

Chapter 2

Understanding Irregularity



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2.1 Introduction

Irregular migration is a multifaceted, dynamic phenomenon that is attracting disproportionate media and political attention since the early 2000s and has been at the forefront of the political debate in most of the European Union’s member states since the outbreak of the so-called ‘migration crisis’ of 2015. Indeed, the political attention paid to migration, and particularly irregular migration, is disproportionate compared to its volume. Migrants represent 3.3% of the world’s population (IOM 2017a from UNDESA 2017)—notably a rather small fraction—with migrants in an irregular situation representing between 15% and 20% of all migrants, according to recent estimates. This would thus mean approximately 1% of the total global population, or some 30–40 million individuals worldwide (UN OHCHR 2014; ILO 2015). Naturally, these are estimates and vary between continents and particularly between countries. As suggested by Koser (2007) and Fargues (2008), irregular migration is pervasive in some sectors and areas of Asia and Africa, reaching and exceeding 50% of the total; it is quite extensive in North America (according to Rosenblum and Ruiz Soto’s 2015 estimate there were 11 million irregular migrants in the United States in 2013) but quite limited in Europe, where the most recent comparable estimates (Kovacheva and Vogel 2009) put the number of irregular migrants between 1.9 and 3.8 million in 2008. Moreover, there are reasons to believe that irregular migration may have slowed during the economic and financial crisis

The opinions expressed in this chapter are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM).

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in Europe and the US, a trend that might have been reversed by the most recent developments (long-lasting conflicts, insecurity, environmental change, lack of employment, and booming young populations) generating new flows of refugees and other migrants (Carling 2018) from both Africa and Asia to Europe.

Discussing irregular migration in Europe entails dealing with different paths towards irregularity—legal entry and irregular stay, entry with fake documents, entry and abuse of the terms of stay, to name only a few. Each of these paths represents a varying percentage of the total phenomenon in each country. There are degrees, so to speak, and types of irregular migration, and dichotomous distinctions ought better to be avoided. We should also not neglect the fact that irregular migrants are people with lives and jobs who make contributions to their immediate and wider social environment: they work (usually without appropriate insurance or pay or both), rent accommodation, have families, and also have health and education needs. Thus, they can actively contribute to their communities despite their irregular status, posing multiple governance, political, and moral challenges at the local, national, and European levels.

While the EU Returns Directive (2008) unequivocally states that people in an irregular situation cannot reside in the European Union—they must either be returned to their country of origin/last country of transit or must regularise their situation—reality is far more complex. This is not only because return often proves too complicated to be implemented, but also because while national or EU laws may dictate the expulsion of a person, this person may have developed ties with the country of residence that cannot be severed so easily. Such ties may include children that go to school and whose lives will be disrupted, employers who value a hard-working and reliable employee, neighbours and friends—both natives and migrants—who do not care about the legal status of their friend. These contradictory situations, where national law comes up against social reality, are often left to the city or regional level to be solved by local authorities that seek to ensure that their communities are welcoming, humane, yet also ‘orderly’ places to live. The challenges here can be political and moral (transforming the violation of migration regulations in criminal offences) but also socio-economic (providing health and welfare to persons who cannot pay taxes because they work without documents; tolerating irregular situations; dealing with people who find themselves homeless because they cannot hold a stable job because of their undocumented status).

This book focuses primarily on irregular residents (and workers) rather than on irregular entrants. In other words, it does not focus on the border but rather on internal controls and related practices and policies, covering different perspectives on irregular stay and work such as the policy and public discourses on irregular migrants’ deservingness (Chauvin and Mascarenas, Chap. 3), or the human rights of all irregular migrants (O’Cinneide, Chap. 4) but also the special case of vulnerable groups (Chimienti and Solomos, Chap. 6). The book also looks at different aspects of irregular migrants’ lives, notably their employment (Triandafyllidou and Bartolini, Chap. 8), their interaction with welfare and other public services (Atac and Schütze, Chap. 7) or with local authorities (Spencer, Chap. 10). In other words,

the book brings together different types and dimensions of irregularity with different perspectives and facets of the lives of migrants in an irregular situation.

This chapter introduces the multifaceted dimensions of migrants' irregularity in Europe, with a view to providing the framework within which the other contributions to this volume are framed. The chapter is organised as follows. The next part provides a brief theoretical reflection on the dynamics of irregular migration, on why and how it happens, and presents the main related definitions of the topic. We pay special attention to the pathways into irregularity of residence and the connection between irregular migration and irregular work, since we consider employment an important factor in shaping migration decisions but also in perpetuating conditions of irregularity. We highlight why and how irregular migration needs to be conceptualised not as a black-and-white distinction between legal and illegal status but rather as a continuum of different statuses between regularity and irregularity. While rejecting the dichotomous distinction helps understanding how irregular migrants' lives are possible and sometimes tolerated in the local contexts, the analysis of EU-sponsored schemes for voluntary returns of migrants at risk of falling into irregularity and of befallen irregular migrants is presented in the third part of the chapter. The ways in which return is conceived and implemented in practice leave doubts as to the sustainability of such schemes—from both a moral and an economic point of view—and contribute to the understanding of the persistence of a certain amount of irregularity even when alternatives are formally available. The fourth part delves into the available data and estimates about the size of irregular migration by residence status in Europe, although the dearth of reliable and comparable sources across countries allows only a rough evaluation in terms of magnitude and trends. The final section summarises the main points, which are then further investigated in subsequent chapters.

