

PRIME

Protecting Irregular
Migrants in Europe

Measuring and Analysing the Social and Labour Rights of Irregular Migrants: New Indicators for Twenty-Eight European Countries

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Abstract

There is substantial societal and political concern about the social and labour market vulnerabilities of migrants living and working in European countries without the legal right to reside. In this context, the role of legal rights for “irregular migrants” as a means of addressing some of these vulnerabilities is an important issue that remains underexplored. We lack systematic evidence on the social and labour rights that irregular migrants can claim based on the national laws of host countries, on how rights vary cross-nationally, and how rights affect irregular migrants’ conditions and capabilities. To address these gaps, this paper introduces ‘IRMIGRIGHT’ - the first bespoke database of social and labour rights of irregular migrants in twenty-eight European countries. It advances a multidimensional conceptualisation of the rights of irregular migrants as “capabilities” and develops a novel set of indicators to measure the breadth and depth of irregular migrants’ rights. The database is innovative in methodological terms in its analysis of both explicit and implicit modes of rights protection and exclusion of irregular migrants under national laws. Key findings indicate significant variation in how European countries protect the rights of irregular migrants and in the types of rights protected, with labour rights better protected, on average, than social rights. Where rights are legally guaranteed to irregular migrants, there are large gaps in the quality of those rights, measured relative to the rights of citizens: in particular, irregular migrants enjoy substantially less freedom in claiming and enforcing their rights and, in many countries, they are subject to discriminatory user costs (surcharges) for accessing public healthcare including emergency services.

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PRIME

Protecting Irregular Migrants in Europe (PRIME) is an international research and policy project that analyses the conditions and politics of irregular migrants in Europe. PRIME is run through a consortium of seven migration research institutions (pictured below). This research paper is a slightly revised version of PRIME Deliverable 3.1.

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1. Introduction: What rights for irregular migrants in Europe?

Rights, and particularly socio-economic rights, are characterised by contestation. Exactly who has rights, the precise nature and extent of those rights, and the costs of rights enforcement and non-enforcement, are matters which animate political and social debate and are at the heart of the social policies which make up the national welfare states of advanced democracies. Despite what, for many, may be the comforting anchors of international human rights and national constitutional rights, rights are seldom fixed, always open to reinterpretation and, once gained, in need of regular reinforcement and defence.

If the determination and enforcement of rights presents a general challenge for national governments, a very particular challenge is associated with delineating the rights of migrants whose immigration status is “irregular”; that is, migrants without the legal right to reside in the host country. Countries with liberal democratic values face an inevitable “goal conflict” between, on the one hand, upholding their duties to protect the fundamental rights of all persons in their territories (as established in national laws, constitutions and in international human rights treaties to which they are state parties) and, on the other hand, maintaining state authority to control immigration and regulate national borders (Fox-Ruhs, et al. 2024). The conflict manifests itself institutionally and politically, including in the operation of illegality principles which invalidate ‘unlawful’ contractual relationships and all rights derived thereunder (see e.g. Bogg and Novitz 2014), in the design of particular social policy provisions, and in tensions between laws at the regional, national and constitutional levels.

In global terms, European countries are particularly susceptible to the goal conflict associated with policies on irregular migrants, having some of the world’s oldest and most developed welfare states and systems of national constitutional and human rights protections, as well as being recipients of sizeable numbers of irregular migrants.¹ Despite many shared values and common economic and political objectives (particularly within European Union Member States), well established variations in the welfare states, labour markets, political, legal and cultural traditions of European countries (e.g. Korpi 1980, Esping-Andersen 1990, Korpi and Palme 1998, Hall and Soskice 2001) might lead us to anticipate important cross-national differences in how individual countries perceive of, and respond to, the goal conflict. In consequence, we would also expect differences in the rights that European countries guarantee to irregular migrants under national laws.

Since institutional settings are likely to be related to different political and organised interests, we can further expect that country-specific interest-based dynamics will also shape the goal conflict and, thereby, cross-national approaches to rights provision. We can think, for example, of the interests, structural dependencies (and profits) that may be associated with certain industries or models of healthcare and eldercare that would need to adapt to survive in the absence of irregular migrant labour. There are also general popular interests in maintaining public health, keeping all children learning and in schools, and managing homelessness on the streets that might shape support for basic healthcare, education and shelter for migrants and their children. Concerns

1 Kierans and Vargas-Silva 2024, estimate irregular migration stocks of between 2.6-3.2 million in 12 European countries over the period 2016 to 2023.

about irregular migrant workers undercutting citizen workers and subverting labour standards, are further likely to influence the nature of labour rights protections at national law levels and how these apply to irregular migrants.

If there is ambition to explore the *dynamics* of rights provision for irregular migrants in European countries and to understand how countries navigate the goal conflict in reaching policy decisions on such provision, we first need better and deeper understanding of the rights of irregular migrants *per se* and how rights provision varies across national laws. In particular, we need to know the types of rights that countries are most and least likely to protect in respect of irregular migrants, the patterns and modes of rights provisions, and whether there are any particular institutional contexts that are more and less amenable to certain protections for irregular migrants. Existing cross-national research on the rights of irregular migrants has only begun to scratch the surface of these issues (e.g., Fox-Ruhs and Ruhs 2022, FRA 2021).

One approach to developing better cross-national knowledge of an understudied and complex phenomenon like irregular migrants' rights is to develop an index. Index construction requires us to identify or break down, in conceptual terms, the composite components of the understudied phenomenon and to develop empirical indicators which then measure these components. By subsequently putting together or "aggregating" the composite indicators, we are able to measure and assess the full breadth of the given phenomenon on a single scale that allows us to make fair and reasonable comparisons across country contexts and over time (for discussion see e.g., Bjerre et al. 2015, McCormick and Mitchell 1997, and Wallace Goodman 2015).

While attempts have begun to include measures of the rights of irregular migrants in existing cross-national indices measuring general migrant rights' (see e.g., Huddleston et al. 2015, Solano and Huddleston 2020, Helbling et al. 2017, de Haas et al. 2014, EMN 2021 and Römer 2022), the totality of these existing indices does not provide a comprehensive picture of irregular migrants' rights. Some indices cover only a narrow range of social rights while others fail to include labour rights. In certain instances, there are limits to the European countries for which data is collected and, in other cases, datasets aggregate data on social rights for *all* categories of migrants in constructing their indices.

We argue that analysing the rights of irregular migrants cross-nationally merits the construction of a bespoke irregular migrant rights' database ('IRMIGRIGHT') – one which is attentive to the precarity and particular vulnerabilities associated with the irregular migrant status, and which is equipped to analyse the potential of legal rights provisions to enhance irregular migrants' conditions. To this end, we develop a multidimensional approach which conceptualises and measures the legal rights of irregular migrants as "capabilities" (c/f. Sen 1985 and 1999, and Nussbaum 2000). We operationalise this approach by analysing the national laws of twenty-eight European countries in relation to sixteen social and labour rights using a novel set of indicators which measure four key rights dimensions - coverage, adequacy, costs and agency. This enables us to assess not only the presence and absence of rights protections but, critically, the 'quality' of rights from the perspective of the capabilities of irregular migrants. Given the potentially important *implied* effects of national labour and contract laws, social welfare/security laws, and constitutional and equality laws on the rights of irregular migrants, our analysis examines both implicit and explicit modes of rights protection and exclusion.

Section 2 of the paper conceptualises the "legal rights" of irregular migrants as "capabilities" and outlines the significance of four key rights dimensions - coverage, adequacy, costs and agency.

Section 3 explains the scope of the IRMIGRIGHT dataset, the rights indicators and approach to aggregation, and the method of data collection. In section 4 we analyse and discuss key findings from our rights indicators and Section 5 concludes with a summary of thematic findings, reflections on the limitations of our research and suggestions for future research in this field.

2. Conceptualising the Legal Rights of Irregular Migrants: A Capabilities-Inspired Multidimensional Approach

In order to measure the legal rights of irregular migrants we first need to clarify how we conceptualise such “legal rights”. Drawing on the very broad and expansive rights literature (see e.g. Waldron 1993), we begin with a basic conception of legal rights as the positive law-based enforceable claims of individuals to certain “goods” vis-à-vis the state and others, which claims such others are duty-bound to meet. We understand “goods”, in terms of what Berlin (1969) defined as the positive and negative liberties of individuals. Goods thus comprise access to material resources (positive liberties) that serve to equip individuals with, among other things, sufficient income, health, education and wellbeing such that they may live free from the struggle for basic, everyday subsistence (for discussion see Goodin 1988). They also include negative liberties; namely freedoms to engage in forms of human expression and behaviour (both individually and collectively) without undue interference from the state and subject only to respect for the rights of and duties owed to others.

Claim rights that can be enforced under national laws

A conception of rights as the claims of individuals speaks to the centrality of human agency in the process of realising and enforcing rights. Fundamental or human rights are said to exist because of the capacity and freedom of individuals to assert claims to a particular treatment by others based on the inherent dignity and personhood of the individual (c/f. Dworkin 1978, Feinberg 1980,). When such “claim rights” are however recognised not just as a matter of moral authority but rather by the positive laws of national governments (or otherwise) we can think of these claim rights as “legal rights” (Hart 1994, Weale 1983).

Legal rights necessarily require an element of enforceability, hence the adage that there is no right without a remedy. Given that we operate in a world of nation states, the positive laws on which claim-rights are based must therefore be laws that are directly enforceable within *national legal orders* in order to satisfy our understanding of “legal rights”. So-called “soft law” in, for example, the form of international human rights law based on collectively agreed treaties and conventions, gives rise to enforceable legal rights at the national level only where such law has been incorporated or otherwise endorsed in national legal frameworks, or where the signatory nation state has bound itself to enforcement mechanisms associated with the given treaties.

Two international treaties which make explicit provision for the rights of irregular migrants – the 1990 UN Convention on Migrant Workers and their Families and the 1975 ILO Migrant Workers (Supplementary Provisions) Convention (No. 143) have, respectively, had either no ratifications from any major high-income migrant-receiving country (including all EU countries and the UK) or signatures by only a handful of European countries² (see Ruhs 2013). Moreover, since immigration status is not a ground that is expressly pro-

2 Cyprus, Italy, Portugal, Slovenia and Sweden have all signed ILO Convention No.143.

tected from discrimination under most international human rights standards, *general* rights treaties such as those of the United Nations, the European Convention on Human Rights (ECHR) and the European Charter, are liable to narrow interpretations by national authorities, and are often limited to citizens and regular migrants with some countries entering express reservations to this effect (Fox-Ruhs and Ruhs 2022). Although national courts have been known to interpret *universally applicable* civil and political rights – such as the Article 3 ECHR freedom from inhuman and degrading treatment – as giving rise to certain minimum socio-economic duties on the part of host countries in respect of irregular migrants,³ such universal civil rights are not themselves tantamount to a right to basic subsistence support for all. Moreover, fundamental rights that are not absolute – such as freedoms of association – may be liable to restriction based on democratic considerations, including those related to the enforcement of national immigration laws (see Council of Europe/European Court of Human Rights 2024).

Legal rights as distinct from discretionary powers

The notion of enforceable claims is critical for distinguishing “legal rights” from the ‘goods’ that individuals may enjoy as the result of the exercise of state discretionary powers. Where state authorities have discretion in the area of public service provision, the claim of an individual to a certain benefit does not compel the state to act (i.e. there is no duty-bearer in the same way as arises under a legal rights formulation) nor does the claimant enjoy the same nature of remedies in the event that discretion is not exercised in the way that the claimant had sought (see e.g., Titmuss 1971). Although administrative discretions can be wide or narrow, in all cases they shift power away from the individual (prospective beneficiary) and in favour of the responsible state actor (Goodin 1986). The individual left unserved or under-served by the discretion can at best hope to initiate a review process to consider if the discretionary power was properly and fairly exercised in accordance with the relevant framework of rules.

Maintaining a clear distinction between legal rights and discretionary powers is particularly important when conceptualising the rights of irregular migrants given that, from the perspective of host governments, discretionary powers may be regarded as an attractive alternative to rights. Discretions enable government actors to respond flexibly to individual basic *needs* on a case-by-case basis, while reducing the perceived economic and political risks (including alleged irregular migration “pull factors”) associated with more stable and uniform rights provision.

Implied rights

While positive law is at the basis of our conception of legal rights, we understand positive law in comprehensive, contextualised and dynamic terms in such a way as speaks to a type of interpretivist legal tradition (see Stavropolous 2021). We do not conceive of positive law as concerning only black-letter statutory or codified law but rather as encompassing the full range of laws, including constitutional law, case law, legal precedents and principles which should be read panoramically. To this end, we place conceptual importance on the legal rights of individuals that can be *implied* from the breadth of relevant national laws and we do not limit our understanding of legal rights only to statutory laws which, on the face of the legislation, are explicit about the scope of their application (see e.g., Whyte 2002 for analysis of implied rights in legal practice).

3 See, for example the judgment of the UK’s House of Lords in *R(Limbuela) v Secretary of State for the Home Department* (2005) UKHL 66 and a subsequent aligned decision of the English Administrative Court *R (Aburas) v London Borough of Southward* [2019] EWHC 2754.

The notion of implied rights is an important recognition of the fact that legal rights frequently derive from operational principles of universalism, contribution and other forms of social participation that govern national constitutional, social welfare/social security and labour laws. When it comes to irregular migrants, in respect of whom such welfare and labour laws may not originally have been designed, careful and reasoned analysis is required to determine whether such migrants are protected by legal rights provisions drafted in the general terms of “persons”, “employees”, “workers”, “insured/uninsured”. Much depends on the eligibility requirements for membership of these particular classes of individuals and the effects, if any, of the migrant’s irregular immigration status. *De facto* inclusion may be ruled out by *de jure* exclusion owing to the application of illegality principles which nullify legal rights (that would otherwise apply) on the grounds of irregular migration status.

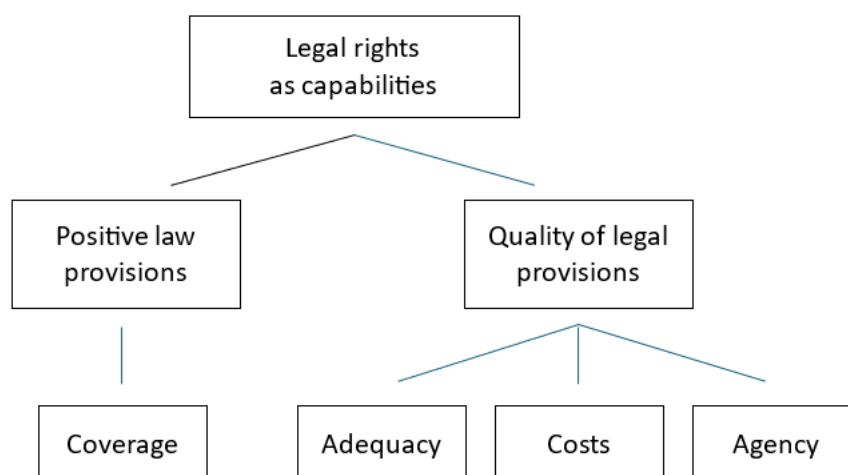
Attending to the matter of implied rights is particularly important where rights provisions are politically controversial, such as is the case for irregular migrants but also for other potentially socially marginalised groups such as children, and the long-term unemployed. In these scenarios national governments may have strategic reasons to rely on implied rights formulations that quietly address the treatment of irregular migrants. Indeed, in respect of irregular migrants, implied rights may be part a deliberate strategy by which national governments manage the conflicting goals associated with upholding fundamental rights and immigration laws (Fox-Ruhs et al. 2024).

Legal rights as capabilities

The foregoing basic conceptualisation of “legal rights” provides us with core parameters for identifying the presence of positive law rights and for distinguishing such rights from discretionary powers and human rights. If, however, we were to end our conceptualisation here, we would be left with a rather thin or minimalist concept that would provide little scope for comparing and analysing variety in the *quality* of the legal rights of irregular migrants across countries. To add depth and breadth to our conceptualisation, we therefore adopt what Beitz (2009), in the human rights context, has described as a “practical conception” of rights; that is to say, we conceive of “legal rights” in terms of their *functionality* so as to build a *multidimensional conception* that incorporates both the essence and utility of such rights from the perspective of the would-be rights-claimant.

Taking the work of Berlin (1969) as our point of departure, we conceive of rights as designed to *expand the freedoms of individuals*, both in the form of “positive liberties” – those freedoms derived from the active supply to individuals of material resources and social goods (e.g. education) - and “negative liberties” - the freedom from state interference in individual choices and behaviours. Such freedoms enhance the resources and agency of individuals and thereby promote what Sen (1985, 1999) and Nussbaum (2000) have defined as “human capabilities”. A capabilities-inspired approach prompts us to conceive of legal rights beyond their *intrinsic value* for claimants and to consider also the function of *rights as means* to potentially enhance the conditions and agency of individual rights claimants. We depict this conceptualisation of legal rights as capabilities in Figure 1 below.

Figure 1: Conceptualisation of legal rights as capabilities



The notion of “legal rights as capabilities” is made up of (1) a basic conception of legal rights as “positive law provisions” (comprised of enforceable claims to ‘goods’ which the state and others are duty-bound to meet), and (2) legal provisions that differentiate the “quality” of those legal rights as defined under (1). We understand that the functioning of legal rights as capabilities is shaped by at least four critical dimensions. These dimensions relate to *who* can claim legal rights (“coverage”); *what*, of value, can be claimed (“adequacy”); *which* rights costs are borne by whom (“costs”); and *how* much freedom individuals have to claim rights (“agency”). Variation on these legal rights dimensions will substantively alter the nature of the right - potentially rendering functionless the legal right and, in some circumstances, challenging the very “rights” character of the phenomenon.

Coverage. All positive law rights provisions have a subject-group or target population. It therefore goes without saying that legal rights only function to enhance the freedoms of those individuals who are “covered” by rights provisions that they can subsequently claim and enforce. Naturally, the more encompassing or fully universal the legal right, the greater the coverage. Rights are however often constructed in ways that limit coverage to specific societal sub-groups (for critical see discussion see Miller 2002). Coverage might be restricted by a wide range of social objectives, such as the perceived needs of certain social groups, cost effectiveness, and logics of fairness or appropriateness. Based on such types and combinations of objectives we can discern between rights coverage that is limited on grounds of personal human attributes (e.g. age, gender and disability) and coverage that is limited according to behavioural pre-conditions (e.g. paid social security contributions, duration of employment, length of territorial residence). In respect of irregular migrants, common conditions for accessing rights relate to duration of stay in the host country, to public registration or similar bureaucratic requirements, and potentially to co-operation with immigration law enforcement authorities.

Adequacy. The freedom offered by a right depends critically on the adequacy of what is legally guaranteed; namely whether the ‘right’ satisfies the minimal definition of a ‘good’. However, the matter of whether and the extent to which a right provides something of value to individuals is always a relative assessment. When, for example, does a right to education offer something objec-

tively recognisable as “education”? Similarly, when does a minimum wage provide an economic guarantee that effectively protects workers from exploitation? Criteria or benchmarks are typically used for identifying the minimum thresholds needed to establish a certain rights provision as a ‘good’. We take the view that adequacy should be assessed in social relational terms, so that, in the case of irregular migrants who are frequently on the margins of host societies, “rights adequacy” requires access to resources that boost the capabilities of such migrants in those specific host society contexts.

