

MIRREM

Measuring Irregular Migration

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PATHWAYS AND POLICY EVOLUTION: COMPARING NATIONAL LAWS AND POLICIES ADDRESSING IRREGULAR MIGRANTS

Working Paper 6/2024

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Deliverable Information:

Project Acronym:	Measuring irregular migration and related policies (MIRreM)
Project No.	101061314
WP	WP3 - Politics: Understanding legal and policy contexts
Deliverable Type:	Report
Deliverable Name	Pathways and Policy Evolution: Comparing national laws and policies addressing irregular migrants
Version:	1
Date:	28/03/2024
Responsible Partner:	International Centre for Migration Policy Development (ICMPD)
Contributing Partners:	University for Continuing Education Krems (Danube University Krems)/ UWK, Vrije Universiteit Brussel, Toronto Metropolitan University, University of Turku, Hellenic Foundation for European and Foreign Policy (ELIAMEP), University of Leicester, University of Milan, University of Maastricht, University of Warsaw, Instituto Universitário de Lisboa (ISCTE-CIES), Complutense University Madrid, University of Oxford, Migration Policy Institute Europe (MPI-E)
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Reviewers:	Lucy Leon (UOXF), Myriam Cherti (UOXF)
Dissemination Level:	Public

Revision History:

Version	Date	Author	Organisation	Description
1	16/02/2024	Maegan Hendow, Ayesha Qaisrani	ICMPD	Initial draft
1	23/02/2024	Maegan Hendow, Ayesha Qaisrani	ICMPD	Draft for review

1	15/03/2024	Authors from all Contributing Partners	All Contributing Partners	Feedback on Draft Deliverable
1	19/03/2024	Lucy Leon, Myriam Cherti	UOxf	Official review, provision of feedback on Draft Deliverable
1	28/03/2024	Maegan Hendow	ICMPD	Submitted Version 1

Executive Summary

In this paper, we provide an analysis of the policy frameworks that impact on migrant irregularity, or aim to do so, across the 20 countries under study. This includes 12 EU Member States (Austria, Belgium, France, Finland, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, and Spain), five countries located at the EU's external borders (Bosnia and Herzegovina, Morocco, Serbia, Tunisia, Türkiye and the United Kingdom), and two North American countries (Canada and the United States).

First, we discuss the policy evolution process, in terms of what kind of events and entities can contribute to policy shifts. In particular, the paper finds that the main “triggering events” that have been used in several countries to shift policy approaches to irregular migrants are the irregular arrival of migrants on a larger scale, the COVID-19 pandemic, economic crises and security threats. At the same time, these events and others can be used by specific entities to advocate for specific policy approaches. In particular the role of the media, civil society, employers, political parties, the judiciary, local governments and the EU have emerged as influencing policy shifts. These policy shifts may entail more or less restrictive approaches to irregular migrants, depending on the national context.

Then, we examine the policy-related pathways into and out of irregularity, using the MIrreM taxonomy as an organisational framework, namely of demographic, geographic and status-related flows (Kraler & Ahrens, 2023). Policy approaches that expand or restrict status-related in- and outflows and those addressing geographic in- and out-flows are the most common. For inflows into irregularity, policies may address or produce migrant irregularity. For example, border walls and “pushback” practices aim at addressing irregular entries across a geographic border. Policy measures that restrict access to asylum, on the other hand, may impact on the status-related inflows into irregularity in a country. For outflows from irregularity, return policies aim at removing irregular migrants from the territory, whereas regularisation programmes, mechanisms and initiatives endeavour to adjust the status of irregular migrants in the territory. The extent to which these policy approaches may address irregularity depends however on the scale of the policies, as well as the challenges countries may face in implementing specific approaches.

For this reason, we end the paper with a discussion on the challenges that impede policy implementation, across the countries under study. This includes in particular structural challenges related to legislative frameworks and labour market structures, as well as coordination issues, across administrative levels and stakeholder groups. In addition, lack of resources to implement policies, as well as politicisation of migration, have also blocked progress in some cases. Finally, the lack of data on the irregular migrant population has been highlighted as a key hindrance, speaking to the prescient focus of the MIrreM project.

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THE MIRREM PROJECT

MIRreM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom.

TO CITE:

Hendow, M., Qaisrani, A., Rössl, L., Schütze, T., Kraler, A., Ahmad Yar, A. W., Bircan, T., Oruc, N., Mohan, S. S., Triandafyllidou, A., Jauhiainen, J. S., Smolander, S., Toivonen, H., Cyrus, N., Nikolova, M., Desmond, A., Heylin, R., Cacciapaglia, M., Bonizzoni, P., Ambrosini, M., Badre, A., Siruno, L., Leerkes, A., Yelisseyeu, A., Fihel, A., Kaczmarczyk, P., Rakowska, K., Carvalho, J., França, T., Jovanovic, K., Finotelli, C., Cassain, L., Echeverría, G., Apaydin, S., Jolly, A., Sloop, J., Sohst, R. R. (2024). Pathways and Policy Evolution: Comparing national laws and policies addressing irregular migrants. MIRreM Working Paper 6/2024. Zenodo. <https://doi.org/10.5281/zenodo.10782561>

KEYWORDS

Irregular migration; policy measures; pathways into and out of irregularity

ACKNOWLEDGEMENTS

The authors thank the interview respondents and workshop participants, across the 20 countries under study, who generously shared their time and expertise on this topic. Without these participants, the analysis included in this paper would not have been possible.

The main authors are also grateful to their colleagues at ICMPD for the support provided in the development and finalisation of this Working Paper, including Veronika Bilger for her excellent comments and feedback, as well as Katerina Miteva and João Reis for their research assistance.

FUNDING ACKNOWLEDGEMENT

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Research Executive Agency. Neither the European Union nor the granting authority can be held responsible for them.

In addition, MIrreM benefits from funding provided by UK Research and Innovation (UKRI) under the UK government's Horizon Europe funding guarantee. The Canadian research component of this project is undertaken, in part, thanks to funding from the Canada Excellence Research Chairs Program of the Government of Canada.

1. INTRODUCTION

Among matters of public policy in Europe and elsewhere, few topics have been as politicised as the matter of immigration, gaining salience particularly in the last two decades (De Haas et al., 2020). Amid social, demographic and economic shifts, countries' policies towards irregular migration have been shaped by shifting public attitudes and political interests, as well as economic needs. Indeed, a wide range of legal and policy interventions have been pursued in a vast number of countries in the recent past to address the rising challenges of irregular migration, which is often portrayed by politicians and some media outlets as a threat to the economic and social fabric of receiving countries. Where the “liberal paradox” (Hollifield, 1992) helped explain liberal immigration policies given labour market needs in the face of political pressures, recent developments in the field of irregular migration policy making may present interesting new insights. Considering the development of migration policies, academic literature point to a variety of factors that instigate and shape migration policy changes often in an interacting and overlapping manner: lobbying of employers' and trade union organisations, competition among political parties, advocacy by human rights NGOs and migrant organisations, court rulings setting limits and objectives for migration policies, etc (Consterdine, 2014; Cyrus, 2017b; Freeman, 1995; Joppke, 2001; Schmidt, 1996). Changes in migration policies have even been described as side effects of other policy fields that deeply influence and shape migration policies (such as historical heritages, diplomatic considerations, labour market developments) (Cyrus & Vogel, 2001). Recent research has also documented the significance migration-related events considered “crises” have had in driving policy changes and policy accumulation (Knill & Steinebach, 2022; Trauner, 2016). Current developments related to policy openings to specific groups of (irregular) migrants, or the COVID-19 pandemic, may challenge, confirm or expand these concepts in new ways.

While such policy changes and approaches can be quite intentional in their approach to migrant irregularity (including informal practices of implicit tolerance), other policies may unintentionally impact on it (whether by reducing, producing or extending it). Indeed, public policies not usually classified as migration policies can have an important impact on migrants nonetheless (Czaika, 2020). Moreover, policy measures have produced different types of irregularity, including “tolerated” and “semi-legal” or “quasi-irregular” statuses and practices of “semi-inclusion” or toleration (Chauvin & Garcés-Mascareñas, 2012; Düvell, 2011; Kraler & Ahrens, 2023; Kubal, 2013; Ruhs & Anderson, 2010; Triandafyllidou & Spencer, 2020) across which migrants can shift categories and statuses over the course of their stay (Crawley & Skleparis, 2018; Schuster, 2005).

Against this background, this working paper examines how migrant irregularity is structurally influenced by the polity framework in place. Research for this paper has been carried out under the EU-funded project “Measuring irregular migration and related policies” (MIrreM),

as part of its Work Package 3 on Politics: Understanding Legal and Policy Contexts. Based on 20 countries across Europe, North America and North Africa, this report synthesises key trends and patterns among national policy approaches towards migrant irregularity, highlighting commonalities and differences across various national contexts. In particular, this report examines three key research questions:

- how have irregular migration policies evolved over time and in response to what;
- what pathways into and out of irregularity have these policies produced or aimed to address; and
- what challenges have hindered policy implementation.

In doing so, the report aims to contextualise irregular migration policy changes, as well as how such policies can channel migrants into or out of irregularity.

The report is structured as follows: within this introductory chapter, we begin by first outlining the types of legal and policy frameworks that have been examined over the course of the research. Following this, Chapter 2 describes the methodology adopted for this study, the countries that have been included in this analysis, the data sources used, as well as the methodological challenges encountered during the research. Further detail on the number of interviews conducted, by country and by stakeholder are presented in Annex I. Chapter 3 presents a comparative overview of the policy evolution process across the 20 countries under study, highlighting major triggering events and the influence of key actors and factors on the process, leading to the contemporary policy priorities in the respective countries. Drawing on the MIRreM conceptual framework, in Chapter 4 we discuss in detail the major pathways into and out of irregularity, in terms of demographic, geographic and status-related in- and out-flows of migrant irregularity. This chapter focuses in particular on the policy frameworks that have impacted on or aimed to address these flows. It also spotlights a number of potential promising practices related to pathways out of irregularity. This leads to Chapter 5, where we highlight the main challenges and constraints identified that restrict implementation of policies introduced to address migrant irregularity. Lastly, Chapter 6 summarises the main findings and concludes this report.

1.1 National frameworks

How different countries address migrant irregularity often reflects their unique government and political structures. The type of government system in place shapes the way laws and policies are introduced and implemented at the national and sub-national levels. The mapping conducted of the legal and policy initiatives for the countries under study has highlighted the diversity in approaches adopted by the 20 countries under study, reflecting the variety in terms of their respective national particularities.¹ The government structures observed across the countries under study include those with unitary or presidential systems, parliamentary setups, federal systems, constitutional monarchies, each with its own unique set of policy and legislative instruments and cultures of policy implementation

¹ Legal and policy frameworks have been mapped for each country under study and are available on the MIRreM project website: <https://irregularmigration.eu/>.

that frame the way they choose to address migrant irregularity. While a centralised structure may allow for a uniform approach across the country through executive orders, federal systems empower sub-national governments to address local needs. However, the way policies are implemented at different policy levels can sometimes produce inconsistencies in approach across different administrative scales and may require high levels of coordination among different stakeholders to address such differences. At the same time, in some cases the lack of coordination may be intentional or a sign of friction among administrative levels.

These systems also dictate the process taken for introducing a legal/policy change to address migrant irregularity at the national level, as well as which types of legal/policy instruments can be implemented. The instruments that have impacted on the situation of migrant irregularity in the countries under study (or have aimed to do so) are therefore a wide range, and sometimes merely titled differently based on the national context, and include: the national constitution, constitutional amendments, legal acts, legislative codes (e.g. criminal or penal codes), bills, decrees, legislative amendments, ordinances, legal regulations, rules (e.g. Immigration Rules), executive orders, ministerial decisions, policies, memorandum of understanding, framework agreements, bilateral labour agreements, circulars, directives, government-funded projects and programmes, regularisation programmes, regularisation schemes, regularisation initiatives², court decisions, strategy documents, etc. Moreover, all these instruments exist within contexts that apply different degrees of enforcement, and hence effectiveness.

The main legal provisions concerning irregular migration across the countries under study are usually enshrined in the respective national law(s) on immigration (titled differently across the countries, as e.g., “Aliens Act”, “Immigration Law”, “Foreigners Act”, “Residence Act” etc.), which govern the entry, stay and exit of non-nationals in the country. In some cases, this can be one main legal provision, but often can be a package of several linked acts. In all the countries under study, these define the legal parameters of foreigners’ presence on the national territory, and by doing so delineate irregularity of status among foreigners. In many countries, subsequent amendments of these legal provisions have also directly addressed matters related to migrant irregularity sometimes relating to regularisation, toleration or removal of irregular migrants. The provisions may also simultaneously cover matters related to international protection and asylum, as well as integration.

Drawing on the respective country mapping, it appears that whether a certain policy or legal domain is considered to directly or indirectly influence migrant irregularity varies across the countries, based on the types of migrant irregularity that are relevant for the respective country (e.g., overstayers, those who cross borders irregularly, children born into irregularity, those working in contravention of the terms of their permit, etc). Nevertheless, the mapping provides an overview of the legal/policy domains that have been addressed in the respective country contexts relevant for migrant irregularity. These include legal and policy instruments that relate to:

- defining irregularity of status among foreigners on the territory (as related to mode of entry, stay and exit);

² These have been described as time-bound regularisation schemes based on an existing mechanism. See PICUM 2022.

- international protection and asylum procedures, describing procedures for the recognition and protection of individuals fleeing persecution or violence in their home countries. They outline criteria for asylum eligibility, asylum application procedures, and the rights and obligations of asylum seekers and recognised refugees. Targeted instruments may also be introduced to address temporary and humanitarian protection;
- employment of foreigners, specifying how migrants and/or asylum seekers may engage in labour market activities. These also relate to assessing domestic labour market demand to determine seasonal work provisions or quotas for migrant workers. Another related domain is regulations related to employers, through sanction or penalties, for recruiting irregular migrants;
- regularisation of irregular migrants, specifying scope, eligibility, special circumstances, institutional responsibility for administering regularisations, etc.;
- access to basic services for irregular migrants (and their children). Most of these relate to access to education and healthcare, but some may also encompass other areas such as access to legal aid, integration-related opportunities, civic services, municipal registration, as well as structures that protect irregular migrants through restrictions on data sharing (e.g., through firewalls), etc.;
- border management, including measures aiming to counter migrant smuggling and prevent irregular entry (both between border crossing points and clandestine entries at border crossing points);
- forced and voluntary return of irregular migrants. In some cases, measures may also be introduced to suspend removal orders and define tolerated status of non-removable individuals;
- detention and other forms of public accommodation that cater for irregular migrants, in particular those in return processes. Often, such accommodation also or indeed mainly cater to other categories of migrants, notably asylum seekers;
- international cooperation on migration and mobility, particularly with countries of origin or transit, sometimes focusing on one area (e.g. return) or broader encompassing wider cooperation across many areas (e.g. development cooperation, trade, etc.);
- development, restructuring, or strengthening of institutional powers, and their roles and responsibilities in relation to migration and migrant irregularity;
- addressing trafficking in human beings, encompassing also protection for victims;
- addressing exceptional circumstances that may have an impact on migrant irregularity (e.g., COVID-19, Russian aggression against Ukraine, etc).

This list is non-exhaustive, but nevertheless summarises the main themes that most of the countries under study have addressed through their country-specific array of policy and legal instruments.

2. METHODOLOGY

2.1 Research methodology

This comparative report is a synthesis document that draws on individual country reports of 20 countries. The countries include 12 EU Member States (Austria, Belgium, France, Finland, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, and Spain), five countries located at the EU's external borders (Bosnia and Herzegovina, Morocco, Serbia, Tunisia, Türkiye and the United Kingdom), two North American countries (Canada and the United States) (Figure 1). Together this agglomeration of countries offers insight for assessing the broader trends and patterns of irregular migration policy making across different contexts and provides the opportunity to compare and contrast the different policy approaches adopted by these countries in different circumstances that they experience.

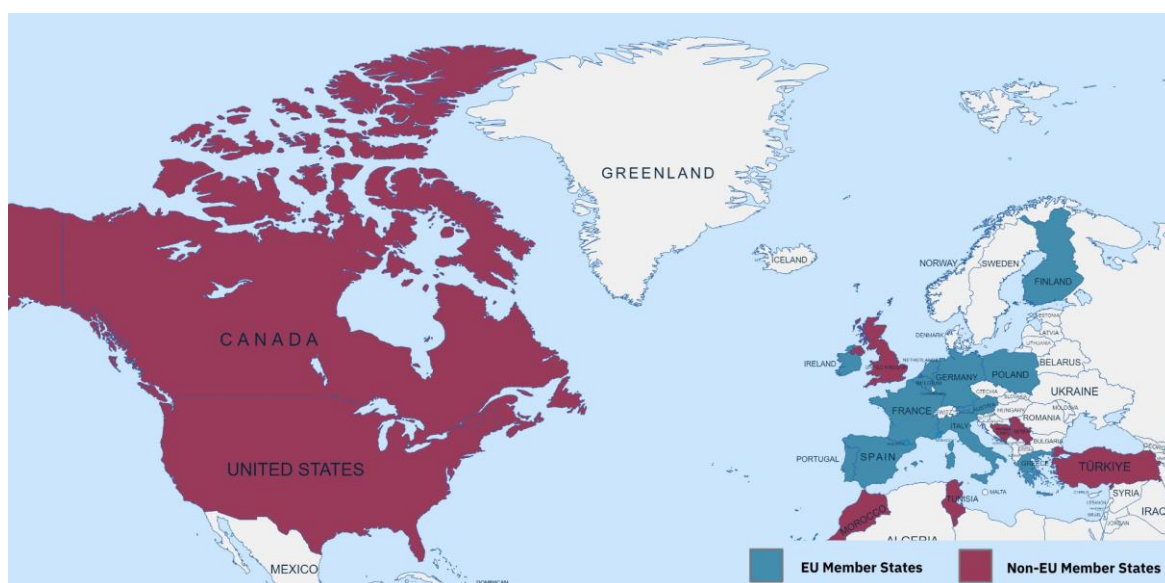


Figure 1 Geographical overview of countries covered

The country reports that feed into this comparative report were developed by the respective country rapporteurs in MIRreM. Each of the country reports were developed on the basis of extensive literature review, rapporteurs' own expertise and knowledge on the subject, as well as semi-structured qualitative interviews and workshops with diverse national expert stakeholders to fill gaps in the knowledge base.

As a starting point for literature review, country researchers reviewed academic papers and grey literature on the topic published by different governmental and non-governmental actors. National legislative decrees, policy documents as well as official press releases served as important sources of information on national developments in the legal and policy realms. Country experts also participated in relevant policy seminars, conferences and discussions that enriched the data. Nine³ of the 20 countries under study were previously part of the EU-funded Clandestino project (2007-2009), which provided an overview of policy developments in regard to irregular migration in those countries up to 2009. Hence, the Clandestino studies for these countries served as a benchmark and background. However, to keep the discussion narrow, targeted and complementary, the MIRreM country reports focused on the time period from 2010 to the present to capture the most recent and relevant developments in the policy sphere.

Based on the literature review conducted, stakeholders were approached for interviews based on gaps in the literature to be addressed and their expertise vis-à-vis these gaps. For the empirical research, stakeholders interviewed ranged from state authorities, to supra-national and international institutions, subject experts, and civil society organisations, etc and include:

- State authorities include national and sub-national government representatives;
- Supra-national and international institutions include EU institutions (e.g. FRONTEX, EUAA, Europol, FRA, etc.), and UN agencies (e.g. IOM, ILO, UNHCR etc.);
- Experts include individuals with specialised knowledgeable on the topic, for instance think tanks and research institutes, academic experts, relevant professionals (lawyers etc.), community leaders.
- Civil society organisations include international and national civil society and non-governmental organisations, migrant rights organisations and other interest groups such as trade unions.

Where relevant and accessible, interviews were also conducted with sub-national level stakeholders to understand the context. To complement data collected from desk research and interviews, 11 national stakeholder workshops were also held (for Austria, Belgium, Canada, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, Spain, the UK).⁴ The workshops served as important platforms for knowledge exchange, to identify further relevant stakeholders for more in-depth discussions, and to present and validate initial research findings. Some country partners also leveraged informal exchanges with relevant stakeholders and experts to fill knowledge gaps.

Research for the country reports was carried out between February and September 2023. In total, 124 interviews were conducted across the 20 MIRreM countries, comprising both in-person and online interviews, based on the preference of the stakeholder and feasibility constraints of the researchers. The main purpose of primary data collection through interviews and stakeholder workshops was to fill in knowledge gaps that were evident

³ Countries in MIRREM also covered under Clandestino include: Austria, France, Germany, Greece, Italy, the Netherlands, Poland, Spain and the UK.

⁴ These workshops fed into several research strands under the MIRreM project. Aside from validating findings related to national policies on irregular migration, they also gathered input on data needs and usage and data sources and estimates (thus feeding into MIRreM Work Packages 2, 3 and 4).

through desk research. Hence, while general interview guidelines were developed to support the fieldwork, exact themes covered in the interviews depended on the respective data gaps in the country. Stakeholders received a concept note on the project defining the scope of the study and the relevance of their contribution. Consent was sought in writing (where possible) or verbally to use notes from their discussion into this analysis, while ensuring confidentiality and anonymity. Interviewees were informed that they could terminate the interview or withdraw their shared data at any point during the interview. For data protection, interview recordings, conducted with the consent of the participants, were exclusively accessible to the responsible MIRR country partner or expert, while anonymised/pseudonymised transcripts or summaries were used by the authors to conduct analysis. An overview of the number of interviews per country and the type of stakeholders interviewed in each country is provided in Annex 1.

Literature reviewed for the country reports was systematically stored and cited using Zotero as a reference manager software. For analysis, we used a qualitative data analysis software (NVIVO). All 20 country reports were compiled within NVIVO and analysed using the pre-defined structure of the reports, as well as keyword searches.

All information in this report draws on these 20 country reports and the analyses contained therein, also including desk research relevant for the national level analysis. These reports have been complemented by additional desk research as relevant (cited accordingly), as well as references to specific research participants in quotations or when there are specific claims by individuals. References to country approaches therefore draw on these reports, while not referencing them explicitly.⁵ Where countries are cited, this is based on the analysis included in the specific country reports cited, yet does not preclude similar practices in other countries.

2.2 Methodological challenges

Considering the scale of the project and the various country contexts, there were some challenges that the country experts experienced in terms of conducting fieldwork for this study. Some of the most common challenges across the countries are briefly summarised below.

2.2.1 Reluctance in participation by some stakeholders

One of the main challenges experienced in conducting fieldwork was the reluctance of some stakeholders to participate in interviews, despite assurances of anonymity. There were various reasons for rejecting these interview requests. In some countries, the sensitivity of the topic, especially under their current national political climate, made them hesitant to

⁵ However, all country report authors are contributing authors to this report and have been consulted on the final analysis to ensure appropriate referencing of their country analysis. Some country report authors gave broader review feedback, including adjustments to the report structure.

speak about migrant irregularity (e.g., upcoming elections, policy changes or political tensions on the topic of migrant irregularity etc.), while others quoted lack of time for their unavailability. There were also instances where the approached stakeholders did not respond at all, hence the reason for their unavailability cannot be concluded. Interestingly, there were a few instances where some stakeholders deemed relevant for policymaking on migrant irregularity from research point of view refused to be interviewed because they did not consider it a relevant topic for their respective portfolios.

Most often, state officials and law enforcement representatives were the ones who avoided being interviewed, but this hesitance was also observed for some organisations that provide support to irregular migrants. It was noted in particular that government officials in countries transited by irregular migrants were reluctant to be interviewed. Nevertheless, the purpose of conducting interviews for this study was to fill in knowledge gaps specific to country cases, and hence ensuring representation from all stakeholder categories was not the primary aim.

2.2.2 Policy changes at the time of MIrreM fieldwork

Given the current nature of policymaking on irregular migration globally, some of the countries under study experienced relevant policy changes and political shifts (elections) during or following the fieldwork period (Canada, Finland, France, Greece, Morocco, Poland, Spain, Tunisia, Türkiye, UK). This had two main implications: firstly, it made conducting fieldwork more challenging in some countries, as some very relevant stakeholders could not participate in the interviews; and secondly, decisions taken and policy development after the completion of fieldwork were not reflected in the interviews. Nevertheless, the country researchers ensured that the country reports were up to date, with major latest developments in legislation captured from secondary sources up to January 2024.

2.3. Note on Terminology

Before proceeding further into discussion, a clarification note on terminology is necessary. Acknowledging that determination of irregularity of a person's entry or stay in a country is closely tied to their legal status based on required permits and legal conditions, this document, and the MIrreM project, refrains from using the terms "illegal" migrants or migration. This is in line with the rising consensus, especially within the scholarly community, that using the word "illegal" for human beings, regardless of their legal status, deprives them of their basic human dignity because of the derogatory and criminalised connotations associated with the word "illegal" (Ambrosini & Hajer, 2023). Therefore, in this document, the phenomenon is referred to in terms of irregularity in line with the accepted terminology as used by the European Commission and the European Migration Network (EMN).

While there is no universal definition of irregular migration, the European Migration Network (EMN) draws on the IOM's definition of irregular migration and defines it as the "movement of persons to a new place of residence or transit that takes place outside the regulatory

norms of the sending, transit and receiving countries.” Similarly, irregular stay is defined as “the presence on the territory of an EU Member State of a third-country national who does not fulfill, or no longer fulfils the conditions of entry as set out in Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.” (European Migration Network, 2019). For regions beyond the EU, IOM’s definition of irregular stay may be more relevant, i.e., “the presence on the territory of a State, of a non-national who does not fulfil, or no longer fulfils the conditions of entry, stay or residence in the State.” (International Migration Law No. 34 - Glossary on Migration, 2019).

