

PICUM priority recommendations for EU action on labour migration

Complementary information to our response to the public consultation – Dec 2020

This document provides complementary input to our response to the public consultation on the future of EU regular migration policies, December 2020. It does not include all our answers but provides additional explanation regarding several questions and highlights our current priority recommendations for EU action on labour migration.

For analysis of labour migration and work permit policies across Europe and recommendations for all levels of labour migration governance, see PICUM (2021) '[Designing labour migration policies to promote decent work](#)'.

Question 1: In which occupations do you think that the EU will mostly need to recruit third-country nationals in the coming years, also taking into account the economic impact of the COVID-19 crisis?

The consultation asks to identify occupations where there will likely be labour market needs in the EU. There are numerous occupations where we see migrant workers are working irregularly and unable to access a work permit.¹ There is a need for more opportunities for decent labour migration and access to work permits across sectors and occupations.

However, we have a preference for a **comprehensive and crosscutting approach**, where these occupations are included in general work permit schemes (see also Question 2c). We are not in favour of new European legislative proposals on the admission of workers for a particular sector or occupation, which would lead to more different rules for different workers and increase fragmentation. Member States already have complex and multiple rules for different workers; legislation at EU level that adds complexity is not well-implemented in practice and risks producing further irregularities and inequalities.

The main barriers to people working on these occupations are not to do with EU legislation, but how labour migration policies are designed on national level, particularly the use of mechanisms such as

Question 2a: What new practical measures on regular migration should the EU take in the next years to support Member State authorities, employers and prospective migrants?

Among the practical measures suggested in the consultation, **guidelines and exchange of good practices on reducing administrative barriers** would be useful, in particular if they could address:

¹ Of those listed in the consultation, these include: Building and related trades workers; Personal service workers; Personal care workers; Cleaners and helpers; Agricultural, forestry and fishery labourers. In addition, other jobs frequently done by undocumented workers include (using ISCO nomenclature): Sales workers, Security guards, Electrical and electronic trades workers, Sewing, embroidery and related workers; Drivers and mobile plant operators; Labourers in mining, construction, manufacturing and transport; Food preparation assistants. See PICUM (2021) '[Designing labour migration policies to promote decent work](#)'.

- Analysis of current practice/ exchange of good practice to encourage MS to simplify or remove labour market tests that essentially block access to the labour market for third-country nationals.
- Guidelines to encourage labour migration *at least* for jobs on shortage occupation lists. At the very least for these jobs, there should be permits available without quotas or labour market tests.²
- Promotion of the good practices highlighted below in the sections on domestic workers, job-seekers, protection of labour migrants' rights and regularisation.

The consultation also suggests **Funding of labour migration projects between Member States and third countries** as a possible practical measure at EU level. In general, we are not in favour of bilateral labour migration agreements as a means of labour migration governance.³ Those that are in place or may be developed need enhanced safeguards, protection and rights for migrant workers.

- If the Skills Partnerships are to be scaled up with the announced “Talent Partnerships” initiative, there needs to be minimum standards to be supported by EU funds, in addition to those set out in the Single Permit Directive. In particular these should ensure: transparency (inc. regarding process for which companies are involved); involvement of social partners and trade unions in development and monitoring; coverage of recruitment fees and travel costs by employers; and access to information for workers, including on labour and trade union rights and complaints and redress mechanisms.

Recommendations set out in PICUM (2021) '[Designing labour migration policies to promote decent work](#)' are applicable, in particular those related to administrative procedures and conditions and rights associated with residence and work permits, as far as terms may be set by the project, or otherwise considered in its development and implementation.

Question 2b: What new legislative initiatives should the EU take in the next years to harmonise at EU level the admission and rights of those categories of workers that are not regulated at EU level?

The consultation asks about new legislation at EU level to harmonise admission rules and rights for domestic workers/ care givers. While there are significant gaps in access to work permits for domestic and care workers, this should not be resolved through EU legislation for labour migration of domestic and care workers at this stage.

We advocate for domestic workers to be included in general labour migration schemes, as is the case in some member states. A sector-specific scheme for these workers would be unnecessarily complicated and has high risks of having lower standards for domestic workers.

Very diverse jobs are included in the term and sectors, with different skills and qualifications, relevant national regulations and definitions – it will be extremely difficult to harmonise at EU level. A lot of work has gone into developing ILO C189 on decent work for domestic workers in this regard

² For example, an [EMN study](#) from 2015 found that most MS do not adjust their labour migration schemes in relation to Lists of Shortage Occupations, and even in those that do, the resulting policy adjustments focus on a very specific, narrowly defined list of (shortage) occupations.

