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<th>AEMH 10-036</th>
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<td><strong>Title:</strong></td>
<td>HUMA Report “Access to health care for undocumented Migrants and Asylum Seekers in Ten EU Countries” (Executive Summary)</td>
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<td><strong>Author:</strong></td>
<td>HUMA Network (Doctors of the World)</td>
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<td><strong>Date:</strong></td>
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ACCESS TO HEALTH CARE FOR UNDOCUMENTED MIGRANTS AND ASYLUM SEEKERS IN TEN EU COUNTRIES

LAW AND PRACTICE

EXECUTIVE SUMMARY
There are currently a significant number of undocumented migrants living in the EU. This population constitutes one of the most excluded social groups present in our territory. This marginalisation also has an impact in the health field. These migrants often do not access any health care. Not only do they face barriers that are common to the whole migrant population (e.g. lack of awareness and time, language and cultural barriers...) but they also support the consequences of their weak status and invisibility within society. Circumstances such as short entitlements and administrative conditions imposed, their permanent fear of being denounced, their lack of both information and the financial means to pay, make going to the doctor or a hospital the very last resort that they seek and only in the gravest situations.

The situation of asylum seekers regarding health care is also problematic, although in most countries this does not seem to be that critical given their authorised status. Nonetheless, their effective access to health care depends to a great extent on the legal entitlements recognised by the host country, the administrative conditions required and the existence of active policies seeking to improve access by this population to mainstream health facilities.

Another important difference between these two socially excluded groups concerns the EU response. Whilst there is an EU directive establishing the minimum reception standards for asylum seekers, including the minimum health care protection that Member States should guarantee to asylum seekers, there is no EU provision for undocumented migrants’ right to health care or to other basic social needs. In the EU, the debate concerning undocumented migrants continues to be rooted in the fight against “illegal migration”, and no debate has yet been open about the need to protect undocumented migrants’ rights at EU level nor the ratification of the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families. This instrument protects the rights of all migrants, irrespective of their administrative status, and has not been ratified yet by any EU Member State.

The direct consequence of this approach is that nothing prevents Member States from using health care as an instrument to serve migration control purposes rather than considering it as a right that they should protect in accordance with their international Human Rights obligations. Given the fact that each EU Member State has put in place its own system of regulating undocumented migrants’ and asylum seekers’ access to health care, the rights and administrative conditions imposed on these
populations greatly differ from country to country. Thus, the main purpose of this report has been to provide a very detailed overview of legal entitlements and conditions to access health care in each targeted country for the various groups (nationals, authorised residents, asylum seekers and undocumented migrants) and in regard to the different types of care and treatments (emergency, primary and secondary, ante-post natal, medicines, etc). The report also offers comprehensive information concerning the rules about access to health care inside detention centres and the regulation of the permits to remain for medical reasons that protect seriously ill undocumented migrants against expulsion.

This information is complemented by testimonies from the field about how these legal frameworks are implemented in practice and the obstacles that undocumented migrants and asylum seekers face to effectively access their large or short entitlements. The analysis of this very relevant information shows that these populations face considerable barriers in all EU countries when they try to access health care.

In short, this research provides evidence that the access to health care by undocumented migrants, and to a lesser extent by asylum seekers, is not guaranteed in the EU. The standards set by the main international treaties are far from being respected and member states instead of working on the “progressive realisation” of this right, are increasingly using it as a tool to discourage the entry of new migrants.

This restrictive tendency is occurring throughout Europe and it risks progressively endangering the effectiveness of general public health policies inasmuch as there is a part of the population living in Europe who remains excluded from the mainstream health system.

Based on these results, the HUMA network proposes specific recommendations to the EU institutions seeking to increase the visibility and regulation of the problem at EU level and to urge Member States to improve access to health care so as to avoid any discrimination on the basis of the administrative status.
MAIN OUTCOMES PER COUNTRY

BELGIUM (insurance-based system)
Asylum seekers are entitled to access practically all types of preventive and curative care. In regards to health coverage, there is not a significant discrimination compared to Belgian nationals. The situation is different if we consider the administrative steps to follow to access health care. Undocumented migrants can access free of charge Aide Médicale Urgente (“urgent medical assistance”) entailing a large range of medical services with the only exception of some prosthesis, devices and some categories of medicines. To implement these entitlements, a parallel administrative system has been put in place with a number of complicated steps among which there is a spot investigation by the social services and the agreement of the doctor through a certificate defining the “urgent” character of the care requested. This system is highly bureaucratic and very differently implemented by the authorities in the various catchment areas.

