



Demystifying the regularisation of undocumented migrants

POLICY PAPER

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This policy paper was written by Leïla Bodeux, with the support of Shannon Pfohman, Caritas Europa.

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1. Introduction

While the fight against irregular migration has dominated the political agenda for years, undocumented migrants remain a sizable population in Europe. For migrants, the **lack of a regular residence status often goes hand in hand with a huge amount of suffering and vulnerability – a situation that can last for several years, even a lifetime.** Referred to as undocumented migrants or people without papers, these people may find themselves in a **protracted limbo situation**, where they struggle to obtain a regular residence status, yet they are not returned to their countries of origin. Living on the margin of society, under continuous stress and anxiety, their basic rights are often disregarded. **Caritas Europa firmly believes that every person, regardless of administrative status should have their human rights respected.** Many Caritas organisations throughout Europe are thus providing basic support to undocumented migrants in order to support them and uphold their human dignity.

Starting with the **human cost that undocumented migrants** bear, this paper aims to **discuss the different facets of the regularisation debate and related practices in several countries.** In a context with scarce options to come to work in Europe by means of regular pathways, irregular

migration has thrived. This continues to be driven by **labour demand for workforce**, which the local population in Europe does not or cannot provide. Several economic sectors like the agricultural, construction, hospitality or domestic care sectors structurally depend on an undeclared workforce, consisting of irregular migrants, who are often exploited by employers.

The COVID-19 pandemic has brought into focus in the European public debate the issue of essential workers, exploitative conditions, and the importance of granting legal rights to those working without papers, through what is known as *regularisation*. **Calls for regularisation schemes have been voiced by different actors due to economic, humanitarian and public health reasons** in order to bring undocumented migrants 'into the system'. One such example is evident by the labour shortage in the agricultural sector due to COVID-19-imposed travel restrictions that created a favourable context to launch a **new regularisation campaign in Italy.**

The **2009 EU funded “Clandestino” project**¹, which is the latest comprehensive study on undocumented migrants in Europe, estimated that **between 1.9 million to 3.8 million undocumented migrants were living in Europe at the time, including many families and children.** While to this date the issue of regularisation remains highly controversial, **regularisation has however been regularly applied** in several European countries. For policy makers across the political spectrum, regularisation – whether exercised for humanitarian or employment purposes – has represented a **flexible policy tool**

¹ European Commission, EU-funded [research project](#) CLANDESTINO (2007-2009). Database on Irregular Migration.

to correct flawed immigration and labour policies. Between 1996 and 2008, **3.5 million persons were regularised in Europe, the majority of whom in Italy and Spain for labour purposes².**

Eastern European states also resorted to regularisation at different points, albeit to a lesser extent.

Nevertheless, regularisation remains **a taboo for many policy makers around Europe**, as a frequent criticism of regularising undocumented migrants' claims that it rewards irregularity and creates incentives to migrant irregularly, the so-called pull factors. Nonetheless, academic research³ has proven this perception to be unfounded, not least because regularisation schemes have generally been set up to exclude recently arrived migrants from the scope. In addition, irregular migration is partly fuelled by the **availability of undeclared cheap and flexible jobs, as well as by the lack of regular pathways to enter Europe.** The US context also shows the increase of securitisation of border and migration management having failed to reduce irregular migration and/or the size of the undocumented population. In addition, the stricter the policies become, the more people are forced to settle in the destination country because circular mobility becomes virtually impossible.

There is an **inherent contradiction with respect to how countries react to and manage irregular migration.** On the one hand, politicians scapegoat irregular migrants for all sorts of societal ills and call for tougher migration measures. On the other hand, they turn a blind eye on some of the key pull factors for irregular migration, such as the

informal economy and the availability of undeclared work; implicitly recognising that undocumented migrants plug the labour forces' gap in some sectors. This **mismatch between security-oriented policies and pragmatic economic interests** allows the perfect ecosystem for the black labour market and thus the phenomenon of undocumented migration to thrive across Europe.

The COVID-19 pandemic has made more people realise that, depending on the national context, **well-designed regularisation processes can be a practicable policy tool that makes sense both from economic and humanitarian points of view.** As such Member States (MS) and EU institutions should study this option more seriously. But **in the long run**, policy-makers will not only need to **promote adequate levels of regular migration** to better respond to labour market needs for different skills set in different countries of destination, but also to **address the issue of underground and informal economies.**

² ICMPD (2009), "REGINE. Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU", [Final report](#) and [policy brief](#).

³ Ambrosini M. (2018), Irregular immigration in Southern Europe. Actors, Dynamics and Governance, Palgrave MacMillan

families with young kids, unaccompanied children, teenagers, people with names and different lives, realities and trajectories.

2. The human impact and background to irregularity

Living in an open prison

'It's very stressful living as an undocumented migrant. At any time, you can be ordered to be deported back to your country. This affects your mental state and your ability to sleep or function in society. As an undocumented migrant, you have a sense of being imprisoned, albeit an open prison. After getting my case approved, I felt free. I felt like the sky was the limit and anything and everything was possible. I felt energized and knew I wanted to keep fighting for others who were in the same position as I had been'⁴.

MAN, 34 years old, from the Democratic Republic of the Congo now living in the Netherlands.

Recent up to date and accurate figures are lacking, but in some countries in Europe, the number of undocumented migrants could be in the several hundreds of thousands (possibly up to 700,000 in Italy, 400,000 in France, 150,000 in Belgium). But as Pope Francis reminds, people must not be reduced to mere numbers⁵. It is thus vital to recall that these are all **men, women,**

Challenges and limitations to the protection of rights of undocumented migrants

Some people have lived in an irregular situation for a couple of months, while others for a decade or more. Undocumented migrants are most often hard workers, willing to take on physical and difficult jobs others are unwilling to do, working in the fields, in restaurants, cleaning facilities, or wherever possible. Some people feel they belong to the country of destination: they have stable jobs, many friends and family members, their children are already active in the local school, they are active in the local and diaspora communities, etc. For them, the prospect of a return to the country of "origin" is rarely sought. **Their life is deeply rooted in the country of destination and as such, they are contributing to its development.**⁶

Lacking a regular residence status disempowers people and renders them invisible and vulnerable to abuses and exploitation. The psychological toll of living in an irregular situation is immense: the constant fear of being apprehended and deported (e.g. random controls in the public transportation system can have life changing consequence), and the uncertainty about one's future can be weakening, causing stress, anxiety, depression and illness. Caritas observes these people to be really eager to fully

⁴ UN Development Programme (2019), "[Scaling Fences](#): Voices of Irregular African Migrants to Europe", p.57.

⁵ Vatican, "[Francis greets](#) the population of Lesbos: immigrants are not numbers, but people, faces, names and stories", 16/04/2016.

