

# CHAPITRE 13

## Overview of Current Public Policies

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*Current Public Policies, Rules and Legislation – especially European ones –  
With Regard to Highly Skilled Immigration, Nationality Regimes, Stay Rights, etc.*

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## Introduction: Three Levels of Public Policies

Policies and programs adopted by the developed receiving countries – mainly the United States, Canada, Australia, and the European Union (EU) countries – for the admission of foreign workers with a view to facilitating and/or regulating high-skill immigration fall into three broad categories: 1) Multilateral treaty regimes, 2) Regional accords, and 3) Sovereign nation-state laws. The most recent example of the first type, the multilateral regime, can be found in the General Agreement on Trade in Services (GATS) under the ongoing World Trade Organisation (WTO) negotiations. It incorporates an emerging set of policies concerning movement of the highly educated and research “professionals” – what one could define as “eligible members” of the “scientific diaspora” – across countries. Regional accords provisioning expedited movement of these skilled workers between countries are geo-political trade blocks like the EU and EEA, North American Free Trade Agreement (NAFTA) and, to a limited extent, the Asian Pacific Economic Cooperation (APEC). The Nation-state framework includes unilateral laws and regulations of individual countries about immigrant selection facilitating the inward movement of some people and not of some others. How much each of these three types of policies is geared towards encouraging or discouraging the formation of “Scientific Diaspora” in the receiving (“host”) countries; how much towards matching the demand and supply in their own labour markets; and how much for development work in the sending (“home”) countries are questions that are crucial to be addressed while considering policy recommendations. To make an enlightened comment on this, and before providing an analysis of the pros and cons of these policies vis-à-vis each other, it is important to have an overview of the contents of these complementary policy frameworks.

### The Spectrum of Policy Contents: A Bird’s Eye View<sup>1</sup>

#### The GATS

The GATS emerged from the Uruguay Round (1986-1993) of negotiations on the General Agreement on Tariffs and Trade (GATT), the trade liberalising institution established at the time of the Bretton Woods Agreements almost four decades ago. Thus, only in the past decade-and-a-half has the international community begun to develop a multilateral framework for the exchange of skilled personnel between countries. Negotiated among 116 member countries and in force since January 1, 1995, the GATS is the first multilateral, legally-enforceable agreement governing the rules on international trade in services, which includes the movement of persons providing services internationally. The GATS defines international trade in services as the provision of a service through one or more of the following four “modes”: *cross-border supply*, which resembles international trade in commodities; *consumption abroad*, under which the consumer moves into the territory of the supplier; *commercial presence*, which involves setting up a branch or subsidiary in another member country; and *movement of natural persons*, which means the physical relocation of individuals for providing a service in another country. It is the fourth mode, involving the movement of natural persons, which pertains directly to high-skilled migration, although the third mode, viz., commercial presence, also involves intra-company transfer of personnel between sovereign states. Movement of natural persons can occur in two ways: Either through the presence of a large foreign service provider, with all dependent employees coming as intra-company transferees, or through the relocation of migrants who are temporarily employed/self-employed as service suppliers, i.e. as consultants or workers for the fulfillment of a service contract, but not as intra-company transferees of any commercial entity. What is important in these movements under the GATS is that the migration of “natural persons” (i.e. of human beings as different from the “juridical persons”, which are the firms and other such legal entities) has to be a purely temporary phenomenon. In other words, it does not cover persons migrating for permanent employment, permanent residence, or citizenship in another member country. Three broad categories of temporary entrants can be thought of moving under the GATS rules: business visitors, intra-company transferees, and

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<sup>1</sup> This section is based on excerpts from an exhaustive study by Christian (2000) on comparative policies.

foreign qualified professionals/practitioners. Business visitors are normally allowed to stay in the host country only for a short period of time (usually not exceeding 90 days) and are prohibited from receiving payments from any entity outside the host country. Intra-company transferees, the foreign employees of MNCs operating within a member country, generally stay for a longer period of time – ranging between two to five years – and can receive payments within the country. Like intra-company transferees, foreign qualified professionals or practitioners are employed temporarily in a host country, but they are not tied to an affiliate or branch of a foreign company.

There are 29 articles in GATS that bind signatory member countries to observe general obligations in all services sectors (business services, communication services, construction and engineering services, distribution services, educational services, environmental services, financial services, health-related services and social services, tourism and travel-related services, recreational, cultural and sporting services, and transport services) and modes of supply. These obligations include, for example, *most-favored-nation* (MFN) *treatment*, whereby signatories must accord equal treatment to all trading partners; *transparency*, which commits governments to publish all laws and regulations affecting the services trade; and *progressive liberalization*, which requires countries to continue negotiations on reducing barriers to international trade in services on a periodic basis. Apart from these general obligations, the GATS includes lists of individual country concessions called Schedules of Specific Commitments that signify a country's obligations concerning national treatment and market access of foreign service providers. Generally, members undertake to follow a particular level of openness without first introducing new measures that would restrict the entry and operation of foreign service-providers. It is in the country commitment schedules, rather than in the more universally binding general agreement, that concrete liberalization of trade in services actually takes place. As a result, liberalization under the GATS has been limited as compared to similar agreements covering trade in international. For example, under the GATS, governments are free, in the exercise of discretion, to choose the services sectors and modes of supply in which they make commitments. In addition, they can also limit the extent to which liberalization takes place in these categories. Since provisions governing the movement of natural persons were negotiated toward the end of the agreement's inaugural sittings, most countries, notably developed nations, refused to make extensive commitments concerning this mode of supply. Correspondingly, the GATS included a Decision on Negotiations on Movement of Natural Persons to bring about further liberalization in the near future. One year after signature of the GATS, six countries, the European Communities (EC, which includes the 15 EU Member States), Australia, Canada, India, Norway, and Switzerland, submitted new, more extensive schedules of commitments. Some other countries like New Zealand and USA have pitched in subsequently.

A Decision on Professional Services to harmonize the member countries' practices concerning accreditation and recognition of foreign professionals' qualifications, a measure essential for facilitating the recruitment and admission of highly skilled workers, was also included in the GATS. Countries have, however, mostly remained reluctant to pursue considerable liberalization of rules governing movement of natural persons under the GATS. Most governments have avoided comprehensive commitments, excepting for the admission of particular migrant classes, i.e. the most highly skilled. Member states have also been very specific about which individuals qualify for entry under these categories. For example, each horizontal commitment specifies the necessary qualifications and the permitted scope of activity of admissible workers. Commitments might also state whether the admission of a particular class of foreign worker is contingent on prior labor-market testing, viz., Economic Needs Test (ENT), i.e., a demonstration that no suitably qualified domestic labor is available to fill the job in question, and/or wages and working conditions conform to national standards. Some countries have also incorporated immigration quotas in their schedules of commitments. In general, country commitments are geared towards the admission of highly skilled workers and are biased in favor of those whose entry also results from the commercial presence of an MNC, i.e., as intra-company transferees. According to a survey by the Council for Trade in Services, one-third of commitments governing the movement of natural persons concerns intra-company

transferees. From the same survey the Council determined that 240 out of 328 commitments pertain to managers, executives, and specialists. In contrast, only 17 percent of all entries cover lower skilled workers.

Most member countries' schedules of commitments are found to be generally conforming to the trends summarised above<sup>2</sup>. The European Union, which submitted a schedule on behalf of its 15 Member States, has limited entry to natural persons engaged in the provision of a professional service on a contractual basis in 16 different fields. These contractors are admitted for a period of three months or the duration of the service contract, whichever is less. Workers seeking entry as intra-company transferees must also been in service with their employer abroad for at least one year. In addition, all candidates must satisfy qualifications standards set by each Member State. The EU has also made a number of sectoral commitments. For the most part, the sectoral entries extend market access only to individuals possessing a minimum level of education and experience – in most cases a university degree, professional certification, and three to five years of relevant experience. Some EU countries might also require labor-market testing for professionals in certain sectors.

### The Regional Accords

Regional accords, the second category of policies, such as the EU, European Economic Area Agreement (EEA), and North American Free Trade Agreement (NAFTA), have facilitated the exchange of nationals of one participating State to another. In particular, free movement provisions have led to the dismantling of discriminatory barriers to entry, residence, work, and recognition of professional qualifications, without recourse to economic protections such as labor-market testing. However, free-movement provisions apply only to workers whose country of origin is *within* the region. In other words, migrants from outside the region (in European parlance, the so-called “third-country nationals”), including those who hold permanent resident status in a regional State, often face substantial barriers when moving within the region. In recent years though, States of the European Free Trade Association (EFTA), in particular Norway, Iceland, and Liechtenstein, have joined the EU's drive for a unified single labor market. The EEA Agreement (1992), encompassing those States as well as the 15 EU members, contains provisions on the free movement of persons similar to those found in EU legislation.

