REGINE

Regularisations in Europe

Martin Baldwin-Edwards
and Albert Kraler (eds.)

Pallas Publications

REGINE
Regularisations in Europe

edited by
Martin Baldwin-Edwards and Albert Kraler

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR
Justice, Freedom and Security

ICMPD
International Centre for
Migration Policy Development

PALLAS PUBLICATIONS

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR
Justice, Freedom and Security

IMPORTANT LEGAL NOTICE

Cover design: René Staelenberg, Amsterdam

ISBN 978 90 8555 008 2
e- ISBN 978 90 4851 081 8
NUR 747

Table of Contents

List of Tables

SECTION I

SECTION II

Austria

Belgium

Germany

Greece

Hungary

Ireland

Italy

Latvia

Romania

Slovakia

Slovenia

Spain

Sweden

Switzerland

United Kingdom

United States

Table of Boxes

SECTION I

SECTION II

Table of Figures

SECTION I

SECTION II

Contributors

Joaquín Arango is Professor of Sociology, Complutense University of Madrid, Spain and Director, Center for the Study of Migration and Citizenship, Instituto Universitario de Investigación Ortega y Gasset. He is the co-author of the study on Spain.

Martin Baldwin-Edwards is associate researcher with ICMPD and co-director of the Mediterranean Migration Observatory, University Research Institute for Urban Environment and Human Resources, Panteion University, Athens, Greece. He is the co-author of Section I of the study (together with Albert Kraler) and author of the country chapters on Cyprus and Greece. Jointly with Albert Kraler, he held the coordination of the REGINE study.

Saskia Bonjour is research officer at the International Centre for Migration Policy Development (ICMPD) in Vienna and co-authored the country chapters on Belgium and the Netherlands.

Mariya Dzhengozova is research assistant at the International Centre for Migration Policy Development (ICMPD) in Vienna. She authored the country chapters on Bulgaria, Ireland, Poland and Portugal and co-authored the chapters on Belgium, Germany, and the Netherlands

Claudia Finotelli is Research Associate at the Instituto Universitario Ortega y Gasset, Madrid, Spain and co-author of the country chapter on Spain.

Lucinda Fonseca is Professor of Geography at the Centro de Estudos Geográficos, University of Lisbon, Portugal and was an advisor on the country chapter on Portugal. In addition, she provided support in arranging interviews with Portuguese trade union representatives for the chapter on trade union perspectives of Part I of the study.

Albert Kraler is research officer at the International Centre for Migration Policy Development (ICMPD) in Vienna. He is co-author of Section I of the study (together with Martin Baldwin-Edwards) and co-author of the country chapters on Austria, Belgium, Germany, Malta, the Netherlands and Sweden. Jointly with Martin Baldwin-Edwards he held the coordination of the REGINE study.

Audrey Lenoel is a postgraduate researcher at the Centre for the Study of Poverty and Social Justice, School of Policy Studies, University of Bristol, United Kingdom and has authored the country chapter on the United Kingdom.

David Reichel is research assistant at the International Centre for Migration Policy Development (ICMPD) in Vienna. He is the author of the country chapters on the Czech Republic, Finland, Hungary, Romania, Slovakia and Slovenia. He co-authored the chapters on Austria, Luxembourg, Malta and Sweden.

Paolo Ruspini is senior researcher at the Faculty of Communication Sciences of the University of Lugano, Switzerland and Associate Fellow at the Centre for Research in Ethnic Relations (CRER) of the University of Warwick, United Kingdom. He is the author of the country chapters on Estonia, Latvia, Italy and Switzerland.

Karin Sohler is a freelance migration researcher based in Paris, France. She is the author of the country chapter on France.

Violeta Targonskiene is a former Deputy Head of the Asylum Affairs Division, Migration Department, Ministry of Interior, Lithuania (currently on leave) and author of the country chapter on Lithuania.

Alfred Wöger is research assistant at the International Centre for Migration Policy Development (ICMPD) in Vienna. He is the author of the country chapters on Denmark and the United States and co-authored the chapter on Luxembourg.

Vassiliki Zygoura is a Phd student at Panteion University, Athens, Greece and has provided research assistance for the country chapter on Greece.

Acknowledgements

We gratefully acknowledge the invaluable information and assistance provided by the many NGOs and trade unions across the European Union that responded to our requests; in particular, we should like to thank Michèle LeVoy and Don Flynn from PICUM and Marco Cilento from the ETUC. We are also grateful to those Member States that spent some considerable time and effort in answering our detailed questionnaire: we especially thank the staff of the Interior Ministry of Greece who provided invaluable corrections to, and guidance concerning, unpublished data.

Finally, we wish to thank the European Commission for giving permission to produce a print version of the REGINE study, originally published in February 2009 as four separate volumes on the website of the Directorate General for Justice, Freedom and Security (accessible under http://ec.europa.eu/justice_home/doc_centre/immigration/studies/doc_immigration_studies_en.htm; the four volumes of the study plus a summary and other related publications are also available on ICMPD's research website http://research.icmpd.org/1184.html). For practical reasons, the format, organisation and hence pagination of the printed version of the study differ. The content of the printed version, however, is identical with the previously released online version, save for a number of printing errors which were removed in this version.

Preface to the Printed Edition

In December 2007, the European Commission (DG Justice, Freedom and Security, Directorate B – Immigration, Asylum and Borders) commissioned the International Centre for Migration Policy Development (ICMPD) to undertake a *Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU.* The study was commissioned subsequent to the Commission's Communication on policy priorities in the fight against illegal immigration of third-country nationals (COM (2006) 402 of 19 July 2006), in which the Commission announced that it would undertake a study on regularisation, the purpose of which was to collect concrete factual, statistical, economic and legal information on issues related to regularisations, in order to inform future EU policy in this area.

Thus, the aim of the study is to provide a thorough mapping of practices relating to the regularisation of third country nationals illegally resident in the 27 EU Member States, with comparative reflections on regularisation practices elsewhere. In addition, the study investigates the relationship of regularisation policies to the overall migration policy framework, including the diverse interlinkages between regularisation policies, protection issues and refugee policies and also the role of regularisation regarding the framework for legal migration. Moreover, the study examines the political position of different stakeholders towards regularisation policies on the national and the EU levels. Finally, the study examines potential options for policies on regularisation on the European level, incorporating Member States as well as other stakeholders' views on possible instruments on the European level.

This study would not have been possible without the support it received from a wide range of individuals and institutions, including the European Commission, individual Member States, NGOs and trade unions and colleagues at ICMPD. However, the opinions expressed in this study are entirely those of the authors and cannot be taken to reflect any official views of the European Union, individual Member States or ICMPD.

The book is divided into three sections. Section I provides a comparative analysis of regularisation practices in the European Union, a survey of stakeholder views and an investigation of legal and policy issues related to regularisation from the perspective of international law and European Union law. Additional supporting material is provided in sections II and III. Section II features country chapters on the 29 countries covered by this study. Section III consists of a statistical annex, with summary statistical data in spreadsheet format concerning regularisations for the EU (27), compiled during the course of this study. The information in the statistical annex presents not only detailed statistical data, but also criteria and some details of regularisation measures in individual EU Member States. However, the information is incomplete; specifically, information on detailed criteria and the nature of regularisation measures was not always available. In other cases, there was too little (or even contradictory) information to be able to provide listing of criteria or a classification of the measure. Nor is the data comprehensive, i.e. covering

all regularisation measures described in section I and II. Thus, the annex should be seen as providing preliminary data on which future studies can build.

Section I is organised as follows: §1 introduces relevant terms and definitions and also sets the parameters of the study. §2 looks in some detail at earlier comparative studies of regularisations and their impact; §3 presents the empirical findings of the report, with a particular emphasis on policy outcomes. §4 is a summary of Member State positions on regularisation, as identified from ICMPD questionnaire responses, while §5 is a more detailed analysis of the positions of various social actors – mostly derived from questionnaire responses. §6 outlines the major provisions relevant in international and regional (Council of Europe) law, and also identifies the policy stances of relevant international organisations. §7 is a synopsis of the relevant EU legislation and principles. In §8 we present twelve detailed policy options and sub-options. Finally, in §9 we draw together some of the most important policy lessons to be learned from the EU, USA and Switzerland. Taking account of the expressed positions of stakeholders across the EU, we advocate adoption of those policy options that seem most likely not only to be effective in better managing irregular third country national populations across the EU but are also supportable by Member States and European social actors.

THE EDITORS, Vienna, April 2009

SECTION I

Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU

by Martin Baldwin-Edwards
and Albert Kraler

1 Terms, definitions and scope

1.1 The problem of negative definition

Defining 'illegal stay' is notoriously difficult and globally, states' practices vary widely in regard to whom they regard as illegally resident. In the European Union, the recently-agreed Return Directive[1] adopts a common definition of illegal stay, which also has been used in other relevant draft directives from the European Commission.[2] Thus, Article 3(b) of the Return Directive stipulates:

"[I]llegal stay" means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code[3] or other conditions for entry, stay or residence in that Member State

Despite this common definition, however, the national definitions used in Member States still vary widely and may need to be adapted when transposing the Directive. The problem of the real meaning of such a definition arises at least partly because it constitutes an attempt to define something in a negative sense[4] – that certain persons are **not** legally staying on the territory – with insufficient clarity concerning the specific laws, or specific aspects of law, that may have been infracted.[5] An

[1] Art. 3(b), *Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals*, Council of the European Union, Brussels, 25 June 2008, 10737/08.

[2] E.g. *Proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals,* COM(2007)249 final; *Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in member states for returning illegally staying third country nationals*. COM(2005)391 final.

[3] Article 5 of the Schengen Border Code (Regulation (EC) No 562/2006 of The European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)) lists the following entry conditions: (a) possession of a valid travel document or documents giving authorisation to cross the border; (b) possession of a valid visa, if required; (c) justification of the purpose and conditions of the intended stay, sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or onward travel; (d) no SIS alert has been issued for the purposes of refusing entry; (e) persons entering are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States.

[4] Exceptions lie with the Netherlands and Ireland, both of which have an official definition of illegal residence. For more details, see European Migration Network (2007): *Illegally Resident Third Country Nationals in EU Member States* (synthesis report), p. 11.

[5] One major source of heterogeneity in the definition of illegal stay as set out by the Return Directive is Article 5 (1) (c) of the Schengen Border Code referred to in the directive. In the absence of a common admission policy, it is Member States who define purposes and conditions of stay and who have the power to withdraw a right to stay if conditions are not (or are no longer) met, unless the Third Country National is covered by Community legislation on long-term residence, the rights of EU citizens and their families, or the family reunification directive. Because of the power of Member States to specify purposes and conditions of stay, the concrete definitions of illegality will naturally vary accordingly.

alternative definition such as 'lawful residence'[6] also has a number of meanings in different national legal systems, ranging from a very narrow interpretation in the UK, Spain and Portugal,[7] to a broader concept of 'legal stay'.[8] Thus, varying national immigration and labour laws (amongst others) lead to varying types of illegal stay. Although *illegal stay* includes all types of stay which do not conform to notions of 'legal stay' (as defined in different national contexts), persons without residence status but 'known' and tolerated by the authorities may not be included in national definitions of illegal stay.[9] For its part, the Commission seems to take a very broad view of what constitutes 'illegal stay': "e.g. expiry of a visa, expiry of a residence permit, revocation or withdrawal of a residence permit, negative final decision on an asylum application, withdrawal of refugee status, illegal entrance".[10] Furthermore, the Return Directive includes specifically those third country nationals "who no longer fulfil" the conditions of legal entry, stay or residence. Thus, holders of expired residence permits are *de jure* illegally residing, apparently regardless of the circumstances that led to this. The Return Directive's discussion[11] states that there is no attempt to "address the reasons or procedures for ending legal residence"; at present, there is also no Community instrument for addressing the reasons or procedures for *beginning* legal residence. Given that both of these issues are germane to the phenomenon of 'illegal stay', it would seem that regularisation of illegally staying third country nationals must logically remain, for the time being, as a matter for national policy.

1.2 Types of illegal or irregular status

The terminology used in the literature is extensive, inconsistent and generally problematic through lack of definition. Such terms include 'clandestine', 'irregular', 'illegal', 'unauthorised', 'undocumented', '*sans papiers'*; we do not find it useful here to rehearse the arguments for and against any particular terminology.[12] Suffice it to say that we are essentially concerned with conformity or non-conformity with legal requirements: an individual's degree of 'compliance'[13] with national legislation is complex and multifaceted, and in practice is more complex than the definition embraced by the Return Directive would suggest. Table 1 gives an indicative typology of the complex range of actualities of conformity with national

[6] Note particularly the use of this concept by the ECJ in Singh (C-370/90), although the case is not about illegal stay *per se.*

[7] Excluding those with temporary legal stay, but not the right of residence.

[8] "*séjour légal*" in France, "*rechtmäßiger Aufenthalt*" in Germany, and *soggiorno legale* in Italy.

[9] There is a tendency for some Member States to define third country nationals who are unlawfully staying, but known to the authorities, as being outside of the population of illegal residents. In a strictly legal sense, documented immigrants whose residence is unlawful should be considered part of the wider population of irregular or illegal residents. Thus, Germany does not consider tolerated persons as illegally staying whereas the Netherlands includes tolerated persons in its national definition of illegally resident persons (see REGINE country fact sheets on Germany and the Netherlands).

[10] *Proposal for a Directive … for returning illegally staying third country nationals*, *op. cit,* p.6.

[11] See Fn. 1

[12] For a more extensive discussion see Jandl, M., Vogl, D. and Iglicka, K. (2008): 'Report on methodological issues', Unpublished Draft Report for the project *Clandestino - Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe.*

[13] For the concept of 'compliance', see Ruhs, M. and Anderson, B. (2006): *Semi-compliance in the migrant labour market*, Working Paper 30. COMPAS, University of Oxford.

immigration and labour legislation. We distinguish four main aspects of legality/formality[14]: – **entry, residence, employment (legal)** and **employment (formal)**. The dimension of 'entry' merely refers to the legality of entering the territory, with a crude distinction of legal or illegal; the dimension of 'residence (nominal)' identifies the formal residence status granted to an immigrant – this may change over time, and also in the case of breach of conditions (see Table 1, Fn. 16). The dimension of 'legal status of employment' refers to whether non-nationals are legally entitled to work, as defined by regimes for work and/or residence permits. By contrast, the category 'nature of employment' refers to compliance with wider employment regulations, notably tax and social security (payment) regulations (hence this covers the distinction between declared/undeclared work). A fifth, cross-cutting dimension (which we do not consider to be a defining element of legality/illegality) is whether illegally staying persons are 'documented', i.e. known to the authorities.

Taking first the variable of legality of entry, it can be seen that there exist seven variants of illegal entrants and five variants of legal entrants (plus one special case of children born on the territory). A similar examination of statuses concerning legality of residence reveals eight illegal types, four legal and one semi-legal. Across the EU (27), immigration and employment laws (along with their actual policy implementation) vary so widely, that the determination of exactly which of these categories should be cast as 'illegally staying', and which should not, will inevitably turn into a lottery. As can be noted from Table 1, certain categories consist of persons who presumably are not intended as the targets of policies such as the Return Directive. Of particular note are the bottom two rows – children of varying statuses, and those with expired residence permits who continue in employment (and usually also in taxation). Other categories, such as visa-overstayers and illegal entrants, might appear to be suitable targets for return: in practice, a large number of Member States have relied upon these categories for their immigrant labour policy. Most of these types of illegality can be considered suitable for regularisation[15] – at least, under certain conditions such as length of residence. Table 1 is not to be interpreted as definitive of the concept of 'illegal stay', but rather as an elaborating device used to deconstruct the extraordinarily wide and (arguably) open-ended definition used in the Return Directive. For example, taking **legality of entry** as a condition (note the Return Directive definition, given above), we exclude four subcategories of persons with legal entry but illegal residence; similarly, taking (nominal) **legality of residence** as a condition, we exclude five subcategories of persons (of which three are illegal entrants). Furthermore, one of the major subcategories (illegally working persons who entered with a tourist visa) has both legal entry and residence, but is in breach of conditions of the visa. Such a breach is likely to lead to termination of legal stay, although the practices of Member States vary widely. Here, again, we find a significant heterogeneity across the EU (27) which warrants further study: apart from legal constraints on terminating the residence of a third country national (see in more detail below, § 1.3), not all

[14] We do not document here, for simplicity, the cases of withdrawal of residence permits consequent to criminal conviction, assessment of public policy risk, or breach of the conditions of residence.

[15] Possibly, working tourists constitute an exception; however, a tourist visa is a 'normal' work migration route into many EU countries.

breaches of immigration regulations are sanctioned with termination of stay. However, relatively little is known about Member States' practices in this regard.

Table 1: Types of illegal or irregular status

Entry	Residence (nominal)[16]	Legal Status of Employment	Nature of Employment (formal – taxed, social security	Documented?	Examples
Illegal	(illegal)	-	-	-	Undocumented migrants transiting a country without actual residence
Illegal	Illegal	Illegal	None	No	Illegal immigrants not working; family members reunified without authorisation and not working (includes children)
Illegal	Illegal	Illegal	Informal	No	Illegal immigrants who are working
Illegal	Illegal	Illegal	Formal	Semi-documented (tax authorities, social security bodies)	Illegal immigrants illegally employed, but paying taxes and social security contributions (in countries where legal employment status and nature of employment are not systematically cross-checked)
Illegal	Legal	Illegal	Informal	Documented	Asylum seekers without access to work who work informally, *post hoc* regularised persons without the right to work
Illegal	Semi-legal	Legal/illegal	Formal/informal	Documented	Persons in respect of whom removal order has been formally suspended (e.g. tolerated status)
Illegal	Legal	Legal	Formal/informal	Documented	Formally regularised persons; persons with a claim to legal status due to changed circumstances (e.g. marriage with a citizen, ius soli acquisition of citizenship by offspring)
Legal	Legal	Illegal	Informal	Semi – documented (if visa obligation)	Tourists working without permission
Legal	Legal	Illegal	Informal	Documented	Legal immigrants without the right to work (e.g. students in some countries, family members in others)
Legal	Illegal	Illegal	Informal	Semi-documented (if visa obligation)/ undocumented	Visa overstayers, citizens of new EU MS without access to work who overstay the 3 months period
Legal	Illegal	Legal	Formal/informal	Semi-documented	Overstayer in permit-free self-employment (e.g. business persons, artists, etc.)
Legal	Illegal	Illegal	Formal	Semi-documented	Persons whose residence/ work permit has expired but who continue to be formally employed
-	Illegal	Illegal	Informal	Semi-documented/ undocumented	Children of illegal immigrants born in country of residence; children of legal immigrants born in country of residence with expired/ without legal status

Adapted from Gächter *et al.* (2000:12) and Van der Leun (2003: 19)

[16] The title of legal residence may be subject to observance of certain restrictions, such as access to employment, and is likely to be removed upon discovery of any serious breach. State response to infractions varies according to country and category of immigrants, with greatest toleration generally of family members.

1.3 Freedom of movement rights and protection of residence status of third country nationals under European Community legislation

There are some important categories of non-nationals for which the above typology of illegality/irregularity does not apply, or applies only in a very limited sense. These are: third country nationals holding the EU long-term residence status[17] and third country nationals who are family members of EU nationals.

Third country nationals who are long-term residents of a Member State, that is third country nationals who legally and continuously resided within the territory of a Member State for five years and have been granted long-term residence status according to Directive 2003/109/EC, enjoy more or less unrestricted freedom of movement and far-reaching protection from expulsion and withdrawal of residence status. Not only do long-term residents enjoy full access to Member States' labour markets, but additionally their failure to meet certain conditions (e.g. lack of means, or engaging in undeclared work) may not lead to withdrawal of the status and a consequent move into illegality. As in the case of EU citizens, freedom of movement rights may be waived only on major grounds of public policy, public security and public health.[18]

A second category of third country nationals, which enjoys substantial residence rights and hence far-reaching protection from expulsion under EU legislation, is that of family members of EU nationals who have exercised freedom of movement rights.[19] Under the directive, the powers of Member States to waive freedom of movement rights is limited to major grounds of public policy, public security and public health. Under Article 28 of Directive 2004/38/EC, Member States' power to initiate removal procedures against EU citizens and their family members are not only limited to serious grounds of public policy and security, but the scope for enforcement measures should "be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin."[20] Thus, neither lack of means, unemployment nor engagement in undeclared work may lead automatically to termination of residence and consequent illegal stay.

[17] In the meaning of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents.

[18] See also Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States for the definition of freedom of movement rights of EU nationals and their family members, from which freedom of movement rights granted under Directive 2003/109/EC are derived.

[19] Directive 2004/38/EC. The personal scope of the directive is restricted to EU citizens *who use mobility rights* and their family members (emphasis added). This excludes EU nationals who reside in their country of citizenship and their (third country national) family members, unless (1) the EU national has previously resided in another Member State; (2) the family unit already existed at that time; and (3) the EU national in question and his/her family members have thus acquired freedom of movement rights under the directive. Indeed, in several Member States family reunification rights of nationals are more restricted than those of EU nationals (on the beneficiaries of the rights awarded under the directive see Article 3, *passim*).

[20] Preamble, para 23, Directive 2004/38/EC.

However, third country nationals who are not long-term residents enjoy limited protection from expulsion under EU legislation and also under the European Convention of Human Rights (ECHR). By implication, third country nationals staying less than five years but enjoying certain protection under EU legislation or international law may similarly become nominally illegally resident only on more serious grounds, despite any infractions of immigration conditions. In particular it is family members of third country nationals who enjoy a certain protection from loss of residence status and expulsion under both the ECHR and EU legislation, with the ECHR potentially providing much more extensive protection from expulsion than does the family reunification directive.[21]

Generally, the family reunification directive[22] provides only limited security of residence and protection from expulsion to third country nationals who have been admitted as family members. This reflects above all the fact that the family reunification directive is more concerned with regulating conditions of admission of third country nationals for the purpose of family reunification than defining the rights enjoyed by (*de facto*) family members already resident – on whatever terms – in a Member State. Reflecting this, family members have to be explicitly admitted as family members to enjoy any rights under the directive. Similarly, family members are – as a general rule – required to submit applications for family reunification from abroad.[23] However, all Member States except Cyprus provide for in-country applications in cases where family members already enjoy a right of residence, however limited, i.e. essentially in cases of permit switching.[24] Indeed, the possibility to switch to a family based permit may be considered an important safeguard to avoid the situation that persons no longer meeting the conditions of residence on other than family grounds lose their right to residence and become liable to be deported, or otherwise lapse into illegality.[25]

In addition to procedural requirements (such as submitting an application from abroad), the right to family reunification is conditional upon meeting housing, income and integration conditions according to Article 7 of the Family Reunification Directive. Despite the (arguably) limited scope of the directive, recent ECHR case law suggests that the power of states to withhold a legal status is increasingly

[21] See Thym, D.(2008): 'Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?' *International and Comparative Law Quarterly*, 57, 1, pp.81-112.

[22] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

[23] See article 5(3) Directive 2003/86/EC. Two states (Ireland and Poland) allow for in-country applications. See Groenendijk, K., Fernhout, R., van Dam, D., van Oers, R., Strik, T. (2007): *The Family Reunification Directive in EU Member States. The First Year of Implementation*. Nijmegen: Wolf Legal Publishers, p.48f.

[24] *Ibid.*

[25] The results of an analysis of post-regularisation trajectories of immigrants in Italy on the basis of residence permit data indicate that about 10% of women, who had been regularised on the basis of employment in the 2002 regularisation programme and still had a work related permit in 2004, had switched to a family based permit by 2007 (1.2% in the case of males), while 11.6% of males had switched to a permit on the grounds of self-employment. See Carfagna, S., Gabrielli, D., Sorvillo, M. P., Strozza, S. (2008): *Changes of status of immigrants in Italy: results of a record-linkage on administrative data sources*. Presentation given at the International Seminar on Longitudinal Follow-up of post-immigration patterns based on administrative data and record-linkage, Belgian Federal Science Policy, Brussels, 23 June 2008.

limited, in particular in cases where family members do not meet all, or some, of the requirements or when *de facto* family members have never been admitted as family members or have been illegally resident.[26]

1.4 The meaning of 'regularisation'

The term 'regularisation' has no clearly defined meaning, either legally or through general usage. Historically, legalisation or amnesty for those in an irregular status has very different origins across countries. Differing patterns include corrective or accommodating measures related to changes in post-colonial nationality laws (the UK, the Netherlands), similar recent changes for some Baltic countries, post-hoc legalisation of non-recruited (but needed) illegal labour migration flows (southern Europe and France), legalisations for humanitarian reasons (most of western Europe), legalisation of rejected asylum-seekers by virtue of the length of procedure (Belgium, the Netherlands), for family reasons (France), and 'earned' regularisation[27] by virtue of duration of residence, employment record, etc. (the UK, France, Spain *et al*.).

For the purposes of the REGINE project:

Regularisation is defined as any state procedure by which third country nationals who are illegally residing, or who are otherwise in breach of national immigration rules, in their current country of residence are granted a legal status.

This broad definition covers all procedures through which third country nationals in breach of national immigration rules may acquire a legal status, whether or not these are explicitly intended to offer a legal status to migrants in an irregular situation. In some cases, we categorise as regularisations certain procedures which the Member State involved does not consider to be such. Specifically, these include the *de facto* regularisation of 2006 in Italy, the various regularisation programmes of Germany for long-term 'tolerated' persons, and an employment-based regularisation in Austria implemented in 1990. We also take account of a process that we call 'normalisation'[28] by which a short-term residence status is awarded to persons already with legal (but transitional) status: this includes categories such as students or asylum-seekers who change their status (e.g. exceptional grant of a non-transitional legal status on grounds of marriage).[29]

---

[26] See Chapter 6, for details.

[27] Our usage of the term 'earned' regularisation is different from its specific meaning of the concrete proposals for an earned regularisation scheme as developed by MPI president Demetrius Papademetriou (see infra, chapter 2, for a description of the scheme).

[28] This is our own terminology (although it is taken from the Spanish *normalización*, as used in Spain's 2005 legalisation), used in the very specific sense of 'adjusting' the status of persons, rather than actually granting a legal status to those without. It is not, therefore, a regularisation as defined above.

[29] Various regularisation programmes and mechanisms provide, or have provided, for the regularisation of long-term asylum seekers, including in Belgium, Germany, the Netherlands, Sweden and the UK, often targeting specific categories of long-term asylum seekers. In particular in the 1990s, such programmes were often intended to provide complementary protection to persons not covered by the Geneva Convention, notably refugees from the former Yugoslavia. According to Koen Dewulf (Centre for Equal Opportunities and Opposition to Racism, Belgium,

The definition provided above does not specify the dimensions covered by such procedures, i.e. whether it pertains to residence (residence permits), access t employment (work permits/ residence permits giving access to employment) or compliance with employment and social security regulations (possession of a formal work contract; compliance with tax and social security obligations).

Although the most significant regularisation programmes usually address both residence and work status, there are important examples of programmes that seek only to address the work status of non-nationals in an irregular situation or their compliance with broader employment regularisations. For example, the current amnesty for irregularly employed care workers in Austria primarily seeks accommodation of the specific nature of care work by amending employment regulations; indeed, non-compliance with employment and social security provisions (rather than rules regulating non-nationals' access to employment) were identified as the main issue of concern. While such programmes (as well as programmes targeting non-nationals without access to employment) may appear to be outside the scope of a study whose remit is to map and analyse "practices in the area of regularisation of *illegally staying third-country nationals"*,[30] in fact, the three dimensions – legal residence, access to employment and legal employment [compliance with employment, tax and social security regulations] – are closely intertwined. Not only do regularisation programmes designed to reduce the number of illegally resident third country nationals typically specify current employment (or an employment record) as a condition for regularisation, but non-nationals in breach of work permit or wider employment regulations are usually also in breach of conditions for legal residence: technically, non-nationals not covered by freedom of movement rights may be viewed as illegally resident if found in an irregular work situation.[31]

1.5 Programmes and mechanisms for regularisation

Although there exists a wide range of policies across Member States for granting a regularised status, two broad and fairly distinct procedures can be identified for this purpose. For these, we employ the terminology of 'programmes' and 'mechanisms' – the former indicating a time-limited procedure (frequently, but not necessarily, involving a large number of applicants), and the latter indicating a more open-ended policy that typically involves individual applications and, in most cases, a smaller number of applicants.[32]

---

comment, International Seminar on Longitudinal Follow-up of post-immigration patterns based on administrative data and record-linkage, Belgian Federal Science Policy, Brussels, 23 June 2008) existing regularisation mechanisms have been extensively used to award unrestricted legal statuses to other persons with liminal legal status, notably students who had developed ties to Belgium.

[30] The Austrian programme in fact explicitly excludes third country nationals without a residence title or with a restricted residence title not entitling work and thus does not qualify as a regularisation programme.

[31] Thus, a long-term resident as defined by Council Directive 2003/109/EC may lose his/her right to residence only if "he/she constitutes an actual and sufficiently serious threat to public policy or public security" [Article 12 (1), 2003/109/EC].

[32] One of the main exceptions is France, where 101,479 persons were regularised between 2000 and 2006 on the basis of personal and family ties (80,401) and regularisation after 10 years of residence (21,078). Altogether, regularisations in France account for more than 8% of all admissions during

Thus, the following definitions have been developed and Member States' practices analysed in accordance with this framework.

Regularisation Programme
A regularisation programme is defined as a specific regularisation procedure which (1) does not form part of the regular migration policy framework, (2) runs for a limited period of time and (3) targets specific categories of non-nationals in an irregular situation.

Regularisation Mechanism
A regularisation mechanism is defined as any procedure other than a specific regularisation programme by which the state can grant legal status to illegally present third country nationals residing on its territory. In contrast to regularisation programmes, mechanisms typically involve 'earned' legalisation (e.g. by virtue of long-term residence), or humanitarian considerations (e.g. non-deportable rejected asylum-seekers, health condition, family ties etc.), and are likely to be longer-term policies.

1.6 Methodology

Data have been collected and collated from the following sources:

- existing comparative and national studies of regularisation programmes and policies
- statistical and legal data from state data sources, via the REGINE questionnaire
- questionnaire survey to non-governmental organisations
- interviews with social actors active on the European level
- survey of government positions, via the REGINE questionnaire
- external expert input for in-depth study of seven selected countries

We have sought to achieve overall breadth of analysis, by covering all EU Member States, in parallel with detailed case studies of five EU countries and two non-EU – namely, Spain, Italy, Greece, France, UK, Switzerland, USA. Summary statistical and legal data for the EU (27), where available, have been collated in spreadsheet format for comparative reference.

For the purposes of this report, we have developed several analytic instruments and gathered a broad range of data, including

- A multi-faceted depiction of forms of illegality, as given in Table 1, allows for a more detailed breakdown of the problematic concept of 'illegal stay'.
- Through questioning of Member States (using the REGINE questionnaire) alongside our own research, more precise data concerning application numbers, actual grants of legal status and acceptance rates within

this period. The total number of regularisations between 2000 and 2006 is therefore substantially higher than the estimated 87,000 persons regularised in the 1997/98 regularisation programme (see REGINE country study on France).

programmes have been assembled for 17 countries: these are summarised in Table 2 (§3) and represent a real advance on previously published data.

- For the first time, statistical data on regularisation mechanisms (as defined) are published for 10 countries. Despite being incomplete, and missing several countries, this also represents a real advance in knowledge.
- Utilising previously-compiled data on estimated irregular TCN stocks, supplemented by ICMPD evaluations for missing data, we classify each Member State as having per capita stocks ranging from low (less than 0.5% of total population) to very high (more than 2%). (See Table 5, (§3))
- Using the new data on programmes and mechanisms, we identify six 'policy clusters' with regard to regularisation, and suggest some broad defining characteristics of the countries comprising each cluster.

Policy outcomes have been evaluated primarily through the detailed case studies (Spain, Italy, Greece, France, UK, Switzerland, USA) although with reference to the pre-existing literature. Through the detailed comparative study, we identify both good and bad practices in the areas of regularisation programmes and mechanisms, and immigration policies generally (see §3.3 – Policy issues). These are then used to address specific policy issues and formulate policy proposals with the objective of promoting 'good practices' and bringing to the attention of Member States some of the 'bad practices' that we believe have been identified.

The positions of Member States, social partners (trade unions, employers organisations, immigrant associations and migrant advocacy organisations) and international organisations are described in Chapters 4, 5 and 6. These are based on questionnaire responses, interviews and publicly available policy positions.

Chapter 8 lists a wide range of policy options, all derived from the issues identified in Chapter 3. Our recommended policy options, based on international experiences and readings of the positions of Member States, social actors and international organisations, are presented in Chapter 9.

2 Previous comparative studies on regularisations and their impact

2.1 Introduction

This chapter reviews selected previous comparative studies on regularisation policies in EU Member States and elsewhere. It considers how existing studies conceptualise regularisation and how they classify different regularisation measures in comparative perspective. It evaluates existing studies' findings regarding the characteristics of regularisations and their main rationales, while enquiring into how regularisation measures fit into the overall migratory framework. Finally, the chapter reviews existing studies' findings on the implementation of regularisation measures and their impact.

Although research on regularisation practices of individual countries has now a long tradition – a growing number of studies began to appear as long ago as the early 1980s, when regularisations became more common in the context of growing restrictions on immigration[1] – it is only relatively recently (specifically, since the publication of the seminal study on regularisation practices in selected European states, carried out by the Odysseus network[2] and published in 2000[3]) that regularisation policies have received serious attention from a comparative perspective. That the increased interested in regularisation policies from a comparative perspective roughly coincided with the communitarisation of migration policy through the Amsterdam Treaty is not simple coincidence: the role of the European Community has been a major rationale for the majority of studies. Indeed, the Odysseus study on regularisation practices was financed by the European Commission and the study was actually the network's very first multi-country study on migration legislation of Member States from a comparative legal perspective.[4] This suggests that regularisation policy, although outside the actual scope of migration policy-making on the European level, has been a core concern from the very beginning of the development of a common European migration and asylum policy.

[1] See, for an early study on France, Marie, C.V. (1984): 'De la clandestinité à l'insertion professionnelle régulière, le devenir des travailleurs régularisés'. In: *Travail et Emploi N°22*, décembre, pp. 21-32. In Italy, first studies on regularisation programmes began to appear in the mid-1990s (see for example Massi, E. (1995): *La sanatoria per I cittadini extracommunitari, Diritte e pratica del Lavoro*, pp.3033f); In Spain, the first studies were published from the 1990s onwards (see for example A. Izquierdo Escribano (1990): *Immigration en Espagne et premiers résultats du programme de regularisation*, Rapport par l'OECD. Group de Travail sur les Migrations. Paris: OECD). In the US, numerous studies have been published following the 1986 Immigration Reform and Control Act (IRCA).

[2] See on the Odysseus network http://www.ulb.ac.be/assoc/odysseus/

[3] De Bruycker, P. (ed) (2000): *Les regularisations des étrangers illégaux dans l'union européenne. Regularisations of illegal immigrants in the European Union*. Brussels: Bruylant; A summary report of the study was also published as Apap, J., De Bruycker, P., Schmitter,C. (2000): 'Regularisation of Illegal Aliens in the European Union. Summary Report of a Comparative Study', *European Journal of Migration and Law*, 2, pp. 263–308. Because this summary has been more widely disseminated and is more accessible than the original French summary contained in the book, we will mainly refer to this version.

[4] De Bruycker, P. (2000): 'Presentation d'ouvrage'. In: De Bruycker, P., op. cit., pp.xxvii-xx1.

Since then, the literature on regularisation policies has multiplied, and now includes a variety of comparative mapping exercises of regularisation practices[5] as well as numerous studies investigating specific aspects of regularisation policy, including to what extent regularisation is an effective policy tool,[6] the socio-economic impact of regularisations[7] and a large number of broader reviews of migration policy that also cover regularisations.[8]

2.2 Illegal migration, the informal economy and regularisation as an instrument to combat illegal employment

A second important impetus for research on regularisation has come from the **Organisation for Economic Cooperation and Development (OECD)**. The OECD has consistently been reporting on major regularisation programmes (or amnesties, the term preferred by the OECD) in selected OECD member states in its annual SOPEMI reports since the mid-1990s.[9] In contrast to the Odysseus study (discussed

[5] Blaschke, J. (2008): *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union.* PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs; J. Greenway, (2007): *Regularisation programmes for irregular migrants*. Report: Council of Europe. Committee on Migration, Refugees and Population. Strasbourg: Council of Europe, online under http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc07/edoc11350.htm; Levinson A. (2005): *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*, Oxford: Centre on Migration, Policy and Society, University of Oxford. http://www.compas.ox.ac.uk/publications/Regularisation%20programmes.shtml; Sunderhaus, S.(2006): *Regularization Programs for Undocumented Migrants. A Global Survey on more than 60 Legalizations in all Continents*. Saarbrücken. VDM Müller. A summary of the study has also been published as Sunderhaus, S. (2007): Regularization Programmes for Undocumented Migrants. *Migration Letters,* 4, 1, pp.65-76

[6] Papademetriou, D. (2005): *The "Regularization" Option in Managing Illegal Migration More Effectively: A Comparative Perspective.* MPI Policy Brief, September 2005, No.4, available at: http://www.migrationpolicy.org/pubs/PolicyBrief_No4_Sept05.pdf, Papadopoulou, A. (2005): 'Regularization Programmes: An effective instrument of migration policy?' *Global Migration Perspectives Nr.33*. Geneva: Global Commission on Migration, available online at http://www.gcim.org/attachements/GMP%20No%2033.pdf,

[7] Papademetriou, D., O'Neil, K., Jachimowicz, M. (2004): *Observations on Regularization and the Labor Market. Performance of Unauthorized and Regularized Immigrants*. Hamburg: HWWA

[8] Heckmann, F., Wunderlich, T. (eds.) (2005): *Amnesty for Illegal Migrants?* Bamberg: efms; Migration Policy Institute (with Weil, P.) (2004): *Managing Irregular Migration*. Presidency Conference on Future European Union Cooperation in the Field of Asylum, Migration and Frontiers Amsterdam, 31 August - 3 September, 2004 Policy Brief Nr. 4. Washington: Migration Policy Institute. Available at http://www.migrationpolicy.org/events/2004-08-31.euroconf_publications.php; OECD (2000): *Combating the Illegal Employment of Foreign Workers*. Paris: OECD.

[9] See OECD (1994): *Trends in International Migration. Annual Report 1993.* SOPEMI. Paris: *OECD*, p.47; OECD (1997): *Trends in International Migration. Annual Report 1996*. SOPEMI. Paris: OECD, p.57; OECD (1998), *Trends in International Migration. Annual Report. 1998 Edition.* SOPEMI. Paris: OECD, p.60-62; OECD (1999): *Trends in International Migration. Annual Report. 1999 Edition*. SOPEMI. Paris: OECD, p.75-77; OECD (2001): *Trends in International Migration. Annual Report.2000 Edition.* SOPEMI. Paris: OECD, p.82 and ff. OECD (2001): *Trends in International Migration. Annual Report. 2001 edition*. SOPEMI. Paris: OECD, pp.80-81; OECD (2003): *Trends in International Migration. Annual Report. 2002 edition*. SOPEMI. Paris: OECD, pp.89-91; OECD (2004): *Trends in International Migration. Annual Report. 2003 edition*. SOPEMI. Paris: OECD, pp.69-72; OECD (2006): *International Migration*

below) and various other mapping studies that have been published since, the focus of the OECD writings on regularisation has been less concerned with legal aspects. Indeed, none of the major OECD publications on the topic have much to say on either the conceptual or the legislative aspects of regularisation, nor has the OECD considered regularisation practices in the wider sense (as done by this study). In addition, OECD studies essentially cover only regularisation programmes. The statistics published by the OECD on regularisations, moreover, do not systematically distinguish between applications and actual grants of regularisation.

Generally, the focus of SOPEMI reports, as well as more specialised OECD publications,[10] is on social and economic aspects of regularisation policies. In particular, OECD reports have gone the furthest in assessing the impact of regularisation exercises on labour markets, most notably the informal economy and migration patterns. In so doing, the OECD studies have provided important insights into specific aspects of regularisation policy not sufficiently covered by most other studies. In the recent 2007 *International Migration Outlook*[11], the OECD sees the persistence of regularisation as an actual or potential policy tool in a number of its Member States. However, it also observes a shift from general amnesties to targeted regularisations which, according to the OECD, also muster more support than general amnesties.[12]

The OECD points out several possible advantages of regularisation programmes. First, they provide information to the authorities, for example, "on the number of immigrants meeting the required conditions, on the networks which have enabled undocumented foreigners to remain illegally and in the economic sectors most concerned."[13] Secondly, regularisation programmes "provide an opportunity to accord a status and rights to foreign workers and residents who have been in the country for several years in an illegal situation." Thirdly, "where numbers of illegal immigrants reach critical dimensions, regularisation can meet public security objectives", in particular where the prevention of exploitation and the taking-up of illicit or criminal activities by illegal immigrants is concerned.[14] Thus, by opening

---

Outlook. 2006 edition. SOPEMI. Paris: OECD, pp.81-83; OECD (2007): *International Migration Outlook. 2007 edition.* SOPEMI. Paris: OECD,pp.106-108.

[10] OECD Secretariat (2000): 'Some Lessons from Recent Regularisation Programmes'. In: OECD (ed.): *Combating the Illegal Employment of Foreign Workers.* Paris: OECD, pp.53-69. See also Garçon, J.P. (2000): 'Amnesty Programmes: Recent Lessons'. In: Çinar, D., Gächter, A., Waldrauch, H. (eds): *Irregular. Migration: Dynamics, Impact, Policy Options. Eurosocial Reports*. Volume 67. Vienna: European Centre for Social Welfare Policy and Research, pp.217-224.

[11] OECD (2007): *op.cit.* p.106.

[12] It is debatable, however, to what extent the perceived shift towards targeted regularisation programmes is actually a consequence of the shift away from the almost exclusive focus on employment based regularisations in most earlier publications by the OECD and particular its neglect of regularisations on humanitarian grounds, family ties, reasons linked to length of asylum procedures, complementary protection, etc. In other words, the perceived shift towards targeted regularisations may be the consequence of change in perspective on regularisations as much as it reflects changes in actual practice.

[13] OECD (2000): *op. cit.* p.81

[14] *Ibid.;* for a recent review of European studies on regularisations as a tool to address vulnerability, social exclusion and exploitation of irregular migrants see A.Kraler (2009), *Regularisation of Irregular Immigrants - An Instrument to Address Vulnerability, Social Exclusion and Exploitation*

up broader employment opportunities, regularisation programmes may discourage the pursuit of unlawful activities.[15]

However, the OECD notes also various disadvantages and negative consequences of regularisation programmes. First, they may encourage future illegal immigration. Secondly, they can inadvertently reward law-breaking and queue-jumping, thus disadvantaging lawful immigrants. Regularisation programmes may also have negative policy impacts in that frequent recourse to large-scale regularisation programmes may inhibit the elaboration and improvement of formal admission systems. Finally, the OECD observes that large scale employment-based regularisation programmes have often been associated with massive fraud – notably in Spain and Italy – indicating that key objectives of employment based programmes, namely the formalisation of informal work, have not always been achieved to the extent hoped for.[16] The OECD also points to various lacunae regarding knowledge on the qualitative and quantitative outcomes of regularisation programmes, including the employment situation of applicants, both at the time of regularisation and after , the impact of regularisation on employment patterns (i.e. whether regularised migrants moved up the job ladder and whether jobs previously done by regularised migrants were taken by new, undocumented migrants), and the possible and actual impact on family related migration, amongst others.

Cognisant of the fact that most large-scale regularisation programmes by OECD Member States have been employment-based, the OECD points to several fundamental challenges of employment-based regularisations. First, higher labour costs resulting from formalisation of work contracts may mean that employers have difficulty in paying higher wages and will again resort to hiring illegally employed workers, depending on the economic situation. This is something that the OECD sees as being exacerbated by the inadequacy of quota programmes, for example in Spain and Italy, in providing a flexible tool to respond to labour shortages. In situations of stagnation or recession, regularised migrants – and also legal immigrants – may risk becoming unemployed and losing their legal status if the situation does not improve.[17]

In a more systematic **OECD review** of "lessons from recent regularisation programmes" published in 2000,[18] the OECD notes that employment-based regularisation programmes that target irregular employment of immigrants are constrained by the overall size of the informal economy. Thus, for regularisation policies to be successful, they need to be part of far broader policies tackling undeclared work – and not just undeclared work done by immigrants. Reflecting on the 1998 regularisation programme in Greece, the review argues that "[t]o grant permanent status to amnesty beneficiaries without at the same time radically overhauling labour relations would profoundly alter labour market flexibility and

of Irregular Migrants in Employment? Paper written on behalf of the Fundamental Rights Agency (FRA), forthcoming at http://fra.europa.eu

[15] OECD (2003): *op. cit.* p.89

[16] *Ibid.*

[17] OECD (2003): *op. cit.* p.68

[18] OECD Secretariat (2000): *op. cit.*

would no doubt trigger an immediate increase in unemployment for Greeks and [formally employed] foreigners alike."[19]

On the basis of post-regularisation studies conducted between the 1980s and mid-1990s, the review by the OECD secretariat notes that regularised migrants are on the whole significantly younger than the average working population and are located in sectors with a high concentration of foreign labour. In an earlier review of profiles of migrants regularised in 1991 in Spain and 1986 in the US, respectively,[20] the OECD found interesting differences between the profiles of regularised immigrants in the two countries. Whereas irregular migrants benefiting from the 1991 Spanish regularisation were mostly young, unmarried and male, had a good standard of education and spoke Spanish well, the percentage of males was much smaller in the US (58%), about half were married and about 43% lived with their wives. The average family size was 3.5 persons and usually included one person with legal status. While educational levels were significantly below average for the US population, the labour force participation rates were significantly higher. More recent data on Spain shows that the profile of regularised immigrants has changed considerably since: in particular, the share of female immigrants benefiting from regularisation has significantly increased, as has the number of family members. Suffice it to say that the different profiles above all indicate different structural conditions and migration patterns in the two countries and in the case of Spain, significant changes of structural conditions and migration patterns over time. In more general terms, the limited comparison of data on Spain and the US suggests that outcomes of individual regularisation programmes cannot be easily extrapolated to different periods of time and different programmes. In a similar vein, comparisons of outcomes of different programmes in different countries need to take into account possible structural differences between countries which might explain the particular characteristics of one or another programme.

These caveats notwithstanding, the OECD survey of 2000 suggests that, despite country specificities, regularised migrants can generally be found in the same sectors as the legal migrant workforce – notably agriculture, small industry, tourism, hotels and catering, and household and business services. The highest concentration of irregular immigrants, however, can be observed in agriculture, manufacturing, construction and public works and certain categories of services.[21] The review concludes that the high concentration "reflects the systematic attempts by firms to minimise labour costs (wages and social insurance contributions) and maximise labour flexibility (with highly intensive work for limited periods in time)."[22] Put in somewhat different terms, there are important structural factors contributing to illegal employment that lie in the very nature of the sectors concerned – namely high competition, low profit margins, and cyclical fluctuations in labour demand. In France and Italy, the review reports, there is a major concentration of regularised workers in manufacturing, with textiles/garment and construction/public works employing the bulk of illegal immigrants in France. The review argues that the

[19] *Ibid.* p.57
[20] OECD (1994): *op. cit.* p.47
[21] OECD Secretariat (2000): *op. cit.* p.59
[22] *Ibid.,* p.60

decline of these industries, rather than leading to their outright disappearance, leads companies to systematically resort to "subcontracting, and in some cases, to cascading subcontracting", both of which are closely associated with illegal employment.[23]

The OECD review further notes that "[t]he development of subcontracting is part of a process whereby labour management is totally or partially externalised by encouraging salaried workers to acquire self-employed status." In this context of "concealed dependent employment" it is often "small and medium-sized enterprises that enhance the flexibility of the production system and adjust to economic shifts". Illegal work carried out by illegal migrants is – in some sectors – an essential ingredient to successful flexibilisation of production processes and regularisation potentially reduces the flexibility achieved by using irregular work. In other sectors, notably in personal services, and in particular in domestic services, other processes are at work and illegal migrant employment often goes along with a broader rise in employment in this sector. Thus, many of the jobs created have only been created because of the availability of cheap and flexible migrant labour: were costs to increase (for example by requiring employers to pay minimum wages, taxes and social security contributions in the context of regularisation programmes), a certain share of jobs could be lost.

2.2.1 Outcomes of regularisation programmes

The 2000 OECD review of regularisation programmes also collected various data on the outcomes of regularisation programmes.[24] One issue that the survey highlights is the problematic issue of retention of a legal status. Thus, data collected for the 1996 regularisation programmes in Italy and Spain suggests that the main beneficiaries of the programmes were immigrants who had obtained a legal status in earlier regularisations. Various studies that have been produced since, however, suggest that this problem has been largely overcome in more recent programmes. For Italy, unpublished research on the 1998 regularisation programme suggests[25] that applicants for this programme had not previously submitted application. In addition, data on the most recent regularisation programmes in Italy (2002) and Spain (2005) shows that some 80% of all regularised migrants had managed to retain their legal status (see country studies on Spain and Italy). Data presented in the OECD review on the 1991 regularisation – 82,000 of altogether 110,000 immigrants regularised still retained a legal status in 1994 (i.e. close to 74.5% of regularised immigrants retained their status) suggests that the retention rate has since improved; equally important, however, it also points to the fact that the assessment whether a programme which achieves a 74.5% retention rate three years after its implementation should be considered a success or a failure is partly also a matter of perspective.[26] Generally, the review stresses that – if the "disappearance" of more than 25% of regularised immigrants, as in the case of the 1991 Spanish

[23] *Ibid.,* p.61
[24] OECD Secretariat (2000): *op. cit.,* p.63
[25] Dominico Gabrielli (ISTAT), personal communication
[26] OECD Secretariat (2000): *op. cit.*, p.63. As the survey points correctly points out the data available do not allow us to distinguish between non-retention of a permit because of emigration on the one hand and loss of status on the other hand.

regularisation, can be attributed to non-renewal of permits (rather than emigration), "administrative procedures that grant short-term work permits to amnestied immigrants [do] contribute, in the event those permits are not renewed, to an increase in the number of illegal immigrants, in particular when manpower needs persist in certain sectors of the economy." [27]

Two OECD studies on Italy conducted in the mid-1990s and cited by the review identified that two main reason for the persistence of illegal immigration in Italy, namely the persistent patterns of non-renewal of permits of migrants regularised during earlier regularisations, in other words, deficiencies in the management of migration and secondly "the growth of the underground economy and benefits it generates for those who have an interest in migratory flows, providing those flows remain illegal." According to the OECD, between 1991 and 1994, over 300,000 foreigners were unable to renew their residence permits, with an unknown share presumably falling back into illegality.[28] Against the background of the general growth of the informal economy the review recommends to "reconsider the issue of illegal immigration [and tie] it more closely with economic and social changes in host countries."[29]

By contrast, data on the US reviewed by the report suggests that most regularised immigrants were able to retain the residence visa issued to them and a large majority was able to gain permanent residence status after four years. The change to permanent residence enabled immigrants, among others, to take up job opportunities outside the sectors they were employed in at the time of the amnesty and moreover involved (limited) rights to family reunification. Data on post-regularization trajectories in the US indeed reveal a significant geographical and occupational mobility of regularised migrants. Anticipating significant occupational mobility farm workers regularised under IRCA's scheme for employees in the agricultural sector, the US government introduced new schemes for the recruitment of agricultural workers to prevent additional illegal inflows. By contrast, occupational mobility was not anticipated in the 1981—82 regularisation in France and vacant positions seem to have been filled with new illegal immigrants.[30]

In a review of the effects of regularisation programmes and employer sanctions published in 2000[31], ILO researcher **Manolo I. Abella** identifies several reasons why states engage in regularisation programmes. First, "tolerating (…) unauthorized stay and employment of large numbers of foreigners weakens a state's ability to impose the rule of law in other spheres" and thus regularisation (or removal) ultimately can be seen as a measure strengthening the rule of law.[32] Second, regularisation often aims at preventing exploitation of foreign workers and enforcing

[27] *Ibid.*
[28] *Ibid.,* p.64
[29] *Ibid.*, p.64
[30] *Ibid.,* p.63
[31] Abella, M.I. (2000): 'Migration and Employment of Undocumented Workers: Do Sanctions and Amnesties Work?' In Çinar, D., Gächter, A., Waldrauch, H.(eds.), *Irregular. Migration: Dynamics, Impact, Policy Options*. Eurosocial Reports. Volume 67. Vienna: European Centre for Social Welfare Policy and Research, pp.205-215.
[32] *Ibid.,* p.206

– by way of regularisation – relevant employment regulations. A third objective is to avoid the creation of a dual labour market and thus to prevent "allocative inefficiencies (…) [whereby] the same labour can command different prices in different segments of the labour market" and hence also, to prevent illegitimate competition.[33] In a survey of selected research findings Abella finds that the impact of regularisation programmes is clearly mixed. Based on the US (and contrary to findings reported by the OECD) Abella does not see marked occupational mobility and, hence, no significant improvement of the employment situation of regularised immigrants and argues that overall, experience, qualification and language skills are more important predictors of occupational mobility.[34] Similarly, he finds little clear evidence of a positive impact of regularisation on migrants' wages, with the possible exceptions also discussed by the 2000 OECD study.[35] Generally, he argues that the wage differentials between citizens and legal migrants, on the one hand, and irregular migrants, on the other, which have been observed in the US can be explained by shorter duration of employment, average lower educational levels and other human capital factors characterising irregular migrants in the US. However, it is unclear to what extent these findings can be transferred to the European context with highly regulated labour markets and a much more significant impact of legal status on the social position of immigrants.[36]

In terms of the impact of regularisation on fiscal revenues and state expenditures Abella highlights that the overall balance of regularisation is difficult to establish. Although it can be reasonably expected that regularisation does contribute to higher state revenues (tax revenues and social security contributions), evidence from the US quoted by Abella indicates that two thirds of undocumented workers had already paid social security contributions prior to regularisation to avoid detection.[37] Indeed, a study on the impact of regularisation programmes commissioned by DG Employment quotes evidence from a survey among Mexican migrants showing that 66% of all unauthorised migrants were paying taxes, while 87% among those legalised under IRCA's provisions for agricultural workers and 97% of those regularised under the law's general provisions had already paid taxes prior to regularisation.[38] This also suggests that the possible fiscal gains from regularisation measures depend not insignificantly on the legislative framework in the country in

[33] *Ibid.*

[34] However, research on post-regularisation trajectories in the US quoted by Abella suggests that regularisation had a positive impact on human capital accumulation, in particular on acquisition of language skills. See S. Kossoudji, S.A., Cobb-Clark, D. A.(1992): *Occupational Mobility or Occupational Churning? Pre-Legalization Occupational Change for Male Hispanic Legalization Applicants.* Paper presented at the 1992 Annual Meeting of the Population Association of America)

[35] i.e. mobility from the farm sector to low-wage manufacturing and service work in the US, and similar movement away from agricultural work to urban based service and low wage manufacturing work in France

[36] See Van der Leun, J. (2003): *Looking for Loopholes. Processes of Incorporation of Illegal Immigrants in the Netherlands*. Amsterdam. Amsterdam University Press. Most research, however, has focused on the economic impact of citizenship and there is relatively little research on the impact of different legal statuses (or the lack thereof) on earnings, occupational status and occupational mobility.

[37] Abella, M.I.: *op. cit,* p.207f

[38] Papademetriou *et al*.: *op. cit.* p.18. Papademetriou explains the higher tax paying rate among regularised migrants by their longer residence in the US and possible positive self-selection.

question and in particular on the extent to which illegal residence is associated with irregular work. As the data cited by Papademetriou show, a majority of illegal migrants in the US seem to work in the formal economy. In Southern Europe, by contrast, illegality is closely associated with irregular employment, although irregular employment is at the same time a much broader phenomenon. In many other European countries, by contrast, the proportion of legal immigrants and EU citizens (in particular from new Member States) who are engaged in irregular work seems to be relatively large and more important than illegally staying third country nationals.

Abella further argues that the gains through increased social security and tax payments may be – to some extent – offset by additional expenditures following from an increased use of public services, including welfare entitlements, education, health services etc.[39] Finally, Abella emphasises the need to distinguish between different types of irregularity and to design regularisation programmes accordingly. Quoting Böhning's review of early ILO studies of regularisation programmes,[40] he distinguishes three types of irregularity: (1) institutional irregularity, "where aliens become irregular because there is [a] lack of explicit policies in the country they enter, or the laws are ambiguous, or because of administrative inefficiency"; (2) statutory irregularity, which "arises where non-nationals violate restrictions imposed on them that contravene customary international law"; and (3) proper irregularity "where non-nationals violate national laws and regulations that are compatible with basic human rights". Each of the different types of regularisation requires a different design because different target populations are being addressed. In our terminology (see introduction), measures targeting institutional irregularity would generally be subsumed under what we call 'normalisation', whereas we would not regard relaxation of restrictions (statutory irregularity) as constituting regularisation. Finally, it is 'proper irregularity' which is the actual target of regularisations in the narrow sense.

2. 3 The Odysseus study on regularisation practices in eight European countries

Eight years after its publication, the Odysseus study[41] still remains the main point of departure and reference work for most recent studies on regularisation, despite several limitations. Its continuing relevance warrants a more detailed discussion. The study is still the most comprehensive legal study of regularisation practices up to this date and few of the studies that have appeared since provide a similarly detailed analysis of relevant legislation and administrative procedures. The study covers the legal bases of regularisation practices, eligibility criteria and other conditions for regularisations, the nature and form of administrative procedures and the costs of regularisation procedures for applicants.

Apap *et al.* define regularisation as "the granting, on the part of the State, of a residence permit to a person of foreign nationality residing illegally within its

[39] Abella M.I.: *op. cit.* p.208
[40] Böhning, W.R.(1983): 'Regularizing the Irregular', *International Migration,* 21, 2.
[41] De Bruycker, P. (2000): *op. cit.* and Apap, J. *et al.* (2000) *op. cit.*

territory."[42] They exclude from their definition persons who have in principle a right to residence (however temporary), such as asylum seekers or non-nationals waiting for a renewal of their permit but temporarily without a status; and they exclude non-nationals against whom removal procedures have been initiated but whose removal has been temporarily suspended ('toleration'). Thus, in general, the definition developed by the Odysseus study is very close to our definition, although it is less specific as regards the definition of 'illegal migrants'. In particular, the study does not reflect on different dimensions of illegality and the consequences that a breach of the conditions of residence (e.g. by engagement in illegal or undeclared work) has on the residence status of immigrants. In contrast to this study, the Odysseus study does not consider processes of what we call 'normalisation', i.e. the transformation of a restricted or transitional temporary residence status, which cannot be converted into a regular residence status, into a regular residence permit (the latter, in principle, convertible into a long-term status).

The study's main contribution lies in the comparative analysis of regularisation practices, and in particular in the elaboration of a typology of regularisation programmes and mechanisms which has remained the most influential 'typology' up to this date. However, rather than providing a systematic typology that might be a basis for a systematic classification of regularisation practices, the 'typology' developed by the Odysseus study defines five major axes along which regularisations can be analysed. The 'typology' thus essentially defines variables for a (potential) matrix classifying regularisations along these criteria. The following dimensions are distinguished:

(1) **Permanent vs. one-off regularisations**: This distinction is roughly equivalent to our distinction between regularisation mechanisms and regularisation programmes.

(2) **Individual vs. collective regularisations:** Apap et al. mainly differentiate individual vs. collective regularisations by the degree of administrative discretion in awarding a legal status to an illegally staying alien. In other words, regularisation measures based on a tight and detailed eligibility criteria which clearly define the target population would be classified as collective regularisation; Apap et al. contrast criteria-based regularisations to cases where authorities have considerable discretion, no entitlement to regularisation exists and authorities judge cases on the individual merits of a case.[43]

(3) **Fait accomplit vs. protection grounds**: 'Fait accomplit' regularisations refer to what is today sometimes discussed as "earned regularisation", i.e. regularisation on the basis of integration in the host society, notably on the grounds of long residence. Apap *et al.* do not clearly distinguish 'fait accomplit' regularisations from regularisations on grounds of protection; although they mainly include medical grounds and forms of subsidiary protection in this category, they also classify regularisation for family related reasons as protection related regularisations.

[42] Apap, J. *et al.* (2000): *op. cit.*, p.263.
[43] Apap, J. *et al.* (2000): *op. cit.*, p.267.

(4) **Expedience vs. obligation**: This distinction refers to the degree to which a state is obliged to regularise certain illegally staying non-nationals under constitutional and national human rights laws or under international law, notably regarding article 3 ECHR (prohibition of inhumane, cruel or degrading treatment) and article 8 ECHR (respect for private and family life).[44]

(5) **Organised vs. informal**: This distinction refers to what degree formalised regularisation mechanisms and programmes exists. Informal regularisations thus would refer to cases where individuals staying irregularly would petition immigration authorities to get regularised, i.e. to be issued a permit within the existing legal framework, irrespective of whether there are specific provisions for regularisations.

The 'typology' developed by the Odysseus study still provides a useful point of departure. It covers various important dimensions of regularisation measures, including administrative and organisational aspects of regularisation policies (1, 3 and 5) and regularisation criteria (3 and 4). However, neither the Odysseus study nor subsequent studies which have made use of the Odysseus typology have actually attempted to comprehensively classify regularisation measures according to the five dimensions identified by the study.

In addition, the typology also has a number of weaknesses. First, broader objectives of regularisation measures, including regaining control, addressing undeclared work and the informal economy, improving the social situation of immigrants, carrying out regularisations as an accompanying measure to increased immigration restrictions, etc. are not reflected in the typology. Secondly, dimensions (3) and (4) essentially cover some grounds on which the stay of illegal immigrants might be regularised. These distinctions inadequately cover employment-based regularisations, but also family related reasons seem to constitute a distinct reason for regularising the status of illegally staying non-nationals and cannot be easily subsumed under either "Fait accompli" or "protection". In addition, the fourth dimension (expedience vs. obligations) seems to be both too broad and too narrow. The understanding of obligation is relatively broad in that analytically it also would include classical protection grounds (refugee status) and other statuses which have emerged more recently (subsidiary and temporary protection, protection for victims of trafficking) – all of which need to be distinguished analytically from regularisation (even if overlaps exist). Conversely, the distinction between expediency and obligations can also be considered as too narrow, as it inadequately reflects the entitlements of residence to long-term residents and thus the obligations of states to persons with a 'consolidated' residence status. Long-term residents also enjoy considerable protection and their residence may be terminated only on exceptional grounds and not automatically, if initial conditions for admission or temporary residence are no longer met.[45]

[44] See also Thym, D. (2008): Respect for Private and Family Life under Article 8 ECHR in 'Immigration Cases: A Human Right to Regularize Illegal Stay?' *International and Comparative Law Quarterly*, 57, 1*, passim*

[45] Although the long-term residence directive (2003/109/EC) was adopted only 3 years after the Odysseus study on regularisations, a majority of Member States covered by the study provided for

The Odysseus study also identifies a number of criteria used by the relevant countries to establish the regularisation of illegal staying third country nationals, namely

- a geographical criterion (physical presence of the applicant before regularisation),
- an economic criterion (employment status);
- a humanitarian criterion (persons unable to return to their country of origin for reasons other than those linked to the status of refugee under the Geneva Convention)
- a criterion relating to asylum procedures (e.g. undue length of the procedure)
- health reasons
- family related reasons
- a quantitative criterion relating to the number of regularizations granted;
- nationality of the applicant
- integration
- qualifications of the applicant

The focus of the Odysseus study on the analysis of regularisation practices from a comparative law perspective is arguably also is its main weakness. The study has relatively little to say about the implementation of regularisation. At the same time, the detailed statistical information collected for the study (applications submitted, persons regularised and acceptance rates), which provides some (albeit limited) indicators for the implementation of regularisation programmes, still has to be regarded as a major achievement. The study also identified major deficiencies of data collection, many of which remain valid today.

The study says little on the rationale of regularisation policies and on the target groups for regularisation, although some reasons (long-term residence – fait accomplit, or regularisation on protection grounds) are covered by its typology. Finally, the study also has little to say on the impact and effectiveness of regularisation policies in terms of achieving wider goals. In both respects – the rationale and impact of regularisation policies – the study essentially provides conclusions based on normative reasoning rather than empirical analysis: it thus maintains that regularisations are a crucial mechanism to both help integrate, and to reduce the stock of, illegal immigrants. Regularisation may also, therefore, be a more humanitarian alternative to enforcing return.

Finally, the study does not provide a comprehensive evaluation of regularisation policies. In particular, it lacks a broader comparative perspective. Neither does it embed its analysis of regularisation practices in a broader analysis of policies on irregular migration, nor does it discuss any links between regularisation and broader policies on asylum and legal migration.

---

a long-term (permanent) residence status with a similar scope. See Groenendijk, K., Guild, E. & Barzilay, R. (2000): *The Legal Status of third country nationals who are long-term residents in a Member State of the European Union*. Nijmegen: Centre for Migration Law.

2.4 Subsequent comprehensive reviews of regularisation practices

Three recent comprehensive comparative studies on regularisation practices – Jochen Blaschke's study on regularisation practices in the EU27 commissioned by the European Parliament,[46] Amanda Levinson's comparative study of regularisations in 8 European Union Member States and the US,[47] and Sebastian Sunderhaus's[48] global survey of regularisation programmes take an approach very similar to that of the Odysseus study, in that all three basically map regularisation practices in the countries that the studies cover, albeit with varying levels of detail and, generally, in much less detail than the Odysseus study. Levinson's study covers 9 countries (8 EU Member States and the US), Blaschke covers all the 27 EU countries, although he provides little detail on individual countries and few comparative conclusions, while some of the information contained in the report is of questionable veracity. Sunderhaus undertakes a global survey covering a total of 16 countries in Africa, Asia, South, Central and North America, and Europe, but covers only regularisation programmes and does not consider regularisation mechanisms. All three studies adopt the typology developed by the Odysseus study, although Blaschke actually makes very limited use of the typology.

In general, Levinson's study stands out among the three studies in that she goes furthest in evaluating the rationale, implementation and the wider impact of regularisation programmes. Like Sunderhaus, however, she effectively focuses on regularisation programmes and does not consider regularisation mechanisms.

Generally, all three studies suffer from the same limitations as the Odysseus study. In particular, none of them adequately discuss regularisation in connection with other policies on irregular migration and asylum, nor do they link their analyses of regularisation practices to a broader analysis of immigration policies, or do so only in a very limited manner. Sunderhaus and Levinson base their studies on an extensive survey of the literature. **Blaschke**'s study is based on limited information gathered from administrative authorities and experts in individual countries; the main value of the study lies in its broad coverage of all EU Member States, but he has little to add in comparative perspective. In addition, he largely ignores the existing literature and thus largely fails to engage in conceptual and analytical debates surrounding regularisations.

Sunderhaus, although providing a useful overview over global patterns of regularisations, only provides limited comments on the links between regularisation policy and the wider policy framework. In particular, he asserts that the lack of immigration channels open to unskilled migrants are a major reason for undocumented migration which regularisation measures then have to correct. Sunderhaus identifies several rationales for carrying out regularisations, including the economic benefits (formalisation of employment), humanitarian considerations as well as regaining control of migration through regularisation programmes. In addition, he suggests that regularisation programmes are usually implemented in want of other policy options. In a way, Sunderhaus argues, regularisation policies

[46] Blaschke, J. (2008): *op. cit.*
[47] Levinson, A. (2005): *op. cit.*
[48] Sunderhaus, S. (2006): *op. cit.*

thus can be seen as an attempt to redress the negative outcomes of previous migration policies and thus are generally of a corrective nature. Apart from the limitations the study by Sunderhaus shares with the Odysseus study, Sunderhaus' survey is problematic on two additional grounds. Methodologically, the inclusion of developing countries without consideration of the implications of different histories and unfamiliar systems of migration management, as well as the more limited capacity of some of these countries to control migration (or the wider population), is problematic. Secondly, and more important for this study, the focus on large-scale programmes in selected countries leads Sunderhaus to ignore the role of smaller scale programmes as well as that of regularisation mechanisms, which, as this study shows, can involve substantial numbers of people. Crucially, his focus on selected large-scale regularisation programmes leads him to a rather negative assessment of regularisation programmes in general, although he concedes that they may be useful policy tools if their design and implementation are improved.

Of these three studies, only **Levinson** pays much attention to wider questions linked to regularisation policies, including the role and position of regularisation policy in the context of the wider policy framework. For Levinson, regularisation is an indicator of wider policy failures, notably the failure of internal and external controls; unfortunately, she does not go into further detail of what exactly these failures consist of. In particular, she pays little attention to broader patterns of deficient practices, including deficiencies in the administration of legal migration and asylum which, as we show, can be identified as one of the sources of the need for regularisation programmes, or deficiencies in the design of both asylum and migration regulations.

In addition, Levinson discusses several issues neglected by the Odysseus study in more depth, notably the rationale for regularisation programmes, issues relating to the implementation of regularisation programmes and mechanisms and the impact of regularisations. Referring to a previous IOM study[49], she identifies four major reasons why states engage in regularisations, namely (1) to regain control over migration and to reduce the size of the irregular migrant population; (2) to improve the social situation of migrants, a goal often embraced in response to immigrant advocacy coalitions and public pressure to undertake regularisations; (3) to increase the transparency of the labour market and combat illegal employment; and (4) foreign policy goals.[50] Neither humanitarian considerations nor legal obligations (notably, protection obligations held by states regarding certain categories of immigrants) are considered by Levinson. Levinson observes several limitations and problems of regularisation programmes – namely, lack of publicity, overly strict requirements, application fraud, corruption of public officials, lack of administrative capacity to process applications, massive backlogs and delays, and ineffectiveness of employer sanctions.[51]

[49] Mármora, L. (1999): *International Migration Policies and Programmes*. Geneva: IOM.
[50] This is essentially limited to Portugal's programme for Brazilian undocumented workers.
[51] Levinson, A. (2005): *op. cit.* pp. 5-6.

In her assessment of the impact of regularisation programmes, Levinson distinguishes four dimensions: (1) political impact; (2) economic impact; (3) impact on patterns and stocks of undocumented migration; and (4) socio-economic impact.

(1) Political Impact: Levinson observes that most regularisation programmes have been preceded and accompanied by extensive public debate. In various countries, immigrant advocacy coalitions composed of migrant organisations, NGOs, religious organisations and trade unions have emerged through public debate on regularisation programmes which have in some cases decisively influenced the policy debate on regularisations, as well as the design and implementation of relevant programmes. This line of argument has been pursued in more detail by Barbara Laubenthal, whose recent study on the emergence of pro-regularisation movements in Europe traces the emergence of such movements in France, Spain and Switzerland.[52] Laubenthal shows that in the context of the three countries studied, it was specifically the imminent revocation of (limited) rights of undocumented migrants that triggered large-scale mobilisation of pro-immigrant groups, as well as undocumented migrants themselves. In addition, she shows that in all three contexts, preceding changes in civil society, notably the increasing attention paid to social exclusion and marginalisation, were important factors enabling regularisation to be successfully framed as an instrument against discrimination and social exclusion.

(2) Economic Impact: Levinson concludes from her literature survey that large-scale regularisation programmes may actually lead to increased informality in the labour market and thus – as a stand-alone measure – may be insufficient to combat undeclared work and reduce the size of the underground economy. The main reasons for these at best mixed results are the unwillingness of employers to pay higher wages for legalised workers and the resulting structurally embedded high demand for irregular migrant work, along with migrant networks that channel immigrants into certain sectors of the economy and not others. Levinson stresses that regularisation – in combination with other instruments – may still be useful: The challenge is " integrating migrants well enough into the social and economic fabric so that the underground economy does not remain a large pull factor."[53] Finally, large- scale

[52] Laubenthal, B. (2006): *Der Kampf um Legalisierung. Soziale Bewegungen illegaler Migranten in Frankreich, Spanien und der Schweiz*. Frankfurt: Campus; the main findings of the study have been published also as Laubenthal, B. (2007): 'The Emergence of Pro-Regularization Movements in Europe'. *International Migration* 45/3, pp. 101-133.

[53] Levinson, A. (2005): *op. cit.* p.9.

regularisations may be an excellent tool for obtaining information on labour market participation and the position of irregular migrants in the labour market.

(3) Impact on undocumented migration: Levinson points out that the success of regularisation programmes to reduce the stock of undocumented migrants has been mixed. On the basis of research on the US Levinson argues that undocumented migration has, contrary to the objectives of the Immigration Reform and Control Act (IRCA) 1986, not been reduced and has further grown after the 1986 legalisation programme carried out under the act. However, she does not discuss whether the growth of irregular migration to the US has been coincidental or whether it can be attributed to pull effects of the 1986 regularisation. In addition, Levinson observes that a fairly large number of regularised persons fail to meet the conditions for renewing their permits and thus fall back into illegality.

(4) Socio-economic impact: Again, Levinson finds that the impact of regularisation programmes has been mixed. In principle, well-organised regularisation programmes can have a positive impact on wages, occupational mobility and the wider integration of immigrants. However, in practice, regularisation programmes have often failed these objectives. Drawing on Reyneri's studies on irregular employment in the Mediterranean countries of the EU[54] she observes that because of structurally embedded high demand for irregular (undeclared) work in those sectors in which regularised migrants are concentrated, few regularised migrants managed to keep regular employment; on the contrary, regularisation in some cases reduced migrants' chances for employment, including remaining in employment.

On the basis of her literature survey, Levinson makes a number of recommendations, in particular regarding relevant ingredients of a successful regularisation programme (see Box 1, below). In addition, she recommends additional measures that would reduce the need for large-scale regularization programmes, including flexible work visas that would allow for more extended periods of unemployment and job seeking, stronger or better implementation of labour protection laws, and expanding the scope of long-term residence.

[54] Reyneri, E. (2001): *Migrants' Involvement in Irregular Employment in the Mediterranean Countries of the European Union* [online]. Geneva: International Labour Organization; www.ilo.org/public/english/protection/migrant/download/imp/imp41.pdf

Box 1: Elements of a successful regualrisation programme

Preparatory Stage	Consensus building among all stakeholders on scope, terms and target groups of regularisation programmes. Involving all relevant stakeholders, notably advocacy groups, employers, trade unions, political parties and immigrant associations Clear definition of application process/ procedure Active campaigning involving all relevant stakeholders
Implementation stage	Training of officials implementing regularisation Involving NGOs and immigrant associations in implementation
Post-regularisation stage	Compiling and analysing data on outcomes of programmes, in particular regarding demographic composition of regularised population and labour market position

Source: A. Levinson (2005:11-12)

Building on previous research and extensive hearings of both academic and NGO experts, the recent **Council of Europe** report on regularisation programmes[55] probably provides the most systematic evaluation of regularisation programmes undertaken so far. The report identifies five major types of programmes (1): exceptional humanitarian programmes; (2) family reunification programmes; (3) permanent/ continuous programmes regularising irregular migrants on a case-by-case basis; (4) one-off, employment based programmes aimed at regularising large numbers of irregular immigrants; and (5) earned regularisation programmes. The Council of Europe typology thus does away with some of the inconsistencies of the earlier Odysseus typology and provides a typology that lends itself more easily as the basis for a systematic classification of regularisation schemes in individual countries. In particular, two points are noteworthy.

First, the typology stresses that family based programmes constitute programmes in their own right and need to be seen as different from humanitarian programmes. As our own study shows (see infra), family based regularisations are indeed an important phenomenon in a number of Member States and also point to deficiencies in regard to access to the right to family reunification. Secondly, the Council of Europe typology adds a new category of regularisations, namely 'earned regularisation', a term that has emerged in the US context and also has made its way into British debates on regularisation programmes.[56] According to the report, "the idea behind these programmes is to provide migrants with a provisional, temporary living and working permit and to have them "earn" the right to have the permit extended or become permanent through the fulfilment of various criteria, such as knowing the language of the host country, participating in community activities, having stable employment and paying taxes."[57] A concrete proposal how such a

[55] Greenway, J. (2007): *op. cit.* The report is based on extensive hearings of both academic and NGO experts as well as background research by Amanda Levinson.
[56] See Papademetriou, D. (2005): *op. cit.*
[57] It should be noted, however, that in public debates on 'earned regularisation', the term is often used in a different meaning, notably in the sense that integrated, long-term resident illegal migrants should be considered as having earned a right to residence.

scheme could look like has been developed for the US by MPI President **Demetrios G. Papademetriou** and is presented in Box 2, below.

Box 2: 3-tier earned regularisation

Overall objectives of an earned regularisation programme	Alternative to one-off large-scale regularisation programme Reduce the stock of illegal migrants, and in particular illegal immigrants working in the informal economy Reduce the size of the informal economy
Tiers/ Characteristics	Purpose/Advantages
Tier 1 Applicants would qualify automatically for probationary status and would be issued a residence and work permit	Registration of illegal immigrants, bringing illegal immigrants under the control of the state, Through low thresholds to registration programme would reach the largest possible number of irregular migrants Through low thresholds to registration biggest social problems associated with irregular residence and work would be removed, including violations of labour regulations, exploitation, disregard for social protection, evasion of taxes
Tier 2 After 3-5 years applicants regularised under Tier 1 would be able to obtain permanent residence (tier 2) Subject to a number of criteria, including stable formal sector employment, paying taxes, language skills, civic participation, etc. Applicants would be awarded credits/ points for meeting each (or some) of these criteria; Permanent residence would be awarded after acquiring a number of points in a given time frame (3-5 years), plus a bonus year for those who have met most, but not all points yet (Substantial) fees would be covered by immigrants	Would make administration more orderly and manageable, Would reduce some of the problems associated to large-scale programmes carried out in a short span of time (backlogs, fraud, etc.) Applicants would be able to apply once they have attained the number of points Would offer a flexible tool to reward irregular migrants wishing to remain on a longer term basis for their incorporation into the host society Would provide a transparent and clear mechanism to award residence rights Creates incentives for ongoing "positive behaviour"
Tier 3 Would target for those who failed to pass the test under tier 2 Persons under tier 3 would be granted a two year extension of their residence and work permit and be required to their home country within this period	Temporary extension of the work and residence permit would increase the likelihood of voluntary return Would reduce the negative consequences of immediate enforcement of return

Source: Papademetriou, D. (2005: 12-13)

In its review of characteristics of regularisation programmes, their rationale, their implementation and their possible impact, the Council of Europe report repeats many of the points already made by the Odysseus study and Levinson. It differs in that it takes a more comprehensive view of regularisation and explicitly discusses regularisation as part of broader policies on irregular migration. Thus, the report recommends that "Regularisation programmes should be examined as one policy tool that, in conjunction with other measures (protecting the rights of migrants, increased internal and external migration controls, individual return programmes and development partnerships with countries of origin) could be a valuable tool for managing migration."[58] The report remarks critically that "[r]egularisation programmes have been largely designed and carried out as standalone policy efforts to control irregular migration, and then often paid little attention to the realities of the labour market needs of employers or to the behaviour of migrants. As a stand-alone policy to control migration, regularisation programmes are doomed to failure, since they deal with current and possibly future flows of migrants, not the control mechanisms that prevent them from entering."[59]

In addition, the report recommends co-operation with countries of origin on facilitating the orderly return of failed migrants and developing development-return schemes that would make return a more viable and attractive option for failed migrants themselves. The Council of Europe report, however, also recognises that overly strict immigration policies may be a cause of illegality and recommends to expand the scope for legal immigration, including labour immigration for lower skilled categories of immigrants. Furthermore, the report stresses human rights considerations, notably in terms of the respect for private and family life. The report thus notes that 'spontaneous' family reunification seems to be an important source of irregular migration, but family considerations are a rare criterion in most large-scale regularisation programmes. Finally, the report also sees a need for a common position on regularisation of both the Council of Europe and the European Union that would incorporate its recommendation.

Aspasia Papadopoulou's review of regularisation practices written for the Global Commission on Migration[60] essentially covers much of the same ground as the Odysseus study and in particular, as Levinson's review and the Council of Europe report. However, she places more emphasis on the relationship between regularisation policies and asylum and stresses that regularisation has in the past often been granted as a form of complementary protection. As the Council of Europe, she emphasises the general need to undertake regularisations in agreement with existing human right norms under international law, including the Universal Declaration of Human Rights, the UN 1990 Convention on the Rights of Migrant Workers and Members of their Families, the European Convention on Human Rights, the European Social Charter, the ILO Migration for Employment Convention 1949 (C97), and the Convention on the Rights of the Child.

[58] Greenway, J. (2007): *op. cit.*, p. 2.
[59] *Ibid.* p.13. See also Migration Policy Institute/ Weil, P.: *op. cit.* for systematic assessment on policies on irregular migration.
[60] Papadopoulou, A. (2005): *op. cit.*

In contrast to the Council of Europe report, Papadopoulou does not endorse 'earned regularisation' schemes. The main problem, she argues, is that regularisation would then be treated as an award, rather than as a right, and would undermine equal-opportunity and equal-rights-based understandings of integration. In addition, an earned regularisation scheme would favour more highly skilled, resourceful and well-connected migrants and thus would have a clear bias against more vulnerable and less resourceful groups.

2.5 Conclusion

This survey of the literature suggests that there are two broad strands of research on regularisation practices. One major strand of research, including most studies written on regularisation practices in the European Union which – in one way or another – build on the seminal Odysseus study, has a broad, comparative impetus and focuses on the policies as such. The main focus of this strand of research is on identifying types, criteria and objectives of regularisation measures and on providing indications for which objectives, in which form and under what circumstances regularisation may be an appropriate policy tool. This strand of research thus focuses on the overall design of regularisation measures; it does address questions of implementation to some extent, but is less interested in the overall impact of regularisation.

By contrast, a second strand of research, which includes the OECD studies on regularisation (as well as work done by Papademetriou, amongst others) is less interested in conceptual issues, the criteria and conditions used in regularising illegal migrants or the specific objectives of regularisation measures, but instead places the focus on the wider (fiscal and economic) impacts of regularisation measures. In addition, a secondary focus is on possible conclusions that can be derived from the assessment of past regularisation exercises for the design of new regularisation programmes or mechanisms. Generally, this strand of research focuses on large-scale employment-based regularisation programmes and does not cover regularisation measures in their entire breadth. Nor is this strand of research interested in regularisation as a policy tool to address the presence of illegal migrants *per se*. Rather, the main interest is in establishing to what extent, and under what conditions, regularisation can be an appropriate policy tool to address illegal migrant employment and the informal economy at large. In the European context, the focus of this strand of research thus essentially is on those countries which have conducted large-scale employment based regularisation programmes – notably, the southern European countries (in particular Spain and Italy) and to a lesser extent, France. Because of this specific focus on the nexus of illegal migration and the informal economy, the conclusions drawn from this type of research cannot really be transferred to other European countries without comparable patterns of irregular migrant work. The available evidence suggests that in these countries – broadly speaking, the western and northern European countries– illegal migration is to some extent dissociated from illegal migrant work and that the largest share of persons engaged in irregular work consists of legal immigrants, EU citizens (in particular,

citizens from new EU Member States) and nationals.[61] Similarly, because the target populations of regularisation programmes and mechanisms in these countries – where regularisations are largely carried out for humanitarian or family reasons or where programmes target specific categories of third country nationals (rejected asylum seekers, tolerated persons) – are starkly different from countries with regularisation programmes targeting illegal migrant workers, the overall economic and fiscal impact of regularisation measures is likely to be different as well.

The two strands of research, however, also suggest that it is indeed useful to distinguish between two distinct objectives of regularisation measures: namely

(1) regularisation as a tool in addressing irregular employment and the informal economy, i.e. as a labour market policy, and

(2) regularisation as a rectification of illegal or semi-legal residence and as an alternative to removal

In the first instance, regularisation is a means to achieve wider objectives and essentially is an attempt to re-regulate the informal economy. In the second instance, regularisation is a goal in itself and is used to address policy and implementation failures (e.g. in the asylum system) and to respond to specific situations and needs (e.g. humanitarian concerns, etc.).

[61] In Austria, 56.8% of the persons found illegally employed in 2007 were citizens of new EU Member States. See Table II.7 in Kraler, A., Reichel, D., Hollomey, H. (2008): *Clandestino Country Report: Austria.* Unpublished Draft Report for the project Clandestino - Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe.

3 Regularisation practices across the EU

3.1 General patterns of programmes and mechanisms

Following the division of regularisation processes into programmes and mechanisms (as defined in Chapter 1), we have attempted to collect and collate statistical data on both of these procedures for all Member States. Despite our best efforts, and the provision of information by 22 countries (out of 27 requested), the data are in general far from satisfactory. For regularisation programmes, we requested numbers of applications and grants of legalisation: only five countries[1] were able to provide both figures for their relevant programmes, with the majority (ten countries) cognisant of only one of the two figures. The situation with regularisation mechanisms is considerably worse, with many countries simply not recording the data. Thus, the data provided considerably understate the award of regularised statuses by mechanisms, and to a lesser extent through programmes: for this reason, we have supplemented official data with figures taken from available research. Furthermore, it is evident that *de facto* regularisations of persons with ethnic ties have been completely excluded from Member States' evaluations of their own policies. Even though, typically, 'co-ethnics' are awarded citizenship, the transition from an irregular status to legality is, in our view, a regularisation. The number can only be crudely estimated, but for just one country (Greece), is at a minimum of 350,000 persons awarded either citizenship or documented as legally resident on the basis of ethnicity.[2] Given the above caveats, we can state that over the period 1996-2007, just under 4.2 million persons applied for regularisation through programmes in 16 Member States.[3] If we include the 2006 *de facto* regularisation in Italy, the total number of applications exceeds 4.6 million.[4] Data on applications in the framework of regularisation mechanisms are not generally available: about 305,000 persons are known to have been awarded legal status through mechanisms in eleven countries.[5] Another six countries seem to have no data on their awards of legal status through mechanisms. Thus, a total of almost 5 million persons are recorded as having applied for regularised status during this timeframe – either through time-limited programmes or through case-by-case regularisation mechanisms. Taking into account the substantial missing data,[6] the total is easily 5.5 million. Adding to this, the 'missing' data on co-ethnics (Greece, Germany, Hungary *et al.*), the total

[1] Hungary, Italy, Luxembourg, Poland, Spain.

[2] A similar, although analytically distinct, category of persons consists of descendants of emigrants of Member State who may have a claim to citizenship of a Member State, and thus, European Union citizenship. In particular in regard to Italy (where nationality legislation was changed to expand the population eligible for Italian citizenship prior to the 2005 elections), Portugal and Spain this involves considerable numbers of persons. It is unclear, to what extent *ex-post* status adjustments (i.e. registration of citizenship) takes place in their country of citizenship.

[3] BE, DK, FR, DE, GR, HU, IE, IT, LT, LU, NL, PL, PT, ES, SE and the UK.

[4] Figures for the 2006 Italian de facto regularisation are taken from Cuttitta, P. (2008): 'Yearly quotas and country-reserved shares in Italian immigration policy', Migration Letters, 5/1, pp. 41-51.

[5] AT, BE, DK, FR, FI, DE, GR, HU, IE, PO SK

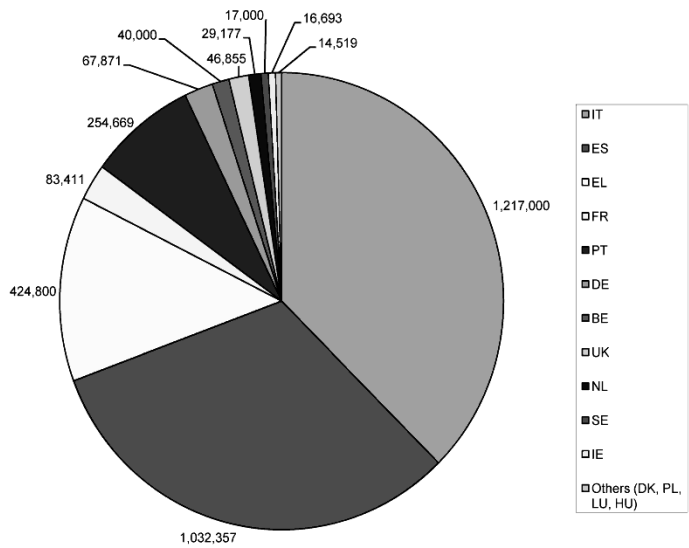
[6] Official data on applications or grants through programmes are missing completely for Denmark, Estonia, Lithuania and the UK; data on individual programmes are missing for Germany, Greece, Poland and Portugal.

number of persons involved in transitions from irregularity to a legal status may exceed 6 million.

3.1.1 Regularisation Programmes

Over the period 1996-2007, data from 42 regularisation programmes show a total of about 4.2 million applicants in 17 countries, of which at just under 2.9 million were granted legal status.[7] Including the Italian *de facto* regularisation of 2006, the total number of programmes is 43, involving 4.7 million applicants, of which more about 3.2 million were granted a status. Table 2, overleaf, shows summary data for each of the programmes, ordered by total applications over the period. Italy (including the *de facto* regularisation of 2006) appears in first place with just under 1.5m applications; Spain is second, with 1.3m, and Greece is in third place with just under 1.2m (although this is overstated by about 230,000 owing to a 2-stage process in 1997-8). These three countries account for 84% of known applications in regularisation programmes. In the 42 regularisation programmes, the number of applicants varied considerably between programmes ranging from 51 applicants in Lithuania in 1996 to over 700,000 in Italy in 2002. From the data available, regularisation rates of individual programmes are typically over 80% in southern countries, with lower rates for Germany, Belgium and Luxembourg and extremely low rates for France (21% and 53%). The weighted mean regularisation rate (only for those programmes where both application and grant numbers are known) is 80%.

Figure 1: Grants of regularised status through programmes, EU (27), 1996-2007



Note: missing data for EL (1997, 2001) and LT resulting in an undercount of at least 500,000

[7] The real figure is higher, owing to missing data from Greece (1997, 2001) and the countries listed in Fn.99

Table 2: Regularisation programmes in the EU (27), 1996-2008

Year/Peri	Countr	Number of	Country	Regularisations	%
199	I	250,74		217,00	**86.5**
200	I	702,15		650,00	**92.6**
200	I	500,00		350,00	**70.0**
			1,452,9		
199	E	25,12		21,38	**85.1**
200	E	247,59		199,92	**80.7**
200	E	351,26		232,67	**66.2**
200	E	691,67		578,37	**83.6**
			1,315,6		
199	E	371,64			
1998-	E	228,20		219,00	**96.0**
200	E	350,00			
200	E	90,00		90,00	
200	E	96,40		95,80	**99.4**
200	E	20,00		20,00	
			1,156,2		
199	F	143,94		76,45	**53.1**
200	F	33,53		6,95	**20.7**
			177,48		
199	P	35,08		31,00	**88.4**
200	P	185,00		185,00	
200	P	19,40		19,40	
200	P	40,00		19,26	
			279,49		
199	D	18,25		18,25	
200	D	71,85		49,61	**69.0**
			90,11		
1999-	B	55,00		40,00	**70.0**
			55,00		
199	U	12,41		11,14	**89.7**
200	U	11,66		10,23	**87.8**
200	U	9,23		9,23	
200	U	11,24		11,24	
200	U	5,00		5,00	
			49,55		
199	N	7,60		1,87	**24.7**
200	N	2,30		2,30	
200	N	30,00		25,00	**83.3**
			39,90		
2005-	S	31,00		17,00	**83.3**
			31,00		
200	I	17,90		16,69	**98.1**
			17,90		
200	D	3,00		3,00	
1992-	D	4,98		4,98	
			7,98		
200	P	3,50		2,74	**78.3**
200	P	28		28	
2007-	P	2,02		17	**8.8**
			5,81		
200	L	2,88		1,83	**63.8**
			2,88		
200	H	1,54		1,19	**77.5**
			1,54		
199	L	5		5	**94.4**
199	L	38		15	**40.8**
200	L	10		7	**74.8**
			54		
TOTA		**4,684,0**		**3,244,3**	
Averag		***111,52***		***87,67***	***80.4***
					[weighted

No programmes: AT, BG, CY, CZ, EE, FI, MT,

KEY
Official
Own
Incomplete
Missing

Nine Member States provided details on criteria used in 26 regularisation programmes. The importance of various criteria or conditions is shown in Table 3 below.

Table 3: Importance of selected criteria in regularisation programmes

Specific criteria	Essential	Desired	Not
Presence in the territory	22	0	3
Length of residence	17	3	6
Family ties	3	11	11
Ethnic ties	0	0	25
Nationality	4	1	20
Integration efforts	3	3	20
No criminal record	17	5	3
Employment	8	11	7
Health condition	3	0	22
Other	5	0	20

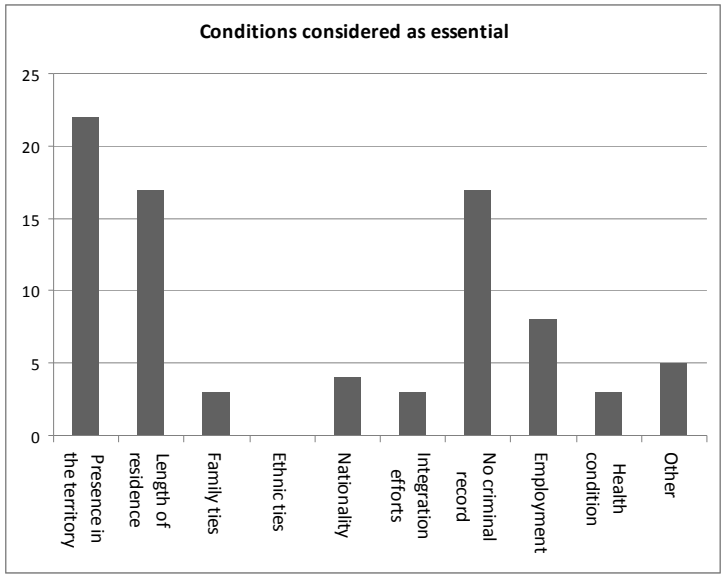
'Presence in the territory' before a certain date stands out as the most important criterion used and has been seen as essential in 22 programmes. **Length of residence** and **lack of criminal record** both have been regarded as essential in 17 programmes and desired in three and five programmes, respectively.

Employment is another important criterion, being mentioned in respect to 19 programmes as either essential or desired. However, only eight programmes viewed employment as an essential criterion.

Family ties – mentioned altogether as important in 14 programmes (although only three times as essential) is another frequently cited criterion. Other criteria are much less often mentioned as essential or desired, with **integration efforts** (six times, three times as essential) and **nationality** (five times in total, in which four as essential) are more important.

Health reasons are only cited in three programmes, while **ethnic ties** are considered as irrelevant in respect to all programmes on which information was reported. Figure 2, below shows the criteria seen as 'essential' by frequency of occurrence in the 26 programmes for which information was provided.

Figure 2: Conditions considered as essential programmes



3.1.2 Regularisation Mechanisms

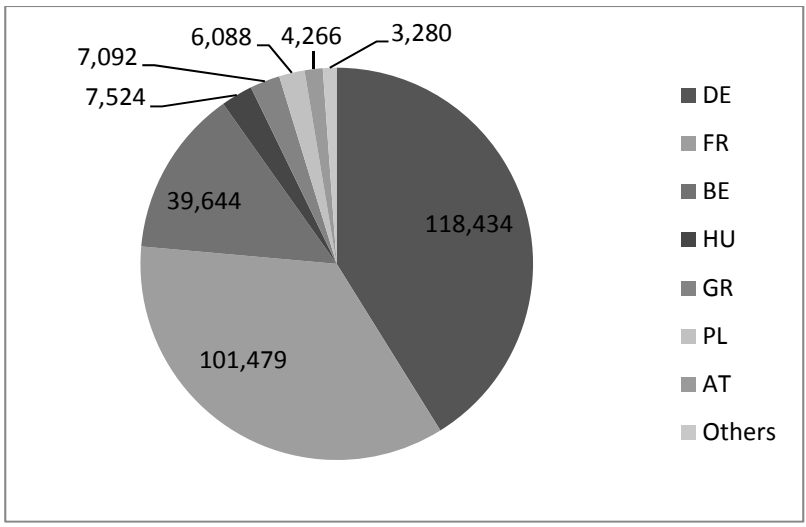
As noted above, many statistics on regularisation mechanisms are either not collected or not available. Therefore, the following statistics show a non-random sampling of all regularisations through mechanisms. Since 2001 around 305,000 regularisations were recorded for this project: however, the grounds for regularisation differ significantly between countries and various mechanisms. The general common rationale is that persons are allowed to change from an irregular status to a regular status according to various legally-defined reasons (mainly humanitarian). The largest number regularised in the course of a mechanism is reported for Germany, at 118,434 (making up 41% of known regularisations by mechanism in this study).[8] If the number of tolerated persons (110,000 as of September 1, 2008) and the 23.500 persons with a leave to remain (*Aufenthaltsgestattung)*[9] are included, the total number of persons 'regularised' through permanent mechanisms exceeds 251,000 persons. However, in contrast to persons regularised under the various regularisation mechanisms existing in Germany, the status of tolerated persons is only temporarily adjusted through toleration or leave to remain. Conversely, however, a majority of tolerated persons and persons on leave to remain are subsequently regularised – indeed, possession of toleration or a leave to remain is a pre-condition for most mechanisms and similarly has been in regard to the various programmes conducted in Germany. France reports large numbers of regularisations through mechanisms and in terms of using regularisation mechanisms to award fully fledged legal statuses, has been the most

[8].The figure represents the sum of various individual mechanisms. See, for more details, the German country profile in Appendix B.

[9] Figures of tolerated persons and persons on a leave to remain have been taken from *Migration und Bevölkerung*, 10/2008, p.3

significant and consistent user of mechanisms in the EU. Over 2000–06, more than 100,000 persons were regularised either for personal reasons or family ties (80,000) or by virtue of 10 years of residence (21,000). Countries where considerable numbers of regularisations were reported are Belgium (2001–2006: 40,000), Hungary (2003–2007: 7,524), Greece (2005–2007: 7,092), Poland (2006–2007: 6,088) and Austria (2001-2007: 4,226). Figure 3, below, shows these graphically.

Figure 3: Grants of regularised status through mechanisms, EU (27), 1996-2007



16 Member States provided information on 28 mechanisms existing in those countries, although only 13 countries gave details on criteria used in respect to 23 mechanisms. The importance of various criteria or conditions in these mechanisms is shown in Table 4 below:

Table 4: Importance of selected criteria in regularisation mechanisms

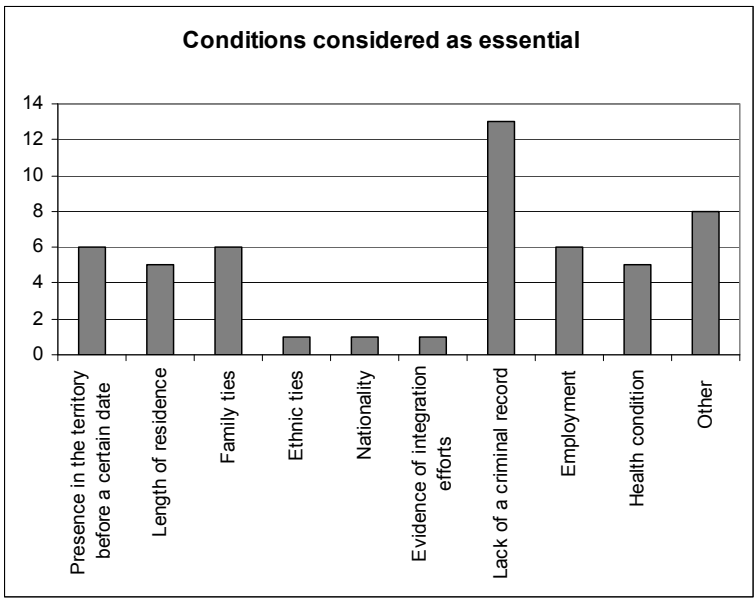
Specific criteria	Essential	Desired	Not relevant
Presence in the territory before a certain date	6	0	14
Length of residence	5	4	10
Family ties	6	7	8
Ethnic ties	1	2	16
Nationality	1	1	17
Evidence of integration efforts	1	13	6
Lack of a criminal record	13	4	5
Employment	6	6	8
Health condition	5	3	13
Other	8	0	2

For most mechanisms **'a lack of criminal record'** is seen as essential to benefit from regularisation. Moreover, **'length of residence'** and **'presence in the territory before a certain date'** are seen as essential. Additionally, **'employment'**, **'family ties'** and **'health condition'** are frequently cited.

'Evidence of integration efforts' is definitely the most important issue which is seen as 'desired' for regularisation through a mechanism. It was by far mentioned most often as 'desired' but only once as 'essential' and only 6 times as 'not relevant'.

'Nationality' and **'Ethnic ties'** are definitely not relevant for benefiting from regularisation mechanisms, as they are mentioned most often as 'not relevant' and hardly at all as 'desired' or 'essential'. In general, 'length of residence' and 'presence in the territory before a certain time point' are essential only for five mechanisms, but are seen as not relevant in 10 and 14 mechanisms respectively.
Figure 4, below, shows the criteria or conditions seen as 'essential' by frequency of occurrence in the 21 mechanisms for which information has been provided.

Figure 4: Conditions considered as essential mechanisms



Box 3: Regularisation policiy in Switzerland

From 1945, Switzerland followed a temporary worker immigration programme to fill its economic demand for unskilled labour, with rotation of workers to avoid settlement of migrant groups. Until very recently, Switzerland denied the existence of long-term immigrant residents – even though the phenomenon had started to appear in the 1970s. Immigration practice was changed in 1991 and again in 1998 to conform to EEA (European Economic Area) rules, such that persons from countries outside the EU or EFTA (European Free Trade Area) could not be given work permits, unless they were highly qualified. A 2005 immigration law, replacing the previous one of 1931, strengthened the restrictions on immigration from outside EFTA (by setting quotas) and increased the maximum detention term for illegal immigrants and asylum-seekers from one to two years, while also introducing criminal and other sanctions for human smuggling, irregular employment, and marriages of convenience. At the same time, draconian rules on asylum were introduced (effective from 2007) along with reduced benefits for asylum-seekers – making it the harshest asylum law in Europe, according to UNHCR. The 2000 Census recorded 22.4% of the population as foreign-born and 20.5% with a foreign nationality; the principal immigrant group is now citizens of the former Yugoslavia (24% of foreigners) followed by Italians, at 22%. Illegal residents (the term used is *sans papiers*) are thought to number between 50—300,000 according to government estimates, which averages 2.4% of total population. (This makes Switzerland, according to our classification in Table 5, a country with a very high (VH) stock of irregular migrants.) According to expert opinion, these irregular migrants are mostly from Latin America, former Yugoslavia, Eastern Europe, and Turkey; they tend to be of prime working age (20-40), with unequal distribution across the country of genders and family status. Some entered Switzerland on tourist visas; others lost or failed to renew their legal residence status. However, the term *sans papiers* is most frequently used to denote temporary workers who have lost their legal status, family members of these, and rejected asylum-seekers who have remained and work informally. It was not until a particular situation occurred in the latter half of the 1990s – involving nationals of the former Yugoslavia – that regularisation became a matter of political contention and public interest. Since 1991, seasonal workers from countries outside of the EEA had been denied work permits: the Yugoslav seasonal workers were threatened with deportation as they could not complete the four years required for a one year residence permit. In 1998, the government rejected a proposal made by the National Council for a mass amnesty; instead, they opted for individual regularisation on the basis of 'hardship'. In 2001, a circular was issued (the 'Metzler' Circular) outlining the criteria used for case-by-case regularisations. Since the cantons are

responsible for case-by-case regularisations (subject to approval by the Confederation) and also execute federal deportation orders, the position adopted by each canton is crucial. Over the period 1996—2000, the French-speaking canton of Vaud supported regularisation of Bosnian migrants on the basis of hardship, although the federal government refused to do so. In 1997 the canton refused to implement deportation orders; eventually, in 2000, 220 families were granted permits by the federal government. A second political mobilisation also involved the canton of Vaud, and concerned Kosovar migrants; they were former seasonal workers who had applied for asylum at the outbreak of the Kosovo war and were now threatened with deportation. Again, the political mobilisation – which involved trade unions and publicity campaigns – was successful and the Swiss Federal Council regularised 6,000 Kosovars who had spent more than eight years in the canton. Although these regularisations are ostensibly case-by-case, in reality they are collective programmes.

Since 2001, there have been 14 parliamentary inquiries into the matter of *sans papiers*. Left politicians demanded large-scale amnesties, while most centre parties insisted on case-by-case regularisation on the grounds of 'hardship'. The latter is seen as the only solution to the problem, although there have been criticisms of the lack of transparency of the process. Since 2001, 3,694 persons from various countries of the world applied, with an acceptance rate of 57%. A regularisation campaign aimed at non-deportable rejected asylum-seekers in 2000, with onerous criteria for applications, benefited 6,500 Sri Lankans: each case was reviewed individually by the Federal Office for Refugees (FOR). Rejected asylum-seekers from other countries were not eligible, and had to ask their canton to request the FOR to re-examine their cases. In 2006, the Federal Commission for Foreigners called for harmonisation across the cantons of treatment of cases of hardship; whilst in December 2007, a new call for mass regularisation of irregular migrants has been made by socialist politicians in Zurich. The official position on regularisation taken by the Federal Council is unstintingly one of opposition to large-scale amnesties, on the grounds that they promote future illegal migrations, encourage illegal employment, reward illegality, and might increase recorded unemployment (*inter alia*). Thus, they insist on case-by-case evaluations on the humanitarian basis of 'hardship'. Many cantons, Swiss trade unions and other sectors of civil society take a different view, tending to emphasise the important economic role of undocumented workers and their integration in society. Thus, there is no consensus on policy, except at the federal political level.

SOURCE: REGINE country study on Switzerland

Box 4: Regularisation policy in the USA

Most of the legal immigration into the USA, typically totalling 600—900,000 each year, consists of family reunification, with a smaller share for employment reasons, and very small numbers for humanitarian reasons. Unauthorised immigration flows are thought to be of a similar magnitude – i.e. in excess of 500,000 a year – and estimated irregular migrants stocks since the last major regularisation of 1986 have shown a massively increasing trend. In 1990, the estimated stock of irregular migrants was around 2 million; by 2000 it was 8 million; and by 2006 it had climbed to circa 12 million. Of these, the majority (57%) are from Mexico, followed by El Salvador (4%), Guatemala, the Philippines, Honduras, India, Korea and Brazil. In contrast, over the last two decades the legal immigrant stock has been falling continuously, since the number of persons being naturalised (plus deaths and emigrations) is greater than the number being admitted.The last major regularisation in the USA was in 1986 – the *Immigration Reform and Control Act* (IRCA). It granted permanent residence status to four categories of unauthorised migrants – those who could prove that they had been continuously resident since 1982 (a general amnesty); seasonal workers who could demonstrate that they had worked more than 90 days in the last year, or more than 30 days for each of the three previous years, in the perishable agricultural crops sector (Special Agricultural Workers – SAW); and two much smaller groups for humanitarian reasons, consisting of Haitian and Cuban immigrants and any illegal immigrant who could show continuous residency since 1972. The programme was notable in that, for the first time in US history, it criminalised the hiring of illegal migrants and imposed a system of sanctions to target employers. However, this provision held employers liable only if they "knowingly" hired an unauthorised immigrant – thus initiating a lucrative new business of document fraud and use of middlemen and subcontractors. IRCA also called for better border enforcement, but this saw little action until a decade later. 1.7 million applied for the general amnesty and 1.3 million under SAW; of these, 1.6 million and 1.1 million respectively were legalised, that is, with acceptance rates of 94% and 85%. Those rejected were able to appeal the decision, and even as late as 2004 there were two pending class-action suits affecting 100,000 people denied legal status on the technicalities of 'continuous residence'. The programme left large categories of people outside of its remit: these included those who had arrived between 1982 and 1987; agricultural workers who fell short of the minimum working days requirement; and various other irregular situations. In total, an estimated three million unauthorised migrants were unable to participate in the regularisation – roughly the same number as those who did apply. Thus, the programme was ineffectual in terms of its actual coverage and thereby failed to solve even temporarily the problem of irregular migrant stocks. The US government collected data on the impact of IRCA through two 'Legalized Population Surveys'

in 1989 and 1992, asking a random sample of around 6,000 applicants a range of questions relating to the labour market and human capital. These data are particularly important, since it is rare to have such reliable information on irregular populations. Several secure conclusions on the impact of IRCA have been derived: (1) regularisation increased the earning power of those legalised, usually through occupational mobility; (2) the link between earnings and the human capital of migrants strengthened post-legalisation, implying better resource allocation; and (3) legalised migrants invested more heavily in their own human capital, probably because of increased returns of such investment, allied with greater security and easier access to education and training programmes. However, there is no reliable information on the impact of IRCA on the informal employment sectors, or on unemployment and labour force participation rates. Since the status accorded those legalised was a permanent one, there could be no lapse back into illegality. This does not mean, though, in the weakly-regulated US labour market, that all of those regularised worked in the formal economy.

Since IRCA, other than some small-scale humanitarian programmes, the only programme of note is the *Late Amnesty* of 2000 whereby some 400,000 irregular migrants were granted amnesty under the IRCA general provisions of illegal and continuous residence prior to 1982. There are no known studies of the impact of this smaller programme. Subsequently, the regularisation proposed by President G. W. Bush (the Fair and Secure Immigration Reform, 2004) set out a new vision of offering three-year temporary work permits, renewable once, to irregular migrants in the USA as well as to potential migrants outside of the country. This programme would thus have established mass guestworker migration, without the possibility of permanent residence or citizenship, as the official immigration policy of the USA. Another proposed bill of 2004, the Immigration Reform Act, continued along more traditional lines of US policy. This bill offered permanent residency to those who could meet all of six requirements: (1) presence in the USA for more than 5 years; (2) employment for at least 4 years; (3) passing security and criminality checks; (4) no outstanding tax debts; (5) demonstrated knowledge of English and understanding of American civic citizenship; (6) payment of a fine of $1,000. Neither of these bills was passed, nor any of nine other detailed proposals made since 2003 and dealing directly or indirectly with regularisation of irregular migrants. Thus, since 2000 the USA has had no policy for the management of irregular migration – culminating in its current stock of over 12 million unauthorised migrants, probably more than the combined stock of all other developed countries of the world.

SOURCE: REGINE country profile for the USA

3.2 Regularisation as a policy response to stocks of irregular migrants

In examining regularisation policy across the EU (27), one of the first questions that springs to mind is whether or not there is any correlation with a Member State's propensity to regularise and the extent of its irregularly resident third country national population. Using all available datasources, with particular emphasis on quantitative data, Table 5 (overleaf) provides estimations of the extent of irregular migrant stocks (as a proportion of total population). Even when allowing for the difficulty of making such evaluations, it does seem that certain Member States are more affected by illegal stocks than others. From Table 5, we can say that two countries have had extremely high illegal migrant stocks – Greece and Cyprus. Another eight countries (Spain, Italy, Portugal, Belgium, Hungary, the UK, Germany, the Czech Rep.) have high stocks; six countries are evaluated as having medium-level stocks (the Netherlands, Luxembourg, Estonia, France, Austria and Sweden).[10]

Is there any obvious relation between irregular migrant stocks and regularisation practices? Of the two countries with very high stocks, one (Cyprus) has never held a regularisation programme. Of the eight countries with high stocks, all but one have undertaken programmes since 1996 (although Germany denies that its policy is a regularisation), all but two had programmes prior to 1996, and all but two also have regularisation mechanisms. We might also posit a counterfactual: are there any countries with low (or medium) irregular migrant stocks that have undertaken regularisations? Of the 12 countries evaluated as having low stocks, five have undertaken programmes since 1996 but only one had a programme prior to 1996; all five also have regularisation mechanisms. Thus, there seems to be a rough but highly imperfect correlation of regularisation policies with the extent of irregular migrant stocks. Clearly, other intervening variables play important roles in shaping policy responses.

In Table 5, we have tried to categorise Member States' policies into various clusters of policy approaches. These are explicated below, along with some suggestions as to what might be the intervening variables that mediate the linkage between the policy problem (illegal migrant stocks) and the differing policy responses.

3.2.1 Policy clusters of regularisation behaviour across the EU (27)

The southern European countries
(Greece, Italy, Spain, Portugal)

These countries are distinguished by their reliance on regularisation as an alternative to immigration policy: the great majority of legal TCN workers have acquired their

[10] However, one should add, that most estimates refer to the period before 2004, i.e. before the two waves of EU enlargement. As a consequence of EU enlargement and the *de facto* regularisation of a large number of citizens of new EU Member States who were irregularly staying in a EU(15) Member State, the number of illegally staying third country nationals has since decreased significantly (Michael Jandl, personal communication).

legal status through regularisation programmes,[11] as opposed to being recruited from abroad (as their immigration laws require). As noted above, Spain, Italy and Greece dominate the figures for regularisations by programme – with Portugal showing a slightly lower rate. In contrast to most other EU countries, these four countries until recently experienced large growth in labour demand – especially in unskilled work. Some of the demand is in seasonal agricultural work, but even that has proven difficult to manage: employers rely on illegal labour in all sectors, owing to the inability of the state to facilitate orderly immigration. The four countries are also distinct in not having an obvious asylum-regularisation nexus, i.e. regularisation for rejected asylum-seekers. Regularisation mechanisms have existed in three out of the four, since 2000 in Spain, 2001 in Portugal, and 2005 in Greece. The utilisation of these is not known, except for Greece where quite large numbers have been regularised (mainly for reasons of health).

Regularising on humanitarian grounds
(Belgium, Denmark, Finland, Luxembourg, the Netherlands, Sweden)

The main common characteristic of this group of countries is that regularisation is granted primarily on humanitarian grounds; overall, regularisation is closely connected with the asylum system and, in particular, with subsidiary and temporary protection. Other than Finland, all countries in this group have had small to medium-scale regularisation programmes in the last decade and all but the Netherlands have mechanisms. In addition, Belgium has a relatively transparent framework for awarding regularisation through mechanisms. Thus, regularisation measures in these countries are largely conceived as forms of complementary protection rather than as a response to irregular migration, with the possible exception of Belgium, which in addition to regularisations on complementary protection grounds has frequently granted regularisation on grounds of family ties.

The regularising 'new' Member States
(Estonia, Hungary, Ireland, Lithuania, Poland, the Slovak Rep.)

This is a diverse group of countries, whose main common characteristic is that they have actually regularised. All but Estonia and the Slovak Rep. have had programmes, and all have mechanisms which appear to have been utilised to some

[11] This is absolutely clear for the period 1980—2000 (see e.g. Reyneri, E. (2001): 'Migrants' Involvement in Irregular Employment in the Mediterranean Countries of the European Union', *International Migration Paper 41*, Geneva: International Labour Organization, p. 4; Simon, G. (1987): 'Migration in Southern Europe: An Overview'. In: OECD: *The Future of Migration*. Paris: OECD, p. 287), and is mainly owing to policy deficits (Baldwin-Edwards, M. (1997): 'The Emerging European Immigration Regime: Some Reflections on Implications for Southern Europe', *Journal of Common Market Studies*, 35/4, p. 507). The emergence of family reunification channels, especially in Italy and Spain, has permitted more legal immigration but for most (non-seasonal) labour migrants the primary route to legality remains regularisation (see e.g. Cangiano, A. (2008): 'Foreign migrants in Southern European countries: evaluation of recent data'. In: Raymer, J. and Willekens, F. (eds.): *International Migration in Europe: Data, Models and Estimates*. New Jersey: John Wiley & Sons, pp. 96—7).

extent. Relative to their population sizes, they are small-scale regularisers. Much of the activity has been related to 'adjustment' of their resident populations to the new post-Soviet order, and the creation of 'illegal' residents that resulted from political and territorial changes. Ireland is the exception to this, as its regularisation is characterised by managing (illegal) labour migration flows (although it has not followed the pattern of southern Europe).

The 'reluctant regularisers'
(France, the UK)

These 'old immigration countries' with colonial histories and, in the case of France, large post-war labour recruitment programmes, have struggled to manage immigration over many decades, occasionally resorting to regularisation programmes as a policy instrument (but with fairly small numbers, although overall numbers in France are higher). They have developed extensive and sophisticated regularisation mechanisms, which are used to a significant degree although (particularly in the case of France) with a serious lack of transparency.[12] In both countries, the asylum process is caught up in the issue of illegal immigrant stocks, although a considerable proportion of irregular migration takes place outside of the asylum nexus . Policy responses include more aggressive deportation of failed asylum-seekers, toleration, and regularisation of some on humanitarian grounds. The extent to which medium-level stocks of illegal migrants are actually managed is open to debate – especially in the UK, which we classify as having high irregular TCN stocks.

[12] The data for France (see Fig. 3) show this; the UK is unable to provide data, but we believe that the figures are very high.

Table 5: Comparative table of regularisation practices in the EU (27), 1996-2008

	Illegal TCN population[1]	Estimated illegal immigrants [000s][2]		Total population	Mean estimate/ total population [%]	Number of programmes since 1997	Previous programme?	Regularisation mechanism ?	Role of asylum process?
		low	high	[000s]					
Greece	VH	150	400	11,006	2.5	6	N	Y	Y
Spain	H	150	700	41,551	1.0	5	Y	Y	?
Italy	H	200	1,000	57,321	1.0	3[3]	Y	N	?
Portugal	H	30	200	10,408	1.1	3	Y	Y	?
Belgium	H	90	150	10,356	1.2	1	Y	Y	Y
Netherlands*	M	60	225	16,193	0.9	3	Y	N	Y
Sweden*	M	15	80	9,182	0.5	1	Y	Y	Y
Denmark	L (?)	n.d.	n.d.		n.d.	2	Y	Y	Y
Luxembourg	L-M	n.d.	n.d.		n.d.	1	N	Y	Y
Finland	L	n.d.	n.d.		n.d.	0	N	Y	Y
Hungary	H	150	150	10,142	1.5	1	N	Y	Y
Estonia	M	5	10	1,356	0.6	1	Y	Y	N
Ireland	L	9	20	3,964	0.4	1	N	Y	Y
Poland	L	45	50	38,219	0.1	3	N	Y	Y
Lithuania	?	n.d.	n.d.		n.d.	2	Y	Y	N
Slovak Rep.	L	n.d.	n.d.		n.d.	0	N	Y	Y
UK*	H	430	1,000	59,329	1.2	5	Y	Y	Y
France	M	300	500	59,635	0.7	2	Y	Y	Y
Germany	H	500	1,500	82,537	1.2	4[5]	Y[5]	Y	Y
Austria	M	40	100	8,102	0.9	0	Y[4]	Y	Y
Cyprus*	VH	40	40	715	5.6	0	N	Y	Y
Czech Rep.	H	195	195	10,203	1.9	0	N	N	Y
Bulgaria	L	n.d.	n.d.		n.d.	0	N	N	Y
Latvia	L	n.d.	n.d.		n.d.	0	N	Y	N
Malta*	L	n.d.	n.d.		n.d.	0	N	Y	Y
Romania	L	n.d.	n.d.		n.d.	0	N	Y	Y
Slovenia	L	n.d.	n.d.		n.d.	0	N	N	N

***** indicates that this country has not returned the ICMPD questionnaire

Notes

[1]These should be read as a cautious assessment of the approximate size of the irregular migrant population. Where estimates of irregular migrant stocks are available (cols. 2,3), these have been used as a proportion of total population (col. 5). A ratio of less than 0.5% is considered to be low (L); 0.5—0.9% is medium (M); 1—1.9% is high (H); and >2% is very high (VH). Otherwise, qualitative and other indicators have been utilised for this evaluation.

[2] The data source for cols. 2, 3 and 4 is GHK (2007), except for Sweden, which are taken from Blaschke and the REGINE country reports (see bibliographic references)

[3] Includes the *de facto* regularisation (residence permits for illegal residents) of 2006, which the Italian government does not consider to be a regularisation

[4] Includes an employment based regularisation (via work permits) which effectively amounted to the regularisation of illegal residence

[5]Covers specific regularisation programmes for long-term tolerated persons, which the German government does not consider to constitute regularisation

The ideological opponents of regularisation
(Austria, Germany)

These are distinguished by their political opposition to regularisation as a policy instrument, even though Germany uses mechanisms that amount to regularisation (awarding 'tolerated' status) and in addition several small-scale programmes for specific target groups; generally, both Germany and Austria extensively utilise regularisation mechanisms.[13] In both countries, the asylum system is thought to be linked to the creation of illegal immigrant stocks, although the number of asylum applications in both countries has sharply decreased recently: this is particularly true in Germany, where asylum applications have constantly decreased since the early 1990s. In both countries, stocks of irregular migrants have significantly decreased as a result of EU enlargement. Despite this, the stock of irregular migrants in Germany is considered to be relatively high, resulting in significant social exclusion and labour market segmentation.

The non-regularising 'new' Member States
(Bulgaria, Cyprus, the Czech Rep., Latvia, Malta, Romania, Slovenia)

To some extent, the principal characteristic shared by these countries is transition from state-driven to market-based economies, with the implicit larger role for the informal economy. With the major exceptions of Cyprus and the Czech Rep., all have low stocks of illegal migrants, with little policy to manage these. The situation is acute with Cyprus, which has high immigrant stocks on temporary permits: there is an interaction with the asylum system, going in the opposite direction from the usual case in Europe, alongside the more normal immigration—asylum input. Malta also has an asylum system problem, but one stemming from illegal immigration feeding directly into the asylum process and applicants forbidden to work. None has had any regularisation programme, and none has a functioning regularisation mechanism:[14] there is, therefore, no policy for the management of irregular migrant stocks in these countries.

3.2.2 Intervening variables that might explain policy differences

This is necessarily speculative, but we do need some sort of theoretical explanation of why some countries respond to irregular migration with a particular policy instrument, or indeed do not respond. Proceeding from the Member State responses to the ICMPD questionnaire (see also §4), the following observations can be made:

(1) The ideological opponents of regularisation (Germany and Austria) believe that it constitutes a 'pull factor' for future illegal migration flows. This view is also shared by France and Belgium (and possibly the UK)

[13] Germany is the foremost country in awarding legal status through mechanisms – see Fig. 3
[14] To be accurate, Cyprus, Latvia, Malta and Romania have regularisation mechanisms that amount to temporary 'toleration'; it is not known if these have been utilised. See Appendix B country profiles, for more information.

(2) The Nordic countries, Belgium, Luxembourg and the Netherlands emphasise humanitarian reasons as a primary issue for regularisation policy
(3) The southern countries emphasise managing the labour market (including labour recruitment problems), combating the large informal economy, and trying to maintain the legality of residence of TCNs
(4) The regularising new MS put forward a variety of reasons for regularisation, including humanitarian reasons, managing illegal residence, bringing immigrant workers within the tax and social security regime, and securing long-term integration
(5) The non-regularising new MS appear not to have formulated policy positions, and some (at least) might be described as agnostic on the issue.
(6) Family reasons constitute an important reason for regularisation, especially in France; family reasons (often converging with the notion of 'strong ties') have also been important grounds for regularising migrants in an irregular situation in various other countries, including Belgium and Sweden.

On the basis of the above observations, we can posit the following as possible intervening variables that can explain policy differences:

(a) Differing labour market structures – particularly concerning informal employment
(b) The role of ideology and sanctity of law in policy formulation
(c) The degree of pragmatism in policy formulation (contradicts point (b))
(d) The extent and phase of migration – i.e. recentness and lack of state infrastructure
(e) The role of asylum policy, i.e. managing rejected asylum-seekers after extended processes
(f) The design of the framework for legal migration, notably concerning admission channels

Given that these variables show very different values across the EU (27), it is important to bear them in mind when formulating possible policy options for the region. Furthermore, we have presented here a static picture of different policy approaches. In reality, policy is dynamic and constantly evolving: in particular, we note a trend toward the greater use of regularisation mechanisms across most of the older EU Member States. In some cases, this trend runs parallel with the use of programmes (as in Spain and Greece, for example); in other cases, it seems to have been adopted as a conscious alternative to programmes (as in Belgium, France and the UK).

3.3 Policy issues identified in this study

Table 5 (along with the policy regime clusters) shows something of the diversity of approaches to regularisation across the EU. This diversity is, in our view, explained by the intervening variables listed above.

3.3.1 Policy effectiveness of regularisation programmes since 1996

In evaluating policy effectiveness in all EU countries, we are faced with an appalling lack of data, systematic follow-up or research. Only two countries (Spain[15] and France[16]) seem to be able to produce an estimate of budgetary costs (for 2005 and 1997, respectively). Only one country (Spain) monitors the progress of legalised immigrants in the social security system; France had a follow-up survey for its 1997 programme, but nothing for its 2006 small-scale programme.[17] Italy recently commissioned a large-scale survey[18] which is a sophisticated evaluation of the 2002 regularisation, while Belgium has commissioned an in-depth evalutation of labour market outcomes of persons regularised during the 2000 programme.[19] Greece and Portugal have no evaluations of policy outcomes.

3.3.1.1 Retention of legal status

The Italian mid-2005 survey estimated that regularised migrants represented 28% of the immigrant population, and that 98% retained their legal status. 88.5% renewed their permits with an employer, although loss of employment appears as a significant risk. For Spain, Arango and Finotelli[20] report that a year after regularisation some 80% were still in the social security system and were able to renew their residence permits. In both Spain and Italy, expert reports conclude that regularisation has had a significant effect in reducing illegality. This is probably less true for the regularisations in Greece, although no reliable data or studies are available.[21]

For Spain, our report concludes that transition back into the informal sector was low for those migrants working in construction and restaurants, but very high (up to 90%) for agriculture and housekeeping. There is also an observable trend for a change of employment sector after regularisation – from agriculture to construction (males) and from domestic work to restaurants (females). For Italy, the study cited concludes that migrants' actual employment often differed from that shown on the residence permit;[22] on the other hand, it calculates that in the South of Italy employment opportunities for legalised workers were roughly doubled in construction and agriculture. Again, for Greece and Portugal there are no data.

---

[15] Spanish government reply to ICMPD questionnaire.

[16] Not included in the French government reply to ICMPD questionnaire: see REGINE country study for France, for details.

[17] See REGINE country study for France.

[18] Published (in English) as Cesareo, V. (2007): *Immigrants Regularization Processes in Italy*, Milan, Polimetrica.

[19] Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelle, 2008 : *Before and After La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 Décembre 1999)*, available at http://www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf,

[20] REGINE country study for Spain.

[21] For an explanation of why this is likely to be the case, see REGINE country study for Greece.

[22] This is also shown by Reyneri's study of earlier Italian regularisations, where falsified employment contracts and complex mixes of formal, informal and even fraudulent employment were common. See Reyneri, E. (1999): "The mass legalization of migrants in Italy: permanent or temporary emergence from the underground economy?", in Baldwin-Edwards, M., Arango, J. (eds): *Immigrants and the Informal Economy in Southern Europe*, Routledge, 1999, pp. 83—104.

We should note the European practice in regularisations of granting work visas, temporary cards (e.g. 6 months) or very short-term permits (1 or 2 years). This is in contrast to the amnesties of the USA and elsewhere, which grant long-term residence rights with a view to citizenship. The European policies are of two broad types: those that are predicated on immigrants as workers, and tend to recreate illegal statuses where labour market conditions are poor; and those that are predicated on humanitarian or social inclusion issues. In both cases, 6-month or 1-year permits are the norm, with onerous (and frequently different) conditions for their renewal or conversion to a normal residence permit. There are also some serious problems of a bureaucratic nature in implementing the transition from work visas, temporary cards or permits to normal residence permits. Thus, the award of longer-term statuses would seem to be an obvious route to improving retention rates; equally, setting different criteria for permit renewals is counterproductive and should be avoided.

3.3.1.2 Criteria for eligibility

Most of the regularisation programmes have similar criteria, although with different emphases on health status, ethnicity, family connections etc. The principal variable criterion of note is that of employment contract or employment record (as distinct from social insurance payments); a pattern is evident that requiring employers to actively participate in the regularisation process leads to a more successful outcome. When the programme is run in parallel with enforcement of labour laws by the Labour Ministry (i.e. a clampdown on the informal economy), and the dual Ministry approach also actively involves all the major social partners, the policy is more securely effective. The Spanish programme of 2005, as well as the Italian one of 2002, shows superior results over previous programmes (particularly compared with the Greek programmes) apparently for these reasons. The conclusion would seem to be that regularisation programmes are suitable for irregular migrants in secure employment situations, whereas general or unfocused amnesties should be avoided.

3.3.1.3 Possible encouragement of illegal migration flows to or from the territory

The existing research, including government answers to the ICMPD questionnaire, does not support the claim that legalised migrants subsequently move to other EU countries. Indeed, it is counter-intuitive to suppose that migrants with a recently-acquired legal status in one country would choose to re-migrate and lose that status. On the other hand, there is evidence that irregular migrants make their way through northern European states to those in the South, and also vice versa.[23] This is the consequence of the Schengen system, and has no relation to regularisation opportunities, but rather to those in national labour markets. Such a consideration is outside the remit of this project. Insofar as encouragement of future migration flows is concerned, on the basis of available evidence it is impossible to quantify to what extent large-scale regularisations might play a role; in the case of the USA, there

[23] This is specifically noted in the case of East Europeans migrating to Spain via Germany – see REGINE country study for Spain.

seems to be a very limited effect.[24] As mentioned elsewhere, irregular migration is in many countries a substitute for legal, organised labour migration flows: again, it is employment opportunities and information networks related to those which are pertinent. One particular type of flow has been empirically related to regularisation (specifically to that of Spain in 2005): this is the stimulation of former illegal residents actually outside of the country at the time of the regularisation programme.[25] This effect is the result of regularisation criteria focused on past residence, rather than continuous and current residence: reformulation of criteria may well be appropriate in the light of this new evidence.

3.3.1.4 Bureaucratic management of programmes

The management of large-scale programmes has been a significant problem for almost all countries, with unexpectedly large numbers of applicants, insufficient machinery to receive and process applications, staff shortages and various unpredicted difficulties. The consequence, in almost every country, has been long queues of applicants, massive delays, and (in many cases) continuous extension of deadlines and postponement of decisions.[26] Variable interpretations of the regularisation legislation across regions or prefectures appear as a significant problem resulting in highly unequal treatment according to nationality, or region of application. This latter problem is perhaps worst in the case of regularisations in France.[27]

One issue that has scarcely been addressed is the procedure through which applications are made. Several factors emerge as both crucial and variable in the way they are implemented across countries (and sometimes, as in the case of France, even within a country). These are:

- The importance of involving civil society and migrant associations in the process, from the planning stage and throughout the implementation phase
- The need to guarantee protection from expulsion to applicants during the process
- The mechanism(s) by which the applications are evaluated – i.e. through documents and other checks or requiring personal interview

In the last case, the scant evidence suggests that personal interview alters regularisation programmes such that they start to resemble mechanisms: thus, a lack of strict evaluation criteria tends to emphasise subjective (more personal) judgements about applicants. Equally, the administrative burden associated with personal interview (and any appeal rights) adds considerably to the costs of such a programme. Thus, the personal interview approach – at least on the face of it –

[24] Orrenius, P., and Zavodny, M. (2001): 'Do amnesty programs encourage illegal immigration? Evidence from IRCA', Federal Reserve Bank of Dallas, Working Paper 0103.
[25] Elrick, T. and Ciobanu, O.: 'Evaluating the Impact of Migration Policy Changes on Migration Strategies: Insights from Romanian-Spanish migrations', *Global Networks* (forthcoming).
[26] The Greek programme of 1998 (Green Card) was particularly notable for its delays and deadline extensions, with very slow processing of applications. See REGINE country study for Greece.
[27] See REGINE country study for France.

would seem to promote uncertainty, inequality of treatment, and delayed implementation of the programme.[28]

Of all programmes examined in any detail, best practices are most easily identified in the Spanish programme of 2005. The organisational aspects of the programme, even when encountering unexpected problems, are exemplary: they consisted of 742 information points, recruitment of 1,700 temporary staff, support from trade unions and migrant associations, and strong management techniques. These latter included a clear administrative division between social security offices for collecting applications and the Interior Ministry for processing them. In addition, the Labour and Interior Ministries established electronic systems for information exchange between ministries and for automatic renewal of residence permits.[29]

3.3.1.5 General summary

The overall impact of regularisation programmes is positive, with apparently small but permanent reductions in illegal residence and/or employment, and little evidence to support the claims of increased illegal migration flows in any direction. What is clearly missing, however, is systematic evaluation of policies and appropriate corrective responses. Even the most basic data, such as total number of applications, total number regularised, and subsequent renewals, are missing from the great majority of MS programmes. This data deficit should be a priority issue, since without even basic data, policy analysis is at best speculative and, at worst, futile.

Related proposal(s): Options 1, 2, 3, 4, 5,

3.3.2 Policy effectiveness of regularisation mechanisms

Most Member States do have at least limited mechanisms in general immigration legislation under which illegally staying persons can be regularised on specific humanitarian grounds.[30] The grounds for awarding humanitarian stay are varied (see §3.1.2) and may include family or other ties to the country of residence, medical grounds, 'hardship' (which may include both of the former), and protracted asylum procedures. In addition, some Member States also utilise such mechanisms to 'rectify' problems resulting from legislative changes.[31] However, humanitarian

[28] This last point seems to be one of the main factors in the poorly-managed 1998 Green Card programme in Greece. See REGINE country study for Greece, for details.

[29] See REGINE country study for Spain.

[30] We exclude the issuing of (temporary) residence permits under Council Directive 2004/81/EC of 29 April. 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities. First, like asylum, subsidiary and refugee status, this is primarily a protection related permit. Secondly, and perhaps more important, permits issued under the directive do not create an entitlement to legal residence and are explicitly of a temporary nature. Thus, the permit caters only for immediate protection needs and in a sense, in particular as smuggled migrants are concerned, has a functional role, namely to support legal proceedings against traffickers and human smugglers.

