

ICMPD

**International Centre for
Migration Policy Development**

The Regularisation of Irregular Migrants and its Impact

Agenda

Aims of the session

What is regularisation?

Policy Context

Impact 1: Pull effects

Impact 2: Employment effects

Other impacts?

Aims of the session

- Provide an understanding of regularisation
- Discuss the (EU) policy background
- Examine patterns of and trends in regularisation, and
- Examine impacts of regularisation, focusing on two examples
 - » Pull effects of regularisation, and
 - » Labour market impacts

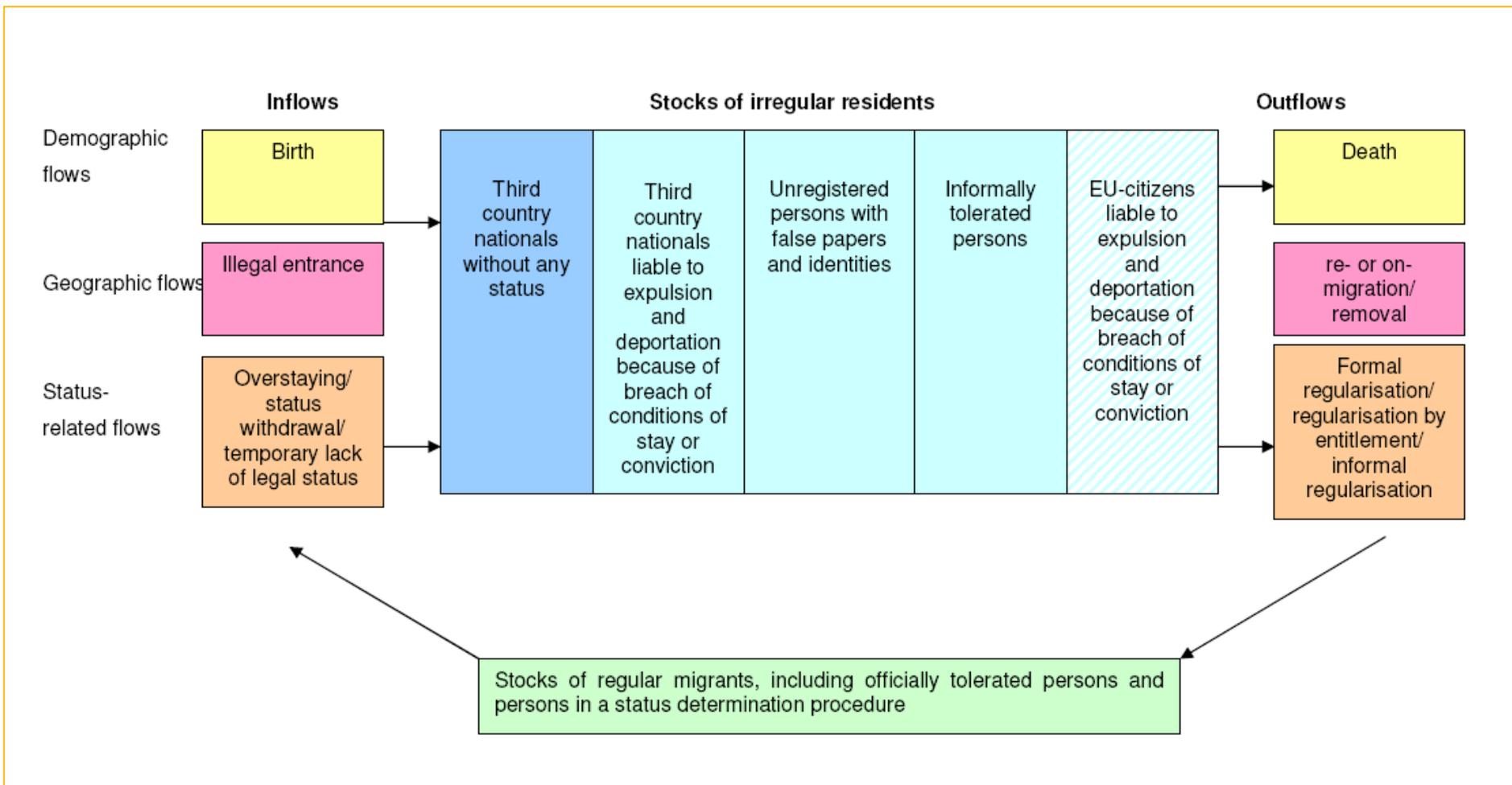
Background

- Based on several studies, in particular
 - » REGINE (2007-2009):
 - Martin Baldwin-Edwards & Albert Kraler (eds.) (2009) : REGINE. Regularisations in Europe. Amsterdam: Pallas Publications
 - » REGANE (2012-2013)
 - Albert Kraler et al. (2014): Final Report - Feasibility Study on the Labour Market Trajectories of Regularised Immigrants within the European Union (REGANE I). Vienna: ICMPD

What is regularisation?

