



PICUM POSITION PAPER

UNDOCUMENTED MIGRANTS AND THE EUROPE 2020 STRATEGY: MAKING SOCIAL INCLUSION A REALITY FOR ALL MIGRANTS IN EUROPE

NOVEMBER 2015

 **PICUM**

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

The Platform for International Cooperation on Undocumented Migrants (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of more than 140 organisations and 100 individual advocates working with undocumented migrants in 33 countries, primarily in Europe as well as in other world regions, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national level. With over ten years of evidence, experience and expertise on undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at policy level.

Based on the realities faced by undocumented migrants and migrant workers in precarious situations - those with short term residence permits in insecure employment situations - this position paper aims at informing the debates on poverty and social inclusion, education and on labour migration. This paper develops links with the three social targets of the Europe 2020 Strategy – poverty, employment, and education - offering insight to how the targets could positively impact undocumented migrants and how the inclusion of this group could help achieve the objectives of the Strategy.

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EXECUTIVE SUMMARY

The five headline targets of the Europe2020 Strategy in the fields of employment, reduction of poverty, education, climate and energy and research and development were set to reach the overall objective of Europe 2020, launched in 2010 as the European Union's strategy for smart, sustainable and inclusive growth. These include concerted efforts to empower and activate disadvantaged groups across EU member states and find sustainable solutions for the future of the EU labour markets. However, implementation of a comprehensive approach that would promote economic growth that contributes to social justice, decent work, combating poverty, investing in an inclusive and universal education system and to the transition from informal to formal economy in labour market sectors vulnerable to exploitation, has fallen behind.

This position paper develops links with the three social targets of the Europe 2020 Strategy – poverty, employment, and education - offering insight to how the targets could positively impact undocumented migrants¹ and how the inclusion of this group could help achieve the objectives of the Strategy. Based on the realities faced by both undocumented migrants as well as migrant workers in precarious situations (those with short term residence permits in insecure employment situations) this position paper aims at informing the debates on poverty and social inclusion, education and on labour migration.

The inclusion of migrants irrespective of their migration status in the broader implementation of the Europe 2020 Strategy is crucial as migrants face an increased and disproportionate risk of poverty and social exclusion, human rights violations and discrimination. Due to the multiple failings of labour migration systems in Europe, migrant workers in low wage sectors face great difficulties in maintaining their regular migration status. Low-wage migrant workers often fluctuate between regular and irregular status, making a social strategy solely based on residence status counterproductive. While many undocumented migrants in Europe, including undocumented children and youth, are able to at one point regularize their status, the restrictions they may have faced in accessing education and health care services not only result in an abuse of their human right to education and health, but also result in wasted potential and can have harmful long term health impacts.

The inequality faced by Europe's workers has resulted in increased labour segmentation, low wages and normalization of exploitative working conditions.

The growth of 'in work poverty' may increase hostility towards undocumented workers, often viewed as unwelcome competition for scarce jobs, and blamed with lowering wages and safety standards. This paper particularly focuses on specific issues concerning the unrecognised labour market needs in low wage employment sectors and the precarious situation facing migrant workers in the informal sector. The paper explores how the creation of more adequate labour migration channels could positively impact economic recovery and improvement of working conditions.

The paper also addresses undocumented children and poverty; access to homeless services and health care for undocumented migrants; as well as the reasons for early school leaving among undocumented children and youth. It aims to contribute to the understanding that it is in the mutual benefit of European society as a whole to ensure fair and inclusive working conditions, quality services, protection and justice, and secure and regular residence statuses for migrant workers.

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By providing a set of concrete policy recommendations for EU institutions on ways to include undocumented migrants in the social inclusion, employment and education policies, this paper hopes to contribute to a better understanding of the relevant role of the Europe 2020 Strategy and the EU.

¹ Undocumented migrants are third country nationals who are currently living/working in the EU without valid residence permission.

EUROPE 2020 STRATEGY: A BRIEF OVERVIEW

These targets include concerted efforts to empower and activate disadvantaged groups across EU member states and find sustainable solutions for the future of the EU labour markets.

The Europe 2020 initiative² was launched in 2010 as the European Union's strategy for smart, sustainable and inclusive growth, representing a commitment from the EU institutions and member states to steer the EU collectively towards a more equal and sustainable future both in terms of economic and human progress. Five headline targets in the fields of employment, reduction of poverty, education, climate and energy and research and development were set to reach the overall objective. These targets include concerted efforts to empower and activate disadvantaged groups across EU member states and find sustainable solutions for the future of the EU labour markets.

The employment target aims to have 75% of 20 to 64 year old men and women employed by 2020. This includes the setting up of a "forward-looking and comprehensive labour migration policy responsible for the needs of labour markets" and "better integration of migrants in the workforce".

The poverty target sets out to reduce poverty by lifting at least 20 million people out of the risk of poverty and social exclusion by 2020. "Provision of innovative education and employment opportunities for deprived communities and the development of a new agenda for migrants' integration to enable them to take full advantage of their potential" are some of the suggested ways on how to achieve this.

