



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

Common Template for EMN Study 2020

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

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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-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

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).

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 third-country nationals were irregularly staying in the EU. More specifically, extrapolating from statistics

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>)

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 checks.¹⁴ In practice, such a document is not always issued although in another case, the CJEU stated that

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).

¹⁴ Article 14(2) of the Return Directive.

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 further specifics on the situation of irregularly staying migrants in their decision in the case *Conference of*

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.

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

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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

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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 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.

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

National Contribution from Estonia*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.*

The aim of this study “Responses to long-term irregularly staying migrants: practices and challenges in EU Member States and Norway” is to examine national policies and approaches towards third-country nationals (TCNs) who have been in the country for a long time without a legal basis to stay. The study gives an overview of the services provided to them; cooperation mechanism while referring those persons to services; national measures to discourage illegal stay and options for legislation of persons illegal stay.

Estonian legislation does not distinguish between ‘short-term’ irregular migrants and ‘long-term’ irregular migrants. TCNs are not allowed to stay in Estonia without a legal basis and if a person has no legal basis to stay, he is required to leave immediately, within the period imposed by the return decision or within the shortest possible period.

The scope of the issue of long-term irregular migrants is difficult to determine, according the Police and Border Guard Board (hereinafter the PBGB) estimations annually up to five persons will remain in a country, whose return becomes a long-term process or impossible. Although 89% of return decisions issued in 2019 to TCNs were fulfilled, some delays may occur while incouraging persons to return/obstacles arise.

In the context of this study the ‘long-term’ irregular stay is understood if the voluntary departure of the TCN is not an option anymore (or hasn’t been an option) and enforceable return decision is issued to a person but:

- there are some obstacles that impede implementation of forced return of third-country national, for example difficulties in identifying the person or obtaining documentation, problems with organizing transportation, but also barriers arising from immigration policies of other countries (countries not accepting forced expulsion, countries not accepting charter flights, unwillingness to take back their own citizens);
- expulsion of the TCN is impossible but person is still in an irregular stay:

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

there is no state receiving the person; 2) if receiving state does not cooperate with expulsing state; 3) in case of internationally recognized principle of non-refoulement.

The range of services available to person staying for long-term illegally in a country, is not a extensive - emergency social assistance (consists of accomodation, food and closing) and emergency health care (in situations where postponement of care or failure to provide care may cause the death or permanent damage to the health of the person requiring care). Additional medical support (consultation of doctor/nurse/phycologist/psychiatrist, purchase the medicine) organised by the PBGB may be provided to persons to whom return decision is issued. Persons residing illegally are not entitled to work.

As the scope of persons staying irregularly in Estonia is relatively small, also the network of organisations related to their assistance has been remained limited – support is mainly provided by local governments and charity organisations as “[Toidupank](#)”, shelter houses etc. but also some church congregations are involved.

Estonian legislation does not provide an ultimate solution for legalisation of long-term irregular migrants. All the circumstances and approaches of each case of irregularly staying migrants will be assessed individually. According to current practice, if there are some obstacles to the removal than humanitarian considerations or force majeure and the removal is not declared as impossible, the PBGB continues all necessary operations for organising the removal. However, if it turns out that removal is not possible (on the principle of non-refoulement), the removal shall not be executed. In other options the assessment will be made, whether expulsion is possible or not. If removal of TCN is declared impossible, then pursuant to the Aliens Act, it is possible to grant a temporary residence permit on humanitarian grounds to a TCN.

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):

The Estonian legislation does not distinguish between ‘short-term’ irregular migrants and ‘long-term’ irregular migrants neither in legislation nor in practice. Persons are prohibited to stay in Estonia without a legal basis²⁹ and who have no legal basis to stay in Estonia are required to leave immediately or within the period imposed by the return decision.³⁰

Third country nationals (hereinafter TCN), who has no legal basis to stay, are issued a return decision by the PBGB or by the Estonian Internal Security Service, where it is indicated that the person is staying in Estonia illegally, an obligation to leave Estonia is imposed and the term for voluntary compliance with the obligation to leave is determined. The term for voluntary leave is from 7 to 30 days and it may be extended by up to 30 days at a time.

Upon expiry of the term for obligation to leave set in return decision, the obligation to leave may be enforced at any time. The obligation to leave Estonia will be fulfilled by detention and expulsion of a person.

Although we do not distinguish between ‘short-term’ irregular migrants and ‘long-term’ irregular migrants, we may broadly divide that ‘short-term’ irregular migrants are persons to whom a return decision (whether voluntary or enforceable) is issued, but there occur some obstacles that impede of return of a person and as a result the decision to return may be postponed. Short-term irregular stay may be ended by legalizing person’s stay, person will leave to country of origin, person becomes a ‘long-term’ irregular migrant.

In the context of this study the ‘long-term’ irregular stay is understood if the voluntary departure of the TCN is not an option anymore (or hasn’t been an option) and enforceable return decision is issued to a person but:

²⁹ Obligation to Leave and Prohibition on Entry Act § 3 p 2 § 2 p 1

³⁰ Obligation to Leave and Prohibition on Entry Act § 3 p 2 § 3 p 2

- there are some obstacles that impede implementation of forced return of third-country national, for example difficulties in identifying the person or obtaining documentation, problems with organizing transportation, but also barriers arising from immigration policies of other countries (countries not accepting forced expulsion, countries not accepting charter flights, unwillingness to take back their own citizens);
- expulsion of the TCN is impossible but person is still in an irregular stay:
 - 1) there is no state receiving the person; 2) if receiving state does not cooperate with expulsing state; 3) in case of internationally recognized principle of non-refoulement.

