

DISCUSSION  
BRIEF

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# INTEGRATION

The social inclusion of  
undocumented migrants



**ReSOMA Discussion Briefs** aim to address key topics of the European migration and integration debate in a timely matter. They bring together the expertise of stakeholder organisations and academic research institutes in order to identify policy trends, along with unmet needs that merit higher priority. Representing the first phase of the annual ReSOMA dialogue cycle, nine Discussion Briefs were produced, covering the following topics:

- hardship of family reunion for beneficiaries of international protection
- responsibility sharing in EU asylum policy
- the role and limits of the Safe third country concept in EU Asylum policy
- the crackdown on NGOs assisting refugees and other migrants
- migration-related conditionality in EU external funding
- EU return policy
- the social inclusion of undocumented migrants
- sustaining mainstreaming of immigrant integration
- cities as providers of services to migrant populations

Under these nine topics, ReSOMA Discussion Briefs capture the main issues and controversies in the debate as well as the potential impacts of the policies adopted. They have been written under the supervision of Sergio Carrera (CEPS/EUI) and Thomas Huddleston (MPG). Based on the Discussion Briefs, other ReSOMA briefs will highlight the most effective policy responses (phase 2), challenge perceived policy dilemmas and offer alternatives (phase 3).

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## Discussion Brief

# The social inclusion of undocumented migrants\*

## 1. Introduction

Undocumented migrants are one of the most socially marginalised groups in Europe. There are many ways that people can fall into an irregular situation. Migrants and asylum seekers can go “in and out” of irregularity as laws and policies change (Vespe et al. 2017). A third country national in an irregular situation may have become undocumented by entering the country irregularly or/and have their asylum application rejected or not yet filed; they may also reside in the country irregularly as a consequence of overstaying their short-term residence visas or loss of employment contract. Falling into irregularity can occur when migrant workers are unable to change employer or sector and may face bureaucratic obstacles to prolong their visas. Undocumented migrants are often employed in sectors where undeclared work is predominant. Migrants can also become undocumented due to the inability of reunifying with family members.

This discussion brief provides an overview of the most relevant pieces of EU legislation and funding that explicitly mention the social inclusion of undocumented migrants. Local public service providers and civil society

organisations retain a degree of dependency on national and EU funding in order to remain operational. National policies and funding schemes often implicitly and/or explicitly exclude basic service provision to migrants in an irregular situation. EU stakeholders and researchers consistently find that the gap in basic service provisions accessible to all migrants is widening across the EU.

Despite international, regional and EU human rights standards, many undocumented migrants across Europe often cannot access public healthcare, education, adequate housing and accommodation, labour protections and essential social security. In these cases, public services providers have to prove that migrants are residing regularly, before assisting them, as required by national laws addressing irregular migration in many EU Member States (Carrera et al 2016). There is a lack of ‘firewall’ – a formalised separation between basic service provision and immigration control, whether in law, or in practice, directly impacts the work of social services providers at the local and regional level when fulfilling their commitments and responsibilities to protect the fundamental rights of migrants in irregular situation (Crepeau and Hastie, 2015).

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## 2. Scoping the debate

### The definition

There is no single uncontested notion of 'undocumented migrants'. For the purposes of this paper 'undocumented migrants' are third country nationals who are currently living and/or working in the EU without valid residence permit. It does not necessarily mean that such migrants do not have actual passport or ID, although it might be the case for some. Thus, the term is used interchangeably with 'migrants in an irregular situation' and encompasses failed asylum seekers and people who cannot return or be removed. Some people cannot be expelled for reasons unrelated to their documentation, for example because of humanitarian considerations (FRA 2011).

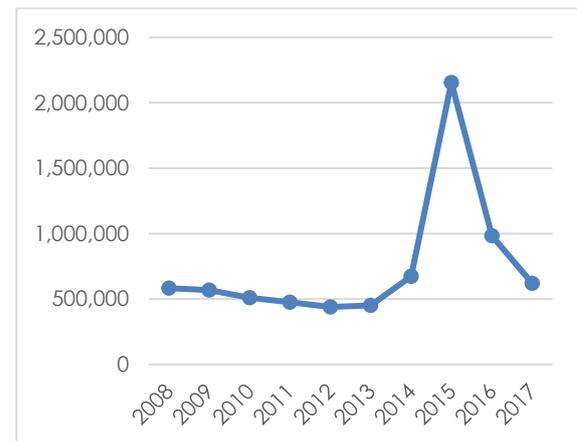
'Undocumented migrants' places a clear emphasis on the lack of administrative procedures, as opposed to the term of 'illegal migrants', which makes illegality into an essential characteristic of person. The Council of Europe and United Nations as well as some EU institutions have reiterated that 'no one is illegal' as this terminology would perpetuate the criminalisation of migration, hate speech and hate crimes against those in an irregular situation (Guild, 2010; FRA 2011; ECRI 2016; UN High Commissioner for Human Rights 2017a).

### Scale of the topic

At EU level, it is impossible to verify the real number of migrants in an irregular situation. Eurostat collects annual statistics that relies on information from national authorities about third country nationals

found to be irregularly present in the EU Member States. These numbers do not capture the reality on the ground, as majority of migrants in an irregular situation are not identified by the authorities (Eurostat, 2018). According to the Eurostat, the number of identified persons in an irregular situation peaked in 2015 and accounted for 2,16 million detections. As of 2017, the number was estimated at 620,000 (see Figure 1 below).

**Figure 1. Number of third country nationals found to be in an irregular situation in the EU (28)**



Source: Eurostat, 2018 [migr\_eipre].

The European Border and Coast Guard Agency (Frontex) also collects data on irregular crossings and detections of persons staying irregularly. Frontex statistics do not correspond to actual persons coming/staying as some of the persons have been double counted when moving and living within the EU.

According to the findings of the Clandestino project in 2008, there were between 1.6 and 3.8 million undocumented migrants in the European Union (Triandafyllidou 2009). In 2012, it was similarly estimated that approximately 6% to 12% of all third country nationals residing in the European Union were undocumented



migrants (Biffi & Altenburg, 2012). Carrera and Guild (2016) argue that the production of these estimates “fuels calls for further criminalisation of irregular migration to ‘deal’ with what is presented as a problem because of the size”. Civil society organisations and trade unions have used these numbers to make their case about the individual and societal costs of excluding undocumented migrants (PICUM, 2015:7; ETUC 2016a&b).

### **Exclusionary policies**

Policies regulating undocumented migrants' entitlements to basic services differ widely among EU Member States, in spite of the many international and European instruments that should ensure a uniform approach to undocumented migrants' access to basic rights. National regulations place various restrictions on access to services for undocumented migrants. For example on healthcare entitlements, the MIPEX study finds that few Member States grant undocumented migrants the same level of access as nationals, while the majority of them limit coverage for the undocumented to 'emergency care' (Buttigieg, 2016). Even in cases of emergency care, the precise definition of 'emergency' and the associated conditions vary greatly.

