour is often used as a cyclical buffer, like other macroeconomic policies aimed at maximizing growth and minimizing unemployment. For migrants, this means they are often the last to be hired and the first to be fired and their employment relationships are frequently non-standard, and in poorly regulated sectors or activities.

From a social and political perspective, in times of economic insecurity migrants easily become scapegoats; xenophobic sentiments and discrimination against migrant workers rise. This alone presents one of the most formidable challenges for social peace and cohesion, and therefore for governance, in hard times.

An initial ILO assessment of the impact of the global financial and economic crisis confirms a number of premises about the impact on migrant workers:

- Migrants and persons of foreign origin are hard hit, they are disproportionately among those already laid off or rendered unemployed.
- Those migrants remaining employed are often affected by reductions in pay, working time, and worsening working conditions.
- Migrant workers have reduced access to social safety net support. This is especially true for migrants in irregular situations.
- However, many migrant workers are not returning home, unless forcibly expelled. This is the case even when they are being offered financial incentives to voluntarily depart. Conditions at home are even worse. While there may be opportunities for some kind of work in host countries, there are now effectively none at all in many origin countries.
- Migrant workers are compelled to take whatever work they can find. They may accept even more substandard pay and abusive conditions than before. This fact presents an immediate policy challenges for governance and for stabilization of labour markets and working conditions.
- Scapegoating of migrants and xenophobic violence against foreigners is already on the rise throughout the world. It is expressed in increased murders and lynchings of migrants in some countries, in generalized expressions of anti-foreigner sentiment, in hostile political discourse, and in calls for exclusion of migrants from access to labour markets and from emergency social protection benefits.
- Many countries have reduced quotas or intake of foreign workers; some countries have embarked on deliberate policies of exclusion and expulsion of migrant workers.
- Migrant remittances to countries of origin are declining.

- The further deteriorated situations in home countries make whatever remittances migrants can send an even more crucial lifeline for their families and local communities.
- What employment opportunities existed earlier for those remaining at home are also evaporating, meaning even fewer options for persons coming back from abroad. This makes the return of migrant workers a greater threat to labour market stability and ultimately, to social stability at home.

These impacts can easily destabilize labour markets, deteriorate working conditions, and undermine social cohesion in migrant employment countries. The large scale return of migrant workers and the reduction of remittances are already destabilizing economically, socially, and politically migrant origin countries.

Migration represents a long term solution to labour and skills needs in economies across the OSCE area. Thus short term crisis responses are needed, not only to prevent economic and labour destabilization, but also to sustain long term efforts to ensure protection and integration of migrants along with institutionalised regulation of labour migration.

Areas for policy intervention include taking measures to shore up decent work conditions and protection for migrant workers – along with vulnerable national workers — in employment countries; enhancing job creation and social safety net protections for returning migrants and populations as a whole in migrant source countries; and repressing xenophobic violence anywhere it appears while explicitly discouraging nationalist anti-migrant and anti-trade discourse and action.

### **3. Challenges of protection, social cohesion, integration**

Evidence from most of the EU Member States suggests that migrants from outside the EU are concentrated in badly paid, insecure, and badly regarded jobs, such as seasonal work, low-skill occupations, or domestic work.<sup>46</sup> Even where migrants are not predominantly employed in these occupations, and not only in the EU, these occupations tend to be predominantly filled by migrants, male or female. The reasons range from these jobs being acceptable if they can be construed as an exception in the life-course to wages being sufficient for the purpose in mind and to a lack of alternatives due to systematic discrimination and even victimisation.

While it is not implausible to attribute the abuses partly to a situation where the supply of job seekers exceeds demand, the availability of residence and work permits, and the terms of their availability, also play a role. The fact that people risk their lives in border crossing testifies to this. If they are willing to risk their lives, they will be willing to risk lesser consequences, such as exploitation and slavery. Protection obviously starts with people not having to risk their lives or their freedoms in order to improve their situation in a world that offers plenty of opportunities. Some of the most common problems encountered by migrant workers concern high intermediation fees of recruitment agencies, contract violations or unilateral contract changes at the beginning of employment, lack of, reduced or late payment of wages, and non-fulfilment of obligations to fund return travel.

Protection of migrant workers' human and labour rights begins in the country of origin. Issues include measures to prevent exploitative recruitment, e.g. the regulation and licensing of recruitment and employment agencies and recruitment fees, pre-departure assistance, particularly with regard to correct information on life and work abroad, on-site services and support to get access to legal remedies (OSCE/IOM/ILO 2006, 35). The better migrant workers are prepared for work abroad the more likely will they be able to enjoy appropriate protection in the destination country and to know about their right (OSCE/IOM/ILO 2006, 40). Disseminating information on working abroad is most successful if a variety of channels of communication – resource centres, print media, TV, radio – are used (OSCE/IOM/ILO 2006, 55) simultaneously and for an extended period. State-based activities to

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<sup>46</sup> See for example: EUMC (2003) Migrants, Minorities and Employment: Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union, p.45.

regulate employment agencies might usefully be accompanied by voluntary initiatives to develop codes of conduct (OSCE/IOM/ILO 2006, 50).

Measures to protect migrants already at the stage of recruitment need to be developed jointly with recruitment agencies. A good example is the self-regulation of recruitment-agencies implemented in Russia. Russian legislation provides for compulsory licensing of agencies dealing with employment of Russian citizens abroad. As of February 2009, 590 recruitment agencies had received a license from the Russian Federal Migration Service (FMS). In addition to regulation by FMS, initial steps towards self-regulation have been taken. A non-commercial partnership, International Association on Labour Migration (MATM), was established in 2004 and includes over 70 private recruitment agencies from Russia, Tajikistan and Moldova. The Association's principal task is the development of "civilized" forms of labour migration. The members of this network have adopted a Code of Business Ethics by which they are guided in their work. The Association works in close cooperation with state and international agencies in that field, like e.g. the Russian Federal Migration Service, the Russian Federal Service on Labour and Employment, the Ministry of Foreign Affairs as well as with representative offices of IOM and ILO in Moscow and other partners (OSCE/IOM/ILO 2006, 50).

Most of the protection issues for migrant workers in destination countries are laid down in the international human rights framework and in international labour law. Protection is best achieved by equal application of the national labour law to the employment of migrant and non-migrant workers. A necessary complement is monitoring and inspection, particularly in areas known to be conducive to exploitation and discrimination (Council of Europe 2008, 143).

The first and foremost base for protection of migrants is equal treatment in employment with national workers. Tolerance of inequalities encourages exploitation of foreign workers, facilitates substitution of national workers by less well protected immigrants, leads to a general deterioration of working conditions, and is therefore detrimental to social cohesion (Council of Europe 2008, 144).

Granting the right to join a trade union without hindrance is a further major element of protection of migrant workers. Trade union rights include freedom of association and collective bargaining rights, and are recognised universally as a core of international human rights instruments. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been instrumental in implementing the relevant international norms in OSCE participating States in recent years.

With its *Legislationline* service the ODIHR is offering an invaluable tool box for lawmaking, among others, in the field of migration (<http://www.legislationline.org/topics/topic/10>). In English and Russian it offers materials on 14 subtopics including fundamental rights, immigration law and policy, external borders, migrant rights and entitlements, migrant workers, discrimination of migrants, children and migration, family reunion, legal recourse, other mechanisms of legal recourse, migration and crime, international co-operation on migration, freedom of movement within state territory, internally displaced persons (IDPs), and also offers links to international legal norms and to state legislation in the OSCE area.

The ODIHR has been engaged in anti-trafficking work including research and proposals on how better to protect and to compensate victims. There have been three main avenues of action:

- support the establishment of multi-agency anti-trafficking structures (National Referral Mechanisms) that develop human-rights-based policy and practice in anti-trafficking;
- improve the identification and assistance of trafficked persons, including victims of labour exploitation and Roma victims; and

- strengthen access to remedies and rights by raising awareness of rights amongst trafficked persons, vulnerable groups and civil society.

On its website (<http://www.osce.org/odihr/13475.html>) the ODIHR offers a range of useful documents for download.

Employment is a key element of inclusion and integration into society, for natives as well as for newcomers. In many OSCE countries immigrants concentrate in vulnerable employment sectors, face atypical employment and are barred from most public-sector jobs. The systematic disadvantages on the labour market cannot only be attributed to lower levels of education or the lack of knowledge of the national language. Studies conducted under the supervision of the ILO (Zegers de Beijl 2000), since 1994, have been showing that discriminatory behaviour of employers and labour market gatekeepers against immigrants and persons of immigrant origin in recruitment are an important cause of their disadvantaged position. Legislation against discrimination, well established specialised institutions of law enforcement and an easily accessible support system for victims are key pillars of the protection of immigrants and of a comprehensive integration policy. Repeated, reinforced discrimination leads to resignation, marginalisation and social exclusion, and does not only prevent integration, but also prevents origin and destination societies to gain from migration (Council of Europe 2008, 102).

Highly qualified migrants are often confronted with de-qualification and employment below their skill-level. This downgrading is often aggravated by lacking recognition of qualifications obtained in the country of origin. De-qualification does not only lead to a waste of intellectual and educational resources, but also to an under-utilisation of human capital, reducing the potential economic gains both for the source country and the country of origin.

In Canada, the Immigrant Settlement and Adaptation Programme (ISAP) assists immigrants in job search, job-specific language training, bridge-to-work assistance and work placement. The programme also includes an accurate evaluation of the qualifications of the immigrant and, if necessary, provides supplementary training modules to better fit the credentials obtained abroad to the Canadian system of qualifications. Three years after arrival, half of the migrants working in Canada are placed in positions commensurate with their original qualifications, and 75 percent of immigrants with an university degree are working in jobs that require a Bachelor's degree at minimum (Council of Europe 2008, 79).

Neither within the OSCE region nor within the EU a system of recognition of qualifications and credentials obtained in third countries exists. Within the EU-funded "EQUAL"-initiative a number of projects have developed projects aiming at improving this deficit. A good example is the project "Equal works" tackling discrimination and inequalities in the labour market in the United Kingdom. Between 1991 and 1998, the project comprised 174 development partnerships, for those in work or seeking work and included actions to help the integration of migrants and asylum seekers. One development partnership MEET (Migrants Empowerment and Employment Training) funded within this programme concerned the recognition of migrants' skills and qualifications and developed tools for matching migrants' qualifications with British certificates and trainings to increase employability.

Migration changes society and institutions. In most cases the social composition of migrants differs from the host society with regard to the level of education or vocational experience leading to disadvantages at the labour market. Furthermore, migrants often speak languages, adhere to religions or follow traditions different from the majority population. Whereas the first factor may lead to changes in the social stratification of the host society, the second questions the notion of a socially or ethnically homogeneous nation, which characterised the self-conception of most European and non-

European “Western” countries in the last century. Today, most societies are characterised by a rich and growing socio-cultural diversity, encompassing on the one hand growing differences in life style and value orientation among the “native” population and on the other hand growing diversity as an effect of immigration.

This intermingling of people of different backgrounds on the one hand presents an opportunity for increased social dynamics and cultural innovation, and on the other hand challenges social cohesion in the sense of “the capacity of a society to ensure the welfare of its members, minimizing disparities and avoiding polarisation” (Council of Europe 2004, 3). Successful integration is part and parcel of achieving these goals.

Respect for migrants’ rights, dignity and equal treatment stand at the core of integration. An integration framework must guarantee equality and non-discrimination, safeguard fair rules for migration and settlement and ensure decent opportunities for all. A coherent approach to integration must include local and national authorities, the social partners, and civil society including migrants and their organisations. Furthermore, it must be based on respect for cultural differences as long as they do not conflict with international human rights instruments and the rights of other people.

Residence- and employment security is a major facilitator for integration. Most nationals in OSCE countries can expect protection, access to employment services and unemployment benefits in case of unemployment. Permanently settled migrants usually also have acquired these rights, but for temporary migrants losing the job often also entails the loss of the residence permit. The risk to lose the right to live in the country in case of unemployment is a major impediment to integration.

Securing equal access to and equal treatment with regard to public goods – the education and training system, the health system, housing and social provisions, public security – is a main challenge for coordinated integration policies (Council of Europe 2008, 113-125).

As knowledge of the national language is a precondition for success in the labour market as well as for social and political participation, immigrants should be given ample opportunity and actively encouraged to learn the language as an aid to employment, vocational integration and participation in society. Provisions should take into account the living conditions and constraints migrants face to ensure they can and are motivated to access them. Courses should be available outside working hours and at affordable costs and offer facilities for childcare and for women from more gender-segregating societies (Council of Europe 2008, 120).

Effective integration requires the possibility to participate properly in social life and the political process. Migration challenges the established notion of citizenship as a bundle of rights bound to a single nationality. A growing number of people identifies with more than one culture and lives in more than one country. A coherent integration strategy should encourage active participation from the earliest possible moment. Political integration entails as well active participation in civil society organisations and political parties as the right to obtain the nationality of the host country. Granting local voting rights to immigrants has proven as an effective tool to enhance political participation in a great number of European countries. EU citizens are granted local voting rights in all Member States, and several EU and EEA countries<sup>47</sup> also grant local voting rights to all or certain groups of settled non-nationals to improve their political integration.

Furthermore, civic and political participation of immigrants should be encouraged, in particular at the local, town or regional level, including the participation of migrants’ organisations. Ultimately, naturalisation could be considered and dual citizenship recognised as a means of accommodating existing ties to both the country of origin and the country of residence (Council of Europe 2008, 122).<sup>48</sup>

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<sup>47</sup> e.g. Belgium, Denmark, Finland, the Netherlands, Ireland, Luxembourg, Norway, Portugal, Slovakia, Slovenia, Spain, Sweden, UK, Switzerland. Source: The Immigrant Voting Project, <http://www.immigrantvoting.org/material/TIMELINE.html>.

<sup>48</sup> It may be remembered that the current mayor of Rotterdam, Europe’s most important port city, is a dual citizen (Morocco and Netherlands).

### III. International legal framework and protection of migrants

This chapter highlights the OSCE commitments towards implementing international and regional legal frameworks applying to international migration. It summarizes the relevant international, ILO, European, CIS and Inter-American instruments and reviews indicators of progress in adopting these. Annex 2 provides a list of adhesions by OSCE participating States to the most relevant international instruments.

#### 1. Reference to international normative and policy framework

##### a) International Customary Law and UN Conventions

**One of the core commitments on migration first mentioned in the Helsinki Final Act and reaffirmed in subsequent documents is to implement the relevant international obligations of the participating States. Furthermore, this is complemented by the pledge to “consider adhering to further relevant multilateral instruments or bilateral agreements in order to improve arrangements for ensuring effective consular, legal and medical assistance for citizens of other participating States temporarily on their territory.”<sup>49</sup>**

The core international human rights instruments relevant for the areas covered by the OSCE commitments on migration are the:

- Universal Declaration on Human Rights;
- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICECSR) and its Optional Protocol (ICCPR-OP1), and;
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

In legal terms, the Universal Declaration is non-binding, though in practice it is politically binding and generally recognised as part of the international customary law, while the provisions of the other international treaties are binding for the States party to it. These instruments protect all human beings regardless of their nationality and legal status, and this universality of the human rights and fundamental freedoms was also reaffirmed for instance in the Helsinki Document of 1992 (Art. 32).

More specifically, the rights of migrant workers are addressed in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) of 1990, the only UN instrument of direct relevance to this precise category (Cholewinski 1997, chapter 4). Another UN instrument that bears implicit relevance to the situation of migrants is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) protecting all individuals within the jurisdiction of the State from discrimination and exploitation on grounds of race, colour, descent, or national or ethnic origin. Furthermore, the Convention on the Rights of the Child forbids discrimination against any child on the basis of its parents' status, including 'illegal' status (Art. 2(1)), with access to schooling and healthcare being areas of main concern.

Different from a number of OSCE commitments since 1989 that apply only to legally residing migrant workers, the ICRMW identifies some core rights that apply to all aliens, including those with an irregular status, on the territory of countries of origin, transit and destination. These rights include the protection of personal property rights (Art. 15), basic legal and personal security rights, including the right to trial (Art. 16), rights of liberty and legal treatment upon its deprivation (Art. 17), basic legal

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<sup>49</sup> The Vienna Document 1989 item (23).

rights (Arts. 18-21), conditions of lawful expulsion (Art. 22), employment and social security rights (Arts. 25-28), the rights of children of migrants (Arts. 29-30), and access to housing (Art. 43 (1) (d). ICMPD 2009, 92). This Convention explicitly defers to the sovereign prerogative of each State to determine and organize entry or refusal of foreigners to its territory. As of 27 March 2009, the ICRMW had been ratified by 41 States and signed by 15 others.

Among OSCE participating States only six are parties to the Convention<sup>50</sup> and another two (Montenegro, Serbia) have signed it. Notably, none of the EU member States have signed or acceded to the Convention, which reflects the obstacles to its ratification identified in a recent study published by UNESCO<sup>51</sup> (MacDonald/Cholewinski 2007, 51-66).

## **b) ILO Conventions**

The international instruments most relevant for the OSCE commitments on migration and also representing the consensus on labour migration are:

- the Migration for Employment Convention (Revised) No. 97 of 1949 (Revised) and;
- the Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975, as well as their accompanying Recommendations.<sup>52</sup>

Equality of opportunity and treatment with respect to employment and work conditions are stipulated in both Conventions (Art. 6 of ILO Convention No. 97 and Art. 10 and 12 of ILO Convention No. 143), as is the requirement to facilitate the reunification of migrant workers with their families. Most of the provisions of this Convention are, more or less, replicated in the ICRMW (ICMPD 2009, 93. Böhning 1991).

The Conventions are binding only on those countries that have ratified them, but they do not affect the sovereign right of each member State to allow or refuse a foreigner entry to its territory and that it is for each State to determine the manner in which it intends to organize the potential entry of migrant workers or the refusal of their entry. As of February 2009, 20 OSCE participating States are parties to the 1949 Convention,<sup>53</sup> and 13 to the 1975 Convention.<sup>54</sup>

In addition, all current ILO social security standards<sup>55</sup> define personal scope of coverage irrespective of nationality, almost all contain similar clauses on equality of treatment between nationals and foreign workers in the host country, and the majority also contains special non-discrimination clauses. The ILO has also adopted several further standards that deal specifically with the protection of migrant workers' social security rights<sup>56</sup> (OSCE/IOM/ILO 2006, 155).

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<sup>50</sup> Albania, Azerbaijan, Bosnia and Herzegovina, Kyrgyzstan have acceded to it, while Tajikistan and Turkey have ratified it.

<sup>51</sup> Namely the concern of a number of States that the ICRMW would restrict their sovereign right to decide upon admission to their territory; the lack of adequate capacity of some governments to implement the advocated migration policies; the clashes between the rights-based approach of the Convention and their current priorities, often dominated by security concerns; the difficulty in both gaining cheap labour and ensuring the protection of migrants' rights and equal opportunities; and the misinterpretation or misunderstanding of the legal text.

<sup>52</sup> ILO Recommendations No. 86 and No. 151.

<sup>53</sup> Albania, Armenia, Belgium, Bosnia and Herzegovina, Cyprus, France, Germany, Italy, Kyrgyzstan, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Netherlands, Norway, Portugal, Serbia, Slovenia, Spain, Tajikistan, United Kingdom.

<sup>54</sup> Albania, Armenia, Bosnia and Herzegovina, Cyprus, Italy, the former Yugoslav Republic of Macedonia, Montenegro, Norway, Portugal, Serbia, Slovenia, Sweden, Tajikistan.

