

Report from DG Home and Social Platform Hearing on the Future of Migration and Asylum in Europe December 3, 2013

OPENING REMARKS

Ms Heather Roy, President of Social Platform

Ms Roy welcomed the participants to the NGO hearing co-organised with the Commission to discuss challenges and opportunities of migration in Europe. Ms Roy also welcomed further future cooperation between the Commission, the European NGO Platform on Asylum and Migration and Social Platform.

While both mobility within the EU and migration to Europe from outside the EU are increasing, the current Stockholm programme is coming to its end. Participants and the panellists representing Civil Society Organisations (CSOs) were therefore asked to give their views for the future based on their involvement and every day work with migrants and the people who assist them. She said that it would be necessary to consider the social dimension of migration and not see migrants as general commodities moved around to fill labour market gaps.

Mr Laurent Muschel, Director of Migration and Asylum, DG Home Affairs, European Commission

Mr Muschel welcomed the participants on behalf of the Commission by underlining the importance of the views of civil society organisations (CSO) on the future of Asylum and Migration policy in the overall preparation of the Commission's post-Stockholm Communication. He mentioned the unfavourable political climate in view of the upcoming European Parliament election. In this context, civil society would have a key role to play to put the debate on migration on a better footing, but he stressed that civil society's message had to be credible and balanced.

In preparation for the post-Stockholm Communication, Mr Muschel noted that the European Parliament's report was expected in December, then the Commission would adopt a Communication early March 2014 and European Council in June is expected to discuss and decide on the strategic guidelines, which will frame the area of freedom, security and justice.. The Commission had launched a call for contributions on the Europa website with a deadline of January 21. The final stakeholders' conference would take place on 29 and 30 January in Brussels. Until the end of January the Commission would therefore be in listening mode.

Mr Muschel outlined the main successes and challenges for the future of migration and asylum policy. In the field of legal migration, six Directives have been adopted even if the piecemeal approach remains. Therefore, it would not be appropriate to devise new legislation before finalizing the on-going negotiations on legislative proposals (e.g. the Directive on students and researchers) and implementing the existing acquis. Mr Muschel called on CSOs to make the case for legal migration. In order to do so, more facts and figures would be necessary as to why the EU need migrants (e.g. demographic development, job skills etc.) and CSOs need to be vocal to try to change the debate and later develop new legislation.

Revised asylum legislation was adopted in June 2013, developing a clear and extensive Common European Asylum System. The priority now would be to effectively implement the new rules. At present, recognition rates of asylum vary a lot; reception capacity is under constraints; and the capacity and quality of asylum systems diverges between Member States. The Commission would undertake infringement procedures against the Member States that have not implemented the asylum acquis correctly, but the Commission would also help Member States deal with the challenges they faced, e.g. through emergency funding to help Member States to improve their reception conditions: €50m had been allocated in emergency funding since October 2013 to Bulgaria, Malta, Italy and Cyprus.

Mr Muschel suggested that it would be necessary to develop more pooling of capacities of Member States, in particular in developing Country of Origin reports and on the reception of asylum seekers. This had been already discussed in the framework of the Task Force Mediterranean.

More far-reaching proposals in the field of asylum could include protected entry procedures and setting up a humanitarian visa system, but there was a lot of resistance from Member States who are concerned by potential pull factors. He noted that on the issue of search and rescue at sea, Member States appeared to be prepared to rescue when a boat was sinking but were afraid of conducting search missions, as could this could act as a pull-factor for more migrants. Finally, one of the biggest challenges was the integration of migrants and refugees into the receiving society.

Ms. Doris Peschke, Chair of the European NGO Platform on Asylum and Migration

Ms Peschke reminded about diversity of views on migration and asylum in Europe but she also observed diversity and different priorities in the responses by NGO members of the Platform.

Before discussing the future priorities, Ms Peschke proposed to look back at Tampere 1999 and what Member States agreed then. It was the first framework that tried to balance and shape migration policies based on international law and conventions. Some of the proposals had not yet been fulfilled, so the main challenge would be to overcome the current imbalance and persuade Member States to be a part of this system. NGOs would need to gain credibility in their messages but they would need to convey their opinions jointly with the Commission.

