

MIRREM

Measuring Irregular Migration

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LOCAL LEVEL LAWS AND POLICIES ADDRESSING IRREGULAR MIGRATION

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Summary

Local responses to irregular migrants vary widely. Some cities have formal policies regarding irregular migrants and a specific budget allocation for related services. Others make adjustments that are less formal in approach or less coordinated within the agency. Still other cities have yet to develop an approach to the irregular migrant population. Based on data from the City Initiative on Migrants with Irregular Status in Europe (C-MISE) and primary and secondary data collected by MirreM partners from Canada, Italy, the United Kingdom, the Netherlands and Poland, this working paper aims to provide an analysis of local level responses to address irregular migrants, including innovative practices where they have emerged and ongoing challenges in policy implementation.

The way cities respond to irregular migrants has evolved significantly. They reveal a complex pattern of privileges and constraints at the international, national and local levels, as well as the tensions that can arise in multilevel governance when interests diverge at the local, state and federal levels. National legal frameworks provide irregular migrants with minimal or no access to most legal services. At the local level, this can lead to social problems such as homelessness and poverty, which communities have to deal with. Between and within countries, laws governing access to services for different categories of irregular migrants may vary.

Cities across Europe and North America have led the way with some promising practices toward irregular migrants, ranging from stopping irregularity to helping them access essential services such as access to health, accommodation, education, and legal advice. Several examples of city initiatives are discussed in this paper. However, despite the availability of promising practices by different cities in dealing with irregular migrants, a number of persisting challenges remain which include: growing anti-immigration discourse; growing national legal restrictions to essential services; limited data on irregular migrant populations at both national and local levels; limited funding and capacity of local authorities.

The paper reflects on some implications for policy and practice that emerged from and which include effective firewalling and joined-up approach across departments and between organisations; maintain or continue some of the good practice adopted during Covid-19; and resolve administrative bottlenecks where they heighten the risk of migrants falling into irregularity.

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ACRONYMS

C-MISE	City Initiative on Migrants with Irregular Status in Europe
COMPAS	Centre on Migration, Policy and Society
MRCI	The Migrant Rights Centre of Ireland
GNIB	The Garda National Immigration Bureau
IPO	The International Protection Office
ISD	The Immigration Service Delivery
SMU	Initiative and Studies on Multi-ethnicity

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.

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1. INTRODUCTION

Over the past decade or so, there has been a significant evolution in how cities respond to irregular migrants. They show a complex pattern of privileges and limitations at the international, national, and local levels as well as the tensions that can arise in multi-level governance when interests at the local, state, and federal levels diverge.¹ National legal frameworks provide minimal or no access for irregular migrants to most statutory services. This can lead to social problems at the local level, including homelessness and destitution, which municipalities find they need to address. Between and within countries, the law on access to services can vary for different categories of irregular migrants.

Responsibility for public services is a shared competence, but immigration control is essentially the domain of national governments. Across Europe, municipalities bear varying responsibilities for the services they provide; however, they are all accountable for the overall well-being of the local population. Municipalities provide services such as healthcare, policing, housing, social services and education to people with differing needs, while bearing a broader responsibility for maintaining social cohesion and public safety. Municipalities may facilitate access to mainstream services where this is appropriate. Examples include admitting children to mainstream schools and pre-school facilities, or extending the local housing and social care teams' remit to also support homeless migrants with irregular status.

A municipality has the authority to allow someone who would not otherwise be able to pay for a mainstream service to use it. In other situations, irregular migrants might be given special treatment or added to a service meant for other migrants. Staff members employed by the municipality or another public sector organisation may offer the service in full or in part. If the municipality is restricted from providing the service or there are concerns regarding data sharing, funding may be granted to non-governmental organizations (NGOs) to carry out the service. Children and vulnerable adults typically have greater access to services, which is a reflection of both the municipality's priorities and the national legal frameworks. The municipality sometimes aims to address the underlying issue of irregular status in addition to the immediate effects of exclusion, such as by making legal advice more accessible. A "local dimension of migration policymaking" has gained increased academic recognition in recent years (Caponio and Borkert 2010, Flamant 2020).

The local responses to irregular migrants differ extensively. Some cities have formal policies relating to irregular migrants and a specific budget allocation for relevant services. Others are making adaptations which are less formal in approach, or less coordinated across the authority. Still other cities have to yet develop an approach towards its irregular migrant populations.

Based on data from the City Initiative on Migrants with Irregular Status in Europe (C-MISE)² and primary and secondary data collected by MirreM partners from Canada, Italy, UK, the Netherlands, and Poland, this working paper aims to provide an analysis of local level responses to addressing irregular migrants, including innovative practices where they have emerged and persisting challenges in policy implementation.

¹ <https://cmise.web.ox.ac.uk/files/adecadeofcompasresearchandkeonirregularmigrantsoct2022pdf>

² <https://cmise.web.ox.ac.uk/>

³ C-MISE Guidance 2019 and 2024

The paper starts with a brief methodology chapter, then chapter three gives a short overview of city responses to irregular migration. Chapter four provides more detailed examples of city's innovative practices when it comes to responding to irregular migrants in their territory. The following chapter then gives an overview of some the persisting challenges that cities still face. Then the final chapter reflects on implications for policy and practice.

2. METHODOLOGY

2.1 RESEARCH METHODOLOGY

This working paper is based on two sources of data. Firstly, desk based and local level stakeholder interviews conducted towards the end of 2023 and at the beginning of 2024 by MirreM researchers based at the University of Oxford, the University of Leicester, Maastricht University, University of Milan, Toronto Metropolitan University and the University of Warsaw. Secondly, data from the City Initiative on Migrants with Irregular Status in Europe (C-MISE) ⁴ which draws on a C-MISE Guidance (2019; 2024) as well as continuous engagement with over 55 European and north American cities since 2017.

The paper also draws on discussions from a joint MirreM and C-MISE workshop held in December 2023 at the University of Oxford which brought together C-MISE city representatives and national UK stakeholders that reflected on interim findings on local-level data estimates and indicators as well as local policy responses to irregular migration.

MirreM stakeholder interviews

The research questions with stakeholders focused on local-level data, estimates and indicators and the development of local-level laws and policies for irregular migrants. A total number of 24 interviews was conducted by the contributing MirreM partners for this WP deliverable. Table 1 provides an overview of the number and types of stakeholder interviews conducted by the project partners.

Table 1: MirreM stakeholder interviews distribution

Country	Number of interviews conducted	Types of stakeholders
UK	7	6 local government representatives (city level) and 1 academic expert
Ireland	2	1 local government representative and 1 CSO representative
Canada	3	3 local government representatives
Italy	8	5 CSOs and 3 local government representatives
Poland	4	4 local government representatives (focused on immigration and employment law enforcement)

C-MISE data

⁴ The C-MISE initiative is a knowledge-exchange programme supporting European cities to share knowledge on best practices and policy responses regarding irregular migrants. For further information on C-MISE, please consult its website: <https://cmise.web.ox.ac.uk/>

C-MISE is a city led initiative that was launched in 2017. It initially consisted of a working group of 11 municipalities from 10 European countries. The cities in the working group were Athens, Barcelona, Frankfurt, Ghent, Gothenburg, Lisbon, Oslo, Stockholm, Helsinki, Zurich and Utrecht (Chair). The cities met four times over the initial 24 months with the primary aim to learn from each other's experiences, from site visits to services provided to irregular migrants, and from research materials prepared by the Centre on Migration, Policy and Society (COMPAS). On behalf of C-MISE, COMPAS colleagues Sarah Spencer and Nicola Delvino, published its first C-MISE Guidance in 2019⁵ which represents a repository of ways different local authorities responded to irregular migrants. In its second and third phase, and particularly during the period of the COVID Pandemic, C-MISE was able to reach a much wider group of cities (55 cities across 19 European countries and two North American cities - New York and Montréal - had engaged in one or more of its meetings) to inform their policies and practices, and to mainstream irregular migrants within the work of the city networks that address wider migration issues. Following this ongoing engagement with the cities through online and face-to-face meetings, COMPAS produced a revised version of the C-MISE Guidance in 2024⁶ that gives an updated account of the cities' policies and practices.

This paper therefore draws on the multiple examples from the C-MISE Guidance to complement the data collected by MirreM partners as part of this work package and which look specifically at the local contexts in the UK, Ireland, Italy, the Netherlands, Poland and Canada.

2.2 NOTE ON DEFINITIONS

As discussed in the MirreM Policy briefing No 2 (Leon et al, 2024) on local-level data, indicators and estimates of the irregular migrant population, there are significant variations in how irregular migration is defined at the local level. Terms such as: 'illegal', 'out of status', 'undocumented migrants' were some examples used by local authority representatives. However, regardless of the terminology used by the interviewees at the local level, we have, for the most part, referred to this population as "irregular" migrants in this report.

According to some local authorities, this range of terminology within and across municipalities has given rise to a scattered approach to policies supporting irregular migrants from different local government departments, instead of a more joined-up approach. Many of the municipalities focus their work on groups that align with their support and protection duties, such as people seeking sanctuary (asylum-seekers, refugees) and 'migrants with vulnerabilities' due to their age (e.g. children), exploitation (e.g. victims of human trafficking and modern slavery) and those with specific health and support needs. Migrants with irregular status were among the 'migrants with vulnerabilities' cohort, as long as they were perceived as vulnerable (Leon et al, 2024).

2.3 METHODOLOGICAL CHALLENGES

⁵ Delvino, N. & Spencer, S. (2019) Migrants with Irregular Status in Europe: Guidance for Municipalities, City Initiative on Migrants with Irregular Status in Europe (C-MISE) COMPAS, Oxford. <https://www.compas.ox.ac.uk/wp-content/uploads/CMISE-Guidance-for-Municipalities-Migrants-withIrregular-Status-in-Europe.pdf>

⁶ Delvino, N., Spencer, S. and Cherti, M. (2024) Migrants with Irregular Status in Europe: Guidance for Municipalities, City Initiative on Migrants with Irregular Status in Europe (C-MISE) COMPAS, Oxford. <https://www.compas.ox.ac.uk/project/city-initiative-on-irregular-migrants-in-europe-c-mise>

A number of challenges were encountered by the MirreM research partners when conducting stakeholder interviews, some of which are listed below.

- Securing interviews with the relevant stakeholders and particularly local policy makers. This was partly due to a level of research fatigue among particular stakeholders and also partly due to the different national contexts that impacted on the availability of the relevant stakeholders. For example, in Canada, there is a regularisation programme pending, and there is currently significant mobilisation on the matter, in particular from the civil society sphere, hence policy makers were not limitedly available for interviews.
- A limited response from representatives from CSOs. This could be due to the fact that many of these organisations have limited staff and resources making them face an overload of work and responsibilities caused by emergency assistance to irregular migrants. Thus, lack of time may have been a significant factor.
- Some local authority representatives and cities, particularly in the UK, preferred to maintain anonymity which contrasted with the data from C-MISE where all the cities were named.