2.2 A Dynamic and Multifaceted Account of Irregular Migration

As pointed out recently in a comprehensive study by de Haas et al. (2016), policy changes over the past 20 years have diversified immigration policies, making them more selective and differentiated towards specific groups. This is applied using multiple criteria, differentiating among high- and low-skilled workers, students, refugees, and family members. In this panorama, policies targeted specifically towards family migrants, irregular migrants and on border controls have been tightened, and prospective international migrants seeking better jobs and life opportunities face increasingly higher walls, particularly if they aim to emigrate to high-income countries in Europe, North America, and Australia. Nonetheless, the demand for cheap (irregular) labour in migrant-receiving countries, coupled with the needs generated by ageing populations in Europe and economic pressures of booming young

populations in origin countries, create a powerful pull/push mechanism that defies border controls, visa restrictions, and internal control measures.

Restrictive policies produce irregular residence status and irregular work (De Genova 2004; Vickstrom 2014) as they limit legal channels for labour migration, raise the requirements for family reunification or family formation, and make regularisation of status difficult to reach. One might argue that this is precisely the objective: to make the lives of irregular migrants impossible and cut them off from both jobs and welfare so that they leave or are discouraged from coming. However, as we know, migration is a phenomenon that can be governed yet not controlled. It is not a tap that can be opened and closed. There is no single national interest on migration as politicians often argue, but rather the different interests of employers, workers, trade unions, and various sections of the local population that may benefit or suffer from migration. Regularity or irregularity are not two opposites but rather two extremes on an array of intermediate statuses.

Patterns of irregularity are diverse and can include people who crossed a border unlawfully as well as visa over-stayers, children born to undocumented parents, migrants who lost their regular status because of unemployment or non-compliance with certain requirements, and last but not least, rejected asylum seekers. Irregularity is not entirely of the migrant's making: it may result from red tape or labour market dynamics that privilege irregular stay and irregular work. Researchers have coined the term 'befallen irregularity' (González Enríquez 2014; Vickstrom 2014) to specifically characterise the cases in which migrants in southern Europe fell to irregular status because of red tape around stay or work requirements that are impossible to fulfil. The term 'befallen irregularity' or 'semi-legality' (Kubal 2013) is also used to emphasise the fact that migrants, particularly but not exclusively in southern Europe, may alternate periods of regular stay and work with periods of irregular stay and irregular work and may live in conditions of partial regular status, e.g. with the right to stay although not to work or participate in a regularisation programme yet eventually fail to fulfil all the conditions to obtain a durable regular status. Additionally, research has shown that irregularity is functional to labour market conditions in specific sectors such as construction, domestic work, agriculture, and the food industry as irregular migrant workers provide a cheap and plentiful workforce (Jordan and Düvell 2002; Van der Leun and Kloosterman 2006; Cheliotis 2017). By creating conditions of regular stay and work that are impossible to meet, states indirectly support the interests of unscrupulous employers and create ethnic segmentation and hierarchies in the labour market that are functional to the national economy.

Irregular migrants are often not completely deprived of formal papers that testify to their presence in a given country. Recent studies (Vasta 2008; Chauvin and Garcés-Masareñas 2014) have shown that irregular migrants may possess legal documents such as social security numbers, work contracts, certificates of enrolment for their children in school, or identity cards issued by municipalities while still not having a regular stay permit. Such documents testify to the *de facto* inclusion of the migrant in the labour market and social life and are important in illustrating the dynamism and complexity of the irregular migration phenomenon as well as the fragmentation of its governance. A typical example of such fragmentation comes

from Spain where municipalities require all migrants to enrol with the local registry (*padrón*) even if they do not have regular permits of residence, which are issued by the national administration.

While regularisation of one's status is generally seen as the outcome of the application of the migrant and her/his family, Europe has experienced two large indirect regularisation waves through successive EU enlargements to the east, in 2004 and 2007. Citizens of 'new' member states who were irregularly residing and/or working in the 'old' member states became EU citizens, thus shifting to a regular stay with full socio-economic and labour rights. This of course has had important implications for all aspects of their lives and socio-economic and political inclusion in the countries of residence, even if it certainly did not automatically mean that they also acquired a job in the formal economy.

In addition, over the past two decades, a number of countries have repeatedly resorted to regularisation programs as a response to the presence of irregular migrants within their territories (Kraler 2009). Southern European countries have regularized the largest number of migrants with amnesty programs, but a sizeable number of migrants has also been regularized by Belgium and France and to a lesser extent Germany, the Netherlands, and Sweden (Baldwin-Edwards and Kraler 2009). While some 3.5 million migrants received a regular residence permit within the EU through regularizations (one of the most recent was carried out by Poland in 2013), in more recent years no single measure of that kind has been implemented by EU Member States, and the EU Return Directive explicitly restrains them from such measures if not in 'exceptional' circumstances.

2.2.1 Definitions of Irregularity

Although the concept of irregular migration is often treated as self-evident by media and political discourses, it deserves some careful reflection to avoid ambiguities and inconsistencies (Triandafyllidou 2010). A number of different terms and expressions are used for persons who enter a country illegally, overstay their terms of regular residence, live in a country without a residence permit, or break immigration rules in a way that makes them liable for expulsion. At the academic level—but also in the media and public discussion—terms like irregular, undocumented, or unauthorized have been preferred to the more discriminatory 'clandestine' or 'illegal' immigrants. Indeed, even though no human being is illegal (Ambrosini 2013), specific practices and behaviours in breach of the law can be referred as 'not legal' (for example, illegal border crossing).

