

NATIONAL
STAKEHOLDER
REPORT

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INTEGRATION

Better regulation that supports the
social inclusion of the undocumented





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The **National stakeholder reports** aim at taking the academic debate provided by the ReSOMA discussion briefs to the national level throughout the EU. For each topic, a **structured feedback process** has been implemented in a number of Member States where the issue at hand is most relevant in terms of current developments and upcoming trends. Leading experts discussed the **possible consequences of evolving (or lacking) EU policies for the Member State**, and the **country's role in shaping the EU agenda**. These feedback loops enabled researchers, practitioners and policy-makers to exchange experiences and strategies to face issues related to migration, asylum and integration matters.

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National stakeholder report

Better regulation that supports the social inclusion of the undocumented*

Better Regulation of Support for Social Inclusion of the Undocumented

Fundamental rights and freedoms as enshrined in [the Charter](#) and the [ECHR](#), apply to everyone within Member States' jurisdiction, including migrants with an irregular legal status unless individuals are explicitly excluded.¹ This has been confirmed in a recent (2011) report of the [Fundamental Rights Agency \(FRA\)](#). There are several EU directives that protect the rights of undocumented migrants, such as the [Employers Sanctions Directive](#) that help lodge complaints for employers and the [Victims of Crime Directive](#) ensuring that victims of crime receive appropriate information, support and protection. These are 'firewalls', that is, formalized separation between immigration control and service provision related to basic rights regardless of one's residence status².

These legal tools allow local and regional actors and authorities to make commitment and take responsibility to protect the fundamental rights of undocumented

1 For a concise summary of the current situation of migrants who hold irregular legal status and cannot be removed, see: <http://fra.europa.eu/en/Non-removed-migrants-rights>

2 See ReSOMA Ask the Expert Brief on migration and the ReSOMA Synthetic state of the art policy brief on Better Regulation of Support for Social Inclusion of the Undocumented, 2018.

people, hence better regulate the support for the social inclusion. Yet, as previously portrayed in the ReSOMA [Ask the Expert brief on integration](#), local service providers, who are dependent on National and EU funding in order to remain operational, are concerned about the narrowing of funding criteria for entitlement to services (sometimes implicitly and sometimes explicitly excluding undocumented migrants). Similarly, recent studies draw attention to criminalization of undocumented migrants, and of humanitarian assistance to the undocumented, which pushes them into more precarious positions and increases vulnerability to abuse and exploitation.

Stakeholder outreach and feedback

This report reaches out to stakeholders from a variety of countries where support for undocumented has been a serious concern. It provides an overview and analysis of the feedback provided by these stakeholders in relation to support for social inclusion of the undocumented, that have been developed in [earlier ReSOMA publications](#). This involves the following countries:

- France
- Germany
- Greece
- Italy



- Spain
- The Netherlands

In each of these countries, between 6 and 10 stakeholders were consulted (see appendix for a full but anonymized overview). This includes policy actors working at the national as well as the local level, NGOs working in the social field and experts from the various national contexts with specific topic of the consultation. In many cases, the consultation took the form of an individual interview (via Skype or Gotomeeting); in several cases where this was seen as appropriate, the consultation took a form of a virtual meeting with several stakeholders at the same time, allowing for interaction on specific topics. The consultations followed a standardized template and were implemented by experts with access to networks in the selected countries. For this report, this involved the European University Institute (Italy, Germany and Greece) and UPF-Barcelona (Spain, France, The Netherlands). Based on reports of the stakeholder consultations, this stakeholder outreach report was compiled by the ReSOMA team of Erasmus University Rotterdam.

The consultations focused on three topics that emerged as central from the [Ask the Expert policy briefs](#) and the synthetic state of the art report on better regulation of support for the social inclusion of the undocumented. These three topics include:

- *State of legislation and policy actions in member states*: What are the main policy actions and initiatives to ensure social inclusion of undocumented migrants? Are there differences be-

tween regional, local level and national approaches?

- *Firewalls in law and in practice*: Are there “firewalls” in law and in practice in member states that ensure the protection of social services from interaction with, or obligations to, immigration and police authorities in respect of identifying, documenting or reporting on immigration status (for example with respect to the use of health services, legal aid, education etc.)? Would firewalls work in practice and, if not, what would be the alternative?
- *Practical barriers in implementing EU directives*: What are the main practical barriers in member states to implement the EU laws protecting undocumented migrants?

State of policy actions and initiatives in member states

Stakeholders in all countries mention an increase in the number of migrants with irregular status over the last years. In countries like the Netherlands, these are mostly rejected asylum seekers who cannot be returned to their countries of origin whereas in others, like Spain, stakeholders see this as a result of stricter Immigration law which deliberately aimed to discourage migrants without a legal status to stay further.

There is a growing tension between local and national authorities' position in offering basic assistance and services to the undocumented as municipalities are more inclined to include them. This is the case in the Netherlands but even in Spain where the constitutional court eventually suspended the ad-hoc regional decrees



passed at the level of autonomous regions, like Andalusia and Catalonia, to revert what some NGOs and activist groups call “Health Apartheid” (decree law 16/2012). Even then Barcelona municipality continues using its competence to the fullest by for example leading co-operatives doing recycling and selling clothes in the market, through which migrants without a regular status would gain a legal status.

