

Caritas Europa's annex to the European Commission survey consultation on legal migration

Caritas Europa is the Catholic network working with people of all faiths to end poverty and to promote the dignity of all people. Caritas Europa has 49 member organisations in 46 countries across the European continent, including in all Member States of the European Union and the vast majority of Council of Europe member countries. We are also one of the seven regions of Caritas Internationalis, which has 162 members operating in 200 countries/territories around the world. This is important to mention, as it signals our intention to not present Eurocentric solutions, but rather to consider a holistic approach with a global vision for the common good.

We believe that people and the environment, not profits, should be at the heart of all policies. We oppose all kinds of exclusion and support all initiatives that promote sustainable development that benefit everyone and enable all people to find a meaningful role to play in society. We also believe in the importance of dialogue as a tool for building trust in relation to fostering inclusive societies.

Caritas Europa is not a one-issue organisation, which enables us to understand, contextualise and draw links across different policy areas, and the topic of this consultation overlaps with migration policies, social and labour market policies, and aging and health care policies, among others.

This annex provides further insights to some of the elements raised in the survey.

Legal status and regularisation

Several of our members have highlighted the tremendous negative impact the COVID-19 pandemic has been having on migrant workers, despite the crucial role they play in keeping several segments of our economies (e.g. agriculture, food production and distribution, and health and social care) up and running during these difficult times (and beyond). Precarious employment contracts, harsh working conditions, informal employment, exclusion from social security and access to public services have amplified the economic and social consequences of the pandemic for migrants as well as their risk of exploitation. Loss of employment and income without access to a safety net has pushed many people into poverty, and has dramatically reduced remittances to families back home. Migrants who have precarious work contracts or legal statuses risk falling into irregularity and poverty, which is exacerbated due to the economic consequences of the pandemic and disturbances in the states' administrations in charge of dealing with granting legal status and residence permits.

In this regard, it is key for the European Commission (EC) to promote the good practices that several Member States (MS) have implemented, such as flexible policies related to administrative procedures and legal status (e.g. automatic renewal of residence permits, temporary regularisation of the legal status in Portugal, regularisation campaigns for the agricultural, domestic and care sectors in Italy). The EC should also stress the existing possibilities under EU law for MS to grant a temporary or permanent legal status, such as for instance under the return directive¹, the anti-trafficking directive and the employer sanctions directive². We also call on

¹ "Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory", DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 6(4), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDE>

² Article 13.4: "Member States shall define in national law the conditions under which they may grant, on a case-by-case basis, permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals involved", and recital 27 "To supplement the complaint mechanisms, Member States should be free to grant residence permits of limited duration, linked to the length of the relevant national

the EC to urge MS to withdraw the obstacles that some national administrations put in place in the regularisation procedures of persons who meet requirements laid down in EU law (e.g. lack of appointments to provide the requested documentation, etc.).

It is also worth stressing that the protection of the rights of third country nationals cannot be solely tied to the employment and labour market situation. The strengthening of labour and legal channels must necessarily be accompanied by flexibility in renewing and/or modifying authorisations according to the reality of the labour market itself, allowing for bridges between the different situations (employed, self-employed, entrepreneur) in order to avoid potential workers falling into irregularity.

We also encourage the EC to discuss with MS the issue of regularisation as a policy option, among others, rather than as a taboo, that taking due consideration of the national context and reality can make sense for a variety of reasons (economic, social, humanitarian, public health) and avoid situations of limbo. Even if harmonisation in the field of regularisation is not foreseen, some measures coordinated by the EU could promote good practices and streamline the procedures. The Spanish system of *arraigo social* and *arraigo laboral* could, for instance, inspire other MS. In the first system, a temporary residence permit can be granted after the third country national has been in Spain for at least three years, is integrated in society and has a job offer allowing the applicant to be independent and autonomous. This system could nevertheless be improved to streamline regularisation. For instance, the condition requiring an applicant to be in possession of a full time job contract for at least one year to be eligible for regularisation should be withdrawn. Third country nationals who have a job offer should be allowed to stay under the *arraigo social*, regardless of the time spent in Spain.