³ For more analysis of the challenges with bilateral labour migration agreements, see See PICUM (2021) '[Designing labour migration policies to promote decent work](#)'.

– this is the relevant instrument that should be ratified in all EU MS in line with the [Council decision of 28 January 2014](#).

Extensive reforms of the domestic and care sectors are needed in many countries. Labour migration for domestic workers should be addressed as one part of a broader Care Package which would include various regulations and investment to ensure decent work for all domestic workers and quality and affordable care for service users, rather than in isolation.

We recommend the following EU actions for migrant domestic workers:

- [Ensure the application of all employment standards to domestic workers.](#)
- [Encourage ratification of ILO C189.](#)
- [Exchange of good practice where domestic and care work is included in general labour migration schemes.](#)
- [Recognise the contributions of migrant women, including undocumented, to the care sector, and ensure inclusion of labour migration and migrant workers' rights in related EU initiatives on care, PHS services, gender, etc.](#)

Question 3: Do you think the EU should introduce rules allowing the admission of third-country workers without a concrete job offer, permitting them to search for a job subject to certain conditions?

While a permit to enable people to look for work in country could be very helpful for workers and employers, and reduce the need to rely on recruitment agencies, there are very significant risks of exploitation. It would be important that the person is either immediately provided a long-term residence permit, or that the job-seeking visa can be easily converted into a stable residence and work permit based on one of various different criteria, designed intentionally to avoid creating dependency of workers on employers, and mitigate risks of extortion, coercion and exploitation.

Other priorities which enable people to look for work include: untying residence and work permits from one employer, ensuring continuance of residence permits with a reasonable period for unemployment/job-search, and in-country applications.

We recommend the following EU actions for job-seekers:

- [Guidelines to clarify that the Single Permit Directive does not require combined residence and work permits to be linked to a single employment relationship, and to encourage Member States to ensure it is possible for people to remain regularly residing and look for alternative work for a reasonable period of time.](#)
- [Promote good practices of permits that enable workers to change employer, job and sector, and are applied for by workers.](#)
- [Strengthen provisions on in-country applications in the announced reform of the Single Permit Directive, to require in-country applications, regardless of status.](#)

Question 6: How could the EU strengthen the protection of third-country workers' rights and fight their exploitation?

The consultation recognises the continued labour exploitation and unequal treatment experienced by labour migrants.

One of the suggestions is to develop horizontal EU rules on **effective labour inspections** and a sanction system addressing employers of TCNs in case of abuses. Accessible and effective complaints mechanisms are required by EU law, for irregular workers by the "Employers' Sanctions Directive", and for regular seasonal workers by the "Seasonal Workers' Directive". It would also be a necessary measure to implement and make accessible the rights enshrined in other EU laws, in particular the "Victims' Directive", "Anti-Trafficking Directive" and EU employment regulations.

- Any additional rules to address labour inspections and complaints mechanisms should focus on ensuring general labour inspections and complaints mechanisms are accessible and effective for migrant workers.⁴ In particular, rules should ensure independence and efficiency of labour authorities and inspectors – during inspections and in complaints procedures - in enforcing labour rights for all workers, without any risk of immigration enforcement.

This is essential to uphold labour rights for all workers and ensure equal treatment and pay in the same workplace, considering that many precarious migrant workers may have a permit that is dependent on their employer, may be working irregularly while residing regularly, or may be working and residing irregularly. If they face negative repercussions regarding their status for exercising their labour rights, it opens the door to exploitative labour practices and prevents workers from reporting and cooperating with inspection authorities.

Other priority recommendations for EU action to improve protection of labour migrants' rights and prevent their exploitation:

- Introduce the right to change employer, type of job and sector for Single Permit holders in the announced revision of the Directive.
- Improve regulation⁵ and monitoring of all private employment and recruitment agencies and consider the role of the European Labour Authority in this regard.
- Develop a stronger framework for joint and several liability in sub-contracting and supply chains.

⁴ For more information see PICUM (2017) [Undocumented Migrant Workers: Guidelines for Developing an Effective Complaints Mechanism in Cases of Labour Exploitation or Abuse](#) and PICUM (2020) [A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice](#), Brussels: PICUM.

