

Regularisations – an instrument to reduce vulnerability, social exclusion and exploitation of migrants in an irregular situation in employment?

Working paper prepared for the European Union Agency
for Fundamental Rights (FRA) by the International Centre
for Migration Policy Development (ICMPD)

This working paper was prepared by Albert Kraler of the International Centre for Migration Policy Development (ICMPD) for the European Union Agency for Fundamental Rights (FRA). It was part of a wider project on the inequality and discrimination faced by migrants and minorities in employment. The paper reflects the views of the author and not those of the FRA.

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Summary

Over the past 25 years, European Union (EU) Member States have implemented nearly 70 regularisation programmes involving more than six million migrants living in an irregular situation in the EU. The majority of programmes were implemented in the past decade, and 73 % of applications for regularisations through programmes were submitted in this period. All but five EU Member States provide for permanent regularisation mechanisms in their legislation, while a number of states also provide more limited forms of status adjustments, such as the temporary suspension of a removal order or residence ban, to respond to the presence of migrants in an irregular situation on their territory.

Regularisations – the awarding of legal status to irregularly staying migrants – have typically followed two distinct approaches: one driven by a humanitarian and human rights driven logic; and the other by a regulatory, labour market policy driven logic. Under the first logic, regularisation measures have aimed to respond to a range of humanitarian considerations including backlogs in asylum claims and long asylum procedures, family reasons, reception of refugees from conflict zones not covered by the 1951 Geneva Convention relating to the Status of Refugees and other humanitarian concerns. Regularisations following the second approach have generally aimed at addressing large-scale irregular employment and the informal economy.

Both types of regularisation measures potentially have important effects on the possibility for individuals benefitting from regularisation to access basic rights, including core labour rights. While the success of regularisation measures in terms of macro-level objectives – notably the reduction of irregular employment and the informal economy – can be disputed, this paper shows their potential to reduce and eradicate the vulnerability of regularised migrants to adverse working conditions, exploitation and coercion. In addition, regularisations have positive effects on the individual employment trajectories of regularised migrants, including in relation to income, participation in employment, occupational mobility and use of skills.

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This paper examines regularisations from the point of view of concerned migrants and their access to fundamental rights. It recommends systematically considering the potential positive effects of regularisation measures in terms of addressing the vulnerability of migrants in an irregular situation in policy debates and in the concrete design and implementation of regularisation measures. However, the report highlights that other measures need to be adopted to address the vulnerability of migrants in an irregular situation in a comprehensive fashion, including wider reforms of immigration and employment legislation as well as various other measures.

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Introduction

This paper investigates whether the regularisation of irregular migrants is, or can be, an effective policy tool to address the vulnerability of migrants in an irregular situation to exploitation, social exclusion and marginalisation in the labour market. Regularisation – the awarding of legal status to irregularly staying migrants – has been advocated by migrant advocacy groups, trade unions and other civil society actors, but also by international bodies such as the International Labour Organization (ILO).

The question has so far received much less attention from policy makers and academic researchers. Both academic research on regularisation and statements from policy makers have almost exclusively looked at regularisation from the angle of migration management. Thus, the main questions raised in both academic and policy debates are: whether regularisation can be considered an appropriate and effective instrument within the wider governance framework of irregular migration; and how regularisation fits with other policies on irregular migration such as border management, internal controls (including employer sanctions) and return. Similarly, debates on the consequences of regularisation have focused on the macro-level impact in terms of reducing the stock of migrants in an irregular situation and achieving other regulatory aims such as reducing the share of irregular employment and the informal economy. There is a large body of literature dealing with these aspects and this paper will address these macro-level concerns only in passing.¹ Rather, the paper focuses on the consequences of regularisation for individuals and the potential of regularisation to address the vulnerability of migrants in an irregular situation to marginalisation, social exclusion and exploitation in the labour market.

¹ For more on these issues see Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>; Kraler, A. (2009), *Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration?*, available at: <http://library.imiscoe.org/en/record/308630> (all hyperlinks in this report were accessed on 20 October 2011).

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The issue of regularisation has also been discussed from a human rights and broader humanitarian perspective. There are strong normative reasons for regularising migrants in an irregular situation, which are to some extent based on an understanding that regularisation has beneficial outcomes for individuals afforded a legal status. Some of the arguments put forward in these debates will be referred to in this paper.²

² Human rights arguments on the basis of the European Convention on Human Rights (ECHR) are developed by Thym, D. (2008), 'Respect for private and family life under Article 8 ECHR in immigration cases: A human right to regularize illegal stay?', *International and Comparative Law Quarterly*, 57, 1, pp. 87-112. A broader discussion of regularisation from a human rights perspective, which also takes into account other international legal norms, is found in Chapter 6 of Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>.

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1. Regularisations in the European Union

1.1. The policy context: debates on regularisation in the European Union

In the context of the discussion preceding the adoption of the European Pact on Immigration and Asylum, the question of the regularisation of irregular immigrants has received renewed attention at the European level and, for the first time, has been explicitly discussed as an issue that may require European rather than solely national solutions.³ The discussions surrounding the pact, however, have mainly focused on negative aspects of regularisations and a number of associated issues, including: whether regularisations and, in particular, large-scale regularisations are an adequate policy response to the presence of migrants in an irregular situation; whether regularisations, by providing irregular migrants with legal status despite their unlawful entry and/or residence, undermine the principles on which contemporary migration management is built and 'reward' migrants in an irregular situation for unlawful behaviour; whether regularisations have a pull effect and provoke new irregular immigration; and whether regularisation measures, in particular large-scale regularisations implemented in one EU Member State, may have a negative impact on other EU Member States.

Thus, rather than exploring the potential of regularisation as a policy tool to achieve specific ends, the pact generally aims at a more constrained use of regularisation measures. This is based on an understanding that regularisation should not be considered as part of the regular 'toolbox' of migration management, whatever the merits of regularisation measures in tackling a broad range of objectives.

³ Council of the European Union (2008), *European Pact on immigration and asylum*, 13440/08, Brussels, 24 September 2008.

However, there is also a longstanding discussion on the potential benefits of regularisation involving academics, international bodies such as the Organisation for Economic Co-operation and Development (OECD);⁴ ILO;⁵ the Council of Europe,⁶ the Global Commission of International Migration (GCIM)⁷ and various social actors, including trade unions and non-governmental organisations (NGOs). In these debates regularisation is discussed as a measure with potentially beneficial outcomes, both from the perspective of states and receiving societies, and from the perspective of migrants in an irregular situation benefiting from regularisation. For states, regularisation offers the opportunity to bring irregular, and often undocumented and hence invisible, migrants into the legal and formal social and economic structures of the receiving society. At the same time, regularisation may be a tool to address the informal economy and associated negative phenomena such as tax evasion and evasion of social security obligations, adverse working conditions, exploitation and social dumping, amongst others.⁸ Regularisation

⁴ The OECD's Sopemi Reports have consistently reported on regularisations since the early 1990s. A more thorough discussion of regularisation can be found in OECD Secretariat (2000), 'Some lessons from recent regularisation programmes' in: OECD (ed.), *Combating the Illegal Employment of Foreign Workers*, Paris, OECD, pp. 53-69.

