

## ETUC position on the new European Commission's five-year programme on migration (EC Communication “An Open and Secure Europe: Making It Happen”)

Adopted at the meeting of the ETUC Executive Committee on 11-12 June 2014

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DG Home affairs launched a Communication aimed at setting priorities in the migration policies for the next five-years. In it, the ETUC recognises a new narrative for the migration phenomenon in Europe.

However some areas of concern have been detected and improvements can be introduced.

Third-country nationals should benefit from a full ‘equal’ treatment at the workplace and on the labour market, including access to employment in public services. The EU working plan needs more concrete proposals to ensure participation of migrants in the labour market with long-term perspectives.

Trade unions urge action to eradicate any practice of exploitation of migrant workforce within the informal economy. For that purpose, the EU needs a framework of action on regularisation of migrants.

The common asylum system made positive progresses, but ‘responsibility’ and ‘solidarity’ are not visible yet. The ETUC will continue to gather political consensus on the 4 proposals set in its Resolution for a more effective protection of migrants and refugees, their lives and their rights on the EU's borders.

The EU and its agencies should be strongly committed to the respect of fundamental human rights and international conventions protecting migrants, asylum-seekers and their family members.

The ETUC is ready to build a structured dialogue on migration with DG Home affairs, in coordination with DG EMPL. The ETUC will also make a claim for a seat in the Consultative Forum of FRONTEX.

### **Background**

The European Commission DG-Home Affairs published in March 2014 a Communication to the European Parliament and the Council entitled An Open and secure Europe: making it happen - COM(2014) 154 final.

Therein, DG Home affairs sets priorities in the migration policies for the next five-years (2015-2019). Four out of five chapters are dedicated to movements of people across EU Borders, including economic migrants, asylum seekers and legitimate travellers.

With the previous five-years programme (the Stockholm Programme) having reached its end, the Communication paves the way for the definition of the next EU policy in the migration field and triggers the legislative process which will involve European Parliament and Members States on the same footing (co-decision procedure).

The ETUC set-out its priorities in the Action Plan on Migration and within the ETUC Resolution for a More Effective Protection of Migrants and Refugees, their Lives and their Rights on the EU's Borders.

The ETUC priorities concerning economic migration can be summarised as follows:

- a) Recovering a correct balance between the right to free movement of labour and the protection of social standards, mainstreaming equal treatment in the entire EU acquis on migration and fostering a rights-based approach to integration and inclusion.
- b) Enhanced access to labour market facilities and protection including training and recognition of skills and qualifications, access to social security and portability of pension rights.
- c) Encouraging the exit of undocumented migrants from their irregular condition or undeclared employment.
- d) Encouraging Member States to promote effective integration policies with well-funded public services, and enhancing ability of trade unions to provide services and assistance to migrants.
- e) Supporting collective bargaining and social dialogue - boosted by an increasing membership among the non-national population - as an instrument for improving diversity management in the workplace and adapting the current rules to accommodate an increasing presence of third country nationals in the workplace and in the labour market.
- f) Tackling trends behind the movements of third-country nationals triggered by international trade, with special focus on secondment of work or other forms of cross-border service provision implying movement of workers.
- g) Enhancing the EU legislation, investing more on a structured dialogue on migration with DG Home affairs, in coordination with DG Employment, pursuing different objectives: an enhanced implementation and enforcement of the existing acquis; a reduced fragmentation of the current legislation on economic migration; legislation supporting stable or stabilization of migration flows.
- h) Following up the engagement taken in the Action Plan on Migration aimed at advocating the ratification of the main international conventions including the UN convention on the protection of the rights of all migrants and their family members (1990) by all EU governments and the Convention 189 on domestic work.

In the field of movements connected to people seeking international protection the ETUC expressed the need of an enhanced asylum policy calling upon Member States for greater responsibility vis-à-vis the international community and even more importantly vis-à-vis the obligation to respect human lives and human rights for those seeking protection in line with the UN 1951 Convention on refugee status and its 1967 protocol.

