



ENAR's Response to the DG Home's Migration Consultation:

Debate on the future of Home Affairs policies: An open and safe Europe – what next?

This consultation entails views from the European Network Against Racism (ENAR) and its members throughout Europe on the progress made during the Stockholm Programme to advance a coordinated and transparent future migration policy. This is meant to complement the joint statement made by the European NGO Platform on EU Asylum and Migration (EPAM), of which ENAR is a member, on elements for the future EU Programme on Asylum and Migration and as such, this response is less “technical” to avoid repetition.

Methodology

ENAR members responded to a survey the ENAR Secretariat prepared to enable their contributions and opinions regarding the situation on the ground in the EU Member States impacting third country nationals and EU migrants. The aim was to compile ENAR members' opinions regarding the future challenges and policy priorities on European migration and to influence decisions made on the post-Stockholm Programme.

Survey responses were received from ENAR members in Belgium, Denmark, France, Ireland, Sweden, the United Kingdom, and the European level. Survey respondents were made up of anti-racist and migrant-rights organisations, human rights NGOs, equality bodies, cultural and academic foundations, and voluntary support organisations.

Analysis and ENAR assessment

ENAR is happy that an attempt is being made in the area of migration policies to gradually bring about greater transparency as a consequence of the successive changes introduced to the EU Treaties, as well the increasing need for a more European approach to migration. Yet, we believe there are still many obstacles as far as achieving common European policies, harmonising approaches, carrying out self-assessments, adhering to fundamental rights frameworks, providing financial support, and encouraging burden sharing, among other things, between Member States. The Commission argues that many achievements have

contributed to building a common European culture oriented towards a safer and more open Europe for the benefit of all EU citizens as well as third country nationals. Yet our members clearly provide alternative positions on this, indicating the necessity for a more thorough and critical review of future migration policies.

Building on arguments put forward by survey respondents and by Patrick Taran, President, Global Migration Policy Associates, ENAR encourages that the Commission adhere to the following recommendations:

1. *Know before you proceed* → *Indicators, Monitoring, Evaluation, Infringements*

We need to start with a working assessment of the whole situation, its features, and the policy implications. It is vital to consider whether that what was intended was what was actually needed. This entails greater effort to assess what the Programme seeks to accomplish and in the end achieves in terms of outputs, outcomes, and impact. Drawing on lessons and identifying ongoing challenges from previous Programmes is useful for improving subsequent Programmes.

- Substantial evaluations of the post-Stockholm Programme are required with qualitative criteria for evaluation, identified indicators, and the utilisation of qualitative and quantitative measurement.
- There is a need for the European Commission to require Member States to deliver annual or half-yearly reports, co-signed with some NGOs, regarding efforts to improve conditions for asylum seekers and immigrants.
- There is a need for hard data, analysis, and EU-wide guidelines to ensure access to and portability of rights and social security. Member State governments are lacking the financial resources, know-how and in many cases also the political will to advance on this. As long as fears abound about costs, administrative complications for social protection and social security are likely to remain a challenge.
- Make policies transparent on matters regarding asylum and integration in all EU Member States, incorporating a truly global approach to migration that is not embedded in Eurocentric power positions. The European Commission should closely monitor the implementation of EU migration and asylum policy and make effective use of infringement proceedings in cases of violation or ineffective implementation of EU law.
- In a broadly Euro-sceptic society, more needs to be done by the European Commission to engage and inform about the Programme. There is a need for improved communication dissemination and less legalistic jargon, so that civil society organisations and governments can better address the topic with greater transparency and understanding.

2. *Identify the future agenda*

Look ahead, where we want Europe to be in 20-30 years. Not just in five. Migration, demographics and labour markets do not transform in five years. Unless we address the

future now, the risk is that Europe may be very different in 20 years, different from what we wanted or anticipated.

