



STUDY 2020

**Responses to long-term irregularly staying
migrants: practices and challenges in France**

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RESPONSES TO LONG-TERM IRREGULARLY STAYING MIGRANTS: PRACTICES AND CHALLENGES IN FRANCE

Study conducted by EMN France

November 2020

Disclaimer:

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List of Acronyms

- AME: State Medical Aid
- ASE: Child welfare service
- AVR: Voluntary return aid
- AVR: Assisted Voluntary Return
- BTS: Advanced technical certificate
- CAP: Vocational Aptitude Certificate
- CASF: Code on Social Action and Families
- CESEDA : Code on Entry and Residence of Foreign Nationals and Right of Asylum
- CPAM: French national health insurance agency
- DGEF: General Directorate for Foreign Nationals in France
- ECHR: European Convention on Human Rights
- OFII : French Office for Immigration and Integration
- OQTF: Order to Leave French Territory

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Responses to long-term irregularly staying migrants: practices and challenges in France

EXECUTIVE SUMMARY

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 (2008/115/EC)¹ 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.² 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.³

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, their refusal to cooperate with the enforcement of the return decision or where individual circumstances or other practical reasons impede the enforcement of a return decision.

In addition, there are cases of third-country nationals whose residence permits have expired and have not been renewed, 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.⁴ In some cases, third-country nationals may disappear from sight 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.⁵

¹ Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0115>

² 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.

³ European Commission, Annex to the Commission Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, section 1.2 "Illegal stay", <https://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-6505-F1-EN-ANNEX-1-PART-1.PDF>

⁴ 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).

⁵ Refugee Law Initiative in cooperation with the Centre for International Criminal Justice, 'Undesirable and Unreturnable Migrants', 2016, <https://cicj.org/wp-content/uploads/2016/09/Undesirable-and-Unreturnable-Full-report.pdf> This research addresses excluded asylum seekers and other migrants suspected of serious criminality who cannot be removed.

Scope of this 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 being definitive, was not enforced or was postponed for legal reasons (the principle of non-refoulement, 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,
- Third-country nationals who do not or no longer meet the 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)⁶ and who were not issued a return decision because they were unknown to the authorities.

Insofar as the decisions for return as well as the reasons why a return decision has not been enforced or has been postponed may play a role in the measures taken by the national authorities, their examination is outside the scope of this study.

Various measures directly relate to the enforcement of a return decision such as Assisted Voluntary Return (AVR) programmes or other return incentives have already been covered in numerous other studies and discussions at expert group level and are not the primary focus of this study.

This Study covers the period from 2015–October 2020.

Objectives of the study

The overall aim of this study is to provide an overview of existing national policies and practices towards third-country nationals in a prolonged situation of illegal stay and to explore the possible responses to bring such situations to an end.

It will examine measures that may be indirectly related to promoting return – either to the country of origin or to another third country – such as restricted access to general services or specific programmes for third-country nationals in a situation of protracted illegal stay.

The **first section** of the study begins by presenting the institutional, legal and political context regarding long-term irregular migrants and aims to provide an overview of main points of discussion in France, both in terms of policy and civil society.

Section 2 analyses the rights and services available to long-term irregularly staying migrants, the role of central, regional and local authorities in providing services, as well as the role of civil society organisations. **Section 3** focuses on policies and good practices implemented in finding approaches to address and end the issue of long-term irregularity.

⁶ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>

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 France.

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):

In principle, no distinction is made regarding the length of irregular stay. The individuals concerned are eligible to be removed, with due respect for private and family life (Article 8 of the European Convention on Human Rights, ECHR).

However, the regularisation of situations may take into account the habitual period of residence in France and, as such, may offer better prospects for foreign nationals who have been in an irregular situation for a longer period of time.

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 refolement, 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)?

In practice, all these categories exist in France, but the legislation on foreign nationals does not categorise them in a specific way. Their legal status (being the subject of a return decision awaiting enforcement, failed asylum seeker evading detection, foreign national whose visa or residence permit has expired, residence permit required for medical reasons, etc.) will determine the procedure to be followed to issue and enforce a removal order.

In addition, there are no grey areas: either the person is the subject of a removal order and is avoiding the order without justification, in which case, the individual continues to be in an irregular situation, or they can provide evidence demonstrating that they are unable to leave the country. In this case, they may be placed under house arrest.

If necessary, the removal order may be overturned or repealed by a judge in order to grant residence to the individual in question.

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 France, annually since 2015.

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

By definition, it is impossible to evaluate the number of people living in an irregular situation in the country. The number of beneficiaries of State Medical Aid (AME) may provide an initial indication, as the AME is a mechanism which enables certain foreign nationals in an irregular situation to receive access to healthcare. AME is granted on the condition of stable residence (three months of uninterrupted residence in France) and resources. The reliability of this indicator is, however relative, notably due to changes that may affect the conditions of access to this mechanism.

Two initiatives have been taken in regard to the way in which this mechanism is managed in order to fight fraud:

- the annual admission document to the AME is now secured and delivered directly to the beneficiary;
- a national database of AME beneficiaries has been created by the French national health insurance agency (CPAM).

At 31 December 2018, 318,106 people were receiving the AME, a slight increase (+0.7%) in comparison to the previous year.⁷

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

See response to Q1d.

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).

⁷ National Assembly, <http://questions.assemblee-nationale.fr/q15/15-26139QE.htm>

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

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

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

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

When a foreign national can justify that they are unable to leave the country, the government may place them under house arrest as long as there is a reasonable prospect of their removal (for a once-renewable period of six months). No specific law is attached to this legal regime

The house arrest order is issued by the competent authority, which depends upon the nature of the removal order (whether it is issued by the Prefect or by the Minister).

