

PICUM Priorities for the 2019–2024 legislature of the European Parliament

September 2019

 **PICUM**
PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

About PICUM

PICUM – the Platform for International Cooperation on Undocumented Migrants – represents a network of 162 member organisations in 32 countries, working together to ensure that undocumented migrants have a dignified standard of living and rights, with a focus on Europe.

Bringing together a broad range of experience and expertise from its members' frontline services, community work, research and policy work, PICUM has for 18 years generated and coordinated a humane and informed response to undocumented migrants' realities and provided a platform to engage policy makers and the general public in the full realisation of undocumented persons' rights.

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Our priorities

During the 2019–2024 legislature of the European Parliament, we continue to support the development, reform, implementation and monitoring of EU initiatives affecting undocumented migrants so that they uphold fundamental rights, the rule of law and contribute to a prosperous, cohesive, and inclusive society. We will also continue to provide evidence-based analyses and recommendations, consolidating existing expertise and data, and coordinate joint advocacy.

The Multiannual Financial Framework

- **Scope and administrative requirements:**

While the focus on migrants' integration is increasing in the next MFF, with a dedicated specific objective in the new European Social Fund Plus (ESF+) and a proposed increase for the Asylum, Migration and Integration fund (AMIF), undocumented migrants are not considered eligible for most of the actions under these funds. On one hand the Commission affirms that particularly vulnerable groups, including undocumented migrants, [should be addressed by the EU funds](#) and that these actions can be delegated to non-governmental stakeholders; on the other, national auditing requirements still challenge those NGOs who want to include undocumented migrants in services. The possibility to support this target group is very uneven across member states. **PICUM advocates for ensuring social**

inclusion of the most disadvantaged ones beyond basic material assistance, [with no discrimination based on residence status](#).¹

- **Civil society as partners and beneficiaries:**

Meaningful participation of civil society should be ensured in the preparation, implementation, monitoring and evaluation of the actions supporting migrants' inclusion. Resources for capacity building should also be provided to allow NGOs to access funding. Lastly, civil society organisations providing humanitarian assistance to undocumented migrants and promoting EU values and the rule of law should be granted access to adequate funding in direct management under the EU Multiannual Financial Framework for 2021-27, and adequate support within the Citizens, Equality, Rights and Values programme.

1 Together with the European Council for Refugees and Exiles (ECRE), PICUM issued detailed recommendations on the proposal for the ESF+ fund, available [here](#). More information on PICUM recommendations on socio-economic Inclusion of migrants in the next EU budget (2021 – 2027) is available [here](#).

Civic space and rule of law

- **Facilitation Directive:** A recent report from research platform ReSOMA found that, between 2015 and 2019, at least 158 humanitarian actors have been investigated or formally prosecuted on grounds of smuggling or related offences.² In response to this, more than 110 organisations, including PICUM, signed a statement asking the EU to put an end to the criminalisation of solidarity with migrants and refugees.³ **To this end, PICUM advocates for the revision of the EU Facilitation Directive, to clearly define migrant smuggling as requiring criminal intent**, such as ‘financial or other material benefit’ or unjust enrichment, in line with the UN Migrant Smuggling Protocol. The revision of the directive should not allow the criminalisation of humanitarian actors, by making the humanitarian exemption clause mandatory for the member states.
- **Effective monitoring:** All instances of criminalisation of humanitarian actors should be monitored by an independent observatory linked to the proposed EU Rule of Law Mechanism, and through parliamentary investigations. The monitoring should not only include criminal convictions but also all cases of criminal investigations as well as ongoing harassment and targeting of migrants’ rights defenders, as recommended by the European Parliament in its 2018 resolution.⁴

Regular migration channels and employment standards

- **“Fitness check” and next steps for the EU on regular migration channels:** In 2017, the European Commission carried out a “Fitness Check” of the regular migration framework.⁵ The results⁶ were published at the end of March 2019. The Commission has identified some potential follow up actions, including new legislation and legislative reform, as well as policy measures such as guidelines and improved data collection, to be discussed with the new Commission leadership. **PICUM has recommendations on these follow up actions as well as additional proposals and looks forward to working with MEPs to improve the EU’s regular migration framework in the next legislature.**
- **Employers Sanctions’ Directive:** This 2009 Directive includes several provisions related to the labour rights of undocumented migrant

2 ReSOMA (2019) “Crackdown on NGOs and volunteers helping refugees and other migrants”, available [here](#).

3 PICUM et al., “Joint statement: The EU must stop the criminalisation of solidarity with migrants and refugees”, 26 July 2019, available [here](#).

