

Executive Summary Report

Exploration and Analysis of Further Public and Civic Alternatives to RR: Case Studies at Multiple Levels

Case Study: EU Level Initiatives

Authors: Svenja Schurade, Sabine Hess, Institute for Cultural Anthropology / European Ethnology, Georg August University Göttingen, Germany

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1. Introduction

Based on desk research of 14 EU policy documents and four interviews with Members of the European Parliament (MEPs) and their staff as well as European wide civil society networks, our research reviews existing EU-level initiatives arguing either for and against alternatives to RR policy. Our research shows that a debate on regularisation has been ongoing within the EU since the early 2000s, focusing on the pros and cons of related policies. During the 2010s, EU legislation refrained from harmonising regularisation at the supranational level in falling under the competences of the individual member states – a fact not called into question by the Return Regulation which has now been adopted.

2. Debate on a common regularisation policy in EUrope

A debate on the advantages and disadvantages of regularisation policies has been taking place on the level of the EU for some time now. The European Commission, European Council and Parliamentary Assembly started to discuss regularisation programmes as part of a harmonised EU strategy in early 2000. A Spanish large-scale regularisation programme of the same year triggered a debate coming to frame regularisation negatively, namely as a pull factor in migration. In 2006, as part of its initiative “Policy Priorities in the Fight against Illegal Immigration” (COM (2006) 402 Final), the Commission proposed financing a study on the practices and impacts of regularisation mechanisms. In 2007, the Parliamentary Assembly published the Greenway Report (Doc. 11350, 2007), Resolution 1568 (Parliamentary Assembly, 2007b) and Recommendation 1807 (Parliamentary Assembly, 2007a), demanding further research and the establishment of common guidelines and recommendations for member states regarding the organisation of regularisation programmes across the EU. Based on these documents, the EU financed the study “REGINE: Regularisations in Europe: Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU” (Baldwin-Edwards & Kraler, 2009), which compared individual member states’ different regularisation programmes. The study highlights the positive effects of regularisation on reducing the number of irregular migrants as well as combatting irregularities in the labour market; pull effects are not evident, meanwhile.

Until today, the pros and cons of regularisation continue to come up in EU policy debates. A main counterargument to regularisation is the pull-factor narrative (Parliamentary Assembly, 2007a, 2007b; Ramboll, 2013). Most recently, the Legal Migration Fitness Check (Migration and Home Affairs, 2019) – a comprehensive

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evaluation conducted by the European Commission to assess whether existing legislation is effective, coherent and relevant for achieving its intended policy objectives – confirmed the centrality of return policies as a migration governance instrument and declared existing rules fully satisfactory; in contrast to the REGINE study, the Fitness Check states that debates on the rights of irregular migrants might send the wrong policy signal and encourage further irregular migration.

However, several EU policy papers do discuss the positive effects to regularisation. They understand regularisation programmes as multifaceted policy instruments addressing and able to provide solutions to the most often precarious situations undocumented migrants find themselves in, by helping to uphold human rights and dignity, strengthen labour protections and mitigate exploitation in the informal economy (including tax evasion), increase social security and, lastly, improve awareness and control over the undocumented population. They thus reinforce the rule of law, enhance integration and reduce delinquency by, inter alia, improving regulated forms of circular migration (Directive 2008/115/EC, 2008; Doc. 11350, 2007; Parliamentary Assembly, 2007a, 2007b; Ramboll, 2013).

In the years which followed regularisation was, though, only marginally addressed at the EU level and no initiative for a common EU regularisation mechanism adopted. Nevertheless, the Pact on Asylum and Migration (2008) does mention case-by-case regularisations within member states. The Stockholm Programme (2010) regulates the exchange of information between the latter on nationally implemented regularisation programmes. In 2013, a study by the management consulting group Ramboll welcomed the introduction of common regularisation policies, but recommended linking residence permits to the assessment of cooperation. Even if no common regularisation policy has been adopted by the EU and its institutions, a general framework for regularisation does still exist in the EU.

3. Framework on Regularisation within the EU

The central legal basis for national regularisation programmes was established in 2008 with Article 6 (4) of the Return Directive, which has been lately transformed into a new Return Regulation (EU Return Regulation, 2026).