[31] For example, the UK domestic worker regularisation programme implemented between July 1998 and October 1999 aimed at rectifying expected problems following an amendment of the Overseas Domestic Workers Concession announced on 23 July 1998 (See REGINE country study

mechanisms are often used to award more secure permits to persons who otherwise do not meet the conditions for a superior legal status or who are residing on restricted, temporary permits and have, contrary to expectations and the terms of their stay, developed substantial ties with their country of residence.[32] This also suggests that the target population of regularisation mechanisms in EU Member States actually includes a variety of categories of persons who are, strictly speaking, not illegally staying.[33]

In sum, regularisation mechanisms provide a flexible legal means to address specific situations that cannot easily be solved otherwise. This suggests that regularisation mechanisms play an important functional role as a corrective measure supporting comprehensive strategies of managed migration and allowing a flexible accommodation of humanitarian and other concerns.

Gauging the policy effectiveness of regularisation mechanisms is an impossible task, given the massive deficit of data noted above (§3.1.2). Whereas there are data deficits and other problems with regularisation programmes, varying according to country, the situation with mechanisms is far worse. In particular, we note problems in the following areas:

i lack of transparency in procedures, often with arbitrary outcomes
ii issues of resource allocation – unknown costs of the process
iii issues of advance planning
iv lack of involvement of stakeholders and social partners

Provided that mechanisms are used as a policy complementary to programmes, these problems are not perhaps so serious. However, we do question the policy effectiveness of the experience of large-scale users of mechanisms (e.g. France). Individual applications are time-consuming, may be costly, and without careful (and even more costly) review procedures can have highly variable outcomes for apparently similar cases. As a result of the lack of clear criteria and procedural rules, it is often left to the courts to define the scope of and criteria for regularisation mechanisms Although sometimes established as a substitute for regularisation

for the UK). However, anecdotal evidence suggests authorities often use also other, informal mechanisms to rectify 'practical' problems resulting from changes of immigration legislation including awarding residence permits despite conditions not being met. There is also evidence that in cases where applications from abroad have been made mandatory in the case of family reunification, authorities have been advising applicants already in the country how to best apply from "near abroad" .(Informal information gathered in the ICMPD-led project on "Civic stratification, gender, and family migration policies in Europe". On the project, see http://research.icmpd.org/1233.html).

[32] For example, in Belgium a significant number of students, who had developed family or other ties to Belgium, apparently benefited from regularisation mechanisms under article 9.3 of the law of December 15th 1980 "Betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen." (Information provided by Koen Dewulf (Centre for Equal Opportunities and Opposition to Racism) in the framework of the International Seminar on Longitudinal Follow-up of post-immigration patterns based on administrative data and record-linkage, Belgian Federal Science Policy, Brussels, 23 June 2008.)

[33] Apart from persons on temporary, restricted permits, this also includes asylum seekers who, for the duration of their asylum procedure, are legally staying.

programmes (as in Belgium or France), the functions and *modi operandi* of regularisation mechanism and programmes are different, and the distinctive successes of each policy instrument should be noted and used appropriately.

3.3.2.1 A functional argument for limited regularisation mechanisms in all MS

Against this background, the lack of regularisation mechanisms in some Member States is a reason for concern. The following countries do not have any legal mechanism[34] by which they can regularise on an individual basis:

- Bulgaria
- The Czech Republic
- Italy
- The Netherlands
- Slovenia

Furthermore, there is a similar number of countries that appear to have restricted ability or tendency to regularise. In terms of setting minimum standards across the EU, it would seem desirable to specify that every MS has at its disposal a basic continuous regularisation mechanism. It is inconceivable that there is no need for humanitarian and other considerations for the individual granting of legal status in every Member State. As noted above, such mechanisms are probably more appropriate instruments for regularisation of illegal residents in vulnerable employment or financial situations or with health problems.

Of those countries which do grant legal status through such a mechanism, many award temporary statuses that cannot be renewed or provide non-statuses (temporary suspension of removal orders) that are not considered a legal status, although beneficiaries of such non-status are usually not considered illegally resident either. Some principles setting out minimum standards on the type and renewability of such permits would also seem to be a legitimate area of legislation. The procedures for awarding humanitarian statuses vary. In some countries, there is a fully-fledged application procedure, including the right to appeal against negative decisions, whereas in others a humanitarian status/a non-status is awarded *ex officio* without application and without any legal remedies against administrative decisions. In addition, in some Member States (notably in Germany, and, outside the European Union, in Switzerland), special bodies (so-called 'hardship commissions') have been charged to adjudicate 'hardship cases' or to advise authorities on decisions on humanitarian stay. In some cases, commissions with an advisory mandate or otherwise informally include other stakeholders from the NGO community.[35] The

[34] One could argue that short-term humanitarian permits for asylum seekers are a substitute for a regularisation mechanism, but we do not do so for the purposes of the REGINE project.

[35] In Austria, for example, NGOs, alongside other stakeholders, are represented in the Advisory Council on Asylum and Migration Affairs which (as two separate institutions) was first created by the 1997 Aliens Law. The Advisory Council was involved in decisions on humanitarian stay in an advisory role between 1998 and 2005. Apparently its recommendations were largely followed by the Ministry of the Interior (Interview, Karin König, Vienna City Administration, 27 February 2008).

implications of different institutional set-ups and procedural variations have not been investigated in this study. There is some evidence, however, that ex-officio procedures without any possibilities for legal redress are problematic and may result in arbitrary and inconsistent decisions. Generally, the effects of different institutional designs call for further study and might be a suitable issue for the identification and exchange of good practices.

Related proposal(s): Options 1c, 1d

3.3.3 Avoiding the creation of illegal immigrants

The assumption is frequently made that immigrants with an irregular status are in such a situation through crossing a border illegally, breach of visa conditions, or rejection of asylum applications. Table 1, above, gives an indication of the main categories of illegal entry, residence and employment. Although the majority of irregular residents participating in regularisation programmes are in the above categories, a significant minority (varying by country of residence and origin) is in an irregular status for other reasons. These are shown in Table 2, as the bottom two rows. We classify these categories as 'created illegal immigrants', for which state policy is primarily responsible. Below, we identify some specific cases.

3.3.3.1 Persons whose residence permits have expired, but they remain in employment

This occurs for a variety of reasons directly emanating from state procedures. First, weak bureaucracy and inefficiency in residence or work permit procedures can result in long delays and irregular status – particularly where permits are of short duration (1 or 2 years). Secondly, onerous obligations for the renewal process may lead to immigrants being unable to satisfy those conditions; such obligations include

i the requirement of a full-time employment contract
ii the payment of social insurance as if in full-time employment[36]
iii very high application fees for residence/work permits[37]
iv the requirement to appear in person, or to queue, taking up many working days when the employee is not granted permission to do so by the employer

[36] In Greece, the average annual payment of social insurance by TCN workers in the construction sector exceeds that made by Greek workers, but is still insufficient to satisfy the criterion of full-time employment.

[37] Application fees for residence permits range from €15 in Italy, €50 in Germany up to €900 in Greece (long-term) and €1,078 in the UK (indefinite leave to remain). Excessive fees for residence permits are proscribed in both the *European Convention on Establishment* (ETS 019) and the *European Convention on the Legal Status of Migrant Workers* (ETS 093). Article 21(2) of ETS 019 states that the amount levied should be "not more than the expenditure incurred by such formalities". ETS 093 goes further, and states in Article 9(2) that residence permits should be "issued and renewed free of charge or for a sum covering administrative costs only". Article 10 of the Proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (COM (2007) 638 FINAL) contains a similar clause.

v unnecessary documentation, often requiring costly official translations and copies, when the state bureaucracy either already has such documentation or does not need it.

In our view, such causes of illegal residence are needless and require immediate corrective action in policy and bureaucratic implementation.

Related proposal(s): Option 10a

3.3.3.2 Persons who migrated as minors or were born on the territory

In a considerable number of EU countries (and our surveys did not specifically focus on this issue), it is evident that there is a serious problem with children who have been born on the territory and could not receive the citizenship of the host country, who migrated as children accompanying their parents, or who arrived as unaccompanied minors and were institutionalised.

In the Greek regularisation of 2005, 13.1% of illegal immigrants awarded legal status were children under 16, and 3.9% of recipients of 1-year individual humanitarian cases were under 16.[38] In France, residence permit data for 2006 show that 53% of those granted a permit on the basis of residence >10 years were aged 18-24: presumably, they had migrated to France as children <14.[39] Similarly, a preliminary analysis of regularisation data on persons regularised in Belgium in 2005 and 2006 on the basis of article 9 of the Law of 15 December 1980 (as amended) shows that roughly 30% of all persons regularised were in the age group 0-19 of which about 23% were in the age group 0-14.[40] In all cases, upon reaching the age of majority such children are required to have their own residence permit: in many EU Member States, this results in an illegal status and even deportation orders against individuals who grew up or were actually born in the country. In our view, given that all Member States have ratified the UN Convention on the Rights of the Child, this is a prime area for EU legislation
to protect the following:

i the rights of children born in the territory who reach the age of majority
ii the rights of children of irregular migrants, or who arrived as unaccompanied minors

Related proposal(s): Option 6b

[38] See REGINE country study on Greece.
[39] See REGINE country study on France
[40] Fernando Pouwels, 'Data aanvraag KSZ-DVZ', presentation at International Seminar on Longitudinal Follow-up of post-immigration patterns based on administrative data and record-linkage, Belgian Federal Science Policy, Brussels, 23 June 2008

3.3.3.3 Persons whose refugee status has been withdrawn

By its very nature, refugee status is a temporary, transitory status which eventually should lead to either 'local integration' (including acquisition of citizenship) or repatriation.[41] Against this background, article 11 of Council Directive 2004/83/EC[42] ('Qualification Directive') defines a set of conditions under which refugees cease to be refugees.[43] These include return to the country of nationality or previous residence from which he or she has fled, re-acquisition of his or her former nationality, acquisition of a another states' nationality and, importantly, if the reasons for granting a refugee status cease to exist. In the latter case, the expectation is that (former) refugees will leave the country of asylum, either voluntarily or under compulsion.[44] Withdrawing refugee status without consideration of the feasibility of return, however, risks systematically creating a semi-legal (non-deportable) category of aliens.[45] The Commission proposal to extent the scope of the Long-term Residence Directive to persons under subsidiary protection and refugees can be seen as a sensible first step, but it does not provide any mechanism for persons resident for less than five years (see also below, §3.3.5).

Related proposal(s): Option 8

3.3.3.4 Retired persons with limited pension resources

Third country nationals who are dependent on pension arrangements external to the EU are particularly vulnerable to exchange rate fluctuations, as well as to inadequate uprating of benefits for satisfying cost of living increases in their country of residence. These problems are further compounded when Member States set minimum resources levels at a high rate, thus disqualifying retired TCNs with low pensions from lawful residence. In the case of future migration flows, the high personal resources requirement may well be prudent public policy; a distinction has

[41] The Commissions Policy Plan on Asylum underlines the importance of resettlement the third 'durable solution' as an instrument of EU asylum policy (see *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum: An Integrated Approach to Protection across the EU.* Brussels, 17 June 2008, COM(2008)360). Although resettlement is an important instrument of asylum policy in a global perspective, it mainly applies to insecure or overburdened first countries of asylum outside the Union context. Analytically, it is in itself not a durable solution in the same sense as the other two durable solutions; also at the end of resettlement, there should be either repatriation or local integration.

[42] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

[43] Article 14 in turn defines conditions for the revocation of refugee status on exclusion grounds (as defined by Article 12).

[44] It should be noted that although most Member States do have rules on the loss of refugee status, it seems that few countries systematically review refugees' status in respect to whether the grounds for granting refugee status still exist.

[45] In Germany, for example, refugee status is granted for three years, after which a case is reviewed as to whether the grounds of granting refugee status still apply. In a significant number of cases, refugee status is withdrawn, because of changed circumstances in the country of origin. However, the majority of former refugees apparently remain in the country under toleration status (comment, Harald Lederer, Federal Office for Migration and Refugees, asylum and refugees working group, 2nd official PROMINSTAT workshop, 12-13 June 2008, Bamberg).

to be drawn between potential migrants and those with many years of residence. There is little to be gained from denying residence permits to existing residents over the age of retirement: it merely creates yet another category of 'illegally staying' that is probably non-deportable anyway. In line with ECHR jurisprudence conferring rights on legal or illegal residents (see §6.2), the minimum resources provision of the EU long-term permit should be dropped for pensioners already residing on the territory.

Related proposal(s): Option 6a, 10

3.3.4 Regularisations in lieu of labour migration policy

In the expert studies commissioned for this project, but also generally in the academic and professional literature, most of the countries engaging in large-scale regularisation programmes have done so partly through their failure to recruit sufficient TCN workers (other than seasonal labour) through official channels.[46] In particular, Greece, Italy, Spain and Portugal exhibit this characteristic, although illegal labour migration can also be seen as structurally embedded throughout highly developed capitalism, including the USA and Northern Europe.[47] The result of simple abandonment of regularisations would be to increase the extent of informal employment and the size of the informal sector. The problem of illegal employment has already been addressed in a Commission study of 2004,[48] which noted the apparent disinterest of MS in identifying and dealing with the issue of the enlarging informal sector: furthermore, the economic sectors primarily affected (construction, services, tourism, agriculture) are those in which illegal immigrants are almost exclusively employed.One solution, carried out on a small scale under the Spanish *Contingente* of the 1990s, is to permit illegal residents to apply for work permits as if they were not resident – in other words, allocating a quota for overseas recruitment to illegally-resident TCNs. This has also been done on a large scale in 2006 by Italy,[49] whereby some 350,000[50] illegal TCN workers were granted residence permits. Thus, a *de facto* regularisation was carried out and mostly evaded public and political scrutiny. In the long run, however, more pro-active and open labour recruitment schemes are required, with the objective of shifting illegal migration flows into formal processes.

Related proposal(s): Option 10b

---

[46] See: Reyneri, E. (2001) *op. cit.,* and Baldwin-Edwards, M. and Arango, J. (eds) (2000): *Immigrants and the Informal Economy in Southern Europe*, London, Routledge. This policy failure is also openly acknowledged by the relevant MS returns of the ICMPD questionnaire, although geographical location and other factors are also relevant for the magnitude and characteristics of irregular immigrant stocks and flows.

[47] Baldwin-Edwards, M. (2008): 'Towards a theory of illegal migration: historical and structural components', *Third World Quarterly*, 29/7

[48] Renooy, P. *et al.*: 'Undeclared work in an enlarged Union'. Final Report, DG Employment, May 2004

[49] The questionnaire return by the Italian government makes no mention of this issue: see REGINE country study on Italy. For a detailed study of the use of annual quotas as regularisation policy in Italy, see Cuttitta, P. (2008): 'Yearly quotas and country-reserved shares in Italian immigration policy', *Migration Letters*, 5/1

[50] *Ibid.,* p. 48

3.3.5 The role of national asylum systems

The relation of asylum systems to the irregular status of resident TCNs is central to the debate, yet has attracted hardly any serious research. One thing that has always been evident is that while applying for asylum represented a relatively easy migration route into Northern European countries starting in 1982,[51] the underdeveloped asylum systems of the southern European countries were eschewed in favour of clandestine migration.[52] With accession of more MS, the variation in protection and reception conditions accorded by national asylum systems has increased to the point that a few countries have recently stopped automatic implementation of Dublin II returns (notably, to Greece). Thus, in some countries migrants gravitate towards the asylum system, whereas in others they mostly shun it. In both cases, there is an impact on irregular migrant stocks.[53] Table 1 indicates, in a crude evaluation, those countries where the role of the asylum system in terms of regularisation issues appears to be significant.

Three strands of the asylum process stand out as being problematic, and all three would benefit from Community instruments for their regulation:

i Variable chances of receiving protection, according to MS

ii Access to long-term residence for those receiving asylum or subsidiary protection status

iii The length of asylum procedures, which practically and legally require limitation

As with other issues, more effective management of this area would reduce illegal migrant stocks and make regularisation less needed as a policy instrument. Various studies and reports have highlighted the highly variable chances of receiving protection in the European Union. The variation in recognition rates is probably most evident in the case of Chechen refugees. Recognition rates for Chechens vary between 74.8% in Austria (average 2002–06), 28.3% in Belgium (average 2004–06), 26.2% in France (average 2000–07), 23.2% in Germany and 5.2% in Poland.[54] The recent Policy Plan on Asylum recognises the problematic of heterogeneous administrative practice in spite of harmonised legislation and proposes several measures to make access to protection more equitable across Europe.[55]

In addition, in the context of mass refugee flows following the Bosnian and Kosovo crises in the 1990s, war refugees, a majority of whom had entered their destination

[51] Baldwin-Edwards, M. (1991): 'Immigration after "1992"', *Policy & Politics*, 19/3.

[52] Baldwin-Edwards, M. (2002):'Semi-reluctant Hosts: southern Europe's ambivalent response to immigration', *Studi Emigrazione*, 39/145.

[53] The complex nexus between regularisations and asylum is by a recent comparison of German and Italian approaches towards irregular migration. See Finotelli, C. (2007): *Illegale Einwanderung, Flüchtlingsmigration und das Ende des Nord-Süd-Mythos: Zur funktionalen Äquivalenz des deutschen und des italienischen Einwanderungsregimes*.Hamburg: Lit

[54] Reichel, D. Hofmann, M. (2008): *Chechen Migration Flows to Europe - a statistical perspective.* Forthcoming

[55] COM(2008) 360, *op.cit.*

countries illegally,[56] were often accommodated by ad hoc measures outside the asylum system which often amounted to de facto regularisation. Thus, in response to the refugee crisis, Austria issued temporary permits to Bosnian refugees under the provisions of the Aliens Act, the Netherlands and Italy introduced a novel status explicitly designed for temporary protection purposes, and Germany, Sweden, and France and the UK changed or used existing humanitarian statuses.[57] Finally, following the Kosovo crisis, a temporary mechanism was established on the European level,[58] which harmonises the different ad-hoc responses taken by EU Member States during the 1990s but so far has not yet been put into practice. However, as the objective of the temporary protection mechanism was not so much to define a legal status for war refugees, but rather to provide a mechanism for 'burden-sharing' among EU Member States, subsidiary protection status as defined by the qualification directive (Council Directive 2004/83/EC)[59] is the much more relevant legal provision, not least since the thresholds to identifying a situation calling for the putting into force of the temporary protection mechanisms are quite high and quite unlikely to be invoked but in the most exceptional circumstances.

Related proposal(s): Option 11

3.3.6 The lack of coherent policy on non-deportable aliens

There exists a small but significant number of persons who, for various reasons, cannot be deported: they are left in a sort of limbo of long-term toleration, varying in extent and treatment across MS. This includes, in certain MS, refugees not entitled to asylum because of persecution by non-governmental groups; unsuccessful asylum-seekers who cannot be deported; illegal immigrants of unknown provenance; and TCN family members of EU citizens with a transitional or restricted status before marriage, for whom several MS require application from outside the territory.[60]Some guiding principles on limiting the number of such cases to an absolute minimum, by specifying formal procedures for the legalisation of certain 'tolerated' statuses, would aid a small reduction in the extent of illegal residence across the EU. In some cases, temporary residence permits might be

[56] In Germany, for example, an estimated 80% of Bosnian war refugees entered the country illegally. See K.Buchberger, Die Repatriierung von Kriegsflüchtlingen in Europa nach Bosnien-Herzegowina in den ersten drei Jahren nach dem Daytoner Abkommen unter besonderer Berücksichtigung der deutschen Rückführungspolitik. Unpublished Masters thesis. University of Münster, 1999, p.31

[57] Van der Selm, J. (2000): 'Conclusions', in Van der Selm, J. (ed): *Kosovo's Refugees in the European Union.* London and New York, Pinter. See also Van Selm-Thorburn, J. (1998): *Refugee Protection in Europe. Lessons of the Yugoslav Crisis*, The Hague, Boston, London, Martinus Nijhoff Publishers.

[58] *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*

[59] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

[60] Presumably, travel to another EU country to make that application, with a return of the entire family invoking Treaty principles of free movement, could be an option. Nevertheless, it is an unnecessary impediment to the right of family unity, and the situation creates problems for little purpose.

appropriate; in others, such as family members of EU nationals, clearly more permanent statuses are needed.

Related proposal(s): Options 7, 8

3.3.7 Regularisation for family-related reasons

There appears to be a significant extent of 'spontaneous' family reunification – that is, children and spouses of TCNs who reunite with their families outside the legal framework of family reunification. This occurs for a variety of reasons, including: serious delays with the formal process, lack of understanding of the procedure itself, difficulty in meeting the often stringent income and housing requirements laid down by Member States. Regardless of the desirability, or otherwise, of this phenomenon, the consequence is that there are stocks of 'illegally staying' resident TCNs whose presence poses a policy problem for Member States.

As with the regulation of labour immigration (see §3.3.4), family reunification requires application from outside the territory. Regardless of their ability to meet other criteria (e.g. housing and income), migrants are unable to apply for family reunification without leaving the territory and risk being refused readmission. Given the current trends in ECHR jurisprudence, particularly involving family rights, we recommend that exceptions to the extra-territorial requirement be permitted. It is highly unlikely that any MS would try to deport such family members (particularly as the legality of doing so is questionable), therefore it seems desirable to amend the family reunification rules to permit what amounts to legalisation of *de facto* family reunification.[61]

Related proposal(s): Option 12

[61] This has been done in several regularisation programmes; here, we recommend that it should be a permanent (albeit unadvertised) policy.

4 Government positions on policy[1]

4.1 Views on national policies for regularisation

Concerning the need for policy on regularisation at the national level, 10 Member States either did not express an opinion or failed to return the questionnaire. Three Member States (the Slovak Rep., Romania, Bulgaria) emphasise that a mechanism is sufficient policy; four (Belgium, Portugal, Spain, Greece) identify management of informal employment as a key factor in the need for programmes; and four (France, Greece, Italy, Poland) see regularisation programmes as an important tool in migration management. One Member State (Austria) considers that humanitarian reasons are the only legitimate reason for regularisation; six other Member States emphasise humanitarian reasons, along with several other factors (Belgium, Hungary, Luxembourg, Poland, Portugal, Spain). One Member State (France) considers a regularisation mechanism to be an important tool in dealing with non-deportable aliens; one (Greece) emphasises the criterion of social integration of immigrant populations for its recent regularisation policy. The Member States' positions more or less correspond with actual practice over the last decade, i.e. with a majority using the policy instrument (albeit with slightly different objectives).

Of those Member States expressing extreme reservations about regularisation policy, four (Austria, Belgium, France, Germany) claim that programmes constitute a pull-factor for future illegal migration; one (the Czech Rep.) has the view that it is not an effective policy, or is a last-resort policy (Bulgaria), while Finland is of the opinion that it is not a suitable policy instrument for managing migration. Slovenia considers that regularisation cannot reduce illegal flows, but might cause them to increase. Overall, there are eight expressions of extreme reservation compared with 25 expressions of support for some sort of regularisation policy instrument(s): these total more than the number of MS respondents, owing to complex positions adopted by many MS.

4.2 Views on policy impact on other EU MS

There is an important claim, made by several Member States, that regularisation programmes impact heavily on other MS. Despite our insistence in the questionnaire that evidence or research be provided to back up any claims, only three were able to do so. These were the Czech Republic, Ireland and Poland. The Czech Rep. notes that it is a transit route to Italy; Ireland notes new inflows in order to benefit from its regularisation policy for parents of children; Poland notes an impact from Germany's policy on 'tolerated persons'. Four countries have no view on the matter; four more (Italy, the Slovak Rep., Slovenia, Spain) are of the opinion that there is no impact. Three Member States (France, Greece, Hungary) state that they "assume" that there is an impact on other countries of such policy.

[1] This chapter relies solely on the official positions stated by Member States that returned the REGINE questionnaire. 21 countries returned the questionnaire, although not all stated their policy positions. There remain, therefore, substantial gaps concerning MS views.

4.3 Views on the operation of the information exchange mechanism

Five Member States expressed no opinion on this issue; one (Belgium) considers the mechanism to be working well; three (Estonia, Latvia and Slovenia) consider that it is not working well, as does Italy which considers that the activities within regularisation mechanisms need to be covered. Generally, the majority of respondents approve of the information exchange and would like to see its scope of operations improved and extended.

4.4 Views on possible EU involvement in the policy area

Five Member States expressed no opinion on this issue. Three (France, Italy, Greece) would support an EU legal framework so long as it respected national policy needs; two (Estonia and Latvia) advocate the need for a common approach; and three (France, Poland, Spain) suggest the need for information exchange concerning good practices, statistical data techniques, etc. Five countries (Austria, the Czech Rep., Finland, Germany, Slovenia) express opposition to any regulation of this area, on the grounds that it is not needed or is outside the legal competence of the EU. Overall, there is no visible support for strong regulation of this policy area, but a great deal of interest in the development of research, identification of good practices, policy innovations etc. within the framework of information exchange.

5 Positions of social actors

5.1 Introduction

This chapter reviews the positions of non-state stakeholders towards regularisation policies, including trade unions, employers organisations, NGOs and migrant organisations. In so doing, the chapter draws on desk research on the positions of organisations towards regularisation, and if these are lacking, on their overall positions towards recent EU policy proposals on both illegal and legal migration as well as on irregular work; on questionnaires sent out to NGOs and trade unions; on interviews with representatives from selected organisations; and on documents provided by NGOs and other interested parties in response to our questionnaires.

All of these actors have, either in practice or in principle, and to varying degrees, stakes in regularisation processes. Thus large-scale regularisations based on employment criteria naturally fall naturally within the mandate of interest organisations (i.e. employers' organisations and trade unions) as they are designed to have a major impact on the labour market and to correct certain labour market deficiencies, notably informal employment and the resulting exploitative labour conditions. However, employment-based regularisations might also be implemented to redress problems resulting from inadequacies of legal migration channels, as a result of which some employers resort to informal channels of recruitment and to post-immigration adjustments of migrant workers.[1]

Non-governmental organisations working on migration issues, most of which are engaged both in advocacy and provision of services to immigrants, are involved in both employment-based regularisations and those based on family, humanitarian, protection or other grounds. Employers organisations and most trade unions, by contrast, rarely consider non-employment based regularisations as falling within their mandate.

Both types of organisation – those with vested interests on the one hand and advocacy NGOs and migrant organisations on the other – have been involved in regularisation processes in several stages of the policy making process and in a number of ways. These include interest formulation, advocacy, lobbying and thus policy formulation in the broadest sense; and in terms of campaigning – disseminating information, mobilisation and monitoring of implementation during regularisation processes Both trade unions and NGOs usually also provide legal counselling and representation to individuals, while employers organisations provide legal information on employer related aspects of employment-based regularisations. Finally, social actors too have an important role to play in regard to the evaluation of the implementation and outcome of programmes and regularisation mechanisms.

[1] In most continental European states, except perhaps the Nordic countries, post-immigration status adjustment was the rule, rather than the exception. In the early 1970s, for example, more than 60% of immigrants to France obtained a permit only after arrival, despite state efforts to clamp down on informal recruitment (Hollifield, J. (2004): 'France: Republicanism and the Limits of Immigration Control'. In: Cornelius, W.A., Tsuda, T., Martin, P. L, Hollifield, J. F. (Eds): *Controlling Immigration. A Global Perspective.* 2nd edition. Stanford: Stanford University Press, pp. 183-214. In other countries, such as Austria, informal recruitment mechanisms and post-immigration status adjustments have been relevant until the early 1990s.

Indeed, in the absence of systematic post-regularisation evaluations carried out or commissioned by those states that have implemented regularisation processes, NGO and trade union evaluations often provide the only source of information on outcomes of regularisations.[2]

Over the past decade or two, there has been a marked shift in the framing of public debates on regularisation processes. Generally, the earlier focus on economic, labour market and welfare policy related aspects of regularisations has given way to more human rights based debates, reflecting wider changes in regularisation practices, along with important changes in the very nature of migration policy.[3] Thus, even in those countries in which regularisations were, and still are, primarily employment-based (trade unions and business organisations have mainly, and traditionally, been the interested parties), debates are increasingly centred on human rights. Where the focus is on employment, regularisation is largely seen as a possible tool against social exclusion, marginalisation, exploitation and discrimination;[4] family considerations or protection concerns otherwise dominate. Reflecting the shift away from labour market and economic considerations, employers organisations today are on the whole much less involved in debates on regularisation policy than they were in the 1980s and 1990s.

The remainder of this chapter is organised as follows: Section 5.2 discusses the role of trade unions and trade union positions vis-à-vis regularisations. Section 5.3 discusses positions of employers organisations and finally, section 5.4 describes positions of non-governmental advocacy organisations and migrant organisations.[5]

5.2 Trade union positions

Generally, trade unions across Europe have had, and to some degree continue to have, ambiguous positions on regularisation policy which partly reflect a more fundamental ambiguity towards migrant workers generally, although immigrants are

[2] See for example on the 2006 (family based) regularisationin France the excellent report by the French NGO CIMADE: CIMADE (2007): *De la loterie à la tromperie. Enquête citoyenne sur la circulaire du 13 juin 2006 relative à la régularisation des familles étrangères d'enfants scolarisés.* Rapport d'observation. Avril 2007. available at: http://www.cimade.org/boutique/3-De-la-loterie-a-la-tromperie

[3] Reflecting, among others, the increasing importance of human rights norms in migration policy and the growing importance of rights-based immigration streams (asylum, family related migration) since the 1980s. On the growing importance of human rights norms see Joppke, C. (1998) (ed.): *Challenge to the Nation-State. Immigration in Western Europe and the United States*. Oxford: Oxford University Press

[4] See for an analysis of national frames of regularisation debates in France, Spain and Switzerland by Laubenthal, B. (2006): *Der Kampf um Legalisierung. Soziale Bewegungen illegaler Migranten in Frankreich, Spanien und der Schweiz*. Frankfurt: Campus. For an analysis of political mobilisation around the issue of irregular migration in the European Union more generally see Schwenken, H. (2006): *Rechtlos, aber nicht ohne Stimme. Politische Mobilisierung um irreguläre Migration in die Europäische Union. Bielefeld: Transcript*

[5] Generally, relatively few migrant's organisations have the resources to formulate their own policy positions, comment on policy proposal or get involved in lobbying to the same extent as larger advocacy organisations. Thus, the overwhelming majority of NGO responses come from established NGOs rather than migrants' organisations.

increasingly accepted as a core constituency by trade unions – a process which in some countries dates back as far as the 1970s and 1980s.[6]

Since the 1990s – and in some countries much earlier – trade unions have also become more responsive to the needs of irregular migrants. [7] In certain countries (notably France, Italy, Portugal, Spain, Greece and the UK), trade unions have been major driving forces in recent and ongoing campaigns for regularisation. From a trade union viewpoint, two main problems are associated with irregular migration and in particular with irregular work: first, the situation of irregular migrants is characterised by a lack of protection, vulnerability to exploitation and victimisation, and lack of access to welfare and other rights; secondly, low salaries and the evasion of taxes and social security contributions may lead to marginalisation and 'social dumping', thus causing a lowering of social standards. Regularisation, from this perspective, offers an opportunity to re-regulate informal sectors of the economy and thereby protect the interests of irregular migrants working under conditions of informality and illegality, while also protecting the interests of both legal migrants and the native population. In several instances, trade unions have also taken up a broader human rights agenda and engaged in advocacy on behalf of groups excluded from the labour market or who are only marginally employed.[8]

5.2.1 National level trades union positions

Regularisation policy has been a core issue for trade unions in various countries, including Belgium, France, Italy, Portugal, Spain and the UK, and more recently in Germany and Ireland. Outside the European Union, trade unions have taken an interest in regularisation in the USA and Switzerland.[9] In some countries, including Portugal, trade unions were formally involved in the planning and implementation of regularisations.[10]

---

[6] See Penninx, R., Roosblaad, J. (2000): *Trade Unions, Immigration and Immigrants in Europe 1960-1993.* New York. Oxford: Berghahn Books.

[7] See Bauder, H. (2006): *Labor Movement. How Migration Regulates Labor Markets.* Oxford: Oxford University Press, p.23 and 200; Watts, J. (2002): I*mmigration Policy and the Challenge of Globalization. Unions and Employers in Unlikely Alliance*. Ithaca. London: Cornell University Press.

[8] For example in Germany in the context of recent regularisation of long-term tolerated persons, but also in Switzerland and France (see Laubenthal, B. (2006): *op. cit.*).

[9] See Laubenthal, B. (2006): *op. cit.*; On Switzerland see also the response by the Swiss Trade Union "Syndicat interprofessionnel des travailleuses et travailleurs (SIT) - Response, ICMPD NGO Questionnaire, 17 May 2008. The union has successfully rallied the government of the canton of Geneva to ask for a collective regularisation of irregular workers. So far, however, the request has not been acknowledged by the federal government.

[10] For example, in the 1996 regularisation programme unions could – in lieu of employers – certify that applicants did have jobs, if employers refused to do so. As a member of the Consultative Council for Immigration Affairs (COCAI – "Conselho Consultivo para a Imigração) the union was effectively involved in planning the 2001 regularisation programme. In the 2005 programme it disseminated information among potential beneficiaries of regularisation. [Source: Confederação Geral dos Trabalhadores Portugueses Intersindical Nacional (CGTP), Portugal, Interview with Carlos Trindade (Executive Committee, Migrations Department), Manuel Correia (President of "Sindicato das Indústrias Eléctricas do Sul e Ilhas"), Yasmin Arango Torres (União dos Sindicatos de Lisboa), Lisbon, 26 February 2008.]

Generally, unions consider regularisation as an employment-related issue, or at least potentially so. Unions' policies on regularisation are thus closely tied to their policies regarding irregular work. At the same time, regularisations for other than on employment grounds are generally seen as not falling within the mandate of trade unions. In other countries, regularisation as such has received less attention from unions, partly reflecting the lack of experiences with employment-based regularisations and/ or the relatively low profile of illegal migration in these countries. In countries where employment-based regularisations have not received much attention, the focus generally is on irregular (undeclared and illegal) work and related issues (vulnerability of workers, exploitation, social dumping), as, for example, in Denmark, Slovenia and Sweden. Here the focus is on both legal and illegal residents, with the former (including nationals) being generally considered the quantitatively more important group.[11] In a variety of other MS, trade unions often have no clear position on either irregular work or illegal migration – even in cases where the extent of irregular migration is thought to be substantial, as for example, in Austria (where estimates range between 50,000 to 100,000 employed non-nationals)[12] and the Netherlands (where estimates range between 60,000 and 120,000).

Whether or not clearly articulated positions on regularisations exist, trade unions' policies on irregular migration generally focus on employer sanctions, better enforcement and increased work-site inspections. Thus, although unions across Europe maintain that the rights of irregular migrants should be equally protected, regularisation on employment grounds seems not to be a prominent concern for trade unions except in a relatively small number of countries.

Nevertheless, several unions have formulated explicit positions on irregular migrants – often focused, however, on irregularly employed non-nationals, covering both legally and illegally staying third country nationals. In June 2007 the Swedish trade union TCO adopted a policy concerning irregular migrant workers based on the principle that "irregular migrants, despite lack of work permits, shall enjoy the same labour protection as other employees."[13] The union further called for the decriminalisation of illegal work and, as a corollary, for an increase in penalties for employing migrants without work permits. Finally, the union's new policy also stipulated that unions should avoid actions that may lead to the deportation of irregular migrant workers. In the UK, unions have played an important role during discussions leading to the adoption of the *Gangmasters (Licensing) Act 2004*, which focused on exploitation of illegal migrants by specific types of temporary work agencies. In its response to the ICMPD questionnaire, UNISON, a British trade union, stresses that it is particularly irregular migrants who become subject to

[11] See questionnaire responses to the ICMPD TU Questionnaire, the REGINE country studies on France and the UK, and on Germany : Deutscher Gewerkschaftsbund - Bundesvorstand vom 15.05.07: Stellungnahme zum Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, beschlossen vom Bundeskabinett am 28. März 2007, http://www.migration-online.de/beitrag._aWQ9NTMzNA_.html,

[12] Kraler, A., Reichel, D., Hollomey, C. (2008): *Clandestino Country Report Austria*. Unpublished Project Report, Clandestino project.

[13] TCO, Response, ICMPD TU Questionnaire, 2008.

exploitation.[14] It also supports regularisation and is a member of the UK pro-regularisation alliance "Strangers into Citizens".[15]

In Ireland, the Irish Congress of Trade Unions has elaborated its own proposal for a regularisation scheme. In its policy paper 'A fair way in', the Irish Congress of Trade Unions argues that "[e]xperience in Ireland and abroad shows that unscrupulous employers exploit the situation of undocumented workers and often intimidate them into accepting less than decent treatment and unsafe working conditions." The report further reasons that "it is detrimental and unjust for a society to create an underclass of individuals without the opportunity to bring their lives out of the shadows and live their lives without fear."[16] In line with unions' concerns over the vulnerability of irregular migrant workers, debates on irregular migrant work are often linked to forced labour and trafficking: several unions, among them the Irish Congress of Trade Unions and various British and Belgian unions, have demanded special protection measures, including access to legal status, for victims of forced labour and labour-related trafficking. The Greek Trade Union, GSEE, has the clearest preference for regularisation because of the sheer magnitude of the illegal migrant population in Greece and argues that a "mass regularisation programme of migrants in Greece is imminent because, according to the calculation of our trade union, 50%-60% of migrants in Greece remain undocumented".[17]

The benefits of regularisation

The trade unions that have responded to the ICMPD TU questionnaire generally cautiously support regularisations. Indeed, in several EU Member States, trade unions have been involved in campaigns for the regularisation of irregular migrants. Similarly, ongoing campaigns for regularisation programmes in Belgium, France, Ireland and the UK are strongly supported by trade unions. Thus, the Belgian trade union LBC-NVK (a white collar trade union) considers regularisations to be an appropriate measure "under certain conditions (…) [that is] as long as it offers social protection to all employees/active people in Belgium, as long as it affects social dumping policies in a positive way and as long as there is severe control of companies selling fake job contracts to illegal migrants." However, "it is clear (…) that a regularisation policy (on a national level) will not be enough (…) to combat illegal employment."[18] Accordingly, the union is currently, along with other unions, in negotiation with the Belgian government on selective, targeted regularisations. The scheme foresees that migrants who reach a certain level on a points scale which is composed of parameters such as legal work, language skills and integration, among others, would be regularized. Another Belgian union, CGSLB, stresses the positive potential impact of regularisation on occupational mobility and working

[14] UNISON, Response, ICMPD TU Questionnaire, 2008.
[15] See www.strangersintocitizens.org.uk
[16] Irish Congress of Trade Unions (2007): *A Fair 'Way In'. Congress Proposal for a Fair Regularisation Process for Undocumented Workers in Ireland,* p.2 Document provided to the authors.
[17] GSEE, Response, ICMPD NGO Questionnaire, 30 May 2008.
[18] LBC-NVK, Response, ICMPD TU Questionnaire, 2008.

conditions and, from the government perspective, the additional income it would generate for public funds.[19]

In Portugal, the trade union CGTP emphasises that regularisation programmes are potentially highly effective tools to combat social exclusion, insecurity, and poverty and prevent marginalised immigrant groups from becoming involved in petty crime.[20] In addition, the union stresses that previous regularisation programmes in Portugal did have a major impact on the economy, and increased tax payments, social security contributions and decreased the informal sector. Another Portuguese trade union, UGT, also stresses the social benefits of regularisation programmes, in particular for the protection of migrant workers' rights. However, it rejects extraordinary regularisation programmes and stresses the need for well-managed, controlled migration as the preferred alternative option.[21] Similarly, the Spanish trade union, UGT, rejects mass regularisations and advocates individual regularisations. Accordingly, it was involved in negotiations leading to a tripartite agreement between trade unions, employers' associations and the government on the establishment of regularisation mechanisms. According to the union, the success of the most recent Spanish regularisation programme of 2005 is largely due to the fact that it regularised the status of migrants as residents and their employment status *and* included measures targeting employers; the union sees the programme's success in particular in terms of its impact on the labour market. [22] In a similar vein, the British trade union UNISON argues that a regularisation would have a positive impact on the labour market: "The evidence so far shows that migration increases the number of jobs in the economy, and we believe regularisation would have a similar effect. Additional tax income generated through regularisation would improve public service provision. And regularisation would stop exploitation of paperless workers who had been regularised."[23]

In two non-EU countries from which responses were received – Switzerland and Norway – on the whole, similar views prevail. The response by the Norwegian Federation of Trade Unions stresses, however, that the employment gaps between low and middle income countries, on the one hand, and high income countries, on the other, create particular challenges which must be taken into account when designing labour immigration policies: "In Norway a more actual problem than illegal/clandestine migration, is work in the informal/illegal sector by immigrants as well as the problem of social dumping. This represents a threat against the Nordic labour market model, characterized by, among others, high standard of wage and work conditions and fair income distribution. The size of the challenges is not necessarily linked to the legal status of the immigrants. Labour immigration from low-cost countries creates particular challenges. Our experience tells us that as long

[19] Centrale générale des syndicats libéraux de Belgique (CGSLB), Response, ICMPD TU Questionnaire, 2008

[20] Confederação Geral dos Trabalhadores Portugueses –Intersindical Nacional (CGTP), Portugal, Interview with Carlos Trindade (Executive Committee, Migrations Department), Manuel Correia (President of "Sindicato das Indústrias Eléctricas do Sul e Ilhas"), Yasmin Arango Torres (União dos Sindicatos de Lisboa), Lisbon, 26 February 2008.

[21] União Geral dos Trabalhadores (UGT), Portugal, Interview with Mr. Cordeiro, Lisbon, 27 February 2008.

[22] Union General de Trabajadores (UGT), response, ICMPD TU Questionnaire, 2008.

[23] UNISON, *op. cit.*

as there are great differences with regard to the conditions of work and pay in the countries of emigration and immigration, the short-term gains of untidy employer conduct will be so considerable that the possibilities will be exploited where available. This indicates that the rules on labour immigration from low-cost countries should be more carefully designed than rules for other countries."[24]

Towards a European policy on regularisation?

The position of trade unions towards a possible Europeanisation of regularisation policy is divided. Thus, the Spanish trade union UGT voices its concerns that a Europe-wide harmonisation of regularisation policies would risk the establishment of lower standards than currently exist at the national level. This might mean less protection for irregular migrant workers than they currently enjoy under Spanish legislation.[25] Other unions are more positive towards European-level policies concerning regularisation, although European measures envisaged by unions would not necessarily consist of regulating regularisation as such, but broader measures – including improving and harmonising policies on legal migration and adopting effective measures concerning irregular work. Thus, the Belgian trade union CGSLB argues that a first step needs to be the harmonisation of admission policies.[26] The Danish Union of Electricians, by contrast, suggests more limited measures, including Europe-wide regulation of (temporary) work agencies.[27] The Belgian LBC-NVK calls for a comprehensive approach and argues that "an adequate response to the current problems on a European level requires a wide range of measures and policies, addressing undeclared work, precariousness of work and the need to open up more channels for legal migration" and considers the employers sanction directive to be an important first step. It sees major advantages in the fact that European level policies would increase transparency, reduce social dumping and competition between Member States and would prevent "country shopping". Finally, such measures would promote the protection of (irregular) migrant workers.[28] Similarly, a comprehensive approach towards regularisation is advocated by the Portuguese union CGTP, including enhancing control mechanisms against companies employing illegal migrants. However, it also has more concrete suggestion regarding regularisations. Thus, regularisation programmes could be carried out on the European level at the same time, which would reduce unsolicited inflows from other Member States.[29] UGT, another Portuguese union, similarly suggests a harmonisation of regularisation procedures and generally supports the harmonisation of admission policies.[30]

UNISON, the British trade union, suggest that "Europe might have a role in supporting common principles and a legal framework", the advantage being that it

[24] Norwegian confederation of trade unions, response, ICMPD TU Questionnaire, 2008.
[25] IGT, *op. cit.*
[26] CGSLB, *op. cit.*
[27] Danish Union of Electricians, Response, ICMPD TU Questionnaire, 2008.
[28] LBC-NVK *op. cit.*
[29] [29] Confederação Geral dos Trabalhadores Portugueses –Intersindical Nacional (CGTP), Portugal, Interview with Carlos Trindade (Executive Committee, Migrations Department), Manuel Correia (President of "Sindicato das Indústrias Eléctricas do Sul e Ilhas"), Yasmin Arango Torres (União dos Sindicatos de Lisboa), Lisbon, 26 February 2008,
[30] União Geral dos Trabalhadores (UGT), Portugal, Interview with Mr. Cordeiro, Lisbon, 27 February 2008.

would bring a more consistent approach "at a time when the role of Europe is being recognized in terms of regulating Europe's borders." However, a European policy on regularisation might also "detract from the role of national governments in delivering a coherent regularisation programme at a national level".[31] In a similar vein, the Greek trade union, GSEE, argues that given the significant economic and social differences between Member States, the natural locus of regularisation policy should remain the national level: every country has different structures concerning the labour market and a different immigration history. For instance, Greece since 1990 has been receiving third country nationals on a large scale for the first time in its history. In addition, the size of the informal economy is large. Consequently, Greek regularisation policy must be part of a general effort to combat illegal or flexible employment in the country, while in Germany or in France the social inclusion of ethnic minorities and migrants or the fight against discriminations should be the priority.[32]

Finally, the Slovenian Association of Free Trade Unions emphasises the positive (potential) role of the *UN Convention on the Protection of the Rights of All Migrant Workers and Their Families* and recalls the recommendation of the European Economic and Social Committee (2004/C 302/12) calling upon the Commission and the Council Presidency to undertake the necessary political initiatives to ensure speedy ratification of the Convention.[33]

Conclusion

The review of trade union positions suggests that in those countries with a history of (employment-based) regularisations, they are generally positive – in principle – towards regularisation, if managed well and designed carefully. In several other countries that do not have a significant history of employment-based regularisations such as Ireland (which has become a country of immigration only recently), the UK and Germany (which both used regularisation mainly for long-term asylum seekers (the UK) or rejected asylum seekers and other 'tolerated persons' (Germany)), unions have recently become a significant part of broader alliances calling for implementation of regularisation programmes and mechanisms. In most other countries, the main issue of concern for trade unions is irregular work carried out by both citizens and legal immigrants as well as by irregular migrants. However, the common element in all countries is that unions call for measures that help to combat irregular work and the problems associated with it, including vulnerability to exploitation and adverse working conditions on the level of the individual migrant and evasion of taxes and social security payments and hence social dumping and unfair competition on the macro-economic level. In some countries with particularly strong involvement of irregular migrants in undeclared work, such measures may include regularisations. On the whole, however, a broader set of measures is desired, including (as the Slovenian trade union respondent emphasises) the adoption of relevant legal instruments that would help to strengthen protection standards across the European Union.

[31] Unison, *op. cit.*
[32] GSEE, *op. cit.*
[33] Association of Free Trade Unions of Slovenia, Response, ICMPD TU Questionnaire, 2008.

The sparse response to the ICMPD questionnaire – altogether only 11 trade unions, out of which two are from non-EU countries, responded to the ICMPD questionnaires[34] – suggests, however, that regularisation is not a very prominent concern for trade unions in Europe. To some extent, this reflects the fact that only in a handful of countries, and in particular in the four southern European countries (Greece, Italy, Portugal and Spain), regularisation is directly linked to broader labour market issues, whereas in the majority of Member States regularisation processes usually have been implemented for humanitarian and other reasons. Although such regularisations ultimately also have effects on the labour market, they are not seen as an issue of primary interest for trade unions. In a way, illegal immigration in general is increasingly seen in humanitarian terms (and also in terms of border management and migration control) rather than as an issue more directly linked to labour market dynamics. Instead, the current focus is on irregular work – irrespective of whether it is performed by illegal residents, legally staying third country nationals, EU citizens or nationals.

5.2.2 The European Level: Positions of the ETUC towards regularisation

On the European level, the European Trade Union Confederation (ETUC) does not have an explicit common position on regularisation policy. This reflects, on the one hand, divergent views of its constituent organisations on regularisations and, on the other, the lack of common European policies on regularisations. However, in an interview with members of the research team for this study, the representative of ETUC's Working Group on Migrants and Ethnic Minorities noted that overall the ETUC has a pragmatic position and acknowledges that regularisation programmes may be necessary and useful, if planned and implemented well. Generally, integrating irregular migrants into the "legal structures" of society – notably as regards formal employment and legal residence – must be a main priority. This said, the ETUC prefers a more open admission policy that includes low-skilled migrants over regularisations (see below). States must accept that it is the prospect of employment in general that constitutes a pull factor for migration and that illegal migration can only be combated if possibilities for legal labour migration exist.[35]

The Confederation's commentaries on recent Commission proposals on legal migration and irregular work, although not commenting on regularisation as such, suggest certain prerequisites for well-managed migration, which, by implication would reduce the need for (employment-based) regularisation and would entail a certain measure of harmonisation of regularisation practices.[36] Thus, the ETUC

[34] 8 responses to the ICMPD TU questionnaire (of which one summary response per e-mail) were received, of which one came from a non-EU country (Norway); 3 NGO questionnaires from trade unions were received, of which one came from a Spanish Trade Union which also completed the TU questionnaire. Another came from a Swiss trade union.

[35] Interview with Marco Cilento (ETUC), Brussels, 20 May 2008.

[36] The following documents were considered: ETUC position regarding European Commission's proposals on legal and 'illegal' migration. Available at: http://www.etuc.org/a/4415?var_recherche=position%20papers , 30 April 2008; - Illegal immigration: ETUC calls for enforcement of minimum labour standards and decent working conditions as a priority. Available at: http://www.etuc.org/a/2699 , 30 April 2008.; Towards a pro-active EU policy on migration and integration. Available at: http://www.etuc.org/a/1159?var_recherche=legal%20migration , 30 April 2008; Action Plan for an

recommends (i) the creation of possibilities for the admission of economic migrants: (ii) the development of a common EU framework for the conditions of entry and residence; (iii) reaching a clear consensus between public authorities and social partners about real labour market needs; and (iv) avoidance of a two-tier migration policy that favours and facilitates migration of the highly-skilled while denying access and rights to semi- and low-skilled workers. Essentially, the ETUC argues for an opening of legal channels for migration for **all** categories of immigrant workers and strongly discourages a focus on highly skilled migrants. In this respect, the ETUC appreciates the Commission's proposal of a directive on admission for high-skilled workers,[37] accompanied by a proposal for a general framework directive on rights for all third country nationals who are legally residing in an EU Member State.[38]

However, the ETUC observes a slightly contradictory approach. Thus, although a proposal for a directive on sanctions for employers employing irregular migrants[39] has been adopted by the Commission, which in a way targets lower-skilled third country nationals (as undeclared work mostly occurs in the low-skill and low-wage segments of labour markets), there is little or no initiative in the legislative programme of the Commission in offering legal channels for migration for medium or low-skilled labour, other than the initiative on seasonal workers. In the opinion of the ETUC, "without such legal channels, sanctions for employers employing irregular migrants may not only turn out to remain largely ineffective, but may also lead to further repression, victimisation and exploitation of irregular migrant workers". Furthermore, the ETUC argues, "it is an illusion to think that EU Member States can solve the problem of illegal migration by closing their borders and implementing repressive measures". Consequently, the ETUC proposes "more proactive policies to combat labour exploitation" including (i) provision of "bridges out of irregular situations for undocumented migrant workers and their families, and enabling them to report exploitative conditions without fear of immediate deportation"; (ii) establishment of common criteria for the admission of economic migrants, thus reducing 'illegal' migration; and (iii) strengthening co-operation and partnership with third countries, in particular developing countries and the European neighbourhood countries. Thus, the ETUC, without advocating large-scale regularisations, recommends the limited use of regularisation mechanisms, or "bridges out of illegality".
In addition, the ETUC insists that "the Commission and the Council recognize the social policy dimension of economic migration, and establish adequate procedures and practices for consultation of the European social partners in the legislative

---

ETUC policy on migration, integration, and combating discrimination, racism and xenophobia. Available at: http://www.etuc.org/a/1944?var_recherche=legal%20migration , 30 April 2008.
[37] Proposal for a COUNCIL DIRECTIVE on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment COM (2007) 637 FINAL
[38] Proposal for a COUNCIL DIRECTIVE on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. COM (2007) 638 FINAL
[39] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL providing for sanctions against employers of illegally staying third-country nationals. COM (2007) 249 FINAL

process." If the Commission develops policies on regularisations, "unions should be strongly involved in policy-shaping".[40]

5.3 Employers organisations[41]

5.3.1 Introduction

Like trade unions, employers organisations are largely indifferent vis-à-vis regularisation and – on the whole – do not regard regularisation as a particular issue of concern. This is in stark contrast to the 1970s and 1980s, when employers (in particular, in France and the USA), were major proponents of regularisation. Only in exceptional circumstances, it appears, do employers support, or indeed call for, regularisation procedures. It is interesting to note, therefore, that the current pro-regularisation campaign in the UK "Strangers into citizens" is supported by various business groups.[42] In France, a broad range of businessmen, predominantly from small and medium sized companies, have joined calls for regularisation of illegal immigrants following a strike by illegal immigrants.[43] Various macro-economic and structural factors explain the relative indifference of employers towards regularisation. These include: economic restructuring and decreasing reliance on a flexible, low-skilled labour force and the consequent reduced likelihood that major employers will resort to illegal migrants as a significant source of labour; the fact that illegal migrants tend to be employed in small and medium sized businesses in certain sectors with small profit margins that are not well represented in employers associations; and the fact that major employers' association, in particular those which are also organised on the European level, tend to represent larger firms whose profitability does not depend on (unskilled) immigrant labour.[44] Indeed, illegal labour migration today primarily seems to concern sectors such as agriculture, tourism, hotel and restaurants, and domestic services, all of which are characterised by a relatively low degree of organisation of employers (or the complete absence of employers associations in the domestic sector), decentralised production and small production units. This said, employers have been involved in regularisation policy making in Spain and other countries and thus, in particular in countries with employment-based regularisations, do play a significant role.

Limitations of time and resources have not allowed a systematic enquiry into employers' positions on the national level. In our analysis of employers' positions, we thus focused on the European level. On the European level, we contacted the

[40] Interview with Marco Cilento (ETUC), Brussels, 20 May 2008.

[41] The following documents were consulted for this summary: BUSINESSEUROPE position on Sanctions against employers of illegally staying third-country nationals, submitted 25 October 2007. Available at: http://www.businesseurope.eu; BUSINESSEUROPE position on Commission Communication on Circular migration and mobility partnerships between the EU and third countries, submitted 26 October, 2007. Available at: http://www.businesseurope.eu, UNICE position on the Commission policy plan on legal migration, submitted 10 May 2006. Available at: http://www.businesseurope.eu

[42] Liberation, 18 Avril 2008: ' L'appel de Londres à une amnestie'.

[43] Liberation, 18 Avril 2008, 'Les patrons avec leurs sans-papiers'; Following these protests, 741 migrants with regular employment but illegally staying have received residence permits according to the General Confederation of Labour (see *Migration News Sheet*, August 2008, p.11).

[44] Watts, J. (2002): *op. cit.* pp.81—100

Confederation of European Businesses (BusinessEurope, formerly UNICE[45]) and the European Association of Craft, Small and Medium-sized enterprises (UEAPME). Of these, only BusinessEurope replied to our requests to provide information on the organisation's views on regularisation, indicating that the organisation had no official position on regularisation policy.[46] In accordance with our view that regularisation policy must not be analysed as a stand-alone policy and that any analysis needs to consider related policy aspects (including admission policy, policies on settled immigrants, broader policies on illegal migration as well as policies on undeclared work), we will review commentaries by BusinessEurope and UEAPME, respectively, on the European Union's policies on legal and illegal migration in the following section of this paper. This review suggests that employers organisations do have positions on particular issues related to regularisation – even though none of the organisations have formal views on regularisation as such.

5.3.2 Positions of the Confederation of European Business (BUSINESSEUROPE)

Our review of relevant BusinessEurope positions is based on BusinessEurope commentaries on recent Commission proposals for new instruments in managing legal migration, including 'mobility partnership', 'circular migration' and the proposal for a framework directive on rights of third-country nationals workers. In addition, we discuss the position of BusinessEurope regarding EU policies on illegal migration and irregular work – in particular, the Commission proposal for employers sanctions regarding illegally working third-country nationals.

According to BusinessEurope, the negotiation of mobility partnerships "constitutes an important new strategy in the field of immigration policies at EU-level".[47] In particular, BusinessEurope acknowledges that the proposed new instruments – mobility partnerships and circular migration – are a reasonable and innovative response to the growing numbers of illegal migrants arriving through the Eastern and South-Eastern borders of the EU. While BusinessEurope acknowledges that the EU has an important role to play in co-ordinating and improving the relations of Member States with third-countries to develop common strategies to better manage migration flows, it insists that any EU initiative should respect the principle of subsidiarity. Thus, the decisions on the number of economic migrants to be admitted in order to seek work, the types of their qualifications and skills as well as their country of origin are the responsibility of the Member States. Given the differences between labour market needs, companies' requirements and skills gaps across Europe, the EU should refrain from any attempt to quantify needs at EU level. This is neither feasible nor desirable. Labour market needs should be assessed in Member States at the appropriate level as close to the ground as possible."[48] In addition, Member States must be able to decide freely whether or not to participate in a

[45] UNICE stands for 'Union des Industries de la Communauté européenne'. The organisation became BusinessEurope in 2007

[46] E-mail response, D'Haeseleer, S. (BusinessEurope), 16 April 2008

[47] BusinessEurope (2007): Position *on Commission Communication on Circular migration and mobility partnerships between the EU and third countries*, submitted 26 October, 2007. Available at: http://www.businesseurope.eu (p.5)

[48] *Ibid*., para.10

mobility partnership and "employers should be fully involved in the discussion and decision on the number of economic migrants to be admitted to seek work and the types of their qualifications and skills"[49]

The principle of subsidiarity, particularly in admission of economic migrants, is further related to the flexibility of EU actions – that "will allow national administrations to apply a wide range of admission mechanisms in order to respond quickly to the needs of companies and especially SMEs".[50] Thus, although BusinessEurope sees a value in developing common instruments for labour migration on the European level, it cautions against their uniform application on the Member State and stresses the need for flexibility at the level of the individual Member State. By implication, BusinessEurope's position on admission policy, and in particular its strong emphasis on the principle of subsidiarity, suggests that it would oppose policies on regularisation on the European level which would contradict the principle of subsidiarity.

In the opinion of BusinessEurope, the Commission proposal for a general framework directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State, and on a common set of rights for third country workers legally residing in a Member State, is in part unwarranted. Defining a common set of rights is "not necessary since workers' rights are already adequately covered by existing national and/or EU legislation."[51] In relation to the specific directives on the admission selected categories of economic migrants, BusinessEurope argues that this indeed is a sensible step and corresponds to "the changing economic needs over time and the difference in labour market needs, companies' requirements and skills gaps across Europe"[52]. Furthermore, European employers welcome the idea of a single application for a joint work/residence permit as it promotes "unbureaucratic, rapid and transparent procedures at national level and [should] simplify administrative procedures."[53].

In relation to illegal migration, European employers agree with the Commission that, "if well conceived, mobility partnerships and circular migration could be useful instruments to fight illegal migration".[54] In the opinion of BusinessEurope, a key challenge to ensure the long-term benefits of circular migration is the need to design policies in such a way that circular migration remains circular and does not become permanent. In this sense, European employers express doubts concerning the effectiveness and/or feasibility of some of the actions proposed by the Commission – such as the requirement for a written commitment by migrants to return voluntarily, support to help the partner country create sufficiently attractive

[49] *Ibid*. para. 11 and 13
[50] UNICE (2006): *UNICE position on the Commission policy plan on legal migration*, submitted 10 May 2006. Available at: http://www.businesseurope.eu
[51] *Ibid*. para. 32.
[52] *Ibid*. para. 32-35
[53] *Ibid*., summary
[54] BusinessEurope (2007): *BusinessEurope position on Commission Communication on Circular migration and mobility partnerships between the EU and third countries,* submitted 26 October, 2007. Available at: http://www.businesseurope.eu , para.9

professional opportunities locally for the highly skilled etc. The Confederation makes note of the "potential contradiction between the strong emphasis put simultaneously on both circular and return migration on the one hand and the efforts to foster integration of third country nationals on the other hand".[55]

Regarding measures against illegal migration, the Confederation supports the objective of the proposed sanctions for those employing illegal workers. Generally, BusinessEurope acknowledges that employment is one of many pull factors for illegal migration. However, in the opinion of BusinessEurope, the Commission proposal does not comply with the subsidiarity principle: "By introducing EU-wide legal definitions of 'employment' and 'employer', the proposal directly interferes with national social and labour law. In addition, Member States are best placed to decide on and set effective sanctions for non-compliance with the provisions of the Directive."[56]According to European employers, the draft directive also fails to respect the proportionality principle: "It would impose overly burdensome and costly administrative requirements on EU companies".[57] Furthermore, there should be a qualitative element to distinguish between criminal and administrative sanctions.[58]

Finally, in the view of BusinessEurope, action against illegal migration must be accompanied by measures aimed at facilitating legal migration – sanctions against those employing illegal workers should not be taken in an isolated way but accompanied by measures such as effective co-ordination with migrants' countries of origin, action to fight against organised crime, and speedy repatriation of illegal migrants (consistent with their legitimate rights).[59] Furthermore, "to avoid a situation where an employer recruits workers with irregular status due to the lack of qualified or specific human resources and limited possibilities for legal migration, BusinessEurope reiterates the importance of creating unbureaucratic, rapid and transparent procedures at national level to recruit migrant workers".[60]

For the purpose of this study, four points are worth pointing out. First, BusinessEurope strongly emphasises the basic principle of subsidiarity. For the development of regularisation policies on the European level this suggests that any policy that would reduce the flexibility of Member States to design national solutions to national problems is likely to be opposed. Conversely, setting quantitative targets at the European level is opposed by business organisations. This notwithstanding, BusinessEurope positions also suggest that it is not opposed, in principle, to elaborating common procedural standards and similar measures. Secondly, BusinessEurope's position on proposals for new instruments regarding legal migration places a certain emphasis on the reduction of bureaucracy and other practical obstacles, which, as BusinessEurope argues, often leads businesses to

[55] Ibid. para. 15-16
[56] BusinessEurope (2007): *BusinessEurope position on Sanctions against employers of illegally staying third-country nationals*, submitted 25 October 2007. Available at: http://www.businesseurope.eu , p.1.
[57] *Ibid.*
[58] *Ibid.* para. 18
[59] *Ibid.* para. 8
[60] *Ibid.* para. 8-9

irregularly employ migrant workers. This suggests that BusinessEurope is likely to support measures that help to avoid what we discuss (in §3.3.3) under the heading of the 'creation of illegal immigrants'. Thirdly, however, BusinessEurope opposes strengthening and uniformly regulating the rights of legal migrants admitted as workers – an option which we view as important in terms of avoiding that legal migrants (or their family members) lapse into illegality. Fourthly, BusinessEurope calls for comprehensive measures on illegal migration, including employer sanctions, facilitated recruitment of migrant workers, enforcement of return and, if not prominently, regularisation as a possible alternative to return, should return not be enforceable.[61]

5.3.3 European Association of Craft, Small and Medium-Sized Enterprises (UEAPME)

The main basis for our review of policy positions of the European Association of Craft, Small and Medium Sized Enterprises (UEAPME) is policy papers commenting on: (i) the proposal for a directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State; (ii) the proposal for a directive for sanctioning employers employing illegal immigrants; and (iii) the Green Paper on an EU approach to managing economic migration.

According to UEAPME, the role of the EU in managing legal migration in general relates to the development of a "step-by-step harmonisation of criteria and procedures", "while respecting the sovereignty of Member States."[62] The concept of legal migration is further narrowed to economic migration. The principle of sovereignty means that the Member States should have the exclusive competence to decide on the number of immigrants to be admitted from third countries.[63] In this context, UEAPME agrees with the proposal for a single procedure for third country nationals to reside and work in the EU and particularly with the creation of a 'one-stop-shop' system, "as this will help to make the immigration process more transparent and less burdensome."[64] In addition, UEAPME stresses that "economic immigration to the EU has to be conceived as a win-win situation for the three parties involved, the host country, the country of origin and, of course, the immigrant worker."[65]

---

[61] In our interpretation, the formulation "quick repatriation of illegal migrants respecting their legitimate rights" does suggest regularisation if "legitimate rights" can only be upheld by regularising irregular migrants.

[62] UEAPME (2007): *UEAPME position paper on the proposal for a directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third country workers legally residing in a Member State*. Available at: http://www.ueapme.com/docs/pos_papers/2007/071205_pp_framework_directive_immigration.pdf , 23 April 2008, p.1.

[63] UEAPME (2005): *UEAPME's position paper on the Green Paper on an EU approach to managing Economic Migration COM (2004) 811*. Available at: http://www.ueapme.com/docs/pos_papers/2005/EconomicMigration.doc , 23 April 2008, p.1

[64] *Ibid.*

[65] UEAPME (2005): *UEAPME's position paper on the Green Paper on an EU approach to managing Economic Migration COM (2004) 811*. Available at: http://www.ueapme.com/docs/pos_papers/2005/EconomicMigration.doc , 23 April 2008, p.2

Illegal migration is referred to in the context of economic migration. UEAPME supports addressing illegal migration through a mix of policies, which according to UEAPME should include (i) stronger sanctions and controls; (ii) better implementation of decisions (iii) addressing incentives for illegal employment (such as overregulation of the labour market, excessive tax and social security obligations etc) and (iv) planning of a general awareness raising campaign.[66]

Regarding EU measures against illegal migration in the labour market, UEAPME agrees with the European Commission's proposal for sanctioning employers that employ illegal immigrants. However, it stresses that the primary responsibility for combating illegal employment lies with public authorities. Although UEAPME considers it reasonable to give employers a certain responsibility in regard to work permits, it opposes the proposal that employers should have a more far-reaching role in controlling the residence status of third country national workers – for example, by obliging them to keep a copy of the residence permit. "Basically the necessary action in order to pursue companies which employ illegal immigrants must not lead to more administrative burdens for those companies, in particular SMEs which comply with the law."[67] Furthermore, the Association agrees generally with the usefulness of proportionate and dissuasive financial sanctions but opposes the principle that the employer should cover the return costs of the illegally employed third country national.[68] In addition, UEAPME is strongly opposed to the Commission's proposal for an automatically -triggered procedure for claiming back outstanding remuneration and the standard assumption in calculating back-payments, that the employment lasted for a minimum of 6 months. According to UEAPME this would put illegally-employed migrants in a better position than legal workers and would constitute an additional pull factor and incentive (on the part of immigrants) to take up illegal work.[69] Similarly, UEAPME is also strongly against putting illegally-employed migrant workers who co-operate with authorities in a better position, arguing that this would similarly constitute an incentive, rather than a disincentive, to engage in irregular work.

Regarding the needs and capacities of SMEs to combat illegal employment, UEAPME recognises that micro enterprises have more difficulties in getting easy access to and a clear understanding of information on existing social and legal obligations for third-country nationals. For this reason, it proposes a three-step approach for the sanctioning of employers who employ illegal immigrants: (i) prevention and information; (ii) warning: authorities should clearly distinguish between cases where the illegal employment is the result of disinformation or lack of awareness of relevant regulations and other cases where the employer willingly employs illegal immigrants in full knowledge of the law; such cases should be treated differently; (iii) sanctions should only be the last resort if it is clear that the employer acts repeatedly and fully aware that his employment practices are in

[66] UEAPME (2007): *UEAPME position paper on the proposal for an EU directive for sanctioning employers employing illegal immigrants.*
Available at: http://www.ueapme.com/docs/pos_papers/2007/070919_pp_sanctioning.pdf , 23 April 2008, p.1
[67] *Ibid.* p.2
[68] *Ibid.* p.3
[69] *Ibid.* p.4

breach of the law.[70] On the whole, UEAPME has a much more pronounced position on EU policies vis-à-vis irregular migration, reflecting the fact that it is small and medium sized businesses that are the main employers of irregular migrant workers and would be most affected by measures adopted at the level of the European Union. The negative evaluation of the incentives for irregular migrants to co-operate with authorities and the protection provisions in the proposal for a directive on employers' sanctions suggests a possible negative attitude towards regularisation measures aimed at addressing informal work and combined with sanctions and increased obligations for employers. However, like BusinessEurope, UEAPME welcomes the procedural elements of the proposed framework directive on a single application procedure as potentially greatly increasing transparency and reducing bureaucracy.

5.4 Positions of Non-Governmental Organisations and migrant organisations

5.4.1 Introduction

Non-governmental organisations have long had a pivotal role in representing migrants' interests, promoting migrant rights and providing services to migrant communities, and in particular also undocumented migrants with or without limited access to public services. In many European countries, NGOs also are the most active actors regarding campaigns for regularisation,[71] notably in Belgium, France, Portugal and Spain, where NGOs have successfully mobilised around regularisation programmes. Similarly, the current pro-regularisation campaign "Strangers into Citizens" in the UK is led by an alliance of NGOS, although it also includes other societal actors. In Ireland, NGOs, together with trade unions, currently campaign for regularisation, as do NGOs in Belgium[72]and Germany.[73] Although NGOs in other EU Member States have been less successful in promoting regularisation campaigns, they nevertheless have played and continue to play an important role in providing legal counselling and advice to irregular migrants. Migrant organisations – organisations run by and for immigrants – have, on the whole, a much lower profile and only a few migrant organisations have taken on a more pronounced role in promoting regularisation or providing legal advice. However, as advocacy NGOs, migrant organisations have played an important role in disseminating information about ongoing regularisation campaigns. An overview of current NGO activities with regard to regularisation is presented in Table 6. Their role – actual and desired – in regard to regularisation policy is described in Table 7. The following review of NGO positions is based mainly on responses to a short questionnaire developed by the research team and disseminated among NGOs specialised or otherwise working on undocumented migrants by the Brussels-based NGO *Platform for International*

[70] *Ibid.,* pp.1-2

[71] See Laubenthal, B. (2006): *op. cit.* on the emergence of pro-regularisation movements, mainly led by civil society organisations, in France, Spain and Switzerland.

[72] See for example the activities undertaken by the Belgian NGO *Coordination et Initiatives pour et avec les Réfugiés et Étrangers* (CIRE) on regularisation under http://www.cire.irisnet.be/appuis/regul/accueil-regul.html

[73] See for example the „Bleiberechtsbüro", an initiative of the Bavarian refugee council (Bayrischer Flüchtlingsrat e.V.), online at http://www.bleiberechtsbuero.de/

Cooperation on Undocumented Migrants (PICUM).[74] Altogether, 36 responses were received, two of which were from trade unions and one from a research institution (the latter are not considered here). In addition, various NGOs provided us with position papers and other documents on which we also draw in the following. In total, we received responses from 10 EU countries. In addition, we also received responses from three NGOs organised at the European level and one NGO and a trade union in Switzerland. The relatively largest number of responses was received from Greece and Spain; of the countries with significant experiences of regularisation measures, NGOs from two countries – Italy and the UK – did not provide any responses to the questionnaire. [75] Since the mid-1990s, when a new stage in the Europeanisation of migration and asylum policies was reached with the Maastricht and Amsterdam Treaties and the parallel development of an EU agenda on non-discrimination and the fight against xenophobia and racism, several umbrella organisations of NGOs and faith based organisations that are specialised or otherwise working on migration issues have been formed at the European level.[76] These include various Church organisations such as Caritas Europa, the Churches Commission for Migrants in Europe (CCME), the Commission of the Bishops' Conferences of the European Community's Working group on Migration (COMECE), the International Catholic Migration Commission (ICMC), the Jesuit Refugee Service Europe (JRS-Europe) and the Quaker Council for European Affairs (QCEA). The European Council on Refugees and Exiles (ECRE), the European Network Against Racism (ENAR), the European Coordination for Foreigners' Rights to Family Life, the Platform on International Cooperation on Undocumented Migrants (PICUM), Solidar and the campaign for the adoption of the UN Migrant Convention - December 18 - are probably the most relevant non-denominational European level NGOs focusing on migrant issues. Most of these organisations have adopted positions on EU approaches and possible alternative approaches to undocumented migration, including regularisation, which we will examine in the last section of our review of NGO positions.

[74] For more information, see www.picum.org ; we are grateful to Don Flynn and Michèle LeVoy and the enthusiastic interns at PICUM for readily supporting us in disseminating the NGO questionnaires and getting the support of NGOs for this part of the study.

[75] Questionnaires were translated into Greek and Spanish which explains the high turnout for these two countries. In addition, questionnaires were also translated into French. The lack of an Italian version probably explains why no responses were received from Italy.

[76] See on the emergence of European NGOs working on migration issues Geddes, A. (2000): *Immigration and European Integration. Towards Fortress Europe?* European Policy Research Series. Manchester: Manchester University Press, in particular pp.131-151

Table 6: Current and past activities of NGOs concerning regularisation

	NGO/Country	Main activities in regard to regularisation
AT	Krankenhaus (Hospital) der Barmherzigen Bürder – AT	- Acting as intermediary between undocumented migrants and state authorities - Lobbying - Membership in official commissions - Membership in official commissions adjudicating individual regularizations - Commercial brochures - Providing anonymous, unconditional and free medical assistance - Care for 120,000 persons without insurance per year (6,000 stationary)
AT	Organisation Diakonie Flüchtlingsdienst (Refugee Service) - AT	- Lobbying - Public relations
AT	Asylkoordination	- Campaigning and lobbying
BE	Centre des Immigrés Namur-Luxembourg ASBL (Antenne de Libramont)	- Campaigning and lobbying, - intermediary between irregular migrants and authorities, particularly in regard to access to health care
BE	Samahan ng mga Manggagawang Pilipino sa Belgium - BE	- Info dissemination, assisting and advising in the constitution of dossiers of applicants.
CZ	Counselling Centre for Citizenship / Civil and Human Rights - CZ	- Lobbying
CZ	Counselling Centre for Refugees / Organization for Aid to Refugees - CZ	- Launch of a public debate on regularisation in the Czech context. - Organisation of projects lobbying for regularisation
DE	Flüchtlingsrat im Kreis Viersen e.V. - GE	- Position papers and involvement in discussions
NL	Stichting LOS(Landelijk Ongedocumenteerden Steunpunt) - NL	- Campaigning and lobbying for regularisation
NL	University Medical Centre St Radboud - NL	- Not directly involved in any activities. The centre works together with Pharos / Lampion and their role is important as pressure factor and as knowledge centre
PT	AMI (International Medical Assistance) - PT	- Support of juridical issues when requested
PT	Jesuit Refugee Service (JRS) - PT	- Direct involvement as an intermediary between undocumented migrants and state authorities when it comes to regularisation matters.
ES	ACCEM: Atención y Acogida a Refugiados e Inmigrantes - ES Madrid	- Participation in all regularisation processes - Info contact point for TCNs and employers during 2005 regularisation programme - Submission of evaluation reports to the state Administration regarding the last regularisation programme - Membership in *Foro para la Integración Social de los Inmigrantes* (Forum for the Social Integration of Immigrants)

	NGO/Country	Main activities in regard to regularisation
ES	Fundación Andalucía ACOGE - ES	- Provision of information during regularisation processes (collection of applications) - Advocating for the rights of TCNs - Consulting – contribution at the planning phase of legislation (changes) concerning TCNs
ES	Asociación Vida y Salud al Inmigrante Boliviano (AVISA) – ES Madrid	- Membership in Consejo de Inmigración de España
ES	Iglesia Evangélica -ES	- Mediation in the process of contacting undocumented TCNs - Participation in parliamentary commissions - Support regarding social needs of TCNs
ES	Interculturalia – ES Madrid	- Advocating the rights of undocumented TCNs
ES	Movimiento por la Paz, el Deasarme y la Libertad en Canarias (MPDLC) - ES	- Membership at Foro Canario de la Inmigración – a consultative body at the level of the provincial government on issues concerning immigration - Provision of integral support to immigrants (socio-economic integration) - Consulting of undocumented TCNs during the last process of normalisation
ES	Asociación Salud y Familia, UGT - ES	- Development of programmes focusing on the social integration of immigrants - Support and attendance in relation to health issues
IE	Migrant Rights Council of Ireland, Dublin (MRCI)	- Directly supporting undocumented migrant workers in accessing services; regularisation of status - Lobbying the government for greater protections for undocumented migrant workers - Research on the experience of being undocumented in Ireland
FR	FR - SNPMPI – LA PASTORALE DES MIGRANTS	- Preparing files for asylum cases; - Campaigning as part of a broader network of civil society actors, notably church groups
GR	ANTIGONE	- Campaigning, - Awareness raising - Production of reports concerning the problems and the violations of rights of migrants
GR	DIAVATIRIO	- Provision of information to undocumented TCNs regarding the regularisation process - Exercising pressure for the change of procedures
GR	HLHR	- Elaboration of specific policy and legislative amendments' proposals - Organisation of 3 National Migration Dialogues - Annual and international reports and conferences.
GR	Greek Migrants Forum	- Demonstrations, memos, interviews in the Press, updates for the regularisation programmes - Support of immigrants without proper documentation to organise themselves, to learn the Greek language
EU	Europäische Vereinigung von Juristinnen und Juristen für Demokratie und Menschrechte in der Welt e. V. (EJDM)	- Dialogue and information exchange with other similar organizations, - Participation at statements and position papers, common conference projects

	NGO/Country	Main activities in regard to regularisation
EU	European Council on Refugees and Exiles (ECRE)	- Advocacy and lobbying at EU institutions and Council of Europe regarding asylum seekers and recognised refugees, including the issue of regularisation
EU	La Strada International (LSI) – Europe (domicile in NL)	No special activity has been indicated.
CH	FIZ (Fraueninformationszentrum für Frauen aus Afrika, Asien, Lateinamerika und Osteuropa, Fachstelle zu Frauenhandel und FRauenmigration	- Participation in round-tables regarding regularisation and advocating in favour of the measure - Discussion of regularisation relevant issues in the working groups and commissions on human trafficking
CH	Schweizerischer Evangelischer Kirchenbund SEK (Nationale Geschäftsstelle der Evangelischen Kirchen der Schweiz	- Membership at the Eidgenössichen Kommission für Migrationsfragen and in the platform „für einen runden Tisch zu den Sans-Papiers“ („for a round table on undocumented migrants“).

Note: not all respondents completed the relevant sections of the questionnaires.

Table 7: Actual and desired role of NGOs in regularisation processes/ design of regularisation policies

	NGO/Country	Assessment of own role/ role of NGOs
AT	Krankenhaus (Hospital) der Barmherzigen Bürder – Austria	- Compensates for lack of state policies (access to health care) - NGOs should help straightforward and spontaneously without asking
AT	Organisation Diakonie Flüchtlingsdienst (Refugee Service) - AT	- NGOs should be involved in the process of identifying target groups of regularisations and in bodies adjudicating or advising on regularisations
BE	Centre des Immigrés Namur-Luxembourg ASBL (Antenne de Libramont)	- NGOs should highlight problems regarding the asylum system and regularisation practices, e.g. through engaging in a dialogue with the responsible minister, critical analysis of policy measures, pointing out alternatives - NGOs need not be formally involved in decision-making
BE	Samahan ng mga Manggagawang Pilipino sa Belgium - BE	- NGO successful track record of providing advise to applicants, as all 20 persons assisted by the NGO have been regularised - NGOs being a civil society initiative can support, supplement and complement efforts of other civil society actors and government so as to make sound policies that take into account the different specificities of groups at the grassroots level. - NGOs can be actors for the implementation, monitoring and follow-up and eventually in evaluation of the policy, programme and/or mechanisms of regularisation.
CZ	Counselling Centre for Citizenship / Civil and Human Rights - CZ	- NGO have a monitoring function - NGOs should play an active role in formulating migration policy

	NGO/Country	Assessment of own role/ role of NGOs
CZ	Counselling Centre for Refugees / Organization for Aid to Refugees - CZ	- NGOs should monitoring, evaluate and criticize government policies - Not much success to change policies but major success to initiate a parliamentary debate on regularisation and irregular migration - Government authorities see NGOs as unequal partners despite their knowledge on the issue - NGOs should be seen as serious partners by the government
DE	Flüchtlingsrat im Kreis Viersen e.V. - GE	- Contribution to the public debate - NGOs play an important role as a counterbalance to arguments of the government authorities which are related to regulatory issues - NGOs should be more involved in the process of legislation
NL	Stichting LOS(Landelijk Ongedocumenteerden Steunpunt) - NL	- Crucial role for the implementation of the last regularisation programme - regularisations are not possible without NGOs as partners
PT	AMI (International Medical Assistance) - PT	- NGOs should be an instrument of mediation between the interests of immigrants and the policies to them created. - As non governmental entities, nor controllers, relatively to regularisation policies and immigrants in irregular situation, NGOs should assume an educative and sensitising role
PT	Jesuit Refugee Service (JRS) - PT	- contribute to policy development. - monitor the implementation of regularisation policies - provide guidance to migrants regarding the process of regularisation.
ES	ACCEM: Atención y Acogida a Refugiados e Inmigrantes - ES Madrid	- NGOs should be intermediators between immigrants and administration - NGOs should point out violations of recognised immigration laws - The proposals of NGOs should be taken into account regarding the formulation of regularisation policies
ES	Fundación Andalucía ACOGE - ES	- The practical experiences of NGOs within their daily work should be taken into account - NGOs should point out if immigration laws are not respected
ES	Asociación Vida y Salud al Inmigrante Boliviano (AVISA) – ES Madrid	-NGOs play a fundamental role with respect to the formulation of regularisation policy, as we are the ones who have contact with the immigrants. - NGOs should be involved at an early stage of policy development
ES	Iglesia Evangélica - ES	- Through their daily practical experiences NGOs know the consequences of policy measures very well and should be consulted by government agencies
ES	Movimiento por la Paz, el Deasarme y la Libertad en Canarias (MPDLC) - ES	- NGOs are doing the work different public administrations should do - NGOs should be more involved in respect to the formulation of immigration policies
ES	Asociación Salud y Familia, UGT - ES	- It´s not possible that all Spanish NGOs play an important role in respect to the formulation of regularisation policy
IE	Migrant Rights Council of Ireland, Dublin (MRCI)	- Overall aim: promote the conditions for social and economic inclusion of undocumented migrant workers and their families, - through: direct support to undocumented migrant workers; lobbying at national and international level also by cooperating with other organisations; - research. - awareness raising and representation of the interests of undocumented migrant workers
FR	FR - SNPMPI – LA PASTORALE DES MIGRANTS	- Own role/position is a sensitive issues, since irregular migration is a highly contested issue also within the Church; - General role. Involvement of NGOs by government agencies often done as an alibi, not a dialogue, but a monologue.

	NGO/Country	Assessment of own role/ role of NGOs
EU	Europäische Vereinigung von Juristinnen und Juristen für Demokratie und Menschrechte in der Welt e. V. (EJDM)	- Only little influence due to neglect of regularisation as a policy option on the one hand and due to a lack of involvement of NGOs. - NGOs should be involved in formulation and evaluation of regularisation policies
EU	European Council on Refugees and Exiles (ECRE)	- own lobbying regarding regularisation has not had a large impact, due to refusal of EU to address the issue of regularisation - NGOs are often the only actors providing services to undocumented migrants and hence have a major role to play - NGOs are well placed to provide inputs in policy debates and to monitor the effective and fair implementation of policies

Note: not all respondents completed the relevant sections of the questionnaires

5.4.2 A survey of national level NGO perspectives

Why regularise? Arguments pro-regularisation

Irregular migration is seen as a significant problem by virtually all NGOs that responded to the ICMPD NGO questionnaire and the majority of NGOs, in principle, support regularisation measures. The target population of regularisation is complex and varies from one country to another: it might be illegally resident migrants without any documentation in the narrow sense, but might also include person with an unclear or precarious legal status such as tolerated persons in Germany.[77] In addition, as one Czech NGO points out, "The boundary between a legal and an illegal stay is often blurry and a foreign national with a legal status can easily slip into an illegal status."[78]

The NGOs that have responded to the ICMPD questionnaire do support regularisation for various reasons, although opinions are divided on the extent to which regularisation should be pursued to offer irregular migrants a pathway out of illegality. Some organisations, for example NGOs primarily providing medical care, often do not feel competent to assess whether regularisation should be promoted as an option or not but emphasise the negative consequences of illegality (such as lack of access to healthcare, schooling and other basic social rights) and welcome any measures that help to promote providing irregular migrants with basic access to care services – including regularisations.

Others are explicitly agnostic vis-à-vis regularisations and see their role primarily in upholding the basic human rights of irregular migrants, as the response of a German NGO illustrates: "The Catholic Forum Life in Illegality [Katholisches Forum Leben in der Illegalität] does not wish to evaluate the German regularisation policy for principled reasons. However, [the Forum] is convinced that also in the future, illegal migration won't be prevented. It therefore calls for an adaptation of the legislative framework in a way that irregular migrants are able to realise basic social rights

[77] See Europäische Vereinigung von Juristinnen und Juristen für Demokratie und Menschrechte in der Welt e. V. (EJDM), response, ICMPD NGO Questionnaire, 4 May 2008

[78] Counselling Centre for Refugees/ Organization for Aid to Refugees, response, ICMPD NGO Questionnaire, 30 April 2008

without having to fear detection and subsequent removal. Against this background the Forum would welcome regularisation measures insofar as they would reduce the number of irregular migrants and hence the number of migrants without access to rights."[79] A Dutch NGO emphasises that any responses to the social problems associated with illegality need to take into account migrants' migration projects and, by implication, the likely persistence of illegal migration, whatever measures governments may adopt to combat irregular migration: "As long as their 'project' didn't succeed, irregular migrants will stay and struggle on. In this way they often harm themselves (living on the fringes of society, deprived, vulnerable) and society as well (a source of cheap labour, criminality, precarity)."[80]

La Strada an international NGO working on trafficking issues, equally highlights the vulnerability arising from lack of status: "[T]here are large numbers of people in a irregular situation whose position is very vulnerable due to their status. It is generally known that this makes them vulnerable to exploitation, violence and abuse which are the main indicators for trafficking."[81]

Several NGOs also point to racism and xenophobia which partly arises out of the 'demonisation' of irregular migration, as a Greek NGO stresses: "In many cases the fact that a great number of irregular immigrants reside in the country 'poisons' the public opinion which is unaware that immigrants want to be regular in the country of residence. The stereotype of the illegal immigrant frightens public opinion and creates xenophobic reflexes which act as a deterrent as far as the solution of the problem is concerned."[82] Similarly, a Czech NGO argues that "[n]on-regularized migrants residing in the Czech Republic are often the victims of discrimination, xenophobia, hostility and intolerance. Although they are aware of their position, they lack the resources and the ability to deal with it (…)Those foreign nationals that are staying in the country illegally are people who should be guaranteed certain minimal rights in a democratic system. And, besides fundamental human rights, certain other factors should also be taken into consideration – such as those related to the right to enjoy a family life or the availability of healthcare services."[83]

Like other NGOs which responded to the ICMPD NGO Questionnaire, the German Refugee Council/Viersen (*Flüchtlingsrat im Kreis Viersen e.V.*) sees the main problem of irregular migrants in their limited and precarious access to basic social rights, which, as it argues, has been virtually ignored by the wider public: "Hitherto, [irregular migrants] are barely visible in public debates and have almost no possibilities to satisfy their basic needs. At least, there are some regional and national actors who raise the issue from time to time in public debates (…). However, concrete support is available at most in respect of basic health care provided by NGOs (…). Apart from schooling, however, where there are special

[79] Katholisches Forum Leben in der Illegalität, response, ICMPD NGO Questionnaire, 23 April 2008
[80] Stichting LOS (Landelijk Ongedocumenteerden Steunpunt), response, ICMPD NGO Questionnaire, 21 April 2008
[81] La Strada International LSI, Response, ICMPD NGO Questionnaire, 8 May 2008
[82] DIAVATIRIO (Greece), Response, ICMPD NGO Questionnaire, 30 May 2008
[83] Counselling Centre for Refugees, *op. cit.*

provisions, access to most basic rights is practically impossible because of sanctions that irregular migrants have to fear if they try to access such rights." [84]

Several NGOs – notably, the NGOs from Greece, Portugal and Spain which answered the questionnaire – do not want to limit regularisations to particularly vulnerable groups but argue in favour of broadly-conceived regularisation measures, which would be beneficial both for the integration of migrants as well as for society at large. This said, they also stress the role of regularisation in fighting social exclusion, exploitation and improving the situation of vulnerable groups.

Thus, a Portuguese NGO argues in favour of regularisation "so that the process of social and cultural integration develops easily." Regularisation would also help to reduce illegal immigration and would help fight the exploitation of workers, sexual exploitation and the exploitation of children. "This way, [one would promote] their rights to better [living] conditions, with better employment opportunities and [fairer] salaries.[85] A Greek NGO speaks in favour of regularisation of immigrants, because "this is the only way to estimate the exact number of immigrants who live in Greece, to counter any form of criminality which stems from immigrants, to eliminate any of the phenomena of xenophobia and racism and finally this is necessary, as a basic pre-condition for the smooth social integration of immigrants."[86]

A Belgian immigrant association similarly argues in favour of regularisation "because it is important for migrants to have a stable legal status in the host country. Regularisation is one way of recognizing the contribution of the informal undocumented sector in building the economy and socio-cultural richness of the host country, thus bringing them to the formal sector."[87]

Several NGOs argue that regularisation is needed because of the inadequacy of existing immigration regulations or failures of existing immigration policies. Thus, a Spanish NGO argues that "the legal mechanisms regulating the entry of Third Country Nationals do not correspond to the needs of a flexible labour market" and that Spain needs foreign workers. Regularisation thus is needed "to avoid [the] marginalization [of irregular migrants] and to respond to the needs of the labour market."[88] A Czech NGOs sees major deficiencies in the design and immigration legislation: "Besides the existing legal obstacles, the Czech Republic is also known for its restrictive policies towards third-country nationals, its confusing and frequently updated legislation, as well as the unfriendly attitude of public officials communicating with the foreign nationals. As a result, many of the foreign nationals residing in the country have an illegal status."[89]

[84] Flüchtlingsrat im Kreis Viersen e.V., Response, ICMPD NGO Questionnaire, 21 April 2008
[85] AMI (International Medical Assistance), Response, ICMPD NGO Questionnaire, 5 May 2008
[86] Greek Migrants Forum, Response, ICMPD NGO Questionnaire, 30 May 2008
[87] Samahan ng mga Manggagawang Pilipino sa Belgium, Response, ICMPD NGO Questionnaire, 13 May 2008
[88] Movimiento por la paz, el desarme y la libertad, Canarias (M.P.D.L.C.), Response, ICMPD NGO Questionnaire, 25 April 2008
[89] Counselling Centre for Refugees, *op. cit.*

In summary, NGOs argue that

- regularisations would be an appropriate measure to **reduce the number of persons illegally residing** in a country of the EU
- regularisations are **beneficial to the economy**
- they **reduce the exploitation** of irregular migrants
- regularisation **reduce social exclusion**
- they **promote the integration** of irregular migrants into the society
- they improve the **access to basic social rights**, notably **access to health care**
- they can be a **corrective** to administrative or legislative deficiencies
- regularisations are an appropriate means to protect the rights of particularly vulnerable groups, including children and elderly, victims of serious crimes and victims of trafficking/ forced prostitution

Why regularisation might not be the ideal solution

As the above survey of NGO principal positions on regularisation shows, NGOs generally are in support of regularisation measures. Nevertheless, several NGOs express reservations on the use of regularisation measures. Among the arguments put forward is that regularisations essentially can be read as indicators for policy failure. Although the conclusion cannot be not to implement regularisation measures, if the need for regularisation arises, several NGOs stress that more far-reaching reforms of the overall framework governing migration and asylum have to be undertaken to address some of the root causes of the presence of irregular migrants. Thus, a Belgian NGO argues that "one-off programmes generally reflect a failure of immigration policies. Indeed, pursuing a policy of closure and tight border controls in an era of globalizing economic and social interactions and exchanges must be regarded as inappropriate."[90] A Spanish NGO similarly argues that "in principle, regularisation measures are measures of last resort and indicate that there has been no effective management of migration flows" and recommends that ultimately, "various legal migration opportunities should be opened" which should be based on research on the real migration needs and which should take account both of the situation (and needs) of the Spanish labour market and the goal to promote development through migration and to reduce the enormous disparities between South and North."[91] The position that more legal migration channels should be developed is also supported by another Spanish NGO, which in addition sees a certain foreign policy rationale in the last major Spanish regularisation programmes which, according to the NGO, does not reflect the migratory reality.[92] Another Spanish NGO recommends co-operation agreements with third countries to promote legal and "orderly" migration.[93]

A Swiss NGO, by contrast, suggests that there are limits to migration reform: that there will never be "perfect" migration policies and regularisation measures therefore will always be needed as a corrective instrument: "Regularisation

[90] Centre des Immigrés Namur-Luxembourg ASBL (Antenne de Libramont), response, ICMPD NGO Questionnaire, 5 May 2008
[91] ACCEM, response, ICMPD NGO Questionnaire, 13 May 2008
[92] Federacion Andalucia ACOGE, response, ICMPD NGO Questionnaire, 6 May 2008
[93] Iglesia Evangélica Española, response, ICMPD NGO Questionnaire, 15 April 2008

measures complement admission systems, because immigration legislation will always have deficiencies. In addition, in spite of preventive measures taken against irregular migration, there will always be a limit as to how migratory flows can be controlled and effectively managed. It is against this background that the *Global Commission on International Migration* (GCIM) also recommends making use of regularisation measures."[94] Similarly, the Czech Counselling Centre for Citizenship argues that "the principle to regularise [irregular situations] is a self-evident complementary measure, not only in immigration legislation but (…) in many other legal domains, too (for example leniency programmes in anti-trust legislation)."[95] La Strada, an NGO with branches in several EU countries, adds "(…) that regularisations are needed as long as the restrictive EU immigration policies do exist, but in fact regularisations are not the solution for the real problem and do tend to be 'not fair'. It is mostly about groups and there will always be groups and individuals that are not included."[96] As an alternative it suggests a comprehensive approach, which would go beyond finding remedies to immediate problems and would also address some of the root causes of migration. Although several of the NGOs acknowledge that regularisation, especially large-scale regularisation, might act as a pull factor, they don't see this as a sufficient reason not to undertake regularisations.

Regularisation practices in individual countries and NGO recommendations

As has been shown above, NGOs generally criticise the absence of legal migration channels and the restrictive nature of existing immigration legislation, which create the need for regularisation. However, NGOs also see major deficiencies in the use of regularisation measures in individual Member States. Thus, in Austria, NGOs generally criticise the very restrictive use of humanitarian stay to regularise migrants. Similarly, the Czech NGOs lament the absence of any serious regularisation mechanisms which implies that regularisation is only possible in very few individual cases, by using general provisions in immigration legislation. Although Dutch NGOs which have responded to the questionnaire welcome the latest regularisation programmes for rejected asylum seekers in the Netherlands, they note that the programme targeted only a specific group of persons. In addition, they severely criticise the restrictive use of humanitarian stay – the only permanent regularisation mechanisms in the Netherlands – which, they argue, leaves a sizeable number of persons in an irregular situation: "The new regularization of ex-asylumseekers (pardon) in our country is a very generous project, unfortunately it is only for a specific target group (not 'general', as most non-asylumseekers complain). (2) We used to have a three-year rule, meaning that when an admission-procedure took more than 3 years, the applicant was granted a stay permit: unfortunately this rule has been abolished. No other regularization mechanism exists nowadays, apart from the application 'on humanitarian grounds' which is only seldom granted."[97] A Belgian NGO complains that the new criteria on individual regularisations that were

[94] Schweizerischer Evangelischer Kirchenbund SEK, response, ICMPD NGO Questionnaire, 5 May 2008

[95] Counselling Centre for Citizenship/ Civil and Human Rights, response, ICMPD NGO Questionnaire, 4 May 2008

[96] La Strada International LSI, response, ICMPD NGO Questionnaire, 8 May 2008

[97] Stichting LOS (Landelijk Ongedocumenteerden Steunpunt), response, ICMPD NGO Questionnaire, 21 April 2008.

announced in the government Accord of March 2008 have not yet been put into practice.[98] A German NGO notes that "as regularisation policy in Germany is limited to providing a right to stay to persons who have been in a toleration status for a long period of time, that is persons without a right to stay but who are documented, a large number of persons fails to get access to their most fundamental rights."[99]

Box 5: Migrants Rights Centre Ireland - Bridging Visa

What is it? A temporary 6-month permission to remain

Target group: Migrants from outside the EU who have entered Ireland lawfully but have become undocumented for reasons beyond their control (workplace exploitation, deception, or unexpected redundancy).

Needs

- Estimation of the eventual size of the target group
- Lack of official mechanism for temporary permission to remain dealing with the situation
- Dealing with bureaucratic procedures: some individuals have been able to petition the DJELR for a temporary permission to remain and have received it, but this is slow and torturous and can take up years or more. There are no defined criteria or transparency regarding decisions.

Expected results

The Bridging Visa will allow beneficiaries to

- Have a new work permit application processed;
- Access social benefits and services for which they have contributed;
- Feel free to come forward and report exploitation and abuse without fear of deportation;
- Have the opportunity to visit their families back in their home countries and
- Get back into the system and on course to living and contributing to Irish society

Source: Migrant Rights Centre Ireland, Leaflet and FAQs on the Bridging Visa campaign, online at: http://www.mrci.ie/policy_work/IrregMigrant_UndocuMigrant.htm

In Greece, the main problems associated with current regularisation practices are found to be bureaucratic procedures, high fees, and onerous documentation requirements: "The most recent regularisation has been strict and with too many formal requirements, a hybrid of a general and a very limited regularisation. In fact, less than 200,000 people have applied, despite the favourable measures adopted for migrant youth and children after pressure by NGOs and the Ombudsman. All the past 3 regularisations have in common the amnesty of the employers and the paradox of obliging exclusively migrant workers to pay [significant] and not refundable social security contributions and hefty fees in order to regularise themselves."[100] Another Greek NGO adds: "[R]egularisation [policies] in Greece [can be] characterised as ineffective. The main reason of this ineffectiveness is the incoherence of the measures and the absence of systematic information of those eligible. Although we agree in general with the connection between the regularisation and the time of presence of the immigrants in the country we are

[98] Centre des Immigrés Namur-Luxembourg ASBL (Antenne de Libramont), response, ICMPD NGO Questionnaire, 5 May 2008

[99] Flüchtlingsrat im Kreis Viersen e.V., response, ICMPD NGO Questionnaire, 21 April 2008

[100] HLHR, response, ICMPD NGO Questionnaire, 29 May 2008

convinced that the ways with which the Greek laws call the immigrants to prove their presence in the country create more problems than they solve. In addition, over the least years there has been no information campaign for immigrants nor any mechanism for their information. This political choice of the state shows that its target is not the 'regularisation" of those who normally have a right to it."[101] In Portugal and Spain, NGOs generally positively evaluate government policies on regularisation, but see some room for improvement, including reducing some of the documentary requirements for regularisation programmes or doing away with fines that regularised migrants have to pay in Portugal. However, there are also more fundamental concerns. Thus, ACCEM, a Spanish NGO, observes that "although the Spanish immigration law foresees different paths to regularisation, in the praxis they are not sufficient." Among the problematic areas it identifies are: a) eligibility criteria; b) required documentation; c) conditions of continuous stay; d) delays in processing the applications; and e) regional differences resulting from different implementation of regularisation measures by provinces. The NGO responses suggest various ways forward. First, NGOs argue that they – along with other stakeholders – should be involved in designing any policies on regularisation at the national level, not least since NGOs are closest to migrants in an irregular situation and have the best knowledge of the needs of irregular migrants. Generally, NGOs do support (permanent) regularisation mechanisms, in particular for hardship cases. An interesting proposal for a 'bridging visa' that would be available for irregular migrants who have been legal residents (but have lost their legal status for reasons beyond their control) comes from an Irish NGO. The proposal, which is supported by the Irish Confederation of Trade Unions, is presented in Box 5 (above).

Suggested target groups for regularisation measures

Table 8, overleaf, summarises NGO suggestions of potential target groups for regularisation measures. The target groups are presented country-by-country, rather than as a synthesis – as the target groups indicated by NGOs can also be read as broader indications of particularly problematic categories of third country nationals in individual countries. Switzerland has been included in the table, since the context for irregular migration – generally speaking – resembles that of countries of the European Union. As can be seen from the table, the most often-cited category is that of rejected asylum seekers, followed by particularly vulnerable groups, notably victims of trafficking, minors and other family members, including family members of nationals. This indicates that NGOs consider irregular migrants liable to be deported (if we generalise the notion of rejected asylum seekers) as being a major category of concern in virtually all countries from which we have received responses. Furthermore, it suggests that current state practices, notably reliance on return as the only viable policy option, is seen as seriously wanting from the perspective of NGOs. Similarly, vulnerable persons, although probably relatively insignificant in quantitative terms, are seen as an important (suggested) target group for regularisation measures, and indeed have been an important category of beneficiaries of past regularisations for humanitarian reasons. What is perhaps most surprising is the extent to which family members, including family members of legal residents and nationals, and particularly minors have been identified as a major group of concern.

[101] ANTIGONE, response, ICMPD NGO Questionnaire, 29 May 2008

Towards a European policy on regularisations?

In general, NGOs are supportive of adopting policies on regularisation at the EU level. According to the responses collected in the questionnaires, a policy on regularisation potentially could enhance the rights of irregular migrants, could define minimum standards and provide common definitions of regularisation and could help fight social exclusion and exploitation. However, there are also various concerns. Thus, NGOs argue that there is the danger that any EU level regulations could lead to more restrictive policies actually preventing, rather than promoting the use regularisation as a policy tool. In another respect, EU level policies might be problematic in that they might risk insufficiently taking into account the specificities of individual countries.

Table 8: Suggested target groups for regularisation measures

Austria	Long-term asylum seekers, irregularly staying spouses of Austrian nationals, victims of legal changes
Belgium	Long-term asylum seekers (4-5 years), persons with strong attachments to Belgium (families with children at school, integration, local ties), persons with long residence in Belgium (5 years and longer)
Czech Republic	Long-term asylum seekers, persons with long de facto residence who were unable to renew their permits, irregularly staying spouses of Czech citizens, persons who lost their status as a result of restrictions following from Act No. 326/1999 Coll. on the residence of aliens in the Czech Republic, persons who lapsed into illegality because of gaps in immigration legislation and/or because of administrative errors
France	Rejected asylum seekers
Germany	Traumatised war refugees (e.g. from Iraq and Afghanistan), unaccompanied minors, minors in an irregular situation who were born on German territory and raised in Germany, victims of serious assaults, victims of forced prostitution and trafficking, exploited persons, tolerated persons
Greece	War refugees, persons fleeing racism in country of origin; children born and raised in Greece and in an irregular situation, persons who have resided in Greece for long periods of time and are integrated, persons who failed to renew their permits – often for reasons beyond their control, rejected asylum seekers, family members of Greek nationals
Ireland	Third country nationals who have fallen out of the employment permit system for reasons beyond their control; persons from non-visa countries who work irregularly because of unavailability of employment permits; failed asylum seekers
Netherlands	Persons effectively unable to return to their country of origin, persons with long residence in the NL, in particular persons with family members in the NL, vulnerable groups (physically or mentally ill persons, minors)
Portugal	Victims of trafficking, persons with long residence in Portugal who are integrated in Portugal and are employed
Spain	Rejected asylum seekers who are unable to return to their country of origin, persons who have developed ties to Spain, family members of legal residents, victims of human trafficking, persons with serious health problems which cannot be treated in the country of origin/ who don't have access to health care in the country of origin, vulnerable persons, minors who either have no possibility to return or in whose cases return is not advisable, victims of criminal abuse
Switzerland	Vulnerable persons (victims of violent crimes, victims of trafficking, pregnant women, women in general, elderly persons, children); long-term asylum seekers, persons who cannot be returned; domestic workers and their children, persons who lost their legal status

Source: ICMPD NGO questionnaires

Thus, NGOs argue, Member States should have some flexibility in responding to irregular migration and migration more generally. Antigone, a Greek NGO, emphasises that any legislation to be developed on regularisations needs to be based on a 'good practice' model: "A common European policy should take place only if the best practices (…) and the maximum standards of protection of migrants could be guaranteed as a content of a possible EU directive on regularisation."[102] In a similar vein, another Greek NGO warns of developing strong regulations at the European level and instead argues in favour of evaluatory structures: "The great variations between many EU Member States, especially between North/South, create contradictions which often lead to compromises with the result that important national measures are missed. Nevertheless, there is a need for common policies. These policies should put great emphasis on the evaluation and the creation of structures which can be registered and intervene where appropriate."[103]

Measures suggested by NGOs include: defining the legal status of regularised persons, providing minimum standards for regularisation procedures, a permanent regularisation commission that would be composed of various stakeholders (including the judiciary and NGOs), promotion of regularisation mechanisms, exchange of experiences and best practices, the definition of basic regularisation principles, strengthening access to international protection and improving the asylum procedure (for example, by setting limits to the length of the procedures), and finally, agreements on regularisation mechanisms for particularly vulnerable groups.

Generally, NGOs support a debate on regularisation policies on the European level – a debate in which NGOs should have a crucial role. However, NGOs do not necessarily see a need for developing strong legislative instruments on the EU level. As one Czech NGO argues; "issues related to regularisation programs and mechanisms must be discussed at a European level – especially with respect to the specific impact (both positive and negative) of regularisation policies that have already been implemented and with respect to the mutual sharing of experiences. In our opinion, it isn't necessary to have a common approach for regularisation programs and mechanisms on a Europe-wide level and we believe that these issues should fall within the competency of the individual member states. Our view is that the adoption of a common European approach to the issue of regularisation could well end up having a rather negative impact consisting of the attempt of the opponents of regularisation to minimize the range of options, which regularisation provides, or the opponents could end up being able to effectively find support for a general ban on regularisation programs across Europe."[104] The need for a thorough debate on regularisation is also stressed by a Belgian immigrant association: "I think the keyword here is participation by all the stakeholders (including the undocumented themselves) not just the host countries in formulating, implementing (monitoring and follow-up) and evaluating policies, programs and mechanisms. Migrants have something to contribute."[105]

[102] ANTIGONE, *op. cit.*
[103] Greek Migrants Forum, response, ICMPD NGO Questionnaire, 30 May 2008
[104] Counselling Centre for Refugees/ Organization for Aid to Refugees, response, ICMPD NGO Questionnaire, 30 April 2008
[105] Samahan ng mga Manggagawang Pilipino sa Belgium, response, ICMPD NGO Questionnaire, 13 May 2008

In conclusion, NGOs clearly see a role for the European Union in regularisation policy and welcome a debate on regularisation on the European level. Although there are concrete proposals for possible policy measures that could be adopted on the European level, NGO responses suggest that the main priority at this stage should be to open a debate on regularisation practices, which should focus on the exchange of experiences, the evaluation of past and ongoing regularisation measures and on the development of common principles and guidelines for regularisation practices.

5.4.3 Position of NGOs on the European level

In addition to national level NGOs, there are a number of organisations on the European level which have formulated policies and recommendations regarding regularisations. Among these, PICUM – *Platform for International Cooperation on Undocumented Migrants* – is probably the best-known organisation and one which sees advocacy for the rights of undocumented migrants as its core mandate.

In its extensive 2005 report on "10 ways to protect undocumented migrant workers",[106] PICUM argues that regularisation is in itself not a sufficient but a necessary tool to comprehensively protect undocumented migrant workers and improve their rights. This said, the report argues that undocumented migrant workers do have, and should have, basic social, employment and human rights and are in a position to assert these rights: "Nonetheless, there are many benefits for undocumented workers – as well as for society on the whole – if they obtain legal residence status."[107] Regularisation is beneficial to society at large because "[h]aving a large group of people working in an informal economy undermines the economy as a whole. Regularizing undocumented workers is a way of combating the informal economy while at the same time improving the lives of these workers. Furthermore, regularization creates more visibility of the target group that social policies are meant to protect but who, because of their irregular status, are denied this protection."[108]

Since, as the report argues, lack of legal status is a "license to abuse", regularising migrants in an irregular situation is a necessary, if insufficient, step to fight some of the consequences of illegality. However, "[a] comprehensive solution goes beyond the regularization of workers by tackling the reason why these low wage sectors always rely on undocumented workers."[109]

In a joint statement on the Commission's communications on policy priorities in the fight against illegal immigration of third country nationals, European Christian Churches and Church organisations[110] argue for a comprehensive approach towards

[106] Platform for International Cooperation on Undocumented Migrants (Picum) (2005): *Ten Ways to Protect Undocumented Migrant Workers*. Brussels: Picum, available online at http://www.picum.org/LABOR/PICUM%20Ten%20Ways%20to%20Protect%20Undocumented%20Migrant%20Workers.pdf

[107] *Ibid.* p.99

[108] *Ibid.* p.102

[109] *Ibid*. p.100

[110] Caritas Europa, Churches Commission for Migrants in Europe (CCME), Commission of the Bishops' Conferences of the European Community's Working group on Migration (COMECE),

illegal migration. While acknowledging the role of border control and return, the organisations warn against the exclusive reliance on enforcement measures and, amongst other proposals, recommend the opening of legal avenues for immigration and the use of regularisation as an alternative to return. In addition, the joint statement calls for the rapid adoption of the 1990 UN *Convention on the Protection of All Migrant Workers and Their Families*, stressing the need to protect the rights of irregular migrants and combat discrimination and racism targeted at undocumented migrants. Finally, the statement critically reviews the lack of involvement of social actors in developing policies on irregular migration:

"Unfortunately cooperation with civil society does not seem to be in the focus of this communication and the distinctive role and experience of churches and church related agencies in addressing complex issues resulting from migration are not fully acknowledged. It is striking that NGOs are only mentioned as information-providers on undocumented workers, not as partners in ensuring a human rights-based policy approach. We are deeply concerned about the misconception regarding the role of NGOs, churches and church agencies in the context of setting up a common European migration policy."

In an earlier statement of March 2006, European Churches voice their concern that provisions of the 'Return Directive' might render it impossible to carry out regularisation campaigns, which, according to Churches, "have proved to be an important instrument for tackling the complex issue of irregular migration."[111] The Churches also note that return can only be an element in a comprehensive approach and particularly note the importance of ensuring equal access to international protection in the territory of the Union. In the current context, the Churches see a danger that access to protection depends on mere chance, depending on whether persons in need of protection reach a country with high or low recognition rates, as the example of Chechnyan refugees shows.[112]

In a similar vein, the European Council on Refugees and Exiles (ECRE) highlights the need to ensure equal access to international protection across the EU. As a tool to access protection, ECRE supports the introduction of EU Protected Entry Procedures (PEPs): these are arrangements that would permit an individual to: (i) approach the authorities of a potential host country outside its territory with a view to claiming recognition of refugee status or another form of international protection; and (ii) be granted an entry permit in case of a positive response to that claim, be it

---

International Catholic Migration Commission (ICMC), Jesuit Refugee Service Europe (JRS-Europe) and Quaker Council for European Affairs (QCEA) (2006): *Comments on the European Commission's Communication on "Policy priorities in the fight against illegal immigration of third county nationals" COM (2006) 402 final*. Brussels

[111] Caritas Europa, Churches Commission for Migrants in Europe (CCME), Commission of the Bishops' Conferences of the European Community's Working group on Migration (COMECE), International Catholic Migration Commission (ICMC), Jesuit Refugee Service Europe (JRS-Europe) and Quaker Council for European Affairs (QCEA) (2006): *Comments on the European Commission's Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals COM (2005) 391,* Brussels, p.2

[112] *Ibid.*

preliminary or final.[113] According to ECRE, success in such a procedure should not depend on any particular links with the country of destination. ECRE also stresses that the specific procedures "should not undermine the situation of those with protection needs who arrive in Europe in an irregular manner and should not be considered as an alternative to resettlement. Furthermore, making a PEP application should also not prevent a person from seeking asylum on EU territory in the future."[114]

In a review of Member States' practices vis-à-vis persons who cannot be deported, ECRE observes that many people who cannot be returned may find themselves in 'limbo situations' – irregular situations with few or no rights and without any possibility of receiving support or permission to work. Thus, ECRE notes that in practice a return decision or procedure is often suspended but rarely followed by the granting of any status.[115] Against this background, ECRE recommends to provide rejected asylum seekers with the opportunity to apply for a permanent legal status if they "have lived in the receiving country for 3 years or more and consequently started to put down roots."[116] Referring to the Council of Europe report on regularisation programmes for irregular migrants,[117] ECRE notes that the report "has found that regularisation programmes can provide a solution for the human rights and human dignity of irregular migrants, as well as respond to labour market needs and promote increases in social security contributions and tax payments".[118]

[113] ECRE (2007): *Defending Refugees Access to Protection in Europe,* Available at: http://www.ecre.org/files/Refugees%20Access%20to%20Protection%20in%20Europe%20FULL.pdf, p.50
[114] *Ibid.* p.52
[115] ECRE (2005): *The Return of Asylum Seekers whose Applications have been Rejected in Europe*. Available at: http://www.ecre.org/files/return.pdf , p.26
[116] ECRE (2007): *Submission from the European Council on Refugees and Exiles in response to the Commission's Green Paper on the Future Common European Asylum System (COM (2007) 301).* Available at: http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/contributions/ngo/european_council_on_refugees_exiles_ecre_en.pdf , May 28 2008, p.20
[117] Council of Europe (CoE) Assembly, Regularisation programmes for irregular migrants, Doc 11350, 6 July 2007. Available at: http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc07/edoc11350.htm .
[118] ECRE 2007, Submission … p.20

6 International organisations

6.1 The scope of international law

6.1.1 UN Conventions

Despite the sovereign right of each state to regulate immigration of non-citizens into its territory, the provisions of 'customary international law' are binding even on non-signatories: such law pertaining to migrants includes the *Universal Declaration on Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Cultural and Social Rights*, and the *Optional Protocol to the International Covenant on Civil and Political Rights*. However, these instruments have little to say concerning non-nationals without legal residence: only the *International Convention on the Protection of the Rights of All Migrant Workers and Their Families* (ICRMW) extends basic human rights to undocumented aliens.

ICRMW, as of October 2008, had been ratified by no EU country. The Convention identifies some core rights that apply to all aliens, with an extended set of rights for those legally present. In this, it continues the approach taken in *ILO Convention 143* (see below). The core rights include such things as protection of personal property rights (Art. 15), basic legal and personal security rights, including the right to trial (Art. 16), rights of liberty and legal treatment upon its deprivation (Art. 17), basic legal rights (Arts. 18-21), conditions of lawful expulsion (Art. 22), employment and social security rights (Arts. 25-28), and the rights of children of migrants (Arts. 29-30). On the other hand, Art. 35 expressly precludes that the Convention implies any "regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation". Furthermore, Art. 69 does have some specific directions to states on how to deal with irregular migrants, amounting to the policy choice 'regularise or expel':

> ***Article 69***
>
> 1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.
>
> 2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

In an extended analysis of the obstacles to ratification of ICRMW,[1] the authors note specific national objections to the rights accorded to irregular migrants in the convention. Particularly, Italy would be obliged to deliver the substantial rights already guaranteed in other legislation (but largely unenforceable); the UK does not accept the principle of equal treatment of irregular workers (their contracts are viewed as illegal and unenforceable); the idea of rights for irregular immigrants is a taboo in Germany's public discourse; Poland and the UK consider that the Convention would be a 'pull-factor' for illegal migration flows; Spain is concerned about public reaction to announced rights for irregular migrants, while Italy seems to consider the Convention to be irrelevant or outdated as a policy issue.

For its part, the European Commission is taken to task in the report, for its 'criminalisation' of irregular migrants, with an overemphasis on security and labour market protection and a correspondingly de-emphasised context of social and fundamental rights for those caught up in what is now a common pattern of informal employment and/or residence across the developed world.

One further UN Convention that is relevant for this study is the 1989 *Convention on the Rights of the Child*. This has been ratified by all members of the United Nations other than the USA and Somalia. The Convention is probably part of customary international law, but regardless has an annual reporting mechanism and periodic scrutiny of states parties' practices regarding compliance with the Convention. Of particular note, Article 2(1) forbids discrimination against any child on the basis of his parents'status, including illegal status; Article 3(1) states that:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Thus, there are clear limitations imposed on states in their management of the children of irregular migrants and the treatment of families with an irregular status: access to schooling and healthcare are primary areas of concern, along with state practices concerning regularisation and expulsion.

6.1.2 ILO Conventions

The principal instruments of relevance are the *Migration for Employment Convention (Revised)* (C 97) of 1949 and the *Migrant Workers (Supplementary Provisions) Convention* (C 143) of 1975. The Conventions are binding only on those countries that have ratified them. As of July 2008, for the 1949 Convention, there are 47 states parties, including Belgium, France, Germany, Italy, the Netherlands, Portugal, Spain and the UK. For the 1975 Convention, there are 23 states parties, including EU members Cyprus, Italy, Portugal and Sweden. The 1949 Convention essentially deals only with legally recruited migrants, although it does have various provisions that may conflict with existing policies on migrant returns (e.g.

[1] MacDonald, E. and Cholewinski, R. (2007): *The Migrant Workers Convention in Europe*, Paris: UNESCO

repatriation of migrants with more than five years of residence should "in principle" not occur). The 1975 Convention was drawn up specifically to address the growing problem, evident even in the 1970s, of irregular migration. In particular, Part I deals with illegal work, requiring prosecution of employers as well as workers, and stipulating equality of treatment for illegal migrants. Also, loss of employment is not seen as an adequate ground for withdrawal of a work or residence permit. Most of the provisions of this Convention are, more or less, replicated in the UN Convention of 1990.

6.2 Regional legal instruments

The Council of Europe, formed in post-war European cooperation, was established partly to maintain and reinforce human rights after the horrors of Nazism. The Council functions mainly as an intergovernmental organisation for (currently) 47 European states. Treaties, either conventions or agreements, are concluded within a multilateral framework: once opened for signature, they constitute straightforward international treaties and not legal instruments of the Council of Europe. Furthermore, the treaty rights are conferred solely on nationals of other contracting parties. The exception to this is the *European Convention on Human Rights* (ECHR), whose control machinery includes a commission and a court to whose jurisdiction members have agreed.

The ECHR has without doubt had the most impact; for migrants, however, other important legislation includes the *Convention on Establishment*, 1955; the *European Social Charter*, 1961; the *European Convention on Social Security*, 1972; and the *Convention on the Legal Status of Migrant Workers*, 1977. With the exception of the ECHR, the conventions are applicable only to legally resident migrants who are nationals of contracting states: however, they do set standards concerning the conditions and maintenance of legal status, such as state procedures for the issuing of residence permits.

What is important for EU policy on irregular migrants is that not only has the *European Court of Human Rights* (ECtHR) recently started to address the rights of such migrants, but that the Convention itself (and implicitly the jurisprudence of the Court) is, according to Article 6(2) of the (Consolidated) Treaty on the European Union, to be considered as part of the *Acquis Communautaire*. Indeed, the gap between EU and ECHR laws has narrowed substantially in recent years, such that some sort of symbiotic relationship – rather than uneasy competition – is gradually emerging.

Recent ECHR case law has "considerably extended the protective scope of Article 8 ECHR by granting autonomous human rights protection to the long-term resident status independent of the existence of family bonds…effectively granting several applicants a human right to regularize their illegal stay."[2] This new direction of the Court's jurisprudence has come about partly through having to address the rights of long-term ethnic Russian residents of several Baltic states, who had been refused

[2] Thym, D. (2008), 'Respect for private and family life under Article 8 ECHR in immigration cases: a human right to regularize illegal stay?', *International and Comparative Law Quarterly*, 57, p. 87

citizenship of Latvia and Estonia. After the case of *Sisojeva et al. v. Latvia,*[3] various administrative courts in Germany relied upon the new case law to oblige the authorities to regularise the illegal stay of rejected asylum-seekers who had been living in a 'tolerated' fashion for many years.[4] However, it has also been extended to the legal and social situation of immigrants in Western Europe. The cases of *Mendizabal v. France*[5] and *Da Silva & Hoogkamer v. Netherlands*[6] concern, respectively, the conditions for granting residence permits and the regularisation of illegal stay.

Two recent instruments of European Union policy on migration – the directives on family reunification and on long-term residence – are in need of human rights standards, since the directives themselves are little more than instructions for Member States. The recent case law of the ECtHR, particularly that concerning Article 8, is almost certain to be the guiding force in any ECJ interpretations of the EU directives and perhaps can lead to "structural alignment of ECHR standards and EU legislative instruments".[7]

In a first ruling on the family reunification directive (case C 540/03 (judgment of 27 June 2006), the ECJ dismissed an action brought by the European Parliament for annulment of the directive. The ECJ considered the directive as being consistent with the provisions of the *European Convention of Human Rights* and the jurisprudence of the ECtHR. Thus, the ECJ found that that the directive cannot be regarded as running counter to the fundamental right to respect for family life, to the obligation to have regard to the best interests of children or to the principle of non-discrimination on the grounds of age. The court argued that the attacked provisions preserve a limited margin of appreciation for Member States which is no different from that accorded to them by the ECtHR in its case law relating to the right to respect family life, for weighing competing interests in each factual situation.

6.3 The positions of international organisations on irregular status and migration policies

Several of the international organisations whose mandate covers the protection of migrants have issued various statements in the form of reports, resolutions and recommendations on regularisation practices and related issues, which we review in the following. The organisations whose positions are reviewed are: ILO, GCIM, CoE and UNHCR.

6.3.1 Regularisation and irregular employment

According to the *International Labour Organization* (ILO), regularisation programmes can serve to combat the informal labour market and can bring economic benefits for the host country in terms of increased taxes and social security contributions. Nevertheless, they are "complex undertakings" as

[3] ECtHR, judgement of 15 January 2007 (GC), No. 60654/00
[4] Thym, D. (*2008.*), *op. cit.* p. 105
[5] ECtHR, judgement of 17 January 2006, No. 51431/00, *Ariztimuno Mendizabal v. France*
[6] ECtHR, judgement of 31 January 2006, No. 50435/99, *Rodrigues Da Silva & Hoogkamer v. The Netherlands*
[7] Thym, D. (*2008.*): *op. cit.*, p. 111

"authorities must convince the migrants that it is to their advantage to become regularized, but they cannot divulge their plans too far in advance, since this might immediately encourage more immigration".[8]

The *Global Commission on International Migration* (GCIM) also supports the view that regularisation programmes are "complex undertakings" – they can promote additional irregular migration, if states establish them on an ongoing or rolling basis; however, regularisation measures have provided many migrants with irregular status with a chance to find a place in the economies and societies of their host countries.[9] The Commission makes a distinction between selective regularisation programmes (offering legal status to migrants with irregular status, who have been present in a country for significant periods of time, who have found employment and whose continued participation in the labour market is welcomed by the state and private sector) and amnesties, in which migrants with irregular status are given legal status in an across-the-board manner.[10] GCIM recommends that regularisation should take place on a case-by-case basis. The successful achievement of the aims depends on a "transparent decision-making process" with "clearly defined criteria for migrants to qualify for regular status". The criteria may include (i) applicant's employment record; (ii) language ability; (iii) absence of a criminal record and (iv) the presence of children who have grown up in the country; "in other words, those who have already achieved a substantial degree of integration in society".[11]

The *Council of Europe* (CoE) notes as well that regularisation programmes may have a subsequent 'pull effect' for further irregular migration.[12] However, these concerns may be exaggerated if other factors contributing to irregular migration are not taken into account. These factors refer to: geographical location, colonial history and linguistic ties, high level of demand for unskilled labour, narrow front-door for regular migration and difficulty in returning irregular migrants.[13] The Assembly also recognises that regularisation programmes offer the possibility to protect the rights of irregular migrants, to tackle the underground economy and to ensure that social contributions and taxes are paid.[14]

Similarly to the Global Commission on International Migration, the CoE distinguishes between regularisation programmes for specific groups of irregular migrants (exceptional humanitarian programmes, family reunification programmes, permanent or continuous programmes, earned regularisation programmes) and

[8] International Labour Organization (2004), I*nternational Labour Conference. Report 6. Towards a fair deal for migrant workers in the global economy*. Geneva. Available at: http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/rep-vi.pdf, p. 122, para. 401-402

[9] Global Commission of International Migration (2005), *Report. Migration in an Interconnected World: New Directions for Action*, Available at: http://www.gcim.org/attachements/gcim-complete-report-2005.pdf, p. 38, para. 34

[10] GCIM (2005): *op. cit.* p.38

[11] GCIM (2005): *op. cit.* p.38, para. 35

[12] Council of Europe (CoE) Assembly (2007): *Recommendation* 1807. *Regularisation programmes for irregular migrants*, para. 4

[13] Council of Europe (CoE) Assembly (2007): *Resolution 1568, Regularisation programmes for irregular migrants*, para. 13

[14] Council of Europe (CoE): Assembly *Recommendation, op. cit*., para. 4

general amnesties, which apply to all irregular migrants.[15] The Council advocates particularly for employer-driven regularisation programmes as a means of meeting the needs of a large number of irregular migrants, employers, trade unions and society in general. It supports also a process of earned regularisation, the benefits being that this

i will provide a pathway to permanent residency or citizenship for migrants through a points system (points would be awarded on an individual basis to migrants through knowing the language of their host country, paying taxes, having stable employment, participating in community life, etc);

ii has the potential to be self-selecting, since only those migrants who were truly motivated to stay would earn enough points, while those who were not would be forced to return home;

iii eliminates the need for large-scale one-shot programmes, since each individual country would determine who would be regularised on a case-by-case basis. Earned regularisation is considered to be "flexible, adaptive and responsive to local labour market needs and demographic realities".[16]

Furthermore, a regularisation process should be seen as part of a comprehensive strategy and "not as a measure of last resort when all other measures have failed".[17] That refers to improvement of bureaucracy of regularisation programmes, including:

i Comprehensive review of best practices and impacts;

ii Taking into account both the concerns of employers and migrants;

iii Improvement of publicity efforts (ensuring that publicity for the programmes reaches irregular migrants and that their benefits are explained carefully to the media and to the public in general);

iv Administrative preparedness – strengthening the administration to be able to deal with the potential number of applicants for regularisation; minimum administrative requirements; guarantees against fraudulent procedures.[18]

[15] Council of Europe (CoE): Assembly *Resolution, op. cit.*, para. 9

[16] Council of Europe (CoE) Assembly (2007): *Regularisation programmes for irregular migrants*. Report Committee on Migration, Refugees and Population. Rapporteur: Mr John Greenway, United Kingdom, European Democrat Group. Doc. 11350. Available at: http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11350.htm, para. 120

[17] Council of Europe (CoE) Assembly (2006): *Human Rights of Irregular Migrants*. Report Committee on Migration, Refugees and Population. Rapporteur: Mr Ed van Thijn, Netherlands, Socialist Group. Doc. 10924. Available at: http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10924.htm , para. 127

[18] CoE Assembly 2007, Report, *op. cit.*, para. 107-111

The ILO also advocates an individual right to 'earned adjustment' as an alternative, or complement, to more general 'unique' regularisation measures. It targets irregular migrant workers who cannot be removed for legal, humanitarian or practical reasons and who have demonstrated that they have a prospect of settling successfully in the host country: "Migrant workers with irregular status may be said to earn a right to legal status if they meet certain minimum conditions: they must be gainfully employed, they must not have violated any laws other than those relating to illegal or clandestine entry and they must have made an effort to integrate by (for example) learning the local language".[19] ILO notes that the successful achievement of aims depends on the involvement of all groups that will be affected: that includes migrants themselves through publicity and information programmes via channels that migrants trust, such as civic and religious organisations.[20] Furthermore, regularisations work best when the process is "straightforward" – if the requirements are too demanding, time-consuming or costly, they will discourage many of those who are eligible. "Regularization should instead take the form of a simple act at the lowest possible level of administration, demanding very little documentation and requiring neither the support of a lawyer nor recourse to the courts."[21]

The Council of Europe has also defined measures accompanying regularisation programmes, which refer to the following:

i Combating irregular employment and informal economy (reinforcing the labour inspectorate and establishing systems of fines and punishments);

ii Strategies to encourage the integration of irregular immigrants who have been regularised;

iii Working co-operation with countries of origin (tackling the push factors of irregular migration, whether these be economic or environmental, including co-development and other measures);

iv Tightening visa and/or border controls;

v Widening the front door to regular migration (more open admission policies that increase legal access to labour markets);

vi Considering impact on families (impact of migration enforcement on families; perpetuation of irregular status on the second generation of immigrant families and its effects on the educational attainment, potential income earnings, health, and integration of children into the host country);

vii Co-operation with other governments to harmonise policies: "the Council of Europe and the European Union should work toward establishing a common principle of regularisation";[22]

[19] ILO (2004): *op. cit.* p. 120, para. 399
[20] ILO (2004): *op. cit.* p. 120
[21] ILO (2004): *op. cit.* p. 120
[22] Council of Europe (CoE) Assembly 2007: *Report*, *op. cit.*, para. 112-119

viii Protecting the victims of trafficking;

ix Enabling the regularisation of irregular migrants and ensuring full integration into society when they are unable to return to their country of origin.[23]

6.3.2 Migration management strategies and irregular migration

According to the ILO, the prevention of irregular migration depends on the creation of more legal migration opportunities. In this sense, intensification of border controls – "more policing" instead of "better policies" – is not the solution.[24] There is a recognised need for a "comprehensive and co-ordinated policy approach which attempts to tackle all dimensions of the phenomenon", engaging "not merely the participation of governments, but also the social partners and civil society".[25] The proposed approach incorporates measures to reduce irregular labour migration at all stages of the migration process:

i Activities in countries of origin, as well as inter-state co-operation (public information/educational campaigns that inform potential migrant workers on the risks of irregular migration; capacity building to strengthen institutional structures - policies and measures adopted by countries to protect their workers while seeking more employment opportunities abroad, negotiation of bilateral labour agreements.

ii Border controls and the articulation of a viable visa policy (a minimum of bureaucratic obstacles and/or red tape enabling migrants to enter and take up employment.

iii Measures and sanctions against those who facilitate irregular migration.

iv Protection for irregular migrant workers (minimum guarantees for the protection of irregular migrants as an integral aspect of a preventive approach).

v Opening up more legal channels for labour migration –policies to establish legal migration methods and procedures that are equitable and sufficiently attractive to deter potential migrants from travelling by irregular means.[26]

[23] Council of Europe (CoE) Assembly 2007: *Resolution*, *op. cit.* para. 20-21
[24] ILO (2004): *op. cit.*, p. 61, para. 199
[25] OSCE, IOM, ILO (2006): Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination. Vienna. Geneva. Available at: http://www.ilo.org/public/english/protection/migrant/download/osce_handbook_06.pdf , p. 161, 165
[26] *Ibid.,* pp. 174-175

GCIM observes that "strengthened border controls and visa restrictions have not always been effective in preventing irregular migration".[27] It recognises the need for a long-term approach based on a combination of measures. Border control policies should be accompanied by:

i additional information programmes, providing prospective migrants with a better understanding of the risks entailed in irregular migration;

ii guidance in finding regular migration opportunities;

iii capacity-building programmes, involving training and institutional development;

iv introduction of new legislation, policies and practice, especially in countries that have only recently been confronted with the issue of irregular migration;

v interstate co-operation.[28]

GCIM has consequently now proposed several activities. States and other stakeholders "should engage in an objective debate about the negative consequences of irregular migration and its prevention"; regional consultative migration processes should include irregular migration in their agendas; states should provide additional opportunities for regular migration (when gaps in the labour market need to be filled, for example, and to establish clear and transparent criteria for the recruitment of foreign workers); appropriate measures taken against employers who engage migrants with irregular status; states "should establish fast, fair and efficient refugee status determination procedures, so that asylum seekers are quickly informed of the outcome of their case"; and in situations of mass influx, "states should consider offering the new arrivals prima facie refugee status".[29]

For the Office of the **United Nations High Commissioner for Refugees (UNHCR**), the primary point of interest in irregular migration and its management is the intersection between refugee protection and irregular migration. In the UNHCR's view, the main challenge for refugee protection derives from two interrelated facts. First, most contemporary refugee movements today consist of *mixed flows;* what is more, the motives for migrating individuals are also mixed, and increasingly so. A second challenge is related to the nature of refugee movements, which are increasingly irregular, take place without the requisite documentation and frequently involve human smugglers and traffickers. In this context the Office recognises the need for a legal and procedural framework that can combine migration management with the protection of refugees: "[M]igration management must take due account of international refugee protection obligations, including the importance of identifying people in need of international protection

[27] GCIM (2005): *op. cit.* p. 35
[28] GCIM (2005): *op. cit.* p. 35, para. 17-18
[29] GCIM (2005): *op. cit.* pp. 33-41

and determining appropriate solutions for them"[30]. According to UNHCR, mixed migration towards the European Union's borders cannot be addressed by "enhanced border and migration control measures alone", but should involve "close co-operation among states within the European Union, as well as with governments of countries of transit and origin."[31]

In 2006 the Office developed a ten-point action plan of protection tools, especially relevant for refugees who are at risk of refoulement, human rights violations and other potential hazards. The framework could be developed into broad migration strategies and could have an impact on the introduction of regularisation measures. The action plan proposes mechanisms to make asylum proceedings more flexible and transparent and which could, subsequently, reduce backlogs in applications. The measures include: (i) the establishment of protection-sensitive State entry systems (training of border guards on how to respond to asylum applications); (ii) the development of appropriate reception arrangements (registration of new arrivals and provision with temporary documentation) and (iii) the launch of mechanisms for profiling and referral (initial determination and counselling in order to establish whether people wish to seek asylum. and to identify other available options, including return, regularisation or regular onward migration.[32]

In some situations, the UNHCR argues, refugees and other relevant persons of concern could profit from migrant-worker programmes or temporary work permits. Similarly, refugees could benefit from legal onward movement from the host State to a third country through regular migration channels.[33]

Regarding persons who do not meet the criteria for refugee status, UNHCR proposes to take into consideration alternative temporary migration options: "these could variously allow them to stay legally in the country of arrival, or to move to a third country for humanitarian reasons, or for the purposes of work, education or family reunion. Efforts to address mixed population movements should also explore a place for regular migration options, temporary or even longer term."[34]
In its commentary on the Commission's 2007 Green Paper on the future common European asylum system also sees a need for a common European policy on regularisation: "While it is beyond the scope of UNHCR's mandate to comment on regularization measures for persons who are not in need of international protection, it is clear that this is an area in which increased EU coordination is needed."[35]

---

[30] UNHCR (2007): *Observations on the occasion of the First Euro-Mediterranean Ministerial Meeting on Migration Algarve, 18-19 November 2007*. Available at: http://www.unhcr.org/protect/PROTECTION/473d554b2.pdf , p.1
[31] UNHCR (2007): *Implementing the Ten-Point Plan of Action in Southern Europe: Activities Undertaken by UNHCR to Address Mixed Migration in the Context of the Mediterranean/Atlantic Arrivals*. Available at: http://www.unhcr.org/protect/PROTECTION/452ce4cd4.pdf, p.1
[32] UNHCR (2007): *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, revised January 2007, http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf, p.3
[33] UNHCR (2007): *Global Appeal 2008-2009*; Available at: http://www.unhcr.org/publ/PUBL/474ac8c12.pdf, p.28
[34] UNHCR (2007): *Refugee Protection and Mixed Migration*, *op. cit.*, p.3-4
[35] UNHCR (2007): R*esponse to the European Commission's Green Paper on the Future Common European Asylum System*, available at http://www.unhcr.org/protect/PROTECTION/46e53de52.pdf , p.27

Finally, the Office observes that there is considerable confusion in the European media about terms such as "refugees", "asylum-seekers", irregular (or "illegal") migrants, and "economic migrants". Moreover, asylum-seekers and refugees are often cited in close association with crime and terrorist acts. Consequently, UNCHR calls on mass information campaigns in countries of origin, transit and destination, in order to discourage irregular migration, warn of the dangers of smuggling and trafficking, and focus on legal migration options.[36]

[36] UNHCR (2007): *Implementing the Ten-Point Plan of Action*, *op. cit.*, p.9

7 The EU policy framework – relevant legislation and principles

7.1 Introduction

With the Amsterdam Treaty of 1997, the European Union was granted wide-reaching powers with respect to immigration. Thus, Article 63 (3) of the Treaty stipulates, among other things, that the Council "shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt…measures on immigration policy within the following areas: (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion, (b) illegal immigration and illegal residence, including repatriation of illegal residents."