The education targets aim to reduce early school-leaving rates below 10% and have at least 40% of 30-34 year-olds completing third level education.

Although civil society has welcomed the Europe 2020 Strategy and in particular the focus on addressing poverty and social exclusion, main concerns lie in the strong emphasis on economic growth and austerity policies that overshadow progress on the social targets.³

The Strategy reached its half way mark in 2015 and PICUM will explore how it has set out to include the migrant population and what has the EU has delivered so far in terms of progress in the three social targets relating to employment, poverty and education.

² Commission Communication *Europe 2020: A strategy for smart, sustainable and inclusive growth*, COM(2010) 2020 final. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

³ See for example: EAPN, *Briefing Note on the EU2020 Strategy*, 2011. <http://www.eapn.eu/images/stories/docs/EAPN-position-papers-and-reports/2011-briefing-note-europe-2020-en-final.pdf>.

1. EMPLOYMENT

1.1 References to migrants in the employment target

Launched in 2010, the European Commission's Flagship Initiative "An Agenda for new skills and jobs"⁴, which aims to support the objectives of the Europe 2020 employment target, made a promising start in guiding the EU policy agenda on labour migration, a policy area governed by both DG Home Affairs and Migration and DG Employment and Social Affairs. It suggests that "the potential of third-country migrant inflows is not fully utilised and insufficiently targeted to meet labour market needs, despite the substantial contribution of migrants to employment and growth" and furthermore that "a mapping of the skills profile of third-country nationals already living in the EU, would be instrumental in determining how the expanding legal framework of EU and national admission schemes for migrant workers could help mitigate skills shortages".⁵

Despite the promising analysis of this Flagship Initiative, the promotion of a comprehensive labour migration policy for third country migrant workers is a complex and difficult task on the EU level. One of the areas in which the EU has had difficulty in legislating has precisely been the admission of third country nationals for the purposes of paid employment and independent economic activity.⁶

1.2 Labour market demand in low wage sectors and EU policy responses

According to the OECD⁷, the working age population in Europe will shrink by 50 million by 2060. Even with the success of any planned activation policies, it will not be enough to mitigate this prognosis without labour migration policy reform. However, current statistics show that the labour markets of EU member states are increasingly restrictive to third country migrant workers: the total number of first time residence permits for all remunerated activity reasons (not differentiating for the type of employment, skill level or sector) in the EU28 went down from 786,892 in 2008 to 535,478 in 2013.⁸

According to the OECD, the working age population in Europe will shrink by 50 million by 2060. It will not be enough to mitigate this prognosis without labour migration policy reform.

4 Commission Communication *An Agenda for new skills and jobs: A European contribution towards full employment* COM (2010) 682 final. http://eur-lex.europa.eu/resource.html?uri=cellar:776df18f-542f-48b8-9627-88aac6d3ede0.0003.03/DOC_1&format=PDF

5 Commission Communication *An Agenda for new skills and jobs: A European contribution towards full employment*, op. cit., p.2 and p.12.

6 A. Triandafyllidou, S. Marchetti, *Europe 2020: Addressing Low Skill Labour Migration at times of Fragile Recovery*, RSCAS Policy Paper 2014/05, p.1. http://cadmus.eui.eu/bitstream/handle/1814/31222/RSCAS_PP_2014_05.pdf?sequence=1.

7 B. Westmore, International migration: the relationship with economic and policy factors in the home and destination country. OECD Economics Department Working Papers no. 1140, page 5. http://www.oecd-ilibrary.org/economics/international-migration-the-relationship-with-economic-and-policy-factors-in-the-home-and-destination-country_5jz123h8nd7l-en;jsessionid=ddskmnbgsfht.x-oecd-live-03.

8 Eurostat, First permits by reason, length of validity and citizenship, December 2014. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_resfirst&lang=en.

The EU's labour migration policies, with the exception of the recently adopted directive regulating seasonal work, have thus far mainly focused on highly skilled workers, leaving very few regular employment opportunities for low-wage workers from outside the EU. At the same time, particular sectors of the economy in the EU rely on the presence of a migrant workforce that works undeclared in the informal economy due to limitations on work and residence permit opportunities which force these migrants to work in precarious conditions with an irregular status due to lack of alternatives.⁹

National and EU migration policies continue to offer few possibilities for migrant workers from third countries to receive work and residence permits to work regularly in low wage sectors.