This clarification is important to make because in some national laws, policy publications and other literature, the terms “illegal” migration and migrants may still be used, particularly in the period under study. This terminology is generally avoided; in the limited instances where those are quoted or cited directly in this report, inverted commas are used to reflect the usage as in the original text of the publication cited. We also acknowledge that different countries may have their own preferred/officially given terminologies for irregular migrants – across the MIrreM countries, terms such as unauthorised, undocumented, clandestine, unlawful, paperless, non-status migrants have been commonly mentioned. However, in this report, we have referred primarily to this population as “irregular” migrants, regardless of the terminologies used in different country reports.

3. POLICY EVOLUTION

3.1 Introduction

In examining irregular migration policies and priorities since 2010, one can observe significant shifts in terms of approaches and responses to irregular migration. Certain events have served as “turning points” or “windows of opportunity” for policy change with regard to irregular migration, not least the 2015 “refugee protection crisis” (Cyrus, 2017a). Sometimes overlapping crises may stifle policy change, while in other cases they may compound the challenges faced in a country, instigating policy change (Trauner, 2016):

“After three devastating crises [financial, pandemic, and energy crises] that changed and complicated everything, how can we still have a law from another time?” Italian civil society organisation interview

Some events can therefore serve on the one hand as “critical junctures” (Kingdon, 1984), triggering major policy changes in some countries, while on the other hand leading to smaller scale changes, or changes in rhetoric rather than policy for others, depending on the setting (Birkland, 1998)⁶.

These turning points do not stand alone, however: they must be understood within the broader contextual factors at play in the country, including group politics and geopolitical factors. States’ reactions to these turning points are therefore reflective of these broader factors that may constrain or direct their policy response with regard to irregular migration. In that sense, while it is important to examine how policies evolve, this chapter will not do so chronologically, as policy evolution depends on the contextual environment. This chapter will discuss first the turning points that have been relevant for policy evolution across the countries under study. Then it will discuss the contextual setting within which this policy evolution should be situated, namely the role of stakeholders and other entities who influence policy directionality. That section will include also smaller scale turning points that have been important in the respective national context, for particular stakeholders. Finally, the chapter will end with a summary of the current policy priorities vis-à-vis irregular migration across the countries under study.

⁶ Birkland’s “focusing events” (1998) highlights a differentiation in policy responses based on the intensity and impact of the problem, where agenda setting and group politics can vary considerably depending on the event.

3.2 Triggering events

This section analyses the major triggering events that have changed the course of policies towards irregular migrants across the countries under study. As such, the events highlighted here are large-scale ones that have had an impact beyond a singular national stage.

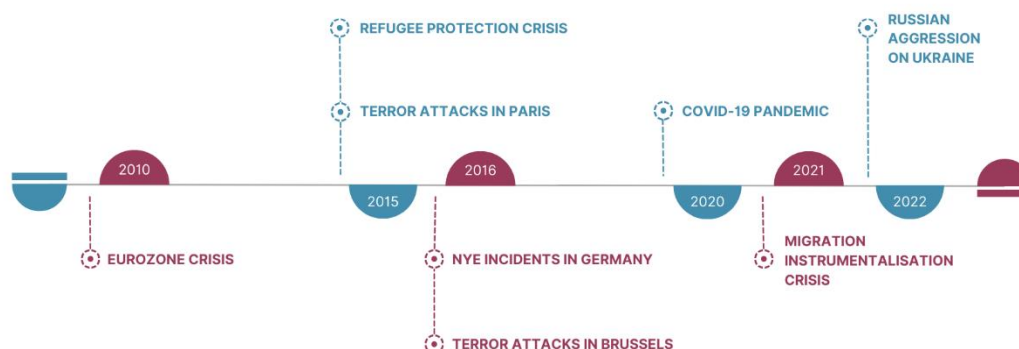


Figure 2 Shared triggering events across the countries under study

3.2.1 Irregular arrival of migrants on a larger scale

The first type of triggering event that has led to policy changes of varying types and degrees in the countries under study is irregular arrival of migrants on a larger scale, often conflict induced. This was the most commonly identified type of turning point, relevant for: Austria, Bosnia and Herzegovina, Finland, France, Germany, Greece, Italy, the Netherlands, Poland, Serbia, Türkiye. The European 2015 “migration crisis” and the displacement caused by the Russian aggression on Ukraine in 2022 stand out as the most significant turning points for the countries under study.

While the large-scale arrivals of migrants, including asylum seekers, in 2015 first triggered an outpouring of solidarity from the general public (Austria, Germany, Netherlands), it was quickly followed by a backlash. For Greece, Italy and Türkiye, irregular arrivals related to the 2011 Arab Spring began earlier, although reflecting a similar trajectory. The policy-related challenges related to addressing these large-scale arrivals became focal points in the media, which made reference to and in some cases magnified a number of specific examples, including:

- the Calais ‘Jungle’ camp and other makeshift camps along migration routes, as well as the challenges faced in dismantling them,
- border closures (e.g. along the Western Balkan route in 2015 and between Italy and France in 2011),
- criminal or terrorist acts reported to involve refugees or citizens with migration background (e.g. 2015/2016 New Years Eve incidents in Germany and terror attacks in Belgium and France),
- overcrowded reception facilities (Greece, Italy, Serbia), and

- reports on overwhelmed asylum and welfare systems more broadly.

In response to these perceived policy “threats”, a number of countries passed or revised (irregular) migration-related laws and policies in response to the crisis, leading in part to a “policy accumulation” (Knill & Steinebach, 2022) of irregular migration-related policies in late 2010s: Austria, Bosnia and Herzegovina, Finland, France, Netherlands, Serbia. The 2016 EU-Türkiye agreement was lauded by political leaders across European countries at the time as an effective measure to reduce and manage irregular migration (Germany, Greece, Serbia, Türkiye). However, the measure was heavily criticised by civil society organisations and academia, and its long-term effectiveness has also been questioned. In the Netherlands, the adoption of a new agenda on migration included a particular focus on preventing irregular migration and implementing a more “robust” asylum system, the rationale for which was attributed to “considerable social tension and unrest” related to 2015 arrivals (Government of the Netherlands, 2018: 1-3).

Right-wing and populist opposition parties capitalised on this waning public support, which quickly turned to pockets of negative sentiment, making political gains and often shifting the political landscape in the aftermath (Austria, Germany, Italy, Netherlands, Poland). In 2017, Austria and Germany’s respective right-wing populist Freedom Party and Alternative for Germany made huge gains in their respective elections, in the former case becoming part of the coalition government. Under the new Austrian centre-right coalition, the government tightened and restricted provisions under a variety of migration and asylum laws and set up new asylum and border police units, aiming to prevent “illegal migration” and so-called “asylum abuse”. The Finnish centre-right coalition in government during the 2015 “crisis” implemented a number of restrictive policies during their term, including removal of granting residence permits based on humanitarian protection and tightening the criteria for family reunification (Pirjatanniemi et al., 2021). In Poland too, the newly formed right-wing government employed negative rhetoric towards refugees and asylum seekers, refusing to participate in the EU refugee relocation scheme, and their more security-oriented approach was then reflected in the subsequent migration strategy published in 2019. At the same time, while this shift for Poland was reflected strongly in the official rhetoric and border management approach, their labour needs necessitated a continued more liberal approach towards (irregular) migrant labour (see discussion on migrant irregularity as related to the Polish simplified employment procedure Section 4.2.3).

This shift post-2015 towards more security-oriented approaches and with more negative public sentiment towards refugees and asylum seekers (particularly those from the Middle East and North Africa), can be juxtaposed against the more positive sentiment expressed towards Ukrainians arriving at a larger scale following the Russian aggression against Ukraine in 2022. This turning point shifted public sentiment and policy to more open approaches towards newly arriving Ukrainians seeking protection, in line with political solidarity with Ukraine following the Russian invasion. Notably, this manifested in migration policy with the triggering of the Temporary Protection Directive and its speedy application across the EU. This has been more strongly reflected in Austria, Germany and Poland, although the more positive rhetoric towards protection-seeking Ukrainians emerged across Europe, including Finland, France, Italy, Serbia and the UK, in stark contrast at times to the continued hostility towards irregularly-arriving asylum seekers from the Middle East and Africa (Ambrosini & Hayer, 2023).

"When you compare it to what's happening in Ukraine and the whole state of mind that we've had at the EU level in relation to them, it's been fantastic. I'm not questioning it in any way or it's not a bad or evil thing. But in relation to the migration and movement that took place in '15 and '16, still no one has any will to do anything to solve these people's situations." Finnish civil society organisation interview

Other examples of larger-scale irregular border crossings that initiated policy change include: Serbia's lack of capacity to accommodate asylum seekers in 2011 that led to a refocus on reception facilities in the country; a 2017 increase in irregular arrivals along the land border of Canada and the US, leading to policy changes in the Canada-US Safe Third Country Agreement; and the 2021 and 2023 "instrumentalisation of migration" crises on the Polish-Belarusian and Finnish-Russian borders, which have had impacts on (border) policies in the respective countries and across the EU. In particular, the 2021 arrivals of mostly Iraqi nationals to Poland via the Belarusian border represented a multi-fold increase in irregular entries along the border and was used to justify changes in Polish and EU policy. Shortly after the crisis, the Polish Ministry of Interior and Administration dissolved the department responsible for developing Poland's migration policy and rejected the draft migration policy that it had prepared, citing "abrupt changes in Poland's neighbourhood" (Polish Government, 2022). The developments have been described as a "shocking governmental catastrophe" (Łodziński & Szonert, 2023: 18), after which migration management in Poland seemed to resign itself to a piecemeal, otherwise described as "flexible", approach, rather than operating under an overarching framework. While this crisis clearly reoriented the Polish policy approach, it also had wider impacts on the European approaches to irregular migration, including the introduction of a new Commission proposal for a Regulation addressing the instrumentalisation of migration and asylum (COM/2021/890 final), which has been criticised for its potential impacts on access to asylum (ECRE, 2022). Notably, this proposal was initiated prior to the Russian invasion of Ukraine, after which there was a European-wide reorientation towards more liberal approaches to Ukrainian large-scale arrivals, represented in temporary protection measures, in sharp contrast with the turn towards deterrence and securitisation in relation to irregularly arriving asylum seekers from other countries.

3.2.2 Pandemic

The novel coronavirus pandemic of 2020 represents another important caesura, whereby countries implemented a wide range of policy measures affecting irregular migrants – ranging from their mobility, to access to services, to regularisation programmes (Austria, Canada, France, Germany, Greece, Ireland, Italy, Poland, Portugal, Spain, US). Across the globe, mobility ground to a halt in the face of the COVID-19. While for most countries, this involved temporary measures that were enforced or lifted with the levels of spread of the infection, the US was the only country under study that implemented a longer-term border control response to the pandemic: Title 42, in place across both the Trump and Biden administrations until 2023, albeit still framed as temporary, and only in effect at the Southern border with Mexico.

States around the world also faced unprecedented disruptions to the healthcare sector, labour market, supply chains and essential services. In the face of these disruptions, many states implemented more inclusive policies towards irregular migrants, albeit in very specific areas and with varying scale. Firstly, states included irregular migrants in public services, particularly in publicly funded testing and vaccination campaigns (Austria, Germany, Greece), as well as implemented firewalls to support their access to healthcare and other services (Germany, Greece, Ireland, UK).

“During COVID there was the idea to vaccinate undocumented workers in the fields and initially it was suggested that each employer tell who they are, and the health services providers would have to vaccinate them. But that would mean the campaign would fail because if the employers said they had irregulars in the fields they would have to pay fines and the workers would have to be issued orders to leave by the police. So, the solution was found to issue them a temporary insurance number and everyone could get the number on the spot of vaccination and get the one-dose vaccine.” Respondent at Greek stakeholder workshop

In Germany, some German Federal States launched initiatives to reach irregular migrants through anonymised vaccination offers or mobile vaccination teams. In March 2020, the UK Government launched the “Everyone In” initiative as a public health response to the pandemic, asking local authorities in England to house all homeless people, regardless of their immigration status.

Secondly, in line with the mobility restrictions and to prevent backlog, countries implemented online renewal processes or extended residence permit validity, to prevent migrants falling into irregularity through pandemic-related unemployment, fear of renewing in person, or other issues (Austria, Greece, Ireland, Poland, Spain).

Thirdly, the pandemic led policy shifts towards regularisation or amnesty programmes (Canada, France, Greece, Ireland, Italy, Portugal). Related to the positive outpouring of support for (and shortages of) essential workers, Canada, Ireland and Italy launched efforts to regularise these workers. In Canada, the regularisation focused explicitly on pending or failed asylum seekers with experience in the healthcare system, calling them “guardian angels” (McKenzie, 2020). In Italy, the regularisation programme focused on irregular migrants employed in care or domestic work and agriculture. In 2022, Ireland implemented two regularisation programmes, for long-term undocumented migrants, as well as for all those awaiting a first instance decision on their international protection claim since the start of the pandemic. While these programmes grew out of sustained business, trade union and civil society advocacy for regularisation of irregular migrants over many years, the positive outreach to and coverage of irregular migrant workers during the pandemic reportedly paved the way for this regularisation. In Greece, the impact was less direct: due to the pandemic, Greece faced huge labour shortages, particularly in the food services, tourism and agricultural sectors. Two recent legislative measures in 2023 aimed firstly at directing workers to the agricultural and tourism sectors through changes to issuance of dependent work permits, as well as secondly regularising long-term irregularly present migrants in the country. In Portugal, the high COVID transmission rates in Odemira, a rural area with high numbers of irregular migrants working in agroindustry, highlighted the unsanitary and exploitative working conditions for irregular migrants in the country. The Odemira incident

prompted an increased government focus on labour and housing inspections to reduce exploitation, as well as efforts to identify particularly vulnerable cases from among this population for regularisation.

3.2.3 Economic crisis

For Greece, Italy and Portugal, the Eurozone crisis of 2010-2011 led the countries to implement or maintain more liberal measures towards irregularly staying migrants. This can be contrasted to measures addressing new arrivals, where border control measures remained of high priority, at least for Greece and Italy. In Greece, the skyrocketing rates of unemployment led many migrants and their families to fall into irregularity, related in part to difficulties in permit renewal linked to social security contributions. In response, the Greek Ministry of Labour reduced the number of days required of social security contributions for the renewal of permits. It also established the new *ergosimo* system, a means to pay wages and social security contributions to those occasionally employed in specific sectors such as domestic and care work and agriculture. The system aimed to facilitate irregular migrants' access to social security coverage even without a work permit, although in practice their access to these social rights remains limited (Bartolini et al., 2022). In Italy in 2012, the Monti government introduced a regularisation programme for irregular migrant labourers in the country. 130,000 applications for regularisation were submitted, although it was ultimately limited in its effectiveness, due in part to the complex Italian policy implementation processes. Portugal, under the tenure of a right-wing coalition government at the time, retained its 2007 regularisation legislation, making only minor amendments to it.

3.2.4 Security threats

Security threats and criminal or terrorist attacks have led to important shifts towards more restrictive policies towards irregular migration (Belgium, Finland, France, Germany, Italy, Türkiye, US). The 2015/2016 New Year's Eve incidents in Germany and the terrorist attacks in Belgium and France in 2015 and 2016 stand out in this regard for the EU countries under study. In the former case, criminal acts in several German cities, in particular Cologne, conducted by groups of young men described in media as refugees and irregular migrants, triggered strong responses from anti-migration activists and instigated heated debates on purported security risks related to refugee arrivals, particularly of Muslim men. In the latter case, although the attacks were conducted primarily by radicalised Belgian and French nationals, their migration background became a basis for claims of national security threats posed by migrants and refugees. For European countries, this linked up with the general downturn in public opinion towards migrants following the initial warm welcome of 2015 and related policy shifts.

Security threats related to the outbreak of war have also been important in shifting policy approaches at countries' borders (Finland, Türkiye). For Finland, following the Russian

aggression against Ukraine in 2022, discussions on irregular migration have become increasingly charged with security-related issues. Its accession to NATO in 2023 and the instrumentalisation of irregular migration as part of hybrid geopolitical threats have meant conversations on the topic in the country have become more security oriented. This has been demonstrated in the several temporary closures of the border with Russia (at the time of writing in place until mid-April 2024). For Türkiye, in the wake of several terror attacks, as of 2015 they shifted away from their previous “open door” policy towards Syrian refugees, ramping up border security measures and construction of a border wall, first with Syria and eventually across their entire Eastern and Southeastern borders with Iraq and Iran.

While the argumentation of migrants as security threats can be quite salient in public debates, it may not always have merit. Indeed, as highlighted by a government interviewee in Bosnia and Herzegovina:

“No single irregular migrant has been classified as a security threat so far.” Bosnia and Herzegovina government representative interview

Indeed, this suggests the importance that these “triggering events” can be in terms of furthering specific narratives put forward by particular actors, further discussed in the next section.

3.3 Polities, Politics and Positionalities

As noted above, events themselves do not shift policy approaches: they may become windows of opportunities that can be amplified by media or geopolitical concerns and instrumentalised by political actors and other stakeholders in advocating for their own policy priorities, more or less effectively. The role of these various entities and actors also reflects the myriad levels and facets of migration governance, which jointly shape migration policies and approaches (Geddes, 2022).

This section will discuss what types of entities have been the most relevant in the policy evolution process, across the countries under study. Smaller-scale events that have been relevant to the policy evolution process in specific countries are also discussed here with respect to how they are used within the national context by specific actors.

3.3.1 Media and general public sentiment

Public debates, reflected in and informed by the media, have had a significant impact in shaping countries’ politics and policies towards irregular migration and was relevant for all countries under study. Media coverage of irregular migration and the narratives media produce, particularly related to the events previously highlighted, can influence policy orientation towards irregular migrants in a number of ways. This includes public discourse on refugee and migrants’ rights, their integration, security and humanitarian concerns, and is reflected in how the issue is taken up by a number of other actors discussed in this section.

Media coverage of large-scale arrivals in 2015 can be linked to shifts in public opinion in the years since. In Germany, the media coverage of the 2015/2016 New Years Eve criminal attacks, bolstered by populist politicians, played a key role in shifting public opinion sharply against asylum seekers in the country mere days afterwards. The subsequent policy turn has been strongly linked to this shift. Similarly, Austrian, Finnish, Italian and Dutch coverage of record high numbers of asylum seekers has similarly intensified political debates on refugees, and can be linked with more restrictive policy turns and the rise in right-wing populist parties in the countries (see also Section 3.3.4). For Europe, recent research has highlighted the differentiated media coverage and narratives of Ukrainian displacement in 2022 as compared to coverage of the 2015 refugee protection crisis, as well as the impact this has had on public opinion (Ibañez Sales, 2023; McCann et al., 2023). Media coverage during the COVID-19 pandemic reframed irregular arrivals not only as security concerns but also health ones, as potential “carriers of the virus”, while also at times focusing on their particular vulnerabilities (e.g. in Portugal’s Odemira trafficking scandal) and their role as essential workers (Elliott & Ben Brahim, 2022).

Media coverage can also serve to keep an issue on the policy agenda: In Spain, issues faced by irregular unaccompanied migrant children after they turn 18 have been reported on and debated in various media outlets over several years. In 2021, a legal pathway was provided for regularisation of those irregular children who could not be returned after they reach the age of majority, and has been considered a direct response to the public debate on this issue.

Media outlets have also been important in terms of breaking major migration-related national scandals, which have led to policy changes in some countries (Ireland, Poland, Portugal, UK). Recently in 2023, Polish media uncovered a visa fraud scheme, whereby Polish work visas were issued to Middle Eastern and Asian country nationals in exchange for large sums of money. The response to this coverage has been immediate: more restrictive visa policy approaches and more Polish visa refusals than usual in third countries. In Ireland, the Guardian’s 2015 report on human trafficking and labour exploitation of irregular migrants in the Irish fishing industry led the government to establish an Inter-Departmental Task Force to examine the issue. Upon their recommendation, in 2016 access to regular status was expanded in a sector-specific approach for those third country nationals working in the industry, albeit with heavily restrictive eligibility criteria. In the UK, the Windrush scandal (Williams, 2020), also broken by the Guardian in 2017, led to an independent review, promises from the Home Secretary of compensation and British citizenship, and led the government to move away from its “hostile environment” rhetoric, preferring the terminology of “compliant environment”. Despite this change in terminology, the provisions of the Immigration Acts of 2014 and 2016, which attempted to make it difficult to live in the UK with an irregular migration status in the hope that this would encourage people to leave the UK voluntarily, remain on the statute book, even if UK policy and media attention has now moved away from focusing on stocks of irregular migrants within the UK to migration flows across the English Channel. A public opinion poll in 2018 found that the majority of Britons were ashamed of British treatment of the Windrush generation, yet most attributed the scandal to government incompetence rather than a result of policy approaches. 60% still supported “an immigration policy that is designed to make it as difficult as possible for people who do not have the right to be in the UK to stay here” (Gottfried, 2018). This

demonstrates that the negative impact of particular policies (reported on in the media) does not necessarily change broader policy preferences.

Similarly, changes in institutional structures have also been attributed to media and public attention, as a response to scandals. In Portugal, the death of a Ukrainian irregular migrant in custody of the border police in 2020 was used by the government to justify the dissolution of the border police and creation of a new agency (although this restructuring was already planned in 2019). In the UK, the BBC reported in 2011 that the UK Border Agency had not appropriately checked passports at entry, adopting rather a “risk-based” approach. Criticism in media reports and by politicians charged the agency with making the borders less secure. This was followed by official reviews of the agency, and its subsequent dissolution.

3.3.2 Civil Society

Civil society actors emerged as one of the strongest groups of actors advocating usually for more liberal policy approaches towards irregular migrants (Belgium, Canada, Germany, Ireland, Morocco, Netherlands, Portugal, Tunisia). In some cases, they participate as a core group in the policy development process, as in Portugal, where the Council of Migrants, made up of migrant associations, advises the High Commission for Migration on legislative developments. In Germany, an alliance of churches, welfare organisations, trade unions and researchers advocated successfully for changes in the legal framework in 2011 to improve irregular migrants access to healthcare and education. In 2015, a similar partnership, together with representatives of the private sector (industry and SMEs), argued for pathways towards regular status because of demographic needs (shortages of labour and trainees in the country) and the positive perception of Syrian refugees and their potential to fill these needs at the time. This advocacy contributed to legal amendments providing tolerated foreigners (see promising practice box on the *Duldung* under 4.3.2) a pathway towards regular stay. In Canada and Ireland, the recent regularisation programmes can be understood as the culmination (in Ireland’s case of decades) of robust civil society advocacy for regularisation, following the policy opening offered by the pandemic. In the Netherlands, civil society, led by the Conference of European Churches and with support of municipalities, challenged a court ruling that limited access to government shelters to specific groups, with the aim to expand access, particularly for rejected asylum seekers no longer permitted to stay (Fox-Ruhs & Ruhs, 2022; O’Cinneide, 2020). While their challenge was rejected by the courts, their advocacy was ultimately successful in that they managed to expand access to shelters for former asylum seekers outside the scope of the existing accommodation, through the LVV facilities (see promising practice box in Section 4.3.2). In Tunisia, the Jasmine Revolution of 2011 fostered an environment in which civil society organisations thrived, advocating for human rights and social justice, including for migrants, and contributing to migration policy developments in the country post-revolution.

Civil society organisations have been an important driving factor in the implementation of more liberal policies towards irregular migrants, as well as challenging more restrictive policies. This includes in coalition with private actors (as noted for Germany above and in the

next section), as well as with municipalities and other local government stakeholders (as noted in the Dutch example above).

3.3.3 Employers and other private actors

In the countries under study, private actors have been relevant stakeholders (often in alliance with trade unions, see above) promoting more liberal policies vis-à-vis irregular migrant labour, in view of their labour needs (France, Germany, Greece, Italy, Poland, Spain). In France, Italy and Spain, regularisations have targeted specific sectors due to acute labour demands of the private sector. In Italy, employers themselves are the main actors permitted to present applications to regularise irregular migrant workers: irregular migrants do not enjoy a direct right to apply for regularisation, this is always filtered through an employer. Indeed, academic literature has long highlighted the important role of employers (particularly in alliance with trade unions) in state toleration of irregular migrant labour and policy formulation (Freeman, 1995; Joppke, 1998).

In Greece and Poland, given the opposition to such measures by right-wing political parties, more liberal policies towards irregularity, aiming to address labour shortages, are implemented rather under the radar:

“Since the pandemic, Greece has to see the irregularity – that's the challenge, for the first time it needs to see that facing the irregularity is a way to attract workers. That's where the game is now. To tackle the irregularity in order to meet the needs of the Greek economy. This is the big challenge – politically difficult for a country like Greece to accept, especially when it has a conservative right-wing government. To say ‘now that I need them, I have to give papers, if I don't give papers – I won't bring new ones and the ones I have will leave me too.’ The assumptions now are that indeed some employers manage to make the papers of the workers they already have, but the numbers are much lower than the need for – something that has no official confirmation” Greek expert interview

3.3.4 Political parties

Party politics can also help explain policy changes (Schmidt, 1996). Party politics can shape policies when new political leadership or opposition parties come into power and implement sharp policy turns. Priorities of incumbent political parties may also change, driven usually by pressure from electoral politics. Lastly, specific triggering events may also be used by parties (in power or not) to substantiate or argue for specific policy approaches and agendas.

Such changes in political leadership and coalitions have sharply reoriented irregular migration policy approaches in Austria, Belgium, Canada, Finland, France, Italy, Poland, Portugal, Spain, UK and the US. Right-wing coalition governments have tended to implement more restrictive policies towards irregular migrants, although based on the country context this can imply a wide spectrum of policy interventions. In Finland and Poland, the right-wing

coalitions already in government during the refugee protection crisis of 2015 (and 2021 for Poland) implemented several laws restricting the rights of irregular migrants and asylum seekers. In 2019 and then again in 2023, new Finnish coalition governments took abrupt policy turns again, in line with their centre-left and right-wing coalitions, respectively. Italian coalitions and US party politics have reflected similar whiplash policy approaches, with the most recent 2023 far-right Italian government implementing harsh anti-smuggling penalties, restrictions on special protections and a more expansive approach to detention. Interviewees in Italy lamented the strong role anti-migrant public opinion plays in feeding into Italian politics:

“When I was young, I naively believed that good policies could not be designed since institutions do not listen to people working in the field. Therefore, I thought there was a disconnect between what a policy is and what a policy does. Now I know this disconnect exists, but it is intentional because of an electoral interest. (...) Migration is a very politicized issue. It lies in political oppositions. You cannot address this issue ‘calmly’ or wisely. Never.” Italian civil society organisation interview

In Spain, the centre-right government in power from 2012-2018 excluded irregular migrants from access to the healthcare system during the same period, sandwiched between more liberal approaches of previous and subsequent governments. In Portugal, where labour needs necessitate a more liberal approach to irregular migration, the centre-right coalition government took a more hands off approach, merely downgrading the topic from the political agenda from 2010-2014.

