

15 Principles for framing a positive approach to migration

Conclusions of an ENAR policy seminar on EU migration policy



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european network against racism

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Introduction



Migration is a global phenomenon that has increased alongside globalisation. The number of people living outside their country of birth is estimated to have almost doubled during the last 50 years. Women now constitute almost half of all migrants and dominate migration flows to developed countries. Migrants are also vulnerable to exploitation and increasingly represented in the “3 D” jobs - dirty, dangerous and difficult. While people migrate for employment, family reunification, marriage or willingness to live in a different environment, the demand for labour migration has been a major factor in rising levels of migration to developed countries.

The awareness of Europe as a continent of migration has been accompanied by an increasingly visible negative public perception of migration and migrants, to the extent that the Fundamental Rights Agency report “Trends And Developments 1997-2005: Combating Ethnic And Racial Discrimination And Promoting Equality In The European Union” found that “...as immigration into Europe (both legal and irregular) increased during this period, a corresponding increase was noted in racist violence and crime against vulnerable immigrant communities - notably irregular immigrants, asylum seekers and refugees” (p. 42). Many ethnic and religious minority groups have been affected by public perception and the negative debate on migration. The negative portrayal of migration by policy makers and by the mass media through stereotypical language and negative images has led to a worrying increase in racism and xenophobia towards third country nationals.

In November 2008 ENAR held a policy seminar entitled “Framing a positive approach to migration” in order to enable anti-racist civil society to proactively define the frame of reference for debate on an EU approach to migration. The seminar considered the practical realities of EU migration policy, but also the less tangible “shape of the debate” that underlies the approach taken and leads to these practical realities. The seminar was held in response to ENAR’s analysis that while the member states of the European Union face a variety of different situations with regard to third country nationals and mobile European Union nationals, a common theme is that across Europe migrants are treated as second class persons, socially excluded and subject to various forms of discrimination with regard to access to rights, employment, education and social services.

The European institutions are now working towards the “Stockholm Programme” for Justice and Home Affairs that will be vital in framing the future European approach to migration and asylum policies. These developments have the potential to enable the EU to revisit its approach to immigration and asylum, framing it within a positive approach that combats racism and xenophobia and promotes the rights of all.

ENAR is therefore proposing 15 Principles for framing a positive approach to migration. We call upon the European institutions to address our concerns in the field of migration, to incorporate the principles in the future Justice and Home Affairs programme to be adopted in 2009 and to follow them when implementing this programme.

ENAR's priorities on migration

ENAR's strategic goal in the field of migration is to promote the rights of third country nationals and to ensure that migration, and related policies and practices, do not undermine ENAR's vision of a Europe without racism. The EU's approach to integration and migration policies needs to be firmly grounded in a human rights-based approach ensuring anti-racism and anti-discrimination through a common set of rights for all.

EU migration policy

During the last decade, the foundations of a common EU immigration policy have been gradually established. In October 2005, EU Heads of State and Government identified immigration as a key area for future work, inviting the Union and the member states to further develop a common approach. This led to the adoption of the Global Approach to Migration by the European Council in December 2005. This framework has encompassed the development of the Common Basic Principles on Integration, the development and implementation of the Policy Plan on Legal Migration and policy priorities in "the fight against illegal immigration of third-country nationals", and has provided the basis for EU policies on asylum. While some European developments have had positive implications for the protection of third country nationals, many more have sought to restrict rights, and serve to undermine the integration of all migrants, in particular the most vulnerable groups which include asylum seekers and undocumented workers.

The EU does recognise that larger migration flows may be needed in the future, and policy proposals have been brought forward to enable entry and residence of highly skilled workers, the so called "Blue Card" Directive, and to establish certain basic social and economic rights for third country national workers. In bringing forward such measures the European Commission recognised that the role of economic immigration assumes even more significance in the context of demographic ageing which European countries are already experiencing and are expected to face in the next decades. This presents a clear recognition that not only will inward migration continue, it will become increasingly necessary for the well-being of all within Europe and for economic growth.

The Hague Programme is now coming to an end, and the European Union has called for a renewed commitment to a common immigration policy. There is now a talk of a "Stockholm programme" (under the Swedish Presidency during the second half of 2009) as a follow up to the Hague Programme to set out the EU's renewed commitments in this area. The Hague programme was an important step for the formalisation of EU policy in the areas of migration, asylum and integration. Nevertheless, the period of its implementation has been characterised by an overwhelmingly negative dialogue on migration that has led to the stereotyping and stigmatisation of migrants and their descendants. ENAR's 15 principles come at an essential stage in the process, while the framework for a renewed strategy is being developed. They define the approach anti-racist civil society wants for the EU's migration policy: an approach based on human rights that combats racism and promotes the rights of all.