### *In the USA*

#### **Free Intra-European Mobility of the Highly Skilled in the EU**

Over the 1990s, intra-European labor mobility has come increasingly to mean free movement of highly skilled individuals, especially because exchange of expertise has come to characterise an integrated economy. During the 1950s and 1960s, northwest European countries demanded a large pool of *unskilled labor* – the so-called *guestworker* cohorts – to boost post-World War II economic expansion, particularly in manufacturing industries. In recent years, however, demand has shifted to skilled foreign specialists, who are recruited both from other European and other OECD countries. Much high-skilled migration within Europe takes place on an intra-firm basis, as many previously national firms become Pan-European in their operations. This type of migration has been referred to as “Euro-mobility of Euro-specialists”.

Despite these relaxation of barriers to free mobility within Europe, it has been observed that workers have been reluctant to relocate from one Member State to another for a variety of reasons such as linguistic and cultural differences. In fact, Europe is said to have experienced significantly lower volumes of employment-related movement than the United States. What is currently more surprising is that intra-EU migration fell to roughly one-third of the total migration by the early 1990s from the earlier share of about two-thirds in the 1960s, implying thereby that migration flows vis-à-vis the outside world have become more dominant over time. Of course, there has also been an increase in the intra-EU movement during this period due to (a) high unemployment rates persisting in leading EU Member States, such as France and Germany, (b) increased operations of multinational corporations seeking to expand European operations with the advent of the Euro, and (c) increased job-search through the Internet. In

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<sup>2</sup> CHRISTIAN, 2000.

addition, it is also likely that the highly skilled category of workers is more responsive to the free movement provisions of the EU and EEA legislation than the less skilled. The anticipated end of mandatory military service in several EU Member Countries such as the United Kingdom and France could add another dimension to the augmentation of supply of young male professionals into the intra-European labour market.

The concept of allowing workers to move freely between Member States of the EU dates back to the founding of its parent organization, the European Community (EC), when seven European countries signed the Treaty of Rome (Treaty Establishing the European Communities, TEC) in 1957. Title III Articles 48-51 of the TEC deal directly with the principle of free movement of persons. Article 48 calls for the abolition of “any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment”. The TEC grants workers of any Member State the right to accept offers of employment and to move freely and reside within a Member State for employment on an equal footing with nationals of that Member State. Every citizen of the Union who intends to reside for more than three months in another Member State is, however, required to have a residence permit. This document, which serves only to confirm the stay rights enjoyed by all Union citizens, is issued on presentation of certain documents, which vary according to the circumstances of the person making the request. Residence permits are issued generally for an initial period of five years, and are renewable. These rights are subject to considerations of public policy, public security, and public health. In addition, *the Treaty does not extend these entitlements to those seeking employment in the public service of a Member State*. The TEC also mandates close cooperation between national employment services, encourage the exchange of young workers between Member States, and call for the harmonization of national social security schemes.

Western Europe is considered by many to be the region where free movement of persons between States has taken root most effectively. Participants in the free movement regime include EU nationals (citizens of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, the United Kingdom, Spain, and Sweden), EEA nationals (EU nationals plus citizens of Iceland, Liechtenstein, and Norway), and third-country nationals, as summarised in Table 1.

**Table 1: Summary of Western Europe’s Free Movement of Persons Regime**

	EU Nationals	EEA Nationals	Others
Principal Legal Instruments	TEC, Regulation (EEC) No. 1612/68, Directive 68/360	EEA Agreement	Few Community initiatives, national legislation
Terms of Movement (Stay Rights)	Residence permit required for stays of more than three months	5-10 years. 3 months without job offer.	Up to 10 years
Required Documentation	Identity card	Identity card	Optional visa requirement
Family Unification	Yes. Guaranteed by EU legislation	Yes. Guaranteed by EEA Agreement	Dependent on national legislation
Recognition of Qualifications	General and sector-specific directives	General and sector-specific directives	Dependent on national legislation
Access to Social Security and Other Benefits	Yes. Guarantee by EU legislation	Yes. Guaranteed by EEA	Agreement Dependent on national legislation
Employment Services	Covered by EURES	Covered by EURES	Not covered by EURES

Source: CHRISTIAN, 2000.

Directives and Regulations that facilitate progressively growing freer circulation of workers are being issued by the Council of Ministers, the Union legislature under obligation of Article 49 of the TEC. Accordingly, the Council, in 1968, adopted Regulation (EEC) No. 1612/68, which established the principle of *equal treatment* between Member State nationals for the purpose of residence and employment. In particular, the Regulation states that “[a]ny

national of a Member State is entitled to take up and engage in gainful employment on the territory of another Member State in conformity with the relevant regulations applicable to national workers”. This provision prohibits Member States assigning greater priority to their own nationals than to other EU-nationals when a position is available. Equal treatment also includes the right to join trade unions and to receive access to tax and social benefits schemes on par with host-country nationals. The Council subsequently amended Regulation 1612/68 to extend the rights of free movement and equal treatment to family members of workers belonging to one Member State and employed in another. For example, spouses, dependent children, and dependent parents and grandparents, regardless of nationality, may join an intra-EU migrant in the host Member State. They may also take up gainful employment in that State, and the children of EU-workers may avail themselves of general education, apprenticeships, and vocational training. During the 1970s, the Council extended these rights to self-employed workers, including independent service providers. Subsequently, free-movement rights were granted, in 1996, to dependent employees of service providers engaged in another Member State.

Next, the Council issued Directive 68/360, which lists the documentation required for EU nationals seeking admission to another Member State. For example, intra-EU migrants require neither an exit visa from their home country nor an entry visa from the intended host country. Instead, potential entrants need only present an identification card or passport that clearly states their nationality at ports of entry. Directive 68/360 also entitles intra-EU migrants and accompanying family members to residence permits valid for five years with automatic renewal. EU law provides for the coordination of national social benefits schemes to support the free movement of workers. Regulations Nos. 1408/71 49 and 574/72 mandate that EU citizens present in another Member State receive, for the purpose of determining eligibility for social security benefits, treatment equal to that accorded to citizens of the host country. Thus, EU citizens receive the same social benefits in all Member States and may combine their social insurance and pension contributions accruing for work in different Member States.

### **Mutual Recognition of Educational Qualifications**

Free movement of workers within the EU, particularly of the highly skilled migrants, naturally entails the recognition in one Member State, of qualifications and professional credentials, i.e. diplomas and certificates, awarded in another. This too, however applies only to nationals of Member States and only to diplomas and other certificates awarded by Member States. For the most part, there is a legal framework for the recognition of qualifications based on a series of Directives that apply to credentials within a given field or economic sector. Hence, architects (Directive 85/384/EEC), doctors (Directive 93/16/EEC), dentists (Directive 78/687/EEC), and general-care nurses (Directive 77/452/EEC) holding certificates awarded in an EU Member State may have their credentials recognized throughout the Union.

Apart from this sectoral approach, there is also a “horizontal” or blanket approach to the recognition of qualifications within the EU. Accordingly, Directives 89/48/EEC and 92/51/EEC 53 have introduced a general system for the automatic recognition of professional training of at least three years duration. This system generally applies to all qualifications not covered under sector-specific Directives. Professions covered by this general recognition system include laboratory assistants, medical laboratory scientific officers, dental technicians, specialist nurses, and lawyers. There is, however, a provision for a host country to choose to recognize a degree held by an intra-EU migrant only after a period of “compensation”, which may be in the form of either an adaptation period or an aptitude test, if it insists that there are substantial differences between a degree awarded domestically and a degree awarded by another Member State.

### **Movement as EU Citizens First, Workers Later**

In the past, free movement provisions within the EU were meant mainly for mobility of the workers, the self-employed, and service providers. With the signing of the Maastricht Treaty on European Union (TEU) in 1992, the concept itself was extended to cover all persons entitled to a new European citizenship instituted by Article 8 of the TEC as amended by the TEU. This has been interpreted as granting of an EU-wide citizenship as the logical consequence of the free movement of persons. Thus, beginning in 1992, EU nationals willing to take up employment in another Member State need not have a job offer before entering the host Member State. The recent Amsterdam Treaty on European Union (TEU, 1997) sought to further augment the free-movement rights of European citizens and other residents through the creation of an “Area of Freedom, Security, and Justice”. The treaty, therefore, mandates that decisions on immigration-related matters be dealt with increasingly by centralized EU institutions rather than individual Member States. In addition, the Amsterdam Treaty incorporates the intergovernmental Schengen Agreement (1990) – aimed ostensibly at promoting free movement of citizens by dissolution of internal borders between Member States while strengthening the common external border.