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

Extension of the short-stay visa

Extension of the voluntary departure period

Article L.511-1-II of the French Code on the Entry and Residence of Foreign Nationals and the Right of Asylum (CESEDA), modified by Law No. 2016-274 of 7 March 2016 on the rights of foreign nationals in France⁸ and Law No. 2020-734 of 17 June 2020 on the various provisions relating to the health crisis⁹ state that: "foreign nationals who are required to leave France have a period of thirty days from the date of notification of the obligation to leave France to do so voluntarily. In exceptional circumstances, the administrative authorities may allow a voluntary departure period of more than thirty days if it appears necessary to take specific circumstances into account."

Foreign nationals are informed in writing of this extension. The circular of 2 November 2016 issued under application of Law No. 2016-274 of 7 March 2016 on the rights of foreign nationals in France specifies these circumstances in the spirit of the Return Directive (Article 7§2). The circumstances mentioned in this circular include length of residence, the existence of children in education, and other family or social connections.

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

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

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).

⁸ Law No. 2016-274 of 7 March 2016 on the rights of foreign nationals in France, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000032165558&dateTexte=20170628>

⁹ Law No. 2020-734 of 17 June 2020 on the various provisions relating to the health crisis, other urgent measures, as well as the withdrawal of the United Kingdom from the European Union, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042007059/2020-09-12/>

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.

When practical obstacles exist, the removal order remains enforceable. It is the responsibility of the foreign national to voluntarily comply or the administration to enforce, where necessary placing them under house arrest or placed in detention.

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

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

In the event of material impossibility, France may apply two house arrest regimes:

- Long-term house arrest, mentioned in response to Q2;
- Short-term house arrest, for the length of time it takes to meet the material requirements for removal. This form of house arrest (L. 561-2 of the CESEDA) is 45 days and can be renewed once. When the material conditions are met and the foreign national does not voluntarily comply with the order which applies to them, a home visit may be organised.

It is important, however, to stress that such foreign nationals remain in an irregular situation. Their continued stay in the country is simply tolerated until removal is possible.

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

An extension of the short-stay visa

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

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

SECTION 1.2. PRIORITIES AND DEBATES AT A NATIONAL LEVEL

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

Yes

No

If yes, (i) what was the debate about and (ii) how has the debate evolved since 2015 (include debates related to Covid-19)? ^[1] Please provide a brief explanation of the main focus (i.e. main aspects discussed) and the evolution since 2015. Please indicate the main stakeholders involved. Please provide qualitative evidence to support your answer (e.g. national parliamentary debates, strategies, other policy documents).

The issue of long-stay irregular migrants regularly features in discussions in the media and public debates. Parliamentarians regularly ask questions of the government on this subject. The Parliamentary debate on immigration that was organised on 30 September 2019 addressed this issue, notably with regard to the AME provided to foreign nationals in an irregular situation, the budget for which had recently increased.

On 25 February 2020, a draft law was submitted to prohibit the regularisation of foreign nationals in an irregular situation.¹⁰ The aim of this draft law was to combat “irregular entry into France, which represents a significant economic cost to the public purse (...) and to protect the right of asylum ...”. It proposes that “the administration be prohibited from regularising foreign nationals in an irregular situation, in order to reduce applications for immigration and to comply with French laws in force and to reward those who comply with them.” The question of removing foreign nationals who have committed serious crimes and with a view to combatting terrorism is also often associated in the media with the issue of irregularly-staying foreign nationals.

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).

Generally speaking, policy debate has taken place involving a range of actors concerned about foreign nationals in a long-term irregular situation, with some wishing their regularisation in France and others advocating for their removal.

The question of the cost of providing AME is also a regular topic of debate (see Q1d on AME). Those who defend this policy explain that access to emergency medical care protects this group of people and the entire population from more serious medical issues. Opponents criticise the cost of this mechanism.

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.*

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

Yes

No

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

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

Yes

¹⁰ National Assembly, Prohibition of the regularisation of foreign nationals in an irregular situation, law proposal (in French), http://www.assemblee-nationale.fr/dyn/15/dossiers/interdiction_regularisation_etrangers_situation_irreguliere

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?^[11]_{SEP}*
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).

Debates on the issue of migrants in an irregular situation take place regularly with civil society actors (NGOs, charitable organisations, and international organisations such as La Cimade, the Groupe d'Information et de Soutien des Immigrés, GISTI,¹¹ etc.) who are in regular contact with foreign nationals, provide them with assistance and advise them on administrative procedures. These organisations regularly call on the government, drawing its attention to the situation of foreign nationals in an irregular situation (precariousness, conditions for accessing the labour market, etc.).

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?

The COVID-19 crisis brought the issue of the regularisation of irregular workers into the scope of the discussions relating to the health crisis. An amendment was therefore proposed to regularise irregular workers who had an offer of employment or employment contract in the agriculture sector.¹²

Various initiatives have been launched in the context of the COVID-19 crisis, both by NGOs and charitable associations.

- One example is the GISTI website which lists initiatives in France and abroad to promote the regularisation of undocumented migrants during the COVID-19 emergency situation.¹³
- Led by 15 collectives of undocumented migrants, the Marche des Solidarités, the Etats Généraux des Migrations, and more than 120 NGOs, undocumented migrants decided to begin walking from all around the world on 19 September 2020 to get to Paris and take part in a major demonstration on Saturday 17 October 2020.¹⁴
- On 16 June 2020, La Cimade launched a campaign for the broad and long-term regularisation of all undocumented people in France, asking for them to be issued with a stable residence permit that would guarantee the right to work and with a long-term view of achieving freedom of movement and establishment.¹⁵

¹¹ GISTI is a non-profit making organisation which defends and provides legal aid to foreign nationals in France .

