



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

Common Template for EMN Study 2020

17 July 2020, Final Version

Action: EMN NCPs are asked to complete this template and submit their National Report by 2 November 2020

Further clarifications can be provided by directly contacting the EMN Service Provider (ICF) at emn@icf.com; Sara Bagnato (Sara.Bagnato@icf.com); Tatiana Kistruga (Tatiana.Kistruga@icf.com); Norma Rose (Norma.Rose@icf.com).

1 BACKGROUND AND RATIONALE FOR THE STUDY

Member States are confronted with the situation of third-country nationals who no longer or have never fulfilled the conditions of stay, who were denied a residence permit or who have exhausted all legal options against the enforcement of their return decision. The Return Directive (Directive 2008/115/EC) sets the obligation for Member States to issue a return decision for third-country nationals once it has been established that they are not eligible for legal stay.¹ This is aimed at reducing situations of legal uncertainty for third-country nationals, so that any third-country national physically present in a Member State should be either considered as legally staying – and enjoying a valid right to stay – or as illegally staying and be issued a return decision.²

However, in practice, a certain share of third-country nationals issued with a return decision do not leave the territory of Member States. National authorities might be unable to proceed with removals due to either legal or practical obstacles. Issuance of a return decision allows for a period of voluntary departure, however a third-country national could be unwilling to leave voluntarily. Forced return may be impossible to enforce without some level of co-operation from the third-country national. In other cases, national authorities postpone return to respect the principle of non-refoulement, individual circumstances or other practical reasons impeding the enforcement of a return decision.³ Additionally, there are cases of third-

¹ Article 6 of the Return Directive. The directive applies to all EU countries except Ireland, nevertheless the concepts covered by the study are also relevant to the Member State.

² European Commission, Return Handbook (section 1.2 'illegal stay').

For the purpose of this study, illegal stay and irregular stay (as used in the EMN Glossary) will be used interchangeably.

³ According to Article 9 of the Return Directive, Member States should postpone removal where it would infringe the respect of the principle of non-refoulement or where the return decision is reviewed by a competent national authority. Member States may postpone return by taking into account the specific individual circumstances of the third-country national or for practical reasons impeding removal (lack of identification of the third-country nationals or transport capacity).

country nationals whose residence permits expire and renewal is not secured, or who for other reasons do not or no longer fulfil conditions for legal stay, and who were not issued a return decision for a variety of administrative and practical reasons. In some cases, third-country nationals may disappear from the supervision of the competent authorities involved. In other cases, migrant who entered illegally remained undetected by migration authorities.

These situations may result in long-term or protracted situations of illegal stay and legal uncertainty over several years, as well as deplorable living conditions.⁴ Examples include homelessness, (mental) health issues, addiction issues, falling victim to organised crime (i.e. labour and sexual exploitation) or involvement in crimes, all of which contribute to the detriment of the third-country national concerned, national governments and the communities in which irregular migrants reside.

In terms of practices, the actions of national governments, and local authorities (cities, regions) may be contradictory. Central authorities are responsible for achieving the objectives of the national migration policy, such as ensuring the prevention and fight against illegal stay and enforcement of return decisions. Local authorities (municipalities and regions) are at the forefront of the practical consequences of third-country nationals irregularly staying for a prolonged time and are confronted with challenges such as ensuring access to basic services and public order. Accordingly, complementarity or tension can result between policy objectives at the central level aimed at achieving the return of irregular migrants and the practical realities faced at the local level. That is, having to accommodate the presence of irregular migrants and provide basic services when return does not happen and when access to mainstream services is not legally possible due to their residence status. Ultimately, the applicable legal framework, demarcation of competences and institutional structure also play a role in the process of cooperation and communication between central authorities and municipalities.

Recent research was carried out by the City Initiative on Migrants with Irregular Status in Europe (C-MISE) examining policies and measures implemented in 11 cities across 10 Member States considering the applicable legal framework.⁵ It showed that cities' responses ranged from adopting policies aimed at discouraging irregular migrants from residing in their territories to adopting measures that include them in the provision of some municipal services.

While existing research offered some insights into approaches adopted by Member States towards long-term irregular migrants, policies and practical measures are changing rapidly and there is currently no recent and comprehensive EU-wide overview regarding this group of third-country nationals. This study aims to respond to this gap.

2 EU LEGAL AND POLICY CONTEXT

The return of illegally staying third-country nationals has been an important issue in the EU's policy agenda on migration over the past 20 years and has accentuated since 2015, as illustrated by the emphasis on enforcement of return in the European Agenda on Migration. There is little recent information available on the number of persons staying illegally in the EU Member States.⁶ Eurostat data provides only rough estimate of 'third-country nationals found to be illegally present' in the EU as it covers persons who are apprehended or otherwise come to the attention of national immigration authorities. Accordingly, not all irregularly staying migrants are included in these figures. In 2017, the European Commission (in its communication on the delivery of the European Agenda on Migration) estimated that around 1 million

⁴ Refugee Law Initiative in cooperation with the Centre for International Criminal Justice (2016) *Undesirable and Unreturnable Migrants*. This research concerned excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed. Available at: <https://cicj.org/wp-content/uploads/2016/09/Undesirable-and-Unreturnable-Full-report.pdf>.

⁵ Delvino, N. (2017) *European Cities and Migrants with Irregular Status: Municipal initiatives for the inclusion of irregular migrants in the provision of services*, Oxford: Centre on Migration, Policy and Society (COMPAS) - University of Oxford. Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/City-Initiative-on-Migrants-with-Irregular-Status-in-Europe-CMISE-report-November-2017-FINAL.pdf>

⁶ A EU-wide research project on this topic carried out in 2008 found an estimate of around 3.8 million of persons were staying illegally in the EU ('Clandestino' project, <http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report-november-2009.pdf>)

third-country nationals were irregularly staying in the EU. More specifically, extrapolating from statistics on the numbers of return decisions which could not be enforced (amounting on average to ca 60% out of 500 000 per year), one can assume that the issue concerns up to 300 000 migrants per year.⁷

In terms of the applicable legislative framework at EU level, the return of third-country nationals as set by the Return Directive is the relevant starting point for this study.⁸ The Return Directive lays down common EU standards on forced return and voluntary departure. It has a two-fold approach: on the one hand, it provides that Member States are obliged to issue return decisions to all third-country nationals staying irregularly on the territory of a Member State. On the other hand, it emphasises the importance of implementing return measures with full respect for the fundamental rights and freedoms and the dignity of the individual returnees, including the principle of 'non-refoulement'. As a result, any return may only be carried out in compliance with EU and other international human rights' guarantees.

The Return Directive provides a framework which imposes an obligation on Member States to issue a return decision to any third-country national illegally staying on their territory, unless there are compassionate, humanitarian reasons not to do so, or if there is a pending procedure for renewing a residence permit.⁹ The respect of this obligation aims at reducing situations of legal uncertainty for third-country nationals since they can be either considered as legally staying, and enjoying a valid right to stay, or illegally staying and subject to a return procedure.

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

While postponement of removal of irregular migrants is allowed under the Directive, the legal situation of this category of third-country nationals is only partially addressed.¹⁰ In cases of postponement of return, the Return Directive refers to a set of minimum basic rights and procedural guarantees for third-country nationals.¹¹ These 'basic rights' include family unity, emergency health care, basic education for minors and taking into account the needs of vulnerable persons.¹² In a 2014 case, the Court of Justice of the EU (CJEU) ruled that Member States must cover other basic needs to ensure that emergency health care and essential treatment of illness are in fact made available during the period in which that Member State is required to postpone removal.¹³ Additionally, according to the Return Directive, Member States should also provide a third-country national with a written document confirming the postponement of their removal, in order for that person to be able to prove his or her situation in the event of administrative controls or

⁷ Commission Staff Working Document Fitness Check on EU Legislation On Legal Migration {SWD(2019) 1056 Final},2/2, p. 84. See also Eurostat data on non-EU citizens found to be illegally present (*migr_eipre*), ordered to leave the EU (*migr_eiord*), and returned (*migr_eirtn*, *migr_eirt_vol*, *migr_eirt_ass*).

⁸ Ireland does not participate in the Return Directive. National legislation in relation to return applies.

⁹ Article 6 of the Return Directive.

¹⁰ Recital 12 of the Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (hereafter the Return Directive): "*The situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed. Their basic conditions of subsistence should be defined according to national legislation. In order to be able to demonstrate their specific situation in the event of administrative controls or checks, such persons should be provided with written confirmation of their situation. Member States should enjoy wide discretion concerning the form and format of the written confirmation and should also be able to include it in decisions related to return adopted under this Directive*".

¹¹ Article 14 of the Return Directive.

¹² Article 14 of the Return Directive.

¹³ CJEU, *Abdida*, case C-562/13 of 18 December 2014, ECLI:EU:C:2014:2453. See also Opinion of Advocate General Bot that includes means to secure accommodation as part of 'decent standard of living' (ECLI:EU:C:2014:2167).