Regularisation, defined as any state mechanism through which third country nationals who are illegally residing or who are otherwise in breach of national immigration rules in their current country of residence are granted a legal status – clearly falls within the scope of the powers granted to the European Union. Given the close link of regularisation practices with international protection in a majority of EU Member States (including asylum, subsidiary and temporary protection), the Union's powers regarding refugees and asylum provide an additional rationale for considering regularisation as a policy area falling in principle under the competence of the European Union, as defined by the Treaty. However, to date, the European Union has not explicitly dealt with regularisation. Against the background of the history of policy development in the area of migration and asylum, this is not at all surprising, as regularisation touches the core of immigration policy – namely, defining the conditions and procedures for admission of third country nationals, even if regularisation admits third country nationals in an exceptional and post-hoc manner.[1] In the absence of an explicit policy on regularisation, the following discussion will undertake a review of the existing policy framework. Rather than providing a comprehensive overview of relevant legislation and its interlinkages with regularisation, which is beyond the scope of this chapter, we will review general objectives of European policies on migration and international protection and will identify basic normative principles enshrined in the existing policy framework which relate to regularisation or on which European policies on regularisation could be built. We will start with a brief review of European Union policies and thinking on illegal migration, mainly on the basis of various communications adopted by the European Commission and then will identify a number basic normative principles underlying the current policies on migration and asylum.

[1] So far, Member States have largely resisted any attempts for harmonising rules and procedures for admission of third country nationals outside the context of family reunification and international protection. Not unsurprisingly, the ambitious proposal for a directive "on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities", which the Commission adopted in 2001 (COM(2001) 386 final), did not find sufficient support from Member States.

7.2 European Union approaches to illegal migration and the regularisation option

The following review[2] does not purport to provide a comprehensive review of European Union policies on illegal migration. Certain aspects of broader European Union policies on illegal migration, notably return policies, have already been addressed in the preceding chapters and will be taken up again in §8. The objective of this chapter is more limited: it aims to provide an overview of the evolution of Commission thinking on the role of regularisation as a policy tool and thus essentially is intended as a background to the current discussions. Suffice it to say that the interlinkages between broader policies on illegal migration and regularisation have so far received rather little attention and, in particular, this issue has not been addressed explicitly in any of the communications on EU policies concerning illegal migration.

As has been noted in §2, the Commission has for some time taken an interest in regularisation policy. Thus, the first major comparative study on regularisation practices in selected EU Member States (conducted by the Odysseus network) was financially supported by the European Union and indicated that regularisation was, if not an issue regulated at the European level, clearly an issue of concern in the context of the development of European Union migration policy. However, the interest in regularisation did not immediately translate into an explicit and open consideration of regularisation as a policy option in the Commission's proposals for the elaboration of policies on illegal migration.

In its 2000 Communication on a community immigration policy formulated subsequent to the Tampere council conclusions, the Commission stressed that efficient management of migration "requires action at all phases of movement of persons, in order both to safeguard legal channels for admission of migrants and for those who seek protection on humanitarian grounds while at the same time combating illegal immigration." [3] The Communication thus sees policies on illegal migration as a prerequisite for the development of more open policies on legal migration. The communication highlights the complexity of illegal migration and stresses the need for a comprehensive approach, without, however, mentioning regularisation as part of a possible policy approach: "The phenomenon of illegal immigration consists of a number of interlinked phases and each has to be tackled systematically with specific measures. These include action in source and transit countries, police co-operation to pool knowledge of trafficking operations which by their nature are international, action at the point of entry including border controls and visa policies, legislation against traffickers, help for victims and their humane repatriation."[4]

Although repeatedly referring to regularisation practices of Member States, the communication refrains from an evaluation of whether regularisation can be an effective policy tool to address irregular migration. By contrast, the Commission

[2] See for an earlier review Verbruggen, N. (2005): 'General Policy Trends Regarding Undocumented Immigration in the EU'. In:Heckmann, F., Wunderlich, T. (eds.): *Amnesty for Illegal Migrants?* Bamberg: efms pp. 33-37

[3] *Communication from the Commission to the Council and the European Parliament on a Community immigration policy*. COM (2000) 757 final, p.12

[4] *Ibid.*

communication on a common policy on illegal migration adopted a year later seems to suggest that, generally, regularisations are not an appropriate policy instrument and provides a principled argument that "[i]llegal entry or residence should not lead to the desired stable form of residence."[5] In the Commission's view, demand for low skilled workers and ready access to undeclared work are major factors driving illegal migration. Nevertheless, the communication argues, "illegal residents cannot be considered as a pool to meet labour shortages."[6] As a corollary, the emphasis of the communication's policy proposals lies in strengthening border management, including strengthening the common visa policy and adopting other preventative measures, improving and strengthening information exchange mechanisms and the development of common policies on readmission and return.

However, the Communication stresses that the fight against illegal migration should not compromise the ability to provide protection to those in need of international protection and observation of the rights of particularly vulnerable groups. "Measures relating to the fight against illegal immigration have to balance the right to decide whether to accord or refuse admission to the territory to third country nationals and the obligation to protect those genuinely in need of international protection.(…) [W]hatever measures are designed to fight against illegal immigration, the specific needs of potentially vulnerable groups like minors and women need to be respected."[7]

Whereas a subsequent Communication on policies on illegal migration adopted in 2003 basically follows the same line of thinking,[8] the Commission Communication on Immigration, Integration and Employment[9] adopted in the same year explicitly discusses regularisation as a possible policy option and thus diverges from the stance adopted in the two previous communications. In particular, it discusses regularisation in the context of broader policies on integration, arguing that "integration policies cannot be fully successful unless the issues arising from the presence of [illegal immigrants] are adequately and reasonably addressed." Thus, the Communication values the possible role of regularisation to integrate illegally resident third country nationals but also warns that regularisation may encourage future illegal immigration.[10] This – more positive – approach towards regularisation is also adopted in the Commission's Study on the links between legal and illegal migration, published in 2004.[11] The study acknowledges that "for pragmatic reasons

[5] *Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration* COM (2001) 672 final, p.6
[6] *Ibid.,* p. 6
[7] *Ibid.,* p. 7
[8] *Communication from the Commission to the Council and the European Parliament in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents* COM(2003)323) of 3 June 2003
[9] *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment*, COM (2003) 336 final
[10] *Ibid.,* pp. 25-26
[11] *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Study on the links between legal and illegal migration.* COM (2004) 412 final

the need may arise to regularise certain individuals who do not fulfil the normal criteria for a residence permit." The study notes the different grounds on which regularisation measures have been implemented and observes the close connection of regularisations on protection grounds and for humanitarian reasons with the asylum system, while noting that "large-scale" regularisation on employment grounds, amongst others, also indicates the presence of a certain demand for unskilled workers that cannot be satisfied by legal immigration."[12] Finally, the study notes some positive implications of regularisation programmes, including better population management, reducing undeclared work, and increasing tax revenues and social security payments. The study, however, also notes that the (long-term) effectiveness of regularisation measures has been questioned and that there may be other negative consequences. Despite these words of caution, the overall evaluation of regularisation measures in the study is positive.

In its Communication of 2006[13] on policy priorities in the fight against illegal immigration of third-country nationals, within which the present study was announced, the approach towards regularisation, by contrast, is again more reserved. The Communication notes that large-scale regularisations, in the context of the abolition of internal controls in the Schengen area and the introduction of a right to freedom of movement for long-term residents, may have implications for other Member States and proposes the establishment of a Mutual Exchange Mechanism (subsequently established). While generally indicating a more reserved approach towards regularisation, the relevant section of the Communication also provides an important justification for developing a policy on regularisation at the European level, which would leave open the option of undertaking regularisation measures. Thus, the Communication states that it is "the difficulties in *tolerating the sustained presence of significant numbers of third-country illegal immigrants* on their territories"[14] (our emphasis) which have led some Member States to implement regularisation measures. By implication, the Communication recognises that the *sustained presence of undocumented migrants* should indeed be considered a problem. Although the Communication, like previous communications and measures adopted by the European Union, clearly signals a preference for return, at the same time it suggests that inaction – in the event that return cannot be effected – is clearly not a viable option.

In the most recent Communication on principles, actions and tools for the further elaboration of a common European immigration policy of June 2008,[15] however, the reservation about large-scale regularisations is repeated and phrased in an unusually open manner, while regularisations are otherwise not discussed in any of the concrete measures suggested under the heading "Security – effective fight against illegal immigration". Thus, the Communication argues that "[i]ndiscriminate large-

[12] *Ibid.*, p. 10
[13] *Communication from the Commission on Policy priorities in the fight against illegal immigration of third country nationals*, COM (2006) 402 final, pp. 7-8
[14] *Ibid.,* p. 7
[15] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Common Immigration Policy for Europe: Principles, actions, and tools.* Com (2008) 394/4.

scale mass regularisations [sic] of immigrants in an illegal situation do not constitute a lasting and effective tool for migration management and should be prevented."[16]

A similar attitude towards regularisations – on the whole – also prevails in opinions expressed by the European Parliament. In the opinion of the Civil Liberties Committee, regularisations are "quite often a signal of lack of appropriate measures in place to deal with a phenomenon which forms part of societies in most Member States."[17] The European Parliament thus believes that "en masse regularisation of illegal immigrants should be a one-off event since such a measure does not resolve the real underlying problems."[18] Furthermore, effective return policy is seen as one of the factors liable to deter illegal migration. In this sense, the Committee clearly supported the adoption of the 'Return Directive", defining at the European level the rules and conditions governing a policy on return.[19] Regarding the readmission of irregular migrants, it calls on the Council and the Commission to develop agreements with third countries concerned.[20]

The European Parliament report also includes the opinions of the Foreign Affairs and the Development Committees. According to the Foreign Affairs Committee, "Member States should not adopt national measures regularising the situation of illegal immigrants because this creates a suction effect."[21] The Development Committee does not have any direct position on regularisation, but it asks the Commission and Member States, "in partnership with countries of origin, to invest resources in information campaigns in the countries of origin of illegal immigrants in order to warn them of the physical risks and dangers of migrating illegally and of subsequent marginalisation in countries of destination." [22] Thus, regularisation is clearly not a preferred option for the Parliament.
This said, the current shift towards a more negative attitude vis-à-vis regularisations, which is also reflected in the discussions surrounding the debate on the European migration pact, seems to insufficiently take into account the two contrasting 'logics' of regularisation measures that we have identified in the review of earlier studies on regularisation practices. In our conclusions to §2 we distinguished between (1) an employment and labour market policy driven logic (which often involves the regularisation of large numbers of persons) and (2) regularisation used as a corrective policy instrument, which often follows a human rights based and protection-oriented rationale or broader considerations of legal principles and due process of the law. The current discussions, however, mainly seem to refer to large-scale regularisation implemented on employment grounds. Indeed, as our review of policy positions of relevant civil society actors in §5 has shown, there is a broad

[16] *Ibid.,* p. 11
[17] EP, Committee on Civil Liberties, Justice and Home Affairs, 17 September 2007, Report on policy priorities in the fight against illegal immigration of third-country nationals (2006/2250(INI)), Rapporteur: Javier Moreno Sánchez. Available at: http://www.europarl.europa.eu///sides/getDoc.do?type=REPORT&language=EN&reference=A6-2007-0323, para. 58
[18] *Ibid.*
[19] *Ibid.,* para. 67-68
[20] *Ibid.,* para. 70
[21] *Ibid.,* para. 16
[22] *Ibid.,* para. 11

consensus that ultimately, large-scale regularisations used in lieu of labour market and labour migration policy indicate policy failure and, in principle, should be avoided. However, there is disagreement whether regularisation as a policy tool can be simply disposed of, as long as alternative approaches – for example, fighting undeclared work and systematically returning failed migrants – do not lead to the desired results.

With regard to the second logic – regularisation as a complementary measure used as redress against administrative deficiencies (e.g. lengthy procedures) and for humanitarian and protection-related reasons – the issues at stake are, we argue, quite different. First, regularisations can, but need not, involve large numbers. Secondly, the use of regularisation is not necessarily indicative of broader policy failures[23] but essentially reflects the need for complementary, corrective instruments which allow states to respond to particular situations in a flexible manner. Thirdly, and most importantly, this type of regularisation typically involves regularising persons in an irregular situation as a matter of principle and rights. This perspective on regularisation has been largely ignored in current debates on regularisation policy in the European Union. Indeed, as we argue in the following, there are certain principles built into European migration policy which would lend themselves as guiding principles for developing European Union policies on regularisation.

7.2 General objectives and normative principles underlying the European

Union framework for migration and international protection

We argue that many of the same principles which have underpinned the development of European Union migration policies under the Tampere and the Hague agendas could inform the development of policies on regularisation – whether in the form of strong measures (including the elaboration of primary legislation) or in the form of 'soft measures' (e.g. the identification of common principles upon which Member States should base their policies of regularisation). The following brief review of relevant principles, however, should not be taken as an elaboration of criteria and principles for regularising persons in an irregular situation, but principles that should inform the identification of relevant normative standards.

The Commission Communication on a Community Immigration Policy of 2000[24] outlined several basic principles on which Community migration policies should be built and that would provide similarly useful principles to build a policy on regularisation, including **transparency and rationality**, **clear and simple procedures**, and **differentiating the rights of third country nationals by length of stay**. With respect to regularisation, this could mean that regularisation should be conceived of as a secondary alternative to return, should return not be feasible within a set time limit (and thus as a *rational* and *transparent* option directly tied to return). Setting a time limit, in turn, would be based on the notion that a form of

[23] However, regularisations of asylum applicants on the grounds of length of the procedure clearly indicate policy failure.
[24] COM(2000) 757 final, *op. cit.*

residence-based rights should also be available for irregular migrants and that social and family ties that irregular migrants have developed in their Member State of residence should be taken into account, as is actually the case in several European Union Member States. Precisely because an irregular status is undesirable from a policy perspective and constitutes an 'irregularity' that needs to be addressed, the status of irregular migrants must be taken into account within the overall architecture of legal statuses: exit options for persons in such a condition need to be devised – either in the form of return or through regularisations, should return not be a viable option. Other key principles addressed in the same Communication are the **right to family reunification** and the **right of persons in need of international protection to access protection**.

As the Commission communication on immigration, integration and employment of 2003[25] has reasoned, **regularisation** may indeed also be **used to promote the integration of third country nationals in an irregular situation** into mainstream society and, by implication, as **a measure against social exclusion and marginalisation**. Although regularisation and thus integration may not be the preferred option in dealing with the presence of irregular migrants, irregular migrants should not be – a priori – excluded from the agenda of promoting the integration of immigrants and fighting social exclusion. This is not least since the sustained presence of marginalised groups without clear rights is clearly undesirable and may contribute to discrimination, racism and xenophobia.[26]

Moreover, several more fundamental legal principles and principles of good governance equally could be invoked in the development of regularisation policies, including legality (that is, that administrative decisions should be taken after due process of the law, should follow clear and transparent procedures and should be based on clear criteria), the availability of legal remedies against administrative decisions, reasonable duration of administrative procedures, non-discrimination, and proportionality, amongst others.

Finally, in addition to following certain basic principles that have informed the development of European Union migration policy under the Tampere and Hague agendas (as well as more general legal principles), the development of regularisation policy on the European level could also aim at some of the same general objectives of migration policy development in the European Union. In particular, it could aim at harmonising procedures and procedural standards and harmonising the legal statuses of regularised migrants along with the attach rights and obligations.

[25] COM(2003) 336 final, *op. cit.*

[26] In recognition of the diverse interlinkages of legal status (or lack thereof) and social exclusion, a forthcoming study on minorities, migrants and employment which was recently commissioned by the European Union's Fundamental Rights Agency will include a section on undocumented migration and vulnerability. See A. Kraler, S. Bonjour, A. Cibea, M. Dzhengozova, C. Hollomey, T. Persson, D. Reichel (2009), *Migrations, Minorities and Employment.* Study regarding discrimination on grounds of race and ethnicity in the area of employment. Forthcoming at http://fra.europa.eu

8 Policy Options

OPTION 1: REGULATION OF REGULARISATION ACTIVITIES OF MEMBER STATES

Description: Such a proposal for a directive or regulation would set common standards for regularisation across the EU

Option 1a: Blanket ban on mass regularisations

Rationale and possible impact: In the context of freedom of movement and the gradual emergence of a common labour market, it is sometimes asserted that large-scale regularisation programmes potentially negatively affect other Member States, contribute to unsolicited secondary movements of regularised migrants and unintentionally regularise third country nationals who are illegal residents of another Member States. Such programmes are also thought likely to provoke new illegal immigration from third countries. This, one could argue, undermines the common position of EU Member States to combat illegal migration and breaches the principle of solidarity on which policies on migration are based. However, there is little evidence to support the claim that regularised immigrants are likely to move on to other Member States as any legal status granted under regularisation schemes is confined to a single Member State.

There is limited evidence that regularisation in one Member State has led to immigration of irregular immigrants from (or transiting) other Member States, although the magnitude of in-migration is likely to be small.[1] Not unsurprisingly, regularisation programmes (or rumours about pending regularisation programmes) are likely to reduce voluntary returns of failed migrants,[2] but are unlikely to have an overall effect on returns. However, there is hardly any evidence for a pull effect from third countries, although pull effects might be more important for selected groups of immigrants. Thus it is not obvious why such a strong measure is warranted. In addition, such a proposal ignores possible rationales for regularisation programmes and would reduce the flexibility available to Member States in responding to particular problems. If implemented, a blanket ban is likely to have unexpected effects (e.g. *de facto* regularisations as in Italy 2006, rise in asylum applications and increased costs for the asylum system, increase in the irregular migrant population, increased informal employment etc.). A ban on large-scale regularisations would still permit the operation of individual, temporary and humanitarian mechanisms. However, the implementation costs of these are high, and

[1] In order to prevent unsolicited inflows of irregular immigrants from other Member States, Belgium, for example, temporarily reinstalled border controls during its 2000 regularisation programme (MS response Belgium).

[2] According to a memorandum by the Belgian minister responsible for migration and asylum, persistent rumours about an imminent regularisation programme is, along with other factors (notably the most recent enlargement of the European Union and the accession of Bulgaria and Romania) a major reason for the decline of voluntary returns from 2006 to 2007 (see Chambre des Représentants de Belgique, Note de Politique Générale de la Ministre de la Politique de Migrations et d'Asile. 21 Avril 2008, DOC 52 0995/020, p.12).

mostly unknown: ruling out this policy option would severely limit Member States' policy options in their management of the problem.

What supports EC action? There is a minority of Member States who are strictly against large-scale regularisations and have reservations against other Member States using large-scale regularisation programmes as a policy tool. In a similar vein, the migration pact which drafted on the initiative of the French government recommends that Member States "use only case-by-case rather than general regularisation for humanitarian or economic reasons, within national legislation."[1]

What works against EC action? The great majority of Member States are opposed to such regulations, as are all NGOs and other stakeholders. In addition, an effective blanket ban would require the drafting of a directive or regulation, agreement over which will be difficult to achieve, given the negative attitude of major Member States (see §4) to adopt strong regulatory frameworks.

Option 1b: Requirement for consultation with the Commission and the Council on planned regularisation programmes

Rationale and possible impact: This would require more serious planning and consideration of regularisation programmes, notably in the context of potential impact on other MS. Given the extent to which a few MS have utilised regularisation mechanisms, there is a case for including notifications of policy in that respect as well as for programmes.

Such a consultation procedure would facilitate transfer of expert knowledge gained from other MS regularisations, at the same time as allaying the fears of other MS concerning such programmes. One concrete recommendation would be to confine regularisation programmes to employment-based criteria and directly involve employers and civil society; irregular residents without strong earning capacity should then be addressed with individual applications under regularisation mechanisms (focused on humanitarian issues, long residence, integration efforts, health condition, lengthy asylum procedures etc.). Although various Member States have resorted to regularisation programmes in the case of asylum seekers and rejected asylum seekers, as in the Netherlands (2007) and Sweden (2005/6), we recommend the integration of such programmes into the regular legal framework and establishment of permanent mechanisms for regularising similar cases. [See Option 1d, below]

What supports EC action? This would have to be a new component of EC policy and also would require setting up a legal basis or incorporating such a requirement in the Mutual Information Exchange Mechanism (Council Decision 2006/688).[2]

What works against EC action? It is unlikely that many MS will support this action, even though it might be welcomed by NGOs and other stakeholders.

---

[1] *European Pact on Immigration and Asylum*, version II, dated 4th July 2008, section II, (a).

[2] *Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration*

Option 1c: Definition and notification system for regularisations

Rationale and possible impact: Although this would not constrain MS in their policy management, it would provide a very clear definition of what actually constitutes a regularisation programme or mechanism on a formal basis, and would require MS to provide advance notice of any regularisation initiative. In the case of permanent mechanisms, Member States should provide regular reports on nature and outcome of regularisation mechanisms and any relevant legislative changes. The process should also include improved statistical data collection and *post hoc* provision of those data to other MS. Thus, this would represent a small step towards some degree of harmonisation in the European management of illegal residents.

Any definition of regularisation should aim to define the meaning of regularisation as precisely as possible. To do so, we suggest not only to define regularisation in the narrow sense, i.e. in the way we have defined regularisation for the purposes of this study, but also to define status adjustments that strictly speaking do not qualify as regularisations, because they a) do not result in the award of a fully fledged legal status (but only formalise documented illegal stay pending removal) or b) target persons who were strictly speaking not illegally resident.

A systematic categorisation of regularisations and other status adjustments should thus consider at least three dimensions, namely (1) the nature of the status adjustment; (2) the nature of the adjustment procedure and (3) the target population, i.e. criteria for regularisation. Based on the definitions developed by this study, two basic types of regularisation procedure should be distinguished.[3]

(1) Regularisation programmes
(2) Regularisation mechanisms

In addition, two other forms of status adjustment should be distinguished, namely

(3) 'Normalisation', i.e. the adjustment of a limited or transitional status (asylum applicant status or other limited temporary statuses) to a more permanent regular status, which could be further distinguished by the type of procedure used (programme or mechanism).
(4) Suspensions of removal decisions and residence bans not addressing the illegality of stay but providing some limited access to rights and protection from expulsion.

Defining reasons for regularisation will require careful examination of Member States' regularisation practices, in particular insofar as grants of residence permits on 'humanitarian grounds' through regularisation mechanisms are concerned. Here our study suggests that authorities enjoy a wide range of discretion and it is often not clear on which criteria regularisation is based.

[3] See the definitions in §1

We suggest distinguishing the following basic criteria:

- Length of residence
- Employment
- Family ties
- Health
- Length of the asylum procedure
- Failure to enforce return[4]
- Complementary protection[5]
- Individual ties to a country/ integration[6]
- Exclusion criteria
- Other

Table 9: Classification of regularisations (status adjustments)

Nature of Status Adjustment	Nature of the procedure	Criteria/ Reasons for regularisation	Status Granted[7]
Regularisation: *any state procedure by which third country non-nationals who are illegally residing, or who are otherwise in breach of national immigration rules are granted a legal status in their current country of residence*	Programme Mechanism	Length of residence, employment, family ties, health, length of the asylum procedure, failure to enforce return, complementary protection, individual ties to a country/integration, other	Temporary permit Permanent residence
Normalisation: *any state procedure by which third country-nationals who are legally residing but who are in a restricted or transitional status are granted a superior legal status*	Programme Mechanism	Length of residence, employment, family ties, health, length of the asylum procedure, failure to enforce return, complementary protection, individual ties to a country/integration, other	Temporary permit Permanent permit
Suspension of removal order (toleration)	Programme Mechanism *De facto* toleration[i]	Failure to enforce return, complementary protection, other	Temporary permit 'Toleration' status *De facto* toleration[i]

[i] *de facto* tolerations refers to cases where a removal order is not formally suspended but simply not enforced.

[4] This is different from length of residence in that regularisation on the basis of duration of stay may be granted without any enforcement action having been initiated. Length of residence thus is a defining feature for both reasons for regularisation, but captures different sections of the illegally resident population.

[5] Subsidiary protection as defined by the qualification directive (2004/83/EC) does not cover all protection grounds, for example, protection from individual harm and threats from non-state actors in situations not involving indiscriminate violence.

[6] Several countries use 'integration' as a criterion, often involving other criteria such as family ties, education and upbringing in a country, employment, etc. This composite criterion would have to be developed and distinguished clearly from other grounds.

[7] The classification of permits should be in line with the classification used in view of the implementation of Regulation 862/2007 on Community Statistics on Migration and International Protection. However, in view of the enormous complexity of legal status, ultimately a similar typology as developed for the acquisition of nationality by the NATAC project should be developed for residence permits [see on NATAC: Bauböck, R. Ersbøll, E., Groenendijk, K., Waldrauch, H. (2006): *Acquisition and Loss of Nationality|Volume 1: Comparative Analyses, Policies and Trends in 15 European Countries*. IMISCOE Research. Amsterdam. Amsterdam University Press]

Ultimately, a comprehensive definition and documentation of regularisations would also require us to delimit regularisations more clearly from other instances of de facto status adjustments following *regular* provisions for legal migration. Thus, most countries require applications for first permits to be made from abroad, which, as we have shown in chapter 3, bears a certain risk that immigrants already resident in a country fail to comply with requirements and become illegal. Eventually, such situations may be remedied by regularisations. By contrast, in countries which are more flexible in allowing in-country applications, the need for regularisations in these specific cases may never arise. To assess the role and need of regularisations, systematic information on first permits issued by place of application and by persons covered seems clearly warranted.

What supports EC action? In the context of the Mutual Information Exchange Mechanism (Council Decision 2006/688/EC) a limited information exchange already takes place. In addition, Council Regulation 862/2007 on Community Statistics on Migration and International Protection already obliges Member States to provide a (limited) set of statistical information on residence permits granted, following a certain minimal harmonisation of definitions. Provision of statistical data could be incorporated into the Mutual Information Exchange Mechanism, and would then be available for MS to utilise within the reporting under Regulation 862/2007.

What works against EC action? There may be opposition from MS, depending on the presentation and exact nature of such a policy proposal. In particular, the history of the negotiation of the Regulation 862/2007 and the elaboration of definitions by NGOs and other stakeholders seem indifferent on such an issue.

Option 1d: Setting minimum standards for the granting of residence permits for illegally residing TCN, on a case-by-case basis (regularisation mechanism)

Rationale and possible impact: five Member States do not have available any small-scale regularisation mechanism; others have constrained ability or tendency to grant legal status. Given that most of these states are recently acceded or southern European, it would seem desirable to ensure that relevant policy mechanisms are available. Equally, for those MS with regularisation mechanisms, the criteria for granting legal status are vague and non-transparent. Without ruling out a catch-all provision for exceptional cases, it would seem desirable to specify the circumstances under which this instrument should be used. The most common criteria used (see §3.1.2) are: no criminal record, family ties, employment and health condition; on the other hand, some MS mechanisms seem to be indistinguishable from the criteria used in programmes. Thus, setting EU standards for a common approach to this issue could help to clarify the precise objectives of each MS in its policy. Given the almost complete absence of any research on regularisation mechanisms prior to this study, and the lack of transparency of most Member States' practices in this area, it would be unwise to attempt to define such standards here. There is a need for a detailed follow-up study specifically focused on that aspect which, in particular, should investigate practices of awarding residence permits on humanitarian and other exceptional grounds, including relevant case law.

We also strongly recommend review procedures, to ensure equal treatment of applicants and accountability of the relevant state agencies in their processing of applications. Some MS have review boards, although the effectiveness of their operation is often questioned. Again, minimum standards across the EU in this matter would be appropriate. The third aspect that deserves attention is the actual duration of permits issued. With the exception of temporary protection granted specifically to asylum applicants (who may be able to return in the not-too-distant future), short-term permits create uncertainty. If the long-term objective is the social integration of the recipients of permits, then permit durations of 6 or 12 months are not desirable. For this, and reasons of bureaucratic management, we suggest a 2-year minimum duration of permits.

What supports EC action? MS positions on this are not clear; presumably, there would be some support for such legislation, particularly from those MS on whose practices the minimum standards would be based. NGOs and other stakeholders would welcome such legislation.

What works against EC action? Some of the southern MS may resist this intrusion into national policy management, although the newer MS may not object.

OPTION 2: DEVELOPMENT OF PRINCIPLES AND BENCHMARKS FOR REGULARISATION PROGRAMMES AND MEASURES (IN CO-OPERATION WITH STAKEHOLDERS: SOCIAL ACTORS, GOVERNMENTS AND ACADEMIC RESEARCHERS)

Description: Building on existing recommendations of international organisations and bodies – including the *International Labour Organization (ILO)*, the *Global Commission on Migration (GCIM)*, and the *Council of Europe (CoE)*, amongst others – the Commission could formulate a number of key principles and benchmarks for both regularisation programmes and measures.

Rationale and possible impact: Such guidelines could define under which conditions a specific type of regularisation might be an appropriate measure, how regularisation should be planned, implemented and evaluated and which alternatives there are. These principles and benchmarks could inform Member States' evaluation of their own policies and the formulation of future policies in this field. Principles and benchmarks should be practical, supported by illustrative 'good practices', and cognisant of the fact that under certain conditions 'good practices' can turn out to be 'bad practices'. Some of these indicative practices are identified in §3.3, but a future focused advisory project is needed for the development of benchmarks.

What supports EC action? There are several recommendations, including those of the CoE, the ILO and the GCIM, formulating a common position on agreed key principles of regularisation programmes and practices. However, these have not benefited from detailed critical evaluation of individual programmes nor do they take account of the relevant EU policy framework, hence the guidelines are general

and of limited use to Member States in developing policy measures. Preliminary contact with national responsible ministries suggests that expert guidance in policy formulation – learning from each other's experiences – would be generally welcomed. Also various other stakeholders, including NGOs and the European Trade Union Confederation (ETUC) are in support of general guidelines. Elaborating guidelines would not require any legal measures and could follow the model of the Handbook on Integration. A handbook on regularisation would not question the sovereignty of Member States to undertake regularisation programmes or establish mechanisms, nor need it be seen as an endorsement of regularisation as a preferred policy option. The handbook would probably garner most support if elaborated in a broad consultation process which includes relevant stakeholders from all sectors of society.

What works against EC action? Guidelines on regularisation could be seen as endorsing regularisation as a policy tool and might be opposed by various Member States, in particularly those which are known to oppose regularisation in principle. Opposition might be addressed by providing (financial) support for the elaboration of such guidelines by third parties.

OPTION 3: ENHANCED INFORMATION EXCHANGE IN THE FRAMEWORK OF THE MUTUAL EXCHANGE MECHANISM

Description: One set of options consists of strengthening the obligation to pre-inform other Member States about major projects in migration policy by enhancing the mutual information mechanism established by Council Decision 2006/688.[8] To date, the Mutual Information Mechanism consists essentially of a web-based information mechanism and seems to have been little-used. This option is essentially a weaker form of Option 1c (which may be too demanding for widespread support from MS).

Both sub-options would require upgrading of the mutual information mechanism by obligatory modes of information exchange and possibly by broadening the scope of exchange methods to non-web-based mechanisms. On the other hand, there is almost unanimous support from MS for enhanced exchange of information, provided it does not replicate existing measures. It could be strengthened in two ways:

Option 3a: Systematic evaluation of policy impact on other EU Member States

Member States could be asked to systematically evaluate planned measures concerning migration policy in terms of their potential impact on other EU MS at the national level (and thus diverging from the current set-up) in the way financial implications and conformity with EU legislation or human rights standards are systematically evaluated in individual countries before passing a legislative proposal or adopting a non-legislative measure. The Commission could support such

[8] *Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration.*

systematic pre-legislative evaluation through guidelines on the criteria and the methods to be used.

Rationale and Possible Impact: Council Decision 2006/688 requests Member States to inform other Members on planned policy measures that might have an impact on other EU Member States. By incorporating a systematic impact assessment in national legislative procedures, the evaluation of the impact on other EU MS would be done on a systematic rather than a case-by-case basis. To make such systematic evaluations a useful, tool, however, the Commission would need to develop guidelines and a set of criteria to be followed in evaluating the possible impact of national measures on other MS. In addition, such systematic evaluation will have to be restricted to selected aspects of migration policy which potentially have the largest impact on other MS – notably, admission policy (including regularisation), acquisition of citizenship, and others (including flows of 'privileged aliens').

What supports EC action? The basic structure in the form of the mutual exchange mechanism already exists and would only have to be amended. In addition, there is generally broad support for enhanced exchange of information among Member States.

What works against EC action? The measure would create a new obligation under EC legislation, which might be opposed in principle.

Option 3b: Enhance the right for Member States to request information on planned policy measures

A right to request information from other MS states on planned and adopted measures and their possible impact on other MS exists in principle in Council Decision 2006/688, Art. 2 (3). This has apparently not been utilised, its use should be promoted as part of information exchange.

Rationale and possible impact: Establishing a clear procedure for information requests and obliging MS addressed by a request to answer the request, following a certain format and guidelines would allow MS to specifically request information on policy measures by other MS which are problematic or contentious in the view of another. In addition, the MS making the request would be able to formulate concrete criticism concerning potential negative effects of policies on other MS which ideally should be supported by evidence and would thus contribute to a more focused information exchange based on concrete evidence than is hitherto the case.

What supports EC action? The principle has already been incorporated into Council Decision 2006/688, but needs to be fleshed out. There is great interest in enhanced information exchange and provided that the obligation to provide information is sensibly circumscribed, the great majority of MS are likely to support it.

What works against EC action? Enquiries about specific measures in national migration policies might be seen as questioning the sovereignty of MS with regard

to framing policies according to national priorities and needs; on the other hand, the principle is already established in the Decision.

OPTION 4: IMPROVING STATISTICAL INFORMATION ON REGULARISATION PROGRAMMES AND MECHANISMS

Description: Member States should systematically collect statistics on the number of applications, number and type of permits issued (and persons regularised, if different from cases) and legal grounds of regularisation; divided by sex, age, country of birth and citizenship. For regularisation programmes, Member States should be encouraged to collect additional information, notably on employment status, education and other relevant socio-economic and demographic variables including length of stay, family ties, etc.. As data on regularisation programmes and, in particular, mechanisms is often derived from residence permits databases and thus formally integrated into the administration of residence permits, Member States should take measures to ensure that persons regularised can be distinguished from persons granted a residence permit for other reasons.

Rationale and possible impact: Statistical information is essential for evaluating migration policy. In respect to regularisation a number of issues may be relevant. First, a common definition of regularisation or, more generally, status adjustment, needs to elaborated. This needs to be a generic definition that covers all cases principally constituting regularisation, whether a Member State currently views it as regularisation or not. Such a definition may distinguish between regularisation mechanisms and exceptional regularisation programmes with a specific time limit. Related to this, Member States need to account for permits issued under regularisation as such and be able to produce statistics on regularised persons following such a definition. Second, to assess the relative importance of regularisation as an admission channel vis-à-vis other channels, good information on permits issued in the framework of a regularisation is crucial. This not only includes number of permits issued and applications received, but also data on length of stay[9] (to better evaluate the importance of regularisation as an admission channel over a longer time period). In addition, various other demographic data, notably age, country of birth, etc. should be collected, which will allow to have a better understanding of the composition of regularised persons and migration histories, and to some degree, reasons for an illegal status. Third, information on regularised persons should ideally be linked to other records on the history of a person's stay in a country, including whether and when the person has lodged an asylum claim, whether he or she previously had a legal status, including whether he or she has previously been regularised, etc. As to the former, this will allow a better understanding of why persons end up in an irregular situation. Data ideally should be kept as register data to be able to trace a person's 'career' after regularisation. Fourth, to effectively improve statistical data on regularisation, any measures need

[9] Although it is likely that information on length of stay as reported by applicants may be problematic. However, alternative information might be available in some cases (e.g. enforcement data on non-deportable aliens or long-term asylum seekers whose recorded residence is known).

to be closely linked to improving residence permit data, of which regularisation data frequently are part (in particular, in the case of regularisation mechanisms).
What supports EC action? Regulation (EC) No 862/2007 on Community statistics on migration and international protection [10] and its implementing measures would provide a framework establishing standards for collecting information on regularisation practices.

What works against EC action? There is broad evidence suggesting that residence permit data are among the most complex and heterogeneous data of statistical data collection on migration related issues.[11] In addition, there has already been significant resistance to the requirements of the regulation on migration statistics in its current form and there may be limits to further harmonisation of data collection. Finally, there is an enormous heterogeneity in the technical set-up of residence permit databases and, for example, not all Member States may be able to collect data in a way that would allow to trace the history of a person and to trace the person post hoc. To address this, the Commission may opt for defining core principles of data collection and opt for soft measures such as exchange of good practices and technical information exchange.

OPTION 5: IMPROVING INFORMATION ON THE IMPACT OF REGULARISATION PROGRAMMES

Description: The Commission should formulate proposals for minimum standards for impact related data on regularisation programmes. Such a proposal should be output oriented and leave it to Member States how to best achieve the desired results. The proposal should define minimum information required to assess the impact of regularisation programmes: this would include persons regularised, the impact on the state budget (both in terms of costs and incomes), the labour market and the welfare state. Data for (statistical) impact assessments on regularised immigrants may derive from register data if longitudinal data is available and registers may be linked to registers holding socio-economic and other information relevant to assess the impact of regularisation programmes both on persons themselves (labour market performance, retention of legal status, etc.) and the labour market in general. If such data is not available, Member States should be encouraged to use post-hoc surveys to follow up regularised persons. In terms of budgetary impact, Member States generally should be able to produce data or estimates on costs for implementing a programme and estimated benefits from income taxes or social security contributions paid be regularised persons. Measures that could be proposed could also include other studies, including quantitative studies on labour market effects of regularisation or an assessment of pull effects.

[10] Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers.
[11] This reflects the enormous diversity of Member States' immigration policies in terms of legal statuses awarded, grounds of admission, terminology etc. For a full harmonisation of statistics generic definitions of modes of admission and legal statuses would have to be generated that could follow the model of NATAC which achieved a similar synthesis for nationality laws.

Rationale and possible impact: Information on the wider impact of regularisation programmes is extremely patchy and in only two states (Spain and Italy) do reasonably good data exist. However, evidence on impact of regularisation programmes is extremely important in assessing efficiency, whether they have reached their desired objectives or whether concerns about negative effects, including those raised by other Member States, are warranted.

What supports EC action? No legal basis for EU action exists, apart from the general powers granted to the Commission under the Treaties. The Commission may thus want to opt for 'soft measures' and formulate guidelines, for example, in the framework of a communication on regularisation data. However, such a measure could be easily linked to proposals listed under Option 1.

What works against EC action? As stated above, no legal basis for EU action exists. In addition, there seem to be generally little capacity in Member States to systematically evaluate the impact of their policies in the field of migration and international protection in more sophisticated terms. As evaluation involves costs and may require reorganisation of national data collection and accounting systems or allocating resources to evaluation research, some resistance to such proposals can be expected.

OPTION 6: STRENGTHENING THE PRINCIPLE OF LONG-TERM RESIDENCE AS A SOURCE OF RIGHTS BY EXPANDING 2003/109/EC[12] TO PERSONS NOT COVERED BY THE DIRECTIVE AND BY PROPOSING AUTOMATIC ACQUISITION OF THE LONG-TERM RESIDENCE STATUS

Description: The Commission should, by analogy with the proposed expansion[13] of the scope of Directive 2003/109/EC to TCN beneficiaries of international protection, specify conditions under which the long-term residence directive should be applicable to other legal immigrants on short-term bases not currently covered. Such provisions should ensure that Member States do not circumvent the provisions of the directive (by using temporary statuses for *de facto* long-term purposes) by specifying conditions under which the status has to be awarded. In addition, an amendment should establish under which conditions Member States should permit a change from a temporary to a permanent status that would make a permit holder (eventually) eligible for long-term residence. Rules are also needed regarding the award of credits for years of residence on temporary permits that **must**, in turn, be taken into account when considering entitlements to long-term residence status. Possible criteria could include changes of personal circumstances, humanitarian concerns, *de facto* length of residence, etc. As a corollary, the Commission could propose to establish automatic acquisition of the long-term status after legal residence has exceeded a certain *de facto* duration.

[12] *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.*
[13] COM (2007) 298 final.

Rationale and possible impact: Exclusion from access to the long-term residence status may encourage unlawful activities, particularly with vulnerable persons. Expanding the scope of the directive and introducing an automatic acquisition of the status would also increase security of residence for persons who were admitted on a short-term basis.

What supports EC action? The legal framework in principle already exists and would only have to be amended. The Commission should also be concerned to develop a rights-based approach towards long-term residents, in line with the jurisprudence of the ECtHR (see §6.2)

What works against EC action? There is likely to be strong resistance by Member States to extending the personal scope of the directive to persons not yet covered. Similarly, establishing an automatic right to acquisition of long-term status is also likely to meet with resistance. The Commission could counter such resistance by commissioning research on practices and experiences of persons not covered by the directive, suggesting best practice models and alternatives for minimum standards, e.g. automatic acquisition if no further information is needed by authorities, more than five years residence requirement for persons outside the scope of the directive, etc.

Option 6a: Facilitating access to long-term residence status: reconsidering or limiting the use of conditions with respect to acquiring the status

Description: Member States should reconsider conditions for acquiring long-term resident status and elaborate a set of criteria under which conditions the requirements may be waived

Rationale and possible impact: Currently, various conditions are attached to the acquisition of the status of long-term residence in the meaning of Directive 2003/109/EC, including integration requirements, continuous residence and a requirement of sufficient income. In addition, Member States have considerable scope for setting fees for acquiring a permit. The conditions for acquiring the status of a long-term resident, as well as related fees, may thus exclude certain categories of persons from the benefits of the Directive. This may affect in particular vulnerable persons who are unable to comply with either the integration or income requirements, or are unable or unwilling to pay the fees and expenses associated with acquiring the status. These persons are also the most likely to fall into illegality, e.g. because of non-renewal of a short-term permit on the basis of lack of means. In addition, highly mobile persons who have difficulties in meeting the condition of uninterrupted residence as defined by the Directive, may similarly be denied access to the status. The Commission should elaborate a set of criteria under which conditions the requirement should be waived. In addition, the Commission may consider to propose a time limit after which all third country nationals, having been resident in a Member State for more than five years, should be entitled to long-term status either without any conditions or at best only limited conditions (for example, exclusion on public policy and public security grounds) attached to the acquisition of the status. Minimum residence requirements in Member States' nationality

legislation (between 5 and 10 years)[14] might be taken as a general timeframe in which an automatic right to long-term residence status should be granted.

What supports EC action? The legal framework in principle already exists and would only have to be amended

What works against EC action? There is likely to be strong resistance from MS to lowering or waiving conditions, as the view that each Member States has the right to select immigrants and to award rights selectively is a majority opinion. Similarly, automatic acquisition for non-complying aliens is unlikely to be supported by many Member States, but may nevertheless be discussed as an informal proposal. A possible solution would be to define some minimum standards on the use of fees, income requirements and integration requirements to make access to long-term residence status easier across the Union. Many NGOs and other stakeholders view such a development as essential in the management of problems of illegal residence.

Option 6b: Automatic acquisition of the status of long-term residence (109/2003/EC) for children born on the territory and minors with 5 years' residence

Description: This would give the status of long-term residence to children reaching the age of majority who were born on the territory, and also to minors with 5 years' residence on the territory upon reaching majority.

Rationale and possible impact: Upon reaching the age of majority, second generation migrants in countries without some form of *ius soli* are obliged to apply for residence permits. Similarly for minors who migrated, either unaccompanied or with their family, their residence as children is disregarded in many MS. Thus, at 18 they are classed as illegal immigrants if they are unable to acquire a residence permit – often requiring either employment or registered student status. This legislation automatically confers a secure residence status on deserving recipients, and elimates a whole class of 'created illegal immigrant'.

The legal status of the child, or of its family, should be disregarded for the purposes of this proposal. The *UN Convention on the Rights of the Child*, in Art. 2 (1), forbids discrimination against any child on the basis of his/her parents' status, including illegal status. The criterion of residence should be interpreted generously: for children born on the territory, some registration of birth plus some limited evidence of residence (e.g. school registration); for migrant children, school registrations or other official documentation. What should **not** be required is hard evidence of *continuous* residence, even for only five years, as this may be difficult to provide.

[14] 7 (EU 15) Member States have minimum residence requirements between 3 and 5 years, the remainder between 6 and 10 years, with the latter being the most frequent among this group. See Harald Waldrauch (2006): Acquisition of Nationality. In: Bauböck, R., Ersbøll, E., Gronendijk, K., Waldrauch H. (eds.): *Acquisition and Loss of Nationality. Policies and Trends in European Countries*. IMISCOE Research Series. Amsterdam. Amsterdam University Press, extended chapter available at: http://www.imiscoe.org/natac/acquisition_bookchapters.html

What supports EC action? The legal framework in principle already exists and only would have to be amended. NGOs are advocating this policy very strongly in certain EU countries.

What works against EC action? The position of MS on this is not known, but it is likely to be supported by many (possibly with a public policy derogation).

OPTION 7: SYSTEMATIC EXCHANGE OF INFORMATION ON MS PRACTICES CONCERNING ILLEGALLY STAYING THIRD COUNTRY NATIONALS WHO CANNOT BE DEPORTED

Description: The Commission could set up an information exchange mechanism or a working group, possibly for a limited period of time, to collect and exchange information on Member States practices with regard to illegally staying persons who cannot be deported on grounds other than those defined in Art. 15 in the Qualification directive (Council Directive 2004/83/EC).[15] This includes persons threatened with individual harm by non-state actors, including 'strong discrimination' and other forms of more subtle harm (e.g. on the grounds of sexual orientation).

Rationale and possible impact: Although a majority of MS practice some type of regularisation, often in the form of selective case-by-case regularisations, return clearly remains the preferred option in most Member States. However, as the Commission Memo on "New Tools for an Integrated European Border Management Strategy" (Memo 08/85)[16] makes clear, only an estimated 40% of the roughly 500,000 persons apprehended annually in the European Union are removed from the territory of the European Union. If the evidence collected by Joanne van der Leun for the Netherlands[17] is indicative of broader trends in the European Union, it seems that a substantial share of effected returns actually concern persons who have been sentenced for a criminal offence, implying an even higher share of persons found illegally present on a Member State's territory who are not deported. Although there can be doubts about the quality of the quantitative information available, there is enough evidence to suggest that the effectiveness of return policies is, for various reasons, inherently limited and can at best be a partial response to the presence of irregularly staying third country nationals. These limits of enforced return and the reluctant or selective use of regularisations ultimately leads to a build-up of the number of persons illegally staying who cannot be deported. Ignoring the discrepancy between actual capacity to enforce return and the presence of illegal residents ultimately also risks the undermining of wider policy objectives, notably with regard to social cohesion and integration and thus needs to be addressed explicitly.

[15] *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*

[16] European Commission (2008): *New Tools for an Integrated European Border Management Strategy*. Memo 08/85. 13 February 2008. Brussels.

[17] Van der Leun, J. (2003): *Looking for Loopholes. The Process of Incorporation of Illegal Immigrants in the Netherlands*. Amsterdam: Amsterdam University Press.

While the qualification directive provides a legal basis for awarding a legal status for persons in need of protection but not qualifying as a refugee under the Geneva Convention,[18] there are no consistent policies in EU Member States on other persons who cannot be deported. Such an ad-hoc consultation and/or working group could investigate:

A the extent of non-enforcement (annual number of persons whose removal is suspended; total stock of persons not removed) and the characteristics of persons not removed in terms of time elapsed since first apprehension/ first removal order (i.e. duration of "suspension" status)

B the existence and nature of policies on such persons (informal non-enforcement, formal non-status, eligibility for regularisation…) and

C the collection and collation of best practices with the aim of formulating common principles as to how non-deportable aliens should be treated.

The information exchange/ working group could also be supported by related studies on the subject. As there seems to be little comprehensive information on state practices in this area, the inclusion of major stakeholders, notably NGOs, or organisations such as ECRE, and UNHCR as well as advocacy groups such as PICUM or CCME in such a process would be warranted.

What supports EC action? Undertaking a limited information exchange/ collection exercise can be seen as a logical corollary to the elaboration of a common EU return policy. If there is to be a common return policy, there needs to be a systematic and regular assessment on what happens if return cannot be effected. The advantage of collecting and exchanging information is that it is low profile and does not *per se* involve policy harmonisation and the elaboration of common standards on practices regarding non-deportable aliens, although it might contribute to the formulation of a policy if Member States wish to do so. At the same time, incorporating a "good practice" element in the information exchange could contribute to developing principles in treatment of non-deportable aliens and diffusing good practices in dealing with this category of persons.

What works against EC action? Establishing a focused information exchange mechanism on "failed returns" would highlight uneasy dilemmas of current approaches towards illegal migration and might be seen as a first step towards minimum standards in the rights and treatment of non-deportable aliens which in turn might be seen as undermining the priority to return illegal migrants; it could

[18] According to Article 15 of the Directive, persons qualify for subsidiary protection if they are subject to the following potential harms: (1) Death penalty or execution; or (2) Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or (3) Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

also be seen as supporting regularisation as an alternative solution through the backdoor.

OPTION 8: PROVISIONS ON PRACTICES CONCERNING NON-DEPORTABLE ALIENS

Description: The Commission should propose a review of standards and procedures in Member States for returning illegally staying third-country nationals, with regard to practices concerning non-deportable aliens.

The Commission could propose definitions of different categories of non-deportable aliens, positively defining the legal status of such persons. Definitions should be based on an analysis of Member States' practices with regard to different categories of non-deportable aliens in comparison to persons under subsidiary protection. On the basis of the analysis of state practices, the Commission should propose a harmonisation of such practices, including the definition of minimum rights (e.g. access to health, access to the labour market, etc) and possible expansion of rights after a certain timeframe in analogy to the proposal to extend the application of 2003/109EC to subsidiary protected persons and in accordance to the concept of 'civic citizenship'.

Provision on minimum standards concerning practices concerning non-deportable aliens should also explicitly consider the rights of minors, in particular access to education. Secondly, a proposal should set certain time limits for renewal of decisions whereby return is temporarily suspended (see Article 13 (2) of the 'Return Directive') and provide for procedures that need to be taken if return is repeatedly postponed. Thirdly, there need to be provisions in the event that authorities negatively assess the prospects of returning an illegally staying third country national. If return cannot be effected within a reasonable time period, or is otherwise not feasible, there is need for a temporary legal status which ultimately should lead to a long-term resident status. Such provisions could be incorporated in a future amendment of the Return Directive and would provide for a three-step procedure. First, non-deportable aliens should be granted labour market after six months of *de facto* stay. According to our proposal, they would thus enjoy rights similar to those of asylum seekers as proposed in recent Commission proposals to amend the directive on minimum standards for the reception of asylum seekers.[19] Rather than is the case in countries providing for a 'toleration' status, the status should be considered as a legal one, although restricted and limited. Secondly, the duration of 'toleration'should be strictly limited and Member States should at any time have the possibility to fully regularise non-deportable aliens. Thirdly, after a certain duration (we recommend five years of *de facto* residence, analogously with the time-frame used in the Long Term Residence Directive), non-deportable aliens should have an *absolute right to residence*, abrogated only on serious grounds of public order and security. Access to fundamental rights, notably education and health care, should be guaranteed irrespective of such provisions.

[19] Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers. COM(2008) 815 final, 3.12.2008

Rationale and possible impact: As noted above in Option 7, state practices concerning non-deportable aliens are extremely heterogeneous. However, there needs to be a harmonised approach to the treatment of such persons. One positive aspect of comprehensively regulating the treatment of non-deportable aliens would be that the need for responsive regularisation programmes would be reduced (as, apparently, occurs in France). At the same time, such a policy might imply the regularisation of considerable numbers of TCNs. Nevertheless, this would be an altogether more realistic policy and would also be more compatible with notions of combating social exclusion, civic citizenship, and 'legal integration', i.e. the progressive acquisition of rights by non-nationals.

What supports EC action? The 'Return Directive' already includes limited provisions related to non-deportable aliens and regularisation (paragraph 12 in the Recital; Articles 6 (4), 9, 10, 13 (2)). A limited administrative harmonisation of practices (definitions of different cases, documentation, etc) may actually be welcomed by Member States,

What works against EC action? A positive definition of minimum rights of non-deportable aliens, e.g. the extension of the personal scope of the reception conditions directive, is unlikely to get much support. On the other hand, the Directive includes some references to such basic rights, including education. Finally, although there seems to be some support for harmonising practices, defining a pathway for the 'legal integration' of non-deportable aliens (e.g. defining a time limit after which Member States must award a legal status, and a time limit after which such persons should have access to long-term status) is unlikely to receive much support.

OPTION 9: IMPROVING DATA COLLECTION ON IRREGULAR MIGRATION (STATISTICS ON APPREHENSIONS, RETURNS, ADMINISTRATIVE COSTS)

Description: The Commission should propose, and in particular through its statistical agency Eurostat and academic experts working in this area, ways to improve the collection of statistical data on irregular migration. These measures should include

A collection of personalised data (rather than simple counts of cases), notably in regard to refusals, returns, and apprehensions;

B build-up register based apprehension datasets which can be linked to other relevant databases (visa database, asylum databases, Eurodac, return database, databases on persons held in detention pending deportation)[20];

[20] It needs to be stressed that detention pending deportation does not necessarily result in the removal of the detained person after the end of the detention period. Thus, multiple detentions and apprehensions (that may or may not be counted as such) are likely to be the case.

C if the Council decides to opt for a comprehensive border traffic register system[21], all relevant datasets should be integrated into this system;

D apprehension data should distinguish between illegally resident immigrants and illegal migrants (persons illegally crossing a border) and in the case of the latter, between in-bound and out-bound flows. Because such distinctions are inherently difficult to make in the case of persons in an irregular situation, proxy variables that may indicate that a person has just or recently entered a country or has been residing in the country for a longer period of time shall be elaborated. Direct measures include length of stay, previous apprehensions or registrations in other databases. Indirect measures include assessments of the authorities, etc.

Rationale and possible impact: The usefulness of currently collected statistical information on irregular migration for drawing conclusions on the magnitude and patterns of irregular migration is extremely limited.[22] Thus, to some extent, data collected, notably data on apprehensions is actually misleading. Personalised data-collection and a linkage to other databases would allow to assess the extent of multiple apprehensions, the share of asylum seekers and thus of persons with a (principal, if perhaps temporary) claim to legal status, etc and thus would also provide a basis for better estimating the size of the irregular migrant population in Europe. In the context of regularisation, comprehensive and systematic data collection is necessary to provide accurate data on enforcement practices, effective duration of residence of persons apprehended and awaiting removal and the actual share of effected returns. Such information is crucially important to evaluate return policy and for considering possible alternatives, including regularisation.

What supports EC action? Regulation (EC) No 862/2007 on Community statistics on migration and international protection[23] and its implementing measures would provide a framework establishing enhanced standards for collecting statistical information on irregular migration and the Commission might consider incorporating stronger standards on data collection in a future review of the regulation.

What works against EC action? Given the difficulties of Member States in complying with existing standards and against the background that few Member States' data collection systems allow the systematic linkage of different datasets to

[21] See European Commission (2008): *New Tools for an Integrated European Border Management Strategy*. Memo 08/85. 13 February 2008. Brussels.

[22] See Jandl, M. Kraler, A. (2006): 'Statistics on refusal, apprehensions and removals: An analysis of the CIREFI data'. In: Poulain, M., Perrin, N., Singleton, A. (eds.): *Towards the Harmonisation of European Statistics on International Migration (THESIM)*. Louvain-La-Neuve: UCL Presses Universitaires de Louvain, pp.271-285. In the framework of the Prominstat project (www.prominstat.eu) a more detailed analysis of statistical data on irregular migration is being conducted (to be finalised by February 2009).

[23] *Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers.*

each other, considerable difficulties in implementing such a proposal and resistance are to be expected. This suggests that informal mechanisms, such as technical information exchange, the elaboration of good practices and pilot studies with countries with good information systems, may be more appropriate.

OPTION 10: ESTABLISHMENT OF COMMON STANDARDS FOR THE PROCEDURE OF GRANTING AND RENEWING A NATIONAL RESIDENCE PERMIT

Description: This would broadly define a range of conditions, documents and procedures that are required by Member States for the acquisition of a residence permit, without impinging on MS autonomy in the actual granting of such permits. The precise instrument that could be used is left open; ideally, it would specify at least maximum application and renewal fees. [24]

Option 10a: Specification of documents and fees required for application for a residence permit

Rationale and possible impact: The purpose of the provision is to limit the number of illegal residents left outside the residence permit system by virtue of excessive (and often pointless) bureaucratic and financial requirements. This includes: translations of a large number of official documents, social insurance contributions above the level of those of nationals', high application fees, and various other bureaucratic demands. Interestingly, all of the MS with high application fees for permits have high (or very high) stocks of illegal residents: fiscal barriers are an important aspect of policy effectiveness, and should not be ignored.

What supports EC action? The provisions of the Council of Europe *European Convention on Establishment* (ETS 019) and the *European Convention on the Legal Status of Migrant Workers* (ETS 093) specify that fees, if levied, should cover administrative costs only. Constraints on the unreasonable demands of MS in residence permit procedures are a consistent feature of NGO positions communicated to us.

What works against EC action? It is likely that certain MS will oppose limitations on their levying of high fees.

Option 10b: Permitting applications for employment/residence from within the territory

Rationale and possible impact: The failure of a considerable number of countries (especially of southern Europe) to adequately recruit (unskilled) workers from outside their territory is a cause of large stocks of illegal residents. This is partly the result of restrictive legislation, partly through weak administration, and partly through the reluctance of employers to hire unskilled persons without personal contact. Allowing workers to apply for work permission from within the territory (as

[24] These standards could be included in the Commission's *Proposal for a COUNCIL DIRECTIVE on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State*, COM (2007) 638 final.

has been practised by Italy and, earlier, Spain) is a temporary solution to the problem of managing labour migration. It should not be cast as a legalisation, but as a legitimate route to legal employment and residence in the territory.

What supports EC action? Those MS with difficulty in constructing labour migration policies may find this a convenient temporary solution that avoids the alleged 'pull-effect' of large-scale regularisation programmes. The policy should be set as an option, rather than an obligation for MS.
What works against EC action? It is possible that certain northern EU MS will object to the flexibility implicit in this approach, on the grounds that it might encourage more illegal immigration.

OPTION 11: REVIEW OF ADMINISTRATIVE PRACTICE IN REGARD TO ASYLUM AND SUBSIDIARY PROTECTION AND ELABORATION OF PROCEDURES ENSURING EQUAL ACCESS TO INTERNATIONAL PROTECTION ACROSS THE EUROPEAN UNION.

Description: To improve the equal access to asylum and subsidiary protection across Europe, a European asylum review board should be established, which should be charged to evaluate administrative practices in EU Member States. The Commission should elaborate proposals for addressing lack of harmonised practices despite harmonised legislation, including the establishment of a European asylum appeals board whose decisions would have direct effect, or other options. Such an appeals board could be integrated with the proposed European Asylum Support Office (which has a more limited mandate, including possible review).

Rationale and possible impact: NGO responses to the ICMPD NGO questionnaire have highlighted that one of the reasons for the presence of illegal immigrants are major protection deficiencies of the asylum system. In turn, addressing these deficiencies would also reduce the need for regularisation, while generally improving the asylum system. According to NGOs, deficiencies are not so much due to gaps in legal protection than to major difficulties in administrative practice, which result in uneven access to international protection in the European Union. Various other evidence, including ECRE reports, UNHCR opinions and highly varying recognition rates for specific groups of asylum seekers[25] corroborates this view. Innovative measures which would focus on the administrative level could potentially have a major impact on improving equal access to international protection.

What supports EC action? There is, in principle, commitment among Member States to create a common European asylum system.

What works against EC action? The implementation of the directives in the area of asylum, in line with the principle of subsidiarity, is a matter of Member States. Harmonisation of administrative practices by contrast could be seen as breaching

[25] For example, Chechen asylum seekers with high recognition rates in Austria (one of the main receiving countries for this category of refugees) and low recognition rates in Germany.

this principle. In addition, an asylum review board or a European appeals board may be opposed in principle.

OPTION 12: STRENGTHENING THE RIGHT TO FAMILY REUNIFICATION (DIRECTIVE 2003/86/EC)

Description: the idea of this proposal is to close gaps with respect to the right to family life. This would include strengthening the rights of *de facto* family units already resident (i.e., extend rights to persons not formally admitted as family members), permitting family reunification for unmarried partners,[26] setting precise conditions of housing requirements and minimum income (which, are non-existent in some MS, and set very high in others). The actual operation of the Directive should be reviewed, and policy proposals developed from detailed examination of the highly variable practices across the EU.

Rationale and possible impact: The operation of the Family Reunification Directive is highly variable across the EU, leaving many families with the choice of either living apart or residing as illegal aliens. Given the trend in case law of the European Court of Human Rights, especially concerning the concept of family life (Art. 8), it is reasonable for the Commission to adopt a more active role in pushing for legal status of family members and easier access to family reunification procedures (see §6.2). It is unlikely that there would be increased migration inflows: it is very likely that there would be increased numbers of *legal* residents from this policy proposal.

What supports EC action? Many Member States actually do carry out good practices and minimal restriction on family reunification rights.

What works against EC action? Certain MS appear not to favour family unity as a policy objective, or at least consider that setting high minimum standards for this is their national prerogative.

[26] Unmarried partners are already admitted on this basis by Belgium, Denmark, Finland, France, the Netherlands, Sweden and the UK.

9 Conclusions and preferred policy options

9.1 Regularisation practices in the EU (27)

As has been demonstrated throughout this study, there is a wide range of specific causes of 'illegal stay' across the EU: Table 1 (§1) shows that there is a complex constellation of legal/illegal entry, legal/illegal residence, legal/illegal employment and whether a person is registered (and known to public authorities) or not. A recent Commission memo estimates that about half of the overall stock of illegal migrants results from illegal entry into the territory of a Member State, while another half is due to overstaying of visas and residence permits.[1] Our study, by contrast, suggests that withdrawal and loss of legal status – that is, illegality as a consequence of administrative procedures – is a third and important, albeit difficult to quantify, source of illegal resident populations.[2] Thus, irregular migration is not driven by a single logic, nor can there be simple responses to irregular migration. Most importantly, irregular migration is inextricably intertwined with the overall migration policy framework.

There is also a variety of opinions across EU Member States regarding what actually constitutes regularisation of third country nationals who are illegally staying. This diversity of approaches toward, and understanding of, regularisation to some degree reflects the considerable complexity of irregular migration as a social phenomenon: unsurprisingly, there is also a wide range of policies designed to address the problem. Table 5 (§3) summarises the policy positions of Member States, and §3.2.1 hypothesises six clusters or policy groupings – some of which are in ideological competition with others. Nevertheless, few Member States (five out of 27) have absolutely no policies or practices of regularisation – and of these five, three have recently acceded to the EU. Over the last decade, three southern Member States have engaged in large-scale regularisation programmes, all of which seem strongly related to deficits of formal labour immigration channels, although this view is challenged by those Member States. Other (mostly northern) countries have engaged heavily in case-by-case regularisations – usually in order to address a different set of problems, such as rejected asylum-seekers or non-deportable aliens. Yet others have attempted to normalise a transition situation, moving from state socialism within the Soviet bloc to western liberal democracies. In total, our conservative estimate for the EU(27) of the number of persons involved in regularisation of one sort or another over the period 1996-2007 is between 5 and 6 million.[3] The sheer magnitude of this figure indicates the importance of regularisation policy for the EU.

[1] European Commission (2008): *New Tools for an Integrated European Border Management Strategy*. Memo 08/85. 13 February 2008. Brussels

[2] It is safe to assume that the largest share is made up of rejected asylum seekers. However, as our report shows, there are numerous other cases in which third country nationals lose their previous status and lapse into illegality. Although relatively unimportant in quantitative terms (as compared to rejected asylum seekers), some of these cases highlight important gaps of legislation and deficiencies of administrative procedures regarding issuing and renewing residence permits.

[3] See §3.1 *et seq.*

9.2 Regularisation practices in Switzerland and the USA

As part of this study, we have examined two federal governance systems external to the EU – namely, Switzerland and the USA.[4] Both have extensive experience with irregular immigrant residence, albeit with very different immigration structures and histories. Switzerland is now considered to be a country with not only high immigrant stocks, but also high irregular immigrant stocks (>2% of total population); the USA for some time has had declining legal immigrant stocks whilst illegal stocks have risen continuously, currently constituting over 4% of total population. By most estimations, these stocks are high enough to be considered serious policy failures – certainly, they are higher proportions than exist in all but two EU Member States. It only remains for us to pose the question: 'Does the EU have anything to learn from those experiences'?

Taking first the case of Switzerland, the most pronounced aspect of its policy approach is a disjuncture between the federal and canton levels. The federal government pursues an extremely conservative approach to the issue of regularisation, emphasising the negative consequences that (allegedly) arise from large-scale programmes and choosing to restrict its activities to case-by-case humanitarian regularisations. (In this, it follows a policy approach very similar to that of Germany.) Some of the cantons, on the other hand, are less concerned with 'high policy' and instead emphasise the twin issues of economic and social integration of the irregular migrants. What follows is a structural conflict between the policy competences of the federal government and the cantons – with relatively small numbers of irregular migrants being regularised. Superimposed on this, is a more usual Left-Right political debate, with the Left (and trade unions) canvassing for regularisation programmes, while the centre-right opposes them.

In the case of the USA, the federal structure appears not to have played an important role in the deficit of policy. The last 'proper' large-scale regularisation[5] was in 1986, and although it was a general amnesty it set a long period of residence (5 years) in order to qualify. Thus, it failed to address about half of the estimated irregular population. Since 1986, primarily owing to the unwillingness (or inability) of the federal government to permit either temporary or permanent unskilled labour immigration, the labour market needs of the US economy have been filled by mass illegal immigration, primarily from Mexico. Unlike European labour markets, the weakly-regulated US labour market readily employs illegal migrants within the formal economy: thus, the informal economy is not a significant factor and most illegal immigrants in the USA are working in a documented capacity.[6] Since 2003, there have been eleven attempts to legislate on immigration reform – all have failed. The primary cause is ideological dispute over what the immigration policy of the USA should actually be, and how regularisations or other specific policies would fit into that framework.

[4] See Boxes 3 and 4

[5] Since 1986, the US has implemented various small-scale programmes. In 2000, some 400,000 irregular migrants benefited from a "late" regularisation under IRCA's general provisions.

[6] For clarification of this, see Table 1. The relevant category is row 4 of the table.

There are some potential lessons for the EU from these two cases. First, the issue of governance: if a common immigration policy were to be established at the European level, it is likely that some of the problems of Switzerland would become evident. The appropriate policy instruments for the management of irregular migration should be chosen, and used, by the MS in order to avoid such conflicts. Secondly, where there are issues of principle, or ideology, such as the 'known' consequences of regularisation programmes, we insist on relying on evidence as opposed to formulating policy positions on the bases of unsubstantiated beliefs. The existing literature, and our own research, provides no evidence of the 'pull factor' for regularisation programmes: the situation is far more complex, and involves many more variables which are typically not under political control. Thirdly, the policy impasse of the USA – accompanied by massive increases in irregular stocks – is not such a catastrophe within the US system. Indeed, we might even argue that it supports a particular form of capitalism that relies upon a plentiful supply of low-cost flexible labour. Such a policy impasse within the EU would create much more trouble: we thus advise against setting out ideological political positions on this difficult topic. Evidence-based policy is more likely to engender cross-party (and cross-national) political support, and it is this approach that we have followed in our study. In particular, we want to emphasise that any policy debate on regularisation needs to be based on a thorough understanding of different rationales for undertaking regularisation measures as well as an understanding of the forms, volume and frequency of such measures.

9.3 Policy positions of Member States and social actors[7]

9.3.1 Views on national policies for regularisation

There is no consensus within the EU (27) concerning the need for regularisation policies. Nine Member States express extreme reservation about the policy instrument – mostly in the belief that it constitutes a pull-factor for future illegal migration flows. Three newly-acceded MS believe that a case-by-case mechanism is sufficient. MS generally posit a variety of policy objectives associated with regularisation – including managing informal employment, immigration management, humanitarian issues, dealing with non-deportable aliens, *inter alia*. On the whole, government positions correspond closely with past practices.

Trade unions tend to see regularisation as an employment-based issue, and in some countries (France, Italy, Portugal, Spain, Greece and the UK) have been important driving forces for regularisation campaigns. Current campaigns in Belgium, France, Ireland and the UK are strongly supported by unions; in general, trade unions are cautious supporters of regularisation policies. Employers organisations currently seem to be largely indifferent to the issue of regularisation, in contrast to their position in previous decades; exceptions lie with current campaigns in France and the UK, where business groups belong to broad coalitions of social partners demanding regularisation programmes.

[7] The detailed sources for identification of these positions are given in §4 (for Member States) and §5 for trade unions, employers associations and NGOs.

NGOs are the most active actors concerning mobilisation and campaigns for regularisation programmes – most notably in Belgium, France, Portugal, Spain, the UK, Ireland and Germany. However, the sheer diversity of NGO activities is reflected in their differing objectives and target groups, making it difficult to characterise a 'typical' NGO position. Nevertheless, all are agreed that regularisation is an appropriate policy instrument – whether to manage the extent of illegal residents, to protect vulnerable groups, to compensate for deficiencies in immigration management, to improve access to basic social rights, or to promote the integration of migrants. Principally, NGOs believe that they should be more involved in the policy design of regularisation programmes, as they are the best-informed on the situation of irregular migrants. NGOs also seem to be supportive of permanent regularisation mechanisms, particularly in cases of hardship.

9.3.2 Views on an EU role in regularisation policy

Five Member States are, in principle, opposed to any regulation of this policy area: interestingly, these are all countries that are opposed to regularisation programmes, and two of these do not even have a regularisation mechanism. Three Member States support an EU legal framework that would respect national policy needs. Overall, there is little support for a strong EU role in this policy area: what does seem to command enthusiasm among Member States is a stronger information exchange mechanism and the development of policy expertise. The latter might consist of identification of good (and bad) practices, the use of statistical data techniques, and generally learning from other countries' experiences.

National trade unions – perhaps surprisingly – express views not so very different from those of Member States: few favour strong EU regulation, some would support a package of broader measures (such as regulation of legal migration), and most are supportive of a limited role for the EU whilst respecting different national policy needs. The ETUC, whilst not stating a clear policy position, implicitly favours a broad Europe policy approach that would reduce the actual need for employment-based regularisations: this would include the promotion of economic migration channels, with a common EU framework for entry and residence; establishing a clear consensus between states and social partners about labour market needs; and moving away from the current two-tier migration policy approach that favours high-skilled labour migration and denies the need (and legal recruitment channels) for low-skilled workers. The ETUC also recommends the limited use of regularisation mechanisms, or "bridges out of illegality".

The positions of two major European-level employers associations (BusinessEurope and UEAPME) are not identical. BusinessEurope, while stressing the principle of subsidiarity, is not opposed to the elaboration of common procedures and other measures; its emphasis seems to be on the reduction of bureaucracy and other practical obstacles, which tend to push businesses into irregular employment of migrant workers. BusinessEurope does seem to be opposed to strengthening and regulating the rights of legal immigrant workers, while supporting measures against illegal migration – including employer sanctions, returns, and possible regularisation

where return is not possible. UEAPME[8] represents SMEs, whose involvement with irregular employment of immigrants is undoubtedly greater than for large enterprises: furthermore, bureaucratic hurdles (both practical and fiscal) represent greater problems for their members. Thus, UEAPME strongly supports the EU framework directive on a single application procedure for migrant workers, emphasises the need for national authorities to determine labour market need for immigrant workers, and considers that over-regulation of the labour market is a primary cause of irregular employment. Their position on employer sanctions is rather more reserved than that of BusinessEurope, and opposed to any increased obligations on employers and also to existing policy on employers bearing the return costs of illegally employed third country nationals.

European NGOs with positions in this policy area include PICUM,[9] various Church organisations (e.g. Caritas, CCME[10]) and ECRE.[11]PICUM sees regularisation as a necessary but insufficient policy tool, while emphasising the need to address the underlying causes of informal employment and irregular status. Church organisations also argue for a comprehensive approach in tackling illegal migration, whilst asserting the value of regularisation programmes within such a broad approach. They are critical of the lack of consultation with NGOs in the formulation of policy in the area of irregular migration, are fearful of the possible impact of the 'Return Directive' which may impede future regularisation campaigns, and advocate the rapid adoption of the UN 1990 Convention. ECRE is broadly supportive of regularisation (citing the 2007 Council of Europe report), with particular emphases on the status of rejected asylum-seekers with three years' (or more) residence and on suspended return decisions that leave persons on European territory without any legal status.

9.4 The role of international law in shaping EU policy

Finally, we draw attention to the rights-based legal issues previously outlined in §6.1. In our view, the emphasis on security aspects of irregular migration and residence needs to be adjusted – for reasons of European political consensus and also of foreign relations. The recent jurisprudence of the *European Court of Human Rights* (ECtHR) has ventured into new territory concerning the rights of irregular migrants, and the case -law constitutes the EU *Acquis*. In particular, the principle of proportionality is paramount in addressing the issue of irregular residence: this principle is barely visible within the Return Directive (notably, paras. 6, 13, 16 of the Recital) even though Member States have the apparently unrestricted possibility to regularise under Art. 6 (4). Thus, arbitrary administrative practice (as opposed to rights-based policy) has been built into current legislation; various factors – e.g. duration of stay, integration into the labour market, social integration, links with country of origin (or of nationality), criminal record – are relevant for assessing the

[8] *European Association of Craft, Small and Medium Sized Enterprises*
[9] *Platform for International Cooperation on Undocumented Migrants*
[10] *Churches Commission for Migrants in Europe*
[11] *European Council on Refugees and Exiles*

proportionality of forced return rather than regularisation.[12] It is to be expected that such cases will burden the ECtHR for years to come, since Member States appear reluctant to concede any principled rights to irregular migrants.

This latter issue is, in fact, one of the major obstacles to ratification of the UN 1990 *Convention on the Rights of All Migrant Workers and Their Families*. The Convention actually grants less strong rights to irregular migrants than recent ECtHR jurisprudence, yet has been ratified by no Member State. In particular, the clear policy choice expressed in Article 69 – regularise or expel – is a reasoned and fair dictum that would have been well-heeded by the framers of the Return Directive.[13]

Finally, the rights of child migrants constitute a matter of paramount importance that has yet to be adequately addressed within the EU framework. The UN 1989 *Convention on the Rights of the Child* represents a clear legal and moral guiding force, while most European policy has relegated it to perfunctory recital alongside rare practical adherence.

9.5 The logic of policy choices

In formulating the policy options of §8, we have been guided by three discrete sets of information. These can be categorised as policy principles that are appropriate for this specific policy area; policy issues that have been identified in §3.3 and policy positions (of Member State governments, of civil society, and of international law) as previously identified in this chapter. Each is briefly discussed below.

9.5.1 Policy principles

The main principle that we deduce from research within this study is that single measures (e.g. outlawing one form of regularisation or encouraging another) cannot be an appropriate response in tackling regularisations. Rather, any state or EU response must consist of several measures in different areas that take account of this diversity. For regularisation policy, this means that 'one-size-fits-all' solutions are not only ineffective but are also likely to provoke or exacerbate related problem areas. Thus, we reject the concept of a simple common policy, and recommend that a coherent, flexible set of measures be adopted: this might include a legislative component, although 'soft' measures are likely to yield better results in this complex area.

The second principle – derived as a conclusion from earlier analysis and guiding our policy options – is that regularisation policy cannot be formulated in isolation from other policies, i.e. as stand-alone policy. It is vital for its effectiveness that it is fully integrated with broader policies on illegal migration: these include, at the very least, policies on border management, return, asylum and subsidiary protection. These in

[12] For a discussion of the possible development of the '*Boultif* criteria', see Thym, D. (2008): Respect for Private and Family Life under Article 8 ECHR in 'Immigration Cases: A Human Right to Regularize Illegal Stay?' *International and Comparative Law Quarterly*, 57, 1, pp. 93-5

[13] The view of the European Commission is that the Directive applies only after a Member State has determined that a third country national is illegally staying, therefore the policy choices prior to such a determination lie outside of the purview of the Directive.

turn must be integrated with policies on legal migration, including visa policy. Thus, the following policy options are explicitly framed in this broader context. As a corollary, one should note that the proposed options largely consist of strategies that are not mutually exclusive but, rather, complementary.

9.5.2 Policy issues

Previously (in §3.3) we examined in some depth various policy issues that emerged as problematic during the course of our research. These can be summarised as follows:

(1) Policy effectiveness of regularisation programmes, including:
    i. Retention of legal status
    ii. Criteria for eligibility
    iii. Encouragement of illegal migration flows
    iv. Bureaucratic management
(2) Policy effectiveness of regularisation mechanisms
(3) Avoiding the creation of illegal immigrants
    i. expired residence permits
    ii. persons who migrated as minors or were born on the territory
    iii. withdrawn refugee status
    iv. retired persons with limited pension resources
(4) Regularisations in lieu of labour migration policy
(5) Role of national asylum systems
(6) Lack of coherent policy on non-deportable aliens
(7) Regularisation for family-related reasons

The policy proposals have been formulated to address each of these problematic areas, with specific linkages shown in §3.3

9.5.3 Policy positions

These are outlined above, in §9.3. Overall, there is little support from Member States or from civil society for extensive regulation of this broad policy area: there is considerable enthusiasm, however, for technical support, policy guidance, and information exchange. In some specific policy areas, we believe that there is limited support for minimum standards regulation; in other areas, we believe that there will be considerable interest in solving 'technical problems' – often bureaucratic or structural in origin – whereby the 'accidental' creation of illegally staying third country nationals can be minimised.

Thus, our preferred policy options – shown below in §9.6 – are grouped into four categories. Category 1 consists of policies that leave Member States with exclusive responsibility for the policy, with the Commission playing the role of facilitator. Category 2 policy options give the Commission some role in co-ordination and development of policy. Category 3 consists of some specific policies that, in our opinion, will command support from both Member States and civil society: in particular, we address issues pertaining to 'created illegal immigrants'. Finally, category 4 policies constitute 'strong' regulation for the achievement of minimum

standards in some crucial policy sub-areas: again, it is our belief that these specific policy issues are important enough for Member States, as well as civil society, to concur with the need for common standards across the European Union.

9.6 Preferred policy options

9.6.1 Policies for information exchange, policy development and technical support

The following options are designed to assist MS in the development of their own national policies, on a range of issues pertaining to illegal residence. The role of the Commission is predominantly that of facilitating information exchange and providing access to expert advice.

Option 2
Development of principles and benchmarks for regularisation programmes and measures (in co-operation with stakeholders: social actors, governments and academic researchers)

Option 3a
Systematic evaluation of policy impact on other EU member states

Option 3b
Enhance the right for member states to request information on planned policy measures

Option 4
Improving statistical information on regularisation programmes and mechanisms

Option 5
Improving information on the impact of regularisation programmes

Option 7
Systematic exchange of information on MS practices concerning illegally staying third country nationals who cannot be deported

9.6.2 Policies for notification and policy elaboration

These options place more responsibility for policy development in the hands of the Commission, with obligatory notifications and consultations.

Option 1b
Requirement for consultation with the Commission and the Council on planned regularisation programmes

Option 1c
Definition and notification system for regularisations

Option 9
Improving data collection on irregular migration (statistics on apprehensions, returns, administrative costs)

9.6.3 Policies for minimising "created illegal immigrants"

These options we consider to be amongst the most important, not only in minimising the extent of unnecessary irregularity, but also in the promotion (and a role for the Commission) of rights with the EU. The areas covered are children reaching majority (Option 6b), pensioners and others with long-term residence claims but having difficulty in maintaining legal status (Option 6a); and family units that have reunified without authorisation or otherwise have difficulty in fitting within the system.

Option 6a
Facilitating access to long-term residence status: reconsidering or limiting the use of conditions with respect to acquiring the status

Option 6b
Automatic acquisition of the status of long-term residence (109/2003/EC) for children born on the territory and minors with 5 years' residence

Option 12
Strengthening the right to family reunification (directive 2003/86/EC)

9.6.4 Policies for the regulation of minimum standards

The following are our recommended options for guaranteeing minimum standards. Although it is listed (as Option 1a) we advise strongly against the removal of such an important policy instrument as the regularisation programme: we do advise against unfocused amnesties, but this issue should be covered by policy development mechanisms and exchange of good practices. The regulation of some other areas is advised: the need for a regularisation mechanism, with clear criteria (Option 1d); extending the coverage of the long-term residence permit (Option 6); practices on non-deportable aliens (Option 8); procedures and standards for the issuance of residence permits (Options 10a, 10b); and asylum and temporary protection administrative practices (Option 11).

Option 1d
Setting minimum standards for the granting of residence permits for illegally residing tcn, on a case-by-case basis (regularisation mechanism)

Option 6
Strengthening the principle of long-term residence as a source of rights by expanding 2003/109/EC to persons not covered by the directive and by proposing automatic acquisition of the long-term residence status

Option 8
Provisions on practices concerning non-deportable aliens

Option 10a
Specification of documents and fees required for application for a residence permit

Option 10b
Permitting applications for employment/residence from within the territory

References – primary sources

Member State responses to the ICMPD MS Questionnaire

Austria
Ministry of the Interior, Response, ICMPD MS Questionnaire, 13 March 2008

Belgium
Ministry of internal affairs; Department of foreigners, Response, ICMPD MS Questionnaire, 19 May 2008

Bulgaria
Ministry of Interior, Response, ICMPD MS Questionnaire, 31 March 2008

Czech Republic
*Ministry of Interior***,** *Department for asylum and migration policies***,** Response, ICMPD MS Questionnaire, 31 March 2008

Denmark
Ministry of Refugee, Immigration and Integration Affairs, Response, ICMPD MS Questionnaire, 21 April 2008

Estonia
Ministry of the Interior, Response, ICMPD MS Questionnaire, 31 March 2008

Finland
Ministry of the Interior, Response, ICMPD MS Questionnaire, 18 March 2008

France
Ministère de l'Immigration, de l'Intégration, de l'Identité nationale et du Codéveloppement, Response, ICMPD MS Questionnaire, 10 June 2008

Germany
Bundesministerium des Inneren, Response, ICMPD MS Questionnaire, 24 April *2008*

Greece
Ministry of Interior, Response, ICMPD MS Questionnaire, 18 July 2008

Hungary
Ministry of Justice and Law Enforcement, Department of Migration, Response, ICMPD MS Questionnaire, 18 July 2007

Ireland
Justice Equality and Law Reform (Irish Naturalisation and Immigration), Response, ICMPD MS Questionnaire, 18 July 2008

Italy
Ministerio Interno, Dipartimento Libertà Civili e Immigrazione - Direzione Centrale Politiche Immigrazione e Asilo, Response, ICMPD MS Questionnaire, 2 April 2008

Latvia
Ministry of Interior, Office of Citizenship and Migration Affairs, Response, ICMPD MS Questionnaire, 13 January 2009

Lithuania
Migration Department under the Ministry of the Interior, Response, ICMPD MS Questionnaire, 31 March 2008

Luxembourg
Ministry for Foreign Affairs and Immigration, Response, ICMPD MS Questionnaire, 17 March 2008

Poland
Ministry of Interior and Administration, Response, ICMPD MS Questionnaire, 18 July 2008

Portugal
Ministério da Admnistração Interna, *Department for International Relations and Cooperation, Aliens and Border Service,* Response, ICMPD MS Questionnaire, 14 April 2008

Romania
Ministry of Interior and Administration Reform, *Romanian Immigration Office*, Response, ICMPD MS Questionnaire, 18 March 2008

Slovakia
Ministry of Interior, Response, ICMPD MS Questionnaire, 18 March 2008

Slovenia
Ministry of Interior, Response, ICMPD MS Questionnaire, 18 July 2008

Spain
Ministerio de Trabajo y Asuntos Sociales, Secretaría de Estado de Inmigración y Emigración, Directorate General for Immigration, Response, ICMPD MS Questionnaire, 31 March 2008

Responses of immigrant associations, religious organisations and NGOs to the ICMPD NGO Questionnaire

Austria
Asylkoordination, Response, ICMPD NGO Questionnaire, 21 May 2008
*Diakonie Flüchtlingsdienst***,** Response, ICMPD NGO Questionnaire, 15 April 2008
Krankenhaus der Barmherzigen Brüder, Response, ICMPD NGO Questionnaire, 5 May 2008

Belgium
Centre des Immigrés Namur-Luxembourg ASBL (Antenne de Libramont), Response, ICMPD NGO Questionnaire, 5 May 2008
Samahan ng mga Manggagawang Pilipino sa Belgium, Response, ICMPD NGO Questionnaire, 13 May 2008

Czech Republic
Counselling Centre for Citizenship/ Civil and Human Rights*, Response, ICMPD NGO Questionnaire, 4 May 2008*
Counselling Centre for Refugees/ Organization for Aid to Refugees**,** *Response, ICMPD NGO Questionnaire, 30 April 2008*

France
SNPMPI – La pastorale des Migrants, Response, ICMPD NGO Questionnaire, 15 April 2008

Germany
Flüchtlingsrat im Kreis Viersen e.V., Response, ICMPD NGO Questionnaire, 21 April 2008
Katholisches Forum Leben in der Illegalität, *Response, ICMPD NGO Questionnaire, 23 April 2008*

Greece
ANTIGONE, Response, ICMPD NGO Questionnaire, 29 May 2008
Greek Migrants Forum, Response, ICMPD NGO Questionnaire, 30 May 2008
DIAVATIRIO, Response, ICMPD NGO Questionnaire, 30 May 2008
HLHR, Response, ICMPD NGO Questionnaire, 29 May 2008

Ireland
Migrant Rights Centre, Response, ICMPD NGO Questionnaire, 30 April 2008

Netherlands
Stichting LOS (Landelijk Ongedocumenteerden Steunpunt), Response, ICMPD NGO Questionnaire, 21 April 2008

Portugal
AMI (International Medical Assistance), Response, ICMPD NGO Questionnaire, 5 May 2008
Jesuit Refugee Service (JRS), Response, ICMPD NGO Questionnaire, 5 May 2008

Spain
ACCEM, Response, ICMPD NGO Questionnaire, 13 May 2008
Asociacion Vida y Salud al Inmigrante-Boliviano"AVISA", Response, ICMPD NGO Questionnaire, 1 May 2008
Asociacion Salud y Familia, Response, ICMPD NGO Questionnaire, 25 April 2008
Federacion Andalucia ACOGE, Response, ICMPD NGO Questionnaire, 6 May 2008
Iglesia Evangélica Española, Response, ICMPD NGO Questionnaire, 15 April 2008
Interculturalia, Response, ICMPD NGO Questionnaire, 21 April 2008.

Movimiento por la paz, el desarme y la libertad, Canarias (M.P.D.L.C.), Response, ICMPD NGO Questionnaire*,* 25 April 2008

European Union
Europäische Vereinigung von Juristinnen und Juristen für Demokratie und Menschrechte in der Welt e. V. (EJDM), Response, ICMPD NGO Questionnaire, 4 May 2008
European Council on Refugees and Exiles (ECRE), Response, ICMPD NGO Questionnaire, 14 October 2009
La Strada International LSI, Response, ICMPD NGO Questionnaire, 8 May 2008

Non-EU (Switzerland)
*FIZ Fraueninformationszentrum für Frauen aus Afrika, Asien, Lateinamerika und Osteuropa***,** Response, ICMPD NGO Questionnaire, 21 April 2008
Schweizerischer Evangelischer Kirchenbund SEK, Response, ICMPD NGO Questionnaire, 5 May 2008

Other (non-NGO) responses to NGO questionnaire

Netherlands
Centre for Migration Law, Radboud University Nijmegen Response, ICMPD NGO Questionnaire, 18 April 2008
University Medical Centre St Radboud, Response, ICMPD NGO Questionnaire, 15 April 2008

Trade unions

Interviews with trade union representatives
European Trade Union Confederation (ETUC), Interview with Marco Cilento, Brussels, 20 May 2008

Confederação Geral dos Trabalhadores Portugueses –Intersindical Nacional (CGTP), Portugal, Interview with Carlos Trindade (Executive Committee, Migrations Department), Manuel Correia (President of "Sindicato das Indústrias Eléctricas do Sul e Ilhas"), Yasmin Arango Torres (União dos Sindicatos de Lisboa), Lisbon, 26 February 2008,

União Geral dos Trabalhadores (UGT), Portugal, Interview with Mr. Cordeiro, Lisbon, 27 February 2008

Trade union responses to the ICMPD TU Questionnaire

Belgium
Centrale générale des syndicats libéraux de Belgique (CGSLB), Response, ICMPD TU Questionnaire, 2008
LBC-NVK, Response, ICMPD TU Questionnaire, 2008

Denmark
Danish Union of Electricians, Response, ICMPD TU Questionnaire, 2008

Greece
GSEE, Response, ICMPD NGO Questionnaire, 30 May 2008

Slovenia
Association of Free Trade Unions of Slovenia, Response, ICMPD TU Questionnaire, 2008

Spain
Union General de Trabajadores (UGT), Response, ICMPD TU Questionnaire, 2008

Sweden
TCO, Response, ICMPD TU Questionnaire, 2008

United Kingdom
UNISON, Response, ICMPD TU Questionnaire, 2008

Non-EU

Norway
Norwegian confederation of trade unions, response, ICMPD TU Questionnaire, 2008
Switzerland
Syndicat interprofessionnel des travailleuses et travailleurs (SIT), Response, ICMPD NGO Questionnaire, 17 May 2008

References – secondary sources

Academic articles, chapters, books and studies

Abella, M.I. (2000): Migration and Employment of Undocumented Workers: Do Sanctions and Amnesties Work? In Çinar, D., Gächter, A. and Waldrauch, H. (eds.): *Irregular Migration: Dynamics, Impact, Policy Options*. Eurosocial Reports. Volume 67. Vienna: European Centre for Social Welfare Policy and Research, pp. 205—215

Apap, J, de Bruycker, P. and Schmitter, C. (2000): 'Regularisation of Illegal Aliens in the European Union. Summary Report of a Comparative Study', *European Journal of Migration and Law*, 2, pp. 263—308

Arango, J. and Jachimowicz, M. (2005): 'Regularizing immigrants in Spain: a new approach'. Migration Information Source/ MPI. Available at: http://www.migrationinformation.org/Feature/display.cfm?ID=331

Baldwin-Edwards, M. (2008): 'Towards a theory of illegal migration: historical and structural components', *Third World Quarterly*, 29/7, pp. 1449—1459

Baldwin-Edwards, M. (2002): 'Semi-reluctant Hosts: southern Europe's ambivalent response to immigration', *Studi Emigrazione*, 39/145, pp. 27—48

Baldwin-Edwards, M. and Arango, J. (eds) (1999): *Immigrants and the Informal Economy in Southern Europe*. London: Routledge

Baldwin-Edwards, M. (1997): 'The Emerging European Immigration Regime: Some Reflections on Implications for Southern Europe', *Journal of Common Market Studies*, 35/4, pp. 497—519

Baldwin-Edwards, M. (1991): 'Immigration after "1992"', *Policy & Politics*, 19/3, pp.199—211

Bauböck, R., Ersbøll, E., Groenendijk, K. and Waldrauch, H. (2006): *Acquisition and Loss of Nationality. Volume 1: Comparative Analyses, Policies and Trends in 15 European Countries*. IMISCOE Research. Amsterdam: Amsterdam University Press

Bauder, H. (2006): *Labor Movement. How Migration Regulates Labor Markets.* Oxford: Oxford University Press

Blaschke, J. (2008): *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union.* PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs

Böhning, W.R (1983): 'Regularizing the Irregular', *International Migration,* 21/ 2, pp.159—163

Buchberger, K. (1999): Die Repatriierung von Kriegsflüchtlingen in Europa nach Bosnien-Herzegowina in den ersten drei Jahren nach dem Daytoner Abkommen unter besonderer Berücksichtigung der deutschen Rückführungspolitik. Unpublished Masters thesis. University of Münster

BusinessEurope (2007): Position *on Commission Communication on Circular migration and mobility partnerships between the EU and third countries*, submitted 26.10.2007. Available at: http://www.businesseurope.eu

BusinessEurope (2007): *BusinessEurope position on Sanctions against employers of illegally staying third-country nationals*, submitted 25.10.2007. Available at: http://www.businesseurope.eu

De Bruycker, P. (ed) (2000): *Les regularisations des étrangers illégaux dans l'union européenne. Regularisations of illegal immigrants in the European Union.* Brussels: Bruylant

Cangiano, A. (2008): 'Foreign migrants in Southern European countries: evaluation of recent data'. In: Raymer, J. and Willekens, F. (eds): *International Migration in Europe: Data, Models and Estimates*. New Jersey: John Wiley & Sons, pp. 89—114

Carfagna, S., Gabrielli, D., Sorvillo, M. P. and Strozza, S. (2008): Changes of status of immigrants in Italy: results of a record-linkage on administrative data sources. Presentation given at the International Seminar on Longitudinal Follow-up of post-immigration patterns based on administrative data and record-linkage, Belgian Federal Science Policy, Brussels, 23.06.2008

Caritas Europe, Churches Commission for Migrants in Europe (CCME), Commission of the Bishops' Conferences of the European Community's Working group on Migration (COMECE), International Catholic Migration Commission (ICMC), Jesuit Refugee Service Europe (JRS-Europe) and Quaker Council for European Affairs (QCEA) (2006): *Comments on the European Commission's Communication on "Policy priorities in the fight against illegal immigration of third county nationals" COM (2006) 402 final*. Brussels

Caritas Europa, Churches Commission for Migrants in Europe (CCME), Commission of the Bishops' Conferences of the European Community's Working group on Migration (COMECE), International Catholic Migration Commission (ICMC), Jesuit Refugee Service Europe (JRS-Europe) and Quaker Council for European Affairs (QCEA) (2006): *Comments on the European Commission's Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals COM (2005) 391,* Brussels

Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelle (2008): *Before and After. La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 Décembre 1999),* available at http://www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf

Cesareo, V. (2007): *Immigrants Regularization Processes in Italy*. Milan: Polimetrica

CIMADE (2007): *De la loterie à la tromperie. Enquête citoyenne sur la circulaire du 13 juin 2006 relative à la régularisation des familles étrangères d'enfants scolarisés.* Rapport d'observation. Avril 2007; Available at: http://www.cimade.org/boutique/3-De-la-loterie-a-la-tromperie

Council of Europe (CoE) Assembly (2007): *Regularisation programmes for irregular migrants*. Report Committee on Migration, Refugees and Population. Rapporteur: Mr John Greenway, United Kingdom, European Democrat Group. Doc.11350. Available at: http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11350.htm

Council of Europe (CoE) Assembly (2007): *Recommendation* 1807. *Regularisation programmes for irregular migrants*

Council of Europe (CoE) Assembly (2007): *Resolution 1568, Regularisation programmes for irregular migrants*

Council of Europe (CoE) Assembly (2006): *Human Rights of Irregular Migrants*. Report Committee on Migration, Refugees and Population. Rapporteur: Mr Ed van Thijn, Netherlands, Socialist Group. Doc.10924. Available at: http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10924.htm

Cuttitta, P. (2008): 'Yearly quotas and country-reserved shares in Italian immigration policy', *Migration Letters*, 5/1, pp. 41—51

Deutscher Gewerkschaftsbund - Bundesvorstand vom 15.05.07: Stellungnahme zum Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union, beschlossen vom Bundeskabinett am 28.03.2007, http://www.migration-online.de/beitrag._aWQ9NTMzNA_.html

Dewulf, K. (Centre for Equal Opportunities and Opposition to Racism Belgium), comment, International Seminar on Longitudinal Follow-up of post-immigration patterns based on administrative data and record-linkage, Belgian Federal Science Policy, Brussels, 23.06.2008

ECRE (2005): *The Return of Asylum Seekers whose Applications have been Rejected in Europe*. Available at: http://www.ecre.org/files/return.pdf

ECRE (2007): *Defending Refugees Access to Protection in Europe,* Available at: http://www.ecre.org/files/Refugees%20Access%20to%20Protection%20in%20Europe%20FULL.pdf

ECRE (2007): *Submission from the European Council on Refugees and Exiles in response to the Commission's Green Paper on the Future Common European Asylum System (COM (2007) 301)*. Available at: http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/contributions/ngo/european_council_on_refugees_exiles_ecre_en.pdf, 28.05.2008

Elrick, T. and Ciobanu, O.: 'Evaluating the Impact of Migration Policy Changes on Migration Strategies: Insights from Romanian-Spanish migrations', *Global Networks* (forthcoming)

ETUC (2003): *Action Plan for an ETUC policy on migration, integration, and combating discrimination, racism and xenophobia*. Available at: http://www.etuc.org/a/1944?var_recherche=legal%20migration, 30.04.2008

ETUC (2005): *ETUC position: Towards a pro-active EU policy on migration and integration*. Available at: http://www.etuc.org/a/1159?var_recherche=legal%20migration, 30.04.2008

ETUC (2007): *ETUC Position regarding European Commission's proposals on legal and 'illegal' migration*; Available at: http://www.etuc.org/a/4415?var_recherche=position%20papers, 30.04.2008

ETUC (2006): *Illegal immigration: ETUC calls for enforcement of minimum labour standards and decent working conditions as a priority*. Available at: http://www.etuc.org/a/2699, 30.04.2008

European Migration Network (2007): *Illegally Resident Third Country Nationals in EU Member States* (synthesis report). http://emn.sarenet.es/Downloads/download.do;jsessionid=C91FE3E9DAD28B8A6888BD7573008825?fileID=498

Finotelli, C. (2007): *Illegale Einwanderung, Flüchtlingsmigration und das Ende des Nord-Süd-Mythos: Zur funktionalen Äquivalenz des deutschen und des italienischen Einwanderungsregimes*.Hamburg: Lit

Gächter, A., Waldrauch, H. and Çinar, D. (2000): 'Introduction: Approaches to Migrants in an Irregular Situation'. In: D. Çinar, A. Gächter, H. Waldrauch (eds): *Irregular. Migration: Dynamics, Impact, Policy Option*s. Eurosocial Reports. Volume 67. Vienna: European Centre for Social Welfare Policy and Research, pp. 9—28

Garçon, J.P. (2000): Amnesty Programmes: Recent Lessons. In: Çinar, D., Gächter, A. and Waldrauch, H. (eds): *Irregular. Migration: Dynamics, Impact, Policy Options. Eurosocial Reports*. Volume 67. Vienna: European Centre for Social Welfare Policy and Research, pp. 217—224

Geddes, A. (2000): *Immigration and European Integration. Towards Fortress Europe?* European Policy Research Series. Manchester: Manchester University Press

GHK (2007): *Impact Assessment on a Community instrument laying down sanctions for employers of third-country nationals with no or limited rights to work that are exceeded*. Specific Contract No. JLS/2006/B4/05, Abac no. 30-CE-0096339/00-78, Multiple framework service contract JLS/2006/A1/004, Request No. 2, Directorate-General Justice, Freedom and Security. London: GHK (2 volumes)

Global Commission of International Migration (2005): *Report. Migration in an Interconnected World: New Directions for Action*, Available at: http://www.gcim.org/attachements/gcim-complete-report-2005.pdf

Groenendijk, K., Fernhout, R., van Dam, D., van Oers, R. and Strik, T. (2007): *The Family Reunification Directive in EU Member States. The First Year of Implementation*. Nijmegen: Wolf Legal Publishers.

Groenendijk, K., Guild, E. and Barzilay, R. (2000): *The Legal Status of third country nationals who are long term residents in a Member State of the European Union*. Nijmegen: Centre for Migration Law.

Heckmann, F. and Wunderlich, T. (eds.) (2005): *Amnesty for Illegal Migrants?* Bamberg: efms

Hollifield, J. (2004): 'France: Republicanism and the Limits of Immigration Control'. In: Cornelius, W. A, Tsuda, T., Martin, P. L. and Hollifield, J. F. (eds): *Controlling Immigration. A Global Perspective.* 2nd edition. Stanford: Stanford University Press, pp. 183—214

International Labour Office (2004): I*nternational Labour Conference. Report 6. Towards a fair deal for migrant workers in the global economy*. Geneva. Available at: http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/rep-vi.pdf

Irish Congress of Trade Unions (2007): *A Fair 'Way In'. Congress Proposal for a Fair Regularisation Process for Undocumented Workers in Ireland*

Izquierdo, A.(1990): *Immigration en Espagne et premiers résultats du programme de regularisation*, Rapport par l'OECD. Group de Travail sur les Migrations. Paris: OECD

Jandl, M., Vogl, D. and Iglicka K. (2008): Report on methodological issues. Unpublished Draft Report for the project *Clandestino - Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe*

Jandl, M. and Kraler, A.(2006): 'Statistics on refusal, apprehensions and removals: An analysis of the CIREFI data'. In: Poulain, M., Perrin, N. and Singleton, A. (eds.): *Towards the Harmonisation of European Statistics on International Migration (THESIM)*. Louvain-La-Neuve: UCL Presses Universitaires de Louvain, pp. 271—285

Joppke, C. (1998) (ed.): *Challenge to the Nation-State. Immigration in Western Europe and the United States.* Oxford: Oxford University Press

Kossoudji, S. and Cobb-Clark, D. (1992): *Occupational Mobility or Occupational Chruning? Pre-Legalization Occupational Change for Male Hispanic Legalization Applicants.* Paper presented at the 1992 Annual Meeting of the Population Association of America

Kraler, A. (2009): *Regularisation of Irregular Immigrants - An Instrument to Address Vulnerability, Social Exclusion and Exploitation of Irregular Migrants in Employment?* Paper written on behalf of the Fundamental Rights Agency (FRA), forthcoming at http://fra.europa.eu

Kraler, A., S.Bonjour, A.Cibea, M.Dzhengozova, C.Hollomey, T.Persson, D. Reichel (2009), *Migrations, Minorities and Employment. Study regarding Discrimination on Grounds of Race and Ethnicity in the Area of Employment*. Forthcoming at http://fra.europa.eu

Kraler, A., Reichel, D. and Hollomey, C. (2008): Clandestino Country Report Austria. Unpublished Draft Report for the project *Clandestino - Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe*

Laubenthal, B (2007): 'The Emergence of Pro-Regularization Movements in Europe', *International Migration,* 45/3, pp. 101—133

Laubenthal, B. (2006): *Der Kampf um Legalisierung. Soziale Bewegungen illegaler Migranten in Frankreich, Spanien und der Schweiz*. Frankfurt: Campus

Levinson, A. (2005): *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*. Oxford: Centre on Migration, Policy and Society, University of Oxford

Libération, 18 Avril 2008: "L'appel de Londres à une amnistie"

Libération, 18 Avril 2008 : „Les patrons avec leurs sans-papiers"

MacDonald, E. and Cholewinski, R. (2007): *The Migrant Workers Convention in Europe*. Paris: UNESCO

Marie, C.V. (1984): 'De la clandestinité à l'insertion professionnelle régulière, le devenir des travailleurs régularisés'. In: Travail et Emploi N°22, décembre, pp. 21—32

Mármora, L. (1999): International Migration Policies and Programmes. Geneva: IOM

Massi, E. (1995): La sanatoria per I cittadini extracommunitari, Diritte e pratica del Lavoro

Migration Policy Group (2008): Migration News Sheet, August 2008, Brussels

Migrant Rights Centre Ireland (n.d.): Leaflet and FAQs on the Bridging Visa campaign, Available at: http://www.mrci.ie/policy_work/IrregMigrant_UndocuMigrant.htm

Migration Policy Institute (2004): Managing Irregular Migration. Presidency Conference on Future European Union Cooperation in the Field of Asylum, Migration and Frontiers Amsterdam, 31 August - 3 September, 2004 Policy Brief Nr. 4. Washington: Migration Policy Institute. Available online at http://www.migrationpolicy.org/events/2004-08-31.euroconf_publications.php

OECD (1994): Trends in International Migration. Annual Report 1993. SOPEMI. Paris: OECD

OECD (1997): Trends in International Migration. Annual Report 1996. SOPEMI. Paris: OECD

OECD (1998): Trends in International Migration. Annual Report. 1998 Edition. SOPEMI. Paris: OECD

OECD (1999): Trends in International Migration. Annual Report. 1999 Edition. SOPEMI. Paris: OECD

OECD (2000): Combating the Illegal Employment of Foreign Workers. Paris: OECD

OECD (2001): Trends in International Migration. Annual Report. 2000 Edition. SOPEMI. Paris: OECD

OECD (2003): Trends in International Migration. Annual Report. 2002 edition. SOPEMI. Paris: OECD

OECD (2004): Trends in International Migration. Annual Report. 2003 edition. SOPEMI. Paris: OECD

OECD (2006): International Migration Outlook. 2006 edition. SOPEMI. Paris: OECD

OECD (2007): International Migration Outlook. 2007 edition. SOPEMI. Paris: OECD

OECD Secretariat (2000): Some Lessons from Recent Regularisation Programmes. In: OECD (ed.), Combating the Illegal Employment of Foreign Workers. Paris: OECD pp. 53—69

Orrenius, P. and Zavodny, M. (2001): “Do amnesty programs encourage illegal immigration? Evidence from IRCA”, Federal Reserve Bank of Dallas, Working Paper 0103

OSCE, IOM, ILO (2006): Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination. Vienna. Geneva. Available at: http://www.ilo.org/public/english/protection/migrant/download/osce_handbook_06.pdf

Papademetriou, D. (2005): The "Regularization" Option in Managing Illegal Migration More Effectively: A Comparative Perspective. MPI Policy Brief, September 2005, No.4, Available at: http://www.migrationpolicy.org/pubs/PolicyBrief_No4_Sept05.pdf

Papademetriou, D., O'Neil, K. and Jachimowicz, M. (2004): Observations on Regularization and the Labour Market Performance of Unauthorized and Regularized Immigrants. Hamburg: HWWA

Papadopoulou, A. (2005): 'Regularization Programmes: An effective instrument of migration policy?' Global Migration Perspectives Nr.33. Geneva: Global Commission on Migration, Available at: http://www.gcim.org/attachements/GMP%20No%2033.pdf

Penninx, R. and Roosblaad, J. (2000): Trade Unions, Immigration and Immigrants in Europe 1960-1993. New York and Oxford: Berghahn Books

Platform for International Cooperation on Undocumented Migrants (PICUM) (2005): Ten Ways to Protect Undocumented Migrant Workers. Brussels: PICUM, Available at: http://www.picum.org/LABOR/PICUM%20Ten%20Ways%20to%20Protect%20Undocumented%20Migrant%20Workers.pdf

Pouwels, F.: 'Data aanvraag KSZ-DVZ': presentation at International Seminar on Longitudinal Follow-up of post-immigration patterns based on administrative data and record-linkage, Belgian Federal Science Policy, Brussels, 23.06.2008

Reichel, D. and Hofmann, M. (2008): Chechen Migration Flows to Europe - a statistical perspective. (forthcoming)

Renooy, P., Ivarsson, S., van der Wusten-Gritsai, O. and Meijer, R. (2004): Undeclared work in an enlarged Union: Final Report, DG Employment; May 2004

Reyneri, E. (2001): 'Migrants' Involvement in Irregular Employment in the Mediterranean Countries of the European Union.' International Migration Paper 41, Geneva: International Labour Organization; www.ilo.org/public/english/protection/migrant/download/imp/imp41.pdf

Reyneri, E. (1999):'The mass legalization of migrants in Italy: permanent or temporary emergence from the underground economy?', in Baldwin-Edwards, M., Arango, J. (Eds): Immigrants and the Informal Economy in Southern Europe, Routledge, 1999, pp. 83—104

Ruhs, M. and Anderson, B. (2006): 'Semi-compliance in the migrant labour market', Working Paper 30. COMPAS, University of Oxford

Schwenken, H. (2006): Rechtlos, aber nicht ohne Stimme. Politische Mobilisierung um irreguläre Migration in die Europäische Union. Bielefeld: mimeo.

Simon, G. (1987): 'Migration in Southern Europe: An Overview'. In: OECD: The Future of Migration. Paris: OECD

Sohler, Karin (1999): Zur Neuformulierung der Politik der Inneren Sicherheit im Kontext der Immigrationskontrolle in Österreich, 1989-1999, Unpublished Masters Thesis. Vienna: University of Vienna.

Sunderhaus, S. (2007): Regularization Programmes for Undocumented Migrants. Migration Letters, 4, 1, pp. 65—76

Sunderhaus, S. (2006): Regularization Programs for Undocumented Migrants. A Global Survey on more than 60 Legalizations in all Continents. Saarbrücken. VDM Müller

Thym, D. (2008): 'Respect for Private and Family Life under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?' International and Comparative Law Quarterly, 57, 1, pp. 87—112

UEAPME (2007): UEAPME position paper on the proposal for a directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third country workers legally residing in a Member State. Available at: http://www.ueapme.com/docs/pos_papers/2007/071205_pp_framework_directive_immigration.pdf, 23.04.2008

UNHCR (2007): *Global Appeal 2008-2009*; Available at: http://www.unhcr.org/publ/PUBL/474ac8c12.pdf,

UNHCR (2007): *Implementing the Ten-Point Plan of Action in Southern Europe: Activities Undertaken by UNHCR to Address Mixed Migration in the Context of the Mediterranean/Atlantic Arrivals*. Available at: http://www.unhcr.org/protect/PROTECTION/452ce4cd4.pdf

UNHCR (2007): *Observations on the occasion of the First Euro-Mediterranean Ministerial Meeting on Migration Algarve, 18-19 November 2007*. Available at: http://www.unhcr.org/protect/PROTECTION/473d554b2.pdf

UNHCR (2007): *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, revised January 2007, http://www.unhcr.org/protect/PROTECTION/4742a30b4.pdf

UNHCR (2007): R*esponse to the European Commission's Green Paper on the Future Common European Asylum System*, available at http://www.unhcr.org/protect/PROTECTION/46e53de52.pdf

UNICE (2006): *UNICE position on the Commission policy plan on legal migration*, submitted 10 May 2006. Available at: http://www.businesseurope.eu

Van der Leun, J. (2003): *Looking for Loopholes. Processes of Incorporation of Illegal Immigrants in the Netherlands*. Amsterdam: Amsterdam University Press

Van Selm, J., 'Conclusions', in J. van der Selm (ed) (2002): *Kosovo's Refugees in the European Union.* London and New York: Pinter

Van Selm-Thorburn, J.: *Refugee Protection in Europe. Lessons of the Yugoslav Crisis*. The Hague, Boston and London: Martinus Nijhoff Publishers

Verbruggen, N. (2005): 'General Policy Trends Regarding Undocumented Immigration in the EU'. In: Heckmann, F. and Wunderlich, T. (eds.), *Amnesty for Illegal Migrants?* Bamberg: efms

Waldrauch, H. (2006): Acquisition of Nationality. In: Bauböck, R., Ersbøll, E., Gronendijk, K. and Waldrauch, H. (eds.): *Acquisition and Loss of Nationality. Policies and Trends in European Countries.* IMISCOE Research Series. Amsterdam. Amsterdam University Press, extended chapter available at http://www.imiscoe.org/natac/acquisition_bookchapters.html

Watts, J. (2002): *Immigration Policy and the Challenge of Globalization. Unions and Employers in Unlikely Alliance*. Ithaca and London: Cornell University Press

European Union documents

Primary legislation

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; Article 12 (1) on Protection against expulsion

Council Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

Council Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration

Council Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers

Commission Communications

Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy, COM (2000) 757 final, Brussels, 22.11.2000

Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration, COM (2001) 672 (final)

Communication from the Commission to the European Parliament and the Council in View of the European Council of Thessaloniki on the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents, COM (2003) 323(01)

Communication from the Commission to the Council, European Parliament, the European Economic and Social Council and the Committee of the Regions on Immigration, Integration, and Employment, COM (2003) 336 final, Brussels, 3.6.2003

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions; Study on the Links Between Legal and Illegal Migration, Com (2004) 412 final, Brussels 4.06.2004

Communication from the Commission on Policy priorities in the fight against illegal immigration of third country nationals, COM (2006) 402 final, Brussels, 19.7.2006

Communication from the Commission to the European Parliament, the Council, the European Economic Social Committee and the Committee of Regions, Policy Plan on Asylum: An Integrated Approach to Protection across the EU; COM (2008) 360, Brussels, 17.06.2008

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; A Common Immigration Policy for Europe: Principles, actions, and tools. COM (2008) 359, Brussels, 20.06.2008

Legislative proposals

European Commission, Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in member states for returning illegally staying third country nationals; COM (2005) 391 final, Brussels, 1.9.2005

European Commission, Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals; COM (2007) 249 final, Brussels, 16.5.2007

European Commission, Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment COM (2007) 637 final, Brussels, 23.10.2007

European Commission, Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. COM (2007) 638 final, Brussels 23.10.2007

Council of the European Union, Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, No 10737/08, Brussels, 25.06.2008

European Commission, Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers. COM(2008) 815 final, 3.12.2008

Other European Union documents

European Commission (2008): New Tools for an Integrated European Border Management Strategy. Memo 08/85. Brussels, 13.02.2008

European Parliament, Committee on Civil Liberties, Justice and Home Affairs (2007): Report on policy priorities in the fight against illegal immigration of third-country nationals (2006/2250(INI)), Rapporteur: Javier Moreno Sánchez. Available at: http://www.europarl.europa.eu///sides/getDoc.do?type=REPORT&language=EN&reference=A6-2007-0323

Relevant instruments under international law

Council of Europe Conventions

Council of Europe – ETS no. 019 – European Convention on Establishment, Article 21(2), Chapter VI on taxation, compulsory civilian services, expropriation, nationalisation

Council of Europe – ETS no. 093 – *European Convention on the Legal Status of Migrant Workers*

European Court of Human Rights – judgements

European Court of Human Rights (ECtHR) judgement of 17 January 2006, No. 51431/99, Aristimuño Mendizabal v. France

European Court of Human Rights (ECtHR): judgement of 31 January 2006, No. 50435/99, Rodrigues Da Silva & Hoogkamer v. The Netherlands

European Court of Human Rights (ECtHR): judgement of 15 January 2007 (GC), No. 60654/00, Slivenko *et al.* v. Latvia

Other relevant instruments under international law

International Labour Organization – C97 – Migration for Employment Convention (Revised) of 1949

International Labour Organization – C143 – Migrant Workers (Supplementary Provisions) Convention of 1975

United Nations – Convention on the Rights of the Child of 1989

United Nations – International Convention on the Protection of the Rights of All Migrant Workers and Their Families of 1990 (ICRMW)

SECTION II

Country Studies

10 Austria

Albert Kraler & David Reichel

1. Introduction

At the beginning of the year 2007, the total resident population in Austria stood at 8.3 million persons of whom roughly 826,000 were non-nationals. (See: www.statistik.at). The largest groups of Third Country Nationals are citizens of Serbia and Montenegro[1] (137,289), followed by Turks (108,808) and citizens from Bosnia and Herzegovina (86,427).

Table 10: Basic information on Austria

Total population*		8,299,000
Foreign population*		826,000
Third Country Nationals*		550,000
Main countries of origin*	Serbia and Montenegro	137,000
	Germany	114,000
	Turkey	109,000
Net migration***		27,000
Asylum applications**		11,921

* 1st Jan. 2007 ** During 2007 *** 2006
Source(s): www.statistik.at, www.bmi.gv.at/publikationen

2. Irregular migration in Austria

There are few global estimates on the stocks of illegally staying foreign residents in Austria. Estimates range between 40,000 and 100,000, but as all available estimates were made before the two recent waves of EU enlargement and a significant share of illegally resident non-nationals before enlargement were believed to be citizens of new Member States, the actual total population of illegally resident third country nationals is likely to be on the lower end of the estimate (Kraler, Reichel & Hollomey 2008).

There are several statistical indicators on illegal migration, notably apprehension figures, figures on expulsion orders and asylum applications, which are traditionally closely correlated to the number of apprehensions.

In 2006, 3,276 persons were expelled for unlawful residence in the territory. In 2007, the number decreased to 1,748[2] (Ministry of the Interior). Taking into account only persons apprehended in the territory and disregarding both double-counting or undercounting, i.e. the fact that figures are likely to be biased, apprehension statistics indicate a population of 16,000 persons who were illegally residing in

[1] Separate statistics for the two countries are not yet available
[2] The reason for this sharp decrease may be the accession of Romania and Bulgaria to the European Union in 2007.

Austria in 2007. As the number of 16,000 apprehended persons within the territory includes an unknown number of asylum seekers[3] and transiting migrants as well as citizens of Romania and Bulgaria who are – since 2007 – EU citizens and thus are no longer part of the illegal resident population, a much smaller number of those apprehended in 2007 as illegally staying actually can be considered as illegally resident in a narrow sense. Assuming that only a certain share of irregularly staying persons are apprehended, however, and taking into account estimates for countries of similar sizes, the number of 16,000 can be taken as a low range estimate for the illegally staying population.

Table 11: Persons apprehended due to illegal entry and/or residence in 2006

	When entering	In the territory	When leaving the country	In course of compensatory measures[4]	**Total**
Smuggled persons	2,250	8,401	1057	562	**12,270**
Persons staying/entering illegally	590	7,683	11341	6,707	**26,321**
Total	**2,840**	**16,084**	**12,398**	**7,269**	**38,591**

Source: Ministry of the Interior

Because of safe third country and Dublin rules, virtually all asylum applicants have entered the country illegally. Thus, asylum applications can be taken as indicators for flows of illegal immigrants. This said, not all irregular migrants lodge asylum claims. Conversely, asylum seekers, once they have formally lodged an application, are no longer illegally resident. In regard to the asylum system, the number of discontinued asylum procedures has been frequently suggested as an indicator illegal migration, although there is no evidence whether "disappeared" asylum seekers have remained in the country, have returned or moved elsewhere.

A second source of irregular migrants who have been in the asylum system are rejected seekers who do not return/ who are not returned. However, no data on rejected asylum seekers remaining in the country exist. Thus, although the exact extent to which the asylum system is linked and contributes to stocks of illegally resident migrants is unclear, it can be considered a major 'source' of irregular migrants. Recently, however, asylum figures have dramatically decreased (see table below), and so have apprehensions, which have sharply declined from a total of 48,751 in 2001 to 38,642 in 2004 and 14,862 in 2007 (Kraler/ Hollomey 2008).

[3] It is unclear how many asylum applicants submit an application immediately after entry in a border district or once in the country and after a certain period of (undocumented) residence. In the context of the enlargement of the Schengen area, however, the distinction between in-country apprehensions and border apprehensions is increasingly blurred.

[4] After omission of border controls (i. e. dragnet controls nearby borders)

Table 12: Discontinued asylum procedures 2003 to 2006

	2003	2004	2005	2006
Discontinued asylum procedures	18,029	7,603	6,765	4,023
Unfounded	7,065	5,905	1,399	1,303
Number of all asylum applications	32,359	24,634	22,461	13,349

Source: Ministry of the Interior

From the available evidence, therefore, it seems that the importance of irregular entry has considerably declined as a result of EU enlargement as well as a result of the decline of asylum related migration in recent years. Similarly, overstaying can be assumed to be of rather minor quantitative importance in the Austrian context today: In respect to migrants from non-EU Europe, non-compliant forms of migration on a circular basis (e.g. entry on tourist visa and illegal work; entry as seasonal workers and under-declaration of employment etc. and subsequent return and legal re-entry) are more likely to occur than overstaying. Although it is not unlikely that some citizens of new EU Member States without access to employment "overstay" in a technical sense, there are no means to check this. Both legally and in practice, EU citizens (whether new or old) are no longer seen as a category whose residence status can be irregular. Finally, the relatively strict visa issuing practices vis-à-vis third country nationals subject to visa requirements and the substantial financial guarantees required from "sponsors" as well as increased controls similarly reduces the scope for overstaying and leaves visa-free countries as the most likely source of overstayers. In the current context, withdrawal and loss of a legal status thus seems to be the most important pathway into irregularity, with the asylum system being the most important, although not the only source of irregularity as a consequence of status loss and/or withdrawal.

3. National policy on illegal migrants in regard to regularisation

The Ministry of the Interior rejects regularisation as policy response to the presence of irregular migrants. Despite Austria has consistently rejected regularisation as a policy instrument, it has regularised irregular migrants both through (limited) mechanism and through two *de facto* regularisation programme implemented in the 1990s, which involved relatively large numbers of migrants.

In response to the ICMPD questionnaire, the Ministry of the Interior provides four main arguments why regularisation should be avoided. First, the Ministry of the Interior believes that regularisations would send the wrong signal to prospective irregular migrants and are likely to constitute a pull factor for irregular immigrants, even though the Ministry concedes that such pull effects might be difficult to prove. Secondly, the Ministry argues that long term illegal residence has to be considered a threat to public order, which in turn constitutes an absolute reason for denying a residence title. Third, regularisation of irregularly staying third-country nationals would contradict the principle of equal treatment enshrined in the constitution.

Fourth, the Ministry argues that regularisations would undermine managed migration also in a long term perspective, as individual regularisations are likely to imply subsequent family reunifications and therefore would increase future immigration flows in an unpredictable way. Generally, the Ministry considers the topic as highly sensitive and rejects any measures on the European level that would oblige Member States to regularise illegal immigrants (MS Response AT: 1-2, and BMI 2009).

4. Regularisation programmes

In the period under review (1996-2008), **no regularisation programme as such** has been carried out in Austria. The first major regularisation programme was implemented in 1990, in the course of which some 30,000 persons were regularised. Under the programme, illegally employed foreign nationals could apply for a work permit to regularize their employment status and by implications, also their residence status, as the latter was subsidiary to the employment status before 1993 (see: Nowotny, 1991). Effectively, this early programme thus regularised both residence and employment of the regularised persons, albeit regularisation of residence status was not an explicit objective of the programme.

In the late 1990s, a special programme for displaced persons from Bosnia and Herzegovina was carried out and was implemented through a special law, known as the 'Law on Bosnians' (*Bosniergesetz*). The programme targeted persons from Bosnia and Herzegovina who were under temporary protection in Austria – in total around 85,000 persons. According to the act persons under temporary protection could obtain a settlement permit, if they had resided in Austria without interruption since 1st October 1997 and if they fulfilled all conditions of the Aliens Act (1997), including access to legal employment and suitable accommodation. In the beginning of the year 2000, the majority of the 85,000 displaced persons from Bosnia and Herzegovina had obtained a settlement permit and thus successfully had changed to the regular residence regime. A small number - around 600 persons continued to reside under the temporary protection regime, while another 5,500 were in the asylum system (cf. Fassmann & Fenzl, 2003: 299 – 300; BosnierG, 1998). Although the programme is strictly speaking not a regularisation programme, as Bosnian displaced persons were legally admitted (if ex post) on a temporary permit and the 1998 programme only 'normalised' the status of Bosnians by admitting them into the regular (permanent) residence regime, the entire history of the reception of Bosnian war refugees in Austria suggests that the programme effectively constituted the second step in a two-step regularisation procedure. In terms of target group of this 'regularisation programme', the so-called 'Bosnieraktion' is similar to programmes for war refugees from the former Yugoslavia implemented in other Member States, which eventually became known and institutionalised as temporary protection programmes. In many respects, subsidiary protection which was developed on the basis of the principle of 'non-refoulement' currently fulfils similar functions.

A third programme, implemented between June 2007 and June 2008, however, falls short of a regularisation as defined for the purpose of this study, although its objectives are similar to many employment oriented regularisation programmes

proper implemented elsewhere. The programme known as 'care amnesty' (*Pflegeamnestie)* targeted care workers from new EU member states working in breach of general employment regulations and/or in breach of the employment of foreign nationals act. The programme was launched in June 2007 and ended in June 2008. Under the programme, persons working illegally as domestic care workers and meeting the definition of care worker used in the amnesty were eligible to register their employment, while sanctions and penalties have been suspended for the duration of the programme for both for care providers and their employers . However, only persons with a residence right in Austria and principle access to employment were eligible for the amnesty, thus excluding illegally resident third-country nationals as well as third-country nationals without access to employment. The only group of third country nationals that were (theoretically) eligible for the amnesty thus were persons with a restricted status, notably family members and long term residents in the meaning of 109/2003/EC.

According to the Ministry for Social Affairs, more than 9000 registrations were received until 30th of June.[5] As the data only counts new registrations, the figure may include persons who have not been employed (irregularly) prior to registration (i.e. the data may include new registrations proper). Between 90% to 95% of those registering registered as self-employed workers. Although the Ministry of Social Affairs does not have detailed statistics on nationality of applicants for the amnesty, the majority of persons registering under the programme are thought to have been Slovakians, followed by Romanians. A small number of Austrian citizens also seem to have benefited from the amnesty, reflecting its basic focus on labour law. Apparently, no or only an insignificant number of third country nationals seem to have benefited from the amnesty. The main reason seems to be a very restrictive practice of the Labour Market Service (Arbeitsmarktservice - AMS) in regard to issuing work permits – which third country nationals who are not long term residents require. It is unclear why no long term residents (but a small number of Austrian citizens) have benefited from the amnesty.

The overall number of care workers eligible for the amnesty is not known; however, serious estimates range from 6,000 to 20,000 (see Kraler, Reichel & Hollomey 2008). Although it is assumed that a majority of persons employed as illegal care workers come from new EU member states, anecdotal evidence suggests that there is a certain share of persons from non-EU countries, notably from the Former Yugoslavia. Thus, although the amnesty would have been an opportunity to regularise third country nationals in breach of the Employment of Foreign Workers Act 1975 (as amended) and thus technically in breach of immigration conditions, the opportunity was not seized.

[5] Telephone Interview, Dr. Hofer, Ministry of Social Affairs, 18 July 2008.

5. Regularisation mechanisms

According to the response of the Austrian Ministry of the Interior to the ICMPD questionnaire, regularisation is a concept alien to the legal framework governing migration. (Response AT: 1).

However, the Ministry of the Interior may regularise non-nationals in an irregular situation on humanitarian grounds. Humanitarian residence permits were first introduced in the 1997 reform of aliens legislation. To a large degree, the introduction of the mechanism was a response to massive problems regarding renewal of residence permits and consequence loss of legal status under the 1993 Residence Act and in particular, to irregularity of minors (See Kraler, Reichel & Hollomey 2008). According to one expert estimate, between 5 and 10% of third country nationals in Vienna were affected by status loss between 1993 and 1997 as a result of the conditions and procedural changes under the 1993 Residence Act.[6] The status is granted on the discretion and on the initiative of the authorities, a provision recently (successfully) challenged before the constitutional court.[7] At the time of writing (January 2009), a proposal for the amendment of humanitarian stay has been tabled (see more details below). Austrian legislation distinguishes between two types of humanitarian residence titles, namely humanitarian residence permits (*Aufenthaltsbewilligung aus humanitären Gründen*), i.e. short term permits and humanitarian settlement permits (*Niederlassungsbewilligung aus humanitären Gründen*), i.e. long term (immigration permits) with principle eligibility for long term residence status in the meaning of directive 109/2003/EC.

Non-refoulement is the most important grounds for granting a humanitarian residence permit. Such a permit may be granted for maximum duration of three months (§72 (1) Residence and Settlement Act 2005 [*Aufenthalts- und Niederlassungsgesetz, NAG]*). Aliens may also be granted a humanitarian stay to facilitate criminal prosecutions, a provision particularly meant for victims of trafficking (§72 (2) Residence and Settlement Act 2005). Such permits are valid at least six months. In addition, restricted settlement permits or settlement permits without access to employment can be granted (§73) The former can be issued to persons who meet the conditions of the 'integration agreement' and in case of dependent employment, have a work permit under the Aliens Employment Act (§73 (2). For the latter, the conditions of the integration agreement have to be met (§73 (3). Humanitarian permits, however, may also be issued in cases of family reunification, in which humanitarian reasons apply (§73 (4). While humanitarian status grants according to §72 and §72 (1)-(3) of the act are issued on discretion of the Ministry of the Interior and no right to apply for the status exists, an application for regular family reunification is a condition for issuing a permit under § 72 (4). In addition, to granting humanitarian status under §§72-73, however, an application for a regular residence or settlement permit may be exceptionally admitted from within the country, if reasons for granting a humanitarian status under §§72-73 apply (see §74 Residence and Aliens Act 2005). A residence status under this provision may be awarded by the provincial authorities, but is subject to approval by the Ministry of the Interior.

[6] Interview with Karin König (Municipality of Vienna, MA17), 27 February 2008
[7] See Decision of the Constitutional Court, G 246/07 u.a of 27 June 2008

The number of humanitarian permits issued has varied between the years and has considerably decreased since 2002. Between 2002 and 2007 more than 6,000 residence titles (both residence and settlement permits excluding extensions) were issued on humanitarian grounds. Humanitarian residence permits are frequently issued to asylum seekers, who were already working in Austria, but whose application was rejected, and who subsequently lost their right to remain according to the Asylum Act. (cf. Asylkoordination n.d.). In particular in respect to humanitarian settlement permits (i.e. long term residence permits), however, admissions from abroad are actually more important in quantitative terms than regularisations of irregularly staying migrants, notably for family related admissions outside the quota systems.

Table 13: Grants of humanitarian residence permits

	Humanitarian residence permit* (*Aufenthaltstitel*)	Humanitarian settlement permits* (*Niederlassungsbewilligung*)	Total
2002	1,679	-	1,679
2003	711	237 (627)**	1,575
2004	464	196 (667)**	1,327
2005	254	112 (478)**	844
2006	144	91 (61)**	296
2007	188	93 (150)**	431

* The numbers include only first permits
** The numbers in brackets are issued for family reunification which are issued when quotas (which define the maximum number of permits issued per category per year) are exhausted
Source: BMI 2007, 1753/AB XXIII.GP Anfragebeantwortung and BMI Fremdenstatistik 2002 to 2007, authors' calculations

In response to the ICMPD questionnaire, the Austrian Ministry of the Interior stressed that humanitarian status should not be viewed as a regularisation instrument. The regularisation of the residence status of Third Country Nationals granted a humanitarian stay should be seen as a mere side effect of the permit and as an emergency regulation (Response AT: 1).

In response to the ruling of the Constitutional Court of June 2008, a proposal for the amendment of the provisions on humanitarian status were tabled in late 2008.[8] The proposal has three main elements. First, victims of trafficking and domestic violence would now be able to lodge an application for a short term residence permit under §72(1) as a victim, rather being awarded a title on the initiative of the Ministry of the Interior. Secondly, if removal has been found inadmissible on grounds of article 8 ECHR, the proposal stipulates that a settlement permit has to be granted. Third, the proposal stipulates that each provincial governor can establish an advisory

[8] See: Entwurf: Bundesgesetz, mit dem das Asylgesetz 2005, das Fremdenpolizeigesetz 2005 und das Niederlassungs- und Aufenthaltsgesetz geändert werden und ein Bundesgesetz über einen Beirat des Landeshauptmannes zur Beratung in Fällen besonderen Interesses erlassen wird, draft and comments on the draft available at:
http://www.parlinkom.gv.at/PG/DE/XXIV/ME/ME_00012/pmh.shtml, (12 Jan 2009).

committee on humanitarian cases. Recommendations by these bodies would not be binding, however, the existence of an advisory body would be a pre-condition that provincial governors can grant a settlement permit on humanitarian grounds. In addition, the proposal requires that the alien is sponsored, either by individuals or associations. Other than under current regulations, where the status is granted by the Ministry of the Interior, the Ministry would only have to be informed about status grants. Particularly the third element of the proposal was heavily criticised by a wide range of social actors as well as provincial governments. The criticism of civil society actors and interest groups focused on two aspects of the proposal, namely that the possibility to apply for humanitarian status may be dependent on the province of residence (and whether the provincial authorities in principle allow for humanitarian status grants by establishing an advisory body) and secondly on the requirement that individuals granted a humanitarian stay should be sponsored for a period of five years. Critics argue that this provision privatises governmental responsibilities and furthermore would lead to dependency and possibly exploitation, while humanitarian status grants would be highly selective, depending on the ability of individuals to find sponsors.[9] In response to the criticism and the refusal of provincial governments to take over the partial responsibility for humanitarian status grants, an amended proposal is currently being elaborated.