The presence of migrant workers demonstrates that labour market demand exists in low wage occupations most notably in the restaurant, hospitality, agriculture, construction, retail, and domestic work sectors. Nonetheless, national and EU migration policies continue to offer few possibilities for migrant workers from third countries to receive work and residence permits to work regularly in these low wage sectors. Due to widespread unofficial work arrangements, undeclared activity and informal recruitment channels in these sectors, very little comprehensive cross-country data is available about sectorial labour shortages or labour market outcomes for different migrant profiles¹⁰, as these workers are often not recognised, registered or counted in national statistics.¹¹

Circular migration – the temporary and often repetitive movement of a migrant worker between the country of origin and destination for the purpose of employment- has been promoted by the European Commission in the Global Approach to Migration¹² as the preferred policy choice for managing labour mobility and many member states utilize some form of temporary or circular migration schemes.¹³ However, trade unions and researchers caution against the overemphasis on circular and temporary migration schemes as “many jobs filled by temporary migrant workers, including at middle- and lower-skilled levels, are actually ‘permanent’ jobs, given the structural nature of such labour market shortages¹⁴”. Disregarding the permanent nature of these jobs could eventually lead into more irregularity and undeclared work.¹⁵ Researchers also suggest that in the long-term it would be more beneficial to admit workers based on general skills rather than specific sectorial profiles to facilitate labour market matching and increase transparency.¹⁶

- 9 B.Anderson, *Migration, immigration controls and the fashioning of precarious workers* in *Work, Employment and Society*, Volume 24, Number 2, June 2010, p.306
- 10 G. Lemaître, *Migration in Europe: An overview of results from the 2008 immigration module with implications for labour migration in Matching Economic Migration with Labour Market Needs*, OECD/European Union, 2014, p.351. http://www.oecd-ilibrary.org/social-issues-migration-health/matching-economic-migration-with-labour-market-needs_9789264216501-en
- 11 International Labour Organisation, *The informal economy and decent work: a policy resource guide, supporting transitions to formality*, International Labour Office, Employment Policy Department – Geneva, 2013, p. 2. http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_212689.pdf
- 12 Commission Communication *The Global Approach to Migration and Mobility* COM(2011) 743 final. 2011. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0743&from=EN>
- 13 European Migration Network, *Temporary and Circular Migration: empirical evidence, current policy practice and future options in EU Member States*, 2011. http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/0a_emn_synthesis_report_temporary_circular_migration_final_sept_2011_en.pdf
- 14 R. Cholewinski, *Labour migration, temporariness and rights in Rethinking the Attractiveness of EU Labour Immigration Policies*, in Ed. S. Carrera et al., *Rethinking the Attractiveness of EU Labour Immigration Policies*, CEPS, 2014, p.23. http://www.ceps.eu/system/files/RETHINKING%20LABOUR%20IMMIGRATION%20POLICIES_withcover.pdf
- 15 S.Olney and R. Cholewinski, *Migrant Workers and the Right to Non-Discrimination and Equality* in Ed. C. Costello, M. Freedland. *Migrants at Work: Immigration and Vulnerability in Labour Law*, 2014, Oxford University Press, p.277
- 16 M.Kahanec, *Labour market needs and migration policy options: towards more dynamic labour markets*, in, in Ed. S. Carrera et al, CEPS, 2014 *op. cit.*, p.52.

1.3 More regular channels for labour migration

Workers are pushed into the informal economy and into an irregular situation when a structural labour demand is not met through official labour migration channels.

The creation of more regular channels for low wage migrant workers is potentially hindered by the lack of political will on member state level to propose legislation that could be perceived as “bringing more migration” and in particular more low-wage migrant workers.¹⁷ Policy-makers tend to respond to negative public opinion about migrants by closing most regular channels for admitting low-skilled migrants for economic purposes, aiming to meet the demand by admission through other channels or by tacit approval of high levels of irregular employment.¹⁸ This inactivity results in lost tax revenue and more irregular migration, as these workers are pushed into the informal economy and into an irregular situation when a structural labour demand is not met through official labour migration channels. This situation in turn creates a vast decent work deficit with high levels of labour exploitation, work place accidents¹⁹ and general worsening of working conditions.²⁰ Undocumented migrant workers are particularly vulnerable to unsafe working conditions and face many barriers across Europe to access compensation for work place accidents.²¹

There is a clear and significant role for an adequate labour migration policy in better supporting the EU 2020 goal of growth and competitiveness and in reducing and preventing undeclared work and irregular migration.

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As a first step, researchers highlight the need to acknowledge that there is a structural demand for migrant labour force in certain occupations that is related to factors such as the long-term demographic processes (the ageing of European societies), the configuration of nuclear families without extended support networks to cover needs for care of children or elderly/disabled people, as well as the participation of women in paid work outside the home – all irreversible phenomena that persist even in periods of acute economic downturn.²²

The UN Special Rapporteur on the Human Rights of Migrants has appealed to EU governments to recognise their real labour needs, particularly in the low-wage and medium-wage sectors, and has asked the EU to help those states combine facilitated regular migration for such sectors.²³ The next step is to find ways to end the political impasse surrounding any new initiatives around the creation of more regular channels for labour migration, particularly for low-wage employment. There is also a need for further consolidation, streamlining, and transparency of standards and rights of the current EU labour migration policy, a framework currently characterised by fragmentation, legal uncertainty, discrimination and competing multi-layered migratory statuses.²⁴

17 R. Cholewinski, *Study on obstacles to effective access of irregular migrants to minimum social rights*, Council of Europe, 2005, p.18. <http://mighealth.net/eu/images/e/ec/Chol.pdf>

18 Ed. A. Platonova, G.Urso, *Labour Shortages and Migration Policy*, International Organisation for Migration, 2012, p.23. <http://labourmigration.eu/research/report/22-Labour%20Shortages>.

