I-CLAIM

Improving the Living and Labour Conditions of Irregularised Migrant Households in Europe

Irregularised migration and the next European Commission

Ensuring enforcement and intersectional monitoring of the rule of law and fundamental rights

Policy Brief

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Summary

Has the Ursula von der Leyen (VDL) Commission (2019-24) delivered a new start in EU migration policy? In short, no, the VDL Commission hasn't fulfilled its role as 'Guardian of the Treaties' to effectively and impartially enforce EU Treaty values and meet the Better Regulation commitments when adopting and implementing EU migration policies.

A home affairs and criminalisation approach prioritising the policing and expulsion of irregularised people has dominated the Commission's policy agenda. This has been at the expense of upholding the values of the Treaty on the European Union's Article 2 values, robust enforcement of EU legal standards and ensuring dignified treatment and effective justice to every individual. It has also meant an almost complete disregard of EU Better Regulation commitments in all major legislative initiatives, including the EU Pact on Migration and Asylum.

The European Commission's policy of irregularising migration is best understood through evaluating the Commission's internal structures. The Commission's institutional configuration from 2019-24 has not facilitated effective coordination between its justice and home affairs services in the areas of the rule of law and fundamental rights, nor has it guaranteed effective supervision for all the work undertaken by the Vice-President responsible for 'Promoting our European Way of Life' and the Commissioner responsible for Home Affairs and Migration in DG HOME.

With all this in mind, this CEPS Policy Brief recommends that the next Commission should unequivocally commit to monitoring and enforcing an intersectional rule of law and approach, which should include appointing a First Executive Vice-President responsible for coordinating, monitoring and upholding EU Treaty values across all the Commission's structures and policies.

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Executive Summary

This CEPS Policy Brief shows that a home affairs and criminalisation approach prioritising law enforcement and policing has dominated the von der Leyen (VDL) Commission (2019-24) on questions related to migration policy. This policy approach conflicts with human dignity and other legitimate public policy perspectives, such as employment and social inclusion non-discrimination, where the individual's migration status isn't the determining factor. It also conflicts with EU Treaty values which emphasise the obligation to uphold the rule of law and guarantee access to effective justice for every individual.

Some human mobilities are uncritically understood as an insecurity problem within EU migration policies. This includes what does and does not constitute 'migration', who is a 'migrant', who is an 'irregular immigrant', and who isn't. Special focus is given to individuals from certain countries and regions where asylum seekers come from or to communities who are structurally discriminated against due to their origins (like the Roma). This calls into question the Commission's compliance with its own EU Anti-Racism Action Plan 2020-2025, which requires it to address institutionalised discrimination. Current EU policies fall short of upholding decent working conditions for all workers.

The overriding policy priority driving EU migration policy has been expelling irregularised third country nationals (TCNs) at all costs. The EU's home affairs and criminalisation approach is a direct product of the intergovernmental origins of European cooperation on restricting free movement inside the Schengen area. These policies have played a key role in pushing people with legitimate mobility and asylum claims into irregularised status. It pursues a law-enforcement logic which reduces individuals to deportable or expellable subjects without any agency and rights.

The structure of the VDL Commission has deepened a top-down or 'control and command' approach that aims to ensure the political alignment of all Commission initiatives in these domains. Unlike the previous Commission, the Vice-President responsible for 'EU values' has not supervised and coordinated all the Commission's work. This has blurred the Treaties' call for EU values in Article 2 TEU to take priority over the home affairs agenda.

Instead, the Commission has given precedence to the restrictive priorities of some EU Member States, reinjecting intergovernmentalism into an area where the EU has consolidated competencies. Thus, the VDL Commission has not effectively fulfilled its role as 'Guardian of the Treaties', meaning that it hasn't effectively enforced EU Treaty values and fulfilled the Better Regulation commitments in EU migration policies.

This Policy Brief has three core recommendations:

(I) A comprehensive review of the Commission's internal organisation and structures to ensure effective and impartial monitoring and enforcement, compliance with EU rule of law values and the upholding of EU Better Regulation commitments;

(II) actively enforcing the EU's Charter of Fundamental Rights and existing instruments granting non-discriminatory access to socio-economic rights to irregularised persons in the areas of employment and social inclusion; and

(III) upholding and promoting international labour standards and decent work rights across EU legislation and policy for all workers regardless of their migration status, both in employment and regular migration policies.

