



● PICUM

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STATEMENT ON THE UPCOMING EU PACT ON ASYLUM AND MIGRATION

As announced by Commissioner for Home Affairs Ylva Johansson and Vice-President for Promoting our European Way of Life Margaritis Schinas in Autumn 2019, and included in the European Commission [work programme for 2020](#), an EU Pact on Asylum and Migration is expected to be launched in the coming month. Published at a critical juncture in the history of EU migration and socio-economic policies, the Pact has the potential to signal a turning point in how Europe addresses migration.

The COVID-19 pandemic has exposed the ambivalence of the existing system, which strongly relies on workers in low-wage occupations - the hospital orderlies, supermarket staff, food delivery personnel, agricultural workers and countless others - while at the same time excluding many of these same people from social protection and health care systems.

In this moment of crisis, some countries are having the courage to step up and review their migration policies.

Extension of residence permits

In March 2020 [Portugal](#) announced plans to grant residence status to everyone with a pending residence application on any ground until 1 July 2020. Individuals who are granted permits on this basis will be able to access health care and all other public services on equal terms as any other permanent resident in Portugal. Other countries, including [Greece](#), [Ireland](#), [Italy](#), [France](#), [Luxembourg](#), [Poland](#) and [Slovakia](#), have automatically extended the validity of all residence permits expiring during the lock-down. In [Slovenia](#), migrants in return procedures have been released and granted a temporary permit valid up to six months.

Regularisation

In [Italy](#) the government has adopted a measure that can potentially regularise hundreds of thousands migrant workers working in the agricultural and caregiving sectors to address likely labour shortages due to the lockdown measures. Workers in these sectors may be able to access a work permit, if they are in work or have an offer of work, or a temporary permit to look for work. In [Belgium](#), advocates are calling the authorities to regularise undocumented people to grant them access to social support during the COVID-19 pandemic, as did several MPs in [France](#). Calls for regularisation are growing in [Spain](#) too, where the [Barcelona](#) city council asked the national government to take action on residence permits to tackle the pandemic.

Release from immigration detention

In [Spain](#), almost all immigration detainees have been released and provided accommodation in state-funded reception programmes run by NGOs. Hundreds of individuals have also been released in the [UK](#), [Belgium](#), [Netherlands](#) and [Italy](#). In Romania, the government asked NGOs to provide accommodation to migrants released from detention centres. Forced returns were suspended or significantly reduced in [ten Member States](#) (Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Lithuania, Malta, Slovakia).

Social protection measures

In [Ireland](#) undocumented migrants have been granted full access to social welfare and health care, and authorities have confirmed that there will be no data sharing between service providers and immigration officers, in compliance with the firewall principle. Moreover, undocumented workers who have lost their job due to COVID-19 are eligible to apply for the [Pandemic Unemployment Payment](#).

At a time in which undocumented migrants are particularly at risk of marginalisation and scapegoating, the European Commission has an important role to play in supporting and encouraging these promising practices.

While building on the critical lessons we learn in this challenging and unprecedented period, the Pact will have to propose a five-year, forward-looking strategy. PICUM recommends the Pact to address the following issues:

1. EXPANDING AND IMPROVING REGULAR MIGRATION PATHWAYS

While the majority of migration happens for work and family reasons, this reality is completely overshadowed by the EU's focus on asylum, border controls and return. Promoting reforms in regular migration pathways has to be a priority. Migrants are not simply an economic value to be capitalised upon, but actors in the social, economic and cultural development of the communities they support and live in, and human beings with rights and ambitions.

The Pact should commit to meaningfully promote the expansion and improvement of regular migration pathways, including for family and work across different skills levels.

This should include improving work and residence permits to promote rights, full inclusion and participation, and family life. Allowing for jobs and permits to be changed, and for in country applications, are some of the reforms needed both to reflect reality. As people change jobs, and

families are formed, the new Pact should demonstrate a moving away from policies and practices that create the conditions for exploitation, violence and loss of status.

2. PROMOTING COMPREHENSIVE RESIDENCE PERMIT SCHEMES

In real life there is no clear-cut distinction between “those who have a right to stay and those who do not”. Residence status is a matter of policy choices as much as individuals’ choices.

The Pact should recognize that people arriving irregularly or identified as undocumented migrants on the territory should have meaningful access to various residence permits and status determination procedures, as already existing in many member states.

In the past, many member states have **adopted** regularisation measures, recognizing the importance of regularising individuals on a number of different grounds, including residence and work criteria. In April 2020, the **Commission** itself underlined that “Member States enjoy broad discretion to grant a residence permit or another authorisation offering a right to stay to irregular migrants for compassionate, humanitarian or other reasons, as provided for by Article 6(4) of Directive 2008/115/EC (hereafter “the Return Directive”)”.

The Pact should move away from the focus on channelling people either into international protection or return procedures, and avoid directly linking the two.

Some people may not be – or have been recognised as – in need of international protection, but still have grounds to stay, including because of family life, health concerns, statelessness, respecting the principle of non-refoulement or because their return is blocked by factors beyond their control. They should be entitled to appropriate forms of residence permits and protection.

3. PROMOTING CASE MANAGEMENT AS A MIGRATION MANAGEMENT TOOL

Case management is a structured social work approach to migration management centred on individuals’ engagement with migration procedures. By building trust in the system, providing stability and facilitating people’s sense of agency, case management increases engagement and participation in migration procedures, providing an effective approach to reducing irregularity while avoiding immigration detention.

