

# Final Report

## **Feasibility Study on the Labour Market Trajectories of Regularised Immigrants within the European Union (REGANE I)**

**February 2014**



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The views expressed in this study are those of the authors and do not necessarily reflect the point of view of the European Commission or ICMPD as an intergovernmental organisation.

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# Executive Summary

This report presents the results of a feasibility study on employment trajectories of regularised third country nationals in the European Union (EU). The aims of the feasibility study were twofold: (1) to study the feasibility of implementing a comparative quantitative survey of regularised third country nationals in seven EU countries (Germany, France, Italy, the Netherlands, Poland, Spain and Sweden), based on a review of relevant literature, expert interviews and a qualitative pilot study of regularised migrants, and (2) to examine the basic features and dynamics of post-regularisation labour market trajectories based on the primary and secondary data collected in the course of the feasibility study. The pilot study involved altogether 100 qualitative interviews with both regularised and non-regularised third country nationals in an irregular situation, the latter serving as a comparison group. In addition, expert interviews with over 40 policy experts, civil society representatives and academics were conducted in the various countries.

## *Regularisation as a policy tool*

The study shows that regularisation remains an important policy tool in responding to the prolonged presence of migrants in an irregular situation, though approaches to regularisation vary greatly across countries. In the EU as whole, at least 3.5 million persons were regularised through regularisation programmes in the past two decades. Another several hundred thousand third country nationals obtained a legal status through permanent regularisation mechanisms, available in one form or another in most EU Member States. For the purpose of this study, we define the target population of regularisations in line with the definition of illegal residence according to Article 3 (1) of the Return Directive (2008/115/EC). Thus, the Directive defines “illegal stay” as the *presence on the territory of a Member State of a third-country national who does not fulfil, or no longer fulfils, the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State*. As we are only interested in residents in an irregular situation that may be eligible for a regularisation scheme, we exclude residents from the study who have a regular residence status, but do not comply with the conditions of their legal residence. Accordingly, regularisation is defined as a state procedure that confers legal residence status upon third country nationals who are without any legal status or otherwise lacking the right to remain. Not included in the scope of this study are status transitions from irregular to regular status on the basis of a legal entitlement to residence, for example, on grounds of international protection as a result of an “automatic” status transition of residence and

movement rights of individuals following their country's accession to the EU, or as result of marriage with a regularly residing third country national or citizen, which sometimes creates an entitlement to residence. That said, the boundaries between regularisation and other forms of status adjustment are fluid, reflecting the fact that "regularised migrant" essentially is a political category, as is the category "irregular migrant". Unsurprisingly, both categories are primarily shaped by evolving legal frameworks and changes in legislation, thus also shifting the boundaries of irregularity and regularity.

### *Conditions for and rationales of regularisation*

The criteria for regularisation differ considerably across countries and also within countries between different programmes and mechanisms. Some form of minimum residence requirement is common to all programmes and mechanisms reviewed. In addition, employment or more general "integration" requirements, as well as humanitarian considerations, are often invoked as conditions for regularisation. In many cases, the eligibility for particular regularisation schemes is further specified. As a consequence, regularisation schemes rarely target a broad cross-section of residents with an irregular status, but rather particular subpopulations.

There is a clear divide between countries implementing regularisation as a means to address spontaneous labour migration and informal employment of immigrants (amongst our countries under study, Italy and Spain) and countries regularising on humanitarian grounds (Germany, the Netherlands and Sweden). In France, humanitarian considerations also play an important role; however, contrary to Germany, the Netherlands and Sweden, beneficiaries are more rarely connected to the asylum system (e.g. rejected asylum seekers, long-term asylum seekers). In addition, France has a history of employment-related regularisations, and recently employment considerations have again gained importance. Poland is specific in that its regularisation programmes, and particularly the most recent regularisation scheme of 2013, have aimed at addressing irregular residence as such, without additional humanitarian, integration or labour market requirements involved. Formalising the presence of migrants without regular status thus was the main rationale for regularisation which in turn can be largely ascribed to adjustments to legal requirements induced by EU accession. It remains to be seen how the framework in Poland will further evolve. Addressing irregular migration as such has also been a major objective of regularisations in Italy and Spain in the past, although it has been increasingly absent in regularisations since the turn of the millennium. Similar considerations are largely absent in France, Germany, the Netherlands and Sweden.

### *The impact of regularisation on regularised migrants*

The results of the qualitative pilot study allow insights into the complex relationship of regularisation and employment. Opportunities to escape the informal labour market or, more generally, to improve one's labour market status through regularisation are mediated by a variety of factors, including the recognition of qualifications obtained abroad, access to (vocational) training, the length of residence (until regularisation), gender, the welfare system, the labour market structure (e.g. prevalence of informal labour, in general, and related opportunities to work formally) and, finally, the migration regime. Moreover, the impact of regularisation was assessed along several dimensions introduced by the participants, which by far exceeded issues of employment. The diversity of aspects raises issues of complexity regarding the actual impact of regularisation on trajectories. As the interviews under study suggest, the impact of a status change is not limited to a single component, but rather multiple interconnected elements.

Employment was often a precondition for obtaining legal status, and therefore excluded persons without employment from obtaining legal status. If employment was not a requirement for regularisation, persons without proper employment (no employment or informal employment) could sometimes improve their employment status through regularisation. Despite having regular status, there were also participants who remained in informal work arrangements after regularisation, or who could only improve their status partially. For instance, they found themselves in hybrid forms of employment combining a formal (limited) contract with a sometimes substantial share of undeclared hours. Conversely, several employed persons could improve their labour market status after being granted regular residence status.

The results of the pilot study suggest that the ability to find regular employment is influenced by migrants' qualifications as well as the ability to have their qualifications recognised. In cases where regularisation did not directly impact on the employment opportunities of regularised migrants, it still opened possibilities for re-skilling and further training. This was reported by several respondents in our sample, notably if regularisation also gave access to some form of welfare support or subsidised labour market training schemes. However, the labour markets under study rely to a large extent on formal qualification. Thus, even though many participants were highly educated, some additional training was required, due to a lack of recognition of qualifications acquired abroad. Participants who did not receive any support thought these measures to be hardly accessible to them. Many respondents felt that regularisation improved the choice of occupational sectors available and argued it had



facilitated the change of employment, and sometimes even of profession. However, in some instances, where migrants were regularised and held work permits limiting access to specific occupations, it seemed that occupational mobility was hampered in the longer run. Even more so, migrants without regular status found the range of occupations available to be severely limited. It was further deemed nearly impossible to work in a profession in accordance with skills acquired prior to migration. Thus, all but one respondent in our sample were not working in the profession initially trained for while residing without regular status. Opportunities for occupational mobility (e.g. change of employer and change of occupation type) were perceived as fairly limited, amongst others, because of the risk of financial distress and lack of access to benefits in case of unemployment.

Amongst our respondents, the impact of regularisations on working conditions and the quality of work was mixed. Some participants had ambivalent, and sometimes even negative, assessments of the evolution of the quality of work since regularisation. However, the findings suggest improvement with regard to very basic aspects such as paid leave, determined working hours, access to full-time jobs and for some respondents, an overall sense of more self-determination in regard to work and work-related issues. Finally, it seems that the possibility to claim basic labour-related rights cannot be taken for granted by migrants in an irregular situation. The specific intersection of informal work and the lack of regular residence status appears to particularly enhance their vulnerability.

An important finding of the pilot study concerns the positive impact of regularisation on well-being and its instrumental value for enjoying a range of other rights, such as access to education, welfare services and social insurance or family reunification, some of which are linked to access to formal employment through regularisation.

While the pilot study sheds light on different possible impacts of regularisation, the qualitative data does not allow conclusions on the extent to which the experiences described by respondents were typical. There is thus a clear need for more information on the various impacts of regularisation schemes. Questions to be addressed include how the different regularisation programmes and mechanisms succeeded in terms of the sustainability of the regularisation, that is, to what extent regularised third country nationals were able to maintain their legal status after regularisation. More research is also needed in regard to the potential of regularisations to improve the employment situation as well as their wider societal impact. The qualitative evidence collected strongly suggests that the design of regularisation schemes (eligibility criteria, conditions, type of residence permits granted, etc.) has an important role in maximising or, by contrast, minimising the potential of regularisation to

improve the employment situation of regularised migrants. More systematic evidence on the impact of regularisations is thus a crucial pre-condition for evaluating the actual impact of regularisation schemes. While the qualitative evidence collected by this small-scale study highlights a number of issues, more systematic and robust evidence on the employment effects of regularisation can only be obtained through a quantitative survey of regularised third country nationals. Such a survey would also allow a more solid insight into the experiences of migrants while in an irregular situation and the role of the informal labour market.

### *Feasibility of a survey of regularised and non-regularised migrants*

Conducting a survey of regularised and non-regularised migrants is methodologically challenging. Only in the Southern EU Member States covered by the study, namely Italy and Spain, did regularised migrants represent a more significant share of the legally resident population of third country nationals and are as such sometimes covered – even if only in rather crude terms – by general surveys of the immigrant population. In other countries such as Germany, the Netherlands or Sweden, their share, by contrast, is so small that regularised migrants would not be sufficiently captured through traditional sampling methods (e.g. based on a sample of all third country nationals, or immigrants more generally). The study finds that in order to carry out a more detailed analysis of trajectories of regularised immigrants at reasonable costs, alternative sampling methods need to be considered. Methods reviewed include sampling on the basis of a list of the target population, location sampling, respondent-driven sampling and a combination of quota and chain referral sampling. The study proposes a mixed sampling methodology, using the most adequate and most feasible sampling method in a given country. To this end, available sampling methods were ranked according to certain quality and feasibility criteria. As the study argues, such a mixed sampling method approach does not at all diminish the comparative potential of the survey.

### *Conclusion*

As a response to the presence of irregular migration, regularisation remains an important policy tool in the EU. The gap between return decisions issued and actually effected returns is one important reason why regularisation remains on the agenda. However, humanitarian, labour market-related and other policy considerations also play an important role in their own right. In general, regularisation is a multifaceted policy tool and usually linked to a variety of policy goals. This study has sought to shed light on the impact of regularisations on labour

market trajectories of regularised migrants. Its results indicate a broad range of potential impacts of regularisations on beneficiaries, which to some extent go beyond labour market issues, while also pointing out the interlinkages between these other impacts (for example on well-being or welfare) and their role for the labour market performance of individuals. Yet the study also highlights the limitations of the potential, and sometimes ambivalent, outcomes of regularisations, which have to be adequately contextualised. Important questions thus have to remain open that a future study should address: Can we discern any causal patterns? In what ways do regularisation policies impact on trajectories of immigrants? What factors make regularisation a “positive” and successful experience? Conversely, what factors contribute to ambivalent or negative outcomes? How typical are certain experiences? Such questions can only be addressed through a quantitative survey. In addition to providing information on the impact of regularisation, such a study also can be expected to provide a deeper – and comparative – insight into irregular migration and the situation of migrants in an irregular situation in the EU. Given the close linkage in Northern European countries to asylum, such a study is also likely to provide important lessons for asylum policies, notably in terms of reception policies, regulations on access to work and their impact.

Thus, the actual implementation of a quantitative survey on the impact of regularisations on third country nationals represents an attractive instrument to better inform choices for future policies.

# 1. Introduction

Irregular migration has been a major focus of European Union policymaking in the field of migration and asylum ever since the entry into force of the Amsterdam Treaty and the related Tampere conclusions. Arguably, irregular migration, and in particular mixed flows of bona fide refugees and migrants not eligible for international protection, was a major factor why Member States agreed to embark on efforts in harmonising policies on migration and asylum. Indeed, several instruments now incorporated into EU law, such as the Dublin system or notions such as “safe third country”, have been defined well before the Union formally acquired a competence on migration and asylum (Kraler/Rogoz 2011).

Return has always been the preferred policy response to the presence of migrants in an irregular situation. However, for various reasons, including practical and legal obstacles, return is not always possible. Indeed, there is a major enforcement gap, with the ratio of effected/confirmed returns to the number of return decisions averaging around 59 percent in the period 2008–2012.<sup>1</sup> In this context, regularisation has often been an alternative policy option adopted by individual Member States, especially from the late 1990s onwards.

As the *Communication from the Commission on Policy Priorities in the Fight against Illegal Immigration of Third-Country Nationals* of 2006 states, it was the inherent “difficulties in tolerating the sustained presence of significant numbers of third country illegal immigrants [sic]” that led individual Member States to carry out regularisations (COM (2006) 402 final, p.7). These “difficulties” are complex. They relate to the lack of access to fundamental rights often associated with an irregular status, including severe violations of fundamental rights such as labour exploitation (FRA 2011); they include poverty and, more generally, social exclusion resulting from the exclusion from formal employment opportunities and the partly associated exclusion from welfare entitlements; and, they relate, on a macro-level, to distortions in the labour market created by widespread informal employment, which, while not specific to migrants in an irregular situation, is in practice the principal form of employment migrants in an irregular situation can access. In addition to simply regularising an irregular situation and acknowledging the impossibility or undesirability of return, regularisation measures have hence often been justified in addressing some of the detrimental social and economic consequences of an irregular residence status.

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<sup>1</sup> Own calculations based on Enforcement of Immigration Legislation (EIL) statistics, available in the Eurostat database. The average represents the unweighted average, i.e. the arithmetic means of individual countries’ return ratios. The overall ratio between ordered and effected returns averaged around 40 per cent.

However, very little is known about the wider impacts of regularisation and specifically the impact of regularisation on those regularised. There is less than a handful of studies that have investigated such impacts in the European context, and somewhat more, but still fairly limited, research on the US.

An earlier study conducted by ICMPD between 2007 and 2009 (Baldwin-Edwards & Kraler 2009) on behalf of DG Justice, Freedom and Security (now DG Home) identified the overall extent of regularisation, the different forms, rationales and target groups of regularisation, while linking regularisation to the complex causes of irregularity, differing patterns of irregular migration and diverse policy responses to irregular migration across the EU. However, as a study largely based on desk research and limited primary data collection from public authorities and other stakeholders, the study was unable to provide robust evidence regarding the wider impacts of regularisation. In particular, it failed to provide robust and conclusive evidence on the impact of regularisation on labour market trajectories of regularised migrants. However, such evidence is crucial in order to shed light on the potential costs and benefits of regularisation and in order to understand how benefits can be maximised and costs minimised.

The REGANE study sets out to address this gap, by analysing the impact of regularisation on the labour market trajectories of third country nationals in the EU and by assessing the feasibility of a quantitative survey of labour market experiences of regularised immigrants. This report presents the findings of the feasibility study. The study had the following objectives:

- 1) to provide an overview of recent policy developments regarding the regularisation of third country nationals in seven EU countries (Germany, France, Italy, the Netherlands, Poland, Spain and Sweden)
- 2) to map existing studies analysing the impact of regularisation on the labour market performance of third country nationals
- 3) to provide preliminary results from semi-structured interviews carried out with regularised and non-regularised third country nationals in the seven countries
- 4) and to determine the feasibility of conducting a comparative survey on the labour market performance of regularised immigrants in the seven EU countries.

## 1.1. Methodology

The study applied a mixed methodology adapted to the basic research objectives outlined above, combining methods of comparative legal, political and social analysis with qualitative social research.

A wide range of sources of information was used to compile this study, including both available secondary materials and primary materials collected specifically for this project. In particular, the study was based on the following:

- studies on the impact of regularisation on labour market trajectories of regularised migrants
- available secondary statistical data, including both more general data and data specifically on regularisations
- studies and other sources of information on regularisation policies in the seven countries covered by this study
- expert interviews with over 40 policy experts, academics and civil society representatives in the countries covered
- 100 qualitative interviews with both regularised and non-regularised migrants.<sup>2</sup>

In addition, we also consulted relevant theoretical and methodological literature. In particular for developing our proposal for a quantitative survey of regularised and non-regularised migrants, we specifically reviewed a number of relevant survey instruments and related methodological documentation (sampling design, questionnaires, etc.).

In terms of its design, the study combines national case studies with a comparative approach. Based on the respective country-specific material, separate country studies were carried out for the seven countries covered. In addition to that, the final report adopts a comparative approach, addressing the different national policy frameworks, the experiences of our interview partners with regularisation and life in an irregular situation, and, finally, a proposal for methodological approaches for a comparative quantitative survey of regularised and non-regularised migrants.

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<sup>2</sup> A detailed description of the methodology for the qualitative research with regularised and non-regularised migrants can be found in the introduction to chapter 4.

## 1.2. Coverage

The countries covered include France, Germany, Italy, Spain, Sweden, the Netherlands and Poland. In France, Germany, Italy, Spain and Sweden two major cities were covered, while in Poland one major city was covered and in the Netherlands a conurbation (comprised of Amsterdam, Leiden, Den Haag, Rotterdam and Utrecht). Two cities were covered to reflect the size of and regional variations of the countries (See figure 1, below).

Figure 1: Geographical scope of the REGANE study



We chose these seven countries to ensure a certain geographical variation, but also to have a variation in terms of regularisation policies, including their rationale, scope, form and target groups, thus following a “varied or heterogeneous case study” logic according to Roche (1999: 193). The choice of major cities as interview locations was guided by both pragmatic and principled considerations. In principled terms, it is well known that migrants generally tend to concentrate in urban areas, and amongst these, in major conurbations. This is no different in the case of migrants in an irregular situation. In their case, larger cities also offer peculiar advantages over smaller towns or rural areas, including access to ethnic networks, support structures and welfare services not available in smaller areas, and a greater degree of anonymity. As a result, it is plausible to assume that focusing on major cities will result in a reasonable cross-section of the migrant population in an irregular situation in particular

countries. From a pragmatic standpoint, we had to restrict the number of research locations because of cost and time constraints. In addition, we assumed that gaining access to respondents would be considerably easier in larger cities with established support structures, community centres, etc. through which respondents could be recruited.

Largely for reasons of cost and time constraints, we explicitly excluded the option of recruiting interviewees in rural areas, which would have been relevant, particularly in Italy and Spain. Particularly in the Southern parts of the two countries, there is significant involvement of migrants in an irregular situation in the agricultural sector and migrants in an irregular situation employed in agriculture have also benefited from past regularisation programmes.

### **1.3. Concepts, terms and definitions**

#### *Irregular migration and regularisation*

For the definition of regularisation, we draw on the earlier REGINE study (Baldwin-Edwards & Kraler 2009). According to that study, regularisation can be defined “as any state procedure by which third country nationals who are illegally residing, or who are otherwise in breach of national immigration rules, in their current country of residence are granted a legal status.” (Baldwin-Edwards & Kraler 2009: 9).

For the purpose of this study, we define the target population of regularisations in line with the definition of “illegal residence” according to Article 3 (1) of the Return Directive (2008/115/EC). Thus, the Directive defines “illegal stay” as the *presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State*. As we are only interested in residents in an irregular situation that may be eligible for a regularisation scheme, we exclude residents from the study who hold legal residence status, but do not comply with the conditions of their legal residence.

Moreover, we distinguish between two types of regularisation schemes: (1) time-limited measures, which we will refer to as regularisation programmes and (2) permanent mechanisms. According to the REGINE study, “a *regularisation programme* is a specific regularisation procedure which (1) does not form part of the regular migration policy framework, (2) runs for a limited period of time and (3) targets specific categories of non-



nationals in an irregular situation.” (Baldwin-Edwards & Kraler 2009: 11). By contrast, a *regularisation mechanism* “is defined as any procedure other than a specific regularisation programme by which the state can grant legal status to irregularly present third country nationals residing on its territory. In contrast to regularisation programmes, mechanisms typically involve “earned” legalisation (...) or humanitarian considerations (...) and are likely to be longer-term policies” (ibid.). The REGANE study covers both forms of regularisations. In terms of the temporal scope of the study, we cover all regularisations that took place since about 2000 in the respective countries under study.

Not included in our concept of regularisation are status transitions from irregular to regular status on the basis of a legal entitlement to residence, for example, on grounds of claims for international protection as a result of an automatic “status transition” of citizens from recently accessed EU Member States following their country’s accession to the EU in the 2004, 2007 and 2013 enlargements, or as a result of marriage with a legal resident or citizen, which sometimes confers an entitlement to residence, notably in case of marriage with an EU citizen enjoying freedom of movement rights. This said, the boundaries between regularisation and other forms of status adjustment are inherently blurred and have considerably evolved in the past 20 years or so, reflecting the fact that regularisation essentially is a political rather than an analytical category, as is the category “irregular migrant” (Kraler 2011: 310). As Bakewell (2008: 432f) argues, these policy categories should not be conflated with analytical categories. This does not imply that these categories cannot be exploited fruitfully in an analytical way – after all, policy categories become effective in public administration and law and strongly affect individuals’ lives. They thus “mark (...) out people in multiple ways and [therefore] may also have explanatory power” (ibid.).

Unsurprisingly then, the meaning of both irregularity and regularisation reflects the evolving legal frameworks governing both irregularity and regularity and the shifting boundaries of the two. The increasing salience of humanitarian reasons for granting regularisation is one such major shift in the meaning of regularisation. When humanitarian reasons became more important in the 1990s, one stream of humanitarian regularisations remained closely tied to the asylum system, allowing the regularisation of individuals in need of international protection who are not eligible for full Geneva refugee status. With the Qualification Directive (Directive 2004/83/EC), since re-issued as a recast directive (Directive 2011/95/EC), such grants of legal status were formalised under the notion of subsidiary protection, and are in general no longer viewed as regularisation. However, there are still significant numbers of cases where legal obstacles to removal exist and subsidiary protection is not granted, mostly because an individual threat cannot be shown. In these cases regularisation (usually called

“humanitarian stay” or by a comparable term). A second important stream of humanitarian regularisations relates to family issues and the right to protection of family and private life according to Article 8 of the European Convention of Human Rights (see Kraler 2011). The latter is often framed in more general terms under the overarching notion of “integration” as a potential source of legality, encompassing criteria as diverse as ties to legal residents or citizens, ties to the country of origin, length of residence, language knowledge, presence of children and employment. A defining trait of all humanitarian regularisation is that they construct beneficiaries of regularisation as vulnerable – in contrast to employment-based regularisations, where deservingness for regularisation primarily relates to the employment and employability of migrants benefitting from regularisation. This said, employment criteria have also become more important in humanitarian regularisations, which sits uneasily with their humanitarian logic (Chauvin, Garcés-Mascreñas & Kraler 2013). Importantly, as Chauvin and Garcés-Mascreñas (2012: 253) argue, regularity and irregularity are not static conditions, but rather a “dynamic space in which migrant civic deservingness is being assessed and accumulated and in which the possession of traces of durable formal, bureaucratic, and economic integration has become a key asset (...) yet never guaranteeing access to lesser illegality in any univocal way.”

### *Informal employment*

Informal employment is an important phenomenon relevant to this study. However, informal employment is by no means limited to migrants in an irregular situation. In fact, the available evidence suggests that it is citizens and legal residents who are quantitatively the most significant sections of the populations engaged wholly or partly in informal work. Yet in practice, informal employment is almost by definition the only form of work which migrants in an irregular situation can easily access. This has not always been the case and in some contexts (notably the US) migrants in an irregular situation are still often formally employed<sup>3</sup> and pay taxes and social security contributions. Nonetheless, the stringent policing of access to formal employment and related benefits in Europe means that formal employment is available – and here only to a very limited extent – to migrants known to authorities, but not to most other categories of migrants in an irregular situation. In the context of this study, some form of involvement in informal employment will thus have been a standard experience for a significant proportion of potential beneficiaries of regularisation schemes. Only in the Northern European context (Germany, the Netherlands and Sweden in our case study

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<sup>3</sup> Albeit not necessarily under their official identity – whether formal employment under migrants’ official identity is an option depends very much, among other things, on what kind of identity documents are required to formally enroll in social security schemes and whether such means of identification are accessible to migrants in an irregular situation.

countries) the experience may have been more mixed, as some non-removed migrants – the main target group of regularisation in these countries – may have had formal access to employment, while welfare support and sanctions against illicit employment have been explicitly used to reduce the incentives for this category of migrants in an irregular situation to take up work altogether.