<sup>55</sup> Social Security (Minimum Standards) Convention No. 102 of 1952; Employment Injury Benefits Convention NO. 121 of 1964; Invalidity, Old-Age and Survivors' Benefits Convention No. 128 of 1967; Medical and Sickness Benefits Convention No. 130 of 1969; Employment Promotion and Protection against Unemployment Convention No. 168 of 1988; and Maternity Protection Convention No. 183 of 2000.

<sup>56</sup> The Equality of Treatment (Accident Compensation) Convention No. 19 of 1925; The Equality of Treatment (Social Security) Convention No. 118 of 1962; The Maintenance of Social Security Rights Convention No. 157 of 1982.

Furthermore, the ILO, in 2006, published comprehensive non-binding policy principles and guidelines on labour migration, the Multilateral Framework on Labour Migration,<sup>57</sup> which reflect the relevant international standards and illustrate successful practical experience from countries in all world regions. Two sections are particularly relevant in terms of policy formulation and its content: “one addresses expanding avenues for regular labour migration, taking into account labour market needs and demographic trends, and identifying key policy lines (...) [, and] another addresses development of national policies in the context of ensuring that they are coherent, effective and fair” (Council of Europe 2008, 52).

### c) Council of Europe

The Council of Europe currently has 47 Member States including all the EU countries and many of the other OSCE participating States.<sup>58</sup> Treaties, either conventions or agreements, are concluded within a multilateral framework: once opened for signature, they constitute straightforward international treaties and not legal instruments of the Council of Europe. The treaty rights are conferred solely on nationals of other contracting parties. An exception to this is the European Convention on Human Rights (ECHR) that provides for a commission and a court to whose jurisdiction all members of the Council of Europe have agreed (ICMPD 2009).

Among the instruments developed by the Council of Europe, the *European Convention on Human Rights (ECHR)* has had the most impact, particularly because of the European Court of Human Rights on whose jurisdiction its members have agreed. Other Council of Europe agreements referring specifically to the protection of migrant workers are:

- the Convention on Establishment (1955);
- the European Social Charter (1961);
- the European Convention on Social Security (1972), and;
- the European Convention on the Legal Status of Migrant Workers (ECMW) (1977).

Different from the ECHR, these instruments are applicable only to legally resident migrants who are nationals of contracting states. As of 16 February 2009, the ECMW had been ratified by 11 OSCE participating States and signed by another four.<sup>59</sup> It is also worth remembering that in 1997 the ECHR itself and implicitly the jurisprudence of the Court became part of the European Union *acquis communautaire* as per Art. 6(2) of the Consolidated Treaty on the EU. This has been an important part of a broader movement towards convergence between the EU and the Council of Europe. Indeed, if the EU's Lisbon Treaty entered into force, the EU itself could accede to the Convention.<sup>60</sup>

### d) EU policy approach to migration

Within the EU, developments have been marked by the revision of the *Tampere Programme* (1999-2004)<sup>61</sup> and the adoption of the five-year *Hague Programme* in November 2004 in the field of Justice,

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<sup>57</sup> Available at [http://www.ilo.org/public/english/protection/migrant/download/multilat\\_fw\\_k\\_en.pdf](http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf), 2009-02-19.

<sup>58</sup> The OSCE participating States not members of the Council of Europe are the European states of Belarus and the Holy See, and the Central Asian countries of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, and Canada and the United States.

<sup>59</sup> Ratifications: Albania, France (reservation regarding Art. 18 on social security), Italy, Moldova, Netherlands (reservations regarding Art. 7 on travel and Art. 11 on the recovery of sums due in respect of maintenance), Norway (reservation regarding Art. 11), Portugal, Spain, Sweden, Turkey, and Ukraine (reservation from Art. 28 on the rights of migrant workers to organise for the protection of their economic and social interests in political parties and trade unions). Signatures: Belgium, Germany (declarations regarding Articles 14, 18 and 6), Greece, and Luxembourg.

<sup>60</sup> See [http://europa.eu/scadplus/glossary/eu\\_human\\_rights\\_convention\\_en.htm](http://europa.eu/scadplus/glossary/eu_human_rights_convention_en.htm), 2009-03-13.

<sup>61</sup> European Commission COM (2004) 401 final, 2 June 2004.

Freedom and Security.<sup>62</sup> Its overall objectives were translated into concrete action along ten priority areas, among which feature the respect for and active promotion of fundamental rights, the development of a common policy on legal migration, and the establishment of a coherent European framework for integration.<sup>63</sup> This framework for action has since led to the adoption of the Common Basic Principles on Integration (CBPs),<sup>64</sup> the Common Agenda for Integration<sup>65</sup> and the Policy Plan on Legal Migration,<sup>66</sup> which aimed precisely at creating a coherent and co-ordinated EU approach to integration and migration, directed towards reaching the Lisbon goals of ‘delivering stronger, lasting growth and creating more and better jobs.’ All these documents include elements of combating racism and xenophobia, mainstreaming integration in all relevant policies, preventing discrimination on the labour market and monitoring the implementation of EU legislation protecting immigrant rights.<sup>67</sup>

Among European Union Member States (with the exception of Denmark, Ireland and the United Kingdom that have opted out of the common immigration and asylum policies), a trend towards approximation can be identified for institutional arrangements, for decision-making processes as well as for the thematic scope of migration policies covered by the EU regulatory framework.

At present the EU *acquis* determines the right of family reunification for third country nationals;<sup>68</sup> defines rules for the admission of third country nationals who are long-term residents;<sup>69</sup> provides frameworks for the integration of third-country nationals;<sup>70</sup> regulates financial and technical assistance for third-countries in the areas of migration and asylum;<sup>71</sup> and stipulates rules on non-discrimination on the grounds of racial and ethnic origin.<sup>72</sup>

The family reunification directive is the central piece of legislation on the rights of family members on the European level and it allows for a probationary period of up to five years.<sup>73</sup> The implementation of this clause ranges from two years (Portugal, the Czech Republic) to five years (e.g. Sweden, Poland) (Groenendijk et al 2007, 9). In parallel, the directive on the status of third-country nationals institutes the distinction between short- and long-term residents and thus divides third country nationals into two categories according to the duration of their stay, which entitles them to full, limited, or no access to the labour market as well as to other areas of socioeconomic life. To acquire a more secure residence status or even to maintain the current one depends on fulfilling a number of requirements of which the most important are a regular income, social insurance, uninterrupted and legal stay, and not posing a threat to public order.

The very relevant EU Directives on racism and eliminating racial discrimination in employment are discussed in the following section.

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<sup>62</sup> Annex 1 to the Presidency Conclusions of the Brussels European Council of 4/5 November 2004, [http://ec.europa.eu/justice\\_home/news/information\\_dossiers/the\\_hague\\_priorities/doc/hague\\_programme\\_en.pdf](http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/doc/hague_programme_en.pdf), 2009-02-20.

<sup>63</sup> Council document 9778/2/05 REV 2, 10 June 2005, and COM (2005) 184 final, 10 May 2005.

<sup>64</sup> Press release 14615/04 (Presse 321) from the Council of the European Union, 19 November 2004, [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/jha/82745.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/82745.pdf), 2008-10-30.

<sup>65</sup> COM (2005) 389 of 1 September 2005.

<sup>66</sup> COM (2005) 669 final of 21 December 2005.

<sup>67</sup> For instance, the third CBP highlights the importance of the effective integration of immigrants into the labour market for reaching the Lisbon targets on growth and jobs.

<sup>68</sup> The Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification entitles immigrant family members to the same status as their sponsor, including in terms of access to the labour market.

<sup>69</sup> The Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents ensures their access to employment on equal terms with the nationals.

<sup>70</sup> See for instance the Common Basic Principles on Integration (CBPs) of 2004 and the Common Agenda for Integration of 2005, cited above.

<sup>71</sup> The Global Approach to Migration (GAM) was adopted in 2005 by the European Council. Initially GAM focused on migration originating from and transiting through Africa and the Mediterranean, but in 2007 it was extended to the Eastern and South-Eastern regions neighbouring the EU. See COM (2007) 247 final, 16 May 2007.

<sup>72</sup> See the Framework Strategy for Non-Discrimination and Equal Opportunities, COM (2005) 224 final, 1 June 2005.

<sup>73</sup> Article 15 of Council Directive 2003/86/EC (2003-09-22) on the right to family reunification.

## e) The Commonwealth of Independent States (CIS)

The Commonwealth of Independent States, (CIS) comprises twelve countries that emerged from the demise of the Soviet Union, namely the Russian Federation, the Caucasus countries Armenia, Azerbaijan and Georgia, the Central Asian Republics of Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan, along with Belarus, Moldova and the Ukraine.

On 14 November 2008, the Council of Heads of Government of the CIS endorsed the '*Convention on the Legal Status of Labour Migrants and Their Family Members*', which had been under discussion since 2006. The agreement seeks to create conditions for equal treatment of migrant workers and their families with the citizens of the host country, as well as to effectively regulate labour migration and to contribute to the socio-economic development of the parties.<sup>74</sup> It recognizes the principle of non-discrimination, judicial protection, and equal remuneration, but not also the right to education or other rights.

The Interparliamentary Assembly of Member Nations of the CIS (IPA CIS) was created on 27 March 1992 as an advisory body for the preparation of draft legislative documents of mutual interest. In 1995 it received the status of an inter-state body, occupying ever since the leading role in the system of agencies of the CIS.<sup>75</sup> The IPA CIS adopts model legislative acts and recommendations aimed at harmonising the legislations of the Commonwealth states and at establishing a basis for interaction on matters of mutual interest. As part of these efforts, a model law on 'The Migration of Labour in the CIS Countries' was adopted in 1995, which spells out the principle of equality with respect to employment and work conditions and non-discrimination on the grounds of nationality, race, religion or gender (Art. 9), it specifies under which conditions migrant workers can benefit from equal access to social security (Art. 14) and it includes further provisions on the right to join trade unions (Art. 15), on the access to education and vocational training for migrant workers and their families (Art. 16), on the recognition of educational certificates and professional qualifications (Art. 11) as well as on the prevention of 'illegal' labour migration (Art. 21).<sup>76</sup> The '*Declaration on the Coherent Migration Policies*' adopted by the Council of Heads of States of the CIS, on 5 October 2007, reaffirms the principle of non-discrimination including political and social rights in accordance with international conventions.<sup>77</sup>

## f) Human Rights in North America

In the case of Canada and the U.S., the American Declaration of the Rights and Duties of Man (1948) reiterates that the essential rights of man are attributes of one's personality and not derived from his/her nationality, and stipulates the right to work and to fair remuneration and the right to social security, as well as the corresponding duties to social security and welfare and to work.<sup>78</sup> Other major human rights documents relevant for the Inter-American system include the American Convention on Human Rights from (1969),<sup>79</sup> and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (1988),<sup>80</sup> the latter recognizing the benefits that stem from the promotion and development of cooperation among States and introduces an obligation to non-discrimination on grounds of race, colour, sex, language, religion, political and other opinions, national or social origin, economic status, birth or any other social condition (Art. 3). Moreover, the Protocol also lays down the right to just, equitable and satisfactory conditions of work (Art. 7), trade union rights (Art. 8) and the right to social security (Art.

<sup>74</sup> <http://cis.minsk.by/main.aspx?uid=12890>, 2009-02-22.

<sup>75</sup> At present it brings together the heads of parliaments of Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan and Ukraine.

<sup>76</sup> <http://www.iacis.ru/html/index-eng.php?id=54&str=list&nid=9> and <http://www.iacis.ru/html/?id=22&pag=24&nid=1>, 2009-02-19.

<sup>77</sup> Information provided by ILO Moscow.

<sup>78</sup> <http://www.cidh.oas.org/Basicos/English/Basic2.American%20Declaration.htm>, 2009-03-13.

<sup>79</sup> It was only signed by the U.S. on 1 June 1977.

<http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>, 2009-03-13.

<sup>80</sup> <http://www.cidh.oas.org/Basicos/English/basic5.Prot.Sn%20Salv.htm>, 2009-03-13.

9). However, the Convention was so far only signed by Canada and the Protocol by neither of the two OSCE participating States.

Also relevant, the Inter-American Human Rights Court, in 2003, issued an Advisory Opinion on the juridical condition and rights of undocumented migrants, which states that labour standards should apply to all workers in an employment relationship in the Americas, regardless of immigration status.<sup>81</sup> According to the Opinion, “the State has the obligation to respect and guarantee the labour human rights of all workers, irrespective of their status as nationals or aliens, and not to tolerate situations of discrimination that are harmful to the latter in the employment relationships established between private individuals (employer-worker). The State must not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.”

## 2. Implementation of OSCE commitments on protection and welfare of migrants

With respect to **protecting migrant workers**, the main OSCE commitments are to:

- protect and promote their fundamental human rights, including economic, social and cultural rights, and their social welfare, including their living conditions;<sup>82</sup>
- ensure equality of rights of legally residing migrant workers with the nationals of the host countries with regard to conditions of employment and work and to social security;<sup>83</sup>
- promote equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for legally residing and working migrant workers ;<sup>84</sup>
- facilitate the reuniting and regular contacts of legally residing migrant workers with their families.<sup>85</sup>
- condemn discrimination on the ground of race, colour and ethnic origin, and prevent intolerance and xenophobia against migrant workers;<sup>86</sup>

Moreover, specific commitments have also been made to ensure effective equality of opportunity between the children of migrant workers and children of nationals regarding access to all forms and all levels of education.<sup>87</sup>

In the Helsinki Final Act of 1975 the participating States committed themselves to protecting the “personal and social welfare” of migrant workers, ensuring their “equality of rights with the nationals of the host countries with regard to conditions of employment and work and to social security”, and to “endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions”. These core commitments were reaffirmed in subsequent documents and have

<sup>81</sup> Advisory Opinion OC-18/03 of 17.09.2009, requested by the United Mexican States.

[http://www.corteidh.or.cr/docs/opiniones/seriea\\_18\\_ing.doc](http://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.doc), 2009-03-13.

<sup>82</sup> See the Helsinki Final Act 1975, the Madrid Document 1983, the Copenhagen Document 1990, the Charter of Paris for a New Europe 1990, the Moscow Document 1991, and the Vienna Document 1989.

<sup>83</sup> See the Helsinki Final Act 1975.

<sup>84</sup> See the Helsinki Document 1992.

<sup>85</sup> See the Helsinki Final Act 1975, the Madrid Document 1983, and the Vienna Document 1989.

<sup>86</sup> See the Moscow Document 1991, the Budapest Document 1994, the Ministerial Council Decision No. 4/03 on Tolerance and Non-Discrimination, and the Permanent Council Decision No. 621 on Tolerance and the Fight against Racism, Xenophobia and Discrimination, annexed to the Ministerial Council Decision No. 12/04 on Tolerance and Non-discrimination.

<sup>87</sup> See the Helsinki Final Act of 1975 and the Vienna Document of 1989.

been complemented by further pledges aimed at protecting the migrant citizens on their territory as well as their citizens abroad, optimising the benefits of migration and mitigating its adverse impact in both the countries of origin and of destination, and fostering international cooperation.

In the Moscow Document of 1991 the participating States condemned “all acts of discrimination on the ground of race, colour and ethnic origin, intolerance and xenophobia against migrant workers” and pledged to “take, in conformity with domestic law and international obligations, effective measures to promote tolerance, understanding, equality of opportunity and respect for the fundamental human rights of migrant workers,” as well as to adopt “measures that would prohibit acts that constitute incitement to violence based on national, racial, ethnic or religious discrimination, hostility or hatred.”

Additional commitments to promote equality of opportunity also with respect to education, health services, housing and access to trade unions have been made in the Helsinki Document of 1992 (Art. 38), while the provision of elementary language and vocational training for migrant workers as well as the facilitation of the reuniting and regular contacts of migrant workers with their families count also among the commitments of the Helsinki Final Act.

Ratification and implementation of the international standards and policy frameworks discussed above is fundamental to achieving these commitments. Given the importance of these protection concerns, a number of additional agreements have been elaborated among groups of OSCE participating States. These agreements provide further evidence of implementation of these commitments in the OSCE area. Furthermore, these agreements demonstrate the necessary complementarity between enactment of legal standards and development of policy and administrative measures to give full effect to the standards, principles and commitments on protection.

The following subsections look respectively at (a) several examples of general inter-country agreements, and (b) specific measures on discrimination, racism and xenophobia.

## **a) Status of multilateral agreements on protection**

### **Western Balkans**

Cooperation among the countries in the Western Balkans on migration-related aspects materialises through several regional initiatives such as the *Regional Cooperation Council* (RCC, the successor to the Stability Pact for South-East Europe, <http://www.rcc.int/>)<sup>88</sup> and the *Migration, Asylum, Refugees, Regional Initiative* (MARRI, <http://www.marri-rc.org/>).<sup>89</sup> Relations between the EU and the Western Balkans are anchored in the Stabilisation and Association Process (SAP).

Following the adoption of MARRI ‘Strategy and Programme of Action 2008’,<sup>90</sup> an Action Plan for 2008/2009 has been developed by the MARRI Regional Centre in order to achieve the objectives set out in the strategic priority areas (i.e. migration, trafficking in human beings, visa liberalisation and implementation of readmission agreements, document security, border management, asylum and refugees).<sup>91</sup> Under the priority area of migration a seminar was organised in Ohrid on 12 September 2008 to highlight the importance of development and adoption of comprehensive national migration policies as prerequisite for sound migration management. The output included a set of recommendations identifying several key elements of comprehensive migration management systems: unambiguous national legislation harmonised with relevant instruments of international law; adoption of comprehensive migration policy and establishment of a governmental inter-agency working group; creation of a Central Migration Authority to ensure effective inter-agency co-operation; competent

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<sup>88</sup> The RCC membership consists of 45 countries, organizations and international financial institutions. For a complete list, see [http://www.rcc.int/index.php?action=page&id=14&link\\_id=21](http://www.rcc.int/index.php?action=page&id=14&link_id=21), 2009-02-20.

<sup>89</sup> MARRI counts with 6 member States: Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro and Serbia.

<sup>90</sup> MARRI Strategy Programme of Action 2008, <http://www.marri-rc.org/upload/Documents/MARRI%20SPoA%202008.pdf>, 2009-02-20.

<sup>91</sup> MARRI Regional Centre Action Plan for 2008/2009, <http://www.marri-rc.org/upload/MARRI%20RC%20Action%20Plan%202008-2009.pdf>, 2009-02-20.

information management support IT mechanisms; regionally harmonised and coherent data collection methods; development of permanent training systems for staff involved; regional cooperation and exchange of information; development of policies for migrant integration etc.<sup>92</sup>

### **Commonwealth of Independent States (CIS)**

In the Commonwealth of Independent States (CIS), the Council of Heads of the CIS Migration Bodies regularly discusses and determines priority areas for cooperation in migration management, aiming at concerted policy approaches within the CIS framework, fostering the harmonisation of migration legislation in the CIS countries, safeguarding migrants' rights and enhancing the exchange of migration-related data and information (ICMPD 2008, 10). CIS countries concluded an *'Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers in the CIS'* (Moscow, 15 April 1994), which was amended in 2005 by the *'Protocol on Changes and Amendments to the Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers'* of 15 April 1994 (Moscow, 25 November 2005).<sup>93</sup> Ten countries are party to the Cooperation Agreement and 2 more have signed but not ratified it,<sup>94</sup> while only 3 countries are also parties to the Protocol and 6 have signed but not ratified it.<sup>95</sup> The agreement includes a series of mutual commitments in the field of labour migration, specifically related to the social protection of labour migrants in other CIS countries. In particular, it provides for:

- mutual recognition of diplomas, qualification, certificates, documents certifying degrees, titles, qualifications;
- mutual recognition of work records and work experience records;
- equal treatment of migrant workers under a the national labour legislations, including social benefits and special conditions granted to workers;
- veto on double-taxation;
- migrant workers' eligibility for social protection, insurance and medical treatment provisions under national legislation, except for pension benefits (Kabeleova et al 2007, 39-40).