In the urgent context of the soaring pressure on the Southern borders of the EU and with the urgent aim to stop unacceptable deaths in the Mediterranean Sea and on land borders such as those on Spanish-Morocco borders in Ceuta and Melilla or between Greece and Turkey, as result of the infringement of obligations stemming from international conventions, the ETUC advanced its proposals:

- i. Migration policy should become a shared responsibility and competence of the EU and all Member States. EU institutions and their agencies must implement a genuine common policy for asylum and migration. Resources must be adequate to the tasks they seek to tackle and they should be bound by, and made accountable to, fundamental human rights as enshrined in the European Treaties.
- ii. The pushing back of boats should be replaced with the duty of search-and-rescue in the sea. An EU Regulation shall remove any national legislation allowing prosecutions against those who provide assistance to people in need. The ETUC also denounces the use of protective equipment which is able to cause serious physical injury such as that on the border fences in Ceuta and Melilla.

iii. Implementation of a programme called FRONTAID aimed at creating welcoming public structures under the EU umbrella in areas exposed to large scale arrivals of migrants and asylum-seekers in compliance with the respect of fundamental rights as enshrined in the EU law. Such welcoming structures will: provide first-aid assistance; start and manage procedures concerning identification of migrants or asylum seekers; proceed to a preliminary examination of an asylum application in order to point out the competent Member State according to the Dublin II Regulation; cooperate with the competent Member State to instruct an application for other kinds of permits; supervise the triggering of return procedures, when needed, and ensure an effective right of appeal.

While renewing the strongest commitment of the ETUC Secretariat to the full implementation of the Action Plan on Migration and of the ETUC Resolution for a More Effective Protection of Migrants and Refugees, Their Lives and Their Rights on the EU's Borders; and having taken into account the discussion held in the ETUC Migration Working Group and the suggestions that came from its members;

***The Executive Committee is called upon to adopt what follows as contribution to the Communication 'An Open and Secure Europe: making it happen'.***

#### **FOR ADOPTION**

##### ***A new Narrative for the Migration Phenomenon in Europe***

The ETUC appreciates the attempt to change the narrative of the migration phenomenon in Europe. The Communication stresses that migrants enrich our societies with an enjoyable diversity and insists on the contribution that migrants bring to the EU economy.

The EU is entering a phase of consolidation of the progress achieved so far. No new legislative initiative is expected in the coming years. The EU Commission wants to concentrate efforts on an improved coherence among different domains of the migration policies. Of interest is also the idea of going toward "a single area of migration" codifying and streamlining the substantive conditions of admission as well as of the rights of third-country nationals.

The reference to the necessity of adjusting the EU policies to both short and long term economic needs can be welcomed. It is acknowledged that people wish to come and work in Europe, some temporarily and some on more permanent basis. This should help bring stronger attention to rights of and opportunities for long-term migrants, their families and children, and for more investment on integration and inclusion policies.

The focus on the contribution of migrants to the EU economy shifts the attention to the labour market and its inclusiveness. Special emphasis is on recognition of qualification, access and portability of rights acquired under the social security schemes, and intra-EU mobility of migrants.

If the contribution to the EU economy can be better achieved through a precise analysis of the labour market needs, the ETUC welcomes the EU Commission's requirement for a closer involvement of social partners in this exercise.

A new stance is visible on the rights-based approach to integration and all political levels are called upon to show greater responsibility. National political leaders are urged to take decisive action to ensure an open and secure Europe where fundamental rights are guaranteed, building on the Charter of the Fundamental Rights of the EU.

Concerning the management of the Schengen area, the intentions to remove obstacles in obtaining visas for travellers, migrants and asylum-seekers are clear. Concerning the latter, positive developments are expected from the declared intention of pushing

Member States to undertake greater responsibility and solidarity for relocation of asylum seekers, or for tackling emergencies causing disproportionate inflows of people in search of international protection.

Concrete proposals are also advanced or envisaged to prevent hazardous journeys to cross-the EU borders and to take would-be migrants away from traffickers.

### ***Areas of Concern and possible Improvements***

Against these positive developments, the ETUC identifies reasons for concern and suggestions for improvement, here grouped in four chapters mirroring the four chapters of the Communication linked to movements of migrants across the EU Borders.

### **Chapter 1. For an effective Policy on Migration and Mobility.**

#### **Equal treatment at work must become an EU standard for third-country nationals.**

The reference to 'fair' treatment and non-discriminatory access to the labour market is a not a sufficient standard for EU legislation. Third-country nationals should benefit from a full 'equal' treatment in the workplace and on the labour market, including access to employment in public services. This principle should not be limited to integration policies but should feature the overall efforts for better implementation and enforcement of the EU *acquis* on migration.

