PERCEPTIONS

Policy Brief

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COVID-19, Migration and Human Rights in the EU

Main Challenges Facing Migrants During the COVID-19 Crisis and Their Fundamental Human Rights

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Executive Summary

This policy brief aims to provide policymakers with an overview of some of the main challenges faced by migrants – all persons who change their country of usual residence - in the European Union (hereinafter EU) amidst the COVID-19 pandemic. It also provides policy recommendations and outlines good practices by EU member states in order to better plan, test and implement migration policies at times of crisis. The immediate measures regarding COVID-19 had a direct negative impact on migrants, regardless of whether they were on the move or residing in an EU member state. Their right to freedom of movement, international protection, healthcare and employment were impeded. EU member states varied greatly in their responses – some, such as Germany, adapted their entry conditions, reception procedures and considered migrants access to healthcare, while others, such as Hungary disregarded migrants in their policy responses. This policy brief focuses on four areas concerning migrants – travel and entry conditions, access to administrative services, healthcare and employment. Its aim is to provide a brief overview of these aspects of migrants' journeys and quality of life. The brief will point out the most common challenges and propose respective policy measures. Finally, some good practices are distinguished that potentially could become viable long-term solutions to comparable emergency situations.

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Introduction

In March 2020, the outbreak of the COVID-19 pandemic posed an unprecedented collective challenge to the EU. The health emergency prompted EU member states to take various restrictive measures. Studies found that migrants, including refugees and asylum seekers, were disproportionately affected which in turn raised some important questions about European migration policies and the protection of fundamental human rights in times of emergency crisis (FRA, 2021).

To address the health emergency, EU member states implemented a variety of measures, including but not limited to, physical distancing, switching to online work settings, altered administrative and judicial procedures, and disrupted provision of regular healthcare services. Other countries, such as Hungary, did not address migrants' needs sufficiently. The pandemic had a direct impact on the proper delivery of public services and the overall quality of life of the migrant populations in EU and beyond. In this respect, a number of EU institutions, the UN Refugee Agency (UNHCR) and civil society organisations raised concerns about the legality and proportionality of some measures and recommended interim solutions for restoring them (UNHCR, 2020 & Civil Society Action Committee, 2020).

Against this background, the present policy brief outlines some of the main challenges faced by migrants, refugees and asylum seekers residing on the territory of EU member states and on their way to it. It considers the definition of a migrant more broadly, including refugees, asylum seekers and those with undefined or unusual status. Herein, various stages of migration are covered - from their decision to migrate to the procedures regarding their status and access to services. It analyses how the emergency measures introduced in response to the COVID-19 crisis has affected asylum and reception procedures in EU countries, as well as the variations and similarities in national efforts to address the situation. This policy brief highlights some aspects of these issues and suggests a list of relevant recommendations and good practices that EU member states could implement to better address migrants' needs in times of healthcare emergencies similar to the COVID-19 pandemic.

Key Issues:

- *The COVID-19 pandemic had far-reaching effects on all areas related to asylum and migration from 2020 onwards.*

- *Fundamental human rights were often affected by measures addressing the health emergency, raising important questions about EU countries' capabilities to support asylum seekers and refugees in times of crisis.*

Main Challenges of Migrants in the EU During the Pandemic

Travel and entry conditions

The first and foremost measure in response to the COVID-19 pandemic was the closure of national borders and enforcement of entry bans. On 16 March 2020, the European Commission adopted a Communication calling for a temporary restriction on non-essential travel to the EU in view of COVID-19 (European Commission, 2020)

Key Findings:

- *The first challenge migrants faced amidst the covid-19 pandemic was the closure of borders, restricting the freedom of movement.*

followed by guidance on the implementation of such restrictions. As of 1 May 2020, almost all EU countries had put in place restrictions on the admission of third country nationals and further restrictions upon their arrival to EU borders (OECD, 2020). Thus, migrants were not able to return to their country of origin where at times the rates of COVID-19 infections were lower, nor to leave the country they resided in.