We would like to add some further elements related to questions on the regularisation criteria set out in the survey. It is paramount to ensure that the criteria used are clear, transparent, objective and proportionate to ensure that regularisation can actually be implemented. The creation of an independent interdisciplinary commission, composed for instance of lawyers and members of the civil society, could determine the establishment of such criteria. Regularisation modalities should not give disproportionate power to employers, which may lead to a situation of protracted exploitation. Rather, it should allow migrants to apply for regularisation independently from the employer. The status granted should be clear, stable and durable, to ensure that migrants do not fall back into situations of irregularity.

Ultimately, in line with the welcomed change in narrative that the Home Affairs Commissioner is promoting to foster a positive take on migration, we call on the EC to avoid using the terms “illegal migration” and “legal migration”, which tend to criminalise in the public eye migrants in irregular legal situations. Instead, the terms “irregular migration” and “regular migration” are preferred references, and they are aligned with the nomenclature used at the global level (e.g. in the UN Global Compact on Safe, Orderly and Regular Migration).

For more information, see the following statement, articles and OpEds that we published on the impacts of COVID-19 on migrants:

- OpEd “Why COVID-19 shows that migrants’ integration in Europe is as important as ever”, 18/12/20, <https://www.euronews.com/2020/12/18/why-covid-19-shows-that-migrants-integration-in-europe-is-as-important-as-ever-view>

proceedings, to third-country nationals who have been subjected to particularly exploitative working conditions or who were illegally employed minors and who cooperate in criminal proceedings against the employer, DIRECTIVE 2009/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052&from=EN>

- OpEd “Time to recognise migrants’ contribution to Covid-19 response”, 30/06/20, <https://www.euractiv.com/section/non-discrimination/opinion/time-to-recognise-migrants-contribution-to-covid-19-response/>
- Article “Migrants and COVID-19. Challenges and opportunities”, 22/06/20, <https://www.caritas.eu/migrants-and-covid-19-challenges-and-opportunities/>
- OpEd “Undocumented workers are Covid-19 ‘elephant in room’”, 27/04/20, <https://euobserver.com/opinion/148161>
- Joint statement “Without rights for agri-food workers, Europe’s food supplies rest on shaky ground”, 16/04/20, <https://www.caritas.eu/wordpress/wp-content/uploads/2020/04/Joint-statement-farm-workers-final-layout-16April2020.pdf>

Equality of rights, social policies and non-discrimination

What kind of labour market does Europe need and what is our vision of society? This should guide the way forward. We need to develop a more inclusive labour market and address education and training, since these are key tools to solving unemployment issues. The aim should be to simplify migration procedures and give migrants clear employment-related rights.

As rightly highlighted by the EC in the Fitness check on legal migration, current EU rules on labour migration apply a vertical and sectorial approach and are thus fragmented, entailing several gaps and mismatches and creating different sets of rights depending on a migrants’ skill levels. We would thus favour a more horizontal approach, which could potentially take the shape of an EU code on migration, as suggested by the EC in the consultation survey. Nevertheless, it is key that such a code should not lead to a downward levelling of migrant workers’ rights.

Preamble 15 of the European Pillar of Social Rights says: “The principles enshrined in the European Pillar of Social Rights concern Union citizens and third-country nationals with legal residence. Where a principle refers to workers, it concerns all persons in employment, regardless of their employment status, modality and duration.” Considering this, migrant workers in the EU must have the same rights and obligations in terms of work and social benefits (e.g. unemployment allowance, sick leave, protection and hygiene at work, portability of social security benefits including pension rights, etc.) as other workers, without discrimination. Working in the EU means contributing to and benefiting from social protection, and accessing social rights under the same conditions, in line with the European Pillar of Social Rights. Equal rights, fair treatment and non-discrimination for all workers should thus be ensured in the new policies developed by the EC and MS.

One way to ensure effective implementation of the European Pillar of Social Rights is also via the ratification of Revised Economic and Social Charter and collective complaints procedure by all MS, which should also accept the personal scope as interpreted by the CoE’s European Committee of Social Rights. Stronger protections linked to the EU Charter on Fundamental Rights are likewise necessary.

Any forthcoming policies should also be strictly aligned with regional and international rights and standards on labour rights (ILO, UN, CoE, SDG 8.5.5 on Decent work and economic growth and 1.3 on social protection system).