The EU working plan needs more concrete proposals to ensure a stable presence and opportunities for professional development and participation of migrants in the labour market with long-term perspectives. In this sense, it is important to enhance recognition of qualification and skills for all migrants and not only for those who have been admitted under the schemes for entry and work of high skilled migrants.

DG HOME affairs should implement a stronger coordination with other services of the EU Commission. In particular, mobility from third countries and building/recognition of qualifications, job and skill matching would be better managed if designed within a single frame of action, to be agreed with DG EMPL and DG EAC.

The same applies to all the available tools to support mobility, skills and diplomas recognition and non-discrimination, which are in place for EU mobile citizens and should be available to third-country nationals working in the EU.

Equal treatment should be ensured to the third-country nationals employed in a Member State as is already the case for EU citizens. The equal treatment principle should protect third-country nationals employed in a Member State against discrimination on grounds of nationality, ethnic origin, or gender as regards access to employment, conditions of employment and work, in particular with regard to remuneration, dismissal, and tax and social advantages, by ensuring equal treatment, under national law, practice and all measures/protections set in collective agreements, in comparison to nationals of that Member State (Recital 3, Directive 2014/54/EU On Measures Facilitating The Exercise Of Rights Conferred On Workers In The Context Of Freedom Of Movement For Worker).

#### **The ETUC demands and a structured dialogue with DG Home affairs.**

A dialogue on migration policies can be structured taking inspiration from existing practices in other EU Commission services such as the Advisory committee on Free Movement in DG Employment, or other forms of structured social dialogue in DG REGIO and DG EAC.

DG EMPL should be charged with ensuring uniform protection for migrant workers or detect risks of under-protection or distortions of the labour market including undesired practices of social dumping. DG EMPL should make a better use of the competences in

article 153 of the TFEU and finalise a proposal for a framework directive on rights of third-country nationals at work.

In DG Home Affairs, the European Migration Network already engages representatives of national governments in a structured network that can be used for the purpose of a closer exchange with trade unions on the most important areas of migration policy. Enlargement and implementation of such a network can be the starting point for setting up a proper structured dialogue in the migration field.

Such a structured dialogue should ensure that all legislative initiatives and policies aimed at governing labour conditions and implementing integration of third-country nationals and their families (regardless of their legal basis) pass through proper consultation with social partners at EU level before their adoption, as well as at national level for their transposition and enforcement.

The EU needs a clear strategy for regularisation of migrants and to fight their exploitation within the informal economy.

In the EU Commission's words, a credible approach to irregular migration needs a combination of measures. But this combination still relies on policies enhancing the 'security side' of the problem which have proved to be insufficient. Indeed, it is recognised that the offer of illegal labour opportunities by employers is a pulling factor for irregular migration or a cause for migrants to fall into an irregular position. Trade unions denounce the fact that entire areas of the EU economy depend on irregular work of migrants. Trade unions urge action to eradicate any practice of exploitation of migrant workforce within the informal economy and/or related to the undocumented position of the worker.

For that purpose, the EU needs a framework of action both on legal channels of migration not limited to high-skilled professionals and on regularisation of migrants. The employers' sanction directive is not a sufficient instrument to discourage irregular employment of migrants but most of all is not a suitable instrument to ensure migrant workers with appropriate rights and opportunities for transforming their irregular job into a regular one, having evaluated the individual case. The EU should address this issue with the view of offering opportunities of regular stay, granting permits of stay and full equal treatment, for migrants attracted and exploited in the informal economy. This also implies more effective prosecution of employers perpetrating offences against migrant workers.

International trade and third-country nationals posted within cross-border provision of services.

The ETUC urges for a clear stand on the protection of fundamental rights of individuals performing their work on the territory of Member States. This issue will likely become significantly more relevant in the coming years. The EU Commission links migration policies with trade policies and wants to encourage short-term movement of high-skilled professionals supplying services. A more flexible visa system can facilitate temporary stays of non-EU workers.

Trade unions highlight the fact that the EU institutions have not been able to detect dangers behind labour mobility linked to cross-border provision of services. The recent adopted Intra-Corporate Transfers Directive is an example of that. The EU scheme for intra-corporate transfers, if not corrected at the moment of the transposition into national laws, endangers the protection of fundamental labour rights of workers performing their job within EU territory. This affects both workers of third countries (whose situation in the labour market would be differentiated) and workers of the destination countries who, as a result of social dumping, would face pressure to lower their working conditions.