Following advice and guidance from national, EU and international health authorities, EU countries took a wide range of measures to limit the spread of the disease. Particularly, the EU Member States closed their borders and/or imposed mandatory testing and quarantine upon arrival, fewer asylum seekers were channelled into the Dublin procedure and the freedom of movement in and out of reception centres was restricted. In terms of restrictions to cross-border movement, these measures included additional travel and health checks for asylum seekers; mandatory testing for COVID-19 depending on the transit countries before entering and mandatory quarantine. Many of these measures affected, often disproportionately, the rights of migrants and refugees (UNHCR, 2020).

o   Issues in Focus

Closure of EU external borders. Closure of EU external borders was introduced in most of the EU member states. Some countries closed their borders completely, causing severe disruptions in traditional migration routes and significant number of migrants being stuck in transit countries (EASO, 2020). Travel restrictions made journeys of asylum seekers more difficult, even impossible in many cases. Countries such as Greece and Hungary banned entry to asylum applicants (ICJ, 2020). This resulted in closure of arrival centres, restricting the right to apply for asylum. New applicants were unable to submit asylum applications for international protection and be placed in reception facilities. Other members, such as Italy and Malta, closed their maritime borders for disembarkation of people rescued at sea (Stierl & Dadusc, 2022).

- *Closure of EU member states' external and internal borders, as well as quarantine requirements have disrupted the right to asylum and the process of asylum applications.*

Quarantine requirements. Quarantine requirements posed additional problems for incoming migrants. Evidence shows that asylum seekers were often stigmatised as potential spreaders of the virus when arriving in reception facilities. The strict social distancing rules further delayed the asylum administrative procedures and led to, for instance, the temporary cancellation of face-to-face interviews (EASO, 2020). In some EU member states, movement restrictions caused a particular strain on living conditions for migrants put under quarantine due to the limited number of available facilities. In some cases, countries were unable to address problems with essential services such as access to clean water and sanitation, nor to provide the needed additional support to migrants with children and those with disabilities.

Closure of internal borders and impact of COVID-19 measures on Dublin transfers and the right to family life. The risk to public health posted by the pandemic led to the introduction of internal border controls, which had a negative impact on transfer

procedures for applicants for international protection within the EU under the Dublin Regulation (ICJ, 2020). For instance, in the Netherlands and Germany all incoming and outgoing Dublin transfers were temporary suspended until April 2020 (EASO, 2020). Although most EU member states resumed Dublin transfers shortly thereafter, their execution was affected by mandatory COVID-19 testing requirements that applicants were required to undertake in order for the transfer to be completed. In some cases, refusing to meet those requirements meant that the applicants were not registered (France, European Commission, 16 April 2020, op.cit., p.8). This had significant consequences for family reunification under the Dublin Regulation. Additionally, language barriers prevented applicants from understanding the consequences of refusing to take a COVID-19 PCR test, which in some cases resulted in an annulment of the Dublin transfer and an order to register an application for international protection (UNHCR, 2020).

- o **Recommendations and Good Practices**

- In urgent circumstances, such as a global health emergency, EU member states should implement exemptions to border closures to allow for migrants to legally seek asylum and international protection.

- Exceptional closure of internal and external borders should have an explicit time limit and include legal and humanitarian safeguards for migrants and asylum seekers.

- Health checks, quarantine requirements and testing should be communicated with incoming migrants in an understandable manner, including in various languages.

- Where possible, member states should provide opportunities for self-isolation and implement surveillance measures that enable migrants to reside in a broader and better range of facilities. Member states should have in place a comprehensive migration strategy which covers emergency situations.

- Family reunification procedures should not be suspended even in circumstances such as a pandemic. Instead, they should be adjusted according to EU law.

Administrative services

The general measures on confinement and social distancing affected administrative asylum procedures – from filing applications to applicant interviews and administering decisions. Many EU member states stopped the registration and

Key recommendations:

- *EU member states should implement exemptions to border closures for migrants.*

- *Exceptional closures should have a definite time limit.*

- *Specific requirements should be communicated in an understandable manner.*

- *Member states should provide necessary facilities, supplies and an opportunity for self-isolation.*

- *Family reunification procedures should not be suspended.*

lodging of asylum applications for various periods of time. The registration of applications and personal interviews were interrupted in many EU countries from March to April 2020, resulting in an unprecedented drop in asylum applications (EASO, December 2020). In response to this, the European Commission issued guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and resettlement (European Commission, April 2020).