Migrants and beneficiaries of protection were known to be marginalised and targeted by xenophobia and racism. These issues of fear needed to be addressed in a credible but not simplistic way. The quality of the legal framework needed to be insured, including through implementation, the setting of standards, and through an evaluation and monitoring mechanism to learn lessons from experience. A balanced approach was needed between action at the border and ensuring protection needs. Further work was needed on alternatives to detention and to follow up on the Directive on trafficking with a victim-centred approach.

As it was 10 years since the Common Basic Principles on Integration and Ms Peschke suggested that the integration agenda is mature enough to work further with Member State governments to enhance the participation of migrants in the receiving societies should be looked into to ensure a two-way integration process. High unemployment in one Member States did not mean that there were no labour shortages elsewhere. Coherence and cooperation between different DGs was crucial. The rights and dignity of migrants and asylum seekers as well as address fears of marginalised people present in our societies should be taken seriously.

SESSION I Access to Europe: challenges and tools linked to entry into the EU

Chair: [REDACTED] Red Cross EU Office

The scarcity of legal ways to entering the EU had led to migrants taking dangerous routes to Europe. A balanced approach was needed; so far there has been an emphasis on border control and externalization. Many considered that the EU could play another role to promote solidarity across the EU to prevent the tragedies that have been witnessed. To this end, the Red Cross had issued a policy paper with nine policy recommendations.

[REDACTED] Amnesty International European Institutions Office

According to [REDACTED], Europe detained people, including children, under horrible conditions. There were problems in all Member States regarding conditions, lack of access to legal remedies and assistance. Detention had an impact on the health and psyche of migrants in terms of leaving them with a lack of purpose and hopelessness. At the same time, CSOs did not have the full picture because Member States did not provide information about their detention conditions. It was critical to make this information public. Independent inspections of detention centres should be ensured in accordance with international standards.

But the use of detention, as a migration tool, was questionable in the first place. There was now a momentum to move towards alternatives. There were two approaches: either the traditional law enforcement approach or a human rights approach, building on engagement with migrants and mutual trust. In the short term the Common European Asylum System needed to be implemented. Support should be given to those who provided alternatives to detention and forbade the detention of minors. There was also a need for independent monitoring and data collection on detention practices.

The starting point for border management was the State's responsibility to protect the rights of migrants but instead there appeared to be a lack of a human rights' framework and instead there were push-backs at borders and violent treatment. Border practices needed to be monitored to get the full picture of what was happening. Cooperation with third countries on border management was problematic when third countries did not respect human rights. Protecting borders should not be more important than protecting human rights.

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referred to an ECRE publication on the different conditions and practices in 21 countries vis-a-vis Syrian asylum seekers.

According to , access to protection was not only about the physical access but it also included fair examination in compliance with international law. Physical access to Europe was in many cases not possible; there would be obstacles such as detention, lack of information, the impact of the Dublin system, e.g. in relation to family provisions. She called for rethinking the Dublin system in the light of fundamental rights. The Common European Asylum System would need to be properly implemented (without forgetting that Member States could apply more favourable standards, e.g. for the detention conditions) and applicants would need to be properly informed to access and assert their rights.

stressed the need for training of officials, legal representatives and interpreters, but the key to success, in her view was application of the knowledge into every-day work. Evaluation of existing training methods and its impact was needed, in particular of the content of the EASO training curriculum for its compliance with the Charter of Fundamental Rights (involvement of Fundamental Rights Agency was suggested). Guidance and pooling of good practices would also be needed, as well as monitoring of transposition and compliance. NGOs would be well placed to provide information, facts and figures on a situation in Europe. The respect of ECJ and ECHR jurisprudence would need to be monitored and finally, allocation of funding at national level would need to be properly assessed.