⁵ International Labour Organization (ILO) (2004), *Towards a fair deal for migrant workers in the global economy*, Report VI, International Labour Conference, 92nd Session, Geneva, ILO, available at: <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/meetingdocument/kd00096.pdf>; see also Organization for Security and Cooperation in Europe (OSCE), International Organization for Migration (IOM), ILO (2006), *Handbook on establishing effective labour migration policies in countries of origin and destination*, Vienna and Geneva, pp.170-173.

⁶ Council of Europe, Parliamentary Assembly (PACE) (2007), *Regularisation programmes for migrants in an irregular situation*, Report of the Committee on Migration, Refugees and Population, doc. 11350, 6 July 2007.

⁷ Global Commission of International Migration (2005), *Migration in an interconnected world: new directions for action*, available at: <http://www.qcim.org/attachements/qcim-complete-report-2005.pdf>, pp. 37-39.

⁸ See, for example, Abella, M.I. (2000), 'Migration and employment of undocumented workers: do sanctions and amnesties work?' in: Çinar, D., Gächter, A., Waldrauch, H. (eds.), *Irregular migration: dynamics, impact, policy options*, Vienna, European Centre for Social Welfare Policy and Research, pp. 205-215; Papademetriou, D., O'Neil, K., and Jachimowicz, M. (2004), *Observations on regularization and the labour market performance of unauthorized and regularized immigrants*, Hamburg, HWWA; Migration Policy Institute (2004), *Managing Irregular Migration*, Policy Brief No. 4, Presidency Conference on Future European Union Cooperation in the Field of Asylum, Migration and Frontiers, Amsterdam, 31

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may thus increase the tax base and income from social security contributions, while ensuring compliance with basic employment regulations and the protection of migrant workers. From the perspective of migrants, regularisation not only has an intrinsic value by ending the insecurity and precariousness associated with irregular status,⁹ but it also removes structural barriers resulting from illegal status and thus creates opportunities for social mobility and betterment.¹⁰

In a similar vein, various communications issued by the European Commission have recognised the need for and potential benefits of regularisation measures. Acknowledging that return may not always be a feasible option for legal, humanitarian or practical reasons, the Commission Communication on immigration, integration and employment adopted in 2003 argues that the presence of migrants in an irregular situation needs to be considered "both from the point of view of [its] impact on the labour market and with respect to the objective of integration and social cohesion".¹¹ The communication further argues that "the presence of large numbers of illegal residents has a negative influence", notably "as a source of cheap labour, liable to exploitation."¹² It also acknowledges that "illegal immigrants are excluded from full participation in society, both as contributors and as beneficiaries,

August - 3 September 2004, Washington D.C., Migration Policy Institute, available online at: www.migrationpolicy.org/events/2004-08-31.euroconf_publications.php.

⁹ For evidence of the feeling of insecurity as a result of illegality and strategies adopted by migrants in an irregular situation in response, see: Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documents_enligne/BAfr.pdf.

¹⁰ Illegality as a structural barrier for the realisation of equality and hence as a source of inequality lies at the core of the concept of 'civic stratification' developed by Lydia Morris, Eleonore Kofman and others. See Morris, L. (2002), *Managing migration: civic stratification and migrants' rights*, London, Routledge; Kofman, E. (2003), 'Contemporary European Migrations, Civic Stratification and Citizenship', *Political Geography*, 21, pp. 1035-1054.

¹¹ European Commission (2003), *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment*, COM(2003) 336 final, Brussels, 3 June 2003, p. 26.

¹² *Ibid.*, p. 26.

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which contributes to their marginalisation and fuels negative attitudes to them from local people".¹³ Although the communication points to both potential positive and negative effects of regularisation measures and does not explicitly advocate their implementation, it reminds Member States that the negative effects of regularisation need "to be balanced against the problems arising when large numbers of illegal residents are present in Member States".¹⁴

In a similar vein, the *Study on the links between illegal and legal migration* issued by the Commission in 2004 argues that regularisation programmes may have a series of beneficial outcomes, including better population management, a reduction of undeclared work, and increased tax revenues and social security payments. The study also stresses that regularisation measures may be regarded as instruments to promote social inclusion and cohesion by combating the marginalisation and exclusion of a particular segment of the population: "by carrying out regularisation operations, governments attempt to bring such migrants into society rather than leaving them on the margins, subject to exploitation".¹⁵

More recent Commission communications generally adopt a more sceptical attitude towards regularisation and prioritise preventive and enforcement measures such as enhanced border controls, internal controls including employer sanctions, and the systematic return of irregular third-country nationals. Nevertheless, they do not rule out regularisations entirely. Thus, the 2006 Commission Communication on policy priorities in the fight against illegal immigration of third country nationals stresses that "the sustained presence of significant numbers of third-country illegal immigrants" in Europe

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ European Commission (2004), *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Study on the links between legal and illegal migration*, COM(2004) 412 final, Brussels, 4 June 2004.

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cannot be tolerated, implicitly suggesting that regularisation needs to be maintained as a policy option should alternative options prove unviable.¹⁶

1.2. Regularisation practices in the European Union

Regularisation is by no means an exceptional policy measure in the European context. Between 1973 and 2008, 69 regularisation programmes¹⁷ were carried out in 19 of the 27 EU Member States. The majority of these programmes were implemented between 1993 and 2008 (see figure 1).

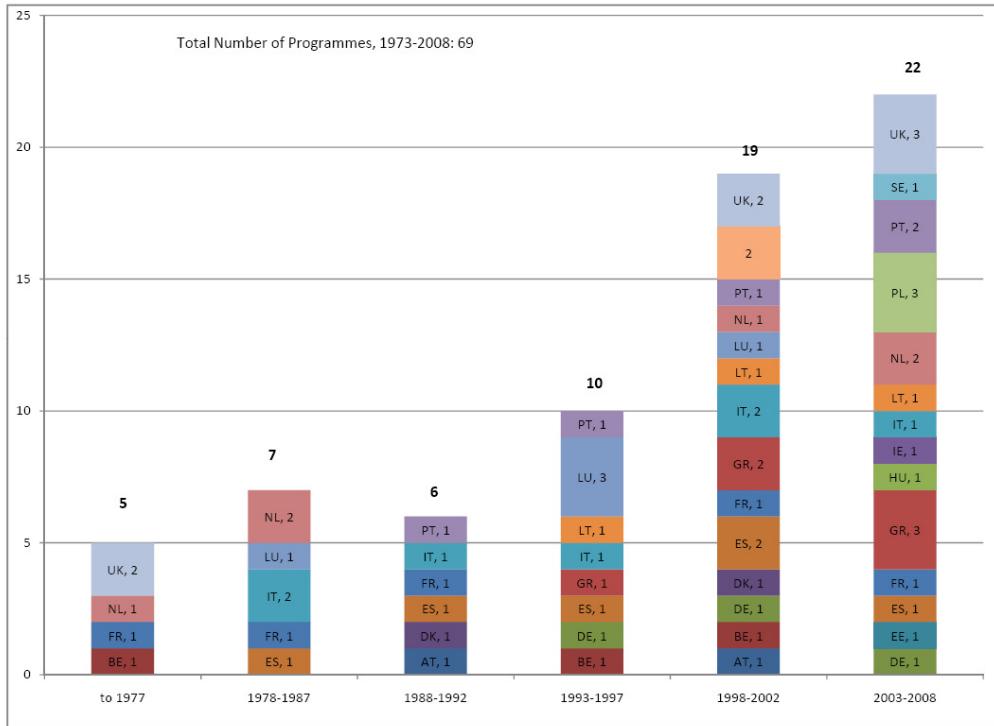
Since 1973, over six million persons have applied for regularisation under such programmes and over 4.3 million migrants in an irregular situation have been awarded legal status. The majority of regularisations were granted in the four Southern European countries of the European Union (Greece, Italy, Portugal and Spain) and France. These alone accounted for over three-quarters of all irregular migrants regularised between 1973 and 2008, with Italy (35.4 %), Spain (24.7 %) and Greece (19.2 %) awarding the largest number of regularisations through such programmes.

