



European
Commission

Practical Measures to Reduce Irregular Migration

*produced by the
European Migration Network*

October 2012





Practical Measures to Reduce Irregular Migration

*produced by the
European Migration Network*

October 2012

This Synthesis Report summarises the main findings of the National Reports for the EMN Study on *Practical Measures to Reduce Irregular Migration* undertaken by EMN National Contact Points from 22 Member States (Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom) plus Norway.

The overall purpose of this study was to provide an overview of existing approaches, mechanisms and measures to reduce irregular migration in the EU and Norway. In particular, its aim is to inform policymakers and practitioners about the practical measures that have proved effective and proportionate in addressing the issue of irregular migration and to contextualise national policies and practices within the overall EU policy framework. A further aim was to present the available statistics and the methods of data collection used by Member States to estimate the irregular migrant population.

The Synthesis Report, as well as the National Reports upon which this synthesis is based, are available from <http://www.emn.europa.eu> under "EMN Studies." Several of the National Reports are available in the Member States' national language, as well as in English.

**Europe Direct is a service to help you find answers
to your questions about the European Union**

Freephone number (*):

00 800 6 7 8 9 10 11

(*) Certain mobile telephone operators do not allow access to 00 800 numbers or these calls may be billed.

More information on the European Union is available on the Internet (<http://europa.eu>).
Cataloguing data can be found at the end of this publication.

Luxembourg: Publications Office of the European Union, 2013

ISBN 978-92-79-27532-6

doi:10.2837/803

© European Union, 2013

Reproduction is authorised provided the source is acknowledged.

Printed in Belgium

PRINTED ON WHITE CHLORINE-FREE PAPER

Contents

Disclaimer	6
Explanatory note	6
Executive summary	7
Key Findings	7
Factual Findings	8
1. Introduction	13
1.1 Definitions and Terminology used in the Study	14
1.2 Methodology	15
2. EU policy on reducing irregular migration	17
3. National policies on and legal frameworks for reducing irregular migration	18
3.1 Institutional Framework	20
3.2 National Legislative Frameworks	21
3.3 Recent legislative changes and their drivers	23
4. Pre-entry measures	26
4.1 Information and awareness-raising campaigns	27
4.2 Pre-entry controls and checks prior to arrival at the national border	28
4.3 Role of carriers	29
4.4 Immigration Liaison Officers (ILOs)	30
4.5 Identification of irregular migration routes	31
4.6 (Other) Intelligence-gathering and Risk Assessment	31
4.7 Training and other Support Activities	32
4.8 Co-operation with third countries	33
5. Entry measures	35
5.1 Refusals of entry at the borders: a statistical overview	36
5.2 Border surveillance through use of technology	39
5.3 Measures to improve border-management and checking of passengers	40
5.4 Measures to detect and prevent use of false documents for entry	41
5.5 Cross-border cooperation	41
5.6 Cooperation with Frontex	42
6. Measures taken during stay in the Member State	43
6.1 Estimates of stock of irregular migrants	44
6.2 Identification of irregular migrants on the territory	45
6.2.1 <i>Apprehensions of third-country nationals found to be irregularly present</i>	46
6.3 Measures to prevent employment of irregular migrants	48
6.3.1 <i>Workplace inspections</i>	48
6.3.2 <i>Sanctioning of employers</i>	51
6.3.3 <i>Other practical measure to reduce employment of irregular migrants</i>	52
6.4 Detection and prevention of fraudulent means of staying on the Member State territory ...	53
6.5 Other practical measures undertaken	55
7. Pathways out of irregularity	56
7.1 Obtaining legal status (regularisation)	56
7.2 Return	58

7.2.1 The impact of the Return Directive : (Directive 2008/115/EC)	59
7.2.2 Costs of return / removal	61
7.2.3 Situations in which removal is difficult and practical responses to this	62
8. EU and European cooperation	65
8.1 The impact of Schengen	66
8.2 The impact of the EU Solidarity Funds (RF and EBF)	66
8.2.1 European Return Fund (RF)	67
8.2.2 External Border Fund	68
8.3 Cooperation with EU Agencies or international organisations	69
8.4 Cooperation between Member States	71
8.5 Legislative cooperation with third countries (including EU Readmission Agreements)	72
8.5.1 EU Readmission Agreements	72
8.5.2 Bilateral readmission agreements	73
9. Concluding remarks	76
9.1 Statistical Analysis	76
9.2 The effectiveness of practical measures	77
9.3 The impact of EU legislation	79
9.4 Barriers to effectiveness	80
9.5 Lessons learnt	80
9.6 Additional measures identified	81
ANNEX I: Definitions related to irregular migration	82
ANNEX II: Recent and ongoing studies on irregular migration	85
ANNEX III: EU actions to reduce irregular migration and list of relevant EU legislation	91
ANNEX IV: Overview of national legislation	99
ANNEX V: Penalties imposed in Member States in relation to irregular migration	102
ANNEX VI: Examples of Projects funded by the European Return Fund and the External Borders Fund in (Member) States (as provided in national reports)	111
ANNEX VII: Additional statistics on irregular migration	114
ANNEX VIII: Bibliography	133

LIST OF TABLES

Table 6.1: Estimates of stock of irregular migrants in (Member) States	44
Table 6.2: Third-country nationals detected as irregularly employed (irregular migrants in employment and legal migrants working outside of conditions of residence) in Member States ...	49
Table 8.1: European Networks and forums addressing irregular migration	70
Table 8.2: EU Readmission Agreements and Member States with implementing protocols	73
Table 8.3: Bilateral readmission agreements between (Member) States and Third Countries	74
Table V.1: Table of penalties per Member State	105
Table VII.1: Third-country nationals refused entry at the EU's external borders, 20 main countries of citizenship, 2008-2011	117
Table VII.2: Number of third-country nationals found to be irregularly present in EU Member States in 2011 as a proportion of the total population	118

Table VII.3: Third-country nationals found to be irregularly present, 20 main countries of citizenship, 2008-2011	120
Table VII.4: Third-country nationals ordered to leave, 20 main countries of citizenship, 2008-2011	126
Table VII.5: Third-country nationals returned to a third country, 20 main countries of citizenship, 2008-2011	128

LIST OF FIGURES

Figure 5.1: Third-country nationals refused entry at the external borders, by (Member) States, 2011	37
Figure 5.2: Third-country nationals refused entry at the external borders, all (Member) States, total and by reason, 2008-2011	38
Figure 6.1: Third-country nationals found to be irregularly present, by (Member) State, 2011 ...	46
Figure 6.2: Third-country nationals found to be irregularly present, ten main (Member) States, in 1 000s, 2008-2011	47
Figure VII.1: Third-country nationals refused entry at the external borders, by (Member) States, total and by reason, 2010	114
Figure VII.2: Third-country nationals refused entry at the external borders, ten main (Member) States, in 1 000s, 2008-2011	115
Figure VII.3: Third-country nationals refused entry at the external borders, all (Member) States, in 1 000s, by type of border, 2008-2011	116
Figure VII.4: Third-country nationals found to be irregularly present, all (Member) States, total, by sex and age, 2008-2011	119
Figure VII.5: Third-country nationals ordered to leave, by (Member) States, total, 2011	124
Figure VII.6: Third-country nationals ordered to leave, ten main (Member) States, in 1 000s, 2008-2011	125
Figure VII.7: Third-country nationals returned to a third country, by (Member) State, total, 2011	126
Figure VII.8: Third-country nationals returned to a third country, ten main (Member) States, in 1 000s, 2008-2011	127
Figure VII.9: First instance decisions on asylum applications, by (Member) State, ordered by decreasing number of rejection, 2011	129
Figure VII.10: First instance negative decisions on asylum applications, main ten (Member) State, in 1 000s, 2008-2011	130
Figure VII.11: Final decisions on asylum applications, by (Member) State, ordered by decreasing number of rejection, 2010	131
Figure VII.12: Final negative decisions on asylum applications, main eleven (Member) State, in 1 000s, 2008-2011	131

LIST OF BOXES

Box 4.1: Pre-entry actions in the EU Action on Migratory Pressures – A Strategic Response	26
Box 5.1: Linking practical measures taken at entry to the Strategic Response	35
Box 6.1: Linking practical measures taken at entry to the Strategic Response	43
Box 7.1: Linking practical measures to provide a pathway out of irregularity to the Strategic Response	56

Disclaimer

This Synthesis Report has been produced by the European Migration Network (EMN), which collectively comprises the European Commission, assisted by its service provider (ICF GHK-COWI), and EMN National Contact Points (EMN NCPs). This report does not necessarily reflect the opinions and views of the European Commission, the EMN Service Provider (ICF GHK-COWI) or the EMN NCPs, nor are they bound by its conclusions. Similarly, the European Commission, ICF GHK-COWI and the EMN NCPs are in no way responsible for any use made of the statistics provided.

Explanatory note

This Synthesis Report was prepared on the basis of National Reports from 23 EMN NCPs (**Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom and Norway**) according to common specifications¹ developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability.

The National Reports were largely based on desk analysis of existing legislation and policy documents, reports (including previous EMN outputs), academic literature, political debate, media articles, internet resources and reports and information from government agencies, NGOs and International Organisations (IOM). Statistics were available through Eurostat and from national state authorities (ministries, border guards and other law enforcement agencies) or through national databases.

It is important to note that the comments of this Report refer to the situation in the above-mentioned (Member) States up to and including 2011 and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available National Reports and it is strongly recommended that these are consulted also.

The (Member) States listed above are given in **bold** when mentioned in the Report and "(Member) States" is used to indicate the contributions from participating EU Member States plus from Norway.

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.

¹ Available, along with the various National Reports (including in a Member States' national language as well as in English), from <http://www.emn.europa.eu> under "EMN Studies".

Executive summary

Key Findings

Reducing irregular migration is a policy priority of the EU and its Member States, as well as for Norway. The EU recently outlined its strategic priorities for reducing irregular migration in a Strategy Paper and almost all (Member) States have introduced legislative changes and/or policy for reducing irregularity in recent years.

The need for joint EU action and (Member) State cooperation in reducing irregular migration is evidenced by the fact that many of the key measures highlighted by (Member) States are those involving cooperation (e.g. joint returns, joint border patrols, information exchange and risk analysis).

A common EU approach is a major influence driving the implementation of Member State measures to reduce irregular migration. For examples, through Schengen obligations some (Member) States have improved their border management infrastructure; through EU funding they have been able to implement effective technical equipment at borders and to implement effective return measures; also through legislation they have reduced irregular employment and facilitated return; and, through the support of Frontex, have, amongst other measures, increased their understanding of trends in irregular migration flows to increase preparedness.

Nonetheless, (Member) States' policies tend to respond to their specific national needs. The different regions of the EU have different experiences of irregular migration. Those at the EU's external borders tend to have a greater problem with irregular entrants and in keeping the border secure; whereas other (Member) States have a greater problem with overstay and misuse of legal routes into the EU. Practical measures are thus responsive and measured, targeting specific actions with specific objectives. Such measures necessarily take into account that third-country nationals enter into an irregular situation for a range of reasons, and hence cannot be conveniently brought together into one group towards which one policy can be targeted.

Overall, statistics suggest that irregular migration is in decline in many EU (Member) States; although in some it has risen or stayed the same. The reasons for this are multiple and include indirect factors, such as EU enlargement and the economic crisis in the EU. Effective legislation, policy and implementation through practical measures are also key to reducing irregular migration. Nonetheless, (Member) States continue to experience differences in migratory pressure of irregular and mixed migration flows, with Southern EU Member States consistently receiving high levels of irregular migrants and recent major inflows of irregular migrants. The rising volume of "mixed migration" flows and the situation in third countries (including political unrest and economic recession) may represent future challenges to addressing irregular migration to the EU.

At national level there is some lack of evaluation of practical measures and their effectiveness in some (Member) States. For this reason, and others, this Study represents an important contribution to inform policymakers of possible ways forward in reducing irregular migration to the EU.

Factual Findings

During the past decade the EU has implemented a range of practical measures to support the prevention and reduction of irregular migration in the EU (Section 2 and Annex III). Most recently the EU Action on Migratory Pressures - a Strategic Response) outlined six strategic priority areas and identifies a number of key goals. Such actions include the adoption of legislation; the creation of EU agencies aimed specifically at supporting (Member) State actions in this area – notably Frontex; and the establishment of EU Funding mechanisms – i.e. the Return Fund and External Borders Fund.

(Member) States take different approaches to irregular migration dependent on their overall policies and particular experiences of irregular migration (Section 3). For example, some frame their approach to reducing irregular migration within a national security policy, whereas others focus on tackling potential misuse of legal channels of migration, e.g. through the asylum system, family reunification, intra-EU mobility or economic migration. All (Member) State approaches are influenced by EU policy; although this appears to be more extensive in some (Member) States than others. In particular, a proactive approach to preventing irregular migration through cooperation with third countries and through an effective visa policy has been highlighted as paramount in a number of (Member) State policies.

Legislation (Section 3.2) provides the ‘back-bone’ for practical measures and is regularly updated to incorporate obligations under EU law and to adapt to the dynamics of changing migratory pressures. Legislation and – in particular – case law also ensure that the fundamental rights (e.g. the right to a private and family life, access to healthcare, and access to education) are maintained. Indeed, case law has recently had a major impact on primary legislation related to irregular migration in at least three (Member) States. Penalties are issued in some (Member) States to both irregular migrants and those facilitating the migration through a system of fines and – in some cases imprisonment (see Annex IV). However, there is little evidence to demonstrate the effectiveness of such measures as a preventative tool.

The EU has had a major impact on practical measures to reduce irregular migration (Section 8). The creation of the Schengen Area, and the eradication of internal borders, has placed an onus on those Member States at the EU’s external borders to ensure their border management infrastructure is adequate. This has been achieved through greater cooperation between (Member) States – e.g. through Frontex and other inter-EU networks – and through the implementation of border management equipment, e.g. with funding from the External Borders Fund.

In order to prevent potential irregular migration before it occurs (Section 4), the provision of information on the legal requirements for entry – e.g. through websites such as the EU Immigration Portal (Annex III) and national web portals

(Section 4.1) – can help prevent the irregular migration of third-country nationals due to a lack of understanding of the legal requirements for entry. Information campaigns (Section 4.1) also prevent migration by warning of the risks of migrating irregularly. These have proven to be most effective when they have specific goals and target particular ‘at-risk’ groups and are part of a wider strategy of prevention. Repeated campaigns may also be more effective.

All (Member) States report that an effective visa management system (Section 4.2) is a key preventative measure in reducing irregular migration. In some (Member) States the visa is pivotal to migration management, as residence / settlement permits can only be issued to third-country nationals who have entered using a visa. Consular representatives issuing visas play an important role in detecting potential irregular migrants before they leave and in detecting false documents and fraudulent claims to migration (e.g. false declarations of marriage or parenthood). In this sense consular offices, as well as Immigration Liaisons Officers (Section 4.4) play an essential communicative role in reporting back to (Member) State authorities to inform risk management and planning processes.

Prior to entry, cooperation with carriers has also proven particularly effective in preventing irregular migration (Section 4.3). By training carrier staff in the identification of false documents, the work of border management authorities is facilitated (See also Section 4.7). To encourage compliance of carriers– e.g. with the provisions of Council Directive 2004/82/EC – some (Member) States have imposed sanctions against carriers for providing incorrect or incomplete passenger information, although others have introduced incentive schemes and fostered a closer working relationship to encourage compliance.

Ongoing analysis of migration routes (Section 4.5) and other intelligence gathering (Section 4.6) to inform risk assessments are important measures for forward planning of practice at the border and planning of long-term policy in light of any trends or upcoming risks. The Frontex Risk Analysis Network (FRAN) is highly important in this regard, as through it information can be shared between (Member) States – e.g. on trends in migration routes, in false documentation, and in other fraudulent means of entering (Member) States.

Practical measures taken at entry (Section 5) – particularly those pertaining to border controls – have proven effective to date. The decreasing number of refusals at the border (Section 5.1) may, to some extent, demonstrate a decrease in flow of (potential) irregular entrants. From 2008 to 2011 the number of refusals at the border has halved from 635 380 to 311 850 (including an overall decrease between 2010 and 2011 also). However, from 2010-2011 there was an increase in border crossings – particularly via the Eastern Mediterranean route to Greece.

By checking advanced passenger information and visa applications against EU databases such as the SIS I, VIS and EURODAC (Section 5.3), (Member) States can profile third-country nationals (passengers / visa applicants) in advance of their arrival in the EU and assess any potential risks of irregular migration. Use of the SIS II is evidenced by an increase in the number of refusals at the entry due to the issuance of an SIS alert.

With the support of EU funding (Section 8.2.2) (e.g. the External Borders Fund) and the technical support of Frontex (Section 5.6), (Member) States have also

increased surveillance of unofficial border crossing points (so called 'green borders') (Section 5.2). At sea, patrolling systems have saved lives of persons risking dangerous sea routes to Southern EU Member States, as well as led to a major reduction (by tenfold) in the number of irregular migrants arriving by sea. Along the eastern land border, a surveillance system which detects human presence has led to a decline in irregular migration flows from Ukraine, as well as a decline in smuggling of goods.

Shared resources and networked information, such as the Interpol database of false documents and the European image-archiving system (FADO), are important tools for detecting fraudulent documents at the border (Section 5.4). (Member) States also share information on fraudulent documents with FRAN. In other (Member) States, special investigations are undertaken to detect and prevent the production of documents— especially where this is linked to organised crime. Other Member States have set up law enforcement units specialised in identifying false documents, to train and provide assistance to border management authorities. Biometric passports provide a possible solution to fraud. Moreover, diplomatic and consular representations abroad also play a major role in detecting forged documents (see Section 4.2).

Cooperation at the border (Section 5.5) between (Member) States to ensure that internal borders are kept secure, and with neighbouring third countries (e.g. joint investigations, joint patrols and other forms of cooperation) also ensure that irregular migration is prevented not only on the EU side, but at the country of origin also.

In order to assess the number of irregular migrants present at any one time, some (Member) States have produced estimates (Section 6.1). However a range of methods are employed to produce such estimates, which makes it difficult to compare the statistics of different (Member) States. At least two (Member) States updated previously published estimates and found that the stock of irregular migrants was decreasing; indeed the number of irregular migrants may have decreased in one (Member) State by as much as tenfold from 2005 to 2011, due to the effects of the economic crisis which decreased the total influx of migrants. By contrast, national studies suggest major increases (e.g. from just under 20 000 in 2005 to over 440 000 in 2010) in other (Member) States.

To reduce irregular migration during stay (Section 6), most practical measures are focused on better tackling abuse of legal migration channels including preventing irregular work. Some (Member) States carry out ad-hoc checks (e.g. of hotels, transport links and other travel hubs) to identify irregular migrants (Section 6.2). Many (Member) States carry out inspections of workplaces (Section 6.3.1). In some, inspections that are targeted on particular sectors on the basis of intelligence and analysis, have been found to be particularly effective. However, ad-hoc checks and inspections may be costly in terms of time and staff resources and, unless these are targeted, do not always lead to many successful identifications. In addition, ad-hoc checks may in some circumstances infringe on the fundamental rights of migrants.

Statistics on apprehensions (Section 6.2.1) show there has been a notable decline throughout the EU. In the Southern Mediterranean, the number of apprehensions decreased overall between 2010 and 2011; indeed the numbers decreased in

some (Member) States by 23% and 36%. Member States cite EU enlargement as a reason for the decrease in apprehensions. Other (Member) States consider that it is due to effective measures – e.g. improved training of the state border guards and other relevant authorities.

With regard to misuse of legal routes, (Member) States have invested in measures to detect and investigate marriages of convenience (Section 6.4). Cooperation between registrars and immigration authorities has proven to be central to detecting such misuse. Other (Member) States focus on preventing misuse of the student route into the EU, for instance by awarding educational institutes that comply with their obligations with greater freedoms to offer a wide range of course levels and work placement opportunities to students than those who do not. Some (Member) States have also implemented measures to provide opportunities for legal migration to migrants who risk becoming irregular - e.g. rejected asylum applicants or economic migrants who have lost their jobs (Section 6.4).

The actual scale of irregular migrants working in the EU remains uncertain (Section 6.3.1), as while statistics exist (e.g. number of persons identified as irregularly working following workplace inspections), it is difficult to draw conclusions from the statistics; notably because they may reflect the intensity of inspections activities rather than the prevalence of violations. Moreover, some (Member) States do not disaggregate between legally-resident migrants violating conditions of stay/work and irregular migrants employed in their statistics. Moreover, the disparity in methods and scope of the data collection means that the statistics are not comparable. The Employer Sanctions Directive (Section 6.3.2) has had some impact already in (Member) States, but due to its relatively recent introduction this has been limited and not all (Member) States have fully implemented this yet. In some (Member) States, the impact may also be limited as a system for sanctioning employers is already in place.

The swift and sustainable return of third-country nationals who do not have permission to stay in the EU is a priority for all (Member) States (Section 7). However, return is often problematic (Section 7.2.3). (Member) States often experience situations in which return cannot take place, e.g. if the third-country national is particularly vulnerable, if they do not have suitable documentation for return, or if there are difficulties in organising a return flight.

The Return Directive (Section 7.2.1) has had a major impact on (Member) State approaches to return. Following transposition, several (Member) States introduced new concepts (e.g. “return decision” and “entry ban”). Transposition of the Return Directive has also led in some cases to an improvement of the fundamental rights of returnees. For example, some now offer free legal assistance for those who lack sufficient resources to guarantee effective protection of the interests of the individuals concerned and the concept of a “vulnerable person” was introduced into return procedures in order to provide them with more favourable treatment. In addition, it has led to the strengthening of assisted voluntary return (AVR) within the EU, by improving conditions for AVR in some (Member) States and introducing it as a concept in others.

The Return Fund (Section 8.2.1) is another important instrument for achieving EU and Member State goals. For example, the Return Fund has funded assisted voluntary return schemes in a number of (Member) States and covers the costs

of charter flights in others. In some, it has been used to train border authorities in the treatment of returnees and in others it has been used to fund projects encouraging cooperation with countries of return and follow-up activities with returnees in the country of origin. Several (Member) States report that the Return Fund has helped improve the overall quality of returns in the (Member) State.

(Member) States provide few statistics on the costs of return (Section 7.2.2); therefore it is difficult to evaluate the overall cost-effectiveness of return measures in comparison with other practical measures taken to reduce irregular migration. However, forced returns are recognised as being more costly than voluntary return, although (Member) States highlight the importance of return flights (including those co-ordinated by Frontex) in ensuring effective return, as well as in acting as a deterrent effect for future irregular migrants.

Readmission agreements (Section 8.5.1) are valued as important instruments for ensuring the swift and sustainable return of irregular migrants and have led to visible improvements in the return of irregular migrants. In some Member States they are also used as tools for strengthening international cooperation. However, many (Member) States have tended to focus on bilateral readmission agreements, over EU ones, and many have not yet established protocols for the implementation of EU readmission agreements.

1. Introduction

The overall purpose of this EMN Study on *Practical Measures to Reduce Irregular Migration* is to provide an overview of existing approaches, mechanisms and measures to reduce irregular migration in the EU and Norway. In particular, its aim is to inform policymakers and practitioners about the practical measures that have proved effective and proportionate in addressing the issue of irregular migration, both in relation to prevention and in providing pathways out of irregularity, including best practice and to contextualise national policies and practices within the overall EU policy framework. A further aim was to present the available statistics and the methods of data collection used by (Member) States to estimate the irregular migrant population.

The focus of this Study is third-country nationals found to be irregularly present in EU Member States and Norway. More specifically, this comprises persons who have:

- ▶ overstayed their visa or their maximum visa waiver period;
- ▶ those who have violated the conditions of their visa, work permit or permit to stay so that the conditions for granting the visa / permit are no longer satisfied;²
- ▶ persons who have not left the (Member) State territory upon a (final) negative decision on their application for international protection;
- ▶ persons who have absconded during the application process for international protection and did not leave the (Member) State / EU following a rejection of their application;
- ▶ persons who have entered using false documents;
- ▶ persons who have entered fraudulently stating the purpose of their stay (e.g. through a marriage of convenience) ; and
- ▶ persons who have entered the EU via smuggling.³

The study does not address human trafficking.⁴ Although this is a form of irregular migration, it is a topic requiring in-depth investigation and discussion in its own right. Moreover, it differs from other types of irregular migration in that it is usually performed against the will of the migrant or by misleading him/her.⁵ The Study

² This could thus include third-country nationals who are, for example, working whilst they are not allowed to work or who are irregularly employed (e.g. thus violating the conditions of their visa, permit to stay and/or work).

³ Smuggling of people has been included within the scope of this study as it represents a means by which migrants willingly enter the EU irregularly. According to Framework Decision 2002/946/JHA, Articles 1 (3)- (4), any individual found to be smuggling a migrant into the EU may be punished with a custodial sentence of a minimum of 6-8 years. The Stockholm Action Plan outlines future proposals to amend this Decision by introducing actions against so-called 'facilitator packages' which supply migrants with both transportation and fraudulent documentation for entry as well as contacts and translation in their country of entry.

⁴ For more on this, see the EU's Anti-Human Trafficking website: <http://ec.europa.eu/anti-trafficking/>

⁵ Human trafficking means 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." *Source:* Directive 2011/36/EU (Article 1).

also refrains from addressing prevention and detection measures which are an integral part of the visa issuance process, as these are addressed in the EMN study on Visa Policy as Migration Channel.⁶

The Study is structured to outline effective practical measures undertaken to address irregular migration at four stages, namely to:

- ▶ Address potential irregular migration before the migrant arrives in the host (Member) State – at **pre-entry** level ([Section 4](#));
- ▶ Detect **entry** of irregular migrants onto (Member) State territory ([Section 5](#));
- ▶ Monitor and ensure migrant compliance with the respective conditions of their visa and/or other permission to **stay** in a (Member) State in order to avoid overstay ([Section 6](#)); and
- ▶ Address the (legal) situation of irregular migrants by providing **ways out of irregularity** ([Section 7](#)).

Definitions and methodology used in the study are introduced next, followed by an overview of recent and ongoing studies of relevance. The EU policy context ([Section 2](#)) is then briefly introduced. (Member) State approaches to irregular migration are then outlined, along with the legislative framework, including any recent legislative changes at (Member) State level ([Section 3](#)). The following chapters present the practical measures undertaken by (Member) States to reduce irregular migration prior to a migrant entry ([Section 4](#)); at the external borders ([Section 5](#)); to prevent irregularity during stay ([Section 6](#)) and to provide pathways out of irregular migration ([Section 7](#)). The impact of EU policy and intra-EU cooperation ([Section 8](#)) is then addressed followed by Concluding Remarks ([Section 9](#)).

1.1 Definitions and Terminology used in the Study

This Synthesis Report uses the terms ‘[irregular migrant](#)’ and ‘[irregular migration](#),’ as well as ‘irregular entry’, ‘irregular stay’ and ‘irregularly-staying’. Relevant definitions are given in [Annex 1](#).⁷ This is exclusive of alternative terminology such as ‘illegal migrant/migration’ or ‘undocumented migrant/migration,’ in accordance also with Recital 7 of [Resolution 1509 \(2006\)](#) of the Council of Europe Parliamentary Assembly.⁸ Similar debates on terminology have ensued in some (Member) States (e.g. Germany, Slovenia)

Other (Member) States may use different terms within their National Reports. Indeed, Germany refers to three types of irregular migrant: [clandestine migrants](#) – i.e. those who have crossed the border irregularly as well as overstayers; [pseudo-legal migrants](#) – i.e. persons residing apparently legally in the country whose legal stay is based on false statements or identities (e.g. persons who have

⁶ See www.emn.europa.eu > ‘Studies’

⁷ In addition, the EMN Glossary (available from www.emn.europa.eu > ‘EMN Glossary’) lists a number of terms related to irregular migration, which have been taken from the EU Acquis and which are used throughout this Study.

⁸ This states that “the Assembly prefers to use the term “irregular migrant” to other terms such as “illegal migrant” or “migrant without papers.” This term is more neutral and does not carry, for example, the stigmatisation of the term “illegal.” It is also the term increasingly favoured by international organisations working on migration issues.”

entered through a marriage of convenience or forged documents); and registered unauthorised migrants, which are persons without residence status who are known to the authorities (e.g. ‘non-removables’ or ‘duldung’ – see [Section 7.2.3](#)). Italy considers ‘irregular migration’ – comprising violations of the conditions of stay (including overstay) – as distinct from ‘unauthorised migration,’ which comprises irregular entry, however, for the purposes of this study, such differentiation is not used. Luxembourg refers to migrants in an “irregular administrative situation.”

1.2 Methodology

The National Reports are based on common Study Specifications, developed by the EMN and followed by all EMN NCPs to ensure, to the extent possible, comparability and to facilitate the preparation of the Synthesis Report. The EMN does not normally engage in primary research, but rather collects, gathers and evaluates data and information which are already available. National Reports were thus largely based on desk analysis.

An overview of some recent and ongoing studies on irregular migration is provided in [Annex II](#). Such studies include EMN outputs; studies on fundamental rights of irregular migrants in the EU; studies related to EU policy and legislation on irregular migration; publications outlining trends and risk assessments on irregular migration in the EU, including those of Frontex and ICMPD; and literature which aims to calculate the number of irregular migrants in the EU. Some (Member) States (Austria, Finland, Germany, Ireland, Italy, Poland, Slovak Republic, Spain) referred the *Clandestino* project in preparing their National Report (see [Annex II](#)). In particular Austria, Finland, Germany, Spain and the United Kingdom used *Clandestino* to substantiate or feed into [Section 6.1](#) on estimates of irregular migration. Ireland made use of information provided in the recent FRA Study on *Fundamental Rights of Irregular Migrants* in their analysis of practical measures and their effectiveness.

Many (Member) States (Austria, Belgium, Finland, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Spain, Slovak Republic, Sweden, Norway) conducted expert interviews with state authorities, ministries and departments. Others hosted workshops (Germany) or carried out other consultations (Estonia, France, Hungary, Slovenia, United Kingdom, Norway).

Whilst (Member) States were able to provide an overview of practical measures, two main problems were highlighted: (i) the difficulty in evaluating policy effectiveness (Czech Republic, Estonia, Netherlands, United Kingdom) – for example, the Czech Republic and Estonia noted that measures are often implemented together and hence it is difficult to assess the impact of a measure in isolation; and (ii) a lack of existing research on the topic (Finland, Slovenia) – indeed, Finland, Ireland, Lithuania, Slovak Republic and Norway note that the Study sets a precedent in providing comprehensive information on this topic. In addition, (Member) States experienced challenges in presenting reliable statistics (Czech Republic, Finland, Germany, Ireland, Lithuania, Slovak Republic) or found that diverse methods had been used to estimate statistics, which hindered the quality and comparability of the figures. Germany noted the difficulty in assessing costs, since many practical measures are implemented for purposes other than simply addressing irregular migration (e.g. police checks and labour inspectorate visits to workplaces).

Statistics relevant to the presentation of irregular migration to the EU (e.g. third-country nationals refused entry at the border; those apprehended for being irregularly present; those found to be irregularly working, etc.) are presented throughout this Study and in [Annex VII](#). These include statistics reported to Eurostat in accordance with [Regulation 862/2007/EC](#).⁹ In consideration of these statistics, it should be kept in mind what they actually reflect.¹⁰ While, on the one hand, they may reflect the effectiveness, or otherwise, of policies, variations may also, on the other hand, reflect external factors – for example, EU enlargement (which has ‘spread’ the number of migrants to a larger number of countries and at the same time halted the flow of former irregular migrants from accession countries) or events in third-countries, such as political conflicts (e.g. as noted in [Annex III](#), the events of the ‘Arab Spring’ had a major impact on irregular migration flows to Southern EU countries). Statistics may reflect trends in irregular migrant numbers, they may also – instead of or as well as – reflect trends in policy and practice – e.g. an increase in workplace investigations or improvements in border control.

⁹ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF> See Articles 5 (1)-a, 5 (1)-b, 7 (1)-a and 7 (1)-b. In addition, for Article 5 (1)-a see relevant desegregations outlined in Article 13 (5) of [Regulation 562/2006](#).

¹⁰ This paragraph is similar to a discussion presented in the National Report of **France**.

2. EU policy on reducing irregular migration

Reducing irregular migration constitutes an important element within the EU's overall approach to effectively balance and manage migration flows. This includes developing policy on return, as well as on border control, with specific legislation also focussing on stay / work. A comprehensive overview of EU actions to reduce irregular migration, as well as the EU acquis in irregular migration is given in [Annex III](#).

In April 2012, the Justice and Home Affairs Council of the European Union approved a [Strategic Response for EU Action on Migratory Pressures](#),¹¹ which outlines a number of non-exhaustive Strategic Priority Areas, namely:

- ▶ Strengthening cooperation with third countries of transit and origin on migration management,
- ▶ Enhanced border management at the external borders,
- ▶ Preventing illegal immigration via the Greek-Turkish border,
- ▶ Better tackling of abuse of legal migration channels,
- ▶ Safeguarding free movement by preventing abuse by third-country nationals,
- ▶ Enhancing migration management including return.

For each priority area a number of key challenges, future goals and potential and planned measures – or actions – are outlined. The Strategy proposes that future EU Presidencies will be responsible for updating the list of actions set out in the Annex on a biannual basis, taking into account developments in relation to migratory pressures and the progress achieved by previous Presidencies. The Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) Committee will oversee the implementation and update of the list of actions.

Consistent with the role of the EMN in providing up-to-date policy-relevant material, the findings of this study are also presented with reference to their relevance for each of the six Strategy Priority Areas outlined in this strategy.

¹¹ Note from the Presidency to the Council Mixed Committee of 23rd April 2012, document No. 8714/1/12 REV 1. Available at: <http://register.consilium.europa.eu/pdf/en/12/st08/st08714-re01.en12.pdf>.

3. National policies on and legal frameworks for reducing irregular migration

This Section outlines (Member) State's policy towards irregular migration and the legislative frameworks regulating these approaches. It begins by outlining the national approaches and then describes the national stakeholders involved in the drafting and implementation of policy ([Section 3.1](#)). This is followed by an overview of national legislation ([Section 3.2](#)) and recent legislative changes and their drivers ([Section 3.3](#)).

The fight against irregular migration is also a policy priority for many (Member) States. For example, in **Austria** policymakers refer to the issue as, “*one of the major international challenges for Europe and the EU.*” (Member) States have outlined their approach to addressing irregularity in specific policy documents (**Czech Republic, Greece, Netherlands**), or otherwise within those specifically on migration (**Belgium, Spain, Slovak Republic**), national security (**Estonia, Finland**), other policy areas (**Germany, United Kingdom**) or in general strategy documents (**Estonia, Luxembourg**). In other Member States (**Austria, Hungary, Italy, Latvia, Lithuania, Slovenia**) the approach to irregular migration is primarily mapped out in legislation.

For some (Member) States, the approach is highly influenced by EU policy. This is the case in **Estonia, Hungary, Latvia** and **Slovak Republic**.¹² Notably, **Estonia's** approach to reducing irregularity is outlined in its *Estonian European Union Policy 2007-2011*. In relation to border controls, the **Czech Republic** has outlined some of its objectives for tackling irregular migration in its *National Schengen Plan 2011*. The **Slovak Republic** refers to the reduction of irregular migration as a “joint priority” shared with the EU, and **Hungary** describes recent moves to improve the coherence of the Hungarian legislation on migration to increase legal certainty and to facilitate the fight against irregular migration and migration-motivated abuses.

(Member) States highlight the importance of taking a proactive or preventative approach to tackling irregular migration prior to the migrant's arrival. For example, **Belgium** describes prevention as “*one of the corner-stones of Belgian [immigration] policy towards irregular migration.*” Others (e.g. **Greece, Luxembourg, Norway**) note the importance of international cooperation (particularly with countries of

¹² For more information on the impact of EU policy and legislation on (Member) State legislation see [Section 8](#).

origin) in preventing irregular migration and the importance of visa policy (**Finland, Ireland, Lithuania, Spain**).

Focussing on reducing irregular entry, the **Netherlands** is currently implementing its *Innovation Border Management Renewal Programme*, which aims to modernise the current border management process through use of biometrics and other advanced technology. **Lithuania** has also recently introduced the *Draft programme of State Border Guard Development*, which outlines border policy for the period 2011–2018. Under its Internal Security Programme, **Finland** also aims to establish IT systems to aid the processing of visas and improve border management.

(Member) States may also centre their approach on better tackling abuse of legal migration channels. For example, **Lithuania** and the **Slovak Republic** focus on preventing employment of irregular migrants and combating the 'black economy'. **Ireland** focuses on preventing and detecting marriages of convenience – to date it has not found evidence of a high influx of irregular migrants and especially little through irregular entry.

Regarding policies on return, the EU and many (Member) States promotes assisted return. **Norway** emphasises the fact that return practices must be consistent and have a high degree of predictability for the migrant. In **Greece** current legislation has a focus on forced return.

Estonia and **Finland** (also) frame their approach towards irregular migration within their policy on national security. For example, the main policy document on the topic in **Estonia** is *Main directions of the security policy until 2015* and in **Finland** the approach is most recently outlined in the *Internal Security Programme*. **The United Kingdom** recently created a dedicated Border Police force, as part of a refocused Serious Organised Crime Agency (SOCA) within the UK's Home Office, which would be charged with enhancing national security, including implementing immigration controls. **Hungary** also recognises national security as a priority in its approach to irregular migration.

Austria and **Luxembourg** focus on preventing asylum applicants from becoming irregular migrants. In 2011 **Austria** introduced its '*7-Point-Package*' of measures to combat irregular migration. Amongst other measures, the document refers to an asylum applicant's "duty to collaborate" (*Mitwirkungspflicht*) by remaining in the first reception centre for up to seven days after filing the application to prevent absconding. Between 2004 and 2009 **Luxembourg** sought to increase the speed and efficiency with which asylum applications are processed and since 2009 the approach has centred on encouraging voluntary return. **Sweden** also states that its objective is to secure long-term, sustainable migration policies that maintain the right of asylum and facilitate mobility across borders.

Spain seeks to reduce irregular migration, at least in part, through increasing the possibilities of legal migration. Indeed the link between opportunities for legal migration and the volume of irregular migration has been observed in the **Czech Republic**, as the issue of irregular migration has become more urgent there in light of the impacts of the economic crisis. **Germany** has also pointed to a symbiosis between irregular migration and other policy areas, such as education, health and social policy. In a similar vein, **Germany** also refers to the balance of approaches

in its Member State between the “regulatory” position mainly maintained by the *Federal Ministry of the Interior* and the *Interior Ministries of the Federal Laender*, and the “human rights” position of the civil society representatives (churches, welfare associations, relief organisations).

3.1 Institutional Framework

All (Member) States have official institutions responsible for developing policy to reduce irregular migration at all stages (pre-entry, entry, stay and removal).¹³ In most (Austria, Czech Republic, Estonia, Finland, Germany, Greece, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Slovak Republic, Spain, United Kingdom), it is the Ministry of Interior or Home Affairs (or other authority directly subordinated to this institution) that takes overall responsibility for migration. In Norway, the Ministry of Justice and Social Protection is responsible for policies in this area, as well as the overall coordination of immigration policies together with the *Directorate of Immigration* and the *Ministry of Labour*. In Ireland, it is the *Minister of Justice, Equality and Defence*.

In Austria, Czech Republic, Italy, Netherlands, Poland, Slovenia, Slovak Republic and Spain the Ministry of Labour and Social Policy (or equivalent) also plays an important role in setting the conditions for labour migration and, where relevant, work permits and the combating of irregular employment (in Slovenia this is the *Migration and Integration Directorate* within the *Ministry of Interior*). In other (Member) States (Estonia, Finland, Greece, Italy, Latvia, Luxembourg, Lithuania, Slovenia, Slovak Republic, Spain, Sweden, Norway) the Ministry of Foreign Affairs and consular offices play an important role – e.g. in setting visa policy. Other authorities that are engaged in policymaking related to reducing irregular migration include the *Ministry of Justice* (Ireland, Latvia, Slovak Republic, Sweden, Norway), *Ministry of Finance and Customs* or equivalent (Finland, Slovak Republic, Sweden, Norway), the border guard authorities (Latvia, United Kingdom), the judiciary (Spain), and immigration services (Finland, Latvia). Finland mentions a network of institutions responsible for smaller areas of policy,¹⁴ as does Sweden.

In certain Member States (Czech Republic, France, Germany, Sweden) there are also country-specific institutions, e.g. *the Swedish Migration Board* in Sweden, *the Irish Naturalisation and Immigration Service* in Ireland. Some of the country-specific institutions are operating at the inter-ministerial level, e.g. *the Inter-ministerial Authority for Combating Illegal Employment of Foreign Nationals* in the Czech Republic, *the Inter-ministerial Committee on Immigration Control* in France or at regional level - e.g. *the Ministries of Interior of the Länder* in Germany that are responsible for the affairs relating to foreign nationals.

¹³ Further information on the institutional framework is provided in the institutional charts provided on the EMN website at www.emn.europa.eu > ‘Asylum and Migration Policy Factsheets’.

¹⁴ The *Migration Department* of the prepares policy and legislation on illegal migration and human trafficking according to its political guidance; the *Ministry for Foreign Affairs* is the central authority responsible for Schengen visa matters; the *Ministry of Transport and Communications* is, in cooperation with the Russian authorities, is responsible for developing cross-border traffic arrangements, as are the *Border Guard* and *Finnish Customs*; the *Finnish Immigration Service* is responsible for decision-making on immigration, international protection and citizenship.