ENAR concerns about the current dialogue on immigration and asylum

1. It is a fundamental principle of human rights that they apply to “Everyone... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social group, property, birth or other status”.¹



In the European Union, **equal treatment of third country nationals** is both an obligation, under the general principle of respect for fundamental rights, and a political commitment. The Tampere Presidency conclusions in 1999 stated that “The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its member states”. The recent Council Conclusions on enhancing the Global Approach to Migration stated that “The Council reaffirms that the respect of human rights and fundamental freedoms of migrants, the Geneva Convention and due access to asylum procedures lie at the basis of the European Union’s migration policy”.²

2. It is vital that law, policies and practices related to migration and asylum do **not undermine the vision of a Europe without racism**. The danger of this arises from two realities. Firstly, that discrimination against third country nationals affects a significant proportion of Europe’s ethnic and religious minorities. It is often difficult to distinguish between discrimination on grounds of race, ethnicity or religion, and discrimination on grounds of nationality. Secondly, when the debate on migration crosses the line into racism, when the tone and content of the dialogue leads to stereotyping and stigmatisation of migrants, perpetrators of racism and discrimination do not ask to see someone’s passport or residence permit before acting. In this way “legally resident” third country nationals and EU citizens belonging to ethnic and religious minorities become the targets of the racism and xenophobia that a negative debate on migration creates.



¹ Article 2 of the Universal Declaration of Human Rights

² Council Conclusions on enhancing the Global Approach to Migration 2878th GENERAL AFFAIRS Council meeting Luxembourg, 16 June 2008

3. ENAR is concerned that the **focus on the economic role of third country nationals has obscured the goal of equal rights**. Migration is seen as a utilitarian and short-term solution to demographic change whereby migrants will come to Europe for a few years, contribute to the economy, and leave before they become a “burden”. This approach, which treats migrants as economic units and not as human beings, is not consistent with European values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. It emphasises only the role of the migrant as a worker and places insufficient value on the social and cultural contribution that can and is made by migrants to Europe’s economy, society and culture. Those not defined as “highly skilled” are excluded even from recognition of the economic value of migration, excluding recognition of their economic, social and cultural importance to European society. The denial of rights to many migrants, including asylum seekers, undocumented migrants and others, not only has a negative effect on the individuals concerned, but also denies society the fruits of their participation in civic, political, social, cultural and economic life.
4. ENAR is concerned about the **securitisation of the migration and asylum agenda**. A link has been forged between terrorism and immigration by policy makers, the media and in public perception that has resulted in increasingly restrictive and intrusive policies in this area. There may also be a lack of safeguards for the rights of migrants within countries, at borders and in home countries. Examples illustrating this effect include the justification by the Maltese government of detention of migrants on the basis of security, and difficulties obtaining visas where a person is applying from an Islamic country, as highlighted in ENAR’s 2006 Shadow Report from Hungary. Such measures have been criticised by international and European human rights bodies. For example, the report from the European Commission against Racism and Intolerance (ECRI) of the Council of Europe on the situation in Lithuania observes that national security and public order considerations have been mainstreamed into all aspects of asylum and refugee law and have opened significant space for the indefinite detention of foreigners who are considered to pose a threat.
5. Moreover, the **negative public perception of migration and asylum** is being reinforced by a negative political dialogue. The European Bureau of Policy Advisors has highlighted that: *“European citizens are living through times of strongly felt insecurity. Geopolitical Cold War structures have been replaced by an uncertain environment. Europe is challenged by security threats such as terrorism. Global economic competition is growing and results*



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in fears of job losses. Against this background of felt insecurity, the public presentation of immigrants and migratory phenomena by the media and by politicians is often biased or negative, linking them often almost exclusively to security issues. The terminology commonly in



use (such as “bogus asylum seekers” and “welfare scroungers”) has often become pejorative, while in reality migrants consist of different groups with different expectations and opportunities.”³

The role of the mass media in creating a negative discourse on migration must not be underestimated either. The negative portrayal of migration in the mass media can, at least in part, be traced to the dominant political and policy agenda. The EUMC report found a worrying tendency of media following rather than questioning the dominant political discourse on migration, repeating, and legitimising, restrictive policy proposals and xenophobia.⁴