This area – linking labour movements and international trade - calls for a renewed and integrated strategy framing Visa Policies and Economic Migration into a single policy

framework. All measures aimed at opening legal channels for labour migration, implying the issue of a residence permit or of a visa, should set clear rules for what conditions of employment and work are concerned. Such rules should strictly abide by the rule-of-the-law-of-the-place-of-work.

## **Chapter 2. On Schengen, Visas and External Borders.**

More flexible provision of visas can be an opportunity for Europe. However it should be accompanied by clear rules clarifying that all individuals on EU territory can claim for the respect of the fundamental rights of the EU and defining clear rules for standards at work, even in the context of provision of services. Such rights must be firmly anchored to the principle of equal treatment based on the respect of the *lex loci laboris* (Law of the place of work). The ETUC considers that all attempts of governing labour migration flows and conditions of employment should abide by the principle of equal treatment, irrespective of the type of working contract and length of stay.

The ETUC underlines the dangers coming from the ‘trading’ of the visa/permits. It creates a ‘double standard’ that is not acceptable when fundamental human rights are at stake. The possibility to ‘purchase’ visas, long-term residence permits or even citizenship to those who possess large resources is an increasingly common practice in many Member States.

This liberal practice by which nationality is regarded as a good that can be acquired on the market is at odds with the daily experience of trade unions which witness the difficulties (and often human tragedies) that thousands of people suffer attempting to see their fundamental right finally recognised. Third country nationals experience unjustified delay or the denial of their rights to family reunification. The same happens for people seeking international protection.

## **Chapter 3. On a common European Asylum System in Practice**

The common asylum system has made progress, but ‘responsibility’ and ‘solidarity’ have yet to materialise. It is necessary to discern structural reforms of the EU Asylum Package from urgent measures to tackle emergencies set by sudden large scale arrivals of people caused by extraordinary events or humanitarian crisis.

Structural reforms must include the revision of the Dublin Regulation, by enhancing the protection of asylum seekers during the process of establishing the State responsible for examining the application, and by clarifying the rules governing the relations between states<sup>1</sup>. Displacement of refugees is already possible under the Dublin Regulation scheme, but statistics prove that the resettlement of asylum seekers is limited to a handful of cases. Closer cooperation between national authorities and the EU institutions can trigger mechanisms of mutual support, through a balanced approach taking into account the population of each country and also alleviating the situation of Member States subject to disproportionate influx.

Member States should give asylum-seekers the chance to lodge a request for international protection in their own country or in a transit country, without being obliged to face dangerous trips to the EU, likely arranged with criminal organisations. The ETUC

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The Dublin Regulation provides rules and criteria to allow a sharing of the burden for refugees. European Directives set common standards for dealing with asylum and protection of migrants and set rights of refugees and their families or third-country nationals entitled to international protection. REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)]

urges the European Commission to advance proposals once the feasibility study on possible joint processing claims outside the EU is finalised.

The different agencies and programmes active within the European Asylum System should finally help a more effective resettlement of asylum seekers. These instruments should give priority to the interest of the migrant and be respectful of fundamental rights of the EU.

FRONTEX should abide by fundamental human rights. Border guards and operational staff of FRONTEX have to comply with international conventions calling for full respect of human rights. In this sense, the ETUC deplors the lack of a genuine dialogue on trade union rights between the EU agency and EPSU, the European Federation of Public Service Unions, notably regarding the common training programme of border guards. This is all the more urgent in view of the EC plans to step up FRONTEX's coordinating role of national border guards.

The ETUC will take the necessary step to claim a seat in the Consultative Forum of FRONTEX. The Consultative Forum's task is to promote the highest level of transparency and respect for Fundamental Rights in all FRONTEX activities.

Unfortunately, the situation on the Southern borders is not yet under control. Thousands of migrants and asylum seekers are attempting to cross the EU borders through land or sea and Member States are still facing emergencies.

The EU should be equipped with a clear welcoming strategy, which is still missing. The current architecture for migration policy has been built on the idea of defending the EU borders and to impede irregular arrivals. Too much has been spent on this purpose without clear returns. New institutions and suitable public resources are needed to increase the welcoming capacity of the EU as a whole, to improve coherence and transparency in the decisions concerning asylum requests or requests for international protection, to relocate asylum-seekers in a second Member State in based on solidarity and in respect of the rights of the migrants and their interests, to provide them with perspectives of life and work while the decision for international protection is still pending.