At the same time, political opposition (particularly of right-wing populist or anti-migrant parties), even if not yet in power, has also contributed to policy shifts (Austria, Germany, Türkiye, UK, US). French President Macron and US President Obama, although elected on platforms of more humane approaches to migration, both ramped up deportations of irregular migrants in efforts to maintain support and reach cross-party consensus. In Germany, the Coalition government responded to increasing concerns fuelled by right-wing parties with legal initiatives to support tighter controls at external EU borders, to introduce temporary border controls at borders to neighbouring countries, in particular Austria and Poland, and to strengthen efforts to deport tolerated third-country nationals without a right to stay. In Türkiye, while the government had generally adopted a positive rhetoric towards migrants (including Syrian refugees under temporary protection), opposition parties were highly critical of the government’s migration policies (Apaydin & Müftüler-Baç, 2022). This reached an apex in 2019, when the government party experienced major losses in local elections, including İstanbul and Ankara, which had been governed by the AKP for the previous 25 years.

“Irregular migration was not actually Türkiye’s domestic issue until recent years. Until then, it had always been viewed from the EU perspective as a foreign policy issue along with the AKP government’s own foreign policy assertiveness. But especially after the 2019 local elections, it turned into a domestic concern for the government.” Turkish expert interview

The heightened politicisation of the issue is reflected in the new establishment of the single-issue anti-migrant populist Zafer Party (Victory Party) in Türkiye in 2021. Similar shifts have been observed post-2015 in Austria, Germany and the Netherlands, as well as other EU

countries, with the rise of right-wing populist parties. Populist Dutch politicians took an “apocalyptic tone”, warning of terrorist attacks, as well as “the implosion of the welfare state” and the destruction of “Dutch core values” (Lucassen, 2018, pp. 383-384). In the UK, the advocacy of the far-right UK Independence Party, particularly in terms of cultivating xenophobic sentiment through alarmist messaging on large-scale irregular arrivals, led to the success of the Brexit campaign and the subsequent departure of the UK from the EU. In contrast, President Biden’s successful 2020 campaign in the US was predicated on a promise to undo many of President Trump’s policies, particularly the more restrictive ones towards (irregular) migrants.

3.3.5 Judiciary

The judiciary has long been argued to influence states’ more liberal policies towards migrants (Joppke, 2001), yet the findings from the countries under study suggest a more ambivalent role. In Germany, Ireland and the Netherlands, specific court cases upheld specific groups of irregular migrants’ rights and extended pathways to regularisation to them. Since 2021, German courts have prohibited the deportation of those seeking protection to Greece, including those who had already received a positive asylum decision by Greek authorities, due to the risk that refugees may be unable to meet their basic needs if returned there. In Ireland, 2018’s *Luximon and Balchand* was a response to a prior policy that restricted previously unrestricted residency of third country national students in Ireland, which resulted in a number of former students falling into irregularity. The case obliged the Minister to consider migrants’ private and family lives in deciding whether to vary or renew their residence permission, and that non-citizens could not be required to leave Ireland to apply for renewal of permission to remain (*Luximon & Balchand v. Minister for Justice*, 2018). In the Netherlands, the EU’s Court of Justice, building on the previous *Zambrano* ruling, ruled in 2017’s *Chavez-Vilchez* that if a denial of residence to an irregular third country national parent could result in a Dutch child having to leave the EU with their irregular status parent, then the parent must be granted a residence permit. Recent research has also highlighted the creative use of jurisprudence in the Italian context to extend humanitarian protection to those who experienced extreme hardship during their migration journey, having transited through Libya (Guidi et al., 2023).

On the other hand, for Spain and again the Netherlands, international and national court judgements have upheld more restrictive interpretations of irregular migrants’ rights. In 2020, two African migrants appealed to the European Court for Human Rights, arguing that their rights against collective expulsion were impinged on by Spanish pushbacks as they were attempting to cross the fence into Spain at Melilla. The rejection of their appeal by the European Court in *N.D. and N.T. v. Spain*, argued that “the lack of an individualized removal procedure had been a consequence of the applicants’ own conduct,” upholding Spanish pushback policies at their border with Morocco. In the Netherlands, civil society appealed to the courts to expand Dutch shelters to a wider range of rejected asylum seekers than already included. Based on a prior 2009 European Committee of Social Rights decision (*Conference of European Churches against the Netherlands*, 2014), these shelters were available only to those with families with minor children and those cooperating in imminent return processes.

In 2015, the Dutch Administrative High Court and the Council of State rejected this appeal, finding the shelters sufficiently compliant.

In the US, challenges to federal policies on irregular migration have vacillated, upholding more liberal policies towards irregular migrants or striking them down, depending on the judge. This has been visible in several policy areas: the decade-long evolution of the DACA regularisation policy in response to court challenges and instruction; the unsuccessful court challenges from sanctuary cities on the suspension of federal funding; and the legal action and appeal processes over the use of Title 42 to suspend entry and asylum applications at the US' Southern border.

3.3.6 Local and provincial governments

Multi-level migration governance can also spark shifts in policy approaches at different levels. Here, cities can be important actors challenging national level policies, particularly (but not only) with regard to inclusionary approaches to irregular migrants (Spencer, 2020).⁷ In the Netherlands, municipalities were partners with civil society in challenging the national approach to access to shelters. The cities of Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht are also implementing partners in the new LVV programme implemented as a result of this advocacy (see promising practice Section 4.3.2).

In Canada and the US, there are a growing number of sanctuary cities announcing their non-cooperation in deportation practices of federal actors and implementation of firewalls to support irregular migrants' access to social and educational services. In the US, this led to a media firestorm and a policy standoff between different administrative tiers on implementation of migration policy: in response, the Trump administration cut federal funding to the cities, leading to judicial challenges on the matter. On the other hand, some cities can also warn against the overburdening of their own services, advocating for more restrictive approaches. In Germany in 2013, some cities hosting a large number of EU citizens published a letter warning that EU citizen entitlements to social benefits overburden cities and municipalities.

In Canada, regularisation programmes are under the remit of the federal government, yet provincial governments have been relevant actors in their design or implementation to different extents. In Toronto, while the 2019 regularisation programme for construction workers emerged primarily from civil society and trade union advocacy, the Toronto province and municipal government have been involved in policy direction and capacity questions. In contrast, in 2020 the Quebec provincial government was in fact the entity that proposed the "guardian angel" COVID regularisation policy to the federal government, which subsequently initiated the temporary public policy and expanded it later on. The two examples demonstrate the range of influence provincial governments may exert on specific policies, in this case regularisations.

⁷ For more information on the policy approaches towards irregular migrants at the local level, see MIRreM Working Paper 7/2024: Local-level laws and policies addressing irregular migrants. Available at: [10.5281/zenodo.10870032](https://zenodo.org/record/10870032).

3.3.7 EU influence

While the European Union itself is not a uniform or unitary actor, but rather a representation of a wide group of actors (including some of those previously mentioned above, such as the ECJ), it was highlighted for a number of countries as influential in (re)orienting their own policies on irregular migration. This was in terms of migration policy harmonisation efforts for EU Member States, adoption of specific policy measures by EU candidate countries as part of the EU *acquis*, and externalisation of EU policy approaches for third countries.

In terms of harmonisation of EU policy approaches, this was highlighted for Austria, France, Greece, Ireland and the Netherlands as relevant to their national policy debates and approaches to irregular migration, but could be considered relevant for all EU Member States.⁸ For France and the Netherlands, the European Agenda on Migration has indirectly influenced their own policies on border control and return, as well as cooperation with third countries. For some countries (France, Greece), the differentiated migration approach of other EU countries and the impact on migrant irregularity on their own territory has intensified debates about shared responsibilities for border control and asylum within the EU. In Ireland, calls for a general regularisation have been met with refusals grounded in the commitment under the 2008 European Pact on Immigration and Asylum to consider regularisation only on a case-by-case basis (Dáil Éireann, 2017). At the same time, Ireland generally opts out of EU policy measures related to borders, migration, visa and asylum, in order to maintain its participation in the Common Travel Area with the UK. This includes key EU policies such as the Return Directive and the Employer Sanctions Directive, as well as the inapplicability of the EU Charter of Fundamental Rights and EU-wide entry bans for its own deportations.

For EU candidate countries (past and present), policy evolution can be attributed to their adoption of the EU *acquis* (Bosnia and Herzegovina, Serbia, Türkiye). For Serbia, in 2009 its major policy shifts has been attributed to EU accession requirements, after which it focused on asylum policy development and border management policies. For Türkiye, most of the policy development on migration from 2001-2011 focused on adoption of the EU *acquis* in the hopes of future membership, and has been described as a “Europeanisation” process (Icduygu & Aksel, 2012).

Finally, the externalisation of EU migration policy has impacted policy approaches in third countries and countries at the EU’s external borders (Greece, Italy, Morocco, Serbia, Spain, Tunisia, Türkiye). For EU countries at the EU’s external borders, the pressure placed on them as “guardians” of the European border has framed their irregular migration policy approaches at the border (e.g., pushbacks) and also in negotiations with third countries (Greece, Italy, Spain). Bilateral agreements or more informal cooperation with neighbouring countries have been framed in the context of border control (reducing irregular entries). The

⁸ The specific EU Directives or policies mentioned included the Temporary Protection Directive, Reception Directive, Return Directive, Directive on Reception of Asylum seekers, EU free movement policies (particularly vis-à-vis new enlargement countries), the EU’s refugee relocation scheme and the 2015 European Agenda on Migration. For an analysis of EU policy frameworks, see MIRreM Working Paper 08/2024: EU Policy Framework on irregular migrants. Available at: [10.5281/zenodo.10875942](https://doi.org/10.5281/zenodo.10875942)

fraught relationship between Greece and Türkiye in particular has played an outsized role in Greek debates on and policy responses to irregular migration flows. For Greece, the 2016 EU-Türkiye agreement is considered an intervention required due to the breakdown in talks between the two countries, which culminated in the 2015 refugee protection crisis. EU influence has also contributed to regularisation initiatives abroad: the two regularisation campaigns implemented in Morocco in 2013 and 2017 have been partly attributed to EU and civil society pressure, among other geopolitical aspirations (Cherti & Collyer, 2015).

On the other side of the border, third countries' policy approaches have also shifted in response to EU pressure to reduce irregular arrivals, as part of the externalisation of EU migration policies. For Morocco, Tunisia and Türkiye, cooperation is particularly advanced, with several established frameworks with the EU and EU Member States explicitly addressing mobility and migration aspects. In Tunisia, this includes cooperation with Frontex to enhance its border management approaches, a readmission agreement with the EU, and massive funding for capacity building (particularly in the field of border management) and development (aiming to address the root causes of migration). It has also led to the implementation of increased border security measures on its own external borders, particularly along its coast and with Libya. These measures have coincided with more intensive discriminatory and xenophobic rhetoric employed by the government, and have exacerbated the challenges faced by irregular migrants in the country. For Türkiye, it has positioned itself explicitly as a strategic partner to the EU in its fight against irregular migration. Since 2016 it has emphasised its role as a major migrant and refugee host country and has sought to incorporate these dynamics into its bilateral relations with the EU. In this role, it has reoriented its own policy approaches towards irregular migrants in the country, focusing not only on its western borders with the EU, but increasingly towards its Eastern and Southeastern neighbours.

3.4 Current priorities

Given the policy evolution process since 2010, discussed in this chapter, it is important to examine also the current status of policy priorities in addressing irregular migration. For the 20 countries under study, country researchers identified the top three to five current policy priorities for their respective countries.⁹ This reflects countries' current focus, in terms of both current and future planned policy measures related to irregular migration. This section assesses and analysis those current priorities.

⁹ These are outlined in respective Country Briefs, available on the MIRREM website: <https://irregularmigration.eu/>.

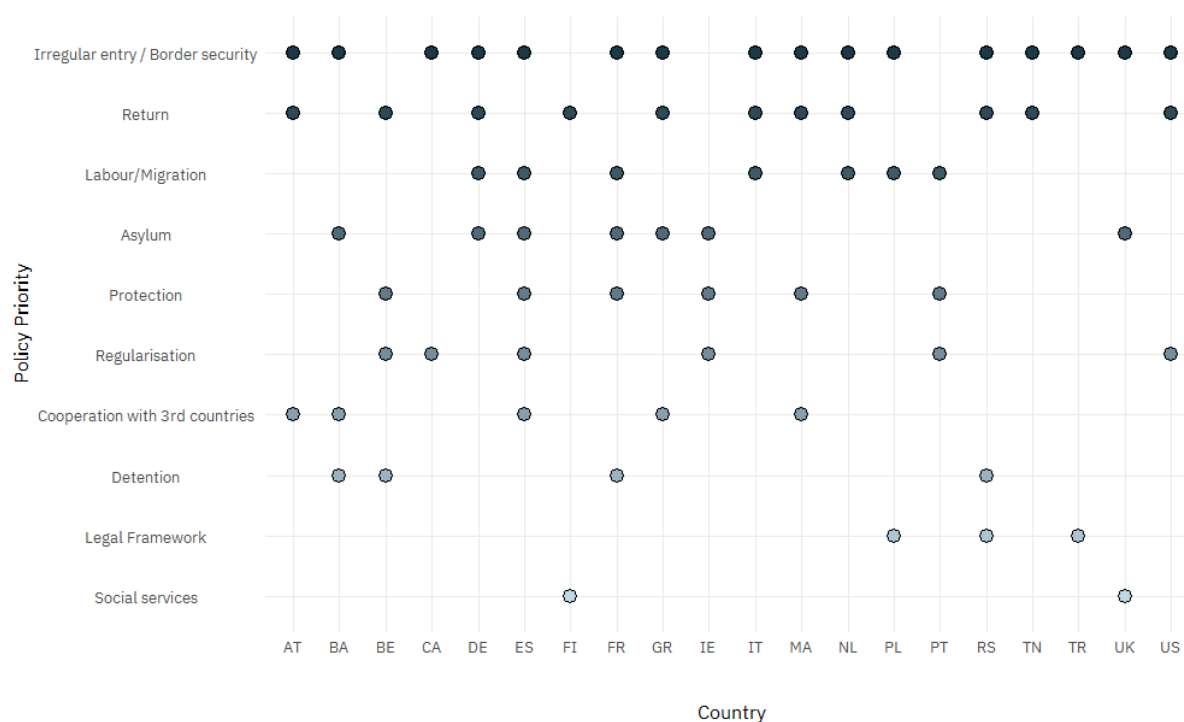


Figure 3 Current policy priorities across the countries under study

Across the 20 countries under study, addressing irregular entries and border security is the overwhelmingly top priority, relevant for nearly all countries, with few exceptions (Belgium, Finland, Ireland, Portugal). This includes for EU countries more centrally located, like Austria, who are preoccupied with transit movements via the Western Balkans and Eastern Mediterranean route, or France, whose focus is rather on addressing secondary movements within the EU by ensuring the application of the Dublin procedure. In most of these countries, border control and prevention of irregular entries is framed within a broader national security discourse (Austria, Bosnia and Herzegovina, Canada, France, Germany, Greece, Italy, Morocco, Poland, Serbia, Tunisia, Türkiye, US).

“That [decisions on migration policy were taken at the highest political level] connected the issue to the national security policy and measures, so a number of policies were made that had to do with border security... We saw afterwards that all this changed because other third countries moved in line with Türkiye – e.g., Belarus, which acts as a provocateur of Russia in Poland and Lithuania. And this created new strategic partnerships within the EU. The classic partnership between the southern EU member states... we then saw new partnerships being created. The Baltic states should ally with the southern countries with greater emphasis on border security.” Greek expert interview

In some countries the reasoning for prioritising strict border control and irregular migration policies is explicitly framed as a risk of terrorism and crime, including combatting organised criminal networks of smugglers and traffickers (Belgium, France, Germany, Italy, Poland, Türkiye, US). Given these various security risks, a few countries currently prioritise detention policies and practices (Belgium, Bosnia and Herzegovina, France, Serbia), although this has not emerged as a common current policy priority across the countries under study. Often this

overlaps also with broader reception and detention needs in a constrained environment, where countries struggle to provide accommodation to rejected asylum seekers during the return process, on the one hand, as well as to newly arrived or particularly vulnerable asylum seekers in temporary facilities.

Closely related as a policy approach aiming to prevent irregular entry, cooperation with third countries is a particular priority for countries at the EU's external borders, EU Member State and non-EU alike (Bosnia and Herzegovina, Greece, Morocco, Spain). Here, readmission and other bilateral agreements facilitating return are important. In half of all countries under study return is a key priority, both voluntary and forced (Austria, Belgium, Finland, Germany, Greece, Italy, Morocco, Netherlands, Serbia, Tunisia, US).

In contrast, promotion of labour migration as a means to reduce migrant irregularity is also an important current priority area, particularly for Southern EU Member States under study with a sizeable irregular migrant labour force and/or labour market needs (France, Italy, Portugal, Spain), but also others interested in more highly skilled migration (France, Netherlands) or facing their own significant labour needs (Germany, Netherlands, Poland). Only Portugal and Spain prioritise labour migration policies together with regularisation approaches, whereas other countries tend to focus on one rather than the other.

For those countries who currently prioritise pursuing regularisation approaches (Belgium, Canada, Ireland, Portugal, Spain, US), there is a strong overlap with those also prioritising addressing human rights abuses and the needs of vulnerable groups (Belgium, France, Ireland, Morocco, Portugal, Spain). This includes measures addressing trafficking in human beings (Belgium, France, Portugal) and labour exploitation (Portugal, Spain). For countries prioritising asylum policies, this encompasses a wide range of approaches: from those focusing on capacity building (Bosnia and Herzegovina), to those aiming to improve protection standards and capacities (Germany, Ireland), to those who consider the asylum process (and restrictions in accessing it) in conjunction with irregular migration management (France, Greece, Spain, UK).

The least common policy priority across the countries under study was regarding migrants' access to social services, for only two countries. In early 2023, Finland opened up irregular migrants' access to essential healthcare (beyond emergency) services and have implemented firewalls in a limited way in the healthcare and education sectors. The newly elected conservative government, however, aims to revert to the previous policy, allowing access only to emergency services (except for children and pregnant women). The UK, through its "hostile environment" and "compliant environment" policies, aims to prevent irregular migrants from accessing any public services, as well as making it difficult for them to use banking services, rent housing and work. In Germany, although the 2021 Coalition agreement included declarations to improve access to health care for irregular migrants, due to unexpected political urgencies related to the Russian aggression on Ukraine, the issue was not pursued.

Finally, for three countries, priorities also reflect institutional needs, where the current framework has been or is insufficient for the management of irregular migration. For Poland, the lack of an overall migration strategy is a conscious choice to allow for flexibility of approach. For Serbia and Türkiye, the lack of existing frameworks has been the impetus for policy changes in the respective countries. In Türkiye's case, the institutionalisation of

migration management systems and responsibilities, in line with the governing structures, has been a major and consistent area of development for the past decade.

In some countries, their priorities towards irregular migrants overall are currently aligned towards either more restrictive and enforcement-oriented priorities (Austria, Finland, Serbia, Tunisia, Türkiye, UK), or more protective and liberal policies (Ireland, Portugal). However, current priorities across the countries under study are usually mixed and not only aligned along only one pole but represent a balance between different approaches across this spectrum. For example, balancing responsibilities and priorities to prevent irregular entries at the border, on the one hand, with labour market needs that depend on irregular migrant labour, on the other, as reflected in the mixed policy priorities of Canada, Poland and Spain, for example. At the same time, implicit policies of toleration of irregular migrants also demonstrate or reflect policy priorities, even where not inscribed. In this sense, irregular migration policy is not homogenous, but rather can be seen, as one interviewee formulated it:

“a stew with many ingredients and many cooks” Spanish trade union representative, stakeholder workshop

Indeed, this mixed approach can be reflective of the role of the various stakeholders and other entities involved in advocating for policies within the respective countries under study, as has been described throughout this chapter.

4. PATHWAYS INTO AND OUT OF IRREGULARITY

4.1 Introduction

For our analysis of pathways into and out of irregularity as related to policy frameworks, we would like to briefly highlight the conceptual framework upon which this analysis draws, established under the MIrreM project and drawing on the previous Clandestino project (2007-2009) (Vogel & Jandl, 2008). With regard to our understanding of irregularity, the MIrreM project understands it as not only strictly non-nationals without residence rights, but more broadly including related classes as well. The classification system established by the MIrreM project distinguishes three types of situations related to irregular stay (Kraler & Ahrens, 2023):

- migrants without residence rights,
- migrants with a provisional residence status or reasonable claim to provisional status, and
- mobile EU citizens with a revoked right to stay.

Those in provisional status are those “whose status may be subject to review and who are in principle not entitled to a pathway to regular long-term residence and eventually, citizenship” (Kraler & Ahrens, 2023), such as those whose removal orders have been suspended, victims of trafficking with a temporary permit and asylum seekers during the asylum process.

The same conceptual framework highlights the various mechanisms by which migrants may fall into or out of irregularity, distinguishing between geographic in/outflows, demographic in/outflows and status-related in-outflows (See Figure 4). Irregular migrants’ “visibility”, as noted in the figure, refers to whether migrants are registered by immigration authorities (or not). In this approach, even if authorities are aware of an undocumented population, their “visibility” depends on registration, not “knowledge”, which can be ambiguous and not necessarily documented interaction (FRA - European Union Agency for Fundamental Rights, 2011; Kraler & Ahrens, 2023).

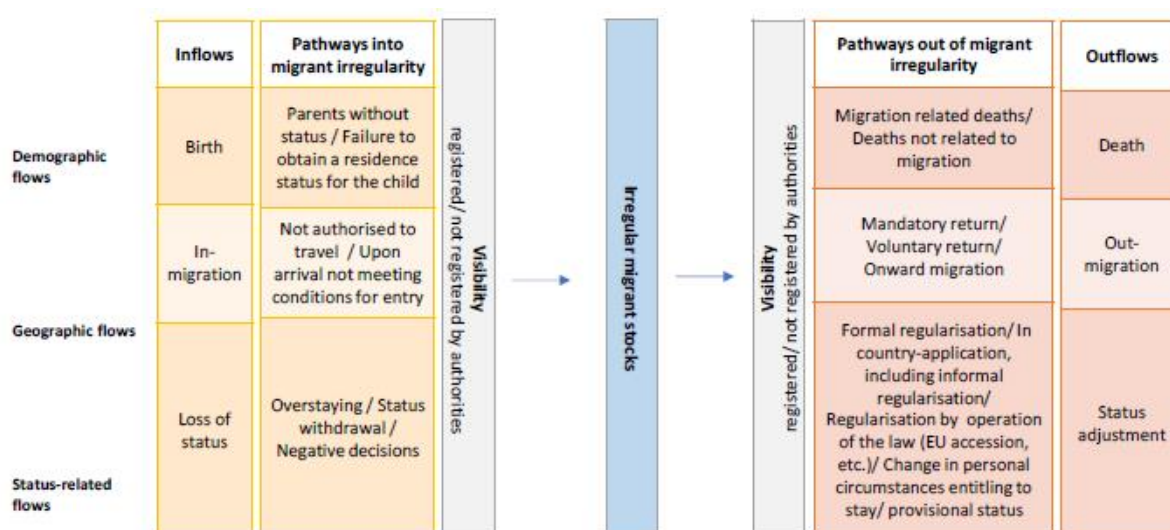


Figure 4: Visibility and mechanisms of migrant irregularity (Kraler & Ahrens, 2023)

This chapter of the report will discuss the ways in which policies address or interact with these pathways, across the 20 countries under study, focusing on the key policy-related mechanisms by which migrants have fallen into and out of irregularity. Here, we will highlight the common policy approaches with regard to pathways into and out of irregularity, according to each class of inflow/outflow, as well as discuss examples that can typify or are unique to the case. Pathways are categorised according to demographic, geographic or status-related inflows and outflows, and each section will briefly present how this has been defined under the taxonomy, followed by a discussion of the findings related to it. This includes both how the pathway may be produced by policy mechanisms, as well as how it has been addressed. Under the section on pathways out of irregularity, promising practices of policy measures as identified by the researchers are highlighted.

4.2 Pathways into irregularity

4.2.1 Demographic inflows

In the MIrreM conceptualisation of demographic inflows, birth is the primary inflow into irregularity, the mechanisms of which are transmission of an irregular status from parent to child, and/or failure to obtain a residence status for a child although the parents legally reside in the country (Kraler & Ahrens, 2023). In most cases, the situation as relevant to policy is described typically as a child born to parents with irregular status, and as such, ineligible for regular status. As noted by an expert in Italy:

“As long as we are talking about individual persons is one thing. However, when these individuals are also fathers of families, it is an even bigger problem because the

children follow the irregular condition. It is the whole family unit that goes back into illegality [sic].” Italian expert interview

In such cases, the child therefore acquires the same status as the parents, unless policies explicitly address this specific pathway into irregularity.

Across the countries under study, policies had a limited focus on demographic inflows into irregularity. Related to this, some countries noted that the lack of data on births (and deaths) among the irregular migrant population was a key hindrance in this regard (Greece, Netherlands, Poland). Nonetheless, this pathway into irregularity was relevant as a policy focus or byproduct of policies for 13 countries: Austria, Bosnia and Herzegovina, Ireland, Italy, Finland, France, Germany, Greece, the Netherlands, Portugal, Tunisia, Türkiye and the United Kingdom.