¹⁶ European Commission (2006), *Communication from the Commission on policy priorities in the fight against illegal immigration of third country nationals*, COM(2006) 402 final, Brussels, 19 July 2006.

¹⁷ A regularisation programme can be defined as “a specific regularisation procedure which (1) does not form part of the regular migration policy framework, (2) runs for a limited period of time and (3) targets specific categories of non-nationals in an irregular situation.” See Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>, p. 11.

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Figure 1: Regularisation programmes in the EU, 1973-2008



Source: Kraler, A. (2009), Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration?, figure 3.

In addition, all but five EU Member States¹⁸ provide for permanent regularisation mechanisms, largely on humanitarian grounds, in their migration policy framework. Moreover, ‘toleration’, the temporary suspension of a removal order or residence ban, is practiced in several Member States. Although falling short of fully fledged legal status and providing few substantive rights apart from the right to reside and access to basic social rights, ‘toleration’ can be regarded as a substitute for full regularisation and as a temporary status adjustment. In Germany, which is one of the few countries to formally – rather than only informally – tolerate migrants in an irregular situation, toleration involves a substantial number of persons.

Half of the temporary regularisation programmes implemented in the EU between 1973 and 2008 mainly targeted irregular migrant workers. Asylum seekers were the main target groups in an additional 11.6 % of programmes

¹⁸ The five countries are: Bulgaria, the Czech Republic, Italy, the Netherlands and Slovenia.

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and war refugees of another 10.1 % of programmes. Programmes for war refugees were mainly implemented during the 1990s in the context of the Bosnia and Kosovo crises. At this time, some states developed temporary protection schemes explicitly designed for refugees not covered by the Geneva Convention. Subsequently, common standards for temporary protection were defined on the European level based on the basic norm of non-refoulement and an understanding that war refugees were in need of protection.¹⁹

Humanitarian grounds were the basis for 10.1 % of regularisation programmes, including the rejection of an asylum claim and the impossibility of return, while some 13 % of programmes targeted other groups including migrants who had lost their status as a result of state succession or changes of the migration policy framework.²⁰ However, in terms of the number of people involved, employment-based programmes are by far the most important type of regularisation measure, reflecting the strong link between irregular migration and the informal economy in the Southern European countries where most regularisations take place.²¹

By contrast, permanent regularisation mechanisms, as opposed to specific regularisation programmes in place for a defined period of time,²² almost exclusively follow a humanitarian and human rights-driven logic. Only in France and Portugal do recently introduced regularisation mechanisms target

¹⁹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ 2001 L 212 and Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ 2004 L 304 (*Qualification Directive*). The Qualification Directive defines subsidiary protection from which more recent individual arrivals from war-torn countries such as Afghanistan, Iraq, Somalia and others have benefited.

²⁰ Own calculations on the basis of data collected by ICMPD.

²¹ Kraler, A. (2009), *Regularisation: A misguided option or part and parcel of a comprehensive policy response to irregular migration?*, available at: <http://library.imiscoe.org/en/record/308630>.

²² An example for a permanent regularisation mechanisms would be provisions in the immigration law under which migrants in an irregular situation can obtain a residence permits on humanitarian grounds.

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undocumented workers as workers.²³ Permanent regularisation mechanisms typically grant legal status on grounds of: protection; family ties or other strong ties to the country of residence; non-enforceability of return; health; and hardship, often involving one or more of the preceding criteria.

Regularisation is never unconditional. EU Member States have applied a variety of criteria to define the group of irregularly staying migrants eligible for regularisation. The most important of these are: presence in the territory of the Member State before a certain reference date; length of residence; and lack of a criminal record. Other criteria, such as family ties or integration efforts have been important criteria in a number of programmes and several regularisation mechanisms.²⁴ Where programmes have targeted undocumented workers, proof of employment and formalisation of the employment contract, or proof of social security payments, were the central additional criteria applied.

Despite the apparent widespread use of regularisation measures, EU Member States generally regularise selectively and do not have a generalised regularisation policy which follows a clear set of rules, criteria and conditions that are universally applied. Rather, regularisation is implemented at the discretion of the authorities and is widely regarded by governments as an exceptional policy tool.

²³ *Ibid.*

²⁴ Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>, Chapter 3.

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2. Regularisation and the labour market

2.1. Irregular migration and the informal economy

There is large body of literature on the nexus of irregular migration and the informal economy, which generally suggests a very strong link between irregular migration and informal employment. For example, the study *Informal employment in the advanced economies* suggests that the “participation of illegal immigrants in informal employment is very high, possibly the highest of any socio-economic group in the advanced economies”.²⁵ At the same time, it should be noted that informal employment is a much broader phenomenon, involving legal migrants and the native population whose participation in the informal economy is quantitatively far more significant. Similarly, there is not a clear dividing line between informal and formal employment. Firms may employ both formal and informal labour, while at the level of the individual informal and formal employment are usually intertwined.

In the context of the EU, the distinction between migrants in an irregular situation and those who are in a regular situation is increasingly blurred. Rather than outright illegality, it is a spectrum of non-and semi-compliance which characterises current dynamics of irregular migration in the EU and in particular in Northern European and Eastern European countries with much lower numbers of persons without any status.²⁶ Thus, a considerable proportion of irregularly employed migrants may be staying legally, but be employed in breach of restrictions on access to employment or in an informal

²⁵ Williams, C.C. and Windebank, J. (1998), *Informal employment in the advanced economies*, London, Routledge, p. 85.

²⁶ See on the concept of non- and semi-compliance Anderson, B. and Ruhs, M. (2006), *Semi-compliance in the migrant labour market*, Working Paper No. 30, Centre on Migration, Policy and Society (COMPAS), University of Oxford.

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manner, both of which could – in principle – result in the withdrawal of the right to stay.

It is particularly third-country nationals legally staying on short-term permits, or who have been staying fewer than five years in their current country of residence and thus are not yet eligible for a long-term resident status, who are potentially threatened with the withdrawal of status and expulsion in case of irregular employment. Various other categories – citizens of EU Member States, third-country nationals who are long-term residents, family members of EU citizens and family members of legally staying third-country nationals are generally not threatened with status withdrawal, although little information on actual state practice exists.

