socialplatform

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POSITION PAPER ON MIGRATION

An opportunity for the EU

INTRODUCTION

This paper outlines Social Platform's position on migration; it includes the human rights concerns of regular and irregular migrants, asylum seekers and beneficiaries of international protection. While recognising that different laws and policies apply depending on one's migration status, human rights apply to all. This paper provides a set of recommendations to the EU and member states reflecting the concerns of Social Platform members followed by focused proposals based on Social Platform's areas of work: Social Inclusion, Employment, Services of General Interest and Civil Dialogue.

We have also developed separate recommendations on the situation of intra-EU mobility for EU citizens, who may be at risk of/or ending up in destitution. EU-citizens exercising their right to free movement can experience similar problems as third country nationals, despite the different legal framework and protection system applicable to them[1].

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Social Platform is the largest civil society alliance fighting for social justice and participatory democracy in Europe. Consisting of 47 pan-European networks of NGOs, Social Platform campaigns to ensure that EU policies are developed in partnership with the people they affect, respecting fundamental rights, promoting solidarity and improving lives.

1) A HUMAN RIGHTS APPROACH

– third country nationals are not second class citizens

EU migration and integration policies must be based on a human rights approach[2], where equality is promoted and migrants are recognised and respected as rights holders. Just because third country nationals are born outside the EU, they should not be treated as second class citizens.

25% of all EU-27 residents will be foreign-born or have at least one foreign-born parent by 2060[3]. The EU must seize the opportunities revolving around migration movements and reap the benefits related to this in response to addressing the European demographical and economic challenges. It is also crucial to ensure that migrants are not only seen as economic units and as 'solutions' to Europe's problems. All the EU member states have signed most of the core international human rights instruments and are thus legally obliged to protect the rights of all individuals in their territories. However there is often a gap between law, and its implementation and practice at national level.

In light of the effects of the economic crisis and the fact that one out of ten people at risk of poverty and social exclusion have a migrant background in the EU[4], urgent action is needed. We need to combat and prevent discrimination, racism, administrative barriers, poverty and social exclusion; which hinder migrants from accessing the labour market, housing, education, health and other essential goods and social services; as well as resources enabling them to lead dignified lives.

We are concerned about the increase of xenophobia and racism and the spread of hate in European political parties and movements, particularly as these anti-immigration discourses have become normalised in the EU political mainstream. This is also important to underline since 'anti-migrant' political discourse has been extending beyond the 'extreme' or 'far-right' political parties[5]. Migrants face a strongly negative political climate, proposals to restrict immigration flows have been supported in several countries, fuelled in some by the growing influence of populist parties[6].

Crimes and discrimination against migrants on the grounds of race, ethnic origin, religion and belief, nationality and citizenship go unpunished; due to under-reporting linked to fear or mistrust of authorities, to lack of access to justice mechanisms and redress[7] and to lack of knowledge about their rights as migrants. Some migrants, e.g. migrant women or migrants with disabilities, are made more vulnerable when facing multiple discrimination because of their characteristics, identities and/or situation.

WE PROPOSE TO EU INSTITUTIONS:

Legislative measures:

- **Conclude the EU accession process to the European Convention on Human Rights**;
- **Enforce EU law for the proper quality transposition of the first generation of migration, asylum, residence, and anti-discrimination laws**, leading to the further use of infringement proceedings[8]. Ensure that the implementation of international human rights standards applies to all migrants, irrespective of residence status[9].
- **Ensure that the human rights of asylum seekers and beneficiaries of international protection are guaranteed through the transposition of the new 'Asylum Package'** (adopted June 11, 2013) including their basic rights.
- **Monitor the transposition of the Framework Decision on combating racism and xenophobia** (2008/913/JHA) including the application of infringement procedures, when needed, and amend it to address all forms of bias violence. Taking into account the recommendations of the Council of Europe within the framework of its campaign on hate speech, improve legislation that prohibits incitement to hatred, (e.g. the media's coverage of migrant issues) and remove practices that restrict migrants' engagement with civil society and the media[10].

- **Based on the impact assessment (issued 2013) of the Return Directive** (2008/115/EC), **the Commission shall gather best practices** regarding its implementation to ensure that the fundamental rights of persons in detention and/or whose return procedures are postponed or stopped, and who cannot be removed, are respected.
- **Amend the Dublin Regulation to promote a shared EU responsibility and solidarity** among member states by applying a burden sharing strategy at the borders of those countries receiving a higher number of asylum seekers and/or undocumented migrants. This must respect the individual human rights of each newcomer regardless of the number of new arrivals.
- **Adopt the proposal for the revision of the Council Directive on the conditions of entry and residency of third country nationals** (COM(2013)151) for the purpose of scientific research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing. Make provisions for all visa-holders under this Directive to have freedom of movement throughout the EU during the period of their visa. Mobility of young migrants is a vital contribution to intercultural understanding[11].

Non-legislative measures:

- **Mainstream migrants explicitly into, and across, the EU's regular policy priorities**, information and cooperation on education, employment and social inclusion.
- **Mainstream a rights-based approach throughout the Europe 2020 Strategy**, including the National Reform Programmes, the National Social Reports and the Country-Specific Recommendations as a part of the European Semester to ensure that all migrants have equal access to rights, resources and opportunities.
- **Allocate sufficient resources to the European Union Agency for Fundamental Rights** to ensure and monitor the implementation of the European Charter of Fundamental Rights, guaranteeing equality before the law (Art 20), non-discrimination (Art 21), the right to fair and just working conditions (Art 31), as well as to collective bargaining/actions (Art 28).
- **Apply systematic standards for disaggregated equality data collection** as a way of monitoring equality and progress made at the member State level over time. Adhering to data protection regulations, ensure that sensitive date is protected from misuse and only used for equality purposes.
- **Propose interpretative guidelines to the implementation of the Family Reunification Directive** (2003/86/EC) to help member states to correctly implement the law by also transposing all 'more favourable' optional clauses to remove the legal, financial and practical obstacles to family reunion that exist today[12].
    - **Guarantee access to residence permit independent from sponsors of family applicants as soon as possible**. This is especially crucial in relation to migrant women who are subject to domestic violence[13].
- **Pay migrant women special attention in the current (2010-2015) and forthcoming (from 2015 on) EU Strategy on Equality between Women and Men** and its action, measures and programme on ending Violence Against Women;
- **Implement the EU's commitment to policy coherence for development** with a 'migrant centred approach' when dealing with migration and development issues;
    - **Develop mobility strategies and migration policies** between the receiving countries and the countries of origin, by involving social partners and civil society organisations, to avoid an unnecessary brain-drain that can contribute to the increase of geographical imbalances and of negatively effects families and children left behind. Promote the application of ethical recruitment practices, for instance by allowing family reunification, granting multiple entry visas and allowing more channels for legal migration, including for manual, low-skilled and domestic workers[14].
- **Ensure that resources within the new Home Affairs Funds are allocated among various policy areas** in a way that fully takes into account the EU and the member states commitments to protect and ensure the human rights of migrants in order to support their reception and integration and ensure their full participation. Ensure that civil society and international

organisations are formally consulted when defining the future national priorities under the Asylum and Migration Fund in order to increase the impact of the activities funded[15].

- **Encourage member states to implement the Common Basic Principles on Integration -** Framework for the Integration of Third-Country Nationals in the EU, emphasising its' dynamic two-way process by all immigrants and residents'.
- **Take appropriate measures to prevent any kind of inhumane, degrading, or forced treatment, resulting in the deprivation of migrants' liberty**; e.g. when migrants come into contact with law enforcement agents and are stopped due to racial/ethnic profiling and/or are at risk of bias violations[16]. Detention should be a measure of last resort and assessed within the context of proportionality. Children should never be detained nor should they be separated from their parents in that context.
- **Asylum seekers should not be deprived of their freedom of movement within their host countries** so that they can maintain social and family ties and explore relevant opportunities for work and education.

WE PROPOSE TO MEMBER STATES:

Legislative measures:

- **Properly implement the European Convention on Human Rights and the Council of Europe's European Social Charter[17].**
- **Enshrine the UN Convention on the Rights of the Child** in national legislations, including the protection of unaccompanied children and undocumented children living with families or with other caregivers.
- **Ensure that apprehension and reporting practices** do not curtail undocumented migrants' fundamental rights[18].
- **Respect the Return Directive's** (2008/115/EC) **procedural safeguards**.
- **When transposing and implementing the EU Victim's Rights Directive** (2012/29/EU) **into national legislation, consider introducing specific safeguards** allowing undocumented victims to report crime to law enforcement authorities without fear of prompting proceedings related to their irregular residence status[19].
- **Implement the Anti-Trafficking Directive** (2011/36/EU) **to provide victims of trafficking with residence permits** whether or not they denounce the perpetrators.
- **Adopt the (recast) Reception Condition Directive** (COM(2011)320) in terms of information, documentation, material reception conditions (housing, food and clothing) and access to health, schooling, and employment[20].
- **Implement the Qualification Directive** (2011/95/EU) with regard to the definition of dependent family members such as children over 18 and grandparents living with and economically dependent on the family, rights of refugees, and beneficiaries of subsidiarity protection; with regard to family unity, access to employment and health care, recognition of professional qualifications and better standards for vulnerable persons with special needs[21].
- **Adopt a clear legal standard outlawing the use of racial profiling** in all circumstances and to ensure effective monitoring of all police, security and immigration practices, particularly those where discretion may be exercised, in order to identify profiling practices.

Non-legislative measures:

- **Share between member states good practices of sustainable processes and administration of regularisation and flexible extension of residence permits and visas.** When taking regularisation decisions, the length of stay in the host country, extent of social and family ties, health status, as well as the possibility to fill a labour market shortage with a migrant workforce living in the host country, should be assessed. This will prevent migrants from losing their regular migration status, facilitate access to secure and regular residence for those that have lost their status and avoid exploitation and degrading treatment and violation of human rights due to residence status.

2.1) POVERTY AND SOCIAL EXCLUSION

– guarantee migrants their social, economic and cultural rights

It is essential to stress the link between migration, discrimination and poverty and social exclusion. This is all the more necessary as recent policy developments, both at EU and at national level, appears to represent a denial of some of the most fundamental human rights of migrants and is likely to further increase the number of migrants living in poverty.[22] The social inclusion of migrants is closely linked to their ability to access quality employment, education, further training and other services. Social inclusion strategies in many countries give comparatively little consideration to preventing and fighting (the risk of) poverty and social exclusion among migrants. This is especially evident when it comes to undocumented migrants and asylum seekers, where most national action plans lack appropriate strategies and measures. Moreover, some countries have even reduced welfare provisions and access for migrants. This is all the more concerning in the context of the economic crisis and harsh austerity measures, especially in countries receiving external financial assistance, where migrants have been particularly affected by the financial cuts to social protection mechanisms and social services due to their initial vulnerable status.

The share of migrants in a situation of poverty or social exclusion remains distinctly higher than that of nationals. In 2011, the risk of poverty and social exclusion among migrants surged to 46.7%, corresponding to a year-on-year increase of almost 5 percentage points[23].

WE PROPOSE TO EU INSTITUTIONS:

Legislative measures:

- **Ensure the implementation of the International Covenant on Economic, Social and Cultural Rights** and develop incentive mechanisms to reinforce its implementation at national level.
- **Adopt a new Directive ensuring a common set of rights within a member state based on equal treatment with nationals**, beyond the scope of the Single Permit Directive (2011/98/EU). This should include among others access to: social security and social protection, goods and services, working conditions, education and vocational training, decision-making etc.