For Ireland, this pathway is a more recent development related to legislative change. The country previously provided universal citizenship based on *jus soli*, however in 2005 introduced a constitutional amendment by referendum prohibiting acquisition of citizenship to children born in Ireland to parents with irregular status (without regular status for at least three years). As a relatively new demographic change to this population for the country, the plight of children born in Ireland in an irregular situation has become a particular concern for civil society in recent years, with political advocacy calling for facilitation of their access to citizenship and a halt to their deportation (Desmond, 2018). Indeed, the Labour Party introduced a bill in 2018¹⁰ to naturalise minors born in Ireland, demonstrating the issue’s continued policy relevance in the country.

In several countries, policies are in place or were enacted to ensure *against* this demographic inflow into irregularity, and/or to ensure family unity despite it. In France and Italy, parents of children born in the country have options to regularise their status, although for only a limited duration. In Italy, the initial six-month permit provided following the birth of a child can be used to regularise longer-term stay through access to subsequent family permits and “assistance to a minor” permits. In Germany, the toleration status (*Duldung*, discussed later on) may be transmitted also to the individual’s children. These are discussed further in Sections 4.3.2 and 4.3.3 as pathways out of irregularity related to access to legal status in cases of non-return and changes in circumstance.

In Portugal, the population of second and third generation children born in Portugal without citizenship or status was considered significant so much so that legislation was passed in 2006 providing legal status to all those born in Portugal and to irregular parents of minor-age children, as well as facilitated pathways to citizenship for the same populations. Moreover, in 2020, legislation was enacted extending access to citizenship for children born in Portugal to parents residing in the country for at least a year (regardless of status), on the basis of which the parents can obtain long-term residence (See promising practice box in Section 4.3.3 on Portuguese access to citizenship). Similarly, but with lengthier requirements, in the United Kingdom, a child born in the country with irregular status is eligible to apply for citizenship if she has lived continuously in the country for the first 10 years of her life. In the cases of Canada and the United States, its citizenship policies based

¹⁰ The bill introduced in 2018 lapsed in 2020 due to the dissolution of the Irish parliament, but was later reintroduced in 2021.

on *jus soli* provide citizenship for all children born in the country, regardless of parents' status, limiting the possibility of this demographic inflow into irregularity. In these cases, the existing demographic flow into irregularity has been addressed (to different extents) by specific policies providing pathways out of irregularity for children born in the country and their parents. Other routes for those who have lost status as children or entered irregularly and have access to certain pathways out of irregularity are discussed later on in this chapter, as status-related pathways out of irregularity.

4.2.2 Geographic inflows

The geographic inflow as defined by the M_{Irre}M taxonomy is that of irregular entry (Kraler & Ahrens, 2023). Unauthorised, irregular or clandestine crossing of a border is one of the major pathways into irregularity for the irregular migrant population for all countries under study. The primary way this has been addressed policy-wise is in the implementation of more stringent or expansive border management and border security policies, usually focusing on preventing irregular entry between border crossing points.

Border walls and fencing practices are the most visible practices among these measures, including:

- Greece's border fence at the border with Türkiye was initiated in 2012 following increased irregular arrivals in 2010;
- Finland's temporary border closures with Russia, extended several times between late 2023 and 2024 (at the time of writing currently in force until mid-April 2024), amid claims of instrumentalisation of irregular migrant arrivals (of Syrian, Somali nationals, among others) from Russia;
- Poland's border wall with Belarus began construction following increased irregular arrivals via that border route in 2021;
- Türkiye's border wall with Syria began in 2015 in response to domestic terror attacks and eventually expanded across the rest of its Eastern and Southeastern borders;
- The construction of the US-Mexico border wall was heralded and re-launched under President Trump's tenure.

France's temporary reintroduction of border controls with Italy in 2011 was also a highly visible response within the Schengen area aiming to prevent the arrival of primarily North African irregular migrants during the Arab Spring. The controversial "Title 42", a section of an obscure public health law, was used in the US from March 2020 to November 2023 to summarily deny entry and access to the asylum process, as well as expel to Mexico, those arriving at the US-Mexico land border irregularly. At the same time, research has demonstrated that more restrictive border control policies have not necessarily deterred irregular migration but rather displaced it, often to more dangerous routes where migrants are more exposed and vulnerable (Benveniste et al., 2020; Godenau & López-Sala, 2016). Exemplar of this, during the period Title 42 was implemented, recidivism of clandestine entries at the US-Mexico border reportedly soared, while irregular entries have reduced by 70% since the end of implementation of the policy (Chishti & Bush-Joseph, 2023).

Counter-smuggling policies and operations are also central to border security measures, for all countries under study. These operations are often framed in life-saving terms: Italy's 2023 Cutro Law, named after a migration tragedy at sea "to give both a symbolic and concrete signal" (Government of Italy, 2023), implemented harsher penalties for smugglers transporting migrants. Such policies are relevant not only at the EU's external borders but also within the Schengen area, addressing migrant smuggling networks facilitating secondary movements. Austria's border with Hungary has been a relevant area for the country's detection of migrant smuggling operations along the Western Balkan route towards the country.

Deployment of surveillance technology at the border also fits within such fencing practices, aiming to identify clandestine entries at and between border crossing points through CO² probes, heartbeat detectors, "e-border technology" and other forms of surveillance.¹¹ Spain's SIVE system, integrating radar, video and infrared cameras was one of the pioneer EU border surveillance systems deployed along the maritime border in the early 2000s.

In terms of operations at the border, "pushback" practices are another operational approach to preventing irregular entries, which have triggered concerns regarding collective expulsion and infringement of the right to non-refoulement. "Pushbacks" as an operational reality at the border, if not explicit policy, have been relevant practices on the borders of: Austria, Greece, Poland, Serbia, Spain, Türkiye, US. Spain's pushbacks of two African men attempting to cross the fence in Melilla was subject to a legal challenge on the basis of prohibition of collective expulsions in 2020, as they argued they were returned without an identification procedure and access to a lawyer (Carrera, 2020). However, the practice was upheld by the European Court of Human Rights on the grounds that "the lack of an individualized removal procedure had been a consequence of the applicants' own conduct" (European Court of Human Rights, 2020).

The application of the "safe third country" principle is also considered a way prevent (or discourage) irregular entry (Austria, Canada, Germany, Greece, Netherlands, Serbia, Türkiye, UK, US). In such cases, if in the course of the admissibility check in the asylum procedure, an applicant is found to come from a safe third country, the asylum application then is rejected. The person can also in arrangements taken under this principle be returned to that third country. For the US and Canada agreement in this regard, a recent 2023 policy change expanded its applicability not only to those identified at official border crossing points but the entire extent of the land border. The policy change was enacted following observed increases in irregular entry between border crossing points in 2017, aiming to plug this perceived "loophole". Poland's 2021 legal amendments in response to the irregular arrivals from Belarus have implemented a similar approach: migrants detected irregularly crossing the Polish border may not have their asylum applications processed (at the discretion of the Head of the Office for Foreigners), unless they arrived directly from the territory on which his/her life was threatened. These approaches have faced legal and policy challenges, however. In the case of Türkiye, returns of Bangladeshi irregular migrants to Iran under this framework were suspended on the basis of a lack of proper assessment of risk factors in Iran (AIDA, 2022b). Recent research has examined the use of safe third country concepts,

¹¹ The use of technology at the border is known to be widespread, but was specifically noted for Bosnia and Herzegovina, France, Germany, Greece, Serbia, Spain, Türkiye, UK.

including the EU-Türkiye Statement, and concerns that its application may lead to breaches of human rights and EU law in individual cases (Kienast et al., 2023).

Policy measures implemented further afield have also been framed as addressing potential irregular entries, such as return policies (See Section 4.3.2), carrier sanctions and advanced passenger information (Germany, Spain, UK), information campaigns (Austria, Germany), detention policies (France, Germany, Morocco, UK) and extraterritorial asylum processing approaches (Italy, Serbia, UK). Austria's information campaigns in countries of origin disseminate information about the (dangerous) practices of smugglers, dangers related to irregular migration and the restrictive nature of the law for irregular migrants in Austria (Ministry of Interior, 2022; Tschiderer, 2022). In 2022, such campaigns supported by Austria were implemented in Afghanistan, Algeria, Bosnia and Herzegovina, Egypt, Iraq, Kosovo, Lebanon, Mauritania, Montenegro, Nigeria, North Macedonia, Pakistan and Serbia. German campaigns such as "Rumours about Germany"¹² and "Let's Talk Migration" aim to correct false impressions or expectations among potential migrants to the country.

In terms of extraterritorial processing, the UK's 2022 "Migration and Economic Development Partnership" with the government of Rwanda has attempted to implement a new approach for European countries in terms of addressing irregular arrivals. The policy aims to remove asylum seekers to Rwanda during the asylum determination process, and explicitly frames this approach as a way to reduce the irregular migration flows entering the country via small boats on its southern coast (UKVI & Braverman, 2023):

"People must know that if they come here illegally it will result in their detention and swift removal. Once this happens – and they know it will happen – they will not come, and the boats will stop... We will detain those who come here illegally and then remove them in weeks, either to their own country if it is safe to do so, or to a safe third country like Rwanda. And once you are removed, you will be banned—as you are in America and Australia—from ever re-entering our country." (Sunak, 2023).

Civil society organisations have been outspoken in their criticism of the policy, questioning the legality of the proposal. In November 2023, the Supreme Court ruled that the policy was unlawful, however shortly afterwards, the UK Government published the Safety of Rwanda (Asylum and Immigration Bill), which is currently proceeding through Parliament (Walsh, 2024).

"The UK plan also proposes keeping an option to develop offshore asylum processing. Such policies often mean forced transfers to other countries with inadequate asylum systems, dehumanising and harming claimants. The plan also proposes changing the "well-founded fear of persecution" test for refugee status, which is of serious concern to UNHCR as it departs from international standards." (UNHCR, 2021).

Such policies implemented further afield have been critically assessed as externalising migration controls to third countries, with countries "stretching" their borders by multiplying the institutions involved in border management, including international organisations, NGOs and other actors (Casas-Cortés et al., 2015; Lavenex, 2006) also Section 3.3.7).

¹² <https://rumoursaboutgermany.info/>

4.2.3 Status-related inflows

In the MIRreM conceptualisation of status-related inflows, three categories are outlined: first, overstaying a visa or residence permit's duration (including the allowed duration for visa-free travellers); second, withdrawal of residence status as conditions are no longer met; and third, negative decision of a "provisional status" (e.g. final negative decision on asylum status) (Kraler & Ahrens, 2023).

Overstaying

Overstaying the terms of work, student or tourist visas (including visa free regimes) was relevant for all countries under study as a main pathway into irregularity, except for Serbia. While overstaying could be intentional, in some cases it may not: exorbitant visa fees and difficulties navigating the bureaucratic mazes of renewal processes could also be reasons for overstaying (further discussed later on with regard to "befallen irregularity"). In some countries, it is considered the main channel into irregularity, even if not often an important focus of policy discourse.

"Although someone knows the issue of the Balkan route, public discourse is focused on the arrivals by the sea. Some years ago, somebody talked about overstayers as well. At that time, that was not a word known by experts only. It was good, but then it disappeared again from the public debate." Italian civil society organisation interview

Overstaying tourist visas or the terms of visa free agreements (usually 90 days out of 180 days) has been a particularly relevant pathway into irregularity for some countries (Belgium, France, Germany, Greece, Ireland, Italy, Poland, Portugal, Spain, Tunisia). In Spain, the visa free agreements with Ecuador, Colombia and Bolivia until 2003, 2001 and 2007 (respectively) reportedly served as a "pull effect" for migrants and have contributed to larger irregular migrant communities of these nationalities (Finotelli & Arango, 2011). Similar was noted for Italy and Poland, linking the makeup of their irregular migrant populations with visa free arrangements with Latin American countries (for the former) and Georgia and Ukraine (for the latter). In France, those with a short-term medical visa are another group that may overstay due to extended medical treatment or other reasons. This group may have access to regularisation processes in the country on medical grounds (discussed later).

In cases of overstay, a fine would be applied and the person issued a return decision. In Tunisia, one interviewee linked this to onward movements towards the EU:

"Unclear and non-transparent administrative procedures, long waiting times, and the fine for visa-overstay and undocumented people is too high for this latter to afford paying; hence, many cases are pushed to seek crossing the Mediterranean. Some would say 'the money I would pay for a fine is better used for paying smugglers to help me cross to you Europe.'" Tunisian civil society organisation interview

This applies not only to third country nationals: for EU citizens within the EU, while they do enjoy the benefit of free movement, they are also required to register with the authorities when they stay in another EU country for longer than 90 days. When they do not, they would also be considered irregular overstayers.

No longer meeting or violating residence conditions

Migrants holding residence permits may lose access to subsequent permits for a wide range of reasons, for example due to unemployment, lack of contributions to the social system, loss of health insurance, missed renewal deadlines, divorce or loss of a spouse, changes in legislation limiting access to the permit, errors made by the applicant or others during the application process, or conviction of criminal activities or other documented violations of the residence conditions.

“Immigrants may be here on a specific permission like a student visa that is time limited with no prospect of renewal, and provides no route to another permission like a work permit. Or a person is on a work permit that expires and the holder cannot find a new job. Or an individual is in a relationship that breaks down.” Irish civil society interview

In some cases, countries implement policies to counteract such pathways into irregularity where it happens by accident. In Canada, for example, a temporary resident whose permit has expired can apply within 90 days of the loss of status for the status to be restored.

Policy changes can be an important mechanism by which migrants’ status in the country changes. The UK’s Windrush scandal demonstrates the way irregularity can be produced by increasingly restrictive residence policies over time. In this case, restrictive policies and legislation introduced as of the 1960s progressively limited the eligibility of various groups to live in the UK, producing the Windrush generation’s irregularity (Williams, 2020). Even though the UK’s Immigration Act of 1971 gave the Windrush generation the right to live in the country, they did not have documentation of that status (in part due to the loss of these landing slips by the UK Home Office), leading to a situation in which the government, in a process of “institutional ignorance and thoughtlessness” (Williams, 2020, p. 7) considered them irregular. Similarly, policy changes in Ireland have produced migrant irregularity in a number of ways. Aside from birth-related irregularity (See Section 4.2.1), a 2011 policy limited third country nationals’ access to study and work permits to a maximum of seven years, where they had previously been granted de facto indefinitely. This irregularised many former third country national students who had come to Ireland prior to 2011. In response, the government issued a regularisation programme.

In addition, for some EU countries under study and the UK, Brexit was highlighted as potentially impacting on migrant irregularity (France, Poland, Portugal, Spain, UK). While EU citizens in the UK and British citizens in the EU had access to a process to transfer their residence permit into a different permission adjudicated under the Withdrawal Agreement, those who were unable to access legal advice to complete their application or who did not have the correct paperwork to submit would have fallen into irregularity. It is yet unknown how many people were impacted as a result of this policy change (Sumption & Cuibus, 2023).

“Befallen irregularity” is also an important policy-related issue in this regard, especially in recent years. The concept encompasses situations in which migrants fall into irregularity due to impossibly high bureaucratic requirements around stay or work, as well as situations of slow-moving bureaucracy and understaffing of residence and labour permit public services

(González Enríquez, 2014; Triandafyllidou & Bartolini, 2020a; Vickstrom, 2019). This was exemplified in an expert interview in Türkiye:

“One of my students, a French student who came with Erasmus, was deported. He was planning to stay for two semesters, but he did not renew his permit for the second semester due to the confusion during the [2023] earthquake because it was unclear whether universities would provide distance education. He was deported after an ID check on the street. Similarly, a Moroccan student of mine was deported a few years ago. At the Presidency of Migration Management, sometimes the procedures for document renewal take longer than expected, leading to problems.” Turkish expert interview

In the UK, the cost of applying for Indefinite Leave to Remain tripled between 2010 and 2020, making it more difficult for people to regularise their status (Walsh, 2020). “Befallen irregularity” is also a highly relevant consideration for countries affected by COVID-related backlogs in the processing of residence permits and visas (Greece, Ireland, Italy, Poland, Portugal, Spain, Türkiye, US). In Portugal, the country reportedly has a backlog of 300,000 requests for regularisation to be processed, due to COVID-related closure of public services, with a special plan being developed currently to deal with this backlog (Portuguese civil society interview). For Greece and the US, substantial asylum and immigration backlogs have been an issue for years, compounded since 2020. In the US’s case, institutional backlog has been driven by lack of digitalisation, an increased number of applicants, lack of human resources and funding, all compounded by the pandemic.

“Because of processing delays, noncitizens who rely on regular renewals of their work authorization—such as holders of Deferred Action for Childhood Arrivals (DACA), the spouses of certain visa holders, and asylum seekers—sometimes could not lawfully work for long periods of time, affecting not only their livelihoods but also their employers’ operations” (Gelatt & Chishti, 2022, p. 7).

In March 2022, the US State Department was still processing visa applications related to family sponsorship dating to September 1997, and those related to employment from January 2012. In November 2021, the State Department’s backlog numbered more than 4.1 million applications (Esterline & Batalova, 2022, p. 30). Such backlogs have clear consequences on migrants’ legal status: in the US, new applicants to the DACA programme, who had a narrow window of time to apply due to court rulings (December 2020-July 2021), mostly lost their chance to access those benefits.

Some countries implemented automatic and/or online renewals of residency during the pandemic that were important in preventing befallen irregularity during this time (Ireland, Poland, Spain). In Poland, this was highlighted as a potential issue related to the end of the COVID-related state of emergency:

“It may be the case that as a consequence of termination of [automatic] validity [of residence permits during the COVID-19 state of emergency,] the scale of irregular migration will abruptly and quite dynamically increase” Polish government representative interview

In Ireland, a specific regularisation programme was implemented in 2022, to deal with the backlog of asylum applications (See Section 4.3.3). Although befallen irregularity was

previously a consideration in the context of regularisation debates in Spain – in terms of arguments that migrants would not be able to renew the residence permit obtained after a regularisation – it seems to represent only a marginal category in the country by current assessments.

Aside from situations where migrants no longer meet the terms of their residence permits, there are also those cases in which migrants may violate (purposely or not) the terms of their residence. This encompasses engaging in informal work, as well as being charged with a criminal offence (although examples for this latter case did not come up prominently in the countries under study). Informal work and its relationship with migrant irregularity is indeed an important consideration (see for a more detailed discussion Salihoglu & Vargas-Silva, 2024).

Engaging in the informal economy applies both to migrants who hold residence permits and work in contravention of them (Germany, Poland, Türkiye), as well as to those migrants with irregular status working in the informal economy (for example care work, seasonal agricultural work, construction, etc). This was highlighted as an important irregular migrant group in Austria, Germany, Italy, Portugal, Serbia, Spain, UK. In addition, recruitment programmes for the temporary employment of third country nationals (seasonal work, contract labour) offer opportunities to organise employment that often violate statutory standards of working conditions and minimum wage. These groups may therefore be particularly vulnerable to exploitation:

“It's easy for people to work in urban areas where there is work. It's more difficult in rural areas, but actually some of the labour exploitation of undocumented migrants happens in rural areas in villages where you might find there's a house full of people who were working under the radar but actually have been trafficked. Who have their passports taken. Who are working in supermarket packing houses and so on.” UK expert interview

This latter group has been an important target of some regularisation policies (See Section 4.3.3).

Those who work in violation of their residence permits has emerged as an important status-related inflow especially in the Polish policy context. Poland's simplified employment procedure has on the one hand contributed to initiating mass labour migration (straight) into formal employment, initially on a seasonal basis. However, on the other hand, it has also created a path for visa abuse and semi-irregularity, albeit on a much smaller scale than the formal employment of migrants. In this procedure applicable for a number of labour market sectors related to seasonal work and available to nationals of Armenia, Belarus, Georgia, Moldova, Russia (until 2022) and Ukraine, a Polish employer submits a declaration on entrusting work to a foreigner, together with other administrative documents and small fee, at a local work office. Then a foreigner can apply for a Polish visa on the basis of that declaration. This mechanism has been abused to facilitate entry to Poland and to the Schengen area more broadly for purposes or work other than that in the declaration linked to the visa. Some companies have also reportedly created fictitious employment declarations; such companies have been run by Polish nationals in cooperation with Ukrainian nationals or companies, by Ukrainian companies with activities in Poland, and more recently other nationals, such as Georgian (Bielec, 2023; Górny et al., 2018). Low

penalties for fictitious employment declarations have arguably contributed to the abuse of the system. Moreover, a 2018 Polish court decision established that employment in violation of this procedure should not be considered a grave violation (in contrast to absence of a work permit or employment declaration entirely) and therefore cannot be used as a basis for a return decision. The simplified employment procedure's effect on irregularity in Poland has therefore been ambiguous.

A similar situation has been observed in Türkiye due to the strict rules regarding stay and work for Syrians under Temporary Protection. In this case, Syrians under Temporary Protection are eligible to apply for a work permit after six months of status recognition. However, employers reportedly prefer to not register this work, leading to irregular work of Syrians in violation of the terms of their stay. Moreover, Turkish law stipulates the specific location or provinces in which Syrians under Temporary Protection must reside, as well as specific sectors in which foreigners are restricted from working. Therefore, if a person leaves the designated area and works or resides elsewhere, they also would be considered violating the terms of their stay and subject to removal processes.

Several studies note that EU citizens make up a significant share of informal work across the EU (Kraler & Ahrens, 2023; Lafleur & Mescoli, 2018; Triandafyllidou, 2010). While they may not be subject to expulsion in such cases, and (irregular) migration policy frameworks do not explicitly address EU citizens, they should also be highlighted as experiencing irregularity in this regard. EU citizens may also be considered irregular and issued orders to leave if they are unable to support themselves financially, particularly where they request social benefits (Austria, Finland, Germany).

Such cases described above speak to the different forms of “semi-legality” and “quasi-irregularity” (Kraler & Ahrens, 2023; Kubal, 2013; Triandafyllidou & Bartolini, 2020b). At the same time, migrants may alternate periods of regular/irregular work and stay. This demonstrates the patchwork way in which legal and policy frameworks can apply at the individual migrant level. While all of the above policies and practices discussed under this section highlight the various ways migrants may fall into irregularity, the same migrant may have access to policy frameworks allowing them a pathway out of irregularity (Section 4.3), albeit perhaps for only a portion of their stay.

Negative decision on provisional status

An important pathway into irregularity for all countries under study are asylum seekers who had provisional status during the asylum determination procedure, yet lost it with a final negative decision. Rejected asylum seekers are important as both a byproduct of (asylum) policy implementation, as well as a target for policies aiming at reducing the irregular migrant population (e.g., return, regularisation, etc – see Section 4.3).

In this regard, protection-related policies, especially policy changes restricting asylum and other forms of protection, have important impacts on migrant irregularity in respective countries. In 2015 and 2016, Finland implemented restrictions on international protection provisions: it shortened the appeal introduction period for asylum cases, as well as abolished one category of international protection (humanitarian grounds). In the latter case in

particular, all those who were previously granted residence permits on the basis of humanitarian protection lost their permit after this amendment.

"At the Finnish level, we have made such changes that have contributed to the birth of paperlessness around 2015 and a little after that. In other words, at that time such guidelines were made in the legislation, the possibility of international protection, or as we say protection-based residence permits, was narrowed down, humanitarian protection was removed as a category. And... it has led to a situation where some people who would have previously received perhaps a humanitarian protection permit, there is a certain fear of returning to their homeland." Finnish civil society organisation interview

In Türkiye, the government¹³ took over processing of requests for asylum from UNHCR as of 2018. As of this time, asylum applications sharply decreased (by 70%), simultaneously with a sharp increase in the rejection rate for Afghan asylum seekers, coinciding with a growing number of Afghans among the irregular migrant population in the country (Almasri, 2023, p. 43). This demonstrates the importance that changes in recognition rates of asylum can play in migrant irregularity. In the US, the Trump administration terminated Temporary Protected Status for nationals of six countries (El Salvador, Haiti, Nicaragua, Sudan, Honduras, Nepal), although court challenges and the repeal of this action by the Biden administration meant this policy was never implemented. This action would have greatly increased the size of the irregular migrant population in the country (and the scale of deportations), had it been effected.

This population is often provided an order to leave the country, following the negative decision on their asylum procedure. Refused asylum seekers, however, may try to stay in the country clandestinely, especially in cases where the asylum procedure has taken many years, including for cases of unaccompanied minors. At this point, policy measures incentivising (e.g., assisted voluntary return) or enforcing return become relevant, as well as those offering a pathway to more regular status (e.g. through toleration permits, or regularisation measures, see Sections 4.3.2 and 4.3.3).

Indeed, policies addressing the irregular migrant population often explicitly or implicitly focus on rejected asylum seekers. Bilateral agreements can be a means to deal with the irregular population of rejected asylum seekers, as described in the Austrian case with regard to migration agreements with countries with low asylum recognition rates. During COVID-19, the Canadian government's efforts to regularise rejected asylum seeker health workers was one way to address the population in the context of the pandemic. Spain's provision of one-year humanitarian permits to rejected asylum seekers from Venezuela explicitly aimed at addressing the growing irregular migrant population from the country. In 2012, Belgium's amendment to its asylum reception law introduced the concept of "return path", providing support to facilitate return of rejected asylum seekers. Inability or unwillingness to enforce deportations of this population at a larger scale, especially for those countries with sizeable

¹³ These responsibilities were with the Directorate General of Migration Management (DGMM), which was re-established in 2018, coinciding with Türkiye's transfer to a presidential system the same year. Subsequently, it transformed into the Presidency of Migration Management (PMM) in 2021 to increase its rank among other government institutions.

territories, has been linked to inflated estimates of the irregular migrant population (Canada, US).

Aside from these three groups (overstayers, those violating the terms of their residence, those with a negative decision), the situation of stateless persons was also highlighted.¹⁴ For Greece, Tunisia and Türkiye, the case of stateless persons has been relevant, although this population is usually eligible for provisional status: in Tunisia, they reportedly often apply for asylum and await resettlement to a third country; in Türkiye they are eligible for temporary protection. This population would also likely be relevant for the other countries under study, as a population eligible for provisional status during asylum procedures. In Greece, although the population can access some procedures to regularise their stay, they reportedly still face legal limbo in the country, experiencing prolonged marginalisation and discrimination (Keramitsi, 2022).