Only a very few number of asylum seekers and undocumented migrants (namely unaccompanied children) can access health care on equal grounds as nationals in regards not only to coverage but also to administrative conditions.

FRANCE (statutory insurance-based system)
Asylum seekers are entitled to access health care on equal grounds as French nationals in regards to coverage and conditions. This also applies to unaccompanied children.

Undocumented migrants can access health care free of charge (with minor exceptions) through a parallel administrative system called “Aide Médicale État” (state medical assistance). However, to obtain the AME and enjoy these entitlements, they must comply with two conditions: residence in France for more than three months and be under a certain economic threshold. To comply with these conditions, they have to follow a number of administrative steps that end by entailing important obstacles in order to effectively access health care.

The rest of undocumented migrants are only entitled to access free of charge emergency care.

GERMANY (insurance-based system)
Asylum seekers are significantly discriminated against in the German legislation during their first four years of residence in Germany. During this period, they are only entitled to access free of charge medical treatment in cases of “serious illness or acute pain” as well as “everything necessary for recovery, improvement or relief of illnesses and their consequences” (including, among others, ante-post natal care and HIV treatment). Only
children have rather extended coverage. The law recognises these same entitlements to undocumented migrants. However, this apparent parallelism between entitlements of asylum seekers residing for less than forty eight months and undocumented migrants is not reflected in daily practice given the obligation to denounce imposed by the German legislation on public administrative institutions, including the social welfare centres that have competences on health administration issues. This rigid framework has only been “broken” by few initiatives taken at local level intending to provide some health care to undocumented migrants and to this aim procuring their anonymity.

ITALY (national health system)
Asylum seekers are entitled to access health care on equal grounds as Italian nationals in regards to coverage and conditions. This is also the rule for unaccompanied children. Undocumented migrants have access to wide health coverage (specifically detailed and listed in the law) through a specific system called “STP – Temporarily Present Foreigners” consisting of a short-term but renewable anonymous code that is easily provided to all undocumented migrants. Although undocumented migrants are normally requested to pay a symbolic contribution to the system through the “ticket”, the major barrier is the lack of entitlement to have a family doctor, which also leads to many obstacles accessing specialists.

THE NETHERLANDS (insurance-based system)
Asylum seekers are entitled to access free of charge all types of health care with very few exceptions. In regards to conditions, the system differs from Dutch nationals because asylum seekers cannot choose the insurance company but this difference does not have a major impact on the services received and the conditions applying. Undocumented migrants can only access care considered by doctors on a case by case basis as “medically necessary”. The rule is that they will have to pay for it unless it is proven they cannot pay. If this is the case, health care providers, hospitals and pharmacies will provide care or treatment and then ask for reimbursement to the specific public fund. Although rather generously interpreted by law and particularly in practice (also including HIV treatment and ante-post natal care), this concept does not offer enough guarantees to effectively access health care because it makes access dependent on doctors’ discretionary appraisals. In addition, many health care providers are not so motivated to provide access since they can only receive maximum the 80% of the cost incurred.
**MALTA (national health system)**

The treatment that Maltese legislation gives to asylum seekers and undocumented migrants is not very different. This treatment is to a great extent explained by the absence of a legal framework that clearly differentiates the groups of foreigners present in the territory and establishes their basic rights.

There is a law recognizing the right of asylum seekers to access “state medical care and services” (without any more specification). However, no Maltese legal provision refers to undocumented migrants’ access to health care. There is only a non-legally binding “policy document” establishing that all foreigners in detention are entitled to “free state medical care and services”. Although the interpretation of this term is usually quite large, practice shows that effective access to health care and medicines by these populations highly depend on discretionary decisions made at hospitals or on the scarce medical resources of detention centres and the willingness of their guardians.

In the cases where they are allowed to receive medical services, they access the mainstream system primarily showing their “police number” as a unique identification.

