Regularisation of Irregular Migrants in the European Union
(1) European Policy Context

- Strong opposition among EU MS against regularisation, but no consensus and therefore mixed messages in EU policy documents

- European Pact on Immigration and Asylum
  - Clear preference for return as the main policy option: “Illegal immigrants on Member States’ territory must leave that territory”
  - But vague regarding the permissibility of regularisation: [The European Council agrees] “to use only case-by-case regularisation rather than generalised regularisation, under national law, for humanitarian and economic reasons” (p.7)

- Return Directive permits EU MS to regularise persons issued a return decision
  - article 6(4): “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.”
(1) Policy context (cont.)

- Opposition against regularisation largely focuses on large-scale regularisations and clandestine migrants
  - Reluctance to regularise on a smaller scale basis and case-to-case basis but widespread practice, notably on humanitarian grounds
  - Irregular migrants known to the authorities (e.g. Rejected asylum seekers) tend to be regularised through „regularisation mechanisms“ (permanent provisions built into immigration allowing to regularise individuals as opposed to time-limited programmes)
- Own regularisation practices are often framed as not constituting regularisations
(1) Policy Context - We don‘t regularise!

- Denial to engage in regularisation
  - “The scheme is not in any sense a regularisation. Each case is assessed on its merits and the temporary permission (...) is only given where the applicant can satisfy the authorities as to the merits of their application.” Irish Ministry of Justice and Law Reform on Introduction of the Bridging Visa Scheme (2009)
  - “Regularisation for the purpose of legalizing illegally staying third country nationals is unknown in the Austrian legal order (...). Legalisation is merely a possible side-effect’, MoI AT in response to REGINE, speaking about humanitarian stay permits

- Using different terms
  - Non-harmonised protection status, categorial protection, complementary protection, humanitarian stay
(2) Regularisation practices

Background

- Asylum – migration nexus
  - Majority of irregular migrants in Northern European countries can be assumed to be involved in the asylum system at one stage

- Stricter controls, in particular labour market controls push out irregular migrants from the labour market, in particular in Northern EU MS
  - Substitution by informally employed citizens from new MS?

- Enforcement gap: in EU average, only 50 per cent of return decisions were enforced (2005-2007), even lower (about 40%) in the period 2008-2010, but great diversity and unreliable data
  - Rising number of 'non-removable' persons
(2) Regularisation practices cont.)

Key facts

- **Forms of regularisation**
  - Both time limited programmes and permanent mechanism.
  - Proliferation of permanent mechanism since the late 1990s, notably for humanitarian reasons.

- **Trends**
  - The majority of persons regularised in the framework of programmes, however, no systematic data collection on permanent regularisation mechanisms.
  - Shift towards mechanisms to avoid public (or international) attention.
  - Vast majority of persons regularised between 1973 and 2008 regularised in Southern EU MS.
  - Peak of number of regularisations in the period 1998-2002.
  - Almost all EU MS practice some form of status adjustments, whether as a fully fledged regularisation or as a more restricted award of a residence permit.

- **Rationales:**
  - Re-regulation, notably large-scale regularisations targeting undocumented migrants in general.
  - Humanitarian/ human rights based considerations.
(2.1) Regularisation programmes

Number of regularisation programmes 1973-2011 by main target group

Total number: 72

- Other
- Family cases
- Humanitarian (incl rejected asylum seekers)
- Asylum seekers
- War refugees
- Undocumented migrants/ employment

<table>
<thead>
<tr>
<th>Period</th>
<th>Other</th>
<th>Family cases</th>
<th>Humanitarian</th>
<th>Asylum seekers</th>
<th>War refugees</th>
<th>Undocumented migrants/ employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1973-1979</td>
<td></td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1980-1984</td>
<td>2</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1985-1989</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1990-1994</td>
<td>2</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1995-1999</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000-2004</td>
<td>2</td>
<td></td>
<td>1</td>
<td>3</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>2005-2011</td>
<td>3</td>
<td></td>
<td></td>
<td>3</td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>
Applications for regularisation through programmes, 1973-2008

68 Programmes in 19 EU Member States; total applications (est.): 6,021,850; total regularised: 4,373,789

- Before 1990: 403,245
- 1990-1997: 370,197
- 2003-2008: 1,814,609

- Applications/Petersons eligible (estimate)
- Regularisations granted
(2.1) Regularisation programmes (cont.)