¹² National Assembly, various provisions relating to the health crisis, other urgent measures and to the withdrawal of the United Kingdom from the European Union (in French), <http://www.assemblee-nationale.fr/15/cri/2019-2020/20200211.asp>

¹³ GISTI, Regularisation of undocumented persons: A relaunched claim during the state of emergency du to Covid-19 (in French), <https://www.gisti.org/spip.php?article6383>

¹⁴ GISTI, National march for undocumented persons: We're moving towards the Elysée! (in French), <https://www.gisti.org/spip.php?article6478>

¹⁵ The Cimade, Cimade launches a campaign to regularise undocumented people (in French), <https://www.lacimade.org/presse/la-cimade-lance-une-campagne-pour-la-regularisation-des-sans-papiers/>

In addition, since April 2020, members of Parliament (largely from the left) and leading figures (notably from trades unions) have addressed several messages to the government (through platforms or open letters) asking for the regularisation of workers who had contributed to the economic operation of the country during the health crisis.^{16 17} The target audience is all employees working in refuse collection, security, cleaning, personal care, deliveries and agriculture.

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.

Under application of European law and notably the Return Directive, France has a clear legal regime:

- Foreign nationals in an irregular situation can be issued with a removal order, first with a timescale for voluntary departure and with access to appropriate assistance where necessary. A legal appeals process exists which may lead to the measure being annulled and which involves a re-examination of their situation by the administration. Where appropriate, the foreign national may be granted residence.
- Foreign nationals in an irregular situation who can provide relevant tangible proof may request their admission for residence or obtain the status of refugee.

In all other cases, foreign nationals in an irregular situation must leave the country, either voluntarily or through their forced removal. In all cases, people in a long-term irregular situation have either been issued with a removal order which has not been enforced, or have avoided any controls. There is no reason to introduce changes to the legislation, because such individuals can request admission for residence where appropriate.

¹⁶ Le Monde, Coronavirus: "Our nation must show its gratitude to foreign nationals who are facing this crisis with us" (in French), https://www.lemonde.fr/idees/article/2020/04/21/coronavirus-notre-nation-doit-montrer-sa-gratitude-envers-les-etrangers-qui-affrontent-cette-crise-avec-nous_6037272_3232.html

¹⁷ Le Monde, The regularisation of undocumented people in the political debate, https://www.lemonde.fr/societe/article/2020/05/05/la-regularisation-des-sans-papiers-s-invite-dans-le-debat-politique_6038719_3224.html

Section 2: NATIONAL POLICIES AND APPROACHES REGARDING LONG-TERM IRREGULARLY STAYING MIGRANTS

This section aims to provide an overview of national policy in France on the way France addresses long-term irregularity. It will address the following research questions:

- *Which rights and public services are long-term irregularly staying migrants provided access to?*
- *What is the role of central, regional and local authorities in dealing with this group of migrants?*
- *To what extent are regional and local authorities involved and cooperate with the central government?*
- *What is the role of civil society organisations or other entities regarding the access to public services for long-term irregularly staying migrants?*
- *What measures (e.g. policies, practical tools, guidance) were implemented regarding the access to public services for long-term irregularly staying migrants?*
- *Were there any studies or research published on the effectiveness of these measures?*

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

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

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

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

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

Table 1 Rights and services available to long-term irregularly staying migrants who have been issued a return decision

Type of stay or status as identified in Q2 and/or Q3: [_____]				
Type of service	Service provided ? (Y/N)	Is the provision of service mandatory or discretionary ? ¹⁸	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to: I. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice? II. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
Accommodation				Less <input type="checkbox"/> Same <input checked="" type="checkbox"/> More <input type="checkbox"/>
Accommodation <i>If yes, please briefly describe</i>	Yes		<p>According to Article L 345-22 of the Code on Social Action and Families (CASF)¹⁹ "any person without shelter and in a situation of medical, mental or social distress has access, at any time, to emergency accommodation."</p> <p>Access to accommodation is subject to no conditions on the regularity of residence: there is an unconditional right to accommodation.</p> <p>There are a wide range of facilities and types of accommodation available (emergency accommodation centres, social hostels, accommodation and social reintegration centres, mother-and-child reception</p>	Emergency accommodation is allocated without distinction on the grounds of nationality. As such, the right to access emergency accommodation is identical for nationals and migrants, and migrants in a regular situation as well as for migrants in an irregular situation.

¹⁸ 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.

¹⁹ Code on Social Action and Families,

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006074069/LEGISCTA000006157691/#LEGISCTA000006157691

			<p>establishments, establishments receiving people in danger or in situations of prostitution, etc.).</p> <p>Article L. 111-2, 2° of the CASF guarantees as part of the social aid mechanism, that accommodation costs of foreign nationals will be covered.</p> <p>The SAMU Social, a collective of non-governmental organisations is responsible for providing emergency accommodation.</p>	
<p>Special accommodation facilities (i.e. shelter for victims of violence, children etc.)</p> <p>If yes, please briefly describe</p>	<p>Yes</p>		<ul style="list-style-type: none"> • Accommodation facilities for mothers and children are available in each department (Art. L221-2 of the CASF). • For victims of violence: at its meeting of 5 June 2018, the interministerial council for integration approved a measure aiming to provide specialised accommodation facilities for female asylum seekers and refugees who had been victims of violence or human trafficking. As part of a comprehensive reflection aiming to better take into account vulnerabilities throughout their journey, this measure aims to offer greater and more appropriate support and guarantee secure accommodation. The measure was piloted in two regions in 2018 (Île de France and Provence-Alpes-Côte-d’Azur). At the end of 2019, 300 specialised places to accommodate vulnerable women had been created in four regions (Île de France, Provence-Alpes-Côte-d’Azur, Nouvelle Aquitaine and Auvergne-Rhône-Alpes). • Accommodation for unaccompanied minors. <p>Unaccompanied minors fall within the remit of child welfare as defined in Article L. 112-3 of the CASF, which makes no distinction on the grounds of nationality but bases itself on the criteria of being a minor and in a dangerous situation.</p>	

