Health Care in
NOWHERELAND
improving services for undocumented migrants in the EU

Policies on Health Care for Undocumented Migrants in EU27

Country Report

Luxembourg

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April 2010

Work package 4
Policy Compilation and EU Landscape
Deliverabel No.6

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Preface

Undocumented migrants have gained increasing attention in the EU as a vulnerable group which is exposed to high health risks and which poses a challenge to public health. In general, undocumented migrants face considerable barriers in accessing services. The health of undocumented migrants is at great risk due to difficult living and working conditions, often characterised by uncertainty, exploitation and dependency. National regulations often severely restrict access to healthcare for undocumented migrants. At the same time, the right to healthcare has been recognised as a human right by various international instruments ratified by various European Countries (PICUM 2007; Pace 2007). This presents a paradox for healthcare providers; if they provide care, they may act against legal and financial regulations; if they don't provide care, they violate human rights and exclude the most vulnerable persons. This paradox cannot be resolved at a practical level, but must be managed such that neither human rights nor national regulations are violated.

The EU Project, "Health Care in NowHereland", works on the issue of improving healthcare services for undocumented migrants. Experts within research and the field identify and assess contextualised models of good practice within healthcare for undocumented migrants. This builds upon compilations of

- policies in the EU 27 at national level
- practices of healthcare for undocumented migrants at regional and local level
- experiences from NGOs and other advocacy groups from their work with undocumented migrants

As per its title, the project introduces the image of an invisible territory of NowHereland which is part of the European presence, "here and now". How healthcare is organised in NowHereland, which policy frameworks influence healthcare provision and who the people are that live and act in this NowHereland are the central questions raised.

Healthcare in NowHereland: Improving services for undocumented migrants in the EU

Project funded by DG Sanco, Austrian Federal Ministry of Science and Research, Fonds Gesundes Österreich. Sole responsibility lies with the authors. The European Agency is not responsible for any use that may be made of this information.

Running time: January 2008 – December 2010

Partners:

Centre for Health and Migration at the Danube University, Krems (AT) (main coordinator)

Platform for International Cooperation on Undocumented Migrants (BE)

Azienda Unità Sanitaria Locale di Reggio Emilia (IT)

Centre for Research and Studies in Sociology (PT)

Malmö Institute for Studies of Migration, Diversity and Welfare (SE)

University of Brighton (UK)

Introduction

This report is written within the framework of the research project, *NowHereland - Health Care in NowHereland – Improving Services for Undocumented Migrants in the EU,* and one of its work packages. The focus of this work package – *policy compilation* – was to collect data on policy approaches regarding access to health care for undocumented migrants in the EU member states, to deliver 27 Country Reports and to offer a clustering of the states. A descriptive approach has been applied. In order to contextualise health care access, certain other themes are covered, such as the main characteristics of the various health systems, aspects of policies regarding undocumented migrants and the general context of migration.[1]

The term used in this project is thus, "*undocumented migrants",* which may be defined as third-country nationals without a required permit authorising them to regularly stay in the EU member states. The type of entry (e.g. legal or illegal border crossing) is thus not considered to be relevant. There are many routes to becoming undocumented; the category includes those who have been unsuccessful in the asylum procedures or violated the terms of their visas. The group does not include EU citizens from new member states, nor migrants who are within the asylum seeking process, unless they have exhausted the asylum process and are thus considered to be rejected asylum seekers.

All the reports draw upon various sources, including research reports, official reports and reports from non-governmental organisations. Statistical information was obtained from official websites and from secondary sources identified in the reports. As regards legislation, primary sources were consulted, together with the previously mentioned reports. One salient source of this project was information obtained via a questionnaire sent to recognised experts in the member states.[2]

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[1] Information regarding the project and all 27 Country Reports can be found at http://www.nowhereland.info/ . Here, an *Introduction* can also be found which outlines the theoretical framework and methodological considerations as well as a clustering of the states.

[2] For the report at hand, the person to acknowledge is: Marie Cécile Charles, Assistante sociale/licenciée en criminologie, CLAE.

