

Demographic Changes, Immigration Policy and Development in the European Union



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Provided that the European Union no longer has a “demographic motor”, immigration from outside the EU could help to mitigate the negative effects of the falling population between now and 2025. This is not the sole option to cope with the ageing problem and working-age population decline, but, at least in the short to mid-term, it can contribute to cushion their impact. In view of Europe’s demographic gaps, the quest to revitalise the EU’s economy by implementing the ambitious Lisbon Strategy calls for migrants to fill in current and future labour market needs and thus ensure economic sustainability and growth. While the management of admission for employment should remain within the competence of the Member States, the role for the EU in setting out guidelines and perhaps binding principles in relation to creating a level playing-field on the management of migratory flows becomes very important. Towards this end, the article points out the need to consolidate the development of the EU’s migration acquis on the entry, stay, and access to the labour market as well as the integration of regular migrants and the deepening of relevant EU policies, inter alia, by means of new legislative proposals and new concepts which will strengthen the implementation of existing strategies linked to migration, including improvements in the decision-making process. Whilst admitting that a lasting and appropriate response to the migration phenomenon will require constant and long-term efforts and substantial financial resources, the article concludes that it is of the utmost importance that the European policies are adjusted accordingly and an open dialogue at national and European level as well as an evaluation of the ongoing action plans takes place on a regular basis.

Introduction

The Lisbon Strategy for Growth and Jobs places emphasis on increasing the competitiveness of the EU, and deals with the demographic evolution by making more effective use of the migrant workforce.¹ The Policy Plan on Legal Migration² includes a set of proposals and a roadmap for the actions and legislative initiatives that the European Commission intends to take.

Intra-EU mobility appears to be a strong pull factor for third-country workers. By removing the rigidities of labour markets, creating an EU Blue Card, envisaging a future database for Blue Card Holders, and using financial instruments to train and support migrants in their search for work, highly-qualified migrants are able to enter the EU labour market and can play a primary role in relieving – in the short term – labour shortages in certain areas. Fighting illegal immigration not only requires a new legal and institutional framework for entry into the EU, but also requires increased efforts to stimulate democracy and the economy of the developing countries.

Immigration and employment

The 2004-2050 population projections of Eurostat³ demonstrate that the EU population growth until 2025 will be mainly due to net migration, since the total deaths will outnumber total births from 2010. However, the effect of net migration will no longer outweigh the natural decrease after 2025, when the population will start to decline gradually. Hence, the share of the working age population (between 15 and 64) in the total population is expected to decrease strongly in the EU25 countries, from 67.2% in 2004, to 56.7% in 2050, which is a fall of 52 million working age inhabitants. These demographic trends will not influence all Member States to the same extent. However, they should be managed in an effective and harmonised way in combination with policies of integration and equal opportunities which will strike a balance between the rights and obligations of the migrants and those of the host societies respectively.⁴

Policy plan on legal migration – the next steps

The “Policy Plan on Legal Migration”⁵ defines a road map for the remaining period of the Hague Programme (2006-2009)⁶ and lists the actions and legislative initiatives that the Commission will take in order to pursue a coherent development of the EU legal migration policy.⁷

In the Commission Communication on a Policy Plan, there are proposals for a Framework Directive and four specific complementary ones on highly qualified and seasonal workers, intra-corporate transferees and remunerated trainees.

The Framework Directive on a common set of rights

The main aim of a Framework Directive is to guarantee that third-country nationals who are admitted and legally employed in a Member State, but are not yet recognised as long-term residents, enjoy the same socio-economic rights across the EU. The establishment of a common framework of rights for these third-country nationals would not only be beneficial towards creating a *level playing field* of rights within the EU, but would also be fair towards people who contribute to the economies of the Member States through their work and their tax payments. In this context, the “hot issue” of the recognition of diplomas and other qualifications comes to the forefront, and needs to be addressed in order to avoid situations in which immigrants work well below their competences and skills (the so-called “brain waste”) which can eventually lead to a loss, both in terms of income and value of their skills, for the immigrants as well as for both the countries of residence and of origin.