While there is no general legal obligation under EU law to provide for the basic needs of all third-country nationals pending return, the Commission encourages Member States to do so to ensure humane and dignified conditions of life for returnees (Return Handbook, p. 75).

checks.¹⁴ In practice, such a document is not always issued although in another case, the CJEU stated that while Member States have wide discretion concerning the form and format of the written confirmation, they must provide it to third-country nationals when there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of the Return Directive.¹⁵ Lastly, the Return Directive prohibits detention where prospects for removal no longer exist.¹⁶

There is no political consensus nor harmonisation at EU level on the approach to this category of third-country nationals.¹⁷ While the Return Directive foresees some basic rights, also referring to the respect of the Charter of Fundamental Rights, international law and the European Convention for Human Rights in the implementation of the Directive, the way Member States approach this category of third-country nationals is largely determined by domestic law and practices.

Studies have shown that practices vary considerably across Member States. Several trends were identified, considering that a combination of these situations may be encountered in the same Member State:¹⁸

- Third-country nationals are only issued a return decision and do not have rights that are in addition to those referred to in the Return Directive.
- Third-country nationals receive a certificate or other written confirmation to stay in the territory of the Member State until they are removed, yet it is not considered as a fully-fledged residence permit. This is sometimes referred to as a 'toleration status'.
- Third-country nationals may have their return postponed but do not receive a written confirmation. In practice, their presence is 'tolerated' until the return decision can be implemented.

As mentioned in the Return Directive, third-country nationals may receive a decision granting temporary residence to persons who are not or cannot be returned for humanitarian or other policy considerations.¹⁹ In this event, any pending return procedures should be closed, and if a return decision was already issued, it should be withdrawn or suspended. Thus, Member States can either withdraw or suspend the return decision, considering the nature and duration of the right to stay granted as well as the need to ensure effective return procedures.

The framework provided in the Return Directive should be read in conjunction with other legal instruments which also apply to the category of third-country nationals falling under the scope of the study. For example, national authorities' approach to vulnerable persons should also consider obligations stemming from the 1989 UN Convention on the Rights of the Child²⁰, from the EU's framework on victims of trafficking in human beings.²¹ Additionally, albeit the Return Directive is silent on access of irregular third-country nationals to other social assistance than emergency healthcare and access to education, other instruments may nonetheless apply. For instance, the European Committee of Social Rights²² laid down

¹⁴ Article 14(2) of the Return Directive.

¹⁵ CJEU, *Mahdi*, case C-146/14 PPU of 5 June 2014, ECLI:EU:C:2014:1320.

¹⁶ Article 15(4) of the Return Directive.

¹⁷ Lutz, F. (2018) *Non-removable Returnees under Union Law: Status Quo and Possible Developments*, in *European Journal of Migration and Law* 20 (2018) 28–52.

¹⁸ EMN 2010 Study, FRA 2011 Study on the situation of third-country nationals pending return/removal and 2013 Study on the situation of third-country nationals pending return/removal.

¹⁹ Article 6(4) of the Return Directive and CJEU ruling in the *Mahdi* case, C-146/14. The Return Handbook provides a number of criteria that Member States may take into account for granting permits related to the individual and policy situation. These criteria can consider the cooperative/non-cooperative attitude of the returnee, the length of factual stay of the returnee in the Member State, the integration efforts made by the returnee, the personal conduct of the returnee, its family links, etc. (Return Handbook, p. 77).

²⁰ UN Convention on the Rights of the Child, 1989, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

²¹ As consolidated in Directive 2011/36/EU and Council Directive 2004/81.

²² The European Committee of Social Rights (previously, the Committee of Independent Experts on the European Social Charter) is a regional human rights body that oversees the protection of certain economic and social rights in most of Europe. The European Committee of Social Rights was established under the auspices of the Council of Europe, pursuant to articles 24 and 25 of the 1961 European Social Charter. The Committee monitors implementation of the 1961 Charter, the 1988 Additional Protocol, and the 1996 Revised European Social Charter. It is unique among regional human rights mechanisms for its collective (as opposed to individual) complaint mechanism, and the flexibility it allows States in deciding which provisions of the Charter to accept.

further specifics on the situation of irregularly staying migrants in their decision in the case *Conference of European Churches vs. the Netherlands*.²³ This decision made clear that, in light of its established case-law, shelter must be provided not only to migrant children but also to adult migrants in an irregular situation and even when they are requested to leave the country.

3 STUDY AIMS AND PRIMARY QUESTIONS

The overall aim of this study is to provide an overview of existing policies and practices in Member States and Norway towards third-country nationals in a prolonged situation of illegal stay. The study aims to explore the responses and approaches to bring such situations to an end both by central and local authorities, and to mitigate the social consequences for the affected third-country nationals. As mentioned, these could range from providing access to basic services or support, other indirect measures to encourage eventual return to their country of origin or other non-EU country, or options to obtain a legal status.

More specifically, this study covers the EU Member States and Norway and aims to:

- Determine the legislation and policies of central, regional and local authorities towards long-term irregular migrants;
- Examine the policies and practices in place to provide access to public services and rights to long-term irregular migrants in the realm of Member States' obligation to cater for basic needs;
- Examine existing practices in Member States and Norway to identify cases of exploitation and abuse among long term irregular migrants;
- Explore cooperation mechanisms between central, regional and local authorities if and when implementing policies targeting this category of third-country nationals;
- Examine the policies and practices in place in Member States and Norway to end long term illegal stay, including return and granting authorisation to stay;

To this end, the below primary research questions will be addressed:

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

4 SCOPE OF THE STUDY

The overall focus of this study is on **long-term irregular migrants** in a situation of protracted illegal stay, namely:

- Third-country nationals subject to a return decision and whose return, despite the return decision becoming final, was not enforced or was postponed for legal (non-refoulement principle, medical or humanitarian reasons) or other practical reasons (e.g. non-cooperation on the part of the person concerned or of the country of origin or other administrative reasons), and

²³ For more information please see: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-90-2013-conference-of-european-churches-cec-v-the-netherlands?inheritRedirect=false

- Third-country nationals who do not or no longer fulfil conditions for entry and stay in the territory of a State (as set out in the Schengen Borders Code (Regulation (EU) 2016/399) or other conditions for entry, stay or residence in that EU Member State), and who were not issued a return decision because they were unknown to the authorities.

In the latter case, despite the complexity in the determination of the duration of stay of the irregular migrant, authorities are usually able to distinguish between newly arrived irregular migrants and those that have already been in the Member State for a considerable amount of time before detection (of their illegal stay).

The study will focus on the cooperation between central authorities and municipalities in the implementation of national policies on irregular migration, as well as the margin of discretion of local authorities in the provision of services to third-country nationals. Where relevant, cooperation between municipal authorities and civil society organisations will also be explored.

More specifically, the study aims to examine the type of access to mainstream services of these target groups. It also aims to identify the type of services accessible to a person without a residence permit or other form of authorisation.

The study thus aims to map possible responses to end such long-term irregularity. Various measures directly relate to the enforcement of a return decision such as Assisted Voluntary Return (AVR) programmes or other incentives to return were already captured in numerous other studies and discussions at expert group level and are not the primary focus of this study.²⁴ This study will rather investigate measures which may indirectly relate to the promotion of return – either in the country of origin or another third-country – such as restricted access to mainstream services or specific programmes geared towards third-country nationals in a prolonged situation of illegal stay. Other possible responses to be explored include legal stay options for third-country nationals based on an integration criterion (e.g. length of stay, work, social and family ties, or education reasons). Additionally, Member States may also consider granting a temporary residence permit to migrants in an irregular situation who cooperate with the justice system, either as victims of trafficking in human beings or as witnesses of other offences or crimes.²⁵

While the reasons for issuing the return decision as well as the reasons for the return decision not being enforced or postponed could play a role in the measures implemented by national authorities, their examination does not fall within the scope of this study.

The Study covers the period from 2015 – October 2020.

5 RELEVANT SOURCES AND LITERATURE

EMN Studies and other sources

- EMN (2017) The effectiveness of return in the EU. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_return_study_synthesis_report_final_en.pdf
- EMN (2016) Approaches to rejected asylum seekers. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf
- Report EMN Expert Seminar Latvia (2017) Non-removable Returnees under European Union Law. Accessible: http://www.emn.lv/wp-content/uploads/1.Lutz_non-removables-EMN-seminar-handout.pdf
- EMN (2012) Practical Measures to Reduce Irregular Migration. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/00a_emn_synthesis_report_irregular_migration_october_2012_en.pdf

²⁴ Reference is made to the activities on these topics carried out by the EMN Return Experts Group.

