

# PICUM Red Lines

for the negotiations  
on the directive on  
combating violence  
against women and  
domestic violence

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# Introduction

The [Platform for International Cooperation on Undocumented Migrants](#) (PICUM) was founded in 2001 as an initiative of grassroots organisations. Now representing a network of nearly 160 organisations working with undocumented migrants in 31 countries, PICUM has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at national and EU levels. With more than twenty years of evidence, experience and expertise on issues affecting undocumented migrants, PICUM promotes recognition of their fundamental rights, providing an essential link between local realities and the debates at the policy level.

The European Commission's (Commission) proposal for a [Directive on combating violence against women and domestic violence](#) (the Directive) constitutes an important opportunity to develop a coordinated approach to tackle violence against women and domestic violence regardless of residence status. The Directive also constitutes a critical step to harmonise EU law with established international standards, in particular the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which the EU recently ratified and will become [binding](#) as of 1 October 2023.

PICUM has been following the discussions on the violence against women directive since the initiative to develop a directive on violence against women was announced. Drawing upon our expertise, we have actively commented and provided inputs at various stages of the process. The Directive is an opportunity to ensure that undocumented women, who are at an increased risk of violence, are able to access justice, protection, and services.

The negotiating positions agreed by the European Parliament (Parliament) and the Council offer varying degrees of protection and support for undocumented victims. The European Parliament position, [adopted on 6 July](#), promises to strengthen the rights of all women facing violence. This includes setting high standards of protection for victims, ensuring a safer environment for reporting crimes and obligations to investigate such complaints/reports, next to facilitating access to specialized victim support services. In contrast, the European Council [position adopted 9 June](#) raises concerns as it appears to be merely a superficial commitment to address violence against women, without genuine efforts to safeguard rights in practice.

In the below, we share our red lines – the very minimum standards of protection guarantees for migrant women - for the next steps of the negotiations based on the original proposal and these agreed positions. Implementation of these red lines will ensure that:

- All women have a **safe environment to report a crime** without being at risk of deportation, given that fear of deportation deters undocumented women from seeking help and puts them at risk of further violence.
- All women have **access to specialist support services, including shelters** according to their specific needs as survivors of gender-based violence and irrespective of residence status;

For more information about the situation of undocumented migrant women, we invite you to read the background (p. 5).

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## RED LINE 1 – Article 2(1)

This provision - introduced by the **Commission** and **supported by the Parliament** - ensures adequate consideration for the increased risk of violence faced by victims experiencing discrimination based on a combination of sex and other grounds to cater to their enhanced protection and support needs. This is key, as undocumented women and women with an insecure residence status are highly at risk of violence due to the combination of their precarious residence status and other forms of discrimination (e.g. gender, ethnicity, race, sexual orientation, etc). The **Council** – by proposing to delete this provision - fails to recognise how intersectional forms of discrimination place some victims at higher risk of violence.

It follows that it is essential for this provision to be maintained. Among the Parliament's proposals, the addition of explicit linking with Article 35(1) – is key to ensure alignment between the victims at increased risk of violence and the targeted support they should receive.

### Recommendation: Parliament position (*in bold & italic*)

#### Article 2(1)

1. When implementing the measures under this Directive, Member States shall take into consideration the increased risk of violence faced by victims experiencing **intersectional** discrimination based on a combination of sex **or gender** and other grounds so as to cater to their enhanced protection and support needs, as set out in Article 18(4), Article 27(5), **Article 35(1)** and Article 37(7).

## RED LINE 2 – Article 13(1)(b)

The **European Parliament** has proposed under Article 13(1)(b) to expand the list of situations which makes a person vulnerable, namely residence status, living in a reception centres, detention facilities or accommodation centres for asylum seekers, and which should therefore be considered an aggravating circumstances for an offence. Given how a woman's immigration status affects her risk of experiencing violence, these are extremely important additions that should be retained in the negotiations.

Given the worrying current trend to criminalise acts of solidarity with migrants, we welcome the European Parliament's proposal to also expand the list of aggravating offences to include offences committed against human rights defenders. Indeed member states should provide a safe and enabling environment for all human rights defenders to facilitate their work. However, this protection can only be effective if there are effective ways for them to report abuse and access justice.