### **Policies for Entry, Stay, and Movement of Third-country Nationals**

Gradually, the principle of free movement within the EU has extended to the almost ten million third-country nationals (TCNs), i.e. workers from outside the Union, in possession of a specific residence status in a Member State. For instance, a March 1996 Council Resolution allows permanently resident TCNs in one Member State to get either a ten-year or an unlimited residence permit in another Member State. In February 1999, the European Commission, the Union’s executive body, tabled two new proposals for a Directive governing the movement of TCNs employed in services sectors within Union territory. The first proposal provides for creating an “EC service provision card” for EU-based enterprises in services sectors, permitting the service providers to transfer their non-EU national employees from one Member State to another simply by a declaration to authorities within the destination country. The second proposal would provide the self-employed third-country nationals with the freedom to provide services throughout Union territory, provided they are legally established as self-employed persons in a particular Member State. The EC service provision card would also allow for the temporary movement of self-employed third-country nationals.

Beginning with the coming into force in May 1999, the Amsterdam Treaty also promised to promote the free-movement and employment rights of third-country nationals. In particular, the centralized European institutions, like the European Commission and the Council of Ministers, are given clear mandate to enact policies directly affecting the migration of non-EU nationals, thus paving the way for eventually abandoning the practice of leaving the entry, stay, movement, and employment of third-country nationals to a diverse, and sometimes inconsistent range of national policies. Further, the Amsterdam Treaty extends the TEC anti-discrimination clause to encompass all forms of discrimination on account of racial or ethnic origin, religion, age, sex, disability, or sexual orientation, thereby in principle covering the third-country nationals in its fold. However, until at least early 2000, very little EU-level legislation has actually been adopted to turn the principle into practice.

### ***European Economic Area (EEA) Agreement: An Inter-Regional Accord***

Negotiated between the EU and European Free Trade Area (EFTA) from 1990 to 1992, the EEA Agreement extends the principle of free movement of persons to a larger subset of European States. EFTA/EEA includes outlying and smaller European states of Iceland, Norway, and Liechtenstein that attract skilled human resources. In force since 1994, the EEA Agreement draws on EU legislation, i.e. the Treaty of Rome and subsequent Regulations, Directives, and Decisions, aimed at creation of a single market in goods, capital, labor, and services throughout the EEA, encompassing both the EU and most EFTA Member countries. Decisions on the incorporation of EU policies into the EEA Agreement – including provisions on free movement of persons – is decided upon by a Joint Committee that involves representation of both institutions. A national of one EEA country is not required to obtain in advance a residence

permit before travelling to any other participant State for the purpose of taking up dependent employment or self-employment, for the purpose of providing a service, or for the purpose of foreign study. They only have to report to the national authorities of the host country their reasons for seeking residence after they arrive, and they can stay in the host Member country for a maximum of three months until finding employment, and take up residence on accepting employment there. The intra-EEA migrants can bring in family members, and their dependent children are entitled to receive an education comparable to that accorded to nationals of the host country. Like EU law, the EEA Agreement also provides for equal and omnibus social security coverage of Member country nationals working in another participating State.

#### *Other Regional Accords: Some Non-conventional Examples*

Apart from NAFTA<sup>3</sup>, which is a traditionally well-known regional accord, there are other regional organizations, a non-conventional but notable example being the Asia-Pacific Economic Cooperation (APEC). APEC, encompassing Australia, Chile, Hong Kong China, Korea, Malaysia, New Zealand, and the Philippines has, like the EU, adopted a multiple-entry service card to expedite travel and work authorization for service providers already established in a Member State. An Australian initiative, the APEC Business Travel Card facilitates the entry of businesspersons for a period of five years throughout the APEC. APEC coordinates its high-skilled migration policies through a Business Mobility Experts Group, and its Committee on Trade and Investment, collects and disseminates information on member countries' short-term business entry requirements. One example of such endeavour is the outlining of the member countries' visa requirements for highly skilled temporary entrants in an APEC Business Travel Handbook.

Other than regional and inter-regional accords, there are examples of overlapping sub-regional accords too having policy frameworks for movement of skilled workers: In Europe, there are several free-trade or free-travel agreements that predate the EU/EEA and in which select countries continue to take part. These agreements incorporate dissolution of internal borders between signatories, free movement of Member-State nationals within a common region, and issuance of a universal visa for nationals of third countries. Examples are the Nordic Passport Union (1957) between Denmark, Finland, Norway, and Sweden; the Benelux Area (1960) between Belgium, the Netherlands, and Luxembourg; and the Common Travel Area (1922) between the United Kingdom and the Republic of Ireland. EU/EEA policy normally upholds rather than precludes these sub-regional agreements. For example, while adopting the Treaty of Amsterdam, the EU allowed the U.K. and Ireland to opt-out of the Schengen agreement provisions concerning free movement and visa-free travel throughout the Union territory.

#### **The Nation-State Framework**

In the third category of policies at the level of the sovereign nation-state, in contrast to regional frameworks, governments are often free to initiate unilateral measures to facilitate and/or regulate the entry of highly skilled foreigners. Governments generally regulate by issuing work permits on the condition that foreign workers satisfy labor-market tests, i.e. by requiring employers to certify that no suitably qualified domestic workers are available to fill the post and that wages and working conditions comply with national standards before hiring a foreign national. Some countries regulate entry by means of a quota on the number of foreign workers admitted. These instruments are often unavailable and/or prohibited under multilateral and regional accords. Nonetheless, even at the national level, countries have generally undertaken unilateral measures to facilitate the admission of highly skilled workers.

Because most European countries are participants in the multilateral regime established by the GATS, and are also members of at least some form of regional cooperation that expedites the transfer of skilled personnel between States, there are a number of similarities in their respective approaches to high-skilled migration. For example, nearly all of the countries have moved towards eliminating labor-market tests for the most skilled categories of foreign

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<sup>3</sup> NAFTA has not been detailed here, but there are references available in the literature.

temporary workers, in particular at the levels of managers and executives. At the same time, however, most countries require labor-market tests for other categories of skilled migrants, the successful completion of which usually results in the issuance of a temporary work and/or residence permit.

All Western European countries grant work authorization in the form of time-specified work and/or residence permits. Most allow foreign workers to renew these permits upon expiration of the original authorization. Consequently, foreign workers can often gain permanent residence and unrestricted access to the local labor market after renewing these temporary permits a requisite number of times. This procedure could, in essence be referred to as permanent residence by virtue of longevity. This contrasts with traditional immigration countries such as Canada, Australia, and the United States, where work authorization often accompanies admission to permanent residence. Traditional immigration countries also preside over substantial programs for temporary admission. However, in contrast to practices in Western European countries, employers in Canada, Australia, and the United States – rather than the workers themselves – must petition the government to extend permanent resident status to the foreign temporary workers they sponsor. In addition, workers are sometimes required to return to their countries of origin before applying for permanent employment-based residence. There is no such discernable pattern among the countries concerning policies governing the entry and stay of spouses and dependent children who accompany skilled foreign workers. Application procedures, in particular methods of labor-market testing, also vary from State to State. Finally, the period during which work authorization is valid differs across categories of migrants and across countries, from a few months to several years.

## **Policy Objectives – The Range and Coverage**

To summarise the three categories of policies classified above, multilateral agreements like the GATS set limits, especially on numbers and requirements for skilled admission, but these are not yet comprehensive. Regional accords apply differential rules, the EU being far more permissive for the movement of its Member State nationals and the guarantee of their residential, economic, and social rights than for the third-country nationals. National State policies show a predilection for facilitating skilled entry, albeit less so in Western European countries than in the traditional countries of immigration, like the US, Canada, Australia.

All three categories of policies, however, are expected to address the likely adverse impacts of the migration of the highly skilled, through focusing on policy objectives like (i) education for skill export, (ii) retention, (iii) involvement of the diaspora in development (iv) strategies to promote return and circulation, and so on. Reclassifying these innumerable policy objectives into three distinctly manageable types, it is possible to say that in all three categories of policy regimes illustrated above there is an explicit short-term policy objective – that of matching supply to demand for highly qualified and skilled personnel in the receiving labour market(s) of the concerned nations/regions. The second policy objective could be called a medium term objective of facilitating the formation of diaspora networks, implicitly or indirectly embedded in the explicit priority given to family reunification programmes in the immigration regimes<sup>4</sup>, followed by either a “melting pot” approach or a “salad bowl” approach to assimilation with the native majority communities. The third explicit, but long-term objective is that of development in the countries of origin of immigrants ostensibly to (a) keep the tide of immigration within limits (as fewer people emigrate from relatively more developed countries than from less developed ones), and (b) to prioritise the entry of those immigrants who match the labour market requirements but would not necessarily settle down permanently (as they would like to go back if and when situations in home countries improve). The concrete follow-up of this third objective is, however, still at an embryonic stage, and at times not so well defined.

