

The fundamental rights of migrants in an irregular situation in the European Union



Ann-Charlotte Nygård
Programme Manager
EU Fundamental Rights Agency

Fundamental rights situation of irregular migrants

- Non-removed persons
- Immigration law enforcement
- Workers' rights
- Adequate standard of living
- Healthcare
- Education
- Family life

Methodology

Questionnaires

Field research
(2 case studies)

Desk research



FRA findings



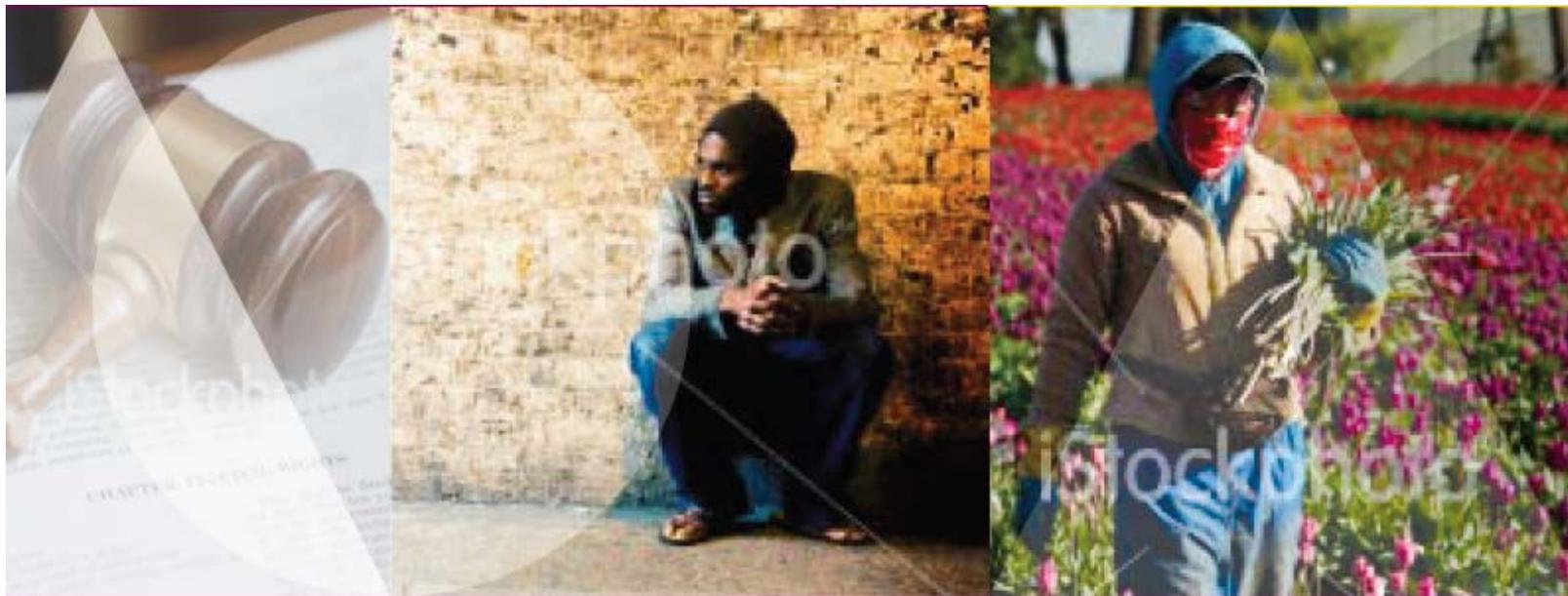
1. Healthcare

2. Education

3. Detection practices

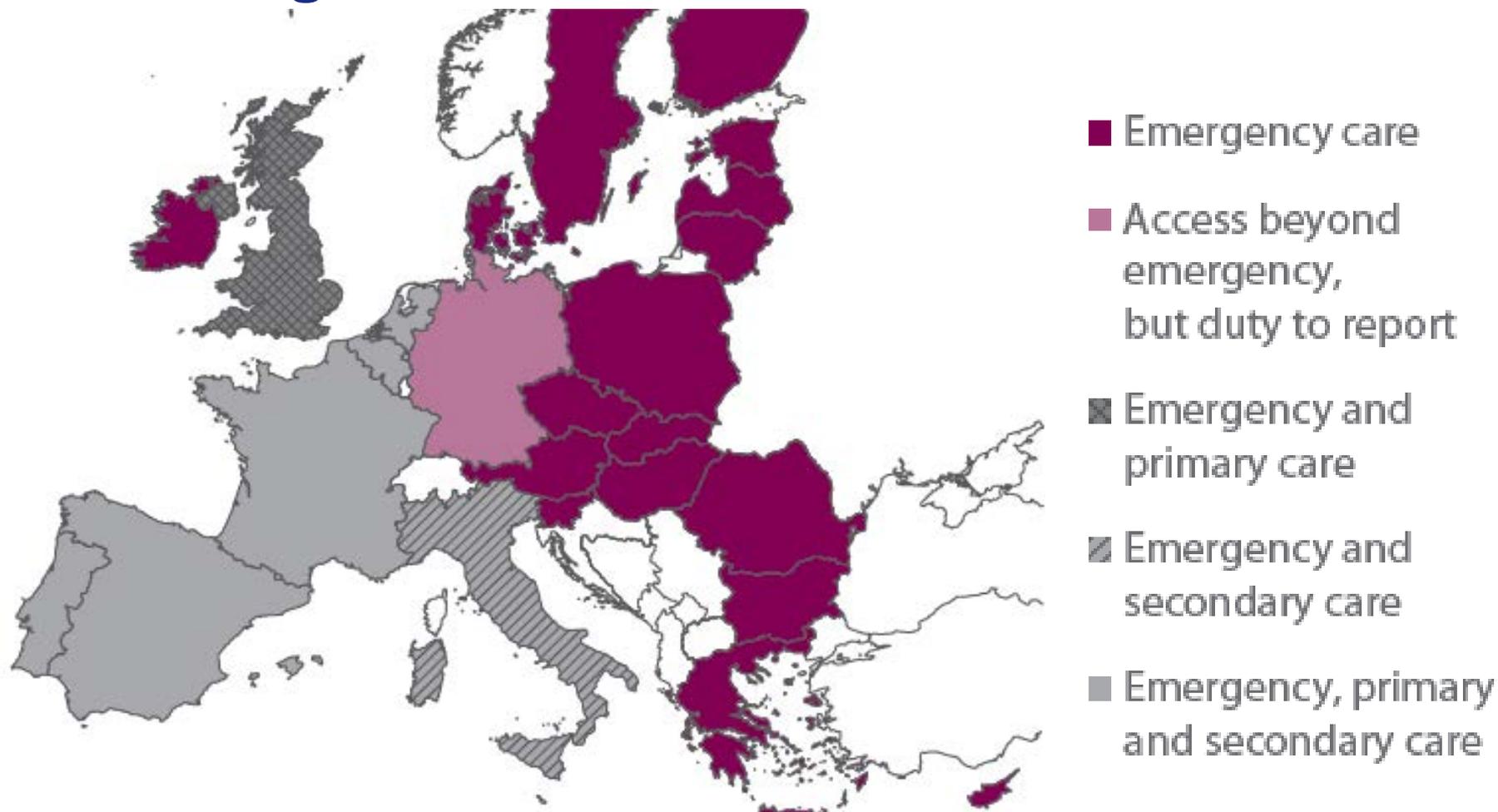
4. Worker's rights

5. Non-removal and impact on fundamental rights



1. Healthcare

General healthcare entitlements for migrants in an irregular situation, EU 27



Special provisions exist in some countries for: children, maternal / reproductive healthcare, transmittable diseases

Migrants in an irregular situation in IRELAND

- **Have to pay for the emergency care** The payment depends on the provider's discretion.

Also in Austria, Bulgaria, Czech Republic, Denmark, Finland, Greece, Hungary, Latvia, Poland and Sweden

- **Screenings** for HIV, Hepatitis & STDs are available free of charge – public health arguments.

Access to healthcare for irregular migrant children

As nationals

- *Greece, Estonia, Romania, Portugal, Spain*

Limited access

- *Germany, Netherlands, Denmark, Poland*

Full access only for unaccompanied minors

- *Belgium, France, Italy, Lithuania, Luxembourg, Cyprus, UK*

Full access if removal has been suspended or postponed

- *Austria, Czech Republic, Luxembourg, Sweden*

Emergency health care

- *Bulgaria, Finland, Hungary, IRELAND, Latvia, Malta, Slovakia*

Entitlements for women who require maternal or birth healthcare and for children

Delivery is considered an emergency in all Member States and medical staff may not refuse to treat irregular migrant women who are in labour. However, there may be costs for childbirth.

In IRELAND, costs depend on healthcare provider

Practical obstacles to access healthcare

Costs

Apprehension of migrants in an irregular situation in accessing care due to the costs.

