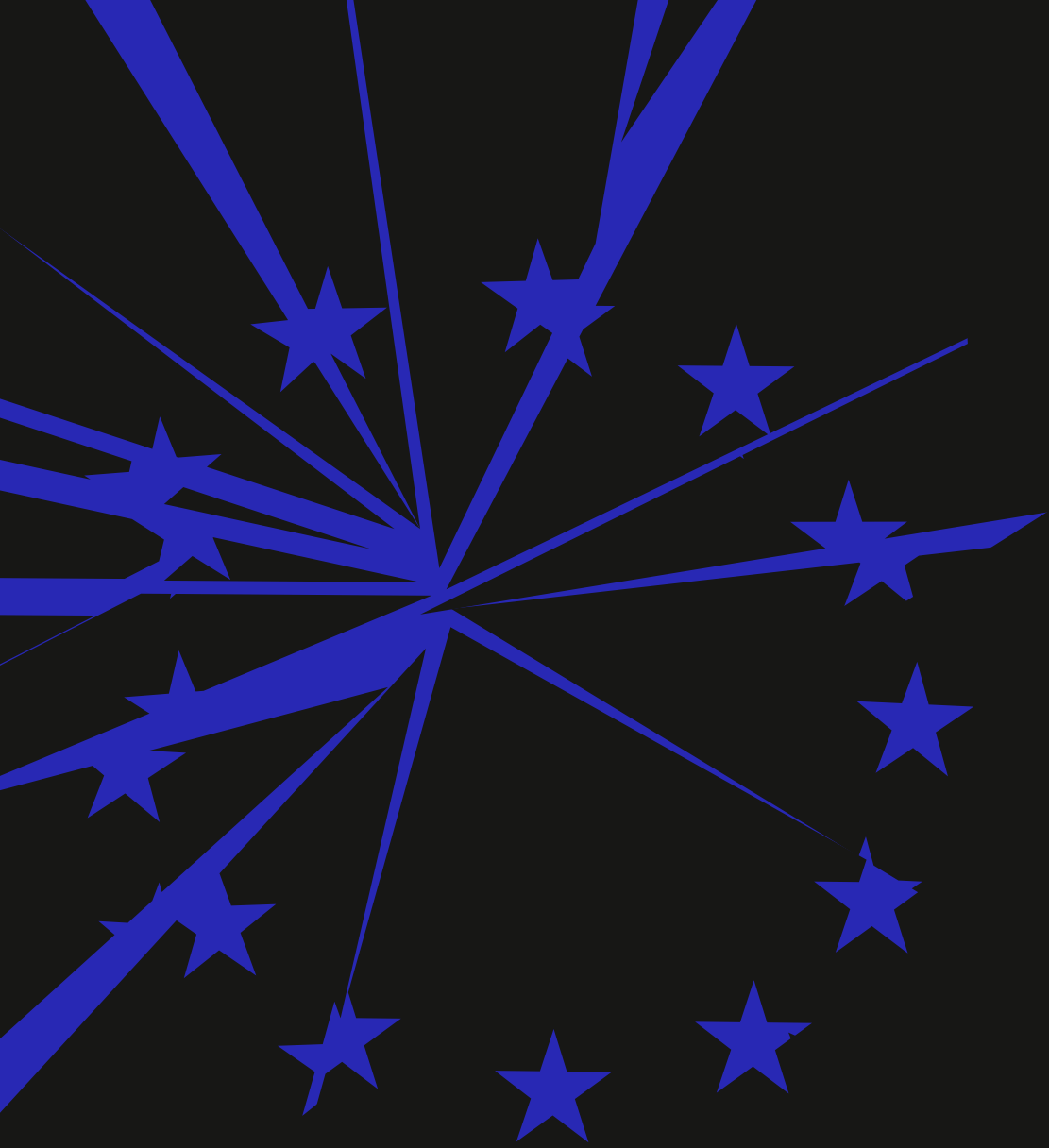




**Migrants
are in danger,
Europe
is adrift.
It's time to react!**

Fifteen proposals



**Fifteen
Proposals
for European
migration
policies
that respect
migrants'
rights**

La Cimade is calling for a break with current migration policies. EU policies must be based upon the respect of migrants' fundamental rights, and upon equality of access to those rights.

This call is consistent with the history and common values of the EU, as established by the Lisbon Treaty and the EU Charter of Fundamental Rights, and also with the commitments the EU and its Member States have made to the respect of human rights by signing various international agreements.

