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Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway

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Explanatory note

This study was prepared on the basis of national contributions from 26 EMN NCPs (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK and NO) collected via a Common Template developed by the EMN NCPs to ensure, to the extent possible, comparability. National contributions were largely based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources and reports and information from national authorities rather than primary research. The listing of EU Member States and Norway in the study following the presentation of synthesised information indicates the availability of relevant information provided by those Member States and Norway in their national contributions. More detailed information may be found in these national contributions, and it is strongly recommended that they are consulted as well.

Statistics were sourced from Eurostat, national authorities and other (national) databases.

It is important to note that the information contained in this study refers to the situation in the abovementioned Member States and Norway up to November 2020 as reported in the contributions made by their EMN National Contact Points.

EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this study, but have done so for other EMN activities and reports.

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LIST OF GLOSSARY TERMS

There are several key terms used in this template. The definitions listed below are defined with help from the EMN Glossary,[1] version 6.0.

Term	Definition
Forced return	The process of going back – whether in voluntary or enforced compliance with an obligation to return – to one's country of origin, a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or another third-country to which the third-country national concerned voluntarily decides to return and in which they will be accepted (Article 3(3) of the Return Directive).
Illegal or irregular stay	The presence on the territory of a Member State of a third-country national who does not fulfil, or no longer fulfils, the conditions of entry as set out in Article 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.
Irregular migration	The movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.
Non-refoulement	A core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment, or any other human rights violation.
Overstayer	A person remaining in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered an EU State, but who has stayed beyond the expiry of his/her visa and/or residence permit.
Regularisation	State procedure by which irregularly staying third-country nationals are awarded a legal status.
Residence permit	An authorisation issued using the format laid down in Regulation (EC) No 1030/2002 entitling its holder to stay legally on the territory of a Member State.
Return	The movement of a person going from a host country back to a country of origin, country of nationality or habitual residence, usually after spending a significant period of time in the host country, whether voluntary or forced, assisted or spontaneous.
Return decision	An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
Social protection benefits	For the purpose of this study, please refer to the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood to cover, at a minimum, income support, assistance in the case of illness, or pregnancy, and parental assistance.
Postponement of removal	(Temporary) suspension of removal of a third-country national who has received a return decision but whose removal is not possible either for humanitarian reasons (as their removal would violate the principle of non-refoulement or due to the third-country national's physical state or mental capacity) or for technical reasons (such as lack of transport capacity or failure of the removal due to lack of identification or the country of origin's refusal to accept the person) and for as long as a suspensory effect is granted in accordance with Article 13(2) of Council Directive 2008/115/EC (Return Directive).
Third-country national	Any person who is not a citizen of the EU within the meaning of Article 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Article 2(5) of the Schengen Borders Code.
Trafficking in human beings	The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.[2]
Voluntary departure	Compliance with the obligation to return within the time limit fixed for that purpose in the return decision.
Vulnerable person	Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Article 21 of Directive 2013/33/EU (Recast Reception Conditions Directive).

1 EMN Glossary, https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en, last accessed on 30 June 2021.
2 Article 2, par.1 of the Anti-trafficking Directive.

EXECUTIVE SUMMARY

KEY POINTS

- The status of third-country nationals who cannot be returned due to legal or practical obstacles varies within and across the Member States as it does not rely on a harmonisation at EU level and usually depends on individual circumstances. Migrants who abscond or who were never detected by the authorities have no written documentation of any sort. This creates a potentially confusing situation for both migrants and service providers to navigate.
- Services provided to long-term irregular migrants with some form of status/authorisation are limited compared to those provided to regular migrants, often discretionary, and difficult to access, especially concerning social protection benefits and employment. Services available to undetected migrants with no authorisation to stay are even more limited and essentially rely on the application of standards set out in international human rights law. Access to services may be limited still further by migrants' concerns about detection and apprehension.
- The main service providers for long-term irregular migrants are national authorities and municipalities, with non-governmental organisations (NGOs) providing complementary and/or autonomous services. Cooperation mechanisms for service provision between national and local authorities are mostly ad hoc, and do not have a focus on the issue of long-term irregular migrants, but rather irregular migrants more generally.
- In order to end irregular stay in general, not only focussing on long-term specifically, (voluntary) return is prioritised in the Member States, whereas regularisation is only marginally addressed in policy. Good practices identified in the study focused on encouraging return through return counselling and on discouraging illegal stay by restricting certain rights while balancing the need to provide humane treatment for all persons, irrespective of their legal status.
- The COVID-19 pandemic has highlighted the situation of migrants who cannot be returned or who remain undetected by the authorities, due to the urgency in ensuring universal access to medical care. In a limited number of cases, labour market shortages in essential sectors due to border closures led to regularisation of workers with skills in shortage areas. The majority of Member States face cases where forced returns could not take place because of irregular migrants' refusal to undertake a PCR test or other medical examination required by their country of origin. The scale of this issue is however limited.

BACKGROUND AND RATIONALE FOR THE STUDY

Third-country nationals who no longer or who have never fulfilled the conditions of stay are denied a residence permit, while those whose return decision has not been or cannot be enforced may face long-term situations of illegal stay and legal uncertainty, including often deplorable living conditions.[3] The actions of national governments and local authorities (municipalities, regions) may be contradictory. Central authorities must fulfil national migration policy objectives to prevent illegal stay and enforce return decisions, while local authorities must address the practical issues associated with the prolonged stay of irregularly staying third-country nationals, including access to basic services.

To reduce situations of legal uncertainty for third-country nationals, the Return Directive (2008/115/EC)[4] obliges Member States to issue a return decision to irregularly staying third-country nationals on their territory.[5] The Directive also sets out minimum basic rights and procedural guarantees where there is a postponement of return, exercised in conjunction with other relevant legal instruments. While the Return Directive (2008/115/EC) foresees some basic rights for 'non-removable' returnees, there is

3 Refugee Law Initiative and Centre for International Criminal Justice, 'Undesirable and unreturnable? Policy challenges around excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed', 2016, London: University of London, https://cicj.org/wp-content/uploads/2016/09/Undesirable-and-Unreturnable-Full-report.pdf, last accessed on 23 February 2021.

4 Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive), https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115, last accessed on 20 July 2021.

5 Return Directive, Article 6.

no further harmonisation at European Union (EU) level, with the approach instead largely determined by domestic law and practice.

Aim and scope of the study

This study aims to provide an overview of existing policies and practices in the EU Member States and Norway towards third-country nationals in a prolonged situation of irregular stay. The overall focus is on those third-country nationals subject to a return decision but whose return was not enforced or was postponed, and those without a return decision who are unknown to the authorities.

The study explores the responses and approaches by central and local authorities to end those situations and mitigate the social consequences for the third-country nationals affected. It examines access by these groups to mainstream services.

Method and analysis

The information used in this study came primarily from secondary sources provided by 25 EU Member States and Norway. National contributions were based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources, media reports and information from national authorities. In some Member States, primary data collection was carried out through interviews with national stakeholders.

NATIONAL LEGAL AND POLICY FRAMEWORK

Categories of long-term irregular migrants at national level

While Member States do not distinguish between long-term and short-term irregular migrants in their definitions, they acknowledge that, in practice, different reasons can lead to prolonged irregular stay. This resulted in the identification of two main categories of such migrants across the Member States: (1) irregular migrants that cannot be returned for legal obstacles (such as medical reasons),[6] or practical obstacles (such as lack of travel documents).[7] Several Member States reported that there are (2) irregular migrants who remain unknown to authorities because they were never detected,[8] or they absconded during the asylum procedure or after having received a negative decision.[9]

Third-country nationals who cannot be returned for legal or practical reasons fall into three main categories in terms of their legal situation, or a combination in some cases: (1) issuance of a temporary authorisation or permit to stay;[10] (2) issuance of a certificate or other written confirmation to postpone return or extend the period for voluntary departure;[11] and (3) *de facto* suspension of return without any certification issued.[12] In those cases where there are practical obstacles to return, the first two categories are an option in a minority of Member States, and may be available to only a limited number of irregularly staying migrants.[13]

There are no official statistics on the number of irregularly staying migrants in the Member States and Norway. However, some Member States provide estimates using proxy data.[14] These are most accurate for 'non-returnable' irregular migrants, based on the number of issued authorisations to stay and on the number of returns decisions that were not implemented.[15] Additional estimates are provided on the numbers who absconded or those whose asylum applications were refused.[16]

Priorities, debates and plans at national level

Irregular migration remains a recurring topic in political, inter-institutional, legal, and public debates in about half of the Member States and Norway. Policy and legislative debates primarily focus on the need for authorities to increase and simplify the return of migrants without a legal status to their countries of origin.[17] Inter-institutional and public debates include discussions of irregular migration and asylum, as well as the availability of basic services for irregular migrants,[18] which in some cases resulted in changes in service provisions. At policy and public level, regularisation of irregularly staying migrants who cannot be removed has also been debated, as has their integration into society.

During the COVID-19 pandemic, the main discourse in the Member States and Norway on irregular migrants has focused on regularisation and service provision, particularly healthcare.

6 AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, LT, LU, LV, NL, SE, SI, SK and NO; PL does not consider as (long-term) irregular migrants third-country nationals who cannot be returned due to legal obstacles.
7 AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK and NO.
8 AT, BE, CZ, DE, EE, ES, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK and NO.
9 AT, BE, CZ, DE, EE, ES, FI, FR, IE, LT, LU, LV, NL, SE, SI, SK and NO.
10 AT, BE, CY, CZ, DE, EE, FI, HR, HU, IT, LT, LU, LV, MT, NL, PL, SE, SI, SK and NO.
11 AT, BE, BG, CZ, DE, EE, FI, HR, NL, IE (within certain judicial review proceedings only, by written undertaking or Court injunction), IT, LT, LU, LV, PL, SE, SI, SK and NO.
12 CY, FR, HU, IE, LT, LU, NL, PT, SE and NO.
13 LT, FI, NL, SE. In Finland this is the case where obstacles to return are not due to fault of the returnee.
14 AT, EE, FI, FR, IE, IT, LU, NL, SE.
15 AT, EE, LU, FI and NO.
16 AT, FI, LU, SE.
17 AT, BE, DE, ES, FR, IT, LU, SE, SK.
18 AT, DE, FI, FR, IT, LU, NL, SE.

NATIONAL POLICIES AND APPROACHES TO LONG-TERM IRREGULARLY STAYING MIGRANTS

Rights and access to services for long-term irregular migrants

Access to services varies across different categories of irregular migrants. Overall, long-term irregularly staying migrants who remain unknown to migration authorities have more limited access to services and rights than those who cannot be returned for either legal or practical reasons and who may have been issued with one of several types of authorisation. The rights and services legally granted to this category of irregularly staying migrants are generally limited across the Member States, with those available largely stemming from international rights standards (e.g. emergency medical care, provision of compulsory education), which, in the majority of Member States, are enshrined in national and regional law. Emergency healthcare and compulsory education remain largely accessible for this group of migrants, yet, in practice, access remains challenging, often due to fear of being detected by the migration authorities or a lack of understanding of what services are available. Access to the labour market and social protection benefits - already minimal for irregular migrants with authorisation to stay - is not possible in almost all Member States, and only one-third of the Member States and Norway provide accommodation services, sometimes on a discretionary basis by NGOs.

In contrast to those irregular migrants unknown to the authorities, irregular migrants who cannot be returned, in some cases, have access to more services. In certain Member States, the temporary authorisation granted may be a temporary residence permit allowing access to services equal to beneficiaries of other forms of protection.[19] For migrants who have not been issued a certificate of postponement or suspension of their return, access to services and rights is typically the same as for those who remained unknown to authorities. This means access to compulsory education and emergency healthcare, granted in line with the provisions of the Return Directive (2008/115/EC), where applicable, and other international rights standards. However, access to accommodation, social protection benefits, employment, additional education, non-emergency health care and legal aid may also be available, but this varies across Member States, and is dependent on the individual's legal situation and the type of service.

Authorities and organisations delivering the services, and cooperation between authorities

For long-term irregular migrants, whether known or unknown to the authorities, national authorities and municipalities are responsible for service provision, with NGOs collaborating as service providers in several instances.[20] Nonetheless, municipalities and NGOs may provide autonomous additional services to complement the national services.

National authorities have measures in place to facilitate cooperation with regional and local authorities regarding the situation of long-term irregular migrants. However, these tend to address general issues such as information exchange and guidance on migration matters, although some provide monitoring and support to follow-up individual case management at regional or authority level.[21] There appears to be little systematic participation in horizontal cooperation networks of local and regional authorities. Where such cooperation was reported, it tended to be fragmented.

Good practices in granting access to services for long-term irregularly staying migrants

Several Member States highlighted good practices in service provision. National authorities consider those practices that facilitate dialogue between authorities and irregular migrants to be good practices.[22] This is notable in the area of healthcare, where flexible application of regulations allows irregular migrants to access healthcare.[23] Good practices in the area of education included allowing the children of irregular migrants to access public schools.[24]

Another good practice is the exchange of information between national and local authorities.[25] By contrast, in some Member States, it is considered good practice to limit the degree of coordination between national and local authorities in order to build trust at local level.[26] Good practices were also reported in respect of flexibility in inter-institutional coordination when dealing with irregularly staying migrants.[27]

RESPONSES TO END LONG-TERM IRREGULAR STAY

The main policy priority reported by the Member States and Norway to address irregular stay was ensuring the return of irregularly staying migrants. Most prioritise voluntary return over other solutions, as this is considered the most cost-effective and humane approach, and thus offer incentives, such as counselling or return packages.

19 For instance, CZ, DE EL, IT, SE.
20 BG, CY, DE, FR, LU, MT, PL, SI. In LU, only the National Reception Office will provide services if the removal cannot take place for technical or legal reasons but the third-country national is willing to return voluntarily.
21 BE, BG, CZ, DE,EE, FI, LV, NL, PL.
22 BE, DE, FR, LT, MT, NL, SE.
23 BE, LU, MT, NL.
24 CZ, DE, ES, FR, HR, IE, MT.
25 CZ, DE, EE, LV, NL.
26 NL.
27 DE, NL.

As well as promoting return, nine Member States and Norway reported having specific measures to discourage irregular stay or encourage return.[28] These were mainly restrictive measures seeking to limit irregular migrants' access to public services. Member States also reported that their efforts to combat undeclared work by implementing measures targeting employers were also used to discourage migrants from staying irregularly on their territory.[29]

In contrast, regularisation was not seen as a policy priority for long-term irregular migrants. Only a few countries have regularisation policies specifically targeting long-term irregular migrants.[30] Conversely, the most notable types of regularisation, regardless of the length of irregular stay, were humanitarian regularisation (when respect for the *non-refoulement* principle amounts to a regularisation procedure for example);[31] medical regularisation (when medical emergencies or chronic conditions constitute a justification for regularisation);[32] employment-based regularisation (when sufficient vocational training or higher education is considered acceptable by the host country's standards);[33] and regularisation through the granting of a right of residence with an administrative court decision.[34] Five Member States offer regularisation based on specific 'integration achievements' or 'integration efforts'.[35]

CHALLENGES AND SUGGESTED ACTIVITIES TO BE UNDERTAKEN AT EU LEVEL

Most Member States and Norway identified challenges in their policies to address the issue of long-term irregularly staying migrants. Others reported no challenges,[36] for example due to the small number of (known) cases.[37]

Reported challenges related to the provision of services,[38] including accommodation,[39] healthcare,[40] access to social security and welfare,[41] labour market,[42] and education,[43] which differed across the various institutions involved. The difficulties in service provision reflected the fact that this group is not well quantified or understood,[44] and challenges arose in respect of tensions between service provision and its impact on the willingness of irregular migrants to return.[45] Other challenges related to the exchange of information and/or cooperation between national and local authorities on the issue of long-term irregularly staying migrants,[46] in some cases due to (the absence of) trust, and difficulties in the identification and detection of irregular migrants.[47] Member States also identified slow processing in asylum systems and general obstacles or limited incentives to the return of irregular migrants as challenges in addressing the issue of long-term irregularly staying migrants.

The impact of the COVID-19 pandemic created additional challenges for Member States addressing the issue of long-term irregular migrants. The main (practical) challenge was the implementation of return decisions due to restrictions imposed on travel (specifically air travel), which significantly slowed down or stopped return flights altogether.[48] The risk that irregular migrants may not feel secure in accessing healthcare during the pandemic due to fears of removal was also reported.[49]

Suggested activities to be undertaken at EU level

Finally, several Member States suggested activities that could be undertaken at EU level to tackle the issue of migrants staying in prolonged irregularity on the EU territory.[50] These were mainly focused on improvements to the effectiveness of return policies and systems,[51] and information exchange on irregular migrants between Member States.[52]

28 BG, DE, EE, IT, LT, LU, NL, SE, SK and NO.
29 BG, DE, EE, FR, HR, IT, LU, LV, NL, SE and NO.
30 DE, FR, ES, MT.
31 BE, CY, DE, EE, ES (irregular migrants can be granted a residence permit on exceptional humanitarian grounds, through collaboration with the justice system, for international protection, or for being in a situation of gender-based violence or a victim of trafficking in human beings), FR, LU (a residence permit can be granted on exceptional humanitarian grounds), LV, PL, SI and NO.
32 BE, ES, FR, LV, LU (usually for persistent medical issues that cannot be treated in the country of origin) NL, SI and NO.
33 DE, ES (the person must have been working for at least six months or have a work contract, depending on the case), FR, IT, SI.
34 DE, HR.
35 DE, ES, FR, LU, MT.
36 BG, CY, CZ, FR, HR, LT.
37 CY, CZ, HR, LT.
38 AT, BE, DE, EE, FI, IE, LU, LV, MT, NL, PL, PT, SE, SK.
39 DE, EE, IE (refers to unsuccessful international protection applicants issued with deportation orders remaining in reception centres), LU, LV, NL, SE, SK.
40 BE, DE, LU, LV, MT, NL, PL, SE, SK and NO.
41 DE, FI, LU, LV, PL, SK.
42 DE, LU, MT.
43 DE, FI, LU, LV.
44 BE, EE.
45 BE, DE.
46 BE, DE, FI, LU, MT, NL, PL, SK.
47 BE, FI, LU.
48 AT, BE, DE, EE, FR, HR, LT, LU, LV, MT, PL, SE, SK.
49 IE.
50 AT, BE, EE, CZ, FI, HU, LT, LU, LV, MT, SE, SK and NO.
51 LT, SE, SK.
52 BE, LT.

1. BACKGROUND AND RATIONALE FOR THE STUDY

1.1. INTRODUCTION

Member States are required to deal with the situation of third-country nationals who no longer or never fulfilled the conditions of stay, who were denied a residence permit, or who have exhausted all legal options against the enforcement of their return decision.

The Return Directive (2008/115/EC)[53] sets the obligation for Member States to issue a return decision for third-country nationals once it has been established that they are not eligible for legal stay.[54] This aims to reduce legal uncertainty so that any third-country national physically present in a Member State should be considered either legally staying and enjoying a valid right to stay, or irregularly staying and thus issued a return decision.[55] In practice, however, a certain share of third-country nationals issued with a return decision neither enjoy a legal stay nor are able to return. This is due to a variety of reasons, including respect of the principle of *non-refoulement*, individual circumstances, and practical reasons impeding the enforcement of a return decision.[56] In other cases, migrants who entered illegally remain undetected by migration authorities, or abscond.