Non-legislative measures:

- **Monitor how member states include migrants and their families in the implementation of Active Inclusion Strategies** with a comprehensive and integrated approach towards the three mutually reinforcing and equally important strands of the strategy (adequate income support, access to inclusive labour markets and universal access to quality services); to this aim provide specific recommendations to member states in the Country Specific Recommendations.
- **Include migrants and their families within social inclusion and anti-poverty strategies**, including the implementation of the policies and recommendations drawn from the European Platform Against Poverty and Social Exclusion as well as the Social Investment Package.
- **Invest in integration policies**[24]. Attention should be paid to the Commission's Common Agenda for Integration, the principles of which should be taken into account when mainstreaming migration concerns into the inclusion strategies [25].
- **Base mobility partnership on rights-based legal and social provisions for migrants,** including international human rights and international labour standards. It should be accompanied by measures for practical implementation of the portability of social security and pension rights.
- **Support efforts of EU candidate countries as well as civil society organisations in these countries in achieving sustainable reintegration** of their citizens whose asylum application or temporary protection in EU countries have been rejected or withdrawn.

WE PROPOSE TO MEMBER STATES:

Legislative measures:

- **Implement the Council of Europe's European Social Charter** (1961). The Social Charter is a source of inspiration for the social objectives of the EU and includes social rights that are not foreseen in the Charter of Fundamental Rights of the EU. Member states should respect the Charter, even if it does not have the same legal ground for sanctions as a decision of the European Court of Human Rights.
- **Implement the Single Permit Directive** (2011/98/EU) in particular the section on a "common set of rights to third-country nationals legally residing in a member State, irrespective of the purposes for which they were initially admitted to the territory of that member state, based on equal treatment with nationals of that member state".
- **Remove existing national legislations that criminalise solidarity actions** by EU citizens or human right defenders who advocate for the rights of migrants, including in particular undocumented migrants, i.e. in the areas of hosting, advising and assisting, providing material support, food and shelter (the so called 'Solidarity Crime' which is present in several countries)[26].

Non-legislative measures:

- **Invest in good universal social policy systems to create better living conditions also for migrants.**[27] The lack of good universal social policy systems as well as the failure of consistent and multiplayer integration policies all over Europe causes divisions amongst people experiencing poverty. This can create feelings of 'competition' (for jobs, housing etc.) and fear among people experiencing poverty. Further it can contribute to fostering a general and political climate of resentment, resulting in racism and discrimination[28] and therefore directly contribute to the weakening social cohesion.
- **Include migrants within social inclusion and anti-poverty strategies and social investment strategies, and invest in integration policies**[29]**.** Attention should be paid to the Commission's Common Agenda for Integration, the principles of which should be taken into account when mainstreaming migration concerns into inclusion strategies.[30]

2.2) EMPLOYMENT

– guarantee migrants access to quality and sustainable employment

The Europe 2020 Strategy identifies labour migration as one of the policy instruments to respond to the priorities and needs of labour markets. It recognises however that migrants' potential is hindered and that improved integration and equality policies should enable them to take full advantage of their potential[31]. The unemployment rate for migrants during 2012 reached more than double the rate for nationals and long-term unemployment is increasingly becoming more prevalent among them[32].

Many migrant workers face serious human rights violations and are exposed to substandard working conditions and to power imbalances in favour of the employer when a residence permit is directly linked to the work permit. Migrants also face a greater likelihood of unemployment and for a longer period of time than nationals[33], with certain groups being especially disadvantaged (undocumented workers, young people) and women[34]. Lack of recognition of informal/formal education and qualifications and/or of professional and intercultural experience; lack of access to information and lack of language proficiency are key barriers for migrants to access the labour market. Migrants are often placed in positions that do not match their qualifications, which amplifies labour market segregation. Migrants also face stigmatisation and discrimination by employers when trying to access employment as well as while in employment. For these reasons, many fall into undeclared and irregular work with precarious working conditions (dirty, dangerous, demanding) and are as such also not acquiring social security rights or building up a pension. Many women are further concentrated in stereotypical female occupations (domestic work, care, restaurants and hotels etc.), in a position that does not match their qualifications, or fall into prostitution.

Labour migration cannot be separated from family migration, because the former generates the latter. It is therefore necessary to utilise and plan labour and family migration jointly.

WE PROPOSE TO EU INSTITUTIONS:

Legislative measures:

- **Ensure that legal frameworks for labour migration guarantee protection against abuse, exploitation and other violations** of labour rights, including in low wage sectors.
- **Guarantee that the multiplication of statuses applicable to migrant workers in the EU respects the "equal status for equal work" principle** and does not hinder the enforcement of labour rights.
- **Ensure that the Seasonal Workers Directive** (COM(2008)637) **under discussion complies with the principle of equal treatment** for seasonal migrant workers regarding work conditions, social rights and access to legal redress[35].
- **Adopt the proposal for the revision of the Council Directive on the conditions of entry and residency of third country nationals** (COM(2013)151) for the purpose of scientific research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing[36].
- **Propose interpretative guidelines to the implementation of the Family Reunification Directive that enable dependent spouses and family members to work**. Current prohibitions have led to poverty traps and the deskilling of primarily migrant women.
- **Make a migrant's residence permit status independent of their employer and enable labour market mobility for third country nationals**. Residence rights linked to the employer can lead to exploitation and various forms of control and abuse of migrant workers.

- **Amend EU law on work and residence permits to allow part-time possibilities in the employment of third country nationals**, for reasons related to medical conditions, giving birth or caring for children or other family members. These circumstances should not lead to losing one's permit.