			<p>Pursuant to the Law of 5 March 2007 reforming child welfare,²⁰ this Article states that the aim of child welfare is to “prevent the difficulties facing minors who are temporarily or definitively deprived of the protection of their families and to ensure they are cared for.” Article L.111-2 of the CASF confirms that there no nationality conditions apply to the child welfare arrangements. As soon as the young person is in the care of the child welfare services (ASE), they have the same rights and the same support, regardless of nationality.</p> <p>Once an individual has been recognised as a minor, they are placed in children’s accommodation, in a social hostel, in a Maison de l’Enfance, or in a foster family.</p>	
Other forms of accommodation or shelter or specialised centre				
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		<p>Any person without resources, who is settled and living in France has the right to “health insurance” regardless of whether they have a residence permit.</p> <p>Foreign nationals who have been in France for fewer than three months and who therefore do not have the AME can receive (occasional) financial assistance for emergency care at a hospital (hospitalisation or consultation in a healthcare establishment).</p> <p>The type of emergency care that is covered includes:²¹</p>	

²⁰ Law No. 2007-293 of 5 March 2007 reforming child welfare, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000823100&categorieLien=id>

²¹ National Health Insurance, state medical aid and urgent care, <https://www.ameli.fr/assure/remboursements/cmu-aides-financieres/aide-medicale-etat-soins-urgents>

	<ul style="list-style-type: none"> - treatment the absence of which would threaten the life or could lead to serious and long-term changes to the health of the individual or an unborn child; - treatment aimed at avoiding the propagation of a disease to relatives or the greater public (e.g. tuberculosis); - all treatment for pregnant women and new-borns (preventive examinations carried out during and after childbirth, childbirth itself); - terminations of pregnancy (voluntary or for medical reasons); - treatment to minors. 	
	<p>Foreign nationals who are in an irregular situation in France because they do not hold a legal residence document or hold a residence document that does not appear on the official list²² may request the AME. This is allocated on the condition of stable residence (uninterrupted residence in France for more than three months; minors are exempt from this period²³)²⁴ and resources.²⁵ To apply for the AME, an application must be submitted (this includes forms and supporting documents). Once granted, the AME is allocated for one year. Renewal must be requested annually.</p>	

ing the list of residence permits set out in I of Article R. 111-3 of the French Social Security Code, [JORFTEXT000034677457/](#)

ance on a basis which is not purely occasional and in conditions which demonstrate a minimum of stability (opinion of 31). This excludes people who are travelling through France without the intention of settling in the country, some of

The AME grants the right to 100% coverage of medical and hospital care within the limits of the social security rates.²⁶ Individuals do not need to advance any fees.

The AME grants the right to reimbursement of the following treatments:²⁷

- Medical and dental treatment;
- Medications reimbursed at 100%, 65% or 30%;
- Costs of analysis;
- Costs of hospitalisation and surgical interventions;
- Costs relating to certain vaccinations and certain screening tests;
- Costs related to contraception and termination of pregnancy

1) Access to the AME is set out in the legislation (Articles L251-1 to L2521-3, Articles L252-1 to L252-5, Article L254-1 and L254-2, Article R251-1 and R251-2 of the CSAF.

2) Applications for the AME should be addressed to the CNAM.

The following medical costs are not covered by the AME:

- Technical acts, examinations, medication and products regarding assisted reproduction;
- Medication judged to have little medical benefit, reimbursed at 15%;
- Thermal cures.

			However, in the case of minors, 100% of medical expenses are covered in all cases.	
Other healthcare services <i>If yes, please briefly describe</i>				
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? <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"/>
Are there circumstances in France where long-term irregularly staying migrants are entitled to access to the labour market? <i>If yes, please describe any specific conditions attached to their employment.</i>	No			
Education				Less <input type="checkbox"/> Same <input checked="" type="checkbox"/> More <input type="checkbox"/>
Do (long-term irregular migrant) children have access to compulsory education?	Yes		All children in France must attend school without condition as to the regularity of the residence of their parents or legal guardians, nor on condition of having entered France as part of family reunification. The education of adult students is also not conditional upon presentation of a residence permit.	

The department responsible for the unaccompanied minor must ensure these young people have access to education. Specific schemes have been developed for the education of unaccompanied minors, particularly for newly-arrived pupils speaking other languages.

The **right to education** is recognised by the International Convention on the Rights of the Child²⁸ (Article 28). Unaccompanied minors have the same access to education as nationals. Education is **compulsory until the age of 16**. Several options are open to unaccompanied minors aged between 16 and 18. **Access to education is even more important for unaccompanied minors** given that following a course is one of the criteria taken into account when they apply to regularise their situation when they turn 18, as well as one of the conditions for being granted a young adult contract.

- **Compulsory education for young people between the ages of 6 and 16.**

Education is a right for all children living in France, regardless of their nationality, migration status or background.²⁹ Article L.131-1 of the French Education Code states that "education is compulsory for children of both sexes, between the ages of six and 16". The Interministerial Circular of 25 January 2016³⁰ states that the education of unaccompanied minors aged between six and 16 living in France falls under **common law and compulsory education**, under the same conditions as other pupils.

In addition to the **compulsory education for all children** (Articles L. 111-1, L. 122-1 and L. 131-1), the Education Code sets out the **obligation to establish particular actions for the reception and education of newly-arrived children speaking other languages** (Articles L. 321-4 and L. 332-4).