Costs. No legal right is cost-free given the resources associated with rights provision and enforcement (c/f. Waldron 1993 and see also e.g. Chilton and Versteeg 2020). How and by whom such costs are absorbed affects the capabilities associated with the legal rights. This is particularly true of certain legal rights in the domain of social provision (e.g. in the areas of healthcare and education) that are commonly formulated in ways that incur *user-charges* for the rights claimants. In the extreme cases, user-costs may be so high as to constitute an insurmountable barrier to rights claims or may act to deter rights claims in circumstances where the required investment would likely undermine an individual’s capabilities more generally. Irregular migrants are potentially more susceptible than citizens to higher user-costs associated with social rights because of their irregularity and/or lack of insured status.

Agency. The agency of individuals to exercise the freedom to claim legal rights is, as already discussed, core to the very essence of rights. However, the degree of agency that individuals enjoy in claiming rights is likely to vary substantially across contexts. Agency to claim rights is more constrained in circumstances where the ‘good’ associated with the right is diluted or, (in extreme cases) effectively cancelled out, as a result of the probable negative consequences accruing to the rights claimant and/or relevant others as a direct result of the rights claim. Legal rights must thus be evaluated in the context of the broader legal (including legislative) framework within which such rights are claimed and enforced. In the case of irregular migrants, multiple factors associated with the interactions between immigration law and social welfare and labour laws may be present which constrain individual freedom to claim the rights that are provided in positive law.

3. Methods and Data

Scope: countries, rights, and “irregular” migrants

Our dataset is based on an analysis of national laws in the twenty-seven Member States of the European Union, and in the former Member State of the United Kingdom. Viewed globally, these countries constitute “most similar cases”, sharing as they do (with the recent exception of the UK), a single market, a common political framework including a common asylum and immigration programme,⁴ and a core set of fundamental rights values as enshrined in the European Charter of Fundamental Rights and Freedoms. At the same time, the countries also exhibit important differences in terms of welfare state and labour market settings, constitutional and political arrangements, and relative economic development (particularly between established and more recent Member States). Such institutional variation within a set of common parameters, sets up a potentially rich empirical basis for subsequent exploratory comparative institutional analysis based on the data from the IRMIGRIGHT dataset.

4 Denmark and Ireland have reserved the right to “opt out” of common asylum and immigration policies, under the respective terms of the Edinburgh Agreement to the Maastricht Treaty and the protocol to the Treaty of Amsterdam. The UK followed a similar approach prior to leaving the EU.

In view of our conceptualisation of legal rights as capabilities, we chose to analyse a range of social and labour rights known for their significance in the lives and experiences of irregular migrants in European host countries (e.g. FRA, 2021). As displayed in Table 1 below, the rights analysed in the IRMIGRIGHT dataset include both cash benefits and services, short term/one-off emergency and non-emergency rights, rights vis-à-vis the state and rights vis-à-vis third parties such as employers (i.e. horizontal and vertical rights), and rights of both the positive and negative liberty varieties. Such variety in rights *types* allows for the future use of the dataset to analyse potential correlations between, on one side, patterns of social and labour rights at the country and rights levels and, on the other, the institutional logics of different social policy programmes and the interests of particular political actors.

Table 1: Social and labour rights analysed in the IRMIGRIGHT database

Social Rights	Labour Rights
Emergency healthcare	Minimum wage/collectively agreed wage
Primary healthcare	Recovery of unpaid wages
Maternity healthcare	Workplace health and safety
Specialised healthcare	Maximum weekly working hours
Compulsory education	Compensation for workplace injuries
Further education/training	Right to join or form a trade union
Emergency subsistence income support	
Emergency shelter	
Guaranteed minimum income	
Social housing	

It is also important to be clear about whose rights we aim to measure and analyse. “Irregular migrants” are defined in our research as migrants without the legal right to reside in a host country. Given our analytical focus on the relationship between *irregular status* and rights, we exclude from our data analysis any irregular migrants who have acquired a *protected status* under the national laws of host countries since the latter status is normally associated with an expanded and distinct set of rights for such individuals relative to the general irregular migrant group. Those with protected status include, for example, irregular migrants who receive special treatment as trafficked individuals or as unsuccessful asylum applicants with “tolerated” or “duldung” status (e.g. in Germany and Austria) in circumstances where the return of such migrants to their countries of origin (or first asylum claim countries) cannot be effectuated due to legal and practical hurdles (see e.g. discussion in Hinterberger and Klammer 2020).

Measurement: Rights Indicators and Aggregation

To measure the social and labour rights of irregular migrants in European countries, we developed a series of rights indicators. These indicators reflect our conceptualisation of legal rights as capabilities and are therefore designed to provide empirical measures of what we consider (as discussed in section 2) to be the four composite dimensions of the legal rights of irregular migrants: namely, “coverage”, “adequacy”, “agency” and “costs”. The majority of rights (i.e. the complete set of 6 labour rights and the 4 social rights relating to emergency and non-emergency

income support and housing) are measured according to the first three indicators only. The costs indicator is additionally used to measure those *social rights* which could theoretically result in user-costs for the rights claimant: in our dataset, such rights include the four healthcare rights, and both education rights.

We score each rights indicator on a scale ranging from 0-1, with 0 representing the bottom and 1 the top of the scale. In the case of the coverage and adequacy indicators, we attribute scores on a five point ordinal scale (0, 0.25, 0.5, 0.75 and 1) while for the agency and cost indicators, a three point scale is used (0, 0.5 and 1). Our decision to vary the number of scoring intervals depending on the rights dimension (indicator) measured, reflects our views on the different nature of the four rights indicators, the scope of the available data that is measured, and the variation that such variables are likely to yield based on empirical observation.

Rights Indicator 1: Coverage

Our “coverage” rights indicator measures the extent to which legal rights provisions at national law level include the irregular migrant population in a given social or labour rights provision. To establish *some degree* of rights coverage, both elements of a right and remedy must be present. To establish the *extent* of rights coverage for the irregular migrant population, we assess the application of any access conditions which restrict irregular migrant inclusion in the legal protection. Since our primary interest, is to establish the social and labour rights of the general category of irregular migrants and not irregular migrant sub-groups such as children or migrants with disabilities, we opted to assess only access conditions that could, in principle, be satisfied by all irregular migrants.⁵ Our indicator therefore measures the application of any general behavioural requirements that irregular migrants must satisfy in order to be covered by the legal rights provision. Coverage scores are attributed to each social and labour right for each country using the following five point scale:

1 = coverage without limitation

0.75 = coverage limited by low threshold access condition

0.5 = coverage limited by medium threshold access condition

0.25 = coverage limited by high threshold access condition

0 = no coverage (i.e. no such legal right for irregular migrants)

Our data indicate that the conditions which most typically limit rights coverage relate to the length of *de facto* residence requirements. Differences in the required residence duration will therefore affect the coverage score (e.g. from a “low threshold” three-month requirement to a “high threshold” of residence of more than a year or multiples of years). Similarly, access to public healthcare via a voluntary insurance contribution scheme may require low, medium and high levels of prior contribution (in monthly contribution terms) as a condition of access. Our data also indicate that some rights may limit coverage to sub-groups of irregular migrants, such as those who had a prior but lapsed legal status, or to irregular migrants who can demonstrate sufficient evidence of steps taken to regularise (e.g. as is the case in Ireland in relation to the right to recover outstanding wages).

⁵ It should be noted that we separately compiled and analysed rights data on these irregular migrant sub-groups for possible future inclusion in an expanded version of the IRMIGRIGHT database.

Rights Indicator 2: Adequacy

The adequacy indicator measures the substantive content of rights in terms of the scope or range of benefits provided to the irregular migrant claimant compared to the equivalent benefits enjoyed by citizens. We benchmark rights adequacy against the substance of equivalent rights enjoyed by citizens because we believe that the citizenship rights threshold is the best available measure for establishing the “value” of the right in capabilities terms for the irregular migrant. If we understand the substance of citizens’ rights as indicative of the freedoms (in both resource and agency terms) that are regarded as necessary to participate in a particular society, then it is our view that the rights of irregular migrants as capabilities must also be assessed with reference to that same society. While it might not be considered optimal or even desirable from a host society perspective to afford irregular migrants rights that are equal to citizens, the capabilities of irregular migrants undoubtedly increase the closer their rights come to approaching the right standards of citizens.⁶

Rights adequacy is measured according to the following five point scale:

- 1 = full adequacy / equal treatment
- 0.75 = somewhat limited adequacy
- 0.5 = limited adequacy
- 0.25 = strictly limited adequacy
- 0 = no adequacy / highly unequal treatment

Cases which explicitly stipulate rights protections on a par with citizens, as well as cases of *implied rights* (as discussed in section 2 and further in section 3 below)⁷ will score 1 on adequacy (i.e. 1 = full adequacy/equal treatment). Adequacy may be *somewhat limited*, and receive an adequacy score of 0.75, when migrants are excluded from certain peripheral benefits or services reserved for citizens that may be assessed as consistent with “optimal provision” or provision which is complementary to core provision (e.g. where irregular migrants in France may be excluded from alternative therapies in medical care). Adequacy may be *limited*, and score 0.5, if irregular migrants’ access to any core benefit/service is reduced or somehow limited in frequency or subject to certain expenditure caps (e.g. in Luxembourg where compensation for accidents at work involving irregular migrants cannot exceed a certain sum). Adequacy may be strictly limited, and score 0.25, if irregular migrants are excluded from any element of the “core benefits/services” provided to citizens (e.g. in Sweden and the Netherlands where primary and specialised healthcare is subject to the opinion of a medical professional that such care is urgent or necessary). Theoretically, adequacy may be wholly absent where the gulf between citizens’ rights and irregular migrants’ rights is so great as to render the right functionless from the perspective of the capabilities of irregular migrants.

The assessment of rights adequacy always concerns both the nature of the *right and remedy*. Circumstances where the remedy dimension of rights may result in a lower adequacy score include those where irregular migrants enjoy less than the full scope of remedies available to citi-

6 Alternative approaches that may capture a more “absolute” measure of adequacy are less suitable across the range of rights that we analyse. E.g., while measures based on purchasing power parities might allow us to compare the ‘value’ of cash benefits for irregular migrants across countries, we would require different measures for healthcare and education services, and for most labour rights.

7 We adhere to the approach that legal rights may be *implied* to irregular migrants on the basis of national welfare state settings of universalism, contribution or need, as well as on labour and constitutional or human rights principles of inclusivity and equality/non-discrimination.

zens in order to enforce the same rights (e.g. where an irregular migrant enjoys the same legal protection to workplace health and safety as citizens but has limited remedies relative to citizens for enforcing those rights because the irregular migrant lacks *locus standi* in the labour courts, or is denied access to statutory accident and injury compensation schemes).

On the face of it, national legislation may be drafted in ways that could be read as providing rights to irregular migrants that are, in some respects, *more favourable* to irregular migrants than to those of citizens and which, it could be argued, should therefore be measured as rights that are “*more than fully adequate*”. For example, certain national laws on “back pay” rights which, in adherence to the terms of the EU Employer Sanctions Directive, presume a minimum of three months of unpaid wages for irregular migrant worker claimants but not for citizens workers, could be regarded as effectively providing irregular migrants with more favourable treatment. It is our view however that, given the particular difficulty that irregular migrants face (relative to citizens) in establishing past employment (given their irregular immigration status and lack of employment contract), the three-month presumption can be understood as a necessary instance of positive discrimination in order to prevent *indirect discrimination* vis-à-vis irregular migrants that could otherwise occur in the absence of such adjustments to back pay mechanisms. Accordingly, we do not attribute a score greater than 1, even in cases where elements of the back pay right could be regarded as more favourable to irregular migrants.

Rights Indicator 3: Costs

User costs are widely considered a fair and sustainable way of part-funding certain publicly-provided services such as healthcare and education. The “costs” rights indicator measures the extent to which the healthcare and education services in relation to which irregular migrants’ have a right of access (i.e. are covered) are subsidised by the state on an equal or less than equal basis compared to citizens. This means that, in our dataset, the only rights that we will measure using the costs indicator are the four healthcare and two education rights.

As with the adequacy indicator, we again justify benchmarking the user-costs charged to irregular migrants against those charged to citizens on the grounds that such relative measure provides us with the best means of assessing the rights of irregular migrants in capabilities terms. Given the lack of transparency about the specifics of surcharges levied on irregular migrants across countries and the consequent inability to compare the absolute value of service costs relative to citizens in each country case, we use a less fine-grained scoring scale and measure differentiated treatment at only three intervals between 0-1 (as opposed to the 5 intervals used to score coverage and adequacy).

1 = Irregular migrants benefit from the public service on the same user cost basis as citizens (including, where relevant, a “no user costs” basis)

0.5 = Irregular migrants benefit from the public service subject to the same user costs as ‘standard’ citizens, but are excluded from means-tested reliefs to cover user costs that low-income citizens enjoy

0 = Irregular migrants benefit from the public service on a higher user cost basis than ‘standard’ citizens (i.e., irregular migrants pay a surcharge)

An argument could be made that in countries where healthcare and education services are funded wholly by taxation and/or social security contributions, irregular migrants who access such

“free” services without the payment of user charges are treated not only equal to but better than citizens. Since this however posits assumptions about taxation and social security payments that are not well evidenced (i.e. that citizens contribute to social security funds and taxes (income and VAT) that cover the costs of healthcare services and that irregular migrants do not), it is not an argument that we entertain in our scoring scheme.

Rights Indicator 4: Agency

The agency indicator is a composite of two sub-indicators which each assess a different aspect of the freedom of irregular migrants to claim and enforce their rights. To arrive at an overall agency indicator, we take the mean of the scores for each of the two sub-indicators. The first sub-indicator measures the extent to which irregular migrants can exercise social and labour rights without state interference; specifically, without their irregular immigration status being reported to national law enforcement authorities by state service providers or labour inspectorates. What we refer to as “firewalls” are national level policies that guarantee access to social and labour rights by irregular migrants without the risk of such reporting to immigration enforcement authorities. On the other hand, a “reporting duty”, as the term itself implies, is a statutory requirement on state officials and service providers to notify the law enforcement authorities should they encounter a migrant with an irregular status. In relation to rights for which irregular migrants are covered under national laws, we measure these various types of, and protections from, reporting by assigning scores at three intervals between 0-1.

1 = Firewall against reporting (i.e. service providers/public officials are expressly prohibited from reporting the presence of irregular migrants to immigration authorities)

0.5 = No legal duty on service providers/public officials to report irregular migrants but authorities can choose to report and collaborate with immigration officials

0 = Mandatory statutory duty on relevant service providers/public officials to report irregular migrants to immigration authorities

The second agency sub-indicator measures the availability of legal aid for irregular migrants who seek a civil remedy in the case of alleged breach of their social or labour rights. Unlike, the first sub-indicator which measures irregular migrants’ agency in terms of negative liberties vis-à-vis the state, legal aid is an example of a positive liberty wherein access to public financial resources is a critical element in determining the freedom that irregular migrants enjoy in claiming and enforcing their legal rights. An assessment of the application of national civil legal aid laws to irregular migrants, yields one of the following three scores:

1 = Access to civil legal aid to enforce rights

0.5 = Access to civil legal aid only for cases involving human or constitutional rights violations

0 = No access to civil legal aid

Aggregation

To measure the overall individual right score for each of the 16 social and labour rights in all 28 countries, we adopt an additive approach to aggregation that involves taking the mean of the three or four rights indicators (as relevant to the given right). If a right receives a score of 0 in relation to the coverage indicator, its overall individual right score will also be zero. We aggregate each of the 16 rights scores across countries, by calculating the mean of the overall individual right score of each right (e.g. emergency care) across the 28 countries.

To arrive at an overall country rights score for each of the 28 countries, we add the 16 overall individual right scores for each country and calculate the mean. To produce social and labour right scores for each of the 28 countries, we calculate the mean of the 10 social rights and 6 labour rights respectively.

The main analyses and results reported in the next section follow this approach to aggregation. An alternative approach to aggregation could involve calculating the overall individual right score by *multiplying* the three or four rights indicators for each of the 16 social and labour rights in all 28 countries. This alternative, multiplicative form of aggregation would result in an overall individual right score of zero if a right scores 0 on any of the four rights indicators.⁸ This alternative aggregation approach could be justified if we take the view that, to satisfy the definition of a legal right (in capability terms), a positive score is required on all 3-4 constituent rights indicators.

We prefer however the additive over the multiplicative approach to aggregation for our main analyses because of the particular way in which we have constructed our rights indicators and the meaning that can therefore be attributed to a zero score across each of the 3 or 4 dimensions. For example, a zero score, based on the indicators that we use to measure agency and costs, does not clearly equate to a finding that the irregular migrant claimant is devoid of all agency to claim rights, or impeded by discriminatory costs to the extent that makes the right effectively non-exercisable. Instances of rights with zero scores on agency and costs, include a wide range of scenarios which have substantively different effects on the rights of irregular migrants.

Data Collection and Coding

The entire IRMIGRIGHT dataset is built on extensive and thorough analysis of the national laws of 28 European countries, as well as related policies and interpretative materials. The analysis of national laws spans the fields of immigration law, social security and social policy legislation, labour and contract laws, and constitutional, equality and human rights laws. A team of 11 social science and legal analysts from Uppsala University, the University of Zagreb and the European University Institute assumed the task of data collection and analysis. Two purpose-built instruments, designed in questionnaire-style format, were developed to provide systematic and comparable social and labour rights data across countries (see appendices 1 and 2). Each data collection instrument contained a sequence of closed (yes/no) questions related to all four rights dimensions as well as additional sub-fields concerning rights provisions (see later in section 3 “variables not scored in the rights indices”). The yes/no (1/0) format of questions enabled an initial basic coding of data. Analysts also completed supplementary text boxes in order to contextualise and justify all data entries, and to provide relevant supportive references (including hyperlinks to all primary legislation).

⁸ Under our standard (additive) aggregation method only rights which score zero on coverage will have an overall individual right score of zero.

The data collection instruments for social and labour rights were broadly similar, with the exception that labour rights instruments did not include explicit questions on equal treatment in costs (not relevant to labour rights) nor in regard to adequacy. In the latter case, we operated on the default assumption that labour rights coverage offers irregular migrants protection on an equal basis to citizens. To cater for any deviation from the norm in this respect, the data instruments included an opportunity for analyst respondents to provide details of any variant cases. The instruments were piloted in six of the twenty-eight European countries in early 2024 and, using the revised instrument, data were then collected over the period April 2024 to December 2024. All data collection documents for each of the 28 countries, complete with full references, will be published in 2026, when we will release the entire IRMIGRIGHT dataset.

Identifying Implicit Inclusions and Exclusions in National Legal Provisions

A particular challenge associated with measuring the legal rights of irregular migrants is determining when, in the absence of *explicit* legal provisions either including or excluding irregular migrants, it is reasonable to *imply* such rights inclusion and exclusion (see discussion about implied rights in section 2). In the process of data analysis for the IRMIGRIGHT dataset, this challenge was most acute in the area of labour rights where, in the context of national laws that are typically drafted in the universal terms of “workers” or “employees”, analysts were required to judge the likely applicability of such laws to *irregular migrant workers* or *employees*. Such judgment necessitated a considered and comprehensive reading of the interaction between labour and fundamental rights laws, and immigration and contract laws.