Methodology

This Policy Brief falls within the scope of the EU-funded I-CLAIM project which examines the living and labour conditions of irregularised households in Europe. It's based on the I-CLAIM report 'The Legal and Policy Infrastructures of Irregular Migration in the EU' (Carrera & Colombi, forthcoming, SpringerBrief in Law).

The research findings and policy recommendations also draw on a discussion held at the closed-door I-CLAIM EU stakeholders meeting, which took place on 18 April 2024 and was co-organised by the Centre for European Policy Studies (CEPS), the European Trade Union Confederation (ETUC) and the European Network Against Racism (ENAR). The meeting brought together officials from the EU institutions, international organisations, civil society organisations, social partners and employers' organisations.

1. INTRODUCTION

Since the 1980s, with the development of Schengen intergovernmental cooperation, the mobility of specific categories of non-EU nationals from both outside and inside the Schengen area has been labelled and treated as a 'migration issue' or as 'irregular migration'. For some categories of third-country nationals (TCNs), this has translated into structural barriers to equal access to decent work and socio-economic rights, the entrenching of different forms of systemic discrimination and the violation of international labour and human rights standards, as well as the EU'S Charter of Fundamental Rights (CFREU).

The key legislative and policy documents adopted by the outgoing 2019-24 European Commission led by Ursula von der Leyen (VDL) have reflected and reproduced these historically embedded policy agendas. The institutional configuration of the Commission's Directorates-General (DGs) and relevant services with direct or indirect competencies over irregularised mobilities has prioritised a home affairs and criminalisation approach to the detriment of other alternative policy angles, all equally relevant, on issues related to cross-border human mobility. This has had significant repercussions on EU legislation and policy, and has ultimately negatively affected the living and working conditions of irregularised persons in the EU.

This Policy Brief recommends that the next European Commission (i) reviews its internal organisation and structures to ensure effective monitoring and enforcement, compliance with primary law, EU values and the Better Regulation Guidelines; (ii) actively enforces the CFREU, anti-discrimination legislation and existing instruments granting access to socio-economic rights to irregularised persons in the areas of employment and social inclusion; and (iii) upholds and promotes international labour standards in EU legislation and policy for all workers, both in employment and regular migration policies.

2. KEY RESEARCH FINDINGS

RESEARCH FINDING #1:

A home affairs and criminalisation approach dominates European Commission migration policies

The Schengen and Dublin intergovernmental systems developed in the mid-1980s and early 1990s constitute a defining historical moment where the priority was given to Member State Interior Ministers' agendas, which called for 'flanking measures' to manage TCNs and refugees' movements to compensate for an internal area with free movement.

From this point onwards, the prevailing policy approach to cross-border and intra-EU mobility has been based on law enforcement, policing and the logic of criminalisation. This is still the case today.

Rather than free movement, priority has been given to constraining and irregularising the intra-EU mobility of refugees and asylum seekers and framing them as 'secondary movements'. This has been operationalised through, first, applying a hierarchy of criteria and establishing the responsibility for assessing asylum claims in the Member State of first unauthorised entry; second, positive asylum decisions not being mutually recognised across the Union; and third, the penalisation of asylum seekers and refugees who engage in unauthorised intra-EU mobility. This model has generated grave human rights violations and greater administrative responsibilities for Member States at the EU external border, with well-documented systematic incapacities and structural dysfunctions.

This framing has been reflected in the VDL Commission's political priorities. It has also been expressed within the internal structures of the Commission itself, e.g. in the division of portfolios between the different DGs and specific units, and the hierarchy among the Executive Vice-Presidents, Vice-Presidents and the Commissioners (see *Research Finding #5* below).

On top of wrongly associating asylum seekers and refugees with the notion of irregularity and 'irregular migration', this approach ignores alternative forms of protection at the EU and national levels, as well as irregularised TCNs' entitlement to fundamental rights – primarily human dignity. It also dehumanises and reduces individuals to deportable or expellable subjects without any agency and rights. It ignores issues related to their living and working conditions, the concerns raised by social partners and civil society organisations, and the practical impacts of the current EU policy priorities within these domains (Carrera & Colombi, forthcoming, SpringerBrief in Law).