The **ways of registering and educating children who are foreign nationals** are set out in the Circular of 20 March 2002 concerning the ways of registering and educating first and second generation children who are foreign nationals.³¹

- **Education of unaccompanied minors between the ages of 16 and 18**

Foreign minors between the ages of 16 and 18 are no longer subject to compulsory education. However, the Circular of 20 March 2002 specifies that there is a **need to ensure that their education may be provided**, taking into account their degree of ability in French and their level of education.

The Education Code states that "any pupil who, at the end of compulsory education has not reached a recognised level of education must be able to continue their studies in order to reach such a level. The Government shall provide the necessary resources, in the exercise of its competences, for the resulting extended education. All non-emancipated minors have the right to continue their education beyond the age of sixteen" (Article L. 122-2 of the Education Code).

Unaccompanied minors over the age of 16 may continue **secondary education or may immediately begin a vocational course**, most often leading to a Vocational Aptitude Certificate (CAP). Some Departments focus on

			support with continuing education, supporting unaccompanied minors towards a vocational Bacalaureat or an advanced technical certificate (BTS), taking into account the labour market context. ³² The education or vocational training of unaccompanied minors between the ages of 16 and 18 is all the more important because it is crucial for their future in the country: in order to be able to apply for a residence permit when they turn 18 , these young people must be able to prove they have followed a course which lasted at least six months and which led to a vocational qualification. ³³	
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			
Legal aid or assistance				Less <input checked="" type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>

³² Interview with representatives of the ASE in the Department of Paris and the City of Paris, January 2018.

³³ Observatoire national de l'action sociale (ODAS), Letter of the Odas - « Reception arrangements adapted to unaccompanied minors: In the face of the emergency, departments innovate ».

<p>Do long-term irregular migrants have access to legal aid or assistance type of services?</p> <p><i>If yes, please briefly enumerate and explain</i></p>	<p>No, except for the people listed on the right.</p>		<p>Foreign nationals may, without having to justify a length of residence or a work permit, receive legal aid³⁴ if they are³⁵:</p> <ul style="list-style-type: none"> - A minor; - An assisted witness, defendant, accused, convicted person, plaintiff, if they have a protective order or are the subject of a plea bargain (; - Being held in a waiting zone or detention centre; - Have been refused residence following examination by the residence permit commission, have been refused residence and been issued with an obligation to leave France, have been issued with a prefectoral order to be taken to the border or an expulsion order; - Detained while their right of residence is verified; - A beneficiary of a protective order as a victim of domestic violence. - Are the subject of a plea bargain; - In a situation of particular interest as a result of the subject of the litigation or the cost of the procedure. 	
Other?				Less <input type="checkbox"/> Same <input checked="" type="checkbox"/> More <input type="checkbox"/>
<p>Are any other rights relevant to mention here? Please describe</p>	<p>Yes</p>		<p>Reduced rates of 50% off to individuals (and members of their family) whose resources are equal or less than the income ceiling for the complementary health insurance and the AME (Article L. 1113-1 of the French Transport Code,³⁶ regarding access for disadvantaged people to public transport).</p>	

³⁴ Ministry of Justice, Legal Aid, <https://www.justice.fr/fiche/aide-juridictionnelle>

³⁵ Article 3 of the law No 91-647 of 10 July 1991 on legal assistance, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000537611/2020-10-12/>

³⁶ Transport Code (in French), https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000023086525/LEGISCTA000023068990/#LEGISCTA000023086412

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)?

The information is identical to the information provided in Table 1 (Q10).

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 ? <small>³⁷</small>	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to: I. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice? II. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
Accommodation				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Accommodation <i>If yes, please briefly describe</i>				
Special accommodation facilities (i.e. shelter for victims of violence, children etc.)				

³⁷ 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.

If yes, please briefly describe				
Other forms of accommodation or shelter or specialised centre				
Healthcare				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Emergency healthcare <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>				
Basic medical care If yes, please briefly describe				
Specialised care If yes, please briefly describe				
Other healthcare services If yes, please briefly describe				
Social assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Are long-term irregularly staying migrants entitled to receive social benefits?				

<p><i>If yes, please briefly describe what these benefits are</i></p>				
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Employment				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
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<p>Are there circumstances in France 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>				
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Education				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
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<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p>If yes, please briefly describe access.</p>				
--	--	--	--	--

<p>Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training?</p> <p>If yes, what types of education and under which conditions?</p>				
--	--	--	--	--

Legal aid or assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
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Do long-term irregular migrants have access to legal aid or assistance type of services?

If yes, please briefly enumerate and explain

Other?

Less | Same | More

Are any other rights relevant to mention here?
Please describe

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?

No, the conditions for accessing these services are not subject to prior verification of the migration status, other than access to the AME which only concerns foreign nationals in an irregular situation (see Q1d).

See the detail of services and their conditions of access in Table 1 below.

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

Yes

No

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

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

Yes

No

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

NGOs work with the government in some local authority areas, notably to deliver food and medical care, as well as psychological support to foreign nationals in an irregular situation, for example when migrants gather together in "camps".

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

The government wants only state-approved NGOs to distribute food to migrants. Thus, for example, in September 2020, a prefectural order was issued which banned NGOs that were not State-approved from distributing food and drinks to migrants in the centre of Calais. According to the authorities, this measure aimed to reduce public order disturbances. The order was confirmed by the administrative tribunal in Lille, which observed that a state-approved NGO was providing water and meals.

However, in practice, NGOs which are not state-approved continue to distribute meals to migrants.

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.

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?

Yes

No

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**'³⁸ channels between the TCN concerned and public authorities to report the incident without divulging their situation of illegal stay?

