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MIGRANTS & REFUGEES
HAVE RIGHTS!

Impact of EU policies on accessing protection





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foreword

This report is Caritas Europa's studied response to the tragedy hundreds of thousands of women, men and children face when seeking refuge in Europe. People escaping war, repression and violation of human rights turn to Europe in the hope of finding a safe haven, but instead meet with denial of protection and rejection of solidarity.

Caritas Europa observes that certain policy responses by both the European Union (EU) and European government leaders belie core European values and contradict fundamental Christian teaching, as well as the foundation behind the EU project.

With this report, Caritas Europa wants to contribute to this political debate and propose solutions to the ongoing tragedy of migration. It is based on the experiences of Caritas organisations across Europe working to secure protection and human rights of migrants and refugees. The stories and testimonies of those who make it to Europe demonstrate the urgency of the situation.

Caritas Europa seeks to contribute to appropriate humanitarian responses by providing evidence about the situations of migrants and asylum seekers, supported by insight from Caritas' staff and volunteers helping the people in need. It provides an in-depth analysis of the impact that current EU asylum and migration policies are having on migrants in Europe.

Along with reviewing the situation of migration in Europe, the report also analyses the root causes of migration to Europe. It identifies five main areas where law and policy may hamper migrants from accessing international protection or ensuring human rights. These include: **(1)** access to protection, humanitarian visas and resettlement; **(2)** the non-refoulement principle; **(3)** family reunification; **(4)** labour migration and mobility; and **(5)** irregular migration.

Each of these areas is built upon testimonies of refugees and migrants, analysis of relevant EU law and policy and recommendations for solutions. This report also offers a solid foundation for policy advocacy and local action to promote a Europe of true solidarity, justice and well-being for all, including migrants.

Appropriate responses can only derive from recognising that migrants and asylum seekers are not a "flow" nor an "invasion", but are women, men, and children, whose human rights and needs are being jeopardised.



Jorge Nuño Mayer
Secretary General of Caritas Europa



introduction

“My heart broke several times a day when I was a volunteer in Lesbos. Sometimes I had to turn away almost in tears. One night I walked between two lines of refugees sitting and standing in the freezing cold, deciding in my head to which child (some were crying from the cold and hunger) I would bring a blanket to, as we had a limited number and I had to keep in mind that late in the evening new refugees would arrive and would need blankets. When I brought the blankets to give them to the “chosen ones”, naturally other children and parents started pulling them and others pleaded. Needless to say it was very rough emotionally for me. However, when I asked a translator to explain why I chose those children (crying and the lightest dress) and that I could not give out more blankets because new refugees who were going to arrive this night would be soaked and would need them, they all went silent and were understanding. Their reaction was very moving.”

Antony, Caritas volunteer in Lesbos
Source: Caritas Cyprus

“Greek people are very friendly to me and the other persons here. They smile at us in order to comfort us and they ask how they can help us.”

A., refugee from Syria
Source: Caritas Hellas

“There were different humanitarian organisations trying to ease the pain of the refugees and we were one of them. Caritas distributed the aid in the afternoon and evening, while others were there only during the morning. Volunteers from Caritas Czech were there to drive women and children with their van, so they didn't have to walk long to get to the border crossing.”

Magdalena Pavlovic, Caritas Serbia
Source: Caritas Serbia

Migration is a major feature of Europe. Public and political debate is often contradictory. On the one hand, governments facilitate migration when there is a need for foreign labour and skills to develop and sustain the national economies. On the other hand, the migration debate across Europe always includes contentious elements, particularly the nativist antagonism towards foreigners of differing racial, ethnic, regional and religious origins. Hostility to migration and to migrants increases in periods of widespread unemployment, all the more when government services to the population are reduced, primarily affecting the marginalised and poor people.

In response to the last decade's economic, social and political challenges, the European Union (EU) is working on a common framework on asylum and migration. The result is a complex set of directives, policy formulations, institutional mandates and practices. However, as this report details, this evolving framework also creates important challenges concerning the respect of migrants' human rights. Recent events raise concerns about access to the EU for people seeking protection from war, persecution, human rights violations or poverty. Equally serious are concerns about restrictions on the human and labour rights of regular and irregular migrants. Since early 2015, the deteriorating humanitarian crisis has grabbed global attention as growing numbers of refugees and migrants, mostly from Middle East, Afghanistan and certain African countries, seek safe haven in Europe. Despite stepped-up search and rescue operations, some 3,770 migrants lost their lives in perilous sea crossings in 2015. Hundreds of thousands of desperate people risk their life in perilous journeys across both land and sea to reach protection and security in Europe. Once on the continent, their situation remains extremely dire as reception infrastructures and necessary services are overcrowded or not available. Many sleep in the streets, with no blankets or warm clothes, sometimes even without food and water.

As warfare engulfs countries across the Middle East and North Africa, still more people are expected to attempt the journey. Official responses often see this movement - predominantly of refugees and persons in refugee-like situations - as a threat. They even sometimes talk in terms of an 'invasion' with consequent calls for forceful means of preventing people seeking protection from reaching Europe. Anti-migrant feeling continues to proliferate in media and political discourse. It sustains prevailing discrimination and fuels xenophobic violence. However, this reaction also triggers spontaneous public expressions of solidarity from tens of thousands of "common citizens" and civil society organisations across EU Member States.

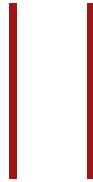
These contradictory features bring to the fore the influence that EU policies have on migrants' access to Europe and to protection of their human rights. And the public responses underline that migration is not just about laws and policies, but it also touches the fundamental values of the European civilisation, EU Member States and the European Union.



Speaking before the European Parliament in Strasbourg in November 2014, Pope Francis called on European leaders to restore a Europe that “revolves not around the economy but around the sacredness of the human person”.¹ United Nations (UN) leaders, church groups and civil society organisations have spoken out to emphasise that the deaths, push-backs of migrants and externalisation of EU borders undermine respect for the most fundamental values of human life and the protection of human rights.

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overview of the situation of asylum seekers, refugees and migrants in the EU

“I had to go in exile for the first time when I was a child, during the war between my country and Ethiopia. Then, I was imprisoned for entering into conflict with my superiors in the school I was working for. I was jailed three times for daring to express my disagreements with the government’s policy.”

Abasou, 30-year-old teacher from Eritrea, refugee in France

Source: “Paroles d’exilés à Calais”, Secours Catholique-Caritas France

“We escaped from death. Aleppo has been destroyed for years now. We used to live as normal people in a normal country. We used to run our own business. But we have lost everything now... We had a great and happy life; my wife, my children and the rest of my relatives. During the war, I lost my brother, my father. I do not know where they are, not even if they are alive. I remember the terrorism of the war, the bombs and the dead bodies. We had to leave. Now that we are safe in Europe, I want to live again away from the war, like a normal man of my age.”

M., 38-year-old Syrian refugee

Source: Caritas Hellas

Over the last century, Europe experienced and accommodated the displacement of millions of people as a consequence of two devastating World Wars. At the end of World War II, more than 3 million Germans were displaced. At one point 14,400 a day were being forcibly expelled into a devastated Germany.² In the last sixty years, European countries faced and solved two huge refugee crises: (1) within days after Soviet tanks invaded Hungary on 4 November 1956, some 180,000 Hungarian refugees arrived to Austria and 20,000 to Yugoslavia.³ In the end, 180,000 were resettled from Austria and Yugoslavia to a total of 37 different countries – the first 100,000 of them in less than ten weeks.⁴ (2) When the Soviet military snuffed out the “Prague Spring” liberalisation in Czechoslovakia in 1968, a total of 208,000 refugees fled to Austria by the end of that year.⁵

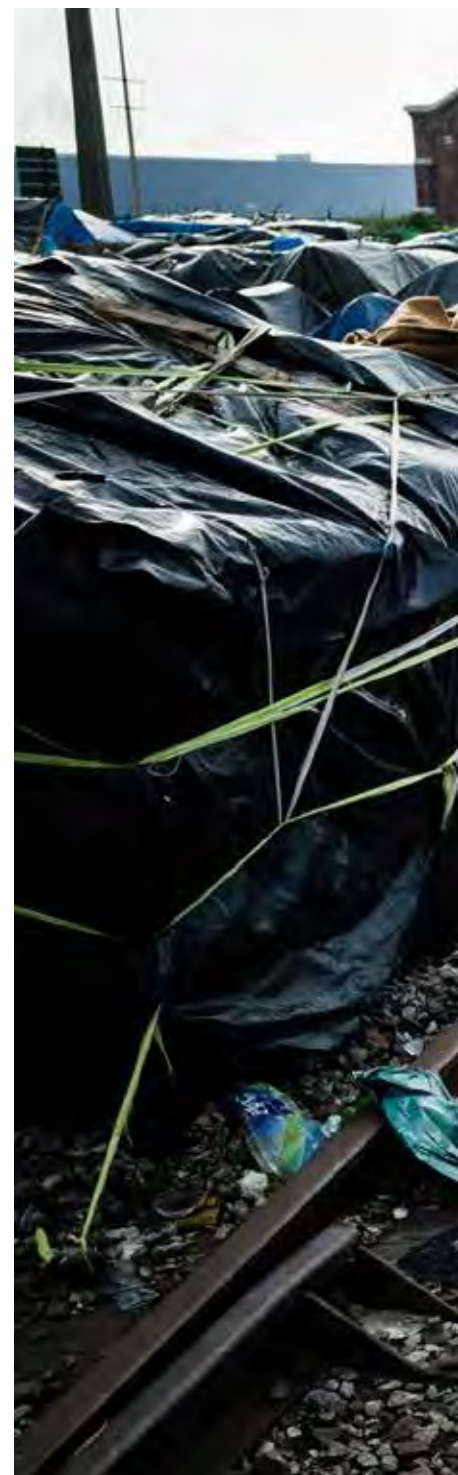
The number of asylum applications in EU Member States has varied considerably over recent decades.⁶ In 2015, the number of asylum applicants increased to reach 942,400 compared to 626,000 in 2014.⁷ 413,800 people sought asylum in the EU in the third quarter of 2015 only.⁸ In 2014, the 27 EU Member States for which data is available granted protection status to around 185,000 asylum seekers.⁹

The number of asylum application from Syrians alone increased from 50,000 in 2013 to almost 123,000 in 2014¹⁰ and to approximately 210,000 in 2015.¹¹ The top three nationalities were Syrians, Iraqis and Afghans.¹²

Among the asylum seekers who succeeded to file applications, Syrians received by far the highest number and rate of approvals, including protection based on national legislation (65,450, a 95% rate of recognition), followed by Eritreans (14,150, 89%), Iraqis (7,280, 70%) and Afghans (11,170, 62%).¹³

In 2014, EU Member States resettled 6,380 refugees.¹⁴ On 20 July 2015, the EU approved a new EU emergency resettlement plan for “voluntary” distribution among EU Member States of 20,000 Syrians and Eritreans who had fled their countries, but not reached the EU.¹⁵ On 14 September 2015, the European Commission (Commission) proposed the relocation of 40,000 asylum seekers from Italy and Greece to other EU Member States. The following week, Commission President Jean-Claude Juncker urged EU Member States to raise the 40,000 to 160,000 relocated persons. Eventually, a divided EU decided by majority vote (the Czech Republic, Hungary, Romania and Slovakia voting against) to relocate an additional 120,000 from Greece, Italy, and Hungary. The number of refugees to be relocated is determined by a mandatory distribution key for each EU Member State based on the size of its population, GDP, the average number of past asylum applications and the unemployment rate. In addition, the relocation only applies to nationalities having a 75% or greater asylum acceptance rate.¹⁶

The number of refugees in European countries remains small in comparison to the countries bordering Syria and Iraq (Iran, 982,000 and 1.2% of total population; Jordan, 632,762 and almost 8%; Lebanon, 1.15 million and 23.3%; and Turkey, 2.29 million and 3%), as well as to worldwide totals. The United Nations High Commissioner for Refugees (UNHCR) reports that there were 19.5 million refugees and 1.8 million asylum seekers worldwide in 2014.¹⁷





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Secours Catholique - Caritas France

“The first person I saw in Athens, Greece, was an Afghan. His face was covered by blood because he had been attacked by fascists. I never heard this word before. Greece is Europe, and I thought about staying there. I was arrested by the police, who demanded I exit the country. Then, I went to the asylum office and I waited for four days outside before the police came and asked us to move. One evening, while I was going out to buy orange juice, I saw some youngsters with chains and baseball bats. They started to insult me and to run towards me. I ran and I even lost one shoe. A Pakistani guy, slower than me, was caught by these people and beaten. I did not feel safe anymore. After three months, I left for Italy.”