Fear of expulsion

Migrants in an irregular situation would associate contact with healthcare with the risk of being reported to immigration authorities.

In IRELAND, Immigration Act 2003 contains a duty for public authorities to share information. Interface between the information system of the Department of Social and Family Affairs and that of the immigration authorities.

Promising practice in Ireland

The Immigrant Council of Ireland in Dublin

- Promotes the rights of migrants through advocacy, lobbying and research. And they also conduct outreach with hospital social workers, training them on immigration issues and entitlements

Women's Health Project

- Targets trafficked women whether documented or undocumented

NGOs

- Spirasi: Targets asylum seekers, refugees and other disadvantaged migrant groups
- Cairde: Targets ethnic minority communities, amongst others migrants in an irregular situation

FRA opinion on access to healthcare

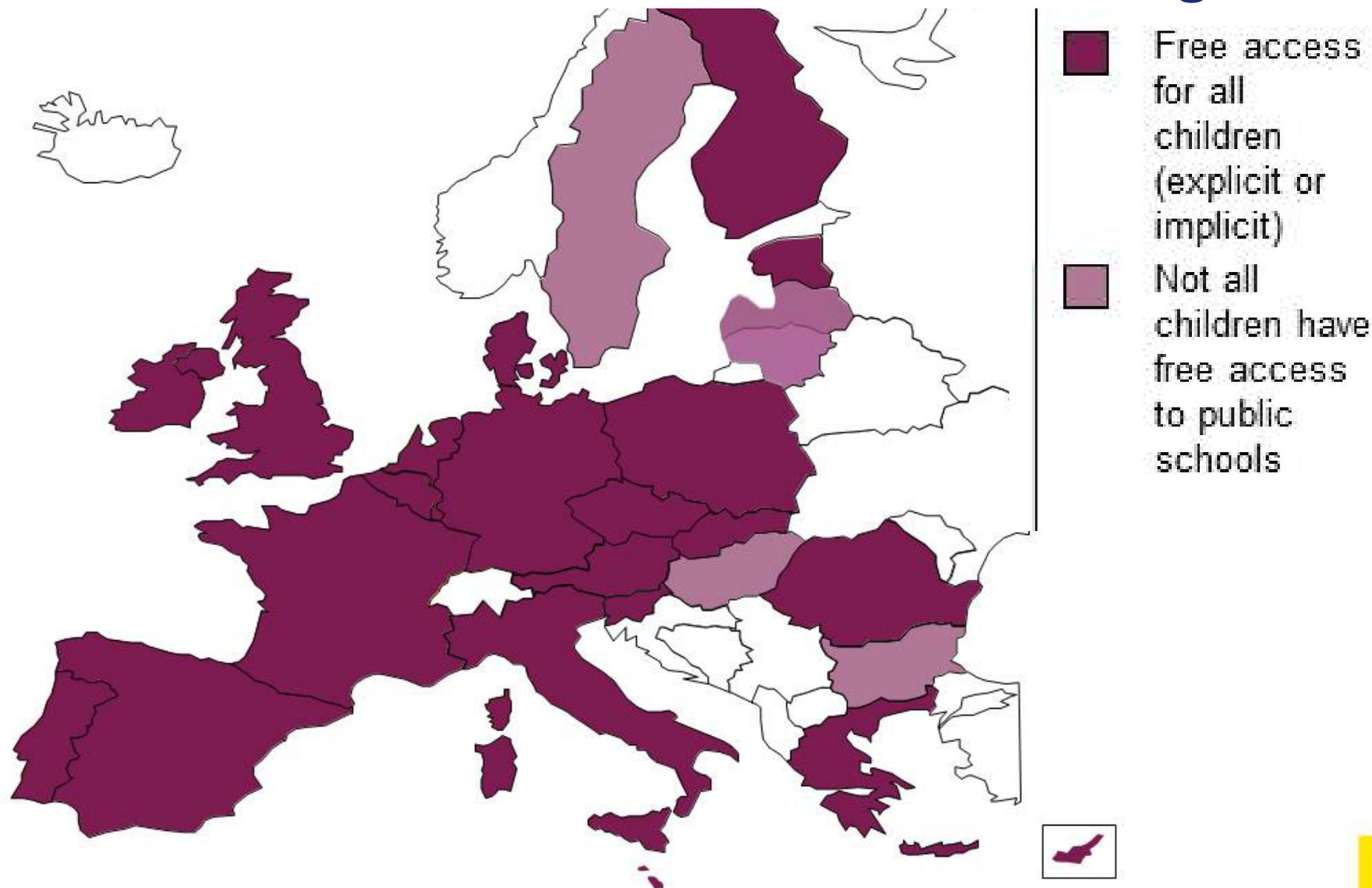
Migrants in an irregular situation should, as a minimum, be entitled by law to access essential healthcare services. Such healthcare should not be limited to emergency care only, but should also include other forms of essential healthcare, such as the possibility to see a doctor or receive necessary medicines. The same rules for payment of fees and exemption from payment should apply to migrants in an irregular situation as to nationals.