For more information, see:

- Caritas Europa’s contribution to the EC consultation on the Action Plan for the implementation of the European Pillar of Social Right, <https://www.caritas.eu/wordpress/wp->

[content/uploads/2020/11/201102-EC-consultation-on-EPSR-action-plan-%E2%80%93-CE-contribution-%E2%80%93-final.pdf](https://www.caritas.eu/content/uploads/2020/11/201102-EC-consultation-on-EPSR-action-plan-%E2%80%93-CE-contribution-%E2%80%93-final.pdf)

- Caritas Europa's publication on access to services: <https://www.caritas.eu/access-to-services/>

Family reunification

Family reunification policies contribute to ensuring a smooth integration of some migrants into the local societies where they have family, and further help to reduce incentives for irregular migration. Family reunification can also facilitate mobility, including for highly skilled migrants, as third country nationals might be reluctant to embark on job careers in Europe if rules on family reunification are burdensome and not properly implemented. But regardless of the level of skills, family life is not a benefit, but a right, and should be implemented as such by MS. We think that the consultation pays too little attention to how to improve the implementation of the right to family life for legally staying third country nationals.

Our members highlight the existence of many practical, administrative and financial obstacles in the implementation of EU laws on family reunification, which lead to long, frustrating and expensive processes. Difficulties are particularly acute for the beneficiaries of subsidiary protection. Despite not being specifically mentioned in the EU family reunification directive, the EC guidance on the said directive and UNHCR highlight the need to facilitate family reunification for refugees and beneficiaries of subsidiary protection alike. Several MS restrict family reunification for beneficiaries of subsidiary protection in the law (e.g. Germany, Austria, Sweden), and if no such exception is made in the law, the practice makes it more complicated for beneficiaries of subsidiary protection to exercise the right to family reunification (e.g. Belgium). More generally, several MS contemplate reforms to make access to family reunification more complicated. The material and practical obstacles that applicants encounter in general include: high material requirements, medical insurance, DNA test, access to embassy, visa fees, burdensome bureaucracy, pre-departure integration measures, etc. These elements amount to de facto obstacles, not always proportionate, that restrict the right to family life. Disabled people face also discrimination in some MS, because the welfare benefits they rely on in some cases are not considered as income to be taken into account for the minimum income threshold required to reunite family members.

These legal and defacto obstacles should be accounted for and tackled by the EC when developing new policies related to regular migration.

Cooperation with third countries on regular migration and the EU Talent Pool

We welcome that the EC is looking at ways to expand partnerships on labour migration with third countries, and we would want human mobility to be further facilitated for different skills set, including for low and medium skilled workers.

These partnerships, such as the Talent pool, must keep in mind the consequences that labour migration has on the countries of origin, and must ensure that policies are fair, without unjustified unequal treatment and are anchored in a human rights-based approach. It is, for instance, important to avoid brain drain, and to ensure decent and equal working conditions, -among others by involving social partners in the negotiations of these partnerships. Labour migration opportunities and labour contracts must provide migrants with a stable and

secure status that open up access to the social security system in order to avoid precariousness, or fall into irregularity and destitution.³

With regard to the international recruitment of qualified people from third countries, we stress the importance of carrying out a prior search in the MS for people of foreign origin with the same abilities and of making the administrative procedures for the recognition of their qualifications or professional skills more flexible. In this way, people in an irregular administrative situation can be regularised without MS or employers having to go to their countries of origin to be recruited.

Domestic and care workers

Considering the wealth of experience of our members, including Caritas organisations from Austria, Bulgaria, Germany, Moldova, Romania, Slovakia, Switzerland and Ukraine, Caritas Europa is able to highlight obstacles related to fair working conditions and challenges with respect to the rights of mobile migrant care workers in the EU. Many of these obstacles were heightened during COVID-19, for instance:

- Lack of recognition/attention/support in service provision for elderly persons and those with disabilities, i.e. social care or home care workers.
- Lack of (or no) Personal Protective Equipment (PPE) & Testing in home care or institutional care for elderly persons and those with disabilities - priority given to other sectors including to hospitals and healthcare, making it much more dangerous for migrant care workers to continue to work safely. Many of them also may not have had sufficient health care insurance, potentially putting themselves and their clients at greater risk.
- Staff shortages, departures, sick or on leave and many services forced to stop during lockdown (e.g. home care workers due to border restrictions).

