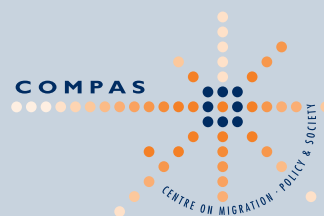


OUTSIDE AND IN:

Legal Entitlements to Health Care and Education for Migrants with Irregular Status in Europe



Executive Summary

July 2015

Sarah Spencer and Vanessa Hughes

This report sets out for the 28 Member States of the European Union (EU28) the legal entitlements for migrants with irregular status to access health care services and, for children, education. The data is also set out for each country individually in a separate Annex. The report is part of a broader study exploring the official rationales for granting access to services at national, regional and municipal level.

We use the term 'migrants with irregular status' and 'irregular migrants' to denote adults who have remained in a country or entered without authorisation. We use 'entitlements' rather than rights as referring to a legal entitlement to a specific service rather than to the broader but sometimes less specific fundamental rights to health care and education in international human rights standards.

The report covers entitlements in law not the many barriers that can nevertheless impede an individual securing access to the service. We note, however, where a requirement to cover the full cost of health care, or a requirement on service providers to pass on the details of service users to the immigration authorities, in effect nullifies the entitlement to that service.

Method

In our mapping of entitlements we used the data in studies published by the EU Fundamental Rights Agency in 2011 as our baseline, updating subsequent reforms identified in academic and policy literature. We added data for the most recent EU Member State, Croatia, and drew on interviews conducted with policy makers and civil society representatives across 14 Member States in which legal entitlements was one topic covered. Our mapping of entitlements was, during the course of the study, sent to a national expert in each country to check the accuracy of the information. Recognising the difficulty of securing comparable data on this topic, and the extent to which entitlements can change over time, **the authors will welcome any updates** from authoritative sources to amend the tables in the Annex to this report.

Key Points

- Entitlements to health care and education are polarised across the EU. The mapping nevertheless reveals a normality of a level of entitlements, albeit often at a very low level.
- While there are instances of erosion in entitlements in recent years, there are also countries in which they have been extended.
- In all 28 Member States (MS) irregular migrants are entitled to emergency health care; in six MS, adults are entitled to emergency health care only.
- In 10 MS irregular migrants are entitled to a level of access to primary and secondary care services, in some cases nullified by a requirement to pay a significant part of the cost. Notwithstanding many procedural barriers, entitlements appear least restrictive for adults in Belgium, France, Italy, the Netherlands, Portugal and Sweden.
- 15 MS allow access to screening for HIV and of them 10 allow access to treatment. There are 11 countries where irregular migrants are not entitled to screening or treatment for any infectious diseases.
- Entitlements for children to access health care are more extensive. In 8 MS children have the same entitlements to health care as children who are nationals of that country. In contrast, in five countries, children (unless unaccompanied in some cases) are entitled only to emergency care.
- In 23 MS, children with irregular status are entitled to attend school. In ten MS, that entitlement is explicit in law, not only an inclusive provision from which they are not excluded. In five MS, the law does not entitle these children to attend school.

Entitlements to Health Care

While there are instances where the law on access to health care has recently become more restrictive or further restrictions are under consideration there are also recent instances of entitlements to irregular migrants being extended.

Table 1 of the report shows the position across the EU28 in relation to entitlements to emergency, primary and secondary care. In all 28 Member States irregular migrants are at least entitled to emergency health care, variously defined. In six Member States, irregular migrant adults are entitled to emergency health care only. In a further 12 countries, irregular migrants are likewise excluded from primary and secondary care but do have entitlements to certain specialist services, such as care for infectious diseases (Table 2). In many of the countries where entitlements for adults are restricted to emergency care (with the addition in some cases of specialist services), some nevertheless grant greater entitlements to some categories of children (Table 3).

In 10 Member States irregular migrants are permitted by law to some level of access to primary and secondary care services: Belgium, Czech Republic, France, Germany, Ireland, Italy, Netherlands, Portugal, Sweden and the UK. The scope of services to which these entitlements provide access varies significantly. Before judging these countries to be the most accessible in this respect we consider whether a requirement to pay a significant part of the cost of care in effect nullifies that entitlement. In the Czech Republic, Germany, Ireland and the UK, that entitlement is indeed eroded by a requirement to pay the full cost of some or all care provided. In Germany, a requirement on public servants to inform the immigration authorities is a further barrier.

We conclude - notwithstanding further significant qualifications noted - that entitlements for irregular migrant adults to a level of primary and secondary care are, in relative terms, least restrictive in six countries: Belgium, France, Italy, the Netherlands, Portugal, and Sweden.

