



**ICMPD**

International Centre for  
Migration Policy Development

# 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 (...). [L]egalisation is merely a possible side-effect”,* Mol 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

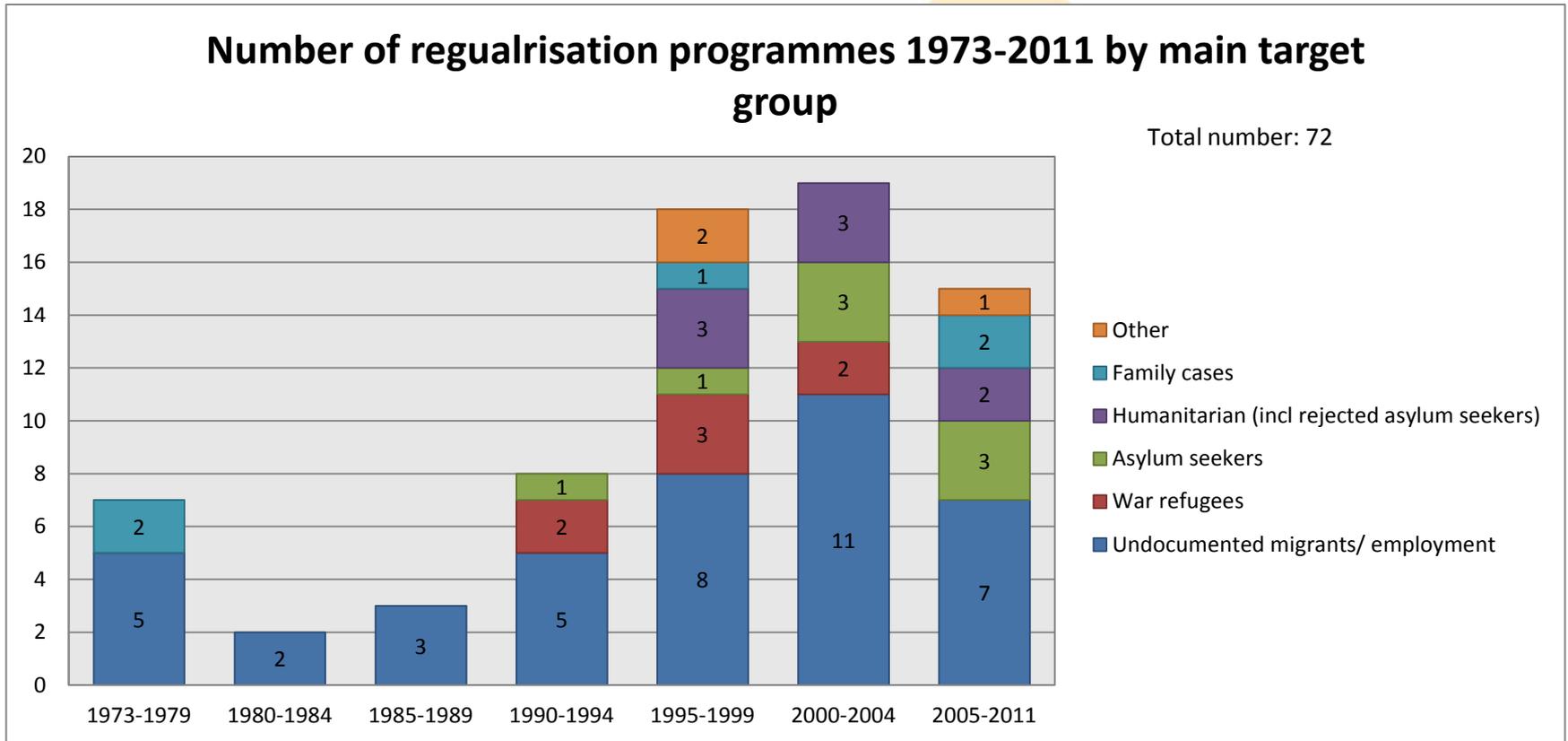
- ❑ Asylum – migration nexus
  - ❑ Majority of irregular migrants in Northern European countries can be assumed to be involved in the asylum system at one stage
- ❑ Stricter controls, in particular labour market controls push out irregular migrants from the labour market, in particular in Northern EU 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.)