Non-legislative measures:

- **Ensure adequate and accessible channels for different types of regular labour migration**.
- **Promote International Labour Standards** as cornerstones of EU labour migration policy.
- **Strengthen the use of the European Social Fund for better support and tailored guidance for third-country nationals** and extend the scope of the ESF to include migrants, irrespective of their residence status. This is in order to improve the social inclusion of migrants, as well as access to the labour market, the quality and sustainability of employment, the working environment and health and safety at work, as well as education and training.

WE PROPOSE TO MEMBER STATES:

Legislative measures:

- **Interpret and apply the Anti-Trafficking Directive** (2011/36/EU) **broadly** to include full protection for migrant workers victims of economic exploitation.
- **Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families**.
- **Ratify ILO Conventions to improve the working and living conditions of migrants** in Europe, in particular on "Decent work for domestic workers" (C189) and related ILO Conventions (C97 and C142).
- **Respect the Racial Equality Directive** (2000/43/EC)**, the Employment Equality Framework Directive** (2000/78/EC) **and the Gender Equality Directive** (2006/54/EC) and promote equal treatment at work to ensure fundamental rights, non-discrimination and gender equality. This is important as migrants are more vulnerable to multiple discrimination.
- **Implement the Temporary Agency Work Directive** (2008/104/EC), laying down the principle of non-discrimination, regarding the essential conditions of work and of employment, between temporary workers and workers who are recruited by the user company. The existing legislation must be enforced more effectively and extended to reflect all instances of agency work, this is important as migrant workers are very often employed under temporary working contracts.
- **Ensure the implementation of the Council Directive on measures to improve safety and health at work** (89/391/EEC) and **adopt the European Parliament proposal for a revision of the Council Directive on Maternity Leave** (COM(2008)637) to give all women equal rights; strengthen their legal protection against dismissal and working time arrangements on return to work, the right to entitlement to paid leave when changing country of work and full salary, including for domestic workers.
- **Ensure through legislation decent working conditions** by guaranteeing migrant workers and in particular in the sectors of care, health and domestic work, equal treatment comparable to EU citizens. This includes pay, working hours, leave, social security, access to education and training and rights at work, in addition to collective bargaining and unionisation. Ascertain the portability of the acquired rights of third country nationals when moving to another country[37].

Non-legislative measures:

- **Establish effective mechanisms to allow migrant workers in an irregular situation to lodge complaints against abusive employers** without the risk of arrest and deportation, by improving the Employers Sanctions Directive (2009/52/EC), which currently offers no such guarantees and is therefore not effective in addressing exploitation.
- **Provide clear and efficient procedures to recognise, validate and document qualifications**, including guidance for the steps that can be taken, such as e.g. adaptation and knowledge refreshment courses, in order to reach the full potential of the qualification obtained in third countries. Qualification recognitions can reduce the extent to which many migrant workers are driven towards undeclared work, especially in domestic work and the home care sector[38]. It can also prevent deskilling which often affects migrant women, who have been prevented from entering the labour market due to specific family migration related prohibitions or due to a lack of qualification recognition avenues.
- **Tackle discrimination both in access to employment, as well as on the job**, by fostering adequate resources and training for public employment services, as well as ensuring follow-up after hiring.

2.3) SERVICES OF GENERAL INTEREST

– Guarantee to migrants access to necessary basic services

Practical, administrative and legal obstacles as well as extreme poverty combined with exclusionary practices often prevent migrants, in particular undocumented migrants, from accessing essential basic services such as health care. These obstacles include the requirement to provide identity documentation or documentation proving their ability to cover expenses, the lack of information about their rights, the duty of service providers to report them to the authorities in some member states, and also the lack of translation services and cultural mediators.

Doctors of the World witness how groups that were already facing vulnerability before the crisis, such as undocumented migrants, have seen a reduction in social safety nets which provide them with basic help[39].

Service providers should be able to offer their services to all without the risk of penalties or legal uncertainties to ensure the protection of fundamental rights. In some member states, service providers report that the government threatens to cut their subsidies if they continue helping undocumented migrants. This contradicts the law[40] that states that undocumented migrants should have access to emergency aid. Undocumented migrants also face particular barriers to education and training, endure precarious housing situations, are denied access to homeless shelters[41], and shelters for victims of violence against women and girls and gender based violence.

Undocumented children tend to have more rights than their parents but largely depend on their parents to know where to get care and what institution provides the treatment they need. Parents of these children are afraid of being exposed and denounced to the authorities and then deported, they also fear their children being taken away by child protection. These issues should not be underestimated as factors that prevent parents from seeking medical help for their families.

WE PROPOSE TO EU INSTITUTIONS:

a) Overarching measures

Legislative measures:

- **In line with the UN International Covenant on Economic, Social and Cultural Rights, revise the Facilitation Directive** (2002/90/EC) to make it compulsory for member states to abolish laws that criminalise humanitarian and social assistance to undocumented migrants; this implies that humanitarian and social assistance should not be regarded as facilitation of illegal stay and financial support to providers of services to undocumented migrants should not be cut.
- **Earmark funding to support the provision of services for migrants**, irrespective of their status. Services shall include emergency care (food and clothing banks, accommodation services, and health care), debt counselling, free or affordable language courses, literacy courses, providing information about migrants' rights and the services available to help them. Funding shall also include interpreting and cultural mediation services to make services more accessible for migrants, such as for healthcare services, in particular mental health services and victims support.