The context of rising xenophobia and bigotry in the EU Member States endangers the common values gradually adopted by the EU. With economic crisis and austerity that make European citizens worry about their own future, public opinion is more sensitive to rhetorics that stigmatise foreigners. The EU should work to break down those fears and ease tensions by recognising the positive side of immigration. It does have the means to transform migration into an opportunity for both migrants and their countries of origin and the EU. It can create the tools necessary to defend rights, as the Charter of Fundamental Rights and some directives granting certain rights to migrants, even if only to a limited number of categories.

Current policies, focused on security concerns and symbolised by Frontex, have taken precedence over the protection of migrants' rights. The EU has concentrated its efforts and resources on the fight against "illegal" immigration and border control¹, instead of on an active immigration and integration policy. The drownings in the Mediterranean Sea of 2013 are one of the consequences of these policies. The possibilities of entering the EU "legally" being more and more restricted, migrants have to resort to networks of people traffickers and ever more dangerous routes.

1. François Crépeau, UN Special Rapporteur on Migrants' Human Rights, shares this opinion in his memoir of April 2013 "The management of the EU's external borders and its impact on migrants' human rights".

For a European Parliament committed to fundamental rights

The Lisbon Treaty has reinforced the powers of the European Parliament, especially its right to take political initiatives and its role as co-legislator. Ensuring the respect of fundamental rights is also one of its duties as specified in the Lisbon Treaty and article 36 of the European Parliament's internal rules.

Members of the European Parliament (MEPs) are therefore important players in EU migration policies, accountable for the consequences of those policies on migrants' rights. They must use their prerogatives to ensure that EU policies are founded on the respect of fundamental rights, but also upon the solidarity between Member States, so they share responsibility for receiving migrants. The European Parliament must also attend to improving links between civil society and the making of European policy.

La Cimade calls upon the European Parliament to:

1.

Introduce, through its role as co-legislator, safeguards for the respect and protection of fundamental rights into all European legislative texts which affect migrants.

Make sure that the protection of migrants' fundamental rights and the equality of rights are at the centre of political guidelines for asylum and migration.

2.

Continue to support unconditionally the draft treaty regarding the accession of the EU to the European Human Rights Convention, by encouraging EU Member States and their national parliaments to ratify this agreement.

For a more open EU that respects the right to mobility for all

EU policies must respect the right to mobility for all. This right, which includes freedom of movement and settlement, must prevail for all and not just a privileged few, all the more because current migratory movements are one of the consequences of worldwide unrest in which the EU has its responsibility. The EU has thus a duty to welcome and to solidarity. The right to mobility must not be restricted by abusive border control. In the same way visa policies must facilitate and not restrict this right.

The proliferation of biometric databases to control the EU borders raises many questions. Costly and ineffective, the existence of those systems entails risks of violations of fundamental rights, such as the protection of personal data. Their principal beneficiaries are the security and defence industries.

Just as the UN Special Rapporteur on Migrants' Human Rights recommends, the EU must "acknowledge that it is impossible to close [its] borders" and "consider the opening of a larger number of migratory routes, including for low-skilled workers [...] which would help to reduce the number of illegal border crossings and the trafficking of migrants". The EU must break with its lockdown logic and migrant selection strategies, which bring about violations of rights, are an impediment to the right to mobility and violate the principle of non-refoulement². This repressive and security-driven logic, embodied by the Frontex agency, poses real problems for the respect of human rights, as specifically

2. In 2012 the European Court of Human Rights has condemned Italy for violating this right by detaining Hirsi Jamaa.

highlighted by the Parliamentary Assembly³ and the Council of Europe Commissioner for Human Rights⁴.

The EU's cooperation with migrants' countries of origin and transit should always be clear and open, through truly equal partnerships which protect migrants' rights. The aim of this cooperation must not be to stop migration to Europe by appointing neighbouring and transit countries as the border guards of the EU. In the same way, official development assistance must not be used to regulate migratory flows.

La Cimade requests Members of the European parliament to:

3.

Defend a visa policy which facilitates the exercise of the right to mobility for all.

- Use their right of political initiative to push the European Commission to submit a legislative proposal to widen the legal ways to access the EU territory.
- Request the European Commission to check if procedural guarantees provided by the Community Code on Visas are actually enforced in each member state (visa refusal motivation, time limit to answer, list of supporting documents, specification of ways and deadlines for appeal).
- Highlight the denaturation of existing visa policies and abusive applications by certain European consulates, especially by making sure that visa costs are not used as a deterrent measure.

4.

Question the growing place of biometrics and the filing of foreigners' data in the EU border control policy.