²⁵ Under Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

EMN AHQs

- EMN (2017) Ad-hoc query on the cost of a forcible removal of the irregular third country nationals. Accessible: http://www.emnitalyncp.it/wp-content/uploads/2018/02/029_hr_ad-hoc_query_on_the_cost_of_a_forcible_removal_of_the_irregular_tcns_wider.pdf
- EMN (2019) Ad-hoc query on children with prolonged stay without a permanent right of residence.

Other policy documents, reports and studies (chronological order)

- European Commission (2020) *Compilation of national practices related to Covid-19 related extensions of legal stay*. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/handbook-annex-41_en.pdf
- European Commission (2017) *Communication on a more effective return policy in the EU – a renewed action plan* and Recommendation (EU) 2017/432 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, COM (2017)200. Accessible: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32008L0115>
- Return Directive 2008/115/ EC, complemented by ECJ case law and the European Commission's "Return Handbook" (Commission Recommendation C(2015)6250 of 1.10.2015)
- European Committee on Social Rights (2014). Decision *Conference European Churches vs. The Netherlands*. Accessible: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-90-2013-conference-of-european-churches-cec-v-the-netherlands?inheritRedirect=false
- European Commission (2013) *Situation of third-country nationals pending postponed return/removal in EU MS*. Accessible: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/irregular-migration-return/return-readmission/docs/11032013_sudy_report_on_immigration_return-removal_en.pdf
- CJEU, Judgment of 14 December 2014, case C-562/13 [GC], *Abdida*, EU:C:2014:2453
- Ataç I, Schütze T., Reitter V. (2020) *Local responses in restrictive national policy contexts: welfare provisions for non-removed rejected asylum seekers in Amsterdam, Stockholm and Vienna*, *Ethnic and Racial Studies*, 43:16, 115-134.
- Leerkes A., Van Houte M. (2020) *Beyond the deportation regime: differential state interests and capacities in dealing with (non-)deportability in Europe*, *Citizenship Studies*, 24:3, 319-338.
- Timmerman, R., Leerkes, A., & Staring, R. (2019) *Safe reporting of crime for migrants with irregular status in the Netherlands*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
- González Beilfuss, M. (2019) *Safe reporting of crime for migrants with irregular status in Spain*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
- Taverri, S. B. (2019) *Safe reporting of crime for victims and witnesses with irregular migration status in Italy*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
- Van Den Durpel, A. (2019) *Safe reporting of crime for migrants with irregular status in Belgium*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
- Hinterberger K.F. (2020) *Regularisierungen irregulär aufhältiger Migrantinnen und Migranten. Deutschland, Österreich und Spanien im Rechtsvergleich*, Nomos. Accessible : <https://www.nomos-elibrary.de/10.5771/9783748902720/regularisierungen-irregulaer-aufhaeltiger-migrantinnen-und-migranten>.
- Hinterberger K.F. (2019) 'An EU Regularization Directive. An effective solution to the enforcement deficit in returning irregularly staying migrants', *Maastricht Journal of European and Comparative Law*, n 26, 736–769.
- Lutz, F. (2018) *Non-removable Returnees under Union Law: Status Quo and Possible Developments*, in *European Journal of Migration and Law* 20 (2018) 28–52

- Menezes Queiroz, B. (2015) *Illegally staying in the EU: an analysis of illegality in EU migration law*, Accessible: https://cadmus.eui.eu/bitstream/handle/1814/38145/2015_Queroz.pdf?sequence=1&isAllowed=y
- Fundamental Rights Agency (2017) “Fundamental rights of migrants in an irregular situation who are not removed”, available at <https://fra.europa.eu/en/publication/2017/fundamental-rights-migrants-irregular-situation-who-are-not-removed>
- Rosenberger, S., Koppes, S. (2018) *Claiming control: cooperation with return as a condition for social benefits in Austria and the Netherlands*. Comparative Migration Studies 6, 26, available at: <https://comparativemigrationstudies.springeropen.com/track/pdf/10.1186/s40878-018-0085-3>
- Delvino, N. (2017) *European Cities and Migrants with Irregular Status: Municipal initiatives for the inclusion of irregular migrants in the provision of services*, Centre on Migration, Policy and Society (COMPAS), University of Oxford. Accessible: <https://www.compas.ox.ac.uk/wp-content/uploads/City-Initiative-on-Migrants-with-Irregular-Status-in-Europe-CMISE-report-November-2017-FINAL.pdf>
- Peyronnet, C. (2017) *Undesirable and Unreturnable Migrants under French Law: Between Legal Uncertainty and Legal Limbo*, Refugee Survey Quarterly, 2017, 36, 35–60
- Centre for International Criminal Justice (2016) *Undesirable and unreturnable? Policy challenges around excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed*. London: University of London. Accessible: <https://cicj.org/wp-content/uploads/2016/09/Undesirable-and-Unreturnable-Full-report.pdf>
- Fundamental Rights Agency (2012) *Practical guidance in the area of asylum, migration and borders*, available at: <https://fra.europa.eu/en/publication/2013/practical-guidance-area-asylum-migration-and-borders>
- Fundamental Rights Agency (2011) *Fundamental rights of migrants in an irregular situation in the European Union*, available at: <https://fra.europa.eu/en/publication/2012/fundamental-rights-migrants-irregular-situation-european-union>
- Kox M. (2009) *Het leven gaat door. Een onderzoek naar de effecten van het illegalenbeleid op het leven van uitgeprocedeerde asielzoekers in Utrecht*. Stichting LOS, Available (in Dutch) through: <http://www.stichtinglos.nl/sites/default/files/los/files/Het%20leven%20gaat%20door-def.pdf>

6 DEFINITIONS

There are several key terms used in this template. The definitions listed below are defined with help from the **EMN Glossary**,²⁶ version 6. Please see the table below.

Term	Definition
Entry ban	An administrative or judicial decision or act prohibiting entry into and stay in the territory of the EU Member States for a specified period, accompanying a return decision.
Family members	A third-country national, as specified in Article 4(1) of Directive 2003/86/EC (normally members of the nuclear family – i.e. the spouse and the minor children), who has entered the territory of the European Union for the purpose of family reunification
Forced return	The process of going back – whether in voluntary or enforced compliance with an obligation to return – to one’s country of origin, a country of transit in accordance with EU or bilateral readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted (Article 3(3) of the Return Directive).
Illegal or irregular stay	The presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Art. 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.

²⁶ Available at: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en.

Term	Definition
Irregular migration	The movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.
Non-refoulement	A core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation.
Overstayer	A person remaining in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered an EU State, but who has stayed beyond the expiry of his/her visa and/or residence permit.
Regularisation	State procedure by which illegally staying third-country nationals are awarded a legal status.
Residence permit	An authorisation issued using the format laid down in Regulation (EC) No 1030/2002 entitling its holder to stay legally on the territory of a Member State.
Return	The movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.
Return decision	An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
Social protection benefits	For the purpose of this study please refer to the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum – income support, assistance in the case of illness, or pregnancy, and parental assistance.
Postponement of removal	(Temporary) suspension of removal of a third-country national who has received a return decision but whose removal is not possible either for humanitarian reasons (as their removal would violate the principle of non-refoulement or due to the third-country national's physical state or mental capacity) or for technical reasons (such as lack of transport capacity or failure of the removal due to lack of identification or the country of origin's refusal to accept the person) and for as long as a suspensory effect is granted in accordance with Art. 13(2) of Council Directive 2008/115/EC (Return Directive).
Third-country national	Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.
Trafficking in human beings	The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. ²⁷
Voluntary departure	Compliance with the obligation to return within the time limit fixed for that purpose in the return decision.

²⁷ Article 2 par.1 of the Anti-trafficking Directive

Term	Definition
Vulnerable person	Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Art. 21 of Directive 2013/33/EU (Recast Reception Conditions Directive)).

7 ADVISORY GROUP (CORE AND WIDER GROUP)

An “Advisory Group” (AG) has been established within the context of this Study for the purpose of providing support to EMN NCPs during the development of the specifications for the Study, as well as the drafting of the Synthesis Report. In addition to COM, and the EMN Service Provider (ICF and the Odysseus), the members of the AG for the Study include EMN NCPs from BE, EE, FI, LU, SE, SI, NL and NO. NL NCP is the chair of the Advisory Group.