6. An area that shows a disconnection between the EU level discourse on migration and the discourse at the level of member states is attitudes towards **EU nationals who exercise the right of free movement** in the European Union. Evidence shows a worrying increase in racism and xenophobia towards this group, particularly since the accession of the “new” EU member states from Central and Eastern Europe. ENAR’s 2007 Shadow Report on racism in Europe highlights that racism and discrimination can also be experienced by EU nationals when they migrate to another member state. It reports that in Ireland, Sweden and the UK where the labour market is open to all EU nationals (except nationals of Bulgaria and Romania in the case of Ireland and the UK) there is evidence to suggest that nationals of EU12 member states face barriers that have not affected nationals of EU15 member states to the same extent.⁵
7. The current process has been marked by a **lack of dialogue and engagement with civil society**. It is crucial that such a dialogue takes place as it is central to the development of a common European policy on immigration and asylum.

³ Migration and public perception, Bureau of European Policy Advisers (BEPA) 2006, p. 2

⁴ Racism And Cultural Diversity In The Mass Media: An Overview Of Research And Examples Of Good Practice In The EU Member States, 1995-2000, EUMC, February 2002, p. 37

⁵ ENAR Shadow Report 2007, p. 7

15 Principles for framing a positive approach to migration

In response to these concerns, ENAR's policy seminar "Framing a positive approach to migration" in November 2008 put forward 15 principles for building a positive approach to migration. The EU is coming to a crossroads in defining its future migration policy. ENAR believes that such a policy must promote the rights of third country nationals and be firmly grounded in a human rights-based approach. In this spirit, ENAR's 15 Principles aim to give a new, positive impetus to the EU's approach to migration. We urge the EU to abide by them when designing and implementing its future common immigration and asylum policy.

Principle 1: Promote positive values, conceptions and principles

The underlying perceptions and assumptions surrounding migration and how the EU should respond must be tackled. Public perceptions often become political assumptions and these are more often than not based on the premise that migrants should be restricted from fully exercising their human rights, including free movement, and that they are easily replaceable and removable unless it is to the EU's economic benefit. Such an approach leads to an attempt to rationalise racism and xenophobia in the way we act as individuals or legislate at national or community level. It results in restrictive migration policies, discrimination and exploitation of third country nationals, subordinating the interests of the minority to the perceived interests of the majority. This must be replaced by an approach framed by respect for human rights and recognition of the positive nature of diversity in Europe. Such an approach recognises that in a society that embraces diversity the interests of the majority and minority are both met by respect for the fundamental human rights of all.

For example:

The economic, social and cultural importance of migrants - whether "highly skilled" or not - to European society, from the Polish plumber in London to the Lebanese restaurant owner in Tallinn, to the migrant women working in domestic care in Italy, Ireland and many other European countries, and the fruits of their participation in civic, political, social, cultural and economic life must be recognised.



Principle 2: Use positive terminology in the political discourse

Terminology must not perpetuate a negative image of migrants. Human beings cannot be illegal, and language must recognise this. Political and media discourse is particularly relevant in this context. The mass media have an influence on people's attitudes and common knowledge, and it therefore has the responsibility to cover stories accurately, to enhance the democratic process, to respect the law and to uphold fundamental rights.

For example:

The media must bring attention to racist incidents and crime and promote positive images of migrants. Hiring minorities within the media could be a solution in presenting an ethnically diverse picture of society and avoiding negative portrayal of migrants and ethnic minorities.

Principle 3: Take a human rights based approach to migration

The EU's and member states' migration policies must respect the norms, standards and principles of the international human rights framework. Europe has to acknowledge the responsibility that it has as a role model and standard setter and should therefore respect human rights in order that such standards of equality and human dignity can be part of the ideological standards exported by Europe to the wider world. Member states' discretion in the implementation of Community law must be framed in conformity with their international human rights obligations.

For example:

EU member states are for instance bound to respect the European Convention on Human Rights (ECHR) and the United Nations Human Rights Treaties, which also apply to migrant workers, regardless of their legal status.