The Agreement authorizes quotas for labour migrants subject to regulation by bilateral agreements between parties. It determines recognition of work periods and the right to pension, but lacks provisions on non-discrimination, equality of treatment, equality of rights, relying instead on the 'inherited' principle of equality among citizens of the USSR. Social protection is guaranteed only for regulated migrants. The agreement did not envisage the harmonisation of national legislations.

### **EU member States**

Labour market access in EU member States is, on average, only partly complying with the OSCE commitments in terms of the eligibility of migrant workers for the same opportunities as EU nationals to work in most sectors; their access to labour market integration measures to adjust to the language and professional demands of the labour market; the opportunities to get their full set of skills and talents recognised, to access training, and to develop language skills that are critical for the job market; the security of their situation in employment, including having possibilities to renew most types of work permits and to remain living in the country and look for work, in case of losing the job; the freedom to change employer, job, industry and work permit categories in order to pursue their

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<sup>92</sup> MARRI Recommendations - Comprehensive Migration Management Systems, Ohrid, 12 September 2008, [http://www.marri-rc.org/upload/Documents/Recommendations/Recommendations%20-%20Comprehensive%20Migration%20Management%20Systems%20\\_Ohrid.%2012%20September%202008.pdf](http://www.marri-rc.org/upload/Documents/Recommendations/Recommendations%20-%20Comprehensive%20Migration%20Management%20Systems%20_Ohrid.%2012%20September%202008.pdf), 2009-02-20.

<sup>93</sup> A list of all CIS Human Rights Treaties concluded during 1991-2001 and ratification status is available on the webpage of the Executive Committee of the CIS: <http://www.cis.minsk.by/sm.aspx?uid=9696>, 2009-02-19.

<sup>94</sup> Parties: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Uzbekistan, Ukraine. Signatories: Georgia, Turkmenistan.

<sup>95</sup> Parties: Belarus, Kyrgyzstan, Moldova. Signatories: Armenia, Azerbaijan, Kazakhstan, the Russian Federation, Tajikistan, Ukraine.

professional development; having the right to join a trade union. Most migrants can renew all but seasonal work permits, and participate in trade unions and work-related negotiation bodies.<sup>96</sup> Central and Eastern Europe lags substantially behind the rest, while Western Mediterranean countries like Spain, Italy, Portugal and Nordic countries like Finland, Sweden and Norway have the best performances in these areas.

In Canada, the rules relating to family reunion for migrants admitted as permanent residents are generous on the whole. Migrants with permanent residence in Canada can be joined by family members, provided that they agree to sponsor them for a period of three to ten years depending on the relationship. Persons eligible for family reunion are:

- spouses, common-law or conjugal partners 16 years or older;
- dependant children up to the age of 22, including adopted children;
- intended adoptees under the age of 18;
- parents and grandparents;
- brothers, sisters, nieces, nephews, or grandchildren who are orphans, under the age of 18, and unmarried or not in a common-law relationship.<sup>97</sup>

With regard to family reunion,<sup>98</sup> the EU member States diverge most on the provisions that determine how long residents must wait to be eligible and which family members they can sponsor. Generally, migrants are not forced to take language or ‘integration’ tests and courses to secure the right to live with their family. However, most sponsors must prove that they have a job or a certain income. Families are partially secure in their status and have slightly more favourable rights. If their application is refused or permit withdrawn, most have legal guarantees and avenues to appeal. Family members and their sponsors have equal access to take up jobs or further their education.

Over the past 20 years or so, courts, especially in EU Member Countries, have increasingly tended to invoke Article 8 of the European Convention on Human Rights and the European Court of Human Rights, and the Court itself also became more active in protecting the right to family life (Guiraudon/Lahav 2000. Thym 2008). To pick out one prominent example relevant for the application of the OSCE commitments regarding family reunification, in the case of *Sen v. Netherlands*, in 2001, the European Court of Human Rights found violations concerning disproportionate restrictions placed on the right to respect family life (Art. 8 of the ECHR) in the context of the expulsion of foreigners or their admission into a State party. The rights guaranteed in the ECHR are applicable to “everyone within [the] jurisdiction [of the contracting parties]”.

In countries of origin in the OSCE area, the protection and welfare of migrant workers are usually achieved through regulatory measures, i.e. streamlining and simplification of regulations and procedures intended to protect workers, and provision of support services (pre-employment orientation and information campaigns, empowerment of migrant workers, close supervision and monitoring by governments of recruitment activities undertaken by employment promoters or agencies, introduction of criminal proceedings against serious offenders, introduction of stronger measures to ensure enforcement of the employment contract at the worksite, inter-state cooperation between countries of origin and destination etc.) (OSCE/IOM/ILO 2006, 43).

<sup>96</sup> <http://www.integrationindex.eu/topics/2585.html>, 2009-02-24.

<sup>97</sup> Immigration and Refugee Protection Act (2001), sections 12(1) and 13 (1); Immigration and Refugee Protection Regulations, SOR/2002-227, 11 June 2002, pp. 116-137.

<sup>98</sup> <http://www.integrationindex.eu/topics/2586.html>, 2009-02-24.

## **b) Status of legislation and measures to prevent discrimination and combat xenophobia**

Several OSCE commitments emphasize need to condemn discrimination on the ground of race, colour and ethnic origin, and prevent intolerance and xenophobia against migrant workers.

In many OSCE countries, national labour legislation is applicable to all workers and makes no distinctions on the basis of nationality, but application of this legislation is problematic because it often affords no explicit protection to non-nationals and access is also difficult in practice. According to the ILO, in a significant number of countries, national discrimination law does not apply to migrant workers (Council of Europe 2008, 73). The applicability of anti-discrimination laws is often limited to certain grounds, such as ethnicity, 'race' or sex, while laws relating to distinctions on the basis of nationality are in most cases limited. Access to employment or to the labour market is considered a sovereign prerogative of States and can be limited, although, in many European OSCE countries, restrictions are generally lifted after two to five years of employment (OSCE/IOM/ILO 2006, 145).

Prevention of discrimination and protection of the human, civil and labour rights of migrants in the countries of employment are intrinsically linked with achieving their full integration and thus enabling them to better contribute to the socio-economic welfare in the country of employment. Likewise, upholding economic and social rights in countries of origin will prevent migration from being a compelled decision and will enhance the beneficial effects of migration on the development in the country of origin (CMW n.d., 9).

### **EU member States**

In the EU, the Member States have now by and large transposed the 'Racial Equality Directive'<sup>99</sup> and the 'Employment Equality Directive'<sup>100</sup> into national law (though full and correct transposition in all 27 Member States is yet to be achieved), setting a common framework for all Member States to implement anti-discrimination law and policies. The provisions of the directives are minimum requirements, i.e. Member States may always do more, but never less, to combat discrimination.

Since the Equality Directives entered into force, all Member States have introduced or amended national anti-discrimination law. In some countries, it was the first time enforceable legislation on equal treatment was put in place; in most countries, the transposition of the Directives into national law contributed to clarification and strengthening of the legal protection against discrimination. The implementation of the Directives is not yet complete. The Commission sent a 'reasoned opinion' to 14 Member States in June 2007 for failing to implement the Racial Equality Directive fully, and to 11 Member States in January 2008 for incorrect implementation of the Employment Equality Directive. The main problem areas include definitions of discrimination, assistance to the victims of discrimination – such as the shift in burden of proof and victimisation – and the scope of the protection granted.<sup>101</sup>

### **Commonwealth of Independent States (CIS)**

In the CIS, the Council of Heads of State adopted in 2007 a 'Declaration on Coherent Migration Policies of the CIS countries'<sup>102</sup> which reaffirms the principle of non-discrimination including political and social rights in accordance with international conventions. The high level at which this declaration was adopted is evidence of the importance of this topic within the CIS as well as of the difficulty of

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<sup>99</sup> Council Directive 2000/43/EC, 29 June 2000.

<sup>100</sup> Council Directive 2000/78/EC, 27 November 2000.

<sup>101</sup> European Commission (2008) Commission acts to close gaps in employment equality rules. Press release 31 January 2008, [http://ec.europa.eu/employment\\_social/fundamental\\_rights/pdf/news/ip08\\_155\\_en.pdf](http://ec.europa.eu/employment_social/fundamental_rights/pdf/news/ip08_155_en.pdf), 2008-10-16.

<sup>102</sup> Results of the meeting of the Council of Heads of State, 5 October 2007, in Dushanbe, <http://www.cis.minsk.by/main.aspx?uid=10308>, 2009-02-20.

managing migration. The Declaration does not mention the common labour market, which was meant to be further developed by the working groups.

In the UK, the Southern and Eastern Trades Union Congress and *Unionlearn* have produced a pamphlet to assist in campaigning against racism. It provides information on ethnic minority discrimination and disadvantage in the labour market and provides practical advice to union organisers for identifying and combating racist behaviour and practices in the workplace (FRA 2008, 54).

In Croatia, in line with the provisions of the Aliens Act regulating the work of aliens in the Republic of Croatia, aliens shall be guaranteed identical rights as provided in the labour law regulations of the Republic of Croatia regarding the employment and work conditions, that is, in collective agreements and arbitration rulings. The guaranteed rights shall refer to the maximum stipulated working hours and minimum rest periods, the minimum paid annual leave, the minimum wage rate, including the overtime wage rate, health conditions and safety at work, protective measures for the employment of expecting mothers, women and minor workers, and ban discrimination.<sup>103</sup>

### 3. The Way Forward

In general, the necessary legal and institutional frameworks for regulating migration and protecting migrants in the OSCE area have been steadily developing over recent decades. This reflects on the one hand the elaboration of relevant international and European normative standards, and their gradually widening ratification. On the other hand, expanding multilateral efforts whereby various groupings of participating States are coordinating their respective actions within cooperative structures such as the EU or the CIS, or by creating additional partnerships, as in the case of the Western Balkan countries with the EU.

The OSCE commitments on migration are being gradually incorporated into national legislation and policies, but this is an on-going process. Most limitations are in terms of ensuring equal treatment with nationals and non-discrimination on all grounds, including on nationality. However, the implementation often lags behind, especially as capacities are insufficiently developed and administrative structures are sometimes lacking the necessary knowledge, efficiency or funding.

Clearly, the national adoption and transposition of foundational legal standards for protection of migrants and building effective policy is far from complete.

While a significant number of OSCE participating States have ratified and incorporated one or more of the most relevant instruments, a substantial number have not yet done so.

**One important path forward involves providing information and technical support to concerned States to improve legislation through incorporation of international standards.**

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<sup>103</sup> <http://www.mup.hr/1266.aspx>, 2009-02-24.

## IV. Migration Policy: Optimising benefits and mitigating adverse impact

This chapter focuses on the policy arena. Elaboration of explicit migration policy and concrete action measures are the necessary complement to legislative enactment of normative standards. Effective governance of labour migration requires legislation, policy and concrete measures taken together. This chapter highlights the numerous commitments to establish policies and practices that ensure that migration is deliberately regulated in order to meet needs and obtain benefits for concerned countries. The chapter illustrates that while many initiatives have emerged, many gaps remain unfilled.

### 1. Relevant OSCE commitments

In terms of **optimising the benefits of migration and meeting the needs for labour skills** in both origin and destination countries, the OSCE commitments are directed to

- adopting effective national frameworks in order to manage migration,<sup>104</sup>
- ease regulations concerning the movement of citizens from the other participant States in their territory, with due regard to security requirements.<sup>105</sup>
- creating conditions to foster integration and greater harmony in relations between migrant workers and the rest of the society in which they reside, including by raising awareness about the enriching contribution of migrants to society and by enabling migrant workers to participate in the life of the society where they lawfully reside;<sup>106</sup>
- providing elementary language and vocational training for migrant workers;<sup>107</sup>
- facilitating the social and economic reintegration of returning labour migrants in their countries of origin, for instance by attracting their savings with a view to increasing opportunities for employment or by ensuring with appropriate legislative means or reciprocal agreements the payment of pensions;<sup>108</sup>
- fighting ‘illegal’ migration and addressing its root causes;<sup>109</sup>
- increase the possibilities of employment in countries of origin, for instance by developing economic co-operation suitable to both host and origin countries.<sup>110</sup>

<sup>104</sup> See the Ministerial Council Decision No. 2/05 on Migration.

<sup>105</sup> See the Helsinki Final Act 1975.

<sup>106</sup> See the Moscow Document of 1991, the Helsinki Document 1992, the Budapest Document 1994, the Ministerial Council Decision No. 4/03 on Tolerance and Non-Discrimination, and the Permanent Council Decision No. 621 on Tolerance and the Fight against Racism, Xenophobia and Discrimination, annexed to the Ministerial Council Decision No. 12/04 on Tolerance and Non-discrimination.

<sup>107</sup> See the Helsinki Final Act 1975 and the Madrid Document 1983.

<sup>108</sup> See the Helsinki Final Act 1975, the Madrid Document 1983 and the Vienna Document 1989.

<sup>109</sup> See the Ministerial Council Decision No. 2/05 on Migration.

<sup>110</sup> See the Helsinki Final Act 1975.

## 2. Implementing commitments to optimise benefits and mitigate adverse impact

### National migration policy statements or frameworks

A particularly significant OSCE commitment was the one incorporated in the Ministerial Council Decision of 2005, urging participating States to adopt “*effective national frameworks in order to manage migration.*”<sup>111</sup>

The general trend among the OSCE participant States is to develop migration policies directed at encouraging and regulating legal migration. Some of these comprise comprehensive national strategies or “coherent, comprehensive and balanced National Action Plans” covering a range of concerns and spelling out the intersecting involvements of different branches of government and other stakeholders, including social partners.

Some national policy statements have had a more limited focus on countering ‘illegal’ migration, particularly where it is associated with such phenomena as trafficking in human beings and organized crime. However, the participant States have understood that in addressing the problem of irregular migration, measures of control or restriction alone are insufficient. Therefore efforts are being taken to adopt cross- or multi-sectoral approaches, engaging not merely the participation of governments in the countries affected by irregular labour migration, but also the social partners and civil society.

Countries of origin are starting to focus on developing labour emigration and return strategies, with steps being taken regarding the recognition of qualifications and diplomas acquired abroad and on providing information about legal routes to emigrate. On the other hand, progress is less marked with regard to enhancing the protection of expatriates’ rights. Countries of destination do put more emphasis on controlling their borders and regulating the inflow of migrant workers, but at the same time they are starting to develop measures aimed at enhancing integration and social cohesion, and at protecting the rights of the migrants.

#### Elements for Policy Formulation:

Migration concerns the individual migrant and his/her family, and the source and the host country alike. A sustainable and successful migration policy has to establish procedures and regulations optimising the effects of migration for all three simultaneously for otherwise it will be circumvented by one or the other of the parties.

Migration is a process with several stages. Pre-migration information has to give accurate and reliable information about conditions of travel and recruitment and the working and living conditions in the host countries. Recruitment has to be regulated in a way guaranteeing a fair treatment of potential immigrants and avoiding exploitation and dependency from the recruitment agent. Travel has to be organised under decent conditions at a fair price.

In the host country, dependency on a sole employer has to be avoided by granting fair admission procedures including free choice of the employer and equal treatment with nationals with regard to employment and working conditions and access to social rights, including protection against discrimination, and full respect for freedom of association and collective bargaining (trade union) rights.

Migrants should be given the possibility to acquire the lingua franca of their host country at conditions adequate to their situation, and they should also be given the possibility to follow their traditions, as long as they are consistent with international human rights and the laws of their country of residence. Integration policies should include institutional facilities informing immigrants about their rights and about the laws, norms and practices of the host society. Their children should be given access to the educational system in the same way as children of nationals enjoy it, and particular emphasis should be given to their educational advancement. Family reunification should be facilitated, and family members be given access to the labour market as soon as possible.

In order to allow sustainable return, their employment should give room for the acquisition of transferable skills and knowledge. Thus they should have access to training and retraining programmes in the same way and under

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<sup>111</sup> See the Ministerial Council Decision No. 2/05 on Migration.

the same conditions as nationals. Temporary migration programmes should last for the period necessary to allow skill acquisition. Visa regulations should allow for travel between host and source country. The transfer of remittances should be facilitated, and its costs reduced to a minimum. Associations of immigrants should be supported in activities supporting migrants in the host country and the advancement of the country of origin.

Return to the country of origin should be seen as an option the individual migrant has to decide about. Returning migrants should be supported with regard to the utilisation of capital and knowledge acquired in the host country. In the country of origin, returning migrants should be supported in their re-integration process.

In order to facilitate a holistic migration policy, bi- and multilateral agreements regarding the joint development of migration policies should be concluded. In the source country, one-stop-shop agencies for pre-departure information, recruitment and information and support on return should be set up. Also in the host countries, one-stop-shop agencies informing about migrants' rights and living conditions should support migrants' settlement. Co-operation with the migration agencies active in the countries of origin should be sought, in particular with regard to sustainable return and support for returning migrants with regard to transfer of skills, capital and knowledge.

(Drawn from ILO, IOM and ICMPD policy recommendations)

## **Western Balkan Countries**

In the Western Balkan region, the latest Enlargement Strategy and Progress Reports<sup>112</sup> indicate that slow progress is being made in the area of migration policy development and implementation. Legislation regarding the movement, stay and employment of aliens is in most Western Balkan countries newly adopted or in process of adoption, but the administrative capacities required to implement the legislation in this field is insufficiently developed. The most quoted impediments are insufficient staffing levels, lack of or insufficient intra-agency cooperation, lack of technical capacities, lack of compatible data systems on migration etc. On the other hand, due to the conclusion of a significant number of readmission agreements both with the European Community and with other countries, the number of returned people is starting to rise steadily, which makes integration of readmitted persons a priority. However, for the moment secondary legislation on migration policy and an integration policy plan are still either lacking or in their first stages. Also, visa policies are only in their beginnings in most of the Western Balkan countries.

## **CIS countries**

Being increasingly confronted with the negative consequences of unregulated migration, CIS countries have invested greatly in improving the quality of migration management systems in recent years. Most CIS countries have developed the necessary legislative basis, generally in line with international standards and agreements. Nevertheless, a good legal basis is contrasted with the underdevelopment of administrative and operational structures (such as labour-related entry and residence policies, labour market services, public or private job agencies) (Hofmann 2007, 15). The main problem areas are border control (where clear-cut responsibilities are often missing, equipment is not updated or cannot be properly used, inter-agency cooperation is not working efficiently, the sheer length of the borders etc.), visa policies (which are at an early stage of development and the understanding of the visa system as an instrument of migration control is not fully developed yet),<sup>113</sup> and the cumbersome procedures for issuing work and residence permits. The actual admission policies with regard to labour purposes and work permits have proved to impose too many bureaucratic hurdles, financial burdens and tedious procedures on employers and labour migrants (ICMPD 2005, 273). The inefficiency of these procedures leads to the paradoxical situation that in spite of the acknowledged need for workers many labour migrants find themselves pushed into irregularity since they cannot fulfil the administrative requirements (Hofmann 2007, 16).

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<sup>112</sup> Reports are available for Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey at [http://ec.europa.eu/enlargement/how-does-it-work/progress\\_reports/index\\_en.htm](http://ec.europa.eu/enlargement/how-does-it-work/progress_reports/index_en.htm), 2009-02-24.

<sup>113</sup> Apart from entry and transit visa there is also still an issue with exit visa. Uzbekistan keeps requiring them of its citizens while Turkmenistan gave up the practice in 2004.

