I-CLAIM

Improving the Living and Labour Conditions of Irregularised Migrant Households in Europe

The Legal and Policy Infrastructure of Migrant Irregularity

Comparative report

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Executive Summary

This comparative report brings together the main findings of Work Package 3 of Improving the living and labour conditions of irregularised migrant households in Europe research project (I-CLAIM). This report examines the national policies and legislation that produce and shape irregular migration in six countries, Finland, Germany, Italy, the Netherlands, Poland and the United Kingdom, as well as at the EU level. It brings together findings from the six country reports, and a report examining EU policies.[1] The national reports and the EU report draw on the analysis of policy documents and written reports, as well as expert interviews conducted for this work package.

In this report, an irregular migrant is defined as a person, a non-citizen of the country of residence, who does not hold residence status in that country. This we term 'administrative irregularity'. We also address the situation of individuals with a temporary and precarious legal status in the country of residence, using the term administrative precarity. It refers to a situation in which a person has a temporary and conditional legal status in the country of residence, such as being an asylum seeker with a pending removal order, or a person with a short-term and insecure legal status, such as a 'tolerated stay permit' (Duldung) in Germany. The main reason for adopting a more expansive definition of irregular migrant than strictly those without a valid residence permit is to capture the growing precarity and short-termism of immigration status, and the factors that intervene to make the situation of a growing number of immigrants 'irregularisable'.

We found that in the six I-CLAIM countries, there is no single definition of an 'irregular migrant'. Who counts as an irregular migrant varies across countries, across national, regional and local levels but also institutionally. Importantly, various institutions approach migrant irregularity differently, with important implications for its governance. While in the state-level governance of irregular migration the emphasis is commonly on internal security and home affairs, in practice, welfare and labour market policies and their implementation play a central role in shaping specific configurations of irregularity. Social and welfare policies govern migrant irregularity at the local level. The complexity of multi-level migration governance between local and national regulations, combined with the discretionary power of local bureaucrats, can produce differential treatment vis-à-vis individuals' access to rights. We found that local governance of social and welfare policies is often in a conflicting relationship with how nation-states seek to control irregularised migrants' access to social and welfare services. Cities and municipalities often take a more pragmatic approach and offer more extensive access to welfare services than the minimum national standards.

This discrepancy between policies emphasising internal security and border control and welfare policies is also evident in the way irregular migration is governed in the institutions of the European Union. Home affairs and criminalisation focus dominates the way irregularity is approached in the European Union. This has led to privileging measures that seek to increase the return rate, rather than policies on regularisation. We argue that the fact that regularisation of irregular migrants is a 'no policy' in the European Union is in itself a policy; we have termed this the EU's 'policy of no policy' towards regularisation.

Although there is a strong policy emphasis on irregular border crossings and criminalisation of irregularity, the most common routes into irregularity in most I-CLAIM countries are administrative. The majority of irregularised migrants residing in these countries have entered the country through regular routes, for

[1] The country reports are available at https://i-claim.eu/publications/

example as a worker or asylum seeker, and have subsequently lost their status or have been unable to have it renewed. The de facto presence of irregular migrants within the territories would warrant policy perspectives that privilege paths to regularisation.

Collective regularisation campaigns are important examples of the acknowledgement of this presence and such campaigns have been adopted in four of the I-CLAIM countries, of which some have concerned only a very targeted group of people (UK), and some have been larger in scale (IL, NL and PL). In addition to collective regularisation campaigns, which are rarely adopted and often are politically divisive, there are several individualised routes out of irregularity, many of which are highly precarious and short-term.

We argue that irregularity is often a process rather than a static state, as individual situations may change rapidly from regularity to irregularity and back, and individual household members might be of a different status. Moreover, irregularity is not an either-or situation. For example, migrants may reside legally in the country of residence but work outside the regulations of their residence permit, and thus be at significant risk of falling into irregularity. They might be EU citizens but lack access to basic welfare rights or employment protection in the country of residence. In this report, we attempt to unravel this complex interplay between various administrative situations and particular vulnerabilities that are created at the intersection of migration and labour laws and policies.

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I-CLAIM

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1. Introduction

Improving the living and labour conditions of irregularised migrant households in Europe (I-CLAIM) research project investigates the various forms of migrant irregularity, the factors that produce them and how irregularity is produced and experienced by migrant workers and their families. The research was funded by EC Horizon Europe and UKRI and carried out in six European countries (Finland, Poland, Italy, Germany, the Netherlands, the United Kingdom) and at the EU level.

This comparative report examines the national policies and legislation that produce and shape irregular migration in the six countries, Finland, Germany, Italy, the Netherlands, Poland and the United Kingdom as well as EU policies. It brings together findings in the six country reports and a report examining EU policies. It examines the intersections between migration, labour, and welfare regimes and how they contribute to migrant irregularity and migrants' living and working conditions, drawn from the findings from the country reports[2] on the policy and legal infrastructure of irregularity (I-CLAIM WP3). It analyses the production of irregularity through laws and policies in our partner countries and in the EU, as well as the consequences of these policies for migrants and their families.

The term 'legal and policy infrastructure' highlights the fact that policies and legislative practices are an important part of the organisational structure that produces the phenomenon of irregular migration. These organisational structures and regulatory frameworks vary in time and place, and they are constituted at the various levels of governance: local, national and supranational. The legal and policy infrastructures that shape irregular migration include immigration laws and their implementation, but also welfare and labour market policies and their implementation. To emphasise the fact that the social category of the irregular migrant is a product of multiple structural, political, and legal infrastructure and trends, and not a quality of an individual or a group of people, we have used the term 'irregularised migrant'.

Moreover, we stress that **irregular migration** stems from **administrative processes** and refers to **situations** characterised by the lack of residence status in the country of residence. We also address the situations of individuals who have a **temporary and precarious legal status** in the country of residence, using the term **administrative precarity**. Administrative precarity is especially linked to temporary legal status such as the status of an asylum seeker, short-term residence permits and insecure legal status, such as a tolerated stay permit (*Duldung*) in Germany.

I-CLAIM also introduces the concept of 'irregularity assemblages' (Gonzales et al. 2019; Sigona et al. 2021) to capture how irregularity is produced in and across different sites, including migration and asylum laws, policies, and practices, as well as broader labour market and welfare regimes. The notion of assemblage helps to include a wider range of factors that come into play in the production of irregularity, contextually, spatially and historically. Irregularity impacts individuals unevenly depending on their nationality, gender, class and membership of racialised communities. The term 'assemblage' highlights the unfixed, contingent and transient nature of irregularity, where different agendas, actors and narratives collide. To emphasise the processual dimension of irregularity, we have used the term irregularisation. This brings forth the fact that

[2] The country reports are available at https://i-claim.eu/publications/

changes in laws, policies as well as national and EU policies may contribute to the creation of administrative irregularity and precarity.

The purpose of this comparative report is to examine the legal and policy infrastructure of irregularity in I-CLAIM partner countries. Each team's policy analysis was based on a variety of policy documents and reports on irregularity, including reports about the preparation of legislation, law texts, political programmes, material produced by ministries, research-based reports, and information publicly available on the relevant institutions' websites. Furthermore, interviews conducted with four to 14 experts in each country representing different fields of expertise have guided the analysis and provided valuable insight into how state practitioners, NGOs and other relevant stakeholders operate, and what are the living and working conditions of irregularised migrants and their families.

The report is divided into the following sections: First we discuss the various ways migrant irregularity is conceptualised in the policy documents we analysed across the contexts we studied, and following the conceptualisation of irregularity in I-CLAIM we explain who counts as an irregular migrant in this report. We concretise the discussion by providing examples about the routes to irregularity, before providing an overview of recent legal and political developments and world events which have affected migrant irregularity in the countries we studied and Europe more broadly. In Chapter 2, we discuss the key legal and policy devices that produce irregularity. After that, in Chapter 3, we examine policies regarding access to social and welfare rights that function as a form of migration control and everyday bordering. Chapter 4 presents possible routes to regularisation and the challenges related to regularising one's status within the existing paths. In Chapter 5, we open up the entanglements between the production of irregularity and labour regimes. Chapter 5 discusses the gendered and racialised dimension of migration and labour policies. Finally, we conclude the report by highlighting some of the key tendencies and developments across the studied countries and in the EU, and their effects on irregularised people and their families.

1.1. Definitions of irregularity in the policy documents

In the six countries, there is no unanimously accepted definition of an 'irregular migrant'. The term is typically used to refer to individuals without the legal right to reside in the country. How irregularity is defined and who is considered to belong to the category of 'irregular(ised) migrant' affects and reflects how irregularity is politically and institutionally managed. Terms like 'unauthorised', 'irregular', 'undocumented', and 'without legal status' are often used interchangeably, depending on the context of the use of the word. There is great variation according to national languages.

The term 'illegal' is commonly used in the policy texts in all the I-CLAIM countries. However, across Europe the term 'illegal' is also being contested, because of its criminalising and derogatory associations. Civil society campaigns stating that 'no one is illegal' stress that humans cannot be illegal in themselves. This is in accordance with the UN recognition that already in 1975 declared that 'the UN organs and specialized agencies concerned to utilize in all official documents the term "non-documented" or "irregular migrant workers"' (UN 2024a).

Despite this, in the **UK**, the category of illegal has been enshrined in law through the 2023 Illegal Migration Act. In **Germany** and in the **Netherlands**, illegality is connected to the 'abuse of the welfare system' which must be combatted. In Germany, irregularity is linked specifically to unpermitted or illegal entry and closely connected to 'illegal employment' (Rheindorf et al. 2024). Similarly, in Poland, irregularity is closely entangled with the

legality of work. In Finland, official documents mix the terms illegal and irregular: Finnish terminology speaks of illegal entry and stay, while the official translation in English is irregular entry and stay.

The EU Returns Directive that offers the basis for EU secondary law and policy instruments also refers to illegal stay. The Directive defines 'illegal stay' as: "the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State." (Directive 2008/115, a 3). Notably, the term refers to Third-country nationals (TCNs), even though EU citizens might find themselves in a situation comparable to irregularity, especially in countries that require them to register their stay after residing up to 3 months in the Member State.[3] Such EU citizens are referred to as persons 'who no longer satisfy the requirements for a right of residence' (European Commission 2023) and who can thus be given an expulsion decision.

In the UK, following a Supreme Court ruling in 2018, a migrant with 'precarious status' is defined as a person vulnerable to losing their legal status and thus risks losing social rights and access to public services (UK Human Rights Blog 2018). This definition includes migrants whose residential status is tied to employment – which employment-based permits often are by default – and asylum seekers who are still in the asylum process (Piemontese & Sigona 2024). Importantly, following Brexit, EU citizens in the UK and British citizens in the EU are also at risk of irregularisation, following the UK exit from the EU. The fact that language around irregularity as well as reporting and statistics vary across institutions and across countries makes it difficult to grasp and compare the extent of the phenomenon among the six countries included in I-CLAIM. Throughout this report, our aim is to make explicit what we mean in each context when we refer to irregularity.

A key finding from our analysis is that definitions and approaches to migrant irregularity not only vary across national policy documents, but also locally, regionally, and across institutions, and are terrain for political mobilisation and contestation. State institutions differ in their approach from media and civil society, but there might also be divergence across different state institutions. For example, in Finland the Ministry of the Interior emphasises illegal entry and stay in the Finnish documents, while the Ministry of Social Affairs and Health responsible for providing health care services to all residents also includes EU citizens who reside legally in the country but do not have insurance cover in its definition of undocumented individuals (Merikoski et al. 2024). In Italy, EU citizens and non-EU citizens who have not formally registered their residence in Italy are referred to by some civil society actors as 'non-resident regular migrants' (Palumbo & Marchetti 2024). The way irregularity is approached might even vary within an institution. In Italy, depending on the departments of the Ministry of Labour and Social Policies, the issue of irregularity is considered to be linked to migration or closely related to undeclared work, therefore affecting national workers as well.

Similarly, the way migrant irregularity is defined and addressed varies significantly within EU institutions and actors. The EU's approach on home affairs and criminalisation dominates the way irregularity is understood. This frames approaches to irregularity at the EU level to the acts of crossing external Schengen borders irregularly, to the prevention of so-called 'secondary movements', to the unsuccessful outcomes of

[3] Most EU countries (22 in total) require that EU citizens register their stay with the relevant authorities and (exceptions are Czech Republic, France, Germany, Ireland, the Netherlands, and Sweden).

asylum applications and to the non-enforceability of return orders overlooking the fundamental rights of irregularised individuals that are derived from their rights as humans, rather than rights related to a specific administrative status (Carrera & Colombi 2024).

The definitions of migrant irregularity are in a conflicting relationship with how the worker is defined in the EU legal framework. According to Court of Justice of the European Union (CJEU) case law, the term 'worker' should be interpreted broadly (Carrera & Colombi 2024).[4] Specifically, in Case C-311/13 (Tümer), the Court provided a definition of 'worker' that can be interpreted as including individuals in irregular conditions, such as third-country nationals without regular migration status, as highlighted by the Platform for International Cooperation on Undocumented Migrants (PICUM 2020). This aligns with international labour law and the right to decent work, as established by the International Labour Organization (ILO), which applies to every worker, regardless of their migration status. Interviews with key EU stakeholders confirmed that, according to EU case law, residence or immigration status do not affect the application of the legal instruments covered by DG EMPL (Carrera & Colombi 2024). For instance, the Occupational Safety and Health Standards (OSH) Directive (Council Directive 89/391/EEC) does not differentiate between workers based on their residence, immigration, or legal employment status; instead, it covers all individuals engaged in work activities. The only exception concerns domestic workers, specific public and military services workers, and self-employed workers, who are excluded from the OSH Framework Directive.

1.1.1. *Who is considered to be an irregular migrant in I-CLAIM?*

In I-CLAIM, we understand irregularity as an administrative situation characterised by the lack of a valid residence permit. We also address administrative precarity related to the possible loss of status due to the temporary and conditional nature of the status, examining in particular the interplay between immigration laws and labour and welfare laws and regulations. Irregularity is a situation people end up in through various routes, and importantly, it is a situation that is produced by immigration, asylum, welfare and labour policies, legislation, and practices. Thus, it is not a quality of particular individuals or groups, but rather the product of the interactions of a range of regulatory regimes.

We align our terminology with that of critical migration studies, in that we depart from administrative categories such as 'asylum seeker' when describing mobile people, in cases in which it is not necessary in the particular context of discussion. We understand that the individual reasons for migrating are diverse, and at different points of their lives, an individual may be categorised differently in the immigration administration. As Crawley and Skleparis argue, the value-laden distinction between different migratory categories, such as 'refugee' and 'migrant', when used to highlight other groups' movements' legitimacy, only reinforces exclusionary and unfounded stereotypes. What they name 'categorical fetishism' fails to capture the complex relationship between political, social, and economic drivers of migration and their individual significance (Crawley & Skleparis 2017). Being alert to the fallacy of labels, it is especially relevant when

[4] See also CJEU, Cases C-138/02 Collins, C-456/02 Trojani, C-46/12 LN, C-139/85 Kempf, C-344/87 Bettray, C-171/88 Rinner-Kühn, C-1/97 Birden, C-102/88 Ruzius-Wilbrink, C-152/73 Sotgiu, C-196/87 Steymann, C-344/87 Bettray, C-151/04 Nadin, C-196/87 Steymann, C-344/87 Bettray, C-27/91 Hostellerie Le Manoir, C-270/13, Haralambidis.

analysing a highly politicised contested phenomenon across different national and supranational legal frameworks (Gonzales et al. 2019).