The design of the data collection instrument played a crucial role in guiding analysts through the necessary evidential steps required to arrive at conclusions of implied rights or implied exclusions. This involved a five-stage process:

Stage one asked for evidence of explicit inclusion or exclusion of irregular migrants based on national laws (immigration laws, social security laws, labour and employment laws, human rights, equality and constitutional laws).

Stage two, where relevant, asked for evidence of implicit inclusion of irregular migrants based on the universal language of national law (“all persons”, “all workers” “all uninsured”), inclusive human rights, constitutional or equality provisions, and/or other eligibility criteria. Grounds for implicit exclusion of irregular migrants (e.g. based on definitions of “employees” or eligibility criteria for access to social benefits) were similarly required.

Stage three required further supportive evidence to corroborate any implied inclusions or exclusions (e.g. case law, government guidance, government and political statements, evidence from practice).

Stage four, in the event of an implied inclusion claimed at stage 2, required analysts to check for the potential of any conflicting implied exclusion (e.g. legal and permanent residence requirements; required membership of social insurance programmes; the possession of lawful (valid) and enforceable contracts of employment).

Stage five, in the event of evidence of explicit or implicit rights, analysts were prompted to specify the available legal remedies in the event of rights violation.

Based on the above stages, we coded rights provisions in respect of irregular migrants in each country according to one of four possible modes:

- Explicit inclusion
- Implicit inclusion
- Explicit exclusion
- Implicit exclusion

“Hard cases” where analysts arrived at either ambiguous or conflictual judgments (e.g. cases which found evidence of implied rights protections for irregular migrants but which simultaneously flagged the possibility of implicit exclusion), were subject to subsequent rounds of assessment by team colleagues. Institutional logics were compared in country cases with similar institutional settings as part of the process for resolving judgments in hard cases. In the interests of complete transparency, the logic and evidence for all judgments of the implied inclusion and exclusion of irregular migrant in/from rights provisions is documented in the data collection forms that will be subsequently published alongside the full dataset.

Data Validation

From the outset of the data collection process, a series of steps and measures was put in place to ensure a high level of accuracy and consistency in the data provided by analyst respondents across countries. Instructions and the methodological approach were agreed and discussed in group meetings and written communications with all participating analyst respondents. At the beginning of each new instance of data collection, online data collection forms refreshed analysts about the substantive parameters of measurement for the particular right under assessment. Following an initial design pilot to test for clarity, quality and efficient data collection, a comprehensive pilot exercise was conducted with eight of our twenty-eight countries, measuring a sample selection of social and labour rights. This led to the fine-tuning of instructions to analysts about the nature and quality of data content in order to optimise uniformity.

All gathered data were subject to a rigorous and thorough process of internal data validation. Data were cross-checked by a second analyst (different from the original coder and from a different academic institution) to verify the substantive data content and also to ensure consistent interpretations of materials across the team of analysts. Data were validated both horizontally (at the level of the individual right across all 28 countries) and vertically (at the country level for all rights). Data discrepancies that were identified in this process were further discussed, evaluated and resolved. Finalised cross-checked and coded data were then scored according to the scoring scheme for the three to four rights indicators (as discussed above). Scoring was checked internally and analyses were replicated by a data analyst independent from the project team.

Variables not scored in the rights indices

The IRMIGRIGHT database also contains a number of variables derived from the data collection instruments and scored on a simple dichotomous (0/1) basis but which were unused in the development of our four rights indices (see appendices 1 and 2 for data collection instruments). Mention has already been made in this section of our data on ‘partial coverage rights’ in cases where national level laws either offer rights protections to certain designated sub-groups of ‘vulnerable’ irregular migrants (children, elderly, persons with disability, and victims of domestic and sexual violence) or devolve competence to regional legislatures to legislate for the rights of irregular migrants in country regions only. The dataset also contains a variable on the rights-related,

but conceptually distinct, matter of the presence or absence of discretionary powers by national and sub-national state authorities in relation to social service provision for irregular migrants.

Measuring change over time

In addition, we also created three variables on policy change in national laws relating to irregular migrants' social and labour rights over a period of thirty years (1995-2025). One variable measured basic changes in legal rights where national laws shifted from either including to excluding irregular migrants from legal provisions, or from excluding to including. A second variable measured change in the mode of legal provision; namely, change in the explicit or implicit character of rights inclusions and exclusions in national laws. A third variable measured changes in the quality of rights protections in terms of simple positive or negative directions of change based on data relating to benefit coverage, adequacy, agency and costs.

4. Results

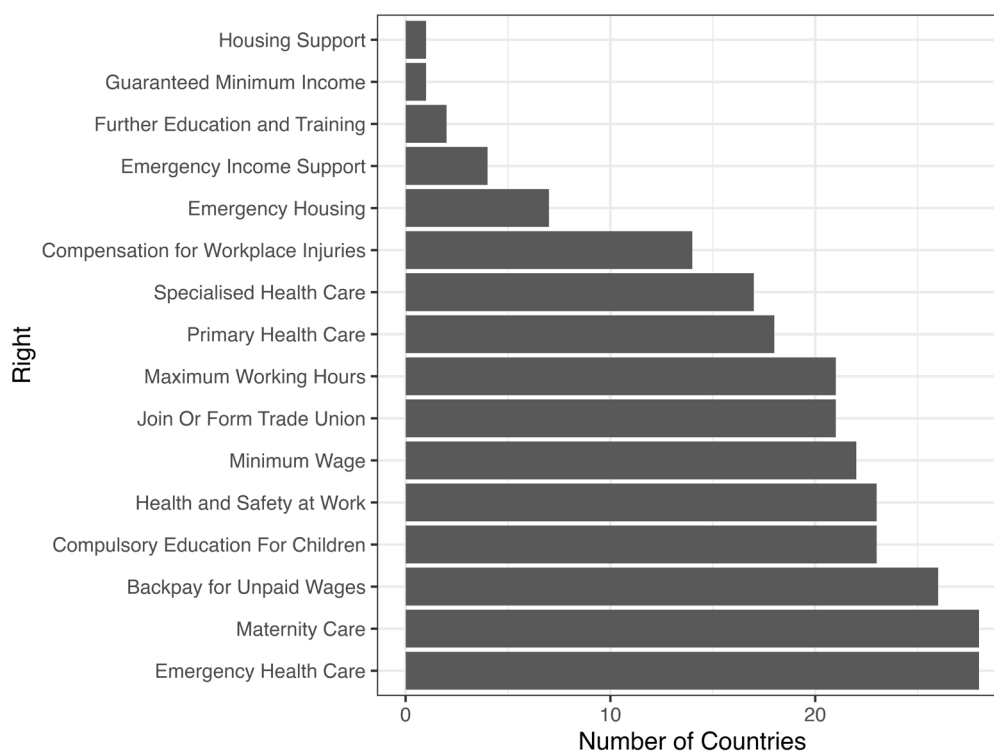
Results are presented in five sections. We first share findings on the basic contours of irregular migrants' legal rights across European countries by providing an overview of the presence and absence of rights provisions for irregular migrants in national laws across countries, and by displaying the mode of legal provisions; specifically, the shares of national legal rights provisions that explicitly or implicitly include and exclude irregular migrants. We then present our analyses of the four rights indicators (coverage, adequacy, costs and agency) at the level of each of the 16 individual rights. We follow this with a presentation of aggregated rights scores for all individual rights across all countries and overall rights scores for each of the 28 European countries. We use these aggregate scores to explore possible relationships between country rights scores and countries' welfare state and labour market settings. Fourth, we discuss additional relevant findings from data that were collected but unused for the development of rights indicators (e.g., data on partial rights protections for vulnerable migrant sub-groups, rights provided at regional law level within nation states, and social provisions provided in the form of discretionary powers of national and sub-national state actors). We conclude our analysis with some preliminary findings on the nature and direction of policy change in respect of the social and labour rights of irregular migrants in the twenty-eight European countries over the last thirty years.

Presence and Absence of Legal Rights Across Countries

A simple count of the existence of legal rights provisions for irregular migrants (across 16 social and labour programmes), as provided in Figure 2 (based on the presence of both a right with a remedy), is a helpful starting point for depicting the span of, and gaps in, rights-based protections. The rights of irregular migrants are displayed in ascending order from those areas where legal provisions are least to most present in national laws. Housing support and guaranteed minimum income only exist in one country, and vocational training in two. Very few countries provide irregular migrants with rights to emergency subsistence level income support and emergency housing. Half of the countries provide some kind of right to compensation for accidents and injuries at work. A majority of the countries provide specialised and primary healthcare. A set of labour rights is provided to irregular migrants in more than 20 countries including: maximum working hour thresholds; freedom to join or form a trade union; minimum and/or collectively agreed wages; and health and safety in work environment. The right to compulsory education for the children of irregular migrants is guaranteed in 23 countries. Backpay for unpaid outstanding wages is found

in 26 countries (but not in the UK and Romania). All countries have some kind of rights for maternity and emergency health care. Taking all 28 countries together, rights are absent in 43% of the cases where states could otherwise have chosen to make rights provisions in national law. While the latter indicates a very large overall gap in the rights of irregular migrants in Europe, there are, as evidenced in Figure 2, large differences in the protection gap depending on the right. In our subsequent analysis of rights dimensions (i.e., coverage, adequacy, costs and agency) we will demonstrate further gaps in the nature of the legal rights that irregular migrants enjoy across types of rights and countries.

Figure 2: Number of Countries Providing Rights Protections



Source: IRMIGRIGHT Database

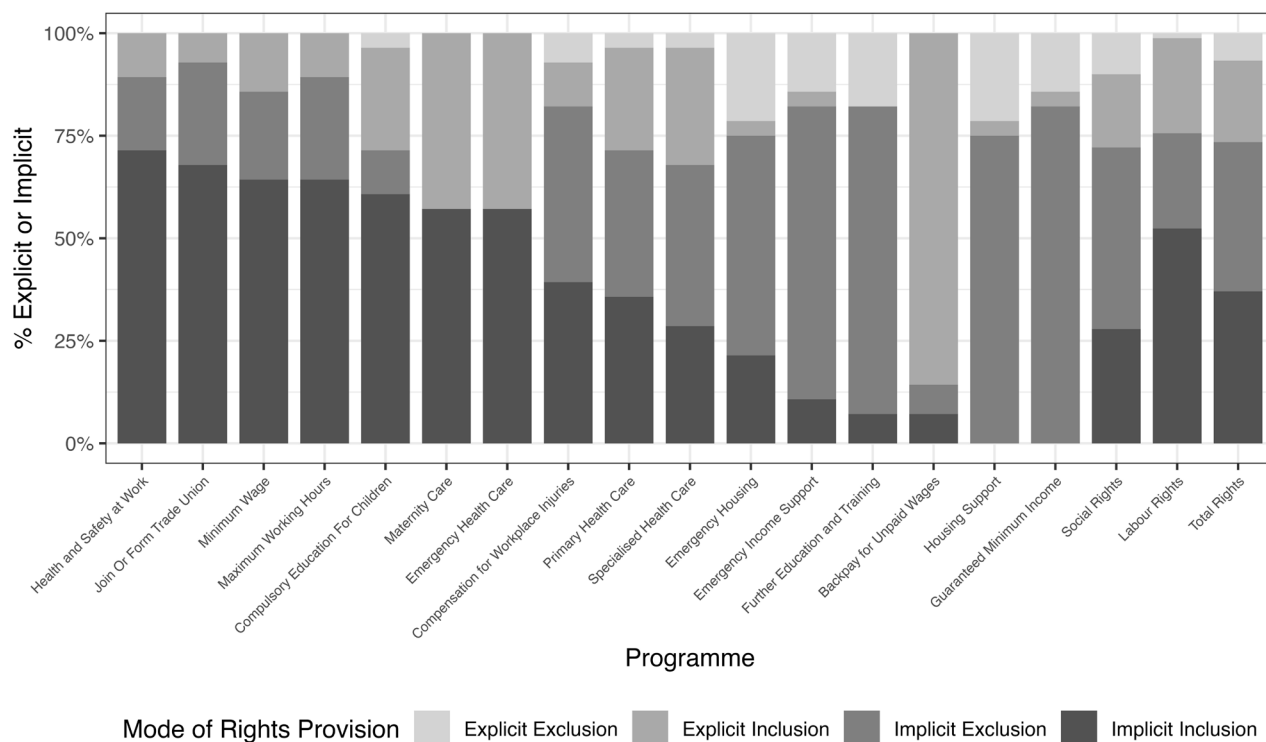
Explicit and Implicit Rights Inclusions and Exclusions

As discussed in sections 2 and 3, countries vary in the ways in which they include or exclude irregular migrants from social and labour rights provisions. We argued the important conceptual and methodological reasons for ensuring that measures of rights in the IRMIGRIGHT dataset take account not only of explicit statutory rights provisions of irregular migrants but also of provisions which, based on a comprehensive reading of related national laws and policies, *imply* the inclusion or exclusion of irregular migrants. It is therefore of substantive interest to analyse the dominant *modes of inclusion and exclusion* of irregular migrants in social and labour rights laws, and to observe any particular patterns in legislative modes that are associated with certain types of rights or rights sub-groups.

Figure 3 provides an overview of the shares of explicit and implicit inclusions and exclusions of irregular migrants in the national laws of all 28 countries across 16 social and labour rights. The figure also displays overall shares and those for social and labour right sub-groups. The key finding from this data is that the vast majority (73%) of all legal provisions that include or exclude irregular migrants do so *implicitly*, with virtually equal shares across labour and social provisions.

Implicit *exclusion* of irregular migrants is twice as likely for social rights as labour rights, whereas the implicit *inclusion* of irregular migrants in labour rights is almost double that of social rights. This raises an interesting question, which we will later discuss further, of why it may be that the default institutional settings of welfare states are more likely to result in the exclusion of irregular migrants while the equivalent settings of labour market regulations promote greater inclusion.

Figure 3: Modes of Inclusion and Exclusion of Irregular Migrants in Legal Rights Provisions



Source: IRMIGRIGHT Database

If we move to consider the smaller share of legal provisions that are *explicit* in their inclusion and exclusion of irregular migrants (27% across social and labour rights), it is notable that, notwithstanding the sizeable protection gaps in rights as displayed previously in Figure 2, countries' national laws very infrequently *explicitly exclude* irregular migrants from rights. Instances of explicit exclusion account for only 1.2% of labour provisions (and relate only to exclusion from compensation for workplace accident and injury) but account for 10.8% of social provisions, concerning mainly social housing and income assistance of both the emergency and non-emergency varieties and further education/training. The *explicit inclusion* of irregular migrants is, by contrast, a more frequent occurrence. The relative shares of explicit inclusion of irregular migrants in rights provisions are fairly similar between social (17.86%) and labour (23.21%) rights and are respectively accounted for by the almost complete explicit inclusion of irregular migrants in back pay measures, and by explicit rights to healthcare and compulsory education (see Figure 3).

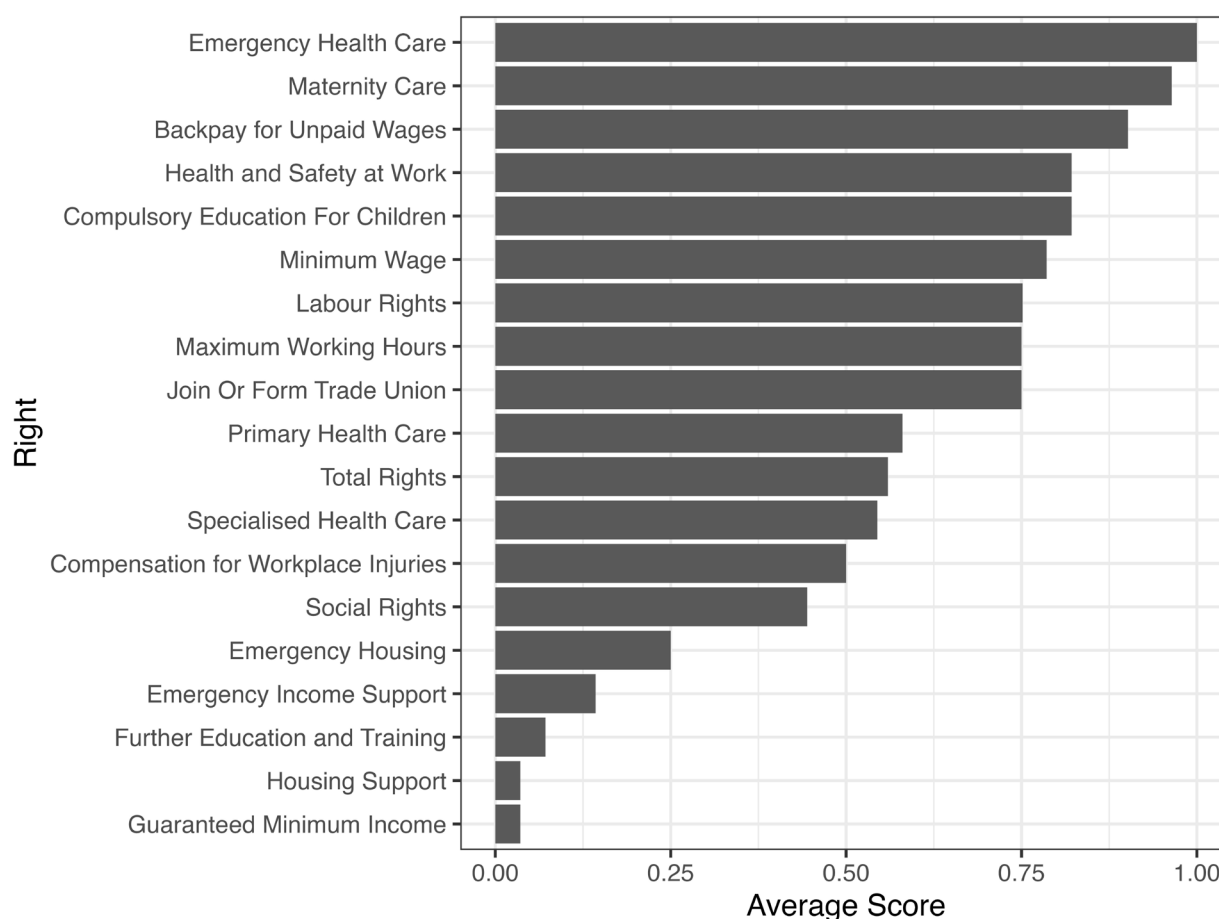
Certain individual countries in our dataset are also notable for their strong tendencies to be either explicit or implicit about the scope of their social and labour laws in relation to irregular migrants. The Netherlands stands out as the country that is most explicit about how it deals with the rights of irregular migrants; out of 16 rights, 6 explicitly exclude, 7 explicitly include and only 3 labour rights are implied. Other noteworthy countries with high levels of overall explicit inclusion

are Belgium, Spain and France, while Austria is unique in explicitly including irregular migrants in all labour rights protections with the exception of the minimum wage which is implied through the laws governing application of the collective wage agreements. The UK, along with the Netherlands is the country which most frequently explicitly excludes but, unlike the Netherlands, offers few instances of explicit inclusion of migrants in rights provisions.

Coverage

We turn now to consider the results from the first of our four dimensional rights indicators - coverage. Relative to the basic measure of the presence or absence of the legal rights of irregular migrants per se as shown in Figure 2, the results of the coverage indicator, as displayed in Figure 4, provide a more detailed picture of the extent to which the population of irregular migrants is covered by the national laws of the twenty-eight countries in respect of all sixteen social and labour rights. As discussed in section 3, the coverage indicator is scored (on a range between 0-1) based not only on the presence of a legal right with a remedy, but also taking account of any administrative access requirements that may delay or otherwise impede coverage of irregular migrant populations. Figure 4 (below) hence shows the average country coverage scores for each of the sixteen social and labour rights.