EU-level research on the topic concludes that these rights restrictions seem intended to have a deterrence effect. Countries severely limit entitlements to rights, such as health, in the hope of encouraging undocumented migrants to leave the country and deterring others from coming, as a form of migration control (Buttigieg 2016; FRA 2015; FRA 2011; Biffi & Altenburg 2012). By making life more difficult for those already present, these

measures aim to deter potential candidates and prompt voluntary returns to countries of origin or third countries while protecting the public resources (Da Lomba 2004; Atak & Crepeau 2018). European Union Fundamental Rights Agency (FRA) (2015) and academic research (Biffi & Altenburg 2012) confirm that such practices do not have any deterring effect and that they are counterproductive for the rights of undocumented, for the public health, and public budget.

The main researchers on this topic argue that these practices are part of the '**securitisation of migration control**', understood as policies to exclude irregular migrants or other unwanted foreign nationals through entry restrictions, border control, detention and deportation (Guild 2010; Atak & Crepeau 2018). Drawing on the securitization theory (Buzan & Weaver 1998), 'security' does not need to be something tangible but it is already carried out in the intangible speech act, itself. Weaver (1995) explains that by “uttering security, a state representative moves a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it”. Huymans (2006) explores further the connection between the securitization theory and EU policies and suggests that today the idea of a migration security threat is legitimised by the sovereign states of the EU and used to justify extraordinary measures disregarding fundamental rights and criminal justice checks and balances that claim to deal with exceptional threats posed by immigration. As a consequence, the 'security' framework that has been established in the name of freedom has a tendency to lead to violations of human



rights (Bigo, 2005; Carrera & Merlino 2009; Guild 2010; Mitsilegas & Holliday 2018). International and regional bodies, as well as civil society, repeatedly express their concern that undocumented migrants are framed and treated first and foremost as a security threat rather than as rights bearers (Brilantes et al. 2017; UN High Commissioner on Human Rights 2017 a & 2017 b; ECRI 2016; Muižnieks 2015; PICUM 2015; PICUM, 2018; ETUC 2016a&b).

According to the European Commission's Directorate-General for Regional and Urban Policy, one of the consequences has been the restriction of their access to basic services and rights (European Commission 2018d). Irregular migrants are excluded from the regular labour market and public services. For example, public services are obliged to require potential clients to provide social security number (linked to a residence permit) as a precondition for funding and as a form of internal border control (Atak & Crepeau 2018; Cholewinski 2018). Exclusion from basic social rights rest upon and convey the idea that irregular migrants themselves are primarily responsible for their precarious situation. Such policies tend to overlook the major drivers observed by migration researchers: the impact of national and international policies (i.e. absence of bilateral agreements for seasonal work and other legal migration channels), macro-economic factors that give rise to irregular migration, such as the demand for a cheap and flexible workforce within informal labor markets combined with extreme poverty, corruption, violation of human rights and/ or conflict in countries of origin (Da Lomba 2004; Atak & Crepeau 2018). Empiric evidence

points to frequent cases of migrants immigrating regularly and subsequently becoming irregular due to stringent rules, changes in the law or refusals to renew residence or work permits (Vankova forthcoming; Vankova 2017; Cholewinski 2018; Vespe et al 2017).

Therefore, the UN Secretary General has highlighted that "there is a spectrum of irregular migration". The binary conceptualisation of the issue is missing the complexity and in-between statuses of undocumented migrants (UN Secretary General 2017: para 10).

### **Mitigating role of civil society and local authorities**

Efforts of internal border control lead to the unintended consequence of pushing irregular migrants further underground. Academics find that marginalisation and criminalisation can lead to a larger number of victims of discrimination, abuse and exploitation (Mitsilegas and Holliday 2018; O'Donnella et al. 2016; Guild 2010). For example, UNODC (2013) and several academic reports warn that the increasing vulnerability of migrants in an irregular situation can itself present an opportunity for human traffickers or other organised criminal groups. This nexus is widely acknowledged by academic research (Mitsilegas and Holliday 2018; McAdam 2013; Guild, 2010).

The national efforts to trace, arrest, detain or expel irregular migrants have given rise to frictions between the national and local levels of governance (see ReSOMA Discussion Brief on cities as providers of services to migrant populations). For example, Spencer (2017) observes that national exclusionary approaches contrast



with local authorities' more nuanced concerns for social cohesion and responsibility for service delivery for all residents.

The topic of the social exclusion of the undocumented has mostly been raised by international and regional human rights bodies, trade unions and civil society organisations and local authorities. These actors find themselves confronted on a daily basis with obstacles for irregular migrants to access basic social services or seek justice for violations waged against them (Levoy & Geddie 2009; PICUM 2015; ETUC 2016 a & b; ECRI 2016; Social Platform 2018). Civil society organisations receiving funding from local government play an important role for undocumented migrants to access these basic services (Social Platform 2018). Local authorities often have to step in to provide for undocumented migrants, in particular vulnerable groups. Nevertheless, few policies or funds have been developed for this purpose (Van Meeteren 2008; Levoy & Geddie 2009;). Some local authorities aim to include and serve undocumented migrants where the local interest is at stake. A case study from the Netherlands indicates the tendency for local authorities to tolerate law-abiding undocumented migrants in a local context (Leerkes, Varsanyi & Engbersen, 2012). This tendency comes into conflict with national immigration enforcement officials who may try to identify or intercept undocumented migrants by obliging public service providers and even civil society to fulfil their mandate (Crepeau and Hastie 2015; also see ReSOMA brief on Crackdown on Civil Society).

Undocumented migrants' health care, education and training, legal services, and housing are rarely funded from the

national budget. This situation presents another major challenge. A Joint UNHCR/ECRE study of all EU Member States finds that EU funds, such as ESF and AMIF, are channelled through national authorities (for example AMIF often is disbursed by Ministries of Interior) and rarely made accessible to municipalities and NGOs that provide basic services to migrants, let alone undocumented migrants (Westerby 2018).

