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Measuring Irregular Migration

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Deliverable 3.2 Compilation of 20 Country Briefs on Irregular Migration Policy Context

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Executive Summary

This deliverable provides an overview of the national policy landscape related to migrant irregularity for 20 countries in the form of Country Briefs. Briefs are provided for the following countries: Austria, Belgium, Bosnia and Herzegovina, Canada, Finland, France, Germany, Greece, Ireland, Italy, Morocco, the Netherlands, Poland, Portugal, Serbia, Spain, Tunisia, Türkiye, the United Kingdom and the United States.

The Briefs are drawn from more extensive analysis conducted within MIRreM Country Profiles, which themselves are analysed comparatively in another Deliverable (D3.3). The purpose of the Briefs is to provide a concise synopsis of the main policy issues of relevance for the irregular migration situation in each respective country, with a focus on developments since 2010. They are not foreseen to be an exhaustive representation of the entire policy and irregular migration situation in each country, but rather provide a snapshot of the most relevant issues to date, by each national rapporteur's assessment.

Each Brief provides a short overview of the recent (since 2010) policies of relevance for irregular migration, in particular the respective country's irregular migration-related policy priorities, stakeholders, recent policy measures, main turning points in policy development, policy impacts, and challenges in implementation. Moreover, each Brief outlines the main types of migrant irregularity that emerge and the pathways into and out of irregularity in each country, including regularisations as relevant.

Annexed to each Brief is also an overview of the legal and policy frameworks highlighted as relevant for migrant irregularity in each respective country.

THE MIRREM PROJECT

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

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

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KEYWORDS

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

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Austria Country Brief on Irregular Migration Policy Context

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Austria

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Controlling irregular migration, in particular via the Balkan region and on the Eastern Mediterranean route**

In Austria, there has been a strong emphasis on preventing all migration movements outside of existing legal pathways into Austria. This has been implemented on the one hand through externalisation efforts, such as cooperation on cross-border policing of irregular migrants, advocating for hotspots at the EU external borders and strengthening cooperation with states along the so-called “Balkan route” through “security partnerships” for enhanced migration control (Biffl, 2017, p. 155; Ministry of Interior, 2022). Important events for the realisation of these efforts include the “Western Balkans Conference” (2016), the Vienna Declaration to fight “illegal migration along the eastern Mediterranean routes” (2020), the launch of the Joint Coordination Platform (2020), and the related Prague Declaration on political guidelines for the Joint Coordination Platform on effectively combating irregular migration along the Eastern Mediterranean route (2021).

- **Voluntary and forced return**

Discussions regarding return are closely related to the asylum system, rejected asylum seekers and access to social welfare and support services (such as access to basic welfare support, free language and integration courses, legal consulting, etc) (Stiller & Humer, 2020). Measures include the expansion of assisted voluntary return programmes, cooperation with countries of origin of asylum seekers with low recognition rates, information campaigns, reintegration support and bilateral agreements on voluntary and forced return. Through the establishment of the governmental Federal Agency for Reception and Support Services (BBU), legal and return counselling has been standardised and harmonised.

- **Pre-emptive prevention of irregular migration in countries of origin**

In recent years, Austria has strengthened efforts to prevent irregular migration through bilateral agreements with the countries of origin of asylum seekers with low chances for a positive asylum decision, as well as through the implementation of measures such as counselling, information dissemination, and campaigns in the countries of origin, especially addressing the practices of migrant smugglers, the restrictive nature of Austria's Aliens Law, as well as dangers related to (irregular) migration

1.2 OVERVIEW OF THE AUSTRIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Voluntary return and forced removals**

Measures include the expansion of assisted return programmes, cooperation with countries of origin of asylum seekers with little chances for a positive asylum decision, information campaigns, re-integration support and bilateral agreements on voluntary and forced return (Stiller & Humer, 2020). Forced removals are implemented if persons, whose application for international protection or another residence title was rejected, have received a return decision and don't leave the country voluntarily. Forced removals may also occur if a person has irregularly crossed the border, is irregularly residing in Austria (e.g. overstayers) and/or has breached the residence requirements and therefore, lost the residence permit, or if he/she or a family member, if dependent on the visa of this family member, have lost the residence permit.

- **Entry and residence ban**

The imposition of an entry ban is more strictly regulated for third-country nationals than for EEA nationals, Swiss nationals or their third-country national family members. In the case of third-country nationals, an entry and residence ban can be imposed for an administrative fine of at least €1,000. An administrative fine for irregular residence can amount to between €500 and €2,500 (in the case of first offence) and thus already justifies issuing an entry and residence ban. Even if the number of administrative penalties in the case of unlawful entry or residence is identical for all groups, the consequences may differ significantly. Whether and, if so, to what extent, entry and residence bans of third-country nationals are justified by administrative penalties cannot be assessed due to lack of data.

- **Toleration (“Duldung”) and Residence permits for exceptional circumstances**

The residence permits for a) special protection, b) reasons of Article 8 ECHR and c) particularly exceptional cases are the Austrian instruments of regularisation.

Toleration is not a right to stay and tolerated persons usually do not have labour market access (if they had none before the toleration status was granted), but if a person has been tolerated for more than one year, he/she can apply for the special protection residence permit, which is valid for maximum one year and can be extended. The other two residence permits mentioned are likewise valid for one year but cannot be extended (Hinterberger, 2023).

- **Return centres, mandatory return counselling, residence requirement and area restriction, detention pending deportation, exclusion from social benefits**

Persons who have received a return decision are excluded in most provinces from basic care (“Grundversorgung”). If a person does not leave voluntarily, fails to comply with the duty to cooperate, or is unable to provide proof of such cooperation, he/she can be obliged to take up accommodation in one of the federal accommodation centres (residence requirement) and may be subject to a territorial restriction. Persons who have received a return decision must participate in return counselling. If there is suspicion that a person issued with a return decision may abscond, detention pending deportation can be imposed.

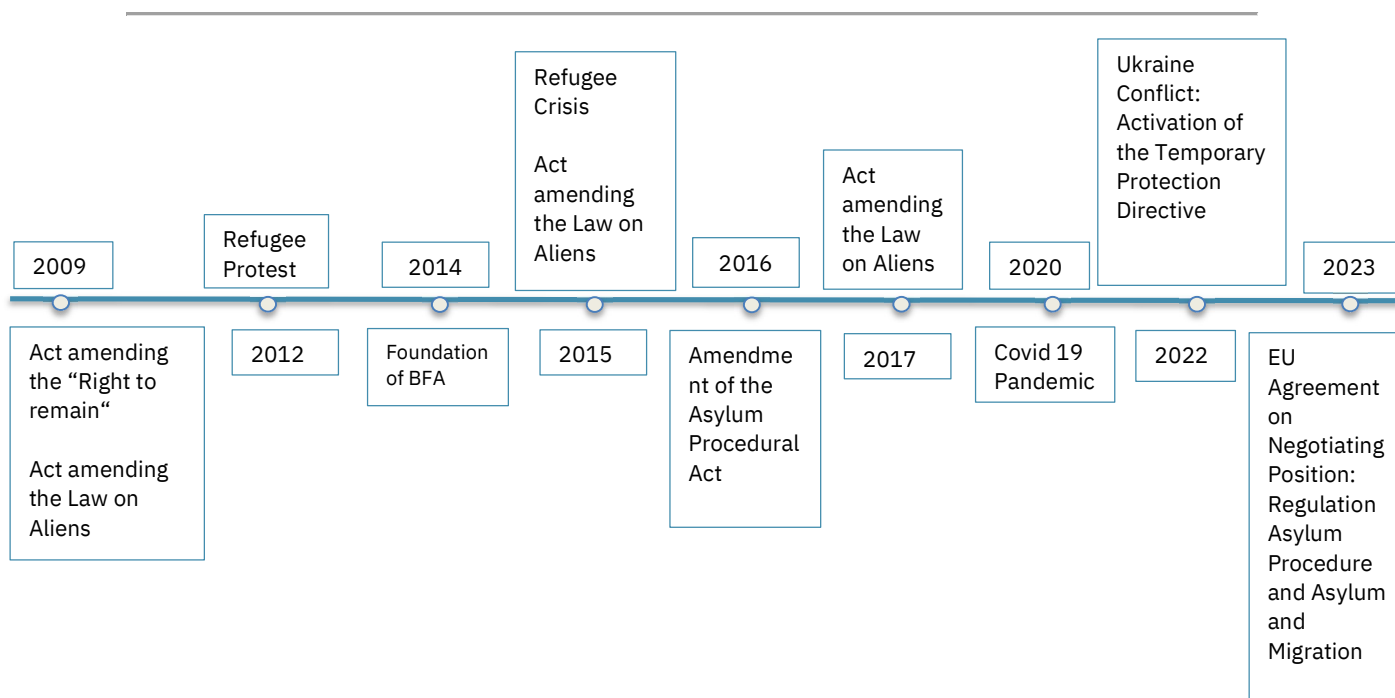
- **Penalties in case of unlawful stay**

Stiff penalties apply to individuals staying unlawfully in Austria. Foreign nationals who are themselves held responsible for their failure to comply with an obligation to leave Austrian territory without delay, such as when a return decision issued against them becomes both final and enforceable, commit an administrative offence punishable by a fine of up to €15,000.

- **Penalties in case of unlawful border crossing**

A person who has entered Austrian territory unlawfully (without the mandatory travel documents and visa), commits an administrative offence and can be punished by a fine of €100 to €1,000 or by imprisonment for up to two weeks. A person who has previously been legally punished for illegal entry is liable to a fine of €1,000 to €5,000 or to imprisonment for up to three weeks.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Impact of post-2015 reforms: Increase of precarious residence situations**

The idea of **temporary asylum** ("Asyl auf Zeit") was brought to the political stage in 2016 (Amendment of the Asylum Procedural Act (BFA-Verfahrensgesetzes)). Recent critiques have highlighted: a) the possible negative impacts for asylum seekers and the host society, connected to increased legal uncertainty and instability of asylum status and hence irregularity; b) potential difficulties that refugees may face in integrating into society, because a time-limited status could hinder refugees' ability to find employment and housing; c) the significant bureaucratic burden that results from the legislation considering the effectiveness of individualised examination in case of numerous withdrawal proceedings (Knapp, 2016).

The **2017 Aliens Law Amendment Act** is particularly significant in terms of its impact on the living conditions of irregular migrants and migrants with precarious residence status, especially as related to return centres, mandatory return counselling and area restrictions. If, despite a legally binding return decision, voluntary return does not take place and these persons are not tolerated, a residence requirement (accommodation in centres of the federal government and an area restriction) can be implemented. Furthermore, in case of non-compliance and non-legal residence, administrative fines may be imposed.

- **Increase of withdrawal rate for subsidiary protection and asylum**

Overall, it is apparent that after the introduction of temporary asylum (“Asyl auf Zeit”) in 2016, the number of withdrawal decisions did increase significantly. For both subsidiary protection and asylum, the withdrawal rate increased between 2015 and 2018, with a jump in 2018, and levelling off in 2020. However, in 2020, around 80% of the withdrawal decisions were appealed and annulled by courts (Diakonie, 2020).

- **Impact of regularisation options**

With the "Bleiberechtsnovelle" (BGBl I 29/2009), the provisions on the right to stay on humanitarian grounds were fundamentally changed, which made it possible to apply for a residence permit to maintain private and family life in accordance with Art 8 ECHR and for “exceptional circumstances”. However, the relatively low numbers using these regularisation provisions (applications as well as provisions ex officio) reveal a restrictive application of regularisation possibilities of the Federal Office for Immigration and Asylum, as well as low awareness of this option among migrants.

- **Fluidity between regular and irregular work and residence**

Developments of labour market access and labour market policies in general have likely had a significant effect on migrants with a precarious or irregularised status, since they are mostly unable to access social benefits, and thus have to secure their livelihood through other accessible means (Hombberger & Güntner, 2022). In the Austrian case, a state of flux between regularity and irregularity in regard to residence can be triggered by the fact that a range of residence permits in Austria do not grant access to the labour market (Stern, 2017).

- **Externalisation of migration policy and international cooperation**

In recent years, Austrian authorities widened and deepened their cooperation with other countries, especially in the Western Balkans, to disrupt migratory routes under the heading of “anti-smuggling” and “security”-incentives. One impact of these efforts can be observed at the institutional level, where new thematic alliances between mostly interior ministers, EU delegates, and agencies such as Frontex were formed under the heading of “security partnerships”, established through memoranda of understanding (“Vienna Declaration” and “Prague Declaration”) and the foundation of the Joint Coordination Platform in 2021. With regard to the Austrian policy priority of forced and voluntary return, several bilateral agreements linked to readmission have been concluded with third-countries in 2023.

- **Impact on integration of counselling services into BBU**

In 2020, counselling services for migrants were taken out of the hands of some larger NGOs and integrated into a government institution (the BBU), which is subordinate to the Ministry of Interior. A wide range of (I)NGOs raised concerns regarding the independence of the BBU and bundling these services in a government agency. The decoupling of support and counselling services from NGOs could therefore cause migrants with irregular status or negative experiences with state institutions to avoid contact (Asylkoordination, 2020; Fritsche et al., 2019). In addition, travel costs incurred for return and legal advice can be a further obstacle.

- **Policy impacts on gender-specific irregularity**

Gender-specific aspects of migration also entail gender-specific residence precariousness: Family reunification is an important means of residence for migrating women in particular, but it is characterised by dependence on the residence rights of the (male) partner. The three-year waiting period before (mostly male) beneficiaries¹ of subsidiary protection can apply for family reunification (beneficiaries of asylum do not have this waiting period), combined with the required proof of adequate housing, health insurance, and sufficient income, increase the risk that women choose an irregular entry route, such as with the support of migrant smugglers.

1.2.4 Policy challenges in addressing migrant irregularity

- **Covid-19 restrictions**

Policies related to the COVID-19 pandemic aimed at reducing mobility, including transnational mobility, in a number of ways. This entailed border restrictions and enhanced border control and hence likely influenced geographical (irregular) migration flows, including inflows, onward movements and return. The pandemic also posed severe challenges to carrying out (forced) returns, particularly in 2020, due to flight cancellations, border closures, COVID-19-related entry regulations and strict quarantine regulations. The pandemic also had an impact on the employment of third-country nationals in various labour market sectors, such as seasonal and harvest work, as well as the care sector (Scherndl, 2021).

- **Gender equitable implementation of regularisation**

The severely limited flexibility of the conditions of application for residence permits for exceptional circumstances contrasts with the very different biographical constellations and legal circumstances that apply to irregular migrants in practice. An important facet of these circumstances is gender-specific exclusionary effects. Requirements for regularisation opportunities are strongly linked to performance-based integration evidence, such as income generation and language acquisition. Women in particular, some of whom have (multiple) care responsibilities, are often unable to provide this evidence, which makes it more difficult for them to access pathways out of irregularity.

- **Harmonised implementation of access to basic social care in the provinces**

When it comes to accessing social assistance by migrants in an irregular situation, dynamics in the multi-level-governance of these services pose a challenge for the implementation of services, including for non-removed persons. Provinces transpose the national law (“Basic Care Agreement”) very differently in terms of including/excluding non-removed persons from access to basic care, even though they are an explicit target group of this legal provision. Moving the place of residence

¹ For more information, see the data on the granting of subsidiary protection (asylum statistics) from the Federal Ministry of the Interior at <https://www.bmi.gv.at/301/Statistiken/>.

often does not improve the situation, as only the province in which they are initially registered is responsible for providing basic social care.

- **Implementation of toleration (“Duldung”) and residence permits for exceptional circumstances**

This restrictive implementation practice also includes the very low number of toleration cards issued to irregular migrants deemed non-deportable. Based on the known figures on toleration and residence permits for exceptional circumstances, these residence permits represent only a small number of cases. Data on the toleration status are not publicly available, but according to parliamentary inquiries approximately 200 to 300 cards are issued per year.

- **Standardisation of bureaucratic processes and increased transparency**

The fact that often only the suspension of removal is granted de facto poses a challenge for a coherent implementation and access to basic care. In those cases, migrants don’t receive a written confirmation of the suspension, which they might need in order to be entitled to basic social assistance (FRA - European Union Agency for Fundamental Rights, 2011), depending on the way the basic care provision is implemented in the respective province.

Table 1: Relevant Austrian institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Federal Ministry of Interior (BMI – Bundesministerium für Inneres)	The BMI is responsible, among other things, for security, state borders, the organisation of the service operations of the Federal Police, citizenship, and disaster management. Furthermore, the BMI is responsible for organising and conducting elections, referendums and referendum petitions, and organises internal administration in the provinces (Bundesländer).	Link (AT)
2.	Federal Office for Immigration and Asylum (BFA- Bundesamt für Fremdenwesen und Asyl) / Federal Ministry of Interior	The BFA has nationwide jurisdiction and is directly subordinate to the Ministry of Interior. The main tasks of the BFA include conducting first-instance asylum and Aliens Law proceedings – except for criminal proceedings and visa matters – as well as issuing residence permits for exceptional circumstances. The BFA enforces the Asylum Act (2005, AsylG), the 7 th (deportation and toleration), 8 th (measures terminating residence) and 11 th (Austrian documents for foreigners) main section of the Aliens Police Act (2005) and the Federal Basic Care Provision Act.	Link (AT)
3.	Federal Criminal Police Office (BK -	The Federal Criminal Police Office is subordinate to the Directorate General for Public Security in the	Link (AT)

	Bundeskriminalamt) / Federal Ministry of Interior	Ministry of Interior and began operational activities in 2003. The BK supports all provincial criminal investigation offices and subordinate police departments by providing assistance and support services, as well as analysis and evaluation of results. In the context of irregular migration, particular emphasis should be placed on the fields of combating human trafficking, smuggling and organised crime, and international police cooperation.	
4.	Federal Agency for Reception and Support Services (BBU - Bundesagentur für Betreuungs- und Unterstützungsleistungen) / Federal Ministry of Interior	The agency was created in 2019 (Act establishing the Agency) and became operational as of 1 July 2020. Areas of responsibility include: basic care, return counselling and assistance, legal advice and legal representation, human rights monitoring, interpretation and translation services. The BBU is a state agency. In the BMI organisation chart, the BBU is assigned to Directorate General V (Migration and International Affairs)/ Directorate V/B (Integrated Border Management, Foreign Nationals Police, Asylum and Return).	Link (AT) and Link (AT)
4.	Joint Coordination Platform (JCP) (Koordinationszentrum für Migration) / Federal Ministry of Interior	The Joint Coordination Platform (JCP) started its activities on 1 January 2021 and is directly assigned to the Federal Ministry of Interior/ Directorate General V (Migration and International Affairs). The platform is a joint initiative of Austria and interested EU member states and partners. It operates on a permanent basis. The tasks of the JCP include among others the monitoring and analysis as well as strategy and coordination of activities in the Western Balkan region and along the Eastern Mediterranean route; funding and financing programmes; as well as anti-trafficking measures.	Link (AT) and Link (AT)
5.	Finance Police (Finanzpolizei) / Federal Ministry of Finance	Regulatory tasks include, among others, the detection of illegal employment of foreigners and of violations of the provisions of the Wage and Social Dumping Prevention Act (LSD-DB); and of social fraud. These tasks are particularly important with regard to irregular migrants in irregular work situations.	Link (AT)
6.	Federal Ministry of Labour and Economy (BMAW - Bundesministerium)	The tasks of the BMAW include, among others, the transmission of labour market policy targets to the Labour Market Service (Arbeitsmarktservice (AMS), which is responsible for implementation; labour law and compliance with labour law provisions, national	Link (AT)

	Arbeit und Wirtschaft)	and international market strategies, tourism and, in connection with the aforementioned points, the Employment of Foreign Workers (Act).	
7.	Aliens Police (Fremdenpolizei) / Federal Ministry of Interior	As defined in the Aliens Police Act § 2 the Aliens Police is responsible for 1) preventing the unlawful entry of foreigners; 2) supervising the stay of foreigners in the federal territory; 3) deporting foreigners back and transporting them through; and 4) preventing and stopping criminal acts under this federal law. The areas of focus of the Aliens Police in the provinces (Bundesländer) can vary, e.g. the Aliens Police Department in Vienna is also the coordination centre for air and land deportations, especially charter deportations.	Link (AT) and Link (AT) and Link (AT)
8.	Federal Administrative Court Austria (Bundesverwaltungsgericht Österreich)	The Federal Administrative Court decides on appeals against decisions of the Federal Office for Immigration and Asylum concerning applications for international protection, Austria's responsibility for conducting the asylum procedure (including as related to Dublin procedures), granting residence permits for humanitarian reasons, decisions on the termination of the stay of foreigners in Austria, organising their departure, imposing detention pending deportation; as well as on complaints about measures and delays, and against the refusal of a visa.	Link (AT)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN AUSTRIA: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Austria

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayers (third-country nationals)	<p>Third-country nationals who lawfully entered Austria (with the travel documents and visas (if needed) required) but stayed beyond the time limits or conditions of the entry permission or the visa-free stay or the determined duration of stay. Unlawful residence is an administrative offence.</p> <p>Penalties: a fine of unlawful residence: €500 up to €2,500 or imprisonment for up to two weeks.</p>

	In case of an already existing conviction of an illegal stay, fines from €2,500 to €7,500 or imprisonment for up to four weeks; deportation; entry ban.
Rejected asylum seekers and persons who have applied for subsidiary protection	A person covered by a 1 st instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period. A complaint can be filed with the Federal Administrative Court within 14 days. The BFA can issue a return decision, which must be complied with within 2 weeks. If there is no voluntary return, a deportation can be implemented and an entry ban may be issued.
Persons who have crossed the Austrian border unlawfully and have not applied for international protection	A person who has not entered Austrian territory lawfully (without the mandatory travel documents and visa) commits an administrative offence. Penalties: a fine of €100 to €1,000 or imprisonment for up to two weeks. A person who has already been legally punished for illegal entry is liable to a fine of €1,000 to €5,000 or to imprisonment for up to three weeks; deportation; entry ban. Any foreigner who does not reside lawfully in the territory of Austria (without a valid visa or residence permit) commits an administrative offence. Penalties: fine of €500 up to €2,500 or imprisonment for up to two weeks. In case of an already existing conviction for an illegal stay, fines range from €2,500 to €7,500 or imprisonment for up to four weeks; deportation; entry ban.
Tolerated persons	Persons concerned have received a return decision but cannot return due to legal or practical obstacles beyond their control (e.g., if the responsible embassy refuses to issue the required travel or identity documents). Even if toleration status is granted, a person remains an irregular resident and the return decision remains in force. If the conditions for toleration cease to apply, the toleration status is withdrawn.
Children born to irregularly residing parents, or whose parent(s) have a residence permit but have not met the administrative requirements.	Children born in Austria who do not possess Austrian citizenship stay legally in Austria for the first six months after birth, provided that the mother or another foreigner who is responsible for child care and upbringing of the child is legally resident in Austria. This applies for as long as the person concerned remains lawfully resident. If the father has the sole right to the care and upbringing of the child, his legal residence is a prerequisite for the child's legal residence during the first six months of life. If the mother and/ or father of a child born in Austria stay irregularly or have not met the necessary administrative steps within the first six months after birth, the child is also irregularly resident.

Migrants issued with a return decision who do not leave the country in the mandatory time.	Migrants who have received a final return decision and do not comply with the obligation to leave the country within the mandatory time. Administrative offence. Penalties: fine of up to €15,000 or imprisonment up to six weeks; deportation; entry ban.
Third-country nationals with entry or residence ban.	Third-country nationals, who have entered or remained in Austria despite a ban on entry or residence. Administrative offence. Penalties: a fine ranging from €5,000 to €15,000 or to imprisonment for up to six weeks; deportation.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum seekers	The Austrian Asylum Law defines an individual as an asylum seeker from the moment of lodging an application for international protection until the final conclusion, discontinuation or the procedure deemed no longer relevant.
Witnesses or victims of human trafficking	Victims and witnesses of human trafficking can apply for the special protection residence permit. The residence permit is valid for max. one year and can be extended. Persons concerned can access the labour market with an employment permit, no labour market screening required .
Victims of cross-border prostitution trafficking	Victims of transnational prostitution trafficking can apply for the residence permit special protection. The residence permit is valid for maximum one year and can be extended. Persons concerned can access the labour market with an employment permit, no labour market screening required.
Victims of domestic violence.	Victims of domestic violence can apply for the special protection residence permit. The residence permit is valid for maximum one year and can be extended. Persons concerned can access the labour market with an employment permit, no labour market screening required.
Tolerated third-country nationals who are subject to the non-refoulement principle or cannot return for factual and / or practical obstacles.	Tolerated persons are still irregularly resident in Austria and do not have access to the labour market if they did not have access to the labour market prior the toleration status was granted (e.g., if a person has lost his/her residence permit due to delinquency, but cannot return). If a person has been tolerated for more than one year he/she can apply for the special protection residence permit. This residence permit is valid for max. one year and can be extended. Holders of such a residence permit can access the labour market with an employment permit, no labour market screening required.
Third-country nationals and EU-citizens with	Persons eligible can apply for a residence permit for reasons of Article 8 ECHR: Art 8 of the ECHR involves weighing the private and/or family interests of the person in remaining in Austria against the interests of

residence claims based on private and family interests (Art 8 ECHR)	Austria in removing the person from the country. The type, duration and lawfulness of the residence, the actual existence of a family life, the worthiness of protection of the private life, the degree of integration, the ties to the home country and the criminal record are taken into account. Persons concerned are eligible for the standard residence permit: access to the labour market with an employment permit, labour market screening required and the residence permit plus with unrestricted labour market access.
Third-country nationals with residence claims based on the duration of residence and degree of integration	Persons eligible can apply for a 'residence permit in particularly exceptional cases': The prerequisite for issuance is the proof of five years of continuous residence in Austria (at least three years of the total duration of residence must have been legal), the legal right to accommodation, sufficient health insurance and regular income. Furthermore, the integration degree is considered,. Persons concerned are eligible for the standard residence permit: access to the labour market with an employment permit, labour market screening required; and the residence permit plus with unrestricted labour market access.
EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Overstayer (EU citizens who don't fulfil the requirements for a stay exceeding the three months visa-free time).	EU citizens are entitled to a visa-free stay in Austria for three months but must fulfil various requirements for the extension of the stay, such as self-employment or employment in Austria; availability of sufficient means of subsistence and health insurance coverage for themselves and family members; or the main purpose of the stay is (vocational) training. Furthermore EU citizens and their family members might lose the right of residence if there is a threat for reasons of public order or security, or the evidence of the registration certificate or the residence cards for dependents is not provided). If persons concerned remain in Austria without a valid registration certificate, their stay becomes irregular. Penalties: administrative offence, fine from €500 up to €2,500 or imprisonment for up to two weeks. In case of an already existing conviction for an illegal stay, fines amount from €2,500 to €7,500 or imprisonment for up to four weeks; deportation.
EU citizens who are subject to a residence ban but have not left, or who have re-entered, the country.	The conditions for a residence ban according to § 67 of the Aliens Police Act apply to EEA nationals, Swiss nationals or third-country national family members. A residence ban is issued if, due to their personal conduct, public order or safety is endangered. The personal conduct must constitute a real, present and substantial danger affecting a fundamental interest of society. Criminal convictions alone cannot justify these measures. In principle, a residence ban can be issued for a maximum of 10 years; an unlimited residence ban is only possible under special conditions. Administrative offence.

	Penalties: fine of €5,000 to €15,000 or imprisonment for up to six weeks.
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1.3.1 Pathways into and out of irregularity

- **Irregular border crossing, irregular resident persons and overstayers**

A third-country national is considered to have entered Austria illegally if he/she enters Austria without the required visa and travel documents. If no application for international protection is filed after entry, he/she is an irregular resident. EU citizens are eligible to a three month visa-free stay, afterwards they have to meet some requirements (such as sufficient means of subsistence, health insurance) that are necessary for the issuance of a “certificate of registration”.

- **Loss of status**

Reasons for the loss of residence status might be non-renewal of a residence permit for not meeting the residence requirements anymore; or breaching conditions of residence, e.g., due to criminal convictions, loss of income and health insurance, sham marriage, divorce from a person entitled to residence, irregular employment or longer breaks in residence, e.g. the residence permit "Permanent Residence - EU" expires automatically if a third-country national consistently stays away from the EEA territory for more than twelve consecutive months. In addition, temporary asylum status can expire and not be renewed if conditions in the country of origin have changed.

- **Legalisation of the status**

The formal instruments for regularisation are the residence permits for exceptional circumstances, which, moreover, do not constitute a norm, but are only granted in special cases on the basis of case-by-case assessments (BFA, 2023). The numbers of formally regularised persons by residence permits for exceptional circumstances varies since 2020 between about 2,500 and 3,200. Furthermore, regularisation or legalisation of the status can also take place through entitlement by marriage to a national or an EU citizen, or as a consequence of EU accession of the irregular migrant’s country of origin.

- **Voluntary return**

Migrants can generally participate in return programmes regardless of how long they have been regular or irregularly staying in the country. The measures for the support of voluntary return are based on a 4-pillar model, consisting of information tools, return counselling, return assistance and reintegration offers (Ministry of Interior, 2022). However, in the case of an irregular stay, the financial means of support can be reduced significantly.

- **Forced removals**

A forced removal is only possible by official order of the Federal Office for Immigration and Asylum (BFA) if there is an enforceable return decision, an order for removal, a deportation order or an entry/residence ban. Deportations are carried out

on behalf of the BFA, the provincial police directorates are responsible for enforcement. Forced removals can be carried out by land or air, in cooperation with other EU member states and, since 2022, with the support of Frontex.

1.3.2 Regularisation

- [2009, Residence permit for reasons of Article 8 ECHR](#)

Eligibility criteria:

- private and/or family interests of the person in remaining in Austria prevail over interests of Austria in removing the person from the country.

Further criteria to be considered:

- type, duration and lawfulness of the residence
- existence of a family life and private life
- degree of integration
- ties to the home country
- (no) criminal record

- [2009, Residence permit in particularly exceptional cases](#)

Eligibility criteria:

- proof of five years of continuous residence in Austria (at least three years of the total duration of residence must have been legal)
- degree of integration, in particular the self-sustaining capacity, education, vocational training, employment, German language skills

Further criteria to be considered:

- legal entitlement to accommodation according to local standards
- sufficient health insurance
- regular income

- [2009, Residence permit special protection](#)

Eligibility criteria:

- witnesses or victims of human trafficking
- victims of transnational prostitution trafficking
- victims of domestic violence
- persons whose stay in Austria has been tolerated for more than one year because they are subject to the ban on refoulement or cannot be deported for reasons for which they are not responsible

- [2009, Standard residence permit](#)

Eligibility criteria:

- Requirements correspond to the residence permit for reasons of Article 8 ECHR or the residence permit for particularly exceptional cases

- [2009, Residence permit plus](#)

Eligibility criteria:

- Requirements correspond to the residence permit for reasons of Article 8 ECHR or the residence permit for particularly exceptional cases
 - successful completion of module 1 of the integration agreement or
 - lawful gainful employment (above the marginal earnings threshold).
- [2009, toleration \(“Duldung”\)](#)
Eligibility criteria:
 - Persons whose return or forced removal is not possible for legal or practical reasons beyond their control (i.e., if the responsible embassy refuses to issue the required travel or identity documents).

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Aliens Act (“Fremdenrecht”)	1997	Merging of the Aliens Act and the Residence Act in the Aliens Act 1997. The Aliens Act 1997 facilitated to grant a residence permit for humanitarian reasons.	Link (DE)
2	Basic Care Agreement (“Grundversorgungsvereinbarung”)	2004	Agreement between the Federal Government and the provinces on joint measures for temporary basic care for foreigners in need of assistance and protection (incl. asylum seekers, persons entitled to asylum, displaced persons and other persons non-deportable for legal or factual reasons) with the goal of a nationwide standardisation of the guarantee of temporary basic care. Basic care should be uniform throughout the country, implemented in partnership, avoid regional overburdening and create legal certainty for the persons concerned.	Link (DE)

3	Aliens Law Package (“Fremdenrechtspaket”)	2005	Repeal of the Aliens Act and replacement by the Aliens Police Law, the Asylum Act and the Settlement and Residence Act. Standardisation and systematisation of the ‘residence permits for humanitarian reasons’ (“Aufenthaltstitel aus humanitären Gründen”) in the Settlement and Residence Act (NAG - Niederlassungs- und Aufenthaltsgesetz). Conditions and requirements for legal residence and lawful departure and definitions of unlawful entry and residence, as well as related administrative penalties for third country nationals, are specified in §31 and §120 of the Aliens Police Act (2005).	Link (DE)
4	Home Care Act (“Hausbetreuungsgesetz”)	2007	The Home Care Act represents one of Austria's largest regularisation initiatives. It enabled 24-hour caregivers to transition to a regularised independent or dependent employment relationship in 24-hour care, mainly affecting persons from Central and Eastern Europe.	Link (DE)
5	Amendment to the “Right to Remain” (“Bleiberechtsreform”)	2009	Reform of the “residence permits for humanitarian reasons” including a right of application. Introduction of the “right to remain” and the “special protection residence permit”. Regularisation of certain groups: “old case regulation”.	Link (DE)
6	Act amending the Law on Aliens (“Fremdenrechtsänderungsgesetz”)	2009	The legal instrument of toleration was created. If the return of a person seems inadmissible or impossible, he or she can receive a tolerated status and ID card. Tolerated persons remain irregular. The ID card is valid for one year; if the obstacles to return still exist, the tolerated status can be extended.	Link (DE)

7	Aliens' Authorities Restructuring Act (amendments 2013 and 2014) (FNG – Fremdenbehörden - neustrukturierungsgesetz")	2012	Federal Act enacting the Federal Office for Immigration and Asylum (BFA – Bundesamt für Fremdenwesen und Asyl) Establishment Act and the BFA Procedures Act and amending the Asylum Act 2005, the Aliens Police Act 2005, the Settlement and Residence Act, the Citizenship Act 1985, the Basic Care Act and the Introductory Act to the Administrative Procedures Acts 2008.	Link (DE)
8	Act amending the Law on Aliens ("Fremdenrechtsänderungsgesetz")	2015	Reform of toleration: When issuing a return decision, the admissibility of the return decision must be assessed by the authorities with regard to a possible refoulement violation. Identifiable obstacles to return must be taken into account when issuing a return decision.	Link (DE)
9	Act amending the Law on Aliens ("Fremdenrechtsänderungsgesetz")	2017	Persons, who have received a return decision and don't leave voluntarily / or fail to comply with their duty to cooperate / or are unable to provide proof of such cooperation can be obliged to take up accommodation in one of the federal quarters (residence requirement) and may be imposed a territorial restriction. Establishment of administrative penalties in case of non-compliance with residence requirement and with following a return decision.	Link (DE)
10	Fundamental Act on Social Assistance ("Sozialhilfe-Grundsatzgesetz")	2019	Foreign nationals who received a return decision and are obliged to leave the country are excluded from the access to social assistance benefits.	Link (DE)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Amendment to the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”) within the framework of the “Growth and Employment Act” (“Wachstums- und Beschäftigungsgesetz 2005”)	2005	Significant increase of the maximum penalties for illegal employment to make illegal employment unattractive. Involvement of the tax offices and their bodies in measures against illegal employment.	Link (DE)
2	Amendment to the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”)	2007	Implementation of equal rights of beneficiaries of subsidiary protection and beneficiaries of asylum in terms of free access to the labor market.	Link (DE)

3	2 nd Amendment to the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”)	2009	The following persons may be granted access to the labor market through an employment permit: a) foreigners who have a right of residence under the Settlement and Residence Act or the Aliens Police Act that does not preclude employment; b) asylum seekers who have been admitted to the asylum procedure for three months and have de facto protection against deportation; c) asylum seekers who have filed a subsequent application after a rejected decision and have de facto protection against deportation; d) tolerated persons (pursuant to Section 46a FPG) who have lost protection status (asylum or subsidiary protection) and thus already had access to the labor market.	Link (DE)
4	Implementation of the EU Sanctions Directive (2009/52/EC) in the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”)	2011	Newly regulated and penalised are: the illegal employment of irregularly resident third-country nationals and migrant minors without residence permit; the employment of foreigners under particularly exploitative working conditions; the use of labor obtained under force and exploitation of trafficked persons; the employment of a larger number of foreigners without the right of residence for longer than one month (Bundesministerium Arbeit und Wirtschaft, 2022).	Link (DE)
5	Amendment of the Asylum Procedural Act (BFA-Verfahrensgesetzes)	2016	Specifications and amendments on regulations on counselling of asylum seekers and on the duration of the right to remain (“Asyl auf Zeit”). All persons who have applied for asylum after November 2015 don´t receive permanent settlement rights anymore. Furthermore, the amendment implemented a three-year waiting period before beneficiaries of	Link (DE)

			subsidiary protection may apply for family reunification.	
6	Amendment to the “Employment of Foreign Workers Act”	2017	Asylum seekers admitted to the asylum procedure for three months are entitled to perform typical household services in private households without an employment, with payment via the service voucher (Bundesministerium Arbeit und Wirtschaft, 2022).	Link (DE)
7	Amendment to the “Employment of Foreign Workers Act” (“Ausländerbeschäftigungs-gesetz”) and the “General Social Security Act” (“Allgemeines Sozialversicherungsgesetz”)	2017	Implementation of the requirements of the EU Seasonal Directive (2014), which, were already largely in line with the Austrian seasonal model. Its objectives are to contribute to seasonal migration management and to ensure decent working and living conditions for seasonal workers (Humer & Spiegelfeld, 2020).	Link (DE)
8	Integration Year Act (IJG – “Integrationsjahr-gesetz”) and legal anchoring of the Integration Year Act within the framework of the Labor Market Integration Act (“Arbeitsmarktintegrations-gesetz”).	2017	This federal law addresses persons entitled to asylum and subsidiary protection and asylum seekers with a high likelihood of recognition. It includes measures promoting the acquisition of German language skills and qualifications required for labor market integration, to increase the chances of sustainable employment in the regular labor market (Bundesministerium Arbeit und Wirtschaft, 2022).	Link (DE)

9	Annulment by the Constitutional Court of the Bartenstein Decree (BMWA, 2004) and the Decree of Beate Hartinger-Klein (BMASK, 2018)	2021	With the repeal of the Bartenstein (2004) and Hartinger-Klein (2018) decrees concerning the restrictions of employment permits for asylum seekers only to temporary employment in seasonal work or harvesting assistance, asylum seekers may have unrestricted access to the labor market after three months, but under the condition of a labor market test and an employment permit to be obtained by the employer.	Link (DE)
10	Activation of the "Temporary Protection Directive". Federal Government Ordinance on a Temporary Right of Residence for People Displaced from the Ukraine ("Verordnung der Bundesregierung über ein vorübergehendes Aufenthaltsrecht für aus der Ukraine Vertriebene	2022	The legal framework for temporary protection is laid down in the Asylum Act (Section 62 and the Displaced Persons Ordinance). The target groups are Ukrainian citizens residing in Ukraine before 24 February 2022, beneficiaries of international protection recognised in Ukraine and family members of these two groups. Beneficiaries of temporary protection have access to the Austrian labor market and basic care.	n/a

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Belgium Country Brief on Irregular Migration Policy Context

AUTHORS:

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Belgium

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Promoting voluntary return**

Belgium has implemented structured initiatives to encourage the voluntary return of rejected asylum seekers and undocumented migrants (Lietaert et al., 2017). By facilitating their departure and providing reintegration support, the government seeks to offer a pathway back to their home countries.
- **Refining detention practices**

Belgium maintains detention centres, termed ‘closed centres,’ to hold irregular migrants, including rejected asylum seekers, during deportation processes. However, questions have arisen about the appropriateness of detaining vulnerable groups, prompting discussions about alternative measures.
- **Combating human trafficking**

Belgium has taken proactive steps to counter human trafficking and migrant smuggling. Legislative actions aim to combat these criminal activities and safeguard irregular migrants from exploitation.
- **Pursuing selective regularisations**

Selective regularisations have been historically employed, granting legal status to migrants who fulfil specific criteria. However, questions around the fairness and efficacy of such programmes have sparked debate.

1.2 OVERVIEW OF THE BELGIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Coercive Measures for Voluntary Return**

Belgium has introduced measures aimed at facilitating the voluntary return of irregular migrants, including rejected asylum seekers. The law of 19 January 2012 amended the Reception Act and introduced the concept of the ‘return path,’ defined as individual support offered to facilitate the return of rejected asylum seekers. Coercive measures may be applied in cases of resistance. These measures could involve administrative penalties or restrictions on access to certain services to incentivise voluntary return.

- **Penalties for Human Trafficking and Migrant Smuggling**

Belgium has adopted laws to combat human trafficking and migrant smuggling, aiming to protect irregular migrants from exploitation and abuse. Penalties for individuals involved in such criminal activities can include imprisonment, fines, and asset seizures. Additionally, penalties may apply to businesses or organisations facilitating human trafficking or smuggling.

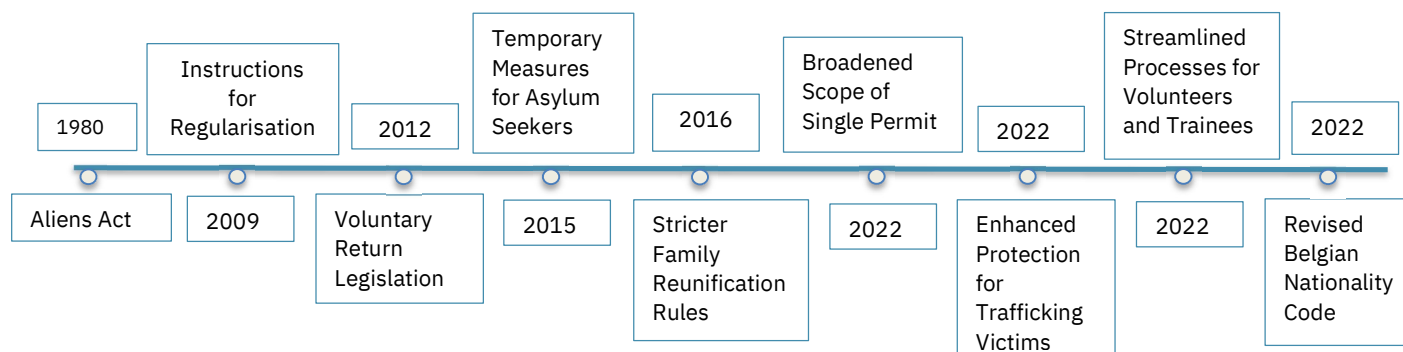
- **Reforms and Penalties for Detention Practices**

Belgium maintains “closed centres” to detain irregular migrants, including rejected asylum seekers. In response to criticism and international standards, Belgium is in the process of transitioning towards banning child detention and devising alternatives. The Immigration Office (IBZ) charges penalties for not adhering to these reforms, which could involve legal action, fines, or restrictions on detention practices.

- **Restrictions on Transit Migration**

Belgium has taken steps to restrict transit migration. The government aims to limit the movement of irregular migrants through its territory. Penalties for individuals attempting to transit through Belgium without legal authorisation may include detention, deportation, or fines. Furthermore, businesses or individuals facilitating transit migration may also face penalties.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Assisted Voluntary Return (AVR)**

AVR programmes, initially a central pillar of asylum and migration policy, aimed to promote voluntary return. However, over the years, policy shifts and changes in enforcement have influenced the behaviour of undocumented immigrants, affecting their choices more towards seeking asylum than joining the AVR programmes (Vandevoordt, 2017).

- **Detention and Deportation**

The shift from passive tolerance to active expulsion through enforcement of “Orders to Leave the Territory” and forced deportations has significant implications (Wittock et al., 2023). The policy focus on detention and deportation impacts the treatment of undocumented immigrants and their ability to remain in the country (Wéry, 2023).

- **Regularisation**

Changes in immigration policies, including stricter labour regulations, have indirect consequences on the regularity of migrants’ status (Chauvin et al., 2013). Stricter sanctions for employers hiring undocumented workers affect employment opportunities for irregular migrants, potentially influencing their regularisation prospects (Van Meeteren, 2014). That is because a lack of employment hinders irregular migrants to be financial stable for applying for regularisation. Also, the regularisation process is highly costly in Belgium and most migrants are financially unable to apply.

- **Combat Human Trafficking**

Policies aimed at combating human trafficking intersect with irregular migration, as some irregular migrants may be vulnerable to exploitation by traffickers (van der Leun & van Schijndel, 2016). The effectiveness of these policies and their impact on reducing irregular migration and protecting vulnerable migrants is a significant concern for some stakeholders regarding the overall policy framework .

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Obstacles to Return**

Repatriating irregular migrants to their countries of origin poses complex challenges, especially in countries with deteriorating security and economic conditions like Afghanistan and Syria (Scalettaris & Gubert, 2019). This challenge is exacerbated by migrants’ apprehension about returning to uncertain prospects in their home countries. Moreover, lack of collaboration with some countries of origin hampers the execution of return policies, challenging government policies on return.

- **Multifaceted Motivations of Irregular Migrants**

Policies aimed at reducing support and aid to irregular migrants may not deter them from staying in host countries. Irregular migrants often have strong personal ties and motivations beyond financial assistance, emphasising the importance of understanding their complex motivations when devising policies.

- **Resource Scarcity for NGOs**

NGOs play a critical role in supporting irregular migrants, but they face challenges due to limited resources and funding (Hantson et al., 2022). This scarcity impedes their ability to provide adequate assistance and worsens the already challenging conditions faced by this vulnerable population.

Table 1: Relevant Belgian institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	The Federal Government Department for Interior Affairs (ibz)	The Federal Government Department for Interior Affairs (ibz, Service public fédéral Intérieur) is responsible, inter alia, for managing migration flows, asylum seekers and unlawfully present 'aliens'. The ibz is the competent body for access to territory, residence, settlement and expulsion of foreign nationals. In general, ibz is responsible for coordinating security and public order, civil protection, immigration and asylum, police and security services, nationality and civil registration, local authority support, elections, and emergency management.	Link (EN)
2.	The Commissioner General for Refugees and Stateless Persons (CGRS/CGRA)	The Commissioner General for Refugees and Stateless Persons (CGRS) is in charge of refugees and stateless persons. CGRS is responsible for assessing and determining the eligibility of asylum seekers for refugee status or subsidiary protection, ensuring a fair and thorough examination of asylum claims, and providing legal and administrative support to individuals seeking protection in Belgium.	Link (EN)
3.	Aliens Litigation Council (CCE)	CCE is an administrative court composed of judges who rule independently on appeals brought before it. CCE is responsible for reviewing and adjudicating appeals and disputes related to the legal stay, residence	Link (BE)

		permits, deportation, detention, and other immigration-related matters concerning foreigners in the country.	
4.	Fedasil	Fedasil is the Federal Agency responsible for the reception and voluntary return of asylum seekers and other similar target groups in Belgium. Fedasil facilitates material aid to asylum seekers and to other categories of foreigners with equal rights to reception (in accordance with the 'Reception Act' of 12 January 2007).	Link (EN)
5.	Public Centre for Social Welfare (CPAS/OCMW)	The Public Centre for Social Welfare, known as Openbaar Centrum voor Maatschappelijk Welzijn (OCMW) in Dutch and Centre Public d'Action Sociale (CPAS) in French is responsible for ensuring the well-being of every lawfully resident inhabitant of Belgium. In general, CPAS/OCMW is responsible for providing social assistance, welfare services, and support to individuals and families in need, including financial aid, housing assistance, medical and social services, and various forms of social support. In rare situations, CPAS/OCMW supports undocumented migrants which includes access to emergency shelter, medical care, food aid, and other basic necessities. However, the level and type of support can vary depending on local policies, available resources, and the specific situation of the individual.	Link (BE)
6.	State Secretary for Migration	The Belgian State Secretary for Migration takes measures to regularise migrants under very specific criteria. The State Secretary for Asylum and Migration in Belgium is responsible for formulating, implementing, and overseeing policies related to immigration, asylum, border control, regularisation, international cooperation, integration, legislation, and public communication.	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN BELGIUM: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Belgium

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
<p>Visa overstayer</p>	<p>A person who has legally entered but then stayed beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and/or residence permit.</p> <p>Penalties in Belgium include fines, immediate deportation or even getting banned from entering the Schengen Zone for a specific amount of time, detention and losing social support.</p>
<p>Rejected asylum seeker</p>	<p>A person whose application for international protection has been reviewed and denied at the final stage following any appeals, encompassing decisions deeming the application inadmissible or unfounded. These decisions are made by administrative or judicial bodies through various procedures, including priority and accelerated processes, during the specified reference period.</p>
<p>People who arrive with a tourist visa and stay for medical support</p>	<p>Individuals from countries with lower medical systems come to Belgium for medical treatment. Based on the Alien Act, migrants regardless of their status are entitled to medical support. Certain conditions apply.</p>
<p>Dublin procedure migrants</p>	<p>Asylum seekers with a fingerprint lodged in other Member State(s) who are asked to leave the territory</p>
<p>Travellers and Romani people</p>	<p>The cities of Brussels, Antwerp, Ghent and Sint-Niklaas have a substantial Roma population. Often, owing to their lifestyle and vulnerabilities, Roma people face challenges in obtaining formal documentation and administrative support, resulting in their status as an irregular or undocumented population.</p>
<p>Transit migrants</p>	<p>Refers to a person who temporarily stays or passes through Belgium (mostly to the UK) during their (irregular) migration journey.</p>

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum seekers without proof of registration	Due to a lack of space for asylum seekers in government shelters, many asylum seekers often sleep rough. Since 2021, Belgium has been facing a serious shortage of space to provide shelter for asylum seekers. In 2023, the CGRS decided to expedite the asylum procedures for individuals with a higher chance of receiving a positive decision. This includes people who worked in the security and political sectors in Afghanistan before the Taliban takeover, as well as individuals with serious illnesses and vulnerabilities.
EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
EU citizens without residence right	Some EU migrants come for a short-term stay but continue to work undeclared or stay with relatives without registering. This includes EU and non-EU institutions' trainees, interns and temporary staff, and students, among others.

1.3.1 Pathways into and out of irregularity

- **Economic and Policy Shifts**

Economic crises and government policy changes, such as restrictions in response to economic crises, can propel individuals into irregularity by limiting opportunities for legal migration and changing the rules for entry into the country (Schoumaker et al., 2022).

- **Loss of Legal Status**

Some individuals initially enter the country legally but later fall into irregularity due to factors such as visa or permit expiration, changes in regulations, and government restrictions (Farcy & Smit, 2020).

- **Staying Undocumented**

Even after the expiration of legal documents or receiving asylum application rejections, some migrants choose to remain undocumented in the country rather than return to their home countries. They may live in vulnerable and legally unprotected conditions, susceptible to exploitation and disadvantages in their places of residence.

- **Article 9 of the Migration Act: Residence Permit**

Article 9 of the Migration Act on Residence Permits allows individuals with valid residence status in another EU Member State to reside in Belgium for specific purposes, fostering freedom of movement within the EU and offering legal pathways for temporary stays, reducing the likelihood of resorting to irregular means.

1.3.2 Regularisation

- **Article 9bis of the Migration Act on Residence Permit**

The Article 9bis Residence Permit enables foreign nationals who do not meet other permit requirements to regularise their stay in Belgium based on exceptional reasons or humanitarian grounds, acknowledging the specific circumstances of individuals residing without legal status or facing changing situations.

- **Article 9ter of the Migration Act on Residence Permit**

The Article 9ter Residence Permit focuses on humanitarian reasons, providing protection and legal status for foreign nationals facing serious threats to their life or physical integrity in their home countries, including those with protection needs and those at risk of torture or inhuman treatment.

- **Other Pathways to Regularisation**

Various less common pathways for regularisation include employment-based regularisations, victimhood-based regularisations for those subjected to human rights violations (including e.g. human trafficking), family (re)unification, and education-based regularisations. These routes offer opportunities for individuals to transition out of irregularity under specific circumstances.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Aliens Act: the Law of 15 December 1980	1980	The Law of 15 December 1980 on access to the territory, residence, settlement and removal of foreign nationals was published in the Belgian Official Gazette on 31 December 1980 and entered into force on 1 July 1981.	Link (FR)
2	The Royal Decree of 8 October 1981	1981	The Royal Decree of 8 October 1981[1] on access to the territory, residence, settlement and removal of foreign nationals was published in the Belgian Official Gazette on 27 October 1981.	Link (FR)
3	Royal Decree of 2 August 2002 – Royal Decree on Closed Centres	2002	Determining the regime and regulations to be applied in the places on the Belgian territory managed by the Immigration Office where an alien is detained, placed at the disposal of the government or withheld, in the application of article 74/8 §1 of the Aliens Act.	Link (FR)
4	Royal Decree on Immigration Office Asylum Procedure	2003	Royal Decree of 11 July 2003 determining certain elements of the procedure to be followed by the Immigration Office charged with the examination of asylum applications based on the Law of 15 December 1980.	Link (NL)
5	Royal Decree on CGRS Procedure	2003	Royal Decree of 11 July 2003 determining the procedure and functioning of the Office of the Commissioner General for Refugees and Stateless persons.	Link (FR) Link (NL)
6	Royal Decree on CALL Procedure	2006	Royal Decree of 21 December 2006 on the legal procedure before the Council for Alien Law Litigation.	Link (EN)

7	Reception Act	2007	Law of 12 January 2007 regarding the reception of asylum seekers and other categories of aliens.	Link (FR)
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[1] In Belgium, the key distinction between a royal decree and a legislative act lies in their scope and authority. Legislative acts are the primary laws enacted by the Parliament, while royal decrees are secondary legal acts issued by the King to provide detailed regulations and guidelines for the implementation of these laws.

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Law of 30 April 1999 concerning the employment of foreign workers	1999	To identify and sanction the illegal employment of third-country nationals and inform on the outcomes for the third-country nationals involved.	Link (FR) Link (NL)
2	Royal Decree of 9 June 1999 implementing the law of 30 April 1999 regarding the employment of foreign workers	1999	Regulating the conditions under which foreign workers can work and the obligations of the employer and the employee.	Link (FR)
3	Law of 26 May 2002 on the right to social integration	2002	Law on Social Integration.	Link (FR) Link (NL)
4	Royal Decree on Legal Aid	2003	Royal Decree of 18 December 2003 establishing the conditions for second-line legal assistance and legal aid fully or partially free of charge.	Link (FR) Link (NL)
5	Royal Decree on Medical Assistance	2007	Royal Decree of 9 April 2007 determining the medical aid and care that is not assured to the beneficiary of the reception because it is manifestly not indispensable and determining the medical aid and care that are part of daily life and shall be guaranteed to the beneficiary of the reception conditions.	Link (FR) Link (NL)
6		2007		Link (FR)

	Royal Decree on the Assessment of Reception Needs		Royal Decree of 25 April 2007 on the modalities of the assessment of the individual situation of the reception beneficiary.	Link (NL)
7	Royal Decree on OOC	2007	Royal Decree of 9 April 2007 determining the regime and functioning rules of the Centres for Observation and Orientation of Unaccompanied Minors.	Link (FR) Link (NL)
8	Amendments to the legal framework regarding students' right to stay	2021	The law concerns students who have the right to stay in Belgium and are subject to amendments in the legal framework. The amendments, implemented through a ministerial decree, introduce new standard documents for applying or renewing a student's residence permit. These documents include a higher education enrolment certificate that serves to demonstrate the purpose and nature of the student's stay, indicating whether it is for final enrolment, provisional admission, a preparatory year, an exchange year, or enrolment for an admission test.	Link (NL)
9	Amendment to the Immigration Act	2022	The amendment concerns a broader category of people who are applying for a single permit from the Belgian territory, particularly volunteers, trainees, and researchers, who would benefit from the partial transposition of Directives (EU) 2016/801 related to volunteers and trainees and researchers, and it addresses issues related to their participation in European volunteer projects, access to traineeships, and eligibility for a search year.	n/a

10	Amendment to the legislation on trafficking and smuggling	2022	The amendment concerns individuals who can be considered victims of trafficking in human beings and (aggravated forms of) human smuggling. It also involves authorities who are explicitly required to refer all victims to specialized reception centres. Additionally, front-line workers and public authorities are part of the amendment's focus, aiming to raise awareness, provide tools for dealing with potential cases, and improve the protection and assistance to victims. The text also mentions posted third-country nationals and labour exploitation, particularly focusing on social dumping and labour exploitation among them, as well as unaccompanied minor girls who are suspected victims of human trafficking (primarily sexual exploitation) and are targeted by a new reception structure.	N/A
11	Amendment to the immigration/alien act	2022	The changes pertain to volunteers and trainees in Belgium, allowing volunteers on European projects to apply for a single permit or work permit and exempting them from the labour market test (Immigration Act), while trainees can obtain permits regardless of age or study program involvement, with adjustments to means of subsistence requirements (Articles 61/13/16 to 61/13/24 and 61/13/25 until 61/13/32).	n/a
12	Amendments to the Royal Decrees determining the functioning of the CGRS and the Immigration Office	2022	Providing the possibility for these instances to organise interviews remotely.	Link (NL)

13	Amendments to the Belgian Nationality Code (BNC)	2022	The amendment involves various changes, such as replacing the term "stateless" with "has no other nationality," streamlining the process of recognizing a child as Belgian; clarifying the accountable civil registrar for the application of Article 10 BNC to the child's place of birth; and formalising the Public Prosecutor's engagement to provide non-binding opinions, replacing the prior dependence on the Nationality Service for guidance, with a novel provision permitting the Justice FPS to be consulted in matters beyond the remit of the Public Prosecutor.	Link (EN)
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Bosnia and Herzegovina Country Brief on Irregular Migration Policy Context

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Nermin Oruc

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Bosnia and Herzegovina

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1. POLICY PRIORITIES

The most relevant policy priorities of BiH for addressing migrant irregularity at the moment, as listed by official policy documents and confirmed at interviews, are:

- **Strengthening institutions**

In particular, the focus is on strengthening capacities of the Border Police, including both human resources and equipment such as surveillance and biometric identification at the borders (DG NEAR, 2022). Activities are currently being implemented through EU-IPA projects and support by the Swiss government. Moreover, the asylum system and temporary reception centers are in the need of further investments to increase their capacities and effectiveness. Finally, services to migrants are currently provided by NGOs (such as legal services) or informal groups, whereas they could be further institutionalised (Organization for Security and Co-operation in Europe, 2018).
- **Readmission agreements**

Following positive experience of readmission agreement with Pakistan, BiH is continuing its efforts to sign agreements with other source countries of irregular migrants to improve the process of return of migrants and discourage their transit through BiH. These efforts aim to have both a preventive (making BiH less attractive transit country) and remedial effect on the magnitude of irregular migration from some countries.

- **Improving legislation related to labour market integration of migrants**
Lack of labour force in specific sectors drives changes in the labour legislation in the direction of easing employment of foreigners. However, regulating their status and rights still remains a challenge.