The Commission recently adopted two legislative proposals for Directives on simplified admission procedures and on a common set of rights for third-country workers,⁸ as well as on the admission of highly skilled immigrants.⁹

The first proposal for a Framework Directive provides for a “one-stop-shop” system for third-country nationals who would like to reside in a Member State for reasons of work. It envisages a single application procedure, thereby simplifying, shortening and accelerating the procedure both for the employer and the migrant. The admission conditions are still an issue of national competence. However, certain safeguards need to be maintained when handling an application for skilled employment:

- a) Provide access to information on the necessary documents for an application;
- b) Give reasons in cases of rejecting an application; and
- c) Reach a decision on the application within 90 days.

Once admitted, the immigrant will receive a “single permit” which will entitle him/her to stay and work for the period granted. In practical terms, information on access to work will be on the residence permit so as to cover cases of other existing residence permits issued for purposes of family reunification, study and asylum.

Admission for highly-qualified employment

The proposal on highly skilled immigration shows Europe’s challenge with regard to becoming a real pole of attraction to third-country workers. The idea of proposing a directive on the conditions of admission to the EU for highly qualified third-country nationals¹⁰ – including the possibility of an EU green card – responds to this economic necessity. Europe continues to receive low-skilled or unskilled labour, while the USA, Canada and Australia are able to attract talented migrants.¹¹ Recent studies have shown that 54% of Mediterranean, Middle-East and North Africa (MED-MENA) first generation migrants with a university degree reside in Canada and the USA, while 87% of those having a lower than primary, a primary or a secondary level of education live in Europe.¹² The majority of the Member States are in need of highly skilled workers as EU enterprises have growing difficulties in filling current job vacancies. So long as there are mismatches between educational and professional choices and labour market needs, there is no question that a real demand exists for specific skills, varying from one country to another, which quite often cannot be met within the EU. In these cases, it is fair to open channels of legal migration through effective means of recruiting economic migrants.

The EU, however, will be challenged in the coming years to counterbalance, on the one hand, the need to reduce the “brain drain” through ethical recruitment and return migration by identifying the areas of expertise (e.g. health and social sectors) in which there is a clear risk of draining away the reservoir of skills that countries need, and, on the other hand, to attract the best and the brightest to Europe in order to boost its economy.

The recently adopted proposal on highly-qualified employment is a good response to address the situation of a lack of highly skilled workers in the national labour markets and does not create the right of admission since the definition of specific needs and quotas for economic migrants remains a national competence (demand-driven system). When a third-country national is admitted under this scheme, he or she will receive a special residence and work permit, called the “EU Blue Card” entitling him or her to a series of socio-economic rights (e.g. tax benefits, social assistance, payment of pensions, access to public housing, study grants, etc.) and favourable conditions for family reunification. Like the US Green Card, which provides for security of residence and access to the labour market, the “EU Blue Card” allows skilled workers to reside and work in the EU for a renewable period of two years, after which they can move on and work in another Member State.¹³ In a bid to avoid negative “brain drain” effects in developing countries, especially in Africa, the proposal supports mandatory ethical recruitment standards¹⁴ which can reduce – if not ban – active recruitment policies by Member States in developing countries which are already suffering from serious “brain drain”, and foresees an expiry date of the EU Blue Card after a five year period in order to enhance circular migration.

Migration postpones the onset of population decline and ageing, but cannot reverse this trend.

An assessment

By paving the legislative path of the aforementioned proposals whilst putting into place the other three on seasonal workers, remunerated trainees and intra-corporate transferees, the Commission is increasing pressure on the EU to move towards a common position on economic migration. The proposals stress the need for common EU rules which regulate at least some key categories of economic migrants, and establish attractive conditions for them, coupled with the request to ensure a secure legal status for all immigrants in employment. Nonetheless, questions have been raised regarding the wisdom and the desirability of dividing up the area of rights of third-country nationals into sectors according to the type of work. Reflecting upon the Commission's failure to go through with its previous proposal which covered all third-country nationals involved in paid-employment and self-employment activities, a fragmented approach is considered by the Commission as the best way to strengthen international competitiveness and finally reach an agreement at Council level.¹⁵

brain waste, using the workforce more effectively and enabling third-country workers to earn a higher income. Such a tendency could reduce pressures on social security, increase tax revenues and use public services equally. In contrast, a weak legal position of third-country workers may bring about the polarisation of society on the basis of ethnic origin, with clear-cut spatial and social segments of under-privileged migrant workers. Changes in the rights of third-country workers are not expected to have a significant impact on the supply of migrants, who mainly decide to emigrate on the basis of potential wage gains. Nevertheless, an extension of their socio-economic rights will make them less attractive to EU employers, who will be burdened with social security and health insurance costs, which may result in a decline in demand for their labour, and, subsequently a decline in the number of admissions.