- By opposing the establishment of the "Smart Borders" programmes proposed by the European Commission.
- By monitoring the use of the Visa Information System (VIS) and asking for it to be suspended if there is a risk it could be abused or misused for repressive action. Other databases and filing systems (SIS, Eurodac) must be monitored the same way.

3. Resolution 1932 (2013) of the Parliamentary Assembly of the Council of Europe: "Frontex: Responsibilities in the matter of Human Rights".

4. In his memoir "The Right to Leave a Country", published in November 2013, the Commissioner for Human Rights observes that EU border control policies harm human rights.

5.

Ensure the strict respect of the fundamental right to freedom of movement.

- La Cimade blames the new rules in the Schengen area which allow a temporary reintroduction of internal border controls in exceptional circumstances. The European Parliament must very closely monitor the enforcement of those rules to prevent abuse.
- Request the creation of an evaluation and sanction mechanism for controls at internal borders of the Schengen area, when they are not made in exceptional circumstances (like the systematic racial profiling at some French borders).

6.

Request the stopping of all Frontex operations and the closing of this agency, as its missions are not compatible with the respect of fundamental rights, a fact that has already been exposed by civil society.

In anticipation of this, without delay:

- Make a full and independent assessment of Frontex's activities since its creation, specifically regarding the respect of fundamental rights and the financial costs. The assessment must include the fundamental rights strategy put in place by Frontex and the cooperation agreements signed with third countries.
- Monitor land and sea operations coordinated by Frontex without restrictions

and ask for their suspension (including joint return flights) in case of risk of, or confirmed, violation of rights.

- Request the creation of a complaint/appeal mechanism in case of individual violation of rights in the framework of Frontex activities.

7.

Advocate a different cooperation with third countries, peer to peer, questioning the readmission agreements and partnerships for mobility, and putting an end to the instrumentalisation of official development assistance.

Regarding readmission agreements:

- Require an actual right to democratic scrutiny: agreements must be discussed in national parliaments as well as in the European Parliament pending negotiations and until their final adoption.
- Request to cut the link between negotiations on readmission agreements on one hand and development policies and visa facilities on the other, in order to ensure balanced negotiations.
- Request the introduction, into agreements that have already been signed, of guarantees in favour of persons to be sent back, especially of persons to be sent back to transit countries (appeal mechanisms, suspension of the agreement if the country does not respect fundamental rights, etc.).
- Not to sign new agreements, as long as existing agreements do not guarantee human rights.

Regarding partnerships for mobility:

- Request a right to oversee the contents and the conclusion of those partnerships.
- Request the exclusion of the readmission clause. There should be

no subordination of any agreement on mobility to questions of border control. And agreements on mobility should not be limited to just a few rules on short term visa facilities.

For an EU that welcomes and protects, breaking with forced expulsions and detention

The EU asylum policy must be based on the strict respect of the Geneva Convention on refugees. Priority must be given to the protection of people forced to flee persecutions and violation of human rights that are engendered by global disorders. Asylum seekers must be considered as presumed refugees instead of suspects and should be granted the social, economic and cultural rights foreseen in the Convention. They should not be detained. The EU must also ensure the strict enforcement of the non-refoulement principle which forbids expelling people to places where their life and freedoms could be threatened (some Frontex operations violate this principle).

Furthermore, asylum seekers should be granted the possibility to choose their host country when they look for protection in Europe, in order to take into account the reality of their family and cultural ties. Finally, the EU asylum policy should be based on solidarity between Member States to ensure proper reception of people in need of protection. The reception of Syrian refugees illustrates the weaknesses of the EU asylum policy, in particular the lack of solidarity. The new regulations and directives passed in June 2013 do not solve these weaknesses. Whereas 3 million refugees

stay in neighboring countries, Europe only registered 32 000 requests in the first 9 month of 2013.

The adoption of the Return Directive in 2008 and its wrong transposition in some Member States have institutionalised the detention of migrant people including children and families. Camps for foreigners have multiplied on the European territory these last years (393 camps identified by “Close the camps” project) but also in neighbour countries, under the EU influence. The EU and its Member States must break with this policy of forced expulsions and detention, which is costly, has little efficiency and is incompatible with the respect of fundamental rights. The first and true alternative is to be set beforehand this traumatising step of migration paths. Only a policy putting at its core the respect of fundamental rights, the right to mobility, the right to asylum, ensuring an actual right of residence and equality of rights, will prevent massive expulsions and detention.