Yes

No

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

The Law of 16 June 2011 on immigration, integration and nationality,³⁹ which transposes the Sanctions Directive of 18 June 2009 into domestic law, introduced and strengthened sanctions against employers, while establishing provisions aiming to guarantee social and pecuniary rights to foreign nationals working illegally. The main measures include an increase in their pecuniary rights, the presumption of an employment relationship, and a mechanism enabling employees to appeal or have enforced a judgement against the employer for any unpaid wages or to request the competent authority to initiate recovery procedures.

Third-country nationals employed illegally may lodge a complaint against their employer. Foreign workers may apply to the industrial tribunal to enforce the payment of wages and compensation. In addition, they may legally request additional compensation if they are able to establish the existence of damages not set out under these provisions (Article L. 8252-2 of the Labour Code). Representative trades unions may initiate legal proceedings against any actions resulting from application of the provisions of the Labour Code regarding the combat against undeclared employment, in favour of an employee, without having to justify a mandate from the concerned party. It suffices that the concerned party has been informed by any means with a certain date, and this has not been opposed within 15 days from date of receipt of the information. The concerned party may still intervene at the relevant tribunal the union has called upon, and end the procedures at any time. The applicable regulations are set by Article D. 8223-4 of the Labour Code.

Thus, a foreign national in an irregular situation but exercising a salaried activity "is assimilated, from the date of their recruitment, to a regularly recruited employee with regards to the employer's obligations" (Article L. 8252-1 of the Labour Code). Consequently, they benefit from all the rights and protections relating to this situation.

Similarly, undocumented workers may call upon the industrial tribunal should their employers violate their obligations (non-payment of hours worked, violation of legal conditions relating to rest, holidays, maximum working time, etc.).

In addition, in certain situations it is possible for foreign nationals in an irregular situation to apply for full or partial coverage of the legal fees related to the proceedings.

³⁸ <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

³⁹ Law No. 2011-672 of 16 June 2011 on immigration, integration and nationality, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000024191380/>

When it comes to protecting foreign nationals in an irregular situation, professional secrecy applies to health workers, social workers, and social assistance workers. However, in practice, NGOs helping migrants insist that the fear of denunciation of their irregular residence is a reality for many.

Law No. 2016-274 of 7 March 2016 on the rights of foreign nationals in France (Article L 611-12 of the CESEDA) provides that the prefecture may "without violating professional secrecy, other than medical secrecy, in the context of processing an initial request for a residence permit, a request to renew a permit, or as part of controls on regularity of residence, request any document or any information necessary to check the sincerity and accuracy of statements made or to check the authenticity of documents produced with a view to granting or verifying a residence permit". This concerns principally the social security bodies and public and private health establishments, the authorities responsible for labour and employment, school and higher education establishments.

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)):

Since 2015, France has rolled-out facilities help prepare for return (DPAR) which principally target people who are the subject of an Order to Leave French Territory (OQTF). These centres have the two-fold objective of developing alternatives to detention for the removal of third-country nationals in an irregular situation and improving the procedure for asylum seekers by freeing up places in accommodation centres for asylum seekers unfairly occupied by people who have been definitively refused asylum. These centres offer assistance with preparation for return (presentation of voluntary return assistance, administrative support, etc.) and offer accommodation to those concerned.

DPARs are adapted for people in irregular situations, who often find themselves in highly vulnerable situations after their asylum application has been rejected, and provide them with a secure space where families and individuals voluntarily preparing for return are provided with accommodation and support with the procedure in dignified and adapted conditions.

DPARs are temporary accommodation facilities dedicated to foreign nationals in an irregular situation, who have chosen to comply with a voluntary return programme to their country of origin, implemented by the French Office for Immigration and Integration (OFII).

It aims to better prepare families and individuals who are volunteering to return, the vast majority of whom have had their asylum applications rejected.

This regional mechanism is based on two pillars:

- Accommodation in a collective facility, management of which is entrusted to an NGO that has signed an agreement with the State.

As with any foreign national in an irregular situation who has received an OQTF, people who have joined this assisted return programme are placed under house arrest, but this is flexible, particularly in terms of reporting to the authorities.

- Personalised administrative support provided by the OFII, which identifies candidates, and prepares and organises their return to the country of origin.

During their stay in the DPAR, residents receive a subsistence allowance of €4 per person per day. When they leave, their plane tickets are paid and they receive voluntary return aid (AVR), financial support the amount of which depends on the country of origin and the composition of the family.

As of November 2020, 16 DPARs were operational, including four in the Paris region and 12 in the provinces, with a total capacity of 1,071 places.

Five DPARs opened in 2019: in Aisne (60 places, opened 01/01/2019), in Gironde (30 places, opened 16/04/2019), in Ille et Vilaine (34 places, opened 01/12/2019), and in Doubs (33 places, opened 01/12/2019), and in Loire-Atlantique (60 places, opened 24/10/2019).

The credits provided for in the draft 2021 budget will make it possible to open 1,500 new places.

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:

As part of the ERRIN programme, the Belgian FEDASIL agency asked OFII in 2019 to participate in the "Reach Out Transmigration" project, with a view to facilitating contact and information, notably regarding voluntary return and reintegration mechanisms with irregular migrants living along the northern coastline.

In order to implement the project, a transnational team was created, bringing together four outreach teams (two Belgian and two French).

The role of these outreach teams consist of:

- Intercepting migrants in transit. The outreach teams proactively approach migrants in transit (and other undocumented migrants) in the Hauts-de-France. They advise and inform these migrants of voluntary return and other residence procedures.
- They carry out joint outreach activities. On average once a week, the outreach workers recruited by OFII carry out joint outreach activities with their counterparts recruited by FEDASIL. Each team alternately organises these joint outreach activities either in Calais/Grande-Synthe or in Brussels/Parc Maximilien and Gard du Nord in Paris.

