



Written Submission to the Consultation for the Action Plan for the implementation of the European Pillar of Social Rights

November 2020

The socio-economic consequences of the ongoing COVID-19 health crisis require a strong effort from EU member states in promoting social justice and inclusion in Europe. The forthcoming EU Action Plan for the Implementation of the European Pillar of Social Rights (EPSR) is therefore both timely and very welcome. The need for investing in people's standard of living and equal opportunities is particularly urgent in a context of increasing economic hardship and social exclusion, linked in particular to unemployment, under-employment or otherwise precarious employment situations, and limitations on interactions with social services and in community spaces.

For people with insecure residence status, the health, social and economic shocks of this crisis are especially acute. Restricted or irregular residence status often prevents migrants from enjoying full rights in employment, access to health and other services, and education. The pandemic has highlighted how the denial of access to services and social protection on the basis of migration status makes whole societies more vulnerable. It is essential to ensure that all people, regardless of their migration status, can exercise their human rights through safe access to basic services.

To make European societies more resilient and inclusive, the Action Plan on the Implementation of EPSR should address the rights of all people residing in the EU, regardless of migration status.

On the basis of its nearly two decades of work on advancing the right of undocumented people, PICUM has identified a number of challenges at the EU level with regards to the implementation of specific principles of the Pillar and has developed specific recommendations for action within the framework of the EPSR.

I. General Recommendations

1. Mainstream the Pillar's principles across all policy areas

As the EPSR is a policy framework and does not consist of enforceable legislation, its implementation needs to be mainstreamed across all policy areas, including the EU's asylum, migration and integration policies. In other words, upcoming initiatives in the area of migration and home affairs should be assessed on the basis of their impacts on the social rights of people and adapted to ensure coherence with the EU's social objectives.

For example, the principles of the EPSR should ensure that provisions in migration and asylum laws guarantee, and do not prevent, access to affordable preventive and curative health care of good quality, to childcare and to quality and inclusive education.

Recommendation:

As extensively covered in [Social Platform's recently published views on the future European Pillar of Social Rights](#), the Action Plan for the Implementation of the EPSR should capitalise on all existing efforts for non-discrimination and inclusion of the most marginalised groups, ensuring that all future legislative proposals contribute to strengthening social rights across the EU. While we fully endorse this approach, we have offered a specific perspective, identifying the main measures that should be taken to address exclusion of people who are undocumented.

2. Ensure a direct link between the European Pillar of Social Rights and the Action Plan on Integration and Inclusion 2021-2027

Access to quality and affordable social services is a strong precondition for social inclusion, particularly for third country nationals. People who do not have access to fair working conditions, decent housing and affordable healthcare lack the circumstances for meaningful participation in public life.

Recommendation:

The principles at the core of the EPSR must guide the implementation of the new Action Plan on Integration and Inclusion. Synergies between the two policy frameworks need to be developed to ensure that the objectives of integration and inclusion are achieved through far-reaching advancements in social rights for all, including migrants and regardless of their residence status.

For more information:

- PICUM/ECRE, [The Future EU Action Plan on Integration and Inclusion: Ensuring an Approach Inclusive of All](#), October 2020

3. Ensure that the EU funds delivering the Pillar promote social inclusion for all

EU funding is one of the main instruments for supporting implementation of the EPSR, as the competence for social policy is primarily with member states. In the next Multiannual Financial Framework (MFF), the European Social Fund Plus (ESF+) will be the primary tool for supporting the implementation of the Pillar's principles across EU member states.

For the first time, the upcoming ESF+ will include a specific objective (viii) on socio-economic inclusion of third country nationals, as well as a number of objectives (ix, x and xi) promoting access to services for vulnerable groups, social integration of people at risk of poverty and social exclusion and addressing material deprivation through material assistance.

Recommendation:

To ensure that social inclusion is put at the core of the funds' implementation, the European Commission should promote the preparation of actions aiming at reducing social exclusion in an inclusive manner and investing in integration of people made vulnerable (including undocumented migrants) through lack of access to services and supports.

For more information

- PICUM/ECRE, [Promoting socio-economic inclusion of migrants and refugees in the next EU budget \(2021 - 2027\)](#), February 2019

II. Brief Analysis and Specific Recommendations

PICUM is committed to promoting the recognition and implementation of undocumented people's rights in Europe, including their social rights. PICUM's work in the areas of access to health care, access to justice, labour rights, the rights of undocumented children, families and youth, and fundamental rights considerations in the context of migration policy encompasses many of the policy areas identified by the 20 principles of the EPSR.

The following is intended to provide an overview of the state of play on undocumented people's social rights in EU member states under several principles of the European Pillar of Social Rights. Links with existing PICUM publications are included for more information.