⁶ Caritas Europa (2019), "Common Home [publication](#). Migration and development in Europe and beyond", pg.36-43.

participate in the communities where they are living. But a lot of skills, ambitions, and lives are often wasted because of bureaucratic administrative rules that keep people in situations of limbo and fear. The situation is **particularly painful for children born in Europe who remain undocumented for years** because of the circumstances of their parents. They are unable to project into the future and feel frustrated about being treated differently than the native population, especially considering their sense of belonging and feeling at home in the country where they are living⁷. Despite their difficulties, **undocumented migrants are not passive actors; they possess a high sense of agency, and many are creative, energetic, innovative and resilient in their ambitions to develop and contribute to their community.**

Due to their administrative situation, undocumented migrants are often at risk of exploitation, and **when experiencing abuse, the lack of a regular residence status prevents people from reporting cases to the police out of fear of deportation**⁸. Labour inspections at the work place are often carried out in conjunction with immigration enforcement authorities, which means that exploited undocumented migrant workers can be apprehended. In what concerns health care, **financial barriers and fear that their personal data would be communicated to**

immigration authorities has resulted in people not going to the doctor or to a hospital. Finding dignified accommodation is a real challenge. For those in even more precarious situations, accessing basic humanitarian support provided by NGOs or charities can also be risky due to the same fear of being reported to the authorities, while NGOs and volunteers are meanwhile often wrongly accused of facilitating smuggling⁹. This is why it is **crucial to implement the so-called ‘firewall principle’, which distinguishes immigration enforcement services from public and social services, and as such better signals to migrants which entities to trust.**

Something often forgotten and disregarded but already asserted by Caritas Europa in the past¹⁰ is that people – including **undocumented migrants – have rights, regardless of their administrative immigration status**¹¹. International and European conventions¹² as well as legal national provisions ensure a wide range of rights, some of them inalienable. These rights include, for instance, the right to life, to human dignity, to *non-refoulement*, to protection from torture and inhumane treatment, to family life, to access basic health services, to decent work¹³, and access to justice, among others. Regardless of the parents’ residence status, the best interest of the child must also be protected and children have the right to access basic education and should not be

⁷ See for instance PICUM (2021), “[Navigating irregularity](#) : The impact of growing up undocumented in Europe, and PICUM (2018), “[Manual](#) on regularisations for children, young people and families”. See also The Guardian [series](#) on undocumented youngsters in Europe, August 2020.

⁸ See PICUM (2020), “[Insecure justice](#)? Residence permits for victims of crime in Europe”.

⁹ Caritas Europa (2019), “The “criminalisation” of solidarity towards migrants”, [position paper](#).

¹⁰ Caritas Europa (2012), “Fundamental rights apply to migrants in irregular Situation”, position paper, and Caritas Europa (2006), “undocumented migrants. The precarious situation of third country nationals residing irregularly in Europe, position paper.

¹¹ Caritas Europa (2016), “Migrants and refugees have rights [publication](#)”. For an extensive overview of the rights of undocumented migrants, see FRA (2011), “[Fundamental rights](#) of migrants in an irregular situation in the European Union”.

¹² See for instance the European Convention of Human Rights, the EU Charter of fundamental rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic and Cultural Rights (ICESCR), International Labour Organisation conventions on labour law.

¹³ PICUM (2020), “[A worker is a worker](#). How to Ensure that Undocumented Migrant Workers Can Access Justice”.

detained. **In practice, however, undocumented migrants are far too often, denied these rights, and the negative rhetoric surrounding the issue can lead to people being wrongfully associated with “criminals” in the public debate.**

Falling into irregularity

The reasons for becoming undocumented are numerous and often multi-layered¹⁴. The most common stereotype pictures people who “broke the law” and crossed borders irregularly. (This can be done for several reasons: seeking livelihood opportunities, reuniting with a family member, fleeing insecurity)¹⁵. But the reality is far more nuanced and many people actually became undocumented migrants by overstaying their visas or due to administrative obstacles to renew their temporary residence status. **The boundary between regularity and irregularity is often blurred, and people’s status can fluctuate** from regular to irregular from one day to the next. A simple change in immigration law can also result in irregularity.

In several countries like Italy or Spain, one’s **residence and work permit is often linked to a job contract**, which initially has to be regularly renewed. The implication of this is that one can easily lose a residence status following the loss of work. **Missing an administrative requirements to renew a residence status** (due, for instance, to financial fees, unclear requirements or not well communicated deadlines) can also result in falling into irregularity. While others may have lost their regular residence status after a **separation**

from a violent partner (since a residence status can be linked to the spouse in cases of marriage or family reunification, for instance). Some people, including former asylum seekers, may also receive a **return decision that, however, may not at the moment or long into the future be enforced**. This may be due to a variety of reasons (e.g. lack of administrative documents to enter the country of origin, health problems, risk of *refoulement*, best interest of the child, etc.). In this case, authorities may tend to formally or **informally tolerate their stay, though they do not grant a residence status**. This leaves people in a protracted limbo situation. There are endless personal stories and reasons for having an irregular status, indicating the **diversity and complexity of individual and personal life situations, far from the oversimplified stereotypes commonly conveyed by politicians and the media**.

¹⁴ Düvell, F. (2011) ‘Paths into Irregularity: The Legal and Political Construction of Irregular Migration’, *European Journal of Migration and Law*, 13(3): 275-295.

¹⁵ For more information about the root causes of forced migration, see Caritas Europa’s Common Home [publication](#), op. cit.

3. How COVID-19 reactivated discussions on regularisation

While the toughening of migration policies in recent years has made regularisation very controversial and a tabooed policy option, **the COVID-19 pandemic has contributed to bringing regularisation back into the spotlight**¹⁶. The **challenges** undocumented migrants face, but also the **contribution** they make to our societies and economies have been made more evident¹⁷, while many people realise that in order to fight the virus, everyone – including the most vulnerable migrant populations – has to be **included in the health response**.

Challenges and opportunity for a change in narrative

As our members have witnessed on the ground, **the COVID-19 pandemic has exacerbated pre-existing challenges that migrants were already facing**. Precarious employment contracts, harsh working conditions, informal employment, exclusion from social security and access to

public services have amplified the economic and social consequences of the pandemic for migrants as well as the risk of exploitation.

Undocumented migrants are particularly affected because of their exclusion from welfare support and public health services¹⁸. In addition, migrants who have a precarious or temporary residence status often linked with a work contract, risk falling into irregularity due to the loss of the work contract, and disturbances in the states' administrations in charge of granting and renewing residence permits. Thousands **risk falling into poverty and irregularity**.

In addition to these challenges, COVID-19 has also made **more visible the indispensable contribution that migrants make to our economies, and to our societies**, which is not new, but too often neglected or recognised. During the pandemic, migrants have played a vital role in keeping supermarkets, public transport, personal care and hospitals open and functioning, all sectors that already faced labour shortages before the pandemic, often attributed to low pay and unpopular working conditions. According to research from 2020¹⁹, 13% of key workers (e.g. in agriculture, education, health, care, cleaning, etc.) in the EU are immigrants – this percentage increases to 33% if we consider less skilled sectors with more difficult working conditions, such as cleaning, or the food industry. The health sector also heavily relies on foreign nationals; in the UK for instance 33% of doctors were born abroad²⁰. Undocumented migrants also play a key economic role, and the media underlined the **structural dependence of certain economic**

¹⁶ Desmond, A. (2020), "Out of Crisis Comes Opportunity: Reconsidering Regularisation of Irregular Migrants in the EU in the light of COVID-19", UNESCO Chair on International Migration [Policy Brief](#).