Some EU citizens are not exempt from similar securitising approaches. Despite not being referred to as 'irregular' by EU policy professionals, the mobility of specific categories of EU nationals is made conditional on additional constraints or conditions. For instance, this is the case with mobile EU citizens with a Roma background or EU citizens not fulfilling the conditions set by the Citizens' Rights Directive and/or those accused of non-evidence-based 'benefit tourism' claims.

While their fundamental right to free movement is enshrined in the EU Treaties, EU secondary law constrains intra-EU mobility or ignores existing structural issues, translating into direct or indirect discrimination against these categories based on their origins or wealth status. This can include being expelled from a Member State, discrimination based on wealth or income, the increased targeting of specific EU nationalities and exclusion from EU social inclusion funding programmes.

RESEARCH FINDING #2:

Co-existing and competing approaches in EU policy and within the commission

Despite the overall dominance of a home affairs and criminalisation approach in the Commission's work on irregularised migration, analysing the broader EU policy framework reveals coexisting and sometimes competing approaches. Other EU policy approaches – offering different entry points to the conversation surrounding irregularised mobilities – have remained relevant but have been marginalised or sidelined.

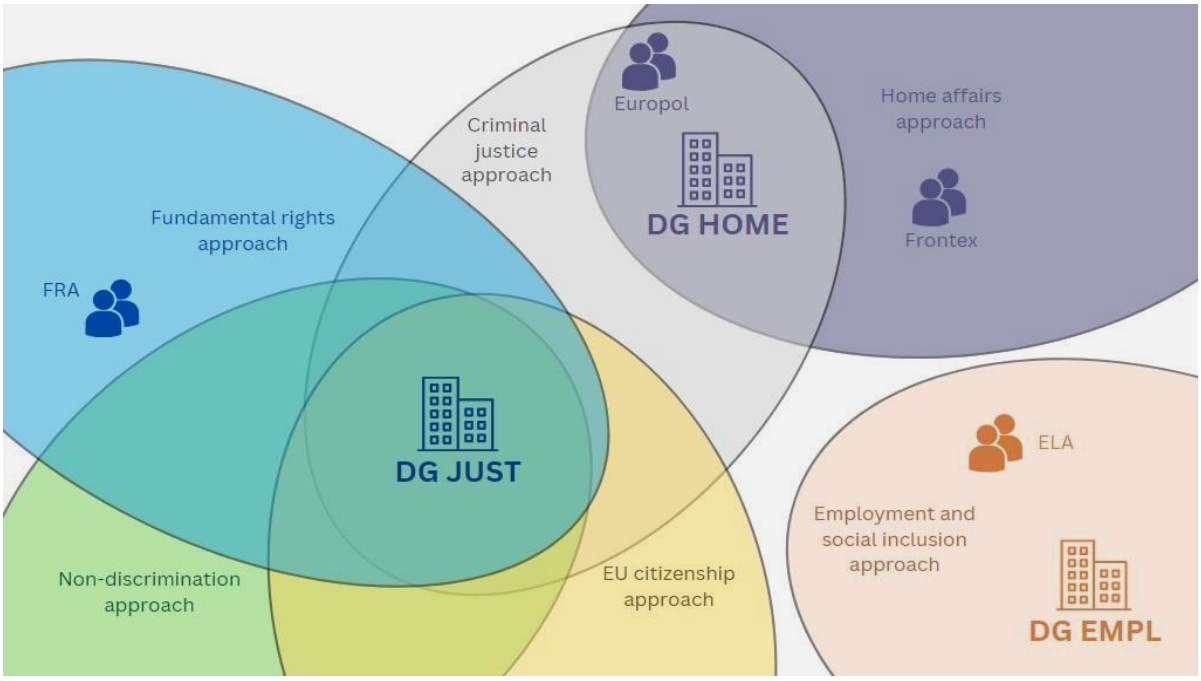
The following EU policy approaches can be identified within the intra-institutional configuration of the 2019-24 Commission: (1) employment and social inclusion; (2) fundamental rights; (3) non-discrimination and (4) EU citizenship rights.