For a complete and dynamic picture (Kovacheva and Vogel 2009), the distinction is made between irregular *residents*—foreigners without any legal residence status in the country and those who can be subject, if detected, to an order to leave or to an expulsion order (stocks)—and irregular *entrants* who cross an international border without the required valid documents (flows).

To clarify the various irregular statuses, below is a list of the different forms of irregular stay that migrants may experience which serves the purpose of illustrating the complexity of intersecting entry, stay and work related status:

- Persons with forged papers or persons with real papers but assuming false identities;
- Persons with seemingly legal temporary residence status. The so-called working tourists (entered on a tourist visa and working irregularly) are assumed to be the majority of irregular migrants in some countries. Migrants with a temporary conditional permit such as seasonal and contract workers may likewise be liable for expulsion if they break their contract terms (for example, because they work for a longer period than permitted);
- Persons who lose their residence status because they no longer satisfy the conditions that initially granted the permit (unemployed, no longer able to demonstrate employment relationship to obtain a work permit, student whose course of study has ended, expiration of family permit for young adults coming of age, etc.);
- Persons who never had a regular status because they entered illegally and couldn't find a way of regularizing their status;
- Persons entered illegally but are registered with public authorities. They have been denied protection after lodging an asylum application;
- Tolerated persons without a regular status, with or without a document to prove the suspension of their removal and thus their semi-legal residence status. This occurs when removal of the illegally-residing alien or return to the country of origin is not possible because there is no agreement with the country of origin or transit,¹ or it is not possible to establish the nationality of the migrant;
- Children born to parents who are unlawfully residing and hence without fully-documented status.

2.2.2 *Flows of Irregular Migrants*

Inflows and outflows of irregular migrants continuously contribute to the stock of irregular residents. Such flows may be demographic (births² and deaths), physical (actual entries or departures) or legal (most notably change of status from regular to irregular or vice versa). Geographical movements in and out the country may take place through unguarded border crossings or undetected unlawful entries at guarded border crossings. Unlawful entries may even take place under the control of the

¹ See the Regulation 1953 adopted by the European Parliament on 13 October 2016 regarding a uniform European travel document for the return of illegally staying third-country nationals (European travel document for return), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1953> (last accessed on 31 March 2019).

² Births into irregularity of children of undocumented migrants.

state in the sense that the irregular migrant may enter, be apprehended, receive a return decision asking her/him to leave the country (usually within 30 days) but still stay in that destination country.

The continuing refugee and migrant crisis, combined with the different and changing practices applied by European countries in terms of entry/transit of these flows, will likely result in an increase in the number of undocumented migrants in Europe as not all new arrivals are able or willing to lodge an asylum application and not all those who fall into irregularity can be effectively returned (EMN 2018).

Status-related flows concern people who fall into irregularity after a period of regular residence. The largest of such inflows is that of visa over-stayers: persons who enter with a tourist or other temporary visa and overstay the allowed period, possibly engaging into paid employment while their visa allows only for tourism/leisure activities. Status-related flows also include asylum seekers whose application has been definitively rejected or people whose permanent or temporary permit has been withdrawn as a consequence of a criminal offence. On the other hand, there are status-related outflows from irregular residence, ranging from regularization through marriage to collective amnesty programmes (Baldwin-Edwards and Kraler 2009), which are less frequent and smaller in size over the past years compared with the 1990s and early 2000s.

Third-country nationals may repeatedly shift from regular to irregular status and vice versa as, for instance, Vickstrom (2014) has shown for Senegalese migrants in France, Italy, and Spain. Migration policy reforms may create new status options or make established ones available for new groups of people. While widening legal options would represent a functional equivalent to regularisation for them, European migration regimes have become more restrictive and more fragmented over the past years. The increasing migrant and refugee flows between 2011 and 2018 put pressure on the EU system for governing the borders and managing asylum and irregular migration, creating temptations for member states to adopt individual rather than coordinated responses.

2.3 The Close Links Between Irregular Stay and Irregular Work

Irregular migration is to a large extent driven by labour market dynamics. This is an important issue that is often neglected in relevant political and policy discourses. For instance, the availability of jobs in agriculture or construction or the demand for live-in care workers can act as a pole of attraction for migrant workers who may decide to enter a country unlawfully or overstay their visa and violate its conditions because of the availability of work opportunities. The connection between prospective employer and employee takes place through relevant networks (for instance through referral from a migrant that already works in the same employment and recommends her/his friend, cousin, or co-villager) while these same networks may

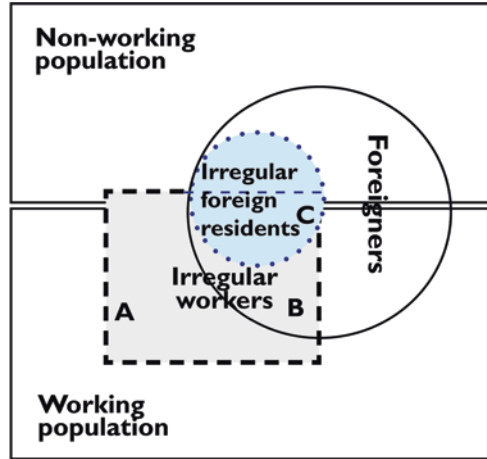
mitigate the costs of (irregular) migration by providing for accommodation and support to the undocumented newcomer. Such a plentiful and disposable labour force can be handy for unscrupulous employers or seasonal and temporary jobs or both, as they incur no additional costs of firing or of paying for welfare or unemployment benefits.