1.2. OVERVIEW OF THE BOSNIAN AND HERZEGOVINIAN POLICY FRAMEWORK

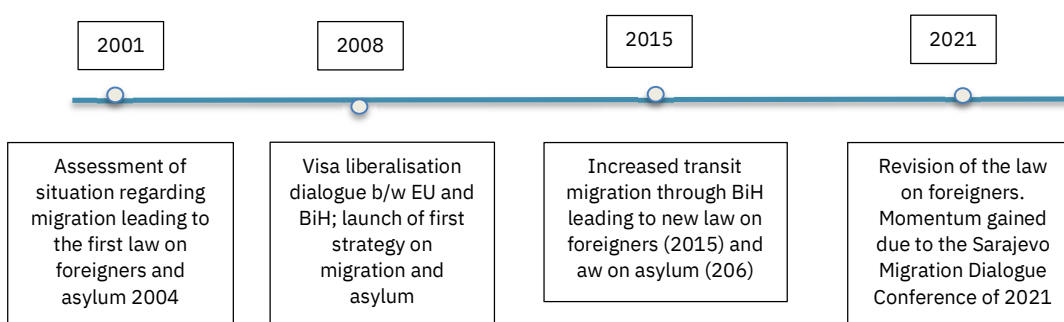
See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Establishing JRAC at the Border Police**
A Joint Risk Assessment Centre was established in accordance with the Integrated Border Management Strategy for BiH 2019-2023, and includes from BiH Ministry of Security, Indirect Taxation Authority, Border Police, Service for Foreigners' Affairs, Plant Health Agency and Veterinary Office. The purpose of this centre is to conduct risk assessments and analysis, and then disseminate the findings to coordinate actions at the sub-regional level and formulate national policies. The JRAC serves as a platform for inter-agency collaboration and communication on risk assessments, by leveraging the analytical capacities of border management agencies and the Ministry of Security. Nevertheless, there still remains much to be done on improvement of the risk analysis capabilities of the JRAC.
- **Improving registration system**
With support of international donors, primarily EU and the Swiss government, BiH is making efforts at improving its documentation of migrants, as well as upgrading and increasing interoperability of a central information system on migration (MIS) (ICMPD, n.d.). Still, further support is needed to ensure full compliance to EC Regulation No 862/2007 and full compatibility with the EURODAC system of the EU member states. In order to improve the management of irregular migration, it is essential to reinforce and standardise the legislative regulations related to the collection of biometric data, data protection and the exchange of information in accordance with the EU acquis.
- **Regularisation of the readmission procedures**
In the case of a readmission from Croatia, which is a European Union member state, irregularities were observed in the readmission process, including the declaration of children as adults. However, in the case of readmission from Bosnia and Herzegovina to Serbia, the process was conducted in a more orderly manner, with the participation of guardians, the service for affairs with foreigners, the border police, and social

services. The children were protected and handed over to social workers, rather than being left at the border.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- Improved capacities of institutions**
 Policies that improved capacities of institutions have reportedly resulted in improved effectiveness and efficiency of their implementation of policies. This includes improved legislation (Bosnia and Herzegovina Ombudsman, 2018) and introduction of new bodies, such as Coordination Body for Migration, initially established in 2013, with extensions of its mandate made in 2016 and 2020. Improved data collection and exchange provided a basis for design of policies based on evidence. Steps forward made recently in both of these areas have improved cooperation and coordination between various institutions involved in management of irregular migration.
- Increase in immigration from countries such as Iraq, Burundi and Cuba**
 According to stakeholders interviewed, the recent increase in the number of irregular migrants from countries such as Iraq is a direct consequence of a visa liberalisation agreements of BiH with these countries, whereas increase of irregular migrants from Burundi and Cuba is reportedly a direct consequence of a visa liberalisation agreements between these countries and Serbia. Migrants reach Serbia without visas, and then enter BiH mainly on foot. This highlights the need for a coordination of migration related policies between neighbouring countries.
- Decline of immigration from countries such as Pakistan**
 According to stakeholders interviewed, they assure that the decline may be primarily explained as a result of signing a bilateral agreement with Pakistan, which reportedly discourages migrants from Pakistan to use the route through BiH because of the threat of quick readmission to Pakistan. If such a causal relationship can be

confirmed, then bilateral agreement can serve as effective mechanisms to discourage irregular migration from the main source countries.

1.2.4 Policy challenges in addressing migrant irregularity

- **A “soft” border**

The border of BiH was described by stakeholders as “soft”, meaning that due to understaffed Border Police in Bosnia (they reported an estimate of more than 1,000 of field staff posts currently not filled), large parts of the BiH border remain unmonitored, which is well known among migrants and smugglers. As the requests for staffing made by Border Police were rejected on several occasions, the challenge to secure political will for it remains. BiH is expected to start negotiations with Frontex soon, which could improve monitoring of its border in the future (Sarajevo Times, 2023).
- **Coordination between institutions**

The rise in mixed migrant flows compelled Bosnia and Herzegovina to intensify its endeavours to enhance migration management. In Bosnia and Herzegovina, authorities are divided among several institutions, resulting in challenges in coordination between these institutions and reducing the effectiveness of law enforcement. Despite recent improvements, considerable challenges persist in terms of institutional collaboration and coordination in the area of migration management. Particularly important is to assure state-led migration management and considerable work remains to be done in that direction (Press and information team of the Delegation to Bosnia and Herzegovina, 2023).
- **Lack of pathways for regularisation of status**

BiH lacks regulation that will allow irregular migrants to regularise their status. The issue is mainly a lack of motivation to introduce such a legislation due to a relatively low number of individuals requiring regularisation of their status. For example, a legislation does not treat the status of children born in BiH to irregular migrants and there is no clear intention to consider such a legislation because it happens rarely and is treated case-by-case, mainly with support of a local NGO providing legal services to migrants.

Table 1: Relevant Bosnia and Herzegovinian institutions

Sr. No.	Institution/d epartment	Responsibilities	Web link
1.	Coordination Body for Migration Issues in BiH	By the Decision of the Council of Ministers of Bosnia and Herzegovina from 2013, the Coordination Body for Migration Issues in BiH was appointed. The coordinating body is in charge of continuously reviewing the overall situation in the field of	Link (EN)

		<p>migration and asylum, encouraging and ensuring inter-ministerial cooperation between relevant institutions dealing with migration and asylum, as well as assessing future migration trends and proposing measures to improve migration policies and strategic documents. It also oversees implementation of strategic documents. The Coordination Body is composed of high-ranking officers of the BiH Border Police, the Service for Foreigners, the Immigration Sector, the Asylum Sector and the State Investigation and Protection Agency (SIPA) within the Ministry of Security; the Sector for International Legal and Consular Affairs of the Ministry of Foreign Affairs; Sector for Refugees, Displaced Persons, Readmission and Housing Policy and the Sector for Emigration of the Ministry of Human Rights and Refugees. Technical assistance to the work of the Coordinating Body is provided by the Immigration Sector.</p>	
2.	Ministry of Security	<p>The Law on Asylum designates the Ministry of Security's Asylum Sector as the first instance authority responsible for deciding on asylum applications. Appeals against these decisions are handled by the Court of BiH. The Ministry of Security's Asylum Sector can make various decisions on asylum applications, including:</p> <ul style="list-style-type: none"> -Approval of refugee status or subsidiary protection; -Rejection with a voluntary departure deadline; -Rejection but inability to remove the applicant due to the non-refoulement principle; -Suspension of the asylum procedure with a voluntary departure deadline; -Rejection with a voluntary departure deadline. 	LINK (EN)
3.	Sector for Asylum, Ministry of Security	<p>This Sector is in charge of:</p> <ul style="list-style-type: none"> • applications for international protection in BiH, • decisions on applications for international protection in BiH, • rejected applications for international protection in BiH, by reasons, 	LINK (EN)

		<ul style="list-style-type: none"> procedures for applications for international protection in BiH that have been suspended, by reasons, applications and decisions of international protection in BiH for unaccompanied minors, Decisions on applications for international protection in BiH for unaccompanied minors. 	
4.	Service for Foreigners, Ministry of Security	<p>The Service for Foreigners' Affairs (SFA) is a specialised agency operating under the Ministry of Security in BiH. It holds a significant role in managing the movement and stay of migrants across the country. As the administrative body within the BiH Ministry of Security, the SFA is responsible for administrative tasks and inspections related to foreigners and asylum seekers. As they are part of the MoS, they work in close coordination with the other sectors of MoS, such as Sector for Asylum. This Service is in charge of:</p> <ul style="list-style-type: none"> applications and the decision for permanent residence in BiH, applications and decisions for temporary residence in BiH, the basis for a temporary residence permit, temporary residence permit - issued permits (stickers of stay) during the year, temporary stay - active permits at year-end granted temporary residence on the basis of work permit by nationality, sex, age, sector and skills, <ul style="list-style-type: none"> temporary residence granted on humanitarian grounds during the year, temporary granted stay for humanitarian reasons at the end of active year, <ul style="list-style-type: none"> measures against foreigners, cancellation of visa and cancellation of temporary residence, by reasons cancellation of permanent residence, by reasons annulment of visa or temporary residence with the measure of expulsion from the territory of BiH by reasons 	LINK (BS)

		<ul style="list-style-type: none"> • measures of expulsion from the territory of BiH, by reasons, • receipt of persons in BiH by the agreements on readmission, • return from BiH on readmission agreements, • foreigners who left BiH themselves within the period left for voluntary leave, • foreigners who have voluntarily left BiH, <p>Considered a "migration control mechanism," the SFA ensures that individuals meet the necessary requirements to enter the asylum system in BiH. Moreover, the SFA plays a critical role in identifying potential victims of human trafficking, as well as victims of child abuse or gender-based violence among the migrant population.</p>	
5.	Border Police of BiH, Ministry of Security	<p>The Border Police is a law enforcement agency that plays a vital role in ensuring border security and overseeing the movement of individuals into and out of BiH. Operating at the borders and entry points, the Border Police enforces immigration laws, conducts document inspections, and actively works to prevent “illegal” migration. As an operationally independent body within the Ministry of Security, the BiH Border Police is primarily responsible for monitoring and controlling the country's international borders. Its pivotal role involves screening migrants and refugees upon arrival and identifying potential victims of human trafficking.</p> <p>The Border Police oversees:</p> <ul style="list-style-type: none"> • visas issued at the border of Bosnia and Herzegovina, • refused entries at the border of Bosnia and Herzegovina, • illegally crossing the border of Bosnia and Herzegovina, • receipt of persons in BiH by the agreements on readmission, • return from BiH on readmission agreements, • foreigners who left BiH themselves within the period left for voluntary leave, • foreigners who have voluntarily left BiH, 	LINK (EN)

6.	Sector of Immigration, Ministry of Security	<p>This Sector is in charge of:</p> <ul style="list-style-type: none"> reception of persons in BiH by the agreements on readmission, foreigners who have voluntarily left BiH. 	n/a
7.	Ministry of Human Rights and Refugees	<p>After the refugee status or subsidiary protection is granted, the Ministry for Human Rights and Refugees assumes responsibility for safeguarding the rights and addressing the concerns of refugees and individuals with subsidiary protection in BiH. The MoS collaborates with several independent bodies to effectively carry out its duties in this regard. According to Article 12 of the Law on the Ministries and Other Bodies of the BiH Government, the MHRR is responsible for providing reception and care for up to 30 days to BiH nationals returning to BiH under readmission agreements.</p>	LINK (BS)
8.	Ministry of Foreign Affairs (MFA)	<p>This Ministry is in charge of:</p> <ul style="list-style-type: none"> Visa policies Visa applications and visa issuances <p>The Ministry of Foreign Affairs has the authority and responsibility for the readmission of Bosnian and Herzegovinian nationals, as established in the Readmission Agreement between BiH and the European Community, as well as in bilateral readmission agreements with other countries. These agreements are implemented through protocols. The ministry, through its diplomatic and consular representations, issues the necessary travel documents for the return of individuals who will be readmitted. If there is insufficient evidence to meet the requirements for readmission, the relevant Bosnian and Herzegovinian diplomatic and consular representations arrange an interview, upon request, with the potential returnee to determine their nationality. The ministry's Division for International Law Relations and Consular Affairs acts as a mediator between the competent institutions involved in implementing the agreements, facilitating discussions on specific details such as the date of return, designated border crossing points, and the need for possible escorts.</p>	LINK (EN)

9.	Agency of Labour and Employment (PES)	<p>This Agency is in charge of:</p> <ul style="list-style-type: none"> • work permits to foreigners, by citizenship, sex, age and branch of activity, • issued, extended, annulled, and valid work permits to foreigners, by country of citizenship, • issued, extended, annulled, and valid work permits to foreigners, by branch of activity. 	LINK (EN)
10.	Intelligence and Security Agency (OSA)	<p>The Intelligence and Security Agency (OSA) in Bosnia and Herzegovina (BiH) plays a significant role in relation to immigration legislation, particularly concerning the security aspect. It is responsible for conducting security checks on foreigners to assess potential risks to the security of BiH. These checks aim to identify any potential threats or concerns that may arise from the presence of certain individuals in the country. The OSA's role is crucial in ensuring the safety and stability of BiH by assessing the security implications associated with the entry and presence of foreigners, thereby contributing to effective immigration control and safeguarding national security.</p>	LINK (EN)
11.	State Investigation and Protection Agency (SIPA)	<p>The State Investigation and Protection Agency (SIPA), is an independent agency operating within the Ministry of Security of Bosnia and Herzegovina. It has operational independence in carrying out its duties and was established to fulfil police responsibilities. SIPA plays a crucial role in criminal investigations, counter-terrorism efforts, and combating organized crime. It collaborates with various security and law enforcement agencies, including those involved in addressing immigration-related crimes such as human trafficking and migrant smuggling. SIPA's mandate, as defined by relevant laws, includes the prevention, tracking, and investigation of criminal acts falling under the jurisdiction of the Court of Bosnia and Herzegovina. These acts encompass organized crime, terrorism, war crimes, human trafficking, and other crimes</p>	LINK (EN)

		against humanity and values protected by international law.	
12.	Centres for Social Work	Centres for Social Work in Bosnia and Herzegovina (BiH) are local or regional institutions dedicated to providing social support and protection, with a particular focus on families and vulnerable individuals. In accordance with national and international laws, these centres have the responsibility to ensure legal guardianship and protection for all unaccompanied and separated children, irrespective of their nationality. Working in collaboration with organizations such as UNICEF, UNHCR, BHWI, Save the Children, and other partners, the Centres for Social Work appoint guardians for unaccompanied migrant and refugee children. This cooperative effort aims to safeguard the rights and well-being of these children and ensure their access to essential services. Additionally, the Centres for Social Work bear the responsibility of addressing issues related to violence, abuse, neglect, and exploitation of children, as well as domestic violence. They play a critical role in identifying and responding to such cases, providing necessary support, and working towards the overall protection and welfare of children in BiH.	n/a
13.	IOM	The IOM is an intergovernmental organisation that works closely with BiH authorities to provide support in various areas related to migration management. This includes capacity building, technical expertise, data collection and analysis, awareness raising, and assistance to migrants and vulnerable groups.	LINK (EN)
14.	UNHCR	UNHCR is responsible for the protection of refugees worldwide. In BiH, UNHCR works with national authorities and other partners to provide protection, assistance, and durable solutions for refugees and asylum seekers. It supports the development and implementation of refugee policies, refugee status	LINK (EN)

		determination procedures, and the integration of refugees into the host society.	
15.	Danish Refugee Council	The Danish Refugee Council (DRC) is an international non-governmental organization that operates in BiH, providing assistance to refugees, asylum seekers, and internally displaced persons. They offer protection, legal aid, livelihood support, and psychosocial assistance, working to improve the living conditions and resilience of displaced populations.	LINK (EN)
16.	Save the Children	Save the Children is a global humanitarian organization that focuses on improving the lives of children. In BiH, they provide support and assistance to migrant and refugee children and their families. Their efforts include ensuring access to education, healthcare, psychosocial support, and protection services. Save the Children works closely with local partners, government agencies, and other organizations to address the specific needs and rights of migrant children in BiH.	LINK (EN)
17.	The Bosnia and Herzegovina Women's Initiative	The Bosnia and Herzegovina Women's Initiative (BHWI) is a NGO that collaborates with UNHCR to provide various services to asylum seekers and refugees in BiH. BHWI offers a range of support to individuals in need, including psychosocial assistance to address their emotional well-being and mental health. They also provide interpretation and transportation services to help refugees and asylum seekers navigate official procedures and engage with institutions effectively. Additionally, BHWI organises recreational and vocational activities, promoting integration and empowerment among the refugee community. BHWI operates in several reception centres in BiH, such as the Salakovac Refugee Reception Centre, Delijaš Asylum Centre, and Ušivak Transit/Reception Centre. Their staff members can also be found at the UNHCR Information Centre in Sarajevo, where they provide information and support to individuals seeking refuge in the country.	n/a

		In collaboration with UNHCR, the Bosnia and Herzegovina Women's Initiative plays a vital role in assisting and supporting asylum seekers and refugees, ensuring their well-being and helping them navigate the challenges they face during their displacement.	
18.	World Vision BiH	World Vision BiH is another non-profit organisation that works with vulnerable communities, including migrants and refugees. They aim to provide immediate relief and long-term support to meet the needs of individuals and families affected by displacement. World Vision BiH focuses on areas such as shelter, water and sanitation, education, and livelihood support. They collaborate with local communities, authorities, and other stakeholders to promote the well-being and integration of migrants in BiH.	LINK (EN)
19.	Foundation for Local Democracy	Foundation for Local Democracy (FLD) focuses on providing support and assistance to migrants and refugees in BiH. They work on various aspects, including protection, integration, access to healthcare and education, and promoting human rights.	LINK (EN)
20.	Vasa prava	Vaša Prava BiH is a legal aid organization that provides free legal assistance to migrants and refugees. They help individuals navigate the legal system, provide information on their rights, and support them in asylum and residency procedures.	LINK (EN)

1.3. THE SPECTRUM OF MIGRANT IRREGULARITY IN BOSNIA AND HERZEGOVINA: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Bosnia and Herzegovina

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayer	<p>A person who has legally entered but then stayed in BiH beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and /or residence permit.</p> <p>Penalties in Bosnia and Herzegovina usually include immediate deportation or an order to leave the country.</p> <p>The number of such cases are considered low by the authorities and subsequently not a major policy concern.</p>
Rejected asylum seeker	<p>A person covered by a first instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period.</p>
Person illegally entering the country.	<p>An individual entering the country without legal documents or funds to sustain oneself</p>
New-born children of irregular migrants	<p>Children born to parents who are irregularly residing in BiH either because of irregular entry with lack of relevant documents and sufficient funds, or overstay of the authorised period mentioned on their entry permit. There are cases where children may become stateless, particularly if their mother's nationality is not recognised or if they have no official status</p>

1.3.1 Pathways into and out of irregularity

- **Asylum application**

Bosnia and Herzegovina is party to the 1951 Refugee Convention relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees and the Government has the responsibility to process asylum claims and to decide whether somebody can be granted refugee status in Bosnia and Herzegovina. If a foreigner has not been granted refugee status or subsidiary protection due to the application of exclusion clauses, but it is established in the asylum procedure that there is a serious risk that he will be subjected to the death penalty or execution, torture or other inhuman or degrading treatment or punishment by return or forced removal to another country, the foreigner is allowed to stay in BiH in accordance with the Law on Foreigners, which regulates the area of movement and residence of foreigners.

- **Assisted voluntary return**

BiH recorded several hundreds of assisted voluntary returns of foreigners from BiH. It was implemented by IOM through its Assisted voluntary return and reintegration (AVRR) programme (IOM Bosnia and Herzegovina, n.d.), in coordination with BiH institutions and migrant communities, as an example of multi-sector approach to voluntary return and creating a comprehensive migration management system. The program provides administrative, logistical, financial support and reintegration assistance to migrants unable or unwilling to remain in the host/transit country and who decide to return to their country of origin. BiH institutions report a low number of forcible removals of foreigners identified as staying illegally in the country (e.g. only 1 in 2021) and interpret it as a good sign of effective voluntary return schemes (BiH interview with government representative).

- **Work permits**

A migrant status can be regulated through a work permit. The work permit application is submitted by an employer. A migrant who entered the country through a visa-free regime or with a long-term visa can find an employer who will apply for a work permit on migrant's behalf, and in such a manner regularise her/his status in the country by obtaining a residence permit on the basis of a work permit issued.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No	Title of policy/law	Year	Description	Web link to source
1.	Law on Foreigners	2015, revisions in 2021	The Law on Foreigners provides the legal framework for regulating the entry, stay, and movement of foreign nationals in BiH. It outlines the procedures for obtaining visas, residence permits, and work permits. The law also sets criteria for granting international protection to foreigners, establishes grounds for deportation, and defines the responsibilities of relevant authorities in enforcing immigration laws.	“The BiH Official Gazette”, No. 88/15, and 34/21,
2.	Law on Asylum	2016	The Law on Asylum governs the process of granting asylum and international protection to individuals who seek refuge in BiH due to persecution, conflicts, or generalised violence. It establishes the criteria for determining refugee status, procedures for lodging and examining asylum applications, and the rights and obligations of asylum seekers and recognised refugees. The law also addresses the establishment and functioning of reception centres for asylum seekers.	Official Gazette of BiH”, No. 11/16
3.	Strategy and Action Plan on Migration	2008-2011	The strategy defines the main topics as: visas, border control. Immigration and asylum, and readmission. The goal specified was to develop a system for managing borders, visa regime,	LINK (EN)

	and Asylum		immigration and asylum in BiH according to the EU standards.	
4.	Strategy and Action Plan on Migration and Asylum	2012-2015	<p>Mid-term strategic goals, defined for the period 2012 – 2015 are the following:</p> <ol style="list-style-type: none"> 1 Enhancement of the system of entry and stay control of foreigners in Bosnia and Herzegovina; 2 Enhancement of the quality of international and temporary protection (asylum) in Bosnia and Herzegovina; 3 Increasing efficiency of monitoring and control of the state border of Bosnia and Herzegovina; 4 Enhancement of the fight against illegal migrations in Bosnia and Herzegovina; 5 Contribution to the reduction of human trafficking in Bosnia and Herzegovina; 6 Strengthening institutional capacities in Bosnia and Herzegovina with the purpose of connecting migration and development; 7 Ensuring overall integration of foreigners who reside in Bosnia and Herzegovina legally and 8 Establishment of Permanent Coordination System in the realization of migration policy of Bosnia and Herzegovina. 	LINK (EN)
5.	Strategy and Action Plan on Migration and Asylum	2016-2019	<p>Medium term strategic goals, as defined for the period 2016 – 2020, are the following:</p> <ol style="list-style-type: none"> 1) Improving the system of control of entry and stay of aliens in Bosnia and Herzegovina; 2) Strengthening capacities in the area of asylum in Bosnia and Herzegovina; 3) Increasing efficiency of control of the state border of Bosnia and Herzegovina; 4) Improvement of the fight against illegal migrations in Bosnia and Herzegovina; 	LINK (EN)

			<p>5) Contribution to the reduction of human trafficking in Bosnia and Herzegovina;</p> <p>6) Strengthening institutional capacities in Bosnia and Herzegovina with objective of linking migration and development;</p> <p>7) Establishing of a system for monitoring of integration of aliens who reside legally in the territory of Bosnia and Herzegovina;</p> <p style="text-align: center;">and</p> <p>8) Establishing of a Permanent Coordination System in the implementation of migration policy of Bosnia and Herzegovina.</p>	
6.	Strategy for Integrated Border Management in Bosnia and Herzegovina for the period 2019-2023	2019-2023	<p>VISION: Ensure the unimpeded movement of people and goods across the national border whilst preventing all forms of illegal activity linked to crossing the national border.</p> <p>MISSION: Implement the new concept of integrated border management and joint inter-agency action in order to reduce the threat to border security and internal security and act to increase the overall level of security in Bosnia and Herzegovina</p>	LINK (EN)
7.	Mobility partnership with Switzerland		<p>Switzerland and Lichtenstein have been supporting work in the field of migration for many years now. Based on the existing, long-lasting, and intensive cooperation, both countries have established "Migration Partnerships" with BiH through memorandums of understanding (Switzerland in 2009, Lichtenstein in 2011) within the Swiss "Migration Partnership Strategy for the Western Balkans".</p>	LINK (EN) .
8.	Rulebook on the content, manner of keeping	2016	<p>It regulates the content, manner of keeping and use of official records on foreigners</p>	("Official Gazette of BiH" No. 51/16

	and use of official records on foreigners			
9.	Rulebook on entry and stay of aliens		This Rulebook stipulates: the procedures for entry of aliens in BiH; refusal of entry; certification of invitation letter; issuance of visas at the border; visa extension; visa cancellation and revocation; approval of residence and issuance of residence permits; issuance of certificates on identity; work registration certificates; registration and deregistration of permanent and temporary residence; issuance of Alien ID Card; termination of residence; cancellation of residence; certification of the Book of Aliens, as well as other issues related to the entry, movement and stay of aliens in BiH.	"Official Gazette of BiH" No. 36/08, 87/12
10.	Rulebook on the Central Database on Foreigners	2017	This rulebook determines the authority for the conduct, content and rules on management, use, protection and storage of data and the procedure for deleting data, as well as the rules for accessing data in the Central Database on Foreigners. The central database on foreigners is part of the Information System for Migration, it is maintained in electronic form and contains data from official records maintained on the basis of the Law on Foreigners and the Asylum Law.	"Official Gazette of BiH" No. 19/17
11	Law on State Borders Service	2004	It regulated competence, organisation and management of the BiH State Borders Service	"Official Gazette of BiH" No. 50/04, 27/07, 59/09

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1.	The Law on Administrative Dispute	2002	This law regulated procedures of administrative disputes at the BiH courts, including the ones where irregular migrants are involved	"Official Gazette of BiH" No. 19/02
2.	The Law on Ministries and Other Bodies of Administration	2003	Regulated mandates of different ministries, and their responsibilities over different issues, including the ones related to irregular migration	"Official Gazette of BiH" No. 5/03
3.	The Law on Protection of Personal Data	2006	The purpose of this Law is to secure in the territory of BiH for every individual, regardless of his/her nationality or residence, respect for human rights and fundamental freedoms, and in particular the right to privacy with regard to the processing of personal data relating to him/her.	"Official Gazette of BiH" No. 49/06
4.	Various Criminal Laws at different levels in BiH		They regulate criminal offences and sanctions by and against individuals, including irregular migrants.	LINK (EN) ,
5.	State and entity level laws on employment of foreigners		These laws regulate the conditions, manner and procedure of employment of foreign citizens and stateless persons in Bosnia and Herzegovina and its entities, exceptions to the issuance of work permits, termination of validity of work permits, record keeping of issued work permits and other matters of importance for the employment of foreigners.	LINK (EN)

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Canada Country Brief on Irregular Migration Policy Context

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Canada

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

Canada's overall policy position on migrant irregularity has been largely reactive. The federal government has primarily focused on the implementation of targeted programmes to regularise persons without status in response to labour market demands, political and activist pressures, and in anticipation of new immigration policies or law (Bou-Zeid, 2007). Migrant irregularity in Canada has been considered in an ad hoc manner.

The topmost relevant policy priorities for Canada in addressing migrant irregularity at the moment are:

- **Responding to labour shortages**

Attention has been placed on filling labour gaps in industries identified as “high-demand” sectors. The last two *Temporary Public Policies* focused on regularizing the status of: 1) out-of-status construction workers in the Greater Toronto Area (2019-2024) and, 2) pending and refused refugee claimants working in the health care sector during the COVID-19 pandemic (2020-2021).

The Minister of Immigration, Refugees and Citizenship has indicated that the Ministry is creating a “broad and comprehensive [regularization] program” beginning with construction workers. A proposal will be made to Cabinet in Spring 2024. This is in keeping with the Prime Minister's 2021 mandate to the Minister to explore regularization pathways for undocumented workers (Trudeau, 2021).

- **Controlling irregular arrivals at the US-Canada border**

Exploitation of a “loophole” in the Canada-US Safe Third Country Agreement (STCA), where refugee claimants are required to request protection in the first safe country in which they arrive (at official ports of entry), led to a significant number of asylum

claimants making unauthorized crossings into Canada through unofficial points along the border, most notably at Roxham Road, Quebec (Côté-Boucher et al., 2023). Re-negotiations in 2023 extended the ambit of the Agreement, to now include the entire extent of the land border. The number of irregular entries into Canada has since decreased.

1.2 OVERVIEW OF THE CANADIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

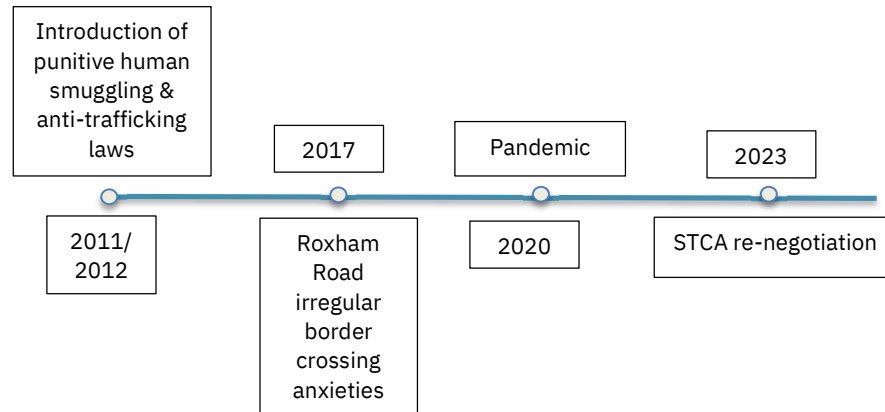
1.2.1 Policy implementation measures

- **Regularisation of migrant communities and targeted sectors**

Canada has previously implemented one-time, specific regularisation programmes, targeting small niche migrant populations in relation to specific industries with labour shortages. Each programme had its own eligibility criteria and application process, executed through different policy instruments. These ‘fit for purpose’ regularization programmes have targeted both out of status persons and refused refugee claimants. In certain programmes, primary applicants’ immediate family members were also allowed to regularize their status.
- **Humanitarian and Compassionate Considerations**

This ongoing mechanism operates as an “exceptional measure” in Canadian law when all other pathways to acquire permanent residence have been exhausted (Delisle and Nakache, 2022). Applicants must prove that their personal circumstances warrant exemption from the rules of the Immigration Act (Neufeld, 2009). This is a highly discretionary process, where immigration officials assess the applicants’ credibility and deservingness (Goldring and Landolt, 2022). Applicants must demonstrate that they are not a financial burden on the state; are good candidates for settlement because they have family in Canada but not in the country of origin; and, that deportation will result in undue hardship for themselves or their family in Canada (Dauvergne, 2005).

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- Regularization Programs enhance economic and community well-being**

Status regularization programs have resulted in positive impacts and economic and social benefits to the population at large (Alboim et al., 2023). Regularized status removes restrictions and fears and enables the full participation of persons in Canadian society. In addition to filling labour shortages, it brings the opportunity to maximize the economic potential of persons who can now contribute to the broader economy of the country in a formal way. With access to rights, protections and services, the risk of worker exploitation and correlated factors such as insecure housing can be mitigated. People with regularized status can also participate in and contribute to their communities without the constant fear of detention and deportation because of their immigration status.
- Revised Safe Third Country Agreement Shifts Sites of Asylum Claims**

The site of the majority of asylum claims have very recently shifted from land ports to airports. Between 2022 and 2023, the number of asylum claims being made at land ports of entry decreased by 36%, while the number of airport-based asylum claims increased over two and a half times within one year (from 17160 claims in 2022 to 41355 in 2023) (Government of Canada, 2024). Mapping this increase on to policy shifts, points to the STCA amendments which stymied the flow of migrants at the land border. During the same period asylum applications at Canada's main international airports increased significantly but it is unclear whether the two types of flows are connected.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- Irregular migration data and estimates**

The government is unable to specify either the size or distribution of the irregular population in Canada. Without baseline data related to the population’s size and spread, it is a challenge to maximize the effectiveness of geography specific and capped regularization programmes. In the absence of these data, regularization programmes are formulated based on conjecture.
- Barriers to programme uptake**

Bureaucratic problems, which arise from the complexity of application processes, create barriers which can result in programmes’ slow and limited uptake. Citing the “undersubscription” of a permanent residence pathway for temporary workers in 2021, Macklin (2022) notes that multiple factors added to the programme’s inaccessibility: applicants’ lack of digital literacy and language fluency (the application was completely online), “onerous” document requirements, the expenses of language testing, and legal assistance in completing the application. Additionally, obtaining certain documentation for applications can be problematic (Alboim et al, 2023). For example, there have been reports from temporary foreign workers attached to closed, employer specific permits who have faced situations where their employers purposely withhold documentation such as Labour Market Impact Assessments required for applications (Tulli et al., 2022; Smith and Kim, 2022).
- Economic impact of deterrence vs. regularisation**

There is an economic argument that supports a re-prioritization of federal investment from deterrence and controls to the formulation of a more encompassing and sustainable regularization policy. The Migrant Rights Network (2023) citing the Auditor General’s 2020 report, states that the Canada Border Services Agency (CBSA) receives at least \$46 million per year to carry out deportations, which averages to a cost of \$4,750 to deport one person, while “it costs about \$3,900 to provide settlement and integration services for a permanent resident.” Given this basis, it would be economically wise to invest in sustainable regularization policies and programmes that will serve to integrate people who have lived and worked in the country and fell out of status, giving them rights and protections, and the responsibility to contribute to the Canadian economy in a formal way.

Table 1: Relevant Canadian institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Immigration, Refugees and Citizenship Canada (IRCC)	IRCC is the lead government department responsible for the development of immigration policy and the administration of the Immigration Act. IRCC, in collaboration	Link (EN)

		with its partners, conducts the screening of potential permanent and temporary residents. It is also responsible for the issuance and control of Canadian passports and other travel documents that facilitate the travel of Canadian citizens, Permanent Residents and Protected Persons.	
2.	Immigration and Refugee Board of Canada (IRB)	The IRB is an independent, administrative tribunal established by Parliament on January 1, 1989, to resolve immigration and refugee cases. The IRB assesses and determines refugee claims.	Link (EN)
3.	Canada Border Services Agency (CBSA)	The CBSA facilitates the flow of legitimate travellers and trade across Canada’s borders and at its ports of entry. It is also the enforcement arm of the Immigration Act.	Link (EN)
4.	Ministère de l’Immigration, de la Francisation et de l’Intégration (MIFI)	Specific to the province of Quebec, MIFI is responsible for assessing applicants intending to reside in Quebec, then informing IRCC of its decision.	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN CANADA: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Canada

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Migration at borders: migrants crossing borders, not authorised for entry.	<ul style="list-style-type: none"> a. Migrants crossing borders, not at official ports of entry, not authorised for entry, not registered by authorities. b. Migrants crossing borders, not authorised for entry and requesting international protection (asylum seekers/ refugee claimants). c. Migrants crossing borders, not authorised for entry, registered by authorities (administrative entry), and not eligible for asylum procedure: <ul style="list-style-type: none"> i. Apprehended and “pushed-back”: irregular migrants who are apprehended at or near borders and returned to

	<p>previous country (Safe Third Country Agreement or detained and deported). Exceptions include: if the migrant has a family member in Canada; unaccompanied children under 18 years; migrants at risk of the death penalty; if the migrant has a valid Canadian visa</p> <p>ii. Apprehended, kept for administrative processing within Canada and subsequently ordered to leave the country, but abscond and remain without legal status.</p>
Refused or non-status asylum seeker.	<p>a. Refused asylum applicants at the Immigration and Refugee Board of Canada (IRB) who have not applied for appeal.</p> <p>b. Asylum applicants refused at appeal level who have not applied for subsequent judicial review, Humanitarian & Compassionate (H&C) consideration or Pre-Removal Risk Assessment (PRRA).</p> <p>c. Asylum applicants refused at judicial review, H&C or PRRA</p> <p>d. Asylum applicants who withdraw or abandon their claims (applicants who “disappear” during the asylum procedure). These may include people who left the country or who stayed without status.</p>
Migrants who lose status after regular entry as temporary entrants. Such persons can attempt different pathways to remain delaying orders of removal; or remain in the country without status	<p>a. Migrants whose temporary permits have been withdrawn, for example, because of a criminal offence or engaging in paid employment while on a visitor permit.</p> <p>b. Migrants with expired temporary residence permits who were not able to convert to permanent residence status or to secure permit extensions or other temporary status permits:</p> <ol style="list-style-type: none"> 1. International students 2. Temporary foreign workers and their spouses/family members.
Non-national born in another country without any regular authorisation to live in Canada	Enters Canada legally as a visitor, but remains beyond valid visitor status.

Most relevant categories of migrants with “precarious” status in Canada	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum applicants	Those applicants waiting for a decision (pending cases – backlogs).
Temporary migrants (with a valid permit) facing difficulties qualifying for permanent residence	Migrants employed in specific programmes, for example: a. Migrants hired under the Seasonal Agricultural Worker Program (maximum of 8 months) and cannot meet the work experience criteria for permanent residence pathways. b. Migrants hired under the Home Child Care Provider Pilot and Home Support Worker Pilot (set to expire) and who have challenges meeting qualifying criteria for permanent residence
Unaccompanied minors who made unauthorised entry.	Children arriving without their parents are referred to as ‘unaccompanied children’ or ‘unaccompanied minors’ and may submit their own applications. The STCA requires the child to prove to the satisfaction of Canadian border authorities that they are under the age of 18 and have no parent or legal guardian in either country. This may be challenging, especially if the child lacks the requisite documents or does not speak the language.

1.3.1 Pathways into and out of irregularity

Inflows and outflows of irregular migrants contribute to the number of irregular residents in Canada.

- Unauthorized in-flow across the US-Canada border by persons not eligible to claim asylum – this in fact codified in Canadian law as “irregular arrivals.”
- Visa over-stayers: persons who enter with a tourist or other temporary visa and overstay the allowed period, offending their visa stipulations, for example, by engaging in paid employment while on a visitor tourist visa.
- Asylum claimants whose applications have been definitively refused, or people whose permanent or temporary permits have been withdrawn because of a criminal offence.
- The temporal dimension of permit processing or asylum decisions creates and exacerbates precarities. According to the Auditor General’s (2023) report, at the end of 2022, processing times for refugee and humanitarian applications were on average three years. The report confirming the IRB’s (2021) projection of 24 months for refugee claims and 12 months for refugee appeals. Wait times for applications made

by temporary residents are variable. Protracted wait times for application outcomes increase the risk of falling out of status.

There are “safety valves” built-in to Canada’s immigration laws which can temporarily or indefinitely stay removals (Ahouga, 2024), providing the chance for status transition:

- Refused asylum claimants can apply for protection to the Immigration Minister, who conducts a [Pre-Removal Risk Assessment \(PRRA\)](#) to determine whether the applicant is a Convention refugee or a person in need of protection. This also allows for the presentation of new evidence that arose after the rejection or was not reasonably available at the time of the decision (Parliament of Canada, 2023, s. 113).
- Inadmissible foreign nationals and refused refugee protection claimants can request [Temporary Resident Permits](#) for protection reasons (Parliament of Canada, 2023, s. 2). However, refused refugee protection claimants cannot request a temporary resident permit until 12 months have passed since the decision and appeals.
- [The Humanitarian and Compassionate \(H&C\)](#) avenue allows for an application to permanent residence based on evidence of hardship, establishment in Canada, or where applicable, the best interests of the child, and other humanitarian considerations. Refused refugee applicants must wait for 12 months after the last decision of the IRB’s Refugee Appeal Division to make an application.

1.3.2 Selected Regularisation Programmes

- [Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic 2020-2021](#)
Two programmes, one in Quebec and one for the rest of Canada, aimed at providing permanent residence to both refused and pending refugee claimants specifically working in the healthcare sector. Spouses and common-law partners in Canada were also granted permanent residence.
- [Temporary Public Policy for Out-of-Status Construction Workers in the Greater Toronto Area \(GTA\) 2019-2024](#)
Developed to recognise the economic contribution of long-term out of status resident construction workers and has sought to regularise individuals who have been contributing to the Canadian economy by filling a regional labour market need.

Table 3: Regularisation programmes enacted in Canada, 1960-2024

1960-1972	Chinese Adjustment Statement program (approx. 12,000 regularised)
1986-1973	Amendment to the Immigration Appeal Board Act (approx. 13,000 regularised)
1973	Adjustment of Status Program (approx. 39,000 regularised)
1981	Special Regularisation Program for Haitians Residing in Quebec (approx. 4,000 regularised)
1983-1985	Minister's Review Committee (approx. 1,000 regularised)
1994-1998	Deferred Removal Order Class (approx. 3,000 regularised)
2002	Special Regularisation Procedure for Algerians Residing in Quebec (approx. 900 regularized)
2004-ongoing	Humanitarian and Compassionate Considerations (2020-2023 applications ranged between 8,000 to 25,000 per year, with an average approval rate of 60.25%)
2019-2024	Temporary public policy for out-of-status construction workers in the Greater Toronto Area (approx. 452 workers and family members regularised in 2019-2023; extended until July 2024, with total target of up to 1,000)
2020-2021	Temporary public policy for pending and failed asylum seekers working in direct patient health care during COVID (Quebec and the rest of Canada) (of 3,115 approved in principle [met minimum requirements], only 380 received Permanent Resident status as of May 2021)

Source: Adapted from Alboim et al, 2023

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Division 4- Inadmissibility	2001	Immigration and Refugee Protection Act (S.C. 2001, c. 27)speaks to the cessation of protection due to non-compliance with the Act in terms of security, human and international rights violations, criminality, health grounds, financial reasons, misrepresentation.	Link (EN)
2	Part 13 Removal- Division 1 – Removal Orders	2001 with several amendments	As part of the Immigration and Refugee Protection Regulations (SOR/2002-227), there exists different types of removal orders: including a departure order, an exclusion order, and a deportation order.	Link (EN)
3	Humanitarian and compassionate considerations – request of foreign national	2004	25 (1) Subject to subsection (1.2) The Minister may evaluate the application if all other avenues are exhausted. Primarily the applicant must prove that they will face ‘undue hardship’ if they are returned to their home country.	Link (EN)
4	Designated Foreign National Regime – to protect against human smuggling or other irregular arrivals of groups of individuals	2012	The Minister of Public Safety and Emergency Preparedness, through the <i>Protecting Canada's Immigration System Act (2012)</i> or Bill C-31 amended the Immigration and Refugee Protection act to designate a person as a foreign national.	Link (EN)

5	Temporary Public Policy for Out-of-Status Construction Workers in the Greater Toronto Area (GTA)	2019-2024	Developed to recognize the economic contribution of long-term resident construction workers without status and has sought to regularize individuals who have been contributing to the Canadian economy by filling a regional labour market need.	Link (EN)
6	Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic	2020-2021	Initially focused in Quebec, and then implemented by the federal government across the country, and attended to “both failed and pending refugee claimants” specifically working in the healthcare sector. Spouses and common-law partners in Canada, were also granted permanent residence.	Link (EN)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Section 117 Enforcement Human Smuggling and Trafficking	2001 amended 2012	The Immigration and Refugee Protection Act (Section 117) prohibits knowingly organizing, inducing, aiding or abetting the coming into Canada of one or more persons in contravention of the Act if the offence was for profit or to benefit from or at the direction or in association with a criminal organization or terrorist group. The Act also prohibits knowingly organizing the coming into Canada of one or more persons by means of abduction, fraud, deception, or use or threat of force or coercion.	Link (EN)

2	Safe Third Country Agreement under Regulation 102 Immigration and Refugee Protection Act (S.C. 2001, c. 27)	2002 amended 2023	Designed to facilitate responsibility sharing for the consideration of refugee claims, and to deter “irregular arrivals” as defined above.	Link (EN)
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Finland Country Brief on Irregular Migration Policy Context

AUTHORS:

Jussi S. Jauhiainen, Selma Smolander and Henri Toivonen



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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Finland

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Forced and voluntary return**

To facilitate the return of those individuals who have entered or stay in Finland irregularly (irregular migrants, undocumented migrants, or paperless persons), and to decide on what kind of measures to take for individuals who cannot be returned to their country of origin (Ministry of the Interior, 2022). According to the Government of Finland (2023, p. 221), “rejected asylum applicants will return or will be returned to their countries of origin as soon as possible. The principle of non-refoulement will be complied with. The Government will ensure that the asylum process will not become a channel for job seeking and labour immigration.”

- **Social and health care services for irregular migrants**

The most recent change to social and health services took place at the beginning of 2023 under the leadership of Prime Minister Sanna Marin's government, when every individual, with special focus on irregular migrants, was granted the right to necessary health care throughout Finland (Government of Finland, 2020). Prime Minister Petteri Orpo's government, active since June 2023, considers measures so that irregular migrants would only be entitled to urgent health care and social services.

1.2 OVERVIEW OF THE FINNISH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Reforms in the Aliens Act**

The Aliens Act (301/2004) is a standalone legislation that determines the conditions of non-citizens in Finland. In 2015, an amendment to Section 51 of the Act had significant implications for irregular migrants. Prior to the amendment, individuals, whose asylum request was rejected and who were uncooperative with authorities, could obtain temporary residence permits. However, the amendment excluded such individuals, thereafter, only granting permits to those facing other obstacles to their removal from the country. Humanitarian protection was further removed as a reason to grant the residence permit in 2016. This has subsequently contributed to the increase of irregular migrants in Finland (Wahlbeck 2019; Jauhiainen & Tedeschi, 2021).

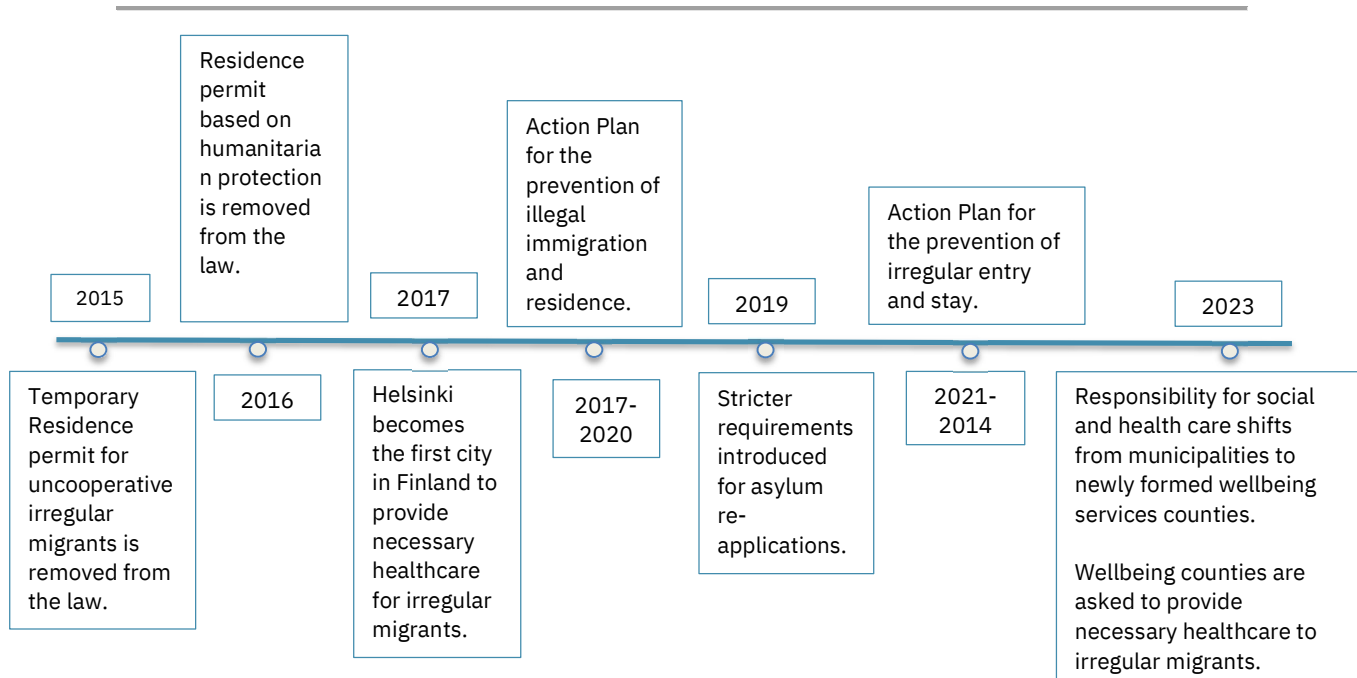
- **Action Plan for the Prevention of Irregular Entry and Stay for 2021–2024**

This comprehensive plan encompasses a range of actions, such as promoting both forced and voluntary return options for irregular migrants and examining potential avenues for enabling their continued presence in the country, such as through employment opportunities. The primary objective of the Action Plan is to proactively combat the emergence of a “shadow society”, referring to the population of irregular migrants (Ministry of the Interior, 2021).

- **“Firewall policy”**

A notable, though not yet official, practice is the implementation of a “firewall” policy, which permits irregular migrants to report crimes, access healthcare and compulsory basic education without fear of arrest and subsequent forced removal from Finland to the country of origin. This practice is implemented in some but not in all municipalities throughout Finland. However, not all national and local authorities agree with NGOs about the best practices if and when to implement firewall policies (Katisko et al., 2023, p. 66, 88).

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Change in the Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings (746/2011) Section 14a**

The revision restricted the duration of reception services solely to individuals who had received a negative decision regarding their international protection application and who could not effectively be repatriated by the authorities. The majority of the over 32,000 asylum seekers who arrived in 2015 did not secure asylum or other residence permits, therefore shifting into irregular status. For these migrants, reception services were no longer available (Act on the..., 2011; Wahlbeck, 2019).

- **Abolition of the basis of humanitarian protection in the Aliens Act**

The removal of the humanitarian reasons in 2016 for granting residence permits in Finland, as stipulated in the Finnish Aliens Act, had a comparable effect to the situation described earlier. This legal change and its subsequent application specifically affected individuals who were previously eligible for a residence permit based on humanitarian grounds (Aliens Act, 2004; Wahlbeck, 2019; Jauhiainen & Tedeschi, 2021).

- **The establishment of wellbeing services counties in early 2023**

This reform involved the transfer of responsibilities for organising social and health care, as well as rescue operations, from more than 300 municipalities to 21 welfare areas across Finland. As a result, the services pertaining to the irregular migrant population also fell under the purview of these well-being services counties (Laki sosiaali... 2021). Given the recent nature of this reform, assessing its effects accurately remains challenging.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Forced and voluntary returns**

Issues related to the return process cause administration challenges between different actors. A prominent issue revolves around determining the appropriate course of action for individuals who cannot be returned, as well as those whose returns are disrupted due to various factors. The main challenges concern affecting return to certain third countries and the lack of functional cooperation with certain third countries in that regard (Könönen, 2018; Jauhiainen & Tedeschi, 2021). The Government of Finland (2023, p. 224) “promote the conclusion of agreements on the return of third-country nationals” [from Finland].

- **Discrepancies and varying interpretations of current legislation**

A significant challenge that was evidenced in the interviews related to varying interpretations of existing legislation and policies (see also Pirjatanniemi et al. 2018; Saarikkomäki et al. 2021). In instances where specific guidelines are followed, certain aspects of interpretation are delegated to lower levels of governance. This can potentially lead to variation in the treatment of the irregular migrant population.

- **Knowledge gaps among authorities and migrants themselves**

Irregular migration is not a well-understood phenomenon among all authorities. The lack of data about the ongoing situation of irregular migration creates knowledge gaps among different authorities. In addition, irregular migrants themselves are not always aware of their rights (see Jauhiainen & Tedeschi, 2021).

- **Geographical challenges**

Geographically, the capital city of Helsinki and its surrounding region are major hubs for irregular migrants. These areas not only attract a larger number of international migrants and irregular migrants, but also provide a greater concentration of services offered by the public sector and non-profit organisations. They also provide employment opportunities in the private sector. In contrast, in municipalities with very few irregular migrants and a small number of immigrants overall, irregular migrants often stand out from the majority population, making it more difficult to remain unnoticed in these municipalities (see Jauhiainen & Tedeschi, 2021).

Table 1: Relevant Finnish institutions

Sr. No.	Institution/ Department	Responsibilities	Weblink
1.	Ministry of the Interior of Finland	Develops Finland's migration policy and oversees the Finnish Immigration Service, the Police of Finland, and the Finnish Border Guard.	Link (EN)
2.	Finnish Immigration Service	Makes decisions related to immigration, asylum, refugee and citizenship matters.	Link (EN)
3.	Police of Finland	Enforces immigration laws and regulations, including those related to irregular migration.	Link (EN)
4.	Finnish Border Guard	Monitors the entry of people crossing non-Schengen borders and enforces the rules and regulations related to immigration and border security.	Link (EN)
5.	Ministry of Social Affairs and Health	The Ministry's area of responsibility includes questions related to social services and health services for irregular migrants.	Link (EN)
6.	Wellbeing services counties	Since 2023, there are 21 wellbeing services counties in Finland, which are responsible for organising regional social and health services.	Link (EN)
7.	Social Insurance Institution (KELA)	KELA reimburses wellbeing services counties for the costs of urgent social services. The wellbeing services county can receive compensation if it has provided urgent social services to a person who has received a negative asylum decision and whose reception services have ended.	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN FINLAND: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Finland

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Asylum seeker whose request for international protection was rejected, i.e. did not lead into international protection or residence permit	Individuals who have sought asylum in Finland but did not receive a positive decision, followed by various situations where they continue to reside in the country. This category encompasses individuals who received a negative asylum decision and remain in Finland, exceeding the 30-day limit after a negative asylum decision without appealing or reapplying. It includes asylum seekers who disrupt the asylum process by failing to attend asylum interviews, as well as those who remain in Finland for more than 90 days after applying for assistance to voluntarily return to their home country.
Individual granted a residence permit according to the now-outdated section of the Aliens Act	Individuals who were previously granted residence permits on the basis of humanitarian protection or who were previously granted a temporary residence permit due to obstacles to removal from Finland, but lost their right to residence permit after the Aliens Act was amended.
Individual who bypasses the asylum process upon entering Finland	Individuals who flee conflicts or are asylum-related migrants but fail to initiate the asylum process; individuals who enter Finland but are too afraid to inform the authorities; individuals who fail the asylum process in another EU country but reside irregularly in Finland; and individuals in Finland who, under the Dublin Regulation, are unable to initiate the asylum process in Finland.
Overstayer	Individuals who entered Finland with a valid visa but subsequently failed to renew it or leave the country after the visa has expired, as well as those whose fixed or continuous residence permit expired or terminated without renewal. It includes individuals who unknowingly overstay their residence permits, as well as those who later become afraid of informing the authorities about it. Individuals with a residence permit from another EU member state who stay in Finland for over 90 days without informing the authorities or decide to reside in Finland for work reasons without permission.

Individual who enters Finland without permission but who does not perceive the need for protection	Individuals who have been residing in Finland irregularly and have never applied for a residence permit, as well as third-country nationals who entered Finland without a visa or despite being barred from entry.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Rejected asylum seeker who cannot be returned	Reasons for the inability of the authorities to initiate the return of rejected asylum seekers include medical reasons, inadequate travel documentation, the refusal of the person’s country of origin to accept their return, or the existence of ambiguous and challenging conditions in the country of origin, making it difficult for the person to be returned. These individuals can be granted a temporary residence permit.
EU/Nordic citizens from another EU member state or Nordic country without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
European Union citizen who fails to register their residency	These individuals are required to register their stay in Finland if their duration of stay exceeds 90 days. Additionally, they must demonstrate their ability to provide for their own livelihood during their stay. The regularisation of their situation occurs simply by registering their stay with the authorities.
Citizen from Denmark, Iceland, Norway or Sweden who fails to register their residency	These individuals are obligated to register their stay in Finland if their duration of stay exceeds six months. Unlike the previous group, these individuals are not required to provide proof of livelihood. The regularisation of their situation occurs simply by registering their stay with the authorities.
European Union citizen who fails to comply with an order to leave the country	These individuals have been deported or ordered to leave Finland due to their inability to meet financial obligations or support themselves adequately, or based on considerations of public safety. Members of the latter group can be given an entry ban of up to 15 years.
Citizens from Iceland, Norway,	These individuals have been deported or ordered to leave Finland based on considerations of public safety.

Sweden or Denmark who fail to comply with an order to leave the country	
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1.3.1 Pathways into and out of irregularity

- **From asylum seeker to irregular migrant**

The most prominent group of irregular migrants in Finland comprises former asylum seekers who initially entered the country legally but subsequently became irregular. That might happen for example if an individual receives a negative asylum decision and remains in Finland (Jauhiainen & Tedeschi, 2021).

- **Losing legal status after legal entry to Finland**

Due to the change in the Aliens Act (301/2004), some people who were previously granted a residence permit on the basis of humanitarian protection according to the now-outdated section of the Aliens Act cannot get an extension to their residence permit and therefore become irregular migrants. Related to the same outdated section, some individuals who were previously granted a temporary residence permit due to lack of cooperation in the removal process also become irregular migrants. Some people also become irregular migrants after their visas or residence permits have expired and they remain in Finland (Katisko et al., 2023, 11–12).

- **Assisted Voluntary Return**

One significant way of addressing irregular migration in Finland is through assisted voluntary return. Sections 14a and 31 of the Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings (746/2011) clearly specify assisted voluntary return as an option for those who recently lost their right to reside. The Act permits assisted voluntary return for those third-country nationals who applied for international protection (and were unsuccessful), those without residency in any municipality who previously received temporary protection as victims of human trafficking, and those who lost their right to reside in Finland after receiving a residence permit under Section 51 of the Aliens Act (following the legal changes in 2016).

- **Involuntary return**

Forced returns are another way that authorities combat irregular migration in Finland. According to Section 151 of the Aliens Act (301/2004), the Police of Finland and the Finnish Border Guard are responsible for removing individuals who are either entering or staying in Finland illegally. The grounds for deportation are outlined in Section 149, and include those irregular migrants who have previously lived in Finland with a residence permit but no longer have a valid permit, as well as those who have lost citizenship and are living in the country without a proper residence permit.

- **Getting a residence permit**

To attain legal residency in Finland, irregular migrants must meet the prerequisites for obtaining a residence permit. There are various possibilities for fulfilling these requirements, including seeking international or alternative protection as stipulated in the Aliens Act (301/2004) when significant changes occur in an individual's circumstances or in their home country. For instance, changes in individual's health status or armed conflict in their country of origin may render individuals eligible for different forms of protection and qualify them to remain in Finland. Additionally, irregular migrants with family members already living in Finland can regularise their stay through family reunification, subject to certain conditions outlined in the Aliens Act.

1.3.2 Regularisation

Currently, Finland does not have any fixed regularisation schemes in place for irregular migrants. While there have been political discussions and investigations regarding the potential implementation of a formal regularisation process, for example through being employed, no concrete plans have been made (Katisko et al., 2023). In addition, the national government in place since June 2023 has clearly expressed that it is opposed to regularisation of irregular migrants. “To support the Government’s objectives to tighten asylum policy, we [the Government of Finland] will introduce the more stringent provisions and best practices made possible by the Qualification Directive, Asylum Procedures Directive and Return Directive (Government of Finland, 2023, p. 221).

