

solidar

Irregular migrants have rights

Solidar Position on the European Commission Communication on illegal immigration: a rights-based approach to the question of irregular migration

Solidar is an international alliance of social and economic justice non-governmental organisations (NGOs) working in development and humanitarian aid, social policy, social service provision and life-long learning. Solidar works in Europe and worldwide in alliance with trade unions, organisations of the labour movement and civil society for an equitable and sustainable world.

As a European network Solidar has been promoting European solidarity, cooperation and exchange for more than 50 years. We keep on doing so. Solidar's Secretariat regularly informs members about relevant policy developments, debates and activities taking place at the EU level. The Secretariat encourages members to respond to new EU policies and to engage in discussions at a European level. We create spaces for exchange and reflection on European issues relevant to our work through working committees and activities such as seminars and conferences. Solidar expresses its opinion on EU issues through position papers discussed and approved by our members. We allow citizens engaged in our network to make their voices heard at a European level.

A number of Solidar member organisations work with and for migrants, both in Europe and abroad, be it by providing services ranging from language courses to legal advice and vocational training, by encouraging migrants who wish to contribute to the development of their countries of origin to do so, or by running anti-discrimination campaigns.

The Solidar Secretariat, five Solidar members and five migrant associations in Austria, France, Italy, the Netherlands and Spain are currently implementing an 18-month project on migrant integration funded by the European Commission.

Terminology

Solidar prefers to avoid using the term 'illegal' to define third-country nationals who lack residence papers issued by an EU member state, as, both from a juridical and an ethical point of view, no human being can be considered illegal. The Parliamentary Assembly of the Council of Europe refers to 'irregular migrants' to avoid the stigma associated with the term 'illegal' and because this is the definition which, in the PACE's words, 'is increasingly favoured by international organisations working on migration issues'¹.

¹ PACE Resolution 1509 (2006), 'Human rights of irregular migrants'

Executive summary

The European Commission released a Communication on 'Policy priorities in the fight against illegal immigration of third-country nationals' on 19th July 2006². The summer of 2006 saw a massive increase in EU efforts to tackle irregular migration and speed up the creation of a common migration and asylum system. As thousands of migrants landed on the shores of the Canary Islands after a perilous, life-threatening crossing from the shores of West Africa, the EU's external border agency, Frontex, was assigned its first operational mission, Hera II. Ships and planes supplied by Spain, Italy, Portugal and Finland intercepted and sent back over 1,200 people over a three-month period, raising serious concerns about EU member states' commitment to the European Convention on Human Rights, the 1951 Refugee Convention and, more specifically, to the principle of *non-refoulement*.

Irregular migrants have been glaringly absent from EU legislation so far. Though irregular migrants are those probably experiencing the greatest difficulties in sending remittances home and gaining recognition of their qualifications, they are not mentioned in documents on, for example, migration and development (or 'co-development'), including the 2005 European Commission Communication on the subject³.

Solidar's key comments on the Communication

- **Solidar welcomes** the references to the protection and promotion of human rights, to the Charter on Fundamental Rights and to the European Convention on Human Rights and Fundamental Freedoms as well as those to the existence of mixed migratory flows and to the right to seek asylum.
- **Solidar endorses** the European Commission's efforts to encourage a 'rational debate' to disprove the link between irregular migration and 'societal problems', which in turn leads to racism and xenophobia.
- **Solidar expresses concern** about the fact that the EC appears to privilege a binary approach to irregular migration based on regularisation and/or repatriation which excludes any measures aimed at ensuring the fundamental rights of the millions of irregular migrants currently in the EU who cannot obtain legal status and cannot be repatriated.
- **Solidar laments** the lack of any reference to irregular migrants' basic social rights, including the right to healthcare and education.
- **Solidar is disappointed** that the Communication does not address the need to broaden legal channels for entry.
- **Solidar is surprised** that the Communication views illegal employment as a significant 'pull factor'. Migrants are not attracted to Europe by the prospect of working illegally *per se*. What is the case, on the other hand, is that vital sectors of the European economy rely on the cheap labour provided by migrants.

² COM(2006) 402

³ COM(2005) 390

- **Solidar deploras** the apparent confusion between smuggling and trafficking in the Communication.

‘What shall we do should irregular migrants appear on our shores?’

The European Commission’s Communication appears to be premised on the assumption that illegal migrants should not be present on EU territory. Paradoxically, it almost seems to lay out a blueprint for future action should irregular migrants arrive in great numbers.

The EC seems to privilege a binary approach to irregular migration which foresees either regularisation or repatriation for those who are apprehended without papers. The former, however, which Solidar endorses, is viewed as a measure of last resort in the Communication and one which could have negative repercussions on the EU as a whole, if and when newly regularised migrants move to other member states. Though not explicitly stated, regularisation also appears to be seen through the prism of some member states’ view that it leads to an increase in irregular migration flows.