Five OSCE participating States (namely Armenia, Azerbaijan, Georgia, Moldova and Ukraine) are engaged in cooperation with the EU through the European Neighbourhood Policy (ENP),<sup>114</sup> the Commission outlined the main principles of the new ENP, acknowledging the necessity to apply the full range of its policies (foreign, security, trade, development, environment and others) to this end.<sup>115</sup>

Under the framework of the ENP, cooperation in the field of Justice, Freedom and Security on migration issues with Georgia and Moldova included the objective of elaborating and starting the implementation of coherent, comprehensive and balanced National Action Plans on migration and asylum issues a) to improve coordination between relevant national agencies dealing with migration, b) to achieve the exchange of information and possibly cooperation on transit migration, c) to support training activities in the field of immigration and asylum, d) to develop cooperation with international organisations and the relevant agencies of the main countries of origin, transit and destination in order to manage migration processes etc.<sup>116</sup>

Moreover, steps have been taken to strengthen the dialogue and cooperation in preventing and fighting 'illegal' migration with the view of eventually reaching agreements on readmission as well as on reintegration of returned asylum seekers and migrants. Georgia has readmission agreements in place with three EU Member States and is negotiating with most others. The European Commission has funded several AENEAS projects in Georgia including document security, reintegration of returning migrants, and informed migration.<sup>117</sup>

In Sweden, new rules for labour immigration entered into force in December 2008. The new bill seeks to create a more open and flexible system for labour migration. Concrete measures to this end include ending the labour market testing by government agencies and enabling individual employers to identify which skills cannot be filled internally. The basic requirement for immigrating to work in Sweden is that there be an offer of employment that will provide the immigrant with an adequate living and the terms of employment offered are no worse than those specified in relevant Swedish collective agreements or provided for by common practice in the occupation or industry. However, the principle of Community preference must be respected, which means that nationals of EU and EFTA countries are to have first priority for access to employment opportunities. Sweden does not use quotas for labour migrants.<sup>118</sup>

In January 2007, Russia adopted a new immigration policy which should contribute to decelerating the country's population decline, fill labour shortages more effectively, maintain economic potential and increase revenue, as well as reduce social tensions. The law defines quotas for migrant origin countries and high penalties for employers who employ migrants without the required permits and it is expected to provide 6.5 million migrants in 2007 with a registration and working permit.<sup>119</sup> The changes in legislation are intended to simplify the procedure for registering foreign citizens at their place of residence, along with employment, which were among the most serious obstacles for the legalisation of the status of migrants. Regarding the reform of the process governing migrant employment, which concerns only non-visa CIS citizens arriving in Russia from the CIS, labour permits are now issued

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<sup>114</sup> The ENP for Belarus is not yet activated because there are no agreements in force with it, and the ENP builds upon such existing agreements. Also, relationships with Russia are instead developed through a Strategic Partnership covering four "common spaces."

<sup>115</sup> Communication from the Commission to the Council and the European Parliament. Wider Europe – Neighbourhood: A new Framework for Relations with our Eastern and Southern Neighbours. Brussels, 11 March 2003, COM (2003) 104 final, p. 4.

<sup>116</sup> See respective Action Plans available at [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm), 2009-02-24.

<sup>117</sup> Commission Staff Working Document accompanying the Communication from the Commission to the Council and the European Parliament "Implementation of the European Neighbourhood Policy in 2007", SEC (2008) 393, Brussels, 3 April 2008, [http://ec.europa.eu/world/enp/pdf/progress2008/sec08\\_393\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2008/sec08_393_en.pdf), 2009-02-24.

<sup>118</sup> <http://www.sweden.gov.se/sb/d/3083/a/114169>, 2009-02-20.

<sup>119</sup> [http://www.euromonitor.com/Russias\\_new\\_immigration\\_policy\\_will\\_boost\\_the\\_population](http://www.euromonitor.com/Russias_new_immigration_policy_will_boost_the_population), 2009-02-20.

directly to the immigrant, and not, as in the past, to the employer, which in practice means that workers are no longer tied to one employer. Moreover, the migration services are now obliged only to inform the employment authorities about work permits issued to foreign immigrants but not to wait for its approval before issuing them, as before 2007 (Zayonchkovskaya 2007, 143).

On 20 July 2007 the President of Ukraine signed the decree entitled “Improvements of State Migration Policy of Ukraine” (No. 657/2007). The decision reinforces the Decision of the Council for National Security and Defence on “Directions of State Migration Policy of Ukraine and Urgent Measures of Improvement of Its Effectiveness” dated 15 June 2007. Implementation measures should ensure a) regulation and differentiation of immigration to Ukraine, including of temporary character, depending on investment, scientific and cultural needs of the state, b) improvement of national legislation on refugees, creation of legal institutes for implementation of rights of persons who are in need of complementary and temporary protection, and c) effective counteraction to ‘illegal’ migration and reinforcement of responsibility for offences related to it. In line with the Decision, the Cabinet of Ministers of Ukraine, among others, submitted, by the end of 2007, a draft Concept Paper on State Migration Policy of Ukraine (with involvement of public organizations, scientists and experts) to Parliament. It also drafted laws on the ‘Basic Grounds of the State Migration Policy of Ukraine’, on the ‘Introduction of Amendments to the Law of Ukraine on Legal Status of Aliens and Stateless Persons’, on ‘Refugees, Persons Who are in Need of Complementary and Temporary Protection’, and on ‘Ratification of the Agreement between the Cabinet of Ministers of Ukraine and the Government of Russia on Readmission.’ In parallel, the Ministry of Foreign Affairs conducted preparatory measures for the ratification of the Ukraine/EU Readmission Agreement and for ensuring Ukraine’s participation in the EU programme on financing of forced and voluntary return of irregular migrants to the countries of their origin or citizenship, as well as negotiations for concluding readmission agreements with a number of countries of origin.<sup>120</sup>

The UK Home Office (Interior Ministry) utilizes existing surveys and data in order to identify and evaluate current and future labour market shortages and to assess labour demand and skill needs (Department for Education and Employment, 2001). Moreover, in the UK, evidence of labour market tightness is documented before a decision to facilitate the immigration of persons with a particular set of occupational skills is taken and implemented (OSCE/IOM/ILO 2006, 38).

Programmes for training, counselling and assistance for minorities to succeed in the labour market can be found for instance in the Czech Republic primarily for Roma, in Estonia for the non-Estonian speaking unemployed, and in Hungary for refugees (FRA 2008, 53).

Albania, Turkey and most of the former Yugoslavia are in a process of assimilating their legal and administrative systems to the requirements of future EU membership. This lends direction to the development of migration policies and has tended to speed them up.<sup>121</sup>

However, in terms of implementation, reports from some countries note that capacity of governments to manage migration has remained low due to limited financial resources, lack of experienced staff, an unwieldy bureaucracy, and a high level of informal payments. Insufficient coordination and cooperation among concerned Ministries has also been cited as a problem

<sup>120</sup> <http://soderkoping.org.ua/page15519.html>, 2009-02-20.

<sup>121</sup> See the latest Enlargement Strategy and Progress Reports available at [http://ec.europa.eu/enlargement/how-does-it-work/progress\\_reports/index\\_en.htm](http://ec.europa.eu/enlargement/how-does-it-work/progress_reports/index_en.htm), 2009-02-24.

### 3. Examples of programmes, initiatives and practices implementing commitments

The EU's sectoral policy dialogue with ENP partner countries covers a wide range of subjects – from the political to the technical, supporting the transition, reform and modernisation of ENP partner countries' administrations and public institutions. On migration and visa facilitation, Ukraine and Moldova concluded readmission and visa facilitation agreements with the EU, which entered into force on 1 January 2008. Guidelines were drafted to support the correct and harmonised implementation of the visa facilitation agreements.

The European Commission is developing a model of 'mobility partnerships' to facilitate legal migration while at the same time combating 'illegal' migration, which involve the Commission, interested EU member States, and relevant third countries.<sup>122</sup> These partnerships are not limited only to mobility but touch upon many aspects related to the migration-development nexus. A pilot-mobility partnership is currently being developed with the Republic of Moldova, and exploratory talks will be undertaken with Georgia. The programme in Moldova seeks to assist the Moldovan authorities in encouraging the return and facilitating the reintegration of highly-skilled Moldovan migrants abroad (Council of Europe 2008, 77). A Common Visa Application Centre was opened in Chisinau under Hungarian leadership, also including Austria, Denmark, Estonia, Latvia and Slovenia. More Member States are expected to join.

In Russia, a six year government programme, starting in June 2007, encourages "compatriots" living abroad to return to Russia. Repatriates are to receive cash, social benefits and support to regain Russian citizenship. By February 2009, 20,000 people had already applied.<sup>123</sup>

The Council of Heads of the CIS Migration Bodies is shortly expected to start working on establishing and improving mechanisms for gathering and analysing the relevant information and statistical data in order to monitor the migration situation and also to devise common unified standards in the interests of a possible inter-State exchange.<sup>124</sup>

As a notable development in the migration field the agreements on visa facilitation and readmission between the European Community and Albania,<sup>125</sup> Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, and Serbia, signed on 18 September 2007, should be mentioned. The agreements entered into force on 1 January 2008. Furthermore, during spring 2008, a structured dialogue on visa liberalisation was initiated between the above countries and the EU. In this process detailed roadmaps have been developed with clear benchmarks to be met in order to

<sup>122</sup> Commission Staff Working Document accompanying the Communication from the Commission to the Council and the European Parliament 'Implementation of the European Neighbourhood Policy in 2007'. Progress Report Moldova. SEC (2008) 399, Brussels, 3 April 2008, <http://soderkoping.org.ua/files/pages/16680/1.pdf>, 2009-02-20.

<sup>123</sup> [http://www.euromonitor.com/Russias\\_new\\_immigration\\_policy\\_will\\_boost\\_the\\_population](http://www.euromonitor.com/Russias_new_immigration_policy_will_boost_the_population), 2009-02-20.

<sup>124</sup> Migration Management and its linkages with economic, social and environmental policies to the benefit of stability and security in the OSCE region. Statement by Mr. Nikolay Smorodin, Deputy Director of the Federal Migration Service of Russia, at part I of the 17<sup>th</sup> OSCE Economic and Environmental Forum, Vienna 19-20 January. Reference No. EEF.DEL/13/09, 20 January 2009, available at [http://www.osce.org/documents/eea/2009/01/35971\\_en.pdf](http://www.osce.org/documents/eea/2009/01/35971_en.pdf), 2009-02-24.

<sup>125</sup> For Albania only a visa facilitation agreement was signed, as a readmission agreement was already in force.

advance towards visa liberalisation (ICMPD 2008, 12). The agreements substantially improve the conditions for obtaining visas for travel to the EU. The facilitation agreements are linked to readmission agreements that were negotiated and concluded in parallel, and to the introduction of biometrics.<sup>126</sup>

With regard to the fight against ‘illegal’ migration a number of CIS countries concluded an ‘Agreement on Cooperation in Combating Illegal Migration’ in 1998.<sup>127</sup> Subsequently, in June 2004, the CIS Council of Ministers of Internal Affairs adopted a decision and addressed the Council of Heads of States of CIS to elaborate a joint roadmap on the fight against ‘illegal’ migration for the years 2006-2008. Based on this decision the Council of Heads of States adopted a concept on the fight against ‘illegal’ migration of the CIS states in Astana, in September 2004, and decided upon the creation of the Joint Commission of CIS Member States.

The Czech Immigration Police Officers (IPOs) are members of the Foreign Police Service and are posted to third and transit countries for the purpose of establishing and maintaining contacts with the host countries in an effort to contribute to ‘illegal’ migration prevention, repatriation of migrants without rights to stay, and legal migration management. The main tasks of these officers are to provide the staff of an embassy with methodological and expert assistance and to assist them during interviews with of visa applicants. There is also the benefit of ensuring a flexible cooperation and communication between embassies in risk regions and the Czech Ministry of the Interior. In 2007, the destinations for the IPOs were Moscow, Ulaanbaatar, Hanoi, Lvov, Cairo, and Algiers. In 2008, the destinations were Cairo, Kiev, Lvov, Hanoi, Moscow, Peking, Istanbul, Damascus, and Ulaanbaatar.

For the past 6 years, Hungary has been implementing an ‘in depth integrated controlling system’ of the foreigners residing in the country. The controls are ad-hoc and carried out on the basis of cooperation agreements between the police, the labour inspectorate, the Hungarian Customs and Finance Guard, and the Office of Immigration and Nationality. Checks can take place separately or as a common act of these authorities. If, during a control, an authority notices irregularities pertaining to the competence of another authority, it informs the responsible body. Furthermore, the visa authority makes efforts to sign bilateral agreements with the receiving institutions in order to have a registry of the participating foreigners especially for the following entry purposes: entry of tourist groups, participation in cultural and sport events, larger student groups. A similar system has been in place in Austria.

In Belgium the mandatory declaration of employment by migrants is part of a broader employment project, Limosa. Through this project the Belgian authorities aim to create better guarantees for the free movement of services and workers with extra attention being paid to everyone’s rights and conditions of employment in Belgium. The website [www.limosa.be](http://www.limosa.be) plays an important part in this project. Immediately after each declaration of activity from a foreign national via the website, a ‘Limosa-1’ certificate is supplied. This certificate must be presented to the Belgian client or principal. If an employee, self-employed person or trainee is unable to produce this Limosa-1 document, the

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<sup>126</sup> Communication from the Commission to the European Parliament and the Council “Western Balkans: Enhancing the European perspective”, COM (2008) 127 final, Brussels, 5 March 2008, [http://ec.europa.eu/enlargement/pdf/balkans\\_communication/western\\_balkans\\_communication\\_050308\\_en.pdf](http://ec.europa.eu/enlargement/pdf/balkans_communication/western_balkans_communication_050308_en.pdf), 2009-02-24.

<sup>127</sup> These countries were Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Ukraine.

Belgian client or principal must report this to the authorities immediately. In time, the www.limosabe website's functionalities will be expanded to allow employers to fulfil almost all their administrative obligations concerning working in Belgium via a single electronic portal. The Limosa declaration is an important step towards legal employment in Belgium while observing the Belgian and European regulations.

Trade Unions of Migrant Workers were organised in Russia in accordance with their right of association.<sup>128</sup> Since 2008, Kazakh trade unions are actively engaging migrant workers in trade union membership in order to protect their worker and human rights.<sup>129</sup> Trade unions of Kyrgyzstan<sup>130</sup> and Tajikistan have policy papers on labour migration whereby they seek collaboration with trade unions of destination countries for support of trade union members abroad.

## 4. The Way Forward

As highlighted in the OSCE-ILO-IOM Handbook on Establishing Effective Labour Migration Policies, the policy objectives of protecting citizens while working abroad and optimizing the developmental benefits of labour migration can only be met if two important elements form a part of a deliberate plan. First, countries must establish the necessary institutional capacity and inter-ministerial coordination to meet their policy objectives. This includes giving due priority to labour migration in terms of overall development, foreign policy, and resource allocation. Second, inter-state cooperation is essential (OSCE/IOM/ILO 2006, 36).

Therefore, further development of comprehensive migration management systems and strategies are needed in the participating States, based on enhanced cooperation among the countries of origin, transit and destination. As also recommended by the Global Commission on International Migration (GCIM) in 2005, and specified with more detailed guidance in the ILO Multilateral Framework on Labour Migration, states should provide additional opportunities for regular migration and establish clear and transparent criteria for the recruitment of foreign workers. Last but not least, policy frameworks must include mechanisms for data collection and monitoring the implementation and effects of measures, which would enable their proper evaluation in view of improving the policies and their outcomes on a regular basis.

**Building on the way forward suggested by the previous chapter, a second main path is to support countries to elaborate and implement national migration policy frameworks, commitment statements, and plans.**

A key form of international support to assist States in elaborating and implementing effective national policy frameworks will be provision of technical cooperation, advisory services and sharing of practical models.

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<sup>128</sup> Trade unions of migrant workers in Russia have their own newspaper "Migrant."

<sup>129</sup> Kazakh trade union policy paper "Labour Migration in Kazakhstan and the activity of social partners", Astana, 2008.

<sup>130</sup> Policy paper of the Kyrgyz trade unions on labour migration, Bishkek, 2008.

## V. International Cooperation and Dialogue

This chapter notes the emphasis given in the OSCE Commitments to international cooperation and dialogue on migration. It includes a summary of the main international and regional intergovernmental organizations that concern OSCE participating States, as well as certain more informal international consultative forums on migration. It also outlines several particularly relevant international and European social partner and civil society organizations. Moreover, the chapter reviews the development of bilateral labour migration agreements and international social security accords as evidence of expanding implementation of these OSCE commitments by many participating States.

### 1. Review of OSCE Commitments on International Cooperation

OSCE commitments encourage **bilateral and multilateral cooperation** by urging the participant States to:

- ensure orderly movements of workers thorough collaboration between host and origin countries;<sup>131</sup>
- deal jointly with the problems arising from the migration of workers;<sup>132</sup>
- co-operate to further improve the general situation of migrant workers and their families.<sup>133</sup>

Furthermore, the 13th Ministerial Council encouraged the OSCE itself to contribute by “facilitating dialogue and co-operation between participating States, including countries of origin, transit and destination in the OSCE area” and by “assisting the participating States ... to develop effective migration policies and to implement their relevant OSCE commitments.”<sup>134</sup>

Before analysing the “migration dimension” in international cooperation and dialogue, it has to be noted that, to this point, no international migration regime has formed at the global level. As Koslowski points out, “an international refugee regime based on the 1951 UN Convention and 1967 Protocol on the Status of Refugees as well as the ongoing activities of the United Nations High Commissioner for Refugees (UNHCR) is well established. In contrast, there is no international migration regime” (Koslowski 2008, 3). Without discussing the variety of different interpretations of this fact in detail, all analyses identify a general lack of political interest on the part of states as the main reason for the lack in regime formation at international level. On the one hand, the lack of interest in regime formation results from states’ tradition of satisfying their demand for foreign labour unilaterally. On the other hand, it is the mostly negative public perception of immigration at the domestic level, which prompts concerns on the part of governments when it comes to shifting responsibilities in migration governance to international regimes. As a consequence, the admission of persons to States for the purposes of work, education and family formation or reunification remains in the domain of national regulations and decision-making.

However, despite the absence of an international migration regime, progress in multilateral cooperation on migration has gained a lot of momentum since the early 1990s. Today, a multitude of international mechanisms, fora and organisations deal with international migration at the global level

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<sup>131</sup> idem

<sup>132</sup> See the Helsinki Final Act 1975.

<sup>133</sup> See the Madrid Document 1983.

<sup>134</sup> Ministerial Council Decision No. 2/05 on Migration.

(Hofmann et al 2004, 79ff). The large and well-established multilateral institutions, which stemmed from the post-war situation in the 1950s, have maintained their important role but increasingly widened the scope of migration related activities: UNHCR and Council of Europe, concerned with human rights issues and refugee protection, the International Labour Organisation (ILO), focusing on the protection of migrant workers, the International Organisation for Migration (IOM), dealing with a broad number of migration issues, and the European Communities promoting the free circulation of persons in the emerging internal market. Over recent years, these traditional actors in migration governance at international level have been supplemented by a broad number of newly established multi-lateral fora dealing with migration governance.

At regional level, processes such as the Budapest Process and the Söderköping Process in Europe, the Puebla Process in the Americas, and the Asia-Pacific Consultations have assumed an important role in addressing issues of migration policy development and governance. The experience made in the regional processes also fed into the further development of migration policy cooperation on the global level within fora like the Berne Initiative or the Global Commission on Migration initiated by the Secretary General of the United Nations in 2003.