¹⁷ See Caritas Europa's [intervention](#) at the Council of Europe on the challenges and opportunities for migrants related to the COVID-19, 22/06/20.

¹⁸ See this [report](#) from the University of Oxford on the Impact of COVID-19 on access to services for irregular migrants.

¹⁹ Fasani F., Mazza J. (2020), "[Immigrant Key Workers](#): Their Contribution to Europe's COVID-19 Response".

²⁰ OECD (2016), "[Recent trends](#) in international mobility of doctors and nurses".

sectors on undocumented migrants' labour, especially in the domestic and care sector, as well as the agricultural sector, which contributed to the launch of a regularisation programme in Italy (see *infra*).

The many **examples of migrants' contributions during the pandemic could lead to a positive change of narrative and policies on migration, and make regularisation a more acceptable policy option.**

Efforts to include migrants in governments' COVID-19 responses

To ensure an inclusive response to COVID-19 and to prevent the creation of irregularity, **several countries have adopted flexible measures with regard to administrative procedures and status** (e.g. automatic renewal of residence permits) and have made **efforts to include undocumented migrants in their socio-economic recovery package and health response**, ensuring access to health care for all – regardless of administrative status.

For instance, **Portugal decided to grant a temporary residence permit for those with a pending application for asylum, residence or work permit**, to ensure their inclusion in the public health response. This measure, adopted in May 2020 and extended until 31 March 2021 at least²¹, has temporarily regularised 246,000 people according to Portuguese government²².

Nevertheless, the Portuguese organisation SOS *Racismo* assesses that almost 100,000 migrants are excluded from this opportunity, because they don't have any administrative procedure pending. Those excluded are deemed as particularly 'invisible', often in especially vulnerable and exploited situations despite their labour being instrumental to the leading sectors of the Portuguese economy, such as in construction industry, farming and tourism²³.

In Spain, the government also adopted several measures to ensure more flexibility in the administrative processing of regular status applications in order to prevent people from falling into irregularity. This includes, for instance, measures to make family reunification more flexible, and to facilitate the provision of regular residence status for undocumented parents of a minor with a Spanish or an EU country nationality. Access to the labour market was also facilitated for young migrants between 18 and 21 years old. The government also proposed to amend legal provisions²⁴ to ensure that unaccompanied minors continue to be protected and do not suddenly lose their residence status when they turn 18. Spain also implemented some measures to increase access to basic services and provide some economic support. In addition, the Spanish government also announced in October 2020 that it was preparing a new law to improve the access to universal health care to undocumented migrants²⁵. According to Caritas Spain, despite these positive steps, uncertainty, delays and

²¹ Euronews, "[Coronavirus](#): Portugal grants temporary citizenship rights to migrants", 29/03/20.

²² Observador, "[Covid-19](#). MAI anuncia regularização de 246 mil imigrantes ilegais", 03/11/20.

²³ Zandonini, G. "[The shadows](#) of the Portugal's migration model", 8/05/20.

²⁴ El Diario, "[El Gobierno](#) reformará el reglamento de Extranjería para evitar que los menores migrantes tutelados pierdan sus papeles al cumplir 18 años", 29/01/21.

²⁵ El Diario, "[El Gobierno](#) reconoce que su decreto de la sanidad universal no funciona y prepara otra ley para garantizar la asistencia de inmigrantes sin papeles", 21/10/20.

bottlenecks in the administrative procedures remain, and will negatively affect many migrants.

Undocumented migrants working in the domestic and care sectors are particularly at risk of poverty, since they are excluded from the government economic and emergency measures.

These are just a glimpse of some reactions from states, and many more countries have adopted targeted administrative and public health measures to take migrants into consideration in their response to the pandemic²⁶. On top of these temporary measures, **several voices across Europe have called for more sustainable regularisation measures.**

Voices calling for long-term regularisation

In various European countries, civil society organisations (CSO), trade unions, employers' federations, doctors, virologists, and politicians have advocated for the launch of fully fledged regularisations campaigns. **While calls for regularisations are not new, the pandemic has reenergised and made the movement more visible.**

Advocates for regularisation **invoke economic, social and humanitarian reasons, but also public**

health considerations. Indeed, COVID-19 can only be controlled, and ultimately defeated, if everyone is included in the longer term health response. This means ensuring access to testing, medical consultation, vaccination and treatment for everyone, including all migrants²⁷. Providing a regular residence status to undocumented migrants would bring many benefits for the migrant and local populations, as it would ensure the full inclusion of everyone in the public health response and bring undocumented migrants out of the shadows.

In **Belgium and France**, numerous municipalities²⁸, CSO²⁹, undocumented migrants' associations³⁰, trade unions, lawyers³¹, intellectuals³², doctors and parliamentarians³³ have called for regularisation, going so far as to organise demonstrations³⁴ on the topic. In **Luxembourg**, a working group, of which Caritas Luxembourg is a member, has been preparing recommendations toward the government about regularisation and the fight against exploitation and human trafficking. In **Spain**, a petition supported by 400 organisations³⁵, and the campaign #RegularizacionYa³⁶, calls for an extraordinary regularisation of all migrants in an irregular situation, as did the city of Barcelona³⁷. Caritas Spain has been advocating for the regularisation of undocumented migrants in the agricultural and domestic care sectors for years.

²⁶PICUM, Non-exhaustive [overview](#) of European government measures impacting undocumented migrants taken in the context of COVID-19 overview, March-August 2020.

²⁷Gavi, "To be effective, [COVID-19 vaccination](#) plans must include migrants", 18/12/20.

²⁸ RTBF, «[La commune](#) de Forest demande la régularisation des sans-papiers face au coronavirus», 4/04/20.

²⁹ La Cimade, "[5 propositions](#) pour la régularisation large et durable des personnes sans-papiers", 16/06/20; La Libre, «[Voici pourquoi](#) les pays membres de l'UE doivent donner des documents de séjour aux sans-papiers », 2/04/20.

³⁰ [Petition campaign](#) calling for regularisation in Belgium.

³¹ Le Soir, «[Lettre ouverte](#) à Madame Wilmès: «La régularisation du séjour des sans-papiers n'apporte que des avantages», 1 May 2020.

³² Libération, "[Pour une régularisation](#) des migrants sur le sol français et européen", 10/04/20.

³³ France 24, «[Coronavirus : des députés](#) demandent la régularisation des sans-papiers », 3/04/20.

³⁴ Le Monde, «[Aucun être humain n'est illégal](#): plusieurs milliers de manifestants en France pour la régularisation des sans-papiers », 20/06/20.

³⁵ <https://www.cear.es/firma-regularizacion-migrantes/>

³⁶ See the campaign [#RegularizacionYa](#), and El País, "[#RegularizacionYa](#): la campaña de mil entidades migrantes y antirracistas", 22/04/20.

³⁷ El Diario, "[Barcelona pide](#) al Gobierno que regularice la situación de los inmigrantes para hacer frente a la crisis del coronavirus", 04/04/20

Similar campaigns are ongoing in the **United Kingdom**³⁸, as well as in many more countries.