- Discussion
 - » What is regularisation?
 - How would you define regularisation?
 - Are there other legal mechanisms with the same effects?

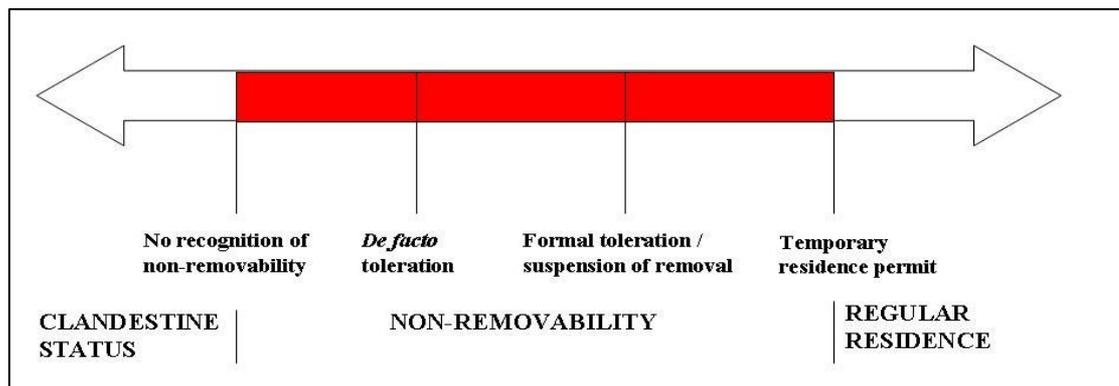
 - » Compare the figure taken from the Clandestino project („Inflows, stocks of irregular residents, and outflows“).
 - Who are irregular migrants according to this figure?
 - Who, according to your knowledge would be the target groups of regularisation among the categories distinguished amongst the stocks of irregular residents?
 - Are there categories not mentioned?
 - How do stocks relate to inflows?



Source: Dita Vogel and Albert Kraler (eds.) (2008) Report on Methodological Issues. Clandestino Project Report. <http://irregular-migration.net//index.php?id=187>

What is regularisation?

- Regularisation = Award of legal status to migrant in an irregular situation
 - » But what exactly is an irregular situation?



Source: FRA (2011): Fundamental rights of migrants in an irregular situation in the European Union

What is regularisation?

- Regularisation reflects the complexity of migrant irregularity
- Regularisation can be defined as (intentional) status adjustment from an irregular to a regular status.
 - » A migrant in an irregular situation (i.e. who does „not or no longer fulfills the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State”, Article 3(2) of Return Directive) may also access a legal status through other channels:
 - International protection, marriage to EU citizen, informal regularisations, fraud...
 - » In practice regularisation is often not about completely undocumented irregular migrants, but also about irregular migrants known to authorities.

Policy Context

- Regularisation became contested policy issue on the EU level in mid-2000s, in the context of large scale regularisation programmes conducted mainly in Southern EU MS.

- European Pact on Immigration and Asylum (2008)
 - » Clear preference for return as the main policy option: “Illegal immigrants on Member States’ territory must leave that territory”
 - » But vague regarding the permissibility of regularisation: [The European Council agrees] “to use only case-by-case regularisation rather than generalised regularisation, under national law, for humanitarian and economic reasons” (p.7)

- Stockholm Programme
 - » Similarly expresses a strong preference of return, with return policy being framed as a cornerstone of migration management.
 - » Mentions regularisation only in passing (exchange of information)

Policy context (cont.)

- Return Directive
 - » permits EU MS to regularise persons issued a return decision:
 - » article 6(4): „Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory.”