Figure 4: Mean Coverage Scores by Right



Source: IRMIGRIGHT Database (see Table A4 in Appendix 3)

What is immediately apparent is that mean coverage scores result in an ordering of rights that is almost identical to that of the basic rights count of Figure 2. The only notable difference is that the coverage scores in Figure 4 result in irregular migrants' access to maternity care ranking slightly behind emergency care, indicating the presence of a very small coverage gap in maternity rights

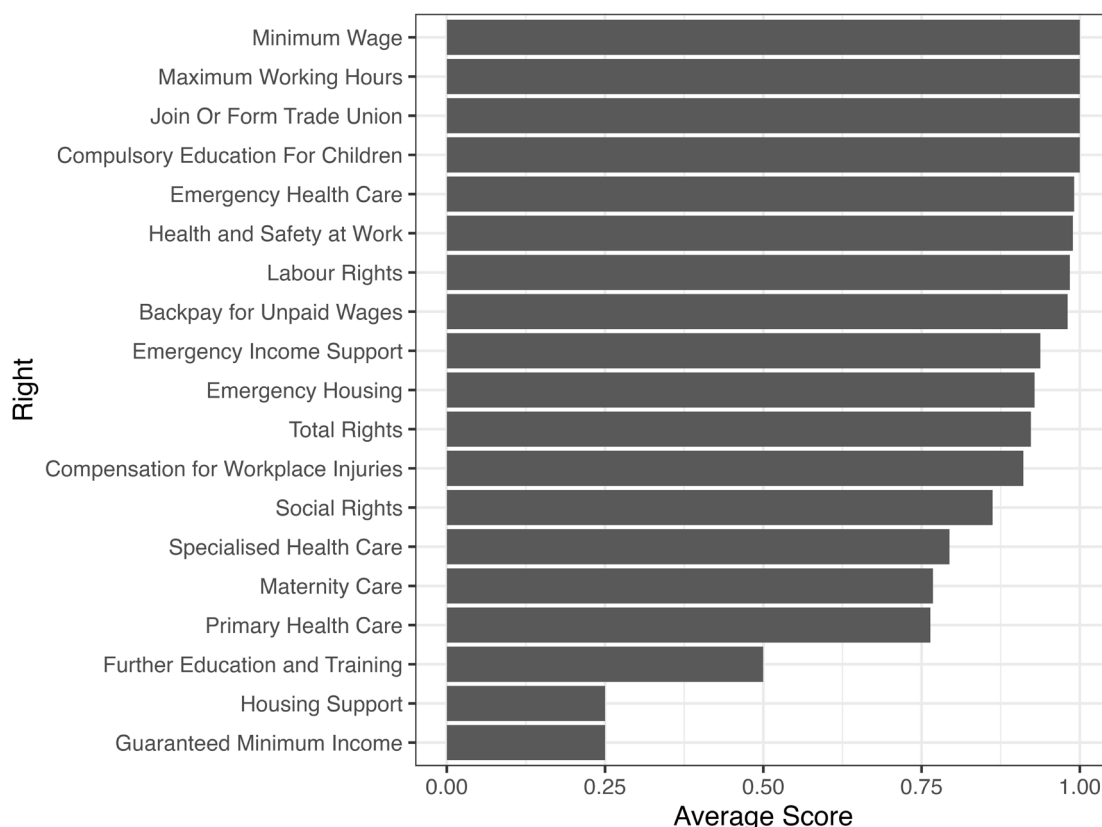
provisions in certain countries relative to the full coverage of emergency provisions. Otherwise, the rights receiving the highest coverage scores are ‘back pay’ for outstanding wages, compulsory education for children and workplace health and safety. Those rights with the lowest coverage scores are minimum income and housing supports of both the standard and emergency varieties as well as further education and vocational training.

The key message from the data is that legal rights provisions for irregular migrants rarely limit population coverage. Mean coverage scores are therefore, in the vast majority of cases, determined solely by the presence or absence of a right with a remedy. Coverage scores vary significantly across individual rights and rights subgroups (labour rights scoring 0.75 and social rights scoring 0.44) with the mean coverage score for all rights programmes falling at 0.56. As shown in the descriptive statistics available in Table A1 of Appendix 3, standard deviation in coverage scores across all rights is relatively high at 0.49 and compensation for workplace accidents and injuries is the right which gives rise to most variation in coverage scores across countries (s.d. = 0.51).

Adequacy

As discussed in sections 2 and 3, assessing the value of rights to irregular migrants in capabilities terms requires going beyond rights coverage and measuring also the quality of rights provisions along the dimensions of adequacy, costs and agency. Adequacy is one of three measures in our dataset that indicates the relative treatment of irregular migrants vis-à-vis citizens in regard to the nature of rights provision. Figure 5 displays the mean adequacy scores in relation to rights for which national laws offer some form of coverage to irregular migrants (i.e. rights which have a coverage score greater than 0).

Figure 5: Mean Adequacy Scores by Right



Source: IRMIGRIGHT Database (see Table A4 in Appendix 3)

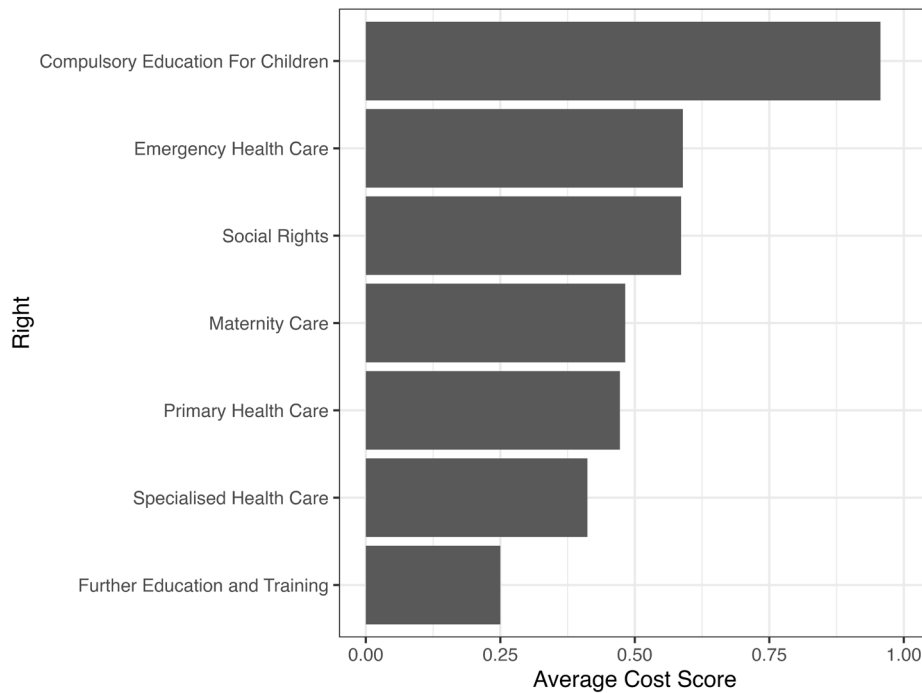
The general picture that emerges from the adequacy data, as displayed in Figure 5, is one of very high adequacy scores across most rights. The mean adequacy score for all rights is 0.92 with a standard deviation of 0.2 (see Appendix 3). This suggests that, once irregular migrants are covered by legal rights, provisions tend not to discriminate between such migrants and citizens. Equal treatment of irregular migrants with citizens is most striking in relation to labour rights where five of six labour rights achieve a full or virtually full adequacy score. Only the right to compensation for workplace accidents indicates a degree of less favourable treatment of irregular migrants (score of 0.91) which may be linked to the social security law basis of the right in some countries. To an extent, the strong equal treatment of irregular migrants in relation to labour rights is intuitive considering the relatively high share of implicit inclusions of irregular migrants in labour rights (52%, as displayed earlier in Figure 3) which sets an expectation of strong universalism among labour rights with positive coverage scores.

Equal treatment of irregular migrants with citizens in terms of the scope of benefits and services is less assured in the area of social rights and Figure 5 shows substantial variation in adequacy scores in this sub-field. Only the rights to compulsory education and emergency care receive full or close to full adequacy scores. It is interesting that although irregular migrants are covered by rights provisions to emergency income support and housing in the laws of only a minority of European countries, those countries that make such provision typically do so on a basis equal to that of citizens (with adequacy scores of 0.94 and 0.93 respectively). In respect of all types of healthcare rights, irregular migrants tend to be treated on a reasonably equal basis to citizens in terms of the nature of care services and it is only in relation to the rarely protected rights to housing, income support and further education/training that the treatment of irregular migrants becomes less equal.

Costs

Costs are a very relevant rights consideration in six out of ten social rights which theoretically may involve user costs; namely the four healthcare and two education rights in the dataset. Figure 6 below shows that, among the countries whose national laws provide irregular migrants with access to healthcare and education (i.e. where there is a coverage score greater than 0), countries typically discriminate against irregular migrants by charging them higher user costs for such access relative to the user charges levied on citizens.

Figure 6: Mean Costs Scores by Social Rights



Source: IRMIGRIGHT Database (see Table A4 in Appendix 3)

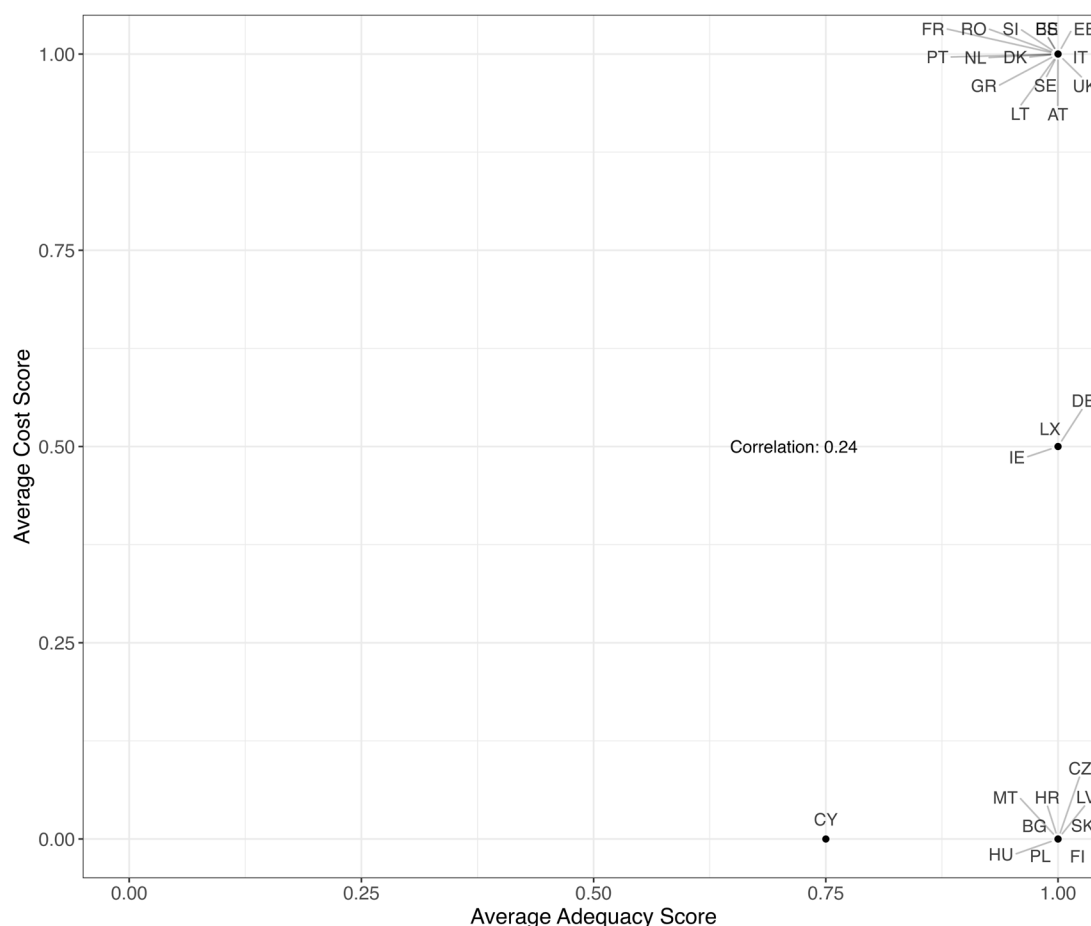
The costs scores of individual social rights displayed in Figure 6, including the mean score of 0.59 for social rights overall, indicate a moderate degree of discrimination in regard to the costs that irregular migrants must pay relative to citizens in order to exercise their rights to public services. The exception is the right to compulsory education where irregular migrant children receive, in almost all cases, equal treatment to citizen children. The latter may be partly accounted for by the “compulsory” nature of education under national laws and also potentially by the role of the UN Convention of the Rights of the Child in encouraging universal access to education for children.

Given the very few cases of rights to further education/training, our greater interest lies in analysing the cost scores for healthcare rights where coverage rates are significantly higher. The data in Figure 6 show that a substantial portion of the costs to the state of providing irregular migrants with legal rights to healthcare are expected to be absorbed by irregular migrants themselves. The UK, for instance, is a state that, on paper, actually makes a profit from providing rights to healthcare (specialised care and non-emergency elements of maternity care) at 150% of the cost to the NHS of treating citizen patients. Indeed, even in the area of emergency care for which all 28 countries in our dataset provide legal rights and all but one (Cyprus) provides full adequacy on the scope of the benefit, just under half of those countries provide costs on an unequal or, in the case of 10 of these countries, a highly unequal basis to citizens. The number of countries that provide rights to maternity care on an unequal cost basis is even greater than for emergency care, with 20 of the 28 countries charging irregular migrants at higher rates than citizens. The fact that maternity care costs score between those for emergency care, specialised care and primary care (see Figure 5), is likely indicative of the composite nature of maternity services in straddling all three others forms of healthcare.

The finding that irregular migrants are treated significantly less equally to citizens on the costs of healthcare rather than on the scope or range of available healthcare services (i.e. adequacy),

causes us to consider whether there may be a trade-off in healthcare rights (i.e. a negative relationship) between rights adequacy and rights costs, and whether such trade-off may be more pronounced in particular healthcare rights? We explore this potential relationship in the following three figures which correlate the adequacy and costs scores for emergency, primary and specialised healthcare respectively. Given the amalgamated nature of maternity care, we exclude this right from our analysis here.

Figure 7: Correlation between Mean Adequacy and Mean Costs Scores for Emergency Care across Countries



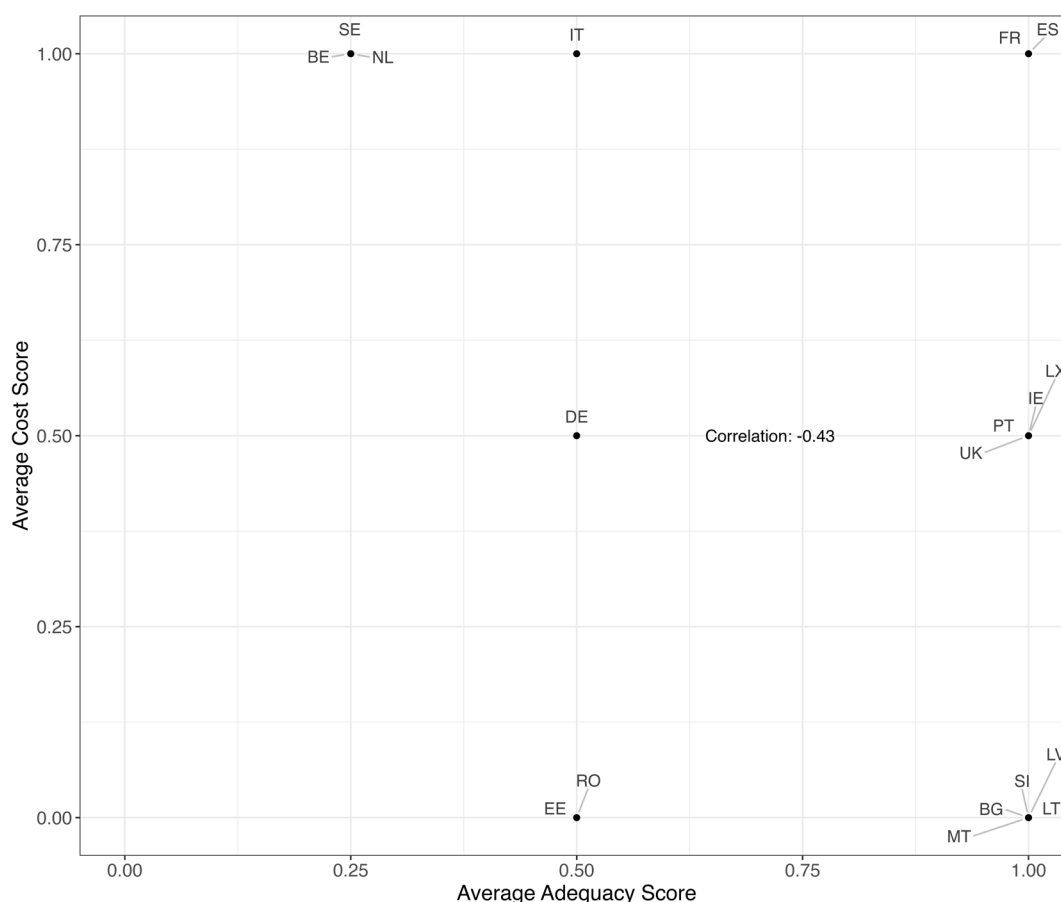
Source: IRMIGRIGHT Database

Figure 7 above indicates that, with the exception of Cyprus, none of the other 28 European countries, offer the right to emergency care on a reduced adequacy basis relative to citizens but they have different approaches to how such care should be paid for. For the cluster of countries in the bottom right quadrant of Figure 7, we could perhaps interpret their placement there as a result of an adequacy-costs trade-off but the majority of countries are found in the top right quadrant indicating that they guarantee emergency healthcare rights to irregular migrants on an equal basis to citizens both in scope and costs terms. While the divide between the top and bottom right quadrants suggests that economic development might influence countries' approach to costs, there are a number of cases where this is not the case. Finland, for example clusters with the Eastern European countries in the bottom right quadrant while Romania shares company with the Northern and Western European countries in the top right quadrant.