Considering that nine Member States (BE, BG, LT, HU, MT, AT, PL, SI, SK) have a distinct procedure at present and show no indication of changing,¹⁶ and that there is no data from Luxembourg and Sweden,¹⁷ one might think that the interdependence of the two titles could create a vicious



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a) A single application procedure for a single permit and a common set of rights of third-country nationals

The absence of an explicit definition of third-country workers in most Member States, and the gap between the rights of third-country workers and other workers requires intervention at EU level. Without adopting the above proposal, Member States would be less inclined to adjust their policies. Even if EU intervention may be opportune under the subsidiarity principle, the rights and entitlements of third-country workers remain the competence of the Member States. Creating a *level playing field* for third-country workers requires the recognition and the establishment of the principle of equal treatment notwithstanding the specific features of national legislation. If it were not for EU level guidance and support, it would be unlikely that the Member States would introduce the principle of equal treatment. An improvement in the legal status of third country workers may have a positive impact on the social and economic performance of migrants. Better access to education, vocational training, lifelong training or the recognition of diplomas may result in diminishing

circle since there is no residence permit without a work permit and vice versa.

Advantages

Having distinct procedures can actually result in a longer processing time and more administrative burdens and costs both for the employer and the potential migrant worker as different authorities and services are involved. A single procedure with a single permit would ensure quicker, more simplified procedures, less "red tape" and more transparency. It would reduce the risk of creating discrepancies between two separate permits thus allowing for lawfulness and a clearer overview of the third-country national's status as well as the purpose of residence in the actual host country.

Disadvantages

An adjustment of national procedures, however, takes time as well as resources, and transposition problems may occur in the area of technical implementation, which means that closer internal coordination between the administrative services involved has to be established. Furthermore, where

the existing procedure will have to be reformed so as to comply with the single application procedure, additional "one-time costs" might occur from employing specialised personnel or from training the existing one. It is also possible that the extension of rights to third-country workers through the possession of a single permit could give rise to employing third-country nationals illegally or in an undeclared way. Such an impact must be controlled by the Member States and, needs to be tackled at Community level by other provisions, such as the recent Commission proposal on the sanctioning of employers who use third-country nationals that are staying illegally,¹⁸ or the Return Directive.¹⁹

In due course, the Member States will further be burdened with monitoring and evaluation taking the form of statistics (e.g. volumes of third-country nationals who have been granted, renewed or withdrawn a single permit), best practices, comparative analyses, innovative approaches and experiences.

b) European Union Blue Card for highly qualified third-country workers

Benefits

The proposal on an EU Blue Card initiates a process of finalising the measures on labour migration in the EU for third-country nationals. Highly qualified migrants will no longer face 27 different admission systems, and will be able to move easily from one country to another for work without undergoing lengthy and cumbersome procedures. If the Commission obtains an agreement at Council level, it can further proceed with the elaboration of the other three proposals. The Blue Card is not "a blank cheque to all highly skilled workers". It is a demand-driven (i.e. based upon a work contract) proposal, thus, allowing Member States to control which type and how many highly-qualified workers will enter their labour markets.²⁰ So long as it respects the Community preference principle for workers of the enlarged EU over third-country nationals, it is unlikely to cause political tensions at the Council. The EU Blue Card brings higher visibility of all skills, both in Europe as a whole and in Member States in particular, as well as clarity and consistency in the application of rules within companies. More information and "advertisement" via internet on the EU Blue Card will also contribute to its success.