Figure 1 below shows these co-existing and competing approaches, as well as the main institutional actors which, within their own remit, exercise influence over the understanding of and policy approaches on issues related to irregularity – both for irregularised TCNs and mobile EU citizens.

These include the European Commission's Directorates-General (from left to right, DG Justice and Consumers – JUST; DG Migration and Home Affairs – HOME; and DG Employment, Social Affairs and Inclusion – EMPL) and specific EU agencies (the EU Fundamental Rights Agency – FRA; the European Union Agency for Law Enforcement Cooperation – Europol; the European Border and Coast Guard Agency – Frontex; and the European Labour Authority – ELA).

These policy approaches are based in both EU primary and secondary law, and international legal standards, which are distinct from those related to migration policies. They offer different entry points for appreciating how different cross-border human mobilities are irregularised and – if prioritised at the policy level – would have direct positive implications for irregularised TCNs' rights.

Figure 2. Mapping key actors and approaches to 'irregularity' in the Commission



Source: Author's own elaboration.

First, the EU legal and policy framework on employment leaves no doubts that a worker's mobility or residence status has no relevance to their entitlement to decent working conditions and employment. In EU policy, the entry point should be whether the individual is a worker or not—and not their nationality or origin. This stems from International Labour Organisation (ILO) standards, as well as Article 6 and Article 7 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) which apply to 'everyone' – including migrant workers. This is particularly important for the Employment Equality Directive's (EED) provisions related to the defence of rights, victimisation, access to information, social dialogue, sanctions and compensation. Case law from the CJEU (Case C-311/13, Tümer) has clarified that undocumented third-country workers are entitled to the protections given by EU law to all workers.

Second, from a fundamental rights perspective, the underogable right to human dignity—which as stipulated in Article 1 CFREU is inviolable – entails access to socio-economic rights, such as social and medical assistance, and adequate housing.

Third, a non-discrimination approach means that discrimination based on nationality or immigration status can be a proxy for discrimination on ethnic and racial grounds, and may go against international and EU legal standards. In contrast to the EU's commitment to a 'Union of Equality', the Anti-Racism Action Plan and the EU Roma Strategic Framework, existing restrictions *de facto* target some TCN and EU nationalities more than others. Groups such as racialised persons and EU citizens of Roma descent face structural obstacles and direct discrimination *vis-á-vis* access to social inclusion programmes and, consequently, to socio-economic rights and their human dignity.

RESEARCH FINDING #3:

Access to decent work

The EU employment policy framework covers all people engaged in work activities. All EU Member States are party to the eight core ILO conventions. These standards include the right to *decent* work, which applies to every worker, irrespective of their migration status, as well as equal treatment and non-discrimination between third-country workers and national workers.

Any person in an irregular situation who qualifies as a 'worker' is undoubtedly covered by the protections and standards afforded to all workers under EU law and policy. The most crucial criterion or connecting factor to unlock this protection is a relationship with an employer. Irregularised migrants employed in the EU fall thus within DG EMPL's remit.

Despite this, DG EMPL officials don't see themselves as directly responsible for issues related to TCNs without regular immigration and residence status, and their access to employment and socio-economic rights. They recognise that these persons are covered by employment-related instruments but point to DG HOME as the lead DG on questions concerning TCNs. This is a direct consequence of how portfolios have been allocated within the Commission and the internalising of the home affairs and criminalisation approach.

This has significant repercussions on the Commission's overall political priorities and the enforcement of existing EU and international standards, including safeguards and access to complaint mechanisms. When it comes to employment for irregularised TCNs, priority has been given to the strengthening, homogenisation and enforcement of the repressive elements of the Employers Sanctions Directive.

Labour inspections remain a key concern – at the national level, labour authorities are often obliged or encouraged to cooperate with immigration authorities or law enforcement, leading to distrust and the fear of being reported and deported by the TCNs affected. This highlights why firewalls are needed to protect migrant workers' rights in the context of labour inspections. The protective elements of the same directive (i.e. access to residence permits, effective remedies, compensation, etc.) are not effectively implemented at the national level. Despite this, the Commission hasn't prioritised strengthening or enforcing these protections.