3. OVERVIEW OF CURRENT CITY RESPONSES

3.1 TYPES OF CITY RESPONSES TO IRREGULAR MIGRATION

As discussed in the introduction, local responses towards irregular migrants differ widely. It is important to note however that not all cities formulate inclusive policies towards irregular migrants. Bauder and Landau (2018) discuss cases of North American and African cities that seek to actively repel (irregular) migrants or that rigorously comply with national immigration enforcement. While we fully acknowledge this ambivalence of urban migration policy-making, the urban space remains the primary site of struggles for improving the precarious situation of irregular migrants.

Some cities mobilise the concept of Urban Citizenship (Varsanyi, 2006) to advocate for the city as an alternative locus of membership, regardless of residency status. This concept proposes an ideal where citizenship is based upon the mere presence and residence in a place. In this perspective, the city is not the lowest administrative level of a national state; instead, it is its own polity anchored in the everyday life of its residents.

Few categorizations in the literature (see for example Kaufmann et al 2021) elaborate on the diverse urban policies in support of irregular migrants. Here we would like to focus on three types of policies/responses: regularisation, sanctuary cities and local bureaucratic membership.

- Regularisation programmes confer national residence status on irregular migrants. Within these programmes, cities can make use of their implementation discretion, as they sometimes have a role in defining or evaluating regularisation criteria.
- Sanctuary cities in North America are cities that have passed a resolution or ordinance expressly forbidding city or local law enforcement officials from inquiring about immigration status and/or cooperating with national immigration enforcement authorities. Similar sanctuary practices have been established in a number of European cities, including Barcelona, Zurich and Sheffield.
- Local bureaucratic membership aims to facilitate irregular migrants' access to city services. In some cases, these city services are based on parallel structures, that is, services specifically developed for irregular migrants, often in collaboration with NGOs, and regular structures that ensure access to city services for irregular migrants in the same way other residents access them.

It is important to emphasize that these different policies are not mutually exclusive. They often complement each other, but they can also be incoherent and have contradictory directions and effects (Bauder 2017).

Kaufmann et al (2022) distinguish between policies that aim to award a (more) secure status to irregular migrants and policies that facilitate access to city services.

The status policy category is conceptually related to the local implementation of regularization programmes and sanctuary cities, and the service category is conceptually related to local bureaucratic membership. Out of the 95 cities surveyed across EU countries, five (5.3%) formulate policies that award irregular migrants with a (more) secure status, 24 (25.3%) formulate policies that facilitate access to city services and 69 (72.6%) formulate neither (see Table 1). Amsterdam, Barcelona and Madrid are the only cities that formulate policies in both policy categories.

These numbers are rather low compared with the US, where more than 100 cities have passed sanctuary laws. A main reason for this transatlantic difference may lie in the fact that US cities have a single set of federal laws to respond to, whereas in Europe each nation state has its own, different national laws on immigration. It is also necessary to interpret this low number of policies in European cities cautiously because many urban policies in support of irregular migrants are often provided through a web of parallel structures via civil society organisations (Buckel 2011; Mayer 2018; Spencer 2020). Cities may also choose to strategically engage in low-visibility forms of support for irregular migrants in order to prevent conflicts with national governments (Delvino 2017; Spencer 2020).

In the same study by Kaufmann et al (2022), between 2018 and 2020, the authors surveyed urban policies in support of irregular migrants in all 95 European cities that have more than 350,000 inhabitants. Below is a table that summarises their findings, included here for illustrative purposes.

Table 2: Overview of urban policies in support of irregular migrants

	No	Cities
Policies that provide a more secure status	5	Netherlands: Amsterdam Spain: Barcelona, Madrid, Malaga, Valencia
– An inclusive Padrón approach developing a municipal register	4	Spain: Barcelona, Madrid, Malaga, Valencia
– Partial non-enforcement of immigration law to enable safe reporting of crime	1	Netherlands: Amsterdam
Policies that facilitate access to city services	24	Austria: Vienna Belgium: Liège Finland: Helsinki Germany: Berlin, Bochum, Bremen, Cologne, Düsseldorf, Frankfurt, Hamburg, Hannover, Munich Netherlands: Amsterdam, The Hague, Norway: Oslo Spain: Barcelona, Madrid Sweden: Gothenburg, Malmö, Stockholm
- Legal counselling	5	Germany: Berlin, Hamburg, Hannover Netherlands: Amsterdam Spain: Barcelona
- Health care	20	Austria: Vienna Belgium: Liege

		Finland: Helsinki Germany: Berlin, Bochum, Bremen, Cologne, Düsseldorf, Frankfurt, Hamburg, Hanover, Munich Italy: Bologna, Florence, Milano Netherlands: Amsterdam, The Hague, Norway: Oslo Spain: Madrid Sweden: Gothenburg
- Housing	6	Italy: Genoa Netherlands: Amsterdam, The Hague, Spain: Barcelona, Madrid Sweden: Gothenburg
- Welfare	4	Netherlands: Amsterdam Sweden: Gothenburg, Malmö, Stockholm

Source: Kaufmann et al 2022

3.2 NATIONAL LEGAL FRAMEWORKS AND LOCAL RESPONSES

Municipalities have to operate within national legal frameworks. The constitutional settlements of most European countries do not allow them to devise their own. National legal and policy frameworks provide for limited but varying access to public services for irregular migrants. The provision in national laws for a level of access to services acknowledges that people with irregular status should not be excluded from all social security provision. Access has been provided in part because exclusion can conflict with national policy priorities such as protection of public health (such as access to treatment for HIV/AIDS, as well as during the COVID-19 pandemic) and in measures to enable victims of domestic violence or human trafficking to approach the police without fear of deportation (Spencer, 2018). In some European nations, relatively inclusive measures exist for irregular migrants' social protection. For example, Finland's constitution guarantees adequate social, health and medical services for everyone in the country and is backed up by specific care and welfare legislation (some of which is at risk of being rolled back by the current administration). In Switzerland, workers' access to social insurance is not constrained by immigration status, although in practice many remain undeclared and therefore unable to access this social security (PICUM, 2022).

National legal frameworks are nevertheless largely restrictive. Migrants with irregular status are not entitled to access most public services. They are also not permitted to work in the formal labour market or access welfare benefits. The social consequences of this exclusion are felt at the local level. Whilst municipalities may respect (or defer to) the role of national government in migration governance, they can find, however, that the exclusion of this section of the population impacts not only the migrants themselves, but also other local residents. It can impact negatively on municipalities' capacity to fulfil statutory responsibilities such as addressing homelessness, crime prevention and protecting public health, with potentially negative consequences for the wider community. Yet they need to respond to these challenges in ways that do not encroach on the responsibilities of national governments in relation to immigration control.

The following sections analyse how these national frameworks are 'translated' into local contexts.

3.2.1 Exceptional national and local policy responses during Covid-19

For a period in the early 2020s, nation states across Europe – whether for humanitarian reasons, to safeguard essential supply chains or to protect public health – created more hospitable, less hostile environments for irregular migrants. European nations' reactions to the Covid-19 pandemic, whilst varied, all had implications for their resident populations of irregular migrants. The following list is not exhaustive:

- The Netherlands, for example, during the pandemic temporarily abandoned the requirement that irregular migrants prepare for return to their countries of origin in order for them to access homeless shelters (Mallet-Garcia and Delvino 2021).
- Portugal temporarily regularized all migrants, including asylum seekers, who had applied for a residence permit before the declaration of the state of emergency for Covid-19, aiming to ensure migrants' rights, including access to health care and social security (Guadagno, 2020).
- Italy also offered temporary regularisation to subsections of its irregular migrants working in domestic and care settings, agriculture and fisheries.⁷
- The United Kingdom government instructed those working in its National Health Service not to check the immigration status of anybody accessing Covid-19 testing and treatment. The government also asked local authorities in England to "help make sure we get everyone in,"⁸ including those who would not normally be entitled to assistance under homelessness legislation. In response, local authorities across the country sought to ensure that people sleeping rough and in accommodation where it was difficult to self-isolate (such as shelters and assessment centres) were safely accommodated to protect them, and the wider public, from the risks of Covid-19.
- Spain and Greece both introduced fast-track procedures for irregular migrants to secure work permits in sectors of the economy especially affected by the pandemic.
- Uniquely among European nations, Ireland established a website to allow workers with irregular status who had lost their job in the formal sector due to Covid-19 to apply using their Personal Public Services Number for 'Pandemic Unemployment Payment' alongside laid-off workers with regular immigration status (Mallet-Garcia and Delvino 2021).
- Belgium released an estimated 300 irregular migrants from detention centres during the pandemic.
- In Slovenia, migrants held pending forced return were released and granted a temporary residence permit valid for up to six months (Mallet-Garcia and Delvino 2020).

Elsewhere, Quebec implemented a regularisation campaign targeting pending or failed asylum seekers working in healthcare, and this was then expanded to the rest of Canada.

Many of these more inclusive policies, adopted during the pandemic, have not outlasted it. Nevertheless, they illustrate how national governments do have the power, when they choose to use it, to make policies and pass laws that embrace irregular migrants, rather than exclude them.

⁷ Regularisation of undocumented migrants: Portugal and Italy take the first steps... – nvo

⁸ <https://commonslibrary.parliament.uk/research-briefings/cbp-9057/>

3.2.2. Policy evolution in specific national/local contexts

Local policy responses to irregular migration need to be understood in the context of the evolution of national immigration policy in different countries.

Many UK cities focus their work on groups that align with their support and protection duties, such as people seeking sanctuary (asylum-seekers, refugees) and 'vulnerable' migrants, including children, victims of human trafficking and modern slavery, and people with health and support needs, rather than focusing on irregular migrants per se. Brexit played a pivotal moment, with the introduction of the EU Settlement Scheme for EEA nationals living in the UK to regularise their status. Local authorities were conscious of the risk that their EEA residents could fall into irregularity, with the changes to immigration policy post Brexit and many local authorities worked on information campaigns to raise awareness of the risk and support residents with accessing legal advice. Separately, 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.

In Italy, a number of actors influence the development of policy towards irregular migrants at the local level. Alongside local public servants, they include legal consultants, civil society organisations, employers, trade unions and faith institutions.

In the Netherlands, the Foreign Nationals Employment Act (2023) set the parameters for local policy development vis-a-vis the employment of irregular migrants. Meanwhile, the Linkage Act (1998) is interpreted and implemented differently by different actors at the local level. There is some variation between cities in the nature of relevant policy development. Amsterdam, for example, is seen as 'countering' locally an exclusionary national approach to irregular migrants. Rotterdam, on the other hand, is considered strict in its approach to migrants with irregular status, in keeping with the posture struck by the national government.