Pope Francis himself has urged improvements in the working conditions of migrant farm workers in **Italy** and defended their regularisation³⁹, and the **United Nations called to explore “various models of regularisation pathways for migrants in irregular situations”** in a policy brief on COVID-19⁴⁰.

Through the [MIND project](#)⁴¹ and related [#whatishome campaign](#), **Caritas Europa also contributed to changing the negative rhetoric** about migrants by raising awareness on the many positive contributions they make to our societies and economies⁴². We, for instance, called to protect the rights of undocumented migrants in the agricultural sector and to ensure they are granted a stable residence permit and therewith a regular status⁴³. We likewise published positions on the importance of home care work as it relates to migration⁴⁴. Ultimately, we urged policy makers to demystify the taboos around the issue of regularisation⁴⁵.

As shown, the pandemic has given new impetus to the issue of regularisation, but the topic is far from being new, and regularisation **has been more regularly implemented by European countries than commonly thought**⁴⁶.

³⁸ <https://regularise.org/about/>

³⁹ Vatican News, “[Pope appeals](#) for respect for the dignity of farm workers”, 6/05/20; and Infomigrants, “[Undocumented migrants](#) should be regularized, Pope Francis says”, 30/04/20. See also the Vatican Migrants and Refugees Section [policy brief](#), “Regularization of Migrants in Administrative Irregular Status”, June 2020.

⁴⁰ UN (2020), “[Policy Brief: COVID-19 and People on the Move](#)”, p.3.

⁴¹ The campaign is part of the EU funded Caritas MIND project, which explores the interactions between migration and development. Additional information can be found in the Caritas Europa Common Home [publication](#) as well.

⁴² Caritas Europa’s OpEd in Euronews, “[Why COVID-19 shows](#) that migrants’ integration in Europe is as important as ever”, 18/12/20, and in Euractiv “[Time to recognise](#) migrants’ contribution to Covid-19 response”, 30/06/20.

⁴³ Joint [statement](#) “Without rights for agri-food workers, Europe’s food supplies rest on shaky ground”, 16/04/20.

⁴⁴ Caritas Europa [Declaration](#) and related [press release](#).

⁴⁵ Caritas Europa’s OpEd in EU Observer, “[Undocumented workers](#) are Covid-19 ‘elephant in room’”, 27 April 2020.

⁴⁶ For a comprehensive overview of practices in EU countries, see European parliament, “[Trends on Regularisation](#) of Third Country Nationals in Irregular Situation of Stay Across the European Union”, 24/01/08.

4. Labour needs triggering regularisation in Southern European countries

For many years, regularisation has been **used as a pragmatic policy tool**, among others, to tackle undeclared work and exploitation, bring in tax and social security revenues, respond to a humanitarian situation, and provide social rights to migrants and foster integration.

According to one of the most recent comprehensive research study⁴⁷ on regularisations in Europe (“Regine”), dating back to 2009 and commissioned by the European Commission, **between 1996 and 2008, 3.5 million persons were regularised** in 27 EU Member States (MS), a number that is likely to be even higher as a result of missing data. More than **5.5 million people were involved in regularisation processes in the same period** (i.e. applied for the regularisation of their status). Outside of Europe, the largest regularisation scheme occurred in the United States in 1986, when 2.7 million migrants were regularised⁴⁸.

In practical terms, regularisation can be classified in two models: **one-off temporary programme; and permanent mechanism enshrined in law.**

Regularisation programmes are exceptional, one-off measures that target a large number of applicants for employment purposes. They are typically time-bound (with specific deadlines by which to apply), requiring a job contract and evidence of having already resided a certain length of time in the country. Often, employers can apply for regularisation on behalf of their employees, incentivised by the benefits of an amnesty that enables the employment of migrants via legal means. Successful applicants generally receive a temporary residence status, which can be renewed upon certain conditions. The majority of regularisations in Europe occurred through programmes **between 1996 and 2008: 42 regularisation programmes were implemented in 17 EU MS, leading to the regularisation of 3.2 million people** (from a total of 4.7 million applicants)⁴⁹.

In Southern European states like Italy, Spain and Greece⁵⁰, economic demand for cheap and flexible labour forces in various sectors (e.g. agriculture⁵¹, domestic care⁵²), coupled with an ageing local population and lack of appetite among the native population to do the sort of work often filled by people in irregular situations, have not surprisingly provided an opportunity for a large number of undocumented migrants. In Italy, the 2002 amnesty regularised 650,000 people, and in Spain, the biggest regularisation programme, called “normalisation”, resulted in regularising 578,375 people in 2005. The Spanish

⁴⁷ ICMPD (2009), “REGINE study”, *op. cit.*

⁴⁸ *Ibid.* p.38

⁴⁹ ICMPD (2009), *op.cit.* If we look at the period between 1973 and 2008, 68 programmes regularising 4.3 million people were identified. This represented one-fifth of all foreign citizens in the EU at the time and involved the majority of Member States (i.e. 18 Member States). See also Kraler A. (2009), “Regularisation a misguided option or part and parcel of a comprehensive policy response to irregular migration?”, IMISCOE working paper n°24, p.20

⁵⁰ See Ambrosini M. *op.cit.* for an in depth analysis of irregular migration and regularisation in Southern countries, p.61-84

⁵¹ Open society foundation (2018), “[Is Italian Agriculture](#) a ‘Pull Factor’ for Irregular Migration—and, If So, Why?”.

⁵² In Italy, the care sector has also played a significant role in resorting to irregular workers. Ironically, despite often voting for parties opposed to migration, households have massively hired irregular migrants (e.g. for child and elderly care). See Ambrisoni, *op.cit.* p.80

programme ensued from an agreement between the government, employers' organisations and trade unions, and the social security contribution of the newly registered workers brought around 120 million € per month⁵³ into the state's budget.

Labour and economic needs have long influenced immigration policy, and regularisation is no exception, evident by the pressure exerted on national governments by businesses to implement regularisation policies. Often, states use regularisation to **compensate for the gaps in labour market needs/demands and the lack of legal pathways** for people to migrate to Europe for employment purposes. States also use regularisation to **regulate undeclared segments of the economies** by bringing large numbers of irregular migrant workers into legality.

In order for regularisation programmes to be efficient and sustainable, they need to be smartly designed, have flexible and reachable criteria, and not be too bureaucratic or expensive for the applicants. Past experiences have shown that if migrants are ill informed, or not able to renew a work contract, they can quickly fall back into irregularity. Additionally, it's essential to **involve a wide range of stakeholders** (e.g. NGO, trade union, local authorities, employers' organisations, etc.) in implementing regularisation programmes in order to inform and support potential beneficiaries in their applications for regularisation.

Regularisation programme launched in Italy amidst the COVID-19 pandemic⁵⁴

Amidst the first wave of the COVID-19 pandemic, the lockdown and travel restrictions prevented seasonal workers and undocumented migrants from working in the fields to harvest fruits and vegetables in several countries⁵⁵. In Italy, where more than 370,000 migrants work each year in the agricultural sector, the lack of a sufficient labour force in this area created the favourable conditions after years of advocacy by different groups, for instance employers, trade unions, and CSOs, including Caritas Italiana, to launch a new regularisation campaign.