15 States allow access to screening for HIV and of them 10 allow access to treatment: that is, Belgium, France, Greece, Italy, Malta, Netherlands, Portugal, Spain, Sweden and the UK. Access was extended in the UK in 2012. A greater number of States (17) allow access to screening for other infectious diseases such as tuberculosis (TB), of which 14 also allow access to treatment, at least for TB.

Map 1: Showing polarisation of entitlements to health care of children with irregular immigration status across the EU28

- Entitlement to health care is the same as for children who are nationals of that country
- Entitlement is only to emergency care



Source: Spencer and Hughes, 2015, Table 3

There are thus 11 States where irregular migrants are not entitled to access screening or treatment for any infectious diseases, namely Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Lithuania, Luxembourg, Romania, Slovakia and Slovenia. In some cases they may be able to access screening and treatment on the payment of the full cost of that service.

21 EU countries provide an entitlement to a level of maternity care: in a minority of cases for delivery only. Other states make no specific provision for maternity care. However, many or all will include giving birth within the definition of emergency. The question of who is liable for costs – as in countries which do allow greater access to maternity care – remains problematic.




Entitlements for children with irregular status to access health care (Table 3) are more extensive than for adults, particularly – but not only – for those who are unaccompanied. In 8 Member States children, whether with their parents or unaccompanied, have the same entitlements to health care as children who are nationals of that country: that is, in Estonia, France, Greece, Italy, Portugal, Romania, Spain and Sweden. The age to which the entitlement extends varies. In five countries, Bulgaria, Finland, Lithuania, Luxembourg and Slovakia, children (unless unaccompanied in some cases) are entitled only to emergency care. In a further seven countries they are entitled only to emergency care and to specialist services such as treatment for infectious diseases. In 11 countries children who are unaccompanied and/or known to the authorities have additional entitlements.

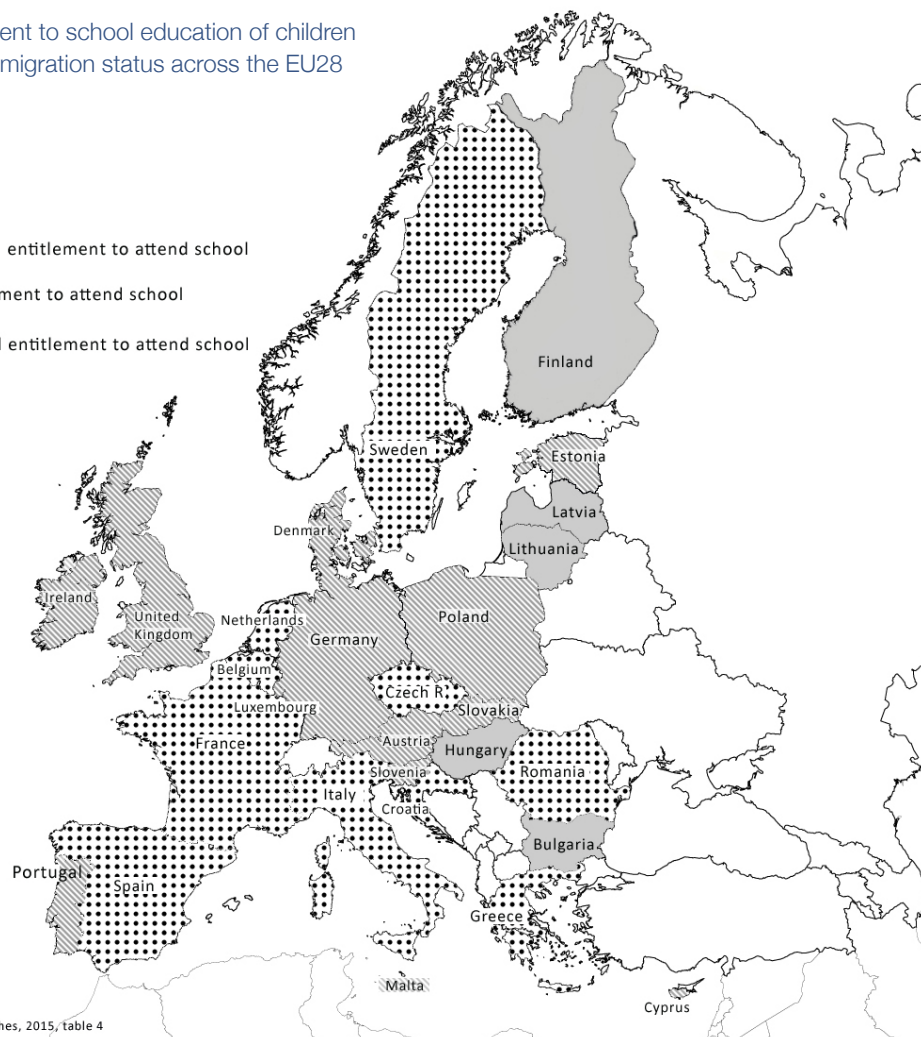
Entitlement to School Education

As with health care there has been an extension of access to education for children with irregular status in recent years.