- *Administrative asylum procedures were delayed and hindered by social distancing measures.*

o **Issues in Focus**

Suspension of new and on-going asylum applications and expiration of residence permits. Processing of asylum applications was directly impacted by the pandemic. Most member states closed their reception facilities, affecting the right of migrants to access relevant protection procedures, such as international protection, residence status and permits, as well as access to health, education and employment (FRA, 2021). This had a direct impact on all stages of asylum procedures, including filing applications, face-to-face interviews and notification about decisions (EASO Asylum Report, 2021). Suspension of first instance procedures led to a delay in processing applications, and in many cases in extension of deadlines and prioritisation of vulnerable applicants (EUAA, 2021). The notification of applicant decisions was sometimes postponed due to problems in the postal services. Migrants who were already in possession of residence permits experienced obstacles to extending their permits due to disrupted services that in turn impeded their access to some services related to employment, healthcare and education.

Public access to authorities and personal interviews. The general coronavirus measures affected face-to-face services for migrants. In most EU member states, national authorities announced restricted access to public facilities and services (EASO, 2020). Personal interviews with migrant applicants were initially suspended in a number of EU member states. They were replaced by remote interviews and national authorities utilised electronic tools to support all stages of asylum procedures. Some countries limited in-person interviews to vulnerable applicants, such as migrants with disabilities and small children. In-person activities were gradually restored, with stringent requirement in place like plexiglass shields and ventilation, social distancing, temperature screening and the use of masks.

- *The general measures on confinement and social distancing affected asylum administrative procedures, face-to-face services and access to information.*

Access to information, legal assistance and interpretation services. The measures against the transmission of COVID-19 had effect on the access to information and support to applicants throughout the procedure, as fewer specialists were able to provide information, legal assistance and interpretation. The complexity and dynamic adoption and revision of restrictive measures, as well as other stress factors, often put asylum seekers in a vulnerable situation in terms of their awareness about the measures in place. Some EU countries attempted to respond to this issue by developing dedicated hotlines and websites with information in various languages. In many instances, however, migrants were unable to use legal

assistance and interpretation services due to COVID-19 restrictions, which affected their right to information and legal representation.

Children and applicants with special needs. Some applicants necessitated special procedural guarantees. EU member states faced difficulties to address the specific needs of key groups of vulnerable applicants - unaccompanied minors, women and girls, victims of domestic violence and LGBTI persons. It increased the risk of detention or placement within reception facilities that do not provide adequate conditions and support. Member states were rarely able to create a physically and psychologically safe environment with access to support services for vulnerable applicants (EASO, 2021). A common concern of EU countries was trafficking of undocumented minors during reception.

o Recommendations and Good Practices

- National authorities should integrate alternative working modalities, such as remote and online services, as new technologies play a crucial role in ensuring that asylum applications and processes continue to operate appropriately (EASO, 2020).

- Expiring residence permits during times of crises should be extended by national authorities of EU member states in order to ensure equal access to healthcare, employment and education.

- Relevant public authorities should adopt shorter procedures for registrations of applications for asylum and visas when social distancing rules are in place and include an option to submit them via post or online. Personal interviews and notification of application decisions should be adapted in an online or semi-online setting via electronic tools, with necessary support provided.

- EU member states should maintain sufficient number of legal assistants and interpreters for migrants at the reception stage. In order to fill the information gap, states should adopt virtual counselling and legal advice, software for language assessment and dialect recognition assistance and other electronic tools. Equal access to these services via technological tools should be ensured (EASO, 2021).

- Support to vulnerable applicants should be prioritised. Children should be monitored strictly and put in physically and psychologically safe environments. Member states should deliver additional counselling and psychological support to vulnerable migrants to prevent their re-traumatisation and mental health illnesses.