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<sup>4</sup> For example, the US amendments to Immigration and Nationality laws carried out in 1965.

## Policy programmes set up for matching supply to demand of skills in the host-country labour markets

Policy requirements like the GATS-related Economic Needs Testing (ENT) prior to the issuance of work visas by the receiving countries are geared towards the first objective of matching supply and demand of skills *in the receiving countries, not so much in the sending countries*<sup>5</sup>. However, systems that requires mutual recognition of professional qualifications earned in another country and dissemination of information about employment prospects are also geared towards this objective. For example, the EU has inaugurated a number of administrative programs to facilitate the free movement of workers and citizens throughout its territory. In 1994, the Commission established the European Employment Services (EURES) to promote the exchange of information between national employment services. EURES also provides advice, through a team of about 500 professional “Euroadvisors”, directly to EU-nationals in search of employment opportunities in other Member States and to employers wishing to recruit workers at the European level. Seventeen countries (the 15 EU Member States and Iceland and Norway) currently take part in the EURES program. EURES enlists the cooperation of public employment services, trade unions, and employer organizations. The program maintains two databases: one that lists available job openings throughout participating States and another that provides general information on living and working conditions within those countries. Within the former, EURES maintains a listing of vacancies specifically for management, engineering, and senior-level technical positions that require at least three years of advanced study or training. In 1998, EURES helped around 500,000 EU residents obtain jobs outside their countries of origin.

The EU has instituted other programs to disseminate information on free movement, in particular programs that seek to strengthen the link between the Union’s free-movement provisions and the institution of EU citizenship. One prominent example is the *Citizens First Initiative*, launched in 1996. The Initiative informs average citizens about their right to free movement and employment in other Member States. Its recent guidebook, titled *Living in Another Country of the European Union*, reportedly reached over 75 million Member-State nationals. An outgrowth of the *Citizens First Initiative*, the *Dialogue with Citizens and Business*, provides both employers and employees with information and advice on intra-EU mobility. This includes a “Route Map” for job-seekers interested in taking up work in another Member State, and guidebooks and national fact-sheets concerning residence and work in the various EU countries<sup>6</sup>. International exchange programs, including *Tempus*, *Force*, *Petra*, *Lingua*, and *Eurydice*, constitute another important category of programs for promoting intra-EU mobility. Under these projects students, workers, teachers, scientists, and professionals who are nationals of an EU-Member State may reside, learn, and work in another Member State. Of particular interest in this regard is the *Erasmus* programme, which is designed to increase exchanges between universities throughout the Union. Finally, the European Commission has undertaken studies on how to improve policies and programs relating to the free movement of persons. Perhaps the most notable recent example is the report of the *High-Level Group on Freedom of Movement* presented to the Commission on March 18, 1997. The report makes a number of recommendations, including proposals to more thoroughly inform EU-nationals about their right to free movement, to facilitate access to employment in host Member States, to promote greater flexibility in securing reunification with family members, and to ensure greater equality in

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<sup>5</sup> It is only recently that developed receiving countries are becoming conscious of not depleting scarce human capital from low-end developing countries, e.g. medical personnel (doctors, nurses), and teachers from South Africa.

<sup>6</sup> Much of the information made available by the Dialogue can be found at the Internet site, <http://europa.eu.int/citizens>. An important element in supporting the free movement of persons within the EU has been the harmonization of social benefits programs. Accordingly, in 1992, the Union established the TESS (Telematics in Social Security) system, which seeks to improve intra-EU migrants' access to and use of social benefits in host Member States. This includes simplifying administrative procedures for the receipt and payment of benefits and facilitating the exchange of information between national social security institutions.

taxation. The report also advocates increased extension of free-movement rights to non-EU nationals legally resident in a Union Member State.

In the EEA, like in the EU framework, mutual recognition of degrees takes place both on a sectoral and on a general basis. In addition, if an intra-EEA migrant seeks entry into a profession that remains unregulated by the government of the host country, the EEA Agreement requires only that he or she demonstrates two years (during the past ten years) of related work experience in the country of origin. Two EEA/ EFTA States, Iceland and Norway, have been active participants in the EURES network. Between 1997 and 1998, Norway opened eight EURES centers in major metropolitan areas to provide information and advice to job-seekers and employers interested in taking advantage of labor mobility throughout the EEA. In both years, Euroadvisers were involved in substantial recruitment of medical professionals and engineers for employment in Norway. In 1997, Norway received 2,000 nurses from other EEA countries, particularly from Finland and Sweden. In addition, Norway concluded bilateral agreements with Austria, France, and Germany for the recruitment of doctors and disseminated 4,000 booklets on becoming a medical doctor in Norway. Under these agreements, doctors receive three months of training in the Norwegian language in their home countries (which is paid by the Norwegian government). A Medical Placement Project (MPP) within EURES recruits individual applicants, administers their placement in language courses, and matches them with available positions in Norway. For its part, Iceland has been involved in educating small and medium-sized businesses about the EURES network and about measures governing free movement within the EEA. EEA/EFTA States have also adopted measures to support the EU's *Citizen's First Initiative*. In 1997, Iceland, Norway, and Liechtenstein convened a meeting with the European Commission on using information published by the *Initiative* as a basis for comparable free-movement projects in the EEA. In June 1997, Norway instituted its own information campaign for "citizens", titled *Meeting Point Europe*. The program produced guidebooks in Norwegian on the EEA Agreement and on working and studying in other participating States.

### Policy actions facilitating the emergence of diaspora networks: Paving the way towards Diaspora Network building in host and home countries<sup>7</sup>

The host countries' priorities in tilting the immigration policies, alternately between "family-reunification" and "skill requirements", have indirectly led to formation, in the host countries, of two kinds of diaspora networks – the sub-national linguistic/provincial networks, and the national professional networks – respectively as elaborated upon in the Indian case-study<sup>8</sup>. There is enough evidence in the sociological literature on assimilation of immigrant communities with the dominant native communities, or on multiculturalism, and the competing approaches of "melting-pot" and "salad bowl" adopted towards achieving these two goals respectively. The governmental efforts towards formation of diaspora networks have, however, not gone beyond this directly. It is rather the private sector initiative which has taken the lead for proceeding further. For example, there are non-governmental corporate networks beneficial to the diaspora use in receiving countries. The force behind the emergence of these networks has been a broad consensus within Europe among governmental and non-governmental entities that employment and particularly self-employment is probably the most critical factor in countering marginalisation of immigrants and ethnic minorities<sup>9</sup>. While improvements of housing, education, and tolerance are considered important, the non-governmental corporate networks believe that better labour market position and sound economic foundation would help individual members of disadvantaged minority communities address better many of their problems in the host countries. This reflects an understanding of the fact that similar barriers to participation in

<sup>7</sup> The examples listed and illustrated under the three sub-sections here are based on excerpts from LINDBURG, 1997.

<sup>8</sup> There are very few home-country based diaspora networks facilitated by public policies, but there are NGOs and returned expatriates' alumni-type associations formed for self-serving purposes.

<sup>9</sup> For example, "Asian-Indians" is an ethnic minority group as per the US census definitions for the US population.

the countries' economic life across the whole of Europe exist for immigrant communities, for example, those arising from lack of language fluency amongst recent immigrants, low/unrecognized educational attainment/qualifications, recruitment discrimination, restricted advertising of vacancies, glass-ceilings for immigrant employees, etc. The constraints on government in generating new employment prompted the private sector employers to counter socio-economic exclusion of immigrants in Europe. There is a growing recognition of the significant contribution high-skill immigrants and ethnic minorities have made, are making, and could make to European economies and societies – leading to joint efforts by public and private sectors to actively remove barriers to their labour market participation. This is because firms which engage in inclusive practices are more likely to attract and retain talented employees. Increasingly, the motivation for corporate action in the area of socio-economic inclusion of immigrants is “enlightened self-interest” or “pragmatic social responsibility”, i.e., socially responsible activities that result in tangible business gains or “win-win strategies” for the company concerned as well as society. There are examples of these new “diaspora-oriented” networks, programmes, campaigns, which are undertaken by corporate sector, and supported by governments, and the Trade Unions/NGOs.