6. Conclusions

Austria has never undertaken explicit regularisation programmes aiming the regularisation of irregular staying migrants. However, the "amnesty" of illegally employed aliens implemented in the early 1990s effectively also regularised the residence status of persons covered by the programmes and thus can be seen as amounting to a regularisation programme. Similarly, the programme implemented for Bosnian refugees can be interpreted as a two step regularisation programme. Most Bosnian refugees came spontaneously and hence irregularly and were formally 'admitted' only after the fact. The reluctance to use regularisation as a policy tool may be explained by two factors: First, the relatively low number of illegally staying third country nationals, and secondly, and perhaps more importantly, the principled opposition against using regularisation, even in individual cases, as a policy tool to address the illegal residence status of third country nationals, a view shared across the political spectrum.

Despite the opposition to regularisation, there have been several laws and programmes which effectively regularised foreigners' statuses during the last two decades. Although humanitarian status is not seen as a regularisation mechanism by Austrian authorities, several thousand persons have obtained a legal residence on humanitarian grounds in the past years. In public debates, however, regularisation policy has recently become a major focus of public debates on immigration, asylum and irregular work. In respect to irregular work, debates on regularisation have been mainly limited to the care sector and mostly referred to citizens from new EU Member States rather than third-country nationals. In addition, the issue is considered as 'solved' after the recent 'care amnesty'. By contrast, regularisation of

[9] Formal comments on the proposal can be accessed at the parliamentary website under http://www.parlinkom.gv.at/PG/DE/XXIV/ME/ME_00012/pmh.shtml, (12 Jan 2009).

illegally staying third country nationals discussed under the label 'right to remain' (*Bleiberecht)* has only attracted the attention from the wider public more recently in the context of one well known and widely publicised case. To some degree, the case is a consequence of the practice in some provinces to issue work permits to asylum seekers and subsequently the dilemma how to deal with individuals who had access to work, were employed and whose applications for asylum were subsequently rejected.[10] In the context of these debates, two major NGOs (*Diakonie* and *SOS Mitmensch)* have proposed a regularisation programme for third country nationals in an irregular situation who had been staying in Austria for an extended period of time. According to the proposal, well integrated individuals should have a right to apply for humanitarian stay after three years of de facto residence. After five years, individuals should have an automatic right to remain. According to proponents of the proposal, the suggested provision would affect approximately 4,000 individuals.[11] To some extent, the proposed amendments to the regulation of humanitarian stay takes up some of the underlying arguments of the NGO proposal, notably the idea to avoid limbo situation and the proposed obligation to issue residence permits to aliens whose asylum claims or applications for residence permits have been rejected but who cannot be returned on grounds of article 8 ECHR.

At the time of writing, it remains unclear how the provisions on humanitarian stay will be implemented. Nevertheless, the proposal and the subsequent discussion suggest that the government has reversed its principled opposition to regularisation and that Austria is moving towards a more pragmatic approach in respect to the regularisation of illegally staying third country nationals. In particular, the proposal for the first time acknowledges for the first time the need for clear regulations in respect to persons who are irregularly staying and who cannot be returned for an extended period of time.

[10] Herbert Langthaler, comment, Stakeholder-Workshop des Forschungsprojektes „Undocumented Worker Transitions" (UWT), Forba, Vienna, 26 November 2008

[11] Die Presse, 21/22 June, 2008: „Humanität mehr gehorchen als Gesetzen" – Die evangelische Kirche fordert Bleiberecht für 4000 Menschen und kokettiert mit zivilem Ungehorsam." Available online at
http://diepresse.com/home/panorama/oesterreich/392806/index.do?from=suche.intern.portal

7. References

Asylkoordination (n.d.): Aylregime in Österreich. http://www.asyl.at/projekte/node/asylregime_oesterreich.pdf

Blaschke, Jochen, 2008, *Trends on regularisation of third country in irregular situation of stay across the European Union*, Briefing paper, Directorate-General Internal Policies. Policy Department, Citizens Rights and Constitutional Affairs

BMI (Ministry of Interior), 2007, 1753/AB XXIII.GP Anfragebeantwortung. Available at: www.parlament.gv.at/PG/DE/XXIII/AB/AB_01753/imfname_096617.pdf - 27 October 2008

BMI (Ministry of the Interior), 2009, ICMPD STUDIE betreffend Regularisierungsprozesse der EU-Mitgliedsstaaten. Ö-Stellungnahme

Fassmann, Heinz & Fenzl, Heide-Maria, 2003: Asyl und Flucht, in: Fassmann, Heinz & Stacher, Irene (Ed.), 2003: *Österreichischer Migrations- und Integrationsbericht. Demographische Entwicklungen, sozioökonomische Strukturen, rechtliche Rahmenbedingungen*, Klagenfurt: Drava Verlag.

Kraler, Albert; Christina Hollomey, 2008: *Undocumented Migration in Austria*. CLANDESTINO. Counting the Uncountable: Data and Trends across Europe. Research Briefing. Available online at http://www.eliamep.gr/en/category/migration/

Kraler, Albert; David Reichel, Christina Hollomey, 2008: Undocumented Migration: Counting the Uncountable. Date and Trends across Europe. Country Report AUSTRIA. Online at http://www.eliamep.gr/en/clandestino/

Nowotny, Ingrid, 1991: Ausländerbeschäftigung in Österreich. Die Gesamtproblematik und aktuelle Situation. In: WISO 14. Jg. (1991), Nr. 1

Response AT: ICMPD questionnaire sent to the Austrian government in the course of the REGINE project, 2008

8. Statistical Annex

Table 14: Smuggled persons illegally staying or entering by citizenship 2006 and 2997 (main countries)

	Smuggled persons				Persons staying/entering illegally				Total			
	2006		**2007**		**2006**		**2007**		**2006**		**2007**	
	Total	**in %**	**Total**	**in %**	**Total**	**in %**	**Total**	**in %**	**Total**	**in %**	**Total**	**in %**
Romania	137	1,1	8	0,1	21293	80,9	294	6,7	21430	55,5	302	2,1
Serbia and Montenegro*	2223	18,1	1447	14,7	490	1,9	603	13,8	2713	7,0	2050	14,4
Russian Federation	1506	12,3	1664	16,9	189	0,7	166	3,8	1695	4,4	1830	12,9
Moldova	1250	10,2	772	7,8	196	0,7	175	4,0	1446	3,7	947	6,7
Bulgaria	19	0,2	3	0,0	1373	5,2	41	0,9	1392	3,6	44	0,3
Ukraine	724	5,9	612	6,2	275	1,0	329	7,5	999	2,6	941	6,6
Turkey	611	5,0	510	5,2	155	0,6	205	4,7	766	2,0	715	5,0
Georgia	476	3,9	309	3,1	164	0,6	130	3,0	640	1,7	439	3,1
India	530	4,3	402	4,1	93	0,4	152	3,5	623	1,6	554	3,9
Mongolia	445	3,6	235	2,4	59	0,2	34	0,8	504	1,3	269	1,9
Other	4349	35,4	3880	39,4	2034	7,7	2246	51,3	6383	16,5	6126	43,1
Total	**12270**	**100**	**9842**	**100**	**26321**	**100%**	**4375**	**100%**	**38591**	**100 %**	**14217**	**100 %**

* For better comparability the numbers of persons from Serbia and Montenegro were added up in 2007, although the countries were counted separately (partly since 2006).
Source: Ministry of Interior; table taken from Kraler, Reichel & Hollomey 2008)

11 Belgium

Albert Kraler, Saskia Bonjour, Mariya Dzhengozova[1]

1. Introduction

According to Statistics Belgium, Belgium had a population of some 10.58 million in 2007 of whom 932,161 (8.8 per cent) were foreigners.[2] The total foreign born population in 2004 stood at approximately 1.2 million or 11.4% of the total population (Ouali & Carles 2007: 15).

Table 15: Basic information on Belgium (2007)

Total population*		10,584,534
Foreign population*		932,161
Third Country Nationals**		185,918
Main countries of origin (TCN, 2006)**	Morocco	80,602
	Turkey	39,664
	DR Congo	13,454
Net migration (2006)*		50,722
Asylum applications**		11,115

*Statbel (see FN 2); ** EMN NCP Belgium 2007

Third country nationals represent around 35% of the foreign population. Although immigration from other EU countries has traditionally been and continues to be an important factor shaping the composition of the foreign population, relatively liberal naturalization requirements and a much higher naturalization propensity among third country nationals compared to EU citizens also are important factors to explain the relatively small share of third country nationals in the total foreign population (see table above). After an all time high of asylum applications in 2000 (42,691 applications), asylum inflow has since dropped sharply. In 2006, just over 11,000 applications have been recorded (Ouali & Carles 2007: 5).

2. Irregular Migration in Belgium

There are a variety of estimates on the irregular migrant population in Belgium, most of which date from the period around the 2000 regularisation programme. Based on the results of a survey among undocumented migrants conducted by the University of Leuven in collaboration with various NGOs, the irregular migrant population has been estimated at 70,000 in 2000. The survey on which the estimate was based showed that 57% of the persons interviewed had filed an application during the regularisation programme in 2000. Applying the share of persons who

[1] The authors would like to thank Benedikt Vulsteke of the Belgian NCP/ EMN for helpful comments on draft versions of the study

[2] FPS – Economy. General Directorate Statistics Belgium (Statbel), figures published on http://www.statbel.fgov.be/figures/d21_fr.asp; for net migration: http://www.statbel.fgov.be/downloads/pop1988_2006_mov_fr.xls (accessed 19/05/2008)

filed an application to the results of the regularization process, in which 33,219 applications relating to a then estimated 50,000 persons[3] were submitted, the number of undocumented migrants was estimated at 71,000 (EMN 2005:27). Similarly, in response to the ICMPD questionnaire, the Belgian Ministry of the Interior states that estimates of the number of persons eligible for the 2000 regularisation programme ranged between 50,000 and 70,000 (Belgium, Response ICMPD MS Questionnaire 2008).[4] In the early 1990s, the Ministry of Justice estimated the number of irregular migrants at 70,000 to 100,000. Similar numbers were put forward in the first half of the 1990s by journalists, interest organisations and the ILO (EMN 2005:27). A recent report commissioned by the Ministry of the Interior suggests a slightly higher stock of irregular migrants and puts the total number of irregular migrants in 2005 at 110,000 (Van Meeteren, Van San & Engbersen 2007).[5] The report also provides a time series, which suggests, somewhat counterintuitively,[6] that the number of irregular migrants has remained constant over the 5 years (2001-2005) covered by the report. Methodologically, the estimate is based on several strong assumptions and the resulting figure seems to be relatively high.

In general, (failed) asylum seekers are thought to constitute a significant share of the undocumented migrant population (Belgium, Response ICMPD MS Questionnaire 2008). Indeed, in the regularisation programme in 2000, the overwhelming majority of applicants came from important sending countries of asylum seekers. However, applications were filed also by a considerable number of migrants from non-asylum countries. The most important countries of origin of undocumented migrants according to the data from the 2000 regularisation programme and data on case by case regularisations are the Democratic Republic of Congo, Serbia, Russia, Turkey and Morocco. Before the two recent waves of enlargement, Polish and Romanian citizens also constituted important categories of undocumented migrants.

Statistics on apprehensions collected by the Federal Police and the Immigration Service provide one of the main statistical indicators on undocumented migration. As can be seen from the table below, apprehension figures have remained at

[3] The MS questionnaire response for Belgium provides a revised figure of around 55,000 persons.
[4] No further information on this estimate was provided and it might actually refer to the EMN estimate.
[5] The estimate is derived from a two step procedure. First, the study authors have calculated a crime offense rate for irregular migrants derived from a survey of 120 irregular migrants. From police statistics on criminal offenses the authors then derived the number of foreign offenders who were irregular staying. The total number of irregular migrants was then extrapolated by applying the share of migrants who had committed a criminal offense derived from the survey (8.3%) on the total number of foreign offenders who were irregularly staying derived from police statistics (8,966), assuming that the total number of illegally staying offenders represented 8.3% of the total irregular migrant population in Belgium. The authors then arrive at a figure of 108,000 irregular migrants in Belgium, which they classify as a conservative estimate, putting the minimum estimate at 100,000. Applying the same logic to irregular migrants appealing to emergency health care (Dringende Medische Zorg, DMZ), they arrive at a similar figure (111,000) and then use 110,000 as their final estimate. The methodology of the study – a simple multiplier method in the classification of Jandl (2008) has been elaborated by a group of researchers based at the University of Rotterdam and has previously been applied to the Netherlands and generally is considered a relatively robust method
[6] One would expect a certain decline of the irregular staying population as a result of EU enlargement like in other Member States.

arelatively constant level between 1994 and 2004. Statistics, however, do not distinguish between transit migrants and irregular residents apprehended. For interception of asylum seekers – both legally residing and rejected – separate records are kept (see Table 16).

Table 16: Apprehended irregular migrants, 1994-2004

Year	Intercepted illegal immigrants	Intercepted asylum seekers*
1994	14,001	22,231
1995	14,335	14,285
1996	13,562	18,063
1997	14,394	13,168
1998	12,704	14,643
1999	13,471	16,935
2000	15,263	17,113
2001	14,913	13,504
2002	17,319	12,830
2003	16,715	15,556
2004	13,771	16,657

*this category includes both legally resident asylum seekers and failed asylum seekers
Source: EMN 2005:28

A recent survey of migrants regularised in 2000, although not statistically representative, provides interesting insights into the pathways into irregularity (See Centruum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelle 2008). Among the 116 respondents who answered this particular question 28 migrants (24%) entered Belgium clandestinely (without any documents, mainly from other MS, in which some at least had some sort of documentation), 45 (39%) used false papers or documents obtained fraudulently and through a smuggler), 33 (28%) had tourist visas, while the remainder had some other sort of visa, suggesting that legal entry and subsequent overstaying was less common than often thought. However, the high share of irregular entries among the respondents might also be related to the fact that 'forced migrants' (asylum seekers with a reasonable claim to refugee status, de facto refugees from conflict countries) are known to represent the largest share of irregular entries.

3. National policy on illegal migrants in regard to regularisation

Like in other EU Member States, the preferred policy option vis-à-vis irregular migrants is voluntarily return, and if voluntary return is not an option, forced removal. At the same time, Belgium has consistently used regularisation in humanitarian cases. In total, an estimated 77,500 persons have been regularised in the period between 2000 and 2007, about half of which were regularised in the 2000 regularisation programme and another half between 2001 and 2007.

In its response to the ICMPD Member State questionnaire, the Belgium government argues that human rights obligations provide an incentive for irregular migration, or more precisely, and incentive for irregular migrants to remain in Belgium, because various entitlements also enjoyed by irregular migrants, for example the right to education for irregular children, access to emergency health care and a relatively broad understanding of emergency health care – make it easier for illegal migrants to persist in their irregular situation. The Ministry of Interior's response pointed out that in Belgium's federal system, the Communities and Regions may provide additional rights and assistance to illegal residents, thus reinforcing this pull-factor. The government considers the increasing number of persons residing illegally to be "largely due to fallacies of return policy efforts", which include "unwillingness on part of the countries of origin to readmit their nationals; human rights criteria of protection; limited possibilities to arrest and detain people; etc." (Belgium, Response ICMPD MS Questionnaire 2008).

Also the Belgium government believes that regularisations – in principle – constitute a pull factor and therefore are problematic.[7] Indirect evidence on a 'pull effect' is provided by a recent a memorandum of the Belgian minister responsible for migration and asylum (Chambre des Représentants de Belgique 2008: 12). According to the memorandum persistent rumours about an imminent regularisation programme is, along with other factors (notably the most recent enlargement of the European Union and the accession of Bulgaria and Romania) a major reason for the decline of voluntary returns from 2006 to 2007. However, the pull effect concerns irregular migrants already in Belgium, who postponed return decisions in expectation of another regularisation programme. As elsewhere in Europe, there is little evidence on the direct impact of regularisatons on irregular migration flows more generally, although there is some evidence of an influx of irregular migrants from other EU Member States during the 2000 regularisation programme, despite the temporary suspension of Schengen rules for the duration of the programme (See also EMN 2005: 105). The countries of origin of regularised migrants suggest that long-standing migratory links (in respect to Turkey and Morocco) as well as colonial links (Democratic Republic of Congo) are probably more important than any pull effects regularisation policy might have.

There is no entitlement to regularisation in Belgium. The government regards regularisation as an exceptional measure that is granted on a case-by-case basis and wherever possible, the government uses alternative policy option. These include: encouragement to voluntary return; increasing the numbers of forced returns, and delaying forced expulsion of children (and the parents) to the end of the school year to mediate adverse humanitarian. More recently (as has been announced in the latest federal Government declaration), Belgium has opted for the opening of an additional track for legal migration by means of the flexibilisation of (the criteria for) work permits delivery. Regularisation measures target specific groups of persons who do not qualify for a regular residence permit but cannot be removed to their country of origin. Importantly, regularisation is also used for persons who are technically not illegal, such as asylum seekers still awaiting a decision or certain persons with temporary statuses and restricted permits. Overall, the Belgian government argues

[7] Comment on the draft study, Benedikt Vulsteke (EMN NCP Belgium), 16.1.2009

that the availability of regularisation mechanisms contributes to a better management of migration flows and improves the situation of certain persons with precarious statuses (Belgium, Response ICMPD MS Questionnaire 2008).

4. Regularisation programmes

Background of the 1999/2000 regularisation campaign

In 1998, a Nigerian woman died during an attempt to repatriate her to her home country. Due to the public outcry that followed, the question of how to deal with irregular migrants became a major issue in the formation of the Verhofstadt government, a coalition of liberals, socialists and ecologists which entered office in 1999. The new government decided to implement a regularisation campaign. An independent commission would examine applications for regularisation and advise the Minister of the Interior on each individual case. Although not legally obliged to do so, the Minister committed himself politically before Parliament to follow these advises. The eight chambers of the regularisation commission would each consist of a magistrate, a solicitor and a NGO-representative (Fischer 2001).

Irregular residents would be eligible for regularisation if they lived in Belgium on 1 October 1999 and belonged to one of four categories at the moment of application, namely (i) asylum seekers who had waited for more than four years – three years if they had minor children – for a decision on their asylum application, or were still awaiting a decision; (ii) aliens for whom return to their country of origin or prior residence was impossible; (iii) aliens who were severely ill; (iv) aliens who could assert humanitarian reasons and had developed lasting social ties in Belgium (Ministry of the Interior 2000). This regularisation programme then did not only concern illegal residents but also asylum seekers who were still in the asylum procedure. The campaign started on 10th January 2000 and ended on 31st December 2002. (Levinson 2005: 2)

Objectives

According to the Belgian government, the objectives of the programme were primarily social-humanitarian in nature: to reduce irregular employment, to resolve problems of public order, to address precarious living conditions of irregular migrants and to address other humanitarian concerns. The issue was considered urgent since the number of irregular migrants had become considerable following significant inflows of asylum seekers over the 1990s, consequent backlogs in processing of asylum claims and the inability to remove a sufficient number of irregular migrants from the territory.

The regularisation campaign was seen as a one-shot operation and presented in official discourse as a measure to reduce both illegal employment, problems with public order and to address humanitarian concerns. (Belgium, Response ICMPD MS Questionnaire 2008)

Qualitative outcomes
Generally, problems were reported with the administrative implementation of the programme, particularly lack of qualified personnel and logistic resources. As a result, the given time frame was exceeded by far.
In response to the questionnaire, the Belgian Ministry of the Interior indicated that there was a certain influx of persons who were illegally staying residents in other member states and who were attracted by the possibility of regularisation. Additionally, the campaign gave a "wrong signal" to irregular migrants in the country, i.e. that is was "worthwhile" to wait for a next campaign and therefore to postpone return decisions (Belgium, Response ICMPD MS Questionnaire 2008).

Quantitative outcomes
Shortly after the launch of the campaign, a survey was conducted with 340 undocumented migrants. 57 per cent of them had submitted a regularisation request. The results from the survey suggest that the regularisation programme did reach a significant share of illegally staying third country nationals, but that an equally significant number of persons remained in an irregular situation and for various reasons, failed to apply.

In the course of the programme, 37.152 dossiers were presented for examination, bearing upon around 55,000 persons (Belgium, Response ICMPD MS Questionnaire 2008), including more than 23,000 minors (EMN 2005: 104). The applicants were mainly citizens of Congo (15.2 per cent), Morocco (14.5 per cent), Pakistan (6.7 per cent) and Yugoslavia (6.2 per cent). Less significant numbers of applicants were citizens of Poland, Turkey, Romania, India, Algeria and Angola. Most persons applied on the basis of the criterion of humanitarian reasons and/or durable social ties (77 per cent). 24 per cent applied as asylum seekers whose application was pending for more than three or four years, 23 per cent argued that they were unable to return, and 9 per cent applied because they were seriously ill[8] (EMN 2005: 104 – 105).

A total of 786 dossiers were confiscated by the office of the public prosecutor because of several forms of fraud (Belgium, Response ICMPD MS Questionnaire 2008).
By June 2005 approximately 25,597 (70 per cent) applications had received a positive response, while 6,177 (17 per cent) had received a negative response, 810 (2 per cent) were excluded from the regularisation programme due to public order reasons and 4,016 (11 per cent) had been declared unfounded (because of duplicate applications, obtaining refugee status in the meantime, etc.) (EMN 2005: 105). Applying the ratio of applications to persons covered by applications to positive decision, the number of regularised persons can be estimated at 37,900, although expert estimates put the number slightly higher at 40,000 to 45,000 persons.[9]

[8] 33 % of the applications fulfilled more than one criterion.
[9] E-mail from Benedikt Vulsteke (EMN NCP Belgium), 26 January 2009

Table 17: Outcomes, 1999-2000 regularisation programme

	Cases	Persons
Total number of applications	37,152	55,000
Positive decisions	25,597	37,900
Negative decisions	6,177	9,140
Exclusion (public order)	810	1,200
Irrelevant [e.g. Recognised refugees, etc.]	4,016	5,950

Note: figures in red are own estimates, based on the ratio cases to persons in respect to total number of applications. It is likely that the number of persons regularised is significantly higher, while the number of persons affected by negative decisions etc. might be somewhat lower.
Sources: EMN 2005: 104-105, Belgium, Response ICMPD MS Questionnaire 2008

The impact on regularisation on individuals regularised in 2000
According to the response to the ICMPD questionnaire, close to 100% of migrants regularised during the regularisation campaign retained the status and were able to renew their BIVR (proof of inscription in the foreigner register) (Belgium, Response ICMPD MS Questionnaire 2008).

A recent study on the post-regularisation trajectories of individuals regularised in the 2000 regularisation campaign provides important insights in respect to the impact of regularisation on regularised individuals (Centruum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelle 2008). The study is based on a survey of 116 migrants regularised in 2000 and focuses on the post-regularisation experiences of regularised migrants in respect to employment and use of social benefits, although it also addresses a number of other aspects.

Overall, the study finds that regularisation had a positive impact on employment patterns of regularised migrants. In detail, however, the study shows that labour market outcomes differ markedly between different groups of regularised migrants and depend on a variety of factors (see in more detail below). In addition, the study also highlights the importance of the most immediate of all consequences of regularisation – the acquisition of a relatively secure and stable residence title – on individuals' wellbeing and sense of security. As the study notes, the period in illegality is often described as a period in which the world literally stood still - a life on standby (ibid.: 16). The fact that 66 out of the 116 respondents of the study (or 57%) had obtained Belgian nationality within the 7 year period since the implementation of the regularisation programme similarly indicates the acute apprehension of the implications of legal status among regularised individuals.

The study indicates that 68% of the respondents of the study were employed at the time of the study (2007), while 16% received unemployment benefits (ibid., pp.147ff). Official data, employing a less extensive definition of employment, shows a somewhat bleaker picture for the same group, with 51% being employed and 14% receiving unemployment benefits. With a 65% labour force participation rate according to official figures regularised migrants, however, show similar

employment patterns as the foreign population in Belgium in general (Raxen Focal Point Belgium 2006: 67).

The study, however, also shows the diversity of employment trajectories of regularised immigrants, which the study shows is linked to legal status before regularisation (asylum seeker, rejected asylum seeker, undocumented migrant), legal status of employment (legal or illegal), human capital factors (educational attainment) and social networks. The study thus identifies five main employment trajectories: (1) consolidation (concerning mainly asylum seekers already legally working before regularisation); (2) 'catalysation' (concerning asylum seekers irregularly employed before regularisation, for whom regularisation increased employment stability and opened occupational mobility); (3) continuing dependence on social benefits (mainly concerning other humanitarian migrants); (4) a hybrid trajectory (concerning former asylum seekers who were not employed before regularisation, mainly due to young age and for whom regularisation largely had positive effects on employment); and (5) increasing dependence on social benefits (concerning mainly undocumented migrants, who were not eligible for social benefits before regularisation) (Centruum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelle 2008: 149). Although increasing reliance on social benefits and other transfer payments may be taken as an indicator of increasing dependence and thus labour market failure, it may similarly be interpreted as and indicator of the exercise of choice on the part of migrants.

The study stresses occupational mobility as one of its main findings regarding the employment situation. Thus, the study reports a major exodus from construction and agriculture to manufacturing and to a lesser extent, services. The shift away from agriculture and construction can be interpreted to reflect, amongst others, difficult working conditions characteristic of this sector as well as the fact that these sectors are particularly haunted by adverse employment practices such as withholding of wages and irregular pay, long working times, and other irregularities (ibid., pp.93ff).

Although formal educational attainments positively influence the general employment prospects, the study's results indicate significant deskilling among regularised migrants, which the study explains by precarious employment careers, regularised migrants' history of unskilled labour before regularisation as well as the fact that employers tend to value formal qualifications only in combination with relevant work experience. This suggests that there is a penalty for periods of irregularity: Not only is irregular work usually associated with low-skilled occupations. But irregular employment usually also lacks opportunities for occupational mobility and thus effectively blocks employment careers. The comparatively more successful employment careers of regularised former asylum seekers interviewed in the study who already had access to legal employment before regularisation corrobates this view (ibid.pp. 92-94).

5. Regularisation mechanisms

There is a general possibility to apply for regularisation in Belgium according to article 9bis and 9ter (formerly article 9.3) of the Aliens Law of 1980.[10] According to the Ministry of Interior, the original article 9.3 was not originally meant as regularisation mechanisms. The purpose was to avoid that foreigners on short term residence permits who had obtained working permits from having to return to their home country to apply for long term residence permits at the Belgian Embassies abroad. In practice the article was increasingly used as a regularisation mechanism for foreigners who applied for a residence permit because they were unable to return to their country of origin or because of 'exceptional circumstances' (i.e. humanitarian reasons) (Belgium, Response ICMPD MS Questionnaire 2008, see also Fischer 2001).

In response to widespread criticism of the lack of transparency and absence of clear criteria for eligibility, a number of circulars issued in 1997, 1998 and 2002 specified the eligibility criteria under article 9.3 (see EMN 2005: 105). The main criteria are:

- An unreasonable long asylum procedure
- Medical reasons
- Other humanitarian situations, including
    - parents of children with Belgian nationality;
    - financially dependent aged parents supported by one of their legally resident children;
    - persons who were brought up in Belgium and returned against their will; certain categories of handicapped;
    - persons living in a long-standing relationship to a Belgian citizens or a legally resident alien if the familial unit would cease to exist if the person concerned would return to his country of origin (Belgium, Response ICMPD MS Questionnaire 2008, see also EMN 2008).

The experience of interest organisations shows that applications are most likely to be successful in case of lengthy asylum or family reunification procedures, statelessness, the impossibility of expulsion, or special ties with Belgium (VMC 2008). Article 9ter stipulates that medical conditions which entail an inability to travel and the absence of adequate health care in the country of origin may be grounds for regularisation. In all cases evidence of integration effort and employment as well as absence of criminal records are desirable. For article 9ter family ties will increase the likelihood of successful application. (Belgium, Response ICMPD MS Questionnaire 2008).

Between 2001 and 2004, around 30,000 applications were lodged(Caritas International, 2006: 17, Chambre des Représentants de Belgique 2004:8531). In 2005, the number of applications for regularisation (including renewals) was 15,927, while the number of regularisations granted amounted to 5,422. 5,549 applications

[10] Article 9 (3) of the Aliens Law was replaced by article 9bis and 9ter in a reform of the provisions on humanitarian stay in 2006. See Projet de loi modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (Doc. 3-1786)

were rejected (Service Public Fédéral Interieur 2006: 61-62). In 2006, 12,667 applications were lodged. 5,392 applications were approved, while 6,024 were rejected (Service Public Fédéral Interieur 2007: 62).

A report by Caritas from 2006 suggests that lack of transparency – which had given rise to various circulars in 1997, 1998 and 2002 – and problematic decisions continued to be a major problem, although the report expected some improvements by the replacement of the article 9.3 by article 9bis and 9ter (Caritas International 2006). However, no information on administrative practice in the application of the amended provisions of the Aliens Law are available.

Table 18: Outcomes, individual regularisations under article 9bis and 9ter

	2001-2004	2005	2006	2007
applications (cases)	30,000*	15,927	12,667	13,883
positive decisions (cases)	n.a.	5,422	5,392	6,256
number of regularised persons	5,644	34,000		

* estimate covering the period 2001 to first half of 2004
Sources: Chambre des Représentants de Belgique 2004, EMN 2008, information provided by Mr. Benedikt Vulsteke, 16 January 2009.

6. Conclusions

Both regularisation programmes and regularisation mechanisms form part of Belgian migration policies. Although the 2000 regularisation programme has met several difficulties, notably regarding long delays in processing in applications, the programme has – by and large - been positively evaluated. While its overall impact on stocks and flows of irregular migrants are difficult to assess, it seems that it generally met its main objectives – to address backlogs in the asylum system and address specific humanitarian cases.

The current Belgian government does not intend to implement further regularisation programs in the foreseeable future, although both civil society organisations and migrants in an irregular situation are lobbying for a new programme at the time of writing. According to the government, the provisions under article 9bis and 9ter are – in principle – sufficient as a legal mechanism to regularise irregular migrants and therefore no further programme is required. A circular specifying regularisation criteria on the basis of article 9bis and 9ter of the aliens law has been on the table since March 2008, but has – as of January 2009 – not yet been decided.

7. References

Caritas International, 2006 : *Parole à l´exil. Faits et signaux*. Available at : www.caritas-int.be, 15 March 2008

Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelle, 2008 : *Before and After La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 Décembre 1999)*, available at http://www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf

Chambre des Représentants de Belgique, 2004 : Réponse du ministre de l'intérieur à la Question n° 400 de Mme Nahima Lanjri du 13 octobre 2004. Bulletin des questions et réponses, 51 055 du 29 novembre 2004, available at http://www.dekamer.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=51&dossierID=51-B054-7-0400-2004200502411.xml

Chambre des Représentants de Belgique, 2008: *Note de Politique Générale de la Ministre de la Politique de Migrations et d'Asile*. 21 Avril 2008, DOC 52 0995/020

European Migration Network (EMN), National Contact Point Belgium, 2005: *Illegally resident third country nationals in Belgium: State approaches towards them and their profile and social situation*. Avaialable at: http://www.dofi.fgov.be/nl/statistieken/belgian%20migration%20point/Illegally%20Resident%20TCN%20in%20Belgium%20final.pdf, 17 February 2008

European Migration Network, National Contact Point Belgium, 2007: *Annual Statistical Report on Migration and Asylum (Reference Years 2004 and 2005)*. Available at: http://www.dofi.fgov.be/nl/statistieken/belgian%20migration%20point/17%20Belgian%20Statistical%20Report%20on%20Asylum%20and%20Migration%20_2004%20and%202005_.pdf , 19 May 2008

EMN (2008). *Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna)*, August 2008. In: G. Biffl & J. Bock Schappelwein, 'Zur Niederlassung von Ausländerinnen und Ausländern in Österreich', Vienna: Österreichischen Instituts für Wirtschaftsforschung. pp. 105-113

Fischer, M., 2001: *European Migration and Refugee Policy: New Developments*, Lecture in the Cicero Foundation Great Debate seminar "European Migration and Refugee Policy: New Developments", Paris, 15 February 2001. Available at: www.cicerofoundation.org/lectures/p4fischer.html, 17 February 2008.

Gsir, S., M. Martiniello, K. Meireman, & J. Wets, 2005: *Current Immigration Debates in Europe: A Publication of the Migration Dialogue. Belgium.* Brussels: Migration Policy Group. Available at: http://www.migpolgroup.com/multiattachments/2959/DocumentName/EMD_Belgium_2005.pdf, 17 February 2008.

Gsir, S., M. Martiniello & J. Wets, 2003: *EU and US Approaches to the Management of Migration. Belgium*. Brussels: Migration Policy Group. Available at: http://www.migpolgroup.com/multiattachments/2047/DocumentName/Belgium.pdf, 17 February 2008

Jandl, Michael, 2008: Methods for estimating stocks and flows of irregular migrants. In: Albert Kraler, Dita Vogel (eds.), Report on methodological issues. Clandestino. Undocumented Migration: Counting the Uncountable. Data and Trends across Europe. Online at http://www.irregular-migration.hwwi.net.

Levinson, A. (2005). *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*. Oxford: Centre on Migration, Policy and Society, University of Oxford. Available at: http://www.compas.ox.ac.uk/publications/papers/Country%20Case%20Belgium.pdf, 17 February 2008

Martiniello, M. & A. Rea (2003), *Belgium's Immigration Policy Brings Renewal and Challenges*, Migration Information Source. Available at: http://www.migrationinformation.org/Profiles/display.cfm?ID=164, March 14 2008

Ministry of the Interior (2000). *Omzendbrief inzake de wet van 22 december 1999 betreffende de regularisatie van het verblijf van bepaalde categorieën van vreemdelingen verblijvend op het grondgebied van het Rijk.* Available at: http://staatsbladclip.zita.be/staatsblad/wetten/2000/01/10/wet-1999000987.html, 17 September 2008.

Ouali, N. & I. Carles (2007). *Undocumented Worker Transitions, Work Package 2.* London: Working Lives Research Institute, EU Sixth Framework Programme Belgium country report Work package 2. Available at: http://www.londonmet.ac.uk/research-units/$-working-lives/projects/uwt/country/country_home.cfm, 17 February 2008.

Population Division of the Department of Economic and Social Division of the United Nations Secretariat. *Trends in Total Migrant Stock: The 2005 Revision*. Available at: www.un.org/esa/population/publications/2006Migration_Chart/Migration2006.pdf, 12 March 2008.

Raxen Focal Point Belgium (2006) National Data Collection Report 2006, n.p.

Service Public Fédéral Intérieur (2006). *Rapport d'Activités 2005: Office des Etrangers*. Available at: http://www.ibz.be/download/2005/dofi.pdf , 18 September 2008.

Service Public Fédéral Intérieur (2007). *Rapport d'Activités 2006: Office des Etrangers*. Available at http://www.ibz.fgov.be/download/activiteitenverslag_2006/pdf_web_cd/Vreemdelingenzaken_FR.pdf, 18 September 2008.

Van Meeteren, Masja; Marion van San & Godfried Engebersen, 2007, Irreguliere immigranten in België.Inbedding, uitsluiting en criminaliteit. Rotterdam: Erasmus Universiteit Rotterdam Vlaams Minderhedencentrum (VMC) (2008). *Regularisatie (artikel 9 bis)*. Available at: http://www.vmc.be/vreemdelingenrecht/wegwijs.aspx?id=81, 17 September 2008.

12 Bulgaria

Mariya Dzhengozova

1. Introduction

The scope of the current study refers to experiences with regularisation practices at a national level. The main sources include: (i) principal laws concerning legalisation of illegally residing third country nationals (TCNs) – Law for the Foreigners in the Republic of Bulgaria as amended 2007 and Law for the Asylum and the Refugees as amended 2005; (ii) expert analysis on the implementation of the laws (Daskalova et al, Ilareva, Zhelyazkova et al); (iii) official population statistics (EUROSTAT, UN Department of Economic and Social Division, State Agency for Refugees (SAR)), unpublished data provided by the Bulgarian Ministry of the Interior and figures regarding human trafficking (ICMPD Yearbook 2006 on illegal migration). The position of different social actors on regularisation issues has been reconstructed on the basis of an ICMPD questionnaire (2008) addressed to Bulgarian Ministry of Interior (hereafter, response MVR BG). In addition, an expert interview with the lawyer D. Daskalova (Legal Clinic for Refugees and Immigrants, Sofia) complements the description (hereafter, response Daskalova).

Table 19: Basic information on Bulgaria

Total population*		7,605,064
Foreign population**		260,000
Third Country Nationals		Not available
Main countries of origin		Not available
Net migration***		-33,772
Asylum applications*		236

* 2008 ** 2006 *** 2007

Source(s): http://epp.eurostat.ec.europa.eu/; http://aref.government.bg

Like the other former socialist countries, Bulgaria had limited emigration and immigration before 1989. Not until the early 1990s did the country became part of the world migratory system. The geographical position of Bulgaria may positively affect immigration flows – it is one of the three countries sharing a land-bridge to Asia and the Middle East at the base of the Black Sea. As a result, immigration involves mainly migrants from the Near and Middle East, Afghanistan, China, and people from the former Yugoslav and Soviet republics. The major migrant groups include Syrians, Lebanese, Iraqis, Kurds, and Afghans – they are not new to Bulgaria, as there was migration from these countries in the 1960s and 1970s. For the Russians, Armenians, Ukrainians, etc. Bulgaria is also an option for migration (Zhelyazkova et al 2007: 1).

2. Irregular Migration in Bulgaria

Based on interviews, the Centre for the Study of Democracy estimates that 10-15 per cent of migrants in Bulgaria reside illegally. Data provided by the Ministry of the Interior focus only on three countries – Afghanistan, Turkey and Armenia – and are 'likely to be an underestimate', according to Zhelyazkova et al (2007: 22). The data are summarised in the following table:

Table 20: Illegally residing TCNs between 2004 and 2006 according to country of origin

Country	2004	2005	2006	Total (1991-2006)
Afghanistan	175	95	116	386
Turkey	107	216	172	495
Armenia	86	145	79	367
Total				1191

Source: Bulgarian Ministry of the Interior, 2007, quoted in Zhelyazkova et al (2007: 22).

The main channel through which illegal migrants enter the Republic of Bulgaria is the Bulgarian-Turkish border. Compared to 2005, a significant decrease in the migration pressure from Turkey to Bulgaria was observed in 2006. Illegal migrants also use routes via Greece in order to enter Bulgarian territory. On the Bulgarian – Greek border section most of the detained trespassers were citizens of Moldova, Afghanistan, China and other states (in 2006). On this border section the number of detained Moldovan trespassers has doubled in comparison to 2005. On the other hand there is a significant decrease in the number of citizens of Afghanistan compared to 2005. In general, Afghanistan, Turkish and Moldovan citizens represent the dominant group of border violators. In 2005 the number of Afghanistan border violators was 480 and in 2006 it decreased to 119; the number of Turkish border violators was 259 in 2005 and in 2006 it was 269. Finally, the number of Moldovan border violators was 113 in 2005 compared to 190 in 2006 (ICMPD 2006: 67-69).

Besides those who enter the country illegally, a substantial part of the undocumented aliens in Bulgaria have expired residence documents (response Daskalova).

3. National policy on illegal migrants in regard to regularisation

Since the early 1990s national legislation in the sphere of migration in general has experienced and continues to experience adjustment and changes. The harmonisation of Bulgarian laws and norms with international and European standards has intensified this process. In January 2007 Bulgaria became an EU member state and began hosting an external border of the EU. This resulted in stronger and more repressive immigration policies, justified in the name of concerns for security and combating illegal activities (Lewis & Daskalova 2008: 6-7).

4. Regularisation programmes

Up to the present moment, the country has not implemented any regularisation programmes. However, negative population growth creates certain needs. As Bulgarian citizens are tempted by promises of higher-wages in newly-accessible Western European markets, shortages arise in both the high- and the lower-skilled segments of the Bulgarian labour market. 'Bulgaria needs immigrants' (Lewis & Daskalova 2008: 6) but these needs are not responded to by the current migration framework. Many immigrants in Bulgaria, 'frustrated by impossible legal obstacles, are forced to leave the country, face extended and inhuman detention and deprivation of rights, and enter the informal economy.' (Lewis & Daskalova 2008: 2)

According to the Ministry of the Interior, Bulgaria does not apply regularisation programmes because 'at present no necessity for their introduction is registered', in view of the absence of 'consistent migration flows or at least a large number of illegally staying immigrants'. In case a foreigner is found to stay illegally in Bulgaria, 'the Migration Directorate enforces Chapter five of the Law for foreigners in the Republic of Bulgaria – Measures for administrative compulsion - Art. 39a', that is the foreigner is expulsed (response MVR BG 2008: 5).

The position of the Ministry raises the question to which extent current Bulgarian migration policies respond suitably and sufficiently to the possible relationship between lacks of constant migration flows, the tendency towards negative population growth and the needs of the national labour market.

In addition the relevance and the effectiveness of the administrative detention as a measure against illegal migrants command our attention. 'The tendency towards increasing numbers of asylum seekers and immigrants being deprived of their liberty through the concept of administrative detention is the single most disturbing trend in Bulgaria and threatens fundamental concepts of human freedom' (Ilareva 2007: 60-61).

5. Regularisation mechanisms

Regarding regularisation mechanisms, asylum legislation gives certain possibilities. *The Law for Asylum and the Refugees as amended 2005* provides for regularisation mechanisms in granting asylum, humanitarian status and temporary protection. According to Art. 2. (1) 'The President of the Republic of Bulgaria shall provide asylum. (2) The Council of Ministers shall provide temporary protection in cases of massive entry of foreigners under the conditions of this law or in fulfilment of the conclusions of the Executive Committee of the High Commissioner of the United Nations Organisation for the foreigners and upon an appeal of other international organisations.
(3) The chairman of the State Agency for the Refugees shall provide a refugee status and a humanitarian status by virtue of the Convention for the refugees status of 1951 and the Statement for the refugees status of 1967, of the international acts on the protection of the human rights and of this law' (Law for Asylum and the Refugees).

Although the Law introduces the possibility of regularisation mechanisms, there are inconsistencies and difficulties in its practical implementation. 'For example, in order for the initial protection prescribed in law for asylum seekers to function, one needs to be recognised as an asylum seeker. As a result of recent changes in the Law on Refugees, this happens with the registration of an asylum application, not with its submission. In Bulgaria the time between submission and registration has no restriction, resulting in tremendous hardship for asylum seekers as many are obliged to remain indefinitely without legal recourse to basic rights while awaiting 'registration' (response Daskalova). Crucial is the fact that there is no legal basis for distinguishing between asylum seekers and undocumented migrants: 'due to the delay in registration of requests for asylum, applicants often spend months before their procedure in front of the State Agency for Refugees begins. As a result hundreds of immigrants are detained for months if not years due to a lack of cooperation from consular bodies, statelessness, or through simple bureaucratic mishap and administrative malpractice' (Ilareva 2007: 60-61). That means that during a limbo period asylum seekers are without any legal status in the country and thus have no access to the labour market, livelihood support or medical care. They may be detained or even deported, in violation of their internationally protected rights against refoulement, and in spite of the fact that the Bulgarian Penal Code and International Law provides asylum seekers special protections in terms of 'illegal' entry' (Lewis & Daskalova 2008: 13, 15-16).

6. Conclusions

The Bulgarian Ministry of Interior considers regularisation programmes as an ultimate measure: 'At this stage Bulgaria does not face circumstances, which imply introducing regularisation programmes' (response MVR BG: 12). It opts for the development of preventive mechanisms within the framework of legal migration: "It is necessary to stress on the prevention … It is always better when the migration is kept in line with the legal provisions and for this reason efforts must be made in this direction" (response MVR BG: 12). This position confirms the already mentioned restrictive tendency in national migration policies.

The issue of illegal employment has been also touched upon– in the opinion of the Ministry "the illegal workers' issue [is] manifest wherever grey economy is in place or the employers tend to override in one way or another the legal requirements for hiring foreign nationals" (response MVR BG : 12). In this sense it should the policy focus should be on the "awareness - as regards the employers, as well as the candidates to be employed - as early as in the country of origin". Furthermore, the Ministry supports the Proposal for a Directive of the European Parliament and the Council for applying sanctions against employers of illegally staying third-country nationals: "In our view, the [proposal] comes precisely at the right time" (response MVR BG : 12).

Regarding common EU-action, the Ministry considers advisable the development of a "uniform procedure, which however shall be applicable only when necessary and following a mandatory notification and consultations with the other Member-States" (response MVR BG: 12).

7. References

EUROSTAT, Population statistics online. Available at: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/C/C1/C11&language=en&product=Yearlies_new_population&root=Yearlies_new_population&scrollto=45; 22 April 2008.

ICMPD (International Centre for Migration and Policy Development), (2006), Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe.

Ilareva, Valeria (2007), *Bulgarian Treatment of Asylum Seekers*, In Forced Migration Review, *Humanitarian reform: fulfilling its Promise?* Issue 29, December 2007, 60-61. Available at: http://www.fmreview.org/humanitarianreform.htm, 12 March 2008.

Law for the Asylum and the Refugees, Prom. SG. 54/31 May 2002, amend. SG. 31/8 Apr 2005, Ministry of the Interior. Available at: www.mvr.bg/NR/rdonlyres/BC96E947-6DF6-48F6-9872-85F94CE8FC6C/0/07_Law_Asylum_Refugees_EN.pdf, 12 March 2008.

Law for the Foreigners in the Republic of Bulgaria, Prom. SG. 153/23 Dec 1998, amend. SG. 29/6 Apr 2007, Ministry of the Interior, http://www.mvr.bg/NR/rdonlyres/8C3CCC42-3E72-4CBB-900A-E8CB6DE82CAD/0/ZVPNRBGESChTS_EN.pdf, 15 April 2008.

Lewis T. & Daskalova D. (2008), *Legal Dimensions of Immigrant Access to Employment in Bulgaria: A Contextual Analysis.* Submitted by Legal Clinic for Refugees and Immigrants, Sofia, Bulgaria as part of the International Project on Immigration Trends and Immigrant Integration Policies for the Bulgarian Labour Market. Convened by the Economic Policy Institute (EPI), Sofia, Bulgaria

Population Division of the Department of Economic and Social Division of the United Nations Secretariat, Trends in Total Migrant Stock: The 2005 Revision. Available at: www.un.org/esa/population/publications/2006Migration_Chart/Migration2006.pdf

Response MVR, BG - questionnaire filled in by the Bulgarian Ministry of Interior, February 2008.

State Agency for Refugees with the Council of Ministers, [asylum statistics online]. Available at: http://aref.government.bg/?cat=21, 22 April 2008.

UNHCR representation in Bulgaria, (Statistics), (2007), http://www.un-bg.bg/index.php5?l=2&p=3&#statistics

Zhelyazkova, A. & Angelova, V. & Vladimirov, Z. (2007), Bulgaria Country Report Work Package 2, Undocumented Worker Transitions, International Centre for Minority Studies and Intercultural Relations. Available at: http://www.londonmet.ac.uk/londonmet/library/c24240_3.pdf, 11 March 2008

13 Cyprus

Martin Baldwin-Edwards

1. Introduction

Cyprus's immigration policy was mostly formulated in the 1990s, in order to recruit immigrant workers to fill labour shortages in a rapidly expanding economy. Almost overnight, Cyprus was transformed from a country of emigration to a net recipient of migration. All immigration was conceived as temporary, with an administrative distinction between those requiring a permit from the Ministry of Labour and those (mainly in housekeeping) whose residence status fell within the competence of the Interior Ministry (Trimikliniotis, 2005). Immigration policy was essentially protectionist, confined to specific sectors, and tied immigrant workers to one employer, with a limit to maximum duration of stay (Thomson, 2006). This model of immigration policy is similar to the temporary guestworker policies of Arab countries (see Baldwin-Edwards, 2005) and offers no prospects of long term residence. Cypriot immigration policy was seriously criticised by the Council of Europe (ECRI, 2006) for this reason, particularly as it contradicts the underlying philosophy of the EU directive on long-term residence.

Prior to EU Accession, immigrant levels had been climbing, reaching 30,000 with permits (6.7% of working population) in 2002, but with another 10-30,000 undocumented workers and circa 20,000 Greek and Pontian-Greek workers (Trimikliniotis, 2005; 2007). Thus, immigrant labour represents 15-20% of the total labour force and is amongst the highest in Europe. In 2005, a new immigration policy was adopted that effectively circumvented the EU long term residence directive, by limiting temporary residence permits to 4 years and disallowing renewals (Polykarpou, 2005). This policy is not visible in any law, and is applied on a discriminatory basis, such that elderly or chronically ill Cypriots can employ domestic workers without temporal restrictions. In other sectors, permit renewal is routinely refused, and this approach has allegedly encouraged legal immigrants to continue their residence by applying through the asylum process (Polykarpou, 2005: 8).

2. Irregular Migration in Cyprus

Whereas in the late 1990s the predominant form of illegal immigration into Cyprus was by sea via Lebanon, after the opening up of the Green Line the favoured illegal migration route changed to become via Turkey and then crossing into the Republic of Cyprus from the North. This route is slowly being brought under control, but in 2004 and 2005, the total numbers crossing illegally were over 5,000 for each year, with 2,700 and 3,900 applying for asylum. By 2006, this was down to 3,800 illegal entries, of which 2,000 applied for asylum and 1,150 voluntarily left the territory. The predominant nationality/gender of illegal immigrants has been Syrian males (54-62% over 2005-7) and of asylum-seekers has also been Syrian males (12-27% over 2005-7), followed by Pakistanis, Georgians (including women), Bangladeshi, Iranians and Indians. In earlier years, there were very large numbers of asylum applications (over 10,000 in 2004) – of which many were from Bangladeshi and

Pakistanis, who had arrived as students and were told that they could not work. As asylum applicants, they had the right to work in certain sectors – mainly agriculture (Thomson, 2006). The asylum figures have also increased through migrant workers contracts' expiry, and their desire to remain in Cyprus. This problem arises because Cyprus does not tolerate the presence of illegal immigrants, and reportedly imprisons and expels those who are detected. Deportations follow the same sort of pattern for nationalities/gender as illegal immigration and asylum-seeking. For 2006, there were 3,000 deportations, of which 21% were Syrians, 12% Bangladeshi, 8% Sri Lankans, 7% Pakistanis, and around 5% each of Egyptians, Iranians and Turks.[1]

3. National policy on illegal migrants in regard to regularisation

It is only since 2002 that Cyprus has assumed responsibility for asylum processing (previously it was managed by UNHCR), and this has not been considered a great success in terms of recognition rates and fair hearings. The policy on illegal immigrants seems to be (although is not obviously stated anywhere) that the presence of illegal immigrants is not tolerated, and will automatically lead to detention and deportation. This applies equally to those whose employment ended (under the tied-employer permits): thus, there is little distinction between illegal immigrants and others whose legal status has changed. There is, according to various sources, great opposition to the EU directive on long-residence being implemented, and every effort has been made in recent years to prevent legal long-term workers from applying. There is similar opposition to implementation of the Directive on Family Reunification. Clearly, as the Council of Europe has pointed out, Cyprus's guestworker policy is at odds with EU policy and has to be reformed. Whether or not that reform will lead to the need for regularisation programmes is a matter of conjecture: however, the very great extent of illegal immigrant presence on Cyprus is a matter of concern.

4. Regularisation programmes

None. As indicated above, the immigration policy of Cyprus has the effect of creating illegal aliens through its temporary guestworker policy, which is in conflict with the EU directive on long-term residence.

5. Regularisation mechanisms

Cyprus exceptionally grants temporary residence permits on humanitarian grounds – e.g. health reasons, child welfare, asylum procedures. No data are available at this time.

[1] All statistical data in this section are derived from unpublished statistics provided to ICMPD by the Aliens and Immigration Unit, Cyprus Police.

6. References

Baldwin-Edwards, M. (2005): *Migration in the Middle East and Mediterranean*, Regional Study prepared for the Global Commission on International Migration, Geneva: GCIM

Blaschke, Jochen (2008), *Trends on regularisation of third country in irregular situation of stay across the European Union*, Briefing paper, Directorate-General Internal Policies. Policy Department, Citizens Rights and Constitutional Affairs

ECRI (2006): *Third Report on Cyprus, 2005*, European Commission against Racism and Intolerance, Council of Europe: Strasbourg

Polykarpou, D. (2005): *ENAR Shadow Report 2005: Racism in Cyprus*, KISA
Thomson, M. (2006): 'Migrants on the edge of Europe: Perspectives from Malta, Cyprus and Slovenia', Sussex Migration Working Paper, June 2006. University of Sussex.

Trimikliniotis, N. (2007): 'Nationality and citizenship in Cyprus since 1945', Ch. 10 in Bauböck *et al.* (eds), *Acquisition and Loss of Nationality, Vol. I*, Amsterdam: Amsterdam UP

Trimikliniotis, N. (2005): 'Cyprus', Increasing Labour Supply through Economic Migration: Peer Review, 23rd and 24th June 2005, Dublin, Ireland. Online from Mutual Learning Programme, http://www.mutual-learningemployment.net/

14 Czech Republic

David Reichel

1. Introduction

In December 2006, there were some 10.3 million people living in the Czech Republic including 321,451 foreigners. The majority of the foreign population consists of Ukrainians (102,594), followed by Slovakians (58,384), Vietnamese (40,779) and Russians (18,564)[1].

Table 21: Basic information on the Czech Republic

Total population*		10,287,189
Foreign population*		321,451
Third Country Nationals* (incl. Romania and Bulgaria)		218,570
Main countries of origin*	Ukraine	102,594
	Slovakia	58,384
	Vietnam	40,779
Net migration**		34,720
Asylum applications**		3,016

* 31 December 2006 ** During 2006

Source: Czech Statistical Office, www.czso.cz, 25 April 2008

Since 2004, the Czech Republic is a member of the European Union and since December 2007, the Czech Republic is also a member of the Schengen area.

2. Irregular Migration in the Czech Republic

In 2006, there were 4,371 cases of illegal border crossings reported of which 16 per cent were committed by Czech citizens as the largest group. The largest group of foreigners crossing the Czech borders illegally were Ukrainians with 654 cases, followed by Poles (460) and Germans (289). In the same year 7,117 persons (6299 events) were reported to stay illegally in the Czech Republic. The vast majority of these persons held the Ukrainian citizenship (68%), followed by Vietnamese (7%), Russian and Byelorussians (each 2 per cent).

Since the year 2000, the numbers of apprehended illegal aliens has dropped sharply from some 22,000 to 7,117 in 2006 (see: www.czso.cz → illegal migration, based on data of the Police Headquarters CZ). Out of these 7,117 persons 5,094 were detected inland, of whom 37 per cent (or 1,889) reported themselves. The remaining persons were detected during checks and security operations (ICMPD, 2007: 96).

According to the response to the questionnaire sent to the Czech government in the course of the project[2], the Czech Republic was rather a transit country and had only become a destination country. Since the year 2000, illegal residents are documented,

[1] See: www.czso.cz

[2] Filled in by Department for Asylum and Migration Policies within the Ministry of Interior

yet prior to 2000 there was no differentiation between illegal entrance and illegal stay (Response CZ).

For the Czech Republic a good deal of estimates on illegal migration exists. Most of the estimates are of low quality, although they were quoted repeatedly, and address mainly foreigners who are working illegally in the Czech Republic regardless of their residence status. An estimate of the number of foreigners who reside illegally in the Czech Republic in the year 2000 puts the number at 295,000 to 335,000 persons including foreigners who work illegally, their dependants and persons who are transiting the country illegally (cf. Drbohlav & Lachmanová, forthcoming). The figure includes and estimated 165,000 undocumented workers and 30,000 dependents, figures drawn from previous research done by the authors. In addition, they add 100,000 to 140,000 transit migrants, a figure drawn from a 1994 IOM report, whose accuracy and methodology is unclear. Even if one only restricts oneself to the resident illegal migrant population, the figure can no longer seen been as accurate for today as there have been major changes since 2000 (e.g. EU enlargement, different numbers of asylum seekers, enlargement of Schengen area, introduction of Dublin regulations, etc.). The decreasing number of persons apprehended due to illegal migration (border crossing and illegal stay: 53,000 in 2000 and 7,500 in 2007[1]) substantiates the assumption that the number of persons residing illegally in the Czech Republic has decreased sharply since 2000.

3. National policy on illegal migrants in regard to regularisation

The general policy towards undocumented migrants is very strict, as there is (almost) no possibility to obtain a legal status. Only since 1 January 2008, undocumented migrants can attend primary and secondary school without being reported to the police, which was mandatory for schools prior to 2008. Generally, the policy towards undocumented migrants is very restrictive in the Czech Republic and the migrants are criminalised to a large extent[2].

According to the Ministry of Interior, the Czech Republic does not consider regularisation as an effective mechanism to combat illegal migration. In 2004, the government adopted an Action Plan on Combating Illegal Migration, including five basic areas to be tackled, namely prevention, control and sanctions, legislation, inter-ministerial cooperation, and international co-operation (Response CZ: 5).

4. Regularisation programmes

No regularisation programme has ever been conducted in the Czech Republic, nor are there currently any plans for a programme, despite the presence of a relatively large irregular migrant population.

[1] Cf. Drbohlav & Lachmanová, forthcoming
[2] Email from Multicultural Center Prague, 10 March 2008

5. Regularisation mechanisms

Generally, it is very difficult (rather almost impossible) for illegal migrants to become legalised in the Czech Republic. Only few asylum seekers obtain legal status through applying for visas, e.g. student visas[3].

According to the Czech government, there is no kind of regularisation mechanism available (Response CZ).

6. Conclusions

The Czech Republic reports that there is no significant evidence that immigration policy would have an impact on the numbers of undocumented migrants. The government considers the implementation of the amendment of the Asylum Act (in force since February 2002) as an effective instrument, as the objective to decrease the number of asylum seekers was achieved which is traced back to the implementation of the act[4]. The numbers of detected illegal migrants already decreased from 2000 to 2002 (Response CZ: 4).

The Czech Republic reports that it has already been affected by regularisation programmes conducted in another country, namely Italy.

"As an example of an impact of regularization programme in other country can be seen an increased number of Egyptian nationals coming to the Czech Republic during the summer months in 2006 who then applied for asylum. According to the intelligence information (proved by interviews conducted with applicants) the Egyptian nationals intended to use the Czech Republic as a route to Italy (their target country) as there was expected to be regularization. In 2005 there was only 7 asylum applications submitted by Egypt nationals, in 2006 there was 422 applicants registered. In 2007 the numbers sharply decreased." (Response, CZ: 12)

Furthermore, the governmental response declares to prefer 'traditional' measures to deal with illegal migration and regularisation is not considered necessary in the near future (Response CZ: 12).

In view of the role of the European Union concerning regularisation programmes, the Czech Republic states that the level of harmonisation of migration policies is not sufficient for Europe wide programmes (Response CZ: 13):

"We consider there is not enough space for establishing such standardised approach at the moment. The reason is that there is not established any mechanism and competence of the Europaen Commission to put such approach in practice. If there is a standardised approach for regularization programmes in future, it is possible only after agreement of all Member States." (Response CZ: 13)

Altogether, the government of the Czech Republic totally rejects regularisations in whatever form.

[3] Email from Multicultural Center Prague, 10 March 2008
[4] The overall decrease of asylum application is not mentioned

7. References

Drbohlav, Dušan & Lachmanová Lenka, forthcoming: CLANDESTINO Country Report. The Czech Republic

ICMPD, 2007: 2006 Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe. A Survey and Analysis of Border Management and Border Apprehension Data from 20 States

Response CZ: ICMPD questionnaire sent to the Czech government in the course of the REGINE project, 2008.

Website of the Czech Statistical Office: www.czso.cz

8. Statistical annex

Table 22: Persons apprehended for illegal migration, Czech Republic, 2000-2007

		2000	2001	2002	2003	2004	2005	2006	2007
Illegal border crossing	**- Foreigners**	30,761	21,090	12,632	11,125	9,433	4,745	3,676	2,837
	-Czech citizens	1,959	2,744	2,109	2,081	1,262	944	695	547
	Total	32,720	23,834	14,741	13,206	10,695	5,689	4,371	3,384
Illegal stay	**Foreigners**	22,355	18,309	19,573	21,350	16,696	9,800	7,117	4,712
Illegal migration of foreigners - total		**53, 116**	**39,399**	**32,205**	**32,475**	**26,129**	**14,545**	**10,793**	**7,549**

Source: Drbohlav & Lachmanová forthcoming (original source Zpráva 2001, 2002, 2006, 2007, 200

Table 23: Expulsions, Czech Republic, 2000-2007

	2000	2001	2002	2003	2004	2005	2006	2007
Number of foreigners expelled by court	1,242	761	1,350	1,993	2,068	2,252	1,951	1,609
Number of foreigners administratively expelled	10,042	11,064	12,700	14,176	15,194	10,094	6,960	4,629
Implemented administrative expulsion	1,065	2,258	1,481	593	433	761	665	245

Source: Drbohlav & Lachmanová forthcoming (original source Zpráva 2001, 2002, 2006, 2007, 2008).

15 Denmark

Alfred Wöger

1. Introduction

On 1 January 2008, the total population of Denmark was estimated at 5,455,791 of whom almost 10% or 505,000 persons represented the total foreign-born population. Furthermore 5.5% of the total population or 298,490 individuals were not Danish citizens and about 67% of the total number of immigrants and descendents were third country nationals.

As it appears from the table below, Turkish foreigners constituted the largest group, with more than 29,000 people, followed by Iraqis and Germans. The group of foreigners which increased the most in 2007 was from Poland. In the course of 2007, the number of Polish people increased by 4,089 persons, corresponding to an increase of the population group of about 40%. During this period also 2,246 persons applied for asylum in Denmark. Main countries of origin of asylum seekers were Iraq, Afghanistan, Iran, Syria, Russia, Serbia and Montenegro and South Korea. In the first quarter of 2008 the number of asylum seekers decreased 13% compared to 2007 (www.dst.dk).

Table 24: Basic information on Denmark

Total population*		5,455,791
Foreign population*		294,490
Third Country Nationals*		197,902
Main countries of origin*	Turkey	29,160
	Iraq	17,369
	Germany	16,842
Net migration**		23,090
Asylum applications***		2,246

* 1st Jan. 2008**2007*** During 2007

Source: Statistics Denmark, www.dst.dk, 5 May 2008

2. Irregular Migration in Denmark

The Danish research on illegal immigration is very limited due to the fact that the government until very recently was convinced that this phenomenon hardly existed in the country. The Danish Police states there are no official statistics on the number of illegal immigrants in Denmark (Danish Ministry of Refugee, Immigration and Integration Affairs, 2006: 56). Nevertheless there is a presumable number of persons staying illegally or irregularly in Denmark. Three major groups can be identified:

- overstaying visitors
- aliens working without authority
- rejected asylum seekers

It is estimated that the largest group of unauthorized immigrants residing in Denmark consists of rejected asylum seekers (Vedsted-Hansen, 2000: 402f.). According to the Danish Police between May 2003 and September 2006 587 persons, whose asylum application has been rejected, did not present themselves at one of the two Danish asylum centres which are responsible for the repatriation of refused asylum seekers. Furthermore within the short period from 1 January to 10 February 2007 the southern border of Denmark reported 241 illegal border crossings. It was also estimated that in 2006 about 1,600 refugees disappeared. A report of the Danish Ministry of Refugee, Immigration and Integration Affairs, published in 2006, pointed out that about 1,400 Ukraine nationals were living and working in Denmark without permission. In total, statistical estimates assume that somewhere between 1,000 and 5,000 illegal immigrants reside in Denmark. It is also presumed that the major part of these persons is working particularly in the agricultural and construction sectors (Roskilde University, 2007: 24ff.).

3. National policy on illegal migrants in regard to regularisation

In Denmark undocumented immigrants are not considered an eminent social problem and are therefore in practice not an important issue in political and public discourse. This can primarily be explained by the estimated number of illegal migrants, which is very small in Denmark due to the fact that there are few ways to enter the country and that life is rather tough for individuals not being allowed to stay (Vedsted-Hansen, 2000: 402).

Consequently for the Danish Ministry of Refugee, Immigration and Integration Affairs the prevention of "*illegal migration in Denmark is primarily focussed on returning persons, who are not or no longer allowed to stay in Denmark legally. An efficient return policy is considered to be an important tool in order to prevent illegal migration. […] It is a priority of the Danish Government to sign readmission agreements with countries from where Denmark receives illegal migrants, and to return persons, who do not have a valid permission to stay. Denmark has initiated specific measures for rejected asylum seekers, who do not corporate* [sic] *with the police in facilitating their own return. Engaging actively in regions of origin is part of the Danish strategy to fight the root causes for illegal migration.* (Danish Ministry of Refugee, Immigration and Integration Affairs, 2006: 55-56.).

Only very recently several cases of Polish workers who came to Denmark legally as workers but were exploited by their employers have been discussed in the media and in political and public debate. However, those cases are still regarded as exceptions to the rule (Roskilde University, 2007: 26). According to the Legal Advisor of the Danish Red Cross Asylum Department Thorbjørn Bosse Olander, failed asylum seekers who cannot be deported are also becoming an important issue in Denmark. These persons are offered to stay in the asylum centres until they can return to their home country or another safe country. Until then they are provided with meals and additionally get a small amount to cover their daily expenses. From his point of view this arrangement with failed asylum seekers prevents them from having to work illegally in order to survive as in some other countries. Nevertheless some of them work illegally while they stay in the asylum centres and others choose to disappear

and work then also illegally (Response E-mail Danish Red Cross Asylum Department).

4. Regularisation programmes

According to the response of the Danish Ministry of Refugee, Immigration and Integration Affairs to the ICMPD questionnaire, two regularisation programmes have been carried out in Denmark:

Under Act No. 933 of 28 November 1992, residence permits on a temporary basis were granted for specific individuals from the former Republic of Yugoslavia who as a result of the war found themselves in an unbearable situation. Form 1 December 1992 to 19 December 2002 temporary resident permits were granted for almost 4989 persons in distress, mainly Bosnians. Residence permits were valid for half a year at a time and individuals were authorized to take up paid employment if a job vacancy has been announced for three months and could not be filled by a person with a work permit in Denmark.

On 30 April 1999 in view of the crisis in Kosovo a special emergency act came into force. Under Act No. 251, the so-called Kosovo Act, temporary resident permits were granted for certain persons from the Kosovo province in the Federal Republic of Yugoslavia. This act applied for those arriving under the UNHCR Humanitarian Evacuation Programme as well as for those migrating spontaneously to Denmark. Until 3 June 2000 almost 3000 persons from Kosovo were granted temporary resident permits. Residence permits were valid for half a year at a time. Permission to take up paid employment would be granted if they had a written employment contract and the appointment conditions did not conflict or deviate from normal employment conditions according to Danish labour regulation (salary, working hours, etc.) (Response DK: 2ff.). Since then no further regularisation programme has been carried out.

5. Regularisation mechanisms

According to the Danish Ministry of Refugee, Immigration and Integration Affairs there are three regularisation mechanisms in Denmark:

Residence permits on humanitarian grounds

The Danish Aliens Act, Section 9b, 1, stipulates that a residence permit on humanitarian grounds can be granted to a foreign national registered by the Immigration Service as an asylum seeker in Denmark. The applicant must be in such a situation that significant humanitarian considerations warrant a residence permit. Applications are submitted to the Ministry of Refugee, Immigration and Integration Affairs and it conducts a factual assessment on a case-by-case basis. The Ministry's ruling regarding a humanitarian residence permit is final – it cannot be appealed to any other administrative authority (EMN 2008: 107). Persons who are granted residence permits on humanitarian grounds are usually families with young children from areas in a state of war or with very difficult living conditions. Applicants receive a residence permit valid for six months and a work permit. The main reason for not granting this on a permanent basis is that the permit depends upon the situation in the home country of the individuals. A new assessment is made every

year. The number of humanitarian residence permits granted was 186 in 2005 and 216 in 2006 (mainly to Iraqis and Afghanistan nationals) and 223 in 2007 (EMN 2008: 107).

Residence permits on special grounds, e.g. serious illness, other exceptional reasons

Residence permits on special grounds are usually granted to children who arrive in Denmark unaccompanied and whose parents reside in another country. Furthermore, the residence permit may be granted to asylum seekers, who have been rejected but who during a minimum period of 18 months have not been able to leave the country. Applicants receive a residence permit for six months, which can be renewed first for another six months, then for one year and after that for three years. After a total of five years with temporary residence, they may apply for permanent residence permit. Unaccompanied minors can obtain a permanent residence permit after just two years and ten months following the submission of their application (ECRE 2008).
They are also granted full access to the Danish labour market. In 2006 36 residence permits were granted on grounds of exceptional reasons. (Response DK: 3)

Residence under the Job Card scheme

A residence permit under the Job Card scheme is issued for six moths. It cannot be extended, but if the applicant finds a job before the residence permit expires, he or she has the right to obtain a permanent residence permit pursuant to the ordinary provisions (Response DK: 7).

In 2007 about 2062 residence permits on behalf of the Job Card scheme were granted and 50 per cent of these permits have been issued to persons from India (Danish Ministry of Refugee, Immigration and Integration Affairs, 2008)

6. Conclusions

Until now illegal migration has not been considered an important issue in Denmark. The prevention of illegal migration focuses on returning persons who are not allowed to reside in the country, mainly rejected asylum seekers.

According to the Danish Ministry of Refugee, Immigration and Integration Affairs there is also no evidence to suggest that the conducted regularisation programmes attracted inflows from other European member states. Furthermore, there are no plans to conduct a regularisation programme in the near future (Response DK: 13).

7. References

Danish Ministry of Refugee, Immigration and Integration Affairs (2006), *International Migration and Denmark*. SOPEMI Report to the OECD 2006. Available at: http://www.nyidanmark.dk/resources.ashx/Resources/Publikationer/Rapporter/2006/sopemi_report_2006.pdf, 5 May 2008.

Danish Ministry of Refugee, Immigration and Integration Affairs (2008), Record *number of immigrants to Denmark*. Available at: http://www.nyidanmark.dk/en-us/news/news/danish_immigration_service/2008/februar/record_number_immigrants.htm, 14 May 2008.

European Council on Refugees and Exiles (ECRE) (2008), *Denmark*. Available at: http://www.ecre.org/drc/denmark.shtml, 15 May 2008.

EMN (2008). *Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna)*, August 2008. In: G. Biffl & J. Bock Schappelwein, 'Zur Niederlassung von Ausländerinnen und Ausländern in Österreich', Vienna: Österreichischen Instituts für Wirtschaftsforschung. pp. 105-113

Hansen, Thomas et al. (2007): Statistical overview. Population statistics on foreigners. Danish Ministry of Refugee, Immigration and Integration Affairs, Available at: http://www.nyidanmark.dk/NR/rdonlyres/86C56774-CAC9-42A5-BBC4-F28B3629078B/0/statistical_overview_2007.pdf, 21 March 2008.

Response DK: Response to the questionnaire sent to the Danish government in the course of this project filled in by the Ministry of Refugee, Immigration and Integration Affairs.

Response E-mail: Response to an e-mail sent to the Danish Red Cross Asylum Department in the course of this project filled in by the Legal Advisor Thorbjørn Bosse Olander.

Roskilde University (2007): Denmark Country Report. Undocumented Worker Transitions Project. Available at http://www.londonmet.ac.uk/londonmet/library/s15990_3.pdf.

Statistics Denmark: Population and elections. Foreigners. Population by region, age, sex, ancestry, citizenship and country of origin. Available at: www.dst.dk, 21 March 2008.

Vedsted-Hansen, Jens (2000): Regularization of illegal immigrants in Denmark. In: De Bruycker, Phillipe (2000): *Regularisations of illegal immigrants in the European Union*. Brussels: Bruylant.

16 Estonia

Paolo Ruspini

1. Introduction

Estonia has a long history of both emigration and immigration that has coincided with periods of colonization, independence and occupation. The first Republic of Estonia was declared on 24 February 1918. During the period of independence from 1918 to 1940, Estonia was already a multi-ethnic country with recognised Russian, Swedish, Jewish, German and Latvian minorities, all of which had almost completely disappeared by 1945 due to the acts of occupation regimes (Jäärats, 2008). The Second World War, a Soviet occupation (1940-1941), a German occupation (1941-1944) and another Soviet occupation (1944-1991) had a devastating impact on Estonian demographics. Until the time of regaining the independence on 20 August 1991, the population loss was offset by the Soviet occupying power via forced industrialization and by allowing and encouraging the entry of constant waves of migrants from different parts of the Soviet Union, including Russia, Belarus, Ukraine, Moldova, the Caucasus and Central Asia (Jäärats, 2008). In the light of these historical events and the country's geopolitical location (being the Estonian eastern border with Russia the external border of the European Union since 1 May 2004), the main countries of origin for immigration are the former Soviet Union countries, first and foremost Russian Federation. During approximately 50 years (between 1945-1988) about 500,000 foreigners settled in Estonia from the regions of the former Soviet Union, making up about 35 per cent of the total population of Estonia by the year 1989 (EMF & EMN, 2007b). The immigration pressure from the CIS countries has been constant and due to accession of Estonia to the European Union there is no reason to predict decrease according to the Estonian National Contact Point of the EMN, although the statistics of the year 2004 do not show significant increase in immigration (EMF & EMN, 2007a). Comparing the 1989 census data with the indicative figures of 1945, the Estonian population was 1,565,622 persons, almost double (1.8 times) that of 1945, including 963,000 Estonian (61.5 per cent) and 602,381 persons of other ethnic backgrounds (the remaining 38.5 per cent) (Jäärats, 2008). According to the data of the Statistical Office of Estonia and Minister of Population, the population of Estonia was however 1,344,684 in 2006, compared to 1,356,045 in 2003 and 1,372,071 in 2000. The main reason for the decrease of the population is the very low birth rate (negative population growth) since the middle of 1990s.

In Estonia the definitions of citizenship and nationality are based on different grounds. A person who by nationality is an Estonian may hold the citizenship of the United States of America and is therefore a citizen of a third country. At the same time, a person who is born in Russia and is of Russian nationality but has acquired Estonian citizenship through naturalisation, is considered a citizen of Estonia and the European Union. The citizenship of Estonia is based on legal continuity. The current state of Estonia is the legal successor of the Republic of Estonia established in 1918. The principle of continuity is applicable also for the citizenship. In 1992 the 1938 Citizenship Act was re-entered into force and according to that all persons with the citizenship of Estonia as on 16 June 1940 and their successors were considered as

Estonian citizens. *Jus sanguinis* and the principle of continuity of Estonian statehood are thus the two principles regulating the Estonian citizenship.

In 2006 the composition of population was divided as follows (in percent): Estonians 69%, Russians 26%, Ukrainians 2%, Finns 1%, Byelorussians 1%, and other nationalities 1%. When in 2006 82% of the population were citizens of Estonia, 10% were aliens with undefined citizenship and 8% were citizens of another state, then in 1992 the situation was the following: 68% of Estonian citizens and 32% of persons with undefined citizenship. During the years in between, a part of the persons with undefined citizenship acquired Estonian citizenship while some acquired the citizenship of another country (EMF & EMN, 2007b).
According to Jäärats (2008) the recent changes in Estonian immigration policy have been facilitated by the relative success of integrating past immigrants into Estonian society, the declining and ageing population, rapid economic growth and the resulting projected lack of labour.

2. Irregular Migration in Estonia

A publication of the Centre of Policy Study Praxis (No 2/2002) argues that because of the geographical location, vicinity of the Scandinavian welfare states and the number of illegal immigrants living in the Russian Federation, Estonia is a potential transit country for refugees coming from the South and East where the harsher economic situations and unemployment may motivate people to cross the border illegally or submit an application for asylum (EMF & EMN, 2007b). According to the Citizenship and Migration Policy Department/Ministry of the Interior of the Republic of Estonia, the Estonian legislation does not however provide a consistent definition of illegal immigrants. With regard to the National Aliens Act, a legal permit must exist for an alien to enter and stay in Estonia (Blaschke, 2008). Furthermore section 6(1) of the Aliens Act establishes a fixed annual immigration quota as follows: "The annual immigration quota is the quota for aliens immigrating to Estonia which shall not exceed 0.05 per cent of the permanent population of Estonia annually". In 2008, this ceiling was raised to 0.1 per cent. This quota functions in comparison to other countries as a control measure that is intended to constitute an absolute ceiling for admissions *per annum*, rather than a "desirable quota" based on estimations of need. Jäärats (2008: 209) observes that "the annual immigration quota is fixed and centrally determined without any involvement of local government, social partners or the civil society".

In 2006 the Estonian Border Guard discovered 63 cases of illegal immigration and 109 illegal immigrants. As compared to the year 2005, the number of cases of illegal immigration has more or less remained on the same level, 20% more illegal immigrants were discovered. The citizenship or country of origin of the illegal immigrants discovered by the Border Guard Administration in 2006 are as follows: Moldova – 32; Kazakhstan – 16; Russian Federation – 14; Ukraine – 10; Byelorussia – 4; Ghana – 1; Turkey – 1; Israel – 1; Romania – 1; Republic of Cote d'Ivoire – 1; Stateless persons – 28 (EMF & EMN, 2007b). The persons denied entry includes the most citizens of the neighbouring countries (Russian Federation and before the EU accession Latvia) and citizens of India and the Philippines. In the case of the latter, they are usually members of a ship's crew who wish to enter the

country during the ship's stay at port without having a valid basis for entry (EMF & EMN, 2007a).

3. Regularisation programmes

No regularisation programmes have been implemented in Estonia, although the special provision on persons of Estonian origin and persons who had resided in Estonia before 1990 and continued to reside there continuously (see below) could be considered a programme rather than a mechanism, notwithstanding the fact that the relevant provisions are contained in regular immigration legislation.

4. Regularisation mechanisms

In view of the *Obligations to Leave and Prohibition to Entry Act* there is only one possibility to legalise a person's status. If a person staying in Estonia without a basis of stay who is of Estonian origin; or settled in Estonia before 1 July 1990, has not left Estonia to reside in another country, continued to stay in Estonia and does not contradict the interests of the Estonian State a precept for legalisation can be issue, which obliges the alien to apply for a residence permit. Regularisations are processed individually and case-by-case and aim at securing a legal status for long-term residents. The regularisation norms are stated in the law and are therefore permanent (Blaschke, 2008; Ministry of the Interior, 2008). The legalisation programme was mainly addressed to residents of the former Soviet Union who had resided in Estonia for a long time but due to the political changes lost their legal basis to stay in the country (Ministry of the Interior, 2008). Residents of the former Soviet Union who wanted to stay in Estonia they had to present an application for residence permit before 12 July 1994. When this deadline approached it was discovered that about 90 per cent of them hadn't done that. The deadline was prolonged first time for one year and then again until 30 April 1996. The sufficient time left made the presentation of applications possible. According to the Estonian Ministry of the Interior (2008: 4) however a large number of aliens were documented through this 'programme'. The highlighting in quotes seems a proof of recognition by the Ministry of the Interior of the peculiarity of this procedure when compared with former statements of the Citizenship and Migration Policy Department by whom, despite the existing legalisation frameworks for aliens, "Estonia does not have any specific regularisation program" (Blaschke, 2008: 13).

Estonia has legalised the status of persons who were residing in the country illegally by use of section 20 of the Aliens Act which entered into force in 1997 and according to which aliens who had applied for a residence permit before 12 July 1995 and who had been granted a residence permit and lack a criminal record became entitled to the rights and duties provided for in earlier legislation. Accordingly, such aliens do not need work permits for employment in Estonia during the period of validity of their temporary residence permits and they have the right to apply for a permanent residence permit in view of the procedure and conditions established by the Estonian Government starting from 12 July 1998. An application for a permanent residence permit must be submitted at least one month before the expiry of a temporary residence permit (Ministry of the Interior, 2008). In view of IOM (2000) although the irregular aliens who registered were issued

precepts to leave the country, they were also informed as to how to regularise their stay.

In addition to the above mechanism, section 21 of the Aliens Act which entered into force in 1999 forms the basis for legalisation of persons staying illegally in Estonia. Section 21 stipulates that a residence permit may be issued outside of the immigration quota to an alien to whom the issue of a residence permit is justified (…) and who settled in Estonia before 1 July 1990 and has thereafter not left to reside in another country (Ministry of the Interior, 2008). The same rationales of the legalisation programme apply for the above legalisation mechanisms, i.e. to secure a legal status to long-term residents of the former Soviet Union in Estonia. The most essential qualities for application include the presence in the territory before a certain date, lenght of residence and family ties. As mentioned earlier, the absence of criminal record as well as the proof of employment form also an important part. The needs of certain group of illegal immigrants and those of the State for sustained immigration policy are declared reasons for these legalisation mechanisms (Ministry of the Interior, 2008).

Estonia does not issue residence permits on the basis of humanitarian reasons. According to the Aliens Act a residence permit should not be issued or extended to an alien if some country, a part from the Schengen visa area, has applied a prohibition on entry for this alien and if the prohibition has entered in the Schengen Information System.

Regularisation is certainly not an issue of public discussion in Estonia and no regularisation programme is in progress for the time being (Blaschke, 2008). At the European level, the Estonian Government seems however to share concern for a common approach including a better exchange of information and consultation before launching any new programme or mechanism (Ministry of the Interior, 2008).

5. References

Blaschke, J. (2008), "Estonia", in *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union*, PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs, pp. 13-14.

Estonian Migration Foundation - EMF & European Migration Network - EMN (2007a), *Estonian Migration and Asylum Statistics Report 2004*, September 2007, Tallinn: EMF & EMN.

Estonian Migration Foundation - EMF & European Migration Network - EMN (2007b), *2006 policy report. Estonian migration and asylum policy*, May 2007, Tallinn: EMF & EMN.

EMN (2008). *Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna)*, August 2008. In: G. Biffl & J. Bock Schappelwein, 'Zur Niederlassung von Ausländerinnen und Ausländern in Österreich', Vienna: Österreichischen Instituts für Wirtschaftsforschung. pp. 105-113

IOM - Regional Office for the Baltic and Nordic Countries (2000), *International and National Legal Measures Relating to Irregular Migration with Particular Reference to the Baltic States*, Odysseus Programme, IOM Research Initiative for Baltic Countries, Final Report, August 16, 1999 – February 15, 2000, Helsinki: IOM & EC.

Jäärats, K. (2008), "Estonia", in *Comparative Study of the Laws in the 27 EU Member States for Legal Immigration - including an assessment of the conditions and formalities imposed by each member state for newcomers*, Brussels: European Parliament & IOM, pp. 207-223.

Ministry of the Interior (2008), "Estonia", Response to the "ICMPD Questionnaire addressed to EU member states on regularisation processes", Tallinn: Ministry of the Interior.

17 Finland

David Reichel[1]

1. Introduction

The history of migration in Finland is different from the histories of most other EU Member States. After WWII Finland was a country of emigration and many persons were migrating to Sweden. Only in the 1990s Finland started to experience immigration, however, the number and percentage of foreigners living in Finland is the smallest in the EU 15 (Salmenhaara, 2005: 15).

Table 25: Basic information on Finland

Total population*		*5,300,484*
Foreign population*		*132,708*
Third Country Nationals		*n.a.*
Main countries of origin*	*Russia*	*26,211*
	Estonia	*20,006*
	Sweden	*8,349*
Net migration**		*13,586*
Asylum applications**		*1,505*

* 31st December 2007 ** During 2007; Source: Statistics Finland, www.stat.fi

2. Regularisation in Finland

Until recently irregular migration was not an important issue in Finland, therefore regularisation of irregular migrants was not an issue either. Hence, there was no specific legislation on regularisation in Finland, although there have been discussions on the issue (until 2003). No systematic irregular immigration was observed and the irregular foreign workforce is assumed to be very small, especially compared to Southern European countries (Salmenhaara, 2003: 17). However, in 2002 the topic of the irregular workforce was discussed in the Finnish parliament, leading to plans to modify the proposal for the new Aliens Act in order to be able to impose stricter controls on irregular employment (Salmenhaara, 2003: 17).

Due to the unimportance of irregular immigration in Finland (and immigration in general) it is likely that many regularisations took place on the basis of normal work and residence permit legislation (Salmenhaara, 2003: 17). This assumption is corroborated when looking at the asylum statistics provided by Statistics Finland

[1] The author would like to thank Tero Mikkola, Senior Advisor to the Minister of the Interior, for helpful comments on draft versions of this chapter.

Table 26: Asylum-seekers and refugees in Finland 1999 to 2007

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Asylum-seekers	3,106	3,170	1,651	3,443	3,221	3,861	3,574	2,324	1,505
Decisions on asylum [1]									
– Asylum granted	29	9	4	14	7	29	12	38	68
– Residence permit granted	467	458	809	577	487	771	585	580	792
– No asylum or residence permit granted	1,330	2,121	1,045	2,312	2,443	3,418	2,472	1,481	961
Family reunification									
– Opinions in favour/decisions in favour [2]	186	214	475	363	303	162	355	129	267
– Adverse opinions/decisions [2]	357	302	762	324	499	746	316	209	136
Quota	650	700	750	750	750	750	750	750	750
– Additional quota	–	–	–	–	–	–	–	–	–
Refugees received by municipalities [3]	1,189	1,212	1,857	1,558	1,202	1,662	1,501	1,142	1,793
Immigrating as refugees	**17,623**	**18,835**	**20,692**	**22,250**	**23,452**	**25,114**	**26,615**	**27,757**	**29,550**

1) Decisions of the Finnish Immigration Service,
2) From 1 May 1999, decisions,
3) Refugees by quota, asylum-seekers having received a favourable decision and persons admitted under the family reunification scheme; Source: Website of Statistics Finland and Ministry of Interior

In its response on behalf of the Finnish government to the questionnaire sent out in the course of this project, the Ministry of the Interior emphasises that Finland has no experience with regularising migrants, neither through programmes nor through mechanisms. Finland has 'very few illegally staying third country nationals', which in eyes of the government is due to three facts. First, Finnish law stipulates that an alien may reside legally in the country until a final decision has been reached on his application; second, aliens who cannot be removed from the country are granted a residence permit – the Ministry describes this as 'the main principle' upon which Finnish asylum law is based - and third, aliens who are not granted a residence permit are 'effectively removed from the country'. (MS response FI: 2-3)

The Ministry concedes that some Finnish policy mechanisms may be 'interpreted in a broad sense to include regularisation mechanism [sic] because they prevent the emergence of groups of illegal third country nationals that could in other circumstances require the establishment of specific regularisation mechanisms'. As the two main examples of such preventive mechanisms, the Ministry mentions the granting of residence permits on 'compassionate grounds' (Section 52 of the Aliens Act) and in cases where an alien cannot be removed from the country (Section 51 of the Aliens Act). (MS response FI: 3-4)

Table 27: Number of permits granted under Section 51 and 52

Section 52:	Section 51:
2007 - 210	2007 - 24
2006 - 163	2006 - 299
2005 - 159	2005 - 259
2004 - 464	2004 - 27
2003 - 249[1]	2003 - 8

(MS response FI: 3-4)

The granting of a permit on compassionate grounds under section 52 is discussed at some length in a recent publication of the European Migration Network. It is a continuous permit given to aliens residing in Finland taking into consideration their health, ties to Finland, circumstances they would face in the home country, their vulnerable position or other compassionate grounds. Most of these permits have been granted to rejected asylum seekers whose return to the home country is impossible. A compassionate ground may be also the impossibility of receiving essential medical care in the alien's home country. Each case is assessed individually and the standard and the access to medical care in applicant's country of origin are closely evaluated when assessing the case. A permanent residence permit can be granted to aliens who after being issued a continuous residence permit, have resided legally in the country for a continuous period of four years and if the requirements for issuing a continuous permit are still met (EMN 2008: 11).

[1] These numbers are slightly different from the data provided in a recent EMN study, which states the number of residence permits issued on compassionate grounds were as follows: in 2005 - 161 permits; in 2006 - 164 permits; in 2007 - 232 permits and in 2008 (January-June) - 103 permits (European Migration Network Ad-Hoc Query 2008: 11).

3. Conclusions

Irregular migration is not considered a social or a political problem in Finland. Regularisation procedures have not been applied in the past, nor does the Finnish government intend to implement them in the foreseeable future.The Ministry of the Interior states that it does not regard regularization programs as 'suitable measures for regulating migration'. Other policy instruments should be developed or strengthened to address issues such as labour market shortages. The Finnish government therefore deems a common EU framework for the management of regularization unnecessary.

4. References

Blaschke, Jochen (2008), *Trends on regularisation of third country in irregular situation of stay across the European Union*, Briefing paper, Directorate-General Internal Policies. Policy Department, Citizens Rights and Constitutional Affairs.

EMN (2008). *Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna)*, August 2008. In: G. Biffl & J. Bock Schappelwein, 'Zur Niederlassung von Ausländerinnen und Ausländern in Österreich', pp. 105-113. Vienna: Österreichischen Instituts für Wirtschaftsforschung. pp. 105-113.

Salmenhaara Perttu (2003), *EU and US approaches to the management of migration. Finland*. Available at: http://www.migpolgroup.com/infopages/2056.html, 10 July 2008

Salmenhaara Perttu (2005), *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue. Finland*. Available at: http://www.migpolgroup.com/infopages/3003.html, 10 July 2008

18 France

Karin Sohler

1. Introduction

This report on regularisation practices in France draws on various sources: official reports (government, advisory boards and parliament), statistical sources and research done on regularisation programmes and pro-regularisation movements. Additional primary sources were consulted in particular with regard to legislation and policy developments in recent years (laws and administrative circulars, legislation manuals, Internet publications of migrants' rights NGOs, and press articles).

The report covers the period since 1996 until present, but considers as well previous experiences of regularisation policies (since 1973) in a comparative perspective. It outlines the development of irregular migration as a policy issue and the general shifts and factors of regularisation policies (including both programmes and legal continuous mechanisms of regularisation), analyses the implementation and characteristics of programmes, and finally gives an evaluation of measures and outcomes based on available statistical data and research.

The terminology used in this report when referring to foreigners without a regular residence status is either 'irregular migrants' or *Sans Papiers* when referring to their role as social movement actors.

2. Irregular Migration in France – An overview

2.1 Evolution of official perception of irregular immigration

Both the legal and the political meaning of irregular migration have changed considerably with the major changes in the *legal system of regulation of entry and residence of foreigners* and with the priorities of *immigration control* advanced since the 1990s, above all in the context of the emerging EU internal migration regime.

Two general changes have marked the process of legal redefinition of irregular migration:

- The new boundaries drawn between EU migrants and non-EU migrants, which focus immigration control on immigrants from countries outside the EU (thus limiting the phenomenon of irregular status to these groups)

- The multiplication and differentiation of immigrant status categories (different types of permanent and short-term residence permits allocating different rights), introducing a more marked segmentation between immigrants regards residence rights, with irregular residents as the most precarious status group.

An irregular residence and situation generally results from entering the country without authorisation or from an authorised entry (as tourist, student, spouse, asylum seeker, seasonal workers etc.), which for diverse reasons becomes irregular (expiration of permit and overstaying, no renewal, loss of permit due to change of conditions, refused asylum, etc.). With the system of residence permits (admission and renewal) becoming more and more differentiated, also possible pathways from a regular to an irregular status have been multiplied. Regularisation as the inverse movement (from irregular to regular) thus also became a more complex procedure that had to take into account very different situations.

The reasons for coming into an irregular situation have significantly changed over time: In the regularisation programme of 1981-1982 (concerning 130,000 immigrants) it became evident that the majority of migrant workers had entered by tourist visas and overstayed, a practice which had for a long time constituted the normal procedure of migrant labour market insertion. The successive restructuring of the regulatory framework for foreigner's entry and residence towards a system of reinforced visa obligations and pre-entry controls, which coupled residence permits to a preliminary authorised (regular) entry, made the ex-post regularisation within the country the exception.

The *political redefinition* has been marked by control-oriented strategies of policing irregular migration, promoted by the conservative UMP government since 2002, that shifted the framing of irregular migration towards a security problem (subject to more severe sanctions)[1]; despite such a focus, the French policies of controlling immigration have broadened towards more global strategies in relation to the external dimension, especially by coupling immigration (control) with development policies (in major countries of origin), and involving countries of origin and immigrants as actors in these policies (partnership agreements on concerted immigration and irregular migration control; co-development policies supporting migrants development and economic projects in home countries).

In this context, new situations of irregularity and patterns of irregular migration evolved, which we will outline briefly in the following section.

2.2 Changing patterns of irregular migration

Asylum migration

Since the early 1990s, official perception has focussed on *asylum seekers* as an important migrant group in relation to potential irregular migration (control). During the last decade these asylum seekers mainly came from European countries (like Turkey, Ex-Serbia and Montenegro /Kosovo, Russia/Chechnya), African countries (like DR Congo, Algeria, Mauritania, Mali), Asian countries (Sri Lanka, China) and from Haiti.

[1] According to the actual immigration law in force an infraction of entry and residence law is sanctioned with one year of prison and a fine of 3,750 €, if necessary with an interdiction to re-entry of a maximum duration of three years.

High numbers of asylum applications (France is one of the principal EU asylum countries)[2] and the parallel changes in asylum legislation and recognition policies amounted to an increasing number of refused asylum seekers[3]; an increasing proportion of these asylum seekers were excluded from the normal asylum procedure and processed in accelerated procedures, which already deprived them of residence status in the procedure and provided for less procedural safeguards (especially those coming from "safe countries of origin"[4] and those in the Dublin procedure[5]).

An important (though not quantifiable) part of the refused asylum seekers remained as "de facto refugees" in the country, often because of prevailing situations of violence or insecurity in their home countries. Though no reliable data are available, it was estimated that only a small proportion of refused asylum seekers actually leave the country after a negative decision (Parliamentary report Des Esgaulx 2005; Othily & Buffet 2006)[6].

As to this situation, the number of annually refused asylum seekers (as one of the most visible and controllable populations skipping into an irregular status) became a major indicator used in governmental evaluations of the flows of foreigners in an irregular situation.

Family migration

In a second area, that of family immigration, the problem of irregularity became an important issue during the 1990s (especially with the *Pasqua laws 1993*), since stricter family reunion conditions, and the exclusion of regularisation possibilities within the country for family members having arrived without authorisation (as family members) lead to contradictory legal situations for persons who were in principle guaranteed a right to stay (right to "normal family life") and thus protected from expulsion, but on the other hand could not legalise their situation.

The restrictions of family reunification thus became an important *driving force and reason* for irregular immigration and the presence of irregular immigrants; this has furthermore resulted in particularly difficult irregular situations (with couples/families in partly regular and irregular situations).

---

[2] Asylum applications increased from 19,000 in 1996 to approximately 52,000 in 2003, and since then decreased again to 23,800 applications in 2007 (OFPRA 2007).

[3] Refugee recognition rates decreased to 15 percent in 2003 and have since increased to 19,5 percent in 2006. Therefore, between 2001 and 2006, the asylum applications of about 207 500 asylum seekers were definitively refused. However, an increasing proportion of them have applied for re-examination of their situation („réexamen"), due to the original poor examination within the accelerated procedures.

[4] A list of 17 safe countries of origin has been fixed, where generally no risk of persecution exists according to the asylum office OFPRA, thus asylum applications from these countries are processed in an accelerated procedure.

[5] Procedure to determine the responsibility for asylum claims and processing between EU Member States

[6] There are no data available on the number of refused asylum seekers that leave the country since official statistics do not distinguish in relation to residence status, figures are only available concerning the number of refused asylum seekers leaving the country with voluntary return assistance programmes.

In this context, it became common to include also minors and children (born and raised in France) in the category of irregular migrants and in regularisation programmes (although they were seldom counted in regularisation statistics). The feminisation and "familialisation" of migrants in an irregular situation became apparent during the regularisations in the 1990s.

Whereas in the 1981-1982 regularisation programme the large majority of regularised were young men (only 17% women) without partners or families, the regularisation programme of 1997-1998 and the following permanent regularisations covered an increasing proportion of women, minors and persons living in partnership relations (see section 1.4).

Labour migration

The pattern of labour market insertion of migrants without residence permits seems to have remained quite stable over time as to the segments and types of labour they occupy in the informal and regular economy: it mainly concerns employments in the construction sector, the service sector (hotel-restaurant, cleaning) and also the domestic services, textile sector and agricultural sector; and above all is common in small enterprises with a demand for a highly flexible and seasonal labour force, as well as in private households (domestic workers) (see Marie 1984; Brun & Laacher 2001; Heran 2004; CICI 2007; Jounin 2008)[7]. Irregular migrants thus have been inserted as a cheap and flexible labour force within the regular economy, and to some extent also in the social security and tax system. The insertion of irregular migrants into regular employment (contract), including social security contributions, by means of falsified documents, constituted a frequent practice of integration in the regular labour market, especially among the sub-Saharan African immigrants.

Countries of origin

The more restrictive policies of admission and long-term residence towards third country nationals (with the recent law reforms mainly concentrated on restrictions of family reunification) have multiplied the pathways to irregularity for these immigrants; In France the majority of the new annual immigration and of the present *foreign* population (despite a stable proportion of about one third EU citizens) comes from countries outside the EU, mainly from Maghreb countries and to a smaller part from sub-Saharan countries (from former French African colonies)[8].

Most former citizens of French colonies in Africa have, after independence, benefited from specific (liberal) regimes of freedom of circulation, settlement and

[7] Among all types of infractions concerning illicit employment (not insured, not paying taxes) uncovered by work inspections, those related to the irregular employment of foreigners (without work permit) represented only a small proportion (11,7%) in 2006. The employment of foreigners without work permit concerned principally the construction and public building sector (46% of registered cases) and the hotel and restaurant sector (19 % of registered cases).

[8] According to census data (INSEE 2004-2005) in mid-2004 the foreign population was 3,5 million (in metropolitan France), which represented 5,8% of the total population. 1,2 million of the foreign population were citizens from EU 25 countries (34,7%, Europe incl. other non EU countries 39,3%); 1,1 million were citizens from Maghreb countries (31,6%); 420,000 citizens from other African countries (11,9%). All nationals from African countries represented 43,6% of the foreign population. Citizens from Asian countries (incl. Turkey) represented 14% (486,000), nearly half of them citizens from Turkey (229,000). (Regnard/DPM 2006: 150ff)

citizenship, which since the 1970s and later with the Schengen agreements became more and more restrained. These traditional countries of origin have now been placed at the centre of strategies for immigration control and the prevention of irregular migration, advanced currently within the framework of new bilateral agreements on "concerted migration"[9]. On the one hand these agreements liberalise access for labour immigration on selective terms (based on quotas for certain professions) and by circulation visa for nationals of these countries, and in exchange facilitate readmission of irregular migrants from these countries and co-operation on immigration control. They furthermore closely couple the management of migration flows with issues of development and co-development aid.

The irregular immigration patterns from these countries (Maghreb, sub-Saharan Africa), are therefore closely interrelated to the cutting off of regular immigration possibilities, and persisting immigration stemming from closely tied migration networks and relations (families, commercial, higher education and qualification). Such a hypothesis is confirmed by recent studies on the newly admitted immigrant population in 2006, including also a high proportion of recently regularised migrants (based on familial ties and long-term presence), mainly from Maghreb and sub-Saharan African countries (Bèque 2007).

France also is a destination and transit country of organised irregular migration (via smuggling networks): The government report (CICI 2007) observed the most important inflows of migrants via irregular smuggling networks from Asia (China), the Middle East (Iraq, Iran), Northern Africa (Maghreb), Eastern Europe (Romania, Bulgaria), Turkey and the Indian subcontinent (India, Sri Lanka, Pakistan) (CICI 2007: 139).

Since several years important irregular transit migration, mainly from regions of war and insecurity (Iraqi, Kurds),[10] trying to gain access to the UK and Scandinavian countries has been observed in France.

The lifting of barriers for new EU citizens (in 2004 and 2007) had indirect regularisation effects on immigrants from these countries, above all on Romanian and Bulgarian citizens, who until 2007 had been targeted as a specific problem group for irregular migration, related to "problems of public order" (in particular Roma travellers). Irregular migrants from Romania were in recent years often involved in police apprehensions and effectuated removals.

The situation in the Overseas Territories (DOM-TOM)

A very specific problem in the French context has emerged due to the French Overseas Territories and the external borders close to countries of emigration from Africa and above all Latin-America (both for political and poverty reasons, as for example in the case of migrants and asylum seekers from Haiti in recent years).

[9] Such agreements have been concluded with Sénégal (23 September 2006), Gabon (5 July 2007), the Democratic Republic of Congo (25 October 2007), and recently with Bénin and Tunisia (see Report CICI 2007; Accord franco-tunisien sur l'immigration, Reuters 29.4.2008).

[10] Between 1999 and 2002 they had been placed in the humanitarian reception centre of Sangatte.

This has more recently drawn particular attention to the situation of irregular immigration and the issue of immigration control in the French Overseas departments and territories (DOM-TOM), with a focus on the American Caribbean departments (Guyana, Guadeloupe, St. Martin, Martinique), and also on the islands of Mayotte and Réunion (with major immigration coming from the Comorian Islands).

The state secretary of Overseas territories has estimated the size of the irregular migrant population in Guyana at 40,000, in Guadeloupe and St. Martin at 10,000 to 20,000 and in Martinique at about 2,000. On the island of Mayotte 50,000, i.e. the highest number of irregular migrants, was estimated (and on the nearby island of La Réunion another 1,500; CICI 2007: 170). In recent years the readmission and removal procedures from the Overseas territories have increased considerably in numbers: In 2005, 44 % of all removal procedures of foreigners from France were carried out in the DOM and in Mayotte, in 2006 the figure was 50% (the majority thereof in Mayotte and Guyana)[11].

2.3 Indicators and estimations of irregular migration

The very heterogeneous and dynamic character of migration control policies and irregular immigration make it difficult to name figures.

As official figures to a large degree rely on police control- and apprehension statistics, these statistics also indicate effects and evolution of state control practices (reinforced in recent years). The administration under the lead of the Inter-ministerial committee of Immigration control (CICI, established in 2005), since then a major actor in shaping policies, has developed a set of *indicators* to seize irregular immigration[12], both concerning the irregular inflows (measured via border control statistics) and the presence of irregular migrants in the country relating to indicators evaluating the number of persons in irregular status (refused asylum seekers, apprehensions and infractions of entry and residence legislation, persons covered by public medical assistance AME[13]). The indicators also take into account the

[11] In 2005 15,532 removals were been carried out in Overseas territories (half of them in Mayotte), compared to 19,841 in metropolitan France (CICI 2007: 150). In 2006 the removals effectuated in the DOM made up 24,156 (13,258 from Mayotte and 8,145 from Guyana; from Guadeloupe 1,964; St. Martin 289; Martinique 436; Réunion 64), which meant that they exceed those in metropolitan France.

[12] The indicators refer to a) migration pressure at external borders is measured by border policing statistics (using three indicators: 1) number of detentions while awaiting entry permit at the border (zone d'attente); 2) refoulements at the border (incl. non-admission and readmission to another state according to bilateral readmission agreements or to Dublin regulation); 3) asylum demands at the border;
b) Indicators to measure irregularly staying migrants present in the country, which include: 1) refused asylum seekers per annum; 2) annual exceptional regularisations (migrants having entered irregularly); 3) annual apprehensions of foreigners for infractions of entry and residence legislation; 4) persons in administrative detention for expulsion 5) eviction orders (APRF) not executed; 6) persons benefiting from public medical assistance (Aide médicale d'État).

[13] Since 1999 the public medical aid AME is attributed nearly exclusively to foreigners in an irregular situation. The number of AME beneficiaries was 191,000 in 2006, but the indicator tends to overestimate the irregular population since the outflows (those leaving the country, those regularised) are not captured accurately with these data.

reduction of irregular situations (via permanent regularisations, enforcement of removal).

These indicators furthermore provide data on the number of annual regularisations on an exceptional basis of migrants having entered the country irregularly: between 2001 and 2006 in total more than 155.000 foreigners (having entered irregularly) were regularised (CICI 2007: 143; see Table 31). Regularisations have contributed more to reduction of irregular migration than removals in the same period. All these indicators have to be evaluated with caution (and cannot be added up to an estimation of stocks of irregular migrants), since they include many double or multiple counts (of persons), and do not record the change of situations (regularisation of status, outward migration to other countries etc.). A senate report on "clandestine migration" (Othily & Buffet 2006) provided figures of an approximate stock of 200.000 to 400.000 migrants staying without residence permit in the country. The same numbers, however very rough and not reliable estimations of stocks of irregular migrants, were also advanced in the political debate.

2.4 Evolution of regularisation programmes (1973-2006)

2.4.1 General characteristics

French policies to prevent and limit irregular immigration have drawn upon two complementary strategies: a control-oriented and an inclusive one. The first has gained priority within government policies (of controlling illegal immigration), whereas the second via regularisation has been applied more selectively and on an individual basis.

Large or small-scale punctual, *exceptional regularisation programmes* were operated regularly after the suspension of immigrant labour recruitment policies and since 1973 included six relevant programmes, the last one in 2006 (in 1973, 1980, 1981-1982; 1991; 1997-1998; 2006).

The historically most important operation in terms of numbers of persons regularised was the programme in 1981-1982 (with *130,000 regularisations* in total), which targeted migrant workers (regularised on the basis of labour market integration). In the framework of such exceptional programmes approximately 282,300 persons in sum had their status regularised between 1973 and 2006.

In France there were never any general amnesties (although the regularisation rate of 87% in 1981-1982 came closest to an amnesty), all collective regularisations were processed on the basis of more or less specified *criteria* (eligibility and admission) defined by means of *administrative circulars* issued by the competent ministers (Labour and social affairs, Interior, Immigration and integration[14]). Such punctual administrative regularisations were based on a case-by-case examination and decision of competent authorities (prefectures on a regional level), and within their scope for discretionary decision.

[14] Since May 2007 competences shifted from the Ministry of the Interior to the then created Ministry of Immigration, Integration, national Identity and Co-development.

Another common feature of regularisation programmes in France has been the regularisation only *via short term permits*, thus such regularisations were only provisional, further regularisation (renewal of permit) depending then on stable labour market integration, stable family relations or the qualification of human rights situation in the home country (de facto refugees). To drop back into an irregular status after one year was thus possible. The increasingly strict conditions imposed for renewal and the generally precarious and disadvantaged employment position (risk of unemployment, low income) of (regularised) immigrants rendered their residence status precarious, at least within the first years[15].

2.4.2 Shifts of aims and groups targeted with regularisation programmes

Over time and along with changing immigration policy contexts the aims and the target groups of such regularisation operations changed considerably.
Two major shifts in this respect can be observed:

A move from regularisation policies which aimed primarily at *labour market inclusion* of immigrant workers towards aims of *humanitarian and social integration* (of de facto immigrants), which became dominant in the 1990s regularisation programmes;
Correspondingly a shift of focus from irregular *migrant workers* (in 1973, 1980, 1981-1982) towards *partners and families (in 1997-1998; 2006)*, as well as rejected *asylum seekers and de facto refugees (in 1991, 1997-1998)* as major target groups took place.

These shifts corresponded with a trend from broader, large-scale regularisations towards more focused (small-scale) measures. In the long run we can observe a narrowing of target groups, a decrease in the numbers and the regularisation rates and finally a substitution of collective regularisation procedures by individual regularisation procedures (see Table 30).

An element that became obvious in all programmes was an existing *mismatch* between restrictive admission policies and de facto immigration dynamics (redirected to irregular channels); it resulted from both internal and external factors (related to family reunification, a constant demand for a precarious migrant labour force; political and economic factors for emigration in the home countries…), causing growing problems and concerning an increasing immigrant population.

Collective regularisation programmes were designed to compensate or attenuate to some extent the effects of previous law reforms (as was the case in 1997-1998 related to the *Pasqua Laws of 1993*) and problems emerging due to failing administrative procedures (as was the case with asylum procedures in 1990), which had deprived more migrants of a legal status.

[15] After five years of legal residence they can apply for a permanent residence permit, conditioned they fulfil requirements

Migrant workers programmes
The programmes initiated at the beginning of the 1980s had migrant workers as their principal target group. Associated with labour market policy aims to combat illegal work and exploitation of migrant workers[16], the operation was designed (by the socialist government coming to power in 1981) to regularise the largest number possible of irregularly employed immigrants present. This objective has been largely achieved, also by a relaxation of criteria during the regularisation operation, which allowed for the regularisation of a total of 87 percent (130,000) of the applicants. From the 130.000 regularised migrants (mostly young men) 90 percent were workers with a more or less stable employment, most of them having arrived within the last three years before their regularisation (nearly 40 percent were in France for no longer than one year; 70 percent arrived in the country within the last three years; Marie 1984: 26)

Long-term and refused asylum seekers
Collective regularisations especially aimed to overcome certain gaps or inconsistence within the legal system itself, causing situations whereby persons could neither be expelled, nor regularised: for example the asylum law (until 1998)[17] did not provide for a (temporary) protection status for those refugees who were not recognised under the protection regime of the Geneva Refugee Convention, but were nevertheless victims of war and (non-state) violence; an increasing part of refugees were neither recognised as Geneva convention refugees and excluded from other possibilities of regularisation, nor could they actually return and be deported to their home countries, therefore constituting a new category of "ni regularisables, ni expulsables".

In this respect, since the beginning of the 1990s asylum seekers and de facto refugees have become an important group of persons in an irregular situation and hence of regularisation policies. Following a peak of the number of asylum applications at the end of the 1980s and the correspondingly long duration of asylum processing (approximately five years) a reform of the asylum system aimed to accelerate asylum processing; this resulted in a high number of refusals of asylum applications at the beginning of the 1990s. A large part of these refused asylum seekers already had integrated and established family ties in France after long-term asylum procedures, or in other cases could not be returned to their home countries (e.g. because of war or generally insecure conditions; personal risk). This provoked an important protest movement against expulsions and claims for collective regularisation of long-term asylum seekers for integration and humanitarian reasons (Poelemans & De Sèze 2000: 310; GISTI Plein Droit 1991; CNCDH 2006).
The *regularisation programme in 1991* addressed the situation of such refused long-term asylum seekers[18] (more than three years in asylum procedure) and was so far

[16] Law on employment, enhancing rights of irregularly employed migrants and introducing sanctions of irregular employment (Cealis et.al. 1984:13)
[17] Then a temporary protection for refugees from non-state violence and persecution by non-state actors has been created (*asile territoriale*), which later has been substituted by the subsidiary protection status introduced with the asylum law reform in 2003.
[18] Refused asylum seekers have since been considered as an important component of persons remaining in the country without residence permit (ca. 80% of the annual asylum applications are rejected), see CICI 2007; report of OFPRA 2006.

the only collective regularisation focussing on refused asylum seekers (although the regularisation programme of 1997 among many others also included this group). Nevertheless, this regularisation was not operated on merely humanitarian concerns (long-term stay, family ties, non-refoulement because of threat to life), but also on the de facto labour market integration of most of these long-term asylum seekers (at that time asylum seekers have been allowed to work, they were only excluded from labour market access in 1991)[19]. One third of the applicants (15,000 persons) could get their residence status legalised.

This is another example where preceding policy changes on the one hand, and following protest movements (hunger strikes of refused asylum seekers in many French cities) resulted in a collective regularisation measure.

Families as new target group

The *Pasqua laws* (1993)[20] had multiplied situations of irregularity mainly concerning family members, which had entered the country outside the regular family reunion procedure, or parents of children born in France.
With respect to parents of children born in France, already ministerial circulars (Circular 5 May and 13 June 1995; Circular 9 July 1996) and the Debré Law of 1997 had restored regularisation possibilities on an exceptional basis.

The *regularisation programme of 1997-1998* had as a major aim a "clearing up" of these situations of family members (parents, children and spouses) trapped in an irregular situation, despite the fact that they were protected from expulsion by law. The programme mainly focussed on the regularisation of *family members* (related to rights to family and personal life guaranteed by article 8 ECHR) and *long-term present immigrants*, whereas immigrant workers and refused asylum seekers without family dependants in France (mostly men) were only marginally targeted (and regularised) by this programme.

The problematic of families in an irregular situation resurged again in 2005 and 2006, pushed as an agenda by solidarity mobilisations of citizens committees in schools by teachers, pupils and parents: it related to the situation of irregular immigrants with children born in France and enrolled in school, and for which an expulsion to an unknown home country was not possible. In this context a further *humanitarian regularisation programme* addressed the situation of such families in June 2006. The number of overall applications of families (over 30,000 applications) again made aware of the important number of families concerned.

[19] The regularisation was possible under the condition of an entry before 1989, for refused asylum seekers that have been in the asylum procedure for at least three years (or two years when they had family ties), and if they had already been employed for at least two years and could present an employment contract or a promise of employment (see Poelemans & De Sèze 2000:310).
[20] One of the major provisions of the *Pasqua Law* was to make legal entry a precondition for obtaining a residence permit. Furthermore, migrants who had come to France without documents, but whose children had been born in France could no longer claim the constitutional right to family life in order to stay in the country This new regulation placed such parents in an irregular situation, although they were protected from removal (Laubenthal 2007:110; Poelemans & De Sèze 2000: 311).

2.5 Evolution of continuous regularisation mechanisms

Apart from regular collective regularisation measures, continuous regularisation mechanisms on an individual basis became an increasingly important factor of the French migration system.

The cornerstones of the currently existing mechanisms for exceptional regularisation have been laid following the collective regularisation programme of 1997-1998 with the *Chevènement Law* (1998)[21] (and partly already by the Debré Law in 1997[22]): it re-established legal entitlements[23] and expanded regularisation possibilities for certain categories of irregularly staying foreigners, as were those who had personal and familial ties and those with a long-term presence (foreigners proving a permanent residence of more than ten years, or fifteen in the case of students). A specific mode of *exceptional regularisation* on humanitarian grounds was created for other situations not covered by legal entitlements. For regularisations on these terms a new temporary residence permit (*Carte vie privée et familiale*) valid for one year (with possibility for renewal), which also entitles to work, was introduced (Regnard/DPM 2006; GISTI 2006).

2.5.1 Modifications with immigration acts of 2006 and 2007

The legal mechanisms for exceptional regularisation have been twice modified by the immigration Act reforms in 2006 and 2007 (Act on entry and residence of Foreigners and on Asylum, CESEDA):

- in 2006 the (Sarkozy II law) the legal entitlement of regularisation after a continuous presence of ten years was abolished[24]; and regularisations in such cases had to undergo a previous consultation by a newly introduced *National Commission on the exceptional admission to residence (Commission nationale de l'admission exceptionnelle au séjour).*

- In 2007 (Hortefeux law) exceptional regularisation mechanisms were revised in order to provide for regularisations on grounds of employment. The criteria for application have been specified further in an administrative circular by the Minister of Immigration (of 7 January 2008)[25].

[21] *Loi n°98-349 du 11 mai 1998 relative à l'entrée et au séjour des étrangers en France et au droit d'asile*, published in the Official Journal 12 May 1998

[22] The Debré law of 1997 introduced for the first time a regularisation on a legal basis (instead of only via circular). Target groups of this regularisation were parents of French children, spouses of French nationals, young adults who entered France before the age of ten, and foreigners present in France in an irregular situation for more than 15 years.

[23] There have existed mechanisms allowing for a (continuous, individual) regularisation after more than 15 years of continuous presence, until the Pasqua law (24 August 1993) abrogated this possibility of regularisation after a long-term presence. Foreigners who could prove having had a residence in France for more than 15 years were then entitled to get a permanent residence permit (carte de resident, valid for ten years).

[24] The UMP majority had challenged the provision as a "reward for unlawful behaviour (clandestinity)" (Mariani report 2006), which would provide an incentive for irregular migrants to remain without permit in the long run.

[25] *Loi n° 2007-1631 du 20 Novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile*, published in the Official Journal 21 November 2007 ; Art. L.313-14 CESEDA

The legal provision introduced in 2007 was embedded in government policies of promoting qualified labour immigration and objectives to inverse the existing ratio of annual inflow of labour immigration and family related immigration[26] (by raising economic migration up to 50 percent of annual admissions) (CICI 2007: 8).

The circular limited the scope of such regularisations on terms of employment to third country nationals (excluding Algerians and Tunisians), with professional qualifications and a stable employment contract[27] within certain employment sectors and 30 professions affected by an actual shortage of labour, varying according to regional labour market situation.[28]

Exceptional regularisations are generally subject to an assessment of the personal situation (considering intensity of personal ties, family relations and integration into French society; personal threat and risk in the home country) and a discretionary appreciation of interests by the prefectures.

In cases of exceptional regularisations after long-term presence (ten years) the national advisory commission has to be consulted; in the case of exceptional regularisations on grounds of employment in professions with labour shortage, the regional labour market and employment offices have to approve the regularisations (compliance with criteria) in advance. These regularisations allow for the granting of a temporary residence and work permit (valid one year with option of renewal, the purpose depending on the grounds for regularisation: either permit "private and family life", or "employee" or "temporary worker", depending on the type of employment[29]).

In the future, the *National Commission on the exceptional admission to residence*[30], nominated in December 2007, shall standardise the decision-making of the

---

Circular of 7 January 2008 CIRCULAIRE N° NOR : IMI/N/08/00012/C

[26] Family related permits (family members of French citizens, family members of foreigners via family reunion, personal and family ties) constitute the highest proportion of new annual admissions, in 2006 they accounted for 52% (96 385 permits of 183 575 of all permits, see CICI 2007: 75).

[27] The conditions required concerned the recognised professional qualifications and/or experience and a stable employment contract (unlimited duration contract CDI or contract of at least one year) in one of the 30 professions defined in the circular.

[28] Generally the list determined in the circular included qualified professions in the construction sector, informatics, technical professions or financial controlling. For third country nationals from countries with specific bilateral agreements of concerted migration, the number and type of professions accessible differed (according to the terms of the agreements).
In parallel, the labour market access of EU citizens of new EU Member States (still subject to a transition period restricting their labour market access) has been liberalised for a broader range of 150 professions (list also including lower qualified professions) facing actual labour shortage.

[29] a renewal of such permits was conditioned to a continuous employment for at least two years in one of the professional sectors with labour shortage.

[30] It is composed of two qualified persons (representatives from the higher administration, presidents of the commission), two representatives from NGOs concerned with reception and integration of migrants (Forum Réfugiés, Centre d'Action Sociale protestante CASP), two members of parliament, one mayor, and four representatives of the executive (from Ministry of the Interior and Ministry of Immigration and Integration, Ministry of Foreign Affairs), all of them

prefectures concerned exceptional regularisations: the governmental advisory committee is charged to give recommendations on the criteria of exceptional admission to residence, as well as to submit an annual report evaluating the practical implementation of exceptional regularisations. Since the Commission was only recently set up, no report has been produced until present.

Since 1998 these exceptional regularisation mechanisms within the general legal framework have thus allowed to take humanitarian and human rights related individual cases into continuous consideration (see section 1.4; and Table 29).

2.5.2 Important policy factors and rationales

The political factors and rationales of collective regularisation measures in France can be characterised by several recurrent features:

- Collective regularisation measures were always closely linked to legislative changes and general shifts in immigration policies (as was the case in 1981, in 1997-1998, indirectly also in 2006); with immigration policy becoming a major electoral campaigning issue, these also corresponded to governmental changes; in that sense they have functioned as transitory measures, sometimes even as a laboratory for future policies, in a sense that they provided policy makers with information on the irregular migrant population and the applicability of designed policies (e.g. relevant criteria for regularisation, return programmes etc.).

- Situations of irregularity due to restrictionist policies and/or legal "gaps" or dysfunctions (long-term processing of asylum, legal limbo situations of neither expellable, nor legalised) became also a major driving force for regularisation actions: those mainly tried to attenuate and adjust "system failures": this was the case with the situations of irregularity emerging from the conflict between application of human rights norms on the one hand (rights of private and family life, non-refoulement and protection from inhumane treatment), and policies denying such rights in practice (exclusion from residence permit, etc.); in this respect, the compliance with international human rights norms became a major rationale for regularisations.

- Often shifts towards more restrictive policies were compensated and attenuated by punctual, focused regularisation measures: e.g. the recognition of asylum seekers since the beginning of the 1990s, as well as the policies which made family reunion for third country nationals increasingly difficult in the 1990s, a policy further accentuated with recent immigration law reforms in 2006 and 2007.[31]

---

nominated by the Ministers of Interior and of Immigration. Decree of 12 December 2007 NOR: IOCD0771712A, published in the Official Journal 27 December 2007

[31] The results of the Migrants Integration Policy Index (MIPEX) study indicates that the conditions for family reunion in France have worsened and place France on the lowest level in the EU 28 (Niessen et.al. 2007: 68-73).

Political contestation as a major factor

A typical feature of these collective regularisation actions is, that they all have been preceded and pushed by political protest mobilisation of migrants in an irregular situation[32] and pro-regularisation pressure groups supporting their claims; in the 1970s pro-regularisation campaigns were supported mainly within the labour movement, then also to an increasing extent by human rights and migrants and refugees rights associations or more recently by citizens' action committees. They played an important role in pushing governments to attenuate restrictive policies through regularisation programmes and in human rights centred agenda setting (Laubenthal 2007; Siméant 1998; Fassin et.al. 1997; Migrations Société 2006).

Especially the emergence of the *Sans Papiers* movement since 1996 (with the church occupation of St. Bernard of 300 African *Sans Papiers*) and the important political solidarity movement it provoked had a major impact on the regularisation policies adopted afterwards by the socialist government in 1997-1998. Since then *Sans Papiers collectives* organised on local and national level have continued to pressure for collective regularisation.

Again in 2005 and 2006 an important protest and solidarity movement based on citizens' committees organised in the network *Réseau Education Sans Frontières* (RESF)[33] developed around single cases of children and youths threatened by expulsion. The campaigning of the RESF has broadened the social basis of regularisation supporters beyond the actors normally concerned by the issue (such as humanitarian and migrants rights NGOs). The diffusion of the issue into the private lives of many citizens made it an issue of broader societal concern. As such it appeared as an agenda in the presidential elections in 2007.

The most recent contestations emerged around the issue of regularisation of Sans Papiers workers with an unprecedented strike movement in April 2008[34], supported and coordinated by the CGT (Confédération Générale du Travail) trade union. The strike action again drew attention to the issue of irregular migrant workers' rights and the existing demand from a number of service sectors (the gastronomy sector etc.) for such kind of migrant labour.

The political contestation around the *Sans Papiers* issue(s) (of workers, families, refused asylum seekers) remains a crucial factor in French regularisation policies (and practice); in that sense, the social and political conflict mediation is another major feature of regularisation policies. Thus social and political contestation was a challenge for governments to adopt measures. Socialist governments were more inclined to respond to challengers and their claims than were conservative governments, though the latter could not overlook public opinion and civil society support for regularisation movements with a humanistic framing. The latter were

[32] This was the case in 1973 and 1981 when protest mobilisation and hunger strikes of migrants lead to punctual regularisations, in 1991 (hunger strikes and demonstrations in many French cities) and 1996 (church occupations and hunger strikes of Sans Papiers).

[33] The local support committees of RESF organised in schools and around families concerned. See RESF website http://www.educationsansfrontieres.org/

[34] The organised strike movement coordinated by the CGT trade union started on 15 April 2008 in which initially 300 Sans Papiers workers participated, simultaneously occupying a dozen workplaces in five districts of Ile-de-France (Le Monde 15.4.2008; Libération 22.2.2008).

however inclined to respond to economic interest groups, and to bring regularisation policies in line with its pursued selective labour immigration policies.

3 Implementation of regularisation programmes

3.1 Regularisation programme 1997-1998

3.1.1 Planning and decision making process

Aims of the programme

The implementation of the regularisation programme in 1997-1998 closely followed the electoral success of the socialist government, which announced a reform of the immigration policy and legislation, to be based on an expert report of Patrick Weil. In this context and as a response to the *Sans Papiers* movement of St. Bernard the socialist government envisaged a collective regularisation measure in order to urgently solve the "intolerable and inextricable" situation of irregular immigrants; it was designed as an urgency measure in anticipation of the later reform of immigration legislation.

The declared aim of the programme was to resolve irregular situations resulting from the contradictions in the immigration law in force, notably the effects of the Pasqua laws of 1993. As the then Minister of Interior Chevènement pointed out, the operation had the objective to end the situations of persons neither eligible to residence permits nor expellable (which concerned several tens of thousands of foreigners, above all parents of children with French nationality or born in France, but also spouses) (Hearing of Minister Chevènement, Senate report 1998).

The reform of immigration legislation adopted later in May 1998 (*Chevènement law*) also marked the official end of the regularisation programme. From then on, the new legal mechanisms allowed for the permanent and individual procedures of regularisation for the situations addressed by the regularisation programme. That way the reform should in the long run avoid the necessity of future collective regularisation programmes.

Actors involved in planning the programme

The programme was designed by the Ministry of the Interior in co-operation with the ministry of Labour and Social affairs (concerning the accompanying measures). Although migrants' rights' NGOs demanded the Prime Minister Jospin to be involved in the concerted definition of regularisation criteria in advance, there has been no consultation of civil society actors. NGOs were only associated in the process of implementation.

Target groups and definition of criteria

The criteria adopted for the regularisation operation (published in the circular of the Minister of the Interior 24 June 1997) to a large degree picked up the recommendations of the *National Consultative Commission of Human Rights* (of 12

September 1996)[35], which were issued in reaction to the *Sans Papiers* movement of St. Bernard in 1996. In this respect civil society positions were considered, although the civil society actors (CNCDH, migrant's rights organisations, *Sans Papiers* organisations) were not consulted in the definition of regularisation criteria[36].

With the *circular of 24 June 1997*[37] 11 different categories of eligible[38] migrants as well as the respective criteria for regularisation (which differed for each of the categories) were established.

The immigrants targeted with this programme were in the first instance *family members* in irregular situations (in principle entitled to rights to family life, including spouses, children and parents of children with French nationality or born in France), mainly those having entered the country outside the regular channels of family reunification procedures. But also humanitarian situations, such as *rejected asylum seekers* (which were confronted with serious risks to their life in case of return to their home country and thus were protected from expulsion for human rights reasons, especially Algerians[39]) or *seriously ill persons* (for which treatment in the home country was not accessible). However, the regularisation was also eligible for irregular migrants without family responsibilities and ties in France as well as for students, although their regularisation was subjected to more demanding conditions.
According to the categories of migrants eligible to regularisation different criteria for admission were imposed: the required length of residence in the country was longest for single migrants without family dependants (minimum residence of seven years), and reduced for family members (five years of residence in the case of spouses of foreigners in a regular situation; undetermined 'several years' for long-

[35] The commission is composed of representatives from 33 national human rights, humanitarian and antiracism associations, 7 trade union and employer's federations, and of 45 independent personalities (including religious representatives, university lecturers, etc.) and 7 experts represented in international Human rights organisations.
[36] Representatives of Cimade regretted that the government had not involved associations and Sans Papiers collectives in a preliminary consultation on the criteria of the regularisation, which they considered as important in order to pacify the tensions and conflict situation. In that sense, they also proposed instances of mediation at local level to mediate in conflicts between administration, Sans Papiers organisations and NGOs (Interview Giovannoni, Cimade Senate Hearing 1998).
[37] Circular of 24 June 1997 (*Circulaire relative au réexamen de la situation de certaines catégories d'étrangers en situation irrégulière*, NOR : INTD9700104C)
[38] 1) spouses of French citizens; 2) spouses of foreigners in regular situation; 3) Spouses of recognised refugees; 4) Long-term established foreign families; 5) Parents of children born in France; 6) Children (over age of 16 or of full age) having entered France outside of family reunion; 7) Minor children having entered France outside of family reunion; 8) rejected asylum seekers /persons not recognised as refugees which could face vital risks in case of return to their country of origin; 9) seriously ill persons; 10) foreigners without family dependants; 11) students (which have been refused a residence permit)
[39] The circular allowed for a regularisation of "persons not having the status of political refugees who might face serious risks in the event of return to their country of origin, in particular from third parties rather than from the legal government". It focused especially the case of Algerian refugees (fleeing from civil war and violence of Islamist groups), at that time no subsidiary protection status existed for refugees (fleeing risks other than those recognised by the GFK). The circular distinguished in that case between Algerians and other nationals: applications of Algerians were to be examined by the Department of liberties and legal affairs (Ministry of Interior) before a decision to be taken on their regularisation (see Poelemans & De Sèze 2000: 323).

term established foreign families). Instead of length of residence the condition of a minimum period of marriage of one year (and marriage before the date of the circular 24 June 1997) was imposed for spouses of French nationals, spouses of foreign nationals and of refugees.

Integration criteria were important for the regularisation of foreigners without family dependants, but also in the case of long-term established foreign families: they were applied with respect to proof (for the former period of stay) of economic "resources resulting from a regular activity"[40] and adequate accommodation, and moreover compliance with tax obligations. For long-term established families, the school enrolment of children was also taken into account (see Poelemans & De Sèze 2000: 322).

For all categories a threat to public order (in terms of criminal record, police reports) constituted a reason for exclusion from regularisation (or in the case of ill persons for limiting their residence permit).

3.1.2 Implementation

Practical organisation of procedure

The organisation of the regularisation procedure built on former experiences, but in some respect applied new arrangements, especially concerning the accompanying measures and the return programme.

The regularisation took place on a *decentralised administrative level* – in the competence of the prefectures of the regional departments (of residence of applicants). As the measure was initiated by administrative circular (which is not legally binding) the prefectures were at liberty to use their discretion in its application. It was generally operated via an *application procedure* (based on a written application form and documents of proof required from migrants) at the prefectures, which in practice was organised differently in the various departments – e.g. concerning the documents that had to be procured for justification of residence, work etc.

A personal interview with each applicant was obligatory, in case he/she did not follow the invitation the application was considered as withdrawn. (In some departments non-response to interviews attained up to 15%). The applicants could be assisted by a person of his/her choice or otherwise by an interpreter.

The administrative decision procedures also guaranteed *procedural rights* to applicants: the right to a motivated (written) refusal decision, the right to appeal against the refusal of regularisation (within a period of two months from notification of the refusal decision) [41]. However, the non-legal character of the circulars also

[40] Income from an activity carried out in a *declared* company and lawful activity.

[41] Three forms of appeal are possible: an application for review of the decision at the prefectures (= recours gracieux); an appeal to the higher administrative authority the Minister of the Interior (= recours hierarchique); and the contentious appeal at an administrative High Court (= recours contentieux).

limits the possibilities of appeal, since a decision cannot be appealed as not conforming to the criteria (that have no legally binding force). The circular did not specify a moratorium of expulsion during the regularisation procedure. However, the prefectures were advised to suspend the enforcement of removal measures.

Monitoring of the implementation process
An innovation with respect to former regularisation procedures was the organisation of internal monitoring of the procedure. The government nominated a representative from the higher administration (section president of the administrative High Court *Conseil d'Etat*), Mr. Galabert, to monitor the implementation; he was charged to regularly inform and consult the government in the event of problems or difficulties arising during the process. The monitoring should serve also as a means to harmonise application practices all over the territory. He could also be addressed directly by concerned migrants.

Involvement of NGOs
Migrant's counselling NGOs (such as Cimade, GISTI, LDH, MRAP….) have been implicated in the procedure above all in the information of concerned migrants about the criteria and procedure, since the government did not organise an information campaign on its own. NGOs were involved by ministries (information meetings about criteria and application of the circular) as an information interface between authorities and the concerned population. Some NGOs also were in dialogue with the local prefectures, which informed the associations on the implementation of the circular.

For example Cimade organised collective information meetings (in Paris six per week with 50 to 100 participants) and issued information leaflets to inform about the regularisation procedure and criteria. GISTI also issued information brochures. Later the legal assistance by NGOs also used their legal assistance to lodge appeals (recours gracieux) against refusal decisions. To a certain degree migrant counselling associations were also involved in the *monitoring process*, by informing the officially nominated observer on problems occurring during the process.

Timeframe
The general *application period* was limited from the date of the circular, 24 June, until 1 November 1997 (approximately four months), but for certain categories of migrants – like spouses of recognised refugees, (not recognised) refugees invoking serious risks in the event of return to their country of origin, ill persons, students and children from a previous marriage who entered outside family reunification - an exceptional and extended application period until the entry into force of the new legislation (Chevènement law, May 1998) applied.

A high number of applications (143,948) was registered until the first deadline (in November 1997). The applications were concentrated in some departments and prefectures (with a generally high immigrant population), as Paris and Île-de-France, in the North (Nord, Haute-Normandie), the departments of Rhône and Rhône-Alpes and in the South (Bouches du Rhône) (Ministry of the Interior 1999:78).

As of the extended application period for certain migrant groups and time-intensive examination procedures (interviews, proof etc.) the processing of all applications extended into the whole year of 1998 (end of April 1998 75% and as of 31 December 1998 about 98% of the applications had been processed).

Resources and costs
The implementation process was organised with additional staff recruited for the operation.

In certain departments with considerable numbers of applications the resources were not sufficient. Additional temporary personnel was recruited in 33 prefectures, they were only employed in the reception and constitution of applications, but not in the procedure of assessment of applications. They received initial training of one week up to 10 days (worked on basis of short term contracts of 3 months, most time students or academics) (Masson & Balarello 1998: 50). Additional personnel were provided by the state authority OMI to compensate staff shortages.

The budget expenses of the Ministry of the Interior for the regularisation operation have been calculated roughly with 6,097 Mio. € (40 Mio. Francs), a calculation which did not cover the overall costs[42].

On the other hand (regularised) migrants finally also contributed to the bureaucratic costs with the obligatory fees of regularisation. Given the fees fixed in the circular[43] the total migrants contributions could be estimated with 17,4 Mio. € (own estimate, based on the number of 87,000 foreigners regularised multiplied with an approximate fee of 200 € per person).

Difficulties in the implementation process
Major difficulties in the implementation process resulted from a heterogeneous application of the circular (procedural practices[44] and interpretation of unspecified requirements e.g. resources) at the regional and local level. The complexity of the circular (different criteria according to different categories) and the lacking transparency of certain criteria added to such problems.