**PORTUGAL (national health system)**

Asylum seekers are entitled to access health care on equal grounds as Portuguese nationals in regards to coverage and conditions. Extensive health coverage is provided by law to undocumented migrants as long as they can prove that they have been living in Portugal for more than ninety days. However, the ability to provide this evidence is often a critical barrier for them to exercise their entitlements. Access is organized through temporary registrations at health centres and is normally done each time they seek health assistance.

Short-stay undocumented migrants are considered tourists and have reduced coverage that nonetheless includes HIV treatment and ante-post natal care, among others.

As with the local population, undocumented migrants’ entitlements are significantly endangered by the failures of the Portuguese health system in regards to organization and lack of resources.

**SPAIN (national health system)**

Asylum seekers and undocumented migrants are entitled to access health care on equal grounds as Spanish nationals in regards to coverage and conditions. The problem is that for undocumented migrants it is more complicated to comply with the administrative requirements, mainly the empadronamiento – local civil registration, because it implies having valid identity documentation and an address.

Children and pregnant women are exempted from any administrative re-
requirement. At least four regions in Spain (out of seventeen) have adopted a more friendly approach consisting of providing a “health card” to all undocumented migrants without any kind of administrative conditions.

**SWEDEN** (national health system)

In Sweden, asylum seekers and undocumented migrants are highly discriminated against by the legislation governing access to health care. The sole exceptions are children of asylum seekers, asylum seeking children and those whose application for asylum failed. Asylum seeking adults are only entitled to access free of charge “care that cannot be postponed”, ante-post natal care, family planning and abortion. They have to pay a patient contribution for some of these services.

As “gömda” (hidden), undocumented migrants have been totally invisible for the legislation. Only very recently, a law has formally referred to rejected asylum seekers only to leave them outside the categories of foreigners who have some access to the health system. Thus, undocumented migrants in Sweden, including children, pregnant women or persons in emergency situations or with serious infectious diseases do not have any access to health care free of charge and have great difficulties paying the high costs of the health services. The lack of any prohibition to provide care to undocumented migrants has led the county councils and some public hospitals to adopt timid initiatives to provide some health care to this extremely marginalized social group.

**UNITED KINGDOM** (national health system)

Asylum seekers are entitled to access health care on equal grounds as British nationals in regards to coverage and conditions. This is also the rule for unaccompanied children. Undocumented migrants can only access free of charge primary care, emergency care, family planning, treatment of communicable diseases (except HIV) and in serious mental health cases. Since 2004, they have had to pay the full cost of any other hospital treatment or diagnosis including secondary care, inpatient care, ante-post natal care, medicines and HIV treatment. Furthermore, they can be denied access to these services if they cannot advance payment as long as the treatment can wait until the patient returns to his/her country of origin.

An important obstacle for undocumented migrants arises from the fact that general practitioners in the United Kingdom have the discretionary power to include or not include patients in their NHS list and this is the gate to access the meager entitlements that the undocumented migrants have.
Overview tables

These tables seek to summarise the results contained in the different country profiles. They show the main features of each system and allow the comparison of them. However, the overall complexity of each system cannot be presented in this table. For a complete overview of undocumented migrants’ and asylum seekers’ entitlements as well as residence permits for medical reasons, it is advisable to read the correspondent country profile.

Access to health care and treatment for adult undocumented migrants according to applicable national legislation

Colour code

<table>
<thead>
<tr>
<th>Country</th>
<th>Access to Health Care</th>
<th>Access to Treatment</th>
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<tbody>
<tr>
<td>BELGIUM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Primary</td>
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<tr>
<td>Secondary (outpatient)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospitalisation (inpatient)</td>
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<tr>
<td>Emergency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ante-post natal</td>
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</tr>
<tr>
<td>ACCESS TO HEALTH CARE</td>
<td>ACCESS TO TREATMENT</td>
<td></td>
</tr>
<tr>
<td>BELGIUM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If entitled and obtain the AMU (thus i) spot investigation of address and lack of resources; and ii) “urgent” character</td>
<td>If entitled and obtain the AMU (thus i) spot investigation of address and lack of resources; and ii) “urgent” character</td>
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<tr>
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<tr>
<td>IF entitled and obtain the AMU (thus i) proved residence of more than three months; and ii) proved lack of enough resources</td>
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<tr>
<td>Access to health care and treatment due to the existence of the duty to denounce undocumented migrants that completely override entitlements</td>
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</table>