### *Some Corporate Initiatives*

#### **European Business Network for Social Cohesion (EBNSC)**

EBNSC was established in cooperation with the European Commission in 1995 to promote and implement the *European Declaration of Business Against Exclusion*. Launched by a group of business leaders/managers with the then European Commission President Jacques Delors and Commissioner Pádraig Flynn, it seeks to commit business organizations to take part in joint efforts to prevent and combat social exclusion in order to promote social cohesion. Comprising some of Europe's most successful companies, including Accor, Bayer, The Body Shop, British Telecom, Cockerill Sambre, Levi Strauss Europe, Marks and Spencer, Philips International, Shell Sweden, Siemens and Volkswagen, the network promotes business-driven approaches to tackling social exclusion in five action areas: integration in job market, improvement of professional training, minimizing redundancies, creation of jobs and Self-Managed Enterprises, and social integration in deprived areas/ of marginalised groups. As part of the contribution to the European Year Against Racism 1997, the Network established a special Task Force, which produced a report, “Gaining from Diversity: Business participation and benefits in Europe's ethnic and cultural change”.

#### **Business in the Community (BITC), and its “Race for Opportunity” campaign**

Chaired by British Airways' CEO and led by corporate members of BITC, the campaign encourages business to invest in the diversity of Britain's ethnic minority communities “by creating new opportunities and initiatives in employment, marketing, purchasing, education and community involvement”. It is nationally-driven, yet directed at local communities, and is based on the conviction that in an increasingly global and multi-racial society, there is an urgent need for British businesses to develop the economic and social contribution of minority communities, particularly when statistics show that the considerable business skills and buying power of these communities are not being fully utilized. Specifically, the campaign promotes corporate involvement in these matters as Employers, as Purchasers, as Providers of goods and services, and as Responsible Citizens.

#### **Sweden 2000**

Consisting of companies like Volvo, Swedish Telecom, Hennes & Mauritz; the public authorities and organisations, the Swedish 2000 Membership Association shares a commitment to actively work to promote public awareness of the value of Sweden's diverse population. Internally, members are committed to developing a labour force that reflects Sweden's multicultural society, particularly to bring in young workers, particularly with no previous work experience in Sweden. The association established the *Sweden 2000 Institute* to facilitate exchanges in “best practices” in the area of diversity management. Apart from convening workshops, seminars etc., the *Institute* raises public awareness, to support national initiative and

international networks, and disseminate information on the contribution of diversity to Swedish society. As signatories of Sweden 2000's "manifesto", executives and managers agree to promote the concept of "culturally diverse competence" inside the company and in public engagements, meetings with other business practitioners, and various other fora. The concept of "culturally diverse competence" advocates that (a) people of different origins have access to equal career opportunities, (b) the innovative strength that immigrants possess is utilized in the job market, and (c) Sweden's international competitive strength is promoted, with corresponding positive effects for individuals and society.

#### **Samen Werken (Working Together), Amsterdam, The Netherlands**

Expanding to over 300 participating companies, *Samen Werken* was established in 1992 by IBM, ABN, AMRO, KBB and Fokker to address the high percentage of ethnic minorities in Amsterdam and its surrounding vicinities. It took note of the demographic projections that minorities in Amsterdam would soon become majorities. The aim of *Samen Werken* is to facilitate the employability of these groups and to encourage companies to acquire experience in working with them. Based on its successful track record, the programme went nation-wide in 1996.

#### **FACE (Fondation Agir contre l'exclusion) Paris, France**

Established by donations of 20 prestigious enterprises, FACE has three main directions for its actions with employers: (1) Convincing them to set up operations/franchises in critical areas and to employ and train young persons from the local populations, (2) Facilitating job creation in the service sector for employment of disadvantaged youth, (3) Encouraging firms to hire disadvantaged youth who possess diplomas.

#### **Sodalita, Milan, Italy**

This private intermediary organization came into being through coalition of the founder, which was an employers' association, and some private companies. Comprising mainly some retired Italian businesspersons, it establishes partnerships between private companies and the non-profit, voluntary sectors in Milan for working on a variety of social issues. It is counted amongst few rare organizations of its type in southern Europe, particularly focusing on the goal of enhanced involvement of business interest in the community.

#### **Government Initiatives**

There are varying policies and/or actions by which governments are encouraging business action aimed at the inclusion of immigrants and ethnic minorities in Europe. These are operationalised through business support in establishing a fair and equitable legal framework, while ensuring that this framework allows sufficient space for voluntary efforts by the private sector. Governments also actively work to encourage voluntary action by the business sector through promoting the adoption of codes of conduct and cooperation with labour organizations, as exemplified below.

#### **The Joint Declaration on the Prevention of Racial Discrimination and Xenophobia and Promotion of Equal Treatment at the Workplace**

The "social partners" (trade unions, and employers' associations), with the support of the European Union, adopted a "Joint Declaration on prevention of racial discrimination and xenophobia and promotion of equal treatment at workplace" in Florence in October 1995. It outlines several measures which have had a positive effect on preventing racial discrimination in the workplace and proposes a set of minimum standards which employers can apply in order to promote equal opportunities in the workplace. *Among the reasons it cites for adopting fair employment practices are to use people's talents to the full.* A compendium of good practices, based on the Declaration, was compiled by the European Foundation for the Improvement of Living and Working Conditions, and published in 1997.

### **INTEGRA and similar initiatives**

One of the more effective roles that the governments in Europe can play is in “empowering” other actors to come up with effective solutions to employment exclusion. For this, the EU is an important enabling institution. It has appropriated almost 400 million ECU towards INTEGRA, a new strand of the Employment Community Initiative designed to promote measures to improve access to the labour market and employability of excluded groups, including migrants, refugees and ethnic minorities. INTEGRA supports the development of people-driven local initiatives aimed at fighting against discrimination in training and work as well as the establishment of neighbourhood approaches in disadvantaged urban areas through job creation initiative. It also provides funding to projects based on transnational local partnerships, and those which are developing innovative approaches in the area of training, guidance and counselling systems, provision of training and placement; assisting job creation; and information, dissemination and awareness activities. DG V (Employment and Social Affairs) of the EC has also played a key role in developing, supporting and/or participating in a number of initiatives with the business sector on the issue of socio-economic inclusion, such as EBNSC (cited above), Local Integration Action (LIA, cited below), the Social Dialogue (from which the Joint Declaration cited above emerged), and the Copenhagen conference on “New Partnership for Social Cohesion” DG XXIII/A/4 (Small Companies) sponsors projects aimed at promoting assistance to immigrant and ethnic minority entrepreneurship in craft and small enterprises.

#### **New Partnership for Social Cohesion, Copenhagen, Denmark**

An international Think Tank was established in 1997 to promote dialogue on this theme between business leaders, leaders of labour market organizations, international agencies, networks, and researchers. Its establishment was based on the assumption that “companies have a considerable potential for contributing to social cohesion without losing profitability”. A proposed follow-up of this initiative has been an invitation to various governments and the EU to provide support to partnerships and networks, exchange of experience, emulation of successful approaches, and cooperation with business networks – all aimed at development of partnerships with business for enhancing “the economic foundation of immigrant and ethnic minority communities”.

#### **ELAINE network: Promoting self-employment and job creation by migrants and ethnic minorities**

ELAINE is a network of local authorities started by European Centre for Work and Society in Maastricht in 1990. It primarily deals with ethnic minority policies in Europe. Its primary objective has been to facilitate mutual exchange of practical expertise and experience among local authority officers specialising in ethnic minority policies. ELAINE is also a nodal partner network of the LIA (Local Integration/Partnership Action) Programme, consisting of ELAINE and two other municipal networks: EUROCITIES and *Quartiers en Crise*. The LIA Programme is funded by DG V of the EC, and over a three-year period between 1996 and 1999, it aimed at identifying and promoting local projects which demonstrated good practices in the full integration and advancement of migrant and ethnic communities in the public and economic life of their towns. ELAINE’s network of local authorities in Antwerp, Arhus, Barcelona, Den Haag, Genk, Newcastle upon Tyne, Sheffield and Utrecht, in fulfilling the aim of improving the socio-economic life of the migrant and ethnic minorities in cities, carries out projects that promote self-employment and job-creation.