Some criteria were further specified or modified (via administrative circulars and internal directives) during the procedure: For example in the case of spouses of French nationals supplementary directives (6 August, 30 September, 20 November

[42] It included supplementary hours for staff, remunerations for additional staff recruited and material costs, not included were calculations of costs for the working time of the personnel of the regular services of foreigners (Masson & Balarello 1998: 48).
[43] In order to finance the bureaucratic costs of regularisation foreigners regularised had to pay fees (essentially to cover costs of the medical examinations and contribute to administrative costs of issuing permits). Generally, 1300 francs or 198,2 €, in addition stamp duties for residence permits (220 francs or 33,5€) (exceptional reduction of fees were provided for destitute persons); fixed sums for families (266,8€) (see Poelemans /De Sèze 2000: 328-329)
[44] The documents of proof required varied according to prefectures: most prefectures adopted lists of documents necessary for justification of length of presence in France, matrimonial status, employment etc. In the first stage of the process not all prefectures implemented the individual interviews in the same manner. Thus a further circular clarified that the interview should examine the situation of the applicant.

1997) made the requirements concerned the length of matrimonial ties more flexible and in practice eased the conditions[45]. This resulted in a variable practice of prefectures in assessing the duration of marriage (see Poelemans & De Sèze 2000: 318).

Major difficulties occurred with regard to *the means of proof required:* For applicants it posed considerable obstacles to prove certain conditions, such as the residence period and former employment (especially certificates proving employment were difficult to obtain), but also the presentation of medical certificates (ill persons) encountered certain difficulties. The prefectures frequently doubted the authenticity of presented documents of justification[46] (especially pay rolls, medical attestations, Masson & Balarello 1998: 35). The verification of proof documents thus slowed down the processing.

Accompanying measures of the programme

The government (in the competence of Labour and Solidarity ministry) also set up accompanying measures (follow-up measures), on the one hand to assist the social integration of the regularised population, on the other hand to promote assisted return for those refused regularisation. Both accompanying measures were de facto only implemented after a certain delay and during the regularisation operation: the social accompanying measures in October 1997[47], the voluntary return assistance programme in January 1998.

1) Social accompanying measures

The government attached an important role to the implementation of social accompanying measures in view of the integration process of the regularised persons. A special procedure was set up in order to survey the needs and to facilitate the access to social services and support for the regularised migrant population.[48]. The results of the surveys were sent to the local social services and administrations (Directions départementales des affaires sanitaires et sociales DDASS) in the department of residence of the beneficiaries, to take action as appropriate. The social services had to inform and report regularly (every month) to the Labour ministry (DPM) about the progress of accompanying measures and problems encountered. A further objective was to inform regularised immigrants about their social rights and access to social benefits.

The regularised migrants also had to contribute to the financing of these measures (by fees for the permits and obligatory medial examination at the state office OMI).

[45] One year of marriage counted from the date of decision (instead of date of circular), but also possible in cases where close to one year

[46] In case of doubt (marital community, family situation) the authorities could initiate police investigations (criminal record) or consult the public social aid services.

[47] Fixed in the circular of 24 June 1997, modalities defined in circular n° 686 of 21 October 1997 by the Minister of Labour and Solidarity, DPM

[48] It included interviews among the regularised migrants (questionnaire designed for the operation) carried out at the occasion of the medical examination at the state office OMI (taking place after regularisation) to survey their social situation and their needs for social assistance (concerning housing, social security, family benefits, health care, employment, qualification training, French courses, alphabetisation, adaptation to local life, school enrolment of children).

Concerning the impact on the social welfare budget (family related allowances; health insurance) the Minister of Labour[49] expected no major costs.

The survey concerning needs for social support among regularised migrants found that about half of the regularised migrants (included in the survey, of which two third were not employed at the moment of regularisation) wanted some kind of support by public social services, and most of these demands for support concerned housing, professional qualification and employment, to a minor degree also French language courses and social security (Neyrand 2000: 5-7).

2) Return assistance programme
The second accompanying measure implemented in January 1998 was a modified *return assistance programme* (circular of 19 January 1998), which increased the sum of financial return assistance paid to migrants obliged to leave after a refusal of regularisation[50].

As the responsible minister of Labour, Martine Aubry, outlined in the senate hearing, the government gave priority to a voluntary return over a forced removal, in order to guarantee a human rights conform and socially, economically correct return process.

Migrants who were generally obliged to leave the country within one month after the notification of their refusal could within the same period (one month) apply for the return assistance (on which they were informed in the notification of the refusal decision). In that sense, the enforcement of removal (by eviction orders) was suspended until end of April 1998[51], in order to give to non-regularised migrants the possibility to apply for return assistance.

---

[49] Concerned the impact on social security budget a provisional estimation provided by the public Family allowance fund/insurance (CAF) estimated the expenditure for regularised families at 190 Mio. Francs (28,9 Mio. €) over the year (including also housing aid and 3,8 Mio.€ RMI social allowances), which represented 0,08% of the overall expenditures of the CAF. Concerning the health insurance expenses the minister of Labour did not expect any additional costs, but rather a benefit, resulting from the fact that the regularised migrants will contribute to the health security system. The costs for general health expenditure were estimated with 300 Mio. Francs (45,7 Mio. €), an amount equivalent to the annual expenditure for general medical assistance for irregular migrants.

[50] Already with the regularisation programme for refused asylum seekers in 1991 a similar return assistance programme has been implemented. The return aid provided of an administrative and financial aid of 4,500 francs (686€), plus 900 francs (137€) per child, paid in two instalments at departure and in the home country.
The preparation for return of migrants was complemented by further measures of social and psychological accompanying measures, which have been assured by the state office OMI and non-state associations or organisations on the basis of public-private agreements (about 75 such agreements signed in May 1998, Hearing Minister Aubry, Senate Report 1998).

[51] A decision of refusal was coupled by a request to leave the country (Invitation de quitter la France IQF) within one month from the date of notification of decision, which in case of subsequently could be enforced by an eviction order (Arreté de reconduite à la frontière – APRF). An appeal against the refusal decision did not have suspensive effect on the enforcement of removal. But internal administrative directives advised prefects to postpone eviction orders (APRF) in case of appeal procedures underway (Poelemans/De Sèze 2000:332). According to internal directives, in practice APRF have been issued from 24 April 1998 onwards. Persons whose

In practice the programme was not in very frequent demand during the operation (that is in the short delay of one month after the refusal), which can be explained by the fact that many migrants' first choice was to appeal against the refusal decision first (appeal possible within a delay of two months), before they would definitively envisage a return and apply for return assistance. As migrant NGOs remarked, the overlap of delays for application (before a possible appeal procedure) in many cases rendered the application for voluntary return assistance impossible. During the whole year of 1998, in sum 887 migrants left the country with return assistance (Regnard/DPM 2006: 145).

3.1.3 Evaluation of the implementation process

Political evaluation

An evaluation of the regularisation procedure was at first undertaken on the political level by a parliamentary (Senate) enquiry commission upon the initiative of the political opposition (Masson & Balarello 1998). The evaluation took place during the implementation process and was terminated before the regularisation operation had ended and final results were available.

The commission was generally very critical of the regularisation measure as such, as it qualified a massive regularisation programme as the wrong policy instrument of migration management.

The report pointed to several shortcomings and dysfunctions of the implementation procedure: it criticised the long duration and the time delay of the procedure (caused by appeal procedures and administrative difficulties to process the high number of applications); it criticised that the return programme and the social accompanying measures were applied too late and inefficiently, which had contributed to unequal access of migrants to such assistance programmes. In the centre of its critique was the lack of effective removal of migrants who were not regularised, which would imply the toleration of a sizeable number of irregular migrants. Thus it concluded that the programme would incite irregular migrants to stay (in expectation of a future regularisation) and attract new candidates to immigrate.

Evaluation by NGOs and the Human Rights Committee

Migrants rights NGOs evaluated the regularisation procedure as insufficient with regard to the regularisation of the irregular migrants with no family dependants (single migrant workers). They criticised that the programme had failed to regularise an important number of persons without family ties, despite their long-term presence and integration, and in particular former asylum seekers (Senate Hearing Cimade, Masson & Balarello 1998, report part 2: 168).

With a view to the high refusal rate among single, irregular migrant workers (who were only to a minor degree regularised within the programme) and the collective protest action (including hunger strikes) of concerned *Sans Papiers* it provoked, the

regularisation was dismissed and who had lodged an appeal between 24 September 1997 and 24 April 1998 could stay in France during the appeal procedure.

National Consultative Committee on Human Rights (CNCDH) in July 1998 addressed recommendations to the government[52]: It proposed the re-examination of these refused applications for two reasons, in his opinion the regularisation criteria and practice had unjustly disadvantaged certain categories of migrants (single migrant workers), and secondly it observed an unequal treatment of applications (of persons in identical situations) in different prefectures, considered as not conform with the equality principle (CNCDH, avis July 1998).

With regard to the significant number of rejected applicants to the regularisation measure, the committee argued that it would neither be practicable, nor desirable to expel several thousands of persons, and moreover held it not acceptable to confine them for an indefinite time in a situation of clandestinity and despair.

3.2 Regularisation programme for families and children 2006

3.2.1 Planning and decision making

Aims of the programme

The regularisation programme for families launched by the then Minister of the Interior Nicolas Sarkozy in June 2006 was pushed on the political agenda already in 2005 by the citizens committees of RESF. The citizens' solidarity movement, organised in the network *Réseau Education Sans Frontières* (RESF), gained strength in autumn 2005 with the support and mobilisation around some individual cases of children threatened by expulsion, strongly covered in the media (CIMADE 2007: 3). Then the Minister of the Interior suspended (via a circular published in October 2005) further expulsions of children attending school and their families in an irregular situation until the end of the school year (June 2006). The mobilisations of citizens' committees for a right to stay for concerned children, youths and their families intensified during the school year and as the end of the expulsion moratorium approached[53]. It coincided with a parallel broader opposition movement against the government immigration policies (immigration law reform 2006).[54]

The objective of the regularisation measure was to find a humanitarian solution (re-examination of situation) for those families with children in an irregular situation whose removal procedure had been suspended (until the end of the school year 2006). However, in conformity with its firm position on irregular migration and towards collective regularisation, the government was particularly anxious to avoid

[52] Avis concernant les conditions de réexamen des dossiers des « Sans Papiers » déboutés, 3 juillet 1998

[53] A petition of RESF was launched in February, support via "republican sponsorship" of children and families by citizens and politicians, and protest mobilisations and demonstrations for regularisation and against expulsion of children and families.

[54] The parallel immigration law reform (CESEDA, law Sarkozy II, July 2006) also had fuelled protests among a broad alliance of civil society actors (united in the protest alliance UCIJ) supported by the left wing political opposition parties against the immigration policy reform. The law reform at the same time intended to further restrict the possibilities of family reunion for third country nationals.

a broader regularisation measure and to limit the measure to a narrow target group of families with strong ties and integration in France.[55]

Target group and definition of criteria
Only shortly after the public announcement of a possible regularisation for families (6 June 2006) the Minister of the Interior issued a circular that determined six criteria (*circular of 13 of June 2006*)[56] and the modalities of the regularisation procedure.

No external actors have been involved in the definition of criteria for the regularisation process.

The circular defined families with minor children enrolled in school and living in France since birth or childhood (before the age of thirteen) as eligible for regularisation; furthermore it imposed the condition of at least two years presence of one parent in France, and school (or kindergarten) inscription of at least one child since September 2005 (or before).

Besides the formal criteria (of eligibility), the authorities' evaluation of the children and parents' integration should be based on the exclusiveness of ties the children have in France (absence of ties with the country of which they had citizenship); the parent's effective contribution to child support and education; the "real will of integration of these families" to be evaluated on the basis of French language competence, education of the children, the school performance of children and finally the absence of threats to public order (Circular 13 June 2006).

Especially the integration related criteria were vague ("real will of integration", "absence of ties of child in home country") and strongly dependent on subjective interpretations on the part of administrative authorities, and in practice allowed for a highly flexible scope of decision for the authorities.

The circular explicitly excluded asylum seekers in the Dublin procedure from application.

3.2.2 Implementation

Practical organisation of procedure
The regularisation procedure has been organised in the usual manner via administrative circular giving the guidelines (though not legally binding for authorities), based on a written application and an individual examination of the situation (proofs, assessment of integration) within the competence of the regional

[55] As the Minister of the Interior stated it was necessary to "avoid the impression that everyone who comes to France and whose children are enrolled in school, will be regularised later on" (Sarkozy, Libération 6.6.2006); Prime Minister Dominique de Villepin underlined that the operation should combine "humanity and strictness" (humanité et fermeté), and at the same time exclude "a massive regularisation", otherwise the operation would risk to give a "wrong signal" (Villepin, Libération 29.6.2006).
[56] Circular N°NOR/INT/K/06/00058/C;

prefectures. This time a personal interview was not obligatory, though in practice prefectures relatively often applied it.

An "external national mediator", the lawyer Arno Klarsfeld was nominated by the Minister of the Interior with a mission of arbitration and mediation in difficult and litigious cases between applicants and the administration (he could also be addressed directly by families concerned in order to intervene with the administration in favour of humanitarian cases); he defined his role as to monitor that children which had their main or exclusive attachment in France were protected from expulsion (Libération,29.6.2006; Le Monde, 23.8.2006).

The regularisation programme was accompanied by two measures: on the one hand the end of the moratorium of expulsions for families (established by the circular of 31 October 2005), on the other hand a specific return assistance arrangement for families in an irregular situation.The regularisation programme guaranteed neither any residence status nor protection from expulsion during the procedure, thus making applicants vulnerable to expulsion.

As in earlier regularisations the operation was coupled with a return assistance programme; but in contrast to previous regularisation operations (in 1997-1998), the return assistance was designed as an alternative to the regularisation process, not as an ex-post measure to assist return in the case of refusal. This meant that applicants were informed systematically on the return assistance options before their application and were obliged to renounce to return aid *before* applying for regularisation. In order to encourage migrant families to return voluntarily, the amount of financial assistance was doubled (for applications during the period of the regularisation programme[57]). There are no data available on the number of migrant families that accepted the voluntary return assistance proposed in the framework of the programme.[58]

Timeframe

A short *timeframe* of two months for filing the applications (from 13 June until 13 August 2006) and for the processing (decision-making) of the operation (until September) has been set, the latter justified with the necessity to clarify the status of families and children before the beginning of the new school year. An unexpectedly high number of migrant families applied[59]: the important media coverage and the

[57] The voluntary return assistance normally includes an amount of 3,500 € per couple and additional 1000€ per minor child (until the third child, for each further child 500€). During the period of the programme it was doubled and made up 11.000 € for a family with two children.

[58] In 2006 1,991 persons returned with the financial and administrative assistance of voluntary return programme (ARV Aide au retour volontaire), thereof 1 434 heads of family or single persons and + 557 spouses and children. The principal nationalities of migrants returning with the programme were Chinese, Algerian, Moldavians, Bosnians, Serbs, Russians and Malians. Including also those returned with the humanitarian return programme in sum 2,539 persons benefited from return assistance (ARV and humanitarian return programme) in 2006 (CICI 2007: 123-127)

[59] The prefectures initially spoke of 800 families (about 1200 adults) concerned by the measure (Cimade 2007: 3). On the 8 of June Minister Sarkozy estimated the number of persons concerned by the regularisation with approximately 2,000 persons, which would represent about 25 percent of the cases known to the administration, means 8,000 persons in total (Vanneroy 2007).

strong and effective support mobilisations of RESF fuelled expectations of a generous regularisation action among migrant families concerned.

The sizeable number of applicants (in total 33,538 applications) made visible the dimension of the problem. The applications were once again mainly concentrated in the bigger cities and agglomerations (Paris and Île-de-France, Lyon, Marseille).

Resources and difficulties
Due to the ad hoc character of the regularisation measure and the expected small-scale operation, no specific organisational resources were prepared.

In the first weeks of application for regularisation major difficulties resulted from staff shortages (also due to summer holidays) and an unexpectedly high number of applications: this was especially the case in some prefectures where most applications were filed. In some prefectures this resulted in an improvised management of the operation in the first three weeks, until additional temporary staff was hired. The consequence were long waiting lines before the prefectures, insufficient reception facilities to carry out personal interviews, personnel not sufficiently qualified (foreigners law administration) in several localities. Especially in the big cities (Paris region, Marseille, Lyon), confronted with an important influx of applications, the prefectures faced problems to process applications within the given short time limit of the operation.

Besides organisational difficulties also *significant disparities* in the application and interpretation of the criteria were observed depending on the prefectures: this concerned primarily a variable application of criteria for eligibility, the requirements of documents of proof, different practices concerned interviews[60], etc.
Some prefectures excluded applicants on the basis of nationality: in the department Hauts-de-Seine applications of Romanians were refused with the argument of Romania's upcoming EU accession; in Paris nationals from "safe countries of origin"[61] have been excluded (Cimade 2007: 22).

The Minister of the Interior intervened in the middle of the process to harmonise the practice (giving internal directives to the prefectures on the common application of criteria)[62].

Although the number of applications far exceeded the initial expectations, and attracted a far greater public than the families already known to the authorities, the timeframe of the operation has not been extended. The operation was officially closed in September and the final results announced (with only 6,924 regularisations of the overall 33,500 applications), despite the fact that a certain (unknown) number of the applications were still in the course of examination and no decisions taken.

[60] e.g. some prefectures realised in-depth interviews, others with assistance of social workers, others only formal interviews to verify documents, the possibility to be accompanied by a representative of associations or a sponsor during the interview has not been allowed in all prefectures (Cimade 2007: 14)
[61] This was the case with a circular from 30 June that specified that foreigners from safe countries of origin were excluded.
[62] For example, it was clarified that all criteria had to be fulfilled (cumulative).

The communication of the final results certainly played a role with view to the political message of the programme (limiting the extent of the regularisations to humanitarian cases, at the same time demonstrating firmness against irregular immigration).

Involvement of civil society and migrant advocacy associations
Migrant's advocacy and legal counselling organisations (in particular Cimade) and the citizens committees RESF have obviously played an important role in the implementation of the programme: They supported the families with preparation of applications, also via the organisation of collective applications[63] (Cimade 2007:10).

Furthermore, they had an initiative role in *monitoring* the regularisation process (Cimade and activists published a monitoring report afterwards), and organised a help service for concerned families during the regularisation procedure.[64]
The Cimade and RESF addressed the independent anti-discrimination institution HALDE (*Haute Autorité de Lutte contre les Discriminations et pour l'Egalité*) in mid-July to demand its intervention concerned the procedure[65]. The HALDE on 4 of September addressed a letter to the Minister of the Interior as a reminder of the principle of equal treatment concerning the regularisation of migrants in similar situations.

In view of the high refusal rates for regularisation, migrants advocacy NGOs and RESF continued their support of immigrant families, by assisting legal appeal procedures[66] and by political mobilisations (via petitions), notably against the expulsion of families.

3.2.3 Evaluation of implementation process
The regularisation measure was contested on a political level: the NGO Cimade and RESF launched a petition demanding a parliamentary enquiry to clarify the conditions of application of the circular[67]. The three parliamentary opposition parties (Socialists, Greens, Communists) supported a resolution to establish a parliamentary commission on the regularisation operation, which was not successful.

[63] Three collective actions were organised by RESF in Paris (the 5 July, when they were received by Yannick Blanc, Director of the general police at the prefecture of Paris, on the 26 July and the 4 August. In Paris 1360 single applications in Paris have been lodged by way of such collectively organised actions (Cimade 2007: 10).
[64] As part of its campaign « Assez d'humiliation ! » the Cimade established a national advice service (help telephone line) during the summer for the families, youth of full age but still attending school and persons threatened by expulsion. The Cimade supported the locally established monitoring networks of the RESF, and covered all departments. More than 1000 demands for information, counselling and emergency cases were received, and in many cases local RESF mobilisations to protect migrants from expulsion and media alerts were started via the network. Only a few expulsions of families or youth of full age were realised during summer. (Cimade, Actions de la Cimade, dossier de presse au 19 septembre 2006)
[65] http://www.educationsansfrontieres.org/spip.php?article864 ; CIMADE 2007: 5
[66] As NGOs reported a majority of gracious appeals against refusal of regularisation (to the prefectures and Minister of the Interior) had remained without response, and thus were refused (Cimade 2007: 5).
[67] The petition launched in September 2006 has been signed by 16,000 citizens, associations, collectives and trade unions within several months, see www.placeauxdroits.net

The Cimade initiated a "citizen's enquiry" report, based on observations and monitoring of NGO staff, activists of support networks and concerned migrants during the operation, to evaluate the implementation process (Cimade 2007). It is until present the only evaluation report of the programme.

The Cimade report was extremely critical of the procedure; it observed above all shortcomings and dysfunctions in relation to a heterogeneous application of criteria and unequal treatment of applications depending on prefectures and date of application (due to a more restrictive practice in the second half of the operation after the readjustment of internal directives to prefectures by the Minister).

4. Qualitative and quantitative outcomes

The assessment of quantitative and qualitative outcomes of programmes is difficult to compare over time since programme target groups (criteria) changed, statistical data and evaluations of outcomes were often not comprehensive and fragmentary (also related to a sometimes selective information policy of governments on regularisations); also impact studies have varied in scope, representativeness and focus.

Official statistical data on regularisation in general do not cover an evaluation of the whole process (including outcomes of appeal procedures or data on withdrawn applications).[68]
The outcomes of large scale programmes of 1981-1982 and of 1997-1998 have been explored by *follow-up studies,* most commissioned by the Ministry of Labour (DPM) (1981-1982 programme: Cealis et.al. 1983; Marie 1984; 1997-1998 programme: Thierry 2000[69]; Neyrand & Letot 2000[70]; Simonin & Brun & Laacher & Gomel 2001[71]). In general, studies on the long-term effects of regularisation

[68]On the outcome of appeal procedures no data have been published. According to NGOs supporting the appeals of refused applicants, appeal procedures to a large extent remained without response or confirmed negative, only a small proportion was regularised (see GISTI, http://www.gisti.org/doc/bilans/1998/3-3.html)

[69] The statistical evaluation of the characteristics of applicants and regularised population was done by the national demographic institute INED. It provided a correction of the statistical data on applications (correction of double counts of applications) to 135,000 applications (instead of the official number of 150,000) and calculated the number with 87,000 regularised persons (including also minors).

[70] Survey conducted among a sample of 29.074 regularised immigrants (carried out at the medical examination at the office of OMI, between November 1997 and June 1998); Chinese migrants were underrepresented in the sample, some regional departments were overrepresented – such as the Paris region, Bouches du Rhone and Nord - compared to the overall regularised migrant population; other socio-demographic characteristics were roughly the same as of the total regularised population. The study focussed on an evaluation of the social situation and of needs for integration assistance of the regularised population.

[71] The sociological study on the impact of regularisations on the social and employment situation and careers of regularised migrants was carried out in a period of one to two years after the end of the regularisation programme (from November 1999 until August 2000). It was based on 100 in-depth interviews with migrants regularised and personnel of institutions and associations involved (justice, police, labour inspection, social security services, local administration, trade unions, migrants assistance associations), and a questionnaire survey among a sample of 207 migrants regularised (in the regions of Île-de-France and Provence-Alpes-Côtes d'Azur PACA). The sample

programmes are missing (e.g. concerning the employment integration, the stability of the regular residence/renewal of permits, etc.). Neither are data available on previous legal status (reasons for irregular status).

For the small-scale programme in 2006 only provisional, fragmentary statistical data and no evaluation of final results of the programme are available so far. Thus a detailed analysis of outcomes (in relation to number and characteristics of regularised population etc.) is not possible.

Statistical data on the *permanent exceptional regularisations* (apart from programmes) have been published by the annual reports on immigration policy and reports on the immigrant population (CICI 2007; Regnard/DPM 2006).

A recent survey among the newly admitted immigrant population (in 2006) also covered the regularised population (making up 36% of the sample). It provides results on the socio-demographic characteristics, national origin, employment and housing situation of the regularised population (Bèque 2007).

Based on these heterogeneous sources we will give an overview on the

- general quantitative indicators of regularisations
- social characteristics of the regularised population
- and as far as possible also impacts.

4.1 Outcomes of regularisation programmes

4.1.1 Outcomes of programme of 1997-1998

Regularisations according to main categories

As statistical data of the Ministry of the Interior[72] indicate, 72 percent concerned regularisations based on family ties, 20,7 percent concerned long-term established foreigners without family dependants, only small proportions concerned foreigners with an illness (4 percent), humanitarian cases (of persons whose life was at risk in the case of return to their home country, 2 percent) and students (1,6 percent).

Regularisation rates

According to diverse statistical sources the average final *regularisation rates* were calculated between 58 and 64 percent (INED, Thierry 2000). Provisional statistical evaluations (Masson & Balarello 1998: 38[73]; Ministry of the Interior 1999) indicated

---

matched the overall regularised population with view to the main nationalities represented (a majority from African countries: over one third from Maghreb; one third from sub-Saharan Africa; with 57% men were overrepresented in the survey sample compared to overall regularised migrants).

[72] On the basis of 143,948 applications (registered until the official deadline of 8 November 1997) of which 98,4 percent had been processed at 31 December 1998 (including the appeals dealt with at ministerial level). The number of residence permits issued was 79,549 (that was 56 percent of applications). (Ministry of the Interior 1999)

[73] A disparity in regularisation practices (rates) has been observed: whereas certain departments had regularisation rates above the national average (58%) which was the case in Paris with a rate of

that *regularisation rates* varied significantly on the regional level (departments), which reflected not only a different structure of the resident irregular migrant population, but also heterogeneous administrative regularisation practices.

The regularisation chances (rates) of women were higher than those of men (77 percent vs. 52 percent), and married migrants with family ties were far more likely to be regularised than unmarried individuals (without families), which generally corresponded to the focus criteria and target group of the regularisation programme (Thierry 2000: 207).

Socio-demographic characteristics
Nearly half of the regularised population were women (49 percent; women constituted about 40 percent of the applicants, see Thierry 2000: 202).

A majority of the regularised population was aged between 25 and 40 (only 19,2 percent were under the age of 26).

Concerned their matrimonial and family situation, the majority (of 57 percent) lived or had lived in couple (married, living in couple, divorced), most of them had children in France (but most of these children were not concerned by this re-examination); it was rare that the partners (spouses) were also concerned by a irregular situation and re-examination (in one third of cases). A relatively high proportion (17 percent) of the spouses had French citizenship (Neyrand 2000:3).

Nationalities
The nationalities most represented among the regularised migrants were citizens from Maghreb countries with nearly one third, citizens from diverse sub-Saharan African countries – above all Malians and Congolese - with approximately a quarter, and citizens from China with (11 percent) and Turkey (4 percent) (Thierry 2000; Ministry of the Interior 1999). The Chinese immigrant population were "newcomers" of regularisations compared to former programmes, and they were mainly concentrated in the Paris region (where the majority of the Chinese immigrant community lives).

Duration of stay
The average duration of stay of the regularised was six years (before regularisation): the period of stay was longer for migrants from Mali, Senegal and Cape Verde (more than seven years), and shorter for Turkish, Chinese and Algerian migrants (about five years) (Thierry 2000: 207).

The survey among the regularised population (Neyrand & Letot 2000) also highlights the relatively *long duration of stay* of migrants before regularisation: More than half of the regularised population (52,4%) surveyed had stayed in France

80,6% (Paris had the highest absolute number of applications and also regularisations), in Yvelines (85,4%), in Bouches-du-Rhône (61,6%) and Alpes-Maritimes (63,6%). On the contrary, rates of regularisation below the national average were registered in Seine-Saint-Denis (42,5%), Val d'Oise (45,7%), in Hauts-de-Seine (47,6%) and in Val-de-Marne (48,3%). (Masson & Balarello 1998: 38)

for a period from 6 to 10 years, and further 18,6% since more than 10 years, only 29% had stayed less than 6 years in France.

Employment situation

The follow up study on the regularised immigrant population (Neyrand & Letot 2000) provided further information with regard to the *employment situation* of regularised immigrants: of the survey sample only one third (31%) was in employment at the time of regularisation (and half of the not employed respondents were searching an employment).

Impact on employment careers of regularised migrants

The study of Simonin et.al. (2001) showed that in a period of two to three years after the regularisation the employment situation[74] and distribution of employment sectors (except from services in private households) of the employed migrants remained stable. 54% of those employed only had one employment after their regularisation. One third of the employed have stayed with the same employer as before their regularisation. They worked in a limited range of employment sectors (construction, domestic services, restaurant, clothing, agriculture, and services for enterprises; Brun &Laacher 2001: 103). The survey found an improvement of employment conditions for the majority of regularised (of five from six cases): above all concerning a reduction of working hours, the regularity of payment, and an increase in wage levels. These improvements have been more important for those who changed their employer after regularisation (4/5 voluntarily changed employer, motivated primarily by wish to have a registered employment). More than half of the employed had an unlimited employment contract (CDI).

Impact on residence security of regularised migrants

The same study found that all of the interviewed had their permit renewed; in practice the rate of renewal in the Paris region had been nearly 100% (according to administrative sources). The process of renewal (of another temporary permit) has been quasi-automatic (Brun & Laacher 2001: 5-6).

Assessment of effectiveness in reducing stock of irregular immigrants

Considered the relatively high refusal rate of regularisation and an estimated final number of 48,000 migrants that were not regularised (Thierry 2000: 2001) the operation has only partly been effective in reducing the stock of irregular migrants present.

A large proportion of the irregular migrants applying were unmarried men (42,283, see Thierry 2000: 2002), thus not "fitting" in the preferred categories targeted by the programme, nor able to fulfil the high requirements. Despite the long-term presence of many of them (63% of these male single applicants had entered the country before 1991, which was more than 6 years before the regularisation measure) the operation largely ignored this group.

[74] Two thirds of the sample already worked before their regularisation and still worked at the moment of the survey (only 10% of those working before their regularisation were seeking a job at time of the survey); 15% were seeking for a job, only 6% were out of the labour market (inactive) at the time of the survey.

Not all of the refused irregular migrants actually left the country (also removal was only partially executed, due to practical obstacles and judicial safeguards and reviews of decisions[75]; in general between 20 and 25 percent of issued removal orders are enforced per year (Regnard/DPM 2005: 147); however, the regularisation options of the new legal framework offered possibilities for their regularisation (long-term presence, humanitarian grounds), which allows to assume that a part of those refused within the programme have been regularised subsequently.

4.1.2 Outcomes of programme in 2006

The official final result published by the Minister of the Interior, Sarkozy, in September 2006 at the end of the operation was 6,924 regularisations (of 33,538 applications). This meant a very low regularisation rate of 20% (of applications). In Paris where more than one fourth (27,6%) of all applications had been filed (9248 applications), the rate of regularisation was even lower at 17,4% (1606 adults finally admitted).
However, these "final" results are incomplete, since an unknown number of applications were not yet examined and decided or lodged an appeal (and thus counted) during the time frame of the programme, and continued to be processed within the normal, individual regularisation procedure.

Furthermore, the number of children regularised (which are not counted separately since they do not hold a residence permit) is not included in these figures only referring to adults (parents). Until now, no detailed and corrected results of the operation have been published, thus the definitive number of regularised and refused families is unknown.

The number of families whose regularisation was definitively refused (according to the official final figures 26,614 refused applications) and who left the country either voluntarily or by enforcement of return, as well as the number of those who remained in the country because of a later regularisation and a correction of the refusal decisions (regularisation after appeal procedure, revocation of removal orders by judicial authorities) is unknown.

Assessment of effectiveness in reducing stock of irregular immigrants

Regarding the very low regularisation rate of 20%, the programme was not effective in terms of reducing the stock of families with children in an irregular situation. A considerable proportion of those not regularised still may be in a legal limbo situation after the programme, in view of the situation that enforced removals in many cases were difficult to proceed, namely due to civil society protest and support, but also because of judicial safeguards protecting them from expulsion.[76]

[75] In 1999 the Minister of the Interior Chevènement made an effort to enforce the removal of migrants not regularised in the operation of 1997-1998. By pointing to the fact, that only half of non regularised migrants had been subject to a removal measure (ARPF), the Minister respectively called on the prefectures to accelerate their removal. (Circulaire 11.10.1999, NOR : INT/D/99/00207/C)

[76] It can be observed in general (related to all migrants, not only those refused in the collective regularisation operation) that in 2006 three fourth of removal orders (in the majority APRF, only low number of expulsion orders) could not be enforced; the non-execution of removal procedures is

4.2 Outcomes of regularisations via permanent regularisation mechanisms

Since having been introduced in 1998, legal provisions for exceptional regularisation (on humanitarian grounds or after long-term presence of ten years; granting a temporary residence and working permit of one year, permit "vie privé et familiale") have been applied more frequently: especially the regularisations based on grounds of *personal and family ties* have increased from 2002 onwards. In 2006 the significant increase of up to 22,200 regularisations on grounds of personal and family ties is due to the regularisation effects of the programme for families and children in the same year (which were regularised under this residence title).

The regularisations after a continuous presence of ten years have in the same period (2000 – 2006) ranged at an average level of 3,000 per year. Such exceptional regularisations have gained importance in relation to the overall annual admissions of third country nationals in recent years: in 2006 they made up approximately 13 percent of the annual new admissions, an increase which was mainly due to the exceptional regularisation measure of families in 2006 (see CICI report 2007: 78).

The beneficiaries of regularisations based on *personal and family ties* were mainly refused asylum seekers; nationals from the African continent constitute the majority, within recent years the proportion of nationals from China and Turkey increasing constantly (Régnard/DPM 2006: 112-113; Bèque 2007, see Table 32)

5 Evaluation

5.1 Regularisation programmes versus continuous mechanisms

Collective (national) regularisation programmes have become a rare instrument within the general regularisation and immigration policies.

As outlined above, the legal regularisation mechanisms to deal with individual case-by-case regularisations gained importance over collective programmes. This has contributed to a certain attenuation of (political and social) problem pressure at a national level, and a decentralisation of regularisation practices, which have been shifted in the realm of the prefectures (level of departments). This has certainly contributed to a heterogeneous, more arbitrary practice of regularisation varying at local level. On the other hand this also allowed for a more responsive and flexible approach towards locally specific (humanitarian) problem situations and demands for regularisation.

5.1.1 Government and political party positions

The position of the UMP government (in power since 2002) on regularisation policies can be characterised by a strict refusal of large-scale ("mass") collective regularisation programmes on the one hand, and a pragmatic, flexible approach concerned exceptional individual regularisations (via continuous mechanisms).

---

to a large extent consequence of the judicial control system of expulsion (appeal procedures at administrative courts), which lead to a high rate of revocations of the prefectures eviction orders As data for 2006 indicate, 39% of all removals were impeded because of judicial review decisions (CICI 2007: 154).

Arguments brought forward against collective large-scale regularisation programmes have mainly concentrated on the pull-effect of regularisation programmes on irregular immigrants (moving from other EU countries or from the major countries of origin) as well as on organised criminal smuggling networks.

In response to the strike movement of *Sans Papiers* workers, the government again reiterated its objection to a collective generous regularisation measure ("no massive regularisation"), this time pointing to the sufficient labour force (of unemployed immigrant workers) in the country and the ambition to prefer employment insertion of the unemployed regular immigrant population[77].

Moreover, the government emphasized the priority of integration of regular resident immigrants over the regularisation of irregular immigrants. Generally the position defended was that regularisation should not be a right (acquired through de facto immigration), but an exceptional means to solve humanitarian situations. Collective regularisation programmes became a controversial issue for political conflict and electoral competition: the conservative government opposed "mass" regularisation policies as a symbol of socialist immigration policies.

The political party spectrum is divided on the issue: in the electoral campaign of the presidential and legislative elections in 2007 the policy positions ranged from strict objection of collective regularisation measures (UMP candidate Sarkozy), a moderate position in favour of (integration) criteria based regularisation (Socialist party and the liberal Modem candidates), to positions favouring a global regularisation measure (left wing opposition of Communists, Greens, LCR). However, a broad political consensus on the necessity of humanitarian criteria based regularisation exists.

As to the need for regularisation measures, the situation of refused (long-term present) asylum-seekers and long-term present immigrant workers the need for regularisation measures is possibly most pressing, since these groups have been most excluded from collective regularisations within the last decade. The recurrent campaigns for a regularisation of these groups point to an existing problem.

5.1.2 Positions of civil society stakeholders

Diverse civil society actors (Sans Papiers self-organisations, migrants' rights associations, human rights organisations, humanitarian church organisations, trade unions, or citizens committees) have continued campaigning for both, broader collective regularisation programmes and more focussed criteria-based regularisations (as recently the strikes for a regularisation of irregular migrant workers working in certain employment sectors with labour shortage).

[77] Statements of president Sarkozy, Liberation, 24.4.2008; Immigration Minister Hortefeux «Pas de régularisation massive des sans-papiers», Le Figaro23.4.2008, http://www.lefigaro.fr/actualites/2008/04/24/01001-20080424ARTFIG00003-pas-de-regularisation-massive-des-sans-papiers-.php

However, there is no common position on the scope and form of regularisation measures: Sans Papiers collectives and some NGOs or trade unions claim for a global regularisation of all Sans Papiers present (general amnesty), others for a criteria-based regularisation.

The various civil society organisations together with *Sans Papiers* organisations have advocated for a *human and social rights centred* regularisation policy, and also demanded a review of procedures in order to guarantee a fair procedure according to rule of law principles.

In such a perspective, several migrant and refugee rights NGOs and trade unions[78] addressed the government recently claiming for a regularisation of *Sans Papiers* immigrant workers, thereby demanding to engage a broader consultation process involving civil society actors on the respective regularisation criteria[79].

A review and harmonisation of regularisation criteria is currently under way within the framework of the governmental advisory commission on exceptional regularisation, but the representation of non-governmental, civil society actors in this board is very limited (two NGO representatives of 11 members) and does not include social partners.

The Consultative committee on Human Rights CNCDH, representing a broad spectrum of civil society organisations, and the CFDA (Coordination of asylum rights associations) have focussed their attention on refused asylum seekers: arguing in favour of inclusive regularisation measures for this group, in particular as a necessary corrective of observed shortcomings of the asylum procedure (CNCDH 2006: 250[80]; CFDA 2004[81]).

The defence of irregular migrant workers' rights recently gained importance pushed forward by trade unions such as CGT and migrants' rights associations[82]. They criticised the recently adopted mechanisms of regularisation for workers in a limited area of professions as too restrictive and discriminating against TCN (compared to new EU citizens), while also placing migrants in a dependant position vis-à-vis their

[78] Cimade, France Terre d'Asile (FTDA), Ligue des Droits de l'Homme (LDH), GISTI, Uni(e)s contre l'immigration Jetable, CGT – Confédération Générale du Travail, CFDT – Confédération Française Democratique du Travail

[79] Communiqué commun CGT, CFDT, Ligue des droits de l'Homme et Cimade, 29.4.2008 ; FTDA Communiqué de presse 21.4.2008, Travailleurs en situation irrégulière: le Parti socialiste doit parler et agir pour la création d'une « commission de sages » ; FTDA Communiqué de presse, 24.4.2008, Régularisations : l'équité contre l'arbitraire.

[80] In his recommendation on the conditions of exercising the right to asylum in France the Human Rights Commission demanded a benign treatment of regularisation applications of refused asylum seekers (taking into account the general criteria existing risks in case of return and of integration); and it reiterated its demand that a separate permit of residence should be created for refused asylum seekers, which are neither expellable (personal risk, situation of general violence in home country), nor can be regularised according to the legal conditions;

[81] CFDA : Propositions concernant les déboutés du droit d'asile, Une réalité incontestable, juillet 2004 http://cfda.rezo.net/procedures/note-07-04.html

[82] Several trade unions and migrants' rights organisations (united in the alliance "Unies contre l'immigration jetable" UCIJ) started an information campaign among Sans Papiers on their rights as workers and on the new mechanism of regularisation (based on employment).

employers, and therefore demanded for a global regularisation of irregular immigrant workers.

The CGT supported (and co-ordinated) a collective strike movement of several hundred of *Sans Papiers* workers in order to achieve their regularisation (nearly 1000 applications for regularisation have been filed at the regional prefectures with support of the CGT). The strike action was triggered against the background that many of these irregular migrant workers had been licensed by their employers, as a consequence of tightened controls imposed on employers.

The employer's federation MEDEF (*Mouvement des Entreprises de France*) has no general position on regularisation policies. The Confederation of small and medium enterprises (CGPME *Confederation Générale des Petits et Moyennes Entreprises*) supports the government approach of limited case-by-case regularisation of migrant workers (in response to labour demands of certain professional sectors)[83].

Some of the sectoral employer organisations, namely of those employment sectors most in demand of and employing immigrant labour force (such as the hotel and restaurant sector), demanded a collective regularisation of irregular migrant workers for several reasons: These employers have been mostly affected by more severe control policies[84] and also troubled by the recent strike actions; some employers willing to retain and regularise their irregular migrant employees, which they had employed ignoring their irregular situation (falsified residence and work permits) also advocated in favour of regularisation.

In this context, the two most important employer's federations in the hotel and restaurant sector, the UMIH (Union des Métiers et des Industries de l'Hôtellerie) and the Synhorcat (Syndicat National des Hôteliers Restaurateurs Cafetiers Traiteurs) adopted a favourable position concerned an urgent regularisation measure of irregular immigrant workers in their sectors, in case of employers in compliance with labour and social legislation[85].

The UMIH president went further in suggesting the regularisation of at least 100.000 irregular workers (in all professional sectors), thereof about 50,000 in the café-

[83] Libération 29.10.2007

[84] Since 1 July 2007 (circular April 2007) employers were obliged to verify the residence documents of foreigners before their employment (at the prefectures), which lead many employers to generally control the documents of their staff, and to dismiss irregular workers with falsified documents. In Paris the prefecture had registered 62 635 such demands of employers and found in 10 % of the cases falsified residence permits or falsified documents (Immigration Minister Hortefeux, Le Figaro 23.4.2008).

[85] That means under the condition that employers immigrants had declared and insured their irregular workers (at the social security insurance, paid employers contributions) while ignoring their irregular status, and moreover employed them before the entry into force of new control obligations for employers (since July 2007).
Libération, 18.4. 2008; See also press release of Synhorcat 16.4.2008, http://www.synhorcat.com/syn_page.php?rb=com-promo&srub=&id_article=1970
L'Express, 17.4.2008, http://www.lexpress.fr/info/infojour/afp.asp?id=9073&1234

restaurant sector (arguing "if they were not regularised, they had to be licensed" and this "would destroy a part of the tourism sector in Paris")[86].

In contrast, the employer's federation of Construction maintained a regularisation of Sans Papiers workers was not necessary, and argued that the labour demand could be sufficiently satisfied with unemployed workers (Libération 18.4.2008).

5.2 Evaluation of strengths and weaknesses

With regard to the two most recent programmes described in this report and the legal regularisation mechanisms we can summarize some of their strengths and weaknesses:

Participation and consultation of major stakeholders in the definition of the criteria for regularisation

- There has been no systematic consultation of civil society actors such as migrants' rights organisations, labour and employer interest organisations, integration institutions, etc. in the design of the programmes and the elaboration of adapted and applicable criteria. The marginal involvement and consultation of stakeholders has fuelled contestations over legitimacy of regularisation measures from the side of civil society actors.

Information and transparency

- Regularisation procedures have suffered from a deficit of transparency and information of the immigrant population: No governmental information campaigns on the regularisation programmes were undertaken; this task was largely left to migrants' rights associations, which have only limited capacities of outreach.

- The lack of transparency of criteria and of regularisation practice was also related to the fact that many internal administrative directives were not published (and subject to changes during the procedure), thus not accessible for the concerned applicants. This contributed to a lack of trust in the regularisation process.

Procedural constraints

- With the increasingly *selective criteria* applied in programmes (reproducing the diversification of immigrant status categories in the legal immigration system) procedures of regularisation became more complex to manage, resulting in longer processing (including appeal) and difficulties of a homogenous application of criteria.
- Especially *criteria concerning humanitarian grounds and integration*, requiring an individual and in-depth assessment of the situation of the applicants, have proven to be problematic under the circumstances how

[86] 20minutes.fr; 21.4.2008; http://www.20minutes.fr/article/226710/France-Les-inspecteurs-du-travail-soutiennent-les-sans-papiers.php

collective regularisation programmes were carried out: time and resource constraints, administrative personnel not sufficiently qualified to assess such cases; the time limits and stress situation for migrants not allowing for an adequate assessment of such criteria, are some aspects regards a deficient assessment of such criteria. This problem was evident in the regularisation procedure for families in 2006, as the given implementation conditions were not appropriate to examine the often complicated individual situations of families concerned (e.g. means to appreciate language knowledge and integration).

- A recurrent problem of regularisation procedures in France was the *unequal treatment* of applications and unequal chances of regularisation. This major shortfall resulted from the specific administrative procedure of regularisation (via administrative circular; no legal binding force; minor procedural safeguards), which gives the local prefectures a great discretionary power in the regularisation procedure.

General design of programmes

- As a strength may be highlighted the development of a more comprehensive design of programmes adapted to new target groups (both regularised and refused), taking into account social integration and humanitarian concerns (e.g. social assistance, return assistance), as was the case with the programme of 1997-1998.

- A weakness in respect to integration aims and the prevention of a reversion to irregular status is related to the policy choice of generally treating regularised migrants (irrespectively of their career) the same way as newcomers concerning short term residence permits and renewal conditions; to the extent that measures (individual and collective) already pose increasingly strict integration requirements as conditions for regularisation (long-term presence, school enrolment, clean criminal record, resources and stable employment), the perpetuation of an insecure residence status ignores and hampers the integration process of regularised migrants.

Evidence of side effects (irregular migration incited by programmes)

- In contrast to a widely spread political argument that immigration programmes (that of 1997-1998) had stimulated further irregular immigration, there is no empirical evidence for such a conclusion.

- As to the direct attraction of irregular immigrants to the country there is no empirical data that would ground such a hypothesis (applicants who had entered only recently were of little importance in the programme of 1997-1998[87]); in general, the programme design excluded those with a short

[87] As Thierry (2000) shows in his analysis, only a small proportion of applicants had entered the country rather shortly before or during the programme (between 1996-1998), meaning 14,8% of male and 18,5% of female applicants.

residence period and those who were not present in France (personal interviews) from regularisation.

- The unwanted side-effects of programmes consisted mainly in the fact that a part of the refused irregular migrant population further remained in the country; but there is no evidence on their fate, nor are figures available about their moving on to other EU countries.

- This means that programmes have not created new irregular migration, but rather resulted in the continuous presence of an already present irregular migrant population.

6. Conclusions

Apart from the particular problems arising in their concrete procedural implementation, the analysis of the regularisation processes in the last decades raises the general question as to the *appropriateness of collective regularisation* measures as a means of immigration policy. It is clear that different policy aims require different instruments. One therefore has to ask which are the aims that can best be tackled by collective regularisation, and which could more efficiently, and less costly (in economic, social and humanitarian terms) be addressed by individual measures.

Labour market oriented aims are certainly best treated by general amnesties, and in fact past collective regularisation measures with a labour market goal (such as the programme of 1981-1982) amounted in effect to an amnesty (with recognition rates approaching 87%). The recently introduced individual "case-by-case" procedures are much less adapted to labour market management goals; moreover, criteria of selective regularisation mechanisms (based on qualification) do not match the reality on the labour market, since a large part of the irregular migrant workers is employed in sectors other than those covered by actual regularisation provisions (even qualified TCN workers are often employed in the unqualified sector).

By contrast, regularisation on *humanitarian grounds*, requiring high qualitative standards of individual evaluation (appreciation of personal situation, interviews, legal remedies etc.) are best addressed in individual exceptional regularisation procedures, and usually suffer from the time and personal constraints characteristic for (not well prepared) collective programmes (as can be seen from the shortcomings of the recent programme for families of 2006).

With view to the current debate that opposes large scale collective programmes and individual exceptional regularisation measures, by emphasizing the negative side effects of the first, and the positive ones of the latter, it should be stressed that the two extreme poles of regularisation policies – general amnesties and individual exceptional regularisation mechanisms – are not opposite but complementary policy measures. Whether these measures should be oriented more towards the "amnesty" or towards the "exceptional mechanism" pole, should depend on the concrete problematic and policy aim in question, and not on a priori ideological grounds.

7. References

Bèque, Marilyne (2007): Qui sont les nouveaux bénéficiaires d'un titre de séjour en France? In: Etudes et Résultats, N° 612, décembre 2007, Direction de la recherche, des études, de l'évaluation et des statistiques DREES, http://www.sante.gouv.fr/drees/etude-resultat/er-pdf/er612.pdf

Brun, François, Smaïn Laacher (2003): Situation régulière. Paris: L'Harmattan. Cealis Roza, Delalande François, Jansolin Xavier, Marie Claude-Valentin, Lebon

André (1983): Immigration clandestine: la régularisation des travailleurs «sans papiers» (1981-1982). In: Bulletin Mensuel des Statistiques du Travail supplément n°106, pp. 1-61

De Bruycker, Phillippe (ed.) (2000): Les Régularisations des étrangers illégaux dans l'Union européenne, Bruylant Bruxelles.

Fassin Didier, Alain Morice, Catherine Quiminal (1997): Les lois de l'inhospitalité: Les politiques de l'immigration à l'épreuve des sans-papiers. Paris: La Découverte.

Héran, François (2004): Cinq idées reçues sur l'immigration. In: Population et Sociétés, N° 397, Janvier 2004, Bulletin mensuel d'information de l'INED, Paris.

Jounin, Nicolas (2008): Chantier interdit au public, enquête parmi les travailleurs du bâtiment. Paris: La Découverte.

Laubenthal, Barbara (2007): The Emergence of Pro-Regularization movements in Western Europe. In: International Migration Vol. 45 (3), 2007, pp.101-132

Levinson, Amanda (2005): The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies, Centre on Migration, Policy and Society, University of Oxford.

Marie, Claude-Valentin (1983): L'immigration clandestine et le travail clandestin des étrangers en France à travers la régularisation des «sans-papiers» de 1981-1982. (Résultats d'une enquête sur échantillon). Rapport remis à Monsieur Pierre Beregovoy. Paris, Ministère des Affaires Sociales et de la Solidarité Nationale.

Marie, Claude-Valentin (1984): De la clandestinité à l'insertion professionnelle régulière, le devenir des travailleurs régularisés. In: Travail et Emploi N°22, décembre, pp. 21-32.

Marie, Claude-Valentin (1999): Emploi des étrangers sans titre, travail illégal, régularisations: des débats en trompe-l'oeil. In: Dewitte, Philippe (ed.): Immigration et intégration, l'état des savoirs. Paris, La Découverte, pp. 352-365.

Migrations Société (2006): « Sans papiers: d'hier et d'aujourd'hui », Migrations société, vol. 18, n°104, March-April 2006.

Neyrand, Gérard, Letot Corinne (2000): Le suivi social des étrangers régularisés, au titre de la circulaire du 24 juin 1997. In: Migrations études n° 92, janvier 2000.

Niessen, Jan, Huddleston, Thomas and Laura Citron (2007): Migrants integration policy index. British Council and Migration Policy Group, Brussels, September 2007, www.integrationindex.eu

OECD (2007): International Migration Outlook: SOPEMI - 2007 Edition.

Poelemans, Maiténa, De Sèze Sophie (2000): La Régularisation des immigrés illégaux en France. In: De Bruycker, Phillippe (ed.) (2000): Les Régularisations des étrangers illégaux dans l'Union européenne, Bruylant Bruxelles, pp.161-194

Poelemans, Maiténa, De Sèze Sophie (2000): The Regularisation of clandestine immigrants in France. In: European Journal of Migration and Law 2, 2000, 309-336.

Richard, Jean-Luc (2005): Les immigrés dans la société française (n.916- Septembre 2005), Problèmes politiques et sociaux, La Documentation française.

Siméant, Johanna (1998): La cause des sans-papiers. Paris: Presses de la Fondation nationale de Sciences politiques.

Simonin, Bernard, Brun François, Laacher Smaïn, Gomel Bernard (2001): De la régularisation à l'intégration : stratégies, atouts, obstacles... In: Migrations études n° 97, janvier 2001.

Thierry, Xavier (2000): Les entrées d'étrangers en France: évolutions statistiques et bilan de l'opération de régularisation exceptionnelle de 1997, in: Population No. 3, INED.

Thierry, Xavier (2000): Statistical Report on the 1997 regularisation for illegal migrants in France. In: De Bruycker, Phillippe (ed.) (2000): Les Régularisations des étrangers illégaux dans l'Union européenne, pp. 195-210.

Vanneroy, Coline (2006): Comment est mise en oeuvre la circulaire du 13 juin 2006 relative aux sans-papiers ? L'exemple de Paris. TERRA-Ed., Coll. "Synthèses", Octobre 2006, http://terra.rezo.net/article552.html

Official reports

Comité interministériel de contrôle de l'immigration (CICI) (2007): Les orientations de la politique de l'immigration, Rapport au parlement - Décembre 2007. Quatrième rapport établi en application de l'article L.111-10 du code de l'entrée et du séjour des étrangers et du droit d'asile. http://lesrapports.ladocumentationfrancaise.fr/BRP/074000765/0000.pdf

Commission Nationale Consultative des Droits de l'Homme - CNCDH (2006): Les Conditions d'exercice du droit d'asile en France. La Documentation Française. Paris.

Des Esgaulx, Marie-Helene (rapporteur) (2005): Rapport d'information en conclusion d'une mission d'évaluation et de contrôle sur l'évolution des coûts budgétaires des demandes d'asile (hébergement, contentieux, contrôle aux frontières), 6.7.2005, Assemblée nationale, n° 2448 http://www.assemblee-nationale.fr/12/rap-info/i2448.asp#P801_109204

Documentation Française (2007): Dossier Immigration et Politique migratoire, http://www.ladocumentationfrancaise.fr/dossiers/immigration/immigration-clandestine.shtml

Mariani, Thierry (rapporteur) (2006): Rapport d'information sur la mise en application de la loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité, Rapport à l'Assemblée nationale N° 2922.

Mariani, Thierry (rapporteur) (2006): Rapport sur le projet de loi (N° 2986), relatif à l'immigration et à l'intégration, Rapport à l'Assemblée Nationale N° 3058, http://www.assemblee-nationale.fr/12/rapports/r3058.asp

Masson, Paul, José Balarello (rapporteurs) (1998): Commission d'enquête sur les régularisations d'étrangers en situation irrégulière. RAPPORT 470 (97-98), Tome I, http://senat.fr/rap/l97-4701/l97-4701.html Tome II, 1ère partie http://www.senat.fr/rap/l97-47021/l97-47021_mono.html#toc16

Ministère de l'Intérieur (1999): Les titres de séjour des étrangers en France en 1998. Premier rapport remis au Parlement par le Ministère de l'intérieur en application de l'article 45 de la loi du 11 mai 1998 (4ème trimestre 1999) http://lesrapports.ladocumentationfrancaise.fr/BRP/004000141/0000.pdf

Othily, Georges, François-Noël Buffet (2006): Immigration clandestine: une réalité inacceptable, une réponse ferme, juste et humaine, Rapport de commission d'enquête n° 300 (2005-2006) de MM. Georges OTHILY et François-Noël BUFFET, fait au nom de la commission d'enquête, 6 avril 2006, http://www.senat.fr/rap/r05-300-1/r05-300-1.html

Office français pour la protection des réfugiés et apatrides OFPRA (2007): Rapport annuel 2007. http://www.ofpra.gouv.fr/documents/Rapport_OFPRA_2007_BD.pdf

Régnard, Corinne /DPM (2006): Immigration et présence étrangère en France en 2005. Rapport annuel de la Direction de la Population et des Migrations. Décembre 2006. Ministère de l'Emploi, de la Cohesion sociale et du Logement.

Laws and circulars

http://www.legifrance.gouv.fr/

Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA), version consolidée au 8 mars 2008, http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158&dateTexte=20080321

NGO documents and Internet sources

CIMADE (2007): De la loterie à la tromperie. Enquête citoyenne sur la circulaire du 13 juin 2006 relative à la régularisation des familles étrangères d'enfants scolarisés. Rapport d'observation. Avril 2007, available at: http://www.cimade.org/boutique/3-De-la-loterie-a-la-tromperie; Website of the citizens' inquiry www.placeauxdroits.net

GISTI (2006): Le guide de l'entrée et du séjour des étrangers en France, Paris: La Découverte.

GISTI (2008): Le guide de l'entrée et du séjour des étrangers en France, Paris: La Découverte.

La Régularisation de 1997-1998, Circulaires, Commission d'Enquête sénatoriale, www.gisti.org/droit/histoire/regularisation/index.html

GISTI (1991): Une très exceptionnelle régularisation. In: « Immigrés: le grand chantier de la "dés-intégration" », Plein Droit n° 15-16, novembre 1991, http://www.gisti.org/doc/plein-droit/15-16/regularisation.html

RESF - Réseau éducation sans Frontières, website http://www.educationsansfrontieres.org/

8. Statistical Annex

Table 28: Indicators (evaluation of irregular residence)

	1999	2000	2001	2002	2003	2004	2005	2006
Ind.1 annually refused asylum seekers	14200	18400	22400	24500	29600	38800	60000	27700
Ind.2 annual regularisations of foreigners having entered irregularly			16538	20837	25989	28390	31650	31741
Ind.3 Annual apprehensions of foreigners in irregular situation	27293	43508	37586	49470	45500	44545	63681	67130
Ind.3 Foreigners accused of infractions of entry and residence legislation		51359	47246	57608	59023	64218	82814	90362
Ind.4 Arrest in administrative detention					28155	30043	29257	32817
Ind.5 not executed removal orders (APRF)	28711	30022	31140	34874	39665	51501	46698	47993
Ind.6 persons covered by public medical assistance				145000	170000	146297	178689	191067

Notes: Ind. 1: The number of refused asylum seekers has been calculated on the basis of the number of refused asylum applications in the 2. instance (decision on appeal) multiplied with a coefficient of 1.132 (permitting to take into account the additional proportion of asylum seekers refused in the first instance without appealing)
Source: CICI 2007:142-148

Table 29: Overview of continuous legal mechanism for exceptional regularisation

	Admission on grounds of personal and family ties or for health reasons	**Exceptional admission to residence** **1) on humanitarian grounds** **2) on grounds of employment (since 2007)**	
Legal basis (circular)	Article L.313-11 CESEDA (since 1998) (Circular of 30 October 2004)	Section 7 Article L.313-14 CESEDA (Circular of 24 June 1998 - vital risks for refugees) (Circular of 7 January 2008 – employment)	
Eligible categories	2°, 6°, 8° - Children of full age (living in France with one parent since the age of 13, or having been in charge of social services as minors since age of 16); - parents of a minor French child contributing to child care; - foreigners born abroad with continuous residence of more than 8 years, after the age of 10 and enrolled in French school for at least 5 years; 7° - other foreigners with *personal and family ties* (not falling under the above defined categories of family members with a legal entitlement on family reunion) 9° and 11° - foreigners entitled to occupational injuries benefit, foreigners with serious illness (who cannot benefit of effective treatment in their home country)	Third country nationals	Third country nationals qualified and employed in certain professions (demanded on the labour market) *Excluded from application: Algerians and Tunisians*
Conditions for regularisation	Legal entitlement according to the defined criteria (length of presence, family relations, etc.) 7° based on appreciation of interests assessing the intensity, duration and stability of family and personal ties; conditions of living and integration into French society; integration is evaluated in taking into account knowledge of republican values nature of ties with family remaining in country of origin	Discretionary decision 1) humanitarian considerations or other exceptional reasons (risks in home country; continuous long-term residence of 10 years)	Discretionary decision 2) Cumulative criteria: exercising a profession part of a list of overall 30 professions (varying regionally), mainly including qualified professions (sector of construction, informatics, technical professions, financial controlling…); (TCN from countries with specific bilateral

				migration agreements may have access to additional professions); Recognition of diploma or professional experience for one of the defined professions; strong commitment from side of employer: stable work contract (unlimited contract CDI; exceptionally short term contract CDD of minimum one year); preliminary evaluation and approval of employment by the regional labour and employment administration (DDTEFP)
Refusal criteria	living in polygamy; threat to public order (in general: criminal record);			
Residence permit granted	Temporary residence permit (one year), purpose "private and family life" ("Carte vie privée et familiale"), entitles to work;		Temporary residence and work permit (one year), purpose "employee" (salarié) or "temporary worker"	
Number of regularisations (2000 – 2006)	80,401 (personal and family ties) 21,078 (after 10 years of residence)	no figure available	No figure available	

Sources: CESEDA; GISTI 2006 84-88; Circular of 30 October 2004 related to conditions of instruction of applications for admission to residence of foreigners in irregular situation; Circular of 7 January 2008

Table 30: Quantitative and qualitative indicators of regularistion measures

Indicators	**Year(s) of programme**			
	1981-1982	**1991**	**1997-1998**	**2006**
Number of applicants	150,000	50,000	*135,000 (1)*	33,538 *(applications not persons)*
Number of regularised	130,000	15,000	87,000	6,924
Regularisation rate	*86,7%*	*30%*	*64%*	*20,6%*
Main target groups/categories	Foreign workers having entered France before 1.1.1981; later included several further categories (as political refugees, trainees, apprentices; seasonal and temporary workers; foreigners laid-off by their employers for having demanded regularisation)	Refused long-term asylum seekers having entered France before 1.1.1989	Family members and long-term established families; foreigners without family dependants; refused asylum seekers/ de facto refugees ill persons students (condition of certain minimum residence time of 7 or 5 years or duration of marriage)	Families with one or more children enrolled in school (at least one parent minimum residence of two years in France)
Residence permit granted	temporary residence and work permit (one year), renewable	temporary residence and work permit (one year), renewable	temporary residence and work permit (one year), renewable	temporary residence and work permit (permit "private and family life", one year), renewable

Source: Thierry 2000

Table 31: Number of regularisations of Third Country Nationals (other than EU 27, EEA, Switzerland) on the basis of excepetional permanent regularisation mechanisms (2000-2006)

Annual regularisations	2000	2001	2002	2003	2004	2005	2006
Personal and family ties	6999	5922	6864	10931	13295	14195	22195
in % of total	*4,7%*	*3,6%*	*3,8%*	*5,7%*	*6,9%*	*7,6%*	*12,1%*
Admissions after 10 years of residence	3166	2806	2871	3815	3073	2674	2673
in % of total	*2,1%*	*1,7%*	*1,6%*	*2,0%*	*1,6%*	*1,4%*	*1,5%*
Total of admissions (1)	149982	164466	181078	190825	191850	187134	183575

(1) Includes all types of issued residence permits per year (economic reasons, family reasons, recognised refugees, etc.)
Source: CICI report 2007: 75-78;

Table 32: Socio-demographic characteristics of newly admitted (regularised) immigrants in 2006 (in %)

	Type of residence permits obtained in 2006, in % (N=6,280)					
				Regularisations		
	Spouses of French nationals	Family reunion	Refugees	*Residence of more than 10 years in France*	*personal and family ties*	Total
New migrants	41	11	8	4	32	100
Sex						
Men	49	29	43	59	43	46
Women	51	71	47	41	57	54
Age						
18-24	21	29	29	53	16	23
25-29	31	19	17		19	24
30-34	23	15	18	8	25	22
35-44	19	22	25	24	29	23
> 45	6	15	11	15	10	9
Country of birth						
Algeria	32	17		9	16	21
Morocco	18	33	7	13	7	15
Tunisia	8	18		0	4	7
sub-Saharan Africa	17	8	24	35	33	22
Other African countries	2	0	17	10	6	5
Turkey	5	10	12	0	4	6
South-East Asia and East Asia	4		0	11	14	7
South Asia	2		11		0	3
CIS	3	14	15	22	3	4
Europe (outside EEA and CIS)	2		8		4	4
Central and South America	5		6		6	5
France + EU + others	2		0		3	2
Year of arrival in France						
1960-1998	2		5	74	17	11
1999-2001	11	14	9	22	43	21
2002-2003	11		23		23	16
2004-2005	19		50	4	14	17
2006	57	86	12		3	35

Source: DREES survey 2006 „Parcours et profils des migrants", Bèque 2007:3

19 Germany

Albert Kraler, Mariya Dzhengozova, David Reichel[1]

1. Introduction

At the end of 2006, the German population stood at 82 million people of whom 8.2 per cent or 6.7 million were not German citizens. By far the largest group of foreigners living in Germany were citizens of Turkey (1.7 million), followed by Italians (0.5 million) and Poles (0.36 million). The large majority of third country nationals are admitted in the framework of family reunification. As in the 1990s, asylum applications have continued to drop sharply in the 2000s, from 95,000 in 1999 to 21,000 in 2006.

Table 33: Basic information on Germany

Total population*		*82,351,000*
Foreign population*		*6,751,000*
Third Country Nationals (excluding Romania and Bulgaria)*		*4,567,600*
Main countries of origin*	*Turkey*	*1,738,800*
	Italy	*534,700*
	Poland	*361,700*
Net migration**		*78,953*
Asylum applications**		*28,914*

* 31 December 2006 ** 2005

Source: Statistisches Bundesamt Deutschland (www.destatis.de)

Since the 1990s, analysts have pointed to Germany's ongoing need for immigrants to bolster economic development and maintain a dynamic workforce, given the rapid aging of the country's population. A process of policy review began in 2001 with a government commission's report on immigration and integration policy (Oezcan 2004).

2. Irregular Migration in Germany

The German government refrains from providing figures concerning the number of illegally staying third country nationals in Germany, since it deems it impossible to make a realistic estimate. (BMI 2007a: 141-148; Schönwalder et al. 2006: 27) Numbers that circulate in the media and among researchers range from a hundred thousand to at least a million. (Sinn et al 2006: 58-59; CoE 2006: 3-5, Cyrus 2008).

According to Schönwalder et al. (2006), police and asylum statistics indicate that the number of illegal residents increased sharply in the second half of the 1990s. This is all the more plausible since control at Germany's eastern borders was almost absent in the direct aftermath of the reunification of the Federal Republic of Germany and the German Democratic Republic. The disappearance of the Iron Curtain opened the

[1] The authors would like to thank Axel Kreienbrink (Federal Office for Migration and Refugees, Nuremberg) for helpful comments on a draft version on this chapter

way to Germany for many Eastern Europeans, while "very few legal options were made available to them". In addition, the German asylum law was significantly tightened in 1993. With this legal migration channel "largely blocked", more immigrants may have entered illegally. Since the late 1990s however, the number of illegally staying third country nationals in Germany seems to be stagnating and, because of the effects of EU enlargement, decreasing (Schönwalder et al. 2006: 30-33).

3. National policy on illegal migrants in regard to regularisation

In its response to the Member State questionnaire, the Federal Ministry of the Interior emphasised that the German government was strongly opposed to mass regularisations, which are expected to work as a pull factor for illegal migrants. In the view of the Ministry of the Interior, mass regularisation conducted in one EU Member State may negatively affect other EU Member States as regularised persons might subsequently migrate within the Union.[1] (Germany, Response ICMPD MS Questionnaire 2008).

German migration laws and regulations comprise a residence status which is neither irregular nor undocumented: the so-called *"Duldung"* ('toleration'). Foreign residents who are legally obliged to leave the country and whose deportation cannot be executed, are issued a document stating that they have received a "suspension of deportation", or "*Duldung*". This document is issued for a period of days, weeks or a few months, and may be prolonged indefinitely, each time for a short period, as long as the obstacle for deportation persists. Tolerated persons have only limited access to the German labour market and receive basic social assistance, often only partly in cash and partly in kind (Geyer 2007; Cyrus & Vogel 2005: 21-23).

According to the Ministry of the Interior, 154,780 'tolerated' aliens were living in Germany in August 2007. More than half of them – about 87,570 – had lived in Germany for more than six years (BMI 2007b). Recent German debates about regularisation centred on the question of how to tackle the situation of these *"langjährig Geduldeten" (*long term tolerated persons). Following a the 2006/2007 regularisation programme and regularisations through mechanisms, the number of tolerated persons has been reduced to some 110,000 as of 30 September 2008 (MuB 2008b).

4. Regularisation programmes

There have been several regularisation programmes for specific groups of tolerated persons who had no criminal records and were employed. Until 2005 the Federal Ministry of the Interior reports ten such 'amnesty programmes':

[1] The Ministry admits that there are no scientific studies on the impact of regularisations on other EU countries (Germany, Response ICMPD MS Questionnaire 2008).

Box 6: German regularisation programmes

1991 Regulation governing long-lasting cases of Chinese scientists, students and other trainees who entered before 1 November 1998; Christians and Yezidis from Turkey who entered before 1 January 1989; Ethiopian and Afghan nationals who entered before 31 December 1988; Iranian and Lebanese nationals, Palestinians and Kurds from Lebanon, and Tamils from Sri Lanka who entered before 1 January 1989. Provided there is no ground for expulsion present other than that they have been homeless or have drawn social assistance or youth benefits for a longer period of time

1991 Regulation governing long lasting cases for rejected asylum seekers from former Eastern bloc such as Poland and Hungary

1993 Regulation governing the right to stay of nationals from Angola, Mozambique and Vietnam who entered the GDR as contract workers up to and including 13 June 1990 on the basis of intergovernmental agreements;

1993 Regulation for long-lasting asylum cases on the basis of the asylum compromise of December

1993 Regulation for asylum seekers from Afghanistan, China, Iraq, Iran, Laos, Libya and Myanmar (Burma)

1994 Regulation governing the right to stay for Pakistani nationals who belong to the Ahmadiyah sect and entered Germany before 1 January 1989

1994 Regulation governing the right to stay for Turkish nationals belonging to the Yazidi sect who entered after 31 December 1989 and whose asylum application was rejected before 1 July 1993

1996 Regulation for cases of hardship regarding foreign families who lived in Germany for many years and had entered before 1 July 1990, if their lives have since that time centred on Germany and if they have integrated into the German economic, social and legal order. Altogether 7,856 persons were regularised.

1999 Regulation governing the right to stay for rejected asylum seekers and expellees from other countries than the Federal Republic of Yugoslavia and Bosnia and Herzegovina. At least 18.258 applicants were regularised

1999 Regulation for rejected asylum seekers who have been staying in Germany for a long time. This regulation is to refer to individuals who have not left Germany despite the rejection of their application for asylum due to reasons they cannot be held responsible for.

2000 Regulation governing the right to stay for civil war refugees from Bosnia and Herzegovina and Kosovo, in particular traumatised persons from Bosnia-Herzegovina.

Source: Cyrus & Vogel 2005: 22-23

In November 2006, the Conference of Ministers of the Interior of the *Bundesländer* agreed upon a regularisation programme targeting persons who had long been tolerated and who could prove to be integrated into German society.

This regularisation programme was not laid down in law. It was adopted as a common position of the responsible *Länder* authorities on the issuing of residence permits according to §23 (1) of the Residence Act and became known as the *IMK-Bleiberechtsbeschluss (*Decision of the Conference of Ministers of the Interior on the Right to Remain). The deadline for submitting applications for residence permits under this regulation was 16 May 2007. The eligibility criteria were rather strict. Among others, the applicant had to earn sufficient income to be able to support him/her self and his/her family, without having recourse social benefits (Marx 2006). In addition, a range of other criteria – school success of children, length of schooling, language proficiency, etc. – were applied. According to the response to a parliamentary question submitted by one of the opposition parties, 71,857 persons applied for a residence permit under the programme, of which 19,779 persons had received a residence permit by 30 September 2007. An additional 29,834 persons were granted a toleration status to enable these persons to look for jobs in order to meet the income criterion. In the case of 7,785 persons, the application was rejected (Deutscher Bundestag 2007: 7). A study published in early 2008 shows marked variations in the implementation of the regularisation programme in different provinces. However, the study also suggests that there was significant good-will among all parties involved to solve situations of long-term tolerated persons and discretion was largely used in favour of applicants. Negative decisions thus there often not the result of bad will or strict interpretation of the *IMK-Beschluss* but derived from the fact that exclusion grounds applied (for example, a conviction for a criminal offense, deceipt of immigration authorities, lack of identity documents). The fact that the criminal and administrative offenses which constitute absolute exclusion grounds are largely linked to irregular status, for example offenses against immigration regulations or poverty related offenses such as free-riding on public transport, has also been severely criticised (Schührer 2007: 78ff). In a similar vein, the integration requirements have been subject to major criticism. In particular, the fact that toleration status implied major constraints in people's daily lives and thus acted as a major exclusion mechanism was, according to critics of the regularisation programme, not sufficiently taken into account. Indeed, demanding proof of integration, including employment, from persons whose access to employment was restricted, has been regarded as a major paradox of the programme (See Schührer 2007).

As part of the reform of the *Zuwanderungsgesetz* (Immigration Law), a temporary scheme for regularising the residence status of 'tolerated' foreigners was laid down in law, which came into force in August 2007. Aliens who on 1 July 2007 had lived in Germany for at least eight years – six years if they had minor children – with a 'tolerated' status would be granted a temporary residence permit, provided they showed willingness to integrate, disposed of suitable housing, spoke sufficient German and had not knowingly misinformed the German immigration authorities. Their permit would be valid until 31 December 2009, before which date they were to find employment, so as to dispose of sufficient income (BMI 2007b).

By 31 December 2007, 22,858 persons had applied for regularisation, of whom 13,674 were still awaiting a decision.[2] 1, 816 applications had been rejected, while 1,770 foreigners had been granted a residence permit on humanitarian grounds. The large majority of applicants however, namely 9,088 foreigners, had received a residence permit *"auf Probe"* (propationary permit), i.e. conditional on their earning sufficient, independent and sustainable income before the end of 2009. Their residential status in Germany remains insecure. (MuB 2008).

5. Regularisation mechanisms

Regularisation mechanisms exist in Germany, albeit to a fairly limited scope. Individual irregular aliens may obtain a residence permit through *"Bleiberechts- oder Altfallregelungen"* (regulations for status adjustment of old cases), if their expulsion has been delayed for many years. These regulations concern aliens who are officially 'tolerated'. Persons without any status (no toleration) cannot apply for regularisation in Germany. Eligibility criteria comprise absence of criminal records, sufficient means of subsistence through employment and integration in Germany. The Ministry of the Interior, however, does not regard these provisions as constituting regularisation mechanisms (Germany, Response ICMPD MS Questionnaire 2008). Detailed statistics on residence permits issued on humanitarian grounds, excluding permits issued to persons admitted from abroad can be found in the annex to this chapter.

Current legislation[3] provides for regularisation the following cases. [4]

Granting of residence in cases of hardship (Chapter 5, Section 23a, par 1 of the Residence Act): The supreme Land authority may, on petition from a Hardship Commission to be established by the Land government, order a residence permit to be issued to a foreigner who is required to leave the Federal territory (hardship petition). According to the individual case concerned, the said order may be issued with due consideration as to whether the foreigner's subsistence is assured. The residence permit may be issued and extended for a maximum period of three years. In 2005, 186 persons benefited from hardship petitions, in 2006 – 1, 165, in 2007 – 1,711 and in 2008 (January-June) – 1,298 (EMN 2008: 107 and 113).

Residence permit on humanitarian grounds in case of a deportation ban (Abschiebungshindernisse): A foreigner should be granted a residence permit where

[2] Exlcuding Thüringen and Bayern, whose figures were not yet available.

[3] *Residence Act of 30 July 2004, last amended by the Act on Implementation of Residence- and Asylum- Related Directives of the European Union of 19 August 2007* (www.bmi.bund.de, accessed 18 September 2008)

[4] In addition to the grounds listed in the main text, German legislation contains two provisions on *admission* on humanitarian grounds. According to chapter 5, section 22 of the Residence Act a foreigner may be granted a residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds. According to chapter 5, section 23, par.1 of the Residence Act the supreme Land authority may order a residence permit to be granted to foreigners from specific states or to certain groups of foreigners in accordance with international law, on humanitarian grounds. The order shall require the approval of the Federal Ministry of the Interior.

a deportation ban applies on the basis of existing danger of the foreigner being subjected to torture or inhumane or degrading treatment or punishment in the country of deportation. (Chapter 5, Section 25, par. 3 of the Residence Act). The residence permit should be issued for at least one year. In 2005, 1,998 persons were granted residence permit on that ground, in 2006 – 5,512, in 2007 – 9,395 and in 2008 (January-June) – 7,823 (EMN 2008: 107 and 113).

Urgent humanitarian or personal grounds (Chapter 5, Section 25, par. 4 of the Residence Act): A foreigner who is non-enforceably required to leave the Federal territory may be granted a residence permit for a temporary stay if his or her continued presence in the Federal territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests. The residence permit may be issued and extended for a maximum period of three years but for no longer than six months. In 2005, the number of residence permits issued was 1,492: in 2006 – 4,079; in 2007 – 7,227 and in 2008 (January-June) – 4,308 (EMN 2008: 107 and 113). Furthermore, a residence permit may be extended if departure from the Federal territory would constitute exceptional hardship for the foreigner due to special circumstances pertaining to the individual case. In 2005, the number of people provided with such extension was 7, in 2006 – 4; in 2007 – 38 and in 2008 (January-June) – 883 (EMN 2008: 113).

Victims of human trafficking (Chapter 5, Section 25, par. 4a of the Residence Act): A foreigner who has been the victim of a criminal offence may also be granted a residence permit for a temporary stay, even if he or she is required to leave the Federal territory. The permit shall be issued for six months and extended; a longer period of validity is permissible in substantiated cases. Significantly low number of residence permits has been issued on this ground: in 2007 – 3 and in 2008 (January-June) – 14 (EMN 2008: 113).

Legal or factual grounds (Chapter 5, Section 25, par. 5 of the Residence Act): A foreigner who is required to leave the Federal territory may be granted a residence permit if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The residence permit should be issued if deportation has been suspended for 18 months. The permit may be issued and extended for a maximum period of three years but for no longer than six months. In 2005 the number of permits issued was 1,896, in 2006 – 7,148, in 2007 – 16,917 and in 2008 (January-June) – 19,468 (EMN 2008: 107 and 113).

Right of residence for integrated children of foreigners whose deportation has been suspended (Chapter 10, Section 104b of the Residence Act): A minor, unmarried child may be granted a residence permit in his or her own right in the event of the said child's parents or the parent possessing the sole right of care and custody not being granted a residence permit or an extension of the same and leaving the federal territory, where (i) the child has reached the age of 14 on 1 July 2007; (ii) the child has been lawfully resident in Germany or resident in Germany by virtue of suspended deportation for at least six years; (iii) the child has a command of the German language; (iv) on the basis of the child's education and way of life to date, he or she has integrated into the prevailing way of life in Germany and it is ensured

that the child will remain integrated in this way of life in the future and (v) care and custody of the child are ensured. A relatively low number of residence permits has been granted on that basis: in 2007 – 45 and in 2008 (January-June) – 66 (EMN 2008: 107 and 113).

6. Conclusion

German responses to irregular migration from the 1990s up to this date are characterised by a reluctance to undertake large-scale regularisation programmes and a preference for intermediate solutions (toleration) and a series of ad-hoc measures targeting specific groups, often groups with specific protection needs (war refugees, temporary refugees, etc.). Apart from the enormous complexity resulting from this preference for ad-hoc solutions, the important role of administrations and differences in policy between different Länder also are important factors explaining the form and extent of regularisation measures in Germany.

As this country fact report shows, however, Germany has in the past one-and-a-half decades effectively regularised a significant number of illegally staying third country nationals, even though the great majority only received "toleration status" and thus have to a large extent never benefitted from a full status adjustment.

7. References

Bundesministerium des Innern (BMI) (2007a). *Migrationsbericht des Bundesamtes für Migration und Flüchtlinge im Auftrag der Bundesregierung. Migrationsbericht 2006.* Available at: http://www.bamf.de/cln_101/nn_442522/SharedDocs/Anlagen/DE/Migration/Publikationen/Forschung/Migrationsberichte/migrationsbericht-2006,templateId=raw,property=publicationFile.pdf/migrationsbericht-2006.pdf, 18 September 2008.

Bundesministerium des Innern (BMI) (2007b). *Reform des Zuwanderungsgesetzes ist in Kraft getreten.* Available at: http://www.bmi.bund.de/cln_028/nn_161642/Internet/Content/Themen/Auslaender__Fluechtlinge__Asyl__Zuwanderung/DatenundFakten/Reform__Zuwanderungsgesetz___20in__Kraft.html, 18 September 2008.

Council of Europe (CoE) (2006). *Legal Situation of Irregular Migrants in Germany, i.e. Granting and Limiting of Access to Social Rights*. Report for the Ad Hoc Meeting of CMDG Experts on Policies on Irregular Migrants, 30 November -1 December 2006, Strasbourg. CDMG (2006)68. Available at: www.coe.int/t/dg3/migration/Source/CDMG(2006)68%20report%20germany_en.doc, 18 September 2008.

Cyrus, N. & D. Vogel (2003). *EU and US Approaches to the Management of Immigration. Germany.* Brussels: Migration Policy Group. Available at: http://www.migpolgroup.com/multiattachments/2059/DocumentName/GermanyMigration.pdf , 18 September 2008.

Cyrus, N. &, Vogel, D. (2005). *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue. Germany.* Brussels: Migration Policy Group. Available at: http://www.migpolgroup.com/multiattachments/2971/DocumentName/EMD_Germany_2005.pdf, 18 September 2008.

Cyrus, N.(2008). Country Report Germany. Clandestino. Undocumented Migration: Counting the Uncountable. Data and Trends across Europe. Forthcoming at http://www.irregular-migration.hwwi.net

Deutscher Bundestag (2007): *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Petra Pau, Sevim Dagdelen, weiterer Abgeordneter und der Fraktion DIE LINKE*. Drucksache 16/6832, Drucksache 16/7089, 11 November 2007.

EMN (2008). *Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna)*, August 2008. In: G. Biffl & J. Bock Schappelwein, 'Zur Niederlassung von Ausländerinnen und Ausländern in Österreich', pp. 105-113. Vienna: Österreichischen Instituts für Wirtschaftsforschung.

Geyer, Florian (2007). *Germany's regularisation of November 2006: Committed to an EU immigration policy?* CEPS Commentary, 9 February 2007. Brussels: Centre for European Policy Studies. Available at: http://shop.ceps.eu/downfree.php?item_id=1461 , 9 July 2008.

Marx, Reinhard (2006): *Bleiberechtsbeschluss vom 17. November 2006*. Migrationsrecht.net. Available at: http://www.migrationsrecht.net/beitraege-zum-auslaenderrecht/737-bleiberechtsregelung-bleiberechtsbeschluss_2.html, 18 September 2008.

Migration und Bevölkerung (MuB) (2008a). *Deutschland: Neue Zahlen zum Bleiberecht*. Newsletter, Ausgabe 3, April 2008. Available at: http://www.migration-info.de/migration_und_bevoelkerung/artikel/080305.htm, 18 September 2008.

Migration und Bevölkerung (MuB) (2008b). Deutschland: Bilanz – ein Jahr Altfallregelung., Ausgabe 10, Dezember 2008, Available at. http://www.migration-info.de/migration_und_bevoelkerung/archiv/ausgaben/ausgabe0810.htm

Oezcan, V (2004). *Germany: Immigration in Transition*, Migration Information Source. Available at: http://www.migrationinformation.org/Profiles/display.cfm?ID=235, 13 March 2008

Schönwalder, K., D. Vogel & G. Sciortino (2006). *Migration and Illegality in Germany.* AKI Research Review 1. Available at: http://www.wzb.eu/ZKD/AKI/files/aki_research_review_1.pdf, 18 September 2008.

Schührer, Johanna (2007). *„Chancen nutzen - Aufenthalt sichern"? - Ein Bleiberecht für langjährig geduldete Menschen*. Diplomarbeit zur Erlangung des Grades einer Diplom-Sozialarbeiterin/Sozialpädagogin an der Fachhochschule für Sozialarbeit und Sozialpädagogik „Alice Salomon" – 28. Online at www.bleiberechtsbuero.de/wp-content/uploads/2008/03/diplom_bleiberecht_js.pdf *(*January 2009)

Sinn, A., A. Kreienbrink, H. D. von Loeffelholz & M. Wolf (BAMF) (2006) *Illegal aufhältige Drittstaatsangehörige in Deutschland. Staatliche Ansätze, Profil und soziale Situation.* Forschungsstudie 2005 im Rahmen des Europäischen Migrationsnetzwerks. Available at: http://www.bamf.de/cln_101/nn_442522/SharedDocs/Anlagen/DE/Migration/Publikationen/Forschung/Forschungsberichte/fb2-illegale-drittstaatsangehoerige,templateId=raw,property=publicationFile.pdf/fb2-illegale-drittstaatsangehoerige.pdf, 18 September 2008.

Zentrum für Politik, Kultur und Forschung Berlin e.V. (2008). *Expertise zur Umsetzung des IMK-Bleiberechtsbeschlusses vom 17. November 2006.* Berlin. Online at http://www.zpkf.de/pageID_5496764.html

8. Statistical Annex

Table 34: Residence permits issued on humanitarian grounds

	2005	2006	2007	First half 2008	Total
Residence Permits					
Hardship cases (Länder) §23a AufenthG	186	1.165	1.711	1.298	4.360
Deportation ban (§ 25 Abs.3 AufenthG)	1.998	5.512	9.395	7.823	24.728
Urgent personal or humanitarian grounds (§25 Abs.4 AufenthG)	1.492	4.079	7.227	4.308	17.106
legal or factual grounds (§25 Abs.5 AufenthG)	1.896	7.148	16.917	19.468	45.429
Probationary residence permits (§104a Abs.1 Satz 1 AufenthG)			8.604	13.394	21.998
Regulations for old cases ('Altfallregelung', §23 Abs.1 i.V.m. §104a Abs.1 Satz AufenthG)			1.513	244	1.757
Regulations for old cases / adult children of long term tolerated persons (§23 Abs.1 i.V.m. §104a Abs.2 Satz 2 AufenthG)			323	487	810
Regulations for old cases/ unaccompanied refugees (§23 Abs.1 i.V.m §104a Abs.2.Satz 1 AufenthG)			54	81	135
Integrated children of tolerated persons (§23 Abs.1 i.V.m §104b AufenthG)			45	66	111
Total Residence permits					**116.434**
Settelment Permits (Niederlassungserlaubnisse)					
Humanitarian grounds after 7 years of residence (§26 Abs.4 AufenthG)	18.237	17.759	22.397	13.948	**72.341**
Grand total (Residence + Settlement Permits)					**188.775**

Source: EMN 2008

20 Greece

Martin Baldwin-Edwards [1]

1. Introduction

For much of the twentieth century, with the exception of the Exchange of Populations with Turkey in 1922, Greece was a country of emigration. Mass emigration of Greeks in the 1950s and 1960s had left certain sectors of the Greek labour market short of workers, and Africans were employed as private servants, hotel workers and dockyard labourers alongside Turks in industry (Nikolinakos 1973). By the end of 1972, according to the Labour Secretary of the military government, the number of foreign workers in Greece amounted to 15,000-20,000, mostly Africans (Fakiolas & King 1996: 176). In the 1970s, the first non-European refugees started to arrive – some 3,000 from Lebanon, in 1976 – to be followed later by small numbers of Vietnamese boatpeople, and in the 1980s by asylum-seekers and refugees from across the Middle East (Papantoniou *et al.* 1996: 41). After 1985, large numbers of Poles and other East Europeans arrived. Greece at that time refused to allow recognised refugees and asylum-seekers the right to work, and they were temporarily housed in refugee camps and rented hotel rooms awaiting relocation to another country; however, the international climate for refugee relocation worsened, and the typical length of stay of the refugees increased from six to nine months to as much as five years (Papantoniou *et al.* 1996: 42). Most of the asylum-seekers and refugees worked in the large Greek informal economy, and played an important role in attracting yet more immigrants from Eastern Europe and the Middle East.

By 1986, the number of legal immigrants was estimated as 92,440, and by 1990 as 173,436 (Fakiolas & King 1996: 176); however, detailed residence permit data suggest a rather lower figure for 1990, of around 60,000. To these official data should be added the illegal and semi-legal[2] residents – estimated at 100,000 for 1990 (Baldwin-Edwards 2004a). Thus, the immigrant population by 1991 was of the order of two to three per cent of total population, although probably constituted a higher proportion of the labour force.

It was not until 1991 that the Greek state or Greek society showed any real interest in immigration policy, with the challenge to Greek border integrity by Albanians who were leaving the collapsed socialist regime of Enver Hoxha. A few tens of thousands crossed the mountainous border with Greece, and provoked a near-hysterical reaction in the mass media, with the rapid construction of a 'dangerous Albanian' stereotype (Karydis 1992). Hastily, a new immigration law was approved, to replace the outdated 1929 law. The new law made no practical provision for legal immigration, but instituted several new mechanisms of expulsion and deportation as well as implementing major parts of the Schengen Agreement (Baldwin-Edwards & Fakiolas 1998). Over the period 1991-2001, the Greek police expelled without legal

[1] I acknowledge with gratitude the detailed comments made on a previous version of this paper by Kat Christofer (journalist) and Miltos Pavlou (HLHR-KEMO Director).

[2] E.g. 'false tourists' who entered Greece legally, but worked illegally, and either left and returned every three months or paid a small penalty at the border for 'overstaying', when they eventually did leave.

process typically 150,000—250,000 persons per year, of which 75—80 per cent were Albanian (Baldwin-Edwards 2004b: 4).

Since the 1970s, small numbers of ethnic Greeks had been arriving from the Soviet Union; however, according to survey data, large inflows began in 1989 and peaked in 1993. Various laws were enacted to facilitate the arrival in Greece of 'repatriates' from the USSR, along with easy naturalisation: yet no reliable records of their arrival in Greece or of their receipt of Greek citizenship have apparently been kept. Ethnic Greeks from Albania, on the other hand, were not accorded any real privileges over the 1990s, were not described as 'repatriates' and effectively were indistinguishable from illegal migrants (Baldwin-Edwards 2004a: 3). Since 1998, a 'Special Identity Card for *Homogeneis'* has been issued to Albanian nationals claiming Greek ethnicity: the number of such permits awarded was concealed on the grounds of 'national security' by the Ministry of Public Order until summer 2006, when the Minister confirmed to a Parliamentary Committee that the previously-leaked figure of 200,000[3] was correct (*Athens News*, 4 August 2006).

1.1 The emergence of regularisation as a policy

In the early 1990s, despite the very large number (hundreds of thousands annually) of Albanians involved in illegal migration and subsequent (illegal) expulsions by the Greek state, along with the rapidly-growing xenophobia sponsored by the mass media, there was no attempt by the Greek state to improve on either its management of immigration or the collection of statistical data. This was primarily, it seems, because both state and society believed that the immigration of Albanians (and others) was a temporary phenomenon, and of little real interest to the country. The official position until the mid-1990s was "that Greece is not a country of immigration" (Glytsos 1995: 168). After several years of highly restrictive policy and typically circa 30,000 valid work permits and 80,000—90,000 residence permits, by 1994 government estimates of the stock of illegal migrants had reached 500,000—600,000 (Baldwin-Edwards & Fakiolas 1998: 188—191).

After protracted consideration in drafting two Presidential Decrees (P.D.s) on the legalisation of illegal immigrants, which had been criticised for lack of dialogue with immigrant associations in Greece, the process took a turn for the worse when the July 1997 cabinet meeting to approve the decrees decided at the very last minute to exclude nationals of Albania and other countries bordering Greece. This decision was subsequently rescinded by the Prime Minister, Costas Simitis, after uproar from the General Confederation of Greek Workers [Greece's largest trade union] and other influential pressure groups. The regularisation was not the result of popular movement or of planned policy, but represented an emergency measure or admission of policy failure. The policy of mass expulsions which had started with the repressive 1991 law had failed to prevent large-scale immigration; after a long period of political lethargy, a regularisation process proceeded in 1997 (Skordas 2000: 348-9).

[3] First published in Baldwin-Edwards (2004a: 3).

2. Greece's first regularisation programme of 1997

This first regularisation was based on Law 2434/1996 on policy for employment, whereby Art. 16 authorised the establishing of a committee to draft two presidential decree laws on regularisation of illegal immigrants. The first decree law was aimed at registering the immigrants, with a 'Provisonal Residence Card' (White Card); the second set out the conditions for issuing a 'Temporary Residence Card' (Green Card). Presidential Decree 358/1997 laid down the conditions for the White Card, but had no long-term objectives: it was simply a temporary registration of immigrants for the purposes of proceeding to the Green Card application (laid down in P.D. 359/1997). The legal viewpoint is that this was not two separate legalisations, but two steps of the same process. The reality is that these two steps seemed to operate independently of each other.

According to P.D. 358/1997, applicants must have failed to fulfil the conditions for entry, residence *and* employment and must have been on Greek territory on 28 Nov. 1997. A Labour Ministry circular of Jan. 1998 specified, contradicting the P.D., that illegality of either residence or work was sufficient. Law 2676/1999 subsequently replaced the former provisions of the P.D. and specified that both illegal residence and employment were required; this was countermanded, in turn, by Law 2713/1999 which determined that the procedures applied to those aliens who did not fulfil the conditions for any of the categories of entry, residence or employment (Skordas 2000: 353).

Thus, beneficiaries were irregular aliens resident on 28 Nov. 1997 who worked, or wished to work, for any employer or as self-employed. It excluded aliens legally resident, Albanian nationals with a Special Homogeneis Card, EU/EFTA nationals and their families, and foreign seamen. The administration of both procedures was handed to OAED, the parastate employment organisation under the umbrella of the Labour Ministry, which had a network of local offices that could accept applications.

2.1 The White Card

The application for a White Card had four substantive conditions:

(1) the applicant must not be suffering from a disease which endangers public health
(2) the applicant must not have been convicted by a judgement not subject to appeal for a crime or misdemeanour for a term of imprisonment of at least 3 months (excepting cases of illegal entry and employment in Greece)
(3) the applicant must not have been entered on the register of undesirable aliens
(4) the granting of the card must not be contrary to public interest or order.

Documents required were:

- Declaration of personal status
- Passport, ID card, etc
- Insurance booklet or certificate of application for such
- Employment contract

Non-submission of the above documents did not lead, however, to inadmissibility of the application (Skordas 2000: 357). In particular, an employment contract or employment history were not essential.

Also required (and mandatory) were:

- Certificate of health from a Greek state hospital
- Certificate of criminal record (Ministry of Justice)
- Certificate of non-entry on register of undesirable aliens (Ministry of Public Order)[4]
- Proof of length of stay in Greece (either by visa stamp or registration with a state organisation, for phone, electricity etc)

All had to be submitted by 1 June, 1998. In reality, owing to massive delays of the Greek bureaucracy, this date was extended several times, with the final date of 30 April 1999. In theory, the White Card was supposed to be merely a temporary record of the lodging of an application for legalisation: in practice, there were serious problems with the provision of official documents by the Greek bureaucracy. Thus, two certificates were established by circular: "White Card Certificate A" was issued when an application was lodged without all the supporting documentation. This proved also to be a bureaucratic problem, since the Ministry of Justice refused initially to issue a criminal record document to other than holders of Certificate A: thus, in one stroke, another ministry created yet another stage in the process that was not required by the law. This problem was resolved, but there were massive delays with the health certificate (with remarkable queues at public hospitals, which had been unprepared for the task), with the criminal record certificate (Ministry of Justice) and with the certificate of non-registration as an undesirable alien (Ministry of Public Order). 'White Card Certificate B' was issued to applicants who had submitted all documents. In theory, this certificate should not have been needed: the relevant circular stipulated that the White Card had to be delivered within five working days. In practice, regions with large numbers of immigrants were unable to even approach this timing, and the Certificate was essential.

The authorities chose to treat Certificates A and B as being synonymous with a White Card: thus, all three documents conferred on their holder, spouse and minor children the right not to be expelled over its duration (originally, expiring 31 Dec. 1998; later extended to 30 April 1999) and for the cardholder only, the right to work with equal treatment with Greek nationals in employment and social security terms. The White Card did not, according to the original law, confer the right to leave and

[4] This was later deemed a non-impediment when the entry was for reasons of illegal entry, residence or employment; in the interim, applications were put on hold.

return to Greece: this was subsequently provided by P.D. 241/1998 which allowed a total of 2 months absence over the duration of the card. Holding the card also meant that the children of immigrants could attend school – they had previously been forbidden under the draconian provisions of the 1991 immigration law. The card also protected immigrants from possible expulsion when dealing with various state authorities, such as schools and hospitals. Access to unemployment benefits was initially prohibited, but ultimately granted by a Labour Ministry circular of October 1998.

2.2 Implementation and outcomes of the White Card procedure

Initially, applications were slow in coming. In particular, the lack of information in any language other than Greek was a serious problem, along with a strike by the administrative body (OAED) in February 1998. By March, only 150,000 had applied (*Athens News*, 8/3/98). There were serious delays with the Justice Ministry, with a 7-month waiting period for the criminal record certificate, and also with hospitals, which excluded standard blood tests in order to cope with the workload of screening migrants for infectious diseases (*Athens News*, 15/3/97).

In the seven months after the end of the registration period, OAED concluded four analyses of the data, with progressively larger samples of 10,000, 26,396, 40,820 and 50,961 applications (Baldwin-Edwards & Fakiolas 1998). The total number of applicants was around 373,00. It was left to another agency – the National Labour Institute – to conduct a thorough analysis of the data, eventually published in March 2000. Table 35, below, shows applications by nationality and gender.

These were the first data on the characteristics of the irregular immigrant population of Greece, and showed the primacy of Albanian nationals along with nationals of Bulgaria and Romania. Most of the applicants were of younger working age (88% were aged 15—44), with an educational profile similar to the Greek population. The majority were married (51% of males and 60% of females) and of these, 45% had two or more dependants. Thus, including the dependants registered with the applications, the total number of persons regularised in this procedure came to 462,067 (Emmanouilidi 2003: 31). More than a third of the applicants did not state their profession; of those who did, the majority (56%) were unskilled manual workers. The regional distribution was concentrated in the Greater Athens area (44%), and also in Thessaloniki and Central Macedonia (Kanellopoulos *et al.* 2006: 28—9).

The total number of applicants was, therefore, 371,641 with 65% of Albanian nationality. The total number of persons covered by the White Card was 462,067 (including spouses and minors); the estimated number of irregular residents who did not apply is 150,000 (Bagavos & Papadopoulou 2002: 96). This would imply a total of irregular residents prior to the legalisation in excess of 600,000 persons (including children).

Table 35: Applications for White Card (1998 regularisation) by nationality and gender

	M+F	M	F
ALBANIA	241,561	195,262	41,025
BULGARIA	25,168	10,494	14,108
ROMANIA	16,954	11,444	5,137
PAKISTAN	10,933	10,432	51
UKRAINE	9,821	1,882	7,721
POLAND	8,631	4,764	3,718
GEORGIA	7,548	2,741	4,655
INDIA	6,405	6,068	103
EGYPT	6,231	5,704	347
PHILIPPINES	5,383	904	4,361
REP of MOLDOVA	4,396	1,138	3,160
SYRIA	3,434	3,148	158
RUSSIA	3,139	757	2,301
BANGLADESH	3,024	2,890	25
IRAQ	2,833	2,365	416
ARMENIA	2,734	1,354	1,304
YUGOSLAVIA	2,335	1,282	1,007
NIGERIA	1,746	1,357	350
ETHIOPIA	931	261	636
SRI LANKA	820	283	515
FYR of MACEDONIA	436	343	76
MOROCCO	408	263	138
GHANA	353	270	77
CHINA	326	218	100
KAZAKHSTAN	297	66	224
LEBANON	246	192	45
ALGERIA	230	210	14
SUDAN	210	182	25
TANZANIA	207	176	28
Others	4,901		
TOTAL	**371,641**		

SOURCE: Cavounidi & Hatjaki (2000)

2.3 The Green Card

The two basic requirements for applying for the Green Card were possession of a White Card (or satisfaction of its criteria) and a minimum income, measured as forty social insurance stamps for 40 days' work dated from 1 January 1998. Originally, the deadline was set at 30 July 1998 and later extended to 31 October. Subsequently, Law 2676/1999 made a distinction between the time during which the income should have been earned and the (revised) deadline for submitting the documents: the former was set at 31 December 1998 (28 February for domestic workers) and the latter at 30 April 1999 (Skordas 2000: 365).

It was initially decided that the Green Card would have only one certificate, since all the documents had to be submitted at the same time – unlike the case with White Card applications. In practice, the delays with the Ministry of Justice were so serious that Green Cards were eventually issued without the certificate of criminal record having been issued. Two Green Card certificates were provided: Certificate A recorded that the application had been made in good time, and missing documents were the fault of the state, while Certificate B recorded that all documents had been provided. Thus, the two Green Card certificates served identical functions to the White Card ones.

Green Cards were issued with a temporal limitation, ranging normally from 1—3 years.[5] Exceptionally, 5-year cards could be given to immigrants who, in addition to the normal criteria, could demonstrate that they had been living in Greece for five years or more and had sufficient financial resources for housing and living costs (Skordas 2000: 368). The cards could be extended for two years one or more times after initial grant. The award of Green Cards was made by regional committees at the level of prefecture, presided over by a judge of a court of first instance. According to one legal specialist, the legislation conferred on the applicant the *automatic right* to a Green Card if all conditions had been met, whilst allowing the regional committee to determine the temporal validity of the card. In practice, when committees decided that it was contrary to the interests of the national or local economy, they rejected applications. A further breach of law is noted, in that it was originally laid down by circular that unanimous voting was required within each committee, whereas majority voting is a legal norm for the administration. Of course, this regulation made decision-making slow and difficult (Skordas 2000: 373—5).

Finally, renewal of the Green Card was a matter of some importance, not least since the majority of Green Cards were issued for a duration of one year (later changed to two years for dependent employees and one year for agricultural workers and others). Whereas the law required the administration to grant initial Green Cards automatically upon satisfaction of the criteria, complete discretion was granted to the administration for renewals which could be refused for any reason. Amongst other impediments, the number of social insurance stamps required for renewals was increased to 200 days. Thus, although the temporal validity of renewed Green Cards was set at two years, the ease with which this could be achieved was in great doubt. This is attributed to the clear objective of refusing to all immigrants the right of permanent residence in Greece (Skordas 2000: 375).

[5] The majority of cards were issued with a validity of one year. There is no indication that anyone was ever given a card for three or five years.

2.4 Implementation and outcome of the Green Card procedure

In practice, the number of documents actually required for the Green Card was many more than originally stated. Many of these documents had actually been supplied for the White Card, and had to be re-acquired and resubmitted. They included:[6]

(a) A statement of facts of one's residence, certified by the police and with a photocopy of a rental contract

(b) A photocopy and translation of one's passport, certified by the police

(c) A statement of facts from the tax office that the applicant did not owe taxes

(d) An employment contract; for self-employed persons, registration for VAT and taxes and open status as self-employed

(e) Proof of social insurance – a booklet, printout of stamps paid, and a statement from the insurance agency that the holder was a current member

(f) A certificate of health, although not necessarily from a state hospital.

The deadline for submission of applications was moved forward three times – from July 1998, to Oct. 1998, to Dec. 1998 and finally to April 1999. These extensions were necessitated entirely through the inability of the Greek state to produce appropriate documentation as it had obligated itself to do. There were also massive delays with the local committees for evaluating applications, which moved very slowly and frequently interviewed applicants in person. As with the White Card, OAED did not compile adequate statistical data on the progress of the procedure, and confined itself to issuing occasional numbers of "total cards issued to date". There has never been any information provided concerning the duration of the cards issued, and no published information on the characteristics of the immigrants. Given the dearth of information, it has proven necessary to construct artificially a timeseries of how the process seems to have proceeded. Figure 5, below, is such a reconstruction made using the following data as basic building blocks. These data are:

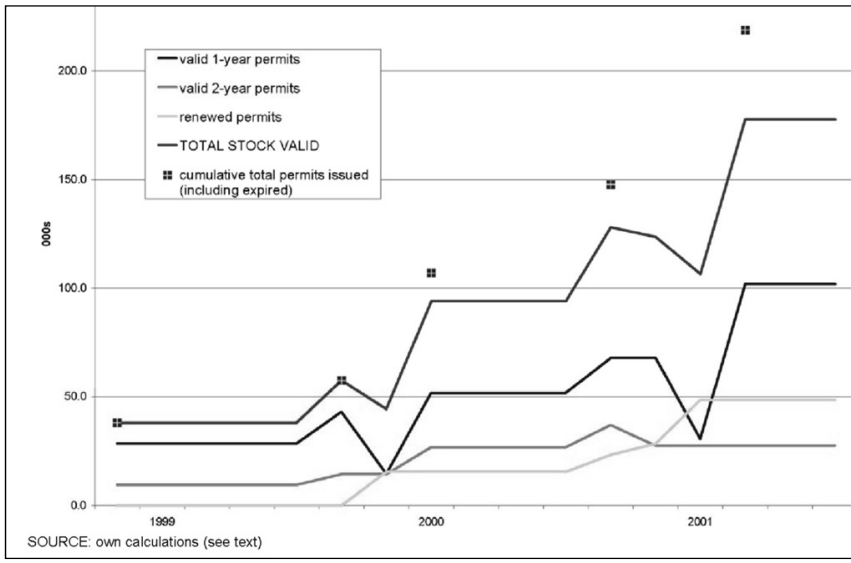
- Cumulative number of permits issued provided by press release for the dates: 12/98; 9/99; 2/2000; 9/2000; 4/2001
- An empirical estimation of 25% 2-year and 75% 1-year permits
- A press release figure of 54% total renewal rate

As can be seen from Figure 5, the rate of progress in awarding predominantly 1-year cards is far from impressive. One year after the original deadline of July 1998, the total stock of valid cards was less than 50,000 persons; two years after, it was under 100,000. It was not until March 2001 (2 years 8 months later) that the figure reached its maximum of 150,000 cards.

[6] I am indebted to Kat Christofer for these empirical details.

This is in the context of 373,000 persons who had applied for a White Card; we should also not forget the 47% of applicants for renewal who were refused, and therefore lapsed into illegality.

Figure 5: Estimated timeseries of valid Green Cards (1998 regularisation programme)



Although no data were ever published for Green Card awards, crude application data appear to have been compiled by OAED.[7] These are reproduced in Table 36, below. Apart from some minor exchange of order of nationalities (e.g., Pakistanis replace Romanians, in third place; Egyptians replace Georgians in seventh place) and a slightly reduced proportion of Albanians (down from 65%), the application characteristics of nationalities are very similar to those for the White Card. No data on employment characteristics – ostensibly, the reason for setting up regional committees for evaluation of the applications – have ever been provided and it is doubtful that they even exist.

Data on Green Cards provided for the REGINE project by the Interior Ministry differ from those of Table 36. The total number of applications is given as 228,200 and total number of cards issued as 219,000; there are no details or breakdown available for these figures.

[7] They appear uniquely in Emmanouilidi (2003: 31)

Table 36: Applications for a Green Card (1998 regularisation) by nationality

	M+F	%
ALBANIA	131,590	61.8
BULGARIA	16,412	7.7
PAKISTAN	9,089	4.3
ROMANIA	8,238	3.9
UKRAINE	5,896	2.8
POLAND	5,279	2.5
EGYPT	5,172	2.5
INDIA	4,385	2.1
GEORGIA	??	<1
PHILIPPINES	??	<1
REP of MOLDOVA	2,788	1.3
SYRIA	2,788	1.3
BANGLADESH	2,469	1.2
Others	18,753	8.8
TOTAL	**212,860**	**100.0**

SOURCE: Emmanoulidi (2003: 31)

2.5 Evaluation of the 1998 regularisation process (White and Green Cards)

Adequacy of policy planning

In principle, the idea of registering an illegal population by providing temporary protection from expulsion is a good one. However, the failure to build upon the short-term success of the White Card procedure is evident. An expectation existed in the mind of the Labour Ministry policy-makers that most holders of White Cards would proceed to the Green Card: that only 213.000 did so (57%) represents a real policy failure.

The actual policy objectives seem to have been confused from the very outset. This is evident from the contradictory positions concerning the criteria for eligibility of applicants: in the P.D. three conditions were stipulated (illegal entry, residence and employment), to be contradicted by ministry circular requiring only illegal residence or work, which itself was contradicted by a 1999 law, which was again contradicted by another 1999 law. Such policy equivocation is guaranteed to create confusion and bureaucratic problems. Its origin seems to lie in the Greek habit of preparing legal texts in a hasty manner, and relying upon ministerial circulars to smoothe over the many problems.

Bureaucratic adequacy

The lack of communication with other ministries, notably of Justice, Public Order and Health, created massive delays in both processes. Ultimately, the certificates required were largely irrelevant in the granting of cards, so these requirements can be seen as an unnecessary obstacle presented to applicants. The creation of multiple certificates of application for both cards reflects the complexity which had been created by the state's requirements not only of immigrants but also of itself.

The administration by OAED was far from satisfactory in purely practical terms, and certainly unacceptable in terms of the monitoring of policy outcomes (see below). In particular, the lack of information and application forms in any language other than Greek required newspapers, NGOs and others to fill the gaps left by the state and assist immigrants in the process. The legal profession also benefited massively from the approach taken by the policy-makers, along with some involvement of organised crime in various aspects of the process.

The completely unnecessary role invented for local commissions to evaluate Green Card applications is perhaps the most outstanding policy failure. Not only was much of their activity apparently unlawful,[8] but the idea of case-by-case examination of applications in a mass regularisation is completely misplaced. Its origin is clearly political, in appeasing local political interests that were anti-immigrant and advocated protection of local labour markets. Indeed, it was precisely those same political interests that had nearly scuppered the regularisation programme by excluding Albanians from its coverage. Thus, the slow progress made in handing out Green Cards is to a large extent attributable to this localised structure of Commissions.

Evaluation of policy outcomes

No mechanisms were established to evaluate policy outcomes. The statistical data presented by OAED were badly delayed and of very low quality: even the final data are small samples of the total datasets for White and Green Card applications. With Green Cards, no information has ever been provided concerning duration of cards, employment characteristics, regional location, etc. Given that these issues were supposedly paramount concerns in the framing of the legislation, the absence of indicators is remarkable. For the Green Card, contribution to a social insurance system was a requirement. It would therefore seem obvious that records are needed of the contribution of foreign workers to each social insurance scheme. The main social insurance agency for employees (IKA) did not even record nationality of its members until 2002, and certainly provided no data of relevance to this regularisation. The other agencies produced data on immigrant social insurance even more recently, and have yet to publish their data. Therefore, the impact of the regularisation on social insurance is unknown. A similar remark can be made about the taxation system, since the Greek state seems not to be interested in recording the nationality of its tax-payers.

Impact on the irregular immigrant population

The White Card registration can be considered a success of sorts, in that it did succeed in identifying the characteristics of much of the irregular population.[9] The Green Card, on the other hand, can only be described as a multiple policy failure. The philosophy of control and limitation of immigrants' rights led policy-makers to replicate the Ministry of Public Order's practice (which continued alongside the White and Green Cards) of giving out 1-year residence permits – even to immigrants with 20 years residence. The lack of an entitlement for renewal of Green Cards –

[8] See Skordas (2000) for a detailed legal analysis of the conduct of these regularisations.

[9] Clearly, the programme did not cover all irregular migrants in Greece, so there is some question of just how representative of that population sub-group the White Card data actually are.

denying immigrants clear information on how to remain legal – had its inevitable result of mass reversion to illegal status. Even before that, the number of valid Green Cards did not exceed 130,000 until 2001 – and that with an estimated irregular population of 500-600,000. The prospects of secure residence status were nil, leaving both legal and illegal immigrant populations in a condition of 'institutionalised precariousness' and, by all accounts, a determination to minimise their contact with the Greek state.

3. The 2001 Immigration Law 2910/2001

By the late 1990s, it was increasingly being recognised by the state that Greece needed an actual immigration policy, rather than the exclusionary provisions of the 1991 Law. After a long drafting process, a bill which supposedly remedied those defects was presented to Parliament. In fact, the draft law provided no realistic mode of legal entry to Greece, and replicated – albeit in slightly different ways – most of the defects of the 1991 Law.[10] Furthermore, it had in its original draft no provisions for legalisation: apparently, the Greek state believed that the 1998 Green Card process was a great success and required no repetition or amendment. Immediately the draft law was made public, there was a political outcry about no provision for legalisation, and the Minister was forced to make a last-minute amendment to create another 'Green Card'. This time, the Card was (like the White Card) valid for only 6 months, and had to be replaced with both a work permit and a residence permit under the new rules of the 2001 Law. Even this draft law was heavily criticised by human rights groups and academics,[11] although several improvements were made during its progress through committees. In particular, immigrants were no longer tied to a specific employer – as had been the case with the 1991 Law. However, the final version had no measures to deal with the extensive trafficking and forced prostitution of women and children which had escalated out of control during the 1990s; it had no realistic mechanism for labour recruitment; and did little other than transfer the competence for 1-year residence permits to local authorities, whilst continuing to require separate work permits of immigrants.

3.1 The 2001 regularisation procedure

The 2001 Law transferred competence for immigration policy away from the Ministry of Public Order (MPO) and to the Interior Ministry and the municipalities and region of Greece (although leaving the MPO with exclusive competence for asylum and illegal migration issues). The role for OAED that the Labour Ministry had carved out was implicitly revoked, and necessitated revocation of the two 1997 Presidential Decrees. Thus, OAED had to clear all pending Green Card applications. Those that had been repealed because their holders had been absent from Greece for more than two months were reissued; and those that were processed during a transitional period subsequent to the passing of the 2001 Law, were made equivalent to a work permit plus residence permit. Green Cards due for renewal before 31 Dec.

[10] see Baldwin-Edwards (2001); various Ombudsman's reports
[11] E.g. Skordas (2002); Sitaropoulos (2001)

2001 were automatically extended for 6 months, and those due for renewal before 2 June 2001 were extended to the end of that month (Emmanouilidi 2003: 51).[12]

The main regularisation programme (Art. 66(1)) consisted of four categories of application:

a. holders of expired White Cards, Green Cards or residence permits who had not submitted applications for renewal, or had a Green Card renewal application dismissed, and could prove that they had resided in Greece since its expiry;

b. all applicants for a Green Card who had appealed, provided that they withdraw their appeal to OAED;

c. all applicants for a 6-month Green Card on humanitarian grounds who had already applied to the Special Committee set up under P.D.;

d. anyone who had resided, legally or illegally, for one year immediately prior to the entry into force of the 2001 law.

For category (a), applicants had two months (June—July 2001) to submit the expired card, passport and any evidence of continuous stay in the previous year in Greece (either visa stamps or utility bills);[13] for category (d), a passport and evidence of continuous stay in the previous year; for category (b), they had two months to withdraw their appeal to OAED and apply through OAED for the new 6-month card; and for category (c), the provision was withdrawn but applicants should submit their application within two months to OAED which would forward it to the immigration service.

All applicants had to provide social insurance stamps amounting to 250 days work, which they could purchase at the usual employer's rates. After being granted such a card, an immigrant worker had then to apply for a work permit. For this, the following documentation was typically required (there were varying requirements, according to employment type):

(i) the 6-month residence permit (card)
(ii) a certificate of criminal record (from the Ministry of Justice)
(iii) a certificate of health (from a state hospital)
(iv) evidence of social insurance coverage and discharged debts for medical or other reasons
(v) employment contract[14]

[12] In practice, the lack of adequate communication between state bureaucracies meant that few offices knew of the extension and the burden of proof of the law was placed on individual immigrants.
[13] This is a statement of the 2001 Law. The practice was initially that rental contracts were demanded by the authorities as the only acceptable proof of residence; this was later modified to a 'solemn statement' [*dilosi*] notarised by the police, who often wanted to see utilities bills as proof.
[14] For housekeepers and others with multiple employers, letters "promising work for a certain period" were demanded: these were almost impossible to get Greek employers to provide.

A subsidiary regularisation procedure was provided in Article 67 of the Law. Under this provision, residence permit or Green Card holders who had resided for two years or more could apply for family reunification for his/her currently residing spouse and unmarried minor children. The provision for currently residing family members represented an effective legalisation of these, since the normal provisions of the new Law (Arts. 28—32) assumed their presence outside of Greece.

3.2 Implementation and outcomes of the 2001 regularisation

Applicants were required to apply first of all for a work permit at municipal offices, and with a receipt for this then apply for a residence permit. The local government offices had been totally unprepared for such an event, and the situation was even more chaotic than had been the earlier regularisations. Furthermore, the requirement of a formal employment contract was inconsistent with the large informal economy, and immigrants' employment within it: many employers simply refused to provide contracts and gave their employees the choice of being dismissed or continuing with illegal employment.

The only available official data consisted of an announcement by the Ministry of the Interior stating that 351,110 migrants had applied for residence and work permits, of whom half were located in the Athens Metropolitan Area. The Interior Minister, Kostas Skandalidis, announced in February 2003[15] that by June some 450,000 new residence permits would have been issued along with another 200,000 by the end of the year. However, the Ministry continued to be unable to provide data, as their information collection database was still under construction. Various press reports[16] claimed that only 35,000 residence permits had been issued for all of Greece, and in Attica only 37,000 out of 180,000 immigrants had actually applied to renew their permits with the deadline expiring on June 30, 2003. As of November 2003, the extended deadline for all permit applications had expired and the expulsion of 'illegal immigrants' resumed, although less visibly than in the early 1990s. For those who had already received permits, the validity of the supposedly 6-month permits was extended four times – from the original expiry date of February 2002, to May 2002, Dec. 2002, July 2003, and finally July 2004.[17]

The Ministry of Labour, and the various prefectures responsible for work permits, were also unable to provide data. Press reports stated that only 30% of potential applicants had applied to renew their work permits: the actual numbers of applications and the numbers of permits given were not available. Throughout 2003, and continuing into 2004, the prefectures were demanding, variously, 150, 180 or 300 days of social insurance for renewal of work permits. (300 days represents full-time employment with statutory holidays and a 6-day week.) The requirement, originating from Ministry of Labour circulars, had no basis in law and was condemned by the Ombudsman and by the Ministry of the Interior.

[15] *Athens News*, 6 June 2003
[16] *Ta Nea*, 12 June 2003; *Athens News*, 20 June 2003
[17] Chaos surrounded these frequent extensions, with poor state inter-agency communication leaving immigrants effectively in limbo or even reverting to irregular status.

No data were ever provided on the results of the regularisation procedures, other than a total figure of 367,504 applicants and 341,278 grants of permits (an acceptance rate of 92.9%). For category (b) applicants, a figure of 3,100 has been stated;[18] for Article 67 beneficiaries of family members' regularisation, the Ministry's database in September 2004 provided a figure of 20,344 beneficiaries of which 70% were Albanian nationals and 61% of the total were male.[19]

3.3 Evaluation of the 2001 regularisation process

Adequacy of policy planning

The lack of planning of any sort is clear from the context of how this regularisation programme emerged – as a political response to public pressure. The regularisation provisions of the draft law were prepared within five working days. In fact, the main policy intent of the new Law was simply to substitute the Ministry of Interior for the Ministry of Public Order in the provision of residence permits: no thought was given to the existence of Green Cards, the role of the Labour Ministry, the absurdity of two entirely separate systems of Green Cards and residence/work permits. Nor was any thought given to why separate work and residence permit schemes were necessary or desirable: the Law simply continued the status quo with small modifications.

Of the actual regularisation articles (66—67), there does seem to be a clear recognition of problems with renewal of permits, and in particular with the renewal procedures of the Green Card. There is also the very positive recognition of the need for family member regularisation, and relatively flexible procedure for such. On the debit side, there is the insistence that immigrants had to pay social insurance contributions of 250 days (this is the employer's responsibility, in the case of employees), the continued requirement for immigrants themselves to get certificates from the Justice Ministry, and the requirement of a formal employment contract. Since immigrants are known to work predominantly in the Greek informal economy, without accompanying strong measures to deal with employers, this represented merely yet another bureaucratic hurdle. Finally, we can note that the additional burden of requiring immigrants to take a separate work permit was unnecessarily burdensome for both the state and applicants.

Bureaucratic adequacy

All the evidence available points to massive bureaucratic failure in this programme. The number of applicants was large (larger than for Green Cards) and the administration needed to deliver this service was simply not available. This applies to staffing levels, training of personnel, computerised services, even to equipment and infrastructure of new buildings allocated for the purpose. Effectively, there was a chaotic overburdening of the state offices over a period of three years or so – leading to repeated automatic extensions of permit validities. Thus, 6-month permits ultimately were valid for three years.

[18] Emmanouilidi (2003: 51)

[19] own calculations from statistical datasets compiled in the course of preparing a report for the Interior Ministry (Baldwin-Edwards, 2004)

The strain on state hospitals for the provision of medical certificates was such that most simply refused to give appointments to migrants in less than a few months – despite the urgency of acquiring such certificates. It might also be recalled that as medical certificates had already been provided for the White Card and Green Card, those applicants who had held such cards could have been exempted from the requirement.

Evaluation of policy outcomes

There has been no evaluation of policy outcomes. No usable data pertaining to the programme have ever been provided by the Ministry of the Interior, or by the Labour Ministry. In particular, the question of which categories (and which nationalities) had significant application numbers is a matter of great importance. The number of applicants with expired Green Cards is of relevance, indicating lapse back into illegality; the number of applicants with merely White Cards is also of interest. Furthermore, the number of recent illegal migrants (category d) is of great importance for immigration policy management: none of this information is available. The lack of data reflects the lack of organization and long-term planning, and reproduces or aggravates the systemic problems of migration management.

In terms of impact on social security and taxes, the only information available is from the employees social insurance scheme – IKA. Data for 2003 show a total of 346,000 non-Greek workers (including EU/EFTA nationals), representing a small increase in 2003 over 2002. Regrettably, no data exist for 2001 so the impact on the insurance scheme is unknown. The other social insurance schemes (OGA and TEBE), along with the tax system, can provide no data at all on immigrant participation for the relevant years.

Impact on the irregular immigrant population

The effect on immigrants themselves was not very positive, in the sense that the programme consisted of excessive bureaucratic requirements allied with financial obligations to the Greek state (for example, the residence permit application fee was 150 Euros per year of validity; the social insurance costs were around 1,500 Euros). A parliamentary amendment of 2003 "allowed" immigrants to pay the social insurance debts of their employers, in order to renew permits: this transfer of legal obligation from (Greek) employers to (foreign) workers affected only third country nationals and represented direct discrimination. Other bureaucratic obligations (with financial implications) consisted of the need for translation of passports for nationals of those countries who had not signed the Hague Convention – with costly and inefficient verification made by the Greek Foreign Ministry (Fakiolas 2003: 1294). If the result of these efforts were to be secure legal status, doubtless most immigrants would suffer quietly. In fact, institutionalised precariousness continued, with the majority of immigrants in Greece left in limbo – between applications, without social insurance, with expired permits, or permit application receipts (which merely protect against deportation). Certainly, the 2001 regularisation achieved little in managing Greece's irregular immigrant population.

4. The 2005 Immigration Law 3386/2005

This immigration law had its origins in a change of government, which in its early days promised great reforms and repudiations of the various reputed ills of the previous PASOK administrations. One of the significant innovations of this law was to abolish the dual system of residence and work permits, substituting it with one procedure and a residence permit which embodied a specific authorisation for employment.[20]

From the viewpoint of managing irregular TCN residents, two articles stand out: Article 44, for the issue of residence permits on humanitarian grounds; and Article 91 – an article purporting to deal with "transitional provisions", but also including two major regularisation programmes. The transitional provisions proper include continuation of the operation of Law 2910/2001 for renewal of residence permits expiring after 1 Jan. 2006; automatic extension of residence permits which had already been extended (by Law 3242/2004) to 30 June 2004, along with permits that had expired before that date, to 31 December 2005; and a pot-pourri of various provisions relating to ethnic Greeks, Greeks living abroad, diplomatic delegations etc.

The two paragraphs dealing with regularisation (all of these provisions within Article 91) are located in paragraphs 10 and 11. Para. 10 deals with expired permits, and para. 11 with irregular residents who have never applied for a permit.

Regularisation of expired permit-holders (Para. 10, Art. 91)

Holders of expired permits, along with those whose permits had been automatically extended to 31 Dec. 2005, were required to apply at their local prefecture for a work permit before 31 Oct. 2005. They were also required to produce 150 social insurance stamps for each of the periods 1 July 2004—30 June 2005 and 1 July 2003—30 June 2004. If their employer had not paid those, they were "allowed" to purchase them with a document provided by their prefecture stating that they were renewing work permits.[21] Within one month of being granted a work permit, the migrant had then to make an application for a residence permit. The permit would be awarded for the same duration as the work permit, and applicants had to pay a so-called "deposit" of €147 for each year of validity of the residence permit – thus continuing the rates set by the 2001 Law.[22]

[20] This came about after years of campaigning by the Ombudsman, HLHR (in its *National Migration Dialogues:* see http://www.hlhr.gr) and the Mediterranean Migration Observatory (e.g. Baldwin-Edwards, 2001; press reports in *Avgi*, 11/3/2001, p. 7; *Kathimerini* (English), 23/2/2001, p. 2; *Eleftherotypia*, 17/2/2003, p. 48).

[21] As happened with both applications and renewals under the 2001 Law, this represented a discriminatory transfer of legal and fiscal responsibility away from the employer and onto immigrant workers. The cost of 300 insurance stamps was around €2,000.

[22] These rates have been continued until now; the application fee (non-refundable) for the new EU long-term permit has been set at €900.

Regularisation of irregular residents who had never held a permit[23] *(Para. 11, Art. 91)*

Irregularly residing third country nationals who were not considered to be "dangerous for public order and security" could apply to their local municipality for a 1-year combined residence and work permit covering the applicant and his/her family.[24] The applicant had to have been resident in Greece on or before 31 Dec. 2004, and able to prove this with any of the following:

- Visa stamp in a passport
- Application for a residence permit
- Provision of a VAT number[25]
- Certificate of a social security institution[26]
- Rejection of an application for asylum (date of rejection before 31/12/04)

The applicant was also required to provide all of the following:

i. Statement of occupation, reason for residence in Greece, family members residing, declaration of not having committed any crime

ii. Passport, travel document, or asylum rejection

iii. Confirmation of payment of the "deposit" for an application

iv. Health certificate from a public hospital

v. Certificate of payment of social security contributions for 150 days work

vi. Proof of submission of application for membership of a social insurance scheme

vii. Certificate of family status, concerning minor children

Registration in the list of undesirable persons held by the Ministry of Public Order was irrelevant if recorded for reasons of illegal entry, exit, employment or residence; the submission of a criminal record certificate (from the Ministry of Justice) was required only for subsequent renewal of the permit.

[23] As was later clarified by Circular 30/2005, those TCNs whose applications for renewal of a permit had been rejected, or those whose permits had been revoked, were required to apply as if they had never held a permit. Ironically, since it required only 150 insurance stamps, this legalisation route was cheaper.

[24] No deadline for the receipt of applications is specified in the Law, but is understood to have been 30 Dec. 2005.

[25] TCNs are not normally allowed to apply for VAT registration or a tax ID without holding a permit.

[26] Without being registered for tax, TCNS are not allowed to register for social insurance with IKA (private sector employees). Therefore, a VAT number or social insurance registration implies that the migrant had a residence permit at one point (in contrast to the stated objective of this legalisation provision).

4.1 Implementation and outcomes of the two regularisation programmes

The problems associated with all three previous programmes manifested themselves in the two concurrent programmes. Thus, as the first deadline of 31 October loomed, very few migrants with expired (or about-to-expire) permits had applied: staff at the social insurance organisations had not been properly informed and were refusing permission to purchase insurance stamps. This problem was not resolved until late September, forcing the ministry to extend the deadline to 30 December (as for para. 11 applications).[27] The para. 11 process was not faring any better, with public hospitals unable to give outpatient appointments until well into 2006[28] and applications could not be submitted without the health certificate. In addition, the para. 11 applicants had to buy social insurance stamps, like those applying under para. 10.

In late October, the Ministry was still revising and refining the rules (Circular 30) to the anger of the immigrant community, and on December 10th a protest rally was held. The migrant communities, along with trade unions and political activist groups, demanded a reduction in the number of social insurance stamps required, an extension of the deadline, and a more flexible interpretation of the conditions laid down in the Law.[29] The joint deadline was extended to 28 Feb. 2006, and to some extent some of the conditions (but not the number of stamps) were relaxed. By January, the Deputy Ombudsman had written to the Minister of the Interior to suggest that the low turnout for both programmes necessitated a change in policy; specifically, he suggested that the limited number of documents proving residence in Greece prior to 31/12/04 should be enlarged; that those with expired permits should be allowed to apply under para. 11 (thus paying less social insurance); that certain categories of migrants be exempted from fees and social insurance payments – notably, teenagers reaching majority and needing their own permit, spouses of EU nationals, and spouses of long-term immigrants; and that Albanians of Greek descent be exempted from insurance and application fees (even though they should be eligible for a Special Homogeneis Card or Greek citizenship).[30]

Ultimately, the joint deadline was extended yet again – to 30 April 2006.[31]Thus, for the para. 10 procedure it had been postponed three times, and twice for para. 11 applications. The General Secretary of the Ministry expressed complete satisfaction with the estimated number of 100,000 applicants, and openly criticised the regularisation procedure in Spain as a model, stating that such an approach would be "…creating more problems. We would see an increase in unemployment."[32]

Despite the existence of an electronic database for registering residence permit awards, the Ministry was (and remains) unable to provide basic statistical data on the number of applications under the para. 10 procedure. Such awards were

[27] *Athens News*, 4/11/2005: "All undocumented migrants now have until year's end to legalise their status"
[28] *Athens News*, 21/10/2005: "Health papers too hard to get"
[29] *Athens News*, 9/12/2005: "Rally against migrant law"
[30] *Athens News*, 27/1/2006: "Deputy ombudsman critical of migrant legalisation"
[31] *Athens News*, 3/3/2006: "Another new migrant legalisation deadline"
[32] *Athens News*, 10/2/2006: "We cannot legalise them all" [interview with Interior Ministry General Secretary Athanassios Vezyrgiannis]

apparently not recorded as regularisation and are estimated at 90,000. Applications made on the basis of para. 11 were recorded as 96,400 with the final number of permits awarded as 95,800 – a rate of 99.4%. Table 37, overleaf, gives a detailed breakdown of permits awarded on the basis of para. 11. The predominant nationality of immigrants in Greece – Albanians – is present in a much lower proportion than all previous regularisations and also in permit data: typically at around 60—70%, for this programme they were only 37%, with roughly twice as many male as female applications. The overall ranking of nationalities is roughly as observed in previous data, with the exception of an increased (but still small) presence of Chinese and Nigerians. Bangladeshi and Indians are under-represented, in this regularisation.

Some 13,000 permits went to children under 16 – presumably, as family members – with high proportions of female children in the cases of Bangladesh, Syria, Egypt, Pakistan and Iraq, and high proportions of male children in the cases of the Philippines. However, these high proportions merely reflect the absence in Greece of a female parent (in the first case) and of a male parent for Philippino children. For some nationalities (Bulgarian, Romanian, Chinese, Russian, Albanian), there are rather high proportions (18—27%) of persons with "unknown" ages: the reason for this is not known but raises questions of accuracy of data.

4.2 Evaluation of the 2005 regularisation programmes

Adequacy of policy planning

The two programmes were better-planned than previous legalisations in Greece, with a clearer strategy of streamlining the residence and work permit application procedure. The para. 10 programme replicated provisions of the 2001 Law – in particular, requiring immigrants to renew work permits and pay for any missing social insurance contributions. In the case of employees, the direct discrimination against TCNs resulting from this obligation appears not to have troubled policy-makers; nor was there any serious attempt to regulate the illegal activities of Greek employers, who were (and remain) in continuous and obvious breach of both labour and immigration laws. In the case of para. 11 procedures, many of the mistakes made in 1998 and 2001 were repeated – in particular, a failure to appreciate the incapacity of the public health system to cope with examining tens of thousands of additional patients in a very short period of time. The time-frame set was completely unrealistic, and this should have been clear from previous programmes. The strict requirements for proof of residence (i.e. only state documents were accepted) were presumably a precaution against fraud: given the massive corruption evident in the public sector, it has to be questioned whether this is a reasonable and proportionate safeguard. As with para. 10 applicants, the emphasis placed on social insurance contributions as a mechanism for managing informal employment was at best naïve, at worst a cynical money-making exercise. With both programmes, the state replicated what had become a characteristic of migration management in Greece – namely, extreme requirements for legal employment in the first instance, followed by costly regularisation with a very short-term card or permit, followed yet again by onerous demands for permit renewal. The obvious result of such policy is to impel all immigrant workers into intermittent irregular status, since legal routes are over-

priced. There is no reliable information or research on immigrant earnings,[33] therefore no logical basis on which the state could assess immigrant capacity to pay social insurance (regardless of the discriminatory aspect of such policy). Equally, the applications fees (or "deposits") for residence permits cannot be justified at €147 per year, making them amongst the highest in Europe.

Bureaucratic adequacy

Although the number of applicants was much lower than in the three previous regularisations, the bureaucracy was still unable to cope well with the processes. This is partly because of the involvement of social insurance agencies, partly because of the continued reliance on over a thousand municipal authorities to accept and process applications, with very little training in many cases. We might also note the highly adverse effect of unclear specification in much of the Law, leaving the details to be clarified by circulars written well after the start of the regularisation programes. Within a tight timeframe, this is clearly an inadequate approach to management. Thus, the repeated extensions of the programme deadlines indicate serious problems of bureaucracy – even if these were not located within the Ministry itself.

Evaluation of policy outcomes

As with previous programmes, there was no evaluation of policy outcomes. Indeed, there is no possibility of drawing even rough conclusions, since the numbers and characteristics of applicants under para. 10 were not recorded for statistical purposes. Presumably, there was no perceived need to evaluate policy, because senior Ministry officials were very clearly satisfied with their own policy. In the case of para. 11 applications, there are data giving some indications of migrant characteristics: however, in this case, the quality of data is insufficient for policy evaluation. For example, rejected asylum-seekers, "abrogated" case asylum applicants, and persons who retracted their asylum applications were all allowed to apply (if they could satisfy the residence date requirement): this variable of former status is not recorded in the dataset. It would also be valuable to know how many former permit holders applied under para. 11: this information is not available. Nor is there any information available on the small proportion of persons whose applications were rejected. Although there is now the possibility of examining the records of the major social security funds, neither the Ministry of Labour nor the Interior Ministry has attempted to carry out impact analyses of the programmes. Access to microdata by independent researchers is prohibited, therefore only the State can undertake such analyses. Since a fundamental sticking point (in both fiscal and bureaucratic terms) in the award and retention of residence permits is the payment of social insurance, it might seem rather strange that there is no research on the matter.