In addition to formal authorities, in several (Member) States informal actors are involved in the process of policymaking (Germany, Greece) and policy implementation (Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Spain, Norway). For example, the ombudsman and the *National Commission for Human Rights* assist in formulation and implementation of policy in Greece. Non-governmental organizations advise migrants on their rights in France, Germany, Netherlands, Poland and Spain; provide reception and integration support in Italy and Poland; and run voluntary return and reintegration programmes through the *International Organisation for Migration* (IOM) in Estonia, France, Germany, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic and Norway and the *Red Cross* in Estonia, Lithuania and Luxembourg. Other stakeholders engaged in implementation of policy on irregular migration include churches (e.g. in Sweden) and trade unions (Netherlands, Spain, Sweden), e.g. in running campaigns against irregular employment.

Several Member States (Belgium, Czech Republic, Germany, Hungary, Lithuania, Netherlands, Poland, Spain, Sweden) have undertaken measures to make cooperation between different institutions working in the field of combating irregular migration more effective. Belgium, Hungary, Lithuania and Poland formalised the procedure of collaboration in legislation. Others (Czech Republic, Germany, Hungary, Netherlands, Spain, United Kingdom) have inter-ministerial level institutions which coordinate cooperation (e.g. *Analytical Centre for the Protection of State Borders and Migration* in Czech Republic; *the Joint Analysis and Strategy Centre for Illegal Migration* in Germany; *the Integrated Management Centre* in Hungary; *the Expertise Centre for Human Trafficking and Human Smuggling* in the Netherlands; *the Government's Delegate Commission for Immigration Policy and Sectoral Immigration Conference* in Spain; and *the National Migration Group* in the United Kingdom). Sweden organises regular meetings between different institutions.

3.2 National Legislative Frameworks

The conditions under which a third-country national may enter, stay and settle in a Member State are usually regulated through a main Act (often referred to as the *Aliens Act* or *Residence Act* or *Immigration Law*). They are then updated to incorporate important changes – e.g. to transpose relevant EU legislation – on a regular basis (e.g. every 3 – 5 years). A full list of these is provided in Annex II. Other legislation, such as asylum legislation and legislation transposing EU provisions on the right to free movement (where separate from immigration law) are also important to preventing irregular migration. In some Member States there is also separate or supportive legislation for border control (Estonia, Finland, Lithuania, Poland, Slovenia, Slovak Republic),¹⁵ returns / expulsions (Estonia, Luxembourg), and detention (Luxembourg). For example, in Finland decisions concerning removal are regulated, in part, through the *Administrative Procedure Act (434/2003)*. In Poland migration law tends to be introduced through various separate laws. The conditions under which third-country nationals may work in a (Member)

¹⁵ From January 2012 this was no longer the case, as the Slovak Republic's *Act on State Borders Protection* was merged into the new *Act on Stay of Aliens*.

State may also be outlined, or further outlined, in separate legislation – this is the case in **Austria, Belgium, Netherlands, Poland, Slovenia, Slovak Republic**. Criminal legislation is also relevant where irregular migration is considered a criminal offence, where the migration involves the forgery of documents, or where those facilitating irregular migration are subject to criminal proceedings (see [Annex V](#)). **Latvia** outlines its provisions on carrier's sanctions in its legislation on aviation. **Germany** and **Luxembourg** make the point that irregular migrants are often affected by legislation other than that specifically regulating migration, such as legislation related to health care, education and social welfare. For example, the **Netherlands** outlines provisions on access to such services in its *Benefit Entitlement (Residence Status) Act*. **Lithuania**, in response to an increase in migrants irregularly obtaining temporary residence permits by registering fictitious businesses, amended legislation pertaining to businesses (*Law on Companies of the Republic of Lithuania*) as a disincentive to false registration (see also [Section 6.3](#)).

Belgium, Finland, Spain, Ireland Luxembourg and **Sweden** specifically note the importance of respecting the fundamental rights of migrants, whatever their documentary situation, by ensuring access to healthcare and education. In addition, an irregular migrant may rent an apartment, obtain a transport pass and legally buy and sell real estate or property (subject to certain conditions). Similarly, in **Ireland** all individuals (including irregular migrants) can apply for a Personal Public Service Number (PPSN) which gives them access to certain public services. However, NGOs have stated that in practice it is sometimes difficult for irregular migrants to obtain these. In relation to healthcare, **Sweden's Health and Medical Services Act** (HSL) requires county councils to provide health and medical care in response to immediate need. **Norway** has recently reviewed its regulations regarding irregular migrants and health care, with the purpose of clarifying existing rules and this has resulted in better access to healthcare. In **Luxembourg**, all children have access to the education system, independently from the administrative and legal status of their parents. However, as it is obligatory to declare the address of residence to the municipality, some irregular migrants may be deterred from using the service. **Sweden** is currently debating whether education should also be obligatory for children awaiting return (following an order). In **Finland**, as in other (Member) States, irregular migrants may access legal aid. In 2011, **Norway's Immigration Regulation** introduced a provision that gives certain irregular migrants who have applied for protection the right to work voluntarily and without payment.

Case law has recently impacted on policy and practice towards reducing irregular migration in at least five Member States (**Austria, Czech Republic, Finland, Italy, Netherlands**). Sometimes the case law has been driven by considerations of compliance with EU law. For example, in relation to return, **Austria's** Administrative High Court ruled in May 2011 that exclusion orders and expulsion orders must be understood as a return decision according to the Return Directive. Through this and subsequent rulings, the competence of the Security Headquarters, which is under the power of direction of the Federal Ministry of the Interior, was significantly restricted.

In the **Czech Republic, Italy** and **Spain**, judgements passed by the national Constitutional Courts revoked provisions outlined in primary legislation, due to concerns for fundamental rights. In the **Czech Republic**, the Court revoked the

provision of Section 171 (1) (c) of the *Act on the Residence of Foreign Nationals*¹⁶ and in **Spain** the Constitutional Court, expanded the *Organic Law 4/2000* to provide the right to post-compulsory education to all migrants (regardless of legal status), as well as the (previously excluded) right to assembly, association, demonstration and strike. In **Italy**, a number of amendments to *Law 94/2009* – the so-called ‘Security Package’ were made as a result of jurisprudence. First, the European Court of Human Rights judged the provision which introduced the ‘crime of illegal entry and/or stay’ as being in contradiction to the Return Directive. Second, Article 1 (15) of *Law 94/2009* – which imposes stricter requirements on third-country nationals wishing to acquire Italian citizenship through marriage by providing that the applicant must show valid residence permit to the registrar in order to marry– was partially declared unconstitutional, on the basis of the European Convention of Human Rights (ECHR), by the *Italian Constitutional Court* in July 2011 following an appeal against the provision by an Italian wanting to marry an irregular migrant from Morocco.¹⁷

In **Finland** case law has been central to clarifying and further defining legislation related to irregular migration and misuse of the right to asylum. The judgement ‘Singh v Hammond’ (1988) in the **United Kingdom** set a precedent in combating overstay, by setting the legal basis on which officers may, in certain circumstances, make enquiries about the immigration status of people present there.

A variety of penalties are imposed in (Member) States in relation to irregular migration, depending on the nature of the offence and whether the person sanctioned is the migrant him/herself committing it, or someone facilitating the irregular migration. Some offences may be considered administrative and subject only to fines or specific actions (return orders, re-entry bans, bans on professional activity, etc.), whereas others may be considered more serious offences subject to larger fines or imprisonment and even to criminal procedure – this is almost always the case for offences such as smuggling or forgery of documents, but it is also quite often the case for ‘border offences’ – i.e. crossing the border irregularly, and in some countries for irregular stay. A description of these penalties and further details on the types of offences and sanctions issued are provided in the National Reports. In addition, an overview of the sanctions is given in [Annex V](#).

3.3 Recent legislative changes and their drivers

In response to EU policy developments, and to address specific national situations and concerns, (Member) States have also implemented notable changes in their national legislation; some of which have been described above, and their impacts will be further elaborated throughout this report.

The most common drivers of legislative changes amongst (Member) States are accession to the EU and changes to EU legislation (see also [Section 8](#)); as well as increasing influxes of irregular migrants (in the case of **Greece**, **Italy**

¹⁶ which excluded judicial review of a decision on administrative expulsion of a foreign national in the event that the foreign national had been staying in the territory or in the transit area of an international airport on an unauthorised basis before the proceedings on the administrative expulsion were started.

¹⁷ Decision n. 245 of July 20th, 2011.

and Spain). Other drivers include public opinion (Spain, United Kingdom) or the opinion of NGOs and associations (Czech Republic) in, for example, consideration of fundamental rights, and the economic crisis (Czech Republic, Spain). Global developments may also impact on (Member) States approach to irregular migration – for example, Luxembourg notes that, following formal recognition of the independence of Kosovo,¹⁸ a programme was set up to encourage voluntary return to the third country.

Austria, Italy and the Slovak Republic have introduced major legislative changes. Austria saw changes to its *Aliens Act* in 2009 and 2011 with changes to detention, introducing the concept of ‘tolerated stay’ and regularisation possibilities for humanitarian reasons, as well as transposing EU law. In response to notable increases in the influx of irregular migrants, Italy introduced a number of legislative amendments in 2008 with respect to the removal of non-nationals (including EU citizens) and detention and in 2009 introduced a “Security Package” which *inter alia* introduced the so-called “crime of illegal immigration” (subsequently amended by the Constitutional Court – see Section 3.2.1), as well as stricter regulations regarding refusals at the border and intensified coastal patrolling and rejections at sea. The Slovak Republic introduced the new *Act on Stay of Aliens* which entered into force on 1 January 2012 and brought in changes to tolerated stay, administrative expulsion, offences and the imposition of fines for breaking the law. Ireland is currently reviewing a major draft legislation – the *Immigration, Residence and Protection Bill* - which will set out a coherent legislative framework for immigration, clarifying the concepts of irregular stay and introducing the obligation to leave if found to be irregularly present.

In relation to border control, Sweden and the United Kingdom note the importance of the introduction of biometric visas / residence permits. In 2013, the United Kingdom plans to introduce a new Border Police Force which aims to improve immigration controls and address trafficking of people, weapons and drugs.

In relation to irregular stay and work, in Poland, the Polish *National Labour Inspectorate* gained responsibility for controlling the legality of third-country national’s employment in 2007 and since 2009 this responsibility has been shared with the Border Guard. The United Kingdom introduced civil penalties in 2006 under the *Immigration, Asylum and Nationality Act* (2006), designed to encourage employers not to employ irregular migrants / migrants working irregularly. Germany brought in amendments to its *General Administrative Regulation on the Residence Act* to ensure that personal data of third-country nationals found to be irregularly present and disclosed to the welfare offices in the billing process for health services, may not be used against the migrant. Other legislative changes were introduced in order to bring national legislation into line with the Employer Sanctions Directive (see Section 6.2.2). Lithuania, with the aim of preventing marriages of convenience, introduced provisions to make it illegal for its nationals to help a third-country national to obtain a document confirming a right to stay/reside by unlawful means.

¹⁸ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence. All subsequent mentions of Kosovo are also understood to be within the context of this statement’.

At the return stage, **Czech Republic** introduced greater safeguards on fundamental rights during detention; whereas **Greece, Italy** and **Spain** increased the time limit during which third-country nationals can be detained awaiting removal from three to six months in **Greece**, from 30 days to a maximum of 18 months in **Italy** and from 40 to 60 days in **Spain**. The **United Kingdom** also made changes to its family returns procedure, driven in part by a high level of public debate around the previous system. **Austria** also made changes to its system of pre-return detention. **Sweden** has made (other) changes that reduce obstacles to return: it introduced support grants to third-country nationals returning to countries where there are limited preconditions for re-establishment.

4. Pre-entry measures

This Section outlines the practical measures undertaken by (Member) States to reduce irregular migration prior to entry – i.e. measures to prevent irregular migration from taking place at all. Some common approaches between (Member) States may be observed; however, the specific geographies and individual circumstances of each (Member) State also have a bearing. For example, **Spain's** approach responds in part to its efforts to guard its maritime border and land border (at Ceuta and Melilla) with Africa. Similarly, **Norway** takes a preventative approach with regard to border crossings from the Russian Federation although there is currently little evidence of irregular migration there, even with the increase in (legal) border crossings since 2009.

The main activities highlighted by (Member) States at pre-entry level include: information and awareness-raising campaigns (Section 4.1); pre-entry controls and checks (Section 4.2) the role of specific actors, such as carriers (Section 4.3) and immigration liaison officers (Section 4.4); the identification of irregular migration routes (Section 4.5) and other risk assessment and intelligence-gathering activities (Section 4.6) and development training and support activities (Section 4.7); as well as development activities in countries of origin aimed at preventing potential irregular migrants (Section 4.8) and cooperation activities with third countries (Section 4.9).

Box 4.1 - Pre-entry actions in the EU Action on Migratory Pressures – A Strategic Response

Three of the strategic priority areas of the Strategic Response to EU Action on Migratory Pressures list challenges and identify goals to be addressed prior to entry. These are:

- ▶ Strategic priority area I: Strengthening cooperation with third countries of transit and origin on migration management
- ▶ Strategic priority area II: Enhanced border management at the external borders
- ▶ Strategic priority area III: Preventing illegal migration via the Greek-Turkish Border

The relevant challenges and goals identified are as follows:

Challenges identified in the Strategy

- ▶ Enhancing the capacity of countries of origin and transit to manage mixed migration flows (area I)
- ▶ Prevention of illegal migration from the Southern Mediterranean Countries (area I)
- ▶ Prevention of illegal migration via the Western Balkans (area I)
- ▶ Combating irregular migration transiting Turkey to the EU (area III)

Goals identified:

- ▶ Equipping countries of first asylum with the necessary means to be able to guarantee refugee protection (area I)
- ▶ Assisting third countries in better managing mixed migration flows (area I)
- ▶ Establishing Mobility Partnerships (area I)
- ▶ Extending dialogues on migration mobility and security with the Southern Mediterranean Countries (area I)
- ▶ Strengthening the identification of irregular migration routes (area II)
- ▶ Continuing to assist relevant authorities of the Western-Balkan countries in strengthening their capacity to combat illegal migration (area I)
- ▶ Engaging with the Turkish authorities and concluding the EU-Turkey readmission agreement (area III)

4.1 Information and awareness-raising campaigns

Belgium, Czech Republic, Italy, Latvia, Luxembourg, United Kingdom and Norway describe effective information and awareness-raising campaigns in third-countries, often carefully tailored to address specific issues, and designed to discourage irregular migration whilst raising awareness about legal channels of migration. These have tended to target particular third countries that have an established relationship or a history of irregular migration to the (Member) State.

In Belgium, prevention campaigns have been carried out in specific third countries, using a range of media, including television advertisements and theatre plays. Since 2000, such campaigns have been organised, among others, in Albania, Cameroon, D. R. Congo, Guinea, India (Punjab), Kazakhstan, Kosovo, Russian Federation, South-Caucasus, Tunisia and the former Yugoslav Republic of Macedonia (FYROM). Policymakers have also been involved in such campaigns. Belgium highlights several good practice points, including ensuring that campaigns have specific goals and target groups, and are part of a comprehensive strategy. Repeated campaigns have also been found to have greater impact and effectiveness.

In 2008/9, the Czech Republic launched a media campaign, simultaneously in both Mongolia and the Czech Republic, targeting Mongolian labour migrants and focussing on the labour market and living costs in the Czech Republic, as well as the rights and responsibilities of migrants, their residence status, available support. Luxembourg highlights a number of awareness raising initiatives, in particular, its *'Migrate with eyes open'* project, and the mobility partnership between the EU and Cape Verde. Such initiatives aim to inform those planning to migrate to Luxembourg, particularly in relation to family reunification, about the conditions that apply, to familiarise themselves with the country's social and cultural realities, and to obtain information about return options to Cape Verde. A web portal¹⁹ has also been established by a migrant workers' support organisation and co-financed by the *Office for Reception and Integration*, which brings together essential information for entry to and stay in Luxembourg, which is available in several languages.

In Italy, awareness campaigns aimed at preventing irregular migration have targeted third countries characterised by high migratory flows, including Egypt, Morocco, Albania, Moldova, Kosovo and Ukraine. Typically they have targeted specific groups, and have used a combination of channels, relevant to the groups targeted, often in collaboration with newspapers, the media and NGOs. In Egypt and Morocco, the campaigns have focussed on unaccompanied minors: one project in Morocco has, among other things, developed a pedagogical kit which raises awareness of the dangers of child migration, using multilingual (Arabic, Berber, French and Italian) comics and cartoons, showing the stories of children at risk. In the Ukraine, Italy has also worked with the national authorities to raise awareness of the impact of the migration of Ukrainian women on children and young people left temporarily without their mother.

¹⁹ www.bienvenue.lu

4.2 Pre-entry controls and checks prior to arrival at the national border

All (Member) States reported the importance of an effective visa-management system as a key preventative measure in the fight against irregular migration.²⁰ This is, in part, due to the fact that visa operations predominantly take place in third countries, therefore maximising its potential as a preventative tool, and the possibility for (Member) States to respond to changing circumstances through adjustments to visa processes. Recognition of the specialist nature of the task of visa processing has also given rise to specific institutional and organisational innovations in some (Member) States (e.g. **Belgium, Germany**) as well as on-going and permanent staff training and support mechanisms. **Austria** notes also that the effectiveness of visa management is enhanced by additional legal and practical measures, for example, carrier sanctions. Several Member States (**Estonia, Germany, Greece, Latvia, Lithuania, Malta, Poland**), also refer to the future use of tools provided by the Visa Information System (VIS)²¹ which are expected to play an important role in the context of reducing irregular migration.

The visa process in **Germany** is a pivotal instrument for migration management and is crucial in preventing irregular migration, as residence / settlement permits can only be issued to third-country nationals who have entered the country using an appropriate visa. **Germany** highlights a number of practical measures which have been established to reduce the risk of visa abuse, for example, a Visa Alert Database (operational in 2013) to strengthen the prevention of visa abuse and irregular entry to complement VIS, a facility for visa application data to be cross-checked against a range of national databases and registers, a Visa Information Centre, to investigate how false visas are obtained, and a special police network of document and visa advisors, attached to German Missions and active mainly in countries that are known sources of irregular migration.

Finland has developed a specific approach to tackle irregular migration in conjunction with the visa-granting process, which allows relevant authorities to assess the risk of a person's irregular entry by reviewing, for example, their ties with the home country (family, work, home). In addition, a visa applicant may be requested to present a return journey ticket as a requirement for being granted a visa. Specific processes have also been established in relation to visa processing for family reunification purposes, the aim to tackle the issue of marriages of convenience, and other areas of known misuses, for example, in relation to foster children.

Other specific measures to tackle irregular migration through the visa processes include those that have been developed by **Lithuania**, where a mechanism for consultation between diplomatic and consular representations and with the responsible authorities before a decision is made on the issuing of a visa has proved effective in allowing for the identification of misleading information. In

²⁰ For more on this see also the EMN 2011 Study on *Visa Policy as a Migration Channel*, available at www.emn.europa.eu > 'Studies'.

²¹ Council Decision [2004/512/EC](#) of 8 June 2004 established the Visa Information System (VIS); Commission Decision [2008/602/EC](#) of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the central VIS and the national interfaces for the development phase.

Poland, on-going consultations prior to granting visas to third-country nationals take place between the Polish Border Guard and its consulates, on detected cases of misuse or of visas, fraud, falsification of documents. Polish consulates work within standards and requirements set out in the Community Code on Visas,²² and use the computerised system of consultations (VISION) with central authorities of other Schengen states. In the **Slovak Republic**, there is regular communication between the consular departments abroad and the Ministry of Interior through information communication networks. These offices exchange information on false documents, the legitimacy of sponsors and travel agencies issuing invitations and other relevant information.

4.3 Role of carriers

A number of Member States (e.g. **Austria**, **Belgium**, **Germany**, **Estonia**, **Italy**, **Lithuania**, **Luxembourg**, **Netherlands**, **Slovak Republic**, **Spain**, **United Kingdom**), as well as **Norway**, highlight the important role of the checks and controls undertaken by carriers (e.g. airlines and ferry operators) as an important measure to complement other activities to reduce irregular migration at pre-entry stage.

Since 1999, carriers travelling to **Austria** have been examining the validity of visas of passengers at the point of departure and Austria reports this has proved a highly effective measure. **Lithuania** also notes a significant decrease in the number of persons attempting to enter without the necessary documents since the introduction of sanctions on carriers in 2008. **Germany**, fines carriers between €1 000 and €5 000 for each migrant trying to enter irregularly; in 2010, action was taken against 15 airlines, with total sanctions amounting to more than €1.5 million. In **Estonia**, where a traveller is found not to hold the required documents, the carrier is obliged to return the individual and can be liable for any costs associated with expulsion and/or detention up to €32 000. In **Norway**, airlines that carry passengers without legal travel documents may be penalised with a fine of some €3 125. In **Lithuania**, this is 11 000 to 18 000 litas (approx. €3 200 to €5 200) and again, has contributed to a significant decrease in the number of persons arriving without the required documents.

The *UK Border Agency* and the *UK Risk and Liaison Overseas Network* (RALON) in the **United Kingdom** maintain close cooperation with carriers in order to prevent the arrival of “inadequately documented arrivals” (IDAs) at the UK border. Air carriers demonstrating high standards of document and security checks at the point of embarkation, as well as a high level of cooperation with UK border authorities, may be awarded ‘automatic gate check’ (AGC) status which means that any fines for carrying undocumented passengers will be waived. At the time of writing, a total of 378 ‘AGC’ stations were in place. This incentive has proven to be effective in encouraging carrier cooperation with UK authorities and the operations have contributed (along with other border security initiatives) to a decrease in the number of IDAs arriving in the UK from 31 000 in 1999 to only just over 4 000 in 2010. As part of the scheme 15 800 air carrier staff and holding agents have also been trained in forgery awareness and document security.

²² Regulation (EC) No. 810/2009 of 13 July 2009 establishing a Community Code on Visas (Visa Code).

4.4 Immigration Liaison Officers (ILOs)

Many (Member) States (**Austria, Belgium, Czech Republic, Finland, Hungary, Lithuania, Ireland, Lithuania, Netherlands, Spain, United Kingdom and Norway**) draw attention to the important role of liaison officers in preventing and discouraging irregular migration and specifically to the network of Immigration Liaison Officers (ILOs)²³ posted in third countries by a (Member) State's immigration service or other competent authorities. ILOs establish and maintain contacts with host country authorities, in order to contribute to the prevention and combating of irregular migration, the return of irregular migrants, and the management of legal migration. (Member) States tend to deploy liaison officers to third countries where the need has been found to be greatest.

Practically, liaison officers may act as intermediaries between national and foreign investigations (**Austria**), and support visa decision-making processes (**Belgium, Czech Republic, Hungary, Finland, Latvia, Slovak Republic, Slovenia, Norway**). This can include advice on document and identity checking and forgery detection (**Belgium, Czech Republic, Slovenia, Slovak Republic, Norway**); and interviews with applicants (**Belgium, Latvia**). In **Belgium**, ILOs in some consular posts have delegated authority to grant or refuse certain types of visa.

Liaison officers also maintain contact with border guard staff, for example, to exchange intelligence (**Belgium, Germany, Finland, Latvia, Slovenia, Norway**). ILOs undertake in-country training and development of overseas staff (**Austria, Netherlands, Norway**) and in **Austria**, an annual conference of ILOs takes place, which in 2011 brought together 23 ILOs to exchange information, to share updates on political developments and to discuss organisational matters. In the **United Kingdom**, ILOs form part of the UK Risk and Liaison Overseas Network (RALON) mentioned previously, which has been highly effective in helping to reduce the number of those who arrive with inadequate documentation. In **Slovenia**, liaison officers working in Croatia, Serbia, Montenegro and Italy make use of specialist police equipment and have access to the police intranet and information databases, to facilitate information exchange among security authorities and the Slovenian Police involved in integrated border management. In **Germany**, the German Federal Police Border has been deploying border police liaison officers since 1992, and currently 24 liaison officers are working in 23 countries, mostly in Europe, and also in neighbouring countries. These liaison officers collect, evaluate and analyse information on the border policing situation in the various countries and exchange information with the local authorities; advising and supporting the responsible local offices; and provide advice and information on German and other countries' missions on measures to prevent irregular migration. **Hungary** and **Norway** also refer to liaison work including with the police, for example, posting police liaison officers overseas to prevent smuggling of human beings. In **Finland**, liaison officers may also participate in anti-crime operations jointly with police and liaison officers from other EU (Member) States on matters of irregular migration and human trafficking.

Lithuania does not have its own liaison officers, but works with ILOs from other Member States based in the Russian Federation, Belarus, Georgia – the nationals

²³ Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an Immigration Liaison Officers Network and Regulation (EU) No 493/2011 of 5 April 2011 amending Council Regulation (EC) No 377/2004.

from these countries constitute the majority of their irregular migrants – which has contributed to preventing irregular migration through a continuous exchange of information on the risks of irregular migration, trends, techniques, and the use of false documents. ILOs have also been active in obtaining documents necessary for the return of irregular migrants from third-country diplomatic or consular missions. In the **Netherlands** and **Norway**, the role of the ILOs has been extended to include the facilitation and investigation of return.

4.5 Identification of irregular migration routes

Frontex (see [Annex III](#)) plays an important role in identifying migration routes into the EU, notably:²⁴

- ▶ Western Mediterranean route
- ▶ Central Mediterranean Route
- ▶ Eastern Mediterranean Route
- ▶ Eastern Land Borders Route
- ▶ Western Balkans Route
- ▶ Western African Route
- ▶ Circular Route from Albania to Greece

The ICMPD i-Map project also presents ‘profiles’ on Irregular and Mixed Migration routes into the EU.²⁵ In addition to and in conjunction with Frontex and ICMPD, (Member) States adopt a range of practical measures to identify irregular migration routes, usually in cooperation with relevant national and international agencies.

In **Austria**, the Federal Asylum Agency and the Criminal Intelligence Service Austria cooperate to identify routes of irregular migrants, and also smugglers. In 2010 and 2011, the Balkan-Route from Turkey to **Greece**, through the Former Yugoslav Republic of Macedonia (FYROM) and Serbia to **Hungary** and then to **Austria** was identified. Other major routes to and through Austria include flows from countries of origin: (a) to Turkey and **Greece** through **Italy**, and (b) through Bulgaria and Romania to **Hungary**, and then to Austria. **Austria** also notes that migration routes change constantly, and are shaped by the situation in the countries of origin, as well as the legal framework and border control measures in the countries of transit and destination, highlighting the need for on-going intelligence and cooperation. **Ireland** highlights its use of information technology, and the sharing of intelligence internationally, as well as its involvement in international operations to combat irregular migration and trafficking in human beings. **Hungary** describes its work in analysing risks and challenges, and monitoring the use of motorways at borders.

4.6 (Other) Intelligence-gathering and Risk Assessment

Some (Member) States advanced their detection of irregular migrants at entry by applying intelligence and risk assessment measures (**Austria**, **Belgium**, **Czech Republic**, **Germany**, **Greece**, **Lithuania**, **Luxembourg**, **Malta**, **Poland**, **Sweden**,

²⁴ See: <http://www.frontex.europa.eu/intelligence/migratory-routes>

²⁵ www.imap-migration.org

Slovenia, Slovak Republic, Norway) or integrated border management systems (Austria, Germany). In Belgium and Poland, risk assessment for irregular migration includes weekly, monthly and annual reports, as well as intelligence from the network of liaison officers. In the Slovak Republic, the collection of intelligence information and strategic analysis of risks are undertaken by the Risk Analysis and Coordination Department of the Bureau of Border and Aliens Police. Germany's approach to integrated border management, a "four pillar model," consists of the pre-emptive strategy ("pre-entry"), external border controls, compensatory measures in the country, and police cooperation. Austria's approach to integrated border management includes cooperation between different stakeholders and organisations (including Frontex), as well as different countries. In Lithuania, border guards are provided a list of risk factors to inform operations at the border and within the country.

4.7 Training and other Support Activities

(Member) States refer specifically to the importance of training and support to staff (e.g. border authorities, customs authorities and staff working for carriers) as a practical measure to address irregular migration at pre-entry stage, and indeed, in response to the challenges of the decentralised nature of the work, often taking place in third countries, and the use of multiple agencies. Many (Member) States refer to regular and on-going training and support to staff for activities relating to visas and border controls (for example, Austria, Belgium, Germany, Greece, Latvia, Lithuania, Netherlands, Slovak Republic, Slovenia, Sweden), and in some cases, these extend to carriers (Belgium, see also [Section 4.3](#)), reflecting the recognition of the role of such actors in relation to preventing irregular migration at pre-entry stage. Belgium, Netherlands and Sweden highlight training of personnel overseas.

Slovenia, for example, has highlighted a comprehensive approach to the training of police officers, and has developed a series of specialised training courses, covering fields relevant to the prevention of irregular migration, for example: the detection of document abuse; the use of special equipment to control state borders outside border crossing points; detection of human trafficking; work of shift managers on border crossing points; helicopter surveillance; humanitarian law, human rights and police ethics; information system; conducting interviews with irregular migrants; international protection procedures; and foreign language training.

In relation to training for carriers, Belgium provides information and advice to carriers (air carrier, shipping companies, road transporters) on how to identify irregular migrants, plus developed a specialised website giving information on the travel documents recognised by the Belgian authorities and the conditions to enter the Schengen area and civil penalties imposed on carriers. In 2010, training to limit irregular migration was delivered to airliners in the D. R. Congo, Cameroon and the Gambia, plus in Morocco, Turkey and India. Belgium also provides training to detect false travel documents to border control staff and airline companies in the countries of origin by the "air police" section of the Federal Police.

The Netherlands has implemented a project to establish a Regional Immigration Training Academy (RITA), which aims to expand the capacity of 600 immigration

and customs officers from the East-African community. In **Sweden**, the Swedish police abroad train airport personnel, migration officers and Swedish Embassy staff on various themes, including human trafficking.

4.8 Co-operation with third countries

Several Member States (**Germany, Italy, Luxembourg, Netherlands, Slovak Republic, Spain**) highlight the role of preventative measures by tackling the issues in countries of origin that may result in decisions to migrate irregularly, and by opening up legal channels for migration that provide for migration and mobility. **Germany**, for example, has developed bilateral agreements permitting legal entry of nationals from third countries such as Bosnia and Herzegovina, Croatia, Serbia incl. Montenegro and Kosovo, the Former Yugoslav Republic of Macedonia (FYROM), Turkey, Albania, Russian Federation. This serves to recognise the importance of the migrants' remittances to the development of countries of origin, the potential of migration movements for knowledge transfer and innovation, as well as the positive role of migrant diasporas in development. **Germany, Netherlands and Luxembourg** participate actively in mobility partnerships; **Slovak Republic** refers to assistance and development of migration management in countries of origin and in transit through international official development aid projects, and international cooperation aimed at capacity building. **Italy** has also signed bilateral agreements with Moldova, Morocco, Egypt, and Albania (and negotiated with Tunisia) aimed at promoting labour migration through exchange of information, sharing of technical tools, drafting lists of workers in the Country of origin, with training opportunities on site including the teaching of Italian language, etc.

(Member) States have set up cooperation agreements with third countries, including police co-operation agreements (**Austria, Greece, Italy, Slovak Republic**); bilateral co-operation agreements on organised crime, human trafficking and irregular migration (**Austria, Slovak Republic, Lithuania**), and transfer, return and acceptance of persons irregularly staying in the territory of the respective States (**Lithuania**). Specific border agreements with third countries were highlighted by **Lithuania** (with Russian Federation and Belarus) and **Poland** (Moldova), border guard co-operation agreements (**Estonia, Spain, France**). **Austria** has highlighted a specific bilateral security agreement with Albania and Bosnia-Herzegovina, with a specific focus on supporting visa liberalisation versus procedures to prevent irregular migration, migrant smuggling and human trafficking.

Austria also refers to its 'twinning project' *Implementation of the Integrated Border Management Strategy in the Republic of Serbia*, which works in partnership with the National Police of **Hungary** as a junior partner. The main aim of this EU-funded project is to support the implementation of the Integrated Border Management Strategic Action Plan to introduce and enhance border security in the region in compliance with EU standards. The **Czech Republic** has also highlighted cooperation projects for strengthening capacities, in particular, the General Directors' Immigration Services Conference (GDISC) ERIT Ukraine project, implemented also by **Hungary, Netherlands, Poland, Slovak Republic** and the **United Kingdom**, which has applied the 'twinning principle' of close cooperation between the migration authorities of several Member States and those of a third country to share know-how and investments in technical infrastructure to achieve a common goal. Several Member States

(Belgium, Greece, Netherlands, Sweden) refer to their joint involvement in the *Transit Migration in the Mediterranean* (MTM) Project, coordinated by ICMPD, which ended in 2009 and brought together these Member States with third countries, including Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia to create a better understanding between the participating states and focuses on irregular migration flows. Poland supported Kosovo in the Framework of the Project “Strengthening the rule of law – Border and Boundary Police” and in other projects involving cooperation with Armenia and Macedonia related to migration management and the prevention of irregular migration.

(Member) States have implemented a range of training and assistance measures to support third countries to address irregular migration in countries of origin and transit. The Czech Republic approach has been to combine capacity building measures in third countries with development elements, for example, by measures to stabilise groups in the population most at risk of irregular migration. Such projects have been implemented in Ukraine, Moldova, Georgia and the countries of the South Caucasus, particularly in cooperation with IOM Prague, NGOs and other entities. In Germany, a standard feature of bilateral co-operation with third countries (and other EU Member States) has been training and equipment assistance to police forces, including instruction, advisory courses and study / information visits held in Germany. The United Kingdom has aimed to build capacity and share technical support in the area of return; its SIREDA - Supporting Implementation of Readmission Agreements – project has funded the voluntary return and reintegration of irregular migrants in Ukraine, and has aimed to deter the use of Ukraine as a transit country for irregular migration. In a recent Joint Declaration signed by Austria, Hungary and Serbia, Ministers committed themselves to develop the capacity and efficiency of Serbian migration and asylum authorities, possibly with support of the European Asylum Office (EASO) or other EU Member States. The Slovak Republic participates in the international project *Building Training and Analytic Capacities on Migration in Moldova and Georgia* (GOVAC) which aims to create a basis in both countries for the development and implementation of migration partnerships by enhancing the capacities of state institutions and academia in migration management and also is engaged in cooperation with the *EU Border Assistance Mission to Moldova and Ukraine* (EUBAM).

As well as training and capacity building, (Member) States have highlighted measures to exchange good practices. Poland, for example, has exchanged good practices on returns and identification with experts from Vietnam, and held meetings with the representatives of border services of Poland and Ukraine, to exchange good practice on procedures of transfer and readmission. The projects are co-financed by the European Return Fund.

Other forms of non-legislative cooperation with other (Member) States and third countries are referred to in other sections of the report, for example, the work of immigration liaison officers ([Section 4.4](#)); co-management of practices at borders ([Section 5.5](#)); and co-operation to aid removals ([Section 7.2](#)).

5. Entry measures

This Section outlines (Member) State actions undertaken at entry, primarily at the borders, to control irregular migrant's entry into (Member) States' territories. As identified by Frontex (see [Annex II](#)), in addition to overstay and absconding from the asylum process, migrants may also become irregular by crossing at official border crossing points using false documents or by crossing at unofficial or irregular border crossing points – so-called 'green borders'. At both official and unofficial border crossing points, smugglers or facilitators may also play a role. In response (Member) States have introduced various measures, including using technology for surveillance of the external borders ([Section 5.2](#)); measures to improve border-management and checking of passengers ([Section 5.3](#)); and measures related to the detection of false documents ([Section 5.4](#)). Many (Member) States also highlighted the effectiveness of cross-border cooperation with other (Member) States and with third countries ([Section 5.5](#)). Such cooperation is further described in [Section 8.4](#) and [Section 4.9.1](#). Frontex supports (Member) States in a variety of measures implemented at the border, which are briefly described in [Section 5.6](#). A statistical overview of refusals at the border is provided in [Section 5.1](#).

Box 5.1 - Linking practical measures taken at entry to the Strategic Response

Three of the strategic priority areas of the Strategic Response to EU Action on Migratory Pressures list challenges and identify goals to be addressed on entry. These are:

- ▶ Strategic priority area II: Enhanced border management at the external borders
- ▶ Strategic priority area III: Preventing illegal migration via the Greek-Turkish Border
- ▶ Strategic priority area VI: Enhancing migration management, including cooperation on return practices

The relevant challenges and goals identified are as follows:

Challenges identified in the Strategy:

- ▶ Preventing and combating illegal immigration by ensuring strong and efficient external border control (area II)
- ▶ Ensuring effective controls are in place at the Greek-Turkish Border (area III)
- ▶ Ensuring all Member States have efficient migration management systems in place in order to be prepared for fluctuating migration pressures (area VI)

Goals identified:

- ▶ Strengthening the security and control of the Schengen external borders (area II)
- ▶ Implementation of the Frontex Regulation (area II)
- ▶ Enhancing inter-agency cooperation and cooperation between Member States (area II)
- ▶ Making greater use of Advanced Passenger Information (area II)
- ▶ Increasing the capacity of Greece by introducing sustainable measures for reducing irregular migration (area III)
- ▶ Putting in place a sustainable and credible EU policy approach to the management of migration and ensuring contingency measures are in place for unexpected flows of migration (area VI)
- ▶ Developing early warning systems based on data received from Member States (area VI).

5.1 Refusals of entry at the borders: a statistical overview

This subsection provides an overview of refusals of entry at the external borders of the EU 2008-2011. Overall the number of refusals decreased, although in some (Member) States notable increases from 2010 to 2011 have occurred. More detailed statistics are presented in Annex VII

Frontex, in its Risk Analysis Reports, also provides information on detected irregular crossings. According to the 2012 Report,²⁶ in 2011, there were notable increases in irregular border crossings in the Mediterranean (following the Arab Spring), but there was a decrease in detections of Albanians irregularly crossing the border. In total the number of irregular border crossings increased from 104 000 in 2010 to 141 000 in 2011 (+35%), 46% of irregular border crossings were detected in the Southern Mediterranean (i.e. Italy, Spain) and 40% were detected in the Eastern Mediterranean (i.e. Greece) borders. Detections of nationals of Pakistan crossing irregularly increased from less than 4 000 in 2010 to 15 300 in 2011 mostly via the Eastern Mediterranean route. In 2011, the largest number of irregular migration crossings (57 024) were detected on the Eastern Mediterranean route – i.e. entering the EU via Greece, although detected irregular crossing increased also on the Western and Central Mediterranean routes.²⁷

Eurostat figures for the number of refusals per (Member) State in 2011 are illustrated in [Figure 5.1](#); the figures for 2010 are provided in [Annex VII](#) (Figure VII.1). As shown, the Member States with the largest number of refusals are (as in 2010) Spain, Poland, United Kingdom and Hungary. The number of refusals at the border in Greece grew significantly from 3 805 in 2010 to 11 160 in 2011 and in Italy from 4 215 in 2010 to 8 635 in 2011. The number of refusals in France 2010 to 2011 also grew from almost 10 000 to just over 11 000 and in Hungary from around 10 500 to around 11 800. Belgium also saw an increase of almost 900 refusals from 1 855 to 2 730 and in Latvia the number of refusals grew from just over 800 in 2010 to just over 1 200 in 2011. In Spain there was a lower number of refusals at the border (228 000) in 2011 as compared with 2010 (290 000), although the numbers remain much higher than those of other (Member) States. This is largely due to the migratory pressures at the external borders of Ceuta and Melilla which are located on the African continent bordering Morocco. The decrease in numbers 2010 to 2011 is likely due to ongoing actions to reduce irregular entry at these borders.

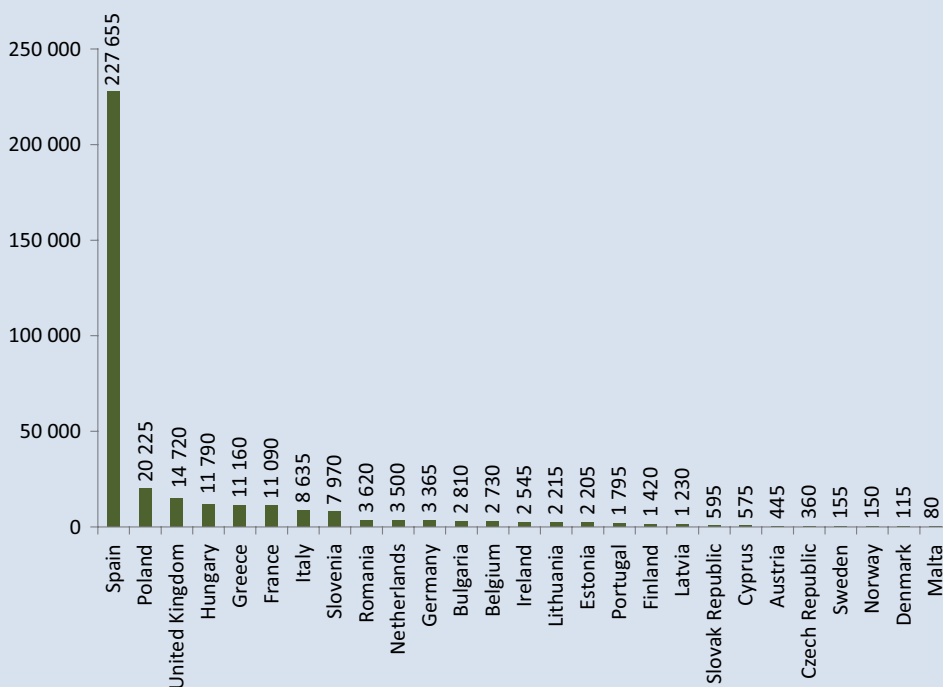
Overall, however, the number of refusals at the border steadily decreased 2008 to 2011 (by 21% per year and 51% overall between 2008 and 2011). This is illustrated in [Figure 5.2](#). The Figure also illustrates the main reasons for refusals which was, for each of the years 2008 to 2010, 'no valid visa or residence permit', followed by 'purpose and stay conditions not justified', then 'insufficient means of subsistence'. From 2008, following the implementation

²⁶ Available at: http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2012.pdf

²⁷ See: http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2012.pdf

of the Schengen Information System (SIS), it became possible to register ‘an alert has been issued’ as a reason for refusing entry (of persons who have been entered into the SIS for non-entry due to being a threat to public policy, public security or national security, or because they have already been subject to a removal order in the EU). Since then this reason has increased in frequency as a reason for refusal. Finally, ‘no valid travel document’ is also a common reason for refusal. Whilst all persons refused entry at the border can be considered irregular entrants to the extent that they do not fulfil the conditions of entry, they may not all have specifically set out to enter irregularly – for example, where the entrant has ‘insufficient means of subsistence’ or inadequate documentation, this may also signal that the entrant was unaware of this condition of entry and did not aim to enter irregularly.