Obtaining and keeping or renewing one's legal status in the EU often depends upon employment (even for those who hold family related permits, which are linked to the work permit of the main breadwinner), particularly for people on relatively short-term stay permits. Legally residing third-country nationals should be able to have jobs with proper contracts which respect labour laws and include welfare insurance. However, in practice it is often the case that migrant workers are employed in irregular ways, i.e., without being declared or having a proper contract, or with a contract that specified conditions of work and salary that are not respected in reality. This is because migrants are often concentrated in labour market sectors where there is a high incidence of informal work such as construction for men or cleaning and caring work for women, or catering, tourism, and agriculture for either. In addition, those recently arrived have less bargaining power compared to settled migrants or natives as they may have only partial information about their rights, or may not yet speak the local language or may not know where to address themselves if they suffer an injustice. On top of this, they may be in absolute need for a job and a livelihood—even if this does not come with all the required conditions—as they may have no other source of income or any social support networks to rely on. The importance of trade unions and labour market inspectors for protecting all workers, but particularly migrant workers in this case, cannot be overestimated (see also Triandafyllidou and Bartolini, Chap. 8).

In addition to these socio-economic dynamics attracting unauthorised migrant workers to a country to take up informal work or pushing legally staying third-country nationals to accept irregular employment, it would be important to consider how socio-economic exclusion interacts with symbolic inclusion/exclusion. As Ambrosini (2016) argues, we could conceptualise two levels of authorisation: one is that of regular versus irregular migration status and the other is one of symbolic authorisation in the sense of recognition that the migrant is filling a job vacancy and performing a job that is socially valuable. Ambrosini points out that this distinction is also gendered, as usually the female care workers and cleaners are those represented positively and recognised as valuable, while narratives of 'clandestine' migrant workers almost always refer to male migrants. Ambrosini points out that asylum seekers, too, although temporarily authorised in the receiving country's territory while their application is processed, are stigmatised and excluded as non-socially valuable.

The realities of irregular residence and irregular work combine in multiple ways, preventing clear-cut definitions and requiring attention to single national practices and legal frameworks even within the European context. We should better speak of a continuum between regularity and irregularity, ranging from situations where one is a regular foreign resident allowed to work and with a formal employment contract to cases in which one is an irregular foreign resident with an undeclared job.

Fig. 2.1 Total resident population by work status, citizenship, and residence status. (Source: authors' compilation)



Moreover, one's status is not fixed. Changes in status (of residence, of permission to work, of employment conditions) are frequent and not necessarily in the direction of progressive improvement and stability (EMN 2016a). 'Spaces of' and 'pathways to' illegality (Ruhs and Anderson 2006; Düvell 2011) are thus found within the triangle of migration policies, labour market dynamics, and the individual choices of social actors. Different types and degrees of irregularity can be produced and negotiated among all actors involved and semi-compliance to (some) rules might be a frequent case (Ruhs and Anderson 2006).

Figure 2.1 summarizes the possible intersections of citizenship, residence, and work status: irregular employment can be found among the native labour force (A), foreigners with a regular residence status (B), and foreigners who are irregularly residing in the country (C). This book focuses on irregular foreign residents and delves deeper on the intersection between residence and work for foreigners in Chap. 8.

2.4 The Size of the Irregular Migrant Population in Europe

Figures on irregular migrants are difficult to compile, and most EU countries' national authorities do not provide any official estimate of the size of irregular foreign population in their territory. The last comprehensive effort for an EU-wide figure reflects numbers that are a decade old: the Clandestino Project (Kovacheva and Vogel 2009) estimated the number of irregular migrants as between 1.9 and 3.8 million, that is, between 7% and 12% of the total migrant presence in the EU-27³ in 2008.

³Croatia had not acceded at that time.

Since then, some updated estimates are available for a few countries: irregular migrant residents were estimated at between 180,000 and 520,000 in Germany in 2014 (Vogel 2015); at around 300,000 in Italy in 2013;⁴ at around one million in the UK in 2010;⁵ and at around 33,000 in Sweden in 2017.⁶ In general, most official and independent sources speak of an irregular migrant presence ranging from 6% to 10% of the total foreign resident population in Europe before the eruption of the so-called “migration crisis” in 2014–2015.

While a number of countries repeatedly resorted to regularisation programs until the late 2000s (Kraler 2009), no such measure has been applied in the last five years in Europe. Conversely, EU member states are taking major steps to combat irregular flows and stream-line the asylum-seeking process, even though increased securitization and criminalization could hardly stop new migration flows (de Haas 2011). In particular, there have been explicit efforts in border securitization, in extending the mandate of the European agencies Frontex and EASO, in enforcing the EURODAC system for coordinated collection of fingerprints of all asylum seekers, in suspending the Schengen Agreement (1985) under certain “emergency” situations, and in discussing amendments to the recently updated Dublin Regulation (1990, 2003, 2013) to boost returns, which the EU Return Directive foresees as the main tool for dealing with irregular migration (see below).

National authorities have not released any new estimate of irregular migrants in their respective countries in recent years. Eurostat provides harmonized data on enforcement of migration legislation for EU member states and some other European countries (Iceland, Norway, and Switzerland). These figures are illustrative of irregular migration flows rather than stocks of total presence at one point in time. However, they might be informative on the degree of law enforcement and cross-country differences in migration management, offering an overview on trends in the number of migrants found irregularly present in an EU country.