In doing so, we align ourselves with the UN International Organization for Migration's definition according to which a migrant is "any person who is moving or has moved across an international border or within a state away from his/her habitual place of residence, regardless of the person's legal status, whether the movement is voluntary or involuntary, what the causes for the movement are and what the length of the stay is" (UN 2024b). This definition also includes EU mobile citizens. While we are aware that EU legal terminology makes a distinction between EU citizens and third-country nationals, in I-CLAIM, we do not wish to reinforce divisions that may prioritise some mobilities over others. This is even more salient considering the precarious position of British citizens in the EU, and EU citizens in the UK, after Brexit (Benson et al. 2022).

Hence, in our approach to irregularity, we include migrants whose residence status is precarious and who are thus at risk of falling into irregularity. This means that irregularity is also a concern for individuals who have temporary residence permits based on work, study, or personal characteristics, such as health, and to intra-EU migrants who might not have been able to, or willing to, register their residence.

1.2. Routes into irregularity

Based on the expert interviews and policy analysis conducted in the context of six countries and the EU, we have identified eight principal routes into irregularity (see Table 1). These routes are similar to the general typology presented by the MIrreM project – Measuring Irregular Migration, which distinguishes between demographic, geographical, and status related flows (Kraler & Ahrens 2023). Similarly, we have distinguished between demographic, geographical and administrative causes behind irregularity.

While the main demographic route, irregular border crossing, captures the public and policymakers' attention, the most common routes into irregularity are administrative and occur after the actual mobility of border crossing.

The routes presented here refer to various situations from which people end up in an irregular or precarious legal status. Note that the following categorisation is not mutually exclusive nor exhaustive, but presents typically occurring routes in the contexts of the six countries we analysed.

Table 1: Main routes into administrative irregularity and precarity in the six I-CLAIM countries

Administrative route	Demographic route	Geographic route
Rejected asylum application	Being born into irregularity, for example, in an unrecognised state or exile, or to irregularised parents	Irregular border crossing
Being unable to register one's residence or apply for a residence permit from within the country		

Precarity related to loss of status because of expiry of residence permit and/or being unable to renew it	
Lack of recognised travel or identification documents	
Overstaying a visa	
State's admission of their failure to enforce a return decision for legal or practical reasons (toleration)	

In addition to the above-mentioned situations, there are other administrative situations that result in irregularity. For example, working more than the permitted hours or working outside the sector determined in one's residence permit may result in the loss of a residence permit.

Furthermore, in all I-CLAIM countries, a notable group living and/or working in irregularity are EU/EEA citizens who have the right to free movement. However, EU/EEA citizens of another member state who have not registered their stay in a member state of residence within three months of arrival in member states in which registration is required, may end up in a situation comparable to irregularity in which they lack access to basic social and welfare rights, or they may be required to leave the country. The reasons for not having one's stay officially registered vary: some people choose not to register, others cannot because of insufficient economic resources or lack of adequate grounds.

What is the most prevalent route into irregularity differs across the I-CLAIM countries and their geographical location. In the UK, visa overstaying is likely to be the main route to irregularity (Piemontese & Sigona 2024), whereas in the Netherlands and in Finland, people whose asylum application has been rejected currently make up the largest group (Hajer et al. 2024, Merikoski et al. 2024). In Poland, media and popular discourses focus on illegal border crossings as a key feature of migrant irregularity, but experts emphasise other causes and situations, such as regulations regarding working legally (Matuszczyk et al. 2024). In Italy, due to its geographical location, irregular border crossings are more prominent than in the other I-CLAIM countries (Palumbo & Marchetti 2024).

Due to the complexities of multi-level migration governance, local and national regulations can produce differential treatment vis-à-vis individuals' access to rights. This can lead to a situation in which an individual might be irregularised in one administrative system, but be regular in another. In Finland, an individual who holds a residence permit and gained permanent residency status in a municipality can have social rights based on residency, even though they might have lost their legal status in the country (Merikoski et al. 2024). Also, an individual may have regularised status to reside in a country, but may work irregularly. This often means that the work they do does not comply with the right to work regulations of their permit, for example the field of work or hours worked are not compatible with the permit's regulations. Others do not have a legal employment contract. Thus, people may work irregularly even if their stay in the country is regularised, or vice versa. We discuss the tension between undeclared or irregular work and regular status in chapter 5.

1.3. Measuring irregularity: estimates and caveats

Irregular migration is by its very nature an elusive phenomenon (Gonzales et al. 2019), which makes it difficult to produce reliable country estimates, and even more when considering that countries and institutions adopt different definitions and measures that can be contradictory.[5] In some I-CLAIM countries, the estimates of irregularised people also include asylum seekers and/or individuals with 'tolerated' status (Duldung), while in other countries, only those residing without a valid residence permit are included in the estimates. Although asylum seekers have a legal status during the asylum process, the reason they are included in some of the estimates, according to the Pew Research Centre (2019), is that their future in the country is uncertain and many will end up with a deportation order and some have entered through unauthorised routes. In the following estimates, we have selected the ones reflecting the irregularised population without valid residence permits, excluding asylum seekers.

According to estimates, of the I-CLAIM countries, the UK and Italy host the largest numbers of migrants living in irregular situations. According to estimates from 2017 (excluding asylum seekers but including UK-born children of irregular migrants), the number of migrants living in irregular situations in the UK was 809,000 (Jolly et al. 2020). In Italy, approximately 458,000 people were estimated to be in a condition of administrative irregularity, without a residence permit (ISMU 2023) and 176,000 as so-called non-resident regular migrants, with a valid residence permit, but not included (or not yet included) among those registered with the registry office (mostly EU citizens or new residents) (ISMU 2024, 19). In Germany, in 2022, the number of individuals who were 'required to leave', including rejected asylum seekers or foreign students, workers and tourists whose visas had expired, and those with a tolerated status (Duldung) was 304,308, and the number of people directly obliged to leave the country was 56,163 (Bundestag 2023). In Poland, the most recent figures available from the Border Guard and National Labour Inspectorate capture the number of detainees by the Border Guard for illegal stay (7,166 in 2022), and those involved in irregular work (termed non-compliant work) (5,183 in 2022) (Matuszczyk et al. 2024). In the Netherlands, the most recent estimations suggest that between 23,000 and 58,000 foreigners were residing irregularly in the Netherlands (Van der Heijden et al. 2020). In Finland, the phenomenon is the least significant: the estimates varied between 3,000 and 6,000 individuals (Finnish Refugee Advice Centre 2023).

Finally, in the six countries and the EU policy, migrant irregularity is perceived as the outcome of an individual's reprehensible action rather than being produced by administrative processes. Officials in Germany and Poland emphasise unauthorised border crossings as the reasons behind irregularity, while in Italy, Finland, the Netherlands and the UK, irregularity is understood as resulting from various reasons: unauthorised border crossing, overstaying a visa, or due to not being able to regularise residence. It should also be noted that country-based estimates often fail to account for intra-EU mobility of irregularised migrants, which can lead to instances of double-counting (see Sigona 2015). The I-CLAIM countries also differ in the extent to which irregularity is considered to be a problem in the national policy documents, and according to the experts in each country. In the EU and in most of the I-CLAIM countries, (excluding Poland), the presence of irregularised migrants is considered to be a problem, while in Poland irregularity associated with entrance and stay was considered to be less problematic than irregular work performed by migrants.

[5] For a comprehensive study on estimates and definitions, see Kraler & Ahrens 2023.

1.4. The political contexts of irregularity in I-CLAIM countries

The analysis carried out in the country reports starts from the early 2000s, with some variations between country due to contextual factors. This is because the EU enlargements in 2004 and 2007 had a significant impact on intra-EU labour mobility. Fassmann, Kohlbacher and Reeger (2014) calculated that almost five million citizens from Central and Eastern European countries resided in the EU-15 countries by 2011.

The EU enlargement also resulted in an exceptionally high increase in the number of 'posted workers' who were not moving under the legal regime regarding the freedom of movement for work, but under the regime of free provision of services, which renders them vulnerable to labour exploitation (Robin-Olivier 2022). According to figures from 2020, the number of EU posted workers now amounts to almost ten million people in the EU-27 countries (De Wispelaere et al. 2022, Robin-Olivier 2022). The enlargement also meant that hundreds of thousands of central and eastern Europeans who were residing irregularly in EU member states became regular, roughly one third of formerly irregular migrants from CEE countries regularised their status in the UK after the EU enlargement in 2004 (Piemontese & Sigona 2024).

It should be acknowledged that in many I-CLAIM countries, the question of irregular migration had entered political agendas prior to the 2000s, at several historical and political junctures. In Italy, Germany and the Netherlands, irregular migration has been a politically-contentious issue since the 1990s. The UK followed suit in the 2000s, and Finland in the 2010s, especially after the so-called 'asylum crisis', and Poland in the 2020s, especially after the pushback by asylum seekers at the Poland-Belarus border in January-September 2021. However, according to Polish NGOs, pushback had been happening on a smaller scale since 2015 (Amnesty International 2017).

While it is impossible to offer a comprehensive overview of the political and historical processes behind the politicisation of irregular migration in all I-CLAIM countries, it is clear that certain historical events have been used instrumentally as windows of opportunity for policy change. Drastic regime changes, wars and conflicts that have forced people to seek better economic opportunities and asylum abroad have especially offered such windows of opportunity. These include the Collapse of the Soviet regime, the War in the Former Yugoslavia, and Civil Wars in Afghanistan and Somalia that resulted in increased forced migration mobilities and the politicisation of migration and asylum in Italy, Germany, the Netherlands in the 1990s. In the 2000s, the refugee camps in Calais politicised asylum in the UK, and the spread of conflicts and wars after the Arab spring in 2011 in Tunisia, Libya, and in Syria led to the increase in the number of people reaching Europe, especially Italy, leading to the framing of the increase in the number asylum seekers into a 'crisis' in 2015-2016. The COVID-19 pandemic in 2020-2021 had a significant, albeit different, impact on irregular migration, as it meant a dramatic decrease in mobility, while at the same time demonstrating the dependence of health care systems on migrant frontline workers across Europe and globally. Russia's unprovoked and unjustified attack on Ukraine has led to the most recent significant refugee mobilities in the EU. In the next section, we offer a closer look at how the large-scale mobilities in 2015-2016, the pandemic and the war in Ukraine have impacted irregular migration in selected I-CLAIM countries.

1.4.1. *The political responses to the large scale mobilities in 2015*

The movement of roughly 2.5 million refugees from Syria, Afghanistan and other countries who applied for asylum in European Union member states in 2015-2016 was framed as a 'crisis' in the media and political discourses across Europe (Crawley et al. 2017, McMahon & Sigona 2021). In November 2015, the European

Commission labelled the arrival of less than 500,000 people, mostly Syrians fleeing the Civil War, during the first nine months of 2015 as "the 'largest global humanitarian crisis' of our time" (Holmes & Castañeda 2017, 12). As scholars have widely argued, the crisis rhetoric served to legitimise anti-migration politics in several European Member states such as Hungary (e.g., Kallius et al. 2016), Poland (Matuszczyk et al. 2024), Germany (Rheindorf et al. 2024) and Finland (Merikoski et al. 2024).

In Germany, where the initial political reaction was welcoming, the asylum 'crisis' led to significant shifts in policies as regulations were tightened, including the Asylum Seekers Benefits Law (*AsylbewG*) and Return Improvement Act (*Rückführverbesserungsgesetz*). In Finland, several restrictions limiting asylum seekers' rights were introduced in 2015-2016 including the removal of subsidiary protection if voluntary return was deemed possible, removing the opportunity for humanitarian protection, limiting access to legal counselling, and reducing time limits for appeals on decisions. Moreover, the framing of the increase in the number of asylum seekers as a 'crisis' legitimised stricter interpretations of the grounds for international protection, resulting in the decrease of acceptance rates especially of Iraqi asylum seekers (Saarikkomäki et al. 2018). In Italy, it legitimised the agreement between Italy and Libya as a means to try to prevent sea arrivals (Palumbo & Marchetti 2024; see also 2.1. (below) on the fortification and externalisation of EU borders).

At the EU level, the events of 2015 became an impetus for the preparation of a what was originally called a European Agenda on Migration (European Commission 2015) and which was eventually developed into the Pact on Asylum and Migration agreed on by the European Parliament in April 2024. The European Commission's original communication calling for a European Agenda on Migration was motivated by the need to "respond to the human tragedy in the whole of the Mediterranean" (European Commission 2015, 3). In addition, the more immediate political responses at the EU level were the fortification and externalisation of borders through both the Italy-Libya deal backed by EU, and the establishment of a 'statement of cooperation' between the European Council and Turkey (now Türkiye) to prevent the mobilities of people from Turkey to Europe.

1.4.2. *The COVID-19 pandemic*

The COVID-19 pandemic influenced migration and mobility at large. In the UK, where Brexit had already slowed EU migration down, the pandemic additionally contributed to the departure of EU workers. The COVID-19 pandemic had a considerable effect on irregularised people in many ways. For example, migrants' attempts to be reunited with their families or to seek an authorised entry route to their destination was limited because of embassy and border closures.

Irregularised migrants often work in sectors that were considered to be essential in pandemic, such as cleaning, transport, and food and delivery services. However, this also put them particularly at risk, because these jobs cannot be done remotely, and they typically offer little protection against disease (Mallet-Garcia & Delvino 2020). For example, in the UK, irregular migrants were overrepresented in jobs done at the frontline of the crisis, leaving them more likely to contract COVID, yet unable to access the vast majority of employment protections needed to keep them safe. To make matters worse, the No Recourse to Public Funds condition excludes irregular migrants from accessing state support, which resulted in many irregular workers with COVID being forced to continue working even when unwell and contagious, as self-isolation would have led to a loss of pay and the risk of destitution (JWCI 2022).

Job security is low in the sectors in which irregularised migrants often work. Thus, the pandemic made it difficult for many irregularised migrants to uphold their informally constructed everyday lives regarding work or housing. Many shelters which irregularised people often rely on had limitations about the use of space during the daytime. Employment situations became precarious for many working in sectors that are vulnerable to sudden changes in economic situation or general consumption patterns. In the Netherlands, many domestic workers lost their jobs, leaving them unable to support themselves, while food couriers and other delivery workers turned out to be essential workers during lockdowns and had plenty of work available (Hajer et al. 2024). In Poland, research among Ukrainian workers demonstrated that the introduction of compulsory quarantine for third-country nationals crossing the border led to a reduction of employment in agriculture of irregularised minors with their parents. Overall, in Poland as elsewhere, the situation of who were called 'essential workers', often irregularised, did not fundamentally improve, despite the discourse about their importance and contribution (Fiałkowska et al. 2022). Moreover, in Poland, liberal rules governing the stay of migrants who entered Poland legally for a limited period during an epidemiological emergency were implemented during the pandemic. There was a risk that after these special regulations were repealed in July 2023, the number of irregular migrants would increase (Matuszczyk et al. 2024).