### *Trade Union/NGO initiatives*

Apart from the corporate sector and the government, there are Trade Unions and other NGOs who are also playing important roles in promoting the policy of inclusion for immigrant and ethnic minorities in the labour market:

#### **Trade Unions**

Trade unions have by tradition been working for the protection of the rights and dignity of migrant workers, though mostly low skilled and not so highly skilled, and their families. Their activities are geared towards promoting equal treatment of migrant workers with national workers in matters of recruitment, working and living conditions and education, as well as fighting against their racial harassment and discrimination in the workplace. Although trade unions are no longer as virulent, they are still front-ranking entities for developing measures that combat racial harassment and discrimination, and those which promote equal treatment in personnel policies, *particularly when supply and demand matching in the labour market goes against the interest of workers*. To promote better and faster integration of worker in the workplace, trade unions have organised language and other training courses, as well as intercultural training for their members. To be more effective in these fields, many trade unions have sought to broaden their membership base by including immigrant and ethnic minority workers. Trade unions are thus successfully trying to demolish as myth the perception that they exclusively stand for the interest of the majority workers. They are playing an equally important role in shaping or influencing policies Europe-wide, both at the national level and the local levels. They often pursue this as partners in the official structures, which also include employers' organisations. There are differences of degree though, for example, between the European level or in the Scandinavian and Rhineland welfare states, where this kind of formal cooperation/participation is higher than, say in the UK or the southern European countries where it is limited or negligent. Where such formalised "social partners" exist, it has helped to produce important measures such as joint declarations and/or codes of conduct on the prevention of racial and ethnic discrimination, or voluntary agreements on the fixing targets for immigrant and ethnic minority recruitment. Sometimes, concrete activities are also being jointly undertaken. There are, however, times when this label of "social partners" fails to bridge the differences of opposite interests between the constituencies that trade unions and employers' organisations represent. Although there are success stories like in Denmark, Germany and the Netherlands, where co-operative agreements among the social partners have worked, most of the company representatives sound critical of the trade unions for impeding their initiatives in promoting diversity. The tendency to define socio-economic problems and their possible solutions with different terms and emphases, and the predisposition in some countries to view each other as adversaries is posing significant barriers to the development of joint actions aimed at promoting the diaspora inclusion and emergence of networks. Despite such barriers to co-operation, however, the recognition of common interest areas between business, immigrants, NGOs, and trade unions is spawning examples of new and creative links between companies and trade unions, such as the *Migrant-training School* in Copenhagen, Denmark. The course offered in the school is funded mainly by the adult-education system and the regional Public Employment Administration<sup>10</sup>. The great success of the programme is attributed to the mutual gains of the participating partners: Employers find that the employees with enhanced language and computer skills are more versatile and can accomplish a wider range and complexity of tasks. They also benefit from reductions in employee injuries. Employees begin to make the link between increased training and increased opportunities. Many of them proceed on their own

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<sup>10</sup> The School, which is an initiative of the Hotel and Restauration Union (HRF/RBF) in Copenhagen, is a co-operative venture between the HRF-Copenhagen, private sector employers, the employment administration, some Danish schools for adult education and vocation schools. It operated during the annual lean season for the business from the end of September to beginning of April. The participants, all HRF-RBF union members, receive three months of full-time instruction (30 lessons per week), including intensive Danish language instruction, an introduction to Danish society (such as info on rights of and regulations for un/employment, computer training, guidance in occupational safety (i.e., fare safety and first-aids).

initiative to receive additional training through night courses to improve their skills. Public Employment Administration of the region is willing to fund the programme on the basis of the rationale that those who attend the school are less likely to become dependant on unemployment benefits, and are more likely to retain jobs or find work elsewhere during slow periods or other economic slump in their branch of the business.

### NGOs

It is important to distinguish between three varying types of NGOs in this field of action:

1) Quasi-government bodies which primarily focus on the statutory context, such as the UK's Commission for Racial Equality, the French *Commission nationale consultative des droits de l'Homme*, and the Swedish Ombudsman on Ethnic Discrimination. The government "watchdog" function of this group has in some cases led to a generally positive relationship between these bodies and the business sector, and has helped several corporate offices introduce significant changes in attitudes and practices.

2) Immigrant and ethnic minority assistance/aid organisations: Within this category of aid and assistance NGOs, there are emerging examples of slow-developing relationship with business. Such co-operation between business and service NGOs is increasingly gaining importance as the private sector begins to take on the responsibilities for larger share of public utilities and services previously supplied by the public sector.

3) Advocacy groups who lobby for and promote a number of cause-related issues: It is with this category of NGOs, which are most vocal, that the relationship with business is perhaps the least detectable and most strained. Unlike in the US, most European NGOs that take up the cause of migrant and ethnic minority have yet no well-defined relationship with the corporate sector, and this is true from the side of the corporate sector too. It is also true that that it is mostly from among this group of NGOs that the most pronounced critiques of corporate practices surface, leading to public pressure for legislation. Thus, these NGOs play a significant role in modifying corporate ethics and behaviour. On the other hand, it is also this role of the NGOs which makes the private sector wary of venturing into the social realm, lest it over-exposed itself to unfavourable public scrutiny.

NGOs, including many a Diaspora Network would therefore benefit from a clear assessment of where their strategies are constructive and where they may be having counter-productive results. NGOs can also make a more conscious effort to learn and have an open mind about the role of initiatives being taken by the private sector in promoting labour market inclusion and mobility of immigrants and ethnic minorities, and to disseminate this information to Diaspora Networks. Particularly with respect to immigrants, not only employment, but also *the quality of employment* is one of the most effective bridges to participation and co-adaptation in multi-ethnic urban communities.

### **The Development Initiative: Public Policies allowing Development Actions**

The French government has just set up a federation of migrant NGOs in France in order to facilitate their access to funding for *development projects* in the community or country of origin. Three specific, but different categories of similar examples are available.

#### *Example 1: Host-country Initiative in Europe*

A parallel, *host-country, initiative* in Europe is "the European Coordination for Foreigners Right to Family Life" (*Coordination européenne pour le droit des étrangers à vivre en famille*). Since 1994, the Coordination has mobilised several hundreds of associations comprising the family movement, the labour union movement, immigrant-rights movement, and movement of solidarity and defence of human rights. Its goal is to obtain legal and political guarantee for the right to family life of foreigners (third-country nationals) residing in the countries of the European Union. It acts at the European and National levels through the mobilisation of associations and through direct interventions. What unites the associations and

campaigns to the Coordination, in spite of any religious, political, or philosophical differences, is the fact that they consider the right to family life a basic right that must be respected by all: The Universal declaration of Human Rights and many texts of international law uphold the right to marry freely and to live with one's family with the benefit of social protection, without discrimination because of race, colour or national origin.

Certain States of the EU, by allowing variations in their immigration and asylum policies to take precedence over these rights and by adding restrictive clauses to deal with third-country nationals, create a *de facto* opposition to marriage and family life. Couples are divided and children separated from their parents, even when one of their parents is the citizen of a European State or has been allowed legally to settle in the country. The associations of the European Coordination, outraged by these violations, continue to ask the European authorities to take measures so that the States respect the right to family life. They ask that third-country nationals receive the same rights as European citizens.

Proposals of the Coordination since the Treaty of Amsterdam: After waging a campaign with other European networks to amend the Treaty of Maastricht, the Coordination expressed, immediately after the intergovernmental Conference of Amsterdam, its disappointment: Advances may have been made regarding principles, but they were not accompanied by institutional measures likely to ensure a real guarantee of the rights of foreigners. Since 1995 the Coordination has proposed a project for a European Convention (or directive) on the right to family life based on two essential features:

- A definition of the family that respects the sociological reality of the emotional and material ties of families of all origins.
- A legal basis for recognised rights: Equality between European citizens and third-country nationals residing legally in the territory of any State in the Union.

Several hundred associations in Belgium, Britain, France, Germany, Italy, Luxembourg, Portugal, Spain and Sweden have shown their support for these propositions.

The Proposed Directive of the European Commission: Since the Treaty of Amsterdam came into force in May 1999, the Council of the Union, meeting in Temperere, recognized the need to make more compatible the various national laws concerning the rights of citizens of other countries to enter and stay in their territories. The EC developed a proposal for a directive that would address the right of families to live together, and the European Parliament has approved its basic provisions. Although this proposal does not entirely respond to all the stated objectives of the Coordination, it is considered an important step forward toward the respect of the right to family life, and therefore the Coordination call upon its associates to support it. It was therefore incumbent on the Council of the Union to adopt this directive, which was to oblige every State to modify its national regulation on uniting foreign families, thus respecting human rights and basic freedoms within the framework of a common policy of immigration and asylum among the European States.

The Petition campaign for the Right of Immigrants to Family life: The Coordination therefore asked, prior to its press release dated 5 November 2001, everyone who felt concerned for the situation of so many individuals and foreign families to show support for the Commission's directive and to take an active part in the Petition Campaign For Immigrants' Right to Family Life by contacting the Council of the Union and the governments of their respective countries<sup>11</sup>.