[33] There is some limited research on the household incomes of certain immigrant groups – mainly Albanians.

Table 37: Grants of legal status under Para. 11. Art. 91, Law 3386/2005

	SEX	AGE															
	Male						**M Total**	**Female**						**F Total**	M/F ratio	Country Total	% of Grand Total
NATIONALITY	**0-15**	**16-25**	**26-45**	**46-65**	**66+**	**unknown**		**0-15**	**16-25**	**26-45**	**46-65**	**66+**	**unknown**				
ALBANIA	4.000	7.353	5.789	1.141	46	4.509	22.838	3.670	2.831	3.233	679	44	1.795	12.252	1,9	**35.090**	*36,6%*
	17,5%	*32,2%*	*25,3%*	*5,0%*	*0,2%*	*19,7%*		*30,0%*	*23,1%*	*26,4%*	*5,5%*	*0,4%*	*14,7%*				
BULGARIA	377	577	940	301	3	857	3.055	349	644	1.871	1.492	16	1.500	5.872	0,5	**8.927**	*9,3%*
	12,3%	*18,9%*	*30,8%*	*9,9%*	*0,1%*	*28,1%*		*5,9%*	*11,0%*	*31,9%*	*25,4%*	*0,3%*	*25,5%*				
ROMANIA	521	820	1.238	158		636	3.373	441	892	1.523	222	3	801	3.882	0,9	**7.255**	*7,6%*
	15,4%	*24,3%*	*36,7%*	*4,7%*	*0,0%*	*18,9%*		*11,4%*	*23,0%*	*39,2%*	*5,7%*	*0,1%*	*20,6%*				
PAKISTAN	48	1.678	4.223	229	1	330	6.509	19	11	15			2	47	138,5	**6.556**	*6,8%*
	0,7%	*25,8%*	*64,9%*	*3,5%*	*0,0%*	*5,1%*		*40,4%*	*23,4%*	*31,9%*	*0,0%*	*0,0%*	*4,3%*				
GEORGIA	136	442	950	250	3	179	1.960	97	382	1.698	885	16	320	3.398	0,6	**5.358**	*5,6%*
	6,9%	*22,6%*	*48,5%*	*12,8%*	*0,2%*	*9,1%*		*2,9%*	*11,2%*	*50,0%*	*26,0%*	*0,5%*	*9,4%*				
EGYPT	156	961	3.121	155	1	300	4.694	135	64	99	14	1	4	317	14,8	**5.011**	*5,2%*
	3,3%	*20,5%*	*66,5%*	*3,3%*	*0,0%*	*6,4%*		*42,6%*	*20,2%*	*31,2%*	*4,4%*	*0,3%*	*1,3%*				
UKRAINE	182	205	347	121		91	946	213	286	924	873	18	417	2.731	0,3	**3.677**	*3,8%*
	19,2%	*21,7%*	*36,7%*	*12,8%*	*0,0%*	*9,6%*		*7,8%*	*10,5%*	*33,8%*	*32,0%*	*0,7%*	*15,3%*				
CHINA	63	407	1.102	87	1	380	2.040	61	210	620	48		217	1.156	1,8	**3.196**	*3,3%*
	3,1%	*20,0%*	*54,0%*	*4,3%*	*0,0%*	*18,6%*		*5,3%*	*18,2%*	*53,6%*	*4,2%*	*0,0%*	*18,8%*				
RUSSIA	73	108	178	59	1	104	523	89	313	1.066	624	13	495	2.600	0,2	**3.123**	*3,3%*
	14,0%	*20,7%*	*34,0%*	*11,3%*	*0,2%*	*19,9%*		*3,4%*	*12,0%*	*41,0%*	*24,0%*	*0,5%*	*19,0%*				
SYRIA	191	348	982	21		64	1.606	172	88	108	6		1	375	4,3	**1.981**	*2,1%*
	11,9%	*21,7%*	*61,1%*	*1,3%*	*0,0%*	*4,0%*		*45,9%*	*23,5%*	*28,8%*	*1,6%*	*0,0%*	*0,3%*				
REP. OF MOLDOVA	170	323	271	44		54	862	197	261	377	107	2	112	1.056	0,8	**1.918**	*2,0%*
	19,7%	*37,5%*	*31,4%*	*5,1%*	*0,0%*	*6,3%*		*18,7%*	*24,7%*	*35,7%*	*10,1%*	*0,2%*	*10,6%*				
NIGERIA	88	142	885	18		72	1.205	79	181	395	5		15	675	1,8	**1.880**	*2,0%*
	7,3%	*11,8%*	*73,4%*	*1,5%*	*0,0%*	*6,0%*		*11,7%*	*26,8%*	*58,5%*	*0,7%*	*0,0%*	*2,2%*				
INDIA	35	358	999	86	1	147	1.626	21	12	34	7	1	6	81	20,1	**1.707**	*1,8%*
	2,2%	*22,0%*	*61,4%*	*5,3%*	*0,1%*	*9,0%*		*25,9%*	*14,8%*	*42,0%*	*8,6%*	*1,2%*	*7,4%*				
BANGLADESH	35	297	1.126	22	1	43	1.524	23	4	23			1	51	29,9	**1.575**	*1,6%*
	2,3%	*19,5%*	*73,9%*	*1,4%*	*0,1%*	*2,8%*		*45,1%*	*7,8%*	*45,1%*	*0,0%*	*0,0%*	*2,0%*				
IRAQ	81	266	807	28	1	38	1.221	82	37	87	9			215	5,7	**1.436**	*1,5%*
	6,6%	*21,8%*	*66,1%*	*2,3%*	*0,1%*	*3,1%*		*38,1%*	*17,2%*	*40,5%*	*4,2%*	*0,0%*	*0,0%*				
PHILIPPINES	124	48	223	26	1	8	430	93	78	376	63	1	11	622	0,7	**1.052**	*1,1%*
	28,8%	*11,2%*	*51,9%*	*6,0%*	*0,2%*	*1,9%*		*15,0%*	*12,5%*	*60,5%*	*10,1%*	*0,2%*	*1,8%*				
Others	274	632	1.940	192	13	303	3.354	237	368	1.282	432	12	387	2.718	1,2	**6.072**	*6,3%*
	8,2%	*18,8%*	*57,8%*	*5,7%*	*0,4%*	*9,0%*		*8,7%*	*13,5%*	*47,2%*	*15,9%*	*0,4%*	*14,2%*				
GRAND TOTAL	6.554	14.965	25.121	2.938	73	8.115	57.766	5.978	6.662	13.731	5.466	127	6.084	38.048	1,5	**95.814**	*100,0%*
	11,3%	*25,9%*	*43,5%*	*5,1%*	*0,1%*	*14,0%*		*15,7%*	*17,5%*	*36,1%*	*14,4%*	*0,3%*	*16,0%*				

Source: Ministry of Interior

Impact on the irregular immigrant population

It is not possible to evaluate the impact of these two programmes without better quality data. The addition of 96,000 residence permits (presumably, but not necessarily, mostly first-time applicants) may reflect the extent of irregular immigration since the previous regularisation cut-off date. Or it may not. The provision of an estimated 90,000 permits to those with expired permits may have been sufficient to cover the number of such persons: evidence from immigrant organisations suggests the contrary, but this is not supported by hard data. Throughout 2004—5, the total number of valid permits rose consistently from 451,000 in January 2004 up to 566,000 in July 2005; by January 2006, it had reached 587,000.[34] It seems probable that this number of valid permits, plus the additional ones processed in the programmes, covers the vast majority of the population requiring TCN permits. However, the situation is further complicated by the revocation of ethnic Greek permits (Special Homogeneis Cards) from an unspecified number of Albanian nationals, out of a total of more than 200,000 with such cards. Again, the lack of data and information makes analysis impossible: informed speculation is all that is available.

5. The 2007 Special Regulation of Migration Policy Issues, Law 3536/2007

With the ending of the 2005 regularisation programmes, the Government was under increasing pressure to open another programme to address the allegedly large number of TCN residents[35] who remained outside of legality. The decision to re-open a modified regularisation programme (repeating the para. 11 procedure) was announced by the Minister in October 2006[36] and promulgated as law in February 2007. Article 18 of Law 3536/2007 contains several modifications of relevance: para. 1 extends the possibility to apply for an 'indefinite residence permit'[37] (normally given after 10 years of legal residence) to family members over the age of 21, provided that they also satisfy the conditions. Para. 3 rescinds the requirement of a criminal record certificate for renewal of residence permits. Para. 4 repeats the general conditions of the para. 11 regularisation procedure of 2005, with some additional documentary proof of residence. These are:

- Registration of the applicant, or of the applicant's child who is still at school, in a state primary or secondary school; registration must have been before 31 Dec. 2004.
- A birth registration made prior to 31 Dec. 2004, provided that one spouse was legally resident.
- Rejection of a renewal or application for a residence permit (provided that the rejection was not on the grounds of public order) if the application was filed before 31 Dec. 2004.

[34] Personal communication of the Ministry summary dataset, calculated at 6-monthly intervals, provided to the author in the course of another research project

[35] They were estimated at several hundreds of thousands, by GSEE (Greece's largest trade union)

[36] *Athens News*, 13/10/2006: "One more amnesty"

[37] As distinct from the EU long-term residence permit

- Rejection of an application for a Special Homogeneis Card (for ethnic Greek Albanians), if the application was filed before 31 Dec. 2004; or an unrenewed Special Homogeneis Card that had expired before 31 Dec. 2004.

The applications had to be submitted by 30 Sept. 2007, along with payment of 150 days of social insurance and the application fee. Para. 5 permits migrants to buy social insurance for the purpose of renewing their residence permits, requiring them to submit a certificate of such by 30 Sept. 2007. Para. 6 states that residence permits that had expired after 1 Jan. 2006 and application for whose renewal had been rejected as out of time, would be re-examined subject to a fine of €50 per month of delay.

5.1 Implementation and outcomes of the 2007 regularisation

Although the Law was passed in February 2007, throughout February, March, April and May the social insurance agencies refused to allow immigrants to purchase social insurance stamps on the grounds that they had not been informed of the Law.[38] This occurred despite the fact that such social insurance purchases were demanded for both first-time applications and renewals. By June, the Minister was stating an intent to regularise some 70,000 persons by year's end: it is unclear where this figure came from, but it could not have been from actual application numbers which were very low. Several months later, it was reported that municipal offices had been instructed to allow incomplete and clearly inelegible applications for regularisation – provided that the €150 application fee was included. Thus, over August—September 2007, the Athens municipality collected over two million euros in fees from 16,402 applicants; interestingly, the director of the Athens municipality application centre chose to blame immigrants "who insist on their right to apply".[39]
The actual number of applications has not been revealed by the Ministry. The total number of permits granted came ultimately to just under 20,000 – rather less than the Minister's stated objective. Table 38, overleaf, gives data by significant nationalities, broken down by age group and gender. It is actually instructive to compare these data with the results from the 2005 regularisation, as given in Table 37. There are many important differences: (1) The nationalities concerned. Whereas in 2005, Albanians constituted only 37% of granted regularised permits, here they are 84%. Bulgarians and Romanians are absent here, because of their accession as EU nationals. Pakistanis (who should be second after Albanians) are much lower at ninth place, while Moldovans and Russians are more prominent. (2) Gender balance. In total, far more males than females were legalised in this process (2.1:1 compared with 1.5:1 in 2005). In particular, the gender balance shifted to males for two high-ranking nationalities in the 2007 process – Egyptians and Indians. (3) Age. This is difficult to compare because of problems in the 2005 data. However, it looks as if this process included far fewer children (0—15) than were in the 2005 regularisation. For 2007, children are recorded as only 4% of male and 6% of female totals (compared with 11% and 16% in 2005). The higher figures in 2007 are for the age bracket 16—26, possibly those who had been able to provide evidence of school attendance prior to 31 Dec. 2004

[38] *Athens News*, 1/6/2007: "Legalisation finally underway"
[39] *Athens News*, 28/9/2006: "Migrants apply despite ineligibility"

Table 38: Grants of legal status under Para. 4. Art. 18, Law 3536/2007

	SEX	AGE													
	Male					**M Total**	**Female**					**F Total**	M/F ratio	Country Total	% of Grand Total
NATIONALITY	**0-15**	**16-25**	**26-45**	**46-65**	**66+**		**0-15**	**16-25**	**26-45**	**46-65**	**66+**				
ALBANIA	488	6.839	3.531	639	17	11.514	352	1.809	2.622	363	38	5.184	2,2	**16.698**	*83,6%*
	4,2%	*59,4%*	*30,7%*	*5,5%*	*0,1%*		*6,8%*	*34,9%*	*50,6%*	*7,0%*	*0,7%*				
GEORGIA	6	39	116	22	4	187	6	47	212	99	5	369	0,5	**556**	*2,8%*
	3,2%	*20,9%*	*62,0%*	*11,8%*	*2,1%*		*1,6%*	*12,7%*	*57,5%*	*26,8%*	*1,4%*				
EGYPT	2	87	392	9		490		3	3	1	1	8	61,3	**498**	*2,5%*
	0,4%	*17,8%*	*80,0%*	*1,8%*	*0,0%*		*0,0%*	*37,5%*	*37,5%*	*12,5%*	*12,5%*				
INDIA		90	341	40	1	472			3			3	157,3	**475**	*2,4%*
	0,0%	*19,1%*	*72,2%*	*8,5%*	*0,2%*		*0,0%*	*0,0%*	*100,0%*	*0,0%*	*0,0%*				
REP. OF MOLDOVA	3	53	64	11	1	132	3	50	73	9	2	137	1,0	**269**	*1,3%*
	2,3%	*40,2%*	*48,5%*	*8,3%*	*0,8%*		*2,2%*	*36,5%*	*53,3%*	*6,6%*	*1,5%*				
RUSSIA		11	14	4		29	5	30	82	50	3	170	0,2	**199**	*1,0%*
	0,0%	*37,9%*	*48,3%*	*13,8%*	*0,0%*		*2,9%*	*17,6%*	*48,2%*	*29,4%*	*1,8%*				
UKRAINE	4	14	26	10		54	1	20	66	38	3	128	0,4	**182**	*0,9%*
	7,4%	*25,9%*	*48,1%*	*18,5%*	*0,0%*		*0,8%*	*15,6%*	*51,6%*	*29,7%*	*2,3%*				
SYRIA		47	92	5		144		6	19			25	5,8	**169**	*0,8%*
	0,0%	*32,6%*	*63,9%*	*3,5%*	*0,0%*		*0,0%*	*24,0%*	*76,0%*	*0,0%*	*0,0%*				
PAKISTAN	2	43	114	3	1	163			2			2	81,5	**165**	*0,8%*
	1,2%	*26,4%*	*69,9%*	*1,8%*	*0,6%*		*0,0%*	*0,0%*	*100,0%*	*0,0%*	*0,0%*				
ARMENIA		18	24	7		49	1	9	37	9		56	0,9	**105**	*0,5%*
	0,0%	*36,7%*	*49,0%*	*14,3%*	*0,0%*		*1,8%*	*16,1%*	*66,1%*	*16,1%*	*0,0%*				
Others	15	86	256	31	4	392	15	44	170	40	2	271	1,4	**663**	*3,3%*
	3,8%	*21,9%*	*65,3%*	*7,9%*	*1,0%*		*5,5%*	*16,2%*	*62,7%*	*14,8%*	*0,7%*				
Grand Total	520	7.327	4.970	781	28	13.626	383	2.018	3.289	609	54	6.353	2,1	**19.979**	*100,0%*
	3,8%	*53,8%*	*36,5%*	*5,7%*	*0,2%*		*6,0%*	*31,8%*	*51,8%*	*9,6%*	*0,8%*				

Source: Ministry of Interior

6. General characteristics of the Greek regularisation programmes

With the exception of the first programme (White Card), we can identify some common features:

(1) **Restriction as the guiding principle**, with very short-term permits and even more restrictiveness in the renewal possibilities. The result is that many of the legalisations are of the same people, who constantly move into and out of legal status. In the 2001 regularisation, for the prefecture of Nea Ionia in Athens, 92% of applicants had previously been legalised.[40] For the 2005 legalisation, the proportion seems to be around 50%, but this approximation is far from reliable.[41]

(2) **Emphasis on the payment of social insurance contributions** – even to the extent of making greater demands of immigrants than of Greek workers, in this respect. It is the responsibility in Greek labour law for employers to pay the social insurance of workers, yet this responsibility has been pushed onto immigrant workers who are required to pay the total insurance costs from their own money if their employer has not conformed with the law.

(3) **Emphasis on high application fees**, disproportionate to the processing cost of the permit. Immigrants have emerged as a money-making venture for the Greek state, which funds its own Migration Research Institute (employing only Greeks) as well as making an overall profit for the state. The application fees for residence permits range from €147—900. 25% of receipts are now used for training of staff in municipal offices, for the better management of migration issues.

(4) **The existence of variable statuses and permits, differing legal competencies and massive discontinuities:** the different permit types, their short-term duration and a lack of any long-term planning mean that the Greek state cannot even verify how many years of legal residence an immigrant has had. This is of paramount important for the EU long-term residence status: initially, the Interior Ministry even tried to disqualify periods of legal residence such as Green Cards from the EU permit application procedure.

(5) **Complexity and opaqueness** seem to be a guiding principle, such that neither the state nor the immigrants have much idea of how to manage the situation. The result is an overburdened state and immigrant applicants left in limbo, which is greatly to the benefit of lawyers, mafia operators and corrupt state officials.

[40] Original research, conducted by M. Pierre Sintès

[41] The approach taken in the 2005 regularisation programmes was so bureaucratic that it is difficult to comment on it: see relevant text, above.

7. Regularisation Mechanisms

The first clear mechanism for regularisation of illegal aliens can be found in Art. 37, para. 4 of Law 2010/2001: this facilitated the acquisition of 1-year renewable residence permits by decision of the Minister on the grounds of (a) the impossibility of departure or removal from Greek territory, in particular for humanitarian reasons; (b) as a temporary permit for those who had to leave their country of citizenship for reasons of *force majeure*. A small number of such permits was awarded, but details are not available. Law 3386/2005 provided in its transitional provisions for the continued validity of such awarded permits, but replaced the procedure for awards with Art. 44, which is actually a more comprehensive and carefully thought-out provision than that of the 2001 Law.

In particular, Art. 44, para. 2 allows the award of a 6-month permit at the discretion of the Minister: the permit may not be renewed, but can be replaced through one of the provisions of Art. 44, para. 1. The latter allows the award of one-year renewable permits on the grounds of (a) labour accidents, (b) victims of certain criminal acts, (e) persons with serious health problems – in all cases provided that the applicant has previously held a permit.

The number of awards of permits under Art. 44, para.2 since the 2006 implementation of Law 3386/2005 is quite high, at around 7,000 persons (or cases) in a three-year period. Table 39, shows its beneficiaries, for principal nationalities by gender and age-group.

Slightly more male than female permits were awarded, consistent with the male-female ratio of the immigrant population in general. Similarly with nationalities, whose numbers are more or less proportionate to their presence in Greece (other than that Albanians are under-represented here). The second, third and fourth nationalities here (Georgian, Bangladeshi, Philippine) are slightly over-represented compared with their known population size in Greece, while Bulgarian and Romanian are slightly under-represented. The predominant age groups are the working age population 16—45, which constitutes 81% of the total; males 16—25 are more visible here than females of that age group at more than double the number. In particular, male Albanians aged 16-25 are significant, at 833 persons; also, there is a sigificant number of Albanian male and female children, at 58 and 66 respectively. Generally, child recipients of this status are in very low numbers, so Albanians are an exception.

There are two problems with these data, and both are serious. The first is that we do not know on what grounds the 6-month permit was awarded; and secondly, that there is no information on what happened on expiry of the non-renewable permit. As a temporary form of regularisation this procedure may be adequate, but it is not evident legislatively or empirically that as a longer-term policy it is sufficient.

8. National policy on illegal migration with regard to regularisation

The relationship between policies on illegal migration and regularisation is obscure, and possibly non-existent: it is easier to emphasise the clear relationship between regularisation policy and immigration policy. In effect, Greece's immigration policy is fundamentally its regularisation policy – a *post hoc* legalisation[42]of variously:

i TCN residents who entered on tourist and student visas, illegally working and/or overstaying;
ii TCN residents who entered on tourist and student visas, with the intent of claiming Greek nationality through ethnic background but were rejected
iii TCN residents who entered illegally [primarily Albanians across the mountain border]

The formal legal immigrant recruitment mechanism involving Greek consulates has hardly been used, owing to massive bureaucratic problems for employers. Potential employers of migrants are required to deposit with the Greek state three months salary plus the possible costs of forcible return of each migrant. According to informed sources, the Greek state never refunds the deportation costs and sometimes has the three months wages returned with great delays. Thus, employers frequently either refuse to engage with the official recruitment machinery, or actually require their employees to finance the deposit themselves – usually failing to inform them that it can, in theory, be refunded. n terms of numbers, the highest annual quota for labour recruitment, set at 57,000 in 2006, is small in comparison with the immigrant population of around 1,000,000; for 2008, the quota has been reduced to 37,000 owing to lack of interest from employers. In previous years, the figures recruited were merely a few thousands per year. Thus, we can assert that Greek immigration policy is fundamentally its regularisation policy.

Views on regularisation policy are mixed, and were quite thoroughly researched in 1997 in preparation of the first regularisation programmes.[43] Competing views in ministries reflected the interests of each ministry, with Agriculture favouring legalisations, and the Ministries of Foreign Affairs and Defence opposing them. Prefectures bordering Balkan countries in the North opposed both legalisations and immigration itself, while Athens tended to support both immigration and legalisations. Both employers associations and trade unions welcomed legalisation and recognised the need for immigrant labour.Recent official opinion on the topic is in surprisingly short supply, other than continuous criticism of Greek policy from the Ombudsman, HLHR and others. The Greek response to the REGINE governmental questionnaire identifies several structural causes for the irregular status of immigrants, making regularisation programmes an imperative.

[42] Given that many policy areas in Greece (e.g. planning permissions for housing, or for commercial use of buildings in residential areas) are post hoc legalisations of illegal acts, it should be no surprise that immigration policy also falls into this style of management.
[43] See Baldwin-Edwards & Safilios-Rothschild (1999) for a more detailed summary of the different positions.

Table 39: Grants of humaitarian residence permits 2005-8 under Art. 44. Para. 2, Law 2286/2005

	SEX	AGE												
	Male					**M Total**	**Female**					**F Total**	Country Total	% of Grand Total
NATIONALITY	**0-15**	**16-25**	**26-45**	**46-65**	**66+**		**0-15**	**16-25**	**26-45**	**46-65**	**66+**			
ALBANIA	58	833	370	128	39	1.428	66	250	271	127	60	774	**2.202**	31,0%
GEORGIA	3	61	123	30	4	221	4	45	293	122	4	468	**689**	9,7%
BANGLADESH		145	377	5	1	528		1	1			2	**530**	7,5%
PHILIPPINES	5	23	107	11	2	148	5	49	226	23	2	305	**453**	6,4%
REP. OF MOLDOVA	4	103	63	9		179	1	88	79	23	2	193	**372**	5,2%
UKRAINE	6	55	53	11	2	127		48	117	58	4	227	**354**	5,0%
BULGARIA	6	37	59	14		116	1	37	107	65	3	213	**329**	4,6%
RUSSIA	5	22	19	13		59	4	74	110	47	5	240	**299**	4,2%
ROMANIA	2	60	43	2		107		53	44	3	1	101	**208**	2,9%
SYRIA	5	55	83	6		149	7	11	10	1		29	**178**	2,5%
INDIA	1	49	80	12		142	1	1	8	2		12	**154**	2,2%
ARMENIA	1	25	27	8	3	64	1	24	24	25	10	84	**148**	2,1%
PAKISTAN	2	50	62	8	5	127	1	2	6			9	**136**	1,9%
EGY[T	5	8	38	16	1	68	3	5	10	5	3	26	**94**	1,3%
SRI LANKA		8	32	3		43		4	41	6		51	**94**	1,3%
CHINA		6	26	7		39		5	33	5	1	44	**83**	1,2%
NIGERIA	3	5	36	2		46	2	5	15			22	**68**	1,0%
Others	43	63	200	40	5	351	35	57	193	48	17	350	**701**	9,9%
GRAND TOTAL	**149**	**1.608**	**1.798**	**325**	**62**	**3.942**	**131**	**759**	**1.588**	**560**	**112**	**3.150**	**7.092**	100,0%

Source: Ministry of Interior

These include large-scale lapses from legal to irregular status, a sizeable and increasing number of long-term immigrants with illegal employment, and difficulties of border management.[44] Mention is also made of the historic role of separate work and residence permits, along with onerous demands for social insurance payments, in terms of creating impediments for the renewal of permits.[45]
A recent interview with the General Secretary of the Interior Ministry is perhaps instructive, when being asked about the 2005 regularisation and its originally small number of applicants: *We estimate that by the end of February we will have reached 100,000. Our target was 100,000 applicants. You could say that there are more, but many of them entered the country without the necessary documents they need to legalise their status. Many came after 2004. We cannot legalise all of them.*
If we were to open the door to everyone, like Spain did, we would risk creating more problems. We would see an increase in unemployment. I believe that our legalisation effort is very good. People have to understand that Greece is not a free-for-all.
[Interview with Athanassios Vezyrgiannis, Interior Ministry General Secretary: *Athens News*, 10/02/2006]
Several core assumptions revealed by this interview are open to challenge.

(1) "The state cannot regularise all illegal immigrants": it is not clear why this should not be a policy objective, despite practical difficulty in so doing. The result of restricting the programme in 2006 to those who arrived before the end of 2004, without proposing an alternative policy for those undocumented residents, is merely to perpetuate the problem.

(2) "Our target was 100,000…". There is no known reason for this figure, which appears to have been decided arbitrarily. Arbitrary policy is bad policy, and should be avoided at all costs.

(3) "If we were to open the door to everyone, **like Spain did**, … we would see an increase in unemployment". The claim that immigrant regularisation creates unemployment is not sustained by the standard theoretical literature or any empirical evidence.[46] The implication of this comment is that it is official government policy to permit irregular residence and irregular employment; it is also an attack upon Spanish policy, with the unproven claim that regularisations promote illegal migration flows.

The emphasis on the labour market is important, because protectionism has informed most Greek policy in the employment sphere. It is, therefore, unlikely to

[44] REGINE governmental questionnaire: Q. 7
[45] *Ibidem*, Q. 12
[46] This claim is actually made in OECD (2000: 57) where the OECD Secretariat argue that, with the extent of informal employment in the Greek labour market, simply granting legal status to irregular immigrants would reduce labour market flexibility and increase the unemployment of Greek workers. This dogma is based on zero evidence and reflects the policy agenda of "flexible labour markets" touted by the OECD, rather than a systematic exploration of the impact of regularisation on the Greek economy.

be coincidental that there is a policy of issuing *vevaiosi* [receipts] and leaving applicants in limbo for years; alongside this, is the very short-term duration of residence permits, when they are eventually awarded. The problem is further compounded in the 2007 regularisation which permitted the registration of clearly ineligible persons for the process. Combined, these policy measures have the clear result of promoting high segmentation of the labour market, to the benefit of the native population and employers.

8.1 Estimating the extent of illegally resident TCNs

Despite the general recognition of immigration as a long-term phenomenon, the distinction between legal and illegal immigrants remains unclear. This is primarily because of rigid legal-bureaucratic frameworks: these typically award very short-term statuses, there is heavily delayed processing of applications, severe restrictions concerning the renewal of permits (particularly concerning social insurance payments), and even the award of permits after expiry of their validity. Furthermore, recent practice (in the 2007 regularisation) of permitting applications without valid documentation but payment of an application fee, has had the result of giving the same "grey" legal status to all applicants. This receipt [*vevaiosi*] protects its holders from police detention and expulsion under the immigration rules, but is otherwise worthless. Since 2005, at any one time there seem to be around 500,000 valid permits, another 200,000 or more expired but in the renewal process, and another 300,000 or so merely expired. Recent data indicate some 208,000 pending applications and 181,000 permits issued this year;[47] however, these recent data are incomplete and do not provide sufficient information on migration management.

In comparison, the number of border arrests (18,000 in 2004; 30,000 in 2005) looks insignificant, although these have apparently increased since 2005. More importantly, undocumented immigrants detained within urban centres are usually presented in the data as if they had recently arrived in Greece, when the evidence suggests that many have resided for some time. Overall, the distinction between legal and illegal TCN residents is a largely theoretical fiction, promoted by a state legalistic and bureaucratic mentality. It is thus impossible to talk about stocks of illegally residing TCNS when the great majority of the immigrant population has oscillated between legal, tolerated and undocumented statuses over several decades.[48] It should be noted that the Ministry responsible is unable, statistically, to identify for how long legal immigrants have resided in Greece, or when they were first awarded legal residence status. Nor is it able to state how many legally residing immigrants there are in Greece: it is only able to state the number of valid permits

[47] *Athens Plus*, 1/8/2008: p. 4

[48] Lest this seem exaggerated, the author has personally interviewed one immigrant with legal residence (via 1-year permits) exceeding 30 years, who in the early 2000s received a deportation order when his family circumstances changed. There is extensive documentation of others, with legal residence exceeding 20 years, who have been caught in the trap of waiting for a formal permit and being unable to work, leave or enter Greece, as the *vevaiosi* allows neither employment nor travel. Rather more people, with unstable work and low pay, have found themselves in and out of legality (as much as in and out of work), simply because the social insurance demands on immigrants are so high. In some sectors, construction in particular, immigrants pay more social insurance per person than do Greek workers (Baldwin-Edwards, 2004b).

on any one day of the year. Despite the clear impossibility of estimating illegal stocks under these conditions, some institutions have engaged in this exercise, as shown in Table 40, below.

Table 40: Selected estimates on illegal migration in Greece

60-80,000	Minister of Public Order, in evidence to the Parliament (2006)
200-300,000	Hellenic Migration Policy Institute (2006)
500,000	GSEE [largest trade union in Greece] (2006)
205,000	Clandestino Study, ELIAMEP (2008)

With the exception of the most recent study conducted by ELIAMEP, none gives the basis or methodology of their calculation, although the first seems to be based on the statistic (60,000) pertaining to detected illegally residing immigrants in 2005. The ELIAMEP/Clandestino study undertakes a rigorous analysis of the mostly deficient methodological approaches in various studies, and concludes that irregular migrant stocks have massively reduced in recent years. This reduction is attributed largely to regularisation measures (Maroukis, 2008).

9. Conclusions

Greek policy has had the effect (and possible intent) of placing its immigrant population in continuous legal uncertainty, thereby weakening their economic bargaining power and impeding immigrants' integration into Greek society. It is also incompatible with European Union policy on long-term residence and integration of immigrants. The policy solution of regularisation, as a way of assisting immigrant integration, is insufficient to compensate for fundamental structural problems with the immigration system and poor regulation of the labour market. An aggressive policy on irregular employment is needed, with a clear focus on employers: thus far, Greek policy has not only focused exclusively on immigrants, but also transferred onto them the employers' responsibility for social insurance payments. Fundamental reform of the entire immigration and employment infrastructure is a requisite for successful management of the problem of irregularly residing third country nationals in Greece. Some basic reforms have been undertaken in the 2001 and 2005 immigration laws, but these represent merely a starting point for the better management of immigration in Greece. In particular, detailed *post hoc* policy evaluations, continuous monitoring of processes, and major improvements in the quality of data for policy monitoring purposes are all urgently required.

Table 41: Synopsis of regularisation programmes in Greece

	1997	**1998**	**2001**	**2005**	**2007**
# applicants	371,641	228,200	367,504	n.d.	n.d.
# permits issued	n.d.	219,000	341,278	185,800 est.	20,000
Original duration of permits	6 months	1-2 years	6 months	1 year	1 year

10. References

Bagavos, C. & D. Papadopoulou, D. (2003), *Μεταναστευτικές τάσεις και Ευρωπαϊκή μεταναστευτική πολιτική*, [Immigration trends and European immigration policy], Athens: Labour Institute GSEE- ADEDY, Study no. 15.

Baldwin-Edwards, M. (2004a), *Statistical Data on Immigrants in Greece: An Analytic Study of available Data and Recommendations for Conformity with European Union Standards*. A Study conducted for IMEPO, Ministry of the Interior, Greece. Available at: http://www.mmo.gr/pdf/general/IMEPO_Final_Report_English.pdf

Baldwin-Edwards, M. (2004b), 'Immigration into Greece, 1990-2003', presentation for UNECE Population Forum 2004. Available at : http://www.unece.org/pau/_docs/pau/2004/PAU_2004_EPF_Sess4PresnBaldwinEdwards.pdf

Baldwin-Edwards (2001), 'An analytic commentary on the Greek immigration bill, 2000', MMO Working Paper 1, Athens, Mediterranean Migration Observatory. Available at: http://www.mmo.gr/pdf/publications/mmo_working_papers/MMO_WP1final.pdf

Baldwin-Edwards, M. & R. Fakiolas (1998), 'Greece: The contours of a fragmented policy response', in M. Baldwin-Edwards & J. Arango (eds.), *Immigrants and the Informal Economy in Southern Europe*, London: Routledge.

Baldwin-Edwards, M. & C. Safilios-Rothschild (1999), 'Immigration and unemployment in Greece: Perceptions and realities', *South European Society & Politics* 4/3: 206—221

Cavounidi, J. & C. Hatjaki (2000), "Alien applications for Residence and Work Permits", Athens: National Institute of Labour, Second revised edition (in Greek)

Emmanouilidi, E. (2003), 'Greek immigration and asylum policy', Athens: Centre of Planning and Economic Research (KEPE)(unpublished ms). Available at: http://www.emn.gr/Docs-pdf/Studies/Greek%20Immigration%20and%20Asylum%20Policy.pdf

Fakiolas. R. & R. King (1996), 'Emigration, Return, Immigration: A Review and Evaluation of Greece's Postwar Experience of International Migration', *International Journal of Population Geography* 2: 171—190

Glytsos, N. (1995), 'Problems and policies regarding the socio-economic integration of returnees and foreign workers in Greece', *International Migration* 33/2: 155—176

Kanellopoulos et al.(2006), *Illegal immigrants in Greece: State approaches, their profile and social situation*, Athens: Centre of Planning and Economic Research (KEPE)

Maroukis, Th. (2008) 'Undocumented Migration in Greece: discourses, data and estimates', Country Report for the "Undocumented Migration: Counting the Uncountable. Data and Trend Across Europe" CLANDESTINO Research Project, Dec. 2008, 81 pp.

Nikolinakos, M. (1973), 'The contradictions of capitalist development in Greece: labour shortages and emigration', *Studi Emigrazione* 30: 222—235.
OECD (2000), *Combating the Illegal Employment of Foreign Workers*. Paris: OECD

Papantoniou, A. *et al.* (1996), 'Migrants' Insertion in the Informal Economy: Deviant Behaviour and the Impact on Receiving Societies', Athens, December 1996, mimeo.

Skordas, A. (2002), 'The New Immigration Law in Greece: Modernization on the Wrong Track', *European Journal of Migration and Law*, 4/1: 23—48

Skordas, A.(2000), 'The regularization of illegal immigrants in Greece', in P. de Bruycker (ed), *Les Regularisations des Etrangers illegaux dans l'Union Européenne*, Bruxelles: Bruylant, 343—387

Sitaropoulos, N. (2001), 'The New Greek Immigration Law: A Step Forward?', *Immigration and Nationality Law and Practice* 15/4: 228—234

21 Hungary

David Reichel

1. Introduction

Hungary has to deal with a decreasing population. Between 1980 and 2007 the Hungarian population shrunk from app. 10,709,000 to app. 10,066,000 (and to an estimated 10,045,000 in 2008). On 1 January 2007, the foreign population of Hungary stood at around 166,000 persons of whom roughly 67,000 were Romanian citizens, almost 16,000 were Ukrainian citizens and some 15,000 were Germans, constituting the three largest groups of foreigners living in the country (see: www.ksh.hu).

Table 42: Basic information on Hungary

Total population*		*10,066,000*
Foreign population*		*166,000*
Third Country Nationals		*n. a.*
Main countries of origin*	*Romania*	*67,000*
	Ukraine	*16,000*
	Germany	*15,000*
Net migration		*n. a.*
Asylum applications**		*2,117*

* 1st Jan. 2007 ** During 2006
Source: UNHCR 2008; www.ksh.hu

Since 2004, Hungary is a member of the European Union and since 21 December 2007, Hungary belongs to the Schengen area.

2. Irregular Migration in Hungary

There are no known valid estimates on illegally resident third country nationals in Hungary. However, there are statistical data on border apprehensions which may be analysed as an indicator for illegal migration, although they are subject to bias since they depend on changes in the legal framework and in border management activities. Besides, apprehensions of illegal migrants could include asylum seekers, multiple-counting and persons who are in principal eligible to enter the country, but not at the moment of the apprehension (e.g. someone forgot her/his passport).

In 2006, 15,219 border apprehensions were reported in Hungary including both foreigners and citizens of Hungary, of whom the largest group consisted of citizens of Ukraine (2,090) followed by Romanians (995) and Moldavians (745). This number also includes Hungarians (273).

2,381 people were apprehended while entering the country illegally and 10,568 people were apprehended while leaving Hungary in 2006 (Futo/Jandl, 2007: 124 - 125).

In the Hungarian government's response to the questionnaire[1], it was indicated that there is a linkage between the increase of undocumented migrants and a country's restrictive policy, as migrants who cannot meet certain criteria might enter the respective country illegally (Response HU).

It is furthermore noted that there are problems where third country nationals enter and stay legally in the territory, but fail to meet the purpose for which the permit was actually issued, as - for instance - students who have the intention to work (Response HU).

Another indicator for the number of illegal residents in a country is the number of applicants to regularisation programme(s) as illustrated below.

3. National policy on illegal migrants in regard to regularisation

The issue of illegal foreign labour was a public issue introduced by politicians in 2002. Illegal foreign labour was presented as a threat by the then oppositional Socialist Party which led to quota for foreign workers in Hungary. However, the quota never came close to being reached. Of 81,000 possible work permits, only some 200 were issued in the first half of 2002 (Sik and Zakarias, 2005: 10-12).

Generally, the population of Hungary is ethnically very homogeneous and immigrants are also mostly ethnic Hungarians. According to Sik and Zakarias (2005), this homogeneity contributes to a permanent and relatively high level of xenophobia in Hungary. In December 2004, there has been a referendum on double citizenship for ethnic Hungarians living abroad, which was rejected due to too low election turn out (Sik and Zakarias, 2005: 10-12).

According to the response of the Hungarian government to the questionnaire sent out in the course of this project, regularisations are seen as last resort solutions and should be linked to well-defined policy objectives, but other policy options – such as effective border control or effective measures against overstaying – should be considered first (Response HU).

According to the Department of Migration within the Ministry of Justice and Law Enforcement, regularisation programmes cannot be considered as appropriate measures to tackle the problem of illegal migration if studies or researchers show that such programmes attract illegal migration. Additionally, problems of regularisation programmes could be that they only cover certain categories of undocumented migrants (mainly workers) while vulnerable groups (e. g. children) are not covered (Response HU).

[1] filled in by Department of Migration, Ministry of Justice and Law Enforcement

4. Regularisation programmes

Until now, there has only been one regularisation programme carried out in Hungary in 2004.

Objectives

The implementation of the programme was related to Hungary's accession to the EU with the objective to decrease the number of illegally staying migrants, thereby also decreasing the number of persons who might potentially migrate to other member states illegally. In addition, the programme was motivated by family reunification considerations, as there were persons with family ties to Hungarians who had no other chances to obtain a residence permit. The programme was linked to the EU-accession of Hungary and hence, should be seen as an exceptional measure (Response HU).

Implementation

In April 2004, Hungarian legislators decided to implement a regularisation project which would be in force for 90 days, from May 2004 to June 2004.[2] The legal basis of the programme was §145 of the Act no. XXIX of 2004 'on the amendment, repeal of certain laws and determination of certain provisions relating to Hungary's accession to the European Union', within the immigration law.

The criteria for regularisation as laid down in the law were:

- Residence before 1st May 2003 in Hungary
- No criminal records: The programme excludes non-nationals detained in alien policing detention, except for non-nationals who fall under the clause relating to family ties to Hungarian citizens; as well as non-nationals serving a term of imprisonment, or non-nationals against whom a criminal procedure or an arrest warrant is pending.
- Personal reasons, namely (a) family ties, such as spouses of Hungarians or non-Hungarians who are lawfully resident in Hungary, or (b) evidence of integration, such as the ability to handle affairs in Hungarian and culture linkage to Hungary justifying their further stay, or (c) economic reasons, such as ability to certify an income-generating activity in Hungary (e. g. to be the owner or executive officer of a company, or (d) the expulsion of a person may not be enforced due to non-refoulement provision. (Response HU; cf. ECRE, 2004)

Persons whose application was approved obtained a temporary right to remain in the country. Non-nationals were issued a one-year residence permit, while applications from those falling under section (d) will be considered in a discretionary manner. No legal remedy is available if the application is refused; with respect to the applicants falling under category (a) this is contrary to Hungary's obligations under Article 8 (right to family life) taken in conjunction with Article 13 (right to an effective remedy) of the European Convention on Human Rights. All persons who were

[2] During the 90 days it possible to submit applications.

issued a one year residence permit on the abovementioned grounds shall also be issued a work permit without considering the labour market situation (cf. ECRE, 2004).

Qualitative outcomes
Problems have arisen with determining the identity of certain applicants. Also, many foreigners who were granted a one-year residence permit under the regularisation programme were still unable to meet the criteria after their permit expired (Response HU).

Quantitative outcomes[3]
1,540 persons applied for regularisation in the course of the programme, of whom app. 60 per cent were men. 1,194 persons (or 77.5 per cent) were issued a residence permit, who mainly originated from China, Vietnam and Romania, followed by persons from former Yugoslavia, Mongolia and Nigeria. The majority of permits were issued on the basis of gainful employments (55%), followed by issuances due to 'family ties' (25%) (Response HU).

5. Regularisation mechanisms

In Hungary there is the possibility to obtain a residence permit on humanitarian grounds if the requirements for a residence permit are not fulfilled. For instance, a residence permit granted on humanitarian grounds is issued for those who applied for refugee status or for temporary or subsidiary protection. This way their stay can be rendered legal until the authority makes a decision in their case. With regard to some of the categories addressed by this measure, international and EU legal obligations also have to be taken into account, for instance in case of unaccompanied minors or victims of human trafficking (Response HU).

Generally, permits on humanitarian grounds may be granted to persons who (a) are recognised by Hungary as stateless persons, (b) have been recognised by Hungary as persons of the right to stay, (c) applied to the refugee authority for refugee status or for temporary or subsidiary protection, (d) were born in the territory of Hungary and subsequently were left without a legal guardian (also unaccompanied minors), (e) cooperated with the authorities in a crime investigation and have provided significant assistance to gather evidence. These permits are valid for the duration of one year, except for permits according to the last case (e) which are valid for six months. This case (e) has to be initiated by the public prosecutor, the court or the national security agency. Residence permits granted on humanitarian grounds are renewable (Response HU).

Between 2003 and February 2008, the main countries of origin of those third-country nationals who were granted residence permits on humanitarian grounds were the following (the trends might differ according to the year in question): Afghanistan, Algeria, China, Georgia, Iraq, Iran, Mongolia, Nigeria, Serbia and Montenegro (before their independence, the former Yugoslavia), Somalia, Turkey and Vietnam. 7,524 residence permits on humanitarian grounds were issued between

[3] Data provided by the Hungarian authorities

2003 and 2007; however, the numbers of permits increased considerably from 311 in 2003 and 991 in 2005 to 2,945 in 2007.[4]

6. Conclusions

Hungary has implemented one regularisation programme in 2004, which was seen as a special measure at a specific time point in the Hungarian history (EU accession). The objectives of the programme were to reduce the number of illegally residing third country nationals. Moreover, in the response to the questionnaire, filled in by a representative of the Ministry of Justice and Law Enforcement / Migration Department, it is stated that regularisation programmes in general can serve as a tool to decrease the number of illegal migrants or rejected asylum seekers in a country, even though these programmes only provide temporary solutions to real problems.

Moreover, it is noted that there are further advantages to regularisations which comprise increased revenues from taxes and social security contributions, benefits for the regularised migrants (social security benefits, health care and pension) and more accurate determination of the number of third country nationals residing in a country (Response HU: 3).

Furthermore, regularisation programmes can focus the fight against illegal employment and labour force shortages as well as the prevention of exploitation of illegal migrants who are more often exposed to exploitative or abusive situations because of their unsettled status (Response HU: 4).

There are no follow-up data and/or studies on legalised migrants; hence, it is not possible to say anything about the number of regularised persons who have again fallen into illegality or have migrated to another country. Generally, it cannot be said that the regularisation programme in Hungary has constituted a pull factor for illegal migration to Hungary (Response HU).

Currently, Hungary is not planning to implement any regularisation programmes, however, there is interest in the experiences of other member states as well as positive and negative aspects of other regularisation programmes (Response HU: 16).

According to the Hungarian respondent, at least an information exchange mechanism on planned regularisation programmes should be foreseen at EU-level, as regularisation programmes may attract other flows of illegal migrants which would affect other states.

A standardised approach at the EU-level regarding regularisation programmes could be foreseen, as such programmes can have an impact on neighbouring member states, especially since the introduction of the Schengen Rules (taking into account that some member states are more affected by undocumented migrants than others which may lead to the decision that regularisation programmes are the sole solution). This proposed approach could focus on preventive measures and try to

[4] Data provided by the Hungarian authorities

identify the causes of problems produced by the presence of irregular migrants in some countries, as for instance the lack of effective border control, restrictive immigration or labour law policies (Response HU: 16).

7. References

ECRE (2004), *Hungary*. www.ecre.org/files/Hungary%20-%20FINAL_0.pdf, 12 March 2008.

Futo, Peter/Jandl, Michael (eds.) (2007): *2006 Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe. A Survey and Analysis of Border Management and Border Apprehension Data from 20 States*. Vienna, ICMPD

Response HU: ICMPD questionnaire sent to the Hungarian government in the course of the REGINE project, 2008.

Sik Endre and Zakariás Ildikó (2005), *Ethnic Civic Participation of Immigrants in Hungary*. Country Report prepared for the European research project POLITIS, Oldenburg 2005, www.uni-oldenburg.de/politis-europe.

22 Ireland

Mariya Dzhengozova

1. Introduction

The chapter covers Ireland's experiences with regularisation in the period between 1995 and 2008. The main sources include state approaches to illegal migration determined by domestic legislation, reports on asylum and immigration of the Irish Naturalisation and Immigration Service; official statistics provided by the Central Statistics Office (CSO) and by the Irish Refugee Council. Expert analysis concerning the legal and socio-economic situation of illegally resident third country nationals have been also taken into consideration (Mac Veigh 2003; MacÉinrí 2005, Quinn & Hughes and Ruhs 2005). In addition, the study was built on ICMPD questionnaire (2008) addressed to the Department of Justice, Equality and Law Reform (referred to as DJELR response). Comments provided by representatives of the Immigrant Council of Ireland were also used (hereafter, ICI response). The study begins with basic information on the country including also a brief description of the main factors affecting the development of migration policies.

Table 43: Basic information on Ireland

Total population*	4,172,013
Foreign population*: (Non-nationals)	419,733
Third Country Nationals*	
Rest of Europe (non-EU)	24,425
Africa	35,326
Asia	46,952
America	21,124
Other	16,131
Not stated	45,597
Net migration***	67,3
Asylum applications**	4,314

* 2006 ** 2006 *** 2007

Source(s): http://www.cso.ie; http://www.irishrefugeecouncil.ie; http://epp.eurostat.ec.europa.eu

Due to dynamic economic development in the 1990s Ireland turned from a 'country of emigration' into a 'country of immigration'. In 2007 the number of people living in Ireland increased to 4,172 Million of who 419,733 had non-Irish nationality (CSO). Ireland does not have any land borders with migrant-sending countries, which reduces the possibility for illegal immigration. Illegal entry into Ireland is probably easiest via Northern Ireland, which may be accessed from the UK.

There are at least three categories of illegal immigrant: persons who enter the State illegally and continue to reside illegally, persons who enter legally and whose residence status later becomes irregular and persons who have valid residence status but is in contravention of certain employment conditions. An illegal immigrant is explicitly defined in the Illegal Immigrants (Trafficking) Act 2000 as a non-national

who enters or seeks to enter or has entered the State unlawfully" (Illegal Immigrants (Trafficking) Act, Section 1(1)). The Immigration Act 2004 provides at Section 5 that all non-national persons who are in the State without the necessary permission are unlawfully present, except for asylum seekers, convention refugees and their families and programme refugees. Of special importance is the fact that in 2002 the Irish Refugee Council called for a clear distinction between *illegal migrants* and *asylum seekers who enter by illegal means* in any future Irish legislation (Irish Refugee Council, 2002).

Illegal working of third country nationals (TCNs) is likely to happen more frequently in the practice - some migrant workers do not leave Ireland after their employment permits expire. The issue about regularisation of undocumented workers is currently gaining importance – in October 2007 the Irish Congress of the Trade Unions (ICTU) submitted a proposal dealing with the subject.

2. Irregular Migration in Ireland

The Garda National Immigration Bureau provides some statistics on illegal immigration. According to the respective annual reports, in 2006 a total of seven hundred and eighty nine non-national persons (789) were either removed from the jurisdiction by Order or prevented from re-entering due to existence of an Order; in 2005 the number of persons deported was six hundred and fifteen (615) and in 2004 – six hundred and twenty-four (624). In 2000 the number of deported persons was a hundred ninety four (194) (Garda National Immigration Bureau 2006, 2005, 2004 and 2000).

NGOs such as the Immigrant Council of Ireland hold some data on illegally resident immigrants who use their support services - of 231 cases of undocumented migrants accessing the services of the Immigrant Council 179 cases (77 per cent) had entered Ireland legally and later became undocumented. A further 52 cases (23 per cent) had entered illegally (Quinn & Hughes 2005: 19).

In reference to the Annual Report on Statistics on Migration, Asylum and Return 2006 supplied by the Department of Justice, Equality and Law Reform (DJELR), the total number of deportation orders signed between 2002 and 2006 is 11,202 and of these 2, 409 were effected (Department of Justice 2006: 46). According to the same source the total number of voluntary returns between 2002 and 2006 (operated by both DJELR and IOM) is 2,421 (Department of Justice 2006: 47).

Regarding the employment of illegal migrants, potential source of information is held by the Department of Social and Family Affairs. Personal Public Service Numbers (PPSNs) are allocated to all people who seek work or make a social welfare application in Ireland. Estimation of the number of people who have overstayed their permission to remain in the State could be done through checking active PPSNs against Garda National Immigration Bureau (GNIB) information (Quinn & Hughes 2005: 20).

3. National policy on illegal migrants in regard to regularisation

The country passed a number of laws aimed at combating illegal immigration including legal basis for (i) deporting non-nationals in violation of Ireland's immigration laws; (ii) ban the trafficking of illegal immigrants and the carrying of a passenger who does not have proper immigration documents, and (iii) penalize or imprison employers and workers who do not comply with the Employment Permits Act 2003. That resulted in an increase in the number of deportations, up from 188 in 2000 to 590 in 2003 (Ruhs 2004). Other state measure, which facilitates repatriation, is the return agreements signed with Poland, Nigeria, Romania, and Bulgaria. They engage also the International Organization for Migration (IOM) to operate voluntary return programs on its behalf.

4. Regularisation programmes

DJELR reports that Ireland carried out a regularisation programme – it started on 15 January 2005 and ended on 30 May 2005. On 14 December 2004, the Minister for Justice announced the Irish Born Child Administrative Scheme 2005 ("IBC/05") to deal with the many parents of Irish children who were undocumented and who faced the prospect of being deported. This scheme allowed parents of Irish citizen children to apply for permission to remain on the basis of their parentage of an Irish child born in the State before 1 January 2005, subject to certain criteria, both stated and unstated' (ICI response 2008). The circumstances that led to the programme are as it follows:

Prior to 2005, all children born in Ireland were entitled to Irish citizenship. In 2004, the constitution was changed - being born in Ireland no longer led to automatic entitlement to citizenship. In January 2003, the Supreme Court in Lobe and Osayande v. the Minster for Justice, Equality and Law Reform (L&O), held that the non-national parents of Irish citizens were not automatically entitled to reside in the State. However, the Court also acknowledged that children born in Ireland of non-national parents are Irish citizens and, as such, cannot be deported. Following the L&O judgment, 11,493 cases of parents of Irish children remained under consideration and deportation notices were being issued by the Department of Justice, Equality & Law Reform with respect to many families. Following this judgment, the Minister decided to remove the process whereby an immigrant parent could seek permission to remain in Ireland solely on the grounds that he or she was the parent of an Irish citizen child. Parents of Irish children who were undocumented or who had applied for and had been refused refugee status were issued letters stating the Minister's intention to deport them. However, families of Irish citizen children were allowed to make applications for humanitarian leave to remain pursuant to section 3 of the Immigration Act of 1999, as amended, and these applications were considered on a case-by-case basis. Furthermore, a 'number of parents of Irish citizen children were deported after the L&O judgment and many felt compelled to bring their Irish citizen children with them, thus leading to the 'de facto' deportation of Irish citizens. Other families left the State together with their Irish citizen children in order to avoid deportation (ICI response 2008).

There was no clear legislative basis for the introduction of the "IBC/05" scheme - it forms part of the general provisions of Section 3 of the Immigration Act 1999.

According to DJELR it was estimated that between 15,000 and 20,000 persons would have been eligible to apply. This was based on the applications outstanding in 2003 and on records of asylum applications after that date. The number of qualifying parents illegally in the State outside the asylum process, or who left the State after the birth of their child and before the scheme, was estimated. The principal countries of origin included Nigeria, China and Romania' (DJELR response 2008: 3-4). As a result, the number of applicants was 17,900 of whom 16,693 were granted the status (statistics provided with DJELR response). The statuses awarded by the programme were temporary permissions to remain with a permission to work, which were renewable. As a result, 14, 101 persons applied for renewal (the top five countries being Nigeria, China, Philippines, Moldova and Ukraine) and 13,838 persons were granted renewal (statistics provided with DJELR response). 'As anticipated there were some illegal re-entries by persons returning to make application under the scheme. Also many fathers of Irish children entered for the first time, most through the asylum process, to make application under the scheme. It is estimated that out of the almost 1200 applications which were refused, some 600 applicants had not been resident on a continuous basis (or at all) in the State since their child's birth' (DJELR response).

There are no official evaluations of the programme; however, The Immigrant Council of Ireland provides some information about the implementation process. A number of parents who were refused under the IBC/05 Scheme applied to the High Court for judicial review of the Minister's decision to refuse them residency. The High Court held in seven cases that the Minister had unlawfully breached the rights of Irish citizen children by not considering their rights and entitlements when refusing their parents' applications for permission to remain in the State under the IBC/05 Scheme on grounds such as lack of continuous residence. The High Court judgments upheld the children's rights not only under the Irish Constitution but also pursuant to the European Convention on Human Rights. However, on 20 December 2007, the Supreme Court overturned these decisions…In accordance with the findings of the Court, "applicants who were not successful in their application under the IBC 05 Scheme remain in the same position as they had been before their application". The Court concluded by saying that Constitutional and Convention rights of Irish citizen children and their families are "appropriately considered" in the context of representations pursuant to section 3 of the Immigration Act of 1999, as amended – after their receipt of notification of the Minister's intention to issue a deportation order. As a result of the Court judgments, the IBC Unit of the Department of Justice, Equality & Law Reform has said that it now intends to issue all parents who were refused residency under the IBC/05 Scheme with letters stating the Minister's intention to deport them. In this way, parents of Irish citizens are said to avail of the same opportunity for leave to remain under section 3 of the 1999 Act as other non-Irish nationals with respect to whom the Minister intends to make a deportation order, that is, they may make representations to the Minister setting out reasons why they should not be deported' (ICI response 2008).

5. Regularisation mechanisms

The introduction of IBC/05 Scheme is a result of a change in the implementation of a preceding regularisation mechanism - from 1996 to 2003 non-national parents of Irish citizen children were generally granted permission to remain in the State. This policy ended in February 2003. At that time 11,500 applications for permission on that basis were outstanding. The IBC/05 scheme was introduced to deal with these outstanding applications and also with the cases of persons who entered after February 2003 and before the Constitution was amended to preclude the acquisition of citizenship by virtue of birth in the State alone, with effect from 1 January 2005 (DJELR response).

According to DJELR, the amendment ended the phenomenon of mass asylum applications, many by heavily pregnant women, of persons drawn to the State by the possibility of Irish citizenship for their children. In this context it was decided that, rather than engaging in a case by case analysis, a general policy would be adopted of granting those persons permission to remain in the State provided that they fulfilled certain basic criteria. This was extended to parents who were legally in the State on the basis of visas or work permits' (DJELR response 2008: 3).

In the opinion of ICI, '*Section 4 of the Immigration Act 2004* can be also considered as a regularisation mechanism. It provides the Minister for Justice, Equality & Law Reform, or an immigration officer on his behalf, statutory discretion to give a non-Irish national permission *to be* in the State and to impose conditions on such permission in relation to engagement in employment or duration of stay as he deems fit'[1]. Section 4 of the 2004 Act vests the Minister with particular statutory functions that must be exercised by him or her. The exercise of these functions must be governed by the requirements of administrative law in relation to the exercise of discretionary powers.

However, despite the clarity of this legislation, the Minister claims that *he is not obliged* to consider applications for residency made pursuant to section 4 in a situation where a person is in the country *without permission* and/or has made an *unsuccessful application* for refugee status.

While the Minister claims not to be bound by section 4 of the 2004 Act there are many instances where the Minister has regularised migrants by granting them permission to remain, for example, based on marriage to an Irish national or being the parent of an Irish child. Although the Irish Born Child Administrative Scheme (IBC/05) has ended, it would appear as though those who were granted residency under that scheme were granted it on the basis of section 4 permission' (ICI response).

[1] Section 4 provides as follows: '4. (1) Subject to the provisions of this Act, an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State (referred to in this Act as "a permission")' (Irish Statute Book).

Leave to Remain pursuant to Section 3 of the Immigration Act, 1999 - one discretionary mechanism for regularisation is granting persons who may be deported leave to remain in the State. Section 3 of the Immigration Act of 1999, as amended, gives the Minister for Justice, Equality & Law Reform the authority to issue deportation orders to non-Irish nationals living in Ireland. These non-Irish nationals include a person:

- Who has served or is serving a term of imprisonment imposed on him or her by a court in the State;
- Whose deportation has been recommended by a court in the State before which such person was indicted for or charged with any crime or offence;
- Who has been required to leave the State under Regulation 14 of the European Communities (Aliens) Regulations, 1977 (S.I. No. 393 of 1977);
- To whom Regulation 19 of the European Communities (Right of Residence for Non-Economically Active Persons) Regulations, 1997 (S.I. No. 57 of 1997) applies;
- Whose application for asylum has been transferred to a convention country for examination pursuant to section 22 of the Refugee Act, 1996;
- Whose application for asylum has been refused by the Minister;
- To whom leave to land in the State has been refused;
- Who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State; and
- Whose deportation would, in the opinion of the Minister, be conducive to the common good

Persons must be notified in writing of the Minister's proposal to deport them and the reasons for their proposed deportation. Within fifteen working days from the date of the notification letter, these persons may make representations in writing to the Minister setting out the reasons why they should be allowed to remain in the State. The Minister then has the discretion under section 3(6) not to deport a person but to instead offer him or her leave to remain. Section 3(6) lists certain matters to which the Minister shall have regard in determining whether to make a deportation order. These matters include: (i) age of the person; (ii) duration of residence in the State of the person; (iii) family and domestic circumstances of the person; (iv) nature of the person's connection with the State, if any; (v) employment (including self-employment) record and prospects of the person; (vi) character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions); (vii) humanitarian considerations; (viii) any representation duly made by or on behalf of the person; (ix) the common good; and (x) considerations of national security and public policy (Irish Statute Book, Immigration Act 1999 as amended).

'There is no time limit or procedure in relation to the Minister exercising his discretion to allow a person to remain in the State. If the Minister considers that a person should not be deported, then the person will be granted leave to remain in Ireland usually for an initial period of one year, which may be renewed. Individuals with leave to remain are generally granted the right to seek and enter employment,

to establish a business, to travel and to access fulltime education and training initiatives, to go on the list for local authority housing and medical care. Non-Irish nationals include persons who have been refused refugee status, and these individuals may apply for "leave to remain on humanitarian grounds" despite having received a refusal of refugee status. Leave to remain on humanitarian grounds is the same as leave to remain for any non-Irish national under section 3. Failed applicants for refugee status granted humanitarian leave to remain have almost all the same social and economic rights as a refugee. If refused leave to remain, individuals who sought refuge may be deported, regardless of how long they have lived—legally—in Ireland (ICI response).

In reference to the Irish Refugee Council, Ireland gives *leave to remain* to very small numbers of unsuccessful asylum-seekers whereas in some EU countries the numbers who get refugee status is well surpassed by the numbers who get leave to remain. Some people currently waiting for a decision on their leave to remain applications have been in Ireland - legally - since the late 1990s and the risk of being deported in the future when their status is changed to 'illegal immigrant' hangs over them…In 2004, the number of former asylum seekers deported (599) was 8 times the number who got leave to remain (75)' (Irish Refugee Council 2005).

Section 3(11) empowers the Minister to amend or revoke a deportation order. It is open to a person who has been issued a deportation order to apply from within the State or abroad to seek to have the order amended or revoked on the basis of further representations he or she makes to the Minister (or claims that prior submitted information was not considered in the deportation decision). Any such person would have his or her case re-examined and the order lifted in circumstances where it was so merited (Irish Statute Book, Immigration Act 1999 as amended).

6. Conclusions

The most recent change in legislation *The Immigration, Residence and Protection Bill of 2008* does not provide for any regularisation mechanism. According to the ICI, the Bill allows for the deportation without notice of any person who is unlawfully present in the State. Section 4(5) provides a significant new power vested in the State and effectively abolishes the 'Section 3 Process' established in the Immigration Act of 1999, as amended. The Bill does not provide for any avenue to deal with and provide for persons in exceptional circumstances. For example, there is no flexibility to deal with persons whose residence permits are non-renewable, or who were not able to apply for a modification of their existing residence permit, or who did not manage to apply for the renewal of their permit within the time period specified in the Bill. Once classified as unlawfully resident, a foreign national no longer has any possibility of regularising his or her status in the State. Furthermore, section 4(8) of the Bill provides that a foreign national shall not be entitled to derive any benefit from any period of unlawful presence in the State. This is a departure from section 3(6) of the 1999 Act, where the duration of residence in the State of the person was a factor to be taken into account by the Minister in granting leave to remain. In the opinion of the Immigrant Council of Ireland, the new provision contravenes the constitutionally protected right to fair procedures and has the potential to breach Article 8 of the ECHR… There is concern that the abolition of

the section 3 process and the introduction of summary deportations will prevent migrants in an irregular migration situation from being able to access voluntary return programmes. Following publication of the Bill, the Minister for Justice stated that, following trade union pressure, he was considering putting in place a formal scheme which would give those who became undocumented "through no fault of their own" the chance to legally re-enter the workforce. However, newspapers reported that the Minister was not considering introducing a general amnesty "or any form of mass regularisation that would involve granting a concession without looking at the circumstances of the case" (ICI response 2008).

The question about regularisation of undocumented workers is currently gaining importance. In October 2007 the Irish Congress of the Trade Unions (ICTU) submitted a proposal 'A Fair Way In'. ICTU called for 'the development of a fair and transparent regularisation process for undocumented workers in Ireland. The aim of the regularisation scheme should be to provide a bridge for workers out of their irregular situation back into a regular situation' (ICTU 2008: 4). Regarding common EU actions and standardised approach to regularisation, the official position of the DJELR is that the ministry has 'no views' to the subject (DJELR response).

7. References

Conroy, P, 23 February 2005, Speaking note Closed Roundtable of ICI and MRCI, Regular and Irregular Migration -The Undocumented in Ireland 2005 and regularisation programmes. Any lessons to be learnt?

CSO (Central Statistics Office), (2007). Population and Migration Estimates April 2007, Dublin, Available at: http://www.cso.ie/statistics/popnclassbyreligionandnationality2006.htm, 21 April 2008

CSO (Central Statistics Office), (2007) Estimated Population Migration (Thousand) by Migration Flow, Age Group, Year and Sex. Net migration Estimates [direct database] Available at: http://www.cso.ie/px/pxeirestat/database/eirestat/Population%20Estimates/Population%20Estimates.asp, 21 April 2008.

DJELR (Department of Justice, Equality and Law Reform), INIS (Irish Naturalisation and Immigration Service) (2006) Report on Review of Asylum and Immigration. Available at: http://www.inis.gov.ie/en/INIS/VFMReport.pdf/Files/VFMReport.pdf, 6 March 2007

DJELR, Annual Report on Statistics on Migration, Asylum and Return 2006. Available at: http://www.justice.ie/en/JELR/DOJAnnRpt06.pdf/Files/DOJAnnRpt06.pdf, 17 April 2008.

EUROSTAT, Population and social conditions, Net Migration. Available at: http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,39140985&_dad=portal&_schema=PORTAL&screen=detailref&language=en&product=Yearlies_new_population&root=Yearlies_new_population/C/C1/C11/caa14608, 21 April 2008.

Garda National Immigration Bureau, Annual Reports. Available at: http://garda.ie/annreport.html, 17 March 2008.

Irish Congress of the Trade Unions (ICTU), 2007, A Fair Way In. Congress Proposals for a Fair Regularisation Process for Undocumented Workers in Ireland. Available at: www.ictu.ie/html/publications/ictu/Undocumented%20Workers.pdf, 17 April 2008.

INIS, (2008), Immigration, Residence and Protection Bill 2008. Available at: http://www.inis.gov.ie/en/INIS/IRPB_2008.pdf/Files/IRPB_2008.pdf, 6 March 2008.

Irish Refugee Council, (2002), Combating trafficking in human beings: impact on access to asylum". Information Note. Available at: www.irishrefugeecouncil.ie/factsheets/illegaltrack5.doc, 17 April 2008.

Irish Refugee Council, Asylum statistics, for the period January to 31st March 2005. Available at: http://www.irishrefugeecouncil.ie/stats.html, 6 March 2008.

Irish Refugee Council, UNHCR Statistics for asylum applications in 50 industrialised countries in 2006. Available at: http://www.irishrefugeecouncil.ie/press07/unhcr.html, 21 April 2008.

Irish Statute Book, Office of the Attorney General, Section 1 (1) of the Illegal Immigrants (Trafficking) Act 2000, legislation [online]. Available at: www.irishstatutebook.ie/2000/en/act/pub/0029/index.html, 17 April 2008.

Irish Statute Book, Office of the Attorney General, Section 4 of the Immigration Act 2004, legislation [online] Available at: http://www.irishstatutebook.ie/2004/en/act/pub/0001/sec0004.html, 6 March 2008

Irish Statute Book, Office of the Attorney General, Section 4 of the Immigration Act 1999 as amended, legislation [online]. Available at: http://www.irishstatutebook.ie/1999/en/act/pub/0022/sec0003.html, 6 March 2008

MacVeigh, T. (2003), Ireland; Migration Country Report In Niessen J. & Schibel Y. & Magoni, R. (eds.), EU and US approaches to the management of immigration. Available at: http://www.migpolgroup.com/multiattachments/2065/DocumentName/IrelandMigration.pdf, 7 March 2008

MacÉinrí, P. (2005), Ireland, In Niessen J. & Schibel, Y. & Thompson, C. (eds.), Current Immigration Debates in Europe: A Publication of the European Migration Dialogue. Available at: http://www.migpolgroup.com/multiattachments/3006/DocumentName/EMD_Ireland_2005.pdf , 7 March 2008

Quinn E. & Hughes G. (2005), Illegally Resident Third Country Nationals in Ireland: State Approaches Towards the Situation. Available at: http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=1E141439E7A8F1A3497987B9970AA588?directoryID=17

Response JELR, IR: questionnaire filled in by the Irish Ministry of Justice Equality and Law Reform, February 2008.addressed to EU Member States on Regularisation Processes, February 2008

Ruhs, M. (2005), Managing the Immigration and Employment of non-EU national in Ireland, the Policy Institute at Trinity College at Dublin. Available at: http://www.compas.ox.ac.uk/publications/papers/ExecSummary%20%20PI%20Blue%20Book%2019%20Ruhs%20(May%202005).pdf, 7 March 2008

Ruhs, M. (2004), Ireland: A Crash Course in Immigration Policy, Migration Information Source. Available at: http://www.migrationinformation.org/Profiles/display.cfm?ID=260, 13 March 2008

Population Division of the Department of Economic and Social Division of the United Nations Secretariat, Trends in Total Migrant Stock: The 2005 Revision. Available at: www.un.org/esa/population/publications/2006Migration_Chart/Migration2006.pdf, 12 March 2008.

23 Italy

Paolo Ruspini

1. Introduction

Migrants from developing countries started to enter Italy by the mid-1970s (there were 156,179 legally resident foreigners in 1971). The migratory inflow became important only during the second half of the 1980s, when it was estimated at more than 100,000 people per year. Immigrant population has almost doubled every ten years to date. On 1st January 2007, present foreigners in Italy have been estimated at almost 4 million (Blangiardo, 2008). About one half (46%, that is, more than 1.5 million people) of these foreigners living in Italy are migrants originating from East-European countries. The North-African (19%) and Asian (17%) components are also very numerous, while less relevant is the presence of immigrants from Latin America (10%) and Sub-Saharan Africa (9%). With respect to the countries of origin of immigrants, the data reflects a variegated population, made up of numerous different nationalities, some represented by substantial numbers, other more modest. On January 1, 2007, the first nationality, namely Albanians, accounts for 12.8 of the foreign resident population in Italy, followed closely by Moroccans 11.7% and Romanians 11.6%[1]. These are the only three groups to reach double figures. None of the other national groups reaches 10%, though the fast increasing presence of Ukrainians should be considered as well as that of Chinese, Filipinos and Tunisians (Blangiardo, 2006).

2. Irregular Migration in Italy

The foreign community is not distributed uniformly over the Italian territory. About 65% of the foreigners legally present are currently found in the northern and 23% in the central areas of Italy (Blangiardo, 2008). The marginal presence of immigrants resident in the South and in the Islands is correlated to the potential demand in the labour markets of the northern areas, both in industry and agriculture. The most recent estimates by the ISMU Foundation on the stock of irregular immigrants throughout the national territory are of around 541,000 individuals in 2005, 650,000 in 2006 and 349,000 in 2007 (Fasani, 2008). In 2005 about 133,000 of them were settled in Italy's southern regions (Cesareo, 2007).

As to irregularity levels, East-European migrants form the first contingent by number of individuals, both in absolute (about 720,000 units) and relative (19%) terms. More than 240,000 East-European citizens live in the southern regions, however with a definitely higher irregularity rate (32%).

Second in size is the North African group (625,000 individuals), with a slightly rising share in southern regions in comparison with the national average (in both areas 21% against 19%) for the whole of Italy. North Africans show lower irregularity rates than the average (14.1% against 16%).

[1] Own elaboration based on Blangiardo, 2008.

Immigrants originating from Asia and Oceania total about 580,000 units. This group holds supremacy in terms of presence stability, with a definitely higher residents' share than the average one and a lower irregularity rate: 12% on a national scale, and 22% in the South and Islands.

Latin-Americans total in all more than 320,000 individuals. They mostly gather in the Centre-North (91%) and their share in the southern regions includes only 6% of all resident foreigners. The irregularity rate of this group is slightly lower than the average one, while its stability level is lower, compared to that of other macro-areas of origin.

Sub-Saharan Africa is the area from which originates the less substantial foreign group, in absolute terms: 287,000 units, 14% of which are settled in the South. These migrants show irregularity rates within average values and a fairly high share of non-resident regular migrants, which points out low stability values among those foreigners.

Concerning an irregular migrants' classification, the first three communities alone total over 40% of all irregular migrants. Romanians hold the first place (94,000 irregulars, equal to 17% of total irregular migrants), followed by Albanians, Moroccans, and Ukrainians (Cesareo, 2007).

3. Regularisation measures

3.1 Regularisation programmes

Few migrants entered Italy holding a permit to work and to stay. Most of the 'irregular' residents entered legally with a tourist visa or for work and their legal justification for residence subsequently expired. In studies on migration it has been generally recognised that Italian migration policies, explicitly designed to combat "illegality", are in fact an instrument that produces and institutionalises casualisation in its utmost form – which is, precisely, "illegality". Some elements that underlie the institutionalised production of illegality were already present in the earliest migration laws. This is the case of Law 943/86 which made provision for recourse to *amnesties* to regularise situations of previous illegality, which had come about precisely because, until then, Italy did not have legislation to regulate the entry and residence of migrant workers, apart from a few ministerial memorandum (Cillo, 2007). Another fundamental element in the institutionalised production of illegality, which has contributed to rendering recourse to amnesties systemic, is the governing of migration movements through *flows decrees* that annually set an upper limit to the number of entries for the purpose of work for hire. The legislation on flow decrees, introduced for the first time in 1990 by Law 39/90 (Martelli Law), prescribes that it is up to the employer to set in motion the bureaucratic procedures, required by the Interior Ministry, to authorise an entry: hence a migrant worker is excluded a priori from directly and independently requesting a residence permit and is in a position of total subordination to the employer. Furthermore, for many years the flow decrees made provision for very few entries and, in some years, none were issued, obliging migrants to enter Italy illegally or, more frequently, to fall into illegality as "overstayers". All in all, the Italian short history as a receiving country

is marked by six regularisation programmes (1982, 1986-88, 1990, 1995-96, 1998 and 2002), each promoted with the intention of being the last, involving about 1,5 million people. As a consequence, it is clear that "Italian migration polices, ever since their first construction, have organically combined the structural submergence of undocumented migrant workers into the underground economy, due to the quota restrictions on entries, with their periodic emergence through the instrument of amnesties" (Cillo, 2007: 8).

The six regularisation programmes are as follows:

- **1982**, this was an administrative regularisation, instigated by the Ministry for Labour, which offered a work permit to all foreigners who could prove, as well as continuous presence in Italy in the two preceding months, that an employer was willing to employ them legally or that they had been steadily employed in the past. Overall, this measure concerned about 5,000 foreigners (EMN, 2005);

- **1986-88**, this was a legislative regularisation (Law no. 943 of 1986), approved almost unanimously by the Parliament, which offered a legal residence permit and related work permit to all those non-EU citizens who, as well as being in the country on the date the new regulations became effective (27 January 1987), were employed on an illegal basis [contextually legalised] or had been in the past. The directives included in the text of the law provided for a joint obligation, for both an employer and a foreign worker involved in an informal job relation, to submit a regularisation application to the Provincial Employment Office. This procedure closed with the regularisation of 105,000 migrants, more than one half of which unemployed or not in the position to support with documentary evidence their condition as subordinate workers (Cesareo, 2007);

- **1990**, this was a legislative regularisation (Law no. 39 of 1990, the so-called "Martelli" law), approved by the Italian Parliament with a wide majority, but quite strenuously opposed by some parties of the centre and centre-right, which offered a residence permit and related work permit to all foreigners who could prove they were present in Italy on the date the bill came into force (31 December 1989). In that case, the documentary evidence of an effective job relation was not the essential requirement for regularising one's position. In fact, this provision aimed at recognizing and normalizing the growing presence of foreign citizens on the Italian territory, disregarding their employment conditions. Overall, 222,000 foreigners, among which many women, who most likely had come to Italy as a result of family reunifications, were granted an access to the channels of legality (Cesareo, 2007). Designed for reducing the area of irregularity – disregarding immigrants' occupational position – and avoiding its regeneration in the future, this law for the first time shed light on the attraction potential associated with mass regularisations provisions. This attraction power was witnessed by a new regularisation provision, issued five years later, which led to the emergence of a significant number of individual positions, mostly referring to subordinate workers (Zanfrini, 2006);

- **1995-96**, this was a legislative regularisation (Law Decree no. 489 of 1995), approved by the Italian Parliament with a majority but with a certain difficulty and many amendments, which reaffirmed the strict relation existing between legal status

and subordinate employment conditions. This provision offered a residence permit and related work permit to all foreigners who could provide documentary evidence that they were in the country on the date the bill came into force and that they could prove (1) an employer was willing to employ them, (2) a job experience in the past six months or (3) the presence of legally resident family members they could join. For the first time, the possibility to become regularized for family reunification purposes was provided for; a sign that immigration flows were beginning to take stability within the social and economic context of the country. Overall, the measure concerned 246,000 foreigners out of 258,761 applications presented between 1995-1996;

- 1998, this was an indirect regularisation, the result of an item on the agenda approved by a majority of the Italian Senate in coincidence with the reform of the laws on immigration introduced by Law no. 40 of 1998, the so-called "Turco-Napolitano" law (approved by Parliament with a limited majority). This provision offered a residence permit and related work permit, to all foreigners who could prove they were in the country on the date the law became effective (16 October 1998) and who could demonstrate they were illegally employed at that time or at the present. For reasons of political disagreement, the amnesty was organised in a fairly Machiavellian fashion, starting with a limited number of permits being offered to illegal immigrants within the quota for new entries and - when the great difference between applications for legalisation and available permits had been recorded - by gradually increasing the number of permits to be granted until it was transformed into an actual amnesty (Sciortino, 2000). In the context of this procedure, the extent of the phenomenon of immigrants' entrepreneurship (or self-employment), involving 15% of all submitted regularisation applications, began to overbearingly emerge. Overall, 217,000 applications for legalisation were accepted out of 250,747 applications presented;

- **2002**, this is a legislative regularisation which came into force on 9 September 2002, that is 15 days after the publication of the new immigration law (Law no. 189 of 30 July 2002, also known as the "Bossi-Fini" law) in the Italian Official Journal (*Gazzetta Ufficiale)*. Differently from the previous regularisation actions (especially the one enforced by the so-called "Martelli Law", in which for migrants the grant of a regularisation title exclusively depended on the fact of staying in Italy, but also at a different level in comparison with the previous similar provisions), "the 2002 procedure did not aim at presenting itself as an amnesty, but rather as a legalisation tool based on existing job relations" (Zanfrini, 2006: 9). It foresees two kinds of legalisation processes: 1) the legalisation of housekeepers and domestic workers for families, covered by art. 33 of the "Bossi-Fini" law; and 2) the legalisation for all dependent workers employed in productive sectors covered by a specific law (legislative decree no. 195, 9 September 2002) which became effective at the same time as the legalisation for housekeepers and carers. While most parties had declared their opposition to another legalization campaign, the implementation of this programme succeeded because it was framed as "humanitarian" in its regularisation of migrant caretakers who look after Italian children and the elderly (Chaloff, 2003). The programme ran for two months from 11 September 2002 to 11 November 2002, and received 702,156 applications (EMN, 2005). About half the applications were for domestic workers and the other half for other jobs in dependent employment. To

apply, a migrant had to provide documentation of three months of pension contributions and show proof of continued employment. Because of the length of time involved in processing the applications, from 2003 there were hundreds of thousands of foreigners illegally present in Italy but awaiting 'regularisation'. A primary challenge was to define their legal status, in part due to possible changes in their employment position. For instance, many people-minders were already unemployed due to the death of the person assisted, and so without the work which they applied to regularize in 2002. Despite this difficulty, when the process ended in November 2003, there were some 650,000 'new' migrants, who had emerged from illegality (EMN, 2005).

3.2 Regularisation mechanisms

In compliance with the provisions of the Single Act (article 18 of the 1998 immigration law, untouched by the following legislative reform), victims of human trafficking, forced prostitutes in particular, are allowed to receive a special residence permit for reasons of *social protection*, i.e. to remove them from the violence and obligations of criminal organizations and to help them take part in assistance and social-integration programmes. Noteworthy, is the role played by NGOs and particularly Caritas in the promotion and drafting of these provisions (Ruspini, 2000).

3.3 National policy on illegal migrants in regard to regularisation

When in 2003 the individual applications were all dealt with, as a consequence of the most massive immigrant regularisation that Italy has adopted to date, there were some 650,000 'new' foreigners in possession of residence permits, who had emerged from illegality. Certainly, this seems a positive result for both the beneficiaries of the law and the society as a whole. However, the Italian experience seems to demonstrate again that repeated legalisation programmes did not solve the problem of illegality, and they are instead more likely to attract new illegal migration (Abella, 2000). Two studies on illegal immigration in Italy (Palidda, 1996 and 1999) show the amnesties to be an increasingly endogenous phenomenon, due to a combination of two factors: (a) the non renewal of residence permits and employment contracts of immigrants who had benefited from previous amnesties, and (b) the growth of the underground economy and the benefits it generates for those who have an interest in migratory flows, providing that those flows remain illegal (OECD, 2000).[1]

Research on the last legalisations, carried out in Lombardy by the ISMU Regional Observatory on Integration and Multi-ethnicity, seems however to indicate a positive outcome of these programmes of decreasingly frequent slipping back into irregularity (only 2% of the regularised foreigners interviewed had problems in renewing their residence permits, lacking some requirements). This hypothesis

[1] The informal or underground economy in Italy is particularly developed, steadily employing some 17% of the labour force. In addition, it is not necessarily based on open exploitation: even if degrading working conditions are common, there are also many cases where there is a positive trade-off between higher wages and greater employment insecurity, thanks to the possibility of avoiding payments of taxes and social security contributions.

seems confirmed by the analyses carried out at national level on single files of residence permits (Carfagna, 2002). Thus, it has been argued that the increase of the irregular foreign population - and its reproduction after any amnesty has taken place - should be 'mainly' attributed to the arrival of new immigrants who make use of entry channels which, after the arrival, do not entitle to any valid residence permits (Sciortino, 2004).

Another thorny issue that should not be underestimated is that the newly regularized immigrants in 2002, unlike many other foreigners, received a one year permit to stay. This makes their position highly precarious, for example by preventing them from applying for public housing because a longer permit is a pre-requisite for this. If we add that the letter of the law limited the permit for people minders to the specific job for which it was released, it's easy to understand the risk of creating a category of 'second class' immigrants, with serious effects on their quality of life and their chances of integration.

Precariousness is one of the most troubled aspects of the situation created by the rules introduced in 2002. Critics have insisted greatly on the 'precariousness' caused by a marked reduction in the average duration of residence permits, as well as the marked preference of the Italian government for allowing foreigners in only as seasonal workers. In particular, those who lose their jobs had great difficulty in finding new employment in time to renew their permits, while many 'seasonal' workers tend to overstay.

This outcome, clearly in contrast with the stated objectives of the law, also stems from the protracted inability to offer reasonable and timely opportunities for regular entries through decrees programming the flows of immigrants, despite a steady demand for foreign workers. The gap between planned legal quotas and demand for immigrant labour continuously reproduces large strata of illegal immigrants.

3.4 A "disguised amnesty" or 'de facto regularisation' programme?

A clear gap in the outcome of the 2002 and other regularisation programmes has been pointed out by Zanfrini (2006: 30) who argues that "where this regularisation, such as the previous ones and similar measures launched in other countries missed the target is in its ability to weigh significantly upon incoming flows". Though the percent incidence of "undocumented migrants" was lower than the values achieved in different periods of the past, in absolute terms the estimated number of irregular migrants, as to July 1st, 2005, had already totalled half a million individuals, and showed an irreversible tendency to further increase waiting for a new mass-regularisation law.

As a result in March 2006, in consequence of the law decree on migration flows enforced by the Berlusconi Cabinet, over 500,000 "entry" applications for foreign workers were submitted. A figure that was twice as high as the total admission shares that had been provided for. The real question was that almost all applications were in fact directly submitted by foreign workers who had already come and settled in Italy since long. The major mass media plentifully showed and reported in detail the stories of hundreds of thousands of migrants waiting in queues before the post

offices to submit their formal applications. There was an evident rift between law provisions and actual facts (Codini, 2006: 61). Pursuant to the law in force, a foreigner is supposed to find *first* a job in Italy, and only *then*, after having found a job and on the employer's request, he/she is allowed to come in Italy with appropriate documents. Those queued-up migrants told and evidenced a quite different story, a story in which a foreigner who intends to work in Italy, first gets in the country, obviously without appropriate immigration documents (since he /she cannot obtain them in this way), then seeks and finds a job off-the books (as he/she cannot be regularly employed), and finally tries to find a way to regularise him/herself both as a worker and as an immigrant (Codini, 2006). Among illegal and irregular migrants, in 2005 even those with a modest average migration seniority, ¾ had in any case a usually stable job, which confirms that the Italian economic system absorption capacity goes far beyond the limits established by the quota system, but also "further strengthens in people's imagination the idea of Italy as a country in which it is possible to enter, live and work in spite of any law provision" (Zanfrini, 2006: 31).

In the southern regions, where a minority of migrants is settled, in 2005 irregularity rates were extremely high (27% migrants did not hold any regular residence permit, against a national average by 16% and by 15% if referred only to the Centre-North (Blangiardo & Tanturri, 2006).

The new Italian centre-left government elected in April 2006 immediately announced the adoption of a second planning decree providing for a number of "entries" substantially equal to the number of submitted applications exceeding those provided for in the previous decree on flows (Codini, 2006). This decree has been promptly branded by the centre-right opposition as a "disguised amnesty" (Zanfrini, 2006. 31). The final result (through the second decree published on December 7 by the Italian Official Journal, providing for 350,000 additional admissions) was a sort of regularisation for about 500,000 immigrants, in short a measure quite similar to the 2002 regularisation – since the question was again granting a residence permit to some hundreds of thousands of irregular foreign workers on condition they had an employer prepared to regularly employ them. The difference lies, however, in the fact that the 2002 migrants' regularisation was passed through an extraordinary provision aimed exclusively at "regularising" irregular migrants, whereas the 2006 measure was passed instead by means of an "anomalous", improper use of a law instrument aimed at achieving a different purpose, that is to say, through the regulations of incoming flows. The most relevant element in prospect of this measure is that it shed light on the inadequacy of the regulations in force concerning foreign workers' admission (Codini, 2006). Some NGOs' representatives come to the point that "even though the regulation of influxes of migrant workers in Italy is no way a regularisation, it is however perceived and applied as such as the workers called by the employers are *de facto* already living and working irregularly in Italy" (Quyên Ngô Đình & Accorinti, 2006). Such a trend indicates also that even though the legal system may provide norms to regulate irregular migration, Italy has in fact always opted for mass regularisations based on *economic factors* rather than based on *people's specific needs*.

4. Regularisations' outcomes in historical perspective

The results of regularisations have provided an opportunity to outline trends in the flows towards Italy, demonstrating by and large an increasing tendency to a stable integration in the labour market and in the society (EMN, 2005).

Regularisations per nationalities

In correspondence with the 1990 regularisation, launched by the "Martelli Law", Moroccans become by far the most relevant foreign community (22%) in numerical terms, while the second place is held by the Tunisian community (12%), among the first ones arrived in Italy. In order of importance, these two communities are followed by Senegalese (7%) and Filipinos (6%). Through the 1995-96 amnesty (the "Dini Decree"), the Albanian community achieves a relevant position (13%), which almost equals the Moroccan one (14%). The 1998 regularisation measures (enforced on the occasion of the passing of the so-called "Turco-Napolitano" Law) confirm the Albanians' predominance (18%) and the arrival of Romanians (11%), whose number almost equals the Moroccans'. Within the framework of irregularity, a certain weight (8%) is confirmed for the role of the Chinese community. On the occasion of the last regularisation provision (issued after the passing of the "Bossi-Fini" Law), five among the first ten nationalities by number of regularised persons originate from Balkan countries and from the rest of Central and Eastern Europe. Romanians appear as undisputed leaders in the classification by number of applications (143,000) and legalised migrants constituting 21% of the total (Fasani, 2008). This circumstance has the effect of re-designing the overall framework of regular migration, since it assigns to Romanians a role equalling that of Moroccans and Albanians. In the fifth place we find the Ecuadorians, with a number of applications (37,000) which increased by four times the regularly settled migrants from this country, and Moldavians. However, the real novelty of the 2002 regularisation is that of the Ukrainians, who submitted a number of applications (106,000) eight times higher than that of the residence permits issued before the amnesty, and became the fourth national community by number of present individuals (Zanfrini, 2006: 4-5).

Regularisations per age

The mean age of irregular migrants and regularisation candidates tends to grow over time. If we consider the applications submitted in 2002, the migrants' mean age is over 32 years, but reaches 38 years for persons originating from Eastern Europe, who in addition are mostly women. Mean age lowers instead in the communities with a male majority, particularly if we consider the communities from Bangladesh, Egypt, Tunisia, India and Pakistan. The irregular migrant population is thus formed by "young men and by no longer very young women", which clearly reflects different starting situations and migration models (Zanfrini, 2006: 5).

Regularisations per gender

Although women tend to reach the same percentage incidence as men amongst legal immigrants, amongst regularised immigrants the imbalance is more significant, with males constituting three-quarters of the total. Many women entered following the regularisation of spouses under a family reunion visa, as illustrated by post-regularisation data. This situation led to a percentage almost equal between males and females (EMN, 2005). The 2002 regularisation reports a women's presence

highly exceeding the one pointed out by the previous amnesties, as it involves 46% overall emersion applications, and has actually achieved a considerable weight within some emerging communities, such as the Ukrainian, Moldavian and Ecuadorian. Since the basic requirement for having access to this procedure was the existence of a job relation, this figure further confirms the relevance of the female component among the flows directed to Italy, and namely, among those migrating for job reasons. A parallel outcome is also the distribution on the national territory of employment of these migrant women in positions of support to family-related services. 83.6% immigrant women, for whom a regularisation application was submitted, declared to work as home helps (45.8%) or home caretakers (37.8%) (Zanfrini, 2006: 6).

Regularisations per work activity

During two more recent regularisations (1998 and 1995) more immigrants succeeded in finding employment and this shows the increasing need of manpower: in fact, 76.3% of immigrants regularised in 1995 were employed while 92.0% of those regularised in 1998 were employed compared to 68.5% of regularised immigrants in 1986 and 77.4% in 1990 (EMN, 2005).

An analysis of all submitted applications in 2002 allows outlining a fair distribution among workers recruited by companies, to which 52% applications refer, and immigrants recruited by families as home helps (27,6%) or caretakers for old and ill persons (20,4%). The distribution by individual nationalities reflects their gender composition, with communities where women predominate mostly concentrated in the area of services to families, while those with a prevalence of men, usually including subordinate workers employed in companies mainly from Egypt, Pakistan, Tunisia, Algeria, China, Burkina Faso and Morocco. Together with services to families, the building industry absorbs the highest share of regularisation applications (16.6%), as well as the highest number out of already regularly employed migrants, followed by the tertiary industry (16%), particularly trade and catering activities, the manufacturing industry (10.3%), and finally, agriculture (5.3%), whose weight however triples in the southern regions of Italy. Within subordinate jobs for companies, the primacy of Romania goes along with "classical" areas of origin, particularly North-African and Asian countries, while in services to families (and in woman-workers' regularisations) the contribution of East-European migrants is definitely remarkable (Zanfrini, 2006: 6-7).

At last, the overall beneficiaries of these regularisation measures were mostly immigrants who entered Italy irregularly and, to a lesser degree, immigrants whose previous residence permits expired ("overstayers" totalled 18% in 1990, 13% in 1995 and 9% in 1998). Later the number of "overstayers" has increased, also because for the majority of Eastern European countries the obligation to request a visa has been abolished (EMN, 2005).

5. Costs and benefits analysis regarding the regularisation programmes

Three functions of regularisations in the Italian migration regime have been summarised by Finotelli (2005: 71) as follows:

(1) They allowed the Italian state to periodically recover control on irregular migration flows;

(2) They maintained a certain balance in the Italian dual labour market and had an internal control function, periodically transferring migrant labour force from the informal to the formal economy;

(3) They substituted an active (and effective) migration policy.

The overall impression when making cost-benefits analysis of irregular migration and particularly of amnesties is that benefits seem to outweigh the costs. In Italy irregular migrants have, overall, been a benefit both in terms of demography and employment: more than half of all regularly residing foreigners were once irregular, which indicates that this method was, in realistic terms, necessary due to partially ineffective official flow planning (EMN, 2005). As far regularisations, it is unquestionable that illegal migrants' irregular employment continuously feeds a sequence of unfavourable events, such as market distortion, immigrants' discrimination, competition with the weakest segments of local labour, misappropriation of resources destined to the whole community, weakening of the sense of legality. Thus "any intervention aimed at making emerge irregular labour has therefore its practically taken-for-granted legitimacy" (Zanfrini, 2006: 35).

Some positive regularisation effects out of different analyses of the 2002 regularisation programme include first the possibility to keep the *legal status* for the regularised migrants and to obtain an extension of their residence permit either through their original employer, or through a new incoming one. According to Cesareo (2007) almost three years after the latter regularisation about 74% regularised migrants continue to carry on a *regular job* activity, to a greater extent in the South than in the Centre-North of Italy. Secondly, the emersion of a considerable share of concealed labour allows Italy counting on higher *tax revenues*. In this context, estimates concerning declared income highlight that the contingent of regularised migrants contributes now by over one third of the overall income volume produced by the foreign workers who live in Italy.

From another point of view, in financial terms the fight against irregular migration has enormous costs that jeopardize the investment of integration funds. According to the Italian Audit Court (Corte dei Conti) the fight against irregular migration in 2004 to apply the Bossi-Fini law cost a total of 115,467,000 Euro, or rather 320,000 Euro per day. The total sum invested in immigrant integration and assistance projects in the same year amounted only to a mere 29 million Euro (EMN, 2005). Controls are, on the contrary, insufficiently developed and almost totally non dissuasive in jobs and situations in which the atavistic scourge of informal labour takes place representing the most important market for irregular migration (Zanfrini, 2006; Ruspini, 2000a).

When it comes to amnesties, Finotelli (2005) argues however that "they are easier where costs are cheaper". Considering that welfare contributions as unemployment insurance in Italy are low (or in the case of minimum social assistance, practically nonexistent), amnesties generally had little political costs for the Italian governments (Finotelli, 2006: 72). In the Italian context, there is however a manifest clash between the ongoing migration "normalization" process and the periodical recurrence to "exceptional" or "de facto" regularisation actions for irregular migrants. These policy measures have therefore become a fundamental regulation *modus* in the Italian migration regime with an important inclusion function *ex post* (Zanfrini, 2006; Finotelli, 2005). At last, in the European context, it is not clear how this widespread ex post regulation instrument called for a national prerogative of any EU member state, as such may facilitate the harmonisation process of the immigration policy towards a common admission framework (e.g. Ministero Interno, 2008; Pastore, 2004).

6. References

Abella, M. I. (2000), "Migration and Employment of Undocumented Workers: Do Sanctions and Amnesties Work?", in D. Çinar, A. Gächter & H. Waldrauch (eds.) *Irregular Migration: Dynamics, Impact, Policy Options*, Eurosocial Report, no. 67, Vienna: European Centre, pp. 205-215.

Ambrosini, M. & M. Salati (2004) (eds), *Uscendo dall'ombra. Il processo di regolarizzazione degli immigrati e i suoi limiti*, Milan: Franco Angeli.

Blangiardo, G.C. (2008), "Aspetti quantitativi e riflessioni su prospettive e convenienza dell'immigrazione straniera in Italia", in Fondazione ISMU, *Tredicesimo Rapporto sulle migrazioni 2007*, Milan: Franco Angeli, pp. 41-59.

Blangiardo, G.C. (2006), "La presenza straniera in Italia", in Fondazione ISMU, *Undicesimo Rapporto sulle migrazioni 2005*, Milan: Franco Angeli, pp. 33-47.

Blangiardo, G.C. & M.L. Tanturri (2006), "La presenza straniera in Italia", in G.C. Blangiardo & P. Farina (eds) *Il Mezzogiorno dopo la grande regolarizzazione. Immagini e problematiche dell'immigrazione (Volume terzo)*, Milan: Franco Angeli, pp. 23-51.

Blaschke, J. (2008), "Italy", in *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union*, PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs, pp. 22-24.

Carfagna, M. (2002), "I sommersi e i sanati. Le regolarizzazioni degli immigrati in Italia", in A. Colombo and G. Sciortino (eds.), *Stranieri in Italia. Assimilati ed Esclusi*, Bologna: Il Mulino, pp. 53-91.

Cangiano, A. & S. Strozza (2006), "Le procedure straordinarie di regolarizzazione: regole e risultati delle diverse tornate", in S. Strozza & E. Zucchetti (a cura di) *Il Mezzogiorno dopo la grande regolarizzazione. Vecchi e nuovi volti della presenza migratoria (Volume secondo),* Milano: Franco Angeli.

Cesareo, V. (2007), *Immigrants Regularization Processes in Italy. Analysis of an Emblematic Case*, Monza: Polimetrica.

Chaloff, J. (2003), "Italy. Country Report", in J. Niessen, Y. Schibel & R. Magoni (eds.), *EU and US approaches to the management of immigration*, Brussels/Rome: Migration Policy Group.

Chiuri, M.C., Coniglio, N. & G. Ferri (2007), *L'esercito degli invisibili. Aspetti economici dell'immigrazione clandestina*, Bologna: Il Mulino.

CEC (2005), "Policy Plan on Legal Migration", Communication from the Commission, COM 669 final, 21 December 2005, Brussels: European Commission.

Cillo, R. (2007), *Italy. Country Report*, Report edited by Fabio Perocco for the EU Sixth Framework Programme project "Undocumented Worker Transitions", Venice: University of Venice Ca' Foscari, Laboratorio di Formazione e Ricerca sull'Immigrazione.

Codini, E. (2007), "Developments in Regulations", in V. Cesareo (ed.) *The Twelfth Italian Report on Migrations 2006*, Monza: Polimetrica, pp. 59-70.

Di Pascale, A. (2000), "La régularisation des étrangers illegaux en Italie", in P. De Bruycker (Direction) *Les régularisations des étrangers illégaux dans l'Union européenne*, Bruxelles: Bruylant, pp. 273-289.

EMN - European Migration Network, Italian National Contact Point (2005), *Irregular Migration in Italy. Illegally resident Third Country Nationals in Italy: State approaches towards them and their profile and social situation*, Rome: IDOS-EMN National Contact Point.

EMN - European Migration Network (2007), *Illegally Resident Third Country Nationals in EU Member States: state approaches towards them, their profile and social situation*, Synthesis Report for the European Commission, January 2007, 32 p. Available at http://www.european-migration-network.org

Fasani, F. (2008) "A country report on undocumented migration in Italy", Report for the "Undocumented Migration: Counting the Uncountable. Data and Trend Across Europe" CLANDESTINO Research Project, 118 pp.

Finotelli, C. (2005), "Regularisations for illegal migrants in Italy: Background, Processes, Results", in F. Heckmann & T. Wunderlich (eds.), *Amnesty for Illegal Migrants?,* Transatlantic Discourse on Integration, Bamberg: european forum for migration studies (efms), pp. 69-78.

Giacca, G. (2004), "Clandestini ou le problème de la politique migratoire en Italie", Working Paper No. 101, March 2004, Geneva: UNHCR, 21 p.

Greenway, J. (2007), *Regularisation programmes for irregular migrants*, Report for the Parliamentary Assembly of the Council of Europe, Doc 11350, 6 July 2007, Strasbourg: Council of Europe, Committee on Migration, Refugees and Population.

Levinson, A. (2005) "Why Countries Continue to Consider Regularization", *Migration Information Source*, Washington, DC: Migration Policy Institute.

Levinson, A. (2005), "Regularisation programmes in Italy", The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies, Oxford: Compas, 4. p.

Ministero Interno, Dipartimento Libertà Civili e Immigrazione – Direzione Centrale Politiche Immigrazione e Asilo (2008), "Italy", Response to the "ICMPD Questionnaire addressed to EU member states on regularisation processes", Rome: Ministero Interno.

Nascimbene, B. (2000), "The Regularisation of Clandestine Immigrants in Italy", *European Journal of Migration and Law*, 2, pp. 337-359.

OECD Secretariat (2000), "Some Lessons from Recent Regularisation Programmes". In OECD, *Combating the Illegal Employment of Foreign Workers*, Paris: OECD, pp. 53-69.

Palidda, S. (1996), "L'immigration irrégulière en Italie", paper presented at the meeting of the Working Party on Migration, June 1996, Paris: OECD.

Palidda, S. (1999), "Les migrations clandestines en Italie", paper presented at the seminar on *Preventing and combating the employment of foreigners in an irregular situation*, 22-23 April 1999, The Hague: OECD-Dutch Authorities.

Pastore, F. (2004), "Che fare di chi non dovrebbe essere qui? La gestione della presenza straniera irregolare in Europa tra strategie nazionali e misure comuni", in M. Barbagli, A. Colombo & G. Sciortino (eds), *I sommersi e I sanati. Le regolarizzazioni degli immigrati in Italia,* Bologna: Il Mulino, pp. 19-45.

Quyên Ngô Đình, L. & M. Accorinti (2006), "Italy", in Caritas, *The Legalisation of Undocumented Migrants: Ideal Solution, Wrong Track or Pragmatic Way? An European Expert Panel*, 13th – 15th Febrauary 2006, Freiburg im Breisgau, Freiburg: Caritas.

Reyneri, E. (1998) "The role of the underground economy in irregular migration to Italy: cause or effect?", *Journal of Ethnic and Migration Studies*, Vol. 24, No. 2, April 1998, pp. 313-331.

Reyneri, E. (1999) *Migrants' Insertion in the Informal Economy, Deviant Behaviour and the Impact on Receiving Societies*, Migrinf, CE/DG XII - Science, Research and Development, TSER Program.

Ruspini, P. (2005), "Public Policies and Community Services for Immigrant Integration: Italy and the European Union", *Global Migration Perspectives*, no. 45. Geneva: Global Commission on International Migration, 30 p.

Ruspini, P. (2000a), "Living on the Edge: Irregular Immigrants in Italy", in D. Çinar, A. Gächter & H. Waldrauch (eds) *Irregular Migration: Dynamics, Impact, Policy Options*, Eurosocial Report Vol. 67, Vienna: European Centre for Social Welfare Policy and Research, pp. 81-93.

Ruspini, P. (2000b) (ed.), *Easy Scapegoats: Sans-Papiers Immigrants in Italy*, Weinheim, Germany: Freudenberg Stiftung.

Sciortino, G. (2000), "State policies toward Sans-Papiers", in P. Ruspini (ed.), *Easy Scapegoats: Sans-Papiers Immigrants in Italy*, Weinheim, Germany: Freudenberg Stiftung.

Sciortino, G. (2004), "Le frontiere ed i controlli", in G. C. Blangiardo (ed.), *L'immigrazione straniera in Lombardia. La terza indagine regionale*, Milan: Fondazione ISMU and Regione Lombardia.

Schuster, L. (2005), "The Continuing Mobility of Migrants in Italy: Shifting between Places and Statuses", *Journal of Ethnic and Migration Studies*, Vol. 31, No. 4, July 2005, pp. 757-774.

Zanfrini, L. (2006), *Italian Policy on Irregular Migrants in the Labour Market and the Shadow Economy*, Report for the "Ad Hoc Meeting of CDMG Experts on Policies on Irregular Migrants", CDMG 66, Strasbourg: Council of Europe.

Zucchetti, E. (2004) (ed.), *La regolarizzazione degli stranieri. Nuovi attori nel mercato del lavoro italiano*, Milano: Franco Angeli.

7. Statistical Annex

Table 44: Regulations regarding regularisations

Regulations	Deadline for Entry	Regularisation applications	Accepted applications
Ministry of Labour Memoranda 17.12.1979, 08.03.1980, 02.03.1892, 09.09.1982	31.12.1980	5,000	5,000
Law 943/1986 and subsequent extensions	31.12.1986	113,349	105,000
Leg. Decree 416/1989 converted with law 39/1990	31.12.1999	234,841	222,000
Leg. Decree 19/1995 converted with law 617/1996	19.11.1995	258,761	246,000
Prime Minister Decree 16.10.1998 and Leg. Decree 113/1999	27.03.1998	250,747	217,000
Law 189/2002 and Law 222/2002	10.06.2002	702,156	650,000

Source: EMN – National Contact Point (2005) based on Italian Ministry of the Interior data

Table 45: Applications for the 2002 regularisation by workers' type of contract, gender and meanage, top 10 nationalities

Subordinate jobs				**Home-help jobs**				**Caretaker jobs**			
Men		**Women**		**Men**		**Women**		**Men**		**Women**	
Nationality	**Mean age**	**Nationality**	**Mean age**	**Nationality**	**Mean age**	**Nationality**	**Man age**	**Nationality**	**Mean age**	**Nationality**	**Mean age**
Romania	29.2	Romania	26.9	Romania	29.9	Ukraine	40.9	Romania	30.1	Ukraine	43.4
Morocco	27.4	China	29.5	Morocco	27.6	Romania	30.1	Ukraine	35.1	Romania	32.1
Albania	25.5	Ukraine	34.8	Philippines	31.4	Poland	33.1	Ecuador	30.9	Poland	41.9
China	29.6	Poland	27.0	Sri Lanka	29.3	Ecuador	31.0	Peru	31.4	Moldavia	39.0
Egypt	27.5	Albania	27.7	Ukraine	32.8	Moldavia	36.0	Albania	27.2	Ecuador	32.6
India	28.0	Ecuador	28.7	Senegal	29.7	Peru	30.8	Morocco	27.6	Peru	32.0
Ukraine	31.0	Morocco	28.1	Bangladesh	25.1	Albania	30.0	Sri Lanka	30.1	Albania	31.8
Pakistan	28.3	Moldavia	30.8	Albania	25.8	Philippines	31.6	Moldavia	33.0	Russia	43.7
Senegal	29.8	Russia	28.4	Ecuador	30.1	Morocco	29.4	Bangladesh	24.9	Bulgaria	42.1
Ecuador	29.7	Bulgaria	30.8	Peru	29.9	China	31.9	Philippines	32.2	Morocco	30.6
Total	*28.3*	*Total*	*28.9*	*Total*	*29.2*	*Total*	*33.4*	*Total*	*30.1*	*Total*	*38.3*

Source: Italian Minister of the Interior (drawn from Zanfrini, 2006)

Table 46: Legalised migrants by gender and nationality. Regularisations of 1990, 1995, 1998, 2002

Geographical area and nationality	Law 39/90			Law 489/95		
	M+F	% F	%	M+F	% F	%
Total legalised	**217,626**	***26.0***		**244,492**	***31.0***	
EUROPE	**27,699**	***41.5***	***12.7***	**63,128**	***31.9***	***25.8***
Eastern Europe	22,650	*35.4*	*10.4*	61,673	*31.2*	*25.2*
of which: - Albania	2,471	*11.7*	*1.1*	29,724	*18.4*	*12.2*
- Moldova	-	-	-	-	-	-
- Poland	5,366	*51.8*	*2.5*	7,926	*66.8*	*3.2*
- Romania	760	*56.2*	*0.3*	11,099	*28.8*	*4.5*
- Ukraine	-	-	-	295	*79.0*	*0.1*
AFRICA	**127,027**	***15.2***	***58.4***	**96,926**	***17.8***	***39.6***
of which: - Morocco	48,670	*8.9*	*22.4*	34,258	*10.2*	*14.0*
- Senegal	15,966	*2.9*	*7.3*	9,889	*2.6*	*4.0*
- Tunisia	26,318	*7.0*	*12.1*	10,362	*9.6*	*4.2*
ASIA	**46,973**	***33.2***	***21.6***	**61,349**	***36.4***	***25.1***
of which: - Bangladesh	3,861	*1.0*	*1.8*	6,162	*0.9*	*2.5*
- China	8,580	*37.3*	*3.9*	14,445	*41.4*	*5.9*
- Philippines	13,684	*62.3*	*6.3*	21,406	*62.7*	*8.8*
- India	2,819	*11.8*	*1.3*	5,623	*3.6*	*2.3*
- Pakistan	4,510	*2.1*	*2.1*	4,499	*1.4*	*1.8*
- Sri Lanka	5,258	*22.6*	*2.4*	6,993	*26.2*	*2.9*
AMERICA	**15,501**	***64.2***	***7.1***	**23,021**	***69.5***	***9.4***
- Ecuador	344	*70.3*	*0.2*	2,066	*72.1*	*0.8*
- Peru	2,057	*60.8*	*0.9*	12,753	*69.2*	*5.2*
% over documented migrants	***120.9***		***100***	***45.9***		***100***

Geographical area and nationality	Law 1998			Law 189/02 e 222/02		
	M+F	% F	%	M+F	% F	%
Total legalised	**217,124**	***28.0***		**646,829**	***46.2***	
EUROPE	**81,672**	***29.8***	***37.6***	**383,107**	***56.9***	***59.2***
Eastern Europe	81,024	*29.7*	*37.3*	382,992	*56.9*	*59.2*
of which: - Albania	38,996	*16.9*	*18.0*	47,763	*19.3*	*7.4*
- Moldova	950	*69.2*	*0.4*	29,471	*71.7*	*4.6*
- Poland	5,077	*72.4*	*2.3*	30,021	*78.0*	*4.6*
- Romania	24,098	*33.4*	*11.1*	134,909	*45.2*	*20.9*
- Ukraine	2,050	*79.0*	*0.9*	101,651	*85.3*	*15.7*
AFRICA	**72,012**	***17.4***	***33.2***	**108,540**	***14.3***	***16.8***
of which: - Morocco	23,850	*11.3*	*11.0*	48,174	*13.5*	*7.4*
- Senegal	10,727	*5.3*	*4.9*	12,372	*9.3*	*1.9*
- Tunisia	5,565	*6.1*	*2.6*	8,843	*4.6*	*1.4*
ASIA	**47,768**	***27.7***	***22.0***	**87,949**	***25.3***	***13.6***
of which: - Bangladesh	6,689	*0.7*	*3.1*	10,687	*0.7*	*1.7*
- China	16,787	*39.1*	*7.7*	33,950	*37.8*	*5.2*
- Philippines	6,696	*64.7*	*3.1*	9,821	*60.1*	*1.5*
- India	4,697	*3.8*	*2.2*	13,399	*2.9*	*2.1*
- Pakistan	6,592	*1.1*	*3.0*	9,649	*0.7*	*1.5*
- Sri Lanka	4,090	*27.6*	*1.9*	7,030	*20.0*	*1.1*
AMERICA	**15,597**	***68.5***	***7.2***	**67,143**	***64.6***	***10.4***
- Ecuador	5,178	*70.3*	*2.4*	34,292	*64.7*	*5.3*
- Peru	4,960	*67.5*	*2.3*	16,213	*65.5*	*2.5*
% over documented migrants	***24.9***		***100***	***47.8***		***100***

Source: Istat and Italian Ministry of the Interior (drawn from Fasani, 2008)

24 Latvia

Paolo Ruspini[1]

1. Introduction

Immigration to Latvia is a relatively new issue on the country's political agenda. Latvia received its independence from the Soviet Union in 1991. Since then, together with the recent post- EU accession emigration of free movement Latvian workers and the resulting labour shortage at home (e.g. Karnite, 2006), the country's main migration issue has been the status of its 1.1 million Russian-speaking residents. The latter are a visible legacy of the Russification policy of the Soviet Union when millions of people were removed from their homelands and sent to other parts of the territory (Heleniak, 2006). According to the data of Central Statistical Bureau the total population of Latvia in 2008 was 2.3 million of which Latvians made up 59%, and Russians 28 %. Other major nationalities were Belarussian (3.7 %), Ukrainian (2.5 %) and Polish (2.4 %). Due to demographic trends, ethnic Latvians' share of the population has been decreasing, another cause of government concern.

Since 1991 net migration in Latvia is negative: in average more people leave Latvia than arrive. The main long-term migratory flows are to and from CIS countries (e.g., Russian Federation, Ukraine and Belarus) with which the local people have kept family relations, acquaintances and do not face language problems (Šūpule, 2005). Recent foreign immigrants represent only 1.6 per cent of the total population in Latvia, partially as a result of restrictive migration policies that were adopted in the 1990s (Indāns, 2008). After 1991, only those who were Latvian citizens as of June 17, 1940 and their successors were able to receive Latvian citizenship, and therefore only they had the right to vote. Latvia sought to limit citizenship in order to favour Latvians over ethnic Russians and other minorities. However, laws were eased in 1998, granting citizenship to all children born in Latvia after August 21, 1991, and making it easier for Russian-speakers to become naturalized. Nonetheless, about a fifth of all residents remained non-citizens in 2005(De Houwer & Salimbeni, 2007)[2]. Therefore immigrants in Latvia are people that have arrived in Latvia for any reason after 1990. The migration statistics of 2005 shows that the main contributor countries to the immigration flow (a total of 1,886 individuals with a 13.3% increase over a year before) were the Russian Federation (14.95%), Lithuania (14.00%), Germany (10.02%), Estonia (7.10%), Great Britain (6.79%), USA (6.47%), Ukraine (3.76%), Finland (3.66%), Sweden (3.61%), Israel (3.08%) (OCMA & EMN, 2007a).

The main immigrant groups are: foreign nationals receiving residence permits due to family reunification, non-citizens who have been granted citizenship of another country and a residence permit in Latvia, and foreign nationals who have received a

[1] The editors would like to thank Ginta Indrane of the Office of Citizenship and Migration Affairs for comments on the draft version of this chapter.

[2] In compliance with the EU Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long term residents, non-citizens in Latvia may become EU long-term residents since 2006 (Karnite, 2007).

residence permit in Latvia due to employment (OCMA & EMN, 2007a). The emigration flow (a total of 2,450 individuals in 2005 with a 10.7% decrease over a year before) covered the following countries: the Russian Federation (31.2%), Germany (10.2%), Great Britain (6.8%), USA (5.8%), Ukraine (4.6%), Belarus (4.2%), Lithuania (4.2%), Ireland (3.4%) and Estonia (3%). According to Ivlevs (2007) "the employment vacuum created by the emigration of Latvians and Ukrainians to the West is encouraging immigration to Latvia (and Ukraine) from further East – from former Soviet states including those in Central Asia. Ironically perhaps this is creating similar tensions to those reported in the West by the wave of immigration from new European states like Latvia (and the Ukraine)".

2. Irregular Migration in Latvia

According to the Office of Citizenship and Migration Affairs (OCMA) the national legislation of Latvia provides no definition of an illegal immigrant. Generally, there seems to be a common understanding that an illegal immigrant/resident is a person who does not or no longer fulfil the requirements regarding the entering and/or residence in Latvia (Blaschke, 2008). According to the estimation of representatives of State Border Guards and experts from the International Organization for Migration in Latvia, the number of illegal immigrants in Latvia is small – some dozens and they try to enter Latvia mainly from Ukraine and Lithuania (Šūpule, 2005). Most illegal migrants utilise Latvia as a transit route to other destinations, primarily in Western and Northern Europe. However, even as a transit route, Latvia is not a very attractive option due to its underdeveloped ferry traffic and its tight control systems at airports and railway stations (Gromovs, 2005). Illegal immigrants from CIS do not have other real possibilities to enter the EU territory than via the Baltic States or Poland. Therefore potential illegal migrants must rely on land routes to enter Latvia and then several borders of neighbouring countries must be crossed upon leaving Latvia, making this a difficult and unsafe option for illegal traffic. Other factors like its northern climate, geographical position relatively far from Western Europe, limited social benefits and lack of large ethnic communities to support and welcome newcomers would prevent Latvia from becoming a first choice goal for illegal migrants (Gromovs, 2005).

783 individuals were refused entry into the country on the national border by the State Border Guard in 2005. That year, the most entry permits were refused to citizens of Russia (48%), Belarus (13%), Ukraine (11%), and India (5%). Other countries did not exceed the 5% threshold. Compared to 2004, the number of admissions refused decreased considerably, mainly due to the introduction of minimum requirements for border control and cancellation of electronic border control for citizens of the European Union, European Economic Area and the Confederation of Switzerland. (OCMA & EMN, 2005). Citizens of Ukraine and Moldova still attempt to use Latvia as a transit country on their way to Western Europe while using counterfeit passports of citizens of Lithuania (OCMA & EMN, 2005). All in all, since 1995, the number of illegal migrants apprehended while using Latvia as a migratory route is small. However, the large number of illegal immigrants in neighbouring countries such as the Russian Federation and Belarus (300,000) suggest that Latvia could be utilised as a transit route to Northern and Western Europe again in the future (Gromovs, 2005; Indāns, I. & K. Kruma, 2006).

In Latvia, illegally employed persons are considered inhabitants who have not formalised their legal relations in writing (labour contract not signed, social insurance contributions and personal income tax not ensured) and aliens who work in Latvia without work permits. Undeclared employment is a more extensive concept that includes non-payment of taxes, remuneration paid "in envelopes", non payment of compensation for overtime and work carried out at night. At present, both the notions of "illegal" and "undeclared" employment are used interchangeably. According to Indāns (2007) the level of illegal employment among third country nationals in Latvia is insignificant, while the level of hidden employment and informal economy is rather high. Estimates by Latvia's Central Statistics Bureau put the informal economy at 16 per cent of Latvia's GDP, while Latvia's Ministry of Finance has estimated the level of hidden employment as 14-20 per cent (Indāns, 2007). According to Pabriks (2007), who relies both on Indāns as well as some official Latvian government figures, 936 people were found in 2005 to be illegally employed without work contracts. According to State Labour Inspection data, the largest number of people in Latvia is illegally employed in building, small woodworking enterprises, trade, timber industry, and in the service sphere, especially in the sector of hotels and restaurants.[1] Illegal employment also exists in childcare as well as in entertainment and sports. In 2005, the State Border Guard caught only 21 workers who were employed illegally, mainly from the Russian Federation (10). In comparison, during the first two months of 2006, 209 workers in 108 enterprises were caught working without a contract (Indāns, 2007). According to Pabriks (2007), who relies both on Indāns as well as some official Latvian government figures, 936 people were found in 2005 to be illegally employed without work contracts. Since the EU accession, the illegal employment's trend in the Republic of Latvia seems, however, on the rise and the struggle against it became one of the priorities of the State Labour Inspectorate (SLI) (Indāns, 2007). According to the State Labour Inspection data, the number of persons found to be illegally employed without work contracts increased up to 1,802 persons in 2006 and 2,846 in 2007.

3. Regularisation programmes and regularisation mechanisms

In his paper "Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union" Blaschke (2008) relies for Latvia on the contribution from Iveta Muceniece, Director of European Affairs and International Cooperation of the Office of Citizenship and Migration Affairs (OCMA) according to whom no regularisation programs exist for Latvia. Regularisations are thus examined and decided only on a case-by-case basis. The Minister of Interior envisions the possibility within the Latvian Immigration Law to grant a residence permit in accordance with other regulations of Immigration Law (Blaschke, 2008).[2] Mostly this clause has been used for humanitarian grounds and since 2005 approximately 30 permits have been issued. People who have been

[1] Information provided in the commentary to the draft version of this chapter by Ginta Indrane, Office of Citizenship and Migration Affairs, 13.1.2009

[2] The legal basis for regularizations is Immigration Law (Article 23, Paragraph 3 and Article 24, Paragraph 2); Administrative Procedure Law (Response Latvia, ICMPD MS Questionnaire, January 2009)

issued such permits are usually not entitled to the right of family reunification but who due to one or other reason are not able to stay in their home country; a typical example is the case of an elderly mother of a Russian citizen who has a residence permit in Latvia. Although persons with residence permits are not entitled to the right of family reunification with their parent(s), if the parent is old, sick, alone, etc. he/she receives this type of residence permit. The permit is usually issued for one year but it is renewable for a period up to four or five years (it is not strictly regulated by the law). After five years of continuous residence a person can obtain a permanent residence permit (European Migration Network Ad-Hoc Query 2008: 110).

There is no other clue concerning immigrant "regularisation" programmes or mechanisms in Latvia in all the other works reviewed for this fact sheet. All the current debate on immigration policy in this small Baltic country seems in fact focused on the best way to tackle the lowest birth rates in Europe and the labour shortage in low skilled sectors as the construction industry through a more open immigration policy able to boost the country's development but at the same time being sensitive to the possible return of free- movement Latvian workers.

4. References

Akule, D. (2007), "The effect of immigrants on the decision making in Latvia: a boost or an obstacle to development?", article published in *Effect of Migration on European Political Thought and Decision-Making Process*, Valmiera: Vidzeme University College.

Blaschke, J. (2008), "Latvia", in *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union*, PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs, p. 25.

De Houwer, L. & O. Salimbeni (2007), *Latvia*, Country report for the EC Daphne project "The Risk Group of Unaccompanied Minors: Protection Measures in an Enlarged European Union", Firenze: Università degli Studi di Firenze.

European Migration Network, Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna), August 2008; In Biffl, G. and Bock Schappelwein, J. (2008): Zur Niederlassung von Ausländerinnen und Ausländern in Österreich, Österreichischen Instituts für Wirtschaftsforschung, pp. 105-113

Gromovs, J. (2005), "Latvia's EU Accession and the Russian Border", in J. DeBardeleben, (ed.) *Soft of Hard Borders? Managing the Divide in an Enlarged Europe*, Aldershot: Ashgate, pp. 183-198.

Heleniak, T. (2006), "Latvia Looks West, But Legacy of Soviets Remains", *Migration Information Source*, February 2006, Washington, DC: Migration Policy Institute.

Indāns, I. (2008), "Latvia", in *Comparative Study of the Laws in the 27 EU Member States for Legal Immigration - including an assessment of the conditions and formalities imposed by each member state for newcomers*, Brussels: European Parliament & IOM, pp. 315-326.

Indāns, I. (2007), "Labor Policy Analysis in the Context of Immigration. The Case of Latvia", in Vidzeme University College (2007), *Effect of Migration on European Political Thought and Decision-Making Process*, Proceedings of the International Conference organized by Vidzeme University College in Latvia in cooperation with Representation of the European Commission in Latvia, 8 December 2006, Valmiera: Vidzeme University College, pp. 44-54.

Indāns, I. & K. Kruma (2006), "Immigration policy in Latvia – the problems and future perspectives", Paper, Riga: Latvian Institute of International Affairs, Konrad Adenauer Stiftung.

Ivlevs, T. (2007), "Ageing, births and attitudes towards immigration. Evidence from two transition economies", Research paper/media briefing, Nottingham: Leverhulme Centre for Research on Globalisation and Economic Policy (GEP), University of Nottingham.

Karnite, R. (2007), "Employment and working conditions of migrant workers – Latvia", Comparative reports, Dublin: European Foundation for the Improvement of Living and Working Conditions.

Karnite, R. (2006), "Labour shortages due to emigration of Latvian workers", EIROnline, European Industrial Relations Observatory On-line, Dublin: European Foundation for the Improvement of Living and Working Conditions.

Lulle, A. (2003), "Replacement Migration: Is it a solution for Latvia's ageing and declining population?", Reuters Foundation Paper No. 214, Oxford: Green College, University of Oxford.

Office of Citizenship and Migration Affairs - OCMA & European Migration Network - EMN, (2007a), *Annual Report on Asylum and Migration for Latvia (Reference Year: 2005)*, Riga: OCMA & EMN.

Office of Citizenship and Migration Affairs - OCMA & European Migration Network - EMN, (2007b), *Annual Report on Asylum and Migration for Latvia (Reference Year: 2004)*, Riga: OCMA & EMN.

Pabriks, A. (2007), "Migration: Time to Change the Political Course?" in Vidzeme University College (2007), *Effect of Migration on European Political Thought and Decision-Making Process*, Proceedings of the International Conference organized by Vidzeme University College in Latvia in cooperation with Representation of the European Commission in Latvia, 8 December 2006, Valmiera: Vidzeme University College, pp. 7-15.

Response Latvia, ICMPD MS Questionnaire, January 2009

Šūpule, I. (2005), *Active Civic Participation of Immigrants in Latvia*, Country Report prepared for the European research project POLITIS, Oldenburg: Interdisciplinary Center for Education and Communication in Migration Processes (IBKM), Carl von Ossietzky Universität Oldenburg.

Vidzeme University College (2007), *Effect of Migration on European Political Thought and Decision-Making Process*, Proceedings of the International Conference organized by Vidzeme University College in Latvia in cooperation with Representation of the European Commission in Latvia, 8 December 2006, Valmiera: Vidzeme University College.

5. Statistical Annex

Table 47: Statistical Data of Return and Forced Return Decisions 2003-2008

Year	Voluntary return decisions	Forced return decisions*
2003	243	337
2004	41	194
2005	27	149
2006	70	131
2007	81	155
2008	69	195

*Decisions taken by the State Border Guard and Office of Citizenship and Migration Affairs
Source: Office of Citizenship and Migration Affairs (via email)

25 Lithuania

Violeta Targonskiene

1. Introduction

Table 48: Basic information on Lithuania

Total population*		*3,384,900*
Foreign population*		*39,687*
Third Country Nationals*		*37,354*
Main countries of origin*	*Russian Federation*	*12,507*
	Stateless	*5,841*
	Belarus	*3,409*
Net migration*		*-4,857*
Asylum applications**		*116*

** 1st Jan. 2007 ** In 2007*

Source(s): Department of Statistics to the Government of the Republic of Lithuania: http://www.stat.gov.lt/en/;
Migration Department under the Ministry of Internal of Affairs: www.migracija.lt

2. Irregular Migration in Lithuania

According to official statistics[1] presented by the Migration Department in 2006, 208 illegal migrants were identified in the Republic of Lithuania (detained for a period less than 48 hours or longer than 48 hours for reasons of illegal entry of stay). To another 2042 aliens Administrative Offence Protocols were drawn up under Article 206 of the Code on Administrative Offences[2]. These numbers stayed practically the same over the last few years. The situation was, however different in the first years of Lithuanian independence: Lithuania restored its independence in 1990. Starting from this time migration flows to and from Lithuania can be analysed. The collapse of the Soviet Union meant also more possibilities for citizens of the former Soviet Union to migrate. More than 14.000 foreigners migratedto Lithuania in 1990 (mainly from former Soviet republics), this number decreased each year: 11.828 in 1991; 6.640 in 1992 and only 2.536 in 1997[3]. At that time many undocumented persons resided in Lithuania.

At the same time the population of the newly developed state had to apply for Lithuanian citizenship within a certain period of time. While a part of population did not apply on time, some did not solve their legal status question at all (did not apply for citizenship of other newly independent states – former USSR republics or did not get residents permits in Lithuania). Estimations or statistics on the number of illegal

[1] www.migracija.lt
[2] Violation of the procedure of aliens' entry / stay in / passing in transit through / exit from the Republic of Lithuania
[3] Department of Statistics under the Government of the Republic of Lithuania: "International migration of the residents of Lithuania", p. 9.

migrants or undocumented personsthat resided or currently are residing in Lithuania are not available.

3. National policy on illegal migrants in regard to regularisation

Lithuania does not consider regularisation as a prominent tool in in its policies vis-à-vis irregular migration. Conclusions on the policy on regularisation though may be drawn from the respective development of the legal acts in the last years since independence.

The Lithuanian legislation does not provide a definition for undocumented or illegal immigrants. In the absence of a specific legal definition, an illegal immigrant is understood as a person who entered or resides in the Republic of Lithuania illegally.

The first **Law on the Legal Status of Aliens**[1] was adopted in 1991 and regulated the arrival, departure and residence of aliens in the Republic of Lithuania. This Law was of significant importance for the newly independent state as it, for the first time, provided definitions such as: "foreigner", "stateless person", "residence permit in Lithuania", "visa", etc. The Law was in force until July 1999[2]. The second **Law on the Legal Status of Aliens**[3] was adopted in December 1998 and came into force in July 1999. This Law abolished the immigration quota and provided rules for arrival and departure of foreigners which were common for all aliens. This Law was in force until April 2004. These legal acts did not provide any clear definitions of undocumented persons.

The current Article 10 of the Law of the Republic of Lithuania on the Legal Status of Aliens[4] (further – Aliens Law) provides a definition on **"illegal entry into the Republic of Lithuania".** According to this Article an entry is considered illegal if the alien[5]:

a) enters into the Republic of Lithuania despite having been included on the list of aliens for whom an alert has been issued for the purpose of refusing entry into the Republic of Lithuania;
b) enters the Republic of Lithuania not through the border control post;
c) when entering the Republic of Lithuania produces another person's document or a forged travel document;

[1] The Law on the Legal Status of Aliens, 1991, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=21117.
[2] The Law on Implementation of the Law of the Republic of Lithuania "On the Legal Status of Aliens", 1998, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=69960.
[3] The Law on the Legal Status of Aliens, 1998, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=85559.
[4] Adopted on 29 April, 2004; came into force on 30 April, 2004; http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=232378&p_query=&p_tr2=
[5] According to the Aliens Law (Para 32 of Article 2) "alien means any person other than a citizen of the Republic of Lithuania irrespective of whether he is a foreign citizen or a stateless person".

d) enters the Republic of Lithuania without a valid travel document and without an appropriate document entitling him to enter the Republic of Lithuania;
e) enters the Republic of Lithuania holding a visa issued upon producing misrepresented information or forged documents.

According to Article 23 of the Aliens Law the residence of an **alien in the Republic of Lithuania** is considered illegal if he/she:

a) has been staying in the Republic of Lithuania for a period exceeding the period of visa-less stay set by an international treaty of the Republic of Lithuania, an EU legal act or the Government of the Republic of Lithuania;

b) is staying in the Republic of Lithuania overstaying his visa;

c) is staying in the Republic of Lithuania holding an annulled visa after the expiration of the term of expulsion from the Republic of Lithuania;

d) holds counterfeit travel documents;

e) holds a falsified visa;

f) is staying in the Republic of Lithuania without a visa if it is required;

g) is staying in the Republic of Lithuania without a valid travel document, save for asylum applicants;

h) has illegally entered the Republic of Lithuania.

Large-scale regularisation programmes were applied three times in Lithuania since 1995: in 1996, 1999 and 2004. They all were connected with the above mentioned amendments of the migration legislation. The main reason for these measures was to provide aliens with a chance to legalise their status in Lithuania.

Small-scale regularisation mechanisms are introduced in the Aliens Law. These legal provisions are long-term or permanent measures. The main reason for the introduction of these mechanisms was the humanitarian aspect.

4. Regularisation programmes

As indicated above regularisation programmes came along with changes in the migration legislation. The first *regularisation programme* was closely connected with the Law on Immigration. This law came into force on 1 January 1992 and introduced the immigration quota which had to be approved each year by the Government of the Republic of Lithuania. This quota was only approved by the Government for the first time in May 1993, and the migration services started to examine applications for immigration only from 1 July 1993. Hence foreigners who arrived in Lithuania from 01.01.1992 till 01.07.1993 could not exercise their right to

immigrate to the country. After proper examination of this situation the decision was made to approve a legal provision which would help certain foreigners to submit documents for immigration[6]. On 17 April 1996 the **Temporary Law on issue of permanent residence permits in the Republic of Lithuania to the aliens, who arrived to reside in the Republic of Lithuania after the entering into force of the Law on Immigration**[7] was adopted. According to this temporary Law aliens who arrived to reside in the Republic of Lithuania after the Law on Immigration came into force and could not fulfil the requirements set up in this Law due to the lack of a respective quota, could obtain a permanent residence permit in the Republic of Lithuania. To these foreigners the requirements set in the Law on Immigration were not applied if their place of residence was registered by the order set by the Government of the Republic of Lithuania or certified by an effective court decision. Such aliens had to submit their application till 31 December 1996.

The second regularisation programme was connected with the **Law on the Implementation of the Law on the Legal Status of Aliens** adopted on 17 December 1998. This law provided that aliens staying in the territory of the Republic of Lithuania illegally on the date of entering into force of this Law (on 31 December 1998) were obliged to register in the Ministry of the Interior within 3 months and to submit the necessary documents to establish the legitimacy of residence in the Republic of Lithuania. In this case the aliens were exempted from the liability for illegal entry and residence. The question on their further legitimacy of residence in the Republic of Lithuania had to be examined not later than within 3 months after the registration date.

According to the Law on the Implementation of the **Law on the Legal Status of Aliens** adopted on 29 April 2004, aliens staying in the territory of the Republic of Lithuania illegally on the date of entering into force of this Law (on 30 April 2004) were obliged to register personally within 7 days in the Migration Department under the Ministry of the Interior of the Republic of Lithuania. Such aliens had to submit the necessary documents to establish their legal status in the Republic of Lithuania. In this case the aliens were exempted from the liability for illegal entry and residence. The question on their further legitimacy of residing in the Republic of Lithuania had to be examined according to the new Law on the Legal Status of Aliens.

Neither of these programmes was used by large numbers of persons that would have utilised this opportunity of legalisation of their stay - mainly because the overall numbers of illegal or undocumented immigrants were not very high. Given the relatively low impact of these programmes there were also no serious disputes or considerations on political level on this issue. Nevertheless the time limit for regularisation programme was discussed in the parliament: while the Government of the Republic of Lithuania proposed a 3-month time limit for the registration of

[6] Information provided by the Deputy Director of the Migration Department Mr. Janas Vidickas, 7 May 2008.

[7] http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=27059&p_query=&p_tr2=

aliens in 2004 the adopted Law foresaw a time limit of only 7 days following the proposals of some committees of the Parliament[8].

All large-scale regularisation programmes were connected with legal amendments in the law of the legal status of aliens with the main aim to avoid "orbit" situations where persons that would have the right to legalise themselves according to the old legal acts could not do so according to the new legislation. On the other side these programmes partly aimed at stateless persons – mainly former citizens of the former Soviet Union who did not solve their legal status since independence[9].

The Laws of the Republic of Lithuania did not make any special references to the target groups to which regularisation programmes were aimed. All persons residing in Lithuania illegally at the moment of entering into force of the above mentioned legal acts could register as illegal migrants and try to legalise their status, thus could have benefited from these regularisation programmes.