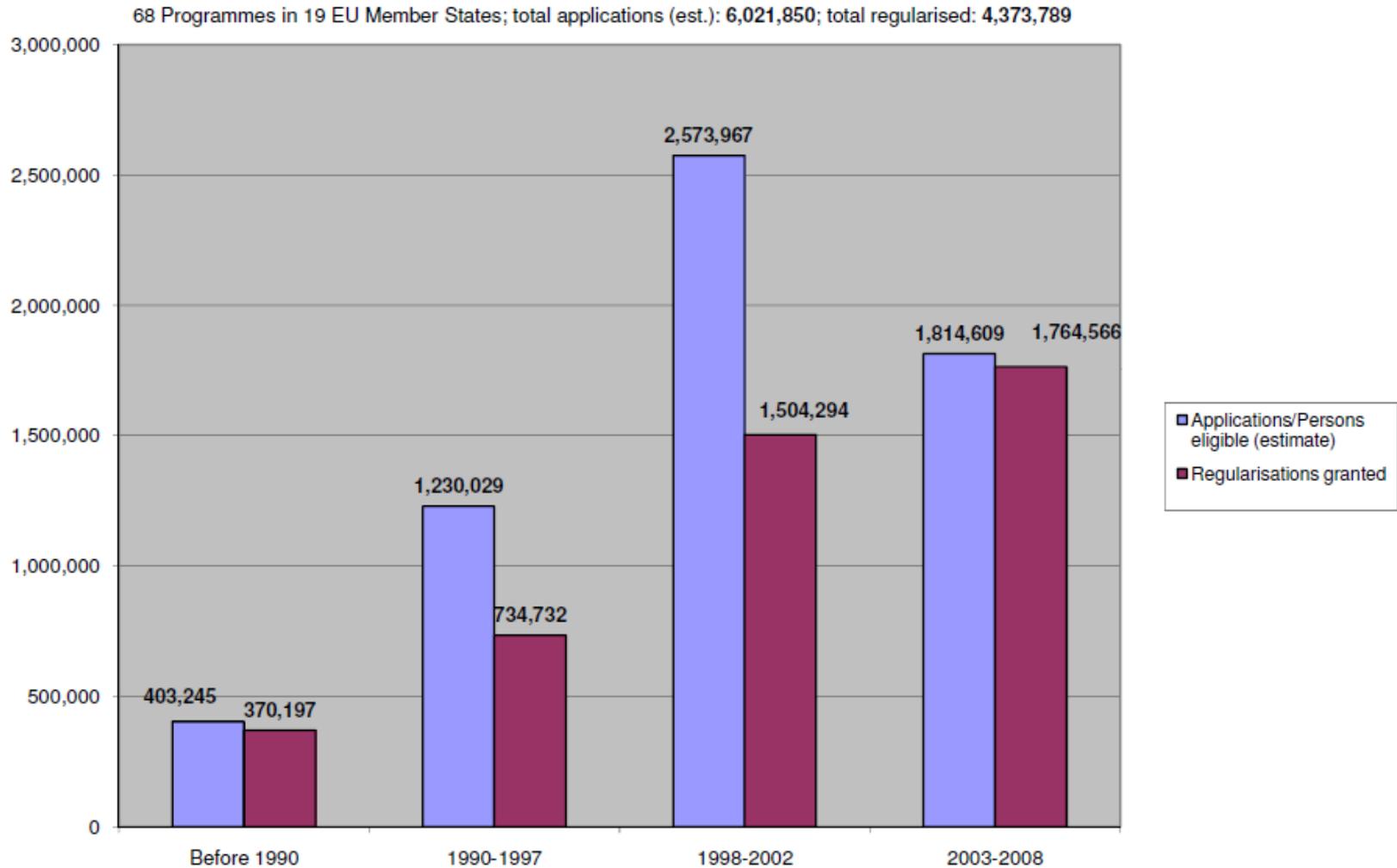
## Key facts

- ❑ 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 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