National legislation sets the maximum period of detention of a person who is a long-term irregular migrant, by the request of the PBGB the administrative court will extend the term of detention of an expelled person in the detention centre by four months at a time but for no longer than 18 months as of the day of detention of the person.

The circumstances and approaches of each case of irregularly staying migrants will be assessed individually.

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)?

Estonian legislation does not distinguish between short-term irregular migrants and long-term irregular migrants and there is no definition for these terms. National legislation stipulates that a legal basis must exist for a person to stay in Estonia. Persons are prohibited to stay in Estonia without a legal basis.³¹ A TCN who has no legal basis to stay in Estonia is required to leave immediately or within the shortest possible period.³²

In the context of this study all categories of persons mentioned in Q1c, are considered as irregular migrants. Although there is no available statistical data for those categories, we have had such cases.

³¹ Obligation to Leave and Prohibition on Entry Act § 2 p 1

³² Obligation to Leave and Prohibition on Entry Act § 3 p 2

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).

There are no exact numbers of long-term irregularly staying migrants, but according to the PBGB estimations averagely up to five persons per year will remain in a country, whose return might become a long-term process or even impossible.

During the period 2012-2017 number of persons released from detention center on a basis that their maximum term for detention has been expired, has been relatively small. In 2013 there were 9 persons, in 2015 1 person and in 2017 2 persons.

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

N/A

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):

Persons who are subject to obligation to leave are issued a return decision, which is an administrative act that imposes a third-country national staying in Estonia without any basis for stay an obligation to leave Estonia or to legalise his/her stay in Estonia in the cases and pursuant to the procedure provided in national legislation. Upon the issue of a return decision all the relevant circumstances will be taken into account in every single case and the reasoned interests will be considered.³³ A person is required to comply with a return decision within the shortest possible period.

According to the Obligation to Leave and Prohibition on Entry Act³⁴ suspension of the return decision for limited time (may be extended up to ninety days) is possible, if the person justifies the circumstances preventing him/her to leave Estonia. These circumstances require a continued temporary stay of a person in Estonia and prevents departure from Estonia:

1) force majeure;

³³ Obligation to Leave and Prohibition on Entry Act § 7² p 3

³⁴ Obligation to Leave and Prohibition on Entry Act § 14 p 4

- 2) a humanitarian ground;
- 3) a good occupational reason and
- 4) a good personal reason.

As this Article only applies to those TCNs who had a legal basis to stay prior to the extension, they are not in the scope of this study, as the focus of this study is on persons who are staying in the country illegally.

National legislation foresees also the cases when expulsion will not be applied and when the expulsion should be suspended.

The expulsion of a person should be suspended/postponed if:

- 1) if a court suspends enforcement execution of a return decision, according to which the PBGB will postpone the return decision;
- 2) on the proposal of the Prosecutor's Office for the reflection period indicated in the Aliens Act. On a basis of an application of the prosecutor's office a cooling-off period of 30 to 60 calendar days may be granted to a person to make a decision whether he or she wishes to cooperate with the investigative authority or the prosecutor's office. The prosecutor's office or an investigative authority will notify a person of the services provided to person during the cooling-off period, of the possibilities and conditions of the issue of a temporary residence permit for participation in criminal proceedings and the grant of international protection;³⁵
- 3) upon the decision of the Police and Border Guard Board if the temporary stay in Estonia of a TCNs justified due to humanitarian considerations or 'force majeure'.³⁶ Person who is willing to postpone his return decision should submit to the PBGB all the evidences confirming his impossibility to leave the country immediately/within shortest possible term for example TCN can bring his medical certificate if it is available. In case a person is in detention, he or she must consult with a doctor in detention centre.

The postponement of the expulsion decision will be made by the court or the PBGB and issued in a written form to a person immediately after the decision has been made.

The circumstances and approaches of each case of irregularly staying migrants will be assessed individually. The expulsion decision will not be applied/decision will be annulled if it becomes evident that return of a person is impossible (in case of internationally recognized principle of non-refoulement).³⁷

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

There are no so-called "tolerated stay" mechanisms in place in Estonia and temporary legal basis for stay is not issued solely for a reason that the person is unable to fulfill the obligation to leave.

According to current practice, if there are other obstacles to the removal than humanitarian considerations or force majeure and the removal is not declared as impossible, the PBGB continues all necessary operations for organising the removal. Pursuant to the Obligation to Leave and Prohibition on Entry Act, in a situation where the return of a person is currently not possible, the return will be suspended by the decision of the court or the PBGB. A TCN who has received the

³⁵ Aliens Act § 205

³⁶ Obligation to Leave and Prohibition on Entry Act § 14 p 5

³⁷ Obligation to Leave and Prohibition on Entry Act § 17¹ Expulsion to a state to which it may result in consequences specified in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the application of death penalty. The expulsion of an alien has to comply with Articles 32 and 33 of the United Nations Convention relating to the Status of Refugees (together with the Protocol relating to the Status of Refugees of 31 January 1967).

return decision is deemed to be an illegally staying TCN in the country: s/he is not granted an official legal status. During the period when the PBGB continues all necessary operations for organising the removal, the TCN may be subjects to surveillance measures.