Figure 5.1 - Third-country nationals refused entry at the external borders, by (Member) States, 2011



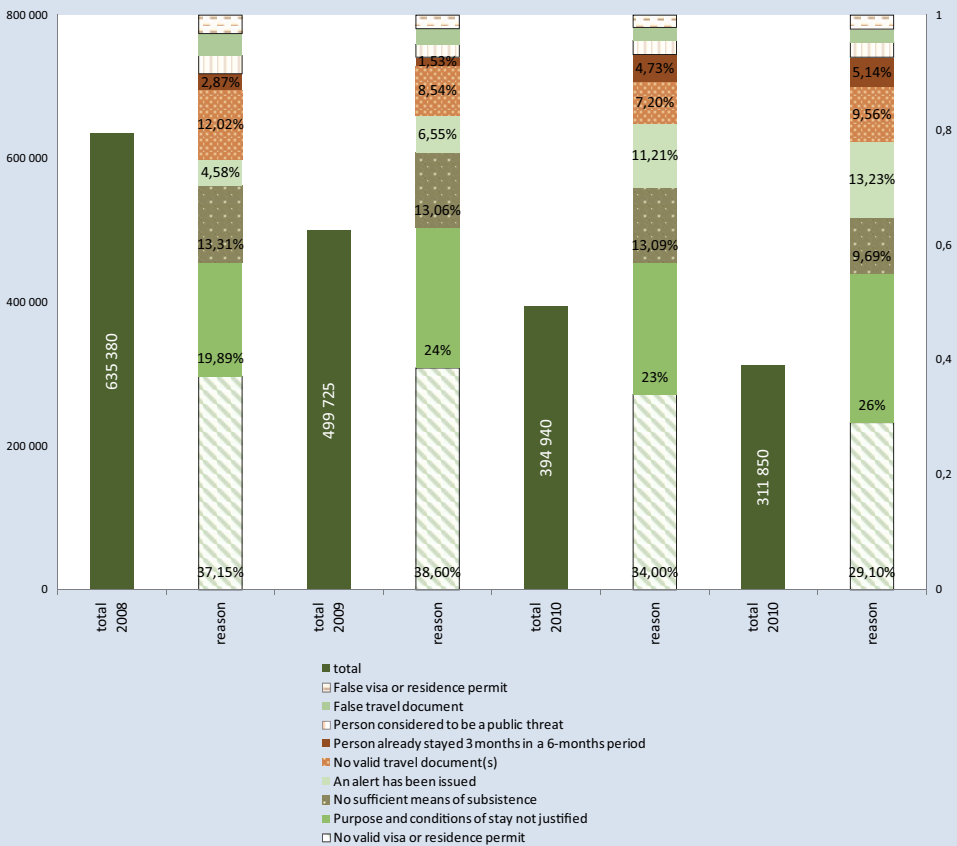
Source: Eurostat

Note: no data for Luxembourg

Table VII.1 in Annex VII shows the main nationalities of those refused entry at the border. The number of Moroccans refused entry is notably high (although these numbers decrease from 2008 to 2011), and this is very likely due to the migratory pressures at Ceuta and Melilla in Spain. In Greece, irregular entrants from Asia and Africa have been increasing in recent years, entering through the Greek-Bulgarian or the Greek-Turkish border. In 2010 there was

a shift in the pattern of entry: the number of entrants at the Greek-Turkish sea border notably decreased from 2009 to 2010, while the number of entrants at the Greek-Turkish land border increased. This decrease is related, among other things, to the effective joint operations that Frontex, together with the Greek authorities, implemented in the Aegean Sea, shifting irregular migration flows from sea to land borders between Greece and Turkey. However refusals of Albanian citizens at the Greek borders increased (from 1 015 in 2010 to 9 000 in 2011). This has happened in parallel to an increase in the number of apprehensions of persons found to be irregularly present (see [Section 6.2.1](#)).

Figure 5.2 - Third-country nationals refused entry at the external borders, all (Member) States, total and by reason, 2008-2011



Source: Eurostat.

Notes: No data for Luxembourg in 2010. Percentages for reasons calculated on the basis of refusals for which a reason is given, i.e. 22 % of total refusals in 2008, 25 % in 2009 and 29 % in 2010. Spain does not record reasons for refusals in about 97 % of cases.

Austria, Estonia and Germany all cite expansion of the European Union as a reason for the decrease in refusals at the border. In **Austria**, in 2005 and 2006 the two main nationalities of refused persons were Romanian and Bulgarian, hence EU enlargement meant these persons were no longer refused entry and overall numbers declined. The accession of Switzerland to the Schengen Area also had an impact on the previously large proportion of persons refused entry who were Swiss nationals. **Germany** also cites that accession of neighbouring countries (**Poland** and the **Czech Republic**) to the Schengen area increased controls of cross-border traffic and intensified border surveillance carried out there, thus reducing irregular entry. Highly specific events unrelated to irregular entry also account for rises and falls in data. For example, the increase in refusals at the sea border in **Estonia** by 350% between 2009 and 2010 was due to a lack of information on the part of Russian seamen of an administrative change which required them to carry a passport and visa which had not previously been the case. **Germany** also highlights administrative factors - namely that different offences were recorded in the statistics, e.g. regarding customs offences, prior to 2008 - and external factors such as the falling number of asylum-seekers entering the Member State. In **Spain** the number of irregular migrants arriving by sea (especially at the Canary Islands) has decreased significantly since 2006 when over 39 000 irregular migrants arrived, 31 678 of which arrived in the Canary Islands; in 2010 only 3 632 irregular migrants arrived in Spain via sea, only 196 of which arrived in the Canary Islands. This illustrates the effectiveness of national measures to target irregular entry via the sea borders.²⁸ **Greece** also attributes the comparatively small numbers of refusals at entry in recent years to improved training of passport control agencies and the work of consular authorities in effectively vetting visa applications and refusing them. The **Slovak Republic** also cites the effectiveness of policies as a reason for the decline: the number of Ukrainians refused entry at the border has declined since the policy of permitting cross-border traffic and the simplification of visa procedures for Ukrainian nationals were implemented.

5.2 Border surveillance through use of technology

Several Member States have recently made use of new technologies to improve border controls and surveillance (**Austria, Czech Republic, Estonia, Italy, Latvia, Lithuania, Luxembourg, Malta, Slovenia, Slovak Republic, United Kingdom**) - particularly across so-called "green borders" where there are no official border crossing points. Such technologies include thermal imaging equipment (**Austria, Germany**) and other kinds of human presence detectors (**Germany, Belgium, Ireland, Latvia, Slovak Republic**). In **Malta**, to counter the threat of irregular migration in 2011 that followed the 'Arab Spring', its Armed Forces more than doubled its offshore maritime patrolling activities. As part of this monitoring initiative, over 1 500 persons (amongst them irregular migrants) who had been trying to get to the EU through dangerous routes were rescued in 2011. The **Slovak Republic** introduced an innovative dual detection system at the northern mountainous and forested border with Ukraine, which is designed to detect

²⁸ For more information on the scale of irregular migration to the Mediterranean, see EMN Ad-Hoc Query 210 on [Illegal migration in the Mediterranean Sea Basin](#) which was originally launched on March 2010 and updated October 2011.

humans even in inaccessible terrains, such as swamps and water flows. As the project is a pilot and costly, it is currently only implemented along 2.3km of the border. A new system of human presence detectors has also been implemented at railway and road border crossing points at the southern border with Ukraine. These detectors are able to spot the presence of a person hidden in a truck or in a wagon with 100% efficiency. According to the Slovak *Bureau of the Border and Aliens Police of the Police Force Presidium*, these combined measures have resulted in lower irregular migration pressures on the Slovak-Ukrainian external border, as well as a decline in other 'illegal cross-border activities' (e.g. smuggling of goods). In **Lithuania**, violations have also decreased along the external border sections where border monitoring systems have been installed. For example, at the Lithuanian-Russian border, violations more than halved between 2010 and 2011 from 175 to 78. The European external border surveillance system (EUROSUR)²⁹ was highlighted by some Member States (**Austria, Hungary**) as a future measure that will improve surveillance.

5.3 Measures to improve border-management and checking of passengers

The use of technology to facilitate the checking of passengers on entry is also highlighted as an effective practical measure by (Member) States. Technologies include X-ray and fingerprints scanners (**Belgium, Estonia**), e-passport scanners and user interfaces (**Austria**), automated e-gates (**Austria, Germany, Finland**), biometric visas (**Belgium, Germany**). **Estonia** has highlighted a wide range of devices, including microscopes, lenses for decoding invisible security elements (IPIs) of photos, devices for checking documents, authenticity control devices and document readers. **Germany** notes that the advantage of automated identity checks (e.g. those which allow the entry of passengers through recognition of biometric information, such as face gait and irises) is that human errors caused by potentially tired or distracted border guard staff can be avoided. They may also be cost-effective, as fewer staff are required.

Czech Republic, Greece, Ireland, Netherlands and Spain consider the provision and analysis of Advanced Passenger Information (API - see also [Section 4.3](#)) an effective tool in preventing the entry of irregular migrants. These are lists of passengers, which are requested from air carriers (and in some countries – e.g. **Spain** from sea carriers also) in advance of the arrival of the vessel. In the **Czech Republic**, as in other (Member) States, API is only requested from specific routes or flights coming from specific countries from which there may be greater irregular migration flows. This allows border guard staff to assess the passenger list and compare it to databases, such as the Schengen Information System and to identify any passengers which may be considered potentially irregular entrants and requiring more thorough or detailed checks on entry.

(Member) States (e.g. **Austria, Slovak Republic**) also highlight the implementation of the Schengen Information System (SIS), and Visa Information System (VIS) as important practical measures.

²⁹ Communication examining the creation of a European Border Surveillance System (EUROSUR), COM (2008) 68 final of 13 February 2008. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0068:FIN:EN:PDF>.

5.4 Measures to detect and prevent use of false documents for entry

Several (Member) States give specific examples concerning effective measures undertaken in relation to document checking at entry. **Ireland** check documents in the Interpol database and uses FADO (*European image-archiving system*). The **Slovak Republic** also checks documents at the border through a Central Screening Console which is interconnected to a FADO documents register amongst other systems. **Italy** has highlighted a range of practical measures used together to prevent the sale and forgery of documents. This has included creating a crime of the production of false or bogus documents to enter (Consolidated Act on Immigration (Legislative Decree 286/1998) set forth by Law 189/2002); a new procedure for issuing “biometric passports” (as required by EU Regulation 2252/2004); signing up to the Prüm Treaty; actions to prevent the falsifications of visas and ‘visa trafficking’, including more overseas consulates; and specific operations to uncover falsified documents.

With regard to lessons learnt, **Italy** highlights the importance of providing for the introduction of new offences, relating to increasingly sophisticated counterfeiting techniques, and also a recommendation to invest in technology. As a practical measure to address document misuse, the **United Kingdom** has also highlighted the good practice of its National Document Fraud Unit, which provides specialist officers and training to border staff to detect migrants arriving with documentation that does not allow them to enter legally. In **Malta** information on fraudulent documents found and the countries of origin of migrants attempting to use them at border crossing points is gathered at Police Headquarters and distributed to all border control officers. This information is also shared by Risk Analysis Officers at meetings of the Frontex Risk Analysis Network (FRAN).

5.5 Cross-border cooperation

Other practical measures at entry include different forms of cooperation activities (see also [Section 4.9](#)). Many Member States (**Austria, Belgium, Czech Republic, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Slovak Republic, United Kingdom**) undertake activities aimed at combating irregular migration at borders together with the neighbouring countries. These activities may take the form of developing police cooperation centres, (**Austria**), joint patrols (**Austria, Czech Republic**), joint operations and campaigns (**Hungary, Latvia**), joint investigations at border crossings (**Estonia**), as well as exchange of statistics, information, experience and training, implementation of joint ventures and networks of liaison officers (**Poland**). In **Poland**, the Border Plenipotentiary System has been identified as a tool for border cooperation with the Russian Federation, Belarus and Ukraine. A Protocol on direct mutual cooperation was concluded between the respective operative border units of the **Slovak Republic** and Ukraine, involving the exchange of opinions and preparation of concrete strategic solutions for countering irregular migration. **Ireland** and the **United Kingdom** automatically share data on migrants crossing their shared border. Any adverse migration histories are therefore alerted to the Immigration Officers in each respective Member State. Finally, in **Finland** the identification and detection of irregular migration at entry is provided via cooperation between the Police, Customs and the Border Guard which carry out criminal intelligence activities.

5.6 Cooperation with Frontex

As described further in [Annex III](#), the main purpose of Frontex is to support (Member) States in their commitment to provide a high and uniform level of control at the external borders of the Schengen area. Border control remains a national competence, but Frontex coordinates the deployment of additional experts and technical equipment to those border areas which find themselves under significant pressure and builds the capacity of (Member) States in various areas related to border control, including training and sharing of best practices.

Several Member States (Austria, Greece, Germany, France, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Spain, Slovak Republic, Sweden) mention cooperation with Frontex as one of the measures undertaken to reduce irregular migration at entry. Such cooperation has included involvement in Frontex joint operations on air, land and sea borders (Austria, Czech Republic, Germany, Estonia, France, Greece, Hungary, Ireland, Lithuania, Malta, Netherlands, Poland, Slovak Republic, Spain, United Kingdom, Norway); participation in Frontex seminars and training sessions, including working groups for documentation experts (Lithuania, Luxembourg, Malta, Netherlands, Poland, Norway); and information exchange through the Frontex Risk Analysis Network (FRAN) (Belgium, Czech Republic, Estonia, Germany, Lithuania, Luxembourg, Malta, Sweden, Slovak Republic, Norway) through which mutual exchange of information takes place between Frontex and the (Member) States.

In 2010 operational headquarters of Frontex were established at Piraeus in Greece with the aim of (i) maintaining the operational nature of Frontex in areas facing serious and permanent migration pressures; (ii) improving the efficiency and effectiveness of ongoing joint European operations; (iii) making optimal use of operational resources of the (Member) States, through better awareness of the situation at the external borders of the Union.

6. Measures taken during stay in the (Member) State

This Section describes practical measures undertaken by (Member) States within their borders. These include a variety of measures including those aimed at identifying migrants who may be staying or have entered irregularly ([Section 6.2](#)); those who may be in irregular employment, including those who become irregular through breaching the conditions of work ([Section 6.3](#)); persons who have entered the country through fraudulent means, e.g. marriages of convenience ([Section 6.4](#)); as well as other measures ([Section 6.5](#)). This Section also provides estimates of irregular migrants in some (Member) States ([Section 6.1](#)); plus statistics on apprehensions of irregular migrants ([Section 6.2.1](#)); and irregular migrants found to be irregularly employed in (Member) States ([Section 6.3.1](#)).

Box 6.1 - Linking practical measures taken at entry to the Strategic Response

Two of the strategic priority areas of the Strategic Response to EU Action on Migratory Pressures list challenges and identify goals to be addressed during stay. These are:

- ▶ Strategic priority area IV: Better tackling of abuse of legal migration channels
- ▶ Strategic priority area V: Safeguarding and protecting free movement by prevention of abuse by third country nationals

The relevant challenges and goals identified are as follows:

Challenges identified in the Strategy:

- ▶ Preventing unfounded asylum applications (area IV)
- ▶ Combating and preventing irregular migration caused by visa liberalisation (area IV)
- ▶ Improve understanding of the abuse of free movement rights by third-country nationals (area V)

Goals identified:

- ▶ Decreasing the number of unfounded asylum claims (from visa-free countries) (area IV)
- ▶ Decreasing the level of the irregular workforce (area IV)
- ▶ Gathering and analysing information on fraud and abuse at EU level (area V)
- ▶ Improving dissemination of information, intelligence and best practice between Member States and investigate abuse of free movement and rights (area V)
- ▶ Ensuring that travel documents used within the EU, including their issuance and validation, meet minimum security standards with a particular focus on ID and residence cards (area V)

6.1 Estimates of stock of irregular migrants

In recent years, a number of studies³⁰ have focused on estimating the total number of irregular migrants in the EU. These studies have tended to demonstrate that, following a peak in 2008, overall numbers are decreasing although localised ‘surges’ of irregular migration flows – such as those which followed the ‘Arab Spring’ in 2011 (see [Annex III](#)) – have continued.

Austria, Finland, Germany, Greece, Ireland, Italy, Netherlands, Slovak Republic, Spain, Sweden, United Kingdom and Norway could provide estimates ([Table 6.1](#)) of the total number of irregular migrants present between 2000 and 2011. Four of these (Austria, Finland, Ireland, Slovak Republic) use the statistics which was established by the Clandestino project; although Finland also provides estimates provided by the Finnish authorities. Both Germany and Spain have updated the Clandestino data applying, the same methodology. Studies in Italy, the Netherlands and Norway suggest that the number of irregular migrants is in decline; while a study in Greece suggests that numbers there have grown from 2007 to 2010. The details of these studies are further discussed in the National Reports.

Table 6.1 - Estimates of stock of irregular migrants in (Member) States

(Member) State	Year of estimate	Source of estimate	Estimate (range, where given)	Estimate (single / central figure, where given)
Austria	2008	Clandestino	25 174 – 73 838	49 506
Finland	2011	National Bureau of Investigation estimates		4 000
Germany	2008	EMN National Report (based on Clandestino method)	190 000 – 420 000	
	2009		140 000 – 340 000	
Greece	2008	EMN National Report		249 108
	2010			443 800
Ireland	2008	Clandestino	30 000 – 62 000	
	2009			560 000
Italy	2010	Initiatives and Studies on Multi-ethnicity (ISMU) Foundation		544 000
	2011			< 500 000
Netherlands	2009	Research and Documentation Centre (WODC)	60 667 – 133 624	97 145
Slovak Republic	2008	Clandestino	15 000 – 20 000	
Spain	2011	EMN National Report		93 000
Sweden	2010	Swedish Migration Board		8 000
	2011	Swedish Police		16 000
United Kingdom	Late 2007		417 000 to 863 000	618 000
Norway	2006	Statistics Norway	10 000 – 32 000	18 000

Source: EMN National Reports

³⁰ For example, Morehouse, C and M. Bloomfield (2011), Triandafyllidou (2010) and Jandl (2006). For full references of these studies see bibliography in [Annex VIII](#). See also See Morehouse and Blomfield (2011) ‘Irregular Migration in Europe’ for the Migration Policy Institution, available at: <http://www.migrationpolicy.org/pubs/TCMirregularmigration.pdf> plus Clandestino, Prominstat projects, the Annual ICMPD Reports.

6.2 Identification of irregular migrants on the territory

The most common way in which a migrant becomes irregular is through breaching the conditions of stay in the (Member) State. For this reason, (Member) States place emphasis on identifying irregular migrants, either by 'seeking out' irregular migrants through targeted checks and inspections or by imposing administrative obligations, such as reporting duties, on those working in the public and, in some cases, the private sector.

Austria, Belgium, Czech Republic, Estonia, Greece, Netherlands, Slovak Republic, Spain and Norway carry out inspections of accommodation, e.g. hotels, but also private residences; **Austria, Belgium, Germany, Slovak Republic** carry out checks on the streets; and **Austria, Belgium, Czech Republic, Estonia, Germany, Hungary, Lithuania, Netherlands, Slovak Republic, Norway** undertake them in public places, such as airports, roads or railways.

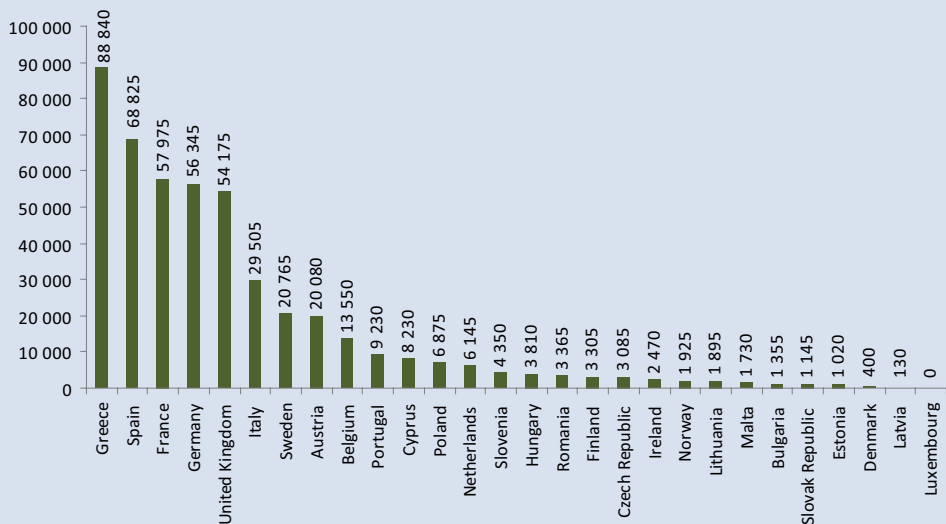
In **Hungary** the basic method to identify irregular migrants is through unexpected checks in different places and at various times, particularly on major traffic routes, junctions, or other public places. When carrying out such checks in **Germany**, the police are obliged, in case of identity checks, to also verify the person's residence status. In the **Slovak Republic**, upon carrying out such residence controls, the police are entitled to enter places designed for business, employment or study, as well as the premises of hotels, and to request identity documents, as well as to further question any persons present. Checks on residence control can be random – e.g. carried out by mobile police units at different checkpoints; carried out more frequently – e.g. regular preventative/security controls according to type plans at selected check-points with where a greater number of third-country nationals is expected to be present, such as motorway rest areas, bus and railway stations, accommodation facilities and market places; or be 'hidden' – i.e. carried out by search groups as part of regular traffic operations on motorways and roads of international importance. The **Netherlands** has developed a system for carrying out targeted checks on vehicles on the main roads leading to and from **Belgium** and **Germany** on the basis of traffic monitoring and the profiling of vehicles. **Spain** increased police controls in places known for prostitution, as well as at job centres. Similarly, **Norway** has been targeting the illicit drug market in Oslo, and evidence shows both that some apprehended drug dealers will present an asylum application, and that some failed asylum applicants or becoming irregular have turned to drug dealing.

Estonia, Germany and Italy impose so-called mandatory reporting duties for public bodies to inform immigration authorities of irregular migrants using their services. Healthcare providers are, however, exempted from such duties. In **Estonia**, the Aliens Act establishes for the third-country national, employer, educational institution, sponsor as well as the person providing housing for the third-country national, the obligation to notify the Police and Border Guard Board of the circumstances that may cause expiry of the legal basis for the person's stay in the country, or of his or her irregular status.

6.2.1 Apprehensions of third-country nationals found to be irregularly present

Figure 6.1 shows the number of apprehensions per (Member) State in 2011. The five Member States with the highest numbers of third-country nationals found to be irregularly present (in order) are Greece, Spain, France, United Kingdom and Germany followed by Italy, Sweden, Austria, Belgium and Portugal. While the number of apprehensions may be indicative of effective detection and law enforcement methods, they can also be indicative of high (er) numbers of irregular migrants in the (Member) State.

Figure 6.1 - Third-country nationals found to be irregularly present, by (Member) State, 2011



Source: Eurostat

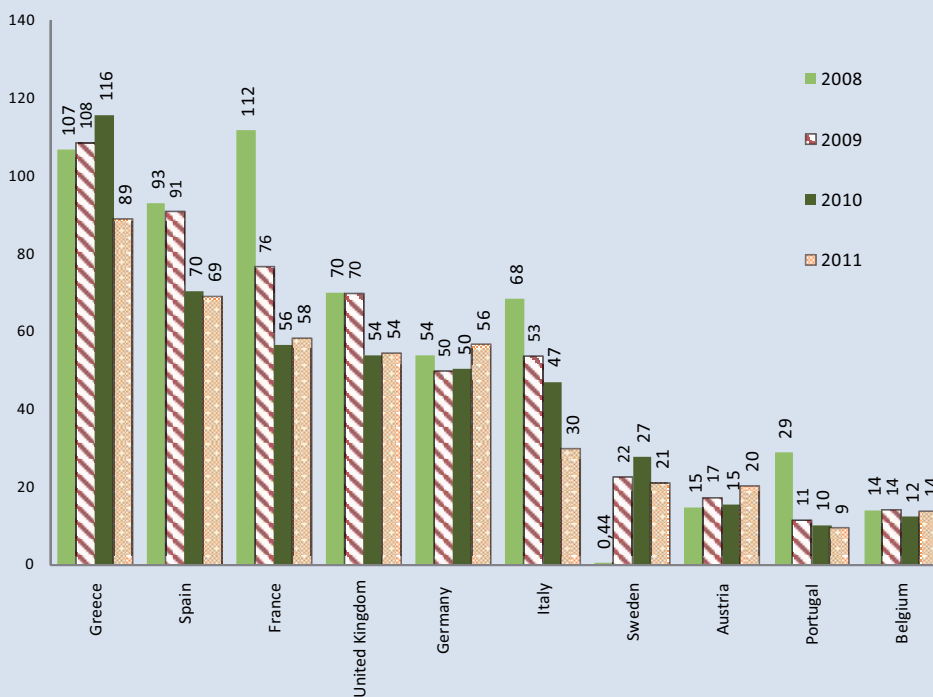
Overall there has been a decrease in the number of apprehensions 2008-2011. This is demonstrated in Figure 6.2, which presents the trends 2008-2011³¹ of the ten main Member States that had the highest number of apprehensions in 2011.

In Italy, Portugal, Spain and Greece the number of apprehensions has decreased overall; indeed the decrease was quite dramatic in Greece and Italy between 2010 and 2011 when the number of apprehensions decreased by around 27 000 (23%) from 2010 to 2011 in Greece and by around 17 000 (36%) from 2010 to 2011 in Italy. In Spain between 2009 and 2010 the number

³¹ Statistics extracted on 16.04.12 and 28.06.2012. Eurostat statistics are available for 2011 for all Member States and Norway, except for Luxembourg.

of apprehensions decreased by around 21 000 (23%) from 2009 to 2011. In **Portugal**, the number of apprehensions declined to around a third of the 2008 total in 2009, 2010 and 2011.

Figure 6.2 - Third-country nationals found to be irregularly present, ten main (Member) States, in 1 000s, 2008-2011



Source: Eurostat

Note: Figure for Sweden in 2008 is below 1000 (440) and is therefore represented as a 0 in the graph above

Similarly, there was a notable decrease in apprehensions in **France** from 112 000 in 2008 to 56 000 in 2010 and in the **United Kingdom** from 70 000 to 54 000, although the number of third-country nationals found to be irregularly present in both these Member States rose slightly again in 2011. To a lesser extent there has also been some decline in the number of apprehensions in **Sweden**.

In **Austria** the numbers have waivered around 17 000 and around 50 000 in **Germany**, although there was an increase in apprehensions in both of these Member States in 2011. **Greece** suggests that the increase in apprehensions is indicative that legislative and practical measures taken have not yet yielded the expected results. **Lithuania** and the **Netherlands** report that since 2008 the number of apprehensions has been more or less stable

Possible causes for the decrease in apprehensions are described in [Annex VII](#). Reasons cited include indirect causes (e.g. measures aimed at reducing irregular migration) such as EU enlargement (**Austria, Belgium**); changes to national legislation and provisions on residence permits (**Estonia**); and trends in asylum applications (**Finland**). Conversely, **Latvia, Poland, Slovak Republic** and **Spain** cite the effectiveness/improvement of operations as causative factors.

Information on the main twenty nationalities of those apprehended is presented in [Annex VII](#). The most common countries of origin of third-country nationals found to be irregularly present in the EU overall are Albania, Afghanistan, Morocco, Iraq and Pakistan. From 2008 to 2010, the number of Albanians apprehended was much higher than that of any other nationality, but in 2011 the number rapidly declined, largely due to a decrease in refusals at the border in **Greece**. By contrast, in 2011 the number of Pakistanis apprehended was much higher than in the three previous years - again this appears to be related to the number of apprehensions in particular (Member) States. The number of Tunisians apprehended also increased from 2010 to 2011.

Apprehended irregular migrants are predominantly men aged 18-34 years. Whilst the number of females found to be irregularly present has slightly increased from 2008 to 2010, this does not appear to be statistically significant. Further information on the characteristics of those apprehended is provided in [Annex VII](#).

6.3 Measures to prevent employment of irregular migrants

All (Member) States implement measures to prevent the employment of irregular migrants. Often these are implemented as part of general measures to prevent irregular work (including the evasion of tax and exploitative conditions). They also often necessarily entail cooperation of immigration authorities with labour inspectorates, ministries of labour or equivalent and trade unions (see [Section 3.1](#)) and include the – often targeted – investigation of workplaces ([Section 6.3.1](#)); sanctioning of employers ([Section 6.3.2](#)) and information campaigns and other measures ([Section 6.3.3](#)). The impact of the Employer Sanctions Directive is also addressed ([Section 6.3.2](#)).

6.3.1 Workplace inspections

Work place inspections as a measure to prevent irregular work are undertaken in **Austria, Belgium, Estonia, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Spain, Sweden, United Kingdom** and **Norway**. In **Sweden**, the Police are not entitled to make random checks and they may only carry out an inspection when they have received information that provides sufficient grounds to carry out a workplace investigation. In the **Slovak Republic**, the police, the Office of Labour, Social Affairs and Family and the Labour Inspectorate carry out inspection activities in cooperation with district, trade licensing and tax offices and with the Slovak Trade Inspection, initiated by competent authorities at the local level. Any third-country national adult found in exploitative working conditions, or any irregularly employed minor, may be granted tolerated stay. In the **Netherlands** inspections are targeted at particular sectors which have been identified as ‘risky’ on the basis of intelligence and analysis. An increase in the proportion of violations

detected through inspections from 16% of all inspections in 2008 to 18% of all inspections in 2010 may reflect the fact that the inspections performed have been increasingly more targeted on the basis of risk analysis.³² Table 6.2 presents statistics on third-country nationals detected as irregularly employed through workplace inspections in nine Member States (Austria, Belgium, Czech Republic, Estonia, Germany, Latvia, Poland, Slovak Republic, Slovenia).

Table 6.2 - Third-country nationals detected as irregularly employed (irregular migrants in employment and legal migrants working outside of conditions of residence) in Member States

Member State	Indicator measured	Source of statistics	2005	2006	2007	2008	2009	2010
Austria	Total detected violations related to employment of third-country nationals	Control Unit for Illegal Foreign Employment (KIAB)	:	:	:	:	11 890	:
	Total detected violations related to employment of third-country nationals	Department of Information and Social Research (Service d'Information et de Recherche Sociale/ Sociale Inlichtingen- en Opsporingsdienst)	:	:	2 885	2 695	2 805	3 650
Belgium	Irregular migrants in employment (detections)		:	:	2 285	2 310	2 180	2 880
	Legally staying third-country nationals irregularly employed (detections)		:	:	600	385	625	770
	Total violations related to employment of non-nationals		:	:	:	2 940	3 595	2 770
Czech Republic	Third-country nationals requiring a work permit detected as working without one	Ministry of Labour and Social Affairs	:	:	:	2 340	3 170	1 795
	Employment of third-country nationals not reported to the State (undocumented work)		:	:	:	600	425	975
Estonia	Completed misdemeanour procedures regarding irregular employment of third-country nationals	Police and Border Guard Board	495	530	260	235	215	115
Germany	Third-country nationals charged with "illegal stay" following detection in the workplace	Vogler/Aßner 2011	:	:	:	:	:	1 175
	Non-nationals (incl. some EU citizens) requiring work permit charged for employment without work permit		:	:	:	:	:	10 010
Latvia	Total detected violations related to employment of third-country nationals	State Border Guard	30	130	100	150	25	20
Poland	Total detected violations related to employment of third-country nationals	State Border Guard, National Labour Inspectorate	2 025	1 355	1 595	1 235	1 590	1 700
Slovak Republic	Total detected violations related to employment of third-country nationals	National Labour Inspectorate	:	:	:	135	485	90
Slovenia	Total detected violations related to employment of third-country nationals		405	485	420	320	340	225
	Irregular migrants in employment (detections)	National Labour Inspectorate	330	405	340	230	260	165
	Legally staying third-country nationals irregularly employed (detections)		75	80	80	90	80	60

Source: EMN National Report.

Notes: Numbers rounded up to the nearest five. ":" signals "no value"

In 2009, Austria identified the highest number of irregularly-working third-country nationals (11 890), as compared to 27 in Latvia. Comparatively high numbers of irregularly-working third-country nationals (i.e. over a thousand) were also detected in Belgium, Czech Republic and Poland. In Greece the number of

³² The number of irregular employees detected rose from 2 010 in 2008 to 2 400 in 2010; however, these figures include nationals of Bulgaria and Romania also and so are not included in Table 6.1.

detected offences related to irregular employment is low (less than 7 a year in 2009/10 and around 29 in 2007/08), but these statistics refer only to inspections related to secondary and tertiary sectors of economic activities (e.g. industry, services) and most irregular migrants are employed in other forms of economic activity difficult to identify (e.g. housekeeping, agriculture).

With regard to trends, the number of detections remained more or less constant in **Belgium** from 2007 to 2009, but peaked in 2010, whereas detections declined in **Estonia, Latvia, Slovenia** and **Slovak Republic**. It is difficult to draw conclusions about the extent of the phenomenon of irregularly employed migrants from these figures, however, since they might reflect more the intensity of inspections activities rather than the prevalence of violations.

Some Member States (**Belgium, Germany, Slovenia**) disaggregate the statistics according to legally-resident migrants violating conditions of stay/work and irregular migrants employed. In **Germany**, the problem of irregular employment of legally residing migrants is greater than that of employment of irregularly-residing migrants. In 2010, 1 173 third-country nationals detected in workplaces in 2010 were charged with "illegal stay" compared with 10 010 persons (including EU citizens from more recently acceded countries, which have been subjected to initially restricted access to employment in other Member States) charged for "working without work permits". By contrast, in **Belgium** and **Slovenia** the proportion of non-nationals with legal stay breaching the conditions of work appear to be smaller: 21% of all violations involving non-nationals in **Belgium** in 2010, and around 27% in **Slovenia** in 2010. **Czech Republic** collects statistics on both third-country nationals identified as working without a permit and those in employment who have not declared this to the State authorities.

Irregularly employed third-country nationals are often detected during workplace inspections aimed at uncovering a range of abuses, including irregular employment of nationals and other tax and regulatory offences. Thus the main aim is not always to identify irregular migrants, although it should be noted that, in comparison to the number of irregular migrants detected, the number of inspections are very high. For example, in **Austria** for every irregular migrant identified in 2009, 2.25 companies (26 787 in total) were inspected. Similarly, in **Germany** out of 510 425 persons checked at workplaces, only 1 173 were found to be irregular.

Finland is active in monitoring third-country nationals for the purposes of preventing irregular employment. In 2011 it held a national monitoring week with a focus on seasonal workers and the construction section. During the monitoring sweep, the permits of a total of 1 906 persons were inspected, of which 553 were at construction sites and 716 in traffic inspections. The inspections led to a total of 11 persons residing irregularly, as well as 18 irregular workers, 8 other third-country nationals who failed to meet the requirements for residing in the country and 2 persons with a warrant for the enforcement of deportation. **France** also carries out operations biannually to tackle irregular employment of third-country nationals. In total, 1 501 operations were carried out in 2010, 23 830 persons were checked, 586 employers of foreign nationals were implicated, 761 irregular migrants were discovered, over a quarter (26.15%) of whom were actually removed, which is an increase of 25.2% compared to 2009 (159 removals). During these operations special attention was paid to restaurants (480 operations), construction work (445 operations) and the caretaking sector

(68 operations). In **Ireland**, between 1 October to 15 November 2011, labour inspectors inspected 441 employers' premises and 88 were found to be in breach of employment permits legislation. Inspections are often carried out at night as businesses open at night (predominantly in the services sector) tend to have a higher proportion of migrant workers.³³

Most cases of irregular employment in **Slovak Republic** are in the restaurant, wholesale, retail and construction sectors. In **Belgium**, irregularly employed migrants are also mainly found in the cleaning, catering and construction sectors. In **Slovenia** the decline in numbers of irregularly employed migrants detected is due both to the effectiveness of detection measures, but also to the crisis in the construction sector. In **Estonia** the Police and Border Guard Board carry out inspections based on annual risk analysis – the majority of visits are made in the accommodation and commerce sector, as well as catering, building, service and light industry sectors.

Third-country nationals found to be irregularly employed in **Belgium** are primarily from Brazil and Morocco; and in the **Czech Republic**, **Poland** and **Slovak Republic**, Ukraine. **Poland** further specifies that short-term durations (circular migration) characterise the irregular work performed by Ukrainian nationals. In the **Slovak Republic**, high proportions of Vietnamese and Chinese and are also detected. In **Latvia**, Russian nationals are mainly detected.

6.3.2 Sanctioning of employers

Many (Member) States have now introduced provisions to sanction employers employing irregular migrants or irregularly employing legal migrants. In 2011, **Lithuania** supplemented its Criminal Code with an article stipulating criminal liability for employers who employ irregularly staying third-country nationals. **Italy** introduced the crime of 'illicit brokering and labour exploitation' into its Penal Code and brought in other provisions to punish the "gangmaster system" of irregular hiring with imprisonment of 5 to 8 years. The **United Kingdom** introduced a civil penalty regime for employers irregularly employing migrants in 2008. Under the scheme, employers found to be irregularly employing a migrant worker may be issued a Notice of Potential Liability for a Civil Penalty – which they are able to appeal – but which may be up to £10 000 (approx. €12 400) per irregular worker. Since the beginning of the civil penalty regime in February 2008 until the end of October 2011, the UK *Border Agency* has issued 6 767 civil penalties to employers and collected over £16.3 million (approx. €20.1 million) in penalty payments.

The Employer Sanctions Directive (see [Annex III](#)) is also likely to have an impact on the way that Member States deal with persons employing irregular migrants. Although its relatively recent introduction has meant that there has been limited time to measure its impact on Member States to date. **Ireland** and the **United Kingdom** have not opted in to the Sanctions Directive and in **Norway**, the EEA Commission in the Ministry of Foreign Affairs has judged the Directive as not EEA-relevant, and therefore will not implement it. Other Member States (**Belgium**,

³³ Due to the small, targeted sample of employers no overall conclusion regarding the level of compliance can be drawn.

Finland, Czech Republic, Lithuania, Sweden) have not yet transposed its provisions into national legislation.³⁴ The Directive has, however, already had some impact in Austria, Estonia, Germany, Italy, Netherlands, Latvia, Luxembourg, Slovak Republic and Spain, where relevant provisions had already been provided for in their national legislation.

In Austria, the Alien's Police Act was changed to define that a contractor who knowingly tolerated irregular employment is liable for any resulting costs in case a return decision, return ban or an exclusion order is issued against the irregular migrant on account of irregular employment. Multiple legislative changes were observed in Estonia where the Estonian Code of Criminal Procedure was amended to foresee criminal punishment to be imposed on an employer who knowingly tolerated employment of an irregular migrant, additional requirements were imposed on the employer, i.e. to notify the Police and Border Guard in case of any changes in the circumstances related to the employment of an alien, and to abolish its previous practice of granting a residence permit to a victim or witness who was irregularly employed. By transposing the Employers Sanctions Directive in 2011, administrative and criminal responsibility for irregular employment of migrants has been set in Latvia. In such cases the applicable punishment is deprivation of liberty, or community service, or a fine not exceeding two hundred times the monthly wage.

Germany's 'Social Law' already provided for imposition of penalties against employers who employ irregular migrants, with a maximum fine of up to €500 000. However, following the transposition of the Employer Sanctions Directive, an irregular migrant who has been in irregular employment may be granted a residence permit provided they are willing to testify in court. Further amendments relate to the liability of the costs for removal of an irregular migrant, creation of new types of charges in criminal law, the obligation to pay the agreed remuneration to an irregular employee and access to the labour courts. Similarly, Spain amended its Aliens Act to stipulate that employment of an irregular migrant shall constitute a very serious offence for which penalties can be imposed on both the main contractor as well as on the subcontractors who had knowledge of the irregular employment. The Netherlands, although not yet having fully implemented the Directive, is almost fully compliant, and cases of irregular employment, once detected, result in a possible sanction or fine. Provisions which still need to be implemented relate to the obligation for employers to notify relevant authorities and the sequential liability for back wages, with failure of notification resulting in a fine.