Amidst and in the context of these activities **OSCE participating States also made commitments to deal with migration in a cooperative manner. Most explicitly this was the case in 1975 when they pledged to resolve the problems arising bilaterally from the migration of workers in Europe as well as between the participating States in their mutual interest, and to comply with the bilateral and multilateral agreements to which each one is party. The CSCE/OSCE has since then provided its participating States with a platform for political dialogue on migration and security related issues.**

In the following, a brief overview of the multilateral processes and international organizations will be provided that have been involved in driving international cooperation in the area of migration since the 1980s. Its aim is to present the major policy processes and key organizations driving the policy process.

## **2. International institutions with a focus on migration**

### **a) The United Nations System**

#### **International Labour Organization (ILO)**

The objective of the International Labour Organization (ILO) is the promotion of social justice and internationally recognized human and labour rights. The ILO was established in 1919 and became the first specialized agency of the UN in 1946. The ILO's organizational structure comprises three main bodies: the annual International Labour Conference, the Governing Body as the ILO's executive council, and the International Labour Office acting as the ILO's permanent Secretariat.

ILO activities in the area of international migration comprise a comprehensive agenda ranging from international standard setting to research to technical cooperation. Its main role and activities were reaffirmed and redefined by decision of the 2004 International Labour Conference – representing the ILO's then 178 member countries at ministerial level, along with executives of the most representative national employer and trade union federations.

The main areas of the ILO Plan of Action on Migrant Workers include developing comprehensive policy guidance comprising the ILO Multilateral Framework on labour migration; implementing the global employment agenda; promoting implementation of relevant international standards, expanding technical cooperation and capacity building, enhancing participation of social partners in migration policy and implementation, expanding the knowledge and database, and engaging in wider international cooperation. Particular activities relevant to implementing the OSCE commitments related to migration include advisory assistance to governments regarding migration policies, technical cooperation, and measures and activities to combat discrimination.

Measures to protect migrant workers and combat trafficking gained more importance with the adoption of the ILO Declaration on Fundamental Principles and Rights at Work in 1998. The Declaration explicitly calls for the “elimination of all forms of forced or compulsory labour”, “the effective abolition of child labour” and “the elimination of discrimination in respect of employment and occupation (ILO 2003, 8).”

### **United Nations High Commissioner for Refugees (UNHCR)**

The United Nations High Commissioner for Refugees (UNHCR), created in 1950 by the United Nations General Assembly, is charged to provide protection and assistance to the world’s refugees. Over the past six decades, it has become one of the world’s principal humanitarian agencies. Under its mandate, UNHCR’s work is humanitarian and non-political. Its founding statute entrusts UNHCR with two main and closely related functions – to protect refugees and to seek durable solutions to their problems. The former function is known as “international protection” and is aimed at ensuring refugees’ basic human rights, particularly that no refugee be returned involuntarily to a country where he or she has reason to fear persecution.

At the core of UNHCR’s protection function is to promote adherence to international agreements on refugees and to constantly monitor compliance by governments. UNHCR thus undertakes a range of activities to promote ratification of and accession to the 1951 Refugee Convention and its 1967 Protocol.<sup>135</sup> The second major function of UNHCR, to seek durable solutions to refugee problems, is accomplished by repatriation to their homeland, integration in first countries of asylum, or resettlement to third countries.

### **Other United Nations institutions and agencies**

Besides UNHCR and ILO a number of other UN institutions and agencies deal with issues related to migration and refugee protection. The General Assembly of the UN regularly considers issues with direct relevance to migration and refugee matters, particularly the Second and Third Committee of the **United Nations General Assembly (UNGA)**, which in the past has considered issues such as migrants’ rights, the situation of refugees or trafficking issues. The Committee regularly reports to the UNGA and submits draft resolutions, decisions or conventions for adoption by the Plenary.

The most important legal instrument in the area of migration is the International Convention on the Protection of All Migrant Workers and Members of their Families (also called the Migrants Rights Convention), which entered into force on 1 July 2003. As noted earlier, this Convention aims at improving legal protection of migrants as well as preventing and eliminating their exploitation. The **Committee on Migrant Workers (CMW)**, the UN body of experts monitoring implementation of this Convention, reviews reports submitted by States Parties to the Convention to assist them in improving implementation of Convention standards. The Committee on Migrant Workers has also endeavoured to identify good practices through its examination of reports of States Parties.

Linked to the activities of the UNGA, and in most cases directly reporting to it, are the activities of other UN organs, programmes and specialized agencies, which often have a bearing on multilateral cooperation in the area of migration in their respective areas (e.g. the UN Regional Economic Commissions, the UN Development Programme, the UN Fund for Population Activities, the UN High Commissioner for Human Rights, the World Bank and others). In the following, attention should be drawn to three smaller UN outfits, which are regularly involved in international cooperation on migration issues in Europe.

The **UN Population Division (UNPD)** under the Department of Economic and Social Affairs of the United Nations Secretariat is tasked with the monitoring and appraisal of a broad range of areas in the field of population. Demographic trends, mortality, fertility as well as international migration are in the centre of UNPD’s activities. The UNPD holds regular meetings on data collection and information

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<sup>135</sup> Geneva Convention on the Status of Refugees and the 1967 New York Protocol. Entry into force 22.04.1951 (Convention) and 04.10.1967 (Protocol). As of 3 November 2003, 138 States were Parties to both the Convention and the Protocol. See: UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. <http://www.unhcr.ch/cgi-bin/texis/vtx/protect>, 2004-01-30.

sharing in the area of population and migration. The **United Nations Economic Commission for Europe** (UNECE) also has a special unit, the Population Activities Unit (PAU), which coordinates regional activities in data collection and research on demographic change and migration.

The **Centre for International Crime Prevention** (CICP) focuses on combating transnational organized crime, corruption, terrorism and trafficking in human beings. The Centre officiates as the implementing body for decisions formulated by the UN Commission on Crime Prevention and Criminal Justice, established in 1992. CICP is part of the United Nations Office for Drug Control and Crime Prevention (UNODC).

In view of the growing internationalisation of crime as result of globalization, the United Nations recognised the ever-growing importance of crime prevention through enhancing international cooperation and promoting internationally acknowledged “Criminal Justice Standards and Norms”. In support of the fight against International Crime the CICP prepared three topic-related programmes: The “Global Programme against Corruption”, a programme entitled “Assessing Transnational Organized Crime Groups: Dangerousness and Trends” and the “Global Programme against the Trafficking in Human Beings” (CICP 1999, 9). The main emphasis is placed on the enhancement of international cooperation between police and immigration authorities, the strengthening of victim protection and the further development of criminal justice standards, both at national and international level. One of the main activities of the CICP is the implementation of the “United Nations Convention against Transnational Organized Crime” (2000) and its Protocols. The main purpose of the Convention is to promote international judicial and police cooperation in specific areas of transnational crime and to enhance governments’ capacities to effectively tackle these types of organized crime.

### **The Global Commission on International Migration (GCIM)**

In September 2002, the UN Secretary General (UNSG) commissioned an internal report about how the UN could better address the issue of international migration. The report recommended the establishment of a global commission in order to initiate broad political discussion and to foster international understanding on the issue. In the end, the UNSG did not choose to form a Commission under UN auspices but encouraged a group of interested countries to take the lead in forming an independent commission. Consequently, the **Global Commission on International Migration** (GCIM) was launched as an independent body in December 2003. Based on the results and discussions of the Berne Initiative and other multi-lateral fora for migration cooperation, a Core Group of States has taken the initiative to establish a framework for multi-lateral, indeed global, migration policy cooperation. The GCIM is supported by about a dozen governments, but Sweden and Switzerland accounted for most of the preparations and the financing.

The GCIM had three mandates: to bring international migration issues to the top of the global agenda, to analyse shortcomings in approaches by governments or other bodies to migration, and to make practical recommendations to the UN Secretary General and other stakeholders on strengthening governance of international migration. It successfully articulated a set of recommendations providing a comprehensive response to migration issues.

### **b) The International Organisation for Migration (IOM)**

Created in 1951, IOM’s mandate is to help ensure the orderly flow of international migrants; to promote international co-operation on migration issues; to aid in the search for practical solutions to migration problems by providing a forum for discussion; and to provide humanitarian assistance to migrants in need, be they refugees, externally or internally displaced persons, or other uprooted people. IOM’s Constitution explicitly recognises the link between international migration and economic, social and cultural development.

Based on a global network of field offices and representations, IOM carries out a large variety of field-based operations and programmes. IOM has defined several service areas that constitute the core of the Organization’s activities. Resettlement, voluntary return, reintegration and transportation assistance for migrants constitute the core of IOM activities. Other related activities comprise of technical cooperation and capacity building, assisted voluntary return for irregular migrants, medical

and public health programmes for migrants, measures to counter trafficking in human beings, awareness raising and education on migration.

IOM has been active in a number of regional consultative processes in migration management both in the wider European area and beyond. In 1996 IOM was one of the co-organizers, together with UNHCR and OSCE/ODIHR, of the CIS Regional Conference to address the problems of refugees and displaced persons in the CIS and their neighbouring states. A Programme of Action was adopted and the organisers were entrusted to monitor its implementation. A working group was set up to provide for the follow-up process. In 2000 IOM organised an international conference on Migration in Dakar, which led to the establishment of the Migration Dialogue for West Africa. In the same year, IOM together with the United Nations Institute for Training and Research (UNITAR) and the International Migration Policy Programme (IMP) launched the Migration Dialogue for Southern Africa. In addition, IOM has played an active role in other regional consultative processes and conferences on migration (e.g. the Regional Conference on Migration, also known as the “Puebla Process”) dealing with migration issues in Central and Northern America, the Intergovernmental Asia-Pacific Consultations (APC), the “Manila Process” dealing with irregular migration in Asia and the 2002 regional conference on people smuggling and trafficking held in Bali.

### **c) The Council of Europe**

The Council of Europe has particular roles, competence and capacity in addressing migration. Its **European Committee on Migration (CDMG)** conducts studies, develops recommendations, contributes to elaborating normative standards and delineates policy guidance covering most issues of migration governance. Many of its policy lines have been endorsed by the Council of Europe Conferences of Ministers on Migration Affairs, thus giving the political impetus at the highest level to ensure their implementation by member states. Policy evolution in many member states shows that Council of Europe guidance has been especially relevant to shaping consistent national policies and to encouraging co-operation among member countries.

The CDMG incorporates operational participation from all 47 member countries (all of which are also OSCE participating States). The composition of the committee reflects the breadth of government institutions charged with addressing migration concerns, including ministries of immigration, labour/employment, interior or home affairs, foreign affairs, integration, and others.

Other Council of Europe bodies address migration issues. The **European Commission against Racism and Intolerance (ECRI)** is tasked with combating racism, xenophobia, anti-semitism and intolerance from the perspective of protection of human rights; its focus includes discrimination and integration regarding persons of immigrant origin. The current Council of Europe Commissioner for Human Rights, serving in an independent capacity, has given particular attention to rights of migrants as a major theme under this mandate. The Parliamentary Assembly of the Council of Europe (PACE) plays an important role, particularly through its **Committee on Migration, Refugees and Population**. This Committee elaborates policies for protection of the rights of migrants, refugees and displaced persons and the improvement of their living conditions and, secondly, proposes political solutions consistent with the humanitarian values of the Council of Europe.

### **d) The European Union**

Despite the priority given to economic and labour market policies, the European Communities always were a project concerned with migration, in the sense that trans-border mobility of Community citizens within the EC was to be facilitated, and by the 1990s, largely treated as internal migration. Today, “the community encompasses two very separate legal regimes relating to migration - on the one hand there is a highly developed EC legal framework regarding the right of nationals of the Member States to migrate and seek employment in any one of the other Member States”, and, on the other, a much less clear legal regime relating to third country nationals (Guild 2004, 47). It was the so-called “asylum crisis” of the 1990s that really prompted ‘harmonisation’ or ‘communitarisation’ of immigration governance at European level. The entering into force of the Amsterdam Treaty in 1999 represented the formal step towards this development. Amsterdam made cooperation in the field of

border and migration management binding for EU Member States, but required unanimity among them when it came to the actual decision-making process. The Nice Treaty in 2003 introduced qualified majority voting into some 30 provisions, also referring to asylum and migration. In 2004, the five-year transitional period foreseen for the implementation of the ‘Tampere Programme’ on migration and asylum came to an end. The ‘Hague Programme’ followed it. The Hague Programme envisaged enhanced coordination and harmonization in asylum and migration matters within the EU. It formulated several key steps for the further ‘communitarisation’ of asylum and migration policy.

Today, the EU acquis comprises standards on the reception of asylum seekers as well as standards on asylum procedures; determines the EU Member State responsible for examining an asylum application; determines the right of family reunification for third-country nationals; defines rules for non-EU nationals working in the European Union; provides frameworks for the admission of students or researchers from third countries and for the integration of third-country nationals; regulates the financial and technical assistance for third countries in the areas of migration and asylum; and stipulates rules on non-discrimination on the grounds of racial or ethnic origin. As a consequence, “EU rules now cover the full gamut of ‘migration policies,’ from entry, residence, and economic rights of immigrants to social integration of immigrants and their descendents” (Hix/Noury 2007, 183).

In parallel to the broadening of the topical competences of the Union, the decision-making process in migration matters underwent an ongoing trend towards ‘communitarisation’ as well. Apart from Denmark, Ireland and the United Kingdom, who have opted out of (or not opted in for) the common immigration and asylum policies, individual Member States gradually lost their veto power in the EU institutions (Pendel 2007, 33). Pending on the entering into force of the Lisbon Treaty – more precisely, upon ratification by the EU Member States – most EU decisions on asylum, immigration and integration will have shifted to qualified majority voting in the Council after 2009. However, there is also a notable exception. The Lisbon Treaty underlines that Member States will ‘retain the right to determine the volumes of admission of third-country nationals coming from third countries to seek work’. In practice, this reservation implies that admission and labour migration from newly arriving third-country nationals will remain in the sole competence of the Member States.

#### The External Dimension of Asylum and Migration policy

The so-called ‘external dimension’ of a common EU asylum and migration policy is not a novelty but has been developing over a number of years. The strategic framework for intensifying cooperation and dialogue on asylum and migration with third countries is provided by the European Neighbourhood Policy (ENP). The ENP was developed in 2004 with the declared objective to put both the Member States of the European Union and its neighbouring countries in a position to benefit from the 2004 enlargement by contributing to increased stability, security and prosperity. In its Communication on “Wider Europe” the Commission outlined the main principles of the new European Neighbourhood Policy (ENP) and defined the strengthening of relations with its Eastern neighbours as one of the ENP’s main priorities. The Union acknowledged the necessity to apply the full range of its policies (foreign, security, trade, development, environment and others) in order to meet all challenges evolving both from the transition processes taking place within the successor states of the Soviet Union as well as from the impact of these processes on the relationship between these states and the Union. At the same time it emphasised a ‘partnership approach’ by calling these policies to assure that both the Union and its new neighbours are put into a position to benefit from evolving opportunities (European Commission 2003, 4ff)

#### **e) Organisation for Economic Co-operation and Development (OECD)**

The OECD groups 30 member countries and provides governments with a framework for the discussion on and improvement of economic and social policies. OECD’s work covers economic and social issues from macroeconomics, to trade, education, development and international migration. Since the 1960s the migration activities of the OECD have mainly been carried out under the auspices of the **Working Party on Migration**. The migration observation group of the OECD, named **SOPEMI**, monitors and analyses migration and asylum flows in OECD member countries on the basis of national reports. The migration activities of the OECD are organised around two main areas: monitoring trends in international migration movements and policies and conducting analyses and

studies on specific migration-related issues. Emphasis is placed on the employment situation of foreigners, the fight against illegal foreign employment, economic aspects of migration and its effects on wages, employment, labour shortages, growth and productivity, and the mobility of highly skilled workers.

#### **f) International Centre for Migration Policy Development (ICMPD)**

The International Centre for Migration and Policy Development is an inter-governmental organisation with headquarters in Vienna. ICMPD was created in 1993 at the initiative of Switzerland and Austria. The purpose of the Centre is to promote innovative, comprehensive and sustainable migration policies and to function as a service exchange mechanism for governments and organizations in the wider European region. A major task of ICMPD is to develop a pan-European cooperation framework, so as to ensure that the countries in Central, Eastern and South Eastern Europe are fully included in a common European migration and asylum regime. Starting from a modest base, today more than 30 governments actively support ICMPD in various ways.

ICMPD's main objective is to support governmental and international actors through policy expertise, research and information, dialogue and networking facilities. In the framework of East-West migration cooperation, ICMPD serves as Secretariat to the Budapest process (see below) and has participated in other fora, processes, projects and institutions dealing with East-West migration. Responding to new migration phenomena in new geographical areas, ICMPD has over the last years progressively expanded its multilateral activities further east to include also countries of CIS and Central Asia and further south to the Mediterranean area. Since 2002, for example, ICMPD is active in establishing an informal network to prevent irregular migration over the Mediterranean, together with Algeria, Egypt, Lebanon, Libya, Morocco, Syria, Tunisia and EU States.

#### **g) Organization for Security and Cooperation in Europe (OSCE)**

The OSCE is a regional security organization comprising of fifty-six participating States as well as Partners for Cooperation that provides an important forum for dialogue and conducts activities in a comprehensive and co-operative manner in three dimensions of security: the politico-military, the economic and environmental, and the human dimension. Comprehensive security has been an integral element of the OSCE philosophy since its inception with the Helsinki Final Act 1975. Migration was included in this concept when freedom of movement was identified as a valuable component. Successive OSCE documents and Ministerial Council decisions reaffirmed migration as an important topic that should be approached by all three dimensions.

In 2005, under the Slovenian Chairmanship migration and security related issues were brought to the forefront of the political dialogue resulting in the Ljubljana Decision on Migration No.2/05. Since then migration related issues have frequently been discussed in various OSCE fora. This has been reemphasized in 2009 with the selection of migration management as the theme of the 17<sup>th</sup> OSCE Economic and Environmental Forum. The Office of the Co-ordinator of Economic and Environmental Activities (OCEEA) and the other divisions of the OSCE continue to lend support and work closely with the OSCE participating States to build capacity and strengthen inter-state co-operation to achieve the OSCE commitments in migration.

### **3. International Inter-governmental Consultative Forums**

#### **a) The Global Forum on Migration and Development**

The Global Forum on Migration and Development (GFMD) is a recent initiative among governments to address the migration and development interconnections in practical and action-oriented ways. It

reflects progressive acknowledgement of the need to address migration policy implications and responses in a multilateral framework. The goals of the GFMD are: a) to bring together government expertise from all regions to enhance dialogue, cooperation and partnership in the areas of migration and development; b) to address the multidimensional aspects, opportunities and challenges related to international migration and its inter-linkages with development; and c) to foster practical and action-oriented outcomes at the national, regional and global levels. Its inaugural meeting was held in Brussels in July 2007, the second in Manila in October 2008 and the third session is being prepared by the government of Greece to be held in Athens in November 2009. The Forum is seen as a multilateral space to examine potential synergies between international migration and development and to steer current research findings and good practices towards more cooperative forms of migration and development management.