Examples of recent programmes

- 2009 programme in Italy for domestic workers, with some 295,000 applications
- 2009 Visa bridging programme in Ireland targeting migrants admitted for work who had become irregular through no fault of their own
- Belgium quasi-programme in 2009 for "locally rooted" (=integrated) persons, might have turned into a visa programme
- 2012: programme in Poland for rejected asylum seekers and others ordered to leave
## (2.2) Regularisation mechanisms

| Mechanism                                                                 | AT | BE | BG | CZ | DE | ES | FI | FR | GR | HU | IE | IT | LV | LT | NL | MT | PL | PT | SE | SI | SK | UK | Total |
|---------------------------------------------------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|------|
| Humanitarian Protection Status                                           | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | 12   |
| Humanitarian permit if TCN cannot return to obtain visa abroad           | ✓  |    | ✓  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 2    |
| Residence status on medical grounds                                      | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | 12   |
| Family reasons                                                            | ✓  | ✓  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 6    |
| Humanitarian status qua unaccompanied minor                              | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | 10   |
| Protection status for stateless persons                                  | ✓  | ✓  | ✓  | ✓  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 5    |
| Tolerated stay                                                            | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | 15   |
| Permit on grounds of national interest                                   | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | 15   |
| Permit issued within ministry's descretionary power                      | ✓  | ✓  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 2    |

Source: EMN (2010): The different national practices concerning granting of non-EU harmonised protection statuses
(2.3.) The diversity of practices

- Regularisation is complex, in terms of
  - Target groups, their particular legal status and whether they are known to authorities or not
  - Scope of rights granted


- Useful to think of regularisation as status adjustment in the continuum between an irregular and a legal status
(3) Impacts

Migratory impacts

- Evidence suggest that there is no major migratory impact
- No evidence that legalised migrants move to other Member States
- Limited evidence of irregular migration movements North→South and vice versa, mainly related to irregular employment opportunities rather than anticipated regularisations
- Little evidence of stimulation of future migration flows caused by regularisation programmes
- Limited evidence of stimulation of flows of former residents, to participate in regularisation opportunities
(3) Impacts (cont.)

Welfare impacts

- **Macro-level impacts:**
  - **Fiscal impacts:** significant positive effects in case of large scale regularisations aimed at irregular migrant workers, otherwise negligible given small numbers (either way: +/-)
  - **Sustainability of regularisation**
    - Depends on legal framework (how easy is it to remain legal ?)
    - Varies across economic branches (Problem sectors agriculture and domestic work)
    - Negative impact of the economic crisis
  - **Dilemma:** Lowering standards to enable legality?

- **Micro-level impacts:**
  - post-regularisation employment and welfare outcomes related to trajectories while irregular/ non-removable
  - Evidence of some upward-mobility, predominantly by leaving job held at/before regularisation, the economic sector or the region of residence
(4) Conclusions

- There is a continuing need for ‘adjustment’ measures
  - Continuing irregular migration flows, even if decrease in recent years
  - Imperfect enforcement of migration controls
  - Enforcement gap, important group of ‘non-removables’
  - Need to address humanitarian considerations

- Generally states use regularisations reluctantly
  - Existing regularisation mechanisms do not always help to reduce problem significantly
  - Humanitarian stay often tied to self-sufficiency/employment, whereas rejected asylum seekers usually barred from employment (paradox!)
  - In application of article 8 ECHR balance usually tips towards state interests (see also ECtHR case law), i.e. is in itself often insufficient as a basis for regularisations
(4) Conclusions (cont.)

- Regularisation in particular helps
  - to address the state of insecurity and ‘limbo’ irregular migrants find themselves in
  - Better access to rights
  - But does not do away with all ills associated with irregular migration (e.g. Precarious employment)

- Emotionalised debate
  - Fears around regularisation not substantiated by research findings
  - Regularisation should be seen as a pragmatic solution in certain cases
  - Does not necessarily undermine migration control
References:

More information at http://research.icmpd.org/1283.html