- Regularisations follow different rationales and framed in various terms
 - » Employment (economic) vs. humanitarian logic, or simple adjustment in the context of immigration reform
 - » Other terms: Amnesty, legalisation, non-harmonised protection status, categorial protection, complementary protection, humanitarian stay
 - Regularisations may thus not be immediately visible as „regularisation“

Policy Context (cont.)

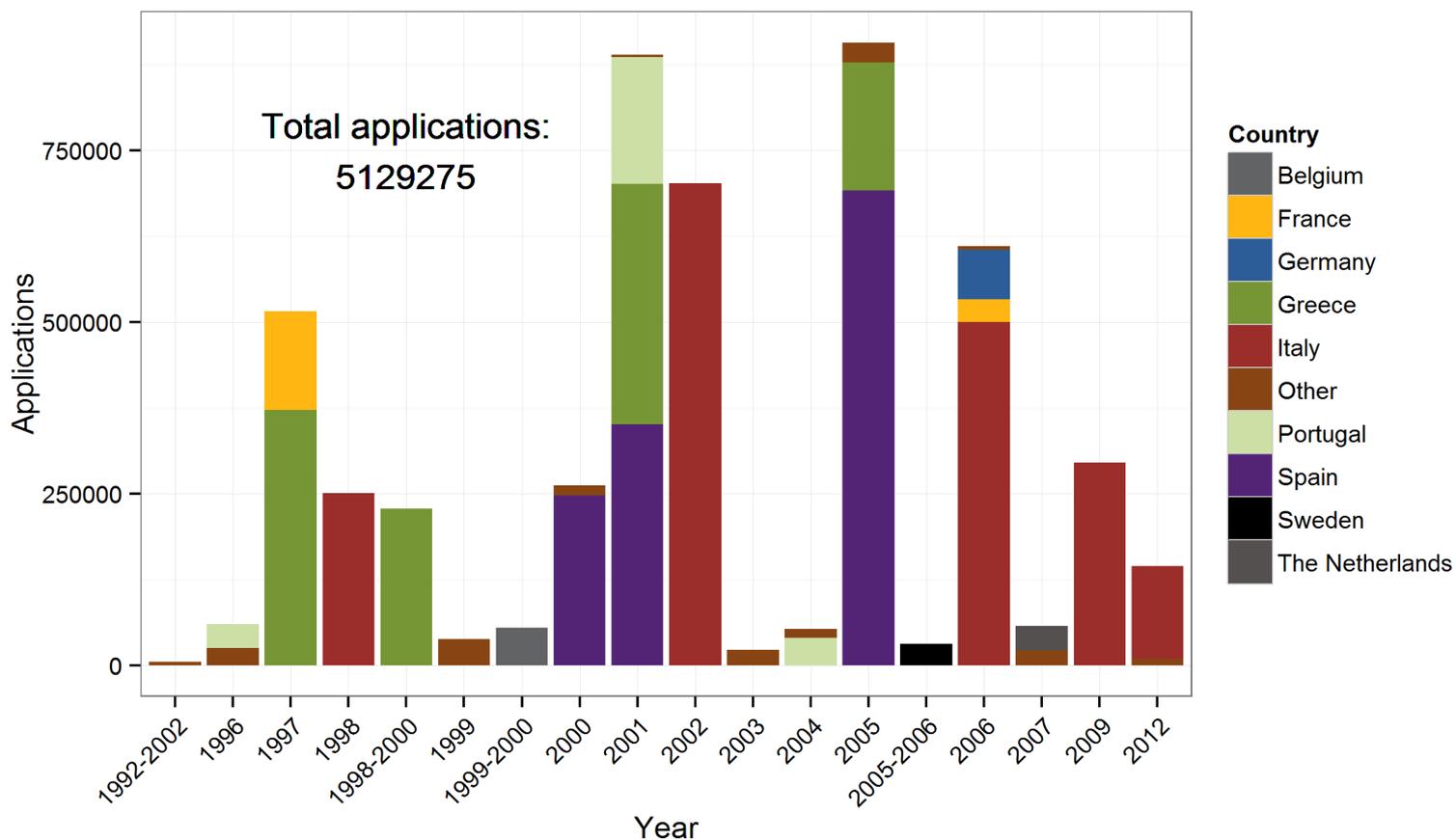
- Enforcement gap
 - » in EU average, only 50 per cent of return decisions were enforced (2005-2007), even lower (about 40%) in the period 2008-2010, but great diversity and unreliable data
 - » Substantial number of ,non-removed' persons
 - » Matter of fact: there are protracted situations of status irregularity in the EU
 - Clandestine migrants in the narrow sense
 - Persons known to authorities and in principle liable to removable
 - » Regularisation could provide an answer