CHAPTER I: Equal opportunities and access to the labour market

1. Education, training and life-long learning

Children of undocumented parents may experience several barriers even in accessing compulsory education. This can be due to documentary requirements for registration that cannot be provided, limited access to exams and lack of awareness amongst educational staff about children's rights to education. Administrative barriers can delay access to school even for children seeking asylum and unaccompanied children when deadlines are not flexible enough.

Access to non-compulsory education can prove even more problematic. Obstacles to higher education put the lives of a number of young people on hold.

Undocumented students are usually barred from doing traineeships due to their residence status even when they are in compulsory education, and despite being fluent in the local language. A number of discriminatory policies block the access to internships and traineeships to third-country national youth because they do not have a work permit or authorisation to access to labour market. Additionally, in many cases they are charged high

international student fees despite being de-facto residents of the EU member state where they want to study.

Migrant students and youth should be first and foremost approached as a target of youth policies together with their peers, and therefore be urgently provided access to higher education systems.

Recommendation:

The right to quality and inclusive education, training and life-long learning should be implemented in a manner that promotes non-discriminatory access for all residents, regardless of status, to higher education, vocational education, training and internships, including through the Youth Guarantee.

For more information:

- PICUM, [Protecting undocumented children: Promising policies and practices from governments](#), 2018
- PICUM, [Access to internships & formal certification for undocumented young people in Europe](#), 2013
- PICUM, [Human rights of undocumented adolescents and youth](#), 2013

2. Gender equality

The Action Plan for the Implementation of the European Pillar of Social Rights should be aligned with the EU's [Gender Equality Strategy](#), which “aims at achieving a gender equal Europe where gender-based violence, sex discrimination inequality between men and women are a thing of the past” and where women “are free to pursue their chose path in life, where they have equal opportunities to thrive, and where they can equally participate in and lead our European society”. At the same time, the Gender Equality Strategy acknowledges that some women are “structurally underrepresented in the labour market”, often due factors that create marginalisation or vulnerability. Under the strategy, the EU commits to an intersection approach in all is gender equality policies so that it can respond to the specific needs and circumstances of women and girls.

The pandemic has revealed in stark terms the gender-related dimensions of inequality. In the case of migrant women, it has exposed the profound undervaluing of their work in areas like health care, education, cleaning, food services, farm work, child and elder care. Confinement and physical distancing measures have cut off their access to vital sources of support and exposed some to a greater risk of violence in their homes or workplaces.

Underpinning this reality are migration systems that entrench structural asymmetries of power and opportunity. Access to decent work permits in Europe is largely restricted to highly qualified people who can secure high incomes, excluding people of all genders with lower socio-economic status. Women, transgender and gender non-binary face restrictions on services and justice when they are undocumented, which heighten their risk of living in situations of economic and social precarity.

Recommendation:

Implementation of the EPSR should take an intersectional approach to address the gender-related dimensions of social and economic inequality that are driven by structural

and historical discrimination against migrant and ethnic minority women, with special attention to those in situations of precarity based on insecure residence status.

For more information:

- PICUM, An inclusive gender-responsive approach to migration, 2020

CHAPTER II: Fair working conditions

Migrant workers with precarious, dependent or irregular status frequently experience conditions below those required by minimum labour standards and collective bargaining agreements, in terms of pay, working time, rest periods, sick leave, holiday, health and safety, information about employment conditions and protection in case of dismissals.

5. Secure and adaptable employment

Migrant workers' precarious or irregular status puts them directly at risk of employment relationships that lead to precarious working conditions. They are not guaranteed fair and equal treatment regarding working conditions, and rarely have contracts or any job security.

6. Wages

Migrant workers with precarious or irregular status are frequently paid below the wage levels set by minimum wage legislation and collective agreements, not paid for all their hours or any overtime. Delayed wage payment and non-payment/ theft of wages are common experiences for undocumented workers.

7. Information about employment conditions and protection in case of dismissals

Migrant workers with precarious or irregular status rarely receive written information about employment conditions and experience breaches of verbal agreements regarding wages and conditions. They are frequently subject to and threatened with unfair dismissal – for example, for demanding payment of wages – and not provided any notice period or due allowances. On dispute resolution mechanisms and redress, see below.

8. Social dialogue and involvement of workers

Migration policies which govern access to the labour market and which prevent workers from exercising their rights are de facto employment policies, creating the conditions for a flexible workforce which can be easily hired and fired, and even removed from the country according to labour market needs. There is minimal social dialogue and involvement of social partners in the design, implementation and evaluation of such policies. Further, membership of trade unions by migrant workers remains low in many EU countries, particularly when considering undocumented workers.

9. Work-life balance

Undocumented children are usually excluded from publicly-funded early childhood education and care services. This situation often makes it more difficult for undocumented parents, in particular women, to work full time or even maintain part-time jobs and make ends meet. In addition, it is virtually impossible for undocumented migrant women to exercise maternity rights, such as maternity leave and breastfeeding breaks, at work. They are particularly likely to face discriminatory treatment such as reductions in pay and

working hours, and termination of employment, due to pregnancy and childcare obligations.