Where local policies and funding are absent, the distance between official policies and social reality is managed through the intervention of civil society actors – compassionate citizens and volunteers, NGOs, religious organisations, trade unions, and social movements (Ambrosini 2017). Civil society actors often step in to fill in a gap in a basic service provision. EU would support such actors in third-countries where “national authorities are overwhelmed, unable or unwilling to act” as laid out by the European High Level Consensus on Humanitarian Aid (2017), however it is not the case for the on-going systemic neglect in the EU Member States (UN High Commissioner on Human Rights 2017 a & 2017 b; ECRI 2016; Muižnieks 2015). This concerns for instance language courses, legal aid, basic health services, clothing, food and soup kitchens and shelters (Biffl & Altenburg, 2012; LeVoy & Geddie 2009). However, this situation places a strain on NGOs across Europe who are making an effort to fill the gaps and failures of the mainstream system. Such civil society actors often suffer from a general shortage of human, technical, and financial resources (LeVoy & Geddie 2009; Social Platform 2018; Carrera et al. 2018). Civil society organisations provide low thresh-



old access to basic services and at the same time are less likely to undertake mandate of law enforcement, in particular, border controls, than for example, national or local public institutions (Crepeau & Hastie, 2015). As a result, undocumented migrants often find it easier to trust medical staff of civil society actors, because of their independent mandate and protection of their clients (Biffl & Altenburg 2012). In most occasions, such NGOs usually do not explicitly include help for undocumented migrants, but help them irrespective of their status. As resources are typically limited, the decision to provide care can be challenging (FRA 215; FRA 2011; Levoy & Geddie 2009; Van Meeteren 2008). In some cases, services could potentially threaten their own existence if it became known that they were supporting a group which they were not supposed to support (Carrera et al. forthcoming). Limited resources also mean that NGOs frequently have to rely on volunteer staff, which sometimes affects the quality of the services provided. NGOs working in many EU Member States face additional pressure from public authorities under recent legal provisions that explicitly criminalise civil society's provision of humanitarian assistance to undocumented migrants (Biffl & Altenburg 2012; Crepeau and Hastie 2015; also see ReSOMA brief on Crackdown on Civil Society).

From the perspective of migrants' rights, it is problematic when public servants are asked to become auxiliaries of immigration enforcement (Guild & Basaran 2018; Carrera et al 2018; Carrera et al 2016; Guild 2010). In order to protect clients of public services, in some countries, 'firewalls' have been established to ensure

that immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services and that such institutions do not have an obligation to inquire or share information about their clients' immigration status (Crepeau and Hastie 2015). The European Commission against Racism and Intolerance (ECRI) has issued a set of policy recommendations to European governments on the establishment of firewalls to prevent denying human rights through sharing personal data and calls on States to comply with their specific obligations in relation to irregularly present migrants in ensuring that their rights are respected in the areas of education, health care, housing, social security and assistance, labour protection and justice (ECRI 2016).

### **Human rights obligations**

The tension between states' interests to fight irregular immigration and basic human rights of undocumented migrants represents a major misconception. Indeed, the sovereign state has the legitimate interest to control its borders, and to know who is entering into its territory, including via administrative penalties of those entering irregularly into their territories and fight against organised criminal groups involved in human trafficking, production of forged documents. The EU legal framework clearly requires respect of the EU's founding principles, such as non-discrimination, proportionality and fundamental rights – such as right to life, right to human dignity, right to asylum, right to health, right to work, education, etc. (Guild 2010; Council of Europe 2011; Carrera et al 2016; Crepeau and Atak, 2018).



Member States are bound by international and regional human rights documents that recognise that any human beings irrespective of their migratory background and residence status are entitled to the set of basic human rights, including provisions of social assistance, healthcare, access to justice, remuneration for the employment. Those rights derive not only from International and European human rights instruments, such as Universal Declaration of Human Rights of 1948, International Covenant of Civic and Political Rights and International Covenant of the Economic, Social and Cultural Rights, ILO conventions (for example ILO Convention No. 97 on migrant workers), Constitution of the World Health Organisation, but also from, the principles of equality and non-discrimination enshrined in the EU's Treaties, EU's Fundamental Rights Charter, national constitutions and the jurisprudence of national and European courts.

The regional documents, such as the European Social Charter and the European Convention of Human Rights (ECHR) use the term 'everyone' *that is in the jurisdiction* of States, referring to the requirement of regular residence only for a few specific rights. Council of Europe (2011) has also elaborated on the Guidelines setting out European human rights standards applicable to migrants in an irregular situation.

**European Social Charter** and its revised version presents another important set of standards for the EU and its Member States in the area of labour rights, social assistance and protection, healthcare, that are applicable to undocumented migrants. High Commissioner for Human Rights, Niels Muižnieks (2015) has reiterated that:

"It is easy to understand that the prohibition of torture protects all people but we should also be aware of the fact that basic social rights are also universal, because their enjoyment constitutes a prerequisite for human dignity. Therefore, member states of the Council of Europe should stand by their obligations to protect the basic social rights of everyone under their jurisdiction, and this includes irregular migrants."

The European Committee of Social rights on several occasions has clarified that basic provisions, entailing positive duties of contracting member states to provide food, emergency shelter, basic social and medical assistance - are applicable to undocumented migrants. Whereas others could be constrained to those contributing to the social protection schemes like for example unemployment benefits.

European Committee of Social Rights, in the collective complaint against Netherlands and France (Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013; European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012; International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003; Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008) confirmed that shelter must be provided even when immigrants have been requested to leave the country, as the right to shelter is closely connected to the human dignity of every person, regardless of their residence status.



The European Committee of Social Rights has also stated that foreign nationals, irrespective of their residence status, are entitled to urgent medical assistance and such basic social assistance as is necessary to cope with an immediate state of need (accommodation, food, emergency care and clothing). And in the collective complaint from Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, the European Committee of Social Rights has reiterated that undocumented children should above all be treated as children and that the state positive obligations extend further to the possibilities to access education and other rights.

The UN Guiding Principles on Extreme Poverty and Human Rights, adopted by the UN Human Rights Council on 27 September 2012, stress that social rights are even more important in situations of economic and political crises (Sepulveda Carmona 2012). Similarly, the Secretary General of the Council of Europe has reiterated that: "It [social rights] is a means of combating social exclusion and poverty by enforcing the principle of the interdependence of human rights, which commands an international consensus; it plays a part in the social reintegration of the most vulnerable persons in society and people who, for various reasons, have become marginalised." (Secretary General of the Council of Europe 2016: para. 39)

More broadly, the European Social Charter gives a guidance to the EU in building a European Social Pillar. For example, Secretary General of the Council of Europe (2016: para 40) called the EU to base European Social Pillar on the full application of the Revised European So-

cial Charter and the mandatory acceptance of the competence of the collective complaints to all EU Member States. So far only Portugal and France have adopted the Revised European Social Charter without derogations (Council of Europe 2018:pa), while 14 out of 28 EU member states have accepted the 1995 Protocol establishing a system of collective complaints to the European Committee for Social Rights.

### **The EU Charter of Fundamental Rights and Freedoms**

uses the word 'everyone' when protecting rights related with dignity and freedoms, with the exemption of the right to choose profession and to be employed. The Charter guarantees the right to human dignity, education, fair and just working conditions, healthcare and the right to an effective remedy and to a fair trial, despite the migration status. As noted by Desmond (2016), the status of the ECHR in the EU legal order has gained importance, with the Court of Justice of the European Union (CJEU) holding that the ECHR is an integral part of the general principles of law whose observance the Court ensures (CJEU 2006), and the Charter suggesting the use of the European Convention on Human Rights (ECHR) as a minimum standard of protection (Article 53 para. 3). AS the European Court of Human Rights has clarified in its caselaw - a number of ECHR standards are applicable to migrants in an irregular situation (CoE 2011).