Key recommendations:

- *EU member states should implement new working modalities where possible.*

- *Expiring residence permits should be extended at times of crisis.*

- *Relevant public authorities should adopt shorter asylum procedures.*

- *Member states should provide necessary assistance to migrants related to their support and understanding of asylum procedures.*

- *Vulnerable migrants should be provided additional support.*

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Access to Healthcare

The rapid rise in the number of COVID-19 positive infections raised questions about the ability of healthcare systems to cope with the influx of new patients. Migrants faced compounded difficulties in accessing healthcare. In many EU member states, such as Bulgaria, there was a lack of beds, especially in intensive care units, insufficient trained staff and shortages of appropriate equipment. In other cases, migrants could not access healthcare due to their irregular status, which resulted in illness and even death. Physical access to doctors and healthcare services was limited. Member states faced challenges to guarantee access to healthcare and support services of migrants with health conditions. Non-urgent medical treatment, including surgical interventions, was often postponed in most EU member states.

o Issues in Focus

Legal right to access care. Despite the fundamental human right to health care under European and International law, migrants were only entitled to emergency care during the COVID-19 pandemic, which was also restricted in some EU member states. Disrupted administrative procedures posed significant difficulties for migrants to prove their right to access healthcare. In countries such as Latvia and Austria, access to healthcare was difficult and was often provided only in emergency situations (OECD, 2020). Due to administrative delays, undocumented migrants had limited access to public services, including healthcare (Varga, 2020). Migrants that were no longer under international protection or had an expired residence status often lost access to healthcare, which increased the risk of infection and spreading the virus.

Administrative and financial barriers. Administrative and financial barriers are major issues regarding migrants' healthcare. Bureaucratic and administrative hurdles such as complicated registration forms, unfamiliar referral systems and health insurance restrictions restricted migrants' access to the medical care they needed. Financial barriers were present regardless of whether migrants have residence status, universal healthcare or insurance. Some health systems, such as that of Poland required co-pays, deductible expenses and additional fees, which had a considerable impact on migrants' fundamental right to healthcare and a minimum standard of living (OECD, 2020). On the other hand, migrants were not aware of administrative and financial procedures. Misinformation and fraud cases regarding access to healthcare were on the rise during the pandemic, of which many migrants fell victims to, due to lack of knowledge and language barriers. EU member states focused on implementing short-term measures and ad-hoc extensions for COVID-19 treatment and vaccination, rather than adopting structural measures to strengthen the universality of their healthcare schemes. In some countries, migrants were discriminated based on the stage of their application process, as they were entitled to certain number of health services during that time (EASO, 2021).

- *Migrants faced difficulties accessing COVID-19 related healthcare.*

- *Non-urgent medical care was also restricted for migrants.*

- *Migrants struggled to prove their right to healthcare due to administrative and financial barriers, fear and distrust for the healthcare system. Migrants were overexposed to the COVID-19 virus but were rarely considered a priority group to inoculation policies.*

Fear and distrust. Migrants, particularly irregular migrants who fear deportation may avoid seeking healthcare due to distrust in authorities (WHO, 2021). Uncertainty regarding healthcare procedures may impede migrants from seeking access to healthcare. Certain medical conditions also prompt feelings of shame or stigma, especially among those with communicable diseases such as HIV and hepatitis. Migrants who avoid seeking the healthcare they need may increase the risk of infections and exacerbate their existing health conditions. This can have a negative impact on collective migrant health in reception facilities (ESPN, 2021). Many EU member states were slow to provide healthcare for migrants, as they experienced a bundle of obstacles - lack of extensive coverage by national health systems, fear of deportation, inability to communicate and lack of knowledge about the healthcare procedures (Samkange-Zeeb et al., 2020).

Access to vaccines. The global COVID-19 pandemic has disproportionately affected migrants across EU member states, as they were often unprotected and overexposed to infection (Armocida et al., 2021). At the end of 2020, vaccination against COVID-19 was initiated in some EU member states, albeit few of them included migrants as priority group. Their exclusion from vaccination plans impeded effective communication between national health authorities and migrants and EU member states were challenged to implement specific interventions to reach them. Vaccination of migrants posed additional problems to countries, including lack of knowledge, ineffective communication and administrative barriers, that in turn limited migrants' access to vaccines (EASO, 2021).

o **Recommendations and Good Practices**

- Migrants irrespective of their legal status must be included in public health strategies of EU member states, including COVID-19 vaccination planning and implementation, as well as primary healthcare services.