Citizens of the recently acceded Member States were and partly still are subject to transitional rules in other EU Member States. Under these rules, their access to other EU Member States' labour markets, and hence their right to settlement, may be restricted for up to seven years. With the end of the transition period for the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia in May 2011, this now only concerns citizens from Bulgaria and Romania, whose access to the labour market can be restricted up to 2014. Currently, 11 of the other 25 Member States foresee some kind of restrictions for citizens of these countries.²⁷ Bulgarian and Romanian citizens who, in breach of restrictions on access to the labour market, engage in paid work in these 11 EU Member States may be viewed as illegally staying. Indeed, available evidence for the period prior to May 2011 suggests that citizens of new EU Member States make up a substantial part of the total number of illegally employed foreigners in some EU Member States.²⁸

For all practical purposes, however, EU citizens are considered a group that, by definition, can no longer be illegally staying in another Member State. Nevertheless, irregularly employed EU-migrants from new Member States

²⁷ See <http://ec.europa.eu/social/main.jsp?catId=466&langId=en>.

²⁸ In Austria, 56.8 % of the persons found illegally employed in 2007 were citizens of new EU Member States. See Table II.8 in Kraler, A., Reichel, D. and Hollomey, C. (2009), 'Country report Austria' for the project *Clandestino - Undocumented migration: counting the uncountable. Data and trends across Europe*, available at: <http://irregular-migration.net/>.

subject to transitional rules have often been subject to very similar conditions as irregularly staying third-country nationals or third-country nationals in breach of immigration conditions. In response to widespread illegal employment of care workers from new EU Member States, Austria has implemented an amnesty specifically targeting citizens from recently acceded EU Member States. The amnesty involved the regularisation of the person's employment status by lifting restrictions for this category of employees and making employment legal, and an adaption of labour laws and social security legislation to fit employment practices in this sector into the existing legal framework. Although labour costs slightly increased due to inclusion into the social security system, the conditions under which care workers were employed were left unchanged. For example, the practice of 24-hour duty for private care workers was legalised and protection of workers legislation changed accordingly. Similarly, wages remained at almost the same level as before the regularisation of the sector.²⁹

Like EU citizens, third-country nationals who are long-term residents of a Member State³⁰ enjoy more or less unrestricted freedom of movement and far-reaching protection from expulsion and withdrawal of residence status. Not only do long-term residents enjoy full access to Member States' labour markets, but their engagement in undeclared work may not lead to withdrawal of their status and a consequent move into illegality. As in the case of EU citizens, freedom of movement rights may only be waived on grounds of public policy, public security and public health.

A second category of third-country nationals which enjoys substantial residence rights and hence far-reaching protection from expulsion under EU legislation is that of family members of EU nationals who exercise freedom of movement rights.³¹ Similarly, family members of third-country nationals enjoy

²⁹ *Ibid.*, pp. 47f.

³⁰ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ 2004 L 16.

³¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ 2004 L 158.

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a certain protection from loss of residence status and expulsion under the Family Reunification Directive.³²

Migrants in an irregular situation may not necessarily be employed in the informal economy. Until the 1990s, and possibly up to the present day, migrants in an irregular situation can find positions in the formal economy, in particular in less regulated occupations and in contexts where there are no systematic cross-checks and linkages between social security and tax records on the one hand, and records on the legal status of immigrants on the other. In the Netherlands such persons were known as "white illegals". In the United States (US) context, the majority of irregular migrants regularised in the 1986 regularisation programme are thought to have paid social security contributions and taxes before regularisation to avoid detection.³³ In addition, "semi-irregular migrants", namely rejected asylum seekers known to the authorities and other tolerated persons, may have legal access to employment as long as return cannot be effected.

Generally, however, and in particular in the EU context, which is characterised by a high degree of regulation, the overwhelming majority of economically active irregular immigrants are presumed to be employed in the informal economy.

Migrants in an irregular situation are usually concentrated in specific economic sectors characterised by high competition, low profit margins and small firm sizes. Generally, they are most frequently employed in construction, agriculture and horticulture, domestic work and care, catering and other hospitality services.³⁴ As an OECD review of regularisation programmes observes, it is the employment of an irregular workforce which

³² Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251 (*Family Reunification Directive*).

³³ Abella, M.I. (2000), 'Migration and employment of undocumented workers: do sanctions and amnesties work?' in: Çinar, D., Gächter, A., Waldrauch, H. (eds.), *Irregular migration: dynamics, impact, policy options*, Vienna, European Centre for Social Welfare Policy and Research, pp. 207f.

³⁴ European Commission (2007), *Accompanying document to the proposal for a directive of the European Parliament and the Council providing for sanctions against employers of illegally staying third-country nationals - Impact assessment*, Commission Staff Working Paper, SEC(2007) 603, Brussels, 16 May 2007, p. 7.

helps firms in these sectors to remain competitive in the face of decreasing profit margins and high competition both nationally and internationally. In the case of the domestic sector, it is the availability of cheap irregular migrant labour which allows native households to ‘outsource’ domestic chores and employ domestic workers.³⁵

In all these sectors, migrants in an irregular situation tend to occupy the least profitable, worst-paid, least rewarding and physically most strenuous jobs. In addition, research has shown that they are much more vulnerable to non-payment of wages, excessive working hours and other forms of non-compliance with employment rights. Because of their irregular status, migrants in an irregular situation tend also to be much more dependent on their employers, who often use their irregular status to pressure them to accept excessive demands or not to complain about non- or late payment of salaries.³⁶

As a recent ILO report demonstrates, vulnerability to adverse working conditions, excessive employer demands and employers’ non-compliance with basic labour standards often translates into outright forced labour and coercion.³⁷ The report presents the findings of a German study which found that although outright violence was the exception among the 42 cases it documented, some degree of violence was used in nine cases, four of which involved sexual exploitation. Generally, cases of violence involved threats by employers to withhold wages or to notify the authorities in order to pressure

³⁵ OECD (2000), *Combating the Illegal Employment of Foreign Workers*, Paris, OECD, p. 61.

³⁶ See, for an Austrian case study, Jandl, M., Hollomey, C. et al. (2008), *Migration and irregular work in Austria: a case study of the structure and dynamics of irregular foreign employment in Europe at the beginning of the 21st century*, Amsterdam, Amsterdam University Press. On Ireland see Migrant Rights Centre Ireland (2007), *Life in the shadows: an exploration of irregular migration in Ireland*, Dublin, Migrants Rights Centre. Working Conditions, employment patterns and individual employment careers in seven EU Member States have been investigated in depth by the EU-funded research project ‘Undocumented Workers Transitions’. Studies are available at: <http://www undocumentedmigrants.eu/>.

³⁷ ILO (2005), *A global alliance against forced labour*, Geneva, ILO, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf#. See also FRA (European Union Agency for Fundamental Rights) (2011), *Migrants in an irregular situation employed in domestic work: fundamental rights challenges for the European Union and its Member States*, Luxembourg, Publications Office of the European Union (Publications Office).

migrants to accept employer demands.³⁸ Study findings of research commissioned by the ILO on returned trafficked migrants in South-Eastern and Eastern Europe showed that 23 % of the respondents were trafficked into the sex trade, 21 % into construction and 13 % into agriculture. The remainder experienced coercion in the domestic and care sector, small manufacturing, and restaurants and catering.³⁹ Research on recruitment mechanisms in the case of Chinese irregular migration in France suggests that debts accumulated by migrants to finance their irregular journey to France were an important factor explaining migrants' vulnerability to coercion.⁴⁰

Studies on irregular migrant employment have shown strong ethnic stratification, which in turn is closely intertwined with differences in immigration status and gender. A study on migrants in an irregular situation regularised in Belgium showed that a majority of Africans were employed in services, South Asians and persons from the Middle East in hotels, restaurants and catering, and Eastern Europeans and other Asians (mainly women) in cleaning and domestic work.⁴¹ Studies in Italy and Spain report similar patterns of ethnic stratification.⁴² Moreover, studies on the 2002 regularisation programme in Italy have indicated how gender and nationality intersect with employment. Those regularised within the domestic work stream of the programme were almost exclusively female. Similarly, some of the

³⁸ ILO (2005), *A global alliance against forced labour*, Geneva, ILO, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf#, p. 48.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, p. 49.