### Recommendation: Parliament position (*in bold & italic*)

#### Article 13(1)(b)

(b) the offence was committed against a person made vulnerable by particular circumstances, such as **residence status, pregnancy**, a situation of dependence or a state of physical, mental, intellectual or sensory disability **or distress, being a victim of trafficking** or living in institutions, **including retirement homes, children's homes, reception centres, detention facilities or accommodation centres for asylum seekers**;

#### Article 13(1)(o a) (new)

**the offence was committed against a public representative, a journalist or a human rights defender**;

### RED LINE 3 – Article 16(5)

The **Commission** efforts to address safe reporting through Article 16(5) are an important step in putting in place the necessary conditions for undocumented women to access justice and support services. At no point should a victim's residence status be shared without consent with any stakeholder – including migration authorities. This violates their fundamental human rights to privacy and data protection, in line with Article 7 and Article 8 EU Charter of Fundamental Rights and General Data Protection Regulation (GDPR).

We therefore welcome the **Parliament's** proposal to ensure all authorities and services cannot report the residence status of a victim reporting a crime to the migration authorities, and to delete the exception introduced by the Commission which allows reporting after the completion of the individual needs assessment. The **Council** now deletes this provision entirely.

#### Recommendation: Parliament position (*in bold & italic*)

##### Article 16(5)

5. Member States shall ensure that the competent authorities **and other services** coming in contact with a victim reporting offences of violence against women or domestic violence are prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities.

### RED LINE 4 – Article 32(3)

The **Commission** has proposed, under article 32(3), to ensure shelters and other appropriate interim accommodations are available to victims regardless of their nationality, citizenship, place of residence or residence status. We welcome this provision, which is supported by both the Parliament and the Council. We further support the **Parliament's** suggestion to ensure that accommodation is available also to the dependents of the victims, as well as the requirement for the development of shelters throughout all regions.

#### Recommendation: Parliament position (*in bold & italic*)

##### Article 32(3)

3. The shelters and other appropriate interim **accommodation** shall be available to victims, **and their dependents**, regardless of their nationality, citizenship, place of residence or residence status. **Specialised women's shelters shall be available in every region, with one family place per 10 000 inhabitants;**

## RED LINE 5 – Article 35

This provision ensures the provision of specific support to victims at an increased risk of violence against women or domestic violence.

Under Paragraph 1, both the **Parliament** and the **Council** highlight the role of discrimination. However, whereas the Parliament provides additional examples of women at higher risk of violence, the Council deletes all examples. It is essential to retain the specific examples of groups of women that are at higher risk of violence, including sex workers. As it concerns terminology, we recommend keeping the original terminology of the Commission on women sex workers instead of women in prostitution.

Under paragraph 2, which ensures third country nationals can access support services, the **Council** deletes: applicants for international protection, undocumented persons and persons who are the subject of return procedures in detention. It is essential for the support services to be available to all persons, regardless of where they are residing. It follows that we recommend supporting the Commission and the Parliament positions and not the Council here.

Under paragraph 4, reporting of violence for persons in detention centres is addressed. It is essential for clear protocols to be established, and that the victims can safely report violence and competent authorities act upon it. We therefore recommend combining the Parliament and the Council suggestions, as described below.

### Summary of proposed language (combining Commission and Parliament position *(in bold & italic)*)

#### Article 35(1)

1. Member States shall ensure the provision of specific support to victims at an increased risk of violence against women or domestic violence **by virtue of intersectional discrimination**, such as women with disabilities, women living in rural areas, women with dependant residence status or a permit, undocumented migrant women, women applying for international protection, women fleeing from armed conflict, women affected by homelessness, women with a minority racial or ethnic background, **LBTIQ+ women**, women **sex workers, victims of so-called "honour crimes"**, women detainees, **women suffering from addiction, women who are pregnant** or older women;

#### Article 35(3)

The support services shall be available for third-country nationals who are victims of violence against women and domestic violence, including for applicants for international protection, for undocumented persons and for persons **who are the** subject of return procedures in detention. Member States shall ensure that victims who request so may be kept **in women- and children-only sections of** detention facilities for third-country nationals subject of return procedures, or accommodated separately in reception centres for applicants for international protection;

#### Article 35(4) *\*this language also integrates the council position*

Council position: Member States shall ensure that persons can report occurrences of violence against women or domestic violence in **institutions and** reception and detention centres to the relevant staff and that protocols are in place **to ensure they and the competent authorities** adequately and swiftly address such reports in accordance with the requirements **under** in Articles 18, 19 and 20.

# BACKGROUND

## Undocumented migrants in Europe

'Undocumented people' or 'undocumented migrants' are people whose residence is not recognised by the country they live in. They are unable to obtain a residence permit or citizenship because of restrictive migration and residence policies. Many have had residence permissions linked to employment, study, family, or international protection, but those permits were either temporary or very precarious and their validity expired. Some, due to the lack of regular migration channels, will arrive to a country without a residence permission, seeking for example asylum which might be declined. There are also children who are born to undocumented parents and inherit this precarious residence status.