These situations may result in protracted or long-term situations of illegal stay and legal uncertainty, as well as deplorable living conditions.[57] Examples include homelessness, (mental) health issues, addiction issues, falling victim to organised crime (labour and sexual exploitation) or involvement in crime, all of which negatively affect the third-country nationals concerned and their communities, as well as national governments.

The actions of national governments, regional and local authorities (e.g. municipalities) may be contradictory. Central authorities are responsible for achieving the objectives of national migration policy, such as preventing illegal stay and enforcing return decisions. However, local authorities are at the forefront of the practical consequences of third-country nationals irregularly staying for a prolonged period and are confronted with challenges such as ensuring access to basic services and public order. Accordingly, complementarity or tension can be the result of policy objectives set at the central level to achieve the return of irregular migrants and the practical realities faced at the local level, such as having to accommodate the presence of irregular migrants and provide basic services when return is not implemented and when access to mainstream services is not legally possible due to the (absence of) a residence status. Ultimately, the applicable legal framework, demarcation of competences and institutional structure also play a role in the process of cooperation and communication between central and local authorities.

Existing research offers some insights into Member States' approaches to long-term irregularly staying migrants. However, as policies and practical measures are changing rapidly and there is no recent, comprehensive EU-wide overview for this group, this study aims to close this gap.[58]

53 Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive), https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115, last accessed on 10 June 2021. The Directive applies to all EU countries except Ireland, although the concepts covered by the study are also relevant there.

54 Return Directive, Article 6.

55 Section 1.2 'illegal stay' of the Recommendation C(2017) 6505 of the European Commission establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return related tasks, https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008L0115, last accessed on 10 June 2021.

56 According to Article 9 of the Return Directive, Member States should postpone removal where it would infringe the respect of the principle of *non-refoulement* or where the return decision is reviewed by a competent national authority. Member States may postpone return by taking into account the specific individual circumstances of the third-country national or for practical reasons impeding removal (e.g. lack of identification of third-country nationals or transport capacity).

57 Refugee Law Initiative in cooperation with the Centre for International Criminal Justice, 'Undesirable and Unreturnable Migrants: Policy challenges around excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed', 2016, London: University of London, https://cicj.org/wp-content/uploads/2016/09/Undesirable-and-Unreturnable-Full-report.pdf, last accessed on 10 June 2021. This research excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed.

58 For instance, see Delvino, N. 'European Cities and Migrants with Irregular Status: Municipal initiatives for the inclusion of irregular migrants in the provision of services' (2017), Oxford: Centre on Migration, Policy and Society (COMPAS) - University of Oxford, https://www.compas.ox.ac.uk/wp-content/uploads/City-Initiative-on-Migrants-with-Irregular-Status-in-Europe-CMISE-report-November-2017-FINAL.pdf, last accessed 10 June 2021.

1.2. EU LEGAL AND POLICY CONTEXT

The Return Directive (2008/115/EC) lays down common EU standards on forced return and voluntary departure. Its framework obliges Member States to issue a return decision to any third-country national irregularly staying on their territory, in order to reduce situations of legal uncertainty.

A return decision shall be withdrawn or suspended where a third-country national staying illegally on the territory is granted an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons. This is also the case where a third-country national staying illegally on the territory is the subject of a pending procedure for renewing their residence permit or other authorisation offering a right to stay.

The Return Directive (2008/115/EC) provides for several cases where Member States should or may postpone return of a third-country national. According to Article 9, Member States *should* postpone removal where it would infringe respect of the principle of *non-refoulement*, where the return decision is reviewed by a competent national authority, or for as long as a suspensory effect is granted. Member States *may* postpone return by considering the specific individual circumstances of the third-country national or practical reasons that impede removal (e.g. inadequate identification of third-country nationals or lack of transport capacity).

In cases of postponement of return, the Return Directive (2008/115/EC) refers to a set of minimum basic rights and procedural guarantees for third-country nationals.[59] These include family unity, emergency healthcare, basic education for minors and taking into account the needs of vulnerable persons.[60] In a 2014 case, the Court of Justice of the European Union (CJEU) ruled that Member States must cover other basic needs to ensure that emergency healthcare and essential treatment of illness are in fact made available during the period in which that Member State is required to postpone removal.[61] Additionally, according to the Return Directive (2008/115/EC), Member States should also provide a third-country national with a written document confirming the postponement of their removal, in order for that person to be able to prove their situation in the event of administrative controls or checks.[62] The CJEU also stated that while Member States have broad discretion in the form and format of the written confirmation, it must be provided to third-country nationals when there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of the Return Directive (2008/115/EC). Lastly, the Return Directive (2008/115/EC) prohibits detention where prospects for removal no longer exist.[63]

The framework provided in the Return Directive (2008/115/EC) should be read in conjunction with other legal instruments that apply to the category of third-country nationals falling under the scope of the study. For example, national authorities' approaches to vulnerable persons should consider obligations stemming from the 1989 UN Convention on the Rights of the Child,[64] and from the EU's framework on victims of trafficking in human beings.[65] The Return Directive (2008/115/EC) is silent on irregular third-country nationals' access to social assistance other than emergency healthcare and education, but other instruments may apply. For instance, the European Committee of Social Rights[66] laid down further specifications about irregularly staying migrants in their decision in the case 'Conference of European Churches vs. the Netherlands.'[67] This decision made clear that in light of its established case-law, shelter must be provided not only to migrant children but also to adult migrants in an irregular situation, even when they have been requested to leave the country.

There is neither political consensus nor harmonisation at EU level on the approach to be taken for 'non-removable' returnees.[68] The Return Directive (2008/115/EC) foresees some basic rights, referring to the respect of the Charter of Fundamental Rights, international law and the European Convention on Human Rights in the implementation of the Directive. However, the way in which Member States approach this category of third-country nationals is largely determined by domestic law and practice.

1.3. STUDY AIMS AND SCOPE

The overall aim of this study is to provide an overview of Member States' and Norway's existing policies and practices in respect of third-country nationals in a prolonged situation of illegal stay, covering the period from 2015 to October 2020. The study explores central and local authorities' responses and approaches to ending such situations. It also analyses measures to mitigate the social consequences for the third-country nationals

59 Return Directive, Article 14..
60 Return Directive, Article 14. .
61 CJEU, *Abdida*, case C-562/13 of 18 December 2014, ECLI:EU:C:2014:2453; see also Opinion of Advocate-General Bot that includes means to secure accommodation as part of a "decent standard of living" (ECLI:EU:C:2014:2167). While there is no general legal obligation under EU law to provide for the basic needs of all third-country nationals pending return, the Commission encourages Member States to do so to ensure humane and dignified conditions of life for returnees (Return Handbook, p. 75).
62 Return Directive, Article 14(2)..
63 Return Directive, Article 15(4)..
64 UN Convention on the Rights of the Child, 1989, https://www.ohchr.org/en/professionalinterest/pages/crc.aspx, last accessed 10 June 2021.
65 As consolidated in Directive 2011/36/EU and Council Directive 2004/81.
66 The European Committee of Social Rights (previously the Committee of Independent Experts on the European Social Charter) is a regional human rights body that oversees the protection of certain economic and social rights in most of Europe. The European Committee of Social Rights was established under the auspices of the Council of Europe, pursuant to Articles 24 and 25 of the 1961 European Social Charter. The Committee monitors implementation of the 1961 Charter, the 1988 Additional Protocol, and the 1996 Revised European Social Charter. It is unique among regional human rights mechanisms for its collective complaint mechanism and the flexibility it allows Member States in deciding which provisions of the Charter to accept.
67 For more information, see European Committee of Social Rights, complaint No. 90/2013 Conference of European Churches (CEC) v. the Netherlands, https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-90-2013-conference-of-european-churches-cec-v-the-netherlands?inheritRedirect=false, last accessed on 10 June 2021.
68 Lutz, F. 'Non-removable Returnees under Union Law: Status Quo and Possible Developments' (2018), European Journal of Migration and Law, 20, p. 28.

affected. These range from providing access to basic services or supporting other indirect measures to encourage eventual return to their countries of origin or other non-EU countries, or options to obtain legal status.

The overall focus of this study is on migrants in a situation of protracted irregular stay, namely:

- Third-country nationals subject to a final return decision but whose return was not enforced or was postponed for legal (e.g. *non-refoulement* principle, medical or humanitarian reasons) or other practical reasons (e.g. non-cooperation on the part of the person concerned, their country of origin or other administrative reasons).
- Third-country nationals who do not or no longer fulfil the conditions for entry and stay in the territory of a State (as set out in the Schengen Borders Code (2016/399)[69] or other conditions for entry, stay or residence in that EU Member State), and who were not issued a return decision because they were unknown to the authorities.

The study examines these groups' access to mainstream services. It also aims to identify services available to a person without a residence permit or any other form of authorisation. The study focuses on the cooperation between central authorities and local authorities/municipalities in the implementation of national policies on irregular migration, as well as the local authorities' margin of discretion in providing services to third-country nationals. Cooperation between municipal authorities and civil society organisations is also explored.

The study maps possible responses to end long-term irregularity, considering options to promote return specifically targeting long-term irregular migrants, or legal options to stay.

The following primary research questions were proposed:

- What is the political and policy debate on the situation of long-term irregularly staying migrants?
- What are the characteristics of the group of third-country nationals who remain in a protracted situation of illegal stay? What information is available on the size of the (sub)groups or categories?
- To what extent are national, regional, and local authorities in your (Member) State confronted with the issue of long-term irregularly staying migrants?
- To which rights and public services are long-term irregularly staying migrants provided access?
- What is the role of cities in dealing with this group of migrants? To what extent are cities involved and cooperating with the central government?
- What is the role of NGOs regarding access to public services for long-term irregularly staying migrants?
- Which measures (e.g. policies, practical tools, guidance) – if any – are implemented to bring protracted situations of illegal stay to an end?
- What studies or research have been published on the effectiveness of these measures?
- What are the key challenges and good practices in terms of policy regarding long-term irregularly staying migrants?

The reasons for issuing a return decision, as well as the reasons for the return decision not being enforced or postponed, may play a role in the measures implemented by national authorities, but their examination is outside the scope of this study.

69 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399, last accessed on 20 July 2021.

2. NATIONAL LEGAL AND POLICY FRAMEWORK

The presence of migrants whose return is not feasible or migrants staying irregularly on the territory of a Member State for a long period of time is well known to authorities and to wider society. Nevertheless, EU policy and law do not define this category. While the Return Directive (2008/115/EC) allows for postponement of removal, it leaves national authorities a wide margin of discretion to determine the nature and form of the written confirmation or other authorisation allowing the third-country national to remain on the territory. Return may also be halted for reasons not explicitly foreseen by the Directive, such as lack of cooperation by the third-country national.

This section reviews how the issue of long-term irregularly staying migrants is understood and framed at national level and in public debates. It also maps the different legal situations of migrants who, despite being subject to a return decision, cannot be returned.

2.1. CATEGORIES OF LONG-TERM IRREGULAR MIGRANTS AT NATIONAL LEVEL

2.1.1. Categories of irregular migrants identified

When defining categories of irregular migrants, **none of the EU Member States or Norway make a legal distinction between short-term and long-term irregularly staying migrants.** Nevertheless, in six Member States and Norway,[70] the duration of irregular stay is taken into account when examining individual cases. In Germany and Spain, for instance, the duration of irregular stay is considered when granting forms of residence permits on humanitarian grounds or for exceptional circumstances. In France, the duration of irregular stay may be particularly relevant for the regularisation of a person's situation, with better prospects sometimes offered to foreign nationals who have been in an irregular situation for a longer period of time (see section 3).

Seven Member States do not distinguish between the **different circumstances of irregular migrants**, defining them all by the fact they do not or no longer meet the conditions for legal stay or residence.[71] However, 18 Member States and Norway recognise in practice that third-country nationals may be staying irregularly for a variety of reasons,[72] which can lead to protracted irregular stay. Different categories can be distinguished.

The first category is third-country nationals who are **issued a return decision but their return cannot be enforced due to legal**[73] **or practical obstacles**.[74] Legal obstacles that may require postponing the return include respect of the principle of *non-refoulement,* or medical reasons. Practical obstacles to return include situations that are not solved within a foreseeable period, resulting in long-term irregular stay, such as lack of transportation or lack of identification or travel documents. It could also encompass situations in which the third-country national is unwilling or unable to leave voluntarily, or where they abscond, making forced return impossible to implement.

Several Member States acknowledged another category of **irregular migrants - those who remain unknown to the authorities because they were never detected,**[75] **or they absconded during the asylum procedure or after receiving a negative decision**.[76] In some countries as for instance in Germany, their stay in the country is considered unlawful and they thereby make themselves punishable by law. Croatia and Poland do not consider these situations in their policies on irregularly staying migrants. Austria and Latvia emphasise that their authorities acknowledge this type of situation but assume that third-country nationals who absconded during the asylum procedures did not intend to remain on the territory and are thus not classified as migrants staying irregularly. This category may also include **third-country nationals whose short-stay visa or residence permits expired but where renewal was not secured**, resulting

70 DE, FR, ES, HR, LU, LV and NO.
71 BG, CY, EL, HU, IT, MT, PT.
72 AT, BE, CZ, DE, EE, EL, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK and NO.
73 AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, LT, LU, LV, NL, SE, SI, SK and NO; PL does not consider as (long-term) irregular migrants those third-country nationals who cannot be returned due to legal obstacles.
74 AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK and NO.
75 AT, BE, CZ, DE, EE, ES, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK and NO.
76 AT, BE, CZ, DE, EE, ES, FI, FR, IE, LT, LU, LV, NL, SE, SI, SK and NO.

in irregular stay, unknown to the authorities.[77] Austria highlighted that these situations may remain unknown to the authorities for a protracted period and therefore a return decision is commonly not issued. Typically, this type of irregularity is detected when delivering social protection benefits or other public services. In Ireland, the category of dependent children, under the age of 16, of parents who later overstay their permission was highlighted.

None of the Member States or Norway have exact figures on the **numbers of irregularly staying migrants in their territory**, although some are able to provide estimations using proxy data.[78] The most concrete estimates are for **migrants that cannot be returned for legal or practical obstacles**, based on the number of issued authorisations to stay and the number of returns decisions that were not implemented.[79] Estimates are also made in relation to the number of third-country nationals **who absconded or whose asylum application was refused**.[80] Luxembourg provided partial numbers for irregular migrants unknown to the authorities using cases referred to NGOs and persons detected as a result of monitoring operations. Ireland provided estimates for the undocumented population, noting that the biggest group comprised individuals who entered Ireland legally and subsequently became irregular, including former students and workers.[81]

2.1.2. The legal situation of third-country nationals who cannot be returned due to legal or practical obstacles

Postponement of removal of irregular migrants is allowed under the Return Directive (2008/115/EC). However, the legal situation of third-country nationals who cannot be returned is only partially addressed in the Directive.[82] As a result, a variety of different options and statuses exist in the Member States, depending on the individual circumstances of the third-country national.

In 15 Member States, the same types of legal possibilities are available **regardless of whether or not the return could take place due to legal or to practical obstacles.**[83] Conversely, 11 other Member States and Norway make a distinction between the two situations where a return cannot be enforced due to legal or practical reasons[84] (Table 2.1). In those Member States making a distinction between the two situations, fewer options are possible where the obstacles are practical.

Table 2.1 Type of authorisation to stay that a third-country national subject to a return decision may receive in countries that do/do not differentiate between legal and practical obstacles to return

Type of authorisation to stay or other response	Countries that do not differentiate between legal and practical obstacles to return		Countries that differentiate between legal and practical obstacles to return	
	Established by law	Established by practice	Established by law	Established by practice
Tolerated stay	AT, DE, EL, FR, LU, SI, SK		Legal obstacles: CZ, HR Practical obstacles: PL, HU	
Temporary residence permit	BE, CY, DE, EE, EL, ES,[85] FI, LU (for medical reasons)		Legal obstacles: HR, HU, IT, LT, LV, NL, PL, SE and NO Practical obstacles: LT, LV, NL	
Extension of short-stay visa			Legal obstacles: LV Practical obstacles: LV	
Written confirmation of postponement of return	BG, EE, EL, HR, LU, SK[86]	BE, SI[87]	Legal obstacles: IE,[88] IT, LT, LV, NL, PL, SE and NO Practical obstacles: IT, LT, SE, NO	Practical obstacles: IE[89]
Extension of voluntary departure period	BG, DE, EE, EL, FI, FR, HR, LU, SK,	AT, BE SI	Legal obstacles: CZ, IT, LT, LV, PL, PT, SE and NO Practical obstacles: LV, SE	Practical obstacles: CY
No written certification issued	ES, FR, LU (practical obstacles only)	CY, FI	Legal obstacles: HU, LT, NL, PT Practical obstacles: CY, HU, NL, PT, SE and NO	Legal obstacles: IE Practical obstacles: IE

77 AT, BE, CZ, DE, EE, ES, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK and NO.
78 AT, EE, FI, FR, IE, IT, NL, LU, SE. In December 2020, a report was published in NL by the Research and Documentation Centre (WODC), the knowledge centre in the field of the Dutch Ministry of Justice and Security, providing an estimate of the total population of foreign nationals unlawfully residing in the Netherlands in 2017-2018, 2969-schattingen-onrechtmatig-in-Nederland-verblijvende-vreemdelingen-2017-2018-volledige-tekst.pdf (wodc.nl), last accessed on 14 June 2021.
79 AT, EE, LU, FI and NO.
80 AT, FI, LU, SE.
81 Reported by two NGOs interviewed for the study.
82 Return Directive, recital 12 states: "The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive".
83 AT, BE, BG, CY, DE, EE, EL, ES, FI, FR, HR, LU, LV, MT, SI, SK.
84 CY, CZ, HU, IE, IT, LT, LV, NL, PT, PL, SE and NO.
85 In Spain, no written confirmation of the postponement of the return is given and only in some exceptional cases is a temporary residence permit given.
86 The written confirmation of postponement of return is interconnected with the issuance of the authorisation to remain.
87 Certificate of permission issued by police.
88 Within certain judicial review proceedings only, by written undertaking or Court injunction.
89 In exceptional circumstances, by a written undertaking.

Notwithstanding this differentiation, **three main categories** were identified in terms of what migrants may receive in cases where a return cannot happen for legal or practical reasons, with a combination of these situations sometimes experienced in the same Member State:[90] (1) issuance of a temporary authorisation or permit to stay;[91] (2) issuance of a certificate or other written confirmation to postpone return or extend the period for voluntary departure;[92] and (3) *de facto* suspension of return without any certification issued.[93] In those cases where there are practical obstacles to return, the first two categories are an option in a minority of Member States, and may be available to only a limited number of irregularly staying migrants.[94]

In all Member States and Norway, **migrants who abscond during the return procedure or who were never detected by the authorities do not receive any written documentation of any sort**.

The three main categories identified are explained in more detail below.

TEMPORARY AUTHORISATION TO REMAIN OR PERMIT TO STAY

Most Member States and Norway foresee the possibility to grant third-country nationals a **temporary authorisation to remain or permit to stay**.[95] Temporary residence permits can be issued in 16 Member States and Norway.[96] Other forms of authorisation to remain, referred to as 'tolerated status/stay', are issued in 10 Member States.[97]

In nine Member States, [98] the authorisation gives a right to temporary stay but does not annul the obligation to return, which remains pending, and the stay is considered irregular. This is the case in Austria and Germany, where the stay of the person is tolerated until their return can be implemented, but the person's stay is nonetheless considered unlawful. In 10 Member States, the third-country national may be issued a (temporary) residence permit, during which time their stay is no longer considered irregular.[99] In Germany, a temporary residence permit may be granted for humanitarian reasons instead of a tolerated stay, if the barriers to return are likely to persist. In this case, the migrant is no longer considered irregularly staying. In Poland, a residence permit can be issued where there are legal obstacles to return, while tolerated stay is granted to migrants who could not be returned for practical reasons.