Like irregular migration, informal employment is a residual category and is defined by its opposite, namely what constitutes formal employment (see on irregular migration in Kraler 2011: 308). Williams and Windebank (1998: 4) define informal employment as “the paid production and sale of goods and services that are unregistered by, or hidden from, the state for tax, social security and/or labour law purposes, but which are legal in all other respects.” It is open to debate whether the qualification in the last part of this definition is warranted, not least since also the boundaries of what constitutes an illicit and, in principle, legal activity are not straightforward. Nevertheless, the definition captures the main elements of informal employment which may apply even if illicit activities were included. Conceptually, Williams and Windebank distinguish three types of activity that make up informal employment: (1) evasion of direct and indirect taxes, (2) social security fraud where officially unemployed are working whilst claiming benefits and (3) avoidance of labour legislation such as social security regulations, minimum wage agreements or other employment standards (ibid.). Informal employment comes in many different forms and it is often deeply intertwined and embedded in the formal economy. It is thus erroneous to think of informal work as a separate economic sphere – as the term “informal sector” suggests. More often informal arrangements complement or are otherwise interlinked with formal activities, for example, when formally employed workers are contracted for a nominal number of hours but work many undeclared hours in excess.

A useful conceptual framework in this regard has been developed by the ILO (2003). It differentiates between production units and jobs by status of employment (see figure 2, below). The cells shaded in dark grey refer to jobs that do not exist in the type of production unit. Cells shaded in light grey refer to formal jobs, leaving the white cells referring to various informal jobs. Consequently, we can differentiate between informal employment in the formal economy by contributing family workers or employees (cells 1 and 2). Informal employment can take place in informal sector enterprises by workers working on their own-account (termed “own-account workers” in the typology in figure 2, below, that is self-employed without employees), employers, contributing family workers and employees, as well as members of producer cooperatives (cells 3 to 6 and 8). Finally, own-account workers and employees can also work informally in households (cells 9 and 10).

Figure 2: Conceptual Framework of Informal Employment (ILO 2003)

Production units by type	Jobs by status in employment								
	Own-account workers		Employers		Contributing family workers	Employees		Members of producers' cooperatives	
	Informal	Formal	Informal	Formal	Informal	Informal	Formal	Informal	Formal
Formal sector enterprises					1	2			
Informal sector enterprises <sup>(a)</sup>	3		4		5	6	7	8	
Households <sup>(b)</sup>	9					10			

(a) As defined by the Fifteenth International Conference of Labour Statisticians (excluding households employing paid domestic workers)

(b) Households producing goods exclusively for their own final use and households employing paid domestic workers

In regard to foreign citizens, the situation is even more complex, since formal access to the labour market, that is, whether a person has the right to be gainfully employed, comes into play as an additional line of differentiation. In this study, we mainly differentiate between whether or not social security contributions and taxes are paid and whether or not the persons have access to the labour market, which is sometimes restricted for third country nationals. An important measure for informal employment is simply working without having a work contract.

### *Labour market performance*

The involvement in informal vs. formal employment in itself is already an important indicator of individuals' labour market performance, with involvement in informal employment, amongst other factors, strongly associated with poverty. It is also important as an indicator in its own right, in terms of the formal quality of employment and access to relevant rights that formal employment brings. As explained above, the indicators informal/formal employment are particularly important for our target group, as the potential to access the formal labour market is one of the main benefits one can expect regularisation to yield.

In terms of other indicators of labour market performance, the study uses established employment measures, notably employment participation, the (mis)match of qualification and

occupation; and a number of measures concerning the quality of work, including employment satisfaction, wages and working hours. When we speak of labour market performance, we thus refer to this set of indicators.

#### **1.4. Structure of the report**

Chapter 2 begins with an overview of important background information on migration and employment in Europe as well as existing studies on the impact of regularisation on labour market trajectories of immigrants, in order to raise important questions for an analytical framework. Chapter 3 provides an analysis of regularisation policies in the seven countries under study since about 2000. Chapter 4 provides results from 100 semi-structured, qualitative interviews conducted in the seven countries with regularised third country nationals and 'never-regularised' third country nationals without residence status. The interview analysis explores the impact of regularisation on labour market integration and the quality of work as well as other areas of life influenced by the legal status of third country nationals. Chapter 5 provides the concluding remarks for the study. The main elements of the study's proposal for a quantitative survey of regularised immigrants are summarised in the annex to this study.

## 2. Background: data, studies, questions

### 2.1. The context: Key indicators

The first part of this chapter aims at setting the stage for the further analysis to be undertaken in this report. In so doing, this chapter will, as a rule, cover the EU as a whole, while more specific country level data will be presented in the subsequent chapter. The chapter proceeds as follows: We first present estimates on the size of the resident population in an irregular situation – the target group of regularisations- and then move on to present data on the scope of regularisations in the EU in the past 20 years or so. As regularised migrants form part of the legally resident population with a citizenship of a third country, we subsequently describe the overall size of that population and its composition in terms of main reasons for migration. Finally, we describe key labour market characteristics of the third country national population.

#### *The target group of regularisations: migrants in an irregular situation*

For obvious reasons, the size of the population without a proper residence status is difficult to estimate. The overall number of third country nationals without residence status was estimated to lie between 1.9 and 3.8 million in the EU-27 in 2008 (Vogel et al. 2011). In principle three categories of irregular status can be distinguished, according to whether individuals are known to the authorities and whether or not they hold a residence permit, as follows:

- Persons without residence status (undetected).
- Persons without residence status known to the authorities (obliged to return).
- Legally residing persons who breach the conditions of their residence status.

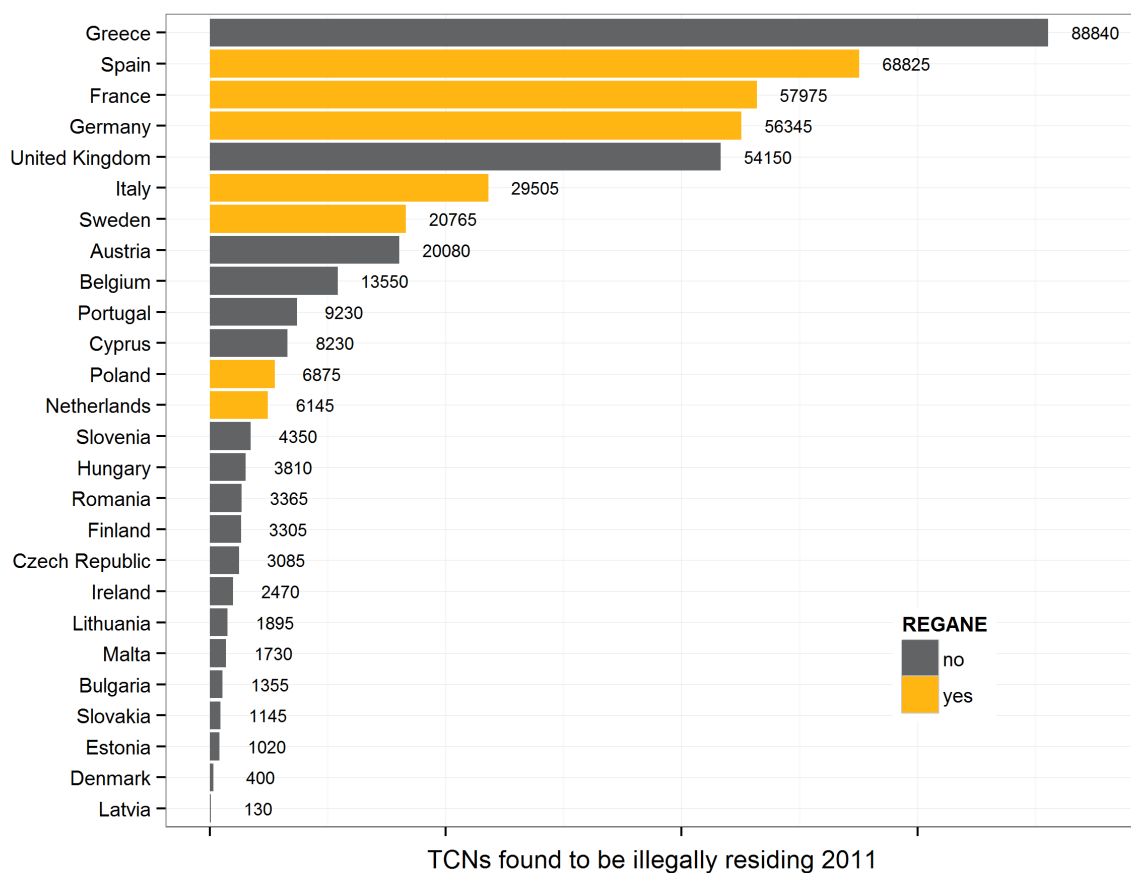
(Vogel & Assner 2011)

Only the first two categories of migrants in an irregular situation are target groups of regularisations, even if in some cases individuals in the third group may also seek an adjustment of their status.

Most statistical indicators in the area of irregular migration are derived from enforcement statistics. Such indicators are strongly based on police activities, thus providing only limited information on the actual extent of irregular migration. The number of apprehensions of irregularly residing third country nationals indicate however the number of persons known to

the authorities and residing in the country without residence permit. Those persons either are allowed to stay in the country (e.g. seeking asylum) or are ordered to leave the country. Figure 3 shows the numbers of third country nationals found to be irregularly present in an EU-27 country in the year 2011. The numbers range from 130 in Latvia up to almost 89,000 in Greece. Apprehensions mostly refer to adult men. Only every fifth apprehension concerns a woman and about 3 percent of apprehensions involve children. In Sweden and Ireland the percentage of children among third country nationals found to be irregularly present in 2011 was especially high (over 20 percent).

Figure 3: Number of third country nationals found to be irregularly present in 2011



Source: Eurostat database, table migr\_eipre (accessed in June 2013)

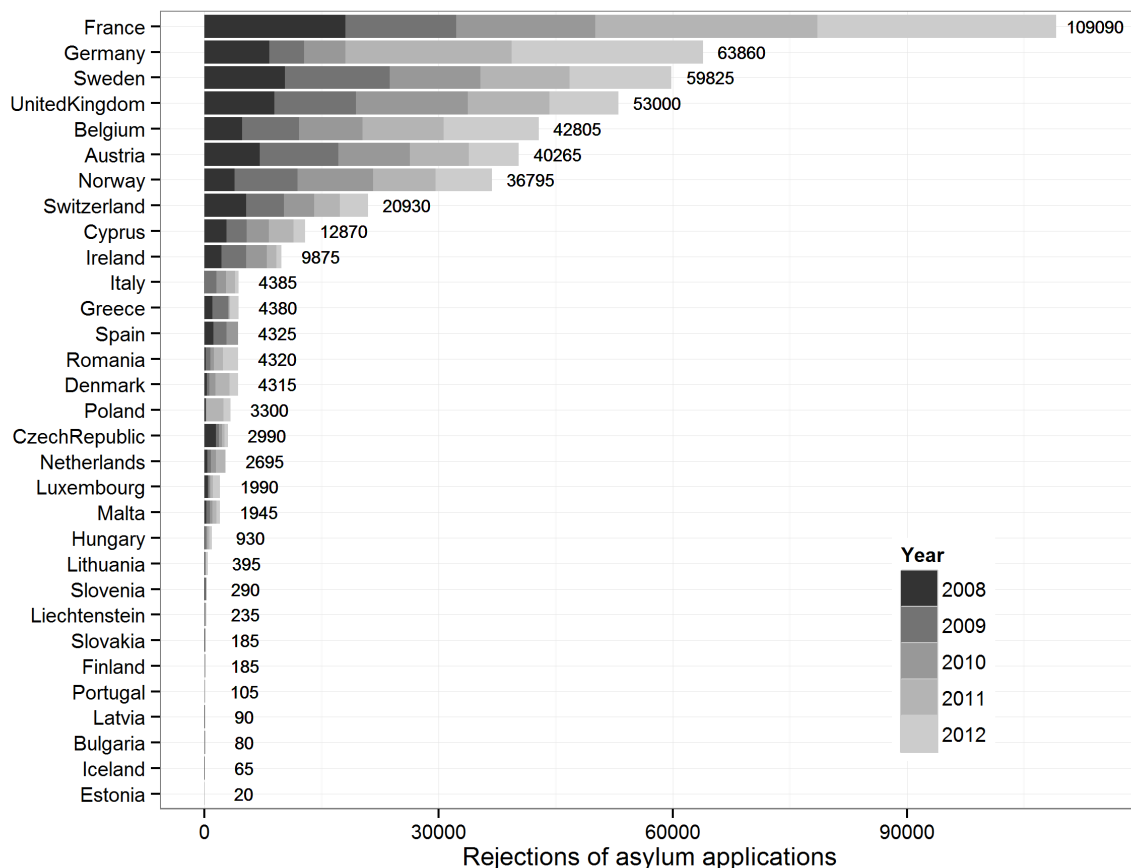
There is a variety of pathways into irregularity. While irregular border crossings and the oftentimes dramatic pictures that come with it have received the most attention both by the wider public and the policy community, it is reasonable to believe that a majority of migrants in an irregular situation in the EU have entered the European Union in a authorised manner and have overstayed their visas or residence permits. Thus on the basis of results of surveys on migrants in an irregular situation, it has been estimated that some 70 per cent of migrants

in an irregular situation in Italy have entered the country legally. In a similar vein, the European Commission has estimated the share of overstayers in the EU at 50 per cent, although not providing any basis for this estimate (both figures quoted in Kraler & Reichel 2011: 111). Whatever the share of “overstayers” it is clear that pathways into irregularity are diverse. This also applies to the term “overstayers”, which covers a variety of situations, ranging from individuals that have entered a European Union country with a tourist or other short term visa and then overstayed, to persons who have lost their residence status, for example because they no longer could meet the conditions of residence or failed to renew their permits for other reasons, to persons whose asylum claim was rejected and did not comply with an obligation to return.

The latter seems to be a particularly important pathway into irregularity in Northern European countries. There is no detailed information available in any country what percentage of rejected asylum seekers stay in a country irregularly, but given that the larger share of persons in removal procedures seem to be former asylum seekers and given the estimates of the ample gap between persons ordered to leave and effected returns, rejected asylum seekers indeed seem to contribute considerably to the total stock of persons without regular residence status (see also Kraler & Reichel 2011: 111). Figure 4, below, outlines the total number of rejected asylum applications in the EU and therefore provides an overview of the total number of persons, who might find themselves in the position of having an irregular status. France reports the largest number of rejections in the four years from 2008 to 2011, at over 100,000. Other countries with high figures of rejections are Germany, Sweden and the United Kingdom.



Figure 4: Total number of rejections among final decisions on asylum applications 2008 to 2011



Source: Eurostat database, table migr\_asydcfina, data extracted in May 2013

### Regularisations

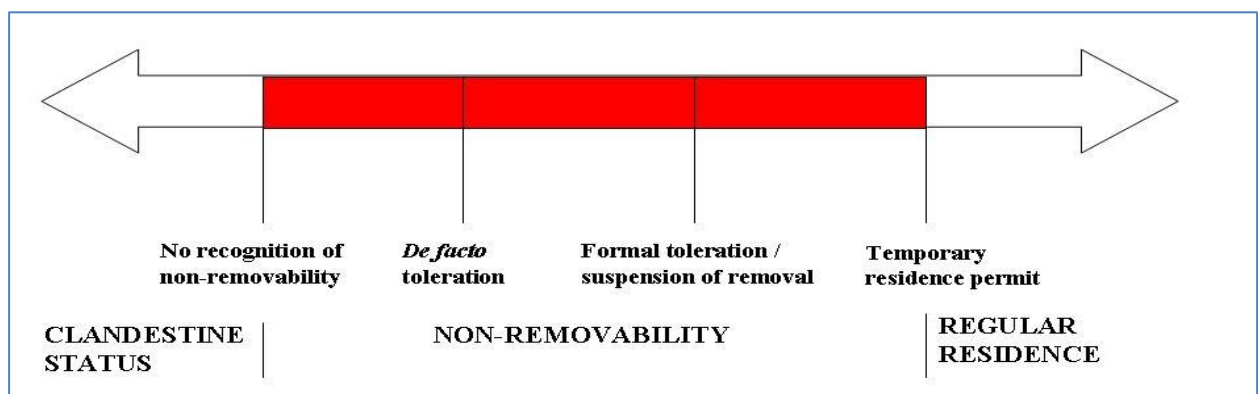
Persons found to be irregularly staying in an EU country as well as rejected asylum seekers are usually ordered to leave the country. In principle there are two ways how policies respond to persons ordered to leave the country: return or regularisation. In the EU there is a clear preference for return as the main policy option. This is also stated in the European Pact on Immigration and Asylum, stressing that *illegal immigrants on Member States' territory must leave that territory*. It further emphasises regularisation should only be used on a case-by-case basis under national law for humanitarian or economic reasons rather than adopting generalised regularisation schemes.<sup>4</sup> At the same time the EU Return Directive, while promoting return of those ordered to leave, also permits regularisations as outlined in Article 6(4): *Member States may at any moment decide to grant an autonomous residence permit or*

<sup>4</sup> Council of the European Union, Brussels, 24 September 2008, available at: <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>, accessed in November 2013.

*other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory.*

However, return is not always a feasible option for practical or legal reasons. Practical reasons include non-cooperation of countries of origin or last residence in taking back persons ordered to leave, difficulties in establishing the identity of persons, or challenges in organising transport. But there are also important legal reasons why persons must not to be removed, notably reasons related to Article 2 (Right to life) and Article 3 (Prohibition of torture, inhuman or degrading treatment) of the European Convention of Human Rights. Thus individuals may not qualify for subsidiary protection under the Qualification Directive, but may still be at serious risk if returned to a situation of intense civil strife or severe violations of human rights (FRA 2011: 31). In addition to these grounds, pregnancy or serious medical conditions may likewise present a (temporary) obstacle to removal. Other important reasons preventing return concern reasons related to Article 8, ECHR (Protection of private and family life) and best interest considerations in case of children (article 3(1), Convention of the Rights of the Child). There is growing awareness of the large number of persons who cannot be returned to due legal or practical reasons, often finding themselves in a legal limbo situation (cf. FRA 2011; Heegaard Bausageret et al. 2013). While obstacles to the enforcement of return decisions mainly result into temporary suspensions of removal decisions,<sup>5</sup> persons who are not returned become, under certain conditions, this mostly the case if return proves unfeasible over prolonged periods of time, also subject to regularisation. The result is a continuum between an irregular and a regular status, which can be illustrated, following the FRA (2011: 34) as in figure 5.

Figure 5: Legality as a continuum



Source: FRA 2011: 34

<sup>5</sup> While the Return Directive requires Member States to issue relevant documentation to migrants whose removal was suspended it seems that practices of informal toleration – widespread before the adoption and entry into force of the Return Directive – to some extent seem to continue (see also FRA 2011: 35f).

### *Regularisation*

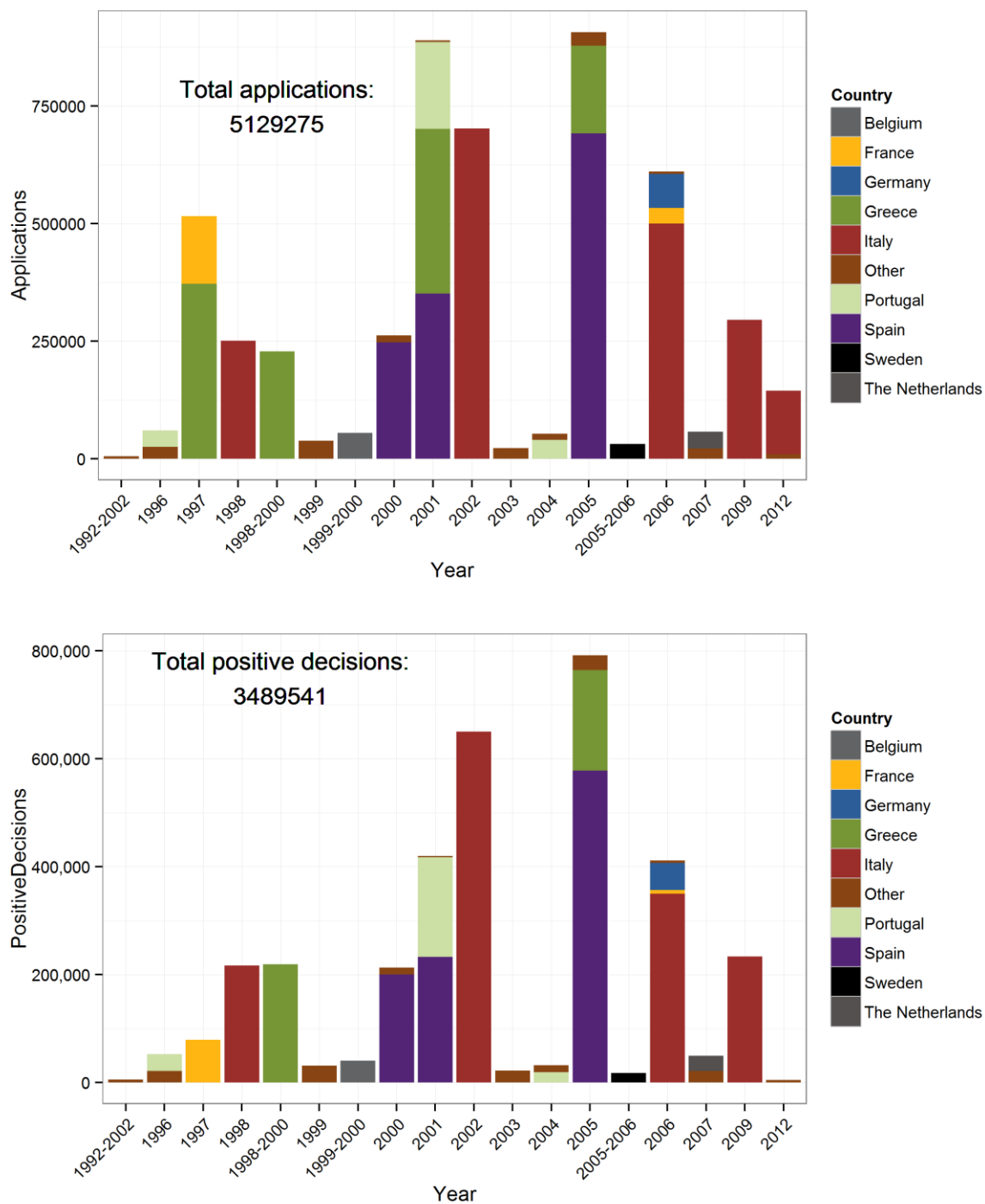
The study “REGINE – Regularisations in the European Union” provided a comprehensive overview of regularisation practices in the EU, showing that whilst there are different normative approaches to granting legal status to persons in an irregular situation, all EU Member States do – at least to some extent – regularise, be it through permanent regularisation mechanisms or through time-limited programmes (Baldwin-Edwards & Kraler 2009).

Based on the REGINE study and updated in the course of this project, we find information on 44 regularisation programmes carried out in 16 EU countries<sup>6</sup> since 1992. This overview is probably incomplete, it is likely that several more programmes have been carried out in the EU since the 1990s, although minor in scope. On the basis of the available data, we can estimate the minimum number of applications for regularisation in the framework of the 44 programmes identified at 5.12 million. In the same period we have information on some 3.5 million positive decisions on applications in 41 regularisation programmes (no data available for two large programmes in Greece and the most recent programme in 2012 in Italy). Numbers of applications range from 45 in Lithuania in 1996 to over 700,000 in Italy in 2002. Figure 6 shows the figures of applications and of positive decisions in regularisation programmes since the 1990s. The graphs should be interpreted with caution, since some persons were repeatedly regularised and sometimes the numbers refer to cases including more than one person (most notably dependants of third country migrants regularised).