The EU must also be particularly careful to the most vulnerable migrant people, such as unaccompanied minors, young adults, victims of violence or human trafficking, children and families as well as seriously ill persons, while developing and implementing its policies.

La Cimade asks Members of the European Parliament to:

8.

React to and act against the failures of the EU asylum policy and the Member States’ asylum systems.

- By asking for a revision of the directive 2001/55/EC establishing a temporary protection in the event of a mass influx of displaced persons in order to ease its implementation;
- By asking for a modification of the Community Code on Visas in order

- to suppress the possibility of a national list making compulsory airport transit visa to certain third-country nationals in “urgent cases of mass influx of illegal immigrants”, which actually hides a hindrance to asylum right;
- By reinforcing the control and alarm mechanisms against the systemic failures of the Member States’ asylum systems;
- By forbidding the detention of asylum seekers.

9.

Ask for modification of the “Return” directive (2008/115/EC) to abrogate its most problematic provisions. At the same time, a reflection should be launched on the implementation of a new ambitious approach to break with the current policy of forced expulsion and massive detention.

The return directive must be changed so that it:

- Guarantee an effective remedy with suspensive effect against expulsion;
- Forbid unconditionally the detention of minor people and implement specific measures to ensure protection from detention and expulsion of vulnerable people, including migrants suffering from serious illness;
- Suppress the entry ban into the EU territory and the systematic registration in the Schengen Information System;

- Detention must not be considered as a punishment measure; its length must be shortened and as short as possible, to be limited to the strictly necessary time for removal;
- Make effective the obligation of less coercive measures than detention (in particular the obligation of a period for voluntary departure).

10.

Propose to create an EU body in charge of monitoring places of deprivation of liberty (an EU deprivation of liberty supervisor) or encourage the creation of this body in Member States where it does not exist.

The multiplication of EU legislation allowing detention of migrant people, including asylum seekers has induced generalisation of detention and of deprivation of freedom systems, and thus justifies creating such a function.

For a fair EU

EU policies must ensure that any person on the EU territory, whatever his administrative status, has real access to justice and procedural rights, as guaranteed by the EU Charter of Fundamental Rights, specifically by its articles 20 (equality), 21 (non-discrimination), 41 (right to a fair administration) and 47 (right to an

impartial court). There must not be any rules of exception for foreigners. The same law must apply on the whole EU territory, including the EU outermost regions such as Mayotte.

La Cimade requests Members of the European Parliament to:

11.

Use their right of initiative to promote the adoption of a coherent and global legislation that guarantees real access to justice for any person living on the EU territory, whatever his status.

This legislation must guarantee access to actual procedural rights, i.e. the right to an effective remedy, access to an impartial court, right to an interpreter and a lawyer, as well as to legal assistance.

For an EU that refuses xenophobia by promoting equality of rights and harmonious coexistence

The EU must promote a positive vision of migrations, by promoting equality of rights and coexistence. The construction of coexistence must be based on the principles of equality of rights and duties, of acknowledgment of diversities, of solidarity and of struggle against discriminations and racism.

Migrants should not be categorised by status, with different rights attached to each category. They must be considered as individuals possessing rights and to whom status and stability of life are due,

in respect of the elementary principles of coexistence. Guaranteeing those rights favours integration into the host society. To achieve this, the adoption of policies allowing a true right of residence in the Member States, which avoids administrative instability, is necessary.

Granting the right to work to migrant people whatever their status is also a factor of integration. Temporary measures that restrict the access to work for certain European citizens, and that apply currently to Croatian citizens (and formerly to Romanians and Bulgarians), are in this view discriminatory. They create lower class European citizens.

Also the EU and its Member States must respect the principle of non-discrimination, as established by the Lisbon Treaty, which aims to ensure equal treatment of individuals, whatever their nationality, their race, their ethnic origin or their religion. Stigmatization of Roma people on the EU territory, who do not have access to all their rights, is a breach of this commitment.

La Cimade requests the Members of the European Parliament to:

12.

Require the implementation of article 7 of the Lisbon Treaty, taking into account the situation and treatment of foreigners and asylum seekers in certain EU Member States.

This article provides for a mechanism of prevention and sanction in case of violation – or risk of violation – of the common values of the EU, as established by article 1bis of the EU Treaty: respect of human dignity, liberty, democracy, equality, rule of law and respect of human rights, including the rights of minorities.

13.

Ensure equality of rights between European citizens and migrants on the European territory, with respect to the Charter of Fundamental Rights.