- EU member states should simplify migrant access to healthcare services. This can be done through community care, mobile healthcare units, introduction of simplified administrative requirements and additional healthcare counselling support specifically trained to support asylum seekers.

- It is recommended that countries expand their universal healthcare coverage to migrants. Countries without universal healthcare coverage should develop systematic ad-hoc schemes for migrants that they can access at all times irrespective of their legal status or application stage.

Key recommendations:

- *Migrants should be included in public health strategies of EU member states.*

- *Migrants should have easy and affordable access to primary healthcare services.*

- *EU member states must provide healthcare coverage or schemes that support migrants in accessing healthcare.*

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Employment

The restrictions to businesses in EU member states had adverse consequences to the right to employment of migrants and asylum seekers. These include restrictions to work due to processing of applications, expiry of work and residence permits, loss of jobs due to the pandemic and difficulties finding a job, among others. In many EU member states, migrants were not recognised as a priority group of employment support, which in turn affected their access to social security, healthcare and housing (UN, 2020).

- • *The right to employment of migrants and asylum seekers was hindered by the consequences of COVID-19 on the labour market.*

o **Issues in Focus**

Access to employment, expired residence or employment status. Due to the delay in processing asylum applications, many migrants faced challenges with eligibility and opportunities to work. In some EU member states such as Greece, migrants were unable to work due to confinement measures – both because of the rise of infections and the closure of many low-skill job positions (ILO, 2020). Administrative burdens, such as the requirement to obtain a tax registration number, also hindered migrants' access to the labour market. Those who were already in possession of work and residence permits required renewal and maintenance of their legal status in order to continue to work. Some EU member states such as France and Spain initiated extensions to work and residence permits and extension of procedural deadlines to ensure migrants keep their legal status (EMN, 2021). Other countries did not apply renewals of permits but processed tolerated stays during the pandemic so that migrants do not fall into an irregular situation (ILO, 2020).

Employment loss. Restrictions on work and closure of facilities posed particular challenges to migrants who were already employed when the pandemic began. Migrants who suffered job loss due to the consequences of COVID-19 often lost their residence permits. As they were not covered by protections of standard labour law and social systems, migrants were forced into irregular or undocumented status. This had a considerable impact not only on employed migrants themselves, but their whole families and their access to housing, healthcare and social services (ICJ, 2020). Restrictions on transboundary movements impeded migrants that are cross-border workers or seasonal workers to exercise their right to free movement and employment. International students were also negatively impacted by labour restrictions. They suffered redundancies and reduced income that affected their ability to continue their education (EASO, 2021).

- • *Migrants struggled with access to employment, suffered loss of employment and were rarely provided income support.*

Income support for migrant workers. Unemployed and financially struggling migrants in the EU were rarely offered targeted support. Some EU member states reported that mainstream unemployment benefits, including business support and help for the self-employed, were also available for migrants who had legal status during the pandemic (EMN, 2021). However, in many cases the conditions that migrants were expected to fulfil – duration of the working relationship and

minimum income requirements, among others – were unrealistic due to COVID-19 restrictions to employment. In countries such as Poland and Germany, migrants were subject to normal unemployment benefits and income support rules. In Italy, the government had a no-dismissal policy for economic reasons, but legal support was based on the duration of employment – a condition that many migrant workers were unable to fulfil but needed financial support. Lack of targeted financial support for migrant workers may affect migrants' right to social security, healthcare and other public services.

o **Recommendations and Good Practices**

- States should automatically extend residence and employment permits of migrants to ensure their access to labour, healthcare and housing. National authorities should minimise administrative burdens that prevent migrants from accessing the labour market.

- EU member states should implement professional skills development and job search support for migrants who have lost their jobs due to the pandemic.

- Migrants who have suffered employment loss or have lost their residence status due to emergency situation should have access to social benefits that ensure their access to essential healthcare, housing, food and education. States should ensure targeted support to women who have suffered employment loss disproportionally.

Key recommendations:

- *EU member states should extend residence and employment permits to provide access to employment.*

- *Professional skills development and support should be available for migrants.*

- *Migrants who lost jobs due to unusual circumstances should have access to benefits and income support.*

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