However, if it turns out that removal is not possible (on the principle of non-refoulement), the removal shall not be executed. In other options the assessment will be made, whether expulsion is possible or not. If removal of TCN is declared impossible, then pursuant to the Aliens Act, it is possible to grant a temporary residence permit on humanitarian grounds to a TCN.^{38,39}

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

The Aliens Act stipulates that in exceptional circumstances a TCN may be granted a temporary residence permit issued for settling permanently in Estonia if the TCN is staying in Estonia and it has become evident that the obligation to leave Estonia would be clearly unduly burdensome to person, the TCN lacks the possibility of getting the residence permit in Estonia on another basis and the TCN does not constitute a threat to public order and national security.⁴⁰ The decision to grant a residence permit on this ground must be substantiated and considerations on which the decision was based should be specified by the PBGB. A temporary residence permit will be issued for up to one year at a time and may be extended by up to three years at a time. Granting of a residence permit on thus ground is exceptional, and a person cannot apply himself or herself for such a residence permit, but it up to the PBGB decision to grant a residence permit.

Extension of the short-stay visa

Extension of person's short-stay visa who has a subject to long-term irregular stay, is not possible.

Extension of the voluntary departure period

A person is required to comply with a return decision within the shortest possible period. According to national legislation, the term for voluntary departure should be complied within 7 to 30 days. The voluntary departure period may be extended by up to 30 days at a time if the compliance with the obligation to leave turns out to be too disproportionately burdensome for a person within the term stipulated in the return decision, taking account of:

- 1) the duration of the stay in Estonia of an alien;
- 2) impact on a child attending school;
- 3) family and social relationships of an alien in Estonia and
- 4) other relevant circumstances.

National legislation does not specify the number of maximum times it can be extended, but in practice it is limited to three times.⁴¹

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

National legislation does not foresee the possibility not to issue a return decision to a person who is a long-term irregular migrant. If the person becomes an irregular migrant, he will be issued a return

³⁸ Aliens Act § 125

³⁹ Aliens Act § 210³, 210⁴

⁴⁰ Aliens Act § 210³, 210⁴

⁴¹ Information is provided by the PBGB office

decision where it is appointed to which country the person should leave. In case there is some uncertainty/the receiving country is unclear, the assessment of the receiving country will be carried out. Absence of receiving country is not an obstacle to issue a return decision, but an expulsion of the person will be annulled in cases where the principle of non-refoulement will apply. A person won't be expelled to a state to which expulsion may result in consequences specified in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the application of death penalty. Also, the expulsion of an alien has to comply with Articles 32 and 33 of the United Nations Convention relating to the Status of Refugees (together with the Protocol relating to the Status of Refugees of 31 January 1967).

In cases where the expulsion is not applicable, a written decision not to apply expulsion will be issued immediately to a person. Within the decision the legal basis and the justification of not to apply the extension will be described.

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

As a reaction of the emergency/crisis situation due to the Covid-19, the new amendment entered into force in the Aliens Act on 06.05.2020 according to which the minister responsible for the area or the Director General of the PBGB authorised by the minister may, in an emergency or an emergency situation, grant an alien who is staying in Estonia, whose return to the country of origin is impeded, a legal basis for the stay in Estonia.⁴² As an clarification: the Director General of the PBGB had previously also a right to legalize the temporary stay of a person if his or her return was temporarily impossible (eg force majeure), but amendment to the Aliens Act made it more explicit.

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):

⁴² Aliens Act § 43 p 3²

According to current the PBGB practice, if there are other obstacles to the removal than humanitarian considerations or force majeure, but the removal is not declared impossible, the PBGB continues all necessary operations for organising the removal. A TCN who has received the return decision is deemed to be an illegally staying TCN in the country: s/he is not granted an official legal status. During the period when the PBGB continues all necessary operations for organising the removal, the TCN may be subjected to surveillance measures.

Person who is a subject to return decision is obliged to co-operate with the organisation of expulsion, among other:

- 1) to provide governmental authorities enforcing expulsion with oral and written information and explanations;
- 2) to submit all information and documents and other evidence in his or her possession which are relevant to the proceedings relating to expulsion;
- 3) to co-operate in the obtainment of the documents necessary for expulsion;
- 4) to co-operate in the collection of information needed for identification of his or her person, and for verification purposes.⁴³

Person who is not co-operating may be detained in the detention center, if the surveillance measures do not ensure the efficiency of the compliance with the obligation to leave the country.⁴⁴ If the person to be expelled continuously fails to comply with the obligation to co-operate or the obtaining of the documents, which are necessary for the return, from the receiving state or transit state is delayed, at the request of the PBGB the administrative court will extend the term of detention in the detention centre of the person to be expelled by four months at a time but for no longer than 18 months as of the day of detention of the person to be expelled.⁴⁵

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

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

Please see the answers to question Q2.

An extension of the short-stay visa

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

Please see the answers to question Q2.

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?

⁴³ Obligation to Leave and Prohibition on Entry Act § 26⁴

⁴⁴ Obligation to Leave and Prohibition on Entry Act § 15 p 2

⁴⁵ Obligation to Leave and Prohibition on Entry Act § 25 p 2

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).

N/A

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).

N/A

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:

N/A

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).

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.

No, there are no planned changes.

