

Regularisations in Europe
Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the European Union

Policy Brief

February 2009

New study on regularisation practices in EU Member States

A new study on regularisation of irregular migrants in the European Union provides a thorough review of regularisation practices in the 27 EU Member States, with comparative reflections on regularisation practices elsewhere. The study entitled 'REGINE – Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU' has been commissioned by the European Commission and has been conducted by a team of researchers at the International Centre for Migration Policy Development (ICMPD), with additional contributions from external experts.

**Regularisation—
a common but
complex device****Main findings**

The study suggests that although regularisations are considered exceptional measures by virtually all governments, they are far from infrequently used. Indeed, the great majority of EU Member States currently use, or have used, some sort of regularisation measure in the recent past, although the extent to which they use regularisation as a policy tool varies greatly.

**Defining
regularisation**

In the study, regularisation is defined as *any state procedure by which illegally staying third country nationals are awarded a legal status*, although actual practices are more complex than this neat definition seems to suggest. First, not all procedures that have regularising effects are explicitly designed as regularisation measures. Generally, there are various regularisation procedures that allow illegally staying migrants to acquire a legal status from within their current country of residence. In some cases, such provisions have been more or less consciously used to regularise irregular migrants, whereas in other cases regularisations 'happened' without an explicit policy to do so. In addition, regularisation measures sometimes target various categories of technically legally staying migrants on transitional or restricted permits.

More than 5.5 million persons involved in regularisations between 1996 and 2008

Finally, regularisations sometimes award statuses short of a fully fledged legal status, notably in cases in which a removal order is formally temporarily suspended ('toleration').

According to the study, the recorded number of persons who have applied for regularisation of their status between 1996 and 2008 is about 5 million. Taking into account the substantial missing data, the **total number of persons involved in transitions from irregularity to a legal status** may be substantially higher and may lie **between 5.5 and 6 million**. Available data show that in total some 3.5 million persons were regularised in the EU27 in the period under review, with the actual number likely to be substantially higher.

Two basic types of regularisation measures: programmes and mechanisms

European Union Member States regularise irregular migrants through two basic types of regularisation measures – **regularisation programmes** and **regularisation mechanisms**. Mechanisms are part of the regular migratory policy framework and are thus permanent measures; programmes, on the other hand, are specific measures, not part of the regular policy framework, run for a limited period of time and typically target specific categories of non-nationals in an irregular situation. In principle, the way in which programmes and mechanisms are designed need not differ; similarly, both types of measures can be used for the same ends. In practice, however, there are a number of noticeable differences. Programmes typically involve larger numbers of persons and frequently target employed irregular migrants, often in an attempt to clamp down on irregular employment more generally. Criteria for regularisations through programmes are on the whole relatively transparent and clearly defined. Among the most frequent criteria used are: residence in the country before a certain date, length of residence, proof of employment. Criteria and procedures in regularisation mechanisms, by contrast, are often less well defined, leaving substantial room for administrative discretion. In contrast to programmes, permanent mechanisms typically are small-scale measures, regularising only relatively small numbers of irregular migrants and are focused largely on humanitarian cases. Over time, however, the number of persons regularised through mechanisms can be substantial and comparable with the number of persons regularised through programmes implemented in certain countries.

Regularisation programmes account for the large majority of applicants

The **overwhelming majority of applications for regularisation were received in regularisation programmes**. Including *de facto* regularisation programmes, 43 regularisation programmes have been implemented in 17 EU Member States between 1996 and 2008, involving **altogether 4.7 million applicants**, of which at least 3.2 million were awarded a legal status. 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. Whereas Southern European countries largely have implemented broadly designed regularisation programmes targeting undocumented migrant workers, regularisation programmes in Northern European countries typically have targeted humanitarian cases, including long-term and rejected asylum seekers, non-deportable aliens, family members, amongst others.