EMN NCPs are invited to send any requests for clarification or further information on the Study to the following representatives of the core AG:

Organisation	Name	Contact details
NL EMN NCP (Chair)	Hans LEMMENS	HPM.lemmens@ind.nl
BE EMN NCP	Ina VANDENBERGHE, David VOGEL, Bram DEVOS	ina.vandenbergh@ibz.fgov.be ; david.vogel@ibz.fgov.be ; bram.devos@ibz.fgov.be
EE EMN NCP	Barbara ORLOFF	Barbara.orloff@sisekaitse.ee
FI EMN NCP	Rafael BÄRLUND	Rafael.Barlund@migri.fi
HR EMN NCP	Ivana PERLIĆ GLAMOČAK	iperlic@mup.hr
LU EMN NCP	Florence HALLACK-WOLFF, Adolfo SOMMARRIBAS	florence.hallack-wolff@uni.lu ; Adolfo.sommarribas@uni.lu
SE EMN NCP	Marie BENGTSOON	marie.bengtsson@migrationsverket.se
SI EMN NCP	Sabina HROVATIN	Sabina.Hrovatin@gov.si
NO EMN NCP	Stina HOLTH	ssh@udi.no
European Commission	Mikko HAKKARAINEN, Fabian LUTZ, Mauro GAGLIARDI	Mikko.HAKKARAINEN@ec.europa.eu ; Fabian.Lutz@ec.europa.eu ; Mauro.GAGLIARDI@ec.europa.eu
Odysseus experts	Daniel THYM, Philippe DE BRUYCKER	daniel.thym@uni-konstanz.de ; debruyck@ulb.ac.be
EMN Service Provider (ICF)	Sara BAGNATO, Tatiana KISTRUGA, Norma ROSE	Sara.Bagnato@ICF.com ; Tatiana.Kistruga@ICF.com ; Norma.Rose@ICF.com

8 TIMETABLE

The following timetable presents the key milestones in preparation of the Study:

Date	Action
19 March 2020	Circulate first draft to 'core' Advisory Group members
23 March 2020	Call with core AG group
17 April 2020	Circulate first draft to all Advisory Group members
24 April 2020	<u>Deadline</u> comments Advisory Group on the first draft of the template
29 April 2020	AG meeting to discuss comments on the first draft of the template
12 May 2020	Circulate second draft to Advisory Group members
19 May 2020	<u>Deadline</u> comments Advisory Group on the second draft of the template
5 June 2020	Circulation of third draft to all EMN NCPs, COM and Odysseus
19 June 2020	<u>Deadline</u> for comments on third draft
30 June 2020	<u>Final draft for approval to COM</u>
17 July 2020	<u>Launch of the EMN study</u>
2 November 2020	<u>Deadline for national reports</u>

9 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs to this Study. The indicative number of pages to be covered by each section is provided in the guidance note. For National Contributions, the total number of pages should not exceed 40 pages, including the questions and excluding the introduction of the study. A limit of 30 pages will also apply to the Synthesis Report, in order to ensure that it remains concise and accessible.

Common Template of EMN Study 2020

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

National Contribution from *Member State*²⁸

Disclaimer: The following information has been provided primarily for the purpose of contributing to a Synthesis Report for this EMN Study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member State.

Top-line factsheet [max. 1 page]

*The top-line factsheet will serve as a summary of the **national contribution** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policy-makers. The top-line factsheet should be a stand-alone product. Please add any innovative or visual presentations that can carry through into the synthesis report as possible infographics and visual elements.*

There is no distinction between 'short-term' irregular migrants and 'long-term' irregular migrants in Maltese law.

If a third-country national is subject to a return decision but there are legal and practical obstacles to return, he or she may still be granted a temporary authorisation to stay. Access to the labour market may be granted. This is without prejudice to the right of the competent authorities to return the person in question should the opportunity arise. It should also be noted, however, that vulnerable persons, such as victims of trafficking, may gain access to additional services.

Return of irregular migrants may be forcible or voluntary. Indeed, long-term irregular migrants are also offered the opportunity to return voluntarily, including through the utilisation of AVRR programmes implemented by the Maltese Government and IOM.

However, a one-off policy that regularised long-term irregular migrants in Malta, the Specific Residence Authorisation (SRA), was launched in 2018. This policy only targets people who entered Malta before a specified date.

Several changes in relation to access of long term irregular migrants to social services occurred as a result of the Covid-19 pandemic, one of which included irregular immigrants registered in schools who were typically afforded education t online during the peak of the COVID-19 pandemic.

Several good practices regarding policy measures were identified, two concerning the provision of services and another concerning the exchange of information between MS. The issue of long term irregularly staying migrants has been subject to public debate, as evidenced on social media websites and prominent news portals.

²⁸ Replace highlighted text with your **Member State** name here.

Section 1: National legal and policy framework

This introductory section of the synthesis report will map the institutional, legal and political contexts on the issue of long-term irregular migrants and aims to provide an overview of main points of discussion in Member States and Norway.

The primary questions addressed in this section are:

- *To what extent are central, regional and local authorities in your Member State confronted with the issue of long-term irregular migrants?*
- *What is the political and policy debate on the situation of long-term irregular migrants?*
- *What are the characteristics of the group of third-country nationals who remained in a protracted situation of illegal stay? What information is available on the size of the (sub)groups or categories?*

SECTION 1.1: CATEGORIES OF LONG-TERM IRREGULAR MIGRANTS AT NATIONAL LEVEL

Q1a. Is there a distinction between ‘short-term’ irregular migrants and ‘long-term’ irregular migrants (as defined in the scope of this study) in your (Member) State?

Yes

No

If yes, please explain how these are defined and where (policy, legislation and/or practice):

Q1b. Are different categories of **long-term** irregular migrants (as defined in the scope of this study) – stemming from law or practice – present in your (Member) State?

Yes

No

Q1c. If yes to Q1b, are these:

irregular migrants subject to a return decision but the return cannot be enforced due to legal obstacles (e.g. non refoulement, medical or humanitarian reasons, etc)?

irregular migrants subject to a return decision but the return cannot be enforced due to practical obstacles (cooperation of the person concerned, problems with travel documents etc)?

former (rejected) applicants for international protection who absconded?

third-country nationals whose short-stay visa, residence permit expired and/or was not renewed?

other irregular migrants who were not (yet) detected by national migration authorities?

Other (e.g. long-term irregular migrants with a criminal record, dependant family members) (please describe in the box below)?

N/A

Q1d. If yes to Q1b, please also provide, if possible, an **estimation** of the numbers of persons (for each category identified in Q1a, 1b and 1c, as relevant) in your (Member) State, annually since 2015.

Please also indicate the relevant source of such estimate(s) and other relevant information if available (e.g. country of origin).

N/A

Q1f. If no to Q1b, please explain why this is not the case (in the box below)

In terms of Maltese legislation, a migrant's stay is either regular or irregular. We do not consider that a distinction between the two should be made in a legislative context as this could constitute a pull factor.

Q2. If a third-country national is subject to a return decision but there are **legal obstacles to return** (i.e. for non-refoulement reasons, medical reasons, etc), can they receive:

Tick as many boxes as applicable in your (Member) State and use the box below to briefly describe the situation (e.g. procedure followed, conditions of application).

*For instance, please indicate if the option ticked is based on **i)** an administrative practice (please explain the practice); **ii)** legislation (please legislation); **iii)** case law (indicate case law reference and a short summary), or **iv)** other (e.g. policy).*

Please briefly describe also indicating estimations of the scale/numbers per year between January 2015-October 2020, if available.

For clarifications on categories below, please refer to section 2.

Written confirmation of postponement of return (please briefly explain the procedure, conditions below):

Temporary/tolerated stay (please briefly explain the conditions, application procedure below):

A document is issued by the Police authorities attesting to the identity of the holder and his or her tolerated stay in Malta. This document has to be renewed on a regular basis.

Residence permit (please briefly explain the conditions, application procedure, duration of status below):

Extension of the short-stay visa

Extension of the voluntary departure period

No return decision issued (for administrative or other reasons including non-refoulement)

In cases of non-refoulement the person concerned would have the option to apply for international protection, or if the circumstances relating to such non-refoulement transpired after the submission of a previous application, when new facts became available, he or she would be able to launch a subsequent application.

Other (e.g. no other form of certificate/tolerated stay/residence permit granted)

Q3. If a third-country national is subject to a return decision but there are **practical obstacles to return** (i.e. lack of means of transportation, lack of identification or travel documents, lack of cooperation of the third-country national, absconding etc.), can they receive:

Tick as many boxes as applicable in your (Member) State and use the box below to briefly describe the situation (e.g. procedure followed, conditions of application).

*For instance, please indicate if the option ticked is based on **i)** an administrative practice (please explain the practice); **ii)** legislation (please legislation); **iii)** case law (indicate case law reference and a short summary), or **iv)** other (e.g. policy).*

Please briefly describe also indicating estimations of the scale/numbers per year can be provided for the years 2015-October 2020, if available.

For clarifications on categories below, please refer to section 2

A written confirmation of postponement of return (please briefly explain the procedure, conditions below):

A temporary/tolerated stay (please briefly explain the conditions, application procedure):

Depending on the circumstances of the case, a document may issued by the Police authorities attesting to the identity of the holder and his or her tolerated stay in Malta. This document has to be renewed on a regular basis.

- A residence permit (please briefly explain the conditions, application procedure, duration of status below):

- An extension of the short-stay visa

- No return decision issued (for administrative or other reasons including non-refoulement)

- Other (e.g. no other form of certificate/tolerated stay/residence permit granted)

SECTION 1.2: PRIORITIES AND DEBATES AT A NATIONAL LEVEL

Q4a. Has the issue of long-term irregular migrants been subject to **policy or legislative debate** (i.e. discussions) in your (Member) State since 2015?