The General Migration Context

Luxembourg is a founding member of the European Union and is situated on the border of the Schengen Area.

The culturally diverse Grand Duchy of Luxembourg is a small, landlocked country with a stable and prosperous economy dependent upon foreign workers (Kollwelter 2007). Already at the end of the 19th century, workers from Germany and Italy were recruited to work in the iron industry on a temporary basis. Throughout the 20th century, immigrants contributed to the country's economic and social development, despite no explicit policies regarding immigration. The most salient groups of migrants originated from Italy and Portugal and arrived in Luxembourg as guest workers. From 1960 and onward, this framework also involved a family-based policy (ibid.). The current labour immigration policy (passed in 1972 and subsequently revised) categorises migrants in relation to the European Union and accordingly only persons from non-EU member countries with qualifications which are not readily available in the country are accepted. As a result of the EU enlargement, this policy in effect applies to a small number of foreign workers, whilst most foreign workers (particularly the highly skilled) originate from neighbouring EU member states. Luxembourg has no law which allows non-EU workers to have their immediate family members join them. Consequently, the Ministry of Immigration has significant discretion and may decide whom to permit access to on a case-by-case basis (ibid.).

Asylum seekers became an issue in Luxembourg in the 1990s, when approximately 2 000 asylum seekers, originating mostly from Bosnia, arrived in the country. In 1996, a law was passed with respect to regulating asylum for the first time. During the course of the Kosovo War, Luxembourg received 5 340 asylum applications, the majority of which consisted of persons fleeing the Balkans. Only 4% of these obtained protected status (ibid.).

As in other European countries, irregular migration to Luxembourg only became an issue relatively recently, and (partial) illegality was not unusual. In truth, most of the Portuguese immigrants who migrated to Luxembourg in the 1970s technically entered the country illegally and regularised their stay after entry (Reichel and Wöger 2009:90 with reference to Kollwelter 2005[3]).

In Luxembourg, only one-third of the country's labour force are Luxembourgers, which leaves a lion's share of the labour market to migrant workers and commuters from neighbouring France, Belgium, and Germany. The latter constitute 38% of the workforce. Consequently, Luxembourg is the country with the highest share of foreigners amongst the

[3] Kollwelter, S. 2005: Active Civic Participation of Immigrants in Luxembourg.
Country Report prepared for the European research project POLITIS, Oldenburg 2005. www.uni-oldenburg.de/politis-europe (2010-03-09).

OECD countries (ibid.). However, the overwhelming majority of non-nationals are EU citizens, whilst the number of third country nationals is relatively low. In 2006, approximately 13% of foreigners were not from the European Union. Their countries of origin included the former Yugoslavia, the United States, and the former Portuguese colony, Cape Verde (Kollwelter 2007).

In 2008, Luxembourg received 455 asylum applications (Eurostat 66/2009). The majority (220) originated from Serbia. The same year, 965 decisions were issued (in the first and second instance) and the rate of recognition was 38.4% (185 in the first instance) (Eurostat 175/2009).

Total Population and Migrant Population

By 1 January 2010 the population in Luxembourg was 502 207 (Eurostat)[4]. By 1 January 2008 the number of foreign nationals was 206 000, which equalled 42.6 % of the total population (Eurostat 94/2009). The main countries of origin were Portugal (76 600, 37.2 %), France (26 600, 12.9 %) and Italy (19 100, 9.3 %) (ibid.).

Estimated Number of Undocumented Migrants

There is no data available with respect to undocumented migrants in Luxembourg. According to estimates, the numbers are comparatively low or medium and correspond to a maximum of 0.9% of the total population (Baldwin-Edwards and Kraler 2009:41). From what is known, it may be said that irregular migration to Luxembourg is mainly related to the asylum system, or more specifically, to rejected asylum seekers. As Kollwelter argues, irregularity is partly due to the restrictive nature of both asylum law and administrative practice (Reichel and Wöger 2009:90 with reference to Kollwelter 2005:12).