## **b) The Inter-Governmental Consultations (IGC)**

The **Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia** (IGC) started as an informal meeting point for only a few Governments for the exchange of views and experiences, but within a few years developed into an important regional multilateral mechanism. IGC is an informal, non-decision making forum for information exchange and discussion on policy coherence in migration, asylum and refugee protection. Many of the concepts discussed in the framework of IGC (such as carrier sanctions for the transport of undocumented aliens, common visa policies, accelerated asylum procedures, and the concepts of "first-host-country" and "safe third country") later found their way into international agreements (such as the Dublin and Schengen Conventions and the London Resolutions) and into national asylum legislation. Subjects regularly dealt with by IGC include: asylum, temporary protection, return, trafficking, unaccompanied minors, family reunification, illegal migration, burden sharing and country of origin information. Since 1996, the IGC has established a "Trafficking Information Exchange System" (TIES), in which the governments of the IGC participating States exchange information on irregular migration, human smuggling and trafficking.

## **c) Regional Consultation Processes – RCPs**

When analysing the impact of multi-lateral cooperation on the governance of international migration, the role of regional initiatives has to be considered of equal importance as the initiatives at global level. The first forms regional cooperation processes have developed in Europe during the 1980s. Despite of their individual characteristics all of the various RCPs have in common that they were established to facilitate the dialogue on migration issues between States. They are characterised by pursuing a "particular model of informal and non-binding multilateralism" (Channac 2007, 9), by "openness" towards issues to be discussed and solutions to be found, and by "efficiency" in communication and administrative procedures. RCPs aim to build networks of information exchange and knowledge transfer, which in a second step, should contribute to convergence and harmonisation of national migration policies (Channac 2007, 13). Initially, many of the RCPs on migration issues had focused on irregular migration, asylum and border management. Meanwhile most of them have broadened their thematic scope and also deal with issues related to admission policies, labour migration or integration. This change in thematic orientation reflects a general change in perception towards an understanding for the need to develop comprehensive migration policies that cover all aspects of international migration.

In context of the OSCE region, the **Budapest Process** represents the largest and longest-standing platform for informal dialogue and cooperation between States on migration issues. The process was established in 1991 and today it represents a consultative forum of some 50 governments in the wider European region (plus Australia, Canada and USA) and 10 international organisations, aiming at preventing irregular migration and at developing sustainable solutions for the governance of legal migration in the wider European region. The **Söderköping Process** was launched in 2001 upon the initiative of Sweden and UNHCR to promote dialogue on asylum and irregular migration issues among the countries situated at the European Unions' eastern border. At present the Söderköping Process involves 10 States. Initiated in 2002, the **Bali Process** brings together more than 50 governments and international organisations. Its aim is to develop practical measures countering

human smuggling, trafficking in human beings and related transnational crimes in the Asia-Pacific region and beyond. The **Puebla Process** was initiated in 1996 and brings together 11 governments from South and North America. It aims to deepen cooperation between participating States, to deepen the knowledge on size and structure of regional migration flows and to counteract anti-immigrant attitudes.

## **4. Social Partner Organizations**

### **a) International Organisation of Employers (IOE)**

The International Organisation of Employers consists of 147 national employer organizations from 140 countries from all over the world. The mission of the IOE is to promote and defend the interests of employers in international fora, particularly in the International Labour Organization (ILO), and to this end works to ensure that international labour and social policy promotes the viability of enterprises and creates an environment favourable to enterprise development and job creation. As migration is one of IOE's policy areas, the organization works closely with the ILO and other relevant international organizations on this topic. For example, it cooperated with the Global Commission on International Migration set up by the UN in 2003. The IOE tracks developments in the further liberalization of trade in services through cross-border movement of professional, managerial and technical personnel through the WTO consultative process, in which it participates. The IOE participated in the drafting of the ILO Multilateral Framework on labour migration as a guide to future work in this area.

### **b) International Trade Union Confederation (ITUC)**

The ITUC's primary mission is the promotion and defense of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. The Programme Document adopted at the ITUC founding Congress sets out the Confederation's overall policy framework, which builds on existing international trade union policies. Promoting respect of diversity at work and in society and implementing effective measures to combat racism and xenophobia, in particular at the workplace and in the labour market, are priorities for the ITUC. To that end, campaigns are being run on combating the discrimination and the unfair and often abusive working and living conditions that women workers, migrant workers and the members of their families are facing throughout the world.

### **c) BUSINESS EUROPE**

BUSINESSEUROPE, the Confederation of European Business, represents more than 20 million small, medium and large companies. Its members are 40 central industrial and employers' federations from 34 countries, working together to achieve growth and competitiveness in Europe. Within its policy priorities, BUSINESSEUROPE works also for the removal of all hurdles to movement of workers. BUSINESSEUROPE encourages Member States to step up their efforts to remove the administrative and legal obstacles, which continue to stand in the way of workers who want to exercise their right to free movement. This implies, in particular, lifting restrictions on entry of citizens from the new Member States while taking account of the situation on the different labour markets. At EU level, the completion of the modernization and simplification of existing rules on coordination of social security schemes is key to facilitate European citizens' right to move freely.

### **d) European Trade Union Confederation (ETUC)**

The ETUC exists to speak with a single voice, on behalf of the common interests of workers, at European level. Founded in 1973, it now represents 82 trade union organizations in 36 European countries, plus 12 industry-based federations. The ETUC's prime objective is to promote the European Social Model and to work for the development of a united Europe of peace and stability where

working people and their families can enjoy full human and civil rights and high living standards. ETUC stands for fair and equal treatment for migrant and ethnic minority workers throughout Europe. The confederation calls for a coordinated EU-wide approach to managing the flow of people seeking a better life in Europe for themselves and their families. Such an approach involves reducing irregular immigration by dismantling human trafficking networks and penalizing unscrupulous employers who seek to benefit from this trade, as well as support measures for countries of origin.

## **5. Civil Society Organizations, a sampling of relevant international entities:**

### **a) International Catholic Migration Commission (ICMC)**

The International Catholic Migration Commission serves and protects the needs of uprooted people, refugees, internally displaced persons and migrants, with operations in 30 countries of the world, including Indonesia, Jordan, Lebanon, Pakistan and Turkey. It advocates for durable solutions and rights-based policies directly and through a worldwide network of member organizations. ICMC's expertise and core programming consists of refugee resettlement, return and reintegration, local integration, work with extremely vulnerable individuals, counter-trafficking and rescue, NGO capacity-building, technical cooperation and government institution-building, emergency response and advocacy. It has observer status with the Council of Europe, the ILO, the IOM and the UN, and collaborates in implementation of EU, UNHCR and other international organization projects.

### **b) Platform for International Cooperation on Undocumented Migrants (PICUM)**

The Platform for International Cooperation on Undocumented Migrants, is a non-governmental organisation (NGO) that aims to promote respect for the human rights of undocumented migrants within Europe. It also seeks dialogue with organisations and networks with similar concerns in other parts of the world. PICUM provides a direct link between the grassroots level, where undocumented migrants' experience is most visible, and the European level, where policies relating to them are deliberated. PICUM reports on issues regarding undocumented migrants through its members' experiences and simultaneously monitors developments within the European institutions. This approach mainstreams undocumented migrants' concerns into key policy debates, ensures PICUM's network is well informed of the EU agenda and develops their capacity to engage in the realisation of just and fair strategies for undocumented migrants.

### **c) European Network Against Racism (ENAR)**

The European Network Against Racism (ENAR) is a network of European NGOs working to combat racism in all EU member states and represents more than 600 NGOs throughout the European Union. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between European Union citizens and third country nationals, and to link local/regional/national initiatives with European Union initiatives. In the context of the debate on migration and integration, ENAR seeks to promote an intercultural ethos respectful of equal rights and diversity in all spheres of society. Its works towards the full political, social, economic and cultural participation of third country nationals and wants to end all forms of discrimination based on citizenship and nationality. ENAR generally aims to ensure that the rights of third country nationals are protected in all circumstances.

## **6. Cooperation of participating States in bilateral or multilateral agreements**

### **a) Labour agreements and other forms of labour recruitment**

Labour migration in the OSCE region is mainly governed by two different regimes. The General Agreement on Trade in Services (GATS), aiming at the liberalisation of trade in services (Martin 2006, 3), has developed into the main mechanism for facilitating transborder movement of the so-called “skilled” labour force. So-called “low-skilled” labour migration is mainly governed by a multitude of labour agreements and other forms of labour recruitment schemes (Mansoor/Quillin 2007, 97).

Labour agreements have a long tradition in the European context. In 2004, the OECD counted a total of 176 bilateral labour agreements and other forms of labour recruitment schemes for its Member States. The actual scope and content may vary significantly between respective agreements. Generalising, it can be said that their main purpose is to respond to labour force shortages in destination countries. But besides that, they are designed to serve other purposes as well. Labour agreements aim to govern labour migration flows between two or more countries and to reduce irregular migration between them, they aim to open new migration channels, to improve relationships between countries and to facilitate cultural and knowledge exchange.

The first bilateral schemes on labour migration governance were drawn up in the post war period to satisfy specific labour market demands in Northern European countries. In the 1970s, most of these schemes came to an end during the economic downturn in the aftermath of the oil crisis. The early 1990s saw intensified efforts to negotiate and conclude labour agreements and recruitment schemes in response to the fall of the Iron Curtain and the increased mobility over the newly opened borders. The more recent schemes primarily had and have a focus on the admission of seasonal and temporary workers for certain sectors in need of so-called “low skilled” work, namely agriculture, construction, tourism and catering (European Commission 2004, 6). To a lesser extent they also cover specific project-related employment, apprenticeships and trainee-ships. Their emphasis on seasonal and temporary work is also an expression of the attempt to channel migration flows, which typically comprise irregular forms of entry and residence, to legal types of migration.

### **b) Bilateral labour agreements in the OSCE region**

#### **Western and Central Europe**

As outline above, most of the 92 labour agreements in Europe date back to the 1990s. A better part of these agreements were a reaction to significantly increased migration following the dissolution of the former Soviet Block and the disintegration of the former Yugoslavia, and an attempt to better manage the resulting flows. With the two enlargement rounds of the European Union in 2004 and 2007 and the end of the transition period in 2011, when all EU Member States will have to comply with the EC rules regulating the free movement of labour, many of the existing labour agreements for central and western Europe will have become redundant.

The experiences made with bilateral labour agreements are quite positive. First of all, labour migration governed under the agreements obviously does not compete with local labour but covers shortages that cannot be filled with domestic workforce (Mansoor/Quillin 2007, 103). Second, well-designed labour agreements really contribute to a reduction of irregular labour migration while at the same time ensuring the return of migrant workers. The example of Spain proves that these two objectives can be met by way of bilateral labour agreements. Spain has concluded several agreements with the main countries of origin of irregular migration flows. An important feature of these agreements is that they not only define target groups, sectors and types of occupation, but also place strong emphasis on the protection of social rights of labour migrants and compliance with national labour regulation standards. The agreements pay particular attention to the issue of return. Seasonal workers, for instance, have to sign a commitment that they will return home after their contract has expired. They have to present themselves at Spanish consular offices in their country of origin after return, and they

do not enjoy rights for family reunification. But the agreements also include a very important incentive for migrants to return by assuring the transferability of social security contributions to their home countries (European Commission 2004, 7).

### **CIS region**

Labour agreements in the CIS region traditionally centred on issues related to the legal status of labour migrants and the protection of their social rights. The break-up of the former Soviet Union divided the USSR's territory into fifteen independent states divided by borders that had transformed from internal administrative to international borders. This not only disrupted traditional trade channels, but also created large-scale minorities on the territories of the newly founded states and turned previously internal movements into international migration. The high degree of economic and social interaction between areas and regions that previously were part of a common state caused the successor states to pursue rather liberal entry and visa policies towards other CIS citizens. The liberal visa and entry policies together with the practical problems resulting from the enormous length of the new external borders and the challenges in building up migration management systems facilitated irregular migration. Estimates speak of about 5 to 15 million migrants currently residing on the territory of CIS countries without the required papers, 3 to 5 million of them on the territory of the Russian Federation as the region's main country of destination (Hofmann 2007, 86). Consequently, in concluding regional and bilateral labour agreements the CIS countries focused on the protection of the interests of their citizens living and working abroad. The most important regional agreements in this respect are the "Agreement on cooperation in the field of labour migration and protection of migrant workers" from 1994 and the "Agreement on Cooperation in Combating Illegal Migration" from 1998. Of more practical relevance are the bilateral agreements concluded between CIS countries. The Russian Federation has concluded the largest number (nine), followed by Belarus (six), Kazakhstan and Ukraine (four each). However, the estimates on the extent of irregular labour migration within the CIS region exceed the numbers of registered ("legal") migrants by far. Related figures suggest that the existing schemes do not always provide sufficient solutions to the demand for foreign labour force and migrants' wish to work abroad (Mansoor/Quillin 2007, 104).

## **7. International Social Security Agreements**

Closely linked to the governance of labour migration is the issue of the protection of migrant workers' social rights and economic interests. The portability of social rights, namely the ability to preserve, maintain, and transfer acquired social security rights, is not only a key aspect when protecting migrant workers' interests but also a crucial measure in more effectively combating irregular labour migration and illegal foreign employment. Lacking portability entails a number of negative consequences for migrant workers. They might lose their contributions to the respective welfare systems, might have to come up for double contributions, and might suffer from reduced wages or pensions.

Especially in so-called "low skilled" employment, lacking portability of social rights is likely to work as a disincentive to take on gainful employment in order to maximise the revenues from one's work. The large numbers of irregular labour migration flows and illegal foreign employment must at least partly be attributed to this fact. In this respect, enhanced negotiation and conclusion of international social security agreements at bilateral or multi-lateral level and providing for the portability of social rights are crucial and necessary measures. Such agreements have a long history going back to the beginning of the twentieth century (Roberts 2000, 8).

However, many migrant workers originating from the main source countries of international labour flows are not yet protected by international social security agreements. NATLEX, the ILO database on international agreements, has counted a total of 1,886 international social security agreements in existence. At the same time NATLEX figures reveal that the distribution of such bilateral or multi-lateral agreements is highly uneven at the global scale. While the highly industrialised countries have signed a multitude of agreements, many of the main source countries of international labour migration have not concluded any agreements at all, neither amongst each other nor with the main destination countries of their citizens working abroad.

Among OSCE countries migrant workers benefit from the portability of social rights to widely varying degrees. Western European countries, Canada and the USA have concluded between 50 and more than 200 agreements respectively, with France (394), Germany (224) and Spain (142) having the most in effect. The new Member States of the EU and the CIS countries have concluded significantly fewer agreements. The south-eastern European countries also have only few bilateral social security agreements in effect. One of the reasons for the different degrees of social protection of migrant workers in the form of bilateral agreements lies in the inadequately developed social security systems of the main countries of origin of international migration flows. This fact runs against the principle of reciprocity implying that each party shares the costs and benefits of the agreement on “a reasonably equal basis” (Roberts 2000, 9). While this principle can be implemented in agreements between states with comparable social security systems and standards, it often constitutes an insurmountable obstacle for the conclusion of agreements between states where such convergence does not exist.

## 8. The Way Forward

The progress in multilateral dialogue and cooperation on migration has gained considerable momentum since the early 1990s. Several global and regional fora deal with migration issues and have broadened the scope of related activities.

However, the multifaceted complexity of migration itself is but reflected in the multiplicity of specialized organizations and forums addressing it.

Several existing forums are particularly relevant for most or all OSCE participating States. The Council of Europe Committee on Migration (CDMG) provides a broad platform for dialogue and for elaboration of common policy guidelines on many areas relevant to the OSCE commitments related to migration; it involves key government ministries concerned for migration from most OSCE participating States except for Central Asia; Canada and the US are observers to the CDMG.

The international dialogue forums on migration convened by the ILO and IOM provide a direct interface between regional and global migration policy for OSCE participating States. Recent IOM International Migration Dialogue sessions have focused, respectively, on labour migration and protection of migrants rights.

With regard to existing Regional Consultation Processes on migration, the composition of OSCE participating States can add specific value to cooperation and knowledge exchange at the global level.

**However, no existing forum on migration and security specifically incorporates all OSCE participating States, nor entirely incorporates important emerging concerns around environmental change and migration, and the interface between human security, national security and international mobility. The OSCE provides a unique platform for these aspects of policy dialogue on migration. With regard to the “external dimension” of the EU’s migration policy, the composition of OSCE participating States can add specific value to the further development of cooperation on migration governance between the EU and other OSCE countries.**

**Several OSCE participating States have concluded bilateral labour agreements and have developed measures that have proven successful in fostering labour migration in certain sectors, whilst reducing the extent of irregular labour migration and ensuring return of seasonal and temporary migrant workers. These policies provide an excellent knowledge base and the experiences made could be shared as ‘good practices’ among OSCE participating States, using the OSCE as a platform, and feed into the further negotiation and conclusion of agreements in the areas of labour mobility, social security, co-development, return of talent, development assistance, and so on.**

In this context, OSCE participating States should also explore deepened cooperation on the further development of social security and welfare systems amongst them to ensure that the principle of reciprocity can be better fulfilled as a precondition for social security agreements.

## **VI. Building Structures and Institutions for Migration Administration**

### **1. Introduction**

As illustrated in previous chapters, implementation of OSCE commitments on legislation, policy frameworks and international cooperation are advancing. However, a considerable number of participating States have made less progress on an essential step, the establishment of viable and effective structures and institutions to govern and administer the specificities of international migration. Some of those that have made strides in developing implementing institutions have not fully succeeded in bridging the gaps between good intentions and successful outcomes.

OSCE commitments on migration did not address the practical structures, mechanisms and institutions required to elaborate, coordinate and carry out the activities and measures to implement and supervise legislation and policy on migration. However, given that obtaining implementation is as important as expressing commitment, this chapter completes this report with a brief review of examples of how OSCE participating States are organizing to carry out their commitments.

### **2. Specialised national agencies & departments corresponding to the intent of commitments**

A wide variety of governmental departments, agencies and specialised bodies are involved in implementing the commitments of the OSCE in the migration field. Several institutional solutions to dealing with migration are found.

Often one ministry – the Ministry of the Interior or the Ministry of Labour, but also others, like the Ministry of Justice or the Ministry of Foreign Affairs – has the main responsibility. In other cases responsibilities are shared between different ministries. A number of countries also have set up specific ministries for migration and/or specific administrative agencies dealing with migration and integration. Shifts in responsibility are frequent and depend on changes in the government or migration policy framework.

Often the Ministry of the Interior has the main responsibility for immigration. Examples include i.e. the United Kingdom, where the Home Office is responsible for immigration; Hungary, where an Immigration Department within the Ministry of the Interior is the leading state agency<sup>136</sup>, Poland, where migration issues are the remit of an Undersecretary of State within the Ministry of the Interior<sup>137</sup>, and Slovenia, where the Migration and Integration Division of the Ministry of the Interior is responsible for migration policy development.<sup>138</sup> Specialised departments of the Ministry of the Interior also can be found e.g. in Lithuania (Migration and Integration Division)<sup>139</sup>, Latvia (Office of Citizenship and Migration Affairs)<sup>140</sup> or Estonia, where the Citizenship and Migration Board, a government agency acting within the administrative area of the Ministry of Internal Affairs, is responsible for migration affairs.<sup>141</sup> A similar solution was found in Russia where the Federal Migration Service<sup>142</sup> is a specialised agency within the Ministry of the Interior.