#### *Example II: Home-country Initiative in India*

A parallel counterpart – a *home-country initiative* – for example, by the Indian government as home-country State of one of the largest scientific diasporas in the world today, has been proposed in the “Report of the High-Level Committee on the Indian Diaspora” (ICWA, 2001). Currently, the Indian Diaspora numbers over 20 million expatriates spread across the world, reflecting the multiplicity and variety of the social, ethnic, religious and

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<sup>11</sup> The contact address of the Coordination is 23 a, rue Belliard – (B) 1040 Bruxelles.  
Website: <http://members.aol.com/coordeurop/indexce.html>

cultural diversity of the country, and the Indian scientific diaspora is a sub-set of this larger set. Since India achieved Independence in 1947, overseas Indians have been interacting with India to seek their roots and to explore new avenues and sectors for mutually beneficial relationship in fields ranging from investment, transfer of skills and technology, to outright philanthropy and charitable works. This trend has become more marked in the last decade as the Indian economy has opened up, giving rise to a new range of opportunities for the emerging generations. Barring some high profile names, however, in the Information Technology and entertainment sectors abroad, the Diaspora has been largely out of public sight and awareness. As a first concrete step towards undoing this, A *High Level Committee (HLC) on Indian Diaspora* was set up to recommend policy options, organisational frameworks, strategies and programmes by the Government of India to involve Non Resident Indians (NRIs) and Persons of Indian Origin (PIOs) in accelerating social, economic and technological development of India. The Committee, in its report submitted to the Prime Minister of India in January 2002, found “strong evidence, in the Indian Diaspora, of deep and abiding ties with, and commitment to, India’s *welfare*” (emphasis added). It has reported that “the reserves of goodwill amongst the Indian Diaspora are deeply entrenched and waiting to be tapped *if the right policy framework and initiatives are taken by India*” (emphasis added)<sup>12</sup>. It may be hoped in this context here that the present work of the *collegial expertise* would show the way the diaspora networks can contribute in this “making of the policy framework” by institutionalising the diaspora option rather than leaving the task to the initiative of the individual expatriates. The Committee confirms that the majority of Indians had left the country because of economic reasons arising from the mismatch between supply and demand in the labour market. In other words, the highly skilled Indians migrate primarily in search of better *employment* prospects and not because of political, social or ethnic factors. They would also rather have stayed back in India if the opportunities for utilisation of their talent were available within the country. Even their genuine efforts to make a “payback to their mother country” are still being stalled because of an unresponsive policy and bureaucratic environment, it is being felt and alleged. A revamping of bureaucratic procedures along with administrative and economic reforms is therefore required to remove unnecessary obstacles in the way of optimal utilisation of these resources. A geographical survey of the Indian Diaspora undertaken by the Committee, tracing individual histories, identifies its main characteristics and demands and expectations from India. It is more or less clear from the survey that the Indian Diaspora wishes to engage its country of origin, viz., India, in a number of diverse areas and activities ranging from trade, investment, education, health, science and technology to culture and philanthropy. However these attempts have often resulted in frustration, generating the single most important and widespread request from the Indian Diaspora, i.e. – institutionalisation of a mechanism of liaison and effective intervention with official authorities such as the police, Central and State Governments, local district administrations, investment promotion bureaus, education and welfare departments, schools, banks, and other specialised bodies dealing with matters concerning the Diaspora. Keeping in mind the enormous reservoir of skills, talent, technology, idealism and funds available with the Indian Diaspora, and the need for major structural and administrative reforms to optimally leverage these invaluable assets, the most important means to this end is to institute a single-window contact mechanism for the NRI/PIOs in the form of an autonomous, dedicated, empowered central office to address their needs, and at the same time ensure their engagement with India. The HLC studied in detail various models including those of the Indian Council for Cultural Relations (ICCR), and other Commissions, as well as the governmental organisations created by some other countries with sizeable Diasporas, such as Poland, Japan, Philippines, Lebanon, Italy, Greece, China and Israel. In doing so, the Committee noted that all the countries with successful Diasporas have well-funded, well-staffed organisations. The Committee also reviewed past attempts at creating offices in the Government of India for handling NRI/PIO affairs. Based on this review, the Committee felt that a fresh attempt had to be made to create an

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<sup>12</sup> Following the recommendations of the HLC, a PIO-card has already been launched for the benefit of visiting PIOs.

empowered, flexible and dedicated set-up capable of handling the multiple issues generated by the Diaspora's networking and interaction with India.

*Example III: Host-country-Home-country Combine between India and the EU*

Example of the third initiative, a *host-country-home-country combine*, is the “EU-India Round Table”, with potential role to play in the area of migration or brain drain of human capital from India, and the Indian diaspora in the EU countries. The EU is India's largest trading partner, accounting for a quarter of the country's foreign trade. A political dialogue, at ministerial level, was inaugurated in 1984, while a joint political statement signed in 1993 provided this dialogue with an institutional basis. The culmination of this dialogue came in June 2000, with the first EU-India summit, held in Lisbon under the Portuguese presidency. The Indian Prime Minister described the summit as “the harbinger of a new India-European Partnership in the 21<sup>st</sup> century”, based on the “shared universal values of democracy and the respect for human rights, rule of law and fundamental freedoms”. It also noted that “the EU and India are important partners in the shaping of the emerging multi-polar world”. Amongst a 22 point agenda, point No. 8 for launching of the India-EU Round Table was accorded a high priority, leading to its inauguration in New Delhi on 29<sup>th</sup> January 2001 (Point No. 9 provided for the launch of an EU-India Think Tank Network to encourage European and Indian academics to undertake joint studies on different aspects of EU-India relations): In 1999, India's Foreign Minister had taken the view that political/economic meetings at the official level were incomplete by themselves, given that civil society had an important role to play. The EC expressed its readiness in 1996 “to help extend the EU-India dialogue to civil society (including trade unions and NGOs), the media, and the academic community”. The EC indicated at the same time that its own efforts in this area “could be usefully complemented” by the European Parliament and the European Economic and Social Committee (ESC)<sup>13</sup>. The Round Table would meet once or twice a year alternately “in India and Europe”.

This political decision to turn to organised civil society for input into the official decision-making process added a new dimension to EU-India relations. The Round-Table is thus “a high level preponderantly non-governmental group of eminent personalities from both sides [...] It enjoys the privilege of having direct access to the highest level of Government/EU institutions”, and its minutes and reports would “form non-binding inputs, in the form of specific recommendations, for decision making by the Government of India and the European institutions”. This level of political backing has ensured it a more important role in the decision-making process than most of the official committees, sub-committees, and working groups that make up the institutional machinery of EU-India relations.

A member of Group III, representing the side of the European civil society had explicitly proposed at the first meeting of the Round Table in January 2001 two topics relating to migration to be recommended for the next summit in November 2001. The first related to the fact that “young Indians were heading for the US, and not Europe”, suggesting they perceived the EU negatively, and this needed to be corrected through “cultural exchanges, television and radio programmes, films, the print media and a people-to-people dialogue [...] to put forward a positive message and change perceptions”. The second topic was migration, being examined by the ESC, which it was thought would be useful to look at holistically, bearing in mind the difficulties faced on both sides. The role of the Indian community in the EU was highlighted in this context.

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<sup>13</sup> The ESC already represented the EU in its civil society dialogues with numerous countries and regions, including the Mediterranean region, Latin American countries and the African, Caribbean and Pacific (ACP) countries linked to the EU through the Cotonu Agreement (ESC, 2001a, 2001b).

## Conclusion and A Perspective Comment: What Generic Policy of Development would be Optimal for the Diaspora Option in Answering the Brain Drain?

### Conclusion

The broad review of the policy arena presented above would carry no meaning in the context of the diaspora option, if not contextualised to the paradigm shifts in international migration of the highly skilled that have taken place globally in recent times. We have elsewhere identified and commented upon at least three types of such paradigm shifts in the context of India<sup>14</sup>: First, in terms of the enlarged application domain of the generic skills of professionals, and of “semi-finished” human capital in the form of younger students, in increasing number of developed receiving countries. Second, in terms of the bandwagon expectation of a fantasized “return migration” of knowledge workers from abroad, implicit in promotion of policies of “temporary” or “circulatory” migration, as a panacea for brain drain. Third, in terms of the replacement of the policy objective of human-development-led “welfare” by that of human-development-led “growth”.

Through the first paradigm shift, worker-seeking (in the form of heightened demand for high-skill professionals like the Information Technologists or, in short, ITs) has become the predominant determinant of international migration, in place of the work-seeking mode (in the form of preponderance of supply of specialized skills by narrow specialists) of international migration<sup>15</sup>. This has been followed by seeking knowledge workers who are endowed with more generic human capital, mainly teachers and students (for frontier areas of knowledge, like IT, biotechnology and so on) for future build-up of knowledge societies in developed countries. Consequently, knowledge-creation (through involvement of teachers and students in research and learning) has become the frontier activity, followed by world marketing (through multilateral negotiations involving the IPR or the GATS under the WTO), rather than application, of created knowledge – leading to heightened flows of the so-called brain drain from developing to developed countries.