Guild and Peers (2006) has argued that "EC Treaty [now **Treaty of the EU**] were designed and worded with the intention that its provisions would in principle apply to all persons within its scope and jurisdiction, including third country nationals". The Court of Justice of the European Un-



ion (CJEU) has clarified in the Tumer case, concerning the employee who is a third-country national and who does not hold a valid residence permit. Tumer has complained about the refusal to grant an insolvency benefit due to his residence status (Case C-311/13) that, as a matter of principle, the social security and other provisions not explicitly excluded for migrants in irregular situation, should be seen as included (CJEU, 2013).

### 3. EU policy agenda

#### Focus on combatting irregular migration

Current EU policies mirror the objectives of Member States policies and address undocumented migrants mainly from the perspective of fight against irregular migration. The increased enforcement of returns and fight against migrant smuggling is recognised among the key objectives in the European Agenda on Migration and European Security Agenda (European Commission 2015a and 2015b respectively). Consequently, a vast array of EU legislation, policy and funding instruments, as well as operational cooperation tools via European Justice and Home Affairs agencies, such as Frontex and Europol, were made available to support these goals. Analysis of these policies by academia suggests that the fundamental rights of undocumented migrants are often seen or framed as obstacles for the efficiency on the side of border agencies and law enforcement operations (Carrera et al. forthcoming).

**The Return Directive** (2008/115/EC) is one of the most important pieces of legislation adopted in the field of irregular migration at the EU level. The Directive expresses a

preference for voluntary return over forced return. Nevertheless, migration legal scholars have criticised this directive for leaving wide margin of discretion to Member States, for instance in granting an abridged period for voluntary departure, and thereby undermining the harmonisation at EU level (Desmond 2016). Even the EU Agency for Fundamental Rights (FRA) has argued that increasing efforts to enforce returns of migrants in an irregular situation and to speed up asylum procedures have created an environment in which Member States resort to restrictive measures, including deprivation of liberty (FRA 2016: 163 -165).

The European Commission (2015c) has adopted an EU Action Plan on Return, that included efforts focusing on making better use of asylum-related tools for return purposes. In addition, the Frontex's mandate was expanded, in 2016 as to coordinate pre-removal orders, joint returns operations, forced returns operations, making it EU's returns agency (Carrera & den Hertog 2016; also see ReSOMA brief on EU Return policy).

Two years after, in light of the unsatisfactory results achieved, in 2017 the European Commission (2017a) decided to issue a renewed Action Plan alongside a Recommendation on making returns more effective when implementing the the Returns Directive (European Commission 2017b).

The UN High Commissioner for Human Rights Office, in a joint statement with other UN agencies and 90 migrant rights' defenders (PICUM 2017 b), were concerned that such plan "encourages Member States to undertake 'swift returns' of people with reduced procedural safe-



guards and through the increased use of detention" (UN High Commissioner for Human Rights Office, 2017a).

Despite these warnings from international organisations and civil society, on 12 of September, 2018 President of the European Commission, has announced the recast of the Returns Directive (European Commission 2018e and 2018 f) that aims further speeding up of the returns by narrowing the procedural and human rights safeguards.

The EU's **Facilitation Directive** (2002/90) that is 'Defining the facilitation of unauthorised entry, transit and residence' envisages a set of measures in the field of border control and to address irregular migration. For example, Member States are required to ascertain migration status before foreigners are offered public services, except when necessary for humanitarian reasons (Article 4 of the Directive 2002/90). In addition, the **Facilitation Directive** (2002/90/EC) leaves a wide discretion to Member States to prosecute acts of civil society actors or professionals without material or other financial benefit or unjust enrichment and lead towards increasingly hostile environment to refugees and migrants and in particular to those in irregular situations (Vosyliūtė & Conte, 2018).

All EU Member States have agreed and therefore are bound to respect international and regional human rights standards and therefore and have positive obligations, such as to save lives and to uphold the right to dignity of undocumented migrants (Guild 2010). Thus, while member states have legitimate interest to uphold their border controls it must be done in line with international, regional

human rights standards and EU's own legal framework, as legitimate aim does not justify illegitimate means – namely infringements on fundamental rights. International human rights law provides that a number of rights including human dignity, non-discrimination and fair trials and others are non-derogable, even in the cases of emergencies.

Indeed, the European Commission has made clear that policies funded by the EU in light of Better Regulation Guidelines should be seen ineffective if fundamental rights are put 'up for balancing exercises' when in fact they should be guiding principles, conditions and outcomes (European Commission 2017 c). For example, Schengen Borders Code (Regulation (EU) 2016/399) refers as well as above-mentioned Returns Directive (2008/115/EC) and Facilitation directive (2002/90) in a number of occasions to the fundamental rights safeguards.

### **EU instruments relevant for the social inclusion of undocumented**

The EU has a patchwork of legislation, policy and funding instruments that aim to contribute to the inclusion of the undocumented. EU legislators have recognised that the very status of irregular migrants makes them particularly vulnerable to becoming victims of labour exploitation and victims of other crimes and have established appropriate fundamental rights safeguards in EU law.

To counter the unregulated employment of migrants, the EU approved the **Employer Sanctions Directive** (2009/52/EC) responding to the perception that the demand for irregular migration is created by employers. This Directive contains sev-



eral important human rights safeguards: the availability and accessibility of complaint mechanisms (Article 13.1); the recuperation of outstanding wages (Article 6.1, 6.2 and 6.3); and access to residence permits (Article 13.4). It requires Member States to implement procedures to facilitate and process complaints from undocumented migrants. Despite these clear rights guarantees, the main concern of migration legal scholars (Guild & Basaran, 2018; Arango, & Baldwin-Edwards 2014; Costello & Freedland 2014; Dewhurst, 2011) and civil society (for example, Knockaert 2017) is that the Directive's primary focus on immigration control renders many of these safeguards ineffective, undermining the objective to reduce exploitative working conditions.

For example, under the Employer Sanctions Directive, Member States are obliged both to put in place effective mechanisms for irregularly employed migrants to lodge complaints against their employers, either directly or via third parties, and to provide procedures for the granting of residence permits of limited duration in situations of particularly exploitative employment conditions (Articles 6 & 13). In practice, monitoring by the European Commission (2014: 7) has observed that "Member States' transposition efforts have often resulted in weak or non-existing mechanisms to facilitate the enforcement of the irregular migrants' rights" (European Commission 2014). In some Member States no specific provisions exist in national law on how to make a complaint (PICUM 2017a). In most, no possibility exists for undocumented migrant workers to complain through third parties, such as NGOs, trade

unions, or migrant workers' organizations (PICUM 2017a).