Ehsan, 24-year-old Afghan operator in a telephone company

Source: “Paroles d’exilés à Calais”, Secours Catholique-Caritas France

“I came to Cyprus in 2014 to work as an agricultural worker in a village. I paid the equivalent of 8,000 euros to an agent to arrange my papers and to get the job. I worked for seven months in the fields collecting vegetables. I stayed in a cabin on the farm, which was basic and there was no heater. I worked from 7am to 8pm with a break for food. I worked seven days a week, including public holidays and I didn’t have a day off except Christmas day. On 15th August, the boss told me I didn’t have to work, but deducted 150 euros from my wages. Once when I refused to work on a public holiday, I was punished by being locked out of the house for two days. I was continually subjected to shouting, abuse and bad racist language from my boss. In the seventh month I didn’t receive my salary and after learning that another worker had left the farm because he was unpaid, I too left. My boss held my passport, my Alien Registration Book and my pink slip from the day I was employed. I understand that this is against the law, but many employers and agents do this.”

R. from Asia

Source: Caritas Cyprus

“I am a Cameroonian asylum seeker in Cyprus. I went to the Labour Office to seek a job, but the usual questions started: why I was in Cyprus, why would I not go back to my country. During this encounter, the labour officer covered her face, as if I were carrying a contagious disease and she was to be infected. She would not touch my official documents and asked me to hold them away from her. I consider myself to dress adequately and am clean. This made me feel humiliated. I was powerless to complain or go back to my home country.”

C., asylum seeker from Cameroon

Source: Caritas Cyprus

Europe has experienced migration for centuries. Migrants numbering in millions from within Europe and abroad contributed to industrialisation in the 19th and early 20th centuries, to rebuilding after World War II and to industrial modernisation in the 1960s and 1970s.

According to Eurostat data, on 1 January 2015, there were 51.5 million foreign-born people residing in the EU, representing approximately 10% of its population.¹⁸ Out of these 51.5 million persons, 17.9 million were born in a different EU Member State than the one where they reside, while 33.5 million were born abroad.¹⁹

Migrants have actively contributed to the economic well-being of EU Member States. Foreign-born workers now comprise 10% to 15% of the labour forces in EU Member States.²⁰ A majority originates from non-EU countries around the world, with only a third coming from within the EU.

In 2013, 71.4% of non-EU nationals in EU Member States were engaged in economic activities.²¹ Furthermore, this rate was higher for non-citizens than citizens in Luxembourg, the Mediterranean and Eastern EU Member States. Contrary to a common myth, these rates clearly indicate a high level of economic participation of migrants in their countries of residence.²²

Most countries in Europe are facing demographic challenges and labour shortages in a wide range of sectors. For example, Germany will lose 5 million members of its workforce in the next fifteen years²³ and Italy will lose 3 million over the next decade.

Both the structural demand in Europe for flexible, docile and low paid foreign workers and the strong demand for high-skilled workers unavailable in the EU are major migration pull factors. A research report from Belgium emphasised common factors across the EU today:

“We find that there are industries that cannot function without new migrants: agriculture, construction, domestic work, hotels and catering, for example. Sectors that cannot be offshored – essentially people-centred industries and services – can now only function because these jobs are being ‘offshored internally’.

Taken as a whole, this powerful trend is creating a segmented job market and a proliferation of worker classifications of different status (e.g. part-time work, temporary jobs and service vouchers). Keeping up the indigenous employment rate depends, among other things, on this structural need for foreign workers employed on unregulated conditions, allowing prices to stay low enough to maintain consumption”.²⁴

For many EU Member States, migration is already an important means to address labour gaps and skills shortages. European businesses recognise that facilitating labour migration at all skills levels is crucial to making European labour markets attractive and competitive; trade union confederations generally concur, as long as labour migration is regulated and decent work conditions prevail.

Measures such as increasing intra-EU mobility, rising retirement age and increasing workforce participation will not resolve the workforce decline already affecting most EU Member States. Therefore, migration is needed to fill the gaps.

The reality for many migrants working in Europe – both regular and irregular – is that they work under sub-standard and precarious conditions. They often do so-called 3D (dirty, dangerous, and degrading) jobs in exchange of very low salaries and no access to any social protection.

Even before the crisis, migrants in Europe were highly represented in temporary work. The share in Belgium, the Czech Republic, Greece, Finland, Hungary, the Netherlands, Norway, Portugal, Spain and the United Kingdom exceeded that of native-born by at least 50%.²⁵ During economic crises, migrants often suffer from massive layoffs and reduced hours and payment,²⁶ as well as from increased discrimination and xenophobic hostility. Unemployment rates are clearly graduated by origins; for example, in Sweden the unemployment rate is 21.6% for non-EU nationals, 12.2% for those born in Europe and 7% for the Swedish population.²⁷

Many EU Member States show a certain degree of ethnic stratification. In Belgium, for example, construction workers are often from Eastern Europe, North Africa or Central Africa; service workers are mainly Africans; in “HoReCa” (hotels, restaurants, catering), workers tend to be from South Asia, the Near and Middle East and Eastern Europe; cleaners are generally from Central or South America, Eastern Europe or Asia; farm workers are from Central Africa, South Asia or the Balkans.²⁸

In addition to competitive pressures driving a ‘race to the bottom’ in pay and conditions, a significant factor that enables this situation is the lack of labour inspection and enforcement of existing labour standards across Europe. This is especially true in sectors where migrant workers are concentrated, notably agriculture, construction, low wage manufacturing and services.

In addition, general retrenchment in welfare policies in EU Member States has further deteriorated the situation of migrants by restricting access to social protection, particularly for those in irregular situations.²⁸

Xenophobia and discrimination against migrants are on the rise across Europe. The press has widely reported about manifestations of xenophobic anti-migrant hostility. The perception among national and European anti-discrimination and rights protection agencies is that such behaviours increased after the 2008 global economic crisis and have continued to be remarkable ever since. The adoption of restrictive migration policies in the name of protecting local labour markets has reinforced xenophobic attitudes by explicitly, though inaccurately, tying migration and migrants to the threat of job losses.³⁰

“We ask for peace, above all, for beloved Syria and Iraq, that the roar of arms may cease and that peaceful relations may be restored... May the international community not stand by before the immense humanitarian tragedy unfolding in these countries and the drama of the numerous refugees... We implore peace for Libya, that the present absurd bloodshed and all barbarous acts of violence may cease, and that all concerned for the future of the country may work to favour reconciliation and to build a fraternal society respectful of the dignity of the person. For Yemen too we express our hope for the growth of a common desire for peace, for the good of the entire people.”

Urbi et orbi message of his Holiness Pope Francis, Easter, 5 April 2015

“I come from Syria where I have faced many difficulties: arrested by the government, living in war. I faced the army’s intervention when I crossed the borders as well as the Turkish army. I spent three years in Turkey without having any supplies, on my own. So I decided to go to Greece by boat, for an unknown future. I could maybe die or stay alive.”

**B., 23-year-old Syrian refugee
Source: Caritas Hellas**

“I am H from an African country which I left before reaching the age of 18. I found shelter in a neighbouring country because I was a minor. I am educated and didn’t want to leave my country at war for over 20 years. I blame the western societies for the situation in my country and feel resentment that now I find myself at their mercy.”

**H. from Africa
Source: Caritas Cyprus**

The UNHCR recently reported that the majority of those attempting unauthorised entry into the EU were migrants “fleeing from war, conflict or persecution at home, as well as deteriorating conditions in many refugee-hosting countries”, and that “more than 85% of those arriving in Greece are from countries experiencing war and conflict, principally Syria, Afghanistan, Iraq and Somalia”.³¹

Forced displacement and refugee flight will not stop until warfare ceases and the conditions permitting the populations to live in security with access to decent work and sustainable living conditions are restored.

EU Member States supply arms and military equipment that are used in such conflicts. They also engage in direct military actions in the Middle East and North Africa (MENA) and in sub-Saharan Africa. Some observers also ascribe responsibility to the EU and its Member States for creating push factors for people to migrate by contributing to bad political, social and economic conditions in their countries of origin.

EU Member States’ arms exports to the Middle East are rising. In 2013, they amounted to EUR 36 billion, 30% of global sales.³² During the first five years after the arms embargo on Libya was lifted in October 2004, EU Member States licensed EUR 834.5 million in arms exports to that country. France alone had negotiated EUR 15 billion in arms sales in the first half of 2015, including the sell to Qatar and Egypt of 24 fighter jets each.³³

In 2014, Saudi Arabia surpassed India as the world’s largest weapon importer. The country increased its spending over the previous year by more than 50% to EUR 5.8 billion.³⁴ Saudi Arabia is the leading country of the Arab coalition intervention in Yemen, a country where close to 20 million people, representing 80% of the

entire population, are “food insecure”.³⁵ Bombardment of infrastructure and disruption of fuel supplies has interrupted the delivery of humanitarian aid to a population already severely affected by lack of food and water. The humanitarian disaster in Yemen progressively worsens as bombing continues and foreign ground troops are engaged.

The aims of the EU’s and its Member States’ policy on arms exports are contradictory. On the one hand, they strive to develop responsible controls, but on the other hand, they allow sales to countries in regions that are already awash in arms. Since 1998, the European External Action Service (EEAS) has worked towards the harmonisation of the EU’s arms export control policy. In 2008, it adopted a Common Position,³⁶ which incorporated provisions on human rights and humanitarian consequences of sales. Since then, it has supported outreach to non-EU countries to adopt the same controls. The EEAS also actively supported the adoption of the UN Arms Trade Treaty, signed by all and ratified by all EU Member States but two.³⁷

Arms sale is a big business. In recent years, the export of arms has provided an economic boost to exporting countries in difficult economic situation. Even when transparency and other “best practices” are adhered to, weapons often change hands during the course of armed conflict through capture and sale by corrupt officials and international dealers. For example, the Islamic State now has access to weapons provided by the United States (US) and undoubtedly by European countries to Syrian rebels as well as to Iraqi and Syrian military forces.

The participation of EU Member State armed forces in ground and air military operations in Afghanistan, Libya and Iraq is also seen as having exacerbated conflicts and radical polarisation among contending forces. Analyst Lars-Erik Lundin of the



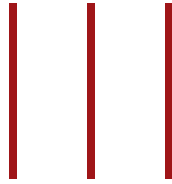
Stockholm International Peace Research Institute (SIPRI) noted in June 2015 that “by now, it should be fully obvious that the way military and associated police operations were deployed in Iraq and Afghanistan led to serious radicalisation effects, including an expansion of the Islamic State”.³⁸

He observed that EEAS’ plans to combat smuggling with a militarised approach had yet “to integrate the military approach into a comprehensive one that includes conflict prevention and poverty reduction”. He warned that “foreign and defence ministers need to ask themselves to what extent a militarised European response to the migration crisis will contribute to further radicalisation, as may also have been the case with the anti-piracy operations off the Horn of Africa”.³⁹

In addition to the militarisation of external borders, border control and access to the EU are being externalised through agreements with non-EU countries in North Africa, the Middle East and Central Asia. These countries are encouraged to impose practices and barriers designed to prevent migrants from approaching the EU’s borders and shores. People trying to reach Europe are restrained in countries that have little or no capacity to assist or protect them. A notable example is Libya plagued by civil warfare and awash in weapons.