⁵ Temporary employment agency workers are covered by EU law in terms of equal treatment, but this framework does not fully address the situation of migrant workers nor international private recruitment agencies. Migrant workers employed through agencies can face complex employment structures with lack of accountability, unauthorised recruitment fees, abusive working conditions and wages, risks of debt bondage, and retention of documents, among other abuses. Improving the EU level legislative framework regulating employment agencies would have real added value and build on good practices on national level, and the extensive work of [ILO](#), [IOM](#) and the [WHO](#) in this area. There is also some attention to this issue in the recent [Council Conclusions on improving the working and living conditions of seasonal and other mobile workers](#) (9 October 2020) and [European Parliament resolution on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis](#) (19 June 2020).

- Impose social conditionalities on EU Common Agricultural Policy subsidies (so beneficiaries need to prove that they respect workers' rights, social security, health and safety, etc.)
- Develop human rights due diligence legislation, such that companies need to demonstrate that they have measures in place to ensure respect for human rights (including labour rights) throughout their supply chains and can be held accountable.
- Improve implementation of existing EU laws that protect labour rights and migrant workers' rights specifically (e.g. Framework Directive on Health and Safety at Work, Working Time Directive, Single Permit Directive).
- Ensure rights of all migrant workers who are victims of crime in implementation of the EU anti-trafficking framework and Victims' Directive, including through the implementation of the Victims' Strategy.
- Exchange good practices on residence solutions in cases of exploitation,⁶ in particular transitional permits⁷ for situations where workers experience labour violations or other abuses.

Question 7: Do you think the EU should strengthen its current rules to sanction those employing and exploiting irregular migrants?

This question in the consultation is prefaced by the suggestion that irregular employment may disincentivise regular migration. There is no evidence for this. The overwhelming majority of migrant workers would rather be employed in a regular manner, pay taxes and contribute to the social security system, than work irregularly.

Furthermore, the experience of PICUM members working with undocumented workers across Europe clearly indicates that the main impacts of sanctions are a deterioration of working conditions and increased precarity for workers.⁸ Before considering strengthening sanctions, it would be essential to properly evaluate the various impacts of the existing sanctions regime, and assess potential impacts of increasing them, involving all stakeholders.

Important considerations include the fact that undocumented migrants need to work.⁹ Imposing sanctions on their employment does not address their need to earn a living, nor reasons for residing and/or working irregularly. Even if criminal and financial sanctions were more significant - and imposed in a way that ensures that workers have their rights upheld without any risk of immigration enforcement (see above) – it is not likely that they would deter all employers. It may deter those that do not make significant financial gain from employing an undocumented worker, reducing employment options. However, it may not represent a real deterrent to those who exploit workers, as the financial benefits of avoiding fully declared and formalised work contracts may continue to outweigh risks of enforcement. Increasing sanctions and risks for employers of irregular migrants may also lead to those risks, in turn, being passed on to precarious workers (through e.g. lower wages,

⁶ Regarding victims of criminal labour exploitation including trafficking in human beings, see PICUM (2020), [PICUM Key Messages and Recommendations on Human Trafficking, October 2020](#); PICUM (2020), *Insecure Justice? Residence permits for victims of crime in Europe*, Brussels: PICUM.

⁷ See for example, the [Open work permit for vulnerable workers](#) in Canada and [Reactivation Employment Permit \(REP\) Scheme](#) in Ireland.

⁸ See e.g. PICUM (2015) [Employers' Sanctions: Impacts on Undocumented Migrant Workers' Rights in Four EU Countries](#).

⁹ As with the general population, those of working age are normally in work. In addition, as undocumented migrants are excluded from social protection systems which would provide some income support when unemployed, unable to work due to long-term health issues or disability, or of retirement age (pensions), undocumented migrants have to work to survive and provide for their families.

longer hours, unsafe conditions, extortion). Sanctions also do nothing to address the structural reasons why certain employers seek profits by reducing labour costs and undeclared work.

Adequate regular employment and residence opportunities for migrant workers would be more effective policy tools to address the presence and employment of irregular migrants.

PICUM therefore recommends:

- [The employers' sanctions regime at EU level should not be strengthened and should be subject to an independent evaluation of its impacts on irregular migration, undeclared work, employment standards and exploitation, and human rights.](#)

Questions 8 and 9: Do you think that the EU should support and coordinate Member States' national approaches in developing balanced regularisation measures? What other measures could be taken at EU level concerning the assessment and criteria for regularisation of undocumented workers?