- Demographic changes, including, declining birth rates and an increasingly ageing European population will continue to be a key concern with consequences on EU Member States' social welfare systems and pension schemes.
- Push factors for migration movements to the EU are not likely to diminish in the future considering economic challenges, poor infrastructures, civil unrest, and climate changes (rising sea levels, devastating storms, desertification), potentially resulting in millions of displaced non-Europeans coming to Europe for protection.
- Europe needs to foster economic growth and development, as it is forced into competing globally to attract migrants to fill labour market shortages. This will have an impact on migration inflows and outflows, affecting migrant workers and their families, including mobile EU citizens.
- As long as the EU remains stuck in a phase of economic decline, however, populist anti-migrant rhetoric will likely remain and be used as a scapegoating tactic by leaders unable to come up with legitimate solutions to move Europe out of financial crisis-mode. This will further have lasting negative impacts for Europe in regard to labour shortages and skills mismatches.
- Hostility towards migrants is also widely manifested, with tendencies leading to incidents of increased brutality, i.e. shootings of groups of migrants, commonplace attacks on and killings of migrants, racial/ethnic profiling, and in some cases, police round-ups and mass detention.
- Meanwhile, the global refugee protection and assistance regime is under pressure, as Member States argue over the scope and costs of refugee protection, burden sharing schemes, and the need to maintain earlier commitments to provide asylum and ensure protection of refugees.
- Is it not essential for the EU to foster a “welcoming and inclusive culture” for migrants? If not, this will have lasting impacts on the migration movements to and from the EU, potentially resulting in decreasing the EU’s attractiveness as a country of destination. It is important for EU institutions to promote a welcoming and inclusive culture that fosters migrant integration as a multi-level process.
- Measures are needed to amend the fragmentation and lack of coherency in current EU and Member State legislation, relegating migrants to different sets of rights. Greater emphasis and coherency is required on issues pertaining to access, movement, status, and services/rights. The current multiplication of statuses for migrant workers must end. European institutions should ensure respect for human dignity and human rights, solidarity, pluralism, non-discrimination, equality and the approximation of rights of third-country nationals to those of EU citizens.
- Not all migration issues need or can be part of a formal EU legal or policy framework. Some may be outside the competences, ability or interest of the Union. However, all of these issues are prominent on governance and public agendas across Europe. All of these issues are integrally related to others, and policy initiatives in one way inevitably affect other areas, so greater attention to a holistic approach is needed.

- Strengthen and promote a coordinated and human rights-based approach among relevant DGs of the European Commission and other EU institutions as well as in Member State and local levels.

3. *Bring all the stakeholders into the room, giving them equal footing*

This entails an entire government challenge, a whole of governance, a holistic mainstreaming of governance. It means social partners – employers, the private sector, and workers - including migrants – as well as civil society and other concerned parts of government need to be at the table and involved equally in providing feedback. There won't be a game without the players, without the full team, on the playing field. So if we want to win the match, we better start strategizing and practicing with the whole team!!

- There is a lack of awareness among NGOs in Member States about the Stockholm Programme. There has been no effort, for instance, by the UK govt. to inform or involve NGOs in this process. It is warned that without information, the Stockholm Programme is seen as irrelevant among the wider public.
- Involve other institutions, the European Parliament, and relevant stakeholders such as NGOs and civil society organisations, in particular migrants themselves in decision on the Post-Stockholm and future of EU migration policies. Consider the different roles these players should have and in what format they should be incorporated in the process in order to ensure the mainstreaming of fundamental rights and stronger political impact in terms of democratic legitimacy.
- Strengthen dialogue with third countries through exchanges between civil society and/or related organisations.
- Improve information dissemination and engagement of NGOs and migrants in the decision-making process.
- Initiatives from National Ministries (working on Security and Justice and migration policy) need to be organised with, among others, civil society and migrants themselves to review, assess and ultimately evaluate such policy.

4. *Take concerted effort to address the following main challenges hindering a rights-based approach as regards structural forms of discrimination:*

- Non-law, non protection, non-recognition of migrants
- Absence of ratifications of Conventions, non-recognition of rights under law
 - Explicit regimes applying lesser rights (such as for migrants under temporary regimes)
 - Absence of effective supervision of relevant law where applicable in nation-states.
 - Absence of existence/access to re-vindication and redress mechanisms
 - Prevalence of violence, violations of rights, victimisation of persons

Recommendation: Promote ratification and full implementation of the specific legal standards recognising and protecting rights of all migrants: the ICRMW, ILO C-97, ILO C-143 and ILO C-189, as well as relevant EU directives.