⁴¹ Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after : La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf, pp. 90f.

⁴² See Cesareo, V. (2007), *Immigrants Regularization Processes in Italy*, Milan, Polimetrica; on Spain, see González Enríquez, C. (2008), 'Country report Spain', report for the project *Clandestino - undocumented migration: counting the uncountable. Data and trends across Europe*, available at: <http://irregular-migration.net/>.

nationalities – notably Ecuador, Moldova and Ukraine - involved were heavily female, with a majority of these employed in the domestic sector.⁴³

The ILO report on forced labour quoted above similarly highlights structurally embedded ethnic stratification as a source of vulnerability in the domestic sector. In particular, the report points to employer preferences as a source of ethnic stratification. According to the report, employer attitudes "exacerbate the vulnerable position of domestic workers. Employers prefer migrant domestic workers because they are less demanding and more flexible concerning working hours."⁴⁴

The concrete nature of the link between irregular migration and the informal economy, however, is subject to great variation within the EU. There seems to be generally high demand for irregular migrant workers in specific economic sectors across Europe, notably in the domestic sector (including care) and to some degree in agriculture. Nonetheless, in many contexts, notably in the more regulated and controlled labour markets of Northern European states, migrants in an irregular situation may face considerable difficulties in accessing employment altogether.⁴⁵ Irregular employment of illegally staying migrants in these contexts can probably be better explained by supply-side rather than demand-side factors and in general seems to be a phenomenon on the margins of the labour market. Similarly, the extent to which irregular migrant employment is linked to exploitation and coercion varies enormously between EU Member States and depends to a significant degree on the opportunity structures available for migrants in an irregular situation and the policies on irregular migration. Evidence suggests that the higher the degree of control and the greater the enforcement activities, the more likely it is that migrants in an irregular situation subject to coercive practices remain

⁴³ Ruspini, P. (2009), 'Italy', in: Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>.

⁴⁴ ILO (2005), *A global alliance against forced labour*, Geneva, ILO, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf#, p. 51.

⁴⁵ See, for a study on the Netherlands, whose findings probably can be generalised to other Northern European states, Van der Leun, J. (2003), *Looking for loopholes: processes of incorporation of illegal immigrants in the Netherlands*, Amsterdam, Amsterdam University Press.

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marginalised, vulnerable to exploitation and less likely to use available legal remedies against their employers.⁴⁶

2.2. Regularisation as a policy response to informal employment

The majority of regularisation programmes have targeted migrants in an irregular situation as migrant workers and have been explicitly designed to combat irregular employment. Employment-based programmes differ from other regularisation programmes in that they usually aim not just at regularising the status of irregular immigrants.⁴⁷ Rather, they normally have a much broader set of objectives related to the re-regulation of the informal economy by reducing the stock of irregular migrant workers and enforcing tax and social security obligations and compliance with basic employment standards.

The success of regularisation programmes in reaching these macro-level objectives is mixed. In early programmes in the 1990s significant numbers of regularised migrants fell back into illegality. Although this is now considerably reduced, evidence from those countries where data are available suggests that there is still a significant drop-out rate. In combination with new irregular inflows it is thus questionable whether such programmes alone can reduce the size of the irregular resident population. Given the structural conditions underlying irregular migration and the potential beneficial outcomes of regularisation from the perspective of individual migrants, however, this does not necessarily diminish the rationale for regularisation programmes. The evidence is also inconclusive regarding whether regularisation programmes manage to reduce irregular migrant employment, again partly due to the dynamic nature of the phenomenon. Available research, which only covers a

⁴⁶ Cyrus, N. (2005), *Trafficking for Labour and Sexual Exploitation in Germany*, Geneva, ILO, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081996.pdf, p. 71.

⁴⁷ Not all employment-based programmes were intended to tackle the informal economy more generally, notably the smaller-scale programmes implemented in the Netherlands (1999), Hungary (2004) or Poland (2003, 2007-2008).

very limited number of countries in depth, suggests that a considerable proportion of newly regularised migrants left jobs held prior to regularisation and subsequently moved into other occupations, frequently in other sectors. To some degree these vacancies then seem to have been filled by new irregular migrants.⁴⁸

Although programmes following a more human rights-based and humanitarian logic may not be designed to address irregular migrant employment, they nevertheless have an impact on employment at both the individual and societal levels. Existing, if patchy, research suggests that most migrants regularised through humanitarian programmes are likely to have been gainfully employed before regularisation.

Among the 116 respondents in a recent study on the Belgian regularisation programme of 2000, which targeted asylum seekers and other humanitarian cases, 80 % were employed before regularisation.⁴⁹ The findings show that the programme had important employment-related effects. These effects may be less in cases of the regularisation of specific groups of migrants known to the authorities such as rejected asylum seekers and other temporarily tolerated persons. They may still have access to reception centres and to social benefits and thus may not need to access employment. Indeed, social benefits may be explicitly used as a strategy to prevent rejected asylum seekers and other tolerated migrants from entering the labour market.

Evaluations of employment-based regularisation programmes have pointed out a number of prerequisites for their successful implementation, including consensus-building among all relevant stakeholders and the involvement of trade unions, NGOs and employers both in the preparation and

⁴⁸ See, for a review of the literature, Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>, pp. 18-21.

⁴⁹ Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf, p. 89.

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implementation of regularisation.⁵⁰ In several countries, notably Portugal and Spain, trade unions and other social actors were formally involved in designing recent regularisation programmes.⁵¹

To facilitate the regularisation of migrants in an irregular situation and address cases where employers are unwilling to apply for regularisation on their employees' behalf or to provide relevant documentation for the regularisation procedure, as well as cases where applicants were dismissed for requesting regularisations, several countries have accepted third-party testimonies. These include France, Spain and the US.⁵²

Evidence from the recent Spanish regularisation programme of 2005, which is widely regarded as very successful, suggests that a combination of regularisation and other measures seem to achieve the best results. These other measures can include: amnesties for employers, such as a waiver of sanctions on the employment of illegally staying migrants and non-payment of taxes and social security contributions; enhanced work-site controls; and employer sanctions for non-regularising employers.⁵³

⁵⁰ Levinson, A. (2005), *The regularization of unauthorized migrants: literature survey and country case studies*, Oxford, Centre on Migration, Policy and Society, University of Oxford, pp. 11-12.

⁵¹ Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>, Chapter 5.

⁵² Papademetriou, D., O'Neil, K., and Jachimowicz, M. (2004), *Observations on regularization and the labour market performance of unauthorized and regularized immigrants*, paper prepared for the European Commission, DG Employment and Social Affairs, Washington, D. C., Migration Policy Institute, p. 24.

⁵³ Arango, J. and Finotelli, C. (2009), 'Spain', in: Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968ICMPD>.