Churches Commission for Migrants in Europe

In the opening statement, admitted that despite the crisis, Europe needed labour migration, especially when looking at demographics in Europe. People were migrating to have a better life but the only way for many would be through irregular channels, and this became a 'survival of the fittest' approach, which was not sustainable.

suggested re-examining what led the Member States to refuse the proposed Directive on the conditions of admission and stay of third country workers that the Commission put forward in 2001. He called for an approach to legal migration that would not be sectorial and piecemeal, but that was cross-cutting and based on needs and rights. Directives needed to be coupled with social standards, developed through involvement of social partners and other Commission services.

Admittedly, quotas were a national competence and the volume of admission of economic migrants would remain a Member State competence but the procedures of admission for different jobs could be jointly organized in the form of a legal instrument, or dialogue with Member States, which could lead to greater competitiveness of the EU as a whole. This would go hand in hand with effective integration policies for migrants, which respect the right to family life.

In his view, the labour migration functioning through back doors with lots of costs, e.g. from trafficking should be put in halt. Despite the fact that trafficking was dealt with as a part of organized crime, he saw many commonalities with labour migration, also as good migration policies would be

the best prevention against trafficking. The anti-trafficking directive from 2011 was a good instrument but there were clear indications that some Member States had not yet transposed it, others had but only some elements of it. He called Commission for ensuring full transposition by e.g. establishing a Contact Committee for peer-to-peer exchange (including NGOs) and by infringement procedures. Practical support on the basis of the Victims Directive should be unconditional to the cooperation with law enforcement. The vulnerability of children must also be protected. Finally, he asked for using correct terminology regarding trafficking and keeping relevant jurisprudence of the ECJ in mind.

██████████ at Caritas-Europe

According to ██████████, family reunification was one of the legal ways to access Europe and the right to family reunification and to family life needed to be respected and implemented in a harmonized way in Member States. The 2003 Directive on Family reunification had been further interpreted through ECJ case law but some rules in Member States would still make it difficult for migrants to bring their families. The 2011 Green paper identified short-comings on the implementation and studies showed evidence of practical obstacles, e.g. it is difficult, lengthy and costly to access visa and it can take between 4-5 years before a family can live together. She concluded by stressing the need for interpretative guidelines to the family reunification directive.

Comments from the audience

- Refugee resettlement as a durable way to enter the EU, as opposed to short-term solutions, such as temporary protection and humanitarian visa should be also mentioned.
- The development of countries of origin should be addressed in order to reduce the push factor. We need to take into account global economic inequalities as well as the environmental and humanitarian crisis.
- There would be a clear need for low skilled care workers in an ageing Europe. Majority of all migrant women tended to be engaged in migrant domestic work, some advancement would be needed on the ILO Convention.

SESSION 2 Access to rights for migrants living in the EU

Chair: Mr Jan Niessen, Director Migration Policy Group (MPG)

Mr Niessen, recalled the Commission's statement that 'a balanced message' was needed and that in this context it was important to ask questions such as "who is balancing and who is measuring it?", "how good and how bad are the policies?", "how can they be improved and implemented?" and "who is benefiting?" As another aspect, he mentioned the duration for which people are called 'migrants' and how they could become full citizens and contribute to wellbeing and prosperity.

With regard to the audience, he mentioned that the NGOs at this hearing were organisations rooted in Europe with national organisations in the Member States who had hands-on experience of working with migrants and had done policy analysis – even before these issues was high on the EU agenda. One should not forget the measures which do work and have a positive impact in order to convey a positive message. As examples, he referred to family reunification laws which were applied as well as the discrimination legislation which was – though to a lesser extend – working well. Similarly one should look into figures on migrants in employment instead of their unemployment statistics only.