This Charter establishes a list of rights and liberties, such as respect of private and family life, right to education, to protection of health, to non-discrimination, etc. Under article 36 of its rules of procedure the European Parliament is obliged to respect this Charter and to ensure its application.

14.

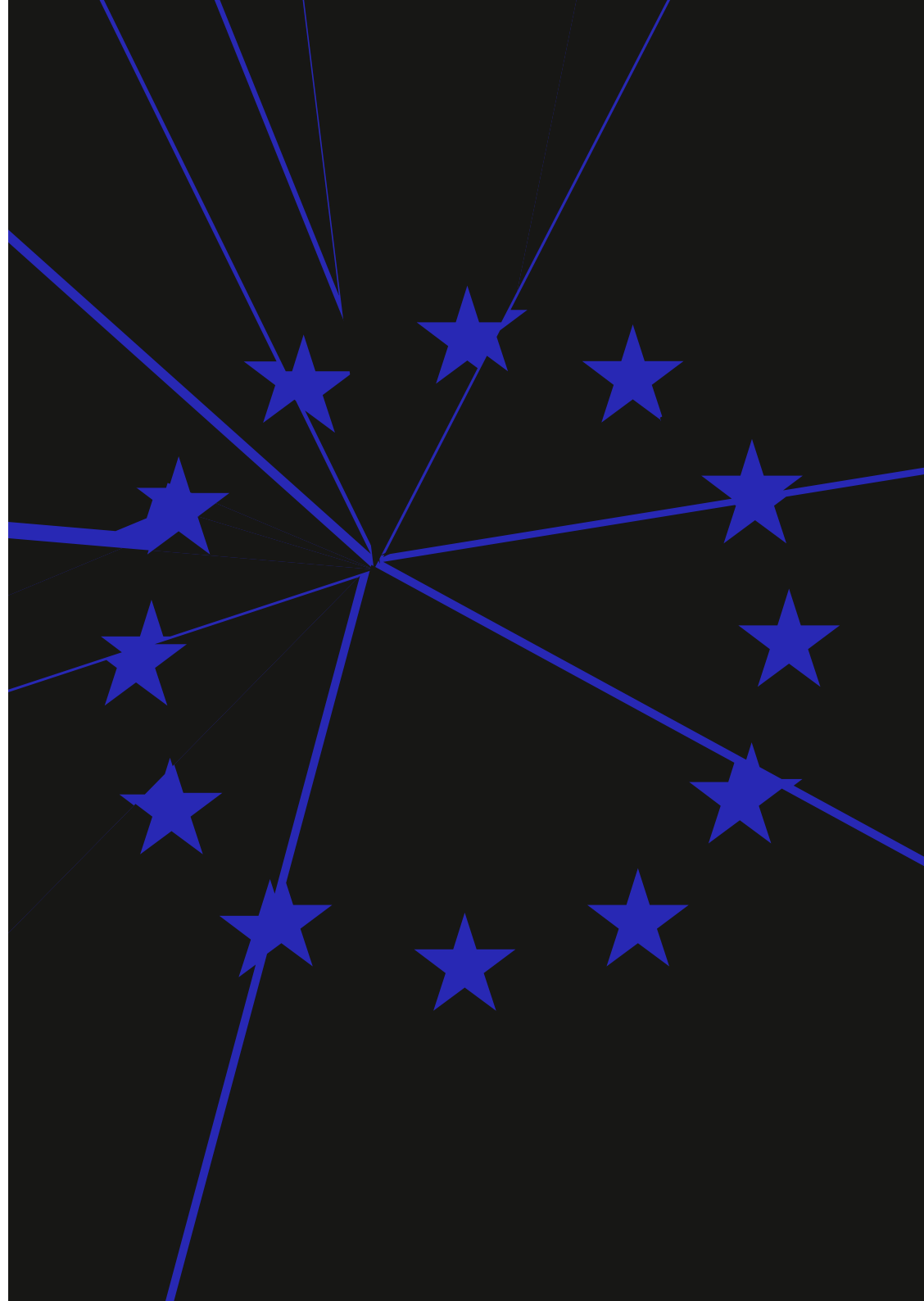
Adopt a resolution encouraging the EU Member States to associate all residence permits with a right to work and to generalise permanent residence permits to allow administrative stability, excluding residence permits of one year or less.

15.

Advocate within the EU institutions the ratification, by the EU Member States, of the United Nations Convention on the protection of the rights of migrant workers and the members of their families.

La Cimade is an association of active solidarity with migrants, refugees and asylum seekers. With its partners in France and abroad it acts for people's rights and dignity.

www.lacimade.org





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