19 See Platform for International Cooperation on Undocumented Migrants, *Position paper on the European Commission Communication on an EU Strategic Framework on Health and Safety at Work 2014-2020*. http://picum.org/picum.org/uploads/publication/PICUM%20Position%20paper_EU%20Framework%20on%20OSH%202014_2020_November%202014.pdf

20 International Labour Conference, 104th Session, 2015, *Proposed Recommendation Concerning the Transition from the Informal to the Formal Economy*, ILC.104/V/1, p. 21 http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_302539.pdf

21 EU Fundamental Rights Agency, *Fundamental rights of migrants in an irregular situation. A comparative report*, 2011, p.48. http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf

22 A. Triandafyllidou, S. Marchetti, *op. cit.*, p.6.

23 F. Crépeau, End of Mission Statement Migrants and the Mediterranean: UN rights expert on human rights of migrants follow up visit to Brussels for further development of his study on EU border management, *Banking on mobility to regain control of EU borders*, February 2015. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15544&LangID=E>

24 S. Carrera, E.Guild, K.Eisele, *The Next Generation of EU Labour Immigration Policy: Conclusions and Recommendations* in Ed. S. Carrera et al., *Rethinking the Attractiveness of EU Labour Immigration Policies*, CEPS, 2014, p.128. http://www.ceps.eu/system/files/RETHINKING%20LABOUR%20IMMIGRATION%20POLICIES_withcover.pdf

Evidence demonstrates that regularisations help to re-regulate the labour market, enforce labour rights and have a positive impact overall.

When analysing and designing policy choices, it is important to take into account, however, the undocumented migrant workers forming part of the European labour force²⁵ and consider measures such as ongoing regularisations linked to employment and social security contributions²⁶ to promote the transfer of such workers into the formal economy. Evidence demonstrates that regularisations help to re-regulate the labour market, enforce labour rights and have a positive impact overall.²⁷

1.4 Recommendations

Legislation:

- › Establish a better regulated EU labour market by **creating more entry and stay opportunities** for third country migrant workers across skill levels and labour sectors through the reintroduction of a framework directive on admission and stay of third country migrant workers, and/or through additional sectorial directives similar to the “Seasonal Workers” and “Blue Card” Directives.

Policy:

- › Improve labour conditions in low wage sectors to address undeclared work and exploitation by developing policies to reinforce the implementation of **internationally recognised labour rights** for all workers, irrespective of status.
- › Remove barriers preventing undocumented workers from reporting exploitation and abuse by supporting member states in setting up of a **“firewall”** - a clear separation in law and practice between the powers and remit of labour and social inspectors and migration law enforcement authorities. Requirements for labour inspectors to report undocumented migrants to immigration authorities should be eliminated and sharing of personal information for immigration enforcement purposes should be prohibited.
- › Allow for **transition to permanent migration** in circular and temporary migration schemes as labour shortages in these sectors is not temporary and could lead into more irregularity and undeclared work.
- › Reduce undeclared work and irregular migration by strengthening the residence status of third country migrant workers by **uncoupling residence and work permits** so that loss of employment would not automatically lead to loss of residence status.
- › In labour market assessment and projections, take account of the undocumented workers who are already part of the labour force and **promote ongoing regularisations** based on employment and social security contributions.
- › **Enhance coordination** between DG HOME (Home Affairs and Migration), DG EMPL (Employment, Social Affairs, Skills and Labour Mobility), social partners and civil society organisations working with migrant workers concerning labour shortages, enforcement of labour rights and labour migration policy through regular consultations.

25 According to the findings from the Clandestino project in 2008, it is estimated that there are between 1.6 and 3.8 million undocumented migrants in the European Union, a large majority of whom work to survive as they have no recourse to public allowances.. See: A. Triandafyllidou, *CLANDESTINO Project Final Report*, November 2009, p.11. http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report_-_november-2009.pdf

26 The Portuguese model is an example. See J. Peixoto and C. Sabino, *Portugal: Immigration, the labour market and policy in Portugal: trends and prospects*, IDEA working Papers, N°6, April 2009, p.44. http://www.idea6fp.uw.edu.pl/pliki/WP6_Portugal.pdf

27 Regularisations in the European Union (REGINE), *Study on Practices in the Area of Regularisation of Illegally Staying Third-Country Nationals in the Member States of the EU, Final Report*, 2009, p. 47. http://research.icmpd.org/fileadmin/Research-Website/Project_material/REGINE/Regine_report_january_2009_en.pdf

Data:

- Improve data collection on the migrant workforce and actual and projected labour market needs in low wage sectors through better **disaggregated and comprehensive statistics** at Eurostat and national level that would inform the need for residence and work permits in those sectors.
- Improve EU-wide collection of disaggregated **data on work place accidents of migrant workers** and promote access to labour accident compensation for all workers irrespective of immigration status.
- Enforce monitoring of the implementation of labour rights protection of undocumented workers in the EU Employers' Sanctions Directive by collecting **cross-country data on the amounts of unpaid wages** received by workers and sanctions received by employers.