The policy framework affecting irregular migrants in Ireland is developed at the national level, rather than locally. Relevant national steps include Ireland not participating in the EU Return Directive; the country's membership of the Common Travel Area; a series of measures taken during the Covid-19 pandemic to prevent people falling into irregularity; and regularisation schemes including the 'Parent of an Irish citizen child' scheme, the Reactivation Employment Permit and the 2022 Regularisation Scheme for Long-Term Undocumented Migrants.

In Poland, the Russian invasion of Ukraine has seen the development of national policy in support of Ukrainian refugees, meaning they cannot currently be deported and are not deemed irregular migrants. They, along with citizens of Belarus, Georgia, Armenia and Moldova are eligible for regularisation for both residency and employment. In the absence of separate regulations and policies for irregular migrants at the local level, national regulations are implemented in the same way throughout the country - by the institutions responsible for controlling and enforcing the legality of residence and employment.

In Canada, where, alongside growing grassroots calls for regularization, the number of Sanctuary Cities is also increasing – cities which seek to ensure residents' access to services regardless of immigration status by removing the threat of deportation. As of 2022, there are seven sanctuary cities in Canada, including the major metropolitan centres Toronto, Vancouver and Montreal, and smaller urban centres like Ajax, Edmonton, Hamilton and London (all in Ontario) which have official sanctuary or access without fear policies. These provisions aim to allow irregular migrants to access some municipal programs and services without fear of being arrested, detained, or removed from the country.

3.3 WHY DO CITIES FACILITATE ACCESS TO SERVICES?

Scholarship on 'urban citizenship' has illustrated how the multi-level governance of migration, involving more than one tier of government, has an impact on migrant irregularity (Spencer, 2018). More concretely, the global Sanctuary Cities movement has effectively shown how irregular migrants can benefit from (partial) enfranchisement and access to services at the local level, despite their lack of status at the national level (Delgado, 2018).

As discussed in Spencer and Delvino (2019) Municipalities give the following reasons for facilitating access to some services for people with irregular status.

→ ***To comply with legal duties***

Municipalities are required to provide some services to people with irregular status as a matter of national law. An example in most EU Member States is education for children of school age. Municipalities also have a range of statutory responsibilities which require them to address the needs of all residents in their area, regardless of status. Municipalities may also have duties relating to a particular section of the population, such as children. An example is the UK municipal duty to safeguard and promote the welfare of a child 'in need'⁹, who would be unlikely without local authority support to achieve or maintain a reasonable standard of health or development, regardless of immigration status. These duties may conflict with others, for example a requirement on the part of municipalities to pass on details of individuals with irregular status to police or immigration authorities. Municipalities have to find a way to fulfil one statutory duty without breaching another.

Municipalities, as state authorities, are also expected to respect the state's obligations under European human rights standards, including the European Convention on Human Rights (ECHR) and the Council of Europe's European Social Charter.¹⁰ In addition, the EU Return Directive¹¹ includes an obligation upon those states it encompasses to provide basic shelter and care to vulnerable individuals who are in the process of returning but have not yet left the country.

→ ***To reduce irregularity***

Irregularity is a challenge for municipalities which – in the Netherlands, for example – are responsible for the reception of and service provision for migrants. They want to reduce the number of people with irregular status and to prevent a lapse from regular status into irregularity (for instance, when an unaccompanied minor reaches the age of 18). Provision of a service such as shelter or a day centre can provide a means of contact between the municipality and the individual and an opportunity to build trust, whether through direct contact or through a non-governmental organisation (NGO) funded to provide the service. Through associated provision of information and legal advice, the individual may then be assisted in their application to the immigration authorities to resolve their status, or helped to return to their country of origin.

⁹ In England it is covered under s17 of the Children Act 1989; in Wales, this is provided by the Social Services and Well-being (Wales) Act 2014; in Scotland, this is provided under Section 22 of the Children (Scotland) Act and Section 12 or 13A of Social Work (Scotland) Act 1968; in Northern Ireland, unlike the other UK nations, support is provided through the local health and social care trusts and under Article 18 of the Children (Northern Ireland) Order 1995 or the Health and Personal Social Services (Northern Ireland) Order 1972.

¹⁰ <https://www.coe.int/en/web/european-social-charter>

¹¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

→ **To achieve municipal social policy objectives**

Municipal social policy objectives differ according to the remit of the authority and the particular challenges it faces, but may include:

- **Ensuring community safety** as municipalities are concerned that all residents, irrespective of their immigration status, should feel able to come forward to the authorities if they have been the victim of or witness to a crime. This is both for their own protection, and for that of other residents. They do not want anyone to be afraid of reporting crime to police. The community has greater protection from crime and security threats if police have access to information from irregular migrants. Municipalities also do not want victims of violence to be forced to remain in violent homes because of a lack of alternative accommodation. For this reason, some municipalities provide places in shelters regardless of immigration status.
- **Avoiding street sleeping and squatting in abandoned buildings:** A frequent reason for intervention is to avoid visible street homelessness, whether squatting in public places or in abandoned buildings. To be effective, measures to address homelessness cannot exclude a section of the homeless population, for example based on legal status. Provision of some form of shelter is also necessary to address the consequences of homelessness such as poor health, substance abuse, physical danger associated with sleeping in the street and a negative impact on tourism.
- **Child protection and welfare:** Protecting children from harm is a legal and/or ethical duty of municipal authorities, and it is felt that children should receive no less protection because of their immigration status or that of their parents. Provision of services can also protect a child's welfare, ensure that decisions are taken in his or her best interests and prevent a 'cliff-edge' wherein a right to receive a service ends when the child reaches 18 years of age but is ineligible to take up an apprenticeship, further education, or employment.
- **Public health:** Municipalities stress the importance, if faced with a public health emergency, of being able to contact all residents or reach those who have been in contact with someone with a communicable disease. They also need all children to be offered vaccinations as an effective vaccination programme is dependent upon a high proportion of the population being covered. Municipalities are concerned that anyone who has HIV/AIDS, tuberculosis or hepatitis should feel able to enter a treatment programme, as this is the most effective way to avoid the spread of these conditions. These considerations became especially pressing during the Covid-19 pandemic, when national efforts to mount effective programmes of testing, contact tracing and vaccination all relied upon the inclusion and participation of everyone in the community.
- **Community cohesion and avoiding segregation:** Cohesion is threatened if a section of the de facto population is visibly excluded, cannot speak the language, and does not use the same services and public spaces as other residents. Municipalities are concerned to avoid any section of the population living separately from the rest of the community as this can lead to fear and mistrust.
- **Addressing exploitation in housing and employment:** For some municipalities, addressing exploitation of tenants by landlords is part of their remit. Irregular status makes individuals vulnerable to exploitation by those able to provide shelter. Women in need of accommodation to avoid sleeping on the street may be particularly at risk. There is also a concern to avoid exploitation by employers of workers who do not want their immigration status to become known. Municipalities also want to limit the informal economy in their area

so as to ensure that businesses comply with health and safety standards and employment regulations, and pay local taxes.

→ ***To ensure the efficient administration of related public services***

Municipalities may find that exclusion of one group of residents undermines their ability to run public services efficiently. Provision of birth certificates, and registration of all residents on a municipal register (as in Spain, Austria and Germany), provides data on population numbers that is used for planning services such as school places and vaccination programmes. Provision of primary healthcare reduces pressure on emergency health services and on hospitals that prolong 'emergency' treatment because of a lack of entitlement to post-emergency care. Reputational risk is also cited as a reason for protecting vulnerable people regardless of immigration status.

→ ***To respect professional ethics***

Professional staff employed by the municipality, such as doctors, nurses, teachers and social workers, are required to meet the standards of their profession. This may include provision of a service on the basis of need or because it is in the best interests of a child, precluding the withholding of services on grounds of immigration status. Staff need to feel supported by their employer in making a decision that is compatible with the ethics of their profession.

→ ***To reduce any public concern***

Public attitudes can be very negative towards people with irregular status. They can also, however, reflect concern for people who are seen to be vulnerable, such as children and victims of domestic violence. There can be a negative public reaction to the visibility of irregular migrants on the streets or temporary encampments, leading to polarisation of public opinion. Municipalities may feel the need to avoid the most visible manifestations of irregularity, and to protect the vulnerable, so as to avoid negative reactions from across the spectrum of public opinion.

→ ***To safeguard the public image of the city***

Municipalities may want to project an image of the city or town as an open, diverse or human rights city, or as an attractive destination for tourism and investment. Visible signs of exclusion such as encampments can conflict with that goal. The City of Sanctuary accreditation scheme, for example, taps into this desire to be recognized as a place of welcome for people fleeing from danger and persecution¹².

3.4 HOW DO CITIES FACILITATE ACCESS TO SERVICES?

Research from the LoReMi (Kirchhoff et al, 2022) project found that departments within a municipality sometimes take different approaches towards irregular migrants, so that the overall municipal response is fragmented, and can lack clarity of purpose and coordination. For those reasons, some municipalities start by conducting or commissioning a local study to map the local need and assess existing or establish new referral pathways to support. The section below provides further information on how municipalities across Europe respond to irregular migrants and strive to avoid such fragmentation.

→ ***Internal and inter-agency consultation, information-sharing and coordination***

¹² <https://cityofsanctuary.org/>

Issues relating to irregular migrants typically concern a number of municipal departments and other local public agencies, requiring a level of consultation and coordination when action is taken. This can be on an ad hoc basis, through an inter-departmental group within the municipality or an inter-agency group that facilitates coordination with other public bodies.

For example in 2017, the Integration Office of Zurich City Council set up an interdepartmental working group on irregular migrants ('sans-papiers'). The Departments of Security, Health and Environment, School and Sport, and Social Affairs are represented in the working group under the leadership of the Department of the Mayor. The working group reviewed the situation relating to healthcare, education, access to justice, and provision of advice and information, and summarised in May 2018 its assessment and recommendations in a preliminary report. The Integration Office is also entrusted with the task of regularly organising interdepartmental networking and exchange meetings in order to discuss possible improvements in access to fundamental rights and services. Representatives of the regional governments (canton) and civil society may also be invited to take part.

→ ***Consultation and coordination with external stakeholders***

As many services are provided with or through external partners, some of the arrangements for regular dialogue that are made are inclusive of them. In some cases, membership is inclusive of NGOs that are not funded by the municipality but are knowledgeable on the situation of irregular migrants.