4 European Parliament resolution on guidelines for member states to prevent humanitarian assistance from being criminalised (2018/2769(RSP)), available [here](#).

5 This includes the following Directives: [Family Reunification](#), [Long-Term Residents](#), [Blue Card](#) (note: the proposed revision of this Directive, which predates the results of the fitness check, is blocked, more information available [here](#)), [Single Permit](#), [Seasonal Workers](#), [Intra-Corporate Transferees](#) and [Students and Researchers](#).

6 European Commission staff working document and accompanying annexes available [here](#). Some gaps were identified, including around admission schemes for different skills levels, the domestic and care sectors and job-seekers; the rights of self-employed people; and the situation of people considered irregularly resident but unable to return or be deported. Prevalence of labour exploitation of migrant workers and continued administrative barriers (visa processes, fees, etc.) were also underlined as areas where further EU action could have an added value.

workers, including regarding unpaid wages and accessibility of effective complaints mechanisms. PICUM's monitoring of the implementation of the Directive has found these rights largely inaccessible in practice.⁷ At the same time, there are increasingly immigration control responsibilities on labour inspectorates, to the detriment⁸ of employment standards, including health and safety.

- › An evaluation of the Employer's Sanctions Directive by the European Commission is overdue, and it has not been subject to a more extensive or independent evaluation. **The Parliament should commission an independent evaluation of the Directive, which would include monitoring of the implementation of the rights provisions in the Directive, and a more extensive review of the impact of sanctions against employers and immigration enforcement through labour inspections on the employment of undocumented migrants and employment standards overall.**
- › The current AMIF proposal for the years 2021 – 2027 includes as eligible actions⁹ the setting-up and implementation of mechanisms for claiming back payments and lodge complaints against their employers, and awareness-raising campaigns to

inform employers and irregular migrants about their rights and obligations. **PICUM advocates for including such mechanisms in all mechanisms within national programs.**

- **Employment standards and the European Labour Authority (ELA):** PICUM is carrying out a legal analysis of the rights of undocumented workers and accountability mechanisms under EU law, and will discuss findings with MEPs, with a view to supporting better implementation of EU employment standards. PICUM follows closely the development of the ELA adopted under the last legislature and continues to engage with the Undeclared Work Platform to provide **evidence on how to tackle undeclared work and (cross-border) labour exploitation in cases involving migrant workers, and the impacts of current practices.**
- **Common Agricultural Policy (CAP):** Exploitation of migrant workers with precarious or irregular status in the agri-food sector in the EU is widespread. **The Parliament should seek to add quality jobs - respect for labour rights and standards and ensuring appropriate monitoring and reporting mechanisms are in place - to the conditionality framework for receipt of CAP funding and subsidies under the new MFF.**

7 For guidelines on how to address this, see PICUM, Undocumented migrant workers: Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse, 2017, available [here](#) (several languages available on [PICUM website](#)).

8 For more information see e.g. PICUM, Firewall and labour, 2019, available [here](#) (several languages available on [PICUM website](#)).