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1	Act on the Status and Rights of Patients	1992	According to section 3, Regarding the right to treatment of persons temporarily staying in Finland, what is separately agreed or mutually agreed upon between the states applies.	Link (FI)
2	Employment Contracts Act	2001	Chapter 11a, an amendment added to the Employment Contracts Act in 2012, outlines the terms and consequences for employers who hire irregular migrants in Finland.	Link (EN)
3	Aliens Act	2004 2015	<p>Sections 49, 51 and 52 relate to the granting of a residence permit to those staying in Finland unlawfully. Sections 129a, 129b and 151 outline the conditions in which the Police and Border Guard are authorized to monitor and inspect irregular migrants and enforce the Aliens Act. Additionally, the opposite of the legal presence of migrants outlined in Section 3 may also constitute irregular migrant status under other laws.</p> <p>Amendment in 2015 introduced stricter conditions for family reunification, abolished one category in international protection, shortened the appeal introduction period for cases related to international protection, and imposed limitations on accessing legal aid. Re-applications were restricted, and</p>	Link (EN)

			modifications were made to regulations concerning safeguarding measures, enforcement of conversion decisions, and deportation. Adjustments were made to the penal provisions concerning violations of entry bans.	
4	Border Guard Act	2005	The Border Guard Act outlines the responsibilities, powers, and procedures for the enforcement of border security in Finland.	Link (EN)
5	Social Welfare Act	2014	Under section 12 every person staying in a Wellbeing services county has the right to receive social services based on their individual needs in an urgent case in such a way that their right to essential care and livelihood is not jeopardized. Services must always be based on an individual assessment by a social care professional.	Link (FI)
6	Action Plan for the Prevention of Irregular Entry and Stay	2021 – 2024	Revised from the previous iteration, this plan outlines 52 actions for the government and its agencies to combat irregular entry and stay in Finland. These measures cover the entire process, from the origin country to transit, border control, and actions within Finland. The plan also includes actions to facilitate the return of irregular migrants and support individuals who cannot be returned.	Link (EN)
7	Government programme	2023	The government programme guides the policy of the coming reign in Finland for the years 2023-2027. The programme includes concrete measures to weaken the status of irregular migrants, for example in terms of enhancing deportation.	Link (EN)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
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1	Criminal code	1889	Finnish law applies to crimes committed in Finland. If an irregular migrant commits a crime in Finland or is subjected to a crime in Finland, the criminal law applies to it.	Link (EN)
2	Constitution of Finland	1999	Chapter 2 of the Finnish Constitution outlines the rights and freedoms that are granted to all individuals living in Finland. For example, sections 16, 18, and 19 of chapter 2 specify that everyone has the right to access basic education, work, and essential healthcare services.	Link (EN)
3	Child Welfare Act	2007	All children living in Finland have the right, if necessary, to services according to the Child Welfare Act.	Link (FI)
4	Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings	2011	This legislation delineates the measures through which authorities can ensure the protection and assistance for victims of human trafficking. Under Section 14a, since year 2015 the duration of reception services were limited only in situations where a person who has received a negative international protection decision cannot be returned by the authorities, which has affected the situation of irregular migrants.	Link (FI)
3	Police Act	2011	The law specifies the powers of the police to intervene in the situation of the irregular migrant.	Link (FI)
5	Act on the Organization of Social and Health Care	2021	Under Section 56a, all wellbeing service counties are required to provide necessary healthcare to all irregular migrants.	Link (FI)

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France Country Brief on Irregular Migration Policy Context

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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France

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Immigration Detention and Enforcement**
France has prioritised enhancing immigration detention policies, including measures to increase the detention of undocumented migrants and expedite the deportation process. These policies aim to address irregular migration and tighten border security, but they have faced criticism from human rights organisations due to concerns about human rights violations and the conditions within detention centres.
- **Selective Immigration and Points-Based System**
France is moving towards a selective immigration approach, similar to the points-based systems used in countries like Australia and Canada. This approach focuses on attracting skilled migrants based on factors such as education, work skills, and language fluency, with the goal of regulating and managing immigration more effectively.
- **Dublin Procedure and Irregular Migration Management**
France's policies centre on encouraging returns of asylum-seeking individuals who entered irregularly to the EU country of first arrival through the Dublin procedure, which allocates responsibility for asylum claims. The country also aims to combat human trafficking, identify irregular migrants, detain them, and restrict transit migration, aligning with broader EU objectives to manage migration flows and prevent irregular entries.

1.2 OVERVIEW OF THE FRENCH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

Penalties for Unlawful Employment of Third-Country Nationals

Decree N° 2013-728, dated 12 August 2013 stipulates penalties for the unlawful employment of third-country nationals. Employers who engage in irregular employment of migrants without legal employment conditions face punitive actions. This measure aims to curb irregular migration by discouraging informal or unstable employment practices, while also “safeguarding” migrants from exploitation.

- **House Arrest for Pending Expulsion**

CESEDA (Code on Entry and Residence of Foreign Nationals) authorises house arrest as a means of ensuring the departure of foreign nationals. This measure can be implemented for both short and long terms, depending on logistical needs. Individuals under house arrest face strict conditions and potential domiciliary visits if they defy the mandate. While this policy aims to facilitate deportation, it places individuals in a legal limbo, with their continued residence subject to provisional tolerance.

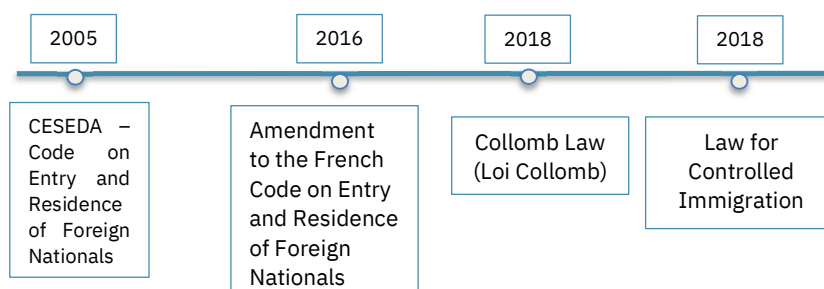
- **Penal Measures for Unauthorised Entry into France**

The Collomb Law of 2018 introduced a set of measures, including penalties for unauthorised entry into France. This law expedited the asylum application process, extended the detention duration for migrants, and established penalties for those entering the country without authorisation. The aim is to enhance both asylum and deportation efficacy while discouraging irregular entry into the country.

- **Facilities for Voluntary Return**

The establishment of facilities for return preparations (DPARs) provides an alternative to detention for irregular migrants and aims to streamline asylum procedures. While these facilities offer support and accommodation, they primarily serve those with unsuccessful asylum claims, indicating a focus on return over integration.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Stringent Policies and Limited Efficacy**

France's immigration policies, marked by increased border controls and a focus on criminalising irregular migration, have not significantly reduced the number of irregular migrants or improved return rates (Cassarino, 2020). This indicates a limited effectiveness in achieving their intended goals (Cassarino, 2015).
- **Healthcare Access Restrictions under AME**

The framework governing access to state medical aid (AME) has faced criticism (Lebano et al., 2020). The AME system, as outlined in the Code on Social Action and Families, includes certain prerequisites for entitlement, such as a stable three-month domicile and financial thresholds (May, 2021). Critics argue that these conditions disproportionately affect migrants with irregular status. They advocate for unrestricted healthcare access, especially for those facing humanitarian exigencies, to ensure that healthcare is accessible to all migrants, regardless of their legal status (May, 2021).
- **Selective Immigration and Restricted Regularisation**

Recent legislative changes reflect a shift towards selective immigration, making it harder for irregular migrants to transition into regularised status. Strict employment and integration requirements limit the avenues available for regularisation, reinforcing a discerning approach to societal integration (Rosina, 2022).
- **Advocacy Amidst Pandemic and Disillusionment**

Advocacy efforts, particularly during the COVID-19 pandemic, aimed to regularise essential workers but faced disillusionment as policy measures fell short. Despite proactive policy endeavours, the overall approach, including detention, deportation, and regularisation, has not provided effective solutions, leading to the need for collaborative efforts to address irregular migration challenges and promote productive integration (Burton-Jeangros et al., 2020).

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Limited Efficacy of Stringent Policies**

The first challenge is the limited effectiveness of France's stringent immigration policies, which include increased border controls and the criminalisation of irregular migration (Rosina, 2022). These policies have not significantly reduced the numbers of irregular migrants or improved return rates.
- **Balancing Return and Integration**

The second challenge involves striking a balance between promoting the return of irregular migrants and facilitating their integration (Caron, 2020). The focus on creating facilities for return preparations (DPARs) suggests an emphasis on return, potentially at the expense of integration.

- Selective Immigration and Restricted Regularisation**
 The third challenge pertains to the shift towards selective immigration policies, making it more challenging for irregular migrants to transition into regular status (Lai et al., 2020; Waldinger et al., 2023). Stricter requirements related to employment, integration, and the principle of family unity limit the avenues available for regularisation.
- Disillusionment and Ineffectiveness**
 The fourth challenge is the disillusionment among stakeholders, including organisations and government institutions, regarding the effectiveness of the policies. Despite proactive efforts and advocacy, policies such as detention, deportation, and regularisation have not produced the anticipated results and solutions for irregular migration challenges. This calls for collaborative efforts and a re-evaluation of policy approaches to ensure productive integration.

Table 1: Relevant French institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Ministry of Interior	Implements migration and asylum policies under Decree N° 2013-728 of 12 August 2013 modified by Decree N° 2018-912 of 24 October 2018. Manages: migration flows; regulations related to visas, foreign nationals' entry, stay and work in France; reception and integration support and access to nationality; the fight against illegal employment and irregular migration and asylum policies.	Link (FR)
2.	General Directorate for foreign nationals in France	Coordinates the Directorates in charge of migration and asylum and the Directorate in charge of accompanying foreign nationals and citizenship issues within the Ministry of the Interior. It also controls; the French office for immigration and integration (OFII) and the French Office for the protection of refugees and stateless persons.	Link (FR)
3.	Inter-ministerial delegate responsible for the integration and reception of refugees	Appointed in February 2018, under the authority of the French Minister of the Interior. Provides support for defining, animating, and evaluating refugee reception and integration policy. Coordinates the actions of all involved ministries and is responsible for organising the reception operations decided by the government.	Link (FR)

4.	Ambassador responsible for migration	Appointed in September 2017 by the Minister of the Interior and the Minister for Foreign Affairs to extend offers of partnerships to countries of origin and transit to better control migration flows (controlling borders, fighting against trafficking, encouraging voluntary return, or detaining people in an irregular situation, acting on the fundamental causes of forced displacement and irregular flows, and promoting legal access routes, notably in favour of those in need of protection).	Link (FR)
5.	Associations and Non-governmental Organisations (NGOs)	<p>They work as partners of the public authorities in handling reception and integration of legally staying foreign nationals and for reception and support for asylum. Some of the most prominent ones include:</p> <p><i>France Terre d'Asile</i> - This organisation provides support and protection to asylum seekers, and refugees, particularly minors. They also offer legal aid, social support, and help with integration.</p> <p><i>Caritas France (Secours Catholique)</i> - Affiliated with the international Caritas network, this organisation provides assistance to migrants, refugees, and other vulnerable groups, working to ensure their rights and well-being.</p> <p><i>Cimade</i> - Active since World War II, Cimade supports foreign nationals and migrants in France. They offer legal assistance, operate in detention centres, and advocate for the rights of migrants.</p> <p><i>Red Cross in France (Croix-Rouge française)</i> - While the Red Cross is renowned for its broader humanitarian efforts, in France, they also assist refugees and migrants, providing emergency accommodation, health services, and social support.</p> <p><i>Groupe d'information et de soutien des immigrés (GISTI)</i> - This group specialises in legal support and advice for immigrants. They also engage in advocacy and training.</p> <p><i>Forum réfugiés-Cosi</i> - This organisation is dedicated to the reception of asylum seekers, the integration of refugees, and the defence of the right to seek asylum.</p>	Link (FR)

6.	French national health insurance agency (CPAM)	Application for state medical aid (AME) for irregular migrants is addressed by the French national health insurance agency (CPAM)	Link (FR)
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1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN FRANCE: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in France

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Visa overstayer	Individuals who entered France legally (e.g., on a tourist or student visa) but did not leave upon visa expiry. Staying beyond the validity of their visa can lead to legal consequences such as fines, detention, or deportation. Temporary Work Visa Holders who enter France legally with a temporary work visa but continue to stay after their work contract ends or if the contract is terminated. If they don't secure another legal avenue for stay, they move into an irregular status.
Rejected asylum seeker	Individuals whose applications for asylum have been denied by the French authorities but who have not left French territory. Their legal stay has ended, and they face the risk of detention or deportation.
Patients on Medical Stay	Individuals who enter France legally on a short-term visa due to medical reasons and overstay, either because of extended medical treatment or other reasons. While they may seek to regularise their stay through medical grounds, if unsuccessful, they become irregular migrants.
Dublin procedure migrants	As per the Dublin Regulation (an EU regulation), asylum seekers must apply for asylum in the first EU country they enter. If they move to another EU country like France and apply for asylum, they can be sent back to the first country. Those refusing to go back might become irregular migrants.
Unaccompanied Minors	Children under 18 who arrive in France without legal documentation and without the accompaniment of a guardian or parent. Their legal situation is complex due to their vulnerability, and while some may pursue asylum, others may remain undocumented.

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum Seekers with Pending Applications	Individuals who have formally applied for asylum but are awaiting the decision. They have the right to remain in France until a decision is made, but their access to work and other rights may be limited. Should their application be rejected, they would need to leave unless they find another legal pathway.
Victims of Trafficking or Exploitation	Individuals who are identified as victims of human trafficking or severe exploitation may have a claim to stay in France for their protection. Their status is often provisional and contingent on cooperation with authorities in investigations or prosecutions.
Migrants eligible for regularisation	This category typically encompasses migrants who have been residing in the country for a considerable duration, those with strong familial or economic ties, and individuals who have integrated well within society. The exact conditions vary, but in many cases, steady employment, demonstrable community engagement, and an absence of a criminal record could enhance one's prospects for regularisation. Some specific groups might be exempted, especially if they have previously been rejected for asylum or have been involved in criminal activities. The implications of regularisation can be profound, leading to improved access to state services, enhanced protection under the law, and a potential pathway to permanent residency or citizenship.
British citizens post-Brexit	Following the Brexit transition, previously resident British citizens no longer enjoy the automatic right to live, work, and study in France under the freedom of movement. However, France has established procedures to ensure that British citizens legally residing in France prior to the end of the transition period can secure their residency rights. British citizens with prolonged residence in France or those with familial ties might have distinct pathways or provisions available to them.
EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
EU citizens who've lost residence rights due to crimes	EU citizens who've committed serious crimes or are considered a threat to public security might lose their residence rights. The exact nature of the crimes that could lead to such consequences is usually determined by national

	law transposing the Citizens Directive. These individuals may be subject to deportation, and their ability to return might be restricted.
EU citizens after 3 months stay	While EU citizens have the right to free movement and residence across the EU, they must fulfil certain conditions after three months in France, like being employed, studying, or being self-sufficient. Those not meeting these criteria might not have a stable long-term right to stay.

1.3.1 Pathways into and out of irregularity

Pathways into irregularity in France:

- **Clandestine Entries**
Historically, clandestine entries, facilitated by smuggling networks or individual attempts to circumvent border checks, have been a direct means leading to irregular status in France.
- **Visa Overstays**
Some individuals who initially entered France legally with valid visas may fall into irregular status by overstaying due to changes in personal circumstances, economic incentives, or socio-political disruptions in their home countries.
- **Asylum Seekers**
Asylum seekers with pending applications may face irregularity if their applications are rejected, leading them to choose to stay due to fears of persecution, lack of safe return options, or hopes for a legal revision in their asylum case.
- **Economic Factors**
Migrants on employment-based permits can fall into irregularity if they lose their jobs and fail to find new employment within a stipulated timeframe, especially in transient sectors like agriculture or seasonal tourism.
- **Family and Health Factors**
Family reunification policies may lead to irregularity if family ties dissolve due to divorce or the death of a family member. Additionally, individuals seeking medical treatment in France may become irregular if they cannot return home due to medical concerns, economic reasons, or socio-political instability.

Pathways out of irregularity in France:

- **Case-by-Case Regularisation:**
France has employed case-by-case regularisation, where criteria such as duration of stay, familial ties, and employment status are considered to provide irregular migrants with avenues to formalise their status.
 - **Regularisation based on Familial Links**
France recognises the right to family life, allowing parents of children born in France or attending French schools to find pathways for regularisation under the principle of ‘family unity’.

- **Regularisation for Labour Purposes**

Under specific conditions and criteria, workers can be regularised, especially if they are employed in sectors facing labour shortages.

- **Health Considerations**

France acknowledges the right to reside for foreigners with health conditions that cannot be treated in their home countries, reflecting the country's commitment to human rights. This provision allows individuals in irregular situations due to their health conditions to apply for regularisation, offering them a legal pathway to reside in France. By doing so, France ensures that these individuals are not returned to situations where they cannot access necessary medical care, thus providing them a chance to step out of irregularity based on humanitarian grounds.

- **Victims of trafficking**

Victims of trafficking can also seek protection and regularisation under specific legal provisions.

- **Postgraduate Students**

Non-EU postgraduate students in France can transition to working professional status after their studies if they meet certain conditions related to their employment prospects. For instance, they may be required to secure a job offer that is related to their field of study and meets a minimum salary threshold. Additionally, the position should typically be for a duration of at least one year. Some students might also benefit from grace periods allowing them a specified time frame to look for relevant employment post-study, ensuring their stay aligns with their professional development and France's labour market needs.

1.3.2 Regularisation

- 2012, Valls circular

Purpose and Context: Introduced in 2012, the Valls Circular provided a clear legal framework formalising and centralising existing regularisation practices for persons in an irregular situation in France. It sought to alleviate some conditions for those seeking residence based on employment.

Mechanisms for Regularisation:

- Based on Employment:

- Eligibility: Applicants must have stayed in France for at least five years with an employment contract or a promise of future employment. They should have worked for at least 8 months within the last two years or 30 months in the last five years. However, those residing in France for three years who have worked for a minimum of two years are also considered.
- Documentation: Proof of previous employment, predominantly through salary statements.
- Outcome: Eligible applicants are granted a renewable residence permit with a one-year maximum validity, allowing employment without a labour market test. In certain cases, even without a promise of employment, applicants may receive a temporary permit for job-seeking.

- Based on Private and Family Life:
 - o Eligibility: Targeted towards parents with children in school, partners of regular migrants, minors turning eighteen with family links or pursuing education in France. Some foreigners with exceptional talent or societal contributions can also apply.
 - o Special Provisions: Emphasis is given to human trafficking victims cooperating with authorities and victims of domestic violence. They receive a one-year renewable residence permit.
 - o Outcome: Qualifying individuals are issued a temporary residence permit labelled “private and family life.”
- Victims of Human Trafficking:
 - o Eligibility and Process: the CESEDA also provides for the regularisation of human trafficking victims. To assist criminal proceedings, victims might get a residence permit with a six-month duration, renewable as the process continues. This permit grants access to the labour market, education, and the social security system. Upon a suspect's conviction, the victim can obtain a ten-year residence permit.
 - o Restrictions: Both employment and private/family life-based regularisations strictly exclude individuals posing a public order risk or those involved in polygamous marriages in France.
- Data Clarity Issues: Although the Valls Circular explicitly outlines the criteria for regularisation, obtaining precise data on the frequency of these mechanisms is challenging. Official statistics usually classify permits by type rather than the reasons for their issuance. Thus, the exact number of irregular residents receiving such permits remains uncertain.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to the source
1	Ordinance No. 45-2659 of 2 November 1945	1945	Ordinance No. 45-2659 of 2 November 1945 on the conditions of entry and residence of foreigners in France.	Link (FR)
2	Code of entry and residence of foreigners and of right to asylum (CESEDA)	2005	This code repealed and replaced Ordinance No. 45-2659 of 2 November 1945, which pertained to the conditions of entry and residence of foreigners in France. The CESEDA took effect on 1 March 2005, with its regulatory part being published on November 15, 2006. A subsequent codification came into force on 1 May 2021.	Link (FR)
3	“Sanctions” Directive	2011	The Law of 16 June 2011 on immigration, integration, and nationality, which transposes the Sanctions Directive of 18 June 2009 into domestic law, introduced and strengthened sanctions against employers employing irregular migrants, while establishing provisions aiming to guarantee social and pecuniary rights to foreign nationals working illegally.	Link (FR)
4	Valls circular	2012	This policy prioritised the regularisation of undocumented migrants based on specific criteria, including the duration of their stay in France, family ties, employment, and integration into French society. The Valls 2012 policy aimed to balance the humane treatment of long-standing undocumented residents with the need to control and manage migration effectively.	Link (FR)

5	Circular on the organisation of education for migrant children	2012	Circulaire REDE1236614C n° 2012-143, dated 2 October 2012, provides guidelines on the organisation of Academic Centers for the schooling of newly arrived migrants and traveling children.	Link (FR)
6	Code of entry and residence of foreigners and of right to asylum (CESEDA) – Amendment 2013	2013	Under the auspices of Decree N° 2013-728 of 12 August 2013, the CESEDA implemented policies pertaining to migration and asylum. The focus of this iteration was on managing migration flows, detailing regulations related to visas, overseeing the entry, stay, and work of foreign nationals in France, and organizing the reception and support for integration and access to nationality. Additionally, it emphasized the fight against illegal employment, illegal migration, and established asylum policies.	Link (FR)
7	Code of entry and residence of foreigners and of right to asylum (CESEDA) – Amendment 2018	2018	This version of the CESEDA is encapsulated by Law n. 2018-778 of 10 September 2018, which aimed at promoting managed migration, ensuring an effective asylum law, and fostering successful integration.	Link (FR)
8	Collomb Law - Law No. 2018-778 of 10 September 2018	2018	The Collomb Law, passed in 2018, shortened the deadline for asylum applications, doubled the time migrants could be detained and introduced a one-year prison sentence for anyone found to have entered France illegally, to speed up the asylum process and make the deportation system more efficient.	Link (FR)
9	Code of entry and residence of foreigners and right to asylum (CESEDA) – Amendment 2019	2019	The CESEDA underwent a significant legislative change through Law n. 2018-187 in March 2019. This amendment was focused on facilitating the sound application of the European asylum system.	Link (FR)

10	Law proposal: Ban on the regularization of foreigners in an irregular situation	2020	A law proposal was submitted in February 2020 to prohibit the regularisation of foreign nationals in an irregular situation. The administration is prohibited from regularising foreign nationals in an irregular situation, to reduce applications for immigration and to comply with French laws in force and to reward those who comply with them.	Link (EN)
12	Code of entry and residence of foreigners and right to asylum (CESEDA) – Amendment 2022	2022	The Decree number 2022-1703 of December 2022 introduced measures relating to the establishment of the office for combating migrant smuggling.	Link (FR)
13	Bill to control immigration, improve integration	2023	The 2023 bill creates a one-year residence permit "working in professions in shortage". Irregular workers will be able to request regularisation under this new card which will be issued automatically, under certain conditions (length of stay of at least three years in France, experience of eight months during the last 24 months in a profession or geographical area in tension). This card will be tested until the end of 2026, before its possible sustainability. Asylum seekers from the countries most at risk (applicants benefiting from a high rate of protection in France) will be able to work immediately.	Link (FR)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Law No. 2016-274 of 7 March 2016 and Law No. 2020-734 of 17 June 2020 – voluntary return	2006	Law No. 2016-274 of 7 March 2016 and Law No. 2020-734 of 17 June 2020 “foreign nationals who are required to leave France have a period of thirty days from the date of notification of the obligation to leave France to do so voluntarily.”	Link (EN)
2	Code on Social Action and Families (CAFS) - Articles L251-1 to L2521-3, Articles L252-1 to L252-5, Article L254-1 and L254-2, Article R251-1, and R251-2	2019	State medical aid requests are primarily submitted by applicants to health insurance organisations, which handle them on the State's behalf. Exceptions include cases involving unaccompanied minors or those with reduced mobility.	Link (FR)
3	Code on Social Action and Families (CAFS) - Article L 345-22	2021	Article L 345-22 of the code on social action and families (CASF), any person without shelter and in a situation of medical, mental, or social distress has access at any time to emergency accommodation, including irregular migrants. The right to access emergency accommodation is identical for nationals and migrants, and migrants in a regular situation as well as for migrants in an irregular situation.	Link (FR)

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Germany Country Brief on Irregular Migration Policy Context

AUTHOR:

Norbert Cyrus

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THE MIRREM PROJECT

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

MIrreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIrreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Germany

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

The 2021 Coalition agreement of the current Federal government is a good indicator for policy priorities. The document addressed issues related to irregular migration and envisaged policy measures directly or indirectly affecting irregular migration (Thym, 2021). Subsequently, relevant issues form four clusters:

- **Prevention of unlawful entries**
In response to alarmist debates pointing to unlawful entries across the external EU borders and across the interior borders between neighbouring EU member states as too high and increasing, the prevention of unlawful entries and fight against human smuggling and trafficking advanced to a policy priority.
- **Efforts to increase the number of departures of third country nationals without a right to stay**
Related to allegations that the number of resident third-country nationals without a right to stay but tolerated by authorities is too high, efforts to increase the number of voluntary and coerced returns gained importance and rank high in the political agenda.
- **Granting provisional status and regularisation of third country nationals entering or staying in Germany without required permissions**
The Coalition agreement includes declarations of intent to design and implement legal provisions offering under particular conditions the regularisation of tolerated third country nationals.¹ While the granting of a provisional status is guided by security concerns and the claim to know who stays in the country, the issue of

¹ <https://handbookgermany.de/en/duldung>

conditional regularisation is guided by pragmatic political considerations to prevent that individuals indefinitely remain in a tolerated status and that the stock of tolerated foreign nationals increase otherwise. It also responds to ongoing advocacy to respect human and fundamental rights and economically vested claims to utilise the resources of refugees.

- **Access to basic social rights for migrants in an irregular situation**

Driven by human rights advocacy and pragmatic considerations of health sector practitioners to contain health risks and reduce treatment expenses, the Coalition agreement envisaged to amend legal provisions regulating access to medical treatment for migrants in an irregular situation.

1.2 OVERVIEW OF GERMANY'S POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Prevention of unlawful entries**

At European level, the Federal government supported the reform of the Common European Asylum System (CEAS) providing measures to process asylum claims at the external EU borders and retain rejected applicants in the border regions. At national level, German authorities introduced stationary controls at the borders to neighbouring countries and intensified efforts to persecute migrant smugglers and human traffickers (Engler & Christinck, 2024). Since 2015, German authorities launch communication campaigns that deliver information on the risks of irregular migration with the intention to dissuade probable migrants from attempting unlawful traveling. The website “rumours about Germany” provides information in English, French and Arabic language. The Federal Government initiated changes in the processing of asylum applications, including a limitation of particular applicants’ possibilities to take legal action, and extended authorities’ legal competencies to enforce return, with the intention to reduce supposed incentives for irregular migration (Stiller & Hoffmeyer-Zlotnik, 2023).

- **Efforts to increase return and departure of foreign nationals without a right to stay**

German authorities aim to facilitate voluntary departures, promote assisted returns and tighten enforcement of deportation (Haberstroh et al., 2022; Peitz, 2023; Stiller & Hoffmeyer-Zlotnik, 2023). Measures for the promotion of voluntary return encompass the funding of return counselling and the launching of programmes for assisted return with financial incentives for foreign nationals willing to return. In addition, changes encompass the introduction of accelerated procedures for the processing of asylum applications with confined rights of objections for particular

protection seekers deemed to be from a safe country of origin or with an obviously unfounded protection request. Legal provisions regulating deportation procedures were tightened to prevent that migrants abscond when deportation is initiated. German Federal Governments supported EU initiatives to sign readmission agreements with North African States (c.f. Tunisia, Egypt), signed new bilateral migration agreements (India, Georgia, Morocco, Colombia) and initiated negotiations (Moldova, Kenya, Philippines, Ghana) (Mediendienst Integration, 2024b). In order to accelerate negotiations, in 2023 a Special Government Commissioner for Migration agreements was appointed (German Federal Ministry of the Interior and Community, n.d.).

- **Conditional regularisation of tolerated third country nationals**

In spite of harsh but unproven allegations that regularisation awards unlawful behaviour and works as a pull factor, German governments used to launch regularisation options that offer a pathway towards a regular residence. Such programmes were usually described as exceptional measures addressing only particular third country nationals without a right to stay who met particular requirements (Hinterberger, 2023). Since 2015, the Federal legislator introduced more durable opportunities providing tolerated third-country nationals the chance to earn a residence title through accomplishment of education, professional training, employment or particular individual integration achievements (Haberstroh et al., 2022; Peitz, 2023).

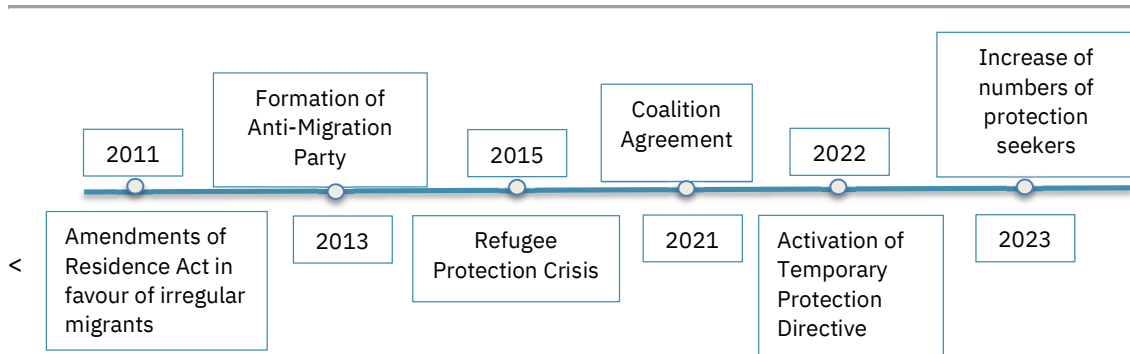
- **Access to basic social rights for migrants in an irregular situation**

Implementation of measures in this area focus on access to education and healthcare; those aiming to improve access to medical treatment are mainly implemented at Federal State and municipal level. In 2011, an amendment of the Federal Residence Act exempted schools and other educational institutions from the duty to report pupils or students without regular residence status to responsible authorities. Some Federal States subsequently began to issue kindergarten vouchers for children in an irregular situation. Also in 2011, the Federal legislator confirmed that Social Welfare Offices in case of an emergency treatment must reimburse costs of migrants in an irregular situation to hospitals without a notification of police or foreigners' offices (Cyrus, 2017). An anonymous healthcare card², mentioned in the 2021 Coalition agreement, was not further pursued at Federal level due to changing political priorities related to the pandemic and the Russian aggression against Ukraine. In 2013, the Federal State of Hamburg established and funded a special clearing point that offers assistance to ill migrants in an irregular situation. The service clarifies the assurance status, explores possibilities to regularise the residence and reimburse in reviewed cases the costs for medical treatment. The organisational model is copied in other Federal states and municipalities. Several actors offer health services that include migrants in an irregular situation, among

² <https://anonymer-behandlungsschein.de/>

public health administration, church-related welfare associations (Malteser) and civic initiatives (Medical Assistance for Refugees).

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

The impact of the afore-mentioned policy measures and programmes is diverse. Available data shows that measures depending on the cooperation with other actors have a high risk to fail.

- **Prevention of unlawful entries and stays**

The support of stricter border control measures at the external EU borders yields no immediate empirical effect but signalled governments’ determination to take action. The number of apprehensions fluctuated between 2015 and 2020 and increased to 127.000 in 2023. The implementation measures noted previously increased the apprehension of those identified as smugglers and traffickers. Federal Police report a reduction in irregular border crossings, an outcome deemed to be caused by the deterrent effect of border controls and neighbouring countries’ efforts to control borders as well (Dinger, 2023). However, research indicate that the measures redirected migrants to less surveilled crossing points and do not impact the number of asylum applications (Engler & Christinck, 2024, p. 16). Authorities are obliged to receive and examine each plea for protection and consequently admit applicants’ entry or to remain for the processing of an asylum examination. Consequently, the chance to reduce the number of asylum applicants by border controls is limited. Authorities refute allegations by human rights advocacy that the right to lodge an asylum claim is occasionally disregarded. Regarding information campaigns, the German government concedes that impact cannot be assessed (Deutscher Bundestg, 2018).

- **Efforts to increase the return of migrants without regular status**

In 2022, about 300.000 foreign nationals known to authorities were obliged to depart. Compared to this number, the number of registered departures is relatively low. In 2022, altogether 4.500 voluntary and assisted returns and 12.945 deportations were registered (Deutscher Bundestag, 2023). The number of persons obliged to depart who return without knowledge of authorities is unknown. Implementation of deportation is impeded by limited organisational capacities and legal, humanitarian and practical obstacles. The effects of re-admission and migration agreements will remain modest as long as most important countries of origin do not cooperate. The expected effects of one-way declaration to return foreign nationals to safe countries of origin fail to appear when human rights obligations interdict coerced removals.
- **Conditional regularisation of tolerated third country nationals**

Despite a general reluctance, German authorities launched several programmes and temporarily introduced mechanisms for regularisation. Between 2015 and 2020, authorities issued nearly 660.000 residence titles to foreign nationals previously staying in Germany in an irregular situation (Haberstroh et al., 2022, p. 21). As of 31 December 2022, the Federal government launched a regularisation programme for tolerated foreign nationals who had lived as of 31 October 2022 for at least five years in Germany. Within one year, about 75.000 applications were lodged, and 54.000 residence titles issued (Mediendienst Integration, 2024a). Regularisation programmes constitute the most important factor by which the number of tolerated foreign nationals has been reduced: in 2023 for the first time since 2015 this was reduced to about 240.000 persons. Conditional regularisation is the most effective mechanism to reduce the number of tolerated foreign nationals without a right to remain in Germany.
- **Access to basic social rights for migrants in an irregular situation**

The knowledge on the outcome of measures protecting the rights of children to education is poor. A survey revealed that school staff are not sufficiently informed about regulations that require the enrolment of children without a regular residence status and prohibits providing such information to police or foreigners offices (Funck et al., 2015). The provisions regulating the reimbursement in cases of emergency medical treatment are similarly not always known to social administration officials (Bundesarbeitsgruppe Gesundheit/Illegalität, 2017). However, information from specialised health service providers indicate that irregular migrants make use of the services. Clearing points document that counselling enables them to (re-)gain membership in health insurance and even apply successfully for a tolerated status or residence title (Flüchtlingszentrum Hamburg, 2023).

1.2.4 Policy Challenges in Addressing Irregular Migration

- **Data**

Original scientific survey data on irregular migration is not available. German authorities continuously report administrative data addressing irregular migration. In addition, documentation of regular Parliamentary inquiries contribute to the scattered availability of irregular migration-related administrative data (Thränhardt, 2024). A special report provided a comprehensive overview and discussion of available data sources and data sets, indicating that diverse creatorship and authority-specific definitions impedes a coherent cross-authority interpretation (Haberstroh et al., 2022). Data validity is limited due to the authority-specific purpose and incoherent practices of data recording at shop-floor level (MIRreM Workshop Germany) and secondary analysis requires methodological sensitivity and is an intricate affair. Although a number of research efforts illustrate that thoroughly conducted secondary analysis could enhance the level of evidence basis (Haberstroh et al., 2022, p. 19; Peitz, 2023; Vogel, 2016) policy decision making refers merely to few indicators in isolation, in particular the number of irregular entries, rejected asylum applications, stock of tolerated migrants without a right to stay or executed deportations without a closer scientific explication of causalities and circumstances. A particular problem constitute the persistent tendency to create the mundane category of “false irregular migrants” by neglecting that about 70 percent of migrants having crossed the borders without required permission obtain subsequently the status of asylum seeker, thus nullifying the culpability of irregular entries (Engler & Christinck, 2024, p. 11).

- **Coping with public and media concerns about irregular migration**

Decision making in migration and integration politics is shaped by efforts to cope with anti-migration sentiments framing migration solely as threat to the social systems and public order. Elected office holders try to conciliate concerns with contrarotating initiatives combining liberal and restrictive approaches. Already pursued and extended liberal and pragmatic policy options offering legal alternatives for entry or pathways out of an irregular situation are rather quietly and cautiously implemented. Demonstratively declared is a preference for top-down implemented command-and-control approach (Boswell & Slaven, 2023) and law amendments that promise to deter unlawful border crossings and remove migrants without a right to stay. The effective implementation of restrictive approaches depends on other actor’s willingness to cooperate and fails to suffice expectations. Consequently, the contrarotating policy facilitates a gap between declared and realised objectives, undermining citizens’ trust in governmental capacities to manage migration.

- **Evidence based designing of a more coherent and pragmatic governance of irregular migration**

A main challenge is the development and implementation of a coherent policy design guided by due and combined consideration of evidence based insights, compliance

with humanitarian law and ethical standards, and pragmatic policy orientation in order to gain electorate's acceptance and "social robustness" (Nowotny et al., 2003).

Table 1: Relevant German institutions

Sr. No.	Institution/ department	Responsibilities	Web link
1.	Federal Ministry of the Interior and Community	The Federal Ministry of the Interior and Community represents the Federal level that is responsible for the framework legislation regulating entry and stay of foreigners	Link
2.	Federal States' Ministries for Interior	The sixteen departments take at Federal State level the responsibility for the implementation of Federal regulations and launch legislation addressing issues in Federal State responsibilities. Federal States are responsible for removal of irregular migrants and the legal regulation of accommodation and livelihood of foreigners in need of assistance.	
3.	Standing Conference of the Federal States Ministries of Interior	The Standing Conference is the representative body where the sixteen Federal State Ministries of Interior discuss twice in a year Federal State crossing issues, including migration related ones, and aim to agree upon a joint position representation their interests vis-à-vis the Federal level. The Federal Ministry of Interior and Communities participates in the conference without voting rights.	Link
4.	German Association of Cities and Municipalities (Deutscher Städte- und Gemeindebund)	The German Association of Cities and Municipalities (DStGB) represents the interests of cities and municipalities in Germany and the EU. The cities and municipalities are responsible for providing accommodation and livelihood	Link
5.	Federal Government Commissioner for Migration, Refugees and Integration	The Federal Government Commissioner for Migration, Refugees and Integration supports the Federal Government in the further development of integration policy and the promotion of coexistence between foreigners and Germans.	Link
6.	Federal Office for Migration and Refugees (BAMF) Bundesamt für Migration und	BAMF is a Federal Office and division of the Federal Ministry of the Interior, with competences and operative responsibilities in the areas of migration, integration and return	Link

	Flüchtlinge (BAMF)		
7	Catholic Forum Living in an illegal situation	The Catholic Forum was founded 2004 on in initiative of the Catholic Bishops Conference Germany and is committed to ensuring that people who are illegally residing in Germany can make use of their basic social rights without having to fear deportation.	Link
8	Federal Working Group Health/ Irregularity	Founded 2006, the Federal Working Group consists of experts from science, medical practice, welfare association, municipalities and NGOs. It sees it as its task to advocate in public and in the political discussion for the realization of the human right to health, even for people in illegality under residence law; to identify and analyse from practical experience the current obstacles that stand in the way of access to health care for people in illegality under residence law; develop practical proposals for removing these obstacles and bring them into the discussion; ensure the exchange of information among relevant stakeholders.	Link
9	Refugee's Councils	The Federal State Refugee Councils are independent representatives of the refugee self-organisations, support groups and solidarity initiatives active in the federal states. The state refugee councils are networked and are members of the nationwide working group for refugees PRO ASYL. The Federal State based Refugee Councils see it as a task of the state to provide refugees with generous reception, effective protection, sustainable integration and a self-determined perspective for the future, taking serious account of their reasons for fleeing and humanitarian needs.	Link
10	Federal Association of Independent Welfare Services	In the Federal Association of Independent Welfare Services, the umbrella associations of the independent welfare sector work together. Their common goal is to secure and further develop social work through community initiatives and socio-political activities. The umbrella associations themselves have a federalist structure, i.e. their branches at the municipal and state level as well as their member organisations are predominantly legally independent.	Link
11	Netzwerk Migrationsrecht	The Migration Law Network has more than 250 members from Germany and other European countries who deal with migration law issues in academia and	Link

		practice. The "Migration Law Network" is primarily aimed at a scholarly debate. However, the self-image includes a continuous and, if possible, institutionalized exchange with practitioners. By linking practice and academia, the "Migration Law Network" sees itself as a point of contact for other actors in the field of migration and its regulation.	
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1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN GERMANY: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Germany

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Irregular migrant	The notion irregular migrant addresses foreigners entering or staying in the Federal territory without required permissions. Initially, the term was narrowly related to irregular migrants not known to authorities (e.g. stock of unknown cases). Third-country nationals in an irregular situation not known to authorities receive currently less attention than those known to authorities.
Unlawful entrant	Every person apprehended when attempting to enter German territories with false, falsified or without required documents. The term is also used to refer to the entrants of protection seekers which are legally exempted from criminal liability (e.g. fake irregular entrants).
Unlawfully residing persons	Persons residing in Germany without required permissions. Law enforcement data on foreign suspects without a lawful status indicate that irregular stay affects mostly (about 80 % in 2023) nationalities with a high chance to obtain after unlawful entry a permission to stay for asylum processing (e.g. implying an unknown share of absconded asylum applicants), but also third country nationals who have entered lawfully (e.g. overstayers).
"Irregular Migrant known to authorities"	Actually, in publications of Federal Ministry of the Interior and the BAMF, the term "irregular migrants" is also used to designate tolerated foreign nationals without a right to stay and obligated to depart, even when they are in contact with authorities. Currently, public attention focusses on these "irregular migrants known to authorities".

Migrant workers without required permissions	Important categories beyond the radar of law enforcement are third country nationals - mostly female - employed by private households as care givers, cleaners or nannies and -mostly men - employed by officially registered but unlawfully operating enterprises in sectors like construction, agriculture, food processing or services.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Foreign nationals whose request for asylum is considered to be admissible	Regardless of the legal circumstances of entry or stay, a temporary residence permit is granted to migrants asking for asylum when German authorities confirm the eligibility. Applicants are permitted to stay in order to carry out the asylum procedure. The residence permit is valid for the duration of the asylum procedure.
Foreign nationals whose request for asylum is considered to be inadmissible or obviously unfounded	A provisional status of toleration ³ (i.e. the suspension of deportation) is granted to foreign nationals having asked for asylum when authorities consider the request to be inadmissible (due to the Dublin regulation) or obviously unfounded and the person cannot depart or be deported due to legal, humanitarian or practical obstacles.
Foreign nationals without a right to stay who cannot be removed for humanitarian, legal or practical reasons	A provisional status of toleration is also granted to a foreign national after unlawful entry or visa overstaying neither with a right to stay nor asking for asylum, when the person cannot be removed due to legal, humanitarian or practical obstacles. The toleration is valid as long as the reasons continue (Haberstroh 2022, 44)
Foreign nationals who fulfil requirements for a special type toleration that opens a pathway towards a residence permit	In the last decade, the legislator introduced special types of tolerated status with the function to offer a path towards a regular residence status for tolerated foreign nationals. While the initial tolerated status implied departure or deportation as legally determined end, the newly introduced special types toleration types offer already tolerated foreign nationals who satisfy particular conditions a pathway towards a regular residence through vocational training, ⁴ employment ⁵ or holding particular

³ <https://handbookgermany.de/en/duldung>

⁴ <https://handbookgermany.de/en/ausbildungsduldung>

⁵ <https://handbookgermany.de/en/beschaefigungsduldung>

	individual features (Chancen-Aufenthaltsrecht). ⁶ However, in case that the conditions are not achieved, the beneficiaries fall back to the insecure status of initial toleration.
EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
EU citizens denied the Right to Free Movement	An order to depart is issued to EU citizens when the responsible authority assert the loss of the right to Freedom of Movement for reasons of public order, security or health or fraudulent application. Based on the order to depart, authorities can impose a ban to re-enter. Law enforcement data on apprehended suspects indicate that the main affected nationalities are Bulgaria, Poland and Romania.

1.3.1 Pathways into and out of irregularity

- Entry and stay without required documents and permissions**
Irregularity occurs when foreign nationals cross national state borders without required documents and permissions, overstay visa, work without required permissions, disregard an order to leave the country or when the status is withdrawn after a re-examination and the responsible authorities do not grant a provisional toleration or residence permit for the purpose of an asylum proceeding.
- Abandoning contact with authorities**
Irregularity occurs when foreign nationals already known to authorities abandon contact during an asylum processing or after an order to leave and remain in the country without required permissions or disregarding the obligation to depart.
- Obtaining a provisional status that suspends deportation**
The granting of a provisional status, e.g. a toleration, is a de-facto regularisation (Schütze, 2023). A toleration is granted after the rejection of an asylum application or in case that the departure or deportation of a foreign national detected after irregular entry or during irregular stay is not possible for humanitarian, legal or practical reasons.
- Obtaining a special type of temporary toleration or residence title for the end of regularisation**
German legislator introduced a set of legal opportunities offering passages for particular categories of foreign nationals with precarious residence status to earn a secure residence status through achievements in education, vocational training or employment. In addition, a residence title can be issued in case of particular hardship or for humanitarian reasons (see 1.3.2).

⁶ <https://handbookgermany.de/en/chancen-aufenthaltsrecht>

- **Informal pathways towards a residence permit**
In addition to formal procedures, foreign nationals may obtain a residence permit due to the side-effects of other policies, in particular the legal protection of family implies that marriage or parenthood establish a right to stay.
- **Temporary Protection of Ukrainian citizens**
The activation of the EU Temporary Protection Directive worked as a programme preventing that Ukrainian citizens who already stayed in Germany or fled to Germany after the begin of the Russian aggression fall into an irregular situation. The regulation grants for up to three years a residence permit providing access to social assistance, education and employment.
- **Voluntary and assisted return, as well as coerced return and deportation**
Voluntary and assisted return is the officially preferred pathway to finish the residence of foreign nationals without a right to stay. In order to enhance the willingness to return, authorities funds services providing financial and organisational support. At the same time, authorities emphasise the importance of coercion and deportation as an instrument to terminate irregular stays.

1.3.2 Regularisation

German governments persistently oppose calls for an implementation of programs for the regularisation of migrants in an irregular situation. Consequently, German authorities do not offer any measures or programmes for granting a residence permit directly to migrants in an irregular situation. In terms of legal trajectories, the provisional status of toleration is the obligatory detour for regularisation.

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ANNEX 1: Policy and Legal Frameworks

In Germany, the legal body addressing or affecting migration consists of numerous legal acts, since 2005 hyperactively amended and complemented with new acts (Hruschka & Rohmann, 2020). A living document providing information on the history of the changes of the residence law indicate 71 changes between 2015-2023.⁷ The changes and amendments serve diverse and contrarotating purposes, mainly to curb irregular entries, to accelerate the processing of asylum claims of applicants deemed to be manifestly unfounded, to promote voluntary or coerced return, to introduce legal pathways towards a regular residence for selected categories of tolerated third-country nationals who fulfil specific requirements. In addition, relevant legal framework regulating irregular migrants' access to social and health services is located at Länder level. Due to the limitation of space, it is not constructive to provide a full list of all legislative changes and amendments. The table presents only the relevant legal body providing the framework for assigning the status of residential irregularity.

Legal body defining residential irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	AufenthG (en) - Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory	2004 (but regularly updated)	The Residence Act determines the legal categories and procedures relevant for the assigning of the status of residential irregularity to migrants who have entered and stay in Germany without required permissions. The particular relevant provisions are section 5 (General preconditions for the granting of a residence title), section 11 (ban on entry and residence), section 14 (unlawful entry; exceptional visa), sections 50-62 (grounds establishing the obligation to leave the Federal territory) with section 60a (temporary suspension of deportation), section 95 (penal provisions). The particular relevant provisions related to the issuing of a	Link (EN)

⁷ <https://www.migrationsrecht.net/gesetze/historie-der-aenderungsgesetze.html>

			provisional status or residence permit are section 23 (granting of residence by the supreme Land authorities), section 23a (grating of a residence in cases of hardship), section 24 (granting of residence for temporary protection), section 25 (residence on humanitarian grounds), section 60 b-c (toleration for education, employment), and section 104a (regulations governing old cases) and section 104b (right to residence for integrated children of foreigners whose deportation has been suspended).	
2	Asylum Act	2008 (but regularly updated)	The Asylum Act determines the legal categories and regulations related to the processing of asylum procedures. Particular relevant are section 3 (recognition of refugee status), section 43 (enforceability and suspension of deportation), section 55 (right to remain pending the asylum decision), section 67 (expiry of permission to remain pending the asylum decision), sections 72-73c (expiry of legal status), section 83 c (procedure for ordering entry and residence bans and for setting time limits for such bans)	Link (EN)
3	Act to Combat Undeclared Work and Unlawful Employment	2004 (but few times updated)	This Act provides the legal framework for the penalisation of undeclared work. Particular relevant is section 1, stating that “unlawful employment is deemed to be carried out by anyone who (...) pursues employment as a foreign national without authorisation”.	Link (EN)

4	Act on the General Freedom of Movement for EU Citizens	2004 (but few times updated)	The Act determines the legal categories and regulations for the procedure of denial of the right to free movement. Particular relevant is section 2 (the right of free movement), section 5 (the conditions for the right to free movement), section 7 (assertion of the loss of the right to free movement), section 6 (fraudulent practices) and section 6 (protection of public order, security concerns and public health concerns as reasons to deny the right to free movement).	Link (EN)
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Greece Country Brief on Irregular Migration Policy Context

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Greece

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Restriction of arrivals and control of irregular migration**

The restriction of irregular migration flows and border protection is a key policy priority of Greece (Dimitropoulos, 2023). Greece established its Asylum Service and First Reception to determine who is in need of protection and has the right to apply for asylum and who does not fulfil the necessary criteria and consequently becomes subject to voluntary repatriation or deportation. Within the border management framework, a priority in addressing irregular migrant flows is given to the upgrade of the electronic monitoring systems to track who enters and leaves the country (Restelica, 2023).
- **Return of irregular migrants**

Returning irregular migrants to their countries of origin or to Türkiye in accordance with the strategy of cooperation with third countries is amongst the main policy priorities. In 2022 the government signed Memoranda of Understanding with Bangladesh and Egypt to support legal migration pathways and agree on the returning of irregular migrant citizens apprehended in Greece to Bangladesh or Egypt, respectively. The objective of the agreements is to meet the needs of the Greek economy and combat the flow of irregular migrants. Issues related to rejected asylum seekers and returns have also been discussed on the highest level with Iraq, as well as with Pakistan.
- **Cooperation with third countries**

Together with the rest of the EU Member States and in common agreement, Greece prioritises addressing the root causes of irregular migration, the fight against smuggling networks, and the protection of human lives in danger. The cooperation

with third countries (those considered countries of origin or transit states for irregular migration), prioritises cooperation on returns or readmissions of irregular migrants, as well as the establishment of legal routes for labour migration. The Greek Minister of Migration and Asylum has noted that at the core of these agreements are the effective guarding and protection of the European borders, as well as the need to combine the needs of the European economies in the labour force with the creation of legal migration and labour routes (Hellenic Republic Ministry of Migration & Asylum, 2023b).

1.2 OVERVIEW OF THE GREEK POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Border management**

In response to the high numbers of attempted irregular crossings of the sea and land border with Türkiye, Greece has taken the following measures: construction of a border fence with the plan to cover another 80 km by 2025, with a long-term goal to cover the total length of the border with a fence (Bathke, 2022; Newsroom, 2022, 2023a); an automated surveillance system at the land border with Türkiye; recruitment of 800 border guards, and enhancement of the material capacity of the Hellenic Coast Guards (Hellenic Republic Ministry of Migration and Asylum, 2021, 2023a, 2023). The main operational objective is to detect and prevent flows of irregular migrants before crossing the Greek border (sea and land). According to CSO reports, a number of informal forced returns, “push backs”, occurred at the borders (Deeb et al., 2021; Greek Council for Refugees, 2023; Greek National Commission for Human Rights, 2023; International Organization for Migration, 2021).

- **Return and deportation**

In case of the rejection of an asylum claim or revocation of international protection or residence permit, the competent authority issues a return decision. There are four different procedures which might follow afterwards: 1. Return to the country of origin. 2. Extension of the deadline for voluntary departure for max 120 days taking into account special circumstances of each case; in some cases, the authorities may impose obligations on third-country nationals to avoid risk of absconding, such as regular appearance before the authorities, deposit of an appropriate financial guarantee, filing of documents or the obligation to stay in a certain place. 3. Detention for those with return orders but subject to temporary suspension of removal. 4. Provision of non-removable status to those whose removal would violate the principle of non-refoulement (L. 4825/2021).

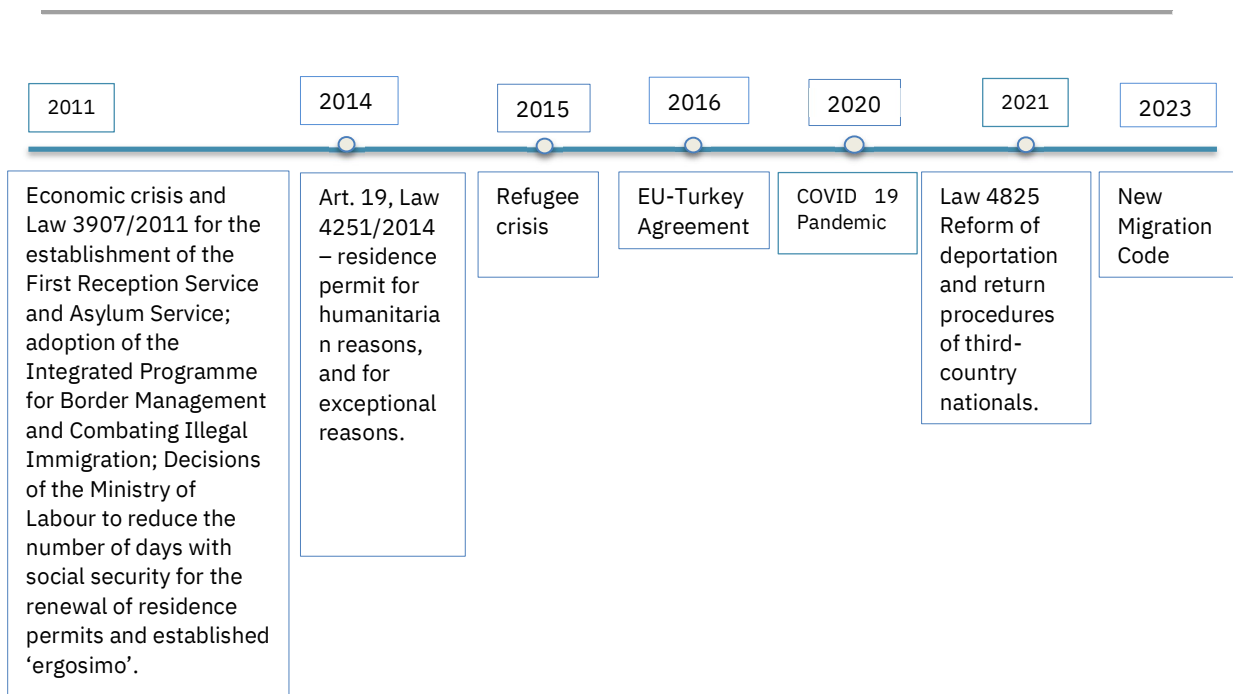
- **Penalties for irregular migrants**

Sanctions are imposed for irregular stay in the country after receiving the order to leave and violating the departure deadline, i.e. for those who remain irregularly, there is a fine upon departure, the amount of which depends on the length of the period that the irregular migrant remained in the country (5038/2023). Imprisonment is imposed for the use of forged or false documents (L. 5038/2023, Art.24, par.6).

- **Labour market**

In Greece the number of irregularly working migrants in the agriculture, tourism, and care work sectors has remained high for years (Greek civil society organisation interview, Greek expert interview). In the last 15 years, migration-related policies focused mostly on protection of the borders, and establishment of a well-functioning asylum system, meanwhile overlooking provisions for labour migrants (Greek civil society organisation interview). Combined with the economic crisis, these were main reasons for labour migrants to leave Greece, resulting in a labour crisis in the post-pandemic period in the key sectors of the economy – agriculture, tourism, and the growing sector of construction. The Greek government has taken measures to respond to this need since 2022, primarily through agreements with countries of origin of irregular labour migrants and a regularisation programme in 2024. Other related policy measures include those targeting those who do not regularise their stay for work with deportation, as well as punitive fines for employers and landlords.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Decline in irregular migration flows in the period 2020 - spring 2023**

The implementation of border management and control according to the requirements of the National Strategy for Integrated Border Management developed in 2019 is considered (Hellenic Ministry of Migration and Asylum, 2021, 2023; Roman et al., 2021) as an effective measure taken by the government of New Democracy, which contributed to the 75% - 90% decrease in irregular migration flows along the eastern border of Greece. Allegations of pushbacks led to strong criticism and accusations by civil society organisations for violations of basic human rights, which led to the establishment in January 2023 on behalf of the EU's Fundamental Rights Agency of a Recording Mechanism of Incidents of Informal Forced Returns, which functions at the National Commission for Human Rights of Greece.
- **Secondary movements**

The transitory nature of irregular migration in Greece is one of its main characteristics (according to two Greek expert interviews). Migrants often attempt to continue their journey to other western European countries, following the route through the Western Balkan countries or, in the past, by sea from the port of Patra. Also, it is considered that many irregularly working migrants in Greece left the country during the pandemic due to lack of sustainable solutions.
- **Expected decrease in the undeclared work and irregular migrants' stocks** - One of the main policy tools to address undeclared work are the labour market inspections, which impose fines on the employers for each irregularly employed migrant. The recently voted L. 5078/2023, Art.193, allows irregular migrants who find work to get insured and to regularise their stay in the country for work reasons. In general, priority is given to providing solutions through the fight against irregularity as an incentive to address labour shortages in the agricultural sector and tourism and fight the undeclared work (three Greek expert interviews).
- **Forthcoming policy impacts**

The impact and results of the latest policies on regularisation and cooperation with third countries will be closely observed in the upcoming period.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Mixed migration flows**

Mixed migration flows are a challenge for establishing a fast-working system that may distinguish between third-country nationals in need of protection and eligible for asylum, and irregular migrants. There are challenges throughout the whole process of reception and identification and management of individual cases: the difficulty lies in the fact that not all cases can be covered by the same policies and that is why some advocate for more tailor-made procedures (Greek expert interview). However, the

capacity of services sometimes is insufficient to address the number of third-country nationals in limbo.

- **Lack of comprehensive legal information for migrants**

Trustworthy and accurate information, free of charge, regarding new legal amendments, renewals of residence permits and other legal matters for migrants is not available. Moreover, NGOs serving migrants reportedly also do not receive official and understandable information from the authorities. In some cases, as it is not clear how legislation has changed, migrants may lose their rights for the renewal of residence permits or decide not to initiate renewal procedures (Greek civil society organisation interview).

- **Linking migration management with labour market needs**

Due labour shortages in the sectors of agriculture, tourism, and construction, the government signed a Memorandum of Understanding with Bangladesh to offer conditional five-year visas to Bangladeshis. Undocumented Bangladeshi migrants in Greece are also eligible if they present a contract with a Greek employer. The new initiative has not been positively received by Bangladeshis, although it is unclear as of yet whether the policy will have the intended results (MacGregor et al., 2022).