For example, Berlin's Senate Administration for Health established a roundtable in 2010 to bring together city officials, the local Medical Association and NGOs that provide medical assistance to irregular migrants in the city. City representation included Berlin's Interior Affairs and Sports Department, the Department for Integration, Employment and Social Affairs, the Regional Office for Health and Social Affairs, and the district health office. The aim was to explore practical solutions to provision of access to health care within the constraints permitted by national legislation. The roundtable, in which moderation was shared by the State Secretary for Health with representatives of the NGO MediBüro, facilitated a regular exchange of information with civil society organisations that enabled the authorities to assess the medical needs of the city's irregular migrant population and help secure cross-institutional agreement on steps to take.¹³

→ ***Coordination by municipal umbrella body***

Where many municipalities within a country face similar challenges in relation to irregular migrants, their umbrella body may take up the issue to provide guidance or to negotiate on their behalf. There are many examples of municipalities that adopted this approach:

- The Association of Dutch municipalities, VNG, has played a key role in negotiating with the government on behalf of municipalities on the possibility of providing shelters to irregular migrants and on funding for that provision, on which agreement was reached in the autumn of 2018.
- The Convention of Scottish Local Authorities (COSLA) has published regularly updated guidance for Scottish local authorities since 2019 on migrants' rights and entitlements to local authority services and works across Local Government to help to prevent destitution.

¹³ Former State Secretary for Health, Environment, Agriculture and Consumer Protection of the Berlin Senate, interviewed by Sarah Spencer, September 2013; Berlin Senate's Official, interviewed by Vanessa Hughes, August 2013. NGO representatives, interviewed by Vanessa Hughes, July 2013; Holm A., Lederer K. & Naumann M. (eds.). (2011). Linke Metropolenpolitik. Erfahrungen und Perspektiven am Beispiel. Berlin, Münster: Westfälisches Dampfboot, pp. 161-182.

To address the gap in statutory guidance for local authorities in England, the NRPF Network, hosted by Islington Council in England, provides advice, guidance and support to local authorities on their statutory duties supporting migrant people with no recourse to public funds (NRPF¹⁴), who may be owed a duty of care under social services legislation. In addition to providing guidance to other municipalities, Islington Council's NRPF Network manage a national database and case management tool for 82 English and Scottish councils to record details of destitute households with no recourse to public funds (NRPF) that are being provided with accommodation and/or financial support by social services. The NRPF Network publish an annual data report, including both national and regional data on the numbers of people supported and the breakdown by immigration status. Through their evidence base, the Network are able to draft policy recommendations and informed consultation responses to support local government to work collaboratively to press for central government funding and policy change.

In addition to communicating multilaterally through umbrella bodies such as those cited above, individual municipalities may also wish to engage in bilateral conversation with other municipalities, for instance regarding the potential interoperability of neighbouring cities' municipal ID cards, so that carriers of an ID card issued by one municipality can use it to access services in another.

→ *Dialogue with national governments*

The significance of national legal and policy frameworks relating to irregular migrants and overlapping responsibilities for policies on access to services can necessitate dialogue between municipalities and national governments. This may be on a bilateral basis where the issue concerns one authority, or involve a number of municipalities. Municipalities also engage with the immigration authorities on individual cases.

For example in 2017, the Greater London Authority (GLA) raised with the UK government the situation of the residents of Grenfell Tower with irregular status who lost their homes in the fire on 14 June that cost 72 lives. It involved letters and meetings to highlight issues and to talk through the Government response in detail. The GLA was one of the voices that influenced government to offer a route to permanent settlement for survivors with insecure immigration status, to extend the deadline to apply to ensure that survivors had more time to come forward, and to make revisions to the policy for family members living overseas to enable them to extend their leave in the UK where they were designated as core participants to participate fully in the subsequent Inquiry.¹⁵

Channels for municipalities' considered communication with national governments may help resolve seeming or actual tensions that can arise in the multi-level governance of migration and migrants (Spencer, 2020). While the extent of devolved and delegated powers and levels of local government autonomy vary considerably from country to country, this remains a political space in which the limits of subsidiarity can be tested, occasionally with dramatic results, such as the near fall of the Dutch coalition government in 2015¹⁶. In situations where a local authority makes available to irregular migrants support denied to them by the national government, such as shelter, or refuses to comply with the national state's requirements, for instance for information sharing on irregular migrants, mechanisms for dialogue at an appropriate level can prove helpful. Where local and national governments fail to communicate or coordinate, the public may be unimpressed.

→ *Developing a comprehensive action plan*

¹⁴ [Who has no recourse to public funds \(NRPF\) | NRPF Network](#)

¹⁵ Mayor of London (2017). Minutes of the London Strategic Migration Partnership, 7 December 2017. Available at: www.london.gov.uk/sites/default/files/lsm_p_minutes_7th_december_draft_update.pdf

¹⁶ [Dutch reluctantly shift to EU-wide response on migrants | Clingendael](#)

Some municipalities have an overall plan for their work relating to their residents with irregular status. In other cases, separate initiatives are planned for, or arise separately over time.

- The City Council of Barcelona in 2017 adopted a strategy aimed at encouraging regularisations and preventing regular immigration statuses from lapsing.¹⁷ The strategy is made up of six goals that include ensuring universal access to municipal services for irregular migrants in the city, and encouraging the regularisation of people in irregular situations through provision of information and free legal advice to help people to obtain residence permits. It also aims to prevent irregular migrants losing their residence permits ('lapsed regularity'), for example by creating a protocol for social services to refer people at risk of lapsed regularity (because of a loss of employment) to the local employment agency. This allows early access to job offers before losing a residence permit, access to training, and development of an employment activation plan. Barcelona's plan provides for an information leaflet in seven different languages on access to the municipal register (the pathway to local services) and establishes information sessions and training courses for professionals who engage with irregular migrants in the provision of services. Irregular migrants are included within the training courses and employment plans of the local employment agency, and in language courses, to facilitate their regularisation and social integration. Information initiatives target specific economic sectors and areas with a high presence of irregular workers, such as the domestic employment sector.

→ *Allocating a budget*

There may be an identified budget for this work with irregular migrants but elsewhere the cost of provision is not identified separately from provision of other services. Alternatively, it can be part of an allocation of funding to NGOs for the services they provide.

- Gothenburg has a budget of €3m per annum for provision of shelter for homeless third country and EU nationals, including those with irregular status. Stockholm similarly has a budget for partnerships with NGO's that offer support and shelter to unaccompanied minors who become 18 and are no longer in the asylum system.
- Barcelona's 2017 strategy (see above) includes a budget of €341,000 (2018) for delivering the actions identified.
- Ghent has a budget set aside to cover unpaid school bills, including those for pupils with irregular status.

¹⁷ Barcelona City Council. (2017). *Mesura de govern per afavorir l'accés a la regularitat i prevenir la irregularitat sobrevinguda*. The strategy (with an English translation) can be accessed at: http://www.bcn.cat/novaciudadania/pdf/mgrregu_laritat.pdf

4. LOCAL POLICY RESPONSES AND INNOVATIVE PRACTICES

Cities across Europe and North America have led the way with some innovative practices towards irregular migrants ranging from terminating irregularity to helping accessing key services. A significant number of the examples cited below are drawn from C-MISE data (C-MISE Guidance 2019, 2014).

4.1 TERMINATING IRREGULARITY

Municipalities may support irregular migrants' efforts to find a solution to their immigration status by providing information and counselling on legal opportunities for regularisation, facilitating mediation between migrants and immigration authorities, and providing support for the voluntary return of those who, through professional counselling, realise they will be unable to regularise their status.

→ *Setting up municipal information or counselling centres on immigration matters*

Municipalities may set up dedicated information centres to provide counselling these are some examples:

- The city of Amsterdam stands out, not just nationally, but also internationally, for its very 'hands-on,' rights-based approach to irregular migration. In 2019, city officials have even produced a manual¹⁸ (that provides an overview of the work processes and agreements that have been made regarding the reception and guidance of irregular migrants (Gemeente Amsterdam, 2019). The official website of the city has a dedicated page for undocumented migrants, which states that: "Undocumented immigrants living in Amsterdam are regarded by the council as full-fledged Amsterdam residents. That is why they also have (limited) access to municipal services" (Gemeente Amsterdam, n.d., para. 2). The city also has an 'Office for Undocumented Migrants' (Loket Ongedocumenteerden Amsterdam) where people can go for information and advice.
- The City of Ghent set up and manages an 'info-point on migration' (Infopunt migratie) that provides general advice and information on immigration matters to all residents of the city, including regular and irregular migrants and Belgian nationals. Irregular migrants can obtain information regarding opportunities and procedures to regularise their status, or can access voluntary return programmes. In addition, migrants receive information on services they can access in the city while their status is irregular (e.g. obtaining a medical card that allows access to a local doctor), and are referred to the relevant municipal departments or local organisations. To increase irregular migrants' trust in municipal employees providing advice, Infopunt migratie ensures the confidentiality and anonymity of data shared and collects only minimal details from clients, including nationality, gender and immigration status. A person's name and telephone number is only requested in exceptional circumstances (for example, when a follow-up is needed).

¹⁸ [Handboek Programma ongedocumenteerden](#)

→ ***Financially supporting independent organisations providing information or counselling***

Some municipalities prefer to externalise immigration counselling and advice by providing funding to local NGOs offering such services. The main reason for adopting such an approach is the increasingly restrictive national regulations that prevent public officials from interacting with irregular migrants or require public service providers to report clients with irregular migration status. In some cases, outsourcing of services to NGOs is also more cost effective, or is aimed at increasing migrants' trust in their advisors so as to render outreach efforts more effective. Several cities have been opting for this:

- The City of Ghent, in addition to its 'info-point on migration', also financially supports an independent organisation providing immigration counselling in its 'Transit-house' to help migrants process their experience and work through their options.
- To reach the highest number of irregular migrants in the city, Barcelona funds a network of 55 non-profit 'social entities' to provide free legal advice on obtaining regular status, renewal of expiring residence permits, and access to services in the city, as well as advice for foreign spouses of Spanish nationals. The social entities also follow the cases of migrants at risk of losing their regular migration status and can mediate on migrants' behalf with the local administration processing immigration cases. To ensure the consistency and efficiency of the service, the municipality established the Network of Social Entities Offering Legal Advice for Foreigners (XESAJE), which facilitates the circulation of information on changes in laws and regulations affecting foreigners. It also organises periodic meetings with institutions to obtain up-to-date information on the most pressing issues for both the administration and users.
- In Cardiff, legal assistance for precarious migrants is principally provided through Asylum Justice, the only charity in Wales that does not rely on legal aid and is sufficiently certified to provide both advice and representation. Asylum Justice aids refused asylum seekers seeking to file new asylum claims, those with deportation notices, and those seeking to secure or extend their immigration status based on personal grounds (Krichhoff et al, 2022).

→ ***Offering mediation mechanisms between migrants and immigration authorities to obtain guidance on regularisation issues***

Municipalities (or their partners) sometimes act as intermediaries to facilitate interaction between immigration authorities and individuals who otherwise would not approach authorities. The mediation may be conducted by municipal employees if they are not required to report irregular migrants or by a private partner.