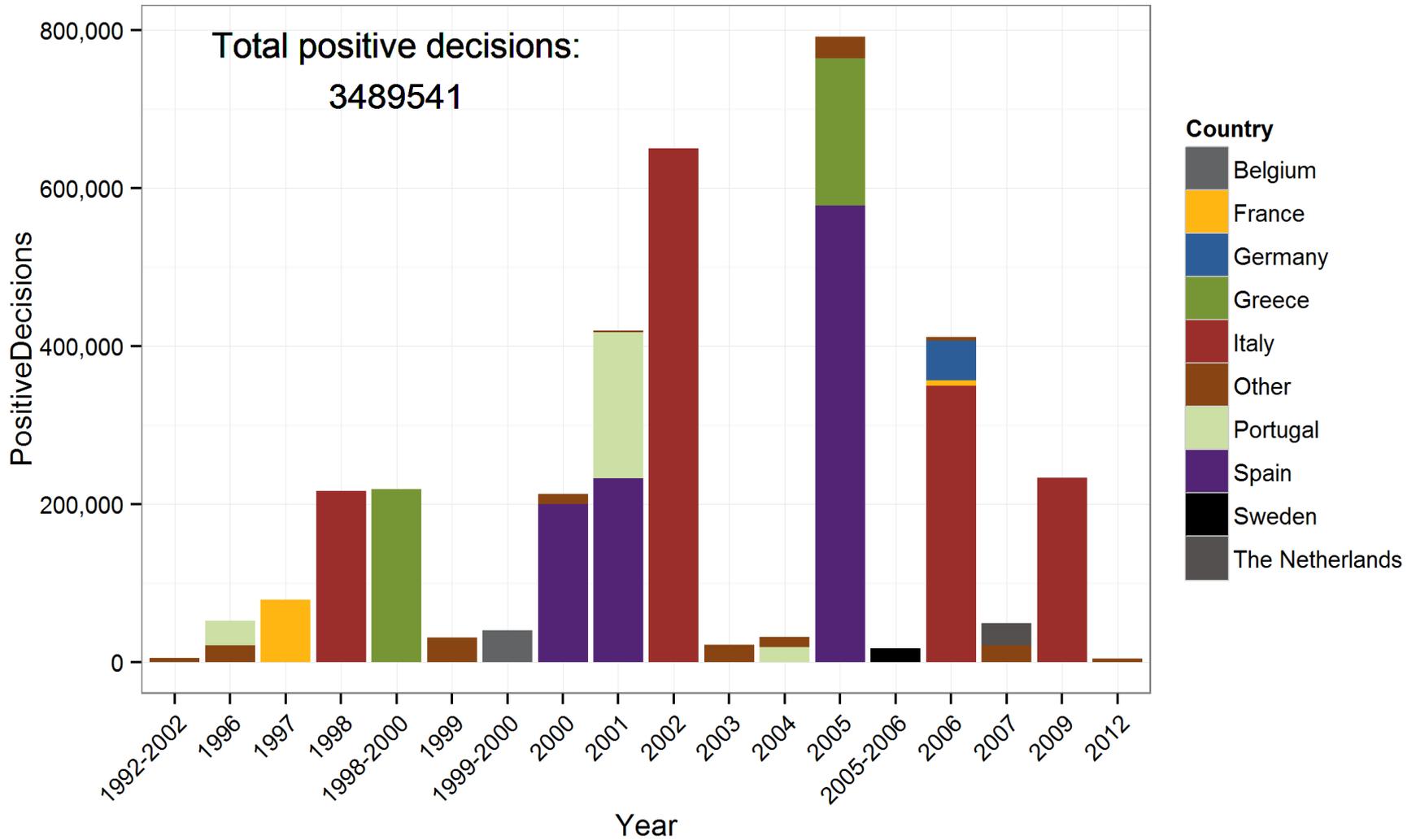
Regularisation patterns

- ❑ Both time limited programmes and permanent mechanism
 - ❑ Proliferation of permanent mechanism since the late 1990s, notably for humanitarian reasons
 - ❑ Overlap with refugee protection
- ❑ The majority of persons regularised regularised in the framework of programmes
 - ❑ But no systematic data collection on permanent regularisation mechanism shift towards mechanisms to avoid public (or international) attention
 - ❑ Cf. EMN Study on Non-Harmonised Protection Statuses (2010)