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<sup>6</sup> BE, DK, FR, DE, GR, HU, IE, IT, LT, LU, NL, PL, PT, ES, SE and the UK.

Figure 6: Applications and positive decisions in 44 regularisation programmes in the EU since 1992



Source: updated numbers based on Baldwin-Edwards & Kraler 2009 and REGANE country reports. For some programmes only the number of applications and for programmes only positive decisions are known

Besides time-limited regularisation programmes almost all EU member states have some sort of permanent regularisation mechanism. The numbers of persons involved in

regularisation mechanisms are difficult to determine comparatively, because the data are not collected or not accessible. However, available data suggest that there were at least several hundred thousand regularisations through mechanisms in the past decade (Baldwin-Edwards & Kraler 2009: 39-41).

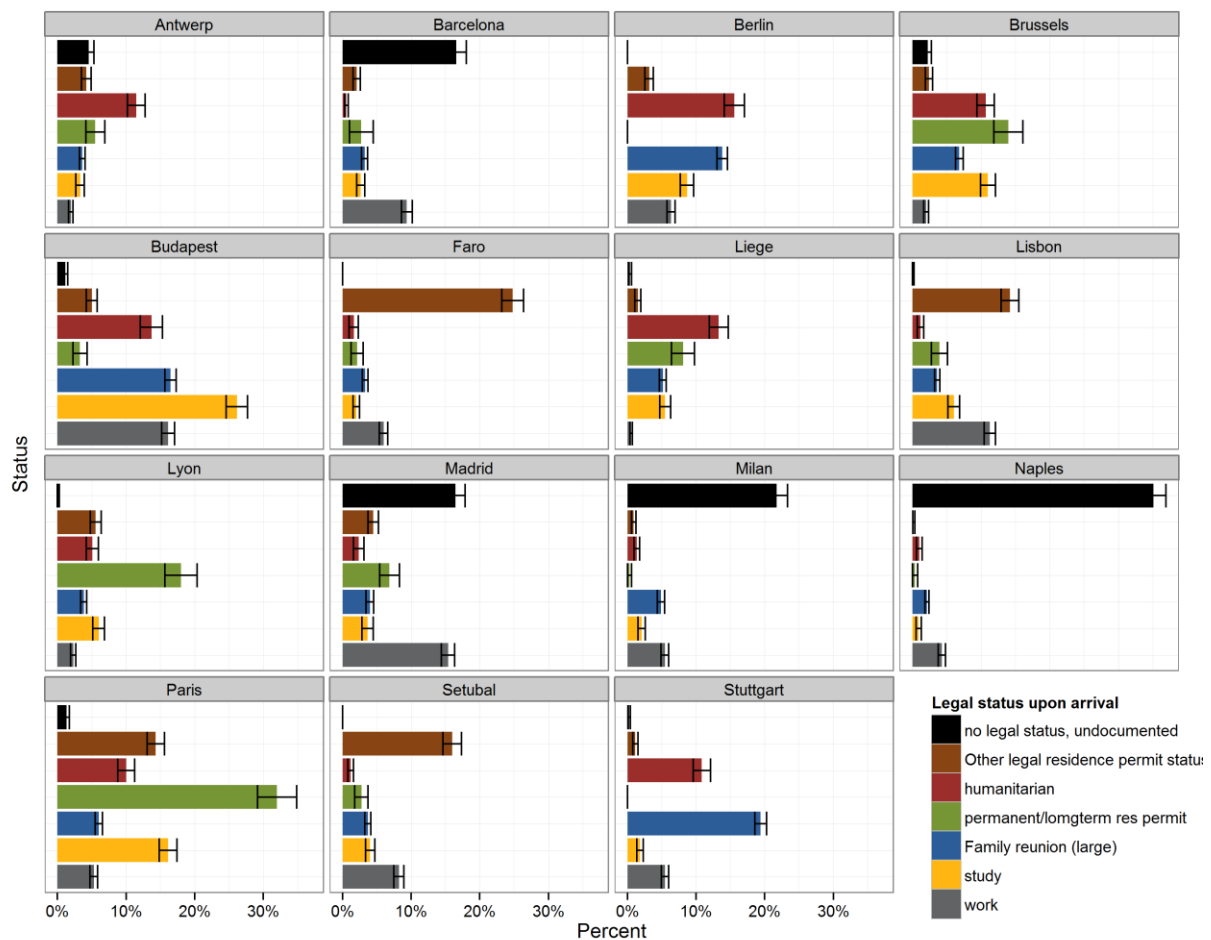
There are no reliable estimates on the number of regularised persons living with legal status in the EU. This is on the one hand related to the lack of comprehensive statistics on regularisations, and in particular, the fact that in most EU countries regularisations are not, or not systematically “flagged” in residence permit registers. On the other hand it is also due to the lack of survey data and in particular studies on the sustainability of regularisation.<sup>7</sup> The available evidence suggests there are indeed persons who fail to maintain a legal status and fall back into irregularity, while others manage to maintain their status and partly also naturalise and become EU citizens (see for a review of evidence Kraler 2012).

There are indications on the scope of status transitions from an irregular to a regular status from the recent Immigrant Citizens Survey (ICS). The ICS surveyed legally residing immigrants from third countries in 15 cities in seven EU countries (Huddleston & Tjaden 2012) and contained a question on the legal status upon arrival and therefore allows an estimate of regularised persons, who immigrated irregularly, to those cities. Such an estimate does not include persons who immigrated regularly and overstayed their legal residence. Figure 7 shows the percentages of legally residing immigrants (also including naturalised persons), who arrived without regular status. It confirms the particularly high percentage of irregular migration in Southern European countries, encountered with large scale regularisation programmes. Especially in Italy the percentage of legalised immigrants is high at around 30 percent in Naples and around 20 percent in Milan. The two Spanish cities also show high shares of immigrants previously in an irregular situation of just below 20 percent. In all other cities the percentage of immigrants, who arrived irregularly and now hold legal status is estimated below five percent.

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<sup>7</sup> Sustainability is understood as to what extent individuals can maintain legal status after regularisation.

Figure 7: Legal status upon arrival of legally residing immigrants in 15 cities in seven EU countries in 2011/2012



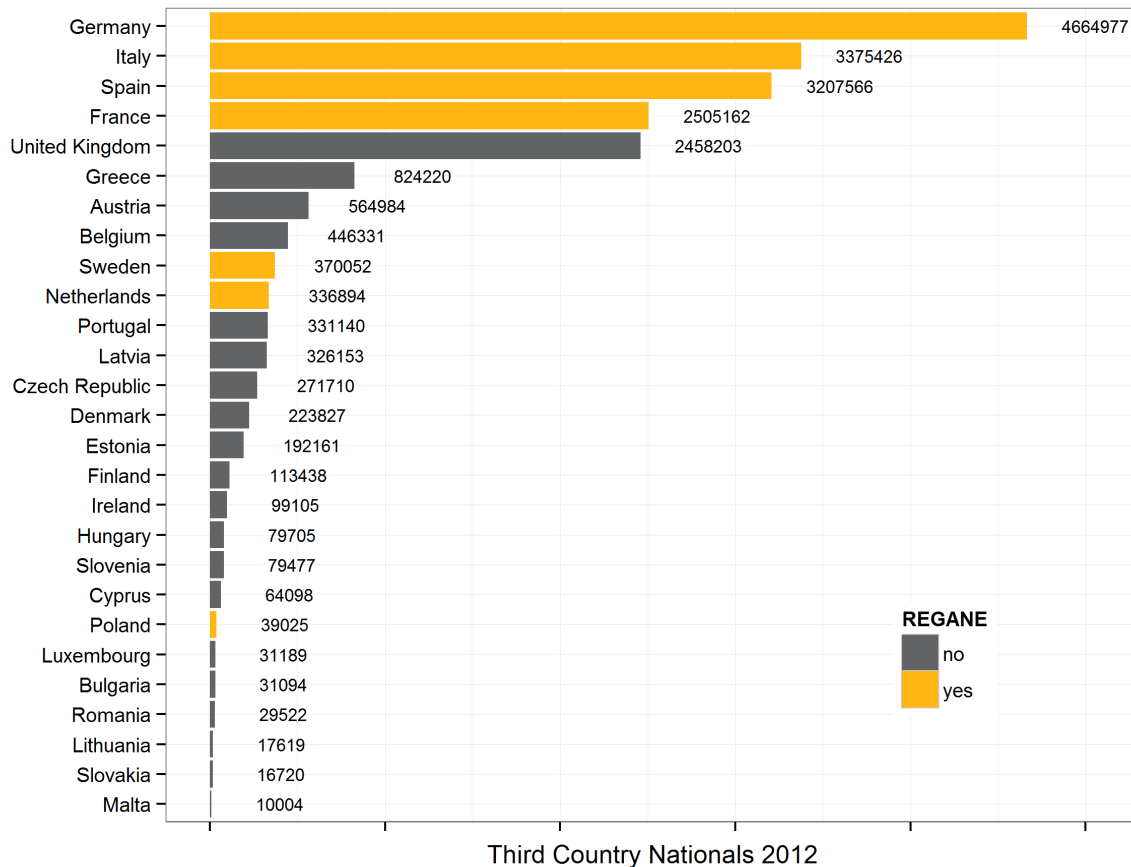
Source: own presentation based on data from the Immigrant Citizen Survey (Huddleston/Tjaden 2012), <http://www.immigrantsurvey.org/>, accessed in June 2013

### *Demography and employment of third country nationals in the EU*

Once awarded a legal status, regularised migrants become part of the overall population of legal residents from third countries. In the following subsection, we present some key indicators on the demography of the EU's immigration population with a citizenship from a third country to provide a context for the study. Altogether 20.7 million third country nationals were estimated to have resided in the EU-27 at the beginning of 2012, representing 4 percent of the total population. Most third country nationals reside in Germany at over 4 million. Italy and Spain are the second and third most important destination countries, with an estimated 3 million third country nationals. France and the UK each host approx. 2.5 million third country nationals. These five countries host some 80 percent of all third country

nationals in the EU, while representing some 63 percent of the general population within the EU.<sup>8</sup>

Figure 8 Numbers of third country nationals in the EU-27 in 2012



Source: Eurostat database

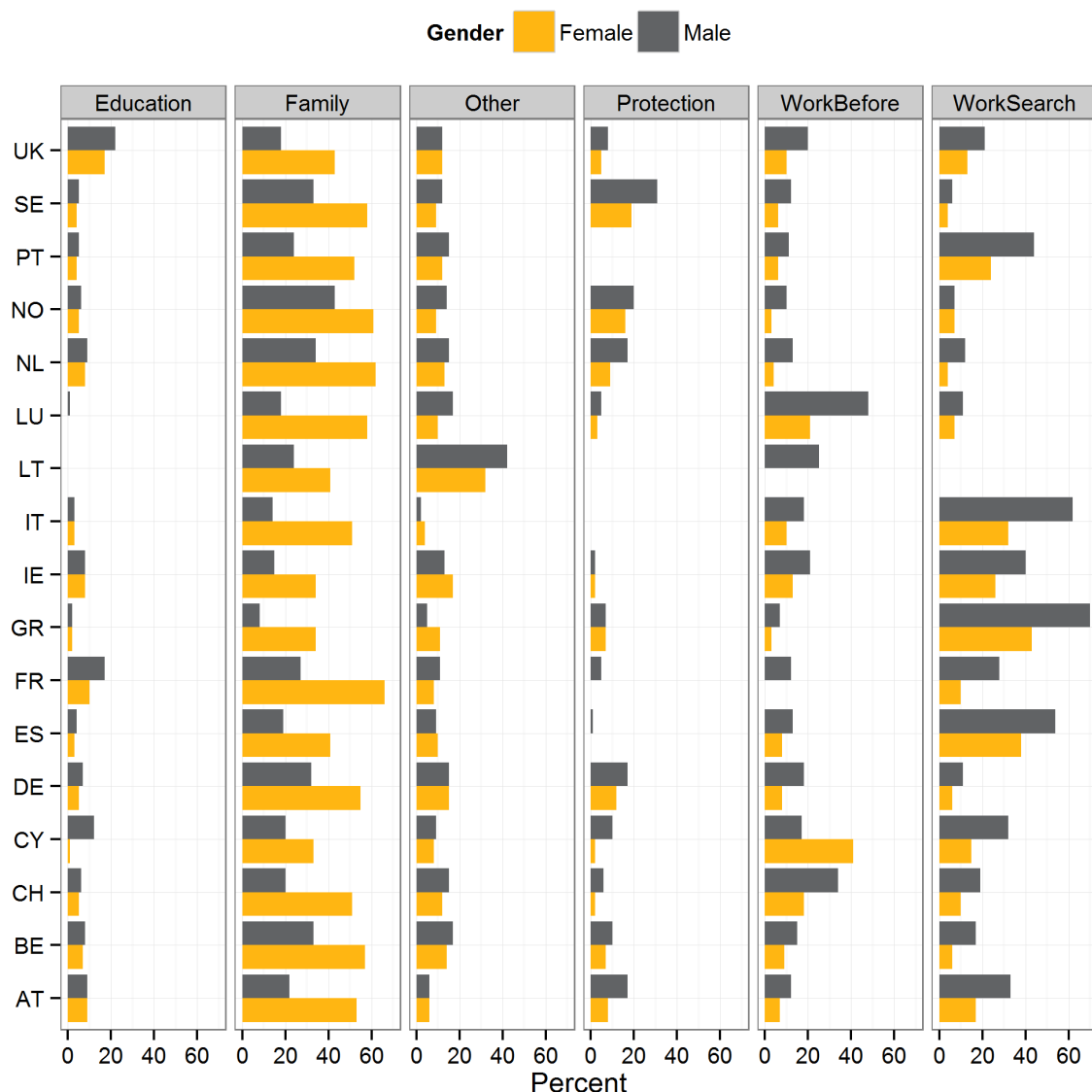
A 2008 Ad-Hoc Module of the European Union Labour Force Survey also collected information on immigrants' (defined by country of birth) main reasons for migration. The following reasons for migration were distinguished: immigration for the purpose of employment (further differentiated into situations where employment was found before immigration vs. situations where migrants immigrated in search of employment), family reasons (reunification with spouse/ children and family formation), education and international protection. While the EU-LFS deliberately did not explicitly collect information on reasons for admission, the above-mentioned differentiation nevertheless is aligned with the main categories for admission of third country nationals in EU Member States.<sup>9</sup> This makes a

<sup>8</sup> Those numbers mainly refer to regularly residing third country nationals and opportunities to include immigrants without legal status differ in the countries. Estimates and indicators on irregularly residing third country nationals will be presented further below.

<sup>9</sup> If migrants' individual motives had been the main focus, a different methodology would have had to be chosen (e.g. ranking of a series of possible reasons by respondents).

clear-cut distinction between personal motives and legal admission grounds somewhat difficult. As the results of the survey show, the distribution of reasons for migration differ markedly between EU Member States, therefore also reflecting differences in admission policies. On the basis of the Labour Force Survey 2008 we find that employment and family reasons are the most prominent reasons for immigration in the EU, as suggested by Figure 9. While women more often indicate to have migrated for the purpose of family reunification or family formation, there also is a significant share of female labour migrants, particularly in Southern European countries.

Figure 9: Reasons for immigration based on the EU Labour Force Survey 2008



Source: Eurostat, table Ifso\_08resr (data extracted in January 2013), 'WorkBefore' refers to employment found before immigration to the country and 'WorkSearch' refers to employment sought after entering the country. Data refers to migrants defined as born outside of country of residence



The labour force survey covers, but does not allow to distinguish regularised migrants. From available evidence and studies, it appears that their personal reasons for migration are diverse, even if work related reasons are perhaps more relevant than in the case of other third country nationals, notably in Southern EU Member States. However, there is also an important family dimension. While not easily quantifiable, there seems indeed to be a certain extent of “spontaneous” family reunification, because conditions are not easily met, because of the limitation of family reunification with third country nationals to spouses and minor children, or because of the requirement to apply for residence from abroad and the inability of certain individuals to comply with this requirement (see FRA 2011: 97). For apparent reasons, migrants in an irregular situation have no access to formal family reunification, but despite this, may sometimes desire to and succeed in reunifying with family members. Some regularisation schemes specifically aimed to tackle the situation of families without regular residence. Finally, it seems reasonable to assume that a certain share of regularised migrants have primarily migrated to escape from situations of generalised violence and instability.<sup>10</sup>

#### *Employment, informal employment and employment characteristics*

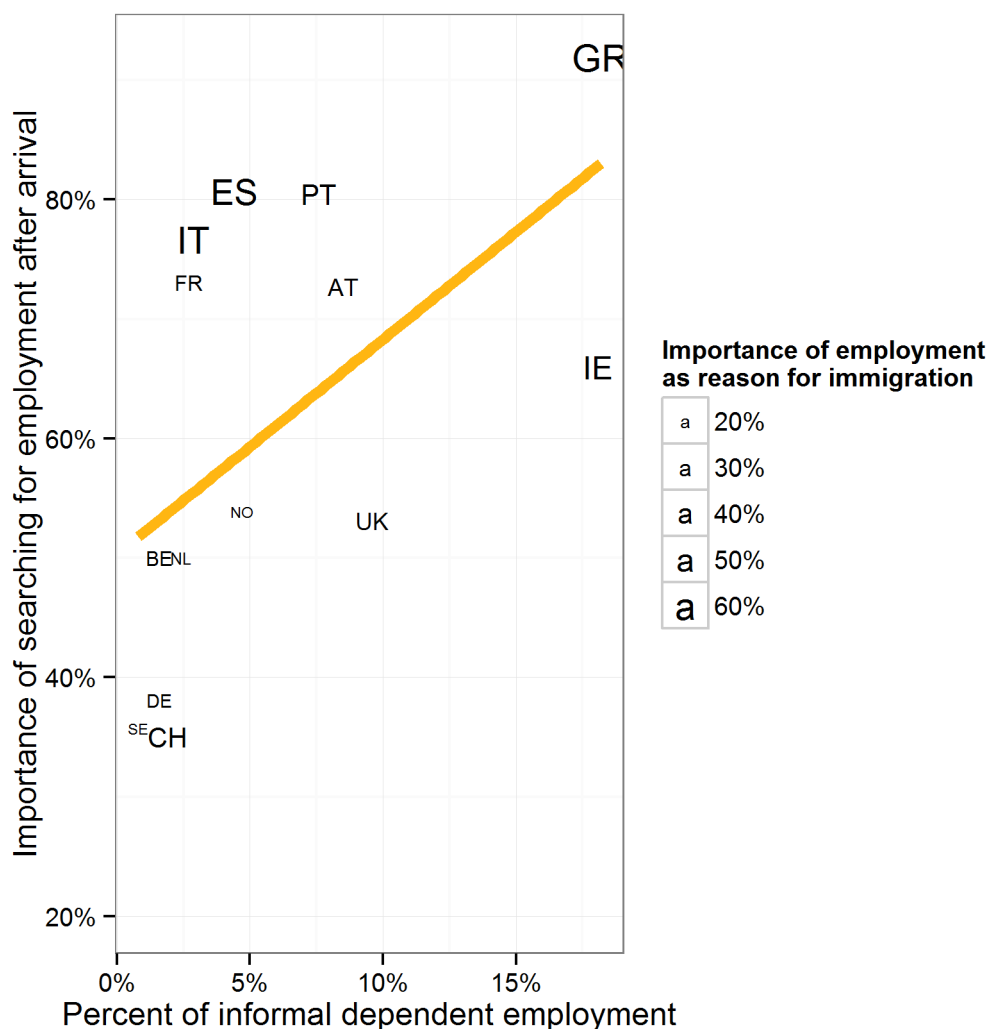
Opportunities to find employment are related to a variety of factors. Figure 9 (above) differentiates between labour migrants who found a job already before migrating to their destination country and those who enter a country and seek work after arrival. It is in particular Southern European countries, namely Greece, Spain, Italy and Portugal, but also Ireland, Austria and the United Kingdom show higher percentages of labour migrants seeking a job after entering the country. The opportunities to find a job before immigration are influenced by a number of factors, including organisation of the labour market, the type of occupations and skills in demand in economic sectors accessible to migrants as well as the type of employers present in these sectors. It is in particular larger enterprises which are pro-actively and formally recruiting internationally, and/or certain sectors (such as tertiary institutions, health providers, firms in the ICT sector, for all of whom international recruitment is an important source of labour). By contrast, smaller sized enterprises have more limited means or expertise to formally recruit internationally, while employment in households – a rapidly growing sector especially in Southern Europe, but also beyond – is characterised by a high share of informal labour (Ambrosini 2012). As shown in figure 10, below, there is a statistical relationship between the percentage of immigrants seeking employment after arrival among all labour migrants and the size of informal employment in the country. This is

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<sup>10</sup> Personal motives to seek protection and the admission ground international protection do not necessarily meet.

not to say that all immigrants who search for work after arrival in the country work informally, especially since the measure used for informal employment refers to all residents, including citizens, but a certain link between the two measures exists. As previously discussed, this is likely to reflect more fundamental differences in the political economy of European labour markets.

Figure 10: Size of informal employment in a country and percentage of immigrants seeking work only after arrival in a country

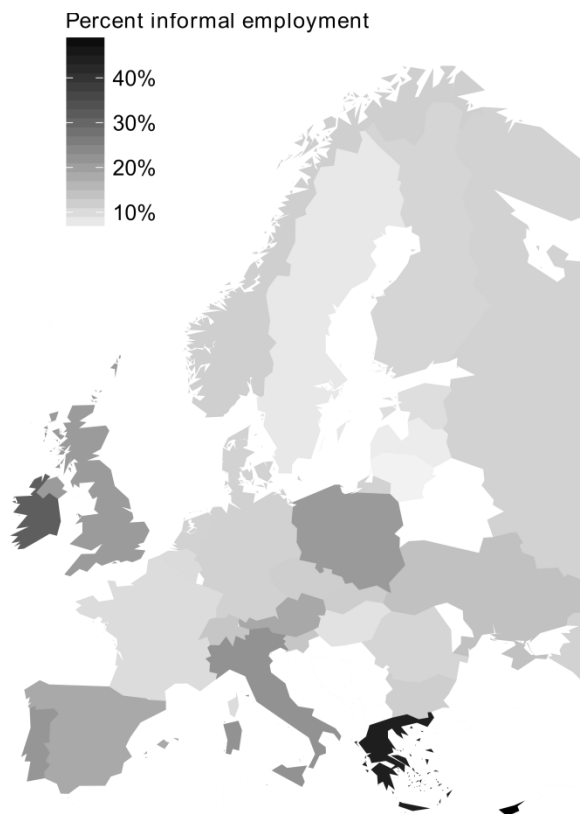


Source: Own calculations based on Eurostat, table lfso\_08resr (data extracted in January 2013) and data on the informal economy drawn from Hazans (2011: 33), data are based on the European Social Survey and refer to the percent of persons working as employees without a contract in the total population

Figure 11 shows the distribution of informal employment, indicated as a percentage of persons working as employees without contract or as informally self-employed (data from

Hazans 2011: 33, not considering family workers). It shows the importance of the informal economy in Greece and Cyprus, which is significantly higher compared to other European countries at 44.4 percent and 49.7 percent respectively. Other countries with higher rates of informal employment are Ireland (31 percent) as well as Italy, Portugal, Poland, United Kingdom, Austria and Spain, ranging from 18 to 22 percent. Informal employment decreases from the South to the West to the East to the North (Hazans 2011).