All three regularisation programmes had one common requirement: foreigners had to provide "necessary documents to establish their legal status in the Republic of Lithuania". Additionally the first regularisation programme realised in 1996 required from aliens to have their place of residence "registered by the order set by the Government of the Republic of Lithuania or certified by the effective court judgement". In this way regularisation programmes were not unconditional, which might have influenced their effectiveness. Additionally the length of the last regularisation programme (in 2004) was very short (only 7 days), a term which cannot be considered to be sufficient.

54 aliens registered as illegal migrants during the regularisation programme in 1996 (32 citizens of the Russian Federation, 12 stateless persons, 5 citizens of Moldova, 4 citizens of Armenia, 1 citizen of Belarus); 51 of them got residence permits. In 1999 385 aliens registered (the biggest groups constituted citizens of the Russian Federation and stateless persons); 157 of them got residence permits. In 2004 103 aliens registered (the biggest groups: citizens of the Russian Federation, Armenia and stateless persons); 77 of them got residence permits[10].

5. Regularisation mechanisms

"If, [according to article 132 of the Aliens Law] an alien's expulsion from the Republic of Lithuania is suspended" due to the certain circumstances provided in the Law "and the circumstances have not disappeared within one year from the suspension of enforcement of the decision to expel the alien, he shall be issued a temporary residence permit". The mentioned circumstances are listed in paragraph 2 of article 128.

[8] For example, Legal Committee, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=231623&p_query=&p_tr2=

[9] The absolute majority of aliens who registered themselves according to the these programmes were representatives of former Soviet Union republics, statistical data from the Migration Department, www.migracija.lt, Migration Annual 2004

[10] Migration Annual 2004, www.migracija.lt

This article provides that the implementation of the decision regarding the expulsion of an alien from the Republic of Lithuania is suspended if:

a) the decision regarding the expulsion of an alien from the Republic of Lithuania is appealed against in the court, except in cases when the alien must be expelled in view of the threat constituted by the alien to state security or public order;

b) the foreign country to which the alien may be expelled refuses to accept him;

c) the alien is in need of immediate medical aid, the necessity of which shall be confirmed by a consulting panel of a health care institution;

d) the alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.).

The introduction of these regularisation mechanisms was caused by practical problems related to the deportation of aliens from Lithuania. In cases when an alien does not have any legal grounds to stay in the country, his or her expulsion still can be impossible if an alien is a stateless person and does not have any residence country or lost the right to reside in another country, or if the transport connection with the country of origin is not possible, or travel documents are not available, etc. In all such cases the situation requires a solution that could avoid a forced continuation of an illegal stay without any possibilities to legitimatise the stay and to develop a normal social and private life.

The working group encompassing representatives from interested state institutions (Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Social Security and Labour, etc.) and international organisations (UNHCR, IOM) was established in Lithuania for drafting the new Law on the Legal Status of Aliens (which was adopted and came into force in 2004). Representatives from NGOs (e.g. Lithuanian Red Cross Society) were invited to some meetings. The draft Law was agreed with international experts from an Austrian/Lithuanian Twinning Project. This working group decided that regularization mechanisms should be introduced into the Law in order to solve the above described practical problems related to the expulsion of illegal migrants. According to the previous legislation such persons could fall under humanitarian protection status (in this case they were not granted the right to participate in social integration programmes, unlike those who were granted protection status). As the new Law introduced subsidiary protection status instead of humanitarian status with a clear indication of the principle of non refoulement, such persons could not enjoy this status anymore - a new legal regulation thus was needed. As a result the current regularization mechanism (see above) was drafted. The Ministry of Interior as the main institution responsible for drafting was asked to provide a clear list of grounds when such regularization measure could be applied (the first draft only knew the impossibility of a deportation

caused by humanitarian reasons)[11]. Beside that the introduction of this norm did not cause major discussions in parliament.
The Aliens Law specifies the target group for regularisation mechanism as aliens whose expulsion from Lithuania was suspended. Practically these aliens are illegal migrants detained in the country for illegal stay or asylum seekers whose application was rejected. In 2005 3 residence permits were issued according to this regularization mechanism, in 2006 – 15[12].

6. Conclusion

Regularisation programmes that were implemented in Lithuania were not caused by any specific factors in the internal labour market (there are only a few cases of identified illegal employment, etc.) and were also not connected with an increase of numbers of illegal migrants.

Lithuania´s experience with regularisation programmes was mostly caused by the gaps in the developed legislation. After the collapse of the Soviet Union, Lithuania had to draft and adopt new legal documents in the field of migration (as in many other areas) in a very short period of time. Phenomena of migration as well as the respective legal tradition in this field were not too much known in Lithuania and only developed in the last 20 years. The main expectation of the new legislation straight after restoring independence was to determine: who is a foreigner, what are the rules of entry, stay and issuance of visas, etc.. In this situation some categories of foreigners were not covered simply because many migration processes at that time were not predictable. Nevertheless the Lithuanian legislative body found a way to solve this problem and to cover existing gaps. As a result, the regularisation programmes in Lithuania are to be understood as measure to fight illegal migration and to implement the state migration policy in a more transparent way. The effectiveness of these regularisation programmes was possibly decreased by additional requirements set up in the legal acts and partly by the limited period of implementation. Traditionally regularisation programmes therefore were connected with the introduction of new migration legislation. At the moment there are no considerations on a political or executive (administrative) level on additional regularisation programmes. Regularisation mechanisms were introduced in the current Aliens Law (entered into force in 2004). The mechanism was caused by practical difficulties related to the expulsion of aliens from the Republic of Lithuania. In this way the final aim of the regularisation mechanism is of two kinds: on the one side to help affected persons to realise their social and private needs for which a legal status in the country of residence is essential, and on the other side to avoid ”orbit” situations when foreigners are forced to live in the country illegally without any possibility to leave the country. The regularisation mechanism is exceptional – it can be applied only under certain circumstances: a decision on expulsion must be taken and then suspended under the grounds listed in the Law. Currently there are no new regularisation mechanisms planned.

[11] This was emphasized, for example, in the comments to the Draft Law submitted by the National Security and Defence Committee of the Parliament;
http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=218100&p_query=&p_tr2=
[12] Migration Yearbook 2005, Migration Yearbook 2006, www.migracija.lt

7. References

Temporary Law on issue of permanent residence permits in the Republic of Lithuania to the aliens, who arrived to reside in the Republic of Lithuania after the entering into force of the Law on Immigration adopted on 17 April 1996;

Law on the Implementation of the Law on the Legal Status of Aliens adopted on 17 December 1998;

Law on the Legal Status of Aliens, adopted on 29 April 2004;

Law on the Implementation of the Law on the Legal Status of Aliens adopted on 29 April 2004;

Official statistics provided by the Department of Statistics to the Government of the Republic of Lithuania (http://www.stat.gov.lt/en/) and Migration Department under the Ministry of Internal of Affairs (Migration Annual 2004, Migration Yearbooks 2005 and 2006; www.migracija.lt);

Documents from the Committees of the Parliament of the Republic of Lithuania (Seimas), adopted during adoption procedure of above mentioned legal acts (www.lrs.lt).

26 Luxembourg

David Reichel & Alfred Wöger

1. Introduction

As of 1 January 2007 the Luxembourgian population was estimated at 476,200 of whom 198,300 (41.6%) were foreigners. At around 73,700 Portuguese citizens constitute by far the largest group of non-nationals in Luxembourg. Other important immigration groups originate from France, Italy, Belgium and Germany (Statec Luxembourg, 2007: 9).

Hence, Luxembourg is the country with the highest share of foreigners in the OECD countries. However, the overwhelming majority of non-nationals are EU citizens, while the number of Third Country Nationals (approximately 27,300 in 2007) is relatively low. The largest group of TCNs are persons from former Yugoslavia [Serbia, Montenegro] who numbered 8,339 in 2003 (cf. OECD, 2008: 59).

Table 49: Basic information on Luxembourg

Total population*		*455,000*
Foreign population*		*151,020*
Third Country Nationals***		*26,900*
Main countries of origin*	*Portugal*	*65,690*
	France	*22,370*
	Italy	*18,800*
Net migration**		*1,584*
Asylum applications****		*802*

* 1st Jan. 2005 ** 2004 *** Estimated 1st Jan. 2006 **** In 2005

Source: Council of Europe, 2006; UNHCR, 2007; Statec Luxembourg, 2007

2. Irregular Migration in Luxembourg

Like in other European countries, illegal entry became only an issue relatively recently and historically, (partial) illegality was not unusual. Thus, most of the Portuguese immigrants who came to Luxembourg in the 1970s technically entered the country illegally and regularised their stay only after entry.

No estimates on the irregular migration exist. From the available evidence it seems that irregular migration to Luxembourg is mainly related to the asylum system, i.e. mainly pertains to rejected asylum seekers and in the 1990s, to war refugees from ex-Yugoslavia. As Kollwelter argues irregularity is thus partly due to the restrictive nature of both asylum law and administrative practice (Kollwelter, 2005: 12).

3. National policy on illegal migrants in regard to regularisation

In 1997, six NGOs campaigned for regularisation of persons in semi-irregular employment situations and of former asylum seekers with special consideration of the integration of those persons. The campaign was rejected in 1998 with the

explanatory statement that the decisions have to be made case by case (Besch, 2000).

For the moment Luxembourg's authorities have not yet taken a position concerning an eventual EU framework for the management of future regularisation programmes or mechanisms, however, it is annotated that the collection of statistical information about regularisations in the EU is therefore useful (MS Questionnaire Response LU).

4. Regularisation programmes

Before 1997 several regularisations were made in Luxembourg, which are briefly illustrated in the following (cf. Besch, 2000):

In 1986 around 1,100 Portuguese and Spanish persons were regularised.

On 15 July 1994, 470 Bosnian citizens, whose temporary residence permit had already been extended several times, were allowed to apply for a carte d´identité d´étranger (ID card for foreigners) if they had work, a dwelling which is not state-subsidised and had not committed any offences against the public order.

On 15 July 1995, 996 persons from former Yugoslavia obtained a statut particulier and therefore, could remain in the country and apply for a d´identité d´étranger in case the before mentioned conditions were met. However, with the signing of the contract de Paix de Dayton in the end of 1995 the statut particulier was no longer granted to those persons.

On 21 July 1996 all persons from former Yugoslavian states were granted a statut particulier if they met certain conditions. Around 1,500 persons achieved this status. Additionally, certain other persons could obtain right of residence when they migrated to Luxembourg prior to December 1995 and were (among others): senior citizens, chronically ill and disabled persons, persons living in mixed marriages, or persons from minority regions.

The exact number of those persons is not known.

Regularisation programme 2001:

The programme “Regularisation de certaines catégories d'étrangers séjournant sur le territoire du Grand-Duché de Luxembourg” was carried out between 15 May 2001 and 13 July 2001 (MS Questionnaire Response LU).

There was no special legal basis laid down, however, the government referred to the Immigration law of 1972 and published some kind of manual (Vade-mecum) (Kollwelter, 2005: 12). The programme carried out at the national level targeted illegal residing persons as well as rejected asylum seekers.

The following criteria had to apply to persons who wanted to become regularised:

a) any major person, living and working in Luxembourg since 01.01.2000, affiliated to the social security system, when he/she has a stable employment
b) any major person living and working in Luxembourg since 01.01.2000 without being affiliated to the social security system, when he/she has a stable employment
c) any major person living in Luxembourg since 01.07.1998 without interruption
d) any person with health problems not allowing him/her to return to his/her country of origin
e) any person older than 65 years, living in Luxembourg since 01.01.2000 who is the father/mother of a child in possession of a foreigner identity card delivered by Luxembourg's authorities
f) any major person living in Luxembourg since 01.01.2000 who is the child of the holder of a foreigners identity card delivered by Luxembourg's authorities
g) any person who is the father/mother or the child of a Luxembourgian citizen.
(MS Questionnaire Response LU)

The main type of statuses granted is short-term residence permit with permit to work. After their expiration a new analysis of the situation of the persons concerned has to be done. The persons concerned have to be employed and to live in a residence without the financial support of the state. The renewal of their status is depending on the fulfilment of these conditions (MS Questionnaire Response LU).

The conduct of the programme took place in co-operation with NGOs defending foreigners' rights (MS Questionnaire Response LU).

2,882 persons applied for regularisation in the course of the programme, however, although principally available, more detailed statistics on gender and citizenship of persons who applied and who were granted regularisation were not provided (Response LU).

On 31 December 2002, 1,839 people had received a positive response and 64 per cent of those received a residence and a work permit. Three-fourth of the persons who applied for regularisation originated from former Yugoslavia (Levinson, 2005: 61).The implementation of the programme was considered as innovative and positive by the OECD on the one hand, due to the close consultation with employers of the sectors most affected by labour shortages and the employers who hired unauthorised immigrants were not sanctioned as long as they pay any outstanding social contributions. On the other hand the programme was also criticised due to several reasons including the low number of applicants given that the number of refugees was much higher. Additionally, the arrival date was set before a bombing campaign in the FRY leading to the exclusion of a high number of refugees (Levinson, 2005: 61).

5. Regularisation mechanisms

In Luxembourg there is a humanitarian status available for persons meeting certain criteria. Essential requirements to award a humanitarian status are family ties, lack of criminal record, employment, health condition, and other humanitarian reasons (e.g. education). Mainly short-term permits combined with work permits are granted. To obtain a renewed permit the situation of the persons concerned are analysed. The renewal of the permit depends on whether the person concerned is employed and is accommodated without the financial support of the state. There are no statistics of the issuances of those regularisations available, neither concerning the issuance of the humanitarian status, nor concerning any follow-up data (Response LU).

According to the UNHCR, 351 persons were granted a humanitarian status other than a refugee status in 2006 (UNHCR, 2008: ANNEX).

6. Conclusions

Over the past two decades, several regularisation programmes have been implemented. However, since 1997, only one programme was conducted in 2001. In the course of the programme almost 2,900 persons applied for regularisation which is a remarkable number for a small country like Luxembourg, considering that in 2001 there were only some 22,500 Third Country Nationals residing in the country.

The main reason of the regularisation programme 2001 was to reduce the number of persons illegally residing in the country and indicates a generally flexible approach of the Luxembourgish government. However, there is no follow-up data on the regularisation programme, nor on the effects of the programme on illegal resident population and the evolution of the illegal resident population after the programme.

7. References

Besch, Sylvian (2000): Note à propos du Luxembourg, In: De Bruycker, Philippe et al. (2000): Regularisations of illegal immigrants in the European Union. Bruxelles: Etablissements Emile Bruylant

Council of Europe, 2006: Recent demographic developments on Europe 2005, CD-ROM

Kollwelter Serge, 2005: Active Civic Participation of Immigrants in Luxembourg. Country Report prepared for the European research project POLITIS, Oldenburg 2005, www.uni-oldenburg.de/politis-europe

OECD, 2008: A Profile of Immigrant Populations in the 21st Century. Data from OECD countries

Response LU: Response to the questionnaire sent to the Luxembourgian government in the course of the REGINE project, filled in by Tom Goeders, Ministry for Foreign Affairs and Immigration

Statec Luxembourg, 2007: Luxembourg in figures
Available at: www.statistiques.public.lu/, 20 March 2008

UNHCR, 2007: Statistical Yearbook 2005. Trends in Displacement, Protection and Solutions

UNHCR, 2008: Statistical Yearbook 2006. Trends in Displacement, Protection and Solutions

27 Malta

David Reichel & Albert Kraler

1. Introduction

In 2006, the Maltese population was equal to 405,577. Due to the small size of the island, Malta is the most densely populated territory in the EU (1,283 persons per square km). (NSO, 2007). According to the 2005 population census, the number of non-nationals was 12,112 of whom 4,713 were British citizens. (NSO, 2007b). In general, Malta does not conceive itself as a country of immigration and immigration is generally viewed as exceptional.

Table 50: Basic information on Malta

Total population*		404.962
Foreign population*		12.112
Third Country Nationals (Non EU citizens)*		5.090
Main countries of origin*	Great Britain	4.713
	Italy	585
	Germany	518
Net migration**		2.075
Asylum applications***		1.166

* As of Census Day 27 November 2005 ** Within one year of census day *** During 2005
Source: NSO, 2007b; UNHCR, 2007

Malta joined the European Union in 2004 and acceded to the Schengen area on 21 December 2007.

2. Irregular Migration in Malta

There are no known estimates on illegally residing foreigners in Malta. Since the carrier sanctions were introduced, there are almost no illegal migrants arriving in Malta by plane.

Illegal immigration to Malta, however, is an issue of major concern to Maltese authorities. In the last years Malta had to deal with – compared to the size of the population – significant inflows of asylum seekers arriving in Malta by boat. A majority of these who arrive in Malta are believed to have headed for Italy and often are intercepted on sea en route to Italy. As a general rule, asylum seekers are detained in detention centres for up to 18 months, except in the case of vulnerable persons (pregnant women, children, sick persons).

At the beginning of 2006 there were 149 pending asylum applications, and during the year 2006 1,272 asylum applications were lodged. 550 applicants were recognised either as refugees or on other humanitarian reasons (mostly humanitarian 522) and 637 were rejected. (UNHCR, 2008: 97)

Since 1996, the asylum applications lodged in Malta have increased sharply.

Table 51: Asylum applications in Malta since 1996

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Applications	75	65	165	85	71	116	350	568	997	1.166

Source: UNHCR, 2007: 418

Many rejected asylum seekers are rejected and subsequently deported. However, there are also groups of rejected asylum seekers who cannot be deported, who are initially detained in centres and after a period of 18 months are released to so called open centres.

According to a press article, the number of these non-deportable rejected asylum seekers is around 2,000. These persons are not allowed to work in Malta and have to get along with roughly 4 Euros (1.75 Lm) a day. Hence, it is believed that a significant number of such persons are illegally employed.[1]

3. National policy on illegal migrants in regard to regularisation

Illegal migration is one of the major issues discussed in the country and there are numerous articles on illegal migration in the numerous news papers in Malta.
These discussions are always connected to the discourse of "limited space" (Amore, 2005).

Generally, asylum seekers are treated as illegal aliens and are thus detained in closed and open centres. The praxis of systematically detaining asylum seekers could be assessed as very problematic and in contravention to the principles of the Geneva Convention. The problems in centres increase since the number asylum seekers increases and the duration of processing appeals filed by rejected applicants (FIDH, 2004: 19 – 20).

4. Regularisation programmes

There has never been a regularisation programme in Malta.

5. Regularisation mechanisms

The humanitarian permit, granted to asylum applicants and rejected asylum seekers alike, is a temporary regularisation mechanism. It is usually issued for a period of 1 year, and if no specific reasons for non-prolongation exist, is usually renewed after expiry (own Interviews, PROMINSTAT Fact Finding Mission to Malta, January 2008). A problem resulting of the high number of humanitarian statuses (in

[1] cf. Vella Matthew in Malta Today, on 13 June 2007,
http://www.maltatoday.com.mt/2007/mw/mw_june13_2007/t13.html, 14 March 2008

comparison to the low number of refugee statuses – see above) are a lack of integration of the persons concerned as they are only issued temporary residence permits (FIDH, 2004: 30).

6. Conclusions

Malta has not answered the questionnaire sent to the government in the course of the project which leads to the absence of a general statement on regularisations.

According to the immigration policy and treatment of irregular migrants and asylum seekers, it has to be concluded that Maltese policy has been against any kind of regularisation until now. Furthermore, there has not been any policy assisting the integration of refugees, indeed the issuance of more humanitarian statuses than refugee statuses could be seen as means that further the departure of migrants due to the lack of integration possibilities and future perspectives (cf. FIDH, 2004: 28-30).

7. References

Amore Katia, 2005: Active Civic Participation of Immigrants in Malta. Country Report prepared for the European research project POLITIS, Oldenburg 2005, www.uni-oldenburg.de/politis-europe

Blaschke, J. (2008), *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union*, PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs

FIDH (International Federation for Human Rights), 2004: Report. International Fact Finding Mission. Locking up foreigners, deterring refugees: controlling migratory flows in Malta.

National Statistics Office (NSO), 2007: Malta in Figures 2007.

National Statistics Office (NSO), 2007b: Census of Population and Housing 2005. Volume 1. Population.

UNHCR, 2008: Statistical Yearbook 2006. Trends in Displacement, Protection and Solutions.

UNHCR, 2007: Statistical Yearbook 2005. Trends in Displacement, Protection and Solutions.

28 The Netherlands

Saskia Bonjour, Mariya Dzhengozova, Albert Kraler

1. Introduction

On 1 January 2008 the population of the Netherlands numbered 16.404 million people and the total number of persons with a foreign background (including first and second generation - with at least one parent born outside the Netherlands) was 3.216 million. The largest countries of origin are Indonesia and Germany, followed by Turkey, Suriname and Morocco. Among foreign nationals, the largest groups are Turks (96,779), Moroccans (80,518) and Germans (60,201) and various other EU nationals. However, the second largest groups of non-nationals after Turks are actually persons whose citizenship is not known or who are stateless (89,268), suggesting a relatively high share of persons with unclear residence status.

Table 52: Basic information on The Netherlands

Total population*		*16,357,992*
Foreign population (including stateless and unknown citizenship)*		*681,932*
Third Country Nationals (non-EU citizens and stateless and unknown citizenship)*		*437,064*
Main countries of origin*	*Turkey*	*96,779*
	Morocco	*80,518*
	Germany	*60,210*
Net migration**		*- 31,320*
Asylum applications**		*14,470*

* 1st January 2007 **2006

Source: Statistics Netherlands, www.cbs.nl (30 May 2008)

2. Irregular Migration in the Netherlands

Most recent calculations, based on the number of apprehended irregular aliens, estimate the number of illegal immigrants in the Netherlands between April 2005 and April 2006 at almost 129,000. This figure should however be taken as no more than an indication of the actual size of the irregular population.[1] (Van der Heijden e.a. 2006: 14; Kromhout e.a. 2008)

3. National policy on illegal migrants in regard to regularisation

Until the end of the 1980s, illegal residence and work was condemned in formal discourse, but tolerated in practice. The 1990s witnessed a turn in policies however. Efforts to prevent prevent illegal immigrants from accessing the labour market and the social security system were stepped up progressively. For instance, social-fiscal

[1] With a probability of 95%, the number of illegal immigrants lies between 74,320 and 183,912.

numbers were tied to a valid residence status and employees were required to identify themselves in the workplace (Van der Leun 2003: 17, 37).

In July 1998 the so-called Linking Act (Koppelingswet) entered into force. It introduced a new Article 1b in the Aliens Act specifying five categories of lawfully resident aliens. They are: (i) aliens who have a temporary or permanent residence right; (ii) aliens who have a provisional residence permit; (iii) aliens who are awaiting a decision on their application for first admission or prolonged stay; (iv) aliens who are allowed to stay for a short period of three months and (v) aliens whose applications have been rejected but who cannot be expulsed, for instance because of severe health problems.

Until 1998 the Dutch Social Security System did not contain conditions related especially to aliens. There was no clear definition of the concept of 'resident': individual circumstances were decisive and case law stipulated that there had to be a lasting bond between the Netherlands and the person concerned (Groenendijk & Minderhoud 2001: 540-543). All 'residents' were insured under national insurances. Since the entry into force of the Linkage Act, aliens who cannot be brought under one of the five categories stay "unlawfully" in the Netherlands. Unlawful residents are excluded from public services, i.e. from social security benefits, health care, social housing and education. They are granted access solely to imperative medical care, education for minors, and publicly financed legal assistance (Van der Leun 2003: 124-125; Davy 2001).

Ten years after the introduction of the law, the situation still remains problematic. In 2008 CWIA (Committee white illegals Amsterdam) has started a petition for 'white illegals' (witte illegalen). The petition encloses a call to Members of Parliament to support legalisation for so called 'white illegals'. They are labour migrants who came to the Netherlands before 1992, holders of a social-fiscal number; they have paid taxes for years. With the introduction of the Linking Act 1998 these people fell into an irregular status (PICUM 2008).

4. Regularisation programmes

Over the years, the number of regularisation programmes and the number of regularised migrants has been very small in the Netherlands. In 1975, residence permits were given to 10,416 irregular migrant workers, mainly Moroccans and Turks. In a regularisation programme of the early 1990s, out of 1,379 applications, 679 were accepted and 700 refused. In 1995 there was a second regularisation programme, with 1,125 applications of which 106 were accepted and 1,119 refused. This programme was continued in 1999 and received about 8,000 applications of which over 2,200 people were accepted and about 6.000 refused. Many of those rejected launched legal appeals, which then ran for many years (Greenway 2007). In broad outline, the criteria for regularisation were comparable in these different programmes. Most importantly, proof was to be provided of lengthy stay and work in the Netherlands, including payment of taxes and social benefits (Bennekom e.a. 2000: 8; Van der Leun & Ilies 2008: 11).

Return project for rejected asylum seekers

In 2002, the first government led by premier Balkenende[2] announced a 'regularisation' campaign for asylum seekers who had been waiting for more than five years for the result of their first asylum application. However, this government resigned after only 87 days in office. Instead, the second Balkenende government, a coalition of Christian-Democrats and Liberals, decided on the fate of these long-term asylum seekers in January 2004. Just over 2,300 people were granted a residence permit. The main criteria was that the applicant had filed his first application before 27 May 1998, had continuously resided in the Netherlands since, and was still awaiting a decision on his application. Asylum applicants were not eligible for the program if they had provided wrong or incomplete information, which if provided would have led to rejection of the asylum claim. (Dutch House of Representatives 2004).

The Immigration and Naturalisation Service (IND) estimated at the time that about 26,000 asylum seekers who had applied for asylum under the old Aliens Act, would not meet the criteria of the one-time "regularisation campaign" and "would have to leave the country" (Marinelli 2005: 1). These asylum seekers had been in the Netherlands for some five years, and had exhausted all the procedural opportunities to get their claims recognized. The largest groups came from Iraq, former Yugoslavia, Azerbaijan, Iran, and Somalia (Van Selm 2004). Around 2,000 persons left the country; most of them did so voluntarily, with extra departure funds (Marinelli 2005: 1).

The limited scope of the regularisation process and the hard line adopted towards those who did not meet the criteria met with broad public protest. In 2005, relief groups and filmmakers joined forces in the '26 000 faces' campaign: a series of film clips meant to show the individual person and story behind each of the 26,000 asylum seekers who were obliged to leave the Netherlands. Minister Rita Verdonk, with the support of Parliament, responded by releasing personal information about asylum seekers to the media, stating that the government was entitled to defend itself against "incorrect and one-sided information being put forward by asylum seekers who were dissatisfied by their treatment and the negative decision on their asylum application" (Marinelli 2005: 2) In addition, there was a petition, signed by some 200 thousand people[3], several demonstrations, and protests by refugee advocacy interest groups. Moreover, various local authorities refused to cooperate with the national return policies. As a result of this non-cooperation, municipalities were granted an important say in the regularisation program that was to be implemented in 2007 (see below).

During the time the second Balkenende government was in office, there were a number of scandals which caused public outcry. A detention centre near Schiphol Airport burned, and 11 'illegals' died in the fire. Also, it became known that the Dutch government was sending known homosexuals back to Iran, as well as sharing information with the authorities in Congo about the asylum seekers it was

[2] A three-way center-right coalition government with his Christian Democrats, Lijst Pim Fortuyn, and the People's Party for Freedom and Democracy

[3] See www.eenroyaalgebaar.nl

extraditing, thus endangering their lives. Finally, the separation of families due to the return policies of the Dutch government met with protest. In 2004, the UN Committee for the rights of children found that Dutch foreigner policies violated the rights of young refugees and undocumented children. In the electoral campaign of 2006, the opposition emphatically promised to return to more 'human' foreigner policies, should it be elected into office. The regularisation campaign of 2007 was the way in which the centre-left government Balkenende III – which succeeded the centre-right government Balkenende II – kept this promise.

Regularisation of asylum seekers
A regularisation programme for asylum seekers who had made lengthy but fruitless efforts to obtain a Dutch residence permit came into effect on 15 June 2007. It was included in the Coalition Agreement of the current government and stems from the administrative agreement with the Association of Dutch Municipalities (VNG). It is intended for those foreign nationals who: (i) submitted their initial application for asylum before 1 April 2001, or who reported to the Immigration and Naturalisation Service (IND) or the Aliens Police to submit an initial asylum application; (ii) who have resided continuously in the Netherlands since 1 April 2001, as on record at the IND and the Repatriation and Departure Service (DT&V) or as demonstrated by the statement from the Mayor; and (iii) have indicated in writing that they will unconditionally withdraw any pending procedures when accepting residence under general amnesty. Family members of foreign nationals granted a residence permit under this regulation may also receive a permit subject to certain conditions.

By 15 June 2007 the IND started to officially assess the files of foreign nationals on record with the IND or DT&V. The files of foreign nationals who reported to the IND by means of a Mayor's statement are currently being assessed (IND 2008a). The total number of foreign nationals who will be granted a residence permit in this regularisation programme is expected to total around 27,500. Since 15 June 2007, almost 25,000 foreign nationals have been offered a residence permit (IND 2008b).

About 500 asylum seekers whose files were assessed do not meet the criteria for a residence permit. In coordination with the municipalities, the COAs (central reception centres) and the IOM, DT&V is stepping up its efforts to deport these foreigners, so as to prevent new backlogs. The government intends to ensure effective repatriation and to prevent rejected asylum seekers from taking to the streets, inter alia by lodging them in reception centres where their freedom of movement is restricted, and by expanding the reintegration support (Ministry of Justice 2008).

5. Regularisation mechanisms

Between 1990 and 2003, a particular regularisation mechanism was in force: the so-called 'three-year-policy'. A residential permit was granted to any alien who had to wait for more than three years for a final decision on his admission request. The ratio underlying this policy was that the administration had an obligation to decide within a reasonable period of time and should bear the consequences for failing to do so. Another practical drive was to prevent backlogs. It might be argued however that this procedure should not be considered a regularisation mechanism, since the

aliens to whom it applied were never in an unlawful situation. (CMR, Response ICMPD NGO Questionnaire 2008; Apap e.a. 2000: 17)

The 'three-year-policy' was exceptional: in general, the Dutch governments have preferred regularisation programmes which were presented as 'one time only' to structural regularisation mechanisms. Outside of such regularisation programmes, it is virtually impossible for an illegal migrant to obtain a regular residence status. Currently the sole available channels - which Van der Leun & Ilies (2008:12) describe as "far-fetched" - are asylum application and marriage to a Dutch national.

6. Summary

Governmental policies in the Netherlands do not favour the regularisation of unlawful residents. The de facto tolerant attitude of the 1970s and 1980s was abandoned in the 1990s for a much more restrictive line, gradually impeding the access of irregular aliens to the labour market and social security system. Regularisation mechanisms are currently virtually non-existent. The regularisation programmes which have been implemented in the 1990s were limited in scope: the maximum of permits granted was 2,200, in the programme of 1999. The most recent regularisation campaign in 2007 was much more significant in scale, with 27,500 aliens granted the right to stay.

7. References

Apap J., P. De Bruycker P. & C. Schmitter (2000). ‚Regularisation of Illegal Aliens in the European Union. Summary Report of a Comparative Study', in: *European Journal of Migration and Law* vol. 2 (n. 3-4), pp. 263-308.

Bennekom, W. v., M. v.d. Bosch, K. Groenendijk & B. Vermeulen (2000). *Comparative study of member states on immigration law, with special reference to deportation and administrative detention. Report on the Netherlands.* Nijmegen: Center for Migration Law. Available at: http://cmr.jur.ru.nl/cmr/docs/expulsion.pdf, 16 September 2008.

Blaschke, J. (2008). *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union*, PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs

Centraal Bureau voor de Statistiek (Statistics Netherlands) (2008), *Population by origin and generation, 1 January 2008*. Available at: http://statline.cbs.nl/StatWeb/Table.asp?STB=G1&LA=en&DM=SLEN&PA=37325eng&D1=a&D2=0-2,127,133,198,216&D3=0&D4=0&D5=0&D6=a,!0-5&HDR=T&LYR=G4:0,G3:0,G2:0,G5:5, 14 March 2008.

Dutch House of Representatives (2004). *Brief van de minister voor Vreemdelingenzaken en Integratie.* TK 2003-2004 19637/29344 No 793.

Groenendijk, K. & P. Minderhoud (2001), 'The Netherlands'. In: Davy, U. (Ed.) *Die rechtliche Integration von Einwanderern*, 519-566. Europäisches Zentrum: Campus.

European Migration Network (2007), *Illegally Resident Third Country Nationals in EU Member States: state approaches towards them, their profile and social situation*. Available at: http://ec.europa.eu/justice_home/doc_centre/immigration/studies/docs/emn_synthesis_report_illegal_immigration_final_january_2007.pdf , 16 September 2008.

Greenway, J., Committee on Migration, Refugees and Population, Parliamentary Assembly of the Council of Europe (2007). *Report Regularisation programmes for irregular migrants*. Available at: http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc07/edoc11350.htm

IND (2008a), *The General Amnesty.* Available at: http://www.ind.nl/en/inbedrijf/actueel/De_pardonregeling.asp, 16 September 2008.

IND (2008b), *Estimate: 27,500 foreign nationals come under general amnesty*. Available at: http://www.ind.nl/en/inbedrijf/actueel/Schatting_27.500_vreemdelingen_vallen_onder_de_pardonregeling.asp, 16 September 2008.

IND (2008c), *Permanent Residence.* Available at: http://www.immigratiedienst.nl/EN/verblijfwijzer/verblijfwijzer_mijnsituatie.asp?proc=komen&procedure=Staying%20in%20the%20Netherlands&procedurestapnaam=Permanent%20residence&land=&duur=1&lang=en, 16 September 2008.

Kromhout, M.H.C. , H. Wubs & E.M.Th. Beenakkers (2008). *Illegaal verblijf in Nederland. Een literatuuronderzoek.* The Hague: WODC. Available at: http://www.wodc.nl/onderzoeksdatabase/1631a-literatuuronderzoek-illegalen.aspx?cp=44&cs=6796, 22 September 2008.

Magnée, I. & E. Gerritsma (2003). *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue. The Netherlands*. Brussel: Migration Policy Group. Available at: http://www.migpolgroup.com/multiattachments/2071/DocumentName/NetherlandsMigration.pdf, 16 September 2008.

Marinelli, V. (2005). *EU and US approaches to the management of migration. The Netherlands.* Brussel: Migration Policy Group. Available at: http://www.migpolgroup.com/multiattachments/3009/DocumentName/EMD_Netherlands_2005.pdf , 16 September 2008.

Ministry of Justice (2008). *General amnesty for about 27,500 foreign nationals*. Available at: http://english.justitie.nl/currenttopics/pressreleases/archives-2008/general-amnesty-for-about-27500-foreign-nationals.aspx?cp=35&cs=1578, 16 September 2008.

Ministry of Justice (2004). *The Aliens Act 2000: Aliens in the Netherlands: admission and reception*. Available at: http://english.justitie.nl/images/aliensact_tcm75-28563_tcm35-14170.pdf, 14 March 2008

PICUM (Platform for International Cooperation on Undocumented Migrants) (2008). *Newsletter February 2008.* Available at: http://www.picum.org/, 16 September 2008.

Parliamentary Assembly of the Council of Europe (2006). *Resolution 1483 : Policy of return for failed asylum seekers in the Netherlands.* Available at: http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1483.htm, 16 September 2008.

Van der Heijden, P.G.M., G. van Gils, M. Cruijff & D. Hessen (2006). *Een schatting van het aantal in Nederland verblijvende illegale vreemdelingen in 2005.* Utrecht: IOPS. Available at: www.wodc.nl/images/1466_volledige_tekst_tcm44-59472.pdf, 22 September 2008.

Van der Leun, J. (2003). *Looking for loopholes. Processes of Incorporation of Illegal Immigrants in the Netherlands.* Amsterdam: Amsterdam University Press.

Van der Leun, J. & M. Ilies (2008). *Illegal immigrants in the Netherlands: A National Expert Report for Clandestino/Eliamep.* Draft report for the project 'Clandestino. Undocumented Migration: Counting the Uncountable, Data and Trends Across Europe'.

Van Selm, J. (2004). *The Netherlands: Death of a Filmmaker Shakes a Nation*, Migration Information Source. Available at: http://www.migrationinformation.org/Profiles/display.cfm?ID=341, March 13 2008

Zapfl-Helbling, Committee on Migration, Refugees and Population, Parliamentary Assembly of the Council of Europe (2005). *Report: Policy Return for Failed Asylum Seekers in Switzerland.* Available at: http://assembly.coe.int/Documents/WorkingDocs/Doc05/EDOC10741.htm, 16 September 2008.

8. Statistical Annex

Table 53: Expulsions from the Netherlands 2002-2006 (total de facto and de jure)

	2002	2003	2004	2005	2006
Asylum-seekers	21 300	21 900	14 900	12 500	10 200
Other irregular migrants	29 100	33 800	27 000	32 400	30 100
Total	**50 400**	**55 700**	**41 900**	**44 900**	**40 300**

Source: IND, 2003-2006 (table from Van der Leun, Joanne & Ilies Maria, 2008: CLANDESTINO country report: Illegal immigrants in the Netherlands).

Table 54: Removals and absconding 2002-2006

	2002	2003	2004	2005	2006
Voluntary & enforced removals	28 200	29 500	22 400	22 400	18 850
Absconding	22 200	26 200	19 500	22 500	21 450
Total involved	50 400	55 700	41 900	44 900	40 300
% removed out of involved	56	58	53	50	47

Source: IND, 2002-2006 (table from Van der Leun, Joanne & Ilies Maria, 2008: CLANDESTINO country report: Illegal immigrants in the Netherlands).

Table 55: Regularisations in the Netherlands

Year of Governmental Decree	Number of Regularisations
1975	15 000
1979	1 800
1991	2 000
1999	1 800
2007	27 500

Sources: Apap et al, 2000; Spijkerboer, 2000; EMN, 2005; IND, 2007 (table from Van der Leun, Joanne & Ilies Maria, 2008: CLANDESTINO country report: Illegal immigrants in the Netherlands).

Table 56: Irregular immigrants apprehended by the police in 2005-2006 per nationality

Nationality	Absolute number	% out of the European/non European irregulars	% out of the irregular population
Europeans			
Bulgarians	1013	38	12
Romanians	446	17	5
Other nationalities	1235	46	15
Total Europeans	**2694**	**100**	**32**
Non-Europeans			
Turkish	799	14	9
Northern African	816	14	10
Africa other	1450	25	17
Surinamese	120	2	1
Asian	1980	34	23
American	338	6	4
Unknown	292	5	3
Total non-Europeans	**5795**	**100**	**68**
TOTAL	**8489**		**100**

Source: van der Heijden et al., 2006, authors' calculations (table from Van der Leun, Joanne & Ilies Maria, 2008: CLANDESTINO country report: Illegal immigrants in the Netherlands).

Table 57: Expulsions from the Netherlands 2002-2006 (totals de facto and de jure)

	2002	2003	2004	2005	2006
Asylum-seekers	21 300	21 900	14 900	12 500	10 200
Other irregular migrants	29 100	33 800	27 000	32 400	30 100
Total	**50 400**	**55 700**	**41 900**	**44 900**	**40 300**

Source: IND, 2003-2006 (table from Van der Leun, Joanne & Ilies Maria, 2008: CLANDESTINO country report: Illegal immigrants in the Netherlands).

Table 58: Number of irregular third country nationals apprehended in border regions by Military Police (KMAR), sea and air borders

2004	9 987
2005	10 588
2006	7 842
2007	8 189

Source: Ministry of Defence 2005, 2006, and 2007 (table from Van der Leun, Joanne & Ilies Maria, 2008: CLANDESTINO country report: Illegal immigrants in the Netherlands).

Table 59: Number of third country nationals apprehended after having crossed the external maritime and air border irregularly

2005	10 803
2006	11 634

Source: COM (2008) 68 final (table from Van der Leun, Joanne & Ilies Maria, 2008: CLANDESTINO country report: Illegal immigrants in the Netherlands).

29 Poland

Mariya Dzhengozova

1. Introduction

The current report focuses on national experiences with regularisation practices and it is based on: (i) relevant domestic laws; (ii) expert analysis (Iglicka and Gmaj, forthcoming); (iii) official population statistics [data provided by the Polish Ministry of Interior and Administration, Central Statistical Office, Eurostat] as well as figures regarding human trafficking from ICMPD Yearbook 2006 on illegal migration. The position of the principal state actor has been reconstructed on the basis of an ICMPD questionnaire (2008) addressed to Polish Ministry of Interior and Administration (hereafter, response MSWIA). In addition, a telephone interview with the expert K. Gmaj (Center for International Relations, Warsaw) complements the study (hereafter, response Gmaj). It begins with basic information and an overview of the main factors affecting migration policies In Poland.

Table 60: Basic information on Poland

Total population*		38,125, 479
Foreign population**		548,830
Third Country Nationals		Not available
Main countries of origin		Not available
Net migration**		-13,8
Asylum applications***		4225

* 31.Dec.2006 **2007 *** 2006

Source(s): http://www.stat.gov.pl; http://epp.eurostat.ec.europa.eu

For many countries in Western Europe and North America, Poland has been one of the largest sending areas in Central and Eastern Europe and a vast reservoir of labour. Since the beginning of the 1990s it is gradually shifting from a major sending country into a country of net-immigration and transit migration. Poland's accession to the EU in May 2004 is likely to foster the changes in the migratory processes (Iglicka 2005). An important consequence (with a possible impact on regularisation) is the implementation of Schengen requirements – the introduction of mandatory visas for Poland's eastern neighbours, Ukraine, Belarus and Russia.

2. Irregular Migration in Poland

Illegal entrance and overstaying (inflows from regular status into illegality) are one of the main types of irregularity currently observed in Poland. For example, in the first 9 months of 2007, the number of foreigners deported on the basis of illegal entrance was 2,265 (Iglicka and Gmaj, forthcoming: 20).

Regarding the origin of undocumented migrants, in general, a stable "core" is represented by citizens of the former Soviet Union counties with Ukraine leading,

followed by Armenia, Russia, and Moldova. Nationals from Vietnam and Mongolia belong to the stable 'core' as well. Apart from this "core", there are small numbers of Afghanistan, Azerbaijani, Bangladeshi, Belarusian, Chinese, Somali, Indian, Iraqi, Pakistani, Sri Lanka, Turkish, Yugoslavian, and many others citizens (Iglicka and Gmaj,forthcoming: 9-10). In particular, Chechens constitute one of the important groups of foreigners who try to enter Poland illegally. Their aim is to apply for a refuge status. Since Poland entered to Schengen zone (20 December 2007) the number of Chechens crossing Polish border illegally grew visibly: from 20 December 2007 to 17 January 2008 Border Guard stopped 600 persons, 95 per cent of whom were Chechens. (Iglicka and Gmaj, forthcoming: 17).

With reference to the ICMPD Yearbook on Illegal Migration, Ukrainian, Russian and Moldavian citizens represent the dominant group of border violators for 2005 and 2006 (Table 61). The majority of apprehension of people entering the country has been made at the Ukrainian border – 769 apprehensions in 2005 compared to 836 in 2006. Other significant groups of TCNs border violators come from Vietnam, Belarus, Georgia and China. The total number of migration-related apprehension of illegal migrants was 3,231 in 2005 compared to 2,741 in 2006 (ICMPD 2006: 177-178).

Table 61: Apprehension of illegal migrants by nationality

Country	2005	2006
Ukraine	1,430	1,234
Russia	469	336
Moldova	366	354

Source: ICMPD 2006

A third category of irregular TCNs are foreigners who enter Poland with tourist visa, although their real aim is work. Thus their stay in Poland is legal – they have legal basis: tourist visa – but their status starts to be irregular when they undertake an employment in a shadow economy. This group can be considered as a "very specific category of illegal migrants interested in circular migration" (response Gmaj).

3. Regularisation programmes

The first regularisation action in Poland is known as the "*Great abolition"* (implemented from 1 September 2003 to 31 December 2003). The programme was introduced on the occasion that the new *Act of 13 June 2003 on Aliens* entered into force. The objective was to settle the status of those foreigners who had already demonstrated the existence of *de facto ties with the country*, but who had not established ongoing legal residence. The measure addressed the need to accommodate whole families of Armenians, living in Poland with an ambiguous status for several years. "The arguments for the regularisation indicated that it was mainly an acknowledgment of the status quo, designed to facilitate the ability of established migrants (whose children attend school and who work or run a business) to emerge from the grey zone -the informal economy" (Iglicka& Kazmierkiewicz & Weinar 2005: 8). This need was also justified in the cases of aliens who resided in

Poland for a long period, were able to cover their costs of residence, had children attending Polish schools for years, however - for some reasons - did not meet the formal requirements allowing legalising their stay on general rules. The situation of the aliens who could not be expelled due to technical or humanitarian reasons was also taken into account while designing the programme (response MSWIA: 6).

The prerequisites for application were as it follows: 1) residing continuously in Poland since at least 1 January 1997; 2) submitted, by 31 December 2003, an application for granting a temporary residence permit to the proper authority; 3) indicated the place of accommodation and presented a legal title authorising to occupy such place; 4) possessed: a promise of issuing a work permit on the territory of the Republic of Poland or an employer's written declaration confirming intention to either employ an alien or to entrust an alien with other gainful work or perform function in boards of legal persons carrying out economic activity if work permit was not required or an income or property sufficient to cover the costs of alien's maintenance and medical treatment as well as maintenance and medical treatment of dependent members of alien's family, without the need to claim social assistance for the period of one year; 5) the regularisation: a) did not constitute a threat to the state security and defence as well as to the public security and public policy; b) did not constitute the burden for the state budget; c) was not in breach of the interest of the Republic of Poland (response MSWIA: 3). It was estimated that the measure could be applicable for not more than 10,000 aliens, addressing mainly citizens of Armenia, Vietnam and Ukraine (response MSWIA: 8-9).

The programme regularised the residence of aliens for one year providing them with the possibility for continuation (when requirements are met). "Granting to those aliens permit for indefinite period as well as releasing them from obligation to obtain a work permit was not considered as it would mean better treatment of aliens residing illegally in the territory of the Republic of Poland than the aliens residing there legally" (response MSWIA: 17).

The "*Great abolition"* did not achieve high numbers: first of all it covered a small group of settled migrants (only those who have been residing since 1 January 1997). The number of application was 3,508 (of which 1, 626 from Armenia, 1,341 from Vietnam, 88 from Ukraine, 68 from Mongolia and 47 from Azerbaijan). The total number of positive decisions was 2,747 (out of which 1,245 for Armenians, 1,078 for Vietnamese, 68 for Ukrainians, 51 for Mongolians and 19 for Azerbaijan nationals (data provided by the MSWIA).

The small number of applicants is explained with the fact that the requirements resulted difficult to complete with. The condition for having a flat, for example, wasn't easy to fulfill – as Poland does not apply social housing policy, it is very difficult to buy or hire a flat - sometimes foreigners rent a flat in the so-called shadow economy. It was also difficult to prove that one has a job contract (response Gmaj). In addition, the time limit for submitting an application was not enough, some of the aliens were made familiar with the possibilities offered under the programme too late to submit an application and some of the aliens were afraid of presenting themselves for Polish authorities due to the threat of being expelled

As a result, in 2007 was launched *"Major abolition – continuation"*. This programme lasted from 20 July 2007 to 20 January 2008 and was addressed to the aliens who, having met all of the requirements specified in the *Great abolition*, did not use the opportunity to regularize their residence, because they were not aware of this possibility or who were afraid of reporting to the competent authorities due to the fear of being expelled from the territory of the Republic of Poland (response MSWIA: 6). The previous requirement for having resided in Poland since at least 1997 narrows the target group – applicants should have at least 10 years of continuous residence, excluding all those illegal migrants that have come after 1997 (response Gmaj). The number of applicants was 2,022 (of which 1,125 from Vietnam, 574 from Armenia, 114 from Ukraine and 43 from China). The number of positive decisions was 177 of which: 102 for Armenians, 26 for Vietnamese, 12 for Ukrainian and 10 for Mongolian nationals (data provided by the MSWIA).

In addition to the *Great Abolition* and *Major Abolition*, the Polish Ministry of Interior and Administration considers the so-called *"Small abolition"* as another regularisation programme. It was also introduced on the occasion that the new *Act of 13 June 2003 on Aliens*. The duration was determined in the period between 1 September 2003 and 1 November 2003. The programme pertained to illegal immigrants who wanted to leave Poland – it created an opportunity for the aliens residing illegally to leave the territory of the Republic of Poland without the consequences caused by illegal stay (ban of entry into the territory of the Republic of Poland) provided that they had not obtained so far a decision on expulsion or on an obligation to leave the territory of the Republic of Poland and their data were not recorded in the index of aliens whose residence on the territory of the Republic of Poland is undesirable. As a result, 282 foreigners took advantage of it including 139 citizens of Ukraine, 26 citizens of Armenia, 25 citizens of Mongolia and 23 citizens of Bulgaria (data provided by the MSWIA).

4. Regularisation mechanisms

Together with the "*Great abolition"* introduced in 2003, the Act on Aliens 2003 was amended in reference to tolerated status ("pobyt tolerowany"). The institute of the tolerated status is a result of the harmonisation with EU legislation and is the equivalent to temporary and/subsidiary protection. This type of protection was envisaged to those of aliens who did not meet the criteria for being granted a refugee status, according to the Geneva Convention of 1951, but, on the other hand, could not be expelled to their country of origin due to the risk of the breach of their basic human rights that could be found there… A permit for tolerated stay is also granted when expulsion of an alien is not possible due to the technical or formal obstacles beyond the authority responsible for executing the decision on expulsion. Such obstacles are e.g. inability to confirm an identity of an alien or inability to provide an alien with a travel document. In the mentioned cases, a permit for tolerated stay is granted ex officio on a case-by-case basis…Cases of aliens who could not be expelled due to the humanitarian or technical reasons were also taken into account while creating the institution of permit for tolerated stay (response MSWIA: 6-7).

The residence permit is for 1 year with the possibility for continuation (when the conditions are met) - the permit for tolerated stay may be withdrawn when

prerequisites for granting the said permit do not apply any longer. Aliens who have been granted a permit for tolerated stay have the right for gainful employment and public assistance.

The total number of applications for 2007 is 3,138[1] compared to 2, 213 for 2006. Major groups are comprised by Russian (2,870 applicants in 2007 and 2086 applicants in 2006) and Vietnamese nationals (118 applicants in 2007 and 50 applicants in 2006). The number of beneficiaries in 2007 is as it follows: 2,910 persons have been granted refugee status ("nadanie statusu uchodźcy") the two major groups being 2,864 Russian and 18 Iraq nationals. The total number of people given tolerated status[2] ("zgoda na pobyt tolerowany") was 218, including 173 Vietnamese, 12 Chinese and 7 Armenian nationals The number of beneficiaries for 2006 is the following: 2, 177 persons have been granted refugee status of which 2, 083 Russians and 9 Iraqis; the number of persons granted tolerated status was 84, the major groups being from Vietnam- 48 persons and Pakistan- 10 persons (data provided by the MSWIA).

Financial consequences that result from the introduction of the measure relate to rights such as right for education, employment, social benefits etc. They are estimated as it follows: "taking into account the current Polish unemployment rate, it shall be born in mind that part of aliens granted tolerated stay will need public assistance. The costs of such assistance will be maintained by a state budget and municipal budgets. It is estimated that the costs will not be very high. It should be expected that due to planned introduction of visas for the citizens of Ukraine, Belarus and Russian Federation Poland as a member state of the EU as well as planned accession to the Dublin Convention, the number of permits for tolerated stay to be granted about 200 families (about 650 people) per year. This may stay for about 0.03% of all of those who need public assistance [c.a. 2.150.000 according to data presented by the Ministry of Labour and Social Policy] (response MSWIA: 23).

According to the MSWIA, other regularisation mechanism is *Visa granted for exceptional circumstances* (art. 33 of Act of 13 June 2003 on Aliens). It legalises a stay of aliens upon their application in a short (three month) period because of exceptional circumstances including: 1) alien's appearance in person before an agency of the Polish public authority; 2) alien's entry in Poland because of the necessity to undergo medical treatment, which he/she cannot undergo in other country; 3) an exceptional personal situation requires the presence of an alien in the country; 4) it is required by the interest of the Republic of Poland; 5) there is a well-founded reason to suspect that an alien is a victim of trafficking in human beings within the meaning of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings and it has been confirmed by an authority competent with respect to conduct procedure on combating trafficking in human beings. The visa is issued for the period of residence necessary to realise the purpose for which it was issued. In any case such a visa may not be issued for the period exceeding 3 months. It is granted for a period of residence necessary for the alien to

[1] It includes First and Second Instances.
[2] Permits for tolerated stay were mainly granted ex officio (response MIA PO: 21).

decide on cooperation with an authority competent with respect to conduct the procedure on combating trafficking in human beings, however not exceeding 2 months. A visa is issued or refused by the Head of the Office of Foreigners. An alien who stays outside the territory of the Republic of Poland submits an application for issuance of this visa through the consul. An alien who stays on the territory of the Republic of Poland through the voivod competent with respect to the place of an alien's residence (response MSWIA: 5).

The total number of applicants for 2006 and 2007 is 1, 270. Major groups are comprised by: 337 Ukrainian, 143 Armenian, 92 Russian, 91 Vietnamese and 65 Belarus nationals. The number of visas issued for 2006 and 2007 is 1,061 (287 for Ukrainian, 144 Armenian, 73 Russian, 63 Belarusian and 43 Vietnamese nationals) (data provided by MSWIA).

Other regularisation mechanism is considered to be *the residence permit for a fixed period granted to an alien married to the Polish citizen* or to an alien possessing a permit to settle or a long-term resident's EC residence permit on the territory of the Republic of Poland (art. 57 sec. 3 of the Act of 13 June 2003 on Aliens - Journal of Laws of 2006, No 234, item 1694, with amendments). This mechanism was introduced in the Act of 13 June 2003 on Aliens (entered into force on 1 October 2005) and was aiming at protecting the family life of Polish citizen being married to an alien. The scope of this regulation was extended on spouses of aliens having permits for indefinite stay in Poland. This mechanism is not applied in case of marriage of convenience or in cases justified by the reasons related to the state security and defence, the public security and policy or the interests of the Republic of Poland (response MSWIA: 7). Residence permit for a fixed period is granted for a period exceeding 3 months and not longer than 2 years. As a rule, no work permit is required for an alien holding a permit granted for an alien married to a Polish citizen. The same rule applies to an alien holding a residence permit for the purpose of family reunification (response MSWIA: 18). No separated data concerning the number of illegally residing aliens who applied for or/and obtained the residence permits for a fixed period granted for aliens married to Polish citizens or married to aliens for whom a permit to settle or a long-term resident's EC residence permit was granted (response MSWIA: 21).

5. Conclusions

Compared to mass regularisation programmes (like for example in Southern Europe), the scope of the programme(s) in Poland is rather limited – it concentrates on a specific group of *settled migrants* (who have "strong ties" with the receiving country). The measures were repeatedly introduced in 2003 and 2007 as they failed to access potentially eligible applicants. In this sense, *Great* and *Major abolition* did not play role of a pull factor for new immigrants (response MSWIA: 8-9)

In the opinion of the Ministry of Interior the number of aliens who were granted a residence permit on the basis of regularisations was too small, comparing to the total population of Poland, to make the influence on the national economy or on the labour market. Moreover, "regularisations resulting in reduction of number of illegally staying foreigners in non-restricted way attained image of country applying

European standards in managing migration… Besides orientation for temporary and quick results in reduction of number of illegally residing migrants, regularisation plays always role of one of measures undertaken by the state authorities to manage the migration accordingly to national strategy" (response MSWIA: 8-9).

The specific requirement for having been resident since at least 1 January 1997 raises the question about measures addressing irregular migrants that have come after 1997. In this respect, no further activities are panned by the State: "Regularisation programmes should not be offered too often nor regularly as they may cause the situation when aliens stay illegally in the country concerned, expecting the next regularisation" (response MSWIA: 26). In addition, the current situation is characterised by a "public concern rather on emigration than immigration. In the context of immigration of importance is the opening in 2006 of the labour market for the neighbouring countries [Ukraine, Russia, Belarus] (response Gmaj).

Regarding possible EU action, the Ministry agrees that regularisation programmes and mechanisms undertaken by one of the Schengen Countries may influence on migratory situation in another one. "However it must be taken into account that the states that use regularisation have various political, economic and historical determinants to apply this instrument. There are also various reasons why immigrants find themselves in irregular situation" (illegal entry, loss of legal status) (response MSWIA: 26). In this sense, the need and usefulness of a standardised approach towards regularisation needs further analysis. "Due to different reason for aliens' regularisation and different reasons for irregularity, it is difficult to say whether standarised regularisation procedures at the EU level would be possible and desirable… It is necessary to develop and strengthens instruments leading to find out solutions for aliens not having a legal title to reside in the territory of the state concerned. The said instruments could be of a control nature. They could also aim at effective return, including voluntary return" (response MSWIA: 26-27).

6. References

Blaschke, Jochen (2008), Trends on regularisation of third country in irregular situation of stay across the European Union, Briefing paper, Directorate-General Internal Policies, Policy Department C Citizens Rights and Constitutional Affairs

Central Statistical Office, Demographic Yearbook of Poland 2007. Available at: http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_PUBL_Demographic_yearbook_of_Poland_2007.pdf, 24 April 2008.

Central Statistical Office, Concise Statistical Yearbook of Poland 2007, Section Population, 190-225, table 34, International Migration of Population for Permanent Residence by sex and age of migrants. Available at: http://www.stat.gov.pl/gus/45_737_ENG_HTML.htm, 13 March 2008.

EUROSTAT, Population statistics online

ICMPD (International Centre for Migration and policy Development), (2006), Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe

Iglicka, K. & Gmaj, K, (forthcoming): Clandestino Country Report. Unpublished, Clandestino project

Iglicka, K. (2005), EU Membership Highlights Poland's Migration Challenges, Migration Information Source. Available at: http://www.migrationinformation.org/Profiles/display.cfm?ID=302, 13 March 2008

Iglicka, K. & Kazmierkiewicz, P. & Mazur-Rafal, M. (2003), Poland; Migration Country Report In Niessen J. & Schibel Y. & Magoni, R. (eds.), EU and US approaches to the management of immigration. Available at: http://www.migpolgroup.com/multiattachments/2084/DocumentName/PolandMigration.pdf 10 March 2008.

Iglicka, K. & Kazmierkiewicz, P. & Weinar, A. (2005), Poland, In Niessen J. & Schibel, Y. & Thompson, C. (eds.), Current Immigration Debates in Europe: A Publication of the European Migration Dialogue. Available at: http://www.migpolgroup.com/multiattachments/3010/DocumentName/EMD_Poland_2005.pdf, 10 March 2008.

Journal of Laws of 2003, No 128, item 1175, Residence permit for a fixed period granted on the basis of art. 154 of an Act of 13 June 2003 on Aliens

Journal of Laws of 2006, No 234, item 1694, with amendments, National visa issued for exceptional circumstances, art. 33 of Act of 13 June 2003 on Aliens.

Journal of Laws of 2006, No 234, item 1694, with amendments, residence permit for a fixed period granted to an alien married to the Polish citizen or to an alien possessing a permit to settle or a long-term resident's EC residence permit on the territory of the Republic of Poland, art. 57 sec. 3 of the Act of 13 June 2003 on Aliens.

Journal of Laws of 2006, No 234, item 1695, with amendments, permit for tolerated stay, art. 97 of an Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland

Journal of Laws of 2007, No 120, item 818, residence permit for a fixed period granted on the basis of art. 18 of the Act of 24 May 2007 on the amendment of the Act on aliens and other acts

Response MIA PO - questionnaire filled in by the Polish Ministry of Interior and Administration, February 2008.

30 Portugal

Mariya Dzhengozova[1]

1. Introduction

According to estimates by the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, in 2005 there were some 10,495 Million people living in Portugal of whom approximately 764, 000 were reported foreigners (Population Division of the Department of Economic and Social Division of the United Nations Secretariat 2005).

2. Irregular Migration in Portugal

There is no reliable and/or accessible official information on the exact size and characteristics of illegally residing TCNs. According to researchers, the number of undocumented migrants is estimated to be between 80,000 and 100,000 (Fonseca& Malheiros& Silva 2005: 12). Changes in patterns of illegal migration have been recently observed. They are expressed in a "shift from the traditional individual movements of people coming from the PALOP countries with established social networks in Portugal to the structured illegal trafficking networks controlled in the sending countries and composed mainly of Eastern European immigrants" (Teixeira et al 2007: 282). This statement is further supported by data from regularisation programmes. The majority of beneficiaries (67 percent) of the regularisation in 1996 were predominantly from PALOP states (Esteves et al. 2003). Principal countries of origin were Angola, Cape Verde, Guinea Bissau, Brazil (Response MAI 2008: 4). The regularisation in 2001 authorized about 170,000 permits, the majority of them to Ukrainians (63,500) and Brazilians (36,600) (Levinson 2005: 3). Finally, in 2004 was regularised the situation of illegal workers coming predominantly from Ukraine; Romania, Cape Verde; Guinea Bissau, Moldavia (Response MAI 2008: 4).

3. Regularisation programmes

In Portugal have been conducted five regularisation programmes so far. While pre-2001 regularisations were not directly concerned with participation in the labour market, it has been a key prerequisite for regularisations since 2001. That includes: the 2001 *stay permits process*, the special regularisation of *Brazilian workers* in 2003 and the 2004 regularisation based on *social security* (Fonseca & Malheiros& Silva 2005: 3).

Extraordinary regularisations 1992-1993

This 'extraordinary' regularisation campaign (October 1992-March 1993) targeted all non-EU foreigners that could prove they had residence in Portugal for a certain number of months before the regularisation. About 80,000 people applied and only 38,400 were regularised. Inefficiency of the regulatory mechanisms led to increase

[1] The editors would like to thank Lucinda Fonseca for providing valuable advise during the writing of the study. In addition, we would like to thank Jorge Portas of the Serviço de Estrangeiros e Fronteiras for the provision of the statistical data annexed to this chapter.

in the number of undocumented immigrants immediately after the campaign. That resulted in a subsequent new regularisation process, which took place in 1996 (Fonseca & Malheiros& Silva 2005: 2).

Extraordinary regularisations 1996

The second 'extraordinary' regularisation lasted for six months (between June and December 1996) and was largely a response to a shift in the country's ruling political parties from liberal to socialist. Successful applicants had to prove that they were involved in a professional activity, had a basic ability to speak Portuguese, had housing, and had not committed a crime. In this programme a distinction was made between applicants from Portuguese-speaking countries, who could apply if they had been in the country since 31 December 1995, and those from non- EU states, who had to have been in the country prior to 25 March 1995 in order to apply. As a result, 67 percent of the immigrants regularized were from PALOP states (Portuguese-speaking African countries). Approximately 35,000 applications were made and 31,000 residence permits were issued (Fonseca & Malheiros& Silva 2005: 2; Esteves & Fonseca & Malheiros 2003: 16). The programme has been criticised regarding preferential treatment given to applicants from PALOP countries, bureaucratic delays, inadequate information campaign and there were reports that undocumented immigrants were arrested at some application centres (Levinson 2005: 2-3; Esteves & Fonseca & Malheiros 2003).

Regularisation based on employment January-November 2001

In 2000, the growing pressure of employers, the changing characteristics of immigrants and the noticeable presence of non-documented workers led to the introduction of a *temporary-stay (permanence) permit* (DL no. 4/2001 of 10 January). It was attributed to undocumented foreigners working in Portugal who could present valid work contracts. In this sense, the *stay permit* associated the possibility of *regularisation* to the condition of *having work* in Portugal. That created a new immigrant status – confirmed by the DL no. 34/2003 - people in possession of a *temporary-stay (permanence) permit* are not considered residents in Portugal (not even temporary/short-term ones) and, therefore, have *reduced civic rights*.

The *stay permit* allowed the foreign workers that were irregularly in Portugal to stay in the country for one year. Around 185,000 foreigners obtained this kind of permit. Once obtained, stay permits can be renewed up to four times. This system was suspended in November 2001 and removed from the revised law on entry, stay and exit of non-EU foreigners from Portuguese territory (D.L. n.34/2003 of 25 February). The principle of recruitment of foreign workers outside the national territory was introduced (Esteves & Fonseca & Malheiros 2003: 13). However, most Portuguese employers do not recruit abroad but employ foreigners who are already in the country, which means that they will probably arrive without the appropriate visas and contracts as undocumented immigrants (Esteves & Fonseca & Malheiros 2003: 16-17). That explains the limitations of the proposed policy.

Agreement between Portugal and Brazil 2003

In 2003 was signed the so-called *Lula agreement* between Portugal and Brazil. It allowed the regularisation of irregular Brazilian workers settled in Portugal and also irregular Portuguese workers living in Brazil. In order to benefit from this agreement, Brazilians should present a work contract or at least a promise of work contract. The main considerations that led to the formulation of the agreement were the special historical, cultural and economic ties between the two countries, and the debate on the conditions of Brazilian immigrants working in Portugal (Fonseca & Malheiros& Silva 2005: 2).

This measure provides for family reunion and for the possibility of regularising foreign workers that settled in Portugal before the 12 March 2003 and made social security and fiscal contributions for a period of at least three months. However, the programme was criticised for being slow - a number of immigrant cases were left pending and for excluding cases of irregular immigrants who started to work after March 2003 and contributed for social security (Levinson 2005: 3).

Normative-Decree N. 6/2004

The Normative-Decree N. 6/2004, of 26 April included opened up the possibility for regularisation of non-EU foreign workers that could prove they were active in the Portuguese labour market before 12 March 2003. Potential beneficiaries were able to show tax payments and contributions to the national social security for a period of at least three months leading up to the aforementioned date. The application period was for 45 days - between the end of April and mid-June 2004. In this period, foreign workers were asked to send a pre-registration document to the ACIME (High Commission for Immigration and Ethnic Minorities). Approximately 40,000 applications were received (Fonseca & Malheiros& Silva 2005: 2). This regularisation was criticised by several NGOs for the length of time involved in the process, for obliging immigrants (who fulfilled the requirements) to leave the country in order to obtain a work visa in a Portuguese consulate (normally in Spain). It was also criticised for rejecting those who made contributions to social security after March 2003 (Fonseca & Malheiros& Silva 2005: 3).

4. Regularisation mechanisms

The Portuguese new Nationality Law (OL no. 2/2006 of 17 April) provides for regularisation mechanism by naturalisation, however, the scope of this mechanism is rather limited. The new law strengthens the principle of *jus soli* (right of the soil) in recognising the status of citizenship to those who have established *strong bonds* with Portugal. It introduces the so-called *subjective right to naturalisation*, which actually affects illegal migrants –it means that citizenship is granted to children born in Portugal if (i) at least one parent has lived as a legal resident for five or more years in the country or (ii) the child has finished the pre-primary education (four years) (SEF). The Foreigners and Borders Office (SEF) provides statistics on the number of naturalisation awarded broken down by nationality (there is no information on resident status).

Regarding residence permits for carrying out a subordinated professional activity, the revised Law on Entry, Permanence, Exit and Removal of Foreigners into and out

of Portuguese Territory (Act 23/2007 of 4 July 2007) provides for a regularisation mechanism. It stipulates that exceptionally, against a proposal of Director General of SEF or by initiative of the Minister of Internal Affairs, the requisite on holding a valid residence visa may be dispensed with, if the foreign citizen, apart from the other general conditions, fulfils the following: "a) Holds a work contract or has a labour connection confirmed by a workers' union, by an association which is party to the Consulting Councillor, or by the Work General Inspectorate; b) Has legally entered in national territory and here remains legally; c) Is registered in the Social Security System and accomplished all his /her obligations to that department (Article 88 n 2, Act 23/2007 of 4 July 2007)[1]. "According to SEF, until now 12000 immigrants (most of them Brazilians) have benefited from this regularisation mechanism"[2].

5. National policy on illegal migrants in regard to regularisation

The debate on irregular migration in Portugal is closely linked to clandestine work and the informal economy.

According to the International Medical Assistance (AMI)[3] the high number of immigrants in irregular situation in the country is an indicator for the limited capacity of the authorities in dealing with regularisation demands: "The legislation is still restrictive, consequently the control of migratory fluxes is inefficient, then, this kind of policy promotes only the illegality situation and the government tries to fight this with extraordinary regularisation [programmes]" (Response AMI 2008: 3). The NGO pays attention to the conditions under which one qualifies for regularisation: "legislation is still very little friendly of those who look up to regulate their situation, and…the requirements are too hard to accomplish". The need of revision of requirements is also supported by the Jesuit Refugee Service (JRS)[4]: "some documents that are required for regularization are nearly impossible to get from countries of origin, especially when it comes to migrants who have been in Portugal for long periods of time; also, the fine that migrants need to pay for their irregular permanence in Portugal should be omitted, since most irregular migrants are in a very vulnerable [economic] condition" (Response JRS: 3). Other aspects which were criticised by NGO in respect to most regularisation programmes is the length needed by authorities in processing the documents. In relation to regularisation mechanisms, it was highlighted the need of a special provision on victims of human trafficking who entered the country illegally: "they can be given a residence authorization since they accept to collaborate with the authorities" (Response AMI 2008: 3).

Regarding positive aspects of regularisation programmes, the General Confederation of Portuguese Workers (CGTP) and the General Union of Workers (UGT) support the opinion that such programmes reduce social exclusion, insecurity, poverty and criminality and thus are important for the society as a whole and the protection of

[1] http://www.sef.pt/documentos/56/Nova%20Lei%20de%20EstrangeirosEN.pdf, 23 July 2008.
[2] Data provided by Maria Lucinda Fonseca, 22 July 2008.
[3] An NGO involved in the process of regularisation
[4] NGO involved in the process of regularisation

migrant workers' rights. Nevertheless, UGT is not in favour of extraordinary processes of regularisation – they are associated with a policy of open doors and UGT stresses on the need of control mechanisms (interview with UGT). In comparison, CGTP is against the quota system as a means of migration control introduced by the Portuguese government. According to the Confederation, this has proved to be a failure, and migrants in irregular situations still persist. In this sense, CGTP presents two suggestions in fighting against clandestine work. Firstly, regularisation processes should be carried out on EU level in all countries at the same time: this would hinder movements and circularisation of people within Europe. Secondly, control mechanisms against companies who support clandestine work should be introduced and coordinated on EU level with the collaboration of Member States' authorities, securing thus efficiency of labour inspection authorities (interview with CGTP). UGT also advocates for regulations on EU level, which, according to the Union, are possible only through a harmonisation of processes and procedures in all Member States with regard to immigration and labour market (difficult, though…). At the same time, the needs and the situation of different groups of irregular migrants has to be evaluated, in order to find tailored measures for different groups (interview UGT).

6. Conclusions

According to the Portuguese government's response to the MS questionnaire, "labour market needs [lie at the heart of effective migration] management" (Response MAI, 2008:3). Indeed, in the past, "specific labour [market] needs, like in public works and tourism, were the main motives [for regularisation programmes]. Since 2001, combating the informal employment is the main motive for the following regularization programmes and mechanisms" (Response MAI, 2008:3). Social actors by and large have similar positions. Overall there is thus an overall consensus in Portugal that regularisations may be an appropriate means to promote immigrant integration, reduce the informal economy and increase protection of workers. Albeit no new programmes have been carried out since 2005, the reform of nationality legislation in 2006 suggests that Portugal continues to follow an increasingly rights based approach to tackling illegal immigration, consistent with the its general immigration and immigrant policy framework – indeed, Portugal ranked second (after Sweden) in the recent edition of the Migrant Integration Policy Index, indicating the relative inclusiveness of its overall policy framework (Niessen et al. 2007). Generally, along with Spain, Portugal's attitudes towards regularisation are among the most favourable in the European Union. However, in the absence of relevant in-depth studies on the outcomes and impacts of regularisation programmes an answer the question to what extent past regularisation programmes actually achieved their various objectives – to promote the integration of immigrants, to combat social exclusion and marginalisation and to reduce informal employment is much less sure.

7. References

Act 23/2007, of the 4th of July on entry, permanence, exit and removal of foreigners into and out of the territory of Portugal; pp.53-54 and 60-61. Available at: http://www.sef.pt/documentos/56/Nova%20Lei%20de%20EstrangeirosEN.pdf, 23 July 2008.

Blaschke, Jochen (2008), *Trends on regularisation of third country in irregular situation of stay across the European Union*, Briefing paper, Directorate-General Internal Policies Policy Department, Citizens Rights and Constitutional Affairs

Esteves, A. & Fonseca, L. & Malheiros, J (2003), Portugal; Migration Country Report In Niessen J. & Schibel Y. & Magoni, R. (eds.), EU and US approaches to the management of immigration. Available at: http://www.migpolgroup.com/multiattachments/2086/DocumentName/PortugalMigration.pdf, 17 March 2008

Interview with CGTP, 2008, conducted by Veronika Bilger, Lucinda Fonseca and Elisabeth Strasser

Interview with UGT, 2008, conducted by Veronika Bilger, Lucinda Fonseca and Elisabeth Strasser

Niessen, Jan; Thomas Huddleston and Laura Citron, in cooperation with Andrew Geddes and Dirk Jacobs (2007): Migrant Integration Policy Index. Brussels: British Council and Migration Policy Group

Organic Law no. 2/2006 of 17 April. Available at: http://www.sef.pt/portal/V10/PT/aspx/legislacao/index.aspx?id_linha=4214&menu_position=4136#0, 19 March 2008.

Response MAI, PT - questionnaire filled in by the Portuguese Ministry of Interior and administration, Department for International Relations and Cooperation, Aliens and Border Service, February 2008.

SEF (The Foreigners and Borders Office), www.sef.pt, legislation and statistics online

Fonseca, L & Malheiros, J. & Silva, S. (2005), Portugal, In Niessen J. & Schibel, Y. & Thompson, C. (eds.), Current Immigration Debates in Europe: A Publication of the European Migration Dialogue. Available at: http://www.migpolgroup.com/multiattachments/3011/DocumentName/EMD_Portugal_2005.pdf, 17 March 2008

Levinson, A. (2005), The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies, Oxford: Centre on Migration, Policy and Society, University of Oxford. Avaialbale at: http://www.compas.ox.ac.uk/publications/papers/Country%20Case%20Portugal.pdf, 17 March 2008

Malheiros, J. (2002), *Portugal Seeks Balance of Emigration, Immigration*, Migration Information Source. Available at: http://www.migrationinformation.org/Profiles/display.cfm?ID=77, March 17 2008

Population Division of the Department of Economic and Social Division of the United Nations Secretariat, Trends in Total Migrant Stock: The 2005 Revision. Available at: www.un.org/esa/population/publications/2006Migration_Chart/Migration2006.pdf, 12 March 2008.

Response AMI, 2008: ICMPD questionnaire filled in by the International Medical Assistance

Response JRS, 2008: ICMPD questionnaire filled in by the Jesuit Refugee Service

Teixeira, A. & Albuquerque, R. (2007), Portugal. In: Anna Triandafyllidou, Roby Gropas (Eds.): European Immigration, A Source Book. Aldershot: Ashgate, pp 277-288.

8. Statistical Annex

Table 62: Number of refused, apprehended and removed aliens during the period 1997-2003

	1997	1998	1999	2000	2001	2002	2003
Number of refused aliens	1358	1497	1098	2472	2636	4189	3695
Number of Apprehended aliens	NA	1994	8080	26140	8942	12975	17886
Number of removed aliens	NA	106	898	1145	607	1995	2790

Source: Data provided via email (06 January 2009) by Serviço de Estrangeiros e Fronteiras

31 Romania

David Reichel

1. Introduction

Romania is rather a country of emigration than of immigration, with very large numbers of emigrants. Prior to 1993, those emigrants were mostly ethnic minorities who tried to escape from discrimination or just to find better living conditions; recorded emigration reached its peak with 96,929 Romanians who legally emigrated (Horváth, 2007: 1 – 3). Other (unrecorded) forms of migration subsequently emerged, in particular irregular circular migration in the Schengen area after removal of the visa requirement for Romanians (Baldwin-Edwards 2007: 7). In 2007, Romania entered the European Union.

Table 63: Basic information on Romania

Total population*		*21,600,000*
Foreign population**		*40,800*
Third Country Nationals		*n.a.*
Main countries of origin**	*Moldova*	*7,907*
	Turkey	*3,731*
	Italy	*3,676*
Net migration***		*-7,234*
Asylum applications***		*594*

* 1st July 2005 ** End of 2003 (foreign citizens with temporary residence) *** 2005
Source(s): Website of National Institute of Statistics Romania, www.insse.ro; SOPEMI 2004; UNHCR Statistical Online Population Database

2. Are there known groups of illegally residing TCNs?

Irregular migration is an important issue when analysing migration to, from and through Romania which had became popular under the Communist regime, where possibilities of legal migration were rather restricted. However, as for legal migration, irregular emigration is far more important than irregular immigration. Irregular emigration from Romania was strongly related to (irregular) labour migration to EU countries (cf. Horváth, 2007:6).

The older tolerated irregularity of localised border crossings was replaced by more stringent border checks and conformity with the EU *Acquis* in preparation for Romania's accession to the EU. Asylum-seekers and refugees showed a clear upward trend until 2001, when the figures halved: the main nationalities have been Iraqis, Somali, Indians and Chinese (Baldwin-Edwards 2007: 26). However, asylum applications remain at a very low level.

There is no general statistical assessment of illegal migration in Romania; however, there are several statistics which indicate the phenomenon (Blaschke, 2008: 33-34). In 2003, 5,386 foreign citizens were apprehended in illegal situations in Romania and to 4,619 of them visas for leaving the country were issued. Those measures

mainly concerned persons from Turkey (911), China (612), Republic of Moldova (441), Syria (241) and Israel (217) (cf. SOPEMI, 2004).

Furthermore, during 2003 3,253 persons were apprehended when illegally crossing the Romanian border. 1,681 of whom were foreign citizens (SOPEMI, 2004).

Table 64: Number of refused and removed aliens in Romania in 2003

	2003
Number of refused aliens	55,950
Number of removed aliens	500

Source: Blaschke, 2008: ANNEX II based on GéDAP/CIREFI data

Almost 56,000 aliens were refused entry into the country in 2003. The main nationalities of those migrants were Hungarian (19,268), Moldovan (15,506), and Serbian (9,342). Moreover, 500 persons were removed from Romania in 2003 (Blaschke, 2008: ANNEX II).

More recent data on apprehensions at the border show a small decline to around 50,000 refused entry in 2005 and 2006, of which more than 50% were nationals of the Rep. of Moldova (Tompea and Nastuta 2008: 178). A very sharp decline in the number of temporary residence permits – from 70,000 in 2000 to 48,000 in 2006 – has been linked with tighter border controls, in particular affecting the irregular circular migration of petty traders (Baldwin-Edwards 2007: 26).

3. National policy on illegal migrants in regard to regularisation

There is no information on the national policy in regard regularisations in Romania. The Romanian legislation regarding migration issues has been changed substantially in recent years, as it was necessary to adjust their legislation to EU policy needs, especially concerning border controls, political asylum laws and practices, and human rights protection of minority groups (Baldwin-Edwards, 2005: 1).

4. Regularisation programmes

There has not been any regularisation programme in Romania, as stated by the Immigration Office (Blaschke, 2008: 38). However, it has to be noted that Romanian citizens who migrated to EU countries irregularly often were included in regularisation programmes (especially in Italy and Spain) which legalised their residence status and provided legal access to the labour market (Horváth, 2007: 7).

5. Regularisation mechanisms

Although the Romanian legislation does not include a definition of regularisation, there is a central assessment criterion for extended residence permits in case of illegal residents (e.g. a student with an expired resident permit who is able to prove that she/he is still a student and fulfills the necessary criteria) (Blaschke, 2008: 34).

There is also a form of temporary 'toleration' granted by the Immigration Office, giving 6-month renewable permissions to stay (as opposed to reside) for a range of specified circumstances (EMN 2008: 111—2). There is no information on the number of persons (if any) receiving such a status.In 2006, out of 551 decisions on asylum applications 10 persons received a positive decision other than refugee status (51 recognised refugees, 283 rejected applications and 207 otherwise closed) (UNHCR, 2008: ANNEX), however, there is no information on what kind of status those persons received.

6. References

Baldwin-Edwards, Martin (2007), 'Navigating between Scylla and Charybdis: Migration Policies for a Romania within the European Union', *Southeast European and Black Sea Studies* 7/1, 5—35

Blaschke, Jochen (2008), *Trends on Regularisation of Third Country Nationals in irregular situation of stay across the European Union.* European Parliament DG Ipol.

EMN (2008): 'European Migration Network Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna), August 2008'; in G. Biffl and J. Bock Schappelwein (2008): *Zur Niederlassung von Ausländerinnen und Ausländern in Österreich*. Vienna: Österreichischen Instituts für Wirtschaftsforschung, 105—113

Horváth, Istvan (2007), 'Romania. Country Profile'; Focus migration, available at: http://www.focus-migration.de/, 11 July 2008

OECD (2004), SOPEMI Report for ROMANIA.

Tompea, Ancuta Daniela and Sebastian Nastuta (2008), 'Romania', in H. Fassman, U. Reeger and W. Sievers (eds), *Statistics and Reality: Concepts and Measurements of Migration in Europe*, Amsterdam: Amsterdam UP (in press)

UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 10/06/2008 www.unhcr.org/statistics/populationdatabase

UNHCR (2008), *Statistical Yearbook 2006. Trends in Displacement, Protection and Solutions*. Available at: www.unhcr.org, 11 July 2008

32 Slovak Republic

David Reichel

1. Introduction

The Slovak Republic consists of roughly 5.4 million inhabitants (see: www.statistics.sk). According to the OECD, in 2004, 0.4 percent of the Slovakian population are foreigners and 3.9 percent are foreign born (http://dx.doi.org/10.1787/615583184240, 14 March 2008).
There are also statistics on the composition of ethnic groups in the country. According to the population census, carried out in 2001, the number of ethnic Slovaks is considered to be 85.8 per cent of the population followed by Hungarians (9.7 per cent) and Roma 1.7 per cent (www.statistics.sk).

Table 65: Basic information on the Slovak Republic

Total population*		*5,380,000*
Foreign population*		*22,251*
Third Country Nationals*		*10,324*
Main countries of origin*	*Ukraine*	*4,033*
	Czech Rep.	*3,612*
	Poland	*2,477*
Net migration**		*3,854*
Asylum applications**		*2,871*

* As of 1st Jan. 2005 ** 2006
Source: UNHCR, 2008; Website of the Statistical Office of the Slovak Republic www.statistics.sk; Council of Europe, 2006

Slovakia has separated from Czechoslovakia and become a independent state in 1993 (Biffl, 2004: 5). Since 1 January 2004 the Slovak Republic is a member of the European Union and since 21 December 2007, it is also included in the Schengen area.

2. Irregular Migration in Slovakia

There are no known estimates on the number of TCN staying in Slovakia illegally. In general, however, Slovakia is considered as a transit country for illegal migrants (cf. Divinský, 2005: 9 - 10). This matter of fact can be illustrated clearly on the basis of border apprehensions of migrants who were not authorised to cross the borders of Slovakia.

Altogether, the ratio of apprehensions of persons entering and leaving Slovakia are balanced (51 % entry), however, this balance vanishes while differentiating the numbers by region of border. 91 per cent of all apprehensions at the border with Austria are outflow migrations and almost 99 per cent of all apprehensions at the border with the Czech Republic are also outflow migrations. Contrary the share of apprehensions of illegal outflow at the border to Ukraine is only 0.3 per cent.

Table 66: Border apprehensions Slovak Republic in 2003

	Total	In	Out
Total	**12493**	**6389**	**6104**
Border with			
Austria	3908	348	3560
Czech Republic	2130	22	2108
Hungary	373	304	69
Poland	599	247	352
Ukraine	5483	5468	15

Source: OECD 2004

At the website of the Statistical Office of the Slovak Republic there is a graph on illegal residence available, which includes all persons found present at the territory of Slovakia who did not meet the conditions of legal residence. The numbers are differentiated by citizenship. More than 900 persons originated from Ukraine in 2005 (only 100 in 2004) and almost 400 held Indian citizenship in 2005 (almost 900 in 2005), as the two largest groups. Other citizens with more than 100 cases per year were Russian Federation, Moldova, China, Georgia, Pakistan and Bangladesh.

Russian Federation, India, Moldova, China and Bangladesh were also the most important countries of origin of asylum seekers who lodged an application in Slovakia.

3. National policy on illegal migrants in regard to regularisation

Persons who enter Slovakia illegally or reside in the country illegally may be taken into detention for the time inevitably needed, but no longer than 180 days. If those detained persons do not apply for asylum, they will be sent back to their country of origin. At the end of 2004, 20 readmission agreements with 18 countries were in operation (Divinský, 2005: 15).

The Ministry of Interior of the Slovak Republic states that there could be a potential relation between immigration policy and illegal migration and a relation between more severe conditions for residence and illegal migration; however, these are just assumptions as there has not been conducted any profound research in the Slovak Republic (Response SK).

According to the response by the Slovak Ministry of the Interior, the mechanism of tolerated stay is regarded as sufficient for dealing with illegally resident aliens and there are no plans for any policy change (Response SK:14).

4. Regularisation programmes

No regularisation programme has ever been carried out in Slovakia.

5. Regularisation mechanisms

According to the Slovakian Ministry of the Interior, the status of tolerated stay can be seen as a regularisation mechanism according to the definitions of the REGINE project. The mechanism of tolerated stay aims to prevent illegal residence and to improve the verifiability of aliens in the territory.

This status was introduced with the new Act on Stay of Aliens in 2002.
There are certain grounds (laid down in the Act on Stay of Aliens) which can lead to the issuance of a tolerated stay by the police:

A tolerated stay is issued to an alien

a) if there is an obstacle of an administrative expulsion,
b) the person was provided with a temporary shelter,
c) if his/her exit is not possible and his/her temporary custody is not effective,
d) the person is a minor found in the SR territory,
e) the person is a victim of a criminal offence related to the trafficking in human beings and he/she is at least 18 years old; a law enforcement agency or a person designated by the Interior Ministry shall communicate to the alien a possibility and conditions of issuance of the tolerated stay on such ground, as well as rights and obligations resulting thereof, or
f) if respect for his/her private or family life thus requires.

Persons who submit a request for voluntary return, the period (no more than 90 days) from the time of the written request until the exit or withdrawal of the request is considered as a tolerated stay, except the alien is taken into temporary custody or the person is entitled to reside in the territory under special conditions, as an asylum seeker for instance (Response SK: 3).

The tolerated stay is issued on request for a period of no more than 180 days, however, of the grounds for the issuance still exist, the tolerated stay can be renewed (Response SK: 3). Only persons who are granted a tolerated stay because they were victims of offences relating to trafficking in human beings and they are 18 years of age or older as well as aliens who are granted a tolerated stay under an international convention (i.e. if respect for her/his private life thus requires) are allowed to work in Slovakia, contrary to persons who obtain only a tolerated stay but not the right to work (Response SK: 3).

Between 2002 and 2004, 148 persons were granted a tolerated stay in Slovakia (Divinský, 2005: 18). In 2007, 372 persons obtained a tolerated stay of whom 83 were Ukrainians, 27 Russians, 21 Vietnamese and 19 Moldavians (Response SK).
In 2006 out of 2,834 decisions on asylum applications, 1,948 were otherwise closed, 878 applications were rejected, 8 applications were recognised as refugees and no asylum seekers was granted another humanitarian stay (UNHCR, 2008: 98).

6. Conclusions

The Slovak Republic is considered to be rather a transit country than a destination country for irregular migrants. There has never been any regularisation programme in Slovakia and since 2002 there is the regularisation mechanism “tolerated stay” which was introduced with the purpose to prevent illegal stay of foreigners and to improve their verifiability of their stay in the Slovak Republic.

In regard to European Union policy, the Ministry of Interior states that it is not able to assess possible Europe-wide policies or regulations. For the Slovak Republic the mechanism of tolerated stay is sufficiently working and there are no plans to implement any regularisation programmes in the Slovak Republic in the future.

7. References

Biffl, Gudrun, 2004: Immigration and Integration Issues in Austria and Slovakia. Contribution to the seminar: Migration in Central Europe: Austria, the Slovak Republic and the EU, April to May 2004, Vienna.

Blaschke, J. (2008), *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union*, PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs

Council of Europe, 2006: Recent demographic developments on Europe 2005, CD-ROM

Divinský, Boris, 2005: Active Civic Participation of Immigrants in Slovakia. Country Report prepared for the European research project POLITIS, Oldenburg 2005, www.uni-oldenburg.de/politis-europe

Response SK: Response to the questionnaire sent to the Slovak government in the course of this project filled in by the Ministry of Interior of the Slovak Republic

OECD (2004): *Trends in International Migration. Annual Report. 2003 edition*. SOPEMI. Paris: OECD

UNHCR, 2008: Statistical Yearbook 2006. Trends in Displacement, Protection and Solutions

33 Slovenia

David Reichel

1. Introduction

At the end of 2006, there were some 2 million people living in Slovenia of whom roughly 53,000 persons were foreigners (cf. www.stat.si).

Table 67: Basic information on Slovenia

Total population*		*2,003,358*
Foreign population*		*48,968*
Third Country Nationals*		*App. 46,500*
Main countries of origin*	*Bosnia and Herzegovina*	*21,943*
	Serbia and Montenegro	*9,279*
	FYROM	*5,122*
Net migration**		*3,436*
Asylum applications**		*1,834*

* As of 31 December 2005 ** During 2005

Source: Website of the Statistical Office of the Republic of Slovenia, www.stat.si; UNHCR, 2007

Slovenia has become an independent state in 1991 and acceded to the European Union in 2004.

2. Irregular Migration in Slovenia

The number of persons residing in Slovenia illegally is considered to be very low[1], due to the reason that it is very hard to make a living in Slovenia without being registered. There are no known estimates on illegal residents in Slovenia.

Generally, Slovenia is rather a transit country than a destination country of illegal migration. In 2007, there were 2,479 illegal border crossings (3,992 in 2006) reported on the territory of Slovenia. Most of those were reported at the border to Croatia (77 %) and the nationality of most persons was Serbian, followed by Albania and FYROM (www.policija.si – statistics, 06 March 2008).

In 2006, 1,117 foreigners were accommodated in Centres for foreigners (where foreigners are sent to until they can be deported), mostly due to the reason that they failed to meet the conditions to reside in Slovenia or they failed to verify their identity (Ministry of the Interior, 2007: 10).

Besides, there is a special group of persons which are discussed in connection with illegal residence, namely the so-called 'erased' persons. In 1991, when Slovenia gained its independency, persons from other states of the former Yugoslavia could apply for Slovenian citizenship. Around 170,000 people obtained Slovenian

[1] This assumption is also supported by the Ministry of the Interior (see Response SI)

citizenship; however, there was also a group of persons who did not apply for citizenship. In 1992 these people were erased from the permanent population register. Hence, those persons were deprived of their right to live in Slovenia. The official number of the 'erased' persons is 18,305 (Zorn, 2004).

Until now, many of the so-called 'erased' persons achieved to regularise their status (Amnesty International, 2005: 3; UNHCR, 2008b), and it is not known how many persons still live in Slovenia without a status.

According to an article published by the UNHCR there is an estimated number of 4,000 persons who remain without a legal status (UNHCR, 2008b), however, according to data and analysis of the Ministry of the Interior[1] those persons have emigrated, as the open number of some 4,000 persons is almost the same since 2006 and there were only 360 applications in the past three years mainly lodged by persons who did not meet the necessary requirements.

3. National policy on illegal migrants in regard to regularisation

Despite the low numbers of illegal migration and the fact that Slovenia is considered to be rather a transit country than a destination country, illegal migration is an important political issue in the public discourse. There were major public discussions about illegal migration (in connection with asylum seeking) in Slovenia since the mid-90s whereby illegal migration and asylum seeking was largely condemned. The public discussion contributed to a simplification of migration issues, where migrants were perceived as 'them' who stood against the autochthon people as 'us'. There were also some critical voices who discussed the bad living conditions with which many immigrants had to struggle. At the same time (until 2001) immigration policy was never put at the top of the political agenda (Andreev, 2005: 18-19).

The position of the Slovenian government vis-à-vis illegal migrants could be described as very tight and restrictive. This position is also emphasised in the response of the Ministry of the Interior to the ICMPD questionnaire:

"Slovenia thinks that regularisation mechanisms and programmes are not appropriate instrument for reducing undocumented immigrants numbers. In our opinion such instrument is raising possibility of inflow of illegal immigrants to the state. That is why Slovenia does not have mechanisms and programmes for regularisation." (Response SI: 5)

The Ministry furthermore states not to notice any connections of immigration policies and numbers of illegal migrants so far. For persons who are found residing in Slovenia illegally sanctions are foreseen and not regularisations, because the Ministry assumes that regularisations would encourage inflows of illegal migrations (Response SI). Combating illegal migration was an important topic of the Slovenian presidency of the European Union. The Minister of the Interior, Dragutin Mate, sees

[1] Information provided via email on 19 June 2008

combating illegal migration as a priority, including a development of an effective policy of returning illegal immigrants.[2]

4. Regularisation programmes in Slovenia

There are no known cases of regularisation programmes of illegal migrants conducted in Slovenia.Until now, there has been a special legislation allowing persons under temporary protection to obtain permanent residence in Slovenia.

Since the beginning of the 1990s Slovenia received some 70,000 refugees from Bosnia and Herzegovina and Croatia and in 1999, some 4,000 from Kosovo. All of those refugees were granted temporary protection in Slovenia and at the end of the 1990s the vast majority of these refugees either returned or moved on to another country. At the beginning of 2002, around 2,300 Bosnian refugees remained in Slovenia for the tenth consecutive year under temporary protection. In July 2002 the Slovenian parliament passed the Amendment to the Law on Temporary Refuge, allowing the remaining Bosnians to obtain permanent residence and other rights, such as the right to integration assistance and the years under temporary protection were taken into consideration for the acquisition of the Slovene citizenship. Some 2,000 Bosnians obtained permanent residence under this legislation and around 200 opted for repatriation in 2002/2003 (UNHCR, 2004).

Additionally, there has been another kind of regularisation for the - upon mentioned - 'erased' persons. The programme/legislation is not to be seen as a conventional regularisation programme, as it addressed a certain group of persons and is connected to a certain period in the history of Slovenia, namely the state succession.

In 1999, Slovenia adapted a special law regulating the status of persons from other State Successors from the former SFRY who were permanent residents on the date of plebiscite for independence and sovereignty and actually lived in Slovenia, and who lived constantly in Slovenia irrespective of their status (Act on the Regulation in the Republic of Slovenia of the Status of the Citizens of Other Countries that Succeeded the Former Socialist Federal Republic of Yugoslavia). Around 12,000 persons obtained permanent residence on the basis of that law. Although this law was not a conventional regularisation programme, because it was connected to a certain complex situation of the country, it shows that regularisations as such are not completely alien to the Slovenian legal framework.

In 2002 it was again possible to obtain citizenship of the Republic of Slovenia under relaxed conditions for persons who were permanent residence in Slovenia on 23 December 1990 and who have lived in the country since then. The applicants were not obliged to prove means of subsistence. Out of 2,959 applicants 1,752 obtained Slovenian citizenship (Ministry of the Interior of the Republic of Slovenia[3]).

[2] (See: http://www.mnz.gov.si/en/splosno/novice/news/article/2049/5709/?cHash=973e99d2c6, 11 March 2008).

[3] Information provided via email on 19 June 2008

5. Regularisation mechanisms

According to the Ministry of the Interior, there is no regularisation mechanism in Slovenia. The International Protection Act of the Republic of Slovenia does not regulate the protection for humanitarian reasons (European Migration Network Ad-Hoc Query 2008: 112). Nevertheless, the number of persons who are granted a humanitarian stay (other than a recognised refugee status in accordance with the Geneva Convention) is very low in Slovenia. According to the UNHCR, in 2006, there were 8 persons who were granted a humanitarian stay (and one recognised refugee); however, the overall number of asylum applications is very low in Slovenia as well (UNHCR, 2008: Annex).

6. Conclusions

According to the Ministry of the Interior, there was no impact of other states' regularisation programmes on Slovenia and this (no impact of regularisations on other Member States) is assessed to be very important, although the Ministry admits that regularisation programmes and mechanisms seem to be necessary in certain Member States (Response SI). For the Slovenian Ministry mutual information concerning the rationale, objectives and scope of programmes in other Member States are not provided sufficiently. A common EU policy regarding regularisations is strictly rejected by the Slovenian government because the government sees no need of it and is afraid that it could probably attract or increase level of illegal migrations in the territory of the EU. Furthermore, it is annotated that standardised approaches across the EU for such programmes and mechanisms are impossible, as programmes and mechanisms are different in Europe due to tradition and economic and geographical situations (Response SI: 13).

Since 2003, border control issues were publicly discussed within a larger EU framework and the question how to increase border control activities and Slovenia's obligations towards other Member States. At the same time the issues of the 'erased' people was still publicly discussed as well as trafficking in human beings, 'Muslims in Slovenia[4]' and the issuing of work permits for citizens of successor states of former Yugoslavia (Andreev, 2005: 20 – 21).

To sum up, the Slovenian policy towards illegal migration is very strict and rejects regularisations (except regularisations in the special case of persons who had no regular status due to the state succession). Punishments against illegal migrants are considered as a more appropriate measure than regularisations, though the number of irregular migrants is considered to be very low in Slovenia. The position is justified through the assumption that regularisations could constitute a pull-factor for irregular migration.

[4] This discussion came up on the background of a planned building of a mosque in Ljubljana

7. References

Amnesty International, 2005: Slovenia. Amnesty International's Briefing to the UN Committee on Economic, Social and Cultural Rights, 35th Session, November 2005. www.humanrightspoint.si/files/att/**Erased**_AI%20brief.pdf, 11 March 2008

Andreev Svetlozar, 2005: Active Civic Participation of Immigrants in Slovenia. Country Report prepared for the European research project POLITIS Oldenburg 2005, www.uni-oldenburg.de/politis-europe

Blaschke, J. (2008), *Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union*, PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs

EMN (2008). *Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna)*, August 2008. In: G. Biffl & J. Bock Schappelwein, 'Zur Niederlassung von Ausländerinnen und Ausländern in Österreich', Vienna: Österreichischen Instituts für Wirtschaftsforschung. pp. 105-113

Ministry of the Interior, Police, 2007: Annual report on the work of the police. See: www.policija.si

Response SI, Questionnaire sent to the Slovenian government in the course of the REGINE project completed by the Ministry of the Interior of the Republic of Slovenia.

UNHCR, 2004: Background Note on the Protection of Asylum Seekers and Refugees in Slovenia. Online. UNHCR Refworld, available at: http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4326f9534, 13 May 2008.

UNHCR, 2007: Statistical Yearbook 2005. Trends in Displacement, Protection and Solutions

UNHCR, 2008: Statistical Yearbook 2006. Trends in Displacement, Protection and Solutions

UNHCR, 2008b: UNHCR urges Slovenia to resolve the problem of its "erased cases". Article available at: www.unhcr.org, 03 March 2008.

Zorn Jelka, 2004: The Politics of Exclusion. Citizenship, Human Rights and the Erased in Slovenia. Available at: http://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=22123, 06 March 2008

34 Spain

Joaquín Arango and Claudia Finotelli

1. Introduction

After having been an emigration country for decades, Spain is today one of the major immigration countries of Europe. Migration flows to Spain started to become sizeable in the 1980s, but at modest levels until the beginning of the 21st century. Since 2000, the rate of increase of the immigrant population has been very high: the number of immigrants has increased from about one million in 2000 to about four and a half million in 2007. The majority of foreign residents have a residence permit, and most of them have come for employment reasons. However, this has not come about as the result of a planned, rational immigration policy nor of effective recruitment programmes. As happens in many other countries, the Spanish government has proven not very successful in regulating immigration. In particular, Spanish legislation was characterised for a long time by a certain lack of realism concerning possible ways to meet the substantial demand for foreign labour, especially of low-skilled workers in the construction sector, domestic and other personal services, the care and hospitality industries and agriculture. The mismatch between inadequate policy regulations and strong demand for labour in the economy fuelled irregular migration flows.

2. Regularisation processes in Spain

2.1 Legal framework and implementation of regularisations

Reducing the rate of irregularity has been a major challenge for the Spanish government throughout the last two decades. Given the inability to reconcile market demands and state regulations, six extraordinary regularisation programmes have taken place. The first one took place in 1985/1986, and was followed by others in 1991, 1996, 2000, 2001 and 2005 (Table 68).[1]

Apart from mass regularisation schemes, the Spanish legislation foresees other individual forms of regularisation such as the *arraigo* (rootedness), humanitarian protection for rejected asylum seekers and the issue of a temporary residence permit for security reasons for collaborating with the Spanish police. However, mass regularisation has played the most relevant role in terms of both magnitude and frequency.

[1] Legislative bases for the regularisation process were the Organic Law 4/2000 of 11th January, the Royal Decree 239/2000 of 18th of February, the Royal Decree 142/2001 of 16th of February and the Royal Decree 2393/2004 of 30 December.

Table 68: Overview of extraordinary regularisation processes in Spain (1985-2005)

Regularisation process	Reference date	Start of the process	End of the process	Government ruled by	Duration of residence permits issued
Programme A	24. 7.1985	24.7.1985	24.9.1985	PSOE	One year
Programme B	15.5.1991	10.6.1991	10.12.1991	PSOE	Three years
Programme C	1.1.1996	23.4.1996	23.8.1996	PSOE (PP)	Five years
Programme D	1.6.1999	21.3.2000	31.7.2000	PP	One year
Programme E	-	31.01.2001	30.06.2001	PP	-
Programme F	23.1.2001	16.02.2001	30.06.2001	PP	One year
Programme G	-	08.06.2001	31.06.2001	PP	-
Programme H	8.8.2004	7.2.2005	7.5.2005	PSOE	One year

Source: Cachón 2007; Cebolla and González Ferrer 2008.

Table 69 shows the intended foci. Most processes have targeted irregular workers; however, this was sometimes extended to other migrant categories like relatives (1996, 2000 and 2001), asylum seekers (2000) or specific nationalities such as Ecuadorians (programme E, 2001). The requirements for application were not always clear. However, a general condition, common to all processes, was that the applicants had to prove that they had been living in Spain before a certain date (reference date). The lack of a criminal record was another relevant essential condition for most processes. The only exception in this respect has been the regularisation programme of 2000. In some cases, the requirements for application included previous employment as desirable, but it was only in 2005 that employment was declared an essential application condition. The national background was relevant only in the case of the regularisation process for Ecuadorian migrants in 2001. Finally, evidence of integration efforts was a relevant and desirable criterion only in the case of programme G in 2001 (*arraigo*).

Table 69: Intended foci of regularisation processes

Regularisation process	Type of irregularity
Programme A	-
Programme B	-
Programme C	Irregular workers, regular residents, relatives
Programme D	Irregular workers, irregular residents, relatives, rejected asylum seekers
Programme E	Irregular Ecuadorian citizens
Programme F	Rejected applicants for Programme D
Programme G	Irregular workers, irregular residents
Programme H	Irregular workers

Source: own elaboration

All regularisation procedures granted a temporary right to remain. In this case the regularised migrants were issued a short-term residence and work permit. All permits were renewable. However, such temporary titles are only renewable if the regularised migrants fulfil certain conditions like, for instance, an employment relationship. In the long term, regularised migrants have access to a long-term residence status in accordance with EU Directive 2003/EC/109.
Some major difficulties have been faced during implementation. As a matter of fact, most regularisations were not supported by the necessary administrative machinery and went through a difficult implementation procedure. Sometimes the application conditions were modified when the process was already under way. Such was, for instance, the case of the regularisation of 2000, which turned into a "sequence of processes" (Arango and Suarez 2003). Furthermore, the overlapping of several processes resulted in bureaucratic congestion. This happened, for example, when the regularisation of 2001 coincided with the re-examination of applications presented during the preceding process (2000) and with the special regularisation for Ecuadorian immigrants. All in all, about 1.2 million foreigners were regularised in Spain since 1986 – half of them after the regularisation of 2005. From this standpoint, the latter deserves special attention.

2.2 The regularisation of 2005

The regularisation of 2005 was preceded by intense negotiations between the government, the trade unions and the employers' confederations, and immigrant associations were also heard. In contrast with the previous regularisations, the 2005 regularisation was part of a wider programme to fight irregular employment in Spain. The process admitted the regularisation of foreigners in view of their *de facto* economic and social integration. Only workers could apply, and for the first time, in order to be legalised they had to produce a work contract valid for at least six months.[1] Legalisation would take place only when the worker had registered in the Social Security System and the first month's social dues had been paid. That is the reason for which the regularisation of 2005 has been described as a "real" regularisation by state officials for the REGINE questionnaire. In contrast to previous regularisation processes, it was therefore the employer who had to apply for the regularisation of his or her employee. Only domestic workers with more than one employer could apply by themselves. Furthermore, applicants had also to prove that they had been in Spain six months before the start of the process, i.e. before 8 August 2004, and the only acceptable proof was official registration in the municipal population register (*Padrón municipal*). Last but not least, they had to produce a clean penal record in their country, to be obtained from their embassies or consulates.

As usual, the regularisation process was been accompanied by several implementation problems. In particular, the process required a large number of applications to be presented in a short period of time. It should not be forgotten that the estimated irregular population at the beginning of 2005 was about 900,000 (Cachón 2007; Pajares 2006). But this time the Spanish government did its best to provide the necessary organisational structure for the regularisation process, setting

[1] They were reduced to three months for the agricultural sector.

up 742 information points on the whole territory and reinforcing the administration personnel with about 1,700 additional employees. The whole process was supported by a wide network of information points managed by trade unions and migrant organisations, Social Security Offices entrusted with the collection of the applications and Foreigners Offices of the Ministry of Interior for the evaluation of the applications.
The separation between application and decision-making points contributed to a considerable rationalisation of the procedure (Jorrit 2008). Furthermore, the Ministry of Labour established an electronic dossier for the exchange of information among all the ministries involved in the process. At the same time, the Ministry of Labour, together with the Ministry of the Interior, set up an electronic system for the automatic renewal of residence permits to avoid long queues and bureaucratic congestion in front of the Foreign Offices. Additionally, the Minister of Labour announced that the regularisation would be followed by a marked increase in workplace inspections, carried out by the Labour Inspectorate.

All in all, the process cost 12,693,983 euros which were distributed as follows:

1) Information Service of the Ministry of Labour: 826,006 euros.
2) Employment of a special group of temporary workers by the Ministry of Public Administration: 5,657,894 euros.
3) Special contribution for extra working hours of employees of the Ministry of Justice: 75,000 euros.
4) Employment of translators: 3,642,640.21.
5) Personnel and management costs of the Office of the Social Security System: 3,032,443 euros.

The high investment in financial and human resources, however, did not suffice to avoid completely the long queues in front of the administrative offices. Furthermore, getting the necessary documents from embassies and consulates was not always easy: for instance, it was particularly difficult for those immigrant communities without diplomatic representation in Spain. Finally, not all applicants had enrolled in the municipal register on time, despite the fact that they might have been in Spain before August 2008. For the latter, the Spanish government approved new provisions allowing applicants to produce a special certificate issued by the local authority attesting to their "social integration" in the local community, in order to waive the requirement of enrolment in the municipal register (*empadronamiento por omisión*). About 30,000 applicants were able to avail themselves of such a document.

In spite of the aforementioned difficulties, 691,655 applications were presented between March and May 2005, leading to the following results:

Table 70: The final results of the Spainish amnesty of 2005

Nationality	Total	Issued	%	Withdrawn	Not admitted	Filed	*Pending*
Bulgaria	25.598	22.239	86.88	1.442	482	1.414	*21*
Romania	118.546	100.128	84.46	7.501	2.788	8.048	*81*
Ukraine	22.247	19.466	87.50	988	414	1.363	*16*
Morocco	86.806	68.727	79.17	6.887	2.217	8.813	*162*
Mali	7.205	6.249	86.73	271	194	475	*32*
Senegal	10.100	7.265	71.93	1.371	349	1.083	*16*
Ecuador	140.020	127.925	91.36	4.842	584	6.621	*48*
Colombia	56.760	50.417	88.82	2.806	361	3.138	*38*
Dom. Rep.	3.994	3.212	80.42	307	124	348	*3*
Perú	3.605	2.950	81.83	283	87	279	*6*
Bolivia	47.325	39.773	84.04	2.889	1.630	2.974	*59*
Pakistan	15.782	8.602	54.51	2.292	2.315	2.286	*287*
China	13.416	8.159	60.82	2.143	1.127	1.932	*55*
Total	***691.655***	***578.375***	***83.62***	***44.457***	***17.362***	***50.356***	***1.105***

Source: Spanish Ministry for Labour and Immigration 2006.

Ultimately, 578,375 applications received a positive resolution. Half of regularised migrants were working in the domestic sector, followed by construction, the restaurant business, agriculture and industry. Women represented half of the applicants. Most of them were employed in the domestic sector and were from Eastern Europe and Latin America. In turn, African women experienced lower levels of regularisation which might be related with their lower employment rates (Rubin et al. 2008). As far as regional distribution is concerned, most applications were presented in Madrid, Catalonia and the Autonomous Community of Valencia.

3. Outcomes and effects of regularisation processes

3.1 Inclusion and stabilisation of irregular migrants

One of the most controversial effects related to regularisation processes concerns their actual capacity to effectively reduce the irregularity rate of foreigners. As Table 71 shows, all regularisation processes carried out in Spain had a high recognition rate:

Table 71: Outcomes of regularisation processes in Spain

1985	38.181	34.832	91%
1991	130.406	109.135	84%
1996	17.676	21.382	85%
2000	247:598	199:926	81%
2001	351.269	232.674	66%
2005	691.655	578.375	82%

However, such data are not considered to be reliable enough because they do not provide relevant information on the stabilisation of the residence status of the regularised migrants. For this purpose, it is useful to compare the number of regularised immigrants since 1985 (1,176,324) with that of non-EU citizens living in Spain at the end of 2006 (2,360,804). From such a comparison it can be surmised that, in the long term, extraordinary regularisations have been responsible for the inclusion of about half of the foreign population. Furthermore, such results suggest that regularised migrants usually remain in Spain after they have been regularised – questioning the existence of a transit effect from Southern to Northern Europe after regularisation processes.[2]

Nevertheless, if we have a look at Table 72 (below), regularisations do not seem to have had the same impact on all nationalities. In fact, the ratio of regularised immigrants to foreigners with residence permits is lower in the case of Moroccans

[2] On the contrary, in some cases transit migration seems to have taken place from northern member states towards Spain. This has been, for instance, the case of Ukrainian migrants whose entry into the Schengen space was favoured by a generous German visa policy. While most Ukrainian women moved to Italy to work in the domestic sector, most men continued their journey to Spain to work in the booming Spanish construction industry (Finotelli / Sciortino 2006).

and Peruvians than in the cases of Ecuadorians and Romanians.[3] Such differences are explained by the period of immigration. Immigration from Morocco and Peru in aggregate terms is older than that from Ecuador and Romania. Furthermore, migrants from Peru benefited from legal immigration channels through bilateral agreements between Spain and Peru. Nowadays, both Moroccan and Peruvian migrants represent "old" communities which use the family reunion channel. On the other hand, recent migration flows are more likely to be irregular. Recent migrants work in the informal economy until the next regularisation process is announced. In spite of the differences between nationalities, the data clearly suggest that regularisations have had an important inclusion function for irregular migrants. Such a function becomes even more evident if we focus our attention on the last regularisation programme. Owing to the high number of approved applications, the regularisation of 2005 provides the most relevant dataset to evaluate the effects of a regularisation process. The evaluation is favoured by the follow-up carried out by the Spanish government after the end of the process. The number of non-EU citizens with a residence permit living in Spain rose to 2,169,648 at the end of 2005, which implied an increase of 638,562 as compared with the end of 2004. In 2006 most of the regularised migrants were able to renew their residence permits that they had obtained in the regularisation. As we can see from figure 4.1, the number of foreigners with a residence permit renewed for the first time doubled between 2005 and 2006 while foreigners with an initial residence permit decreased considerably (see Figure 6).

Table 72: Foreign population and regularised immigrants in Spain (2000-2006)

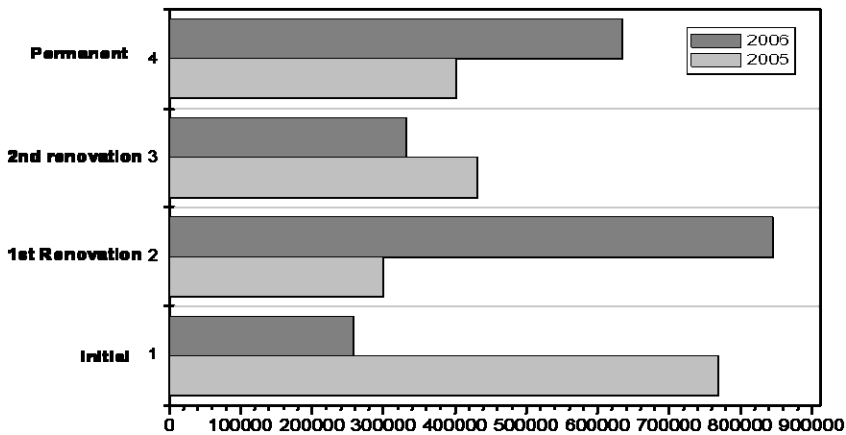
	Regularised foreigners 2000-2001-2005	Foreigners with residence permits (31.12.2006)	% regularised/ residents
TOTAL	994.574	2.360.804	42%
Subtotal	734.015	1.865.590	39%
Bolivia	43.037	52.587	81%
Romania	126.463	211.325	59%
Ecuador	195.226	376.233	51%
Senegal	13.691	28.560	47%
Ukraine	27.841	52.760	52%
Pakistan	14.139	29.669	47%
Bulgaria	31.038	60.174	51%
Algeria	16.798	36.499	46%
Colombia	99.162	225.504	43%
Morocco	135.285	543.721	24%
China	20.163	99.526	20%
Dominican Rep.	5.504	58.126	9,4%
Peru	5.668	90.906	6,2%

Source: Arango and Finotelli (2009b)

[3] Such a result is not a novelty. As we know from the results of the regularisation of 2000, Ecuadorians seem to have profited more from the regularisation process than Moroccans and Peruvians who tended to get their work permits through the general recruitment scheme.

As far as 2007 is concerned, there is still a large number of foreigners with a residence permit renewed for the first time in Spain, while the number of people with a permanent permit is increasing. At the same time, the number of family reunion processes is increasing due to the progressive stabilisation of the foreign population. As a matter of fact, the residence permits issued for this purpose increased from 14,000 to 96,000 between 2000 and 2006. Even though there are no data available on family reunions related to the last regularisation process, the embassies and consulates involved reported an increasing number of applications since the end of 2006.

Figure 6: Disribution of residence permits (2005 and 2006)



Source: Spanish Ministry of Labour and Immigration; Own elaboration.

3.2 The impact of regularisations on the economy and the Social Security system

The National Spanish Social Security Institute has been monitoring the labour career of all regularised migrants since 2005. After the regularisation process, the number of foreign workers registered in the Social Security System increased to 1,404,449, which implied an increase of 578,313 as compared with the end of 2004. In total, one out of every three foreigners registered in the Social Security System had been regularised in 2005. According to information provided by the Spanish Ministry of Labour, tax incomes and social security contributions related to the regularisation process were respectively 92,859,672 euros and 93,345,503 euros. As a consequence, the overall contributions to the Social Security System by the end of 2005 exceeded 800 million Euros for the first time.

From this standpoint, regularised migrants were supposed to have provided a fundamental contribution to the budgetary *superavit* of the Spanish State. Such monetary effects did not disappear. According to the data of the Social Security System, 461,319 of the regularisation-related enrolments were still valid in October 2006. This means that almost 80 per cent of the regularised immigrants were still

working legally at least one year after the regularisation process. On the other hand, among the migrants already 'outside' the system we find 19,288 Ecuadorians, 15,698 Romanians, 15,043 Moroccans, 9,582 Colombians and 9,582 Bulgarians. Losses were not equally distributed across sectors: construction and the restaurant business lost respectively only 1,146 and 4,197 workers while the domestic sector had 104,193 fewer workers than a year after the regularisation process. Similar effects have also been observed in the case of agriculture. According to our interviews with the farmers' association, COAG, only 10—20% of the regularised immigrants were still working in the agricultural sector at the end of 2007. Such observations fit with a recent econometric evaluation of regularisation processes (Ferri et al. 2006). According to its results, economic sectors like commerce and the hotel trade register a significant growth after a regularisation process, while this is not the case for the agricultural sector.

As far as the effect of legalisation on welfare gains or losses of households is concerned, Ferri *et al.* observed that regularisations have different effects on different types of households. In this respect, urban self-employed households or urban skilled employees clearly benefited from the regularisation process while, in general, the impact of regularisations on unskilled labour is less. Regularisations also change the savings habits of immigrants, because regularised migrants are likely to spend more money in their country of residence instead of devoting it almost completely to remittances (as is usually the case when they are irregular). But the most important key results of the aforementioned study are related to the relationship between regularisation and real wages, because it seems that unskilled native workers are affected by regularisations, since real wages are more likely to fall, while skilled native labour benefits from regularisations. Such findings have been also outlined by de Espinola (2006). According to his analysis, real wages in the Spanish economy have been increasing in the industrial sector, while they have been decreasing in construction and in the service sector. In this respect, Ferri et al. (2006) attribute to the trade union a very important role in mitigating the effects of regularisations on wages and employment.

3.3 The clean-up effect of regularisations

Our previous considerations outline how regularisations, and especially the regularisation of 2005, allowed the legal inclusion of a large number of irregular foreign workers. All in all, Table 72 and the outcomes of the last regularisation process suggest that regularisations have been able to reduce the irregularity rate. However, measuring such effect in practice is not that easy. Estimations of this issue are usually based on the comparison between the figures of the non-EU citizens enrolled in the municipal register with those foreigners in possession of a residence permit in Spain. The difference between the two figures is improperly considered to be a reasonable – though vague – estimation of the number of irregular migrants living in Spain. Indeed, the estimations often provided by the Spanish media usually show some ignorance about the disadvantages of this statistical source. First of all, most estimations consider only the absolute number of foreign residents without considering that EU citizens cannot be irregular *per se* and should therefore be excluded from all irregularity estimations. Furthermore, such estimations should also take into account categories like asylum seekers or foreign students who are

omitted from the figures on legal residents. Finally, estimations often do not consider immigrants who have applied for the renewal of an expired residence permit.

In spite of all this, a large number of Spanish researchers argue that the *Padrón* still represents the ground for achieving more clarity on such an opaque phenomenon as the extent of irregularity. This is, for instance, the case of Recaño and Domingo (2005) who tried, quite successfully indeed, to estimate irregularity before the regularisation of 2005. The two demographers observed in 2005 that there was quite a high correspondence between the irregularity rate of certain migrant groups living in Spain and their participation in the regularisation process.[4] According to Pajares (2006), who has also used the *Padrón* data to estimate irregularity, the regularisation was quite successful in reducing irregularity – though he estimated that about 500,000 irregular migrants were still living in Spain after 2005. Similar conclusions have been advanced by Lorenzo Cachón (2007), who suggests that between 300,000 and 400,000 irregular migrants did not participate in the regularisation process. Finally, according to Cebolla and Gonzalez (2008) the number of irregular migrants might be even lower (168,532) if the estimates include students, asylum seekers as well as an approximate number of those foreigners that are renewing their residence permit.

In all the aforementioned cases, the regularisation seems to have not been able to eliminate completely the phenomenon of irregularity in Spain. Such persistence might be related to several factors. First of all, not all irregular migrants can participate in regularisation processes either because they are too young or because they do not have a job. In the case of the last regularisation process there was quite a large segment of the population who could not fulfil the criteria related to registration in the municipal register. Interviews conducted with representatives of immigrants' associations revealed that this was especially the case for Bolivians and Romanians. Furthermore, such estimations should take into account that there is always a part of the irregular population whose application is withdrawn. In the case of the last regularisation process, only 83.70% of the applications were accepted. Finally, there is a general tendency to explain the persistence of irregularity through a 'pull effect' of regularisation processes. Such an effect represents for sure one of the most controversial questions related to regularisation processes. Several researchers, of course, have pointed to the difficulties of measuring it (Blangiardo and Tanturri 2004; Arango and Finotelli [2009]). As a matter of fact, there is no real empirical evidence for the existence of such an effect on a large scale. In particular, measuring a 'pull effect' on some communities does not demonstrate the overall pull effect of regularisation processes. However, some considerations are possible using the limited data at our disposal.

Table 73 (below) shows a considerable increase in the number of detected migrants at the sea borders between 2005 and 2006. Such an increase might be misinterpreted as a pull effect on African migration. However, we assume that the increase of 2006 is more related to the change of smugglers' strategies during 2006. Furthermore, if

[4] The data used for this estimation did not take into account the depuration process of the municipal register and might contain a certain degree of overestimation.

there had been a 'pull effect', the detected irregular migrants would increase also in the Strait of Gibraltar. Nevertheless, the figures do not provide any evidence for that. Finally, migration from Western Africa represents only a small part of the overall migration and is, therefore, one of the (quantitatively) less relevant migration systems with which Spain is involved.

Table 73: Detected migrants at the Spanish sea borders

	Migrants	**Vessels**	**Detected migrants**		**Vessels**	
			Gibraltar	Canary Islands	Gibraltar	Canary Islands
2000	15.195	807	12.785	2.410	628	179
2001	18.517	1077	14.405	4.112	800	277
2002	16.670	1.020	6.795	9.875	377	643
2003	19.176	942	9.788	9.388	567	375
2004	15.671	740	7.245	8.426	446	294
2005	11.781	567	7.066	4.715	348	219
2006	39.180	-	7.502	31.678	-	-
2007	18.057	-	5.579	12.478	-	-

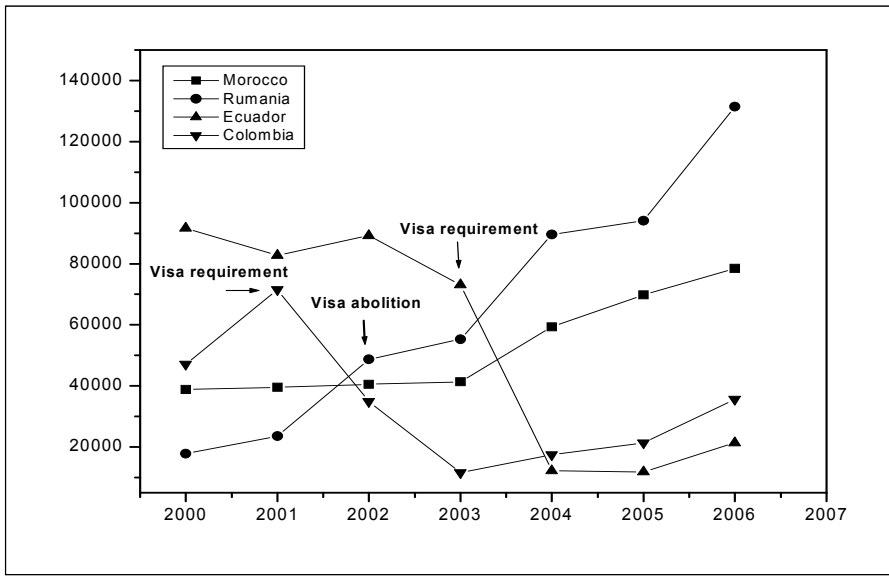
Sources: Coslovi 2007; Ministry of the Interior 2008

Another factor that should be taken into account is that the entry of irregular migrants after a regularisation process also depends on the restrictiveness of visa regulations. Figure 7 relates visa policy with the number of migrants who yearly register for the first time in the municipal register (*variaciones residenciales*). The registrations of Romanians increased significantly after the abolition of the visa obligation in 2002. In this particular case, the data might suggest that the regularisation produced a 'pull effect' on the Romanian community. As a matter of fact, a recent study of the migration mechanisms in the two Romanian communities of Luncavita and Feldru outlined the existence of a 'pull effect' of regularisation processes as most of their members moved to Spain attracted by the ongoing regularisation – supported by strong social networks and, of course, an open visa policy (Elrick and Ciobanu).

Nevertheless, the experience of Luncavita and Feldru cannot be used to validate the existence of a 'pull effect' in other communities and national groups. There is, for instance, less evidence for a 'pull effect' of regularisation processes for Ecuadorians and Columbians, whose numbers dropped after the introduction of the visa obligation in 2001 and 2003. According to these figures, the majority of the regularised Ecuadorians and Colombians had arrived in Spain (and registered in the *Padrón*) before 2003. We can, therefore, assume that the number of Colombians and Ecuadorians might have increased after the regularisations of 2000/2001 favoured by a generous visa policy. On the other hand, the visa obligation reduced the 'pull' potential of the regularisation process of 2005. There is still little evidence for the increase of Bolivians after the regularisation, but we can easily assume that their migration pattern might follow the Colombian and Ecuadorian one. The number of Bolivians might have increased after the regularisation, but it is supposed to drop after the introduction of a visa obligation in April 2007.

As far as Morocco is concerned, we can observe a slight increase of Moroccan enrolments after 2004. Such an increase might be the consequence of the improvement of diplomatic relations between Spain and Morocco up to 2004. However, Moroccans are an old and quite stable community. The increase in this case might be, thus, more the consequence of family reunions and legal labour recruitment than of the 'pull effect' of the last regularisation process.

Figure 7: Relationship between visa policy and first enrolments in the municipal register



Sources: INE 2008

4. Conclusion

The data presented in this report show that regularisation processes seem to have considerably reduced the irregularity rate in Spain. Their overall effect can be summarised in the following points:

1) Regularisations had an important inclusion function for those irregular migrants who were already living in the country.

2) Regularisations are usually most relevant for recent immigrants, whereas more established migrants can benefit from other policies (e.g. family reunion)

3) The majority of the regularised migrants have been able to renew their residence permit, thus stabilising their residence status.

4) More than 80% of the regularised migrants were still registered in the Social Security System a year after the regularisation process.

5) Regularised migrants show a general tendency to change employment sector after having been regularised. Female domestic workers usually transfer into the restaurant business, while male workers move from agriculture into construction.

6) There is little empirical evidence for an overall 'pull effect'. Nevertheless, it can be assumed that the increase of irregular migration after a regularisation process depends not only on the attractiveness of regularisations but also on a complex set of factors: these include visa regulations, the attractiveness of the informal economy and the efficiency of foreign labour recruitment procedures.

5. References

Arango, Joaquín and Liliana Suárez (2003), "Regularización y Mercado de Trabajo". Ministerio de Trabajo y Asuntos Sociales.

Arango, Joaquín and Claudia Finotelli [2009a], 'What can be learned from Spain? The outcomes of the regularisation process of 2005', in Michael Bommes and Giuseppe Sciortino, *Irregular migration and the informal economy*, Amsterdam (forthcoming).

Arango, Joaquín and Claudia Finotelli [2009b], *Evaluación del proceso extraordinario de normalización del año 2005*. Madrid: Ministerio de Trabajo y Asuntos Sociales (in press).

Arango, Joaquín and Maia Jachimowicz (2005). 'Regularization and Immigration Policy Reform in Spain', in Friedrich Heckmann and Tanja Wunderlich (eds.), *Amnesty for Illegal Migrants?,* Bamberg (Germany): Europäisches Forum für Migrationsstudien, pp. 79-88

Blangiardo, Gian Carlo and Tanturri, Maria Letizia (2004), Il popolo dei regolarizzati, in: Marzio Barbagli, Asher Colombo and Giuseppe Sciortino (Eds), *I sommersi e i sanati. Le regolarizzazioni degli immigrati in Italia*, Bologna, pp. 47-102

Cachón, Lorenzo (2007), "La experiencia internacional en regularizaciones extraordinarias de inmigrantes indocumentados", Madrid (unpublished manuscript).

Cebolla Boado, Héctor / Amparo Gonzalez Ferrer (2008). La inmigración en España (200-2007). De la gestión de flujos a la integración de los inmigrantes. Madrid.

Elrick, Tim and O. Ciobanu, 'Evaluating the Impact of Migration Policy Changes on Migration Strategies: Insights from Romanian-Spanish migrations', *Global Networks* (forthcoming)

Espinola de, José Ramón (2006), 'Inmigración y crecimiento en la economía española (2000-2005)', *Revista cuatrimestral de las Facultades de derecho y Ciencias Economícas y Empresariales*, 69, pp. 45-68.

Ferri, Javier, Antonio Gomez-Plana and Joan A. Martín-Montaner (2006), 'Illegal immigration booms and welfare in the host country', *European Journal of Population*, 22, pp. 353-370.

Finotelli, Claudia and Giuseppe Sciortino (2006), Looking for the European Soft Underbelly: Visa Policies and Amnesties for Irregular Migrants in Germany and in Italy, in: Sigrid Baringhorst, James F. Hollifield and Uwe Hunger (Eds): *Herausforderung Migration – Perspektiven der vergleichenden Politikwissenschaft*. Münster, pp. 249-79.

Pajares, Miguel (2006), *La inserción laboral de la población inmigrada en Cataluña. Efectos del proceso de normalización 2005,* Barcelona (Estudis 15).

Recaño, Joaquín / Andreu Domingo (2005), "Factores sociodemograficos y territoriales de inmigración irregular en España". Paper for the 25th International Population Conference, Tours, 18-23 July

Rubin, Jennifer / Michael S. Rendall / Lila Robinovich / Flavia Tsang / Constantijn Van Oranje-Nassau / Barbara Jant (2008): *Migrant Women in the European Labour Force. Current situation and future prospects*. Brussels

35 Sweden

Albert Kraler & David Reichel

1. Introduction

At the end of 2007 there were more than 9 million people living in Sweden. More than half a million of those were foreign citizens and some 270,000 were not citizens of the European Union, including some 35,500 Norwegians and some 1,800 Swiss citizens (Statistics Sweden).

Table 74: Basic information on Sweden

Total population		*9,182,927*
Foreign population*		*524,488*
Third Country Nationals (non EU citizens)*		*274,925*
Main countries of origin*	*Finland*	*80,352*
	Iraq	*40,041*
	Denmark	*38,443*
Net migration**		*54,067*
Asylum applications**		*36,207*

* 31 December 2007 ** 2007

Source: Statistics Sweden, www.scb.se, 29 May 2008

2. Irregular Migration in Sweden

According to Blaschke (2008), the Swedish Migration Board defines illegal migrants as person without a formal permit to reside in the country. They are either unknown to the authorities or have a formal obligation to leave the country.

Compared to other European countries irregular migration is not seen as a significant issue. This said, the topic has recently received more attention notably in connection with failed asylum seekers who abscond or cannot be returned. The focus of public debates has been on access to healthcare for failed aslum seekers. There is no indicator for large scale irregular migration to Sweden and no good estimates on the size of the undocumented migrant population exist. [1]

According to Blaschke (2008), 7.743 persons of a total number of 11.358 migrants had disappeared from the supervision system of the Swedish Migration Board in 2003. In addition, some 7,400 rejected asylum seekers had not (yet) returned to their country of origin. Blaschke cites an estimate of the National Confederation of Trade Unions that some 60,000 non-nationals were illegally working. According to Blaschke, thus up to 80,000 illegal immigrants can be estimated to live in Sweden, although this estimate is probably too high.[2]

[1] Information provided by a Swedish trade union via REGINE questionnaires.

[2] The trade union estimate of irregular employed foreigners is likely to include a large share EU citizens and other persons with a secure residence status who would not be liable to deported if detected.

3. National policy on illegal migrants in regard to regularisation

Generally, irregular migration has not been a big issue in public debates in Sweden. However, in the 1990s, asylum seekers from the former Yugoslavia who did not qualify as refugees under the Geneva convention gave rise to some debates and policy measures. Around 2004/2005 and partly in the context of debates on access of rejected asylum seekers to healthcare, various NGOs and religious organisations started a campaign calling for a regularisation programme for rejected asylum seekers (see Picum newsletters 2004-2006, various issues).

4. Regularisation programmes

In November 2005 the Aliens Act 1989 was temporarily amended (until the new act came into force in March 2006). With this amendment a new procedure granting residence permits was introduced and created an additional legal remedy for asylum seekers against whom a final refusal of entry or expulsion order was issued. According to this temporary amendment, the Swedish Migration Board may grant residence permit under consideration of certain circumstances such as possible problems of returning migrants, health conditions, or other humanitarian issues. Additionally, when assessing the humanitarian situation, length of residence, situation in the country of origin, committed crimes of the aliens, age (children were treated privileged), public order and security were important issues to be considered (EMN, 2005: 9).

The main target group were families with children who had been waiting for a decision from the Migration Board and established themselves in Sweden and, as already mentioned, persons subject to removal (EMN, 2006: 9).

Under this programme, 17,000 rejected asylum seekers were regularised and in the majority of cases, received a permanent permit to reside (13,000 permanent and some 4,000 temporary). 8,000 of the processed cases concerned persons whose asylum application was discontinued.
A total number of 31,000 applications were processed (including around 1,000 duplications), and the reported granting rate was 95 per cent for families with children and 72 per cent for persons with impediments to enforcements of expulsion (EMN, 2006: 10; Migrationsverket 2008).

The main countries of origin were Iraq, Somalia, Palestine, Afghanistan and Serbia (Blaschke, 2008). Blaschke (2008) also reports that rejected asylum seekers are occasionally regularised on an individual basis.

5. Regularisation mechanisms

Chapter 2, Section 4 and 5 of the Aliens Act 1990 (*Utlänningsllagen*) and several provisions of the Aliens Ordinance 1989 (*Utlänningsförordningen*)[1] specified conditions under which aliens could apply for residence permits after arrival in Sweden. Several of categories eligible for in-country applications relate to family reunification. Provisions for several other categories, including humanitarian cases and persons with ties to Sweden, were more closely connected to regularisation. In addition, the Aliens Act also provided for exceptional extensions of residence permits in case conditions for residence were no longer met, but strong humanitarian grounds for renewing a permit existed.