It might be unsurprising that countries would be unwilling or indeed legally *unable* to reduce the

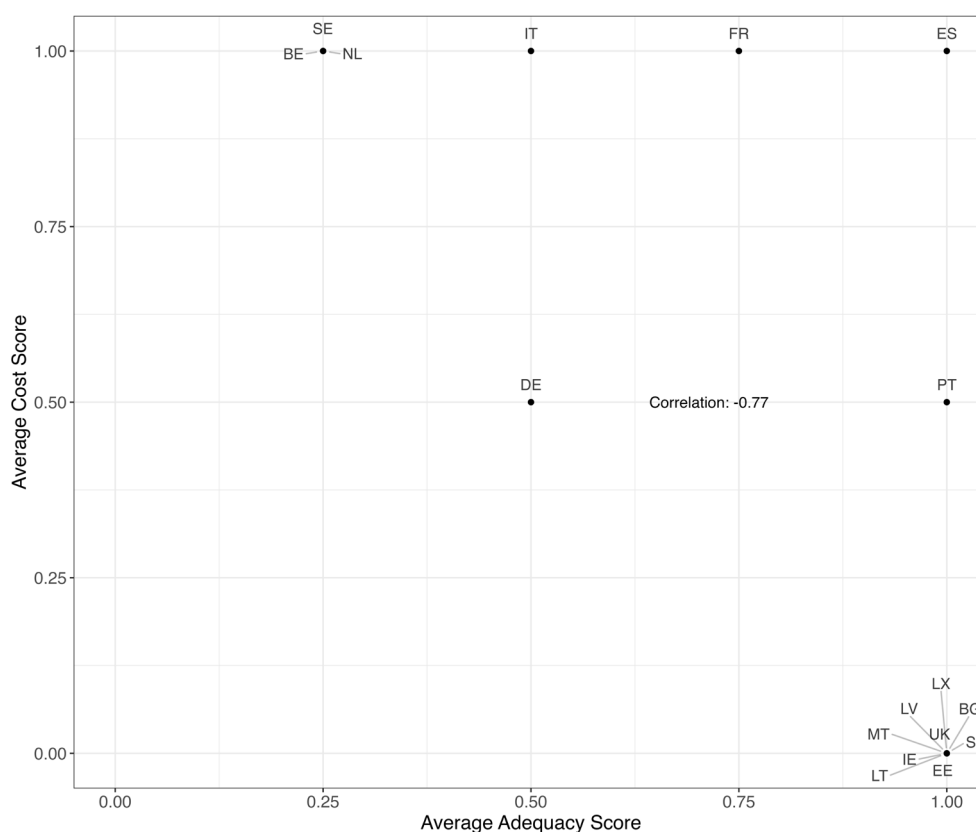
scope of emergency care – an emergency, by definition, does not allow much room for discrimination when it comes to the range of medical services provided to a patient. On the other hand, in relation to non-emergency care that falls under the categories of primary and specialised care, host countries have substantially more scope to reduce the financial burden of providing such healthcare access for irregular migrants by reducing the nature of the benefits rather than by imposing costs on migrants themselves (which they may be unable to pay). Figures 8 and 9 (below) showing the relationships between adequacy and costs for primary and specialised healthcare, demonstrate that there is indeed a negative correlation between costs and adequacy and that such negative correlation becomes more significant consistent with the level of care (i.e. from primary to specialised care).

Figure 8: Correlation between Mean Adequacy and Costs Scores for Primary Care across Countries



Source: IRMIGRIGHT Database

Figure 9: Correlation between Mean Adequacy and Costs Scores for Specialised Care across Countries



Source: IRMIGRIGHT Database

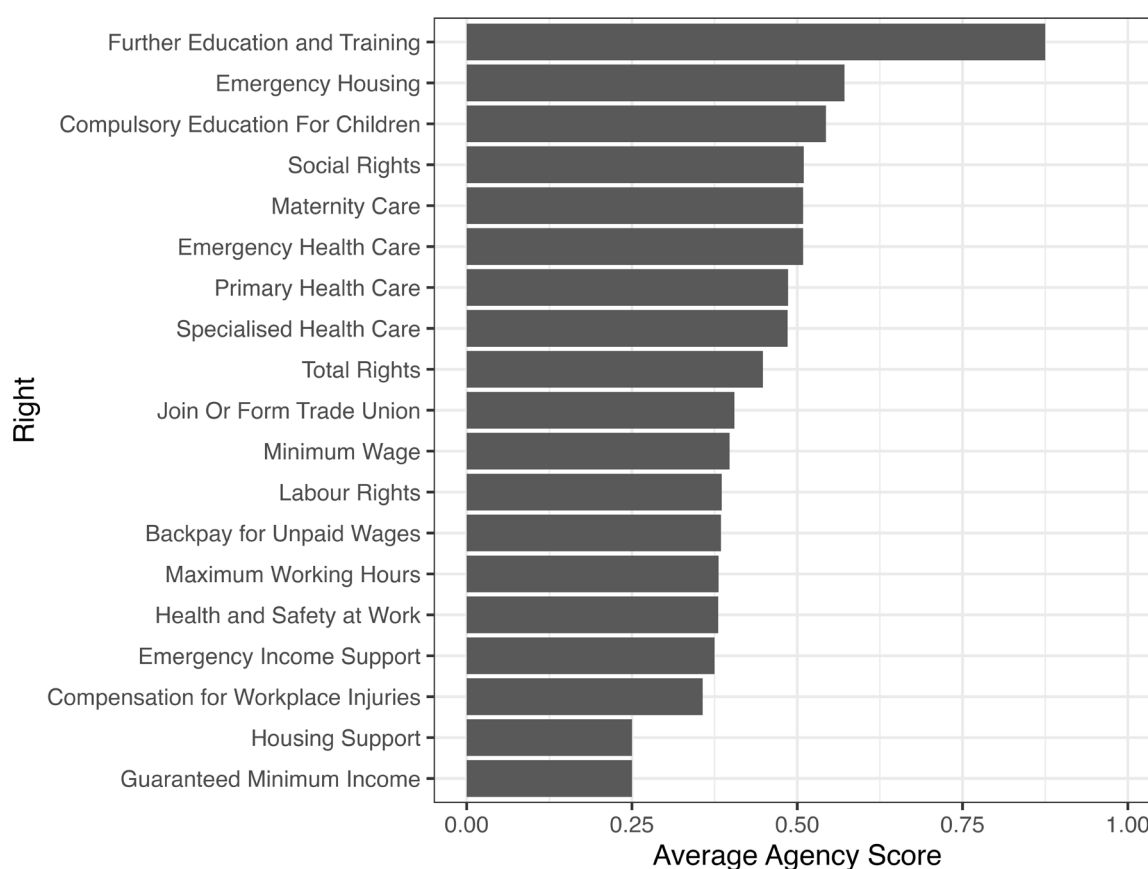
What becomes apparent from these figures is that countries have made different choices about how to limit (and thereby control government spending on) irregular migrants' healthcare rights for non-emergency services. If we compare country responses from emergency care, through to primary care and specialised care, we see that some countries, like the UK, progressively shift position in the graphs from the top right quadrant to the bottom quadrant indicating uncompromised adequacy but dramatic increases in the costs of care for migrants (from free services to services at 150% NHS costs). Other countries like Sweden, Belgium and the Netherlands follow a reverse pattern; never charging migrants for healthcare on a differentiated basis to citizens but significantly reducing the scope of benefits. Then there are the countries where either no trade-off, or substantially less of a trade-off, seems to be present regardless of the nature of healthcare right (Spain, France and, although to a lesser degree, Italy); and the countries that never shift from the bottom right quadrant and for whom the consequence of access to any adequate healthcare service will always entail additional costs for the irregular migrant.

The trade-off is not as notable in certain country contexts like Ireland and Luxembourg which might be considered as outliers in terms of their general healthcare systems. Both countries contain the costs of healthcare to irregular migrants by the distinctive features of their own systems – which provide migrants with rights of access but on the same costs bases as 'standard' citizens. Luxembourg and Ireland receive mid-range scores on the costs dimensions because, while providing a certain level of parity with citizens, each country denies irregular migrants access to means tested benefits to which low income citizens can avail.

Agency

Agency in the sense of the freedom to claim and enforce rights vis-à-vis the state and others (e.g. employers) is, as discussed in sections 2 and 3 a core, constitutive element of a legal right. The agency indicator is unique among the four rights indicators in that it captures (via its two sub-indicators) both the positive and negative liberties of irregular migrants in relation to the state. It is therefore of particular interest that, as shown in Figure 10 below, agency is the rights dimensions with the lowest mean score across all rights (0.44) among the countries whose national laws offer some form of rights coverage to irregular migrants (i.e. those with a coverage score greater than 0).⁹ In other words, the data indicate that the ‘quality’ of irregular migrants’ rights is most diminished by restrictions on agency which place irregular migrants at a relative disadvantage vis-à-vis citizens in being free to exercise and profit from rights to which they are legally entitled.

Figure 10: Mean Agency Scores by Rights



Source: IRMIGRIGHT Database (see Table A4 in Appendix 3)

The limited availability of legal aid to irregular migrants across European countries plays an important role in reducing irregular migrants’ agency. Just under half of European countries provide irregular migrants with state-funded legal aid to enforce both their social and labour rights (Belgium, Bulgaria, Czechia, Finland, France, Malta, Netherlands, Poland, Slovakia, Spain and Sweden). Slovenia and Luxembourg limit legal aid to certain social and labour rights respectively, while in Austria, Cyprus, Ireland and the UK, civil legal aid to irregular migrants is only available in particular cases of alleged abuses of constitutional rights and/or rights protected under the

⁹ Further education/training is an outlying right in agency terms and the mean score is based on only two country instances of rights coverage.

European Convention on Human Rights. The remaining 12 European countries deny legal aid to irregular migrants in respect of all social and labour rights.

Whilst an important factor in explaining the relatively low mean agency scores across rights, legal aid scores do not account for the *difference* in agency scores between labour and social rights. The lower agency scores for labour rights can therefore be explained by the second indicator which measures the extent to which irregular migrants can exercise their rights without the risk of being reported to national immigration authorities. In respect of labour rights, not a single country in the IRMIGRIGHT dataset provides a statutory ‘firewall’ to prevent irregular migrant workers, identified in the course of labour inspections, from being reported to state immigration authorities. On the contrary, almost half of all countries (13 of 28), impose actual reporting *duties* on the labour inspectorate in respect of irregular migrants. The latter include European countries such as Spain and Finland which are otherwise leading the field in protecting irregular migrants’ rights, including by providing legal aid.

As we can see from the country data displayed in Table 2, the picture on irregular migrant reporting differs somewhat in the area of social rights. Compared to the situation for labour rights, only three countries – Bulgaria, Portugal and Estonia – require service providers to report irregular migrant users. In these country cases, reporting duties apply only to providers of healthcare and emergency social services. Firewalls exist in respect of social rights but only in a minority of countries with Finland offering the most progressive firewall protections to irregular migrants, followed closely by Sweden and then Italy. The majority of countries in the IRMIGRIGHT dataset do not therefore legislate either for firewalls or reporting duties in respect of irregular migrants who access social rights. Most legislation is drafted in terms which neither demands nor prohibits reporting. A fuller understanding of the freedom of irregular migrants in exercising their legal rights would therefore require cross-national qualitative data on the practices of social welfare provision, labour inspections and labour justice in respect of this population.

Table 2: Firewalls and Reporting Duties by Social Right and Country

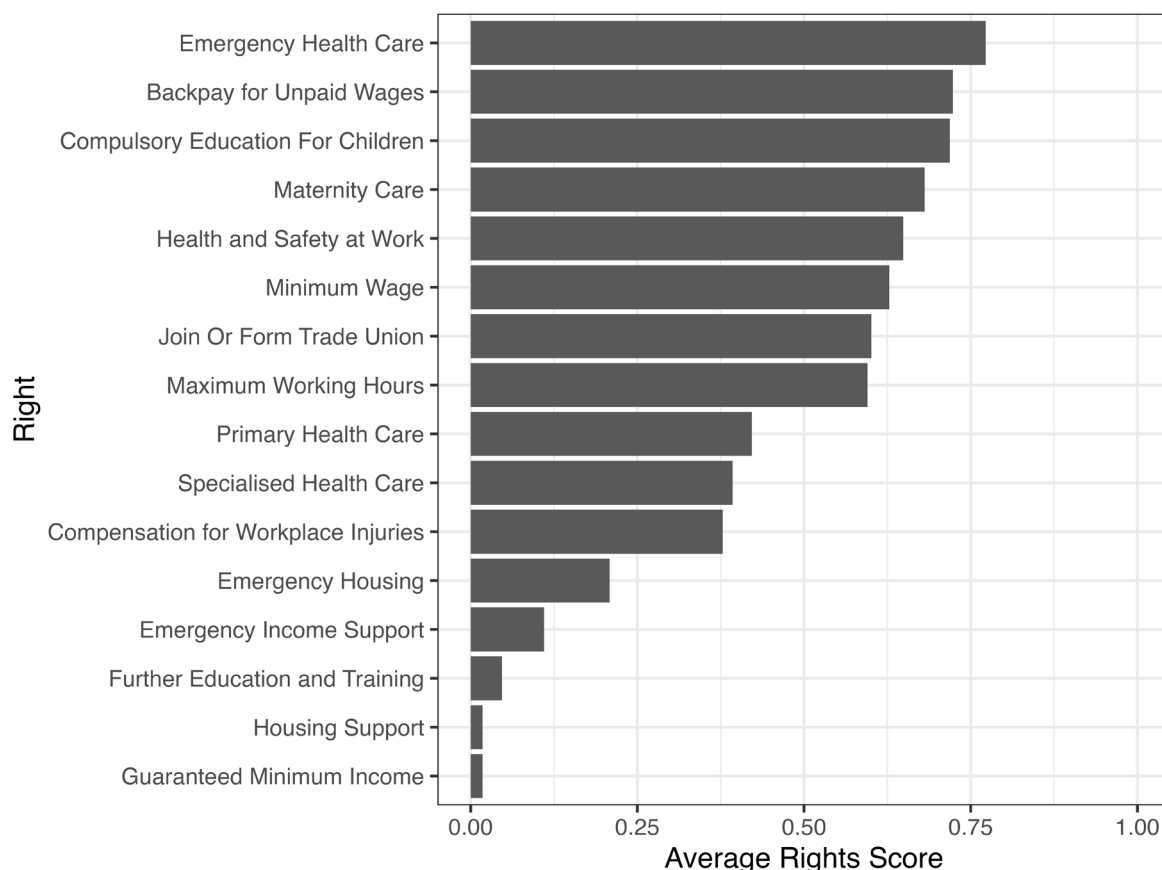
	Firewall	Reporting duty
Emergency care	Denmark, Finland, Italy, Sweden	Bulgaria, Portugal
Maternity care	Denmark, Finland, Italy, Sweden	Bulgaria, Portugal
Primary care	Italy, Sweden	Bulgaria, Portugal
Specialised care	Italy, Sweden	Bulgaria, Portugal
Emergency housing	Finland, Slovakia	Estonia
Emergency subsistence income	Finland	Estonia
Social housing		
Minimum income support		
Compulsory education	Finland, Sweden	
Further education / training	Finland	

Source: IRMIGRIGHT Database

Aggregate Individual Right Scores Across Countries

We now analyse the aggregate (overall) individual right scores for each right in each country (as calculated based on the mean of each of the three or four rights indicators). Our interest is first to compare the means of each of the sixteen overall individual right scores across the twenty-eight countries in order to demonstrate how the rights of irregular migrants in Europe vary across types of social and labour rights. The means of the aggregate individual right scores in twenty-eight countries are displayed in Figure 11 below.

Figure 11: Means of Aggregate Individual Right Scores in 28 Countries



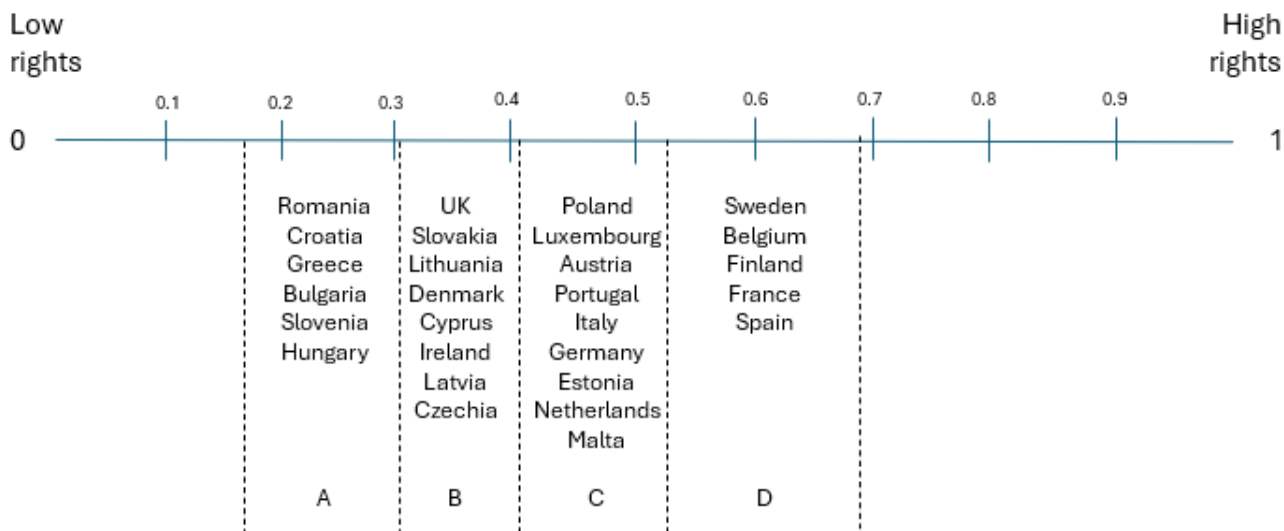
Source: IRMIGRIGHT Database (see Table A5 in Appendix 3)

The headline message from the results in Figure 11 is that there is not a single right which, in all 28 European countries, irregular migrants can claim and enjoy on an equal basis to citizens. Rights, such as emergency care, maternity care and back pay which received a full or close to full coverage score nonetheless provide weaker standards of protection to irregular migrants than citizens when scored on the whole; that is, taking account of the additional rights dimensions. It is also notable that the mean overall score for social rights (0.34) is substantially lower than for labour rights (0.6). Protection in respect of rights to housing support and guaranteed minimum income is virtually non-existent and, for further education/training, and emergency income and housing supports, provided at very low levels. Irregular migrants are also significantly discriminated relative to citizens in regard to non-emergency healthcare. The overall picture for labour rights is slightly better but even here irregular migrants are guaranteed only partial protections in respect of the bulk of labour rights and are weakly protected in compensation terms for workplace accidents and injuries.

Overall Country Scores for Irregular Migrants' Rights

We now shift our analysis from the level of individual rights across European countries to consider overall (combined labour and social) rights scores for each of the twenty-eight European countries in our dataset. Figure 12 below which displays groups of countries in four score bands, according to the overall country rights scores (i.e. the mean of the 16 individual right scores for each country) indicates significant cross-national variation in the legal rights provided to irregular migrants in European countries.

Figure 12: Banded Overall Country Rights Scores



Source: IRMIGRIGHT Database

Group “A” countries, made up of Eastern European countries and Greece, guarantee to protect only what might be considered as the “bare minimum” of rights for irregular migrants; in other words, rights which are necessary to satisfy an extremely minimalistic interpretation of the ECHR. Romania is the only country out of 28 which offers no labour rights to irregular migrants, while the rest of category A countries (with the exception of Greece) provide irregular migrants only with the right to back pay. The right to compulsory education for children of irregular migrants is denied in Croatia and Hungary, and both countries along with Bulgaria (and Slovakia in Group “B”) have a mean costs score of 0.

A second larger country grouping – group “B”- comprised of old as well as more recent EU Member States, offers irregular migrants a slightly wider but still “limited” range of rights which exclude such migrants from important protections in either one or the other of labour or social rights fields. The only labour right protected, albeit inadequately, in the UK, is the right of the irregular migrants to health and safety in the workplace. Slovakia is the only country outside of Group “A” that receives a mean score of zero on the costs indicator.