In 23 of the EU28, children with irregular status are entitled to attend school. In many cases that entitlement is implicit in an entitlement for all children to attend, from which those with irregular status are not excluded. In ten countries, however, (Belgium, Croatia, Czech Republic, France, Greece, Italy, the Netherlands, Romania, Spain and Sweden) the entitlement is explicit: that is, a specific reference to the entitlement of children with irregular status is written into legislation, regulations, Ministerial decree or binding case law. This is also the case for primary education in Slovenia.

Map 2: Entitlement to school education of children with irregular immigration status across the EU28

-  An explicit legal entitlement to attend school
-  No legal entitlement to attend school
-  An implicit legal entitlement to attend school



Source: Spencer and Hughes, 2015, table 4

The entitlement, whether explicit or implicit, can be for education up to 18 years or exclude the 16-18 age group. The entitlement can include access to apprenticeships or to pre-school. There is further variation in whether an entitlement to schooling extends to an end of school certificate confirming results, or for instance to school meals.

In five countries, Bulgaria, Finland, Hungary, Latvia and Lithuania, the law does not entitle these children to attend school (except, as in Latvia, when children are in the Returns Procedure). In each case this is despite a constitutional provision establishing a right to education and/or that education for minors is compulsory. A procedural requirement in law that pupils must be registered in the civic or municipal register or have a residence permit nevertheless excludes children with irregular status from an entitlement to attend school. Children in the community may in practice get access to schools in these countries at the discretion of the school itself.

In countries where there is an implicit right to attend school, local procedural requirements (such as proof of address) can in practice, as in health care, restrict or deter access.

Research Agenda

There would be value, for a future research agenda, in exploring the extent to which entitlements in each country currently meet the standards of access to health care and education required by international and European human rights law. In that assessment, the degree to which a requirement to pay excessively for a service undermines an entitlement will be one question, as is the implications of a lack of protection of service users' personal data from transfer to the immigration authorities. Research on the relationship between the use of a civic register and patterns of entitlements could help to ensure that procedural barriers do not impede access for which the law in other respects provides. Authoritative evidence on the implications of inclusion and exclusion from entitlements, for individuals and the wider community, is fundamentally important to inform future decisions on policy reform.

It would also be valuable to explore whether there are underlying legal, demographic, economic, cultural or institutional factors that may help to explain the uneven geography of entitlements. The report highlights differing levels of irregular migrant population; criminalisation of irregular entry and stay; the availability and frequency of opportunities for irregular migrants to regularise their immigration status; differing commitments under international and European human rights instruments; procedural differences such as the need to secure registration on a civic register in order to access services; different types of health care system; and relative wealth and differing public attitudes, as possible factors to explore.

Conclusion

Our mapping shows a polarisation in entitlements to health care services, from access to emergency care only to a level of access to primary and secondary care and some specialist services. Entitlements to health care are sometimes greater for children. While there has been some erosion in entitlements, they have also been extended in recent years. There nevertheless remain countries where access for both adults and children is severely limited. In relation to education, entitlements range from an explicit legal provision permitting children with irregular status to attend school through to an absence, in a minority of countries, of any entitlement. Notwithstanding the sharply uneven geography of these provisions, the mapping reveals a normality of a level of entitlements for irregular migrants to access health and education services across the EU, albeit in many cases at a very low level.

The nature of the service to which access is allowed varies. The entitlement may be enhanced by regulations at a regional level or undermined by a requirement to pay, for service providers to pass on the details of service users to the immigration authorities, and other procedural hurdles. In many cases, the entitlement is implicit rather than spelt out in law. Rather than establishing that there is, or is not, an entitlement, there are thus shades of grey, making comparison between countries – while essential – inherently problematic.

Research for this report was supported in part by the Open Society Fellowship, which is funded and administered by the Open Society Foundations. The opinions expressed are the authors' own and do not necessarily express the views of the Open Society Foundations. Please contact sarah.spencer@compas.ox.ac.uk with comments.

The full report and annex are available for download at
www.compas.ox.ac.uk/research/welfare/service-provision-to-irregular-migrants-in-europe/



COMPAS
University of Oxford
58 Banbury Road
Oxford
OX2 6QS