4.3 Pathways out of irregularity

4.3.1 Demographic outflows

MIRreM uses a demographic accounting model as basis for its taxonomy of pathways into and out of irregularity, and, as noted above, distinguishes different types of inflows and outflows of irregularity. Death in this conceptualisation is considered demographic outflow. From a policy perspective, it is relevant to know whether death is migration (policy) related or not, for example deaths at the border, in detention or during removal) (Kraler & Ahrens, 2023). In a few countries, migration-related deaths were discussed in the context of policies on irregular migration, either as a consequence of certain policy approaches or an impetus for policy development (Belgium, Greece, Italy, Morocco, Tunisia). However, the findings suggest that this is generally not a highly legislated policy area, as well as that there is a lack of relevant data available on this outflow, which could be used in policymaking (highlighted as a key data limitation for Greece, the Netherlands, and Poland).

Where irregular migrant deaths were discussed, they were primarily mentioned with reference to (preventing) migrant deaths in the Mediterranean. In these cases, instances of migrant deaths while crossing the Mediterranean were described as the result of a country's more security-oriented approach to irregular migration (Tunisia), as related to their policy priorities (e.g., search and rescue operations, Greece, Italy, Morocco), or as directing policy discourse on the topic (Greece). In Belgium, the killing of a two-year-old Iraqi Kurdish girl by a Belgian policeman who opened fire at the French-Belgian border in 2018 was highlighted to illustrate the dehumanisation of migrants and other negative impacts of strict border

¹⁴ This inflow into irregularity can be described as both demographic, for those born into statelessness, but also as a status-related inflow for first generation migrants.

control and counter-smuggling policies, as reflected in civil society activism following the incident at the time.

4.3.2 Geographic outflows

With regard to geographic outflows, three main types are considered in the conceptual framework as pathways out of irregularity: first, mandatory returns (including voluntary departure after a return decision, assisted voluntary return and forced return); second, voluntary return; and third, onward migration to another destination (Kraler & Ahrens, 2023). The first category of mandatory return was relevant for all countries, and onward migration was also relevant for a number, although policies related to onward migration were not commonly at the forefront of policy approaches to irregular migration in-country. In policy frameworks, voluntary and forced return of those who received a return decision is the usual framing, without much differentiation between mandatory (enforced or assisted) returns and voluntary spontaneous ones. Therefore, they are discussed together here.

Return (mandatory and voluntary)

For policy frameworks, voluntary and forced return have become important policy priorities (see Section 3.3 on current policy priorities), especially in recent years, and are relevant for all countries under study. Often, return is framed as essential for the functioning of the overall migration policy framework in the country, in particular related to asylum systems and return of rejected asylum seekers (Austria, Belgium, Finland, France, Italy, Germany, Greece, Netherlands, Serbia, Spain, UK, US). In other cases, (forced) return is framed rather in terms of the “message” it sends to irregular migrants in the country, that they should “self-deport”, and to potential irregular migrants, that irregular migration would not be successful (Austria, Germany, UK, US). For Austria, return was a main focus at the Austrian Asylum Summit in January 2016, including installation of federal return centres, mandatory return counselling, restricted mobility for (rejected) asylum seekers, high penalties for irregular stay, extended periods of detention for returnees, etc. Members of the Austrian government set an ambitious goal of 50,000 deportations within the following three years (which is roughly three times the number of deportations of previous years) or by using aircrafts of the Austrian Armed Forces for deportations (Ataç & Schütze, 2020). In the UK the broader “hostile environment” policy, with the aim of making life in the UK untenable for irregular migrants, was the broader policy context aiming at increasing return rates. In the United States it was highlighted as a practice employed applied the Obama administration with the aim to garner political support for regularisation policies, albeit with limited success.

In terms of forced return, the prioritisation of returning those with criminal offenses or terrorist affiliations is an important element in the implementation of return policies in some countries, particularly those with more security-oriented approaches and that criminalise irregular entry (Türkiye, US). Within the return process, detention is usually reserved for those who are considered as risk for absconding or immediately prior to return procedures. Accommodation centres in some cases have also expanded services available to provide shelter and essential services to irregular migrants who have been issued with return

decisions (France, Netherlands, Serbia). In France, the DPAR facilities offer an alternative to detention for irregular migrants pending return and also help to free up space in asylum reception centres. The centres are often used by those opting for assisted voluntary return programmes and provide accommodation, as well as administrative support in the return process and access to essential services such as healthcare.

Entry bans are an important element of the forced return process, in which the irregular migrant would be ineligible for re-entry to the country for a specific length of time (all EU countries, Canada, Türkiye, UK, US). For EU countries, based on the Return Directive, an entry ban issued by one Member State prohibits entry to all EU Member States (except for Ireland). For Ireland, an entry ban does not automatically prevent the person from entering another EU Member State. However, whereas for the EU there is a five-year maximum limit to the entry ban, in Ireland such orders are open-ended until revoked by the Minister. For EU nationals in other EU countries, they would also be subject to a ban on public order grounds or serious criminal charges. In Türkiye, entry bans were not previously applied to overstayers who agreed to leave the country voluntarily and pay a fine. However, as of 2020, an exemption from the entry ban only applies to those who have not overstayed more than three months. For those who have stayed longer, entry bans are applied commensurate to the length of overstay (but no less than one month and no more than five years), regardless if the person returns voluntarily or not. In cases where an entry ban applies, re-migration to the country (or in the case of the EU, all EU Member States except Ireland) would automatically be considered irregular.

“To ban entry seems to be the easiest, [some believe] that it will solve all problems. Yet my opinion is that this [approach] concurs to create a pathology and an increase in irregular migration, because paths for legal entry and stay get closed.” Polish government representative interview

For many countries, the actual implementation of return was a key policy challenge, particularly in terms of refusal to cooperate with the return process, either by individuals, by local level officials implementing sanctuary policies, or by countries of origin (See also Chapter 5). Countries of origin may also face technical and capacity challenges in the identification of individuals, which create obstacles to return even where they are willing to cooperate. For EU countries in particular, cooperation with countries of origin and transit in terms of identifying, providing documentation for and receiving irregular migrants is considered an important impetus for cooperation agreements (e.g., return and readmission agreements, but also broader mobility-related cooperation frameworks), and is usually an essential portion of the agreement (Germany, Serbia, Spain, Tunisia, Türkiye) (discussed under 4.2.2.). Such agreements have been criticised for externalising the border. In the opinion of one Italian civil society representative, they also consider such agreements as undermining broader migration policy goals, by disconnecting labour migration arrangements from economic needs:

“Other absurd things are the agreements with third countries, like the one with Tunisia these days... they agree to let people come in from that country, regardless of many things. It is absurd because it means you let people in regardless of the economic need of our country, just because states reached readmission agreements.” Italian civil society organisation interview

The EU-Türkiye agreement, bilateral readmission agreements and other readmission procedures were particularly highlighted as “fast-tracking” return processes to specific countries, and for specific groups of irregular migrants, using the “safe third country” principle (discussed under 4.2.2). In Greece, for example, readmission procedures under the 2021 joint ministerial decision should apply to nationals of Afghanistan, Pakistan, Bangladesh, Somalia, or Syria who receive a final negative asylum decision and who have arrived irregularly from Türkiye. In reality, Türkiye has rarely readmitted these nationals, who tend to remain in the country as rejected asylum seekers (rejected under the “safe third country” principle, but not readmitted). In Serbia, however, such processes have been linked with practices of chain deportation, in which migrants deported to Serbia from an EU Member State were reportedly immediately issued an expulsion order and return processes initiated, without access to asylum procedures. For those returned who are Serbian nationals (often of Roma ethnicity), they faced issues related to reintegration and sometimes remigrated to the EU, either to work seasonally or to apply for asylum (again) (Cvejić, 2022).

The inefficiency, high cost and lengthiness of forced return processes were especially highlighted as a policy challenge in terms of implementing return policies (Bosnia and Herzegovina, Finland, Greece, Italy) (See 5.2.4). Indeed, those who are returned may re-migrate to their previous destination nonetheless, as highlighted by an expert in Türkiye:

“In our fieldwork in Afghanistan, we see that people are being sent from Türkiye, but as soon as they have the opportunity to return, they will come back irregularly again. The same goes for Syrians as well.” Turkish expert interview

Moreover, the unequal application of forced return processes, as well as other types of migration control processes and detention, is a relevant consideration here. Recent research by Ambrosini has highlighted the importance of social acceptance of the irregular migrant in this regard, by which controls are applied on those perceived as more dangerous, contributing less or bothersome to the society, such as beggars, the homeless, men and those of African or Middle Eastern descent (Ambrosini, 2013, 2018; Ambrosini & Hayer, 2023).

Assisted voluntary return programmes fit into states’ broader strategies as an alternative way to increase return rates. In contrast to forced return, assisted voluntary returns have been assessed as less costly and bureaucratically easier to implement (Angeli et al., 2014). For those who opt for assisted voluntary return, this is often supported by IOM country offices in coordination with local authorities and organisations, and can include: logistical support for the return journey, including help with travel arrangements like booking flights and obtaining travel documents, as well as reintegration support, which could include financial aid, vocational training or education, support with setting up a business, and access to other resources. Special support is also provided for vulnerable groups, such as those with health problems, victims of trafficking and unaccompanied children. Such programmes have faced criticism for various reasons, however, including the sustainability of reintegration, the “voluntariness” of such programmes, and its usage as a tool within EU externalisation of migration control policies (de Blasis & Pitzalis, 2023; Webber, 2010). These programmes are components of EU countries’ policy frameworks, but also implemented in some third countries (primarily those on the EU’s external borders, such as Bosnia and Herzegovina, Morocco and Tunisia, as well as the UK).

Potential promising practice: *Landelijke Vreemdelingen Voorzieningen (LVV)* pilots

The Netherlands has implemented and evaluated a pilot programme for irregular migrants aimed at finding durable solutions for the participants, in particular as related to continued (legal) stay in the Netherlands, onwards migration to another country, or voluntary return to the country of origin. The programme is run cooperatively with the involvement of the Immigration and Naturalisation Service and the Return and Departure Service of the Ministry of Justice and Security (IND), the police, civil society organisations and municipalities (via the Association of Netherlands Municipalities). In 2019, the programme launched via its National Immigration Facilities (*Landelijke Vreemdelingen Voorzieningen*, LVV) in five municipalities: Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht. A condition for participation in the LVV is that one cooperates with creating the sustainable perspective that is possible. For irregular migrants in the Netherlands, following their admission to the programme, they are screened for possibilities related to legal stay and work, future orientation and return, following which they are assigned a particular case manager to guide them through these various options. During this time they are not subject to forced return, as well as have access to shelter, an allowance and various courses (such as Dutch language, business and sport). The municipalities implemented the programme in different ways, but in Amsterdam for example, a person can participate in the programme for a maximum of 18 months, with maximum six months first allocated to determining access to legal options in the Netherlands. Should this not be a possibility, the LVV process continues with up to another six months of “future orientation” examining other possibilities, including return. If the person decides to return, the process finalises with a maximum of three months return guidance (provided by NGOs). The pilot has been hailed as a success and national roll-out is planned for 2024 (Dutch government representative interview).

The LVV pilot ended in 2022 and its final evaluation found that the provision of shelter and counselling has reportedly led to an improved well-being of irregular migrant participants, as well as an increased sense of safety and public order for Dutch residents. (Mack et al., 2022). The same evaluation found that nearly 60% of participants who left before 1 July 2022 (1,258 persons) found a “solution” for their irregularity. However, the statistics suggest a more measured take on this approach. 41% of these 60% were provisional solutions (described as “semi-permanent” in the evaluation) in the form of another asylum application, for example because of a change in personal circumstance including medical reasons or the situation in the country of origin. The number of permanent solutions (provided a residence permit, returned to the country of origin, onward migration) numbered 18% in total, of this 60% (Mack et al., 2022). Data is not available on the breakdown of this number across the three “permanent” solutions.

In a number of countries, return, or the practical obstacles to return, was connected to status adjustments available to irregular migrants. The implementation challenges mentioned earlier, as well as non-refoulement concerns have led to the practice of toleration of non-deportable irregular migrants, or suspension of return processes (Austria, Belgium, Finland, Germany, Ireland, Netherlands, Poland, UK, US). For Austria and Germany, in cases where return cannot be implemented due to legal or factual obstacles, a temporary residence can be provided (toleration, or *Duldung*, see promising practice box in this section). In these cases, where an irregular migrant has cooperated with the authorities in the return process but for example are unable to obtain travel documents from their respective embassy, they could be issued such a toleration status. In other countries (Finland, UK), a similar condition may be applied under which rejected asylum seekers may be granted a temporary residence permit. In the US, there are several such statuses granting suspension of return,

implemented by various governmental entities at different levels (further discussed in Section 4.3.3): Deferred Enforced Departure, Temporary Protected Status, DACA, prosecutorial discretion, deferred action or other forms of discretion from immigration judges. In such cases, once these obstacles to return are lifted, the return process should in principle then proceed. In Finland, those who refused to cooperate in return procedures were eligible for a temporary residence permit until 2015, when the law changed to remove this possibility. In this case, expert interviewees noted this policy change as a main reason driving current migrant irregularity in the country.

Suspension of return processes are also provided to victims of trafficking or forced labour during the course of the investigation and court proceedings. In many countries, specific permits for trafficking victims are provided for this purpose, although in Germany it is covered under the toleration framework (See Section 4.3.3 on provisional status).

In Italy, paradoxically the practice of (voluntary) return actually sometimes took place in the context of access to a residence permit through the quota mechanism, in previous years. Given that such residence permits were only allocated to potential migrants outside of Italy, but at the same time Italian employers prefer to hire those employees with whom they are already familiar, in practice, migrants had to leave the country to apply for their job. With the most recent quota decree, this requirement was abolished (See Section 4.3.3 on informal regularisation).

In Türkiye, Syrians under temporary protection were previously permitted to visit Syria without loss of status, particularly for Eid celebrations. As of 2022, however, this exemption was removed with few exceptions (e.g., attending funerals), thus those who return even temporarily risk loss of their protected status. This policy change was reportedly aimed to enhance voluntary returns, as part of Türkiye's broader policy goals to increase returns.

Potential promising practice: Toleration of non-deportable irregular migrants

For both Austria and Germany, the toleration permit (*Duldung*) was suggested as a potential promising practice as providing an official status (albeit described as a “limbo” or “semi-legal” status) for those irregular migrants who cannot be returned to their country of origin. Legally, the permit does not provide legal residence, but rather is a temporary exemption from forced return. Reasons for granting a toleration permit could include inability to obtain official travel documentation from their country's representation in Austria or Germany, but may also encompass other legal obstacles or challenges such as related to non-refoulement or an individual's right to private or family life (Aliens Amendment Act, 2015; Hinterberger, 2018; Stiller & Humer, 2020). In Germany, these toleration permits are repeatedly issued, leading to a practice of “chain of tolerations” (*Kettenduldung*), with the consequence that irregular migrants and their family members are able to remain in Germany in a legal situation with limited rights – yet without a specific time limit (Schütze, 2023).

Moreover, the tolerated status is considered one step in the process towards regularisation in the country, with a number of recent changes providing access to status for those with tolerated status. This includes an 18-month residence permit with access to the labour market for those with tolerated status for five years or longer as of 31 October 2022 (or three years for well-integrated youth and young adults under the age of 27). A 2022 law provides for residence for those with: at least 12 months of tolerated stay, three years successfully attending school or a vocational qualification, as well as for those whose application was submitted before age 27 and with a positive prognosis for integration.

Its consideration as a potential promising practice was for a number of reasons, including its potential to facilitate access to other pathways out of irregularity (given accrual of residence in the country, and particularly in the German case), to protect the holder from unwarranted arrest or policy harassment and facilitate access to public services, and also because it makes the phenomenon of non-deportability visible in public debate and action. In Germany, advocacy groups have argued that, although the toleration status is de jure the continuation of irregular presence, de facto this should be considered a termination of irregular presence as the migrant is known to authorities and no longer in contravention of migration laws, describing the practice as akin to regularisation measures.

However, it is not without its challenges – for both countries. In the case of Austria, tolerated persons have difficult differential access to basic social assistance across the country, given the role of the federal provinces in implementing the national law in this regard. Vienna, a more inclusive province as compared to others given its large migrant population, allows access for tolerated persons, meaning that this group often moves to Vienna to access their social rights in this regard. However, they still may not be able to access, as only the provinces in which they initially registered are responsible for them and their access to these services. Moreover, in Austria, in contrast to Germany, there are only a very low number of toleration permits issued to irregular non-deportable migrants, suggesting that the policy is applied only in a rare and restricted manner. In the case of Germany, migrants with a toleration status that allows a pathway towards a regular residence title may fall back to a less favourable toleration when the required achievements in education or employment are not realised. Civil organizations argue that issuing a residence title would better align with the objective to overcome a tolerated status.

Onward migration

For the countries under study, policy approaches may not explicitly address onward movements, but rather tend to address the issue in other ways. Onward migration is considered a next step for irregular migrants (especially rejected asylum seekers¹⁵) without another option for regularising their status (Austria, Belgium, Netherlands), or in the context of shorter transitory secondary movements through a country at the EU's external borders (Bosnia and Herzegovina, Poland, Serbia).

In this regard, the importance of secondary movements in the European context emerged particularly for irregular migration route segments towards the UK (as a former EU Member State, noted for Belgium, France and UK), as well as via the Eastern Mediterranean and Western Balkans routes (Austria, Bosnia and Herzegovina, Greece, Serbia, Türkiye). In one case has such movement been linked to an eventual definitive pathway out of irregularity, in Portugal. In this case, migrant smuggling and human trafficking networks may facilitate irregular migration of Eastern European migrants from other EU countries to Portugal, where they would have access to regularisation processes (see Section 4.3.3). Such examples have been linked to labour exploitation and trafficking in Portugal:

“He could be Bulgarian or Romanian, he [the smuggler] fills two or three buses with guys from there to work, they arrive, they are put everyone in one house, with very very bad conditions, and now you are going to work all hours a day, your salary is going to be the minimum wage, but meanwhile you’re going to pay me off of that for the living

¹⁵ Here a relevant consideration is also the considerable onward movement of asylum seekers: in such instances, asylum cases are closed (often presented incorrectly as negative decisions), yet they are conceptually rather transit migrants and not part of the larger irregular migrant population with a longer duration of stay in a country.

conditions, and for the food and all that.” Portuguese government representative interview

For onward migration, cities are considered important hubs for irregular migrants looking to transition to other parts of Europe (for example Paris and Marseilles in France). Indeed research has long demonstrated the importance of cities during an irregular migrant journey (including for secondary movements within Europe), allowing irregular migrants to work, connect with other migrants and identify options for their next migratory step (Horwood et al., 2020; Optimity Advisors et al., 2015). Likewise, border regions are important transitory locations for migrants prior to attempting the next leg of their journey, as was noted with regard to irregular migrants in Belgium and France (Calais region) planning to try to cross to the UK.

Significant in this context is that onward migration is usually not an overall outflow from irregularity, but rather a transfer of it from one country to another. At the individual level, while a person may have access to a provisional status through a new asylum application, in the longer-term, their irregular status may not be significantly changed. Moreover, while at the individual level, they may consider their secondary movement onward migration, from the point of view of the second state (whether it be a destination or another country transited), it is considered and approached through policies addressing irregular entry (i.e. those discussed under Section 4.2.2). This is reflected in the UK country report, for which addressing irregular crossings of the Channel (from France and Belgium) is a strong policy focus in recent years. In this context, as with other maritime arrivals, irregular migrants in fact aim to be identified during the crossing, in order to claim asylum:

“Now, I don't think the word clandestine is quite right now, because this obviously includes small boat arrivals, and, as far as we know most small boats are not intended to be clandestine. They actually want to be found and picked up and brought to the UK.” UK expert interview

In this case, following detection by UK authorities, the individual will access a provisional status during their asylum process in the UK.

Onward migration may actually, on the other hand, lead to irregularity, as in the case of “visa shopping”, noted in the case of Poland. In such cases, migrants may acquire a Polish visa, particularly through the simplified employment scheme, and use their access to the Schengen space to travel onwards to another destination:

“Very often other EU states may be destination countries which have greatly more restrictive migration policies, and chances to receive residence permit [for a foreigner] through a more complicated procedure are often not achievable.” Polish government representative interview

In such a case, their onward movement, in violation of the terms of their visa, leads to their irregularity. A similar situation could be argued for those who access provisional status in the asylum system, in order to transit the country and irregularly enter another country, as is reportedly the case for some asylum seekers in Bosnia and Herzegovina (discussed in Section 4.3.3 provisional status).

In several cases, onward movement was discussed in tandem with return. In Morocco, it was noted that, while assisted voluntary return and reintegration programmes for irregular

migrants in Morocco may have as an (unstated) goal prevention of onward migration of irregular migrants towards Europe, their impact is debated in that regard. The LVV pilots in the Netherlands (see promising practice box in this section) consider “future orientation” as encompassing both “onward migration”, as well as return.

Onward migration cannot, therefore, be considered a conclusive pathway out of irregularity. This particularly applies for migrants who are removed to third countries through which they transited irregularly. For those who migrate onward and who are returned (following a negative asylum procedure, through readmission agreements or illegal “pushbacks”), their irregular status may be maintained. For those returned to Serbia through readmission agreements with EU countries, recent practices documented by NGOs suggest that access to the asylum process can be hindered, with cases of either non-registration of asylum claims, as well as immediate initiation of return procedures and expulsion orders, described as “chain deportation” (AIDA, 2022a; KlikAktiv - Center for Development of Social Policies, n.d., 2023). For those countries that criminalise irregular exit, such as Morocco, Tunisia and Türkiye, return implies criminal procedures and detention, including for nationals of the respective countries. In such cases, therefore, onward migration in an irregular manner, while potentially allowing migrants access to a provisional status in another country, may sometimes mean reversion to an irregular status or worse in the context of return.

4.3.3 Status-related outflows

In terms of status-related outflows from irregularity, five overarching types are noted in the MIrreM conceptual framework:

1. “Regularisation measures explicitly aimed at regularisation of irregular migrants, whether through time-limited programmes or permanent mechanisms;
2. “In-country application for an ordinary residence permit, including informal regularisations. The requirement to submit an application for a residence permit from abroad is an almost universal requirement for first time permit holders, and specifically non-nationals only possessing a limited right to stay (e.g. under a tourist visa) or without any right to stay. Yet sometimes options for in-country applications exist, or are exceptionally used, and sometimes arranged by authorities, even if not necessarily foreseen by the law, something which we call ‘informal regularisation’;
3. “Regularisation by operation of the law, that is a collective change of the status of a category of persons – EU accession and Temporary Protection could serve as examples;
4. “Regularisation as a result of changes of personal circumstances entitling to a right stay, for example the formation of a family and related entitlements to a residence status, available notably for third-country national family members of EU citizens who have used their freedom of movement rights.
5. “The transition to a provisional status, e.g. by lodging an asylum claim or being identified as a victim of trafficking, etc.” (Kraler & Ahrens 2023).

These categories will be used to further categorise the various policy approaches taken across the countries under study to adjust irregular migrants' status. This section aims to give an overview of the main policy approaches taken, as well as provide examples of the typical types of such policies. However, it does not involve in-depth analysis of respective regularisation policies and practices, given the focus of upcoming work in the MIRreM project doing so.¹⁶

Provisional status and related pathways out

Migrants who hold a provisional status are not irregular, but rather enjoy a provisional right to stay subject to a review of their case and thus as a group in principle are not yet entitled to a pathway to regular long-term residence and citizenship. This includes for example those who are provided with provisional statuses such as: those whose removal has been formally suspended (“Duldung”), those awaiting status determination (e.g. asylum), unaccompanied minors whose asylum claim has been rejected yet still enjoy protection from expulsion, and victims of trafficking or other forms of exploitation who are provided a provisional permit to stay (usually during a criminal trial) (Kraler & Ahrens, 2023). Although this group is not irregular, they are relevant to the study of status changes that can lead to falling into and out of irregularity: positive or negative decisions, termination of procedures, etc. A range of permits that provide provisional status are available to irregular migrants and represent a significant pathway out of irregularity, albeit a sometimes temporary one (Austria, Belgium, Canada, Finland, France, Germany, Ireland, Italy, Netherlands, Poland, Portugal, Serbia, Spain, Türkiye, UK, US).

However, provisional and temporary statuses intersect with each other and migrant irregularity in similar ways. Temporary permits, while providing residence, do so for a limited period of time and with provisional purposes, tied usually to the purpose of stay and/or situation in the country of origin. The majority of these statuses are provided for protection-related reasons that fall outside the scope of refugee status, often described otherwise as complementary pathways. They can sometimes be seen as “stopgap” measures to (temporarily) regularise large groups of irregular migrants present in the country with protection needs, or to prevent irregularity of new arrivals. However, these temporary statuses have also been considered precarious ones, with the risk of holders falling into irregularity, and therefore are also discussed in this section in terms of how they relate to irregularity and given the similar purpose as that provided under provisional status.

The first important form of provisional status is that provided once someone lodges an asylum claim (for refugee and subsidiary protection status), for which a provisional permit is provided during the determination process and is relevant for all countries under study. For many countries, they have experienced extensive backlogs in the processing of such applications (Belgium, Germany, Ireland, Netherlands, US), which can on the one hand increase the precarity of those in the asylum determination process and on the other hand increase pressures on local authorities providing assistance to such individuals. Befallen

¹⁶ Work forthcoming in MIRreM in late 2024 and in 2025 will provide an overview of regularisation policies, examine the implementation and effects of regularisation in selected countries, and examine the pull-effect of regularisation.

irregularity is an important issue related to this (See Section 4.2.3). In some cases, countries may speed up processing for those with high chances of a positive decision: in Belgium, due to lack of sufficient space to house asylum seekers, in 2023 the authorities expedited asylum procedures for those who worked in the security and political sectors in Afghanistan prior to the Taliban takeover, as well as those with serious illnesses and vulnerabilities.