Given the Directive's primary focus on immigration control, the available academic assessments of the Directive find that it did manage to improve enforcement of the international and regional labour law standards readily applicable to undocumented migrant workers (Dewhurst, 2011; Arango, & Baldwin-Edwards 2014; Costello & Freedland 2014; Dewhurst 2014; Cholewinski 2018).

The **Victims of Crime Directive** adopted in 2012 establishes minimum standards for the rights, support and protection of victims of crime. Article 1 of the Directive states that its objective is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings. Crucially, it provides that the rights set out in the Directive apply to victims regardless of their residence status. The current Directive does not explicitly require an effective complaints mechanism for undocumented migrants. This shortcoming has been highlighted by the researchers and NGOs writing on the topic (Cholewinski 2018; PICUM 2017a). In addition, the 'lack of firewall' for undocumented can prevent victims of crimes (including gender-based violence) from filing complaints at the police and accessing access shelters and other assistance foreseen under this directive (Atak & Crepeau 2018).

Overall, the EU's main goals for socio-economic inclusion—the Europe 2020 strategy—presented some of avenues for addressing the needs for various disadvantaged groups in the area of employment, education, as well as, addressing



the issue of poverty. PICUM—the main civil society actor on this topic acknowledged the importance that the undocumented were covered in the Europe 2020 strategy among the most deprived groups:

“The inclusion of migrants irrespective of their migration status in the broader implementation of the Europe 2020 Strategy is crucial as migrants face an increased and disproportionate risk of poverty and social exclusion, human rights violations and discrimination” (PICUM 2015).

The PICUM (2015) report noted that despite this acknowledgement, realities on the ground for undocumented has not changed much since the beginning of the Europe 2020 strategy.

### **EU Funding programmes**

The EU has extremely limited funding instruments available to support the inclusion of undocumented migrants.

Only **FEAD—the Fund for European Aid to the Most Deprived**—explicitly includes the undocumented. For the 2014-2020 period over €3.8 billion was earmarked for the FEAD. EU Member States were expected to contribute at least 15% in national co-financing to their national programme (European Commission 2018d).

Comparatively small in scale, FEAD represents a comprehensive EU programme line designed to help people take first steps out of poverty and social exclusion by addressing their most basic needs. Implemented under ‘shared management’ through national programmes, Member States can provide material assistance to the most deprived (like food, clothing and other essential items for personal use)

in the context of social inclusion measures; or provide non-material assistance to help people integrate better into society. Defining as end recipients of FEAD (Regulation 223/2014, Art. 2.2):

“persons, whether individuals, families, households or groups composed of such persons, whose need for assistance has been established according to the objective criteria set by the national competent authorities in consultation with relevant stakeholders”.

In principle, therefore, the FEAD Regulation allowed co-funding for measures supporting the undocumented. However, Member States have wide discretion in the implementation of their national programmes, in terms of priorities, the definition of target groups and actual funding decisions, such as whether or not to include the undocumented. Only Germany explicitly mentioned support to vulnerable EU citizens and ‘improving the access of immigrating children to offers of early education and social inclusion’ (European Commission 2015e). Migrants in an irregular situation were not explicitly mentioned in any of the Member States Operational Programmes and related performance indicators. No clear overview exists of the actual uptake of FEAD in terms of undocumented migrants (European Commission 2015d).

Other relevant EU funding programmes exclude irregular migrants in their eligibility rules. **The European Social Funds (ESF)** targets persons with legal labour market access, thus excluding persons without the right to work (European Commission 2015d). The same holds true for the other major EU financial instruments on social inclusion, such as the **Youth Employment**



## **Initiative (YEI) and the Employment and Social Innovation fund (EaSI).**

The **Asylum, Migration and Integration Fund's (AMIF)** focus on integration only includes third country nationals with regular residence. Strict eligibility rules excluding the undocumented have led to complaints from organisations and projects working on social inclusion because their target groups often include persons with diverse, often fluid, residence status. The EU social NGOs have therefore made the joint statement that the requirement in EU funding to report immigration status "represents not only an additional burden on civil society, but also compromises the establishment of a trustful relation between service providers and users, justifies the division of families and leads to many errors" (Social Platform 2018:11). Similarly, "restrictions [that undocumented migrants] may have faced in accessing education and health care services not only result in an abuse of their human right to education and health, but also result in wasted potential and can have harmful long-term health impacts" (PICUM 2015: 2).

The European Commission's Directorate-General for Regional and Urban Policy (DG REGIO) (2018d) has made an effort to promote and demonstrate the use of EU funds for social inclusion, healthcare and legal services. The DG REGIO toolkit highlights that EU funds such as FEAD, ESF, AMIF as well as European Regional Development Fund (ERDF) and European Agricultural and Rural Development Fund (EARDF) "should be used to ensure access to basic mainstream services for vulnerable groups" (European Commission 2018d: 26).

DG REGIO has proposed that:

"Taking into account the barriers arising in legal circumstances, the services described below [shelter and housing, healthcare and legal services] can be delegated to external non-governmental stakeholders. In this way, the services may be made available for vulnerable groups in a flexible way" (European Commission 2018d: 26).

Given the limited EU funds under the current budget until 2020, the upcoming 2021 to 2027 Multiannual Financial Framework (MFF) offers a major opportunity for change. The proposals for the future MFF were published by the Commission in May and June 2018 and currently are now under negotiation by the Parliament and Member States.

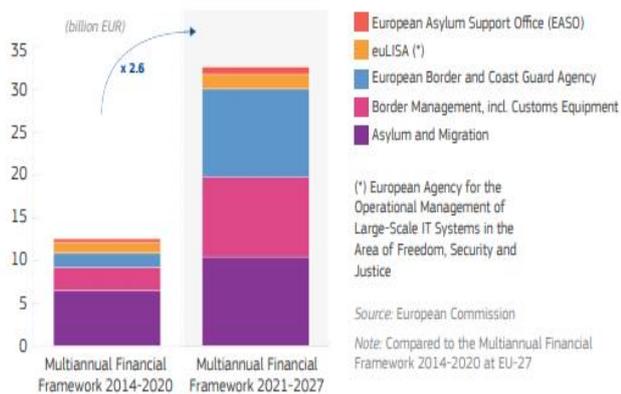
The proposal for an extended European Social Funds Plus (ESF+) mentions migrants explicitly along Roma as 'marginalised groups suffering from social exclusion' (European Commission 2018 a). While the Asylum and Migration Fund (AMF)(replacing today's AMIF) would address short term integration needs of migrants, ESF+ aims to address the long-term integration needs (European Commission 2018a: 50). However the ESF+ proposal was framed as complement to AMIF's definition of integration, thereby excluding the very narrow opportunities to fund services covering undocumented - 'in light of the persistent need to enhance efforts to address the management of the migration flows in the Union as a whole' (European Commission 2018a: 19, recital (20)).

