

Summary of EMN Ad-Hoc Query No. 2023.34

Access to Education and Employment for Irregularly Staying Migrants,

prepared by EMN the Netherlands on 8 January 2024

1. KEY POINTS TO NOTE

- ★ In most Member States, irregularly staying migrants are not allowed to work (BE, BG, CY, CZ, EE, EL, FI, FR, HU, HR, IE, IT, LT, LU, LV, NL, PT, PL, SK and SI).
- ★ DE and SE grant irregularly staying migrants access to the labour market, if they meet certain conditions. In DE, irregularly staying migrants are allowed to work if they have a temporary suspension of removal. SE allows irregularly staying migrants who started working during their asylum procedure to continue working after a return decision has been issued, as long as they cooperate with preparing to return.
- ★ Most Member States (BE, BG, CY, CZ, EE, EL, FR, HU, HR, IE, IT, LT, LU, LV, NL, PT, PL, SK and SI) exclude irregularly staying migrants from vocational training, because they cannot obtain a work permit. SE allows some irregularly staying migrants to work but does not allow them to follow vocational training. DE provides irregularly staying migrants access to vocational training, if they have a temporary suspension of removal. FI allows irregularly staying migrants to follow vocational training but exempts them from apprenticeship training.
- ★ In most Member States (BG, HR, CY, EE, HU, IR, IT, LT, LU, LV, NL, PT, PL, SK, SI and SE), a residence permit is required for access to higher education. Some of these Member States (EE, IT,

HR, LT, NL) may grant irregularly staying migrants a temporary residence permit for study purposes, if they leave the country and lodge an application through the competent diplomatic or consular post in their country of origin. However, LU may grant long-term irregularly staying migrants a residence permit for study purposes, for which they can apply in LU if they have such close ties to the country that removal from the territory would be disproportionate.

- ★ In other Member States (BE, CZ, DE, EL, FI, FR), a residence permit is not a formal requirement for following higher education, meaning irregularly staying migrants have access to higher education to some extent. In DE and FR, irregularly staying migrants may obtain a residence permit for work after graduation. Still, barriers remain, such as language criteria (EL, FI) and administrative obstacles (BE).

2. BACKGROUND AND CONTEXT

In the Netherlands, civil society organisations, several higher education institutions and municipalities are raising awareness about irregularly staying adult migrants who want to enrol in higher education. These are currently not allowed to enrol to study in higher education or vocational training without a residence permit. The Netherlands was interested to learn more from other Member States' legal frameworks, policies and practices regarding these migrants' access to education.

As such, this ad-hoc query aimed to gather information about whether Member States have taken steps to provide for or improve access to education for irregularly staying migrants. This includes for example persons with long-term irregular stay, young adults who previously stayed legally as an unaccompanied minor, persons whose asylum claim has been rejected, and those that fail to meet all the criteria for a resident permit (e.g., due to lack of documentation or financial means).

For the purpose of this ad-hoc query, 'irregular stay' was defined as 'The presence on the territory of an EU Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) EN or other conditions for entry, stay or residence in that EU Member State.'¹

3. MAIN FINDINGS

3.1 Is it possible for irregularly staying migrants to enrol, or continue higher education or vocational training regardless of their irregular stay?

In most Member States (BG, CY, HR, EE, HU, IE, IT, LV, LT, LU, NL, PT, PL, SK, SI, SE), it is not possible for irregularly staying migrants to enrol in or continue higher education or vocational training. However, in several other Member States (BE, CZ, DE, GR, FI, FR), having a residence permit is no formal requirement for higher education. In **BE**, irregularly staying migrants can enrol in higher education, although they are rarely admitted in practice because educational institutions do not receive subsidies for students without a residence permit. Similarly, **EL** does not exempt irregularly staying migrants from higher education explicitly, but practical barriers make enrolment highly unlikely. In **CZ** and **FR**, universities do not check whether students have a valid residence permit.

While BE, EL, CZ and FR grant irregularly staying migrants access to higher education, they exempt irregularly staying migrants from vocational training, because that requires a work permit.

FI allows long-term irregularly staying migrants to enrol in higher education and vocational training if they can prove they have the required prerequisite qualifications and adequate Finnish or Swedish language skills. In addition, they may enrol in liberal adult education (educational institutions such as adult education centres, folk high schools, learning centres, sports training centres and summer universities) at

their own expense. Apprenticeship training, however, is not accessible to irregularly staying migrants, because such training requires a work permit.

DE grants irregularly staying migrants access to both higher education and vocational training, if they have a temporary suspension of removal.

3.2. If irregularly staying migrants have access to education, what perspective is provided after they graduate?

In **DE**, irregularly staying migrants who have completed their vocational training or studies can receive a residence permit for two years, for employment corresponding to the acquired degree. Under certain conditions, this residence permit can be extended, opening the way to regular residence for the purpose of gainful employment. **FR** also allows for a regular residence permit in exceptional cases, based on the irregularly staying migrant's personal and family ties to France, their work experience, or exceptional talent or service to the community.