In terms of health, people in irregular legal situations were particularly vulnerable to the disease, due to their limited access to health services and in many cases, their cramped living spaces. One notable difficulty was to inform irregular migrants properly, and to ensure their access to adequate information. In Finland, various pop-up desks were set up to inform and advise people in irregular situations, as well as regularised foreign speaking populations, in which the prevalence of COVID-19 was higher than among others, and to distribute masks to them. Moreover, other possible chronic or untreated illnesses often worsened COVID-19 symptoms. In some regions, the testing and treatment of COVID-19 was not free for the irregular migrants This depended on the municipality, with some offering testing and treatment for free or for the same price as registered inhabitants. Importantly, some irregularised migrants were reluctant to get tested, because they wanted to avoid giving information about themselves (Jauhiainen & Tedeschi 2021).

1.4.3. *The war in Ukraine*

Since Russia's attack on Ukraine early in 2022, more than 6.3 million people have been globally displaced from Ukraine. Of these, nearly six million are in Europe, and four million have been registered for temporary protection (TP) in the EU (Eurostat 2023, UNHCR 2023). In a matter of weeks after the Russian Federation's attack on Ukraine, the European Commission proposed the activation of the Temporary Protection Directive (TPD) (Council Directive 2001) for the first time in history. The directive was originally drafted in response to the Balkan Wars in the 1990s as a means to protect displaced persons arriving from countries outside the EU, but it had not been implemented ever since. The directive applies to Ukrainian nationals residing in Ukraine before 24 February 2022 and to other nationals who benefited from international protection in Ukraine before 24 February 2022, and their family members. The TPD lists the obligations of the member states when offering protection to refugees, such as a residence permit for the duration of protection, access to housing, health care, and the right to work (European Commission 2024a).

According to the Directive, temporary status will be granted for a maximum of three years, one year at a time. The end date will be March 2025 at the latest, and the TPD anticipates that when "the temporary protection ends, the general laws on protection and on aliens in the Member States (MS) shall apply" (Chapter V, Art. 20). After this period comes to an end, there are three options that Member States could adopt for Temporary Protection Beneficiaries (TPBs) to remain: channelling TPBs into the asylum system or

into regular migration systems or continuing the extension of temporary protection or comparable status to TPBs (ICMPD 2023a). The first two options would both significantly burden the administrative systems of the Member States, resulting in long processing times and backlogs. Moreover, qualifying as a refugee would require the demonstration of individual persecution emanating from the country of nationality, while subsidiary protection would include addressing internal flight alternatives. Accessing residence permits based on migration requires specific reasons for the purpose of stay, and economic contributions are assessed in case of labour migration. This option would disadvantage older age Ukrainians and more vulnerable TPBs who do not possess the requisite skills and qualifications (ICMPD 2023a). Extending the temporary residence status or creating a new legal status such as the proposed ten-year period 'reconstruction permit' are all problematic from the perspective of individuals who are left in a state of temporariness, despite the permanence of stay hampering individuals' ability and motivation to integrate in the host country (ICMPD 2023a; 2023b). Indeed, extending temporary statutes is not a sustainable option, and it is problematic that TPBs are excluded from the EU Long-Term Residents Directive. Finally, the best way to offer protection for Ukrainians would be protection on humanitarian grounds, a legal framework which is not harmonised at EU level and has various national implementations based on discretionary humanitarian grounds (see also 4.2.).

The case of TPBs from Ukraine demonstrates well the caveats of existing asylum and international protection regimes, and how administratively burdensome these systems are. It has also revealed the privileging of Ukrainians over migrants and asylum seekers from non-European countries. The differential treatment of displaced people from Ukraine compared to those from third countries is especially visible in Poland and Finland. Both countries have resorted to pushback (Poland) or are seeking ways to legitimise measures comparable to pushback (Finland) to tackle the arrival of a much smaller number of asylum seekers from third countries at their borders, while at the same time, hosting thousands of Ukrainian TPBs without this being framed as a 'refugee crisis'.

2. The governance of irregular migration

This chapter offers an overview of the governance of irregular migration at the EU level and in the I-Claim countries. The first section focuses on the EU, and argues that while irregular migration is a recognised phenomenon in the EU Member States, it is not considered to be a policy issue at the EU level, apart when it comes to increasing the rate of returns of irregular migrants. This policy of increasing returns aligns with attempts by the EU and some Member States to keep irregular migrants and asylum seekers from arriving in the EU by the fortification and externalisation of European borders, as is examined in the second section. In the third section, we discuss the policies that seek to limit the right to asylum in the I-CLAIM countries. In the fourth section, we describe the administrative routes to irregularity. A key finding is that the tendency towards temporary and increasingly short-term residence permits, combined with long and complex administrative processes, and emphasis on contribution-based approaches to migration that prioritise the economic contribution of migrants, is a major way in which irregularity is legally and politically produced in the I-CLAIM countries. We also present the case of Duldung in Germany as a particular form of temporary status in-between inclusion and removal.

2.1. The EU's policy of no-policy

The governance of irregular migration in the EU dates back to the establishment of the area of free movement of persons and the removal of internal border control in the European Union in the Schengen Agreement of 1985 and the Convention of 1990. The Agreement and Convention introduced the policing and surveillance of mobility of non-EU nationals at external borders and within the EU, and a common visa policy which included a list of the countries from which a visa is required prior to entering the Schengen territory (Carrera & Colombi 2024). The Dublin Convention of 1990 moreover signified the irregularisation of intra-EU mobility of asylum seekers and refugees (Carrera & Colombi 2024).

The EU's agenda on irregular migration emphasises co-operation in border and immigration enforcement, but the opportunity for regularisation is not really addressed. The agenda on migration does not suggest simpler or legal routes for legal labour migration, especially in the case of unskilled labour. Moreover, the agenda does not suggest fair solutions to regularising migration for those with irregular status. In fact, making returns more efficient is encouraged. The 'efficacy' of the return regime is measured through the 'return rate', that is the rate between orders to leave and executed returns. As an official at the EU Commission put it, the "commission's political priority would be for that return rate to change". Furthermore, the view is that Member States are in charge of acting in the case of regularisation and the EU cannot take any steps in the question (Carrera & Colombi, 2024). While irregularity is framed as a non-policy issue at the EU level, we argue that inaction when it comes to irregularity, or not having a policy, is a political choice with severe consequences for the migrants involved.

2.2. Fortification and Externalisation of European borders

While most migrants continue to enter the EU through regular routes, unauthorised border crossings are emphasised in the media and in political discourses. As the EU has adopted increasingly strict and at times violent control of its external borders, limiting legal routes to enter the EU to work and live in safety, the movement of third country nationals to Europe is pushed to unauthorised, irregular and unsafe routes. Stricter border control does not end migration to Europe, but it makes many people's journeys more dangerous and increases irregular border crossings. This is particularly visible in the Mediterranean, which

has become a deadly sea for those attempting to cross it as irregular migrants seeking to enter Europe. Mobility across the sea is not a new phenomenon. People have been crossing the Mediterranean for a long time, to meet seasonal labour demands for one reason, but deaths at the sea have been increasing since the 1990s and since the establishment of Frontex, the European border and coast guard agency, in the early 2000s (Ticktin 2016).

An important measure aimed at preventing asylum seekers from using the Mediterranean routes has been the Memorandum of Understanding (MoU) between the government of Italy and UN-backed Libyan Government of National Accord from 2017, which was renewed in 2020 and 2021 with EU sponsorship. The MoU allows Libya to exploit the EU's intentions to outsource migration management to third countries in order to gain economic and political advantage from the EU. For example, the MoU stipulates that EU and Italian funds are allocated to finance temporary hosting camps or reception centres. In reality, these camps and centres are brutal detention centres, controlled by Libyan armed militias (Ceretti 2024). Physical and mental health risks are associated with stays in Libyan camps, along with the related violations and abuse experienced. These are compounded by the perilous journeys and crossings due to the externalisation of borders and the lack of safe routes, which contribute to the increasing vulnerabilities of migrants, who eventually reach Italy or other European countries and need specific support and assistance.

At the time of writing this report in April 2024, the UK government passed the 2024 Safety of Rwanda Act, which will allow the externalisation of the asylum processing to Rwanda. Asylum seekers who enter the UK without authorisation will be deported to this country.

The fortification of the EU's external borders is currently visible in some I-CLAIM countries as well. In **Poland**, political resistance to the admission of foreigners willing to seek protection in Poland has gradually become visible since the mid-2010s and the situation at the Polish-Belarusian border escalated in 2021 when large numbers of people, many from Afghanistan, Iraq, and Syria, tried to enter the EU via Poland. The political response was to tighten border security and begin construction to fortify the 180 km physical border with Belarus. The explicitly named aim of these measures was to 'combat illegal migration' (Matuszczyk et al. 2024).

Similar developments and political responses are ongoing in **Finland**. In November 2023, the number of asylum seekers arriving at the Eastern border between Finland and Russia started to increase when Russia stopped preventing people without travel documents arriving at the Finnish border. These mobilities were made highly visible by the mass media, even though the total number of asylum seekers applying for asylum was modest. The media and the politicians quickly described the asylum situation as 'Russia's hybrid operation'. Asylum seekers crossing the border were depicted as tools used by Russia and as threats to national security, while their need for international protection was questioned by politicians. The border crisis and the resulting closure of the border is an example of securitisation of asylum migration, in which no actual evidence of what kind of threat asylum seekers pose needs to be demonstrated (Merikoski et al. 2024). Currently, the Finnish government is planning to introduce an act that would make it possible to keep the border open for certain nationalities without accepting entry or asylum applications at the border (Valtioneuvosto 2024), which is against international conventions. In practice, this would mean legalising pushback. The states' attempts to restrict asylum seeking at the border are part of the wider development in which the access to the right to asylum is being undermined, which we discuss next.

The **EU's** response to the Poland-Belarus border situation was to define these events as the 'instrumentalisation in the field of migration and asylum' in the proposal put forward by the European

Commission in December 2021. As argued in an impact assessment for the European Parliament carried out by Centre for European Policy Studies (CEPS), the concept of instrumentalisation does not have a legal basis and is "incompatible with international and European human rights and rule of law standards" and problematically frames migration and migrants in military and insecurity terms by using terms such 'hybrid attack' and 'hybrid threat' (Carrera et al. 2023a). Nevertheless, the EU Commission has proposed amending the Schengen Borders Code to enable Member States to 'limit border traffic to the minimum by closing some border crossing points while guaranteeing genuine and effective access to international protection procedures' (European Commission 2021a, 25) in situations of 'instrumentalisation'.[6] How this would be possible in practice remains unclear. After the Finnish-Russian border crossing points were closed, no new asylum applications have been lodged at the border.

2.3. Undermining the right to asylum

The border closures based on the notion of instrumentalisation is one example of the changes in the Common European Asylum System (CEAS). CEAS, established in 2016, is a legal and policy framework that was developed to guarantee harmonised and uniform standards for people seeking international protection in the EU. European NGOs have been concerned that the introduction, use, and codification of the concept of instrumentalisation in EU law will lead to the further deterioration in the harmonisation of standards of international protection under CEAS. According to a joint statement, the codification of instrumentalisation is a disproportionate, counterproductive, unnecessary, misguided, and unfair measure. It is a disproportionate measure because it will restrict people's fundamental right to asylum, and counterproductive because it creates the risk of arbitrariness by applying varying standards across Member States. It is unnecessary because there is already flexibility regarding the processing of asylum applications and the standards of reception conditions. It is also misguided because it is targeting people seeking protection rather than the governments that utilise people, and it is unfair because it creates differential standards of treatment, depending on where people try to seek protection (IRC 2022).

Instrumentalisation is not the only example of the attempts to undermine the right to asylum in Europe. Under the Dublin Regulation, asylum seekers are obliged to apply for asylum in the 'first country of irregular entry' and remain there for the duration of the application process. Asylum seekers identified in a Member State other than the one in which they submitted their asylum application can be returned to the country of first application. In practice, the Dublin Regulation penalises the intra-EU mobility of asylum seekers and has no regard for their personal motivations and needs (Carrera et al. 2019). The countries that are desirable destinations for asylum seekers, Austria, Denmark, Germany, Norway, and Sweden, referred to the so-called 'secondary movements' mobility between member states as grounds for the reintroduction of internal border control within the Schengen area in 2015-2016 (Carrera et al. 2023b). Also, the introduction of the

[6] Instrumentalisation is defined as 'situations where irregular travel of third country nationals has been actively encouraged or facilitated by a third country onto its own territory to reach the external border of the Member States (…) [or] the active encouragement or facilitation of irregular travel of third country nationals already present in that third country' (European Commission 2021a, 25).

notion of internal protection in 2011 is a means to deny international protection if part of the country of origin could be considered to be safe for the individual seeking protection to travel and settle (Directive 2011/95).

Policies restricting the access to asylum have resulted in an increase in the size of the irregularised population in many European countries, when people arriving as asylum seekers find themselves in a situation in which international protection will not be granted, or is granted for a temporary period only, and when other routes to regular legal status are limited. For instance, in **Poland**, obtaining international or humanitarian protection is difficult, and there is a low rate of positive decisions. Recently, in **Finland,** Petteri Orpo's government programme introduced in summer 2023 will entail significant restrictive changes to the Alien's Act, furthering the development that aims to make Finland an undesirable country for asylum seekers. These include limiting the duration of international protection status to three years for those granted refugee status, and to one year for individuals receiving subsidiary protection. Moreover, according to this reform, travel documents will be required in all residence permits applications, and the option for asylum seekers to apply for labour-based residence permits will be removed (Merikoski et al. 2024). Likewise, in **Italy**, stringent asylum and migration policies and legislation have contributed to a progressive tightening of access to international protection and complementary protection (Sciurba 2022) For instance, the Law Decree 20/2023, adopted after the shipwreck that took place in front of the coastal town of Cutro (in Calabria) in February 2023, has narrowed the scope of complementary protection named 'special protection' (Article 19 of the Consolidated Act on Immigration) – which covers a broad range of situations of vulnerability aimed at safeguarding individuals in situations of vulnerability or facing violations of constitutionally protected human rights, but who are not eligible for refugee status or subsidiary protection. Furthermore, although a 'special protection' permit allows for employment, the new Decree provides that the permit can no longer be converted into a residence permit based on employment (Palumbo & Marchetti 2024). Furthermore, there has been an update to the national list of Safe Country of Origin, (Interministerial Decree of 17 March 2023), including countries such as Nigeria, The Gambia, Ivory Coast, and Georgia. Similarly in **Finland**, the country reports produced by the Immigration Office that provide information on the safety of countries, but also regions within countries, have effectively been used as grounds to deny asylum to Iraqi and Somali applicants, for instance (Merikoski et al. 2024).