The predominance of Ministries of Interior-thinking in ESF+ would mean that a



broader range of funds would focus less on social inclusion and more on 'efforts to counter irregular migration and to ensure the effective return and readmission of irregular migrants to their home countries' (European Commission 2018 c and f). The 2.6 times increase in migration funding also indicates that of the funding priority will be preventing irregular migration, as indicates increased funding for European Border and Coast Guard and Border Management authorities (see figure 2).

**Figure 2. Comparison of old and new Multiannual Financial Framework allocations**



Source: European Commission 2018c.

In addition to this, the merger of FEAD into ESF+, as proposed by the Commission, may actually increase the obstacles for social inclusion of the undocumented (European Commission 2018). While FEAD's volume broadly is to be maintained under Chapter 3 of ESF+ and the hitherto definition of most deprived target groups within national programmes is kept in the proposal, a key point for discussions of the tabled regulation in Council and Parliament (and with stakeholders) will be whether the current 'low threshold' approach to FEAD will be upheld, or whether the potential use of EU co-funding for inclusion measures to the

benefit of undocumented will become further reduced (Social Platform 2018).

One possible opening for funding on the social inclusion and upholding human dignity of the undocumented is the new funding programme 'Rights and Values'. This fund aims at "protecting and promoting rights and values as enshrined in the EU Treaties and in the EU Charter of Fundamental Rights, including by supporting civil society organisations, in order to sustain open, democratic and inclusive societies" (European Commission 2018b). The programme would aim to 'combat and prevent racism, xenophobia, hate speech and violent extremism' and 'the promotion of inclusion' (European Commission 2018b).

#### 4. Key issues and controversies

##### Social exclusion of undocumented resulting from criminalisation of migration and lack of 'firewalls'

Safeguards are essential to uphold undocumented migrants' access to dignity and fundamental rights. The EU's Fundamental Agency finds that the danger of detection and removal, real or perceived, discourages undocumented migrants from approaching medical facilities, sending their children to school, registering their children's births or attending religious services (FRA 2011). 'Firewalls' provide such safeguards, by establishing a clear separation in law and practice between accessing services and any proceedings related to immigration. This firewall includes protection from fines and other administrative sanctions, prosecution for immigration-related criminal of-



fences, arrest, detention and deportation (Crepeau & Hastie 2015).

Scholars have been consistently concerned with the lack of safeguards for the rights of undocumented migrants in the policies designed to fight irregular migration, namely, externalising EU's borders in cooperation with third countries, fighting migrant smuggling and trying to return those who are found to reside in the EU irregularly (Guild 2010; Costello and Freedland 2014; Desmond 2016; Carrera et al 2018; Atak & Crepeau 2018; Cholewinski 2018; Guild & Basaran 2018). They observe that this trend has intensified as a reaction to so called 'European Humanitarian Refugee Crisis', which has led to the adoption of operational measures aimed at reducing numbers of arrivals, preventing and controlling such migration without having due regard to the protection of the human rights of migrants, criminal law checks and balances, and principles of the EU law (Mitsilegas and Holiday 2018; Carrera et al 2018 forthcoming).

Various UN and Council of Europe human rights bodies have linked the restrictive policies on irregular migration with the increasing xenophobic and anti-migrant rhetoric, rise of populism and even the rule of law challenges (Brilantes et al. 2017; UN High Commissioner on Human Rights 2017 a & 2017 b; ECRI 2016).

The UN High Commissioner's for Human Rights mission to the border zones of the EU has criticised such increasingly restrictive trends:

"[EU and neighbouring] States appeared to prioritize an emergency and security-focused approach in their migration re-

sponses, reflected in restrictive laws and policies, such as the criminalization of irregular entry and/or stay, the increased use of detention practices or swift return procedures, all of which had far-reaching impacts on migrants' safety, health and ultimately, their dignity" (UN High Commissioner for Human Rights Office, 2017b).

UN and regional human rights mechanisms have observed gradual restrictions to a wide array of public services, including welfare, public housing, education, and (most) health care, as an additional instrument of migration policy, with the central aim of excluding undocumented migrants from such services (UN High Commissioner of Human Rights 2017a and 2017b; Brillantes et al. 2017; ECRI 2016).

Academia and civil society working on this topic have also criticised the call for 'more security' in practice often, in the end, means 'less rights for undocumented'. (Guild 2010; Costello and Freedland 2014; Carrera et al 2016; Desmond 2016; Carrera et al 2018; Atak & Crepeau 2018; Cholewinski 2018; Guild & Basaran 2018, PICUM 2015; Social Platform 2018). This 'securitisation' approach actually brings insecurity not only to migrants who fall in an irregular situation, but also to those who assist them and thus means less rights for all – migrants and EU citizens alike (see also a ReSOMA Discussion Brief on Crack Down on Civil Society).

The effect on lack of access to social rights is recognised by some of the European Commission services, such as DG Regio:

"Non-EU migrants have identified the lack of legal status as affecting integration



more than employment status. Access to basic mainstream services by these vulnerable groups may be limited due to legal boundaries, as well as discriminating treatments.” (European Commission, 2018d: 26).

While the recognition of the fundamental rights of undocumented migrants is reflected in EU's legal principles and legislation, in practice, undocumented migrants are very rarely able to exercise these rights, making them rather theoretical than real (Cholewinski 2018; Dewhurst, 2014).

### **Access to healthcare**

International and EU law guarantees access to health for everyone including undocumented migrants. Article 168 TFEU provides for a “high level of human health protection and Union action complementing national policies”. In light of the *Turner* judgment (Case C-311/13), this Article should be interpreted as including undocumented migrants. At the same time, public health service providers can and are requested to verify the residence status of migrants and to report them to relevant border control authorities on the basis of Facilitation Directive or other returns and irregular migration control measures. Civil society are also caught up in these reporting requirements (Carrera et al. 2018; Carrera et al. forthcoming; see also a ReSOMA Discussion Brief on Crack Down on Civil Society).

Restrictions of access to healthcare for the undocumented are usually justified as a perceived ‘pull factor’. The Fundamental Rights Agency addressed such “often voiced concern” and concluded on the

basis of the Swedish government inquiry that (FRA, 2011: 7):

“the availability of health and medical services drives neither such migrants’ decisions to enter a particular country nor their decision to leave it”.

Researchers regularly report the consequence of healthcare restrictions and reporting requirements is to drive undocumented migrants further underground, which undermines access to healthcare, social trust in public services, and public health (Da Lomba 2004; O'Donnella et al. 2016; Sholz 2016; Carrera et al. 2018).

Research funded by the European Commission's Directorate-General on Health and Food Safety (DG SANCO) indicate that procedural requirements and restrictions further undermine access to healthcare (Biffl & Altenburg, 2012). The research commissioned by the EU Agency for Fundamental Rights (2011) distinguished five challenges or barriers in providing healthcare services including emergency services:

“the costs of care and complex reimbursement procedures; unawareness of entitlements by health providers and beneficiaries; fear of detection due to information passed on to the police; discretionary power of public and healthcare authorities; and quality and continuity of care” (FRA 2011: 7).