Addressing root causes of displacement implies reducing, if not stopping, the flow of arms to regions and countries in conflict. It also means reconsidering whether potential military interventions will ultimately result in more harm than good.

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Cordaid (Caritas Netherlands)



europa n law, policy and practice

For over 20 years, EU Member States have been working on harmonising their migration and asylum policies.⁴⁰ When the EU was founded with the Maastricht Treaty in 1993, intergovernmental cooperation on migration and home affairs issues was part of the “Third Pillar” of the EU’s integration agenda, with limited supranational

authority. With the Amsterdam Treaty in 1999, asylum and migration issues moved to the “First Pillar” and incorporated the Schengen Agreement. With this move, the EU acquired legislative competence to act in the fields of migration and asylum.⁴¹

europaean agenda on migration

In May 2015, the Commission published its European Agenda on Migration.⁴² It aims at creating a new framework on migration at EU level. In particular, it seeks to tackle the urgent challenges that appeared with the recent migration surge to Europe. As a consequence, the Agenda includes both long-term and urgent measures.

Concerning urgent measures, the Commission tripled the budget of the Triton and Poseidon operations to save migrants at sea and prevent new humanitarian disasters, such as those that happened in the Mediterranean in recent years. Another urgent measure that the Council of the EU (Council) endorsed was the proposals of the Commission to target smugglers with military means to fight trafficking and smuggling. The Council also agreed to resettle to the EU 22,504 people in need of international protection and to relocate 160,000 people in need of international protection. In addition, the Commission is developing a new hotspot approach in Italy and Greece. This approach is supposed to bring together every organisation working at the borders, particularly the national authorities and European agencies (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – Frontex, the European Asylum Support Office – EASO and European Border Surveillance System – Eurosur). It is to make registration of migrants more efficient at the European borders. In practice, it makes quick procedures of return possible. The consequence is that people coming from “safe countries” are returned almost immediately to their country of origin, without even having the possibility to claim asylum.

The first long-term measure aims at reducing the incentives for irregular migration by addressing some root causes of migration, fighting against smugglers and stepping up return procedures. The second measure aims at reinforcing external borders, in particular by strengthening Frontex. The third one is about the Common European Asylum System (CEAS). The Commission also included specific measures aiming at enhancing the integration of migrants in Europe and stressed the importance of legal migration, in particular for high-skilled workers.

common european asylum system

In the field of asylum, the adoption of the CEAS is a major achievement as it sets out common standards for asylum. This system consists of several legislative measures ensuring that asylum seekers are treated equally and fairly: Asylum Procedures Directive, Reception Conditions Directive, Qualification Directive, Dublin Regulation and Eurodac Regulation. In 2009, the Commission established the EASO to provide technical and operational support to EU Member States, in order to help them implement a more consistent asylum policy.⁴³

an attempt towards a common system

Despite continuous efforts of the EU to build a common migration and asylum policy, the results remain uneven. While considerable progress can be lauded on the refugee-asylum dimensions, the evolving EU regime for migration opposes measures to facilitate high-skilled migration to repressive measures aiming at “fighting irregular migration”. While several EU Directives and Communications devise rules for the entry and residence of skilled workers, the EU has failed to produce a sound and comprehensive policy framework on migration in general and labour migration in particular. In addition, the criminalisation of irregular entry impedes those seeking to exercise their right to seek asylum to do so.

The regime for migration has not resolved the contradictions among measures favouring movement of highly-skilled workers, the absence of provisions for lower-skilled (except those covered by the recently adopted Seasonal Workers Directive) and repressive measures to deal with irregular migration, despite the latter primarily resulting from market demand for otherwise unavailable labour in a deregulatory context. So far, the EU and its Member States prioritise management of external borders and fight against irregular migration to the detriment of an adequate and appropriate asylum and legal migration regime.⁴⁴

The global economic crisis that began in 2008 engendered huge complicating factors, such as serious economic recession, financial contraction and the banking and euro crisis, that triggered dramatic growth in unemployment and underemployment across Europe.



Generalised cutbacks in social protection and public services, combined with deliberate scapegoating of migrants, exacerbate public hostility and undermine structures and practices of solidarity. For many politicians, the goals of reducing unemployment and attracting new economic migrants appear fundamentally incompatible or very difficult to explain to sceptical and beleaguered audiences.⁴⁵

Driven by domestic public opinion against migration, EU Member States opt to implement more restrictive policies on migration.⁴⁶ This creates constraints on access to rights for migrants in the EU.

The EU seeks a common migration and asylum policy, but the increased unemployment rates and altered public services, coupled with growing demand for scarce skilled labour, produce tension between politically driven migration control and economic demand for increased migration. Such contradictions influence profoundly the access to protection, the issuance of humanitarian visas and resettlement; they undermine non-refoulement, family reunification and labour migration. They also push through combative responses to irregular migration.

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Cordaid (Caritas Netherlands)

“I invite everyone to ask God’s pardon for those people and institutions who close the door to those who are seeking a family, who are seeking to be protected.”⁴⁷

Pope Francis, 17 June 2015

“I fled the war in Syria with my mother, father and two brothers. We had no other choice than to pay smugglers. We went first to Lebanon and then to Tripoli (Libya) – there were people from all parts of the world. The smugglers left us to sleep in a tent for three nights, and then we embarked on a small boat. It was so scary and dark. The boat sank and we ended up alone, swimming in the open sea. My father saved me from drowning, but he couldn’t save my mum and brothers – they died before we were rescued.”

Amira, refugee from Syria

Source: Caritas Sweden

In 2015, around one million migrants entered the EU irregularly, mainly by crossing the Mediterranean.⁴⁸ However, this figure may be overestimated. Frontex indicates that its data registers each unauthorised entry detected. Many of those who first entered Greece and moved on to another EU Member State were recounted when entering Hungary or Croatia via the Balkans.⁴⁹

Clearly, EU and national legislation and policies fail to guarantee legal access to protection and are in breach of the 1951 Refugee Convention and its 1967 Protocol. Many people fleeing war and persecution face a fundamental dilemma: where and how can they seek effective international protection? With few or no viable options in MENA countries already overwhelmed with refugees or facing internal conflict, Europe appears a viable alternative. And yet, would-be asylum seekers are almost exclusively non-EU nationals from states that need a visa for entry to or transit through the EU legally. With such restrictions to legal access, what can refugees do to reach safety?

Women, men and children refugees are compelled to take dangerous routes and to rely on guides who demand payment for services in high risk circumstances. More than 3,700 people died while crossing the Mediterranean in 2015.⁵⁰ Pope Francis stated that this loss of life is a direct result of the “globalisation of indifference” towards the lives of refugees.⁵¹ It is also an inevitable tragedy given that the EU has chosen to focus on security and control to impede access to the EU rather than on embracing a human rights-based approach. As the situation for those attempting to cross the Mediterranean to Italy has grown more desperate, migrants have become more vulnerable to trafficking and other types of exploitation.⁵² In particular, the



International Organization for Migration is concerned by the increasing number of women arriving in Europe from Africa, who have confirmed being sent to Europe to work in the sex industry.⁵³



© Photo: Antonio Fantasia
Caritas

“My parents, two sisters and I fled Syria to go to Turkey in 2012 because of the conflicts. The conditions in Turkey were very difficult. When we saw on the TV that our district had been destroyed by bombs, we realised we would not be able to go home. We also couldn’t stay in Turkey for much longer because of the poor life conditions, with no access to health services. So we decided to go somewhere with better rights.

We applied with the UNHCR, but they said that they weren’t registering anymore refugees. My parents decided that we should take a boat and go to Greece. I was frightened as I had seen people drowning on TV, but they insisted. I decided to go with them to look after them.

My father met some smugglers through some people he knew. Some were armed with pistols and others with rifles. They were mean and insane. We travelled 8 hours on a coach with about 45 other people to Truva (Troy) on the coast. There were Syrians, Iraqis, Bengalis and Pakistanis. It costs about 1,000–1,200 US dollars per person for the whole trip, depending on your ability to bargain. We stayed overnight, then walked about 90 minutes to the coast and sailed in the morning. There were about 52 of us on a boat about 8 metres long and 3 metres wide. The traffickers stayed on the shore. They had trained one of the passengers to drive the boat and allowed them to travel for free. These boats were really rickety. On board, I couldn’t believe I had taken the risk, but my parents had insisted. The engine stopped three or four times. We didn’t have GPS or a phone to call for help. The women and children were crying. I felt that we were going to die. We tried to calm the children down. The guy driving managed to fix the engine. We were extremely lucky. When we reached the Greek shore, we were just so happy. It was like a new life had begun. My first step on Europe felt like hope.”

S., refugee from Syria
Source: Caritas Hellas

“We were 30 to 40 on the boat. The smugglers told us that the journey would last 24 hours before we reach Europe. We were afraid, but we had no other choice than believing and trusting the smugglers. In fact, it took us 50 hours to arrive to Italy.”

Meheret from Eritrea
Source: “Paroles d’exilés à Calais”, Secours Catholique-Caritas France



limited regular
access to
protection in the
EU

© Photo: Arie Kievit
Cordaid (Caritas Netherlands)



For many asylum seekers, the first challenge is to find a safe and legal path to cross the European external borders. The Schengen Borders Code, as a general rule, requires non-EU nationals to possess valid travel documents authorising them to cross the borders or a valid visa to enter the EU.⁵⁴ Despite referring to the right of asylum and to international protection in the provision governing the refusal of entry, the general entry conditions for non-EU nationals do not make any reference to international protection, nor do they address the situation of mass displacement. As a result, while such rules apply to an eligibility examination for entry on an individual basis, they fail to provide adequate response to the arrival of large numbers of persons, such as Syrians, in refugee-like situations.

According to UNHCR's International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic, "the entry and admission of persons having fled Syria needs to be dealt with in a protection-sensitive manner, regardless of whether they resort to seeking entry without appropriate documentation or in an otherwise irregular manner".⁵⁵ Nevertheless, in 2013, 1,025 Syrians were refused entry at the EU's external borders, 185 (18%) were refused for absence of travel documents and 460 (45%) for lack of a valid visa. In 2014, this number rose to 2,075, of whom 285 (14%) were rejected for absence of travel documents and 770 (37%) for lack of valid visa.⁵⁶ The visa requirement for asylum seekers under the Schengen Borders Code is clearly inconsistent both with UNHCR guidelines and current needs for protection. It compels asylum seekers to attempt irregular entries into the Schengen area⁵⁷ via dangerous sea and/or land routes, which also increases demand for the services of smugglers.



© Photo: Lionel Charrier – MYOP
Secours Catholique - Caritas France



“I left Eritrea together with 64 men, women and children, most of them were relatives, in December 2012. Our journey took more than 11 months, we walked through 5 countries. I was kidnapped three times by desert gunman and gang raped. I narrowly survived the sinking of a smugglers’ flimsy fishing boat off the Italian island of Lampedusa on Oct.3, 2013, swimming through waters clogged with the bodies of more than 350 drowned passengers to reach shore. Only 3 of us survived the journey and finally reached Sweden.”