With the exception of Poland which trails the other group “C” countries on social rights, group “C” – made up of predominantly ‘old’ EU Member States - offers relatively moderate-high rights coverage for irregular migrants but based on provisions that limit the quality of those rights in costs and agency terms. Despite rights protections *per se*, irregular migrants are nonetheless

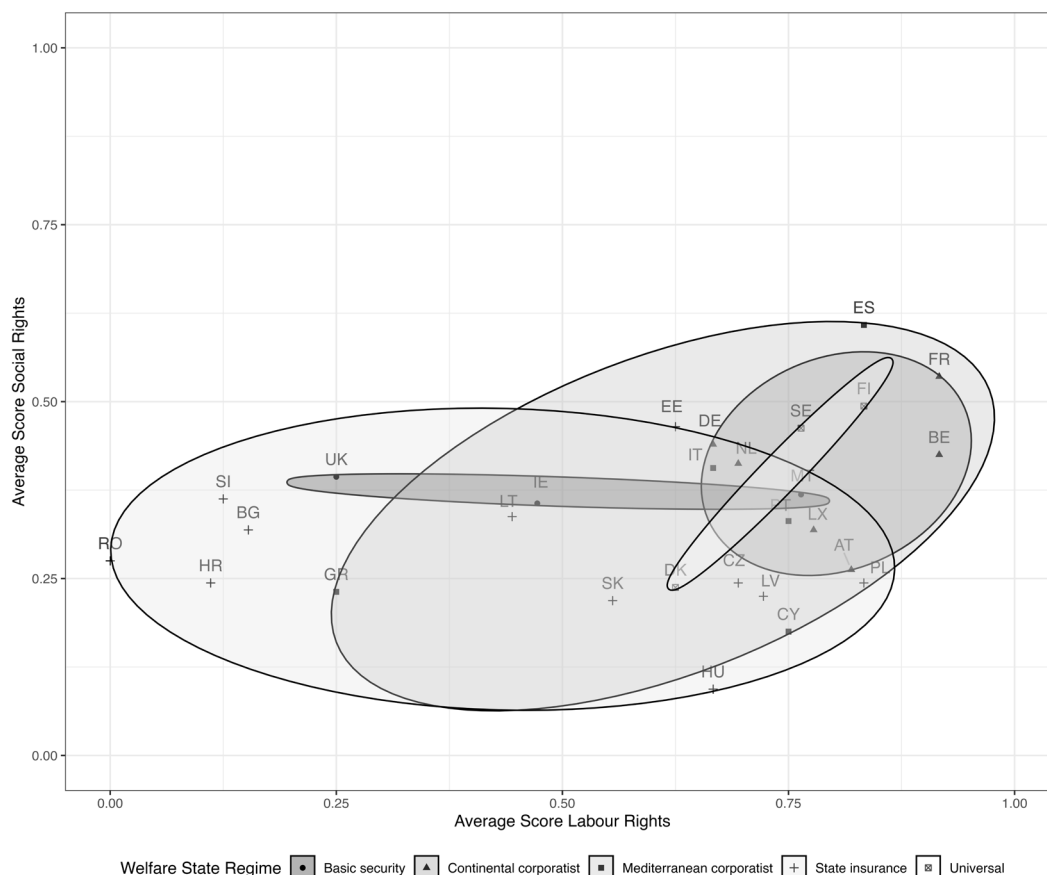
treated on a typically unequal basis to citizens and often face obstacles in exercising and enforcing their rights owing to the absence of country provisions on legal aid and/or firewalls. Germany and Italy receive mean scores of zero on the agency indicator for all labour rights, while Portugal receives a mean score of zero on the agency indicator for all healthcare rights (i.e. in all of these cases there are reporting duties and no legal aid).

A smaller group of ‘old’ EU countries – group “D”- also provides irregular migrants with moderate-high rights coverage but extends the “quality” of such rights by legislating for provisions (in the forms of firewalls and/or legal aid) that are designed to increase the likelihood that such migrants will actually exercise and enforce at least some of their legal rights. Nonetheless, even for all countries in this last group, national laws do not protect irregular migrant workers from being reported to law enforcement authorities by labour inspectorates, with the effect that labour rights protections are always closely linked to immigration control. Finland also scores poorly on the costs indicator relative to other group “D” countries, by charging irregular migrants at higher rates than citizens for accessing both emergency and maternity care, and further education.

Overall Country Scores by Welfare State and Labour Market Classifications

It is beyond the scope of this paper to analyse why countries adopt different approaches to protecting the rights of irregular migrants’ and what might cause them to cluster in groups. In a separate paper (Fox-Ruhs et al. 2024), we hypothesised that, in interaction with political interests, national institutional settings of welfare states, labour markets, legal and political systems both directly and indirectly shape the conditions – including the legal rights – of irregular migrants in European countries. We also drew on existing findings of correlations between certain types of welfare state and labour market settings (e.g. Hall and Soskice 2001). For exploratory purposes only, and specifically to observe any potentially significant correlations, we therefore make a first attempt at plotting the total labour and social rights scores for each of our twenty-eight countries against existing welfare state and labour market classifications for these countries as developed in Österman et al. (2024). To this end, Figure 13 visualises the mean social and labour rights scores for all countries mapped against the five different welfare state regimes to which countries are assigned.

Figure 13: European Countries' Mean Social and Labour Rights Scores, Categorised by Welfare State Regimes



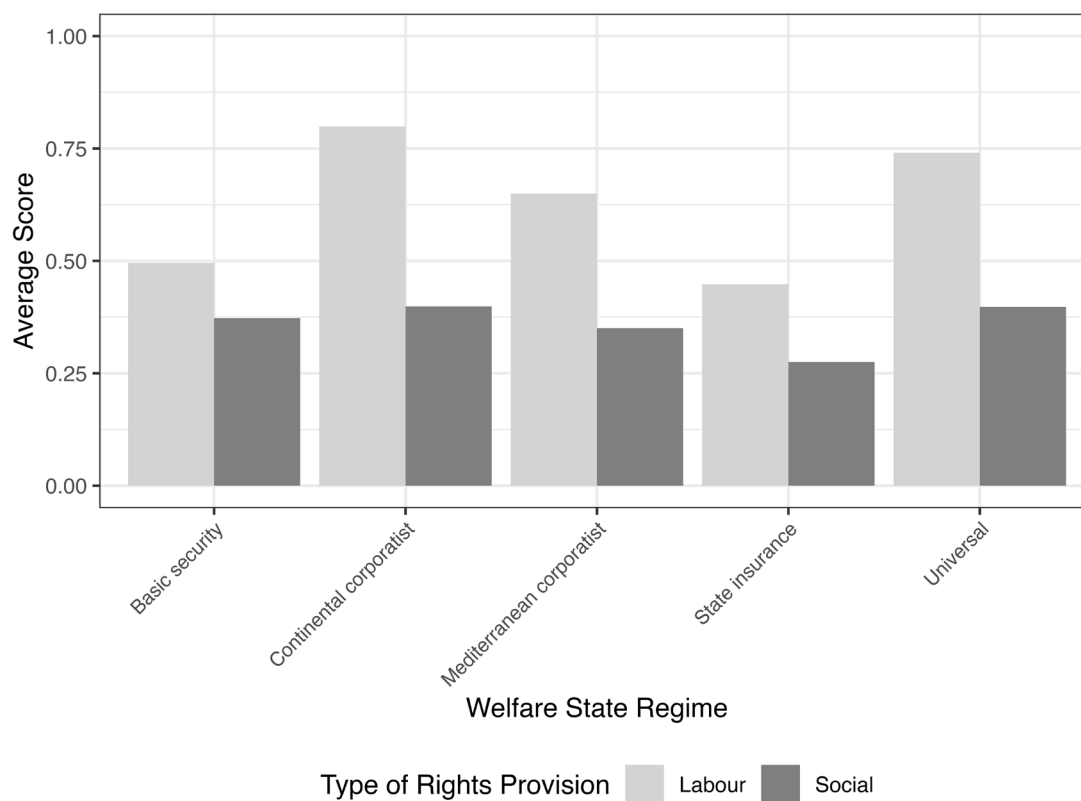
Source: IRMIGRIGHT Database

Figure 13 shows that although countries loosely cluster in the same groups (“A”-“D”) of Figure 12 (which took *combined* social and labour rights scores), these clusters tend to cut across welfare state regime membership. The countries that conform most to regime expectations - with low-medium levels of overall social rights scores - are those Eastern European countries which adhere to the “State Insurance” regime, except for Estonia and, when it comes to labour rights, Poland. The “basic security” regime countries of the UK, Ireland and Malta, also follow our expectation of less rights protection but Malta provides higher labour rights than expected. “Universal” welfare states, on the other hand, are sharply divided on the right side of the graph with Denmark scoring much lower than either Sweden or Finland, and much lower than expected. A similar type of division characterises the “Continental Corporatist” countries although in the federal countries of Germany and Austria (as discussed in section 3 above), the absence of national-level laws in some social policy areas - compulsory education in Germany and social housing in Austria - results in reduced country scores. Countries associated with welfare states of the “Mediterranean Corporatist” variety, show greatest variation in their legislative rights provisions for irregular migrants and are represented in all four main country clusters as discussed above but the graph shows that Greece is the most deviant case.

The average regime differences across cross-national social rights provisions are illustrated in Figure 14 below. These differences are small as could be expected from Figure 13, even if they go

in expected directions. The average differences are particularly small with regard to social rights. Below, we will further discuss the regime differences with regard to labour rights.

Figure 14: Mean Social and Labour Rights Scores grouped by Welfare State Regimes



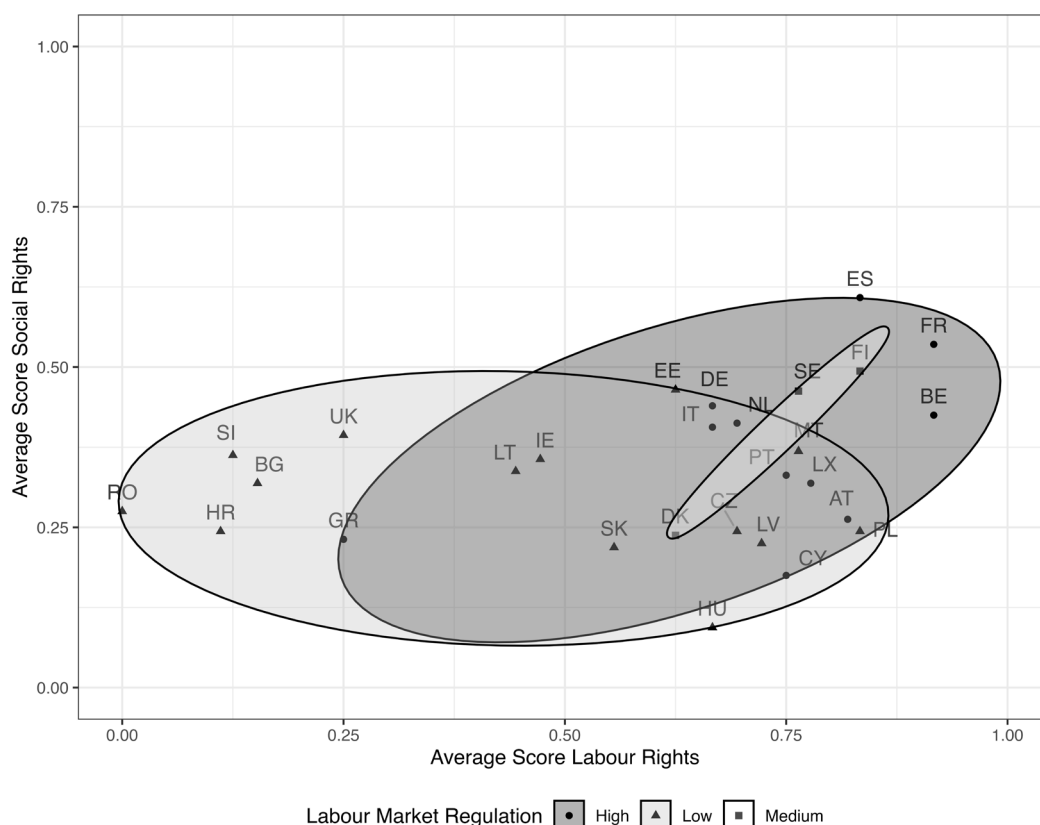
Source: IRMIGRIGHT Database

To some extent, we cannot expect that welfare state regimes that were constructed primarily through the analysis of social security programmes will be determinative of the level of rights provision in the fields of education rights and both emergency and non-emergency social assistance and housing. Moreover, our data on explicit and implicit inclusions and exclusion (discussed earlier in this section), already indicated a high share of *implied exclusions* among social rights relative to labour rights. Such exclusions point to structural elements within national welfare states (perhaps supported by political interests) that may resist, rather than support, an inclusive approach to irregular migrants. In particular, the data suggest the potential exclusionary effects of contribution-based welfare states of the “Corporatist” varieties of welfare states. The data also indicate that we cannot take for granted spill-over inclusive effects of “Universal” welfare states; the findings which show Denmark as offering low social rights provisions and Finland and Sweden as lagging behind some Corporatist welfare states suggest that factors beyond welfare state logics determine policy decisions on irregular migrants’ rights in these countries.

The relationship between the same mean labour and social rights country scores and labour market regulation regimes is illustrated in Figure 15. Again using Österman et al. (2024) to assign countries to one of three labour market regulation regimes (“low”, “medium” and “high”), Figure 15 paints a picture of only a modest and patchy relationship between labour regime type and the rights scores of countries. Whilst the countries which offer irregular migrants the weakest labour

rights are all countries with low labour market regulation (Romania, Croatia, Slovenia, Bulgaria and UK), and the countries which offer irregular migrants the strongest labour rights correspond to those with high labour market regulation (France, Belgium and Spain), there is an equally large number of countries whose rights provisions for irregular migrants do not conform to regime expectations. Greece is an example of a country with high labour market regulation but which scores at the low end in terms of labour and social rights provisions for irregular migrants, while Hungary, Poland, Latvia, Malta and Czechia provide irregular migrants with substantially stronger labour rights than we might typically associate with countries providing low labour market regulation.

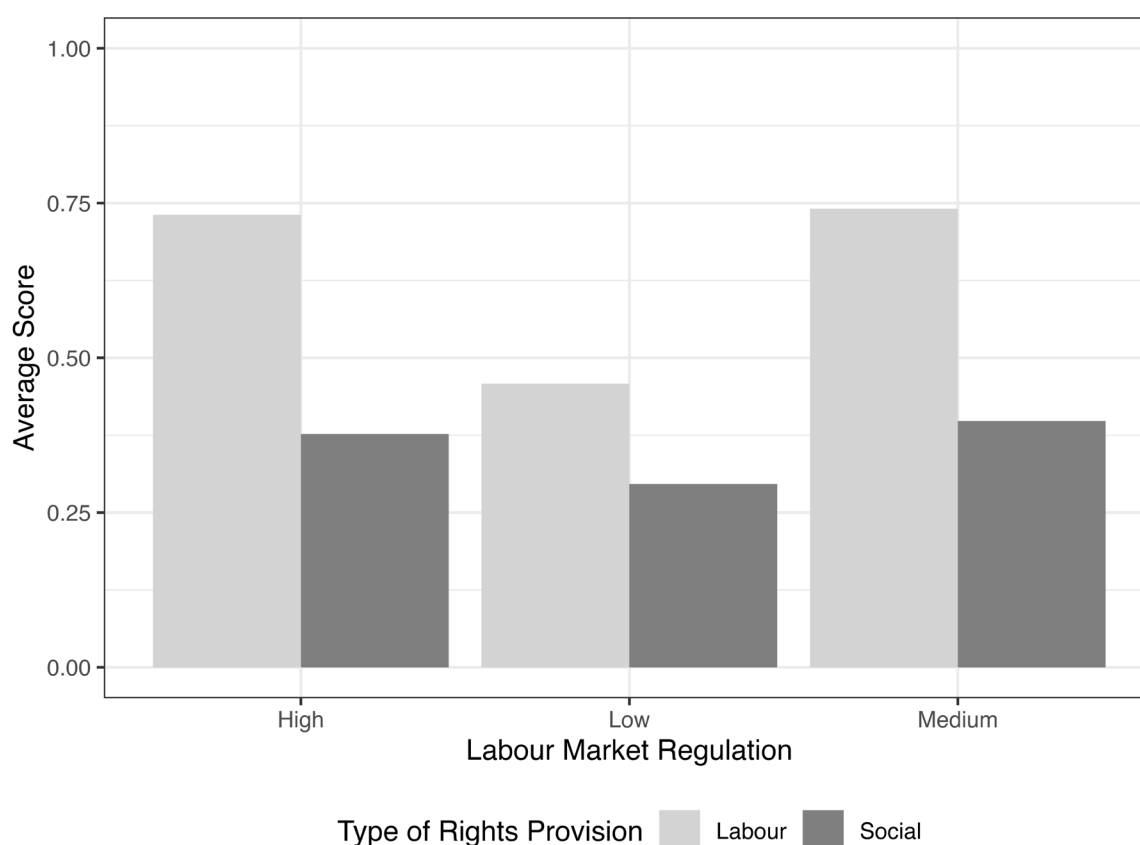
Figure 15: European Countries' Mean Social and Labour Rights Scores, Categorised by Labour Market Regulation Regimes



Source: IRMIGRIGHT Database

Figure 16 (below) shows that there is virtually no difference in the average level of labour or social rights of irregular migrants as protected under national laws between countries with medium and high labour market regulation. Indeed, medium regulation countries have slightly higher mean scores for both social and labour rights than high regulation countries. On the other hand, countries that conform to a low labour regulation regime have clearly lower labour rights scores. Differences in social rights scores between high, medium and low labour market regimes are however less pronounced although the low labour market regime countries trail the other countries in social rights scores.

Figure 16: Mean Social and Labour Rights Scores grouped by Labour Market Regulation Regimes



Source: IRMIGRIGHT Database

Key Contextual Findings Related to the Irregular Migrant Rights Index

Regionally Legislated Rights in Federal or Devolved Country Contexts

For reasons of cross-national comparability, as discussed earlier in the methods section, the IR-MIGRIGHT dataset is limited to the analysis of rights provisions made at the level of national laws in respect of irregular migrants. However, in the course of our analysis of national laws, research revealed that, based on either the exclusive or concurrent legislative competences of regional governments in federal or devolved state models, irregular migrants can claim and enforce certain social rights vis-à-vis regional powers. In certain regions of Austria, Spain, Italy and the UK, migrants residing irregularly in those regions can exercise legal rights to emergency shelter and subsistence level income support. In some Spanish autonomous communities, such migrants additionally have rights, after a period of time, to non-emergency minimum income schemes. Selected Italian regions extend healthcare rights to irregular migrants beyond the limits of national provisions, while German Länder typically legislate to make rights provisions for irregular migrant children in terms of their access to compulsory education. Building knowledge of such sub-national rights provisions is important for contextualising national-level protections, and highlights the significant roles played in some European countries by regional governments, regional courts and constitutional courts in advancing and defending irregular migrants' rights.