Yes

No

If yes, (i) what was the debate about and (ii) how has the debate evolved since 2015 (include debates related to Covid-19)?

Please provide a brief explanation of the main focus (i.e. main aspects discussed) and the evolution since 2015. Please indicate the main stakeholders involved. Please provide qualitative evidence to support your answer (e.g. national parliamentary debates, strategies, other policy documents).

The issue of long-term irregular migrants has long e been a cause for concern. It should be noted that these migrants are eligible for AVRR schemes, which would facilitate their return and reintegration. Such migrants, it should be noted, may also be forcibly returned if their travel documents are acquired.

However, a number of these migrants, who had applied for international protection but who could not be returned through no omission of their own, were given a status known as Temporary Humanitarian Protection- New by the then Office of the Refugee Commissioner. These migrants have since been transferred to a new scheme known as Specific Residence Authorisation, which is operated by Identity Malta. Information about this scheme is given in response to question 29.

s scheme is only accessible to irregular migrants who reached Malta prior to an established date and is therefore not accessible to more recent irregular arrivals.

Q5a. Has the issue of long-term irregular migrants been subject to **inter-institutional debate** between local (municipal, regional, federal) and central level authorities, in your (Member) State since 2015?

Yes

No

If yes, please indicate the main stakeholders involved in your answer and qualitative evidence (e.g. public debates, policy documents).

However, a roundtable discussion between local councils and migrant communities and NGOs was held in 2017 to discuss challenges presented by an increasing migrant population.

Source: <https://newsbook.com.mt/kunsilli-lokali-u-migranti-jpoggu-fuq-mejda-u-jaqblu-li-bid-djalogu-jintghelbu-l-isfidi/>

Q5b. If yes to Q5a, (i) what was the debate about and (ii) how has it evolved since 2015?

Please provide a brief explanation of the main focus (i.e. main aspects discussed) and the evolution since 2015.

N/A

Q6. If yes to Q4a and/or Q5a, has the debate influenced **policy or legislative measures** (e.g. national strategies or plans, legislative framework, etc.)?

Yes

No

If yes, please indicate the policy or legislative measures adopted:

Q7a. Has the issue of long-term irregular migrants been subject to **public debate** (i.e. media/NGOs) in your (Member) State since 2015?

Yes

No

Q7b. If yes to Q7a, (i) please indicate the main stakeholders involved (ii) the main circumstances of the debate and (iii) if there has been any change in the debate since 2015?

Please provide a brief explanation of the main focus (i.e. main aspects discussed) and the evolution since 2015.

Please provide *qualitative evidence* to support your answer (e.g. reliable media reports, statements or reports of NGO/civil society organisations or International Organisations (IOs), research studies, official surveys, barometers, other policy documents).

The issue of long-term irregular migrants has long been subject to public debate. Social media websites (mostly Facebook) and news portals offer the general public a platform through which they can discuss current events, one of them being irregular migration.

Several NGO's as well as political parties were at the forefront of the public debate on irregular migration. Some were more vociferous than others, making their message to their agenda, whether positive or negative to irregular migration.

Q8. Has the issue of long-term irregularly staying migrants been subject to **policy or public debate** in your (Member) State specifically in connection with the measures taken in responses to **COVID-19** and their impacts?

No.

Q9. Are there any **planned changes** in law/policy/practice regarding long-term irregular migrants in your (Member) State?

- Yes, there are planned changes in law. Please explain below:
- Yes, there are planned changes in policy. Please explain below:
- Yes, there are planned changes in practice. Please explain below:
- No.

Section 2: National policies and approaches regarding long-term irregularly staying migrants

This section aims to provide an overview of national policy in (Member) States and Norway on the way States address long-term irregularity. It will address the following research questions:

- Which rights and public services are long-term irregularly staying migrants provided access to?
- What is the role of central, regional and local authorities in dealing with this group of migrants?
- To what extent are regional and local authorities involved and cooperate with the central government?

- *What is the role of civil society organisations or other entities regarding the access to public services for long-term irregularly staying migrants?*
- *What measures (e.g. policies, practical tools, guidance) were implemented regarding the access to public services for long-term irregularly staying migrants?*
- *Were there any studies or research published on the effectiveness of these measures?*

SECTION 2.1: RIGHTS AND ACCESS TO SERVICES OF LONG-TERM IRREGULAR MIGRANTS

This section aims to understand the rights and services accessible to long-term irregular migrants, which central, regional and local authorities are involved in the provision of services, as well as the role of civil society organisations.

Q10. What **services are accessible** to **long-term irregular migrants** who were issued a return decision, but return cannot be implemented for legal or practical obstacles?

Please complete the table below for each type or authorisation to stay or statuses indicated Q2 and Q3 (i.e. written confirmation of postponement of return, temporary or tolerated stay, residence permit, only return decision).

Please complete the below table for each relevant status. If two or more types of authorisations to stay give the same access to services, please fill the table only once.

Table 1: Rights and services available to long-term irregularly staying migrants who have been issued a return decision				
Type of stay or status as identified in Q2 and/or Q3: [_____]				
Type of service	Service provided? (Y/N)	Is the provision of service mandatory or discretionary ? ²⁹	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to: i. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice? ii. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
Accommodation				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Accommodation <i>If yes, please briefly describe</i>	<i>Yes</i>	<i>Discretionary</i>	<i>The Agency for the Welfare of Asylum Seekers in Malta rarely had to accommodate long-term irregular migrants who have been issued with a return decision. Usually such people are either in closed centres or in private accommodation pending the period of voluntary departure, depending on the circumstances of the case.</i>	<i>Less in comparison to asylum seekers, but otherwise not comparable.</i>

²⁹ For example, in some cases a service can be accessed but the costs must be met by the individual rather than the State/national authorities.

Special accommodation facilities (i.e. shelter for victims of violence, children etc.) <i>If yes, please briefly describe</i>	Yes	<i>Dependent on the circumstances of the case</i>	<i>Unaccompanied children would be offered accommodation assistance by AWAS, the Agency for the Welfare of Asylum Seekers.</i>	Same
Other forms of accommodation or shelter or specialised centre	<i>No for social housing</i>			
Healthcare				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Emergency healthcare <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	Y	<i>Mandatory</i>	<i>Lifesaving medical assistance emanating from EU and international law in human rights and National Law in Public Health Care.</i>	<i>More limited than that given to legal migrants and nationals</i>
Basic medical care <i>If yes, please briefly describe</i>	Y	<i>At the discretion of the Medical Officer</i>	<i>Lifesaving medical assistance emanating from EU and international law in human rights and National Law in Public Health Care.</i>	<i>More limited than that given to legal migrants and nationals</i>
Specialised care <i>If yes, please briefly describe</i>	Y	<i>At the discretion of the Medical Officer</i>	<i>Lifesaving medical assistance emanating from EU and international law in human rights and National Law in Public Health Care.</i>	<i>More limited than that given to legal migrants and nationals</i>
Other healthcare services <i>If yes, please briefly describe</i>	Y	<i>At the discretion of the Medical Officer</i>	<i>Lifesaving medical assistance emanating from EU and international law in human rights and National Law in Public Health Care.</i>	<i>More limited than that given to legal migrants and nationals</i>
Social assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>

<p>Are long-term irregularly staying migrants entitled to receive social benefits?³⁰</p> <p><i>If yes, please briefly describe what these benefits are</i></p>	N			
Employment				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
<p>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</p> <p><i>If yes, please describe any specific conditions attached to their employment.</i></p>	Yes	Discretionary	<p>From a Malta Public Employment Service point of view, employment licences to failed asylum seekers are issued if the person in question presents evidence that she/he had in the past applied for asylum. An application under these circumstances is referred to the International Protection Agency (formerly known as the Refugee Commission) for the entity to confirm that the person in question had in fact logged a request for asylum which has been rejected. Once confirmation is received, Malta's Public Employment Service (Jobsplus) issues a temporary Employment Licence. Such licences are issued for a period of three months and may be renewed. It is the responsibility of the employer to apply for such an individual and if the said licence is issued, this is restricted to a specific employer and a specific job. Any changes related to the employment conditions listed in the licence, will require the submission of a new application.</p>	Less
Education				Education
<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p><i>If yes, please briefly describe access.</i></p>	Yes	Mandatory	<p>Children in compulsory education are exempted from fees upon application every year. Exemption stems from the policy adopted by the Board of exemptions in state education institutions.</p>	Same.
<p>Are adult long-term irregularly staying migrants</p>				

³⁰ Please consider the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum - income support, assistance in the case of illness, or pregnancy, and parental assistance.