In Bosnia and Herzegovina and Serbia, those who claim asylum may not always be considered “genuine” asylum seekers. In Bosnia and Herzegovina, asylum seekers should express their interest in seeking asylum, after which they have 14 days to submit their asylum claim and complete the registration process, during which time many reportedly leave the country and migrate onwards. Some interviewees considered this an abuse of the asylum system, given asylum seekers in this case seem to not have interest in pursuing the asylum process further in the country. In Serbia, in contrast, relevant authorities reportedly do not register asylum claims of asylum seekers, in line with a shift in official rhetoric to consider recent arrivals economic migrants, rather than those in need of protection:

“In the past year and a half, at the country's northern border, police departments in Sombor, Kanjiza, Subotica, and Kikinda have been refusing to register people. Even if someone comes to seek asylum, they are turned away and not allowed to register. This also happens in Belgrade, though not as frequently; there, registration is often postponed day by day. I have recorded an instance of a family, a woman with five minor children, who went from one police station to another and was turned away from each one. This seems to be a directive specific to the police departments of those cities.” Serbian civil society organisation interview

Given access to provisional status through the lodging of an asylum claim, and claims of “misuse” of the asylum system, states have implemented a number of policy measures aiming to address this. These are usually framed as addressing irregular entry (See Section 4.2.2).

In the case of the EU more broadly, access to provisional status as an asylum applicant is also considered with respect to the person’s country of first arrival. Where this has been registered, the asylum seeker should be transferred to that country for asylum processing, and thus would have access to provisional status there and not the subsequent EU country of asylum. There are few exceptions to this. In Germany, for example, asylum seekers cannot be returned (under Dublin) to Bulgaria, Greece, Hungary or Italy, as German courts have ruled those countries non-compliant with standards of refugee protection. In these cases, therefore, asylum seekers would be able to access a residence title for the duration of the asylum process in Germany.

Aside from an asylum claim, other important provisional and temporary statuses providing respite from irregularity include those provided for:

- those with humanitarian grounds (Belgium, Canada, Germany, Netherlands, Poland, Spain, Türkiye, US),
- those under temporary protection (Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Poland, Portugal, Serbia, Spain, Türkiye, US),

- unaccompanied minors until they reach the age of 18 (Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Poland, Portugal, Serbia, Spain)
- victims of trafficking or other forms of crime (Austria, Bosnia and Herzegovina, France, Germany, Greece, Ireland, Italy, Morocco, Netherlands, Serbia, Spain, Türkiye, US), and
- those requiring medical treatment in the host country (Belgium, Finland, France, Germany, Netherlands, Poland),
- those who cannot be returned, for a variety of reasons (Austria, Belgium, Finland, Germany, Ireland, Netherlands, Poland, UK, US).

The different statuses also may provide different entitlements, even within the same country. These statuses (including as asylum claimants) are meant to be temporary in nature, until a decision is made on the individual's right to stay – or for temporary permits, until the situation requiring the person to stay (e.g., situation in the country of origin, medical treatment) is resolved. As such, they can be considered a kind of “limbo state” of neither irregular or regular. In some cases, they can provide a stepping stone to full regularisation of status, but not always. Importantly, they can lead back to irregularity, even if the person enjoys a right to stay during the provisional period. The difficulties migrants face in navigating legal regulations and statuses was highlighted by a Polish interviewee:

“At times, after 18 years of work in the migration sphere, legal regulations seem hardly clear and very casuistic to me. So, it does not come as a surprise that someone, even being legally employed and staying legally, may get into irregular stay because it does not take much to happen” Polish civil society organisation interview

As an example, the last category of those who cannot be returned has also been described as a form of “toleration”, or a form of postponing deportation in cases where access to specific protection status has been denied (see Promising Practice on *Duldung* under Section 4.3.2). In some cases, these permit holders can access more sustainable pathways out of irregularity: in Germany, a legal provision coming into force 31.12.2022 (*Chancenaufenthaltsrecht*) offered third country nationals staying in Germany with a provisional status (toleration) for at least five years as of 31.10.2022 a pathway out of irregularity when particular conditions are met. In 2023, at least 75.000 applications were launched and 54.000 accepted. Due to this programme, the number of tolerated persons decreased by about 20 percent (Mediendienst Integration, 2024). However, because such toleration permits are a “postponement” rather than a permanent solution, as well as the complexities of application processes, restrictive application of a status or other reasons, migrants with toleration statuses have also sometimes fallen back into irregularity where they do not have access to other pathways out. This again highlights the way in which migrants may fall into and out of status over the course of their stay.

The provisional nature of these statuses is linked to the specific reason for its granting, which nonetheless can sometimes persist for prolonged periods of time: In Türkiye and the US, many of those with temporary or provisional protection have had the status for over a decade. In contrast, in the cases of victims of trafficking and crime, the temporary permit is often only provided for a very limited duration (e.g., one to six months) related to the victim's cooperation in a criminal case, although in some cases it can be a pathway to more

permanent status. In Belgium, upon a conviction, the cooperating victim can obtain a 10-year residence permit; in the US victims of trafficking can be provided permits of duration up to four years and it can be a pathway to permanent legal status (i.e., a Green Card). In Italy, victims of trafficking or domestic violence can obtain a residence permit without being required to cooperate in a judicial process, and the temporary permit can be converted to a residence permit for work purposes (Scoletta et al., 2023).

“Tolerated” status of non-deportability is provided to those who cannot be returned to their country of origin, but can also be provided for other reasons. In Germany, among the various kinds of toleration, one tolerated status is provided for reasons related to labour market needs. This includes, for example, for the purpose of vocational training if the asylum seeker has commenced this training already, as well as for the purpose of employment if the person arrived prior 1 August 2018 and other conditions are met. In Poland, permits for tolerated stay may be issued for specific family issues or in Poland’s national interest.

Temporary protection measures have recently gained prominence, activated to regularise Ukrainian refugees displaced as of 2022 and Syrian refugees in Türkiye as of 2014. Residence permits on humanitarian grounds can also be considered a complementary pathway for those who have failed asylum claims, provided to those who can demonstrate serious threats to their life or wellbeing in their countries of origin. In Spain, increasing arrivals of asylum-seeking Venezuelans since 2014 were faced with a 99% asylum rejection rate. Venezuelans whose asylum claim had been rejected since 2014 (and were not regularised under the *arraigo*) could access residence permits on humanitarian grounds as of 2019, thereby regularising a significant irregular migrant population in the country. A similar humanitarian permit is not, however, accessible to the similar population of Colombian irregular migrants in the country. In Poland, a new category of humanitarian visas was provided in 2020 for Belarusians facing risks of political persecution: from August 2020 to June 2023, Poland issued over 52,000 such visas. Once the humanitarian visa expired, Belarusian recipients were then permitted to shift to a temporary residence permit with access to the labour market. This pathway of temporary residence permit was not available for other holders of humanitarian visas, however. This, and the Spanish example, demonstrate how temporary permits can intersect with or complement provisional ones, as well as the political way such permits can be issued. One can observe this also in the back-and-forth on the revocation and provision of Temporary Protection Status in the US. Under the Trump administration, they attempted to revoke this status for nationals of six countries, which was partially overturned by a court decision which allowed termination for only three countries.¹⁷ Under the Biden administration the protection status was reasserted for all the countries, and also extended to new countries, including Ukraine as of 2022. For these temporary protection holders, they very nearly fell into irregularity despite holding a residence permit (non-provisional status).

Protection and humanitarian need permits overlap also with permissions for those suffering from health conditions that cannot be treated in their country of origin, where states can provide them provisional status for medical treatment purposes. In France, health is

¹⁷ The six countries were El Salvador, Haiti, Nicaragua, Sudan, Honduras, Nepal. A 2020 court decision allowed the termination of status for nationals of El Salvador, Nicaragua and Sudan. Due to ongoing court appeals, deportations of those whose temporary status had been revoked were not implemented.

considered a core value in their status determination process, including for regularisations. In the US case, deferred deportation may be granted to someone who is caring for a sick relative.

The use of provisional statuses is widespread and while they link up to or are in and of themselves complementary pathways for those in need of protection, they can also be attributed to inefficiencies in the migration processes in the country, as well as the limited application of (or eligibility for) protection and regular statuses under respective laws. This is most obvious in the US case, where the huge scale of migrant irregularity can be set against the backdrop of a highly inefficient immigration system, the wide range of provisional (often discretionary) protection statuses provided by various authorities and the lack of access to large-scale regularisation in almost 40 years. As an example, just in the context of humanitarian-related provisional statuses in the US:

- the Department of Homeland Security can exercise discretion in not deporting certain irregular migrants (an example of which is DACA programme, from which 579,000 currently benefit (Soto & Gelatt, 2023)) and also grants Temporary Protected Status to specific nationals based on humanitarian grounds (currently 610,000 people (Wilson, 2023), nationals of Afghanistan, El Salvador, Haiti, Honduras, Myanmar, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, Venezuela, Ukraine, and Yemen);
- Immigration and Customs Enforcement, US Citizenship and Immigration Services or an immigration judge can grant deferred deportation on humanitarian grounds;
- the Secretary of Homeland Security can issue tolerated status to irregular migrants (often spouses, children, parents of those in military service or veterans);
- the President can grant tolerated status through Deferred Enforced Departure (currently for nationals of Liberia and Hong Kong); and
- US Citizenship and Immigration Services can grant visas for victims of trafficking and other crimes.

In the US case, such forms of relief from deportation can be based on humanitarian grounds or on the basis of ongoing conflict or environmental disaster in the country of origin, and may also (but not always) include work authorisation. In this example, the dizzying array of provisional statuses that provide different rights belies the lack of a comprehensive approach to protection and to migrant irregularity more broadly. While complementary pathways are important and essential policy approaches that go hand-in-hand with refugee protection, they can also become bloated and convoluted where no longer-term solution exists for irregular migrants with protection concerns.

Formal regularisations

Within this category, a wide range of programmes and mechanisms are considered that officially regularise the status of irregular migrants. Indeed, this can be considered the largest category identified across the countries under study for status-related outflows, relevant for the majority of countries under study (Austria, Belgium, Canada, Finland, France, Germany, Greece, Ireland, Italy, Morocco, Netherlands, Poland, Portugal, Spain, UK).

While regularisation programmes or amnesties are time-bound and aim to regularise large groups of specific categories of irregular migrants (particular sectors, for example), regularisation mechanisms make up part of the regular migration law and policy framework, and thus are not time-bound. Regularisation programmes are usually defined officially as such and quite straightforward in their approach. However, the approach taken under regularisation mechanisms can be more or less restrictive, as will be demonstrated in this section by the wide variety of mechanisms discussed. Some countries may consider themselves to adopt a regularisation approach through their regularisation mechanisms of wider scope (e.g., France, Greece, Portugal, Spain). In contrast, others may even define themselves as anti-regularisation, yet still include mechanisms to regularise irregular migrants under more narrow circumstances (e.g., Germany, Netherlands). In these latter cases, many of these mechanisms provide temporary status and target particularly vulnerable irregular migrants in need of specific protection, such as victims of trafficking, those requiring serious medical attention or those in need of protection on humanitarian grounds. As permissions granted to such cases are often time-limited to the applicable situation, these have been discussed above under provisional status.

The first type of formal regularisation discussed here is that of regularisation programmes, observed in the period of study since 2010 in Canada, Greece, Ireland, Italy, Morocco and Poland. All these countries usually implemented multiple regularisation programmes, not singular ones. This could reflect firstly more openness to or political palatability of these programmes in their national context as compared to ongoing regularisation processes through established mechanisms, perhaps as they are more limited in time or scope. Secondly, it could reflect the ineffectiveness of the regularisation programme(s) themselves, requiring multiple amnesties to address migrant irregularity on a wider scale.

Since 2010, regularisation programmes with broader applicability to irregular migrants in the territory were implemented in Greece (2023), Ireland (2022), Italy (2020), Morocco (2013, 2016) and Poland (2012). In Greece, a one-off regularisation programme has recently been implemented based on an existing mechanism.¹⁸ In this case, those irregular migrants who can prove residence in Greece for the last three years and have an employment contract, can apply for regularisation until the end of 2024, and will receive a three-year residence permit. If they maintain their residence and employment, they can afterwards shift to another residence permit. The programme targets the approximately 30,000 irregular migrants in the country, from Albania, Georgia, the Philippines and Pakistan.

In Ireland, two regularisation programmes were implemented in the aftermath of the pandemic, and one in 2018 targeting irregular former international students. In the latter case, this regularisation was implemented explicitly to address the state's irregularisation of former students due to changes in the law, and was called for by a Supreme Court ruling (*Luximon and Balchand*). The role of the courts in forcing the regularisation of specific groups of irregular migrants will be further discussed later on (Operation of national and EU law) (as well as in section 3.3.5). The 2022 Regularisation of Long-Term Undocumented Migrants Scheme granted regular status to applicants who could demonstrate four years of continuous irregular residence prior to 31 January 2022, or two years residence demonstrated for a

¹⁸ This has been described as a third type of regularisation, a regularisation initiative, which describes time-bound programmes based on an existing mechanism (Van der Vennet & LeVoy, 2022).

whole family unit, or three years for the main applicant who has a child under the age of 18, as long as the child was resident since 31 January as well. As of 3 July 2023, almost 87% of the applications (6,000 applications, representing 8,311 individuals) had been processed, with 71% granted legal residence (Dáil Éireann, 2023). In parallel, the Irish International Protection Process Regularisation Scheme was open to applications for regularisation from all those who were in the international protection determination process for at least two years (i.e., commencing before or on 7 February 2020) and still awaiting a first instance decision. In both regularisation programmes, applicants must meet basic requirements such as no criminal record and no threat to the state. The first Scheme required payment of an application fee, while the second Scheme carried no fee.

Potential promising practice: Ireland's 2022 Regularisation of Long-Term Undocumented Migrants Scheme

There has been emerging consensus that long-term irregularity needs to be combatted or reduced, therefore the 2022 Irish regularisation programme was designed in an inclusive way with these goals in mind.

In terms of conditions under this Scheme, there were no requirements for applicants to be employed or have a guarantee of future employment, no requirement of prior lawful residence, connection to an Irish citizen or lawfully resident migrant, no need to prove a level of integration or that they would not be a financial burden to the state, and those with deportation orders were also allowed to apply. Applicants satisfied the continuous residence requirement even if they were absent from the country up to 60 days during the period of irregular residence. A wide range of documentation was accepted as proof of identification (e.g. expired passport or Irish drivers' license) and of undocumented residence (e.g. previous permits, utility bills, Irish doctor or hospital letters, COVID-19 vaccination cards, proof of money transfers carried out in a money transfer facility in the country) (Department of Justice, 2022). The regular status granted included full and unrestricted access to the labour market, and the permit was granted for a period of two years, with the possibility to renew for a further three years. These periods of residence are also valid for the Irish naturalisation process, for which recipients will be eligible after the full five years of lawful residence.

The programme did have a number of limitations, however (Desmond & Heylin, 2023). Challenges in the application of this regularisation included the six-month window for applications and the requirement of continuous unlawful residence, which excluded those who had fallen into and out of irregularity within the requirement period. Given the established knowledge that migrants may fall into and out of irregularity over the course of their stay, this could be considered particularly limiting. Moreover, the minimum age requirement for applications was 18, so children were not able to apply unless as members of a family unit. The limitations imply that similar initiatives will need to be repeated to address future long-term irregular migrants, as well as those who did not qualify for this Scheme.

Nonetheless, the programme has been considered a success, reflected in the high success rate of applications (71% of those processed by 3 July 2023), as well as in having significantly reduced the size of Ireland's irregular migrant population.

In Morocco's regularisations of 2013 and 2016, over 45,000 irregular migrants were regularised. These regularisation programmes targeted the irregular foreign spouses of Moroccan nationals and foreign nationals, children, those with employment contracts of

more than two years duration, those suffering from serious medical conditions and those who could prove five years continuous residence in the country. In parallel, the government established a process to regularise asylum seekers awaiting refugee status determination. In Poland, their universal 2012 regularisation programme targeted irregular migrants present continuously in the country for at least five years, as well as rejected asylum seekers in the country for at least two years. 4,650 irregular migrants, primarily Ukrainians (34%), Vietnamese (34%) and Armenians (12%) received residence permits through the 2012 regularisation campaign. Applicants from Bangladesh, Egypt, India and Pakistan were less likely to receive positive decisions on their applications, also because most applicants from these countries were coming from other EU countries (Reichel, 2014). This campaign broadened the conditions for regularisation as compared to the previous campaigns in 2003 and 2007, which together regularised only around 2,500 persons (Fagasinski et al., 2015).

Canada (2019, 2020) and Italy (2012, 2020) have also implemented regularisation programmes, focusing on regularising irregular migrants working in specific sectors. Both countries' latter regularisation programmes addressed labour challenges related to the COVID-19 pandemic: the Canadian programme provided regular status to failed and pending asylum seekers in the healthcare sector; the Italian programme targeted those working in agriculture, domestic and care work. In these cases, the amnesties aimed at ensuring an appropriate labour force was available for the respective essential sectors in the country facing shortages due to the pandemic. These same countries had previously taken sector-specific regularisation programme approaches. In Canada in 2019, a regularisation programme targeted construction workers in the Greater Toronto Area. Due to low application numbers, requirements were modified and applications extended until the end of 2024. In Italy, employment-based amnesties are considered a core tool of immigration policy in the country: two such programmes have been implemented since 2010, and eight since the mid-1980s.

"In Italy, irregularity is addressed with amnesties: this is the most remarkable admission of the inability to manage the day-to-day administration of the phenomenon of immigration." Italian civil society organisation interview

Other countries have considered such regularisation programmes in the past or are considering regularisation as possible future options at the time of preparing this report. Notably Belgium and the US implemented several regularisation programmes prior to 2010, yet not in the years since. Finland has also recently considered such a regularisation programme, particularly those who applied for asylum before 2017 and are still living irregularly in the country, as well as for families or those without criminal records. However, the recent change to a more conservative government in 2023 makes this option less likely:

"Back in February 2022 we conducted these investigations in the ministry, including the possibility of one-time regularization. But it is politically challenging, so it didn't progress from there." Finnish government representative interview

While such regularisation campaigns can sometimes have broader impact (See Promising practice box on Ireland's 2022 regularisation programme), their singularity and the time-limitation to residence permits provided under such regularisation programmes means that the same migrants may fall again into irregularity. Indeed, this reflects the observation

previously noted that those who have implemented regularisation programmes once tended to have done so several times.

“People have no idea of the actual history of migrants, of those who enter regularly and then lose their status as regulars or those who enter irregularly but then are regularised for some reason: flows, amnesties. Migrants who are included in our society, they are appreciated. They all have a long history of irregularity. We all know that, but public opinion does not say that. Today's perception is predominantly, if not exclusively, referred to the arrivals by the sea. People need to learn more complex and more articulated overlapping mechanisms between regular and irregular paths.” Italian civil society organisation interview

Regularisation mechanisms, on the other hand, are encoded under the country's legal and policy framework and thus are not time-bound. However, in practice the mechanisms can be divided further into two categories: regularisation mechanisms with broader applicability (France, Greece, Netherlands, Portugal, Spain), and more limited ones (Austria, Belgium, Germany, Italy, Netherlands, UK). The typical mechanism is one established under law, based on which irregular migrants may apply for a residence permit if they fulfil the conditions. Other forms include discretionary powers of state actors such as Ministers (Netherlands) or judges (US), as well as official guidance on granting of permits (France). In Germany, Federal States have introduced Commissions dealing with cases of exceptional hardship, to which irregular migrants can apply for a toleration or residence permit. The final decision is made by the Federal Minister for Home Affairs.

Broader-scale mechanisms are the usual ones discussed in the context of regularisation mechanisms, where under law broad conditions apply for regularisation. In Greece, the mechanism for regularisation established in 2014 was the basis upon which the regularisation programme noted earlier was implemented. This is the only case identified under which a regularisation mechanism led to a regularisation programme.

Other broader regularisation mechanisms include those established in France (2012), Portugal (2007), Spain (2004/2011/2022) and the UK, as well as the short-lived Dutch “children's pardon” (2013-2019). In France, Greece, Portugal and Spain, the applicant's link to the labour market, usually through an established employment contract, is a central requirement to the main regularisation pathway. In Portugal, applicants must provide a valid labour contract and must have contributed to the social security and tax system for 12 months. Their contributions to the social security system have reportedly been key in the positive sentiments Portuguese continue to hold towards irregular migrants, where other countries have faced rising xenophobia. In Spain, the *arraigo* mechanism applies to several categories of those with employment contracts or formal employment history, as well as more recently in 2022 to those who will undertake professional training (see Promising Practice box for more details). In the UK, the most constrained of these broader mechanisms, irregular migrants continuously resident in the UK for 20 years can apply for regularisation, after which they enter an additional 10-year route to settlement.

Potential promising practice: the Spanish *arraigo* regularisation mechanism

In 2004, Spain introduced an *ad hoc* individual residency route in its immigration policy, which has expanded in scope over the years. Effective from 2006, the *arraigo* mechanism, which translates to “roots”, offers a residence permit to migrants in an irregular situation, who have lived in Spain for two or three years, and who can demonstrate a certain degree of social or economic integration. Currently, there are four main types of eligibility domains for the *arraigo* mechanism:

i) *arraigo social* – Introduced in 2006, this applies to those who can demonstrate social integration through proof of staying in Spain continuously for a minimum period of 3 years; have family ties with other resident foreigners, or alternatively present a report showing their social integration level; and have an employer contract signed by the worker and the employer.

ii) *arraigo laboral* – Introduced in 2006, this is eligible for those who have stayed continuously for a minimum of 2 years and who can prove continuous employment for at least six months;

iii) *arraigo familiar* – Introduced in 2011, this offers a pathway to regularisation for parents or guardians of Spanish minors; those who provide support to a Spanish person with a disability or who requires support measures for the exercise of his or her legal capacity; the spouse or accredited unmarried partner of a Spanish citizen, an ascendant over 65 years of age or under 65 years of age, a descendant under 21 years of age or over 21 years of age of a Spanish citizen, or of his/her spouse or unmarried partner; children of a father or mother who were originally Spanish

iv) *arraigo por formación* – Introduced in 2022, this applies to those who have been in Spain for a minimum of 2 years before the application, and are enrolled in training courses by the Public Employment Service, aimed at addressing the labour market needs

The general requirements to be eligible for the *arraigo* state that the applicant: i) must not be a citizen of an EU Member State; ii) not have a criminal record in Spain; iii) not be banned from entering Spain; and iv) not be, where applicable, within the period of commitment of no return to Spain. Each of these *arraigo* channels further have specific eligibility criteria, and the validity of the corresponding residence permits varies. For instance, while the *arraigo social* and *laboral* correspond to a one-year non-renewable residence permit, the *arraigo familiar* corresponds to a five-years residence permit. It means that for *arraigo social* and *laboral*, after the validity of the residence permit ends, the individual needs a regular work permit to stay on the territory. *Arraigo por formación* can be renewed in case the training duration is more than a year. Moreover, the scope of these specific *arraigo* mechanisms have also undergone expansion over the years. For instance, in 2011, the duration of pre-employment requirement for *arraigo laboral* was shortened, and further regulations in 2022 allowed regularisation for family reasons to those irregular migrants who are the official caregivers of a Spanish national in a situation of disability. This expansion in scope of the *arraigo familiar* to caregivers is an innovative approach that may extend regularisation to the domestic sector.

The *arraigo* mechanism is credited to have reduced the number of irregular migrants on the Spanish territory by regularising 650,000 individuals (Finotelli & Rincken, 2023), regardless of their nationality or occupation. Its success is also attributed to Spain’s inclusive municipal registration application, which allows irregular migrants to access civic and social rights by registering with a municipality with any identity document and a valid utility bill. This municipal registration then serves as proof of residence for *arraigo* applications. The general viewpoint among relevant stakeholders in Spain is that the *arraigo* has converted migrant irregularity into a transitory condition, as a phase to go through before their status can regularised. As shared by one of the stakeholders, the *arraigo* mechanism has transformed irregularity in status into a “matter of time” (Spanish government representative, stakeholder workshop). That said, the duration it takes for an irregular migrant to regularise their stay through *arraigo* may vary, depending on the time they need to meet the eligibility requirements. Once the application for *arraigo* is made, administrative processing takes about three to four months to

decide on the outcome of the case. The residence permit is effective as soon as the applicant receives a positive outcome on their application.

Many of these mechanisms (larger or smaller scale) account for the right to private and family life in particular (enshrined in Article 8 of the European Convention of Human Rights), providing residence to family members of children, according to particular criteria. The Dutch “children’s pardon” was in place from 2013 until 2019, targeting children in the asylum process for at least five years (as long as the process began before the age of 13). In conjunction, immediate family members could also be granted residence. In France, the 2012 Valls Circular outlines the conditions under which residence can be granted under the law, which includes accounting for the applicant’s private or family life (e.g., those with children in French school, or married to regular migrants). In Spain, family ties to legal residents or other demonstration of social integration are key elements for the *arraigo social*. In Austria, residence may be provided where the private and family interests of the person remaining in the country outweigh the state’s interests in removing them. In Portugal and the UK, paths to citizenship are provided for irregular children born in the country. In other cases, residence is granted to irregular migrants whose children are born in or citizens of the respective country: as this implies changes in circumstance (parenthood, birth), this is further discussed in the relevant sub-section below.

Smaller-scale mechanisms are usually described as residence permits granted under a legal provision for “exceptional circumstances” (Austria, Belgium, Germany, Netherlands), including temporary statuses for humanitarian or medical grounds, discussed previously. In these cases, residence permits are issued in a highly individualised manner: while established under law, the regularisation mechanism is not implemented in a larger-scale manner. Some of these countries may explicitly describe themselves as anti-regularisation, or maintain fairly restrictive policies for the irregular migrant population. The existence of a regularisation mechanism nonetheless therefore implies the absolute need for some kind of mechanism to regularise migrants at the state’s discretion.