As a result, **the government coalition launched a new regularisation programme in May 2020** as part of its economic stimulus programme. The programme **targeted workers and their families in the agriculture, domestic, and care sectors**⁵⁶. The official objective was two-fold: to "guarantee adequate protection to individual and collective health, and to "facilitate the emergence of irregular employment relationships" (so to bring informal and undocumented workers into legality). There were two ways to apply for a regular residence status:

1^o Employer scheme: aiming at addressing undeclared work, an employer could apply for a residence permit on behalf of a worker (migrant or Italian) already employed irregularly, or who he/she wanted to employ, and had to pay a 500€ fee. The worker also had to prove that s/he was

⁵³ W. Maas (2010), "[Unauthorized migration](#) and the politics of regularization, legalization, and amnesty", In Labour migration in Europe, Palgrave, p.247.

⁵⁴ Information provided by Caritas Italiana.

⁵⁵ Euractiv, "[COVID-19 measures](#) could cause 'devastating' labour shortage in EU farming" 25/03/20.

⁵⁶ [Inter-ministerial decree](#), Italian Official Gazette, 1st of June 2020.

present in Italy before 8 March 2020. The length of the residency permit that is granted equals the duration of the work contract, and the permit can be converted into another type later on.

2° Job seeker permit for migrant: this scheme concerned migrants who previously had a residence permit that expired after 31 October 2019, and who could prove that they had worked previously in one of the sectors concerned. Successful candidates receive a six-month stay permit (starting from the application date) in order to find a job. Their permit can later be extended if they find a job.

Applications were open between 1 June and 15 August 2020. Official figures⁵⁷ recorded **207,542 application received through the employer sponsorship system**; 85% for the home care workers and only 15% for the agricultural sector. In addition, only **12,986 people applied through the job seeker permit**.

Organisations, like Caritas Italiana that have been tirelessly working with the government authorities and with migrants to improve the implementation of the scheme, welcome this new programme but want to highlight a couple of **observations and shortcomings**⁵⁸:

- The limited scope of the programme left out critical sectors, such as construction, tourism, and hospitality, in which hundreds of thousands of undocumented migrants work. The lack of clarity of the initial provisions also made it difficult for people to understand the eligibility criteria and the modalities to apply.

- The employer scheme leaves workers at the mercy of the employers, and has generated further exploitation and scams. While the €500 fee was supposed to be paid by the employer, Caritas workers have witnessed numerous instances in which the employer passed this cost onto migrants, and in some cases, sold labour contracts – sometimes fraudulent – in amounts up to 7,000€.
- The low number of applications coming from the agricultural sector can be explained by the specificity of the sector, where exploitation is rife and which structurally relies on a network of intermediaries between the worker and the employer (*caporalato system*). This mechanism makes it difficult to find an employer willing to sponsor a worker. Indeed, many employers financially benefit from undeclared workers and don't have an interest in regularising their employers' situation and becoming visible to the authorities, which subsequently exposes them to closer scrutiny.
- Caritas staff also fear that under the current economic crisis, it will be hard for migrants to renew their permit, and thus many risk falling back into irregularity after a couple of months, as has happened with previous regularisation programmes.

⁵⁷ Italian ministry of interior, [Analisi Statistica](#) delle domande -Dati Aggiornati alle ore 24:00 del 15 Agosto 2020.

⁵⁸ For further critical insight into this programme, see HRW, "[Italy: Flawed Migrant Regularization Program](#)". Opportunity to Learn Lessons for Future", 18 December 2020.

118,434 regularisations in Germany, followed by 100,000 regularisations in France (recorded between 2000 and 2006)⁶⁰.

5. Regularisation on humanitarian and human rights grounds

Another way to regularise migrants is through **regularisation mechanisms, which are embedded in the regular migration policy framework** (i.e. in law). With this, **a very small number of individual applications are processed on a case-by-case basis, with the aim of responding to exceptional personal situations.**

Eligibility criteria are often humanitarian and human rights related, and can concern rejected asylum seekers who cannot be returned, families deeply rooted in local community, very sick people, etc. Applicants often need to prove a satisfactory level of integration. **Northern and Western European countries have been more prone to use regularisation mechanisms** rather than the regularisation programmes described above, even if overlaps exist, and they have also launched ad hoc regularisations programmes⁵⁹.

It is difficult to obtain data on the number of regularisations through permanent mechanisms, as they often transpire (and are recorded) through the regular framework for issuing residence permits. Nevertheless, **the 2009 Regime study recorded 305,000 regularisations through mechanisms in Europe between 2001-2009**, with

Criticisms of regularisation mechanisms often include their lack of transparency and the large discretionary power given to the authorities, as criteria are not always very clear, and are often interpreted in a narrow and restricted way. In practice, the **barriers identified by many migrants** include administrative and bureaucratic hurdles, as well as high financial costs and long procedures.

⁵⁹ See overview of employment provisions in non-work based regularisations in Chauvin S., Garces-Mascareñas B., Kraler A., (2013), "Working for legality:

employment and migrant regularisation in Europe", *International migration*, p.124-126.

⁶⁰ Regime 2009, *op.cit.* p.34-35.

The uphill struggle for regularisation: the example of a Palestinian family in Belgium⁶¹

In 2017, a Palestinian family from Lebanon, consisting of a couple and their three children, unsuccessfully applied for international protection in Belgium. They then decided to embark on a voluntary return programme to Lebanon, but were barred from entering the plane because their passports had expired. Consequently, they became stateless in Belgium. Later on, a baby boy was born and received the Belgian nationality, which led the parents to apply for family reunification with their new-born son. While the parents received a residency permit, their three older children remained undocumented. In March 2020, the family decided to apply for stay permits under the exceptional circumstances grounds of “family unity” (9bis law).

To date, early 2021, the family is still waiting for a reply, as the process is very slow due to overwhelmed administrations. During the procedure, the undocumented children are denied many opportunities and activities such as student jobs, school trips, options to open a bank account, etc., and the whole family is ineligible to benefit from several well-needed social and welfare benefits (e.g. family allowances).

Regularisation on humanitarian and human rights grounds can also take the form of a one-off regularisation programme or campaign.

Recently, a regularisation campaign implemented in the canton of Geneva in Switzerland yielded positive results. The official evaluation shows that it is important to properly design the programme with clear criteria and simple procedure, and to closely engage and work with several actors at each step of the process (e.g. planning, awareness raising, implementation, etc.)

Positive evaluation of “Operation Papyrus” in Geneva

In Switzerland, pro-regularisation voices are increasing⁶², encouraged by the **positive outcome of the 2017 regularisation campaign “Operation Papyrus”, which was launched in the canton of Geneva**, and thanks to which 2,390 people—including 437 families—obtained a one or two-year renewable residence permit.