██████████ at European Anti-Poverty Network

██████████ started his contribution off by stressing that more than 120 million people were in or at the risk of poverty and social exclusion. In 2011, 46.6% of migrants had been in or at the risk of poverty and social exclusion, a figure that has since increased due to the economic crisis. Migrants were denied access to rights and resources due to direct and indirect discrimination and the failure of anti-poverty and social inclusion strategies. They suffered from disadvantages on the labour market, lack of access in adequate housing, limited access to education as well as a lack of access to social rights and services. He called for a more social Europe for migrants as well.

added that a two-way integration process meant obligations and rights for migrants but could only be successful if basic principles were taken into account. Only through a holistic approach and a Europe of solidarity for all could issues such as racism and xenophobia which were promoted by extremist parties be tackled. What was needed is access to right resources, investment in inclusive society, promotion of anti-discrimination and diversity education and empowerment of migrant to build their own representative bodies. Moreover, he stressed that international human rights obligations would have to be met, such as the EU Charter of Fundamental Rights, the Social Charter and the UN Declaration of Human Rights. This could be done by integrating migration in the EU inclusion and anti-poverty strategies, the Social Investment Package and EU Semester process to allow monitoring of progress on migrants integration. Member States should share good practices, organize peer-reviews and have a targeted approach for use of the European Social Funds.

the European Network of Migrant Women

first presented her network, The European Network of Migrant Women (ENoMW), which represents authentic voices on equal rights, treatment and equality outcomes. She reiterated her belief that without gender sensitive measures migration could not be taken seriously because migration affected women and men differently. Most migrant women entered the EU legally but lapsed into irregular status. Migrant women were prevented from family reunification due to strict employment requirements which entailed a dependent status for women. If the women's position was not levelled up, the Europe 2020 Strategy employment target could not be reached since migrant women make up 29-30% of economic inactive population, while men account for only 3%.

The highlighted the need to work on issues of qualifications (migrant women being over qualified), de-skilling (prevention to work due to depended status and over-representation in low skilled work), self-employment, precarious work (prostitution as a way to survive) and entrepreneurship (e.g. 90% of all new business in Belgium were started by migrants – this option should be conceived as a choice not as a last resort). The health and care sector was treated as secondary labour, and yet this is where migrant women found employment. Migrant women were also more vulnerable to threats such as domestic violence due to the link between their residence permit and their spouse.

called for cooperation between all actors, also within the Commission, so that the links between access to employment, housing and education could be strengthened. She also reminded of the need to transfer good-practice from the local level to the EU. Finally, she stressed the fact that the EU could not afford to waste the contribution of migrants to the European economy.

, Eurodiaconia

According to , migrants faced practical, administrative and legal barriers in access to services. Without information, language skills or interpretation and identification documents access to services could become impossible. Moreover a lack of income to cover health costs could tip someone into poverty. She mentioned that service providers were under pressure to report irregular migrants to authorities and that the reduction in welfare provision was worrying and visible through the work of Eurodiaconia's members who had been used to do community development work but who nowadays had to shift the focus to the emergency support.

reminded of the need to guarantee emergency care and to earmark funding for services (emergency, health care, accommodation, interpretation). Furthermore, legislation is needed to ensure that services providers do not risk penalties and fees to deliver their services to irregular migrants. Every individual should be empowered to be included in and contribute to the society. However, people could not work if they didn't have access to education, health, and accommodation. Migrants should be enabled to volunteer. In addition, she asked for a mainstreamed and rights based approach in the Europe 2020 Growth Strategy, into the Social and Active Inclusion and Anti-poverty Strategies, the National Reform Programmes and the Country Specific Recommendations.

Mr Freek Spinnewijn, Director of the European Federation of National Organisations working with the Homeless

Mr Spinnewijn referred to the homeless (shelter) system which included all different types of migrants (settled migrants with permits, asylum seekers, undocumented migrants). He recalled

evidence which showed differences across Member States as to which percentage of migrants is part of the homeless population. In Italy and Spain, for example, migrants accounted for up to 50% of the homeless, in the Netherlands 40% and in Denmark the number was 20%. Among the people forced to sleep on the street (rough sleepers), migrants represented more than half in the UK, because many didn't have access to shelters.

According to him, the homeless sector catered for flaws in other areas. He raised the question whether there are reception conditions to be met for asylum seekers in line with the EU law – wouldn't then the use of certain types of very basic collective homeless shelters not only be an inappropriate solution but also a violation of EU law. Moreover, the Dublin regulation was under pressure and recent case law prevented Member States from sending back migrants to countries of origin. Because they would be homeless in country of entry which meant that homelessness became an argument for deciding where in Europe migrants should live.

