

Statewatch comments to the International Development Committee inquiry into “Migration and Development”

Supplementary evidence: Irregular Immigration and EU External Relations

1. EU policy is increasingly incoherent, unbalanced and unrealistic as regards both external relations and migration objectives. First of all, there is a grave risk that the EU’s external human rights policy will be damaged by these policies, not just indirectly because of the prospect that the EU will have to reduce its human rights ‘demands’ in order to secure its demands for migration cooperation as part of the relevant negotiations, but also directly because the EU is encouraging third States to violate human rights law.

2. Secondly, there is a risk that the previous balanced and realistic ‘root causes’ approach to the external aspects of migration law will now be overlooked. While this approach has not been formally discarded, it is obvious that the EU’s efforts and energy are now devoted to the complementary policy of inducing third States to cooperate with EU migration controls, rather than examining why migration takes place at all. It is striking, for instance, that the Commission’s December 2002 paper contemplates major increases in funding for external EU migration cooperation, but no increase in funding for poverty relief, conflict prevention, et al. While the ‘development’ part of that communication still lays stress on the ‘root causes’ approach, the subsequent Council conclusions place less stress on this issue. While the final Council conclusions are still relatively balanced, we know from experience with the EU’s internal immigration and asylum policy that even where the EU adopts a nominally balanced policy statements, the practical implementation of that policy can still be restrictive.

3. Thirdly, it is arguable that the problem with the ‘root causes’ approach to migration as applied since 1998 is that it did not go far enough. In particular, while the Commission is surely right to emphasise the importance of rural development in developing countries in its most recent paper, one can observe the devastating effect of the EU’s Common Agricultural Policy on such rural development. It is striking that the CAP is not directly addressed anywhere in the voluminous EU documentation on this issue, even though the CAP is the only root direct cause of irregular migration that is directly controlled by the EU. With the EU giving more funding to each European cow than the average income of each human in some developing countries, how much irregular migration has resulted from this policy?

4. Fourthly, the very insularity and high-handedness of the EU’s approach risks damaging its external relations with other countries. This is apparently the only area of EC external relations where the Commission proposes (and the Council approves) negotiating mandates without first ensuring through informal contacts by the Commission and Council Presidency that the other party wishes to negotiate an agreement on the subject. It even appears that in several cases the EU was well aware when drawing up these mandates that the other side has no interest in negotiations at all. This can hardly improve the overall relationship between the EU and the relevant countries. In fact, such unilateralism is exactly the type of approach to external relations that European critics of the Bush administration like to condemn.

5. Finally, the internal logic of the ‘punishment’ policy is clearly contradictory. Let us take the example of the Former Yugoslav Republic of Macedonia. Although it is not currently on the EU’s list of States which should provide greater cooperation, it is on the major transit route into the EU and so could be on that list in future. Imagine the scenario of the FYROM

government being deemed non-cooperative on migration issues. Following the suggestion of the Spanish Presidency before Seville, the EU reduces aid, ceases its extensive conflict prevention efforts in FYROM, terminates any further moves toward EU membership and suspends ratification of its association agreement, thereby abolishing trade preferences and investment guarantees. As a result, the FYROM government would have fewer resources to control its borders and no incentive to do so (as far as transit migration to the EU is concerned). In fact, the likelihood of a civil war breaking out in FYROM itself would be considerably higher; if this happens, FYROM would become a more significant country of origin for migration to the EU and there could be a knock-on effect on neighbouring countries. Abolishing the trade preferences and investment guarantees would also affect EU companies exporting to and investing in FYROM. Even if we do not care about the welfare of inhabitants of FYROM and neighbouring countries, the interests of EU business or the EU's foreign policy goals, the fact remains that migration from FYROM would likely increase. So even approaching the issue from the hermetically sealed world of interior ministries, the policy would fail in its own terms to reach its fundamental objectives, quite apart from damaging a number of separate EU policy objectives.

6. It might be argued that a country not far from civil war is not typical enough to use as a fair example (although unfortunately quite a few countries are near to a civil war or already experiencing one). But even if we concede this point, if we take a more stable state as an alternative example, the same criticism holds true, but simply to a lesser degree. So if the EU terminated its cooperation with Albania, that country would still have fewer resources to control its borders and less incentive to do so. The situation would not be further aggravated by an accelerated slide towards civil war, but the result would still be contradictory to the intended aims of the EU.

7. Is there an alternative? As argued above, the central failings of the EU approach are unilateralism, the focus on only one aspect of migration policy and the departure from the 'root causes' approach to migration. At the same time, one striking feature of international migration law compared to other subjects of great interest to the international community is the lack of a widely-supported framework treaty or international organisation addressing the issue of migration (apart from aspects of refugee law) holistically. Of course, certain aspects of migration law are covered by the International Labour Organisation and (through the General Agreement on Trade in Services) the World Trade Organisation, but this leaves many important elements out. We have the UN Convention on the Rights of Migrant Workers, now in force from 1 July 2003, but it has only been ratified by source countries of migration and does not address all aspects of migration policy either. The EU, if it chose, could play a significant role in building the institutional multilateral framework for addressing issues relating to international migration, incorporating a positive approach to the UN Migrant Workers' Convention.

8. This would obviously be a long-term project, but in the meantime the EU could integrate aspects of this approach into its bilateral relationships. True, some of the EC's recent treaties (such as the Cotonou Convention and the treaties with the Western Balkan States) incorporate positive aspects of migration law into the dialogue with the EU's partners alongside readmission commitments, and include a directly effective right to equal treatment in working conditions. Earlier treaties with the EC (such as the Association Agreement with Turkey and the Europe Agreements) go even further. But very few of the EC's treaties provide for regulation of primary or secondary migration to the EU, and since 1991 the EC has eschewed inclusion of the right to equal treatment in social security in any of its

association agreements (leaving aside the full free movement treaties with Norway, Iceland, Liechtenstein and Switzerland). In order to develop a balanced policy on migration, the EU has to accept that the external aspect of its immigration policy must also address admission of migrants and more extensive equal treatment within EU territory along with the EU's migration control objectives. One example of how this approach might work is the proposed 'wider neighbours' policy, where the Commission clearly foresees greater liberalisation of movement of persons to balance enhanced controls [COM (2003) 104, 11 Mar. 2003].

Conclusion

9. Policies on migration control and external relations can equally suffer from a lack of realism on the part of policy initiators. Where both policies overlap, and suffer from a lack of realism simultaneously, the result could be counter-productive policies that fail to achieve their own aims and damage other migration and external relations objectives. Unfortunately, recent developments in EU external migration policy suffer from such flaws, simultaneously combining the self-absorption of a small child with the arrogance of an (economic) superpower. Only a significant shift in EU policy toward multilateralism, establishing a framework for admission and equal treatment of migrants and back toward examining root causes of migration offers the hope of a balanced or coherent external migration policy.

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