Non-legislative measures:

- **Adopt guidelines on access to essential services** developed by the EU Fundamental Rights Agency[42] as a part of EU policy.

b) Access to health care services

Legislative measures:

- **Prohibit through legislation the criminalisation of service providers and health professionals** who provide health services and victim support services for undocumented migrants.
- **Ensure through legislation that national migration-control authorities do not impose a duty to report migrants in an irregular situation**[43] upon healthcare providers or authorities in charge of healthcare administration. The absence of this duty to report should be clearly communicated to them.
- **Issue EU legislation that guarantees migrants' access to emergency care as well as other forms of basic healthcare**. This includes the possibility to see a general practitioner or receive necessary medicines, as well as access to safe, equal, culturally sensitive health services, particularly sexual and reproductive health services and rights. The same rules for payment of fees and exemption from payment for EU-citizens should apply to all migrants, including those in an irregular situation especially if they are working.

c) Access to housing

Legislative measures:

- **Adopt the Proposal for a Council Directive implementing the principle of equal treatment** (COM(2010)426) between persons irrespective of religion or belief, disability, age or sexual orientation to ensure protection in the area of access to housing which is currently devoid of legislative remedies.
- **Coordinate and facilitate national efforts by establishing a European framework that recognises the right to emergency accommodation and social support** for all homeless migrants regardless of their legal status.

Non-legislative measures:

- **Support member states to better understand the impact of inadequate migration and integration policies related to poverty and extreme poverty** as well as the role of EU anti-discrimination legislation to prevent and combat housing exclusion, for example through awareness raising actions and facilitating of good practices sharing.
- **Establish measures to provide incentives and support to member states with a view to promoting integration policies that tackle severe housing exclusion** of third-country nationals residing legally in their territories[44].
- **Support member states to establish specialised services and shelters for survivors of violence against women and girls and gender based violence** as a practical implementation measure of the Victim's Directive and ensure that migrant women, who often face multiple forms of violence and discrimination, are guaranteed access irrespective of their residence status.

d) Access to education

Legislative measures:

- **Prohibit the reporting of irregular migrant children to migration law enforcement bodies** and the exchange of information with such bodies and instruct school authorities not to require documentation for school enrolment which migrants in an irregular situation cannot procure.

Non-legislative measures:

- **Promote minimum standards and the exchange of good practices in the provision of quality education on the basis of equality and non-discrimination**. This should include all levels of education and training, including non-compulsory education, on the basis of EU priorities in the Europe 2020 Strategy (education, training and skills development) and regarding promoting quality early childhood education and care, as well as tackling early school leaving.

e) Access to financial services

Legislative measures:

- **Revise EU law, such as the Directive on Financial Crime** (2005/60/EC) **in order to enable providers to offer access to a basic bank account to all migrants**, irrespective of their legal status. The directive prevents banks from opening a bank account for specific target groups who do not fulfil the traditional legal requirements such as a national residency address. Apply a *simplified consumer due diligence* to recognise civil society organisations that can act on behalf of the beneficiary or vouch that the beneficiary is not involved in any terrorist or money laundering activity[45]. Ensure that bank regulations are communicated to the migrant regarding these options and restrictions so that the client is well informed.
- **Adopt the Proposal for a Council Directive on access to basic bank accounts** (COM(2013)266) with a proposed new article that gives the right to open a bank account but with an obligation to give the possibility to provide administrative documents after a set period of time, to give time to migrants to clear their situation, e.g. this would enable their families to transfer money if needed.
- **Appoint a competent authority in all member states to assist people, including migrants, in the case of a refusal from the bank**, **and to impose sanctions on financial institutions**.

Non-legislative measures:

- **Set up a structural dialogue with financial institutions**, including "alternative providers", public authorities, civil society organisations and consumer associations, to set up measures and pathways to prevent and tackle financial exclusion and over-indebtedness, paying particular attention to vulnerable users, such as migrants, including undocumented migrants[46].
- **Acknowledge and recognise the contribution by migrants to the global economy by sending home remittances**. Many migrants send money to family members who have remained in their countries of origin and for which access to a bank account is vital in order to avoid reliance on unscrupulous intermediaries and/or other forms of corruption[47].

WE PROPOSE TO MEMBER STATES:

a) Overarching measure

Non-legislative measures:

- **Provide necessary financial and human resources** to enable service providers and civil society organisations working with people in vulnerable situations to also have the means to provide for all migrants to be empowered to participate, assist and volunteer in service provision.

b) Access to health care services

Legislative measures:

- **Recognise that access to health care is a basic human right for all**, in compliance with the UN International Covenant on Economic, Social and Cultural Rights. This should also include reproductive and sexual health care for all migrants, irrespective of residence status.

Non-legislative measures:

- **Provide free interpretation in order to enable all migrants, irrespective of their residence status, to receive adequate and safe health care services.** In the case of migrant women, interpreting services are particularly important since they often bear the responsibility for their children's health. Also, when reporting cases of domestic violence to their general practitioner, migrant women should be able to express themselves in confidence and without fear (family members often do the interpreting). Professional interpreters should be culturally-sensitive and sensitive to gender equality issues (e.g. not biased in cases of seeking medical care as a result of having been subjected to female genital mutilation ro when seeking an abortion).

c) Access to housing

Legislative measures:

- **Implement the Racial Equality Directive** (2000/43/EC) **and the Gender Equality Directive** (2006/54/EC) in order to protect migrants against racial or gendered discrimination in access to housing.