Third-country nationals who are irregularly present within the territory of a member state include those who entered avoiding controls or with false documents and those over-staying their authorized period: Germany, France, Greece, the UK, Spain and Italy registered three quarters (76%) of all detections of irregular migrants in the EU in 2017, but the phenomenon is found in most of Europe (see Fig. 2.2). Differences across countries are a mix of geographical and contextual circumstances with the disparate efforts and resources put into controls. Detections are always above 400,000 individuals between 2010 and 2013, but the descending trend reversed in 2014, with 625,000 individuals detected and the peak in 2015 with more than two million detections (911,000, or nearly half, in Greece). The issue of double-counting individuals who engage in multiple cross-border movements in figures

⁴ See ISMU Foundation: <http://www.ismu.org/irregolari-e-sbarchi-presenze/>

⁵ See Migration Watch UK: <https://www.migrationwatchuk.org/key-topics/illegal-immigration>

⁶ The Swedish Migration Agency (Migrationsverket) estimated that around 33,000 migrants who have been denied a residence permit will remain irregularly in Sweden between 2017 and 2019.

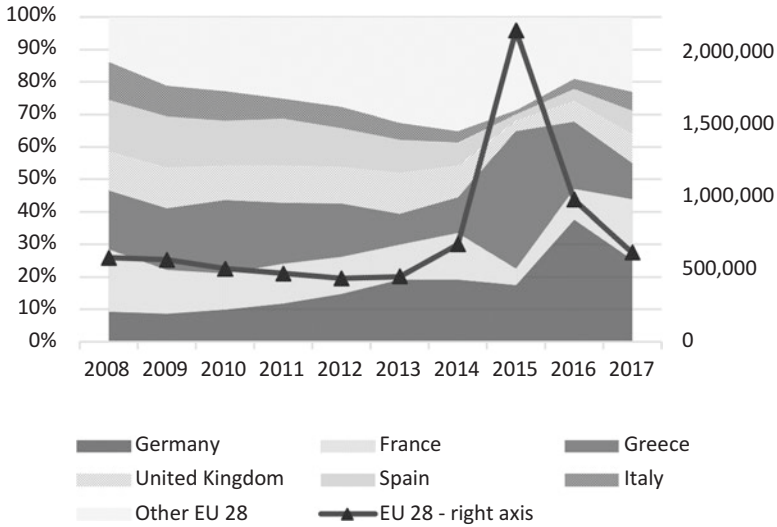


Fig. 2.2 Third country nationals found to be illegally present, % in top 6 EU countries and total EU-28, 2008–2017. (Source: Eurostat [migr_eipre], last checked on 31 March 2019)

released by Eurostat or Frontex has been underlined by many researchers.⁷ This was particularly evident between 2015 and 2016, when thousands of migrants passed from Turkey to Greece and then to central and northern Europe via the so-called Balkan Route, and were detected more than once by authorities.⁸ Regarding refusals of entry at borders, the biggest share is registered by Spain for all of the past ten years. Figure 2.3 shows the differences between detections, refusals of entry, orders to leave, and the share of individuals effectively returned from the EU as a whole. Some migrants might have changed their legal status, lodging a protection request after being detected as irregularly present or crossing. Of the roughly 500,000 annually ordered to leave since 2008, between 40% and 50% have returned to the origin country, while the rest is not registered as returned even though the return of irregular migrants—including rejected asylum seekers who no longer have the right to stay in the EU (see below)—is one pillar of the EU’s current policy on migration and asylum (EMN 2016b).⁹ These figures demonstrate the difficulties in law

⁷Frontex (the European Border and Coast Guard Agency) provides monthly series of detections of irregular border-crossing rather than the number of individuals; as the same person may cross an external border several times, it is not possible to obtain from these figures a precise number of persons entering the Schengen area irregularly.

⁸See <https://migrantsatsea.org/2015/10/14/clarification-of-frontex-data-on-persons-detected-at-eu-external-borders-includes-significant-double-counting/>

⁹In line with the Return Directive, member states are asked to first encourage rejected asylum seekers to return voluntarily, also through assistance programmes, before using forced return that includes coercive methods.

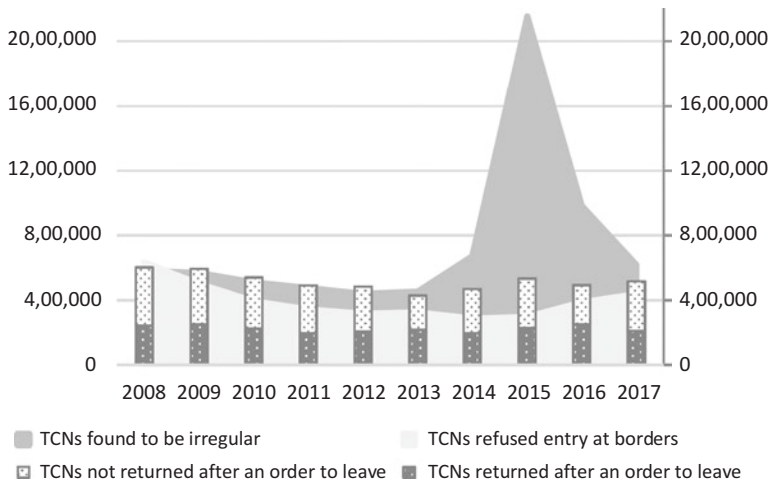


Fig. 2.3 Enforcement of migration legislation, EU-28 (current composition), 2008–2017. (Source: Eurostat [migr_eirfs, migr_eipre, migr_eiord, migr_eirtn], last checked 31 March 2019)

enforcement at national level and the existence of a certain degree of tolerance of irregular foreign residents even in countries where irregular residence is considered a crime.¹⁰

As the nature of new inflows is changing with the unstable contours of conflicts and crises in the Middle East, North Africa and Sub-Saharan Africa, data on detections of irregular migrants must be read in parallel with data on asylum applications, given that a large number of migrants entering the Schengen area irregularly since 2013–2014 have then applied for asylum within the EU.