Access to health care mentioned as one of the main challenges in all six countries. In France, there is health assistance in case of emergency, pregnancy and for new born babies, whereas lack of national insurance blocks access to any services in Greece and Germany.

“Without a passport and a health insurance you cannot even enter into an ambulance in Germany.” (German NGO)

Similarly, being undocumented in Italy makes it impossible to access any services, from winter shelters to monthly bus tickets. Compulsory education is granted in all these countries, vocational training or higher education is not due to lack of documentation but more so due to high costs of staying in the education system. It is mostly NGOs working in the social field that provide direct support in case of troubles in labor market, such as German trade unions checking their working conditions and providing insurance and assistance or French NGOs trying to convince the region of Ile de France to reintroduce the recently dismantled transport aid for irregular persons.

One common aspect of the grassroots initiatives that try to fill the void, in the absence of support from local authorities, is

the focus on groups with potentials for regularization. In Italy, France and Greece, unaccompanied minors or children of undocumented parents seem to be the main target group of various stakeholders. Unlike France where the regional authorities and municipalities use their competence to provide housing assistance for all, in Italy, projects funded by private donors could support only undocumented youngsters who just turned 18 and are waiting for regularization through integration pathway. Similarly, it is a Greek NGO working with unaccompanied minors that could launch an individual sponsorship programme only for minors to be able to continue schooling.

Firewalls in law and in practice

Firewalls exist in emergency healthcare in all six countries that were examined, although there are quite some variations in education and legal aid. All fields considered, the Netherlands emerges as the most inclusive of the six countries consulted whereas France is quite exclusive and looking for new measures to avoid assistance to irregular migrants. For example, French NGOs note that, according to a current ministerial circular, mobile teams, composed of police immigration officers and sometimes including social workers, can be deployed to carry out administrative assessments in emergency housing and expose irregular migrants to expulsion. Similarly, in Italy and Germany, civil servants are obliged to report irregular migrants whereas legal firewalls are in place for compulsory education and hospitals (in German case, emergency healthcare only).



However, even when legal firewalls exist, migrants may not feel confident enough to make use of them due to the political climate. For example, in Italy, a 2009 government proposal to introduce an obligation to report for doctors was met with widespread opposition of nurses and doctors and finally didn't pass. However, this proposal raised concerns among many irregular migrants, who did not want to go to public hospitals anymore while bureaucratic barriers (such as the lack of residence card, that is linked to housing) have also hampered regular migrants' access to hospital. In the following years, migrants have more and more avoided using even the existing firewalls either because they got too scared to approach any public authority or are not fully aware of the existing protections.

Implementation of firewalls may also depend on the (lack of) knowledge of the local authorities involved. As noted by some German NGOs, there are also some German schools that are not aware of the existing legal protections and still ask for registration in the local school area. In Spain, lack of coordination among state authorities involved in migration issues sometimes lead to what appears as firewalls in practices. There are many examples of informal practices such as hospitals working pro bono in order not to report patients with irregular status in Germany. Documents like 'tolerated stay' offered by the Germany authorities, in one NGO's words, "bureaucratize" the situation since it is just registration and does not entitle irregular migrants to social benefits. Although confidentiality rule is in place, stakeholders in Germany and the Netherlands gave examples of hospitals still sometimes reporting migrants ei-

ther unintentionally (not knowing the confidentiality rule) or intentionally (registering a new born) so that they get reimbursement from social welfare services for the costs of their services that the migrants cannot afford.

There are also informal practices that serve the purpose of a firewall. Small organizations either allow their clients to remain anonymous or give an alternative certificate that allows free treatment without providing any personal information. Church in Italy is one such organization that acts like a parallel channel of social welfare for those in need. In Greece many service providers offer services without tapping into the public funding and instead using their own resources. Additionally, not all NGOs seem eager to support migrants with irregular legal status and some make a deliberate choice to defend only migrants with regular status who, despite their legal status, are still discriminated against in terms of access to social services.

Finally, it is noted that existence of firewalls does not guarantee protection as irregular legal status actually means constant change of one's legal conditions. For example, in Italy, there are examples of unaccompanied minors being reported to police as soon as they turn 18. For victims of trafficking, on the other hand, even the police give protection regardless of their legal status.

Practical barriers in implementing EU directives

In all six countries consulted, even if the aforementioned EU directives are transposed into national legislation, not much



positive impact is observed. For example, in the Netherlands, implementation is still a matter of discussion. Hence not knowing how to separate labour inspection from police inspections, interventions in workplace related exploitation carry the risk of expulsion for the migrant laborers.

Lack of implementation is also attributed to bigger structural problems of the labour market. For example, Italian and Spanish NGOs working in the social field draw attention to the exploitative conditions in agricultural production chain that goes beyond the misconduct of a single employer.