6.3.3 Other practical measure to reduce employment of irregular migrants

Other practical measures to reduce the employment of irregular migrants / prevent irregular employment of legally resident migrants include quotas on the issuing of work permits and use of information campaigns. In Slovenia the government can limit issuing work permits for some or for all employment and work of third-country nationals who do not obtain a residence permit (except for individuals subject to International Treaties), through quotas. Additionally, the

³⁴ Greece transposed the Directive through Law 4052/12 in April 2012.

government can also limit the number of self-employed third-country nationals and issue restrictions or prohibit employment and work of third-country nationals.

The **Czech Republic**, **Finland** and **Ireland** have carried out information campaigns to prevent irregular work. In the **Czech Republic** this was aimed specifically Mongolian and Ukrainian labour migrants. In **Finland** the authorities and labour unions jointly launched a website campaign with the main objective of informing young people of the social impacts and consequences of employment in the grey economy. The campaign in **Ireland** targeted employers. **Italy** initiated vocational training courses through the RELAR 2011 Project which trains third-country nationals, EU and Italian citizens in the construction, agriculture and tourism sectors on how to avoid irregular work. The project was found to be effective in preventing irregular migration from participating countries.

6.4 Detection and prevention of fraudulent means of staying on the Member State territory

Another way in which third-country migrants may irregularly enter and reside in the EU is through fraudulent declarations or registration (e.g. marriages of convenience and false declarations of parenthood) or through the forging of documents. **France**, **Germany**, **Latvia**, **Lithuania**, **Slovak Republic**, **Spain**, **Sweden** and **Norway** describe measures aimed at detecting fraudulent means of staying.

Concerning the prevention and detection of marriages of convenience,³⁵ **Belgium**, **Ireland**, **Latvia**, **Lithuania**, **Malta**, **Poland**, **Spain**, **Sweden** and **Norway** reported on actions taken to prevent marriages of convenience. In **Ireland** such marriages have become more of a challenge following the Mettock judgement of the ECJ (Case C-127/08), which concerned interpretation of Directive 2004/38/EC on free movement. Issues have been detected in relation to residence applications based on EU Treaty Rights from, for example, Pakistani and Nigerian nationals and unsuccessful asylum applicants married to EU nationals from, for example, **Latvia**, **Lithuania** and **Poland**. Practical measures have included *inter alia* specific operations, updated guidelines to registrars for marriage notification, including stricter conditions on proof of identity. **Germany** issues around 30 000 visas every year to spouses reunifying with persons legally residing in the Member State and some of its larger municipal authorities have established working groups with staff specialised in investigating potential misuse. The Munich working group processes approximately 150 to 200 suspected cases each year and around 30 of these usually suggest the involvement of organised crime, possibly related to forced marriage. In **Norway** the police may conduct home visits and in-depth interviews with persons applying for family reunification or for renewals; however, the problem is small. In 2009 the number of applications rejected on the grounds of suspected fraud reached a peak of 2% of all applications decided. In **Malta** the Public Registry cooperates with the

³⁵ Further information on the extent of misuse of family reunification and practical measures to prevent and detect it is provided in the recent EMN Study *Misuse of the Right to Family Reunification: Marriages of Convenience and False Declarations of Parenthood* available from: www.emneuropa.eu > 'Studies'.

Attorney General's Office, the Department of Citizenship and Expatriate Affairs and the Police Immigration on such matters. If the registrar has suspicions about the genuineness of a marriage, the couple may be asked to attend individual interviews. Unless these suspicions are satisfied the Registrar shall not allow the marriage to take place by refusing to issue the certificate of banns.

In relation to actions against fraudulent documents, **Belgium** implemented the "Europa Project" in which local authorities, the Federal Police and the Immigration Office cooperate to combat abuses committed by third-country nationals who use false or forged EU identity documents to register in its municipalities. The Federal Police will check the authenticity of documents if the municipal authorities suspect the use of forged documents (e.g. identity documents, marriage contract). Actions that could be undertaken in the case of unlawful acts (e.g. forgery, use of false documents, fraud) are judicial and administrative proceedings and the removal of this person will be treated with priority. In **Germany**, the Federal Police officers are assisted by stationary and mobile inspection devices as well as by automated document reading and inspection systems.

In **Lithuania** third-country nationals were found to be establishing fictitious companies to legalise their presence in the Member State, by taking advantage of the legal provision which facilitates the granting of residence permits for third-country nationals setting up companies. In response, the Lithuanian authorities introduced amendments to legislation in 2009, stipulating that when a business is established by more than one third-country national, the nominal value of the share capital must be at least 50 000 litai (approx. €14 500); whereas previously the contribution was only 10 000 litai (approx. €2 900) which could be paid by an unlimited number of co-owners. Following these amendments, the number of decisions to issue or replace residence permits to persons wishing to engage in legal activities and establish a company decreased two-fold (from 826 decisions in 2009 to 383 decisions in 2010). In spite of this decrease, however, it is not known for certain whether this was a result of the amendments, economic conditions, or other factors.

France, Greece, Italy and **Spain** implemented actions against organised crime groups. For instance, the SEBEKE Operation by **Italy** and **France** of November 2009, coordinated by Eurojust and Europol and for **Italy** by the Central Operation Service of the State Police, resulted in the arrest of two groups belonging to an international organisation aiding irregular immigration in Rome and in Crotona. The investigations, started by the French police, led to the arrest of different members of an organisation whose network covered **Belgium, France, Germany, Greece, Netherlands, United Kingdom** and in Scandinavia. **Greece** places much emphasis on dismantling trafficking networks by conducting thorough preliminary investigation of cases involving the smuggling of migrants and has intensified checks on the legality of stay of migrants in order to identify the possible existence of detention places of criminal organisations in order to blackmail them or their families. In **Spain**, law enforcement agencies have dedicated substantial resources to the prosecution of networks that promote irregular immigration, sexual exploitation and/or the provision of false documents. In 2001, the Unit to Combat Immigration and Document Falsification Networks was created in the National Police Force, acting on complaints received, and mainly concerned with the pursuit of preventing irregular migration, human trafficking and document falsification networks.

6.5 Other practical measures undertaken

(Member) States also highlighted the importance of information sharing and cooperation between authorities and other relevant actors in implementing practical measures (Belgium, Germany, Lithuania, Latvia, Netherlands, Poland, Slovak Republic, Slovenia and Norway). For example, in Poland cooperation with other institutions and entities is in place for disclosing cases of irregular stay of third-country nationals, including rectors of universities, headmasters of schools, directors of detention centres for foreigners, directors of institutions for minors. In Slovenia, at operational level, the Police cooperate with other competent authorities including in particular inspection services, administrative units, health insurance institutes, employment services and other bodies involved in proceedings related to the residence of third-country nationals. Working groups for investigating criminal offences in relation to obtaining residence have been established to detect specific forms of abuse. Also, Norway notes that cooperation between different authorities and institutions is of paramount importance, in particular for the detection of marriages of convenience.

The United Kingdom in March 2010 introduced the Highly Trusted Sponsor scheme, which awards a higher rating to education providers that have demonstrated the highest levels of compliance with their duties. In return, the sponsors are allowed to offer a wider range of course level and work placement opportunities to students. Following a public consultation in 2011 the government also made changes to its *Points Based System* of issuing visas, aimed at tackling abuse of the immigration system by non-EU students.

Spain implemented specific measures to prevent irregularity resulting among legally resident persons who, because of the economic crisis, have lost their jobs. The Aliens Regulation of 2011 introduces new provisions that allow, subject to certain conditions, the renewal of the residence and work permit when the third-country national does not have an employment contract. Furthermore, if one member of a couple becomes unemployed and the other shows that he/she can support the other, the unemployed person's residence permit shall be renewed without requiring first the return to the country of origin to begin family reunification application procedures.

7. Pathways out of irregularity

This Section provides more information on practical measures implemented in (Member) States to provide a pathway out of irregularity. Once a migrant is identified as irregularly present in a (Member) State, there remain very few options for third-country nationals to pursue. Article 6 of the Return Directive (2008/115/EC) provides that a migrant found to be irregularly resident must return to his/her country of origin, unless there are grounds to grant him/her an autonomous residence permit or other authorisation offering a right to stay (see also Articles 2 and 5). This section looks at these possibilities, and others, which are available in (Member) States. First, the section discusses ways of obtaining legal status ([Section 7.1](#)) and then looks at alternatives to regularisation, namely the different forms of return ([Section 7.2](#)). The Section then describes the impact of the Return Directive ([Section 7.3](#)) and some of the financial costs of return and removal ([Section 7.4](#)). Finally, it discusses situations in which it might not be possible to return a third-country national and what happens in these situations ([Section 7.5](#)). Readmission agreements are also considered an effective tool which supports the return of irregular migrants in some – though not all – (Member) States; these are discussed in [Section 8.5](#).

Box 7.1 - Linking practical measures to provide a pathway out of irregularity to the Strategic Response

Two of the strategic priority areas of the Strategic Response to EU Action on Migratory Pressures list challenges and identify goals to be addressed to provide a pathway out of irregularity. This is:

- ▶ Strategic priority area VI: Enhancing migration management, including cooperation on return practices

The relevant challenges and goals identified are as follows:

Challenges identified in the Strategy:

- ▶ Maximising the potentials of a common EU approach in the field of return, both voluntary and forced, in compliance with the existing EU acquis.

Goals identified:

- ▶ To increase the numbers of returns of irregular migrants and to develop swift, sustainable and effective return using a common EU approach, including more effective joint return.

7.1 Obtaining legal status (regularisation)

(Member) States make use of procedures that may be said to represent regularisation,³⁶ based on case-by-case individual considerations and the

³⁶ Regularisation is defined, in the EU context, as a state procedure by which illegally staying third-country nationals are awarded a legal status. See the EMN Glossary for this and further definitions: www.emn.europa.eu > 'EMN Glossary'

type, the frequency and the conditions set for such procedures vary between (Member) States,³⁷ also because this is a national competence with no EU acquis. Austria, Belgium, Czech Republic, Estonia, France, Germany, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom and Norway maintain case-by-case regularisations. In addition, Austria, Belgium, France, Italy, Luxembourg, Netherlands and Spain carried out exceptional or mass regularisations in the past.

In the European Pact on Immigration and Asylum (see [Annex III](#)), the Member States agreed to, “*use only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons.*” Case-by-case regularisations target a precise group of irregular migrants and are subject to specific conditions, such as humanitarian grounds (Belgium, Finland, Germany, Luxembourg, Netherlands, Spain, United Kingdom and Norway), satisfying labour demand (Italy, Luxembourg, Sweden, France), length of residence period (Lithuania, Luxembourg, United Kingdom, France), family ties (Austria, France, Spain) or family reunification (Lithuania, Norway) or a combination of these conditions. In the United Kingdom irregular migrants can apply for “leave to remain” or “indefinite leave to remain” if they can demonstrate that they have continuously resided for fourteen years or longer or on the basis that their removal would contravene their rights under European Convention on Human Rights (ECHR). The United Kingdom is however currently reviewing the use of the “*fourteen year rule*” and it is proposed that regularisation should be available only to those applying on the basis of Art. 8 of the ECHR. In Germany a suspension of removal may be granted on humanitarian grounds or to uphold the political interest of Germany for a period of six months. Further suspension of removal may also be granted – this usually leads to a permit for temporary residence.

Other (Member) States have mechanisms in place that allow well integrated third-country nationals to obtain a legal status, which is the case in, for example, Austria and Germany. Austria may grant a settlement permit or “Red-White-Red Card plus” to irregular migrants who are well integrated taking into account the ability of self-preservation, education and vocational training, employment and knowledge of the German language. In Germany the “*Act to Combat Forced Marriages*” may grant a residence permit to young people whose removal has been suspended for many years, who attend or have successfully completed school and whose prognosis for integration is positive.

The exceptional or mass regularisations that some Member States have carried out stem from the desire to satisfy labour demand (Italy, Luxembourg), for humanitarian reasons (Belgium, Luxembourg) or to regularise the situation of those who had been living in the country for a number of years or to clear the backlog of asylum decisions (Belgium, Luxembourg), or a combination of these conditions (Netherlands). Although Austria carried out such amnesties in the past, policymakers now express reservations about such regularisation programmes and their effectiveness. They point out that such programmes might instigate future irregular migration and experience elsewhere shows that regularisations

³⁷ See also REGINE *Regularisations in Europe. A study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the European Union*, <http://research.icmpd.org/1184.html>.

have to be repeated in order to achieve a sustainable decrease in the number of irregular migrants. By contrast, **Poland's** third regularisation programme entered into force on 1st January 2012. The amnesty allows migrants, who have been living in Poland irregularly since at least 20th December 2007 and those who were refused asylum before 1st January 2012 but are still residing there, to regularise their stay. During the past years, various societal actors have called for a subsequent regularisation programme as they considered that it would bring about a number of economic and demographic advantages to the Polish economy and society, in addition to humanitarian considerations.

Belgium, Luxembourg, Netherlands and Sweden provide statistics on regularisations. In **Luxembourg** in 2009, 75 persons were regularised on a case-by-case basis; of these 33 were from Kosovo. **Sweden**, between 15 November 2005 and 31 March 2006, provided residence permits to around 17 000 third-country nationals who had previously stayed in the country on an undocumented basis. In **Belgium**, more than 80 000 people were regularised during the period 2005-2010 and in the **Netherlands** almost 30 000 people were regularised as part of an amnesty in 2007.

7.2 Return³⁸

The return of irregular migrants has been a priority of EU migration policy now for over a decade³⁹ and *enhancing migration management including return* is listed amongst the strategic responses of the Strategic Response for EU Action on Migratory Pressures.

Austria, Belgium, Lithuania, Luxembourg, Malta, Poland, Slovak Republic and Norway reported on the assisted voluntary return programmes that they have in place and **Germany, France and the Netherlands** reported on reintegration support that they offer to returnees, such as free travel as well as travel and start-up subsidies. **Germany** offers this reintegration support in particular to nationals from countries that are of particular importance for their migration policy. **Poland** perceived a growing interest from third-country nationals for departure through assisted voluntary return programmes. Whereas 962 persons participated in assisted voluntary return programmes in 2008, this increased to 1 565 persons in 2009 and 1 622 in 2010.

Sweden cooperates with **Netherlands, Sweden, United Kingdom and Norway** on the cooperative project "*European Return Platform for Unaccompanied Minors (ERPUM)*" which is aimed at creating a platform for direct cooperation with third countries' authorities in the practical work in returning unaccompanied minors, primarily from Afghanistan and Iraq, to their parents, guardians or other forms of organised reception in the country of origin.

Although (Member) States consider voluntary return as the preferred option, forced returns, in some cases combined with detention pending removal, are considered

³⁸ Further information on return – and particularly on assisted voluntary return schemes is provided in the *EMN Study on EU Programmes and Strategies fostering assisted return to and reintegration in third countries*, available at: www.emn.europa.eu > 'Studies'.

³⁹ For example, the *Green Paper on a Community Return Policy for illegal residents, focusing on forced and assisted return of illegally resident migrants in the EU* was adopted in 2002. See: http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0175en01.pdf.

by some as inevitable to deal with persons who do not wish to leave. Austria, Belgium, Estonia, France, Germany, Greece, Italy, Lithuania, Luxembourg, Netherlands, Slovak Republic, Slovenia and Spain, as well as Norway describe such practices in their National Reports. Frontex plays an important role in coordinating joint return flights and these are noted as important in a range of (Member) States (e.g. Belgium, Estonia, Germany, Greece, Latvia, Netherlands, Poland, Norway). In recent years Greece has been participating more frequently in joint operations and, for example, participated in four return flights to Nigeria and Gambia organised by Austria; two to Nigeria, led by Italy; two flights to Georgia, organised by Spain, and a flight to Syria organised by Cyprus.

Austria, Belgium, Estonia, Greece, Lithuania, Netherlands, Slovak Republic and Spain reported on the practice of detention pending removal. Estonia and Greece detain third-country nationals if removal is particularly difficult, although in Estonia it may include a precept to legalise, and in Italy such persons are placed in the "Identification and Expulsion Centres" until they may be returned. The period of detention prior to removal varies significantly between (Member) States. In Spain irregular migrants may be held in a detention centre until removal can be enforced, although this period may not exceed 60 days, in Greece irregular migrants may be held in temporary detention for a period no longer than six months although this period can be extended to 12 months only in case of a delayed removal, whereas in Lithuania the Law on the Legal Status of Aliens stipulated that third-country national may only be detained for longer than 48 hours subject to court decision. In practice persons are usually detained for three months at the Foreigners Registration Centre, although the detention period may be extended if the removal cannot be enforced. In Estonia a person can be placed in an expulsion centre for no longer than two months, although it can be extended by court decision to maximum 18 months if the removal cannot be completed within 48 hours from the apprehension of the person. Civil society actors and human rights defenders highly criticise the detention of third-country nationals. For example, Belgium reported that they have been highly criticised by civil society groups and human rights defenders in addition to two condemnations by the ECHR for their detention practices, in particular the detention of children, the use of transit zone detention centres and inadequate information to detainees about their legal rights. In accordance with EU policy, Belgium has created a commission for complaints intended exactly to receive complaints of people kept in detention centres.

In terms of effectiveness, in the Netherlands the "Improved Asylum Procedure," which entered into force on 1st July 2010, included improvements to the asylum procedure that would facilitate return by starting the investigation of identity and nationality at an early stage in the application process. The improved procedure aims at a faster and more careful processing of asylum applications. It was anticipated that the number of repeated applications would decrease as a result of the changes to the procedure.

7.2.1 The impact of the Return Directive : (Directive 2008/115/EC)

Most (Member) States reported more profound changes with regard to the Return Directive (Austria, Belgium, Czech Republic, France, Germany, Estonia, Greece, Hungary, Italy, Latvia, Luxembourg, Netherlands, Slovak Republic, Spain and Norway). Denmark, Ireland and the United Kingdom have not 'opted into' the

Return Directive. Several Member States (**Austria, Germany, Estonia, Greece**) did not previously have a concept of “return decision” and this was only introduced by transposing the Return Directive. **France** abolished the APRF (order to escort to the border), and created the OQTF (obligation to leave French Territory) as a return decision, and, moreover, added three new grounds for third-country nationals to the return decision: no proof of having entered legally, non-compliance with the entry conditions, and where there was no request for renewal of a residence permit. Finally, the return decision must currently also specify the country to which the third-country national is removed to, in case of an automatic execution of the decision. The **Czech Republic** differentiates between a “decision on the obligation to leave the territory” and “administrative expulsion,” specifying that the former does not contain any sanction in the form of an entry ban, whereas the latter is generally accompanied by an entry-ban valid for the entire EU.

In transposing the Return Directive, **Greece** and **Spain** introduced the notion of assisted voluntary return, as it previously did not exist in their respective national legislation. In **Italy**, assisted voluntary return had previously only been available for asylum seekers, refugees and holders of a residence permit for humanitarian aid, and people under the Dublin Convention. However, its application was expanded to cover irregular migrants following transposition of the Return Directive. **Belgium** prolonged the voluntary departure period to allow for a better preparation for assisted voluntary return or independent return, as did **Lithuania** in their *draft* Law amending the *Law on the Legal Status of Aliens* which will transpose the Directive. In contrast, **Estonia** reduced the period for voluntary departure from its previous term of 15-60 days to 7-30 days as stipulated by the Directive.

Several Member States (**Austria, Belgium, Czech Republic, France, Estonia, Latvia, Netherlands**) further introduced an “entry ban” as a new concept in national legislation. The **Czech Republic** modified its provisions on breaches of obligations in order to bring it in line with the duration of the entry ban as stipulated by the Directive. **Latvia** reduced the maximum term of entry prohibition, in accordance with the Directive, valid for a period of 30 days to three years instead of the previous national term of three to five years. The **Netherlands** previously did not provide for an entry ban, but issued exclusion orders under its Aliens Act instead. Following the introduction of an entry ban, exclusion orders will continue to exist as a national measure and will only apply to third-country nationals who do not fall under the scope of the Return Directive, such as EU nationals. **Norway** reduced the minimum re-entry ban period to one year from two years. **Spain** raised the minimum period for entry bans from three years to five, while maintaining the maximum at 10 years.

Articles 15 to 18 of the Return Directive outline the conditions under which third-country nationals may be detained prior to removal. This is only possible if (a) there is a risk of absconding; or (b) the third-country national concerned avoids or hampers the preparation of return or the removal process. The Directive provides for Member States to set a limited period of detention, which may not exceed six months. Several Member States (**Czech Republic, France, Estonia, Greece, Luxembourg, Netherlands, Spain**) and **Norway** made changes in relation to detention provisions. **Austria, Czech Republic** and the **Netherlands** restructured the grounds for detention to bring them in line with the Directive. For example, the **Netherlands** introduced as an additional detention ground; the risk of going into hiding. With regard to the period of detention, (Member) States have

wide-ranging maximum detention periods in place: **France** increased the maximum detention period from 32 to 45 days, **Spain** from 40 to 60 days; the period of detention in **Greece** and **Netherlands** can take up to 12 months depending on specific circumstances, whilst **Estonia** and **Norway** stipulate a maximum term of 18 months. The **Czech Republic**, **France**, **Latvia**, **Luxembourg** and the **Slovak Republic**, present alternative measures in addition to the possibility of detention. The **Czech Republic** also offers the possibility of depositing a financial guarantee, whilst obliging the third-country national to report on his or her whereabouts. Similarly, the **Slovak Republic** offers the possibility of regular reporting (in place of detention) as long as the third-country national proves that s/he has sufficient financial measures of subsistence and accommodation and is not considered a threat to public security, order or health. Under immigration law in **Latvia** third-country nationals can register themselves or submit their travel and other documents to the State Border Guard. **Luxembourg** allows for the possibility of 'house detention' and **France** may issue an alternative compulsory residence order of 45 days.

Austria, **Estonia** and **Greece** introduced free legal assistance for those who lack sufficient resources to guarantee effective protection of the interests of the individuals concerned. **Estonia** specifies that free legal aid is available to those who want to contest the decision on the precept to leave. For that purpose, the Ministry of Interior and the Police and Border Guard Board have been granted the authority to conclude contracts with private legal entities. The **Slovak Republic** extends legal aid provided to third-country nationals not only by lawyer's representation but also by any other representative a third-country national may choose. This duty is mostly fulfilled by representatives of non-governmental organisations, or by the *Legal Aid Centre*. The **Czech Republic** reviewed its rules on judicial review by stipulating that a court must decide on a legal action against a decision on detention within 7 working days from the delivery of the case file. In **Estonia**, a supervisory authority is appointed in order to monitor whether the authority performing expulsion follows the correct procedural requirements and when necessary provides opinions and recommendations.

With regard to practical changes and debate about irregular migration, in particular in relation to the Return Directive, it is noteworthy that **Latvia** defined, for the first time, the notion of "illegal stay," resulting in a considerable change in the day-to-day activities of the State Border Guards and the Office of Citizenship and Migration Affairs. In **Lithuania** the concept of a "vulnerable person" was introduced in order to provide them with more favourable treatment. In the **Netherlands**, there has been continuous debate on different interpretations of the provisions of certain EU Directives, including the Return Directive. Debate focuses on asylum applications at the Schengen external border, as the Netherlands has received increasingly more criticism on its practices of detaining asylum applicants at the border with a view to undertake a prompt return if the application is rejected.

7.2.2 Costs of return / removal

The costs of carrying out forced returns in **Czech Republic** were CZK 14 854 570 (around €577 200) in 2010. According to the financial statements of the Ministry of the Interior in **Finland**, the cost of removal and related transportation in 2010 was €2.5 million and there was a proposal to increase the budget to €3.5 million

for 2011. In **Latvia** the costs of expulsions rose from 2005 to 2010. In 2010 the costs of removal was 42 025 LVL (approx. €60 263).

In addition, the police in **Finland** incurred total costs of €2.13 million from enforcing the return of foreign nationals in 2009. Other costs related to return in Finland include the cost of detention (€2.65 million)⁴⁰ and the cost of interpreter services used during asylum investigations (€1.04 million). In the 2012 national budget, the **Netherlands** have estimated the costs of detention of irregular migrants to be around €4.2 million and the costs of returning irregular migrants to be almost €20.7 million. By comparison, it is estimated that the total costs of entry, admission and reception for legal immigration and asylum will be over €761.3 million. The cost of the Innovation Border Management Renewal Programme has been estimated at €8.39 million for 2012.⁴¹ In **Malta**, the cost of returns in 2009 (forced and voluntary) amounted to €878 865. On average, in recent years, **Spain** has spent 22 million euro per year on the forced return flights of irregular migrants, an amount that does not include airline tickets and allowances for the officers who must escort the migrants.

7.3.3 Situations in which removal is difficult and practical responses to this

A number of (Member) States reported on practical responses to situations in which removal of irregular migrants is difficult. Removal is particularly difficult when there is a lack of cooperation with the country of origin (as reported by the **Czech Republic, Estonia, Germany, Greece, Italy, Luxembourg, Netherlands, Spain**); for example, an unwillingness of the country of origin to readmit its citizens (**Czech Republic**). Both **Estonia** and **Spain** indicated that removal is particularly difficult when there is an absence of readmission agreements or a failure to perform it by the third country. Difficulties in establishing the person's identity complicate removal (e.g. in **Belgium, Czech Republic, Finland, Germany, Italy**)⁴² as do a lack of travel documents (as reported by **Czech Republic, Finland, Luxembourg, Sweden**) or counterfeit documents (e.g. **Finland**) which makes it difficult to identify the country of origin for return. Unwillingness from the concerned individual to cooperate in the removal process was mentioned by the **Czech Republic, Finland, Greece** and the **Netherlands**. **Finland** further specified that the number of persons resisting return through physical resistance has grown slightly in recent years. This phenomenon, combined with airlines taking a tougher stance on returnees, has resulted in an increased need for joint return flights on chartered aircraft.

Belgium, Germany and **Italy** noted that a lack of transport capacity or closed airports can complicate removal and the **Netherlands, Poland** and **Norway** indicated that removal to particular countries of origin was complicated. **Norway** mentioned that, in practice, forced return to some countries is not possible, e.g. because there is not a functioning central government to issue passports or verify the identity of the person, and thus to accept the return. Other countries only accept voluntary applications for passports, and others will not accept

⁴⁰ Based on a calculation of €66 300 for each of the 40 detention rooms in the Metsälä detention centre, which is generally fully occupied.

⁴¹ It should be noted that the programme is not aimed solely at the reduction of irregular migration, but also at the facilitation of bona fide travellers.

⁴² In 2012 the EMN will undertake a second focussed Study on difficulties associated with identifying the nationality of third-country nationals.

“laissez-passer” documents issued only for one return. The competent authorities in **Belgium** take into account that “non-removable” does not always mean that the person in question cannot return on an independent basis; some third-country nationals make themselves “non-removable” (for instance in the case of identity concealment).

Return is also particularly complicated if it concerns the return of minors (**Greece, Italy, Poland**), unaccompanied minors (**Lithuania, Luxembourg, Netherlands, Sweden**), pregnant women (**Greece, Italy**), elderly migrants (**Greece, Netherlands**) or persons with diseases (**Germany, Netherlands**). In **Greece** the removal of minors, pregnant women and elderly migrants is prohibited by law. In the case of unaccompanied minors, **Lithuania** may grant them the right to stay if the individual cannot be returned. **Poland** also specified that minors will only be removed if they will be cared for by parents, other adults or care institutions in the country of origin.

In order to deal with these circumstances in which it proves particularly difficult to return persons to their country of origin, (Member) States have certain approaches in place. For example, **Belgium, Luxembourg, Poland** and **Slovak Republic** offer the possibility for tolerated stay⁴³ to third-country nationals, which is similar to “leave to remain” in the **Czech Republic** or “suspension of removal” in **Germany**. In **Malta** “temporary humanitarian protection” may be granted for up to one year (with the possibility of renewal) to former applicants for international protection who did not fulfil the criteria to be granted this status, but who nonetheless could not be returned to their country of origin due to legal or factual reasons and through no fault of their own. In **Belgium** non-removable persons do not receive a residence permit although some receive a suspension of their removal. During this period of ‘tolerated stay,’ irregular migrants are only allowed to benefit from minimal basic rights and in principle are not entitled to social aid. In **Germany** the suspension of removal as such does not entitle residence in the country; rather the obligation to leave the country forthwith continues to apply. In **Luxembourg**, in transposing the Return Directive, ‘tolerated stay’ was replaced with a ‘suspension of removal’ measure. This measure provides for the possibility to postpone the removal decision for a determined period of time, if the third-country national can justify that he/she is not able to leave the territory for reasons beyond his/her control or if the removal will breach the principle of “*non-refoulement*.” It is furthermore possible to obtain a so-called “*temporary authorisation of occupation*” in line with the duration of the suspension of removal which allows for the right to stay on the territory without being allowed to reside.

In **Poland** a foreigner can be granted a tolerated stay up to one year if, for example, there is a risk to their right to life, liberty and personal security or violation of the right to family life or violate the rights of the child. The **Netherlands** may impose a “*temporary stop on departures*” if the situation in the country of origin has changed to such an extent that it is uncertain whether it is possible to remove persons. Such a temporary stop on departures provides lawful residence to the persons concerned. The *Act Stay of Aliens*, which entered into force in the **Slovak Republic** at the start of 2012, introduced provisions for tolerated stay for a maximum of 180 days with the possibility of extension mainly where removal is difficult, if

⁴³ In **Belgium**, tolerated irregulars’ is not an official term.

there are considerations of the fundamental right to private and family life, or if the third-country national has been a victim of trafficking in human beings or of exploitation (e.g. exploitative working conditions). A person may also obtain legal status in **Austria**, **Slovenia** and **Slovak Republic** by a permit for tolerated stay (see [Section 3.4.5](#)), whereas in **Austria** there is a view to regularisation after one year. In the **Czech Republic** a third-country national can obtain an “exception leave to remain” if an obstacle beyond the person’s control prevents departure. The leave to remain can be converted into a long-term residence permit if the obstacle still exists after one year. **Lithuania** grants temporary residence permit to persons if they cannot be expelled within a year. When the circumstances disappear and expulsion becomes possible it is implemented immediately. The Supreme Court in **Estonia** has also passed judgements on temporary stay for migrants who cannot be removed.

Concerning other measures undertaken, the authorities **Spain** have made efforts to increase the number readmission agreements. **Norway** will not forcibly return to countries without a functioning government, but will instead provide “escorted voluntary return,” which provides returnees with financial support, similar to the assisted voluntary return programmes. Such returns are carried out to Gaza and Somalia.

8. EU and European cooperation

This Section provides further analysis on the role of EU-level legislation and mechanisms in reducing irregular migration. An overview of EU actions in this area is presented in [Annex III](#) and the impact of specific legislation, namely Employer Sanctions Directive ([Section 6.3.2](#)) and the Return Directive ([Section 7.3](#)), has been addressed previously.

Austria, Belgium, Czech Republic, Estonia, Greece, Latvia, Netherlands, Poland, Slovenia, Slovak Republic and the United Kingdom note that there has been a significant impact of EU legislation, whereas others (Lithuania, Norway) note less of an impact, or only a limited impact (Finland, Ireland, Spain).

Legislation in Spain already contained many aspects similar to the content of EU legislation and policies on irregular migration. They have also been one of the main advocates for greater intra-European collaboration, by having promoted the establishment of Frontex, endowment of a European Return Fund, conclusion of European Readmission Agreements, as well as the drafting of the Global Approach to Migration and Mobility with the resulting EU Mobility Partnerships. Likewise, Finland's national laws are similar in content to corresponding EU policy and legislation on irregular migration and consequently only introduced minor changes following, for example, the introduction of the EU Return and Employer Sanctions Directives.

Ireland comments that EU law in respect of EU citizenship and free movement of EU citizens has had an indirect impact on Irish immigration law and policy. In particular, the Free Movement Directive and Articles 20 and 21 of the TFEU have required Ireland to adapt certain domestic laws and policies to facilitate rights of entry and residence in the State for non-EU national family members. Ireland notes that there are some concerns about misuse of the right to family reunification through application of the Free Movement Directive.⁴⁴

The Section begins by providing a discussion of the impact that Schengen has had on irregular migration ([Section 8.1](#)). It then describes how EU Solidarity Funds are being used in (Member) States to implement practical measures to reduce irregular migration ([Section 8.2](#)) – specifically the European Return Fund ([Section 8.2.1](#)) and the External Borders Fund ([Section 8.2.2](#)). The Section then looks at the role of cooperation between (Member) States and EU or international organisations ([Section 8.3](#)), followed by forms of legislative cooperation – namely EU and bilateral readmission agreements ([Section 8.4](#)).

⁴⁴ See Irish National Report for more information. See also the EMN Focussed Study on 'Misuse of the Right to Family Reunification' available at www.emn.europa.eu > 'Studies'.

8.1 The impact of Schengen

One of the most important impacts that the EU has had on (Member) State's approach to irregular migration is the creation of the common Schengen area, which created the concepts of 'internal' and 'external' borders. Indeed, the **Czech Republic** and **Estonia** have stated that membership of the Schengen area necessitates not only increased cooperation between (Member) States for the protection of external borders, but also greatly influences practical measures to prevent irregular migration. **Estonia** amended its national legislation in the field of migration, improved its infrastructure, established new procedures, trained officials, and improved cooperation efforts with neighbouring countries. **Hungary** notes that, from 2010 onwards, it introduced 'aliens police'.

Estonia joined the common Schengen visa area on 21 December 2007, and this brought significant changes for the authorities involved in migration and asylum issues as well as legal acts and procedures. **Latvia** transposing law Amendments to Immigration Law came into force on 23 January 2008, changing the work of the state border guard and the procedure for refusing entry, as well as the visa system. **Slovenia** set up an inter-ministerial working group to deal specifically with migration policy in 2009, a key task being to assess how best to align with the EU acquis. **Poland** also changed the scope of tasks and level of authorisation of the border guard. **Lithuania** also restructured its state border guard units, moving over 70% of staff from land borders - which had become internal borders - to external control points, e.g. at airports.

The **Slovak Republic** underlines that accession to the EU and Schengen Area was a major driver of changes to national legislation and policy by which the Member State was obliged to adopt and implement stricter legislation relating to third-country nationals. Following EU accession and preparations to join the Schengen area, a significant reduction in the number of irregular migrants in the years 2004 to 2007 took place, as well as a significant decline of irregular crossings and smuggling via the Slovak-Ukrainian border. In **Poland**, following the elimination of internal borders, the Border Guard intensified control checks on legal stay and work of foreigners, although border controls remained their main focus of activity.

The **United Kingdom**, although not signatory to the Schengen Agreement, notes the impact of the creation of the Schengen area. For example, the lack of internal border controls across the Schengen area was one of the contributing factors that led to the introduction of juxtaposed controls in **France** and **Belgium**.

8.2 The impact of the EU Solidarity Funds (RF and EBF)

This section provides an outline of the impacts of the European Return Fund (RF) and the External Borders Fund (EBF) in (Member) States. Details on (Member) States' specific project titles and objectives funded by the RF and the EBF are summarised in [Annex VI](#).

8.2.1 European Return Fund (RF)

The Czech Republic, Ireland and Lithuania use RF funding to finance the activities of the IOM, which assist irregular migrants to return to their country of origin. The Czech Republic additionally offers irregular migrants advice on return and reintegration processes whilst stimulating such processes by offering financial incentives. Ireland and Greece used funding to cover actual costs of (charter) return flights, with Greece additionally focusing on training activities. Similarly, Poland considers training to improve qualifications of border guards as essential elements in the return process. For this purpose, Poland has established a Border Guard Training Centre in Koszalin to improve the quality of competent Polish authorities involved in return activities. In the United Kingdom the Return Fund part finances the *Voluntary Assisted Return and Reintegration Programme* (VAARP), as well as two voluntary return programmes and a facilitated return programme for foreign national offenders (see below).

Finland, Latvia and the Slovak Republic focus on the overall quality of the return processes. For example, Finland used funding from the RF to finance projects to improve the effectiveness and development of police operations in enforcing return decisions, and to develop a country of origin system to disseminate information both to irregular migrants and to organisations involved in return to Iraq. Latvia has developed several training projects, including language training to improve communication skills of diplomatic and consular employees and has further organised several seminars with other Member States to exchange best practices with regard to voluntary return and forced expulsion. The Slovak Republic, in cooperation with the IOM, aims to provide for humane, organised and cost-effective return and reintegration through assisted voluntary returns. Similarly, for forced returns, the special needs of third-country nationals, especially vulnerable groups, are taken into account. Irregular migrants are, for example, well informed about the possibility of health care and translation services. Germany and Estonia mainly use the funds to finance activities which aim to improve practical cooperation with relevant authorities of source countries for irregular migration.

Belgium, Lithuania, Slovak Republic and United Kingdom not only facilitate high quality return measures, but also focus on follow-up activities in the countries of return. For example, Belgium developed sustainable projects for families in their country of origin. Lithuania and the Slovak Republic developed reintegration programs, implemented by the IOM, for third-country nationals in their country of return to prevent re-migration. In the United Kingdom, the facilitated return scheme for foreign national offenders (FNOs) offers the possibility of voluntary (rather than enforced) return with the offer of assistance to reintegrate to their own society when returned. Since 1 October 2010, the amount of assistance available under the scheme is up to £1 500 (approx. 1 860 euro) if the FNO is still serving a prison sentence, or up to £750 (approx. 930 euro) if they have served their sentence. Recent *UK Border Agency* analysis has shown the scheme to be more-cost effective than forced return, as there are no costs for escorting to the border and costs related to appeals and non-compliance are omitted. The scheme also provides an opportunity for investment in the country of return through business start-ups or further education, which may also prevent further irregular migration in the future. The Return Fund has also financed the *Global Calais* project in the United Kingdom, which is an awareness campaign aimed

at informing irregular migrants in the Calais area about the dangers of crossing the English Channel irregularly; the Assisted Voluntary Return and Reintegration (AVRR) options available to them; and the reality of life as an irregular migrant.

Germany, Greece and Latvia have evaluated the effectiveness of activities funded by the RF. An interim evaluation will be carried out in the **Netherlands** in 2012. In **Germany**, activities which focused on improving cooperation have indeed been a success as illustrated by an increase in the number of passports or substitute passports issued to irregular migrants. Cooperation has been successful to the extent that source countries of irregular migration are no longer regarded as problematic. Noteworthy is that Germany discovered that, despite willingness to cooperate, border guards in certain third-countries simply lack equipment to prevent irregular migration. This discovery underpins current strategy of providing material assistance in the form of supplying equipment and providing for special trainings. **Greece** noted that its training activities have been effective as well, since in 2009, compared to 2008, the number of irregular migrants declined by 13.8%. Furthermore, forced return measures had a preventive effect by giving out a discouraging message to prospective migrants and traffickers. **Latvia** stated that implementation of projects funded by the RF has increased the overall quality of the procedures targeted at preventing irregular migration, in particular by raising qualifications of personnel. By contrast, the **Netherlands** notes that the contribution of the funds for activities to prevent irregular migration is relatively small: RF funding only constitutes a fraction of the amount spent by the Dutch government.

8.2.2 External Border Fund (EBF)

Most (Member) States consider funding from the European External Border Fund (EBF) essential for the protection of EU external borders to better manage migration flows. Funding contributes to the improvement of national practical measures aiming to prevent irregular border crossings. Most practical measures implemented by Member States include supply and improvement of technical equipment (**Belgium, Czech Republic, Estonia, Germany, Greece, Italy, Finland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Norway**), organisation of trainings for border guards to more efficiently use the equipment and improve their capabilities in detecting irregular migrants (**Germany, Greece, Finland, Luxembourg, Slovak Republic**) and improvement of information and monitoring systems (**Belgium, Estonia, Germany, Finland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic**). **France and Spain** also make use of this Fund.

Germany, for example, uses the funds for procurement of equipment for helicopters at the European sea borders, training in personnel in document examination techniques and equipment, as well as investments in the development of VIS and SIS-II. **Luxembourg** utilises the funds to purchase equipment enabling border guards to detect falsified travel documents, improve conditions of visa issuing, adapt control devices and computer systems to make them more compatible with statutory requirements by implementation of the SIS and VIS, and to train personnel responsible for border control. A joint project was launched in 2010 between **Finland, Latvia and Lithuania** aiming to ensure a link between the state border guard electronic information system (REIS) and the VIS, as well as to upgrade border and migration control procedures.

Finland and **Norway** fund many projects through EBF financing, with Norway having currently 35 ongoing or planned projects and Finland 40 projects. Projects implemented by **Norway** aim to strengthen the border surveillance capacity at the Norwegian-Russian border. This border is of particular importance due to the easing of visa requirements with the Russian Federation from end May 2012 for residents in the border region. Examples of measures include the supply of equipment to the police and armed forces to enhance surveillance and reaction capacity, mobility traces, and vehicles for police controls. One of the most recent projects implemented by **Finland** aims to improve border security by enhancing skills and situation management for Border Guard officers and special units by constructing a building that can be used for tactical training. Other projects relate to, for example, improving the Border Guard's capacity to carry out security tasks by replacing ageing patrol boats with new higher performance boats, improving operating capacity of the surveillance system and monitoring the EU's external sea borders, efficiently processing visa applications, implementation of VIS, integration of an information system. In **Lithuania**, funding was used to install modern border monitoring systems along the most vulnerable stretches of the external border. As a consequence, the number of irregular border crossings dropped significantly at the border with Kaliningrad region, Russian Federation.

