EU Returns Directive: impact on migrants and remittances

The EU Returns Directive, approved last year, is designed to harmonise laws amongst Member States, requiring them to return non-EU migrants to their home countries or offer them legal status. Manuel Orozco and Elisabeth Burgess of the Remittances and Development Program of the Inter-American Dialogue - a non-profit policy analysis organisation - examine the impact that the Directive will have on migrant labour flows in European Union Member States, including on remittance products.

Last year, the European Parliament (EP) approved a controversial Directive requiring Member States to either expel or legalise all undocumented non-European Union citizens and take all necessary measures to enforce and recognise one another's expulsion decisions. The so-called Returns Directive is a harsh unilateral provision that undermines the complexities of migration and existing international relations between Europe and the rest of the world. At a time of greater global European integration, the directive contradicts realities dealing with family unification, European population decline, reliance on low-cost foreign labour, trade, and investment.

The issue of third-country immigration into the European Union has become a hot-button issue, challenging the very nature of European integration. Recently, the debate has tilted in favour of conservative, anti-migrant and non-market based approaches, such as that proposed last year by the French President, Nicolas Sarkozy. After making a number of changes, European heads of state endorsed his so-called 'Pact on Immigration and Asylum', a political agreement built around the Returns Directive in which they pledged to seek a common asylum policy, expel undocumented migrants, and enhance border controls by 2012. Although the pact acknowledges the European economy's demand for migrant labour, it emphasises security and expulsion, arguing that the European Union does not have the means to decently welcome all the migrants who hope to find a better life here.

Together, the Returns Directive and the Pact on Immigration and Asylum highlight the EU's recent two-track approach to immigration policy: putting border security and forced return measures on the fast track, while Europe's needs for legal labour migration move along at a snail's pace. Current discussions to create a Blue Card for skilled migrants - similar to the United States' Green Card - should be a step in the right direction, but in reality have been politicised and don't fit current labour market needs. In the meantime, the Returns Directive will increase the challenges of international labour mobility and may endanger the economic ties among migrants, host and home countries, which have significantly contributed to business and economic growth for everyone.

Description of the Directive

The Returns Directive was first presented in the EP nearly four years ago. Last June, the EP approved the Directive and on 16 December 2008, it was signed by both the EP and the European Council. EU Member States are now required to transpose the Directive into their respective national laws by 16 December 2010.

The Directive aims to harmonise laws on returning migrants to their home countries and does not address policies regarding the regularisation of undocumented migrants' legal status. The Directive states that: 'Member States shall issue a return decision to any third-country national staying illegally on their territory'. Authorities must offer undocumented migrants a seven to 30 day window to return voluntarily, but only if the migrant requests that option. Under special circumstances, this window of time can be extended, but it can also be refused if authorities deem the migrant poses a 'risk of absconding'. The Directive instructs that 'Member States shall take all necessary measures to
enforce the return decision, including the use of coercive force. Additionally, it allows for authorities to detain migrants for up to one and a half years (six months with the possibility of a one-year extension). Additionally, the measure requires that all deportation orders be accompanied by a re-entry ban:

- if no period for voluntary departure was granted; or
- if the migrant did not comply with the return order.

The Directive does not apply to the United Kingdom and Ireland, and Denmark has six months to decide whether or not to adopt the Directive in its national law, based on these countries having previously opted out of the Schengen area’s passport-free travel zone and, therefore, out of common EU immigration policy.

Implications of the Directive

An estimated 40 million migrants live in the European Union, where they have been making important contributions to the economy as a labour source.

On a practical level, use of the Directive to either expel or regularise all undocumented migrants, especially if done on a case-by-case basis, would overwhelm current judicial capacity and be impossible to enforce. Frontex, the EU agency tasked with shared border security, would be incapable of such large-scale coordination. Meanwhile, return efforts have proven to fail again and again, even in the highly regulated area of refugee migration and return. The allowance of up to 18 months of detention for migrants awaiting return decisions will prove costly and human rights standards could easily erode.

The Directive is also contrary to EU Member States’ labour market needs, putting in doubt the measure’s validity in upholding Member States’ economic sovereignty. With its rapidly ageing population, Europe has relied on migrant labour to fuel its economic growth. As its native population continues to follow a steady pattern of below-zero growth rates, without the ability to achieve self-reproduction, EU Member States will need to bring in foreign labour. For example, Germany’s population will drop from 80 million to 60 million in 30 years, and will need to increase its demographic growth levels to maintain its productivity.