Table 1: Relevant Greek institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Ministry of Migration and Asylum, General Secretariat for Migration Policy (GSMP)	GSMP was established in 2010 by Presidential Decree 11/2010 (16.02.10 A'15) and re-established by Presidential Decree 18/2020 (A34) in 2020. The General Secretariat participates in the planning and implementation of national and European policies on migration.	Link (EN)
2.	Ministry of Migration and Asylum, Reception and Identification Service (RIS)	It supervises and provides reception and identification processes to TCNs entering Greece without documents irregularly or to stateless persons, who might be refugees, economic migrants, vulnerable individuals, families, minors, or unaccompanied minors. RIS recognises and addresses the needs of each group according to relevant Greek legislation.	Link (EN)
3.	Ministry of Citizen Protection, under which operates the Hellenic Police and the National Coordination Centre	Coordination of the collaboration between the competent institutions on the national level in view of effective border management; coordination and monitoring of the actions and measures implemented within the framework of the national and European policy in the areas of	Link (EN)

	for Border Control, Immigration and Asylum	border control, immigration and asylum; cooperation with Frontex, implementation of the European model of external border security and risk analysis. In accordance with Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019, each Member State shall designate, operate and maintain a national coordination centre which shall coordinate, and exchange information among, all authorities having responsibility for external border control at national level, as well as with the other national coordination centres and Frontex.	
4.	Hellenic Coast Guard – General Directorate of Security and Policing	The General Directorate of Security and Policing supports the mission of the Hellenic Coastguard in its areas of responsibility (paragraph 1 of article 5 of Law 4150/2013) taking care of the prevention and suppression of illegal actions, the surveillance of the sea borders and ensuring the readiness and utilisation of the means available to carry out all kinds of operations and missions, including those for search and rescue.	Link (EN)
5.	Recording Mechanism of Incidents of Informal Forced Returns functioning under the National Commission for Human Rights of Greece (NCHRG)	An advisory body to the Government on issues pertaining to human rights, which addresses recommendations to the Government for migration and asylum questions. In January 2023 the EU’s Fundamental Rights Agency established a Recording Mechanism of Incidents of Informal Forced Returns which functions at the NCHRG.	Link (EN)
6.	The Greek Ombudsman	The Ombudsman intervenes in cases of reported maladministration and has a mandate to act as human rights monitor for the forced return operations (expulsions) of irregular migrants.	Link (EN)
7.	Hellenic Labour Inspectorate (HLI)	Independent authority, which among other responsibilities, supervises private businesses’ compliance with the provisions of the insurance legislation relating to the insurance coverage of employees, undeclared work and illegal employment, as well as the provisions on the legality of the employment of working third-	Link (EN)

		country nationals and the legislation of the Principle of Equal Treatment in Employment. The HLI investigates and prosecutes, in parallel with and independently of other authorities and organisations, the violators of the provisions of the labour law.	
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1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN GREECE: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Greece

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Rejected asylum seekers	TCNs who are considered ineligible to lodge asylum applications after passing the pre-registration procedure or have their asylum claims rejected and become subject to removal orders are moved to pre-removal closed facilities in Greece to stay until the removal order is executed.
Visa overstayers	A third-country national who has legally entered Greece but then stayed beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and /or residence permit face the following penalties: fine, deportation or a ban from entering the Schengen Zone.
Irregular labour migrants	Third-country nationals who have crossed the border irregularly, do not have a permit to stay and work in Greece, but nevertheless work uninsured and live in precarious conditions. Some prefer to stay “invisible” to the authorities rather than becoming subjects of deportation to their countries of origin.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Tolerated stay	Migrants with a suspended removal order who cannot be removed because, for example, their removal would violate the principle of non-refoulement.

Para-legal status (Kapsalis, 2018)	Irregular migrants who have a suspended removal order or remain in Greece for reasons of non-refoulement, and who might be granted a special work permit for a duration of six months to work in the agricultural sector to address emergency needs (Law 4384/2016 and L.4251/2014)
Migrants without passports	In some cases when a deep relationship with the host country is proven but migrants have no relationship with their country of origin and cannot renew their passports, a residence permit might be issued (Circular 2/16.07.2018 Accommodation of citizens of third countries without a passport.)

1.3.1 Pathways into and out of irregularity

- Status change**
 This category refers to irregular migrants who were previously holders of residence permits but fell into irregularity due to: 1. Period of unemployment and lack of enough insurance stamps to renew their residence permit, 2. Lack of reliable information channels which leads them to miss renewal deadlines or changes in legislation, 3. Errors made by legal representatives while submitting applications, 4. Convictions for illegal activities.
- Regularisation for exceptional reasons**
 Art. 19, par. 1, of L.4251/2014 provides for a residence permit for exceptional reasons, which allows migrants in limbo or irregular migrants with seven years of residence in Greece proven through official documents (e.g. documentation from a public hospital) to secure a residence permit with a duration of three years under certain conditions, which might be renewed with another type of residence permit after its expiry (two Greek expert interviews, Greek civil society organisation interview).
- Regularisation for work purposes**
 For irregular migrants with a removal order that has been suspended, if they find work in the agricultural sector, they can obtain a renewable residence permit for six months. Also, according to the Art. 193 in L. 5078/2023, irregular migrants staying in Greece and able to find an employer who will insure them are eligible (as are their spouses and children) to receive a three-year residence permit for work through a 2024 regularisation programme. Finding a job with insurance is the only pathway out of irregularity that allows residence in the country.
- Return and deportation**
 Forced and voluntary returns are implemented after issuing an order to leave to irregular migrants. Afterwards, one of the four different procedures follows depending on the case: 1. Return to the country of origin or readmission to transit country; 2. Extension of the deadline for voluntary departure for a period of maximum 120 days considering special circumstances of each case. 3. Detention for those with

return orders, who have temporary suspension of removal; 4. Provision of non-removable status to those whose removal would violate the principle of non-refoulement. Mostly, return procedures are implemented with nationals of Albania and Georgia. Nationals from Middle Eastern or Central Asian countries are more often issued with suspended return orders, usually due to a lack of agreement with their countries of origin to receive them.

The procedures of deportation refer to rejected asylum seekers or irregular migrants in detention, but there is a gap between the issued orders for return and the number of actual returns (European Parliamentary Research Service, 2019; Gibney, 2008). According to the assessment of the cost effectiveness of return schemes, voluntary returns are evaluated as less costly and bureaucratically easier to carry out than forced returns. But migrants often have insufficient incentives to return voluntarily (Angeli et al., 2014).

1.3.2 Regularisation

- **Article 193 of the L.5078/2023¹ regarding Reform of professional insurance, rationalization of insurance legislation, pension arrangements, appointment and recruitment system of teachers by the Public Employment Service and other provisions**

Eligibility for regularisation under this mechanism has been widened through an exceptional regularisation programme implemented in 2024.

Eligibility criteria

- proof that they were living in Greece continuously in the last three years before 30/11/2023
- the applicant must be a holder of a passport,
- absence of reasons related to public order and security
- payment of a fee of 300 euros and the cost of printing a residence permit in the form of a self-contained document of 16 euro
- an employer must submit a declaration of intention through the Unified Digital Portal of the Public Administration (gov.gr) to employ the applicant, either in the context of dependent work, or in the context of the provision of services or work.
- apply until December 31, 2024.

¹ The Art. 193 was approved by the large majority of the Greek parliament and aims to address the labour shortages in the agricultural sector and tourism. Initially, according to the assessment of the officials, the regulation targets approx. 30.000 undocumented migrants mainly from Albania, Georgia, the Philippines, and Pakistan (Newsroom, 2023b)

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Law 2910 02/05/2001	2001	The law also refers to refusal of entry, revocation of residence permits, expulsions, detention, irregular entry, and exit (Art. 42-50); Article 40, par.3 on access to education for children of parents with unregulated status; residence obligations and sanctions for the employers of undocumented migrants (Art.53); sanctions for transporters of undocumented migrants (Art.55); Art 66-68 – regularization of irregular migrants under specific conditions.	Link (EL)
2	Law 3386/2005 (Official Gazette 212/A ' /23.08.2005)	2005	Law 3386/2005 includes provisions on the revocation of residence permits (Art. 74-75), administrative deportation and other issues related to deportation incl. protection against it (Art. 76-80); detention (Art. 81); irregular entry and exit (Art. 83[1]); obligations against the provision of services to undocumented migrants and	Link (EL)

			<p>sanctions (Art. 84-85); Obligations of employers and third-country nationals workers – Penalties for not complying (Art.86); Furthermore, the law established the granting of residence permits on humanitarian grounds or exceptional reasons (Art. 44) and the granting and renewal of residence permits to victims of trafficking in human beings (Art. 46-52).</p>	
3	<p>Law 3907/2011 (Publ. in Gazette 7/A/26.01.2011)</p>	2011	<p>Organization and Operation of Asylum Service: 1. Establishment of the First Reception Service (Chapter II) under the Ministry of Citizens protection with a mission to manage the reception of the third country nationals who enter the country irregularly. 2. Common standards and procedures for returning irregularly staying third-country nationals (Chapter III) – return, removal, entry ban, postponement of removal or provision of non-removable status (Art. 24), detention; 4. Art. 42 replaces Art. 44 of Law 3386/2005 on the granting for the first time and renewal of residence permits on humanitarian ground or for exceptional reasons, and expands the categories of beneficiaries.</p>	<p>Link (EL)</p>

4	Law 4052/2012 (Official Gazette A' 41/01-03-2012)	2012	Article. 79 Prohibition of employment of irregular resident citizens of third countries (Article 3 paragraphs 1 and 2 of the EU Directive 2009/52/EK); Facilitation of complaints (Article 13 paragraphs 1, 2 and 3 of the Directive) The right of illegally employed persons to submit a complaint provided for by national legislation against their employer. Conditions of employment of TCN with an issued return order (Art.83 - 90).	Link (EL)
5	Law 4251/2014 (Official Gazette 80A'/01.04.2014) codified by 5007/2022	2014	The law 4251/2014 is the coded legislation on migration. As regards to the irregular migration, the law gives definitions of the notions of irregular stay of a TCNs, return, decision of return, removal, voluntary return (Art.1) Defines procedures of entry, stay and exit and points of legal entry, control of entry, visa policy, refusal of entry (Chapter II).	Link (EL)
6	Law 4249/2014	2014	Articles 101-103 Definition of the competencies of the National Coordination Center for Border Control, Immigration and Asylum (N.C.C.B.C.I.A.). In Greece, the role and responsibilities of the national coordination center have been assigned to the National Coordination Center for Border Control, Immigration and Asylum (N.C.C.B.C.I.A.), according to	Link (EL)

			Law 4058/2012, as amended and replaced by Laws 4249/2014 (articles 101-103) and 4960/2022 (article 48). N.C.C.B.C.I.A. is an independent service under the Minister of Citizens' Protection.	
7	Ministerial Decision 11.1/6343/25-11-2014 (GG3295/B' /09.12.2014)	2014	<p>The law regulates issues concerning the internal structure and operation of the accommodation facilities by the First Reception Service and includes the basic principles of operation, the conditions for the accommodation of third country nationals, the procedures for their integration into the facilities, as well as the duties and obligations of the staff of the above services. The aim is to ensure minimum standards both for the entire operation of the Accommodation Centres and for the quality of the services provided.</p> <p>According to Art. 6 on Supervision-Evaluation - Quality assurance, the supervision, monitoring and evaluation of the organization, management and operation, as well as any other issue related to the operation, is carried out by the competent Department of Central Service of First Reception. Details on the evaluation procedures are explained below in the text of the Article 6.</p>	Link (EL)

8	<p>Joint Ministerial Decision 8038/23/22-ιγ - Official Gazette 118/B/21-1-2015</p> <p><i>Establishment and operation of Pre-departure Detention Centers for Foreigners and Regulation of their Operation.</i></p>	2015	<p>The operation of the Pre-Departure Detention Centers for Foreigners that were established with the joint ministerial decision number 8038/23/22-ιγ from 20.01.2015 (B' 118) and are still operating, was extended until 31.12.2023 by the Joint Ministerial Decision 8038/23/22-ιγ. Until 30.06.2015, special facilities for the detention of third-country nationals, against whom deportation or return decisions have been issued and are detained pursuant to article 31 of Law 3907/2011 and articles 76 par. 3 and 81 par. 1 of Law 3386/2005, are established, until their deportation or removal procedures are completed.</p> <p>These facilities operate as Greek Police Services, at Police Station level and are located: two in Attiki, and one in Orestiada, Korinthos, Xanthi, Drama, and Lesvos. The Pre-Departure Detention Centers have as their mission the safe custody of irregular immigrants in conditions of respect for their dignity and to provide them with medical control, pharmaceutical coverage, and psychosocial support.</p>	<p>Link (EL)</p>
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9	Joint Ministerial Decision (JMD) 53619/735/ 1-12-2015 (B` 2631)	2015	<p>Defining the terms and conditions for access to the labour market for third-country nationals remaining in the country under a deferred removal procedure. Access to the labour market is available to third country nationals, who have a status of suspended removal, according to Article 24, Law 3907/2011 or a certificate of non-removal for humanitarian reasons in accordance with the Article 78, Law 3386/2005) by the competent police authority, under conditions. The specific work permit is issued by the Region of the place of residence of the third country national under Article 3 of the No.53619/735/2015 JMD. Beneficiaries of the specific work permit may work exclusively in the agricultural and livestock farming sector, in the sector of domestic work as well as in the textiles sector and work in the entire territory of the country with certain exceptions. The exception for work in the above areas will be explicitly stated in the work permit granted. The beneficiaries do not have the right to access social integration programs during their stay in the country.</p>	<p>Link (EL)</p>
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10	Law 4375/2016 (Gazette 51/A/03.04.2016)	2016	<p>The New Asylum Law adapts the Greek legislation to the provisions of EU Directive 2013/32 on common procedures for granting and withdrawing international protection status (recast)" (L 180/29.6.2013).</p> <p>The Article 9 defines the procedures of reception and identification for all TCNs and stateless persons who enter the country without the legal formalities.</p>	Link (EL)
11	Art. 58, Law 4384/2016 (Government Gazette A'/26.04.2016), of the Ministry of Rural Development and Food	2016	<p>Employment of irregularly resident third-country nationals in the agricultural economy: In cases, when there is a lack of workers in the agricultural sector, the employer might lodge an application with the personal data and the nationality of the irregular migrants that the employer wishes to hire as workers. The irregular migrants receive an order for the postponement of their removal and have the right to lodge applications for residence permit. Then they can be insured with the Greek system of "ergosimo"².</p>	Link (EL)

² "Ergosimo" replaces the payment of the employees and covers their contributions to the insurance sector. Part of the listed value is withheld against insurance contributions and is given to the employee's insurance provider. The "ergosimo" is a legal way of remuneration and insurance for people working at domestically provided services or works: for example domestic helpers, house cleaning, babysitting, delivery of private lessons etc. See: (General Confederation of Greek Workers, n.d.)

12	Joint Ministerial Decision 10700/2017 (Official Gazette 891B'/17.03.2017)	2017	<p>This JDM established a regularization program for TCNs with expired residence permits in the General Police Directorates of Attica and Thessaloniki and gave the migrants a chance to renew them.</p> <p><i>(Amendment of no. 123/2016 (B' 35) of a joint decision of the Ministers of the Interior, Foreign Affairs and Labour, Social Security and Social Solidarity "Determining the category of residence permit of third-country nationals who held residence permits or foreigner's identity cards issued by the services of the Hellenic Police.")</i></p>	Link (EL)
13	<p>Circular 2/16.07.2018</p> <p><i>Accommodation of citizens of third countries without a passport.</i></p>	2018	<p>The Circular provides for the TCN who do not possess a passport or another travel document and is temporary impossible to issue one (in cases where there is proof of the termination of all ties with the country of origin as well as in cases where there is no diplomatic representation of these countries in Greece or due to non-compliance with military obligations), but typically fulfill the right to possess Greek residence permit. The aim of the Circular is to facilitate the issuance of residence permit in those cases and to ensure basic living conditions.</p>	Link (EL)

14	Law 4783/2021 (Official Gazette A' 38/12-03-2021)	2021	<p>Articles 16 and 16A – Gives the employer the right to hire an undocumented TCN living in the country for the performance of agricultural work, under certain conditions, and gives irregular migrants the right to seasonal work and to insurance. Defines the conditions of stay and work for those type of seasonal workers.</p> <p><i>(Ratification of Council Decision (EU, EURATOM) 2020/2053 of 14 December 2020 on the system of the European Union's own resources and repealing Decision 2014/335/EU, Euratom and other provisions).</i></p>	Link (EL)
15	Law 4825 /2021 (Official Gazette 157 A' /4.09.2021)	2021	<p>The Law refers to deportation and return, prohibition, or delay of return procedures in certain cases. Law 4825/21 abolished the possibility for the administration to refer asylum seeker cases to the humanitarian reasons procedure for cases where it considers that this should happen. Introduces amendments for issues arising through the implementation of the return procedure of irregularly staying third-country nationals. The main objective is to reform the current procedure for granting a</p>	Link (EL)

			<p>period of voluntary departure. Provisions are also introduced to ensure the legal residence of third country nationals by extending the validity of their residence permits and the deadlines for submitting applications. In fact, an old provision concerning the possibility for returning migrants to request to stay a little longer in the country to settle their pending cases has been amended – e.g. such as the school attendance of their children.</p>	
16	<p>Law 4939/2022 (Official Gazette 111/A ' /10.06.2022)</p>	2022	<p>Approval of the Code of Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in case of mass influx of displaced foreigners. Article 95: Border procedures for lodging asylum applications; Article 96: Revocation; Article 110: Re-promotion in case of negative decision; Articles 136-139: Repatriation upon termination of protection.</p> <p>Article 95: Border procedures for lodging asylum applications; Article 96: Revocation; Article 110: Re-promotion in case of negative decision; Articles 136-139: Repatriation upon termination of protection.</p> <p>Ratification of a Code of</p>	<p>Link (EL)</p>

			Legislation on the reception, international protection of third country citizens and stateless persons and temporary protection in the event of a mass influx of displaced foreigners.	
17	Law 5038/ 1-4-2023 <i>Immigration Code (Entry into force: 1/1/2024)</i>	2023	The aim is the reform of the Migration Code to include all residence permits issued by the competent Greek authorities to third country nationals in order to ensure a more complete response of immigration policy to the modern needs of Greek society.	Link (EL)
18.	L. 5078/2023, publ. in State Gazette A 211/20.12.2023 (Art. 190-194)	2023	Art. 190 Obligations and sanctions to employers and TCNs who came to Greece through the procedure of “metaklisi” or invitation for seasonal work - Amendment of article 23 of the Immigration Code (L. 5038/2023). Art. 191. Appointment of National Coordinator for the Returns	Link Circular for the implementation of the law (Link)

			<p>and National Coordinator against Illegal Migrant Smuggling in the Ministry of Asylum and Migration. Art. 192. Access of applicants for international protection to the labor market - Amendment of par. 1 of article 57 of the Code of Legislation on the reception, international protection of citizens of third countries and stateless persons and temporary protection in the event of a mass influx of displaced foreigners. Art 193. Granting of a new type of residence permit for work to citizens of third countries. Art. 194 Possibility of subjecting beneficiaries of temporary protection to the provisions of the Immigration Code.</p>	
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Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Law 4052 (Government Gazette 41/A/1-3-2012)	2012	In Chapter 13, Art. 77-89, the Greek law harmonizes with and integrates the EU Directive 2009/52/EC of the European Parliament and of the Council of 18.6.2009 on the "Enforcement of minimum standards with regard to the sanctions and measures against employers who employ irregular migrants in order to combat irregular immigration.	Link (EL)

2	Circular No. 30921/25-06-13	2013	The circular is addressed to all Directorates and Departments of the Labour Inspectorate for the purpose of carrying out inspections in tourist areas, drawing particular attention to the detection of irregularly staying foreigners working in the country.	Link (EL)
3	Law 4198/2013 (Government Gazette 215/A/11.10.2013) <i>Prevention and combating of human trafficking and protection of its victims and other provisions</i>	2013	The Greek legislation is harmonized with Directive 2011/36/EU on preventing and combating human trafficking and on the protection of its victims, regardless of whether they have entered the country legally or in irregular way.	Link (EL)
4	Ministerial Decision Y1.G.P.ok.92490/2013 (Government Gazette 2745/B'/29.10.2013) <i>Program of medical check-up, psychosocial diagnosis and support and referral of TCN entrants without legal documents to first reception centers</i>	2013	A detailed program of access to health services is defined through medical check-ups, psychosocial diagnosis, and support as well as social referral to undocumented TCNs with special provisions for minors, entering the country to first reception facilities. Vaccinations for minors and adults are provided through the program, the patients are provided with medical booklets and the protection of medical data are guaranteed.	Link (EL)

5	Law 4368/2016 (Gazette 21/A/21-2-2016) <i>Measures to accelerate government work and other provisions</i>	2016	<i>Article 33</i> , Health coverage of uninsured and vulnerable social groups without distinction of legal status among them also: beneficiaries of humanitarian status, asylum seekers, and TCNs with an order for expulsion, under the condition that they have social security number.	Link (EL)
6	Joint Ministerial Decision 64186/2018 (Gazette 3877/B/06.09.2018)	2018	Assignment of a Program for the assurance of public health and the coverage of the health needs of refugees and migrants, with HCDCP as implementing body.	Link (EL)
7	Ministerial Decision: [ac. 180838/2022] Measures to deal with the COVID-19 pandemic	2022	Extension of residence permits due to the pandemic.	Link (EL)

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Ireland Country Brief on Irregular Migration Policy Context

AUTHORS:

Alan Desmond and Ruth Heylin



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THE MIRREM PROJECT

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

MIrreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIrreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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

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Ireland

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Regularisation**

Since the early 2000s Ireland has undertaken targeted time-bound regularisation initiatives for discrete categories of irregular migrant. In 2022 Ireland implemented the Regularisation of Long-Term Undocumented Migrants Scheme, a broader regularisation scheme focused on long-term undocumented migrants and a related scheme for individuals who had been in the international protection process for at least 2 years prior to commencement of the scheme: the International Protection Process Regularisation Scheme 2022 was set up following the 2020 Day Report on the International Protection Process (Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 2020).
- **Reforming the international protection system**

Long-standing criticism of international protection applicants' living conditions and delays in processing their applications has generated efforts to reform the international protection application process, including two regularisation schemes aimed at long-stayers in the international protection system. The 2015 McMahon Report on improving the international protection process (Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, 2015) has led to up to 1000 individuals being granted leave to remain, while the International Protection Process Regularisation Scheme 2022, set up following the 2020 Day Report, has seen over 1,585 applicants granted permission to remain.
- **Addressing the situation of irregular migrant children**

The situation of children under the age of 16 who were born in Ireland to irregular migrant parents, or who came with or joined their irregular migrant parents in the

state, has led to civil society advocacy and political efforts to pass legislation to facilitate their acquisition of citizenship. There is particular concern for the former, whose irregularity stems from a constitutional referendum in 2004 that modified what had until then been an unqualified, universal *ius soli* system of allocation of Irish citizenship. Citizenship rights for children born in Ireland featured in the manifestos of three political parties in the 2020 general election.

1.2 OVERVIEW OF THE IRISH POLICY FRAMEWORK

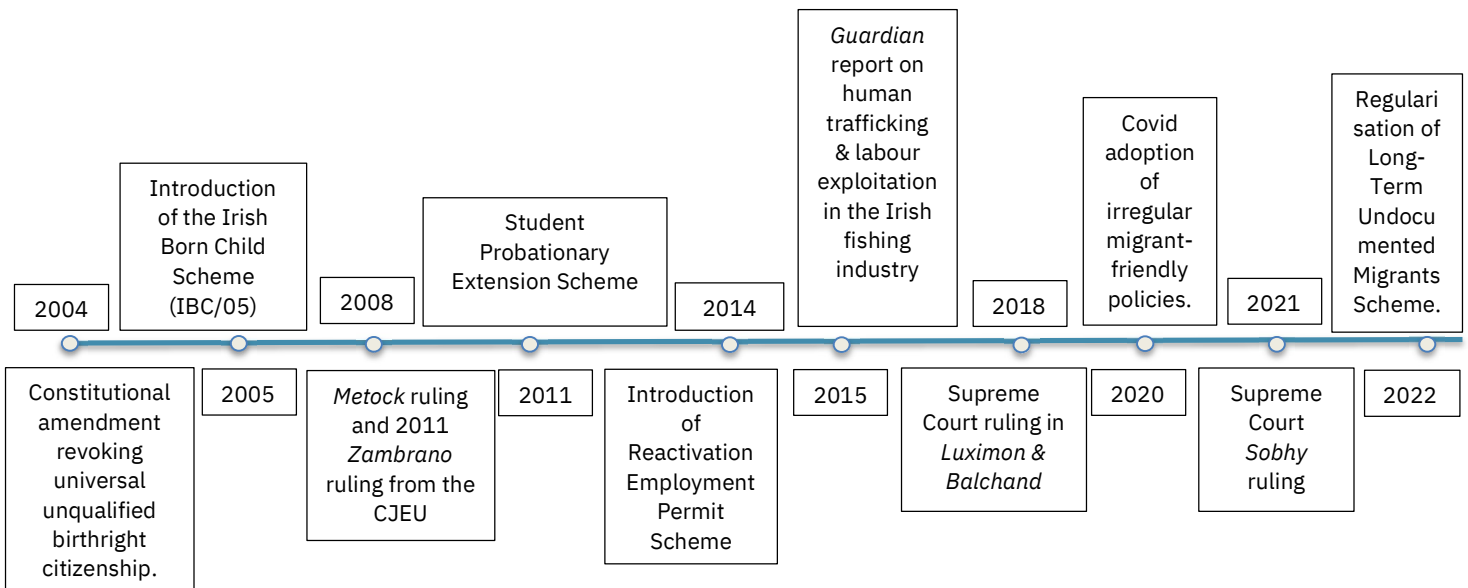
See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **2022 Regularisation Schemes**
Since 2010 Ireland has operated a number of de facto regularisation measures. In 2022, Ireland implemented the Regularisation of Long-Term Undocumented Migrants Scheme that significantly reduced the size of the state's irregular migrant population. In parallel, the International Protection Process Regularisation Scheme provided an opportunity for regularisation of international protection applicants who had been waiting for at least two years for a decision on their protection application.
- **2018 Former International Student Regularisation Scheme**
This Scheme was open to irregular migrants who arrived to study in Ireland between 1 January 2005 and 31 December 2010 and subsequently became undocumented. The Scheme addressed the consequences of a rule change limiting formerly unlimited student visa permission to a maximum of 7 years (Sheridan, 2019, 125 - 126). The Scheme was prompted by the Supreme Court ruling in *Luximon & Balchand v. Minister for Justice*, exemplifying both the reactive nature of Irish policymaking on irregular migration and the tendency to provide pathways out of irregularity for persons who had formerly been lawfully present.
- **Reactivation Employment Permit (REP) Scheme**
The REP Scheme, introduced in 2014, enables migrants who entered the state on a valid employment permit but who fell out of the system through no fault of their own, or who were exploited in the work place, to work legally again. As well as creating a pathway out of irregularity for its beneficiaries, the REP helps prevent illegal employment. However, only 27 REPs were granted between 2017-2022.
- **Atypical Working Scheme (AWS) for non-EEA Crew in the Irish Fishing Fleet**
In response to international media attention on exploitation of undocumented migrants within the Irish fishing industry (Lawrence et al., 2015), in 2015 the AWS for non-EEA workers in the Irish fishing industry was put in place to facilitate regularisation of such fishers. Restrictive eligibility criteria meant that only 152 individuals were granted permission to work for 12 months under the scheme.

- Pandemic-Era Measures to Prevent Entry into Irregularity**
 By automatically renewing residence permissions between 20 March 2020 and 15 January 2022, the state ensured people did not enter into an irregular situation and could continue to work and access services as required. Similarly, the COVID-19 Employment Permits System Contingency Arrangements 2020 meant that employment permit applications, and renewals of existing permits, were processed through a fully online process during the pandemic, thereby preventing some migrants from falling into irregularity.
- Pandemic-Era Measures Impacting Irregular Migrants**
 Pandemic Unemployment Payments for individuals who lost jobs as a result of the health emergency extended to undocumented migrants, thereby mitigating their exposure to financial uncertainty and consequent vulnerability to exploitation and trafficking (Cunniffe & Ayodele, 2022, 71). A de facto firewall policy was also introduced in 2020: the Department of Justice assured irregular migrants that during the pandemic if they accessed Department of Social Protection services or healthcare services, their details would not be shared with the Department of Justice.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Increase in likelihood of irregular migration and risk of entry into irregularity**

The lack of legal channels for immigration to Ireland and the demands of the Irish labour market, and of immigrants wishing to join family in Ireland, leads to irregular migration. The difficulties faced by many lawfully present migrants in renewing or extending their lawful stay results in some migrants falling into irregularity.
- **Reduction in irregular migration via sham marriages**

Operation Vantage was established in 2015 by the Garda National Immigration Bureau (GNIB) to investigate irregular migration and abuse of EU free movement rights through marriages of convenience. It reportedly led to a significant reduction in the number of foreign couples seeking to marry in Ireland and, in 2018, the deportation of almost 200 irregular migrants (Brady, 2018; MacNamee, 2017).
- **Detection of irregular entry across the land border with Northern Ireland**

Operation Sonnet, set up to combat immigration abuses within the Common Travel Area (CTA), resulted in 774 people being refused “leave to land” along the land border with Northern Ireland during 2015-2017. Of these, 20 people claimed asylum, while the remaining 754 were removed from the state (*Seanad Éireann Debate (25th Seanad)*, 2018). As Irish and British citizens may travel passport-free within the CTA and across the land border between Northern Ireland and the Republic, checks conducted as part of Operation Sonnet have given rise to concerns about racial profiling (McKinney, 2019).
- **Reduction in number of international protection applicants likely to remain in Ireland in an irregular status**

The McMahon Report on Improving the International Protection Process saw around 1,000 individuals granted leave to remain by 2017, many of whom would have otherwise fallen into irregularity. Similarly, the International Protection Process Regularisation Scheme 2022, set up following the Day Report, has seen over 1,585 applicants granted permission to remain, some of whom may have fallen into irregularity in the state in the absence of such an initiative.
- **Reduction in Size of Irregular Migrant Population**

The Regularisation of Long-Term Undocumented Migrants Scheme 2022 is likely to have resulted in regularisation of up to half of Ireland’s estimated 15,000-17,000 irregular migrants.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- Low Rate of Enforcement of Deportation Orders**
 Stakeholder interviews indicate that Ireland “is not a state that aggressively pursues people who are undocumented in the country”, at least partly due to the “huge resourcing issue” plaguing the Irish immigration system.
- Inefficient operation of the Irish immigration system**
 Interviews with stakeholders paint a picture of a system plagued by delays, time-consuming processes, a lack of digitalisation and lack of joined-up thinking and processes in the Department of Justice, which is responsible for immigration through the Immigration Service Delivery (ISD) and Garda National Immigration Bureau (GNIB). This increases the risk of falling into irregularity, and extends the time migrants remain in irregularity awaiting the outcome of applications for status.
- Lack of effective routes out of irregularity**
 Most regularisation initiatives implemented by Ireland have been time-bound. The primary permanent mechanism for transitioning out of irregularity is through engagement with the deportation process under section 3 of the Immigration Act 1999. This is a discretionary, onerous, paper-based process that may result in a deportation order, thereby disincentivising irregular migrants from engaging with this process and leading them instead to remain in Ireland in an irregular status.

Table 1: Relevant Irish institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Workplace Relations Commission	Main tasks include inspection of employment rights compliance, information provision, processing of employment agency licences. Along with An Garda Síochána (the Irish national police service), it is the main national institution with responsibility for identification of illegally employed non-EU nationals.	Link (EN)
2.	IOM	IOM Ireland coordinates the Irregular Voluntary Assisted Return and Reintegration Programme (IVARRP) and Voluntary Assisted Return and Reintegration Programme (VARRP)	Link (EN)
3.	Department of Justice	Responsible for border control, visas, residence permissions, international protection, deportation, citizenship. Its migration management responsibilities are carried out by the Immigration Service Delivery (ISD) and Garda National Immigration Bureau (GNIB).	Link (EN)

4.	Immigration Service Delivery (ISD)	ISD, formerly the Irish Naturalisation and Immigration Service (INIS), is an executive office of the Department of Justice. It is responsible for the administrative functions of the Minister for Justice in the areas of: immigration; visa; international protection; citizenship matters. It provides frontline immigration services. For example, applications to the 2022 Regularisation Scheme were made electronically through the ISD online portal.	Link (EN)
5.	Repatriation Division of ISD	Its Case Processing Unit considers and decides upon cases of failed asylum seekers or persons found illegally in the State who were served a notification of intention to deport under section 3 of the Immigration Act 1999 and requests under section 3(11) to revoke a deportation order. Its Arrangements Unit makes practical arrangements to effect deportations, in close cooperation with the GNIB.	Link (EN)
6.	Border Management Unit (BMU)	The BMU Manages entry through Dublin Airport.	Link (EN)
7.	The Garda National Immigration Bureau (GNIB)	The GNIB is an office of An Garda Síochána . It is responsible for all Garda matters that relate to immigration on a national basis such as border control; registration of immigration permission outside of Dublin (registration of immigration permission for people living in Dublin is operated by ISD); granting permission to remain; deportations and investigations (irregular immigration and human trafficking).	Link (EN)
8.	The Human Trafficking Investigation and Coordination Unit	Part of GNIB. Investigates human trafficking cases.	Link (EN)
9.	The International Protection Office (IPO)	Operates under ISD with responsibility for processing asylum applications and appeals. Responsible for processing applications to the International Protection Process Regularisation Scheme 2022.	Link (EN)
10.	Department of Enterprise, Trade	Responsible for issuing employment permits, including the reactivation employment permit.	Link (EN)

	and Employment (DETE)		
11.	Economic Migration Policy Inter-Departmental Group	<p>Convened to oversee a 2018 Review of Economic Migration Policy, has remained in place to oversee implementation of the recommendations of the review and to monitor the guiding principles and operation of the regime on an ongoing basis.</p> <p>It oversees the twice-yearly review process, and provides cross-sectoral expertise which enables decisions to be made in respect of skills and labour issues.</p>	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN IRELAND: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Ireland

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Unlawfully present non-nationals (irregularly-staying migrants)	<p>Section 5 of the Immigration Act 2004 provides that, with the exception of asylum seekers and refugees, any non-national in the state without the necessary relevant permission is “for all purposes unlawfully present in the State”.</p> <p>This category applies, for example, to non-nationals refused permission to land due to lack of a necessary visa or employment permit; lack of valid documents establishing identification; being subject to a deportation order or exclusion order.</p> <p>Similarly, this category applies to persons who have legally entered but then stayed in Ireland beyond the allowed duration of their permitted stay or in contravention of other conditions attaching to their permission to be in the state.</p> <p>Penalties in Ireland for those guilty of an offence under the 2004 Act: a fine not exceeding €3000, imprisonment not exceeding 12 months, or both.</p> <p>Such non-nationals may be required to stay in a particular place, comply with reporting requirements, and surrender ID documents to facilitate their removal from the state.</p>

	UK and EU citizens are not considered to be non-nationals for the purposes of the Immigration Act 2004 (as per sections 11 and 12), and are not required to register with immigration authorities.
Rejected international protection applicants	When international protection applicants are notified that their application has been unsuccessful, they are informed pursuant to section 48 of the International Protection Act 2015 that they have 5 days to confirm that they will voluntarily return to their country of origin. Section 51 provides for a deportation order to be issued in respect of unsuccessful applicants who do not accept the option of voluntary return. This is the point at which international protection applicants become irregular migrants, as reflected in the fact that deportation orders issued under section 51 of the International Protection Act 2015 are deemed to be deportation orders made under section 3 of the Immigration Act 1999.
Irregular Migrant Children under 16	Non-nationals born in Ireland, and non-nationals under 16, are exempted from the obligation under section 9(6) of the Immigration Act 2004 to register with the immigration authorities. This includes children born in Ireland to irregular migrant parents; immigrant children who travel with or join their irregular migrant parents in Ireland; immigrant children whose parents have entered into irregularity after an initial lawful stay in the state. Such children may encounter difficulties when they reach adulthood and seek to access tertiary level education or the labour market. Attempts to register with the immigration authorities will effectively bring their irregular status to the attention of the state.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Victims of trafficking	The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (March 2011) set out criteria for the recovery and reflection period and temporary residence for trafficking victims. They provide that an individual identified as a suspected victim of trafficking shall be granted permission to be in the state for 60 days for recovery and reflection. Where a person has severed all contact with the alleged perpetrators of the trafficking, and it is necessary to allow the suspected victim to assist authorities in an investigation or prosecution arising in relation to the trafficking, a temporary renewable residence permission valid for an initial 6 months will be granted.

EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
<p>EU citizens who remain longer than 3 months in Ireland without employment and without sufficient resources to avoid becoming an unreasonable burden on the social assistance system; who pose a serious threat to public policy or public security.</p>	<p>Statutory Instrument 548/2015 European Communities (Free Movement of Persons) Regulations gives effect to the EU Citizens Directive (Directive 2004/38/EC). Regulation 20 empowers the Minister to issue a removal order for EU citizens and their family members no longer entitled to be in the state because they are not in compliance with the conditions of the Directive. This occurs, e.g., where an EU citizen resides longer than 3 months in the state but is unemployed and does not have sufficient resources to avoid becoming an unreasonable burden on the states' social assistance system. From 2012-2019, annual forced removals of EU citizens consistently numbered between 55-100. In 2020-2021, due to the pandemic, this fell to below 40 each year.</p>
<p>EU citizens who represent a danger for public policy or security because their personal conduct poses a genuine, present and sufficiently serious threat to a fundamental interest of society.</p>	<p>Such EU citizens may be issued with a removal order. However, a removal order may be issued in respect of an EU citizen who is a permanent resident in a host EU state only on serious grounds of public policy, or public security. When it comes to an EU citizen who has been living more than 10 years, a removal order may only be made on imperative grounds of public security.</p>

1.3.1 Pathways into and out of irregularity

- **Inadequate channels for legal migration**

Ireland’s limited channels for legal migration mean that persons seeking to enter the country to join family or meet Irish labour market demands may not meet the criteria for family reunion or a work permit. They may therefore enter on a tourist visa (if such a visa is required for the individuals in question) and remain in the state on a long-term basis in an irregular situation.

- **Obstacles to extension or renewal of lawful permission to remain**
Under the Immigration Act 2004, immigration officers have a high degree of discretion in deciding whether to register or renew a person’s immigration status. The conditions for renewal, such as not being an “undue burden on the State”, are vague. Migrants who have received social welfare payments may be treated as failing to satisfy this condition, thereby having their renewal request denied and falling into irregularity if they fail to leave the state. Entry into irregularity is also a risk for those present on a specific permission like a student visa with no prospect of renewal or changing to a work permit, or for an individual on a work permit who leaves his employer due to exploitation, or whose permit expires before a new job can be found.
- **Section 3 of the Immigration Act 1999**
The primary route out of irregularity is through engagement with the deportation process under section 3 of the Immigration Act 1999. This is a discretionary, onerous, paper-based process that may result in a deportation order, thereby disincentivising irregular migrants from engaging with this process and leading them instead to remain in Ireland in an irregular status.
- **EU law pathways out of irregularity**
EU law sometimes operates to provide irregular migrants with a pathway out of irregularity. For example, the CJEU ruling in *Metock & Others v. Minister for Justice* in 2008 means that any EU citizen exercising free movement rights under Directive 2004/38 is entitled to be joined in the host state by their non-EU spouse irrespective of when and where the marriage took place and of how the non-EU spouse entered the host state. Similarly, the 2011 *Zambrano* ruling means that the non-EU parents of an EU citizen child are entitled to live and work in an EU member state if denial of such rights would require the EU citizen child to leave the territory of the EU.

1.3.2 Regularisation

- [2022, Regularisation of Long-Term Undocumented Migrants Scheme](#)
- [2022, Regularisation of Long-Term Undocumented Migrants Scheme \(2\)](#)
Eligibility criteria:
 - Continuous undocumented residence for 4 years prior to 31 January 2022;
 - Good character;
 - Proof of identity;
 - Proof of each undocumented year of residence in the state;
 - payment of an application fee (€550 for an individual applicant and €700 for a family unit application).
- [2022, International Protection Process Regularisation Scheme](#)
Eligibility criteria:

- Submission of application for international protection at least 2 years prior to the commencement of the scheme, i.e., before 7 February 2020.
- [2018, Former International Student Regularisation Scheme](#)
- [2018, Former International Student Regularisation Scheme \(2\)](#)

Eligibility criteria:

- arrival to study in Ireland between 1 January 2005 and 31 December 2010;
- not having held an alternative permission in the intervening period;
- no criminal record;
- payment of €700 application fee.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Immigration Act	1999	<p>Section 3 sets out the framework for the issuing of and revocation of deportation orders, and is therefore of particular importance for irregular migrants in Ireland. The limited pathways out of irregularity mean that Section 3 is an important de facto route to regularisation. Section 3(3) sets out the process for an individual, in respect of whom the Minister proposes to issue a deportation order, to make representations to the Minister as to why the deportation order should not be made. Section 3(11) empowers the Minister to revoke or amend a deportation order.</p> <p>Section 5 provides for the arrest and detention for up to a combined maximum period of 8 weeks of non-nationals for the purposes of effecting removal.</p>	Link (EN)

2	Irregular Voluntary Assisted Return and Reintegration Programme (IVARRP)	2001	<p>Under this IOM-coordinated programme, flights home are paid and, where required, the IOM will assist in securing travel documents and give assistance at the airport, both at departure and arrival. Persons availing of this programme can apply for reintegration assistance to start a business or enter further education or training when back in their country of origin. This takes the form of an ‘in-kind’ rather than cash payment. There is a separate IOM programme to assist voluntary return of unsuccessful applicants for international protection.</p>	Link (EN)
3	Immigration Act	2003	<p>Sections 2 and 3 provide for the punishment of those who bring to the state non-nationals without the necessary documentation required for entry to or transit through the state.</p> <p>Section 5 regulates the arrest, detention and removal from the state of persons refused leave to land who have been in the state for less than 3 months.</p> <p>Section 8 obliges public authorities to share with each other information concerning non-nationals for the purposes of administration of immigration law, whenever so requested.</p>	Link (EN)

4	Employment Permit Acts 2003 and 2006	2003 and 2006	<p>Non-EU nationals generally may not enter into employment in Ireland without holding a work permit. Employment permit holders can only work for the employer and in the occupation named on the permit. Under the 2003 and 2006 Acts it is an offence for both an employer and an employee to have a non-EEA national in employment without an appropriate employment permit. While illegal employment of non-EU nationals may be prosecuted as a breach of the Immigration Act 1999, it is more likely that a prosecution would occur under the Employment Permits Acts. Although the Workplace Relations Commission has the power to prosecute both employers and employees, they usually focus on the employer.</p>	Link (EN)
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5	Immigration Act	2004	<p>The Act provides the framework for lawful entry and residence in the State. Section 4(3) provides the grounds on which a non-national may be refused entry to the state, including for not holding a valid Irish visa, or for not being in possession of a valid employment permit in respect of the employment he or she intends to take up.</p> <p>Section 4(7) permits an individual to apply to renew or vary her immigration status, thereby, if successful, avoiding a fall into irregular status. In practice, the power under this section has been exercised to grant permission to irregular migrants who have never held an immigration permission.</p> <p>Section 5 provides that, with the exception of asylum seekers and refugees, any non-national in the state without the relevant permission is ‘for all purposes unlawfully present in the State’.</p> <p>Section 9(6) provides that there is no obligation for immigrant children under the age of 16, or non-nationals born in the state, to register with the immigration authorities (though every birth in Ireland must be registered with the authorities within 3 months of the birth, as per section 19 of the Civil Registration Act 2004).</p> <p>Section 11(2) provides that any non-national entering the state who does not comply with the obligation to present to an immigration officer, when requested to do so, their passport or equivalent document, and information, is guilty of an offence.</p>	Link (EN)
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6	Reactivation Employment Permit Scheme	2014	<p>The Reactivation Employment Permit (REP) Scheme enables to work legally again migrants who entered the state on a valid employment permit but who fell out of the system through no fault of their own or who were exploited in the work place. The Scheme allows the ISD and the Department of Enterprise (DETE) to collaborate and to determine, on a case by case basis, whether a person should be granted a pathway out of irregularity. The Minister for Justice first grants a person an immigration permission (a temporary Stamp 1 immigration permission) and a “Reactivation Employment Permit” letter in order to apply for a reactivation permit with the DETE.</p> <p>The initial two year validity of the REP is renewable for a further three years. Domestic workers are excluded from this Scheme.</p> <p>While the Scheme may operate to prevent or reduce irregular employment, long processing times may lead applicants to take up irregular work while awaiting the approval of their application.</p>	<p>Link (EN)</p> <p>Link (EN)</p>
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7	Workplace Relations Act	2015	<p>Section 27 of the Workplace Relations Act 2015 sets out the entry and search powers of labour inspectors. An inspector may enter any place of work or premises they reasonably believe is being used as a place of employment of persons or used to keep documents relating to the employment of persons. Labour inspectors may not visit private residences unannounced.</p> <p>Section 35 of Act enables the Workplace Relations Commission (WRC) to enter into cooperation and data sharing agreements with official bodies, including foreign statutory bodies.</p>	Link (EN)
8	Statutory Instrument 548/2015 European Communities (Free Movement of Persons) Regulations	2015	<p>This piece of secondary legislation gives effect to the EU Citizens Directive (Directive 2004/38/EC). Regulation 20 empowers the Minister to issue a removal order in respect of EU citizens and their family members who are no longer entitled to be in the state because they are not in compliance with the conditions of the Directive. EU citizens are therefore not removed under the framework put in place by section 3 of the Immigration Act 1999. Unlike deportation orders under section 3, a removal order under the Regulations do not entail a re-entry ban.</p>	Link (EN)
9	Atypical Working Scheme for non-EEA Crew in the Irish Fishing Fleet.	2016 - 2023	<p>The Atypical Working Scheme (AWS), was developed by the Department of Justice and the Department of Enterprise, Trade and Employment (DETE) to facilitate short-term highly-</p>	Link (EN)

			<p>skilled employment that is not supported by current Employment Permit legislation. In response to concerns about high numbers of undocumented migrants employed in the Irish fishing industry and potential labour exploitation and human trafficking in 2015, the AWS was expanded to include non-EEA workers in the Irish fishing industry. Restrictive eligibility criteria meant that between Feb and June 2016, 152 individuals were granted permission to work 12 months under the Scheme. As of 1 July 2016, applications to the Scheme may only be made from outside the state, but those successfully regularised in 2016 could apply to renew their permission and to change their employer.</p> <p>The closure of the AWS for non-EEA seafarers on 31 December 2022 was accompanied by the possibility for holders of AWS permission valid on or after 1 January 2023 to apply for Stamp 4 immigration permission, time spent on which is reckonable for naturalisation applications.</p>	<p>Link (EN)</p> <p>Link (EN)</p>
10	Former International Student Regularisation Scheme	2018	<p>The Scheme, prompted by the Supreme Court ruling in Luximon and Balchand was open from 15 October 2018 until 20 January 2019 for online applications for regularisation from irregular migrants who lawfully arrived in Ireland between 1 January 2005 and 31 December 2010 for the specific purpose of study and subsequently became undocumented. The Scheme addressed the consequences of a rule change limiting formerly unlimited student visa permission to a maximum</p>	<p>Link (EN)</p> <p>Link (EN)</p>

			of 7 years. The Scheme regularised 2253 out of 3097 applicants.	
11	Regularisation of Long-Term Undocumented Migrants Scheme	2022	The Scheme, open from 31 January – 31 July 2022, granted a right to live and work for a renewable period of two years to applicants who satisfied the eligibility criteria. 6548 applications were submitted, in respect of 8311 individuals (5654 single applications and 894 family applications). As of 3 July 2023, 87% of applications have been processed: 4,617 (almost 71%) applications have been granted, 1002 (15%) applications have been refused, and 118 (almost 2%) applications have been withdrawn by the applicants for various reasons.	Link (EN)
				Link (EN)
12	International Protection Process Regularisation Scheme	2022	The Scheme, open for online applications from 7 February – 7 August 2022, granted successful applicants a two-year renewable permission to live and work in the state. The main criterion was for the applicant to have been in the international protection process for at least 2 years prior to the commencement of the scheme, ie, that she had applied for protection before 7 February 2020 and was still awaiting a first instance decision on 7 February 2022. 3244 applications were made to the Scheme. As of 1 June 2023, 1585 applicants had been granted permission under the scheme. During the Scheme, a further 1,102 applicants were granted an equivalent, or higher, immigration permission. This means that, by 1 June, 2023, some 2,687 persons who made an application under the Scheme, or more than 82% of all Scheme applicants, had been	Link (EN)

			granted stamp 4 immigration permission, a two-year renewable permission that allows holders to work without an employment permit and is reckonable as residence for applications for citizenship.	
			Some 472 applicants, or just over 14% of all Scheme applicants, had a refusal decision issued to them by 1 June, 2023, all of whom then had access to the Scheme’s appeals process. By 1 June, 2023, some 84 applications, less than 3% of all Scheme applications, remained to be determined.	

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Irish Nationality and Citizenship Act, as amended	1956	Children born in Ireland on or after 1 January 2005 only acquire Irish citizenship if at least one of the parents is an Irish or British citizen or, if neither Irish nor British, has been lawfully resident in Ireland for at least three years prior to the birth of the child.	Link (EN)
2	Health Care Act, as amended	1970	Section 45 provides for access to health care services for persons ordinarily resident in the state, thereby excluding irregular migrants.	Link (EN)
3	Illegal Immigrants (Trafficking) Act	2000	Section 2 criminalises smuggling – creates a framework for the punishment of persons who, for gain, facilitate entry to the state of ‘an illegal immigrant’ or a person who intends to seek asylum.	Link (EN)
4	Voluntary Assisted Return and Reintegration	2001	When applicants for international protection are notified that their application has been unsuccessful, they are informed pursuant to section	Link (EN)

	Programme (VARRP)		48 of the International Protection Act 2015 that they have 5 days to confirm that they will voluntarily return to their country of origin. This is effectively a tool for preventing individuals falling into irregularity. The Catherine Day report recommended that this period be increased to 30 days for unsuccessful international protection applicants.	Link (EN)
5	Social Welfare Consolidation Act, as amended	2005	A migrant worker must be 'habitually present' in the state in order to have access to various social welfare payments, including unemployment assistance; child benefit; carer's allowance; disability allowance; and one-parent family payment. Section 246(5) provides that a person who does not have a right to reside in the state is not habitually resident in the state. Section 246(7)(c) provides that an individual considered for deportation order under section 3(3) of the Immigration Act 1999 is not habitually resident. Exceptionally, however, section 201 allows officials of the Department of Social Protection to make a single payment to a person to meet an exceptional need.	Link (EN)
6	The Criminal Law (Human Trafficking) Act	2008	Criminalises trafficking of humans for exploitation.	Link (EN)

7	Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking and Second National Action Plan to Prevent and Combat Human Trafficking in Ireland	2011 and 2016	<p>Ireland currently gives effect to Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims through administrative arrangements. The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (March 2011) and Second National Action Plan to Prevent and Combat Human Trafficking in Ireland (October 2016) set out the criteria for the recovery and reflection period and temporary residence for trafficking victims. The Administrative Arrangements provide that an individual identified as a suspected victim of trafficking shall be granted permission to be in the state for 60 days for recovery and reflection. Where a person has severed all contact with the alleged perpetrators of the trafficking, and it is necessary for the purpose of allowing the suspected victim to assist authorities in relation to an investigation or prosecution arising in relation to the trafficking, a temporary renewable residence permission valid for an initial period of 6 months will be granted.</p>	<p>Link (EN)</p>
8	Housing Circular 41/2012	2012	<p>To be eligible for social housing, generally migrants must have a legal right to remain in the state on a long-term basis.</p>	<p>Link (EN)</p>
9	Civil Registration (Amendment) Act	2014	<p>Gave new powers to a Registrar of Marriages to consider whether a marriage is one of convenience – where at least one of the parties to the marriage is at the time of entry into the marriage is a foreign national, and enters into the marriage solely for the purpose of securing an immigration advantage for at least one of the parties to the marriage – and on that</p>	<p>Link (EN)</p>

			basis to notify the Department of Justice.	
10	International Protection Act	2015	The International Protection Act regulates the system for seeking international protection in Ireland and sets out the return procedures for unsuccessful applicants. Section 48 provides unsuccessful applicants for international protection with the option of voluntary return. Section 51 provides for a deportation order to be issued in respect of unsuccessful applicants who do not accept the option of voluntary return. This is the point at which international protection applicants become irregular migrants, as reflected in the fact that deportation orders issued under section 51 of the International Protection Act 2015 are deemed to be deportation orders made under section 3 of the Immigration Act 1999.	Link (EN)

11	McMahon Report on improving the international protection process	2015	<p>The Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, chaired by Bryan McMahon, issued its Final Report in June 2015. Amongst its 173 recommendations to improve the Irish system of international protection, it included the recommendation that persons who had been in the international protection system for 5 years or more should be granted the right to remain in the state regardless of whether they were awaiting final determination of their application or the implementation of a deportation order, with regularisation of the latter subject to certain conditions including the requirement that an individual had not been evading deportation, posed no threat to public order or national security and had not been involved in crime. In 2017, NGO Nasc characterised implementation of the recommendations concerning regularisation of persons more than five years in the system as incomplete, with an informal scheme leading to “a number” of deportation orders being revoked and a total of over 1000 applicants being granted leave to remain, a significant number short of the 3350 estimated to be eligible by the Working Group. Regularisation conducted following the McMahon Report recommendation will have prevented potentially up to 1000 individuals in the international protection system from falling into irregularity.</p>	Link (EN)
				Link (EN)

12	Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (Day Report)	2020	To expedite the ending of the direct provision accommodation system for international protection applicants, to prevent the re-emergence of new backlogs, and to reduce the number of outstanding cases, the Day Report recommended the establishment of a one-off, simplified, case-processing approach applying to all applicants who will have been two years or more in the international protection system by the end of 2020.	Link (EN)
13	Information Regarding the Justice Sector COVID-19 Plans; Immigration Service Delivery: Impact of COVID-19 on Immigration and International Protection, FAQs; Rights of Undocumented Workers to access social welfare supports during COVID-19	2020	The Department of Justice published a notice on its website in March 2020 assuring irregular migrants that during the pandemic if they accessed Department of Social Protection services (social welfare benefits and other cash benefits such as Pandemic Unemployment Payment) or healthcare services, their details would not be shared with the Department of Justice. The same notice encouraged irregular migrants to come forward if they wished to regularise their situation, stressing that such cases are assessed and processed on a case-by-case basis.	Link (EN)
				Link (EN)
				Link (EN)
14	COVID-19 Employment Permits System Contingency Arrangements	2020	Employment permit applications, and renewals of existing permits, were processed through a fully online process during the pandemic, thereby preventing some migrants from falling into irregularity.	Link (EN)
15	Automatic renewal of Irish Residence Permits	20 March 2020 – 15 January 2022	Automatic renewal of residence permissions was introduced to ensure people did not enter into an irregular situation and could continue to work and access services as required.	Link (EN)

16	Immigration Guidelines for Victims of Domestic Violence	June 2022 (recent updates)	<p>The Immigration Guidelines for Victims of Domestic Violence explain how a victim of domestic violence whose relationship has broken down can apply for independent immigration permission in his/her own right]. They allow lawfully resident victims of domestic violence who are dependent on the immigration status of their spouses/partners to acquire immigration status that is independent of the status of the perpetrator of violence. While this is not an avenue that is generally open to undocumented migrants, it is open to victims of domestic violence who were formerly lawfully present. The permission to remain granted to successful applicants puts them in the same migration status they had enjoyed as dependents, but consideration will be given to granting them permission to work where it is necessary to support themselves or lawfully resident family members.</p>	Link (EN)
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Italy Country Brief on Irregular Migration Policy Context

AUTHORS:

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Italy

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Employment**

Addressing the recurring critical necessity of meeting labor market demands, particularly in sectors such as agriculture, construction, and care work, poses a significant challenge due to the frequent difficulty in finding a sufficient number of workers to meet employer needs. Additionally, prioritizing ‘regular employment’ within these sectors remains a key policy objective.

- **Security**

Protecting national borders, whose emphasis underscores the political significance of the state's sovereign authority. In public discourse, security concerns intertwine with border protection, particularly in relation to sea arrivals of asylum seekers, resulting in the media and political debate often conflating asylum seekers with irregular migrants.

1.2 OVERVIEW OF THE ITALIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Rights restrictions and border securitisation**

Italy implements several policies that limit rights, entitlements, and opportunities for integration, especially for asylum seekers and refugees, and others that reinforce borders, abruptly stop, or divert migrants' journeys, open detention centres and stipulate repatriation agreements with third countries (Colucci, 2019; Dennison & Geddes, 2021).

Recently, the Cutro Decree institutionalised harsher penalties for smugglers transporting migrants, narrowed the circumstances under which the special protection permit can be granted to asylum seekers – even eliminating the option for conversion into a work permit – and opened new detention centres for repatriation.

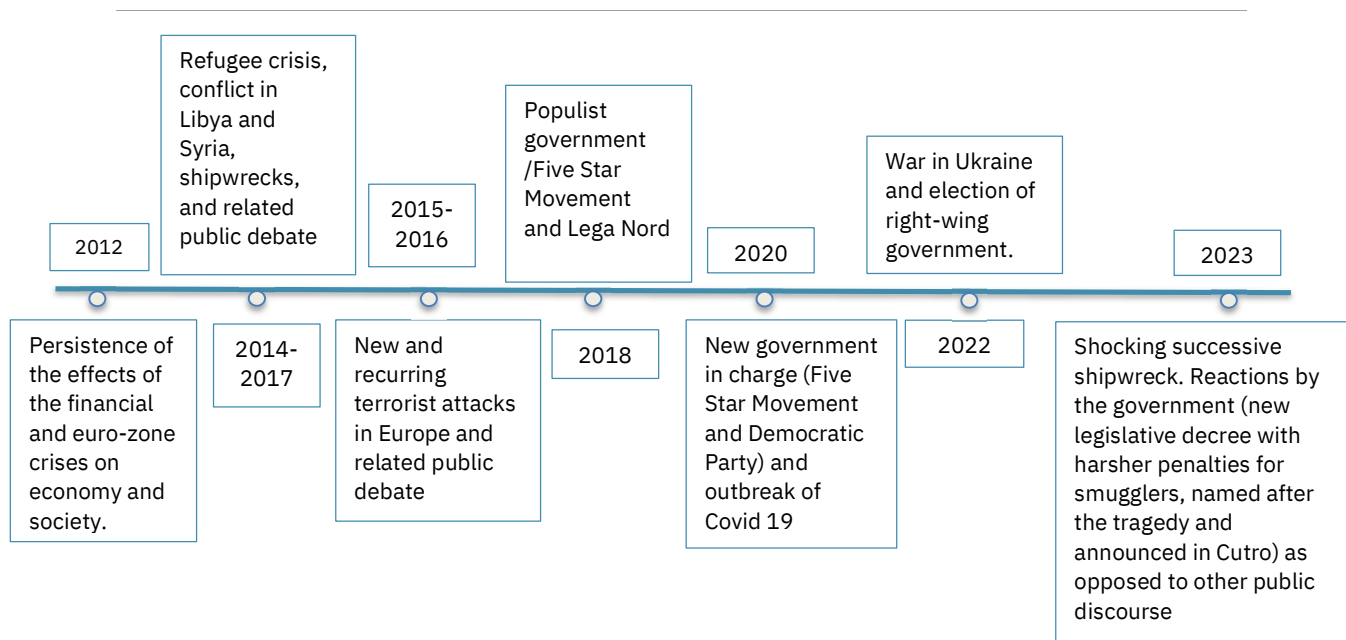
- **Amnesties/regularisation programmes**

Employment-based amnesties are the main tool used to regularise irregular migrants in Italy, often linked to work sectors (mainly care). These programmes or “back-door policies” are granted as an opportunity for employers rather than employees: the employer is authorised to legally hire an immigrant worker already employed off the books by her/him (Pastore, 2014). Policy thus merges the characteristics of a “proper” regularisation (namely a procedure “through which non-nationals who are illegally residing or are otherwise in breach of national immigration rules in their current country of residence are granted a legal status”) with the mechanisms of a status adjustment measure. This means that even third-country nationals with a “precarious” status, such as asylum seekers, could apply to the regularisation program and eventually achieve a more favorable condition (Kraler, 2009; Goldring and Landolt, 2013; Bonizzoni et al., 2021; Bonizzoni and Artero, 2023). The most recent one dates back to COVID-19 (2020) and the related shortage of essential workers (Ambrosini, 2023).

- **Quota mechanisms**

Every year, the Italian Prime Minister issues immigration quotas for third-country citizens. The previous government not only increased the quotas but, importantly, issued an additional flows decree for 2023, lasting three years and allowing a total of 452,000 entries for work opportunities in specific sectors (care, agriculture, tourism, construction, transportation) (De Blasis and Bonizzoni, 2024).