- ❑ Vast majority of persons regularised since 1973 regularised in Southern EU MS
- ❑ Peak of number of regularisations in the period 2001 and 2005
- ❑ Almost all EU MS practice some form of status adjustments, whether as a fully fledged regularisation or as a more restricted award of a residence permit
 - ❑ Purpose: Re-regulation, notably large-scale regularisations targeting undocumented migrants in general
 - ❑ Humanitarian/ human rights based considerations

Regularisation programmes





Regularisation mechanisms

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

What do we know about impacts?

- Only limited evidence on impacts of regularisation
 - » Opinion vis-à-vis regularisation often based on anecdotal evidence or principled standpoints.
 - » Two examples: pull effects and employment

Impacts 1: pull effects

- Pull effect has been used as argument against regularisation, alongside other, often principled arguments:
 - » Regularisation is not compatible with the legal order (unity of the law)
 - » Rewards unlawful behaviour and undermines rule of law
 - » Is not sustainable (lapse back into irregularity)
 - » Rewards „queue-jumping“ (unequal treatment of third-country nationals)

- Key question: Does regularisation undermine the management of migration by providing incentives for prospective migrants to seek entry despite lacking the right to entry and stay?

Policy fears: three examples

Austria

derStandard.at > Panorama >> Abschiebungen


 Wien 6°

International Inland Wirtschaft Web Sport Panorama Etat Kultur Wissenschaft Gesundheit Bildung
 Österreich-Chronik Wien Welt-Chronik Gesellschaft Tiere Umwelt Wetter

Bleiberecht: Fekter fürchtet den Staubsaugereffekt

MARIA STERKL   
 2. November 2010, 19:21

Fast alle alten EU-Staaten haben langansässigen Zugewanderten ein Bleiberecht im großen Stil gewährt - Doch Österreich bleibt hart

Komani, Zogaj, Durmisi, Gjoni, Karrica und viele andere - jedes Bundesland Österreichs hatte schon seinen Medienwirbel wegen drohender Abschiebungen gut integrierter Familien. Und jedes Mal zeigte sich dasselbe Phänomen: Während für die Behörden kein Zweifel bestand, dass die Betroffenen auszuweisen wären, so war dem sozialen Umfeld der Familien bis zuletzt meist gar nicht bewusst, dass es sich um sogenannte „Illegale“ handelte. Die



„ (...) legalisation measures constitute an Enormous pull factor (...). Such a signal should be avoided. Because of the pull effect regularisations also are contrary to the objective of orderly migration and cannot be an adequate response to migration pressures.“

„In addition, due to family reunification, the actual number of foreign nationals to be admitted and integrated will be considerably higher, although this is difficult to estimate.“
 (Response AT, 2008, REGINE Study)



THEMEN **M** **THEMEN** ENTER PROGRAMM DEUTSCH LERNEN

DEUTSCHLAND WELT WIRTSCHAFT KULTUR WISSEN & UMWELT SPORT

THEMEN / DEUTSCHLAND

POLITIK

Legalisierungspolitik in Spanien in der Kritik

Vom Schattendasein in die Legalität: 700.000 "Illegale" in Spanien haben jetzt die Chance auf Bleiberecht. Das Legalisierungsprogramm hat aber auch Kritiker. Ist es großzügig oder kurzfristig?



690.679 bislang illegale Einwanderer sind der Einladung der Regierung Zapatero gefolgt und haben bis zum Stichtag am 7. Mai einen Antrag auf Aufenthaltsgenehmigung gestellt. Die spanische Regierung wertet das als "großen Erfolg": In keinem

„Germany has consistently opposed mass legalisations because of the associated risk of a pull effect for illegal migration“

Polen
sog. Regularisierungstourismus
Personen mit unerlaubtem Aufenthalt können ihren Aufenthalt zwischen dem 02.01. und 02.07.2012 unter

BAMF, Entscheiderbrief 2012

„Mass legalisations constitute a pull factor not only for legalising state. Moreover, because of the abolition of internal border controls [in the Schengen zone] and the European rules on permanent residence rights [for third country nationals] [regularised] persons are factually and legally able to move to Member States.“
(Response DE, 2008, REGINE Study).