3. Addressing the vulnerability of migrants in an irregular situation in the labour market through regularisation

3.1. Positions of social actors

Regularisations are advocated by a wide range of civil society actors including trade unions, migrant advocacy groups and church-based organisations. Apart from macro-level arguments stressing the potentially positive role of regularisation in migration management and in terms of a reduction in the informal economy, civil society actors generally also stress the potentially positive impact of regularisations on the humanitarian situation of individual migrants and their access to human rights.

A recent report by the Irish Congress of Trade Unions argues that “[e]xperience in Ireland and abroad shows that unscrupulous employers exploit the situation of undocumented workers and often intimidate them into accepting less than decent treatment and unsafe working conditions”.⁵⁴ Regularisation in this context not only provides individuals with the opportunity to bring their lives out of the shadows and to live without fear but also creates the conditions for migrants to realise their rights as workers and reduces their vulnerability to marginalisation and exploitation. Generally, both NGOs and trade unions regard regularisation as an important instrument to give migrants in an irregular situation access to rights and to mechanisms protecting their rights. In addition, regularisation is argued to have positive effects on working conditions and social mobility.

⁵⁴ Irish Congress of Trade Unions (2007), *A fair ‘way in’*, Congress proposal for a fair regularisation process for undocumented workers in Ireland.

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At the same time, trade unions see regularisation as a potential instrument to combat social dumping more generally, and hence as a means to ensure protection and labour standards for all employees, whether migrants in an irregular situation, legal migrants or natives. Despite the cautious positive evaluation of the potential of regularisation measures, trade unions in the EU place the emphasis on enhanced controls and employer sanction and are divided on the question of whether regularisation in general should be advocated. In a similar vein, although with a different emphasis, NGOs generally stress that regularisation in itself is not a sufficient means to address irregular migration and in particular the vulnerability of migrants as a result of their status.⁵⁵

Several stakeholders point to administrative or legislative deficiencies, both as sources of irregularity and vulnerability. For example, the criminalisation of migrants in an irregular situation through the threat of status withdrawal and expulsion, and considerable fines for breach of labour and social security regulations, increases the vulnerability of irregular migrant workers. Thus, labour protection legislation may unintentionally increase rather than decrease potential protection risks. Decriminalising irregular workers and shifting the burden of sanctions to employers and regularisation measures, by contrast, would minimise these risks as much as possible and thereby increase migrants' access to rights.⁵⁶ A similar line is taken by the ILO, which advocates the use of regularisation in combination with other measures.⁵⁷

NGOs also stress the impact of regularisation on access to social rights, such as housing, health and education, as well as on migrants' security of

⁵⁵ Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>, Chapter 5.

⁵⁶ See Cyrus, N. (2005), 'Offering regular entries – reducing vulnerability – opening ways out of illegality', paper presented at the conference *Migration and Domestic Work in Global Perspective*, The Netherlands Institute for Advanced Studies, Wassenaar, 26-29 May 2005, available at: www.nias.knaw.nl/en/news_forthcoming_activities/lutz/new_7.

⁵⁷ ILO (2004), *Towards a fair deal for migrant workers in the global economy*, Report VI, International Labour Conference, 92nd Session, Geneva, ILO, available at: www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/meetingdocument/kd00096.pdf, pp. 119ff.

residence.⁵⁸ Although these aspects do not directly concern employment, they have important implications for employment. Against this backdrop, many social actors also see regularisation as a more general tool to promote the integration of migrants in an irregular situation into various societal domains.

In conclusion, social actors see a positive impact of regularisation on individuals in terms of: reducing vulnerability to exploitation; improvement in working conditions; improving access to rights, including realisation of employment-related rights; and opportunities for upward social mobility and betterment.

3.2. Evidence on positive effects of regularisation measures on regularised migrants

There is relatively little research on the employment-related effects of regularisation measures on individual migrants. Only in a handful of countries – namely Belgium, France, Italy, Spain and the US – have studies investigated the impact of regularisations in more depth.

Before discussing the impact of regularisations on employment patterns and working conditions, it is essential to point out that other consequences of regularisation, although not directly linked to employment, often affect the employment situation of regularised migrants. Access to social services, social benefits, childcare facilities, housing and justice as well as access to and use of educational and training opportunities rank among the most important of these consequences. Similarly, regularisation may have an important impact on family lives and the family migration strategies of individuals and families benefitting from regularisation measures.

⁵⁸ See the survey of NGO positions in Europe in Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>, ICMPD, Chapter 5.4.

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The importance of the most immediate consequence of regularisation, the acquisition of a secure legal status, should also not be underestimated. A growing body of research on the situation of migrants in an irregular situation points to the impact of status insecurity on their wellbeing and the psychological, social and economic consequences of constant fear and anxiety.⁵⁹ As the recent study on regularised migrants in Belgium stresses, "this period in illegality is often described as a period in which the world literally stood still – a life on standby".⁶⁰ That 66 out of the 116 respondents in the study had obtained Belgian nationality within the seven-year period since the implementation of the regularisation programme can also be read as an indication of the acute apprehension of status insecurity by irregular migrants and related strategies to obtain the most secure status of all - nationality.

The following brief discussion focuses on the impact of regularisation on individuals' experiences of the labour market. In terms of individuals' working lives, the impact of regularisation generally affects five dimensions: working conditions and vulnerability to exploitation; employment patterns and unemployment; wages and incomes more generally; occupational mobility, both horizontal and upward; and use of skills. In the following sub-sections, each of these dimensions will be discussed in more detail.

3.2.1. Working conditions and vulnerability to exploitation

As FRA's report *Migrants in an irregular situation employed in domestic work: fundamental rights challenges for the European Union and its Member States*, published in July 2011 indicates, migrants in an irregular situation employed in domestic work are at heightened risk of exploitation and abuse, including sexual abuse. In principle, they are entitled to safe and decent working

⁵⁹ See, for example, Jesuit Refugee Service Europe (2007), *Report on destitute forced migrants*, Brussels, JRS, available at: www.jrseurope.org/EPIM/intro.htm.

⁶⁰ Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf, p. 16 (own translation).

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conditions including fair pay, compensation for work accidents and rest periods. Guarantees to ensure respect for such international standards may be provided for in national law, but their applicability to domestic workers in an irregular situation may not be evident.⁶¹

Studies in the US found a slight decrease in working hours for regularised migrants, suggesting that they had more command over their working time than their irregular counterparts. However, evidence of the effects of regularisation on working conditions and on vulnerability to exploitation is mostly indirect in nature. The shift away from agriculture and construction observed in Belgium (see Section 3.2.4.) can be interpreted both as a response to adverse working conditions in these two sectors and as indirect evidence of improved working conditions. Similarly, research on the negative consequences for migrants of illegal status discussed in Section 2.1. shows how the lack of status is frequently used by employers to apply pressure on migrants and often directly impacts working conditions such as working time, physical strain involved and non-compliance with safety standards. By implication, acquiring legal status will protect migrants from abusive employment relationships directly linked to their lack of legal status.

Although evidence of the impact of regularisation on working conditions is almost entirely absent, it is this dimension of irregularity where the potential impact of regularisation is most evident.