Funding:

- Create direct funding opportunities for civil society organisations, trade unions providing **first-line assistance to undocumented workers with labour rights complaints** in addition to channelling allocated structural funding for this purpose.

2. POVERTY

2.1 References to migrants in the poverty target

The poverty target sets out to reduce poverty by lifting at least 20 million people out of the risk of poverty and social exclusion by 2020. It includes the “provision of innovative education and employment opportunities for deprived communities” and “development of a new agenda for migrants’ integration to enable them to take full advantage of their potential” as one of the suggested ways of how to achieve the target.

Similarly to the employment target, the poverty target indicators do not differentiate or offer specific attention to the poverty gap between the general population and foreign born populations, who are most in and at risk of poverty. According to Inequality Watch, the poverty rate in 2010 of the population of 18+ years and more was 26.9% for immigrants born outside of the EU, 15.9% for immigrants born within the EU and 14.8% for Europeans living in their country of origin.²⁸

Furthermore, data from Eurostat proves that the immigrant population is highly vulnerable to downturns in the economy. In the peak years of the EU economic recess, between 2009 and 2011, the group of third country nationals at risk of poverty increased from 31% to 35%, compared to the total population, which increased from 15% to 16%.²⁹

The immigrant population is highly vulnerable to downturns in the economy.

It must also be noted that this data refers only to regular migrants, as no comparative Eurostat data is available concerning rate of poverty of the irregular migrant population due to the economic recession. Nonetheless, available research does demonstrate the link between economic downturn and irregularity, as employers are less likely to keep formal work relationships, potentially causing loss of residence status as result.³⁰ Further research from Spain concludes that undocumented migrants have been particularly affected by the crisis through the increasingly hostile policies towards migrants, which restrict their access to basic services and employment.³¹

2.2 Irregular migrants and poverty

To prevent irregular migration, many EU member states have resorted to limiting the main elements of social inclusion, namely health, shelter, education and a fair income, for its most vulnerable group of migrants, which effectively pushes them into poverty. The legislative and practical barriers facing undocumented migrants in accessing these rights have the clear intent of driving them into a situation of destitution so intolerable, that it should compel their departure from Europe and deter other migrants from coming.³²

28 Inequality Watch, *Poverty in Europe: the Current Situation*, <http://www.inequalitywatch.eu/spip.php?article99&lang=en>.

29 Eurostat October, 2014 <http://ec.europa.eu/eurostat/help/new-eurostat-website>

30 A.Kraler, M.Rogoz, *Irregular migration in the European Union since the turn of the millennium –development, economic background and discussion*, Database on Irregular Migration, Working paper 11/2011, p.13. <http://irregular-migration.net/>

31 C. Manzanedo, R. Gonzales Fabre, *Impacto de la crisis económica sobre los inmigrantes irregulares en España*, 2009, Pueblos Unidos, p.5. <http://pueblosunidos.org/wp-content/uploads/2009ImpactoCrisisEmigrantesEspaña.pdf>

32 See Dutch example in R. Cholewinski, *op. cit.*, Council of Europe, 2005, p.22.

Not only are these policies grossly ineffective in their aim to curb irregular migration, but restricting access to minimum social rights can increase the marginalisation and stigmatisation of migrants in the eyes of the general population, with a potential to increase racism in the society.³³ Restricting access to social services for undocumented migrants can in turn undermine policy objectives in the areas of social cohesion, labour market, public health, and education strategies, and risk downgrading Europe's labour conditions. Furthermore, such restrictive policies also disproportionately impact upon individuals in an irregular migration situation with vulnerabilities due to age, gender and serious medical conditions, including women, children and those with urgent health needs.

Restricting access to minimum social rights can increase the marginalisation and stigmatisation of migrants in the eyes of the general population, with a potential to increase racism.

2.3 Access to homeless services

The European Commission has made some advances in addressing the specific disadvantages faced by migrant populations, and undocumented migrants in particular, in some of the analytical and policy tools of the Social Investment Package.³⁴

The Staff Working Document *Confronting Homelessness in the European Union*³⁵ confirms that “the rising proportion of migrants, especially those who are undocumented, among the homeless is alarming” and suggests that “guaranteeing basic rights and improving access to work and basic services can prevent homelessness among undocumented migrants.” The document also states that “while some form of basic service access is usually available to homeless people in Member States, it is not always guaranteed, and this is especially true for undocumented migrants.”

Making EU funds available for the development of homeless services for undocumented migrants on the local level are examples of vital impending policy advances.

Recognition of the existence and realities of homeless undocumented migrants and of the financial and legislative barriers faced by service providers when finding solutions for this group, is an important advance, but much remains to be done to create durable solutions in practice. Decriminalisation of shelter provision to undocumented migrants under the EU Facilitation Directive, which would enable migrants to access shelter without fear of being reported and service providers to provide services without fear of repercussions³⁶ and making EU funds available for the development of homeless services for undocumented migrants on the local level are examples of vital impending policy advances.³⁷

33 R. Cholewinski, *op. cit.*, Council of Europe, 2005, p.18.

34 European Commission, *Social investment: Commission urges Member States to focus on growth and social cohesion*, <http://ec.europa.eu/social/main.jsp?langId=en&catId=1044&newsId=1807&furtherNews=yes>.