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: [<u>all categories</u>]				
Type of service	Service provided? (Y/N)	Is the provision of service mandatory or discretionary ? ⁴⁶	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 checked="" type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Accommodation <i>If yes, please briefly describe</i>	Yes	Mandatory	Emergency social assistance will be provided to persons who find themselves in a socially helpless situation due to the loss or lack of means of subsistence which guarantees the persons at least food, clothing and temporary accommodation. ⁴⁷ An emergency social assistance will be provided until the person is no longer in a hopeless situation.	There are fewer rights and services are more limited compared to third-country nationals residing legally in the country.

⁴⁶ 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.

⁴⁷ Social Welfare Act § 8 p 1, 2 Emergency social assistance shall be provided to a person until he or she is no longer in a socially helpless situation due to the loss or lack of means of subsistence.

			The provision of emergency social assistance to a foreigner temporarily staying in Estonia is organised by the local authority in whose administrative territory the person is staying at the time he or she is in need of assistance. ⁴⁸	
	Yes	Discretionary	If a person who is staying in Estonia without a basis for the stay in Estonia has no sufficient finances, the PBGB or the Estonian Internal Security Service may organise a short period accommodation of a person if this is necessary for humanitarian considerations or for the protection of a vulnerable person and if he/she cannot use accommodation elsewhere. ⁴⁹	
Special accommodation facilities (i.e. shelter for victims of violence, children etc.) <i>If yes, please briefly describe</i>	Yes	Mandatory	To an unaccompanied minor the substitute care service will be provided by the Social Insurance Board during his or her stay in Estonia. ⁵⁰ The provision of state victim support is organised by the Social Insurance Board. List of services provided to victims are listed in Victim Support Act: 1) counselling of victims; 2) assisting victims in communicating with state and local government authorities and legal persons; 3) ensuring safe accommodation; 4) ensuring catering; 5) ensuring access to necessary health services; 6) providing necessary material assistance; 7) providing necessary psychological assistance; 8) enabling necessary translation and interpretation services for receiving the services provided within the framework of victim support services; 9) providing other services	The access of victims of trafficking in human beings and unaccompanied minors to accommodation does not depend on their legal basis to stay.

⁴⁸ Social Welfare Act § 5 p 5

⁴⁹ Obligation to Leave and Prohibition on Entry Act § 13²

⁵⁰ Obligation to Leave and Prohibition on Entry Act § 12 p 9

			necessary for physical and psycho-social rehabilitation of victims. ⁵¹	
Other forms of accommodation or shelter or specialised centre	No			
Healthcare				Less <input checked="" 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>	Yes	Mandatory	<p>According to Health Services Organisation Act, every person in the territory of the Republic of Estonia has the right to receive emergency care.⁵² Under emergency care it is meant health services which are provided by health care professionals in situations where postponement of care or failure to provide care may cause the death or permanent damage to the health of the person requiring care.⁵³ General Part of the Social Code Act § 3 regulates the scope of persons entitled to receive social rights in Estonia.⁵⁴</p> <p>Additionally, the list of health care services provided to persons who are not covered by the national health insurance are:</p> <ul style="list-style-type: none"> • testing to HIV-virus; • ambulatory services for HIV-positive persons; • treatment of tuberculosis; • testing of SARS-CoV-2 caused COVID-19, treatment and provision of related medical services; • counselling of tobacco cessation; 	Access to emergency healthcare is less for irregular migrants than legal migrants or Estonian citizens.

⁵¹ Victim Support Act § 3 p 2

⁵² Health Services Organisation Act § 6 p 1 and § 6 p 4 Emergency care provided to a person not covered by health insurance shall be paid for from the budget of the Estonian Health Insurance Fund on the bases, conditions and pursuant to the procedure provided for in the list of health services of the Estonian Health Insurance Fund.

⁵³ Health Services Organisation Act § 5

⁵⁴ General Part of the Social Code Act § 3 to an Estonian citizen residing in Estonia, an alien residing in Estonia on the basis of a long-term residence permit or permanent right of residence or an alien residing in Estonia on the basis of a temporary residence permit or temporary right of residence. A beneficiary of international protection or an asylum seeker who is staying in Estonia shall have the right to receive social protection on the bases established in the Act on Granting International Protection to Aliens.

			<ul style="list-style-type: none"> day care for a person with a mental disorder using a narcotic or psychotropic substance or alcohol; reproductive health care counselling and prevention of sexually expanded diseases for a person's up to (incl) 26 years of age.⁵⁵ <p>All minors (incl illegally staying) are covered by national health care system, provided by the State.</p>	
Basic medical care <i>If yes, please briefly describe</i>	Yes	Mandatory	<p>A person to be expelled shall be ensured access to medical examination and necessary health services.</p> <p>The medical expenses of emergency services and treatment of a person to be expelled will be paid from the state budget.⁵⁶</p>	
	Yes	Discretionary	<p>Persons to whom return decision is issued, are entitled to consult a doctor or nurse and receive support for purchasing medicines.⁵⁷</p>	
Specialised care <i>If yes, please briefly describe</i>	Yes	Discretionary	<p>Persons to whom return decision is issued, are entitled to visit a specialised medical assistance/care. The service is needs-based.⁵⁸</p>	
Other healthcare services <i>If yes, please briefly describe</i>	Yes	Discretionary	<p>Persons to whom return decision is issued, are entitled to visit and receive services provided by the psychologist and psychiatrist. The service is needs-based.⁵⁹</p>	
Social assistance				Less <input checked="" type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>