Rights for Vulnerable Groups of Irregular Migrants

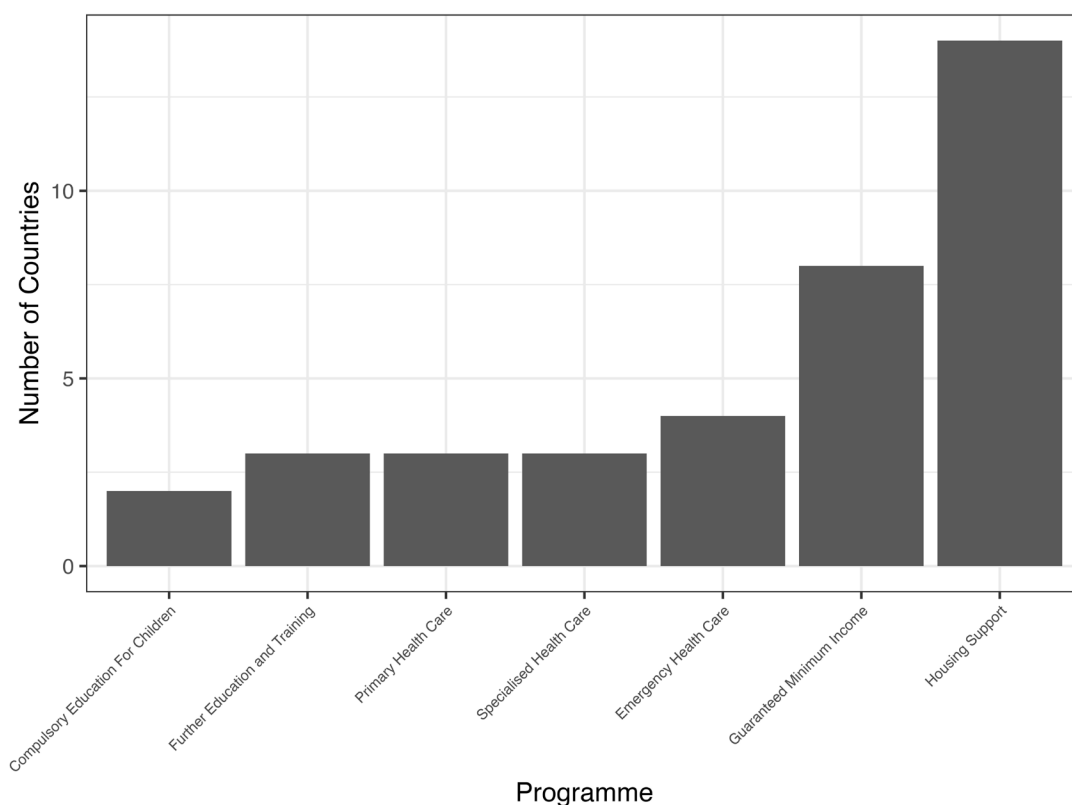
As part of our data collection, we also recorded instances of legal rights provisions that were not comprehensive in covering the irregular migrant population but were reserved to specific “vulnerable” groups of irregular migrants. The phenomenon of sub-group protections arose only in the context of social rights and these were not included or scored in compiling the rights indices. Only a minority of European countries in our research were recorded as making exceptional rights provision for irregular migrants based on age, disability or other vulnerability. Most frequent were special provisions for children to access a full range of healthcare facilities that was otherwise restricted for the general irregular migrant population. A few countries (e.g., Luxembourg) extend healthcare to all persons with disabilities and there were a small number of instances of housing and income support being made available to victims of domestic and sexual violence. In some countries like the UK, the latter provisions are limited to migrants who entered the UK legally but later become irregular as a result of a visa condition breach directly related to an abusive spousal relationship.

Discretionary Powers to Make Social Welfare Provision

In designing and implementing our research, we were highly attentive to the distinction between the legal rights of irregular migrants and the discretionary powers of state actors to otherwise make social welfare provisions for such populations. The data that we recorded on the incidence of discretionary powers (see Figure 17 below) reveals that national laws equip state actors to make social provision on a discretionary basis in all areas of social welfare provision other than maternity care (which is, however, arguably a composite of the other three healthcare rights). What is perhaps most revealing however is that discretionary powers appear to be readily used as a *substitute* for rights in relation to the provision of both social housing and minimum income supports (of both the emergency and more long-term varieties). If we recall, our rights data found that housing and income supports (along with further education/vocational training) are the rights for which irregular migrants enjoy least protection across European countries and yet, it is in these areas that discretionary powers are most prevalent.

A second interesting dimension of our data on discretionary powers is that discretions even play a role in relation to areas of social welfare where irregular migrants may, on paper, have rights under national laws. This point is illustrated by the four country cases of emergency care, identified in Figure 17. Although all twenty-eight countries in our dataset provide access to emergency care as of legal right, the nature or ‘quality’ of that right of access is – in at least four known cases – a matter for official discretion. In relation to healthcare, discretionary powers typically enable government actors to waive user-charges that would otherwise apply to irregular migrants but such powers may also determine the scope of medical services that are available to irregular migrants. This suggests that notwithstanding the conceptual importance of distinguishing rights from discretions, the ‘on paper’ realities of irregular migrants’ entitlements may not always be a straightforward case of either/or; within the scope of an ostensible legal rights framework, discretionary powers can simultaneously operate to adjust exactly *what* irregular migrants can claim of the state. Discretions can be exercised in favour of, or against, irregular migrants and thus have the potential for both enhancing and diminishing migrants’ capabilities.

Figure 17: Numbers of countries with discretionary powers to make social provision for irregular migrants



Source: IRMIGRIGHT Database

Changes in Rights Protections over Time

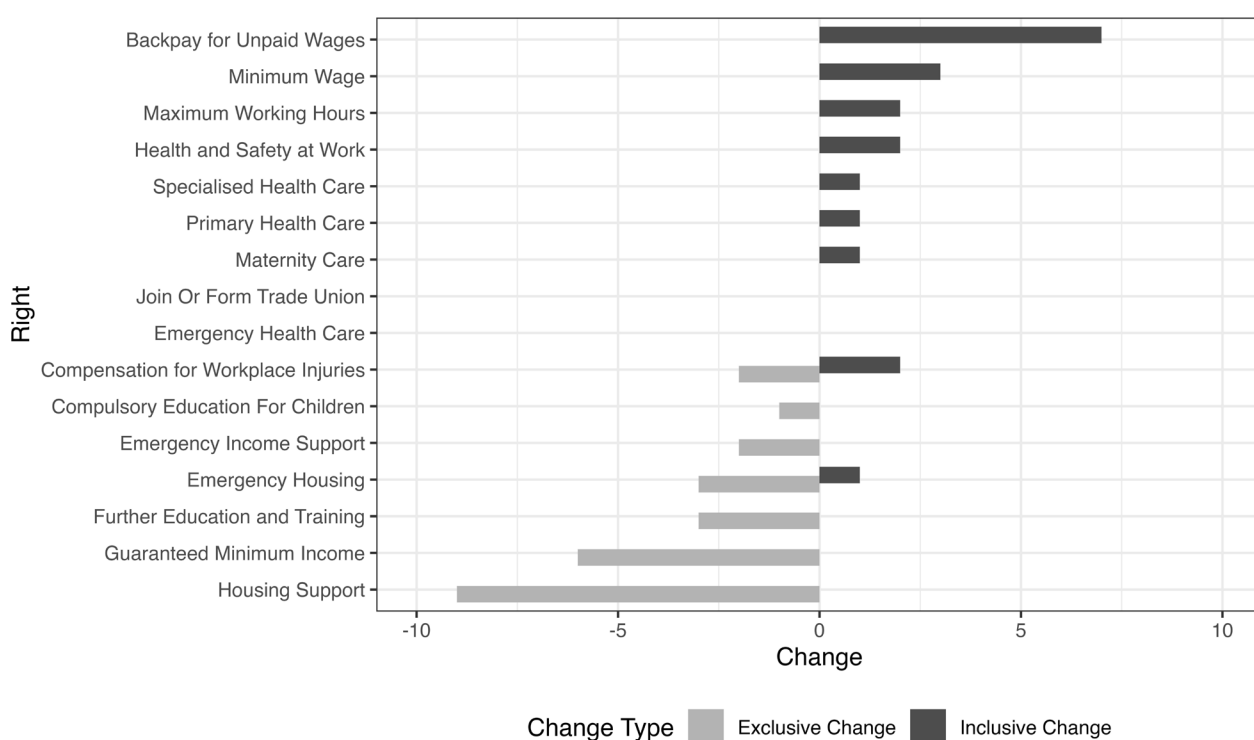
While the IRMIGRIGHT dataset is composed primarily of snap-shot data on the rights of irregular migrants across twenty-eight European countries as collected during the period of April-December 2024, it also contains some data on policy changes across the last thirty years (since 1994) with a focus on the direction, mode and quality¹⁰ of changes. Data indicates a predominant pattern of stability in terms of the inclusionary and exclusionary effects of national laws on the rights of irregular migrants across countries. Simple dichotomous measures of the presence and absence of rights over time, indicate that just under half of the dataset countries (11 of 28) have not changed their laws in regard to the inclusion or exclusion of irregular migrants, even if they may have changed the mode of the legal provisions and/or the quality of the right. Stability has particularly been the norm in the case of the labour rights of irregular migrants while social rights show more tendency for fluctuation.

Figure 18 (below) indicates all instances (whether implicit or explicit) where legal rights changed over the last thirty years (1994-2024) from including to excluding irregular migrants (left side of the figure), and from excluding to including irregular migrants (right side of the figure). The figure shows net changes and therefore thus does not show the very small number of cases where change in one direction was succeeded by change in the opposite direction within the same country, in a way that restored the original position. The vast majority of cases of “inclusive change”

¹⁰ Quality is measured in terms of changes to rights provisions related to adequacy, costs and agency as we define them for the main rights indicators (see section 3 above).

concerned labour rights with only single instances of a country law changing to include irregular migrants in non-emergency healthcare rights and in emergency housing. By contrast, almost all cases of “exclusive change” concerned social rights other than two instances where irregular migrants were excluded from compensation for workplace accidents and injuries. The most inclusive direction of travel has been in relation to the right to back pay, with 7 countries protecting irregular migrants’ right to back pay for the first time in recent history. On the other hand, the rights accounting for the greatest exclusive changes have been those pertaining to social housing and minimum income provision. In these latter instances, legal provision has typically shifted from *implied inclusion* to *explicit exclusion* and most changes date to the late 1990s and early 2000s. These restrictions are consistent with the low coverage rates of these right as of 2024.

Figure 18: Count of Exclusive and Inclusive Net Changes in the Legal Rights of Irregular Migrants across 28 European countries between 1994 and 2024



Source: IRMIGRIGHT Database

Change patterns show some differences across European countries and in particular between ‘old’ and ‘new’ EU Member States. Exclusive changes in the social rights of irregular migrants have been virtually limited to ‘old’ EU Member States although there were some old EU Member States (such as France and Finland) that did not ever restrict coverage over this period. Over time, the UK, Belgium and the Netherlands are the countries that have most excluded irregular migrants from coverage in social rights terms, even if the quality of coverage for some rights remains comparatively high in European country terms. Spain has been the country that has experienced most fluctuation in the exclusion and subsequent inclusion of irregular migrants in labour and social rights provisions. As a result of changes in the right-left ideology of political leadership, Spain moved to restrict the rights of irregular migrants in the early 2000s (including in the areas of healthcare and freedom of association rights) but, following a subsequent shift in right-leaning to left-leaning governance, Spain not only restored but expanded certain rights. These chang-

es have made Spain a present-day European leader in rights protections for irregular migrants. With the exception of Latvia in relation to the right to compulsory education, no 'new' EU Member State has made any changes that implicitly or explicitly exclude irregular migrants from social or labour rights; either the law has been stable in including or excluding irregular migrants, or it has increased coverage via back pay measures and minimum wages.

5. Conclusions

A number of thematic findings emerge from the data analysis in section 4 which merit further summary and discussion. First, the data emphasise the large differentials in the extent to which irregular migrants are protected across categories of rights. Emergency healthcare, compulsory education for children and back pay for outstanding wages are the rights with the highest average levels of protection across all 28 European countries, whilst standard housing support, standard minimum income support and further education or training are the rights with the lowest levels of protections. On average, irregular migrants have significantly weaker social rights than labour rights. Very few countries provide irregular migrants with rights to emergency subsistence level income or emergency housing, and healthcare rights of the non-urgent variety are relatively weakly protected across countries. It is notable that these differentials in rights protections reflect, in the cases of high rights protection, the presence of supranational, enforceable laws governing those rights (i.e. via the ECHR and its protocols, and the EU Employer Sanctions Directive) and, in cases of low protection, the absence of supranational standards designed to explicitly guarantee these latter rights in national laws.

A second thematic finding is that national laws are explicit about their application to irregular migrants in only just over one quarter (27%) of the total number of analysed rights. With the exception of irregular migrants' rights to back pay, it is in the area of social rights that European countries (typically 'old' EU) are most explicit about both the inclusion and exclusion of irregular migrants' legal rights. Consequently, in the substantially greater share of analysed rights provisions (73%), it is necessary to *imply* the inclusion and exclusion of irregular migrants in regard to such rights. Irregular migrants are twice as likely to be implicitly *included* in labour rights as social rights, and also twice as likely to be implicitly *excluded* from social rights as labour rights. Based on this finding, we can reason that the default settings of labour laws across European countries tend to favour a universalist approach to rights protection, whereas the equivalent settings of countries' social rights provisions encourage more exclusive treatment of irregular migrants. Overall, the dominant tendency of European countries to *implicitly* include and exclude irregular migrants from social and labour rights is an important finding which underscores the significance of a methodological approach to comparative rights analysis which is capable of measuring implied rights inclusions and exclusions in a way that is rigorous, systematic and replicable.

A third core finding relates to the 'quality' of protected rights for irregular migrants (in adequacy, costs and agency terms), as measured against the barometer of the equivalent rights of host country citizens. Whilst rights quality is extremely variable across countries, there is no single right which, across all 28 European countries, irregular migrants can enjoy in law on a fully equal basis to citizens. The data show that once irregular migrants are covered to some degree by a given social or labour right, parity of treatment with citizens is typically high in relation to the range and nature of benefits/services provided (i.e., "adequacy") and consistently high for labour rights (the majority of which are implied rights). Irregular migrants are however often discriminated, rel-

ative to citizens, on the costs of healthcare rights (including emergency care), and in relation to the agency that they enjoy in claiming and enforcing rights to which they are entitled in law. The agency of irregular migrants is diminished by the absence of legal aid for enforcing rights but, more significantly still, by the widespread absence of firewalls in respect of both social and labour rights. The exercise of rights by irregular migrants in European countries is therefore accompanied by sizeable detention and deportation risks. Moreover, it seems that the official reporting to national immigration authorities of irregular migrants who exercise their rights ‘on paper’ may be a common way in which European countries respond to the “goal conflict” between fundamental rights and immigration controls, discussed at the outset of this paper.

No dataset is without limitations and there are ways in which the IRMIGRIGHT dataset could be enhanced and developed to provide even deeper and more nuanced understanding of the rights of irregular migrants in Europe. Our analysis of laws at the national law level has the undoubted effect of prejudicing federal countries where certain social policies are a matter of the concurrent or exclusive competence of regional or devolved government (e.g. Germany and Austria). In design terms, the IRMIGRIGHT dataset has the potential to comparatively assess the scope of regional law protections as a component of national law using the rights indicator on “coverage”. Such an extension to the research would depend however on thorough and comprehensive data collection in all the regions of federal states that have law-making competences in the areas of the rights that we study.

An important conceptual and methodological strength of the IRMIGRIGHT dataset is the inclusion and measurement of implied rights and implied exclusions. This is also however a point of potential data vulnerability because findings of implied rights and exclusions, which rely on ‘best judgments’ based on all the available evidence, cannot command the same rock-hard strength as explicit statutory provisions. Unlike in many ‘old’ EU countries where the weight and nature of evidence of implied inclusion or exclusion provided us with confidence levels close, if not effectively equal, to those of explicit provisions, the same confidence could not be achieved (notwithstanding an equally rigorous research and evaluation process), in a smaller number of ambiguous or “hard” cases in certain Central/Eastern European countries. We are fully transparent about the evidence and documented line of reasoning associated with each judgment of an implied right or exclusion and this material will be published alongside the complete dataset in 2026. Should countries meanwhile provide new clarity about the scope of their laws in relation to irregular migrants, we remain attentive to adapt the dataset as part of the updating process.

The IRMIGRIGHT database provides, we hope, an important platform for future research on the rights of irregular migrants. It has the potential to be expanded to include a wider range of rights and larger number of countries, to take account of the rights of particular irregular migrant sub-groups (such as children, the elderly, and those with disabilities) and to engage in more extensive analysis of rights over time. The rights data could be helpfully evaluated within the broader context of countries’ varied policies on immigration detention, returns and regularisation. Indeed, an additional strand of the PRIME research project is currently tasked with complementing the IRMIGRIGHT database with a cross-national analysis of data on regularisation programmes available to migrants on an individual basis.

Finally, there is much work needed to analyse the causes of cross-national variation and to better understand why countries cluster as they do. Future analysis could usefully interrogate the potential relevance of particular interest/institution configurations at national level including:

political party governance along a left-right spectrum and the interaction with political systems; welfare state and labour market settings in interaction with constitutional cultures and judicial interventionism; and regional governance and administrative decentralisation in both federal and non-federal states. Of relevance to these themes are the new and forthcoming PRIME research findings which identify how country rights protections may be influenced by the attitudes and policy preferences of European country publics towards irregular migrants (e.g. see Gschwind et al. 2025, Ahlen et al. 2025). At the supranational level, the research field would further benefit from extended inquiry into the precise mechanisms behind any “international rights standard effect” on the protection of irregular migrants’ rights at the national law level, and what such international initiatives might tell us about political interests in relation to the perceived costs of rights protection and non-protection.

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Appendix 1:

Data collection instrument for social rights

D 3.1 Social rights 12mar-4

The focus of this study is on the **national legislation as of March 2024**. In this project, *irregular migrants* refer to non-European nationals who do not meet the entry or residence criteria and lack full recognition from authorities. *

Under this definition, we exclude persons such as those with tolerated status and an issued return decision, as well as recognized victims of trafficking, for instance.

OK

Specify country *

- | | | |
|--------------------------------|-----------------------------------|--------------------------------------|
| <input type="radio"/> Austria | <input type="radio"/> Belgium | <input type="radio"/> Bulgaria |
| <input type="radio"/> Croatia | <input type="radio"/> Cyprus | <input type="radio"/> Czech Republic |
| <input type="radio"/> Denmark | <input type="radio"/> Estonia | <input type="radio"/> Finland |
| <input type="radio"/> France | <input type="radio"/> Germany | <input type="radio"/> Greece |
| <input type="radio"/> Hungary | <input type="radio"/> Ireland | <input type="radio"/> Italy |
| <input type="radio"/> Latvia | <input type="radio"/> Lithuania | <input type="radio"/> Luxembourg |
| <input type="radio"/> Malta | <input type="radio"/> Netherlands | <input type="radio"/> Poland |
| <input type="radio"/> Portugal | <input type="radio"/> Romania | <input type="radio"/> Slovakia |
| <input type="radio"/> Slovenia | <input type="radio"/> Spain | <input type="radio"/> Sweden |
| <input type="radio"/> UK | | |

Please choose the right you are reporting on. *

- | | | |
|---|---|---|
| <input type="radio"/> emergency care | <input type="radio"/> primary care | <input type="radio"/> specialised care |
| <input type="radio"/> maternity care | <input type="radio"/> compulsory education for children | <input type="radio"/> vocational training |
| <input type="radio"/> guaranteed minimum income | <input type="radio"/> housing support | |

By ", we mean timely care for the acutely ill and injured, with medical, surgical and obstetric emergencies.