1.2.2 Policy evolution: Main turning points



It is also worth noting that:

- In 2012, the Mario Monti technical government enacted an amnesty for irregular migrant workers following the adoption of the European legislation on severe labour exploitation;
- In 2018, under the political government lead by Giuseppe Conte and formed by the populist parties Five Star Movement and Lega Nord, the Salvini Security Bills were adopted. This legislation closed Italian ports to migrants, refugees and NGOs rescuing them, becoming the central objective of government migration policy;
- In 2020, during the pandemic, an amnesty for workers was promoted under the new government led by Giuseppe Conte, formed this time by the Five Star Movement and other political parties, the Democratic Party and Italia Viva, which advocated for the amnesty.

1.2.3 Policy impact

- **Rights restrictions and border securitisation**
In Italy and the rest of Europe, repatriation processes are slow and inefficient. According to data from the Court of Auditors, between 2018 and 2021, only one-fifth of the total people in Italy who had expulsion orders had actually returned to their

country of origin through voluntary or forced repatriation. The annual average is about 5,300 migrants, except for the pandemic years (3,607 people in 2020, 3,838 in 2021). Of the 3,838 repatriations in 2021, 3,420 were forced. Migrant returnees are male in 99.6% of cases, and 30.2% are aged between 25 and 30. 10.4%, however, are between 18 and 20 years.

- **Amnesties/ regularisation programmes**

Although Law 109/2012 enacted by the Monti technical government fell short of expectations, it yielded approximately 130,000 applications for regularisation. The 2020 amnesty for migrant workers resulted in the submission of 207,870 applications. As per the latest data available in June 2023, 132,006 cases were positively concluded, leading to the issuance of residence permit requests. Conversely, 29,181 applications were rejected, and 10,227 were either withdrawn or archived for various reasons. Consequently, by June 2023, three years post-implementation, Italian prefectures had finalised 171,414 cases, accounting for approximately 82% of the total. Notably, the completion rate significantly decreased in the offices of Rome and Milan. In Milan, for instance, as of July 2023, slightly over half of the applications were still in the process of being finalised (Ero Straniero, 2023).

- **Quota mechanisms**

Only 19.8% of the total available quota for seasonal work in 2021 was used, amounting to 8,348. In absolute terms, this was less than half of the quota visas used in 2020. Additionally, only 1,178 quotas were used to convert residence permits into work permits, decreasing to 2,639 in 2020 from 6,500 in 2019. These implementation challenges can be attributed to a combination of bureaucratic obstacles and security concerns.

For the 2023-2025 flows decree, bureaucratic procedures were simplified. As of May 2023, the Interior Ministry has concluded the investigation of over 74,000 applications submitted, equal to 90% of the expected uptake of quota visas. Out of these 74,000 applications, prefectures have issued 60,000 authorisations. These are almost all those provided for seasonal work and more than 60% of those provided for non-seasonal work in the sectors of construction, hospitality and tourism. Ongoing monitoring of this policy's implementation in the coming years is essential to assess its overall impact (Interview).

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Rights restrictions and border securitisation**

There remains a gap between the declared aim of eliminating unwanted immigration and their actual impact. The main reasons for immigration control failures in Italy, which are also common in other European and Western contexts, are: the functioning of labour markets, especially in a neo-liberal era, which is in contrast with the political desire to close borders and prevent immigration by poorly qualified workers;

difficulties in limiting movements of people in a global society; liberal institutions' struggle to balance the aspiration to curb unwanted immigration and the respect for human rights embedded in national constitutions and international conventions; difficulties and costs of deportation itself (e.g., investments needed to enforce border policies or internal controls, diplomatic negotiations to cooperate with immigrants' countries of origin, costs of journeys) (Ambrosini and Hayer, 2023).

- **Amnesties/ regularisation programmes**

Amnesties in Italy have historically required both migrants and employers to meet certain prerequisites. These prerequisites include proof of a valid employment contract, evidence of residing in the country before a specific date, criminal record checks, and, for employers, proof of income and, for migrants, housing documentation. In the case of the latest one (and the one dating back to 2009), these programmes only applied to migrants employed in specific sectors, such as domestic and care work, and in 2020, agriculture and fisheries (Bonizzoni and Artero, 2023). Fictitious employment contracts and the emergence of a migration industry associated with these programmes is well-documented, often leading to fraudulent practices that adversely affect migrants (Bonizzoni and Hayer, 2021). However, the issue of “fake” employment contracts is intricate and also encompasses “genuine employers in the wrong sectors,” as well as various forms of non-commercialised solidarity within ethnic networks and civil society (Interview). Most notably, amnesties place significant responsibility on employers rather than employees during the application process, and they operate within a labour market marked by precarious work (Bonizzoni and Artero, 2023). Furthermore, as mentioned earlier, the problem persists: after more than three years, many applications remain unprocessed (Interview). While the programme has essentially been completed in small towns, the situation is particularly critical in large cities such as Milan and Rome. For example, in Milan, as of July 2023, just over half of the total were in the process of being finalised (Ero Straniero, 2023).

- **Quota mechanisms**

As several experts interviewed have pointed out, quota mechanisms should be expanded, considering current and future demographic trends in Italy, as well as the country's labour market needs. However, these mechanisms require Italian families and companies to hire foreign workers who live abroad, individuals they have never encountered before. This requirement runs counter to a labour market characterised by informal hiring practices and reliance on personal networks. As a result, the uptake of these mechanisms partly involves undocumented foreigners who are already living and working in Italy. This means that part of the applications made under this programme should be rather seen as misguided regularisation efforts. It is worth noting that as related to the 2023 flows decree, regulatory and organisational innovations related to the digitisation of applications have seemingly contributed to reducing the lengthy processing times, which have long been seen as an obstacle to the programme's effectiveness. Nevertheless, there are still many

actors who exploit, speculate, and capitalize on migrants seeking regularization (Bonizzoni and Hayer, 2021; De Blasis and Bonizzoni, 2024).

Table 1: Relevant Italian institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Government	Statement of public policies in the field of migration at national level/ executive power (legislative initiatives, decrees, regulation); orientation of public discourses on migration-related phenomena (e.g., security, inclusion)	Link (IT)
2.	Ministry of the Interior	Internal security and the protection of the constitutional order, for civil protection against disasters and terrorism, for displaced persons and administrative questions. It also drafts all passport, identity card, firearms, and explosives legislation.	Link (IT)
3.	Prefectures (Ministry of the Interior)	Administration and implementation of migration policies	Link (IT)
4.	Magistracy	Interpretation and application of the migration laws and protection of migrants' rights. The judicial power is independent by other power institutions and there is no internal hierarchy within.	Link (IT)
5.	State Policy (Ministry of the Interior)	Supervision of compliance with laws and regulations	Link (IT)
6.	State Navy (Ministry of the Defence)	Support of implementation of migration policies (from rescue to repatriation)	Link (EN)
7.	Ministry of Labour and Social Policies	Supports the definition and the implementation of migration policies, especially with respect to flows decrees and amnesties.	Link (IT)
8.	Regional authorities	Definition and implementation of public policies in fields like health, labour, and welfare. These institutions, though, can limit migrants' access to services (e.g., public housing), with a relevant impact on irregular migrants' conditions and everyday life.	Link (IT)
9.	Municipalities	Definition and implementation of public policies in fields like welfare, and support for social innovation practices, which have a relevant impact on irregular migrants' everyday life	Link (IT)

10.	Health institutions	Provision of essential and non-essential health services	Link (IT)
11.	Education institutions	Provision of compulsory and non-compulsory education	Link (IT)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN ITALY: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Italy

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayer	A person who has legally entered but then stayed in an EU Member State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and /or residence permit (e.g., a tourist visa-holder who stayed for other reasons especially work, or an unaccompanied minor who turned 18 years but could not find a job or any other regularisation situation, such as a study activity, within the time limit allowed by the Italian legislation/ one year).
Rejected asylum seeker	A person whose application for international protection has been definitively rejected, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period.
Unregistered persons with false papers and identities	A person with false papers and identities, whose presence in the territory – if detected – may be subject to termination through an order to leave and/ or expulsion.
Persons issued with a return decision who are not removed	A person who stayed despite a return decision, whose presence in the territory – if detected – may be subject to termination through a new order to leave and/ or expulsion.

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum seeker or amnesty applicants who have not yet registered their claim	A person who would enjoy a provisional right to stay, subject to registration of their case, followed by an examination/ regularisation of their case.
Unaccompanied minor who turned 18 years old and has to find a job/ a regularisation situation (e.g., study) within the time limit allowed by the Italian legislation	A person who enjoys a provisional right to stay subject to an examination/ regularisation of their case.
Third-country national victim of trafficking	A person who enjoys a provisional permit to stay.
EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
EU nationals with a residence ban on public order grounds or criminal charges	EU nationals who do not or no longer enjoy the right to movement and/or settlement in the EU and are liable to be removed because they do not meet residence conditions or are subject to restrictions of free movement rights.
EU citizens without long term residence and without sufficient means	

1.3.1 Pathways into and out of irregularity

- **Unemployment**
People who lose their job and their related permit to stay, falling into an irregular condition. Labour is in fact a fundamental principle not only for the transition toward legal status (as in regularisation programmes), but also for the legal status itself.
- **Loss of visa entitlements**
People who stay in a country beyond the period for which entry was granted, like tourists, or people who engage in activities that are not allowed according to the visa they hold, such as students (blurred lines between regularity and irregularity).
- **Recognition of civil and family rights**
Irregular migrants, both newly arrived and long-term residents, can establish the legitimacy of their marriage and other relations as a means of regularisation. Furthermore, the Juvenile Court can authorise the issuance of a residence permit to the irregular parents of a foreign minor, in case specific protection needs exist (age and health conditions are taken into account).
- **Recognition of a condition of danger or abuse**
Migrants in a condition of danger or abuse, such as asylum seekers or women exploited in the sex industry, can be regularised upon demonstration of “real victimhood”.
- **Regularisation programmes**
A major pathway out of irregularity are those provided under the Italian quota mechanism and work-based regularisation programmes, described further below.

1.3.2 Regularisation

- 2012, Regularisation measure for migrants irregularly employed (Law 109/2012)
Eligibility criteria for employers:
 - EU citizenship or long-term residence permit
 - Accommodation of the employee (minimum standards)
 - Employment relation (continuous and full time, except for care work) in the determined sectors
 - Demonstration of sufficient income levels (e.g., €30,000 of taxable income or turnover, in the case of intending to regularise a work relationship other than domestic employment; €20,000 in the case of regularisation declarations for a foreign worker employed in domestic work with family support functions; no income-related criteria for employers with health issues or disability, who is applying to the regularisation programme for his/ her care worker.)
 - No criminal record, nor threat to public order or state securityEligibility criteria for employees:
 - Continuous presence in Italy

- No criminal record, nor threat to public order or state security
- [2020, Bellanova regularisation programme \(Law 128/2020\)](#)

Eligibility criteria for employers:

- EU citizenship or long-term residence permit
- Accommodation of the employee (minimum standards)
- Employment relation (continuous and full time, except for care work) in the determined sectors
- Demonstration of sufficient income levels (e.g., in the sectors of agriculture, livestock farming, fishery, aquaculture, and related activities, a minimum taxable income of no less than €30,000; in the sectors of domestic work or personal assistance, when the employer is an individual, a minimum taxable annual income of no less than €20,000)
- No criminal record, nor threat to public order or state security

Eligibility criteria for employees:

- Presence in Italy (before and after 08/03/2020)
- No criminal record, nor threat to public order or state security

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1	Law 40/1998	1998	It became “Testo Unico sull’Immigrazione” DLgs. 246-1998, establishing the main guidelines for public policy on migration in Italy, in terms of programming migratory flows, tackling irregular immigration, promoting a wide series of rights for the integration of regular migrants. It established a national fund for immigrants’ integration, and gives to local administrations (regions, municipalities) crucial roles for immigrants’ integration. It also dedicated an entire section to family reunification (art. 28-33), which is still an important channel for regularization, and a specific article (art.19) regulating those vulnerable situations (e.g., pregnant women or women who have had a child in the last six months) in which expulsions and rejections cannot be enforced. It is known as the Turco-Napolitano Law.	Link (IT)
2	Law 189/2002 (Bossi-Fini)	2002	A partial revision of the Turco-Napolitano Law (40/1998). Major innovations were: abolition of the sponsor mechanism and institution of an inextricable link between legal entry in Italy and the possession of a labor contract; criminalization of irregular migrants; extension of the maximum period of permanency (from 30 to 60 days) in CPTs (temporary residence centres); establishment of measures that limit the possibilities of entrance in Italy; fusion of the	Link (IT) Link (IT)

			national funds for migration with the one of social policy.	
3	Memorandum of agreement with Nigeria	2011	Anti-trafficking policies and repatriation agreements to contrast irregular migration.	Link (IT)
4	Law 109/2012	2012	It aimed at implementing an EU Directive on sanctions and measures against employers of “illegally staying third-country nationals”, who illegally hire foreign workers or seriously exploit them. According to this law, the exploited worker who denounces his/her employer and cooperates with the authorities during the juridical process may be given a residence permit for humanitarian reasons. At the same time, the government launched a new regularisation measure for migrants irregularly employed.	Link (EN)
				Link (EN)
5	Memorandum of agreement with Sudan	2016	Anti-trafficking policies and repatriation agreements to contrast irregular migration.	Link (IT)
6	Memorandum of agreement with Libya	2017	Anti-trafficking policies and repatriation agreements to contrast the so-called irregular migration. Furthermore, agreements with local militias, supply of patrol boats and equipment, and enlargement of the Libyan Search and Rescue zones to prevent landings in Italy.	Link (IT)
7	Framework agreement with Tunisia	2017	Anti-trafficking policies and repatriation agreements to contrast irregular migration.	Link (IT)
8	Law 13/2017 (Minniti decree)	2017	Decree on international protection and contrast to illegal immigration. It introduced measures for speeding up the administrative and jurisdictional procedures in terms of international protection. It also introduced measures to ease the operation of identification of extra-EU migrants and to fight irregular immigration. In particular: abolition of the possibility to appeal a negative asylum decision by the Civil; Civil	Link (EN)

			Courts will no longer be required to invite the asylum seeker to a hearing but will be able to examine the appeal on the basis of the video-recording of the first instance interview; the extension of pre-removal detention centres (CPR) in every region of the country; a framework for asylum seekers to engage in unpaid community work. It also introduced minor changes in immigration administration, such as an online procedure to lodge applications for family reunification visa.	Link (EN)
				Link (EN)
9	Law 132/2018 (Salvini Security Bill)	2018	New law on immigration and security, introducing significant amendments and restrictions to the Italian asylum framework. Main changes: - amendments in qualification and reception provisions - abolishment of the humanitarian protection status and restricted access to accommodation and hosting facilities - establishment of the special protection status - provisions that made the expulsion of aliens and citizenship revocation easier.	Link (EN)
10	Law 53/2019 (Salvini Security Bills bis)	2019	Law on immigration and security, mainly establishing what follows: -restrict or prohibit ships' entry, transit, or parking in Italian territorial waters for reasons of order and security. Such reasons include cases where it is assumed that the crime of 'aiding illegal immigration' has been committed.	Link (EN)
11	Law 128/2020	2020	Most recent amnesty with a 55 billion euro stimulus package, meant to support Italy's economy after COVID-19 breakdown. In fact, this measure focused on people working in sectors of the economy deemed to be "essential" during the pandemic crisis, such as undocumented agricultural workers and caregivers.	Link (EN)

12	Law 130/2020	2020	<p>This law partially restored the legal framework outlined in Italy before the so-called Security Bills by Salvini, concerning the reception of asylum seekers and national/international protection beneficiaries. First, the new law reintroduced a single reception system for both. Second, the reception system was articulated in:</p> <ul style="list-style-type: none"> - First aid and identification activities - First assistance - Reception <p>In particular, it changed two fundamental aspects of the reception system for asylum seekers: the possibility for asylum seekers to have access to the reception system; the kind and level of services provided in governmental centers.</p> <p>It also reintroduced the humanitarian protection status, substantially abolished with Salvini.</p>	<p>Link (EN)</p>
13	Law 20/2023 (Cutro Law)	2023	<p>Most recent decree on migration issues, mainly meant to:</p> <ul style="list-style-type: none"> - Provide for a modification in a restrictive sense of special protection and eliminate the option for conversion into work permit - Open new CPRs (Detention Centre for Repatriation), increase the maximum period of detention (from 120 to 135 days), and introduce new forms of detention at the borders for asylum seekers, who can be held for up to four weeks while their applications are processed - Eliminate access to very important services such as psychosocial assistance, legal counseling, and Italian language courses in first aid and reception centres - Change renewals mechanisms of residence permits issued for permanent work, self-employment, or family reunification: they will have a maximum duration of three years instead of two. 	<p>Link (EN)</p> <p>Link (IT)</p>

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Law 286/1998 (consolidated text on migration)	1998	Right to education (and duty) guaranteed to all minors, including children of irregular migrants and irregular unaccompanied minors.	Link (IT)
2	State-Region agreement (n.255/CSR, 20 December 2012)	2012	<p>Enrollment in the National Health System is guaranteed to specific categories of irregular migrants (+18 years), such as pregnant women, victims of traffick, or family relatives of Italian citizens.</p> <p>According to Art. 32 of the Italian Constitution, urgent and necessary health care is guaranteed as a fundamental right to everybody.</p> <p>Nevertheless, regional legislations matter for further healthcare and differ over the Italian territory. Less inclusive laws prevail over more inclusive ones.</p> <p>Services can be unsatisfactory, discriminatory, and not uniformly implemented.</p>	Link (IT)
3	Law 117/2017 (Third Sector Reform)	2017	Relevant reform of the Third Sector organization and functioning in general, impacting then on organizations services for irregular migrants (health, education, etc.). Following this reform, many of these organizations had to change their legal forms, limiting their activities, and/or could access to new resources, expanding instead their activities. Social enterprises, even operating for welfare services, gained a major attention in terms of investments.	Link (IT)

4	Decree by the President of the Council of Ministers of the Italian Republic (DPCM) 12/12/2017	2017	(Update) enrollment to the National Health System guaranteed to all minors (-18 years), including children of irregular migrants and irregular unaccompanied minors.	Link (IT)
5	2023 Flows Decree	2023	Quota set for 2023 is 82,705 workers, broken down by country of origin and type and sector of employment.	Link (IT)
6	Law 76/2023 (cash transfer for elderly care allowance)	2023	Universal cash-transfer program (and in-kind benefits) for elderly care allowance. It has not been implemented yet, but it could stimulate informal care work which is typically made by irregular migrants.	Link (IT)
7	Decree by the President of the Council of Ministers of the Italian Republic (DPCM) 6/04/2023	2023	(Update) national plan to fight irregular labor (2023-2025) , by increasing controls and sanctions. Irregular migrants are often irregularly employed; thus, it is possible to expect more controls, sanctions, and other related consequences (e.g., forced repatriation).	Link (IT)
8	2023-2025 Flows Decree	2023	Additional flows decree, valid for three years (2023-2025), allowing almost 450,000 entrances.	Link (IT)

In addition to the laws and policies mentioned above, it is crucial to consider the relevance of tourism and visa-related policies in the context of irregular migration. As further elaborated in this discussion, many irregular migrants are individuals who exceed their permitted duration in a country. For example, since 2016, citizens of Peru have been allowed to enter Italy and the Schengen area for short-term stays without the requirement of a visa. Furthermore, citizens from various regions, including the Balkans (such as Albania), Moldova, Ukraine, as well as several Latin American countries like Brazil and Argentina, enjoy visa-free entry. This lenient visa policy could potentially contribute to a rise in the number of migrants who enter Italy legally but then overstay their authorized duration.

Indeed, during the 2020 amnesty program for workers, the highest number of applications came from Ukrainian nationals, underscoring the significance of this issue.

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Morocco Country Brief on Irregular Migration Policy Context

AUTHORS:

Abdeslam Badre

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Morocco

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1. POLICY PRIORITIES

- **Addressing humanitarian concerns of migrants**

On top of Morocco's policy priorities is the importance of ensuring status-regularisation of migrants, ensuring their access to basic services, and mitigating the vulnerabilities associated with irregular status, as part of its commitment to a more human approach to migration management. Some of the measures introduced to achieve these objectives include combatting trafficking and smuggling networks, search, and rescue operations, strengthening humanitarian assistance (particularly for migrants in urgent health situations) etc.). Recognizing that a comprehensive approach to migration management extends beyond addressing security and humanitarian concerns, Morocco also places a strong emphasis on socioeconomic integration by implementing measures that provide migrants and their families with access to education, healthcare, and employment opportunities with the aim to create conditions for the successful inclusion of migrants into Moroccan society.

- **Strengthening border controls**

Morocco seeks to control the flow of irregular migrants within its territory while enhancing overall border security. The country's geographical location -linking Africa to Europe- makes it both a transit and destination point. Therefore, this measure is driven by the need to manage migration flows efficiently and mitigating the threats of terrorism. Complementing these efforts, Morocco has been proactive in countering human trafficking and migrant smuggling: two issues intrinsically linked to irregular migration. Actions to combat these challenges have both humanitarian and security dimensions, aiming to protect the rights of migrants while ensuring public safety.

- **Strengthening partnerships on migration management**

The nation's involvement in various agreements with other countries and international organizations provides a structured framework for managing migration flows, addressing security concerns, and enhancing cooperation on migration-related matters. Of equal importance is the collaboration with international organizations, and the commitment to respecting humanitarian and human rights considerations of migrants, including refugees and asylum-seekers. This priority is not solely motivated by a moral imperative but also a response to international obligations which exemplifies in the synergies with various ministries and the High Commissioner for Refugees (UNHCR), IOM, and the UN, among others.

1.2 OVERVIEW OF THE MOROCCAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

In efforts to safeguard the rights of irregular migrants crossing international borders, Morocco adopted an approach to managing migration flows, combating human trafficking and smuggling networks, and enhancing humanitarian assistance.

- **National Strategy for Immigration and Asylum (SNIA) – 2013**

Rooted in humanitarianism, comprehensiveness, and regional leadership, SNIA is driven by four overarching objectives: a) facilitating the integration of regular migrants, b) improving the regulatory framework, c) establishing a suitable institutional framework, and d) managing migratory flows while respecting human rights principles. It comprises three major changes: a) two exceptional regularization process for immigrants, carried out in 2014 and 2016-2017 (this operation benefited nearly 45,000 migrants); b) extended power for the UNHCR to grant the right of asylum to a greater number of asylum seekers in Morocco; c) allowing for better integration of migrants and asylum-seekers into Moroccan society, as well as increased emphasis on the fight against human trafficking and traffickers (Kingdom of Morocco, 2018).

- **Act No. 27.14 & Bills No. 66.17 & No. 72.17 – 2016**

Act No. 27.14, targeting human trafficking was enacted in August 2016. Bill No. 66.17 (pending ratification since February 2019) stipulates refugees, asylum seekers, or any persons shall not be deported to a country where their life or physical safety is in danger, in addition to recognizing the rights of refugees stipulated in international agreements, and creating a national structure concerned with mechanisms for asylum applications. Bill No. 72.17 (pending ratification since February 2019) focuses on entry, residence, and migration in Morocco. It pertains to the entry and

residency of foreign nationals and migration in Morocco as well as serves as a proposed measure designed to complement and amend Act No. 02.03 of 2003, addressing the entry and residency of foreigners and the issue of unlawful migration.

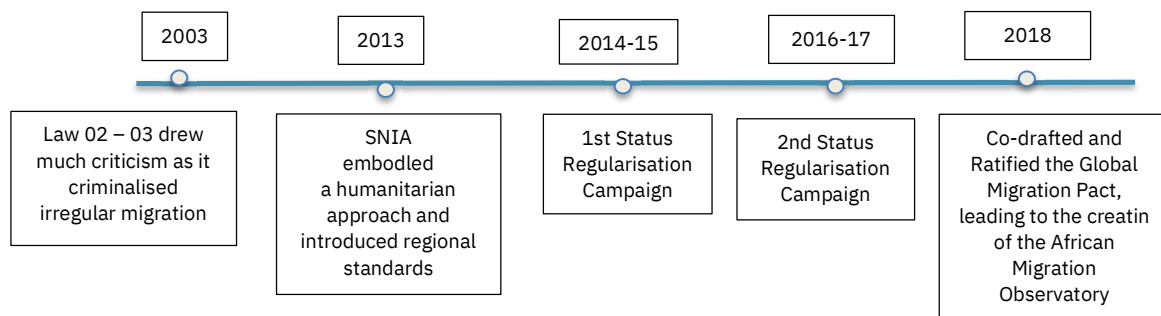
- **Assisted Voluntary Return Programme - 2017**

In collaboration with IOM and the EU, Morocco implements the Assisted Voluntary Return programme. Since 2017, the country has provided voluntary return support to 5,407 migrants to countries of origin as part of the implementation of SNIA. IOM expects an average of around 2,000 returns per year.

- **African Migration Observatory – 2020**

In 2020, Morocco inaugurated the African Migration Observatory in the capital city of Rabat. Affiliated with the African Union, the observatory's primary objective is to enhance comprehension of the migration phenomenon, bearing in mind its distinctive continental characteristics, and to explore potential future trajectories while recommending suitable policy measures. its pioneering role as a collaborative instrument is to facilitate the systematic collection, analysis, and dissemination of data among African nations.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Drawbacks of Act 02-03**

Law 02-03 represents significant challenges to irregular migrants' both journey to Morocco and life within the country (Meknassi, 2019). Over time, the policy has resulted in the criminalisation of such form of migration and has made irregular migrants more vulnerable to exploitation and abuse by human traffickers and smugglers. The law does not adequately differentiate between different categories of migrants, including refugees, asylum seekers, economic migrants, and victims of trafficking. This lack of differentiation results in inappropriate treatment of these

distinct groups. Detained migrants, including children, have reported harsh conditions in detention centres and inadequate access to legal representation. The law has also not been effective in reducing irregular migration but simply pushing migrants to take riskier routes and engage with criminal networks, making their journeys more dangerous (Jacobs, 2024).

- **Impacts of SNIA**

SNIA encompasses 11 programmes all pertinent to migrants' integration in the various socio-cultural tissues of the Moroccan society. They include education, healthcare, housing, social and humanitarian assistance, vocational training, employment, migration flow management, anti-human trafficking efforts, international cooperation and partnerships, regulatory frameworks, governance, and migration. Thousands of migrants who have benefited from the two regularisations programmes have also benefited from SNIA's programmes, including integration into the education and health systems (Schuettler, 2017).

In terms of access to protection, in 2017 refugee cards were granted cards to Syrian refugees, subsequently issuing one-year renewable sojourn permits through the Ministry of Interior. Moreover, with the extended power that SNIA gave the UNHCR Rabat-office, especially regarding the assessments of eligibility of asylum seekers applications, thousands of applicants have been granted refugee status, and were allowed to settle and integrate within the Moroccan society .

1.2.4 Policy challenges in addressing migrant irregularity

- ***Delays in implementation of legislations***

Delays in implementation of legislation has raised several human rights concerns. Bills - No. 66.17 and 72.17, - that pertain to the entry and residency of foreign nationals and migration; and would facilitate the procedure for applying and obtaining the refugee status were drafted and sent the General Secretariat of the Government in September 2018; then was completed in February 2019. However, the bills are still pending ratification. Despite various calls for the ratification, some observers attribute the hesitation to the government's concerns regarding the possible consequences of these bills and their potential to more irregular migrants and asylum seekers to the country.

- ***Inadequate and inconsistent data***

Inconsistent data presents a significant hurdle, especially if willing to formulate well-informed policies, understand migration trends, and evaluate the effectiveness of existing measures. The quasi-absence of updated and harmonised data as well a system for sharing information and intelligence regarding migration-related activities is a constant and evolving. Additionally, managing public opinion and media narratives regarding irregular migration is an essential yet challenging task (Azdem &

Ziou Ziou, 2023). Misinformation, negative perceptions, or public backlash can complicate policy implementation.

- **Political sensitivity**

Migrant irregularity is a delicate matter, both domestically and in international relations. Maintaining a delicate balance between enforcing migration policies and keeping positive diplomatic relations, particularly with European and African countries is a complex task Morocco is constantly struggling to balance national interests and international commitments (Cherti & Collyer, 2015; Harrami & Mouna, 2018).

Table 1: Relevant Moroccan institutions

Sr. No.	Institution/department	Responsibilities	Web link
1.	Ministry of the Interior	takes the lead in shaping border control and immigration policies. It plays a central role in enforcing Law 02-03, and is responsible for the management of migration flows	LINK (EN)
2.	Ministry of Foreign Affairs	engages in diplomacy and international cooperation related to migration. Morocco's international agreements and partnerships in the field of migration are often negotiated through this institution.	LINK (EN)
3.	Morocco's Ministry of Justice	deals with legal aspects of migration and may handle cases related to irregular migrants.	LINK (MAR)
4.	Ministry of Employment and Professional Integration	labour-related policies have a direct bearing on the employment and social integration of migrants.	LINK (EN)
5.	Morocco's Ministry of Health	manages healthcare and public health services, which can also be relevant for migrants, as was the case during the COVID-19 Pandemic	LINK (MAR)
6.	Morocco's National Human Rights Council (CNDH):	is an independent institution that contributes to policymaking and monitors the human rights situation, including those of irregular migrants.	LINK (MAR)

		They provide recommendations and advocate for improved migrant rights.	
7.	Bureau des Réfugiés et Apatrides inter-ministerial ad-hoc Commission for the Regularization of Refugees Registered with UNHCR	This is a collaborative body involving representatives from the Moroccan government and the UNHCR. Its primary role includes the registration, documentation, and overseeing the regularization process for refugees who are registered with the United Nations High Commissioner for Refugees (UNHCR) in Morocco &	LINK (EN)
8.	Civil Society Organizations:	Various non-governmental organizations (NGOs) like GADEM (Groupe antiraciste d'accompagnement et de défense des étrangers et migrants) and others work on the ground to assist irregular migrants, provide humanitarian aid, and advocate for migrant rights. They also interact with the government to influence policies.	
9.	United Nations High Commissioner for Refugees (UNHCR):	UNHCR operates in Morocco to protect refugees, asylum-seekers, and stateless individuals. They work closely with the government to enhance protection mechanisms and advocate for the rights of these vulnerable groups.	LINK (EN)
10.	International Organization for Migration	Among its many roles is providing humanitarian aid to displaced immigrants especially women, children and minority groups; informing them about their rights and available support services, and assisting in voluntary return programmes.	LINK (FR)

1.2. THE SPECTRUM OF MIGRANT IRREGULARITY IN MOROCCO: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Morocco

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Irregular entries	Individuals who enter or stay in Morocco unlawfully (not having neither an identification document and originating from visa-restricted country but do not have a visa or resident permit). These people may not benefit from some rights related to professional or family situation. They may also face criminal sanctions, in addition to being escorted back to the border and/or expelled from the Moroccan territory.
Over-stayer	A person who has legally entered but then stayed in Morocco beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days), or of their visa and /or residence permit (case of student and temporary workers). Penalties in Morocco include Paying a fine after presenting reasonable justifications during a court hearing.
Rejected asylum seeker	A person covered by a first instance decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum seekers without proof of registration	In accordance with article 31-1 of the Convention on the status of refugees, the criminalization of the irregular entry or residence in Morocco does not apply to refugees. Besides, refugees cannot be subjected to an expulsion or escorted to the border according to Article 29-a of the Act 02-03 and article 33 of the 1951 Convention
Persons whose removal has been formally suspended	Due to health issues, political instability, or natural disasters in their home countries. In some cases when the asylum request is refused, the applicant still has the right to challenge the decision if additional proofs are provided.

Unaccompanied minors whose asylum claim has been rejected	Individuals under the age of 18 who arrive in Morocco without a parent or legal guardian. Regardless of their status, they are under the international protection due to fear of persecution, conflict, or other threats in their home countries.
Victims of trafficking with a provisional permit to stay	Individuals who have been subjected to human trafficking, which involves activities such as forced labour, sexual exploitation, or other forms of exploitation. "Provisional permit to stay" suggests that, in some cases, victims of trafficking may be granted a temporary residence permit to stay in Morocco. The permit may be issued to protect the victims and allow them to cooperate with law enforcement in prosecuting traffickers or as part of a humanitarian response to their situation.

1.3.1 Pathways into and out of irregularity

The specific processes for gaining or losing legal status can vary based on an immigrant's country of origin and entry circumstances. So, the approach is not one-size-fits-all.

- **Irregular entry, stay and exit**

Over the past decade, Morocco has undergone a notable shift towards a more progressive migration policy, marked by increased regional cooperation with West Africa and a more compassionate approach towards African migrants. Despite these advancements, significant challenges persist due to policy inadequacies and inefficiencies, particularly concerning the management of irregular migration. One of the primary issues is the lack of clear legal pathways for regular migration. Sub-Saharan African migrants often arrive in Morocco without proper documentation, rendering them unable to access legal employment or essential social services. The absence of legal avenues compels migrants to turn to irregular routes, where they become reliant on smugglers and subject themselves to life-threatening risks in their quest to reach Europe. Harsh crackdowns, frequent police raids, and human rights abuses further marginalize migrants, pushing them deeper into the shadows. The fear of detention or deportation compels many to resort to irregular migration routes.

- **Employment, Family Reunification & Marriage**

Legal residency offers immigrants pathways out of irregularity, which can be achieved through employment or family reunification. On one hand, individuals may attain legal residency by securing employment within the country. This process involves obtaining a work permit, which is contingent upon the employing entity demonstrating to Moroccan authorities that the job position cannot be filled by other applicants, except in cases where selected individuals are undocumented immigrants. This requirement ensures that legal avenues for employment-based residency are pursued, encouraging lawful integration into the workforce and society.

On the other hand, family reunification and marriage to a Moroccan national represent alternative means of regularizing one's residency status. Through family ties or marriage, immigrants can establish legal connections to Moroccan citizens, facilitating their integration into the community and providing a pathway towards lawful residence. This approach not only promotes social cohesion but also recognizes the importance of family unity in immigration policy, fostering stability and inclusivity within Moroccan society. These are the main constant options that immigrants accessible and legitimate means to establish their status within the country.

- **AVRR programme**

Assisted Voluntary Return and Reintegration (AVRR) programme implemented by the IOM-country offices in Morocco in coordination with local authorities and organisations in both the host and home countries are another pathway out of irregularity. According to IOM's 2022 data, in 2021, the AVRR returned the fifth-highest number of migrants worldwide (2,372) from Morocco to West-Central Africa.

- **Access to pathways and services**

The integration of Sub-Saharan migrants into the Moroccan labor market remains ineffective. Discrimination and a shortage of job opportunities impede their economic stability, exacerbating their vulnerability. This limits migrants' access to legal pathways, education, and healthcare, leaving them with few viable options for improving their circumstances. This lack of opportunity often drives migrants to seek better prospects elsewhere, even if it means embarking on irregular migration journeys.

Although Moroccan law grants Sub-Saharan children unrestricted access to public education, significant challenges persist in practice. The quality of education available to migrant children is often substandard. In some cases, young migrants, unable to access formal schooling, may resort to irregular work or migration as a means of survival, further entrenching their marginalisation within society.

1.3.2 Regularisation

- **Regularisation Campaign I - 2013**

In alignment with the spirit of SNIA, the government reactivated the BRA (Bureau des Réfugiés et Apatrides) and established an inter-ministerial ad-hoc Commission for the Regularisation of Refugees Registered with UNHCR. An exceptional operation was conducted between January and December 2014, resulting in the acceptance of 83% of the 23,096 applications submitted by migrants unlawfully resident in the country.

- **Regularisation Campaign II – 2016-17**

In 2016-2017, the second status regularization campaigns were launched, benefiting an additional over 20,000 irregular migrants from representing 113 nationalities. In total, both campaigns collectively benefited around 45,000 migrants, providing them

with a legal status and access to essential services. Additionally, refugee cards were granted to all Syrian refugees, subsequently issuing one-year renewable sojourn permits through the Ministry of Interior. By July 2019, 803 asylum seekers registered with the UNHCR office in Rabat had their status regularised

Eligibility

According to the [Moroccan government eligibility requirements](#) for benefiting from the regularisation programme, the measure concerned foreign spouses of Moroccan nationals who were able to prove that they lived together for at least 2 years. Also, foreign spouses of other foreigners in regular residence in Morocco could also benefit if they were able to prove that they lived together for at least 4 years; including children from the above two cases. Additionally, foreigners with at least two-year contracts of employment; foreigners being able to prove 5 years of continuous residence in Morocco and foreigners who suffer from serious diseases were eligible to benefit. The provisions of this campaign were applied to the foreigners who entered the national territory before 31 December 2013, regardless of their previous nationality.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1.	Act No. 02-03 relative to the entry and stay of foreigners in the Kingdom of Morocco, irregular emigration, and immigration	2003	The Act no. 02-03 presents the conditions and procedures for the issuance of residence permits in Morocco (registration card and residence card). It also presents all the cases of rejection and renewal of these titles, the cases of escorting to the border and expulsion, the movements of foreigners and the criminal provisions.	LINK (EN)
2.	SNIA (National Strategy for Migration and Asylum)	2013	A new national strategy was implemented. Driven by four overarching objectives: a) facilitating the integration of regular migrants, b) improving the regulatory framework, c) establishing a suitable institutional framework, and d) managing migratory flows while respecting human rights principles. It encompasses eleven programmes that span critical areas such as education, healthcare, housing, social and humanitarian assistance, vocational training, employment, migration flow management, anti-human trafficking efforts, international cooperation and partnerships, regulatory	LINK (EN)

			frameworks, governance, and migration.	
3.	Bill No. 66.17	Introduced in 2014, finalised in February 2019, but still pending ratification	The bill stipulates refugees, asylum seekers, or any persons shall not be deported to a country where their life or physical safety is in danger, in addition to recognizing the rights of refugees stipulated in international agreements, and creating a national structure concerned with mechanisms for asylum applications.	LINK (EN)
4.	Bill No. 72.17	Introduced in 2014, finalised in February 2019, but still pending ratification	It pertains to the entry and residency of foreign nationals and migration in Morocco as well as serves as a proposed measure designed to complement and amend Act No. 02.03 of 2003, addressing the entry and residency of foreigners and the issue of unlawful migration.	LINK (EN)
5.	Law 27.14	Enacted 2016	It imposes punishments of five to 10 years of imprisonment and a fine ranging from 10,000 to 500,000 dirhams (\$950 to \$47,710) for offenses with adult victims. For crimes involving child victims, the law stipulates more severe penalties, including 20 to 30 years of imprisonment and a fine between 100,000 and one million dirhams (\$9,540 to \$95,420). These penalties are considered appropriately stringent, especially in the context of sex trafficking, and are in line with punishments for other grave offenses such as rape.	LINK (EN)
6.	Law No. 19.12	Enacted 2016	aiming to safeguard foreign domestic workers. The law mandates the establishment of valid employment contracts adhering to	LINK (EN)

			national labour standards as a prerequisite for obtaining a work visa. Additionally, it prohibits the engagement of intermediaries in the recruitment of domestic workers on behalf of employers and recruitment agencies, with the goal of mitigating susceptibility to deceptive recruitment practices.	
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Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1	Mobility Partnership Agreement	2013	the EU collaborates with Morocco on border management, irregular migration, and assisted voluntary return programmes for third-country irregular migrants on Moroccan soil.	LINK (EN)
2	The Trust Fund	Since 2018	Within the context of the EU Trust Fund, Morocco receives a financial allocation of €30 million as part of the overall budget. This allocation is specifically directed towards supporting Moroccan border agencies and related entities. The primary objectives are to enhance their capabilities in safeguarding vulnerable migrants, tackling issues related to irregular migration, and disrupting the activities of cross-border criminal networks.	LINK (EN)

3	Frontex	Since 2001	The agreement with Morocco builds on results of previous years, and covers support for border management, enhanced police cooperation (including joint investigations), awareness-raising on the dangers of unlawful migration and enhanced cooperation with EU agencies responsible for home affairs.	LINK (EN)
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Netherlands Country Brief on Irregular Migration Policy Context

AUTHORS:

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Netherlands

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

Adopted in 2018, the Dutch government's comprehensive approach to migration is set out in a six-pillar agenda which collectively aims to achieve a "humane and effective migration policy" (Government of the Netherlands, 2018, p. 2). While the government acknowledges that most migrants entering the country do so through regular channels, several elements of the agenda specifically address the issue of migrant irregularity. These are:

- **Preventing irregular migration**
Preventing irregular migration involves tackling its root causes, establishing more effective border management processes, and returning migrants who do not meet admission or residence requirements. There is limited attention being paid to unauthorised workers¹ and the political debate centres on rejected asylum seekers.
- **Combatting illegal residence and stepping up returns**
This applies to refused asylum seekers and to other categories of migrants who are not or are no longer entitled to a residence permit. They will be encouraged to leave independently and voluntarily but detention and forced return remains a real option particularly if a person is found guilty of a criminal offence or public nuisance.
- **Promoting legal migration routes**
This is aimed at facilitating highly skilled migration and exploring how existing forms of regular migration may be used to promote return and readmission and, hence, to curb irregular migration. Examples include disseminating opportunities for labour

¹ This pertains to both unlawfully present migrants working illegally, and lawfully present migrants working in breach of their residence or visa conditions.

migration, temporary employment (circular migration), and foreign student grants and internships.

In the 2022 State of Migration report published by the government, it underscored that there needs to be “a better grip” (through insight and cooperation) and “more control over migration” (Ministry of Justice and Security, 2022, p. 19). Recent world events, including COVID-19, the government takeover by the Taliban in Afghanistan and the Russian invasion of Ukraine, were cited as aggravating external circumstances impacting the migration domain. Internally, ongoing problems with asylum reception accentuate how migration, crucially, should not “overwhelm” but instead meet the capacity and needs of Dutch society.

1.2 OVERVIEW OF THE DUTCH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

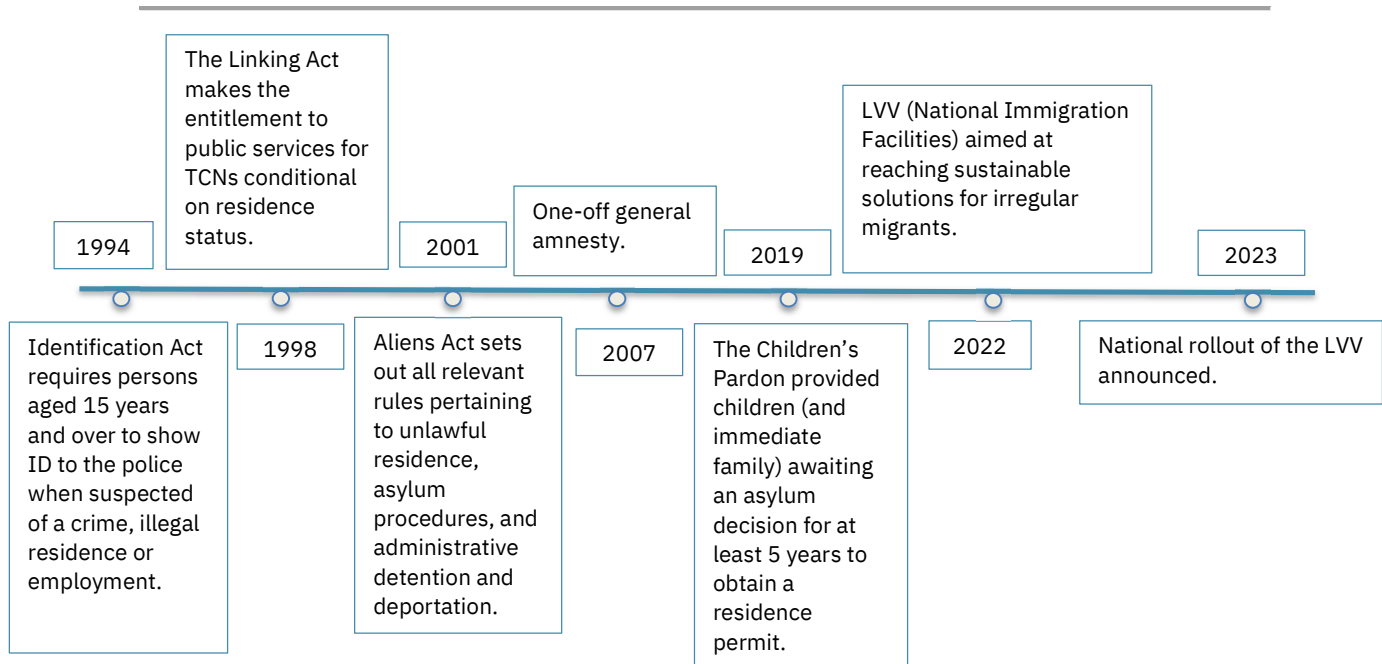
- **Tackling the root causes through migration cooperation**

The government wants to combat irregular migration by tackling the root causes in countries of origin, particularly in North and West Africa. Investments are made in combating poverty, bringing and maintaining stability and good governance, and strengthening foreign trade and development cooperation. The Netherlands also supports countries in improving legislation, investigation and prosecution capacity, and cross-border cooperation. It supported Mali, Senegal and Gambia, for example, in developing legislation to combat human trafficking and migrant smuggling. In Morocco, the Dutch government offered training courses for authorities to trace money flows and undermine the business model of human traffickers and smugglers.
- **Awareness campaigns**

The government has likewise launched information campaigns to inform potential migrants about the risks of irregular migration, such as death, human trafficking, and exploitation. They take various forms, including social media and radio campaigns, events, and direct consultations between potential migrants and confidential advisors from organisations contracted by the government to run the awareness-raising campaign (for example, Seefar). Awareness-raising campaigns were held in Afghanistan, Kurdistan and Central Iraq, and North and West Africa. According to the Ministry of Foreign Affairs, by 2022, these campaigns have reached over 16 million people, including through IOM's ‘Migrants as Messengers’ programme, where returning migrants share their experiences with young people through video, theatre and other art forms to help them make more informed choices about migration.

- **National immigration facilities (*Landelijke Vreemdelingen Voorzieningen, LVV*)**
Launched in 2019 in five municipalities – Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht – the LVV is a pilot programme for irregular migrants aimed at reaching a sustainable perspective or a ‘durable solution’ in the form of either legal stay in the Netherlands, onwards migration, or return to the country of origin. It is a cooperation between the Immigration and Naturalisation Service, Repatriation and Departure Service, the police, and civil society organisations working under the direction of municipalities. It provides participants access to shelter, an allowance, professional guidance, and different activities. A condition for participation is cooperation in creating the sustainable perspective that is possible.
- **Entry ban**
Foreign nationals who are not allowed to remain in the Netherlands including overstayers, those who received a return decision, those who have residence permits withdrawn or asylum applications cancelled, are usually given 28 days to leave. Failure to do so results in an entry ban of usually two years, during which time the person is not allowed to enter any other Schengen country. Violation of the entry ban is punishable with a prison sentence of six months or a fine of a few thousand Euro as stipulated in Section 197 of the Dutch Penal Code and Section 108 of the Aliens Act.
- **Employer sanctions**
The Foreign Nationals Employment Act, amended in 2013, expressly prohibits employers and private individuals from employing foreigners who do not have legal access to the Dutch labour market without a valid work permit. If the permits cannot be produced during inspection, this constitutes illegal employment, which is considered a serious violation of the Act and punishable with severe fines: €8,000 for each illegally employed person. Private individuals have to pay €4,000 for each illegally employed person.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Reported decline in irregular migration**

In December 2020, the government reported that the number of foreigners residing in the Netherlands without the right of residence had fallen substantially in recent years – from 194,000 in 1987, to between 23,000 and 58,000 in 2017-2018. The downwards trend is attributed to the requirement to carry identification documents, as well as to the Linkage Act, which excluded aliens without a right of residence from access to public services and reorganised the Aliens Police (Government of the Netherlands, 2020). However, it remains uncertain to what extent this decrease can be attributed to the implemented measures returns (Tweede Kamer der Staten-Generaal, 2019).

- **Reputed effectiveness of migration cooperation policies**

The Ministry of Foreign Affairs reports that activities under migration cooperation helped prevent irregular migration and protect vulnerable migrants. This is done, for example, by providing information about the risks of irregular migration and on alternatives. It also funded efforts to improve prospects for refugees and vulnerable host communities in countries around Syria and in the Horn of Africa. However, despite efforts to tackle “the root causes”, the inflow of irregular migrants from target countries has not entirely ceased, and research casts doubt on whether aid can greatly and sustainably deter emigration (see for example, Clemens & Postel, 2018).

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Tensions in multi-level and multi-actor (multi-layered) migration governance**

The governance of migration in the Netherlands follows a multi-level or multi-layered approach in which different actors are involved in the interpretation and implementation of policies. However, there are tensions, sometimes even contradictions, between the actions taken by the national government on the one hand, and the local authorities on other. The objectives and perspectives of these actors are not always in alignment (EMN Nederland, 2021). The same tension exists between the authorities and civil society organisations: for example, some NGOs participate in the LVV but are critical about the emphasis placed on returns.
- **Reputation management instead of sustainable solutions**

The government tries to maintain its restrictive and selective migration policy, but there have been instances when the authorities back down when challenged by non-state actors or in the face of a public outcry. It uses temporary redress and reputation management as policy instruments to shore up public trust and re-instil confidence. While these are common manoeuvres in the political arena, genuine accountability in relation to the damaging and lasting impacts of its migration policies is lacking, as are more sustainable and humane measures to tackle irregular migration.
- **Tensions between enforcement and human rights**

There is also a tension between social exclusion and the enforcement of migration legislation on the one hand, and international human rights law on the other. This leads to the adoption of certain institutional bypasses or firewalls that grant children or young people in irregular situations access to education, for example, as well as policies pertaining to the safe reporting of crime, access to family shelters, and opportunities to find durable solutions like the LVV (please see Annex).
- **Selective enforcement of returns**

The enforcement of return is at best, selective, as irregular migrants who do not encounter Dutch authorities are not directly subjected to return policies and may be irregularly staying longer-term (EMN Nederland, 2021). There is also a focus on rejected asylum seekers and those involved in criminal activities. Thus, despite the government's consistent declarations that individuals who are not lawfully permitted to stay in the Netherlands must be returned to their country of origin (Government of the Netherlands, 2022, p. 44), the practical enforcement of policies proves to be more challenging than anticipated due to the lack of systematic and comprehensive implementation.
- **Labour market dynamics**

The ongoing demand for cheap labour also poses a significant challenge in the implementation of Dutch migration policies. Despite employer sanctions, some labour sectors like agriculture, hospitality, domestic work and construction remain reliant on irregular migrant workers. Again, the focus on rejected asylum seekers and

deviant individuals² largely takes attention away from migrants engaged in unauthorised work. This is a segment of the irregular migrant population that is not as exposed to the enforcement of migrant legislation.

- **Integration strategies despite systematic exclusion**

Policies and implementation measures do not deter irregular migrants from affirming their presence and participating in social life. Despite the oft-cited limitations imposed by a precarious legal status, not all irregular migrants are precluded from exercising agency and integrating into segments of the destination country and community through municipality and NGO support networks, the informal economy, and political activities (Chauvin & Garcés-Masareñas, 2014). They are able to raise the level of recognition in their interpersonal interactions despite not having legal rights to political participation (Siruno et al., 2022).

Table 1: Relevant Dutch institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Directorate-General for Migration (DGM), Ministry of Justice and Security (JenV)	The DGM is responsible for the development and implementation of policies based on the Aliens Act and the Dutch Nationality Act. Operating under JenV, it plays a financing role in the reception of asylum seekers, the handling of admission procedures and the return of foreign nationals from the Netherlands. JenV is also responsible for the implementing organisations including the Immigration and Naturalisation Service (IND), Repatriation and Departure Service (DT&V), the Central Agency for the Reception of Asylum Seekers (COA) and for the centres of the Custodial Institutions Agency (DJI) where immigration detention is implemented. In addition, JenV has authority over the Royal Netherlands Marechaussee (KMar) and the police with regard to immigration and border control.	Link (EN)
2.	Immigration and Naturalisation Service, Ministry of	The IND is the admissions organisation of the Netherlands and is responsible for implementing the admissions policy. It assesses all applications from foreign nationals	Link (EN)

² This term is used operationally based on Leerkes et al. (2012). “Deviant” individuals are unauthorised migrants involved in crime and nuisance whereas ‘nondeviant’ are their moderately incorporated counterparts who do not come into contact with authorities and are to a large degree tolerated by local residents and municipal authorities.

	Justice and Security (IND)	who wish to stay in the Netherlands, but also whether the permitted stay of foreign nationals in the Netherlands should be terminated.	
3.	Repatriation and Departure Service, Ministry of Justice and Security (DT&V)	As implementer of the return policy, the DT&V is responsible for allowing third-country nationals without a right of residence to return legally and respectfully to their country of origin. In collaboration with organisations like IOM, DT&V also helps foreign nationals gain prospects for reintegration in the country of origin. DT&V can also organise forced departure for those who do not leave the Netherlands of their own accord.	Link (EN)
4.	Custodial Institutions Agency (DJI)	On behalf of the Minister for Justice and Security, the DJI is responsible for the implementation of sentences and custodial measures, such as the detention of foreign nationals who are ordered to leave the Netherlands.	Link (EN)
5.	Central Agency for the Reception of Asylum Seekers (COA)	COA is the organisation that provides reception and guidance for asylum seekers. Commissioned by the State Secretary for Justice and Security, it offers asylum seekers temporary accommodation and supports them in preparing for their future, in the Netherlands or elsewhere.	Link (EN)
6.	VluchtingenWerk Netherlands (Refugee Council Netherlands, VWN)	VWN is a non-governmental organisation that represents the interests of refugees and asylum seekers in the Netherlands. Its core tasks are to provide personal support in both legal and social areas, to influence policy, such as identifying bottlenecks in the asylum procedure, and to advocate for asylum seekers and refugees.	Link (EN)
7.	Ministry of Foreign Affairs (BZ)	BZ is responsible for the implementation of the European short-stay visa policy. BZ is also involved in the MVV process (provisional residence permit), integration, and return. It also coordinates European migration policy, and is responsible for the financing of projects aimed at tackling the root causes of migration.	Link (EN)

8.	Council of State (Raad van State, RvS)	The Administrative Jurisdiction Division of the RvS is the highest national general administrative court in immigration law. It looks into the process-related and logistical coordination in the migration chain at the so-called interfaces.	Link (EN)
9.	Council for the Judiciary (de Rechtspraak, RvdR)	The RvdR forms the link between the Minister for Justice and Security and the courts. The Council's task is to ensure that the courts (the eleven district courts, the four courts of appeal, the Central Appeals Tribunal and the Trade and Industry Appeals Tribunal) can properly fulfil their judicial duties.	Link (EN)
10	Royal Netherlands Marechaussee (KMar)	The KMar is a police organisation with a military status that monitors the security of the state. Their tasks include border control, enforcement of returns, mobile security surveillance, and tackling migration-related crimes including human smuggling and identity fraud. The KMar is active in the Netherlands (at the internal and external borders) and at the external borders of Europe.	Link (EN)
11	National Police (Nationale Politie)	The police are tasked with implementation of the Aliens Act and the Schengen Borders Code.	Link (EN)
12	Seaport Police (Zeehavenpolitie, ZHP)	The performance of border checks (including the assessment of visa applications) and border surveillance in and around the port of Rotterdam (a maritime external border of the Schengen area) is the responsibility of the ZHP, part of the Rotterdam police unit.	Link (NL)

Additional relevant institutions involved in the Dutch “migration chain” are included in Annex.

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN THE NETHERLANDS: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in the Netherlands

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Irregular residents (umbrella term)	Foreign nationals who are not in possession of a valid residence permit or do not meet the conditions for continued stay and are therefore obliged to leave the country.
Overstayer	A person remaining in the Netherlands beyond the period for which entry was granted. It is usually a person who has legally entered the country, but who has stayed beyond the expiry of his/her visa and/or residence permit.
Failed asylum seeker	A person who applied but has not received asylum and has exhausted all legal remedies.
Refused entry at the border (inadmissible person)	A person who does not fulfil entry requirements, usually because of insufficient financial means to cover the period of stay and type of accommodation, or insufficient documentation such as fraudulent, invalid or forged travel documents such as passports, visas or residence permits. Another ground for refusal is being deemed a security risk i.e., posing a threat to public order, homeland security, public health or international relations among the EU member states.
Illegal entry	Crossing a land, air, or sea border clandestinely, or by using forged travel or identity documents.
Cancelled/Withdrawn residence permit	A person who no longer fulfils the conditions of residence in the country.
Persons in illegal or unauthorised employment	A person not in possession of a valid work permit or who is working more hours than allowed.
Children born in irregularity	Children whose parents are irregular residents.
Other unlawfully residing persons where continued stay is punishable	“1Fers” (war criminals), and “VRIS-ers” (other persons regardless of citizenship who have been sentenced for crimes). They can be excluded from protection, or their residence status can be revoked.

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g., who does this category apply to, under what conditions, who is exempted, implications)
Irregular migrants subject to a return decision but the return cannot be enforced due to legal obstacles (e.g., non-refoulement, medical or humanitarian reasons, etc.)	An irregular migrant may be eligible for postponement of return for medical reasons based on Article 64 of the Aliens Act (Vw). After one year of postponement of return, the migrant can apply for a temporary residence permit based on medical treatment.
Irregular migrants subject to a return decision but the return cannot be enforced due to practical obstacles (cooperation of the person concerned, problems with travel documents etc.)	A “no-fault” permit can be issued to persons who have independently attempted to return, and who can prove that they have contacted the authorities of the relevant third countries regarding their readmission and to obtain the required (travel) documents. If the authorities do not cooperate or do not authorise return, the applicant is considered “not at fault”, as long as he or she has done everything in their power to make their identity known.
Victims of trafficking in human beings (THB)	Pursuant to the Aliens Circular, victims of THB are granted a temporary residence permit on temporary humanitarian grounds (“B8/3”) for the duration of the recovery and reflection period of three months. The refusal to grant a recovery and reflection period cannot be appealed. Thereafter, they can be granted a temporary residence permit of one year, which is renewable. This decision can be appealed.
EU citizens from another EU MS without residence rights	Conditions (e.g., who does this category apply to, under what conditions, who is exempted, implications)
Refused entry	EU citizens from other EU member states may be refused entry to the Netherlands if they have (or might have) tuberculosis, or if they have been deemed to be an undesirable foreign national by the Netherlands by posing a threat to public order or national security.
Loss of right of residence	If the EU citizen who has been in the Netherlands for more than three months is economically inactive and does not have

	<p>sufficient income or does not have a family member who can provide adequate financial support, they may lose their rights of residence in the Netherlands. Income is sufficient if it is equal to or higher than the Dutch minimum wage plus holiday allowance (equivalent to €1,995.00 gross per month as of 01 July 2023). One can also lose the right of residence if the EU citizen or family member applies for a benefit from public funds without having a permanent residence permit that is usually granted after a minimum of 5 years of legal and continuous residency in the Netherlands.</p>
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1.3.1 Pathways into and out of irregularity

Migrants in the Netherlands generally fall into irregularity when they do not or no longer meet the conditions of entry or stay. If found “illegally staying” by authorities, returning them to the country of origin is the priority. Return can be either voluntary or involuntary:

- **Independent departure (voluntary return)**

The return policy aims to encourage voluntary and sustained repatriation of foreign nationals who are not allowed to remain in the Netherlands by offering financial assistance or assistance in kind for return and reintegration (for example assistance in setting up a business or education). In the Netherlands, the term *zelfstandige terugkeer* (independent return) is often used instead of voluntary return. The Repatriation and Departure Service (DT&V) works with IOM and other NGOs to facilitate these. Special attention is given to vulnerable migrants such as those with health problems, victims of human trafficking, and unaccompanied minors. DT&V also works to determine the identity and nationality of migrants and helps them obtain replacement or emergency travel documents.