35 European Commission, *Commission Staff Working Document, Confronting Homelessness in the European Union*, 2013. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013SC0042>.

36 EU Fundamental Rights Agency, *Criminalisation of migrants in an irregular situation and of persons engaging with them*, 2014, p.16 http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0_en_0.pdf

37 Platform for International Cooperation on Undocumented Migrants, *Housing and Homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter*, 2014, pp. 22-23. http://picum.org/picum.org/uploads/publication/Annual%20Conference%202013%20%20report%20HOUSING_EN_FINAL.pdf

2.4 Child poverty

The European Commission has also published specific recommendations on child poverty³⁸ as part of the Social Investment Package. This is a welcome step, recognizing children as individual rights holders and the need to prioritise integrated social investment in children, particularly in times of crisis. Due to their lack of migration status, undocumented children are confronted with numerous barriers to accessing rights and basic services and thus face an increased risk of child poverty.

Due to their lack of migration status, undocumented children are confronted with numerous barriers to accessing rights and basic services and thus face an increased risk of child poverty.

With access to quality services as one of the central pillars of the recommendation, member states are urged to ensure health care services are adapted to ensure undocumented children can enjoy their right to health. The recommendation specifically calls to “Improve the responsiveness of health systems to address the needs of disadvantaged children — Ensure that all children can make full use of their universal right to health care... Devote special attention to [inter alia] undocumented or non-registered children”.

Poverty and social exclusion during childhood can have serious short and long-term consequences, including reducing the social and economic contributions young people make to their societies in the future.

The specific mention of health care services is an essential advancement, however undocumented children’s access to other crucial services such as education and other measures countering social exclusion should also form part of the EU Social Investment priorities. Poverty and social exclusion during childhood can have serious short and long-term consequences³⁹, including reducing the social and economic contributions young people make to their societies in the future.

It is crucial to recognize that these arguments apply equally to all children, regardless of their or their parents’ migration status. While there is no clear data demonstrating that irregular migration is reduced by limiting the human rights of undocumented children and denying access to essential services, an increasing body of research is demonstrating the great individual harm and exacerbation of social inequalities that restrictive migration policies have on the detriment of individuals, families and communities alike.⁴⁰

2.5 Access to health services

Access to health care services is limited for undocumented migrants in many EU countries.⁴¹ Nearly all European Union member states restrict access to health care services to different degrees for undocumented migrants through regulations on migration and health at national level. Such policies are detrimental to individual, community and public health, the functioning of public health care systems and social cohesion, and contrary to medical ethics and legal human rights obligations.⁴²

38 European Commission, *Commission Recommendation of 20/02/2013, Investing in Children: Breaking the Cycle of Disadvantage*, 2013. http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf.

39 P. Hoelscher, (2004), *A thematic study using transnational comparisons to analyse and identify what combination of policy responses are most successful in preventing and reducing high levels of child poverty*, European Commission, 2004, p.37. http://ec.europa.eu/employment_social/social_inclusion/docs/child_poverty_study_en.pdf

40 R. Sabates-Wheeler, *The Impact of Irregular Status on Human Development Outcomes for Migrants*, Human Development Research Paper 2009/26, 2009 http://mpra.ub.uni-muenchen.de/19209/1/MPRA_paper_19209.pdf and S. Carrera, M. Merlino, *Undocumented Immigrants and Rights in the EU. Addressing the Gap between Social Science research and Policy-making in the Stockholm Programme?*, CEPS, 2009, p. 33. <http://core.ac.uk/download/pdf/5087071.pdf>

41 European Union Fundamental Rights Agency. *Migrants in an irregular situation: access to healthcare in 10 European Union Member States*, 2011. http://fra.europa.eu/sites/default/files/fra_uploads/1771-FRA-2011-fundamental-rights-for-irregular-migrants-healthcare_EN.pdf

42 Platform for International Cooperation on Undocumented Migrants, *Access to Health care for Undocumented Migrants in Europe: The Key Role of Local and Regional Authorities*, 2014, p.20. http://picum.org/picum.org/uploads/publication/PolicyBrief_Local%20and%20Regional%20Authorities_AccessHealthCare_UndocumentedMigrants_Oct.2014.pdf

While some member states have shown progress in recent years – including Sweden⁴³, which broadened its entitlements for undocumented migrants in legislation in 2013, or Italy, which now allows undocumented children accompanied by their parents or other caregivers to access health care services through the national health insurance system⁴⁴ - others have restricted existing entitlements as a result of austerity measures (e.g. Spain⁴⁵).

The costs of excluding undocumented migrants from health care services greatly surpass those of including them, since their health condition will usually worsen, thus leading to increased expenses to the state as emergency care is generally more expensive than preventative care.