ITALY

- If entitled and obtain the AMU (thus i) proved residence of more than three months; and ii) proved lack of enough resources
- Access to health care and treatment due to the existence of the duty to denounce undocumented migrants that completely override entitlements

MALTA

- No legal provision, only a non-legally-binding policy document applying to undocumented migrants and asylum seekers in detention centres
- Access to health care and treatment due to the existence of the duty to denounce undocumented migrants that completely override entitlements
2. There are specificities regarding access to health care in most countries for unaccompanied (migrant) children and children of undocumented migrant.

3. The term “urgent” is interpreted very widely as to cover most of curative and preventive health care.

4. Ibid.

5. Ibid.

6. Ibid.

7. Ibid.

8. Ibid.

9. Ibid.

10. The system is organized through an anonymous code flexibly provided to undocumented migrants (“STP code”). Note also that the copayment (“ticket”) by undocumented migrants is very symbolic in Italy and sometimes they are exempted.

11. Access free of charge or co-paid depending on the category of medicines.

12. According to this policy document, undocumented migrants are entitled to “free state medical care and services”.

13. Note also that the copayment (moderating fee) by asylum seekers and nationals is very symbolic in Portugal. Undocumented migrants are usually exempted if they get the certificate of precarious economic situation.

14. Access free of charge or co-paid depending on the category of medicines.

15. This information refers to the situation in the majority of Spanish regions. There are however some of them which have eliminated all administrative conditions to obtain the health card.

16. The general legislation on contagious diseases seem to be applied to everyone through the specialized clinic for sexually transmitted diseases.

17. They can however access some pregnancy care provided by midwives in the community.

18. Some treatment is however provided through designated sexual health clinic upon no conditions.
Access to health care and treatment for adult asylum seekers\textsuperscript{19} according to applicable national legislation

<table>
<thead>
<tr>
<th>Access to Health Care</th>
<th>Access to Treatment</th>
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<tr>
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<td><strong>HIV</strong></td>
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</tr>
<tr>
<td><strong>Hospitalisation</strong></td>
<td><strong>Other infectious</strong></td>
</tr>
<tr>
<td>If they request first the &quot;réquisitoire&quot;\textsuperscript{20} &amp; If they request first the &quot;réquisitoire&quot;\textsuperscript{20} &amp;</td>
<td></td>
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<tr>
<td><strong>Emergency</strong></td>
<td></td>
</tr>
<tr>
<td>If they request first the &quot;réquisitoire&quot;\textsuperscript{20} &amp; If they request first the &quot;réquisitoire&quot;\textsuperscript{20} &amp;</td>
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<tr>
<td><strong>Ante-post natal</strong></td>
<td></td>
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<tr>
<td>If they request first the &quot;réquisitoire&quot;\textsuperscript{20} &amp; If they request first the &quot;réquisitoire&quot;\textsuperscript{20} &amp;</td>
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</tbody>
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Colour code:
- **NO ACCESS**
- **ACCESS FULL PAYMENT**
- **ACCESS CO-PAID**
- **ACCESS FREE OF CHARGE**
- **NO LEGAL PROVISION**

**BELGIUM**
- If residence above 48 months otherwise only if "illness or acute pain" and if get in advance the "Krankenschein"

**FRANCE**
- If obtain "em-padronamiento" and thus the health card"

**NETHERLANDS**
- No access

**PORTUGAL**
- If obtain "em-padronamiento" and thus the health card"

**SPAIN**
- One legal provision generally entitling them to "state medical care and services" and a non-legally binding policy document applying to asylum seekers and undocumented migrants in detention centres

**ITALY**
- One legal provision generally entitling them to "state medical care and services" and a non-legally binding policy document applying to asylum seekers and undocumented migrants in detention centres

**GERMANY**
- If residence above 48 months otherwise only if "illness or acute pain" and if get in advance the "Krankenschein"