- **Deposit, detention, and forced departure (deportation)**

When a foreigner who is not allowed to stay in the Netherlands, such as a failed asylum seeker, does not want to leave the country of their own accord (does not cooperate with departure), the government can force them to pay a deposit that will be repaid on their departure. If there is a risk of a failed asylum seeker evading return, the government will place them in detention until the DT&V can organise a forced departure. In some cases when the foreigner is under 18, they will be accompanied by an officer from the DT&V on their flight back to their country of origin. Irregular migrants apprehended by police are normally also placed in immigration detention with a view to deportation.

1.3.2 Regularisation

The Netherlands has been, and remains, an anti-regularisation advocate on the European political scene. Pathways to regularisation are still generally limited to marriage/cohabitation with a legally staying person or applying for asylum. There are, however, other types of piecemeal regularisations that happen on a case-by-case basis (Leerkes et al., 2012). The grounds or mechanisms for such regularisations include the following:

- [“No-fault” permit \(*buitenschuld*\)](#)
Sometimes, return is not legally or practically possible. In this case, the migrant may be eligible to obtain a “no-fault” residence permit. The permit is intended for persons who have independently attempted to return, and who can prove that they have contacted the authorities of the relevant third countries regarding their readmission and to obtain the required (travel) documents. If the authorities do not cooperate or do not authorise return, the applicant is considered “not at fault”, as long as he or she has done everything in their power to make their identity known. The fulfilment of these conditions needs to be certified by the DT&V, based on evidence submitted by the applicants, such as correspondence with consular authorities.
- Narrowly defined cases in which persons staying irregularly may obtain a [residence permit on medical or humanitarian grounds](#)
A small number of residence permits (which can differ in duration of validity, renewability, and the entitlements they confer in relation to access to the labour market and social security benefits) can also be granted to persons in irregular situations based on medical or humanitarian considerations. These are considerations outlined in Articles 3.46, 3.48 and 3.50 of the Aliens Act 2000. Those eligible include:
 - Persons who are victims and witnesses of trafficking in human beings who cooperate with authorities or who have important reasons not to cooperate;
 - Victims or persons at risk of honour crimes and domestic violence;
 - Persons involved in a witness protection programme;
 - Persons undergoing medical treatment in the Netherlands;
 - Terminally ill persons.
- 2013 – 2019: Definitive Regulation for Long-term Resident Children ([Definitieve Regeling Langdurig Verblijvende Kinderen](#), DRLVK)
A new mechanism which came to be known as the ‘children’s pardon’ was introduced in 2013 with the aim of regularising the status of children who had been in the asylum procedure for a minimum of five years, provided that the process had started before their thirteenth birthday. Additionally, their immediate family members could also be granted a residence permit through this mechanism if their family ties could be proven. However, in 2019, the pardon measure was abolished, together with the discretionary power of the Minister of Migration to grant residence permits, as these were deemed detrimental to the willingness to cooperate with departure and return.

- 2017: [Chavez-Vilchez ruling](#)
Building on the 2011 *Ruiz Zambrano* ruling, the Court of Justice of the European Union (the Court) made a ruling on 10 May 2017 in the case of Chavez-Vilchez, stating that a third-country national who does not possess a right of residence, but is a parent responsible for the care of a minor child who holds Dutch nationality, can apply for a residence permit under specific conditions. The Chavez-Vilchez judgment established that if denying a residence permit to a third-country national parent could result in the child being compelled to leave the territory of the European Union with their non-EU parent, then the parent must be granted a residence permit.
- 2019: New discretionary power of the director of the IND ([ambtshalve toets schrijvende situatie](#), official assessment of compelling circumstances)
The discretionary power of the Minister for Migration abolished in 2019 was replaced by a new discretionary measure under the responsibility of the head director of the IND. Within the first-instance application procedures for residence permits or asylum, the IND now has the ability to consider granting residence authorisation to applicants who would not meet the usual criteria for a permit, based on exceptional reasons. This decision is made either *ex officio* or through a court judgment in an appeal process. Applicants who believe that there are exceptional and individual circumstances that could justify a discretionary decision must provide a reasoned explanation for why it should be applied, along with supporting evidence.
- 2022: [Reassessments of cases under the Children's Pardon](#)
In March 2022, the IND was prompted by a parliamentary motion to review cases (around 30 files) under the Final Regulation for Long-term Resident Children. This was in recognition of the fact that in certain situations, a children's pardon permit can be granted after all, even if no asylum application was submitted for a child.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1	Identification Act [Wet op de Identificatieplicht]	1994	This Act, which was amended in 2001 is about compulsory identification. It requires that all persons aged 14 or older in the Netherlands are required, upon request, to show a valid proof of identification to police officers, ticket inspectors on public transport, and special enforcement officers (BOAs) like labour inspectors provided that information about the person's identity is required to execute their regular tasks. A police officer may ask for identification for example, if a person is suspected of having committed an offence, or if there is a reasonable suspicion of illegal stay and/or illegal employment. An important provision under this Act is that Dutch or European driving licences are not considered as valid proof of identity for people starting a new job. This is because they do not specify nationality or include any information regarding to residency status.	Link (NL) Link (EN)

2	The Linkage Act or Benefit Entitlement (Resident Status) Act [Koppelingswet]	1998	<p>The Linkage Act establishes a link between right of residence and the services provided by the government. It makes the entitlement to a whole range of public services including social security benefits, family allowances and housing subsidies for third country nationals conditional on residence status. It ensures that only migrants with valid residence permits can access the formal labour and housing markets and receive social security benefits. The Act was introduced based on a presumption that exclusion will reduce irregular migration. Its implementation requires a wide range of public registration data accessible for cross-checking to verify an individual's residence status when accessing public services. Usually, this is done by checking a person's right of residence in the Aliens Administration System (VAS) of the Aliens Police which is now linked to the municipal personal records database (GBA). Despite exclusion from many public services, under the Act, irregular migrants still have a right to necessary medical assistance, including preventive medical assistance such as vaccination and pregnancy care; legal aid; and for those below 18 years old, to education. The corresponding legislations, the Dutch Health Insurance Act and Compulsory Education Act are discussed in the next Table.</p>	Link (NL)
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3	Aliens Act 2000 [Vreemdelingenwet]	2001	<p>This Act, which has been revised multiple times, sets out all relevant rules pertaining to unlawful residence, asylum procedures, and administrative detention and deportation. Importantly, under this legislation, unauthorised residence in itself is not considered a criminal offence, but rather a violation of administrative law that could result in administrative detention and deportation. Of the 119 provisions, Section 3 of the Act lays down the conditions for refusal of entry into the Netherlands. Section 10 states that ‘an alien who is not lawfully resident may not claim entitlement to benefits in kind, facilities and social security benefit...’ Sections 14 to 17 enumerate the grounds for the rejection of an application for or renewal of a residence permit, and cancellation of an existing one. The consequences for the alien are in Section 25. In Chapter 3 of the Act (Sections 26 to 43), asylum residence permits are covered. Section 43 in particular, spells out the consequences of a negative asylum decision. Measures for restriction and deprivation of liberty as a consequence of an alien being not lawfully resident, and those pertaining to departure, expulsion and orders declaring a person to be an undesirable alien are covered in Chapters 5 and 6 of the Act, respectively.</p>	<p>Link (NL)</p>	<p>Link (EN)</p>
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Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	The Compulsory Education Act [Leerplichtwet]	1969	Stemming from national law and a corollary to the Linkage Act, all children (including irregular migrants) under the age of 18 have the right to education and training. More specifically, children aged 5 to 16 are required to attend school. Those aged between 16 and 18 who have not yet obtained a basic qualification diploma are required to obtain one. This applies to children of all nationalities regardless of residency status. In order to facilitate this, irregular migrant children are given a temporary education number (onderwijsnummer) via their school, which is created for them by the Education Executive Agency (DUO) in order to enable them to go to Dutch primary and secondary school.	Link (NL)
2	Foreign Nationals Employment Act [Wet arbeid vreemdelingen, Wav]	1994	Most recently amended in 2023, this law regulates who can be issued a work permit and as such, is allowed to work in the Netherlands. With the exception of knowledge workers (e.g., university researchers), such work permits are normally only issued if the employer can demonstrate that there are no Dutch nationals and EU-citizens who can do the work. The Law also expressly prohibits employers and private individuals to employ foreigners who do not have legal access to the Dutch labour market without a valid work permit. If the permits cannot be produced during inspection, this constitutes illegal employment, which is a serious violation of the Act and punishable with severe fines: € 8,000 for each illegal employee. Private	Link (NL)

			individuals have to pay €4,000 for each illegal employee.	
3	Dutch Health Insurance Act [Zorgverzekeringswet, Zvw]	2006	This Act stipulates that anyone who live or work in the Netherlands is obliged to take out basic health insurance. However, because of the Linkage Act, irregular migrants cannot do so (health insurance being a form of social security), rendering them ‘uninsurable.’ Through the Zvw, the government has set up a fund allowing healthcare providers to recoup up to 80% of costs incurred in treating patients who are ‘uninsurable’ if these patients cannot pay. The fund is administered through the Central Administration Office (CAK).	Link (NL)
4	Pre-arrival integration law (Wet inburgering in het buitenland)	2006	Requires those who wish to regularise their status through marriage with a Dutch national to go back to their country of origin to take a language and culture test at consulates in their countries of origin. Not only does this measure reduce substantially the possibility of legalisation through marriage (a common route out of illegality in many other Western European countries), but it also limits marital migration (for TCNs) to the Netherlands.	Link (NL)
5	‘Free in, free out’ policy	2012	Based on European Parliament Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime, this policy allows irregular migrants who have been a victim or witness of crime to enter into a police station to report the crime and be guaranteed to freely leave without being arrested or detained on account of their irregular status. The policy has the form of a ‘gentlemen’s agreement’ and is mentioned in official policy	Link (EN)

			documents but has no formal basis in national legislation.	
6	'No fault' policy (<i>buitenschuld regeling</i>)	2019	The implementing regulations of the Aliens Act 2000 was amended such that under Section 4, a special residence permit may be issued to aliens who cannot leave the Netherlands through no fault of their own for example, if the country of origin refuses to issue a temporary travel document (<i>laissez-passer</i>). An important precondition is cooperation with return procedures, and doing everything possible, but to no avail, to return to the country of origin.	Link (NL)
7	National Immigration Facilities (LVV policy)	2019	The LVV is a pilot program for irregular migrants launched in five cities (Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht) aimed at reaching a sustainable perspective for the participants in the form of either legal stay in the Netherlands, onwards migration, or return to the country of origin. The program is run as a cooperation between the IND, DT&V, the police, and civil society organisations working under the direction of municipalities (Mack et al., 2022). During the program, of a maximum of 18 months, participants will have access to 24-hour shelter, an allowance, professional guidance and different activities. A condition for participation in the LVV and shelter is that one cooperates with creating the sustainable perspective that is possible. Every participant will get a case manager when they are placed in a trajectory. During this time, the participant cannot be forced to return to their country of origin. When a LVV trajectory is ended, with or without	Link (NL)

			obtaining sustainable perspective, access to the shelter will also be ended. The LVV pilot ended in 2022, but it will be rolled out nationally in 2024.	
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Other institutions involved in the Dutch ‘migration chain’

Sr. No.	Institution/Department	Responsibilities	Weblink to source
1	Nidos	Nidos is an independent institution that carries out the guardianship task for Unaccompanied Minor Foreign Nationals (AMVs). Unaccompanied minors are assigned a guardian until they turn 18 or leave the Netherlands. In addition to the guardianship task, Nidos also provides shelter for some of the unaccompanied minors.	Link(EN)
2	International Organization for Migration – Netherlands (IOM in the Netherlands)	IOM in the Netherlands focuses on migrants who want to leave the country voluntarily, resettlement from reception centres in the region, relocation, family reunification, integration and migration and development. As an intergovernmental UN-related organisation, IOM has an independent position and is not a chain partner but a partner that cooperates with the migration chain and has an agreement with the Dutch government to support the voluntary departure of migrants from the Netherlands.	Link(EN)

3	United Nations High Commissioner for Refugees (UNHCR)	As a party to the Geneva Refugee Convention (1951) and the Protocol (1967), the Netherlands has committed itself to cooperation with the UNHCR. With regard to the role of UNHCR in the Netherlands as a representative of refugees and asylum seekers, it is enshrined in the regulations that UNHCR has access to persons in immigration detention as well as to persons in COA reception locations. As an intergovernmental organisation, UNHCR has an independent position and is not a chain partner, but a partner that cooperates with the migration chain.	Link (NL)
4	The Association of the Netherlands Municipalities (VNG)	The VNG represents all municipalities in the Netherlands and facilitates the exchange of knowledge and experience regarding the implementation of national and local policies, including those pertaining to the housing and overall integration of status holders. The VNG also lobbies the national government to improve the reception conditions of asylum seekers and to provide more support to COA.	Link (EN)
5	Ministry of Social Affairs and Employment (SZW)	The SZW is responsible for access to the Dutch labour market. It monitors the implementation of the Foreign Nationals Employment Act (Wav). It is also involved in protecting employment conditions and combating bogus contracts and labour exploitation. Finally, the Ministry of Social Affairs and Employment is responsible for the integration policy.	Link (EN)
6	Ministry of the Interior and Kingdom Relations (BZK)	The Ministry of the Interior and Kingdom Relations (BZK) is responsible for public housing and the accommodation of permit or status holders. The Minister of the Interior and Kingdom Relations, also on behalf of the State Secretary for Security and Justice, coordinates with provincial governments to meet the task of housing permit holders.	Link (EN)

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Poland Country Brief on Irregular Migration Policy Context

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Poland

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **A broad tolerance of semi-regular statuses for the sake of labour market needs**
Labour market and employment irregularities are the main source of irregular migration in Poland. This situation is to some extent the result of the general approach to immigration in Poland since the 2010s. In practical terms, fairly relaxed penalties for companies that provide fictitious employment declarations for foreigners, as well as for economic actors that violate employment regulations, contribute to increased semi-regular statuses¹ among foreign workers. Relatively liberal visa policies have been in place despite heavier securitisation components in official discourse on migration after 2015 (Adamczyk, 2019; Klaus, 2020)
- **Stricter border control and fortifications to prevent unauthorised entry**
More rigorous control of Poland's external borders with non-EU countries, particularly Belarus, including deployment of military forces to the borderland. Additionally, the construction of a border wall and electronic barriers on the border with Belarus, with an approximate length of 200 kilometres.
- **Absence of binding migration strategy to allow for greater flexibility**
Amid continued geopolitical turbulence in the vicinity of Polish borders, Polish authorities abstain from adopting a binding migration strategy. Its absence arguably allows for quick and flexible reactions to evolving situations in the migration sphere, including those related to irregular migration.

¹ Migrants with a legal status breaching their conditions of stay due to violations of employment regulations.

- **Simplified legalisation and employment procedures for nationals of eastern European countries**

Simple and unrestrictive immigration policy for labour migrants from eastern European countries, in particular Ukraine, are in place since 2006. Simplified regularisation procedures for nationals of Belarus who migrated to Poland for political reasons and other categories of Belarusian nationals, such as IT professionals, have also been implemented since 2020.

1.2 OVERVIEW OF THE POLISH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Extension of document validity for the duration of the state of emergency (2020-2023)**

For the duration of the state of emergency resulting from the Covid-19 pandemic, the validity of temporary residence permits, visas, work permits and other documents entitling foreigners to work in Poland was extended until July 2023.

- **Introduction of new types of visas and residence permits for Belarusian nationals**

In response to the unfolding large-scale repression in Belarus, in 2020 Poland introduced two additional types of visas for Belarusian nationals – humanitarian and Polish Business Harbour (PBH) visas. Consequently, a new type of temporary residence permit for the humanitarian visa holders was introduced, as well as facilitations for PBH visa holders related to entrepreneurial activities. The issuance of PBH visas was suspended in January 2024. From August 2020 to November 2023, over 53,300 humanitarian visas and over 89,700 PBH visas were issued to Belarusian nationals (Office for Foreigners, 2024).

- **Greater attention to readmission cooperation with Vietnam and Central Asian countries**

In recent years, Poland has established European Return Liaison Officer positions in Vietnam and Uzbekistan. The latter's activities also cover Kyrgyzstan and Tajikistan.

- **Pushbacks and more restrictive legislation towards persons who entered Poland in an unauthorised manner**

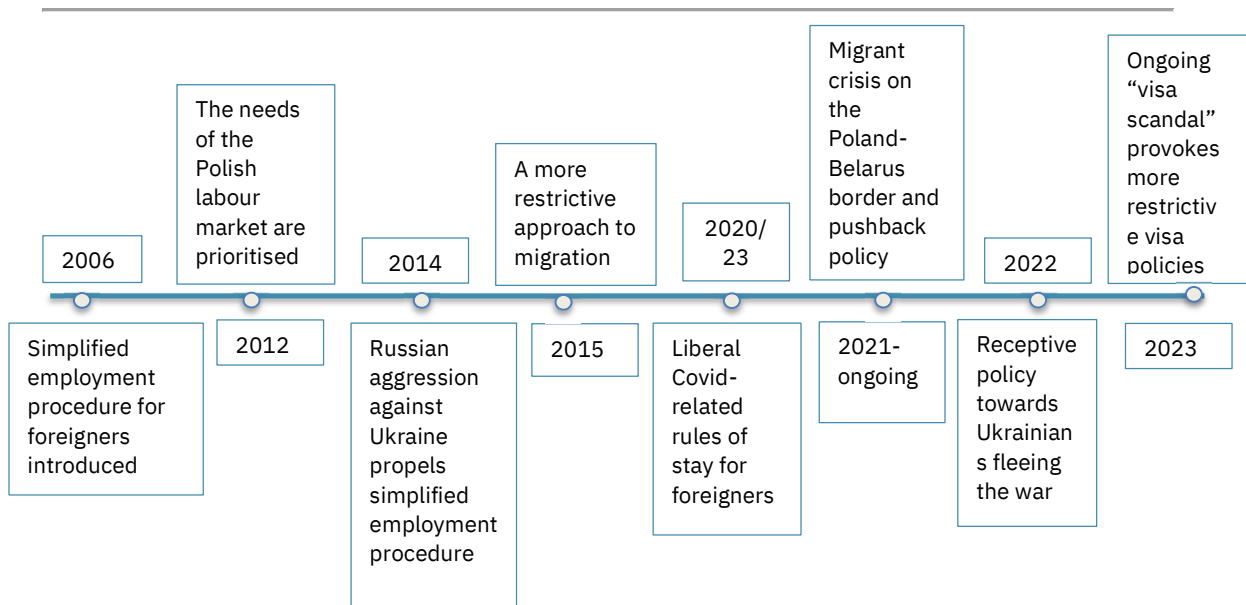
In response to the migrant crisis at the Poland-Belarus border, legislative amendments were adopted that allowed the return of individuals who crossed the

Polish border against the law to the state border line and to issue them an order to leave the territory of Poland and a temporary ban on entering Poland and the Schengen area. Furthermore, the Head of the Office for Foreigners was empowered to leave the application for international protection unprocessed if it was submitted by a foreigner apprehended immediately after illegally crossing the external border of the EU, unless the foreigner arrived directly from the territory in which his life or freedom was threatened.

- **Favourable legislation for displaced citizens of Ukraine**

Ukrainian nationals fleeing the war were entitled to the right to easily legalise their stay by registering with the PESEL UKR system (Universal Electronic System for Registration of the Population, sub-system for Ukrainian citizens under temporary protection in Poland). They were also provided with access to the Polish labour market, labour market services (e.g. job placement, vocational counselling and training), the public health care system and a broad range of social benefits, on par with Polish citizens.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Increase in numbers of foreigners with semi-regular statuses**

Fairly relaxed employment regulations and steep increases in foreign migrant workers in Poland over the last decade resulted in widespread “semi-regular” situations, normally related to employment. According to one interview, if such statuses are taken into account, including migrants staying with a purpose different from the declared one, the “scale of irregularity would probably be huge” (Polish expert interview).
- **Visa and work permit shopping**

Foreigners make use of Polish rules for getting work visas and temporary residence permits for work reasons, which are more liberal than many other EU Member States, with the goal to use this permission to travel onward to another EU country. Some of them perform work in Poland in a semi-regular status or prefer staying in Poland for non-work activities. No data are available to assess the extent of this phenomenon. A Border Guard press release from August 2023 makes reference to an employment agency run by a Georgian national, which issued 1,647 fictitious employment declarations to nationals of Belarus and Georgia from June 2022 until August 2023 (Bielec, 2023).
- **An increased number of foreigners with expired authorisation after July 2023**

A reverse side of the March 2020 regulation which extended the validity of temporary residence permits, visas, work permits and other documents entitling foreigners to work in Poland for the period of the state of Covid-19 related emergency, was an increase in cases of expired authorisations following its termination in July 2023, although no precise data is available on this. An arguably insufficient information campaign about the expiration of facilitation added to this.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Continued politicisation of migration issues**

The politicisation of migration issues started relatively late (around 2015), but has since become extreme. It translates into an insufficient and fragmented public debate, misinterpretation and populist use of relevant data, and a lack of transparency. Experts (e.g. Łodziński & Szonert, 2023) have described Polish migration policy from 2016-2022 as “policy without politics” when regulations on labour market, diaspora or refugee protection are implemented without broader political and official discussion about the goals and long-term perspectives of migration policy as a whole.

- **Absence of comprehensive strategy and insufficient inter-agency cooperation**

Poland still lacks a coherent and clearly articulated migration strategy, which (among other issues) poses serious challenges to coordination. Whereas the Ministry of Interior and Administration and some other state agencies favour a more securitised approach to migration, state agencies in charge of economic policies advocate for a more facilitated line of action. As a result, some relevant state policies, particularly concerning employment and semi-regularity of migrant workers, receive a less coordinated response as they could have. A more unenthusiastic position to migrants since 2015 has resulted in stagnation of decision-making and a situation in which migration-related state agencies increasingly prefer to focus on their narrow priorities rather than taking broader initiative (Polish government interview).

- **High turnover of staff in relevant public institutions**

Due to the wage differential between the private and public sectors in favour of the former, government agencies dealing with (irregular) migration policies have difficulties in training and retaining new generations of professionals (Polish government interview). Furthermore, despite the massive change in the scale of immigration (and the challenges it poses) since 2015, there has been no substantial improvement in terms of personnel.

Table 1: Relevant Polish institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Border Guard	This agency, subordinated to the Ministry of Interior and Administration, is responsible for the border control and prevention of unlawful border crossing, execution of return orders, Dublin transfers and readmission procedure. It is also in charge of monitoring the legality of work and stay of foreigners on the territory of Poland, and supervises detention centres and pre-trial facilities for foreigners.	Link (PL)
2.	State Labour Inspection (SLI)	The SLI monitors the legality of work performed by foreigners through checks at workplaces of Polish employers which have at least one employee with a work contract.	Link (EN)
3.	Police and municipal guard	It monitors the legality of the stay of foreigners as part of its work on identification of offenders and prevention of offences or other threats to public security. Once a foreigner's infringements of the	Link (PL)

		administrative law are identified, the person's case is passed to the Border Guard.	
4.	The Voivodes' offices (regional authorities)	These institutions process foreigners' applications for residence and work permits. The Voivodes' offices are supervised by the Ministry of Interior and Administration.	n/a
5.	The Ministry of Interior and Administration	The Ministry supervises the Border Guard and the Office for Foreigners. It is also responsible for coordination of work aimed at elaboration of migration policy and the reform of the asylum law, since 2015.	Link (PL)
6.	Ministry of Family and Social Policy	The Ministry is in charge of labour market regulations.	Link (EN)
7.	Office for Foreigners	The Office is in charge of legal procedures on granting residence permits and nationality.	Link (EN)
8.	The Ministry of Foreign Affairs	The Ministry is responsible for implementing visa policies and supervising Polish embassies and consulates abroad. It is also in charge of international negotiations over readmission agreements and other forms of cooperation related to irregular migration.	Link (EN)
9.	Committee on Migration (Zespół do Spraw Migracji)	The inter-ministerial Committee, under the Head of the Council of Ministers (the Polish Government), is in charge of initiating migration-related legislative and institutional changes, preparation of proposals concerning modification of competences in the migration sphere, providing expertise on migration-related state programmes, etc.	n/a A Link to the 2007 ordinance of the Head of the Council of Ministers on the creation of the Committee on Migration.
10.	Inter-ministerial Committee concerning reception of persons	The Committee under the aegis of the Council of Ministers, created in February 2022, is tasked with assessing the volume of migrant flows from Ukraine and their	Link (PL)

	from the Ukrainian territory by Poland	consequences for domestic security, monitoring the preparedness of central and local state authorities for reception of people from Ukraine fleeing the war, proposing solutions concerning transportation and relocation of displaced persons in Poland, etc.	
11.	Inter-ministerial Committee on Countering Human Trafficking	The Committee on Countering Human Trafficking, established in September 2023 and functioning under the aegis of the Head of the Council of Ministers, is tasked with advising on actions aimed at preventing and countering human trafficking, and on programmes related to combating human trafficking, etc.	Link (PL)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN POLAND: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Poland

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Irregular entrant	Third-country nationals without any status who entered Poland in an unauthorised manner. Foreigners, often Iraqi and Syrian nationals, who enter Poland from the territory of Belarus, Ukraine and Russia to a lesser extent, and often intend to travel onwards to Germany and other western EU Member States through Poland.
Fraudulent visa-holders	Foreigners who possess a legal ground for their stay in Poland but the actual goal of their stay is different from the one declared. Foreigners, often nationals of Belarus, Georgia, and Ukraine, who arrive in Poland based on a work visa issued as part of the simplified employment procedure, may have other goals or intend to find a type of job different than what was declared.
Overstayers	A person, often nationals of Georgia and Ukraine, who came legally thanks to visa-free regime and then stayed in Poland beyond the

	<p>allowed duration of their permitted stay without the appropriate visa (typically 90 days within a six month period) or residence permit. Often, they perform work without fully complying with existing employment-related regulations. Ukrainian conscripts who did not extend their legal status out of fear of being deported to Ukraine also fall under this category. Those who have not yet renewed their status following the end of the COVID state of emergency, during which their status had been automatically renewed, would also fall under this category.</p>
<p>Third-country nationals with residence rights in another other EU Member State who stay in Poland for longer periods of time than allowed by legislation</p>	<p>Stays over 90 days in any 180-day period amount to violation of the rules of stay and such individuals are subject to deportation</p>
<p>Most relevant categories of migrants with a reasonable claim to a provisional status</p>	<p>Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)</p>
<p>Third-country nationals (non-nationals of CA, US, UK) who enjoy a provisional right to stay subject to a review of their case</p>	<p>Persons whose removal has been formally suspended; Individuals awaiting status determination; Unaccompanied minors whose asylum claim has been rejected; Third-country (non-national) victims of trafficking with a provisional permit to stay.</p>
<p>Selected TCNs facing return decisions</p>	<p>Those eligible could receive a residence permit for humanitarian reasons (e.g., a foreigner awaiting surgery) or a permit for tolerated stay (e.g., specific family issues or Poland’s national interest, or a return decision is impossible for reasons beyond control of the relevant state authority).</p>
<p>Ukrainians with temporary protection status</p>	<p>Without registering in the PESEL UKR system a person’s legal status is questionable. A review of an application for a temporary residence permit might be rejected as Ukrainians who came to</p>

(TPS) who did not register in the PESEL UKR system	Poland after 24 February 2022 are treated as individuals covered by the Act on Assistance (2022) and therefore without access to other types of legalisation.
EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
EU nationals who do not or no longer enjoy the right to movement and/or settlement in the EU and are liable to be removed because they do not meet residence conditions or are subject to restrictions of free movement rights.	EU nationals with a residence ban on public order grounds or criminal charges; EU citizens without long term residence and without sufficient means.

1.3.1 Pathways into and out of irregularity

- **Unauthorised entry and fraudulently held or obtained work visas**

Foreigners, often Iraqi and Syrian nationals, enter Poland in an unauthorised manner from the territory of Belarus and, to a lesser extent, Ukraine and Russia. Often they intend to travel onward to Germany and other western EU Member States through Poland. Nationals of Eastern Partnership countries, mostly Belarus, Georgia and Ukraine, make use of the simplified employment scheme, and nationals of more far-away countries receive Polish work permits with the goal of working in workplaces other than initially declared, or even in other countries.

- **Foreigners with expired authorising documents**

Often these are nationals of Georgia and Ukraine who came legally thanks to visa-free regimes or through the simplified employment scheme and then stayed in Poland beyond the allowed duration of their permitted stay. Their number probably increased after July 2023 when the state of emergency resulting from the Covid-19 pandemic ended and the validity of foreigners' temporary permits, visas, and work permits ceased to be automatically extended. This category also includes Ukrainian conscripts who do not extend their legal status out of fear of being deported to Ukraine, as well as Ukrainian TPSs who did not register in the PESEL UKR system. At

the same time, The Act on Assistance to Ukrainian Citizens allowed Ukrainian nationals who were already irregularly present in Poland to regularise their stay by returning to Ukraine and re-entering Poland in accordance with the new regulation's requirements.

- **Falling into “semi-legal” status due to indecent work intermediaries and complexity of migration law**

Polish migration regulations have seen multiple changes over the years, and their language is often hard to understand for persons without a legal background. This results in occasional unintentional violations of migration law, often in the sphere of employment. Some migrants may fall into “semi-legal” or even fully irregular status due to unprofessional or fraudulent actions of work agencies and informal intermediaries.

- **Residence permits for humanitarian reasons and a permit for tolerated stay**

These regularisation paths are limited but in principle available to foreigners facing return decisions.

1.3.2 Regularisation

- 2011 - [Act](#) of 28 July 2011 on legalisation of stay of some foreigners in the territory of the Republic of Poland and on amendments to the Act on granting protection to foreigners in the territory of the Republic of Poland and to the Act on Foreigners. Eligibility criteria:
 - Person's continuous stay in Poland at least since 20 December 2007 and stay in Poland is illegal at the day of Act's entry into force (1 January 2012);
 - A person had received a final refusal decision on refugee status with an expulsion judgement before 1 January 2010 and continuously stayed in Poland since then, and is illegally staying in Poland at the day of Act's entry into force (1 January 2012);
 - A person reapplied for asylum and was subject to the refugee status procedure as of January 2010.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Act of 20 April 2004 on enhancement of employment and labour market institutions	2004	It regulates foreigners' employment procedures, including 'simplified employment' rules (Art. 90(9-10)), labour market policies including possible limitations to various work permits, handling of electronic registers of cases concerning work permits and employment declarations for foreigners, etc. The Act also stipulates what "illegal performance of work by a foreigner" is.	Link (PL)
2	Ordinance of the Minister of Labour and Social Policy of 30 August 2006 on Taking Up Employment by Foreigners without the Need to Obtain a Work Permit	2006	Based on the above-mentioned 2004 Act, the Ordinance stipulated that nationals of Belarus, Russia and Ukraine can be employed in the agricultural sector for a maximum of three months in any consecutive six-month period via a simplified procedure, based on employment declarations registered by Polish employers in the district labour offices. Since then, the Ordinance was repeatedly amended, opening new sectors of the Polish economy for simplified employment and extending the list of eligible nations. The simplified employment procedure was terminated for Russian nationals in late 2022.	Link (PL)

3	The Act of 28 July 2011 concerning legalisation of stay of some foreigners on the territory of Poland and concerning the changes into the law on providing protection to foreigners on the territory of Poland as well as the law on foreigners	Adopted in 2011, enforced in 2012	The Act lays down the grounds for regularisation of stay of foreigners in Poland who (a) have continuously stayed in Poland at least since 20 December 2007 whose stay in Poland is illegal at the day of law's entry into force (1 January 2012), (b) have continuously stayed in Poland at least since 1 January 2010 who before that day had received a final refusal decision on refugee status with an expulsion judgement, whose stay in Poland is illegal at the day of law's entry into force (1 January 2012), (c) as of January 2010 were subject to the refugee status procedure which had been started in response to subsequent application.	Link (PL)
4	State program "Poland's migration policy: The current state of play and the further actions"	2012, repealed in 2016	The first national migration strategy since 1989. Section 3 of the state program focuses on countermeasures to irregular migration. References to irregular migration are also present in other sections of the document.	Link (PL)

5	Act on Foreigners of 12 December 2013	Adopted in 2013, came into force in 2014. It has been repeatedly amended since then.	The Act lays down 16 types of grounds for obligating foreigners to return, including in case a goal and terms of stay in Poland differ from the declared ones and in case a foreigner performs work without a necessary work permit or declaration on entrusting work to a foreigner included in the declaration register. The Act facilitated the rules of stay in Poland for international students, including the possibility for a third country national who graduated from a Polish education institution to be granted a one-year residence permit for the purpose of seeking employment. Expulsion decisions which were previously issued by provincial governors (in Polish: wojewoda) and decisions obligating a foreigner to return were replaced with return decisions issued by the Border Guard. The latter's role in combating irregular migration and carrying out return proceedings was therefore reinforced.	Link (PL)
6	Ordinance of the Minister of Labour and Social Policy of 21 April 2015 concerning cases in which the carrying out of work by foreigners without the need to obtain a work permit is permitted without the need to obtain a work permit (Journal of Law of 2015, item 588)	2015	The regulation established that full-time students of Polish educational institutions are entitled to work in Poland without a work permit.	Link (PL)

7	Amendments of 24 November 2017 to the Act on Foreigners	Adopted in 2017, came into force in 2018	Amendments into the Act on Foreigners (a) facilitated legal employment in Poland for foreign students and graduates by removing the requirement to prove a main source of maintenance in Poland, (b) introduced new provisions concerning the issues of detaining and returning foreigners, as well as medical and psychological care to foreigners who have not been placed in a guarded centre or remand centres for foreigners on health grounds, (c) introduced the legal ground enabling the Minister of Interior, in agreement with Ministry of Labour and Ministry of Economy, to set limits of temporary residence permits and job permits which can be provided to foreigners in a given calendar year. Such limits may concern specific regions, specialties, job contract types, and types of employer's work activities.	Link (PL)
8	Strategy document “Migration Policy of Poland - Diagnosis of the Initial State” without binding status	2020	Although the document does not serve as an official migration strategy for Poland, it was created as the basis for such a strategy document. Its third part is entirely dedicated to irregular migration and focuses on minimising its scale through (a) improvement of control and verification procedures towards foreigners, and (b) effective return policies.	Link (PL)

9	Anti-Crisis Shield (Act of 31 March 2020 on extraordinary measures aimed at preventing and combating COVID-19, other infectious diseases and crisis situations resulting from them, and some other acts).	2020	Special measures for foreigners for the duration of the Covid-19 pandemic were introduced which enabled them to continue their stay until the end of the state of emergency. The validity of temporary residence permits, visas, work permits and other documents entitling foreigners to work in Poland was extended until the end of the 30th day following the end of the state of emergency, which happened to be 30 July 2023. Furthermore, foreigners staying in Poland permanently, including refugees and beneficiaries of subsidiary protection, were released from the obligation to apply for new residence cards until the relevant offices restored regular service.	Link (PL)
10	Regulation of the Ministry of Interior and Administration of 20 August 2021 amending the regulation on temporary suspension or restriction of border movement at specified border crossings.	2021	The regulation amended the 13 March 2020 regulation on temporary suspension or restriction of border movement at specified border crossings, which was adopted as response to the Covid-19 pandemic. Without explicitly mentioning persons seeking for international protection, it introduced legal grounds for return to the state border line of such individuals who crossed the Polish border against the law and therefore deprived them from a chance to submit an application for granting protection. In a letter to the Minister of Interior and Administration sent five days after the adoption of the regulation, the Polish Commissioner for Human Rights expressed his concerns and stated that the regulation contradicts the Act on Protection, the 1951 Refugee	Link (PL)

			Convention, and Constitution of Poland (Office of the Commissioner for Human Rights, 2021).	
11	The Act of October 14, 2021, amending the Act on foreigners and other acts	2021	The Act crafted in response to the Poland-Belarus migrant crisis (a) through amendments to the Act on Foreigners enabled the Border Guard to return migrants, who were apprehended in Poland or while attempting to cross into Poland outside the border crossing points, to the state border line, based on a decision on immediate removal, instead of issuing a return order; such persons are issued a ban of entry to Poland and the Schengen area for a period from six months to three years, (b) by virtue of amending Article 31(a) of the Act on Protection, it entitled the Head of the Office for Foreigners with the right to leave the application for international protection unprocessed if it was submitted by a foreigner apprehended immediately after crossing the external border of the EU in an unauthorised manner, unless the foreigner arrived directly from the territory where (s)he faced risk of persecution or serious harm, presented credible reasons for illegal entry and applied for international protection immediately after crossing the border.	Link (PL)
12	Act of 12 March 2022 on Assistance to Ukrainian Citizens in Connection with the Armed Conflict on the Territory of Ukraine	2022	The Act on Assistance entitled nationals of Ukraine who left the country as a result of Russian aggression after 22 February 2022, came directly to Poland and then declared their intention to stay in Poland, with the right to legally stay in Poland for 18 months. The Act also provided them with full access	Link (PL)

			to the Polish labour market and the Polish health care system, and to many social benefits.	
13	Act of 8 April 2022 on changes to the Act on assistance to Ukrainian nationals in connection with the armed conflict on its territory and to some other acts	2022	The Act introduced additional facilitations with legalisation and access to the labour market in Poland for Ukrainian nationals. It also provided legalisation opportunities for inter alia Belarusian nationals who were fleeing the war in Ukraine and found themselves in a legal limbo in Poland. They were entitled with the right to apply for Polish humanitarian visa on the Polish territory and consequently for a temporary residence permit on humanitarian grounds.	Link (PL)
14	Article 12 of the Act of 14 April 2023 introducing changes to the Act on assistance to Ukrainian citizens in connection with the armed conflict on its territory and to some other acts	2023	Legal stay of Ukrainian nationals and their family members who fled the war was extended until 4 March 2024, in some cases until 31 August or 30 September 2024.	Link (PL)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Act of 9 July 2003 on employment of temporary workers	2003	It regulates the terms of employment of temporary workers by temporary work agencies and transfer of such workers to perform temporary work in favour of client employers. This legal mechanism has an effect of semi-regularity related to employment.	Link (PL)

2	Act of 15 June 2012 about consequences of employing foreigners who stay on the territory of Poland contrary to the law	2012	The Act regulates sanctions for actors who employ non-EU nationals staying in Poland without valid documents. It introduced severe penalties for employing victims of human trafficking.	Link (PL)
3	National strategy "Social and economic priorities of migration policy"	2018	The strategy implicitly refers to irregular migration by listing the following task as one of the migration policy priorities: 'Strengthening the system enabling control over legality of foreigners' stay and compliance with employment standards'.	Link (PL)
4	The Act of 6 March 2018 on the rules governing the participation of foreign entrepreneurs and other foreign persons in economic transactions in the territory of the Republic of Poland	2018	The Act regulates business activities of foreigners in Poland. Only selected categories of migrants are entitled to the same rights of carrying out business activities as Polish citizens. Particularly, foreigners cannot be self-employed unless they fulfil a number of conditions. This is a popular form of employment in Poland and is often forced by the employers. With no access to self-employment, foreigners might opt for undocumented jobs. Furthermore, the interviewed stakeholders mentioned a recent trend on the Polish labour market when foreigners join fictitious business partnerships which allow employers to bypass regulations concerning minimum wage and social security. These forms of business activities and fictitious employment are sometimes called "Ukrainian joint ventures" (PL_GOV_05).	Link (PL)
5	Regulation No. 6 of the Minister of the Interior and Administration of February 15, 2019	2019	A new Team for Counteracting Trafficking in Human Beings was created. The new Team took over tasks related to the evaluation of the implementation of programmes aimed at combating and preventing trafficking in human beings, preparing projects of	Link (PL)

			National Action Plans against Human Trafficking, etc.	
6	n/a	2020	The European Return Liaison Officer established in Uzbekistan, whose activities also extend to Kyrgyzstan and Tajikistan.	Link (PL)
7	Poland's National Security Strategy	2020	The document speaks about the need to coordinate migration, security, economic, and social policies and that the migration policy should take into account labour market needs, appropriate integration of migrants, and counteractions to possible threats to public safety.	Link (PL)
8	Act of 28 October 2020 on changes to the Act on foreigners and some other acts	2020	It entitled the foreigners who stay in Poland based on, among others, humanitarian visas with the right to work without a work permit.	Link (PL)
9	Instruction nr 392 of the Head of the Council of Ministers of 18 September 2023 concerning the Interministerial Group on Countering Human Trafficking	2023	A new interministerial body under the aegis of the Council of Ministers is created and tasked with providing expertise with respect to programs and policies aimed at countering.	Link (PL)

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Portugal Country Brief on Irregular Migration Policy Context

AUTHORS:

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Portugal

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Regulate irregular migration**
In the absence of the ability to manage migratory inflows from countries of origin, the Portuguese state provides legal pathways for regularisation for those migrants who are irregularly present in the country to obtain authorisations of residence on different grounds, such as economic activity, family reunion, student or humanitarian purposes. No distinction is made between long-term and short-term irregularly present individuals. Forced removals are mostly restricted to migrants who commit serious legal offences.
- **Tackle the influence of criminal networks that support irregular immigration and engage in exploitation of irregular immigrants**
The Portuguese state seeks to tackle the influence of networks that support irregular immigration, and then engage in the exploitation of irregular immigrants. In the absence of Portugal's capacity to organize legal migration and provide sustainable routes from origin countries (mostly in Eastern Europe and Asia), the migration flows into Portugal are supported by labour recruitment networks that have been labelled as the 'merchants of labour' in the literature (Martin, 2017). These networks operate irregularly in Portugal, and some engage in exploitation of irregular immigrants. Portugal seeks to tackle the activity of these unlawful networks and to decrease the vulnerability of irregular migrants.
- **Emphasise the contribution of immigration to the national economy**
Based on the analysis of costs and benefits derived from irregular immigration, Portugal adopts an instrumental approach to immigration that emphasises the intense demand for unskilled workers in the national economy plus the immigrants' annual contribution to social security, which was estimated at €968 million in 2022.

1.2 OVERVIEW OF THE PORTUGUESE POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Establishment of an exceptional mechanism for the regularisation of irregular immigrants in 2007**

The centre-left government established a permanent regularisation mechanism in the immigration law in order to prevent the deployment of mass regularisation programmes or legal amnesties for irregular immigrants like those previously implemented in 2001-2002 that enabled the regularisation of 170,000 immigrants (Malheiros & Peixoto, 2023).

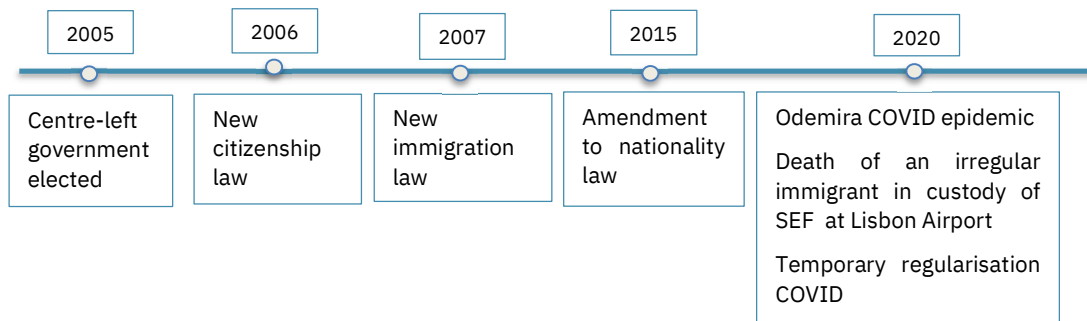
- **Establishment of a new law on access to Portuguese nationality in 2006**

In the face of a significant contingent of second-generation migrants born in Portugal holding only the nationalities of their parents (even if they never visited or lived in the parents’ origin countries), the Portuguese government sought to decouple access to Portuguese nationality from the parents’ regular legal status (dependent on possession of regular labour contracts). Consequently, routes were established for individuals who completed their primary education to access Portuguese nationality independently of their parents’ legal status (Carvalho, 2020).

- **Covid health crisis**

The centre-left government provided temporary regularisation for all irregular migrants who presented a request for the exceptional regularisation of their legal status under articles n. 88 and n. 89 of the 2007 immigration law before 18 March 2020. This decree also guarantees full access to health services and the provision of a national health service number. Three months later, access to the national health service was enlarged to the entire stock of irregular migrants settled in the country.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Management of irregular migration according to the needs of the labour market**

Through the establishment of the permanent regularisation mechanism, the Portuguese government possesses a mechanism to regulate the contingent of irregular migrants in the country based on labour market demands by binding regularisation to a work contract. In the absence of demand for foreign workers due to a lack of job opportunities in the labour market, the possibilities for irregular migrants to subsist or to obtain regularization are diminished, as having a working contract is the main requirement. Notwithstanding the observation of the permanent regularisation mechanism, net migration into Portugal was deeply negative from 2011 to 2016 (Carvalho, 2022)
- **Highest rates of naturalisation of immigrants**

According to data collected by Eurostat, in 2020 Portugal registered the second-highest naturalisation rate of foreign citizens in the EU, only behind Sweden. In 2020, citizenship was granted to 5.5 people per 100 foreign citizens residing in Portugal. As the national government directly associates the management of immigration with the demographic deficit observed in Portugal, granting nationality is a strategy to address this issue.
- **Contribution to the welfare state/social security**

Contribution to social security and tax payment have consistently been the criteria to access the permanent regularisation mechanism, as well as the amnesties for irregular immigrants, which were implemented prior to 2007. Consequently, irregular migrants often strive to maintain their contributions, even when working in informal or precarious employment arrangements. As a result, their contributions to social security are notable.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Labour visas**

Portugal faces challenges in issuing labour visas in the origin countries through the national network of consulates and embassies. Through the provision of legal entry visas, immigrants would not need to pay for the services of recruiter networks that operate irregularly in Portugal. The demand for the services of these networks is far greater when migrants lack access to social networks in the destination countries or are unable to speak the native language of the host country (Martin, 2017).
- **Preventing the exploitation of irregular immigrants in the labour market**

A second main challenge of the Portuguese authorities is to curb the exploitation of irregular migrants by the networks of recruiters that operate in Portugal (Pereira et al., 2021). Irregular immigrants find jobs through these networks of recruiters and there is intense variation in the compliance with national labour laws, related to

wages, taxes and social security deductions. There have been efforts to tackle these abuses by criminalising employers who hire labour agents/agencies that fail to comply with national legislation. However, the work of labour inspectors is very difficult due to the flexibilisation of the labour market and the proliferation of subcontractors. When judicial action is taken, the subcontractors simply close the company and reopen a new one in a different name.

- **Inefficiencies in the process of granting authorisations of residence**

The issuance process for pending applications for an authorisation of residence is exceptionally bureaucratic and slow, lacking clearly defined completion deadlines (Pereira et al., 2021). Throughout this protracted waiting period, the well-being of irregular migrants is significantly compromised, as they endure prolonged periods of intense stress while awaiting a final decision on their applications. Moreover, it is a frequent occurrence for additional documents to be repeatedly requested. In the meantime, these individuals are also barred from leaving the country, even for essential visits to their home countries.

Table 1: Relevant Portuguese institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Serviços Estrangeiros e Fronteira (Border Police)	Its main tasks are conducting first instance procedures relating to entry, residence and removal of foreign citizens. It evaluates requests for regularisation. Responsible for border control. Determines the removal of irregular migrants.	Link (EN)
2.	ACM/ Consultative Council of Immigration Issues	Receives notifications of the rejected requests related to visas, or residence authorisations. The council includes representatives of migrant associations.	Link (PT)
3.	Tribunal da Relação /Court of Appeal	Evaluates appeals against the forced removal of irregular migrants.	Link (PT)
4.	Autoridade para as condições do trabalho (labour inspectorate)	Conducts inspections of working conditions and reports cases of migrant irregularity to SEF.	Link (PT)
5.	IOM (International Organization for Migration)	Implements the voluntary return programme.	Link (EN)
6.	Portuguese Agency for Integration, Asylum and Migration (Agência Portuguesa para as Minorias, Migrações e Asilo)	New agency that integrates SEF and ACM in a single entity.	Link (PT)

7.	Portuguese criminal police (Polícia Judiciária)	Includes the border police inspectors, responsible for conducting criminal investigations.	Link (PT)
8.	Portuguese police forces (PSP and GNR)	PSP will supervise the international border in airports, GNR will supervise maritime and terrestrial borders. These police forces are responsible for supervising voluntary returns and forced removals.	n/a

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN PORTUGAL: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Portugal

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayer	<p>A person who has legally entered but then stayed in an EU Member State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and /or residence permit.</p> <p>Penalties in Portugal include: fine, potential deportation or even getting banned from entering Portugal for a specific amount of time.</p> <p>Migrants who were removed by force from Portugal cannot enter the country for a period of 5 years.</p>
Failed asylum seeker	<p>A person who requested asylum from the Portuguese authorities but whose request was denied. In 2021, there were 1,537 requests of asylum and 228 were accepted whilst another 78 individuals obtained authorisation of residence for subsidiary protection.</p>
Migrants whose request for exceptional regularisation was rejected	<p>A person who unsuccessfully requested regularisation under the permanent regularisation mechanisms included in the immigration law. According to interviews, these cases constitute less than 1 per cent of the annual requests, and the most common reason for rejection is the possession of a criminal record in the origin country.</p>
Former students who failed to obtain a job within one year of finishing studies	<p>Students who finish their studies in Portugal are entitled to an authorisation of residence valid for one year only. If they fail to get a job in this period, they fall into the overall category of overstayers.</p>

UK Citizens	UK citizens that fail to register their residence in accordance with the Withdrawal Agreement signed with the European Union.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Ukrainian Citizens	Ukrainians are entitled to a programme of temporary humanitarian protection that is valid for one year, and renewable for periods of 6 months. The renewals cannot exceed two requests. In March 2023 there was a resolution that extended the validity for another 6 months, with the possibility to extend again until March 2024.
Irregular migrants who deliver request for regularisation to Portuguese authorities	These individuals cannot be deported from the country until there is an official decision of the Portuguese authorities regarding their requests for regularisation.
Irregular migrants whose children were born in Portugal	These individuals cannot be deported from the country as their children are considered citizens if the parents have lived in the country for a period of one year. Second generation of immigrants that were not born in Portugal but who completed primary school, can also apply for citizenship. Parents obtain automatically a long-term authorisation of residence, which is valid until their descendants attain 18 years of age.

1.3.1 Pathways into and out of irregularity

- **Difficulty to initiate and renew authorisation of residence can lead to loss of legal status**

The temporary authorisation of residence is valid for one year, and subsequently renewable for periods of two years. Since the enactment of the law no. 18/2022, the initial validity of the authorisation of residence was increased to 2 years, and it is renewable for periods of three years. Migrants need to provide proof of means of subsistence (presentation of labour contract) and the regular payment of taxes and contributions to social security. However, the existence of a large informal economic sector makes it more difficult to hold legal labour contracts, as well as migrants' increasing employment in seasonal occupations related with the activity of agroindustry (Pereira et al., 2021).

- **Overstaying leads to loss of temporary legal status**

Most irregular migrants in Portugal possess a valid entry visa for different temporary purposes or have travelled from another EU Member State that issued a temporary visa to enter the Schengen space. In some cases, migrants are channelled by recruiting networks into Portugal before the expiration of their temporary labour visas in other EU countries because it is easier to access regularisation in Portugal due to the high demand for unskilled workers and the existence of a legal route for regularisation. In other cases, they can have direct access to the Portuguese territory, for example as is the case for Brazilians that are exempted from the EU visa regime to enter Portugal.
- **Presentation of regularisation request**

The main gateway out of irregularity in Portugal is to request exceptional regularisation from the Portuguese authorities on the basis of the existence of a formal linkage between the candidate and the labour market, which is attested by the presentation of a labour contract or job offer and a minimum of 12 months of contributions to the social security (Malheiros & Peixoto, 2023). Irregular migrants who do not fulfil the criteria to access regularity through the multiple pathways available in the legislation can present an exceptional request for regularisation under humanitarian grounds, which is evaluated by the Portuguese authorities.
- **Presentation of request of naturalisation**

Irregular migrants whose children were born in Portugal can ask for naturalisation if they have lived in the country for a single year before the child was born. The parents obtain a long-term authorisation of residence. Irregular migrants can access Portuguese citizenship if they provide proof of living in Portugal for the past ten years and possess knowledge of the Portuguese language.

1.3.2 Regularisation

- **2007, Permanent regularisation mechanism, Law no. 23, amended in 2015, 2017**
 - Presentation of a valid labour contract, a minimum of 12 months of contributions to the social security and 12 months of tax payments, proof of legal entry in the country.
 - Descendent of a migrant, either born in Portugal or having completed their primary education, regardless of the parents' legal status.
 - Parent of a minor born in Portugal.
 - Victim of serious labour exploitation who cooperates with national authorities in a criminal investigation.
 - Those not covered by the above may submit an exceptional request for regularisation under humanitarian grounds, grounds of national interest, and general public interest, which will be evaluated by the Portuguese authorities.

- **2020, COVID-related regularisation, Administrative acts no. 3863-B/2020 and 10944/2020**
 - Presentation of a regularisation request under the 2007 mechanism before 18 March 2020, then subsequently extended to those who presented a regularisation request before 15 October 2020.
 - The objective consisted of facilitating irregular migrants' access to health services and to provide a provisional regular status to foreign workers. According to an interview, by 2023, the Portuguese authorities received 300,000 requests for regularization, as the economy expanded from the mid-2010s onwards.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1	Law no. 23 of 4 of July that sets the conditions of entry, permanence, removal of foreign citizens	2007	<p>Article 2 provides typology of legal definitions, article 6 sets the conditions of legal entry and exit from the country, Article 45 sets the typology of visas of entry, article 88 sets the mechanism for the exceptional regularization of irregular migrants that possess proof of legal entry in the country, a valid work contract and contributed to the social security services for a period of 12 months.</p> <p>Article 89 – allows the exceptional regularization of self-employed migrants that fulfil the legal criteria set above.</p> <p>Section VII, sets the conditions for the concession of authorizations of residence in special situations. Section VII defines the concession of authorizations of residence under special situations.</p> <p>Article 122 grants authorization of residence without presentation of visa of residence: B) to all descendants of immigrants born in Portugal with parents with legal status or enrolled in the education system. L) provides authorization of residence to the parents with minor descendants resident/born in Portugal. N) provides authorization of residence those immigrants that suffered serious labour exploitation and collaborated with national authorities and denounced the perpetrators.</p>	Link (PT)

			Article 123 – exceptional regime: The law allows the exceptional concession of authorizations of residence to those who do not fulfil the regulations under humanitarian circumstances.	
2	Law n. 29/2012 of August 9	2012	Incorporates the European “Return Directive” into national legislation.	Link (PT)
3	Law no. 63/2015 of June 30	2015	Art 122, o) Grants a temporary authorization of residence (valid for 1 year) to students who finished their studies and seek to search for employment.	Link (PT)
4	Law no. 102/2017	2017	Simplifies pathways for regularization by decreasing the level of bureaucracy through the simplification of procedures necessary to obtain an entry visa or an authorization of residence. Removes the discretionary power of the border police to reject the requests for regularization under article 88 and 89: “law no. 59/2017, of 31st July introduced a profound change in the very nature of Articles 88 and 89, which no longer foresaw administrative discretionary powers, but rather subjective rights to regularisation. The new wording no longer provided any margin of opportunity, by objectively decreeing that everyone who fulfilled specific conditions would be entitled to a residence permit with a visa exemption.” (Gil, 2021). The presentation of a work contract to apply for regularization under article 88 was replaced by the presentation of mere offer of employment letter.”	Link (PT)
5	Law no. 26/2018 of July 5	2018	Increases the protection granted to unaccompanied foreign minors with irregular status who are hosted in Public Institutions or similar institutions. Minors are entitled to authorization of residence on behalf of article 123 of law 23/2007.	Link (PT)

6	Law no. 28/2019	2019	Proof of valid entry in the country is legally supposed when the immigrant proves that is registered in social security for a period of 12 months before making the request for exceptional regularization under articles 88 and 89.	Link (PT)
7	Administrative act no. 3863-B/2020	2020	Provides a regular status to all irregular immigrants and asylum seekers that presented a regularization request before the 18th of March.	Link (PT)
8	Administrative act no. 10944/2020	2020	Provides a regular status to all irregular immigrants and asylum seekers that presented a regularization request before the 15 of October .	Link (PT)
9	Law no.18/2022	2022	Establishes a new visa for job seeking purposes. Introduces the Agreement of Mobility with Portuguese speaking countries in the legislation that allows presentation of regularization requests to irregular immigrants settled in Portuguese of the nationality included in the agreement.	Link (PT)
10	Decree Law no.41/2023	2023	Abolishes SEF and enacts the Agency for Migration, Integration and Asylum.	Link (PT)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Law no. 2/2006 of 17 April that sets access to the Portuguese nationality	2006	Article no. 2 allows access to Portuguese nationality to the minors of irregular immigrants that completed primary education in the country. Article no-5 c) the law allows the naturalization of individuals who make proof of living in the country for 5 years, independently of their legal status. Article no. 3 grants right to naturalization to foreigners married to a Portuguese citizen for a period of 3 years.	Link (PT)
2	Decree law no. 368/2007	2007	Grants authorization of residence to foreign citizens who are victims of human trafficking.	Link (PT)

3	Law no. 28/2016	2016	Tackles the modern versions of forced labour or exploitation of labour. The employer that subcontracts recruiters that violate the labour regulations will be also criminalized by the Portuguese authorities.	n/a
4	Organic Law no. 2/2020, of 10 of November	2020	Article 1.(f) Grants automatic Portuguese nationality to all the new-born babies in Portuguese soil descendants of immigrants that lived in Portugal for the period of 1 year independently of their legal status. Article 6. Grants right of naturalization to all the descendants of immigrants born in Portuguese soil whose parents lived in Portugal for the period of 5 years independently of their legal status.	Link (PT)

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Serbia Country Brief on Irregular Migration Policy Context

AUTHOR:

Katarina Jovanovic

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Serbia

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Border management and deportations:**
Strategy for Combatting Irregular Migration (*Strategija Za Upravljanje Migracijama* [Migration Management Strategy], 2009), established in 2009, focused on aligning Serbian laws with international legislation and EU directives. Policy priority, as reflected in the strategy, is to have better border control and more efficient return system in place. Border control and return is seen to be exercised through measures such as strengthening cross-border cooperation with neighbouring countries, enhancing control of foreigners' movement and residence, effectively implementing readmission agreements, introducing compensatory measures, and preventing alternative routes, especially with Bosnia and Herzegovina and Montenegro.
- **Introduction of "Transit Camps" and The Emphasis on Serbia as a "Transit Country":**
Post border closures in 2015, especially in neighbouring Hungary, Serbia's strategy towards managing migrant populations underwent transformation. The country began propagating the narrative of Serbia being a "transit country." This led to the establishment of "transit camps". Such centres and camps, particularly in border regions, have been observed in other countries as well, reflecting a broader trend in European migration management strategies to compartmentalize and manage migrant populations (Bobic, 2013). This portrayal aligns with discussions in European Union documents that highlight Serbia's role as a key transit nation in the Western Balkans route (European Parliament, 2019).
- **Revision and Implementation of the Foreigners Law**
Serbia's Foreigners Law (*Zakon o Strancima* [Law on Foreigners], 2023) mandates that the legislation indicates that any individual entering Serbia irregularly, such as

without official border crossings or proper documentation, is committing an administrative offense. The only exception to this rule is if an individual seeks asylum. This law, combined with the asylum provisions, creates a structured yet intricate system. One of the major policy discussion topics relates to allowing migrants to stay under certain circumstances even though they did not apply for protection. Such laws, emphasizing border controls and deterrence, align with the increasing push within the EU for member states and candidate countries to strengthen external border controls (UNHCR, 2020).