3.2.2. Employment patterns and unemployment

According to a study on migrants regularised in the 2002 programme in Italy, regularisation has largely positive effects on the employment patterns of regularised migrants. Unemployment rates among regularised migrants were similar to migrants who already had regular status prior to 2002 and were much lower than those among migrants in an irregular situation. Similarly, the stability of the employment situation of regularised migrants indicates a

⁶¹ See FRA (2011), *Migrants in an irregular situation employed in domestic work: fundamental rights challenges for the European Union and its Member States*, Luxembourg, Publications Office.

positive effect of the regularisation programme.⁶² A large majority of persons benefiting from the programme in 2002 have been able to keep their legal status, and almost three years after regularisation almost 75 % of the regularised migrants still had formal employment.

Similarly, a recent study of the effects of the 2005 regularisation programme in Spain found that 80 % of regularised migrants were still in legal employment one year after the exercise. The study found that the overwhelming majority of those who dropped out of legal employment were employed in the domestic sector and agriculture.⁶³

Studies on the impact of the 1986 regularisation programme in the US found a slightly decreasing labour force participation rate, explained mainly by women and elderly men leaving the labour market.⁶⁴ This suggests that regularisation enabled migrants formerly in an irregular situation to exercise some degree of choice in whether to participate in the labour market. It also indicates the interlinkages between employment and other domains, notably family strategies and issues such as work-life balance. Unemployment rates of legalised persons were lower than among the overall population at the time of application (4 % as opposed to 6 %) but higher in 1991 (6 % relative to 5 %), which can be explained by the greater vulnerability of less-skilled workers to cyclical downturns.⁶⁵ Especially in the case of earlier programmes in the 1980s and 1990s, available evidence suggests that many regularised migrants were unable to renew their permits and dropped back into irregularity because of their inability to show that they had formal, legal employment.⁶⁶

⁶² Cesareo, V. (2007), *Immigrants regularization processes in Italy: analysis of an emblematic case*, Monza, Polimetrica International Scientific Publisher.

⁶³ Arango, J. and Finotelli, C. (2009), 'Spain', in Baldwin-Edwards, M. and Kraler, A. (2009), *REGINE. Regularisations in Europe*, Amsterdam, Pallas Publications, available at: <http://dare.uva.nl/document/154968>, pp. 450-51.

⁶⁴ Papademetriou, D., O'Neil, K., and Jachimowicz, M. (2004), *Observations on regularization and the labour market performance of unauthorized and regularized immigrants*, paper prepared for the European Commission, DG Employment and Social Affairs, Washington, D. C., Migration Policy Institute, p. 14.

⁶⁵ *Ibid.*, p. 14.

⁶⁶ *Ibid.*, p. 23.

The study on migrants in an irregular situation regularised during the Belgian regularisation programme in 2000 indicates that 68 % of respondents were employed at the time of the study in 2007, while 16 % received unemployment benefits.⁶⁷ Official data, employing a less extensive definition of employment, shows a somewhat bleaker picture for the same group, with 51 % being employed and 14 % receiving unemployment benefits. Nonetheless, with a 65 % labour force participation rate according to official figures, regularised migrants show similar employment patterns to the overall foreign population in Belgium.⁶⁸ If the study's own results are taken to better represent the employment patterns of regularised migrants, both the labour force participation rate, at 84 %, and the employment rate, at 68 %, are considerably higher than official figures for foreigners in general.

The Belgian study also shows the diversity of employment trajectories among regularised immigrants. Trajectories are linked to legal status before regularisation, namely asylum seeker, rejected asylum seeker or undocumented migrant; legal status of employment; human capital factors such as educational attainment; and social networks. The study identifies five main employment trajectories: consolidation, which concerns mainly asylum seekers already legally working before regularisation; 'catalysation', applying to asylum seekers irregularly employed before regularisation, for whom regularisation increased employment stability and created opportunities for occupational mobility; continuing dependence on social benefits, mainly concerning other humanitarian migrants; a hybrid trajectory, largely applying to former asylum seekers who were not employed before regularisation, mainly due to young age, and for whom regularisation generally had positive effects on employment; and increasing dependence on social benefits, which

⁶⁷ Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf, pp. 147ff.

⁶⁸ Raxen Focal Point Belgium (2006), *National Data Collection Report 2006*, p. 67. Figures are for 2004.

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concerns mainly undocumented migrants, who were not eligible for social benefits before regularisation.⁶⁹

3.2.3. Impact on incomes and wages

There is little information on the impact of regularisation on wages and incomes more generally. Evidence from the US suggests a slight increase in wages of 6 %-8 % after the 1986 regularisation programme in the framework of the Immigration Reform and Control Act (IRCA), although with significant gender differences. The wage gap between migrants in an irregular situation and regularised migrants, however, seems to be related more to the discriminatory effects of IRCA vis-à-vis undocumented migrants, especially the effects of the introduction of employer sanctions, than to wage gains attributable to the regularisation itself.⁷⁰

To some extent, wage gains reported in the US seem to be a consequence of sectoral mobility and upward mobility to better paid jobs rather than a consequence of higher wages for jobs held at the time of regularisation.⁷¹ In a similar vein, the results of a survey on migrants regularised in the 2002 regularisation programme in Italy reported no significant changes in migrants' wages after regularisation.⁷²

⁶⁹ Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf, p. 149.

⁷⁰ Papademetriou, D., O'Neil, K., and Jachimowicz, M. (2004), *Observations on regularization and the labour market performance of unauthorized and regularized immigrants*, paper prepared for the European Commission, DG Employment and Social Affairs, Washington, D. C., Migration Policy Institute, p. 14f.

⁷¹ Abella, M.I. (2000), 'Migration and employment of undocumented workers: do sanctions and amnesties work?' in: Çinar, D., Gächter, A., Waldrauch, H. (eds.), *Irregular migration: dynamics, impact, policy options*, Vienna, European Centre for Social Welfare Policy and Research, pp. 205-215.

⁷² Cesareo, V. (2007), *Immigrants regularization processes in Italy: analysis of an emblematic case*, Monza, Polimetrica International Scientific Publisher, p. 67.

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Research findings from Belgium suggest that regularised migrants find themselves in lower income categories. While 60 % of regularised migrants earned less than €80 (net) per day, the corresponding figure for the total Belgian population as a whole is 23 %. Around 95 % of regularised migrants earn less than €110 per day compared to 60 % of the total Belgian population.⁷³

Regularisation usually involves access to non-employment based incomes, notably transfers and social benefits, thus broadening the potential sources of income.⁷⁴ Although increasing reliance on social benefits and other transfer payments may be taken as an indicator of increasing dependence and thus labour market failure, it may similarly be interpreted as an indicator of the exercise of choice on the part of migrants.

3.2.4. Occupational mobility

The impact of regularisations on the occupational mobility of regularised migrants, both horizontal and vertical, is greatly under researched.⁷⁵ Available evidence from the US and France reported by the OECD suggests significant geographical and occupational mobility as a result of regularisation.⁷⁶ This should not be unexpected: regularisation removes important barriers to mobility and thereby increases the range of choices available to migrants.

The study of the effects of the 2000 regularisation in Belgium stresses occupational mobility as one of its main findings regarding the employment situation. The study reports a major exodus from construction and agriculture

⁷³ Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf, p. 95.

⁷⁴ *Ibid.*, p. 147.

⁷⁵ OECD, SOPEMI (2003), *Trends in International Migration*, Annual Report 2002, Paris, OECD, p. 89.