Non-legislative measures:

- **Ensure access to shelters to all migrants, irrespective of their residence status,** including shelters for homelessness and for survivors of violence against women and girls, and gender based violence.
- **Guarantee access to basic services and facilities to all, no matter nationality or residence status.** Service providers are often confronted with not being able to provide services (such as accommodation, bathing facilities, laundry and storage) because they lack resources or because they cannot use public funding for hosting people who are not regularly residing.

d) Access to education

Non-legislative measures:

- **Enable regularisation of undocumented children** to avoid the risk of interruption of education due to expulsion from the member state.
- **Guarantee access to quality and free or affordable education for migrant children and training and learning opportunities for migrant youth** regardless of residence status and identification documents; implement strategies to accommodate these children and youth in adequate pedagogical frameworks.
- **Ensure that education providers** facilitate access to quality and affordable language and training courses.
- **Support and facilitate inclusion of migrants' family members into host countries through adapted measures**, (including language classes, access to education and after school activities for children).
- **Adopt guidelines developed by the EU Fundamental Rights Agency in order to prohibit discriminatory practices**; "Migrants in an irregular situation should not be apprehended at or next to the school which their children are attending," and "Schools should not be required to share migrants' personal data with immigration law enforcement authorities for eventual return purposes[48]".
- **Ensure that migrant students are properly included in the education system by avoiding segregation tactics** such as placing newcomers not yet proficient in the host society language or who have come from a war-torn area and deemed 'traumatised' into schools with too few resources[49] or into special schools for pupils with learning disabilities.
- **Guarantee access to quality and free education for migrant children and training and learning opportunities for migrant youth** regardless of legal status and identification documents; implement strategies to accommodate these children and youth in an adequate pedagogical framework.
- **Call on education providers to facilitate access to quality and affordable language and training courses.**

e) Access to financial services

Non-legislative measures:

- **Acknowledge, encourage and support the commitment and expertise of "alternative providers", such as social economy or non-profit initiatives** (e.g. credit unions, ethical banks, cooperative banks). They should also be part of a structural dialogue with public authorities, financial institutions, NGOs and consumer organisations to bring their knowledge of the needs of groups facing financial exclusion or difficulties in accessing financial services, as well as their experience concerning the support services or tailored products to ensure financial inclusion, irrespective of residence status.

2.4) CIVIL DIALOGUE

– strengthen the EU institutions consultative process with, and by, migrants and their civil society associations

Participation in public and political life is an important element to integration. However, migrants are particularly under-represented and they often feel isolated and alienated from the host society. They are either not authorised to vote in local elections or do not have access to information about their rights and how they can participate in the political debates and democratic life[50]. Naturalisation and citizenship rights on the other hand foster the political participation of migrants.

Migrant associations and civil society organisations, including migrant women's organisations, have a key role to play in contributing to the European migration and integration policy debate. This dialogue is essential to fight against mutual stereotypes, to show diversity as enriching rather than threatening and to contribute to social cohesion. NGOs also play a key role in helping to change attitudes towards migrants by providing a platform for dialogue, opportunities and access.

WE PROPOSE TO EU INSTITUTIONS:

Non-legislative measures:

- **Ensure that existing consultative structures at the EU level such as the European Integration Forum have their agenda systematically linked to current and emerging policy challenges**.
- **Strengthen the partnership principle in the future Asylum and Migration Fund (2014-20)** by making it mandatory for relevant state authorities and bodies to include civil society organisations and migrant organisations in the preparation, implementation, monitoring and evaluation of the multi-annual programmes[51].
- **Review and reduce the co-financing requirements and develop pre-financing schemes both for European and national-level projects**, in particular for project partnerships including migrants' organisations, as funding from governments and foundations has been cut in the context of the economic crisis. Initiatives for, and by, migrants, including migrant women's organisations, should be supported with specific funding lines and measures should be taken to increase the access to EU funding to migrants' organisations[52].

WE PROPOSE TO MEMBER STATES:

Legislative measures:

- **Implement the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level**, monitor it and share best practices.

Non-legislative measures:

- **Encourage and incentivise local and regional authorities** to support and cooperate closely with migrants and their civil society organisations, as well as with social service providers who work to foster social cohesion and the integration of migrants.

3) INTRA-EU MOBILITY FOR EU CITIZENS

– and the risk of destitution

Numerous EU citizens make use of the right to free movement every day and many people have permanently established a new life abroad[53], thus contributing to the wealth and growth of the host society. However, there is a small but significant proportion of EU citizens for whom moving to another member state has become a poverty trap. They are destitute and face difficulties in accessing the right support. Their vulnerable situation is closely linked to EU policies and legislation in the area of free movement of citizens as well as internal migration law and its interpretation at national level.

The increase of xenophobia and racism and the spread of anti-immigration discourses extending beyond the 'extreme' or 'far-right' political parties also influence the development of policy and legislation in the EU and its member states in regards to the intra-EU mobility of EU citizens.

Free movement is one of the foundations of the EU[54]. However, despite being highly regulated and building on extensive case-law, interpretation of residence rights provided by free movement, especially for people who do not have, or no longer have any kind of income, is still unclear. Access to emergency support as well as access to social welfare benefits differs according to the host member state.

Some member states have implemented forced, arbitrary repatriations which do not take into account what is foreseen by EU law. Other member states offer as a last resort to pay for the travel back to the country of origin. However, considerable numbers of EU citizens do not wish to return despite their difficult situation. As a result, people are forced to adapt to a situation of destitution and risk accumulating other needs, for example in relation to their health.

Roma people moving across the EU, pose a unique set of challenges to the EU and member states. Despite often migrating due to persecution in their home country, Roma find integration into other member states incredibly difficult and are frequently denied the basic rights which they want to secure. Although the EU ensures free movement[55] and residence, this fundamental right is not always granted to all EU citizens, especially to the Roma, who are often subjected to neglect, discrimination[56], and violation of rights.

WE PROPOSE TO EU INSTITUTIONS:

Legislative measures:

- **Define better the sets of criteria on free movement** to be considered by member states in an adequate and proportional way to ascertain if an economically inactive EU citizen is an unreasonable burden to the social assistance system in order to ensure that no EU citizen is left destitute.
- **Guarantee social rights to all EU-citizens, including those from new member states**, e.g. ensuring adequate income resources, as well as access to quality basic services.
- **Guarantee that EU citizens who are not self-sufficient have at least access to emergency accommodation and support** until the individual case regarding her/his residence rights has been assessed.
- **Ensure that the transition period imposed on new member states does not restrict the movement of workers within the EU**. Today the transition period imposed makes it so that a citizen of a new member state is treated as a third country national from the employment perspective.