10. Healthy, safe and well-adapted work environment and data protection

Migrant workers are also largely at greater risk of developing occupational illnesses and experiencing injuries and accidents, including fatal accidents. This is due, in particular, to their sectors and conditions of work and limited access to training and safety equipment, as well as language barriers. In addition, undocumented workers experiencing respiratory and skin conditions, musculoskeletal disorders, mental health or other health issues resulting from their work are sometimes unable to access health care, with strict limitations on non-emergency health care services for undocumented migrants in many European countries, and exclusion from work-related health insurance schemes.

Implementing fair working conditions

Many undocumented workers endure such conditions, as they see little alternative. If they try to negotiate due payment and respect of fair working conditions, their employers threaten to report them to immigration and wield over them their inability to access formal complaints mechanisms without risking deportation.

The risk that filing a complaint will lead to immigration enforcement, combined with the low likelihood that it will result in remedy and exclusion from support for people in unemployment, means that for most, continuing to work for low wages, or accepting their losses and finding alternative employment with only slightly better conditions, are the only viable options.

Workers with a permit linked to a specific job also face similar challenges to access justice, as they are usually fired and made undocumented, if they denounce their employer. This also means that job loss and exploitation are key reasons for people becoming undocumented in Europe.

Recommendation:

While employment law largely includes workers in a factual employment relationship without discrimination on the basis of immigration status, for these rights to be accessible in practice and to implement the EPSR principles in practice, several measures are needed to make labour monitoring, complaints and redress mechanisms more effective and accessible for all workers, without any risk of immigration enforcement as a result.

Implementation of the EPSR should seek to facilitate and strengthen the role of social and civil dialogue – including civil society organisations representing and led by migrant workers - in the design and implementation of economic, employment and social policies, and in migration policies which directly regulate the employment of migrant workers.

For more information:

- PICUM, [A Worker is a Worker: How to ensure that undocumented migrant workers can access justice](#), 2020.

CHAPTER III: Social protection and inclusion

11. Childcare and support to children

- **Early childhood education and care**

All children, regardless of their family or cultural background or gender, have the right to education to further their development. Both compulsory education and non-compulsory education, such as early childhood education and care, are considered fundamental for a child's development and well-being. Children of undocumented parents may experience several barriers due to documentary requirements for registration that cannot be provided, limitation of access to exams and lack of awareness amongst educational staff about children's rights to education. Administrative barriers can delay access to school for unaccompanied children when deadlines are not flexible enough. Additionally, migration procedures can cause a delayed enrolment in schools or cause an interruption of the school year, which should be avoided at all times. Focus should also be given to children with an irregular status turning 18, to ensure that they are enabled to finish their education and have access to supporting mechanisms to facilitate the transition to adulthood.

- **Protection of poverty and enhanced equal opportunities**

Undocumented children and their families are at a particular risk of poverty. Due to their irregular residence status, children have limited access to basic rights and services. Additionally, their parents have limited access to the labour market, which can cause additional vulnerabilities for children as well.

Recommendation:

Poverty negatively affects children's well-being as well as their long-term development. It should be addressed through effective policy measures that ensure access to basic rights and services as well as equal opportunities, regardless of residence status. Furthermore, undocumented children who reach the age of majority need to be supported as well, to ensure a smooth transition into adulthood. Policies should ensure that undocumented youth who reach the age of 18 continue to have access to basic services and rights, to ensure that they do not become subject to poverty, and that they continue having access to equal opportunities to facilitate their personal growth and development.

- **For more information:** PICUM, [Protecting undocumented children: promising policies and practices from governments](#), January 2018.

14. Minimum income

The COVID-19 pandemic has revitalised discussions around minimum social protection floors and minimum income. Some emergency financial support was extended to some otherwise excluded groups (in particular some self-employed), but others have been largely left aside, in particular, those working undeclared and in the platform economy.

The sudden loss of work following confinement measures across EU member states has plunged many undocumented workers into complete poverty and severe risk of starvation and homelessness. Civil society and communities have been mobilising to support people to meet basic needs, but calling for government to step in. Some national level governments have extended access to food and nutrition schemes, as well as shelters to all residents in need, regardless of their status. The Irish national government, as well as city and regional governments in Spain, Italy and the Netherlands made specific efforts to

ensure that undocumented migrants could access these essential services as well as some emergency income support measures.

Recommendation:

The COVID-19 pandemic has exacerbated existing inequalities that were prior to the pandemic and has had an unequal impact on people with irregular migration status, who continue to be one of the most vulnerable groups in society. EU member states should take stock of the positive policy developments during recent months and recognise the need for providing basic material and income support to all the most vulnerable, regardless of their residence status.