Similar restrictive trends can be observed in **the UK**, where there have been some recent changes to asylum law and policy which are likely to have substantial effects. The 2022 Nationality and Borders Act, the2023 Illegal Migration Act and the 2024 Safety of Rwanda Act introduced major changes to the asylum system. These Acts significantly curtail the rights of refugees, undermine the very principle of refugee protection in the UK and breach both domestic and international human rights law (Piemontese & Sigona 2024; Sigona & Benson 2022). The 'inadmissibility rule', introduced in January 2021, may cause a larger numbers of asylum seekers to fall into irregularity and it dramatically limits international protection by basing the threshold not on need, but on the person's form of travel into the country (Gardner & Moreton 2021). It states that a refugee, who arrives in the UK autonomously outside a resettlement programme, may have their claim deemed unsuitable (Piemontese & Sigona 2024). Moreover, applicants may be expelled to another 'safe' country. This development is linked to the wider tendency to view asylum migration as fraudulent and potentially suspicious strategy of entering the country under false pretences (Piemontese & Sigona 2024).

Such restrictive asylum reforms have fostered and, at the same time, have been supported by the idea that asylum seekers represent an unprecedented threat of 'invasion' – albeit this narrative is contradicted by official data – and the suspicion that asylum mechanisms may be utilised by 'economic migrants' who pose

as asylum seekers and exploit national protection systems (Dimitradis & Ambrosini 2024, Sciurba 2022, van Dijk 2018). However, as affirmed by an Italian migration lawyer:

> Actually, the asylum mechanism is not instrumentalised, as a particular prevailing narrative suggests. The core issue lies in the absence of established channels for regular entry and mechanisms for regularisation, this denies individuals the right to choose the legal migratory path they would prefer to pursue (LAW-01, Palumbo & Marchetti 2024).

Restricting access to asylum is closely linked to the number of migrants in irregular situations, as returns and deportations are often expensive and practically impossible to implement. Additionally, these reforms contribute to an increase in precarity of those who have obtained refugee status, subsidiary protection, or complementary protection more precarious. With the absence of other legal migration routes, seeking international protection remains the only viable route out of conditions of poverty, insecurity, and conflict in their countries of origin for many third country nationals. The challenges related to seeking asylum as a route to regular residence is discussed in more in detail in chapter 4.

2.4. Temporality of residence permits and mobility between legal statuses

Difficult access to residence permits for third-country nationals is a key means through which irregularity is produced in Europe. Gaps and failures in the design of national migration and residence policies are ways that lead to situations of irregularity for third-country nationals (PICUM 2023). To gain residence permits or to renew them, individuals must pass a variety of bureaucratic and economic thresholds, such as pay processing fees, provide proof of sufficient funds, level of salary, working hours, quality of employment contract, proof of existing health care insurance and proof of identity or travel documents that may be difficult to get hold of. All these can be termed as bureaucratic bordering practices, through which individuals are kept in situations of precarity and irregularity (Näre 2020; Näre & Maury 2024).

For example, regularisation through family ties, the so-called family life route, is possible in all countries but bureaucratically heavily regulated, so that in practice, many migrants cannot be reunited with their families or secure residence permits for their family members from within the country of residence (more about routes out of irregularity and their challenges in chapter 4). In **Finland** and the **Netherlands,** there are salary requirements for the sponsor of family reunification but also the requirement to apply for the residence permit from one's country of origin or a country in which there is an embassy, and in which they need to reside regularly when filing the application. Travelling to a country with an embassy where they can file an application makes it impossible in practice. Also, in the case of labour-based permits, there are restrictions regarding where one can apply for a residence permit, and most countries require applicants to have valid identification or travel documents. Labour market testing limits opportunities to regularise one's status through employment, and in many countries, there are strict salary requirements (more about entwinements between labour policies and irregularity in chapter 5). Moreover, the requirement to provide valid identification and travel documents leaves many migrant workers in a situation in which they could apply for a labour-based residence permit, but they cannot start the application process in the absence of a recognised identity document. At the time of writing this report, the **Finnish** parliament is processing Petteri Orpo's right-wing government proposal which would make it impossible for individuals living in irregular situations to regularise their residence. The law proposal would make irregular residence as one reprehensible action that would lead to the refusal of a residence permit application (HE 26/2024 vp).

The sheer duration of bureaucratic processes may leave migrant people in a limbo for years as they await a permit. Especially in Italy, it has been noted that there are large numbers of people trapped in lengthy bureaucratic processes, unable to regularise their stay. Delays occur in both first permit applications, and renewal processes, with significant consequences for migrants' access to health care and the labour market. Moreover, the fear of losing a residence permit is a constant burden and makes planning for the future difficult. It also affects family members negatively, and children risk losing their status if their parents lose theirs (Palumbo & Marchetti 2024).

Most residence permits for third country nationals are temporary and short term, including labour-based permits and permits based on international protection. The temporariness itself makes life difficult to plan, reduces the opportunity to create a sense of home and belonging in the country, and creates stress about the renewal of the permit. Moreover, as individual situations may change and one might be without a job for a while, not being able to meet the renewal requirements creates the risk of falling into irregularity when the permit ends (see also Näre & Maury 2024).

Previously in Finland, humanitarian protection was a permit category for individuals whose situations did not qualify for international protection, but who were not able to return or be deported to their countries of origin, due to war or conflict. This category was removed from the Aliens Act in 2016, following the tightening of migration and asylum policies, affecting especially Iraqi and Afghan asylum seekers. Their asylum claims were often denied, but they could have received a residence permit under humanitarian protection. A residence permit based on individual human grounds is an option that has somewhat replaced cases in which humanitarian protection could previously have been applied for, but it does not belong to the legal regime of international protection that has an international legislative basis with established principles regarding the evaluation of evidence. Similarly in Italy, the grounds for issuing residence permits for health reasons and for 'special protection' (former humanitarian protection) have been limited recently (the 'Cutro Decree' in 2023).

Residence permits for individual reasons for vulnerable people, such as for victims of trafficking and people with health conditions, are also typically short-term (see section 4.2). The impact of temporariness and the layers of dependency (of employers, spouses) on the lives of already vulnerable people is severe and concerns the whole household, enhancing vulnerability to exploitation and abuse. If one's family's residence permits are tied to the one's employment, the threshold for quitting exploitative employment is understandably high. Similarly, victims of domestic abuse may choose to stay in an abusive relationship rather than risk their own and their children's residence permits by leaving such relationships. As we discuss in more detail in section 4.2, solutions offered in these situations are often unsatisfactory from the perspective of the victim, if the residence permit that can be obtained is only temporary and not renewable.

In-between inclusion and removal: the case of Duldung (A BOX)

The political will in many European countries is to remove irregularised individuals from the country rather than find ways for them to regularise their status. However, many individuals will not leave the country voluntarily, and many cannot be forcefully deported to their country of origin, as many countries do not receive deportees. Sometimes the reason for postponed deportation is the lack of a valid identification and travel document, or ill health or other personal reason the deportation has to be postponed. This results into a situation in which many people find themselves unable to be fully included the society, yet they are not deported either. As there is lack of political will to offer permanent solutions or residence permits for such

people, such as rejected asylum seekers who do not wish to leave or who cannot leave, solutions for providing some kind of quasi-regularity for people living in an in-between state have been adopted.

A tolerated status is a temporary suspension of deportation, and it is not a residency permit, and it upholds the obligation to leave Germany; it merely declares that the state will temporarily refrain from deportation to enforce this obligation, usually because the individual is unable to do so for legal, personal or humanitarian reasons (Kirchhoff & Lorenz 2018). Reasons for being granted a tolerated status include the necessity to be present at a criminal trial or urgent humanitarian needs. Urgent personal reasons include pregnancy and work-related situations, for example if the individual has begun training in a state-recognised qualified profession. This permit can be bestowed for a few days or up to six months (Rheindorf et al. 2024). However, in practice, many migrants remain in this precarious status for several years. The tolerated status has been described as a permanent state of temporariness, which has over-generational effects (Tize 2020).

The status severely impacts living and working conditions of 'tolerated' migrants. It generally entails a three-month work prohibition. Until November 2023, after this period a 'priority check' (*Vorrangprüfung*), a form of labour market testing, was required to verify that employment of a person with this status does not negatively impact the labour market and that no 'priority' workers (German citizens, EU/EEA citizens etc.) are available for the job. It applies only to work in which there is no labour shortage, and in those where there is, the Federal Agency of Labour (*Bundesagentur für Arbeit*) checks the working and contractual conditions of the employment. In the case of 'tolerated' migrants who entered Germany to gain access to welfare services as asylum seekers, there is no right to work. This is also the case for those who hinder deportation by giving 'false information' about themselves. In addition to work restrictions, toleration entails restrictions regarding where in Germany one may reside. Moreover, one cannot leave Germany and return unless they lose their tolerated status, as it does not include re-entry rights (Rheindorf et al. 2024).

Tolerated individuals have access to certain welfare services as per the Asylum Seekers Benefits Law (*Asylbewerberleistungsgesetz*), to cover food, accommodation, heating, clothes, basic healthcare and necessary household items. Access to these provisions may be reduced if the individual is found by the welfare office to have come to Germany for the purposes of accessing welfare. This resonates with the wide-spread political discourse in which the reduction in the rights of irregularised migrants and asylum seekers to access welfare services and provisions is justified through the discourse of protecting the welfare state from outsiders and their assumed abuse of the system. To sum up, tolerated status impacts individuals and their families for years or even decades, creating insecurity and uncertainty in all areas of life through constant threats of deportation and restrictions on work, travel and higher education (Tize 2020).

Expulsions of EU citizens (Box)

It is commonly assumed that EU citizens can be ordered to leave the territory of a Member State if they do not fulfil the criteria set by the Citizens' Rights Directive or are considered to be 'an unreasonable burden on the social assistance system'. However, Article 14(3) provides the clarification that 'an expulsion measure shall not be the automatic consequence of a Union citizen's or his or her family member's recourse to the social assistance system of the host Member State' (Carrera & Colombi 2024). Individualised assessment is thus required, and it should account for person's fundamental rights, criteria such as the duration of the enjoyment of social benefits, their personal situation, and the amount and history of aid received. It is possible to restrict mobile EU citizens' right to reside in another EU country based on 'public policy, public security and public health' (Carrera & Colombi 2024).

There are no consistent data on the expulsion of EU nationals. However, research has demonstrated abuse and discrimination against specific groups of EU citizens and that Member States can interpret the grounds of public policy, security and public health and who will be considered to be 'an unreasonable burden to the social assistance system of the host Member State' (Mantu & Minderhoud 2023, Maslowski 2015). Evidence of Member States engaging in collective expulsions of EU citizens, especially Roma citizens, also exist (Carrera & Colombi 2024, Sigona & Trehan 2009).

Moreover, expulsions based on the grounds of public policy, security and public health can be accompanied by an entry ban to one or more Schengen states for a maximum duration of 15 years. A study of detention and entry in bans issued in Finland in 2016 showed that the two largest nationalities receiving detention orders were Estonian and Romanian EU citizens (in total 289) for whom 141 national entry bans were ordered (Könönen 2023). Thus, by issuing entry bans, Member States not only expel EU citizens, but also seek to hinder their mobility in the future.

3. Social and Welfare Policies Concerning Migrant Irregularity

Social and welfare policies govern migrant irregularity at the local level. The local governance of social and welfare policies is often in a conflicting relationship with how nation-states seek to control irregularised migrants' access to social and welfare services. While many European nation-states seek to implement restrictive policies with the intention of controlling irregular migration (Ataç & Rosenberger 2019), safeguarding the welfare state (Bendixsen & Näre 2024) to those belonging to a 'national community' (Keskinen et al. 2019), cities and municipalities often take a more pragmatic approach, and often offer more extensive access to welfare services than the minimum standard (Fauser 2019, Spencer & Delvino 2019). Local governments decide to do so for various reasons, including economic, social policy and human rights motivations, crime prevention, public health concerns, child protection, managing the homelessness, and maintaining an inclusive image of being attractive to tourism (Caponio 2014).

This chapter introduces the key social and welfare policies that concern migrant irregularity at the EU level and in I-CLAIM countries. We first present EU policy instruments that regulate the social rights of irregularised migrants and we then discuss examples of how local governments are dealing with irregular migration.

3.1. Social and Welfare Policies at the EU level

Migrants who find themselves in irregular and precarious situations are not a unified group. Therefore, their access to social and welfare services depends on intersecting categories of gender, age, health, 'race', ethnicity, citizenship, legal status and employment status. Within the EU, citizenship (EU vs. third-country) is a key differentiating status. Nevertheless, all migrants, regardless of their legal status, have fundamental rights, even though access to those rights can vary in practice.

A central EU policy instrument regarding employment and social inclusion is the European Pillar of Social Rights, launched in 2017. The Pillar sets 20 principles divided into three chapters: (i) Equal Opportunities and Access to the Labour Market; (ii) Fair Working Conditions; and (iii) Social Protection and Inclusion. The latter chapter includes childcare and support for children, social protection, minimum income, health care, housing and assistance for the homeless, and access to essential services. As stated in Recital 15 of the Interinstitutional Proclamation on the European Pillar of Social Rights (2017): 'The principles enshrined in the European Pillar of Social Rights concern Union citizens and third-country nationals with legal residence. Where a principle refers to workers, it concerns all persons in employment, regardless of their employment status, modality, and duration'. On the one hand, this assertion exempts third-country nationals without legal residence status from the application of these principles. On the other hand, it emphasises the application of all work-related protections and principles to all workers regardless of their residence and immigration status, including irregularised migrants (Carrera & Colombi 2024).

However, although EU policies in the area of social inclusion encompass all individuals, in practice they have been limited to EU citizens and to regularly-staying third-country nationals (in the form of 'integration') (Carrera & Colombi 2024). As PICUM (2023) has pointed out, undocumented migrant people 'are considered ineligible for most inclusion actions supported by the Asylum, Migration and Integration Fund (AMIF), and are often excluded from most activities financed by the European Social Fund Plus (ESF+), due to additional barriers related to residence or employment status in the requirements in calls for proposals or reporting'.

On the other hand, as highlighted by interviews with key EU stakeholders, **fundamental rights,** particularly the fundamental right to human dignity, *de facto* set a threshold below which Member States should not go in their treatment of undocumented third-country nationals and EU citizens who do not meet the conditions for free movement. In this regard, building on the European Social Charter (ESC), jurisprudence from the European Committee on Social Rights has clarified that all fundamental rights, including socio-economic rights, apply to individuals irrespective of their residence or immigration status when these rights are necessary to protect their human dignity and the right to life, which are absolute fundamental rights[7] (Carrera & Colombi 2024). For example, in *Conference of European Churches (CEC) v. Netherlands* (No. 90/2013), the Committee found that the failure to provide food, clothing, and shelter to migrant people without legal residence status violated the right to social and medical assistance and the right to housing, which are "closely connected to the human dignity of every person regardless of their residence status".

With regard to **EU anti-discrimination legislation**, the Race Equality Directive (RED) (Council Directive 2000/43/EC) and the Employment Equality Directive (EDD) (Council Directive 2000/78/EC) establish a general framework for equal treatment in employment and occupation covering both direct and undirect discrimination. The RED also addresses discrimination in access to social protection, including social security and healthcare, social benefits, education, and access to, and provision of, goods and services available to the public, including housing. Neither of the Directives cover differences in treatment between Member States' nationals and EU citizens or third country nationals based on their residence or migration status. However, the 2004 General Recommendation No 30 of the Committee on the Elimination of Racial Discrimination (CERD) has highlighted that 'xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism', and stressed that 'undocumented non-citizens and persons who cannot establish the nationality of the State on whose territory they live' are also of concern to CERD (CERD 2004, 1).