- **Call for the respecting of procedural safeguards and oppose arbitrary expulsion** as set by the Freedom of Movement Directive (2004/38/EC), establishing that an expulsion measure shall not be the automatic consequence of a Union citizen's recourse to the social assistance system of the host member state (Art 14).
    - Before taking an expulsion decision, the host member state shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host member states and the extent of his/her links with the country of origin (Art 28).
- **Ensure clear legislation for family reunification and portability of social security and other rights across the EU, for EU citizens**.
- **Adopt EU regulation on pension portability** to allow workers to transfer their occupational pension rights across sectors and countries, to secure their financial future.
- **Develop a solidarity mechanism**, i.e. an EU fund that would temporarily cover the expenses incurred by member states when they provide social support to EU nationals of other member states who are economically inactive, in a situation of destitution, and ineligible for social assistance.

Non-legislative measures:

- **Develop guidelines on the procedure and decision-making process for deporting EU nationals along with an EU-wide strategy on destitute mobile citizens**[57];
- **Ensure that National Roma Integration Strategies include a strong human rights approach** and sufficient measures are implemented at national and local level to secure the fundamental rights of all Roma including the most vulnerable, such as women and children. All Roma should be sufficiently involved in a meaningful collaboration during the implementation of such measures.

WE PROPOSE TO MEMBER STATES:

Legislative measures:

- **Implement the Freedom of Movement Directive** (2004/38/EC) and the principle of equal treatment to ensure that all EU citizens and their families can exercise their rights and prevent EU citizens from being deported and expelled to their member state of origin.
- **Comply with international human rights law** when evictions occur, common occurrence with Roma, and ensure alternative decent housing.
- **Put additional pressure on Managing Authorities to make more use of underspent EU Technical Assistance Funds** to increase the capacity of marginalised communities for meaningful participation combating social exclusion[58].

4) CONTACTS AND RESOURCES

For more information on our position and to download thematic fact sheets based on the paper visit www.socialplatform.org/migration

Contact person: Annica Ryngbeck, (Policy Officer) Social Platform

A complete list of our members you find on our website. Below reference to some of our member organisations specific work on migration:

ON MIGRATION:

- AGE Platform Europe and ENAR – position paper on the voices of older ethnic and religious minorities and migrants (2012)
- Caritas Europe - position paper on the rights of migrants in irregular situation (2012)
- **COFACE** (Confederation of Family Organisations in the EU) – Transnational families and the impact of economic migration on families (2012)
- **EAEA** (European Association for the Education of Adults) - Adult Learning and Education and the Integration of Migrants (2011)
- **EAPN** (European Anti-Poverty Network) – Contributing to ending Poverty among Migrants: Report of EAPN's Conference on Migration & Poverty (2010)
- **ENAR** (European Network Against Racism) – Hidden talents, Wasted Talents? The real costs of neglecting the positive contribution of migrants and ethnic minorities (2013)
- **ERIO** (European Roma Information Office) – Comments on Council of Europe's Parliamentary Assembly Recommendations 1941 (2010) on Roma asylum seekers in Europe (2011)
- **Eurodiaconia** – Policy Paper on Social Services and Migration (2012)
- **EWL** (European Women's Lobby) and European Network of Migrant Women (*member of EWL*) – Equal Rights. Equal Voices. Migrant women's integration in the labour market in six European cities: A comparative approach (2012)
- **FEANTSA** (European Federation of National Organisations working with the Homeless) – Statements on Migration (website section)
- **ILGA-Europe** (The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) – Asylum for LGBTI people facing persecution (website section)
- **PICUM** (Platform of International Cooperation for Undocumented Migrants) – Undocumented Migrants Have Rights! (2007)
- **Red Cross EU Office** – Legal Avenues to Access International Protection in the EU (2013)
- **SOLIDAR** – Migration (website section)
- **YFJ** (European Youth Forum) – Policy Paper on Youth & Migration (2008)

ON INTRA-EU MOBILITY FOR EU CITIZENS:

- **AGE Platform Europe** – Position paper on Older Migrants and Access to health and long-term care (2008)
- **ENAR and ERIO** – Debunking Myths & Revealing Truths about the Roma (2011)
- **Eurodiaconia and FEANTSA** - EU citizens, homelessness and EU free movement (2012)
- **Eurodiaconia** – Position paper on Social Rights for Roma (2010)

ENDNOTES:

[1] The integration needs of mobile EU citizens – impediements and opportunities (Migration Policy Institute, 2013)

[2] The UN Universal Declaration of Human Rights

[3] Demographic Insights 3/2011 - Migration & Integration

[4] EU-SILC data (European Centre Policy Brief March 2011, Poverty and Social Exclusion of Migrants in the European Union) and European Agenda for the Integration of Third-Country Nationals (2011)

[5] For example: In Greece it is the Golden Dawn, in Finland it is the True Finns and in Hungary it is Jobbik. Espana 2000 is Spain's answer to the Front Nationale and is seeing its membership grow by about 40 new members a week. Source BBC, this example is not exhaustive and many others can be given.