For more information see:

- PICUM, [Non-exhaustive overview of European government measures impacting undocumented migrants taken in the context of COVID-19 – October 2020](#)

16. Health care

Health care services are important points of intervention to address the needs of people facing social exclusion. Improved access to health care and health information can be an important contributor to health and wellbeing, as well as empowerment and inclusion. And yet, in most parts of the EU, primary health care is inaccessible to people with irregular migration status. This means, in many cases, limited or no access to a general practitioner, and no right to subsidised care except in the case of emergencies for children, young and elderly people.

The reality faced by undocumented people in the context of COVID-19 reinforces the need for universal health care that reaches the most marginalised in our societies to ensure everyone's health. It underscores the need for [extending social protection systems](#) to ensure a safety net for all workers, including those registered as self-employed and in non-standard employment.

Recommendation:

Drawing on the lessons from the pandemic, implementation of the EPSR should include concrete efforts to promote among member states more inclusive health and social protection policies, grounded in social rights and equity, that ensure genuinely universal access to preventative and curative care – including, but not limited to, any COVID-19 vaccine and treatments; and the use of social funds to support improved delivery of care to those in situations of greatest vulnerability, without discrimination based on residence status.

For more information:

- PICUM (2017), [Cities of Rights: Ensuring Health Care for Undocumented Residents](#).

19. Housing and assistance for the homeless

- **Housing**

The right to housing is recognised as a basic human right in a wide range of international and regional legal instruments. However, undocumented people are relegated to the margins of the private housing market through their economic and social conditions.

The high levels of discrimination some experience in the housing market, can force third country nationals to accept inadequate housing conditions, often offered way above market prices. People who are undocumented have very limited possibilities to enforce their rights as tenants and to access justice without risking deportation, which enables exploitative housing markets to thrive.

People renting to undocumented people can in some countries risk administrative fines or criminal sanctions, further reducing options as well as bargaining power with landlords. Organisations and individuals providing shelter and assistance to undocumented people also face the risk of criminalisation. Undocumented families with children can experience the impacts of inadequate and insecure housing disproportionately, having to move frequently and often rely on friends and family, with long-lasting effects on children's physical and mental health.

Recommendation:

The de-criminalisation of landlords and organisations and individuals providing shelter and assistance to undocumented migrants can bring a substantial improvement in housing conditions. Safeguarding mechanisms avoiding the transfer of personal data between housing registries and migration enforcement should be put in place, to allow undocumented migrants to have regular renting contracts as well as to safely report exploitative practices by unscrupulous landlords. For more detailed recommendations, check PICUM's website.

- **Basic social inclusion measures**

Specific actions such as food and material distribution for most marginalised groups are part of a policy which should not discriminate across different target groups. Nevertheless, a number of member states require people to be registered, for instance by presenting social security numbers, to be allowed to receive food parcels or essential goods.

Recommendation:

Measures for basic social inclusion of marginalised groups provided through EU funding, including the current FEAD and the upcoming ESF+ should remain as open as possible, and avoid any eligibility requirement to be set up.

For more information

- PICUM, [Housing and Homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter](#), March 2014

20. Access to essential services

- **Access to financial services**

With the last decade seeing a considerable shift from cash payments into card/digital transactions, it has become increasingly difficult for people without documentation to access basic banking services: most undocumented people are de-facto excluded not only from financial services, but all services that necessitate an online payment.

While different banks may apply different policies regarding the documents required to open an account, most credit institutions demand at least identity document and a proof of residence, which most people who are undocumented cannot provide. Legislation aiming to oppose money laundering, such as the [EU Directive 2015/849](#) which obliges banks to verify the customer's identity, has increased the hurdles they face.

While the [Payment Accounts Directive \(PAD\) 2014/92](#) sets clear provisions for including homeless people and those “whose expulsion is impossible for legal or factual reasons” into basic banking services, it does not oblige banks to offer services to undocumented people, who often remain excluded.

Following the pandemic outbreak, retailers have accelerated the digitalisation process, with a sharp increase in services which only offer digital transactions. This process is increasing the weight of banking exclusion in day by day lives of many undocumented migrants, who by now may even struggle to buy tickets for public transport in some municipalities.

Recommendation:

Banking should be considered an essential service and regulated as such, so that no one is excluded on the basis of residence status. Some banks from the USA, Mexico, India and South Africa, have found solutions to provide access to basic financial services to customers who are unable to provide identity or an address proof. Considering the global shift to electronic payments, EU institutions should explore solutions to allow undocumented people to access banking services and could draw on existing experiences from foreign countries which could be replicated at the EU level.

For more information

- PICUM, [Cash Only: Measures imposed to counter money laundering are having serious implications for undocumented people](#), February 2020