The Aliens Act was amended in 2005 (in force since 2006). Although the act does not contain provisions on awarding residence permits on 'humanitarian grounds', the new act provides provisions which follow a roughly equivalent rationale. Thus, residence permits may be granted on "exceptionally distressing circumstances" (Chapter 5, Section 6 of the Swedish Aliens Act). This means that overall assessments of the situation of persons to whom none of the main grounds for residence permit are applicable must be made. This assessment should particularly consider the persons health, adjustment to Sweden, and the situation in the country of origin of the applicant. According to the new act, children shall not be treated as strict as adults (EMN, 2005: 9). As a rule, persons granted a residence title under these provisions are awarded a permanent residence permit. Since 2005 the following number of people benefited from permit on exceptionally distressing circumstances: in 2005 – 4,997 (of which 2,487 under the temporary law); in 2006 – 18,480 (of which 14,823 under the temporary law) and in 2007 – 3938 (EMN 2008: 112)[2].

6. Conclusions

In the Swedish context, where irregular migration, notably in the form of illegal entry or overstaying is considered only a minor problem, regularisation seems to be mainly used as a corrective instrument to deal with persons who are not outright illegally staying (as for example, rejected asylum seekers) and legal migrants who otherwise do not meet the conditions of residence. Over the past decade or so, Sweden has followed a consistent policy of use regularisation as a flexible tool to respond to humanitarian situations.

[1] See for an English translation of the Aliens Act 1990, in the version of 1997) http://www.legislationline.org/legislation.php?tid=129&lid=66&less=false. (ODHIR Legislation database); for excerpts of the Aliens Ordinance 1989 (in its 1993 version) see http://www.legislationline.org/legislation.php?tid=129&lid=67&less=false

[2] This information has become available after the finalization of the main report and thus is not reflected in our comparative analysis.

7. References

Blaschke, Jochen (2008): Sweden. In: Jochen Blaschke (2008): Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union. PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs

Edström Örjan (2000): Note about regularisation in Sweden. In: De Bruycker Philippe (2000): Les Régularisations des étrangers illégaux dans l'union Européenne. Pp.: 409 – 410.

EMN (European Migration Network) (2005): Annual Policy Report 2005. Sweden. Available at: http://emn.sarenet.es/Downloads/prepareShowFiles.do;jsessionid=4B669998F61B4C1E3CDBBC127795F3F1?directoryID=72, 8 July 2008

EMN (European Migration Network) (2006): Annual Policy Report 2006. Sweden. Available at: http://emn.sarenet.es/Downloads/download.do;jsessionid=4B669998F61B4C1E3CDBBC127795F3F1?fileID=598

EMN (2008). *Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna)*, August 2008. In: G. Biffl & J. Bock Schappelwein, 'Zur Niederlassung von Ausländerinnen und Ausländern in Österreich', Vienna: Österreichischen Instituts für Wirtschaftsforschung. pp. 105-113

Migrationsverket (2008): Resultat av den tillfälliga lagen om prövning av beslut om av- och utvisning. http://www.migrationsverket.se/index.jsp?swedish/tillfallig_lag/, 8 July 2008

36 Switzerland

Paolo Ruspini

1. Introduction

The transformation of Switzerland into an immigration country took place at the same time as the industrial take-off during the second part of the nineteenth century. The proportion of foreigners in the total population increased from 3 per cent in 1850 to 14.7 per cent in 1910 (Mahnig & Wimmer, 2003). It was not until the 1888 that Switzerland's net migration became positive. In 1931, the Federal Law of Residence and Settlement of Foreigners (*Bundesgesetz über Aufenthalt und Niederlassung der Ausländer - ANAG)* was enacted. It can be regarded as a 'police law' aimed at border control and the defence of the national territory, profoundly inspired by the international political context of the time, the economic crisis and a widespread xenophobia directed against a so-called 'overforeignisation' (*'Überfremdung'*)[1] of the Swiss society (Mahnig & Wimmer, 2003).

Since the Second World War, Swiss migration policy has been dictated by the need for unskilled labour. This led to the introduction of the system of 'quotas' (*Kontigentierung*) that depend on the demands of the labour market. Rotation of the labour force ('guest worker system') insured that immigration was temporary and prevented immigrant groups from durable settlement in the country. In 1970, the federal government set up the Central Register of Foreigners (RCE) for monitoring and recording the influx of foreign workers. Until recently Switzerland has been reluctant to acknowledge the stabilization of foreigners which already started in the 1970s (Wanner, Fibbi & Efionayi, 2005).

The need to comply, however, with the European integration process, implied an adaptation of the Swiss immigration legislation, reflected in the model of the three circles that was designed in 1991. Accordingly, immigration from outside the EU and EFTA (first circle) and the United States, Canada, and Central and Eastern Europe (second circle) should no longer occur. Since November 1998, Switzerland follows a 'dual entry-scheme', which basically prohibits the recruitment of workers from outside EFTA and the EU, unless concerning highly qualified persons whose recruitment is justified for special reasons. The quota system does not, however, fully reflect immigration in Switzerland in practice. Changing migration patterns, family reunification and the growing number of asylum-seekers have transformed the breakdown of the foreign population (Gil-Robles, 2005). Contrary to the suspiciousness towards the aliens, Switzerland has in fact one of the highest immigration rates in Europe. This phenomenon is due in part to the comparatively restrictive access to citizenship (Mahnig & Wimmer, 2003). According to the 2000 census, 22.4 per cent of the total population of 7.4 million is foreign born and 20.5 per cent, or nearly 1.5 million, are foreigners (defined as persons with a foreign nationality). Switzerland used to be a destination country for employment-seeking

[1] This concept refers to a situation in which the society had become 'foreign' to its own members because of immigration, while establishing a causal link between the number of foreigners and the threat to Swiss identity.

French, Germans, and Italians. In the latter half of the 20th century however, it has hosted a large number of Eastern European dissidents, Yugoslavian refugees, and asylum seekers from the Middle East, Asia and Africa (D'Amato, 2008; Kaya, 2005).

The distribution of the foreign population according to citizenship (Table 75) shows an increase in the number of migrants from the former Yugoslavia, Turkey, and non-European countries. Between 1970 and 2000, the number of Italian and Spanish migrants decreased whereas the number of Yugoslavians, Turks, and Portuguese increased significantly. Sri Lanka, India and China are the main Asian countries of origin, with most Sri Lankans seeking asylum and most Indians and Chinese coming as students (Kaya, 2005).

On 16 December 2005, the Swiss Senate approved a new Law on Foreign Nationals which replaces the existing law dating back to 1931. The new law ratified with a majority of 67 per cent of Swiss voters on 24 September 2006, aims at regulating the admission and residence of non-EU/-EFTA nationals who are not asylum seekers[2]. The law reaffirms current two-tier immigration practises and restricts some residency rules. Only a few thousand highly skilled workers from outside the EU and EFTA are allowed to come and work in Switzerland each year[3].
Illegal immigrants and rejected asylum seekers can be jailed for up to two years pending deportation - a doubling of the current length. Particular measures are to be stipulated, for instance against people smugglers, illicit labour and marriages of convenience. Concerning the latter, the new law provides sanctions such as the detention or fines of up to CHF 20,000 either for the perpetrators or the facilitators (art. 113).

[2] New stricter asylum rules have been approved at the same time. Starting from 1 January 2007, applications of asylum seekers failing to produce either a passport or identification card without a credible reason will be automatically turned down. The loss of the right to social security benefits and reduction of the amount of emergency aid came into effect on 1 January 2008. Only refugees who have received 'temporary asylum' benefit from the law which received wide criticism and disapproval from the United Nations Refugee Agency as the toughest in Europe.
[3] The number of first-time, year-round, renewable residence permits, which includes working rights, is limited to 4,000, and the number of non-renewable, one-year residence permits to 5,000.

Table 75: Evolution of the foreign population in Switzerland 1970-2000 by citizenship

	1970		1990		2000	
	Number	**%**	**Number**	**%**	**Number**	**%**
Total number of foreigners	1,080,076	100	1,245,432	100	1,495,549	100
Germany	118,289	11.0	86,197	6.9	112,348	7.5
Austria	44,734	4.1	30,172	2.4	29,849	2.0
France	55,841	5.2	52,715	4.2	62,727	4.2
Italy	583,850	54.1	383,204	30.8	322,203	21.5
Spain	121,239	11.2	124,127	10.0	84,559	5.7
Portugal	3,632	0.3	110,312	8.9	142,415	9.5
Former Yugoslavia	24,971	2.3	172,777	13.9	362,403	24.2
Turkey	12,215	1.1	81,655	6.6	83,312	5.6
'Other' European	56,993	5.3	83,721	6.7	99,279	6.6
Africa	5,121	0.5	24,768	2.0	49,873	3.3
Americas	18,425	1.7	30,357	2.4	51,124	3.4
Asia	8,327	0.8	62,937	5.1	92,145	6.2
Oceania	1,063	0.1	1,763	0.1	2,994	0.2
Unknown	25,376	2.3	727	0.1	318	0.0

Source: Wanner (2004), Swiss Federal Statistical Office (SFSO), 1970, 1990 and 2000 Censuses.

2. Irregular migration in Switzerland

The term *sans papiers* is commonly used in Switzerland, mainly to designate seasonal or other immigrant workers who have lost their legal status, and members of their families. It also covers rejected asylum-seekers who have not stayed and have merged into the population, often working more or less illegally (Gil-Robles, 2005). There are no statistics about the number of illegal residents in Switzerland, only assessments can be made (FOM, 2008). A detailed governmental report on 'Illegal migration' in Switzerland estimated the total number of irregular-status migrants between 50,000 and 300,000, some of whom have been living in the country for ten years or more (IMES, 2004). A following investigation supported by the FOM and carried out by a Bern based research establishment with the assistance of six institutions gathering data and conducting 60 experts' interviews all over Switzerland, accounted for 90,000 irregular-status foreigners - implying a margin of error of +/-10,000 persons (Gfs.bern, 2005).

The following profile of illegal residents in Switzerland can be drawn from the experience of specialists in the field of support and counselling for illegal residents and the results of the few research at local and national level: the majority originate from Latin America (in particular women), ex-Yugoslavia, Eastern Europe, Turkey and in a few cases from African and Asian countries. They are mostly between 20 and 40 years old. Men tend to be in the majority in three cantons (Bâle-Ville, Thurgovie and Tessin) out of the six investigated, although there are many women (with or without children) particularly in the French-speaking cantons as well as full families living illegally in Switzerland (Gfs.bern, 2005; SIT, 2004; Achermann, C. & D. Efionayi-Mäder, 2003). Many of these people have been through compulsory education and vocational training or university. There seems however to be a certain agreement between the majority of experts that a percentage between 55 and 85% of *sans-papiers* living in Switzerland don't have a post-compulsory education (Gfs.bern, 2005). The vast majority of them are in gainful employment, mainly in the following sectors: household staff (cleaners, child-minders, carers, etc.), cleaning firms, hotel industry, construction industry, agriculture and prostitution. On average their wages are considerably below the norm. The available estimation of the average wage in the mentioned working sectors is around CHF 1,000/2,000. The maximum wage has been estimated between CHF 3,000/5,000 (Gfs.bern, 2005). Some of these people came into Switzerland as tourists or, in fewer cases, illegally. Some had a valid residence permit at one time which, for various reasons, was lost or not renewed (Achermann, C. & D. Efionayi-Mäder, 2003).

3. *De facto* regularisations versus regularisation programmes

Until recently, the situation of persons without a regular residence permit in Switzerland was not perceived as a relevant problem. This might be eventually attributed to the fact that the lack of documents was generally perceived as an indication of illegality or, in any case, as a self-inflicted problem of the alien. Therefore, even if there were undocumented migrants, they could not count on much support from the local population or other actors to redress their legal situation (Efionayi-Mäder et al., 2003).

It was the situation of nationals of former Yugoslavia, and particularly Kosovars, that sparked off debate on the *sans-papiers* in Switzerland in the late 1990s. As a consequence of the adoption of the "three circle" model in the Swiss immigration law, citizens belonged to the "third circle" could not obtain a work permit in Switzerland after 1991. Since Yugoslavia was excluded from the recruitment countries, many of the present seasonal workers were unable to complete the four years required for a one-year resident permit and were subsequently threatened with deportation. The federal authorities' attitude was to refuse to allow any collective regularisation[4], but to express a willingness to consider the possibility of issuing residence permits in cases of hardship. The Bern authorities demanded to be allowed to exercise their discretion, while providing information about the practices they followed in the so-called 'Metzler' circular (Gil-Robles, 2005). This circular was signed by Federal Councillor Ruth Metzler on 21 December 2001 issuing instructions for establishing criteria for the regularisation of the status of foreign residents in cases of hardship. It sought to reconcile a Federal Court decision according to which a number of years spent illegally in Switzerland could not be taken into account for the purpose of obtaining advantages, with the need to bear in mind the implications of a long stay in Switzerland for a foreign national.

The way in which decision-making powers and financial burdens are divided between the Confederation and the cantons partly accounts for the problem of foreigners in irregular status. Decisions on allowing aliens to reside in Switzerland are, in fact, taken by the Confederation, while the canton of residence deals with social aspects, and also executes deportation orders issued in Bern. As a result, different cantons adopt very different approaches by asking, or not asking, for a regularisation of all their aliens.

Between 1996 and 2000, the French speaking canton of Vaud supported claims for regularisation by migrants from the former Yugoslavia and resisted federal decisions for deportation. Vaud appealed to the federal government to grant those migrants residence permits in the framework of regulations concerning cases of hardship. Although the federal government rejected the canton's initiative, the government of Vaud in June 1997 decided not to deport these migrants. At last the canton prevailed and in 2000, 220 families were granted permanent residence permits (Laubenthal, 2007). A second mobilization concerned a group of migrants from Kosovo who were threatened with deportation from the canton of Vaud and organised themselves in the alliance *"En quatre ans on prendre racine"* ("In four years you take roots"). The decision taken in August 1999 by the Swiss Federal Council involved 6,000 former seasonal workers who had formerly applied for political asylum at the outbreak of the Kosovo war. Once more the canton of Vaud set a precedent and former seasonal workers who had spent more than eight years in the canton were granted residence permits. These cantonal initiatives are, as a matter of fact, de-facto collective regularisation campaigns.

[4] In 1998 the government turned down a majority motion for an amnesty by the National Council. The main reason for its decision was that an amnesty would not be an effective or lasting answer to the problem of illegal foreign workers.

Organisations from the asylum and anti-racism movements together with the Swiss trade unions were central actors in the pro-regularisation movements, and their activity was crucial in generating public acceptance of the demand for regularisation. Overall, the Swiss movement sought to legitimate its claim on the basis of the recent migration history linking Yugoslavia with Switzerland. It presented the regularisation issue as a labour market issue, stressing the importance of illegal migrants as members of the Swiss labour market (Laubenthal, 2007).

As a result of these mobilization and the subsequent cantonal decisions, during the winter session of 2001, the Swiss Parliament dealt with the *'sans-papiers'* issue and 14 parliamentary inquiries have been presented (CFE, 2006). Protagonists of the left-wing parties demanded 'amnesties' and wide scale regularisations, while most centrist parties insisted on the case-by-case hardship regulation. Some members of parliament did, however, criticise the lack of transparency in the determination of 'hardship'. One of the reactions of the involved federal offices was the publication of a document enumerating the conditions leading to the determination of 'hardship' which was recognised as the only possible solution to the *sans-papiers* problem (Efionayi-Mäder et al, 2003; CFE, 2006). Since September 2001, 3694 persons applied for a residence permit invoking cases of serious hardship. Out of this number, 2123 persons received a positive answer originating from the former Yugoslavia, South American countries (Ecuador, Colombia) as well as African ones (FOM, 2008).

The rationale behind the 'hardship' concept has been defined as humanitarian and its objective is to give protection to cases where a return from Switzerland would be excessively rigorous, despite the illegal stay (FOM, 2008). In 2000, the Swiss Federal Council launched a campaign called "Humanitarian Action 2000" to deal with approximately 15,000 people living in Switzerland without legal status. The campaign was aimed at rejected asylum seekers who could not be expelled, and others still waiting for a final asylum decision. To obtain provisional admission, the following requirements had to be met: (1) entry into Switzerland before 31 December 1992; (2) no criminal record; (3) willingness to integrate; (4) the asylum seeker concerned should never have 'disappeared' and (5) the delay in the asylum procedure should not have been self-inflicted (DFGP, 2000). 6,502 asylum seekers from Sri Lanka, who had been working in Switzerland for a long time, benefited from the action. During Humanitarian Action 2000, there was no automatic granting of provisional admission; on the contrary, the Federal Office for Refugees (FOR) reviewed the cases of the Sri Lankan citizens individually. In the cases of citizens meeting the requirements enumerated above, but coming from other countries (apparently some other 6,500 persons) the cantons could ask the FOR to re-examine their cases (Efionayi-Mäder et al, 2003; DFGP, 2000). In autumn 2006, the Federal Commission for Foreigners (CFE) in collaboration with the working group on undocumented migrants *(Groupe de travail Sans-papiers* - created in 2002 and provided with power of mediation) called for an harmonisation across the Swiss cantons in the treatment of the cases of hardship (CFE, 2006). At last, on 12 December 2007, a new call for mass regularisation of the undocumented migrants in Switzerland has been made at the municipality of Zürich by the socialist Salvatore Di Concilio and Hans Urs von Matt (Gemendeirat der Stadt Zürich, 2007).

4. National policy on illegal migrants in regard to regularisation

Swiss convergence with the process of European integration concerning asylum and immigration is reflected by the reinstated two-tier immigration practises, which attempt to satisfy the demand for foreign labour, while making it difficult for all but the most skilled third-country nationals to enter. Because of domestic political pressure and the peculiar characteristics of the Swiss democracy, it seems that the country will continue to emphasise its criteria of control and cost in the immigration and asylum legislation and policy, rather than abide to any present and future demographic or economic needs (Efionayi, D., J. M. Niederberger & P. Wanner 2005). In this context, the fight against illegal immigration becomes equally essential because, as underscored by the report on illegal migration from IMES (2004) and other institutional actors; it is considered a phenomenon with harmful effects on the labour market and on the population. According to the same report, the effects can be summarised as follows IMES, 2004: 28):

- an artificial lowering of salary and social status.
- an increase in unemployment.
- disadvantages for companies that respect the law.
- long-term obstacles for the integration of foreigners resident in Switzerland.
- economic loss in terms of unpaid premiums for social insurances.
- problems of integration linked to illegal residence.

The effects of these unfavourable circumstances are reflected by the manner with which undocumented immigrants are dealt. As earlier mentioned, federal policy concerning the regularisation of undocumented immigrants works on a case-by-case basis and refuses to broach the subject of regularising the entire group collectively. The reasons why any other type of amnesty has been rejected by the Federal Council and its rationale are, according to the FOM (2008: 6), as follows:

- (...) a case-by-case approach allows to take into account the personal situation and to make an evaluation of the serious personal hardship of the concerned person. This policy has been accepted by the Parliament (law on foreigners of 16.12.2005), as well as the voters (vote of 24.09.2006).
- the actual provisions aim at protecting the Swiss labour market and avoiding wage dumping. These protections would be challenged by pronouncing a general amnesty.
- the Federal Council is fighting undeclared work and foresees severe sanctions towards incorrect employers.
- an amnesty would cause disregard of legal dispositions and incite foreigners to evade the legislation in order to get an amnesty at a later stage.
- to regulate undeclared workers from third countries would constitute an ‘inequality’ of treatment with regard to workers from other states, especially from the 10 new EU member states that are fixed a quota during a period of transition. An amnesty would be a wrong signal in migratory policy matters. In this context, the Federal Council thinks that the need for

foreign workers can be covered by the opening to the new EU member states.

- in the long run, a general amnesty cannot resolve the problem and cannot efficiently check the number of illegal residents. Experiences from neighbour states show this clearly. Illegal residents would only be replaced by other illegal residents, who accept insecure working conditions and hope to become regularised one day themselves (pull-effect).
- an amnesty has an incentive effect, because once a regulation is applied, there is hope that this will be repeated.
- the employer who employs an undeclared worker creates himself an unjustified advantage. An amnesty would incite this attitude.
- an amnesty could also have a negative effect on unemployment (regularised illegal residents would count as unemployed people).

As mentioned above, a different approach can be observed at local level, i.e. on a canton- by-canton basis, and it has been initiated and brought forward by the same *sans-papiers* with support from trade unions, NGOs and different sectors of the Swiss civil society at large (FIZ, 2008; SEK, 2008; SIT, 2008). Although the main arguments against comprehensive regularisation rests on the fact that this could make Switzerland more attractive and increase criminal activities, those who are in favour of a comprehensive solution emphasise the economic contribution of undocumented people, namely in the area of domestic work and so on (Kaya, 2005). In any case, although the economic contribution of undocumented migrants is not questioned, the federal authorities do not view it as a strong enough argument to favour a collective regularisation at the national level. Interestingly, Swiss employers remain in a veil of silence on the matter (Kaya, 2005).

5. References

Achermann, C. & D. Efionayi-Mäder (2003), *Leben ohne Bewilligung in der Schweiz: Auswirkungen auf den sozialen Schutz*, Forschungsbericht Nr. 24/03, Berne: Bundesamt für Sozialversicherung.

Anlaufstelle für Sans-Papiers & Gewerkschaft Bau & Industrie GBI (2004), *Leben und arbeiten im Schatten. Die erste detaillierte Umfrage zu den Lebens- und Arbeitsbedingungen von Sans-Papiers in der Deutschschweiz*, Basel and Zürich: Anlaufstelle für Sans-Papiers & Gewerkschaft Bau & Industrie GBI.

Brochmann, G. & S. Lavenex (2002), "Neither In nor Out: The Impact of EU Asylum and Immigration Policies on Norway and Switzerland", in S. Lavenex & E. M. Uçarer (eds.) *Migration and the Externalities of European Integration*, Lanham, Maryland: Lexington Books, pp. 55-73.

Commission Fédérale des Étrangers - CFE (2006), "Les sans-papiers: vers une harmonisation dans les cantons", Berne-Wabern: CFE.

D'Amato, G. (2008), *Migration and Integration in Switzerland: A Country Report*, Country Report, Cluster C9, IMISCOE Network, Neuchâtel: Swiss Forum for Migration and Population Studies (SFM).

Dipartimento Federale di Giustizia e Polizia – DFGP (2000), "Azione umanitaria 2000: particolari. Necessità di una regolamentazione", Comunicati, 01.03.2000, Berna: DFGP.

Efionayi-Mäder, D., J. M. Niederberger & P. Wanner (2005), "Switzerland Faces Common European Challenges", *Migration Information Source*, February 2005, Washington, DC: Migration Policy Institute. Available at: www.migrationinformation.org/Profiles/display.cfm?ID=284

Efionayi-Mäder, D., S. Lavenex, M. Niederberger, P. Wanner & N. Wichmann (2003), "Switzerland", in J. Niessen, Y. Schibel & R. Magoni (eds.) *EU and US approaches to the management of immigration*, Brussels/Bern: Migration Policy Group.

Efionayi-Mäder, D. & S. Cattacin (2002), "Illegal in der Schweiz. Eine Übersicht zum Wissensstand", Discussion Paper 12/2002, Neuchâtel: Swiss Forum for Migration and Population Studies (SFM).

Federal Office for Migration – FOM (2008), "Switzerland", Response to the "ICMPD Questionnaire addressed to EU member states on regularisation processes", Berne-Wabern: FOM.

Flückiger, Y. & C. Pasche, (2004), *Analyse du secteur clandestin de l'économie domestique à Gèneve*, Genève: Observatoire Universitaire de l'Emploi. Laboratoire d'économie appliquée.

Fornara, L. (2004), *L'esistenza scomoda: senza voce, senza diritti, senza documenti,... senza vergogna! Studio etnologico sulla comunità ecuadoriana in Ticino*, Tesi DSAS-Lavoro sociale con docente di riferimento Gianluigi Galli, Canobbio: Dipartimento Scienze Aziendali e Sociali, area Lavoro sociale, Scuola Universitaria Professionale della Svizzera Italiana.

Fraueninformationszentrum für Frauen aus Afrika, Asien, Lateinamerika und Osteuropa – FIZ (2008), "Schweiz", REGINE – NGO Fragebogen, Response to the "ICMPD Questionnaire addressed to EU member states on regularisation processes".

Gemendeirat der Stadt Zürich (2007), "Postulat: Sans Papiers, kollektive Regularisierung", Postulat von Salvatore Di Concilio (SP) und Hans Urs von Matt (SP) von 12.12.2007, GR Nr. 2007/649, Zürich: Stadt Zürich.

Gfs.bern (Forschung für Politik, Kommunikation und Gesellschaft) (2005), *Sans Papiers in der Schweiz: Arbeitsmarkt, nicht Asylpolitik ist entscheidend*, Schlussbericht im Auftrag des Bundesamtes für Migration, Definitive Version, 6 April 2005, Bern: Gfs.bern.

Gil-Robles, A. (2005), *Report of Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his Visit to Switzerland,* CommDH (2005) 7, 8 June 2005, Strasbourg: Office for the Commissioner for Human Rights, Council of Europe.

Greppi S., W. Minoggio, L. Da Vinci & A. Colubriale (2003), *La popolazione straniera e i flussi migratori in Ticino*, Lugano: SUPSI.

Hoffmann-Nowotny, H-J. & M. Killias (1993), "Switzerland: Remaining Swiss", in D. Kubat (ed) *The Politics on Migration Policies. Settlement and Integration – The First World into the 1990s*, New York: Center for Migration Studies, pp. 231-245.

Jezler, N. (2007), *Leben ohne Papiere in der Region Zürich*, Lizentiatarbeit eingereicht bei Frau Prof. Dr. Shalini Randeria, Zürich: Universität Zürich, 12 Oktober 2007.

Kaya, B. (2005), "Switzerland", in J. Niessen, Y. Schibel & C. Thompson (eds.) *Current Immigration Debates in Europe: A Publication of the European Migration Dialogue*, Brussels/ Neuchâtel: Migration Policy Group.

Laubenthal, B. (2007), "The Emergence of Pro-Regularization Movements in Western Europe", *International Migration*, Vol. 45 (3), pp. 101-133.

Mahning H. & A. Wimmer (2003), "Integration without Immigrant Policy: The Case of Switzerland", in F. Heckmann & D. Schnapper (eds.) *The Integration of Immigrants in European Societies. National Differences and Trends of Convergence*, Stuttgart: Lucius & Lucius, pp. 135-164.

Piquet, E. & S. Losa (2002), *Travailleurs de l'ombre?*, Zürich: Seismo.

Rohner, K. (2000), "Status Report on Measures to Prevent and Combat the Employment of Foreigners in an Irregular Situation in Switzerland", in OECD, *Combating the Illegal Employment of Foreign Workers*, Paris: OECD, pp. 177-182.

Ruspini, P. (2008), "Switzerland", in J. Doomernik, M. Jandl (eds) *Modes of Migration Regulation and Control in Europe*, IMISCOE Series, Amsterdam: Amsterdam University Press (ISBN: 978 90 5356 689 3), forthcoming

Schweizerischer Evangelischer Kirchenbund - SEK (2008), REGINE – NGO Fragebogen, REGINE – NGO Fragebogen, Response to the "ICMPD Questionnaire addressed to EU member states on regularisation processes".

Schweizerisches Rotes Kreuz – Department Migration (2006), *Sans-Papiers in der Schweiz. Unisichtbar – Unverzichbar*, Zürich: Seismo.

Solcà, P. (2004), *Estimation du nombre des sans-papiers au Tessin*, Rapporto per l'Ufficio federale dei rifugiati, Manno, novembre 2004.

Syndicat Interprofessional des Travailleuses et Travailleurs (SIT) (2008), "Suisse", REGINE – NGO Fragebogen, Response to the "ICMPD Questionnaire addressed to EU member states on regularisation processes".

Syndicat Interprofessional des Travailleuses et Travailleurs (SIT) (2004), *Un secteur et des travailleurs-euses dans l'ombre. Régularisons les sans-papiers et le secteur de l'économie domestique*, Bulletin d'information 93/2004, Genève: SIT.

Ufficio Federale della Migrazione – UFM (2007), "Circolare relativa alla prassi delle autorità federali per il regolamento del soggiorno di persone straniere in casi personali particolarmente rigorosi (del 1° gennaio 2007)", Asilo 52.4.7, Berna-Wabern: UFM.

Ufficio Federale dell'Immigrazione, dell'Integrazione e dell'Emigrazione (IMES) (2004), *Rapporto sulla Migrazione Illegale*, Berna-Wabern: IMES.

Valli, M. (2003), *Les migrants sans permis de séjour à Lausanne*, Rapport rédigé à la demande de la Municipalité de Lausanne, Lausanne, mars 2003.

Wanner, P., R. Fibbi & D. Efionayi (2005), "Switzerland", in U. Reeger et al. (eds.) "Statistics and/or reality? Some evidence from migration related data in twelve European countries", Report of the IMISCOE Network, Cluster A1, Task 3: Structural aspects of international migration: Dynamics of regular flows, unpublished.

37 United Kingdom

Audrey Lenoel

1. Irregular migration in the UK

1.1 Official definition of irregular migration

As in other European countries, the issue of undocumented migrants is a very contentious one, and the terminology and concepts surrounding the phenomenon are sensitive and debated. Different stakeholders tend to use different terminologies depending on their view of the problem. Many international organisations tend to use the term 'irregular' while non-governmental organisations in support of migrants' rights would use both the terms *'irregular'* and *'undocumented'*. The term 'irregular' is generally used to describe movements of people which are not in accordance with the laws of states while 'undocumented' is usually used to describe the position of people already in the country who are either without residence permits, or the residence permit they need to do what they are currently doing – usually working. The terms used in documents produced by the UK government departments and in most public debates are that of *'illegal'* or *'unauthorised'* migration (IPPR, 2006). It is worth noting here that different NGOs oppose the use of these terms as these are arguably strongly related to criminality and might therefore not be suitable to talk about a population generally committing an administrative rather than a serious criminal offence (IPPR, 2006, p.5). They also emphasize the risk of influencing public attitudes towards migrants negatively by using these terms (JCWI, 2006, p.15).

The term 'illegal migration' can encompass many different forms of abuse of the immigration rules such as entering the country illegally by avoiding immigration controls or by breaking the immigration rules in the UK (by working full time having been allowed in to study or failing to leave at the end of their stay). For the purpose of producing estimates, the Home Office has however defined 'unauthorised' or 'illegally resident' migrants as *anyone who does not have valid leave to remain in the UK* (Woodbridge, 2005). This includes:

- *Illegal entrants* (including clandestine entrants and those using deception on entry by presenting false documents or misleading immigration officials). We can note here that the concept of illegal entry was extended in 1976. Before then, the terminology only covered entering the country by avoiding immigration officials (e.g. through coming in small boats or hidden in containers before then), but it came to refer to foreigners who entered the country by deceiving in a material way an immigration official following courts decision in 1976. The term also covers those foreigners who sought to enter the UK and pending a decision on their application abscond (Guild, 2000, p.213).

- *Overstayers* (those who have not left the UK after valid leave to remain has expired – overstayers can be any kind of migrants: visitor, student, au pairs, working holiday makers, etc.); and

- *Failed asylum seekers* who do not comply with instructions to leave the UK, who are not appealing or who have exhausted their rights of appeal (including those who abscond during the process).

In their estimates, the Home Office exclude the category of migrants who are legally in the UK but who are breaching the conditions of their leave to remain (particularly through working), a situation also termed *'semi-compliance' with immigration control* (Anderson in: House of Lords, 2008, p.11), e.g. immigrants on student visas working more than the 20 hours legally allowed during term time, or asylum seekers working in breach of temporary admission conditions, or visitors working despite not being authorised to do so. This category is not the target of regularisation measures and will therefore not be included in this study.

1.2 Characteristics of the Irregular Migrant Population in the UK

1.2.1 Estimates

Illegal immigration is notoriously extremely difficult to measure and the UK is no exception despite its geographically insular position. The difficulties of producing estimates in the UK relate to the following issues outlined by John Salt in Pinkerton et al. (2004):

- A lack of embarkation records to allow the matching of inflow and outflow data on individuals;

- The fact that there have not been any large-scale regularisation exercises in the UK which we could draw data from (regularisations being one of the main data sources used as an indicator of numbers of illegally resident populations); and

- The fact that special surveys have been small-scale and piecemeal.

UK enforcement statistics[1] produced by the Home Office therefore remain the best indicator of the extent of illegal migration (see Table 76).

[1] The enforcement statistics produced by the Immigration Research and Statistics section within the Research Development Statistics (RDS) of the Home Office cover enforcement, detention and removals. For more details, see: http://www.homeoffice.gov.uk/rds/immigration-enforcement.html

Table 76: UK Enforcement Statistics

Type of enforcement & Voluntary returns	1998	1999	2000	2001	2002	2003	2004	2005	2006
Persons refused entry at ports and removed	27,605	31,295	38,275	37,865	50,360	38,110	39,730	32,840	34,825 (P)
Persons against whom enforcement action was initiated (1)	21,080	22,950	50,570	76,110	57,735	-	-	-	-
Persons removed as a result of enforcement action and voluntary departures	7,320	6,440	7,820	10,290	14,205	19,630	18,710	21,720	22,840
Persons leaving under Assisted Voluntary Return Programmes		50	550	980	895	1,755	2,715	3,655	6,200

Source: Home Office, 2007a
Information not available from 2003 to 2006 due to quality issues

However, enforcement data only cover those migrants subject to immigration controls against whom some enforcement actions have been taken and therefore represent only a fraction of the total illegal migrant population which, by definition, might not be captured by those controls. Furthermore, it is important to bear in mind that enforcement is driven by policy decisions rather than objective needs, and the number of enforcement decisions is therefore mainly a reflection of the more or less stringent political stance on irregular migration. We can in fact argue that the number of decisions tells us nothing about the scale of the 'problem'[2]. It is therefore extremely difficult to estimate the extent to which enforcement statistics are an indicator of the total illegally resident population and many estimates are therefore not based on these. In fact, direct methods are of limited value for measuring the

[2] Interview with Mr Don Flynn, Director of the Migrants' Rights Network (MRN), 21st May 2008.

illegally resident migrant population as much of it will remain statistically hidden to such methods (Pinkerton et al., 2004)

In 2004, a team of researchers working at the Migration Research Unit of University College London reviewed methodologies used in different countries within and beyond Europe to estimate the stock of illegally resident persons and assessed their applicability to the UK situation (Pinkerton et al., 2004). They found that most of the methods used in the 28 studies they reviewed were either not applicable in the UK (e.g. those relying on a population register which does not exist in the UK) or would produce too inaccurate results. They however identified an indirect technique previously used in the US called the *residual method* as being potentially applicable to the UK context. Pinkerton et al. viewed this method as the most applicable in the UK context because there were not enough sufficiently disaggregated and centralised statistics to use other direct or indirect methods. However, they clearly indicated the caveats of using this methodology, particularly the need to check whether UK Census data could be used in the same way US census data were used. Subsequently, the Home Office adapted the methodology to fit the data sources available in the UK and produced estimates of the illegally resident population using this method (Woodbridge, 2005).

The residual method uses data from the UK Census conducted in April 2001 and immigration data from the Home Office. It takes the total foreign-born population in the UK (excluding EEA-born population as they not subject to immigration control) obtained from the Census as its starting point, and then subtracts an estimate of the foreign-born population here legally. The later category consists of foreign-born persons living in the UK who have been granted settlement (estimate derived from Home Office flow data as stock figures were not available), temporary legal migrants (Home Office data on persons granted temporary leave to remain which period included the end of April 2001, e.g. persons on student or employment-related visas, including dependants) and quasi-legal migrants (Home Office data on number of persons awaiting a decision on their asylum application or the outcome of an appeal following a refusal). The difference between the total foreign-born population and this estimate of the 'legal' foreign-born population is an estimate of the number of unauthorised migrants in the UK. Using this method, the research team found that the total unauthorised migrant population (including failed asylum seekers) living in the UK in April 2001 was ranging between 310,000 and 570,000 (i.e. between 0.5 and 1% of total UK population) with a central estimate of 430,000 (i.e. 0.7% of the total UK population of 59 million at the time) (Woodbridge, 2005). This very broad range can be explained by the limitations in the data sources and the fact that the residual method could only be imperfectly applied to the UK context.

As we would expect, these estimates have been criticised and the limitations of the sources on which they are based have been pointed out. These estimates are first of all quite out of date, being based on 2001 figures, and it will only be possible to repeat this exercise by using the data of the next Census that will only take place in 2011. Furthermore, it has been highlighted in the past that foreign-born populations (authorised and unauthorised) are undercounted in censuses but there are no estimates available for this (Woodbridge, 2005). Arguably, illegal migrants would be particularly undercounted in censuses as they would avoid direct, doorstep

measures like a census. Although the method takes this into account and a range of zero, ten and twenty per cent undercount for the unauthorised population suggested by the Office for National Statistics (ONS) is applied to calculations, this poses the problem of relying on Census data for estimations. The think-tank Migration Watch UK has claimed that the number of illegally resident immigrants is likely to be much higher and that estimates need considerable adjustments (MigrationWatch, 2005). MigrationWatch's major criticism is that the estimates do not include children born in the UK who are not British citizens – i.e. a subset that includes UK born children of illegal migrants – and argue that between 5% and 15% should be added to the unauthorised population to account for this discrepancy. The pressure group also suggests that estimates should be revised so as to include the number of failed asylum seekers who have not been deported after 2001. They particularly emphasize the importance of this as the year 2002 saw a peak in asylum applications. It is however important to note here that if the number of asylum applications did increase in 2002 compared to 2001, it considerably decreased from 2003, while the number of removals also slightly decreased each year (Home Office, 2007a). Overall, MigrationWatch UK estimated the unauthorised migrant population to be in the range of 515,000 to 870,000 with a central estimate of roughly 670,000 at the end of March 2005 (Migration Watch, 2005).

We can note that failed asylum seekers arguably form a substantial part of the undocumented migrant population in the UK but it is difficult to obtain an accurate number of failed asylum applicants liable to removal still living illegally in the UK as some would have left the country of their own accord, but their number was estimated to be between 155,000 (number of persons due to be removed according the Home Office database) and 283,500 (79,500 reported removals subtracted from the approximately 363,000 unsuccessful applications between 1994 and 2004) in a 2005 report by the National Audit Office (2005).

1.2.2 Profile of illegal migrants

It is particularly difficult to draw a picture of the undocumented migrants living in the UK as their illegal status means that they elude registration and statistical coverage (Tapinos, 1999 in: Pinkerton et al., 2004) and are particularly difficult to research. In other countries, large-scale regularisation exercises have allowed knowing more about the characteristics of irregular migrants but such programmes have not been implemented in the UK. Some case studies have however drawn some valuable information, such as a survey of illegally resident migrants in detention conducted by Black et al. (2004).

This research based on interviews with a randomly selected sample of 83 migrants detained in three immigration detention facilities explored the motivation of the respondents for coming to the UK, their routes both to the UK and into illegal residence (whilst outside the detention centre), their experiences of living as an illegal resident in the UK (including means of support), their involvement in the job market and their use of public services. As shown elsewhere, the findings suggested that undocumented migrants are men in their majority, and relatively young (median age was 29). Most of them were living in London, or at least stayed in the capital at their arrival. Three quarters of those interviewed (62 out of 83 respondents in total)

had worked illegally whilst in the UK, while those who were not working relied on family members or friends to support them. The respondents who were working illegally were generally doing unskilled work even though they were often highly qualified and skilled. Although they did not report difficulties in finding work, they were usually paid cash-in-hand and reported poor working conditions and long hours, and low rates of pay (often below the minimum wage). These findings are consistent with other research suggesting that irregular migrants generally work in sectors that pay low wages but have high demand for labour, i.e. jobs characterised by the 3Ds: dirty, difficult and dangerous. A report on the employers' use of migrant labour conducted for the Home Office (Dench et al., 2006) noted for instance that:

"Illegal working was cited as more of an issue within low-skill jobs, particularly among smaller employers and in less regulated sectors. Those using a number of subcontractors or agencies within the Hotels and catering, Agriculture and Construction sectors were also felt to have higher levels of illegal working. Larger organisations were believed to be more visible and to have more centralised policies, human resources departments and procedures for checking documentation. Agricultural workers were cited as more likely to be mobile and illegally paid 'cash in hand'. However, a large proportion of employers felt it had grown increasingly hard to employ illegally in the Agriculture sector because of pressure from clients such as supermarkets."

Despite a dearth of data, we can note that the sector of domestic work is also associated with high levels of undocumented work and that these jobs are almost exclusively done by women (Wright and McKay, 2007).

Finally, when questioned about their future plans, three quarters of the respondents in the study conducted by Black et al. who had thought about it reported that they would again leave their country of origin - in most cases to return to the UK.

2. Regularisation measures

2.1 Large-scale regularisation programmes

Large-scale regularisation programmes (generally termed 'amnesties' in national debates) are not a characteristic of the United Kingdom and so far no large-scale general regularisation programme has taken place. The UK government is opposed to the idea and the principle of a "general amnesty" has frequently been ruled out by the government at first in the 1998 White Paper *Fairer, Faster, Firmer* at a time when there were huge backlogs particularly in the asylum system, and again in April 2006 by the former immigration minister Tony McNulty. While a new proposal for a general amnesty was discussed, the immigration minister Liam Byrne restated the government official stance on this issue in September 2007, adding that *"an amnesty for immigrants illegally in the UK is unnecessary and would simply create a strong pull for waves of illegal migration".*

The UK position on this question can probably be explained by the high sensitivity of the issue of irregular migration in the country and the belief that its insular position means that borders can be more effectively controlled. This has

underpinned some UK policy choices in the past as Guild (2000) notes that *'the need to control illegal immigration arriving from other Member States is the primary justification of the UK for refusing the full effect of Article 14 EC and for refusing to enter the Schengen system'* (2000: 228-229). Today, the government's rejection of any large-scale amnesty goes with a very strong emphasis on improving border controls and prevents irregular residence and work (see conclusion).

2.2 Small-scale programmes

In the UK, regularisations are generally only considered in the context of removal (Guild, 2000: 211). There have however been a few small-scale one-off regularisation programmes and mechanisms, generally implemented following changes to the law either by Parliament or important decisions of the courts, and recognising *fait accompli*[3]. The UK government has tended to look at regularisations on a case-by-case basis, or in terms of specific cohorts in order to accommodate certain populations physically present in the state (and in particularly difficult situations), outside immigration rules. These regularisations generally applied to a finite number of people and cannot be regarded as general amnesties.

Like most of the rights available to irregular migrants in the UK, regularisations were in the form of *concessions* made by the Minister, the Secretary of State for the Home Department, in the exercise of his discretion *outside the Immigration Rules and the Immigration Act*, therefore limiting the rights of appeal for the decisions (IPPR, 2006, p.14; Guild, 2000)

According to Apap et al. (2000), a regularisation 'model' exists in Europe, and the UK, together with Germany, the Netherlands, France and Belgium, belongs to the group of North European states that tend to regularise 'fait accompli' cases of migration on a selective basis accompanied by further, often complicated requirements (protection, integration). This approach would contrast with the one adopted by South European countries where regularisation tends to be one-off, with relatively straightforward criteria, and stresses economic aspects (integration into the labour market).

The first mechanisms adopted in the UK were *restricted to certain nationalities*, and the numbers of persons it applied to were very limited:

- Following the introduction of the Immigration Act of 1971 and a court decision which gave a particularly harsh interpretation of legality of residence, the UK announced its *first regularisation programme*, which ran *from 1974 to 1978*. Out of 2,430 requests, this programme regularized 1,809 citizens of the Commonwealth and former colonies (mostly Pakistani) who had been living without authorization in the UK between March of 1968 and January 1 1973 by granting them Indefinite Leave to Remain (permanent residence). 621 were refused (26% refusal rate).

[3] This was for instance the reason for implementing the *Regularisation of Overstayers Scheme* in *October 2000*, following important changes in the law affecting overstayers.

- In *1977*, a *second regularisation programme* covering the same category of people was announced. As in 1974, this amnesty was granted to limit the adverse consequences of court decisions extending the concept of illegal entry in the UK (Guild, 2000) and regularized 462 people out of 641 applicants (28% refusal rate).

- More recently, a *de facto* regularisation happened following the *EU enlargement and the opening of the UK borders and market to nationals of EEA Accession States* in *May 2004*. Immigrants from those states who were working in the UK in an irregular capacity prior to that date were allowed to continue working in the UK if they registered to do so. This in effect has been an amnesty, as there would have been no point in seeking to detect and detain these people who on return to their country of origin would have been eligible to return to the UK to work. Between May 2004 and June 2005, of the 231,545 persons who applied to the Worker registration Scheme (WRS), 15% reported that they had entered the UK priori to 1 May 2004 (Home office, 2005).

The UK government also conducted *backlog clearance exercises of asylum applications*. In these cases, the persons were not irregularly on the territory as their residence was lawful on account of their outstanding asylum applications, and these exercises are therefore not strictly speaking regularisations of illegal migrants.

Backlog clearance exercise for outstanding asylum applications (1998 White Paper)
To deal with the huge backlog of over 100,000 cases that had accumulated by July 1998, a special policy was introduced to grant indefinite leave to most asylum claims outstanding since 1993. Those made between 1993 and 1995 were weighed up individually taking into account factors such as community ties, family connections and records of working in the UK for economic purposes and on a voluntary basis, and a form of limited 'exceptional' leave was granted for four years.

Table 77: Persons granted asylum or exceptional leave under the backlog criteria

	Granted	Refused
1999	11,140	1,275
2000	10,325	1,335

Source: Home Office, 2007a, table 3.1, p.46

The Family Indefinite Leave to Remain (ILR) exercise (2003)
Announced by the Home Secretary on 24 October 2003, this "one off exercise" allows certain asylum-seeking families who have been in the UK for four or more years to obtain settlement The basic criteria were that the applicant(s) applied for asylum before 2nd October 2000 and had at least one dependant aged under 18 in the UK on 2 October 2000 or 24th October 2003. It applies to all asylum seeking families whether or not they have decisions or appeals pending or whether they have already reached the "end of the line", providing they have not previously left the UK either voluntarily or by removal. Excluded from the exercise are those who have a criminal conviction and/or whose presence in the UK is not deemed conducive to

the public good. The deadline for applications under the concession was 31 December 2004 but the Home Office continued to accept applications for consideration after this date.

Table 78: Grants of settlement under the Family ILR exercise:

2004	2005	2006
9,235	11,245	5,000

Source: Home Office, 2007a, table 3.1, p.46

The UK has also conducted *case-by-case regularisations through expedience or obligation*. These can be regarded as 'forced' regularisations which are the result of court decisions or international regulations. Here, we can mention the follow-up given by the UK to its condemnation in the European Court of Human Rights on 2nd May 1997 for violation of Art.3 of the Convention, prohibiting inhuman, cruel or degrading treatment, with regard to regularisation of seriously ill foreigners in cases where they cannot be transported or in the scenario where their life would be shortened should they be deported to their country of origin due to the absence of sufficient care (Apap et al., 2000). More recently, some rights for irregular migrants were derived from the Human Rights Act 2000 (which incorporated the European Convention on Human Rights into domestic law), such as the right to respect for family life (Art.8 of Human Rights Act 2000) which might lead to an obligation to regularise a foreigner illegally residing in the State if s/he has family links with a national or a legally established foreigner established in the country, and right to freedom from inhuman or degrading treatment (art.3) (See European Court of Human Rights case n. 146/1996/767/964). This Act established in domestic law what might have been granted as a concession.

The violation of human rights has actually been the main reason to conduct some regularisation exercises, such as the regularisation programme for domestic workers in 1998-99.

Regularisation programme for domestic workers (23/07/1998 – 23/10/1999)
In response to concerns about the treatment of overseas domestic workers, changes to the Overseas Domestic Workers Concession were introduced, the most significant of which allowed a domestic worker to change employer. A number of domestic workers who came to the UK prior to July 1998 found themselves in an irregular situation because as a result of abuse and exploitation they had left their original employer. Ministers therefore decided that as a general approach, in the case of those domestic workers who brought themselves to the attention of IND between 23 July 1998 and 23 October 1999, their stay would be regularised, with twelve months' leave granted in the first instance. The programme included those who had already come to the attention of IND and against whom enforcement action was pending. This concession is however currently threatened by the plan recently announced by the Home Office to rigidly limit domestic workers' leaves to an initial brief period of 12 months, with no extensions being possible beyond that date (following changes in immigration rules related to the introduction of the Points-

Based System[4]). This plan could however be modified, following the rallying of organisations against it and the admittance by the Home Office that this change would again make domestic workers vulnerable to the conditions that the original measure was supposed to address.

Finally, we can mention a policy implemented in 2000 which was not designed as a regularisation scheme but became one in practice:

Regularisation of Overstayers Scheme in 2000:[5]
This was an interesting example of a policy turning into a regularisation scheme when it had not been intended to. It arose because changes to the law in 1999 had abolished an automatic right of appeal for people who had been living in the UK for seven years or longer. In order to prevent the law from having retrospective effect in depriving people who had a right of appeal under the existing legislation, the government announced that anyone with a right of appeal who applied to regularise their stay before 2 October 2000 would retain their right of appeal in the event of an adverse decision. The official publicity for the scheme went to lengths to say that it wasn't an 'amnesty', and that the decision-making criteria for allowing a person to regularise or for refusing them would remain exactly the same. By and large, this criteria was that the person was required to show that they had established substantial connections with the UK - having a family life for example – or that there were other compelling reasons why the person should be removed. The Home Office stated that the measure did not mean that merely residing for 7 years, with no other factor being involved, would lead to regularisation. But once the existence of the scheme was announced, immigration legal advisors across the country started proclaiming the existence of an amnesty, and advertised their services for anyone who had merely resided for 7 years or more. The Home Office (IND) had been poorly-prepared for the influx of applications which ensued and officers started to interpret the scheme as applying to anyone who had resided for 7 years. So a mixture of pressure from the legal advice community and poor administration in the Home Office succeeded in subverting the scheme to the point where it did become an amnesty.

2.3 Permanent regularisation programmes

There are permanent regularisation mechanisms in the UK which take the form of "concessions" granted on a case-by-case basis by the Secretary of State for the Home Office. These concessions are now embedded in immigration rules.

In relation to these mechanisms, Apap et al. (2000) note that *"[...] permanent regularisation is only undertaken in the UK according to very strict conditions and moreover it does not undertake a real call for candidatures due to its permanence in time, whilst the one-off regularisations practised in Italy, Spain and Greece form real programmes that are the object of open advertising campaigns, which guarantees their success and effectiveness"*.

[4] See paragraphs 159A-159H of the Part 5 of the new Immigration Rules, http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part5/
[5] The following explanations were provided by Mr Don Flynn.

- *Long residence rules*
  In 2003, the long residence concessions were incorporated into the immigration rules. Based on long residence, the Home Office will normally allow someone to remain in the UK. These rules are based on the principles of the European Convention on Establishment, which the UK ratified in October 1969 and which states that nationals of countries that are party to said Convention should not be required to leave the host country they are in if they have lawfully resided there for over 10 years, unless there are particularly compelling reasons why they should be required to leave (for example reasons relating to public policy, security, health, or morality). In addition, those whose residence in the UK has been partly or wholly unlawful can also benefit (normally after 14 years). Other factors taken into account in these applications are age, strength of connections with the UK, character, conduct, associations and employment record, domestic circumstances, criminal record and any representations received on the applicant's behalf. The Home Office concession and subsequent rules cover nationals of any country. As Guild (2000) notes it, this is in effect a rolling regularisation programme, allowing overstayers, illegal entrants, and failed asylum seekers, providing they have not been removed or gone underground, to legalise their stay in the UK (see also European Migration Network Ad-Hoc Query 2008: 113).

- *The 'seven-year rule'*
  A concession embodying a general presumption against removal of families with children who have put down roots in the UK, announced in March 1999. The policy benefits families otherwise liable to be removed, with children who were born in the UK and have lived here continuously to the age of seven or over, or who, having come to the UK at an early age, have accumulated seven years' or more continuous residence. ILR normally granted to the whole family.

- *Discretionary leave (DL) / Humanitarian Protection (HP)*
  Where someone is in need of international protection, but they do not qualify for asylum under the Refugee Convention, or if they have human rights grounds, they may be granted a form of temporary leave called Humanitarian Protection (HP) or Discretionary Leave (DL). In these cases, it is the principle of protection that applies (as opposed to *fait accompli*).

In addition to the above-mentioned policies UK immigration law does allow for overstayers, or other undocumented migrants to make applications outside the rules at any time to regularise their leave. Usually in order to be successful in such an application, there have to be underlying compassionate, exceptional or humanitarian grounds on which the Secretary of State may exercise his discretion to grant leave to remain.

2.4 Changes in preferences over time

The position of the UK has been quite consistent over time. However, the following evolution has been noted with respect to the UK approach to regularisation:

" […] the United Kingdom's regularisation system, initially based on one-off procedures recognising fait accompli but restricting itself to certain nationalities, has developed towards permanent procedures which, whilst still motivated by fait accompli, obviously do not rule out the idea of the protection of the person, when this is called for."(Apap et al., 2000)

Permanent mechanisms are less contentious than one-off large scale programmes, and that might be a reason why they have been preferred in the UK. As argued by Levinson (2005), regularisation granted on a rolling and individual basis is less likely to draw the type of attention that a large-scale effort would (Levinson, 2005). However, the length of time required to obtain a permanent residence permit is usually prohibitively long (14 years).

It is also important to note that certain concessions given on a discretionary basis have been integrated into the immigration rules, e.g. the long residence rule.

2.4.1 Legal basis for the regularisation measures

- *Long residence*: these concessions were incorporated into the immigration rules in 2003. Until 5 July 2006, applications on the basis of long residence were considered under two separate frameworks: applications on the basis of UK immigration rule and applications based on Home Office policy as set out in the Border and Immigration Agency (BIA) instructions to its caseworkers. On 5 July 2006, the instructions to caseworkers were withdrawn and it was stated that applications on the basis of long residence would be considered only under the UK immigration rules, and a new guidance was published in 2007. The guidance to caseworkers is not law and BIA can exercise its discretion to treat a person more favourably than its guidance provides.

2.4.2 Reasons leading to the adoption of regularisation measures

As mentioned above, regularisation measures in the UK can broadly be explained by:

- The need to regularise certain groups of people following changes to the law either by Parliament or important decisions of the courts (1971; 1977; long residence rule)

- Backlog clearance exercises, following failure of the administration to deal with the huge backlog of asylum applications (in 1998 and 2003)

- The need to take action following a campaign by associations and trade unions: the 1998 Domestic Workers Regularisation Programme.

Anderson (1999) has analysed the support campaign that has contributed to the adoption of this regularisation programme, and emphasized some of key elements of

its success. First of all, she points out that the associations that initiated the campaign made judicious use of the media and managed to put women' personal stories at the forefront. According to Anderson, *"it gave campaigning material a very strong human rights focus, taking individual cases of abuse, people's stories, then drawing out the role of immigration legislation in facilitating this abuse and showing the possibilities for change. This meant that the campaign could appeal to an audience not necessarily sympathetic to undocumented workers."*

They also made good use of the statistics they had recorded on the problem and this bolstered the media work as "*It meant that women's experiences could not be passed off as simply due to a bad employer, and encouraged people to look for the structural causes of such abuse"*. They also worked to put the issue of migrant domestic workers on the agenda of other groups, both nationally and internationally, and were particularly successful at securing the support of the Transport and General Workers Union (TGWU) in their campaign. Finally, Anderson underlines how the recent change in government following the accession to power of the Labour Party provided the right political context for the campaign to be a success:

"It is important to remember however that this immigration "success" came within the context of a government that was regarded by many on the left as even harsher on asylum seekers than its Conservative predecessors. It was in some ways, to mix my metaphors, a tailor made carrot! The numbers affected were not large, they were women, they had clearly been abused, the change was not a big one, but it can be cited as a liberal policy by the government's defenders."

3. Planning and decision making process

3.1 Aims of the measures

- *Long residence rules*: these rules are based on the principles of the European Convention on Establishment, which the UK ratified in October 1969, and were integration in the national immigration rules in 2003. The long-residence rules can be classified as regularisation for reasons of *fait accompli* as it recognise the presence of persons illegally in the country over a certain period (14 years). As stated in the guidance for caseworkers applying the rule, *"the main purpose of the two Long Residence rules is to enable people who have been working here, or otherwise contributing to the economy, to regularise their position"* (p.8)

- The *seven-year children policy* (DP/069/99) for families with children is a concession of the Home Office (outside immigration rules) aimed at taking the situation of children into account when a family is liable for removal.

- The *Domestic Workers regularisation* was concomitant to the changes to the Overseas Domestic Workers Concession announced on 23 July 1998 and it was aimed at 'rectifying' a situation that might have occurred because of the impossibility to change employers under the provisions of the previous concession. The concession was aimed at regularising the

situation of overseas domestic workers who might have found themselves in an "irregular situation", usually after leaving an employer who abused or exploited them. The reasons leading to this programme can therefore be seen as relating to the protection the human rights of people who might have been in a very sensitive situation following the application of previous rules.

3.2 Target groups/focus of the measures

- *Long residence concession*: all illegal residents in the country for 14 years or more.

- *Domestic workers regularisation*: in this case, it is a very specific socio-professional group. It is probably not surprising that it was this group that was the object of one of the very rare UK regularisation exercises as, in other countries such as Greece, France and the USA, domestic workers have formed an important proportion of the target groups of more general amnesties (Anderson, 1999).

The regularisation programme only applied to those who were originally admitted to the UK prior to 23 July 1998 with the correct entry clearance for employment as a domestic worker and became irregular following the breach of the conditions attached to their visas (see domestic workers' concession before 1998).

3.3 Categories of irregular migrants targeted

- *Long residence rules*: overstayers, illegal entrants, and failed asylum seekers, providing they have not been removed or gone underground.

- *Domestic workers regularisation*: Overstayers. The programme also included those that had already come to the attention of the immigration authorities and against whom enforcement action was contemplated, and those who had been granted leave to remain exceptionally to await court proceeding against an abusive employer.

3.4 Conditions of access/criteria

- *The long residence concession*
  The regularisation criteria of this concession[6] are:

  (i) *Territorial criterion*: The long residence concession allows for a discretionary grant of settlement after 14 years continuous residence of any legality, providing that

[6] Home Office – UK Border Agency, Immigration Directorate Instructions: Chapter 18 long residence, available at: http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter18/ (last updated on 12/07)

there is no strong reason for them to be sent home such as a criminal record. Applicants have to show evidence from their documents to prove that they have lived in the UK for the full 14 years, which means proving the date of arrival as accurately as possible. The residence should be continuous but short periods of absence will not count against the calculation of the period if they do not exceed 18 months in total. However, enforcement actions taken against an individual as well as a period of imprisonment or detention would "stop the clock" for the purposes of the "14-year" Rule. Enforcement actions include a notice of liability to removal; or a decision to remove or a notice of intention to deport. Guild (2000: 221) argues that this is problematic as it is not uncommon to see many years passing between a deportation order and any serious effort being made to expel the individual.

(ii) The IDI state that a person who satisfies the appropriate continuous residence requirement should normally be granted Indefinite Leave to Remain, unless a grant would, in all the circumstances of the case, be against the public interest. Other criteria are therefore taken into account before reaching a final decision.

(iii) *Economic criterion:* the applicant should be able to demonstrate that they have been working and contributing to the economy while in the UK. Reliance on public assistance is not favourably considered and applicants should be self-supporting, i.e. not living on public funds, even though this criterion is not sufficient ground to refuse a grant (Guild, 2000).

(iv) *Compassionate circumstances/humanitarian criteria:* there is not strict definition of this criterion but it might include such things as significant or serious illness, frailty or particularly difficult family circumstances. These particular personal circumstances are most likely to be taken into consideration when the applicant qualifies for a grant under the territorial criteria (14 years of continuous residence) but other factors (such as a criminal conviction or a bad immigration history) suggest that granting that person an ILR might be against the public interest. In these cases, the different criteria would have to be weighed up against each other in order to reach to reach the best possible decision.

(v) *Criteria related to family situations*: families otherwise liable to be removed, with children who were born in the UK and have lived here continuously to the age of seven

or over, or who, having come to the UK at an early age, have accumulated seven years' or more continuous residence, are eligible to be granted an ILR.

(vi) *Criteria related to the integration of applicants*: Everyone who applies under the Long Residence Rules since April 2007 has to show that he has sufficient knowledge of the English language and of life in the UK before qualifying for ILR. This might imply passing the 'Life in the UK test' and taking and passing a course in English and citizenship if language ability is deemed not satisfactory.

- *Regularisation programme for domestic workers (23/07/1998 – 23/10/1999):*[7]

  (i) *Professional status criterion*: the programme was aimed at overseas domestic workers and the applicant were therefore required to provide proof that they were employed as domestic workers at the time of the application was made.

  (ii) Possession of a valid passport.

  (iii) *Economic criterion*: the domestic worker had to demonstrate that s/he was self-supporting and would not need to recourse to public funds, usually through a letter from the employer stating salary details and other 'in kind' payments.

  (iv) *Temporal criterion*: the individuals had to bring themselves to the attention of IND within 12 months of the announcement and that they had continued to be employed in a domestic capacity.

3.5 Groups excluded

- *Long residence rule*: applies to all illegally resident migrants who have resided in the country for at least 14 years, but can exclude people with a criminal record and/or a bad immigration history. The latest category refer to people who committed deliberate or blatant attempts to circumvent immigration control, e.g. by absconding, contracting a marriage of convenience or using false documents.
- *Domestic workers regularisation*: excludes migrant workers who entered the country without the right entry clearance.

[7] For details, see Anderson, 1999.

3.6 Status, rights, responsibilities

- Persons meeting the requirements of the *long residence concession* should normally be given Indefinite Leave to Remain (ILR). ILR is permission to stay permanently (settle) in the United Kingdom, free from immigration control. From 2 April 2007, all applications for ILR will require the individual to demonstrate proficiency in English and knowledge of life in the UK.
- *Domestic Workers regularisation*: applicants who had been residents in the UK for at least four continuous years were normally granted ILR, while those who had been in the UK for less would obtain a 12-month leave in the first instance.

4. Implementation

4.1 Long residence rule

JCWI notes that it is a lengthy and often a not straightforward procedure and that, in the past, some applications were refused because applicants did not pay taxes (which as an undocumented worker is difficult to do in any event, unless under a false name) (JCWI, 2006).

Unfortunately, it has not been possible to obtain the number of persons regularised under the 14 year residence rule. Indeed, the relevant statistical category for this concession combine the grants under the long residence concessions after 10 or 14 years residence together, and it is therefore impossible to break them out in order to obtain numbers for the concession applying to irregular migrants only.

4.2 Domestic workers' regularisation programme

Anderson (1999) provides an assessment of the implementation of the policy:

(1) This programme was not a great success as it led to only a small number of regularisations. Unfortunately, it has not been possible to obtain the number of regularisations under this scheme from the Home Office[8].

(2) Migrant domestic workers could apply for regularisation from July 1998 and July 1999 later extended to October 1999. The guidance notes that persons who entered prior to 23 July 1998 and missed the 23 October 1999 deadline would normally have enforcement action taken against them when they come to light, but that each application would nevertheless be examined on an individual basis and a leave might be granted if the person satisfies the requirements. Anderson notes that the deadline was problematic, particularly because of the lack of

[8] In reply to a request to the Immigration Research and Statistics (IRS) department of the UK Border Agency, we were told that, regarding the '1998-99 Domestic Workers Regularisation Exercise', the data available is not detailed enough to identify these cases. Settlement of Domestic Workers in general is included in 'Permit free employment' within table 5.3 of Home Office (2007a). Although it might possible to break them out for the 1998 and 99, there are almost certainly data quality issues.

publicity for the programme which meant that many of those who might have been eligible in its framework did not hear about it in sufficient time. This issue was further aggravated by the fact that regularisation criteria were only clearly defined by January 1999, resulting in delays in the submissions of applications.

(3) This programme was not greatly publicised and its announcement probably did not reach many of those who might have been eligible to regularisation. Levinson (2005) notes that the lack of publicity has actually been a common reason for programme failure or weakness in the UK.

(4) Anderson (1999) underlines the very important role played by non-governmental organisations in the implementation of the measure. They played the crucial role of mediator between the migrant domestic workers and the institution that they generally mistrusted, i.e. the Home Office. Furthermore, when it became clear that one of the main difficulties applicants to regularisation had was to provide proof that they had entered the country as domestic workers with the right entry clearance, it was decided that registration with Kalayaan – the support organisation that had launched the campaign for domestic workers – would count as such proof.

(5) This regularisation programme was implemented during what Anderson has qualified a 'period of well publicised chaos within the Home Office' resulting from a series of internal changes (new computer system and immigration services moving offices). This context, as well as different aggravating problems relating to delays in establishing the regularisation criteria and the lack of clear instructions given to the Home Office caseworkers, resulted in important delays in decision making.

(6) Different practical implementation difficulties arose. First of all, meeting the requirements proved difficult to many because of the type of documentation that was required. Submitting a valid passport was for instance very difficult as many domestic workers who entered the UK under the concession had their passports taken by their employers or - if they had managed to hold on to it - had not renewed it on expiry. Applicants were therefore very dependant on the good will of their embassies to provide the necessary documents, and some embassies (the Filipino in particular) cooperated more than others. Providing proof of current employment and that applicants were able to support themselves was also very problematic as employers were reluctant to provide any documents for fear of being prosecuted for employing illegal immigrants or becoming liable to paying tax and national insurance. The establishment of such criteria can seem quite paradoxical as *'one of the purposes of the exercise was to free domestic workers from dependence on their employers for their immigration status, yet the necessity of a letter from their employer only reinforced*

this dependency' (Anderson, 1999). As mentioned above, migrants also had to submit a proof that they entered the country as domestic workers, with the right entry clearance. This was difficult to provide, not least because there was no specific entry clearance granted domestic workers. A major step in solving this problem was the decision made by the authorities to accept registration with the support organisation Kalayaan as such a proof. However, the records kept by this organisation had not been developed for this purpose and information on some applicants was missing.

Finally, Anderson reports problems of representation as different 'immigration advisers' and more or less reputable law firms saw the regularisation exercise as an opportunity to offer their services to possible applicants and apply high fees.

5. Evaluation and outcomes

Although no numbers were found on this particular issue, it is believed that the workers domestic programme appeared in the end to have been very costly in terms of time, money and emotional investment for all those involved (Levinson, 2005).

The length of time required to obtain a permanent residence permit under the long residence rule is usually prohibitively long (14 year), and therefore this regularisation mechanism is unlikely to act as an incentive to come and stay irregularly in the UK.

Because the requirements of the Domestic Workers regularisation were so strict, it is also very unlikely that it encouraged illegal immigration.

6. The UK and Europe: debates on regularisation policy in the UK

The regularisation programmes implemented in other countries (Spain in particular) are often mentioned and discussed in public debates. The views on these measures are, as we could expect, quite contrasted between those in favour of a regularisation exercise in the UK and those rejecting this option. The transcripts of the debates that took place at the House of Commons on 20 June 2007 during debates about this issue reflect these differing views. On the one hand, the supporters of a regularisation in the UK argued that a country like Spain just took a *de facto* situation into account by recognising a population that had established strong links with the country and contributed to its economy, and that these measures eventually prevented further growth of the underground economy. They pointed out the financial gains resulting from conducting such exercises and the fact that Spain paid off its social security deficit following the 2005's measures. Furthermore, they argued that these measures - alongside other policies aimed at reinforcing borders and extending the state's control over the black economy - contributed in decreasing the number of illegal migrants and deterring further illegal migration. On the other hand, the main argument put forward by the opponents of such measures is that large-scale regularisation exercises might have acted as magnets to more irregular

migration, citing the Italian and Spanish examples. As no definite answer can be given to this question, the amnesties implemented in the different EU countries will continue to be discussed in debates.

The issue of illegal migration is extensively covered in the media and extremely contentious in the UK. It is difficult to distinguish a clear trend in the public opinion on an issue such as the regularisation of illegally residing immigrants. Here, we can mention two surveys with contrasting results recently conducted. In July 2006, a YouGov survey for the think-tank MigrationWatch, which campaigns against mass migration, suggested that 72% of the people opposed the principle of an amnesty, with only 11% in favour[9]. In April 2007, an ORB poll commissioned by Strangers into Citizens found that 66% of British people believe undocumented migrants who have been in the UK for more than four years and who work and pay taxes should be allowed to stay and not be called illegal, and that 67% also believe asylum seekers should be allowed to work[10]. However, we can argue that, rather than showing contrasting views on the problem, these results reveal the issues relating to asking leading questions in surveys.

7. Conclusions

In January 2007, the 'Strangers into Citizens' campaign for an earned regularisation of the long-term illegal migrants was launched in the UK. This campaign launched by a broad range of Christian Churches and other faith organisations argue that 'earned regularisations' in countries such the US and Spain have been successful and should be implemented in the UK. They recommend that irregular migrants who have lived and worked in the UK for more than four years, have a command of English, a clean criminal record and a referee who is either an employer or person of standing in the community be granted a two-year work permit; at the end of those two years, subject to employer and character references, they should be given ILR. This campaign has been backed up by the think-tank IPPR, which estimated in a report published in April 2006 that a regularisation of irregular migrant workers could raise £1bn in taxes. The 'Strangers into Citizens' coalition has also gained the support of some MPs – particularly in the Liberal Democrat party - and the endorsement of the new mayor of London, the Tory Boris Johnson.

The proposal put forward by the 'Strangers into Citizens' campaign is however not the only regularisation scheme that is currently recommended. The support organisation JCWI for instance recommends a one-off regularisation differentiating between illegal migrants residing in the UK for at least 7 years, those who have been in the UK between 2 and 7 years, and the victims of trafficking and severe labour exploitation. They recommend the first group should be granted ILR, the second group a five years leave to remain before being eligible for settlement while the third group should be able to regularise their stay regardless of length of residence in the UK. They particularly insist the qualifying criteria for the different groups should not focus on proof of employment as this has proved contentious in the past, with

[9] http://www.migrationwatchuk.com/pressreleases/pressreleases.asp?dt=01-July-2006#136
[10] http://www.strangersintocitizens.org.uk/latest_news/opinion_poll_results.html?ci=26875

employers being given too much leverage over the process. They also argue that ILR should be given in order to avoid the Spanish experience of regularising migrants with only temporary residence leading them to continually fall back into irregularity. Finally, JCWI recommends that a permanent regularisation process should allow illegal migrants who have been residing in the UK for at least 7 years to be granted ILR (JCWI, 2006).

We can note here that no clear right-left wing divide can be observed on this issue, and there seems to be debates within each party.

Some of the arguments commonly put forward by activists in favour of regularisation are that:

- The current deportations of migrants illegally residing in the country run at about 25,000 a year. However, as highlighted earlier, the backlog of cases of failed asylum seeker awaiting removal is believed to be somewhere between 155,000 and 283,500 people. A report from the Parliament raised that issue in 2006, stating that, even without any new unsuccessful applications, it would take between 10 and 18 years to tackle the backlog based on the current removal rate of the Home Office's Immigration and Nationality Directorate (House of Commons, 2006)

- The National Audit Office has estimated the cost of forcibly deporting an irregular migrant at £11,000, so it could cost up to £4.7billion to deport all those currently in Britain (IPPR, 2006)

- If irregular migrants were allowed to work legally, the potential taxes they would pay could be as high as £1billion per annum. (IPPR, 2006)

The government rejects this plan at the moment, and wants to appear confident in its ability to remove illegal migrants. Both the Labour and Conservatives have ruled out an amnesty, although - as mentioned above - the Liberal Democrats have backed earned citizenship for some migrants. On 18 September 2007, the Lib Dem came up with a proposal for the regularisation of undocumented migrants. It included the 'development of an earned route to citizenship, beginning with a two-year work permit, for irregular migrants who have been in the UK for ten years, subject to: (i) public interest test; (ii) a long-term commitment to the UK; (iii) a clean criminal record; (iv) the payment of a charge, waived for those who have completed a set number of hours of service in the community or volunteering and (v) an English language and civics test, or proof that the applicant is undergoing a course of education in these subjects (Liberal Democrats Plans for Immigration Reform 2007). The immigration minister, Liam Byrne, rejected the principle of an earned regularisation, saying: *"I believe those here illegally should go home - not go to the front of the queue for jobs and benefits. That's why we're now deporting someone every eight minutes and doubling our frontline enforcement resources"* (Guardian, Sept 2007).

The government wants to appear confident in its ability to manage the problem and claims that irregular migration could eventually be dealt with through a series of

measures aimed to make living in an irregular status in the UK an unsustainable position in the long-term (Home Office 2007b). In 2007, the Government stated its enforcement strategy: *'Our overall aim is to make it as straightforward as possible for migrants to stay compliant, while penalising those who break the rules. We will reduce the number of people not complying because of carelessness (e.g. allowing their visa to expire) and prioritise tough enforcement action against those who cause the most harm (e.g. traffickers and other forms of organised crime).'* This strategy consists in progressively denying work, benefits and services to irregular migrants by working in partnership with tax authorities, benefits agencies, Government Departments, local authorities, police and the private sector (Home Office 2007b). It should also be implemented through reinforced border controls (new technologies: e-borders, etc.), improved internal controls (including the introduction of compulsory ID cards for foreign nationals), removals (by lowering their cost) and employer sanctions (introduction of civil penalty in 2008)[11].

This last point is central to the goal of discouraging illegal migration and the Home Secretary Jacqui Smith emphasized that *"by stamping out illegal working we are making the UK a less attractive destination for illegal migration"* (Home Office Press Release, 23 November 2007).The Immigration (Restrictions on Employment) Order 2007 (SI 2007/3290) came into force on 29 February 2008. This will see the coming into force of the new regime for a combination of prosecutions and civil penalties for employers who employ – knowingly or unknowingly - people who do not have permission to work in the UK for which provision was made in the Immigration, Asylum and Nationality Act 2006.

[11] The Asylum ad Immigration Act 1996 made it illegal to knowingly or negligently employ people who do not have permission to work in the UK (with a penalty of £5,000 if proved). However there were only 33 successful prosecutions between 1998 and 2000 (Layton-Henry, 2004 – in IPPR, 2006). Gangmasters Act 2004 introduced an obligatory licensing system for gangmasters and employment agencies who supply or use workers involved in agriculture in order to reduce exploitation.
Under a new system of civil penalties introduced in 2007, employers who negligently hire illegal workers could face a maximum fine of £10,000 for each illegal worker found at a business. If employers are found to have knowingly hired illegal workers they could incur an unlimited fine and be sent to prison.

8. References

Anderson, B. (1999), The Devil is in the Detail: Lessons to be drawn from the UK's recent exercise in regularising undocumented workers, Working Paper, University of Warwick.

Apap, J., de Bruycker, P. and Schmitter, C. (2000), 'Regularisations of Illegal Aliens in the European Union: Summary Report of a Comparative Study' in De Bruycker (ed) (2000), Regularisations of illegal immigrants in the European Union, Brussels: Bruylant Publishers.

Black, R., Collyer, M., Skeldon, R. and Waddington, C. (2004), A survey of the illegally resident population in detention in the UK, Home Office Online Report 20/05. London: Home Office. www.homeoffice.gov.uk/rds/

Blaschke, J. (2008), Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay Across the European Union, PE 393.282, Brussels: European Parliament, Directorate General Internal Policies of the Union, Policy Department C, Citizens Rights and Constitutional Affairs

Dench, S., Hurstfield, J., Hill, D. and Akroyd, K. (2006), Employers' use of migrant labour, Home Office Online Report 03/06. London: Home Office. http://rds.homeoffice.gov.uk/rds/pdfs06/rdsolr0306.pdf#

European Parliament (2008), Trends on Regularisation of Third Country Nationals in Irregular Situation of Stay across the European Union, Directorate General Internal policies of the Union, January 2008.

European Migration Network Ad-Hoc Query on humanitarian right to residence requested by AT EMN NCP (IOM Vienna), August 2008; In Biffl, G. and Bock Schappelwein, J. (2008): Zur Niederlassung von Ausländerinnen und Ausländern in Österreich, Österreichischen Instituts für Wirtschaftsforschung, pp. 105-113

Guild, E. (2000), 'The regularisation of illegal immigrants in the United Kingdom' in: De Bruycker (dir.) (2000), Regularisations of illegal immigrants in the European Union, Brussels: Bruylant Publishers.

Home Office (2007a), Control of Immigration: Statistics United Kingdom 2006, August 2007. http://www.official-documents.gov.uk/document/cm71/7197/7197.pdf

Home Office (2007b), Enforcing the rules: A strategy to ensure and enforce compliance with our immigration laws, March 2007 http://www.bia.homeoffice.gov.uk/sitecontent/documents/managingourborders/enforcementstrategy/enforcementstrategy.pdf?view=Binary

Home Office – UK Border Agency, Immigration Directorate Instructions - *Chapter 18: Long residence*, (last updated in 2007) available at: http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter18/

Home Office (2005), *Accession Monitoring Report: May 2004 - June 2005* http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/accession_monitoring_report/

House of Commons (2006), *Returning failed asylum applicants*, Thirty-fourth Report of Session 2005-06 of the Committee of Public Accounts, 27 February 2006. http://www.publications.parliament.uk/pa/cm200506/cmselect/cmpubacc/620/620.pdf

House of Lords (2008), *The Economic Impact of Immigration – Volume I: Report*, 1st Report of Session 2007-08 of the Select Committee on Economic Affairs, 1 April 2008. http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeconaf/82/82.pdf

Institute for Public Policy Research (IPPR) (2006), *Irregular migration in the UK: an IPPR FactFile,* April 2006. http://ippr.nvisage.uk.com/members/download.asp?f=%2Fecomm%2Ffiles%2Firregular%5Fmigration%2Epdf

Joint Council for the Welfare of Immigrants (JCWI) (2006), *The Case for regularising irregular immigrants*, July 2006. http://www.jcwi.org.uk/campaigns/workersrights/RegularisationReport.pdf

Levinson, A. (2005), *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*, Oxford: Centre on Migration, Policy and Society, University of Oxford. Available at: www.compas.ox.ac.uk/publications/papers/Country%20Case%20UK.pdf

MigrationwatchUK (2005), 'The illegal Migrant Population in the UK', Briefing paper 9.15 Migration Trends, 28 July 2005. http://www.migrationwatchuk.com/Briefingpapers/migration_trends/illegal_migrant_pop_in_uk.asp

National Audit Office (2005), *Returning failed asylum applicants*, Report by the Comptroller and Auditor General, HC 76 session 2005-2006, 14 July 2005, http://www.nao.org.uk/publications/nao_reports/05-06/050676.pdf

Papadopoulou, A. (2005), 'Regularisation programmes: an effective instrument of migration policy?', *Global Migration Perspectives*, n°33, May 2005. http://www.gcim.org/attachements/GMP%20No%2033.pdf

Pinkerton, C., McLaughlan, G., and Salt, J. (2004), *Sizing the Illegally Resident Population in the UK*, Home Office Online Report 58/04, Migration Research Unit, University College London. http://www.homeoffice.gov.uk/rds/pdfs04/rdsolr5804.pdf

Woodbridge, J. (2005), *Sizing the Unauthorised (illegal) migrant population in the United Kingdom in 2001*, Home Office Online Report 29/05. http://www.homeoffice.gov.uk/rds/pdfs05/rdsolr2905.pdf

Wright, T. and McKay, S. (2007), *Undocumented Worker Transitions: United Kingdom Country Report* – Work Package 2, July 2007. http://www.londonmet.ac.uk/londonmet/library/n48636_3.pdf

Newspaper articles:

BBC News, 'Mayor Rivals want migrant amnesty', 9 April 2008

Patrick Wintour, 'Amnesty plan for illegal migrants – with conditions', Guardian, 19 Sept 2007

Interviews:

Mr Don Flynn, Director of the Migrants' Rights Network (MRN), London, 21st May 2008

Dr Franck Duvell and Mr Bastian Vollmer, COMPAS, Oxford, 4th June 2008
Dr Bridget Anderson, COMPAS, Oxford, 4th June 2008

9. Statistical Annex[12]

Persons removed from the United Kingdom and those subject to enforcement action, 2000-2006. According to Type of Removal

Table 79: Persons refused entry at port and subsequently removed (2) (3) (4)

	2000	2001	2002	2003	2004 (7)	2005 (7)	2006 (7) P
Total	38.275	37.865	50.360	38.110	39.730	32.840	34.825
of which							
principal asylum applicants (5)(6)	5.440	4.175	3.730	2.980	2.865	2.690	2.685
Dependants of asylum applicants (5)(7)					700	345	245
non-asylum port removal cases (8)	32.835	33.690	46.630	35.130	34.010	26.855	26.575
non-asylum cases removed under enforcement powers (9)					2.155	2.950	5.320

Table 80: Persons removed as a result of enforcement action and voluntary departures (3) (4) (10) (11) (12)

	2000	2001	2002	2003	2004 (7)	2005 (7)	2006 (7) P
Total	7.820	10.290	14.205	19.630	18.710	21.720	22.840
of which							
principal asylum applicants (6)	2.990	4.130	6.115	8.270	7.435	8.135	9.015
dependants of asylum applicants (7)					1.210	1.285	990
non-asylum cases	4.830	6.160	8.090	11.365	10.070	12.305	12.830

[12] Blaschke 2008: Annex II

Table 81: Persons leaving under Assisted Voluntary Return Programmes (13) (14)

	2000	2001	2002	2003	2004 (7)	2005 (7)	2006 (7) P
Total	550	980	895	1.755	2.715	3.655	6.200
of which							
principal asylum applicants (6)	550	980	895	1.755	2.300	2.905	4.630
dependants of asylum applicants (7)					405	330	710
non-asylum cases (15)					10	420	860

Table 82: Total persons removed (2) (3)

	2000	2001	2002	2003	2004 (7)	2005 (7)	2006 (7) P
Total	46.645	50.625	68.630	64.390	61.160	58.215	63.865
of which							
principal asylum applicants (6)	8.980	9.285	10.740	13.005	12.595	13.730	16.330
dependants of asylum applicants (7)		1.495	3.170	4.890	2.315	1.955	1.950
non-asylum cases (8)	37.665	39.850	54.720	46.495	46.245	42.530	45.585

Table 83: Persons against whom enforcement action was initiated (16)

	2000	2001	2002	2003	2004 (7)	2005 (7)	2006 (7) P
Illegal entry action initiated	47.325	69.875	48.050				
Deportation action initiated (17)	2.525	625	235				
Administrative removal action initiated	720	5.610	9.450				

Table 84: Total persons against whom enforcement action was initiated (16)

	2000	2001	2002	2003	2004 (7)	2005 (7)	2006 (7) P
Total	50.570	76.110	57.735				
of which							
principal asylum applicants (6)	43.465	67.150	46.200				
dependants of asylum applicants (7)							
non-asylum cases	7.105	8.960	11.535				

Notes
1 Under Sections 3(6), 3(7) or 33(1) of the Immigration Act 1971, or under Section 10 of the Immigration and Asylum Act 1999.
2 Includes cases dealt with at juxtaposed controls.
3 Includes persons departing 'voluntarily' after enforcement action had been initiated against them.
4 Due to a reclassification of removal categories, figures for 2006 are not directly comparable with previous years.
5 Due to a change in the working practices of the Border and Immigration Agency, from February 2003 all port asylum removals have been carried out by enforcement teams using Port Powers of removal.
6 Persons who had sought asylum at some stage, excluding dependants
7 Data on dependants of asylum applicants removed have only been collected since April 2001. Information on the type of removal of dependants is only available from 2004.
8 Figures up to March 2001 may include a small number of dependants of principal asylum applicants refused entry at port and subsequently removed. The breakdown of dependants by type of removal is only available from 2004.
9 Removals which have been performed by Immigration Officers at ports using enforcement powers
10 From January 2005 figures include persons who it has been established have left the UK without informing the immigration authorities.
11 Excludes Assisted Voluntary Returns; includes people removed under AVR-FRS (Facilitated Return Schemes) in 2006.
12 Since January 2004, figures include management information on the number of deportations.
13 Persons leaving under Assisted Voluntary Return Programmes run by the International Organization for Migration. May include some cases where enforcement action has been initiated.
14 In 2006 there were 5,340 persons who had sought asylum at some stage leaving under Assisted Voluntary Return Programmes, of whom 5,330 left under Voluntary Assisted Return & Reintegration Programme (VARRP) and 10 left under the Assisted Voluntary Return for Irregular Migrants (AVRIM) Programme.
15 Persons leaving under the AVRIM Programme run by the International Organization for Migration. May include some on-entry cases and some cases where enforcement action has been initiated. Removals under this scheme began in December 2004.
16 Illegal entrants detected and persons issued with a notice of intention to deport, recommended for deportation by a court or proceeded against under Section 10.
17 Deportation figures may be under-recorded in 2000. 2001 figures may exclude some persons recommended for deportation by a court.

38 United States

Alfred Wöger

1. Introduction

In 2006 the total foreign-born[1] population of the United States of America was estimated at 37,5 million[2], representing 12,5 percent of the total population of almost 299 million.[3].

2. Irregular Migration in the US

Based on analysis of Census 2000 and the monthly Population Surveys using the so-called residual method, the Pew Hispanic Center estimated that in 2006 there were about 11,5 to 12,3 million unauthorized migrants[4] living in the country. 4,2 million of them have entered the U.S. in 2000 or later and almost forty percent of the total unauthorized migrants lived in just two states: California 25% and Texas 14%.

Compared to the estimate of 8,4 million in the year 2000 there was evidence to suggest that the annual growth of unauthorized migrants was around 500,000. Furthermore, it was estimated that about 4,5 to 6 million were unauthorized migrants because of visa violations, while more than the half entered the U.S. illegally (Passel 2006). Most of the legal immigration into the USA, typically totalling 600—900,000 each year, consists of family reunification, with a smaller share for employment reasons, and very small numbers for humanitarian reasons.(Batalova 2006) Thus, illegal migration to the US is comparable in size to the annual legal flows. Table 85 shows the sharp increase of the estimated size of the irregular population in the US since the 1990s.

Table 85: Estimated unauthorized population of the United States by year

Year	Estimated unauthorized population (in million)
1980	2-4
1990	1,7-2,9
2000	8,4
2002	9,3
2004	10,3
2006	11,5-12,3

Source: Edmonston et al. 1990, Passel et al. 2004, Passel 2006

[1] The US Census Bureau uses the term foreign-born to refer to anyone who is not a U.S. citizen at birth. This includes naturalized U.S. citizens, lawful permanent residents (immigrants), temporary migrants (such as foreign students), humanitarian migrants (such as refugees), and people illegally present in the United States.

[2] Migration Policy Institute: http://www.migrationinformation.org/datahub/acscensus.cfm

[3] US Census Bureau: www.census.gov

[4] Unauthorized migrants are persons who live in the USA, but are neither U.S. citizens nor have been admitted for permanent residence or have a temporary status. Most of them enter the U.S. without authorization e.g. with invalid documents, overstay their visas or violate the terms of their admission.

While an estimated 8,3 million unauthorized migrants residing in the United States were from the North America and Central America region, 1,4 million people were from Asia and 970,000 from Latin America. According to the estimates Mexico is the main source country of unauthorized migrants in the United States, followed by El Salvador, Guatemala and the Philippines (see Table 86). In 2006 6,5 million unauthorized migrants or 57% of the total, were from Mexico (Höfer et al. 2007). For the past ten years the Mexican-born population including legal and also unauthorized migrants has grown annually by 500,000 persons. In 2006 about one million unauthorized immigrants residing in the U.S. were born in Europe or Africa (Passel 2006).

Table 86: Country of birth of unauthorized immigrant population 2006

Country of birth	2006
All countries	11,550,000
Mexico	6,570,000
El Salvador	510,000
Guatemala	430,000
Phillipines	280,000
Honduras	280,000
India	270,000
Korea	250,000
Brazil	210,000
China	190,000
Vietnam	160,000
Other countries	2,410,000

Source: U.S. Department of Homeland Security in Höfer et al. 2007

3. National policy on illegal migrants in regard to regularisation

In US federal system, adopting immigration legislation is not unproblematic. In recent years, a number of legislative proposals have been tabled, none of which however have been passed. (Numbers USA 2008) The following two acts failed:

Immigration Reform Act of 2004

The bill would have granted permanent residency to authorized immigrants who are in the U.S. for at least five years and have worked at least four of those. Moreover they would have needed to pass national security and criminal background checks, pay all federal taxes and demonstrate knowledge of English and American civic requirements. The filing fee would have been $ 1000.[1]

Unity, Security, Accountability and Family Act

This legislation would have extended permanent residency to undocumented immigrants who have been in the U.S. for at least five years, and would have

[1] http://www.govtrack.us/congress/bill.xpd?tab=main&bill=s108-2010

provide conditional residency to those who have lived in the U.S. for less than five years.[2]

The following regularisation proposals are currently being debated by the U.S. Congress:

H.R. 371 AgJOBS Act of 2007
The proposed legislation is a slight modification of the AgJobs Act of 2003 which did not become law. It would allow unauthorized alien farm workers to obtain a blue card, which would grant temporary legal status for themselves and their families if they have worked in the United States at least 863 hours or 150 work days during the last two years and furthermore have not been convicted of any felony. Subsequently they can apply for legal residency if they have worked 100 work days per year each of the first five years following enactment or 150 work days per year each of the first three years following enactment in agriculture in the United States.[3]

H.R. 454 HRIFA Improvement Act of 2007
The bill would allow Haitians whose amnesty was denied within the Haitian Refugee Immigration Fairness Act (HRIFA) 1998 to reapply for amnesty. Moreover it would grant amnesty to children whose parents applied for amnesty for them when they were minors, but who have since become adults.[4]

S. 330 Border Security and Immigration Reform Act of 2007
The proposed legislation would create a new 'guestworker nonimmigrant visa program', under which unauthorized immigrants who are unlawfully employed as of January 1, 2007, would have one year following the implementation date to be fingerprinted and registered.[5]

S. 2205
A bill to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes. The legislation would permit unauthorized immigrants who have been in the U.S. for five years, where younger than 16 years old at initial entry, have not reached the age of 30 years and have graduated from a U.S. high school to obtain a six-year temporary status. During the 6-year period, the student would be required to graduate from a 2-year college.[6]

4. Regularisation programmes

The most important regularisation programme is the Immigration Reform and Control Act (IRCA) of 1986, which was a response to the increased numbers of unauthorized immigration from Mexico to the United States since the end of the Bracero Programme in 1964. The Programme set up in 1942 during World War II

[2] http://www.govtrack.us/congress/bill.xpd?bill=h108-440
[3] http://www.govtrack.us/congress/bill.xpd?bill=h110-371
[4] http://www.govtrack.us/congress/bill.xpd?bill=h110-454
[5] http://www.govtrack.us/congress/bill.xpd?bill=s110-330&tab=summary
[6] http://www.govtrack.us/congress/bill.xpd?bill=s110-2205&tab=summary

by U.S. and Mexican governments should compensate the growing demand for labour in the United States. On average 200,000 Mexicans labourers were recruited annually to work in the U.S. industry on a temporary basis (Bean et al. 1990). Civil wars in Central and South America in the 1970s and 1980s brought also an increasing number of refugees to the United States. In 1977 the Select Commission on Immigration and Refugee Policy was founded. The committee's final report, which indicated the urgency of tackling unauthorized immigration, was the basis for the IRCA (Levinson 2005).

The IRCA included legalization for two categories of unauthorized migrants:

- Unauthorized immigrants who could show that they have been living illegally and continuously in the U.S. since at least January 1, 1982 could apply to the Immigration and Naturalization Service for legal resident status from May 5, 1987 to May 4, 1988.

- Unauthorized immigrants who had worked for at least 90 days as agricultural workers during the past three years could apply to the Immigration and Naturalization Service for legal resident status between June 1, 1987 and November 30, 1988.

To prove continuous residence, unauthorized migrants were allowed to use different documents such as driver's license, gas, electric or telephone bills, bank statements, etcetera. They also had to demonstrate that they had not been convicted of any felony, or of three or more misdemeanors in the United States (Amuedo-Dorantes 2008). Filing fees were approximately $185 (Cooper/O'Neil 2005), but poor families were eligible for fee waivers to obtain a temporary legal status. During an additional eighteen months migrants could apply for long permanent residence status by proving basic citizenship skills, such as a minimal understanding of English and of U.S. history and government. To this end, they had to pass a test or provide proof of having satisfactorily pursued a course of study, e.g., English and U.S. History/Government courses in a certified institution (Amuedo-Dorantes 2008).

About 3 million undocumented immigrants, the majority of whom were Mexicans, applied for legal resident status under both categories. 1,6 million undocumented immigrants obtained general amnesty and 1,1 million were regularized as Special Agriculture Workers. Several studies conducted after the IRCA concluded that the regularization program had no impact on the size of the unauthorized immigrants entering the U.S. and particularly asserted that the programme did not include all unauthorized migrants. For example those who entered the United States after 1982 were not covered (Levinson 2005). The average regularisation process lasted two years. More than 95 percent of legalizations took place between 1989 and 1991, and had a high rate of success –about 9 out of 10 applicants obtained LPR status (Rytina 2002).

In 1994, Congress added Section 245(i) to the immigration law. This clause permitted adjustment of the status of aliens who had either entered the US illegally or overstayed the term of their visa. This 'de facto amnesty' initially ran from 1995

early 1998. By the end or 1997, more than half a million aliens had been granted a status adjustment.
The 'Life Act' of 2000 reinstated the regularization procedure under Section 245(i). Applications could be filed until 30 November 2002, by aliens who were present in the US on 21 December 2001 and who were sponsored either by their employer, or by and adult relative who was a US citizen or a legal permanent resident. (Numbers USA 2008)

In 1997 the Nicaraguan Adjustment and Central American Relief Act (NACRA) gave Nicaraguans and Cubans, who were illegally residing in the U.S. at least since 1 January 1995 as well as their spouses and children the opportunity to apply to the Immigration and Naturalization Service for legal resident status before April 1, 2000. Almost 1 million undocumented immigrants obtained general amnesty.

In 1998 as part of the Haitian Refugee Immigration Fairness Act (HRIFA) all Haitians, who were living illegally in the U.S. at least since December 1, 1995, their spouses and children could apply to the Immigration and Naturalization Service for legal resident status before April 1, 2000. It is estimated that about 125,000 undocumented immigrants were regularized under HRIFA. (Numbers USA 2008)

Under the Late Amnesty of 2000 legal resident status has been granted to about 400,000 unauthorized immigrants, who claimed that they should have been illegal in the country since before 1982 and should have been amnestied under the IRCA of 1986.

In 2004, President Bush presented the Fair and Secure Immigration Reform, a proposal for a guest worker program whereby three-year temporary permits, renewable once, would be offered to undocumented migrants in the USA as well as potential migrants abroad. Upon expiration of the visa, the worker would be required to return to his or her home country permanently. Also in 2004, the Immigration Reform Act was proposed, offering permanent residency to those could meet all of six requirements: (1) presence in the USA for more than 5 years; (2) employment for at least 4 years; (3) passing security and criminality checks; (4) no outstanding tax debts; (5) demonstrated knowledge of English and understanding of American civic citizenship; (6) payment of a fine of $1,000. Neither of these bills was passed, nor any of nine other detailed proposals made since 2003 and dealing directly or indirectly with regularisation of irregular migrants. (Levinson 2005: 19-22)

5. Conclusion

With an estimated 12 million illegal immigrants, and an estimated annual irregular inflow of 500 thousand, illegal immigration is a salient political issue in the United Status. Nonetheless, none of the policy measures proposed since 2000 to address this situation have made it through the legislative process successfully.

6. References

Amuedo-Dorantes, Catalina/Mazzolari, Francesca (2008): Remittances to Latin America from migrants in the United States: Assesing the Impact of Amnesty Programs. Working Paper for the Advanced Academic Update at Maastricht Graduate School of Governance 18 &19 March 2008

Batalova, J. (2006): US in Focus. Spotlight on Legal Immigration to the United States. Migration Information Source. Available at: http://www.migrationinformation.org/USfocus/display.cfm?ID=414#2, 24 September 2008.

Bean, Frank/Edmonston, Barry/Passel, Jeffrey S. (1990): Undocumented Migration to the United States: IRCA and the Experience of the 1980's. Available at: http://www.urban.org/url.cfm?ID=203864, 14 March 2008

Höfer, Michael/Rytina, Nancy/Campell, Christopher (2007): Population estimates. Estimates of the Unauthorized Immigrant Population residing in the United States: January 2006, Available at: http://www.dhs.gov/xlibrary/assets/statistics/publications/ill_pe_2006.pdf, 14 March 2008

Levinson, Amanda (2005): The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies, Center on Migration, Policy and Society University of Oxford, Available at: http://www.compas.ox.ac.uk/publications/papers/Regularisation%20Report.pdf, 14 March 2008

Migration Policy Institute: 2006 American Community Survey and Census Data on the Foreign Born by State. Available at: http://www.migrationinformation.org/datahub/acscensus.cfm, 15 March 2008

Numbers USA: Amnesty, http://www.numbersusa.com/interests/amnesty.html#1986, 16 March 2008

Passel, Jeffrey S./Capps, Randy/Fix, Michael (2004): Undocumented Immigrants: Facts and Figures. Available at: http://www.urban.org/UploadedPDF/1000587_undoc_immigrants_facts.pdf, 14 March 2008

Passel, Jeffrey S. (2006): The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates based on the March 2005 Current Population Survey. Research Report conducted for the Pew Hispanic Center. Available at: http://pewhispanic.org/files/reports/61.pdf, 14 March 2008

Rytina, Nancy (2002): IRCA Legalization Effects: Lawful Permanent Residence and Naturalization through 2001. Working Paper Office of Policy and Planning, Statistics Division, U.S. Immigration and Naturalization Service
The American Resistence: Amnesty for illegal aliens, http://www.theamericanresistance.com/issues/amnesty.html, 16 March 2008

U.S. Census Bureau: Population Estimates. Available at: http://www.census.gov/popest/states/NST-ann-est.html, 13 March 2008

Legislation

H.R. 371 AgJOBS Act of 2007, Available at: http://www.govtrack.us/congress/bill.xpd?bill=h110-371, 20 March 2008

H.R. 440 Security, Accountability and Family Act 2004, Available at: http://www.govtrack.us/congress/bill.xpd?bill=h108-440, 20 March 2008

H.R. 454 HRIFA Improvement Act of 2007, Available at: http://www.govtrack.us/congress/bill.xpd?bill=h110-454, 20 March 2008

S. 330 Border Security and Immigration Reform Act of 2007, Available at: http://www.govtrack.us/congress/bill.xpd?bill=s110-330&tab=summary, 20 March 2008

S. 2205 A bill to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes, Available at: http://www.govtrack.us/congress/bill.xpd?bill=s110-2205&tab=summary, 20 March 2008

S. 2010 Immigration Reform Act 2004, Available at: http://www.govtrack.us/congress/bill.xpd?tab=main&bill=s108-2010, 20 March 2008

SECTION III

Statistical Annex

		Austria
Number of programs since 1998		**0**
Number of mechanisms, 2008		**1**
Program or mechanism?		mechanism
Program name		humanitarian residence permit
Date of legislation		1997 (amendment 2009)
Duration of program (months)		ongoing
Number of applicants [000s]		
Number regularised [000s]		4.2 (since 2002)
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	X
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	All illegal migrants may be regularised on humanitarian grounds
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	residence permits are frequently issued to asylum seekers, who were already working in Austria, but whose application was rejected.
Statuses awarded:		
	Temporary right to remain (de facto)	X
	Temporary; limited access to employm	X
	Short-term permit (1-2 years)	X
	Long-term permit (3-5 years)	X
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	in principle
	NO	

		Belgium
Number of programs since 1998		**1**
Number of mechanisms, 2008		**1**
Program or mechanism?		programme
Program name		
Date of legislation		1999
Duration of program (months)		2000 - 2002
Number of applicants [000s]		55,00
Number regularised [000s]		40,00
Legal basis		
	Specific law	
	Within immigration law	
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	X
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	not only illegal residents but also asylum seekers who were still in the asylum procedure
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	X
	ethnic ties	X
	evidence of integration	X
HEALTH	+ve health status	
	health problem	X
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	impossible return
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

		Belgium - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		mechanism
Program name		article 9bis and 9ter (formerly article 9.3) of the Aliens Law of 1980
Date of legislation		1980
Duration of program (months)		ongoing
Number of applicants [000s]		n.a.
Number regularised [000s]		40 (2001-2007)
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	X
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	X
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	also persons not illegally staying (e.g. asylum seekers awaiting decisions), ill persons
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

Denmark			
Number of programs since 1998		**2**	
Number of mechanisms, 2008		**3**	
Program or mechanism?		program	program
Program name		Act 933 on temporary residence permits for citizens of Rep. of	Act 251 on tempory residence permits for citizens of Kosovo
Date of legislation		1992	1999
Duration of program (months)		10 years	14
Number of applicants [000s]		?	?
Number regularised [000s]		4,99	3,00
Legal basis			
	Specific law	X	X
	Within immigration law		
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual		
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)		
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties	X	X
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		
QUOTA	nationality	X	X
	Other (specify)		
Statuses awarded:			
	Temporary right to remain (de facto)	X	X
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		
Long-term perspective?			
	YES		
	NO		

		Denmark - continued		
Number of programs since 1998				
Number of mechanisms, 2008				
Program or mechanism?		mechanism	mechanism	mechanism
Program name		Residence permit on humanitarian	Residence permit on	Residence on behalf of the job
Date of legislation				
Duration of program (months)		ongoing	ongoing	ongoing
Number of applicants [000s]				
Number regularised [000s]				
Legal basis				
	Specific law			
	Within immigration law	ü	ü	ü
	Decree law			
	administrative circular			
	Other (specify)			
Type of program				
	individual	X	X	X
	collective			
	Other (specify)			
Program covers:				
	all illegal residents			
	Illegal residents with employment			
	rejected asylum-seekers			
	rejected "other status"			
	holders of expired permits			
	legal residents illegally working			
	family members			
	Other (specify)	various humanitarian reasons	various humanitarian reasons	
Criteria used:				
RESIDENCE	Presence before [date]			
	length of residence	d	d	
EMPLOYMENT	employment contract			
	employment offer			
	employment record		d	X
	social insurance			
	qualifications			
PERSONAL	family ties	d	d	
	ethnic ties	X	d	
	evidence of integration		d	
HEALTH	+ve health status			
	health problem	X	d	
PUBLIC ORDER	no criminal record			
QUOTA	nationality	X		
	Other (specify)			
Statuses awarded:				
	Temporary right to remain (de facto)			
	Temporary; limited access to employment			
	Short-term permit (1-2 years)	X		
	Long-term permit (3-5 years)			
	Permanent residence (2003/109/EC)		X	X
	Other (specify)			
Long-term perspective?				
	YES			
	NO			

Estonia			
Number of programs since 1998		**0**	
Number of mechanisms, 2008		**2**	
Program or mechanism?		mechanism	mechanism
Program name			
Date of legislation		1997	1999
Duration of program (months)			
Number of applicants [000s]			
Number regularised [000s]			
Legal basis			
	Specific law		
	Within immigration law		
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual		
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	citizens of the former USSR without Estonian nationality	citizens of the former USSR without Estonian nationality
Criteria used:			
RESIDENCE	Presence before [date]	X	X
	length of residence	X	X
EMPLOYMENT	employment contract		
	employment offer		
	employment record	X	X
	social insurance		
	qualifications		
PERSONAL	family ties	X	X
	ethnic ties		
	evidence of integration	d	d
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record	X	X
QUOTA	nationality		
	Other (specify)		
Statuses awarded:			
	Temporary right to remain (de facto)	X	X
	Temporary; limited access to employment		
	Short-term permit (1-2 years)	X	X
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		
Long-term perspective?			
	YES	X	X
	NO		

Finland			
Number of programs since 1998		**0**	
Number of mechanisms, 2008		**?**	
Program or mechanism?		mechanism	mechanism
Program name		Aliens Act, residence permits under Section	Aliens Act, residence permits under Section 51
Date of legislation			
Duration of program (months)		ongoing	ongoing
Number of applicants [000s]		period 2003-7	period 2003-7
Number regularised [000s]		1,25	0,62
Legal basis			
	Specific law		
	Within immigration law	X	X
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual	X	X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	compassionate grounds	non-deportable aliens
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record	d	
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration	X	
HEALTH	+ve health status		
	health problem	X	X
PUBLIC ORDER	no criminal record	X	X
QUOTA	nationality		
	Other (specify)	ties to Finland	non-deportable
Statuses awarded:			
	Temporary right to remain (de facto)		X
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)	X	
	Other (specify)		
Long-term perspective?			
	YES	X	
	NO		

		Finland - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		mechanism
Program name		Aliens Act, residence permits under Sections 49 & 50
Date of legislation		
Duration of program (months)		ongoing
Number of applicants [000s]		period 2003-7
Number regularised [000s]		0,26
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	X
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	family ties
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	X
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	X
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	X
	Other (specify)	
Long-term perspective?		
	YES	X
	NO	

		France	
Number of programs since 1998		**2**	
Number of mechanisms, 2008		**2**	
Program or mechanism?		programme	programme
Program name			
Date of legislation		1997-1998	2006
Duration of program (months)		1997-1998	
Number of applicants [000s]		135,00	33,538 cases
Number regularised [000s]		87,00	6,92
Legal basis			
	Specific law		
	Within immigration law		
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual	X	X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers	X	
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members	X	X
	Other (specify)	ill persons	families with children enrolled in schools
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		X
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties	X	
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem	X	
PUBLIC ORDER	no criminal record		
QUOTA	nationality		
	Other (specify)		families with children enrolled in schools
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment	X	X
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		
Long-term perspective?			
	YES		
	NO		

		France - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		mechanism
Program name		Admission on grounds of personal and family ties or for health reasons
Date of legislation		1998
Duration of program (months)		ongoing
Number of applicants [000s]		
Number regularised [000s]		80,40
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	X
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	X
	Other (specify)	X
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	X
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	X
	ethnic ties	
	evidence of integration	X
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	X
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

		France - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		mechanism
Program name		exceptional admission of residence on humanitarian grounds and employment
Date of legislation		1998 and 2008
Duration of program (months)		ongoing
Number of applicants [000s]		
Number regularised [000s]		21,08
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	X
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	X
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	Humanitarian
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	X
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

		Germany
Number of programs since 1998		**5**
Number of mechanisms, 2008		**5**
Program or mechanism?		programme
Program name		Regulation governing the right to stay for rejected asylum seekers and expellees
Date of legislation		1999
Duration of program (months)		
Number of applicants [000s]		
Number regularised [000s]		18,26
Legal basis		
	Specific law	
	Within immigration law	
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

		Germany - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		programme
Program name		Regulation for rejected asylum seekers who have been staying in Germany for a long time
Date of legislation		1999
Duration of program (months)		
Number of applicants [000s]		
Number regularised [000s]		
Legal basis		
	Specific law	
	Within immigration law	
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

		Germany - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		programme
Program name		Regulation governing the right to stay for civil war refugees
Date of legislation		2000
Duration of program (months)		
Number of applicants [000s]		
Number regularised [000s]		
Legal basis		
	Specific law	
	Within immigration law	
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

		Germany - continued	
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		programme	programme
Program name			
Date of legislation		2006	2007
Duration of program (months)			
Number of applicants [000s]		71,86	22,86
Number regularised [000s]		49,61	10,86
Legal basis			
	Specific law		X
	Within immigration law		
	Decree law		
	administrative circular		
	Other (specify)	X	
Type of program			
	individual		
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	persons with 'tolerated' status	persons with 'tolerated' status
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		
QUOTA	nationality		
	Other (specify)	Sufficient income, school success of children, language porficiency. Etc.	
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)	Residence permits and tolerated	
Long-term perspective?			
	YES		
	NO		

Germany - continued			
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		mechanism	mechanism
Program name		Granting of residence by the supreme Land	Granting of residence in cases of hardship
Date of legislation		2004	2004
Duration of program (months)		ongoing	ongoing
Number of applicants [000s]		Period 2005 - 2007	Period 2005 - 2007
Number regularised [000s]		72,76	3,06
Legal basis			
	Specific law		
	Within immigration law	X	X
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual		
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	certain groups of foreigners	hardship cases, the subsistence has to be assured
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		
QUOTA	nationality		
	Other (specify)		
Statuses awarded:			
	Temporary right to remain (de facto)	X	X
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)	Possible extension for maximum period of three years	Possible extension for maximum period of three years
Long-term perspective?			
	YES		
	NO		

		Germany - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		mechanism
Program name		Urgent humanitarian or personal grounds
Date of legislation		2004
Duration of program (months)		ongoing
Number of applicants [000s]		Period 2005 - 2007
Number regularised [000s]		12,85
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	if presence in the territory is necessary on urgent humanitarian or personal grounds or due to substantial public interests
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	X
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	Possible extension for maximum period of three years
Long-term perspective?		
	YES	
	NO	

		Germany - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		mechanism
Program name		Victims of human trafficking
Date of legislation		2004
Duration of program (months)		ongoing
Number of applicants [000s]		Period 2005 - 2007
Number regularised [000s]		0,00
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	victims of trafficking
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	X
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	Possible extension for maximum period of three years
Long-term perspective?		
	YES	
	NO	

		Germany - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		mechanism
Program name		Right of residence for integrated children of foreigners whose deportation has been suspended
Date of legislation		2004
Duration of program (months)		ongoing
Number of applicants [000s]		Period 2005 - 2007
Number regularised [000s]		0,05
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	Right of residence for integrated children of foreigners whose deportation has been suspended
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	X
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	Possible extension for maximum period of three years
Long-term perspective?		
	YES	
	NO	

Greece				
Number of programs since 1998		**6**		
Number of mechanisms, 2008		**1**		
Program or mechanism?		program	program	program
Program name		White Card	Green Card	temporary card
Date of legislation		1997	1997	2001
Duration of program (months)		5	10	3
Number of applicants [000s]		371,60	228,20	350 (est)
Number regularised [000s]			219,00	
Legal basis				
	Specific law			
	Within immigration law			X
	Decree law	X	X	
	administrative circular			
	Other (specify)			
Type of program				
	individual		X	
	collective	X	X	X
	Other (specify)			
Program covers:				
	all illegal residents	X		X
	Illegal residents with employment		X	
	rejected asylum-seekers			
	rejected "other status"			X
	holders of expired permits			X
	legal residents illegally working			
	family members			X
	Other (specify)			
Criteria used:				
RESIDENCE	Presence before [date]	d	X	X
	length of residence	d	d	X
EMPLOYMENT	employment contract	d	X	X
	employment offer			
	employment record			
	social insurance		X	X
	qualifications			
PERSONAL	family ties	d	d	d
	ethnic ties			
	evidence of integration			
HEALTH	+ve health status	X	X	X
	health problem			
PUBLIC ORDER	no criminal record	X	X	X
QUOTA	nationality			
	Other (specify)	not listed as undesirable alien		
Statuses awarded:				
	Temporary right to remain (de facto)	X		
	Temporary; limited access to employment			
	Short-term permit (1-2 years)		X	
	Long-term permit (3-5 years)		?	
	Permanent residence (2003/109/EC)			
	Other (specify)	6-month Card		6-month Card
Long-term perspective?				
	YES		X	X
	NO	X		

Greece - continued					
Number of programs since 1998					
Number of mechanisms, 2008					
Program or mechanism?		program	program	program	mechanism
Program name		Art 91, par.10	Art 91, par.11	Art 18, para 4	Art 44, par 2
Date of legislation		2005	2005	2007	2005
Duration of program (months)		9	7	7	ongoing
Number of applicants [000s]			96,40	n/a	
Number regularised [000s]		90.0 (est)	95,80	20,00	7,10
Legal basis					
	Specific law			X	
	Within immigration law	X	X		X
	Decree law				
	administrative circular				
	Other (specify)				
Type of program					
	individual				X
	collective	X	X		
	Other (specify)			run-on from Art 91, par. 11	
Program covers:					
	all illegal residents				
	Illegal residents with employment		X		
	rejected asylum-seekers		X		
	rejected "other status"		X	X	
	holders of expired permits	X			
	legal residents illegally working				
	family members		X	X	
	Other (specify)	holders of work permits		see above	individual basis
Criteria used:					
RESIDENCE	Presence before [date]	?	X		
	length of residence	X		d	d
EMPLOYMENT	employment contract	d	d		
	employment offer				
	employment record	d	d		
	social insurance	X	X	X	
	qualifications				
PERSONAL	family ties	d	d	d	d
	ethnic ties				d
	evidence of integration	d		X	
HEALTH	+ve health status	X	X	X	X
	health problem				d
PUBLIC ORDER	no criminal record	X	X	X	X
QUOTA	nationality				
	Other (specify)	expired residence or work permit	d: visa		visa stamp
Statuses awarded:					
	Temporary right to remain (de facto)				
	Temporary; limited access to employment				X
	Short-term permit (1-2 years)	X	X	X	
	Long-term permit (3-5 years)	X			
	Permanent residence (2003/109/EC)				
	Other (specify)				
Long-term perspective?					
	YES	X	X	X	X
	NO				

		Hungary
Number of programs since 1998		**1**
Number of mechanisms, 2008		**1**
Program or mechanism?		program
Program name		
Date of legislation		2004
Duration of program (months)		3
Number of applicants [000s]		1,54
Number regularised [000s]		1,19
Legal basis		
	Specific law	X
	Within immigration law	
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	X
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	spouse of legal resident; or company director; or cultural ties with Hungary; or non-deportable
Criteria used:		
RESIDENCE	Presence before [date]	X
	length of residence	X
EMPLOYMENT	employment contract	
	employment offer	
	employment record	X
	social insurance	
	qualifications	
PERSONAL	family ties	X
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	X
QUOTA	nationality	
	Other (specify)	
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	X
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

		Hungary - continued
Number of programs since 1998		
Number of mechanisms, 2008		
Program or mechanism?		mechanism
Program name		
Date of legislation		2007
Duration of program (months)		ongoing
Number of applicants [000s]		(2007 data)
Number regularised [000s]		2,95
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	X
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	stateless; unaccompanied minors or orphans born in Hungary; assisting authorities with criminal investigation
Criteria used:		
RESIDENCE	Presence before [date]	
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	humanitarian reasons
Statuses awarded:		
	Temporary right to remain (de facto)	
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	X
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	X
	NO	

Ireland			
Number of programs since 1998		**1**	
Number of mechanisms, 2008		**1**	
Program or mechanism?		program	mechanism
Program name		IBC/05	temporary permission to remain
Date of legislation		2005	?
Duration of program (months)		3	1996-2003
Number of applicants [000s]		14,10	
Number regularised [000s]		13,83	16,69
Legal basis			
	Specific law		
	Within immigration law		
	Decree law		
	administrative circular	X	X
	Other (specify)		
Type of program			
	individual		
	collective	X	
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	parent of child with Irish citizenship	parent of child with Irish citizenship
Criteria used:			
RESIDENCE	Presence before [date]	X	X
	length of residence	X	X
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties	X	X
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record	X	X
QUOTA	nationality		
	Other (specify)	parent of child with Irish citizenship	parent of child with Irish citizenship
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)	Temporary permission to remain with work	Temporary permission to remain with work
Long-term perspective?			
	YES	X	X
	NO		

Italy				
Number of programs since 1998		**2 (3)**		
Number of mechanisms, 2008		**0**		
Program or mechanism?		program	program	de facto p.
Program name				
Date of legislation		1998 1999	2002	2006
Duration of program (months)				
Number of applicants [000s]		251,00	704,00	
Number regularised [000s]				
Legal basis				
	Specific law			
	Within immigration law			
	Decree law	X	X	
	administrative circular			
	Other (specify)			
Type of program				
	individual			
	collective	X	X	
	Other (specify)			
Program covers:				
	all illegal residents			
	Illegal residents with employment	X	X	
	rejected asylum-seekers			
	rejected "other status"			
	holders of expired permits			
	legal residents illegally working			
	family members			
	Other (specify)			
Criteria used:				
RESIDENCE	Presence before [date]	X	X	
	length of residence	X	X	
EMPLOYMENT	employment contract	X	X	
	employment offer			
	employment record	X	X	
	social insurance			
	qualifications			
PERSONAL	family ties	X	X	
	ethnic ties			
	evidence of integration			
HEALTH	+ve health status			
	health problem			
PUBLIC ORDER	no criminal record	X	X	
QUOTA	nationality			
	Other (specify)	housing	housing	
Statuses awarded:				
	Temporary right to remain (de facto)			
	Temporary; limited access to employment			
	Short-term permit (1-2 years)	X	X	
	Long-term permit (3-5 years)	?	?	
	Permanent residence (2003/109/EC)			
	Other (specify)			
Long-term perspective?				
	YES	X	X	
	NO			

Lithuania				
Number of programs since 1998		**2**		
Number of mechanisms, 2008		**1**		
Program or mechanism?		program	program	mechanism
Program name				
Date of legislation		1998	2004	
Duration of program (months)		3	7 days	ongoing
Number of applicants [000s]		0,39	0,10	
Number regularised [000s]		0,16	0,08	?
Legal basis				
	Specific law			
	Within immigration law	X	X	X
	Decree law			
	administrative circular			
	Other (specify)			
Type of program				
	individual			
	collective			
	Other (specify)			
Program covers:				
	all illegal residents	X	X	
	Illegal residents with employment			
	rejected asylum-seekers			
	rejected "other status"			
	holders of expired permits			
	legal residents illegally working			
	family members			
	Other (specify)			
Criteria used:				
RESIDENCE	Presence before [date]			
	length of residence			
EMPLOYMENT	employment contract			
	employment offer			
	employment record			
	social insurance			
	qualifications			
PERSONAL	family ties			
	ethnic ties			
	evidence of integration			
HEALTH	+ve health status			
	health problem			
PUBLIC ORDER	no criminal record			
QUOTA	nationality			
	Other (specify)			
Statuses awarded:				
	Temporary right to remain (de facto)			
	Temporary; limited access to employment			X
	Short-term permit (1-2 years)			
	Long-term permit (3-5 years)			
	Permanent residence (2003/109/EC)			
	Other (specify)			
Long-term perspective?				
	YES			
	NO			

Luxembourg			
Number of programs since 1998		**1**	
Number of mechanisms, 2008		**1**	
Program or mechanism?		program	mechanism
Program name		Regularisation de certaines categories	humanitarian status
Date of legislation		2001	
Duration of program (months)		2	
Number of applicants [000s]		2,88	?
Number regularised [000s]		1,84	?
Legal basis			
	Specific law		
	Within immigration law		
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual		
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment	X	
	rejected asylum-seekers	X	
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working	X	
	family members		
	Other (specify)	continuous residence since 1998	humanitarian; children in education
Criteria used:			
RESIDENCE	Presence before [date]	X	
	length of residence	X	
EMPLOYMENT	employment contract		
	employment offer		
	employment record	X	
	social insurance		
	qualifications		
PERSONAL	family ties		X
	ethnic ties		
	evidence of integration	d	d
HEALTH	+ve health status		
	health problem	X	X
PUBLIC ORDER	no criminal record	X	X
QUOTA	nationality		
	Other (specify)	parent of legally resident child	other humanitarian reasons
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)	X	X
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)	employment and non-dependence on the state	employment and non-dependence on the state
Long-term perspective?			
	YES		
	NO		

		The Netherlands	
Number of programs since 1998		**3**	
Number of mechanisms, 2008		**1**	
Program or mechanism?		program	program
Program name		regularisation programme for 'white illegals'	Asylum seekers regularisation
Date of legislation		1999	2002
Duration of program (months)		?	?
Number of applicants [000s]		8,00	?
Number regularised [000s]		2,20	2,30
Legal basis			
	Specific law		
	Within immigration law		
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual	X	
	collective		X
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)		delayed asylum claims
Criteria used:			
RESIDENCE	Presence before [date]	X	X
	length of residence	X	
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance	X	
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		
QUOTA	nationality		
	Other (specify)	proof of paying taxes	various
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		
Long-term perspective?			
	YES		
	NO		

		The Netherlands - continued	
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		program	mechanism
Program name		General amnesty	temporary asylum status
Date of legislation		2007	2000
Duration of program (months)			
Number of applicants [000s]		?	?
Number regularised [000s]		25,00	?
Legal basis			
	Specific law		X
	Within immigration law		
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual		X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	delayed asylum claims	asylum claimants
Criteria used:			
RESIDENCE	Presence before [date]	X	
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		
QUOTA	nationality		
	Other (specify)	various	
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		
Long-term perspective?			
	YES		
	NO		

Poland			
Number of programs since 1998		**3**	
Number of mechanisms, 2008		**3**	
Program or mechanism?		program	program
Program name		"Great abolition"	"Small abolition"
Date of legislation		2003	2003
Duration of program (months)		4	3
Number of applicants [000s]		3,51	0,28
Number regularised [000s]		2,75	0,28
Legal basis			
	Specific law		
	Within immigration law	X	X
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual		
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		X
	Illegal residents with employment	X	
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working	X	
	family members		
	Other (specify)	independent means	
Criteria used:			
RESIDENCE	Presence before [date]	X	X
	length of residence	X	
EMPLOYMENT	employment contract	d	
	employment offer	d	
	employment record	d	
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record	d	
QUOTA	nationality		
	Other (specify)	no threat to state security; sufficient financial means	no threat to state security; not recorded as undesirable alien
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment	X	
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		no right of residence
Long-term perspective?			
	YES	X	
	NO		

Poland - continued			
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		program	mechanism
Program name		"Great abolition -- continuation"	Permit for tolerated stay
Date of legislation		2007	2003
Duration of program (months)		6	ongoing
Number of applicants [000s]		2,02	(2007 data)
Number regularised [000s]		0,18	2,91
Legal basis			
	Specific law		
	Within immigration law		X
	Decree law		
	administrative circular		
	Other (specify)	amended Aliens Law	
Type of program			
	individual		X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment	X	
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working	X	
	family members		
	Other (specify)	had not applied previously for "Great Abolition"	non-deportable aliens
Criteria used:			
RESIDENCE	Presence before [date]	X	
	length of residence	X	
EMPLOYMENT	employment contract	d	
	employment offer	d	
	employment record	d	
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		X
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record	d	
QUOTA	nationality		X
	Other (specify)	no threat to state security; sufficient financial means	no threat to state security
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment	X	
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		X
	Other (specify)		
Long-term perspective?			
	YES	X	
	NO		

Poland - continued			
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		mechanism	mechanism
Program name		National visa for exceptional	Fixed period residence permit
Date of legislation		2006	2003
Duration of program (months)		ongoing	ongoing
Number of applicants [000s]		1,27	n.d.
Number regularised [000s]		1,06	n.d.
Legal basis			
	Specific law		
	Within immigration law	X	X
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual	X	X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	public interest; trafficking victims; medical treatment;	spouse of Polish or EU national; spouse of TCN with EU long-term
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties		X
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		
QUOTA	nationality		
	Other (specify)	no threat to state security	no threat to state security; not recorded as undesirable alien
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		X
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)	period of stay not exceeding 3 months	
Long-term perspective?			
	YES		X
	NO		

		Portugal		
Number of programs since 1998		**2**		
Number of mechanisms, 2008		**3**		
Program or mechanism?		program	program	mechanism
Program name		Agt Portugal & Brasil	Art. 71	Art. 88
Date of legislation		2003	2004	1998
Duration of program (months)		2003-8	1,5	?
Number of applicants [000s]				
Number regularised [000s]		19,40	19,30	
Legal basis				
	Specific law			
	Within immigration law			
	Decree law		X	X
	administrative circular			
	Other (specify)	Internat. Agt.		
Type of program				
	individual			
	collective	X	X	
	Other (specify)			
Program covers:				
	all illegal residents			
	Illegal residents with employment			
	rejected asylum-seekers			
	rejected "other status"			
	holders of expired permits			
	legal residents illegally working			
	family members			
	Other (specify)	Brazilian workers		
Criteria used:				
RESIDENCE	Presence before [date]	X	X	
	length of residence		X	
EMPLOYMENT	employment contract	X	X	
	employment offer			
	employment record		X	
	social insurance		X	
	qualifications			
PERSONAL	family ties			
	ethnic ties			
	evidence of integration			
HEALTH	+ve health status			
	health problem			
PUBLIC ORDER	no criminal record	X	X	
QUOTA	nationality	X		
	Other (specify)			
Statuses awarded:				
	Temporary right to remain (de facto)			
	Temporary; limited access to employment			
	Short-term permit (1-2 years)			ü
	Long-term permit (3-5 years)			
	Permanent residence (2003/109/EC)			
	Other (specify)	3 year work visa	temp. work visa	
Long-term perspective?				
	YES	X	X	X
	NO			

		Portugal - continued	
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		mechanism	mechanism
Program name		Art. 55	Arts. 88-90
Date of legislation		2001	2007
Duration of program (months)		36	ongoing
Number of applicants [000s]			
Number regularised [000s]			
Legal basis			
	Specific law		
	Within immigration law		
	Decree law	X	X
	administrative circular		
	Other (specify)		
Type of program			
	individual		
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)		
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract	X	X
	employment offer		
	employment record	X	X
	social insurance		X
	qualifications		X
PERSONAL	family ties		
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record	X	X
QUOTA	nationality		
	Other (specify)		visa
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		X
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)	authorisn.	
Long-term perspective?			
	YES	X	X
	NO		

		Slovak Rep.
Number of programs since 1998		**0**
Number of mechanisms, 2008		**1**
Program or mechanism?		mechanism
Program name		
Date of legislation		
Duration of program (months)		ongoing
Number of applicants [000s]		(2007 data)
Number regularised [000s]		0,37
Legal basis		
	Specific law	
	Within immigration law	X
	Decree law	
	administrative circular	
	Other (specify)	
Type of program		
	individual	
	collective	
	Other (specify)	
Program covers:		
	all illegal residents	
	Illegal residents with employment	
	rejected asylum-seekers	
	rejected "other status"	
	holders of expired permits	
	legal residents illegally working	
	family members	
	Other (specify)	non-deportable aliens; minors; trafficking victim; family reasons; other
Criteria used:		
RESIDENCE	Presence before [date]	X
	length of residence	
EMPLOYMENT	employment contract	
	employment offer	
	employment record	
	social insurance	
	qualifications	
PERSONAL	family ties	X
	ethnic ties	
	evidence of integration	
HEALTH	+ve health status	
	health problem	
PUBLIC ORDER	no criminal record	
QUOTA	nationality	
	Other (specify)	non-deportable aliens; minors; trafficking victim; family reasons; other
Statuses awarded:		
	Temporary right to remain (de facto)	X
	Temporary; limited access to employment	
	Short-term permit (1-2 years)	
	Long-term permit (3-5 years)	
	Permanent residence (2003/109/EC)	
	Other (specify)	
Long-term perspective?		
	YES	
	NO	

Spain				
Number of programs since 1998		**5**		
Number of mechanisms, 2008		**3**		
Program or mechanism?		program	program	program
Program name		Regularizacion	Retorno ecuatorianos	Reexamen
Date of legislation		2000	2001	2001
Duration of program (months)		4,0		
Number of applicants [000s]		247,60		
Number regularised [000s]		199,90		
Legal basis				
	Specific law			
	Within immigration law	X		
	Decree law	X	X	X
	administrative circular			
	Other (specify)			
Type of program				
	individual			
	collective	X		X
	Other (specify)			
Program covers:				
	all illegal residents	X		
	Illegal residents with employment			
	rejected asylum-seekers	X		
	rejected "other status"			
	holders of expired permits			
	legal residents illegally working	X		
	family members	X		
	Other (specify)		Ecuadorian	from 2000 program
Criteria used:				
RESIDENCE	Presence before [date]	X	X	X
	length of residence	X		X
EMPLOYMENT	employment contract			
	employment offer			
	employment record			
	social insurance			
	qualifications			
PERSONAL	family ties			
	ethnic ties			
	evidence of integration			
HEALTH	+ve health status			
	health problem			
PUBLIC ORDER	no criminal record		ü	
QUOTA	nationality		ü	
	Other (specify)			
Statuses awarded:				
	Temporary right to remain (de facto)			
	Temporary; limited access to employment			
	Short-term permit (1-2 years)	X	X	X
	Long-term permit (3-5 years)			
	Permanent residence (2003/109/EC)			
	Other (specify)			
Long-term perspective?				
	YES	X	X	X
	NO			

Spain - continued				
Number of programs since 1998				
Number of mechanisms, 2008				
Program or mechanism?		program	program	mechanism
Program name		Arraigo	Extraordinary legalisation	temp: social integration
Date of legislation		2001	2005	2000
Duration of program (months)				ongoing
Number of applicants [000s]		*351,30*	691,70	
Number regularised [000s]		*232,70*	578,40	
Legal basis				
	Specific law			
	Within immigration law		X	X
	Decree law	X	X	
	administrative circular			
	Other (specify)			
Type of program				
	individual			X
	collective		X	
	Other (specify)			
Program covers:				
	all illegal residents	X		
	Illegal residents with employment		X	
	rejected asylum-seekers			
	rejected "other status"			
	holders of expired permits			
	legal residents illegally working	X	X	
	family members			
	Other (specify)			for reasons of social integration
Criteria used:				
RESIDENCE	Presence before [date]	X	X	X
	length of residence	X	X	X
EMPLOYMENT	employment contract		X	
	employment offer			
	employment record		X	?
	social insurance		X	
	qualifications			
PERSONAL	family ties			?
	ethnic ties			
	evidence of integration	X		?
HEALTH	+ve health status			
	health problem			
PUBLIC ORDER	no criminal record	X	X	X
QUOTA	nationality			
	Other (specify)			
Statuses awarded:				
	Temporary right to remain (de facto)			X
	Temporary; limited access to employment			
	Short-term permit (1-2 years)	X	X	X
	Long-term permit (3-5 years)			
	Permanent residence (2003/109/EC)			
	Other (specify)			
Long-term perspective?				
	YES	X	X	X
	NO			

Spain - continued			
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		mechanism	mechanism
Program name		temp: humanitarian	temp: public interest
Date of legislation		2000	2000
Duration of program (months)		ongoing	ongoing
Number of applicants [000s]			
Number regularised [000s]			
Legal basis			
	Specific law		
	Within immigration law	X	X
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual	X	X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	international protection and humanitarian	public interest, national security and collaboration with administrative authorities
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties	?	
	ethnic ties		
	evidence of integration		?
HEALTH	+ve health status		
	health problem	?	
PUBLIC ORDER	no criminal record	X	X
QUOTA	nationality		
	Other (specify)		
Statuses awarded:			
	Temporary right to remain (de facto)	X	X
	Temporary; limited access to employment		
	Short-term permit (1-2 years)	X	X
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		
Long-term perspective?			
	YES	X	X
	NO		

Sweden			
Number of programs since 1998		**1**	
Number of mechanisms, 2008		**1**	
Program or mechanism?		program	mechanism
Program name			
Date of legislation			
Duration of program (months)		?	
Number of applicants [000s]		31,00	
Number regularised [000s]		17,00	
Legal basis			
	Specific law		
	Within immigration law	X	
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual		
	collective	X	
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers	X	
	rejected "other status"	X	
	holders of expired permits		
	legal residents illegally working		
	family members	X	
	Other (specify)	long term asylum seekers	
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		
QUOTA	nationality		
	Other (specify)		
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		
Long-term perspective?			
	YES		
	NO		

		U.K.	
Number of programs since 1998		**5**	
Number of mechanisms, 2008		**1**	
Program or mechanism?		programme	programme
Program name		Backlog clearance exercise for outstanding	Family Indefinite Leave to Remain (ILR) exercise
Date of legislation		1998	2003
Duration of program (months)		1999 - 2000??	2003 - 2006
Number of applicants [000s]		24,08	
Number regularised [000s]		21,47	25,48
Legal basis			
	Specific law	X	
	Within immigration law		
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual	X	X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers	X	X
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)		asylum seeking families
Criteria used:			
RESIDENCE	Presence before [date]		X
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record	X	
	social insurance		
	qualifications		
PERSONAL	family ties	X	
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		X
QUOTA	nationality		
	Other (specify)		persons have not left the territory of Uk
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)	X	
	Permanent residence (2003/109/EC)		
	Other (specify)		
Long-term perspective?			
	YES		
	NO		

		U.K. - continued	
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		programme	programme
Program name		Regularisation programme for	Regularisation of Overstayers Scheme
Date of legislation		1998	2005
Duration of program (months)		1998 - 1999	
Number of applicants [000s]			
Number regularised [000s]			
Legal basis			
	Specific law		
	Within immigration law		X
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual	X	X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents		
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)	domestic workers who left their employers	
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence		
EMPLOYMENT	employment contract		
	employment offer		
	employment record		
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration		
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record		
QUOTA	nationality		
	Other (specify)		
Statuses awarded:			
	Temporary right to remain (de facto)	X	
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		

U.K. - continued			
Number of programs since 1998			
Number of mechanisms, 2008			
Program or mechanism?		programme	mechanism
Program name		long residence concession	The 'seven-year rule'
Date of legislation		2003	1999
Duration of program (months)			
Number of applicants [000s]			
Number regularised [000s]			
Legal basis			
	Specific law		
	Within immigration law	X	
	Decree law		
	administrative circular		
	Other (specify)		
Type of program			
	individual	X	X
	collective		
	Other (specify)		
Program covers:			
	all illegal residents	X	
	Illegal residents with employment		
	rejected asylum-seekers		
	rejected "other status"		
	holders of expired permits		
	legal residents illegally working		
	family members		
	Other (specify)		families with children
Criteria used:			
RESIDENCE	Presence before [date]		
	length of residence	X	X
EMPLOYMENT	employment contract		
	employment offer		
	employment record	X	
	social insurance		
	qualifications		
PERSONAL	family ties		
	ethnic ties		
	evidence of integration	X	
HEALTH	+ve health status		
	health problem		
PUBLIC ORDER	no criminal record	X	
QUOTA	nationality		
	Other (specify)		
Statuses awarded:			
	Temporary right to remain (de facto)		
	Temporary; limited access to employment		
	Short-term permit (1-2 years)		
	Long-term permit (3-5 years)		
	Permanent residence (2003/109/EC)		
	Other (specify)		Indefinite leave to remain
Long-term perspective?			
	YES	X	X
	NO		