Concerns

However, there is some fear that the emphasis on the highly skilled workers might widen the gap between high and low-skilled workers. Governments will, simultaneously, be called upon to strike the right balance between going for growth and investing in highly skilled workers, or going for equity and investing in people at the lower end of the scale.

Governments will also be troubled with social security sustainability. If Europe allows a large number of young migrant workers to enter until 2020, who then support the existing retired population, there might be a case of

repeating the problem in 2050 when those migrants retire. The solution to an ageing population is not to have rapid population growth, but either to raise the retirement age, which is currently under debate in many Member States, or to create appropriate schemes which will top up state pensions. Another main issue will be how to bring about the recognition of diplomas where qualifications, in most cases, have been gained outside the EU, and there is no proven professional experience. Undoubtedly, the system of mutual recognition of diplomas acquired in the EU still poses problems, particularly for regulated professions.

The Commission's Blue Card initiative demonstrates that the EU is no longer a "fortress"; it is opening itself up to talent, and creating the right conditions for migrants to obtain a legal job in Europe. However, policy-makers will have to seriously think if the EU wants to move further towards an "age of mobility rather than an age of migration", with people moving back and forth rather than migrating permanently. A new system of labour mobility entails:

- a) the design of actions and measures which help link migrant skills to jobs;
- b) better involvement of employers in government policies on the relevant aspects of labour changes in light of their labour needs; and
- c) ratification by all Member States of the C97 Convention concerning migration for employment,²¹ the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)²² and the European Convention of the Legal Status of Migrant Workers.²³ It is not possible to debate EU mobility against migration when there is nothing to underpin this debate in legal terms.

By creating an EU Blue Card system, the future challenge

is for the Member States to share information on the possible quotas and on the annual statistics of its implementation. These data will also allow for monitoring recruitment in developing countries that suffer from a lack of qualified human capital. Concurrently, the Commission will be challenged to analyse how to set up a database of Blue Card holders and a skill-matching database using synergies with the European Job

Mobility Portal (EURES),²⁴ and also to launch a study to examine future labour needs, which will become the basis for future discussion on whether or not common rules for the admission of other economic immigrants should be proposed or abandoned.

Financial instruments

a) Old financing mechanisms

With a view to supporting the Union's political commitments in the fields of integration, employment and social cohesion, the European Social Fund has financed actions which improve the conditions of entry of highly skilled non-EU workers.

Over the period 2000-2006, the ESF spent some €12.5

"More growth for fewer immigrants" or "better management of immigration for more growth?"

billion on the policy field addressed at promoting equal opportunities for all to enter the labour market.²⁵ Some illustrations of support for immigrants, projects and measures have been identified in the programmes of a number of Member States (e.g. Belgium, Luxembourg, France, Spain, Greece, the Netherlands) amounting to €260 million. These activities included counselling, training guidance, employment support and measures to facilitate labour market integration. In the UK, it has been estimated that ethnic minorities and refugees were, to a large extent (28%), beneficiaries of active labour market measures financed by an ESF allocation of more than €4 billion.²⁶

Having no work permit is, as such, not a criterion for resolving whether the ESF can support actions targeting a specific group. The EC Treaty (Article 146) which establishes the ESF, uses the wording "rendering employment of workers easier". The new ESF Regulation,²⁷ by addressing "migrants in employment", does not in any case hinge upon a Member State's discretion to co-finance projects targeting asylum seekers if that Member State determines, within the legal context of the ESF, that asylum seekers are an eligible group.²⁸

b) New financing mechanisms

For the future, the European Fund for the Integration of Third-country nationals – set up as part of the new framework programme entitled "Solidarity and Management of Migratory Flows" (2007-2013)²⁹ – will deal with the integration and social challenges created by labour immigration. The payment appropriations for the abovementioned Framework Programme receive some €5.866 million,³⁰ and within this package, €825 million has been provided for integrating third-country nationals.³¹

Member States are primarily responsible for the financial control and the implementation of management and control systems. The Commission has to verify consistency, complementarity with other Community instruments, and national management and control systems. Two types of management can be detected in terms of implementation: (a) *shared management* with regards to co-financing national actions in the context of national programmes, including technical assistance for the Member States; and (b) *centralised management* which relates to Community actions and, in particular, calls for proposals and tenders.