The second paradigm shift focuses upon newly emerging “circulatory migration” or the old-fashioned “temporary migration” in place of permanent migration, as a road to return migration, posing to be an antidote to the so-called brain “drain”. Where does it leave the developing countries? Are they better off – as far as the large-scale emigration of their knowledge workers is concerned? One might think that as circulatory migration would gradually replace permanent migration in terms of prevalence, diaspora networks would also die a natural death<sup>16</sup>. On the other hand, it may also be argued that the phenomenon of “physical presence” of *permanently formed settlements of temporary/circulating* foreign knowledge workers in the form of *Scientific Diasporas* is going to remain an important and growing determinant of migration of knowledge workers, although each individual immigrant would cease to matter much as turnover becomes high and rapid. This would happen if the foreign worker component in the labour market grows in size and importance – leading to growth in the number and size of the Diaspora Networks. One could argue that this would be the result of a unique kind of “forced migration” where no particular migrant is encouraged or allowed to stay in the host country for long periods – *à la* “temporary migration under GATS of the WTO regime”. As a result, the individual migrant would become less and less important in any given diaspora, and networks would emerge and replace individual migrants as the sustainable entities. For the receiving developed country, this serves two not-so-obvious but important purposes: (a) “safety valve for migration” (e.g., the state’s responsibility of protecting the foreigners’ interests would stand reduced because same faces of immigrant individuals would

<sup>14</sup> See KHADRIA, 2001a-e, 2002. See also the Indian case study in this report.

<sup>15</sup> See KHADRIA, 2001e.

<sup>16</sup> See India case study in this report, for such a conjecture being made.

not be available continuously for long for building up resistance groups against the native chauvinistic/ racist groups and/or the discriminating employees/governments), and (b) easy and cheap “labour population replacement” – older vintage by newer vintage (to get a hold over newer technologies), older by younger people (to help correct the aging demographic structures of the labour market), and higher-pay-packet-drawing experienced people by lower-pay-packet-receiving fresh entrants (to keep the overall wages bill on labour-cost low). Given these, it may fall in proper place that the decision-making on the demand-side of circulatory migration is still highly controlled by the developed receiving countries, although *it has been made to look* as if liberalization has taken place for immigration<sup>17</sup>.

In this broad contextual background, which one may like relating to the emerging map of the future “knowledge” society drawn by Peter Drucker recently (Drucker, 2001), the Indian case-study presents an anti-thesis to the hype that has been created by the co-called “circulatory migration” as an antidote to permanent migration, and thereby an opportunity for developing countries to turn their brain drain into brain gain. Information collated from various sources show that project investment and return of personnel from abroad to work on productive projects in India do not appear to be very significant<sup>18</sup>. The private sector has, thus far, not been active in stimulating the benefits of skilled mobility; instead, it has focused on the cumbersome problems of international laws governing the movement of the workers they need. Taking India as an example, there are three ways in which corporations use the highly-skilled: (i) Indian companies send consultants to the US, where they use their skills and support their company; (ii) creation of R & D facilities in India, where transfer of technology goes back and forth; (iii) corporations import the skills from India with no return of investment, which is the case in the high-tech area (e.g. to fill the shortages in the US). Corporations with government assistance may be able to bolster the transfer of technology and knowledge to everyone’s benefit<sup>19</sup>. Remittances, on the other hand, are quantitatively significant, but their benefit to the economy is doubtful. Given this, a more holistic approach for measuring the gains from brain drain in terms of raising the long-term average productivity of the *resident* labour force in the sending country (e.g., India) – leading to higher production, higher earnings, higher consumption, and thus elimination of poverty is advocated, rather than continuing to dwell on a myriad of investment avenues in general business and industry for the expatriates. Towards this, sectors need to be identified where the social return on expatriate investments – in terms of increases in average labour productivity of the resident workforce – is much higher and sustainable than the market return. We have identified (Khadria, 1999, 2001a, 2001b) two areas, viz., education and health as qualifying for this for the involvement of the scientific diasporas. We would take the international political economy as a datum, and argue for an endogenous solution of building up average productivity of labour at home through the diaspora-option to the brain drain rather than an exogenous solution of return migration or circulatory migration. We thus advocate for concentrating on a single generic long-term policy intervention – targeted in the limited fields of education and health infrastructure development only rather than a multitude of development or *welfare* targets.

One must keep in mind though the way US leads in immigration of knowledge workers and the way the EU is trying to follow, as the number of countries seeking foreign knowledge workers expands worldwide. EU mechanism on immigration is, however, still largely non-homogeneous across member nations from the points of view of either worker-seeking or work-seeking. As part of a third paradigm shift, in policy, a strategy or model of “outsourcing the diaspora” for substantial and sustainable improvement in the average productivity of labour from within the home country would be in the long term optimal interest of any developed host

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<sup>17</sup> We have emphasized at the Brussels Roundtable (ISIM, 2001) that the policy of encouraging “temporary return” of the highly skilled principal migrant for given duration and specifically for contributing to development in home country will be better-received for facilitating return of migrants on a macro scale. We argued that unlike a policy of temporary migration for ensuring return, this would not unsettle his/her family or children going to school(s) in the home or the host country and therefore not become a barrier in migration decision-making of the highly skilled.

<sup>18</sup> See KHADRIA, 2001a.

<sup>19</sup> Transatlantic Roundtable at Brussels (ISIM, 2001).

country. The long-term optimality of the efforts of the EU for homogenization into a common immigration policy for employment and self-employment of “third-country nationals”, including non-European knowledge workers like Indians, would lie in creating the space for this kind of generic policy of endogenous growth through Scientific Diasporas aimed at lifting the long-term average productivity of the resident labour in sending countries to world levels.

### **A Perspective Comment**

While governments will continue to develop and implement measures aimed at increasing the participation of immigrants and ethnic minorities in the economic life of their countries, it is understood that they cannot do so without the assistance of other actors. One of the emerging “other actors” in this area would no doubt be the Scientific Diaspora Networks. Forward-looking governments ought to actively support the development of cross-sectoral partnerships through legislative and other measures that bring business, governmental, and non-governmental organisations together in initiatives relating to the diaspora option of development. In addition to concrete practices in local communities, the governments, the private sector, and the NGOs might begin to work towards identifying a “Diaspora Policy Agenda” on key matters of development in both host and home societies of the immigrants – matters which have so far remained typically confined to governmental discourses. The objectives of this could be to enlist diaspora support in establishing a fair and equitable legal framework and ensuring that this framework allows sufficient space for voluntary efforts by the diaspora networks. This might include the development of methods for monitoring the recruitment and advancement of immigrant/minority employees as an achievable “index of progress” in the host society. This would highlight the importance of the fact that immigrant and ethnic minorities very often comprise the individuals who, as the high-skill workers, are steering the change, and are not merely the target and recipients of majority initiatives in host societies. Progress *achieved* in terms of this index or measure in the host country would facilitate progress and development in the home countries of the immigrants when the diaspora networks would carry it through for taking those initiatives which would endogenously raise the average productivity of workers in labour markets there.

Given this perspective, the potential social return from investment in education and health sectors are not only much higher than their market returns – thus making the system immune to the negative effects of brain drain; they are also capable of eventually correcting the structure that is responsible for brain drain in the first place<sup>20</sup>. A more useful approach will be *the diaspora option* – in terms of channeling the non-residents’ contribution, as well as the contribution of the host countries into education and health at the grass-roots level, rather than trying to aim at the top-end targets without first building the foundations of human capital at the bottom-end. Education and health sectors are also more suited as receptacles for the skills of scientific diasporas as they comprise mostly the professionals: doctors, engineers, scientists, academics, and lately, high-skilled workers in information technology and in the near future in biotechnology. If the non-residents’ contributions of money, skill and vision, fuelled by appropriate support and action plans from the host-country governments and people, can be utilized by the home country to make a dent on the baneful cycle of the “low-level equilibrium trap”, it would help restore the human capital taken away from the system and may some day even produce a break to the negative and very negative first generation effects of the brain drain. To make these efforts sustainable, monitoring of achievements as well as of setbacks have to be undertaken through further research backed by generation and consolidation of relevant data. It may be a rewarding effort to design appropriate strategies and supporting institutions for removing the hurdles to large-scale involvement of the scientific diasporas’ resources, money, skill, vision and, above all, involvement in transforming the quantity and quality of the home countries’ education and health sector coverage.

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<sup>20</sup> See also MAJUMDAR, 1991.

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