⁵⁵ The Minister of Health and Labor order Nr 60 RT I, 02.07.2020

⁵⁶ Obligation to Leave and Prohibition on Entry Act § 26⁹ p 1,7

⁵⁷ Service is provided with support of the AMIF project (AMIF2018-9 „Support services for applicants for international protection and returnees“)

⁵⁸ Service is provided with support of the AMIF project (AMIF2018-9 „Support services for applicants for international protection and returnees“)

⁵⁹ Service is provided with support of the AMIF project (AMIF2018-9 „ Support services for applicants for international protection and returnees “)

<p>Are long-term irregularly staying migrants entitled to receive social benefits?⁶⁰</p> <p><i>If yes, please briefly describe what these benefits are</i></p>	<p>Yes/No</p>		<p>Emergency social assistance is provided to persons who find themselves in a socially helpless situation due to the loss or lack of means of subsistence, which guarantees the persons at least food, clothing and temporary accommodation. Local municipalities where person lives will provide emergency social assistance until the person is no longer in a hopeless situation.⁶¹ Long-term irregular migrants are only entitled to receive emergency social assistance and not the social benefits.</p>	<p>There are fewer rights and services are more limited compared to third-country nationals residing legally in the country.</p>
<p>Employment</p>				<p>Less <input checked="" type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/></p>
<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>	<p>No</p>		<p>Persons are not entitled to work.</p>	<p>Persons are not entitled to work. There are no rights.</p>
<p>Education</p>				<p>Less <input type="checkbox"/> Same <input checked="" type="checkbox"/> More <input type="checkbox"/></p>
<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p><i>If yes, please briefly describe access.</i></p>	<p>Yes</p>	<p>Mandatory</p>	<p>In Estonia, the compulsory school attendance means the obligation to participate in the studies laid down in the daily schedule of a school or in an individual curriculum. A person who has reached the age of seven years before 1st of October in the current year is subject to the obligation to attend school (including a person having foreign citizenship or unspecified</p>	<p>Equal to the citizens of the Estonia.</p>

⁶⁰ 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.

⁶¹ Social Welfare Act § 8 p 1, 2 Emergency social assistance shall be provided to a person until he or she is no longer in a socially helpless situation due to the loss or lack of means of subsistence.

			citizenship). A person is required to attend school until they acquire basic education or attain the age of 17 years. ⁶²	
Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training? <i>If yes, what types of education and under which conditions?</i>	No		Persons are not entitled to participate in educational programmes and/or professional training.	There is no right to receive services at expense of the State.
Legal aid or assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input checked="" type="checkbox"/>
Do long-term irregular migrants have access to legal aid or assistance type of services? <i>If yes, please briefly enumerate and explain</i>	Yes	Discretionary	Persons are entitled to receive return counselling/ consultation provided by the Police- and Border Guard Board return counsellors. ⁶³	More than citizens and third-country nationals who are legally residing in the country.
	Yes	Mandatory	Person have the right to receive legal aid from the state for contestation of the return decision, the decision on the expulsion or prohibition on entry applied in the return decision in the case the TCN has no sufficient funds to cover legal expenses. ⁶⁴	
Other?				Less <input checked="" type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Are any other rights relevant to mention here? Please describe				

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**)?

⁶² Basic Schools and Upper Secondary Schools Act § 9 p 1, 2

⁶³ Service is provided with support of the AMIF project (AMIF2018-9 „ Support services for applicants for international protection and returnees “)

⁶⁴ Obligation to Leave and Prohibition on Entry Act § 6^o p 1

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

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 ? ⁶⁵	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 checked="" type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Accommodation <i>If yes, please briefly describe</i>	Yes	Mandatory	Emergency social assistance is provided to persons who find themselves in a socially helpless situation due to the loss or lack of means of subsistence which guarantees the persons at least food, clothing and temporary accommodation. ⁶⁶	
Special accommodation facilities (i.e. shelter for victims of violence, children etc.) <i>If yes, please briefly describe</i>	Yes	Mandatory	To an unaccompanied minor the substitute care service will be provided by the Social Insurance Board during his or her stay in Estonia. ⁶⁷ The provision of state victim support including the accommodation is organised by the Social Insurance Board.	
Other forms of accommodation or shelter or specialised centre	?			

⁶⁵ 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.

⁶⁶ Social Welfare Act § 8 p 1, 2 Emergency social assistance shall be provided to a person until he or she is no longer in a socially helpless situation due to the loss or lack of means of subsistence.

⁶⁷ Obligation to Leave and Prohibition on Entry Act § 12 p 9

Healthcare				Less <input checked="" 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>	Yes	Mandatory	<p>According to this Act every person in the territory of the Republic of Estonia has the right to receive emergency care.⁶⁸</p> <p>Under emergency care it is meant health services which are provided by health care professionals in situations where postponement of care or failure to provide care may cause the death or permanent damage to the health of the person requiring care.⁶⁹</p>	
Basic medical care <i>If yes, please briefly describe</i>	No			
Specialised care <i>If yes, please briefly describe</i>	No			
Other healthcare services <i>If yes, please briefly describe</i>	No			
Social assistance				Less <input checked="" type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Are long-term irregularly staying migrants entitled to receive social benefits?⁷⁰ <i>If yes, please briefly describe what these benefits are</i>	No			
Employment				Less <input checked="" type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>

⁶⁸ Health Services Organisation Act § 6 p 1 and § 6 p 4 Emergency care provided to a person not covered by health insurance shall be paid for from the budget of the Estonian Health Insurance Fund on the bases, conditions and pursuant to the procedure provided for in the list of health services of the Estonian Health Insurance Fund.