→Criminalisation of migrants

- Expansion and extension of generalised discourse, legislation and practice of criminalisation of migrants, foreigners, migration, by inference 'minorities' in many cases
- Prevalent political and government discourse of 'othering', exclusion and expulsion
- Reinforcement of identity based on place of origin, with racial-ethnic-religious markers
- Changing legal regimes to criminalise immigration-related infractions
- Generalised shift of migration governance to internal security and police control institutions of States

Recommendations: End the criminalisation of migrants, refugees, beneficiaries of subsidiary protection, stateless, etc. and de-criminalise migration law and infractions to it; end detention of migrants for non-criminal offenses; and repeal exceptionally generalised identity control, surveillance and restriction measures.

→ Increasing xenophobic hostility and violence against migrants

- Widespread direct violence, attacks and killings of migrants reported in all regions
- Specific violence including killings of migrant workers at or around workplaces
- State violence against migrants in mass police operation round-ups and detention in concentration camps
- Collective, arbitrary expulsions, deportations
- Arrests of migrant children in schools
- Raids by heavily armed police troops on individual migrant homes

Recommendation: Stop xenophobia, racism and discrimination against migrants; call for a repeal of discriminatory legislation and policy and a reinforcement of non-discrimination/equality of treatment law and practice; propose and support definition and implementation of national action plans against racism, xenophobia, discrimination; denounce and call for public repudiation of any and all acts of xenophobic violence.

→ Prevalence of sub-standard, abusive employment relations and conditions of work

- Generalised high rates of discrimination excluding migrants from formal employment
- Concentration of migrant workers in 3-D jobs and/or informal work without protection
- Absence of labour inspection, or inspection 'neutralised' by immigration enforcement

- Absence of unions and other mechanisms for self- and collective defence
- Generalised de-regulation formally denying, withdrawing or diminishing OSH, working conditions and employment relations protections in general, and to migrants in particular

Recommendation: Ensure decent work for all, including migrants with vigorous enforcement of labour standards; extending and providing capacity for labour inspection where migrants are concentrated; fully 'firewall' labour inspection from immigration control.

→ Lack of migrant organisation and participation, particularly as workers

- Working conditions and isolation impeding or preventing organisation
- Legal prohibitions on migrant/undocumented participation in trade unions, official posts
- Direct repression: detention, deportation of migrant organisers, outlawing of migrant unions
- Hostility or disinterest by existing worker unions to recruit and organise migrant workers
- Emergence and promotion of 'alternative' non-union forms of organisation for migrant workers
- Formal or informal restrictions on migrants' ability to form or join associations, CSOs, NGOs

Recommendation: Support freedom of association and participation of migrants in unions and associations; advocate for legislation ensuring freedom of associations rights for migrants; support migrants organising in unions, by unions; foster options for outreach to engage migrants in unions, associations, CSOs, employer organisations and foster the representation of Europe's diversity in such posts.

→ Instrumentalisation of migrants and migration

- Migrants characterised as economic 'actors of development'
- Migrants' private earnings termed a 'development resource', subject to State policy intervention and to differential taxation
- De facto off-shoring divestment of social reproduction costs and training investments for labour force by recipient countries

Recommendation: Contribute to and support research and documentation on the real extent and character of migrants' economic and social contributions; identifying underlying conditions and incentives, namely structural factors contributing to exclusionary and discriminatory outcomes to detriment of migrants; determine viable and effective means to impede, prevent and repress to ensure access to justice for all.

Annex: Survey results

85% of the survey respondents felt that the Stockholm Programme did NOT adequately achieve its aim to provide guidelines for common EU policies relative to the protection of fundamental rights, privacy, minority rights and rights of groups of people in need of special protection, as well as of European Union citizenship. Its objective was also understood to provide a geographic and legal space in which Freedom, Security and Justice could be assured as a stable, lasting and accessible reality with plans to establish a new European “security architecture” by extending cooperation in the areas of police, military and secret services, as well as measures in the area of border-crossing data exchange between state authorities and internet surveillance. **14% of the survey** respondents assessed that the aims of the Stockholm Programme **were partially achieved**, but **criticized that the aims were less ambitious compared to the Tampere Programme**.