Furthermore, the **EU Anti-racism Action Plan 2020-2025** (European Commission 2020a) states that 'EU funds Member States' efforts to promote social inclusion by ensuring equal opportunities *for all* and tackling discrimination. EU funds will promote infrastructure development and equal access to the labour market, health- and social care, housing and high quality, non-segregated and inclusive services in education and training, *for all*, in particular for disadvantaged groups.' (European Commission 2020a, p. 10, emphasis added). Although EU policies on social inclusion *de facto* do not apply to irregular migrants, the framing adopted in this Action Plan reveals a significant openness that challenges the dominant approach based on immigration or residence status (Carrera & Colombi 2024).

3.2. Obstacles and challenges concerning access to social and welfare services in I-CLAIM countries

Regardless of the fundamental rights of irregularised migrants, their access to public health care and social and welfare services is restricted in all I-CLAIM countries. Typically, only minimal provision is guaranteed by law. Children and their education are often the only exception to the exclusions from publicly funded services. For example, in **Poland**, irregularised people and their families are almost completely excluded from public social and welfare services, apart from children's comprehensive education, and must rely on

[7] See, for instance, FIDH v. France (No. 14/2003), FEANTSA v. the Netherlands (No. 86/2012), and Conference of European Churches (CEC) v. Netherlands (No. 90/2013).

informal help from personal networks, NGOs or privately purchased medical care. Only urgent medical attention is available.

An example of limiting access to the welfare state as a form of migration control is the wide-reaching Linking Act (*Koppelingswet* of 1998) in the Netherlands. It links access to welfare state and public provisions to residence status. The explicit goal of the *Koppelingswet* has been to prevent the ability of irregularised migrants to lead their everyday lives and therefore make them more willing to leave the country. The exclusion is extended to mixed-status households so that the family members of irregularised persons also risk losing their rights to social and welfare benefits, due to one member of the family being irregularised.

The Hostile environment policies adopted in 2012 in the UK is another example of delegating migration control across society and to both public and private actors. The hostile environment policies seek to make life impossible for irregularised people, with the aim of deterring new arrivals and encouraging migrants to return 'voluntarily' (Griffiths & Yeo 2021). This set of policies extend migration controls by identity checks to various situations and institutions. In addition to social and welfare services, banks, landlords and universities are also obliged to deny or grant access to such services based on immigration status. These everyday bordering measures touch upon all areas of life, making many migrant groups' access to basic rights unattainable (Yuval-Davis et al., 2018).

Even though the UK's hostile environment policy is exceptional in how it extends the reporting obligation to all citizens, similar reporting obligations are found in Germany. In Germany, section 87 (2) of the Residence Act (*Aufenthaltsgesetz*) obliges public authorities to report irregularised migrants to immigration authorities, including in health care contexts and previously also in schools. Even though schools and educational institutions have been exempted from the reporting obligation since 2011, school staff can continue to assume that irrregularised children do not have the right to education (Rheindorf et al. 2024). Indeed, even though irregularised migrants might enjoy social rights on paper, in practice accessing those rights depend on the discretion of street-level bureaucrats (Lipsky 1980) and 'local gatekeepers' (Iacovetta 2006) with the power to manage access to rights, services, and residence.

Indeed, in practice, migration legislation is often inseparable from social and welfare rights. In Italy, issuing a residence permit requires suitable accommodation in addition to a certain level of income. Even though renewing a residence permit should not include an assessment of the suitability of accommodation, this is sometimes requested and can lead to individuals losing their legal status due to not being able to access adequate housing. The housing requirement does not consider the structural constraints migrants encounter in the Italian housing market, including high prices, rigid demands, and racist prejudice. The requirement itself signals systemic discrimination, as Italian households are not similarly scrutinised (Palumbo & Marchetti 2024).

The situation of non-registered EU citizens within welfare states is comparable to that of those living without a residence permit or documentation in many ways. Precarious mobile EU citizens are often excluded from welfare provision. The Eastern European Roma people are also heavily racialised and marginalised in society, and lack adequate financial means or housing. The Roma can be characterised as legitimate yet unwanted migrants, whose presence is not formally challenged, but they lack access to social rights and routes to permanent residence (Tervonen & Enache 2016). All over Europe, forms of institutionalised racism towards the Roma communities are widespread (Carballo-Mesa et al. 2023) and the mobility of Roma is considered to be a problem (Yıldız & De Genova 2019). In the case of Finland, for example, the policy towards the Roma

migrants is ethnicised in that they are perceived as a special category requiring targeted measures from social services, and also 'NGOised', as the social provision depends a lot on the third sector (Tervonen & Enache 2016).

While migration control is still largely executed at the national level, social policies are implemented by local governments. Municipalities oversee organising social and welfare provision for irregularised migrants, and they often have a large degree of autonomy to do so (Gonzales et al. 2019). It also means that municipalities are faced with the outcomes of restrictive national policies, such as the consequences of exclusion from social housing on everyday experiences of homelessness. Thus, it is often in the interest of the municipality to be less exclusionary than the national policy (Hajer et al. 2024). Because municipalities have the responsibility for public order and safety, as well as a duty of care for people in their districts, they often need to contradict the exclusionary national policies. This tension was expressed by a representative of the municipality of Utrecht as follows:

> *Municipalities have a duty of care, and the mayor has the authority for public safety. So, in short, if we have a vulnerable person on the street, we have a public safety problem and a care problem. Then you can always say that someone can go to location A or B for support.* (GVT1, Hajer et al. 2024)

Also, during the COVID-19 pandemic, many European cities extended health care provision to irregularised people (Mallet-Garcia & Delvino 2020). In the I-CLAIM countries, there are several examples of municipalities and local governments that have chosen to extend the provision of welfare from the minimum dictated by law. The City of Helsinki, the capital of Finland, has offered irregularised migrants' wider access to social and health services than in the rest of Finland. Similarly, the cities of Amsterdam and Utrecht are known for adopting more lenient policies towards irregular migrants than in the Netherlands in general. In Italy, some cities such as Naples and Palermo have contested the restrictions on asylum seekers civil registration, which limits their access to health care.

4. The routes to regularisation, requirements and challenges

This chapter of the report examines the routes to regularisation for irregularised people living in the I-CLAIM countries. We differentiate between **large-scale regularisation** schemes, that are periodically applied to irregularised migrants or specific groups thereof, and **individualised regularisation** routes that occur on an individual basis through applications for specific types of residence permit. These permit types and their requirements vary, depending on the country. This chapter of the report also explores options for converting certain residence permit types to other types, thereby providing opportunities for long-term social and labour inclusion. It also considers the impact that challenges concerning access to these routes may have on family members.

4.1. Large-scale regularisation schemes

Some I-CLAIM countries have periodically resorted to general large-scale regularisation programmes for irregularised migrants present in their territories. These countries include the Netherlands, Italy and Poland, although regularisation schemes vary in scale, with Italy having the broadest one.

Regarding the **Netherlands**, with the adoption of the *Koppelingswet* (the Linking Act) in 1998, several regularisation schemes were implemented for those known as "witte illegalen" (white illegals), individuals with irregular stay but still working and paying Social Security contributions. However, after the adoption of the *Koppelingswet*, there have not been any employment-based regularisation schemes. Regularisation plans since the early 2000s have mainly been implemented to address governmental negligence, including negligence concerning asylum application procedures. For example, in 2007 there was a **general amnesty for asylum seekers** who had applied for asylum before 2001 and had not received a conclusion on their application. In general, after the *Koppelingswet*, regularisation schemes have selectively focused on former asylum seekers, excluding other categories of migrant people in irregular conditions. It is worth mentioning that since 2013, there have been also regularisation schemes applying to children growing up in the Netherlands. The last regularization of children, in 2019, coincided with the abolition of the discretionary authority of the state secretary. Whereas discretionary authority could previously be used to grant permanent residence in particular situations, this is no longer possible (Hajer et al. 2024).

Since the 1980s, **Italian governments** have also periodically adopted regularisation schemes for irregularised workers to manage (labour) migration (Barbagli et al. 2004; Colucci 2018). More specifically, regularisation plans have primarily served as a way to compensate for and address the lack of an effective entry system for third-country nationals. Differently from the Netherlands, in Italy, regularisation schemes, especially since 2002, have only applied to specific labour sectors, resulting in another form of selective workers' regularisation plans. Through these regularisation plans, migrants can obtain a residence permit for subordinate work, the duration of which varies according to the validity period of the employment contract. Such a residence permit can be renewed as long as the person can show that they are regularly employed. The last Italian large-scale regularisation scheme was adopted in August 2020 (art. 103 of Law Decree 34/2020 converted into Law 70/2020) to address the impact of the COVID-19 pandemic and to 'facilitate the emergence of irregular employment relationships', applying only to the agri-food and care and domestic work sectors. However, since the beginning it has been clear that significant inadequacies would affect its impact, resulting in a limited number of regularised migrants, especially migrant farmworkers (Palumbo 2020; Schiavone 2020). According to official data provided by the Italian Minister of the Interior, there have been 220,528 applications. The processing of the applications has proceeded at an unbelievably slow pace.

As denounced over three years into the scheme by the 'Ero Straniero' campaign (2023), there are thousands of pending applications from migrants living in Italy.

In Poland, three large-scale regularisation schemes have taken place, respectively in 2003, 2007 and 2012 (Matuszczyk et al. 2024). The main criterion that applicants had to meet were generally related to the specified period of stay before applying for a residence permit within a regularisation programme. Therefore, there were no restrictions linked to labour market sectors or the migratory status of applicants. In all three cases, the number of applicants was small. In the case of 2003 and 2007 regularisations, the *voivodes* (regional governors) received applications from 5,470 foreigners seeking to regularise their temporary (12 months) stay in Poland. The percentage of positive decisions was 76% in 2003 but only 66% in 2007 (Szymańska-Matusiewicz 2012). During the 2012 regularisation, 9,521 applications were submitted.

The remaining I-CLAIM countries, namely Finland, Germany and the UK have never implemented large-scale regularisation schemes for irregular migrants present in their territory. However, in 2007, the UK adopted a "regularisation" programme for rejected asylum seekers with family members, which led to the regularisation of thousands of people (Bloch et al. 2014). In 2021, in Finland, the Ministry of the Interior conducted an inquiry evaluating the granting a full or partial regularisation to approximately 3,000 individuals who had been waiting for their asylum application since 2015–2016. This was the first time that the Ministry of the Interior considered options other than removal orders to irregular migrants' situations, but there was insufficient political will behind to develop the inquiry into a government proposal (Merikoski et al. 2024).

4.2. Individualised regularisation routes

Depending on the countries, there are various individualised routes granting legal status to irregular migrants living in their territories without a residence permit. This section provides an overview of the main individualised routes applicable in the I-CLAIM countries, highlighting requirements, limitations, and challenges concerning these routes.

4.2.1. *The residence permit as an asylum applicant*

Applying for international protection – such as refugee status and subsidiary protection – and thus obtaining a residence permit as an asylum seeker, is one of the main routes pursued by irregular migrants. This path also involves migrants with a renewed asylum claim or in Dublin procedures. In the Netherlands, for example, a legal expert from a shelter for irregular migrants in Utrecht, interviewed for the I-CLAIM project, indicated that 60% to 70% of their clients can attempt to regularise their stay through a new asylum request. In 2022, there were a total 1,529 renewed asylum requests in the Netherlands (IND 2023, 6).

In Italy, recent Law Decree 10/2023, commonly known as the 'Cutro Decree', has narrowed the grounds and channels for granting complementary protection, named 'special protection' (formerly 'humanitarian protection'). In particular, this Decree has meant migrant people can no longer submit a request for special protection directly to the local police headquarters. As a result, the sole avenue for applying for special protection is now through the asylum procedure, which in Italy can be a lengthy process lasting years.

The legal recognition as an asylum seeker allows migrants to obtain a temporary residence permit while their asylum application is being processed. During this period, according to the different regulations of each I-

CLAIM country, they are entitled to specific rights and protections, including accommodation, reception allowance, healthcare, and the right to work under certain conditions. As underlined below, there is inconsistency across I-CLAIM countries regarding the rights of asylum seekers when entering the labour market. In some countries, asylum seekers are permitted to work shortly after submitting their asylum application, while in others, they are allowed to work only after a longer waiting period.

However, in the context of increasingly stringent asylum policies and legislation in many I-CLAIM countries aimed at deterring people from claiming asylum (see above section 2), there is a trend towards limiting and restricting the rights of asylum seekers. For instance, in **Finland**, the current conservative-led government (2023-) programme includes proposals that would make it impossible for asylum seekers to apply for a labour-based residence permit, as is currently possible, or to regularise their residence through another channel. Furthermore, reception systems are under pressure in many I-CLAIM countries, often due to inadequate contingency planning and economic resources. Moreover, the detention of asylum applicants remained commonplace in many countries, rather than being a limited exception (ECRE 2023). At the same time, in several I-CLAIM countries, such as **Italy** and **Finland**, the asylum recognition rate has been around 50% in 2021-2023 (Eurostat 2024). This leaves around half of asylum seekers without legal status based on international protection.

All these factors are expected to lead to an increase in the number of irregularised migrants. They contribute to making the legal status of asylum seekers more precarious while significantly diminishing the prospects for their regularisation.

4.2.2. *Residence permit based on family life*

Another common route followed by irregular migrants in European countries is applying for residence permits based on **family ties** (marriage, parenthood). This route can be based on staying with a partner who is a regular resident (i.e. national citizens, EU citizens, or those with a valid residence permit), or as parents of a child, thereby relying on the child's rights to grow up with their parents. However, factors such as long bureaucratic procedures and strict requirements make it difficult, in many I-CLAIM countries, to secure a residence permit through this route. This can significantly undermine the protection of the right to respect for private and family life established by Article 8 of the European Court of Human Rights.

In the **Netherlands**, for instance, applying for a residence permit with a legal partner can be a complicated process. Therefore, sometimes opting for the 'Belgium route' or the 'EU route', which means you settle as an EU citizen in another EU country which increases the rights of non-EU spouses, can be easier (Hajer et al. 2024). The first families who used this loophole in law moved to Belgium hence, the name 'Belgium route'. As a Dutch legal expert underlined:

> *You can request a residence permit to stay with a Dutch partner in the Netherlands, but it's a lot of hassle, it's very difficult, there are a lot of rules. If you move to Emmerich with your Dutch partner, it's very easy to request a residence permit, and that's called the EU, or 'the Belgium route'. (Legal expert NGO2, Hajer et al. 2024).*

In some I-CLAIM countries, including Finland and Italy, regularisation routes based on family ties have been subject to several restrictive reforms. In **Italy**, as mentioned, Law Decree 10/2023 has restricted the grounds for granting 'special protection', removing the part of the provision that allowed individuals to regularise

their status on the basis of relational and affective/family ties in Italy. However, it should be emphasised that in Italian legislation, there is still a safeguard clause providing for the respect of the state's constitutional and international obligations, including Article 8 of the ECHR, which enshrines the right to respect for private and family life. In any case, the new Italian regulatory framework will make procedures more complex, also leading to an increase in judicial appeals.