„Mr.GOHMERT: In talking—I’m sure you still talk to folks that work to defend our borders. Have you been hearing from them what we’ve been reading and hearing anecdotally, that after talk of legalization for people in the United States, that there’s been a dramatic uptick in people coming across the border illegally? Mr. AGUILAR. Yes, sir. And we’ve experienced that in the past. That is just a part of every time that we talk about some kind of immigration reform, especially when there are still questions out there, there is some kind of increase.”

S.744 and the Immigration Reform and Control Act of 1986: Lessons learned or mistakes

repeated?: Hearing before the Committee on the Judiciary, House of Representatives, 2013

Fear of pull effect not new

- Raised as potential issue when regularisation became first debated on the international level in the 1970s and 1980s. .
- W.R. Bohning (1983): Regularizing the irregular immigrant

„As the announcement of a regularisation might encourage additional irregular inflows, the cut-off point of eligibility must be fixed in such a way as to minimise that danger.“(International Migration, 17, 2 (1983))

One or multiple pull-effects?

- Argument of pull-effect is actually quite multifaceted
 - » Regularisation leads to more (future) irregular immigration
 - » Expectation of a future regularisation programme leads to more irregular immigration
 - » Regularisation leads to „regularisation tourism“ from other countries.
 - » Regularisation may lead to secondary migration of regularised migrants in the EU (long term residence directive). .
 - » Regularisation has multiplier effects on future migration (family reunification)

Implications

- Different responses to different types of pull effects
 - » Pull effect on future regularisation
 - Permanent mechanisms instead of rare large-scale regularisation campaigns. (e.g. „Arraigo“in Spain)
 - » Regularisation tourism
 - Eligibility conditions are usually effective in excluding „tourist“ applicants from programmes (cf. Poland 2012). .
 - Temporary re-installment of border controls (e.g. Belgium 2000)
 - » Secondary migration of regularised migrants
 - If regularised migrants have permanent residence no different to other migrants (reason of admission becomes obsolete over time)
 - (Limited) Intra-EU mobility of legally staying TCN in principle desired (if currently negligible)

Evidence for pull effects - authorities

- Evidence gathered in regularisation procedures
 - » Poland 2012: Altogether some 10,000 applications, amongst reject applications many applications from „regularisation tourists“, notably Pakistani and Vietnamese.

- Indications and suspicion of EU MS.
 - » Allegedly higher numbers of transiting Ukrainians and Romanians during 2005 Spanish regularisation.
 - » According to a Memo of the Belgian Mol rumours of an imminent regularisation led to a massive drop in voluntary returns in 2006/2007 (Cf.REGINE study)
 - Not a pull-effect, but a „perseverance effect“

→ Generally only anecdotal evidence.No evidence for effects on future irregular inflows

Is it possible to identify pull effects?

- Cannot be immediately „seen“
 - » Increase of irregular entries after regularisation may have a variety of reasons.

- Need of theory driven explanation:
 - » Which other factors determine migration?
 - Range of explanations put forward by migration theory
 - » What is the importance of regularisation amongst other factors?
 - » How robust and reliable are underlying data?
 - Individual level data (collected through surveys) more powerful than aggregate data.

Scientific evidence on pull effects

- Bulk of the few existing studies focus on US /IRCA 1986 (Immigration Reform and Control Act)
 - » Woodrow and Passel (1990), Orrenius und Zavodny (2003, 2004): little effects of IRCA.
 - Massive investment into border control in connection with IRCA

- Only two quantitative studies in the EU context
 - » Wehinger 2010 (PhD., Univ. Trier), article based on Phd in IJBM 2014
 - Correlation of CIREFI data (apprehensions), existence of regularisation and a number of macro-level indicators for other factors
 - Result: regularisation has a limited positive effect on future irregular migration; the main drivers are economic.
 - Methodology of the study problematic – apprehension figures not a valid indicator for entries.

Scientific evidence on pull effects

- Baizan/Gonzalez-Ferrer 2010
 - » Study of Senegalese in ES, FR, IT.
 - » Based on a quantitative survey (MAFE Survey)
 - » Results: Regularisation increases probability of migration in the case of Spain, but not in the case of France or Italy.
 - Problematic: How generalizable are results beyond the specific group and the specific historical context?