Remember, should there be any variation within the scope of this right, you have the option to submit additional forms. If you do, please specify the type of right you're referring to in the comment section.

Note that this question only concerns services that are at least partially subsidised by the state.

By ", we mean a patient's first point of contact. Most often, it is general practice, but the exact content may depend on the national legislation.

Remember, should there be any variation within the scope of this right, you have the option to submit additional forms. If you do, please specify the type of right you're referring to in the comment section.

Note that this question only concerns services that are at least partially subsidised by the state.

By ", we mean healthcare that usually happens in a hospital, and requires more specific expertise.

Remember, should there be any variation within the scope of this right, you have the option to submit additional forms. If you do, please specify the type of right you're referring to in the comment section.

Note that this question only concerns services that are at least partially subsidised by the state.

By ", we simply mean anything related to pre-natal, obstetric, and post-natal care.

Remember, should there be any variation within the scope of this right, you have the option to submit additional forms. If you do, please specify the type of right you're referring to in the comment section.

Note that this question only concerns services that are at least partially subsidised by the state.

By ", we mean the mandatory attendance of schools at the standard level required for minors (under the age of 18) in a particular country.

Note that this question only concerns services that are at least partially subsidised by the state.

By ", we mean education for adults, typically focused on skill acquisition necessary for further (self)employment.

Remember, should there be any variation within the scope of this right, you have the option to submit additional forms. If you do, please specify the type of right you're referring to in the comment section.

Note that this question only concerns services that are at least partially subsidised by the state.

By ", we mean non-contributory guaranteed minimum resources which are granted on a general basis without being dependent on previous contributions to social insurance systems. See [Definitions](#)

Remember, should there be any variation within the scope of this right, you have the option to submit additional forms. If you do, please specify the type of right you're referring to in the comment section.

By ", we mean either a cash-based housing subsidy or assistance through social/public housing or other similar forms of aid.

Remember, should there be any variation within the scope of this right, you have the option to submit additional forms. If you do, please specify the type of right you're referring to in the comment section.

Optional comment regarding the right you're describing

Are there grounds to believe that **all** irregular migrants have a right to under national law? *

Yes

No

If not, explain why

Are irregular migrants explicitly excluded by primary legislation (i.e. effects of interaction of social protection and/or labour laws with immigration laws)? *

Explicitly excluded means that irregular migrants are either expressly referenced in the legislation or listed as an exempted group

Yes

No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

Are irregular migrants excluded either explicitly or implicitly by application of legal principles (e.g. illegality doctrines etc.)? *

By legal principle we mean legal rules or doctrines that have developed from judge-made laws (i.e. legal precedent) and which constitute the 'common law'

Yes

No

Elaborate and cite the source if applicable *

The appropriate sources would be case law and academic legal materials (e.g text books, journal articles, judicial lectures).

Are irregular implicitly migrants excluded by a legal residence requirement for accessing ? *

E.g. to access welfare services, must all persons be officially registered as "residents" - via an administrative or ID card process - and is it necessary to be lawfully resident in order to satisfy such requirements?

Yes

No

Elaborate and cite the source if applicable *

Please specify the nature of any residency rules.

<p>Does the law only provide rights for some "vulnerable" groups of irregular migrants? *</p> <p><input type="radio"/> Yes</p> <p><input type="radio"/> No</p>
<p>Is there another reason for the implicit exclusion of irregular migrants from this right? *</p> <p><i>See the Cover note for examples.</i></p> <p><input type="radio"/> Yes</p> <p><input type="radio"/> No</p>
<p>Elaborate and cite the source if applicable *</p> <p><i>Please cite legislation titles both in English and local language</i></p> <hr/>

Please check if any of the following vulnerable groups of irregular migrants have protections by the right

Children < 18	*
<input type="radio"/> Yes	
<input type="radio"/> No	
Elderly/infirm	*
<input type="radio"/> Yes	
<input type="radio"/> No	
Disabled	*
<input type="radio"/> Yes	
<input type="radio"/> No	
Victims of violence (e.g., domestic or female genital mutilation)	*
<input type="radio"/> Yes	
<input type="radio"/> No	
Other - <i>keep in mind that the focus of this study is on the irregular migrants without formal recognition by the authorities.</i>	*
<input type="radio"/> Yes	
<input type="radio"/> No	
Elaborate and cite sources if applicable <i>Please cite legislation titles both in English and local language</i>	*
.....	

If 'yes', explain how so.

Is this right to explicit in national law (i.e., statutory or constitutional) for irregular migrants? *

For instance, the legislation includes a provision asserting a right that applies "regardless of the migration status " or to "foreigners who reside in Sweden without the support of a decision by a public authority or statute".

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

.....

Is the right implied by universal language (e.g. "everyone" or "every worker") in the relevant social/labour statutory (or other) rights provisions? *

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

.....

Is the right implied by national constitutional rights, human rights acts and/or equality laws (e.g. anti-discrimination) *

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

.....

Is the right supported by relevant country-specific case law? *

Yes

No

Elaborate and cite sources if applicable *

Please cite case law references both in English and local language

Is the right supported by government guidance/official interpretative documents? *

Yes

No

Elaborate and cite sources if applicable *

Please cite document titles both in English and local language

Is there another reason for implying legal rights to irregular migrants? *

See the [Cover note](#) for examples.

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

Additional comments

Implicit exclusion

Having said that, are there grounds to believe that the irregular migrant may be implicitly excluded from this right based on a residence requirement or else? *

Use your best judgment.

Yes

No

Elaborate and cite the source if applicable *

Equal treatment

Is the right of all irregular migrants to provided on terms equal to those of citizens? *

Yes

No

Is irregular migrants' less than equal right distinguished by reduced scope of right, in terms of benefits/provisions? *

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

Is irregular migrants' less than equal right distinguished by higher fees/charges? *

Note that this questions only concerns services that are at least partially subsidised by the state

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

Is irregular migrants' less than equal right distinguished by something else? *

Yes

No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

Remedy

Has any remedy, which is also applicable to the right to , already been described in a form for another right? *

- Yes
- No

Specify *

Would you like to report another remedy related to the right to ? *

- Yes
- No

In the event that the right to is not met in full or in part, does national law provide irregular migrants with a remedy, in the form of administrative and/or judicial review or adjudication? *

- Yes
- No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

In any circumstances, is publicly-funded legal aid available to irregular migrants who seek to challenge the legality of state authority actions in relation to their legal right to ? *

Yes

No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

Administrative discretion

Does national legislation grant sub-national state actors discretionary powers to provide [housing, social assistance, healthcare] to irregular migrants? *

Yes

No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

Operational requirements

Are service providers required (by national legislation) to provide information in the language requested by the "recipient"?

*

 Yes No

Elaborate and cite the source if applicable

*

Please cite legislation titles both in English and local language

Are [health, housing, social assistance as the case may be] service providers required to report irregular immigration status?

*

 Yes No

Elaborate and cite the source if applicable

*

Please cite legislation titles both in English and local language

Policy dynamics

Please elaborate on any legislative or administrative changes that may have affected irregular migrants right to .

*

I.e., some broad directions of changes of the stability of the legal/policy position over the last twenty years, e.g. changes from implied rights to explicit rights or from implied rights to explicit exclusions

Appendix 2:

Data collection instrument for labour rights

D 3.1 Labour rights 12mar

The focus of this study is on the **national legislation as of March 2024**. In this project, *irregular migrants* refer to non-European nationals who do not meet the entry or residence criteria and lack full recognition from authorities.

Under this definition, we exclude persons such as those with tolerated status and an issued return decision, as well as recognized victims of trafficking, for instance.

OK

Specify country

- | | | |
|--------------------------------|-----------------------------------|--------------------------------------|
| <input type="radio"/> Austria | <input type="radio"/> Belgium | <input type="radio"/> Bulgaria |
| <input type="radio"/> Croatia | <input type="radio"/> Cyprus | <input type="radio"/> Czech Republic |
| <input type="radio"/> Denmark | <input type="radio"/> Estonia | <input type="radio"/> Finland |
| <input type="radio"/> France | <input type="radio"/> Germany | <input type="radio"/> Greece |
| <input type="radio"/> Hungary | <input type="radio"/> Ireland | <input type="radio"/> Italy |
| <input type="radio"/> Latvia | <input type="radio"/> Lithuania | <input type="radio"/> Luxembourg |
| <input type="radio"/> Malta | <input type="radio"/> Netherlands | <input type="radio"/> Poland |
| <input type="radio"/> Portugal | <input type="radio"/> Romania | <input type="radio"/> Slovakia |
| <input type="radio"/> Slovenia | <input type="radio"/> Spain | <input type="radio"/> Sweden |
| <input type="radio"/> UK | | |

Please choose what you are reporting on?

- | | |
|---|---|
| <input type="radio"/> join or form trade union | <input type="radio"/> minimum wage |
| <input type="radio"/> protection against work in excess of a maximum weekly working hours threshold | |
| <input type="radio"/> healthy and safe working environment | <input type="radio"/> compensation for accidents and injuries at work |
| <input type="radio"/> backpay for unpaid outstanding wages | <input type="radio"/> operational requirements & sanctioning irregular migrant labour |

This refers to a statutory minimum wage and/or a minimum wage based on a collective agreement. Please specify, including, where relevant, the scope of the collective agreement to labour market sectors and categories of workers.

This refers to a statutory or regulatory threshold for weekly working hours for employees.

I.e. The application to irregular migrant workers of relevant national laws and regulations on health and safety in the workplace.

This refers to the inclusion of irregular migrant workers in any publicly funded workplace compensation schemes. Depending on the country, these may be provided in the forms of a standalone workers' accident and injury compensation scheme or as a component of unemployment and/or health insurance programmes. Please also include compensation under criminal injuries schemes where the workplace injury resulted from criminal behaviour on the part of the employer.

These may include general wage recovery provisions and, following the Employer Sanctions Directive, some specific wage recovery provisions for irregular migrants. Please specify conditions (e.g. time thresholds) and, where specified in law, maximum recoverable wages.

Are there grounds to believe that **all** irregular migrants have a right to under national law? *

Yes

No

If not, explain why

Are irregular migrants explicitly excluded by primary legislation (i.e. effects of interaction of social protection and/or labour laws with immigration laws)? *

Explicitly excluded means that irregular migrants are either expressly referenced in the legislation or listed as an exempted group

- Yes
- No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

.....

Are irregular migrants excluded either explicitly or implicitly by application of legal principles (e.g. illegality doctrines etc.)? *

By legal principle we mean legal rules or doctrines that have developed from judge-made laws (i.e. legal precedent) and which constitute the 'common law'

- Yes
- No

Elaborate and cite the source if applicable *

The appropriate sources would be case law and academic legal materials (e.g text books, journal articles, judicial lectures).

.....

Are irregular implicitly migrants excluded by a legal residence requirement for accessing ? *

E.g. to access welfare services, must all persons be officially registered as "residents" - via an administrative or ID card process - and is it necessary to be lawfully resident in order to satisfy such requirements?

- Yes
- No

Elaborate and cite the source if applicable *

Please specify the nature of any residency rules.

.....

Is there another reason for the implicit exclusion of irregular migrants from this right? *

See the [Cover note](#) for examples.

Yes

No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

If 'yes', explain how so.

Is this right to explicit in national law (i.e., statutory or constitutional) for irregular migrants? *

For instance, the legislation includes a provision asserting a right that applies "regardless of the migration status " or to "foreigners who reside in Sweden without the support of a decision by a public authority or statute".

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

.....

Is the right implied by universal language (e.g. "everyone" or "every worker") in the relevant social/labour statutory (or other) rights provisions? *

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

.....

Is the right implied by national constitutional rights, human rights acts and/or equality laws (e.g. anti-discrimination) *

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

.....

Is the right supported by relevant country-specific case law? *

Yes

No

Elaborate and cite sources if applicable *

Please cite case law references both in English and local language

Is the right supported by government guidance/official interpretative documents? *

Yes

No

Elaborate and cite sources if applicable *

Please cite document titles both in English and local language

Is there another reason for implying legal rights to irregular migrants? *

See the [Cover note](#) for examples.

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

Additional comments

Implicit exclusion

Having said that, are there grounds to believe that the irregular migrant may be implicitly excluded from this right based on a residence requirement or else? *

Use your best judgment.

Yes

No

Elaborate and cite the source if applicable *

Remedy

Has any remedy, which is also applicable to the right to , already been described in a form for another right? *

- Yes
- No

Specify *

Would you like to report another remedy related to the right to ? *

- Yes
- No

In the event that the right to is not met in full or in part, does national law provide irregular migrants with a remedy, in the form of administrative and/or judicial review or adjudication? *

- Yes
- No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

In any circumstances, is publicly-funded legal aid available to irregular migrants who seek to challenge the legality of state authority actions in relation to their legal right to ? *

Yes

No

Elaborate and cite the source if applicable *

Please cite legislation titles both in English and local language

Policy dynamics

Please elaborate on any legislative or administrative changes that may have affected irregular migrants right to . *

I.e., some broad directions of changes of the stability of the legal/policy position over the last twenty years, e.g. changes from implied rights to explicit rights or from implied rights to explicit exclusions

Operational requirements

Are labour inspectorate required (by national legislation) to report irregular immigration status? *

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

Are courts or administrative/tribunal authorities are under a duty to report to immigration authorities where the irregular migrant is seeking legal redress for a violated right? *

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

Sanctioning irregular migrant labour under national law

Does the act of work by an irregular migrant constitute a criminal offence under national law? *

Yes

No

Elaborate and cite sources if applicable *

Please cite legislation titles both in English and local language

Please select which of the following penalties may apply to the irregular migrant who breaches national law: *

Fine

Term of imprisonment

Pending immigration applications rejected

Future immigration application barred for at least a minimum specified period

Appendix 3: Summary Statistics of Rights Indicators

Table A1: Descriptive Statistics of all Rights

	N	Mean	Minimum	Maximum	SD
Coverage	448	0.560	0.00	1	0.491
Adequacy	256	0.923	0.25	1	0.202
Agency	256	0.448	0.00	1	0.272
Costs	116	0.586	0.00	1	0.444
Total Right Score	448	0.435	0.00	1	0.391

Table A2: Descriptive Statistics of Labour Rights

	N	Mean	Minimum	Maximum	SD
Coverage	168	0.751	0.00	1.00	0.432
Adequacy	127	0.984	0.50	1.00	0.082
Agency	127	0.386	0.00	0.75	0.251
Labour Rights Score	168	0.596	0.00	0.69	0.350

Table A3: Descriptive Statistics of Social Rights

	N	Mean	Minimum	Maximum	SD
Coverage	280	0.445	0.00	1	0.490
Adequacy	129	0.862	0.25	1	0.260
Agency	129	0.510	0.00	1	0.278
Costs	116	0.586	0.00	1	0.444
Social Rights Score	280	0.339	0	1	0.383

Table A4: Descriptive Statistics of Individual Rights: Coverage, Adequacy, Costs, and Agency

Right	Mean Cov.	Min Cov.	Max Cov.	SD Cov.	Mean Ade.	Min Ade.	Max Ade.	SD Ade.
Backpay for Unpaid Wages	0.902	0.00	1.00	0.291	0.981	0.50	1.00	0.098
Compensation for Workplace Injuries	0.500	0.00	1.00	0.509	0.911	0.50	1.00	0.186
Compulsory Education For Children	0.821	0.00	1.00	0.390	1.000	1.00	1.00	0.000
Emergency Health Care	1.000	1.00	1.00	0.000	0.991	0.75	1.00	0.047
Emergency Housing	0.250	0.00	1.00	0.441	0.929	0.75	1.00	0.122
Emergency Income Support	0.143	0.00	1.00	0.356	0.938	0.75	1.00	0.125
Further Education and Training	0.071	0.00	1.00	0.262	0.500	0.50	0.50	0.000
Guaranteed Minimum Income	0.036	0.00	1.00	0.189	0.250	0.25	0.25	NA
Health and Safety at Work	0.821	0.00	1.00	0.390	0.989	0.75	1.00	0.052
Housing Support	0.036	0.00	1.00	0.189	0.250	0.25	0.25	NA
Join Or Form Trade Union	0.750	0.00	1.00	0.441	1.000	1.00	1.00	0.000
Maternity Care	0.964	0.25	1.00	0.148	0.768	0.25	1.00	0.319
Maximum Working Hours	0.750	0.00	1.00	0.441	1.000	1.00	1.00	0.000
Minimum Wage	0.786	0.00	1.00	0.418	1.000	1.00	1.00	0.000
Primary Health Care	0.580	0.00	1.00	0.467	0.764	0.25	1.00	0.315
Specialised Health Care	0.545	0.00	1.00	0.472	0.794	0.25	1.00	0.309

3

Right	Mean Age.	Min Age.	Max Age.	SD Age.	Mean Cost	Min Cost	Max Cost	SD Cost
Backpay for Unpaid Wages	0.385	0.00	0.75	0.267				
Compensation for Workplace Injuries	0.357	0.00	0.75	0.254				
Compulsory Education For Children	0.543	0.00	1.00	0.279	0.957	0.00	1.00	0.209
Emergency Health Care	0.509	0.00	1.00	0.259	0.589	0.00	1.00	0.472
Emergency Housing	0.571	0.00	1.00	0.401				
Emergency Income Support	0.375	0.00	1.00	0.433				
Further Education and Training	0.875	0.75	1.00	0.177	0.250	0.00	0.50	0.354
Guaranteed Minimum Income	0.250	0.25	0.25					
Health and Safety at Work	0.380	0.00	0.75	0.249				
Housing Support	0.250	0.25	0.25					
Join Or Form Trade Union	0.405	0.00	0.75	0.243				
Maternity Care	0.509	0.00	1.00	0.259	0.482	0.00	1.00	0.396
Maximum Working Hours	0.381	0.00	0.75	0.258				
Minimum Wage	0.398	0.00	0.75	0.263				
Primary Health Care	0.486	0.00	1.00	0.264	0.472	0.00	1.00	0.436
Specialised Health Care	0.485	0.00	1.00	0.286	0.412	0.00	1.00	0.476

Table A5: Descriptive Statistics of Individual Rights

Right	Mean	Min.	Max.	SD
Backpay for Unpaid Wages	0.72	0.00	0.92	0.24
Compensation for Workplace Injuries	0.38	0.00	0.92	0.39
Compulsory Education For Children	0.72	0.00	1.00	0.35
Emergency Health Care	0.77	0.56	1.00	0.13
Emergency Housing	0.21	0.00	1.00	0.37
Emergency Income Support	0.11	0.00	1.00	0.28
Further Education and Training	0.05	0.00	0.69	0.17
Guaranteed Minimum Income	0.02	0.00	0.50	0.09
Health and Safety at Work	0.65	0.00	0.92	0.32
Housing Support	0.02	0.00	0.50	0.09
Join Or Form Trade Union	0.60	0.00	0.92	0.36
Maternity Care	0.68	0.31	1.00	0.17
Maximum Working Hours	0.60	0.00	0.92	0.36
Minimum Wage	0.63	0.00	0.92	0.34
Primary Health Care	0.42	0.00	0.88	0.34
Specialised Health Care	0.39	0.00	0.88	0.34