Similar issues emerge with the Seasonal Workers Directive. Despite being born out of issues affecting irregularised TCNs, they are completely excluded from its personal scope. This leaves them in a situation of irregularity and dependent on occasional regularisation processes at the national level. The development of EU legislation on 'bogus self-employment' and platform work has sidelined issues concerning irregularised TCNs, despite them being a significant percentage of the workforce in this sector. The continued regularisation of this sector may lead to a 'regulatory paradox', furthering the exclusion of these workers if not accompanied by work and residence permits, and strong protective elements.

Despite being excluded from official EU policy discussions surrounding employment, irregularised TCNs have been *de facto* covered by several EU institutions and agencies in this area. ELA's scope of activities is limited to mobile EU citizens and regularly residing TCNs but its activities within the European Platform Tackling Undeclared Work includes TCNs without authorised immigration and residence status. Additionally, ELA, together with the FRA, Commission officials from different DGs and social partners have worked together on the Labour Migration Platform.

One could argue that DG EMPL's perspective would be instrumental to changing the narrative surrounding migration – '*not only as something to deter but as something that can be beneficial to face labour shortages and demographic changes*'. This point was raised in relation to the Talent Pool, the Skills and Talent Package and other current EU policy instruments in the area of labour migration.

However, this has still been limited only to the workers that the EU 'needs' or 'desires' and thus contradicts international labour standards on equal treatment and non-discrimination for all workers. Additionally, DG HOME's primacy could risk mainstreaming the home affairs approach even further to the detriment of one centred on employment and social inclusion, paying no attention to workers' immigration or residence status.

Stakeholders in the iCLAIM closed-door meeting on 18 April 2024 (see Methodology section above) emphasised the need to address the inherent exploitative character of current EU economic models. They underlined that some sectors in the EU are fully dependent on the cheap labour provided by irregular workers, exploiting their vulnerable situation and 'deportability' at any moment. Trade unions have a central role to play by representing and protecting all workers regardless of their immigration and residence status (see for example ETUC, 2017 and 2019).

RESEARCH FINDING #4:

Non-discrimination and anti-racism when accessing socio-economic rights

The framing of specific kinds of mobility as 'migration', 'irregular' or as an EU policy issue to be 'solved' is often premised on racialised and discriminatory assumptions by some EU policy professionals. Irregularised TCNs are assumed to be persons who seek asylum and/or who are from the so-called Global South, in particular from developing or the least developed countries in Africa, the Middle East, Asia and South America.

In contrast, nationals from the 'Global North' or wealthy countries who may have overstayed their visas or might be working undeclared aren't viewed in the same light. Similar considerations play a key role in defining who is entitled to authorised residence and work permits, and who is considered in EU policies as a 'skilled or highly qualified worker' or as 'talent' to be 'attracted'.

The prevalence of a home affairs/criminalisation approach in national and EU policies has translated into structural barriers for accessing socio-economic rights by some non-EU and EU nationals, disregarding international and EU human rights and labour standards, as well as the structural entrenchment of different forms of arbitrary discrimination.

Irregularised TCNs are formally excluded from all social integration programmes based on the idea that 'taxpayers' money cannot be spent on people residing in the EU *illegally* (sic)'. The EU Action Plan on Integration and Inclusion and the European Pillar of Social Rights are formally limited to only those labelled as 'legally residing TCNs' and EU citizens. Specific categories of mobile EU citizens (e.g. Roma EU citizens, EU citizens considered 'an unreasonable burden on the social assistance system', as well as specific EU nationalities) are more likely to experience structural barriers to accessing both social inclusion programmes and to socio-economic rights, and may be subject to expulsion.

While Commission officials linked these shortcomings to socio-economic inclusion remaining a Member State competence, existing instruments already foresee alternative solutions but are not evenly implemented and enforced across the EU. For example, Article 6 of the Return Directive allows for the possibility to grant residence permits for humanitarian reasons or on other grounds for those who don't qualify for international protection but cannot be returned (so-called 'unremovable TCNs'). These would ensure that the recipients receive access to socio-economic rights. Despite this, most of these persons fall into irregularity due to national governments' inaction.