60% of the survey respondents believed these aims were appropriate considering geopolitical migration movements, Europe’s changing demographic trends, labour shortages and skills mismatches, Europe’s financial challenges and the spread of racist hate and violence throughout EU Member States. The other **40% thought the Stockholm Programme aims were NOT appropriate**.

80% of the survey respondents assessed that the disappearance of internal border controls in the Schengen area in the realm of the Stockholm Programme **produced satisfactory outcomes** and/or could be perceived as positive. In contrast, **20% of those surveyed assessed that NO satisfactory outcomes** and/or positive interpretations could be perceived from the disappearance of internal borders in the realm of the Stockholm Programme.

In addition, **100% of the survey respondents assessed that NONE of the following measures/policies** initiated or completed between 2010 and 2014 in the realm of the Stockholm Programme **produced satisfactory outcomes** and/or could be perceived as positive.

- External borders of the EU are managed now in a more coherent manner
- Europe made important advancements towards establishing a Common European Asylum Policy
- The European Arrest Warrant simplified the procedures and timelines for surrender between Member States
- Cooperation in civil law facilitates the lives of citizens on a daily basis and police cooperation helps make Europe more secure
- Cooperation in civil law has contributed to increased obstacles for third country residents on a daily basis in Europe
- Police cooperation helps make Europe more secure
- Information dissemination and awareness raising measures were carried out to inform the residents and citizens about migration policy aims and impacts

60% of the survey respondents thought **the Stockholm Programme did NOT positively contribute to migration** as regards to the European pact on immigration and asylum,

whereas 40% were uncertain of the impact of the European pact on immigration and asylum.

60% of the respondents thought that **from the perspective of a third country national** the Stockholm Programme had a poor impact, 20% assessed a moderate impact, and 20% answered that it depends.

40% of the respondents thought that **from the perspective of an EU migrant** the Stockholm Programme had a poor impact, 20% assessed a moderate impact, 20% assessed good impact, and 20% answered that it depends.

60% of the respondents thought that **from the perspective of their EU Member State** the Stockholm Programme had a moderate impact and 40% assessed it to have no impact.

20% of the respondents assessed as far as **respecting the values of the European Union** that the Stockholm Programme had a poor impact, 40% thought there was no impact, and 40% assessed a moderate impact.

60% of the survey respondents thought there are **inconsistencies in respecting the rights and needs of all migrants** in the EU are in need of further policy reflection and modification.

40% identified **diverging policy approaches between the local, national and EU levels, causing inconsistencies** to signify challenges for migrants to access their rights in the EU and are in need of further policy reflection and modification.

40% identified the **failure of their government to foster integration as a two-way approach** to signify challenges for migrants to access their rights in the EU and are in need of further policy reflection and modification.

20% of the respondents identified **all of the following areas to signify challenges** for migrants to access their rights in the EU and are in need of further policy reflection and modification:

- Failure to bridge gaps between law, implementation and practices
- Inability to ensure legal labour migration that guarantees protection against abuse and exploitation
- Failure to grant refugees access to the labour market within a one year period
- Failure to maximize the positive contributions migrants make to European society
- Failure to ensure non-discrimination of migrants in housing, education and other areas
- Failure to deter xenophobic, anti-migrant sentiment and violence or provide effective remedies for victims

80% of the respondents were NOT satisfied with the overall progress that had been made as regards migration policy developments during the Stockholm Programme, while **20% were uncertain.**

40% of the respondents did NOT see the relevance for expanding Europol and Eurojust, while **40% saw the relevance,** and **20% were uncertain.**

40% of the respondents did NOT see the relevance for expanding centralising resident registers, while 40% saw the relevance for expanding centralising resident registers, and 20% were uncertain.

100% of the respondents thought that greater transparency was necessary regarding the use of military intervention against immigration, police intervention outside of EU territory, the expansion of the European Gendarmerie Forces and intensified cooperation of secret services.

20% of the respondents confirmed that their government did NOT establish mechanisms for civil society participation in the process of implementing migrant integration policies and decisions that impact them, while **80% confirmed that their government did establish such mechanisms, yet among these, 20% noted that migration participation is very limited.**

In those countries where migrant participation is encouraged in discussions on decisions that would impact them, **50% of the survey respondents identified human rights NGOs and anti-racist NGOs to be the institutions typically involved**, whereas **25% identified refugee rights advocates and 25% identified migrant-run NGOs** to be included.