Even selective migration, such as that proposed by the skilled-worker Blue Card scheme, will not bring in enough foreign labour to meet the market’s demand. The Blue Card has its own inherent problems as well. For one, it may be gender-biased against women, who tend to have lower education levels in their home countries and tend not to apply for the card, in a context where female labour mobility is increasingly needed in the European Union countries. Also, decisions regarding qualifications to obtain the Blue Card have been highly politicised, often based on political relationships between countries’ leaders rather than a realistic assessment of migration needs and problems. Immigration policy ought to address the need for agile responses to the market’s demand for foreign labour, rather than being mired in politics.

The Returns Directive’s provision for voluntary return is not realistic, as most will choose to stay even while facing the prospects of forced return. Migrants will face hard choices in assessing the opportunity costs of staying illegal or returning to uncertain conditions back home, and many will most likely stay underground. Even a recent offer by the Spanish government to give unemployed legal migrants a welfare package in exchange for returning to their countries was not well received (the government estimated that tens of thousands of migrants would choose to return but, in fact, only 2,000 have chosen to do so). Those undocumented migrants who choose to stay will face becoming increasingly marginalised as migrant ethnic communities that are often discriminated against, whose conditions will make them vulnerable to poor health, lack of education, and crime. As the social conditions of these communities deteriorate, this in turn will reinforce prejudices, often with racial connotations, against migrants.

The Directive aims to expel people just as the global economic crisis is taking place, increasing unemployment across the board. As economies begin to recover, they will need a highly flexible labour force more than ever.

Migrants represent the most highly flexible labour force, willing to

<table>
<thead>
<tr>
<th>Region</th>
<th>Migration</th>
<th>Remittances</th>
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</thead>
<tbody>
<tr>
<td>East Asia &amp; Pacific</td>
<td>2,514,645</td>
<td>9,045,645,130</td>
</tr>
<tr>
<td>Europe &amp; Central Asia</td>
<td>21,402,503</td>
<td>58,739,771,284</td>
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<tr>
<td>Latin America &amp; Caribbean</td>
<td>3,612,577</td>
<td>10,809,719,436</td>
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<tr>
<td>Middle East &amp; North Africa</td>
<td>5,687,140</td>
<td>15,798,504,791</td>
</tr>
<tr>
<td>North America</td>
<td>703,781</td>
<td>11,801,240,996</td>
</tr>
<tr>
<td>South Asia</td>
<td>1,987,693</td>
<td>8,387,854,719</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>3,944,638</td>
<td>9,653,208,630</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>39,923,437</td>
<td>124,233,849,957</td>
</tr>
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relocate and take jobs that native-born Europeans don't want. In some countries, like Spain, unemployment among immigrants has increased above national averages mostly because these workers were in the construction industry - the most affected sector of the Spanish economy. Deporting them at this time will hurt both the local and home countries economies relying on remittances.

Finally, the important contributions that migrants make to Europe's economy would be diminished by the Directive. These migrants in 2007 sent an estimated US$124 billion in remittances to their families back home, a practice that has been described as an important effective poverty-reduction mechanism. Remittances have grown steadily over the past ten years and with growing unemployment and an expulsion policy, the flows are likely to decline.

The effects of such decline will affect the economies of many countries worldwide. Remittance declines in foreign dependent-dependent countries like Moldova, Ecuador, Dominican Republic, Indonesia, Suriname and Ghana among others - will have important implications for the countries' economies. These flows generally represent, on a person to person context, 60% of a household's income. Thus, a decline would affect these individuals directly. The decline of this flow will depend on the number of deportations, the decline in earnings among those underground who will restrict their expenditures, money transfers included, as well as by those who choose to migrate or not into the EU area, and by the severity of the policy. If remittance decline may be near 5%, the deportations or expulsions may double that figure.

The Returns Directive has wide-reaching implications beyond the understanding of EU members, who have based policy on assumptions and anti-immigrant feelings, rather than on facts or empirical understanding of the intersection between labour migration and economic development. This policy will increase pressure on replenishing rapidly falling demographic growth among EU members, push migrants further into an underground subculture, force people to return during times of global economic downturn, and there will likely be a decline in migrant remittance flows.

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3. In November 2004, the European Council endorsed the creation of a common EU immigration and asylum policy. A December 2006 roadmap for the program included recommendations for a horizontal Directive to introduce a single procedure and permit for migrants seeking to work in the EU and four sectoral initiatives for highly skilled workers, seasonal workers, remunerated trainees and intra-corporate transfers.
4. The UN High Commissioner for Refugees (UNHCR) argued that the compromise text does not incorporate all the safeguards necessary to ensure that returns take place in safety and dignity... Unlike instruments adopted in the asylum field, the proposed Returns Directive purports to set common rather than minimum standards. Although Member States have the option to adopt or maintain higher standards, UNHCR remains concerned that standards on removals are likely to drop as a consequence of this text. http://www.unhcr.org/protct/PROTECT ON/4b6352832.pdf