Figure 11: Prevalence of informal employees and informal self-employment in Europe



Data from Hazans 2011: 33, based on the European Social Survey (time period 2006 to 2009)

Persons with lower skills are more likely to work informally. In general lower educated, younger (particularly students), the elderly and persons with permanent health problems are more often drawn into informal work. Migrants are particularly affected by informal employment, which is both a result of, and a factor contributing to vulnerability. In particular, for various reasons, including amongst others more limited knowledge of alternative employment opportunities, a sense of moral obligation towards employers, pressures resulting from economic responsibilities towards dependants or issues of legal status,

immigrants are more likely to be in a more vulnerable position towards their employers (Hazans 2011).

In his comprehensive overview Hazans (2011) shows that exclusion and discrimination are crucial factors for informal work in Europe, measured as working employees without a contract. Informal employees have the biggest financial problems among all other groups of employed, though informal self-employed are not worse off financially compared to formal employees. Finally and most importantly for the present study, immigrants are particularly prone to work informally. In Southern European countries, persons migrating under free-movement regimes are less likely to work informally compared to immigrants not covered by mobility regime of the EU (Hazans 2011). Working without contract is only one expression of informal employment. There is evidence of considerable prevalence of informal employment through undeclared payment of parts of work done. Williams (2009) finds that some 5 percent of formally employed persons in the EU-27 also receive a significant amount of undeclared payment. This is particularly prevalent in Central and Eastern Europe.

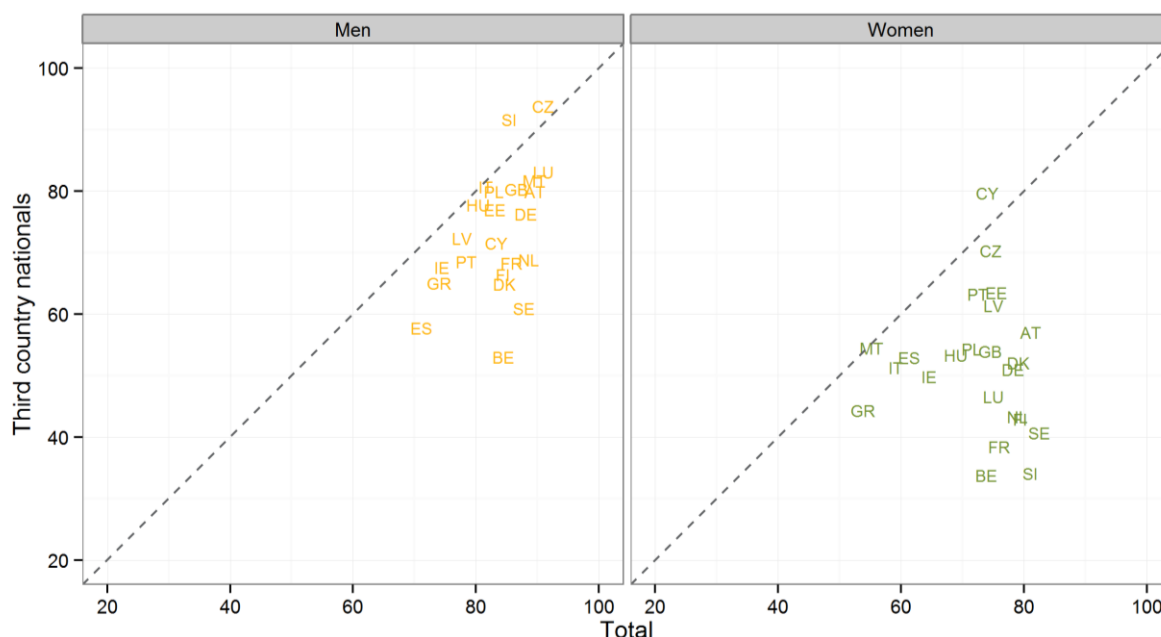
Besides informal employment migrants are more likely to engage in other forms of precarious work. Precarious or casual work can be described as insecure and intermittent employment. The latter is to some extent driven by temporary migration policies, but also reflective of a more general trend of the proliferation of atypical types of employment, including temping. Apart from migration status, young age is risk factor for casual work (Wilson & Ebert 2013). Another problem particularly of concern of immigrants is over-qualification and related processes of de-skilling. Due to formal barriers to the recognition of qualifications, employer attitudes towards qualifications acquired abroad as well as other factors,<sup>11</sup> third country nationals more often are employed below their skill level. Gender and length of residence influence skills mismatch, while women and recent migrants find themselves more often overqualified (OECD 2007 :131-159).

Finally, in addition to informal and precarious work, lack of employment is a major problem when it comes to labour market integration. Hazans (2011) showed that unemployed persons, including those seeking work and those not seeking work (anymore), are facing the greatest financial hardship. In many EU countries, third country nationals show lower employment rates compared to the total population. Particularly, women show much lower employment rates compared to the total population in the EU (Figure 12).

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<sup>11</sup> For example, risk-averse behavior part of migrants partly engendered by migration policies. As a result of that time spent on searching for jobs is kept to a minimum, while fewer risks are taken in terms of terminating unsatisfactory employment relationships.

Figure 12: Employment rates of the total population and third country nationals in the EU-27 for the age group 25 to 54 in 2012



Source: EU LFS 2012, Eurostat database, table “lfsa\_ergan”, extracted January 2014

There are many reasons why immigrants tend to show lower employment rates compared to the total population. The situations differ across countries and immigrants’ success on the labour market is influenced by macro level, contextual factors as well as different compositions of groups of immigrants (Pichler 2011). While the general welfare regime and regulations concerning employment protection are seen as important factors influencing immigrants’ labour market opportunities (Kogan 2006), opportunities to legally access the labour market also need to be taken into account. It can be assumed that the vast majority of immigrants without any legal residence status are not allowed to work. Before discussing the topic of legal residence status in relation to labour market integration more in detail, we will provide an overview of irregular migration in Europe as well as general regularisation practices.

## 2.2. Employment and regularisation

In many countries regularisation mechanisms and programmes also take the employment situation of applicants into consideration, though the general approaches differ considerably (Baldwin-Edwards/ Kraler 2009). Yet, not much is known about the role and impact of regularisation on employment. The following gives an overview of existing studies looking at the impact of regularisation on employment.

Most studies researching the impact of regularisation on the employment situation of immigrants have been carried out in the United States, Italy and Spain, which will be outlined in the following.

### *USA*

In the United States several studies researched the so-called Immigration Reform and Control Act of 1986 (IRCA). We will first outline the literature by the methods and data sources used for the analysis. After the legalisation under this programme, the US government conducted a panel dataset from two “Legalized Population Surveys” (LPS) in 1989 and 1992. These surveys asked a random sample of about 6,000 regularised migrants a large number of questions concerning their labour market experiences pre-entry, at the moment of applying for legalisation, and at the time of filling out the final survey in 1992 (Papademetriou et al. 2004: 12-3). These surveys, allied with the 1986 dataset from IRCA, have permitted extensive and fairly robust analyses concerning the labour market trajectories of regularised migrants in the USA. Recent doubts have been raised, though, on the quality of the panel data contained within the LPS. This is because only half of the respondents in the first wave of 1989 responded to the follow-up in 1992 (Pan 2012: 120).

Recent analyses of the impact of IRCA on the labour market have utilised additional datasets and incorporated more sophisticated techniques (Pan 2012; Barcellos 2010; and Lozano & Sørensen 2011). Other researchers have examined datasets besides IRCA to address the same question of the potential impact of legalisation (Lofstrom et al. 2010; Kandilov & Kandilov 2010; Sampaio et al. 2013).

Pan (2012) utilises the discontinuity created by the 1986 amnesty, in that it excludes a large number of immigrants without regular residence status who had arrived after 1982. Supplementing the IRCA datasets with censuses of 1990 and 2000, she uses a regression discontinuity design to compare labour market outcomes of Californian Latino migrants who arrived in the period 1975-81 with 1982-86 arrivals. Three control groups are used, in order to ensure that differences between the two cohorts are not attributable to general economic trends; these are (i) refugees who arrived 1975-86, (ii) Puerto Ricans for the same period, and (iii) US-born Latino Americans who started work in the same period. By using two census periods, a long-run analysis is also performed – whose results suggest that the benefits of legalisation diminish over time.

Barcellos (2010), like Pan, uses regression discontinuity and difference-in-difference techniques and data from the March Current Population Survey (CPS) 1994-2009, the 2005

American Community Survey (ACS) and the censuses of 1990 and 2000. The control group selected is that of immigrants who have been in the US for less than 8 years (as opposed to the target group of 8-18 years residence). Her control group is not restricted in terms of immigrants' characteristics, and impact is evaluated at different times over an extended period.

Lozano & Sørensen (2011) employ the same method but including a control group of immigrants who always held irregular status, which might be a more valid control group. Using data on legal status from the Mexican Migration Project, they estimate the probability of irregular status for individuals in the census data 1990 and 2000.

#### *Recent estimations of the potential labour market impact of legalisation*

Lofstrom et al. (2010) argue that all previous studies are defective in both their assumptions and control groups. In particular, they stress the massive impact that IRCA had on the supply of formal unskilled labour – making the counterfactual of always-regular workers less valid – and that IRCA introduced strong employer sanctions, making workers in an irregular situation post-IRCA less attractive to employers and therefore an inadequate control group. Their research eschews the IRCA experience, and instead they utilise data from the New Immigrant Survey (NIS) of 2003, analysing how Legal Permanent Residence (LPR) status affects occupational mobility and wages of those who have been granted this legal status (The NIS has data on former legal status, including a distinction between irregular crossing and overstaying). Using regression discontinuity, they select continuously-regular immigrants who arrived at various times, from a wide range of countries, both genders and in various occupations. Two drawbacks of this research are the self-reporting of the data, and the short time span (13 months) covered after award of the status thereby providing only short-run evaluation. The authors mainly argue that previous studies overestimated the impact of regularisation and they mainly find increased occupational mobility with unclear impact on the total labour market.

Kandilov & Kandilov (2010) use data from the National Agricultural Workers Survey (NAWS) from 2000 to 2006 to compare permanent foreign residents with workers in an irregular situation within the agricultural sector. They confine their sample to full-time workers who are male and unmarried (which is 80percent of the dataset). They confirm the wage premium of legal status as being around 5 per cent, but emphasise that non-wage gains are more important. The probability of receiving employer-sponsored health insurance is 9 percent higher, and of receiving bonuses is 11 percent higher. Thus, they claim, studies that focus on wages and income understate the true benefits of legalisation.

Finally, Sampaio et al. (2013) question the methodologies used in all previous research on the benefits of regularisation, claiming that econometric techniques used have been inadequate in correctly accounting for missing variables in the data. Using recent more sophisticated techniques, and also following Kandilov & Kandilov (2010) in both their uses of NAWS and in their inclusion of non-wage benefits, they show that with failure of the conditional independence assumption, all estimated coefficients are statistically insignificant. Their conclusion is that regular status itself has no detectable positive effect on wages or other benefits, and estimations of such can be attributed to the lower skill levels of migrants in an irregular situation, rather than their regular status itself.

#### *Evaluations of the impact of IRCA and other transitions to legal status on specific areas*

##### **(1) Impact on subsequent immigration**

Irregular immigration flows fell after the 1986 amnesty (Bean et al. 1990: 152), but started to increase by 1989 (Orrenius & Zavodny 2001) with the long run impact on irregular arrivals estimated as negligible. However, IRCA beneficiaries started to receive Green Cards from 1989, and were able to sponsor immigration of relatives. Family-sponsored immigration began to rise in 1992, and of immediate family members in 1996. Therefore the 1986 amnesty can be seen as having led to large increases in regular immigration (Orrenius & Zavodny 2012). Durand et al. (1999) differ in their estimated impact on irregular migration flows, claiming that IRCA triggered an additional 300,000 inflows per year.

##### **(2) Impact on employment and unemployment rates of the regularised population**

Most research concludes that participation rates and employment rates fell slightly after regularisation (Papademetriou et al. 2004; Amuedo-Dorantes et al. 2007), for unknown reasons. Various possible causes posited include men becoming more selective about their employment, and women being able to benefit from more state transfers with regular status (Orrenius & Zavodny 2012: 94). However, Pan (2012) concludes that the female employment rate actually rose by 10 percent, by 1990.

Unemployment rates also climbed from the time of application until 1992, increasing from four to six percent and overtaking the rate of the general population. This is attributed to economic downturn, particularly affecting sectors of immigrant employment (Papademetriou et al. 2004: 14).



### (3) Impact on wages and income

The older research is unambiguous that regularisation had a positive overall effect on real wages. Looking at Mexican and Central American men, Kossoudji & Cobb-Clark (2002) estimated a rise of 6 percent in wages; and looking only at Mexicans, Rivera-Batiz (1999) of 13 percent for men and 17 percent for women. Wage gains were, however, unequally distributed, such that legalised migrants with the least human capital or in sectors such as farming or domestic work, actually experienced declines (Papademetriou et al. 2004: 15).

The more recent research, using control groups, comes to less certain conclusions. Lofstrom et al. (2010) conclude that low-skilled workers hardly benefit from regularisation in labour market outcomes; high-skilled workers exhibit upward occupational mobility, which may be related to legal status. Pan (2012) identifies a wage premium of 10 percent for men but none for women; the gender difference is attributed to occupational mobility by men and an increased employment rate of women. She also notes that the greatest gains are by men with high skills, education and a good command of English. Barcellos (2010: 26), on the other hand, estimates a significant positive effect on wages, with the greatest gains going to low-educated Latin American immigrants. Lozano & Sørensen (2011) remarkably produce results that show even larger wage gains than identified in the older literature; this is achieved through occupational mobility.

### (4) Impact on occupational mobility

Without using control groups, the older literature is unable to ascribe substantial occupational mobility to legalisation – especially as there had been some occupational mobility prior to IRCA. Nevertheless, the observed diversification of professions over time is remarkable: on arrival in the USA, 34 percent of subsequently-regularised immigrants were employed in the five jobs most usually occupied by migrants in an irregular situation – namely, farm work, domestic work, food preparation, janitor and cook. By the time of regularisation, the ratio had dropped to 23 percent, and by 1992 this was down to 16 percent (Papademetriou et al. 2004: 17). Similar movement was observed out of other common professions for immigrants in an irregular situation; although upwardly mobile, the range of professions was still mostly confined to those occupied by immigrants in an irregular situation.

The research utilising control groups is slightly clearer – that substantial occupational mobility is actually the mechanism by which post-regularisation wages increased (Pan 2012; Lozano & Sørensen 2011; Lofstrom et al. 2010). Lofstrom et al. (2010) find that highly skilled immigrants exhibit occupational improvements after legalisation, but such improvement is marginal at best for low-skilled workers and apparently confined to overstayers, as opposed

to immigrants who arrived irregularly per se. Barcellos (2010) finds a significant negative effect on the probability of employment in an informal occupation, but significant for only a few years after regularisation. One reservation to this broad consensus is to be found in the research of Pan (2012: 137) who concludes that occupational mobility is largely confined to men: the effect of regularisation for women is mostly to increase labour market participation.

(5) Impact on human capital (including family members)

Prior to the IRCA legalisation, the applicants' median level of education was considerably below that of the US native-born population at seven versus 13 years (Papademetriou et al. 2004: 15). However, visa-overstayers had a level of education exceeding that of the US population, in contrast to the very low levels of persons who entered the country irregularly, predominantly from Latin America.

Post-regularisation, the former weak correlation between human capital and earnings apparently strengthened; in particular, competence in the English language and US schooling were rewarded (Kossoudji & Cobb-Clark 2000: 2002). Although there are claims that legalised persons engaged more heavily in education and training, it is difficult to attribute this to IRCA as opposed to duration of stay in the USA.

The most recent research seems to be unable to clarify the impact of regularisation on human capital trends of the affected population, other than some specific improvements such as 10 percent of male immigrants' stronger English language skills (Pan 2010: 137). The human capital effect on family members is clearer, however, with research showing that second generation Mexican-Americans complete more years of schooling if their parents have legal status (Orrenius & Zavodny 2012: 97). Other research suggests that the positive effects of IRCA legalisation were not long-run for the individual worker, and had generally dissipated by the year 2000 (Pan 2010: 121).

(6) Impact on the formal and informal economy

Regulation of the US labour market is such that immigrants in an irregular situation are easily able to work in the formal economy; thus, the informal economy is a small part of employment of immigrants in an irregular situation (Papademetriou et al. 2004: 18). Immediately after IRCA, a survey of Mexican immigrants found that the proportions with payroll tax deductions (i.e. formal employment) were 66 percent of immigrants in an irregular situation, 87 percent of regularised under the agricultural provisions, and 97 percent of those under IRCA's general provisions (Donato & Massey 1993). This suggests a shift from informal employment. One of the employment areas with high informality – domestic work –

employed 13 percent of IRCA applicants which by 1992 had dropped to 10 percent (Papademetriou et al. 2004: 19).

More recent research suggests that the effects of regularisation on the labour market are far from simple, identifying three different issues. First, there is a degree of occupational mobility – particularly for skilled males – that is derived from the acquired legal status (Lozano & Sørensen 2011; Pan 2012; Lofstrom et al. 2010). However, the impact of increased competition with native workers in more skilled sectors is unclear, and could lead to higher wages or exit by native workers (Orrenius & Zavodny 2012: 94). Secondly, IRCA was not merely a legalisation: it also instituted a new and serious regime of employer sanctions. The impact of this other aspect of IRCA is unclear. Lofstrom et al. (2010: 5) speculate that it may have depressed wages of migrants in an irregular situation, thus exaggerating the apparent pay gains of regularised workers. Some empirical studies suggest that the IRCA employer sanctions acted as a tax on workers in an irregular situation, resulting in lower overall wages as employers could not (or chose not to) distinguish between formal and informal workers (Orrenius & Zavodny 2012: 95). Hispanic workers' wages fell by 8 percent after IRCA (Bansak & Raphael 2001) which is attributed to discrimination by employers in response to employer sanctions. Thirdly, there is a consensus that conformity with taxation, social insurance and other obligations tends to increase with regularised (Kandilov & Kandilov 2010). Hill et al. (2013) in more detailed exposition of the study published as Lofstrom et al. (2010), have some remarkable results across their comparison groups of “continuously legal”, and legalised “overstayers” and “crossers”. In terms of both reported rates of tax returns, and also as a proportion of legally-required returns estimated by the authors, continuously regularly present immigrants had the lowest rates compared with regularised immigrants. As proportions of required returns in 2002, 85 percent of continuously regularly residing immigrants filed federal tax returns, compared with 90 percent of crossers and 94 percent of overstayers. Thus, legalisation is likely to result in increased compliance with taxation laws, but no significant fiscal impact (Hill et al. 2013: 18).

### *Italy*

Due to the importance of regularisation in Italy, there is also considerable research on the impact of regularisation in Italy. The following summarises the main outcomes and a more detailed overview of existing studies on the impact of regularisation on employment can be found in the country assessment report on Italy. For earlier regularisation programmes in Italy, it was shown that a considerable share of regularised immigrants were struggling or could not maintain their legal status, which is strongly dependent on the labour market opportunities for unskilled immigrants in Italy (ISTAT 1998; Reyneri 2001: 50). It can be

shown that the informal labour market hampers the opportunities to change from informal to formal employment, although this is not exclusively the case and a good deal of regularised immigrants also manage to change from informal to formal employment (Reyneri 1999: 99 pp.). For later programmes the results are more promising with very high shares of regularised immigrants succeeding to maintain their status and also showing higher wages for regularised immigrants compared to immigrants without regular status, but still lower than always-regular immigrants (Cesareo 2007). Also further research based on sample surveys carried out by the ISMU foundation suggest a positive result of the 2002 regularisation programme by increased employment rates over time. This increase is however also influenced by a positive economic development from 2001 to 2007.

In Italy the lack of available welfare is seen as contributing to penalising immigrants in an irregular situation, who have to face a trade-off between unemployment and quality of employment (Reyneri & Fullin 2011).

### *Spain*

Research on the impact of regularisation in Spain was published rather recently, also showing positive results of regularisation on labour market participation and increased wages (Amuedo-Dorantes et al. 2013). Based on register data, Sabater & Domingo (2012) and Domingo et al. (2012) show that different regularisation policies – one major programme in 2005 and an existing permanent regularisation mechanisms – had different outcomes in terms of sustainability of legal status in Barcelona. The 2005 programme was much more successful regarding its beneficiaries keeping legal status, than the mechanism in place since 2006. Still under both policies the majority of beneficiaries can maintain legal status. Mostly younger persons (16-19) and older persons (>60) appear to be more prone to falling back into irregularity. This result might be related to labour market success, though this remains guesswork due to absence of data on employment in the study.

### *Belgium*

In Belgium a project (route project<sup>12</sup>) on labour market trajectories of regularised immigrants (most notably asylum seekers) was carried out. This project studied employment trajectories of migrants regularised in 2005 in Belgium in the period 2003 to 2007 based on register data. It could not show any impact on employment participation, except for local government employment, presumably indicating involvement of some regularised migrants in workfare schemes run by municipalities. The cohort of regularised migrants in 2005, however, is

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<sup>12</sup> ROUTE - European comparative research on ulterior trajectories and tendencies among ex-appliers of a regularisation request, see <http://www.belspo.be/belspo/fedra/proj.asp?l=en&COD=AG/JJ/141>.

specific in that almost all regularised migrants were (former) asylum seekers. In subsequent years, the profile was more diverse (Johan Wets: The Route project. Presentation at the Workshop “Careers”, Politique Scientifique Fédérale, Brussels, 25 June 2012).

#### *Other impacts of regularisation*

Regularisation is not only important for properly adjusting mismanaged migration policies and the employment situations of immigrants. Regular residence status is also discussed as important for claiming fundamental rights (cf. Kraler 2012, FRA 2011). Besides escaping exploitation by employers, access to health care and social insurance can be seen as an important result of regularisation, though quantitative information is lacking in this area.

Results of existing studies show a clear dependence on the context in which irregular migration and regularisation take place. Currently there is no overall answer to how regularisation impacts on the labour market situation of immigrants due to the very different regulations, implementations, target populations and structural factors throughout Europe (e.g. informal labour, welfare provisions, etc.).

Based on this overview we derive the following research questions and hypothesis that will be investigated further below based on preliminary results from qualitative interviews, but to some extent will remain open for a quantitative survey.

We assume that regularisation can impact on improved employment participation, though access to formal employment. However, employment participation is only a weak indicator of success on the labour market. Thus we further assume that in countries with strong informal sector integration into formal labour market will be difficult and depends strongly on existing qualifications and skills of migrants. Therefore low-skilled immigrants might not benefit from regularisation in terms of escaping informal employment. Moreover, in some contexts regularisation might lead to lower employment rates, because immigrants with legal status might be more selective about their employment and have the power to seek better employment which in this sense indicates an improved labour market situation. Employment requirements for maintaining regular status might also undermine this privilege and force regularised immigrants to remain in poor working conditions. Access and (supported) participation in occupational training is seen as important for improving beneficiaries' labour market situation.

If regularised immigrants manage to change their employment or remain in the same employment but get access to formal employment, we assume that wages increase.

Access to formal employment also means access to social insurance, which we assume is highly valued by beneficiaries.

We assume that employment benefits from regularisation differ by gender amongst others due to different sectors occupied by men and women.

Besides the potential improvement in the employment situation owing to regularisation we also assume that existing opportunities and legal access to employment increases the opportunities to legal status.

This means we are interested in explaining the employment situation of regularised third country nationals in terms of whether persons have employment or not and in terms of quality of employment. We assume that differences in the employment situation can be explained through general labour market access (potentially increased through regularisation) as well as existing skills and formal qualification (and opportunities to recognise qualification). We assume that this relationship is mainly moderated by factors such as gender and duration of stay (prior to regularisation) on the individual level and the welfare system (e.g. support for labour market inclusion or training) as well as prevalence of informal labour and the overall migration regime on the macro level.