Few (Member) States commented on the effectiveness of the activities mainly because implementation reports of (Member) States' projects funded by the EBF are not required until the end of 2012. **Luxembourg** states that the expected results of, for example, its activities on the extension of the SIS program will be improved access to alerts and data and an increase of positive hits. The quality of responses is also likely to improve through the use of document readers (which mean that there are fewer errors caused by manual data entry). **Poland** explicitly states that the fund constitutes an essential support tool for, in particular, the Polish Border Guards by equipping them with better material, and improving information technology in order to more efficiently protect the external border.

8.3 Cooperation with EU Agencies or international organisations

In terms of EU cooperation, all Member States and Norway have referred to co-operation activity with Frontex (see Annex III). Several Member States make reference to the value of shared EU resources, such as the FADO (False and Authentic Documents Online, an EU image-archiving system set up to help combat irregular immigration and organised crime (**France, Ireland, Slovak Republic**). Member States also refer to co-operation with EUROPOL, the European Police Office, (**Hungary**), CEPOL, the European Police Academy and MEPA, the Central European Police College (**Slovak Republic**). Other (Member) States (**Ireland, Lithuania, Malta, United Kingdom, Norway**) mention their involvement in the networks described in Table 8.1 below. More information is provided in National Reports.

(Member) States also refer to participation in a number of EU projects and financial instruments that have facilitated cooperation to tackle irregular migration. In **Austria**, for example, the EU-funded project "*Establishment of International Law Enforcement Coordination Units*" (ILECUs), 2008-2011, established such units in the countries of the Western Balkans to improve strategic and operative

cooperation. The main goals of the project were to increase information and data exchange and to simplify procedures and processes.

Table 8.1 - European Networks and forums addressing irregular migration

Network / organisation	Purpose and activities
General Directors' Immigration Services Conference (GDJSC) network	Established to facilitate practical co-operation on immigration matters
Strategic Committee for Immigration, Frontiers and Asylum (SCIFA)	A forum for exchange of information among EU Member States in the fields of asylum, immigration and frontiers
Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI) ⁴⁵	Aimed at assisting the Member States in effectively studying legal immigration, in preventing illegal immigration and facilitator networks, in better detecting forged documents and in improving expulsion practice
Intergovernmental Consultation on Migration, Asylum and Refugees (IGC)	An informal, non-decision-making forum for intergovernmental information exchange and policy debate on issues of relevance to the management of international migratory flows
Mediterranean Transit Migration Network (IOM)	An inter-regional inter-governmental consultative forum aimed at collecting and exchanging information and experiences on topics such as irregular and mixed migration and migration and development.

The majority of Member States and Norway cooperate also with non-EU international organisations, in the fight against irregular migration. **Belgium, Czech Republic, Estonia, Latvia, Lithuania, Luxembourg, Netherlands** and the **Slovak Republic** highlighted their cooperation with the International Organization for Migration (IOM), undertaking joint projects, for example, to facilitate assisted voluntary return and reintegration (**Belgium, Estonia, Latvia, Norway, Slovak Republic**), irregular migration prevention campaigns (**Belgium**), attending events and seminars to exchange experience (**Latvia**), and participation in the activities of the IOM Migration Information Centre (**Slovak Republic**). The **Slovak Republic** refers to cooperation with the International Centre for Migration Policies Development (ICMPD) on a range of issues to tackle irregular migration, as well as via its secretariat role for two inter-governmental forums – the Budapest Process and the Dialogue on Transit Migration in the Mediterranean.

(Member) States also refer to cooperation with the various agencies of the United Nations. These include the UN High Commission for Refugees (UNHCR), where cooperation was highlighted by **Greece, Hungary, Latvia** (including the signing of a cooperation agreement); **Lithuania, France** who cite their work with the United Nation Office on Drug and Crime (UNODC); and **Latvia** has worked with the United Nations Development Programme (UNDP) to implement the “*Support to Integrated Border Management Systems in the South Caucasus (SCIBM)*” project, specifically to provide support to Georgia, Armenia and Azerbaijan. **Estonia** and **Lithuania** have cooperated with the International Red Cross, for example, for the supervision of expulsions.

Other international organisations cited include Interpol (**Poland, Slovak Republic**), the Organisation for Economic Co-operation and Development (OECD) (**Norway**), and international civil aviation forums, e.g. ICAO and IATA, which set recommended

⁴⁵ CIREFI was abolished in December 2009, as a consequence of the entry into force of the Lisbon Treaty, and its functions transferred to FRONTEX.

practices and guidelines on passenger facilitation, including procedures for addressing irregular migration, false documentation and the removal of inadmissible people (United Kingdom).

8.4 Cooperation between Member States

Many Member States (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, Slovenia, Spain, United Kingdom) have set up cooperation agreements between themselves to tackle irregular migration. These include those establishing joint police cooperation (Austria, Belgium, Bulgaria, France); on cooperation between the police forces of neighbouring countries (Germany, Greece); and a specific Police and Customs Cooperation Agreement, signed by Belgium, France, Germany and Luxembourg. Other Member States reported cooperation agreements with border guards and on joint patrols (Estonia, Latvia, Lithuania); agreements on regulating common borders (Austria, Czech Republic, Estonia, Hungary, Latvia, Lithuania Poland, Slovak Republic); and agreements on cooperation in combating organised crime (Cyprus, Czech Republic, Germany, Hungary, Italy, Lithuania, Malta, Poland, Romania, Slovak Republic, Slovenia, Spain, United Kingdom).

A number of specific examples of formal agreements were reported. The *“Prüm Treaty”* for example, was signed by Austria, Belgium, France, Germany, Italy, Luxembourg, Netherlands and Spain, with one of its objectives being the intensification of cross-border cooperation to combat irregular migration. To this end, the treaty provides for the automatic exchange of DNA, fingerprint, and motor vehicle registration data. A treaty between France and the United Kingdom concerning the Implementation of Frontier Controls at the Sea Ports on the Channel and North Sea came into force in 2004. The United Kingdom also mentions the *‘Evian Agreement’* with France which includes the establishment of a Joint Operational Co-ordination Centre (JOCC) improving efforts to reduce irregular migration by more co-ordinated and coherent activities. In addition, the United Kingdom and Ireland (with the Isle of Man and the Channel Islands) have established a Common Travel Area (CTA) which permits minimal internal border controls through extensive co-operation to safeguard external borders. A number of agreements between the Nordic countries also exist. These include the Nordic Police Cooperation Agreement, which permits Nordic Authorities (Denmark, Finland, Sweden, Iceland, Norway) such as the Police Authorities, to contact each other directly without recourse to central authorities, in order to facilitate the exchange of information, and the *Öresund Agreement* (Sweden, Denmark) which permits the exchange of information between Swedish and Danish police.

(Member) States also refer to projects to tackle specific issues, for example, Denmark, Netherlands, Sweden, the United Kingdom and Norway, have initiated a cooperation which, among other things, aims at finding the parents of the unaccompanied minors. The *‘European Initiative on Integrated Return Management Project’*, (EURINT) is a cooperation project between the Netherlands, Belgium, and Romania, which has the object of implementing (i) joint actions in approaching authorities of third countries to improve cooperation in the area of return; (ii) joint task forces focused on improving the identification process of the third-country national; and, (iii) between some participating Member States, joint removals.

8.5 Legislative cooperation with third countries (including EU Readmission Agreements)

All Member States (except Slovenia) have concluded readmission agreements to address the issue of irregular migration either with other (Member) States and/or with third countries.

8.5.1 EU Readmission Agreements

Since 1999 the EU has had competence to set up such agreements⁴⁶ and – so far – 13 EU Readmission Agreements are in force, with Hong Kong, Macao, Sri Lanka, Albania, the Russian Federation, Ukraine, the Former Yugoslav Republic of Macedonia (FYROM), Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan and Georgia. On-going negotiations are continuing with Morocco, Cape Verde, China and Algeria. All, except for Hong Kong, Macao and Sri Lanka, include a visa facilitation agreement. According to the recent [evaluation of EU Readmission Agreements](#),⁴⁷ *“a majority of Member States apply EU [Readmission Agreements (EURAs)] for all their returns, but others still use their bilateral arrangements which existed before the EURA entered into force ... the reasons given for non-application of EURAs are the absence of a bilateral implementing protocol and/or that EURAs are used only if they facilitate returns”*.

In some cases, e.g. the EU Readmission Agreement with the Russian Federation, it is mandatory for a Member State to have an implementing protocol in place before it can make use of an EU Readmission Agreement. However, in other cases, EU Readmission Agreements are “self-standing” directly operational instruments which do not necessarily require the conclusion of bilateral implementing protocols with the third country.⁴⁸ [Table 8.2](#) below outline the Member States which have concluded implementing protocols in support of EU Readmission Agreements.⁴⁹

The **United Kingdom** has opted into several EU Readmission Agreements and reports that there are benefits in establishing common standards on returns that have helped foster practical cooperation efforts on return. Other Member States are, however, more critical with regard to the concluded EU Readmission Agreements (**Czech Republic**, **Finland**, **Germany**, **Latvia**, **Malta**, **Poland**). The **Czech Republic**, for example, refers to a controversy between the EU Readmission Agreements and the Return Directive because irregular migrants often try to prolong their stay by utilising every option to postpone enforceability of the return decision. **Finland** notes that the expulsion decisions in Finland are not based on EU Readmission Agreements, but rather on international police cooperation. In a similar vein, **Germany** notes that cooperation with

⁴⁶ See Commission Communication on the Evaluation of EU Readmission Agreements COM (2011) 76 final, available at: http://ec.europa.eu/home-affairs/news/intro/docs/COMM_PDF_COM_2011_0076_F_EN_COMMUNICATION.pdf

⁴⁷ COM (2011) 76 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF>

⁴⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF>

⁴⁹ More information is available in the Commission Communication on the Evaluation of EU Readmission Agreements. - Implementing protocols signed/concluded by the MS under the EU readmission agreements in force.

third countries with which the EU has concluded EU Readmission Agreements has not improved. **Malta** states that, in practice, EU readmission agreements concluded so far have had very little impact on the irregular migration scenario in Malta, as they have not been concluded with the third countries from which irregular migrants to Malta mainly originate. **Poland** refers to several third-countries which have rarely cooperated with Poland despite the existence of EU Readmission Agreement.

Table 8.2 - EU Readmission Agreements and Member States with implementing protocols

Third Country	Member States with an implementing protocol in place
Hong Kong	Germany
Macao	<i>No implementing protocols to date</i>
Sri Lanka	<i>No implementing protocols to date</i>
Albania	Austria, Belgium, Hungary, Italy, Luxembourg, Netherlands, Slovak Republic
The former Yugoslav Republic of Macedonia (FYROM)	Austria, Estonia
The Russian Federation	Austria, Belgium, Estonia, Finland, France, Latvia, Poland, Slovak Republic, Spain
Ukraine	Lithuania, Poland
Bosnia and Herzegovina	Estonia, Malta,
Montenegro	Czech Republic, Malta, Slovenia
Serbia	Austria, France, Estonia, Italy, Poland, Serbia, Slovak Republic, United Kingdom
Moldova	Austria, Czech Republic, Estonia, Latvia, Hungary, Malta, Germany, Poland, Romania, Slovak Republic
Pakistan	<i>No implementing protocols to date</i>
Georgia	<i>No implementing protocols to date</i>

Source: EMN National Reports and COM (2011) 212

8.5.3 Bilateral readmission agreements

In addition to EU Readmission Agreements, (Member) States may set up bilateral readmission agreements. Some of the most common third countries having bilateral agreements with (Member) States are outlined in [Table 8.3](#) below, although the list is not exhaustive.⁵⁰ The main purpose of such agreements is to encourage greater cooperation from authorities in third countries in readmitting nationals who (no longer) have permission to stay in the (Member) State and have been ordered to leave, but fail to do so voluntarily. However, the agreements may have other purposes. For example, readmission agreements are often tied to visa-facilitation agreements. Some agreements – such as **Germany's** bilateral agreement with Vietnam - contain provisions concerning technical procedures – e.g. for determining nationality and to issuing travelling letters. **Germany's** readmission agreements with Bosnia and Herzegovina, Kosovo, Croatia, Former Yugoslav Republic of Macedonia (FYROM), Serbia, and Montenegro were set up for the purpose of returning refugees and their spouses and descendants.

⁵⁰ Further information on the conclusion and impact of readmission agreements is provided in National Reports to the Study, as well as in the EMN Annual Policy Reports, both available on the EMN website: www.emn.europa.eu.

Table 8.3 - Bilateral readmission agreements between (Member) States and Third Countries

Third Country ⁵¹	(Member) States holding bilateral readmission agreement
Algeria and Morocco	Germany, Spain, Italy
Armenia	Czech Republic, Estonia (draft), Sweden, <i>Benelux</i> countries (Belgium, Luxembourg Netherlands – although not yet ratified by Belgium), Norway
Bosnia-Herzegovina	<i>Benelux</i> countries (Belgium, Luxembourg Netherlands), Italy, Sweden, Norway
Croatia	Czech Republic, Italy, Poland, Slovak Republic, <i>Benelux</i> countries (Belgium, Luxembourg Netherlands), Norway, Sweden
Egypt	Italy
The former Yugoslav Republic of Macedonia (FYROM)	<i>Benelux</i> countries (Belgium, Luxembourg Netherlands), Italy, Sweden
Kazakhstan	Estonia, Lithuania
Kosovo	<i>Benelux</i> countries (Belgium, Luxembourg Netherlands) Estonia - under negotiation, and Latvia and Lithuania - under negotiation, Norway
Moldova	Italy
Nigeria	Italy, Ireland ⁵² Spain
Philippines	Italy
Russian Federation	Estonia, Latvia, Lithuania, Norway
Sri Lanka	Italy
Tunisia	Italy
Ukraine	Estonia, Latvia, Lithuania, Poland, Slovak Republic Norway,
Vietnam	Belgium, Czech Republic, Germany, Poland, Slovak Republic, Sweden Norway,

Source: EMN National Reports

Many (Member) States (e.g. Austria, Belgium, Czech Republic, Estonia, Italy, Netherlands, Slovak Republic, United Kingdom, Norway) value Readmission Agreements as important instruments to reducing irregular migration, as they underpin the national legal framework for ensuring speedy return measures and facilitating return procedures of irregular migrants (see also Section 7.2). For example, Estonia notes that readmission agreements have facilitated faster and simplified compulsory return and exchange of information. Of particular importance for Estonia are the Readmission Agreements with the Russian Federation, Ukraine, Georgia and Moldova, as these countries constitute the main source countries of irregular migration. The Netherlands notes that cooperation with concerned third countries has improved through implementation of Readmission Agreements. The Slovak Republic illustrates the positive impact that its bilateral readmission agreement with Ukraine⁵³ has had on reducing irregular migration: in 2002, 1 130 out of 1 195 persons were refused valid readmission. Comparable numbers were perceived in 2003 and 2004. However, in 2005 the number of persons refused by the Ukrainian authorities numbered 192 out of 292 as a result of the renewed application of the Readmission Agreement. Lithuania reports that the return of irregular residents in accordance with readmission agreements is not particularly

⁵¹ The following Member States also have a readmission agreement with Switzerland (Austria, Czech Republic, Greece, Poland, Slovak Republic, Sweden, *Benelux* countries (Belgium, Luxembourg Netherlands).

⁵² The agreement has not yet been formally ratified by the Nigerian Government yet.

⁵³ *The Agreement between the Governments of the Slovak Republic and Ukraine on the Issue and Receipt of Persons through the Joint State Borders Agreement.*

common. However agreements with the Russian Federation and Georgia have proven useful.

Malta notes the importance of Article 13 (“Migration”) of the Cotonou Agreement⁵⁴, which states, among other provisions, that, “each of the ACP States shall accept the return and readmission of any of its nationals who are irregularly present on the territory of a Member State of the European Union,” particularly as many third countries from which irregular migrants to Malta originate are signatory, and proposes that the EU should do more to implement this.

⁵⁴ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part (“Cotonou Agreement”), signed in Cotonou on 23 June 2000.

9. Concluding remarks

Reducing irregular migration is a policy priority both at EU level (see [Annex III](#) and [Section 8](#)) and national level (see [Section 3](#)). This is evidenced by the fact, for example, that almost all (Member) States ([Austria](#), [Czech Republic](#), [Finland](#), [Estonia](#), [Germany](#), [Greece](#), [Italy](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Netherlands](#), [Poland](#), [Slovak Republic](#), [Slovenia](#), [Spain](#), [Sweden](#), [United Kingdom](#), [Norway](#)) have introduced legislative changes for reducing irregularity in recent years (see [Section 3.4](#)). This Section outlines the results achieved by (Member) States in reducing irregular migration ([Section 9.1](#)). The effectiveness of practical measures are then described ([Section 9.2](#)), followed by the impact of EU legislation ([Section 9.3](#)). The Section ends by looking at barriers to reducing irregular migration ([Section 9.4](#)), lessons learnt ([Section 9.5](#)) and suggestions for the future ([Section 9.6](#)).

One feature arising from this study is that there is not one single ‘type’ of irregular migrant; rather people enter into an irregular situation for a range of reasons, and hence cannot be conveniently brought together into one group towards which one policy can be targeted. For example, a migrant refused entry at the border for lack of visa or travel documents, may have made the conscious decision to migrate without these documents (i.e. irregularly) or this may have been due to an unconscious mistake due to lack of information about the criteria for entry; or indeed, the national situation within the country of origin may not provide for the types of documentation sought by (Member) States to permit entry, for example, to prove a family relationship in association with an application for family reunification. Hence it is essential that the range of statistics that are available are carefully examined and understood with as much detail and context as possible by policymakers and practitioners to ensure that policy and practice are effectively targeted to address the wide range of individual circumstances that may result in irregular situation.

9.1 Statistical Analysis

The statistics presented throughout this Study (see [Section 5.1](#) and [Section 6.2.1](#), for example) suggest that irregular migration is in decline in many (Member) States; although in some it has risen ([Greece](#) and [Malta](#)) or stayed the same ([Lithuania](#)). A range of reasons account for this overall reduction: EU enlargement is a notable one (see [Section 9.3](#) below), and the impact of the economic crisis another (i.e. in decreasing the attractiveness of EU countries as targets for irregular migration). The disparity of national statistics makes it difficult to obtain a ‘single figure’ at national or EU level for irregular migration, although statistics can contribute considerably to an understanding of the effectiveness of policy and can highlight the gaps where measures may need to be taken. Trends in statistics relating to irregular migration must also be treated with caution. While such statistics may reflect trends in irregular migrant numbers, they may also – instead of or as well as – reflect trends in policy and practice. For example, an increase in apprehensions in the workplace may represent an increase in the

numbers of irregular migrants reported as working irregularly, but it may just as likely demonstrate a 'push' in labour inspectorate activities and a 'crackdown' on irregular employment rather than an actual increase in the numbers of people working irregularly overall. Equally, trends in the numbers of migrants entering irregularly may be indicative of the scale of inflows of irregular migrants and/or more effective border control. Finally, the irregular migration population is dynamic – it consists of inflows and outflows; groups which remain and those which are in transit; and therefore it is difficult to capture a comprehensive picture that is accurate.⁵⁵

9.2 The effectiveness of practical measures

Considering practical measures in relation to pre-entry (Section 4), entry (Section 5), stay (Section 6) and return (Section 7) stages helps to highlight the importance of shaping legislation, policy and practice to the specific circumstances of individuals in an irregular situation at each stage, and the circumstances of the (Member) State. Data and information relating to the specific circumstances of Member States in each situation can help to develop appropriate – and proportional – responses. For example, significant investment in technology at the border will be unnecessary, if information on irregularity identifies visa-overstay as the biggest reason for irregularity in the territory.

There is a notable lack of evaluations of the effectiveness of policy and practice to reduce irregular migration in (Member) States. For example, the **Netherlands** notes that many measures have been evaluated extremely summarily or not at all. Even where practice is evaluated it may be difficult to link results (i.e. a reduction in overall irregular migration) to a single policy or practice. Nevertheless, (Member) States have indicated some practices that have worked better than others, outlined below.

Above all, most (Member) States highlight the importance of pre-entry measures as key to reducing irregular migration (see Section 4). Once a third-country national is in an irregular situation in the (Member) State, and obtains legal entitlements on the basis of false documents, it becomes much more difficult and costly for the authorities to apprehend and address the irregularity. Hence, it remains a policy priority to prevent the irregular migration from happening in the first place, and this is reflected in (Member) States' policy approach.

Prior to entry, the obligation of carriers to provide advance passenger information (API) as required under Council Directive 2004/82/EC, has proven to be useful in screening for irregular situations, so that individuals are not permitted to enter a (Member) State, or preparations can be made to deal with them on arrival of the carrier. Several (Member) States have highlighted API and the role of carriers to be a key success in fighting irregular migration in the EU, and it is recognised as an additional tool to complement others in preventing irregular migration from taking place. Some (Member) States work closely with airlines to ensure the processes are effectively implemented and carrier staff receives all necessary training and briefings. (Member) States also highlight the effectiveness of Immigration Liaison Officers (ILOs) and police liaison officers in bridging the work of policymakers in

⁵⁵ See National Report of **Germany** for more on this final point.

the EU and those implementing such policies in detached situations, for example, in countries of origin. Their role in communicating risk analysis information and information on irregular migration routes back to the EU is essential. At least three (Member) States highlight visa policy as one of the most effective tools in reducing irregular migration. **Greece** attributes its reduction in refusals at entry to improved training of consular staff in preventing entry with false documents. However, **Poland** notes that visa policy should be supported with other mechanisms, such as road maps and cooperation between liaison officers.

In relation to border controls, **Ireland**, **Italy** and the **United Kingdom** underline the importance of document checking and the use of specific systems for the detection of fraudulent documents. For example, the **United Kingdom** recently established a *Document Fraud Unit* specifically for this purpose. Indeed, the decline in refusals at the border may be evidence of the effectiveness of border measures. Cooperation with other (Member) States – such as that of ‘juxtaposed controls’ implemented by **Belgium**, **France** and **United Kingdom** – and with neighbouring third countries (e.g. joint investigations, joint patrols and other forms of cooperation) also ensure that irregular migration is prevented not only on the EU side, but at the country of origin also. A particular ‘success story’ in practical measures at the border is that of **Spain’s** implementation of Spanish Border Surveillance System (SIVE) in the Canary Islands and south of the Iberian Peninsula (see [Section 5.1](#)). The **Slovak Republic** has also evaluated its border policy as having a significant impact on the reduction in the number of irregular migrants who were detained or refused entry on the border. **Malta** notes that the large influxes of irregular migrants (as well as asylum applicants) arriving at its borders, in proportion to the geographical size and limited absorption capacity of its labour market, place a disproportionate strain on the authorities’ capacity to implement practices effectively.

During stay, the effectiveness of penalties is unclear; although (Member) States implement a variety of penalties according to the offence committed (see [Section 3.3](#)). Some (Member) States carry out random or targeted spot-checks or impose reporting duties on public service providers (see [Section 6.2](#)). However, there are some concerns regarding the impact on fundamental rights of these measures. Furthermore, the cost and effort in implementing such measures may not be proportionate to the results obtained. Other measures focus more on taking action against individuals who profit from them, such as exploitative employers and / or organised crime groups. In **France**, out of 1 501 places of employment checked in 2010, 586 employers were implicated for employing irregular migrants. In the **United Kingdom**, amongst other (Member) States, immigration authorities work with rectors and registrars to prevent fraudulent marriages. **Spain** and **Sweden** provide opportunities for legal migration (see [Section 6.4](#)). For example, **Sweden** provides further options for obtaining a work permit after rejection of an asylum application under certain circumstances. However, this is often difficult (as noted by **Spain**) and requires strengthening other types of incentives offered to countries of origin or transit of irregular immigration. **Germany** also argues that there is insufficient evidence to demonstrate that such measures effectively prevent irregular migration flows.

In providing a pathway out of irregularity, the **Netherlands** and **Spain** refer to the effectiveness of regularisation. The **Netherlands** argues that its 2007 regularisation undoubtedly influenced the scope of the population of irregular

migrants and, although politicians predicted that the regularisation would attract further migrants, this has not been proven by research. In **Norway**, return is recognised as the only pathway out of irregularity, focussing on voluntary assisted return programmes for most nationalities (except those defined as ‘48-hour procedure cases’). These programmes, such as those facilitated by IOM, have led to a substantial increase in returns. **Latvia** also highlights the importance of promoting voluntary return and expanding support to assisted voluntary return programmes, particularly in light of the growing costs of forced removal. **Belgium** also states that return is key to implementing effective measures and emphasises that further support should be given to AVR programmes and to pursue more cooperation with countries of origin and transit.

Belgium, Spain and Greece highlight the importance of return flights (including those co-ordinated by Frontex) in ensuring effective return, but also in acting as a deterrent effect for future irregular migrants. In **Finland**, removals of asylum applicants receiving a final negative decision have helped to decrease the number of failed asylum applicants who then go on to apply for asylum in other EU Member States in 2010 and 2011.⁵⁶ Most (Member) States implement detention prior to return / removal, although these practices have been criticised (e.g. in **Luxembourg**). Similarly, a report by the IOM cited by the **Netherlands** argues that detention has no effect on the willingness of irregular migrants to return and hence, while the Dutch authorities consider it an essential tool for effective return, it may not be as effective as intended. **Germany** describes the effectiveness of national and regional policy in curbing repeated renewals of temporary removal stays (“chain suspensions”), evidenced by increasingly (and significantly) lower number of third-country nationals staying in Germany with a residence title in the form of a “Duldung” (suspension of removal). **Sweden** notes the importance of providing assistance in reintegrating in the country of return and **Norway** highlights the establishment of readmission agreements as major factors influencing the success or otherwise of return policy.

9.3 The impact of EU legislation

As noted in [Section 8](#), EU legislation and policy has had a major impact on national approaches and practical measures towards irregular migration, as well as an impact on the scale of irregular migration arriving and apprehended. In [Section 6.2.1](#) (and [Annex VII](#)), (Member) States cite EU enlargement and the creation of the Schengen Area as a reason for the reduction in irregular migrants staying in the (Member) State and those arriving at the borders. Moreover, legislation introduced through the Regulation of the Schengen Borders Code has also had a notable impact on reducing the number of ‘false tourists’ and visits to relatives or friends in order to stay irregularly. With regard to national legislation and institutions, the Return Directive has had a significant impact on national concepts and approaches – e.g. with almost a quarter of Member States newly introducing the concept of ‘return decision’ and others introducing the concept of voluntary return for the first time. The EU has also been instrumental in funding practical measures to reduce irregular migration, such as equipment, training and return programmes.

⁵⁶ The Dublin Regulation provides that a third-country national who has applied for and failed to obtain asylum in a Member State may not then subsequently apply for asylum in another Member State.

9.4 Barriers to effectiveness

There may also be obstacles to reducing irregular migration. For example, **Greece** notes difficulties in implementing readmission protocols with some third countries, and while cooperation between **Spain** and African countries has – to date – been mainly successful, many agreements are ‘de facto’ and require further institutionalisation and support from the EU as an international actor. **Finland** highlights differences in administrative cultures and practices, e.g. in the interpretation of visa regulations, across EU Member States as a “particular challenge” in preventing irregular migration to the EU. A lack of accurate data may also be an obstacle to monitoring future policy needs – this is pointed out as an issue in **Ireland** and **Luxembourg**, for example. A range of obstacles to effective return were outlined in [Section 7.2.3](#).

9.5 Lessons learnt

Many (Member) States (**Austria**, **Belgium**, **Germany**, **Greece**, **Italy**, **Latvia**, **Lithuania**, **Slovak Republic**, **Slovenia**, **Spain**, **Norway**) argue that cooperation with third countries is one of the most effective measures for reducing irregular migration. **Germany** states that cooperation through the provision of training and equipment support in order to improve border surveillance is particularly useful. **Austria** highlights the fact that the political, socioeconomic and cultural setting of countries of origin has an impact on irregular migration flows and hence it is important to address these. **Spain's** cooperation with West Africa and the Maghreb has increased monitoring of and prevention of the exit of ships transporting migrants and for the readmission of irregular migrants. The **Slovak Republic** focuses its cooperation on Ukraine as the only third country with which it shares a border and the most dominant country of nationality amongst its irregular migrants.

Large-scale information systems are also central to reducing numbers. For example, **Ireland** notes the usefulness of such systems for cross-checking data. However, **Hungary** notes the challenges of implementing large-scale technologies – such as biometric documents – and the subsequent funding needed. **Greece** notes the importance of using translators for identification and investigation.

(Member) State practical measures are responsive and measured, targeting specific actions at particular problem areas with specific objectives. For example, in 2010 **Finland** intensified its focus on reducing the number of third-country national criminals; preliminary results for 2011 show these targets have been mostly met. In **Luxembourg**, a readmission agreement has been signed with Serbia and a Memorandum of Understanding with Nigeria because there is a proportionally higher presence of irregular migrants from these two countries. However, **Luxembourg** highlights the fact that legislative and administrative provisions define what is regular and what is irregular migration, and hence, perhaps more weight should be given to assessing State measures, rather than focusing on the actions of the migrant alone. The proportionality of measures in comparison to results must also be considered.

Hungary notes a number of future challenges to the reduction of irregular migration; namely, the rising volume of “mixed migration,” economic recession in neighbouring countries; and visa liberalisation. **Italy** also notes that immigration

flows to the EU are likely to grow as the African continent becomes more developed, but notes also that countries such as China, with rapidly developing economies, are also more likely to attract increasing migration flows in the future. Similarly the **Netherlands** argues that developments in the scale and nature of irregular migration are difficult to predict, as numerous factors are involved. Amongst the most decisive of these might be the demand for labour and the presence of an already established diaspora.

9.6 Additional measures identified

As a pre-entry measure, **Greece** suggested increasing awareness amongst persons in third-countries of the risks of migrating irregularly and putting more pressure on the diplomatic authorities of countries of origin of irregular migrants for the issuance of travel documents as other measures which could be effective.

On entry, as the proportion of forged personal identification documents and visas is still high in **Latvia**, the State Border Guard identifies a need to continue its cooperation with the Latvian diplomatic and consular representations abroad, as well as the border control and immigration control services of the respective third countries states.

During stay, **Italy** suggests that there should be greater opportunity for residence while job searching, under specific and harmonized conditions, in order to facilitate legal stay and to combat the irregular labour market. **Poland** considers that a change in focus from border control to the prevention of irregular stay could be effective, although it might require changes in law, organisation and logistics.

In order to improve access to pathways out of irregularity, **Italy** argues that irregular migrants should be given a reasonable period of time for complying voluntarily with a removal order as well as offering assistance with the programmes of assisted return. **Greece** also suggests that returns be increased by giving greater focus to voluntary return, but also to forced removals by organising more charter flights to the countries of origin especially to those where there is no air link.

*

* *

ANNEX I: Definitions related to Irregular Migration⁵⁷

Irregular Migration

Movement that takes place outside the regulatory norms of the sending, transit and receiving countries.

Synonyms: illegal migration, clandestine migration, unauthorised migration

Source: IOM Glossary on Migration

Irregular Migrant

In EU context, a third-country national who does not fulfil, or no longer fulfils 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 (from illegal stay, Return Directive)

In global context, someone who, owing to illegal entry or the expiry of his or her legal basis for entering and residing, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country

Synonym: insufficiently documented/undocumented/illegal/clandestine/unauthorised migrant

Narrower Term: Third-country national found to be illegally present, Illegally resident / staying migrant

Related Terms: Illegal stay, Illegal entry, Illegal employment, Overstay (er)

Notes: 1. European Commission tends to use the term Third-Country National found to be illegally present or Illegally resident / staying Third- Country National in legislative acts.

2. This term is not commonly used in NL, used more often by NGOs.

Illegally resident/staying Migrant / Third-country National found to be illegally present

A third-country national who is officially found to be on the territory of a Member State and who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State.

Source: [Regulation \(EC\) No 862/2007](#) (Migration Statistics)

Illegal Entry

In EU context, this means the entry of a third-country national into an EU Member State which does not satisfy Article 5 of Schengen Borders Code.

⁵⁷ These terms are also available, along with the other 300+ terms with translations, from www.emn.europa.eu > 'Glossary'

In a global context, this means crossing borders without complying with the necessary requirements for legal entry into the receiving State.

Source: Regulation (EC) No 562/2006 (Schengen Borders Code)

Illegal 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 Schengen Borders Code or other conditions for entry, stay or residence in that Member State.

This definition is derived from, and is the same as, the definition of ‘Illegal Stay’ outlined in Article 3 (2) of Directive 2008/115/EC of the European Parliament and of the Council (common standards and procedures in Member States for returning illegally staying third-country nationals).

Illegal Immigration

The movement of a person to a new place of residence or transit using irregular or illegal means, without valid documents or carrying false documents.

Source: ILO Thesaurus

Synonym: Irregular immigration, clandestine immigration.

Related Term: Entry (Illegal)

Illegal Employment

Gainful occupation carried out in violation of provisions set by legislation

In the EU context, this covers both the illegal employment of a third-country national who is illegally staying on the territory of a Member State, and of a legally resident third-country national working outside the conditions of their residence and/or without a work permit.

Source: ILO Thesaurus

Employment of ILLEGALLY resident third-country national

The employment of an illegally staying third-country national.

Broader Term: Illegal Employment

Related Term: Third-Country national found to be illegally present

Note: The term itself has been slightly modified from the Employer Sanctions Directive definition in order to be more explicit.

Source: Directive 2009/52/EC of the European Parliament and of the Council (Employer Sanctions)

Employment of LEGALLY resident third-country national (Illegal)

Employment of a legally staying third-country national working outside the conditions of their residence and/or without a work permit. This is subject to each Member States' national law.

Broader Term: Illegal Employment

Source: Derived by EMN on basis of Employer Sanctions Directive (2009/52/EC)

NB: In some (Member) States, third-country migrants who have a legal right to reside in the (Member) State, but who work irregularly, are considered 'irregular migrants.' Where this is the case, EMN NCPs should have highlighted this in their National Report.

Smuggling of migrants

The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a Member State of which the person is not a national or a permanent resident.

Source: Council Decision 2006/616/EC

The EMN Glossary also lists the following definitions, which have relevance for this study on irregular migration, but which are not derived from the EU Acquis and may therefore not be used consistently across all (Member) States. They should rather be used by EMN NCPs as a guideline for the purpose of this study. In light of the findings of this study, these definitions may subsequently be refined.

Informal Economy

All economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.

Source: ILO Bureau of Library and Information Services

Synonym: Black Market, Clandestine Employment

Overstay(er)

In the EU context, a person who has legally entered but then stayed in a Member State beyond the allowed duration of their permitted stay without needing a visa (typically 90 days or six months), or of their visa and/or residence permit.

In a global context, to remain in a country beyond the period for which entry was granted.

Source: IOM Glossary on Migration

ANNEX II: Recent and ongoing studies on irregular migration

This Annex highlights some recent studies into the phenomenon of irregular migration in the EU, including EMN outputs; studies on fundamental rights of irregular migrants in the EU; studies related to EU policy and legislation on irregular migration; publications outlining trends and risk assessments on irregular migration in the EU; and studies which aim to estimate the total number of irregular migrants present in the EU.

EMN outputs in the area of irregular migration

In 2005, the EMN undertook a Study on Illegally Resident Third-Country Nationals⁵⁸ with inputs from nine Member States.⁵⁹ The Study identified that the EU and (Member) States were going through a “transitional phase” in institution-building and in international, national and EU cooperation, which would be likely to impact on irregular migration. This present Study aims then also to assess the extent to which the situation has developed since 2005. The Study also complements a body of information on irregular migration produced via EMN Ad-Hoc Queries; in particular, three recent Ad-Hoc Queries have been summarised, providing up-to-date information relevant to this Study.⁶⁰ In addition, the EMN Annual Conference of 2011 focused on Combating irregular migration: practical responses⁶¹ concluding that effective tools have been developed in the EU Member States that are impacting on the scale of irregular migration of third-country nationals, however that practical measures must be sensitive to the geopolitical factors that influence irregular migration, and take account of differences across regions. In addition, in 2012 the EMN produced its first Focussed Study on Misuse of the Right to Family Reunification.⁶² The Study provide information on the scale and scope of marriages of convenience and false declarations of parenthood providing clear evidence and statistics, to the extent possible, of these types of misuse and how best to address them. The study was presented at the public hearing of the EU public consultation on the right to family reunification of third-country nationals living in the EU (Directive 2003/86/EC).⁶³ Finally, the EMN has recently produced a Study on *Visa Policy as*

⁵⁸ Available at: www.emn.europa.eu > ‘Studies’

⁵⁹ Austria, Belgium, Germany, Greece, Ireland, Italy, Netherlands, Sweden, United Kingdom

⁶⁰ These are Ad-Hoc Query 210 on Illegal Migration in the Mediterranean Sea Basin; Ad-Hoc Query 298 on National definitions of irregular migrants and available data; and Ad-Hoc Query 345 on Practical Measures to Reduce Irregular Migration. See www.emn.europa.eu > ‘illegal immigration’

⁶¹ All the conclusions, as well as a description of the presentations, is available on the EMN website: www.emn.europa.eu > ‘EMN Communication and Dissemination Tools’ > EMN Conferences

⁶² The Synthesis Report and National Reports are available at: www.emn.europa.eu > ‘Studies’

⁶³ More information on the public consultation is available via the DG HOME website <http://ec.europa.eu/home-affairs> > ‘Policies’ > ‘Immigration’ > ‘Family Reunification’

a *Migration Channel*, which assessed the extent to which visa policy impacts on the management of migration, both in terms of facilitating legal migration and preventing irregular migration.

Studies on the fundamental rights of irregular migrants in the EU

The Fundamental Rights Agency's *Fundamental Rights of Irregular Migrants* Study highlighted a number of areas where irregular migrants can be subject to restrictions on their rights. These include access to healthcare, where obstacles include lack of awareness on the part of irregular migrants as well as service providers of entitlements and data exchanges between service providers and immigration enforcement authorities; housing, where irregular migrants are over-represented in over-crowded, insecure dwellings often without access to the most basic services such as running water and electricity; education, where access is often restricted as a result of documentation requirements and the practice of allocating funding to schools on the basis of official residents rather than actual population numbers; and labour rights, which are often infringed as a result of difficulties proving an employment relationship, fear of detection and lack of security of residence which breeds dependency on employers.⁶⁴ Another recent FRA study found that irregular migrants employed in domestic work are particularly susceptible to labour rights infringements as this is an occupational area that tends to be less regulated by legal standards and enforcement mechanisms.⁶⁵

In relation to national measures, in the wake of the adoption of a Directive on Employers' Sanctions (2009/52/EC), another study looked at the situation of employment of irregular migrants and has raised serious questions about the level of protection being granted to the victims of labour exploitation.⁶⁶ In 2011, the European Parliament published a Study on Abused Domestic Workers in Europe with a focus on au-pairs in six EU Member States (Denmark, Germany, Ireland, Netherlands, Poland, Spain). The study found that according to EU law, EU citizens employed as au pairs are mobile EU workers, but that third-country national au pairs are often subjected to exploitative and sometimes abusive conditions. For example, host families with children or elderly people sometimes use au pairs as cheap domestic and care workers. Other studies have highlighted the importance of training government officials working with irregular migrants, so that they become aware of the complexity of mixed migration flows and are able to identify and cater to the needs of asylum-seekers and other vulnerable groups, such as victims of trafficking, unaccompanied minors and persons who have been subjected to gender-based violence.⁶⁷ Related to this, the need to strike a balance between law enforcement and protection of the fundamental rights of irregular migrants has also featured in publications. Enforcement measures, such as reporting obligations, data sharing or arresting migrants in an irregular situation in front of schools, can have a negative and often disproportionate impact on the effective exercise of the fundamental rights

⁶⁴ European Union Agency for Fundamental Rights, 'Fundamental Rights of Migrants in an Irregular Situation in the European Union', Luxembourg: Publications Office of the European Union, 2011.

⁶⁵ European Union Agency for Fundamental Rights, 'Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States', Luxembourg: Publications Office of the European Union, 2011.

⁶⁶ Irina de Sancho Alonso, 'Access to Labour Rights for Undocumented Migrants',

⁶⁷ Cholewinski, Ryszard. Irregular Migration and Mixed Flows. Background Paper. World Migration Report. 2010, p. 12.

of irregular migrants. A FRA study on the detention of third-country nationals involved in return procedures⁶⁸ also found that procedural safeguards, such as the right to be informed of the reasons for detention in a language the person understands, the right to judicial review of the detention decision and legal assistance, set up at national level in order to reduce the risk of arbitrary or unlawful detention, are often infringed when the detention involves irregular migrants. Moreover, while international law strongly discourages the detention of minors, the study also found that the detention of children to prevent unauthorised entry or to facilitate their removal is not uncommon in Europe, including in facilities that are not equipped to cater for their needs.

A number of studies and reports have addressed the role and responsibility of authorities in addressing irregular migration in the EU. These include publications and Internet resources of migrant support groups and associations, such as PICUM and the Migrants Rights Association. PICUM, for example, has outlined its concerns for undocumented migrants living in the EU⁶⁹ noting the importance of preventing irregular migration through such as guaranteeing secure and regularised entry routes for asylum-seekers, implementing fair and transparent asylum procedures, and recognising the economic need for unskilled migrants within the EU. Indeed, adopting a 'holistic approach' by recognising the economic, political and cultural 'push factors' which often force people to leave their countries of origin has been forwarded by other actors. One study recommends European countries to contribute to the sustainable development of the regions of origin by increasing financial support and ensuring that it is properly managed, and, where necessary, by strengthening interventions and other measures to ensure peace, under the patronage of the

⁶⁸ European Union Agency for Fundamental Rights, 'Detention of third-country nationals in return procedures', Luxembourg: Publications Office of the European Union, 2010.