When legal and procedural restrictions are combined, right to health becomes more theoretical rather than practical.

Subsequent study by the Fundamental Rights Agency (2015) suggests that investing in the health of undocumented migrants is not only morally right but also



economically sound, showing “powerful indication that governments would save money by providing access to primary healthcare to migrants in an irregular situation in the case of hypertension and prenatal care” (FRA 2015).

The importance of access to healthcare has been reiterated at EU level I (Sholz 2016), with the Luxembourg Presidency Conclusions and two European Parliament's resolutions on vulnerable migrants in accessing the healthcare (European Parliament 2013) and on migrant women (European Parliament 2014). At the same time, the legal and procedural barriers for healthcare access for the undocumented have remained or even increased, as discussed in Section 3 of this discussion brief (O'Donnella et al. 2016; Carrera et al. 2018).

Examples from the UK and Spain illustrate the challenges when firewalls are erased and undocumented migrants are excluded from public healthcare. This restrictionist trend has been confirmed by the UN High Commissioner of Human Rights (2017b). The field missions at the EU's borders in 2017 have heard from migrants in transit about the impact of having to live clandestine lives both - exacerbating their health condition and preventing from accessing the health professionals (UN High Commissioner of Human Rights 2017b: 13):

“Problems included being subjected to violence from certain police authorities because migrants were too afraid to report their conduct, and not being able to access adequate medical care (particularly for chronic illnesses) in informal settlements or along their journey”.

### **UK: Home Office and NHS data sharing agreement**

In January 2017, the UK's Home Office and UK's National Health Service (NHS) signed a data sharing agreement (Memorandum of Understanding 2018), setting out how patient data may be shared for tracing immigration offenders, for example those that have missed appointments with the Home Office (Bulman 2018). NHS doctors, Members of the Parliament and civil society organisations heavily criticised this agreement as part of the hostile environment policy towards undocumented migrants and asylum seekers (Carrera et al 2018; Bulman 2017 & 2018; Matthews-King 2018a & 2018b). UK's civil society organisations Liberty and Migrant Rights Network filed a case against Home Office considering the data-sharing agreement as against the public interest—violating patients' confidentiality, discriminatory towards non-British citizens, and promoting racial profiling (Bulman 2017; Bulman 2018; Matthews-King 2018a). Under significant pressure, in May 2018, the UK government “pledged to only seek patient data – which is handed to the Home Office by NHS Digital on request – in the event of serious crimes” (Matthews-King 2018). Nevertheless, civil society and doctors remained critical as the precise changes in the data-sharing agreement remain vague (Matthews-King 2018).

### **Spain: Public healthcare reform in disharmonies between national and regional priorities**

In 2012, the **Spanish** government introduced a public healthcare reform excluding undocumented migrants from public healthcare (the Royal Decree



16/2012). Previously, Spain had been considered among the countries (along Portugal, Italy, France and the Netherlands) where undocumented migrants had well-developed access to health care (Biffl & Altenburg 2012: 120). Spanish civil society organisations challenged the new legislation as they were “concerned that the Royal Decree 16/2012 contravenes international human rights norms and standards, and is regressive with regard to the right to health” (CESR et al. 2016). The Spanish constitutional court upheld policy, even though government's statistics in 2016 showed that “since the RDL came into effect on 1 September 2012, more than 748,000 people have been left without a health card and have been excluded from the National Health System” (CESR et al. 2016). The academic research published in March 2018 explored the devastating effects of the the Royal Decree 16/2012 and has concluded that:

“during its first three years of implementation, the restriction increased the mortality rate of undocumented immigrants by 15%, suggesting that health insurance coverage has a large effect on the health status of vulnerable populations with few alternatives of accessing health care” (Mestres et al. 2018).

In June 2017, the regional government of Catalonia re-established universal public healthcare coverage. By June 2018, the Royal Decree 16/2012 was reversed and Spanish government re-instated the healthcare provision for all migrants, including the undocumented.

## **Access to labour rights**

Restrictive policies and funds for the labour rights of undocumented workers have been repeatedly raised by European Trade Unions Confederation (ETUC). ETUC is concerned that the exclusion of undocumented migrant workers from protection of labour law is “feeding the informal economy deprives the state of tax revenues” (ETUC, 2016 a).

Trade union actors have consistently defended the importance of universal access to labour and social rights, including for the undocumented:

“Standing up for undocumented workers is a duty for trade unions, because it is in the interests of all workers. All workers should be able to contribute to and benefit from the country's health and other public services, pensions and benefits. All workers should have enforceable rights to the right pay, working hours and conditions” (ETUC 2016b).

Scholars have documented how national laws prevent undocumented and thus undeclared migrant workers from contributing to (income) tax, health care, pension and other social benefits systems (Costello & Friedland 2014; Guild & Basaran 2018). Without this social safety net, such system makes undocumented workers highly vulnerable to labour exploitation and access to other rights (Crepeau and Atak 2018). Some employers, who are deliberately avoiding tax and obligations to uphold labour rights and conditions, such as minimum pay, are profiting from this situation. As a result, academic assessments of the Employers Sanction Directive find that the right to back pay for undocumented mi-



grants remains more theoretical than practical based on the current state of implementation across the EU (Dewhurst, 2011; Costello & Friedland 2014; Dewhurst, 2014; Cholewinski 2018).

The preamble of the Employers' Sanctions Directive (2009/52/EC), states that "undocumented migrants may often be afraid to approach the relevant State authorities and services if they fall victim to crime or require other basic services". For the same reason, they may be slow to seek redress through official channels if they are underpaid, unpaid or otherwise exploited or abused by their employers (Crepau & Hastie 2015; Cholewinski 2018). Research among grass-roots NGOs by PICUM confirms that undocumented workers are prevented from filing a complaint due to a lack of clear separation between labour inspection and immigration control (PICUM 2017a; Knockaert 2017). For example, the police frequently accompany labour inspectors during workplace inspections in order to report all persons found without residence status (PICUM 2017a). Scholars and practitioners on the topic find that such practices undermine the objectives of a complaints mechanism and enable exploitation by preventing the reporting of violations and claims (Dewhurst 2014; Crepeau & Hastie 2015; Cholewinski 2018). Alternatives are lacking for undocumented migrants to file confidential complaints, for example via third parties – civil society organisations or trade unions (Knockaert 2017; PICUM 2017a).

### **Access to justice**

Article 47 of the EU Charter of Fundamental Rights states that all victims, including undocumented migrants, have the right

to effective access to justice. The Fundamental Rights Agency highlights that "access to victims support services is of crucial importance to crime victims' ability to exercise their right to effective access to justice" (FRA 2014:11). Given the importance of access to victims' support, the Victims' Directive (2012/29/EU) obliges EU Member States to ensure that:

"victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings".