### **3. Regularisation policies in seven EU countries: Developments in the past decade<sup>13</sup>**

This section provides an overview of recent policy developments regarding regularisation of third country nationals in the seven countries under study. The overview is based on the country assessment reports prepared in the course of this study, which provide a more in-depth description of recent policy development.

The countries covered include France, Germany, Italy, the Netherlands, Poland, Spain and Sweden. The country selection was made due to importance of irregular migration and regularisation in those countries on the one hand, but also due to contextual differences, most notably between Southern and Central and Northern European countries. The seven countries include five of the six largest EU countries in terms of population size, ranging from over 80 million in Germany to over 38 million in Poland. The Netherlands and Sweden are smaller regarding the size of the total population, but – together with other countries except for Poland – show larger percentages of immigrants. Germany is the country with largest number of third country nationals in the EU, followed by Italy, Spain and France. The number of third country nationals found to be irregularly present also differ. While higher levels are reported in Spain, France and Germany, other countries show comparably low figures. Yet, as mentioned above, the numbers of apprehensions which serve as a basis for the present discussion do not necessarily reflect the prevalence of irregular migration.

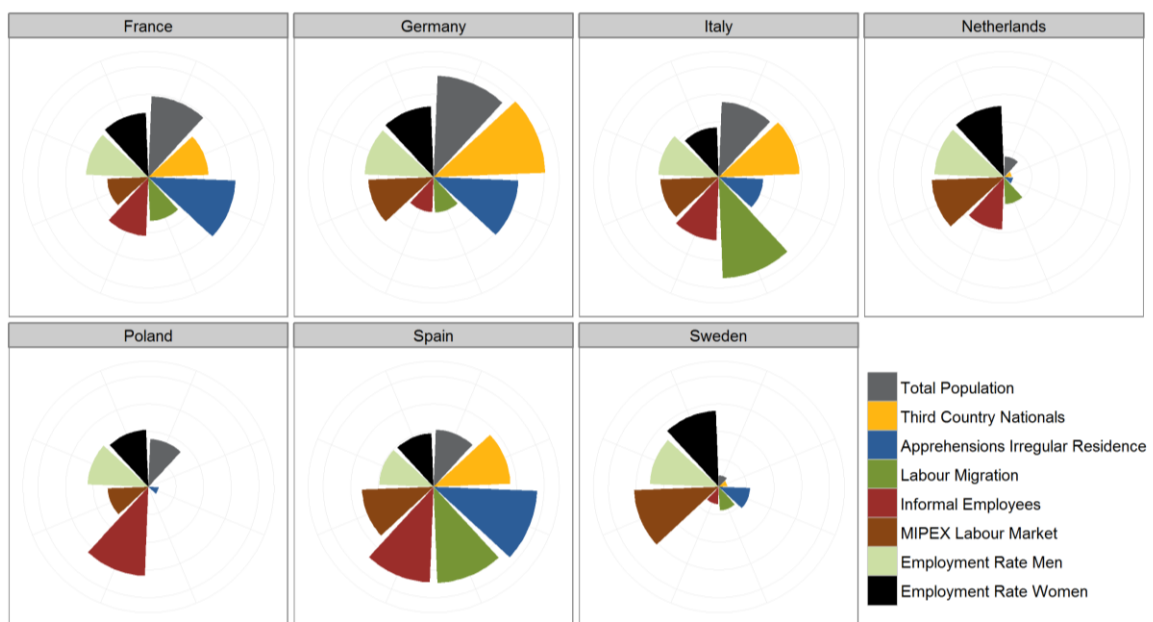
Among all motives for migration surveyed in the realm of the Labor Force Survey, in each of the destination countries under study in this report, labour migration is especially important in Italy and Spain (information missing for Poland). The MIPEX Labour Market Index provides information how accessible the labour market is for third country nationals, to what extent general and targeted support is available on the existence of workers' rights. Sweden scores highest in this index, reflecting the most liberal laws in this regard. The Netherlands, Spain, Germany and Italy show above-average scores and thus comparably liberal laws concerning labour market access, support and rights for third country nationals. France and Poland are comparably restrictive. The total employment rate (i.e. the rate for the total population aged 20–64) for men in 2012 is especially high in Germany (81.8 percent), Sweden (81.9 percent) and the Netherlands (82.5 percent) and clearly below the EU-28 average (74.5 percent) in Spain (65.5 percent), while employment rates for men are close to EU-28 average in France (73.8 percent), Poland (72 percent) and Italy (71.6 percent). Employment rates for women

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<sup>13</sup> This section is based on the country reports of the REGANE studies, which are available at <http://research.icmpd.org/2335.html>. For more bibliographical details see also list of references in this report.

are considerably lower than the EU average (62.3 per cent) in Poland (57.5 percent) and Italy (50.5 percent). In France, employment rates for women are close to average at 65 per cent. Employment rates for women, by contrast, are considerably higher than the EU average in Germany (71.5 percent, the Netherlands (71.9 percent) and Sweden at 76.8 percent. Informal employment in the total population is comparably often reported in Spain and Poland, where over 4 percent of the total population report working as employees without a contract.

Figure 11: comparison of countries according to selected characteristics (scaled)



Sources and notes: Total population, third country nationals, apprehensions taken from Eurostat database, reference year 2012. Percentage of labour migrants among all migrants stems from EU LFS 2008, data obtained from Eurostat database. Prevalence of informal employees from Kazans 2011 based on ESS data, MIPEX from [www.mipex.eu](http://www.mipex.eu), and employment rates taken from Eurostat, reference year 2012 (tsdec420)

### 3.1. Different and yet similar? Normative approaches to regularisation

Despite all seven countries having carried out regularisations in the past decade, the normative approaches to regularisation policies vary considerably across the seven countries. The following section discusses these approaches in more detail, focussing on both regularisation programmes and ongoing mechanisms that have been implemented since the new millennium. Information provided regards the underlying rationales adopted in the measures, the relevance of gainful employment for the measure and the scope and scale of the respective instruments.



## Italy

Irregular migration can be seen as a primary functional equivalent of legal labour migration in Italy and the recognition of this role is reflected in the recurrent use of regularisation programmes, carried out by governments ruled by any political coalition. These measures have traditionally accompanied periodical changes in migration laws.

The largest regularisation to date was carried out in 2002. The amnesty was open to domestic and care workers, but soon after extended to all other categories of workers. The application had to be lodged by the employer, thus, solely dependent workers, either in standard or temporary employment, were eligible for regularisation. Out of a 702,156 applications lodged, 650,000 had a positive outcome (half of which were domestic workers and caregivers). The amnesty precluded individuals who were issued an expulsion order prior to regularisation. However the implementation rules foresaw the possibility for assessing authorities to repeal expulsion orders, a measure generously applied by prefects.

Contrary to the large-scale programme in 2002, the 2009 regularisation scheme has been highly selective in its scope, only targeting foreign workers with an irregular status in the personal and homecare services (*sanatoria colf e badanti*). Because of the unavailability of other effective mechanisms to regularise their status, many other migrant workers, who were not employed as carers or domestic workers and were not entitled to benefit from the measure, tried to find a way to benefit from it, which increased the exposure of the applicants to vulnerabilities. Similar to the programme in 2002, the application could solely be lodged by the employer, thus was again limited to dependent work. Native or EU nationals and non-EU long term residents could request the regularisation of up to three migrant domestic workers in an irregular situation living and working in Italy since at least five months; as for the income criteria, a minimum annual gross income of 25,000 Euro was required for the regularisation of housekeepers (*colf*) whereas no minimum income was required for those willing to regularise caregivers for elderly or disabled people (*badanti*). For this latter category the only requirement was the provision of an official certification attesting the disability and the need for constant assistance. A total of 294,744 applications were filed, 61 percent of which were for housekeepers and 39percent for caregivers. The assessment resulted in a total of 233,244 positive decisions.

Following the reception of the Directive 2009/52/CE, a new regularisation was implemented in 2012. The eligibility criteria were: Italian/EU nationals or non-EU long term resident employer; migrant in an irregular situation present in Italy since 31 December 2011 and working since at least three months; not less than 30,000 Euro income of the employer.

Moreover social contributions for the whole period of employment had to be paid (no less than six months). A 134,576 applications were filed, to a considerable extent by domestic workers (86 percent). Numbers on the outcome are unknown to date.

The framework in Italy provides to a limited extent for continuous regularisation on exceptional grounds: foreign nationals who find themselves in situations of violence, confinement and severe exploitation on Italian territory can receive a residence permit for reason of social protection (six months duration, renewable for up to 18 months at the most). The provision of this residence permit requires the collaboration of the individual throughout eventual investigations undertaken by police staff or other authorities. Subsequent to a legal amendment, the implicit focus on abusive situation in the context of sexwork was dropped and the measure expanded to other forms of violence and exploitation.

In addition, an issued removal order may be temporarily suspended in certain cases (minors until reaching the age of majority, pregnant women and mothers who have recently delivered and fathers if required to maintain the family unit, individuals in a critical health condition and/or receiving medical treatment). The Decree does not foresee any specific duration of these permits or their renewal, however the rights conferred by the residence permit equal those attributed to third country nationals under other provisions. The law further does not prohibit a change of residence grounds (for work or study or other reasons) as long as it does not run contrary to established policy provisions.

Finally, admission of non-EU foreign workers is subject to a mechanism of quantitative selection based on the determination of ceilings to new entries on a yearly basis. Quotas are the main policy tool designed and implemented with the goal of opening a legal entry channel for working purposes, thus serving the economic needs of the country. On the one hand, the quota system of flow decrees has been structured in a selective manner, since a great many of the authorised slots are reserved for migrants from countries with which Italy has stipulated bilateral agreements. On the other hand, the system has increasingly come to be structured in a manner reminiscent of the old *Gastarbeiter* model, clearly encouraging entries for seasonal work rather than for permanent employment. Legal entry remains anchored to this system of annual entry quotas, which in the last years have been improperly used as “mini-amnesties” to rectify situations of previous irregularity. The intent to use the flow decrees to regularise migrant workers already present in the country had become very clear, and quotas can be seen as informal regularisation mechanism part of the regular migration policy, running for several years.

In the midst of an escalating arrival of migrants in an irregular situation from Tunisia to Italy, on 5 April 2011 Italy and Tunisia signed an “exchange of notes.” This agreement set concrete measures to prevent irregular arrivals in Italy and to repatriate Tunisian nationals arriving in the country. Tunisian migrants who had come to Italy between 1 January and 5 April 2011 were granted temporary protection status ex Art. 20 of the Consolidated Act providing for “Extraordinary reception measures for exceptional events”. Conversely, Tunisians arriving in Italy after 5 April 2011 would be returned to Tunisia. The permits were valid for six months (then renewed for other six months) and grant the holder the possibility to work and also travel throughout the Schengen area. This ad hoc “regularisation” measure, clearly without the intention of regularising Tunisian nationals for them to stay in Italy, from the perspective of the Italian authorities, would allow the permit holders to move freely within the Schengen area, and presumably to France.

## **Spain**

In Spain, mass regularisation clearly has played a considerable role in the past decade. It even forms one of the central means deployed to govern labour migration. In the past decade, four out of five announced programmes have been implemented in the years 2000, 2001 and 2005. The programme in 2000 addressed workers in an irregular situation, residents in an irregular situation, rejected asylum seekers and irregularly residing family members. One of the programmes initiated in 2001 was unique in the sense that it specifically addressed a single nationality: Ecuadorian migrants in an irregular situation. However, the latter was never carried out in practice.<sup>14</sup> The second programme launched in 2001 was open to rejected applicants of the regularisation programme initiated in the year 2000 (in the attempt to reduce the emerging backlog). The third programme in 2001 targeted residents in an irregular situation. These schemes have in common that they required a minimum presence in the country, and a clean criminal record (not applicable to programme in 2000). Employment was at that time not a necessary criterion. The scheme launched in 2005 differed in the sense that it exclusively targeted the regularisation of workers in an irregular situation in Spain. Eligibility criteria were 1) provision of a work contract of a minimum duration of six months, 2) a record of contribution to the social security system, 3) minimum stay of six months prior to regularisation (through registration in municipal register) and 4) clean criminal record in country of origin. With the exception of care-workers having multiple employers, applications could solely be lodged by the employer. Contrary to the previous programmes, the 2005 scheme thus introduced dependent work as a compulsory criterion.

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<sup>14</sup> Written note provided by country expert.

All regularisation procedures foresaw a temporary residence permit including labour market access upon positive outcome, including the option for renewal. The 2005 programme was the largest in terms of applications and positive decisions issued: out of 691,655, 578,375 applications resulted in the issuance of a residence permit. The programmes in 2001 had 351,269 applications in total out of which 232,674 resulted in a positive outcome. Finally, the programme in 2000 had 247,598 applications and 199,926 residence permits were issued in total.

The first continuous regularisation mechanism related to work was introduced in 2006 and responded to growing criticism by Northern European countries and increasing pressure subsequent to negotiations with trade unions. The mechanism was grounded on the concept of *Arraigo*.<sup>15</sup> Labour settlement required two years' residence and proof of a one-year dependent employment relationship. In addition, the mechanism maintained the possibility of social settlement on a permanent basis that had already been established in 2000, it required three years' residence, an employment contract of at least one year's duration, and either the existence of family links in Spain or social integration in the local community (to be verified by local authority).

The *Arraigo* mechanism was amended in 2011, it established the basis for a case-by-case regularisation under "exceptional circumstances". The eligibility criteria vary, depending on the grounds establishing residence. In the case of regularisation through employment, the requirements are: no criminal record, continuous stay of at least two years, and an employment relationship that lasted at least six months. In the case of private reasons, the requirements are: continuous stay of at least three years, no criminal record, an offer of an employment contract of one year's duration or more, and either possession of family ties (with spouse/partner, parents/children) with other immigrants with regular status or Spaniards, or submission of a report from regional authorities accrediting the applicant's social integration. The provision of regularisation for family reasons is aimed at parents with children of Spanish nationality, and children with parents who have been naturalised as Spanish. These residence permits for "exceptional circumstances" have a year's duration. Renewals can be applied for and are valid for two years; after five years, the holder may apply for a long-term permit. They automatically allow the holder to apply for a work permit.

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<sup>15</sup> This can be translated as "rootedness" or "settlement", but we retain the Spanish word here. It has a substantial basis in Spanish jurisprudence, which grants quasi-citizenship rights to all residents of Spain satisfying the conditions of social integration.

In addition there are also permits granted to immigrants in an irregular situation in specific cases, including international protection, humanitarian reasons, collaboration with authorities, national security or public interest, female victims of gender-based violence, victims of human trafficking, and cooperation against organised crime networks. These permits are generally of one year's duration and most categories of award also give the right to a work permit.

## **Sweden**

Since 2000, only one major regularisation programme has been carried out in Sweden, which took place between November 2005 and March 2006. The purpose was to bring about a re-examination of the cases of individuals with *res judicata* decisions of deportation or removal. This issue had been particularly mobilised for by actors from civil society (e.g. the Church of Sweden as well as NGOs), which openly demanded regularisations of migrants in an irregular situation in Sweden in order to avoid personal hardship. Following difficult negotiations in parliament that were characterised by severe reluctance of regularisation opponents, a temporary law was finally established. First and foremost addressees were people with return decisions which, for various reasons cannot be enforced and who had stayed a long time in Sweden, who were given the possibility to have their cases reassessed. Families with children and individuals whose deportation is not possible due to the conditions in the destination country were defined as a particular focus. Factors such as length of stay in Sweden, situation in country of origin, links to Sweden, as well as the social and health situation (especially of children) were considered. A clean criminal record was also taken into account as an important requirement. A total of 31,120 applications for residence permits were processed. Out of those, 17,406 applicants were granted residence permits (74 percent permanent residence, 26 percent temporary residence).

According to the new Alien's Act in Sweden, residence permits may exceptionally be granted on the grounds of "particularly distressing circumstances" and do not otherwise qualify for regular residence. Accordingly, the overall situation of an individual should be considered, focusing particularly on the adjustment to Sweden, the situation in the country of origin along with the health situation of the applicant. As the Migration Board emphasises,<sup>16</sup> the previously established possibility to obtain residence for "humanitarian reasons" was more generous in comparison to the newly established ground of "particularly distressing circumstances". In practice, health is currently the decisive factor taken into account.

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<sup>16</sup> Phone interview with expert/representative from the Migration Board, conducted on the 30<sup>th</sup> October 2013.

Successful applicants obtain a residence permit asylum (either temporary or permanent), with labour market access.

### **The Netherlands**

Pressured by civil society, debates on the regularisation of long-term asylum seekers in the Netherlands emerged in 2002. A regularisation programme was implemented; however the actual outcome was limited to the issuance of merely 2,300 residence permits. First and foremost, the government had aimed to enforce the return of rejected applicants through this programme. Social protest emerged against the limited scope of this programme, which had excluded some estimated 26,000 individuals from regularisation. In reaction to ongoing protest, a regularisation programme addressing long-term asylum seekers went into force in June 2007. The requirements specified in the circular were 1) to have lodged the first asylum application prior to 1 April 2001, 2) to provide evidence of continuous presence in the Netherlands since 1 April 2001, 3) to withdraw any other pending procedure for admission. The regularisation could be extended to family members under certain conditions. The number of applications for the programme amounted to 35,874. 28,304 were granted a residence permit comprising access to the labour market (renewable).

The Netherlands adopted a restrictive stance towards the use of regularisation mechanisms. In principle, irregularly residing persons are obliged to leave the country (the introduction of “illegal presence on the territory” as a criminal offence was discussed in parliament when the country assessment was under preparation). Currently, two regularisation mechanisms are in place, which apply to rather specific target groups: (1) regularisation for medical reasons and (2) regularisation for long-term present children and young adults. A residence permit for health reasons may be granted to irregularly residing persons either on account of a health situation diagnosed as critical or if the person in question pursues medical treatment in the Netherlands. The latter ground generally entails a residence permit for the length of the treatment (up to a year). Exceptionally, the residence permit may be granted for the duration of up to five years, provided treatment only is possible in the Netherlands. A residence title granted on account of critical health conditions (valid one year, renewable) is subject to a range of conditions (i.e. termination of treatment would lead to a critical health condition, the treatment is not accessible in the country of origin or any other country reasonably accessible to the individual, the critical condition is esteemed to endure more than a year). Upon the third renewal permanent residence on grounds of critical health condition may be accessed. Further, temporary permits for health reasons are issued (up to a year, renewable), if the treatment's duration is expected to be inferior to a year. This permit

however does not found a residence in legal terms, but rather qualifies as a temporary suspension of removal.

The mechanism for children and young adults is set out in a circular, which entered into force in January 2013. It applies to persons aged less than 19 upon application, who have lodged a demand for asylum, which is still pending and who have continuously stayed in the Netherlands for a minimum period of five years. Moreover, a record of continuous registration with the responsible authorities (alien's police or child welfare institution in the case of unaccompanied minors) is required and any other ongoing procedure related to admission has to be withdrawn. The circular further foresees the possibility to extend residence to family members under certain circumstances.

## **Poland**

Regularisation programmes are an important means to tackle irregular migration in Poland. In the past decade, three regularisation programmes were established. The scheme in 2003 addressed migrants in an irregular situation who could prove de facto ties with the country, but could not access legal status. A complementary measure to the attribution of a residence title was introduced, which granted the possibility for individuals to leave the country without legal consequences (that is without being issued a return ban). To obtain legal status under the 2003 programme, persons needed to fulfil the following criteria: 1) continuous residence in Poland since at least 1 January 1997, 2) submission of application for temporary residence permit to the authorities by 31 December 2003, 3) proof of regular accommodation, 4) a guarantee to obtain a work permit in Poland or an employer's written declaration on the intention of employing the applicant or any other evidence that ensures the applicant can cover her or his living costs and medical treatment (and of dependants), and 5) the regularisation does not oppose the interests of the Polish state. Regularised persons could obtain a residence status for one year with opportunity for extension. The 2003 programme resulted in just over 3,500 applications, which was much lower than expected. Of all decisions, 78 percent were positive, granting legal residence to some 2,700 persons. Partly due to the low number of regularisations in the 2003 programme, a second regularisation programme was launched in 2007 in order to reach those who were eligible for the 2003 programme, but did not apply. Consequently, the requirements were the same for 2007 (including minimum duration of residence). There were roughly 2,000 applications, which resulted in 1,832 decisions of which 73.5 percent were positive. Poland decided to carry out a third regularisation programme in 2012, the purpose of this programme being to eradicate irregular migration as comprehensively as possible. There were almost no requirements except that persons who resided in Poland without legal residence status on 1 January 2012

had to live in the country since at least 20 December 2007 without interruption and could provide identification. Rejected asylum seekers who had remained in the country formed another target group of the regularisation scheme. Beneficiaries obtained a residence permit for two years and were allowed to work under an employment contract, without obligation to possess a work permit, unless their civil contract requires the provision a work permit.<sup>17</sup> Similar to the 2003 programme, a complementary measure lifting return bans for migrants in an irregular situation was installed. 9,555 applications for regularisation were submitted and to date, out of 7,665 decisions legal residence was granted to 4,623 persons (regularisation rate of 60.3 percent).

In the Act on granting protection to aliens of 2003,<sup>18</sup> Poland introduced a form of subsidiary protection called “residence permit for tolerated stay”. A residence permit entailing labour market access shall be granted to a foreign citizen if her or his deportation cannot be enforced because the return poses a threat to his/her personal health and freedom or would attain his/her right to private and family life or the expulsion cannot be enforced for reasons that lie outside the reach of the person concerned.

Moreover, there is an opportunity to obtain a visa for up to three months under exceptional circumstances (1) if the persons has to appear before court, (2) if the person needs to stay in Poland for medical treatment, which is not available elsewhere (3) if an exceptional personal situation requires presence in the country, (4) if in the ‘interest of Poland’ or (5) if there is the reason to believe that the person is a victim of trafficking.

A new law under discussion (likely to enter into force in 2014) foresees a humanitarian residence permit for persons in exceptional circumstances. A residence permit may be granted if the enforcement of a return decision 1) involves a destination country, in which the individual’s human rights (to life, freedom and personal security) would be threatened or s/he could be subjected to tortures or inhuman and humiliating treatment or punishment, forced labour, or s/he would be deprived of the right to fair trial or be punished without legal basis (alternatively a toleration status may be granted, if the individual case precludes the attribution of a residence permit); 2) violates his or her right to family life or children’s rights to a degree that would negatively affect the child’s psychophysical development. Such a permit

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<sup>17</sup> In some cases, such as teaching foreign languages which are mother tongue or performing seasonal jobs by citizens of non-EU neighbouring countries, foreigners do not need work permit to be allowed to work in Poland. In general, however, work permit is obligatory for foreigners, unless they have permanent residence permit. The law ruling foreigners’ access to the labour market is the Act on promotion of employment and labour market institutions (promocji zatrudnienia i instytucjach rynku pracy) of 20 April 2004, Journal of Law 2008, No. 69, item 415, as amended.

<sup>18</sup> Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2003, No 128, item 1176).



will be issued for three months without option for renewal. A toleration status may further be granted if the return decision is not enforceable for reasons beyond the competence of the authorities; or extradition into a given country is deemed unacceptable on ground of a national court decision or decision of the Ministry of Justice.

## **France**

The most recent regularisation programme in France was carried out in 2006 in response to political pressure exercised by social movements. The target group was narrowly defined, exclusively addressing parents of young dependant minor children enrolled in school (prior to the age of 13). Besides enrolment at school, a two year minimum presence of at least one parent in France was required, family ties had to be exclusively maintained in France and the family's "willingness to integrate" formed relevant criteria. In total, 33,538 applications were lodged under this circular; this number exceeded by far the government's expectations (800 families). However, only 6,924 were regularised, equalling a regularisation rate of 20.6 percent. Beneficiaries obtained a renewable residence permit valid for a year, entailing labour market access.