- The Social Services Department of the City of Athens, when certifying that women with irregular status have been victims of violence, has been negotiating the issuance of humanitarian permits on victims' behalf with the Greek Ministry of Interior.
- The City of Munich has entered into partnership with a local NGO for it to take on cases of irregular migrants living in the city and discuss individual situations in an anonymous manner with immigration authorities. This allows the authority to assess individual situations and either suggest ways to regularise status or state that there is no prospect of an alternative to removal. The NGO thus obtains official individual consultations without having to disclose a migrant's identity and can advise migrants accordingly on their possibilities to regularise, or alternatively encourage them to join programmes of assisted voluntary return (Delvino, 2017).

→ ***Embedding immigration counselling within local shelters and other facilities providing services***

Municipalities sometime combine the provision of a service with legal counselling on immigration matters. Such is the case in London, where the Mayor of London, for instance, in association with a charitable foundation (Trust for London) developed a pilot scheme to embed legal support on immigration matters and guidance for children with irregular status in local primary schools (Trust for London 2018, Mayor of London 2020).

Professional legal advice on immigration is also sometimes offered within a shelter for irregular migrants. This solution allows for individual and close follow-up of the immigration cases of the shelter's residents and builds trust between migrants and legal advisors who ultimately may be able to encourage migrants to accept advice on voluntary return. The provision of legal advice within shelters shapes the practice around a 'problem-solving approach' rather than solely service provision.

- The City of Utrecht is funding NGOs to offer shelters for unsuccessful asylum seekers and other individuals with irregular immigration status. Legal advice on immigration cases is offered within the shelter. Legal staff in the shelter advise on asylum appeals and other avenues to obtain a residence permit (e.g. on family or medical grounds). If a chance of regularisation is identified, municipal officers subsequently mediate for individual migrants with national immigration officers to confirm that the solution identified is indeed viable. Legal staff then follow up on the procedure for regularisation. If no chance of regularisation is identified, the migrant is encouraged to participate in a programme of assisted voluntary return.

→ ***Developing guidance and outreach activity for residents with irregular status***

Municipalities may develop guidance and outreach activities to inform residents with irregular or insecure immigration status regarding the possibility of regularising their status, and on the steps to follow to secure regular status. Several cities such as Ghent and Milan are in the process of putting in place a one-stop-shop, similar to the Barcelona one on migration related services.

- In the city of Ghent, local outreach services work closely together with the federal service Reach Out of Fedasil to find and to inform migrants with irregular migration status about their options.
- The Greater London Authority (GLA), in partnership with specialised NGOs and with the support of philanthropic charities, developed two sets of guidance aimed at supporting young Londoners who have been living and growing up in the city with insecure immigration status to secure a legal right to residence in the UK. Both sets of guidance are hosted on the website of the Mayor of London. One set of guidance is aimed at informing young Londoners about their rights and how to receive professional support in London. The other set provides information tailored to professionals helping young Londoners in changing their immigration status. In addition, the guidance directs irregular migrants to relevant local civil society organisations according to their advice needs. The expertise necessary for developing the guidance was secured through a secondment of civil society experts within the city administration, funded by philanthropic organisations. In addition, the GLA carried out outreach activities including hosting a 'Young Londoners Forum' for young people with insecure status and workshops for the city's officials and professionals.¹⁹

→ ***Sector-focused regularisations before and during the COVID-19 pandemic***

¹⁹ The guidance can be accessed at: www.london.gov.uk/what-we-do/communities/migrants-and-refugees/guidance-young-londoners-citizenship-residence

A number of countries offered regularisation to irregular migrants working in certain sectors and areas during the COVID-19 pandemic.

- In 2019 there was the implementation of a targeted regularisation policy geared specifically to construction workers in the Greater Toronto Area, Ontario (the number one immigrant-receiving province in Canada), in response to increasing pressures from the labour unions and migrant advocacy groups. In 2020, amidst the pandemic, there was an increased demand for labour in the health sector, the Quebec provincial government realised this need and in collaboration established a regularisation scheme, which was supported, and subsequently adopted at the federal level.

During the COVID-19 pandemic, many EU countries' governments extended short- and long-term residence and work permits for migrant workers (Twigg et al, 2021). COVID-19 has shone a light on the fact that migrants, including those employed irregularly, play an important role in the provision of essential services in many European countries and contribute to institutional resilience. Therefore, migrants doing essential work, including those typically considered lower-skilled workers such as care assistants and food processors, have in many countries been declared "key workers", whose employment requires protection and in some cases even expansion. The fact that many "essential workers" are migrants, often employed in lower-skilled jobs and sometimes irregularly, has also received public attention, as evidenced, for example, by the widespread 'clapping for carers' across European countries. Partly as a reflection of this renewed sense of appreciation of the work performed by irregular migrants, a number of EU countries introduced new regularisation programmes for certain categories of migrants working without immigration permissions.²⁰

- In Italy, for example, the government passed a law on 13 May 2020 allowing for the temporary regularisation of an estimated 200,000 irregular migrants working in the agricultural and caregiving sectors to address likely labour shortages due to the lockdown measures (Palumbo 2020).
- Greece also introduced an exceptional fast-track procedure for hiring irregular migrants in the agricultural sector to cover urgent needs, as well as an automatic 6-month extension of work permits granted on an exceptional base to irregular migrants.
- Similarly, Spain developed a fast-track procedure to grant residence and work permits for precarious migrants with a background in the health sector (OECD 2020). Other countries provided specific grace periods (e.g. France gave a 90-day extension), while others only indicated that they would tolerate late applications for renewal (e.g. Belgium) or offered an extension for a period beyond the end of the state of emergency (e.g. until 10 days after its end in Estonia, or until 45 days after its end in Hungary).²¹

Prior to the COVID-19 pandemic, no large-scale regularisations had been conducted in EU countries in the last decade, in line with an EU policy line strongly opposed to regularisations, which the EU considered as a 'pull factor' for irregular migration (Mallet and Delvino 2021).

²⁰ See, for example, OSCE 2021 reporting of the scheme in France for accelerated naturalisation (after two years of residence rather than five) for those who were 'frontline workers' during the pandemic. See also details of the regularisation programme opened by the Irish Government.

²¹ Ibid.

4.2 ACCESSING SERVICES

4.2.1. Shelter and accommodation

Access to public shelters or assistance with housing is often hindered by requirements to show a residence permit or other documentation that irregular migrants cannot produce, such as a social security number. Only rarely do state-owned homeless shelters admit migrants in an irregular situation.²²

The right to housing for all persons regardless of nationality or migration status is recognised by a wide range of international human rights treaties as one of the facets of the right to an 'adequate standard of living', including Article 25(1) of the Universal Declaration of Human Rights and Article 11(1) of the International Covenant of Economic, Social and Cultural Rights.²³ However, national legislation in the majority of EU countries imposes penalties on landlords renting properties to irregular migrants, including fines and imprisonment. Renting to irregular migrants may be explicitly punishable in the law, or a general rule on facilitation of irregular stay may be interpreted to include renting housing to irregular migrants.²⁴

Municipalities setting rules on admission to shelters and housing play a key role in facilitating or hindering access to locally-administered shelters. Where national legislation does not explicitly prevent irregular migrants from accessing housing facilities for homeless people, individual organisations managing the facilities may still be reluctant to accept them because they fear their public funding could be jeopardised (PICUM, 2014).

Municipalities may facilitate access to temporary and night shelters for the homeless but also provide housing facilities on a longer term basis, often accompanied by legal counselling with the aim of finding a solution to migrants' irregularity and related homelessness. Many cities were proactive as part of the COVID-19 response.

- For example, the City of Liverpool decided to allow access to its night and day shelters to any street sleepers, including unsuccessful asylum seekers and other migrants with no right to access services. This was part of the national COVID-19 response 'everyone in' mentioned above. In addition, the municipality started an outreach campaign named 'Always Room

²² FRA. (2011). Fundamental Rights of Migrants in an Irregular Situation in the European Union, Luxembourg: Publications Office of the European Union, available at: <http://fra.europa.eu/en/publication/2012/fundamental-rights-migrants-irregular-situation-european-union>.

²³ However, it remains controversial whether the obligation to fulfil the right to housing also includes the duty of states to provide irregular migrants with basic services such as adequate shelters for destitute individuals; see FRA. (2011). Fundamental Rights of Migrants in an Irregular Situation in the European Union, Luxembourg: Publications Office of the European Union.

²⁴ FRA reported that, in 2014, all but five EU Member States had laws imposing penalties on landlords renting properties to irregular migrants. Of the remaining five Member States, Ireland does not punish facilitation of stay, and thus does not punish landlords for renting accommodation to irregular migrants. In France and Malta, a punishment is possible, but those who accommodate a close relative are excluded from punishment (although the Maltese exclusion is limited to seven days). Italy punishes landlords for taking unfair advantage by profiting from irregular migrants' vulnerable situations, but not for renting to them. Belgian law explicitly excludes from punishment assistance provided for humanitarian reasons, which might include providing accommodation. See FRA. (2014). Criminalisation of Migrants in an Irregular Situation and of persons engaging with them. Luxembourg: Publications Office of the European Union.

Inside' to make sure that any street sleeper, as well as the wider population, is aware of the possibility of accessing the shelter, regardless of immigration status.²⁵

- Some municipalities also prioritise the provision of emergency shelter during the winter period. For example, in Geneva, there are night shelters run by the city that accept everyone, including irregular migrants, to try to avoid people dying of cold when sleeping on the street. There are also some emergency shelters run by NGOs that receive some local government funding, where people can have their own room, usually with a maximum duration of stay of around three months. Such shelters will also accept undocumented people who have not received a negative decision on an application for international protection and deportation decision, and people do not risk deportation as a result of accessing services. However, the system is often over-subscribed and many people and families are not able to stabilise their situation and find alternative housing within the three months (PICUM, 2022).

→ ***Funding or reimbursing NGOs for the provision of shelter to irregular migrant***

Municipalities may also fund the activities of NGOs to provide shelters to people in need, regardless of migration status. For example, in Oslo, NGOs run shelters for people needing a place to sleep, regardless of their residence status. In 2018, the City of Oslo provided €600,000 to the shelters. On a regular basis, there are 133 beds for overnight stay and legal and medical assistance is provided. During cold winter periods the capacity is increased. The City of Stockholm has a similar model.

This practice is used in particular in countries where restrictive national legislation prevents direct municipal provision of housing services to irregular migrants, or limits the possibility of accessing national funds to cover the costs of providing shelter. The mediation of an NGO allows indirect provision of shelters. In particular, in national contexts where public officials are bound to report irregular migrants requesting services, the mediation of an NGO can offer a 'firewall'.

Support may take the form of funds provided upfront to manage a facility with the specific goal of providing accommodation for those who cannot access municipal shelters. In the Netherlands, for example where national law strictly limits the provision of services to irregular migrants, the City of Utrecht provides funding to NGOs to manage three shelters hosting irregular migrants. Beyond accommodation, NGOs also provide financial, legal and medical assistance in the shelters.