<p>entitled to participate in educational programmes and/or professional training?</p> <p><i>If yes, what types of education and under which conditions?</i></p>				
<p>Legal aid or assistance</p>				<p>Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/></p>
<p>Do long-term irregular migrants have access to legal aid or assistance type of services?</p> <p><i>If yes, please briefly enumerate and explain</i></p>	<p><i>Yes</i></p>	<p><i>Some services are mandatory, and others are discretionary as explained in the next column.</i></p>	<p><i>All people who have any type of status (even pending status) are entitled to legal aid services by Legal Aid Malta Agency as follows:</i></p> <p><i>1. Criminal Court – all people are entitled for legal aid service without means testing.</i></p> <p><i>Civil Court & Court Tribunals – all people who are eligible through means testing.</i></p>	<p><i>Same</i></p>
<p>Other?</p>				<p>Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/></p>
<p>Are any other rights relevant to mention here? Please describe</p>			<p>N/A</p>	

Q11. What services are accessible to other long-term irregular migrants who were **not issued a return decision**, and remained unknown to migration authorities (see answer to **Q1**)?

Table 2: Services available to long-term irregularly staying migrants who were unknown to migration authorities (e.g. overstayers, irregular entry)

<i>Type of stay or status as identified in Q2 and/or Q3: [_____]</i>				
Type of service	Service provided? (Y/N)	Is the provision of service mandatory or discretionary ? ³¹	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to: i. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice? ii. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
Accommodation				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Accommodation <i>If yes, please briefly describe</i>	<i>Yes</i>	<i>Discretionary</i>	<i>The Agency for the Welfare of Asylum Seekers in Malta rarely has to accommodate long-term irregular migrants who were unknown to migration authorities. Usually such people are in the closed centres. Any person who is accommodated is usually known to the authorities</i>	<i>Less</i>
Special accommodation facilities (i.e. shelter for victims of violence, children etc.) <i>If yes, please briefly describe</i>	<i>Yes</i>	<i>Dependent on the circumstances of the case</i>	<i>Unaccompanied children, would be offered accommodation assistance AWAS, the Agency for the Welfare of Asylum Seekers.</i>	<i>Same</i>

³¹ For example, in some cases a service can be accessed but the costs must be met by the individual rather than the State/national authorities.

Other forms of accommodation or shelter or specialised centre	<i>No access to social housing</i>			
Healthcare				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Emergency healthcare <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	<i>Y</i>	<i>Mandatory</i>	<i>Lifesaving medical assistance emanating from EU and international law in human rights and National Law in Public Health Care provided by the Public Health Sector.</i>	<i>More limited than service given to legal migrants or of nationals</i>
Basic medical care <i>If yes, please briefly describe</i>	<i>Y</i>	<i>At the discretion of the Medical Officer</i>	<i>Lifesaving medical assistance emanating from EU and international law in human rights and National Law in Public Health Care provided by the Public Health Sector.</i>	<i>More limited than service given to legal migrants or of nationals</i>
Specialised care <i>If yes, please briefly describe</i>	<i>Y</i>	<i>At the discretion of the Medical Officer</i>	<i>Lifesaving medical assistance emanating from EU and international law in human rights and National Law in Public Health Care provided by the Public Health Sector.</i>	<i>More limited than service given to legal migrants or of nationals</i>
Other healthcare services <i>If yes, please briefly describe</i>	<i>Y</i>	<i>At the discretion of the Medical Officer</i>	<i>Lifesaving medical assistance emanating from EU and international law in human rights and National Law in Public Health Care provided by the Public Health Sector.</i>	<i>More limited than service given to legal migrants or of nationals</i>
Social assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Are long-term irregularly staying migrants entitled to receive social benefits?³²	<i>No</i>			

³² Please consider the definition of 'core benefits' as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum - income support, assistance in the case of illness, or pregnancy, and parental assistance.

<i>If yes, please briefly describe what these benefits are</i>				
Employment				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
<p>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</p> <p><i>If yes, please describe any specific conditions attached to their employment.</i></p>	Yes	Discretionary	<p>From a Malta Public Employment Service point of view, employment licences to failed asylum seekers are issued if the person in question presents evidence that she/he had in the past applied for asylum. An application under these circumstances is referred to the International Protection Agency (formerly known as the Refugee Commission) for the entity to confirm that the person in question had in fact logged a request for asylum which has been rejected. Once confirmation is received, Malta's Public Employment Service (Jobsplus) issues a temporary Employment Licence. Such licences are issued for a period of three months and may be renewed. It is the responsibility of the employer to apply for such an individual and if the said licence is issued, this is restricted to a specific employer and a specific job. Any changes related to the employment conditions listed in the licence, will require the submission of a new application.</p>	<p>Employment licences are issued for 3 months and are restricted to a particular employer to a specific job.</p>
Education				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p><i>If yes, please briefly describe access.</i></p>	Yes	Mandatory	<p>Children in compulsory education are exempted from fees upon application every year. Exemption stems from the policy adopted by the Board of exemptions in State Education institutions</p>	<p>Same.</p>
<p>Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training?</p> <p><i>If yes, what types of education and under which conditions?</i></p>	No			
Legal aid or assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>

<p>Do long-term irregular migrants have access to legal aid or assistance type of services?</p> <p><i>If yes, please briefly enumerate and explain</i></p>	<p><i>Yes</i></p>	<p><i>Some services are mandatory, and others are discretionary as explained in the next column.</i></p>	<p><i>All people who have any type of status (even pending status) are entitled to legal aid services by Legal Aid Malta Agency as follows:</i></p> <p><i>1. Criminal Court – all people are entitled for legal aid service without means testing.</i></p> <p><i>Civil Court & Court Tribunals – all people who are eligible through means testing.</i></p>	<p><i>Same</i></p>
<p>Other?</p>				<p>Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/></p>
<p>Are any other rights relevant to mention here? Please describe</p>			<p>N/A</p>	

Q12. Do **authorities** (at central or local level) need to **check the migration status** (or the lack thereof) **before providing access to a service** (e.g. accommodation, healthcare, education), or are there 'firewall provisions' allowing persons concerned to access services without fear of being apprehended?

The migration status of persons residing at the centres run by the Agency for the Welfare of Asylum Seekers(AWAS) would be known. AWAS refers asylum seekers to government and non-government entities for the required support and assistance.

Q13. Is **cooperation to return to the country of origin an obligation** if one of the services are provided (under Q10 and Q11) to the long-term irregularly staying migrant?

Yes

No

If yes, please explain the applicable procedures and how it is carried out.

Q14. Are there **any specific projects and/or (ad-hoc) programmes** implemented at **local level** (by municipalities, regions, etc) in your (Member) State specifically targeting the access to services for long-term irregularly staying migrants?

Yes

No

If yes, please provide examples (e.g. which stakeholders are involved in the design, implementation and effects of the projects or programmes, any evaluations conducted on the projects or programmes and any key learning points identified)

Q15a. With the exception of organisations acting as a service provider for public authorities (Q10 and Q11), are **other entities or organisations** (e.g. NGOs, charities, other private entities) involved in providing or facilitating access to services for long term irregularly staying migrants?

Yes

No

If yes, please specify which entities, what type of involvement and service (e.g. accommodation, health care, counselling) are they involved in and, which type of funding used to support their activities.

Jesuits Refugee Services-Counselling,

Legal Advice, Social work support and accommodation, Aditus-Legal Advice, Red Cross-health Care

Q15b. Do these **entities or organisations** need to **report on the migration status** (or the lack thereof) **before providing access to a service** (e.g. accommodation, healthcare, education), or are there 'firewall provisions' allowing persons concerned to access services without fear of being apprehended?

N/A

Q16. If a long-term irregular migrant is a **victim of or witness to an offence** (e.g. labour exploitation, domestic violence, etc), are there any available '**safe reporting**'³³ channels between the TCN concerned and public authorities to report the incident without divulging their situation of illegal stay?

Yes

No

If yes, please briefly describe the channel/reporting mechanism:

Anyone residing in Malta may file an anonymous report to the Police. Those migrants in an illegal state who witness an offence or else are victims themselves will in most cases have to reveal their illegal status unless they report anonymously. That said, the authorities will have to evaluate each situation on its own merits in order to find a balanced approach.'

Q17. Are there any **assisted voluntary return (AVR) projects or programmes** implemented in your (Member) State that also specifically foresee support to access to services (in the host (Member) State, thus before departure) for long-term irregular migrants?

Yes

No

If yes, please describe (e.g. please consider any specific conditions to access the service(s)):

The International Organisation for Migration (IOM) in conjunction with the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) have been jointly assisting migrants to return voluntarily to their country of origin (CoO) since 2009 through five consecutive EU funded projects. Since 2016, under the RESTART VI project, co-financed under the Asylum, Migration and Integration Fund (AMIF) and National Funds, IOM and MHSE assisted 75 migrants in returning to their country of origin as well as offering reintegration support as a means of contributing to the sustainability of reintegration.