In **Finland**, several restrictions to family reunification requirements have been introduced since 2010, which in practice makes it difficult to lodge an application and there is strong evaluation of the family life being real and marriage authentic. Similarly, in **Germany,** existing family ties through marriage and parenthood may intercede deportation and in case deportation is not legally possible, persons may be granted a residence permit, or if it is not possible to issue a residence permit, then a tolerated status will be issued. However, here there also is an investigation into the 'authenticity' of marriage (Rheindorf et al. 2024).

Despite the variations in conditions provided by the legislation of the examined countries, residence permits based on family ties and childcare can also be temporary in nature and typically allow the person to work. In some countries, such as **Italy**, the residence permit based on childcare (Art. 31 of the Consolidated Act on Immigration) can be converted into a residence permit for work reasons. In the **UK**, the family life-based route can also provide for an indefinite leave to remain.

4.2.3. *Residence permits based on health-related issues and pregnancy*

Other routes for regularisation include residence permits for health-related issues. For instance, in **Finland**, a one-year permit can be given to those foreigners who cannot be deported due to their health situation, for example rejected asylum seekers or ill people at the expiry of their residence permit. In **Italy**, foreign citizens without a residence permit and in particularly serious health conditions can apply for a permit for medical treatment according to Article 19 (para 2 letter d-bis) of the Consolidated Act on Immigration. This residence permit has a duration of one year, renewable according to certified medical needs. However, the Decree 20/2023 has significantly undermined even this residence permit. Indeed, the Decree has reduced the application of this permit only to cases in which the health conditions result from "pathologies of particular seriousness not adequately treatable in the country of origin". Such a provision is considered to violate the right to health (Article 32 of the Italian Constitution) because in most countries of origin, medical care is not guaranteed for those who cannot afford the significant cost (Vassallo Paleologo 2023). Furthermore, Decree 20/2023 has eliminated the option to convert the residence permit issued for medical treatment into a work permit.

In general, the regularisation route based on health-related issues usually provides for a temporary residence permit, which does not allow a person to work and cannot be converted into another type of residence permit. Therefore, it is **more a source of temporary relief rather than a permanent solution**.

Pregnant women may obtain a temporary residence permit during their **pregnancy** and some months after the birth. However, in many I-CLAIM countries, residence permits based on pregnancy cannot be converted to another residence permit and this may end up discouraging many women from applying for this type of permit. For instance, in **Germany**, pregnant women during pregnancy may obtain a temporary tolerated status (*Duldung*) that expires six months after the birth. Therefore, unless the father of the child holds German citizenship, the mother will be required to leave Germany with the child. Consequently, the rights of both the mother and child in this scenario, including access to a birth certificate, are quite precarious (Rheindorf et al. 2024). In **Italy**, a residence permit must also be granted to the cohabiting husband of the

pregnant woman for the same duration,[8] but it is not possible for the mother or father of the minor to convert this permit into a residence permit for work purposes. However, this permit can be converted into a residence permit for family reasons, provided that the income and housing requirements for family reunification are met.

4.2.4. *Residence permit based on employment or on higher education*

In some I-CLAIM countries, such as Finland and the Netherlands, migrant individuals irregularly present in these countries can apply for a residence permit based on employment. However, both countries have requirements, including a valid travel document, labour market testing, and salary conditions. These significantly limit the opportunities for obtaining this type of residence permit. For instance, in **Finland**, the applicant needs to have a recognised travel document as identification in order to apply. This puts several people at a disadvantage. Furthermore, the work permit is always limited to a certain work sector, and one cannot change jobs outside that sector without having to apply for another residence permit. Moreover, the labour market test applies. Therefore, unless the sector is exempt from it, such as the case of cleaning or agricultural work, the employer must prioritise national or EU/EEA workers over third country national workers.

Similarly in the **Netherlands**, it is not easy to obtain a work visa because the labour market test sets a preferential treatment of EU/EEA workers; employers have to demonstrate they cannot find European citizens for the job people are applying for, and there are strict salary requirements. These are higher than the minimum wage. Therefore, in practice, regularising via work is only possible for 'skilled' workers with available resources.

In the **Netherlands**, higher education could become a route to regularise. A higher education pilot programme called 'Education Covenant' can facilitate access to higher education for irregularised students. Through this pilot programme running until 2024, some institutions have made an agreement with municipalities to assist irregular migrants who have finished high school in the Netherlands to obtain a study residence permit (Dez & Fiorito 2022). When graduated, international students can apply for one orientation year to look for a job (IND 2023). However, it might be difficult to get a visa that will allow them to look for a job while residing in the Netherlands, and as a consequence, there is the risk of becoming irregularised again (Dez & Fiorito 2022).

4.2.5. *Residence permits for victims of exploitation, trafficking and/or gender violence*

Residence permits for victims of exploitation, trafficking, and/or gender violence are provided in all I-CLAIM countries. However, in most I-CLAIM countries, **strict requirements** make it difficult to follow these routes. Furthermore, the **threshold of demonstrating vulnerability** is high, and this lead many irregularised migrants not applying for these kinds of permit, as they are fearful of deportation in case of negative decision. Moreover, the fact that issuing such residence permits depends on the person's **participation in criminal proceedings** is an element that often prevents victims from pursuing such a regularisation path (Palumbo 2023). This also occurs in **Italy**. Indeed, although Italian legislation (specifically through the so-called social path of Article 18 of the Consolidated Act on Immigration) allows for residence permits to be issued to victims of trafficking and exploitation, irrespective of their cooperation in criminal proceedings, the

[8] See the Constitutional Court judgment of 27 July 2000, no. 376.

relevant authorities rarely implement this provision. Consequently, in practice victims are required to cooperate with relevant authorities in order to obtain a residence permit (Palumbo 2023).

As stressed earlier (section 2), the route to regularisation for victims of exploitation, trafficking, and/or gender violence usually consists of **temporary residence permits**, which only in some cases can be converted into residence permits for work reasons. This hampers survivors' prospects of long-term social and labour inclusion, thus exacerbating their situations of vulnerability to the dynamics of irregularity and exploitation.

In countries such as the **UK**, recent restrictive legislation has made access to residence permits for victims of modern slavery even more difficult and their status more precarious. In particular, the 2023 Illegal Migration Act has significantly changed some provisions of the 'modern slavery' Act, excluding survivors from protection during the 30-day 'reflection period', and preventing them from claiming asylum or obtaining a temporary residence permit, unless they entered the UK legally. Exceptions exist for those cooperating with police investigations and for individuals whose stay in the UK is necessary for compensation seeking and physical and psychological recovery**.**

The UK legislation presents significant limitations, even concerning the protection of migrant women who are victims of gender violence. Indeed, the UK ratified the Istanbul Convention in 2022. However, it has applied a reservation to Article 59 of the Convention, which requires states to provide victims of gender violence with an autonomous residence permit when their residence status depends on their spouse or partner. As several associations and organisations have pointed out, the UK government's Article 59 reservation means that migrants who are victims of gender violence in the UK do not have full protection, as they can feel unable to leave an abusive relationship due to concerns about the impact on their residence status (see, for instance, EHCR 2024).

4.2.6. *Residence permit based on long-term presence in the territory*

A regularisation route based on long-term settlement in the territory is possible, for example, in the **UK** through the '20-Year route to settlement'. However, several factors make it difficult to pursue this route. First of all, the burden of proof required to demonstrate two decades of continuous residence can be challenging, as individuals may not have access to official documentation or records. In addition, the 20-Year route has been criticised for perpetuating a state of uncertainty and precarity, as the Home Office typically grants a temporary residence for a period of 30 months, but renewal is costly. Lastly, studies have underlined that applicants often require an additional 10 years of temporary permits to attain settlement, having lived in the UK for 30 years or more amidst varying degrees of insecurity before finally achieving stability.

4.3. The EU approach on regularisation routes

The relevant EU legal and policy framework primarily focuses on migration management, emphasising third-country nationals who are 'legally residing' and 'wanted' (Carrera et al. 2019), while providing **no real answers or solutions** for irregularised migrants already within the EU. As emerged from the interviews with key EU stakeholders conducted within the I-CLAIM project, irregular third-country nationals are considered to be a 'non-policy issue' in the debates concerning regular and labour migration at the EU level (Carrera & Colombi 2024). This is due not only to the limited competencies of the EU in this area but also to the prevailing idea among national authorities that large-scale regularisations may act as a 'pull factor'. As a

result, EU-level intervention in this domain is perceived as risky, and it is left to the discretion of Member States to decide whether and how to address the status of irregular third-country nationals.

Emblematic of this approach is the fact that the Seasonal Workers Directive, despite being aimed at addressing the protection of seasonal workers in situations of vulnerability, completely overlooks seasonal migrant workers irregularly staying in the territories of the Member States (Zoeteweij 2018). Consequently, the provisions of the Directive do not apply to irregular migrants already in the Member States and cannot be invoked as a tool of regularisation. As underlined by interviewees with EU stakeholders, this limited approach of the Seasonal Workers Directives is because regularisation processes are perceived to fall within the competencies of Member States, and the EU is considered unable to act in this area.

A similar approach emerges in the EU integration policies. The issue of integration of the third country nationals remains a national competence, and EU action in this area can only take place through non-legislative means e.g., action plans, the use of funds, issuing of recommendations, and promotion and exchange of identified 'best practices' between Member States (Carrera 2009). Yet, EU policies in this field tend to mirror a simplistic opposition between 'legal/regular' migration and 'irregular' migration (Carrera & Colombi 2024). Such a limited approach can be found in the Action Plan on Integration and Inclusion 2021-2027, which covers both legally residing third-country national and EU citizens with a 'migrant background' (European Commission 2020b).[9] Irregular third-country nationals are completely absent from the Plan. Once again, the justification for this absence lies in the EU's limited competencies in this area. However, interviews conducted with EU stakeholders as part of the I-CLAIM research have revealed that although the living conditions of irregular third-country nationals have been acknowledged by relevant European Commission services as a pressing issue with significant negative impacts at the local and regional levels, their exclusion from EU-funded projects is based on the principle that EU taxpayers' money cannot be spent on individuals who are irregularly residing in Member States' territories. The understanding is that local institutions and civil society can use the insights gained from these projects to aid irregular migrants (Carrera & Colombi 2024).

However, as previously highlighted, certain soft-law instruments, such as the EU Anti-Racism Action Plan 2020-2025, adopt a more open approach by invoking the use of EU funds to support Member States' efforts to promote social inclusion and to ensure equal opportunities for all people.

[9] In this Action Plan the term 'integration' is used when discussing third-country nationals, while the notion of 'inclusion' is used when referring to mobile EU citizens.

5. Irregularised migrants in labour market sectors

This section of the report focuses on irregular migrants, including those migrant workers with precarious legal status, within labour market regimes. In particular, it explores the irregularity assemblages, paying attention to relationships between **migration and employment regimes, as well as their gendered and racialised dimensions.** The section focuses on the three core I-CLAIM labour market sectors that have a significant presence of migrant labour force: care and domestic work and cleaning services; agriculture; and logistics and food delivery. By discussing them comparatively, we highlight how these sectors are characterised by high rates of undeclared work and by special regulations which leave them unprotected. In this context, the interplay between employment and migration regimes, along with gendered and racialised dynamics, make these sectors open to abuse and exploitative practices, especially for irregular or precarious legal status migrant workers.

5.1. Undeclared work

In all I-CLAIM countries, irregularised migrants are not permitted to work. Therefore, irregularity of legal status invariably corresponds to irregularity of employment and working conditions, that is, undeclared work. However, the reverse is not always the case: migrant workers engaged in undeclared work are not necessarily irregular. For instance, **undeclared work** may involve migrants with a residence permit not intended for work purposes, such as migrants on a study visa who work more than the permitted number of hours per week during term time (Åhlberg & Granada 2022, Schneider & Götte 2022), or asylum seekers who engage in undeclared work before the waiting period allowing them to work. Undeclared work can also involve regular third-country national workers (such as regular seasonal migrant workers), asylum seekers permitted to work, and intra-EU mobile citizens (see, for instance, Corrado & Palumbo 2022, Fiałkowska & Matuszczyk 2021, Lewis & Waite 2015, Siegmann et al. 2022).

As suggested by the broad definition of the European Labour Authority (ELA), undeclared work occurs regardless of the nationality and legal status of the workers. Indeed, the ELA defines undeclared work as 'any paid activities that are lawful as regards their nature, but not declared to public authorities, considering differences in the regulatory systems of the Member States'.[10] As one of the EU stakeholders interviewed for this research argued:

> *We know that when it comes to efficiently and effectively tackling undeclared work, one cannot differentiate between different categories of workers.*

Undeclared work is a common feature across the labour markets of all I-CLAIM countries, although levels may vary. In some I-CLAIM countries, like **Germany, Finland** and **the Netherlands**, while undeclared work does exist, the rates are relatively low compared to the EU average. According to recent estimates, undeclared work constitutes 14.8% of the gross value added in the private sector at the EU level, with rates of 8.6% in Germany, 9.9% in Finland, and 12.8% in the Netherlands (ELA 2023). In Finland, undeclared work may also involve holders of a student permit, despite them having the right to work. However, the working hours are limited by the student visa (currently 30, previously 25 hours weekly), which makes it difficult for many students to earn enough to live in Finland. As a result, many resorted to working extra hours in

[10] See https://www.ela.europa.eu/en/undeclared-work

undeclared situations (Maury 2022). Situations of undeclared work also increasingly involve employers changing employment contracts into service agreements to save on all employer costs, without the worker necessarily understanding the difference. This practice is common in the cleaning and construction sectors, as well as in forestry (Merikoski et al. 2024).

Italy and Poland present higher levels of undeclared work compared to the EU average: 19.7% in the case of Poland and 20.4% in Italy (ELA 2023). In particular, in these two countries, undeclared work is so prevalent in certain sectors, such as agriculture and domestic work, that it persistently shapes employment relationships, especially in the case of migrant workers (Ministero del lavoro e delle politiche sociali 2023). Data collected within I-CLAIM research reveal that both these countries underline that minimising labour costs and complicated formalities related to the legal employment of migrant workers are among the main factors leading to undeclared work situations. In this context, sometimes regular migrant workers (including EU mobile citizens) lack the opportunity to negotiate due to their weak power bargaining, and in the absence of alternative working solutions, accept undeclared work (Giammarinaro 2022, Palumbo 2022). This situation leads to their exclusion from accessing certain benefits. In other cases, such as with several migrant domestic workers in Italy, workers are able to negotiate a contractual arrangement with their employers involving a 'fictitious' number of working hours, building on a 'downward convergence' of interests between the parties (Marchetti 2016). In other cases, as emerged in the Polish context, in some cases, migrant workers themselves prefer to work in the informal economy in order to avoid being formally tied to a particular employer (Fiałkowska & Matuszczyk 2021, Konieczna-Sałamatin 2010). This preference is due mainly to the temporary nature of migration strategies, and the desire to maximise the benefits of working abroad.