→ ***Initiatives supporting irregular migrants' access to the private housing market***

Local authorities may implement initiatives supporting irregular migrants' access to rented accommodation and protect them from exploitative renting conditions. This often happens through an NGO.

Municipalities may financially support destitute migrants for accommodation purposes. For example, the City of Amsterdam has been funding an NGO that provides monthly allowances for living expenses and if needed additional accommodation allowances, to migrants with irregular status and no other means to sustain themselves. The city keeps control over the use of funds through a requirement that officials authorise each case before funds are released.

→ ***Providing accommodation for irregular migrants cooperating in their return***

²⁵ For more information, visit: <https://liverpool.gov.uk/alwaysroominside>

In contexts of restrictive national policies, the local need to ensure accommodation for homeless migrants with irregular status can be reconciled with immigration rules on migrants' removal by limiting access to accommodation facilities to migrants agreeing to cooperate in their return. This is the case, for instance, at the 'bed-bath-bread shelters' also known as the LVV initiative, which is a pilot project in five Dutch cities together with the national government, where they offer shelter and case management to irregular migrants on the condition that they were working towards voluntary return, onward migration, or regularisation. Participants receive shelter, counselling and financial support for food and other necessities. During their participation in the programme people are temporarily protected from detention and deportation.

4.2.2. Access to justice

Irregular migrants are particularly vulnerable to exploitation and crime including labour exploitation, trafficking and domestic violence, because of their limited ability to obtain support from law enforcement authorities. Beyond cultural and linguistic barriers, victims of and witnesses to crime in an irregular condition refrain from reporting it to the police for fear of being arrested and deported. Irregular migrants thus generally mistrust law enforcement authorities, which translates into high levels of underreporting of crime by migrant victims and witnesses.

In June 2020, the EU adopted its first-ever Strategy on Victims' Rights²⁶ setting out its priorities for the next five years (2020-2025) in this area to reinforce the rights and protections of victims of crime. The strategy focuses on improving coordination among actors that are critical to ensuring victims' protection and safety, and on the need to take specific steps to support victims in situations of vulnerability.

EU Member States' policies show an increasing awareness of the need to ensure irregular migrants are able to report crime and access justice and have been introducing legislation allowing the issuance of special residence permits for victims of certain criminal offences (e.g. domestic violence) who report the crime and/or cooperate with police investigations and prosecutions (Delvino, 2017). EU law also provides the possibility of issuing special residence permits to victims of trafficking and serious labour exploitation (PICUM, 2015).

National reforms inspired by local practices in this area have been introduced in the Netherlands where Amsterdam police's 'free in, free out' policy (discussed below) was adopted at national level on the occasion of the transposition into Dutch law of the EU Victims Directive in 2015 on the basis that it had in Amsterdam encouraged more migrant victims of crime to come forward and report the offences.

Moreover, some cities, such as Frankfurt (Kirchhoff et al, 2022) use the responsibilities to protect victims of violence that the Istanbul Convention²⁷ puts on States to advocate for an increase in the number of places in shelters.

→ The 'free in, free out' policy

The key element of the 'free in, free out' policy is the choice – formally or informally adopted by law enforcement actors – to prioritise prosecution of crime over immigration enforcement, by instructing police officers to refrain from investigating the immigration status of individuals reporting a crime and/or apprehending individuals with irregular status reporting a crime, unless suspected themselves

²⁶ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/eu-strategy-victims-rights-2020-2025_en

²⁷ <https://www.coe.int/en/web/istanbul-convention/about-the-convention>

of committing a crime. The policy is accompanied by outreach activities in local migrant communities that aim to inform residents of their right to report a crime without risking apprehension and deportation, and to build trust towards law enforcement authorities:

The local police of Amsterdam adopted the 'free in, free out' policy in 2013. Local police officers are instructed not to ask about the immigration status of individuals reporting a crime. A local police officer is charged with ensuring the functioning of the policy and that colleagues in the local police are aware of what is expected of them. Amsterdam's police sought the cooperation of individuals and organisations trusted by the diaspora community (including churches, NGOs, and migrant organisations) to disseminate information on the means of reporting crime and to build trust in the service. Police refrained from patrolling the premises of organisations offering support to irregular migrants. They distributed leaflets, outlining the policy in Dutch and English, which migrants could hand to police officers when reporting a crime to make sure that the officer they interact with is aware of the policy and refrains from apprehending the migrant, and to explain why the migrant cannot show an appropriate identification document.²⁸

4.2.3. Access to health

Migrants with irregular status face a range of obstacles in accessing medical treatments necessary for their well-being and the public health of the communities they live in. Their entitlement to treatment may be limited by national legislations allowing for only minimal access to public healthcare. In several EU countries, irregular migrants may be entitled to emergency care but not to primary or secondary care (Spencer and Hughes, 2015), nor to the possibility of registering with a general practitioner (GP) and obtaining continuous care. People with irregular status may also not be able to access healthcare they are entitled to because of practical and administrative obstacles related to their immigration status. These include the lack of 'firewalls' in national legislation, which exposes migrants attending public facilities to the risk of being reported to the immigration authorities and deters them from seeking medical care. The health services in question can be organized and delivered at either local or national level.

→ Establishing 'firewalls'

In most EU countries, medical doctors (including doctors employed by public institutions) have a legal and professional obligation of medical confidentiality that prevents them from reporting irregular migrants to immigration authorities. However, this obligation does not always apply to other public employees in medical facilities, including those in the administrative departments of a hospital, or those working in the local welfare offices responsible for covering the expenses of medical treatments provided to uninsured patients. Municipalities can develop initiatives that remove the risk of being reported for irregular migrants seeking healthcare, to allow migrants' access to care and concomitantly ensure that their health conditions are known by health authorities.

In countries where national legislation establishes a general obligation on all public officials to report the irregular migrants interacting with them, local authorities managing healthcare may seek the mediation of external actors such as NGOs to provide the services that irregular migrants would not request from public officials.

In Germany, for instance, although doctors are exempted from the general obligation imposed on public officials by national law to report irregular migrants, employees of municipal Welfare Departments, who are responsible for reimbursing the costs incurred by doctors caring for uninsured

²⁸ Zwart, M. (Dutch National Police Unit Amsterdam). (2017). Equal rights without discrimination, [presentation] in Autumn Academy 2017: Strategic Approaches to Migrants with Irregular Status in Europe, held in Oxford 18-22 September 2017.

individuals, may still be obliged to pass on the details of irregular patients to police,²⁹ nullifying the confidentiality 'firewall' imposed on medical doctors. Several German municipalities have thus found alternative solutions to establish a firewall.

- The City of Frankfurt (Kirchhoff et al, 2022), in cooperation with an NGO (Maisha), has set up its own municipal medical consultation centre, known as 'Humanitarian Consultation Hours' (Humanitäre Sprechstunde) where the only public employee is a medical doctor of the local Health Department (not bound by the duty to report), while other staff work on behalf of the NGO (also not duty bound). The centre operates as a GP, can provide medicines, and works in partnership with a network of specialist doctors to refer patients with more serious health concerns. The cost of the activities of the Humanitarian Consultation Hours are financed by Frankfurt's Department of Health and the Department for Women, while the Department of Social Care provides medicines. Healthcare is provided anonymously and is generally free of charge but the centre asks for contributions according to the patient's means.³⁰

→ *Setting up or supporting medical facilities*

In national contexts where there is only an entitlement to emergency care, irregular migrants are not able to register with a GP, and children likewise may not register with a paediatrician, which often forces migrants to seek care only when their condition requires emergency intervention. Local authorities may set up municipal medical clinics that operate as GPs and paediatricians, providing specialist care or other treatment that is not provided for by national law. Authorities may also support external actors managing health centres that offer such services.

- For a period of time, the City of Florence (together with the Tuscan regional government) funded an NGO (Caritas) to manage, in cooperation with municipal officers, a medical facility ensuring continuity of care to irregular migrants following their release from local hospitals. The centre would host patients post-hospitalisation and provide them with long and medium-term treatments according to an individually structured care pathway until full rehabilitation. Besides its humanitarian aims, the initiative aimed to avoid the saturation of emergency rooms and long-term hospitalisations in hospitals that previously had been delaying the release of irregular migrants from emergency in order to provide them with post-emergency care.³¹
- In Cardiff, the National Health Systems (NHS) runs an inclusive local health service, the Cardiff and Vale Health Inclusion Service (CAVHIS), in order to address access barriers within the larger NHS, including those stemming from charging regulations. As an NHS institution, CAVHIS provides health care to migrants with precarious status. This includes free health screenings, primary care consultations and midwifery services, and provision of help in accessing the wider NHS. CAVHIS is generally recognized as being a welcoming institution

²⁹ The issue is disputed, as some municipalities have been interpreting differently the rules exempting medical doctors from the reporting obligation, with some municipalities considering the exemption to automatically extend to municipal employees in welfare offices, and others interpreting this extension to be limited to cases of emergency. OHCHR. (2019). Promising practices on the right to health for migrants with irregular status at the local level. Geneva: Office of the United Nations High Commissioner for Human Rights (OHCHR).

³⁰ For more information, visit: www.gesundheitsamt.stadt-frankfurt.de

³¹ Municipality of Florence. (2011). 'Marginali e immigrati irregolari, un progetto per garantire l'assistenza anche dopo l'ospedale' [online press release] 12 September. Available at http://press.comune.fi.it/hcm/hcm58683-1_Marginali-i-e-i-immigrati-i-irregolari

for migrants who might be fearful or unsure of how to access healthcare and, ultimately, a means of orienting migrants within the larger NHS (Kirchhoff et al, 2022).

→ ***Providing a safety net for migrants who are excluded from health insurance coverage***

In countries where access to healthcare is organised around enrolment in a national health insurance scheme, irregular migrants are often excluded from accessing the mainstream insurance scheme and may not enrol (or be able to afford to enrol) in alternative insurance. This in practice nullifies their right to access care, as they may be expected to pay inaccessible medical fees for treatments to which they are entitled, including necessary and emergency care.

Municipalities may make budget reservations and provide funding to cover the expenses incurred by patients and hospitals for treatments offered to uninsured individuals, irrespective of nationality and immigration status, thus forming a safety net for those not covered by national health insurance schemes. This funding can be channeled through the work of public or private organisations managing health services for uninsured people. Such organisations can include within their target groups people with irregular immigration status.

Several municipalities in the Netherlands, including Eindhoven, Amsterdam, Nijmegen and Utrecht, support local NGOs that provide medical assistance to uninsured migrants and cover the cost of health services that are not covered by the 'National Basic Health Insurance',³² such as dental care and physiotherapy and fees for pharmaceuticals. Local NGOs also facilitate access to dental services by connecting patients with dentists willing to treat them for a reduced fee (PICUM, 2017).