In 15 Member States and Norway,[100] the temporary residence permit or tolerated status cater for a variety of situations. These include humanitarian considerations such as the existence of medical conditions, no identified caregiver for unaccompanied minors in the country of origin, family ties, or level of integration, and practical impediments (e.g. lack of means of transport or travel documents). Seven Member States specify that temporary residence permits are only granted to irregular migrants who cannot be returned for humanitarian reasons or for practical reasons due to no fault of their own.[101]

CERTIFICATE OR OTHER WRITTEN CONFIRMATION OF POSTPONMENT OF RETURN

In several Member States and Norway, third-country nationals can receive **a certificate or other written confirmation** indicating the decision to postpone their return[102] or extension of the period for voluntary return[103] until the legal or practical obstacles cease to exist. These solutions are adopted for **impediments of foreseeable duration** (e.g. pregnancy, completion of the school year, finalising practical procedures for the return). In Luxembourg, the return can be postponed for medical reasons falling outside situations giving access to temporary stay status. In Norway, the postponement of a deadline for return is rarely granted, for instance due to significant health or educational considerations, and usually only for a few weeks.

NO WRITTEN CONFIRMATION OR OTHER DOCUMENTATION ISSUED

Fourteen Member States and Norway foresee the possibility to issue a return decision, but in some cases *de facto* suspend its implementation until the return can take place, **without written confirmation of the postponement being issued to the migrant**.[104] In some countries, this is the most commonly occurring situation,[105] especially when the return cannot be implemented due to a lack of cooperation from the third-country national concerned, or for some other exceptional reason.[106] In Estonia and Portugal, a certificate is not issued if there is a reasonable prospect of removal. In France, the person may be placed under detention where there is a risk of absconding. In Finland a certificate is not issued where the return cannot take place because the irregular migrant does not cooperate. In the Netherlands, a temporary residence permit or written confirmation of postponement of return is only granted for medical reasons or for practical obstacles outside the migrant's control; for other circumstances, no written certification or document is issued in cases where return is not possible. In Ireland a removal order is formally served with a letter known as an "arrangements letter", which states that a deportation order has been made and sets out legal and practical

90 These findings confirm trends reported in previous studies. See: EMN, 'Approaches to rejected Asylum seekers', 2010; European Union Agency for Fundamental Rights (FRA), 'Study on the situation of third-country nationals pending return/removal', 2011; FRA, 'Study on the situation of third-country nationals pending return/removal', 2013.
91 AT, BE, CY, CZ, DE, EE, FI, HR, HU, IT, LT, LU, LV, MT, NL, PL, SE, SI, SK and NO.
92 AT, BE, BG, CZ, DE, EE, FI, HR, NL, IE (within certain judicial review proceedings only, by written undertaking or Court injunction), IT, LT, LU, LV, PL, SE, SI, SK and NO.
93 CY, FR, HU, IE, LT, LU, NL, PT, SE and NO.
94 LT, FI, NL, SE. In Finland this is the case where obstacles to return are not due to fault of the returnee.
95 AT, BE, CY, CZ, DE, EE, ES, FI, HR, HU, IT, LT, LU, LV, MT, NL, PL, SE, SI, SK and NO.
96 BE, CY, DE, EE, EL, ES, FI, HU, IT, HR, LT, LU, LV, NL, PL, SE and NO.
97 AT, CZ, DE, FR, EL, HU, LU, PL, SI, SK.
98 AT, DE, CZ, HR, HU, LU, IT, NL, SK (authorisation to remain).
99 CZ, DE, EE, FI, HR, HU, LU, LT, SE, SK.
100 AT, BE, BG, CY, CZ, DE, EL, ES, FI, LT, LU, MT, SE, SI, SK.
101 DE (except for minors/young adults), EE, HR, IT, NL, PL, SE.
102 BE, BG, DE, EE, HR, LT, LU, LV, NL, PL, SE, SI, SK (the written confirmation to postpone the return is interconnected with the issuance of the authorisation to remain) and NO.
103 AT, BE, BG, CZ, DE, EE, ES, FI, FR, HR, IE (in certain judicial review cases only), LT, LU, LV, PL, SE, SI, SK and NO.
104 AT, CY, ES, HU, IE, FI, FR, LU, LT, LV, NL, PT, SE.
105 FI, FR, IE, LV, LU, NL, PT, SE and NO.
106 FI, FR, NL, SE.

obligations. If there are obstacles to return, the date of return may be delayed by the Garda National Immigration Bureau until effecting the return becomes operationally possible. No other documents relating to residence status are issued to a person in this situation.[107] Lastly, in Latvia, certificates are not issued where asylum applications are submitted just before the removal is due to take place (so called last-minute applications).

Box 1: Obstacles to return irregularly staying third-country nationals who refuse to take a PCR test or other medical examination required by the country of return

During the COVID-19 pandemic, a new type of (practical) obstacle to return has emerged. Fourteen Member States have reported cases in which returnees refused to undergo the required PCR test ahead of a forced return.[108] The majority of these countries do not allow for a forced PCR test,[109] *de facto* risking suspending the return procedure for an undetermined period of time, if alternative solutions are not found (see Box 12). Conversely, eight other Member States did not identify this as an issue during the period to May 2021.[110]

In several Member States reporting such cases, figures are not available or recorded,[111] and there is no ongoing monitoring. A majority considered it a limited issue,[112] with several Member States reporting a negligible number of third-country nationals refusing such tests.

In five Member States,[113] however, refusal to take a PCR test ahead of a forced return was considered a serious problem. In Belgium, between 1 May 2020 and 31 May 2021, 85 people refused to undergo a PCR test, resulting in the cancellation of 120 return operations. Belgium also reported a gradual monthly increase in the numbers of people refusing a PCR test to avoid return. Sweden noted that an increasing number of returnees refused to take the PCR required by the country of origin to avoid a forced return, thus, the majority of forced returns were not carried out.

2.2. PRIORITIES, DEBATES AND PLANNED CHANGES AT NATIONAL LEVEL

2.2.1. PRIORITIES AND DEBATES

The main focus of national debates is on irregular migration in general, with 13 Member States and Norway reporting such debates.[114] Irregular migration is a recurring topic in political debates, inter-institutional or legal debates, and public debates (including media reports), actions by NGOs or other institutions, and individual citizens.

Policy and legislative debates mostly focus on authorities' views on the need to **increase and simplify returns** or to ensure that migrants without legal status will be returned to their country of origin.[115] In the Netherlands, for instance, there were frequent debates among governmental institutions about **reducing the factors prolonging the stay of irregular migrants**. The debate had an impact on policy, leading to the removal of the discretionary power of the Minister for Migration. In Ireland, legislation on the regularisation of certain groups of long-term irregular migrants (irregular migrant children and former students) was discussed. Two bills have been proposed since 2015: the Migrant Earned Regularisation Bill 2015 and the Immigration (Reform) (Regularisation of Residency Status) Bill 2016. Parliamentary discussions on the benefits of regularisation took place in 2017.

In several Member States and Norway,[116] **inter-institutional and public debates** have included discussions on **irregular migration and asylum**. In Austria, the irregular stay of asylum seekers whose applications for asylum have been rejected are a frequent topic in all debates. In Finland, debates tend to be polarised between those who hold negative views of asylum seekers and those who defend them, resulting in heated public debates on return decisions and the actions of authorities in removal situations. In Italy, there are frequent inter-institutional debates about the National Plan for the distribution of migrants landing on the Italian coast. A political debate in Norway addressed the ethical and legal grounds for a provision giving time-limited permits to unaccompanied minors between 16 and 18 years of age.

Another frequent topic of debate at **inter-institutional level** in nine Member States and Norway is the **availability of basic services for irregular migrants**,[117] resulting in changes to service provision. The (low) levels of access to services can result in criticism from NGOs. In the Netherlands for example, the provision of accommodation in the form of ´Bed-bath-bread´ (*Bed, bad, brood - BBB*) facilities was established by municipalities in cooperation with civil society and local authorities, following a public and institutional debate. In Austria, provinces

107 In Ireland under the Immigration Act 1999 the Minister for Justice can revoke an existing deportation order where there is a compelling case to the Minister for doing so. This will be based on a material change in the person's circumstances, for example, a deportation order will be revoked when a person with an irregular migration status applies for international protection.
108 BE, CY, CZ, DE, ES, FI, FR, HU, IE, IT, LU, NL, PT, SE.
109 BE, CY, HU, LU, IE, IT, FR, NL, PT, SE.
110 BG, EE, HR, LT, LV, PL, SI, SK.
111 CZ, DE, FR, IT, LU, SE.
112 AT, CY, EE, ES, FI, HU, IE, PT. In the Netherlands such statistics are collected, however such registration include both returns as well as transfers under the Dublin Regulation.
113 BE, IT, LU, NL, SE.
114 AT, BE, DE, FI, FR, IE, IT, LU, MT, NL, SE, SI, SK.
115 AT, BE, DE, ES, FR, IT, LU, NL, SE, SK.
116 AT, DE, FI, FR, IT, NL, SE, SI.
117 AT, DE, FI, FR, IT, LU, NL, SE.

were critical of the adoption of the General Social Assistance Act in 2019, which excluded foreign nationals with an obligation to leave Austria from **social assistance benefits**. In Norway, the debate extends to the right to **education** for undocumented migrants' children. **Access to work** is also debated in Norway, focusing on balancing the regulation of labour markets, labour law and work against social dumping with the rights of irregular migrants to work to secure a basic livelihood and human dignity.

Some debates cut across the **policy and public level**. In six Member States, the discussion focuses on the **regularisation** of those irregularly staying migrants who cannot be removed and on the possibilities to **integrate** them into society.[118] In Germany, debate at institutional and public level is polarised between the issue of safe and effective return, and the facilitation of stay for long-term irregular migrants. The situation of minors has also been the subject of policy debate. In Luxembourg, inter-institutional debate focuses on the regularisation or extension of the deadline for voluntary departure of long-term irregular migrants, mainly in relation to the situation of **minors** who have completed at least four years of schooling in Luxembourg but are then obliged to return with their families. In Ireland, the regularisation of the children of undocumented parents was a central policy issue in debates. In Slovenia, issues of **regularisation of the so-called 'erased'**[119] are mainly addressed by NGOs - while a substantial number of people in this situation could regularise their status, some have been living in Slovenia for a long period of time without regulated status. In Ireland, policy debates also addressed the issue of irregular migrants working in the fishing fleet; for a period of time in 2016, these workers could regularise their stay in Ireland via the Atypical Working Scheme for Seafarers, however, such applications must now be made from abroad.

Public debates focus on issues of irregular migration and return, with media outlets holding diverging opinions. High-profile cases of long-term irregular migrants have gained attention in public media in five Member States.[120] Certain media outlets reported sympathetically on individual cases, such as families or individuals staying irregularly long-term and being well-integrated or born in the country but receiving a return decision from the authorities. Other views were debated by media outlets from a right-wing perspective, opposing migration in general.[121] In the Netherlands, these media outlets argue for the abolishment of the BBB facilities. In Germany, debates were linked to a potential danger to **public security**. The terrorist attack on the Christmas market in Berlin in December 2016 advanced the debate on public security; when it became clear that the attacker was a rejected asylum seeker who could not be removed to their country of origin due to a lack of papers, the public debate quickly focused on the threat of terrorism, irregular migrants and their removal. As a consequence, measures were adopted to better enforce the obligation to leave the country.

2.2.2. Planned policy changes related to the prevention of entry and the return of irregular migrants

Planned policy changes on long-term irregular migrants differ considerably across the Member States. Several plan changes to their policies to **prevent the entry of irregular migrants, to facilitate their return,** and **to ensure that returns can be carried out**.[122] In Belgium, legal, policy and practice changes are planned to reinforce returns of irregular migrants. Similarly, the Slovak Republic plans to make changes to the Act on Residence of Foreigners, regarding the administrative expulsion of irregular migrants.

As a result of the debates on **service provision**, Finland has issued guidelines on how to apply the legislation on irregularly staying migrants. It includes guidelines on managing the cost of social services provided in urgent cases. The Finnish Government plans to broaden the healthcare services offered to irregularly staying migrants from urgent services to essential services, and to assess the right of irregularly staying minors to participate in early childhood education and care and secure their right to complete basic education.

Planned changes to **facilitate legal stay for irregularly staying migrants** were reported by Finland, Ireland and Norway. In Finland, the government plans to provide more flexible opportunities to secure a residence permit based on employment for asylum seekers who have received a negative decision. Ireland has published a proposal for a scheme to regularise undocumented migrants, with the scheme expected to open before the end of 2021 (see also Box 10). Additionally, a report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process referred to the need to give temporary or tolerated leave to remain to people who cannot be returned.[123] Norway has begun a process to allow a one-time solution granting legal residency on humanitarian grounds for elderly long-term staying irregular migrants.

Box 2 outlines the main debates taking place during the COVID-19 pandemic, with a focus on provision of services and potential regularisation of irregular migrants.

118 DE, ES, LU, MT, NL, SI.
119 The issue of 'erasures' refers to specific cases of persons from former Yugoslavia who lost their legal status in Slovenia in 1991 when Slovenia gained independence from the former Yugoslavia.
120 BE, DE, FI, LU, NL.
121 NL.
122 AT, BE, FI, IT, SI, SK.
123 In December 2019, the Department of Justice and Equality announced the establishment of the Expert Group on the Provision of Support, including accommodation to Persons in the International Protection Process (Asylum Seekers). The Expert Group's terms of reference included advising on the development of a long-term approach to the provision of supports (including accommodation) to those in the international protection process.

Box 2: The main debates on long-term irregular migration during the COVID-19 pandemic.

In light of the COVID-19 pandemic, the main discourse on irregular migrants in the Member States and Norway has focused on the provision of services, most notably healthcare, as well as potential regularisation. NGO campaigns were conducted in Belgium and Luxembourg to enable irregular migrants to register anonymously with the various partners of social grocery stores, without having to indicate a social security number. In Sweden, civil society organisations raised concerns about the vulnerability of undocumented migrants, which saw public funding of SEK 100 million (approximately EUR 9 million) pledged to ease the consequences of the pandemic.

Debates on regularisation of irregular migrants led to various initiatives in France and Italy, in particular undocumented workers in the agricultural and domestic work sectors. In Spain measures were taken, not to regularise irregular migrants, but to avoid regular migrants working in agriculture from falling into an irregular situation because of the pandemic, and also to allow young migrants in a regular situation but without a work authorisation, to work in the agricultural sector.

3. NATIONAL POLICIES AND APPROACHES TO LONG-TERM IRREGULARLY STAYING MIGRANTS

Member States recognise that a variety of reasons can lead individuals to a situation of protracted irregular stay. However, the lack of differentiation between short-term and long-term irregular migrants and the lack of legal categorisations in most of the Member States and Norway (see section 1), poses the question of systematic access to services and basic rights. National policies focus on reducing irregular stay and thus may be at odds with local and regional authorities, who are confronted with the reality of providing services for long-term irregular migrants. Extended irregular stay may impact long-term irregular migrants' access to essential services and rights such as accommodation and healthcare, which are tailored for what is usually a short-term irregular stay.

This section provides an overview of the national policies in place for irregular migrants' access to services (accommodation, healthcare, social assistance, employment, education, and legal assistance). The analysis first examines the rights and services available to long-term irregularly staying migrants who remain unknown to the migration authorities, followed by those migrants issued a return decision that cannot be implemented due to legal or practical obstacles. It then reports on the key actors involved and differing roles and responsibilities, as well as cooperation mechanisms and good practices identified by Member States in granting access to services for long-term irregularly staying migrants.

3.1. RIGHTS AND ACCESS TO SERVICES FOR LONG-TERM IRREGULAR MIGRANTS

3.1.1. Long-term irregularly staying migrants who remain unknown to the migration authorities

In all Member States , **undetected long-term irregularly staying migrants who remain unknown to the migration authorities have more limited access to services and rights** than those granted to legal migrants. Table A1 in Annex 1 identifies a range of services and indicates whether or not rights are granted to undetected irregular migrants to access these services (either on a mandatory or discretionary basis), and whether the rights granted are less than, equal to, or greater than the services available to legal migrants. The analysis below draws on this information.

Where granted, services are usually provided on a discretionary basis and differ across types of service (e.g. accommodation may depend on the urgency of the individual's needs and available space in the facility; social assistance may depend on exceptional circumstance of distress; healthcare may refer to the necessity of paying for the services).[124] In Italy and Malta, the medical officer who establishes the urgency of the medical treatment also influences access to healthcare.

In Italy, the decision is dictated by a national-regional agreement setting out the parameters for essential levels of care, while in Malta, the decision is made at the discretion of the medical officer. In Belgium, Finland,[125] and Poland, adult education is offered depending on interest, availability of the educational institution, and relevant qualifications of the individual.

The rights and services available for this group of irregular migrants **stem primarily from international rights standards** (e.g. rights to emergency medical care for the preservation of life or irreparable harm to health,[126] the provision of compulsory education,[127] and basic services provided by the Return Directive 2008/115/EC as outlined above). In the majority of Member States, these international standards on emergency medical care[128] and compulsory education[129] are enshrined in national and regional law. In Finland, Slovenia and Norway, they are established in local practice instead of national legal provisions. In Finland, Germany, Slovenia and Norway, municipalities and NGOs provide additional healthcare services to ensure more comprehensive access for undetected irregular migrants. In Austria, the initiative *'#undokumentiert gesund'* ('#undocumented_but_ healthy') is calling for health insurance coverage to be extended to

124 BE, CZ, CY, DE, FI, IE, IT, LU, MT, NL, PT, SE, SI, SK and NO.
125 In Finland, adult education is possible but admission to educational institutions is contingent on the applicant having the prerequisite qualifications to complete the course of study, as well as adequate proficiency in Finnish or Swedish.
126 Committee on the Elimination of Racial Discrimination, general recommendation N° 30 (2004) on discrimination against non-citizens.
127 Articles 28 and 29 of the Convention on the Rights of the Child.
128 AT, BE, CZ, DE, EE, ES, FI, FR, HR, IT, LT, LU, LV, NL, MT, PL, SE, SI, SK.
129 AT, BE, DE, CY, CZ, EE, ES, FI, FR, IE, IT, LT, LU, LV, NL, PL, SE, SI and NO.

third-country nationals without valid residence permits. Thus, overall **emergency healthcare and compulsory education** remain largely accessible for undetected long-term irregular migrants. In practice, however, access can be challenging, especially given the fear of possible repercussions for migration status (see Table 3.1).

Access to the **labour market and social protection benefits** - already minimal for irregular migrants who cannot be returned for either legal or practical obstacles - is not possible in almost all Member States for undetected irregular migrants. Malta is the only Member State where these irregular migrants have access to employment, provided they present evidence that they have applied for asylum in the past. Nor are social protection benefits available to this group in most Member States and Norway. In two Member States, Finland and Spain, access is mandatory but at a lower level than for nationals; and in five Member States,[130] social protection benefits are provided on a discretionary basis only.