The regularisation campaign had **clear and transparent criteria and a simplified procedure**. Eligibility criteria included, among others: five years of uninterrupted residency for families with school-age children; (10 years for those without school-age children), a good level of language competence, employment and financial independence, i.e. no reliance on welfare benefits.

Caritas Geneva, amongst others, was involved in the project and played a key role in its implementation. Overall, **CSOs, including Caritas Switzerland and Caritas Geneva, were positive about the outcome of the campaign, albeit underlying the strict and narrow criteria and the**

⁶¹ Information provided by Caritas Belgium.

⁶² Le Temps, “[La régularisation](#) des sans-papiers est nécessaire”, 25/06/20.

exclusion of failed asylum seekers from the scope of the programme. The organisation CCSI⁶³ stresses that one of the most novel and appreciated elements of the programme was the inclusion of provisions designed to address the issue of undeclared work and exploitation. For instance, applicants could apply for the programme even if their employer(s) did not support them by “self-declaring” their current working conditions. In addition, the state carried out labour controls in the domestic work sector after a status had been granted in order to ensure that employees were not fired after their change in status and that the workers’ rights were being respected.

According to the official evaluation of the “Operation Papyrus” from February 2020⁶⁴, **the campaign was a success overall and mostly benefited migrants active in the domestic care sector.** Less than 1% of these applications were rejected, indicating a high acceptance rate thanks to a good information and awareness raising campaign, in partnership with a wide range of stakeholders (CSOs, trade unions, local authorities, migrant organisations, etc.). Importantly, the evaluation concluded that, contrary to what some had feared, regularisation neither led to new arrivals of undocumented workers, nor to an increase in welfare or social benefits requests by the regularised migrants. Instead, **the programme generated a benefit of 5.7 million Swiss francs for the social insurances of the canton as a result of the additional fiscal contributions.**

⁶³ M. Halle, “[Geneva: Operation Papyrus](#) regularised thousands of undocumented workers”, Picum blog, 02/04/20.

⁶⁴ République et canton de Genève, “[Opération Papyrus](#): Bilan final et perspectives”, 21/02/20.

6. Efforts to improve tolerated statuses

Besides regularisation mechanisms and programmes, several countries, such as Germany, Austria, Poland, Slovakia and Romania are known to **grant a “tolerated status” to migrants who cannot be returned to their countries of origin due to situations beyond their control** (e.g., severe illness, lack of identification papers, risk of *refoulement* due to ongoing dangers in their countries of origin, etc.). Their removal order is thus suspended for a certain period of time, and their continued presence in the country of destination is tolerated, but they are often granted only very limited basic rights.

This effectively **keeps people in a limbo situation**; neither with an irregular status, nor a secure residence permit with full rights. **This status should not be confused with regularisation.** Nevertheless, some countries, like Germany, have tried to allow for a transition from the tolerated status to a more stable work-related residence permit.

The *Duldung* in Germany⁶⁵

203.000 people were living with a tolerated status (*Duldung*) in Germany at the beginning of 2020, 57,510 of whom had already been residing in the country for over four years⁶⁶; many had been denied a protection status. The *Duldung* does not grant the desired residence right with opportunities to participate fully in society. Instead, it merely postpones the deportation order and partially prohibits regular employment and free movement within the country, giving only limited access to welfare benefits and restricted rights to work, similar to what asylum seekers benefit from. Overall, the tolerated status keeps people in a protracted, insecure status, with the obligation to renew the status regularly (e.g. every three or six months), often being extended for years. For instance, thousands of people who fled the war in Bosnia and Herzegovina were granted a six-month *Duldung*, which were often renewed, sometimes up to ten to fifteen years.

After steady criticism by academics and CSOs about this situation, **regularisation programmes in Germany have since 1987 mainly targeted people with such a “tolerated” status.** The 2006 regularisation programme for the long-term tolerated stay of persons targeted families who had stayed in Germany for at least six years (eight years in case of individual adults). Integration, employment, and sufficient income were key criteria in these regularisations programmes.

⁶⁵ Information from Caritas Germany.

⁶⁶ German Parliament, <https://dip21.bundestag.de/dip21/btd/19/193/1919333.pdf#page=28>

By contrast, undocumented migrants without a status have been excluded from regularisation practices and are deprived of most social rights.

Moreover, all state-run health care facilities have to inform the authorities about a person without a secure residence status, and only schools are exempt from this obligation in order to protect the children's right to education. While the presence of undocumented migrants in Germany is estimated at between 200,000 and 500,000 people, there is no public discussion regarding their regularisation.

Instead, **the debate concentrates on how to improve the "tolerated status"**. Giving in to pressure from employers, a tolerated status for vocational training and employment was introduced in 2019 – with strict conditions and excluding from its scope people from safe countries. It thus allowed people to change track from unsuccessful asylum application to employment or training. The **tolerated status for vocational training** (*Ausbildungsduldung*) temporarily suspends deportation for migrants undergoing a three-year vocational training and provides an additional two-year residence permit for employment linked to training. The **tolerated status for employment** (*Beschäftigungsduldung*) targets people whose return has been suspended, if certain conditions are fulfilled, for at least twelve months and if they have worked legally for at least 18 months. This status grants access to a 30-month permit, which can be extended⁶⁷.

thought in Europe, often as a pragmatic policy tool needed for economic, humanitarian or administrative reasons. While regularisation remains a national prerogative, the EU can play a role in showcasing good practices and in further promoting several EU laws and provisions that give MS the possibility to grant a secure residence status to undocumented migrants in some circumstances.

Evident from these examples, **regularisation has been used more regularly than commonly**

⁶⁷Open society foundation (2020), [Towards an EU toolbox](#) for migrant workers, p.5.

7. EU legal framework available for providing a regular residence status

MS possess the power to regularise, as this is a national competence, and they are very sensitive to keep it this way. In 2008, the European Council agreed to apply “only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons”⁶⁸. Nevertheless, EU institutions have not totally ignored the issue of undocumented migrants and regularisation, and **different EU legislation relate to this question.**

In the “**fitness check on legal migration**”⁶⁹, which provides an in-depth analysis of the EU’s acquis on legal migration, the EC highlighted that “the large presence of undocumented migrants fuels a negative public perception of migration and undermines the public acceptance of a sustainable EU migration policy as a whole”. The EC argued that “common standards, which would grant at least certain categories of ‘non-removables’ a right to work, might contribute to alleviating this phenomenon, and that a more

harmonised approach at EU level could yield positive effects, such as creating a level-playing field among countries, avoiding secondary movements, and responding to humanitarian consideration”. Nevertheless, Member State experts argued that more EU level action could risk creating pull factors for irregular migration; they expressed opposition to harmonisation, preferring to deal with undocumented migrants on a discretionary basis at national level.

While the decision to regularise an individual remains a national competence, **several EU laws and provisions further give MS the possibility to grant a regular residence status to undocumented migrants in some circumstances.** The **EU return directive** states that, “*Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory*”⁷⁰. The EC reminds MS of this in its **guidance**⁷¹ **on the implementation of EU provisions in the areas of asylum, return procedures, and on resettlement in the context of COVID-19.** While the EC reaffirms in the **Return handbook**⁷² that there is no legal obligation to issue permits to non-removable returnees and that MS enjoy broad discretion, it recommended a number of non-binding assessment criteria that MS could take into account when carrying out

⁶⁸ Council of the European Union, “[European pact](#) on immigration and asylum”, 24/09/08, p.7.