**MALTA**
- If obtain "em-padronamiento" and thus the health card"
### ACCESS TO HEALTH CARE

<table>
<thead>
<tr>
<th></th>
<th>Primary</th>
<th>Secondary (outpatient)</th>
<th>Hospitalisation (inpatient)</th>
<th>Emergency</th>
<th>Ante-post natal</th>
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<tbody>
<tr>
<td><strong>SWEDEN</strong></td>
<td>If care “cannot be postponed”</td>
<td>If care “cannot be postponed”</td>
<td>If care “cannot be postponed”</td>
<td>If care “cannot be postponed”</td>
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<tr>
<td><strong>UK</strong></td>
<td>If included in a NHS list by a general practitioner.</td>
<td>If included in a NHS list by a general practitioner.</td>
<td>If included in a NHS list by a general practitioner.</td>
<td></td>
<td>If included in a NHS list by a general practitioner.</td>
</tr>
</tbody>
</table>

20. This condition only applies to asylum seekers who choose not to live in public reception centers.

21. Ibid.

22. Ibid.

23. Ibid.

24. Ibid.

25. Ibid.

26. Ibid.

27. Ibid.

28. Ibid.

29. Ibid.

30. Ibid.

31. Ibid.

32. Ibid.

33. Ibid.

34. Ibid.

35. Ibid.

36. Ibid.

37. Ibid.

38. Ibid.

39. Ibid.

40. Ibid.

41. Ibid.

### ACCESS TO TREATMENT

<table>
<thead>
<tr>
<th></th>
<th>Medicines</th>
<th>HIV</th>
<th>Other infectious diseases</th>
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<tr>
<td><strong>SWEDEN</strong></td>
<td>If treatment “cannot be postponed”</td>
<td>If included in the list provided by law</td>
<td></td>
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<td><strong>UK</strong></td>
<td>If included in a NHS list by a general practitioner.</td>
<td>If included in a NHS list by a general practitioner.</td>
<td>If included in a NHS list by a general practitioner.</td>
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</table>

### No expulsion for medical reasons

**Code:** “X” means that there are legal provisions

<table>
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<tr>
<th>RESIDENCE PERMITS FOR MEDICAL REASONS</th>
<th>OTHER LEGAL MECHANISMS TO AVOID EXPULSION OR REFUSAL-OF-ENTRY FOR MEDICAL REASONS</th>
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<td>BELGIUM</td>
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<td>FRANCE</td>
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<td>ITALY</td>
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<td>MALTA</td>
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<td>SWEDEN</td>
<td>X</td>
</tr>
<tr>
<td>UNITED KINGDOM</td>
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</table>

33. The regulation is however very insufficient and unclear.
The first report of the HUMA network, available on www.huma-network.org, seeks to provide an updated overview of the different systems regulating access to health care for undocumented migrants and asylum seekers in ten Member States (Belgium, France, Germany, Italy, Malta, the Netherlands, Portugal, Spain, Sweden and the UK) and show the existing discriminations in regards to legal entitlements. It also deals more specifically with health care entitlements for individuals confined in detention centres and the residence permits or other mechanisms established by national legislations to protect seriously ill undocumented migrants and asylum seekers who cannot effectively access treatments in their home countries against deportation.

In 2011, the HUMA network will publish an updated version of this report covering the situation in nine additional countries: Austria, Czech Republic, Cyprus, Finland, Greece, Hungary, Poland, Romania and Slovenia.

THE HUMA NETWORK

The HUMA network’s general objective is to promote access to health care on equal grounds as nationals for undocumented migrants and asylum seekers within the European Union.

It is an advocacy network active at national and European level. It is for now constituted by 12 European NGOs, including the delegations and offices of Médecins du Monde in Europe, and a coordination team based in Paris, Brussels and Madrid.

The HUMA network’s members develop activities related to health and migration and in particular, targeting undocumented migrants and asylum seekers. They also lead advocacy programs and campaigns at national and European level and contribute to the expertise and data collection of the network.

Médecins du Monde France leads the whole project together with Médecins du Monde Spain and Médecins du Monde Belgium.

For more about the project and its activities, see HUMA network website: www.huma-network.org

For contact: contacthuma@medecinsdumonde.net