For undocumented migrants the homeless system was a last resort but it caused problems for the sector in terms of funding (which in many EU Member States the sector doesn't receive for undocumented migrants) and achieving the objective of transferring homeless people who frequented shelters to sustainable housing situations (which is impossible for undocumented migrants). In some countries publicly funded shelters were not allowed to accept undocumented persons, which was the case in Denmark while in France there is a right for everybody independent of legal status to access shelters.

F. Spinnewijn reminded that homelessness as a result of free movement of EU citizens was a small but increasing problem, which had previously occurred in East-West movements and could now be seen in South-North movements as well (while the East-West movement still exists). Some Member States didn't understand that return could only be done voluntarily and that the use of night shelters was a burden on national social systems. He stated that return could be done on a voluntary basis or on basis of being a threat to health/safety of a host country or a burden on social assistance. F. Spinnewijn welcomed jurisprudence on whether use of shelter could be considered a burden and whether homeless people as a rule can be considered a threat.

He described it as a task of social NGOs to use the existing legislation in order to start litigation since judges could be better allies than the policy makers which could also positively impact the NGO's credibility. FEANTA had brought complaints against Netherlands (and France and Slovenia) and the case was currently pending before the Committee on Social Rights but it had already led to immediate and serious measures by the state to ensure that all people have access to shelters while awaiting the final decision.

Comments from the audience

- Citizenship should be based on residence.
- The discourse around welfare tourism could have a very dangerous impact on the political climate in which the NGOs and policy makers have to operate.
- Member States should strengthen policies by the EU to provide jobs (especially for 3rd generation migrants)
- Undocumented migrants are likely to suffer from exploitation (e.g. women don't get access to SRHR)
- Free movement and migration should be kept separated from effective lobbying and litigation purposes and there should be support for litigation

SESSION 3 The future of migration and asylum in Europe

European Policy Centre

introduced the session saying that it was about what would happen after the Stockholm programme, being it with a perspective of in 5, 10 or 15 years? He expected the Post-Stockholm document to be a strategic guidelines on freedom, security and justice, dealing not only deal with

Asylum and Migration but also with civil and criminal law and justice. He stressed that some conclusions from Tampere 1999 were still valid this days.

Speaking on behalf of the Mr François Crépeau, UN Special Rapporteur on the Human Rights of Migrants

In his letter, Mr Crepeau admitted that he had observed the broadening of a right-based approach in relation to regular migration; the advancement on external borders and a Fundamental Rights Officer at FRONTEX. However, the increasing competence within the EU had not corresponded, in his view, with the rights for migrants themselves, in particular for irregular migrants – that were viewed as a security concerns that would need to be stopped. Additionally, migration and border control hadn't been matched with resources for human rights.

In view of Mr Crepeau, sealing borders would fail because migrants would continue to arrive. For many migrants there would not be any other option to irregular migration (through smuggling etc.) and they would be willing to do dirty, difficult and dangerous work that EU citizens didn't want to do. This could foster discrimination and exploitation.

The EU and Member States would need a comprehensive policy to address pull factors and the shortages at the labour market, also for low-skilled workers. The EU would need to establish a firewall between immigration enforcement and services (e.g. health, education etc.) and fight the criminalization of assistance in some Member States. Irregular migrants might pose an administrative offence but they should not be treated as criminals. Mr Crepeau insisted in terminology; migrants might be in an irregular situation but they might not be illegal. He called for a counter discourse to note the benefits of migration to the country of origin and destination.

Mr Crepeau stressed that the EU law under the Return Directive should be a last resort; he mentioned existence of the inadequate procedures of detention and detention of children (reference to a report by Mr Crépeau from 2012 on detention of irregular migrants). He called for reasonable and proportional detention and asked the EU to explore alternatives to detention.

added that it was important to refer to international human rights standards. Within the EU there was a false understanding of difference between the EU values and the ones from outside the EU while all Member States had signed up to respect international human rights standards.