M., refugee from Eritrea
Source: Caritas Sweden

criminalisation of irregular entry

Limiting regular means of access to the EU territory results in several related negative impacts. Those who are thus pushed to attempt irregular entry, whether asylum seekers or other migrants, face the prospect of criminal offense and detention as well as other vulnerabilities, for example extortion, sexual assault or other exploitation by smugglers. Induced problems also concern EU Member States,

because they create demand for criminal enterprises - smuggling - while also pushing work into the unregulated informal sector. Making irregular entry a criminal rather than a civil or an administrative offense and limiting regular means of access to the EU thus results in criminalising asylum seekers entering irregularly.

In 2014, 111,345 Syrian nationals were categorised in the EU database as “present irregularly”; this figure represents only those individuals in contact with government authorities, so is actually lower than the number of Syrian nationals in irregular status in the EU.⁵⁸ Recorded irregular entry of Syrians remained around 4,000 per year until the end of 2010, but has skyrocketed since 2012, a clear result of the deteriorating domestic situation in Syria since 2011. This relegation of persons in need of international protection to an irregular, criminalised status not only engenders use of detention or coercive measures against them, but also serious human rights consequences. It has discouraged search and rescue operations at sea, while providing justification for naval interdiction and military actions to prevent refugee arrivals, including destruction of merchant marine and fishing vessels in international waters.

The Facilitation Directive requires EU Member States to adopt sanctions on “any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State” irregularly.⁵⁹ The Directive requires this sanction, while it merely allows a “humanitarian exception”: EU Member States may choose not to impose sanctions when the aim of the behaviour is to provide humanitarian assistance to a person, according to national law and practice.⁶⁰ As a result, commercial vessels and fishing boats may be sanctioned if they are discovered aiding passengers of boats in distress carrying migrants. The European Union Agency for Fundamental Rights (FRA) has noted fishermen’s fear of punishment under these rules, jeopardising the right to life of asylum seekers at sea,⁶¹ despite customary international law of the sea that requires sailors to come to the aid of another vessel in distress if they can.

“From the first day I arrived in Greece, I ended up in the Amegdaleza detention camp. Although it is called a ‘camp’, it was worse than a prison. It was the time of previous Greek government. Police told me that I had to be in the camp for 18 months or else I should be deported back in my country. If I go to my country, I ‘m going to be in danger. I don’t want to die. I am a human, I want to live; I want to create a family. I have lots of wishes in my mind like anybody else.”

N., refugee from Afghanistan
Source: Caritas Hellas

use of detention

The Reception Directive allows EU Member States to detain asylum seekers for some purposes, such as to determine or verify his or her identity or nationality as well as to determine the right of the applicant to enter the EU.⁶² According to the FRA’s assessment, “legislation in all but three EU Member States punishes irregular entry with sanctions in addition to the coercive measures that may be taken to ensure the removal of the person from the territory”.⁶³ Since the EU only provides limited means of regular entry, a large proportion of asylum seekers fleeing conflict may be subject to detention under this provision. Data collection mechanisms have not been able to capture fully the situation. Existing data show that 63% (2013) and 51% (2014) of Syrian asylum seekers attempting to access the EU via regular crossing points were without either a valid travel document or visa.⁶⁴

border externalisation

EU Member States, acting individually as well as through the EU, have increasingly sought to prevent people from approaching Europe by externalising parts of border, migration and movement controls to countries distant from the EU land and sea borders. A number of strategies have been implemented in migrant origin and transit countries in sub-Saharan Africa, North Africa, the Middle East, Eastern Europe and Central Asia. These externalisation measures have been promoted through EU cooperation programmes as well as bilateral agreements by EU Member States. These agreements aim to intercept migrants and asylum seekers before they leave a non-EU country’s territory towards Europe and have become common practice.

EU externalisation measures include considerable financing for establishing border surveillance and tighter border controls in countries through which migrants transit towards Europe.

A substantial portion of the EU allocations for migration cooperation with non-EU countries is meant specifically for actions to fight irregular migration and generally to enhance border management and counter trafficking efforts.⁶⁵

Libya and Morocco - as two major transit states - played a central role in the border externalisation approach. The 2003 Moroccan migration law,⁶⁶ explicitly promulgated by King Mohammed VI within a context of cooperation with the EU and the promotion of the EUROMED cooperation framework, marked a drastic shift in Morocco’s migration policies. Both legal and irregular migration, which used to be tolerated - sometimes welcomed - were subsequently discouraged for the former and repressed for the latter.⁶⁷ The 2008 Italy-Libya agreement formalising cooperation to strengthen Libya’s capacity to intercept irregular migrants on Libyan territory or territorial waters was further strengthened in 2012 through a *processo verbale*.⁶⁸

While the border externalisation approach finds considerable political support in Europe, its consequences in practice undermine respect for human rights elsewhere. Bilateral agreements often lack minimum protection of human rights and are inconsistent with international law in restricting, for instance, the right of individuals to migrate.⁶⁹ Such agreements restrain refugees and migrants from leaving countries of transit where they may be subject to detention and degrading treatment. Concerns have been raised that border externalisation to non-EU countries has explicitly promoted deterrence measures, detention of migrants and supported building of migrant detention camps.



The externalisation approach also impacts development cooperation, for instance through conditioning development aid to readmission clauses. According to such clauses, presumed countries of origin have to readmit their nationals who are being returned by EU Member States. In addition, support for strengthening internal borders and movement control within regional economic communities, such as the Economic Community of West African States (ECOWAS), directly thwarts the established free movement of persons essential for regional integration and development.

© Photo: Arie Kievit
Cordaid (Caritas Netherlands)

“I arrived in Bulgaria. The smuggler abandoned us in the forest and we got lost. After four days, I managed to find the police and I asked for help, but they put me in detention. I had to give a bribe of 350 euros to a policeman to get out. I went to Serbia where living conditions were very dire. I then went to Hungary where I asked for asylum, but the police told me that I was registered in Bulgaria and that they would send me back there due to the Dublin system. I went to Austria to ask for asylum and the same thing happen, they wanted to send me back so I continued my way to Italy.”

Ali from Afghanistan

Source: “Paroles d’exilés à Calais”, Secours Catholique-Caritas France

“When I arrive in Italy, the policemen did not take our fingerprints and told us to leave Italy and continue our journey in Europe. I went, without asking any question as they did not want me to stay. I stayed only 24 hours in Italy.”

Nasseredin from Sudan

Source: “Paroles d’exilés à Calais”, Secours Catholique-Caritas France

“I’m 21 years old, and I come from Afghanistan, where I was persecuted by the Taliban for my political beliefs. I was imprisoned and tortured with a hot iron, until I managed to escape to Turkey. From there, after two failed attempts, I crossed by boat to Greece – where I was immediately detained and then confronted with the situation of asylum seekers in Greece: no right to work, no financial benefits, and no place to stay. I’m now living with the help of people from my community – I’m trying to find a way to reach another European country, where I can find a better life.”

Nasir, refugee from Afghanistan

Source: Caritas Hellas

consequences of the Dublin system

The Dublin Regulation marks another problematic component within the CEAS. It follows a hierarchy of considerations of family unity, place of issue of residence documents or visas, and the first country of irregular entrance to decide which EU Member State should be responsible for processing asylum requests.⁷⁰ Under this rule, the more an EU Member State opens its doors to non-EU nationals, the more responsibility it undertakes for those non-EU nationals’ potential asylum requests anywhere in the EU.⁷¹ The rule of the first country of arrival being responsible for examining the asylum claim has led the EU Member States at the EU’s external borders to shoulder by far the largest responsibility for processing asylum applications. EU Member States located at the external borders of the Union, such as Italy, Greece, Malta and Spain, are heavily burdened by arrivals of asylum seekers by sea. The burden on them has increased with the compulsory fingerprinting of every applicant over 14 years old under the Eurodac Regulation to avoid so-called “asylum shopping” by collecting evidence of the location of first entry into EU territory.⁷² As a result, the Dublin Regulation serves not only as a mechanism for responsibility determination, but also as an incentive for these EU Member States to enhance surveillance and control because receiving potential refugees becomes “a burden and punishment for the EU Member States which permitted the individual to arrive in the Union”.⁷³ The Armed Forces of Malta, for example, adopted a strict interpretation of a situation of distress for boats at sea; officials were recorded in several interviews conducted by the FRA to acknowledge that boats were “encouraged” to continue on to Italy instead of being rescued in Maltese waters to avoid responsibility for asylum seekers under the Dublin System.⁷⁴

Despite the fact that the Regulation assumes that “all EU Member States provide adequate protection to those who need it”,⁷⁵ there are huge differences in the reception standards and the protection EU Member States can offer to asylum seekers. The huge variability among EU Member States in rates of acceptance of applications encourages asylum seekers to move on to apply in those countries where acceptance rates are higher.⁷⁶ As a result, asylum seekers tend to choose more dangerous routes to avoid being detected by the authorities. Many of them, especially Syrians and Eritreans, also refuse to cooperate in fingerprinting. The Commission has recently reported the use of detention or coercion by the authorities of some EU Member States for such purpose, leading to possible violations of human rights.⁷⁷ There are also reports of some asylum seekers burning their fingers to avoid registration.⁷⁸



“I am from Burundi. After I obtained my refugee status in Belgium, I was able to bring here three of my children and my husband through family reunification in 2012 and 2013. However, the Belgian authorities refused to grant a family reunification visa to my eldest son who was 19 at the time. He had to flee Burundi and went to Tanzania where he lived in a refugee camp. When the camp was evacuated, he had no other choice than return to Burundi and hide. After one very anguishing year, the Belgian authorities finally granted him a humanitarian visa to come safely to Belgium and be reunited with us.”

A. from Burundi
Source: Caritas Belgium

humanitarian visa

The issuance of a humanitarian visa is an effective tool for EU Member States to allow asylum seekers to enter their territory for international protection, because the procedural and document requirements set forth for visas can usually be set aside. Caritas Europa has demonstrated its effectiveness in previous recommendations and has strongly supported policy proposals favouring access to relevant provisions.⁷⁹ Despite good practice experience in Brazil with Haitians and Syrians in 2013,⁸⁰ no action has been undertaken by EU Member States to issue humanitarian visas to asylum seekers.

With the current conflicts and mass displacements, humanitarian visa applications from Syrian and Eritrean asylum seekers need to be examined beyond the admissibility requirements for uniform visas and the entry conditions laid down in the Schengen Borders Code. When it is not possible to lodge an application to a consulate or embassy of any EU Member State, humanitarian visa applications need also to be accepted at the EU’s external borders. The possibility to make such an exception to or derogation of requirements and conditions is provided in the Schengen Borders Code and in the Visa Code, and is in complete accordance with current EU legislation.⁸¹ Moreover, the language on derogation in terms of “shall be issued” and “considers it necessary” should obligate EU Member States to issue humanitarian visas when refugee and/or human rights circumstances are invoked.⁸²



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Secours Catholique - Caritas France



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Caritas Internationalis

“I fled from Eritrea to neighbouring Ethiopia and then to Sudan, Libya and Tunisia. My first goal was to save my life and the lives of my wife and children. We were resettled to Belgium from Shousha camp in Tunisia in 2011. We were part of the first group of refugees resettled to Belgium. For me, resettlement is not just about moving a refugee from one place to another. It is a lifesaving operation.”

Filmon, refugee from Eritrea
Source: Caritas Belgium

“The stench in the camps is horrendous. TV news and newspapers cannot and are not expressing the reality. It is all so heart breaking and surreal. There is dire need for medicine, baby formula, hygiene products, clothes. When people arrive in Lesbos, they get off the boats after a heroic battle feeling relief and they end up in a bigger nightmare.”