3.3. Are there any initiatives and good practices which aim to remove barriers to higher education or vocational training for irregularly staying migrants?

DE allows irregularly staying migrants with a temporary suspension of removal to follow higher education or vocational training. Furthermore, from March 2024 on, irregularly staying migrants can obtain a residence permit for vocational training, which will legalise their residence during the training period. In **FR**, irregularly staying migrants between the age of 16 and 18 may apply for an exceptional admission to stay, which allows them to continue their studies after they turn 18. **NL** has several private and local initiatives, which support young adult irregularly staying migrants in applying for a residence permit for the purpose of study.

3.4 Is it possible for irregularly staying migrants to obtain a residence permit for study purposes?

In most Member States (BE, BG, CY, HR, PL, CZ, EE, DE, PT, HU, SI, IE, IT, LV, LT, LU, SK, NL, SE), it is not possible to obtain a residence permit for study purposes. However, HR, EE, DE, PT, IE, IT, LV, SK, and NL note that this is possible when an irregularly staying migrant leaves the country and lodges an application through the competent diplomatic or consular post in their country of origin.

In a few Member States (FI, FR and EL), it is possible to obtain a residence permit for study purposes. In **FI**, it is possible if an irregularly staying migrant fulfils the following conditions: sufficient financial resources (550 euros/month) and a valid passport. However, a long-

¹ EMN Glossary

term irregular stay in Finland can be an obstacle for granting the residence permit. In **FR**, it is possible to regularise, on an exceptional and case-by-case basis, the situation of irregularly staying migrants through the exceptional admission to stay procedure. Graduation and continued studies could amount to a reason supporting regularisation. In **EL**, third country nationals who are not holders of a valid residence permit but have attended Greek schools and institutions and fulfil certain preconditions may be granted a residence permit. There are three types: a three year residence permit if they have resided in the country for seven consecutive years; a five-year residence permit for third-country nationals born in Greece and who have completed six grades of a school in Greece; and a ten-year residence permit for adult third country nationals who entered Greece as unaccompanied minors and have successfully completed at least three grades of secondary education at a school in Greece before reaching the age of 23.

3.5 Which challenges may irregular migrants face in obtaining a residence permit for study purposes?

For most Member States (BE, BG, CY, CZ, EE, EL, HU, IE, IT, LV, LT, LU, PL, PT, SK, SI and SE) this question was not applicable, or no challenges were identified or known. In **SE**, for example, access to education for irregularly staying migrants is not an item on the political agenda and therefore the challenges are unknown.

However, some Member States (HR, FI, DE, and NL) identify challenges with regard to obtaining a residence permit for study purposes. **HR**, **DE** and **NL** identify that for irregularly staying third-country nationals the problem is mainly returning to the country of origin for applying for a temporary residence permit (most often they refer to high travel costs or health reasons). For **NL** the main identified challenge for irregularly staying migrants is obtaining travel documents that prove their identity and nationality. Moreover, **DE** experiences a challenge in communicating to those affected and their supporters that this regular procedure, which first requires departure from Germany, must be adhered to. In **FI**, it might be challenging for irregular migrants to fulfil the conditions for a residence permit: e.g., having sufficient financial resources and a passport. Furthermore, as they do not have access to legal labour market in Finland, it can be difficult to arrange 6720 euros for the first year of study. In addition, many irregular migrants do not have a passport with them or have lost it.

3.6. Are irregularly staying migrants allowed to work?

In almost all Member States (BE, BG, HR, CY, CZ, EE, FI, FR, EL, HU, IE, IT, LV, LT, LU, NL, PL, PT, SK, and SI) irregularly staying migrants are not allowed to work if they do not hold a residence and/or work permit. Legalisation of their stay is needed in order to be entitled to work.

SE and **DE** are the only Member States that allow irregularly staying migrants access to the labour market, under certain conditions. In **SE**, asylum seekers who have received a return decision and are preparing their departure may continue to work, if they were already doing so during their asylum procedure. In **DE**, irregularly staying migrants can work if they have received a temporary suspension of removal because their return cannot be carried out, provided that there are no grounds for exclusion in place (for example an unclear identity). To pursue this, they must obtain permission from the immigration authorities.

EMN National Contact Points (NCPs) participating:

Responses from Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden (22 in total).

Disclaimer: The responses of the Member States regarding this ad-hoc query have been provided primarily for the purpose of information exchange among the EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided information that is to the best of their knowledge up-to-date, objective and reliable. However, the information provided in the present summary is produced under the exclusive responsibility of the EMN the Netherlands and does not necessarily represent the official policy of an EMN NCP's Member State. The responses are interpreted by EMN the Netherlands to write this summary.