Throughout the past decade continuous regularisation mechanisms have become the dominant mode of approaching regularisation in France. In principle, regularisation mechanisms address the possibility to exceptionally regularise a third country national on grounds of (1) private and family reasons; (2) humanitarian reasons and (3) work – the latter was established in the course of a legal amendment in November 2007 and responded to a growing mobilization among migrants in an irregular situation and civil society. Subsequently, several circulars, decrees and even less formal ministerial communication (e.g. telegrams) specified the implementation of the provision. Their outcome too was shaped by the ongoing conflict between the government and civil society (e.g. trade unions, *sans-papiers* collectives, employer's representations). Three characteristics are of major importance with regard to this framework: the maintenance of administrative discretion has remained a core principle throughout the period under study, the utilitarian approach (priority of interests of the national economy) was upheld, and, finally, the law is devoid of any entitlement for migrants in an irregular situation and strengthens the role of employers (especially regarding regularisation through work) and, more generally, of administrations in regularisation procedures. Criteria laid down in the circulars that specify the framework comprise amongst others a minimum length of residence in France (currently five years, exceptions possible), evidence of employment history and of secured future employment adhering to local remuneration standards, proof of family relations. Gainful employment is not a requirement for regularisation for private and family reasons, however it may play a role in the evaluation of

the overall “insertion” into French society, as laid out in the most recent circular. The assessment of regularisation through work further depends on the evaluation of national economic interests (labour force shortage in specific areas of employment). Depending on the type of regularisation, either a residence permit for private and family reasons or a residence permit for work purposes is granted. The former foresees unlimited access to the labour market, whereas the latter requires the exercise of a profession in a specified domain and entails geographical limitations with regard to labour market access until second renewal, both permits are renewable.

## **Germany**

In 2006 a decision by the Conference of Ministers of Interior of the German *Bundesländer* about the right to remain for persons with toleration status (*Duldung*) was published (*Bleiberechtsbeschluss*). Toleration status means that deportation is suspended a defined period. Strictly speaking, toleration does not confer any proper regular residence status and merely documents the suspension of a removal order. Persons are thus still obliged to leave the country. This obligation is only suspended temporarily for legal or practical reasons. Following the 2006 decision on the right to remain, temporary residence permits were issued to different categories of tolerated third-country nationals. The scope of the decision addressed different constellations and required the fulfilment of a range of criteria, comprising varying lengths of minimum stay in **Germany**. A temporary residence permit based on paragraph 104a(1) required that the tolerated person had 1) stayed in Germany for at least six years, lived together with at least one minor or unmarried child as a family unit and 2) has appropriate accommodation, 3) adequate knowledge of German (level A2 CEFRL), 4) proves that the child attends school (if of school age), 5) has not willfully deceived the foreigners authority (related to the residence status), 6) does not have any connections to extremist or terrorist organisations and 7) has not been convicted of an offence wilfully committed in Germany (and was fined 50 daily rates or more). The second section of paragraph 104a(2) applies to children or adults who 1) were children upon arrival in Germany with toleration status, 2) had a right to remain (asylum seekers) or a humanitarian status residing in Germany for at least six years (as minor), if the person 3) appears to be able to “integrate into the way of life prevailing in Germany” based on 4) his/her education or “way of life”. Finally, paragraph 104b allows minors to obtain a residence permit, 1) if they attained the age of 14 before 1 July 2007 and 2) had stayed in Germany for at least six years under legal or toleration status, 3) have knowledge of German language, 4) are considered “integrated” based on the assessment of their education or “way of life” and 5) subsistence is secured. Application was open until 30 September 2007 but in December 2009, the deadline

for fulfilling the conditions for a prolongation of residence status was extended until 31 December 2011.<sup>19</sup> No detailed statistics on the outcome of the 2006 decision are available.

Several regularisation mechanisms are in place in Germany. (1) A temporary residence permit may be granted if a person holds a toleration status for longer than 18 months and his/her deportation is unlikely to be enforceable in the near future. Moreover, tolerated persons can obtain residence permits through a hardship-clause, which is referred to as the “Leave to remain” (*Bleiberecht*). This mechanism specifically addresses persons, who have entered Germany aged under 14, resided and attended school in Germany for at least six years and earned a degree in Germany. Under certain conditions, the regularisation may be extended to other family members (e.g. parents, single custodians). In addition, temporary residence may be granted to victims of criminal offences and for other exceptional reasons. Very recently, a mechanism for “qualified” persons (i.e. persons with vocational training or higher education) was established. A central criterion is to have a history of continuous employment throughout the past two or three years in a profession corresponding to the applicant’s qualifications. In addition a range of other criteria shape eligibility (e.g. accommodation, language skills).

In principle all regularised persons in Germany have access to the labour market, although for some categories of regularised migrants the approval of the Federal Employment Agency was needed. In 2013 some access barriers for third country nationals were lifted, equally, labour market access for tolerated persons became more lenient.

### **3.2. Conclusions**

As the policy overview above illustrates, normative approaches towards regularisation in the countries under study not only vary across the seven cases, but also over time. Table 1 provides an overview on the countries’ approaches, i.e. the concrete measures adopted, the scale (i.e. positive decisions), scope of the scheme and relevance of employment history and/or employment offer as a requirement for regularisation. Notwithstanding a range of discernible differences, the cases however also lend themselves to a certain degree of comparability in some dimensions, which shall be briefly explored in conclusion of this chapter.

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<sup>19</sup> Taken from news article from NGO “Pro Asyl”: Hubert Heinhold (2011): Erläuterungen: Beschluss der Innenministerkonferenz zum Thema Bleiberecht. Accessed online at: [http://www.proasyl.de/de/news/detail/news/erlaeuterungen\\_zum\\_bleiberechtsbeschluss\\_der\\_imk/](http://www.proasyl.de/de/news/detail/news/erlaeuterungen_zum_bleiberechtsbeschluss_der_imk/), on 25 September 2013.

Table 1: Overview of regularisation approaches in countries under study

Country	Measure	Ground	Employment as Criterion*	Labour Market Access	Scope**	Scale
Italy	Programme 2002	Labour	YES	YES	Workers in dependent employment	650,000
	Programme 2009	Labour	YES	YES	Workers in personal and homecare services (in dependent employment)	233,244
	Programme 2012	Labour	YES	YES	Workers in dependent employment	
	Ongoing "Mini-amnesties" (via entry quotas for Labour migration)	Labour	YES	YES	Already present migrant workers ("dual use" of slots initially intended for admission of labour migrants)	
	Ongoing Mechanism	Social Protection	NO	YES	Individuals subject to violence, confinement, and severe exploitation	
	Suspension of removal order	Humanitarian	NO	NO	Minors, pregnant women as well as women who recently delivered and their spouses, sick/in medical treatment	
	Extraordinary admission	Humanitarian	NO	YES	Tunisian nationals who arrived between 1 January and 5 April 2011	
Spain	Programme 2000	Residence	NO	YES	Workers in dependent employment, family members, rejected asylum seekers, irregular residents	199,926
	Programme 2001	Residence	NO	YES	Ecuadorian Nationals	
	Programme 2001	Residence	NO	YES	Irregular residents, rejected applicants of Programme in 2000	239,174
	Programme 2005	Labour	YES	YES	Irregular workers	578,375
	Ongoing Mechanism	Social Integration	YES	YES	Irregular residents	
	Ongoing Mechanism	Labour	YES	YES	Irregular workers	
	Extraordinary admission	Humanitarian	NO	YES	Individuals subject to violence, trafficking, humanitarian situations	
Poland	Programme 2003	Residence	YES***	YES	Irregular residents	2,700
	Programme 2007	Residence	YES***	YES	Irregular residents	1,282
	Programme 2012	Residence	NO	YES	Irregular residents	4,623
	Suspension of removal order/Toleration	Humanitarian	NO	YES	Individuals whose deportation would threaten their personal freedom and health or violate the right to private and family life	
	Suspension of removal order	Humanitarian	NO	NO	Individuals subject to trafficking, medical treatment, exceptional personal circumstances and if in the 'interest of Poland'	

France	Programme 2006	Humanitarian	NO	YES	Parents of young dependant school children and their children	6,924
	Ongoing Mechanism	Social Integration (i.e. private and family life)	NO	YES	Parents of children at school, spouses of regularly residing third country nationals, minors who will soon reach the age of 18 or persons who have recently turned 18	
	Ongoing Mechanism	Labour	YES	YES	Workers in dependent employment	
	Ongoing Mechanism	Humanitarian	NO	YES	Individuals in humanitarian circumstances, victims of domestic violence, and of human trafficking, individuals present on the territory since 10 years at least, individuals with an 'exceptional talent' or who have contributed the the collective interest (e.g. in culture, sports,...)	
	Ongoing Mechanism	Humanitarian	NO	YES		
Netherlands	Programme 2002	Humanitarian	NO	YES	Long-term asylum seekers	2,300
	Programme 2007	Humanitarian	NO	YES	Long-term asylum seekers and family members (under certain circumstances)	28,304
	Ongoing Mechanism	Humanitarian	NO	NO	Individuals subject to medical treatment or critical health situation diagnoses	
	Ongoing Mechanism	Humanitarian	NO	YES	Long-term present children and young adults and family members (under certain circumstances)	
Sweden	Programme 2005	Humanitarian	NO	YES	Individuals who received a return decision or deportation order, that was not enforced (especially families with children and persons whose deportation order could not be enforced due to conditions in the destination country)	17,406
	Ongoing Mechanism	Humanitarian	NO	YES	Individuals in 'particularly distressing circumstances' (first and foremost health reasons)	
Germany	Programme 2007 (104 a (1) Sent 1 and Sent 2)	Humanitarian	YES***	YES	Individuals with toleration status who live together with at least one minor or unmarried child as a family unit	
	Programme 2007 (104a(2))	Humanitarian	NO	YES	Children or adults who were children upon arrival in Germany with toleration status	
	Programme 2007 (104b)	Humanitarian	NO	YES	Minors at least 6 years with toleration status younger than 14 who are considered 'integrated'	
	Ongoing Mechanism	Humanitarian	NO	YES	Individuals with toleration status longer than 18 months, whose deportation is unlikely to be enforcable in the near future	
	Ongoing Mechanism	Humanitarian	NO	YES	Victims of criminal offences and other exceptional circumstances	
	Ongoing Mechanism	Humanitarian	NO	YES	Persons who entered Germany younger than 14, resided in Germany and went to school in Germany for at least six years and earned a degree in Germany and their parents	
	Ongoing Mechanism	Labour	YES	YES	'qualified' persons (i.e. persons with vocational training or higher education) with toleration status	

\* Comprises previous employment history and/or employment offer \*\*The terminology 'irregular' refers to migrants in an irregular situation \*\*\* Or other means of covering living and health expenses. The table does not specify whether labour market access is limited in any way (e.g. to specific occupation or employer).  
Source: Baldwin-Edwards & Kraler 2009, country chapters of REGANE study and expert interviews

In a nutshell, the country assessments suggest similar features among countries, which have (1) adopted regularisation policies as a means to primarily address labour migration (be it through programmes or ongoing mechanisms), this holds true for **Spain** and **Italy**. The centrality of regularisation as an instrument of labour migration governance is expressed, amongst others, through the scale and the scope of regularisations, both countries display the highest numbers in terms of resident permits granted and have, although to a lesser extent in Spain, strongly addressed migrant workers as potential beneficiaries. In terms of trends over time, a shift from mass programmes to ongoing mechanisms can be observed in Spain. Italy has, in contrast to Spain, maintained a practice of regularisation through large-scale regularisation programmes throughout the period under study and limits the deployment of ongoing mechanisms to the exceptional admission of individuals on humanitarian grounds (e.g. victims of trafficking, critical health condition) for which gainful employment is not a requirement. It is further noteworthy to retain that both countries have asserted the centrality of gainful, dependent employment for regularisation in the period under study – it has evolved to an obligatory requirement in Spain and has, at times, been adopted to labour market demands in Italy (i.e. by narrowing the scope of beneficiaries to certain occupations e.g. care and domestic work). The role of the employer is strong in both countries, either because applications have to be lodged by the employer and/or because a record of employment history and/or an employment offer has to be provided.

Further, (2) similarities are identifiable between **Sweden**, **the Netherlands** and **Germany**. All three countries have a fairly reluctant regularisation practice essentially driven by humanitarian motives (e.g. in connection to the asylum system and/or human rights obligations). Although the three countries have carried out programmes, these were comparatively small-scaled and primarily connected to asylum-related causes (e.g. long-term asylum seekers, rejected asylum seekers) and framed as exceptional measures solely admissible for well-founded humanitarian reasons. By contrast, regularisation programmes in connection with gainful employment are not an issue in the period under study, although it had been addressed in the Netherlands in the past (so-called ‘white illegals’, i.e. persons who contributed to the social security system but had no residence status were once targeted by regularisation measures). There are some differences with regard to ongoing mechanisms. As a matter of fact, the Netherlands and Sweden deploy a narrow spectrum of grounds for exceptional admission, which is by and large limited to critical health conditions (NL and SE) and long-term presence of children/young adults and their family members (NL). Seemingly, the scope of ongoing mechanisms was narrowed in Sweden and slightly expanded in the Netherlands in the period under study. Germany, by contrast, has adopted an ongoing mechanism more generally addressing individuals holding a toleration status

longer than 18 months and whose deportation is unlikely to be enforceable in the near future. More recently it expanded its considerations towards highly skilled who hold a toleration status.

(3) **France** has adopted a mixed set of measures sharing some resemblance with both country groups previously discussed: It has performed a shift away from mass regularisation to ongoing mechanisms on the one hand, stressing the rising importance of a case-by-case approach. The grounds for regularisation have, in a first phase, been turned to humanitarian and social considerations only, and later on, were expanded again to considerations related to gainful, dependent employment, while the previous measures were maintained. Similar to Spain and Italy, the role of the employer in regularisation procedures has grown since the ongoing mechanism foresees a possibility for migrant workers in an irregular situation to regularise. It is noteworthy to recall that despite the relatively large share of immigrant population and estimated share of migrants in an irregular situation in the country, the scale of these measures are kept at a comparatively modest level and characterised by a considerable degree of room for discretion, intransparency and divergent assessment practices at the administrative level. In sum, the framework points to a solid reluctance to adopt regularisations as a means to govern irregular migration.

Finally, (4) **Poland** has deployed regularisation as a means to primarily address irregular migration as a phenomenon as such. It is remarkable that throughout the period under study, the criteria for regularisation programmes became more lenient (e.g. gainful employment as a requirement was dropped in the last programme, which solely demanded the provision of identification and a minimum length of stay on the territory). Yet, contrary to the other countries under study, the scale of the programmes and of immigration to Poland more generally is comparatively small. It remains to be seen how the framework will further evolve. There are strong indications that programmes were primarily adopted as a means to adjust to legal requirements induced by EU-accession. Eventually, a shift towards ongoing mechanisms informed by humanitarian considerations could emerge as the dominant approach.

## **4. Impacts of regularisation on labour market opportunities – preliminary results from semi-structured interviews**

### **4.1. Methodology and sample**

In the framework of the REGANE feasibility study, explorative semi-structured qualitative interviews were conducted in 13 cities in all seven countries. The purpose of carrying out the interviews was twofold: On the one hand the fieldwork should provide information on methodological issues which are important for planning a quantitative survey with our target population, namely regularised third country nationals and third country nationals without regular residence status. The interviews yielded results concerning the accessibility of our hard-to-reach target population and the interview guidelines were tested to provide input developing a standardised questionnaire for a quantitative survey. On the other hand, qualitative interviews allowed for an exploratory analysis regarding the impact of regularisations on labour market performance. The material was coded with the aid of a qualitative data program (MaxQDA). This chapter provides a qualitative analysis of cases of individuals, who experienced regularisation or who reside irregularly in the country. The main objective was to identify employment trajectories in relation to the residence status of respondents as well as other factors. The analysis thus provides an overview of possible trajectories, with a particular focus on the relationship of employment and legal status. In addition, by analyzing cases in more in depth, we were able to explore reasons why persons found themselves in specific situations. We tried to contextualise our findings in relation to country-specific structures and policies. Since the sample cannot be considered “representative” of the target population, it is important not to derive any generalisations regarding the extent of the phenomena discussed. This section thus offers an insight into the spectrum of situations that we encountered empirically, without making any statements about claiming that a particular situation was frequent or infrequent, typical or, by contrast, exceptional.

Initially it was planned to do 20 interviews in all countries where two cities are covered (ES, IT, DE and FR) and ten interviews in the other countries covering only one city. However, in some countries more cities were included in order to test also other locations and to increase the sample. In some countries not all interviews could be carried out due to difficulties in reaching the target population. Figure 1, above, shows all cities in which interviews were conducted, including Stockholm and Malmö in Sweden, Warsaw in Poland, Hamburg and



Berlin in Germany, “Randstad” in the Netherlands,<sup>20</sup> Milan and Naples in Italy, Paris, Nice and Marseilles in France as well as Barcelona and Madrid in Spain. Not all interviews took place in the cities, but also in urban outskirts. In order to test accessibility researchers tried systematic approaches to the target population via NGOs working with the target population and other social networks accessible to researchers.

It was decided to do semi-structured interviews with guidelines that were prepared by ICMPD and shared with the country partners. The interview guidelines included general questions about the migration history of the interviewees, their residence status, experiences with regularisation and employment situation. Interview partners should explain about the legal situation upon arrival in the countries under study and all changes in their legal situation since then, thus including regularisation experiences and potential loss of status. The same was done for employment in order to get an impression of how employment trajectories evolved.

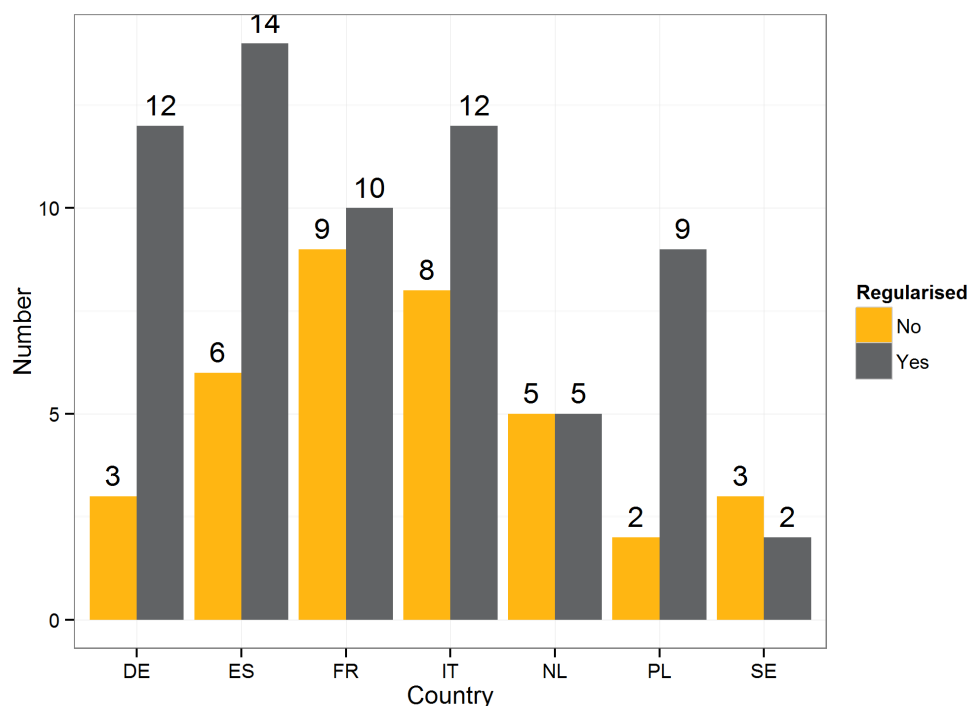
Altogether 100 interviews were conducted in the 13 cities/conurbations with 64 regularised third country nationals and 36 third country nationals in an irregular situation. In Spain and Italy 20 interviews were conducted in each country, in France 19 interviews, in Germany 15, in Poland 11, in the Netherlands 10 and 5 in Sweden. In France, Germany and Sweden lower number than planned were realised due to difficulties in accessing the target population for several reasons (including for instance challenging timing of the fieldwork over the summer break). Interviews were done in several languages depending on the languages skills of the interviewers, including Arabic, Serbian, German, Italian, French, Phasto, English, Dutch, Polish, Catalan, Vietnamese and Spanish. The sample is biased towards men: two thirds of respondents were male. Interview partners originated from over 30 different countries outside the EU, covering the regions of Latin America, Africa, Asia and Europe. Interviewees were comparatively high-skilled. Years of education range from 0 to 23 years, almost three quarters of respondents completed high school or even higher education. Fields of education include Laboratory Sciences, Mining, Archaeology, Nursing/ Midwife, Physics, Electrotechnology, Tourism, Business Administration, Marketing, Sports, Art/ Film Writing, Law, Geography, Rural Development, Math, Vocational Training in different areas including Sewing and Carpentry, Aviation Studies, Economy and Medicine. There were two participants with less than primary school education and one participant with no formal education at all. In 12 cases, information on the highest educational attainment was not available.

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<sup>20</sup> The conurbation called Randstad comprises the cities Utrecht, Amsterdam, the Hague and Rotterdam.

Years of arrival span from 1993 until 2012 and the most dominant age group comprises a range from 20 to 40, but there were also older and younger persons (e.g. participants who arrived at childhood age to the country under study) interviewed. The majority of interview partners were single, but there were several interviews with persons, who lived with their partners and/or other family members and some had their partners and other family members in their country of origin. The residence status of the partner living with the interviewees was, with a few exceptions only, regular, about one third of partners were actually EU citizens. The majority of interviewees were employed – mostly in formal, but also informal employment – or in education. The following will outline main results from the interviews.

Figure 13: Overview of respondents



## 4.2. Reasons for irregularity

We find all kinds of residence statuses upon arrival among the interviewees. Some of the interview partners entered the country without any residence permit or visa. Several others had a tourist visa, which they overstayed and some respondents had residence permits or visas for the purpose of employment, studying or family reunification. Others, especially in the Netherlands, arrived as asylum seekers. Those who came regularly often overstayed their first visa or permit or renewed a few times until they could not extend it anymore.

Interviewees' reported reasons for unsuccessful renewals varied, ranging from not fulfilling the criteria for a residence permit because of unemployment, because of difficulties in changing from one residence category to another (e.g. from student visa to other) or because of difficulties with administrative deadlines.

### **4.3. Reasons for and against regularisation**

There were several reasons reported why persons applied for regularisation. Generally, it is implausible to assume that anyone would want to be in an irregular residence situation. This is also corroborated by statements of interviewees who plainly said that they want regular residence. In some statements, this aspect was furthermore coupled with a wish for being like others, and the wish to have a normal life etc.<sup>21</sup> The impression of being excluded from personhood without papers was expressed by an interview partner with toleration status in Germany: "Without documents in Europe you are not a human being. A document makes you a human being."<sup>22</sup> In addition, participants highlighted their hopes that obtaining a status would offer redress for a situation experienced as devoid of most basic rights – comprising movement (across and within territorial borders), family and private life, health, education and gainful employment. Regarding family related motivations for regular residence, one woman living in Spain explained that she had her minor son in her country of origin and wants to get regular status in order to be able to reunify with him<sup>23</sup> Concerning health reasons the interview material delivers several testimonials on incidences of people with psychological problems due to their irregular residence status. Moreover the poor health coverage when being irregular was a central topic for participants when requested to assess their motives for regularisation and/or compare their situation ex ante and ex post to regularisation. Constrained mobility was a topic in terms of restricted legal possibilities to travel with irregular or tolerated status, but it was also an important topic in people's accounts on daily life, there was repeatedly mention of fears of controls and a feeling of limited mobility (e.g. great unease with commuting to work, walking in the street, riding to school on a bus). Access to education, including vocational training, were mentioned as important assets of regular residence. Finally, access to formal employment and access to better employment are major reasons for people to apply for regularisation. Many interview partners highlight that they cannot get a regular or decent job due to their irregular status, or can exercise gainful employment only in a rather limited range of occupational sectors. There was solely one respondent who declared not to be interested in regularisation because he feared he

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<sup>21</sup> 4\_FR\_N\_2. This is a reference to an interview, using a code constructed to anonymise interviews and used for all interviews with migrants conducted in this study.