Antony, Caritas volunteer in Lesbos
Source: Caritas Cyprus

resettlement and relocation

People who are forced to flee their country of origin and seek international protection must eventually have a safe and stable place in which to settle and to reunify with family members. Some recipients of international protection will be able to return to their country of origin after conflicts are resolved; some will be able to stay in the countries in which they first sought protection. But in large-scale crises, first reception countries are often unable to host, let alone eventually integrate, all who have sought protection there. “Resettlement”⁸³ in the context of UNHCR’s mandate and international refugee law and policy is the admission for residence and eventual integration of refugees from countries of first asylum. Resettlement is understood as one of the three “durable” solutions for refugees, along with integration in the country where they sought protection and voluntary repatriation to the country of origin – when safe to do so.⁸⁴

EU Member States have long cooperated in resettlement of refugees, whether from elsewhere in Europe since World War II or from around the world. Under auspices of the EU Joint Resettlement Programme, adopted in 2012, about half of EU Member States participated in resettlement efforts in 2014, with coordination provided via EASO and the European Resettlement Network.⁸⁵ That year, 6,525 refugees from non-EU countries were resettled in 15 EU Member States; one third of these were accepted by Sweden, which along with the UK, Finland, Denmark and Germany together accounted for 88% of the refugees resettled. In response to growing need, the Council agreed in July 2015 that “all EU Member States would participate through multilateral and national schemes in the resettling of 20,000 displaced persons in clear need of international protection”.

While the EU’s commitment to resettling refugees from non-EU countries is important, the number of refugees served is very small relative to the need. Circumstances are ever direr in first reception countries, compelling refugees

to move on their own towards Europe in search of protection and liveable conditions.

The movement of large numbers of asylum seekers into EU territory and the extreme pressure this has placed on countries on the external borders has created the need to relocate hundreds of thousands of asylum seekers from Greece and Italy, in order to distribute responsibility for them more equitably across all EU Member States. For UNHCR, “resettlement in the EU differs from relocation, which refers to the intra-EU resettlement of recognised beneficiaries of international protection, carried out for the purpose of burden-sharing amongst EU Member States”.⁸⁶ The relocation of 160,000 asylum-seekers from Greece and Italy has been especially divisive within the EU.

Both resettlement and intra-EU relocation provide formal refugee protection, with permanent residence or temporary residence leading to permanent residence, if certain integration conditions are met, and in most cases a path to citizenship in an EU Member State. Both expressions of international solidarity, among EU Member States and with those needing protection, continue to be resisted by some EU Member States.

Caritas Europa calls on the EU and its Member States to:

- Lift visa requirements provisionally for entrants originating from countries in conflict zones, in order to facilitate regular entry of asylum seekers, consistent with UNHCR International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic;
- Establish an equitable distribution mechanism, including financial support, in the Dublin framework to share responsibility for receiving asylum seekers among EU Member States;⁸⁷
- Establish mutual recognition of asylum decisions for all EU Member States and give refugees the right to free movement in the EU;
- Take into consideration the will and interests of asylum seekers and refugees, as well as family ties, in determining in which EU Member States s/he will be able to settle, regardless of the country of first arrival;
- Widen of the scope of the family definition and encourage EU Member States to apply the humanitarian clause more broadly, taking into account the presence of family ties, hence restoring the previous formulation of Dublin Regulation (II).

protection and solidarity

- Provide for the full protection of female refugees in transit and destination countries from all forms of exploitation, violence and life-threatening conditions;⁸⁸
- Revise the Facilitation Directive to restrict the application of sanctions by EU Member States in cases of carriers or persons providing humanitarian assistance;⁸⁹

- Provide adequate training on human rights standards for law enforcement authorities and border management personnel to avoid violations of human rights at borders;
- Prevent the utilisation of international cooperation agreements to facilitate forced returns of individuals seeking international refugee protection to unsafe countries;
- Refrain from using readmission and return clauses in bilateral or regional agreements, punishing African countries for the non-admittance of their nationals by reducing development aid. We ask the European Parliament to have a role of control on readmission clauses in EU agreements with non-EU countries;
- Reverse border externalisation support to migration control in non-EU countries in favour of supporting human mobility and integration within regional economic communities.

detention and coercion

- Establish guidance on limiting the use of detention and coercive measures on migrants and asylum seekers, except as a last resort;
- End resorting to “forced fingerprinting” altogether;
- Provide alternatives to detention of migrants and asylum seekers for other than penal convictions;
- Avoid in all cases the detention of migrant and refugee children, particularly unaccompanied minors, as well as any detention of minors together with adults;⁹⁰
- Ensure full access by international organisations, including UNHCR, the International Committee of the Red Cross and the International Organisation for Migration, as well as relevant civil society organisations and legal services to all places where asylum seekers and migrants are held or detained.⁹¹

humanitarian visa

- EU Member States to authorise the issuing of humanitarian visas at the EU’s external borders as well as in consulates and embassies, as provided for under the Schengen Borders Code and Visa Code;⁹²
- The Council and the Commission to introduce the humanitarian visa in the Visa Code and to establish in detail humanitarian exemptions to the issuance of other types of visas, in order to ensure and facilitate uniform application by EU Member States and reduce arbitrary use of the clause.

resettlement

- All EU Member States to engage in and support the agreed EU relocation and resettlement plans and each to accept a substantial, proportional number of refugees/asylum seekers;
- All EU Member States to increase their allocations for refugee resettlement in the framework of ongoing international refugee resettlement facilitated by UNHCR;
- EU Member States to prioritise vulnerable people in their refugee resettlement selection and admission, particularly single parents with children, persons with disabilities and persons suffering severe trauma.

“When I was at home, my big brother tried to rape me. I was afraid to tell the truth to my father because he would think that I am a liar and he would hit me. I could not tell the police because in my country it’s forbidden to damage your family’s reputation. I left my country and it took me one year and two months to arrive in Italy. Before reaching Europe, I was in jail for 4 months in Libya in a small cell with 40 other persons, it was hard. Because of what happened with my family, I cannot go back to my country and I wanted to ask asylum in Europe. But when I arrive in Italy, I was issued immediately with a deportation order without any possibility to claim asylum.”

Sane from Senegal
Source: Caritas Italiana

The principle of non-refoulement is enshrined in the 1951 UN Refugee Convention and its 1967 Protocol. As expressed in Article 33(1) of the 1951 Geneva Convention, “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion”.⁹³ The principle is also expressed in Article 78(1) of the Treaty on the Functioning of the European Union as well as in Articles 18 and 19 of the EU Charter of Fundamental Rights.⁹⁴

Current EU legislation and policies, however, risk violating this principle by expelling “irregular migrants”, including from countries experiencing warfare or generalised violations of human rights. Although Syria is engulfed in devastating warfare and Eritrea is under UN investigation for widespread violations of human rights, EU Member States ordered 1,485 Syrians and 220 Eritreans to leave the EU territory in 2014. This practice of expulsion is articulated in the EU’s and its Member States’ policy, in particular with respect to enforcement actions at the EU’s external borders to prevent irregular entry by migrants and other non-EU nationals, and has been encouraged by discourse on combating smugglers and trafficking in persons. Provisions in EU external border legislation on returning non-EU nationals criminalise persons who may be asylum seekers and make them vulnerable to refoulement. Currently, the return of non-EU nationals present irregularly in the EU Member States constitutes an important pillar of Frontex operations, with issues of human rights and international protection insufficiently incorporated into the operational process.

However, after lengthy debate, the EU adopted the Maritime Border Surveillance Regulation in May 2014, which requires for the first time that Frontex-coordinated sea border surveillance operations are carried out in accordance with the principle of non-refoulement and international search and rescue obligations.⁹⁵

The operational policies and practice of Frontex must be informed by EU human rights obligations regarding return of non-EU nationals. These obligations have been reinforced and clarified by the 2012 and 2015 decisions of the European Court of Human Rights (ECtHR). In *Hirsi Jamaa and Others vs. Italy* regarding the legality of Italy’s 2009 push-back on the high seas, the ECtHR ruled in favour of the plaintiff and formulated a set of clear conditions, which must be met if a state wishes to return migrants found at sea.⁹⁶ The court determined that “refoulement” of a non-EU national to a country where he or she would be subject to torture, inhuman or degrading treatment not only violates the refugee convention, but also the European Convention on Human Rights.⁹⁷ In his concurring opinion, ECtHR Judge Pinto de Albuquerque emphasised that the ruling applied to all relevant law enforcement operations, because all public employees and law-enforcement agents who perform the function of border control on behalf of a contracting party are bound by the convention standard.⁹⁸

In 2015, the ECtHR ruled in *Khlaifia and Others v. Italy* that the mere fact that the individuals were identified prior to expulsion was insufficient and procedures must provide for meaningful individualised proceedings to evaluate asylum claims.⁹⁹



“[T]he expulsion orders did not contain any reference to the personal circumstances of the affected persons; the Government did not produce any document that could prove that individual interviews regarding the specific situation of each applicant would have occurred before the adoption of these [expulsion] orders; many people of the same origin experienced, at the time of the incriminating facts, the same fate as the applicants.”¹⁰⁰

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Cordaid (Caritas Netherlands)



© Photo: Ben White
CAFOD (Caritas England and Wales)



“We have witnessed a new practice in the context of the hotspot. People coming from sub-Saharan African countries that are considered safe are issued with deportation orders as soon as they arrive on the Italian territory. They are not informed on asylum possibilities and the authorities present in the hotspot, national authorities and European agencies, do not give them the opportunity to claim for asylum. Usually, their deportation is carried out very quickly, in the days following the issue of the order.”

Source: Staff member from Caritas Italiana

“safe country of origin”

As the EU endeavours to develop and implement its 2015 Migration Agenda in the context of the largest irregular movement of people into Europe since the end of World War II, new policies are being developed to streamline and expedite processing of asylum claims. It is essential that the need to deal expeditiously with large numbers of asylum claims does not lead to policies

that jeopardise the asylum seekers’ right of non-refoulement and the right to seek international protection. In this context, the recent proposal for a common EU list of “safe countries of origin” is problematic. Applications from asylum seekers from countries of origin deemed “safe” receive less favourable procedural treatment than those from other non-EU countries. If applicants from “safe” countries are unable to provide sufficient evidence to refute the presumption of safety in their individual case, their claims can be judged as unfounded or manifestly unfounded and thus subject to accelerated procedures and shortened periods for appealing first instance decisions.¹⁰¹

The concept of “safe country of origin” is already in use in the EU. Criteria are set out in Annex I of the recast Asylum Procedures Directive and each EU Member State determines which countries meet them. National lists differ significantly from one EU Member State to another.¹⁰² The proposed legislation would harmonise practices with a single common list of “safe countries of origin”.

The “safe country of origin” concept is problematic because the 1951 Geneva Convention requires that refugees are treated without discrimination on the basis of their country of origin. An additional concern lies in the criteria of the list itself. The proposed EU list would initially comprise seven states: Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey. These seven include the five current candidate countries for EU accession, along with Bosnia and Herzegovina and Kosovo. While the proposal for legislation claims that the “Copenhagen criteria” for EU accession - comprising democratic institutions, stability, rule of law and accession to major international human rights instruments - have been met by the five candidate countries on the list, the European Council on Refugees and Exiles (ECRE) notes that “this finding seems an inaccurate and misleading generalisation of the progress reports issued as part of the EU enlargement process, which consistently highlight critical deficiencies and weaknesses in these areas”.¹⁰³

Caritas Europa
recommends that:

*regarding
non-refoulement*

- A comprehensive regime of human rights protection measures and accountability be incorporated into the Frontex legal foundation and operations to ensure full compliance with EU and international law;
- The Commission revises the Frontex Regulation to ensure that human rights standards and international obligations safeguarding individuals seeking international (refugee) protection are incorporated into the Regulation;
- The Commission and Frontex, as implementing agency, ensure that return procedures are implemented with respect of the returnees' fundamental rights, and pursue voluntary return options over forced repatriation;
- The Commission revises all existing agreements for cooperation with non-EU countries to incorporate safeguards to ensure that no migrants, especially individuals seeking international protection, are returned against their will (refoulé) to countries where they face danger of persecution, warfare or human rights violations;¹⁰⁴
- The Commission ensures that existing and any future bilateral or multilateral agreements explicitly incorporate human rights and international protection standards regarding the treatment of migrants and refugees;¹⁰⁵
- The Commission and Frontex provide for adequate training on human rights standards and procedures for all personnel working in agencies and operations addressing border control, naval operations and migration, in particular regarding apprehension, processing and possible return;
- The European Parliament has a role in monitoring the respect of the fundamental rights in Frontex missions.