Here, the wide range of actors engaged can be highlighted. In Germany, exceptional permits are granted in cases of “hardship”. They are processed by special commissions established in the federal states, who may issue a hardship petition that may then be granted by the federal state. When the Dutch children’s pardon was abolished in 2019, so too was the discretionary power of the Dutch Ministry of Migration to grant residence permits. However, in parallel, an alternative mechanism was established. Under the discretion of the director of the Immigration and Naturalisation Service, he or she may grant residency to irregular migrants for exceptional reasons, *ex officio* or based on a court judgement. Discretionary powers have also been important in the US case, where a number of different entities are empowered to regularise individual or groups of irregular migrants (or provide tolerated status). This includes immigration judges, U.S. Immigration and Customs Enforcement, the U.S. Citizenship and Immigration Services, the Secretary of Homeland Security and the president.

Informal regularisation

Informal regularisation as a term draws on previous research (Baldwin-Edwards & Kraler, 2009; Kraler, 2009) outlining the ways in which existing instruments such as labour migration channels may be used to provide a legal status for irregular migrants, while not designed or described as regularisation instruments per se. In the past, for example, in-country applications for residency without the requirement to apply from abroad have been common.¹⁹ Yet nowadays with the tightening of migration rules and regulations, this practice has become quite uncommon. A few examples can still be mentioned here.

The first case where “informal regularisation” has been identified according to these criteria in the countries under study is the case of EU citizens who have fallen into a form of irregularity. In case they stay in another EU Member State for more than 90 days without registering themselves, their stay is considered irregular. In such cases, the regularisation process usually involves simply registering with the authorities, unless they have been issued an order to leave. In some cases, they may face a fine for violating the laws regarding legal stay in the respective country.

The second case in which this has been identified is the current approach under the Italian quota system. Previously, special permits were allocated for migrants and application has been required from outside the country, yet the process was de facto used by irregular migrants in-country. With the last quota decree of 2023, however, the requirement for applications to be lodged from outside the country has been removed. In Italy, the quota system allocates work permits for migrants from specific countries of origin and sectors of employment, covering both seasonal and non-seasonal employment. Key sectors of employment under the quota system in the past include nurses, IT workers and construction workers, as well as seasonal agricultural and tourism workers. With the 2023 Flows Decree the sectors were expanded to include also family and socio-medical care workers, electricians, plumbers, transport and fishing workers. In this process, an Italian employer submits a request indicating one or more already known workers (“nominal request”) or a number of required workers (“numerical request”) to be recruited from the countries with which Italy has bilateral agreements on quotas.

This practice has been well-established as a mechanism employers use to regularise their irregular migrant workers already in the country, although it previously required migrants to leave the country and re-enter (Cuttitta, 2008). The previous process has been described as a bewildering one, for employers and irregular migrants alike:

“With our quota mechanisms, we also have a wild snakes and ladders game, for which you apply for a foreign worker who already stays in Italy. Then, this person returns to his or her country of origin, pretending to have never been in Italy before. We have to tell these people to put their passports in the washing machines, so they can have a clean passport again and prove they have never been in Italy before. If they got blocked on their way home, everything fell through! Still, regularly hiring a foreign caregiver is so tricky. You can play regularly with somebody already here or play irregularly and wait for the next regularisation programme.” Italian civil society organisation interview

¹⁹ In France, reportedly up to 60% of migrants attained irregular status post-arrival in the early 1970s. In Austria, such status adjustments were relevant until the 1990s. (Baldwin-Edwards & Kraler, 2009; Hollifield, 2004).

As of 2023, workers are no longer required to return to their country of origin and re-enter, thus establishing this instrument as an informal means for regularisation, through an employer.

In a similar approach, in 2021, Portugal concluded an agreement with the Community of Portuguese Speaking Countries (CPLP) to provide access to a permit for nationals of these Member States to enter and stay in the country. The permit does not allow access to the rest of the EU/Schengen area, however, as the European Commission considers the agreement as not compliant with EU regulations. In this case, while the permit is meant for nationals of these countries to apply from abroad, it has also been used de facto to regularise the situation of some irregular migrants in the country already:

“the CPLP agreement and now that the law has put it in practice the Portuguese law, so it has had an impact on migrants irregularity, because if they are here in an irregular status so they can like way faster they can get their residency and become regular so that's an impact on migrants' irregularity that that policy has had.” Portuguese government representative interview

These last cases demonstrate the way in which other policies or instruments may be used to regularise migrants' status, albeit on a smaller scale. Further analysis would be needed to provide insight into how such “informal regularisations” have changed in nature over time.

Potential promising practice: Use of the Italian quota system by employers as regularisation process

Although problematic for a number of reasons, the Italian quota system has served to address migrant irregularity in the country in an indirect manner. Annual quotas are set by Flow Decrees (“*Decreto Flussi*”), based on a consultation process with a technical working group composed of relevant Ministries, Parliamentary Committees, regional and local authorities and representatives of trade unions and employers' organisations. Quotas take into account quantitative and qualitative criteria, based on labour market needs, integration capacity of local areas, potential alternative existing labour force (e.g., migrants holding other permits) and sectoral needs. In terms of sectoral needs, the quotas establish limits according to seasonal and non-seasonal employment. The current 2023 quota allows for 452,000 workers, mostly seasonal ones, over the subsequent three years. Moreover, it abolishes the previous requirement for workers to leave the country and re-enter, which was a key criticism of the quota system previously, given employers' preference to hire migrants with whom they are familiar and already in the country. Indeed, employers have in practice lodged requests for a worker in the quota system, as a way to regularise their own workers.

Critics of the system have highlighted that the quota system has been insufficient to address Italian labour market shortages. This is supported by the fact that during the first day, more than 240,000 applications by employers for permits under the quota system were made online (“*Click day per il decreto flussi 2022*, n.d.). Moreover, interviewees in Italy suggested major adjustments to the quota system to improve its flexibility or new mechanisms to allow irregular migrant workers in the country to access regular status:

“We should go back to sponsor mechanisms. It means that you should allow foreigners who are already here to work for Italians, to allow these people to apply for the quota mechanisms. Do you really think Italian families would entrust their loved ones to foreigners never met, who stayed abroad? It's absurd. I wonder why the last regularisation program targeted so many careworkers...” Italian expert interview

Operation of national and EU law

In this category, the status of a category of persons is collectively changed by the operation of the law. This can take place due to amendments of national legislation that respond to changing situations and shifting power balances among political parties, but also at the EU or international level when new conventions or bilateral agreements come into force. Prior to the period under study, for the EU, accession of some new EU Member States had a major impact on migrant irregularity in EU Member States due to the large-scale legal status change of nationals of these new EU Member States who were previously irregular. As of 2010, other examples of this include the activation of the Temporary Protection Directive (2001/55/EC), which determined access to regular status to newly arrived and previously irregularly present Ukrainians across the EU.

Similarly, the entry into force of the Temporary Protection legislation in Türkiye in 2014 immediately regularised the status of all irregular Syrians in the country seeking protection but ineligible according to previous laws (See promising practice box). In cases of large-scale displacement, the triggering of such mechanisms can have important impacts on the functioning of the asylum systems in respective countries, as well as quickly concretise actual access to protection for those in need:

“Well, perhaps such a good example of how it would be worthwhile for states to react to crises in other countries is that, as I understand it, Ukrainians were granted such a Europe-wide right of residence. And this is, as it were, an absolute factor protecting their potential and their rights. Such a broader understanding that it is in the interest of both the individual and society, that the status of the individual is legalised, that they have the right to escape and be on the run in the country to which they are then directed. This is a good example of how this could work.” Finnish civil society organisation interview

Potential promising practice: Temporary Protection of Syrians in Türkiye

Given the geographic restrictions of Türkiye’s asylum law, which only grants refugee status to refugees from Europe, the temporary protection regulation of 2014 has been instrumental in preventing irregularity of Syrian nationals in the country and regularising the status of millions who were irregularly present when the regulation came into operation. As of 2011, Türkiye experienced a major influx in arrivals of refugees fleeing the Syrian civil war. Prior to 2014, Syrians were referred to as “guests”, which put them in a semi-legal limbo status. However, with the impetus of the Syrian conflict, efforts to revise the legal framework were prioritised (although they were launched prior to 2011). Under the Temporary Protection Regulation, which was modelled after the EU’s eponymous Directive, any Syrian or stateless person fleeing from Syria could register as beneficiaries of temporary protection, with swift processing of applications based on origin, regardless of mode of entry into the country. As of end of 2023, Türkiye hosts 3.2 million Syrians under Temporary Protection, without a specific time limit to their protection status.

Yet the policy has not been without criticism, given the restrictions still imposed on beneficiaries. Beneficiaries of temporary protection can apply for work permits six months after they are granted their status. However, access to specific jobs is limited: there are 28 positions foreigners are prohibited from working in, including lawyers, judges, tour guides, pharmacists, accountants, etc.

Moreover, Syrians under Temporary Protection are required to live and work in the areas in which they are registered. These rules have increased the “quasi-irregularity” of those working or living in violation of their temporary protection permits. At the same time, the “temporariness” of Syrians’ situation in Türkiye can be challenged – some may have already been in the country for over a decade, belying the transitional purpose of such a status.

As of 2021, the deployment of the Temporary Protection Directive in the EU, implemented swiftly across Member States, demonstrates a similar process (upon which the Turkish regulation was modelled), by which large numbers of those seeking protection can access protection quickly and efficiently, and to avoid large-scale irregularity. Given Türkiye’s experience implementing a similar policy already for over a decade, their experiences in this sense could provide the EU with lessons going forward, in terms of how to manage the temporary status of Ukrainians as their displacement becomes protracted.

EU Court of Justice rulings also emerged as important means to regularise specific groups of irregular migrants, through the establishment of their rights under law. Building on the 2011 *Zambrano* ruling, the 2017 *Chavez-Vilchez* ruling has been important for Ireland and the Netherlands, although applicable across the EU. These cases upheld the right to residence of irregular migrant parents of EU citizen children, if lack of access or denial of such rights would require the EU citizen child to leave the EU. In response, the Netherlands was required to provide residence permits to irregular migrant parents of Dutch children. The *Chenchooliah* ruling in 2019 found against Ireland’s practice of deporting non-EU spouses of EU citizens in cases where the relationship was dissolved, or the EU spouse left the territory. In response, Ireland regularised the third country national spouses affected by the ruling.

Changes in personal circumstances

An irregular migrant becoming a parent can be an important change in circumstance that provides him or her with access to regular status, particularly when the child has EU citizenship (according to rights established by the EU Court of Justice, discussed above), but also in other cases. In Germany, authorities are obliged to issue toleration permits to pregnant women in an irregular situation covering the period from six weeks before the due date and eight weeks after the date of birth. In Italy, irregular migrant parents of a child born in Italy can be granted a six-month residence permit. Similarly, the Juvenile Court can authorise the issuance of a residence permit to irregular migrant parents where the child has specific protection needs (taking into account also age and health conditions). These residence permits are temporary (linked to the situation) and cannot be renewed or converted, although in the former case it is reportedly a channel irregular migrants use to later achieve family reunification and therefore status change. In Portugal, irregular migrant parents can obtain residency through the naturalisation of their child born in the country (See promising practice box below).

Marriage of an irregular migrant to a national or resident is also a way to regularise status in most countries, whereby they also access family (re)unification policies. This was considered an important pathway out of irregularity for Belgium, Finland, Italy, Morocco, Portugal and the US. In Italy, where marriage is to a third country national with residence, individuals can still access regularisation through family reunification, given that the irregular migrant

applying for status change under this condition can prove legal entry within the prior year. Where the marriage is to an Italian national, regularisation extends to relatives within the second degree, with proof of cohabitation. In the US, irregular migrants may be able to adjust their status through marriage or by proving they are a direct relative of a US citizen, although application from the country of origin may be required. In Ireland, as mentioned in the previous section, the rights of a spouse of a citizen or another EU resident are upheld even in cases of divorce. On the other hand, this has raised questions in some countries about the potential for “sham marriages”: in Ireland, Operation Vantage is a police programme established in 2015 that investigates irregular migration, including potential marriages of convenience. In Germany, marriages and declaration of parenthood of irregular migrants without a right to remain may raise the suspicion of authorities, who can initiate an investigation and may refuse or annul the related certification.

Those engaged in study programmes also have access to status, following the end of their studies. In Austria, Belgium, France and Ireland, students are granted one or two-year permits after graduation during which time they can seek employment in the respective country.

Yet at the same time, where the access exists, it can still be constrained in cases of strict application of criteria:

“Family reunification has also been made practically impossible. The requirements for making a living are extremely high. We have people who have more or less completed their studies here in Finland and maybe even have a job in sight, but it can all be jeopardized by something like lacking a passport.” Finnish civil society organisation interview

Moreover, changes in status of parents can also have a negative impact on children: where a parent loses their residence, a child may face issues with their own naturalisation processes (Greece).

Potential promising practice: Portuguese access to citizenship for children

In Portugal, access to citizenship was expanded for children of irregular migrants, which has contributed to reducing the irregularity of this population, as well as of their parents, who thereby have access to status. In particular, the revisions to the citizenship law were framed in the context of social concerns about the existence of second and third generation migrants who grew up in the country yet still did not have citizenship.

Portuguese nationality is provided to children of irregular migrants who have completed primary education in the country, as well as those born to a parent born in Portugal (regardless of whether they held a legal residence permit). In 2020, changes to the Portuguese Nationality Act entered into force, expanding citizenship access to those who were born to parents who lived in Portugal for at least one year (even if with irregular status). Based on their relationship to a Portuguese citizen, irregular migrant parents can also obtain long-term residence permits.

4.3.4 Reasons for remaining in irregularity

While this chapter has focused on the policies that influence pathways into and out of irregularity, migrants' agency in deciding to take up a certain path (or not) is also an important consideration. (Düvell et al., 2018) highlight three different behavioural pathways into an irregular status, from migrants' perspectives: "planners", who deliberately set out to breach immigration regulations from the start, such as for work; "successive intentionals" who develop such an intention after arriving, usually after a change in circumstance such as falling in love or finding economic conditions more difficult than expected; and "accidentals", or those who are unintentionally irregularised, because they may be cheated or misled by others.

Indeed, across the countries under research, in some cases migrants remain with irregular status, rather than access pathways out of irregularity for which they may be eligible (Austria, Canada, Germany, Greece, Ireland, Poland, United States). The primary reasons given for irregular migrants to remain in irregularity (and countries for which these reasons were highlighted) include:

- Practical reasons including cost, burden of proof (e.g., of "hardship" in the case of Canada) and resources needed to access the pathway exceed their capacity (Austria, Canada, Greece, UK).
- Fear that accessing the pathway or making oneself known ("visible") to the authorities will have negative consequences, such as deportation and/or application of an entry ban (Austria, Canada, Germany, Greece, Ireland, Netherlands, United States). In cases where legal advice and counselling requires contacting a state authority, this may impose an even higher barrier to access (Austria). As described by an Irish expert interviewee:

"Many people are not willing explore this pathway to regularisation given it entails running the risk of deportation, and [so] they stay undocumented" Irish expert interview

- Lack of knowledge of existing pathways, or uncertainty of their own eligibility for these pathways, due to high legal complexity and/or lack of multilingual information (Austria, Germany, Tunisia).
- Lack of trust that the pathway will offer them a tangible path out of irregularity, perhaps through the experiences of friends and family who did not have a positive outcome (Germany, Greece, Poland).
- Belief that they can remain undetected in the country, including until they choose to move onwards (Greece, Serbia).
- Belief that another more favourable solution may emerge in the future, such as regularisation or opening of migration corridors to other countries (Greece).

At the same time, access to pathways out of irregularity may be actively hindered or denied by state actors, highlighted in a number of countries (Bosnia and Herzegovina, Serbia, Tunisia). This includes through facts on-the-ground, such as refusing to register an asylum claim, inability to register the claim (e.g. due to insufficient resources), or bureaucratic obstacles.

Moreover, bureaucratic hurdles can even create parallel informal systems, contributing to the informal sector in the country:

“The online bureaucratic procedures have generated a parallel industry dedicated to managing appointments, and this curtails people's right to access the Administration. They make it so difficult that in the end, you have to hire someone to get the appointment. The administration knows this.” Spanish local government representative interview

These hurdles have important impacts on migrants' wellbeing. As exemplified by one interview, irregular migrants have

“a fear and lack of certainty about the end result. Not everyone has access to a superb lawyer who will explain everything [to an applicant] and sort it out [...] Usually incoming [foreigners] come from ex-Soviet countries or so called third world countries where trust in public institutions is not high.” Polish government representative interview

Such issues should be kept in mind when considering migrants' practical (versus juridical) access to pathways out of irregularity. The next chapter will delve further into additional challenges that hinder states' ability to implement policies appropriately or effectively.

5. POLICY IMPLEMENTATION CHALLENGES

5.1 Introduction

The previous chapters have traced the evolutionary trajectory of policies that target irregular migration and illuminated the intricate pathways leading migrants into and out of irregularity. While the pathways shed light on the interplay between policy frameworks and migratory realities, across the countries under study, the journey from policy formulation to effective execution is fraught with complexities and uncertainties. A number of factors have been identified as inhibiting implementation of policies designed to address migrant irregularity. These range from broader structural impediments in implementation in relation to legal frameworks, to more specific hindrances and tensions in practical implementation of certain measures. While some challenges are common across a number of countries, others are more specific to particular national contexts and dynamics of migrant irregularity present in them. Below we summarise some of these notable challenges across the countries under study.

5.2. Challenges in policy implementation

5.2.1 Structural challenges

These challenges encompass institutional frameworks, legal procedures, bureaucratic complexities, and economic dynamics that shape how societies handle irregular migration. Across the countries under study, inherent design of the national legislative systems related to migration, as well as labour market realities, have been identified as two major factors having a consequential impact on the practical execution and enforcement of policies in relation to migrant irregularity.

Legislative frameworks

This aspect pertains to the architecture of legal frameworks within the countries under study, which then dictate how official responses to migrant irregularity are approached. Some countries have not traditionally considered themselves countries of destination (Ireland, Poland, Portugal, Spain), while those on the outside borders of the EU view themselves as

transit points for the EU (Bosnia and Herzegovina, Morocco, Serbia, Tunisia, Türkiye). Therefore, their laws and regulations have largely concentrated on addressing matters related to emigration, while legal provisions to address immigration matters, including migrant irregularity are still in their infancy. Within this transformation of countries of emigration to countries of immigration, two main policy approaches have been identified. On the one hand, it may lead to increased focus on legislative development without proportionate attention towards implementation and practice. For example in the case of Spain, while the national legal framework is protective in terms of granting access to rights as compared to other countries, gaps in implementation and enforcement have been highlighted as inhibiting access in practice, particularly in terms of applying for international protection at the borders, minors' access to education, and access of irregular migrants to housing and social services (Spanish civil society interviews, Spanish civil society representative at stakeholder workshop). On the other hand, without adequate legal backing, migration policy, in general, may be seen as more reactive (Poland), and often driven by the outcomes of case law rather than a coherent legal approach (Ireland). For instance, as highlighted by an expert in Ireland, since becoming a country of immigration,

“the state has been struggling to catch up.” Irish expert interview

This fragmentation of approach is also observed in countries that have long been immigration destinations, such as the US, where the lack of an integrated approach to transform the US immigration system is considered as a major barrier to implementation of effective policies (Warren, 2024). When certain policy actions are introduced without sufficient legal backing or adequate legislative adjustments, they may reflect lack of consistency in approach, lack of accountability in action and hence varying degrees of enforcement. This is particularly observed for regularisation programmes, which are (by nature) introduced in an *ad hoc* manner rather than through legislative backing. As noted by a stakeholder interviewed in Morocco,

“The regularisation campaigns were exceptional directives from the Moroccan King and do not have any legislative nature; and since 2017 there has been no regularisation status for newcomers. On the contrary, even those who benefited from the one-year residency card either in 2014 or 2017, fell again into irregularity later, as most of them could not renew their status due to lack of documentation.” Morocco civil society organisation interview

Moreover, legal complexity by design introduces uncertainty in terms of implementation. For instance, intricate frameworks surrounding legal permits, with differential access to rights for work and residence for specific categories, can make it challenging to implement status adjustments or specific regularisation measures in work and residence.

Another issue is related to the speed with which laws and policies are proposed and enacted: some countries experience frequent changes in laws and policies that can create uncertainty in terms of even implementation across the country (Finland, Tunisia), while for others the slow change and adaptability of laws and regulations can be a hindrance for addressing prevalent issues related to migrant irregularity (Belgium). For instance, the Finnish Aliens Act underwent several amendments throughout the 2010s, particularly after 2015, and as recent as 2023, often instigated by change in governments. Some other legislative domains with influence on irregular migrants' status and living conditions were also amended, such

as the Act on the Organisation of Social and Health Care, and the Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings. However, updates in these legislative domains have been interpreted differently across local governments, leading to inconsistencies in implementation. In Belgium, in contrast, enacting regulations is a particularly time-consuming process. Amendments in regulations often have to go through multiple vetting processes, including parliamentary debates in most cases, with more complex processes for national level regulations as compared to municipal levels – suggesting that local level engagement may be more effective in some cases.²⁰

Labour market structures

In some countries, dual labour market structures, comprising large un-regulated informal markets along with the formal labour market, pose implementation challenges vis-à-vis policies concerning employment-based regularisations (Italy, Poland, Portugal, Spain). This is particularly true in contexts where legal pathways for labour migration are limited but demand for labour is high in certain sectors, which is then filled by irregular migrants (Germany, Ireland, Italy, Netherlands, Portugal, Spain, Türkiye). In these cases, the prevalence of an informal labour market can sometimes inhibit mechanisms introduced to regularise labour migrants where structural factors behind the existence of informal markets are not addressed (i.e., high labour demand in specific sectors and restricted legal access). Implementation of work-based regularisations can therefore be challenging in some cases: since irregular migrants are available at cheaper costs, employers may prefer to hire them over regularised labour. At the same time, in the context of care work, the ability for labour law enforcement to monitor private households who employ migrant care workers is restricted. For Greece and Spain, this phenomenon is explained by a trade union member and an expert:

“Irregular labour is addictive for employers because it is hyper-flexible” Spanish trade union representative, stakeholder workshop

“As long as we have demand for such jobs where the state cannot interfere, there will be a pull factor – i.e., if someone knows that will find a job, maybe not on the best terms, but there will be a possibility to find a job.” Greek expert interview

Even in cases where employment procedures for international recruitment are made legally accessible to a certain degree (e.g., in Poland through its simplified employment procedures, Italy through its quota mechanisms for specific economic sectors, Germany with its seasonal labour and contract labour arrangements, and Spain through the improvement of legal migration channels), there are high occurrences of systemic abuse due to the nature of the labour market structure and economic fluctuations in some sectors. For instance, simplified employment procedure for certain foreign nationals²¹ in Poland has reportedly led to fraudulent contracts, where foreign nationals did not eventually work with the declared

²⁰ For more information on the policy approaches towards irregular migrants at the local level, see MIrreM Working Paper 7/2024: Local-level laws and policies addressing irregular migrants. Available at: [10.5281/zenodo.10870032](https://doi.org/10.5281/zenodo.10870032).

²¹ Armenia, Belarus, Georgia, Moldova, Russia (until 2022) and Ukraine

employer. An evaluation in 2014-2015 concluded that around 80% of foreigners who entered Poland on the basis of such declarations did not start legal employment in Poland at all (NIK o zatrudnieniu, 2016).

For Spain, the issue is the mismatch between the demand and supply of labour, even with the improvements in labour migration channels. This is because the catalogues for job demand have outdated categories, which allows for the informal labour market to flourish in new sectors. New economic sectors employing irregular migrants usually comprise the gig or platform economy, which are not sufficiently backed by regulatory frameworks (Spain, UK). In the case of Italy, quota mechanisms for specific economic sectors are also abused, due to this mismatch in labour supply and demand, leading to fraudulent employment practices in other sectors. As explained by a CSO representative in Italy,

“Many working relations are fictional. Most applicants are caregivers, but they do something else in reality. They make pizzas! Currently, in tourism industries, restaurants... employers can’t find employees! However, they have to lie. It is easier and faster to go to the prefecture and declare they want to hire certain people as maids or caregivers. They are hired as chefs and servers when they get work permits. We live in 2023: How can we manage the labour market intersection between offer and demand in this way? By lying? By pretending they are caregivers? It is absurd.” Italian civil society organisation interview

These challenges to implementation of policies addressing migrant irregularity are systematically engrained in the system due to the presence of parallel labour markets (i.e., formal and informal) and economic transformations. This is aptly summed up by another Italian CSO representative,

“If quota mechanisms and other regular entryways are not working, and if the Italian labor market stays dual and impervious since Italians do not take certain jobs anymore regardless of the fact there is a crisis or there is not, what can employers do? How can they solve the labour shortage? Irregular work, irregular stay! Our system generates irregularity.” Italian civil society organisation interview

5.2.2 Coordination issues

In most countries under study, the policy field surrounding migrant irregularity involves a wide array of stakeholders, ranging from governmental to non-governmental actors, comprising a range of line ministries, as well as international, national and sub-national levels, responsible for different facets of migration management. This speaks to the tensions in multi-level governance alluded to earlier on the role of local and provincial governments and established in previous research (Spencer, 2018). Coordination challenges, differences in interpretation of policy measures and legislation, and sometimes even tensions and competition between these different stakeholders, and between different administrative tiers, is linked to slow implementation and limited effectiveness of policy measures in all countries under study. Different stakeholders in the field of migration governance have different objectives and approaches: the outcomes of tensions between such stakeholders have obvious implications for migration policy implementation.