Regularisation mechanisms: lower numbers, but increasing in importance

In contrast to programmes, many statistics on **regularisation mechanisms** are either not collected or not available. To some degree, this reflects the fact that regularisations through mechanisms are usually administered through the regular framework for issuing residence permits. Thus, grants of residence permits through regularisation mechanisms frequently cannot be easily distinguished from the issuing of ordinary residence permits or, conversely, from humanitarian admissions. Against this background, the statistics on regularisations through mechanisms collected by the study are likely to show only a fraction of the total number of status grants 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).

Two logics of regularisation

The analysis of regularisation measures in EU Member States suggests that regularisation follows two distinct logics: **1) a humanitarian and rights based logic** on the one hand, and **(2) a non-humanitarian, regulatory and labour market oriented logic**, on the other.

Humanitarian vs. regulatory, labour market oriented regularisation logic

In the first instance, regularisation is, in a sense, a goal in itself and is used to address policy and implementation failures (e.g. in the asylum system), to respond to specific situations and needs, and importantly, regularisation is often explicitly an alternative to removal. In these cases, regularisation is typically based on a broad set of humanitarian criteria and generally is informed by human rights considerations. In the second instance, by contrast, regularisation is a means to achieve wider objectives, and in particular to address the nexus of irregular migration and the informal economy. Labour market oriented regularisations typically aim at combating undeclared work, ensure compliance with tax and social security obligations and at enforcing social rights and labour standards, and thus, fight social exclusion, vulnerability and other ills associated with undeclared work. In addition, a number of labour market oriented programmes also explicitly aim at promoting the integration of regularised migrants. For labour market related objectives programmes are used almost exclusively. By contrast, both mechanisms and programmes are used in the case of regularisations for humanitarian reasons, suggesting that programmes and mechanisms are complementary, rather than alternative options.

Main policy issues

How effective are regularisations?

The study identifies several key issues in regard to regularisation. First, there are several issues regarding the **policy effectiveness** of regularisation measures, including whether regularised migrants manage to retain their status over time, whether regularisations provoke new illegal migration flows and several issues concerning the implementation of measures. The study suggests that the overall impact of regularisation programmes is positive, with small but permanent reductions in irregular residence/employment. The study finds only limited evidence for a pull effect of regularisations, although there is evidence that regularisation measures have a negative impact on return programmes. Regularisation mechanisms generally seem to provide a useful and flexible tool to address humanitarian cases, although non-transparency of rules and administrative practice stand out as major problems.

Avoiding the creation of irregular migrants

Secondly, the study suggests that the (unintended) '**creation**' of **irregular migrants** through state procedures (e.g. status loss or withdrawal) should be seen as a major problem area in EU Member states, which could be addressed by reforming administrative procedures and legal frameworks for legal migration.

As a de facto admission channel for labour migrants

A third issue is whether employment oriented regularisation programmes can substitute for **labour migration policies**. The study recommends that policy responses should adopt a long-term perspective and put efforts into reforming recruitment and admission policies. However, in the short term and in particular in countries with large irregular migrant stocks, regularisation is often a necessary and unavoidable option to address the presence of irregular migrants, which reforms of admission procedures cannot directly address.

Asylum and non-deportable aliens

Fourthly, the study finds that the **asylum system** is closely linked to the 'creation' of irregular migrants, particularly in Northern European countries, reflecting considerable differences in access to protection across European states. Fifthly, the study sees a need for elaborating clear rules regarding the treatment of the small but significant number of **persons who cannot be removed over an extended period of time**, many of whom are rejected asylum seekers not qualifying for Convention status or subsidiary protection.

Growing importance of family related regularisations

Finally, the study identifies **family-related reasons** as increasingly important grounds on which irregular migrants are regularised, suggesting deficiencies of the existing legal regulations for family reunification and a need for more flexible approaches in this regard.

The way forward: is there a need for European action?