*regarding
safe country of origin*

- The Commission and EU Member States refrain from using the safe country of origin concept, including through the adoption of national lists;¹⁰⁶
- The European Parliament ensures that countries mentioned in the list of safe countries of origin respect fundamental rights of their population, through its power of control of the procedure.

If the "safe country of origin" proposal is adopted, the EU should nevertheless:

- Ensure that asylum seekers originating from a country presumed safe have access to an appeal with automatic suspensive effect to ensure objective individual examination of the protection needs of asylum claims;¹⁰⁷
- Ensure that the list of countries is based on an objective and up-to-date assessment of the human rights situation; in case of sudden changes in the situation of a country, the Commission shall conduct a substantiated assessment to verify whether that country fulfils the conditions of Annex I of the Asylum Procedures Directive, based on the sources of information mentioned in Article 2(2) and the expert opinion of UNHCR;¹⁰⁸
- Not use the references to criteria related to a country's membership in the Council of Europe and status as an accession country to the EU.¹⁰⁹

“I am a Rwandese refugee. I arrived in Belgium together with my 13-year-old daughter. We have been separated with my husband and my two sons when fleeing our country. After months without knowing what happened to them, I heard that my two sons were still alive and were in Western Africa. I asked for family reunification for them. Unfortunately, they did not have any identification paper, only an attestation from the UNHCR recognising their refugee status. My request was refused by the Belgian authorities. Through reports from the UNHCR and the local Caritas of the city they were living, I was able to ask for a review of the decision. Finally, the Belgian authorities granted them a visa to be reunited with me and their sister. We met again after eight years of separation”.

A refugee from Rwanda
Source: Caritas Belgium

Family reunification in international circumstances follows from the fundamental human right to family life, and is articulated in two major international human rights treaties: the 1989 UN Convention on the Rights of the Child (CRC) and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Article 8 of the European Convention on Human Rights (ECHR) and Article 7 of the EU Charter of Fundamental Rights both enshrine the right to family life.¹¹⁰ In particular, it is essential to the human rights, needs and well-being of minor children, and as such requires that the best interests of a child be taken into account.

Joining family members has been one of the main reasons for migration to the EU for the past 20 years.¹¹¹ The Family Reunification Directive establishes common rules for exercising the right to family reunification in all EU Member States except for Denmark, Ireland and the United Kingdom. This Directive determines the conditions under which family reunification is granted and the rights of the family members concerned. It provides that legally residing non-EU nationals, as sponsors, can bring their spouse, minor children and spouse’s dependent minor children to the EU Member State in which they reside. Reunification with an unmarried partner, adult dependent children or dependent older relatives may also be authorised. Once in an EU Member State, eligible family members receive a residence permit and obtain access to education, employment and to vocational training on the same basis as other non-EU nationals. After a maximum of five years of residence, family members may apply for autonomous status, if the family relationships still exist;¹¹² in some EU Member States and under certain circumstances (e.g. death of the spouse), applications can still be made even if the family relationship no longer exists.¹¹³



The Directive also establishes more favourable family reunification conditions for refugees, for whom the definition of family members may be broader and the material and documentary requirements may be less stringent.¹¹⁴



In 2003, the Family Reunification Directive was the first legislative instrument on legal migration achieved at the EU level, and EU Member States were obliged to transpose it into national law by October of 2005.¹¹⁵

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Cordaid (Caritas Netherlands)



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Cordaid (Caritas Netherlands)

Since its inception, the Directive has been criticised by scholars and NGOs for the low level of harmonisation required of EU Member States. In many cases, EU Member States have attempted restrictive forms of implementation and sought to impose additional conditions on applicants.¹¹⁶

The Commission has subsequently reviewed the Directive and its implementation (in 2008 and in the 2011–12 Green Paper), consulted NGOs (2012), and issued additional guidance to EU Member States on implementation (2014).

In 2006, the European Parliament sought to have the European Court of Justice annul three derogations (that permitted EU Member States to impose additional conditions) on the grounds that these derogations were incompatible with respect for family life and the principle of non-discrimination:

- The possibility of verifying whether a child aged over 12 years who arrives independently from the rest of his or her family meets a condition for integration;
- The possibility of authorising applications for children only if they are submitted before the age of 15;
- The possibility of imposing a waiting period of up to three years between submission of the application for family reunification and the issuance of a residence permit to the family members.¹¹⁷

The European Court of Justice ruled in *European Parliament v. Council* (Case C-540/03)¹¹⁸ that the Directive “does not run counter to the fundamental right to respect for family life, the best interests of children or the principle of non-discrimination on age grounds”.¹¹⁹ However, it also clearly specified that EU Member States must apply the Directive’s rules in a manner consistent with the protection of fundamental rights, notably regarding family life and the principle of the best interests of the child.¹²⁰

Following an extensive review and consultation, the Commission issued a Communication on guidance for the application of the Family Reunification Directive.¹²¹ Many institutions, including Caritas Europa and UNHCR, responded

with extensive commentary, identifying deficiencies in the policy itself. Some criticisms, especially on restrictive transposition and implementation or disparate application across EU Member States, have been taken into account in the guidance document.

The UNHCR commentary on the Green Paper provided a broad overview, identifying several areas where the Directive and its implementation provide obstacles to effective family reunification for refugees in particular. These included:

- The failure of the Directive to include beneficiaries of subsidiary protection in its scope;
- The limited family definition and its inadequacy to the actual circumstances of “dependency” of family members;
- The failure to take into account time delays in locating relatives when setting deadlines for applications under the more favourable conditions granted to refugees;
- The inadequacy of requirements on EU Member States to make information about the procedure accessible to migrants and refugees;
- The failure to recognise the difficulty family members may have accessing an embassy to file an application: the refugee status of the applicant and his/her family members can pose special obstacles and be even a risk to their safety if they submit an application to an embassy in their country of origin or residence;
- Difficulties documenting family links and dependency: only official documents are accepted, and attempts to obtain these documents can pose a danger to the family members;
- Requiring DNA testing as proof of family relationship, especially when the applicant must bear the cost and is only eligible for reimbursement if the application is granted, when such tests are not only expensive, but also difficult to obtain in many places;
- Problems applicants may have securing travel documents and visa from remote or insecure areas;
- Difficulties financing travel, especially when applicants may not have access to employment while waiting for the decision on their status.

Caritas Europa highlighted similar concerns in its extensive comments. These included, in particular, the excessive waiting period permitted, of up to two years, which created difficulties for integration, and the administrative fees associated with the application and documentation that were excessive and constituted a major barrier. Caritas Europa also noted that the minimum age requirement for a spouse did not serve the intended aim of preventing forced marriages and was merely discriminatory.¹²²

Studies show that EU Member States still differ greatly in the domestic handling of applications. While the transposition of the Directive has made procedures clearer in EU Member States, in practice it has also led to stricter rules for applicants,¹²³ as the Directive allows EU Member States to strengthen requirements regarding conditions of family reunification.¹²⁴ A tendency among EU Member States is to adopt conditions and to make them harder to fulfil.¹²⁵ Some criteria, such as the reasonable prospect for the right of permanent residence at the time of application (in Article 3) and the waiting period before reunification can be applied (in Article 8), are left open to interpretation by the EU Member States.¹²⁶

To date, the Directive has failed to bring about uniform protection for family reunification.¹²⁷ EU Member States have tended to make more restrictions in transposing the Directive into national law and to minimise the application of certain granted rights so as to limit migration for the purpose of family reunification.¹²⁸ While concern remains about inherent drawbacks in the Directive, the way it has been transposed and implemented by EU Member States may pose greater barriers, but also ones more easily addressed, given the increasingly specific guidance that has been provided by the Commission’s 2014 Communication. This guidance should lead to both better application and greater harmonisation in practice.

Caritas Europa
recommends that
the EU and its
Member States:

- Achieve full transposition and implementation of the Directive at the national level across all EU Member States;
- Apply the Family Reunification Directive according to the guidance and best practices in the Commission's 2014 Communication;
- Remove practical obstacles to family reunification, including by applying more flexible criteria in identifying family members, giving more favourable conditions in cases of applications from refugees, re-evaluating the accessibility and appropriateness of integration measures, lowering application fees and simplifying the requirements of application documents;
- Extend the application of the Family Reunification Directive to cover all those who have been granted international protection, including subsidiary protection, under the same favourable family reunification terms that are afforded to refugees;
- Make the significant effort called for by the UNHCR to rapidly process family reunification claims of refugees who have left the family members in countries of first asylum. (Expeditious mechanisms to reunite these families will decrease the numbers of people attempting dangerous journeys, and the prospect that they will involve smugglers to do so, and it will facilitate refugees' integration in their new host societies.)¹²⁹

Caritas Europa
recommends that
the Commission:

- Improves dissemination of information regarding the scope and effect of the Directive;
- Takes enforcement actions against EU Member States in cases of failure to adequately transpose and implement provisions of the Directive, as required by the 2014 Guidance Communication, and when EU Member States impose unnecessary restrictions or additional conditions.

“A client from Ukraine contacted an agency with a request to find him a job in the Czech Republic. He paid for the employment registration and was promised to have a job with certain specified conditions. After arrival to the Czech Republic a representative of the “agent” took his passport away. Our client was told that there was no job for him and he had to pay other money for accommodation and services. After a couple of weeks, he was offered another job where he had to work more hours and with less money than what he had originally been promised.”

Source: Caritas Czech Republic

Demographic, labour market and economic challenges in the context of European economic integration and the Single European Labour Market make migration, and a more flexible approach to it, imperative. Maintaining development, economic well-being and social cohesion requires attracting migrants for whom there is real demand and who contribute to making our economies more diverse and vibrant. However, the lack of access to human and labour rights protection faced by many migrants is an especially urgent concern. A thorough revision of the EU migration policy approach is needed. However, new actions are being hampered

by the current economic, financial and employment crises, coupled with a strident populist political climate of anti-migrant rhetoric.

The Single European Labour Market, as a pillar of an economically integrated Europe, arguably incorporates all workers within EU Member States. It allows non-EU residents to legally circulate alongside nationals of the EU Member States. Challenges remain of providing regular access to this single EU labour market for non-EU nationals as well as ensuring full protection of labour rights for non-EU nationals working in the EU, including those in irregular situations. The development of a sophisticated system of social security cooperation across the EU also begs recognition and full incorporation of non-EU nationals, especially as they too circulate in the EU space. However, common legislation and policy addressing labour migration into the EU remains unachieved. Despite recent Directives facilitating their access to the EU labour market, high-skilled workers are still not treated equally compared to EU citizens where labour and mobility rights are concerned.

There is a need to better incorporate citizens and residents who are now excluded from the labour market as well as to enhance possibilities for mobility of non-EU residents. Access of foreign workers to social security and portability of rights and contributions also needs to be expanded.