The objectives set out in the General Framework Programme are linked to the challenges observed for the third-country nationals; they complement the aims of the European Social Fund with regard to the social inclusion and employment of immigrants, and are based upon the "Common Basic Principles for immigrant integration policy in the European Union" established by the Council of

Justice and Home Affairs (19 November 2004).³²

However, there are many key challenges which need to be addressed within the coming period 2007-2009. In particular:

- a) how to better balance shared and centralised management;
- b) use old and new financial instruments effectively;
- c) assess national programme documents, management and control systems;
- d) provide guidance, help-desk and information to Member States;
- e) examine the aptness of the regulatory framework and give sufficient scope for interpretation; and
- f) prepare a follow up on the progress achieved and draft final reports.

Conclusions

Migration constitutes an innate element of growth, and today's policy of "more growth for fewer immigrants", should turn into "better management of immigration for more growth". It has been argued that international migration only postpones the onset of population decline and ageing, but cannot reverse this trend. The choice to resort more to migration as a means of confronting the demographic ageing in the EU should be one of the main issues for political dialogue at national and European level as well as with the countries of origin. Europe is at a crossroads and therefore a long-term commitment from all sides is required. There is no alternative to working together, since no single Member State can cope with the challenges of population ageing and decline.

The external dimension of the immigration policy has been mainly shaped around the objective of better management of migratory flows so as to reduce the migratory pressure which is exerted daily upon the EU. Although the target for better management of migratory flows remains valid, the additional challenge consists of developing policies which will recognise the value of mobile workers for enhancing our economies. This pre-supposes an approach which exceeds the issues of controls at the borders and the fight against irregular immigration by managing migration based upon access to labour markets, favourable treatment for admission, and programmes designed to match labour supply with demand. Higher levels of employment, lower levels of education and less favourable housing conditions exemplify the socio-cultural gap between "locals" and migrants in European societies. An ageing, declining European population and workforce calls, in particular, for further investments in education, lifelong learning and vocational training in order to obtain productivity gains and increase competitiveness.

NOTES

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¹ Presidency Council Conclusions (Brussels, 22-23 March 2005), p. 3; Commission Communication to the spring European Council of 02 February 2005, entitled "Working together for growth and jobs: A new start for the Lisbon strategy", COM(2005) 24 final, 2.2.2005, para. 3.4.2.

² Commission Communication, "Policy Plan on Legal Migration", COM(2005) 669 final, 21.12.2005.

³ The Eurostat set of population projections is just one among several scenarios of population evolution based on assumptions of fertility, mortality and migration. The current trend scenario

does not take into account any future measures that could influence demographic trends and comprises four variants: the "baseline" variant presented here, as well as "high population", "low population" and "zero-migration". Statistics, STAT/05/48.

⁴ Commission Communication on immigration, integration and employment, COM(2003) 336 final.

⁵ See *supra* note 2.

⁶ The Hague Programme was adopted by the Brussels European Council (4-5 November 2004). It has set an agenda for five years and it deals with all aspects of policies relating to the

