



**EUROPEAN NETWORK  
OF MIGRANT WOMEN**

# The New EU Migration Pact in Progress: Recalling Legal Obligations

After years of crisis-centred approach to migration and asylum, it is time for the European Union and its member states to build blocks for sustainable migration and asylum policies. The new mandate of the European Commission and the New Pact for Asylum and Migration proposed by Commission President Ursula von der Leyen can be seen as an invaluable opportunity for the EU and its member states to develop rights-based migration and asylum policies.

With this briefing, the European Network of Migrant Women pieces together a set of values and legislation of the European Union that need to be addressed in preparation and implementation of the new Migration Pact.

## Eliminating Sex Discrimination and Promoting Equality between Women and Men in Migration, Integration and Asylum Policies

The European Union is founded on a set of values, including equality, and promotes equality between men and women (Articles 2 and 3(3) of the Treaty on European Union (TEU)). This constitutes the legal basis, and an obligation, for creating policies and actions aimed at eliminating sex-based discrimination.

The Union's policies on migration, integration and asylum are not exempt from this obligation and should be aligned with and incorporate the Union's goals for achieving equality between women and men. In designing the new Migration Pact, therefore, in all its chapters, specific attention should be paid to the conditions and needs of migrant and refugee women and girls. These conditions include, but not limited to, discrimination of women on the basis of their sexual and reproductive status, exposure to male violence, including sexual violence and exploitation, burden of family and child care, potentially low educational level, the right to exercise labour participation and sex discrimination in the job market, traditional harmful practices, including forced marriage, Female Genital Mutilation (FGM) or honour related violence.

The principle of equality between women and men and non-discrimination on the basis of sex within the Pact must be understood - in accordance with the EU law - as a distinct priority that must not be conflated, or merged, with other equally relevant but different non-discrimination principles (e.g. on age, disability, sexual orientation, etc).

Finally, migration, integration and asylum policies should be aligned with the key frameworks<sup>[1]</sup> that elaborate international commitments and provide expert guidance for their fulfilment, on protecting migrant and refugee women from discrimination.

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[1] These frameworks include Convention on Elimination of All Forms of Discrimination against Women (CEDAW) (e.g. General recommendation No. 26 on women migrant workers; General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women; General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19); Beijing Declaration and Platform for Action; UNHCR Guidelines on International Protection N1 (Gender-Related Persecution); The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).

## Gender Mainstreaming and Positive Actions: Women as a Priority Group

Article 8 TFEU obliges the European Union to promote equality between men and women through all its activities (the concept also known as 'gender mainstreaming'). This obligation includes all Union's migration-related policies and activities.

Gender mainstreaming, as defined by the European Commission, firstly, should include "actively and openly taking into account at the planning stage their [policies'] possible effects on the respective situations of men and women". Gender mainstreaming in migration policies should not be limited to a mechanistic exercise of "inclusion", "diversity" or "intersectionality", but should be measurable and result- and impact-oriented. It should be designed by experts in gender mainstreaming methodology for which a budget must be allocated at the stage of policy design.

Gender Mainstreaming in itself is not sufficient to fulfil the principle of equality between women and men. It must to be accompanied by Positive Actions (principle of positive discrimination) aimed at supporting women as a stand-alone group and treating the integration of migrant, refugee and asylum-seeking women as a priority on its own. This must include, whenever necessary for achieving equality between women and men, designing women-only programmes and activities, supporting women-only spaces and initiatives, and allocating necessary funds within all migration, integration and asylum actions for their implementation, in accordance with the positive actions stipulated in the Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

The preliminary goal of these policies should be taking necessary measures to protect the human rights of migrant/refugee women. Their special needs, challenges and strengths should be systematically evaluated, and relevant policy responses should be developed through structural and sustainable solutions.

### Comprehensive Dialogue with Other Policy Areas

No migration policy can be effective if it does not take seriously other anti-discrimination policies, particularly those on fundamental rights, social and labour inclusion, or health. While we have seen the rise in connecting migration and integration with security, terrorism prevention and border management policies, there has been a profound lack in making similar links between migration and other areas, such as Justice, Health, Education and Employment.

As a result, integration of migrants across e.g. cultural, labour, educational sectors, has come to occupy a marginal place in the overall migration actions of the Union. All integration measures are intrinsically linked with these policy dimensions and cannot be viewed in isolation. Thus, ensuring a comprehensive dialogue between integration and other vital socio-economic policies of the Union is paramount for the success of the new Pact.

## Violence against Women: Prevention, Protection, Redress

European Union has an obligation to protect migrant, asylum seeking and refugee women from violence to which they may be subjected by individual men, communities and institutions. The right of women to seek asylum in the EU on the grounds of gender-based persecution and violence, must be upheld by all states, in line with the Istanbul Convention's Art. 60 (Gender-based asylum claims), CEDAW GR 32 and GR 35 and UNHCR Guidelines N1. Similarly, in accordance with the Art. 61 (Non-refoulement) women who are victims of violence must not be deported or repatriated to their country of origin. This concerns, among others, the victims and/or potential victims of trafficking, forced marriage, FGM, honour based violence, sexual violence. All migration and asylum staff must be sensitised and receive appropriate training for identifying gender-based violence cases.

Female victims of violence, refugees and migrants, must have access to appropriate services and facilities, in particular single sex specialist services as recommended by the GREVIO Committee of the Istanbul Convention. When women's legal status is dependent on their spouses, domestic violence must be sufficient ground for granting them independent legal status. Female victims of violence must have access to compensation and redress.

A full range of EU legal instruments protecting migrant and refugee women from violence, including the EU Anti Trafficking Directive 2011/36/EU, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, Directive 2013/32/EU on common procedures for granting and withdrawing international protection, must be invoked in the Pact in reference to women and girls as a special group at high risk of sex- and gender-based violence.

## Developing New Migration Pact at the Time of Covid-19 Crisis

Due to the COVID-19 pandemic Europe is confronted by unprecedented challenges undergoing unprecedented changes. We are yet to see the implications of this crisis in our socio-economic structures. This crisis has already proven that migrants, and migrant women[2] in particular, are not protected as a group in health and labour sectors, who nonetheless, crucially depend on them. We therefore strongly encourage the European Commission in developing the new Migration Pact to take into account the lessons learnt from this crisis and to ensure that the new framework addresses structural deficits in migration and integration management that this crisis has exposed.

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[2] More on the impact of Covid-19 pandemic and state measures on migrant/refugee women can be found in the ENoMW article: <http://www.migrantwomennetwork.org/2020/03/31/global-feminist-perspective-on-the-pandemic-what-normal-do-we-expect-when-the-crisis-is-over/>

European Network of Migrant Women (ENoMW) is a Europe-wide feminist secular platform of migrant women NGOs, not affiliated with any political group, advocating for the rights, freedoms and equality for migrant, refugee and ethnic minority women and girls in Europe.