First-time applications registered a surge in 2015 and 2016, when migrants could transit along the so-called Balkan route towards northern Europe with almost no impediment. At the same time, first-instance decisions on asylum applications have increased sensibly over the last few years. The share of rejections in first-instance decisions declined between 2011 and 2016 from 75% to 39%, to then recover at 55% in 2017 and 63% in 2018. The absolute number of rejections at first-instance has increased between 2014 and 2017, dropping in 2018 (Fig. 2.4). These migrants might appeal the first-instance decisions and still have the right to remain in the EU for the time of the judgement, but for all those whose application will be unsuccessful, the processing time of the asylum applications merely postpones a situation of irregularity.

¹⁰The share of forced returns of migrants following an order to leave varies considerably across member states. In 2017, Malta, Poland, Romania, and the Baltic countries registered shares higher than 90 per cent while Italy, France, Belgium, Czech Republic, and Portugal had shares lower than 20 per cent (Eurostat 2018). The difference is due to the different numbers of irregular migrants to be returned, its different composition in terms of nationalities, and different repatriation agreements with origin countries in place in each member state.

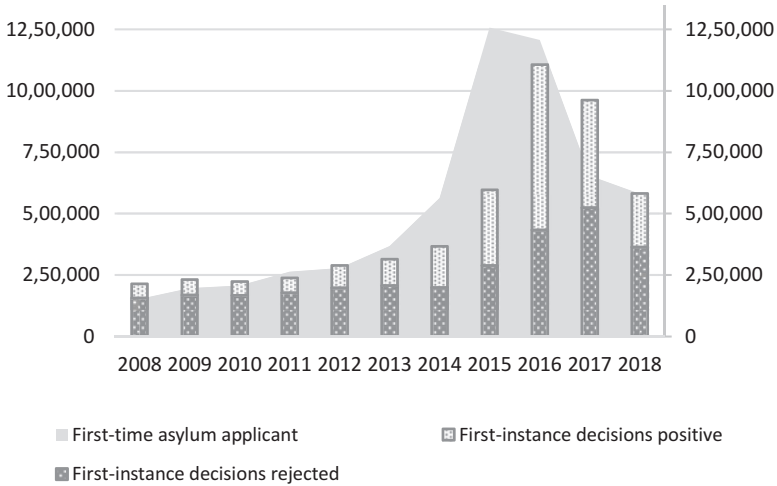


Fig. 2.4 Asylum applications and decisions in EU-28 (current composition), 2008–2018. (Source: Eurostat [migr_asyappctza, migr_asydcfsta], last checked 31 March 2019)

Top nationalities of migrants found irregularly present and of migrants who lodged an asylum application in the EU territory are almost the same. The mixed nature of new inflows, and of asylum applicants, is shown by the varieties of national groups involved. In 2018, most first-time asylum applications were by migrants from Syria, Afghanistan, Iraq, Pakistan, Iran, Nigeria (40% of the total) but also from Turkey, Venezuela, Albania, Georgia, Eritrea, Guinea, Bangladesh, and many other countries of Africa, Asia, and Latin America. As processing applications takes time, a non-negligible number of asylum seekers waits for months the end of the procedure, while others might remain in Europe notwithstanding the final rejection of their application.

While the number of rejections is quantified (although data on final decisions are not available for all EU countries), what happens after asylum seekers exit from the reception system at the end of the period established by national laws, remains unmapped. Both migrants who are recognized some form of international or national protection and rejected asylum seekers at some point are no longer eligible for receiving reception and assistance. These migrants, who might or might not have integrated into local societies through language, training courses, and possibly work experiences, exit the official accounting of people in need. Those without a regular permit to stay are likely to abscond and remain in the EU as irregulars (Tazzioli 2016; EMN 2018).

Outflows of irregular migrants, rather than through forced returns, might also come through regularizations, voluntary returns to origin, or re-emigration. There is evidence that some migrants living in countries most hard-hit by the economic crisis and with an irregular status or at risk of falling into irregularity have independently decided to return, especially those coming from non-turbulent areas (such as North Africa, eastern Europe or south Asia). Maroufof and Kouki (2017) have documented

Pakistanis returning from Greece in the post-2010 period, while Marouf (2017) has also studied Georgians returning from Greece. Gonzalez Enriquez (2013) and Devitt (2013) documented both patterns of informal circularity and return from Spain and Italy to Morocco. Maroukis and Gemi (2013) and Gemi (2017) also showed that Albanian migrants and their families opted for returning when rising unemployment in Greece put them at risk of losing their residence permits.

Economic migrants from middle-to-low income countries with improving prospects might have preferred to return than to stay irregularly in Europe during the economic crisis (this was also found in the US, see Warren 2016). Some countries might have progressively replaced irregular migrants residing for a number of years with newly-arrived irregular migrants, asylum seekers in the process, and rejected asylum seekers. In these cases, the irregular migrant population is likely to be changing in terms of nationality, skills, and gender composition, with outflows of Latin American and North African irregulars compensated by recent inflows of migrants with uncertain status arriving from crisis and war countries who are less likely to return even if they can't regularize their status.