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

In the context of the health crisis linked to the COVID-19 pandemic, it was decided to automatically extend by three months (from the date on which rights ended) rights to AME for people whose rights were terminated between 12 March and 31 July 2020.

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

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.

In October 2019, the GISTI published a practice note entitled "Sans papiers, mais pas sans droits"⁴⁰ (undocumented but not without rights), which sets out and explains in the form of summary and thematic information, the rights which foreign nationals in an irregular situation have (health, daily life, couple, children, accommodation and housing, etc.).

With regards to access to emergency medical care, several reports have been published (IGAS, October 2019, information report on the implementation of the conclusions of information report No. 3524 of 9 June 2011 on the evaluation of State Medical Aid, November 2015)⁴¹ to assess the cost and care proposed and any possible improvements.

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?

According to the requested departments, there is no legislation, guidance, or actions on the subject between the central administration and local authorities.

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)

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)

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)

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)

⁴⁰ Gisti, Undocumented, but not without rights (in French), https://gisti.org/IMG/pdf/np_spmpsd_7e.pdf

⁴¹ National Assembly, Information report on the implementation of the conclusions of the information report No. 3524 of 9 June 2011 on the evaluation of the AME (in French), <http://www.assemblee-nationale.fr/14/pdf/rap-info/i3196.pdf>

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.

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).

The status of foreign nationals in a long-term irregular situation does not exist in French law, and it is therefore difficult to share good practices. However, these foreign nationals in an irregular situation fall within other public policies, for which irregular residence does not constitute a barrier to access to rights, particularly to accommodation (see sub-section 2.1, Table 1).

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:

Exchanging information between Member States?

Please provide a brief explanation:

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?

1. Insofar as legal avenues are open to foreign nationals in an irregular situation wishing to legally remain in France to enable them to be legally admitted for residence, the priority for long-term irregular residences is removal.

The authorities implement removal proceedings when the conditions are met. They must therefore check if the principle of non-refoulement applies and if there is no legal impediment. If the foreign national submits an application for a residence permit for medical reasons or an application for asylum, this request will be studied under application of the relevant law.

2. Exceptional admission for residence: a third-country national in an irregular situation may request, in certain conditions, **an exceptional admission for residence, a residence permit including the term "private and family life", "employee" or "temporary worker"**. Pursuant to Article L. 313-14 of the CESEDA, a temporary residence permit may be issued to a foreign national, unless their presence is a threat to public order, if they are not living in a polygamous relationship, and if their admission for residence meets humanitarian considerations or is justified with regard to the exceptional reasons they have demonstrated. This consists of **regularisations on a case-by-case basis**.

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 ideal means of discouraging long-term irregular stay consists of encouraging entry into a regularisation procedure, in order to benefit from various social right.

To promote voluntary return:

- A general policy to **promote voluntary return by the OFII** to all countries concerned by the programme has been implemented for several years. Communication tools have

been updated and information and promotion sessions are held by the regional offices of OFFI, notably in dedicated accommodation facilities and within the facilities to prepare for assisted return.

For further information, see the OFFI dedicated internet site which is available in several languages and which features positive statements from people who have voluntarily returned and been involved in a reintegration project in their country of origin: <http://www.retourvolontaire.fr>

- The Order of 27 April 2018 relating to return and reintegration assistance⁴² raised the ceiling of the increased amount of the lump-sum allowance to €1,200.
- The Order of 6 September 2019 amended the Decree of 27 April 2018 relating to return and reintegration assistance⁴³ in order to raise the ceiling of the increased amount of the lump-sum allowance to €1,850 until 31 December 2019. This possibility of an increase specifically concerned Iraqi, Afghan and Iranian nationals in the Hauts-de-France and de-France regions.

French law sets out several legal measures aiming to **discourage illegal residence and to improve the effectiveness of return measures:**

- Law No. 2018-778 of 10 September 2018 on controlled immigration, effective asylum and successful integration⁴⁴ strengthens **effectiveness along the entire surveillance chain to enforce orders to leave France**. Thus, during the period of voluntary departure, Article 26 of this law makes it possible to oblige a foreigner to whom an OQTF has been issued with a deadline for voluntary departure, to reside in a place designated by the administrative authority until that deadline expires (entry into force on 1 January 2019).
- Article 31 of this same law aims to improve the **effectiveness of house arrest**, with measures obliging the foreign national under house arrest to spend specific hours every day at their residence, in preparation for departure.
- Article 25 of this Law of 10 September 2018 extends the scope of assisted return to third-country nationals in irregular situations placed in detention (Article L. 512-5 of the CESEDA). This article entered into force on 1 January 2019.

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

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

The OFII website dedicated to voluntary return and reintegration: www.retourvolontaire.fr

⁴² Order of 27 April 2018 relating to return and reintegration assistance, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000036858900/2020-11-18/>

⁴³ Order of 6 September 2019 modifying the Order of 27 April 2018 relating to return and reintegration assistance, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000039061252/2020-11-18/>

⁴⁴ Law No.2018-778 10 September 2018 "For controlled migration, effective right of asylum and successful integration" (in French), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037381808/2020-02-04/>

The site is available in French and English, and is a source of information for anyone interested in return and reintegration into their country of origin.

It provides users with all the necessary information concerning the different types of assistance offered by the OFII, the procedures to apply for it, the steps to be taken and the practical organisation of departure and arrival, all on a single platform.

It also features testimonies from beneficiaries who, through videos or written interviews, give an account of their personal journeys.

All communication materials are available on the website (translated leaflets, films).

The DPAR centres offer assistance with preparation for return to relevant foreign nationals, principally families (presentation of voluntary return assistance, administrative support, etc.) and offer accommodation to those concerned.