Categories of Undocumented Migrants

In terms of the different categories of undocumented migrants, the information which is available is not coherent. According to this information, the most important group of undocumented migrants in Luxembourg consists of rejected asylum seekers (Reichel and Wöger 2009:90). This means that the asylum process plays a role in "producing" undocumented migrants (Baldwin-Edwards and Kraler 2009:41). Other assessments suggest that persons who enter irregularly constitute the most salient group, followed by "overstayers" (Questionnaire Luxembourg).

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[4] Eurostat. http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tps00001&tableSelection=1&footnotes=yes&labeling=labels&plugin=1 (2010-03-09).

Policies Regarding Undocumented Migrants

Regularization Practice, its Logic and Target Groups

There has been one program conducted in Luxembourg (since 1997), in 2001 (Reichel and Wöger 2009:14). There were several programs before 1997 (1986, 1994, 1995 and 1996) which all targeted persons from specific countries (Portugal, Spain, Bosnia and the former Yugoslavia). The program in 2001, "Regularisation de certaines categories d'etrangers séjournant sur le territoire du Grand-Duch de Luxembourg" was carried out between 15 May 2001 and 13 July 2001. This regularisation related specifically to asylum seekers, as part of an ongoing asylum process with the aim of removing them from the asylum system. In total, 2 850 persons were legalised and the majority (2 007) were from the former Yugoslavia. The logic of the scheme was mainly based on economic arguments and the implementation was conducted in close consultation with employers within the sectors most affected by labour shortages (Reichel and Wöger 2009:92).

Internal Control: Accommodation, Labour, Social Security and Education

In Luxembourg it is possible for an undocumented migrant to sign a contract of accommodation. It is also possible to access employment and the related social security. The process is conducted via the employer (Questionnaire Luxembourg).

Furthermore, Luxembourg explicitly permits school enrolment for the children of irregular immigrants into the compulsory school system (European Commission 2004:33 with reference to July 2003 regulation).

Main Characteristics of the Health System

Financing, Services and Providers

Luxembourg has been able to develop one of the most generous welfare systems in the EU (Hartmann-Hirsch and Ametepé 2009). The system may be characterised as being of a Bismarckian-type (implying a connection to labour and paid for by contributions), as the adopted insurance system is generally financed with contributions by employers and employees. However, the healthcare insurance is only financed by the employees and the State, with significant co-financing by the State (ibid.). Healthcare services in Luxembourg are thus financed by a statutory insurance system. The insurance falls into two categories, namely statutory and voluntary. The publicly financed health insurance scheme is compulsory and covers 99% of the population. Cost sharing is widely applied in the form of co-insurance. Three quarters of the population purchase private health insurance to encompass services not covered by the statutory scheme (Thomson et al. 2009). Contributions are collected centrally and allocated to nine occupation-based health insurance funds. Individuals are assigned to a particular fund based on occupation. This is

managed by the Union of Sickness Funds, in conjunction with the agencies (ibid.). In addition to its contribution to the statutory scheme, the central government directly finances health promotion and prevention services, maternity services, capital investment, social care services and some training costs (ibid.).

The range of benefits covered by the health insurance scheme is broad (Thomson et al. 2009:166). In terms of services covered, The Union of Sickness Funds reimburses the costs (80-100%) of treatment according to specified rates, which define the diseases, treatments and drugs which are excluded from reimbursement. Healthcare services where the majority, or all, of the cost is covered by statutory insurance include general and specialist care, hospitalisation, dental care, treatments provided by other health professionals, medical prescriptions, laboratory analyses, pharmaceutical products, transportation and rehabilitation (Kerr 1999).

Within the Luxembourgian system, the patient has free choice with respect to the healthcare provider The providers of care are semi-public and private (Thomson et al. 2009). Primary healthcare is provided mainly by general practitioners (GPs), who are self-employed and mostly work in single practices and are required to comply with the fixed fees for their services. All hospitals operate independently of the state (ibid.:13). Most preventive and health promotion services (such as school health services and health education) are contracted out to the non-profit sector and funded by the state (or in some cases, by the new long-term care insurance) (ibid.).

Basis of Entitlement

In Luxembourg, the basis of entitlement to healthcare is legal residency (Kerr 1999) and affiliation to insurance.