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<sup>136</sup> <http://www.bmbah.hu/>

<sup>137</sup> <http://www.mswia.gov.pl/portal/en/3/63/Structure.html>

<sup>138</sup> [http://www.mnz.gov.si/en/areas\\_of\\_work/internal\\_administrative\\_affairs/#c5226](http://www.mnz.gov.si/en/areas_of_work/internal_administrative_affairs/#c5226)

<sup>139</sup> <http://www.vrm.lt/index.php?id=124&lang=2>

<sup>140</sup> <http://www.pmlp.gov.lv/en/>

<sup>141</sup> <http://www.mig.ee/index.php/mg/est>

<sup>142</sup> <http://www.fms.gov.ru/>

Competencies may change depending on changes in the institutional framing of migration policies. So, for instance, in Finland all competencies regarding migration, including labour migration, have been shifted from the Ministry of Labour to the Ministry of the Interior as of January 1, 2008.<sup>143</sup>

In Malta, the Netherlands and Ireland the Ministry of Justice is the main governmental institution in the migration field. The Ministry of Labour has the overall responsibility for refugee, immigration and integration policy in Norway (Ministry of Labour and Social Inclusion, AID)<sup>144</sup>. In Luxembourg the Ministry for Foreign Affairs and Immigration<sup>145</sup> is the main political actor. In Azerbaijan the Ministry of Labour and Social Protection is the lead ministry (ICMPD 2005, 54). In Armenia, the Department for Refugees and Immigration, which was previously directly subordinated to the Prime Minister, has been integrated into the Ministry of Territorial Administration (ICMPD 2005, 24).

Joint political responsibilities can be found in Austria, where the Ministry of the Interior is responsible for the overall immigration policy and the Ministry of Labour and Social Affairs regulates access of non-EU-immigrants to the labour market. In Kazakhstan, migration policy is jointly formulated by the Ministry of the Interior and the Ministry of Labour that coordinated a Migration Committee. In Kyrgyzstan the State Committee for Migration and Employment (SCME) coordinates the migration policy of the country. In Turkmenistan a number of ministries and other state institutions jointly forge migration policies (ICMPD 2005, 243).

In some countries specialised ministries for immigration have been set up. In Belgium the Federal Minister of Migration and Asylum Policy<sup>146</sup> is responsible for migration issues at the federal level. In France a Ministry of Immigration, Integration, National Identity and Solidary Development<sup>147</sup> was established. In Denmark the Ministry of Refugee, Immigration and Integration Affairs<sup>148</sup> is the leading state body in this field. In Spain the new government that emerged from the elections in March 2004 right after the terrorist attacks in Madrid, assigned the responsibility for immigration policy to the new Secretariat of State for Immigration and Emigration, under the auspices of the Ministry of Labour and Social Affairs.<sup>149</sup> This ended a long tradition of the Ministry of the Interior being in charge of this matter. In Canada the Ministry of Citizenship and Immigration Canada<sup>150</sup> holds the main responsibility. In some CIS countries specialised governmental structures have been set up, as for instance the Moldovan State Migration Service (ICMPD 2005, 170).

A number of countries have organised specialised administrative agencies to deal with migration issues. Among them is Germany, where the Federal Office for Migration and Refugees (BAMF),<sup>151</sup> a specialised unit under the control of the Ministry of the Interior, deals with migration affairs. In Switzerland the Federal Office for Immigration<sup>152</sup> was established in 2005 to coordinate the implementation of migration and integration policies and administrate migration. In the U.S. the Citizenship and Naturalisation Service<sup>153</sup> is responsible for this matter, and in Sweden the Swedish Immigration Board<sup>154</sup> is responsible for the reception of asylum seekers and for making decisions concerning visas, work and residence permits and citizenship. The Board falls under the Ministry for Foreign Affairs, which is responsible for immigration questions, and the Ministry of the Interior, which is responsible for immigrant affairs within the Government Chancery.

In Uzbekistan the External Migration Agency under the Ministry of Labour is responsible for organized recruitment and documentation of national workers to other countries. In Ireland the

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<sup>143</sup> <http://www.intermin.fi/>

<sup>144</sup> [www.regjeringen.no/en/dep/aid.html?id=165-65k](http://www.regjeringen.no/en/dep/aid.html?id=165-65k)

<sup>145</sup> <http://www.gouvernement.lu/ministeres/mae.html>

<sup>146</sup> [http://www.belgium.be/fr/la\\_belgique/pouvoirs\\_publics/autorites\\_federales/gouvernement\\_federal/composition\\_gouvernement/index.jsp](http://www.belgium.be/fr/la_belgique/pouvoirs_publics/autorites_federales/gouvernement_federal/composition_gouvernement/index.jsp)

<sup>147</sup> [http://www.immigration.gouv.fr/article.php?id\\_article=133](http://www.immigration.gouv.fr/article.php?id_article=133)

<sup>148</sup> [http://www.nyidanmark.dk/en-us/the\\_minister/minister\\_of\\_refugee\\_immigration\\_and\\_integration\\_affairs.htm](http://www.nyidanmark.dk/en-us/the_minister/minister_of_refugee_immigration_and_integration_affairs.htm)

<sup>149</sup> [http://www.migranet.eu/public/osservatorio\\_bruelles/301007\\_C2C\\_Spain.pdf](http://www.migranet.eu/public/osservatorio_bruelles/301007_C2C_Spain.pdf)

<sup>150</sup> <http://www.cic.gc.ca/>

<sup>151</sup> <http://www.bamf.de>

<sup>152</sup> <http://www.bfm.admin.ch/bfm/de/home.html>

<sup>153</sup> <http://www.uscis.gov/portal/site/uscis>

<sup>154</sup> <http://www.migrationsverket.se/>

Naturalisation & Immigration Service (INIS)<sup>155</sup> was established in 2005. It is responsible for the administrative functions of the Minister for Justice, Equality and Law Reform in relation to asylum, immigration (including visas) and citizenship matters. The INIS also facilitates a unified government approach to immigration and asylum issues enabling a more efficient service to be provided in these areas.

A common framework against discrimination has been enacted within the European Union by the Council Directive 2000/43 EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. The Directives require setting up independent agencies supporting victims of discrimination and granting legal remedies. Thus there are state agencies against racial discrimination in all EU member countries. In most EU member countries, enforcement functions on human rights and non-discrimination are being combined in single national human rights monitoring bodies responsible for monitoring and enforcing anti-discrimination legislation across a broad range of grounds, including gender, race, ethnicity, nationality or national origin, age and sexual orientation.

### **3. Selection of practice profiles of institutions and agencies implementing commitments (such as labour administration, immigration, statistics, development etc.)**

A wide variety of institutions and agencies are dealing with migration and integration issues in both origin and destination countries. Their practices concern various stages of the migration process.

#### **Pre-migration**

With regard to pre-migration assistance in countries of origin, the main issues concern factual information on employment possibilities and working and living conditions in the host country. In this respect the *Information Resource Centre for Labour Migrants in Tajikistan* presents an example. The Centre was established in 2004 by the IOM and the Government of Tajikistan with support of the OSCE in order to provide intending and actual labour migrants with accurate information on their life and work abroad. Most migrants from Tajikistan work in the informal and lower skilled sectors in Russia. Many economic migrants do not know where to go with questions or for information on travel and work abroad. Unofficial recruiters and traffickers use this situation to their advantage (OSCE/IOM/ILO 2006, 54). At the Centre qualified counsellors provide information tailored to the needs of migrants. They provide information on employment conditions, travel and document requirements, registration, migrants' rights, press reports, maps and contacts, risks of trafficking and smuggling in persons, health risks and tips for economic migrants. Through this project, information is also provided on community organizations and resources, social services and longer-term integration facilities. Particular attention is paid to collecting and preparing up-to-date information in the field of labour migration and disseminating it to intending labour migrants (OSCE/IOM/ILO 2006, 54).

#### **Recruitment**

With regard to recruitment in the country of origin, the regulation of Private Employment Agencies – including registration, licensing, monitoring and enforcement of regulations – is of major concern. Furthermore, cooperation with Public Employment Agencies should be sought and developed and potential migrants should have access to resource or advice centres giving correct information on the terms and conditions Private Employment Agencies have to follow.

In Ireland, a regulatory framework for *Private Employment Agencies based on ILO Convention No.181* was developed in 2004. Ireland had a rather liberal regulation of employment agencies based on legal provisions dating back to 1971. When Ireland became a country of destination for immigrants in the 1990s, a number of Private Recruitment Agencies active in Ireland and in a wide range of recruitment countries were founded. It became clear that the existing regulations, which were developed when Ireland was a major country of emigration, were not sufficient any more. After broad

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<sup>155</sup> <http://www.inis.gov.ie/>

consultations with Private Employment Agencies, the Immigrant Council of Ireland, and the Social Partners, a white paper was published by the Department of Enterprises, Trade and Employment suggesting new legislation, which was based on the ILO Convention No.181. The new registration system also includes a Statutory Code of Good Practice and a complaints procedure. An Advisory and Monitoring Committee including the government, social partners, and the association of recruitment agencies will be responsible for monitoring and implementing the code (OSCE/IOM/ILO 2006, 167).

In Uzbekistan, an external Migration Agency under the supervision of the Ministry of Labour is responsible for organized recruitment and the documentation of migration of national workers to foreign countries. Regional employment centres have been set up acting as state employment agencies for recruitment.

A further example concerns the recruitment of agricultural workers by recruitment agencies known as “gangmasters” in the United Kingdom. Most of them worked without regulation and were known for exploitative practices. After a tragic incident involving the death of 20 migrant cockle pickers recruited under this system in 2003, regulation was developed. The *Gangmaster Licensing Act* of 2005 makes registration compulsory. The agencies have to comply with a code of conduct. Unlicensed recruitment was made a criminal offence. The Gangmaster Licensing Authority audits the agencies using a risk assessment procedure including data analysis and interviews, and scores compliance. Thus only agencies with a relevant risk profile will be targeted for assessment and will have to bear inspection procedures and auditing costs (OSCE/IOM/ILO 2006, 167).

### **Recognition of Qualifications**

The recognition of qualifications and credentials is an important precondition for enabling migrants to succeed on the labour market in host countries and to avoid brain waste. Only a few states work in this field and, have implemented legal regulations promoting the recognition of school degrees obtained abroad (OSCE/IOM/ILO 2006, 138).

In Canada it was noticed that many skilled immigrants cannot get a job in their chosen field despite adequate qualifications. In order to overcome the problem the *Foreign Credential Recognition Programme* was established. Foreign Credential Recognition is the process of verifying that the education and job experience obtained in another country are equal to the standards established for Canadian professionals. Credential recognition for regulated occupations is mainly a provincial responsibility that has been delegated in legislation to regulatory bodies. The Government of Canada is playing a facilitative role with provinces and territories and providing strategic leadership to foster the development of consistent national approaches to this issue. For the implementation of the programme an agency, Human Resources and Skills Development Canada (HRSDC), was set up. The programme is designed to facilitate the recognition of international qualifications so that internationally trained workers may better contribute to Canada’s economic and social development. To achieve this goal, cooperation with stakeholders is sought. For example, federal and provincial governments are working with key medical community stakeholders to improve procedures for licensing internationally trained doctors. Similar work is under way to speed the recognition process for internationally trained nurses and other health care professionals, including pharmacists, medical laboratory technologists, medical radiation technologists, physiotherapists and occupational therapists.<sup>156</sup>

### **Migrants’ rights in the country of destination**

The protection of the rights of labour migrants in the host country can best be achieved if they are treated equally with nationals with regard to employment and working conditions and granted trade union rights. Integration also entails information and advice on the living conditions in the host country, and information about migration and migrant communities for the resident population. The *Information and Resource Centre for Migrants in Portugal* may serve as an example in this regard. The Centre builds networks with migrant organisations, national institutions and NGOs and provides information on the legal status of immigrants in Portugal, measures to fight discrimination, the placement in the labour market and access to social security, health care, the educational system and

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<sup>156</sup> <http://www.hrsdc.gc.ca/eng/cs/comm/hrsd/news/2005/050425bb.shtml>

other social rights and runs a specialised Service Centre on family reunification (OSCE/IOM/ILO 2006, 148).

*Bilateral and multilateral agreements* between source and host countries may also facilitate decent treatment of migrant workers. They determine the documentation of labour migrants, equality of treatment, remuneration and conditions of work, and elimination of forced labour and illegal recruitment. The effectiveness of these agreements depends on the accuracy of provisions and the quality of implementation.

An example of improved practice is the collaboration of Penza province of Russia with provinces in Kyrgyzstan. According to the agreement, the receiving party is responsible for informing about vacancies, the search for potential employers, transfer of migrants to the employment location, and their accommodation. Furthermore the receiving party assists the migrants with regard to issues concerning their legal status and labour agreements. The sending party is responsible for information about workers who wish to migrate for employment, the organised recruitment of labour migrants, their transport to Penza province, and the information of labour migrants on legal procedures in Russia and working conditions.

#### **4. The Way Forward: Suggested policies and measures to facilitate institutional capacity**

The establishment and/or strengthening of viable and effective structures and institutions is crucial to successfully administering law, policy and the practicalities of international migration. While there are numerous examples of ‘good practices’ in this area, it is nonetheless one of large weaknesses.

Many countries lack a coherent structure able to devise, implement, and supervise the multiple aspects of governing the main labour-related aspects of international migration. And many countries also lack a structure or mechanism for efficiently consulting and coordinating governmental policy and action among the numerous different ministries and departments concerned, not to mention involving key stakeholders in consultation to ensure their cooperation.

**An important, practical and extremely useful function will be further sharing of practical guidance and examples of ‘good practices’, such as contained in the OSCE-IOM-ILO Handbook on Effective Labour Migration Policies.**

As with implementation of standards and elaboration of national policy, a key form of international support to assist States in establishing or strengthening institutions, structures and capacity for effective governance of international migration will be provision of technical cooperation, advisory services and sharing of practical models.

## VII. Conclusions and Recommendations

The need to address the increasingly diverse and complex phenomenon of migration in a comprehensive manner by adopting a cross-dimensional approach at the national, regional and international levels (OSCE 2005) is reflected in the commitments that the OSCE participating States have made throughout the years.

The overall picture provided by this review report is one of progress over a long period in the sense of facing and meeting new issues in the area of migration and security as they arose. The report shows that progress has not been equally swift in all regards. There is clear evidence that legislation has tended to be considerably ahead of implementation. Addressing the particular challenges of implementing agreed upon measures will therefore need to be central to the joint effort of OSCE countries. One issue is the capacity of authorities to actually carry out the tasks provided for by national and international law. Another issue is the coordination between authorities within countries and between countries, a third one is the legal and logical consistency of aims and tasks. In many instances this review can only scratch the surface of the issue. Detailed studies at national level would often be necessary in order to understand the mechanisms providing for the observed outcomes. Part and parcel of raising capacity and streamlining aims and tasks is therefore the expansion of review and research capacities at national level.

The size, composition and direction of migration flows within and into the OSCE area have changed considerably and in unforeseen ways since the mid-1970s. No doubt, in another 30 years they will be very different again. Foreseeability is no greater today than it was then. Likewise, migrant populations in the OSCE have changed in size, composition and origin. Although governments and populations keep entertaining the idea that migration can be kept temporary, settlement during the past 30 years has occurred on a scale that is probably no less than in earlier times. Settlement should be expected to continue. There is far more choice regarding the migrant populations' legal status than its size.

It is now generally understood that migration poses opportunities and risks for origin, transit, and destination countries and that therefore migration policy cannot successfully be implemented unilaterally. More immediately than for countries or states migration poses large opportunities and large risks especially for the migrants and their families and communities in the origin countries that depend on the migrants' incomes. While many states have involved social partners and civil society organisations in policy making in one way or another, migrants and potential migrants and their dependents have largely remained excluded, more so than would be implied, for instance, by UN and Council of Europe instruments that have become available in the course of the past 60 years. If migration policy is to be successfully implemented this clearly is an issue that will need to be considered by the OSCE participating States.

This background, the Review of Commitments above, and the conclusions of the OSCE Ministerial Council in December 2005 all point to a growing need for stronger partnership with international bodies specialised in migration specifically by involving them in policy formulation, not least by acceding to the legal instruments they offer, and to more and deeper cooperation between states of origin, destination and transit in developing not only policies but capacities to implement and to evaluate them without prejudice.

### CONCLUSIONS

**The OSCE commitments adopted over a period of 35 years now have consistently focused on protecting and promoting the fundamental human rights of migrants, on combating discrimination and xenophobia against them, on ensuring equality of treatment for regular migrants, and for facilitating family reunion and contacts of migrant workers with their families.**

In order to realize protection and social cohesion as well as the economic and development benefits of migration, the OSCE commitments have emphasized participating States' need to comply with the international agreements and consider adhering to relevant multilateral instruments, to adopt effective national frameworks to manage migration, to ease regulations concerning the movement of citizens, and to foster integration and greater harmony in relations in society, including by raising awareness about the enriching contribution of migrants and enabling migrant workers to participate in society where they reside.

Specific commitments have been made to ensure effective equality of opportunity for children of migrant workers to education, to provide language and vocational training, to facilitate social and economic reintegration of returning labour migrants in their countries of origin, to fight *illegal* migration and addressing its root causes, and to increase employment in countries of origin.

A number of commitments encourage bilateral and multilateral cooperation. These include orderly movements of workers through collaboration between host and origin countries, to deal jointly with the problems arising from the migration of workers, and to cooperate to further improve the general situation of migrant workers and their families.

**OSCE itself is asked to contribute by “facilitating dialogue and co-operation between participating States, including countries of origin, transit and destination in the OSCE area” and by “assisting the participating States ... to develop effective migration policies and to implement their relevant OSCE commitments.”<sup>157</sup>**

## **Implementation of commitments**

Today, there is clear recognition that migration poses large opportunities and substantial risks for migrants and their families and communities, for the destination countries, and for origin communities and countries. Today, there is also undisputed consensus that coordination between authorities within countries and between countries is imperative; migration policy cannot be formulated or implemented unilaterally.

**A clear finding throughout this review is that considerable, but uneven, progress has been made in elaboration and implementation of OSCE commitments on migration by participating States.** Progress has varied across the different commitments. It is evident that legislation has tended to be considerably ahead of implementation. A significant constraint has been in developing the necessary implementing policy and institutions. There is also evidence that political will to effectively tackle migration challenges from a deliberate and regulatory approach has been lacking in some situations.

**The national adoption and transposition of foundational legal standards for protection of migrants and establishing adequate national legislation addressing the various aspects of migration is far from complete;** while a significant number of OSCE participating States have ratified and incorporated one or more of the most relevant instruments, a substantial number have not yet done so.

**A general trend has emerged in recent years to develop migration policies directed at encouraging and regulating legal migration.** Some are comprehensive national strategies or balanced national action plans on migration covering a range of concerns and spelling out the intersecting involvements of different branches of government and other stakeholders, including social partners.

**However, the findings of this review show that effective implementation of legislation and national action plans remains constrained by lack of institutional mechanisms and capacity, lack of resources, and lack of training of relevant authorities and civil society partners.**

**Countries must establish the necessary institutional capacity and inter-ministerial coordination to meet their policy objectives.** This includes giving due priority to labour migration in terms of overall development, foreign policy, and resource allocation. Second, inter-state cooperation is essential

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<sup>157</sup> Ministerial Council Decision No. 2/05 on Migration.

The identification and involvement of relevant stakeholders remains uneven at best. In some countries, the various concerned ministries have been involved, as have the key social partner stakeholders. In others, authority over migration has been concentrated in one branch of government without adequate consultation across the government. In too many countries, migrants and potential migrants and their dependents have largely remained excluded.

**Internal and international dialogue, coordination and cooperation on migration have clearly advanced, especially in recent years.** However, findings of this review indicate that this cooperation is still far from satisfactorily resolving the many challenges of together ensuring orderly movements of workers, dealing jointly with problems arising, and cooperating to further improve the general situation of migrants.

**Further development of comprehensive migration management systems and strategies is needed in the participating States, based on enhanced cooperation among the countries of origin, transit and destination.**

At best, this initial review only scratches the surface of these complex phenomena and equally complex responses. Detailed studies at national level would be helpful to further assess what has really been accomplished and what remains to be done to fulfil these OSCE commitments on migration.