⁶⁹ 'PICUM's Main Conc

United Nations or other multinational organisations.⁷⁰ Nevertheless, it is well known that development aid, at least in the initial stage, would encourage migration outflows (this trend is called by scholars “migration hump” (see Martin (1993)).

Studies related to EU policy and legislation on irregular migration

Some studies have addressed specific EU policies and legislation, such as the EU's border surveillance and the Returns Directive. Recent years have seen important developments in this respect, with considerable investments directed at improving the EU's land and maritime border surveillance capacity⁷¹ and some critics have pointed to the financial and practical limitations inherent in these efforts, given the fact that immigrants are often compelled to migrate as a result of overwhelming needs and argued that, as heavy border controls make it harder for individual migrants to comply with national regulations, they may actually encourage greater irregularity.⁷² The effectiveness of the Return Directive has been questioned by a number of observers,⁷³ while others have highlighted the need to pay more attention to the repercussions of the implementation of the Return Directive for the fundamental rights of irregular migrants, especially the right to family life and the right not to be subjected to torture and inhuman or degrading treatment.⁷⁴ There is also a growing body of comparative literature mapping the regularisation practices across the EU. This is notable, especially, as regularisations were used increasingly across the EU Member States.⁷⁵ Regularisations include both individual regularisations schemes and ‘mass’ regularisation programmes, with the latter being criticised for encouraging irregular migration still further and for acting only as a temporary measure, with many migrants who take advantage of this procedure falling back into irregularity. However, the evidence available from recent large regularisation programmes has not shown either of these to be the case.⁷⁶

Studies on trends in irregular migration and risk assessment

Other ongoing research is being undertaken by the International Centre for Migration Policy Development (ICMPD)⁷⁷ Amongst this research are the ICMPD's Annual Reports which provide information on trends in apprehensions at the border – e.g. the number of apprehensions, source countries of irregular migration, the most common routes and points of entry used by irregular migrants and the

erns about the Fundamental Rights of Undocumented Migrants in Europe (2010); PICUM, October 2010.

⁷⁰ Cherti, Myriam, ‘Beyond Irregularity: Towards a sustainable approach to dealing with irregular migration from sub-Saharan Africa to Europe’, Institute for Public Policy Research (funded by the EU).

⁷¹ Commission Staff Working Paper - Report on progress made in developing the European Border Surveillance System (EUROSUR) (SEC (2009) 1265 final)

⁷² Migrants Rights Network, Working for the Rights of All Migrants. *Irregular Migrants: The Urgent Need for a New Approach*, May 2009, p. 14

⁷³ Baldaccini, A. ‘The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Return Directive’, in *European Journal of Migration and Law*, vol. 11 (2009).

⁷⁴ Carrera, S. and E. Guild ‘Undocumented Migrants and the Stockholm Programme: Ensuring Access to Rights?’, in Massimo Carrera, S. and M. Merlino (eds.), *Assessing EU Policy on Irregular Immigration under the Stockholm Programme* (2010), p. 7.

⁷⁵ Apap, J. et al ‘Regularisation of Illegal Aliens in the European Union. Summary Report of a Comparative Study’, in *European Journal of Migration and Law*, 2000, pp. 263-308.

⁷⁶ Baldwin-Edwards, M. and A. Kraler (ICMPD) *REGINE Final Report. Regularisations in Europe: Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU* (2009).

⁷⁷ <http://www.icmpd.org/>

most common ways of entering the EU irregularly. It also summarises legislative changes in Member States and relevant developments in third countries, providing also detailed country reports for these countries. The Interactive Map on Migration (i-Map) project,⁷⁸ which was initially developed in 2006 by ICMPD, Europol and Frontex aims to facilitate intergovernmental exchanges of strategic and situational information by providing a visual resource for displaying up-to-date information on migration trends and developments between participating states.

Frontex, in its annual risk analysis reports,⁷⁹ provides a situational summary of developments at the external borders and in relation to irregular migration. This includes trend analysis of detected irregular crossings and detections of irregular stay, as well as an analysis of the most common irregular migration routes and the methods used to enter irregularly. As with other reports, Frontex finds that overstaying is probably the most common 'modus operandi' for irregular migration to the EU (see [Section 3.3](#)). Other means of irregular migration are irregular border crossing, use of false documents, absconding from the asylum process, and irregular border crossings. Frontex statistics and analysis suggests that the most common method of irregular border crossing is in small groups at night with the support of 'facilitators'. Reports suggest that irregular entrants take advantage of changes of staff at the border. Frontex has also identified that third-country nationals sometimes provide false declarations of nationality as a means to preventing return. This is particularly the case when the third-country national originates from a third country with which the (Member) State has a readmission agreement in place (i.e. to avoid 'fast-tracked' return).

Studies estimating numbers of irregular migrants in the EU

In recent years, a number of studies have focused on calculating (estimating) the total number of irregular migrants in Europe. These studies have tended to demonstrate that irregular migration in Europe is in overall decline; although localised 'surges' of irregular migration flows - such as those which followed the 'Arab Spring' in 2011 (see [Section 2.6](#)) - have continued, peaking in the summer of 2008.⁸⁰ Such studies include the Clandestino project, the Prominstat project, the Annual ICMPD Reports and other studies.⁸¹ These studies consistently highlight the challenges involved in this exercise. Firstly, the hidden character of irregular migration makes any quantification difficult and always produces estimates rather than 'actual' statistics. Secondly, these estimates are based on a variety of different methodologies which produce results of varying quality and raise issues of comparability. These methodologies include (among others) 'residual' estimation techniques (where the differences between the census and other registries of immigrants are counted); 'multiplier' estimation techniques (where the size of an unknown variable - in this case the irregular population - is assumed to have a stable relationship with a variable that can be measured - for instance, the stock of regular migrants); surveys of employers (who are asked to give their own estimates of the percentage of irregular workers in

⁷⁸ www.imap-migration.org

⁷⁹ See www.frontex.europa.eu > 'Publications'

⁸⁰ See Morehouse and Blomfield (2011) 'Irregular Migration in Europe' for the Migration Policy Institution, available at: <http://www.migrationpolicy.org/pubs/TCMirregularmigration.pdf>

⁸¹ For example, Morehouse, C and M. Bloomfield (2011), Triandafyllidou (2010) and Jandl (2006). For full references of these studies see bibliography in [Annex VI](#)

their industry); and data collected through regularisations. Thirdly, some studies include third-country nationals without legal residence status in the country they are residing in, while other studies also include legal residents who perform work without the necessary permits.⁸²

The aim of the Clandestino project was to provide country-specific estimates of the number of irregular migrants present (estimate of stock) for 12 EU countries⁸³ for the years 2000-2007, as well as comprehensive aggregate estimates for all EU Member States for the years 2003, 2005 and 2008. A variety of methods were used to estimate the statistics. For example, for the estimate for **Germany**, a multiplier method using police crime statistics as compared to general population statistics was used; whereas in **Spain**, which has a Municipal Population Register, the estimate was obtained by calculating the difference between the number of third-country nationals registered and third-country nationals holding a valid residence permit, then subtracting student residence permits and an estimated 10% of expired permits that end up being renewed after the deadline or through positive silence. The methods were also evaluated as to their relative 'quality' (high, medium, low) and the estimates were presented as a range, rather than a single figure.

The Clandestino project identifies a clear decline in total stocks of irregular resident populations during the six year period. In 2002, an estimated 3.1 to 5.3 million irregular foreign residents lived in the European Union. In the same region of the EU15, the aggregation for 2008 resulted in only 1.8 to 3.3 million irregular foreign residents. The estimate for the EU of 2008 with its 27 Member States is only slightly higher: 1.9 to 3.8 million, as most of the irregular resident population is estimated to live in the old Member States. As mentioned above, the estimates used were based on different methods of varying quality, and so adjustments were made in order to achieve approximate comparability.

⁸² For a succinct overview of the available methods and techniques for estimating irregular migration, and a critical discussion of their respective merits and drawbacks, see Jandl, M. 'The Estimation of Illegal Migration in Europe.' *Studi Emigrazione/Migration Studies*, XLI (153), pp. 141-155.

⁸³ Austria, Croatia, Czech Republic, Germany, Italy, Slovenia, Cyprus, Hungary, Poland, Slovakia, Spain and Switzerland.

ANNEX III: EU actions to reduce irregular migration and List of relevant EU legislation

This Annex provides an overview of EU actions to reduce irregular migration over the last decade. It begins by describing the overall policy approach (Section I) then describes the adoption of new legislation (such as the Return and Employer Sanctions Directives – see Section II); the work of EU agencies (Section III); the establishment of EU instruments (such as EUROSUR (Section III) and the Immigration Portal (Section IV); and funding instruments (Section V). It also provides an overview of EU responses to the recent high influx of mixed migration flows from North Africa (Section VI) and the EU's Action on Migratory Pressures – A Strategic Response (Section VII). Section VIII then provides a list of EU legislation relevant to irregular migration.

1. Overall Policy approach

Reducing irregular migration constitutes an important element within the EU's overall approach to effectively balance and manage migration flows, within a common immigration policy framework at EU level. Within European policy there is a central focus on return, as well as on border control, although specific legislation also focuses on stay / work. Articles 77 to 80 of the Treaty on the Functioning of the European Union (TFEU) outline the European Union's legal basis for measures on border checks, asylum and immigration, specifically stating that the European Parliament and the Council “*shall adopt measures (in the area of) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation*” (Art. 79 (2c)).

Two major policy documents: the European Pact on Immigration and Asylum,⁸⁴ adopted by the European Council in October 2008, and the Stockholm Programme,⁸⁵ which was adopted in December 2009, reiterated the policy importance of combating irregular migration. More recently – in 2011 – the Global Approach to Migration and Mobility (GAMM)⁸⁶ outlined ‘preventing and reducing irregular migration and trafficking in human beings’ as one of its four thematic

⁸⁴ Council of the European Union, European Pact on Immigration and Asylum September 2008, available from <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>

⁸⁵ Stockholm Programme: An Open and Secure Europe serving and protecting citizens, available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF>

⁸⁶ See Commission Communication on ‘The Global Approach to Migration and Mobility’ (COM (2011) 743 final), available at: http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v9.pdf

pillars to ensuring a migrant-centred approach to migration policy. The GAMM was designed to respond to the aspirations and problems of those concerned, rather than focusing on the traditional 'flows', 'stocks' and 'routes', and to empower migrants through the provision of access to information about opportunities, rights and obligations. The GAMM also highlights the human rights of migrants.

2. EU legislation aimed at irregular migration

Two key Directives aimed at reducing irregular migration are: Directive 2008/115/EC ("the Return Directive"),⁸⁷ which establishes common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights and international law; and Directive 2009/52/EC ("the Employers Sanctions Directive"),⁸⁸ which lays down minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe the prohibition to employ illegally staying third-country nationals in the EU. The overall aim of the Return Directive is to provide for clear, transparent and fair common rules for the return and removal, the use of coercive measures, detention and re-entry, while fully respecting the human rights and fundamental freedoms of the persons concerned. The overall aim of the Employer Sanctions Directive is to help to irradiate the informal labour market which acts as a pull-factor for irregular immigration. See Section 6.2.2 for more on this.

3. EU Agencies

In addition to legislation and policy, the EU agencies also play a major role in preventing and reducing irregular migration. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was established in 2004 via Council Regulation (EC) 2007/2004 with the aim of strengthening cooperation in the area of migration, asylum and security. This Regulation was later amended by the Regulation (EC) No 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers and was last amended by Regulation (EU) No 1168/2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

Frontex supports and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management. Its main areas of activities are coordinating joint operations using

⁸⁷ Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF> Denmark, Ireland, and the United Kingdom have not opted into this Directive. Norway, as a member of the Schengen Area, transposes this Directive

⁸⁸ Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0052:EN:NOT> Denmark, Ireland, and the United Kingdom have not opted into this Directive. Norway, as a Directive.

Member State staff and equipment at the external borders (see [Section 5.5](#)); training of border guards; risk analysis to identify short- medium- and long-term trends, as well as migratory routes (see [Section 4.6](#) and [Section 5.5](#)), as well as other forms of research such as research into new technologies; coordinating the European Border Guard Teams (EBGT) pooled resource for rapid response capability and assisting Member States in joint return operations (see [Section 7.2](#) providing “situational awareness” reports for border control authorities in the EU.

In February 2008, the Commission offered Member States a roadmap for gradually developing a [European Border Surveillance System \(EUROSUR\)](#).⁸⁹ EUROSUR is an information sharing and cooperation mechanism enabling Member States’ authorities carrying out border surveillance activities and Frontex to collaborate at a tactical, operational and strategic level. The aims of EUROSUR will be to:

- ▶ increase the internal security of the European Union (EU) by preventing cross-border crime;
- ▶ reduce the number of irregular migrants entering the Schengen area undetected; and,
- ▶ considerably reduce the death toll of migrants at sea.

A recent [Commission Staff Working Paper](#)⁹⁰ set out the achievements and challenges in establishing EUROSUR to date. These included *inter alia* the establishment of national coordination centres (often using External Borders Fund funding) and a communication network to link them; the provision of support to neighbouring third countries for the setting up of border surveillance infrastructure; and use of research into border surveillance performance.

4. EU Funding instruments

In addition to the work of agencies, the EU provides support to Member States in reducing irregular migration through its [General Programme “Solidarity and management of migration flows” \(SOLID\)](#),⁹¹ in particular the [External Borders Fund](#)⁹² and the [European Return Fund](#).⁹³ The External Borders Fund provides funding to Member States for which the implementation of the common standards for control of the EU’s external borders represents a heavy burden in order to establish financial solidarity between [Schengen States](#). The Fund also finances Frontex and supports actions for building a [common EU visa policy](#). The EU allocated €1 820 million to the External Borders Fund for 2007–13. All Member States except for **Ireland** and the **United Kingdom**, as well as the non-EU countries associated with the implementation, application and development of the Schengen acquis (**Norway**, **Iceland**, **Switzerland** and **Liechtenstein**), participate in the EBF. The Return Fund has the aim of developing cooperation between EU states and with countries of return, for example by funding assisted return projects and voluntary

⁸⁹ Communication examining the creation of a European Border Surveillance System (EUROSUR), COM (2008) 68 final of 13 February 2008.

⁹⁰ Determining the technical and operational framework of the European Border Surveillance System (EUROSUR) and the actions to be taken for its establishment SEC (2011) 145 final, available at: <http://ec.europa.eu/home-affairs/policies/borders/docs/20110128EUROSURCSWP5SEC2011145%20final.pdf>

⁹¹ Information available at: http://ec.europa.eu/home-affairs/funding/solid/funding_intro_en.htm

⁹² Information available at: http://ec.europa.eu/home-affairs/funding/borders/funding_borders_en.htm

⁹³ Information available at: http://ec.europa.eu/home-affairs/funding/return/funding_return_en.htm

return assistance implemented by Member States. The EU has allocated €676 million to the Return Fund for the period 2008–13. All Member States except for Denmark participate in this funding programme.

5. The EU Immigration Portal

In 2011, the European Commission established the [EU Immigration Portal](#),⁹⁴ which is a website designed at providing important information to third-country nationals wishing to migrate to an EU Member State. For example, the website has information on the requirements prior to leaving (e.g. visas, travel documents, etc.); how to avoid falling victim to situations such as trafficking and smuggling; how EU policy on migration works, and where to go for more information and advice. The website also contains links to other relevant websites, such as that of the EMN. The aim of the website is to help to prevent migrants from getting themselves into an irregular situation.

6. EU Responses to the ‘Arab Spring’

In 2011, the rapid growth in mixed migration to the Southern Mediterranean borders of the EU, following political unrest in North Africa (the so-called ‘Arab Spring’) created a need for joint EU Action to address the issue and to provide solidarity and support to those Southern EU Member States (mainly **Greece, Italy and Malta**) receiving the greatest numbers of migrants. In March 2011, the Commission outlined its approach to building a “[Partnership for Democracy and Shared Prosperity with the Southern Mediterranean](#)” and highlighted EU actions undertaken in response to recent political changes in North Africa.⁹⁵ In early May, the Commission’s Communication on Migration⁹⁶ reaffirmed the importance of building partnerships with North Africa, and of a consistent policy on Mobility, including visas, as well as distinguishing between irregular migrants and genuine refugees in mixed migration groups. In relation to preventing irregular migration it underlines the importance of the Return Directive and Readmission Agreements, as well as the Employer’s Sanctions Directive. The EU’s plans for improved mobility and legal migration options for third countries and for dealing with migratory pressures in Southern Europe both in the short and long term were further developed in the Communication on a “[Dialogue for Migration, Mobility and Security with the Southern Mediterranean](#)”⁹⁷ of 24th May 2011.

The following [Justice and Home Affairs Council meeting](#)⁹⁸ supported the main lines of action proposed by the Commission in these Communications and reaffirmed that it will continue to give high priority to the fight against illegal immigration. In relation to strengthening external borders, the Council reaffirmed the work of the Frontex Agency and its Rapid Border Intervention Teams

⁹⁴ Available at: <http://ec.europa.eu/immigration/>

⁹⁵ Available from: http://www.eeas.europa.eu/euromed/docs/com2011_200_en.pdf

⁹⁶ COM (2011) 248, available from http://ec.europa.eu/home-affairs/news/intro/news_intro_en.htm. Further related Commission papers are planned for end May 2011.

⁹⁷ A dialogue for migration, mobility and security with the southern Mediterranean Countries COM (2011) 292.

⁹⁸ The Conclusions of the meeting are available at: http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/122508.pdf

(RABITs⁹⁹) in supporting Member States in the control and surveillance of the external borders and invited Frontex to continue to provide assistance to Member States in protecting sections of the external border subject to exceptionally high migratory pressures; to develop a European Border surveillance system called EUROSUR; to increase cooperation with third countries, in particular so as to increase the effectiveness of return; to increase information exchange and to work with Europol, Eurojust and Frontex to ensure the dismantling of networks of irregular immigration and trafficking. In anticipation of upcoming legislative proposals on EUROSUR, on smart borders including an entry/exit system and the Registered Travellers Programme and the upcoming establishment of the Agency for the operational management of large-scale IT systems, the Council reaffirmed the importance of technology in meeting the twin objectives of the 'integrated border management' of facilitating legal access and preventing irregular migration. It also highlighted the importance of a balanced visa policy and commended the substantial progress made by the Commission and Member States in the development of the Visa Information System. The conclusions also confirmed that the Global Approach to Migration should continue to serve as the general framework for the external relations of the European Union in the field of migration.

7. EU Strategic response for EU Action on Migratory Pressures

More recently, in April 2012, the Council of the European Union approved a Strategic Response for EU Action on Migratory Pressures¹⁰⁰ outlining a number of non-exhaustive Strategic Priority Areas:

- ▶ Strengthening cooperation with third countries of transit and origin on migration management,
- ▶ Enhanced border management at the external borders,
- ▶ Preventing illegal immigration via the Greek-Turkish border,
- ▶ Better tackling of abuse of legal migration channels,
- ▶ Safeguarding free movement by preventing abuse by third-country nationals,
- ▶ Enhancing migration management including return.

For each priority area a number of key challenges, future goals and potential and planned measures – or actions – are outlined. The Strategy proposes that future EU Presidencies will be responsible for updating the list of actions set out in the Annex on a biannual basis, taking into account developments in relation to migratory pressures and the progress achieved by previous Presidencies. The

⁹⁹ Rapid Border Intervention Teams (RABITs) made up of 'guest officers' from 26 Member States were sent to Greece between November 2010 and March 2011 to support Greece in controlling the large number migrants irregularly entering Greece through its border with Turkey. The operation helped the Greek authorities to apprehend and identify irregular migrants and to gather information on migration routes and facilitator networks. Since the deployment of RABITs, the numbers of irregular crossings have dropped by approximately 75 %. More information is available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/130&format=HTML&aged=0&language=EN&guiLanguage=fr>

¹⁰⁰ Note from the Presidency to the Council Mixed Committee of 23rd April 2012, document No. 8714/1/12 REV 1. Available at: <http://register.consilium.europa.eu/pdf/en/12/st08/st08714-re01.en12.pdf>

Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) Committee will oversee the implementation and update of the list of actions.

The first priority area lists a number of actions aimed at improving the capacity of third countries to manage their own mixed migration flows. Actions listed include equipping the countries of first asylum with the necessary means to be able to guarantee refugees protection that meets international standards thus avoiding secondary movements; increased application and the further development of EU readmission agreements; capacity building and increasing use of Mobility partnerships in third countries; enhancing dialogue with Eastern Partnership countries and non-EU Prague Process partners and acting on the particular challenges faced by migratory flows from the Southern Mediterranean countries and via the Western Balkans route.

The second priority identifies future actions for strengthening political guidance and the legal framework for border control in the EU by concluding negotiations on the Schengen Borders Code and the Schengen Governance package, as well as EUROSUR and to submit proposals on an Entry/Exit system and the Registered Travellers Programme. It also lists implementing the Frontex Regulation and enhancing Member State actions, such as cooperation with other Member States, use of advanced passenger information, and identification of irregular migration routes into the EU.

The third priority area focuses specifically on the challenges met by the EU with migratory pressure at the Greek-Turkish Border. Action proposed in the Strategy include negotiating working arrangements between Turkey and Frontex; increasing Greece's capacity (e.g. by intensifying support for Frontex Operation Poseidon); strengthening the capacity of Turkey in border control, asylum and visa systems; and signing and concluding the EU-Turkey readmission agreement.

The fourth priority area lists measures aimed at tackling misuse of legal migration channels – in particular by third-country nationals originating from third countries with visa liberalisation regimes. Specifically, this priority area is aimed at decreasing the number of unfounded asylum applications from visa free third countries and decreasing the level of the illegal workforce. These measures include carrying out an assessment of risks to internal security before launching visa liberalisation dialogues; assessing the functioning of existing readmission agreements with potential visa liberalised third countries before launching a visa liberalisation dialogues; monitoring the effects of current visa free regimes.

The fifth priority area focuses on measures aimed at tackling misuse of free movement rights – i.e. misuse of the right to family reunification. Actions listed include use of Join Investigation Teams; gathering and analysing information on EU documentation fraud and facilitators detected at the external border; improving information sharing between Member State authorities involved in registering marriages and legal protection of children; and identifying and taking direct action to tackle abuse.

The final priority area has a more general focus on migration management, with the aim of maximizing a coordinated EU approach. Priority actions listed include ensuring full implementation of the Return Directive and the Employer Sanctions

Directive in Member States; ensuring statistics and analysis on migration management are available; and ensuring that return is swift and sustainable under a common EU approach – e.g. by carrying out research under the presidency into possible EU common approaches and best practice in Member States. Other measures listed include the creation of Frontex Code of Conduct on Return and continued support voluntary return programmes, and the specific measure of closely monitoring migration movements from Syria.

8. Relevant EU legislation

In relation to the EU legislative framework, the following legislative instruments are of particular relevance in the context of irregular migration.

- ▶ Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals;¹⁰¹
- ▶ Directive 2009/52/EC providing for sanctions against employers of illegally staying third-country nationals;¹⁰²
- ▶ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code);¹⁰³
- ▶ Council Decision 2006/616/EC on the conclusion, on behalf of the European Community, of the Protocol Against the Smuggling of Migrants by Land, Sea and Air.¹⁰⁴
- ▶ Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data;¹⁰⁵
- ▶ Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air;¹⁰⁶
- ▶ Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network;¹⁰⁷
- ▶ Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence;¹⁰⁸
- ▶ Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence;¹⁰⁹

¹⁰¹ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

¹⁰² Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0052:EN:NOT>

¹⁰³ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF>

¹⁰⁴ Supplementing the United Nations Convention Against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of this Protocol fall within the scope of Articles 179 and 181a of the Treaty establishing the European Community. Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006D0616:EN:NOT>

¹⁰⁵ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0024:0027:EN:PDF>

¹⁰⁶ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:321:0026:0031:EN:PDF>

¹⁰⁷ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:064:0001:0004:EN:PDF>

¹⁰⁸ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:328:0017:0018:EN:PDF>

¹⁰⁹ Available from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&numdoc=32002F0946&model=guichett&lg=en

- ▶ Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985;¹¹⁰
- ▶ Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals;
- ▶ Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 on the obligations of carriers to return third-country nationals;
- ▶ The recent Proposal for a Regulation amending Regulation (EC) No 562/2006¹¹¹ and the Proposal for a Regulation amending Regulation (EC) No 377/2004¹¹² are also of relevance.
- ▶ Relevant financial instruments adopted are:
- ▶ Decision No 574/2007/EC establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows';¹¹³
- ▶ Decision No. 575/2007/EC establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'.¹¹⁴

¹¹⁰ This Directive introduces provisions clarifying Article 26 of the Schengen Convention in relation to obligations on carriers to ensure the return of third-country nationals refused entry at Member State borders. Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:187:0045:0046:EN:PDF>

¹¹¹ Published 10.03.2011. Available from <http://ec.europa.eu/home-affairs/news/intro/docs/SBC%20amendment%20EN.pdf>

¹¹² Published 08.07.2009. Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0322:FIN:EN:HTML>

¹¹³ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:144:0022:0044:EN:PDF>

¹¹⁴ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:144:0045:0065:EN:PDF>

ANNEX IV: Overview of national legislation

Member State	Main Legislation	Supportive legislation				Other relevant legislation
		Borders	Return	Detention	Employment of third-country national	
Austria	Aliens Police Act				Aliens' Employment Act, Settlement and Residence Act	Asylum Act
Belgium	Aliens Act				Act of 30 April 1999 on the employment of foreign workers	
Czech Republic	Act No. 326/1999 Coll. on the Residence of Foreign Nationals		Act No. 326/1999 Coll., Ordinance No. 447/2005 of 3 November 2005			Act No. 40/2006 Coll., the Criminal Code (criminal prosecution of those aiding and abetting irregular migration)
Estonia	Aliens Act	State Borders Act	Obligation to Leave and Prohibition on Entry Act	Obligation to Leave and Prohibition on Entry Act	Aliens Act	Granting Aliens International Protection Act
Finland	Aliens Act (301/2004)§8	Border Guard Act	Administrative Procedure Act (434/2003)	Act on the Treatment of Aliens Placed in Detention and on Detention Units (116/2002)		
France	Code on entry and residence of foreign nationals and right of asylum (CESEDA)					
Germany	Residence Act					
Greece	Law 3386/2005 (Gov. Gazette vol.212)		Law 3907/2011	Law 3907/2011	Law 4052/2012	Law 3772/2009, Gov. Gazette 112, issue A (carriers)
Hungary	Act II of 2007 on the admission and right of residence of third-country nationals (Third-Country Nationals Act) Government Decree 114/2007 (V. 24.) on the implementation of Act II of 2007 on the admission and right of residence of third-country nationals (Third-Country Nationals Decree)	Act CV of 2007 on cooperation and information exchange within the Schengen Implementation Agreement (SIS Act) Government Decree 328/2007 (XII. 11.) on the recognition of travel documents for the purposes of entry in Hungary by third-country nationals	Decree 26/2007. (V.31.) of the Ministry of Justice and Law Enforcement on the executive rules of implementation of expulsion	Decree 27/2007 (V.31.) of the Ministry of Justice and Law Enforcement on the executive rules of alien policing detention		Act I of 2007 on the admission and residence of persons with the right of free movement and residence (Free Movement Act) Government Decree 113/2007 (V.24.) on the implementation of Act I of 2007 on the admission and residence of persons with the right of free movement and residence (Free Movement Decree)
Ireland	Aliens Act 1935 as amended Immigration Act 1999 Immigration Act 2004	Immigration Act 2004 Immigration Act 2003	Immigration Act 1999 Immigration Act 2003	Immigration Act 1999 Immigration Act 2004	Employment Permits Act 2003 Employment Permits Act 2006	Illegal Immigrants (trafficking) Act 2000
Italy	Consolidated Act of measures governing immigration and norms on the condition of foreign citizens (Legislative Decree No. 286 of July 25, 1998 and following amendments)					Law No. 189/2002
Latvia	Immigration Law and subordinated regulations of the Cabinet of Ministers					

Member State	Main Legislation	Supportive legislation				Other relevant legislation
		Borders	Return	Detention	Employment of third-country national	
Lithuania	Law on the Legal Status of Aliens (Official Gazette, 2004, No 73-2539)	Law on the State Border and its Protection (Official Gazette, 2000, No 42-1192) Law on the State Border Guard Service (Official Gazette, 2000, No 92-2848)				Law on Police Activities (Official Gazette, 2000, No 90-2777) Consular Statute of the Republic of Lithuania (Official Gazette, 1995, No 43-1047)
Luxembourg	Law of 1 July 2011 relating to free movement of persons, immigration and international protection		Law of 1 July 2011 relating to free movement of persons, immigration and international protection	Law of 28 May 2009 on the establishment and organisation of the Detention Centre	Law of 31 July 2006 introducing the Labour Code	
Netherlands	Aliens Act 2000 and its subordinate legislation: Aliens Decree 2000, the Aliens Regulations 2000, and the Aliens Act Implementation Guidelines 2000	Sovereign Decree 1813 grants the Minister of Foreign Affairs the power to issue visas			Foreign Nationals (Employment) Act	Benefit Entitlement (Residence Status) Act
Norway	Immigration Act (Act of May 15th 2008 No. 35) and its corresponding Regulation of Immigration (R of October 15th 2008 No. 1286)					
Poland	Act of 13 June 2003 in foreigners (Dz.U. 2006, No 234, item 1694)	Act of 12 October 1990 on the Border Guard (Dz.U. 2005, No 234, item 1997)			Act on the effects of granting work to foreigners staying illegally on the territory of Poland (Dz.U. 2012, poz. 769)	Act of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland (Dz.U. 2006, no 234, i. 1695)
Slovenia	Aliens Act	State Border Control Act			International Protection Act	
Slovak Republic	Act No. 48/2002 Coll. on Stay of Aliens and on Changes and Amendments of Certain Other Acts - replaced by Act No. 404/2011 Coll. on Stay of Aliens which entered into force on 1 January 2012.	Act on State Border Protection (from 1.1.2012 replaced by the Act No. 404/2011 Coll. on Stay of Aliens)			Act No. 5/2004 Coll. on Employment Services and on Changes and Amendments of Certain Other Acts, Act No. 82/2005 Coll. on the Organisation of Government Activities and on the Employment and on Changes and Amendments of Certain Other Acts	Act No. 300/2005 Coll. Criminal Code, Act No. 480/2002 Coll. on Asylum and on Changes and Amendments of Certain Other Acts, Act Stay of Aliens (tolerated stay) Act on the Organisation of Government Activities and on the Organisation of the Central State Administration, Act on the Police Force
Spain	Organic Law 4/2000, on the rights and freedoms of aliens in Spain and their social integration					
Sweden	Aliens Act (2005:716) and supplementary regulations, such as the Swedish Aliens ordinance 4					
United Kingdom	Immigration Act 1971	2007 UK Borders Act				

ANNEX V: Penalties imposed in Member States in relation to irregular migration

This Annex provides information on the system of penalties imposed in (Member) States on both those third-country nationals found to be irregular present or irregularly entering the EU and those facilitating such entry or stay.

Penalties on the irregular migrant

In addition to removal orders and re-entry bans, (Member) States may issue other sanctions for irregular entry and stay and related offences. In **Germany** illegal entry and stay is considered a criminal offence. This was also the case in **Italy** under *Law 94/2009* until the provision was ruled no longer valid under Decision C-61/11/PPU of April 2011 of the *European Court of Justice*. In its letter to the *Dutch House of Representatives* of 6 July 2011, the Cabinet of the **Netherlands** made proposals to make irregular stay of third-country national adults a minor criminal offence. In **Austria**, **France**, **Spain** and the **United Kingdom** illegal entry / stay are not considered criminal offences; however, they are punishable by fine or in the **United Kingdom** also by imprisonment of up to six months. In **Austria** if the fine is not collected imprisonment of up to two weeks may be issued, or the offence of entry is repeated three weeks, and the offence of stay repeated four weeks of imprisonment.

Finland, **Lithuania** and **Sweden** consider violation of their Aliens Act (i.e. entering, staying and/or working irregularly) an offence, although **Finland** and **Lithuania** also separately consider the offence of illegal border crossing (i.e. entry) more severe and punishable by imprisonment. In **Estonia**, illegal border crossing is considered a 'misdemeanour' offence punishable by a fine unless it is committed in disregard of a stop signal or order given by a border guard official; by a group; using transport in a location not intended for crossing; or if it is a repeated offence, in which case it is a criminal offence punishable by prison. The penalty imposed increases further if there is violence involved or serious damage to health. In **Ireland** under the *Immigration Act* of 2004, entry without the correct documentation is an offence liable to a fine or imprisonment of up to one year. In **Sweden** illegal entry is also subject to stronger penalties than illegal stay; whereas in **Austria** and **Slovak Republic** the opposite is true.

In **Greece**, all third-country nationals *entering/leaving* the Member State or *attempting* to enter/leave are obliged to fulfil certain administrative requirements

on entry/exit and a failure to do so is punishable by imprisonment or a fine. Some Member States (**Czech Republic, France, Ireland**) consider evasion from the execution of a removal order a specific offence in itself. Similarly, **Luxembourg** sanctions third-country nationals who have returned to the Member State in violation of a re-entry ban. Other offences related to irregular migration include forgery offences (punishable as a criminal offence) and offences against public authorities (e.g. falsely registering a birth or marriage or otherwise providing false information). In **Italy**, provisions introduced through Law 94/2009 to make irregularity an 'aggravating circumstance' subject to a possible further six months imprisonment added to any sentence for any irregular migrant caught committing an offence were declared unconstitutional by the Constitutional Court in July 2010.¹¹⁵

Penalties on those facilitating irregular migration (i.e. smuggling)

In relation to irregular entry, (Member) States make provisions to penalise smuggling. For example, **Austria, Czech Republic, Finland, Germany, Greece, Italy, Latvia, Lithuania, Netherlands, Slovak Republic and Norway** consider smuggling a criminal offence punishable by imprisonment. In most cases the penalty increases if the smuggler has gained financial benefit or if there was an element of criminal organisation, or if the smuggling put people's life at risk. For example, in **Finland**, smuggling is punishable by fine or up to two years imprisonment or up to six years if the offence is aggravated; in **Lithuania** smuggling is punishable by fine or imprisonment of up to six years, but up to eight years where it poses a risk to human life and up to ten if it involves organised crime. In accordance with Article 26 (2) of the Schengen Convention and Council Directive 2001/51/EC, (Member) States also impose sanctions on carriers that transport third-country nationals who do not carry the correct documentation.¹¹⁶ Many also impose sanctions on carriers for failing to provide advanced passenger information ('API' - see Section 4.3), in accordance with Directive 2004/82/EC ('API Directive').¹¹⁷

Penalties on those employing irregular migrants

In many (Member) States, employment of irregular migrants is considered an offence (see Section 6.2.2). It is considered a criminal offence in **Czech Republic**. In **Estonia**, employment of a third-country national who has no legal basis for employment, is an administrative offence; whereas employment of an illegally-staying migrant is in certain conditions a criminal offence. **Belgium** obliges those employing irregular migrants to pay the costs of return and subsistence prior to return. In **Finland** an employer may be sanctioned with a fine for employing a third-country national or giving false or misleading information to the authorities on the terms of employment of under the Aliens Act but also

¹¹⁵ Judgement 249 of 8 July 2010.

¹¹⁶ Article 26 (2) of the Schengen Convention states that Schengen countries may, "impose penalties on carriers which transport aliens who do not possess the necessary travel documents by air or sea from a Third State to their territories". Council Directive 2001/51/EC these provisions by harmonising financial penalties imposed by European Union (EU) countries on carriers who are breaching their obligations.

¹¹⁷ Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0082:en:NOT>

fined or imprisoned for up to one year for a ‘work permit offence’ for hiring a third-country national not in possession of a requisite work permit. In **Spain** a total of 5 821 sanctions were issued to employers in 2010 amounting to €46 million for authorities. In **United Kingdom**, civil penalties of up to £10 000 (approx. €12 000) per worker may be issued to employers third-country nationals without legal right to work. More information on employer sanctions is provided in [Section 6.2.2](#).

Penalties on those facilitating irregular stay

In **Czech Republic**, **Greece** and **Italy**, facilitating illegal stay is also considered a criminal offence. Indeed, in **Greece** criminal penalties may also be imposed on public officers providing services to irregular migrants. In **Germany** inciting others to illegally enter or stay, aiding and abetting such acts for financial gain, or repeatedly facilitating irregular entry or stay of third-country nationals is subject to criminal prosecution; however the provision of services (e.g. health or social services, including education) are not considered to be included. In **Estonia** providing accommodation or other services and failing to notify the authorities of irregular migrants using public services are considered misdemeanours, or more serious if they are committed as a group or using violence. The provision of accommodation to an irregular migrant as well as false data in order to verify a letter of invitation for a third-country national is also considered an offence in **Lithuania**. In **France**, helping foreign nationals with illegal entry, movement or stay has been considered an offence since 1945; although in 1998 family immunity against prosecution was introduced and in 2009 the concept of ‘humanitarian immunity’ was also introduced to protect those helping in order to “safeguard the life or physical integrity of the foreign national” from “imminent or actual danger.” The Cabinet of the government of **Netherlands** in its letter of 2011 (see above), also proposed to ensure that complicity in illegal stay, such as providing accommodation or food to irregular migrants for humanitarian reasons, will not be made a criminal offence. **Ireland’s Aliens Act** provides that a person who obstructs the police (*Gardaí*) in carrying out searches or investigations, or gives a name or address which is false or misleading, will be liable to a fine not exceeding €3 000 or to imprisonment for a term not exceeding 12 months or both. In **Spain**, facilitation of irregular stay through fraudulent municipal registration is a serious offence which may be sanctioned with fines of between €501 and €10 000 or €10 001 and €100 000 if the proponent has gained a profit. Marriage of convenience is also considered a separate offence in **France**, punishable with a prison sentence of five years and a fine of €15 000.

[Table V.1](#) below provides an overview of these penalties.