Among those with undetermined or unclear status, we also need to consider the 'Dublin returns': individuals who applied for asylum in country different from that of first-entry in the EU and that could be sent back to this first country of entry to have her/his asylum claim assessed there. Between 6000 and 14,000 Dublin transfers per year have been registered in the period between 2008 and 2015, while about 22 thousand transfers were registered in both 2016 and 2017. Thus, around 125,000 migrants with a temporarily-suspended asylum seeker status have been transferred within the EU between 2008 and 2017. At the same time, the number of requests for Dublin transfers have been far higher, reaching a peak of more than 140,000 in 2017 alone (Fig. 2.5).

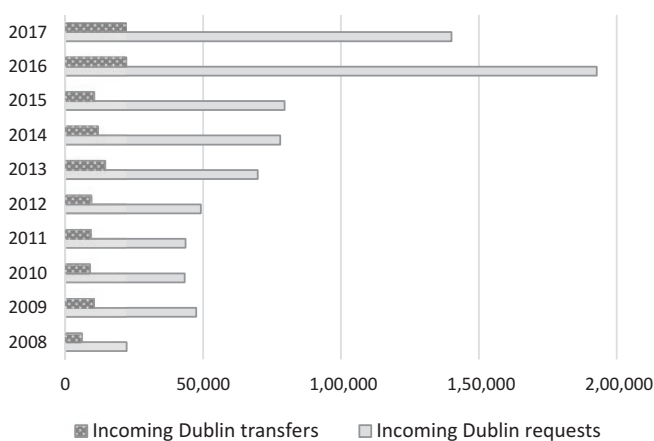


Fig. 2.5 Total incoming requests and Dublin transfers, EU-28 (current composition), 2008–2017. (Source: Eurostat [migr_dubri, migr_dubti], last checked on 31 March 2019)

In a recent report, Fratzke (2015) convincingly argued that the Dublin system has not been efficient in terms of redistributing asylum responsibility, even if it has drawn a clear line as to which state is responsible. Also, the administrative workload involved in processing these Dublin transfers is significant compared to the result achieved. Negotiations for a new reform of both the Common European Asylum System and the Dublin Regulation were ongoing over 2018 but did not reach any tangible results before European elections of May 2019. At the same time, the EU Relocation programme which was meant to redistribute some of the migrants entered in Greece and Italy since 2015, closed, after some extensions, in March 2018, with low numbers compared to the initial goals. Whether member states will successfully engage in a permanent redistribution mechanism to overcome the shortfalls descending from the principle of “first entry” in EU territory remains to be seen.

2.5 Remaining or Returning?

Having outlined the challenges of estimating irregular foreign residents, a word is in order about why people stay despite being undocumented and facing significant hardship. Why do so many people stay without documents despite the risks descending from their precarious legal status? And why is it that return schemes do not work as foreseen by policy instruments?

In his seminal paper on returns, Cassarino (2004) spoke about the migration cycle in the biography of the migrant and of migrants’ preparedness for returning to the country of origin. He considered return sustainable when the migration cycle is complete, and that assessment of favourable return conditions is both objective and subjective in the eyes of the migrant (see also Cassarino (2016: 217)). It is clear that when return follows apprehension and irregular residence and informal work, the migration cycle not only is incomplete, but has also been abruptly interrupted. Indeed, irregular migrants need the income they are making at destination, no matter how meagre this may be,¹¹ to both survive and send back to their families in the country of origin. They are also aware that economic prospects back home are dire and the reasons that made them emigrate in the first place are still valid, whether predominantly related to unemployment and poverty or to insecurity and violence (see also Marouf 2017; Schuster 2011; Dimitriadi 2017).

Assisted Voluntary Return (AVR) schemes shaped by the EU Returns Directive are normally available for migrants at risk of irregularity and for those who are

¹¹ Sexual and labour exploitation of irregular migrants are well documented all across Europe (see for example IOM Italy 2017). Moreover, there seems to be a proliferation of begging activities in many Italian cities, especially involving West African migrants. Migrants make very little money, which nevertheless is sent back home or used to access some services outside the reception centres where they are hosted: <http://www.ontheroadonlus.it/blog/lo-sfruttamento-dei-migranti-nel-lavoro-nellaccattonaggio-forzato/>

already in an irregular situation. In those cases in which migrants are offered the possibility to voluntarily return after having been apprehended, they are likely to be unprepared for returning and might face important vulnerabilities in the origin country (Schuster and Majidi 2013; Koser and Kuschminder 2015). Although AVR has become a very popular concept and practice among policymakers, scholars (Cassarino 2016; Kuschminder 2017) point to the gap between the presumed success of the return policies and the actual reality of return and reintegration, particularly in those cases when AVR is offered to avoid forced return. Indeed, some research (Webber 2011; Kuschminder 2017) suggests that it would be better to speak of 'Assisted' but not 'Voluntary' Return when migrants take part in one of the several EU-funded return schemes as a means of last resort, as they have already fallen into irregularity and with no possibility of regularizing their status.

These schemes are normally implemented through EU funds and efforts to monitor them mainly focus on the legal procedures at the national level (EMN 2018), but there is barely any evaluation of results in terms of sustainability of the reintegration at origin for returnees, in particular when it comes to return of irregular migrants (Kuschminder 2017).