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Secours Catholique - Caritas France

an inadequate legal framework

The Commission has recognised the need for an EU-wide migration policy framework since the late 1990s. Early proposals for regulation, protection and Community cooperation addressed the entire range of skills, labour market needs and migration circumstances. However, labour migration in particular and migration in general are fields in which EU Member States have failed to adopt common rules. In addition, migration has become a more contentious field with regard to the regulation of labour markets, labour relations and social policy.

A series of Directives provide common rules for high-skilled migration. These include:

- Directive on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;
- Directive on the specific procedure for admitting third country nationals for the purposes of scientific research;
- Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (EU Blue Card);
- Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State;
- Directive on the conditions of entry and residence of non-EU nationals in the framework of an intra-corporate transfer.

These Directives provide for a common regulatory framework for skilled migration to and within the EU for non-EU nationals. However, the EU was prevented from elaborating common policy on migration that goes beyond these high-skilled categories. Progress achieved to date remains subject to incomplete transposition and uneven implementation of the existing Directives. The situation is complicated by uncomplete harmonisation of labour legislation and incompatibility of training and qualifications standards as well as differing rates and levels of development of national economies and labour market conditions.

The absence of EU law and policy addressing low-skilled and medium-skilled migrants, except for the recently adopted Seasonal Workers Directive, leaves a huge gap in the EU's ability to deal with a large part of migration into Europe, for which the need for rights protection, regulation and cooperation is considerably greater than for high-skilled migration and intra-company transfers.

Fundamental standards of non-discrimination and equality of treatment are incorporated in the Commission's Communications and in EU Directives on discrimination, notably the "race equality directive" of 2000, and generally apply to regular migrant workers regarding discrimination on the grounds of racial, ethnic or national origin.¹³⁰

Nonetheless, insufficient attention has been paid to the protection of migrant workers under labour standards against discrimination in the workplace and to the labour inspection policies to monitor and enforce these standards.

Pope Francis asks leaders to establish a Europe that "revolves not around the economy but around the sacredness of the human person"... "The time has come to promote policies which create employment, but above all there is a need to restore dignity to labour by ensuring proper working conditions," he said.

"This implies, on the one hand, finding new ways of joining market flexibility with the need for stability and security on the part of workers; these are indispensable for their human development."

The Pope also accused European leaders of exploitation; something he said was an "inevitable consequence of a throwaway culture and uncontrolled consumerism".

"Economic questions dominate political debate, human beings are reduced to cogs in a machine, items of consumption to be exploited," he said.

Source: Christianity Today, 25 November 2014

Although an effective and successful integration policy is key to realising the economic and social benefits of migration for individual migrants as well as for society at large, a coherent EU approach remains lacking. Moreover, the lack of political will and reluctance of EU Member States to relinquish their sovereignty contributes to doubts surrounding the EU migration agenda with an aim to promote legal channels, even for the highly-skilled and for the much needed migrant workers.



© Photo: Isabel Corthier
Courtesy of Caritas Belgium



focus on migrant women workers

“I came to Cyprus to work as a domestic worker. I paid EUR 3,000 to get this job and I earned 324 euros per month plus food and accommodation. I was very unhappy because the madam was difficult. She said I was dirty and must not touch their food. She insisted that I must wash my hands often with bleach to get them clean. After a month, the skin on my hands had a rash, was itchy and looked burnt. I wanted to leave, but didn’t know how to and my agent did not help me. All my documents were held by my employer. One day, my employer kicked me on my legs and thighs with her shoes. I was really hurt. I called another girl from my country who called the Caritas Cyprus Migrant Centre. They took me to the police station. After a few hours, they told us that the employer accused me of stealing her jewellery. Because of the charge, I was remanded in custody for four days while they examined the case. Finally the court ordered that I be released as there was no evidence. No charge was brought against my employer for assault.”

S., migrant from Asia
Source: Caritas Cyprus

Women and girls represent nearly 52% of migrants in Europe. In contrast to past decades, most adult migrant women today are economically active. They often migrate on their own, rather than as dependents, to take up work to sustain their families and communities. Women migrants contribute to change, innovation and social integration. They often become more independent financially and for many, migration is their first opportunity of working and earning a living. Migration changes gender relations and sense of identity as well as influences women’s social-support networks, economic roles and civic participation.

However, demand for women migrant workers in destination countries is defined by labour market segmentation: many opportunities are available for low-skilled jobs considered suitable for women. The increasing prominence of economically active migrant women – often referred to as the feminisation of migration – together with most job opportunities for women migrants being in unregulated sectors, such as agriculture, domestic work and services, contribute to the increase of discriminative employment. Labour standards are usually weak in these sectors, while labour inspection enforcement of decent work conditions is often absent altogether.

The risks of discrimination, exploitation and abuse faced by many women migrant workers are compounded by the absence of social security coverage and other social protection, such as health and maternity care. Women migrants’ ability to address their situations and defend their rights is suppressed where freedom of association and collective bargaining rights guaranteed under international law are denied in national legislation and policy or in practice. Female migrants often suffer triple discrimination as women, as unprotected workers and as migrants. Low status and dysfunctional work-life balance are pivotal problems compounded by discrimination-induced difficulties.

Source: Migrant Women, Women Migrant Workers. Briefing Note for the 133rd Assembly of the Inter-Parliamentary Union (IPU), Geneva, 17-21 October 2015. Prepared by Patrick Taran.

Caritas Europa urges the EU to:

- Further elaborate the comprehensive EU migration/labour policy, which facilitates skills and labour migration, providing adequate regulatory measures, decent work protection and equality of opportunity and treatment for migrants at all skills levels;
- Expand labour inspection to cover employment sectors and workplaces where migrants are concentrated, provide relevant training on labour migration for labour inspectors and separate labour inspection from migration enforcement;
- Establish working redress to justice mechanisms, including just compensations and enforcement of severe sanctions for human exploitation and slavery, and efficient mechanisms of investigation of money laundering;
- Elaborate a coherent EU approach with requisite support to migrant integration, based on the main policy goals of achieving equal rights, opportunities and obligations for all. It should enhance mutual interaction between immigrants and other residents of EU Member States as well as support the shared values of democracy and human rights, with due respect for the multitude of values in the EU Member States;
- Further develop legislation and other measures against discrimination, incorporating recognition of nationality as prohibited grounds for discrimination;
- Facilitate free mobility of non-EU nationals within the EU and, in particular, ensure their equal access to welfare and pensions rights;
- Ensure equal application and enforcement of labour rights and protection for women migrants, in particular domestic workers;
- Ensure the involvement of employers, trade unions and migrants themselves in the social dialogue regarding relevant social, economic, labour and employment policies.

Caritas Europa asks the Commission to:

- Support EU Member States in developing labour market integration policies addressing migrant workers at all skills levels in all sectors;
- Monitor the impact of National Reform Programmes on migrants' integration in the labour market;
- Monitor EU Member States' application of Directives ensuring non-discrimination in employment.

“I worked in Belgium for a building company. I was irregular. I didn’t have any papers, so I was afraid of the police. The employer nearly never paid my wages. My wife and I were hiding; sometimes we had nothing to eat, and we had trouble paying the rent.”

Gabriel, migrant worker from Brazil in Belgium

Source: Caritas Belgium

“A lot of Ukrainian workers in irregular situation arrived in Czech Republic many years ago with tourist visas or employment visas. So-called “agents” used their situation to make them pay 25,000 Czech crowns fees for visa prolongation, but the payment didn’t guarantee obtaining the visa. These workers were accommodated at rooming houses where they paid excessive amounts, while receiving minimum salaries because of “debts” and had to work 12 or more hours daily including weekends. On the other side, they were without health insurance, didn’t pay taxes and in case of a labour accident had no rights. We met a person who became disabled, was put in detention and sent back home.”

Source: Caritas Czech Republic staff

An important component of the EU’s and its Member States’ policy on migration comprises control and repression measures to fight irregular migration. Many of these measures, and the overall framework, pose three major problems. First, they restrict or deny human and labour rights protection to a significant number of people residing in the EU. Secondly, they exacerbate the economic, legal and social problems that they are supposed to resolve. Thirdly, the border externalisation approach discussed above exacerbates repression against and human rights violations of migrants and refugees in non-EU countries. It also prevents access to refugee protection for persons fleeing warfare, persecution or situations of generalised human rights abuse.

Research on irregular migration shows that undocumented migrants number between 1.9 to 3.8 million, representing far less than one percent of the total EU population.

There are also non-EU nationals whose presence in the territory is known to the migration authorities, but who, for a variety of reasons related to legal or humanitarian considerations, practical obstacles or policy choices, are not removed. The number of persons who are not removed but lack regular status is believed to be considerable, although no reliable estimates exist.¹³¹

Most research shows that undocumented migrants respond to economic and social needs; they fill skills shortages and their low wages keep prices low enough for continued mass consumption. It is safe to say that irregular migration is bound up in labour market demand and supply challenges and that restrictive migration policies exacerbate rather than control the problems. Frontex research reinforced this assessment:

*Irregular migration is clearly migration on a scale affected by migration policies in receiving countries. In addition, irregular migration is in vast majority of cases related to income-generating/labour migration. This conclusion is partly empirically based, partly derived from available intelligence and partly logically deduced. Consequently, generating income in the destination country is the *raison d’être* for the major part of irregular migration to occur in the first place.¹³²*

The EU and its Member States cannot deprive migrants in an irregular situation of certain basic human rights. The FRA emphasises that international human rights instruments and the ECHR enshrine and enforce rights and freedoms applicable to everyone within the jurisdiction of the contracting parties, including migrants in an irregular situation. EU law has been interpreted in light of human rights standards, which are binding on EU Member States, as evidenced by references of the Court of Justice of the European Union (CJEU) to the ECHR, the European Social Charter (ESC), the International Covenant on Civil and Political Rights (ICCPR) and International Labour Organization (ILO) conventions. EU law must be implemented and applied in accordance with the EU Charter of Fundamental Rights. In all those areas not covered by EU law, fundamental rights continue to be guaranteed at the national level.

© Photo: Richard Bouda
Courtesy of Caritas Czech Republic



“In Italy, every other week I had an appointment with a psychologist to talk about my journey and my life. Now in Calais, I don't have access to psychological services, but I would need to talk again to a psychologist.”

Ali from Afghanistan
Source: “Paroles d'exilés à Calais”, Secours Catholique-Caritas France



© Photo: Isabel Corthier
Courtesy of Caritas Belgium

health, education, social protection

Reports by the Platform for International Cooperation on Undocumented Migration (PICUM) and by the FRA have noted that fundamental rights to healthcare for undocumented migrants are inadequately or not at all protected in EU Member States. In some cases, only restricted access to fee-paying emergency treatment is available.¹³³ Similarly, maternity care and child healthcare is unequally provided for migrants in irregular situations.

Other examples of restrictions on fundamental rights for undocumented persons include restrictions in several EU Member States allowing only some children in irregular status to access state schools free of charge. Generally, access to education is more restricted the higher the levels of education and the older the child. Blanket restrictions on access to marriage on grounds of irregular stay are problematic and disproportionate, but they still exist in some EU Member States.

The housing situation of undocumented migrants is often precarious and insecure, contributing to their social exclusion and to health risks. Migrants usually rely on family, friends or others in their social network to find housing. Many end up constrained to live in short-term housing, often in overcrowded, insecure dwellings and sometimes without access to the most basic services, such as running water, electricity and heating.¹³⁴

“I arrived in Cyprus in 2012 on a visitor visa. An agent had organized for me to work for nine months. I was then released and then reappointed for another nine months period. In this way the employer did not have to pay holiday pay. I received 430 euros per month. They promised a second renewal of my work permit for another nine month period and I continued working with my employer.”