Table V.1 – Table of penalties per Member State

		Penalties on irregular migrants				Penalties on those facilitating irregular migrants			
	Illegal entry / border crossing	Illegal stay	Illegal work	Marriages/ adoptions of convenience	Failure to comply with a return order	Carriers	Employers ¹¹⁸	Smuggling	Other 'facilitators'
Austria	Administrative Fine: €100 - 1 000 If the offence is repeated: Fine: €1 000 - 5 000 Prison: 3 weeks	Administrative Fine: €500 - 2 500 or Prison: 2 weeks If the offence is repeated: Fine: €2 500 - 7 500 Prison: 4 weeks						Criminal offence Prison: 2 - 3 years, and 5 years if commercial concerning a larger number of persons, or in a manner that subjects the person concerned to a state of torture for a prolonged period of time, or up to 10 years for smuggling as part of an organised criminal group or in a way that threatens the life of a person	
Belgium						Administrative Fine: not specified	Administrative Other: costs of repatriation and subsistence of returnee		
Czech Republic		No fines, expulsion only			Criminal offence		Criminal offence Prison: not timing of the sentence specified	Criminal offence Prison: not timing of the sentence specified	
Estonia	Fine: up to 200 fine units or arrest if committed by a group; in disregard of a stop signal or orders given by a Border Guard Pecuniary Punishment or Prison: up to 1 year if committed by using violence or causing serious damage to health Prison: 4 to 12 years	At the border Fine: up to 200 fine units for illegal stay at the border; or up to 300 fine units or arrest for illegal stay without a legal base Administrative Fine: up to 300 fine units or arrest Aliens who stays without a legal basis at least twice within a year Prison: up to one year	Administrative Fine: up to 300 fine units or arrest Pecuniary Punishment or Prison: up to 1 year, or up to 3 years if committed by using violence or by a group; 4 to 12 years if serious health damage was caused			Fine: up to 300 fine units or up to €6,400 if committed by a legal person for failure to forward or forwarding incorrect passenger data For illegal transportation of an alien Pecuniary Punishment or Prison: up to 1 year, or up to 3 years if committed by using violence or by a group; 4 to 12 years if serious health damage was caused	Fine: up to 300 fine units if committed by a legal person; up to €3,200 in cases of payment of salary to an alien lower than the established rate - up to 300 fine units or €3,200 if committed by a legal person In special cases (e.g. involving 3 or more aliens, a minor alien, an alien victim of a crime related to human trafficking) Pecuniary Punishment or Prison: up to 3 years	Fine: up to 300 fine units for direct conveying of an illegal alien or €6400 per each conveyed person if committed by a legal person Conclusion of a rental agreement Fine: up to 300 fine units for of if committed by a legal person up to €3200	

¹¹⁸ More information on the sanctions imposed on employers is provided in the 2011 Annual Policy Report of the EMN, available at: www.emn.europa.eu > 'Annual Policy Reports'

	Penalties on irregular migrants			Penalties on those facilitating irregular migrants					
	Illegal entry / border crossing	Illegal stay	Illegal work	Marriages/ adoptions of convenience	Failure to comply with a return order	Carriers	Employers	Smuggling	Other 'facilitators'
Germany	Criminal offence Fine: not specified Prison: not specified	Criminal offence Fine: not specified Prison: not specified			Fine: €1,000 to €5,000 for each illegal migrant transported; if the airline continues to transport illegal passengers – the fine increases by €500 each time; in serious cases a restraining order is issued		Criminal offence	Criminal offence: if for gain and as organised group or if results death Prison: 1 – 3 years	
Greece	Fine: at least €1,500, and Prison: at least 3 months If wanted by the police or judicial authorities, or has tax or other obligations Fine: €3,000, and Prison: at least 6 months	Criminal offence Fine: at least €1,500, and Prison: at least 3 months If wanted by the police or judicial authorities, or has tax or other obligations Fine: €3,000, and Prison: at least 6 months	Prison: not specified		Penal administrative and economic sanctions Carriers of all kinds of transport Prison: up to 10 years, and Fine: €10,000 to €30,000 per person transported if the offender acts on speculation a recidivist, has the status of civil servant, shipping or travel agent, or if 2 or more are acting together Fine: €30,000 to 60,000 per person transported and Prison: at least 10 years if the act may be a risk for people transported and Prison: at least 15 years if death occurs Fine: €700,000 for each person transported Prison: life sentence	Fines: €3,000 – 15,000 if related to prostitution; at least €6,000. If a minor: €10,000 – 100,000 Prison: at least 3 months; if repeated at least 6 months Closure of the business: up to 6 months	Penal, administrative and economic sanctions Fine: not less than €20,000, and Prison: up to 10 years If the above person acted because of speculation or habit or committed by two or more Fine: not less than €50,000, and Prison: at least 10 years	Providing accommodation to illegal migrant Fine: €1,500 – 3,000	
Finland	Fine: not specified Prison: up to 1 year	Fine: not specified				Fine: not specified Prison: up to 1 year	Fine: not specified, or Prison: up to 2 years, or at least 4 months and up to 6 years in cases of aggravated arrangement of illegal migration	Preparing false documents Fine: not specified, or Prison: up to 2 years; at least four months and up to four years if the document falsified has significant probative value Producing, transporting or the likes of false documents Fine: not specified, or Prison: up to 6 months	

	Penalties on irregular migrants				Penalties on those facilitating irregular migrants				
	Illegal entry / border crossing	Illegal stay	Illegal work	Marriages/ adoptions of convenience	Failure to comply with a return order	Carriers	Employers	Smuggling	Other 'facilitators'
France	Fine: €3 750, or Prison: up to 3 years	Fine: €3 750, or Prison: up to 3 years		Prison: 5 years and Fine: €15 000	Prison: 3 years sentence Entry ban: up to 10 years	Fine: €5 000 per passenger Fine for failure to transmit passenger data: €50 000 for each journey	Prison: 5 years and Fine: €15 000 if committed by an organised gang Prison: 10 years Fine: €100 000	Fine: €30 000 and Prison: 5 years if the offence is com- mitted by an organised gang, expose the foreign nationals to risk of death or injury or other adverse conditions Fine: €750 000 and Prison: up to 10 years for legal persons if the fine is 5 times higher than for physical persons	Producing fraudulent documents Prison: 1 year Fine: €3 000
Hungary		Fine: up to HUF 10 000							
Ireland	Under Immigration Act 2004 Fine: up to €3 000, or Prison: not exceeding 12 months, or both	Under Immigration Act 1999 Fine: up to €1 500, or Prison: not exceeding 12 months, or both	Employee: fine of up to €3 000 and/or up to 12 months in prison	Under Immigration Act 1999 Fine: up to €1 500, or Prison: not exceeding 12 months, or both	Immigration Act 2003 €1 500 per passenger rising to €3 000 if the carrier takes the matter to Court	Employer: fine of up to €250 000 and/or up to 10 years in prison	Immigration-related offences Fine: €1 500 or Prison: not exceeding 12 months or to both.	Forging / fraudulently altering documentation in relation to asylum claim: Fine: not exceeding €1 500, or Prison: not exceeding 12 months, or both Providing false information in asylum application Fine: up to €1 500, or Prison: not exceeding 12 months, or both	
Italy	Fine: €5 000 to 10 000 (to €20 000 when the migrant is obliged to leave the country, but - owing to the expiration of the detention period - has not been expelled yet and is apprehended by the police.			Fine: €3 000 to 18,000		Criminal penalties: not specified	Criminal penalties: not specified	Criminal offences providing housing to irregular migrants forgery of residence permits	

	Penalties on irregular migrants			Penalties on those facilitating irregular migrants					
	Illegal entry / border crossing	Illegal stay	Illegal work	Marriages/ adoptions of convenience	Failure to comply with a return order	Carriers	Employers	Smuggling	Other 'facilitators'
Latvia	Administrative and criminal penalties: not specified	Administrative and criminal penalties: not specified	Administrative penalty: 100 – 500 LVL	Administrative penalties: a fine of 1 700 – 2 800 LVL	Administrative penalties: a fine of 100–10 000 LVL; Criminal penalties: deprivation of liberty, community service; fine not exceeding 200 times the minimum monthly wage			Administrative and criminal penalties: not specified	
Lithuania	Fine: 2 000 – 10 000 litas for negligent border crossing Prison: up to 2 years	Warning of fine: 250 – 1 000 litas		11 000 – 18 000 litas for every for each person transported without documents	Fine: 32 000 – 103 000 litas; Prison: a term of up to six years, or up to 8 years for mercenary reasons or threat to human life;			Forgery of a document or possession or producing of a forged document Fine, arrest or prison for a term of up to 3 years – where this incurs major damage, up to 5 years Provision of false data in order to verify letters of invitation Fine: 250 – 1 000 litas. Offering accommodation to illegal immigrants: Fine: 1 000 to 2 000 litas or 2 000 to 3 000 litas for a person previously convicted.	
Luxembourg ¹¹⁹	Fines and imprisonment: 8 days and/or fine of €251 to €250 ; imprisonment of 1 month to two years and/or fine from €251 to € 3 000 if the illegal entrant uses forged documents	Fines and imprisonment: not specified		Fine: up to €4 000 per transported passenger without valid travel or residence documents; up to €5 000 per carried-out transport for non- or late-transmission of relevant information	Fine: €251 to 20 000 Prison: from 8 days to 1 year Other sanctions: temporary interdiction to exercise professional activity (up to 3 years) or temporary closure of the company (max.5 years or definitive).		Fines: €5 000 to €125 000 Prison: 6 months to 5 years		
Netherlands	Criminal offence: not specified	Criminal offence: not specified			Administrative Fine: €8 000 per employed illegal immigrant or €4 000 in case of private persons				

¹¹⁹ The 'Sanctions directive' had not been transposed into national law when drafting this report.

		Penalties on irregular migrants			Penalties on those facilitating irregular migrants				
	Illegal entry / border crossing	Illegal stay	Illegal work	Marriages/ adoptions of convenience	Failure to comply with a return order	Carriers	Employers	Smuggling	Other 'facilitators'
Poland	Administrative A ban to enter the territory of Poland or Schengen Member States for 1 year in case of a decision to leave; or 3 years in cases of an expulsion order								
Slovak Republic	Fine: up to €800 for illegal border crossing, Fine: up to €1 600 euro if presenting fraudulent documentation	Fine: up to €1 600	Fine: up to €331.			The carrier is obliged to immediately ensure transportation or substitute transportation of the third-country national and bears the related costs; or if substitute transportation is not possible, the carrier must take over responsibility for the costs of accommodation and return of the third-country national	Financial sanction that can be imposed upon an employer in the event of breach of the prohibition of illegal employment amounts from €2 000 to €200 000. Failing to comply with the obligation of employers in connection with the employment of third-country nationals, stipulated in the Act on Employment Services may result in imposing a fine of up to €33 193.	Sanctions in their strictest form can result in imprisonment of up to 20 years	For facilitation or provision of help in relation to illegal stay or illegal employment in the SR, individuals willing to obtain illegal financial or other property benefits through such activities will be held criminally liable, and the upper limit of imprisonment will be 8 years.
Slovenia	Criminal offence: not specified	Criminal offence: not specified							
Spain	Administrative offence: Fine of up to 500 euro If the foreigner does not have a valid residence permit the penalty could be a fine of 501 to 10,000 euro or expulsion	Administrative offence: Fine of 501 to 10,000 euro or removal	Administrative offence: Fine of 501 to 10,000 euro	Administrative offence: Fine of 501 to 10,000 euro	Administrative offence: Fine of 10,000 to 100,000 euro	Administrative offence: Fine of 10,001 to 100,000 euro. In the case of transporting aliens without having checked the validity and currency of their passports, travel documents or identity documents; or, if appropriate, of the relevant visas the fine shall be 5,000 to 10,000 euro for each traveller transported or a lump-sum minimum of 750,000 euro, irrespective of the number of travellers transported	Criminal offence for those who employ foreigners without a work permit in conditions that suppress, disadvantage or restrict the rights recognised by law, collective agreement or individual contract, thus placing the immigrants in exploitative labour situations. Prison: 2 to 5 years Administrative offence for those hiring migrant workers without a permit or simulating a working relation: Fines of: €10 001 — 100 000	Criminal offence Prison: 4 to 8 years If acted for profit or with violence, intimidation, deception or abuse of position or endangering the life, health or safety of individuals the penalty may be extended Prison: 6 to 8 years	Criminal offence Human trafficking Prison: 5 to 8 years Administrative offences Promotion of illegal entry by invitation, facilitating fraudulent residence permit or municipal registration Fine: €501 to €10 000 In the case of fraudulent municipal registration if very serious when done for profit Fine: €10 001 to €100 000

	Penalties on those facilitating irregular migrants				Penalties on those facilitating irregular migrants			
	Illegal entry / border crossing	Illegal stay	Illegal work	Marriages/ adoptions of convenience	Failure to comply with a return order	Carriers	Employers	Smuggling
Sweden	Fine: not specified or Prison: up to 1 year	Fine: not specified	Fine: not specified		The carrier shall be obliged to reimburse the state for: 1. the cost of the alien's travel from Sweden 2. the cost of travel from Sweden and back for the security personnel who need to accompany the alien, and 3. the cost for the alien's stay	Fine: not specified or Prison: up to 1 year	Prison: up to 2 year In case of gross offence – at least six months and at most six years	Any person who intentionally assists an alien Fine: not specified or Prison: up to 2 year
United Kingdom	Fine: £5,000 Prison: six months	Fine: £5,000 Prison: six months			Non-compliance in providing passenger document information Fine: up to £5 000 Prison: up to 6 months	Administrative Fine: up to £10,000 per illegal worker Criminal prosecution of employers Fine: £5,000 for each person employed illegally		
Norway	Rejection/expulsion: Fine or prison, up to 6 months	Expulsion: Fine or prison, up to 6 months	Expulsion or fine or prison, up to 6 months	Expulsion or fine or prison, up to 6 months	Air/sea transporters: Fine and obligation to transport back to start of journey	Fine or prison up to 2 years	Criminal offence: not specified Fine or prison up to 2 years	Punishment for people who facilitate irregular migrants Criminal offence: not specified Fine or prison up to 2 years

Notes: Legislation in Ireland pre-dates introduction of the Euro and amounts for fines are therefore given in €

ANNEX VI: Examples of Projects funded by the European Return Fund and the External Borders Fund in (Member) States (as provided in national reports)

Member State	External Border Fund	European Return Fund
Austria	<i>No information in National Report</i>	<ul style="list-style-type: none"> (i) Preparation of return for third-country nationals in detention pending deportation (ii) Counselling on voluntary return and organisation of return for the target group of the fund (iii) Measures for country and/or target group specifically with regard to return and reintegration (iv) Pilot Project to develop organisational structures to support voluntary return of female victims of trafficking
Belgium	<ul style="list-style-type: none"> (i) Maison Schengen Kinshasa (ii) Ministerial Conference on UAMs crossing the external borders of the EU (iii) Installation field workers to support consular staff (iv) Implementation of the VIS <p>(i) Activities aimed at providing better technical equipment for the border checks at the external borders</p> <p>Activities aim to increase the safety of the external border:</p> <ul style="list-style-type: none"> (i) Update the infrastructure (ii) Establishment monitoring systems (iii) Development information systems for implementation SIS (iv) Creation border guard management information system 	<ul style="list-style-type: none"> (i) Implementation of the Observation and Orientation Centres (OOC) and alternative accommodation for families in detention (ii) Special Needs Programme has created concrete and sustainable projects for some families in their country of origin. (iii) Training for courts and special services in prisons (i) Activities by IOM to provide advisory services to assist irregular migrants to return to their country of origin.
Estonia	<p>Finland used the EU External Border Fund for 40 projects which broadly aim to upgrade technical surveillance and develop or improve border control equipment for Finnish Border Guards in addition to improving visa processing by providing training of personnel and cooperative authorities.</p> <ul style="list-style-type: none"> (i) Procurement of document reading and inspection devices (ii) Procurement of equipment for helicopters at the European sea borders, (iii) Delegation of document and visa advisors as well as border police liaison officers, (iv) Investments in the development of VIS and SIS-II (v) Training of personnel in document examination techniques and equipment. 	<p>Development and implementation voluntary return:</p> <ul style="list-style-type: none"> (i) Financing forced expulsion, including escorting (ii) Development operative cooperation with authorities of third-countries responsible for managing return (iii) Training to relevant authorities in country of origin
Finland		<ul style="list-style-type: none"> (i) Improving the effectiveness of removal (ii) Development of a country of origin information system on Iraq
Germany	<ul style="list-style-type: none"> (i) Projects to reduce structural problems in practical cooperation with individual countries of origin. (ii) Projects to overcome difficulties to obtain return travel documents to repatriate irregular migrants. 	
Greece	<ul style="list-style-type: none"> (i) Implementation of common training developed by Frontex in the police education system (ii) Control and detection of forged travel documents (iii) Language training for Police personnel and border guards in Albanian, Turkish and Arab (iv) Training of police, port and customs personnel for the proper implementation of the Schengen acquis 	<ul style="list-style-type: none"> (i) Assistance in voluntary returns (by for example organisation of charter flights) (ii) Training personnel involved in expulsion
Ireland	<p>Ireland does not participate in Decision No. 574/2007/EC establishing the External Borders Fund as the legal basis is founded on the Schengen Agreement</p> <p>Numerous projects focused on:</p> <ul style="list-style-type: none"> (i) Improving migration process control (ii) Ensuring data exchange with central VIS and providing training to users of VIS (iii) Upgrading Border Crossing Sites (iv) Facilitating cooperation between Member States 	<ul style="list-style-type: none"> (i) Funds provided to the IOM in Ireland to support voluntary return activities and funding for research projects. (ii) GNB received funding for two forced return flights (iii) Development Voluntary Return Hotline Project
Latvia		<p>Numerous projects which focused on:</p> <ul style="list-style-type: none"> (i) Providing training to personnel involved in return measures, including language training (ii) Improvement of qualitative data (information and recording system on returned individuals) (iii) Development digital archive

Member State	External Border Fund	European Return Fund
Lithuania	<ul style="list-style-type: none"> (i) Installation of modern border monitoring systems (ii) Installation of technical surveillance measures for monitoring of the territorial sea, the Curonian Lagoon and inland border waters (iii) Upgrade of vehicles for external border controls and information systems (iv) Development of modern document analysis and checking equipment (v) Reconstruction border pikes and official trainings (vi) Development National Schengen Information and National Visa Information System 	<ul style="list-style-type: none"> (i) Maintenance of third-country nationals and their forced or voluntary returns (ii) Development of reintegration programs for third-country nationals in their country of origin
Luxembourg	<ul style="list-style-type: none"> (i) Extension of the SIS for integration of the new Member States (ii) Development and installation of programmes for reading the data supplied by the document readers at Luxembourg airport (iii) Installation of document readers at Luxembourg Airport connected to SIS (iv) Putting into application a portable digital fingerprint reader connected to SIS, AFIS and VIS <p>Projects focus on:</p> <ul style="list-style-type: none"> (i) European Visa Information System (ii) The equipment of the control room of the Seaport Police (iii) The Innovation Border Management Renewal Programme (iv) Schengen Information System 	NI
Netherlands	<ul style="list-style-type: none"> (i) Material supply: equipment of transport, investment in construction, networking and information technology 	<p>Funds were used for several projects aimed at facilitating the return of persons illegally staying in the Netherlands.</p> <ul style="list-style-type: none"> (i) Financing return (ii) Provide trainings to improve qualifications of the Border Guards officers and
Poland	<p>In 2010: (i) Measures to promote security and speed up interventions in the performance of surveillance on the external land border with Ukraine; (ii) Measure to improve communication and the performance of external border protection at international airports; (iii) Implementation of the camera monitoring system at the border crossing points; (iv) Purchase of technical facilities for the authorities responsible for border control and border surveillance.</p>	<p>In 2010/2011: (i) Enhancement of the organisation and performance of forced returns and improvement of the conditions to carry out returns of migrants to countries of return; (ii) provision of assisted voluntary returns and reintegration, legal assistance, psychological counselling, social assistance and coverage of other special needs of persons in police detention facilities for third-country nationals through IOM and non-governmental organisations.</p>
Slovak Republic	<p>Norway has approximately 35 ongoing or planned projects which focus on:</p> <ul style="list-style-type: none"> (i) Practical arrangements to provide for efficient crossing at the border crossing point (ii) Software and procedures for obtaining documents at the consulate in question. (iii) Increase control of passengers and crew on ships harbouring Norwegian ports. (iv) Police access to the electronic system SafeSeaNet to facilitate electronic and automatic lists of persons on ships. 	NA
Norway		

ANNEX VII: Additional statistics on irregular migration

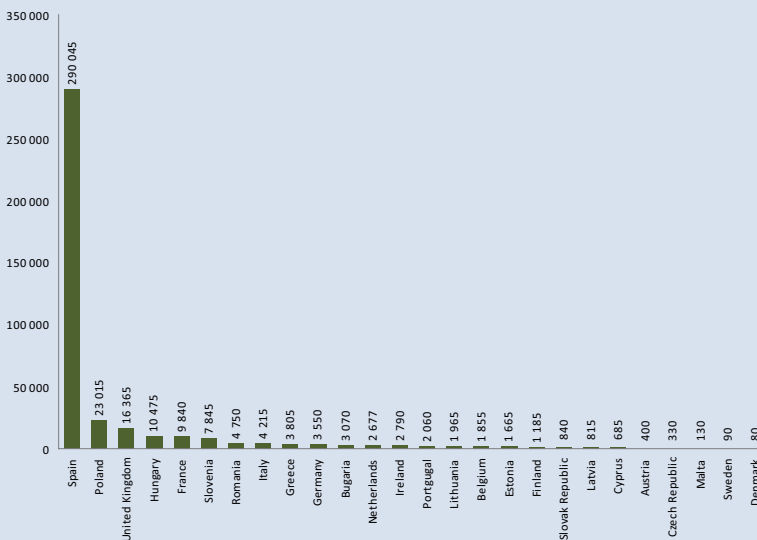
This annex provides supplementary statistics to complement those provided in Sections 5 and 6. It describes the following statistics:

- ▶ Third-country nationals refused entry at the border 2008 – 2011, as collected by Eurostat;
- ▶ Third-country nationals found to be irregularly present 2008 – 2011, as collected by Eurostat;
- ▶ Statistics on specific groups of irregular migrants, e.g. marriages of convenience detected;
- ▶ Third-country nationals ordered to leave and those returned (as possible indicators of irregular migration), as collected by Eurostat; and
- ▶ Other relevant statistic, which may be indicative of irregular migration, namely entry bans and negative decisions on asylum applications.

Refusals at the border: 2010

Figure 5.1 in Section 5 showed the number of third-country nationals refused entry at the border in EU27, as reported to Eurostat. [Figure VII.1](#) outlines the numbers for 2010.

Figure VII.1 – Third-country nationals refused entry at the external borders, by (Member) States, total and by reason, 2010



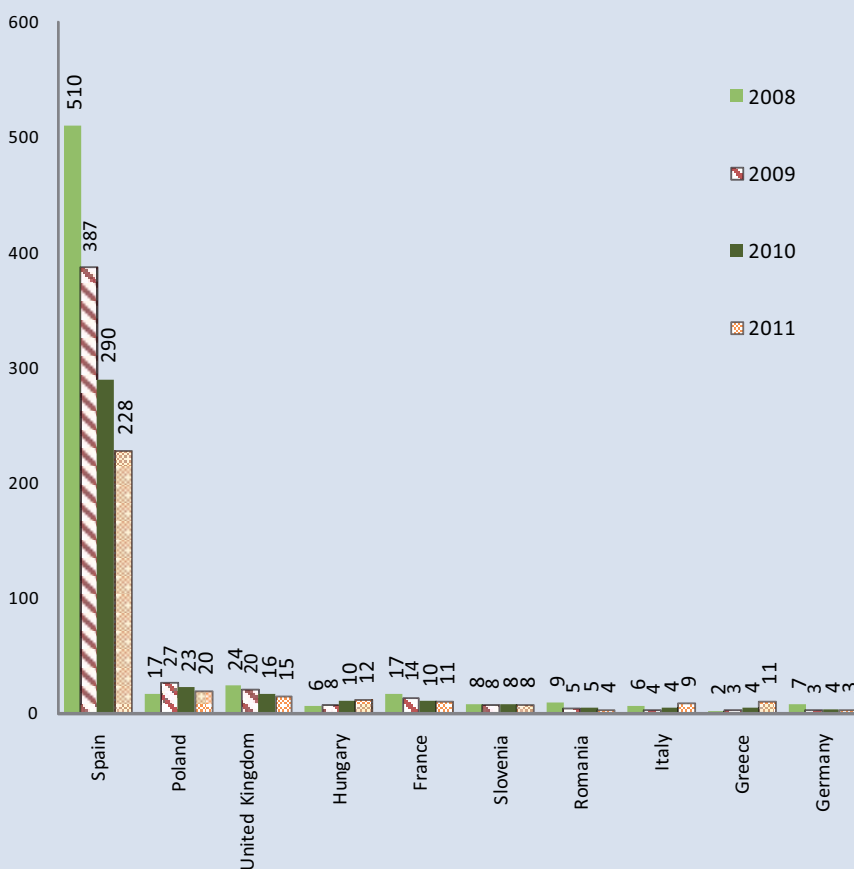
Source: Eurostat.

Note: No data for Luxembourg

Refusals at the border: trends for the ten main (Member) States, 2008-2011

Figure VII.2 shows the trend in refusals for the ten main (Member) States, 2008-2011.¹²⁰ As with overall numbers, there has been a decrease in the number of refusals in most of these (Member) States, except for Greece, Hungary and Italy. There was also a slight increase in refusals from 2009 to 2010 in Germany. The numbers in Slovenia have been more or less consistent 2008 to 2011.

Figure VII.2 - Third-country nationals refused entry at the external borders, ten main (Member) States, in 1 000s, 2008-2011

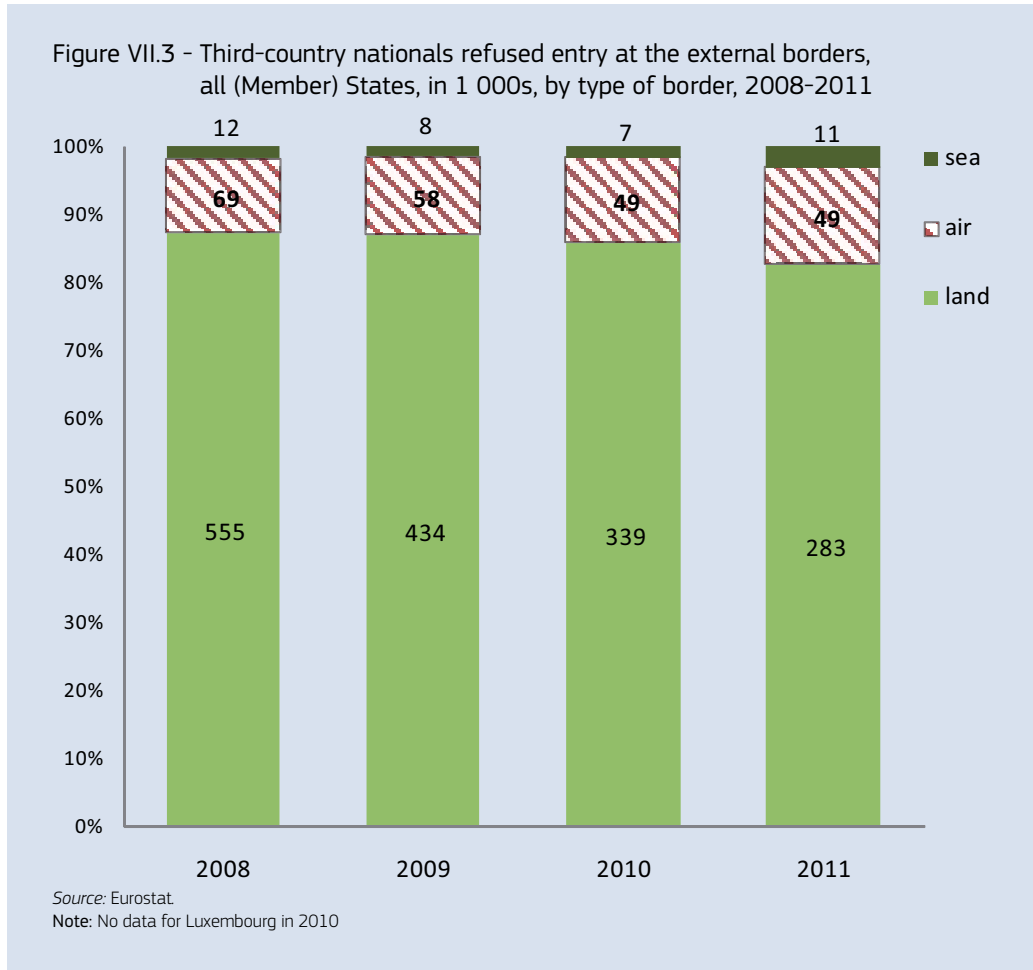


Source: Eurostat

¹²⁰ Statistics extracted on 16.04.12. Eurostat statistics are available for the following Member States for 2011: Belgium, Bulgaria, Czech Republic, Germany, Estonia, Ireland, Spain, France, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Netherlands, Austria, Poland, Romania, Slovenia, Slovak Republic, Finland and Sweden.

Refusals at the border: trends by type of border, 2008-2011

Figure VII.3 shows the proportion of refusals in 2008-2011 according to the type of border (land, air, sea).



Refusals of entry have been consistently most common at the land borders. This is likely because it is much harder to first embark sea and air vessels to travel to (Member) States without adequate documentation and fulfilment of other conditions. Interestingly, however, the proportion of refusals which were at the land borders decreased in 2011 from previous years – this may be due to the continued impact of the eradication of internal borders within the Schengen Area.

In Estonia, 81% of refusals 2005-2010 were at the Estonian sea border (as compared to 17% of refusals at the land border and 2% of the cases at air border). This is regardless of the fact that only about 20% of the total number of the persons crossing the border cross the external border via the sea border. The largest group of individuals trying to cross the Estonian sea border were

the crew members of the transport ships that are staying at the Estonian ports, but very often they do not have a valid document or a visa to enter the country (see above) and mostly concerns citizens of India, Philippines, Myanmar and the Russian Federation. External land borders were removed in Belgium, Hungary, Italy, Luxembourg, Netherlands, Portugal and Spain and from Austria, France and Germany following the implementation of the Schengen Area. From 2008 the majority of refusals at the land border in Austria dropped significantly impacting on the overall number of refusals in that Member State. By contrast, refusals at the land border were most common in Finland, Greece, Hungary, Latvia, Poland, Slovak Republic. In Belgium, Ireland, Lithuania, Sweden, United Kingdom and Norway refusals were most common at the air border.

Refusals at the border: trends by country of origin of those refused, 2008-2011

Table VII.1 - Third-country nationals refused entry at the EU's external borders, 20 main countries of citizenship, 2008-2011

2008		2009		2010		2011	
Morocco	497 720	Morocco	378 485	Morocco	283 060	Morocco	220 485
Ukraine	15 750	Ukraine	19 445	Ukraine	19 105	Albania	16 745
Brazil	11 920	Brazil	8 455	Russian Federation	8 675	Ukraine	16 435
Russian Federation	8 680	Russian Federation	7 925	Serbia	6 380	Russian Federation	8 845
China (incl. HK)	6 320	Georgia	6 095	Brazil	6 355	Serbia	6 585
Moldova	6 000	Belarus	5 005	Belarus	5 705	Belarus	6 025
Turkey	5 850	Croatia	4 835	Turkey	4 285	Brazil	4 930
Serbia	5 745	Turkey	4 745	Croatia	4 140	Croatia	3 860
Croatia	5 610	Serbia	3 620	FYROM	4 010	Turkey	3 600
Belarus	4 430	China (incl. HK)	3 610	Georgia	3 345	FYROM	3 220
Nigeria	3 215	United States	3 310	United States	2 585	Georgia	2 835
India	3 140	Nigeria	2 365	Albania	2 365	United States	2 540
United States	3 060	FYROM	2 280	China (incl. HK)	2 220	Moldova	2 390
Paraguay	2 300	India	2 260	India	2 205	China (incl. HK)	1 720
FYROM	2 125	Moldova	2 235	Moldova	2 115	Bosnia and Herzegovina	1 715
Venezuela	1 840	Venezuela	2 010	Nigeria	1 900	India	1 600
Senegal	1 670	Albania	1 975	Paraguay	1 475	Nigeria	1 550
Bosnia and Herzegovina	1 640	Paraguay	1 650	Venezuela	1 280	Venezuela	1 405
Pakistan	1 535	Argentina	1 505	Pakistan	1 165	Algeria	1 355
South Africa	1 530	Pakistan	1 470	Algeria	1 010	Paraguay	1 315

Source: Eurostat

Notes: no data for Luxembourg in 2010 and presumably data rounded up or down to nearest 5?

Table VII.1 shows the main nationalities of those refused entry at the border. The number of Moroccans refused entry is notably high (although these numbers decrease 2008 to 2011), and this is very likely due to the migratory pressures at Ceuta and Melilla in Spain. In Greece, irregular entrants from Asia and Africa have been increasing in recent years, entering through the Greek-Bulgarian or the Greek-Turkish border. In 2010 there was a shift in the pattern of entry: the

number of entrants at the Greek-Turkish sea border notably decreased from 2009 to 2010 while the number of entrants at the Greek-Turkish land border increased. This decrease is related, among other things, to the effective joint operations that Frontex, together with the Greek authorities implemented in the Aegean Sea, shifting irregular migration flows from sea to land borders between Greece and Turkey. Irregular entrants from Albania are also common at the Greek-Albanian border. Italy notes disproportionately high proportions of females of specific nationalities refused entry; this concerns women from Moldova, Brazil and Ukraine who aim to work in the home care sector, women from China who aim to work in industry, and women from Nigeria who may have been trafficked into sexual exploitation.

Third-country nationals found to be irregularly present

Eurostat statistics on third-country nationals found to be irregularly present according to national immigration legislation (i.e. apprehensions of persons who have either entered the country irregularly by evading border controls or have entered legally, but overstayed their permissions) is disaggregated by age, sex, and by citizenship of the third-country national concerned. This information is available for 2008 to 2010.¹²¹ In addition, some of the National Reports produced for this Study describe statistics from 2005 (Austria, Belgium, Estonia, Finland Greece, Latvia, Lithuania, Netherlands, Slovak Republic, Slovenia); however, it should be noted that there are likely to be differences in the data collection methods and parameters between the national statistics collected up to 2007 and those provided to Eurostat from 2008, which may limit cross-country comparisons prior to 2008 and create breaks in time series in individual (Member) States across the two periods.

Table VII.2 below presents the same figures (of third-country nationals found to be irregularly present) as a percentage of the total population for 2011.

Table VII.2 - Number of third-country nationals found to be irregularly present in EU (Member) States in 2011 as a proportion of the total population

Member State	Total	%	Member State	Total	%	Member State	Total	%
Austria	20 080	0.24%	Greece	88 840	0.79%	Romania	3 365	0.02%
Belgium	13 550	0.12%	Hungary	3 810	0.04%	Slovenia	4 350	0.21%
Bulgaria	1 355	0.02%	Ireland	2 470	0.06%	Slovak Republic	1 145	0.02%
Cyprus	8 230	1.02%	Italy	29 505	0.05%	Sweden	20 765	0.22%
Czech Republic	3 085	0.03%	Latvia	130	0.01%	United Kingdom	54 175	0.09%
Denmark	400	0.01%	Lithuania	1 895	0.06%	Norway	1 925	0.04%
Estonia	1 020	0.08%	Luxembourg	0	0.00%			
Finland	3 305	0.06%	Malta	1 730	0.41%			
France	57 975	0.09%	Netherlands	6 145	0.04%			
Germany	56 345	0.07%	Poland	6 875	0.02%			
Spain	68 825	0.15%	Portugal	9 230	0.09%			

Source: Eurostat

¹²¹ 2011 statistics are available now.

It shows that the (Member) States where the number of irregular migrants apprehended are greatest, proportional to overall population are in Cyprus (1.01% of total population) and Greece (0.79%). The proportion in Malta is also comparatively high at 0.41% of the total population; however, in other countries, the proportion is much smaller. Notably, the proportion of total population that are third-country nationals found to be irregularly present in Greece fell between from 1.02% of the population in 2010 to 0.79% in 2011.

Third-country nationals found to be irregularly present: trends by gender and age, 2008-2011

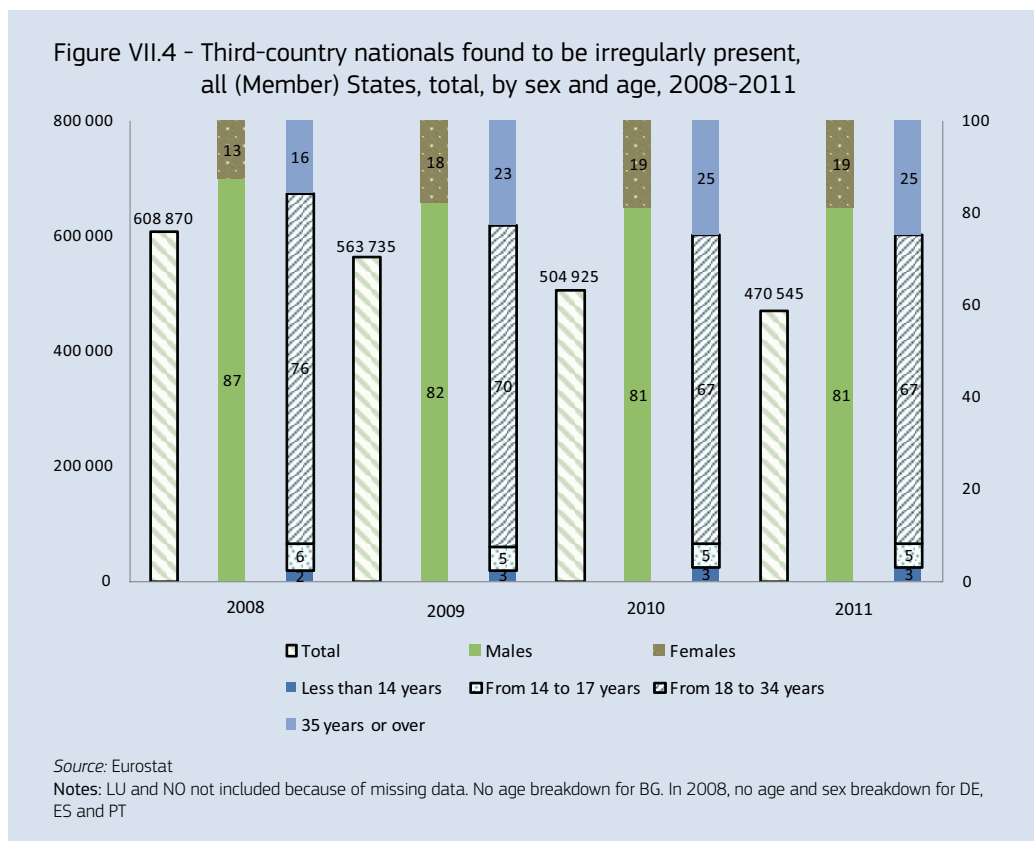


Figure VII.4 presents the total number of third-country nationals found to be irregularly present by age and sex for 2008-2011. As shown, irregular migrants apprehended are predominantly men (around 85%); however the data show that the number of females found to be irregularly present has slightly increased 2008-2010, although this does not appear to be statistically significant. The figures do differ from overall migration, which is also predominantly male but in a much lower proportion (53% among third-country nationals immigrating to the EU and Norway in 2010 and

2011¹²²). The data also show that the largest age group of apprehended irregular migrants is 18-34 (around 70%). Again, the share of youth is slightly higher than in overall legal migration - although the age categories are not exactly the same: the proportion of legal migrants in the age group 15-34 in 2010 was 63% (55% if the category includes only 20-34)¹²³.

In Estonia, an average of 65% of the persons found to be irregularly present are stateless persons (2005 – 75%; 2007 – 60%, 2010 – 63%). They are mainly persons residing permanently in Estonia whose residence permit has expired and they have, for some reason, failed to renew it. During the years 2004-2006, many of the temporary residence permits issued for five years expired. In the United Kingdom the majority of those apprehended were overstayers.

Third-country nationals found to be irregularly present: trends by country of origin of those refused, 2008-2011

Table VII.3 - Third-country nationals found to be irregularly present, 20 main countries of citizenship, 2008-2011

2008		2009		2010		2011	
Albania	72 675	Albania	69 005	Albania	52 375	Afghanistan	45 455
Afghanistan	49 780	Afghanistan	49 755	Afghanistan	41 410	Pakistan	32 510
Morocco	39 775	Morocco	32 570	Morocco	29 670	Morocco	28 890
Iraq	37 425	Iraq	23 670	Pakistan	19 370	Tunisia	24 120
Brazil	32 945	Brazil	18 570	Algeria	19 235	Algeria	17 965
Eritrea	21 095	China (incl. HK)	17 070	Nigeria	16 900	Albania	17 235
India	20 285	Somalia	16 850	Iraq	16 680	India	15 130
Bolivia	17 460	India	16 675	China (incl. HK)	15 345	Nigeria	14 155
China (incl. HK)	17 025	Nigeria	16 480	India	14 995	Iraq	12 450
Nigeria	16 585	Algeria	15 945	Somalia	14 620	Ukraine	11 890
Algeria	15 785	Pakistan	15 500	Brazil	14 340	China (including Hong Kong)	11 755
Tunisia	14 080	Bolivia	14 835	Serbia	12 050	Bangladesh	11 260
Ukraine	13 995	Tunisia	13 885	Ukraine	10 880	Iran	11 115
Turkey	13 955	Vietnam	12 980	Tunisia	10 765	Brazil	10 630
Serbia	13 350	Turkey	11 795	Turkey	10 725	Turkey	10 445
Pakistan	13 210	Ukraine	11 230	Iran	10 115	Russia	9 465
Somalia	10 965	Palestinian territory	11 020	Bangladesh	9 775	Serbia	9 415
Senegal	10 700	Eritrea	10 890	Palestinian territory	9 475	Somalia	8 925
Russian Federation	10 260	Russian Federation	10 370	Vietnam	9 210	Eritrea	8 130
Iran	9 580	Iran	9 345	Russian Federation	9 010	Vietnam	6 525

Source: Eurostat

Table VII.3 illustrates the twenty main countries of origin of third-country nationals apprehended in the EU 2008-2011. As shown in the tables, the most common countries of origin for third-country nationals found to be irregularly

¹²² Source: Eurostat (migr_imm1ctz) Missing data for immigration to Belgium, Bulgaria, Cyprus, Latvia, Hungary, Netherlands, Poland

¹²³ Source: Eurostat (migr_imm1ctz) Missing data for immigration to Belgium, Bulgaria, Cyprus, Latvia, Hungary, Netherlands, Poland and Romania.

present are Albania, Afghanistan, Morocco, Iraq and Pakistan. From 2008 to 2010, the number of Albanians apprehended was much higher than that of any other nationality, but in 2011 the number of Albanians found to be irregularly present rapidly declined – this is largely due to a decline in numbers in **Greece** from 63 140 in 2009 through 47 120 in 2010 to 11 225 in 2011. In 2008 there were also high numbers of apprehensions of third-country nationals from Brazil from 2009 onwards this became less common. In 2011 there were much higher numbers of Pakistanis apprehended than in the three previous years – again this appears to be related to the number of apprehensions of Pakistanis in **Greece**, which grew from 4 295 in 2009 through 8 485 in 2010 to 18 275 in 2011; this may be due to a reported increase in the flow entry of nationals of Asian and African origin. Apprehensions are also common amongst third-country nationals from China, India, and Algeria, and the number of Tunisians apprehended also increased from 2010 to 2011.

In **Germany**, as for many countries, the dominant nationalities amongst irregular migrants are those countries with which Germany has historical migration relations (e.g. Turkey, former Yugoslavian countries) and the Russian Federation; those from countries with large populations, such as China and India; or those from countries that generate large flows of refugees, such as Afghanistan, Iran and Iraq. Between 2008 and 2010 the number of persons irregularly present originating from Afghanistan in Germany almost quadrupled. The number of irregularly-resident Afghanis also rose in **Estonia** in 2009 – previously they had only used Estonia as a transit country to **Finland** or **Sweden**. However, the largest group (approximately one quarter) of apprehended immigrants in **Estonia** were citizens of the Russian Federation (2005 – 22%; 2007 – 29%, 2010 – 25%).

In **Netherlands** there has been a decrease in the number of apprehensions of Chinese nationals following a decision of the administrative high court there to prohibit forced removals of these persons who would not have lawful residence in their country of origin. By contrast there was an increase in the number of Somalis detained due to the high number of asylum applications, and subsequent failed applications 2009 to 2010 and the abolishment of the protection policy for this third country from May 2009.