EU Member States should disconnect healthcare from immigration control policies. They should not impose a duty to report migrants in an irregular situation upon healthcare providers or authorities in charge of healthcare administration. The absence of a duty by healthcare providers to report irregular migrants should be clearly communicated to them.



2. Education for children

Education for undocumented children in national legislation



Some practical obstacles to access primary education

Documents required

- Many EUMS require birth certificates
- At least 5 EUMS require parents' ID (Austria, France, IRELAND, Spain and in parts of Germany)
- Half EUMS require proof of local residence

Fear of expulsion

- Reporting duties
- Immigration law enforcement practices, (Cyprus, France, Germany, IRELAND, Luxembourg and Spain)

Funding issues

- School budget defined on basis of resident population

FRA opinion on education

Legal provisions should explicitly address the right to education of irregular migrant children, thereby safeguarding their access to education

Instruct school authorities not to require documentation for school enrolment which migrants in an irregular situation cannot procure.

Prohibit the reporting of irregular migrant children to immigration law enforcement bodies and the ex-change of information with such bodies.

Implement information campaigns in cooperation with civil society to raise more awareness amongst migrants and educational authorities about entitlements to education of migrant children in an irregular situation.



3. Detection practices

a) Law enforcement measures

identity documents checks in public places

routine workplace inspections

one-off high-profile raids

routine searches of places of accommodation

arrest of suspects at or near service providers (schools, health centres, religious places)

Enforcement operations on or near school premises were reported by civil society survey respondents in in Cyprus, France, Germany, IRELAND, Luxembourg and Spain.

b) Data sharing

Reporting duties deriving from criminalisation of irregular stay

- Irregular entry and/or stay is a criminal offence in 15 EUMS, including Ireland
- denunciation by private individuals

Reporting duties by certain service providers

- Germany abolished reporting duties by schools end 2011, but duties to report still exist in the healthcare sector;
- Cyprus, 2004 Circular by Ministry of Education and Culture; Section 8, Irish Immigration Act 2003; Article 53(3) Slovak Act on Stay of Aliens