9 https://ec.europa.eu/info/law/better-regulation/initiative/1819/publication/250286/attachment/090166e5bb6cffd8_en

Migration enforcement policies

- **Recast of the Return Directive:** The proposed Recast of the Return Directive introduces key changes such as the expansion of the risk of absconding; the issuance of a return decision immediately after a decision rejecting an application for or terminating a residence status/permit; and limitations to the right to remedies and appeals. While the LIBE Committee has not yet held a vote on its draft report,¹⁰ in June 2019, the Justice and Home Affairs Council adopted a partial position¹¹ on the Directive, which would allow for people to be deported to any country which accepts them, further limit the right to appeal and expand member states' possibility to detain and refuse voluntary returns. **PICUM advocates for a Return Directive which fully complies with fundamental rights, including the principles of non-refoulement, presumption of liberty, and the best interests of the child, and which promotes good administration in migration management.**
- **Alternatives to detention:** Under the EU Return Directive and international law, member states have an obligation to assess the effectiveness of less coercive measures before applying detention. This principle is respected only when alternatives to detention are in place and there is a genuine assessment of each individual case. **PICUM, together with the [European Alternatives to Detention Network](#), advocates for community-based alternatives to detention that actively engage migrants in immigration procedures, help build their trust in the system and boost individuals' ability to work towards a permanent or temporary migration outcome.** Access to earmarked EU funding, in particular under the AM(II)F, will be key to making this happen.
- **Ending child detention:** At regional and global levels, there is growing consensus that detaining children based on the children's or their parents' migration status is a human rights violation and is never in the best interest of the child. In May 2018, the European Parliament adopted a resolution stating that children "must not be detained for immigration purposes."¹² **PICUM will work together with the European Parliament to ensure that, in the European Union, no child will be detained because of their or their parents' migration status, and that effective community-based alternatives are in place.**
- **Protecting children in migration:** Innumerable children, both unaccompanied and accompanied by their family members, have gone through EU and member states' migration procedures in the past decades – migration procedures that are often blind to the needs and vulnerabilities of the children they are meant to protect. Such procedures more often than not see children as appendages of parents rather than individual rights-holders, meaning that child-specific grounds for residence status are rarely investigated, children are rarely heard and their best interests are rarely considered. It seems logical that when governments decide on children's futures, they prioritise children's rights, which is why **PICUM advocates for migration policies and practices, including those related to return, to uphold the**

10 Draft [report](#) on the proposal for a directive of the European Parliament and of the Council on common standards and procedures in member states for returning illegally staying third-country nationals (recast) (COM(2018)0634 – C8-0407/2018 – 2018/0329(COD))

11 Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in member states for returning illegally staying third-country nationals (recast) - Partial general approach, 12099/18, available [here](#).

12 European Parliament resolution of 3 May 2018 on the protection of children in migration (2018/2666(RSP)), available [here](#).

best interest of the child, in line with the UN Convention on the Rights of the Child and for finding durable solutions that are in the specific child's best interest – i.e. secure residence status in the country of residence or a third country.

- **Migration management and protection of personal data:** On 14 May 2019, the Council adopted [two regulations establishing a framework for interoperability](#) among EU information systems in the area of justice and home affairs. The Fundamental Rights Agency (FRA), European Data Protection Supervisor (EDPS) and others have expressed

serious concerns that these new regulations are incompatible with the EU's own standards on data protection, under the General Data Protection Regulation (GDPR) and Charter of Fundamental Rights,¹³ and that they represent an enormous backward step, sacrificing fundamental rights to advance the EU's security and migration agendas. **There is an urgent need for oversight over the implementation of these rules to ensure protection of the fundamental rights, to consider measures to mitigate potential harms, and ensure these developments do not drive further erosion of privacy and data protection rights for everyone in Europe.**

Victims of crime and violence against women

- **Istanbul Convention:** The Istanbul Convention, as the first comprehensive international legal instrument on violence against women, is critical to addressing the violence committed against [millions of women in Europe](#) – including [undocumented women](#)¹⁴ who are at particular risk, and face obstacles to protection and justice. On 4 March 2016, the European Commission proposed that the EU become a party to the Convention, to provide a mandate for better data collection and accountability. In May 2017, the EU signed the Convention (on narrow grounds).¹⁵ But, while a [majority of EU member states](#) are parties to

the Convention, the accession has stalled in the Council, and the Convention has become deeply politicised in some member states. **PICUM is working with partners in the [European Coalition to End Violence against Women](#) to promote action by the EU to combat violence against women, including through the EU's accession to the Istanbul Convention.**