Distance and geography are also factors which affect the flow of irregular migration. For example, the most common nationalities of irregularly-resident third-country nationals apprehended in Eastern European Member States, such as **Czech Republic**, **Estonia**, **Latvia**, **Lithuania**, **Poland** and **Slovak Republic** are from the Russian Federation, Ukraine, Belorussia, and Moldova.¹²⁴ There are a high number of apprehensions of Serbians in **Austria**, as well as Russians and Afghanis; and in **Finland** the largest national groups apprehended are Somalis, Iraqis and Russians. In **Ireland** the main countries of citizenship of apprehended irregularly-present third-country nationals are Nigerians, Chinese nationals and Pakistanis and in the **United Kingdom** the most dominant nationalities amongst

¹²⁴ The highest number of apprehensions in **Czech Republic** were from Ukraine followed by Vietnam; in **Latvia** the most common nationalities are Moldovan, Russian, Ukrainian and Georgian; in **Lithuania** they are also most commonly Russian, Belorussian and Ukrainian; in **Poland** from Ukraine, Russia and Vietnam; and in **Slovak Republic** most commonly from Ukraine, followed by Moldova, India, Russia and Pakistan.

those apprehended were from Nigeria and India. In **Luxembourg** apprehended irregularly-present third-country nationals are most commonly from former Yugoslavian Balkan countries.

Third-country nationals found to be irregularly present: possible causes of the decrease in apprehensions

Figure 6.2 in Section 5.2.2 demonstrated an overall decline in third-country nationals apprehended as irregularly present in Member States 2008-2011. In **Austria** and **Belgium** there was an even greater decrease of apprehensions from 2006 to 2007 of 38 579 (2006) to 14 216 (2007) in **Austria** and 17 323 (2006) to 11 642 (2007) in **Belgium**. One of the reasons **Austria** cites for the decrease is EU enlargement. EU enlargement would likely have such an impact both because citizens of accession countries gained access (albeit limited at first in some cases) to free movement, and because this changed the dynamics of irregular migration inflows into the EU (by increasing the number of routes and target countries through which the EU could be entered. **Belgium** also cites the accession of Romania and Bulgaria to the EU as the reason for this temporary decrease.

Other Member States (**Estonia**, **Finland**, **Latvia**, **Poland**, **Slovak Republic**, **Slovenia**) have also witnessed an overall downward trend in the number of apprehensions. In **Estonia** during the period 2005-2010, the number of apprehensions of persons staying irregularly in the country decreased by 67% (2005 - 2703 persons, 2010 - 893 persons); the greatest decreases were between 2005 and 2008 – due in part to the large number of expirations of the five-year residence permit during this period; since then the numbers have remained more stable. **Finland** saw the number of third-country nationals apprehended rise from 1 689 in 2006 to 6 660 in 2009,¹²⁵ but then decrease quite rapidly to 3 755 in 2010. These trends in third-country nationals apprehended correspond to growths or decreases in influxes of asylum applicants. **Latvia** also notes a decrease in numbers of apprehensions from 310 in 2008 to 245 in 2009 which it accredits to effective operations implemented following its entry into the Schengen area. The **Slovak Republic** also attributes its significant decline from 6 662 in 2007 to 2 320 in 2008 to accession to the Schengen area – i.e. due to measures implemented by the **Slovak Republic** in order to meet the requirements imposed through the accession process (including enhancing border controls and combating organised irregular migration). However, it should be noted that apprehensions in the Member State include both those at border crossings (i.e. for irregular crossing) and apprehensions of those already irregularly residing; from 2005 to 2007 there was a higher proportion of apprehensions for irregular crossing, but with the collapse of internal borders following 2008, a higher proportion of apprehensions were made for irregular stay in the **Slovak Republic**. In **Poland** the number of apprehensions decreased from 5 430 in 2008 to 4005 in 2010, which **Poland** attributes to improved effectiveness of its work, inter alia through numerous trainings of the state border guards and other relevant authorities.

¹²⁵ Here, as mentioned above, breaks in data collection methods 2007-2008 and possible distortions of the data thereof should be taken into consideration.

Statistics on specific 'groups' of irregular migrants

It is also possible to obtain a picture of trends and numbers on specific groups or irregular migrants, such as absconders, persons regularised, and detected marriages of convenience. These statistics provide some indication of trends. However, it is difficult to gain an overall picture of trends in irregular migration in general by looking at individual sets of statistics, which have their own specific contexts and variables.

France, Ireland and Sweden provide statistics on the number of orders to leave the territory not executed. In **France**, the rate of non-execution of prefectural removal orders 2006-2010 remained more-or-less stable at around 74.7% (for orders to be escorted to the border). Between 2008 and 2010, total orders to be removed not executed declined somewhat from 85% not executed (a total of 72 975 non-executed orders) to 79.4% (a total of 56 849 non-executed orders) in 2010. In **Ireland** one quarter (1 677 orders) of all deportation orders issued in the period 2005-2010 (6 710 in total) were executed. In **Sweden** 2008 to 2010 the Swedish Migration Board reported around 8 000 people per year had absconded from reception centres. However, while the statistics may include persons who have absconded and become irregular, but it may also represent persons who left of their own accord and therefore cannot be taken as a complete picture of absconders. In **Germany**, registered third-country nationals who stay irregularly, but are neither placed in detention centres nor ordered to return, are registered with the Electronic System for Distributing Irregularly Present Foreigners (ViA system). The number of persons registered on this system has been rising – nationalities include Serbia, Bosnia, Vietnam, Turkey. **Finland** provides statistics on assisted irregular entries: the number has fluctuated since 2005 with the highest number identified in 2009 (1 812) and 515 in 2011.

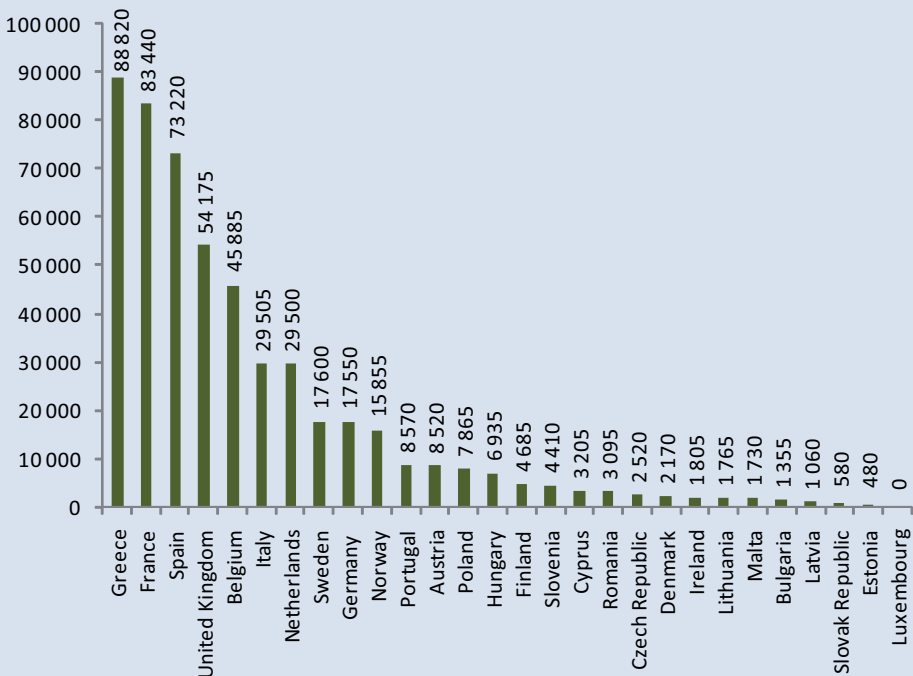
Asylum applicants may also become irregular when they fail to follow specific procedures. In **Germany** in 2010 2,595 asylum applicants (6.1% of all applications) registered their application but then failed to contact the reception centre. In some cases this was because the applicant travelled to another city / region instead of to the one to which they had been assigned; this is referred to as 'traveller atrophy'. Most notably 24.3% of applicants (3 633 persons) who first arrived at Berlin in 2010 failed to move on to their assigned reception centre. Traveller atrophy was most common amongst Vietnamese nationals as well as nationals from Bangladesh, Congo, Lebanon and the Russian Federation. This may be because there are sizable "communities" of foreign nationals in Berlin that asylum seekers prefer to join while at the same time accepting that this inevitably means to become "irregular."

Misuse of the right to migration for family reunification represents another form of irregular migration. **Finland, Germany and Lithuania** provide statistics in their National Reports on marriages that have been found to be fraudulent. **Ireland's** National Report provides data on marriage patterns the Department of Justice and Equality believes to be suspicious. Further data on marriages of convenience is available in the EMN Study on *Misuse of the Right to Family Reunification*.

Third country nationals ordered to leave and returned, 2011

Statistics on third-country nationals ordered to leave and those actually returned can also be indicative of trends in irregular migration. [Figure VII.5](#) below outlines the number of third-country nationals ordered to leave 2008-2011 for each (Member) State

Figure VII.5 - Third-country nationals ordered to leave, by (Member) States, total, 2011

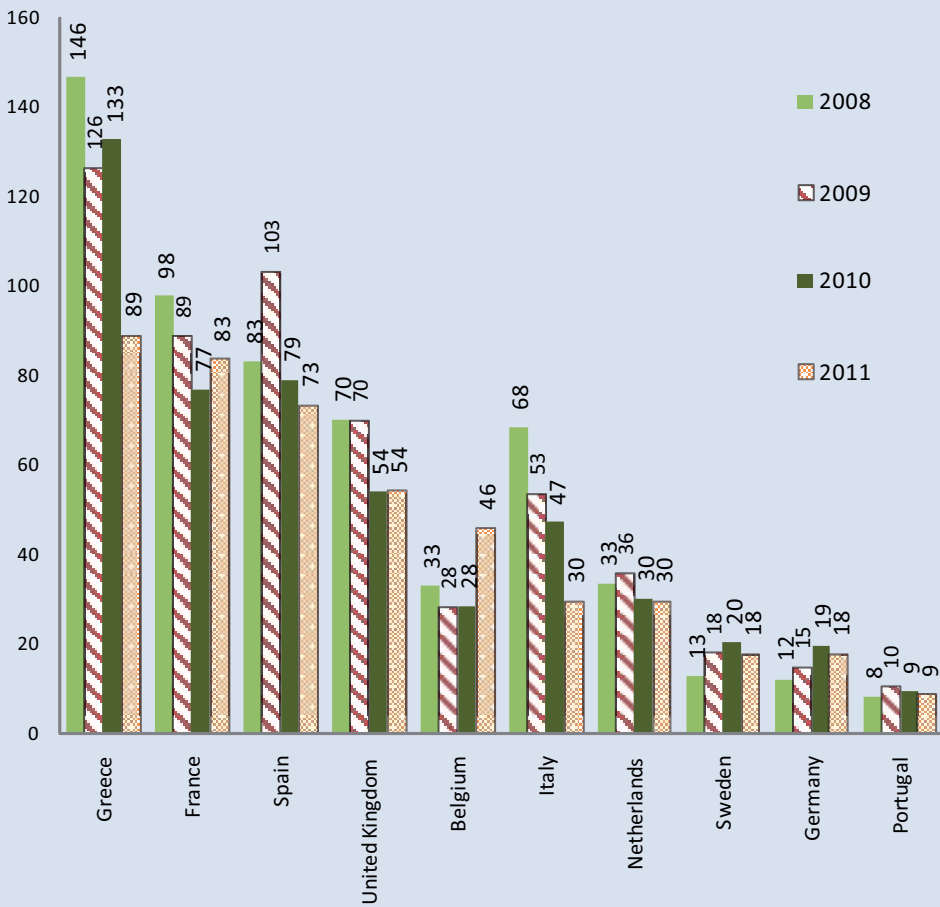


Source: Eurostat

Notes: No statistics for Luxembourg

Similar to the statistics provided in [Figure 5.1](#) on apprehensions (Section 5.2.1), the four main Member States for third-country nationals ordered to leave are Greece, Spain, France and the United Kingdom. However, in comparison with [Figure 5.1](#), Italy, the Netherlands, Sweden, Germany, Austria and Poland have high numbers of third-country nationals ordered to leave. [Figure VII.6](#) shows that the number of third-country nationals ordered to leave has been generally decreasing 2008-2011 in the ten main (Member) States. It is only in Belgium that the numbers increased notably from 2010 (28 000) to 2011 (46 000).

Figure VII.6 - Third-country nationals ordered to leave, ten main (Member) States, in 1 000s, 2008-2011



Source: Eurostat

Table VII.4 shows that the main nationalities of third-country nationals ordered to leave are more or less the same as those apprehended.

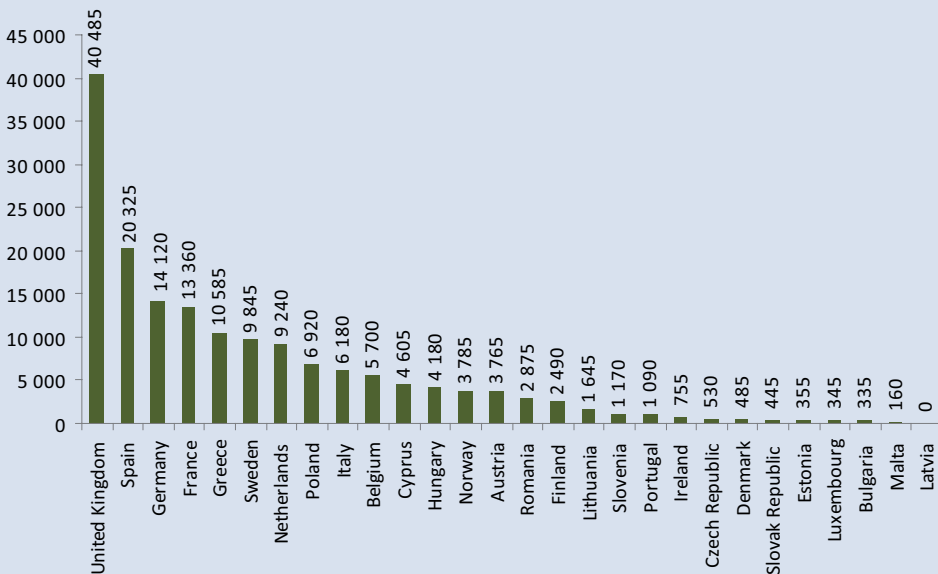
Table VII.4 - Third-country nationals ordered to leave, 20 main countries of citizenship, 2008-2011

2008		2009		2010		2011	
Albania	78 925	Albania	69 200	Albania	55 370	Morocco	39 020
Morocco	45 800	Morocco	41 795	Morocco	37 475	Afghanistan	36 645
Afghanistan	40 155	Afghanistan	34 940	Afghanistan	37 325	Pakistan	32 720
Iraq	34 130	Iraq	25 140	Algeria	27 245	Tunisia	27 160
Algeria	21 335	Algeria	23 080	Pakistan	20 175	Algeria	24 920
Brazil	19 080	Brazil	20 710	Iraq	17 360	Albania	16 905
India	18 795	China (incl. HK)	18 935	Nigeria	16 580	India	15 325
China (incl. HK)	18 620	Bolivia	18 015	China (incl. HK)	16 280	Nigeria	14 550
Pakistan	16 965	India	17 025	Brazil	15 945	China (incl. HK)	13 825
Turkey	15 860	Pakistan	16 775	India	15 490	Brazil	12 685
Nigeria	15 800	Nigeria	16 245	Tunisia	13 120	Russia	12 455
Ukraine	14 615	Tunisia	16 160	Serbia	13 030	Serbia	12 450
Tunisia	14 590	Turkey	15 190	Ukraine	12 460	Bangladesh	12 160
Bolivia	14 505	Palestinian territory	14 445	Bolivia	12 210	Iraq	11 990
Serbia	12 920	Somalia	14 140	Turkey	11 870	Ukraine	11 490
Somalia	11 625	Ukraine	13 420	Somalia	11 325	Turkey	11 440
Senegal	10 290	Russian Federation	10 665	Palestinian territory	11 150	Kosovo	8 765
Bangladesh	8 750	Senegal	10 285	Russian Federation	10 485	Somalia	8 750
Egypt	8 690	Bangladesh	9 615	Bangladesh	10 165	Iran	8 185
Palestinian territory	8 605	Serbia	9 395	Senegal	8 700	Bolivia	7 710

Source: Eurostat

Notes: No data for Luxembourg in 2008. No data for Norway.

Figure VII.7 - Third-country nationals returned to a third country, by (Member) State, total, 2011

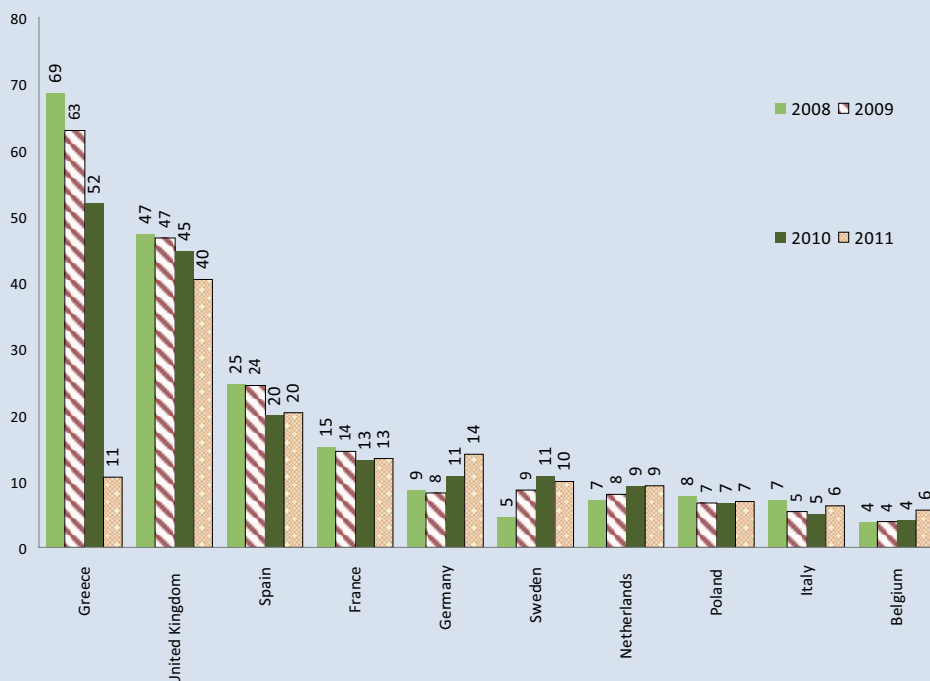


Source: Eurostat

By comparison, [Figure VII.7](#) shows the number of persons returned to a third country for 2011.

[Figure VII.8](#) shows that the number of third-country nationals has, like the statistics on apprehensions and on refusals at the external border, generally decreased 2008-2011

Figure VII.8 - Third-country nationals returned to a third country, ten main (Member) States, in 1 000s, 2008-2011



Source: Eurostat

Decreases in the flow of specific types of irregular migrant are also visible in other (Member) States. For example, in Austria the number of smugglers apprehended has been in decline since 2005, with numbers declining from 20 807 in 2005 to 6 674 in 2010. Smugglers were mainly from Austria and Greece (27 persons each), followed by smugglers from Turkey (21) and Afghanistan (16). The decline in numbers of recorded smuggled persons (- 35%) and smugglers (-31%) in 2010 as compared to 2009 is likely due to positive developments in the countries of origin Afghanistan, the Russian Federation (Chechen Republic), Serbia and the Kosovo.

Table VII.5 provides an overview of the 20 main countries of citizenship of third-country nationals returned 2008-2011.

Table VII.5 - Third-country nationals returned to a third country, 20 main countries of citizenship, 2008-2011

2008		2009		2010		2011	
Albania	69 145	Albania	62 680	Albania	50 520	Morocco	11 705
Morocco	13 560	Morocco	12 970	Morocco	12 645	Serbia	9 400
Brazil	9 170	Brazil	9 860	Serbia	8 630	India	7 575
Ukraine	9 050	Ukraine	7 700	Ukraine	7 790	Albania	7 495
Turkey	6 955	China (incl. HK)	7 105	India	7 790	Ukraine	7 165
Serbia	6 130	India	6 660	Brazil	7 670	Pakistan	6 250
Algeria	5 660	Turkey	5 590	China (incl. HK)	6 480	Russian Federation	6 230
Nigeria	5 275	Iraq	5 565	Iraq	5 755	Brazil	5 980
India	5 125	Algeria	5 440	Nigeria	5 300	Tunisia	5 730
China (incl. HK)	4 320	Nigeria	4 905	Algeria	5 200	China (incl. HK)	5 150
Russian Federation	3 760	Russian Federation	4 420	Pakistan	4 710	Algeria	4 545
Pakistan	3 740	Pakistan	4 210	Russian Federation	4 640	Nigeria	4 515
Iraq	3 670	Serbia	4 105	Turkey	4 555	FYROM	4 090
Moldova	3 430	Bolivia	3 590	Kosovo ¹²⁶	4 180	Afghanistan	3 910
Bolivia	2 975	Kosovo	3 450	Afghanistan	2 905	Kosovo	3 905
United States	2 890	United States	2 910	FYROM	2 765	Turkey	3 625
Tunisia	2 275	Moldova	2 735	Vietnam	2 635	Iraq	3 470
Bangladesh	2 100	Tunisia	2 315	Bangladesh	2 600	Bangladesh	2 535
Vietnam	2 060	Afghanistan	2 295	Georgia	2 460	United States	1 940
Malaysia	2 010	Vietnam	2 275	United States	2 380	Egypt	1 925

Source: Eurostat

Notes: No data for Cyprus, Luxembourg in 2008. No data for Latvia and Luxembourg in 2011

Other relevant statistics: Entry bans and negative decisions on asylum applications

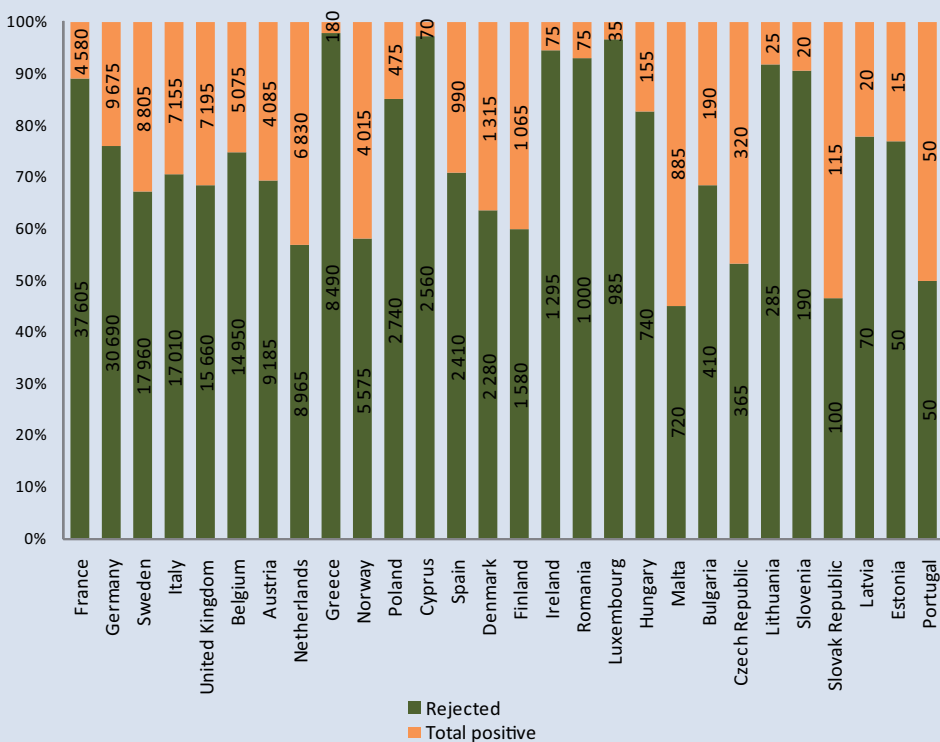
Three Member States (Austria, Czech Republic, Finland) provide statistics on entry bans. In Finland entry bans have increased markedly since 2008; however, this is largely due to an increase in entry-bans related to crimes; whereas bans related to irregular migration (e.g. fraud, irregular stay, etc.) have remained stable. In 2010, a total of 91 entry bans were issued to persons on the basis of irregular residence; a further nine were issued for arranging irregular immigration, and there were 15 entry bans issued for forgery or fraud (i.e. 115 entry bans related to irregular migration in total). Three Member States (Czech Republic, Latvia, Lithuania) provide statistics on carriers sanctioned for providing incorrect or incomplete passenger information. In Latvia 125 carriers were sanctioned in 2010 as compared with 83 in 2008 and 71 in 2009. In Lithuania only six carriers were sanctioned at Vilnius Airport in 2010; however, overall 64 were sanctioned 2006 to 2010.

¹²⁶ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence. All subsequent mentions of Kosovo are also understood to be within the context of this statement'

(Member) States also provide statistics to Eurostat on applications for asylum rejected and humanitarian status withdrawn. Such data may be *indicative* of potential absconders. For example, in **Germany** research¹²⁷ has shown that asylum-seekers whose cases ended with negative decisions are another major group of irregular migrants.

Figure VII.9 shows the number of first instances on application by (Member) States for 2011.¹²⁸ It shows that a large proportion of applications for asylum are rejected in the first instance across all Member States.

Figure VII.9 - First instance decisions on asylum applications, by (Member) State, ordered by decreasing number of rejection, 2011



Source: Eurostat

Figure VII.10 shows the trend in negative decisions 2008-2011 for the ten main (Member) States. It shows that in some (Member) States the number of negative decisions has declined in number (e.g. **Austria**, **Sweden**, **United Kingdom**, **Norway** and in **Greece** to 2010 and **Germany** from 2010 to 2011), which may demonstrate a smaller influx of applicants, an increase in the number of non-eligible applicants, or improvements in the asylum processing system. In **France**, **Italy**, **Belgium** the numbers have risen.

¹²⁷ Düvell/Vollmer 2011: 5

¹²⁸ Data extracted on 24.04.2012

Figure VII.10 - First instance negative decisions on asylum applications, main ten (Member) State, in 1 000s, 2008-2011



Source: Eurostat

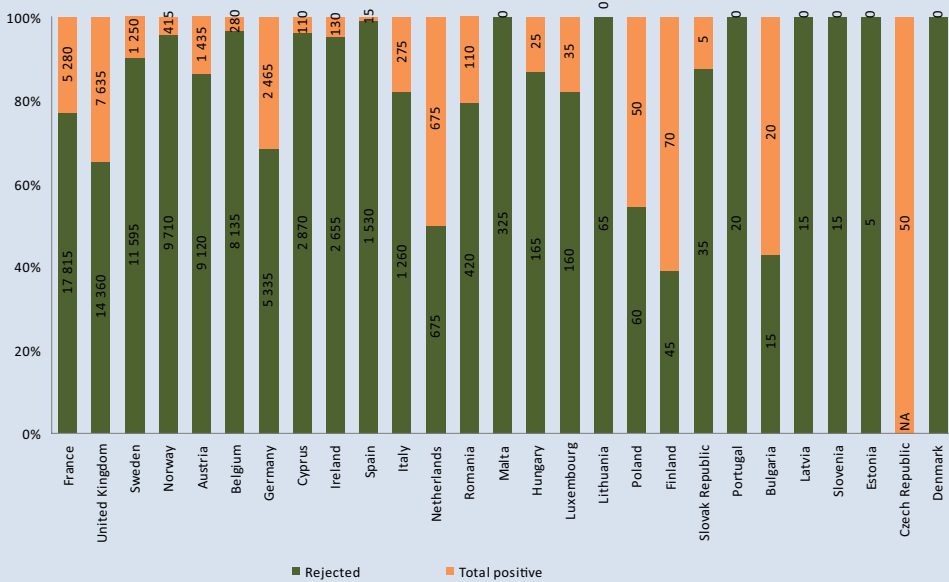
Figure VII.11 shows the number of final decisions for 2010.¹²⁹

Czech Republic only has data on positive decisions. Denmark only has data on negative decisions.

Figure VII.12 illustrates the trend in final decisions for the ten main (Member) States for 2010 from 2008 to (where available) to 2011.

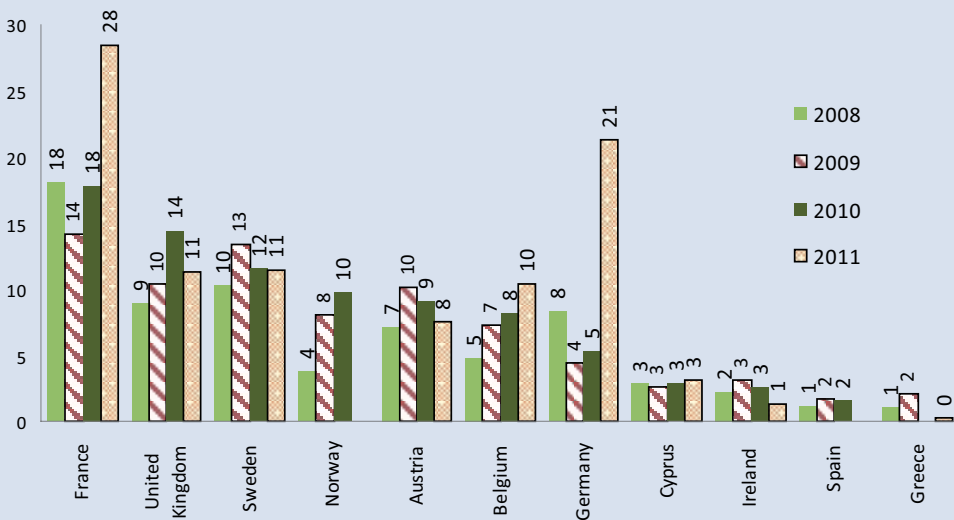
¹²⁹ Statistics extracted 24.04.2010.

Figure VII.11 - Final decisions on asylum applications, by (Member) State, ordered by decreasing number of rejection, 2010



Source: Eurostat

Figure VII.12 - Final negative decisions on asylum applications, main eleven (Member) State, in 1 000s, 2008-2011



Source: Eurostat

Notes: The figure for Greece in 2011 is below 1 000 (210) and is therefore represented as 0 in the graph above.

Costs of practical measures

Very few Member States were able to provide comprehensive statistics on the costs of implementing measures to reduce irregular migration. This is because practical measures are often implemented as part of general national policies and practices and are therefore difficult to separate into those which are aimed at reducing irregular migration and those which are designed for other purposes. For example, border management is aimed at preventing irregular migrants from entering, but also at facilitating the entry of legal migrants, at preventing the import of dangerous goods, at preventing terrorism and preventing the evasion of customs tax (for example).

Germany makes the point that the costs of reducing irregular migration are incurred by different levels of stakeholder: the European Commission and the EU agencies; national, regional and local authorities (police, courts, immigration authorities, etc.). Indeed, in many Member States the costs of practical measures have been financed in part through the EU, e.g. through the external borders fund and the Return Fund (see [Section 8.2](#)).

Prior to entry, **Latvia** gives an overview of costs of State Border Guard Training, as well as the establishment of immigration liaison officers. **Lithuania** provides statistics on the funds given to the government by the External Borders Fund in 2009 and the European Return Fund in 2009 and 2010. At the border, the border guard in **Finland** used €77.4 million on border checks in 2009 and in 2010, the costs increased to €89.2 million. The budget was set at a lower figure of 87.5 million euro. In **Malta** the *National Audit Office* published a Performance Audit Report in 2011 on *'Dealing with Asylum Applications'*, which outlined the accommodation and related costs in 2009 for migrants arriving irregularly in Malta at over €17.3 million. Some of the costs of return measures are described further in [Section 7.2.2](#).

ANNEX VIII: Bibliography

a) Statistical studies on numbers of irregular migrants in Europe

- ▶ CLANDESTINO Database on Irregular Migration available at: <http://irregular-migration.hwwi.de>
- ▶ CLANDESTINO Country reports for 12 EU Member States available at: <http://clandestino.eliamep.gr/clandestino-country-reports/#more-62>
- ▶ CLANDESTINO Research Project: Size and Development of Irregular Migration to the EU. Comparative Policy brief. Vogel, Dita; December 2009. http://clandestino.eliamep.gr/wp-content/uploads/2009/12/clandestino_policy_brief_comparative_size-of-irregular-migration.pdf;
- ▶ Düvell, Frank (ed.): *Illegal migration in Europe. Beyond control?* Houndsmill 2003
- ▶ EMN: *Illegally Resident Third-country Nationals in EU Member States: state approaches towards them, their profile and social situation.* January 2007;
- ▶ Jandl, Michael, Kraller, Albert *Links between legal and illegal migration* (2006), in Michel Poulain, Nicholas Perrin, Ann Singleton (eds.) *Towards the Harmonisation of European Statistics on International Migration (THESIM)*. Louvain-La-Neuve: UCL – Presses Universitaires de Louvain, pp.337-378;
- ▶ Jandl, Michael: *The Estimates of Illegal Migration in Europe.* In: *Studi Emigrazione/ Migration Studies* XLI (153), p. 141-155;
- ▶ Morehouse, C and M. Bloomfield (2011) *Irregular Migration in Europe* for the Migration Policy Institute (MPI), December 2011, available at: <http://www.migrationpolicy.org/pubs/TCMirregularmigration.pdf>
- ▶ PROMINSTAT: *Statistics on Migration, Integration and Discrimination in Europe.* PROMINSTAT Final Report; Vienna: Kraller Albert & Reichel David: ICMPD 2010;
- ▶ Triandafyllidou, Anna: *Irregular migration in Europe. Myths and Reality.* Ashgate 2010;
- ▶ Zhang, Chun Li: *Developing Methods for Determining the Number of Unauthorized Foreigners in Norway.* In *Learning About Illegals: Issues and Methods.* FoU report. June 2008. Available on <http://www.udi.no/upload/FOUrapport%20SSB%20FAFO.pdf>

b) Other relevant studies

- ▶ Apap, Joanna et al: *Regularisation of illegal Aliens in the European Union.* Summary Report of a Comparative study. In: *European Journal of Migration and Law* 2000, p.263-308;
- ▶ Bade, Klaus: *Legal and Illegal immigration into Europe: Experiences and Challenges.* In: *European Review*, 12. 2004, Nr. 3, P. 339-375;
- ▶ Baldaccini, Anneliese: *The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Return Directive.* In: *European Journal of Migration and Law.* Volume 11 (2009);

- ▶ *Battistella*, Graziano: Irregular Migration. In: World Migration 2008: Managing labour mobility in the Evolving Global Economy. IOM, Geneva 2008, p. 201-233;
- ▶ Bell, Mark: Irregular Migrants: Beyond the Limits of Solidarity? In: Malcolm Ross, Yuri Borgmann-Prebil (ed.): Promoting Solidarity in the European Union, p. 151-165;
- ▶ Bogusz, Barbara et al. (eds.): Irregular Migration and Human Rights: Theoretical, European and International Perspectives. 2004;
- ▶ Brunovski, Annette and Lise Bjerkan: *Research with irregular migrants in Norway. Methodological and ethical challenges and emerging research agendas. In Learning About Illegals: Issues and Methods.* FoU report June 2008. Available at: <http://www.udi.no/upload/FOUrapport%20SSB%20FAFO.pdf>
- ▶ Carrera, Sergio/ Merlino, Massimo: Assessing EU Policy on Irregular Immigration under the Stockholm Programme. 2010;
- ▶ Carrera, Sergio/ Merlino, Massimo: Undocumented Immigration and Rights in the EU. Addressing the Gap between Social Science Research and Policy-Making in the Stockholm Programme? 2009;
- ▶ Cherti, Myriam 'Beyond Irregularity: Towards a sustainable approach to dealing with irregular migration from sub-Saharan Africa to Europe'. Institute for Public policy and Research (funded by the EU). More information available at: <http://www.ippr.org.uk/research/themes/project.asp?id=4407&pid=4407&tid=4270>
- ▶ Cholewinski, Ryszard: Irregular Migration and Mixed Flows. Background Paper World Migration Report 2010;
- ▶ Cholewinski, Ryszard: Irregular migrants: access to minimum social rights; 2006 http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=1969
- ▶ CLANDESTINO Research Project: *Ethical issues in investigating irregular migration*; (2009) http://clandestino.eliamep.gr/wp-content/uploads/2009/11/ethics_policy-brief.pdf
- ▶ CLANDESTINO Research Project: *Methodological Issues in Irregular Migration Research (2008)* http://clandestino.eliamep.gr/wp-content/uploads/2009/10/clandestino_report-on-methodological-issues_final12.pdf
- ▶ CLANDESTINO Research Project: *Ethical Issues in Irregular Migration Research (2008)* http://clandestino.eliamep.gr/wp-content/uploads/2009/11/clandestino_ethical-issues-in-irregular-migration-research_final.pdf
- ▶ CLANDESTINO Research Project: *Irregular Migration in Europe: Myths and Realities* <http://clandestino.eliamep.gr/wp-content/uploads/2010/04/irregular-migration-in-europe-april-20101.pdf>
- ▶ CLANDESTINO Research Project: *Undocumented and irregular migration: policy developments, data and social implications* <http://clandestino.eliamep.gr/wp-content/uploads/2010/01/final-report-brussels-conference.pdf>
- ▶ CLANDESTINO Research Project: Pathways into Irregularity: The Social Construction of Irregular Migration. Comparative Policy brief Düvell, Franck; December 2009. available at: http://clandestino.eliamep.gr/wp-content/uploads/2009/12/clandestino_policy_brief_comparative_pathways.pdf

- ▶ CLANDESTINO Research Project: Political Discourses on Irregular Migration in the EU: Comparative Policy brief. Vollmer, Bastian, December 2009 http://clandestino.eliamep.gr/wp-content/uploads/2009/12/clandestino_policy_brief_comparative_discourses.pdf;
- ▶ Cyrus, Norbert: Being illegal in Europe: Strategies and Policies for fairer Treatment of Migrant Domestic Workers. In: Helma Lutz (ed.): Migration and domestic work. A European perspective on a global theme. Aldershot 2008, p. 177-194;
- ▶ European Union Fundamental Rights Agency (FRA): *The situation of irregular immigrants in the European Union* (April 2009 – December 2010). Information available at: http://fra.europa.eu/fraWebsite/research/projects/proj_irregularimmigrants_en.htm;
- ▶ FRA Report “Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner”; http://fra.europa.eu/fraWebsite/media/pr-080311_en.htm.
- ▶ International Centre for Migration Policy Development (ICMPD) REGINE. *Final Report. Regularisations in Europe: Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU*. Martin Baldwin-Edwards & Albert Kraler, ICMPD (2009) Ref. JLS/B4/2007/05;
- ▶ International Council on Human Rights Policy: Irregular Migration, Migrants Smuggling and Human Rights: Towards Coherence. Geneva 2010;
- ▶ Jordan, Bill/ Düvell, Frank: Irregular migration: Dilemmas of Transnational Mobility. Cheltenham 2002. Sciortino, Guisepppe: Between Phantoms and Necessary Evils. Some Critical Points in the Study of Irregular Migrations to Western Europe. In: IMIS-Beiträge 24, p. 17-24;
- ▶ Martin PL. (1993) *Trade and Migration: NAFTA and Agriculture*. Washington D.C.: Institute for International Economics. pp457-76
- ▶ Migrants Rights Network: ‘Irregular Migrants: Migrants’ Rights Network Working for the rights of all migrants the urgent need for a new approach’ May 2009. Available at: http://www.migrantsrights.org.uk/downloads/policy_reports/irregularimmigrants_fullbooklet.pdf
- ▶ Øien, Cecilie and Silje Sønsterudbråten: *No way in, no way out? A study of living conditions of irregular migrants in Norway*, Fafo report March 2011. Available on <http://www.udi.no/PageFiles/24116/20194%20Fafo%20report%20on%20irregular%20migrants%20living%20conditions%202011.pdf> .

European Commission

Practical Measures to Reduce Irregular Migration

Luxembourg: Publications Office of the European Union

2013 — 135 pp. — 17.6 X 25 cm

ISBN 978-92-79-27532-6

doi:10.2837/803

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- via EU Bookshop (<http://bookshop.europa.eu>);
- at the European Union's representations or delegations.
You can obtain their contact details on the Internet (<http://ec.europa.eu>) or by sending a fax to +352 2929-42758.

Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>).

Priced subscriptions (e.g. annual series of the *Official Journal of the European Union* and reports of cases before the Court of Justice of the European Union):

- via one of the sales agents of the Publications Office of the European Union (http://publications.europa.eu/others/agents/index_en.htm).

This Synthesis Report summarises the main findings of the National Reports for the EMN Study on *Practical Measures to Reduce Irregular Migration* undertaken by EMN National Contact Points from 22 Member States (**Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom**) plus Norway.

The overall purpose of this study was to provide an overview of existing approaches, mechanisms and measures to reduce irregular migration in the EU and Norway. In particular, its aim is to inform policymakers and practitioners about the practical measures that have proved effective and proportionate in addressing the issue of irregular migration and to contextualise national policies and practices within the overall EU policy framework. A further aim was to present the available statistics and the methods of data collection used by Member States to estimate the irregular migrant population.

The Synthesis Report, as well as the National Reports upon which this synthesis is based, are available from <http://www.emn.europa.eu> under “EMN Studies.” Several of the National Reports are available in the Member States’ national language, as well as in English.



ISBN 978-92-79-27532-6



doi:10.2837/803