⁶⁹ Health Services Organisation Act § 5

⁷⁰ 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>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>	No			
Education				Less <input checked="" 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	In Estonia, the compulsory school attendance means the duty to participate in the studies laid down in the daily schedule of a school or in an individual curriculum. A person who has reached the age of seven years before October 1 in the current year is subject to the duty to attend school (including a person having foreign citizenship or unspecified citizenship). A person is required to attend school until they acquire basic education or attain the age of 17 years. ⁷¹	
<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 checked="" 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>	Yes	Mandatory	Person have the right to receive legal aid from the state for contestation of the return decision, the decision on the expulsion or prohibition on entry applied in the return	

⁷¹ Basic Schools and Upper Secondary Schools Act § 9 p 1, 2

<i>If yes, please briefly enumerate and explain</i>			decision in the case the TCN has no sufficient funds to cover legal expenses. ⁷²	
Other?				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Are any other rights relevant to mention here? Please describe				

⁷² Obligation to Leave and Prohibition on Entry Act § 6⁶ p 1

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?

Yes, according to Aliens Act a local government (municipality) is required to notify the PBGB about a person who is staying in the territory of the local government illegally.⁷³

As a general rule, the provision of (emergency) social assistance to a person temporarily staying in Estonia is organised by the local authority in whose administrative territory the person is staying at the time he or she is in need of assistance.⁷⁴

To be able to recognize person's needs and legal residential status, the local municipalities may do requests to the national data register of social services and benefits (STAR).⁷⁵

To persons who has been long time in position of the irregular stay, the safe house service will be provided. Safe house service is a social service organised by a local authority with the objective to ensure temporary housing, a safe environment and basic assistance to the persons. Upon provision of basic assistance, the person shall be ensured crisis assistance, if necessary, which restores the person's mental balance and operational capacity in everyday life and informed of other possibilities to receive assistance. Based on the age and needs of the person, his or her care and development shall also be ensured.⁷⁶

A safe house service provider is required to inform:

- 1) the local authority of its place of activity of the arrival of a child at the safe house not later than on the next working day, unless the child has been referred to the safe house by a decision of the local authority;
- 2) the local authority of its place of activity and, if necessary, a regional victim support worker of the Social Insurance Board of the arrival of an adult at the safe house within five working days with his or her written consent.⁷⁷

Access to emergency medical assistance will be provided even though the identity or right to legal stay of person cannot be established.

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.

No, but a person who is in a return procedure is required to co-operate with the PBGB, among other:

- 1) to provide governmental authorities enforcing expulsion with oral and written information and explanations;
- 2) to submit all information and documents and other evidence in his or her possession which are relevant to the proceedings relating to expulsion;
- 3) to co-operate in the obtainment of the documents necessary for expulsion;

⁷³ Aliens Act § 294 p 2

⁷⁴ Social Welfare Act § 5 p 5

⁷⁵ The central users of the register are local government social workers and child protection workers.

⁷⁶ Social Welfare Act § 33 p 1

⁷⁷ Social Welfare Act § 34

4) to co-operate in the collection of information needed for identification of his or her person, and for verification purposes.

This obligation extends also to the representative of the person.⁷⁸

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.

Involved non-governmental organizations may provide social and legal counselling, emergency social assistance – accommodation (shelter-houses), food (Toidupank) and some clothes (charity organizations, churches).

For examples, the city of Tartu co-operates with Tartu Shelter House (which is in a same facility with a Homeless person's day Center, where the person may stay at the daytime) and Tartu Paulus Church. Involved organizations provide social counselling and emergency social assistance – accommodation, food and some clothes.

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?

No, these organisations are not obliged to report of such persons.

⁷⁸ Obligation to Leave and Prohibition on Entry Act § 26⁴ p 1,2

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'**⁷⁹ 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:

Long-term irregular migrants who are victim of or witness to an offence should contact the PBGB helpline 112 or the victim support information and crisis helpline 116 006 and they are entitled to receive victim support (regardless of their legal or unlawful stay in the country). National victim support centres are located in all major cities and they provide free counselling services to those in need in all victim support centres.

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)):

IOM Estonian Office is providing the assisted voluntary return assistance to persons to whom the PBGB has issued a return decision with an obligation for voluntary leave; they are not in a position to provide return assistance to persons to whom an expulsion order has been issued. Generally, persons who have been long-term irregular migrants are subject to forced return.

The PBGB has their own budgetary and finances⁸⁰ to assist return of persons who are in a process of forced return. If needed also accommodation prior return will be provided.

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.

Example: Former USSR undetermined citizen residing irregularly in Estonia since 2018

Background:

⁷⁹ <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

⁸⁰ Supported by the project AMIF2018-10

Former USSR undetermined citizen arrived into Estonia in 2015. Person has applied for international protection for several times in respect of which the decision was made to refuse to grant international protection.