The COVID-19 crisis has also shown that migrant care workers have been subject to unfortunate treatment, one may even say “harassment”, when it comes to the neglect of pragmatic and fair solutions, such as the establishment of care worker corridors along the borders. In this context, it would have been plausible to install professional registers, which could have listed migrant care workers as occupational commuters, who could have been allowed to cross borders, regardless of the distance between the border and workers’ professional jobsites. Given the fact, that care workers are generally understood to be “relevant for the social system” or “system-relevant”, such a solution would have been more than adequate for solving the omnipresent fear of a collapsing care system and would have given clarity to everyone involved in the matter.

The COVID-19 crisis clearly demonstrated how fragile and unsustainable Europe’s current home care migration model is. The current situation has exposed problems that have been lying dormant, hovering underneath the surface for years, making clear the necessity of implementing long-term solutions and emergency plans. In Europe today, with an ageing population and a system reliant on mobile care workers, this is expected to worsen. In places, where immigration is being curtailed, like the UK, we can expect that there will be too few migrants in sectors crucial to recovery, such as health and social care. The question now remaining is how the system of migrant care work can be reshaped in the light of these structural shortcomings? European policy makers should act now to provide for more assurance and guarantee a fair treatment to migrant care workers and their care families in these exceptional situations.

³ See for instance this blog on Putting Talent Partnerships into Practice: <https://www.coe.int/en/web/portal/-/new-video-for-migrant-children-explaining-their-rights-in-age-assessment-procedures>

Hence, it would be important to ensure fair wages, ensuring that the 24-hour care workers are paid dignified wages in accordance with local standards, and that the majority of the money paid by the families is not going to the employment placement agencies. Moreover, ensuring the same conditions for every care worker in Europe would be desirable. It should also be mandatory that home care work be accompanied and better connected to professional nursing services. Care workers should be legally recognised as "essential workers" similar to health professionals, especially during health emergencies such as COVID-19. Their financial compensation should acknowledge this recognition. According to the EC, personal care workers (10.3%) compose one of five of the largest categories of key workers in the EU and personal care work depicts one of six categories of key occupations.

The EU Commissioner for Jobs and Social Rights, Nicolas Schmit said, that the COVID-19 experience has shown that the social value of professions has to be re-assessed as in most EU MS, health workers have been underpaid and undervalued for too long compared to their social impact. "This has to be revised. We have to look again at what the social value of professions is and not just having a hierarchy on wages that sometimes does not correspond to the social value," Schmit said. With this, should come stronger protection measures of migrant care providers, including full employment protection and access to unemployment insurance benefits. Improved working conditions and labour rights must be respected. It is vital to implement with no further delay the European Pillar of Social Rights, paying due attention to principle 16 and 18 to ensure health for all, and access to quality, safe and affordable long-term care.

We thus recommend that home care workers obtain an "official" permanent status in the nursing sector with a recognised job title, such as "nursing assistants living in the household" and that this be reflected in all future relevant nursing agenda concerns and migration policies. Receiving countries should also recognise the negative impacts of care drain and look for more sustainable solutions, such as investing in education or institutional care in sending countries and striving toward social convergence. Some standardisation of care work would likewise be beneficial - qualification requirements, e.g. diplomas recognised in all EU countries.

In addition, examples of policies related to undocumented migrants provided in Portugal and in Italy could be pursued, as they combined concerns about labour shortages in the personal care and agricultural sectors with the willingness to provide these workers with some form of social and health protection. Sweden also announced a 12-month extension to several labour market integration programmes allowing migrants whose subsidies would expire in the near future to remain employed.

We thus call for the development of common standards for fair migration and mobility of home care workers across Europe. More specifically, we would like to see an agreement on Europe-wide minimum standards for migrants' carers, support staff and placement agencies, taking into account the relevant conditions in both home and employment countries and applicable employment regulations.

Further information on our recommendations related to "Fair Care Mobility and Migration in Europe", can be found at the following links:

- <https://www.caritas.eu/wordpress/wp-content/uploads/2019/11/Press-release-Fair-Care-Migration-and-Mobility-in-Europe.pdf>
- <https://www.caritas.eu/wordpress/wp-content/uploads/2019/11/191129-Fair-Care-final-declaration.pdf>
- <https://www.caritas.eu/fair-care-mobility-and-migration-in-europe/>

General response to the consultation

Many of the questions in this consultation are in contrast to each other. Question 2b proposes introducing new legislation to cover those groups not yet included, and question 2c proposes harmonising at EU level the rules for the admission of all third-country workers by developing a comprehensive EU legal migration code, replacing all existing directives on labour migration. We presume if the answer to 2c is positive, then this should also include all the new groups addressed under question 2b. If this were to be done, then the majority of subsequent questions (3-12) would either not be applicable or would come under this common harmonised code.