The costs of excluding undocumented migrants from health care services greatly surpass those of including them, since their health condition will usually worsen, thus leading to increased expenses to the state as emergency care is generally more expensive than preventative care⁴⁶. Exclusion of certain groups of persons from health care creates potential wider risks to community health and forces medical professionals to take on unnecessary administrative burdens and to jeopardise their medical ethics by having to refuse patients on grounds of residence status. Lack of entitlements on national level also puts enormous stress on local and regional governments and civil society organisations that struggle to provide this essential service to all persons on the basis of medical needs.

Although the organisation and delivery of health services is in national level competence, according to the Treaty on the Functioning of the European Union, impacts on health must be considered and addressed in the development and implementation of all relevant EU policies⁴⁷. Inclusive and efficient health care provision for undocumented migrants in all EU member states across the European Union is necessary to achieve public health objectives, and can be better achieved through cooperation at European level. The European Commission has to a limited extent recognised the increasing need to address undocumented migrants in its work on health inequalities and universal access to health services through its Communication on Solidarity in Health: Reducing Health Inequalities⁴⁸ and the ensuing European Parliament Resolution on Reducing Health Inequalities in the EU, which includes a call for ensuring access to health services for undocumented migrants.⁴⁹

43 Red Cross Sweden, *New law gives undocumented migrants the right to health care*, 2013. <http://www.redcross.se/PageFiles/6433/webinfo%20sjukv%C3%A5rds%20engelska.pdf>.

44 Platform for International Cooperation on Undocumented Migrants, *op.cit.* 2014, p.13.

45 Since 1 September 2013, a Royal Decree has limited adult undocumented migrants' access to health care to emergency and maternity health care only. *Royal Decree Act 16/2012* (introducing Art 3ter.a.4 of Law 16/2003), http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-5403.

46 Schäfer W et al., *QUALICOPC, a multi-country study evaluating quality, costs and equity in primary care*. BMC Family Practice 2011;12:115. <http://www.biomedcentral.com/1471-2296/12/115>.

47 "A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities" (Article 168).

48 European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social committee and the Committee of the Regions, *Solidarity in Health: Reducing Health Inequalities in the EU*, 2009. <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1396946539740&uri=CELEX:52009DC0567>.

49 European Parliament, *Resolution of 8 March 2011 on reducing health inequalities in the EU*, 2010/2089(INI), para 5. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:199E:0025:0036:EN:PDF>

2.6 Recommendations

Legislation:

- › Address the legislative, financial and administrative barriers faced by undocumented migrants and organisations assisting them within the context of the Europe 2020 poverty target - in particular the lack of access to the homeless and health care services - and **promote social investments in these areas** that include all migrants irrespective of their residence status.
- › **Revise the Facilitation Directive to decriminalise social assistance to undocumented migrants** by explicitly excluding provision of social and humanitarian services such as health care and homeless shelters from its scope. Renting accommodation to undocumented migrants in an irregular situation should not be considered facilitation of stay.

Policy:

- › Ensure undocumented migrants are addressed in the work of DG SANCO (Health and Food Safety) and DG EMPL and systematically assess and explicitly **address the impacts of policies across relevant sectors on undocumented migrants**.
- › **Implement the Commission Recommendation** Solidarity in Health: Reducing Health Inequalities and the **European Parliament Resolution** on Reducing Health Inequalities in the EU, which includes a call for ensuring access to health services for undocumented migrants.
- › Support member states in setting up a **“firewall”** - a clear separation in law and practice between the powers and remit of health professionals, health administration, social service providers, local authorities and migration law enforcement authorities. Requirements for public officials to report undocumented migrants to immigration authorities should be eliminated and sharing of personal information for immigration enforcement purposes should be prohibited. Detection practices should not be carried out in or near health care services.
- › Integrate the specific concerns of migrants, particularly **undocumented migrants**, in all EU instruments and initiatives designed to improve progress on the **Europe 2020 Strategy**, including:
 - › the implementation of the EU Social Investment Package
 - › the Scoreboard for Social and Employment indicators
 - › Country Specific Recommendations.
- › Enhance **coordination** between DG HOME, DG EMPL, DG SANCO, health and education professionals and civil society organisations working with undocumented migrants through regular consultations.

Data:

- › Develop a system to collect comparable and anonymised data on irregular migration flows in the EU and the impact of all public policies – migration control mechanisms, regularisation programmes, etc. - on the living conditions of undocumented migrants and their access to basic services on a regular basis. Data disaggregated by age, sex, country of origin, education, occupation, skill level and other relevant information such as residence status, issuance of entry, exit and work permits, and changes in nationality should be collected and disseminated. States should ensure the inclusion of households affected by migration in local statistical and data systems, as well as in nationally-representative living standards, expenditure, and labor force surveys. Member states should ensure that such data collection is not used for immigration control purposes.

Funding:

- › Invest in the research and provision of **innovative and inclusive services** that would respond to the urgent need for durable solutions for the growing numbers of undocumented migrants among the EU's **homeless population**.
- › Channel relevant **EU funding, unrestricted to regular residence status holders**, to local level, where services are delivered.