Concerning in particular the emergency situation in the Mediterranean Sea, the Mare Nostrum Operation, implemented by the Italian Government, showed that search and rescue can be effective and many lives can be saved<sup>2</sup>. Italy was already facing great difficulties in welcoming and assisting migration flows crossing the sea and several thousand migrants are expected to arrive during the upcoming summer. Now is the time to take serious steps to share the burden between Member States in a show of solidarity. Enhanced cooperation and solidarity among member states is necessary to abandon the emergency approach and adopt a structured European Plan for management of humanitarian corridors, to ensure the transport of refugees in safe conditions, and for their hospitality and care. Only in this way can the fight against human trafficking be effective.

Concrete proposals have been advanced in the ETUC Resolution For a More Effective Protection of Migrants and Refugees, their Lives and their Rights on the EU's Borders, with particular reference to the FRONTAID programme, and the ETUC will continue to

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Mare Nostrum Operations started in November 2013. Frontex estimates an increase of arrivals equal to +823% in the first 4 months of 2014 (25,650 people have arrived in Sicily and 660 in Apulia, 1,257 are minors). At the end of the year arrivals will amount to 80.000. On average, 6,000 people arrive by boat each month. The Italian Government estimate that several hundred thousand people wish to leave the Libyan coasts to cross the Mediterranean Sea. In 2012, Italy received 17,352 requests of asylum. The number of refugees in Italy are 64,779, ranking 6<sup>th</sup> among the member states for presence of refugees.

gather political consensus to open effective discussion and negotiations with the European Commission on this.

In the abovementioned Resolution, the ETUC claimed for a brand-new welcoming policy<sup>3</sup>. Welcoming structures should be set up and run under the EU public control with the sufficient human and material resources including interpretation facilities and appropriate training on international, EU and national rules on refugee law to provide a fair, fast and accountable service. They should also provide the necessary information on workers' rights and contact details of local trade unions and free legal aid.

#### **Chapter 4. External Dimension of Migration Policies**

The GAMM (Global Approach to Migration and Mobility) sets the EU priorities in steering the external dimension of migration policies<sup>4</sup>. GAMM should be able to address causes of migration and refugee movements at their roots. Special attention should be paid to countries on the EU borders.

It is necessary to better analyse the role of private investments, especially of multinational companies. When locating their operations in developing countries or when recruiting staff from abroad, multinational companies often exploit gaps in wages and labour protection between developed and developing countries.

In the framework of the GAMM, the ETUC will advocate for measures for the private sector to respect corporate transparency and accountability and ILO labour standards, including the prioritisation of the local development against the immediate drawing of profits, as affirmed in the Trade Union response to the EC Roadmap on the Communication on "Strengthening the Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries"<sup>5</sup>.

Furthermore the GAMM should be able to re-think relationships between the richer and poorer part of the world, for a more integrated vision of global aspects of migration. Origin countries must be supported in their path toward democracy and growth based on improvement of working conditions. They should be helped to build migration laws that are respectful of human and labour rights of migrants and of the international standards for protection of asylum-seekers as they arrive or transit on their territories. In this field the trade union movement can play a role in providing support to trade unions in origin countries. The ETUC Network enhancing Assistance for Migrants provides assistance in this regard.

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3 See Fourth Proposal in the ETUC Resolution for a more effective protection of migrants and refugees, their lives and their rights on the EU's borders, available on <http://www.etuc.org/documents/etuc-resolution-more-effective-protection-migrants-and-refugees-their-lives-and-their#.U3HiKPmSzbo>

4 GAMM (COM(2011) 743 final) is the overarching framework for the EU external migration policy, complementary to the EU foreign policy and development cooperation. Dialogue and cooperation with non-EU countries in the context of the GAMM is based on the identification of common interests and challenges. It has evolved into focusing on four main priorities: improving the organisation of legal migration and facilitated mobility; preventing and reducing irregular migration in an efficient, yet humane way; strengthening the synergies between migration and development; strengthening international protection systems and the external dimension of asylum. In addition, respect for the rights and dignity of migrants is an essential cross-cutting dimension of this policy framework.

5 Available on [http://www.ituc-csi.org/IMG/pdf/tu\\_statement\\_ec\\_roadmap\\_private\\_sector\\_inclusive\\_sustainable\\_growth\\_.pdf](http://www.ituc-csi.org/IMG/pdf/tu_statement_ec_roadmap_private_sector_inclusive_sustainable_growth_.pdf)