→ ***Simplifying administrative procedures***

In several EU countries, irregular migrants may need to undergo cumbersome administrative procedures to access the healthcare to which they are entitled under national law. These procedures may constitute a significant barrier for migrants who are irregular (especially if they have no fixed address), as they might be required to show documentation that they cannot procure (e.g. related to their residence or a social security number). In addition, irregular migrants may be impeded from accessing medical treatment promptly when urgently needed because of time-consuming administrative processes. Local authorities responsible for the management of healthcare at the local level may develop simplified procedures that take into account the challenges that irregular migrants may face in meeting certain procedural requirements.

While some municipalities have developed complex procedures which are difficult for irregular migrants to meet (including house visits by a social assistant to verify local residency which can last up to one month, irrespective of the urgency of care, and may not be possible for irregular migrants who may not have a stable housing situation), other cities have opted for more simplified procedures that take into account the particular conditions of irregular migrants without documentation.

³² In the Netherlands, irregular migrants are ineligible for state health insurance and must pay up front for the 'medically necessary' care to which they are entitled. Destitute individuals might have the costs of their treatment covered by the CAK fund established by the government to ensure health care providers can recoup up to 80% of the costs they incur as a result of treating 'uninsurable' patients, but only for treatments falling under the 'National Basic Health Insurance'.

In Belgium, for instance, the welfare departments of local authorities verify the requirements³³ to access a dedicated national coverage scheme for patients with irregular status (the AMU/DMH scheme).³⁴

- The City of Ghent, following a recommendation from the Belgian Ministry of Health, has developed a flexible procedure to issue a medical card for irregular migrants and has eased requirements and decided to rely on alternative types of evidence to verify them. This includes testimony by trusted local organisations as to a migrant's residence in the city and their condition of destitution. Furthermore, to secure swift payments for doctors (and so avoid reluctance to treat patients with irregular status), the city reimburses doctors immediately for treatments provided to patients holding the card and only later requests reimbursement from the federal government under the AMU/DMH scheme. This reduces the waiting time for payments from six months to one week. Doctors thus trust that they will be reimbursed for treatments offered by people holding Ghent's medical card.
- The municipality of Molenbeek (Brussels) arranges (and bears the costs for) an initial medical consultation as soon as an irregular migrant requests medical assistance, without requiring first that the conditions for AMU/DMH eligibility be met. This considerably reduces administrative barriers and allows for rapid detection of serious illness.

In the Netherlands – where destitute irregular migrants' costs for some treatments (see above) may be covered – it can be difficult for health professionals to determine if someone is eligible for reimbursement. Complex bureaucratic systems for reimbursement can make doctors and hospitals reluctant to treat patients with irregular migration status.

- The cities of Eindhoven, Amsterdam, Nijmegen and Utrecht contribute to the funding of local NGOs that certify migrants' eligibility for CAK coverage and provide them with a note of confirmation to present to hospitals and doctors (PICUM, 2017).

→ *Temporary measures as part of COVID-19 response*

Access to healthcare assumed a completely new relevance during the pandemic in view of the spreading of COVID-19 and cities responded by either extending their already existing measures in the area of healthcare or by adopting new initiatives. Various cities, including the city of Frankfurt, allocated a specific portion of their budget to cover the costs incurred by hospitals, pharmacies and local ambulatories to care for people without health insurance, including irregular migrants (Mallet and Delvino, 2021). Other examples of city initiatives, include the following:

- Lublin was the first city in Poland to launch procedures allowing foreigners to obtain a social security number in order to purchase medication in pharmacies and use services provided by the state or local authorities³⁵.
- The city of Cartagena in Spain, in coordination with the Murcia Regional Health Services, has facilitated access to healthcare for unregistered people with irregular status (or those who had other documentation impediments accessing care). The city in particular operated to

³³ Which include an irregular status, usual residence in the municipality, a condition of destitution and no alternative social security sources.

³⁴ In Belgium, irregular migrants cannot enrol in the mainstream national health insurance, and access to care for irregular migrants is regulated under a separate national insurance scheme known as 'Aide médicale urgente' (AMU) or 'Dringende Medische Hulpverlening' (DMH).

³⁵ Council of Europe website [https://www.coe.int/en/web/interculturalcities/covid-19-special-page#%2262433518%22:\[2\]](https://www.coe.int/en/web/interculturalcities/covid-19-special-page#%2262433518%22:[2])

verify the personal situation of migrants whose permits expired during the Spanish state of emergency to check their eligibility for healthcare in the country, with a view to extending access and providing guidance on how to obtain provisional healthcare.³⁶

4.2.4. Access to education

Although entitled by international human rights law³⁷ to attend school and access education, children with irregular immigration status in Europe may encounter several barriers impeding their enrolment in and effective attendance of school. Enrolment procedures requiring documentation that irregular migrants are not able to produce (such as a residence proof or a social security number) are one such barrier. Other barriers include students' fear of exposing themselves and their families to detection by immigration authorities when attending public schools.

Recent research (Bastick and Mallet, 2022) also showed that the Covid-19 pandemic has exacerbated the digital exclusion of irregular migrants. Income loss from the pandemic made internet access unaffordable, and lockdowns in high-density households resulted in sharing devices, interference from family members, and reduced internet speeds. Outside of the home, the pandemic shuttered public libraries, on which a quarter of immigrants report relying on internet access (Perrin and Turner, 2019).

In EU law, specific provisions on access to education for children with irregular immigration status are only provided in relation to children whose removal has been postponed, and require that they are provided 'with access to the basic education system for minors subject to the length of their stay (Art. 14, para 1, Return Directive).

The national legislation of 23 EU countries entitle minors in an irregular situation to attend compulsory education (either explicitly or implicitly through a requirement of all children to attend school). In the other Member States,³⁸ however, national law does not entitle irregular migrant children to attend school, and in practice the decision on whether to admit them is left to the discretion of each school (Spencer and Hughes, 2015).

Education policy is generally a national competency but local authorities are often responsible for the practical management of schools in their territory. They thus play a crucial role in facilitating effective access to education for irregular migrants. Some of the good practices by municipalities include:

→ Study residence permits

In March 2022, the municipality of Amsterdam in collaboration with vocational and higher education institutions in the city signed a covenant and launched a pilot which would give irregular migrants between 18 and 30 years old a possibility to obtain a study residence permit within existing migration and education rules. This is not a national policy, but the pilot project allows irregular migrants who completed their secondary education in the Netherlands to receive further education and to qualify for a residence permit for study with lower tuition fees (Dez & Fiorito, 2022). In October 2023, a similar covenant has been signed in The Hague, and organisations are actively working in Rotterdam to achieve something similar.

³⁶ Ibid.

³⁷ The right of everyone (irrespective of migration status) and of children in particular to education is a human right firmly recognised by several international human rights treaties, including by Art. 13 of the International Covenant on Economic, Social and Cultural Rights; Art. 23 and 28 of the Convention on the Rights of the Child; Art. 2 of Protocol 1 to the European Convention on Human Rights; and Art. 14 of the Charter of Fundamental Rights of the EU.³⁷

³⁸ Bulgaria, Finland, Hungary, Latvia and Lithuania.

→ Introducing firewalls

Where national law does not clearly provide for a 'firewall measure' preventing teachers and school staff from passing on the details of students with irregular status, local authorities can instruct local schools and their employees not to report irregular students and their relatives.

- In Frankfurt, although there does not appear to have been an information campaign provided to schools regarding a change in the law and the interruption of the reporting obligation, schools seemed to be aware of it and accept children onto their school roll regardless of their residence status (Kirchhoff et al, 2022).

→ Allocating financial resources to cover schools' costs for irregular students

Where schools are not reimbursed by national funds for costs related to students with irregular status (who do not feature in official counts), municipalities can make budget reservations to cover such expenses, support school costs, and thus avoid schools' reluctance to accept students with irregular status.

- The City of Ghent has set up a 'social fund for schools', a budget reservation aimed at covering unpaid school bills of the children of indigent and vulnerable families, including children with irregular status.
- In the municipality of Sint-Niklaas in Belgium, a solidarity fund has been established to support schools in running special projects in favour of pupils with irregular migration status. All schools raise funding (through events such as school parties) and contribute to a general fund so that they can support one another (PICUM, 2008).

→ Supporting students' expenses for attending school (such as books, transportation and school meals)

Pupils with irregular status are generally excluded from state financial aid for school expenses, including books, transportation and school meals. As irregular migrants cannot officially work, pupils' families may often be destitute and unable to bear these costs, which in practice hinders access to school. Municipalities may allocate financial resources to support migrants' expenses, or support schools or other organisations in covering migrant students' costs.

The City of Amsterdam has been financing a local NGO ('Leren Zonder Papieren', or Learning Without Papers) that provides financial support to families of children with irregular status for school expenses, including school materials, sport clothes and fees for school trips (PICUM, 2008).

The City of Ghent provides free public transportation to school for all students, including those with irregular status, by reimbursing the costs of a 'bus pass'. To enable students without residence permit to obtain the pass, the city made an agreement with the bus company to allow social assistants within the school to request the pass via a secured/protected platform on the website of the bus company. The latter delivers the passes to the school, which then hands them out to the students.

- In Cardiff, local authority staff have reported using their discretionary powers to support migrant children, to whom they apply lower eligibility criteria for financial aid to circumvent their heightened vulnerability. This may translate into providing a free school uniform, free transportation, or cover other basic needs such as a warm coat for the winter. With the support of Cardiff Council, the City of Sanctuary movement initiated a School of Sanctuary offshoot,

designed to provide a welcoming and caring environment for those people in need of help (Kirchhoff et al, 2022).

→ ***Including irregular migrants in adult educational services***

Municipalities often offer a range of educational opportunities beyond the mainstream educational system. These programmes are often geared toward individuals out of mainstream education, particularly adults and/or foreigners who did not receive official education in the country where they reside, or who have particular education needs, e.g. in relation to language skills. These programmes can offer crucial education for irregular migrants, particularly adults out of schooling age who are not in the official labour market and may not have sufficient skills in the local language.

- A consortium of the city of Barcelona with the Autonomous Community of Catalonia offers complementary 'adult education' courses for adults who could not access good-quality education, those who have dropped out of education, or migrants who did not receive education in Spain and who need to learn the language. These courses are open to migrants with irregular status, as long as they can show a passport.

Municipalities also offer complementary educational services that target the specific educational needs of migrants.

- The same City of Barcelona funds a network of NGOs ('social entities') to offer programmes in the sphere of education, including training courses and classes in Catalan and Spanish, to migrants regardless of status. The network also provides legal advice on how to obtain recognition of qualifications obtained abroad. Barcelona's SAIER centre informs irregular migrants of opportunities to access educational and training services offered by the city.

5. LOCAL POLICY RESPONSES AND PERSISTING CHALLENGES

Despite the availability of promising practices by different cities in dealing with irregular migrants discussed in the previous chapter, a number of persisting challenges remain. This chapter provides an overview of some these challenges. It is important to emphasise that despite the fact that they are presented separately, these challenges are mutually interdependent.