Eight Member States and Norway provide undetected long-term irregular migrants with **general accommodation services**,[131] either on a mandatory,[132] or discretionary[133] basis but in most cases, this is to a lesser extent than the services provided to legal migrants or nationals.[134] Specialised accommodation e.g. for victims of violence or children, is provided in several Member States,[135] and Norway. In Germany, Italy, Luxembourg,[136] and Norway, accommodation services are only provided on a discretionary basis by NGOs, based on how urgently the individual needs accommodation and how much space a facility has available.

In **practice**, **undetected long-term irregular migrants may face challenges in accessing the services to which they are entitled** (i.e. healthcare and education, see Table 3.1). Member States' approaches to age ranges for 'compulsory education' vary, and are defined either at national level or by autonomous regions.[137] In Cyprus, compulsory education covers individuals until they are 15 (although minors in an irregular situation may access high school until the age of 17-18 years). In France and Sweden,[138] it is up to the age of 16 years, in Estonia, 17 years, and in Poland and Spain, 16 years. Depending on the age of the minor, they may not be able to finish their school education, particularly as few Member States give mandatory access to adult education.[139] Some examples of initiatives to overcome these barriers to accessing compulsory education have been introduced in Luxembourg and the Netherlands (Box 3).

Box 3: Provision of identification numbers to facilitate school enrolment of migrant children in an irregular situation

- In Luxembourg, it is difficult for undocumented migrants to provide an address for school enrolment without making their presence known to the State, thus children are not always enrolled in school. A consultation can now take place between the school services and the population Registrar of the relevant municipality to create a national identification number (*matricule*), which would otherwise require proof of address, to facilitate school registration for irregular migrant children unknown to the authorities.
- In the Netherlands, irregular migrant children under the age of 18 are given a temporary education number (*onderwijsnummer*), which is created by the Education Executive Agency (*Dienst Uitvoering Onderwijs*, DUO) and given to the child by the school.

Table 3.1 Main challenges for undetected long-term irregular migrants in accessing healthcare and education services to which they are entitled

Challenges	Member States
Access to healthcare	
Payment required to access basic medical healthcare (usually through the purchase of health insurance)	LU, SK
Irregular migrants and healthcare officers' knowledge of rights and entitlements	BE, DE, FI, NL, SE
Different understandings of 'emergency medical care' (usually at the discretion of the medical officer)	FI, MT, NL, SE
Education	
Language barriers	DE, FI
Lack of knowledge of the educational system	DE[140]
School requiring residence permits or proof of residence	LU, SK

130 CZ, IE (exceptional and/or discretionary basis) NL, PT, SE.
131 EE, ES, FR (in emergency cases), IE, IT, MT, NL, PT, and NO.
132 EE, FR, NL, PT.
133 ES, IT, MT, NO.
134 Except FR, where access to general accommodation is the same as for legal migrants/nationals.
135 BE, CY, CZ, EE, ES, FI, IT, LU, NL, SI, SE, SK, NO.
136 LU recognises that domestic violence infringes on a person's rights, thus an exception exists for irregular migrants that are victims of violence.
137 CY, EE, ES, FR, PL.
138 In Sweden, compulsory education is up to the age of 16 years; however, children are also entitled to attend upper secondary school if they start their studies before they turn 18 years.
139 In Spain, Article 9 of LO 4/2000 (LOEX) guarantees children under the age of 18 access to post-compulsory education, with access also to the public system of scholarships and grants under the same conditions as Spaniards. Foreigners over the age of 18 who are in Spain have the right to education in accordance with educational legislation.
140 In Germany, schooling is a regional competence, so every federal state has different explicit rights and requirements for school access, with only Bavaria, North Rhine-Westphalia, Rhineland-Palatinate and Saarland offering compulsory schooling regardless of residence status.

3.1.2. Long-term irregularly staying migrants issued a return decision that cannot be implemented due to legal or practical obstacles

Irregularly staying migrants subject to a return decision that cannot be implemented for practical or legal reasons may receive different types of authorisations (see section 2). Access to accommodation, healthcare, education, employment, social protection benefits or legal assistance varies across the Member States and Norway and does not necessarily depend on the type of authorisation granted.

Fourteen Member States and Norway allow the same access to rights and services **regardless of the type of authorisation to stay** or the reasons for non-return.[141] In Ireland, Luxembourg and Norway, this is the case because the main determinant for accessing services is whether the person resides in (or reports to) a reception centre and not the type of authorisation (if any) received.

Conversely, eight Member States reported that access to services depends on the type of authorisation to stay: eight Member States reported access for those migrants with a **tolerated stay or temporary permit,**[142] and six reported access for migrants with **written certification of postponement of return or an extension of the period of voluntary departure**.[143]

Table 3.2 illustrates the differences in access to services. Three tables in Annex 2 detail whether these rights are mandatory or discretionary and how they compare to those granted to legal migrants and citizens: Table A2.1. presents the Member States and Norway that give the same access to services regardless of the type of authorisation issued to a migrant who cannot be returned for either legal or practical obstacles, or that do not issue any certificate; Table A2.2 presents those who received a temporary residence permit, a tolerated status or prolongation of their visa; and Table A2.3 presents those who received a written confirmation of postponement of return, or where no return decision was issued. The analysis below draws on the details in those tables.

Across most of the Member States, irregular migrants who have not been issued a certificate indicating the decision to postpone or suspend the return, have the **same access to rights as irregular migrants who remain unknown to the authorities** (see section 3.1.1).[144] In Ireland, Luxemburg and Norway, this is the case for irregular migrants who do not reside in or report to a reception facility. In Sweden, this applies to individual adults travelling alone, while adults with children under the age of 18 have access to the services outlined in Table 3.2 until the day they leave the country.

In certain Member States, the **temporary authorisation to stay** may lead to the issuance of a full-fledged residence permit, albeit a temporary one.[145] In such cases, access to services is equal to that of beneficiaries of other forms of protection or residence permits and is not analysed further here.

Access to accommodation

Access to **general accommodation** is provided to irregular migrants who cannot be returned in 13 Member States and Norway (Table 3.2). It is often granted on a discretionary basis, however, and to a lesser extent to this group than to regular migrants or nationals (see Tables A2.1, A2.2 and A2.3 in Annex 2). In Germany, access to accommodation is the same as for asylum seekers but the type of accommodation offered (centralised or decentralised) may differ, depending on the migrants' level of cooperation with the return process. Access to accommodation in Austria and Germany is a mandatory right with tolerated stay.

The majority of the Member States and Norway also provide **accommodation for vulnerable groups,** such as victims of violence, minors (see Tables A2.1, A2.2, A2.3 in Annex 2). Although a majority offer this accommodation on a mandatory basis and at the same level as regular migrants and nationals, this is not the case in some Member States, where accommodation for vulnerable groups is offered on a discretionary basis.[146]

In a minority of cases, long-term irregular migrants have access to **special accommodation facilities** provided by NGOs,[147] or by regional governments as it is the case in Belgium.

Other accommodation services available include homeless shelters in Belgium, the Czech Republic and the Slovak Republic.

Access to healthcare

Table 2.2. shows that almost every Member State and Norway grants **access to emergency and basic healthcare**, with the only exceptions are Bulgaria and Slovakia, which only assure access to emergency healthcare.[148] In several instances, this is on a discretionary basis (see Tables A2.1, A2.2, A2.3 in Annex 2). In Sweden, it is at the discretion of the medical officer to assess the urgency of the medical treatment and decide whether it falls within the obligation of urgent health care.

Access to other healthcare services such as specialised care (usually referring to either paediatric or psychiatric services) is mostly discretionary and more restricted compared to that available to regular migrants or citizens in several Member States and Norway (see Tables A2.1, A2.2, A2.3 in Annex 2). In Luxembourg, where the return decision of an irregular migrant has been suspended for medical reasons, legally binding access to specialised medical care is granted contingent on their medical condition. However, where an individual granted an extension of the period of voluntary return fails to report periodically to the National Reception Office (ONA),

141 BE, CY, CZ (with the exception of persons granted visa for a stay of over 90 days as special leave to stay who may be granted work permit and, if working, may access some other social benefits), EE, ES, FI, FR, HR, HU, IE (residents in reception centres only), IT, LV, PL, SE (healthcare is the same regardless of the authorisation, however not accommodation nor financial support) and NO.
142 AT, DE, LT, LU, SI, SK, MT, NL.
143 BG, LT, LU (the extension of the period of voluntary return is an administrative decision for which no certificate is issued), NL, PT, SK (in case of written certification this is interconnected with authorisation to remain).
144 CY, ES, HU, IE, FI, FR, HU, LT, LU, LV, NL, PT, SE and NO.
145 For instance, CZ, DE, EL, IT, SE.
146 From Tables A2.1, A2.2 and A4.3: BE, CZ, NO, SE, SK.
147 AT, ES, LU (for victims of violence).
148 For SK, this was only the case for the migrants granted a 'authorisation to remain' (see section 1).

this will result in the termination of their affiliation with the National Health Fund (CNS).

Access to social assistance

Across all types of authorisations**, access to social assistance** is available in 14 Member States and Norway (Table 3.2). However, this is generally available on a discretionary basis and to a lesser extent than that available to regular migrants or citizens (see Tables A2.1, A2.2, A2.3 in Annex 2). In Slovenia and the Netherlands (in certain cases), access is the same as for regular migrants or nationals. In Germany, beneficiaries of tolerated stay status have the same access to social assistance as that granted to asylum seekers, and face sanctions if they fail to fulfil their obligations in the return procedure. If they cooperate on their return, beneficiaries can access additional benefits after 18 months.

Access to labour market

Twelve Member States allow for **labour market access** across any of the different types of authorisations, while others do not (Table 3.2). Unlike other types of services, the level of access varies significantly across the different types of authorisation to stay.

Among Member States that do not differentiate between the different types of authorisations, equal labour market access for irregular migrants issued with a return decision, legal migrants, and nationals is only granted by Hungary, Poland and Sweden (see Tables A2.1, A2.2, A2.3 in Annex 2). Hungary makes access to the labour market only available to returnees who cannot be returned not legal reasons. In Sweden, former asylum seekers who have been employed by the same employer for the last four months can apply for a work permit no later than two weeks after the return decision entered into legal force, provided that certain requirements are fulfilled (i.e. minimum salary of € 1 288 and an offer of employment for the same employer for at least a further 12 months).

Migrants who receive a temporary residence permit, tolerated stay or prolongation of their visa benefit from wider access to the labour market compared to other types of authorisation. In Germany and Lithuania, migrants with a residence permit have a mandatory right to access the labour market, as do migrants with tolerated stay status in Austria. In Poland, migrants are provided access to services, regardless of their authorisation. In Germany, irregular migrants with tolerated stay are granted more limited access to the labour market, depending on their cooperation with their return. In Norway, migrants with time-limited residency permits can get work permits, but these are not automatically given.

For migrants receiving a certificate/decision of postponement of removal, access to the labour market is only possible in Bulgaria and Luxemburg[149] on a discretionary basis (see Table A2.3 in Annex 2).

Access to education

Access to **compulsory education** is granted in all Member States and Norway, except Bulgaria (Table 3.2). This is generally granted on a mandatory basis and to the same extent as regular migrants or nationals (see in Table 2.1, 2.2 and 2.3 in Annex 2). This service is provided to a lesser degree in Germany, due to differences across the federal states,

Access to **educational programmes or professional training for adult migrants** is far less accessible, being provided by only 10 Member States (Table 3.2). This is usually available at the discretion of the institutions concerned, subject to the qualifications held by the individual (see Tables A2.1, A2.2, A2.3 in Annex 2). Mandatory access is only available in Austria for migrants with a residence permit and tolerated stay, with some additional legal requirements necessary for the former.

Access to legal services

Access to **legal services** is available in all Member States and Norway. In the majority of cases this is provided on a mandatory basis, usually to the same degree as for regular migrants and nationals (see Tables A2.1, A2.2, A2.3 in Annex 2). Cyprus and Latvia reported providing more legal services. In Malta, the provision of legal services depends on the type of court (support is mandatory for the Criminal Court, and discretionary for the Civil Court and Court Tribunal). In Sweden and Norway, long-term staying migrants who have already used their allocated legal aid to appeal within the asylum system are not granted additional support, although some voluntary organisations provide such aid.

Access to other services

Other relevant services are made available to long-term irregular migrants in reception centres or municipalities in some countries, including, including meals, translation services, languages courses, psychological support and reimbursement of costs incurred for using public transport.[150]

149 In LU, irregular migrants who receive a postponement for removal can apply for a temporary occupation authorisation (AOT), also sometimes referred to as a temporary work permit (in English).
150 FI, HU, LT, LU.

Table 3.2 Access to rights granted to irregularly staying migrants known to the authorities who have been issued a return decision, according to type of authorisation issued

Services	Member States granting access irrespective of the authorisation (or where none is issued) (Full dataset in Table A2.1)	Member States reporting specifically on access for migrants with a residence permit or tolerated stay (Full dataset in Table A2.2)	Member States reporting specifically on access for migrants with written certification of postponement of return or extension of the period of voluntary departure (Full dataset in Table A2.3)
Member States	BE, CY, CZ, EE, ES, FI, FR, HR, HU, IE,[151] IT, LV, PL, SE, and NO[152]	AT,[153] DE, LT, LU, MT, NL, SI, SK	BG, LT, LU, NL, PT, SK
Accommodation			
Accommodation (in general)	CZ,[154] EE, FR, LV, PL, SE and NO	AT, DE, LU, MT, NL	LU, PT, NL
Special accommodation facilities (shelter for victims of violence, children etc.)	BE, CY, CZ, EE, ES, FI, FR,[155] HR, HU, IT, PL, SE and NO	AT, DE, LT, LU, SI, SK[156]	LT, LU, NL, PT
Other forms of accommodation/ shelter or specialised centre	BE, CZ, FI, IE, LV, PL and NO	SI	
Healthcare			
Emergency healthcare	BE, CY, CZ, EE, ES, FI, FR, HR, HU, IE, IT, LV, PL, SE and NO	AT, DE, LT, LU, MT, NL, SI, SK	BG, LT, LU, PT, SK
Basic medical healthcare	BE, CZ, EE, ES, FI, FR, HR, HU, IE, IT, LV, PL, SE[157] and NO	AT, DE, LT, LU, MT, NL, SI, SK[158]	LT, LU, PT, NL, SK (only in detention)
Specialised care	BE, EE, ES, FI, FR,[159] HR, HU, IE, IT, LV, PL and NO	AT, DE, LT, LU, MT NL, SK	LT, LU, NL, SK (only in detention)
Other healthcare services	EE, IE, PL, SE and NO	AT, LT, LU, MT, SI	SK (only in detention or within 60 days of release, following approval of Ministry of the Interior)
Social assistance			
Social assistance	BE, CZ, EE, ES, FI, IE,[160] IT, PL, SE and NO	DE, LU, NL, SI, SK	LU, SK to some extent
Employment			
Access to the labour market	HU, PL, SE	AT,[161] CZ,[162] DE (additional conditions for those with tolerated status), LT, LU, MT, NL (in some cases), SK	BG, LU
Education			
Access to compulsory education for long-term irregular migrant children	BE, CY, CZ, EE, ES, FI, FR, HR, HU, IE, IT, LV, PL, SE and NO	AT, DE, LT, LU, MT, NL, SI, SK	LT, LU, NL, PT, SK
Access to educational pro-grammes and/or professional training for long-term irregularly staying adult migrants	BE,[163] CZ, ES, FI, PL	AT,[164] DE,[165] LT, LU[166]	LU, SK (in detention, and only language courses)
Legal aid			
Access to legal aid or legal assistance services	BE, CZ, CY, EE, ES, FI, FR, HR, HU, IE, IT, LV, PL	AT, DE, LT, LU, MT, NL, SI, SK	BG, LT, LU, NL, PT, SK

151 IE information refers to residents in reception centres only. No residence permit/tolerated stay, certification of postponement or extension is issued.
152 NO information refers to residents in reception centres only and solely for children below the age of 18.
153 Comparison cannot be made with other categories of migrants and citizens. Additional requirements are mandated to access labour market and education. Further details are provided in Annex 2.
154 Accommodation may be provided to the applicants for voluntary return until the day of their departure from the Czech Republic.
155 In emergency cases only.
156 Only for tolerated stay of specific groups of migrants.
157 Basic medical health care only applies to children under the age of 18.
158 Only for tolerated stay under certain conditions.
159 Not automatically, but in emergency cases only.
160 Only in exceptional circumstances.
161 Additional requirements to be fulfilled for access are stipulated in the Act Governing the Employment of Foreign Nationals.
162 A person granted visa for a stay of over 90 days as special leave to stay may get work permit from the Labour Office.
163 Sometimes
164 Additional requirements to be fulfilled for access are stipulated in the Act Governing the Employment of Foreign Nationals.
165 Additional requirements for those with tolerated status.
166 If a person benefits from an administrative measure or if they continue to reside in a State structure, they may have access to different educational programmes (i.e. they can access the services provided by NGOs). Under certain circumstances, they can access language courses.

3.2. AUTHORITIES AND ORGANISATIONS PROVIDING ACCESS TO SERVICES

For long-term irregular migrants, whether known or unknown to the authorities, the competent authorities providing access to services and rights are national authorities and municipalities, with NGOs collaborating as service providers in several instances.[167] Municipalities and NGOs may also provide additional services autonomously to complement national services.

Municipalities in some Member States and Norway provide services in addition to those foreseen in national law. In the case of services available to irregular migrants who could not be returned, municipalities in Slovenia and Norway provide additional healthcare services for those without health insurance, while in the Netherlands, a specific Amsterdam-Utrecht project aims to provide better access to psychological support for undocumented persons. Additional services are also offered to undetected irregular migrants. Under national law, municipalities provide emergency healthcare,[168] compulsory education,[169] legal aid,[170] and (to a lesser extent) accommodation.[171]

In three Member States,[172] NGOs provide accommodation, healthcare and legal aid to irregular migrants, under national law. Municipalities in six Member States provide additional services independently of those mandated at national level,[173] especially where national-level services are lacking. Municipalities in four Member States and Norway[174] contract private organisations to provide additional healthcare that would not otherwise be accessible without proof of residence. This differs by municipality, depending on the resources available and the number of people in need of services. Under national law in the Netherlands, undetected long-term irregular migrants are not entitled to social assistance but such assistance may be provided on an ad hoc basis by some municipalities. In Germany, the Lower Saxony state government launched an 'anonymous health insurance voucher' project (*Anonymer Krankenschein*), which has since been adopted in Thuringia (*Thüringen*) and Berlin. In addition, some large German cities provide health care to irregular migrants without reporting their status in the so-called 'Clearing Houses' (see Box 4 below).

Box 4: Germany: Hamburg Clearing House

'Clearing Houses' are open in some large cities and serve as contact points for irregular migrants without their data being passed to the migration authorities. The centres advise migrants on their residence status, the social benefit system and health insurance coverage. If no health insurance cover can be established, the clearing office refers people to doctors where the treatment costs can be covered by an emergency fund set up for this purpose.

The first clearing house was opened in Munich in 1998. Cologne, Berlin, Munich, Bremen, Hamburg, Frankfurt, Dortmund, Duisburg, Gelsenkirchen, Münster, Mainz, Leipzig, Erfurt and Jena followed over the following years. Since the opening of the Hamburg Clearing House in 2012, the number of clients and the number of treatments has steadily increased. Since 2015, the Hamburg Clearing House has received long-term commitment, including funding from the City of Hamburg, with an annual budget of € 250 000. Between 2012 and 2018, 8 656 counselling sessions were held for 3 082 clients. More than one-third of all clearing procedures involved the treatment of pregnant clients. In 2018, around 447 persons from 59 different third countries were treated.