# Applications for regularisation through programmes, 1973-2008



# (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

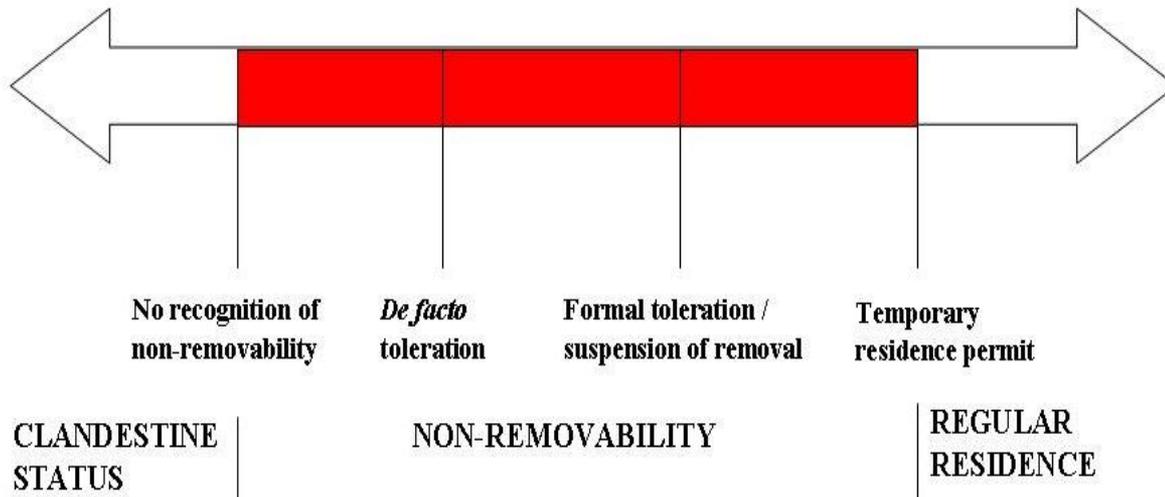
# (2.2) Regularisation mechanisms

|   | AT | BE | BG | CZ | DE | ES | FI | FR | GR | HU | IE | IT | LV | LT | NL | MT | PL | PT | SE | SI | SK | UK | 22 |
|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| <b>Humanitarian Protection Status</b>                                 |    | ✓  |    | ✓  | ✓  | ✓  | ✓  |    |    |    | ✓  | ✓  |    |    |    | ✓  | ✓  | ✓  | ✓  |    | ✓  |    | 12 |
| <b>Humanitarian permit if TCN cannot return to obtain visa abroad</b> |    |    |    |    |    | ✓  |    |    |    |    |    |    |    |    |    |    | ✓  |    |    |    |    |    | 2  |
| <b>Residence status on medical grounds</b>                            |    | ✓  |    | ✓  | ✓  | ✓  | ✓  |    | ✓  |    |    |    |    |    | ✓  | ✓  | ✓  | ✓  | ✓  |    | ✓  |    | 12 |
| <b>Family reasons</b>   | ✓  |    |    |    | ✓  |    |    |    | ✓  |    |    |    |    |    |    |    | ✓  |    | ✓  |    | ✓  |    | 6  |
| <b>Humanitarian status qua un-accompanied minor</b>                   | ✓  | ✓  |    |    |    | ✓  | ✓  |    |    | ✓  |    |    |    |    | ✓  | ✓  |    |    |    | ✓  | ✓  | ✓  | 10 |
| <b>Protection status for stateless persons</b>                        |    |    |    |    |    | ✓  |    | ✓  | ✓  | ✓  |    |    |    |    | ✓  |    |    |    |    |    |    |    | 5  |
| <b>Tolerated stay</b>   | ✓  | ✓  |    | ✓  | ✓  | ✓  | ✓  |    |    | ✓  | ✓  |    |    |    | ✓  |    | ✓  | ✓  | ✓  | ✓  | ✓  | ✓  | 15 |
| <b>Permit on grounds of national interest</b>                         |    |    |    | ✓  | ✓  | ✓  |    |    |    |    |    |    |    |    |    |    | ✓  | ✓  |    |    |    |    | 5  |
| <b>victims of specific offenses</b>                                   |    |    |    |    |    | ✓  |    |    | ✓  |    |    |    |    |    |    |    |    |    | ✓  |    |    |    | 3  |
| <b>Permit issued within ministry's discretionary power</b>            |    |    |    |    |    |    |    |    |    |    | ✓  |    |    |    | ✓  |    |    |    |    |    |    |    | 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



*Source of figure: FRA – Fundamental Rights of Irregular Migrants. Presentation at the conference „Jahrestagung Illegalität“, March 2011*

- 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:

Martin Baldwin-Edwards & Albert Kraler (eds.)  
(2009) : REGINE. Regularisations in Europe.  
Amsterdam: Pallas Publications.

More information at

<http://research.icmpd.org/1283.html>