Shortcomings with residence permits have also been noticed in relation to the Anti-Trafficking Directive, the Victims' Directive and the Directive on Violence Against Women (for the latter, see elements of the directive, the Commission has given in to Member States' pressure and has prioritised making return procedures 'more effective', which gives an overriding priority to expulsions at all costs and is not in line with the unequivocal obligation enshrined in the Treaties and EU Better Regulation Guidelines Toolbox (tool 29) to discard any expulsion policies which may run contrary to absolute fundamental rights. PICUM, 2024). Instead of strengthening or enforcing the protective

RESEARCH FINDING #5:

The internal structuring of the VDL Commission

The outgoing VDL Commission has relied on a top-down structure and has centralised the political mainstreaming of all key issues/priorities and political solutions on human mobility-related policies. This has mainly been achieved through the Secretariat-General's (SG) supervisory and coordinating role.

Through units which act as 'shadows DGs', the SG exercises political control over the work conducted by the individual units within the various DGs and their respective Commissioners. This ensures the political alignment of all Commission activities and initiatives in these domains, and limits individual agency, particularly the monitoring and enforcement of EU law and EU Treaty values.

The 'geopolitical' VDL Commission has given undue preference to the political priorities of some EU Member State governments in these domains, reinjecting intergovernmentalism into an area where the EU has had consolidated – and in some cases even exclusive – legal competencies for almost two decades.

Secondly, in line with the previous Juncker Commission, the role of the Vice-Presidents has revealed a hierarchical and centralised Commission structure, undermining the principle of collegiality. However, and crucially, unlike the Juncker Commission, DG HOME's work was delinked from the portfolio held by the Vice-President on Values and Transparency, Věra Jourová. The outgoing Commissioner for Home Affairs, Ylva Johansson, responsible for DG HOME, has worked under the Vice-President with the controversial title of 'Promoting our European Way of Life', Margaritis Schinas.

This structural reconfiguration fundamentally weakened the direct link between home affairs policies and fundamental rights/EU values – and undermined the subordination of the former to the latter. This structure has translated into a disproportionate priority given to the home affairs and criminalisation approach and this has put EU Treaty values and the Better Regulation Guidelines at risk.

In short, the VDL Commission has failed to effectively and rigorously perform its role of 'Guardian of the Treaties', promote the Union's general interest and unequivocally enforce and comply with EU Treaty values in migration policies.

3. POLICY RECOMMENDATIONS

RECOMMENDATION #1:

The next European Commission should not replicate the internal structures of the 2019-24 commission and should ensure more effective monitoring and enforcement of article 2 TEU values.

DG HOME and the Commissioner responsible for Home Affairs should be brought back under the supervision of a First Executive Vice-President entrusted with a portfolio on the Rule of Law, Fundamental Rights and Better Regulation, and who would coordinate and monitor all DGs' compliance with these Treaty values.

This First Executive Vice-President should give priority to a more robust and systematic screening of all home affairs/migration policies and their implementation – including the EU Pact on Migration and Asylum, as well as any new EU legislative initiatives. This continuous assessment should be based on EU values under Article 2 TEU and the CFREU. This would also guarantee that security-driven, law enforcement and containment-driven migration policies aren't prioritised at the expense of other equally legitimate policy areas or viewpoints related to cross-border and intra-EU mobilities.

Instead of giving precedence to the political priorities of some Member States and depowering the different DGs and Commissioners, the Commission – as 'Guardian of the Treaties' – should ensure effective monitoring and enforcement of EU law and firmly abide by its own Better Regulation Guidelines, including in migration policy. This would mean *always* carrying out impact assessments on new proposals – particularly their impact on fundamental rights – regardless of any perceived 'political urgency' or the crisis-framing of any new measures.

RECOMMENDATION #2:

The next Commission should adopt an intersectional rule of law and fundamental rights approach across all commission services and policy areas – including migration.

In line with the existing commitments under the Anti-Racism Action Plan, EU Roma Strategic Framework and the Action Plan on Integration and Inclusion, the next Commission should genuinely commit to mainstreaming an intersectional approach across all policy areas, including those on migration and irregularised mobilities.