<sup>22</sup> 32\_DE\_H\_2

<sup>23</sup> 55\_NL\_2

would earn less as a formally employed regular worker.<sup>24</sup> Other than that, there was hardly any mention of reasons against regularisation, except barriers to regularisation, which are discussed below.

#### **4.4. Experiences with and subjectively perceived impact of regularisation**

Except two, all regularised respondents were regularised in 2002 or later. The latest reported regularisation took place in July 2013. Around half of respondents were regularised in 2009 or later. Consequently, the experiences with being regularised differ according to length of residence and years since regularisation. While recently regularised persons could explain more thoroughly their immediate feelings and impressions of obtaining legal residence, other respondents could better assess the long-term impact.

##### *Assessment of procedure*

Interviewees reported positive as well as negative experience with the administrative procedure of regularisation. Positive assessments arose from confidence in succeeding to regularise, which made regularisation candidates looking forward to being granted legal residence. Confidence was further raised by support received, as expressed in the mention of supportive employers, private and family networks or NGOs. Some interview partners also had a positive feeling about the regularisation procedure because they handled the entire procedure themselves and therefore were proud of having managed to regularise. Finally, a short duration of the procedure that was not too difficult was highly appreciated by respondents. Positive assessments of the procedure were repeatedly reported in interview material from Poland, in which participants mostly described a quick and easy process. Although the length of and costs of the procedure were raised as a disadvantage, several interviewees in Italy referred to an overall good experience. A relatively positive reference to the procedure was made by many participants from the Netherlands, mostly because they compared the regularisation to the overall negative experience with their preceding lengthy, psychologically straining asylum procedures. Pride in handling the procedure without any additional support was especially a topic among interview partners in Germany.

At the same time there were even more negative experiences with the procedure reported by our interview partners. Participants complained about the lengthy process of regularisation, including persons waiting for up to a year for a decision. Notwithstanding varying durations of procedures, the waiting period was in many cases experienced as causing psychological stress and feelings of insecurity. Other negative experiences concern the difficulties with

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<sup>24</sup> 51\_IT\_N\_2

providing required documents, for instance because document retrieval was not possible in the country of origin, documents lacked an official translation or the employer did not want to (or could not) provide proper pay slips or other relevant documentation. Difficulties in providing accurate documentation on the length of stay in the country also turned out as a major challenge for several interview partners. Eventually, several applications were rejected on these grounds. Interviewees further referred to the costs of regularisation, including administrative fees, taxes and other costs, but there were also accounts of economic burdens shifted from the employer to the immigrant and sometimes even fraud. For example in two cases in Italy the (potential) employers took money in advance (3,000 to 5,000 Euros), supposedly to handle the procedure, but they tricked the participants and did not even lodge application or did not bother to comply with the employer requirements.<sup>25</sup> Because of such negative experiences the interviewees did not apply for regularisation again. Being rejected, sometimes even several times in a row, is a negative experience shared by some respondents. The reasons for rejection were also not understandable to some applicants for regularisation, including one case in France, where the applicant was refused regularisation because he had not returned to his country of origin and had stayed on irregularly. This was considered a violation of the values of the French state by the authorities.<sup>26</sup> Rejected applications also raised suspicion among interview partners on actual parameters authorities deploy to assess the application files, especially when decisions were taken in legal settings which, depending on the policy, offered considerable room for administrative discretion. Some respondents also raised dissatisfaction with unfriendly staff and long waiting queues in front of offices responsible for handling regularisation requests. Finally, many respondents complained that they could not fulfil the criteria for regularisation in terms of having a regular work contract or paying social contributions, without formal work. They claimed the main reason for not finding a regular job is not having legal residence permit, which catches them in a vicious cycle. A French participant expressed strong concerns in that regard, she thinks the system is absurd, since a job is required to apply for regularisation but papers are needed to find employment.<sup>27</sup> Accounts of negative experiences slightly differ, depending on the country of interview. In Spain, especially the eligibility for regularisation itself was problematised (e.g. requirement of minimum period of residence) and there were accounts of several unsuccessful applications, mostly for reasons of incomplete/invalid documentation and/or lack of support from the employer. In Poland, some participants had difficulties to comply with the eligibility criteria (mostly proof of continuous/long enough residence). In Italy, negative experiences were in particular discussed in terms of an issue of wasting time and

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<sup>25</sup> 41\_IT\_M\_2 and 42\_IT\_M\_2

<sup>26</sup> 9\_FR\_N\_2

<sup>27</sup> 10\_FR\_N\_1

money, especially if interviewees were deceived by their employers. In the Netherlands, negative perceptions were connected to the rejection of applications as such, which raised feelings of frustration after spending several years in asylum procedures with no sign of progress. In the German examples, the accounts of negative experiences comprised issues of difficulties with the procedure as such, failed applications and long waiting periods.

### *Impact of regularisation*

The impact of regularisation was assessed along several dimensions, some of them introduced by participants, which by far exceeded issues of employment. The diversity of aspects raises issues of complexity regarding the actual impact of regularisation on trajectories. As the interviews under study suggest, the impact of status change is not limited to a single, but rather multiple interconnected components. However, in view of the centrality of labour to this project, a section on employment will address this issue separately. Against this background, it is important to stress that not only these dimensions are interwoven but, as the concluding remarks of this chapter shall argue, in many regards seemingly reinforcing each other.

Accordingly, regularisation allows access to rights in general, including legal employment, welfare and social insurance, it may have a positive impact on education opportunities, housing, family life, mobility as well as on the overall perception of subjective well-being. The following will highlight some key-findings in more depth.

Some respondents report that legal status allowed them accessing rights, which raised their protection and increased their empowerment. Besides more specific rights, including being able to open a bank account, take out a loan or signing a rental agreement in one's own name, the plain fact that attaining a regular status entails a set of rights was highly valued by many respondents and increased their feeling of security. Many respondents highlight their well-being improved due to having regular residence status, indicated through feeling more confident and free and having an easier life in general. References to increased well-being, personal safety and access to rights was, though with slight nuances in emphasis, a core topic among participants interviewed in all countries under study. The statement of a respondent from the Netherlands illustrates the importance of the relationship between status and well-being. He summarised his experience as "it [regularisation] felt like we were animals being released from a cage".<sup>28</sup>

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<sup>28</sup> 64\_NL\_1

The family dimension was discussed by many participants, since legal residence status renders reunification with family members (e.g. children left-behind spouses or partners) possible. While the opportunity for family reunification was mentioned by several respondents, it remained inaccessible for some for they could not fulfil the requirements regulating family reunification.<sup>29</sup> Family life has also improved simply by accessing legal possibilities to leave the country in order to maintain family ties in the country of origin or elsewhere, as expressed in the following statement of a participant from Ukraine interviewed in Spain: “It was more complicated (before regularisation), because I couldn’t return to my country and get back to Ukraine. Now, with my legal status, we went back, also with the kids.”<sup>30</sup>

Issues of constrained mobility during irregularity were highlighted by many respondents, since irregular residence does not allow persons to travel. On the one hand persons feel they cannot leave the country because of the fear of not being able to return and on the other hand persons are also not able to circulate freely within the country. Against his background, regularisation was perceived a great relief for respondents for instance being the case for a woman with toleration status in Germany, who could not take part in trips during her schooldays.<sup>31</sup> Two respondents from Spain mention that prior to regularisation they were even afraid of walking in the streets due to the fear of being asked for documents by the police and of ultimately being deported.<sup>32</sup> Similarly, participants in Poland and France felt relieved to be able to move freely in their daily lives subsequent to regularisation.

Welfare, social insurance and particularly health care are also of importance. One woman from Spain reports that although she had access to basic health service during her time without residence permit, with regular residence she could get sick leave in order to receive an important medical treatment.<sup>33</sup> The statement of a participant from France implicitly indicates the reluctance, to even take the risk of taking sick leave when being irregular. When assessing the benefits from her regularisation, she plainly claimed: “I can be sick now.”<sup>34</sup> In addition, legal residence status rendered possible to legally rent a flat or house or take out a loan for purchasing property or setting up a business.

Regularisation or even the prospect of regularisation seemingly makes people think about their future and invest in their education in terms of long-term goals. By contrast, strong

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<sup>29</sup> 92\_ES\_M\_1

<sup>30</sup> 93\_ES\_M\_1

<sup>31</sup> 29\_DE\_H\_1

<sup>32</sup> 77\_ES\_B\_1 and 82\_ES\_B\_1

<sup>33</sup> 77\_ES\_B\_1

<sup>34</sup> 17\_FR\_P\_1

preoccupation with struggles of the immediate present were more of a topic when periods of irregular residence were remembered in interviews and also a recurrent theme among participants who held no regular residence at the time of the interview. An important impact of obtaining legal status is access to education and training. In that regard the experience of young persons with irregular residence (and even more so of young asylum seekers) differs, since access to education, in some cases even internships, is possible and eventually contributes to greater ease in formulating educational and professional plans after regularisation. Yet, interviewees also felt they “lagged behind” and lost important years of their life, if compared to persons who do not share similar experiences (i.e. of fleeing one’s country of origin, or migrating at school age). Reports vary from persons who could start vocational trainings, internships or were able to get a driver’s licence. A participant interviewed in Germany summarised his increased opportunities since regularisation in the following statement: “It is good for me. Now I can do my German course for free, I can do vocational training, I can work. Not to stay at home and do nothing. It was not my life to stay at home.”<sup>35</sup> Qualifications also seem central to increase job opportunities, particularly outside the informal sector and a central feature to change occupational sector.

Not all interview partners referred to the impact of regularisation as unequivocally positive. In a several interviews ambivalence can be found, some aspects of holding a regular residence status were welcomed as particularly beneficial (e.g. the relief of finally having the chance to live a “normal” life, access to rights), whereas other aspects were thought of as an ongoing challenge (e.g. labour market position, financial situation or access to naturalisation) despite accessing a regular residence status. Some of these issues shall be explored in more detail in the subsequent section on participants’ subjective assessments of the relationship of regularisation and employment.

#### **4.5. Regularisation and employment**

For purposes of a more informed comparison, the most pressing challenges participants met regarding their employment situation when holding an irregular status will be outlined, before turning to the assessment of the occupational situation subsequent to regularisation. Although certain country-specific patterns became discernible throughout analysis, a great deal of commonalities can be found in the employment-related statements of participants in all seven countries under study.

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<sup>35</sup> 28\_DE\_H\_1



A recurrent theme touched on the limited spectrum of occupational segments accessible to migrants in an irregular situation, mostly comprising: domestic and care work, construction, agriculture, retail, hospitality and food industry. This assessment is further supported by the fact that, with one exception only,<sup>36</sup> not a single case can be found in which an interview partner could exercise a profession s/he was initially trained for or experienced with, when taking up his/her first employment during irregular residence. With regard to the quality of work, it was frequently summarised as poorly remunerated, strenuous physical labor, generating a feeling of being situated on the lowest end of social hierarchy and looked down by others. People felt they experienced a situation in which they had little or no choice other than taking up work no one else wants to do, the perception of lacking choices seems enforced by the pressure to make a living. Lack of access to formal work was clearly viewed as the main cause for taking up informal employment, as one participant in Italy plainly stated: "If I don't work, I don't eat."<sup>37</sup> Some participants, especially interviewees in Germany and the Netherlands reported they did not even attempt to take up work for fear of violating the legislation in place, which could either threaten their prospects for regularisation or cause substantial sanctions: "When I arrived in the Netherlands they put me in jail, although I had done nothing wrong. What will they do to me if I work on the side?"<sup>38</sup> Yet they thought it an unbearable situation, they sometimes connected with feelings of shame (e.g. for having to rely on charity). Many participants regretted their lack of formal access to labor market, and viewed this to be the ultimate priority to achieve, as illustrated in the example of a participant in France: "Give me the right to work, I do not want anything else. I'm not asking for money, just the right to work."<sup>39</sup> Sometimes, participants recalled they were offered jobs or apprenticeships they had to refuse because of lacking legal access to work. Solely in very few cases participants saw benefits in undeclared work.

The informal character of work is not solely characterised by the absence of a contract, moreover the interview material points to the highly occasional character of informal employment, including casual work, high exposure to short-noticed dismissal, (quasi) self-employment, working for multiple employers etc. Also, it can be observed that certain issues were more related to specific types of occupation than others. There are for instance remarkable differences in what seems to be characteristic of informality in the sectors of domestic and care work, construction work or agriculture.

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<sup>36</sup> 66\_PL\_1

<sup>37</sup> 46\_IT\_N\_2

<sup>38</sup> 55\_NL\_2

<sup>39</sup> 4\_FR\_N\_2

In general, there is awareness among interviewees of the particularly vulnerable position and high exposure to exploitation they are experiencing, when devoid of a regular residence status. However, emphasis was also laid on the necessity to balance the need to secure economic survival against the premise not to accept work under any conditions. In that regard, the personal living circumstances and individual biographies as well as their embeddedness in the broader social context (e.g. welfare scheme, fundamental rights, migration regime, structure of labour market) play a crucial role in how this dilemma is being assessed. In some examples, the change of employer (though mostly within the boundaries of the same occupational sector), was referred to as a viable strategy, if working conditions were considered unbearable. In some cases, participants even managed to negotiate work contracts despite their irregular status. Consequently, within these undeniably limiting constraints, there is also room for agency, though in varying degrees. Whether there is a supportive network in the case of dismissal or whether a person has economic responsibilities towards other family members for instance has a different impact on the perception of opportunity structures and choice. For instance a participant in the Netherlands explains she had to take up informal employment in order to provide for her daughter, although she was afraid in doing so in the beginning.<sup>40</sup> On the other hand, another participant interviewed in the Netherlands who had no immediate responsibility towards young children, partners etc. and who had been in detention right in the beginning of his stay was very reluctant to take up informal work.<sup>41</sup>

Regardless of the agency performed by migrants in an irregular situation in informal employment, their vulnerability is expressed through the abundance of statements on severe difficulties met at work and the hardship they faced while unemployed. The search for employment was described as a struggle for several interviewees, getting up early and waiting on the same spot for a day-hire, travelling long distance and searching for a job in vain and being regularly confronted with the reluctance of employers to hire migrants in an irregular situation. By contrast, other participants thought it easy to find employment in certain occupations, such as care and domestic work. In periods of unemployment, participants had to rely on their savings, support from private networks, petty occasional jobs or charity. The loss of work has in some cases led to the loss of accommodation and expelled people on the street. The financial distress and connected with that, severe pressure to make a living were described as stressful.

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<sup>40</sup> 64\_NL\_1

<sup>41</sup> 55\_NL\_2

Accounts of problems emerging in dependent employment range from lacking a contract in the first place or having a contract that states a different profession from the one actually exercised. There was further mention of deprivation from basic rights such as partaking in the general welfare scheme, obtaining payrolls, paid annual leave, sick leave, the possibility to attend medical appointments, settlement on dismissal, salary increase, health coverage in the case of accidents at work, fair remuneration,<sup>42</sup> pay for overtime, additional pay for work on weekends and public holiday, delayed salaries or an overall refusal to remunerate the employee, long shifts with insufficient/no breaks, degrading, abusive and violent treatment by employers and/or colleagues, including racist assaults and sexual violence and a feeling of high exposure to dismissal, especially in times of economic crises. These experiences further intersect with issues related to the residence situation, such as the fear of controls by the labour inspectorate and/or police, difficulties due to shared identities with someone regularly residing, and finally being confronted with expulsion orders or expulsion orders enforced. Interviewees, who considered self-employment an option, emphasised it was almost impossible to run a business on their own when being irregular, since intermediary persons would be required for the most basic issues, such as setting up a bank account.

The coercive power of employers was an important topic among participants. Accounts of dismissals subsequent to asking for a contract can be found in the material, as underlined by the following quote from a participant interviewed in Spain: “When I asked them to help me to get my papers by offering me a contract, I think it was when the problems started. In less than a month they fired me.”<sup>43</sup> Promises to support applicants for the regularisation were not kept and sometimes their dependency was taken advantage of by requesting additional/or unpaid labor in exchange for support. Moreover, deteriorating health conditions (sometimes caused by missing protection at the workplace) were turned against migrants by employers, who threatened to or even dismissed participants because of requests for sick leave or medical visits during work-time. Despite difficulties, employment was not quit by several participants for they feared losing their eligibility for regularisation. Several participants aimed to take legal action against their employer, but only few succeeded, and if so, only with legal support or mediation of labour unions. The awareness of the availability/existence of better conditions seemed to be an important driving factor for acting up against poor working conditions and taking the risk of changing employer. In that regard, the state authorities formally responsible for settling work conflicts were not considered supportive and trustworthy by respondents. Finally, the very vulnerability itself induced by the lack of regular

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<sup>42</sup> This comprises in particular compliance with minimum wage regulations in the respective countries under study and equal pay regardless of the residence status of a worker.

<sup>43</sup> 89\_ES\_M\_1

residence status was considered a significant barrier in proceeding against employers by respondents.

Among interviewees with irregular status, skepticism was also uttered on whether they could ever become eligible for regularisation. In interviews, the difficulty to obtain employment with a contract in a context of lacking legal possibilities for migrants in an irregular situation to take up formal employment and increasing deployment of employer sanctions was repeatedly stressed as a major barrier to comply with regularisation criteria.

Notwithstanding the major challenges individuals are facing regarding gainful work during irregular residence, our participants' accounts cannot be resumed to exclusively negative experiences. Rather, participants recalled their trajectories in terms of multiple sequences, supplanting each other. Sometimes, experiences were framed as plainly fine. For instance participants remembered they had obtained equal pay like formally employed colleagues, held a contract despite their irregular status, received timely payment and acceptable remuneration, were subject to clearly defined work hours and responsibilities. In some cases it was not the employers, but rather working colleagues, private or community networks or schoolteachers that were recalled as an important source of support. Eventually, the positive experiences were superseded by negative experiences, as elaborated in the previous paragraphs or episodes that were assessed as bearing some ambivalence. Especially in descriptions of employment in care and domestic work, relationships seemingly underwent a dynamic of familiarization, which sometimes turned out beneficial for the interviewee (e.g. obtaining support with housing by employer, feeling of equal worth), but sometimes (simultaneously) turned to the detriment of the participant (e.g. expansion of workload in the name of quasi-familiar responsibilities, acceptance of poor remuneration because of strong personal ties with employer).

On the other hand, the assessments of labour market opportunities after regularisation were discussed as a clear improvement in some regard, but also pointed to significant continuities and new challenges emerging in connection with accessing regular status.

Similar to the assessment of the overall benefit of regularisations, respondents referred to simply being content with regard to their employment. Also, respondents think their job opportunities improved after regularisation, because they see the chance of finding regular employment increasing with regular residence status. Others stressed they would not even find employment without regular status. The latter emphasis was especially strong in interviews conducted in the Netherlands, Germany, Sweden and France.

Moreover, the analysis of the participants' trajectories indicates that other types of occupations can be more easily obtained with legal residence and formal labour market access, whereas irregular residence tends to reinforce stalemates in occupational mobility. Several interviewees reported they could finally obtain employment in a desired field of occupation and access trainings for purposes of reskilling. Sometimes trainings were sponsored by employers, but there were also cases in which the employer refused to support the educational aspiration of his/her employee and s/he had to sponsor the training by private means, which was found to be burdensome in terms of money and time resources available. Conversely, there were several participants who mentioned their regularisation confined them to a specific type of occupation or even employer, although they were keen to change occupation and had rather distinct plans for their professional future. This was for instance the case of a participant interviewed in Spain, who wanted to work as a car mechanic but had to varnish furniture instead for a minimum of a year because his work permit was tied with a specific employer.<sup>44</sup> Moreover, the fact that some work permits are tied to specific occupations generates pressure to find work in the same profession, which is an especially great concern in the wake of residence permit renewal or plans to change employer.

Besides perceptions of increased and more diversified opportunities on the labour market, quality of employment also increased in the view of some respondents. Sometimes reference was made to an overall improvement because fears from controls had ceased or participants thought that trust could be more easily established with the employer. A woman and a man from Italy explain that after being regularised they felt less vulnerable to being exploited by their employer, who took advantage of the weak position of other employees without regular residence status.<sup>45</sup> There are reports of higher salaries and the attainment of a more stable economic situation due to regularisation, allowing for savings (and therefore opportunities to carry out important investments and more security if employer was changed). Also the fact of obtaining a contract with set hours was stressed as a fundamental benefit of formal access to labour market. In general, regularisation seems to increase perceptions of self-determination for several interview partners, as illustrated in this quote: "Now that it's over (working long hours), now it's part-time, it is me who has chosen. (...) I said 'No, I want some days off'."<sup>46</sup> Salaries may remain the same but the situation would lead to improvement because of access to paid leave, comprising sick leave, annual leave, maternity leave etc.<sup>47</sup> In some interviews, the possibility to work more hours or obtain a full time contract was mentioned an

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<sup>44</sup> 84\_ES\_B1

<sup>45</sup> 54\_IT\_N\_1 and 38\_IT\_M\_1

<sup>46</sup> 13\_FR\_P\_1

<sup>47</sup> 44\_IT\_M\_1

improvement. Some participants chose to become self-employed and valued to be their own boss, although interview partners also thought they had to struggle in order to economically survive (e.g. no paid leave, heavy workloads and mistrust from institutions such as banks towards self-employed, work permit limits gainful activity to national boundaries). Some felt they could quit jobs more easily, when dissatisfied with working conditions (e.g. because no contract was offered). Also, participants reported to be less scared of being unemployed because they could obtain unemployment benefits.

While there are reports from persons, who worked formally after their regularisation, others could not stabilise or substantially improve their employment situation, for they could not find employment, or remained in short-term occupations, temporary employment or a mix of formal and informal work. The latter was reported to be linked to the fact that employers sought to avoid paying social contributions and therefore registered their employees for fewer hours than actually performed. There are also cases of regularised persons who keep working informally, because they could not find a regular job. Some took up self-employment after regularisation (e.g. in retail/petty trade), but could not formalise their work for lack of legal opportunities, which was perceived a major dilemma, as illustrated in this example of a participant regularised in Poland “They give a chance to stay, but they do not give a chance to set up your own business.”<sup>48</sup> Respondents also reported they remained working informally for the same employer, hoping to eventually obtain a contract, but to the date of the interview their situation had remained unchanged. Working informally seems not only cause problems in terms of quality of work and low wages, but also induces a lack of access to social insurance.<sup>49</sup> Two respondents from Poland reported to have the feeling that they cannot escape from informal work, even after regularisation and are becoming increasingly aware that they will not have any pension when they reach the age of retirement: “I am interested in pension, since I have only three years of employment record (officially). What next? (...) You are given a good start (...) one may legalise, but what next, tell me what next?”<sup>50</sup> Finally, not being formally employed was raised an issue causing concern with regard to renewal of the residence permit, which, depending on the ground of residence, requires a specific income level and regular social contributions that cannot always be maintained by participants. Frustration was also expressed with difficulties in finding employment despite residence status. In several cases participants thought that additional limitations stemmed from the fact that their education or skills were not recognised in the destination country, and formal training was expected, which however cannot be acquired for reasons of time and money.