Principle 4: Comply with human rights instruments

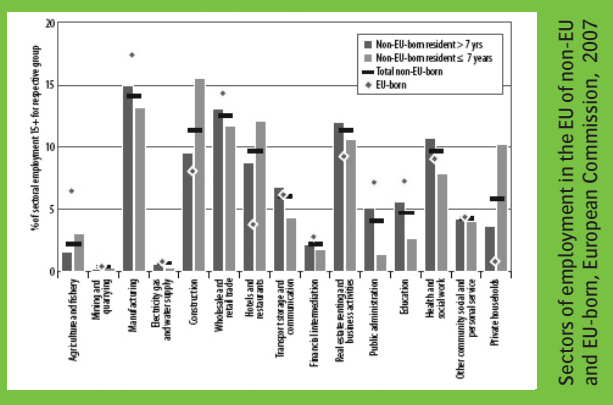
The European Community should sign and ratify international human rights conventions when these fall under shared competence with member states and ensure that all its actions, decisions, regulations, directives and measures are in line with international human rights standards.

For example:

- The European Community should sign the International Convention on the elimination of all forms of racial discrimination, as all member states have already ratified it, just as it has done for the UN Convention on the rights of people with disabilities.
- The Community and its member states should also sign and ratify the International Convention on the protection of the rights of all migrant workers and members of their families.

Principle 5: Make use of demographic data, challenging assumptions

Demographic statistics can feed into the discussion on migration in a positive way when they are used to illustrate the reality of the situation. Demographic and other statistics should be linked with all aspects of migration that need to be publicised - not only that we need migrants because we are an ageing population but also what migrants contribute socially, economically and culturally.



For example:

Demography statistics presented by the French Institut national d'études démographiques (INED) at ENAR's policy seminar on migration tell us that immigration policies cannot counter ageing population in Europe as they bring only a slight retrospective correction to the fertility rates of 30 years ago. However, INED also underlined that immigration is essential to maintain the absolute numbers of active population and to contribute to the good working, for instance, of home care and institutional care.

Principle 6: Ensure anti-discrimination for all

Emphasis must be placed on anti-discrimination for all, irrespective of status or nationality. Derogations and exemptions allowed under existing anti-discrimination legislation have been misused by member states to evade their obligation to ensure that asylum and immigration laws are neither discriminatory nor have discriminatory effects. It has also been used to evade political commitment to ensure fair treatment of third country nationals, for example regarding access to jobs, social housing criteria, welfare limitations, discretionary controls and detention centres. It must also be ensured that the positive impact of comprehensive and strong anti-discrimination policies is made known to interested parties (such as businesses).

For example:

- The exceptions on nationality and legal status should be removed from the EU anti-discrimination directives, as many minority communities in Europe are composed of third country nationals or their descendents and discrimination on grounds of nationality may be difficult to disentangle from discrimination based on religion or ethnicity.
- A non-discrimination clause should be included in the proposed EU directive on the rights of migrant workers. The grounds should include ethnicity and religion as well as nationality in order to guarantee equal treatment of third country workers.

Principle 7: Respect the links between anti-discrimination, integration and social inclusion

Anti-discrimination is inextricably linked with social inclusion and integration. Integration must not be used as a means of restricting the exercise of human rights of migrants and must not exclude or discriminate on any ground, whether on the basis of race or nationality or social or any other status. To this end, special attention should be paid to legislation regarding family reunification, which currently jeopardises both non discrimination principles and children's rights, while disproportionately impacting on migrant women and older migrants.

For example:

EU member states should not introduce integration tests that infringe on the right to family life and/or are discriminatory, by for instance not being applied equally to all third country nationals or by indirectly restricting the possibility of family reunification because of financial requirements. Such "integration" tests run counter to their stated aim of promoting integration.



Principle 8: Enforce existing labour law

Strengthening the implementation and enforcement of existing labour laws under national and Community law and under International Labour Organisation conventions (e.g. the Migration for Employment Convention (Revised) C97 and the Migrant Workers Convention C143) must be a priority for EU institutions and member states.

For example:

- All EU legislative initiatives relating to third country workers - such as the proposed directive providing for sanctions against employers of irregular third country workers - should reaffirm the principles of the uniqueness of labour law to uphold rights and forms of protection in the workplace, in particular for workers in an unequal position of power, such as undocumented workers.
- The EU could insert labour standards and rights into the EU's Common Agricultural Policy agreements: violations of labour standards could be used to halt payments to producers who violate labour law or exploit workers.