1.2 OVERVIEW OF THE SERBIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Strategy on Migration Management and the Action Plan that followed the Strategy:**

Although this strategy has been approved in 2009 and it had only one Action plan as a direct implementation pathway of the strategy, it remained the most important document that serves as a guideline for all subsequent measures and is echoing through most migration practices until now. The strategy addresses the long-term objectives of managing migration in Serbia, focusing primarily on areas like enhancing border management, facilitating the employment of migrants, combating human trafficking, and formulating laws related to asylum and temporary protection. Additionally, it outlines the overall processes for seeking asylum and the regularisation of migrant status. The Action plan the followed with actions such as: Institutionalising the jurisdiction over the collection and analysis of the data on the extent and flows of migration, defining the migration profile of the Republic of Serbia and updating it regularly, strengthening of the capacity of the Coordinating Body for Monitoring and Management of Migration and to make its work more effective and efficient, encompass normative prerequisites for a comprehensive and effective migration management harmonized with EU standards, familiarising the public with the problems of migrants etc.

- **Use of transit centres: Tolerated stay for those irregular migrants who did not apply for asylum protection or have been refused.**

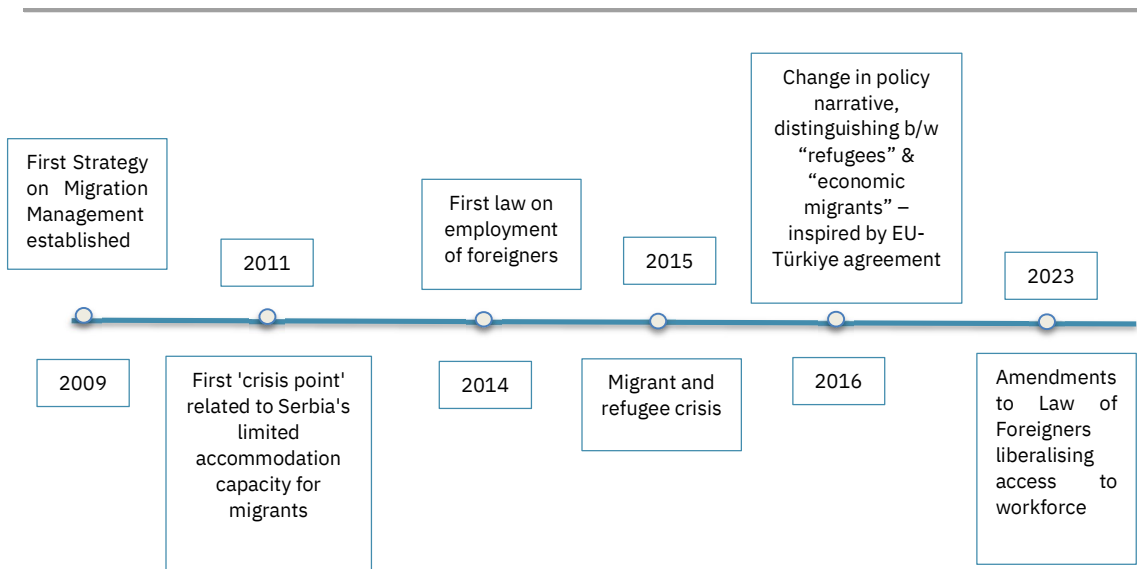
Although this is not an official policy of the state, tolerated permission for irregular migrants to stay in the country specifically and exclusively within transit centres is a prevailing practice of Serbian authorities. While in these transit centres, migrants have access to rights such as housing and food, but limited access to healthcare and other rights that asylum seekers have. This practice is not regulated by official regulations (like the practice with asylum seekers), the authorities permit those

migrants who do not want to ask for asylum to stay in shelter offered by the state for, presumably short, period until they find their way out of the country. On average, they stay in these centres for a few weeks and then leave to go to “game” (irregularly crossing the EU border). These centres exist because the system for deportation of those irregularly staying in the country is not properly working and most people in this status are not being deported although the law states so.

- **Shortening the period in which migrants applying for asylum can get working permits in Serbia.**

This policy measure affects irregular migrants by facilitating the process of accessing work permits. This is the last amendment of The Foreigners Law that has been approved in 2023 and although it does not directly target the irregular migrants it is something that can indirectly impact on the situation of irregular migrants in the country who may submit an asylum claim (Jelačić Kojić et al., 2022).

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Changes in asylum registrations**

At first, official policies were aimed at introducing all illegal migrants to the asylum procedure. Whether migrants intend to undergo asylum procedures or simply seek temporary benefits (like a legal 72-hour stay, health services, and accommodation),

many expressed only a nominal interest in asylum to avail these advantages. This practice led to criticisms of the system's inefficiency, as a significant number only feigned asylum interest without plans to stay. Policy shifts in 2018 led to less stringent registration requirements, resulting in noticeable data discrepancies. The recorded registrations became markedly lower than the actual number of entrants, a disparity that persists to the present day.

- **EU and Hungarian policy impacts in Serbia**

Serbia's migration policy evolution has been heavily shaped by its aspirations to align with the European Union, especially since 2009 when substantial policy development commenced, primarily motivated by EU accession criteria. This era signalled a move towards a more thorough development of asylum policies, a trend that persisted until 2014. However, the emphasis extended beyond legal frameworks, with 2011 marking a notable shift towards improving accommodation centres, a response to the steadily rising number of migrants in need of shelter. After the EU Türkiye agreement and pressures from Hungarian policy changes Serbian official narrative has changed and migrants were divided into two categories: economic migrants and refugees although the structure and number of migrants coming from specific countries of origin have not changed. Hungary's transit zones effectively reduced asylum application channels, as those denied access would be sent back to Serbia, while accepted applicants would move further into Hungary. Such policies indirectly discouraged migrants from seeking asylum in Serbia, exemplifying how broader European decisions inadvertently affected Serbia's irregular migrants (Gardos, 2020).

- **Reliance on migrant smugglers**

From 2020 onwards, the previously tolerated modes of crossing and humanitarian corridors ceased to exist. Since then, according to our experts, the reliance on smugglers has become the exclusive means of crossing, drastically worsening the situation for migrants. Smugglers become the only mean of crossing the green borders as well as the only mean of transferring migrants from borders to shelters and to the next border which gave them not only were over the migrants but also moved smuggling far from official institutions and possibility of migrant protection.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Delays in policy implementation**

The Strategy for Migration Management has been developed since 2009 covering the main policy points of national interest on great number of themes concerning migration management in Serbia but has never been properly implemented due to lack of an Action Plan. This has made enactment of new laws, policies as well as addressing migrations in practice chaotic and not consistent.

- Lack of will from state officials' side to regulate migration**
 Migrants have been viewed as exclusively transit population since the first regulations have been made. There has not been serious or systematic effort to include them in Serbian society or to grant them protection for them to stay longer in the country with all rights that belong to them. There is evidence that even those that are interested to stay in Serbia are discouraged to seek asylum in different ways (transit centres, long administrative procedures etc.)
- Inefficient return mechanisms**
 Irregular migrants should be deported to the country of origin (or the country they came from) once they get return decision, according to Serbian law. However, due to the lack of resources Serbia is rarely able to implement return, leaving a certain number of irregular migrants to remain or pass through the country for a longer-term.

Table 1: Relevant Serbian institutions

Sr. No.	Institution/department	Responsibilities	Web link
1.	The border police department, department for suppression of irregular migrations	Determining whether the migrants are irregular or not, informing about asylum procedure, border control,	LINK (SRP)
2.	The Commissariat for Refugees and Migration of the Republic of Serbia (SCRM)	Gathering and analysis of data relevant to the migration management; Establishing a uniform system for collecting, organizing and sharing information; Identifying and proposing objectives and priorities of migration policy; Proposing and taking measures for the implementation of migration policy and Coordination of state bodies, which perform tasks related to the migration management.	LINK (EN)
3.	Asylum Office	Its main tasks are conducting procedures relating to asylum and aliens as well as granting residence permits in cases of exceptional circumstances.	LINK (SRP)
4.	UNHCR	Mostly consultative and regulative role. Collecting information on arrivals, identifying the most vulnerable categories and referring them to the appropriate services, focusing on persons with international protection needs, improving protection and response capacity, including access to territory and asylum procedure and identification of asylum-seekers and persons	LINK (EN)

		with specific needs for appropriate referrals, policy making. Supporting migrants and Government in migration issues.	
5.	Group 484	Mostly consultative role. Through fieldwork initiatives in direct contact with migrants and refugees regardless of their status. D developed educational programme and advocacy initiatives that place migration topics in a broader social context and public discourse.	LINK (EN)
6.	KlikAktiv – Centre for development of social policies	A local civil society organisation which provides free legal and psychosocial services to both regular and irregular migrants. Directly working on the field and present on the north borders of Serbia monitoring violent pushbacks and providing services to people on the move who are accommodated in informal settlements (squats) in northern border area between Serbia and EU member states: Croatia, Hungary and Romania.	LINK (EN)
7.	Belgrade Centre for Human Rights	Mostly working with asylum seekers, has a consultative role. Providing legal assistance to asylum seekers, Humanitarian assistance, Drafting model laws and projects for the reform and improvement of state institutions.	LINK (SRP)
8.	Astra – anti trafficking action	Local NGO dedicated to the eradication of all forms of exploitation and trafficking in human beings, especially women and children, as well as providing support in the search for missing children. Working with irregular migrants which are trafficking victims.	LINK (EN)
9.	HCIT	Local organisation working in northern Serbia (Vojvodina) offering legal information on access to the asylum procedure, recording and documenting human rights violations in border areas, especially the violation of the prohibition of collective expulsion of foreigners.	LINK (SRP)
10.	IOM	Working on post-emergency humanitarian assistance programmes in Serbia, psychosocial support, transition and recovery support, counter-trafficking, assisted voluntary return, compensation programmes, durable solutions for refugees and Internally Displaced Persons (IDPs), capacity building in migration	LINK (EN)

		management, labour migration, and migration and development. Supporting migrants and Government in migration issues.	
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1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN SERBIA: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Serbia

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Rejected asylum seeker	A person covered by a first instance or final decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period. Also, people who got issued with a return decision who are not removed from the country.
Migrant in an irregular situation - one that has never entered asylum procedure (tolerated within transit centres)	A person that has never applied for asylum or showed intention to do so, that has entered the country illegally and decided to, after receiving the official decision to leave the country in the next 72 hours, stay after that period. Usually staying in private accommodation or "transit" centres and are interested to move fast further to EU. In this case the stay is tolerated in the sense that no one will ask migrants for asylum claim documents while letting you stay in transit centres, but at least officially, work and living in Serbia is not allowed for this population. There are some accounts that those in this status have been tolerated in the terms of labour market but this can't be proven.
Over-stayer	A person who has legally entered but then stayed in Serbia beyond the allowed duration of their permitted stay without the appropriate visa

	(typically 30 days), or of their visa and /or residence permit.
Irregular migrant pushed back from another country (tolerated within transit centres)	This is a specific category of irregular migrants. Most of them were pushed back after crossing a border with EU (Hungary, Croatia, Romania etc.), they mostly already passed through Serbia, refused the asylum procedure, and now do not have a right to seek asylum again. ¹ Also, there is a certain number of these migrants who never passed through Serbia but are pushed-back as if they passed through the country. They are tolerated to stay in the transit centres but not to regularly live and work without the fear of deportation.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Migrants showing intention to seek asylum but still not entering the procedure (making a claim)	Showing intention to seek asylum and applying to asylum are two different things by Serbian law. Once the intention to seek asylum is made in Police, migrants have 72 hours to apply for asylum and formally enter the procedure. During those 72 hours they are regularly staying in the country, if they do not apply for protection during that period their status turns into illegal.
Trafficking victims	If determined that migrants are victims of trafficking than they receive provisional protection from the state by Foreigners law (article 28)

1.3.1 Pathways into and out of irregularity

Most common pathways into irregularity:

- **Irregular entry without applying for asylum:**
One of the main pathways into irregularity is irregular entry into Serbia while opting not to claim asylum/other protection status. There are many reasons why migrants choose to do so – most of them are interested to move through Serbia fast and not to

¹ According to the experts interviewed, it is a common practice. Official's idea is that if you are refused the procedure before, that means that you do not need protection in Serbia. Only in specific cases humanitarian protection is allowed when someone can get protection after they have been previously rejected. This has happened only a few times do far.

lose time on administration. They are tolerated by officials to stay for a short period in the country, so they use this opportunity to find shelter in so-called transit camps. Officials, on the other hand, do not have resources to deport people irregularly staying in the country, or to stop their entry, so they tolerate their transit through the country and encourage them not to seek asylum.

- **Irregular re-entry for those who already had return decision:**

Those who irregularly enter in the country with a return decision are those who previously went through Serbia, stated that they will not ask for asylum, got the return decision, moved on from Serbia, and then returned or by pushbacks or some other way. This pathway is facilitated by the fact that not claiming for asylum procedure (refusing it) allows migrants to get through the country faster, without administration complications and procedures while having accommodation and food in the meantime. A person who previously refused to seek asylum, but re-enters Serbia cannot apply for it again.

Common pathways out of irregularity:

- **Submission of asylum claim or for another form of protection:**

For now, one of the key pathways for regularisation of irregular migrants' status in Serbia is applying for official protection in some form.

The primary issue is the lack of initiative to establish a well-regulated asylum system and offer migrants support to stay. Addressing this concern would lead to significant on-ground changes, and experts assume that a much larger percentage of individuals would be willing to alter their status and seek legal residence in Serbia. Although temporary protection would be the most promising existing practice to offer a path out of irregularity to migrants and one of the existing practices that could be used (as for Ukrainian refugees) it is not a very plausible scenario because of the officials' lack of interest to legalise the migrants' stay in Serbia and migrants lack of interest to stay in Serbia in order to get protection status. Refugee status and subsidiary protection (other two possible statuses) are very hard to prove and gain and there is even less political will to put them in practice leaving temporary protection as the most promising practice (KlikAktiv - Center for Development of Social Policies, 2023).

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1.	The Foreigners Law	2023 (last iteration)	The only law in Serbia directly regulating the status of irregular migrants. If individuals enter without these legalities, they are expected to leave the country. The only exception where the Foreigners Law is not applied is when asylum is sought.	LINK (SRP)
2.	Asylum and Temporary Protection Law	2018	is also related to irregular migrants but only covers asylum seekers, dictating that they are to be placed in asylum centres established by government decisions. Three primary statuses are granted under this: refugee status, subsidiary protection, and temporary protection (including humanitarian protection).	LINK (SRP)
3.	Strategy on combating irregular migrations	2018/19	The strategy aims at harmonising Serbian laws with EU laws and policies on irregular migration. It also strives to give guidelines to increase the number of those who are legally in the country and to decrease the number of irregular migrants. This is mostly being realised through stronger border control and more efficient system of returning people to their countries of origin.	LINK (SRP)
4.	Strategy on migration management	2009	General framework for migration management. It tackles long term goals in Serbian migration management, mostly such as border controls, employment of migrants, fighting trafficking, establishing law on asylum, temporary protection and general pathways to asylum and regularization of the status of irregular migrants. IT is a broad	LINK (SRP)

			strategy and needs Action Plans in order to be fully operational.	
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Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1.	Law on the employment of foreigners	2014 (2023 last iteration)	Employment of foreigners with approved temporary residence (including temporary residence for humanitarian reasons) is granted under the condition that he has a temporary residence permit and a work permit.	LINK (SRP)
2.	Education Law	2017	Irregular migrants can only access primary education. Assessment of a child's readiness for school is done by the Refugee Commissioner's office, although they lack expert personnel for such evaluations.	LINK (SRP)
3.	Migration Management Law	2012	Primarily administers the Commissioner for Refugees and Migration's duties, such as creating the country's migration profile and records of irregular entries and exits. It doesn't define migrants and refugees' rights and obligations.	LINK (SRP)
4.	Criminal Law	2012	While Serbia doesn't have a dedicated anti-trafficking law, human trafficking is regarded as a criminal offense under the criminal law	LINK (SRP)
5.	Constitution of Republic of Serbia	2006	Granting basic human rights to foreigners regardless of their status	LINK (SRP)
6.	Readmission Agreement with EU	2007	The readmission agreement detects and helps vulnerable groups in irregular migration, making legal and institutional changes, strengthening regional communication etc. Serbia agreed to readmit not only Serbian citizens who have been illegally residing in EU but also citizens of third countries for whom it can be determined that they have had Serbia visa or just came to EU through Serbia.	LINK (SRP)

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Spain Country Brief on Irregular Migration Policy Context

AUTHORS:

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Spain

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

Irregular migration represented for a long time the main dysfunctionality of the Spanish migration regime. By neglecting the strong internal demand for foreign workers and limiting legal entry channels for labour, the Spanish migratory regime structurally encouraged the rise of irregular migration (Arango, 2000). Against this backdrop, the immigration law LO 4/2000 and its subsequent modifications and regulations of 2004, 2009 and 2022 addressed the regime's major dysfunctionalities according to the following policy priorities:

- **Creating adequate entry channels for foreign workers**

The legal regulations simplify the individual recruitment procedure under the so-called General Regime (*Régimen General*) by introducing the Catalogue of Hard-to-Find Occupations which allows the recruitment of non-EU nationals without a prior labour market check to assess the availability of native or EU workers. The Catalogue is published by the National Labour Service and revised every three months to make the labour quota system for seasonal and longer-term workers (*contingente*) more efficient.
- **Improving external/internal controls to reduce irregular entries/stays**

Along with the introduction of tougher tourist visa requirements to reduce visa overstayers and a more sophisticated border control system to monitor coastal arrivals, Spain developed bilateral agreements with the main origin and transit countries (readmission and cooperation agreements) (Echeverría, 2020; Gabrielli, 2023). In addition, conscious of the relevance of the informal economy for the development of irregular migration systems, the government strengthened the labour inspection agency to improve its performance. Between 2008 and 2021 the number of inspectors increased from 1,736 to 2,051.

- **Developing a permanent regularisation mechanism**

A key priority in the evolution of the Spanish migration regime has been the institutionalisation of individual regularisation schemes (the *arraigo*), which allow migrants in an irregular situation to get a residence permit if they are able to demonstrate either a pre-existing labour history (*arraigo laboral*) or their social integration (*arraigo social*) after two or three years of irregular residence, respectively. In 2022, the possibility of obtaining the *arraigo* for training purposes was introduced.

1.2 OVERVIEW OF THE SPANISH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **New additions to the *arraigo* scheme**

The Spanish legislation has kept the *arraigo* scheme as an ad hoc regularisation system which allows correcting irregularity on an individual basis for different reasons: labour, family ties, social integration, and training purposes (since 2022) (Finotelli & Rincken, 2023). Whereas the *arraigo* for family reasons is linked to a five-year residence permit, those for social and labour reasons are linked to a one-year permit. They are considered residence permits for “exceptional circumstances” and cannot be renewed, so they must be followed by a regular residence permit. Only the *arraigo* for training purposes may be extended if the training lasts more than one year.

- **Residence permit renewal procedures**

The evolution of immigration legislation shows a continuous effort to improve renewal procedures to prevent befallen irregularity. Previous regulations allowed several facilitations for renewal in the case of unemployment (Vianello et al., 2019). In the context of COVID-19, the government automatically extended all authorisations that expired during the state of alert. The recent 2022 reform allows for renewal of the initial residence permit for four years instead of two, paving the way for a smooth path to permanent residency.

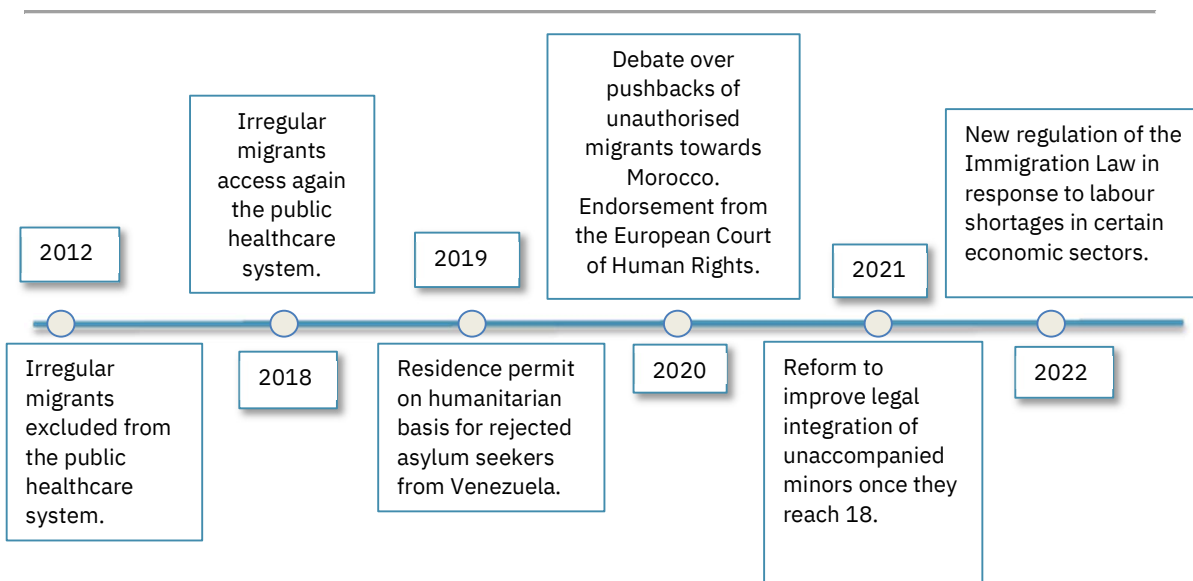
- **International protection**

A 2019 resolution grants one-year residence and work permits, on a humanitarian basis, to all Venezuelan citizens who had their asylum requests rejected since 2014. This further confirms the crucial role of stabilisation and employment rather than securitisation and defensive regulation in the Spanish migration regime. Another special case is the temporary protection status for displaced Ukrainian citizens, which was extended also for those living in Spain in an irregular situation before 24 February 2022.

- **Unaccompanied minors**

In 2021, a new reform improved the paths for social integration of unaccompanied minors. The new measures refine the conditions of unaccompanied minors' authorisations under the protection system and help them to avoid irregularity. The initial authorisation lasts for two years instead of one and explicitly states that they are allowed to work if they are 16 years old. Furthermore, this authorisation does not expire if the minor turns 18, and is renewed for three years if the circumstances that prompted its issuance in the first instance persist.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Reduction of irregular migration (stocks)**

Even though “zero irregular migration” is not a realistic policy objective, the introduction and implementation of the *arraigo* has certainly contributed to reducing the presence of irregular migrants on Spanish territory (Finotelli & Rincken, 2023). Thanks to this policy measure, as recent statistics indicate, the rate of irregular migrants in 2020 oscillates between 8.7% and 9.5% of the foreign-born population (Fanjul & Gálvez Iniesta, 2022), a percentage far below the irregularity rates at the beginning of the 21st century .

- **More effective labour migration channels**

The Shortage Occupation List (Catalogo de ocupaciones de difícil cobertura) has allowed, at least to a certain extent, for better assessment of labour market demand

in certain economic sectors (Finotelli & Echeverría, 2017), while a more efficient organisation of seasonal workers together with the recently introduced cooperation schemes has reduced the employment of irregular workers in the agricultural sector.

- **Prevention of befallen irregularity**

The flexibility in renewing residence permits in the Spanish context, together with the recent extension of the duration of first and second renewals from two to four years are crucial to avoid befallen irregularity and to provide an important impulse to the gradual stabilisation of migrants' residence status.

- **Solving asylum crises**

The decision to issue one-year humanitarian permits to rejected asylum seekers from Venezuela whose application was rejected between January 2014 and February 2019 points to the flexibility of the Spanish migration regime in allowing the transition from the humanitarian into the economic immigration channel as a strategy to address unexpected asylum crises such as the one caused by the number of asylum seekers from Venezuela, which skyrocketed from 124 in 2014 to 40,884 in 2019 (Finotelli & Rincken, 2023). Many countries, particularly those in Northern Europe, have rigorously differentiated between the humanitarian and economic pathways, barring rejected asylum seekers from transitioning to the economic path. Spain, in contrast, has consistently permitted such transitions.

- **Guarantee of access to basic rights**

The decision to exclude irregular migrants from access to the public healthcare sector has been considered a turning point in the regulation of access of irregular migrants to basic rights. Yet, the return to the status quo in 2018 suggests that access to basic rights for irregular migrants is a pillar of the Spanish migration regime.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Reducing the gap between the legal framework and legal praxis in terms of access to rights**

Spain's legal framework is protective. Yet, representatives of the third sector in particular highlight the persistent need of ensuring its enforcement and overcoming the barriers to the effective access to rights that many (irregular) migrants face. Complaints relate in particular to the possibility of applying for international protection at the border, the implementation of minors' access to education, or the opportunity to have access to social services in practice.

- **Efficiently matching labour market offer and demand**

Despite the improvement of legal labour migration channels in recent years (Finotelli & Echeverría, 2017), labour recruitment instruments need to be adapted to a labour market in constant evolution, with a demand for new types of workers on the one hand, and the demand for labour subject to deep economic fluctuations (such as in the construction sector) on the other.

- **Strengthening of labour market inspections**
Given the relevance of the informal economy as a pull factor for irregular migration in Spain, there is a widespread need to provide the still understaffed Labour and Social Security Inspectorate with resources in order to make labour market controls more efficient and discourage employers from hiring irregular migrant workers.
- **Enforcement of internal controls**
Readmission schemes have, at least to a certain extent, facilitated cooperation with origin and transit countries (Gabrielli, 2023). Yet, the persistent lack of cooperation from several countries of origin as well as a lack of resources weakens Spain's capacity to enforce expulsions and suggests that there is need to rethink the current logic of the Spanish internal control system (Sainz de la Maza Quintanal, 2015).
- **Improving cooperation and coordination between different administration levels**
The reinforcement of workplace inspections, the enforcement of internal controls, and the design of more efficient labour immigration schemes require improving cooperation and information exchange between different public organisations at different administration levels.

Table 1: Relevant Spanish institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Ministry of Interior	Border Controls, Police Controls on the Territory, Asylum Applications and other forms of International Protection, Expulsions.	Link (ES)
2.	Ministry of Inclusion, Social Security and Migration	Design and implementation of entry policies for family and labour purposes, renewal of residence permits, organisation of statistical information about immigrants in Spain.	Link (EN)
3.	Ministry of Territorial Policy	Processing of applications for <i>arraigo</i> for training purposes.	Link (ES)
4.	Ministry of Labour	Workplace inspections.	Link (ES)
5.	Municipalities / Offices of the Padron Municipal	They are responsible for the registration of immigrants in the Municipal Registry and for the provision of access to healthcare and education.	n/a

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN SPAIN: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Spain

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayer	<p>A person who has legally entered but then stayed in an EU Member State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and /or residence permit.</p> <p>De facto, penalty would include deportation only in the case that the administrative infraction of irregular stay goes along with conviction for other types of penal infractions, committed inside or outside the country, that constitute a crime punishable by imprisonment for more than one year in Spain.</p>
Rejected asylum seeker	<p>A person whose application for international protection has been definitively rejected, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period. The non-admission or rejection of applications for international protection will determine, as appropriate, the return, expulsion, compulsory departure from Spanish territory or transfer to the territory of the State responsible for the examination of the asylum application of the person who applied for asylum. However, the stay or residence in Spain may be authorised when the person concerned meets the requirements to remain in this situation or for humanitarian reasons.</p>
Befallen irregular migrant	<p>A person who had a residence permit and was unable to renew it.</p>
Irregular entry (clandestine migration)	<p>A person who entered the country without an entry permit such as a tourist visa.</p>

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum seekers waiting for a response to the application	Persons that have presented an asylum application and are waiting for a response. For six months following the application, asylum seekers are not allowed to work.
Rejected asylum seekers from Venezuela (until 2019)	Asylum seekers whose asylum request was rejected between 2014 and 2019 are eligible for a residence permit for humanitarian reasons under exceptional circumstances.
Migrants with renewal procedure in progress	Migrants who have applied for renewal and are waiting for their renewed residence document. The waiting time is generally three months and during this period they are not counted as irregular migrants.
Victims of gender-based violence and human trafficking	Victims of gender-based violence who have a protection order are entitled to a provisional residence and work permit for exceptional circumstances. The same conditions apply to persons officially identified by the police as victims of human trafficking.
Migrants that collaborate with the police against criminal organisations	Irregular migrants that collaborate with the police against criminal organisations are eligible for a residence permit for exceptional circumstances of the duration of one year.
Irregular migrants with at least 2-3 years of registered residence in the Spanish Municipal Registry	Irregular migrants who have been living in Spain for at least two to three years depending on the type of <i>arraigo</i> are eligible for regularisation if they can demonstrate the existence of an employment relationship, family ties, social integration or a training offer.
Unaccompanied minors	Irregular migrants younger than 18 years old are eligible for residence authorisation once under the protection system. They can then turn their permit into a residence permit for exceptional circumstances as soon as they reach the full age.
British citizens after Brexit	British citizens without a residence certificate or a residence card for family reasons had to demonstrate that they were residing in Spain before 31 December 2020 to obtain a residence card under the Withdrawal Agreement and stay regularly on the Spanish territory.

EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
EU citizens in case of public order grounds or national security	The right of entry and residence of EU citizens can be limited on public order and public security grounds. An expulsion order can be issued and executed, for those who have acquired the right of permanent residence, if there are serious reasons of public order or public security. Before adopting this decision, several aspects will be taken into account: duration of residence, social integration, age, state of health, family and economic situation, and links with the country of origin. In addition, for EU citizens in Spain who exceed a 3-month stay without engagement in employment or education and lack sufficient resources for subsistence, the singular avenue for potential expulsion is contingent upon grounds associated with public order (RD 240/2007, Art. 15).

1.3.1 Pathways into and out of irregularity

- Irregular entry**
The main irregular entries concern arrivals by sea, as well as bypassing of the fences in Ceuta and Melilla. Despite the media focus on this phenomenon, clandestine migrants that enter without any type of visa represent a minority of irregular migrants.
- Overstaying**
Overstayers usually enter with a tourist visa and remain in the country of destination after the expiration of this permit. The introduction of visa requirements at the beginning of the new century has certainly reduced Spain’s “pull effect” (Finotelli & Arango, 2011). Yet, visa overstaying can still be considered the most important category of irregular migrant.
- Asylum rejection**
Migrants can become irregular after the rejection of an asylum application. Yet, the Spanish regime has foreseen the possibility to prevent the “irregularisation” of Venezuelan asylum seekers, who represent an important percentage of rejected asylum seekers, providing them with access to a residence permit for humanitarian reasons.
- Regularisation**
The main pathway out of irregularity in the Spanish context is a request for regularisation, described further below.

1.3.2 Regularisation

- [Temporary residence authorisation for exceptional circumstances \(arraigo scheme\), ongoing](#)

Eligibility criteria

- Not be a citizen of an EU Member State.
- Not have a criminal record in Spain.
- Not be banned from entering Spain.
- Not be, where applicable, within the period of commitment of no return to Spain. This refers to the commitment not to return to Spain, in the context of voluntary return programs.

[For work reasons:](#)

- Have stayed continuously in Spain for a minimum period of two years.
- Be able to demonstrate the existence of an employment relationship lasting no less than six months (employment *arraigo*).

[For social reasons:](#)

- Have stayed continuously in Spain for a minimum period of three years.
- Have family ties with other resident foreigners or, alternatively, present a report of roots that accredits their social integration.
- Have an employment contract signed by the worker and employer.

[For family reasons:](#)

- Being a parent or guardian of a minor of Spanish nationality.
- Being a person who provides support to a Spanish person with a disability or who requires support measures for the exercise of his or her legal capacity.
- Being the spouse or accredited unmarried partner of a Spanish citizen, an ascendant over 65 years of age or dependant under 65 years of age, a descendant under 21 years of age or dependant over 21 years of age of a Spanish citizen, or of his/her spouse or unmarried partner.
- Be children of a father or mother who were originally Spanish.

[For training reasons:](#)

- Have stayed continuously in Spain for a minimum period of two years prior to the application for authorisation.
- Commitment to undertake regulated training:
 - for employment or to obtain a professional certificate or a certificate of technical aptitude or professional qualification necessary for the exercise of a specific occupation or one promoted by the Public Employment Services.
 - or, within the scope of lifelong learning at universities, to undertake courses to broaden or update training or professional competencies and skills, as well as other lifelong learning courses.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	LO 4/2000	2000	Organic Law on the rights and freedoms of foreigners in Spain and their social integration (Foreigners Law). This law defines in Title III the infractions in the matter of foreigners and the sanctioning regime.	Link (ES)
2	LO 8/2000	2001	Modification to the LO 4/2000. Title III is modified, relating to the infringements in the matter of foreigners and its sanctioning regime. Measures are introduced to fight against “illegal immigration“ (sanctions to transport companies and to those who organize human trafficking networks). Irregular stay in the territory is considered an infraction punishable by expulsion.	Link (ES)
3	RD 864/2001	2001	Regulation of the LO 4/2000. Chapter IV regulates infractions and administrative sanctioning procedres. Residence permits are granted for collaboration against organized networks. It develops the processes of enforcement of fines and expulsions (assumptions, precautionary measures, effects and enforcement). Section II regulates the functioning of Detention Centers for Foreigners (Centros de Internamiento de Extranjeros).	Link (ES)
4	LO 11/2003	2003	LO 11/2003 which establishes concrete measures on issues of citizens’ security, domestic violence, and the social integration of foreigners.	Link (ES)

5	LO 14/2003	2003	Modification to the LO 4/2000. This amendment strengthens the instruments to fight against “illegal immigration”; it regulates the internal regime of the Detention Centers for Foreigners and guarantees the right of communication of the inmates; it incorporates new obligations of information for the transport companies in the countries of origin/destination and it adapts the carrier sanctions and the mutual recognition of the expulsion decisions to European directives.	Link (ES)
6	RD 2393/2004	2004	Regulation of the LO 2393/2004. approves the Regulation of the Organic Law 4/2000, of January 11, on the rights and freedoms of foreigners in Spain and their social integration. (Repealed by RD 557/2011).	Link (ES)
7	LO 02/2009	2009	Modification to the LO 4/2000. It incorporates the jurisprudence of the Constitutional Court that recognizes the fundamental rights to foreigners without legal residence. It updates the legal system in accordance with the European Directives on immigration pending transposition. It reinforces the fight against irregular immigration, establishes new offences for fraudulent actions and increases economic sanctions, (marriages of convenience, promotion of irregular immigration, falsification of data for registration). It extends the period of detention (from 40 to 60 days), granting a period of voluntary compliance with the expulsion order.	Link (ES)
8	RD 557/2011	2011	Implementation Regulation of the LO 4/2000 (repeals RD 2393/2004). It shortens the duration of the employment relationship that is required for the "arraigo laboral" and introduces the figure of "arraigo familiar" for parents of Spanish minors. It develops the specific aspects of the sanctioning procedures for the	Link (ES)

			imposition of the infractions of expulsion and fines.	
9	European Court for Human Rights. N.D. and N.T. v. Spain [GC] - 8675/15 and 8697/15	2020	Information Note on the Court's case-law 237, concluding no violation in the case of Immediate and forcible return of aliens from a land border, following an attempt by a large number of migrants to cross it in an unauthorised manner and <i>en masse</i> .	Link (ES)
10	RD 903/2021	2021	Regulation of the LO 4/2000 which repeals RD 557/2011 in matters of unaccompanied minors.	Link (ES)
11	RD 629/2022	2022	Regulation of the LO 4/2000 which repeals RD 557/2011. It addresses the needs of the labor market, and the existence of people in an irregular situation who wish to work and who resort to the <i>arraigo</i> scheme, improving some requirements and introducing new figures (<i>arraigo</i> for training purposes).	Link (ES)

List of migration agreements on readmission or cooperation

Sr. n.	Country of Agreement	Date	Description	Weblink to source
1	Morocco	1992	Formal readmission agreement.	Link (ES)
2	Argelia	2002	Protocol with Argelia on the circulation of people.	Link (ES)
3	Guinea-Bissau	2003	Formal agreement on immigration issues.	Link (ES)
4	Mauritania	2003	Formal agreement on immigration issues.	Link (ES)
5	Guinea-Bissau	2003	Formal agreement on immigration issues.	Link (ES)
6	Ghana	2005	Informal agreement (memorandum of understanding).	n/a *

7	Nigeria	2005	Informal agreement (memorandum of understanding) on migration control [+ readmission agreement signed in 2001].	n/a *
8	Senegal	2006	Memorandum of understanding on readmissions + larger agreement on migratory cooperation (both informal) + agreement on minors.	Link (ES)
9	Gambia	2006	Formal agreement on migration control (including development issues).	Link (ES)
10	Guinea-Conakry	2006	Formal agreement on migration control (including development issues).	Link (ES)
11	Mauritania	2007	Informal agreement (memorandum of understanding) on migratory cooperation [+ formal agreement on readmission of signature and third country citizens signed on 7/2003].	n/a *
12	Mali	2007	Formal agreement on migration control (including development issues).	Link (ES)
13	Cabo Verde	2007	Formal agreement on migration control (including development issues).	Link (ES)
14	Guinea Bissau	2008	Formal agreement on migration control (including development issues) [+ informal agreement on readmission signed on 2/2003].	Link (ES)
15	Nigeria	2008	Formal agreement on migration control (including development issues).	Link (ES)
16	Gambia	2010	Informal agreement (memorandum of understanding) on migratory cooperation.	n/a *

Source: Gabrielli, 2023

* informal agreements cannot be traced in the sources of formal legislation

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local	1985	The law regulates the functioning of Municipalities and establishes, among others, that a valid passport is sufficient for foreigners to register in the Municipal Registry and to get access to the public	Link (ES)

			services provided within the municipality (Art. 16 and Art. 18).	
2	Law 16/2003 on Cohesion and Quality of the National Health System	2003	The law establishes cooperation and coordination between public health administrations, guaranteeing equity, quality, equality and social participation in the national health system. Article 3 of the law establishes that people without residence permit can have access to public healthcare if they are enrolled in the municipal registry.	Link (ES)
3	LO 12/2009	2009	Regulation of the right to asylum and subsidiary protection.	Link (ES)
4	Instruction of 5 July 2013, of the Directorate General of Registries and Notaries	2013	Intensive plan for the processing of the applications backlog for the acquisition of Spanish nationality by residence.	Link (ES)
5	RD 16/2012	2012	Urgent measures to guarantee the sustainability of the National Health System and improve the quality and safety of its services. One of the norms introduced by this legislation was the exclusion of irregular migrants from the public healthcare sector.	Link (ES)
6	RD 7/2018	2018	Universal access to the National Health System. Allows access of irregular migrants to public healthcare services again.	Link (ES)
7	Resolution of the Ministry of Interior of 28th December 2019	2019	Administrative memo that establishes that asylum seekers from Venezuela whose application was rejected after January 2014 to get a residence permit for humanitarian reasons.	Link (ES)
8	Resolution de 17 de febrero de 2020	2021	Resolution with technical instructions for the inscription in the municipal registry.	Link (ES)

9	RD 220/2022	2022	Regulation on the reception system for international protection.	Link (ES)
10	RD 889/2022	2022	University Law that regulates the recognition of university degrees.	Link (ES)

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Tunisia Country Brief on Irregular Migration Policy Context

AUTHOR:

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THE MIRREM PROJECT

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

MIRreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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

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Tunisia

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Border security and control**

The government has increasingly focused on enhancing its border security apparatus, including monitoring, and securing its land and sea borders to deter irregular migration and the activities of human trafficking networks. In December 2019, the Tunisian Government of National Accord (GNA) signed agreement with Türkiye in which the latter would offer military assistance to the GNA to heighten security measures along the Tunisian-Libyan border. This involves deploying security units and the army along the coastline and the eastern border of the country. Simultaneously, UNHCR and IOM are partnering with the Tunisian Ministry of Foreign Affairs to coordinate emergency readiness activities in the event of a significant influx of people from Libya. Tunisia also receives support from European Commission through financial and technical support to tighten security over its borders.

- **Assisted Voluntary Return (AVR) and “Assisted Reintegration”**

The AVR programs and the repatriation of irregular migrants to their countries of origin constitute a critical component of the governmental strategy. It is facilitated both by the IOM, and UNHCR offices in Tunisia in collaboration with their local partners. AVR provide irregular migrants with the option to return to their home countries without facing deportation, which is less resource-intensive and more efficient. Assisted Reintegration is designed for those who cannot return voluntarily or qualify for asylum, and they are offered essential support (technical and financial) for a smoother reintegration process.

1.2 OVERVIEW OF THE TUNISIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

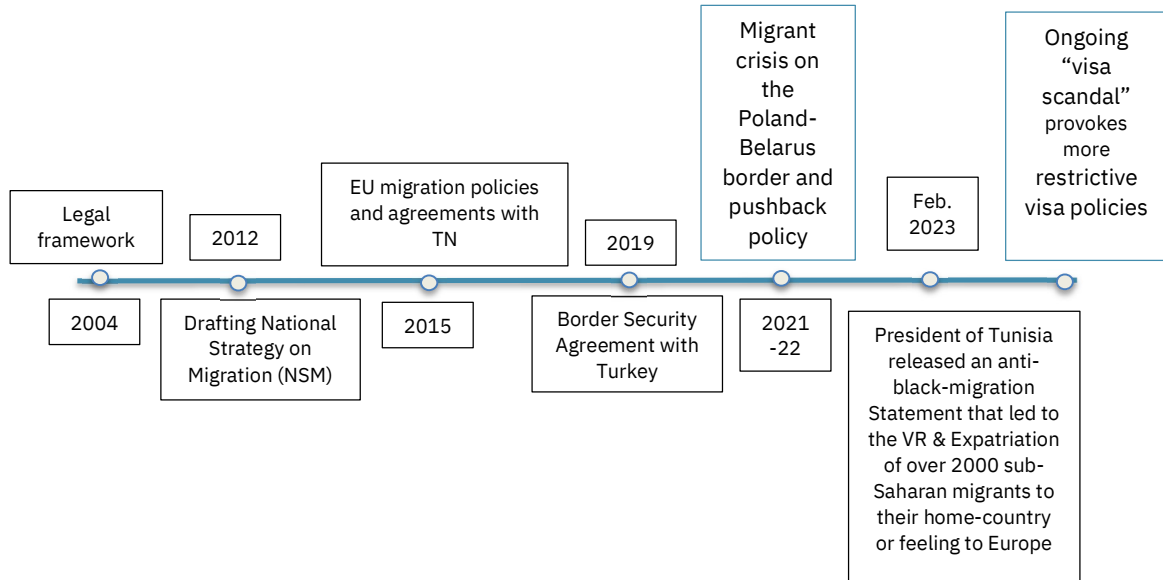
- **Border security**

In December 2019, the Tunisian Government of National Accord (GNA) signed agreement with Turkey in which the latter would offer military assistance to the GNA to heighten security measures along the Tunisian-Libyan border (OCHA, December 2019). This involves deploying security units and the army along the coastline and the eastern border of the country. The support from European Commission encompasses a range of activities, including the procurement of necessary resources, training programs for border guards, and the provision of technical support, all falling under the ambit of priority 1 in the EUTF's regional program: "Towards a holistic approach to labour migration and mobility".

- **Regularisation of entry to the country**

Tunisia has established a legal framework to regulate the entry and residency of foreigners, with stringent penalties for those involved in human smuggling and irregular migration. However, lack of transparency on the ground discriminate against the issuance of residency permits to sub-Saharan immigrants compared to other nationalities due to a rise in xenophobic policy statements against them. Despite the existence of crucial policies related to the protection of migrants and refugees, including the National Strategy on Migration and the National Legislation on Protection System for Refugees & Asylum-Seekers, their implementation has been delayed.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Rise of anti-migrants' sentiments**

The security-oriented policies along with the government's anti-migration rhetoric have given rise to an anti-migrant sentiment in Tunisia, especially against Sub-Saharan migrants, leading to the harassment, discrimination, and violence against this vulnerable group (Parikh, 2023). Furthermore, the neglect of integration and addressing the root causes of irregular migration represents a significant policy gap in Tunisia (Abderrahim, 2023). This also explains the unprecedented surge in irregular migrants' crossing to Europe during the 2023 the same year the president of Tunisia unleashed his famous anti-migrant statement.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Stringent Laws**

Organic Laws No. 1968-7 and Law No. 2004-6 criminalises any form of assistance or attempt to facilitate irregular entry. Migrants often face precarious legal, social, and economic conditions due to the lack of clarity in application of these legislations. Despite the presence of key policies and legislation, the delayed implementation of

crucial measures, such as the National Strategy on Migration (NSM), raises questions about the government's will and commitment to safeguarding the rights of irregular migrants (Herbert, 2022). Additionally, initial reform efforts, such as drafting an asylum law and a rights-based national migration strategy, were cut short due to political assassinations, tensions in neighboring Libya, and economic struggles. Policymakers have depoliticized immigration, sidelining it from the political agenda.

- **Poor implementation of legal systems**

Second, while cooperation with international organisations like the United Nations High Commissioner for Refugees (UNHCR) to enhance protection for refugees and asylum-seekers is ensured, the poor implementation of legal systems that regulate asylum and labour market developments renders the work of these organisations difficult. The delay in enacting the National Legislation on the Protection System for Refugees & Asylum-Seekers raises concerns about the government's commitment to protecting the rights of asylum-seekers.

- **Shifting priorities of decision-makers**

The continuously changing political agendas marked by shifting decision-makers and the creation and dissolution of government bodies (like the State Secretariat for Migration and Tunisians Abroad (SEMTE) contributes to an environment of uncertainty and discontinuity. Adding to this, migration management involves a multitude of stakeholders, including government ministries, international organisations, unions, NGOs, and national organisations. While a holistic approach is crucial, the complex stakeholder landscape presents challenges, and delays in ratification of laws and implementing policies (Natter, 2022). Furthermore, disparity in transparency hinders the development and implementation of effective migration policies due to the government's reluctance in prioritising immigration irregularity in the political agenda.

- **External Pressure**

The European Union (EU) pressures on Tunisian government to adopt security-centric approaches have inadvertently exacerbated challenges faced by irregular migrants within Tunisia through stricter security and border control measures. In other words, the EU's firm stance on border control has prompted Tunisia to prioritize security measures. Although aimed at bolstering security and deterring irregular migration, these actions inadvertently worsen the plight of irregular migrants within Tunisia. Enhanced surveillance, more stringent visa regulations, and intensified border patrols make it progressively harder for migrants to reach Europe. Consequently, desperate individuals are compelled to opt for perilous routes and collaborate with human traffickers (Natter, 2022); when indeed the security-centric policies have unintended humanitarian consequences. Irregular migrants face greater risks, including

dangerous sea crossings, exploitation, and abuse. The closure of traditional migration routes forces desperate individuals to take desperate measures, and endanger their lives.

- **Racial discrimination and anti-migration rhetoric**

Racial discrimination and anti-migration rhetoric of some decision makers and the propaganda by state-owned media outlet have fuelled hate-speech and xenophobia among sub-Saharan migrants thousands of whom fled the country between March and May 2023, after the country's president famous anti-immigration's declarations. Often, anti-migration advocates resort to the migration-terrorism nexus to back up their stance in order to legitimize and further reinforce security approaches on both sides of the Mediterranean. As a result, Tunisia's policy remains caught between safeguarding human rights and complying with EU pressures.

Table 1: Relevant Tunisian institutions

Sr. No.	Institution/department	Responsibilities	Web link
Official Bodies			
1	Ministry of Social Affairs	Leading and coordinating with other ministries.	LINK (EN)
2	Ministry of Foreign Affairs	Acting as a focal point for international cooperation on migration issues.	LINK (TUNISIAN ARABIC)
3	Ministry of Interior	Playing a key role in border management, reception, detention centres, and expulsion orders.	LINK (FR)
4	Ministry of Justice	Involved in legal aspects related to migration.	LINK (TUNISIAN ARABIC)
5	Ministry of Employment and Training	Participating in various aspects of migration management.	LINK (EN)
6	Ministry of Investment and International Cooperation	Engaging in issues related to migration management.	LINK (FR)
7	Ministry of Health	Addressing healthcare-related aspects of migration.	LINK (EN)
8	Ministry of Education	Dealing with educational matters related to migration.	LINK (EN)
9	Department of National Defence	Involved in border control, reconnaissance operations, and irregular migration.	LINK (EN)

10	National Guard	Part of the Ministry of Interior and engaged in migration-related activities, particularly border management.	LINK (EN)
11	National Assembly	Enacting laws strengthening the protection of migrants.	LINK (EN)
Unions			
12	Union Générale des Travailleurs Tunisiens (UGTT)	Initiating the Trade Union Network for Sub-Saharan Mediterranean Migration and protecting migrant workers.	LINK (FR)
National Organisations			
13	Tunisian Red Cross (TRC)	Involved in the protection of refugees.	LINK (FR)
14	Arab Institute for Human Rights (IADH)	Participating in human rights aspects related to migration.	LINK (FR)
15	Tunisian Association for Management and Social Stability (TAMSS)	Engaged in social stability and management of migrants.	LINK (EN)
16	Tunisian Council for Refugees (CTR)	Addressing refugee-related issues.	LINK (FR)
17	Office of Tunisians Abroad (OTE)	Handling diaspora relations.	LINK (FR)
18	National Observatory for Migration (NOM)	Collecting information, data, research, and ensuring coordination related to migration.	LINK (EN)
International NGOs			
19	Caritas	Engaged in humanitarian efforts related to migration.	LINK (FR)
20	Mercy Corps	Participating in various aspects of migration-related support.	LINK (EN)
21	Danish Refugee Council	Addressing refugee issues and providing support.	LINK (EN)
22	Norwegian Refugee Council	Engaged in activities related to refugees and asylum-seekers.	LINK (EN)
International Organisations			
23	Direction Générale de la Coopération Internationale en	Preparing the National Strategy and acting as a key partner for international development partners.	LINK (FR)

	matière de Migration (DGCIM)		
24	UNHCR	<p>primarily concerned with the & providing legal and humanitarian assistance to refugees and asylum seekers, ensuring they have access to the necessary support and rights & conducting registration and status determination of asylum seekers and refugees, operating reception centres.</p>	LINK (EN)
25	IOM	<p>works on enhancing the capacity of Tunisian authorities to manage migration effectively. This involves training border control officials, law enforcement, and other relevant agencies to address irregular migration in a humane and lawful manner.</p> <p>It plays a role in collecting and analysing data related to migration trends. This information is crucial for understanding the dynamics of irregular migration, identifying vulnerable groups, and formulating effective policies.</p>	n/a

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN TUNISIA: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Tunisia

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Over-stayers	These are individuals who have entered the country legally, such as with a visa or residence permit, but have remained in Tunisia beyond the authorised period. Over-stayers in Tunisia include tourists who have exceeded their visa's duration, students who have not renewed their student permits, or individuals on other types of visas who have not left the country within the stipulated time. Depending on their country of origins, they may face legal

	consequences, such as fines, deportation, or bans on re-entry, in accordance with Tunisian immigration laws and regulations.
Undocumented Migrants (irregular entry)	Individuals who enter or reside in Tunisia without proper legal documentation (e.g., visa or residence permit). They include economic migrants, asylum seekers, or refugees who lack required documentation. They are subject to vulnerability, such as: arrest, deportation, and exploitation. Limited access to basic services and protection.
Human Trafficking Victims	These are migrants coerced, deceived, or forced into irregular migration, often falling victim to human trafficking. Lured into irregular migration with false promises, leading to exploitation and abuse. They suffer various forms of exploitation, including forced labour, sexual exploitation, and inhumane treatment.
Irregular Labour Migrants	These are economic migrants (who may or may not have a migration provisional status) who engage in irregular work (in cases of provisional status at times in violation of the terms of their visa/status). They seek employment in sectors like agriculture, construction, or domestic work without legal documentation. They are often vulnerable to labour exploitation, poor working conditions, and limited legal recourse.
Asylum Seekers	Individuals who have fled their home countries due to fear of persecution, violence, or other threats to their safety and are seeking protection in Tunisia. They often arrive without formal recognition as refugees, awaiting asylum determination. Uncertainty about their legal status, difficulties accessing basic services, and risk of detention or deportation are the main challenges they are faced with
Stateless Persons	Individuals without the nationality of any country, often excluded from basic rights and services. Born stateless or lost their nationality (Harraga) due to various reasons. They suffer lack to access to essential services and legal protections, facing a heightened risk of exploitation and abuse. In the Tunisian case, stateless persons are commonly from Eritrea, Somalia, Niger and South Sudan.
Rejected Asylum-Seekers	Individuals who have applied for asylum in the country but have had their asylum applications denied. They may have their claims rejected in for various reasons, including not meeting the legal definition of a refugee, having their claims deemed unfounded, or other reasons. Once their asylum claims are rejected, they are expected to leave Tunisia voluntarily; otherwise, they face potential deportation, and are treated as unlawful migrants.
Most relevant categories of migrants	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)

with a reasonable claim to a provisional status	
Asylum Seekers	Individuals who have fled their home countries due to fear of persecution, violence, or other threats to their safety and are seeking protection in Tunisia. They often arrive without formal recognition as refugees, awaiting asylum determination. Uncertainty about their legal status, difficulties accessing basic services, and risk of detention or deportation are the main challenges they are faced with
Stateless Persons	Individuals without the nationality of any country, often excluded from basic rights and services. Born stateless or lost their nationality (Harraga) due to various reasons. They suffer lack to access to essential services and legal protections, facing a heightened risk of exploitation and abuse. In Tunisia, this population often applies for asylum with and awaits resettlement to a third country.

1.3.1 Pathways into and out of irregularity

Apart from the Assisted Voluntary Return (AVR) and “Assisted Reintegration” as the sole mechanism for exiting irregularity, pathways into irregular migration prevail the scene. The denial of legal status not only deprives individuals of fundamental rights and protections but also perpetuates cycles of irregularity which unleashes socio-economic exclusion and marginalization.

- **Assisted Voluntary Return (AVR) and “Assisted Reintegration”**

The AVR programs and the repatriation of irregular migrants to their countries of origin constitute a critical component of the governmental strategy. It is facilitated both by the IOM and UNHCR offices in Tunisia in collaboration with their local partners. AVR provides irregular migrants with the option to return to their home countries without facing deportation, which is less resource-intensive and more efficient. Assisted Reintegration is designed for those who cannot return voluntarily or qualify for asylum, and they are offered essential support (technical and financial) for a smoother reintegration process.

- **Inconsistencies & Gaps in Policy & Practices**

Irregular migration conundrum houses a nexus of systemic factors and gaps in policy lacunae. Upon arrival in Tunisia, obtaining a residence permit before a student or tourist visa expires is necessary. SICAD, the official administrative portal, outlines the application process for various categories, including workers, students, spouses of Tunisian nationals, retirees, and investors. However, in practice, adherence to

SICAD's guidelines is inconsistent. Document requirements vary between local administrative bodies, typically the Directorate General of Borders and Foreigners, even within the same bureau (Parikh, 2023). Besides this, if we look just at the hurdles encountered once the temporary residence permits is expired, compounded by systemic delays in renewal processes, we see that these snags emerge as a primary catalyst propelling migrants into irregularity. The failure of the Tunisian state to provide timely renewals not only exacerbates migrants' vulnerability but also reiterates systemic inefficiencies within the migration management framework. Moreover, the imposition of steep overstay penalties further perpetuate a cycle of financial burdens and legal precarity for migrants. These systemic flaws remain acute pathways into irregularity.

- **Costs of Rectifying Legal Status**

The bureaucratic delays in renewing temporary residence permits in Tunisia transition migrants into a challenging undocumented status and triggers a domino effect of financial and legal hardships. When temporary residence permits expire, migrants of any nationality become undocumented, often due to the Tunisian state's delays in issuing new permits. This situation forces sub-Saharan migrants into irregular status. There is ample data documenting this scenario (Parikh, 2023). Once undocumented, they incur a visa-overstay fine of approximately 20 Tunisian dinars weekly, equating to about \$26 monthly. Some Sub-Saharan migrants who have been undocumented for over four years, accruing at least \$1,250 in fines, see paying smugglers for passage to Italy to be more cost-effective than settling the fines and affording costly flights back home, knowing that smuggler fees ranged from \$1,300 to \$1,600 per person as of 2022. Thus, the unintended consequence of administrative inefficiencies not only propels sub-Saharan migrants into a precarious legal limbo but also inadvertently encourages the perilous decision to opt for smuggling routes over legal rectifications or returns.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Web link to source
1.	Law No. 1968-7	1968	Organic Law that regulates the entry and residency of foreigners in the country.	LINK (FR)
2.	Art. 23		Foreigner who enters or leaves Tunisia without a valid travel document and entry visa is punishable by imprisonment for one month to one year and a fine. (.)	
3.	Art. 24.		Stipulates 3 years of imprisonment to any foreigner who has evaded the execution of a deportation or has been expelled from Tunisia and entered it again without permission from the Tunisian authorities.	
4.	Art. 25		Imposes imprisonment for one month to one year and a fine on any person who, directly or indirectly, helps or attempts to facilitate the entry, exit, or stay of irregular migrants in the country	
5.	Law No. 2004-6	2004	Organic Law (amending law No. 40 of 1975) that regulates the issuance of the travel documents and entry of foreigners	LINK (EN)
6.	Art. 38		It enhances the penalty for people smuggling by imposing a term of imprisonment of three years and a fine of about US\$2,700 on any person who guides, arranges, facilitates, aids, mediates, or organises by any means the illegal entry or exit of a person into or from Tunisia. The illegal entry or exit may be by land, sea, or air.	
7.	Art. 39		Punishes anyone who shelters persons entering or leaving Tunisian soil unlawfully and without permission from the Tunisian authorities with imprisonment for four years and a fine.	
8.	Art. 40		Stipulate that anyone who deliberately transports a person or persons into or out of Tunisia secretly without the permission of the Tunisian authorities with imprisonment for five years and a fine.	
9.	Tunisia-Turkey Agreement on security	Dec. 2019	Through this bilateral accord, Turkey would offer military assistance to Tunisia to heighten security measures along the Tunisian-Libyan border. This involved deploying security units and the army along the coastline and the eastern border of the country.	LINK (EN)

	measures along the Tunisian-Libyan border			
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Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1.	National Strategy on Migration	pending ratification since 2012	Drafted in 2012, and officially presented in July 2017 ⁶ by the Ministry of Social Affairs in collaboration with ILO, IOM and other international partners and yet to be adopted for unclear reasons, the NSM pertains to safeguarding the rights of foreign migrants, refugees, and asylum seekers within Tunisia and involves the ongoing development and revision of laws related to immigration and the protection of migrants' rights, an in-depth examination of the demographics of immigrants and asylum seekers, and active measures against human smuggling and trafficking. The strategy underscores the commitment to ensure the protection of their rights, regardless of their legal status or circumstances, with a specific emphasis on addressing informal labour. Additionally, it outlines intentions to establish a legal framework for the rights of refugees and asylum-seekers.	LINK (EN)
2	Tunisian Constitution	2014	It stipulates that "the right to political asylum shall be guaranteed as prescribed by the law. It is prohibited to surrender persons who have been granted political asylum"	LINK (EN)
3	National Legislation on Protection System for Refugees &	2014 (Pending ratification)	The bill calls for the creation of the National Refugee Protection Institute (INPR), which would be responsible for determining refugee status & facilitate the access of recognised refugees to education, health and work. A new version was presented by the Ministry of Justice in 2018 and submitted to Parliament recently. The law has yet to be formally adopted and implemented.	LINK (EN)

	Asylum-Seekers			
4	Law on the prevention & fight against human trafficking	Aug. 2016	It strengthens prevention measures for non-Tunisian trafficking victims, who are vulnerable due to their irregular status in Tunisia.	LINK (EN)
5	Organic Law 2018-50	Oct. 2018	The organic Law on the elimination of all forms of racial discrimination aims at combating racial discrimination within the country and prohibit discrimination based on race, ethnicity, or related factors in various aspects of public life, including employment, education, housing, and access to public services; and establishes mechanisms for reporting and addressing racial discrimination, as well as penalties for individuals or entities found guilty of discriminatory practices.	LINK (EN)

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Türkiye

Country Brief on Irregular Migration Policy Context

AUTHOR:

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THE MIRREM PROJECT

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

MIrreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIrreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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

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Türkiye

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Development of a comprehensive legislative framework for migration**

In the 2010s, Türkiye passed broad migration legislation, encompassing labour migration, protection and other issues. The Law on Foreigners and International Protection (LFIP) was signed in 2013 and entered into force in 2014. The LFIP is the most extensive law in the Turkish legal framework that defines and regulates foreigners' movement at entry and exit, as well as their stay in Türkiye. Based on the LFIP, the Temporary Protection Regulation 2014 was drafted in order to regularise forcibly displaced Syrians. Along with that, the Law on International Labour Force (LILF) was introduced in 2016 to regulate the foreign workforce in Türkiye.
- **Development of an institutional framework for migration governance**

An entire chapter of the LFIP is devoted to the establishment and duties of a central authority under the Ministry of Interior. The Directorate General of Migration Management was established in 2013 and became fully operational in 2014. The Directorate transformed into the Presidency of Migration Management (PMM) in 2021. Considering the scattered migration management in Türkiye, the PMM led to significant progress in terms of cooperation among those authorities due to its being located at the centre of governance, despite occasionally drawing criticism for not being a ministry.
- **Border security**

Türkiye's open-door policy and the increase in cross-border mobility into the country caused security and domestic problems. The terror attacks in 2015 revealed that the open-door policy could not be sustained even with the advances in the legal framework. This resulted in a policy focus on increased border security, including relying on advanced concrete walls at the Eastern and Southeastern borders. Despite

the government's claim that the prime target of the wall was ISIL militants, it continued to refer to smugglers and refugees as 'risk factors' (Koca, 2015). At the same time, the EU-Türkiye 2016 Statement has also reflected this turn in policy priority towards border control and security, leading to increases in irregular migrant detections and returns (to Türkiye).