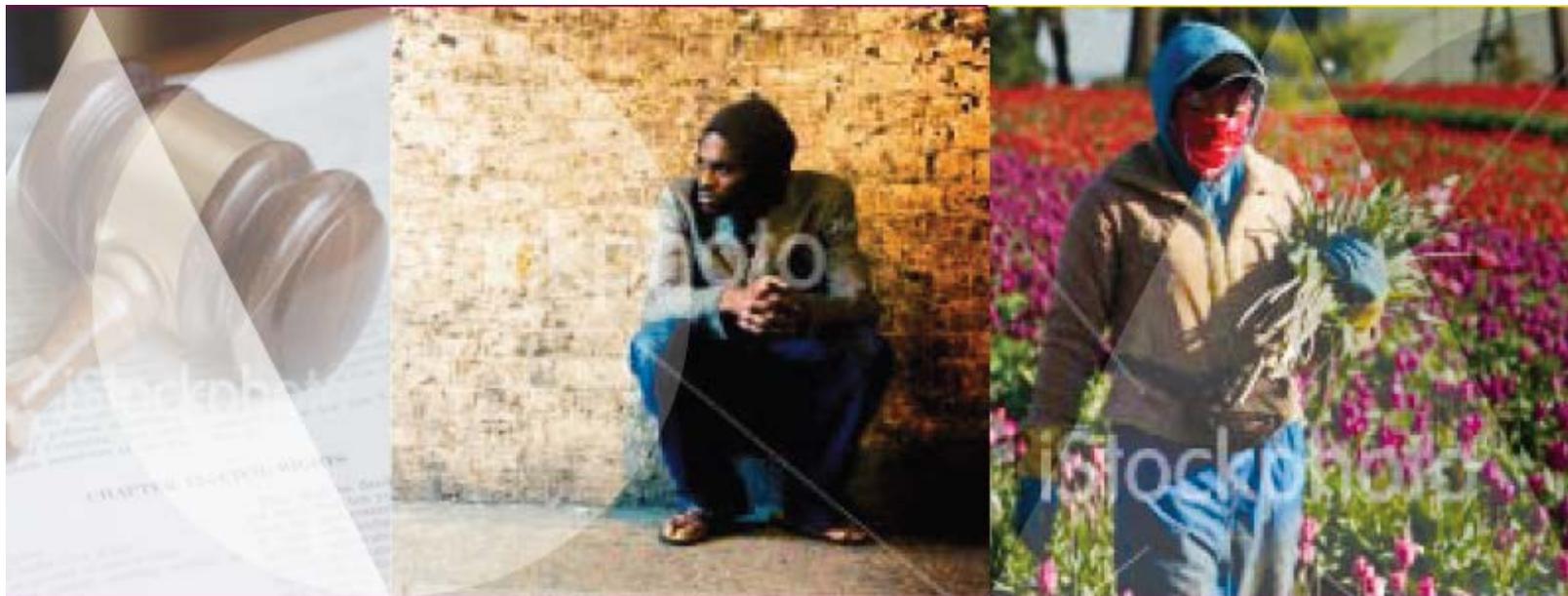
Data exchange practices

- e.g. with local or tax authorities when registering lease agreement [at least 10 EU Member States prohibit or punish renting of accommodation to irregular migrants]

FRA opinion on detection practice and reporting

Member States are encouraged to plan and evaluate detection tactics and operations, developing guidance for police officers, either in the form of a handbook or a list of 'dos and don'ts'; discourage, in particular, apprehensions from or near schools, medical facilities, counselling centres, churches or other institutions offering essential services to migrants.

The guidance should discourage data exchanges between these institutions and immigration law enforcement bodies as this can serve to disproportionately affect migrants' access to basic rights or raise privacy and data protection concerns.



3. Workers' rights

obstacles

Fear of expulsion

Civil society assess risk of deportation as being high in most EUMS

Security of residence during proceedings

1/3 EUMS evidence that although rare, irregular migrants can receive a permission to stay

Low rights awareness

Domestic workers confined to private homes

Evidence requirements

Typically verbal agreements; recruitment is informal, recruiter is not the real employer, difficulty to prove the number of hours worked; witnesses willing to testify

Legal support

Ver.di (German trade union) weekly consultations;

Promising practice

Advocacy

- Migrant Rights Centre Ireland (MRCI)
- Irish Congress of Trade Unions (ICTU)

Claims by migrant workers in an irregular situation

- There are successful claims for back pay and compensation in industrial accidents by migrants in an irregular situation in Belgium, Germany, IRELAND, Italy, Spain and UK .
- Migrants in an irregular situation may receive permission to stay for the duration of a court proceeding on labour dispute cases in the UK, Belgium, Czech Republic, Cyprus, Spain, Italy, Hungary, Portugal and IRELAND.

Coping strategy in case of abusive / exploitative employers

Change
employer

impunity



FRA opinion on employment-related rights

Abolish reporting duties by labour Courts including sharing of personal data. Labour inspections should be disconnected from law enforcement inspections.

Abolish reporting duties by labour Courts including sharing of personal data. Labour inspections should be disconnected from law enforcement inspections.

Establish effective mechanisms to allow migrant workers in an irregular situation to lodge complaints against abusive employers.

Provide the necessary financial or other appropriate support to trade unions, equality bodies and NGOs, so that they can effectively assist migrants in an irregular situation to seek justice, including access to different forms of arbitration.



6. Non-removal and impact on fundamental rights

Technical obstacles: policy options regarding documentation of suspension of removal

No certification of suspension of removal

- possible in all EU Member States

Copy of suspension decision

- three EU Member States

Toleration card / certificate

- Eight EU Member States

Residence permit

- 13 EU Member States (including Ireland)

EU policy context

- Returns Directive (Article 14.1) safeguards certain rights – but only few – for persons whose removal has formally been postponed.
- Neither the Returns Directive nor other EU policy documents provide for a mechanism to put an end to situations of legal limbo that derive from protracted circumstances of non-removability.

FRA opinion on non-removability

EU institutions and Member States should pay more attention to the situation of migrants in an irregular situation who have been given a return decision but who have not been removed

Following the evaluation of the Returns Directive planned for 2014, the European Commission should propose amendments to the Directive to ensure that the basic rights of persons who are not removed are respected

Member States should issue a certification of postponement of removal as required by the Returns Directive. It is an important tool to protect non-removed persons and to facilitate their access to rights. This should also be done when removal is postponed only de facto

Thank you for your attention!

www.fra.europa.eu