Scholars and main implementing organizations have begun studying the implications of dealing with assisted and voluntary returns in terms of returnees' psychosocial wellbeing as well as of reintegration policies and practices of receiving countries at the national and local levels (Vandevooort 2016; Koch 2014; IOM 2015). IOM, one of the main implementers of AVRR (Assisted Voluntary Return and Reintegration) programmes, provided assistance to more than 72,000 migrants in 2017 and to 61,300 migrants in 2018 globally. Most of these returns took place from a country of the European Economic Area: around 70% of returns assisted in 2017 and 55% of returns assisted in 2018 were from a European country, with Germany being the top host country of departure with around 29,600 departures in 2017 and almost 16,000 in 2018.¹² About 63% of IOM's assisted returnees in 2017 received some sort of in-cash or in-kind reintegration assistance once back in the origin country. The success of such schemes could be measured along different lines, in terms of sustainability for returned migrants and their origin communities. IOM seems to have recently developed up-to-date sustainability of reintegration indicators to monitor the economic, social and psychosocial dimension of reintegration (IOM 2017b), prompted by emerging researcher highlighting the necessity of monitoring tools able to adapt its programmes to changing conditions on the ground and to migrants' differentiated abilities and resources (Majidi 2017).

Indeed, the reintegration phase in the country of origin can be challenging for returnees for many reasons, including the shame of a failed migration project; the lack of resources; the fact that the migrant is returned to the capital city of their country rather than their own place of origin; their lack of a viable life perspective, if that existed in any case in the first place; or, the lack of viable development policies in the country of origin. Such situations are often further complicated by

¹² See: <https://www.iom.int/assisted-voluntary-return-and-reintegration>

bureaucratic hurdles and complex mobility patterns. The case of Afghan nationals is one of the most studied. Many Afghans have been returned to Kabul from northern European countries over the past years, after having seen their asylum applications rejected and after having spent long periods, even years, in other transit countries (Pakistan, Iran, Turkey, Greece). Cases have been reported of Afghan returnees with no documentation to prove their nationality and their region of origin, as they only spent their early childhood in the country. In these cases, returnees need to travel to their city of origin (which may be located in an unsafe area) and find two community elders who will testify to their identity. The returnee must then go back to Kabul and apply for Afghan identity papers. This is a very challenging process that frequently is not completed, leading to a marginalisation, which might ultimately push returnees to seek to re-emigrate (for further discussion, see McAuliffe 2016). The lack of alternatives is an important perspective to keep in mind when considering the fate of rejected asylum seekers or irregular migrants who persist and stay at the destination country despite the hardship they face.

2.6 Concluding Remarks

Media and policy debates tend to represent irregular migration and unauthorised stay in a country as an unambiguous concept and a clear legal category. It appears logically straightforward that we should be able to tell whether a person is authorised to stay and work in a given country. However, a closer look at the complexities of entry, stay, prolongation, and abuse of terms of stay shows that this is by no means such a black-and-white distinction. Firstly, there are different ‘degrees’ and ‘types’ of irregularity. Secondly, there are real physical and administrative flows between the two categories. Thirdly, there are also significant grey zones of people with unclear or temporary status. Thus, we may have people who enter legally but overstay, people whose entry was unauthorised but who then regularised their status, and people who enter legally and stay regularly but lose their regular status at some point because they could not renew their permits.

These categories are thus highly dynamic and fluid; both depend on the actions of the people concerned but also on the state bureaucracies and changing migration policies. As we have shown in this chapter, the legal status of migrants and their families depends largely on policies of fencing and gatekeeping (Triandafyllidou and Ambrosini 2011) that states apply to keep foreigners out, but also on labour market dynamics and employment situations. Thus, a regular contract for employment is a ticket to legal status; however, migrant workers often cannot simply secure such a contract or proof of employment and insurance because they work in sectors where informality is high (such as agriculture, domestic work, or construction) and they have little means to pressurise their employers in order to have their rights secured.

The following chapters will further investigate how employment and residence policies for foreign citizens are more and more inserted in discourses on

deservingness to protection for the most vulnerable but also to basic human and labour rights for all migrants, including those in an irregular position. The practises through which migrants' agency meets local communities, creating multiple interstices (Fontanari and Ambrosini 2018) to regularize one's status in terms of residence and work should also be considered, especially when it comes to situations in which multiple layers of jurisdiction are involved. This is, for example, the case of those migrants who engage in secondary movements within Europe with multiple registrations within the Dublin and Schengen areas. While the most visible expressions of unclear and fluid statuses are represented by the informal shelters that grow from time to time at specific border areas and in big cities (from Ventimiglia to Calais, from Oranienplatz in Berlin to Lachapelle in Paris, from Baobab in Rome to Velika Kladuša in Bosnia and Herzegovina), the option of return to the origin country for those who can't regularly stay is also not a straightforward process, particularly if it comes after an apprehension.

The failure or abrupt interruption of the migration project is likely to lead to unsustainable return, especially if it is a last resort to avoid forced removal. Voluntary return programs strive to guarantee assistance and support that could lead to effective and sustainable reintegration at origin, as the lack of long-term prospects at origin might indeed result in re-emigration of returnees.

As shown in these pages, the multifaced dimensions of irregular migration in Europe are particularly complex. The remainder of the book will deepen the analysis, trying to unpack concepts, dynamics, and policy categories to provide a representation that is more adequate and adherent to the situation on the ground.

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