1.2 OVERVIEW OF THE TURKISH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Protection measures**

The regularisation of forcibly displaced migrants from Syria has allowed Türkiye to register more than three million people. On the other hand, a similar mass regularisation scheme has not been introduced for other nationalities. Afghan migrants, for instance, must lodge individual applications for international protection. Since the PMM took over the refugee status determination process from UNHCR in 2018, both the number of applications and approval rates of Afghan migrants for international protection have significantly diminished. Eventually, the legal framework presents a nationality-based, 'hierarchy of protection' (Almasri, 2023).
- **Border walls**

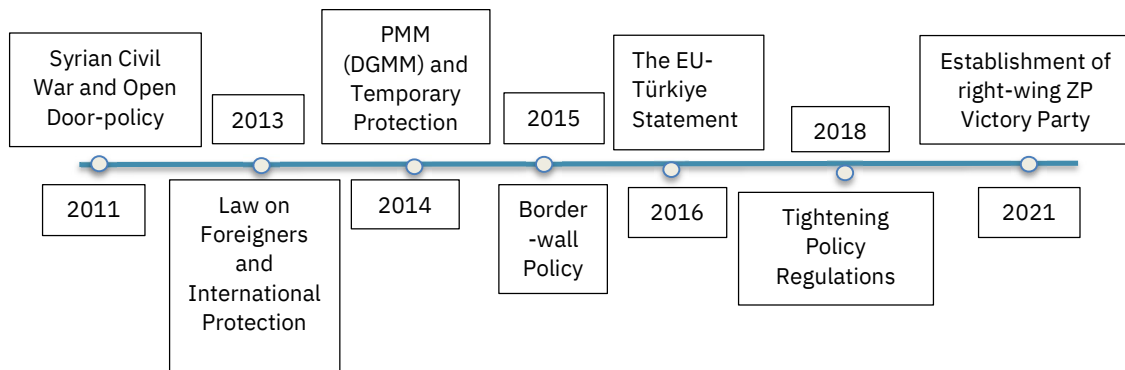
Türkiye has completed construction of 1,067 km (36.2% of the total 2,949 km border, 57.2% of the total border with Syria, Iran, and Iraq) of security walls supported by watchtowers, advanced electronic monitoring systems, barbed wire and patrol roads. Since 2013, the entirety of the Eastern and Southeastern borders has been controlled by the Turkish Armed Forces.
- **Detention and Removal centres**

For those foreigners who are apprehended by law enforcement units and for whom certain conditions apply, such as bearing the risks of absconding or disappearing, posing a threat to public order, security or health, the authorities issue administrative detention and within forty-eight hours they are taken to a removal centre. Until their returns are completed, the foreigners are detained in the removal centres for maximum one year. Currently, there are 28 active removal centres.
- **Requirement of work permit and penalties**

Access to work permits for foreigners is highly regulated in the country. Firstly, foreigners cannot work in specific sectors, such as tourist guides and pharmacists. Secondly, refugees and subsidiary protection beneficiaries are allowed to work in

Türkiye with their IDs serving as de facto permits. However, conditional refugees¹ and asylum seekers are required to apply for work permits. Working without a permit is subject to a number of penalties, including fines and potential deportation: a fine of 14,318 ₺ (€500) if they are employed and 28,665 ₺ (€1000) for self-employed. For employers, they are fined 35,815 ₺ (€1,250) for each foreigner they informally employ. Given that the monthly minimum wage is 11,402 ₺ (€400), the fines serve as a deterrent to violating work permit requirements. Since 2016, certain jobs like seasonal agricultural or animal husbandry, on the other hand, have been exempted from work permits to prevent irregularity among foreigners under temporary protection, who are mainly employed in these sectors (Pinedo-Caro, 2020).

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- Regularisation of forcibly displaced Syrians**
 The Temporary Protection Regulation entered into force in 2014, based on the related articles of the LFIP, and at the time went hand in hand with Türkiye's open-door policy. The regulation has regularised more than 3.5 million Syrians, making Türkiye the largest refugee-hosting country worldwide. The legal system, by precluding permanent settlement, simultaneously exposes Syrians to precarity due to their undefined futures (İçduygu, 2015).
- Apprehensions**
 Since 2014 (when LFIP entered into force), the apprehension numbers have at least tripled: in 2014 there were 58,647 apprehensions, but in 2019 and 2022

¹ Given Türkiye's geographic limitations to the Geneva Convention (i.e. granting refugee status only to those seeking asylum from Europe), conditional refugee status is applied for those seeking asylum and not from Europe. Additional protection categories include those with temporary protection (applied primarily to Syrians) and those with subsidiary protection.

apprehensions were 454,662 and 285,027, respectively. Similarly, the eastern Mediterranean routes to the EU, along Türkiye's border, recorded 885,386 irregular migrant entries in 2015, which set the record at that time. With the EU-Türkiye statement in 2016, there was a sharp decline in the same route.

- **Counter-smuggling actions**

In parallel, Türkiye has also been actively combating migrant smugglers, with apprehensions greatly increasing since 2014. In 2014, there were 1,506 individuals apprehended for committing the crime of migrant smuggling, whereas in 2019 and 2022 there were 9,102 and 9,149 apprehended individuals, respectively. Consequently, smugglers have adjusted their operational models by adapting prices and transportation means (Yıldız, 2021), given that the smuggling market is driven by demand along with supply (İcduygu, 2021).

- **Legal order**

Unlike the pre-2013 era, in which the legal framework on migrant irregularity was dispersed and archaic, the new legislation (especially LFIP and LIFL) provides modern and clear regulations. The foreigners who previously faced challenges due to legal deficiencies are no longer subject to such complexities. The LFIP regulates almost all if not all aspects related to foreigners. Despite the modern framework, there have been criticisms of its implementation. The reports suggest some removal decisions, particularly those based on general security were reversed after the appeal of the foreigners (AIDA, 2022).

- **Data availability**

Although other stakeholders (Turkish Armed Forces, the Gendarmeries, the Coast Guard, Ministry of Labour and Social Security) also publish data on migrant irregularity, the overall data and information on irregular migrants are provided by the PMM and updated regularly. Nonetheless, the data shared publicly by PMM still lack certain levels of detail, for example related to migrant demographics and geographic localities of apprehensions.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Politicisation of the migration issue**

The politicisation of migration prevents advancements in the policy area and can even stall implementation of existing policies. The foundation of a single-issue, anti-migrant party (Zafer Party) has made the migration issue a contestation point at the national level and in political debate. This is not particular to migrant irregularity, but the large numbers of international protection beneficiaries in the country also play a role and are used in public debate.

- **Global pressures on Türkiye**

The withdrawal of US troops from Afghanistan and the protracted civil war in Syria have compounded the pre-existing deep-rooted security and economic challenges

the country faces. These global challenges have also resulted in a gradual increase in irregular migrants. Türkiye cannot sustain both its assertive foreign policies (e.g., open-door) and compliance with the principles of international law (e.g., non-refoulement) without cooperating with regional or global actors on these complex issues. The voluntary return of Syrians, for instance, does not seem possible in the foreseeable future due to the diplomatic relations with the Assad regime. Similarly, the EU-Türkiye statement has led to irregular migrants remaining in Türkiye.

- **Cooperation with the origin countries**

While Türkiye has a high return rate, those it does not return are highly correlated with the countries with which Türkiye does not have established relationships. Certain migrants, for instance, have claimed they come from Myanmar, knowing that there is no diplomatic mission or re-admission agreement with the country. Similarly, some irregular migrants claim they are Uyghurs, hoping that Türkiye would not deport them to China. A parliamentary report from 2017, which investigated a removal centre, for instance, reveals that despite claiming to be from the Eastern Turkestan Republic, 41 out of 139 irregular migrants were, in fact, Central Asian and Russian nationals (TBMM Human Rights Investigation Commission, 2017). Hence, identification of the origin countries still poses a problem in the return process, although Türkiye has been actively trying to address this issue by, for instance, using various embassies to facilitate contact.

Table 1: Relevant Turkish institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Presidency of Migration (PMM) (previously Directorate General of Migration Management)	The central body regulating migration governance (including but not limited to permit and removal decisions) in Türkiye under the Ministry of Interior. It was established in 2013 and became fully operational in 2014. Composed of centres and provincial units. Since 2021, the Combating Irregular Migration and Deportation Procedures Department has performed all related activities ranging from the processing of entries in the Immigration Registration System (named GocNet, a comprehensive database of information on immigrants) to the removal centres.	Link (TUR)
2.	General Directorate of Security / Turkish Policy Forces	Responsible for random identity and passport checks, overseeing border checkpoints and combating migrant smuggling in coordination with the PMM. Performs under the Ministry of Interior.	Link (TUR)
3.	Turkish Coastal Guard	Primarily responsible for irregular exits and to a lesser extent entries, as well as migrant smuggling, along the maritime borders. Performs under the Ministry of Interior and works closely with the PMM.	Link (TUR)
4.	Turkish Armed Forces	The sole authority for controlling the unauthorised entry and exit to the country outside of border crossing points. Unlike the PMM and police forces, the TAF is not part of the Ministry of Interior.	Link (EN)
5.	General Command of Gendarmerie	Performing under the Ministry of Interior, the Gendarmerie is responsible for conducting routine controls and operations in areas beyond the jurisdiction of the police forces (mostly outside the provincial and district boundaries). Their main responsibility is to inspect routes used by migrant smugglers.	Link (TUR)
6.	Disaster and Emergency Management Presidency (AFAD)	The AFAD was responsible for “refugee camps” by providing necessary services such as health, shelter, and education. The AFAD played a significant role during the open-door policies and subsequent regularisation of Syrians,	Link (EN)

		particularly in the border cities. The responsibilities of AFAD in this regard were taken over by the PMM in 2018.	
7.	Ministry of Labour and Social Security	In coordination with PMM, the Ministry regulates work permits. It is responsible for granting work permits and inspecting workplaces. Foreigners who are encountered during the inspections without work permits are reported to the PMM for removal.	Link (TUR)
8.	Turkish Red Crescent Association (Kızılay)	After the Syrian civil war, a special unit called the Immigration Directorate was established in 2014 under the Association. Kızılay is primarily responsible for the services provided in reception, accommodation, and removal centres. Additionally, Kızılay is responsible for providing social aid to Syrians under temporary protection, in cooperation with the PMM.	Link (EN)
9.	International Organisation for Migration (IOM)	IOM is considered one of the most active IGOs in Türkiye on migrant irregularity. Cooperating with a variety of state stakeholders, IOM is active particularly at the Western border in the area of border management (Gökalp Aras & Şahin Mencütek, 2019). Through a project with the PMM, the IOM also develops a database to assess the number of migrants and monitor their activities in Türkiye. Overall, IOM provides technical assistance to state organisations involved across all stages of migrant irregularity.	Link (EN)
10.	United Nations High Commissioner for Refugees (UNHCR)	UNHCR has several protocols with state agencies to monitor the situation of irregular migrants with protection needs and provide assistance to the authorities (e.g., capacity increase of the removal centres). Until September 2018, the UNHCR was responsible for refugee status determination, which was later transferred to the PMM. UNHCR is more active in policies such as non-refoulement and voluntary return.	Link (TUR)
11.	Association for Solidarity with Asylum Seekers and	One of the largest NGOs and a key implementing partner of UNHCR in Türkiye. Focuses on shedding light on the challenges faced by asylum seekers and refugees within	Link (TUR)

	Migrants (SGDD-ASAM)	the country, aiming to garner attention and support. It is also active at the borders along with IOM to provide assistance to the state authorities.	
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1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN TÜRKIYE: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Türkiye

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayer	A person who has legally entered but then stayed in Türkiye after expiry of visa (up to 90 days and any case cannot exceed 90 days within a period of one hundred and eighty days) or the residence permit. If the duration of overstaying surpasses 10 days, the following penalties apply: an administrative fine, an invitation to leave the country within a month and an entry ban to Türkiye. The duration of the entry ban depends on the payment of the fine and the individual's adherence to the voluntary departure.
Illegal entry or attempted exit	Foreigners who enter illegally or attempt to irregularly exit, either by providing false information or clandestinely crossing the border. Those persons are penalised with increased administrative fines and longer duration of entry bans compared to overstayers and cannot benefit from voluntary return but instead are held in removal centres.
Rejected asylum seeker	If a person's international protection application is rejected, they are asked to leave the country similarly to overstayers. However, they can also fall into provisional status by appealing the decision. Since 2018 when the PMM has taken the refugee status determination process from UNHCR, the size of this category has significantly increased.
Breaching work permit requirements	Any individual who violates work permit requirements is subject to removal. Apart from the considerable administrative fines, they are requested to leave the country. Compared to others, this category includes a higher variety of nationalities, as migrants from both Eastern Europe (e.g., Moldova, Romania) and Central Asian Republics (e.g., Uzbekistan, Turkmenistan) have been identified working in private homes without permits.

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Beneficiaries of temporary protection	Individuals who fled the Syrian civil war, including stateless persons, are granted temporary protection status starting in 2014. Their legal status in the country is temporary and recent policies focus on voluntary returns. However, temporary protection beneficiaries can still fall into irregularity for various reasons, such as posing threats to public order and security, leaving their registered cities without authorisation from the PMM, or in the context of unsuccessful forced returns.
Persons whose removal cannot be affected	Individuals who should normally be deported but cannot be due to specific conditions including: facing risks due to serious health conditions, age or pregnancy in case of travel, and access to healthcare treatment in the destination country while undergoing treatment for a life-threatening health condition.
Beneficiaries of humanitarian residence permit	The permit is given only under specific circumstances (for instance, those whose removal is temporarily not possible) and for a short duration. Recipients usually have to find an alternative way to regularly stay in the country as their status is only temporary.
Beneficiaries of residence permit for victims of human trafficking	A victim of human trafficking can be provided with a temporary residence permit for 30 days. Similar to beneficiaries of a humanitarian residence permit, the person might fall into irregularity after 30 days.
Rejected asylum seeker appealing the negative decision	During the review of the decision, the applicant is allowed to stay in the country. Yet rights of residency and movement are strictly regulated.

1.3.1 Pathways into and out of irregularity

- **Illegal entries and exits**

The LFIP Article 5 explicitly states entry into and exit from the country should be done through border crossing points. Notably, the definition of exit from the country was expanded to include also “attempts” to exit, as outlined in the law enacted in 2019 that amended the LFIP (Law no. 7196, 2019). With this expansion, a person who

attempts to exit the country but is apprehended can be held at removal centres and deported without the option of voluntary return.

- **Overstay of existing permit**

Foreigners can stay in Türkiye with a visa for up to 90 days and cannot exceed 90 days within a period of one hundred and eighty days. The LFIP introduces six different residence permits: a) short-term residence permit (Article 31); b) family residence permit (Article 34); c) student residence permit (Article 38); ç) long-term residence permit (Article 42); d) humanitarian residence permit (Article 46); e) victim of human trafficking residence permit (Article 48). The LFIP obliges foreigners to make the renewal application for the residence permit to the authorities prior to its expiration.

- **Work permit regulations**

The article on those subject to removal (LFIP 54(1)) includes foreigners working without work permits. A work permit is required only for asylum seekers and conditional refugees (can apply after six months), whereas refugees and subsidiary protection beneficiaries may work independently or be employed after being granted the status, as their identity document also substitutes for a work permit. The majority of Syrians who benefit from temporary protection work without a permit, because otherwise, they cannot find jobs. This problem puts them in a “grey zone” of irregularity, given that breaching the work permit requirement would result in deportation.

- **Residency regulations**

The place of residence of asylum seekers and international protection beneficiaries is strictly regulated, widely known as ‘satellite cities’, though PMM no longer refers to them as such. Asylum applications of those who do not show up in the designated place of residence or who leave the place of residence without permission are considered withdrawn. For temporary protection beneficiaries, PMM announced that travelling to cities other than those in which the person is registered requires a travel document. Non-compliance with this requirement shall be interpreted as disruption to the public order and might lead to the cancellation of temporary protection.

1.3.2 Regularisation

*There has been no individual regulation act outside the regulations defined by the LFIP after its introduction. The following provide examples also of additional pathways out of irregularity and ways to regularise status.

- [2012, Regulation of overstayers](#)
An overstayer could apply to the authorities and pay the fines within 3 months of the announcement of the circular (May 2012) and be granted a 6 month residence permit.
- [2014, Temporary Protection Regulation](#)
The TPR alone has regularised millions of forcibly displaced migrants coming from Syria. A survey conducted with 2,500 households by AFAD in 2017 indicated that 53% (in-camp) and 27.7% (out-camp) of respondents entered Türkiye without passports through the official border gates; 42% (in-camp) and 55.7% (out-camp) respondents entered Türkiye from non-official border crossing points.
- [2014, Humanitarian residence permit](#), Article 46
Provides residence for one year, can be extended.
An overstayer can apply under certain criteria, including the best interest of the child. Permit is granted when departure or removal from Türkiye is not reasonable or possible.
- [2014, Victim of human trafficking residence permit](#), Article 48
Provides residence for one month to six months, can be extended.
Permit is applied to victims or suspected victims of human trafficking, impacted negatively by the experience, and willing to cooperate with authorities.
- [2020, Voluntary exit](#)
An overstayer (up to three months) who applies to the authorities to voluntarily leave the country by paying the administrative fine is exempted from the entry ban. Introduced with LFIP in 2013, originally there was no duration limit (even up to several years of violation) for overstaying. However, since 2020, if the stay exceeds three months in violation of the permit, an entry ban is imposed commensurate with the duration of overstay, as well as in relation to whether the administrative fine has been paid.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Passport Law (no.5682)	1950	Although LFIP (2013) abrogated most of the articles, some general requirements such as a valid passport at the border gates are still regulated by this law. Nonetheless, the majority of the law regulates passports for Turkish citizens.	Link (TR)
2	Law on Foreigners and International Protection (LFIP) (no.6458)	2013	The most extensive law. It regulates foreign-related activities such as residence permits, entry bans, removal, detention centres, and establishment of the Presidency of Migration Management.	Link (EN)
3	Temporary Protection Regulation (TPR)	2014	To address forcibly displaced migrants coming from Syria as a result of the open-door policy adopted subsequent to the Syrian civil war, the government issued a mass regularisation of irregular migrants. Relying on the associated article of LFIP, which emphasises mass influx, the regulation has provided Syrians with a legal status. Prior to the regulation, Syrians were referred to as 'guests' which put them in legal limbo.	Link (EN)
4	International Labour Force (no.6735)	2016	Regulates the workforce of foreigners in Türkiye. Some foreigners, particularly as temporary protection beneficiaries, cannot work without work permits. In such cases, they would fall into irregularity.	Link (TR)

5	Securitisation and Border Walls	2015	With the increasing domestic terrorist attacks entangled with the gradually increasing flow of irregular border crossings, the government has employed a policy of securitization at the borders. Consequently, concrete walls started to be built on the Syrian border, supported by watchtowers, advanced electronic monitoring systems, and barbed wires. Eventually, the border-wall policy spread to the rest of the Eastern and Southeastern borders to tackle irregular flows.	Link (EN)
6	EU-Türkiye Statement	2016	Türkiye has promised to prevent unauthorized entry to Europe from its maritime jurisdiction in the Aegean Sea. While this has enhanced the controls during the irregular exits through the Aegean Sea to mainly Greece, simultaneously, this has led irregular migrants to stuck in Türkiye. Concurrently, the government shifted its focus to the Eastern borders in order to stop migrants from entering the country. However, this policy left irregular migrants stranded in Türkiye, causing their numbers and visibility to surge, ultimately drawing public contestation.	Link (TR)
7	COVID-19 Circular	2020	On 15 July 2020, the PMM announced that the travel restrictions during the pandemic were considered as force majeure. Consequently, foreigners who exceeded the legal duration of their stay in Türkiye were not considered irregular, and the PMM neither deported them nor issued a subsequent entry ban. After assessing the situation in their country of origin, the PMM allowed these foreigners a period of up to a month to leave the country.	Link (EN)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Labour Law (no.4857)	2003	Regulates the relationship between employer and employee with respect to the end of contracts; thus, indirectly regulates the work permit. Also regulates part-time working conditions, which allow students to work without falling into irregularity.	Link (TR)
2	Foreign Direct Investment Law (no. 4875)	2003	Indirectly regulates the requirement of work permits for foreigners. Foreigners employed by foreign companies, regulated by the law, shall be granted a work permit by the Ministry of Labour and Social Security.	Link (TR)
3	Turkish Criminal (Penal) Code (no.5237)	2004	Defines the crime of migrant smuggling as enabling a non-citizen to enter, or remain in the country, and enabling a non-citizen to go abroad.	Link (TR)
4	Law on Criminal Procedure (no.5271)	2004	With respect to the associated crimes in the Turkish Criminal (Penal) Code, the law regulates criminal procedures including pre-trial detention for the suspect of migrant smuggling.	Link (TR)
5	Turkish Citizenship Law (no.5901)	2009	Regulates under what conditions foreigners can acquire Turkish citizenship such as marriage or investment. Given that the conditions indirectly affect legal stay in the country, it also presents a pathway out of irregularity.	Link (TR)

6	Dual Asylum System	2013	<p>Despite being part of the LFIP, the dual asylum system of Türkiye indirectly, even in certain instances, directly affects the migrant irregularity. On the basis of national interest, Türkiye put geographical limitations on the 1951 Geneva Convention and the 1967 additional protocol. Consequently, Türkiye gives refugee status to only migrants coming from Europe, whereas majority of the asylum-seekers can only apply for conditional refugee status.</p> <p>The conditional refugee leads to differentiated integration as it does not allow long-term integration.</p>	Link (EN)
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United Kingdom Country Brief on Irregular Migration Policy Context

AUTHOR:

Andy Jolly

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THE MIRREM PROJECT

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United Kingdom

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Immigration enforcement**

Enforcing controls on access to public services, employment, healthcare, driving licences and banking services as part of the “hostile” or “compliant” environment policy to encourage people with an irregular migration status to leave the country (Düvell et al., 2018)

- **Stopping small boat arrivals**

One of the five main policy priorities for the current government of Rishi Sunak is to prevent people entering the UK in small boats across the English Channel. The UK government aims to achieve this through agreements with the French government to prevent people leaving France in boats, better surveillance of the English Channel, a National Crime Agency focus on disrupting smuggling gangs, and through legislation such as the Nationality and Borders Act 2022, and the Illegal Migration Act 2023.

- **Transferring responsibility to Rwanda for asylum applications**

As a means to discourage people from making asylum applications in the UK, the government’s New Plan for Immigration takes inspiration from the Australian practice of offshore processing of asylum applications. The partnership between the government of Rwanda and the British government aims that all asylum claims (excluding from unaccompanied minors and Rwandan nationals) that are made following irregular entry to the UK will be considered for transfer to Rwanda. These claims would then be heard through Rwanda’s asylum system, and successful applicants would be granted refugee status in Rwanda rather than the UK. The policy

has been subject to legal challenge in the UK courts (See policy implementation measures section below).

1.2 OVERVIEW OF THE UNITED KINGDOM'S POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

- **Third party migration control obligations**

An example of migration control effected through third parties is the introduction in the Immigration Act 2014 of civil penalties for renting to irregular migrants, leading to checks on the immigration status of tenants applying to rent accommodation from private landlords. Since 2022, this has applied to all landlords in England, and carries a maximum £3,000 fine – set soon to rise significantly – or a maximum prison sentence of five years for landlords who rent to people with an irregular migration status. Other third-party migration controls include right to work checks by employers, the No Resource to Public Funds condition and NHS charges, including charging at 150% of the standard tariff (brought in 2015) and up-front charges (introduced in 2017).

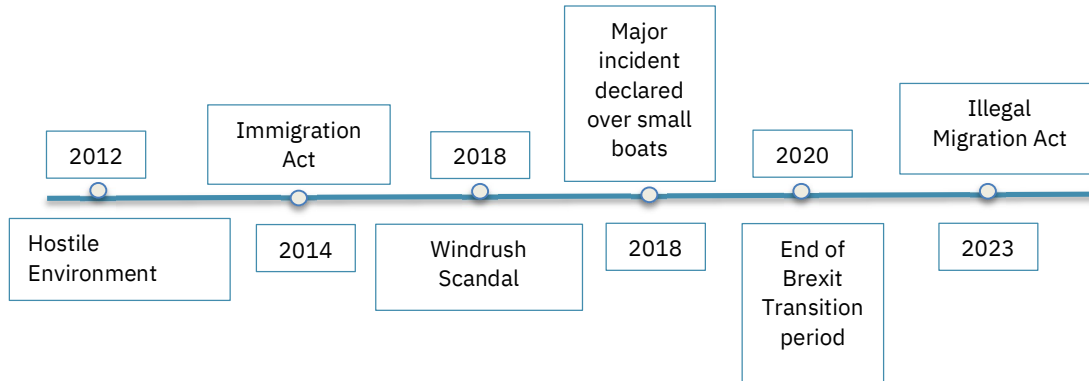
- **Rwanda policy**

The bilateral agreement between the governments of Rwanda and Britain to remove and process asylum seekers who entered the UK irregularly was announced in April 2022. Under the agreement, applicants would be barred from later entering the UK even if their claim was successful (Crowther, 2023). In November 2023, the Supreme Court ruled that the Rwanda policy was unlawful, however the UK Government has since introduced the Safety of Rwanda (Asylum and Immigration Bill) in response, which declares that Rwanda is a safe third country. At the time of writing, the Bill is proceeding through Parliament.

- **Anti-trafficking measures**

The Modern Slavery Act 2015 provides protection for people who are trafficked to the UK, including a defence in law for trafficking victims who commit crimes as a result of being trafficked. However, the Illegal Migration Act 2023 explicitly excludes irregular entrants from these provisions.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- Destitution**

Policies to restrict access to employment, housing, healthcare and social security benefits through the hostile environment and predecessor policies leave people with an irregular migration status at increased risk of poverty, ill health, destitution and exploitation, with the expectation from the government that these policies will act as an incentive for people to leave the UK.
- Human trafficking and modern slavery**

There were nearly 8,000 referrals for potential victims of modern slavery in 2022, a 10% increase on the previous year. Not all victims of modern slavery are irregular migrants, and 25% of those who were referred to the National Referral Mechanism in 2022 were British citizens. However, 27% were Albanian nationals (Home Office, 2023b).
- Voluntary returns and forced removals**

Numbers of voluntary returns to countries of origin and forced removals from the UK have both fallen in recent years. However, more people with an irregular migration status leave the UK voluntarily than through enforced removals. In 2022, there were 3,860 forced returns, and 10,710 voluntary returns (Home Office, 2023a).

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- Data**

There are little reliable data on the stocks of irregular migrants in the UK, or their

geographical location. Data on irregular migration flows are more reliable, but still rely on enforcement activity, and by their nature do not include people who did not come into contact with immigration enforcement.

- **Employment**

Experts suggest that irregular migrant labour is embedded in particular sectors, particularly in hospitality, care work, and agriculture (Mendonça et al., 2023). Despite attempts of immigration and law enforcement to reduce this, a casualised workforce, lack of understanding of the law by employers and widespread subcontracting make this difficult for the authorities to address completely, and some sectors of the British economy rely on irregular migrant labour to survive.

- **Hostility to enforcement action**

Factors such as the Windrush scandal and the so-called ‘go home vans’ of Operation Vaken have created a suspicion of immigration enforcement in some communities, which can prevent victims of crime from coming forward, and can hinder immigration enforcement from working in some communities (Hutchison, 2021). Similarly, there is widespread scepticism within NGOs about the impact of enforcement action in the area of immigration (Düvell et al., 2018).

Table 1: Relevant British institutions

Sr. No.	Institution/Department	Responsibilities	Web link
1.	Border Force (Home Office)	The Border Force is a law enforcement command within the Home Office. It carries out immigration and customs controls for people and goods entering the UK.	Link (EN)
2.	Immigration Enforcement (Home Office)	Immigration Enforcement’s mandate is to prevent abuse, track immigration offenders and increase compliance with immigration law. It works with partners such as the police to regulate migration in line with government policy.	Link (EN)
3.	UK Visas and Immigration (Home Office)	UK Visas and Immigration decides on who has the right to enter or stay in the country (thereby issuing visas accordingly).	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN THE UNITED KINGDOM: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in the UK

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayer	A person who has legally entered the UK but stays beyond the allowed duration of their visa.
Refused asylum seeker	A person who has received and is not or cannot further appeal an decision rejecting an application for international protection, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period.
Irregular entrant	Someone who enters the UK without authorisation to do so. Currently the most common route is through small boats across the English Channel.
Children of irregular migrants	Children born to non-British citizen parents in the UK since the British Nationality Act 1981 has been in force do not automatically have the right to British citizenship. Children born to parents with an irregular status will also have an irregular status, despite not crossing an international border.
Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Unaccompanied minors	Minors who arrive in the UK without a parent or caregiver are “looked after” by local authority children’s services under section 20 of the Children Act 1989.
Third-country (non-national) victims of trafficking with a	Adults in England and Wales who are recognised as a potential victim of modern slavery through the NRM have access to specialist tailored support for a period of at least 45 days while their case is considered.

provisional permit to stay	
Refused Asylum Seekers where there is no viable route to country of origin	Refused asylum seekers who are not able to be returned because of a lack of travel document, no viable travel route, or because of illness are eligible for Section 4 “hard case” support under the Immigration and Asylum Act 1999.
EEA Nationals who were resident in the UK prior to Brexit.	EEA nationals in the UK who moved to the UK prior to the end of December 2020 were entitled to apply for settled status through the EU settlement scheme before 30 June 2021. Those who were accepted through the scheme were able to continue to live in the UK legally, but those who did not apply became irregularised.

1.3.1 Pathways into and out of irregularity

Into Irregularity

- **Overstaying a visa**

Historically this has been the most common route into irregularity in the UK, where a person comes to the UK on a visa and stays in the country after it has expired in breach of the immigration rules. A person in this situation will not be eligible to access public funds such as local authority housing or social security benefits, and will not be legally eligible to take up employment.

- **EEA nationals after Brexit**

After the end of the Brexit transition period, EEA nationals who remained in the UK without applying for settled or pre-settled status became subject to immigration control and were irregularised.

- **Small boat arrivals**

Over the past two years there has been a large increase in numbers of people entering the UK on small boats. Although they are counted as irregular migrants in government policy, the majority go on to claim asylum.

Out of irregularity

There are no formal amnesty schemes currently operating in the UK, however, there are some individual routes through which people can use to regularise their status (Cooper, 2019; Gardner & Patel, 2021).

- **Voluntary and Assisted Return**

The UK government offers an assisted return programme to provide reintegration support for refused asylum seekers who agree to leave the UK, which offers up to £3000 towards accommodation costs, training or business start-up costs.

- **20 Year Route**

Adults with an irregular status have to prove residence in the UK for 20 years before they are able to apply for regularisation, and then enter a ten-year route to settlement, during which time they can lose their status if they do not continue to renew their visa every 2.5 years.

- **Seven-year route for children and families**

There are provisions in the Immigration Rules to allow a child without leave who has lived continuously in the UK for seven years – and their parents – to apply for leave to remain.

- **Applying for British Citizenship as a child**

A child born in the UK with an irregular status, and who lives continuously in the UK for the first ten years of his/her life, is eligible to apply for British citizenship.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	The Immigration Rules	1971 (but regularly updated)	<p>The Immigration Rules are the government policies outlining who can and cannot be given entry and leave to remain in the UK. They were first introduced in section 3 (5) of the Immigration Act 1971 but have been amended multiple times since. They are not Primary Legislation, but are the guidance followed by the Home Office.</p> <p>They contain guidance on the 20-year and 10-year routes to settlement, where certain categories of irregular migrant can in some circumstances apply for a pathway where they can eventually be granted Indefinite Leave to Remain in the UK. These routes were introduced in their current form in 2012.</p>	Link (EN)
2	Asylum and Immigration Act	1996	The Act Introduced the criminal offence of employing someone without the right to work in the UK, and withdrew the right of asylum seekers to claim mainstream social security benefits. The Act also created a 'white list' of safe countries which people can be safely returned to after applying for asylum.	Link (EN)

3	Immigration and Asylum Act	1999	This Act was the first immigration legislation of the New Labour government, and followed the 1998 white paper “Fairer, faster and firmer” the Act created dispersal areas around the UK. Under this policy, asylum seekers were moved away from areas of entry in the southeast of England, to areas of low housing demand in other areas of the country.	Link (EN)
4	Nationality, Immigration and Asylum Act	2002	The Act gave a right for overseas born children of British mothers prior to 1981 to register as British citizens and gave British overseas citizens the right to register as British citizens if they are stateless, creating a pathway for some people to regularise their status. The Act also introduced a power for the Secretary of State to remove British citizenship from people if this is “conducive to the public good”.	Link (EN)
5	Asylum and Immigration (Treatment of Claimants, etc.) Act	2004	The Act simplified the asylum appeals system for refused asylum seekers into a single tier, and limited onward review for refusals. It strengthened powers against irregular arrivals in the UK and those who are seen to be not co-operating with the authorities, and introduced measures to prevent ‘sham marriages’ for immigration purposes.	Link (EN)
6	Immigration, Asylum and Nationality Act	2006	The Act limited the circumstances where immigration appeals could be made to just human rights and racial discrimination grounds. Introduced civil penalties for employers who take on staff without a work permit, and gave police and immigration officers more powers to request information on new arrivals in the country at the point of entry.	Link (EN)

7	UK Borders Act	2007	Introduced biometric residence permits for non-EU migrants, and gave immigration officers powers of detention, entry, search and seizure. The Act also created a new Office of the Independent Chief Inspector of the UK Border Agency.	Link (EN)
8	Borders, Citizenship and Immigration Act	2009	Lengthened the qualifying time where people could apply for Indefinite Leave to Remain in the UK from five years to a new system of probationary citizenship where applicants had to earn points through good behaviour and ‘civic activism’.	Link (EN)
9	Immigration Act	2014	Part 3 of the Act introduced ‘right to rent’ Immigration checks for private landlords, with fines of £3,000 for landlords who rent to irregular migrants without the right to rent. The Act introduced a provision to prevent irregular migrants from opening new bank accounts or applying for UK driving licenses. Finally, the Act strengthened illegal working penalties for irregular migrants without the right to work in the UK.	Link (EN)
10	Immigration Act	2016	The Act introduced a requirement for Banks and Building Societies to introduce checks on both new and existing customers, and made it easier for landlords to evict tenants without the right to rent. In the criminal justice sector, the Act introduced powers to require foreign national offenders to wear electronic tags when released from prison on bail, and extended powers to ‘deport now, appeal later’ to more cases.	Link (EN)
11	Nationality and Borders Act	2022	Clause 11 of the Act created two categories of refugees. Group 1, who travelled directly to the UK, and Group 2 who entered via a third country or irregular route. Group 2 refugees will have limited access to social security benefits and family reunion, and will have their status reviewed after 30 months.	Link (EN)

12	Illegal Migration Act	2023	The aim of the Act is to reduce small boat crossings across the English Channel by preventing those who enter irregularly from claiming asylum, detaining them and removing them from the UK without the right to return in the future.	Link (EN)
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Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Human Rights Act	1998	Incorporates the ECHR into British law, including article 3 “freedom from torture” and article 8 “respect for private and family life”. These sections can be used in Immigration cases to argue for the right to remain in the UK.	Link (EN)
2	Race Relations (Amendment) Act	2000	The Act amended the previous Race Relations Act of 1976, and introduced a duty for public authorities to promote race equality in their work.	Link (EN)
3	Anti-terrorism, Crime and Security Act	2001	Although predominantly relating to counter terrorism, the Act also impacted on other areas. It allowed the Home Secretary to detain any non-British citizen who was suspected to be a terrorist indefinitely. This power was later replaced by Control Orders in the Prevention of Terrorism Act 2005.	Link (EN)
4	Assisted Voluntary Returns Programme	2006	The Assisted Voluntary Returns Programme is a policy which was introduced in 2006 as a way of encouraging irregular migrants (including refused asylum seekers) to leave the country without the need for forced removal. The Programme assists with applying for travel documents, and in some cases applicants are eligible for a £3,000 resettlement grant.	Link (EN)

5	Modern Slavery Act	2015	The Act consolidated existing law on Human Trafficking, and created the post of Anti-Slavery Commissioner. The Act introduced the power for courts to seize assets of convicted traffickers and use them for victim compensation, and a new legal defense for trafficking victims who are compelled to commit crimes as part of their trafficking.	Link (EN)
6	Immigration and Social Security Co-ordination (EU Withdrawal) Act	2020	The Act ended freedom of movement to the UK for EEA nationals at the end of the Brexit Transition period.	Link (EN)
7	European Union (Withdrawal Agreement) Act	2020	The Act legislated for the provisions of the Brexit Withdrawal Agreement.	Link (EN)

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United States

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Regularisation**

The Obama and Biden administrations have launched different attempts to regularise unauthorised migrants¹, including President Obama’s Deferred Action for Childhood Arrivals (DACA) and Border Security, Economic Opportunity and Immigration Modernization Act and President Biden’s US Citizenship Act of 2021. Yet, attempts to regularise unauthorised immigrants have been largely unsuccessful for the past two decades. Administrations have struggled both with building sufficient political support and with legal challenges to their proposed policy changes.

- **Border security**

Since 9/11, the issue of border security has been front and centre on the political agenda of different political administrations. Especially the Trump administration focused on ramping up border control through investing in the US-Mexico border wall and deploying the US military at the border through Operation Faithful Patriot.

- **Deportations**

Over the past 15 years, there has been an increased focus on deporting unauthorised migrants across various administrations. While President Bush founded Immigration and Customs Enforcement (ICE), President Obama ramped up deportations to a record-high number under the Secure Communities deportation programme. This programme was likely launched to build bipartisan support for broader migration

¹ In the US context, the term “unauthorized migrants” is used to apply to those without legal status, as well as those with temporary statuses, including DACA and TPS holders, and those who benefit from executive discretion and relief from deportation.

policies but was unsuccessful in achieving this goal, after which Obama abandoned this programme in 2014. The policy of deportation has a significant impact on irregular migrant communities because it constructs a perpetual position of precarity over their future for those without legal residence status. President Trump reinstated the Secure Communities programme and started using Title 42 during the COVID-19 pandemic to expel arrivals at the USA border, without giving people the opportunity to apply for asylum, based on public health concerns. While President Biden reduced the emphasis on expulsion, for example by attempting to implement a 100-day suspension of deportations, and attempted to limit the scope of ICE's work, he left Title 42 in place until two years into his presidency.

1.2 OVERVIEW OF THE UNITED STATES' POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures and impact

- **DACA**

In 2012, the Obama administration issued an executive order that introduced the Deferred Action for Childhood Arrivals (DACA) policy. The DACA programme provided two years of deportation relief and work authorisation to eligible young unauthorised immigrants. To be eligible, one must be, amongst other requirements, at least 15 years old, have entered the United States before age 16, have continuously resided in the United States since June 15, 2007, and be enrolled in school. More than 800,000 people have benefitted from DACA (Soto & Gelatt, 2023).
- **Deportations**

President Obama's expansion of the Secure Communities programme facilitated the proactive removal of an unprecedented number of undocumented migrants by ICE based on their criminal records, resulting in a record-high number of deportations totalling over three million over the span of Obama's administration (Hing, 2018). This focus on deportation can be understood in the context of Obama's broader efforts to build bipartisan support for his immigration reform plans, such as DACA. Under President Biden, new priorities for deportation have been put in place, focusing on deporting those people who have committed serious criminal offences rather than those with minor offences. However recent research has shown these guidelines have not yet shifted ICE's approach.
- **Temporary Protection Status**

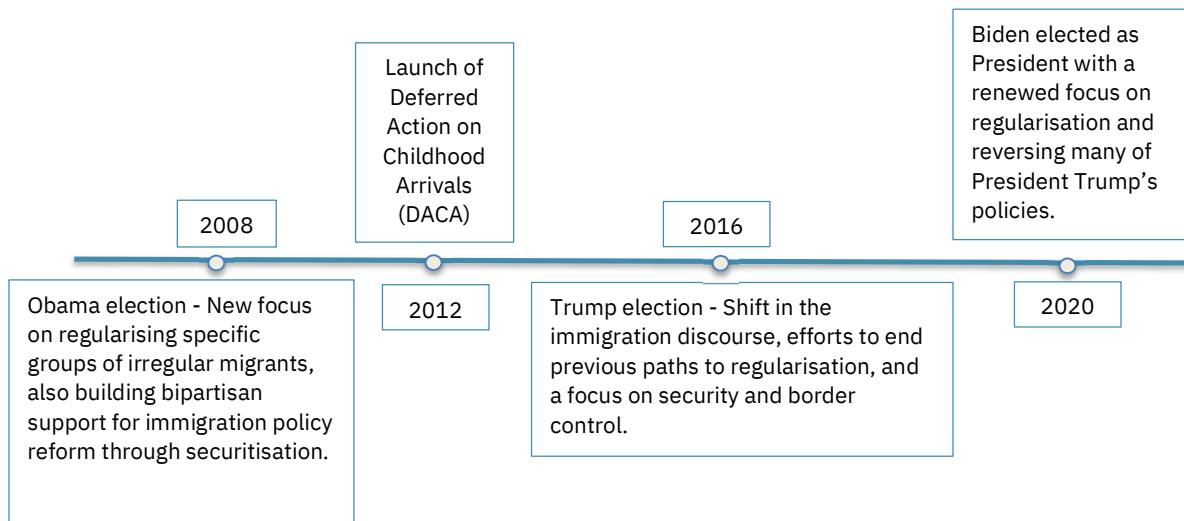
President Trump terminated Temporary Protection Status for nationals from 6 countries (97% of all beneficiaries of Temporary Protection Status at the time). President Biden, on the other hand, extended Temporary Protection Status to about

475,000 people from Venezuela, Afghanistan, Ukraine, and Myanmar already in in the US (Esterline & Batalova, 2022). TPS offers temporary legal protection and work authorisation to nationals of countries facing natural disasters, armed conflict, or other temporary and extraordinary circumstances, as designated by the Department of Homeland Security (DHS). Its purpose is to provide temporary protection to those subject to removal until the country of origin is again safe for repatriation.

- **Title 42**

During the COVID-19 pandemic, Title 42 has been used to impose broad restrictions on land entry for migrants on the basis of posing a health risk, including suspending asylum proceedings and expelling those who arrived at the US border without authorisation to enter. While in place, Title 42 has resulted in over 2.8 million expulsions at the US-Mexico border (Chishti & Bush-Joseph, 2023). It has effectively foreclosed the possibility of seeking asylum at the border for the great majority of Mexicans and nationals of Central American countries. It has also been used to deny entry to large numbers of Haitian border crossers (Gelatt & Chishti, 2022). Title 42 expired on May 11, 2023.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy Challenges in Addressing Migrant Irregularity

- **Migration is a highly politicised issue and administrations struggle to find political majorities to implement policy changes**

Migration is a highly political issue and Democrats and Republicans often fail to find

common ground, leaving the executive branch with few tools to pass policies related to irregular migration. Both Democrats and Republicans use the highly politicised issue of immigration to gain political attention. With rare exceptions, in recent years policies led by Democrats generally focus more on paths to legal status for undocumented migrants, while those led by Republicans have primarily focused rather on border security and deportation of undocumented migrants (Oliphant & Cerda, 2022).

- **Legal action prevents policies from being passed**

Many policies have been paused, ended, or reinstated due to legal intervention. Federal courts have hindered the implementation of policies aimed at regularising unauthorised migrants or granting them some form of relief, as was the case with the overturning of Obama's Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) initiative, a decision that was later upheld by the Supreme Court (Bolter et al., 2021, p.16). Furthermore, continuous court challenges have prevented the Biden administration from reviving and expanding the DACA program as they have prohibited the DHS from granting DACA requests and requests for employment authorisation made by new applicants (Esterline & Batalova, 2022, p.23).

- **Backlogs and capacity issues**

As of 1 November 2021, more than 4.1 million visa applications for permanent immigration (including green cards and visas for spouses and minor children) were on the waiting list of visa requests submitted to the State Department. The number of pending cases jumped from about 328,000 in fiscal year (FY) 2012 to around 656,000 in FY 2017 and then to 1,979,000 in April 2023 (Chishti et al., 2023, p.11). This backlog is driven by combined factors of particularly high demand for visa and asylum procedures that puts stress on the US's procedural structures and adds to pre-existing backlog, as well as lack of funding for sufficient staff and the fact that the existing database still awaits renovation and digitalisation from a still primarily paper-based system. US Citizenship and Immigration Services processing delays means that noncitizens who rely on regular renewals of their work authorisation—such as DACA holders, the spouses of certain visa holders, and asylum seekers—are at times precluded from lawfully working, affecting their livelihoods as well as their employers' operations.

- **Non-compliance of authorities**

Some stakeholders at times do not comply with official policies. For example, research found that ICE's enforcement activities were not in line with the Biden Administration's priorities for ICE to focus on deporting people who committed serious criminal offences, but not those with minor offences (American Immigration Council, 2023). At the same time, sanctuary cities, counties, or states, have a written (or unwritten) policy, that discourages local law enforcement from reporting the immigration status of individuals, unless it involves a serious crime. These communities do not honour requests by ICE to detain undocumented immigrants apprehended for misdemeanour crimes or investigations.

Table 1: Relevant American institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Congress	Enacts legislation, which needs to pass both the Senate and the House of Representatives, the two chambers of Congress. It sets the number of available green cards each year and seasonal work visas.	Link (EN)
2.	President	Every year, the president in consultation with Congress sets the annual refugee admissions ceiling and allocations by region of origin. The President can also issue a Deferred Enforced Departure directive granting relief to unauthorised immigrants of a certain nationality. This is a presidential directive that is not legislation and therefore does not require the approval of the Congress.	Link (EN)
3.	Department of Homeland Security	DHS is the primary agency that engages in immigration enforcement to prevent unlawful entry into the United States. It also engages in the apprehension and repatriation of non-citizen immigrants who have failed to comply with relevant immigration laws. It can exercise prosecutorial discretion not to remove unauthorised migrants, grant parole in place (which allows a noncitizen/foreign national in the US without authorisation to stay for a certain period of time) and temporary protection status.	Link (EN)
4.	US Customs and Border Protection (CBP)	Within the DHS, the CBP enforces immigration laws at borders/ports of entry.	Link (EN)
5.	US Immigration and Customs Enforcement (ICE)	Within the DHS, ICE is responsible for interior enforcement and detention/removal operations. It can grant deferred action, even after an order of removal. (While deferred action does not confer lawful status over an individual, it is a discretionary determination to defer	Link (EN)

		removal action of an individual as an act of prosecutorial discretion).	
6.	US Citizenship and Immigration Services (USCIS)	Within the DHS, the USCIS adjudicates petitions and applications for naturalisation and immigration benefits. It can grant deferred action and provide parole in place.	Link (EN)
7.	Immigration Judges	Can grant deferred action and close a court case, impeding the return of an unauthorised migrant.	Link (EN)
8.	US Supreme Court and Federal Courts	Article III of the US Constitution invests the judicial power of the United States in the federal court system. It creates the US Supreme Court and gives Congress the authority to create the lower federal courts. The US Supreme Court rules on the validity of immigration laws when challenged- especially when the United States is a party to the case and when there is an allegation of a violation of the United States Constitution or a federal law among other things.	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN THE UNITED STATES: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in the US

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Overstayers	Persons admitted on temporary visas who either stay beyond the expiration of their visas or otherwise violate their terms of admission. Visa overstayers are estimated to represent around 25% to 40% of unauthorised migrants. Penalties in the US include: Deportation from the US; Visa voidance; A three-year bar to re-enter the US if the person remained in the country unlawfully for

	<p>more than 180 days but less than one year; A ten-year bar to re-enter the US if the person remained in the country unlawfully for a period longer than one year; A permanent bar if the person re-enters or attempts to re-enter the US after having accumulated more than one year of unlawful presence (Unlawful presence may accrue during multiple visits to the United States).</p>
<p>Entries without inspection (irregular entry)</p>	<p>Persons entering the US territory without inspection (e.g. clandestine entrants) or with false documents.</p>
<p>Most relevant categories of migrants with a reasonable claim to a provisional status</p>	<p>Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)</p>
<p>Persons within the immigration backlog</p>	<p>E.g., persons having applied for asylum but waiting for it to be issued, or persons who are immediate relatives or fiancés of legal residents and waiting for their final papers.</p>
<p>Undocumented noncitizens holding employment authorisation documents (EADs)</p>	<p>For some persons with a pending decision or residence status, EADs can be issued. This includes both applicants for a permanent resident (e.g. green card) or temporary resident status.</p>
<p>Persons with Temporary Protected Status (TPS)</p>	<p>TPS offers temporary legal protection and work authorisation to nationals of countries facing natural disasters, armed conflict, or other temporary and extraordinary circumstances, as designated by DHS. Its purpose is to provide temporary protection to those subject to removal until the country of origin is again safe for repatriation. The statute does not define a time period that could be considered “temporary.”</p> <p>As of September 2020, ca. 320,000 people from ten countries had TPS. All had been in the United States for at least three years, though 80% (256,000) had TPS for at least ten years. TPS status currently applies to immigrants from El Salvador (until March 9 2025); Haiti (August 3 2024); Honduras (July 5 2025); Nepal (June 24 2024); Nicaragua (July 5, 2025); Sudan (April 19, 2025).</p>
<p>Deferred Enforced Departure (DED)</p>	<p>DED protects undocumented nationals from specific countries (currently Liberia and Hong Kong) from being returned. DED for Venezuelans (for which estimates range from 94,000 to 200,000) expired on July 20, 2022 but they are eligible to apply for TPS. The main difference between DED and TPS is who makes the decision to extend the benefit. DED is issued by the President while TPS is issued by the DHS. Both relief options are used in</p>

	crisis situations such as war, natural disaster, or widespread civil strife. It is typically issued through a directive by presidential order which states the conditions of the relief, including the possibility of applying for work authorisation.
Parole in place	Parole in place predominantly aims to prevent the separation of military families by allowing certain family members to remain in the United States, potentially to receive work authorisation, and may open a path to permanent residence. It can be granted to unauthorised migrants that are already on US territory and applies to spouses, children, and parents of specific members of the military and veterans. It is granted on a case-by-case basis.
Long-Term Residents with Discretionary Relief	In the U.S. context, DACA, TPS and DED recipients, as well as those who benefit from executive discretion and relief from deportation, are often included in estimates of the broader “unauthorised” population. 60% (6.6 million) of the estimated 11 million unauthorised immigrants in the US, including some with DACA and TPS, have resided in the country for ten years or longer, as stated above. Segments of this long-term population have been granted various forms of discretionary relief by DHS or by immigration judges, in the form of stays of removal or deferred action, for example. Discretionary relief protects unauthorised immigrants from deportation, and some forms allow eligibility for work authorisation. The protections are temporary and sometimes can be terminated with little or no prior notice. They do not offer a pathway to permanent residence.
Undocumented with a final removal order	If asylum applications are rejected following appeal, immigrants may be issued a final removal order. Of the 11 million undocumented noncitizens in the US, around 1.19 million are estimated to have a final removal order but remain in the country because of official executive discretion or because they abscond.

1.3.1 Pathways into and out of irregularity

- **Overstaying visas**

One of the most common ways migrants enter into irregularity in the US is by overstaying their visas. This can be for different reasons, e.g., once a worker’s visa has expired, it can typically be renewed only from outside the US. Yet with long wait times at embassies and consular offices, workers either postpone their return or spend long wait times in their home country before they can travel back to the US.

- **Entering without inspection**

As many as two-thirds of unauthorised immigrants enter the country by crossing the US-Mexico border.

- **Green Card**

A sizeable group of undocumented immigrants in the US are believed to be eligible for status adjustment through either family or employer sponsorship or other provisions. For example, undocumented migrants may be able to adjust their status and obtain green cards by marrying a US citizen or by showing they are immediate relatives of a US citizen. In addition, well-educated undocumented migrants may be eligible for green card sponsorship through their employers. However – and as for other green card options – application from the country of origin may be necessary.

- **Administrative action**

In the United States, the executive can grant legal protection and other forms of relief to unauthorised migrants. This includes grants of deferred action (like the DACA programme that provided temporary relief from deportation to eligible young unauthorised immigrants) but also parole in place and Temporary Protection Status, for which fourteen countries are currently designated.

1.3.2 Regularisation

Since 2010, lawmakers in the US have put forward multiple bills proposing pathways to a green card resembling amnesty, yet none has been able to move forward. Certain existing laws may permit similar outcomes in specific circumstances, but a comprehensive and widespread amnesty has not been enacted (see DACA for instance which provides temporary relief from deportation and work authorisation).

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Immigration Reform and Control Act	1986	Introduced civil and criminal penalties to employers who knowingly hired undocumented immigrants or individuals unauthorized to work in the U.S; Also offered legalization, which led to lawful permanent residence (LPR) and prospective naturalization to undocumented migrants, who entered the country prior to 1982.	Link (EN)
2	Temporary Protection Status (TPS)	1990	<p>Under In 2020, the Trump’s Presidency, TPS for nationals of six Sudan, Nicaragua, Haiti and El Salvador countries thatwho represented up toapproximately 97% of the total beneficiaries at the time was terminated, on the grounds that they could now safely return to their countries of origin.</p> <p>Under Biden’s Presidency temporary protections was extended to just under 475,000 Venezuelans, Afghans, Ukrainians, and Burmese already in the United States.The Trump administration set the ceiling of refugee admission at the lowest since the resettlement program was formally created in 1980. In 2020, a Regulation entered into force which extended the period for asylum applicants to get a work permit while their applications are still pending from 6 months to 1 year.</p>	n/a

3	Illegal Immigration Reform and Immigrant Responsibility Act	1996	Adding penalties for undocumented immigrants who commit crimes while in the United States or who stay in the U.S. for statutorily defined periods of time- allowed stipulated removals.	Link (EN)
4	Help Haiti Act	2010	The law made it possible for certain Haitian orphans paroled into the United States to become lawful permanent residents (LPR) of the United States and get green cards.	Link (EN)
5	Deferred Action for Childhood Arrivals (DACA) program	2012	<p>Provided two years of deportation relief and work authorization to eligible young unauthorized immigrants.</p> <p>To be eligible, one must be at least 15 years old, have entered the United States before age 16, have continuously resided in the United States since June 15, 2007, be enrolled in school, have earned a high school diploma or its equivalent, or be an honourably discharged veteran and have not been convicted of a felony, a significant misdemeanour, or three or more misdemeanours; or otherwise pose a threat to public safety or national security.</p>	Link (EN)

6	Executive Order 13769 and 13780	2017	<p>Revoked Executive Order 13769 and replaced it.</p> <p>The actions directed by Executive Order 13780 have—among other things—raised the baseline for the vetting and screening of foreign nationals, with an intent to improve the US government’s ability to prevent the entry of malicious actors. The Order in effect imposed a temporary pause on entry of nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen subject to categorical exceptions and case by case waivers and does not apply to persons falling under the exceptions category such as lawful permanent US Residents, and diplomats.</p> <p>Issuance of visa to Iraqi nationals was subject to additional scrutiny to determine if applicants had connections with terrorist organizations.</p>	n/a
7	Farm Workforce Modernization Act	2019	<p>Provides reforms to the H-2A agricultural guestworker program and creates a first-of-its-kind, merit-based visa program specifically designed for the agricultural sector;</p> <p>Allows many undocumented farmworkers, as well as their spouses and minor children, to apply for Certified Agricultural Worker (CAW) status during an 18-month application period.</p>	Link (EN)
8	Liberian Refugee Immigration Fairness Act	2020	<p>Provides an opportunity for certain Liberian nationals and their spouses, unmarried children under 21 years old, and unmarried sons and daughters 21 years old or older living in the United States who meet the eligibility requirements to obtain lawful</p>	Link (EN)

			permanent resident status (receive Green Cards).	
9	Title 42	2020	Was put in place to regulate border crossings under the premise of increased COVID-19 precautions. Title 42 ended on May 11 at 11:59 p.m., upon which time the pre-COVID Title 8 immigration procedures resumed.	Link (EN)
10	Guidelines for the Enforcement of Civil Immigration Law	2021	Restricted ICE agents from seeking out deportations on the basis of lesser offenses, such as drug possession or charges without convictions, and instead focus on individuals with a history of more serious criminal convictions such as murder, rape, and child abuse or who pose a threat to national security. Those who committed felonies more than 10 years ago or with “loose” gang affiliations can also no longer be deported. The new guidelines also require the permission of the ICE director for arrests of suspects outside of jails and prisons.	n/a
11	Public Charge Rule	2022	The Biden administration rescinded a Trump-era rule from 2019 that prevented noncitizens who accessed certain public benefits from becoming lawful permanent residents, a change that the Supreme Court has allowed to stand.	Link (EN)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	1983	The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping.	Link (EN)

2	Affordable Care Act (ACA)	2014	Affordable Health Insurance available to more people. It improved health insurance coverage rates for both the U.S. born and immigrants.	Link (EN)
3	Asylum Application, Interview, and Employment Authorization for Applicants Implementation of Vacatur	2022	Applicants for asylum need not wait 365 calendar days to apply for employment authorization, and can submit applications for employment authorization 150 days after filing their asylum application.	Link (EN)

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