Particular emphasis is placed on addressing the specific needs of returnees in situations of vulnerability, including migrants with health-related needs and unaccompanied migrant children (UMC), and on delivering sustainable reintegration assistance through the preparation of reintegration plans prior to departure and the coordination of reintegration assistance with IOM Missions in CoOs to facilitate returnees' engagement in income generating activities and/or to address their other reintegration-related needs.

Migrants may be eligible for a reintegration package of EUR 4,000, with EUR 200 foreseen as a pre-departure cash allowance and EUR 3,800 as an in-kind reintegration grant following arrival in the CoO. Reintegration assistance can include one or more of

³³ <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

the following elements: post-return counselling; referrals; support towards income-generation (small business set-up, job placements/employment assistance, vocational training, education, etc.), assistance with other reintegration-related needs. The reintegration package can be made available to AVRR returnees under the project, subject to clearance and approval by MHSE.

Irregularly staying migrants are one of the target groups under this programme.

Q18. Please provide if applicable **illustrative (and anonymised) case(s)** of measures adopted by authorities (a) at central, (b) regional and (c) local level (e.g. municipalities) to provide access to services (e.g. accommodation, health, etc) – up to two examples.

National Level (In Malta, most government services are provided at national level)

1. The board of exemption of fees at state educational institutions within the Ministry for Education and Employment (MEDE) has informed all state educational colleges of the policy and procedures followed for the application and granting of exemption of fees. Information is then disseminated to all public schools through the Colleges. Applicants can apply directly at the exemptions office within the Ministry for Education and Employment (MEDE) where queries can be verified and clarified. Processing of applications – if all required documents are valid – takes place within three working days.
2. The Migrant Learners' Unit within the Ministry for Education and Employment (MEDE) uses the services of community support liaison workers who are conversant in various foreign languages to provide the necessary hand-holding and assistance to migrant students (and their respective families) seeking enrolment in a government-owned kindergarten facility (for children from three years to under five years of age) or in a school for children from five years of age up to 16 years old. The Migrant Learners' Unit within MEDE also provides a degree of psycho-social support to the families of migrant students proper.

Q19. Did any change happen in relation to access of long-term irregular migrants to social services as described above, as consequence of measures taken in response to the COVID-19 pandemic?

Yes

No

If yes, please describe by referring to all relevant aspects and services covered in **Q10-Q17**.

From an educational standpoint, failed asylum seekers (irregular immigrants) registered in schools were typically afforded online education during the peak of the COVID-19 pandemic until further actions were taken in their regard, if necessary, by the pertinent authorities.

Since the onset of the COVID-19 crisis, Malta's Public Employment Service (Jobsplus) has been encouraging clients to submit applications mainly electronically. This procedure has been viewed in a positive light by employers. Moreover, third country nationals who, pre-covid, were employed regularly in Malta and ended up without a job due to the COVID-19 situation were offered assistance with

regards to profiling and job search. This service was extended to third country nationals including failed asylum seekers who were in possession of a valid (temporary) employment licence but lost their job during the period of mid-March 2020 till end of June 2020.

Q20. Is there any research available in your (Member) State on irregular migrants accessing rights and services listed above (conducted by relevant authorities, academics, NGOs, etc.)?

Yes

No

If yes, please describe the main findings and conclusions of such research and provide a full reference to the source.

N/A

SECTION 2.2: COOPERATION MECHANISMS BETWEEN CENTRAL, REGIONAL AND LOCAL AUTHORITIES

This section will focus on the cooperation between central authorities and, regional authorities as well as municipalities in the implementation of national policies on long-term irregular migration.

Q21. Were specific measures (legislative, administrative, practices) implemented by central authorities to help regional and local authorities to anticipate and/or to respond to the situation of long-term irregular migrants in their territories? **NO**

Monitoring and follow-up approaches of long-term irregularly staying migrants

Please provide a short description of the (i) measure(s); (ii) proposed effects and (iii) involved organisations (national stakeholders, cities, professionals, etcetera)

N/A

Information exchange between central and local authorities about long-term irregularly staying migrants

Please provide a short description of the (i) measure(s); (ii) proposed effects and (iii) involved organisations (national stakeholders, cities, professionals, etcetera)

N/A

Guidance or any other form of established practice made available to regional and local authorities on how to assist long-term irregularly staying migrants (e.g. training sessions, guidance (e.g. written instructions or guidelines), other)

Please provide a short description of the (i) measure(s); (ii) proposed effects and (iii) involved organisations (national stakeholders, cities, professionals, etcetera)

N/A

Other measure(s)

Please provide a short description of the (i) measure(s); (ii) proposed effects and (iii) involved organisations (national stakeholders, cities, professionals, etcetera)

N/A

Q22. Do local authorities in your Member State participate in **horizontal cooperation networks** (of local authorities) to develop good practices and/or programmes to address the situation of long-term irregular migrants?

Yes

No

If yes, please provide examples.

Cooperation between Local Councils Association and the Integration Directorate (MEAE) which produced the local integration



Adobe Acrobat
Document

charter. (Doc Attached)

Q23. Were there any studies or research published on the effectiveness of any of the measures mentioned in Q21?

Yes

No

If yes, please mention references and brief description of the studies or piece of research:

N/A

SECTION 2.3: GOOD PRACTICES

Q24. What are **good practices** regarding policy measures concerning long-term irregularly staying migrants?

*For each good practice mentioned, please describe **a)** for whom it is a good practice (policy-maker, organisation, other stakeholders), **b)** why it is considered a good practice and **c)** whether the assessment that this is a good practice is based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or from other sources (please indicate which ones).*

Providing services (housing, health care, other measures)

Please provide a brief explanation:

- Health Care. Treatment provided on basis of Public Health to ensure that both the TCN and the society at large are not exposed to unnecessary health risks.
- At compulsory education level, specific induction classes focusing on learning the languages of schooling (Maltese and English) are run in schools by professional personnel to ensure the meaningful mingling and integration of students (including failed asylum seekers) from an array of cultures within a school setting.

Exchanging information between national and local authorities on long-term irregularly staying migrants

Please provide a brief explanation:

Exchanging information between Member States?

Please provide a brief explanation:

Officers from the Ministry for Education and Employment (MEDE) attend EU and international conferences concerning long-term irregularly staying migrants and share information with representatives from other countries.

Other good practices

Please provide a brief explanation:

Collaborating with the Law Courts in order to facilitate the provision of legal assistance to long term irregular staying migrants. The provision of assistance emanates from law.

Section 3: Responses to end long term irregular stay

This section will focus on policies and good practices implemented in finding approaches to address (and end) the issue of long-term irregularity. This section aims to research the following:

- *What measures (e.g. policies, practical tools, guidance) were implemented to bring protracted situations of illegal stay to an end?*
- *Were there any studies or research published on the effectiveness of these measures?*
- *What are the key challenges and good practices in terms of policy regarding long-term irregularly staying migrants?*

Q25. What options are available in your Member State to end long-term illegal stay of third-country nationals (e.g. return, legalisation of stay, other)? Which are prioritized?

- Temporary toleration of stay until return is possible.
- Return: Forced, voluntary and assisted voluntary return.

SECTION 3.1. MEASURES TO PROMOTE RETURN OR DISCOURAGE ILLEGAL STAY

Q26. What measures to **promote return or discourage illegal stay** are in place in your Member (State) specifically for long term irregular migrants (as identified in this study)?

e.g. restricted access to mainstream services or specific programmes geared towards third-country nationals in a prolonged situation of irregular stay, specific cooperation measures between national, regional and local authorities.

Please note that various measures directly related to the enforcement of a return decision such as AVR programmes or other incentives to return were already captured in numerous other EMN studies and discussions at expert group level and are not the primary focus of this study.

Long-term irregular migrants remain liable to return, including by forcible means. Even those migrants who are allowed to work temporarily in Malta for short periods (e.g. up to six months) may be returned anytime their documents are made available. AVRR options are made available to such migrants, so as to encourage them to return and reintegrate voluntarily.

Q27a. What are the **good practices as identified in your Member States to promote return or discourage illegal stay** for long term irregular migrants identified in your (Member) State?

For each good practice mentioned, please describe a) for whom it is a good practice (policy-maker, organisation, migrant, other stakeholders), b) why it is considered a good practice and c) what is the source of the statement – e.g. based on input from experts, surveys, evaluation reports or from other sources (please indicate which ones).

The good practices mentioned above benefit all parties, concerned, including the migrants. This is certainly the case for access to healthcare and education, tolerated stay, as well as access to AVRR.

Q27b. Is there any research available in your (Member) State on **promotion of return or the discouragement illegal stay** (conducted by relevant authorities, academics, NGOs, etc.)?

Yes

No

If yes, please describe the main findings and conclusions of such research and provide a full reference to the source.