## RECOMMENDATIONS

This review makes evident that there is much to be done, and that there is a very substantial role and responsibility for the OSCE in getting this done.

It is evident that intensified efforts are clearly in order to support OSCE participating States to meet the commitments made in the OSCE context. These efforts would address:

- **further adoption and implementation of relevant international standards,**
- **enhanced elaboration and implementation of national migration policy statements and action plans,**
- **strengthening of non-discrimination and anti-xenophobia measures,**
- **establishing or strengthening national institutions, structures and capacity to administer migration,**
- **conclusion of further multilateral and bilateral agreements on labour mobility and social security coverage for migrant workers.**

**The elaboration of national legislation, policy, institutions and their respective implementing measures will be accelerated and made more effective through the provision of technical cooperation, advisory services and exchanges of models and practice experience.**

## OSCE Contributions

Drawing on the conclusions and way forward identified in each preceding chapter, paths for OSCE action would include:

- 1) Providing information and technical support to concerned States to improve legislation through incorporation of international standards.**
- 2) Mobilizing support to governments in elaborating and implementing effective national policy frameworks as well as institutional mechanisms and capacity. A large component of this will be provision of technical cooperation, advisory services and sharing of practical models, evidently in cooperation with the main international agencies concerned such as the ILO and the IOM.**
- 3) Encouraging and supporting expansion of data collection, research and policy review capacities at national level. Also needed is further exploration of policy responses and development cooperation on enhancing decent work and employment opportunities in origin**

**countries, on ameliorating the potential migratory impact of environmental degradation, and on enhancing the development contributions of migration.**

**4) Providing a platform on migration and security issues that incorporates all OSCE participating States where, for example, experience could be shared on concluded bilateral labour agreements and developed measures that have proven successful in fostering labour migration in certain sectors, whilst reducing the extent of irregular labour migration and ensuring return of temporary migrant workers. The knowledge and experience shared could help feed into further negotiation and conclusion of agreements in the areas of labour mobility, social security, co-development, return of talent, development assistance, and so on. Such a platform should be complementary to existing international agencies and forums.**

**5) Facilitating stronger partnership with international bodies specialised in migration, notably towards reinforcing protection of rights of migrants and elaborating coherent national policy and practical action.**

An important topical niche exists for the OSCE at the international level. It comprises two areas:

**6) Advancing analysis and understanding of the links between migration and security including in particular addressing threats to public order and social cohesion arising from xenophobic hostility and violence expressed against migrant workers and other foreigners.**

**7) Analyzing environmental factors and international migration, and identifying policy responses to provide early warning and ensure better preparedness in this area.** No existing forum on migration entirely incorporates important emerging concerns around environmental change and migration. The OSCE could provide a unique platform for these aspects of policy dialogue on migration.

### **Ameliorating impact of the global financial and employment crisis**

**Immediate measures are required to prevent the impact of the crisis on migrant workers from destabilizing labour markets, working conditions and social cohesion in migrant employment countries, and from destabilizing economically, socially, and politically migrant origin countries.**

Areas for intervention include: (1) **taking measures to uphold decent work conditions and protection of migrant workers – along with vulnerable national workers — in migrant employment countries;** (2) **enhancing urgent employment creation and social safety net protections for returning migrants and populations as a whole in migrant source countries;** and (3) **resolutely repressing xenophobic violence and explicitly discouraging *nationalist* anti-migrant and anti-trade discourse.**

International labour migration represents a long term solution to labour and skills needs in economies across the OSCE region. Short term crisis responses need to reinforce long term efforts to ensure protection and integration of migrants and institutionalised regulation of labour migration, efforts underlying OSCE concern to manage migration for stability, security and socio-economic well being.

Immediate lines of crisis response should include:

1. Avoiding forced returns of migrant workers, and maintaining intakes for agriculture and other sectors where labour and skills remain necessary and will be required for recovery.
2. Increasing capacity and extending labour inspection, particularly to sectors and workplaces where migrant workers are concentrated, to ensure decent treatment in the face of pressures to cut pay and increase exploitation – and to prevent unfair competition with national workers.
3. Strengthening anti-discrimination measures and discourse.
4. Explicitly repressing racist violence and xenophobia against foreigners, and prosecuting perpetrators of violent acts.
5. Discouraging scapegoating of migrants.

6. Expanding international support for employment intensive recovery measures, employment creation, and extension of social protection measures to affected populations, particularly to returning migrants in home countries.

This report and these conclusions will hopefully serve as a guide to enable the Forum to conduct well informed deliberations.

These recommendations are intended to assist the delegates to the OSCE 17<sup>th</sup> Economic and Environmental Forum to elaborate findings and agree on proposals for *the way forward* for the OSCE in this arena of major concern to participating States.

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# Annex 1: List of OSCE Commitments on Migration and Migrants

## Introduction

Most commitments made by OSCE participating States are statements of aims to be pursued. In some cases a statement on the means by which the particular aim was to be pursued was included. In later years statements of issues, principles, values or norms became more numerous, sometimes in connection with aims, occasionally also with means. Below the issues and aims participating States committed themselves to are ordered thematically. In each instance the place and time when the commitment was made are added in parentheses. Where any means are mentioned in the respective commitment this information is also appended. In a few instances it was necessary to rearrange the syntax of the sentences in order to separate ends and means as cleanly as possible.

## Stated issues and aims with regard to international instruments and cooperation

- to resolve the problems arising bilaterally from the migration of workers in Europe as well as between the participating States in their mutual interest (Helsinki 1975).

Means towards this aim: The participating States, taking due account of the activities of the competent international organisations, more particularly the International Labour Organisation, in this area, are of the opinion that these problems should be dealt with by the parties directly concerned.

- each state to comply with the bilateral and multilateral agreements to which it is party (Helsinki 1975);

Means towards this aim: Obligation.

- consider that, in future international instruments concerning the rights of migrant workers ... take into account the fact that this issue is of importance for all of them (Copenhagen 1990).

Note: This commitment was made on the eve of the adoption by the UN of the 1990 International Convention on the Rights of All Migrants and their Families (ICRMW).

## Stated issues and aims with regard to the regulation of migration

- ensure the conditions under which the orderly movement of workers might take place (Helsinki 1975);

Means towards this aim: in particular by developing economic co-operation appropriate for this purpose and suitable for the host countries and the countries of origin.

- to facilitate, as far as possible, the reuniting of migrant workers with their families (Helsinki 1975).
- facilitate travel on an individual or collective basis for personal or professional reasons and for tourism, such as travel by delegations, groups and individuals. To this end they will reduce the time for the consideration of applications for such travel to a minimum (Vienna 1989).
- give serious consideration to proposals for concluding agreements on the issuing of multiple entry visas and the reciprocal easing of visa processing formalities, and consider possibilities for the reciprocal abolition of entry visas on the basis of agreements between them (Vienna 1989).
- consider favourably applications for family reunification as well as family contacts and visits involving migrant workers from other participating States legally residing in the host countries (Vienna 1989).

## **Stated issues and aims with regard to development and optimisation of benefits from migration**

- Encourage the efforts of the countries of origin directed towards increasing the possibilities of employment for their nationals in their own territories (Helsinki 1975);  
Means towards this aim: ... in particular by developing economic co-operation appropriate for this purpose and suitable for the host countries and the countries of origin.
- bear in mind that migrant workers, particularly those that have acquired qualifications, can by returning to their countries after a certain period of time help to remedy any deficiency of skilled labour in their country of origin (Helsinki 1975).
- ... undertaking activities to raise public awareness of the enriching contribution of migrants and migrant workers to society (Sofia 2004).

## **Stated issues and aims with regard to working and living conditions**

- if appropriate, to organise the recruitment of migrant workers (Helsinki 1975).
- protecting their [i.e. the migrants'] personal and social welfare (Helsinki 1975).
- if appropriate, to organise ... the provision of elementary language and vocational training (Helsinki 1975).
- ensure equality of rights between migrant workers and nationals of the host countries with regard to the conditions of employment and work and to social security (Helsinki 1975).
- endeavour to ensure, as far as possible, that migrant workers may enjoy the same opportunities as nationals of the host countries of finding other suitable employment in the event of unemployment (Helsinki 1975).
- provision of vocational training to migrant workers ... in the framework of their employment (Helsinki 1975).
- as far as possible, [provision] of free instruction in the language of the host country, in the framework of their employment (Helsinki 1975).
- endeavour to ensure that migrant workers may enjoy satisfactory living conditions, especially housing conditions (Helsinki 1975).
- improving further the general situation of migrant workers and their families, inter alia the protection of their human rights including their economic, social and cultural rights while taking particularly into account the special problems of second generation migrants (Madrid 1983).  
Means towards this aim: host countries and countries of origin, guided by a spirit of mutual interest and cooperation, intensify their contacts.
- to improve further the economic, social, cultural and other conditions of life for migrant workers and their families legally residing in the host countries (Vienna 1989).
- consider adhering to the relevant multilateral instruments as well as concluding complementary or other bilateral agreements, if necessary, in order to improve arrangements for ensuring effective consular, legal and medical assistance for citizens of other participating States temporarily on their territory (Vienna 1989).
- take any necessary measures to ensure that citizens of other participating States temporarily on their territory for personal or professional reasons, *inter alia* for the purpose of participating in cultural, scientific and educational activities, are afforded appropriate personal safety, where this is not already the case (Vienna 1989).
- create the conditions for promoting equality of opportunity in respect of working conditions, education, social security and health services, housing, access to trade unions as well as cultural rights for lawfully residing and working migrant workers (Helsinki 1992).

- The participating States recognise that issues of migrant workers have their human dimension (Vienna 1989).
- The participating States reaffirm that the protection and promotion of the rights of migrant workers have their human dimension ... [and] are the concern of all participating States (Copenhagen 1990);

Means towards this aim: they should be addressed within the CSCE process.

Means towards this aim: to implement fully in their domestic legislation the rights of migrant workers provided for in international agreements to which they are parties.

- We recognize that the issues of migrant workers and their families legally residing in host countries have economic, cultural and social aspects as well as their human dimension. We affirm that the protection and promotion of their rights, as well as the implementation of relevant international obligations, is our common concern (Paris 1990).
- The participating States restate that human rights and fundamental freedoms are universal, that they are also enjoyed by migrant workers wherever they live and stress the importance of implementing all CSCE commitments on migrant workers and their families lawfully residing in the participating States (Helsinki 1992).

### **Stated issues and aims with regard to integration**

- enable migrant workers to participate in the life of the society of the participating States (Moscow 1991);

Means towards this aim: adopt appropriate measures.

- encourage the creation of conditions to foster greater harmony in relations between migrant workers and the rest of the society of the participating State in which they lawfully reside (Helsinki 1992);

Means towards this aim: offer, inter alia, measures to facilitate the familiarisation of migrant workers and their families with the languages and social life of the respective participating State in which they lawfully reside.

- to promote the integration of migrant workers in the societies in which they are lawfully residing. ... recognize that a successful process of integration also depends on its active pursuit by the migrants themselves (Budapest 1994);

Means towards this aim: encourage them in this regard.

### **Stated issues and aims with regard to the prevention of discrimination and xenophobia**

- condemn all acts of discrimination on the ground of race, colour and ethnic origin, intolerance and xenophobia against migrant workers (Moscow 1991);

Means towards this aim: in conformity with domestic law and international obligations, take effective measures to promote tolerance, understanding, equality of opportunity and respect for the fundamental human rights of migrant workers

adopt, if they have not already done so, measures that would prohibit acts that constitute incitement to violence based on national, racial, ethnic or religious discrimination, hostility or hatred.

- to better prevent racist attacks and other manifestations of violent intolerance against migrant workers and their families (Budapest 1994).

Means towards this aim: take appropriate measures.

- combat discrimination against migrant workers (Maastricht 2003).

- take steps ... against discrimination, intolerance and xenophobia against migrants and migrant workers (Sofia 2004).

### **Stated issues and aims with regard to education**

- ensure that the children of migrant workers established in the host country have access to the education usually given there, under the same conditions as the children of that country (Helsinki 1975).
- ensuring equality of opportunity between the children of migrant workers and the children of their own nationals regarding access to all forms and levels of education (Vienna 1989);

Means towards this aim: participating States affirm their readiness to take measures needed for the better use and improvement of educational opportunities.

### **Stated issues and aims with regard to exercising culture**

- confirm the right of migrant workers to receive, as far as possible, regular information in their own language, covering both their country of origin and their host country (Helsinki 1975).
- to permit [the children of migrant workers established in the host country] to receive supplementary education in their own language, national culture, history and geography (Helsinki 1975).
- endeavour to provide or promote, where reasonable demand exists, adequate teaching of the language and culture of the countries of origin (Madrid 1983).
- The participating States will ensure that migrant workers from other participating States, and their families, can freely enjoy and maintain their national culture and have access to the culture of the host country (Vienna 1989).
- encourage or facilitate, where reasonable demand exists, supplementary teaching in their mother tongue for the children of migrant workers (Vienna 1989).
- ensure that the rights of migrant workers and their families lawfully residing in the participating States are respected and underline their right to express freely their ethnic, cultural, religious and linguistic characteristics. The exercise of such rights may be subject to such restrictions as are prescribed by law and are consistent with international standards (Moscow 1991).

### **Stated issues and aims with regard to return**

- increasing ... appropriate opportunities for employment, thereby facilitating the reintegration of these workers on their return home (Helsinki 1975);

Means towards this aim: regard with favour the efforts of the countries of origin to attract the savings ... facilitating the reintegration of these workers.

- facilitating the social and economic reintegration of returning migrant labour (Madrid 1983);  
among other measures ... the payment of pensions as acquired or established under the social security system to which such workers have been admitted in the host country should be ensured

Means towards this aim: appropriate legislative means or reciprocal agreements.

- facilitating the reintegration migrant workers and their families returning to their countries of origin (Vienna 1989);

Means towards this aim: host countries and countries of origin should promote their co-operation in relevant fields.

## Annex 2: List of adherence to relevant international instruments

Ratifications of Conventions Relevant to Commitments on migration by OSCE participating states						
State	ICERD	ILO C111	ILO C97	ILO C143	EC- LSMW	ICRMW
Albania	1994	1997	2005	2006	2007	2007
Andorra	2006					
Armenia	1993	1994	2006	2006		
Austria	1972	1973				
Azerbaijan	1996	1992				1999
Belarus	1969	1961				
Belgium	1975	1977	1953			
Bosnia-Herzegovina	1993	1993	1993	1993		1996
Bulgaria	1966	1960				
Canada	1970	1964			-	
Croatia	1992	1991				
Cyprus	1967	1968	1960	1977		
Czech Republic	1993	1993				
Denmark	1971	1960				
Estonia	1991	2005				
Finland	1970	1970				
France	1971	1981	1954		1983	
Georgia	1999	1993				
Germany	1969	1961	1959			
Greece	1970	1984				
Holy See	1969				-	
Hungary	1967	1961				
Iceland	1967	1963				
Ireland	2000	1999				
Italy	1976	1963	1952	1981	1995	
Kazakhstan	1998	1999			-	
Kyrgyzstan	1997	1992	2008		-	2003
Latvia	1992	1992				
Liechtenstein	2000					
Lithuania	1998	1994				
Luxembourg	1978	2001				
FYR Macedonia	1994	1991	1991	1991		
Malta	1971	1968				
Moldova	1993	1996	2005		2006	
Monaco	1995					
Montenegro	2006	2006	2006	2006		
Netherlands	1971	1973	1952		1983	
Norway	1970	1959	1955	1979	1989	
Poland	1968	1961				

Portugal	1982	1959	1978	1978	1979	
Romania	1970	1973				
Russian Federation	1966	1961				
San Marino	2002	1986		1985		
Serbia	2001	2000	2000	2000		
Slovakia	1993	1993				
Slovenia	1992	1992	1992	1992		
Spain	1968	1967	1967		1980	
Sweden	1971	1962		1982	1978	
Switzerland	1994	1961				
Tajikistan	1995	1993	2007	2007	-	2002
Turkey	2002	1967			1981	2004
Turkmenistan	1994	1997			-	
Ukraine	1969	1961			2007	
United Kingdom	1969	1999	1951			
United States	1994				-	
Uzbekistan	1995	1992			-	
Total OSCE	56	51	20	14	11	6
Total World	173	168	48	43	11	41

## Annex 3: List of bilateral agreements

### Social security agreements

The table below gives for each country the number of international social security agreements and the year of the first and of the latest one. The data are from the ILO's NATLEX database and contain not just the actual agreements but also amendments etc. If an agreement was made between two OSCE participating states, it is counted with each one of the two states and therefore shows up twice in the total.

	International social security agreements	Year of first agreement	Year of most recent agreement
Austria	146	1958	2006
Belgium	170	1947	2008
Denmark	50	1951	2005
Finland	55	1955	2004
France	394	1947	2005
Germany	224	1950	2002
Greece	58	1958	1995
Ireland	20	1949	1994
Italy	112	1948	2001
Luxembourg	140	1949	2008
Netherlands	175	1947	2007
Portugal	95	1962	2006
Spain	142	1956	2007
Sweden	68	1955	2003
United Kingdom	158	1947	2000
Andorra	10	1970	1988
Holy See	n.a.	n.a.	n.a.
Iceland	22	1957	2003
Liechtenstein	30	1965	1996
Monaco	16	1952	1998
Norway	54	1948	2003
San Marino	10	1949	1991
Switzerland	127	1950	2007
EU-15, EFTA, small states	2,276	1947	2008
Bulgaria	36	1955	2006
Cyprus	17	1957	2006
Czech Republic	13	1992	2005
Estonia	4	1994	2003
Hungary	25	1957	2006
Latvia	1	1993	1993
Lithuania	7	1993	2002
Malta	14	1956	2001
Poland	51	1947	2006
Romania	47	1957	2006
Slovakia	12	1992	2002
Slovenia	27	1992	2007

EU-12 newer members	286	1955	2007
Albania	6	1958	1998
Bosnia and Herzegovina	7	1950	2007
Croatia	34	1993	2006
FYR Macedonia	22	1997	2007
Montenegro	1	2008	2008
Serbia	1	2006	2006
Serbia and Montenegro	75	1950	2003
Turkey	69	1959	2006
non-EU, non-CIS	215	1950	2008
Armenia	2	1992	1995
Azerbaijan	1	1998	1998
Belarus	7	1992	2006
Georgia	3	1997	1998
Kazakhstan	1	1992	1992
Kyrgyzstan	1	1992	1992
Moldova	5	1992	1995
Russian Federation	8	1992	2006
Tajikistan	1	1992	1992
Turkmenistan	1	1992	1992
Ukraine	8	1992	2001
Uzbekistan	1	1992	1992
<b>CIS</b>	39	1992	2006
Canada	186	1942	2008
United States of America	97	1942	2001
<b>Northern America</b>	283	1942	2008
<b>OSCE</b>	3,067	1942	2008

Source: ILO NATLEX database. [http://www.ilo.org/dyn/natlex/natlex\\_browse.home](http://www.ilo.org/dyn/natlex/natlex_browse.home), 2009-03-03. Compiled by ICMPD.

The totals include double counting as agreements between two OSCE countries are counted in each country separately.

Included are agreements, acts, treaties, supplementary agreements amending existing agreements, and other legal regulations.

## Labour recruitment

For information on and an assessment of bilateral labour recruitment agreements and alternatives and complements to them see the conference volume edited by the OECD (2004). It covers Switzerland, France, Italy, Romania, and the Czech Republic, the U.S., United Kingdom, and Ireland, Germany, the Philippines, and Poland. It also contains a 25 page overview of principal agreements made by OECD member countries.