⁷⁶ OECD Secretariat (2000), 'Some lessons from recent regularisation programmes' in: OECD (ed.), *Combating the illegal employment of foreign workers*, Paris, OECD, p. 63.

to manufacturing and, to a lesser extent, services.⁷⁷ The shift away from agriculture and construction can be interpreted to reflect, amongst other factors, the difficult working conditions characteristic of these sectors as well as their tendency to be particularly affected by adverse employment practices such as withholding of wages and irregular pay, long working times and other irregularities.

The study on the 2002 regularisation in Italy did not address occupational mobility in detail. However, it found evidence for limited social mobility linked to a transition from dependent to self-employment.⁷⁸ It also found that the need to keep formal employment in order to remain legal may block migrants' prospects for occupational mobility as such opportunities are not available in the formal sector.⁷⁹ This finding seems to be specific for Italy, which continues to experience high levels of irregular migration and irregular employment and, as a consequence, offers fewer opportunities for legal migrants to benefit from occupational mobility within the formal economy.⁸⁰

3.2.5. Use of skills

The evidence on educational attainment and use of skills is mixed. Studies on the impact of the 1986 regularisation in the US have commonly found that the skills of regularised migrants were better rewarded after regularisation than they had been beforehand.⁸¹ While research on Italy shows that regularisation

⁷⁷ Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf, p. 93f.

⁷⁸ Cesareo, V. (2007), *Immigrants regularization processes in Italy: analysis of an emblematic case*, Monza, Polimetrica International Scientific Publisher, p. 53.

⁷⁹ *Ibid.*, p. 86.

⁸⁰ See for an assessment of the illegal migrant population and the extent of irregular employment Fasani, F. (2008), 'Country report Italy' for the project *Clandestino - Undocumented migration: counting the uncountable. Data and trends across Europe*, available at: <http://irregular-migration.hwwi.net/>.

⁸¹ Papademetriou, D., O'Neil, K., and Jachimowicz, M. (2004), *Observations on regularization and the labour market performance of unauthorized and regularized immigrants*, paper

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increases the chances of regularised migrants with higher skills be in employment, migrants do not necessarily find employment commensurate with their qualifications.⁸²

Similar results are reported for Belgium, where formal educational attainments positively influence general employment prospects but are not rewarded by employment opportunities corresponding to the qualifications of migrants. The study attributes this generalised trend of deskilling to regularised migrants' precarious employment careers and history of unskilled labour before regularisation as well as to employers' tendency to value formal qualifications only in combination with relevant work experience.⁸³ This suggests that there is a penalty for periods of irregularity: not only is irregular work usually associated with low-skilled occupations, it also usually lacks opportunities for occupational mobility and thus effectively blocks employment careers. The comparatively more successful employment careers of the regularised former asylum seekers interviewed in the study, who had access to legal employment before regularisation, corroborates this view.

prepared for the European Commission, DG Employment and Social Affairs, Washington, D.C., Migration Policy Institute, p. 15ff.

⁸² Cesareo, V. (2007), *Immigrants regularization processes in Italy: analysis of an emblematic case*, Monza, Polimetrica International Scientific Publisher, p. 53.

⁸³ Centrum voor Sociaal Beleid, Université d'Anvers, Groupe d'études sur l'ethnicité, le racisme, les migrations et l'exclusion, Université Libre de Bruxelles (2008), *Before and after: La situation sociale et économique des personnes ayant bénéficié de la procédure de régularisation en 2000 (Loi du 22 décembre 1999)*, available at: www.ulb.ac.be/socio/germe/documentsenligne/BAfr.pdf, pp. 92-94.

Conclusions

Addressing the vulnerability of migrants in an irregular situation to adverse working conditions, exploitation and coercion has not been a prominent rationale for implementing regularisation measures. Nevertheless, the potential of regularisation to help address vulnerability has been recognised by social actors, in particular trade unions and NGOs, but also by various EU Member States and the European Commission.

Similarly, the positive potential impact of regularisation on the broader employment patterns and employment characteristics of migrants in an irregular situation has received little attention outside academic literature.

This paper suggests that on both counts regularisation is likely to have a positive impact. Periods spent in an irregular situation seem to impact negatively both on long-term prospects for occupational mobility and on the incomes of regularised migrants. Although their employment situation seems to improve and generally compares well to other legal migrants, scope for social upward mobility is clearly limited. Against this backdrop, it is the potential of regularisation to reduce the vulnerability of migrants in an irregular situation to adverse working conditions, exploitation and coercion that is the most significant impact of regularisation.

When debating regularisation measures, EU Member States should systematically consider the potential positive impact of regularisation on individuals' employment situations, but in particular the potential of regularisation to reduce the vulnerability of migrants in an irregular situation to marginalisation, exploitation and coercion. That lack of status, as this paper shows, often implies vulnerability to a range of adverse conditions and clearly indicates that irregularity should be avoided and actively combated. Member States should strive to limit such periods as far as possible by: reducing the risk of persons falling into irregularity; opening legal migration channels and making admission mechanisms and procedures more flexible, thereby also reducing the risk of falling into irregularity; implementing effective and fair return policies; and using regularisation in cases where return is not a viable option or regularisation is a more appropriate response to the irregular migration for other reasons.

Regularisations – an instrument to reduce vulnerability, social exclusion and exploitation of migrants in an irregular situation in employment?

Particularly in the case of rejected asylum seekers temporarily tolerated and other migrants in an irregular situation whose removal orders and residence bans have temporarily been suspended, the duration of toleration should be strictly limited. This limits the risk of persons becoming vulnerable or remaining in such a situation over long periods of time.

When designing policy responses to irregular migration, the impact on individuals as well as the potential negative effects of adopted measures should be systematically considered. Efforts should be made to reduce some of the unwanted effects of legal frameworks governing the entry, stay and employment of non-nationals, notably that migrants in an irregular situation subject to adverse working conditions, exploitation and coercion have little opportunity to counter this situation because of the way policies are built. In particular, to effectively counter the vulnerability of irregular migrant workers and ensure that all workers enjoy the same labour standards and protection under employment legislation, sanctions and penalties imposed on workers should be avoided and abolished as far as possible.

Migrants in an irregular situation should have the opportunity to denounce unfair and exploitative labour practices without fear of negative or long-term consequences for themselves. Although an irregular status by definition involves the threat of sanctions and negative consequences, the objective of combating exploitation and coercion needs to be carefully balanced with wider objectives of addressing irregular migration. Possible approaches could include systematically decoupling employment legislation from immigration legislation, and labour market controls from immigration controls. Measures may also include granting migrants denouncing exploitative employment situations a temporary legal stay,⁸⁴ potentially with the option for a transition to a regular long-term status. Other low profile remedies for migrants subject to exploitative conditions include counselling services.

⁸⁴ Such a temporary permit is actually provided for in Art.13 (4) of the Employer Sanctions Directive, however, like in the case of permits for victims of trafficking for sexual exploitation, only in case of criminal proceedings against the employer. See 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, OJ 2009 L 168 (*Employer Sanctions Directive*).

Regularisations – an instrument to reduce vulnerability, social exclusion and exploitation of migrants in an irregular situation in employment?

As the significant drop out rate from the social security system among domestic workers in Spain, as well as experience from other programmes, suggests, there may be limits to regularising the employment status of workers in this sector (see Section 3.2.2.). In this regard, innovative employment regulations are needed to ensure formal employment relationships. More immediately, employment status and immigration status should be decoupled for this group of workers.