Regularisation and the legal framework for migration policy at the EU level

Although **regularisation** currently is a matter exclusively for national policy, it is nevertheless **embedded in a broader legal and institutional framework**, both in the **European Union** context and in relation to legal instruments under **international law**. Regularisation clearly falls within the scope of the competence of the European Union in the area of migration as defined by Article 63 (3) of the Amsterdam Treaty, which stipulates, amongst others, measures regarding "conditions of entry and residences, and standards on procedures for the issue [...] long-term visas and of residence permits" , and measures concerning illegal immigration and illegal residence.

Although currently not directly concerned with regularisation, basic principles underlying European Union migration policies are clearly relevant for regularisation policy. These principles include: transparency and legal certainty of the framework governing migration, clear and simple procedures, increasing scope of rights after long residence, the right to family reunification, and the right of persons in need of international protection to access such protection. In addition, broader objectives—notably, promoting the integration of third-country nationals and fighting social exclusion, marginalisation and discrimination—are all relevant core principles upon which measures regarding regularisation on the European level can be built. Finally, fundamental legal principles—including access to legal remedies, proportionality, reasonable duration of administrative procedures, and non-discrimination—should be considered additional guiding principles for the development of regularisation policies, both on the national and the European level. Some of these principles are also enshrined in relevant legal instruments under international law, which similarly can serve as a reference frame for the elaboration of regularisation policy.

Positions of governments and civil society actors

Member states: divided over the need for regularisation, but interested in increased cooperation

There is **no consensus within the EU-27** concerning the need for regularisation policies. Member States 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*. Given the diversity of positions over the need for regularisation, governments on the whole are not in favour of regulation at the European level. However, there is considerable **support** among governments **for increased exchange of information, including the exchange of good practices**. In some specific policy areas, there is limited support for minimum standards regulation; in other areas, the report notes that there is 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.

Civil society actors:

Cautious supporters of regularisation and in favour of a limited role for the European Union

National **trade unions** 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 main European federation of trade unions—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 through a reform of rules on admission of labour migrants. In general, trade unions are cautious supporters of regularisation policies.

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. Despite considerable diversity in positions on regularisations, NGOs largely **agree 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. NGOs organised at the European level largely express similar opinions. While opposed to strong regulations on regularisation on the EU level, NGOs generally support ‘soft’ measures such as exchange of good practices and definition of benchmarks on regularisation.

Policy Options

The study suggests four broad areas for possible action on the European level. These include: (1) **policies for information exchange**, policy development and technical support, in the context of which the Commission would act as a facilitator, supporting information exchange and facilitating access to expert advice; (2) **policies for notification and policy elaboration**, in regard to which the Commission would act in a monitoring role and Member States would be obliged to notify the Commission and engage in consultations; (3) **policies for minimising ‘created illegal immigrants’**, which mainly would focus on improving and enhancing existing legal instruments on legal migration and asylum on the EU level; and (4) **policies for the regulation of minimum standards** in the area of regularisation.

Related publications

*Book
version*

Martin Baldwin-Edwards & Albert Kraler (eds.) (2009) : REGINE. Regularisations in Europe. Amsterdam: Pallas Publications. 576 pages. isbn 978 90 8555 008 2

To order visit www.aup.nl

*Online
version of
the study*

Final Report: Martin Baldwin-Edwards & Albert Kraler (2009): REGINE. Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU. Vienna: ICMPD.

Country Studies (Appendix A): Martin Baldwin-Edwards & Albert Kraler (eds) (2009): REGINE. Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU. Appendix A: Country Studies. Vienna: ICMPD.

Country Profiles (Appendix B): Martin Baldwin-Edwards & Albert Kraler (eds) (2009): REGINE. Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU. Appendix B: Country Profiles of 22 EU Member States and the USA. Vienna: ICMPD.

Statistical Annex (Appendix C): Martin Baldwin-Edwards & Albert Kraler (2009): REGINE. Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU. Appendix C—Statistical Annex

The full report and its annexes can be accessed under <http://research.icmpd.org/1184.html#c2309>

*Working
Paper*

Albert Kraler (2009): Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration?

IMISCOE Working Paper Nr.24. <http://www.imiscoe.org/publications/workingpapers/documents/WP24-regularisation.pdf>

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