Regularisation is a commonly used policy tool to address the reality of undocumented residents, with many economic, social and other public policy benefits.¹⁰ The most comprehensive study on regularisation programmes and mechanisms is still the [REGINE study](#) (2009), which identified that 24 of the 27 EU Member States surveyed for the study implemented regularisation programmes or mechanisms between 1996 and 2008. Between 5.5 to 6 million people were regularised in that time period. Criteria are often linked to length and continuity of residence, employment, local social ties, and humanitarian reasons (such as undue length of asylum procedures, inability to return to country of origin, health reasons, the best interests of the child, experiences of victimisation). In many cases, criteria are linked to upholding human rights even if not explicitly framed in this way.

This question in the consultation is preceded by and therefore premised on the false assumption that regularisation measures in one EU member state might increase irregular migration to another EU member state ("taking into account the possible spillover effects". This is not supported by evidence.¹¹ This premise indicates that EU level coordination implied in the question might seek to limit, rather than promote, regularisation measures, as was the case in the 2008 European Pact on Immigration and Asylum for example.

Our analysis of regularisation policies indicates the importance for criteria for regularisation to be developed in partnership with local civil society, to meet local realities and needs. It is unlikely that a common European framework that would lay down criteria for granting/ accessing a permit would be adapted to national and local realities, and there are risks that common criteria would represent a regression compared to existing national pathways. Therefore, we are not in favour of EU legislation that would seek to do so.

We recommend the following EU actions on regularisation:

- [Promote a more objective and evidence-based narrative on regularisation.](#)
- [Provide funding for a new study to update the 2009 REGINE study on regularisation in Europe.](#)

¹⁰ See e.g. PICUM (2020), [Insecure justice? residence permits for victims of crime in Europe](#); PICUM (2018) [Manual on regularisations of children, young people and families](#).

¹¹ For further discussion and references to studies on the impacts of regularisation, see e.g. PICUM (2018) [Manual on regularisations of children, young people and families](#).

- Several EU directives already deal with access to residence permits for particular groups.¹² The Commission should encourage the granting of permits for particular groups where already provided for by EU law.
- Ensure that EU legislation and policies on asylum and return enable people to have meaningful access to all available pathways for regularisation.
- The EU could support and share good practices of regularisations on national level, in particular in relation to procedural aspects. This could potentially lead to the development of guidelines on procedural aspects for well-implemented and successful regularisation, encouraging, for example, ownership of the application process by workers and others measures to ensure independence of workers from employers if regularisation is linked to employment; involvement of civil society in all stages; clear and transparent criteria; procedural rights (e.g. written explanation in cases of refusal, right of appeal), and issuing of permits of reasonable duration. Any such guidelines should be developed through meaningful consultation of all stakeholders including civil society, including migrant associations.

Questions 11 and 12: Should the EU improve the intra-EU mobility rights of regularly residing third-country workers? Do you believe the EU should make the current long-term resident status a truly EU-wide residence status that includes strengthened intra-EU mobility rights?

When migrant workers are not authorised to work in another EU country on the same permit it can lead to situations of undeclared work, irregularity and precarity, and family separation. On the other hand, **improving intra-EU mobility rights for all third-country workers and their family members** would be a significant contribution of the EU to promoting mobility in the labour market which facilitates professional development and job growth, fair competition, effective job and skills matching, and adaptations to workers' and employers' needs.

Likewise, the consultation asks about **long-term resident status**. All efforts to strengthen the Long-Term Residents Directive and the status granted to residents are extremely welcome, in particular in relation to reducing the years of residence required to be eligible and strengthening intra-EU mobility rights.

Question 13: Other suggestions for improving the EU regular migration policy

The consultation also invites other suggestions to improve EU regular migration policy. For policies to be effective, it is crucial to have structured social and civil dialogue with key stakeholders.

- Representatives of migrant workers should be meaningful consulted and involved in all stages of EU labour migration policy development, monitoring and evaluation. The views of representatives of migrant workers, including trade unions, NGOs and migrant worker associations, should have a clear and direct influence on policy, through social dialogue and extended civil dialogue spaces.

¹² In particular, victims of domestic violence with a dependent status (Citizens Dir. and Family Reunification Dir.); trafficked and smuggled persons (Dir. on residence permits for trafficked and smuggled persons); Undocumented workers victim of particularly exploitative working conditions (Employers' Sanctions Dir.); people in return procedures (Return Directive and Return Handbook).