Ms Shannon Pfohman, Deputy Director at European Network Against Racism

Ms Pfohman started by underlining the need for long-term strategies and a holistic approach bringing together different DGs and different Ministries on national level, to respond to the global situation of economic, social and moral crisis. The emerging issues were linked to the access to rights thus being a first or second-class citizen. Given that Member States were positioning themselves stronger than the Commission in relation to integration and migration policies, the question asked by Ms Pfohman was about the role the EU could take to address the spread of racist, xenophobic and anti-immigration policies by European and national politicians.

Ms Pfohman underlined that NGOs needed funding to be able to continue to contribute – together with the Commission - to debunk myths and to promote migrants' positive contributions, as a way to combat structural discrimination and impunity and enable migrants' access to justice. Data collection was in her view a key way to assess policy impact and monitor progress.

Ms Pfohman referred to the Council of Europe's report on cases where free movement has been stopped.

Ms Michele LeVoy, Director of the Platform for International Cooperation on Undocumented Migrants

In the recent years, Ms LeVoy observed a shift in public discourse, from equality of all residents to rights of citizens only. At the same time, the evidence showed that greater security had not

strengthened the rights of citizens but it had led to further violations of human rights and loss of lives. The question was posed 'How can we change the story to show that migrants contribute to our societies?'

Ms LeVoy called for building evidence on how people become undocumented, as fighting border control would not by itself solve the problem of irregular migration. Debunking myths, such as: 'detention deters irregular migration' or 'regularisation programmes are a migration magnet' was needed. NGO would need to have a dialogue with stakeholders to provide the evidence at hands, produced by NGOs as well as think tanks such as the European Policy Centre and Migration Policy Group and the United Nations.

Ms LeVoy admitted that the Seasonal workers Directive was the first to focus on low skilled workers but the need for more directives in other areas, such as construction and domestic work remained. Low-skilled workers should not be regarded as second-class workers. The EU needed to look at the use of regularisation as a policy tool and to ensure safe access to services for migrants (the EU could e.g. make use of FRA's guidelines on detection practices). Ms LeVoy called for a gender mainstreaming approach and better coordination between DG HOME and DG JUSTICE for guidelines on the Victims Directive (which was applicable to all no matter residence status, in particular women victims of violence), e.g. through a focal point on human rights and migration (the way existed for trafficking). There was also a need to take into account a child rights framework, and move beyond the Stockholm programme focus on unaccompanied children. She recalled the four rulings on the Social Charters relating to undocumented children and their social rights, stressed that detention was never in a child's best interest.

Finally, Ms LeVoy suggested analysing the practices of some Member States who had legislation to protect undocumented migrants since decade and opening the EU funding to undocumented migrants as well.

the European Council on Refugees and Exiles

called for a system that would be truly effective and fair and accessible to both protection and territory.

The objectives of the Tampere Programme should re-state and reinforced, and the priority should be to build a system that would allow for an identification of those in need of protection and would be effective in implementing the protection. He agreed on turning the focus to the implementation of the CEAS and strengthening the role of ECJ, but in his view, the CEAS would still allow for derogations by Member States and left gaps such as lack of provisions for intra-EU mobility for beneficiaries of international protection, transfer of protection and mutual recognition of asylum decisions. He talked about a paradox: the EU fought for free movement of EU citizens, yet when it came to migrants a reverse trend was observed.

According to , the Dublin system raised serious doubts about its effectiveness and danger of double standards between Member States. That is why he suggested a health check of the Dublin system in the future.

The new ideas stepping up solidarity between Member States, such as joint or supported processing of asylum applications were interesting in view but raised substantial questions on their feasibility and potential bridges of fundamental rights of asylum seekers, e.g. when officials of one MS would work in another not being fully aware of the reality and legal setting of this country.

Finally, he stressed that a comprehensive system of early warnings was needed, in which various elements, e.g. under EASO, Dublin etc. would complement each other.

Comments from the audience

- There was a need for a gender sensitive evidence based external and intra-EU coordination and strategic guidelines.
- Human rights approach is needed, but the limitations deriving from the infringements being often a political decisions should not be forgot
- The evidence is needed to change the narrative on migration and asylum in the future