Reporting obligations for local authorities

Regional and local authorities in most Member States are obliged to report on the migration status of the beneficiaries of their services.[175] The degree to which the authorities check on compliance with this obligation differs: in 10 Member States,[176] checks are conducted to access all services except emergency healthcare and compulsory education. In Finland and Portugal, checks are done for most services, except delivery of social services or urgent assistance. In Finland and Italy, the authorities providing the service have the right to ascertain the status of the irregular migrant but are not obliged to report it to the immigration authorities or the police. What is considered 'urgent' is established at the discretion of the providing authority - in Portugal, for example, this includes cases where there is danger to life. In Cyprus, France, Slovenia and Sweden, local and regional authorities are not required to carry out checks in order to provide services. Sweden imposes no obligation for service providers to report migration status, but the police may request this information.

In addition to the services provided by national authorities, 11 Member States use Assisted Voluntary Return and Reintegration (AVRR) programmes to provide services to

167 BG, CY, DE, FR, LU, MT, PL, SI. In LU, only the National Reception Office will provide services if the removal cannot take place for technical or legal reasons but the third-country national is willing to return voluntarily.
168 BG, BE, CZ, EE, DE, FI, LT, MT, SE, SI and NO; In CZ, this is solely the case for unaccompanied children, for whom the municipal authority is obliged to provide basic needs.
169 BE, CZ, DE, EE, FI, IT, LT, LU, MT, PL, SE, SI and NO.
170 BG, BE, IT, MT, PL.
171 EE, FI, IE (on an exceptional basis, decision discretionary), MT and NO.
172 IT, MT, PL.
173 DE, EE, NL, SE, SI and NO.
174 AT, DE, NL, SI and NO.
175 AT, BG, DE, EE, HR, HU, IE (generally not applied in practice), LU, LV, MT, NL, PL, PT, SK.
176 AT, BE, BG, DE, EE, HR, HU, LU, LV, MT.

long-term irregular migrants in the host country.[177] In ten Member States,[178] the AVRR programmes are managed by the International Organization for Migration (IOM). France and Spain also refer to other entities, such as France's national facilities to help prepare for return (DPAR). DPARs are temporary accommodation facilities dedicated to foreign nationals in an irregular situation, who have chosen to comply with a voluntary return programme to their country of origin, implemented by the French Office for Immigration and Integration (OFII).

Access to services provided autonomously by other organisations

NGOs in 20 Member States and Norway[179] and religious organisations in nine Member States[180] provide or facilitate access to autonomous or complementary services for long-term irregular migrants. In ten Member States and Norway,[181] NGOs provide special accommodation services and/or legal counselling to irregular migrants who cannot be returned, and to undetected irregular migrants. These services play a larger role for undetected irregular migrants,[182] as the gaps in services available at national level are significantly greater. Their coverage and availability vary depending on the available resources. In eight Member States,[183] religious organisations provide emergency accommodation and, in some cases, financial aid and local activities, as well as food parcels.

In contrast to public authorities, in almost all Member States and Norway, NGOs and religious organisations may provide services regardless of residence status and without an obligation to report the status of their beneficiaries to migration authorities.[184] Norway, however, reports cases of police patrolling near NGOs where such services are provided.

Cooperation with migration authorities

In seven Member States, **cooperation with migration authorities to return to the country of origin is required in order to gain (full) access to services**.[185] Luxembourg decides on a case-by-case basis whether the lack of cooperation warrants placing the migrant in a detention centre or reducing their access to the services available. Asylum applicants whose applications have been rejected and who agree to leave the territory voluntarily may continue to benefit from certain services, such as accommodation, medical care and social assistance until the voluntary return is organised and executed. However, in three Member States,[186] while cooperation with the authorities is not a formal requisite, in practice, failure to cooperate has resulted in a reduction of services. In Austria, the Constitutional Court mandates that there is no obligation to cooperate, but in practice, non-cooperation may lead to the reduction and withholding of benefits in certain provinces.[187] This is also the case in Germany where lack of cooperation leads to sanctions and to the reduction or termination of services. Similarly, in the Netherlands, there is no reduction in the basic services available but a lack of cooperation leads to termination of access to the LVV-pilot (Box 5). Conversely, in Sweden and Norway, cooperation may grant access to further services, even if cooperation is not a requisite for access to services, as is the case in Norway.

Box 5: The Netherlands: National Immigration Facilities, (*Landelijke Vreemdelingenvoorzieningen*, LVV)

On 28 November 2018, the Ministry of Justice and Security reached an agreement with the Association of Dutch Municipalities (VNG) on the development of National Immigration Facilities (LVV).

Funded by the Ministry and municipalities, LVVs are intended for migrants who are not entitled to stay but who have not left the Netherlands voluntarily or by force, including long-term irregularly staying migrants. Municipalities are often confronted with the impact of illegal residence, while the central government faces the fact that irregular migrants do not always return to their country of origin.

The LVVs were set up to find a solution for illegal stay. This specific group of migrants can be accommodated temporarily and under certain conditions. Municipalities, the Immigration and Naturalisation Service (IND), the Repatriation and Departure Service (DT&V), Aliens Police (AVIM) and NGOs are working together in five pilot municipalities to find a durable solution for migrants without a right of stay, in order to prevent illegality. The options can be (independent) return to the country of origin, further migration to another country, or regularisation of stay (where applicable). NGOs will inform and counsel migrants on the different future perspectives and possible consequences of the different options. The IND is available for information about regularisation of stay and the DT&V offers return counselling. The AVIM is mainly responsible for registration and identification of the migrants.

Available communication channels for victims or witnesses of an offence

If a long-term irregular migrant is a victim or witness to an offence (e.g. labour exploitation, domestic violence), 'safe reporting' channels exist to report such incidents (without divulging the situation of irregular stay) in 18 Member States.[188] These channels are often limited, as

177 BG, CY, EE, ES, FR, HU, IE, LT, LU, PL, SK (only strictly as the predeparture assistance once the person is already approved for the AVRR programme by the Ministry of Interior and only 2 weeks prior of the departure.
178 BG, CY (through an Asylum, Migration and Integration Fund (AMIF) co-funded project), CZ, EE, IE, HU, LT, LU, PL, SK.
179 AT, BE, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PT, SE, SI, SK and NO.
180 AT, BE, CZ, DE, EE, HU, IT, NL, SE.
181 AT, BE, CZ, DE, FR, FI, LU, LV, SE, SK and NO.
182 In BE, SE and NO, insufficient resources prevent NGOs from meeting all requests. In FR, the government wants only state-approved NGOs to distribute food to migrants. In practice, however, other NGOs also distribute meals to migrants.
183 AT, DE, EE, HU, IT, NL, SE, SK.
184 AT, BE, CY, CZ, DE, EE, ES, FI, FR (even if professional secrecy applies to health workers, social workers, and social assistance workers, in practice, NGOs mention the fear of denunciation for many of them, HU, IE, IT, LT, LU, LV, NL, PL, PT, SE, SI and NO.
185 CZ, DE, HU, IE (unsuccessful asylum applicants with deportation orders residing in public accommodation are expected to cooperate in return procedures), LU, SE, SI.
186 AT, NL, SE.
187 In the federal provinces of Tyrol and Burgenland.
188 AT, BE, CZ, EE, ES, FR, HR, HU, IE, IT, LT, LU, LV, NL, MT, PL, PT, SK.

they rely on the involvement of a third party[189] or depend on the type of offence.[190]

In Austria, Belgium, France, Luxembourg, Poland and the Slovak Republic, safe reporting channels are also provided for victims of labour exploitation to report their employer through a third party (a trade union or NGO representative). In some cases, however, the situation is more nuanced. In Belgium, safe reporting practices vary, due to the wide variety of actors involved.[191]

In Cyprus, Germany, Finland, Sweden and Norway, there are no forms of formal safe reporting to report a crime without having to provide personal data on migration status. Informal agreements exist in Sweden and Norway that allow for anonymous tips about a crime to be notified to the police.

Despite the arrangements in place, France, the Slovak Republic and Norway all reported that many long-term irregular migrants may not report crimes due to the fear of being apprehended. Although difficult to measure in scope and impact, these complexities suggest that the fear of being apprehended limits access to multiple services.

Box 6: Access to services for long-term irregular migrants during the COVID-19 pandemic

Expanded services available

Several Member States[192] made additional accommodation (homeless shelters) available to long-term irregular migrants during the COVID-19 pandemic. In Austria, the capacity in existing facilities was increased.

Other Member States[193] distributed food to long-term irregular migrants through local authorities and NGOs. In Italy, food vouchers and packages were distributed to all people considered at risk of financial hardship..

Luxembourg and Malta set-up COVID-19 hotlines for counselling, offering advice on financial hardship, including to long-term irregular migrants.

Reinforced social assistance services were made available to long-term irregular migrants in Ireland and Norway. Notably, some cities in Norway opted for the first time to provide **emergency social assistance** for irregular migrants. In Ireland, irregular migrants were reassured they could apply for the unemployment payment established specifically during the pandemic, without fear of repercussions on their migration status.

Access to COVID-19 testing and medical treatment

In Estonia, Finland, France, Italy, Luxembourg, Portugal, and Norway, COVID-19 testing and treatment was provided free of charge and regardless of residence status or healthcare coverage. Luxembourg also provided translators and ran an awareness-raising campaign on this expanded healthcare service. In Luxemburg and Ireland, the government announced that irregular migrants accessing COVID-19 related care would not lead to their removal.

In Croatia, Germany, the Netherlands, and Norway, access to quarantine facilities was granted to long-term irregular migrants displaying symptoms of COVID-19. In Luxemburg and in the Slovak Republic, this was only the case in detention facilities. In Italy, vaccination treatments and prophylaxis against infectious diseases were extended to everyone free of charge, irrespective of whether or not they held a residence permit.

In Spain, a protocol was approved to coordinate the medical control of migrants arriving irregularly by small boats at the Spanish coast, which included free COVID-19 testing and treatment.

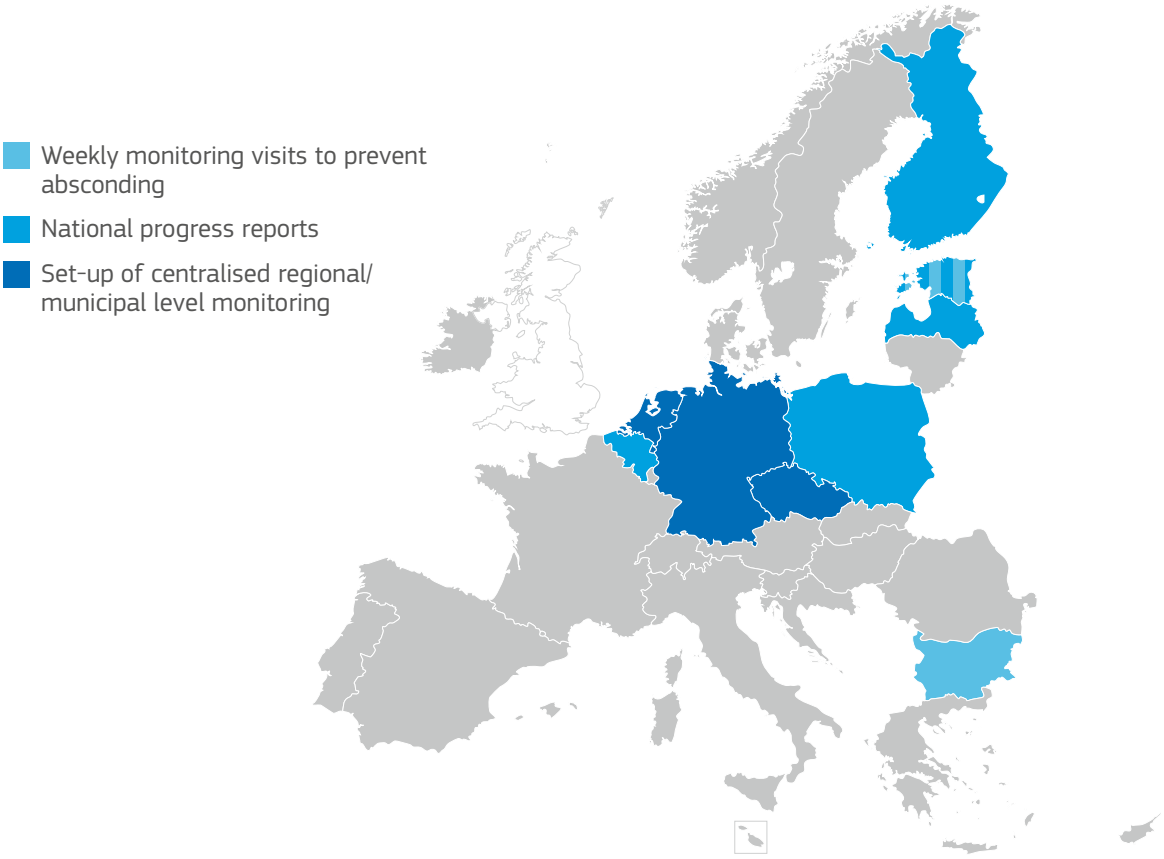
3.3. COOPERATION MECHANISMS BETWEEN CENTRAL, REGIONAL AND LOCAL AUTHORITIES

National authorities have measures in place to provide support and facilitate cooperation with regional and local authorities in anticipating and/or responding to the situation of long-term irregular migrants in their territories. These measures consist of monitoring, information exchange, and guidance (see Figure 3.1) and vary in how systematically they are implemented. However, none of these mechanisms are intended to address the issue of prolonged irregular stay, but, rather, fall into the broader categories of general migration matters, irregular migration and/or returns. No Member State except the Netherlands has published any study on the effectiveness of these measures (Box 7).[194]

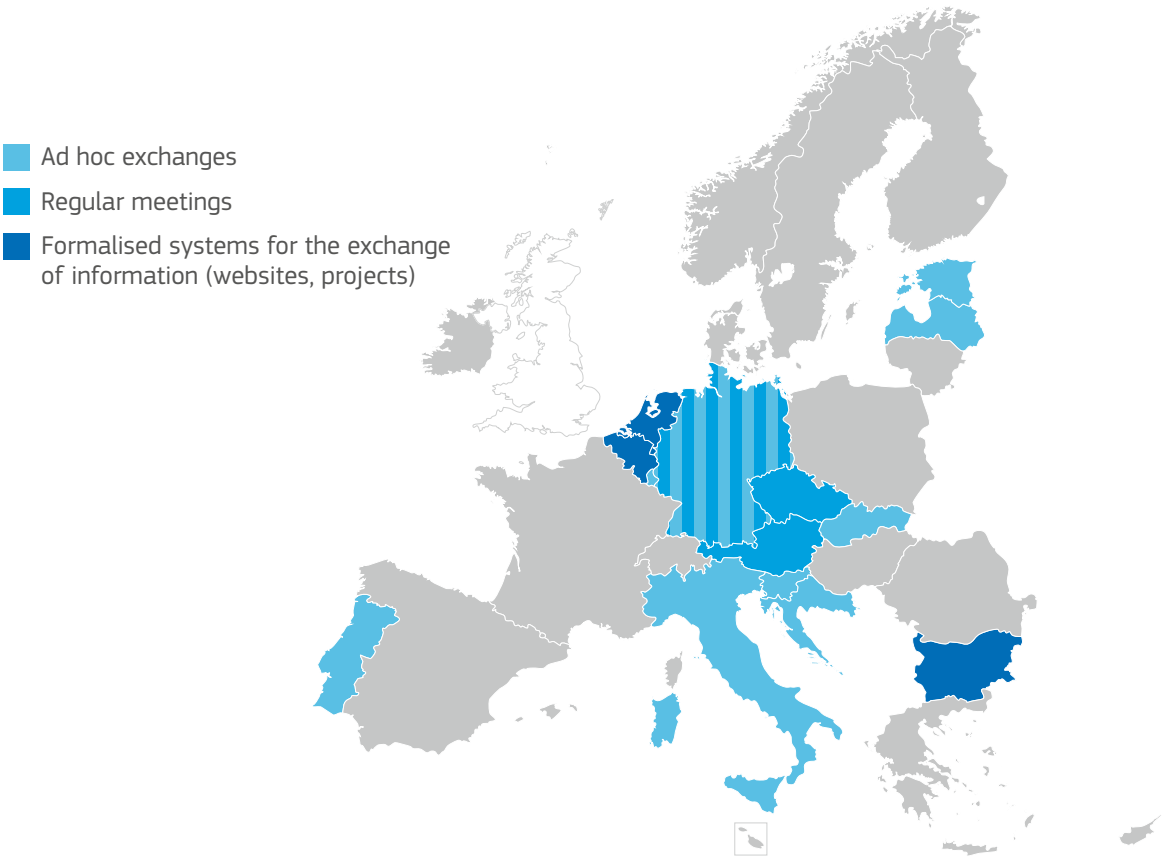
189 BE, MT.
190 BE, CZ, FR, HR, HU, PL, PT, SK.
191 Van Den Durpel, A. 'Safe reporting of crime for migrants with irregular status in Belgium' (2019), *Centre on Migration, Policy and Society* (COMPAS), University of Oxford.
192 AT, FI, LU, NL.
193 IT, FI, LU.
194 For further information on the practice, see: Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/, last accessed on 8 January 2021.