The old directive essentially acknowledged regularisation on the level of individual member states:

> *Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on*

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> *their territory. In that event no return decision shall be issued. Where a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.*

Furthermore, in its case law, the European Court of Human Rights began to advocate an interpretation of Article 8 of the European Convention on Human Rights (ECHR, 1950). Here, the right to respect for private and family life may preclude expulsion. In the 2006 Üner vs. Netherlands ruling (Application No. 46410/99, 2006), the court argued that the social ties of migrants in host countries must be respected, and expelling a migrant who has settled in a given country would violate this fundamental right (Savino, 2016).

The legal scholar Hinterberger (2019) argues that a duty to regularise migrants under specific conditions exists in the EU. Based on the combination of Articles 6 (4), 8 and 9 of the Return Directive, he states that member states must grant a residence permit if return is not possible. Beyond the possibility to grant a residence permit instead of implementing the return decision, Article 8 of the directive demands an effective return policy and Article 9 introduces conditions under which removal needs to be postponed. Hinterberger posits that this creates two conditions under which the duty to regularize exists: first, if the return "would violate the principle of non-refoulement" and, second, if a "migrant is permanently non-removable due to de facto reasons" (ibid., p. 746).

The newly adopted EU Return Regulation does not fundamentally change the Bloc's position on regularisation; the principle of *non-refoulment* is still in place and the new regulation does not restrict the ability of individual member states to issue residence permits on humanitarian and other grounds, as this remains a matter of national competence. Without explicitly mentioning regularisation, the new regulation's Article 15a defines conditions for postponing removal based on legal remedies and the principle of *non-refoulment*.

> *15a) Nothing in this regulation should preclude Member States from providing other grounds for postponing removal for specific groups in national law.*

The regulation's Article 14 also defines the conditions under which removal should be postponed:

> *1. Removal pursuant to Article 12 shall be postponed in the following circumstances:*
>
> *a. when it would violate the principle of non-refoulement; or*

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b. when and for as long as suspension of the return decision in accordance with Article 28 is in place. [Suspension of removal pending the submission of legal remedies]

2. Removal pursuant to Article 12 may be postponed for an appropriate period, taking into account the specific circumstances of the individual case.

3. If the third-country national requests postponement of removal, the request shall be duly substantiated.

As can be seen, EU member states have the competence and, under specific circumstances, the duty to regularise the stay of third-country nationals. However, this also renders member states as well as municipalities the most important implementing actors when it comes to regularisation.

4. Regularisation from below: Relevance of member states and the municipalities

While the EU has adopted a new Return Regulation to increase returns, member states still have options to regularise migrants themselves. For example, Spain initiated a new process of regularisation for approximately one million migrants in April 2026. In the early 2000s, it was the southern European countries who, through large-scale regularisation programmes, were able to spark the discussions on regularisation mentioned above within the EU. In Greece, for example, the regularisation process governed by Law 2910/2001 granted legal residency status to approximately 400,000 people in 2001, while Law 3386/2005, enacted in 2004, legalised the status of approximately 200,000 individuals. Spain regularised the status of approximately 460,000 people between 2000 and 2001 and another approximately 577,000 individuals in 2005 (Baumer, 2010).

As our interviewees made clear, it is precisely member states and their local authorities force to bear the brunt of irregularisation amid the existence of a one-sided migration policy which does not solve this situation by focusing only on enforcing returns. MORE research has confirmed that current policies do not necessarily result in higher return rates; instead, they lead to exclusion, precarity, destitution and endanger public security. Given that municipalities have their own rationales and foci – as dominated by matters of public health, crime prevention, social cohesion and public security –, they have an interest in combatting homelessness and destitution to increase public security in the streets via the regularisation of undocumented migrants (Delvino, 2017; Spencer, 2020).

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5. Conclusion

Our research on alternatives to RR policies at the level of the EU reveals how the debate within its institutions has stalled over the limiting of the discussion to the question only of whether regularisation constitutes a pull factor. A strict return policy has gained the upper hand. Nevertheless, a closer look reveals that there is still a broader interest within the EU, among member states and especially on the part of local authorities and civil society actors to find alternatives which prioritise regularisation and social cohesion over return enforcement. Amid a legal framework giving member states the authority to launch regularisation programmes, they, the municipalities and civil society are hence the key actors when it comes to implementation.

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