- Generally:
 - » Little evidence of a pull effect of regularisations.
 - » Logical reasoning would suggest that pull effect is limited
 - Regularisations usually involve longer waiting periods and thus would require longer term, strategic planning.
 - Regularisations usually go along with at times demanding conditions, so are not a safe bet (cf. Rejection rates).

Impact 2: on employment

Impact or Selection effect?

- Regularisations have an important employment dimension
 - » Core rationale of certain regularisation measures
 - E.g. Spanish regularisation of 2005, domestic worker regularisations 2009 and 2012 in Italy, possibility for skilled migrants with particular qualifications to acquire a legal status (France)
 - » Important consideration also in the case of humanitarian regularisations
 - Criterion „integration“ (humanitarian regularisations based on article 8)
 - German „Bleiberechtsregelung“ (programme on the right to stay for long term „tolerated“ persons (persons under a „Duldung“))
- Cf. Literature on the „Economics of citizenship“

Policy contradictions

- Regularisation falls into two main policy domains
 - » Policies on irregular migration
 - Focused on prevention and enforcement
 - » Integration policies
 - Regularisation = a policy legally integrating non-members into an at least partial membership status
 - » Net result: contradictory policies
 - Exclusion from formal labour market core feature
 - At the same time often a requirement for obtaining a legal status

- Key question: What is the impact of legal inclusion on regularised migrants?

REGANE Study – selected results

Regularisation and employment

- » Overall Employment outcomes
 - Mixed outcomes in terms of employment participation
 - Access to formal jobs increases labour market opportunities
 - Higher salaries
 - Social insurance
 - Less vulnerable to exploitation
 - Holidays
 - Some cannot escape informal employment
 - Importance of training and qualification
- » Importance of employment for obtaining regular residence
- » Trade off between having employment and quality of employment moderated by welfare entitlements

REGANE Study – selected results

» Country variations reflecting different policy approaches

- SE, NL regularisation very much restricted measures in the case of strong humanitarian reasons (notably illness), asylum-regularisation nexus
- France: Regularisation in the context of „migration choisie“ , humanitarian reasons mainly relating to family issues, with large room for administrative discretion;
- Germany: largely focused on in principle employable persons whose removal was suspended for more than 6/8 years (certain humanitarian rationale behind it); strong link to asylum system
- Spain : no asylum – regularisation nexus, successive large scale regularisation programmes focused on undocumented migrants (programmes 2000, 2001) and workers in particular (2005, araigo laboral since 2006), social (humanitarian) consideration (largely equivalent to family issues) combined with employability in the araigo social
- Italy: large-scale programme 2002, programmes focused on domestic workers 2009 and 2012; use of quota system to regularise migrants (notably 2006)
- Poland: „tabula rasa“ approach, regularisation open for most, but challenge informal employment

» Different labour market structures and impact of economic crisis

Experiencing regularisation: Social membership & employment

Irregular Situation

- Irregular situation as constraint for employment opportunities
- However, opportunity structures differ in selected countries
- Simultaneously, employment as prerequisite for membership

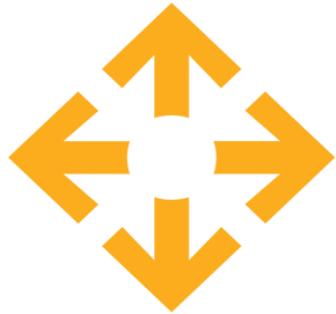
Regular Situation

- Regularisation experienced as empowering (though not uniquely)
- Perception of increase of choice, make future plans, quit jobs, re-trainings (and stalemate)
- Experience of choice linked with overall structures (e.g. overall economic situation, legal regime regulating access to labour market, overall share of informal employment)
- Implications on other aspects of life (e.g. housing, reunification, overall wellbeing)

Other impacts?

I told a friend that my life, our life here does not start until you have your documentation. Imagine all the chaos we've been through and just a damn card makes all your doors open (Regularised migrant from El Salvador, Spain)

Legal status acts as constraint on agency but analysis of impact of legal status has to go beyond immediate range of rights conferred upon individuals and look into social inequality (macro) and different forms of vulnerability and exclusion of individuals(micro)



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