50% of the respondents assessed that this type of participatory consultation is based on formal participation, while **50% assessed this as being informal.**

75% of the respondents noted recognisable differences in achieving migrant integration by governments depending if they were at local, national or European level, **25% did NOT note recognisable differences** in achieving migrant integration by governments depending if they were at local, national or European level. One respondent assessed **the biggest challenge and critique the post-Stockholm Programme lies in the fact that is not binding for the EU Member States.**

80% of the respondents criticized that the Stockholm Programme was not transparent enough, while **20% of the respondents assessed that it was not transparent at all.**

Respondents identified the following **priorities and recommendations in terms of the future of migration and asylum in Europe:**

- reduce the time needed to process asylum applications;
- make necessary effort to provide sufficient translation when needed (during asylum application processes);
- offer unique service institutions or “one-stop-shops” throughout the entire European Union;
- ensure that asylum seekers are not sent back to unsafe countries;
- ensure provisions are made for appeals in cases where asylum applications are not granted positive decisions;
- find solutions that ease processes for legal migration movements to Europe and simplifies processes to attain work visas and conditions for accessing the labour market;

- ensure free movement within the Schengen area and fundamental rights for all EU nationals and long-term residents without any restrictions;
- enable more flexibility regarding the mobility of non-EU, temporary migrants;
- address and counter the structural and systemic factors that reproduce exploitation and discrimination of migrants, taking into account the particular risks of female migrants;
- apply a gender and ethnic specific approach in migration policies
- ensure migrants attain equality of conditions and equality of opportunities with indigenous/native populations; European institutions must ensure respect for human dignity and human rights, solidarity, pluralism, non-discrimination, equality and the approximation of rights of third-country nationals to those of EU citizens.
- ensure stronger rights for minorities in general;
- enforce vigorous responses by governments to anticipate, discourage, and prevent manifestations of racist and xenophobic hostility against foreigners, and prosecute perpetrators immediately; convey a message of no tolerance for xenophobia and violence towards migrants; sanction public figures who spread anti-migrant messages and/or engage in public brutality and violent repression against migrants;
- end the practice of ethnic and/or racial profiling;
- acknowledge that migration movements to and from Europe are likely only to continue in the future and formal, structured solutions that incorporate newcomers are imperative for their smooth transition;
- establish a coherent, international framework that provides for legal or social protection for persons displaced across borders by environmental or climate change impact; this needs to include determinants for applying rights protections, policy responses, and guidelines on how to accommodate displaced populations unable to return to unliveable homelands;
- debunk myths about migrants relying on EU welfare systems, being deviant, criminals, or unwilling to respect Europe's cultural norms and values;
- instead measure and promote the positive contributions migrants make to and for European society and economy, especially since migration is and will continue to be key for Europe's development;
- in this regard, support research efforts to highlight the economic role and contributions of migrants to GDP growth, job creation, enterprise creation, invention patents (half of all are registered to foreign born in Europe and North America), skills renewal and replacement, fiscal impact, net contributions taxes paid by migrants;
- political will and sufficient resources are key for achieving quality policy-making, implementing good practices on the ground, and nurturing a post-migration environment that fosters the inclusion and integration of newcomers;
- improve information dissemination and engagement of NGOs and migrants in the decision-making process;

- involve other institutions, in particular the European Parliament, and relevant stakeholders, such as NGOs and civil society organisations in decision on the Post-Stockholm and future of EU migration policies. Consider the different roles these players should have and in what format they should be incorporated in the process in order to ensure the mainstreaming of fundamental rights and stronger political impact in terms of democratic legitimacy;
- strengthen and promote a coordinated and human rights-based approach among relevant DGs of the European Commission and other EU institutions as well as national level actors;
- ensure that social cohesion be maintained by deliberate legal, institutional and practical measures. It is vital to make anti-immigrant rhetoric and actions expressly unacceptable;
- set forth for the post-Stockholm Programme more ambitious aims than those existing in the Stockholm Programme. It was also stressed that courage among political leaders is necessary to move forward progressively on this matter.

For further information or follow up on ENAR's position on migration and integration, please contact Shannon Pfohman, ENAR's Deputy Director of Policy at Shannon@enar-eu.org