Q28. Please provide **illustrative example(s)** of responses and/or good practices to **promote return or discourage illegal stay** adopted by authorities (a) at central level, (b) regional and/or (c) at local level (e.g. municipalities) – up to two examples, in the form of anonymised case studies of individual long-term irregularly staying migrants):

N/A

SECTION 3.2: LEGALISATION OF STAY OPEN SPECIFICALLY TO LONG-TERM IRREGULAR MIGRANTS

Q29. Are **options for legalisation of stay** open specifically to long-term irregular migrants in your Member (State)?

E.g. a specific status/residence permit for legalising the stay of long-term irregularly staying migrants (see section 1)? specific schemes established at national level for legalising the stay of long-term irregular migrants? Or do such options form part of the system of residence permits available to all migrants?

If yes, please briefly explain the criteria considered (e.g. integration in labour market, length of stay, language skills, absence of criminal record, social and family ties, having entered the country as a minor):

Specific Residence Authorisation (SRA), which was launched in 2018, offered such avenues of stay for migrants who entered Malta before a specified date. No other specific options for such migrants are available.

Policy regarding Specific Residence Authorisation (SRA) established in 2018 - Persons whose application for international protection has been finally rejected by the relevant asylum determination authorities may be granted a Specific Residence Authorisation after an assessment based on the criteria and guidelines.

Eligibility Criteria for SRA- Identity Malta and the immigration authorities shall consider the following criteria during their assessment of an application for a Specific Residence Authorisation: 1. Applicant must have entered Malta in an irregular manner prior to the 1 January 2016 (i.e. by the 31 December 2015) and been physically present in Malta for a period of 5 years preceding the date of application; 2. Applicant must have his/her application for international protection finally rejected by the relevant asylum determination authorities; 3. Applicant must be of good conduct; 4. Applicant must demonstrate that she/he has been in employment on a frequent basis, that is, having worked a minimum of 9 months per year during the 5 years preceding the application for a Specific Residence Authorisation; 5. Applicant must demonstrate integration efforts by participating in integration programmes.

Persons who are granted a Specific Residence Authorisation shall receive: 1) A residence permit valid for two years with the possibility of renewal; 2) Access to core welfare benefits in the same manner as beneficiaries of subsidiary protection granted in

terms of the Refugees Act, Chapter 420 of the Laws of Malta; 3) An employment licence; 4) Access to State education and training; 5) Access to State medical care; and 6) A travel document.

Persons who have been convicted of serious crimes, or are otherwise considered to be a threat to national security, public order and/or the public interest shall not be granted a Specific Residence Authorisation

Q30a. What are the **good practices as identified in your Member States with regards to legalisation of stay** identified in your (Member) State?

For each good practice mentioned, please describe a) for whom it is a good practice (policy-maker, national or local authority, organisation, migrant, other stakeholders), b) why it is considered a good practice and c) what is the source of the statement – e.g. based on input from experts, surveys, evaluation reports or from other sources (please indicate which ones).

N/A

Q30b. Is there any research available in your (Member) State on **practices with regards to options for legalisation of stay** available specifically to irregular migrants (conducted by relevant authorities, academics, NGOs, etc.)?

Yes

No

If yes, please describe the main findings and conclusions of such research and provide a full reference to the source.

Q31. Please provide **illustrative example(s)** of responses and good practices related to the **legalisation of stay measures** adopted by authorities (a) at central level, (b) regional and/or (c) at local level (e.g. municipalities) – up to two examples, in the form of anonymised case studies of individual long-term irregularly staying migrants):

N/A

SECTION 3.3.: MEASURES TAKEN IN RESPONSE TO THE COVID-19 PANDEMIC

Q32. Were measures taken to end the situation of long-term irregular migrants specifically in connection to the responses to and **impacts of the COVID-19** (e.g. legalisation of migrant workers employed in specific sectors)? Please describe.

The pertinent Maltese authorities involved in the labour migration processes accepted applications from TCNs, who were still in Malta and who were previously in possession of a valid Residence/Work Permit and who had their employment terminated on the basis of redundancy as from the 9th of March 2020.

Section 4: Challenges and future actions

Q33. What are the challenges regarding **policy measures** concerning long-term irregularly staying migrants?

*For each challenge mentioned, please describe **a)** for whom it is a challenge (policy-maker, organisation, other stakeholders), **b)** why it is considered a challenge and **c)** whether the assessment that this is a challenge is based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or from other sources (please indicate which ones).*

Providing services (e.g. housing, health care, etc)

Please provide a brief explanation:

Healthcare. Challenges to the health care system include capacity and financial limitations.

Employment - From a public employment service point of view, Malta's Public Employment Service (Jobsplus) receives complaints from employers on the short duration of employment licences (i.e. for instance an employment licence for a failed asylum seeker is of 3 months) however these permits cannot be given for a longer period in view of the uncertain situation of these persons' status in Malta.

In general, various challenges exist on measures targeting irregularly staying migrants, notably those relating to; identification of eligible beneficiaries, cultural, lingual, legal, and health and safety.

Challenges exchanging information and/or cooperation between national and local authorities on long-term irregularly staying migrants

Please provide a brief explanation:

Absence of one holistic IT system for migrants which can be accessed by all government departments offering services to irregularly staying migrants, including data protection issues.

Challenges exchanging information between Member States?

Please provide a brief explanation:

Data Protection Issues.

Other challenges (e.g. other measures mentioned in section 3) Please provide a brief explanation:

Sustainability when providing social services.

Q34. What are the challenges regarding **policy measures** concerning long-term irregularly staying migrants specifically linked to the reposes to and impacts of the **COVID-19 pandemic**?

N/A

Q35. What are the challenges of **promoting return or discouraging illegal stay** concerning long-term irregularly staying migrants? Please describe any additional challenges specifically linked to the reposes to and impacts of the **COVID-19 pandemic**?

Covid 19 has made return more difficult due to travel restrictions, and quarantine rules.

Q36. What are the challenges regarding the **options for legalisation of stay** available to long-term irregularly staying migrants? Please describe any additional challenges specifically linked to the reposes to and impacts of the **COVID-19 pandemic**?

N/A

Q37. According to (central and/or local) stakeholders in your (Member) State, what actions could be taken **at EU level** to support (Member) States to effectively cooperate and overcome the challenges faced in relation to long-term irregularly staying migrants?

For each suggested improvement mentioned, please describe a) for whom it is a suggestion (policy-maker, organisation, other stakeholders), b) why it is considered a suggestion and c) whether the assessment that this is a suggested improvement based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or from other sources (please indicate which ones).

The stark reality is that irregular immigration is a problem, which will not go away.

Some proposed actions, from a Maltese perspective, that could be better

supported and addressed from an EU level would be:

a. EU RESPONSIBILITY-SHARING IN THE AREA OF ASYLUM –

The EU Commission has to dig deeper to fully understand the challenges being faced by small EU front-line states such as Malta or Cyprus. Better “corrective burden-sharing mechanisms”—or “responsibility-sharing” must be introduced. The revision of the Dublin Convention is a must.

b. IMPEMMENTING A MORE EFFECTIVE RETURN ASSISTANCE STRATEGY WHICH WOULD PROVIDE MORE SUPPORT TO MS

c. AN EFFECTIVE AND COMPREHENSIVE EU APPROACH AIMED AT ADDRESSING THE ROOT CAUSES OF MIGRATION –

The EU should focus its efforts on addressing reforms that stand the best chances of improving the economic and employment situation in the target countries. It has to proceed incrementally starting with economic and also judicial reforms. The EU’s development goals for Africa must be adhered to even in the face of an economic down-turn.

The EU must strive to establish, through better coordination, effective and secure financial transfer mechanisms, to enable emigrants to invest their capital back in their home countries. If consistently pursued, these policies would certainly contribute to reducing the root causes of long-term irregular migration.

Section 5: Conclusions

This section of the Synthesis Report will draw conclusions as to the Member States’ existing policies, practices and case law related to long-term irregularly staying migrants.

Q38. With regard to the aims of this study (policy responses to long-term irregular migrants), what conclusions would you draw from your findings reached in elaborating your national contribution?

With reference to the primary research question, please elaborate your conclusions highlighting the relevance of your findings to (national and/or EU level) policy-makers. You may cover the following points:

- The size of the problem of long-term irregular migrants in your country
- the most topical issues raised in the political and policy debate on the situation of long-term irregularly staying migrants
- The main concerns and issues related to providing access to public services to long-term irregularly staying migrants
- The main concerns and issues related to implementing measures to bring protracted situations of illegal stay to an end

National Authorities recognise that long term irregularly staying migrants pose a challenge which in itself is difficult to address. It is also important to note that the Covid Pandemic has made it more difficult for national authorities to address the challenge. As evidenced in the replies several actions were taken by the Maltese Government to address long term irregularly staying migrants, varying from their legalisation of stay, return and access to certain services. Moving forward one understands that this challenge requires a holistic approach which is based on mutual trust between the irregularly staying migrants, national authorities and the EU.