Fugure 3.1 Measures by central authorities to help regional and local authorities to anticipate and respond to the situation of long-term irregular migrants

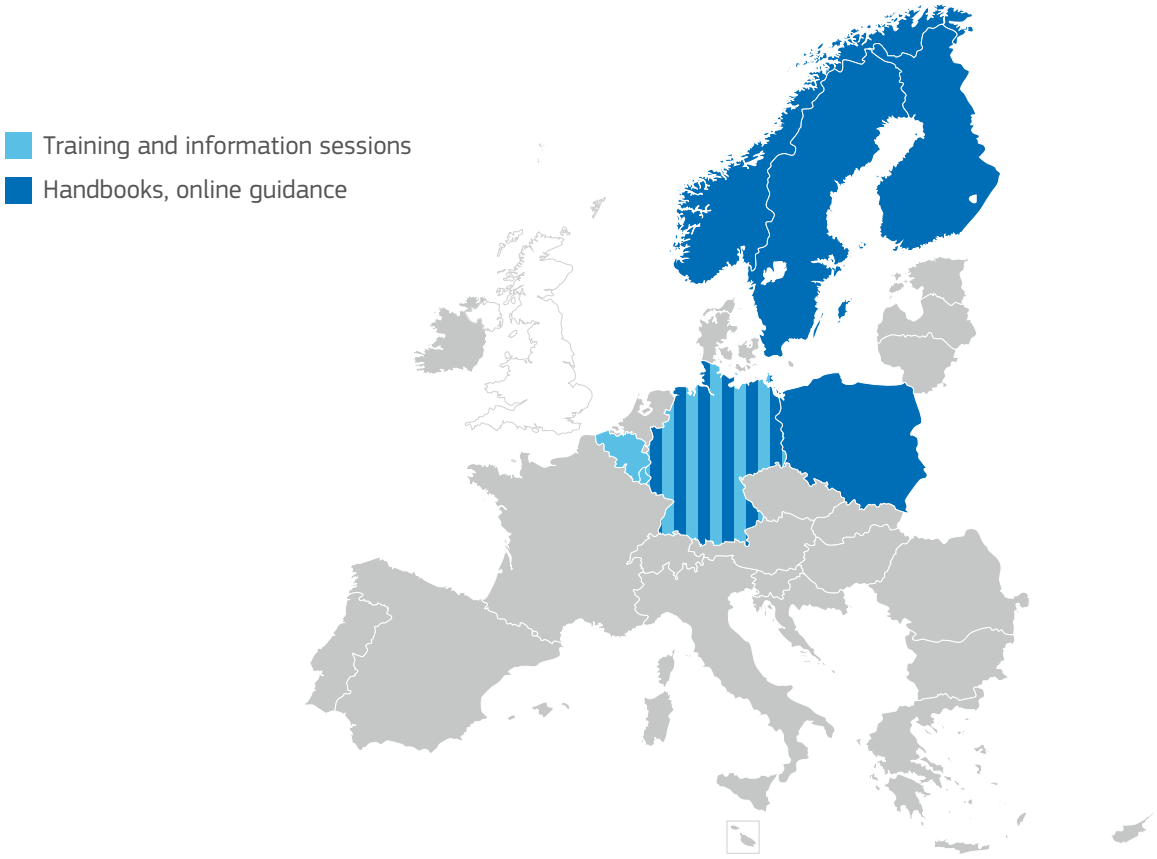
Monitoring and case management support



Information exchange between central and local authorities



Guidance to regional and local authorities on case management approaches



Box 7: The Netherlands: main findings of the evaluation of pilot project National Immigration Facilities - Regioplan

In 2020, the first study evaluating the pilot projects accommodating long-term irregular migrants across five Dutch municipalities (Amsterdam, Eindhoven, Groningen, Rotterdam and Utrecht) was carried out. The study aimed to provide insights into the goals, set-up and results of the pilot LVVs (see Box 5). The main findings of the evaluation were:

Slightly improved collaboration between municipal and national authorities:

Previously a considerable challenge, collaboration has improved slightly, due to the pilot projects' role in increasing understanding between the parties involved and relevant actors reaching out to one another. Despite improved cooperation, disagreements persist in respect of the final goal of the project (finding sustainable solutions), hindering successful and innovative cooperation.

Cooperation is most effective when clear agreements are in place between national and local authorities before implementation of the project, ensuring that actors are clear on the tasks they must carry out.

Slow progress from the pilot projects, especially for vulnerable cases:

The parties involved expressed dissatisfaction with the results yielded by the pilot LVV to date, with progress in accommodation facilities particularly slow. They underlined that this is especially an issue for vulnerable cases, as mental and/or physical health issues are not sufficiently addressed. Parties also underlined that no real solutions have been found for known problems.

Running the pilot LVV takes considerable financial and human resources, especially for organisations given roles unlike their work before their involvement in the pilot LVV.

As shown in Figure 3.1, nine Member States have measures to aid regional and local authorities with monitoring and support to ensure follow-up on individual case management. Across the Member States, these consisted of research or visits to ensure national, regional or local overviews and progress reports of the situation of long-term irregular migrants. Most Member States offer expertise and resources to local authorities by appointing a representative from the relevant ministry or border guards to conduct regular analyses of the numbers of long-term irregular migrants and the resources or checks needed to ensure that irregular third-country nationals in return procedures have not absconded. In the Czech Republic, these analyses are conducted in centralised regional offices, while the Netherlands uses its five National Immigration Facilities, with the cooperation of five municipalities.

Many Member States, listed in Figure 3.1, have initiatives to facilitate the exchange of information between

national, regional and local authorities. Most have ad hoc exchanges between specific immigration officers and regional and/or local authorities, regular committee meetings between relevant representatives, specific projects, or information systems. In Belgium, in addition to a dedicated website to contact and exchange information with the relevant unit, staff members can be assigned to a specific region or city to facilitate cooperation. Ad hoc exchanges typically comprise spontaneous communication between local police authorities and regional and national authorities, usually prompted by a new case arising, or changes in legislation and/or practice.

While Member States provide guidance to regional and local authorities in the form of guidelines (online or physical handbooks) and training, these are not tailored to assisting long-term irregular migrants. In Finland, the municipalities consider the guidelines provided inadequate and poorly defined.

In several Member States, the local authorities do not participate in horizontal cooperation networks of local and regional authorities that could be used to develop good practices and/or programmes to address the situation of long-term irregular migrants.[195] Member States that have established horizontal local cooperation networks have done so either through projects[196] or inter-municipal working groups dealing with wider topics that may also cover long-term irregular migrants.[197] These horizontal networks tend to be fragmented, either within regions or between major or smaller cities. In Finland and Norway, such networks have been established primarily between major cities, where there is a higher concentration of irregular migrants. However, in Finland, smaller municipalities have set up their own ad hoc networks, including the participation of NGOs and parishes involved in providing services. In Belgium and Germany, the focus appears to be more regional than local. In Belgium, inter-municipal umbrella organisations are restricted within regions (Flemish Association of Cities and Municipalities, Union of Cities and Municipalities of Wallonia and Union of Municipalities and Public Centre for Social Welfare (PCSW) in Brussels). Germany has horizontal networks between the federal states, but municipalities are only involved in a larger Federal Working Group on Health/Illegality (*Bundesarbeitsgruppe Gesundheit/Illegalität*), alongside other service providers and experts. In Belgium, two projects supporting local horizontal networks also contributed to transnational cooperation networks between local authorities (Box 8).

Box 8: Projects contributing to transnational cooperation networks between local authorities

Reach Out[198] was funded and carried out through the European Return and Reintegration Network. It aimed to increase knowledge about future oriented legal options, including the possibility of an assisted voluntary return, among 'hard to reach' groups (e.g. stranded migrants, migrants in transit). The first phase of the project was implemented in Belgium and France between November 2019 and April 2021. In May 2021 a second phase started, which will end in April 2022.

City Initiative on Migrants with Irregular Status in Europe (C-MISE)[199] funded by the Open Society and carried out by the University of Oxford's Centre on Migration, Policy and Society (COMPAS) is a knowledge exchange programme between European cities on practices and policies responding to the presence of irregular migrants in their territory. The project initially involved 11 cities (Athens, Barcelona, Frankfurt, Helsinki, Ghent, Gothenburg, Lisbon, Oslo, Stockholm, Utrecht, and Zurich).[200]

3.4. GOOD PRACTICES IN GRANTING ACCESS TO SERVICES TO LONG-TERM IRREGULARLY STAYING MIGRANTS

This section presents good practices in service provision (e.g. healthcare, education), legal and judicial assistance, cooperation with other Member States, and exchange of information between national and local authorities on the issue of long-term irregularly staying migrants. While good practices differ depending on the type of authority and the underlying policy, the examples below were highlighted by the Member States and Norway as good practices.

National authorities highlighted services providing opportunities to facilitate dialogue between authorities and irregular migrants.[201] This contact can be helpful in building trust in public institutions and in opening a dialogue on available options to end irregular stay, including return.

In **healthcare**, the flexible application of regulations to allow access to irregular migrants was identified as a good practice by four Member States.[202] In Luxembourg, healthcare costs are fully reimbursed for the children of irregular migrants. Others consider it good practice to grant access to healthcare on the condition of meeting certain obligations.[203] In the Netherlands, people without a residence permit have no recourse to social services (including health insurance), which means that irregular migrants must pay for their own medical costs. However,

195 BG, CY, CZ, HR, HU, LT, LU, PL, SI, SK.
196 BE, NL, SE.
197 BE, DE, EE, FI, NL, PT and NO.
198 European Return and Reintegration Network, 'Reach Out, 2020, https://returnnetwork.eu/wp-content/uploads/2019/05/ERRIN-Project-Leaflet_Reach-Out.pdf, last accessed on 8 January 2021.
199 Centre on Migration, Policy and Society, 'City Initiative on Migrants with Irregular Status in Europe (C-MISE)', 2019, https://www.compas.ox.ac.uk/project/city-initiative-on-irregular-migrants-in-europe-c-mise/, last accessed on 8 January 2021.
200 BE, DE, EL, ES, FI, NL, PT, SE and CH.
201 BE, DE, FR, LT, MT, NL, SE.
202 BE, LU, MT, NL.
203 BE, LU, MT, NL, SK.

as this is not practically attainable for irregular migrants, a care provider can appeal for a regulation for uninsured aliens and ask for a contribution for the part of the costs that the migrant is unable to meet.

In the area of **education**, some Member States have facilitated contact between migrants and schools, or encouraged access to public schools for the children of irregular migrants.[204] This includes lifting the residence requirements and/ or obligations to report the migration status of children (see section 3.1).

Seven Member States indicated good practices in **co-operation with other Member States and non-EU States**,[205] including frequent communication and specific agreements on 'readmission', whereby countries of origin and host countries agree to protocols for the return of irregular migrants. These are considered good practices as they reduce the administrative burden and accelerate the return process.[206]

Several Member States identified good practices linked to the **exchange of information between national and local authorities**,[207] which in some cases had increased the speed and efficiency of administrative processes related to return procedures, particularly where municipal authorities with fewer resources are involved. Estonia and Latvia, for example, have extended the accessibility of national databases on residence status, population and social security and benefits to a larger set of local actors to facilitate effective coordination between national and local institutions. Other Member States organise different sorts of permanent or temporary coordination teams to manage national and local cooperation,[208] namely with police forces, municipal officials and ministerial officials. Some municipalities in Germany extend this cooperation to civil society organisations.

Several Member States facilitate the **exchange of information** between national, regional and local authorities (see section 3.2).[209] However, the Netherlands considered it good policy to limit the degree of coordination between national and local authorities in order to build trust at local level, as it allowed municipalities to reach and assist irregular migrants in precarious situations more freely. These measures help to build trust between migrants and the authorities and are considered an encouraging sign for the success of return and regularisation policies. The most notable example is the Netherlands' 'safe reporting' policy.

Some Member States consider it good policy to **have more flexible requirements for inter-institutional coordination on irregularly staying migrants**.[210] This is particularly the case for contact between public institutions and law/immigration enforcement. In Germany, schools are not required to pass on information on the residence status of irregularly staying migrant children to immigration authorities, facilitating the admission of irregularly staying migrant children. In the Netherlands, a positive practice is the application of a 'free in, free out' policy to allow irregular migrants to report crimes against them or crimes they witnessed without fear of detention and possible removal.

204 CZ, DE, ES, FR, HR, IE, MT.
205 CZ, IE, LT, LU, MT, NL, SK.
206 LT, LU.
207 CZ, DE, EE, LV, NL.
208 CZ, NL.
209 AT, BE, BG, CZ, DE, EE, FI, HR, IT, LU, LV, NL, SI, SK.
210 DE, NL.

4. RESPONSES TO END LONG-TERM IRREGULAR STAY

Section 3 described how protracted irregular stay creates a situation of uncertainty for both national authorities delivering services and for the individuals concerned, whose access to rights and services is compromised. Equally, institutional tensions may arise between service providers, municipalities and migration authorities in implementing their different mandates – namely, to enforce credible migration policies and to ensure human rights obligations are fulfilled. The main challenge is to develop effective policies to solve the issue of protracted stay, either through return or local integration, in the interests of both effective migration management and the dignified treatment of the individuals concerned.

Section 4 explores the policies in place and good practices identified by Member States to end situations of long-term irregular stay through return or regularisation.

4.1. MEASURES TO PROMOTE RETURN OR DISCOURAGE IRREGULAR STAY

Return is considered the main priority strategy to end irregular stay across almost all EU Member States and Norway.[211] Several Member States and Norway prioritise voluntary return over other solutions in the case of long-term irregular migrants, as it is considered the most cost-effective and humane approach.[212] Member States incentivise voluntary return with a variety of tools, including tailored return, reintegration packages and individual return counselling.[213] However, only one of these approaches is specifically designed to tackle the situation of migrants in prolonged irregular stay: in Germany, people who return to their country of origin through the Federal-Länder Return Assistance Programme and who have held tolerated stay status for at least two years can receive one-off financial support as well as reintegration services in the areas of housing and health in certain countries of destination. For five Member States, forced return is the priority solution to end long-term irregular stay.[214]

Thirteen Member States and Norway have put policies in place to promote the return of irregular migrants.[215] Several consider counselling an important activity to motivate irregular migrants to consider return as an option to end their irregular stay.[216] Albeit limited, some research in Norway has confirmed the positive impact of return counselling.[217] The same applies in Germany, where, despite the fact that it was not tailored specifically to the situation of long-term irregularly staying migrants, counselling was found to build migrants' confidence in the institution and support them to make a viable plan for themselves and their families. Three countries implementing different outreach activities geared toward identifying and contacting irregular migrants who may be homeless or otherwise not integrated also promote counselling[218] (Box 9). Other good practices cited include the design and diffusion of public websites seeking to inform irregular migrants about return[219] and the use of cash incentives.[220] Similarly, these are not specifically tailored to long-term irregular migrants.

211 AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, IE, IT, LT, LU, LV, MT, NL (specifically in relation to the LVV pilots (see Box 5), the aim is to find a sustainable future perspective on a case-by-case basis, be it return, regularisation of stay or further migration to another country), PL, SE, SI, SK and NO.
212 AT, BE, CY, CZ, DE, EE, ES, IE, LU, LV, NL and NO.
213 For an overview of Member States' and Norway's approaches to incentivise return, as well as designing and delivering return counselling, see: 'The effectiveness of return in EU Member States: challenges and good practices linked to EU rules and standards', EMN 2017; 'Policies and practices on return counselling for migrants in EU Member States and Norway', EMN 2019.
214 BG, EE, FI, LT, LV.
215 AT, BE, CY, CZ, DE, EE, FR, FI, IE, LV, NL, SE, SI and NO.
216 BE, CZ, DE, EE, FI, NL, SE and NO.
217 Lillevik, R. 'Experiences with assisted return from Norway – a research review' (2012), FAFO.
218 BE, NL and NO.
219 BE, LU, FR.
220 CY.

Box 9: Individual counselling in Norway

The example below illustrates how case workers can successfully handle the cases of long-term irregular migrants in Norway.

In one case, an elderly man had stayed in Norway for a long time after having his asylum application rejected and return counselling was used effectively to encourage his return. The reception centre where he lived established a relationship of trust with him, identifying partners and relationships in his country of origin and mapping out what he would need in order to be able to make a decision on returning.

The reception centre, the immigration authority regional office, the IOM, local police, the embassy, local healthcare representatives, family in several countries, and the man himself worked closely together to make the return possible.

He is now back with his children and grandchildren in his home country.

In addition to promoting return, nine Member States and Norway have specific approaches or measures in place to **discourage irregular stay**.[221] These are typically **restrictive measures** that seek to **limit irregular migrants' access** to **public services.** Member States and Norway choose to limit access to public services at different levels.[222] Bulgaria grants minimum access to services to irregular migrants that remain undetected or those that cannot be returned (see section 3.1). In other countries the conditions for the provision of social protection benefits and other public services discourage illegal stay.[223] Germany limits access to benefits for irregular migrants deemed responsible for the obstacle to return, restricting them to 'physical minimum subsistence' (whereby benefits are limited to food, accommodation, personal and healthcare). In Italy, irregular migrants are restricted from receiving administrative services and statuses, such as applications for licences, authorisations and registrations. For example, the Consolidated Immigration Act (Article 6, par. 2) stipulates that foreign citizens must show their residence permit in order to sign rental contracts and obtain authorisation to carry out certain activities, such as street trading. In Norway, irregular migrants whose asylum applications have been rejected are subject to a significant decrease in their social protection benefits.

The fight against undeclared work is indirectly used to discourage migrants from staying irregularly on their territory in some Member States and Norway.[224] Typically, measures target employers: in Italy, for example, penalties imposed on employers amount to up to three years' imprisonment and up to € 5 000 for each irregular migrant employed. Other measures are specifically targeted to detect irregular migrants working illegally. Bulgaria carries out regular checks at the residences of irregular migrants to ensure that they do not benefit from unregulated access to the labour market; this aims to limit their access to income sources. In Estonia, Germany, Sweden and Norway, regional offices of the labour inspectorate cooperate with the police and tax authorities to inspect workplaces where irregular migrants are likely to work.

4.2. REGULARISATION OF STAY OPEN SPECIFICALLY TO LONG-TERM IRREGULAR MIGRANTS

Although some Member States refer to regularisation within their policies, none consider it a priority for long-term irregular migrants.[225] Ireland for example, has reported on the approach by the Department of Justice of the case-by case regularisation of persons with an irregular status, which it states allows for a better understanding of the irregular migration phenomenon in the State, while at the same time providing an opportunity for irregular migrants to regularise their stay.[226] Additionally, in 2018, Ireland opened, for a time-limited period, a specific scheme to allow certain third-country nationals who came into the State lawfully under a student permission, and whose status subsequently became irregular, to regularise, and those who had maintained a lawful presence for at least two years, to apply for regularisation of their status. Ireland's 2020 Programme for Government includes a commitment to bring forward proposals to address the regularisation of certain long-term undocumented migrants and their dependants.

Some Member States have different types of regularisation approaches that are available also to long-term irregularly staying migrants. The **most notable types of regularisation, regardless of the length of irregular stay**, are humanitarian regularisation (when respect for the *non-refoulement* principle amounts to a regularisation procedure for example);[227] medical regularisation (when medical emergencies or chronic conditions constitute a justification for regularisation);[228] employment-based regularisation (when sufficient vocational training or higher education is considered acceptable by the host country's standards);[229] and regularisation through the granting of a right of residence with an administrative court decision.[230] Five Member States[231] offer **regularisation based on specific 'integration achievements'** or 'integration

221 BG, DE, EE, IT, LT, LU, NL, SE, SK and NO
222 BG, DE, EE, IT, LU, NL, SE, SK and NO.
223 DE, CY, FI, LT, LU, NL and NO.
224 BG, DE, EE, FR, HR, IT, LU, LV, NL, SE and NO.
225 BE, DE, EE (on a case-by-case basis), ES, FR, IE, IT, LU, NL (specifically in relation to the LVV pilots (see Box 5), the aim is to find a sustainable future perspective (be it return, regularisation of stay or further migration to another country), SI.
226 Information received from the Migration Policy Unit, Department of Justice on 14 January 2021
227 BE, CY, DE, EE, ES (irregular migrants can be granted a residence permit on exceptional humanitarian grounds, through collaboration with the justice system, for international protection, or for being in a situation of gender-based violence or a victim of trafficking in human beings), FR, LU (a residence permit can be granted on exceptional humanitarian grounds), LV, PL, SI and NO.
228 BE, ES, FR, LU, LV (usually for persistent medical issues that cannot be treated in the country of origin) NL, SI and NO.
229 DE, ES (the person must have been working for at least six months or have a work contract, depending on the case), FR, IT, SI.
230 DE, HR.
231 DE, ES, FR, LU, MT.

efforts', whereby migrants who were required to leave have made particular efforts to integrate, such as proof of successful school attendance, language proficiency, social ties, references, or demonstrable value as a skilled worker. These requirements vary across the countries that apply them. In Malta, 'integration efforts' are defined concretely by participation in integration programmes. In France and Luxembourg,[232] regularisation is evaluated on a case-by-case basis.