The number of undocumented people living in Europe is not known, and the estimates provided are debated. Back in 2008, a study funded by the European Commission estimated that there were 1.9 to 3.8 million undocumented migrants in the EU, making up about 0.39% to 0.77% of the total population<sup>1</sup>. Currently, another study, also funded by the European Commission and scheduled for release in 2025, is working on providing more recent estimates of undocumented migrants in different EU countries<sup>2</sup>.

At mid-year 2020, female migrants comprised somewhat less than half (135 million or 48.1 per cent) of the global international migrant population. The percentage of female migrants has not changed dramatically since the first global estimate disaggregated by sex in 1960<sup>3</sup>.

## Pathways to Europe for women

Broadly, there are two main ways through which women come to Europe. They may migrate with

their families, and where this is the case, many women migrate as a dependent of their spouse, which means their rights derive from – and remain dependent on - that relationship. They may also migrate independently, for instance to seek economic opportunities. In this case, many migrant women find themselves working in gendered employment (e.g. in care, cleaning, hospitality), reinforcing stereotypical gender roles and inequalities. These sectors are also often poorly regulated, characterized by precarious contracts, social isolation, and a high exposure to risk, such as sexual harassment, risk of homelessness (especially if living with their employer or in employer-provided housing), discrimination & criminalisation (sex workers).

## A woman's immigration status affects her risk of experiencing violence

Being undocumented, or having residence status that is tied to their employment or to their spouse, creates structural dependencies that make it difficult for women to exit situations of abuse. Lack of an independent residence status, or any status, creates challenges for these women, and increases their chances of experiencing violence or exploitation by intimate partners or employers or in other areas of their lives. Abusive partners often intentionally misinform women who depend on them for their status or who are undocumented, and threaten them with deportation or losing custody of their children or tell them they will be entitled to no state help for housing or subsistence. This leads women to be fearful of any state intervention and reluctant to seek help and report violence, and also means that when state agencies and other providers do intervene they must be aware and well informed themselves to gain their confidence and undo the myths the abusive partner may have perpetuated.

1 European Commission. 2019. Size and development of irregular migration to the EU. [Counting the Uncountable: Data and Trends across Europe](#).

2 MIRREM. MirreM: Measuring Irregular Migration. European Union. <http://irregularmigration.eu/>

3 IOM Global Data Institute, [Women & Girls on the Move: A Snapshot of Available Evidence](#), 7 March 2023

### **Insecure status limits access to services and makes women unlikely to report**

Undocumented migrant women who experience violence are unlikely to report crime because of the risk that they, rather than the perpetrator, will be prosecuted. The criminalisation of immigration law means that, in many cases, victims who come forward to report abuse find themselves worse off – separated from their families, torn from their lives. Going to the authorities for help in many cases does not yield greater protection or result in a proper investigation and could lead to the loss of their immigration status, to deportation or the loss of financial support and therefore destitution. Too often undocumented women are left with few choices. This perpetuates cycles of violence, limiting women's ability to exit situations of abuse and empowering abusers, whose crimes have no consequences. Undocumented women also face practical obstacles that limit their access to safe accommodation and protection through the justice system, including services that are poorly adapted to women who are not proficient in the dominant language, or who live in situations of relative poverty and social isolation. Women also often do not know their rights, and may struggle to navigate complex administrative processes, particularly in the absence of any right to legal assistance.

### **The criminalisation of sex work puts undocumented sex workers at high risk of abuse and exploitation**

A number of undocumented migrants work in sex work. They face multiple layers of discrimination, social exclusion, stigma and poverty, due to their migration status and their occupation (as well as any other intersectional forms of discrimination including gender, ethnic or social origin, sexual orientation or gender identity, disability, etc.). [PICUM's concern](#) is not about the judgment of sex work itself, but whether undocumented migrant sex workers have protections and their rights upheld. As more people fall into irregularity across Europe, more undocumented migrants will likely engage in sex work for survival and to generate an income. Many undocumented sex workers experience theft, violence, harassment, exploitation, evictions and homelessness. They are unable to report crimes to the police without risking deportation, and police are sometimes the perpetrators of violence. They have limited access to essential services including health care, and face immense barriers to accessing protection and justice. Undocumented sex workers are disproportionately subject to police harassment and targeted for immigration enforcement, including as a result of anti-trafficking initiatives.



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For undocumented migrants,  
for social justice.

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