Principle 9: Protect workers' rights

Fundamental human rights (such as those put forward in the Proposal for a Council Directive on a single application procedure for a single permit for third country nationals to reside and work in the territory of a member state and on a common set of rights for third country workers legally residing in a member state) must cover all workers irrespective of legal status or skills. It is essential to avoid direct or indirect penalisation of those who face exploitation, for example through the application of detention and deportation policies. The development of entry and/or employment policies that do not push migrants into the hands of smugglers and traffickers must also be a priority.

For example:

The proposed directive on a common set of rights for third country workers should not exclude certain categories of third country nationals, such as seasonal workers - who more often than not are the victims of labour trafficking in many member states - as this severely limits the effectiveness of the provisions on equal treatment.



Principle 10: Ensure policy coherence

Policy coherence with regard to EU migration policy vis-a-vis other relevant EU policies such as employment and social policy, the Lisbon strategy and fundamental rights, is an essential pre-requisite for effective policy making. The lack of policy coherence between the areas of migration, integration, social inclusion and anti-discrimination has in many cases led migrants to fall through the gap left by such a vacuum, exposing them to social exclusion and discrimination. Policy and decision makers must adopt a holistic and coherent approach to integration and migration and recognise that anti-discrimination and social inclusion are prerequisites for successful integration and migration strategies.

For example:

- An EU Open Method of Coordination on anti-discrimination, integration and migration issues could be put into place in order to enable benchmarking and ensure a holistic approach.
- The European Commission's integrated impact assessment procedure is a useful tool as it tries to ensure that social, environmental and economic impacts are taken into consideration in all policy proposals. Such initiatives should be encouraged and extended to member states' governments.



Principle 11: Promote gender sensitive and age sensitive policy making

It is essential to ensure that migration policy is gender sensitive, and that the specific needs of migrant women are adequately addressed. Policy makers must also consider the specific needs of unaccompanied minors, young people, elderly people and specifically young people in employment.

For example:

EU migration policies should ensure access to the right to work, to social assistance and services of general interest to migrant women workers who work in sectors which are traditionally not recognized as “work” such as domestic and care work.

Principle 12: Ensure participation and the migrants’ voice

In order to change the negative dynamic around the migration debate, the migrants’ voice must be heard in EU and national decision making concerning migration policy. In this context the European Integration Forum is a key mechanism to enable civil society and migrant input into the policy making process.

For example:

ENAR is launching a project funded by the Network of European Foundations in 2009-2011 which aims to answer the need for greater participation and voices of migrants. It aims to bring best practices in migrant integration, identified by ENAR grassroots organisations representing migrants, to the European level and enable these practices to inform other countries’ approaches and the EU approach, impacting on constructive integration policies nationally and locally and informing policy at the European level.

Principle 13: Ensure equality in education

It is important to pursue policies that promote the educational attainment of migrant children as well as the education needs of migrants more generally, including the second generation. In this context, the school system should go beyond the classroom and provide targeted support where needed.

For example:

The specific educational needs and issues of migrants should be mainstreamed into current and future EU Open Methods of Coordination in the fields of education and culture through the development of targets and indicators disaggregated by ethnic origin and migrant status, in order to identify and address the scale and nature of racial discrimination in education and training systems.

Principle 14: Recognise the global context

An effective approach must tackle poverty and social exclusion, especially within the context of the global economic crisis. Ethnic and religious minorities and migrants across Europe are amongst the groups most vulnerable to poverty and social exclusion and are often amongst those “furthest” from the labour market, due to the additional barriers of discrimination and racism which they face. The global economic crisis will only exacerbate this reality. This situation needs to be addressed urgently.

For example:

Precise and targeted policies should be developed to address the specific needs of migrants within social inclusion policies. Member states should for instance identify and address specific barriers to labour market inclusion faced by migrants, such as lack of language skills or legal or residence status.

Principle 15: Be proactive not reactive

The achievement of a positive approach to migration requires policy makers and civil society to be proactive in pursuing a human rights based approach to migration.



For example:

- The EU can proactively include equal treatment of third country nationals in the common European policies on immigration and integration, modifying existing and proposed legislation.
- The EU and member states can acknowledge the role of third country nationals’ representatives and anti-racist organisations in guaranteeing that legislation and policy does not lead to unlawful discrimination against non-nationals, and provide for structured and permanent participation of NGOs in the EU institutional debate and decision making process on immigration and asylum.

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ENAR is a network of more than 600 NGOs working to combat racism in all EU member states and acts as the voice of the anti-racist movement in Europe. ENAR aims to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.



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