Only a few Member States have regularisation **policies focusing specifically on long-term irregular migrants;** a number of examples are highlighted below:

- In Germany, those whose stay has been 'tolerated' for at least 18 months and who are not responsible for the obstacle precluding return but are prevented from leaving the country through no fault of their own, should be granted a residence permit for a maximum of three years. The aim is to end the practice of repeatedly granting toleration ('chain toleration') and to enable their participation in society.
- France has implemented general guidelines for assessing applications for exceptional admission for residence by foreign nationals in an irregular situation. The assessment involves taking into account in particular these individual's situations (including from a family and work perspective), their integration into French society, their knowledge of French values and their command of the French language, the duration of their irregular stay.
- In Malta, people whose applications for international protection have been rejected by the asylum authorities may be granted a specific residence authorisation after an assessment based on certain criteria and guidelines: the applicant must have entered Malta in an irregular manner prior to 1 January 2016 and been physically present in Malta and in employment for a minimum of nine months per year for a period of five years preceding the date of application.
- In Spain, third-country nationals in irregular situations can obtain a residence authorisation if they have stayed at least two years in Spain and have been working for at least six months (labour rooting) or if they have stayed in Spain for at least three years, have a work contract and family ties with another foreigner living in Spain, or demonstrate their integration through a social report (social rooting). Another possibility is 'family rooting', which is extended to those with a parent of Spanish origin or the parents of a Spanish child.

Italy reported the adoption of extraordinary measures periodically to address the issue of irregularly staying third-country nationals (see Box 10).

Box 10: Extraordinary regularisation measures in Italy

Italy has adopted extraordinary measures to reduce the number of third-country nationals without a residence permit who cannot be returned to their countries of origin. Such measures include issuance of a residency permit for reasons of subordinate employment to those who are in possession of a job or a job offer. The solution for regularisation is only available to irregular migrants present on the national territory working in a few specified sectors. Whilst eligibility criteria also include permanence in the territory for a certain period of time, it does not distinguish between long or short-term irregular stay. Such measures have been adopted periodically eight times over the last 30 years, most recently in 2020, whenever the 'physiological' threshold of the estimated number of irregular migrants is exceeded. Each regularisation measure has introduced, as a requirement for access to the procedure, documentary evidence of the presence of the foreign national on the national territory (usually at least four months before) and the absence of a criminal record.

4.3. OTHER MEASURES ADOPTED TO END LONG-TERM IRREGULAR STAY

in certain countries, the temporary permits given to migrants who cannot be returned may be transformed into **permanent residences permits**.[233] In Luxembourg, this is the case if a temporary stay for medical reasons cannot be renewed because it reached the maximum of two years, but the circumstances impeding the return persist.

In the Slovak Republic, permanent residence is granted to a stateless person or for reasons of special consideration. In Sweden, a residence permit can be granted if the impediment is long-lasting in nature.

232 In LU, Article 89 of the Immigration Law will allow the regularisation of irregular third-country nationals whose children have accomplished four years of schooling. However, this regularisation is on a case-by-case basis.
233 BE, DE, LU, NL, SK, SE.

5. CHALLENGES AND FUTURE ACTIONS

Sections 3 and 4 outlined existing policies and approaches dealing with long-term irregular migrants, with a focus on their access to services and rights and national policies to end irregular stay. Several good practices emerged, with the Member States and Norway seeking a balance between guaranteeing dignified treatment to all and enforcing migration policies. The legal and social complexities of the situation of protracted irregularly staying migrants were equally evident.

This section analyses the challenges identified by the Member States and Norway in designing and implementing effective and comprehensive policies to address the situation of long-term irregularly staying migrants. It then outlines suggestions for actions that could usefully be undertaken at EU level to support Member States.

5.1. CHALLENGES IN SETTING UP POLICIES TO ADDRESS THE ISSUE OF LONG-TERM IRREGULARLY STAYING MIGRANTS

In six Member States, the issue of long-term irregular migrants did not pose any specific policy or other challenge,[234] generally due to the small number of (known) cases.[235]

However, most Member States and Norway identified some difficulties in setting up adequate policies to address the long-term presence of irregular migrants. These primarily related to the provision of services,[236] including accommodation,[237] healthcare,[238] access to social security and welfare,[239] labour market,[240] and education,[241] and varied across the different institutions and other organisation concerned.

- Some Member States reported a challenge in providing services to a group that is not well-quantified or understood.[242] For example, Belgium noted that it is difficult to determine the number of irregularly staying migrants and Estonia described challenges in providing services over an unpredictable length of time, as it is not clear how long irregular migrants will be in need of services, which are typically designed to be short-term in nature.
- Another challenge related to service provision is its impact on willingness to return.[243] Practitioners in Belgium and Germany raised the question of whether support in housing or education and improvement of living conditions reduced migrants' willingness to return to their home countries.

Eight Member States reported challenges in exchanging information and/or cooperation between national and local authorities on long-term irregularly staying migrants.[244]

- In Belgium, Finland and Luxembourg, the issues relate to trust and difficulties in the identification and detection of irregular migrants. In Belgium, certain municipalities are reluctant to cooperate with the Immigration Office on the follow-up of return decisions and the return of irregular migrants who have not caused public order problems. Social workers in Finland reported that the threshold for seeking access to services is too high and there is a lack of regional equality in service provision. Luxembourg noted that the issue of irregular migrants that avoid detection by the authorities makes it difficult to determine the scale of the phenomenon, as well as complicating the exchange of information between authorities.
- Malta, Poland and the Slovak Republic reported communication challenges in respect of data on long-term irregular migrants. Malta noted the absence of a

234 BG, CY, CZ, FR, HR, LT.
235 CY, CZ, HR, LT.
236 AT, BE, DE, EE, FI, IE, LU, LV, MT, NL, PL, PT, SK, SE.
237 DE, EE, IE (refers to unsuccessful international protection applicants issued with deportation orders remaining in reception centres), LU, LV, NL, SE, SK.
238 BE, DE, LU, LV, MT, NL, PL, SE, SK and NO.
239 DE, FI, LU, LV, PL, SK.
240 DE, LU, MT.
241 DE, FI, LU, LV.
242 BE, EE.
243 BE, DE.
244 BE, DE, FI, LU, MT, NL, PL, SK.

single holistic IT system for migrants which can be accessed by all government departments offering services to irregularly staying migrants – this could help to avoid 'assistance shopping', for instance. Similarly, in the Slovak Republic, the absence of a permanent platform for regular information exchange between central and local level authorities on individual case management was identified as a major challenge by one of the regional authorities. On a more positive note, Finland reported continuous dialogue on irregularly staying migrants, ranging from national to local level, and pointed to attempts to establish effective practices through various policies and guidelines, recommendations and cooperation networks (Box 11).

Box 11: Cooperation among authorities in Finland

The Helsinki metropolitan area and other major cities with high numbers of irregularly staying migrants have been the quickest to take action to respond to the challenges and build sector-specific cooperation networks. However, municipalities in Finland emphasised that they need clearer national policies and guidelines, as well as legislative improvements, to ensure that all irregularly staying migrants can be provided with the constitutional services to which they are entitled, without the current inconsistencies in access to services.

A few Member States reported challenges in the exchange of information between Member States.[245] Poland noted that better coordination and optimum use of designated liaison officers would enhance collaboration within the EU. Other challenges reported by the Slovak Republic relate to the short period of storage of migrants' personal information, which are erased from databases (e.g. entry/exit at international airports) due to data protection laws, making it difficult to re-examine cases. A central EU-level registry for data on valid long-term residence permits was reported as something that could be useful. Portugal noted constraints in the relationship with third countries, particularly the lack of cooperation on the provision of travel and identity documents. In the Netherlands, several immigration authorities and some municipalities indicated that working together has complicated the exchange of information, in light of privacy concerns related to migrants' information.

For Belgium, Finland and Germany, the challenges reported relate to faster asylum procedures and making voluntary return more attractive for asylum seekers whose applications have been rejected. In Belgium, lengthy asylum procedures may make voluntary return difficult, where the long duration of the stay increases local integration, for example. In Finland, many migrants receiving a negative decision on their residence permit or asylum application prefer to submit a subsequent application or stay in the country irregularly instead of opting for voluntary return, and these options are more expensive alternatives for Finland. In Slovenia, the revised national act allows possibilities for regularisation, and the non-governmental sector has proposed to introduce a statelessness determination procedure to help with recognition of irregular migrants who are stateless persons, in order to provide them with a legal status, residence and rights, stemming from the Convention relating to the Status of Stateless Persons.[246] Finally, having a limited number of diplomatic representations in third countries creates challenges for Luxembourg in returning long staying irregular migrants.

Regarding the main challenges and activities linked to the COVID-19 pandemic, these are highlighted in Box 12 below.

Box 12: Challenges to end the irregular stay of migrants during the COVID-19 pandemic

The main challenges mentioned by the Member States[247] and Norway in promoting and assisting the return of irregular migrants relate to the restrictions on travel, specifically air travel, which has significantly slowed or stopped return flights.

At the height of the COVID-19 crisis, Austria continued to provide return counselling online or by phone. Office hours for client visits resumed in May 2020 and there has been strong demand for the full range of return counselling services since the middle of the summer. Similarly in Germany, most return counselling centres were not accessible to the public in the early phase of the pandemic, with an increase in 'virtual counselling' instead.

In Luxembourg, the Netherlands and Norway, an initial increase in irregular migrants contacting local authorities for assistance to return to their home country was reported, and most were offered return assistance. The sense of urgency in assisting people to return home to their families before borders closed led the municipal authorities in Norway to organise and finance return tickets for irregular migrants, circumventing the formal channels established by IOM and the immigration authorities. Return and legal counselling ceased due to strict COVID-19 measures in reception centres in the spring but recommenced during summer and autumn 2020. In Latvia, some irregular migrants left voluntarily due to the loss of their income sources.

Several Member States reported challenges in enforcing return due to failure to comply with taking a PCR test (see Box 1), leading to the suspension of forced return, potentially for an indeterminate period of time.

In order to implement forced return under such circumstances, six Member States allow for a forced PCR test – or other medical examination - in their legislation or practice.[248] In the Czech Republic, the obligation to undergo a PCR test is covered by the policies of the Ministry of Health and enforced by legislation on the residence of foreign nationals, where

245 BE, MT, PL, PT, NL, SK.
246 United Nations, 1954, Convention relating to the Status of Stateless Persons. https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf, last accessed on 23 July 2021.
247 AT, BE, DE, EE, FR, HR, LT, LU, LV, MT, N, PL, SE, SK.
248 CZ, DE, ES, FI, LV.

a medical examination can be carried out forcefully. In Germany, the Residence Act regulates the issuance of orders for a forced medical examination to determine if a migrant is fit to travel, in cases of non-compliance. Similarly, legislation in Finland allows returnees to be subject to a compulsory medical examination without their consent, in certain circumstances, which would be assessed on a case by case basis. In Croatia and Spain, the obligation is managed via a judicial order. In Latvia, the State Border Guard, as the authority executing forced returns of foreigners, has the right to specify and organise medical checks and other examinations/ inspections of foreigners within the return procedure.

In other Member States, national legislation or administrative practice does not allow forced PCR testing (or other relevant medical examination) where this is required by the country of return.[249] This may *de facto* suspend the execution of the forced return in a particular case, if alternative solutions are not found.

Member States that identified such examples usually deal with them on a case-by-case basis,[250] or treat them as cases where return cannot take place due to practical or medical obstacles.[251]

To prevent the risk of absconding, France, Luxembourg, Portugal and Sweden can place migrants refusing to take a PCR test under supervision or in detention. However, detention is only possible if there is a clear perspective to execute the return - if the refusal to take the test continues and no alternative means to execute the return are found, the migrant cannot be detained. In France, criminal proceedings can be started on the grounds of obstruction, which is sanctioned with a maximum of three years' imprisonment and a 10-year entry ban.

To avoid suspending the return, at least two Member States used alternative solutions to the PCR test. In Finland, statements from the detention centre showing that a returnee has not been outside of the detention centre for a given period of time and has not developed any COVID-19 symptoms have been used to enable the return to take place in the absence of a (negative) PCR test. In Slovenia, instead of conducting tests exclusively before a forced return is implemented, all migrants in detention centres undergo preventive antigen testing on a regular basis.

5.2. SUGGESTED ACTIVITIES TO BE UNDERTAKEN AT EU LEVEL

Several Member States suggested activities at EU level that could help to tackle the issue of migrants staying in prolonged irregularity on the EU territory.[252] Many focus on necessary improvements to the effectiveness of return policies and systems,[253] including recommendations to consider the opportunity of contracting readmission agreements at EU level;[254] boosting cooperation between the EU and countries of origin;[255] further harmonising rules and procedures for return cases and better return assistance;[256] and implementation of more joint voluntary return activities, which would also help countries with limited diplomatic representations in countries of origin.[257]

Suggestions also referred to information exchange on irregular migrants between the Member States.[258] Belgium noted its anticipation of the further development of Eurodac, as announced in the New Pact on Migration and Asylum.[259] Other migration databases, such as the Visa Information System (VIS), the European Travel Information and Authorisation System (ETIAS) and the Schengen Information System (SIS) were also reported as supporting national authorities in dealing with irregular migration.

Other suggestions included:

- In Austria, representatives of NGOs and the authorities interviewed for the study signalled the importance of implementing a common European migration policy, including **defining common criteria for immigration, common categories of residence permits**, and standardised rules for return cases. This is seen as a way of alleviating the migration burden on asylum systems.
- Belgium suggested more targeted **EU funding** (and further funding generally) through the AMIF that could be used for information campaigns on voluntary return options or for further staffing for responsible authorities, speeding up procedures. More targeted funding would ensure more complementarity between projects and avoid double funding of projects with similar scope and goals.
- In Luxembourg, NGOs propose amending EU migration policy to avoid irregular stay and consider both the humanitarian and economic aspects. They propose **enlarging the legal pathways** to migrate to the EU, complemented by dissemination of more information in countries of origin on the risks of irregular migration.
- Latvia mentioned a proposal for '**travel corridors' for irregular migrants to be able to apply for travel documents in different EU Member States**.

249 BE, BG, CY, EE, FR, HU, LU, IE, IT, FR, NL, PT, SE, SI, SK.
250 EE, IE, PL, NL.
251 BE, CY, HU, IE.
252 AT, BE, EE, CZ, FI, HU, LT, LU, LV, MT, SE, SK.
253 LT, SE, SK.
254 BE, EE, SE.
255 AT, BE, CZ, MT.
256 AT, MT.
257 LU.
258 BE, LU, LT.
259 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, (COM/2020/609 final), https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM:2020:609:FIN, last accessed on 15 June 2021.

Such a travel arrangement would allow third-country nationals to travel from one Member State in which they have a residence permit to another (transiting through other Member States) for the purpose of visiting their national embassy to draw up a travel document or participate in identification activities. Member States would ensure that the third-country nationals could travel back to their place of residence, even if they have been staying for a prolonged period of time in another Member State. Implementation of such an arrangement would need specific guidance for the competent authorities.

6. CONCLUSIONS

This study provides an overview of the policies and practices in 25 Member States and Norway with respect to third-country nationals in a prolonged situation of irregular stay. This includes both those who cannot be returned for legal or practical obstacles and those who remain unknown to the authorities. Other than the basic rights foreseen in the Return Directive (2008/115/EC) for this first broad category of irregularly staying migrants, such policies are rarely available. There is no political consensus or harmonisation at EU level on the approach to be taken. Within the wider framework of EU and international law, Member States' approaches to this category of third-country nationals is largely determined by domestic law and practice.

The following conclusions can be drawn from this study:

- **The status of third-country nationals who cannot be returned due to legal or practical obstacles varies within and across the Member States. It may result in legal uncertainty, while migrants who abscond or who were never detected by the authorities have no written documentation of any sort. This creates a potentially confusing situation for migrants and for service providers.**

  While the Return Directive (2008/115/EC) allows for the removal of irregular migrants to be postponed, it only partially addresses the legal situation of third-country nationals who cannot be returned. Irregular migrants whose return is not feasible can receive a temporary authorisation to remain or a permit to stay in almost all Member States and in Norway, where the obstacle to return is of limited duration, or instead, a written certificate of the postponement of return. In more than one-third of Member States and Norway, however, the return is *de facto* suspended without any certification or written confirmation issued to the migrant. This is the most common situation in eight Member States and Norway. In all Member States and Norway, migrants who abscond during the return procedure or who were never detected by the authorities do not receive written documentation of any sort. The range of possibilities results in a spectrum of legal situations for irregularly staying third-country nationals. A combination of possibilities can be encountered in the same Member State, each offering different levels of access to services, potentially creating a situation that is difficult for migrants and authorities to navigate.

- **Services provided to long-term irregular migrants are limited, often discretionary, and even where available, difficult to access, while services available to undetected migrants with no authorisations are more limited still.**

  Generally, national authorities limit access to services for long-term irregular migrants as a means of enforcing migration management policies, with several Member States reporting limiting irregular migrants' access to public services as a specific measure to discourage irregular stay. Irregular migrants who are 'non-returnable' for practical or legal reasons have access to compulsory education and emergency healthcare, in line with the Return Directive (2008/115/EC). Access to other types of services vary considerably, however, and depend on the legal situation of the individual, the type of obstacle preventing return, or the cooperation of the returnee. Labour market access is severely limited across the different types of authorisations granted. For irregular migrants who remain undetected, access to services and rights is even more limited than that granted to those with different types of authorisation, and is often provided on a discretionary basis. Labour market access is denied in all Member States.

- **The main service providers are national authorities and municipalities, with NGOs providing complementary and/or autonomous services. However, access to limited services may be constrained further by migrants' concerns about detection and apprehension.**

  The authorities providing social services and other rights to long-term irregular migrants, whether known or unknown to the authorities, are national authorities and municipalities, with NGOs sometimes collaborating as service providers. Municipalities and NGOs may also provide additional autonomous services to complement national services. In some Member States, organisations such as NGOs or religious organisations play a crucial role in providing complementary services or autonomous services to long-term irregular migrants. Local and regional authorities in most Member States are obliged to report the migration status of the beneficiaries of their services, while six Member States require cooperation with migration authorities on return in order to gain (full) access to services. Measures such as 'Clearing Houses' in some large cities in Germany (where irregular migrants can seek assistance without their data being passed to the

migration authorities) and schemes reported in several Member States to lift residence requirements and/or obligations to report the migration status of children to facilitate school entry suggest that migrant concerns about detection may further limit their access to services, even when available.

- **Cooperation mechanisms between authorities are mostly ad hoc, and do not focus on long-term irregular migrants.**

  Central policy aims to achieve the return of irregular migrants. However, where return is not implemented or there is no residence status, tensions may arise between central policy and the practicalities of accommodating irregular migrants and providing basic services when access to mainstream services is not legally possible. The study found that there is some cooperation between national, regional and local authorities on the situation of long-term irregular migrants, although it mainly relates to information exchange and general guidance. While there is some specific national support for regional and local authorities, none of those mechanisms were designed to address the issue of prolonged irregular stay. Participation in horizontal networks was also found to be absent in almost half of the Member States, and even where present, it tended to be fragmented within regions or between major/smaller cities. There are few examples of recent evaluations and studies conducted by the Member States, but one such study suggests that cooperation mechanisms at horizontal and vertical levels are potentially underutilised as a tool for dialogue on addressing the issue of long-term irregular migrants.

- **Good practices focused on facilitating return, reflecting the need to provide humane treatment for all persons, irrespective of their legal status.**

  Several good practices were reported by the Member States and Norway. These include facilitating dialogue between the authorities and irregular migrants on the options available to end their irregular stay (e.g. return). Other good practices include access to services such as healthcare when meeting certain obligations (e.g. staying in a state-run shelter) and allowing access to education for the children of irregular migrants. Overall, good practice in the Member States and Norway aimed to balance the need to ensure humane treatment for all people regardless of their legal situation with the implementation of policies to return irregular migrants.