Special Requirements for Migrants

Migrants legally residing in Luxembourg enjoy the same rights as citizens in terms of access to the healthcare system. However, insurance is a prerequisite (Questionnaire Luxembourg).

There are legal restrictions in respect of access to healthcare for asylum seekers, upon their arrival in Luxembourg, which do not apply to legal residents. However, they obtain access to care in the same manner as legal citizens after 3 months, although specialised treatment for traumatised asylum seekers is not provided (Nörredam et al. 2005).

Difference Sensitivity

In Luxembourg, some adaptive structures to undocumented migrants are to be found, such as mediation and translation services and the promotion of multicultural staff within the health sector (Questionnaire Luxembourg).

Health Care for Undocumented Migrants

Relevant Laws and Regulations

In the context of health care, there is no specific legislation or regulation which applies to the right to care for undocumented migrants in Luxembourg (Questionnaire Luxembourg). However, there is an informal agreement between the Ministry of Health and the Ministry of Immigration, in terms of which the Ministry of Health draws up a list of names of persons (patients) who are undocumented migrants and submits the list to the Ministry of Immigration every six months (Questionnaire Luxembourg).

Access to Different Types of Health Care

Undocumented migrants may access emergency care provided they are affiliated to insurance, obtained privately or by way of employment. They may access primary care as well as specialist care in terms of the same rules (Questionnaire Luxembourg).

The purchasing of insurance does not require legal residency. In terms of an informal government agreement from 2007, undocumented migrants may purchase social insurances if they can demonstrate that they are resident (at the particular time) in the territory identified in, for example, a contract of accommodation or utility bill (Questionnaire Luxembourg).

Costs of Care

All patients pay for care, which also applies to undocumented migrants when seeking emergency, primary or specialist care (Questionnaire Luxembourg). Having paid for care, an insured patient is reimbursed most of the fee at the rate set by law, minus a proportion which is forfeited as a co-payment. This rate may be between 80- 100% (Kerr 1999:54).

There is no reimbursement during the initial three month period for undocumented migrants. However, in the case of certain serious health problems, it is possible to obtain social welfare assistance for the cost. Other cost sharing arrangements include, for example, that Croix-Rouge offers assistance to persons with healthcare debts on a case-by-case basis (Questionnaire Luxembourg).

Specific Entitlements

As regards the entitlement to healthcare for undocumented migrants, there are no specifically identified groups (such as children or pregnant women) or entitlements focusing on special diseases or conditions (such as HIV or TB).

Regional and Local Variations

Entitlements in terms of legislation do not vary either regionally or locally in Luxembourg. Decision making with respect to the financing and delivery of healthcare is completely centralised (Questionnaire Luxembourg).

Obstacles to Implementation

There are no known obstacles in relation to the implementation of the informal agreement between the Ministry of Health and the Ministry of Immigration (Questionnaire Luxembourg).

Obligation to Report

There is no obligation on staff to report a patient to authorities such as the the police or, in the case of Belgium, the Immigration Service (Questionnaire Luxembourg).

Providers and Actors

Providers of Health Care

Providers of healthcare for undocumented migrants may be found among the general hospitals and emergency units and among general practitioners in the mainstream system (public as well as private). In Luxembourg, no nongovernmental organisations are known to provide care to undocumented migrants (Questionnaire Luxembourg).

The providers are distributed throughout the country and are not coordinated with respect to providing care to undocumented migrants (Questionnaire Luxembourg).

Advocacy Groups and Campaigns on Rights

There have not been any particular information campaigns in Luxembourg regarding the right to healthcare for undocumented migrants. However, there are nongovernmental organisations advocating for undocumented migrants' rights to healthcare (Questionnaire Luxembourg).

Furthermore, there have been protests by undocumented migrants demanding regularisation which have received support from members of several nongovernmental organisations and labour unions (Kollwelter 2007).

Political Agenda

In 2007 and 2008, undocumented migrants in general and children were discussed as part of the political agenda (Questionnaire Luxembourg).

International Contacts

Actors in the field of healthcare for undocumented migrants in Luxembourg have no international contacts (Questionnaire Luxembourg).

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