⁶⁹ European Commission, Commission [staff working document](#), Fitness check on EU Legislation on legal migration, {SWD(2019) 1056 final}, 29/3/2019, part 1 pg.39 and part 2 p.85.

⁷⁰ [DIRECTIVE](#) 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 6(4).

⁷¹ [Communication](#) from the Commission COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement 2020/C 126/02, p.23.

⁷² European Commission, Annex to the Commission recommendation establishing a common “[Return Handbook](#)” to be used by Member States’ competent authorities when carrying out return related tasks, Brussels, 27.9.2017, C(2017) 6505, p.65-66.

regularisation⁷³. The **Employers sanctions directive**, which provides minimum common standards on sanctions and measures against employers who illegally employ undocumented migrants, offers the possibility for a state to grant, on a case-by-case basis, residence permits of limited duration, during the criminal proceedings against an exploitative employer⁷⁴. **Victims of crime, abuse and trafficking can also benefit from temporary residence permits** in some circumstances⁷⁵.

Nevertheless, EU MS seem to be very frugal in using these EU provisions due to the sensitivity of the topic and the diversity of situations in each country. While regularisation will likely continue to be at the discretion and competence of each MS, **it would be advisable for the EC to steer or frame MS actions in this field in order to ensure coherence and consistency across the EU.**

⁷³ These include: the cooperative/non-cooperative attitude of the returnee; the length of factual stay of the returnee in the Member State; integration efforts made by the returnee; personal conduct of the returnee; family links; humanitarian considerations; the likelihood of return in the foreseeable future; need to avoid rewarding irregularity; impact of regularisation measures on migration pattern of prospective (irregular) migrants; likelihood of secondary movements within Schengen area.

⁷⁴ Article 13.4: “Member States shall define in national law the conditions under which they may grant, on a case-by-case basis, permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals involved”, and recital 27 “To supplement the complaint

mechanisms, Member States should be free to grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who have been subjected to particularly exploitative working conditions or who were illegally employed minors and who cooperate in criminal proceedings against the employer, [DIRECTIVE](#) 2009/52/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

⁷⁵ See PICUM (2020), “[Insecure justice](#)? Residence permits for victims of crime in Europe”.

8. Conclusion

The COVID-19 **pandemic has given more visibility to the issue of undocumented migrants and regularisation**. The socio-economic **challenges** migrants are facing, the risk of falling into situations of irregularity due to administrative hiccups, but also the **indispensable contribution** migrants are making to our societies and economies, have contributed to this renewed attention. In addition, many experts stress that everyone, regardless of one's residence status, must **be included in the public health response to COVID-19**.

The issue of undocumented migrants is **not new**: for many years, many people, including families with young children have been living in Europe on the margins of society without a secure residence status, which too often leads to labour exploitation, and precariousness. In many countries, **key sectors** such as agriculture, domestic care, and construction **would not function without the hard work of migrants, including undocumented workers**.

Despite huge means invested by governments to attempt to stop irregular migration and increase return, the phenomenon of undocumented migrants continues. Significant labour force gaps in several economic sectors contribute to fuelling irregular migration and undeclared employment, – far too often at the cost of migrants' wellbeing due to exploitative conditions. This is clearly **linked with the lack of regular migration schemes** that would enable workers with different skillsets to

come to Europe in a regularised manner, alluding to why irregular migration remains still today.

The toxicity surrounding the debate on migration perpetuates **contradictory policies and a certain hypocrisy**: policy makers unwilling or unable to develop legal pathways for migration instead focus on stemming migration while turning a blind eye on undeclared work and exploitation. The **possibility to regularise undocumented migrants is too often a taboo topic**, triggering fears of increasing irregular migration.

Nevertheless, **a leap back in time shows that regularisation has been used more often than commonly thought by many countries**, and has proven these fears to be unfounded. Between 1996 and 2008, 3.5 million people were regularised in Europe, with southern states regularising the largest number of people through one off large-scale regularisation campaigns for labour purposes. States considered regularisation as a **relevant policy option** to meet labour market demand, bring people into legality, increase fiscal contributions, and also address humanitarian challenges.

While regularisation policies remains a national competence, several EU directives contain provisions that allow MS to provide a regular residence status to specific categories of people under certain circumstances. The **EC can thus play a role in coordinating MS' actions and promoting good practices in the field of regularisation**.

In any case, it is time for policy makers to have a **more rational and balanced debate** on the issue of regularisation, instead of considering it a taboo.

9. Recommendations⁷⁶

Based on the overview of regularisation in the past and on Caritas Europa's member organisations' long-standing experience in supporting the human dignity and human rights of migrants, Caritas Europa encourages governments to consider the following **recommendations related to the situation of undocumented migrants, the need to grant a regular residence status and launch regularisation schemes**. EU institutions, including the European Commission, can play a key role regarding these recommendations by monitoring the implementation and respect of EU law and by promoting and sharing good practices.

- European governments must always **respect the human rights and dignity** of every person, regardless of the residence status. The **"firewall" principle** should be implemented to ensure that migrants can access basic services and humanitarian support provided by public institutions or CSOs, regardless of administrative status and without fear of being deported. This principle would also ensure that victims of smuggling and trafficking can access justice without fear or prosecution and deportation.
- European governments should **put an end to the criminalisation of irregular migrants and solidarity towards migrants**. In order to change the narrative on migration and **combat xenophobia, racism and discrimination**, all should refrain from using the term "illegal" migrant, which criminalises and stigmatises migrants. Moreover, no human being is illegal. Instead, use the terms undocumented migrant or migrant in an irregular situation.
- European governments should design balanced and durable migration and mobility policies, which develop **safe and regular pathways for different skill sets** that meet labour demands and respect human rights. **Family unity and reunification** should be promoted as well.
- European governments should ensure that **migrants are granted fair options to acquire a secure and sustainable residence status**. In addition, they should **provide clear, efficient and accessible administrative procedures** by which migrants can apply for and renew their residence status (e.g. work permit, residence permit), including from within the country, in order to avoid people falling into irregularity due to flawed or inefficient administrative migration policies.
- European governments should provide **more flexibility to ensure that the rights and residence status of migrants are not tied to one employer or one sector**, i.e. by taking into account the reality of the labour market when renewing a residence status, allowing bridges between different types of work and work

⁷⁶ See also Caritas Europa's [input](#) to the 2020 EC consultation on legal migration for more recommendations.

permit statuses (e.g. employed, self-employed, entrepreneur) to avoid workers falling into irregularity when a job situation changes or in cases of exploitation.