- **The main response to end irregular stay is (voluntary) return, with regularisation addressed only marginally.**

  Across the EU Member States and Norway, (voluntary) return is considered the priority strategy to end long-term irregular stay, with four Member States choosing forced return. Member States encourage voluntary return through measures such as return counselling or specific return and reintegration packages (including monetary incentives, in some cases). These strategies target irregular migrants generally, rather than long-term irregular migrants specifically. Germany was the only Member State to report a specific measure for those in prolonged irregular stay. People who return to their country of origin through the Federal-Länder Return Assistance Programme and who have been tolerated in Germany for at least two years can receive one-off financial support.

  While return is a policy priority, regularisation is not. Even if Member States reported having regularisation policies in place, there are only few example of regularisations policies specifically targeting long-term irregular migrants.

- **The COVID-19 pandemic and the resulting urgency in ensuring universal access to medical care has highlighted the situation of migrants who cannot be returned or who remain undetected by the authorities. In a limited number of cases, labour market shortages in essential sectors due to border closures led to regularisation of workers with skills in shortage areas.**

  During the COVID-19 pandemic, the main discourse in the Member States and Norway on irregular migrants has related to the provision of services (chiefly healthcare), disruptions in return, and potential regularisation. Several Member States have allowed a time-limited extension to the provision of services or expanded the services available, most notably in healthcare, ensuring access to COVID-19 testing and medical treatment.

  In most cases, no specific return policies were developed during the pandemic. In practice, however, some Member States temporarily suspended voluntary and forced returns in line with the general restrictions on international travel. The impact of the pandemic and the pressure to fill labour market needs for essential workers has led to some initiatives to re-evaluate the skills of irregular migrants and to promote regularisation, for example in the agricultural sector.

  The majority of Member States faced cases where forced returns could not take place because of irregular migrants' refusal to undertake a PCR test or other medical examination required by their country of origin. The scale of this issue is limited, however. Should the numbers rise and countries of return continue to impose medical requirements, there is a legal vacuum in several Member States, which lack a legislative base for enabling forced PCR testing in cases of refusal. Working alternatives have been found in several Member States and could be expanded to prevent absconding or the suspension of forced return.

7. ANNEXES

ANNEX 1: ACCESS TO SERVICES FOR LONG-TERM IRREGULAR MIGRANTS WHO WERE UNKNOWN TO THE MIGRATION AUTHORITIES

Table A1 Access to rights granted to long-term irregularly staying migrants who were unknown to migration authorities (e.g. overstayers, irregular entry) compared to access to services granted to legal migrants

General	Mandatory	Discretionary	No
	Accommodation		
Accommodation (in general)	**Less:** EE, NL, PT **Same:** FR **More:**	**Less:** ES, IT, MT and NO **Same:** **More:**	AT, BE, BG, CY, CZ, DE,[260] IE,[261] HU, LT, LU, LV, PL, SI, SK, SE
Special accommodation facilities (shelter for victims of violence, children, etc.)	**Less:** **Same:** CY (minors receive accommodation from the social welfare services), EE, ES, FI, FR, IT, LU, NL, SI **More:**	**Less:** SK and NO **Same:** BE, CZ, SE **More:**	AT, BG, CY, DE, HU, IE, LT, LV, MT, PL
Other forms of accommodation/shelter or specialised centre	**Less: FR** **Same:** **More:**	**Less:** **Same:** CZ, PL (night shelters) **More:**	AT, BG, DE, CY, EE, IE, HU, IT, LT, LU, LV, MT, SE, SI, SK
	Healthcare		
Emergency healthcare	**Less:** FI, FR, T, MT, SI, **Same:** AT, BE, BG, CY, CZ, DE, EE, ES, HR, HU, IE, LT, LV, NL, PL, PT, SK and NO **More:**	**Less:** LU, SE **Same:** **More:**	
Basic medical care	**Less:** BE, FR, IT **Same:** ES, NL, SE (for children) **More:**	**Less:** DE,[262] FI, IE, LU, MT, SI and NO **Same:** **More:**	AT, BG, CY, EE, HU, LT, LV, PL, SK
Specialised care	**Less:** FR, IT, LT **Same:** ES, NL **More:**	**Less:** DE,[263] FI, IE, LU, MT and NO **Same:** BE **More:**	AT, BG, CY, EE, HU, LV, PL, SE, SI, SK
Other healthcare services	**Less:** SE (childbirth care, abortion, maternity care, prevention of spread of contagious diseases) **Same:** **More:**	**Less:** IT,MT (any other necessary healthcare service provided at the discretion of the Medical Officer), NL (no regular healthcare insurance but care providers can appeal for reimbursement) and NO (maternity care) **Same:** **More:**	AT, BE, BG, CY, EE, HU, LT, LU, LV, PL, SI, SK

260 NGOs sometimes provide accommodation in exceptional circumstances.
261 Access to homeless services may be granted at the local level in limited cases.
262 NGOs and some local authorities provide access to basic medical care.
263 NGOs sometimes provide access to specialised care.

General	Mandatory	Discretionary	No
Social assistance			
Social protection benefits[264]	**Less:** ES, FI **Same:** **More:**	**Less:** CZ, IE, NL, PT, SE **Same:** **More:**	AT, BE, BG, CY, DE, EE, FI, FR, HU, IT, LT, LU, LV, MT, NL, PL, SI, SK and NO
Employment			
Access to the labour market	**Less:** **Same:** **More:**	**Less:** **Same:** **More:**	AT, BE, BG, CY, CZ, DE, EE, ES, FR, HU, IE, IT, LT, LU, LV, NL, PL, PT, SE, SI, SK and NO
Education			
Access to compulsory education for long-term irregular migrant children	**Less:** DE[265] **Same:** AT, BE, CZ, EE, FI (basic education), ES, FR, HU, IE, IT, LT, LU, NL, PT, SE, SI and NO **More:** CY (specific programmes for third-country national children of migrant background)	**Less:** **Same:** FI (early childhood education and care), MT **More:**	BG, HU, LV, SK
Access to educational programmes and/or professional training for long-term irregularly staying adult migrants	**Less:** **Same:** ES **More:**	**Less:** BE, **Same:** CZ, FI, IE, PL **More:**	AT, BG, CY, DE, EE, FR, HU, IT, LT, LU, LV, MT, NL, PT, SE, SI, SK and NO
Legal assistance			
Access to legal aid or assistance services	**Less:** EE (legal aid from the state), FR, NL **Same:** AT, BG, CZ, ES, FI, MT (Criminal Court), NL PL, SK **More:** IT	**Less:** BE, DE[266] **Same:** CY (legal assistance provided by NGOs in cooperation with Ministry of the Interior), IE, MT (Civil Court, Court Tribunals), PT **More:**	CY (legal aid provided by the authorities), HU, LT, LU, LV, SE, SI and NO

264 'Core benefits', as defined the Qualification and Long-Term Residents Directives, is understood to cover income support, assistance in the case of illness or pregnancy, and parental assistance (at a minimum).
265 Access is available in all Länder, however it is only compulsory in some.
266 Legal aid provided by NGOs and sometimes in cooperation with local authorities.

ANNEX 2: ACCESS TO SERVICES FOR LONG-TERM IRREGULAR MIGRANTS ISSUED A RETURN DECISION, BY TYPE OF AUTHORISATION

Tables A2.1, A2.2 and A2.3 explain which services are mandatory and which discretionary. They also show whether and how the services for long-term irregular migrants differ to those for other migrants and natives (i.e. if long-term irregular staying migrants receive less, the same or more in terms of the respective services).

Table A4.1 presents access to rights granted to long-term irregularly staying migrants known to the authorities, regardless of type of authorisation.

Table A2.1 Access to rights granted to long-term irregularly staying migrants who have been issued a return decision but who cannot be returned, in Member States that do not differentiate based on type of authorisation: BE, CY, CZ, EE, ES, FI, FR, HR, HU, IE,[267] IT, LV, PL, SE[268] and NO

Type of service	Mandatory	Discretionary	Service not provided
Accommodation			
Accommodation (in general)	**Less:** EE, PL, SE (mandatory only for adults living with children under the age of 18 and unaccompanied minors) **Same:** FR, HU and NO **More:**	**Less:** CZ, ES, LV **Same:** **More:**	BE, CY, FI, HR, HU, IT, SE
Special accommodation facilities (shelter for victims of violence, children, etc.)	**Less:** PL **Same:** CY, EE, ES, FI, FR, HR, HU, IT and NO **More:**	**Less:** **Same:** BE, CZ, SE and NO **More:**	LV
Other forms of accommodation/shelter or specialised centre	**Less:** PL **Same:** FI, IE and NO **More:**	**Less:** LV **Same:** BE, CZ and NO **More:**	CY, EE, ES, FR, HR, HU, IT, SE
Healthcare			
Emergency healthcare	**Less:** EE, FI, FR, HR, PL **Same:** BE, CY, CZ, ES, HU, IE, IT, LV and NO **More:**	**Less:** SE **Same:** **More:**	
Basic medical care	**Less:** BE, EE (access to examination and necessary health services), FR, HR, HU, IT, PL and NO **Same:** ES, IE, SE (for children) **More:**	**Less:** FI, LV **Same:** CZ **More:**	CY
Specialised care	**Less:** FR, HU, IT, PL and NO **Same:** ES, IE **More:**	**Less:** EE, FI, HR, **Same:** BE, LV **More:**	CY, SE
Other healthcare services	**Less:** EE, PL, SE (childbirth care, abortion, maternity care, prevention of spread of contagious diseases) and NO **Same:** IE and NO **More:**	**Less:** **Same:** **More:**	BE, CY, CZ, ES, FI, FR, HR, HU
Social assistance			
Social protection benefits[269]	**Less:** ES, FI, IT, PL and NO **Same:** CZ (only for persons granted visa for a stay of over 90 days as special leave to stay who were also granted work permit) **More:**	**Less:** BE, EE, IE, SE **Same:** CZ (prolongation of visa only) **More:**	CY, FR, HR, HU, LV
Employment			
Access to the labour market	**Less:** **Same:** HU (permitted to stay), PL **More:**	**Less:** CZ **Same:** HU (return cannot be implemented), SE (only if already employed when the return decision enters into force and cooperating to return) **More:**	BE, CY, EE, FI, HR, IE, IT, LV, SE and NO

267 IE information refers to residents in reception centres only. No residence permit/tolerated stay, certificate of postponement or extension is issued.
268 Only for adults whose applications for asylum have been rejected and who are living with children under the age of 18, and unaccompanied minors.
269 'Core benefits', as defined the Qualification and Long-Term Residents Directives, is understood to cover income support, assistance in the case of illness or pregnancy, and parental assistance (at a minimum).

Type of service	Mandatory	Discretionary	Service not provided
	Education		
Access to compulsory education for long-term irregular migrant children	**Less:** **Same:** BE, CY, CZ, EE, ES, FI (basic education) FR, HR, HU, IE, IT, LV, PL, SE and NO **More:**	**Less:** **Same:** FI (early childhood education and care) **More:**	
Access to educational programmes and/or professional training for long-term irregularly staying adult migrants	**Same:** ES	**Less:** BE **Same:** CZ, FI, PL **More:**	CY, FI, FR, HR, HU, IE, LV, PL, SE and NO
	Legal assistance		
Access to legal aid or assistance services	**Less:** EE, ES, FR, HR, IT **Same:** BE, CZ, FI, HU, PL and NO **More:** CY (free legal aid specifically for irregularly staying migrants), LV	**Less:** IE and NO **Same:** CY (legal assistance provided by several NGOs in cooperation with Ministry of the Interior) **More:**	SE
	Other		
Other	**Less:** **Same:** HU (reception facilities provide additional services) **More:**	**Less:** **Same:** FI (municipalities provide targeted youth work) **More:**	BE, CY, EE, ES, FR, HR, IE, IT, LV, PL, SE and NO

Table A2.2. illustrates the access to rights granted to irregular migrants who received a **temporary residence permit**, **tolerated status or prolongation of their visa**.

Table A2.2 Access to rights granted to long-term irregularly staying migrants who have been issued a return decision, in Member States that tailor supports where a residence permit, tolerated status or extension of visa is issued: AT, DE, LT, MT, NL, SI, SK

General	- mandatory	- discretionary	No access
	Accommodation		
Accommodation (in general)	**Less:** **Same:** AT,[270] DE , NL **More:**	**Less:** LU **Same:** MT **More:**	LT, SI, SK
Special accommodation facilities (shelter for victims of violence, children, etc.)	**Less:** **Same:** AT,[271] DE, LT, NL, SI **More:**	**Less:** LU, SK (for specific categories of migrants with tolerated status) **Same:** **More:**	MT (social housing)
Other forms of accommodation/shelter or specialised centre	**Less:** **Same:** DE, SI (migrants with special needs or vulnerabilities may be placed in social housing) **More:**	**Less:** **Same:** **More:**	DE, LT, LU, MT, NL, SI, SK
	Healthcare		
Emergency healthcare	**Less:** LU, MT **Same:** AT, LT, NL, SI, SK **More:**	**Less:** **Same:** **More:**	DE
Basic medical care	**Less:** **Same:** AT, DE,[272] NL, SK (tolerated status under certain conditions) **More:**	**Less:** LU, MT **Same:** LT, SI **More:**	
Specialised care	**Less:** **Same:** AT, NL, DE[273] **More:**	**Less:** LU, MT **Same:** LT **More:**	SI

270 Due to their special situation, tolerated individuals receive benefits that include accommodation. As a result of the lack of a legal basis for any other category of migrants or citizens, no comparisons can be made.
271 Ibidem
272 Excluding chronic conditions.
273 Excluding chronic conditions.

General	- mandatory	- discretionary	No access
Other healthcare services	**Less:** **Same:** AT **More:**	**Less:** MT (any other necessary healthcare service provided at the discretion of the Medical Officer) **Same:** LT, SI (minors have the same access to paediatric services) **More:**	DE, LU, NL
Social assistance			
Social protection benefits[274]	**Less:** DE (individuals that cooperate with return process), LU, SK (tolerated status under certain conditions) **Same:** DE, (individuals that cooperate with return process), NL (in some cases), SI **More:**	**Less:** **Same:** **More:**	AT, LT, MT
Employment			
Access to the labour market	**Less: Same:** AT,[275] LT, NL (in some cases) **More:**	**Less:** DE , LU, MT, SK (tolerated stay) **Same:** **More:**	SI
Education			
Access to compulsory education for long-term irregular migrant children	**Less:** DE **Same:** AT, LT, LU, NL, SI, SK **More:**	**Less:** **Same:** MT **More:**	
Access to educational programmes and/or professional training for long-term irregularly staying adult migrants	**Less:** AT,[276] DE **Same:** **More:**	**Less:** LT, LU[277] **Same:** **More:**	MT, SI, SK
Legal assistance			
Access to legal aid or assistance services	**Less:** LU **Same:** AT, DE, MT (Criminal Court), NL, SK **More:**	**Less:** **Same:** LT, MT (Civil Court, Court Tribunals), SI **More:**	
Other			
Other	**Less:** **Same:** LT (refugee reception centres provide additional services) **More:**	**Less:** **Same:** **More:**	DE, MT, NL, SI, SK

274 'Core benefits', as defined the Qualification and Long-Term Residents Directives, is understood to cover income support, assistance in the case of illness or pregnancy, and parental assistance (at a minimum).

275 Additional requirements to be fulfilled for access are stipulated in the Act Governing the Employment of Foreign Nationals. Labour market access in Austria is dependent on holding a certain residence permit. Among regular migrants, some therefore have access to the labour market while others do not. Making a general comparison is therefore not possible.

276 Additional requirements to be fulfilled for access are stipulated in the Act Governing the Employment of Foreign Nationals.

277 If a person benefits from an administrative measure or if they continue to reside in a State structure, they may have access to different educational programmes (i.e. they can access the services provided by NGOs). Under certain circumstances, they can access language courses.

Table A2.3 presents the access to rights for irregular migrants who receive a written confirmation of postponement of return or for whom no return decision issued.

Table A2.3 Access to rights granted to long-term irregularly staying migrants who have been issued a return decision in Member States that tailor supports where a certification of postponement of return or extension of the period for voluntary return is issued: BG, LT, LU, NL, PT, SK

General	Yes - mandatory	Yes - discretionary	No
Accommodation			
Accommodation (in general)	**Less:** NL, PT **Same:** **More:**	**Less:** LU **Same:** **More:**	BG, LT, SK
Special accommodation facilities (shelter for victims of violence, children, etc.)	**Less:** **Same:** NL, PT **More:**	**Less:** LU **Same:** LT **More:**	BG, SK
Other forms of accommodation or shelter or specialised centre	**Less:** **Same:** **More:**	**Less:** **Same:** **More:**	BG, LT, LU, NL, PT, SK
Healthcare			
Emergency healthcare	**Less:** PT, LU 'postponement of removal'(the type of access depends on the fact if they are covered by voluntary insurance contributions or not) **Same:** BG, LT (postponement of removal), NL, SK **More:**	**Less:** LU 'extension of period of voluntary return' **Same:** **More:**	
Basic medical care	**Less:** PT **Same:** NL, SK (only in detention) **More:**	**Less:** LU **Same:** LT **More:**	BG, SK (authorisation to remain)
Specialised care	**Less:** **Same:** NL, SK (only in detention) **More:**	**Less:** LU **Same:** LT **More:**	BG, PT, SK (authorisation to remain)
Other healthcare services	**Less:** **Same:** **More:**	**Less:** SK (only in detention or within 60 days of release, following approval of Ministry of the Interior) **Same:** **More:**	BG, LT, LU, NL, PT, SK
Social assistance			
Social protection benefits[278]	**Less:** LU (postponement of removal) **Same:** **More:**	**Less:** SK (to some extent) **Same:** **More:**	BG, LT, LU (extension of voluntary return), NL, PT
Employment			
Access to the labour market	**Less:** **Same:** **More:**	**Less:** LU (postponement of removal) **Same:** BG **More:**	LT, LU (extension of voluntary return), NL, SK
Education			
Access to compulsory education for long-term irregular migrant children	**Less:** **Same:** PT, LT, LU, NL, SK **More:**	**Less:** **Same:** **More:**	BG
Access to educational programmes and/or professional training for long-term irregularly staying adult migrants	**Less:** **Same:** **More:**	**Less:** LU, SK (only in detention and only language courses) **Same:** **More:**	BG, LT, NL, PT
Legal assistance			
Access to legal aid or assistance services	**Less:** LU (postponement of removal), PT **Same:** BG, LT, NL, SK **More:**	**Less:** LU (extension of voluntary departure) **Same:** **More:**	
Other			
Other	**Less:** **Same:** **More:**	**Less:** SK **Same:** LT (refugee reception centres provide additional services) **More:**	BG, LU, NL, PT

278 'Core benefits', as defined the Qualification and Long-Term Residents Directives, is understood to cover income support, assistance in the case of illness or pregnancy, and parental assistance (at a minimum).

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Keeping in touch with the EMN

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Denmark https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/denmark_en
Estonia www.emn.ee
Finland www.emn.fi
France https://www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3/Le-reseau-europeen-des-migrations-REM
Germany www.emn-germany.de
Greece http://emn.immigration.gov.gr
Hungary www.emnhungary.hu
Ireland www.emn.ie
Italy www.emnitalyncp.it
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