Ministries, departments, and administrative tiers

Managing the entry, stay and exit of irregular migrants are dealt with by different line ministries and government departments, often with overlapping responsibilities in multi-tier government systems across the countries under study. One commonly observed point is that the various government entities involved in responses to irregular migration may have diverging policy priorities and may adopt varied interpretation of laws and policies related to migrant irregularity, and in some cases may also deliberately decide to implement policies in a different way (Belgium, Finland, Germany, Italy, Morocco, the Netherlands, Serbia, Spain, Tunisia, UK, US). While this may be efficient in some aspects, as it creates flexibility for some stakeholders to implement more inclusive measures, such a distribution often leads to challenges related to a coordinated response as it creates a “multitude of discretionary spaces” (Oomen et al., 2021) (Austria, Belgium, Bosnia and Herzegovina, Canada, Finland, Netherlands, UK, US).

Involvement of a multitude of government bodies in dealing with migrant irregularity may also create a responsibility gap in terms of action (Finland, the Netherlands, Poland). In Poland, stakeholders note the numerous state agencies working on migration actually tend to focus on their narrow priorities, rather than effectively coordinating among each other. In the Finnish case, when an asylum case is rejected by the Finnish Immigration Services, and the Police of Finland decides that the individual cannot be returned, there is a lack of clarity still as to under whose ambit such cases fall. In such cases, the regional government body (i.e., wellbeing services county) or municipality is faced with ambiguity in terms of course of action. This challenge is expressed aptly by a government representative in Finland,

“The challenge, as I see it, lies in the fact that negative decisions are made at one level, while the person cannot be returned [to the country of origin]. However, at that same level, one's own table is cleared. Consequently, this problem is left for the next level to contemplate. The entire process should be approached as a cohesive continuum, not only from an individual actor's perspective but also in terms of how the issue can be comprehensively addressed and completely resolved. It feels as though these paperless individuals are somewhat akin to a hot potato, dealt with on one's own level and quickly passed on to the next.” Finnish government representative interview

Implementation challenges may also occur when some government departments may not coherently follow through on changes in central government priorities. For instance, in the US, despite a change in priorities of the Biden administration to only deport those irregular migrants with serious criminal charges, Immigration and Customs Enforcement continued to implement deportations according to their own already-set priorities. In this case, lack of regard for the newly introduced criteria for deportation (threat to national, public or border security) highlights the disjointed approach to implementation across different stakeholders.

Coordination challenges do not just take place at the line ministry level, but also between different tiers, i.e., national, regional, municipality and local service providers, adding to bureaucratic delays and inconsistencies in implementation (Austria, Belgium, Bosnia and Herzegovina, Finland, Germany, the Netherlands, Portugal, Serbia, Spain). Conflicting policy

objectives and contradictory or diverging policy implementation approaches can be compounded by a lack of coordination or even outright conflicts over policy directions. In the Netherlands, border management and immigration controls are under the national government's ambit, while housing, civic and labour market integration of individuals under international protection, in addition to other services offered to irregular migrants, fall under the jurisdiction of the municipalities.

For federalist governments, each tier of government can possess its legislative authority and can establish regulations within its jurisdiction in relation to migrant irregularity or services available to irregular migrants, which may or may not be aligned with a national approach (Austria, Belgium, Bosnia and Herzegovina, Canada, Germany, United States). This can lead to policy implementation challenges or policy conflicts across different administrative tiers: their objectives and perceptions are sometimes not in alignment (EMN Netherlands, 2021), often leading to variations in how migrant irregularity is addressed across regions within national territories.

This is noted in Austria with regard to basic care provision, where the provinces (Bundesländer) need to apply the national law of Basic Care Agreement to foreigners: non-removed persons are an explicit target group of this legal provision. Given that the suspension of removal ("Duldung") is often only granted de facto yet migrants often don't receive a written confirmation of the suspension, this poses a challenge for a coherent implementation and access to basic care in the country ("Grundversorgung") (FRA - European Union Agency for Fundamental Rights, 2011; Homberger et al., 2022). In practice, different provinces apply the law differently, with some provinces being more inclusive than others. In the US, the cutting of federal funding for sanctuary cities was implemented as a punitive measure to address migrant irregularity.

Differences in resource allocation and expertise across different municipalities in relation to the concentration of irregular migrants may also impact the scale of services available for irregular migrants (Austria, Belgium, Finland). In Germany, assignment of an administrative migration category is not coherently implemented but follows the preferences and circumstances of local offices with the result that in some regions a tolerated person is granted a temporary probatory permission that opens access to a secure residence status but would be denied this pathway in another.

Disagreements within or among policymaking bodies have also been linked to slow processes of updating or introducing new regulations on the matter, as observed in the case of Belgium. Similarly, where local communities may grapple with the social and economic impacts of irregular migration, divergent views emerge on appropriate policies and interventions. Specifically affected are the range of services that irregular migrants are entitled to, with constant changes and fluctuations based on political agendas leading to widespread uncertainty and ambiguity among service providers as well as for migrants in irregular situations (Belgium, Finland, Netherlands, UK, US).

To address coordination issues in multi-governance and multi-actor systems, some countries have created coordinating agencies or task forces to mainstream government action (Finland, Greece, Poland, Spain). However, the effectiveness of these structures also depend on the degree to which different entities are open to letting go of some

responsibilities towards these agencies, and sometimes taking on additional tasks, which may create some tension.

Stakeholder groups

There is a broad spectrum of stakeholders engaged in governing migrant irregularity within national contexts, including not only governmental bodies as noted above, but also civil society organisations, international organisations, migrant advocacy groups, and local communities, among others. Each of these stakeholders brings its own set of priorities, objectives, and perspectives to the table, often resulting in a dynamic interplay of interests.

Within this intricate web of stakeholders, tensions often arise due to differing agendas, resources, and approaches to addressing irregular migration. For instance, law enforcement authorities may prioritise border security and immigration enforcement, potentially at odds with the humanitarian concerns championed by civil society and advocacy groups. In such cases, the political will for cooperation with certain actors may sway tactics towards more or less inclusive policy approaches. Actors applying or referring to legal provisions may prefer to emphasise and interpret more or less restrictively based on their human rights orientation, nativist sentiments, economic motivations, political alignment or other factors (Germany, Finland, France, Morocco, Netherlands, Poland, Serbia, US).

Some national governments may impose stricter regulations to restrict or deny access of services to irregular migrants. In Greece, for instance, the law criminalises the provision of support to irregular migrants, highlighting the cooperation challenge between the state and the NGOs. However, in certain cases (e.g., Austria, Bosnia and Herzegovina, Finland, Netherlands, Spain, UK, US) municipalities and local stakeholders may continue to provide those services (particularly related to healthcare, education and shelter). While this flexibility mostly helps the situation of irregular migrants, it is often deemed as a hindrance for having a consistent and uniform approach towards migrant irregularity at the national level, and sometimes may be challenged by national governments. In 2012, despite a Dutch court ruling limiting access requirements, municipalities (Utrecht and Amsterdam) and civil society organisations continued to provide emergency shelters and basic needs to a broad range of irregular migrants (Finotelli & Rincken, 2023; O’Cinneide, 2020b). Such tensions are also observed between law enforcement authorities and service providers in matters related to data sharing and firewalls (discussed later under 5.2.3).

International cooperation

In certain policy areas, particularly in return and border management, challenges associated with international cooperation emerged quite prominently across the countries under study. Barriers in enforcement of return orders are not only related to internal policy and resource matters, but also lack of readmission agreements and cooperation with countries of origin to accept the returnees (Finotelli, 2018; Gabrielli, 2023) (Belgium, Bosnia and Herzegovina, Canada, Finland, Germany, the Netherlands, Serbia, Spain, Türkiye). For instance, in Spain, lack of readmission agreements and cooperation with several countries of origin has over time weakened Spain’s capacity to enforce returns. This has led to the incidence of “double irregularity” i.e., when a person has been ordered to leave but can neither be expelled due

to the lack of cooperation, nor partake in individual regularisation mechanism (Spanish government representative interview) (Ibid). In Germany, a special Commissioner for the facilitation of readmission agreements was established in 2023. This phenomenon of having an unremovable population due to lack of readmission agreements with some countries also holds true for the other countries (see discussion on tolerated status in Section 4.3.2).

Border control measures also increasingly require extensive cooperation with neighbouring countries, and tensions may lead to less effective control. For instance, the 2015 “migration crisis” has been attributed by some stakeholders to the failure of bilateral cooperation on border control between Greece and Türkiye (Greek expert interview), ultimately leading to the EU- Türkiye agreement in 2016. Another example is of the Morocco-Algerian conflict over the Sahara, which bars any cooperation and coordination between the two countries to enforce border control and streamline their policy response on curbing smuggling, trafficking and other cross-border crimes, as well as exchanging data (Badre, 2022).

5.2.3 Data (un)availability

Issues with data availability were often cited as hindering the development of informed policies, as well as an issue for evidence-based assessment of efficiency and effectiveness of different policy measures (Austria, Bosnia and Herzegovina, Canada, Finland, Germany, Ireland, Morocco, Poland, Serbia).

“There could be over a quarter of a million migrants in a state of irregularity. One reason we cannot ascertain their exact numbers is their constant movement within and beyond borders, where many lose their lives either at sea or while crossing borders.”
Morocco expert interview

“This [data on the irregular migrant population] is also an issue in Austria that we keep coming up against, that the many organizations and authorities that deal with this topic are not properly connected, if at all. And data protection sends its regards.”
Austrian government representative interview

Data gaps hinder implementation and have been highlighted as particularly relevant in the areas of return and regularisation. In both cases, knowing the target population is crucial for policy implementation. Return orders can only be given to those who are in the records of authorities, such as rejected asylum seekers and those who have been charged with criminal offenses. Those who are not known to the authorities to be in irregular status are difficult to subject to return, and this has been highlighted as a major hindrance to implementation in various countries under study including Belgium, France, Ireland, the Netherlands, Spain, etc. This was highlighted in a government representative interview from the Netherlands:

“when we are doing our internal monitoring of the borders we see that the person has an expired visa, but we also see people who have nothing – they came to Europe we don’t know where or how, so that’s not an overstayer, that’s an illegal entry, but both are illegal so it’s difficult to make it out of the numbers.” Dutch government representative interview

Similarly, for designing regularisation programmes, governments need to know the size of the population they aim to target in order to determine the scale of the initiative (Bosnia and Herzegovina, Canada, Ireland). Since migrant irregularity in itself is an unregistered phenomenon, collecting accurate data on the size of the population is an inherently complicated task, thus inhibiting data-driven regularisation policy development and implementation.

More specifically to work-based regularisations and their interlinkage with labour market demand, another important facet is to acquire accurate estimates of labour demand in specific sectors. While catalogues and databases of skills in demand are collected across various countries (Austria, Italy, Germany, Spain, the UK), they may not reflect the actual labour need or may be outdated in terms of the sectors they cover. Especially under-inspected are the domestic sector and the new platform or gig economy comprising of food delivery, Amazon, Uber etc. where labour checks are especially difficult to implement.

Besides data unavailability, where data is available, it may not be shared, either due to lack of established cooperation in this regard, or as a point of contention between stakeholders with differing priorities (Austria, Germany, Ireland, the Netherlands, Poland, UK, US). As briefly mentioned in 4.3.2., law enforcement entities may criticise local municipalities (in case of sanctuary cities or where firewalls are in place), service providers, and migrant rights organisations for lack of data sharing, which they consider as an impediment to enforcement measures vis-à-vis migrant irregularity. From the perspective of service providers, NGOs and CSOs working with irregular migrants, they are hesitant to share data and insights on the occupational fields that irregular migrants are engaged in, as well as the aid and support networks they access informally, in order to avoid increased government intervention in those areas and to ensure migrants' trust and access to essential services (Germany, Netherlands, the UK, the US). Requests for service providers to coopt into identifying irregular migrants to law enforcement authorities were contentious in the UK, where the campaign "Docs not Cops" was set up to protest against the imposition of ID checks and requirements to share patient data with the Home Office (Luckes, 2018). In the same vein, the Against Borders for Children campaign was successful in advocating for schools in the UK to stop collecting data on children's nationality and country of birth. In Germany, similar firewalls have been introduced: educational institutions are exempt from the general duty of public institutions to report irregular migrants to the police or foreigners' office; after emergency medical treatment, welfare authorities are not permitted to transfer information on irregular migrants to other authorities.

5.2.4 Resource constraints

Among other things, resource constraints were deemed to significantly hinder policy implementation across all the countries under study. These relate to all facets of irregular migration policy, including border control, return and regularisations (especially in relation to bureaucratic processing). A commonly cited issue in this area is that national frameworks related to migrant irregularity are not backed with sufficient human and budgetary resources for their implementation. This leads to disparity between the legal and policy frameworks of

the country and their actual level of implementation. Financial issues, underfunding and disproportionate distribution of financial burdens across the stakeholders involved in migration governance were also cited in numerous cases (Bosnia and Herzegovina, Germany, Ireland, Morocco, Poland, Türkiye). Further complications are visible where the government processes are largely paper-based, and data is fragmented across different agencies, leading to slow processing of applications (Ireland, US). In the Irish case, for instance, the review process for a revocation of an expulsion order is manual and paper-based, making it extremely time-consuming. Processing times are observed to have declined in cases where application processing procedures are digitised (Italy).

In some cases, resource allocation becomes an issue when irregular migrants are disproportionately present across different administrative territories within the country (Austria, Finland, France, Netherlands). This is particularly relevant in relation to service provision, where certain municipalities may be under higher resource strain due to higher concentration of irregular migrants in their jurisdictions. Conversely, areas with bigger irregular migrant populations may have more streamlined services and mechanisms in place with sufficient resources, as compared to locations where their presence is low and thus capabilities of service providers and local municipalities may be limited to address the needs. This was highlighted for example in Finland, where irregular migrants in some rural areas may not be able to access the same types of services as those in the capital, Helsinki.

Some policy areas are inherently expensive to implement, such as return and repatriation. Despite intense policy focus on return-related measures, implementation in this regard is arduous, expensive, and largely ineffective in effectively reducing migrant irregularity, especially when it comes to forced return (deportation) (Belgium, Bosnia and Herzegovina, Canada, Finland, Germany, Ireland, Italy, the Netherlands, Serbia, Spain). Limitation of funds available to enforce returns often intersects with the challenges associated with identification matters, and lack of cooperation with countries of origin further hampering effective use of this policy action. In the words of a stakeholder interviewed in Spain,

“The expulsion system to solve irregular migration is nothing more than a utopia.”
Spanish government representative interview

On the other hand, regularisations and amnesties are ridden with their own set of resource-related challenges that manifest in the form of slow and arduous processing timelines and endemic backlogs of regularisation requests (France, Ireland, Italy, Portugal, Spain, the US). A stakeholder in Italy explained this issue in the following way:

“There are so many problems: first, bureaucrats are not enough. Then, the way these programmes were designed: so slow, cumbersome, and needlessly complicated. Many applications have not been examined yet; meanwhile, related working relations ended.” Italian civil society organisation interview

As mentioned in the above statement, human resource constraints are another major challenge in implementation of relevant policies. Low wages in relevant departments have also come up as an impediment in hiring and retaining professionals in the field. As noted by a stakeholder in Poland,

“At present we are observing a wave of withdrawals from the Office to lower positions [in the private sector] for higher wage.” Polish government representative interview

Human resource constraints are particularly prominent in relation to labour market checks and border control. For instance, capacities of the labour inspection authorities are often limited as compared to their broader goals of ensuring an efficient and compliant labour market, including against human rights abuses such as labour exploitation (Austria, Germany, Greece, Portugal, Spain, UK). In Portugal and Spain, lack of sufficient labour inspection officers and long intervals between labour checks were noted as reasons for exploitative conditions for workers to flourish. The ubiquity of irregular migrants in certain industries, and the lack of understanding of legal developments by employers, may act as an added factor that bars implementation of strict labour inspections. In contrast, in the UK, the problem was linked to the execution of policies in Immigration Enforcement due to the frequent policy changes leading to the low morale of government staff and difficult working conditions (Düvell et al., 2018).

In the case of border control, human resource shortages are evident especially in countries which have long, porous borders with their neighbours (Bosnia and Herzegovina, Morocco, Serbia, Tunisia, Türkiye, US). In Bosnia and Herzegovina, for example, there is a shortage of a minimum of 1,400 border guards to monitor its porous border, for which the country is now considering the use of the army towards the eastern border, a matter which is still under debate in the country.

5.2.5 Politicisation and political tensions

Migration governance, especially in regard to immigration and irregular migration, is a highly polarising issue in most countries under study. In recent years, discourse on migration has been an integral contestation point, and contributed to the rise of right-wing, populist governments across Europe and elsewhere. In national contexts, lack of political consensus on the issue can impede policy development and amendment in the area. Changing political strides have implications for how state laws and policies are designed and enforced (Belgium, Finland, Germany, Morocco, Poland, Türkiye, Tunisia, US). In Belgium and Tunisia, the lack of agreement between different political parties has been highlighted as an impeding factor in introducing or amending a policy. In the Belgian case, a regulatory change at the federal level undergoes a thorough debate process in the Parliament, which entails committee reviews, public consultations, and multiple readings of the proposed legislation. Any political disagreements during this process delay the process of amendment. In Tunisia, changing political agendas have led to the creation and dissolution of government institutions (such as the State Secretariat for Migration and Tunisians Abroad), leading to discontinuity and related implementation challenges. In the case of Poland, politicisation of the migration issue has resulted in barriers to access to relevant data for policy formulation. The issue became particularly visible during the 2023 “visa crisis”, when access to all information concerning migrants and how they participate in the labour market was banned. As expressed by a stakeholder in Poland,

“Political discourse impacts migration policy or migration law rather than the other way around. A [public] discussion influences the law rather than the law impacts the debate.” Polish civil society organisation interview

In Germany, the issue of contrary party-political preferences is represented in the designing and implementation of contrarotating policies in order to signal to voters that their concerns are addressed. Consequently, initiatives to enforce deportation and to introduce pathways out of irregularity are pursued side by side. In the US, differences in approaches between the political parties, as well as between the Federal and State levels and actions taken by different actors, has created a situation of legal and policy limbo for irregular migrants in the country, spanning over several decades (Cox & Rodriguez, 2020). During the Obama administration, the DACA initiative introduced to regularise irregular migrants was overturned by a Supreme Court Order. Its revival continues to face preventions from various courts, which inhibit processing of existing DACA applications and registration of new ones, leaving the state of affairs in a limbo (Esterline & Batalova, 2022).

In implementing policies related to migrant irregularity, states also have to navigate the sensitivities of domestic and international relations. Particularly for countries through which migrants may pass in their journey (sometimes over the course of years), devising a policy or response to migrant irregularity requires a delicate balance between maintaining positive diplomatic relations while addressing national interests and international commitments (Bosnia and Herzegovina, Morocco, Tunisia, Türkiye). Within the Western Balkan region, for example, despite agreements in place between Bosnia and Herzegovina, Croatia, Montenegro and Serbia, situations have been documented in which each country has expelled irregular migrants to another, undermining cooperation on the issue. In the case of Morocco, the ongoing conflict with Algeria has reportedly made it difficult for the two countries to coordinate on border control and to share related data. At the same time, Morocco's reintegration into and reorientation towards the African Union in 2017 has led to improved multilevel cooperation with other African nations, and strengthened its influence in the African region. Its participation in the African multilateral governance framework led to the AU naming it the "African Champion of Migration" in 2018. This acknowledgment elevated Morocco as a model and has motivated the country to play a more proactive role in improving continental migration governance (Abourabi, 2022).

As highlighted throughout this chapter, the practical execution and enforcement of policies aimed at addressing migrant irregularity has been hindered by inherent challenges and constraints in institutional structures, influenced also by economic and political factors. While in some cases, legal and institutional frameworks may not be agile or adaptive enough to respond to the dynamic nature of migration patterns, resource constraints further strain the implementation process, with limitations in funding, manpower, and infrastructure hindering the capacity to enact comprehensive measures. Coordination issues among various stakeholders, both within and outside national borders, contribute to delays and discrepancies in policy implementation. Inconsistencies surrounding data availability on the phenomenon add an additional layer of complexity, making it challenging to formulate evidence-based policies and monitor their impact effectively. Furthermore, political tensions, both domestically and internationally, have cast a shadow over policy implementation efforts. The politicisation of migration issues can lead to divergent interpretations of policies, creating obstacles to coherent and unified enforcement in a country. The above discussion underscores the need for addressing these challenges in

tandem with targeted legislative and policy measures, in order for countries to implement more coherent policy approaches to address irregular migration.

5. CONCLUSIONS

In this Working Paper, we have endeavoured to provide an overarching analysis of the policy evolution, pathways and challenges states face in addressing irregular migration, over the past nearly 15 years. Covering 20 countries spanning across Europe, North America and North Africa, the paper builds on previous research conducted on irregular migration policies and their impact on migrant irregularity across these countries, drawing on literature that documents who and what influences policy development, as well as how policies produce irregularity and precarity of status, including semi-irregular statuses.

In examining the policy evolution process, this paper builds on work done on multi-stakeholder and multi-level governance, in terms of the wide range of actors engaged in migration governance (both in terms of policy development, as well as policy implementation). It further expands the analysis by also examining how such actors can and have utilised “triggering events” in order to shift policy approaches, in line with their own priorities. A flurry of events in 2015/2016 have sharply changed policy orientations across the countries under study, including the refugee protection crisis, the New Years Eve criminal attacks in Germany and the terrorist attacks in Paris and Brussels. However, other incidents at the global (e.g., COVID-19 pandemic, Eurozone crisis) or national (e.g. migrant deaths in state authority custody) levels have been important turning points for the countries under study, reflecting the current relevance of irregular migration as a topic for national interests and contexts. In these processes, the media, civil society, employers and trade unions, political parties, the judiciary, local and provincial governments and even international entities such as the EU all play a role in the changing directions narratives and policies on irregular migration have taken since 2010. In the current context, the elevation of migration to high politics, and its instrumentalisation in electoral politics, have had acute impacts on approaches taken in some countries, with anti-migration rhetoric emerging particularly strongly over the past decade. At the same time, labour market needs and other priorities mean that some countries still maintain fairly liberal approaches to irregular migration, even while maintaining “anti-irregular migration” rhetorical stances. Or, they implement dual policy objectives, at differing locations (such as at the border versus within the territory). This is reflected also in the current priorities states hold vis-à-vis irregular migration: they are almost universally a mix of enforcement-oriented and more liberal policies, including implicit toleration, representing the balance that usually needs to be struck within the national context, among diverse stakeholders with diverging needs.

Given this, there are also a diverse array of policy measures that create pathways into and out of irregularity. While policy approaches do not usually focus on demographic pathways into and out of irregularity (births, deaths), policies may inadvertently create such pathways. In this paper, we have highlighted the ways in which policy approaches may produce irregularity through birth, by restricting access to regular status, as well as may lead to

migrant deaths, including through border security measures. At the same time, both cases have been areas of increasing media and advocacy focus, and therefore of potential future policy development. Considering states' concerted efforts to enforce their geographic borders, such policy measures are highly visible: both in preventing irregular entry, and in removing irregular migrants from their territory. At the same time, states increasingly implement measures further afield, through the use or consideration of surveillance technologies, information campaigns or extraterritorial processing of asylum applications.

Policies are *the* main instruments by which migrants' status is determined, and thus the reason for their (ir)regularity. Based on specific criteria, migrants may be irregularised or may be able to access pathways out. Sometimes both can occur for one migrant over the course of her migration (life) trajectory. Where pathways are provisional or temporary in nature, the risk that migrants fall into irregularity is particularly high, although even with formal regularisations the risk may still be present (although smaller), depending on the length of the permission provided, and other factors. However, this paper has highlighted that, although states may increasingly appear unwilling to prioritise policies to address the irregular migrant population in their country, they are still required to create policy instruments that provide pathways out. Even where limited in scale or with high thresholds of eligibility, regularisation mechanisms, forms of informal regularisation and other means of status adjustment are implemented that provide irregular migrants with pathways out of irregularity. There is no country under study that provides no pathway out of irregularity within their territory. Indeed, there are a wide range of practices and approaches, including potential promising practices, from which countries can learn from one another in order to address irregular migration, adapting to their own national context. The extent to which various policy approaches may address irregularity depends however on the scale of the policies, as well as the challenges countries may face in implementing specific approaches.

For this reason, the final chapter of this paper highlights also the policy implementation challenges states face. Where policy approaches addressing irregular migration are implemented, state structures and other factors can impede their coherence or efficiency. Here, multi-level and multi-stakeholder governance emerges again as an important consideration, not just of course for policy formulation, but now again for putting policies into practice. Coordination of differing values, methods and levels of knowledge is perhaps an impossible task, particularly for this policy field, however a more coherent approach might be possible: the discussion on alliances across stakeholder groups highlight areas where consensus could be reached, in particular policy fields and for specific purposes. At the same time, lack of consensus and challenges in multi-stakeholder and multi-level governance are also natural ways in which discontent emerge in a democratic process. However, lack of resources to implement policies, as well as politicisation of migration for electoral politics, have also clearly blocked progress in some cases. Finally, the lack of data on the irregular migrant population has also been highlighted as a key hindrance, speaking to the prescient focus of the MIrreM project.

Annex

Table of interviews conducted for Country Profiles, by country, stakeholder group and gender

Country	State authorities	Supra-national institutions	Experts	CSOs	Total Female	Total Male	Total
Austria	5	-	1	4	5	5	10
Belgium	4	2	1	-	4	3	7
Bosnia and Herzegovina	1	1	-	1	2	1	3
Canada	1	-	4	1	4	2	6
Finland	4	-	-	6	8	2	10
France	3	-	2	-	3	2	5
Germany	3	-	2	3	5	3	8
Greece	1	-	5	3	3	6	9
Ireland	-	-	3	3	5	1	6
Italy	-	-	4	3	-	7	7
Morocco	-	1	3	1	2	3	5
Netherlands	9	-	-	4	7	6	13
Poland	3	-	2	-	2	3	5
Portugal	5	1	2	3	6	5	11
Serbia	-	-	-	5	4	1	5
Spain	4	-	2	4	4	6	10
Tunisia	-	-	3	2	2	3	5
Türkiye	-	-	4	-	3	1	4
UK	1	-	2	1	2	2	4
USA	-	-	-	1	1	-	1
Total	44	5	40	45	72	62	124

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