3. EDUCATION

3.1 References to migrants in the education target

The education target is mainly focused on reducing early-school leaving, which remains a significant problem for the immigrant population. According to Eurostat data, foreign born children are most affected by early school leaving in the EU. Although showing a positive general declining trend in recent years, in 2013, 11.1% native-born children left education or training early compared to 22.7% of foreign-born children.⁵⁰

Undocumented children in particular are vulnerable to early school leaving, due for example, to the lack of further educational and work opportunities because of their migration status, financial restrictions for continuing higher education, termination of their studies due to an order to leave the country, as well as fear of being apprehended in school.⁵¹

3.2 Access to education and training for undocumented children and youth

In addition to early-school leaving, restrictions in accessing and completing education and training and other barriers such as detection practices that are linked to educational facilities⁵² prevent undocumented children and youth from enjoying their right to education and development.

The right to education is enshrined in a number of international and European human rights instruments and the right to free compulsory education is applicable to all children, regardless of immigration status.⁵³ All EU member states have laws on education that require children to attend schooling for at least eight years. In most countries, this is understood to implicitly include undocumented children. While this means that participation in compulsory education is often possible for undocumented children, the fact that the legislation is unclear commonly results in administrative barriers, limitations in taking official examinations and receiving certification, and exclusion from non-compulsory education.⁵⁴

Restricted access to education during childhood will significantly impact children's full enjoyment of childhood, cognitive and social development, and future economic prospects. Such restrictions both violate children's rights and severely curtail the opportunities and benefits of migration for adolescents and youth, as well as for the communities and societies they live in, as many undocumented children do obtain a residence status⁵⁵ and eventually become part of the EU work force.⁵⁶

50 Eurostat, Early leavers from education and training by sex and country of birth, January 2015. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=edat_lfse_02&lang=en.

51 Special Rapporteur on the Human Rights of Migrants François Crépeau, PICUM, National University of Lanús, *Human Rights of Undocumented Adolescents and Youth*, in partnership with OHCHR and UNICEF, July 2013, p. 34. <http://www.globalmigrationgroup.org/sites/default/files/uploads/gmg-topics/miq-data/Human-Rights-of-Undocumented-Adolescents-Youth.pdf>.

52 This includes arrests at and near or on way to school on grounds of the residence status of children or their parents and mandatory passing of residence information from school administration to migration authorities.

53 EU Fundamental Rights Agency, *op.cit.*, *A comparative report*, 2011, p.85.

54 Platform for International Cooperation on Undocumented Migrants, *Protecting undocumented children: Promising policies and practices from governments*, 2015, p. 4, forthcoming.

55 The Regularisations in the European Union (REGINE) study demonstrates that children have been a preferential group in the regularisation programmes and mechanisms across Europe, *op.cit.*, 2009, p. 51.

56 Special Rapporteur on the Human Rights of Migrants François Crépeau, PICUM, National University of Lanús, *op. cit.*, p. 16.

Schools should represent safe environments, where school administrations do not report undocumented children to the immigration authorities and children and parents are not arrested by immigration authorities within the vicinity of schools or on their way to school.

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Some countries have put in place measures to allow for families to request deportation proceedings to be postponed if children are attending school, so as not to interrupt their education. Where children are at threat of deportation, there are examples from around the world of school communities and civil society mobilising to support fellow students and their families, and prevent deportation, or campaigning for re-entry if deported.⁵⁷

3.3 Recommendations

Legislation:

- › Address the legislative, financial and administrative barriers faced by undocumented children within the Europe 2020 education target - in particular the lack of access to the same statutory education as national children - and **promote social investments in the area of education** that include all children and youth irrespective of their or their parents' residence status.
- › If an undocumented child is facing a deportation order, Peer learning- more towards EU **promote measures that delay deportation** until children have completed the school year and any pending examinations, with possibilities for further delay for children to finish their compulsory education or regularisation based on the acquirement of education, depending on individual circumstances and the best interests of the child.

Policy:

- › Support member states in setting up of a **"firewall"** - a clear separation in law and practice between the powers of school administration, social service providers, local authorities and migration law enforcement authorities. Requirements for school administration to report undocumented migrants to immigration authorities should be eliminated. Sharing of information about the migration status of students and their families for immigration enforcement purposes should be prohibited. Detection practices should not be carried out within the vicinity of schools or students' way to school.
- › Enhance **coordination** between DG EAC (Education, Culture, Youth and Citizenship), DG HOME, DG EMPL, DG SANCO, health and education professionals and civil society organisations working with undocumented children through regular consultations.
- › Ensure that undocumented children are included systematically in the work of DG EAC and the peer-to-peer mechanisms for good practice exchange among member states coordinated by DG EAC.

Data:

- › Improve research and develop system to **collect comparable and anonymised data** disaggregated by variables such as age, sex, country of origin, education, occupation, skill level and other relevant information such as residence status, issuance of entry, exit and work permits, and changes in nationality and the developmental impact of early-school leaving among undocumented children and on regularisations of undocumented children across the EU. Member states should ensure that such data collection is not used for immigration control purposes

57 Special Rapporteur on the Human Rights of Migrants François Crépeau, PICUM, National University of Lanús, *op. cit.*, p. 31.



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