This would entail identifying and addressing '*the ways in which various social categories such as gender, class, race, sexuality, disability, religion and other identity axes are interwoven on multiple and simultaneous levels*' (ENAR, 2020; on the concept of intersectionality and its application in the area of non-discrimination refer to Makkonen, 2012; Schiek & Mulder, 2011; Schiek, 2018).

Stakeholders have noted that, instead of anti-racism intersectionality across all Union policies, migration management has been mainstreamed within the entire Commission. Accordingly, all relevant Commission services must enforce and safeguard the CFREU and anti-discrimination legislation consistently and independently from the fleeting priorities of Member State governments and their Interior Ministries.

The next Commission should address existing forms of systemic institutional discrimination, replacing the overall existing 'blindness' to class, gender and race in anti-discrimination policies and take into account the individual, structural and systemic dimensions together – and not separately. This should be linked to an

intersectional rule of law and fundamental rights approach that aims to ensure that EU Treaty values on the rule of law and fundamental rights are present in a systemic and structural way in all Commission services and policies, including 'migration' and security.

RECOMMENDATION #3:

The next Commission should uphold and promote international labour standards in eu legislation and policy for all workers regardless of immigration and residence status – both in the context of employment and regular migration policies.

In line with the United Nations Global Compact on Migration (GCM), all employment-related EU instruments should explicitly maintain that all workers are entitled to decent employment and working conditions, regardless of their residence or immigration status. A migration-centric home affairs and criminalisation approach should not constrain or take priority over one focused on employment and social inclusion.

Labour inspections at the national level should only be limited to protecting workers' rights and their working conditions, and to fight against labour exploitation. Firewalls should be made mandatory to ensure that labour inspectorates don't deliberately or accidentally share the personal data of irregularised migrant workers with immigration authorities, thereby exposing them to expulsion, which then fuels distrust in public authorities and discourages workers from reporting abusive employers.

Priority should be given to enforcing the protective elements of existing EU legal instruments, as well as to effective access to justice and complaint mechanisms without exposing TCNs to the risks of losing their residence permits or being expelled.

Following DG EMPL's traditional *modus operandi*, social partners and employers' organisations should be actively consulted in matters related to labour migration. DG HOME's state-centric approach risks weakening the link between social partners and the Commission, ultimately eroding the EU institutions' legitimacy and democratic accountability.

The next Commission should commit to strengthening regular migration pathways, which are completely missing in the 2024 Pact on Migration and Asylum. Overly restrictive policies co-create irregularity and foster the social exclusion and destitution of irregularised TCNs, as well as pushing them into undeclared work.

Employers and social partners should be actively involved. Decisions on quotas and profiles shouldn't be only based on the perceived 'needs' of the labour market. Access to rights or residence permits cannot be subordinated to whether a worker is regarded as 'talent' or as a 'high-skilled worker' (see also Shabbir, 2024).

Work permits should be made more accessible to blue-collar third-country workers, including those who are already in the EU. This could include expanding the personal scope of existing instruments such as the Seasonal Workers' Directive so that irregularised TCNs in the EU can apply for such a status. Avenues for regularisation should be made available to allow irregularised workers to normalise their status without fear of repercussion, as well as allowing them obtain long-term residence permits and guarantee their effective access to socio-economic rights. Regularisation processes or issuing other residence permits would benefit those who are in the EU, already contribute to Member States' economies and are rights-holders under relevant human rights standards.

Discussions surrounding regularisation or the transitioning of status – in line with GCM – should be demystified based on the evidence of past experiences at the national level. Engagement with stakeholders

has shown that these discussions are already happening behind closed doors but there is little will to engage publicly in any meaningful conversation surrounding regularisation programmes or regular status transitions to prevent TCNs from falling into irregularity and to reduce precariousness (see also Fresnoza-Flot et al., 2024).

However, regularisation is not the only answer to issues related to accessing socio-economic rights. One factor is due to misapplying and not enforcing existing standards—for example, Article 6 of the Return Directive in the case of non-returnable TCNs or the protective elements of the Employers' Sanctions Directive.

The next Commission should take stock of all the evidence produced through evaluations and not limit itself to strengthening the criminal or quasi-criminal legal aspects of the current *acquis*. It should instead improve the protective elements of the existing instruments, make them mandatory where they are only optional, and actively enforce such standards, including through infringement procedures.

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