Across the European Union, more than 100,000 people are **detained each year** solely because of their migration status. The COVID-19 pandemic has shown that promoting and implementing effective alternatives to immigration detention is now more urgent than ever.

The Pact should promote the implementation of case management as a clear and effective alternative to immigration detention.

The evaluation of ongoing case management projects has shown extremely positive results in terms of compliance, at significantly lower costs than detention. For instance, in **three pilot projects** run between 2017 and 2019 in Bulgaria, Cyprus and Poland, 97 per cent of the participants remained engaged or achieved case resolution.

4. PROTECTING CHILD RIGHTS

Children make up an **important part** of migrant populations, both those living in European countries and those on migration routes. It is crucial that the Pact reflects Europe's respect of child rights and regard for the needs of children in migration, both those on the territory and at the borders. The recent **coordination efforts** between the European Commission and several EU member states on the relocation of unaccompanied children from Greece to nearly a dozen EU member states demonstrate that, when there is political will, actions follow.

The Pact should ensure that the principle of the best interests of the child are central to asylum, return, and border procedures.

The Pact should build upon existing evidence around children in migration and aim to find durable solutions that are in the best interests of the child, so no child grows up in uncertainty.

5. ENDING THE CRIMINALISATION OF SOLIDARITY

In the past years, **hundreds** of individuals have been criminalised for rescuing migrants at sea, giving food and water to people in distress, providing shelter or rental accommodation, and informing migrants about their rights.

The Pact should include, but not be limited to, clear guidelines ensuring that people working on the rights of migrants and providing assistance in the EU are protected from judicial and other forms of harassment.

The EU should support and encourage individuals defending and supporting the rights of migrants.

6. SUPPORTING SOCIAL INCLUSION AND COMMUNITY WELL-BEING

Social inclusion fosters cohesion in our societies and is a bulwark against discrimination and marginalisation. Europe's efforts to promote and ensure social inclusion must be based on the recognition that our society is made up of - and enriched by - diverse communities composed of individuals with different origins and migration backgrounds. Their work, ingenuity, art and culture contribute to Europe's prosperity.

To foster community wellbeing means ensuring that everyone can access the services they need - including health and social services, decent housing and work, and is equally protected under the law through access to justice - **without risking immigration enforcement** because they may have irregular migration status.

The Pact should underscore Europe's commitment to social inclusion, and to fostering inclusive societies where community wellbeing, safety, health, workers' rights and justice are prioritised over narrow immigration enforcement concerns.

This should include recognition of the **important role of cities** and **other local and regional authorities** in promoting inclusion, and of civil society as a bridge to reaching and engaging with communities that have long experience of systemic and intersecting forms of discrimination and exclusion.

7. ENSURING COHERENCE WITH OTHER RELEVANT EU STRATEGIES AND PRIORITIES, INCLUDING PROMOTING GENDER EQUALITY AND VICTIMS' RIGHTS

The Pact should ensure coherence and promote the implementation of other relevant EU strategies and priorities.

For instance, the EU's much anticipated [Gender Equality Strategy](#) for 2020-2025, released on 5 March 2020, is an [important step](#) up for the EU on gender equality and must be reflected in the Pact.

Women represented [51.4%](#) of migrants in Europe in 2019. While there may be no formal differentiation based on gender in criteria for residence and work permits in Europe, in reality women are less likely to have access to the support and resources to travel regularly and safely, to get the jobs that would grant them stable work permits and the incomes to bring to their families. Women who migrate for work are often confined to occupations that are under-regulated, with few rights and protections. A [survey](#) of 400 migrant women carrying out domestic work in the Czech Republic revealed that 53% did not have any employment contract. This exposes them to economic hardship, unsafe working conditions and exploitation, with limited options for redress, particularly if they are undocumented.

During the COVID-19 pandemic, women and girls have been particularly at risk. The UN [Population Fund \(UNFPA\)](#) has [predicted a 20%](#) increase in gender-based violence in all 193 UN member states. Even outside the pandemic period, undocumented women do not systematically report their aggressors to the police or often do not seek help in shelters or hospitals because they are afraid of being reported to immigration authorities.

It is essential that undocumented migrant women have full access to services to ensure the eradication of gender-based violence, which is one of the key objectives of the EU Gender Equality Strategy.

The Gender Equality Strategy commits to include a gender perspective in all EU policies and processes. For the Pact to uphold this commitment, it will have to meaningfully address how migration policies are perpetuating and reinforcing structural discrimination based on gender identity and other characteristics like race, nationality, and sexual orientation.

The EU's upcoming [Strategy on Victims' Rights](#) will include a focus on improving access to justice for people facing particular vulnerability, including child victims and survivors of violence; and address the rights of third country nationals who are victimised in Europe. The EU Victims' Directive itself guarantees access to protection, services and justice for all victims of crimes without discrimination, including based on residence status, and recognises that victims who are not nationals of the country where they are victimised are "particularly vulnerable" and at "particularly high risk of harm".

The Pact should also reflect the priorities and concerns of the Strategy on Victims' Rights, recognising and addressing the forms of victimisation experienced by migrants across a range of contexts, including at home, in the workplace and in detention – and reaffirming the rights of victims to protection and justice.