Such services include emotional and psychological support and advice on legal, financial and practical issues, and addressing risks of further victimisation (FRA 2014:11).

In 19 of the 28 EU Member States, these victims support services are available irrespective of their nationality, country of origin or migration status (FRA 2014: 80). However, practical barriers emerged from interviews with national experts and practitioners conducted by the Fundamental Rights Agency:

"while most EU Member States have adopted adequate legislation on victims' rights, legislation at both the national and EU levels has had a limited impact on actual victim support practices. [...] While some groups of victims are prioritised, others – for example migrants and particularly undocumented migrants – are in a disadvantaged position regarding access to effective support services and protection in criminal proceedings" (FRA 2014: 74).



Previous research by FRA indicated that undocumented migrants regularly face the risk and fear of deportation on every encounter with state authorities, in particular, the police (FRA 2011). Similarly, scholars on this topic raise these concerns about the safety of undocumented victims of crime in their interactions with relevant authorities (Carrera & Merlino 2009; Guild 2010; Crepeau&Hastie 2015; Crepeau & Atak 2018; Carrera et al. 2018).

Just as for health or labour rights, access to justice requires a 'firewall' to protect information gathered through the victim support process (Crepeau&Hastie 2015). Civil society has called for a victim-centred approach to improve effectiveness of the Victims' Directive (2012/29/EU) (Smith & LeVoy 2015). This victim-centred approach includes action targeting negative bias or attitudes towards undocumented migrants among police (Guild 2010; FRA 2011; FRA 2014). Academic and NGO sources highlight that framing undocumented migrants as criminals is misleading and undermining their access to justice (Carrera& Merlino 2009; Guild 2010; Carrera et al 2018)

PICUM notes that "the very language often used to refer to undocumented migrants – "illegal" – wrongly implies that they are not entitled to legal protection" (Smith & LeVoy 2015:4). Therefore, current political discourses scapegoating 'undocumented migrants' are exacerbating their vulnerability (FRA 2018; ECRI 2016) and lead to confusion between short-term political priorities and the goals of criminal justice system – upholding fundamental rights, as well as rule of law principles (Muižnieks 2015; UN High

Commissioner on Human Rights 2017 a & b);).

## 5. Potential impacts of policies adopted

This chapter briefly summarises the key impacts of current EU and Member States policies that have been elaborated in detail in preceding chapters.



### EU and international human rights standards

- Legal and practical barriers for undocumented migrants to access their rights to human dignity, labour rights, health services and medical assistance, access to justice for the victims of crime and other areas of life under international and European law
- Exclusion of undocumented migrants from basic rights undermines the EU's legal principles, such as Fundamental Rights, the Rule of Law, and the Better Regulation Guidelines upholding 'fundamental rights' as a criteria for effectiveness and efficiency.
- Crackdown on civil society and actors providing basic services undermining their mandate and operations. This criminalisation of solidarity constitutes indirect form of 'criminalisation of migration'. Increased demands and political pressure on border and coast-guards, police officers and prosecutors undermines their mandates and professional ethics to uphold fundamental rights (Carrera et al. forthcoming; see also ReSOMA Discussion Brief on Returns and



ReSOMA Discussion Brief on Crackdown on civil society).

- 'Criminalisation of migration and solidarity' is often a result of and can further increase populist and xenophobic rhetoric with broader democratic and rule of law consequences on fundamental rights of all, including other minority groups, in terms of the right to free speech & right to association (see ReSOMA Discussion Brief on Crackdown on civil society; ECRI 2016; UN High Commissioner of Human Rights Office 2017a; Brillantes et al. 2017; Carrera et al. 2016; Carrera et al. 2018).



### Political implications

- Legal exclusion of undocumented from social rights and protection contributes to increasingly restrictive policies in the area of migration and asylum in the EU. Increasing national restrictions further the financial exclusion of undocumented as, for example, AMIF funds are distributed at national level via Interior Ministries.
- Little-to-no impact of "Europe 2020" strategy on fight against poverty among the undocumented (PICUM 2015; Social Platform 2018).
- Merging FEAD into ESF+ may lead to an increase in the threshold for co-funding of services provided to undocumented (European Commission 2018; Social Platform 2018).



### Inclusiveness of European societies

- The denial or intimidation of migrants in irregular situations in accessing healthcare and preventive health care services poses a public health challenge as well as an immediate danger to the migrants concerned (FRA 2015; Biffl & Altenburg, 2012).
- Lack of safe procedures to report crimes and labour violations due to the lack of firewall principle is undermining access to justice and the fight against other serious crimes, including hate crimes (FRA 2011; FRA 2014; Crepeau & Hastie 2014; Crepeau & Atak 2018).
- Lack of timely access to labour rights for undocumented migrants increases risks of labour exploitation, servitude, slavery and human trafficking (UNODC 2012).



### Economic and fiscal dynamics

- Costs of excluding undeclared migrant workers from contributing to the (income) tax, health care, pension and other social benefits systems (ETUC 2016 a&2016 b).
- Costs of overqualification and lack of recognition and of undeclared migrant workers.
- Costs of labour exploitation of undocumented migrant workers.
- Costs of failing to address crime, due to lack of trust to and inefficiency to support undocumented victims (FRA 2011).



- Healthcare costs for preventative primary and prenatal care for undocumented migrants are much lower than emergency care (FRA 2015).



### **The EU as an international actor**

- Lowered scrutiny for EU Member States at international and regional human rights mechanisms for not upholding the human dignity of undocumented migrants, for example by the High Commissioner of Human Rights (2017a & b), at the Human Rights Council – Universal Periodic Review Process and other special procedures.
- Diminished EU's standing in scrutinising third countries, for example, regarding their policies targeting human rights defenders, political opponents and their standards for labour rights, good governance, economic and social policies--In other words, the very issues often contributing to so called 'push factors'.



### **Migration trends and dynamics**

- Hostile environment towards undocumented migrants being used as migration management tools contrary to international and regional human rights as well as EU legal framework (ECRI 2016; Brillantes et al 2017; UN High Commissioner of Human Rights 2017 a & 2017b).
- No evidence that access to basic services is a 'pull' factor to migrate

(Carrera et al. 2018; Carrera et al forthcoming, Guild and Basaran 2018; FRA 2014).

- Depriving undocumented from dignity and rights leads towards increased vulnerability in terms of their health conditions, labour exploitation, exposure to crime, which may decrease opportunities for voluntary return and successful re-integration (Costello & Friedland 2014; Brillantes et al 2017; Guild & Basaran 2018).
- Restrictive regular and labour migration rules increase chances of falling into irregularity and undermine opportunities for a circular migration beneficial to migrants and their countries of origin and destination (Vankova 2017; Vankova forthcoming)



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# ReSOMA

RESEARCH SOCIAL  
PLATFORM ON MIGRATION  
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## ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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