The existing EU legal framework for migrants to access regular channels and the labour market misses many essential professions and also many of the lower-skilled categories of people. A new harmonized EU legislation would need to expand the current instruments and increase worker's rights.

Third country nationals experience major obstacles and inequalities when moving within the EU as workers or as persons in general. Despite the vast consensus that intra-EU mobility is needed and is perceived to be a rather positive solution to responding to Europe's demographic changes, many structural barriers remain. In this case, DG Home would need to collaborate with DG EMPL on such legislation, taking into account the new Directive on Minimum Wage, the European Pillar of Social Rights and the rights related to pensions. And in no way should the merging together of previous instruments related to regular migration water down existing protections or discriminate based on country of origin.

Just to provide another example of a challenge, rules under the Blue Card Directive, for instance, are not clear, neither for migrants nor for MS, as different interpretations of the legislation and practices are applied from one state to another with contradictions in implementation and recognition of associated rights. Clarity and uniformity in the application of rules is clearly needed, but is currently not taking place. Furthermore, some MS do not see the added value of the EU Blue Card because it is already receiving skilled migrants who come regardless of the Blue Card. This may be one reason why some MS are hesitant to rely on the EU Blue Card, because it seems to add another layer of complexities, and this is true of the other existing policies as well. For this reason, harmonising them and including new ones as well, would be useful as long as they are not watered down but prioritise the rights of the migrant workers.

In addition, considering the modest attempts created to enable some rights to movement within the EU for third country nationals, evident by the Researchers Directive and the EU Blue Card Directive, both of which target highly qualified workers, more needs to be done to reach also those deemed "low skilled". When stakeholders speak about high and low skilled migrants, the assumption about what is meant with skills is often vague and not known consistently. The concept of skills itself has become politicised, varying according to the migrants concerned, their country of origin and which country is assessing the labour market needs. More attention needs to be directed to concepts of skills in order to balance the inequalities and bureaucracy linked to different statuses and inconsistent transposition of policies.

Relative to question 10 on entrepreneurs, it is vital that the EU and MS curtail the tendency of coming up with specific rules for certain groups, as this results in disharmony, bureaucratic confusion and the tendency of promoting certain legal options in some countries of origin rather than others.

Recommendations to the EU and Member States

- Address discrimination and preferential hiring practices that place third country nationals at a disadvantage in labour market recruitment processes by ending preferential hiring practices based on citizenship, and ceasing to impose rigid entry rights and work permits.
- Deliver an “annual trend report” reflecting comparable indicators on social cohesion that have been agreed upon and put forth as targets, which includes an EU-wide monitoring of the situation of newcomers, long-term residents, naturalised migrants, the children of migrants and broken down by equality grounds, so as to measure progress in social inclusion policies over time.
- Improve and facilitate the recognition of qualifications and work experiences attained abroad including, among others, the recognition of soft skills (bi- and multilingualism, as well as individual assessments). They need to further ease proceedings following the recognition of foreign qualifications in one MS to enable a less bureaucratic and costly procedure for the recognition of qualifications in a different MS.
- Include equality conditions in public procurement and supplier policy rules, considering its leverage in improving practices that include migrants and third country nationals in their scope.
- Increase the mobility of workers by allowing for temporary visas and by facilitating the re-application process of those already in the system. This would effectively increase worker mobility by guaranteeing legal certainty and increasing EU internal mobility.
- Prioritise public health over immigration status by suspending all immigration enforcement action to allow everyone to follow governments’ responses to the COVID-19 pandemic safely.
- Loosen restrictive settlement and citizenship rights for those who have already been paying into the system for years.
- Review access to social protections with a view to long-term adequacy, in light of the crisis demonstrating the insufficiency of prior provisions.
- Mobilise existing EU financial programmes and the new EU budget 2021-2027 to invest in health and the long-term care sector, to make health and care systems in EU more resilient to crises such as the current one. Financial support measures should also cover significant groups of workers, especially those left at risk of destitution and who are more vulnerable to exploitation.