Process:

Since November 2018, the person has been registered as irregular migrant and issued an immediately enforceable return decision. To be able to organize the expulsion of above-mentioned person, the PBGB started to prepare his documentation. When contacting the person's country of origin it became evident that the state from which the person originates, does not recognize him as a citizen (person didn't fulfill the registration criteria's during the time set by country of origin) and foreign authority is not in interest to co-operate in documentation/return of the person. The TCN was released from the detention center, as his detention was disproportional, and person was referred to Tartu shelter house, where an essential social assistance- as accommodation, food and some clothes were provided to him. Person has been living mainly in Tartu shelter house, although he has left for several times arbitrarily to Latvia and Lithuania. His status has remained the same since 2018.

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**.

In the framework of the emergency healthcare, the medical treatment (covering COVID-19 tests, provision of needed medicine) will also be available for long-term irregular migrants.

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?

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)

Long-term irregular migrants are required to comply with the surveillance measures set by the PBGB. Most commonly used measure is that the person has to appear for registration at the PBGB at prescribed intervals.⁸¹ The PBGB will continue to find solutions to return the person who has no legal basis to stay in a country (for example try to obtain a travel document for a person), even though it may turn out difficult.

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)

The PBGB will contact the local municipality and the shelter (safe) house prior transporting the person to safe house and inform them about the need to accommodate a person. The PBGB migration surveillance bureau will also inform the local prefecture about arrival of such person and surveillance measures implemented to a person.

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)

No, there is no such guidance, as the number of persons who are long-term irregularly staying migrants, is very small.

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)

-

⁸¹ Obligation to Leave and Prohibition on Entry Act § 10 p 2 (2)

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.

In each case, where person become an irregular migrant, will be dealt on the case-by-case basis, involving the governmental institutions (the PBGB, the court etc) and organisations (local governments, hospitals, shelter houses etc) both at horizontal and vertical levels of cooperation.

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:

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:

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

Please provide a brief explanation:

To exchange of the information concerning irregularly staying migrant, the local municipalities may do requests to the national data register of social services and benefits (STAR). Local municipalities

have also access to the Population Register, where information about person citizenship, permanent place of residence, place of stay, residence permit and its validity etc. are available.

Exchanging information between Member States?

Please provide a brief explanation:

There is no any specific exchange of information between MS, as the persons staying illegally are not allowed to leave Estonia/travel from Estonia to other MSs.

The PBGB is in process to work-out its SIS-development (planned to be in use by end of 2022), hereafter it would be possible to enter an alert of return decision to SIS which would allow other MS to be informed of the illegal status of the person.

Other good practices

Please provide a brief explanation:

-

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?

According to national legislation, a person who is staying in Estonia without a basis for stay, a return decision will be issued. Third country national who has no legal basis to stay in Estonia is required to leave immediately or within the shortest period.⁸² Therefore, the priority is that a person who has been issued a return decision would leave a country.

If there is a temporary reason why return is impossible, the return will be postponed and carried out then when it is possible. For example, if during the return process appears that fulfilment of return decision is too disproportionately burdensome for a person within the term stipulated in decision for voluntary departure, taking account:

⁸² Obligation to Leave and Prohibition on Entry Act § 9 p 1 (2,3)

- 1) the duration of the stay in Estonia of an alien;
 - 2) impact on a child attending school;
 - 3) family and social relationships of an alien in Estonia and
 - 4) other relevant circumstances,
- the return decision might be postponed.

If it becomes evident, that return is permanently impossible:

- 1) there is no state to host the alien;
 - 2) the state hosting the alien does not cooperate with the State expulsing the alien;
 - 3) the internationally recognized principle of non-refoulement)
- the return decision will be annulled.

All the cases will be assessed individually.

As an exemption and by way of derogation, in exceptional circumstances a person may be granted a temporary residence permit issued for settling permanently in Estonia if the TCN is staying in Estonia and in the course of the proceedings concerning (the entry of person into Estonia, temporary stay, residence and employment in Estonia) became evident that the obligation to leave Estonia would be clearly unduly burdensome to person, person lacks the possibility of getting the residence permit in Estonia on another basis and does not constitute a threat to public order and national security.⁸³ Granting of a residence permit on this ground is exceptional, and a person cannot apply himself or herself for such a residence permit, but a TCN can emphasize the circumstances why s/he needs the Estonian residence permit during another procedure performed by the PBGB.

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.

The PBGB legal advisors/return councillors are working in close collaboration with persons who are in return process. They explain the advantages of successful return and disadvantages of unlawful stay or if person does not comply with the obligation to co-operate.

Return councillor's service⁸⁴ is provided to persons in detention center but also to persons who are in need of return counselling.

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

⁸³ Aliens Act § 210³ p 1,2

⁸⁴ Service is provided with the support of AMIF-funds AMIF2018-9 „Support services for applicants for international protection and returnees “

source of the statement – e.g. based on input from experts, surveys, evaluation reports or from other sources (please indicate which ones).

Return councillors service⁸⁵ provided by the PBGB is a personalised counselling, provided to persons in detention center but also to persons who are in need of return counselling.

There are no particular measures to promote return or discourage illegal stay for long term irregular migrants, but in order to prevent situations were persons may become long-term irregular migrants there are some stimulations in place: financial assistance for return and reintegration support; not implementing an entry-ban, in case person leaves the country voluntarily etc.).

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):

There are no particular measures at central level to promote return or discourage illegal stay for long term irregular migrants, but in order to prevent situations were persons may become long-term irregularly staying migrants, there are some stimulations in place: financial assistance for return and reintegration support; not implementing an entry-ban, in case person leaves the country voluntarily etc.).