“The agent told my employer and me that he had to reapply on my behalf for a third work permit, but in reality he did not. One day while I was at work, I was arrested by the police and put in detention to be deported. I was issued with a deportation order and deported the following day. I understood afterwards that by the continual turnover of agricultural workers, there was more opportunity for the agents to make money by bringing in new workers.”

S. from Asia

Source: Caritas Cyprus

“I am married to a Cypriot for two years and I lived with him in Cyprus until I was arrested by the police for having an expired residence visa. I didn't know this and assumed my husband had done the necessary work in registering our marriage and requesting a visa. I was deported a few days later.”

“The police informed me that my husband notified them that we had marital problems. He claimed he had a divorce and that I should be sent back to my country. I was arrested in my husband's presence. There is no record of any divorce, I have never been served with divorce papers and I had no idea that my husband wanted a divorce. In fact, we were trying to have a child. My husband, prior to my deportation, did bring some of my clothes to the police station and gave the police 40 euros for me, but he still has my laptop, phone, jewellery and some of my other clothes I left in our home.”

M. from Asia

Source: Caritas Cyprus

labour exploitation

The FRA, numerous trade unions and other competent agencies have amply documented the high risk of exploitation faced by undocumented migrant workers. Currently, the ILO estimates that 20 million persons are victims of labour exploitation globally, among which 5.5 million are children.¹³⁵

Although the labour rights of migrant workers are clearly recognised in international and European human rights and labour law instruments, they are often neither respected nor enforced in practice. For example, not all EU Member States recognise rights of undocumented migrants to claim back pay or compensation for accidents. In cases of abuse or conflict, migrants generally avoid seeking judicial redress, fearing reprisal or finding it inaccessible. For undocumented migrants, fear of detection, low awareness of rights and lack of security of residence are additional factors that discourage recourse to complaints or ultimately to judicial redress.

The situation of women in this context is particularly alarming. The feminisation of migration has led to an increase of women labour exploitation, in particular in the areas of domestic work and care.¹³⁶ Undocumented female migrants as well as “women who rely on their husbands, fathers or employers for their legal status are unlikely to report violence and other abuses”.¹³⁷ They will not seek legal protection against violence and labour exploitation for several reasons, such as “fear of retaliation, shame, stigmatisation and concern for their children”.¹³⁸ In this regard, it is key that governments are aware of the specific situation of undocumented women to be able to address this challenge and answer to their needs.

Support and advocacy by trade unions and NGOs is vital to protecting labour and other rights of undocumented migrants. While migrant workers tend to be concentrated in work sectors where there are few unions, trade union outreach among migrant workers, regardless of status, has expanded in a number of European countries.¹³⁹

EU law and policy

Article 79 of the Treaty on the Functioning of the European Union spelled out “fighting irregular migration” as one of the aims for a common migration policy. The several EU Directives addressing this aim reinforce an explicitly repressive and punitive approach to controlling a vulnerable and unprotected group of persons in Europe, a majority of whom participate in the workforce.

The Return Directive sets out standards and procedures for returning irregular migrants. As the FRA notes, “The EU Return Directive contains only limited guidance on the fundamental rights guarantees for persons who are not removed (Article 14) and does not provide for any mechanism that could put an end to situations of legal limbo deriving from protracted non-removability”.¹⁴⁰

As noted in the discussion and recommendation on access to protection above, the Facilitation Directive and its accompanying Framework Decision oblige EU Member States to punish anyone who assists a person to irregularly enter, transit, or stay in the territory of an EU Member State. Research by the FRA highlighted the risk that domestic EU Member State legislation on the facilitation of entry and stay may lead to prosecution and punishment of those who provide humanitarian assistance – such as charities or individual good Samaritans – or rent out accommodation. Fishermen fear punishment under the rules on facilitation of irregular entry for rescuing migrants in distress at sea.

The Employer Sanctions Directive aims at protecting workers involved in undeclared or unauthorised work, who are often the most vulnerable. However, only in a small minority of cases do inspections result in sanctions on employers. They do not address the causes or the scale of undeclared work and informal economic activity in Europe. Undeclared work represents up to 20% of GDP in some countries and employs far more citizens and legally residing foreigners than undocumented persons. “Similarly, linking workplace inspections with checks on migration status creates

an environment which does not lead to identifying labour exploitation or abuse, as undocumented migrants are discouraged from reporting on or testifying to such conditions. It is often the fear generated by these enforcement measures that prevents undocumented migrants from claiming their fundamental rights or seeking redress when these rights are violated”.¹⁴¹

The lodging of major EU policy responsibilities for migration in the Directorate-General for security rather than in the Directorate-General on employment also reflects a control-based approach rather than a labour regulation approach to what is primarily internationalised labour and skills mobility.

criminalising migrants

At the national level, several EU Member States have resorted to criminalising provisions in migration law, ostensibly to deter migrants from entering or staying irregularly. The human rights challenges connected to the criminalisation of irregular migration have been documented in various reports, including in an issue paper of the Council of Europe’s Commissioner for Human Rights¹⁴² and a report by the UN Special Rapporteur on the Human Rights of Migrants on the management of the external borders of the EU.¹⁴³ In 2011, the FRA published reports on fundamental rights of migrants in an irregular situation in the EU¹⁴⁴ and in 2013 on fundamental rights at Europe’s southern sea borders.¹⁴⁵

Sensitive to the impact of language on society as a whole and because a person cannot be “illegal”, the Commission abandoned the use of the term “illegal migrant”, in favour of the more neutral terminology “irregular migrant” or “migrant in an irregular situation”. European media, however, have been slow in adapting this terminology.





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CAFOD (Caritas England and Wales)

The most comprehensive and effective remedy to resolve irregular migration will be a threefold approach of:

- Establishing a more open, flexible migration regime;
- De-criminalising migration law and administration;
- Abandoning the punitive, repressive approach and measures of “combating irregular migration”.

The whole migration policy focus should shift from border control to people’s needs and respond to economic and labour market needs. It also means scrapping criminalisation and fighting “irregular migration” as EU-wide and national policy goals. Finally, it requires enhancing rights protection and due process for all migrants, including with pathways to regularisation. Acknowledging that this will take time to achieve, a number of more immediate remedies to ensure protection of human and labour rights of all migrants in Europe are proposed here.

Caritas Europa asks the EU and its Member States to:

- Ensure that the human rights and human dignity of undocumented migrants are protected regardless of their legal status;
- Qualify or redefine individual migration as civil or administrative, in place of criminal provisions;
- Cease and desist from using the terms illegal/illegality regarding any person; undocumented, and/or in irregular situations are valid and acceptable terms regarding migrants;
- Provide access for undocumented/ unauthorised migrants to basic services, notably healthcare and education, including by informing service providers about the entitlements of undocumented migrants;
- Ensure access to specialised services, such as psychological support and counselling for especially vulnerable persons, namely women, single parents, children, aged persons and disabled persons;
- Provide for universal access to adequate and affordable housing and living conditions as a basic human right of every human being;
- Prevent criminalisation and or prosecution of persons providing services to undocumented migrants, such as social, health and housing, in particular by rescinding the Facilitation Directive and counterpart measures in EU Member States;
- Ensure application of all relevant labour standards to all migrant workers and extend labour inspections to all sectors and workplaces where migrant workers, including those in irregular situations, may be working;
- Ensure that labour inspections and enforcement of labour standards are fully separated from migration enforcement.

IV

the way forward

Current migratory movements confront Europe with its responsibility to provide international protection for a share, albeit small, of refugees forced to flee warfare, sometimes exacerbated by European arms exports and military interventions. Migration to the EU needs to be understood as a primary factor of economic and political integration and, thus, as a motive for obtaining development and social welfare in Europe.

Europe needs a comprehensive common asylum and migration policy, well beyond the current framework, to enable states to individually and collectively create safe, orderly channels for regular migration that meet labour-market needs, while also providing international protection for refugees fleeing warfare and violations of human rights. Clear and affirmative political leadership is required across the EU to challenge negative, inaccurate public attitudes that migration is an economic liability, a cultural challenge and a security threat.

No matter how far beyond the Mediterranean the EU expands “Fortress Europe”, it will never stop people from risking their lives to enter Europe if the root-causes of their situation are not tackled...

Caritas Europa reminds European leaders that to truly tackle this situation we urgently need:

- *A European search and rescue operation at the EU’s external borders with a clear humanitarian mission;*
- *Safe and legal channels for those seeking protection when fleeing war and persecution;*
- *Legal channels for labour migration.*

Jorge Nuño Mayer, Secretary General, Caritas Europa

<http://www.caritas.eu/news/more-repression-will-not-save-more-lives-at-eu-borders>

The preceding review of law, policy and practice has identified immediate actions by the EU and its Member States. Those ensure access to international protection and uphold human rights and European values in the treatment and resettlement of asylum-seekers and refugees, in ensuring family reunification, in labour migration, and in addressing undocumented migrants.

Our recommendations will solve some of the immediate issues. However, to be successful, the EU’s response to migration needs to be based explicitly on the respect of human rights, the dignity inherent to every human being and the values of peace, solidarity and justice that are hallmarks of the “European project”.

Caritas Europa therefore pushes for the reformulation of European asylum and migration policy to fully uphold human rights of all persons and facilitate more open, safe and legal paths to Europe. It calls on the EU and its Member States to:

- Strengthen implementation of all relevant international human rights and labour standards as well as the 1951 Convention and 1967 Protocol on the Status of Refugees;
- Prioritise humanitarian considerations over the protection of external borders, in particular ensuring protection of vulnerable people (i.e. women, children, single parents);
- Elaborate a durable, collective and equitable response mechanism to address mass displacement and arrivals at European borders of persons in refugee-like situations, ensuring access to international protection;¹⁴⁶
- Assume a more equitable share of international and regional responsibility for the resettlement of refugees;¹⁴⁷
- Provide adequate and appropriate support to frontline countries hosting large populations of refugees and asylum seekers to ensure decent conditions for those populations;
- Establish or expand adequate channels for regular labour migration at all skills levels and respond to real and identifiable labour market needs;
- Expand opportunities for regularisation of undocumented migrants present in EU Member States;

- End the criminalisation of irregular migration and migrants in irregular situations.

The policy framework must also fully implement non-discrimination and equality of treatment under the rule of law and equality of opportunity for all by:

- Changing the narratives on migration, migrants and refugees to recognise the positive contributions of migrants and refugees in a Europe of diverse social, cultural, religious and national populations integrating with historic national identities;
- Resolutely preventing racist and xenophobic discourse and acts;
- Applying and enforcing decent work standards in all places where migrants are employed;
- Ensuring that all migration law, policy and practice are gender sensitive.

The fundamental challenge of addressing the root causes of forced displacement in countries of origin has to be integrally taken up:

- Through peace-making and peacekeeping as well as diplomatic and other conflict resolution efforts;
- Through ending military interventions in non-EU countries;
- Through stopping sales and export of arms that directly or indirectly reach parties to armed conflicts or are used in repression of human rights.

In addition, Caritas Europa calls on the EU and its Member States to fully engage in and to support international efforts, such as envisaged in the 2030 UN Sustainable Development Goals, to create “decent work” employment and other sustainable economic activities that allow people to remain “at home” in safety and dignity, making migration a choice rather than a necessity.

These recommendations should provide a solid, appropriate and dynamic basis for concerned individuals and organisations, as well as Caritas members and constituents, to galvanise action and catalyse international cooperation that can achieve policy and law changes towards a Europe of true solidarity, justice and wellbeing for refugees, migrants and all citizens.



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“ *Migrants and refugees are not pawns on the chessboard of humanity. They are children, women and men who leave or who are forced to leave their homes for various reasons, who share a legitimate desire for knowing and having, but above all for being more.* ”

Pope Francis





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