There is also the case of asylum seekers hosted in the reception system in Italy, who 'choose' to work in undeclared conditions to avoid being denied admission to reception centres. Indeed, asylum seekers hosted in reception centres cannot have an income higher than the annual social allowance (currently around €5,983.64/year). This provision induces many asylum seekers to accept situations of undeclared work, especially when there is a pressing need to financially support their families by sending remittances to their country of origin (Palumbo 2022). This is indeed an emblematic example of (asylum) policies fostering irregularised conditions.

5.2. Irregularised migrant workers in unprotected sectors

Over recent years, most I-CLAIM countries, followed by EU policymaking, have increasingly adopted restrictive labour migration polices aimed primarily at attracting and facilitating so-called 'high-skilled' migrant workers, narrowing regular channels for low-skilled workers. In the Netherlands, employers of high-skilled migrants do not need to justify hiring from outside the EU, while for 'lower-skilled' non-EU migrants, they must first consider the availability of local or EU citizen applicants before hiring from outside the EU. Similarly, in Finland, exempting certain labour sectors from labour market testing channels migrant workers to those sectors and enhances labour market segmentation based on 'race' and migrancy. For instance, since 2015, cleaning and private and domestic work have been exempted from labour market testing in the capital region of Helsinki. This has represented a significant incentive for migrant workers to find employment in this considered 'low-skilled' sector (Wide 2023).

In the UK, the 2021 new Points-Based System (PBS), also applying to EU citizens, establishes limited opportunities for work in jobs classified as low-skilled. The only available channels for low-wage jobs are the Seasonal Worker visa, the Health and Care Workers visa and the Overseas Care Worker visa. Furthermore,

the PBS relies on employers tying workers to specific sectors and employers/sponsors, creating and amplifying workers' dependence on these actors and therefore their vulnerabilities to exploitative dynamics (Piemontese & Sigona 2024, Sumption & Brindle 2023). In **Germany,** two recent changes in 2023 of the Immigration Act of Skilled Workers have contributed to reducing the barriers for migrant workers considered to be 'skilled workers'. This reform has contributed to the creation of a 'merit-based immigration regime', including not only qualification and work experience, but also language skills (German and English), relationship with Germany, age, and spouses that would co-migrate (Rheindorf et al. 2024). In **Italy**, where there is an annual system of entry quotas for migrant workers which includes 'low-skilled workers', such quotas are typically below the actual needs of the labour market for a migrant workforce, including households' needs for home-based caregivers. Above all, the national entry system for third-country migrant workers (Flows Decree system) has proven to be not only ineffective in preventing irregular migration, but also by contributing to its production, pushing many migrant workers towards irregular channels (Chiaromonte 2018).

In this scenario, in all I-CLAIM countries, the high labour demand in low-wage and unprotected sectors such as agri-food, logistics, and domestic and care work, has been primarily met by irregular migrant workers and by migrant workers in precarious conditions, such as third country national workers with temporary residence permit, asylum seekers and EU mobile citizens from less prosperous EU countries – such as Romanians and Bulgarians. With regard to the latter, in **Germany**, public debate has focused on the high number of those seeking protection and their often precarious living situation, combined with the (at least temporary) restriction of work permits, would increase the occurrence of undeclared work in low paid sectors, such as the agri-food sector (Rheindorf et al. 2024, Schneider & Götte 2022). Similarly, in **Italy**, over recent years there has been a significant increase in the presence of non-EU asylum seekers and beneficiaries of international protection in low protected sectors such as agriculture (Corrado et al. 2018). In this context, scholars have referred to the 'refugeeization of the agricultural workforce' to highlight the increasing trend of employing refugees and asylum seekers in Italian agriculture, especially in seasonal cultivation (Dines & Rigo 2016).

From the analysis of the various I-CLAIM country contexts, it clearly emerged that the different level, forms and intensity of undeclared and exploitative working conditions depend on the different situations of vulnerability in which migrant workers find themselves, with regard to legal status and gendered and racialised dynamics and models. In the case of **irregularised migrant workers**, the condition of irregularity and constant fear of 'deportability' (De Genova 2002) represents the main element in creating and exacerbating situations of vulnerability to exploitative working conditions. With regard to **migrant workers with a temporary residence permit for work reasons**, such as seasonal migrant workers or, in the case of UK, overseas visa domestic workers, they are less likely to raise issues about employment and working conditions due to their temporary and precarious legal status (FLEX 2023, Zoeteweij 2018). Moreover, in many countries, temporary migrant workers, such as seasonal workers, are not allowed to change employers. All these factors make them more 'docile' and willing to accept abusive work conditions. In practice, the ever-present threat of losing permission to stay and work, and related difficulty/impossibility in finding another job, have a disciplinary effect on the behaviour of migrant workers, exacerbating their position of vulnerability (Palumbo 2022).

In the case of **asylum seekers**, it is worth mentioning that in some I-CLAIM countries, asylum seekers are permitted to work relative shortly after submitting their asylum application, while in others, they are allowed to work after a longer waiting period (see Table 2).

Table 2: Asylum seekers' right to work in I-CLAIM countries

I-CLAIM Country	Asylum seekers' right to work
Italy	2 months after asylum application
Germany	3 months after asylum application
Finland	3 months after asylum application if the person has a valid travel document. Otherwise, the waiting period is 6 months
Poland	6 months after asylum application
The Netherlands	6 months after asylum application
The UK	They can apply for permission to work only if they have been waiting 12 months for a decision, but only in shortage occupation sectors, and they must be not responsible for this delay.

In any case, in most I-CLAIM countries, asylum seekers find themselves in limbo. Indeed, the interaction between the inadequate implementation of asylum procedures and the absence of appropriate reception and inclusion measures in the country have contributed to creating a condition of 'hyper-precarity' (Lewis et al. 2015) that fosters their exposure to the dynamics of exploitation. In this context, bureaucratic processes are unpredictable (Näre & Maury 2024), so when a decision concerning asylum applications arrives, asylum seekers may find themselves potentially deportable from one day to the next. As **rejected asylum seekers, they are consequently more exposed to the dynamics of exploitation and abuse. Lastly, in the case of EU mobile workers**, especially in the case of EU workers from less prosperous European countries, their ability to cross EU internal borders produces a 'circular migration' relying on temporary and precarious stays, and exposing these workers to undeclared work and exploitation, often through the involvement of temporary agency work (Corrado & Caruso 2022, Siegmann et al. 2022). This, in turn, results in many EU mobile workers not being able to register their residence after three months of residing in an EU country. Consequently, as mentioned above, they are not entitled to residents' social and welfare services.

All these dynamics are fostered and amplified by the '**special' regulations** that have been applied to domestic work, agriculture, logistics, and delivery sectors in many I-CLAIM countries, and which provide limited rights and weak protections for workers. Emblematic in this regard is the domestic work regulation of many I-CLAIM countries, such as **Italy**, the **Netherlands** and the **UK**, which provides domestic workers with limited access to benefits and protection (Hajer et al. 2024, Mantouvalou 2023, Palumbo & Marchetti 2024). This includes maternity leave, sick leave, and protection against dismissal. It is worth noting that domestic workers are excluded from the **EU's** occupational safety and health framework, because of the legal and technical challenges in conducting labour inspections within private households (Carrera & Colombi 2024).

The characteristics of invisibility, isolation, and informality prevalent in these sectors make them '**refuge' sectors** for irregular and migrant workers in precarious situations who would otherwise not find other opportunities to access the labour market along traditional employment paths. However, this opportunity

comes with significant risks, as these conditions also create potential for labour exploitation and abuse. Indeed, these same characteristics of isolation and invisibility, along with widespread informality, and in cases such as live-in domestic and care workers and sometimes seasonal workers in greenhouses (Palumbo & Sciurba 2018), the overlap between workspaces and living spaces, contribute to weakening workers' bargaining power, hindering their access to justice, and consequently exacerbating their vulnerability to exploitative dynamics. European Union Agency for Fundamental Rights' (FRA) reports highlight how these sectors are the most exposed to abusive and exploitative practices, including severe exploitation (FRA 2015, 2021).

Dynamics and forms of irregularity and exploitation have also been encouraged by changes in national labour regulations to allow for greater flexibility through the forms of contract, labour recruitment and intermediation (see, for instance, Fudge & Strauss 2014). In this context, there is increasing recourse in these unprotected sectors to the outsourcing of work through the involvement of new actors and mechanisms, including subcontracting and posting work through **temporary work agencies**, which contribute to the compression and violation of labour and social rights of migrant workers at several levels and from several positions. Furthermore, especially in the case of the cleaning, logistics, and delivery sectors, the platformisation of working and employment relationships, on the one hand, can provide an opportunity for irregular and precarious workers to find a job, as it allows hurdles like language barriers, legal restrictions, or lack of formal qualifications to be bypassed. In this context, irregular migrant workers can use strategies such as borrowed or rented accounts, i.e., they borrow, or usually rent, an account from another platform worker. On the other hand, platform work can significantly facilitate the dynamics of exploitation, eroding workers' rights and exposing them to dangerous and abusive practice (see, for instance, Alyanak et al. 2023, Zwysen & Piasna 2024). The case of food couriers is emblematic in this regard, as they lack many forms of employment protection that regular employees would have. In this context, being a migrant worker in an irregular condition constitutes an exacerbating factor that amplifies the poor working conditions affecting all platform workers (Hajer et al. 2024, Piemontese & Sigona 2024). It is noteworthy that in recent years, many I-CLAIM countries have seen significant developments in **case law** and regulations concerning platform workers, including at the EU level. However, there is a **discrepancy in regulatory progress** between the UK and the rest of Europe: while the latter is moving towards enhanced protection for platform workers, the former is leaning towards increased precariousness (Piemontese & Sigona 2024). At the EU level, it is worth mentioning the (slow) progress on the European Commission's **proposal on the platform work Directive** (European Commission 2021b), although the final text is a watered-down version, due to recent opposition from France and Germany, as well as early objections from Estonia and Greece.

5.3. Gendered and racial dimensions in employment regimes

Gendered and racialised dynamics, roles, and prejudices intersect with other factors such as precarious legal status to shape employment regimes, resulting in forms of discrimination and exploitation, especially in low-protected sectors like domestic and care work, cleaning services, agriculture, delivery, and logistics.

As emerged in **Finland**, a high level of discrimination exists with respect to people with 'foreign-sounding names' who find it difficult to find employment that matches their qualifications (Ahmad 2020). Not employing migrant workers nor promoting them to tasks matching their qualifications is often justified by employers on the grounds of their lack of Finnish language skills, even in the case of tasks in which mediocre Finnish (or Swedish) would be adequate. Similar dynamics occurs in other I-CLAIM countries. Furthermore, in Finland the differential legal treatment of third-country nationals vs. EU nationals and citizens is also present in the income requirements set by different institutions (Merikoski et al. 2024).

In many I-CLAIM countries, **workers of Roma origin** are the most exposed to forms of discrimination (see also FRA 2022), primarily due to the pervasive stereotypes and stigmatising practices that continue to target this ethnic minority. Workers of Roma origin typically occupy some of the lowest levels of the exploitation hierarchy. In the case of migrant farmworkers in **Italy**, while some rural contexts have seen improvements for migrant farmworkers, including Romanian workers who are rarely unionized, particularly in terms of wages, the situation remains unchanged for many migrant workers of Roma origin (Palumbo 2022). In **Finland**, there are some informal work sectors to which especially Eastern European Roma are engaged in. These include selling the Big Issue magazine and begging. Furthermore, as already mentioned, in many I-CLAIM countries, Roma people, being a heavily discriminated-against group, face significant difficulties in finding housing.

In unprotected sectors characterised by a racialised and gendered labour force, such as domestic and care work, agriculture, delivery, and logistics, **skills and tasks are highly gendered and racialised**, often based on specific body characteristics and stereotypes (Anderson & O'Connell Davidson 2003, Piro 2021). For instance, in the case of domestic and care work, the emotional labour and skills of migrant domestic workers tend to be rendered invisible, fuelled by the historical undervaluation of reproductive work and the notion of an inherent predisposition for such tasks among women of specific nationalities and racialised backgrounds (Artero et al. 2021, Sedacca 2022). In agricultural work, gender biases and stereotypes regarding abilities, physical strength, and related productivity contribute to discrimination dynamics, including gender disparities in salary (Giammarinaro 2022).

All these aspects and issues concerning the interactions between nationality/ethnicity, gender, and legal status will be further investigated later in the I-CLAIM project.

5.4. Irregularised migrant workers' access to support and justice

In most I-CLAIM countries, irregularised migrant workers encounter significant difficulties and challenges in accessing support and justice. In particular, often exploited migrant workers try to avoid contact with government officials, and therefore refrain from reporting exploitative labour conditions out of fear for their employer being fined, which could result in them losing their employment, or even deportation. However, even when workers have a residence permit, **the lack of an alternative non-exploitative employment options**, and the related need to support themselves and their family economically, constitute the primary factors preventing migrant workers from escaping situations of exploitation and undeclared work.

In most I-CLAIM countries, employers and employees working without the proper residence title or entitlement to pursue economic activity can face criminal and/or financial charges. In particular, in accordance with the **Employer Sanctions Directive** (Directive 2009/52/EC), **I-CLAIM** countries that are EU Member States provide for sanctions and measures against employers of irregularly-staying third-country nationals. Similar sanctions apply in **the UK**, where the 2016 Immigration Act extended the criminal offence of knowingly employing workers with no legal status to include cases in which employers have a "reasonable cause to believe" that their employees are not permitted to work. This has resulted in employers conducting **'right to work' checks** to verify an employee's immigration status, although these are not legally mandated. In 2023, a campaign called 'Challenge the Checks' was launched by the Migrants' Rights Network, Migrants at Work, and Open Rights Group, with the objective to address the harmful effects of immigration law enforcement in the workplace for the protection of migrant workers and their rights (Piemontese & Sigona 2024).

In all this scenario, labour inspectors play a complicated and challenging role. As FRA has reported, in most European countries, irregular workers risk immigration enforcement as a result of labour inspection (FRA 2021). For instance, in the Netherlands, the labour inspection agency is formally required to protect employment rights, which in theory also include the rights of irregular migrants. In particular, the labour inspectorate focuses mainly on preventing 'shadow employment' (*schijnconstructies*), that is, undeclared work. However, despite a formal distinction between the labour inspection and the police, labour inspectors and police agents often collaborate during workplace inspections, making this distinction difficult to maintain in practice. Studies have revealed various instances in which irregular migrants have been deported after a complaint procedure (Berntsen et al. 2022). Similar practices and dynamics occur in other I-CLAIM countries, like Germany and the UK.

In general, although the legal frameworks of many I-CLAIM countries stipulate that irregular migrant workers are entitled to payment of agreed remuneration, even from undeclared employment, and protection (in line with the Employers Sanction Directive (2009/52/EU), there remains the constant risk of being reported as irregular migrants to the Immigration Authority and, consequently, facing deportation (PICUM 2022).