- area of freedom, security and justice, including their external dimension, notably fundamental rights and citizenship, asylum and migration, border management, integration, the fight against terrorism and organised crime, justice and police cooperation (para. 16 of the Presidency Conclusions).
- ⁷ Since 1999, four directives – based upon Articles 63 (3) and (4) EC – containing provisions on access to work (long-term residents, family reunification, students, researchers) and several Communications have been adopted.
- ⁸ Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, COM(2007) 638 final; MEMO/07/422, “Simplified admission procedures and common set of rights for third-country workers”, Brussels, 23 October 2007.
- ⁹ Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, COM(2007) 637 final, 23.10.2007.
- ¹⁰ The proposal does not cover researchers. These are included in the Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L289/15, 3.11.2005. It is unfortunate, however, that, until today, only six Member States (Belgium, Germany, Hungary, Austria, Portugal and Romania) have notified the European Commission of full implementation of the Directive and four States (France, Latvia, Lithuania and the Slovak Republic have notified partial implementation whereas the Commission becomes entitled to initiate infringement procedures.
- ¹¹ The EU with 1.72% third-country highly qualified workers of the total of the employed population still lags behind all the other main immigration countries, such as Australia (9.9%), Canada (7.3%), US (3.2%) and Switzerland (5.3%) – MEMO 07/ 423 “Attractive conditions for the admission and residence of highly qualified immigrants, 23 October 2007, p. 1.
- ¹² Philippe Fargues, “Projet de coopération sur les questions liées à l’intégration sociale des immigrés, à la migration, et à la circulation des personnes, Migrations méditerranéennes, rapport 2005”, CARIM 2005, p. 21.
- ¹³ The proposal for the creation of a Green card system for economic migrants which could be used throughout the EU appears to have failed as it did not get the support of the European Parliament. European Parliament Resolution on “An EU approach to economic immigration?”, P6_TA(2005) 0408, 26/10/2005.
- ¹⁴ Member States should adopt ethical recruitment policies and principles in the form of a code applicable to public and private sector employers with the aim to protect human resources. These can be strengthened by the development of mechanisms, guidelines and other tools to facilitate circular and temporary migration, as well as other measures that would minimise negative and maximise positive impacts of highly skilled immigration on developing countries.
- ¹⁵ In 2001 the Commission adopted a proposal for a Directive dealing with “the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities”, COM(2001) 386 final, 11.7.2001. Whilst the other European Institutions gave positive opinions, discussion in Council was limited to a first reading of the text and thus the Directive was never adopted.
- ¹⁶ Commission Staff Working Document “Accompanying document to the Proposal for a Council Directive on a single application procedure for a single permit for third country nationals to reside and work in the territory of a Member State and on a common set of rights for third country workers legally residing in a Member State, Impact Assessment, Volume I”, SEC(2007) 1408, 23.10.2007, p. 12.
- ¹⁷ *Idem*.
- ¹⁸ Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals, COM(2007) 249 final, 16.5.2007.
- ¹⁹ Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning third-country nationals who have remained illegally, COM(2005) 391 final, 1.9.2005, EP Decision Pending, 1st reading (15/1/2008).
- ²⁰ Nevertheless, to the extent that a Member State sets the quota at zero, it is enough to frustrate the whole project.
- ²¹ The C97 Convention concerning Migration for Employment, (revised 1949) which came into force 22.1.1952 has only been signed and ratified by ten Member States.
- ²² General Assembly of the United (18 December 1990).
- ²³ The 1977 Convention of the Council of Europe which came into force 1.5.1983 has only been signed by ten Member States – though a different ten from the ILO Convention. <http://europa.eu.int/eures/>
- ²⁴ Commission Communication, “First Annual Report on Migration and Integration”, COM(2004) 508 final, p. 21.
- ²⁵ *Idem*.
- ²⁶ Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation EC No 1784/1999, OJ L 210/12, 31.7.2006.
- ²⁷ However, there are some implications which should be balanced. One the one hand, such co-financing is inappropriate or rather incorrect in legal terms as an asylum seeker has no work permit and/or is not likely to receive such a permit in the near future. On the other hand, the lack of gainful employment creates a situation of dependence in which asylum seekers are forced to rely on welfare states or obtain support from other organisations (e.g. NGOs) which consequently leads to high costs for the host countries and, at the same time, contributes to negative public opinion and discrimination against asylum seekers.
- ²⁸ Proposal for a Council Decision establishing the European Return Fund for the period 2008-2013 as part of the general programme “Solidarity and Management of Migration Flows”, COM(2005) 123 final.
- ²⁹ *Ibid.*, point 4, Financial Resources, p. 11.
- ³⁰ Council Decision No 435/2007/EC of the European Parliament and of the Council of 25 June 2007 establishing the European Fund for the Integration of Third-country nationals for the period 2007-2013 as part of the general programme “Solidarity and Management of Migration Flows”, Article 11, Global Resources, para. 1, OJ L 168/18, 28.6.2007.
- ³¹ The Common Basic Principles assist Member States in formulating integration policies by offering them a thoughtful guide of basic principles against which they can judge and assess their own efforts. Council of the European Union, Press Release 2618th Council Meeting, Justice and Home Affairs, 14615/04 (Presse 321).

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