There are several local factors that are mentioned as barriers in implementing the EU Directives. Firstly, according to one French NGO, police officers often lack training in these directives which increases the risk of expulsion while a Spanish NGO also mentions lack of sufficient number of labour inspectors knowledgeable working in this field. Secondly, unlike the limited possibilities for informal employment in countries like the Netherlands which make the undocumented as well as rejected asylum seekers dependent on charities and direct support of NGOs, shadow economies in countries such as Greece, Italy and Spain offer them jobs for subsistence yet leave them without legal protection. Thirdly, even if you work legally, as mentioned by one Spanish NGO, social acceptance of certain criminal activities may also leave you without legal protection in cases such as sexual harassment or exploitative practices in workplace. Similarly, one Italian NGO acknowledges that not having any first-hand experience beyond hearing how hard it is to prove exploitation in work-

place. This also shows the fact that in its current state, directives do not give enough incentives to local NGOs, let alone migrants with irregular status, to voice their grievances or claim their rights. Hence related to this, fourthly, workers with irregular status are either unaware of their rights or lack trade union or civil society support to come forward especially in small places where locals are scared of retaliation that would come in different forms. In one German NGOs words,

"The working conditions are slavery and they cannot come out of this because if they complain they lose their status."

Overall, so far these directives or other available legal instruments do not offer sufficient protection even for migrants with regular permit due to the fact that coming forward means risking your job at best and expulsion at worst. This is evident in the recent case of sexual harassment of Moroccan women recruited with a work permit for working in berry fields in Spain. As explained one Spanish NGO, although these women were working legally and were themselves victims of a crime, their employer immediately tried to send them back before the public authorities could finish the investigation. Hence, it was the migrant women workers who were punished for their grievances, not the employer nor the employee who actually committed the crime.

Conclusion

The national stakeholder consultations show that undocumented migrants' access to basic services is seen as necessity. However, recently refugees and international protection holders seem to have



more priority in civil societies' agenda in all six countries consulted. This has various implications for the undocumented migrants' access to existing rights and protections on the ground.

Three key observations can be drawn from the feedback provided by stakeholders that are relevant for future policies:

- Access to rights is very much related to the structural conditions of the member states. For example, in contrast to Germany, where refugees have objectively better access to job market and other services, access conditions in Greece are equally worse for both refugees and undocumented migrants as they both suffer from similar obstacles

in bureaucracy, access to accommodation facilities and job market integration.

- Under these circumstances, firewalls between immigration control and service provision are extremely important for undocumented migrants to be able to access limited services, education or job opportunities that some public authorities and NGOs are trying to offer or expand to the migrants with irregular legal status.
- For effective implementation of existing firewalls, it is necessary to make better publicity of undocumented migrants' available rights and invest in the training of related law enforcement personnel.



Appendix I: Consulted stakeholders

Country	City	Institution
Germany	Hannover	Lower Saxony Refugee Council
Germany	Berlin	Office of a member of Parliament
Germany	Berlin	Jesuit Refugee Service Germany (JRS)
Germany	Berlin	German Diakonie
Germany	Kiel	Medibüro
Germany	Gütersloh	Bertelsmann Stiftung
Germany	Berlin	University of Berlin
Greece	Athens	Solidarity Now
Greece	Athens	Norwegian Refugee Council
Greece	Athens	Ministry of Migration Policy
Greece	Athens	Danish Refugee Council
Greece	Athens, Thessaloni- niki	Diotima Centre for Research on Women Issues
Greece	Athens	Babel Day Centre for Migrants' Mental Health
Greece	Thessaloniki	Association for the Social Support of Youth (ARSIS)
Greece	Athens	Greek Council for Refugees
Italy	Rome	Civico Zero
Italy	Rome	IOM Italy
Italy	Rome	Caritas
Italy	Palermo	Centro Astalli
Italy	Bergamo	CESVI
Italy	Rome	"Victims of Torture Programs"- Médecins Sans Frontières
Italy	Milan	NAGA
Italy	Udine	SIMM
Italy	Rome	UNAR and Università la Sapienza
France	Nantes	Expert
France	Paris	Coordination Sud
France	Paris	CERI-CNRS
France	Paris	Expert-Advocate
France	Paris	Expert
France	Paris	Forum réfugiés
Netherlands	Amsterdam	Ministry of Justice
Netherlands	Amsterdam	Stichtinglos
Netherlands	Rotterdam	Municipality
Netherlands	Rotterdam	NGO
Netherlands	Utrecht	Municipality
Netherlands	Utrecht	Municipality
Netherlands	Amsterdam	NGO
Spain	Barcelona	In Strategies
Spain	Murcia	Cepaim Foundation
Spain	Brussels	EU affairs adviser Autonomous Region of Catalonia
Spain	Barcelona	Municipality
Spain	Madrid	ACCEM foundation
Spain	Madrid	ACCEM foundation
Spain	Barcelona	General directorship of equality migration citizenship. Au- tonomous Region of Catalonia
Spain	Barcelona	General directorship of equality migration citizenship. Au- tonomous Region of Catalonia

ReSOMA

RESEARCH SOCIAL
PLATFORM ON MIGRATION
AND ASYLUM

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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