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<sup>48</sup> 69\_PL\_1

<sup>49</sup> 71\_PL\_1 and 69\_PL\_1

<sup>50</sup> 67\_PL\_1

Finally, some respondents were highly dissatisfied with their remuneration since regularisation.

#### **4.6. Conclusion**

The interviews show inter-linkages between employment and legal status in several directions. While some persons seem not being able to regularise because they do not have a (regular) job, others find an employer and manage to regularise because of employment and with the support of their employers. Whereas some find formal work due to regularisation, others cannot find formal employment despite regularisation.

Obviously, opportunities to regularise are influenced by having employment, particularly since this is a requirement for several regularisation schemes. If employment was not a prerequisite, persons could regularise more easily and sometimes find formal employment after that, but this does not hold true in all cases. Opportunities to find formal employment seem to be influenced by qualifications of immigrants, and, especially, the recognition of qualifications. Although many participants were highly educated, their examples show that it is often necessary to do (additional) training, which is only possible with regular status and some sort of welfare support. Lacking support thus represents a barrier, since participants missed vital resources to provide for training (time and financial resources). Welfare provision and support in education and training seem to be of key importance for increasing the quality of work and drawing people out of informal work. Third country nationals in the EU apparently face a trade-off between having employment as such and quality of work, which needs investments (by the state and the persons themselves). Persons with irregular or insecure residence status rarely can invest in their employment careers and the need of income also hinders people in taking risks and -seek better employment.

In the overall assessment, regularisation is viewed as beneficial in several areas, which are not exclusively limited to employment. In general, accessing a regular status was viewed beneficial for it simply entailed a feeling of relief, access to rights and a notion of “personhood” in the full sense. Improvements regarding employment related to the mere possibility to access formal employment as such, increase in remuneration, access to contracts and related rights and more self-determination (e.g. change of employer). Yet, the material also points to significant continuities and new challenges emerging in connection with accessing regular status. Access to regular residence is by no means a guarantee to formal employment and problems with exploitation may prevail.

The interviews also lend themselves to some conclusions on the connection of irregular status and informal employment. Several respondents experienced exploitation even subsequent to regularisation, this is underlined by the perceived fragility of several respondents interviewed in the course of this study. However the specific intersection of informal work and the residence status is seemingly particularly enhancing the vulnerability of migrants in irregular situation. Despite the fact that employment laws in all countries under study provide for a series of employment related rights such as the right to health, safety, fair remuneration and dignity of every worker,<sup>51</sup> the possibilities to claim these rights cannot be taken for granted by participants interviewed. This is emphasised by accounts of lacking support in labour related conflicts. Against this background, a second stage project could greatly contribute to a better understanding of costs and benefits of regularisation by further investigating the intersections between demand for (flexible) labour, characteristics of informal economy, and issues of residence status.

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<sup>51</sup> “In the majority of EU Member States, irregular residence does not nullify a person’s rights as a worker and the effects of labour law” (FRA 2013: 48).



## 5. Conclusions

This report presents the results of a feasibility study on employment trajectories of regularised third country nationals in the European Union (EU). The aims of the feasibility study were twofold: (1) to study the feasibility of implementing a comparative quantitative survey of regularised third country nationals in seven EU countries (Germany, France, Italy, the Netherlands, Poland, Spain and Sweden), based on a review of relevant literature, expert interviews and a qualitative pilot study of regularised migrants, and (2) to examine the basic features and dynamics of post-regularisation labour market trajectories based on the primary and secondary data collected in the course of the feasibility study. The pilot study involved altogether 100 qualitative interviews with both regularised and non-regularised third country nationals in an irregular situation, the latter serving as a comparison group. In addition, expert interviews with over 40 policy experts, civil society representatives and academics were conducted in the various countries.

Regularisation is widely practiced throughout Europe with several hundred thousand beneficiaries in the past two decades. However, not much is known about the impact and sustainability of regularisation. Open questions refer to whether or not and to what extent persons can maintain their legal status after regularisation and how regularisation impacts on the employment situation of persons concerned.

The study shows that regularisation remains an important policy tool in responding to the prolonged presence of migrants in an irregular situation, though approaches to regularisation vary greatly across countries. In the EU as whole, at least 3.5 million persons were regularised through regularisation programmes in the past two decades. Another several hundred thousand third country nationals obtained legal status through permanent regularisation mechanisms, available in one form or another in most EU Member States. Notwithstanding the prevalence of regularisation as a common policy practice, the boundaries between regularisation and other forms of status adjustment are fluid, reflecting the fact that “regularised migrant” essentially is a political category, as is the category “irregular migrant”. Unsurprisingly, both categories are primarily shaped by evolving legal frameworks and changes in legislation, thus also shifting the boundaries of irregularity and regularity.

The criteria for regularisation differ considerably across countries and also within countries between different programmes and mechanisms. Some form of minimum residence requirement is common to all programmes and mechanisms reviewed. In addition,

employment or more general “integration” requirements, as well as humanitarian considerations, are often invoked as conditions for regularisation.

There is a clear divide between countries implementing regularisation as a means to address spontaneous labour migration and informal employment of immigrants (amongst our countries under study, Italy and Spain) and countries regularising on humanitarian grounds (Germany, the Netherlands and Sweden). In France, humanitarian considerations also play an important role; however, contrary to Germany, the Netherlands and Sweden, beneficiaries are more rarely connected to the asylum system (e.g. rejected asylum seekers, long-term asylum seekers). In addition, France has a history of employment-related regularisations, and recently employment considerations have again gained importance. Poland is specific in that its regularisation programmes, and particularly the most recent regularisation scheme of 2013, have aimed at addressing irregular residence as such, without additional humanitarian, integration or labour market requirements involved. This can be largely ascribed to adjustments to legal requirements induced by EU-accession.

The results of the qualitative pilot study allow insights into the complex relationship of regularisation and employment. Opportunities to escape the informal labour market or, more generally, to improve one’s labour market status through regularisation, are driven by a variety of factors, including the recognition of qualifications obtained abroad, access to (vocational) training, the length of residence (until regularisation), gender, the welfare system, the labour market structure (e.g. prevalence of informal labour, in general, and related opportunities to work formally) and, finally, the migration regime. Moreover, the impact of regularisation was assessed along several dimensions introduced by the participants, which by far exceeded issues of employment. The diversity of aspects raises issues of complexity regarding the actual impact of regularisation on trajectories. As the interviews under study suggest, the impact of a status change is not limited to a single component, but rather multiple interconnected elements.

Employment was often a precondition for obtaining legal status, and therefore excluded persons without employment from obtaining legal status. If employment was not a requirement for regularisation, persons without proper employment (no employment or informal employment) could sometimes improve their employment status through regularisation. Despite having regular status, there were also participants who remained in informal work arrangements after regularisation, or who could only improve their status partially. For instance, they found themselves in hybrid forms of employment combining a formal (limited) contract with a sometimes substantial share of undeclared hours.

Conversely, several employed persons could improve their labour market status after being granted a regular residence status.

The results of the pilot study suggest that the ability to find regular employment is influenced by migrants' qualifications as well as the ability to have their qualifications recognised. Thus, even though many participants were highly educated, some additional training was required, due to a lack of recognition of qualifications acquired abroad. Participants who did not receive any support thought these measures to be hardly accessible to them. Many respondents felt that regularisation improved the choice of occupational sectors available and argued it had facilitated the change of employment, and sometimes even of profession. However, in some instances, where migrants were regularised and held work permits limiting access to specific occupations, it seemed that occupational mobility was hampered in the longer run. Even more so, migrants without regular status found the range of occupations available to be severely limited. Moreover, all but one respondent in our sample were not working in the profession initially trained for while residing without regular status.

Amongst our respondents, the impact of regularisations on working conditions and the quality of work was mixed. Some participants had ambivalent, and sometimes even negative, assessments of the evolution of the quality of work since regularisation. However, the findings suggest improvement with regard to very basic aspects such as paid leave, determined working hours, access to full-time jobs and, for some respondents, an overall sense of more self-determination in regard to work and work-related issues. Finally, it seems that the possibility to claim basic labour-related rights cannot be taken for granted by migrants in an irregular situation. The specific intersection of informal work and the lack of regular residence status appear to particularly enhance their vulnerability.

An important finding of the pilot study concerns the positive impact of regularisation on well-being and its instrumental value for enjoying a range of other rights, such as access to education, welfare services and social insurance or family reunification, some of which are linked to access to formal employment through regularisation.

While the pilot study sheds light on different possible impacts of regularisation, the qualitative data does not allow conclusions on the extent to which experiences described by respondents were typical. More systematic and robust evidence on the employment effects of regularisation can only be obtained through a quantitative survey of regularised third country nationals. Such a survey would also allow a more solid insight into the experiences of migrants while in an irregular situation and the role of the informal labour market.

The study finds that in order to carry out a more detailed analysis of trajectories of regularised immigrants at reasonable costs, alternative sampling methods need to be considered. Methods reviewed include sampling on the basis of a list of the target population, location sampling, respondent-driven sampling and a combination of quota and chain referral sampling. The study proposes a mixed sampling methodology, using the most adequate and most feasible sampling method in a given country.

In general, regularisation is a multifaceted policy tool and is usually linked to a variety of policy goals. This study has sought to shed light on the impact of regularisations on labour market trajectories of regularised migrants. Its results indicate a broad range of potential impacts of regularisations on beneficiaries, which to some extent go beyond labour market issues, while also pointing out the interlinkages between these other impacts (for example on well-being or welfare) and their role for the labour market performance of individuals. Yet the study also highlights limitations of the potential, and sometimes ambivalent, outcomes of regularisations, which have to be adequately contextualised.

Important questions thus have to remain open that a future study should address: Can we discern any causal patterns? In what ways do regularisation policies impact on trajectories of immigrants? What factors make regularisation a “positive” and successful experience? Conversely, what factors contribute to ambivalent or negative outcomes? How typical are certain experiences? Such questions can only be addressed through a quantitative survey. In addition to providing information on the impact of regularisation, such a study also can be expected to provide a deeper – and comparative – insight into irregular migration and the situation of migrants in an irregular situation in the EU. Given the close topical connection of regularisation to asylum in Northern European countries, such a study is also likely to provide important lessons for asylum policies, notably in terms of reception policies, regulations on access to work and their impact.

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## **Annex**

### **A feasible approach to surveying regularised immigrants in Europe**

This section outlines opportunities for carrying out a quantitative survey with regularised immigrants in seven EU countries. The proposal is the result of this feasibility study. It is based on a literature review of methods for sampling hard to reach groups, assessments of the situation in the countries under study by interviewing researchers, practitioners and government officials, analysing statistics on the target population and practical considerations.<sup>52</sup>

The first section outlines the definition of our target population generally and particularly in every country. The second section discusses methods for sampling hard-to-reach subpopulations and outlines possibilities to access our target population in the seven countries. The last section discusses other methodological issues and important topics to be covered in a standardised questionnaire.

#### **Target population**

The main target population are regularised persons, meaning any person that has ever experienced a regularisation in her or his country of residence irrespective of the current legal residence status. Regularisation is generally defined as any state procedure by which third country nationals, who are illegally residing, or who are otherwise in breach of national immigration rules in their current country of residence, are granted a legal status.

Despite the variety of irregular situations a foreign citizen can find him-or herself in a country, we only focus on residence status in our definition. Irregular residence could include (1) persons completely lacking a residence permit unknown to the authorities, or (2) persons ordered to leave the countries (for variety of reasons) and therefore not having the right to reside in the country but known to the authorities. Among this group, some persons are awaiting their deportation and for some the deportation was postponed due to legal or practical reasons. (3) Another group of persons that can be included are persons who have a legal residence status, but for 'false' reasons, such as persons possessing residence permits

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<sup>52</sup> As part of the feasibility study a detailed proposal, including a more detailed account of approaches to sampling suggested in the different countries covered as well as a first draft of a source questionnaire was prepared. This section provides a summary of our proposal.

for the purpose of education who are not enrolled at university but are employed or cases of marriage of convenience. This latter group (apparently regular residence) is not covered in our target population, since they have an apparent legal status and therefore cannot be subject to any regularisation procedure. The second group is covered partly depending on the situation in the country under study.<sup>53</sup>

We also suggest not covering persons with legal residence status who are informally employed, be it in breach with migration law (i.e. working despite lack of access to the labour market) or be it in breach with labour laws (i.e. without contract, without paying taxes or obligatory social insurance). Therefore the main focus is on persons lacking a residence permit, which is often related to the fact of lacking identification in general.

Furthermore, it is important to highlight that asylum seekers are not considered having an irregular status, because they are simply awaiting a decision on their application for regular residence. If they stayed in the country before irregularly, lodging an asylum application is also not considered regularisation, since this is not a state procedure primarily aiming at granting legal status to persons without status, but a procedure assessing whether protection grounds apply, as a consequence of which a status transition (from irregular upon entry to pending while in the asylum procedure to a fully fledged legal status upon recognition as a refugee) may occur, but as regularisation through family formation this is not subject to this study.. Asylum seekers might fall into irregularity once their application gets rejected, which makes them potential candidates for regularisation, once they remain in the country despite being ordered to leave after rejection. In fact failed asylum seekers are the most important group targeted by regularisation programmes and mechanisms in Germany, the Netherlands and Sweden, but to some extent also in other countries.

Our general definition of irregular residence is follows the definition in the EU Return Directive 2008/115, meaning *presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State*.<sup>54</sup> Since the exact situation cannot be easily established in a survey we have to rely on personal statements in the field work.

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<sup>53</sup> Persons ordered to leave might be put in custody pending deportation. Detained persons are very likely not covered in the target population due to the practical impossibility of being regularised out of detention. Yet, detention is an important aspect to be considered since this is a crucial experience for any person and regularised persons might have experienced in the course of their life.

<sup>54</sup> The Schengen Borders Code can be found here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R0562:EN:HTML> (accessed in November 2013).

As mentioned above it is not important whether or not the target population of regularised persons maintained their legal status, which means that also persons with irregular residence status can be included. Figure A1 shows the principle differentiation of the potential target population.

*The target population includes regularised persons with regular residence status or even naturalised (RR) and regularised persons, who do not hold regular residence status anymore (RIR).*

*The possible control group includes all persons with irregular residence status, who were never granted legal residence status in the course of a regularisation according to our definition.*

Figure A1: Conceptual outline of target population (RR=regularised and currently regular residence, RIR=regularised but current irregular residence, IR=never regularised and irregular residence)

Current status	Applied for regularisation		
	Never	Yes	
		Rejected*	Accepted*
Regular	X	X	RR
Irregular	IR	IR	RIR
*latest application			

## Surveying hard to reach groups and sampling strategy

There is large body of academic literature on surveying hard-to-reach populations. Hard-to-reach populations can be defined as numerically small sub-populations population who are hard to reach not only because of their relatively small size but because some sort of illicit or stigmatized behaviour or status is a defining trait of that population, such as persons with rare illnesses, drug users or irregular residence. Our target population can be termed a hard-to-reach group due to the low number of regularised persons in comparison with the total population and because not having a regular residence status is also stigmatising and even criminalised in several EU countries. This situation requires the use of alternative sampling methods. Table A1 gives a general overview of different sampling methods available for subpopulations.

Table A1: Sampling methods for subpopulations (particularly migrant groups)

Type of sampling	Frames of random selection of SU	Further reading (examples)
Simple random sampling	List	Groves et al. 2009
Random Routes	List of households, place (Time)	E.g. FRA 2009 11-14
Time-location sampling	Place (Time)	Baio et al. 2011
Capture-Recapture	Place (Time)	Berry 2007
Focused enumeration	Place (Time)	E.g. FRA 2009 14-18
GPS based sampling	Place (GPS)	Landry/ Shen 2005
Respondent-Driven-Sampling (RDS)	Network	Heckathorn 1997, <a href="http://www.respondentdrivensampling.org/">http://www.respondentdrivensampling.org/</a>
Snowball sampling	Network	Goodman 1961

Source: Reichel, Morales 2013

In order to obtain a random sample, we have to know about each individual's probability of being selected into the sample, which is equal selection probability in case of simple random sampling, defined as  $p_i = 1/N$ , where  $p_i$  is the selection probability of each individual  $i$  and  $N$  is the total number of the target population. The easiest and best way to obtain a random sample is sampling from lists, i.e. a complete list of all members of the target population. If a list is not available location sampling can be applied (e.g. random routes) or random-digit-dialling. These methods are not easily applied to sub-populations and indeed almost impossible to be used for rare sub-populations representing less than 1 percent of the total population.

Another approach of location sampling is sampling at selected places, where a high probability of finding the target population is assumed. At the end of the interview the target population is asked about their attendance of all centres surveyed, which allows to calculate a weight according to the selection probability (cf. Baio et al. 2011). This method has been employed several times in the past years for immigrants in general, but particularly also to capture migrants with irregular residence status. This method can only be applied if the target population is well covered by the centres and locations selected (e.g. ethnic shops, ethnics restaurants, public places, counselling services, offices of authorities and even including lists). If the target population is too small to be comprehensively found at known places, other methods needs to be employed.

Another approach is sampling based on knowledge of the network (social contacts) of the target population. Indeed snowball sampling was initially invented to study networks (Goodman 1964) and only over time, the name snowball sampling was used for convenience sampling via respondents. Network sampling can also be used to make inferences, if certain assumptions are satisfied. This approach is called Respondent Driven Sampling (RDS). It assumes that the total target population is well connected through social contacts and every individual can be reached through other individuals. Consequently, some persons of the target population are selected – no matter how contact was established – and those respondents (called seeds) should refer to another person of the target population. Though the selection probability is different for individuals, it is assumed that over the course of sampling the selection probabilities converge, because the selection of the next person is not influenced by selection probability of the previous respondent, i.e. a Markov chain in mathematical terms (see Heckathorn 1997; <http://www.respondentdrivensampling.org/>). This is of course a strong assumption, and one has to be careful when employing the method, being aware that it also can fail.

If none of the above sampling techniques can be employed, the researcher will have to apply convenience sampling. If basic information on the target population is available, quotas can be assigned according to the known characteristics in order to guarantee some degree of heterogeneity in the sample. However, convenience sampling does not allow to make inferences due to the unknown selection bias.

The above discussion reflects the hierarchy of sampling methods that we consider desirable to use for a survey of regularised immigrants. If possible lists should be used, because they guarantee representative selection of respondents. In the absence of a list location sampling is a good alternative. In case location sampling is not feasible opportunities to do RDS were discussed in the countries. If none of the sampling methods that can approach a random sample is feasible we tried to establish quotas based on existing statistics, as outlined in Figure A1.

Figure A1: Hierarchy of sampling methods to approach a representative sample of the target population





## Surveying regularised third country nationals in seven EU countries

Several options for sampling the target populations were examined in the seven countries, where some methods were not feasible. Based on our assessments, we found that in three countries, DE, NL and SE, sampling from a list might be possible. This also means that collaboration with authorities is necessary.<sup>55</sup> Quota sampling might be an alternative option in Germany. In three countries centre sampling can be employed (PL, FR and IT) and in Spain quota sampling is the preferred option (though centre sampling might also work). We propose the following target populations in each of the seven countries including a potential comparison group.

Country	<b>Germany</b>
Target population	Formerly tolerated persons, who obtained legal residence status through „old-case“ regulations (104a/b) or through „hardship regulation“ (paragraphs 23a and 25(5) residence law).
Comparison group	Persons who are subject to removal, but whose deportation order has been suspended („toleration status“ according to paragraph 60a residence law)
Country	<b>Spain</b>
Target population	<ul style="list-style-type: none"> <li>• Beneficiaries of the 2000/2001 and the 2005 programmes</li> <li>• Recipients of the two ongoing regularisation mechanisms – arraigo social/arraigo laboral (in place since after 2005), who are quite large in number.</li> </ul>
Comparison group	Persons never regularised without regular residence permits
Country	<b>France</b>
Target population	Migrants regularised via exceptional regularisation mechanism <ul style="list-style-type: none"> <li>• Mechanism for regularisation (private and family life)</li> <li>• Mechanism for regularisation (work)</li> <li>• Mechanism for regularisation (humanitarian)</li> </ul>
Comparison group	Persons who are in principle liable to leave the territory, known or unknown to the authorities
Country	<b>Italy</b>
Target population	Persons regularised in any of Italy's regularisation programmes since 2000

<sup>55</sup> All proposals are in line with data protection requirements.

Comparison group	Persons never regularised without regular residence permits
Country	<b>The Netherlands</b>
Target population	Asylum seekers who have been regularised in 2008-2009, focus on three nationalities (Afghanistan, Iran, and Somalia, alternatively Iraq instead of Somalia)
Comparison group	Regularly admitted asylum seekers.
Country	<b>Poland</b>
Target population	All (formerly) third country nationals, who successfully regularised in one of the three regularisation programmes in Poland 2003, 2007 and 2012. Successful means that the persons were granted a legal residence status regardless of whether or not the persons could maintain legal status and regardless of whether the person has formal, informal or no employment.
Comparison group	All persons, who irregularly reside in the country for at least one year and never successfully participated in one of the three regularisation programmes or any other form of status regularisation.
Country	<b>Sweden</b>
Target population	All persons who took part in the regularisation programme in 2005 and were granted a temporary or permanent residence permit as well as all persons who obtained legal status through the regularisation mechanism (humanitarian reasons until 2006 and particularly distressing circumstances since 2006) and did not hold a legal status before.
Comparison group	A control group of persons without regular residence status might be included, though only a smaller number will be feasible.

## Questionnaire development

In principle there are several ways to design a questionnaire in order to study employment trajectories. Given cost constraints and due to challenges related to the sensitivity of the topic, a short but precise questionnaire seems to be the best solution. A draft source questionnaire was already prepared in the framework of the feasibility study. The basic outline of the questionnaire is summarised below. It covers the themes migration, legal residence, regularisation, employment and demographics. For implementing the survey proper development of the source questionnaire, translation, testing and adaption to country specific needs is crucial.

The interviews principally should be conducted personally, if possible by multilingual interviewers (computer assisted and paper), but an online version of the survey might also be considered for some countries.

Main sections and topics suggested for a standardised questionnaire

Topic A	Migration history	Arrival in the country, reason for migration, country of birth, nationality, plans regarding settlement
Topic B	Legal status	Legal status upon arrival, changes in legal status/ reason for irregularity
Topic C	Regularisation	Information about regularisation, process of regularisation, impact of regularisation
Topic D	Employment	Employment situation upon arrival, changes in employment situation, unemployment, informal employment, over-qualification, current employment situation
Topic E	Socio-demographics	Gender, age, education, family situation

In order to improve the quality of answers the questionnaire was designed to run chronologically and not according to topics

Section A	Screening
Section B	Arrival
Section C	Regularisation
Section D	Current situation
Section E	Future plans

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## **Feasibility Study on the Labour Market Trajectories of Regularised Immigrants within the European Union (REGANE I)**

**International Centre for Migration Policy Development, 2014**

This report presents the results of a feasibility study on employment trajectories of regularised third country nationals in the European Union. The study aims to (1) assess the feasibility and possible design of a quantitative survey of regularised migrants in seven EU Member States, and (2) to conduct preliminary explorative research on the dynamics of labour market trajectories of regularised migrants. The study shows that regularisation remains an important policy tool in responding to the prolonged presence of migrants in an irregular situation, though approaches to regularisation vary across countries and are linked to a variety of policy goals. Preliminary results of the pilot study indicate that opportunities to escape the informal labour market and, more generally, to improve one's labour market status through regularisation are mediated by a variety of factors, including the length of residence (until regularisation), gender, the welfare system, the labour market structure (e.g. prevalence of informal labour, recognition of qualifications obtained abroad) and, finally, the migration regime. These diverse aspects reveal issues beyond just those related to employment. As the pilot study suggests, the impact of a status change is not limited to a single component, but rather affects multiple interconnected constituents.