[6] EPC paper on Intra-EU mobility: the 'second building block' of labour migration policy (May, 2013)

[7] See e.g. the EU Agency for Fundamental Rights report on 'Access to Justice in Europe' (2011) and also Social Platform position paper 'Towards EU actions against all forms of bias violence' (2011)

[8] For more information about the European Commission's reluctance to launch infringement procedures see EPC policy brief 'Human rights violations in the field of migration: a collective responsibility' (Dec, 2012)

[9] The Treaty 'should not… be regarded as the exclusive preserve of the Union's own citizens', see Tampere Conclusions,1999

[10] Recommendations from Social Platform position paper towards EU actions against all forms of bias violence (2012)

[11] See European Youth Forum's Reaction & Demands for Improvement of the Commission revision of the Directive on Conditions of Entry for Third-Country Nationals (2013)

[12] Statement by 75 NGOs calling the Member states and the European Commission to safeguard family life of migrants and refugees (May, 2012)

[13] See Resolution 1478 (2006) of the Parliamentary Assembly of the Council of Europe

[14] Social Platform recommendations for care that respects the rights of individuals, guarantees access to services and promotes social inclusion (2011)

[15] CSO statement on the EU funding in the area of migration and asylum, Mar 2012

[16] Violations often occur in e.g. migrant detention centres, police station, airports, train stations, or when approached by law enforcement personnel on the streets and at Europe's boarder crossings. See recommendations from Social Platform position paper towards EU actions against all forms of bias violence (2012)

[17] Protecting migrants under the European Convention on Human Rights and the European Social Charter (2013, Council of Europe)

[18] See EU Fundamental Rights Agency Apprehension of migrants in an irregular situation – fundamental rights considerations (2013)

[19] Art 1(1) indent 2 of the Directive state that the rights shall apply in a non-discriminatory manner "with respect to residence status"

[20] See ECRE Comments and Recommendations on the Amended Commissions Proposal to recast the Reception Conditions Directive (COM(211)320 final) (2011)

[21] Policy Analysis for the European Programme for Integration and Migration, European Policy Centre (Apr, 2013)

[22] EAPN, Migration: a question of survival, 2010

[23] European Commission: EU Employment and Social Situation (Quarterly Review March 2013)

[24] EAPN, Migration : a question of survival, 2010

[25] For instance, in the Joint Report on Social Protection and Social Inclusion 2010, migrants have been listed first as the most exposed to unemployment. The rate of unemployed people among this category is more than twice higher than the EU average rate (respectively 19,1% and 9,1%)

[26] Member states are allowed to de-criminalise such actions on the basis of art. 1.2 of Directive 2002/90/EC Defining the facilitation of unauthorised entry, transit and residence

[27] EAPN, Migration : a question of survival, 2010

[28] See for example EUMC (2004) Majority populations' attitudes towards migrants and minorities

[29] EAPN, Migration : a question of survival, 2010

[30] For instance, in the Joint Report on Social Protection and Social Inclusion 2010, migrants have been listed first as the most exposed to unemployment. The rate of unemployed people among this category is more than twice higher than the EU average rate (respectively 19,1% and 9,1%)

[31] See recommendations on the contribution of migrants to economic growth in the EU see the statement by the civil society participants at the European Integration Forum in October 2012 as well as the report by the European Parliament on the integration of migrants, its effects on the labour market and the external dimension of social security conditions (Feb, 2013)

[32] European Commission: EU Employment and Social Situation (Quarterly Review March 2013)

[33] International Migration Outlook, OECD, 2012, p 23

[34] One French survey found that men with French or European-sounding names were five times more likely to be called for interview than applicants with equivalent qualifications and experience, but with North African names (Eurofound)

[35] See joint NGOs statement on the EU Seasonal Migrant Workers' Directive: Ensure effective Equal Treatment (May, 2013)

[36] See European Youth Forum's Reaction & Demands for Improvement of the Commission revision of the Directive on Conditions of Entry for Third-Country Nationals (2013)

[37] Social Platform recommendations for care that respects the rights of individuals, guarantees access to services and promotes social inclusion (2011)

[38] Social Platform recommendations for care that respects the rights of individuals, guarantees access to services and promotes social inclusion (2011)

[39] Doctors of the World, Annual Report 2012: Access to healtcare in Europe in times of crisis and rising xenophobia: An overview of the situation of people excluded from healthcare systems

[40] Reference to European Social Charter, Article 13 and the European Convention on Human Rights, Article 3 and the ECHR case law Pretty vs. UK

[41] Fundamental rights of migrants in an irregular situation in the European Union

[42] See EU Fundamental Rights Agency Apprehension of migrants in an irregular situation – fundamental rights considerations (2013)

[43] See Caritas Europe's position paper on the rights of migrants in irregular situations (2012)

[44] Article 63a of the Lisbon Treaty *'The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of member states with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the member states.'*

[45] For more information see 'Your Europe' – Opening a bank account

[46] Recommendations from Social Platform position paper on Financial Inclusion (2012)

[47] Recommendations from Social Platform position paper on Financial Inclusion (2012)

[48] See EU Fundamental Rights Agency Apprehension of migrants in an irregular situation – fundamental rights considerations (2013)

[49] European Commission, pressrelease on report showing how 'migrant children more likely to end up in poor schools' (April 2013)

[50] Undocumented women in the domestic sector and migrant workers in family businesses and agrigultural areas are particularly exposed to isolation and rights violations discrimination (for more information contact our members EWL or PICUM)

[51] CSO statement on the EU funding in the area of migration and asylum, Mar 2012

[52] In the frame of the European Integration Fund enable small migrant-run organisations to be eligible partners for funding applications by requiring an applicant to include a small migrant-run NGO as a member

[53] The integration needs of mobile EU citizens – impediements and opportunities (Migration Policy Institute, 2013)

[54] Acknowledged by the Treaty (Art. 20) as well as by secondary law, notably Regulation (EC) No 883/2004 *on the coordination of social security systems* and Directive 2004/38 *on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member states*

[55] Free Movement of Persons Directive (2004/38/EC)

[56] Council of Europe (2012) Human rights of Roma and Travellers in Europe

[57] The integration needs of mobile EU citizens - Impediments and opportunities, Migration Policy Institute (mar, 2013)

[58] Beyond First Steps – What next for the EU Framework for Roma Integration? (Open Society Foundation, Feb, 2013)