- **Victims' Directive:** Directive 2012/29/EU (Victims' Directive) guarantees minimum rights for all victims, regardless of residence status (Article 1), including their access to needed

13 See e.g., FRA (April 2018), [Interoperability and fundamental rights implications: Opinion of the European Union Agency for Fundamental Rights](#); EDPS (17 November 2017), [Reflection paper on the interoperability of information systems in the area of Freedom, Security and Justice](#); EDPS (16 April 2018), [Opinion 4/2018 on the Proposals of two Regulations establishing a framework for interoperability between EU large-scale information systems](#); Data Protection Authorities supervising SIS II VIS and Eurodac (17 June 2018), [Opinion of the Proposals for two Regulations establishing a framework for interoperability between EU large-scale information systems](#); Meijers Committee (February 2018), [CM1802 Comments on the proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems](#).

14 PICUM (2018), [The Rights of Undocumented Victims: What to Know if You're a Women's Organisation, Shelter or Service Provider](#).

15 See Council Decision (EU) 2017/866 ([asylum, refugees and refoulement](#)) and Council Decision (EU) 2017/865 ([judicial cooperation in criminal matters](#)).

services, protection and compensation. On 14 May 2018, the EP [adopted a report on the implementation of the Directive](#), affirming the rights and realities of undocumented migrants and noting the shortcomings of national implementation. In March 2019, the Special Adviser to President Juncker submitted her [report on strengthening victims' rights](#), and issued specific recommendations on safeguarding the rights of undocumented victims. PICUM has [published guidance](#) and recommendations on the implementation of the Victims'

Directive, and is currently conducting research on national legislation that grants permits to certain victims of crime. **PICUM welcomes the new role of EU Coordinator for Victims and looks forward to working with the European Commission and the new legislature to ensure adequate implementation of existing rights, as well as consideration of possible new measures that reinforce the rights and protection of all victims, regardless of status.**

Social inclusion and access to services

- **Investing in children:** Although governments acknowledge third country nationals and other migrants often need additional support to ensure equal access to opportunities and access to services, including care, education and social support, EU policies, such as the 2016 European Commission's Action Plan on the integration of third country nationals, often explicitly exclude undocumented children and adults from their scope. **PICUM advocates for a Europe that protects and fulfils the rights of all children in migration, without any discrimination.**
- **EP Intergroup on Children's Rights:** The European Parliamentary Intergroup on Children's Rights – the cross-party and cross-national group of MEPs that champion child rights – is an important force in mainstreaming children's rights, especially those of children in migration. **PICUM advocates for the re-establishment of the Intergroup on Children's Rights** in the 2019 – 2024 Parliamentary term.
- **Access to services and social inclusion:** The EU's 2016 [action plan](#) on integration of migrants acknowledges that human mobility "will be an inherent feature of the 21st century for Europe as well as globally", and affirms the relationship between social inclusion and the well-being, prosperity and cohesion of European societies. Access to services is a pillar of this strategy. Consistent with commitments under the UN Sustainable Development Goals (SDGs), this access occurs through the achievement of universal health care, where "no one is left behind." The EP has adopted several resolutions that explicitly call on member states to improve provision of health care to undocumented migrants and protect and promote the health of undocumented children.¹⁶ **PICUM advocates for access to services, without discrimination based on residence status, as necessary to achieving social inclusion and promoting social cohesion, as well as ensuring the rights and dignity of everyone in Europe.**

16 [European Parliament resolution of 4 February 2014 on undocumented women migrants in the European Union \(2013/2115\(INI\)\)](#); [European Parliament resolution of 4 July 2013 Impact of the crisis on access to care for vulnerable groups \(2013/2044\(INI\)\)](#); [European Parliament resolution of 8 March 2011 on reducing health inequalities in the EU \(2010/2089\(INI\)\)](#).

Contact us



We are keen to discuss these questions further with you and look forward to being in touch. Please do not hesitate to contact us for any information we might be able to provide during your mandate.

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You can also visit our website at www.picum.org for more information on our focus areas and our recommendations.