5.1 ANTI-IMMIGRATION DISCOURSE

A growing anti-immigration discourse is growing across many European countries leading to policy changes and growing negative public narrative on migration. For example, while the Dutch government reports a decline in the number of irregular migrants in the last two decades, attributing it to measures such as identification requirements and the Linkage Act, which limits access to public services for individuals without legal residence, the prevention of irregular migration remains a priority in its comprehensive approach to migration. This is in part due to labour market dynamics where the demand for cheap labour persists which irregular migrants are willing and able to fill (Van der Leun & Ilies, 2010) and thus, despite policies excluding irregular migrants in the labour market, they are not very influential in their case. Further, as enforcement of migration legislation is focused on rejected asylum seekers and those involved in criminal activities (Leerkes, 2009), unauthorised workers and their employers do not often have to face consequences.

5.2 NATIONAL LEGAL RESTRICTIONS

The national legal framework for governing migration has a direct influence on the extent to which cities are able to respond to the needs of irregular migrants. In the UK for instance, as a result of its exit from the European Union, some three million EU citizens living in the UK fell under immigration law which had not applied to them before. Now, Freedom of Movement (FOM) protections against expulsion no longer apply to EU citizens in the UK, expanding the list of reasons for which such people can legally be deported. There is some evidence to suggest such deportations are selective, according to factors such as income and housing (Radziwinowiczowna and Olayinka, 2021).

In July 2023, the legislative landscape for managing migration in the UK was further altered by the passage through parliament of The Illegal Immigration Act. This new legislation was championed by the British Prime Minister and Home Secretary on the basis that it would enable them to 'stop the boats' – a political strapline referring to a promise to end the phenomenon of migrants reaching the UK irregularly on small boats. The Bill extinguishes access to asylum in the UK for anyone who arrives irregularly, having passed through a country – however briefly – where they did not face persecution. It bars them from presenting refugee protection or other human rights claims, no matter how compelling their circumstances. In addition, it requires their removal to another country, with no guarantee that they will necessarily be able to access protection there. It creates sweeping new

detention powers, with limited judicial oversight. Senior representatives of the UN have observed that the Act flies in the face of the UK's obligations under both human rights and refugee law³⁹.

5.3 POLICY IMPLEMENTATION

Another challenge for cities is their capacity to interpret and implement policies at the local level and the tensions that arise therein in view of national legislations. Following humanitarian principles and a duty of care, some cities/municipalities like Amsterdam work together with civil society to ensure that irregular migrants have access to basic services. As Kos et al. (2016, p. 1) put it, some Dutch municipalities have developed “ways of cushioning, bypassing, resisting and counteracting” exclusionary policies. Others like Rotterdam are more aligned with the national policy of migration control and systematic exclusion of irregular migrants within Dutch society.

Tensions in multi-level and multi-actor (multi-layered) migration governance is the prevailing policy challenge. As mentioned earlier, the governance of migration in the Netherlands follows a multi-level or multi-layered approach where different actors are involved in the interpretation and implementation of policies. However, there are frictions, sometimes even contradictions, between the actions taken by the national government on the one hand, and the local authorities on other hand. Likewise, conflict can arise between, for example, NGOs and municipalities over the emphasis put by schemes like LVV on migrants' voluntary return to their country of origin. There is also a tension between social exclusion and the enforcement of migration legislation on the one hand, and international human rights law on the other hand, which leads to the adoption of certain institutional bypasses or firewalls that grant children or young people in irregular situations access to education, for example, and policies pertaining to the safe reporting of crime, access to family shelters, and opportunities to access durable solutions.

Similar policy implementation challenges are faced by cities outside Europe. In the case of Canada, although there are seven cities that are deemed “Sanctuary Cities”, there are several limitations on the effectiveness and efficacy of such policies in practice. These are limited by where city councils are situated within the federation model—delimiting who has power over which issue, and how much and for which purpose federal funds are utilised. There are further limitations placed on local-level governments based on the configuration and allowances of the federation model. Certain responsibilities are handled by the federal and provincial level intergovernmental collaborations, including migrant settlement and integration. This limits the extent and effectiveness of sanctuary policies as articulated by local/city level authorities.

5.4 DATA LIMITATIONS

As discussed in MirreM Policy Brief no.2, the lack of local data estimates continues to be a challenge. In the UK for example, local authorities see limited benefit to trying to collect data on irregular migrants in the local population, when any such assessment would not bring with it additional resources from central government. The only city in the UK which has published such estimates is London. Data sources could though be identified, such as legal clinics, hospitals, services for rough sleepers and migrant support organisations.

Irregular migrant populations have been estimated in Amsterdam, The Hague, Rotterdam and Utrecht, primarily by NGOs based on the data they hold on their clients. In Milan, Italian police do

³⁹ UK Illegal Migration Bill: UN Refugee Agency and UN Human Rights Office warn of profound impact on human rights and international refugee protection system | OHCHR, July 2023 <https://www.ohchr.org/en/press-releases/2023/07/uk-illegal-migration-bill-un-refugee-agency-and-un-human-rights-office-warn>

collect some data on the size of the irregular migrant population in the city but do not then necessarily share it with partner organisations. Meanwhile, Foundation ISMU reached migrants – regular and irregular – across the Lombardy region for twenty years from 2001. Statutory authorities did use this data to inform their policymaking at local and regional levels.

Given the dearth of official data on levels of irregular migration in Ireland, the state at national and local level turns to the Dublin-based NGO, the Migrant Rights Centre of Ireland (MRCI) for estimates, but ensuring the accuracy of these estimates is a challenge. Immigration Service Delivery (ISD) and Garda National Immigration Bureau (GNIB) both have their own databases but do not share them with each other or with others who could make use of them. In Canada, too, reliable data on the irregular migrant population is sparse, leaving policymakers often to rely on anecdotes for evidence. In Poland, various security agencies do produce data at a national level of migrant numbers, but the scale of irregularity at a local level remains unquantified.

5.5 INSTITUTIONAL RIGIDITY

A number of city representatives referred to institutional rigidity as a challenge they face regularly while responding to irregular migrants. In Italy, in some cases institutional rigidity sees public institutions demonstrating hostility towards and seeking to obstruct acts of solidarity. In others, institutional tolerance and cooperation with non-governmental organisations enables a more supportive environment for irregular migrants. That is to say, the level of *flexibility* exhibited by the local state can be an important determinant of how welcome the municipality makes irregular migrants. Meanwhile, in Ireland the challenges seem more to do with a lack of policy measures relating to irregular migrants which makes it practically impossible to determine what rights irregular migrants have in terms of access to services, leading to somewhat arbitrary service provision.

In Canada, the freedom of, for instance, Sanctuary Cities to innovate in policy terms towards irregular migrants is constrained by a federal model of government in which subsidiarity is limited. Local authorities in Poland advocate for the development of a national integration policy which delineates the responsibilities of local and national government respectively. They also argue for simplified employment and workforce legislation, which is overcomplicated as things stand.

Similarly, in Ireland there were many cases of irregularity that began when there was a significant delay or no response in processing of application. For example, where someone tries to renew their Irish Residence Permit (their residence card), and they have a right to renew it, but due to a delay or miscommunication, their card expires, and then their employer won't employ them anymore, they can't get social protection and can no longer pay the rent.

5.6 CAPACITY

Limited funding and capacity is a challenge for most cities as they strive to provide services for their residents. In the UK, local authority teams focusing on migration related issues have often limited capacity and in recent years have had to be policy-reactive, prioritising immediate pressures, including providing accommodation for newly arrived Ukrainians, Afghans and British National Overseas Hong Kongers, as well as juggling local asylum hotels closing and needing to rehouse residents. Local authorities often struggled to find local quality legal provision as existing research has highlighted the geographical patchiness in provision and capacity of legal aid immigration advice services across the country, leading to "legal aid droughts and deserts" (Wilding, 2019)

Similarly, large Polish cities, even Warsaw with the highest income and resources, are struggling for funding. Some stakeholders suggested that this has become a pressing issue following the Russian

aggression against Ukraine and the massive inflow of persons under temporary protection who need adequate housing conditions in the medium term.

6. IMPLICATIONS FOR POLICY AND PRACTICE

Some recommendations emerged from the above analysis. They include:

Policymaking and data – some policymaking at the local level in policy areas that affect irregular migrants pays heed to available data on these populations, but often the primary drivers of policy will be political rather than data-driven. Too often ‘evidence-based policy-making’ makes way for ‘policy-based evidence-making’ (e.g. if a public service – health, police, minimum wage enforcement, etc. – requires users to declare their immigration status, fewer irregular migrants will use it, which may give the false impression that there are fewer irregular migrants who need it).

Firewalls – Many municipalities take steps to safeguard the personal data of service users from immigration enforcement authorities, while continuing to fulfill their responsibilities under national law. Provision of a service for people with irregular immigration status is only effective if the service users are reassured that their personal details will not be reported to immigration law enforcement authorities. A separation between public immigration enforcement activities targeted at irregular migrants and the provision of services to them is known as a ‘firewall’. Firewalls are particularly relevant to such services as healthcare, social services, education and access to the justice system. Firewalls are implemented to ensure that individuals are not deterred from accessing essential services by a fear that doing so could lead to their arrest and deportation (Crépeau and Hastie 2015). Effective firewalling demands a joined-up approach across departments and between organisations. Achieving this level of coherence in a cross-sector, multi-agency environment requires serious and sustained effort.

Continue some of the good practice adopted during Covid-19 – For a period in the early 2020s, nation states across Europe – whether for humanitarian reasons, to safeguard essential supply chains or to protect public health – created more hospitable, less hostile environments for irregular migrants. Many of these more inclusive policies, adopted during the pandemic, have not outlasted it. Nevertheless, they illustrate how national governments do have the power, when they choose to use it, to make policies and pass laws that embrace irregular migrants, rather than exclude them. Several stakeholders recommended maintain or reviving some of the good practice developed or applied during Covid-19. Many of these national initiatives relied on local government for implementation.

Reduce red tape and improve digital applications – Resolve administrative bottlenecks where they heighten the risk of migrants falling into irregularity. This is particularly relevant in the context of fast evolving policy changes that migrants are not able to keep up with. Cumbersome procedures and inaccessible processing facilities can obstruct migrants’ path to (continued) regularity.

Overcome challenges in securing data – the more NGOs are involved in the delivery of services for migrants, and the more universal services are established by public bodies, the harder it can be to ascertain data on the number of irregular migrants in an area from service providers. To enrich the quality of data collected, municipalities could consider developing information sharing partnerships with voluntary and community organisations to collect anonymised data with firewalls in place. This should include clarifying the purpose of collecting data, determining what data needs to be collected

and establishing clear firewalls to ensure that the data is not used for enforcement. The lack of data on irregular migrant populations is especially stark in rural areas.

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