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?

⁸⁵ Service is provided with the support of AMIF-funds AMIF2018-9 „Support services for applicants for international protection and returnees “

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):

Estonian legislation does not provide an ultimate solution for legalisation of long-term irregular migrants.

Legalisation of stay of long-term irregular migrants is possible in exceptional circumstances – a person may be granted a temporary residence permit issued for settling permanently in Estonia if the TCN is staying in Estonia and in the course of the proceedings concerning (the entry of person into Estonia, temporary stay, residence and employment in Estonia) became evident that the obligation to leave Estonia would be clearly unduly burdensome to person, person lacks the possibility of getting the residence permit in Estonia on another basis and does not constitute a threat to public order and national security.

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).

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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.

Kristi Sikk analysed in her master thesis on a topic - *The Assessment of the Possibilities of Expulsion of an Alien who is Staying in Estonia without a Legal Basis and the Legalization of the Stay of such Person*. The aim of the Thesis was to find out what are the possible ways of acting for the state if the expulsion of an alien who does not have a legal basis for stay has proven to be difficult, under which circumstances the expulsion shall be considered impossible and whether the state shall legalize the stay of such aliens in Estonia. The analysis revealed, however, that if a person cannot be expelled, he/she should be given a residence permit taking account person's situation. In addition, the option of tolerating illegal stay was eliminated as those persons would not be able to work and would only

to be dependent on subsidies from the state.⁸⁶ Note: In 2016, the provision of temporary residence permit as an exception, was conducted into the Aliens Act.

Siiri Leskov monitored in her master thesis - *Problems regarding expulsion of third country nationals from Estonia*. Based on the analysis of the theoretical framework of the Thesis and the data gathered with the empirical study, the author identified the problems related to the expulsion of third country nationals in Estonia and the possible solutions thereof.⁸⁷

In 2008 a juridical analyse was carried by the Supreme Court of Estonia (by Liina Kanger), in order to assess the proportionality of case law related to *termination of irregular stay and expulsion from Estonia*.⁸⁸

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):

Persons, to whom an authority has been issued a return decision with obligation to voluntary leave, remains the possibility to apply for residence permit within a country, if person meets the criteria's required for residence permit. Granting the residence permit will revoke a return decision.

There have been cases when persons has entered Estonia during the Soviet Union times and have not legalized his stay up to this time. In one specific case, person entered Estonia in 1995, became an illegal and remained unknown until 2020. After discovering of such a person, the PBGB issued to him a return decision with obligation to voluntary leave. During the person's documentation process came out, that person has never applied for citizenship of this country of origin and that county cannot recognize him as own citizen. Hence, person's return to country of origin became impossible. Person applied a residence permit on a basis of settling permanently in Estonia, and as he fulfilled the criteria's, he got a residence permit.

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.

In Estonia a person who is in situation of long-term irregular stay, is not allowed to work.

⁸⁶ K. Sikk [The Assessment of the Possibilities of Expulsion of an Alien who is Staying in Estonia without a Legal Basis and the Legalization of the Stay of such Person](#), Tartu University, 2015

⁸⁷ S. Leskov [Problems regarding expulsion of third country nationals from Estonia](#), Academy of Security Sciences, 2016

⁸⁸ L. Kanger. [Ebaseadusliku riigis viibimise lõpetamine. Väljasaatmine. Kohtupraktika analüüs](#). Supreme Court of Estonia, 2008

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:

As the termination of the period for how long time the person remains an irregular migrant or returns his country of origin is unpredictable, it may bring concerns to local governances, as the social assistance services are not meant for long period, but rather as short-term measures.

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

Please provide a brief explanation:

No problems identified.

Challenges exchanging information between Member States?

Please provide a brief explanation:

No problems identified.

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

N/A

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**?

Local municipalities have been asked the PBGB to test persons for COVID-19 prior directing them to the facilities provided by the municipalities.

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**?

During the Covid-19 pandemic, problems with facilitating return and preventing illegal stay were mainly related to the closure of external borders and with difficulties to obtain travel tickets, due to limited number of flights.

The PBGB has some financial resources⁸⁹ encouraging persons return to the country of origin, but so far, the measure has not worked so efficiently.

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**?

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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).

According to the PBGB expert/case-worker readmission agreements with third countries will facilitate the procedure of documentation and return of persons who have been staying in EU irregularly for a long time.

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

⁸⁹ Service is provided with the support of AMIF-funds AMIF2018-10 "The implementation of return obligations and offering accommodation service"

- 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

The number of long-term irregularly staying migrants are relatively small in Estonia, according to the Police and Border Guard Board there are annually about up to five persons, whose return becomes a difficult or even impossible.

Range of publicly available services are quite limited if it concerns long-term irregular migrants. Persons are guaranteed with emergency medical and social assistance; legal aid is provided for the contestation of the return decision, the decision on the expulsion or prohibition on entry applied in the return decision.

Estonian legislation does not provide an ultimate solution for legalisation of long-term irregular migrants. All the circumstances and approaches of each case of irregularly staying migrants will be assessed individually.

There are no particular measures to promote return or discourage illegal stay for long term irregular migrants, but in order to prevent situations were persons may become long-term irregularly staying migrants, there are some stimulations in place: financial assistance for return and reintegration support; not implementing an entry-ban, in case person leaves the country voluntarily etc.).