- European governments should **rely more consistently and frequently on existing possibilities under EU law to grant a temporary or permanent residence status** for specific categories of people (e.g. people who cannot be returned, victims of trafficking or exploitation), in line with the Council of Europe's Anti-Trafficking Convention and Istanbul Convention that require state parties to make available permits to victims of human trafficking and gender-based violence.
- European governments should **consider regularisation as a policy option**, among others, instead of a taboo, that depending on each national situation and context can make sense for a variety of reasons (economic, social, humanitarian, public health) and can put an end to limbo situations.
- If **regularisation mechanisms and programmes** are set up, European governments should consider the following recommendations:
 - **Apply clear, transparent and proportionate criteria.** Create an independent interdisciplinary commission composed, for instance, of lawyers and members of the civil society to determine the establishment of such criteria.
 - **Include criteria for instance that considers** family ties (parents of a child having a regular residence status), length of stay in the country (e.g. long-term residents who have no links with the country of origin), children enrolled in school or ongoing higher education studies, extent of integration and ties to the local community (e.g. language competency, involvement in local organisations, employment history), humanitarian situation (e.g. health problems, elderly), impossibility to be returned (risk of human rights infringements upon return), statelessness, migrants holding extended tolerated status renewals, unreasonably long asylum procedures, etc.
 - **Apply the criteria in an efficient, flexible and fair way**, and remove administrative and financial obstacles to ensure swift implementation of regularisation and effective access to the procedure.
 - Ensure the residence **status granted is clear, stable and durable**, to ensure that migrants do not fall back into situations of irregularity.
 - Allow migrants to **apply for regularisation independent of the employer** in order to avoid situations of protracted exploitation.
 - Involve a **wide range of stakeholders** (e.g., CSO, migrants' organisations, trade unions, local authorities, etc.) closely in the design and implementation of regularisation.

Annex

Additional examples and figures on past regularisation practices

- **Austria** carried out an amnesty programme targeting the care sector in 2007–2008, which granted amnesty to 9,000 people mostly from Eastern European countries. A permanent framework for humanitarian based regularisation also exists since 1999⁷⁷ and 4,226 people were regularised through permanent regularisation mechanism between 2001–2007⁷⁸.
- **Belgium.** An exceptional programme was implemented in 1999–2000, following the widespread mobilisation prompted by the death of the 20-year old rejected asylum seeker, Samira Adamu, who had been suffocated to death by two Belgian police officers with a pillow during a return flight. This programme resulted in the regularisation of almost 45,000 people based on durable social ties and humanitarian criteria. The last regularisation campaign was implemented in 2009 on “durable local integration” and employment parameters, resulting in the regularisation of more than 25,000 people. 80,570 people were regularised through permanent mechanisms between 2005–2010, covering mostly humanitarian criteria (e.g. family ties, medical reasons, unreasonably long asylum procedure, employment, integration, etc.)⁷⁹ based on article 9bis and 9ter of the Belgian immigration law. Under article 9bis, applicants need to prove that they find themselves in exceptional circumstances, which prevents them from applying for a residence status from the country of origin. Meeting this requirement has become increasingly complicated over the years, as migration policies have toughened. Article 9ter covers regularisation possibility for serious medical problems.
- In **France**, the main path to regularisation since 1998 is through the humanitarian, family and employment based permanent mechanism, known as the “Chevènement laws” of 1997 and 1998, which regularised 87,000 people, mainly families. A small-scale programme targeting children and families additionally granted 7,000 people a residence status in 2007. Between 2008–2010, 5,000 people were regularised following the mobilisation of workers in the cleaning and restaurant sectors, and supported by the trade union CGT (*confédération générale des travailleurs*). Since 2012, a permanent regularisation mechanism targeting key professions is in place. The local level (prefecture) enjoys a high amount of discretion in granting regularisation, leading to widespread divergences in interpretation as regards the eligibility criteria.

⁷⁷ Chauvin S., Garces-Mascareñas B., Kraler A., (2013), “Working for legality: employment and migrant regularization in Europe”, *International migration*, p.123

⁷⁸ Regine 2009, op.cit. p.34-35

⁷⁹ EMN, [Factsheet](#) –Regularisation of Irregular Immigrants in Belgium.

- **Greece** carried out two major amnesties in 1998 and 2001 that regularised 580,000 immigrants⁸⁰. 7,092 regularisations were made between 2005–2007 through permanent mechanism⁸¹. A legal provision introduced in 2014 opened the possibility to grant stay permits on a case-by-case basis for humanitarian and exceptional.
- **Hungary** regularised 7,524 people through permanent regularisation mechanism in 2003–2007⁸².
- In **Italy**, between 1986 and 1998, four amnesties resulted in the regularisation of 790,000 immigrants, while the 2002 amnesty regularised 650,000 people. In 2009 and 2012, specific programmes also targeted domestic workers, which respectively regularised 233,244 and 105,000 people.
- In **Luxembourg**, the last regularisation programme, launched in 2013, targeted migrants who had lived in the country for at least nine months and had an employer offering them a work contract. Nevertheless, the implementation of this programme failed to be successful in decreasing undeclared work and exploitation widely present in Luxembourg due to several flaws in its design.
- **Netherlands** regularised 28,304 people in 2007 through humanitarian based regularisation programmes. This was in addition to the already existing permanent regularisation mechanisms (e.g. targeting ill people or children).
- **Poland** regularised 6,088 people through permanent mechanism in 2006–2007⁸³. Programmes were implemented in 2003, 2007, 2012 to address long-term irregular residence (mostly for Armenians and Vietnamese), and 4,623 residence permits were granted in 2012⁸⁴.
- In **Spain**, between 1991 and 2005, six regularisation programmes have regularised 1 million immigrants. The biggest regularisation programme, called “normalisation”, regularised 578,375 people in 2005⁸⁵. Since 2005, a permanent regularisation mechanism called “*arraigo social*” and “*arraigo laboral*” (*arraigo* meaning settlement) has existed in Spain and could inspire other MS. Through the *arraigo social*, a temporary residence permit can be granted when the following eligibility criteria are met: three years of residency and a work contract of at least one year, in addition to the existence of durable family or social links. Under the *arraigo laboral*, applicants must have lived in Spain for at least two years, and have had a labour relationship (typically irregular) with an employer for at least one year. Caritas Spain assesses that the system could nevertheless be improved. For instance, the requirement to possess a full time job contract for at least one year should be withdrawn, and migrants who receive a job offer should be

⁸⁰ Ambrosini M. *op.cit.* p.72-75

⁸¹ Regine 2009, *op.cit.* p.34-35

⁸² Regine 2009, *op.cit.* p.34-35

⁸³ Regine 2009, *op.cit.* p.34-35.

⁸⁴ Albert Kraler (2019) Regularization of Irregular Migrants and Social Policies: Comparative Perspectives, *Journal of Immigrant & Refugee Studies*, 17:1, 94-113, p.104.

⁸⁵ W. Maas (2010), “Unauthorized migration and the politics of regularization, legalization, and amnesty”, p.247.

allowed to stay under the *arraigo social*, regardless of the time spent in Spain. In 2011, a third path for regularisation through a permanent mechanism was introduced on the basis of family integration, targeting irregular migrant parents of children possessing Spanish citizenship.

- **Sweden** regularised 17,406 people in 2005 through humanitarian based regularisation programmes⁸⁶.

⁸⁶ Regine 2009, *op.cit.* p.34-35