Border management features prominently in the Communication. Measures include co-operation with sending countries, including Libya, which is not part of the Barcelona process and has not signed the 1951 Refugee Convention. Respect for international law and international human rights norms are not cited in this context.

Development is also highlighted as a long-term tool in addressing the ‘push’ factors underlying migration, but, rather more worryingly, the Communication cites, and endorses, recent decisions to use development funds to strengthen ACP countries’ capacity to secure their borders and manage migration flows.

Tackling irregular migration effectively: broadening legal channels for entry

The Communication fails to address the main underlying cause of irregular migration, namely the virtual lack of legal channels for entry into the EU for citizens of developing countries. Migration legislation varies enormously across the European Union, as do visa requirements and admissions systems, but restrictions on the entry of unskilled workers are commonplace in all member states. Where quota systems are in place, employers routinely lament a massive mismatch between their requests for workers and the annual numbers allocated by the government.

The demand for migrant workers, both skilled and unskilled, is booming across the EU. Migrants are contributing to the growth in the construction and services industries and are taking up jobs in the agricultural sector which EU citizens refuse to carry out. If legal channels are virtually inexistent, or limited, employers will turn to the pool of irregular migrants to fill labour shortages. Broadening legal channels for entry is the most effective means of combating irregular migration and ensuring that migrant workers are not blackmailed and exploited.

Illegal work as a ‘pull factor’

Tackling illegal employment is also seen as key in the Communication, though the EC seems to suggest that migrants are attracted by the prospect of working illegally when it states that ‘the possibility of finding work whilst illegally present in the EU is

a significant pull factor'. Migration, as BEPA (Bureau of European Policy Advisers), the EC in-house think tank, recently pointed out⁴, is viewed as being supply-driven, whereas it is demand-driven, with European entrepreneurs actively seeking to recruit undocumented migrants.

Measures to combat illegal work in the Communication include ensuring employers verify the immigration status of their employees and a series of penalties, ranging from exclusion from public procurement contracts to criminal sanctions.

Solidar welcomes efforts to combat illegal work and to secure labour rights for all, be they migrants or EU citizens, but stresses how member states' labour laws already include a number of harsh provisions on illegal employment – what is really missing is enforcement. Rather than adding another layer to individual countries' legislation to combat illegal work, the European Commission should ensure harsh sanctions are in place as regards the disbursement of EC subsidies. Withholding CAP, or Common Agricultural Policy, funds when breaches of labour rights on the part of farm owners are reported and confirmed in member states would be an extremely effective response to the exploitation of migrants working in Europe's agricultural sector.

Smuggling and trafficking: one and the same thing?

The Communication appears to use the terms 'human trafficking' and 'smuggling' interchangeably. References to the Council 2005 Action Plan on human trafficking are thus set alongside the need to highlight that 'the high sums that have to be paid to human traffickers are a net loss for the persons concerned'.

According to the United Nations' Office on Drugs and Crime, 'the smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers⁵'. Whilst illegal migrants thus often pay huge sums to smugglers in the attempt to reach more prosperous countries or, in the case of asylum seekers, to flee persecution, the victims of trafficking are coerced into travelling abroad.

Solidar upholds the fight against both smuggling and trafficking in people and contributes, through its members, to providing the victims of trafficking with the means to forge new lives for themselves. However, confusion over terminology will not help to combat either of these phenomena.

Irregular migrants have rights

The Communication fails to address the fact that millions of undocumented migrants live in the EU and that their presence cannot simply be addressed in terms of border management and/or (an often unachievable) regularisation. Nowhere in the Communication is there any reference to respect for migrants' basic social rights, including access to healthcare and education regardless of legal status. Legislation in some member states, such as Italy and Belgium, grants irregular migrants the right to healthcare, but the migrants themselves and, worryingly, health professionals,

⁴ BEPA, 'Migration and public perception', 4th October 2006

⁵ Cf. http://www.unodc.org/unodc/trafficking_victim_consent.html

often lack vital information on the subject. Irregular migrants may also be concerned that they will be reported on if they visit a hospital or contact a doctor.

A comprehensive EC approach to illegal immigration should thus include measures geared towards ensuring migrants' basic social rights are respected in all member states. To this effect, Solidar calls upon:

- all European Union member states to sign and ratify the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- the European Commission to present proposals seeking to harmonise EU member states' legislation as regards access to healthcare and education for irregular migrants so as to ensure these rights are enjoyed by all, irrespective of their legal status;
- the European Commission and member states to promote national campaigns aimed at informing irregular migrants of their rights.

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