In Italy, within the framework of increasing institutional attention to the issue of labour exploitation, one of the actions promoted by the 'National Plan to Combat Labour Exploitation' has been the creation of a multi-agency model that involves intercultural mediators from the International Organization for Migration (IOM) in the activities conducted by the National Labour Inspectorate. The aim of this action is first, to provide assistance and protection to exploited migrant workers, as highlighted by some of the national stakeholders interviewed for the I-CLAIM research. This intervention has led to the implementation of actions to ensure timely and effective assistance to exploited migrant workers (Ministero del lavoro e delle politiche sociali 2022). However, there are also some critical aspects, particularly regarding coordination with local associations and NGOs in the support of victims.

In the case of domestic and care work, the exemption of private homes from standard labour inspections in most I-CLAIM countries makes this sector entirely inaccessible. This poses a risk that the specific imbalance of power between employer and employee, characteristic of this sector, can lead to escalation of abuse, rights violations, severe exploitation and violence (De Volder 2017, Maroukis 2017, Palumbo 2017).

In many of the I-CLAIM countries, trade unions, NGOs, grassroots organisations, and civil society organisations in general, play a crucial role in supporting migrant workers' access to protection and raising awareness of their rights. For example, in the UK, migrant and worker rights organisations campaign for the establishment of safe reporting mechanisms, also known as a 'firewall', to protect the fundamental rights of migrant people in irregular conditions. In Germany, the 'GleichBehandeln' Campaign has called for a firewall to be established when irregular migrants access healthcare. In Poland, the grassroots movement of Ukrainian domestic workers illustrates the growing need to support exploited workers, most of whom work in the informal economy. In the Netherlands, the Fairwork NGO is supporting migrants in reporting labour exploitation and getting access to rights such as compensation and payment of back wages. A Dutch NGO, called 'Amsterdam City Rights' introduced the 'City Rights App' during COVID times, an app that was developed to make irregular migrants more aware of their rights and to share information on where to find support on how to access their rights in the city of Amsterdam. At the EU level, PICUM is actively advocating for the rights of undocumented migrants and migrant workers.

5.5. Relevant EU policies concerning migrant workers in undeclared and exploitative situations

Over the last two decades, the EU adopted various measures and instruments, in a range of areas, to protect the rights of workers, including migrant workers, and to prevent undeclared and exploitative working conditions.

As mentioned, the **EU anti-discrimination legislation** focuses on combating all forms of discrimination in employment and occupation, including discrimination based on grounds such as national origin and belonging to national minorities, such as the Roma communities. However, neither the Race Equality Directive (RED) (Directive 2000/43/EC), nor the Employment Equality Directive (EDD) (Council Directive 2000/78/EC) cover differences in treatment between Member States' nationals and EU citizens or third country nationals on the basis of their residence or migration status.

The **EU anti-racism action plan 2020-2025** (European Commission 2020a), adopted within the European Pillar of Social Rights Action Plan, significantly underlines the systemic barriers and discrimination to access to employment, education, health and housing by racialised persons across the EU. As highlighted earlier, by adopting an approach more comprehensive than EU policies on integration and inclusion, the Plan asserts that EU funds will support Member States' efforts to promote social inclusion and ensure equal opportunities for all individuals.

Regarding the prevention and combating of undeclared work, the **European Labour Authority** (ELA) plays a crucial role. Established in 2019, the ELA's mission is to assist Member States and the European Commission in enforcing EU rules on labour mobility and social security coordination fairly and effectively, facilitating easier access to the benefits of the internal market, for citizens and businesses alike. In theory, ELA's activities only cover 'individuals who are subject to the Union law within the scope of this Regulation, including workers, self-employed persons and jobseekers', that is, 'citizens of the Union and third-country nationals who are legally resident in the Union, such as posted workers, intra-corporate transferees or long-term residents'. However, in practice, ELA's activities do encompass EU citizens and third countries nationals in conditions of irregularity when it comes to tackling undeclared work (Carrera & Colombi 2024).

With specific regard to the agricultural sector, the adoption of a social conditionality mechanism in the 2023-2027 **Common Agricultural Policy (CAP)**, making CAP payments conditional on respect for labour standards, constitutes an important measure with which to improve the protection of the rights of farmworkers, and to support a more rights-compliant and sustainable agri-food system (EFFAT 2024). The effectiveness of the social conditionality mechanism will also depend on its implementation at national level.

The adoption of the **EU Directive on minimum wage** (European Commission 2022a) constitutes an important instrument for ensuring that workers, including migrant workers with a precarious legal status in the EU, are paid the minimum wage. The Directive indeed recognises that migrant workers are among those people that 'still have a higher probability of being minimum wage or low wage earners than other groups' (para 10). Furthermore, it also highlights that 'minimum wages are [...] also important in view of the structural trends that are reshaping labour markets and which are increasingly characterised by high shares of precarious and non-standard forms of work, often including part-time, seasonal, platform and temporary agency workers' (para 11). Other crucial steps include the negotiations for the **Platform Work Directive** and the **Directive on Corporate Sustainability Due Diligence** approved in April 2024 (European Parliament 2024).

Concerning EU labour migration legislation, the above-mentioned **Seasonal Workers Directive** constitutes another important instrument to be mentioned. This Directive recognised important protection and rights

for non-EU seasonal workers, including the right to file complaints against employers. However, the instrument relies on an employer-driven system, granting member states broad discretion over the implementation of provisions related to seasonal workers' rights, particularly concerning social security rights (Zoeteweij 2018). Moreover, as already stressed, the Seasonal Workers Directive does not apply to irregular migrant seasonal workers.

EU migration policies addressing exploitation and trafficking mainly rely on a repressive approach (Carrera & Colombi 2024). For instance, the Employers Sanction Directive (2009/52) provides for important rights and protection for irregular migrant workers and offers an important definition of 'particularly labour exploitation', which also pays attention to gender discrimination in the dynamics of exploitation. For instance, it facilitates access to justice for exploited workers and provides for their rights to claim back payment of outstanding wages. However, the primary aim of this legal instrument is to combat irregular migration rather than to protect migrant workers. Indeed, the Directive was primarily enacted to dissuade employers from recruiting irregular migrants. Furthermore, it is worth noting that the Employers Sanction Directive applies only to irregular third-country nationals, leaving migrant workers with a precarious legal status and who are victims of labour exploitation without protection.

Reports assessing the implementation of the Employers Sanction Directive at national levels reveal that the repressive elements of the Directive prevail over the effective enforcement of the fundamental rights and protection for irregular migrant workers (see, for instance, PICUM 2020, FRA 2021). Significantly, in the 2021 communication on the application of the Employer Sanctions Directive, the Commission identified the need for further efforts to improve the protection measures for irregular migrant workers as regards access to information, access to justice and recovery of back payments, and the granting of temporary residence permits (European Commission 2021). However, interviewees with EU stakeholders have noted that currently, there are no plans for more decisive action from the Commission, including infringement procedures. This highlights that this is not framed as a policy priority (Carrera & Colombi 2024).

The EU Anti-Trafficking Directive (Directive 2011/95/EU) provides for a human rights and gender-based approach. However, research has revealed a number of shortcomings in the transposition and implementation of the Directive, including on compensation and the actual enjoyment of rights by trafficking victims (Carrera & Colombi 2024, Palumbo & Marchetti 2021). Moreover, in the context of its ongoing revision (European Commission 2022), the Commission deliberately chose not to include any amendments to the protection, assistance and support provision, as related shortcomings have been considered not to be related to the legislation itself, but rather to the implementation by Member States (see La Strada International 2022; Red Cross EU office 2023; PICUM 2023). Considering that, civil society actors have defined the Commission proposal as a 'missed opportunity' (Carrera & Colombi 2024).

6. Conclusions

This report approaches migrant irregularity as an administrative situation referring to a situation in which the individual does not hold a regular legal status in the country of residence. We also address the situations of **temporary and precarious legal status** in the country of residence using the term **administrative precarity**. It refers to a situation in which a non-citizen has a temporary and conditional legal status in the country of residence. such as an asylum seeker, short-term residence permits and insecure legal status, such as a tolerated status (Duldung) in Germany. In this report as in the I-CLAIM project, irregularity is then understood to be produced by complex, multi-level governance of migration and labour policies and their implementation, as well as welfare and social policies. We term these organisational structures *legal and policy infrastructure*. They vary in time and place, and they are constituted at various levels of governance: local, regional, national and supranational. The legal and policy infrastructure that shapes irregular migration is both immigration law and its implementation, and welfare and labour market policies and their implementation.

In the six I-CLAIM countries, there is no unanimously accepted definition of an 'irregular migrant'. The term is typically used to refer to individuals without the legal right to reside in the country. How irregularity is defined and who is considered to belong to the category of 'irregular(ised) migrant' affects and reflects how irregularity is politically and institutionally managed. We found that against international organisations' recommendations and civil society campaigns, the use of the term 'illegal' to describe irregular migrants is common in the I-CLAIM countries. We also found that definitions and approaches to migrant irregularity not only vary across national policy documents, but also locally, regionally, and institutionally. State institutions differ in their approach from those of media and civil society, but there can also be divergence across state institutions.

We have identified eight principal routes into irregularity in I-CLAIM countries. While irregular border crossings capture the public and policymakers' attention, the most common routes into irregularity are administrative, and occur after the actual mobility of border crossing. The administrative routes are having one's asylum application rejected, being unable to register one's residence or apply for a residence permit from within the country, lacking recognised travel or identification documents, overstaying a visa, states' admission of their failure to enforce a return decision for legal or practical reasons (tolerated status), precarity related to loss of status because of the expiry of a residence permit and/or being unable to renew it. In addition to these, one can be born into irregularity and one can become an irregular migrant due to irregularly crossing borders.

This report also offers an overview of the legal and political governance of irregular migration at the EU level and in I-CLAIM countries. We found that while irregular migration is a recognised phenomenon in the EU Member States, it is not considered to be a policy issue at the EU level, apart from when it comes to increasing the rate of returns of irregular migrants. We refer to this as the EU's 'policy of no policy': having no policy is in fact a policy with tangible consequences. The focus on increasing returns aligns with the EU's and some Member States' attempts to keep irregular migrants and asylum seekers from arriving in the EU by the fortification and externalisation of European borders. Finally, the difficulty of accessing residence permits for third-country nationals is a key means through which irregularity is produced in Europe.

We also discussed social and welfare policies that govern migrant irregularity at the local level. We found that local governance of social and welfare policies is often in a conflicting relationship with how nation-

states seek to control irregularised migrants' access to social and welfare services. Cities and municipalities often take a more pragmatic approach and often offer more extensive access to welfare services than the minimum standard of national policies. While some municipalities and cities may offer wider social and health services, and individual professionals may have the authority to provide their clients assistance regardless of their status, the fact that welfare provision depends on individual agency and discretion makes support for irregularised people highly precarious. This leads to the role of NGOs and other civil society actors being highlighted, which is a form of support that is often based on short projects and thus may lack continuity.

The diversity between local policies was particularly evident during the COVID-19 pandemic, when local healthcare actors in many regions extended services to prevent the spread of the disease. Although in some locations and in some ways access to services became easier during the pandemic, irregularised migrants were especially vulnerable to the disease due to living conditions, inability to work remotely, lack of knowledge about one's rights to seek medical attention or prolonged health issues. Moreover, precarity in the labour market was highlighted during the pandemic years as some migranticised sectors, such as food delivery, had more jobs to offer while many others faced layoffs.

Restrictive migration and asylum legislation and policies adopted in most I-CLAIM countries not only narrow entry channels and routes for regularisation but also increase the **precarisation of the legal status** of regular migrant people. Indeed, there is a growing trend to provide migrant people mainly with temporary residence permits. This significantly restricts mobility between forms of legal status, the ability to convert one's residence permits for work purposes, and more generally, opportunities for long-term social and labour inclusion. In some I-CLAIM countries, the increasing **temporarisation of residence permits** is also affecting international protection. In this regard, the case of Finland is emblematic, because the current government programme includes a policy suggestion about changing international protection to temporary protection and reducing the duration of residence permits for both refugee status and subsidiary protection. Both precarisation and temporarisation of residence permits lead to increasing **irregularisability** of migrants.

Refugees from Ukraine, who are beneficiaries of the Temporary Protection Directive, currently constitute a curious case of temporariness. After the three-year period comes to an end, the Member States have few sustainable options apart from protection on humanitarian grounds, which is a legal framework that has not been harmonised at the EU level, and has various national implementations. Their pending situation demonstrates the caveats of European asylum and international protection regimes and how burdensome these systems are administratively. It has also revealed the privileging of Ukrainians over asylum seekers and other migrants from non-European countries through the differential treatment and through the differences in political and societal discourses of crisis.

In line with a stringent approach, despite the essential role played by the migrant labour force in those sectors considered to be 'low-skilled', labour migration policies in most I-CLAIM countries, as well as at the EU level, prioritise attracting and facilitating so-called 'high-skilled' migrant workers. In this scenario, the high labour demand in **low-wage and unprotected sectors** such as agri-food, logistics and delivery, domestic and care work, and cleaning services, has been primarily met by irregular migrant workers and by migrant workers in precarious conditions, such as third country national workers with temporary residence permit, asylum seekers and EU mobile citizens from less prosperous EU countries – such as Romanians and Bulgarians. Moreover, the dependency on employers for keeping or renewing one's residence permit renders migrant workers vulnerable to exploitation.

As this report has highlighted, the varying situations of vulnerability faced by these migrant workers, related to their legal status and influenced by gendered and racialised dynamics, affect and shape the different **levels, forms, and intensity of undeclared and exploitative working** conditions experienced by these workers. This is especially prevalent in low paid and unprotected sectors such as domestic and care work, cleaning services, agriculture, delivery, and logistics. The 'special' regulations that characterise these sectors, along with everyday border control practices, contribute to generating, facilitating, and amplifying the dynamics of exploitation and abuse. The invisibility, isolation, and informality characteristic of these sectors make them '**refuge' sectors** for irregular migrants and migrant workers with precarious legal status who might not find opportunities through traditional employment paths. However, this 'refuge' comes with significant risks, as these sector-specific characteristics also create and foster conditions for labour exploitation and abuse.

The report highlights that irregularised migrant workers **face significant difficulties and challenges in accessing support, justice, and reporting exploitative conditions**, especially in the case of irregular migrant workers. This is primarily due to the fear of losing employment that, although exploitative, allows them to survive, and/or the fear of deportation. The absence of alternative non-exploitative employment options and adequate support systems for victims of abuse, coupled with the need to support themselves and their families economically, are the primary factors preventing migrant workers from escaping situations of exploitation and undeclared work.

How the worker is defined in the EU legal framework partly contradicts how irregular migrants and workers are treated in national and EU policies. The Court of Justice of the European Union has provided a broad definition of 'worker' that can be interpreted to include individuals in irregular conditions, such as third-country nationals without regular migration status, as PICUM (2022) highlights. This definition is aligned with international labour law and the right to decent work, which according to the International Labour Organization, applies to every worker, regardless of their migration status.

National and EU policies addressing labour exploitation have so far primarily adopted a **repressive approach**, rather than focusing on strengthening the rights of migrant workers and ensuring their effective enforcement. On the other hand, in many of the I-CLAIM countries, trade unions, NGOs, grassroots organisations, and civil society organisations play a crucial role in supporting migrant workers' access to protection and raising awareness of their rights.

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