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):

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

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

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

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

Two situations should be distinguished:

- People whose centre of private and family life is in France, and no equivalent can be found in the country of origin or country of return. Implementation of a removal measure would lead to a disproportionate impact with regard to their private and family life and would be counter to Article 8 of the ECHR. These people may benefit from a legal avenue for admission for residence (Article L. 313-11 7 of the CESEDA).

A temporary private and family life permit will be issued to them.

Examination of applications submitted under this provision aim to weigh up the different criteria (intensity, length of stay and stability of personal and family connections, living conditions, integration, nature of connections in the country of origin) to identify whether a refusal would lead or would not lead to a disproportionate impact (or excessive intrusion) with respect to the applicant's private and family life (Article 8 of the ECHR), that falls within no other category of admission for residence for family reasons or family reunification.

This is a comprehensive review of the applicant's personal situation.

- Other people in an irregular situation who are not eligible for a residence permit. They then fall under the **exceptional admission procedures set out in Article L. 313-14 of the CESEDA**. As such, migrants may request exceptional admission for residence for exceptional reasons and humanitarian considerations examined by the administrative authority in a discretionary way under the control of an administrative judge.

Foreign nationals living in France who are a threat to public order or who are living in a polygamous situation in France are excluded from these two provisions.

In this context, the circular of 28 November 2012⁴⁵ sets out general guidelines for assessing applications for admission for residence by foreign nationals in an irregular situation in France. The assessment involves taking into account these individual's situations, their integration into French society, their knowledge of French values and their command of the French language.

The above-mentioned circular is intended to guide prefectures in examining requests made for various reasons:

- Application under private and family life;

Applicants must justify genuine and sustainable integration in France. Several situations are taken into account: parents of children in school (five years of presence, at least one child has been in school for at least three years, effective contribution to the maintenance and education of the child in the event of separation), spouses of legally resident foreigners (five years' presence, 18 months of living together as a couple), minors who have reached the age of majority (two years of presence, hard-working and reliable background);

- Application on exceptional grounds and humanitarian and compassionate considerations.

Applicants must justify either exceptional talent or services rendered to society or special humanitarian circumstances justifying them being granted a residence permit (such as for example if they are victims of domestic violence or trafficking in human beings).

- Application for a work permit

Applicants must present an employment contract or an offer of employment, have worked for at least eight months, consecutive or otherwise, over the past 24 or 30 months, consecutive or otherwise, over the past five years as well as significant length of residence which can only in exceptional circumstances be less than five years of effective residence in France. The situation of applicants who have been in France for three years and have been working for 24 months, including 8 months, consecutive or not, in the last 12 months, may also be taken into account.

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).

⁴⁵ Circular of 28 November 2012 on the conditions for the examination of applications for admission for residence submitted by foreign nationals in an irregular situation in the context of the provisions of the CESEDA, NOR: INT/K/12/29185/C, http://www.justice.gouv.fr/publication/mna/circ_conditions_demands_admission_sejour_2012.pdf

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

Yes

No

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

Some NGOs have conducted an analysis of the conditions of regularisation of foreign nationals in France in order to advise foreign nationals wishing to apply.⁴⁶

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):

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.

No (as of the date of completion of this study, November 2020).

⁴⁶ GISTI, Regularisation: the "Valls" circular of 28 November 2012 (in French), <https://gisti.org/spip.php?article3062>

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:

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

Please provide a brief explanation:

Challenges exchanging information between Member States?

Please provide a brief explanation:

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

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?

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**?

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**?

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).

Section 5: CONCLUSION

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

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

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

The purpose of this study is to **present national policies and measures in relation to third-country nationals who are long-term irregular migrants and to map possible responses to put an end to these situations.**

As regards the **institutional, legal and political framework** in France, the law on foreign nationals does not define categories of foreign nationals in a short or long-term irregular situation. Their legal status (holder of a pending return decision, rejected asylum seeker who is absconding, foreign national whose visa or residence permit has expired, application for a residence permit for medical reasons, etc.), the duration of their illegal stay in France and their family situation will determine the procedure to be followed for taking and enforcing a removal decision, offering them voluntary return assistance or if they possibly fulfil the conditions for an exceptional admission to stay.

The issue of long-term irregular migrants is subject of debate in France both at political level and in civil society, as regards access to state medical aid and the conditions for their regularisation.

In general, irregularly staying foreign nationals have **access to the main rights and public services** (education, emergency care) with specific rights for certain categories, such as access to housing (unaccompanied minors, victims of violence) and basic care. Furthermore, illegally staying foreign nationals enjoy social and financial rights in the event of illegal employment and can lodge a complaint against their employer.

As regards the solutions put in place to put an end to these situations, French law provides for a number of legal measures designed to discourage illegal residence and increase the effectiveness of return measures.

In addition, the French authorities accompany foreign nationals in an irregular situation in **the assisted voluntary return procedure**, in particular with the arrangements for preparing them for return, even if this public is difficult to reach in terms of promotion and information on measures of assisted voluntary return and reintegration, as it is spread on the territory and 'little visible'. Furthermore, France and Belgium are cooperating on a 'Reach Out Transmigration' project to facilitate contact and information, in particular on assisted voluntary return and reintegration schemes with irregularly staying migrants on the northern coastline (French and Belgian).

Finally, an **exceptional admission to stay** is also possible in certain cases, but this procedure requires an overall examination of the applicant's personal situation.

ANNEXES

APPENDIX 1: LIST OF PEOPLE INTERVIEWED OR WHO CONTRIBUTED TO THIS STUDY

The interviews and questionnaires were conducted between October and November 2020 by EMN France.

Ministry of the Interior

General Directorate for Foreign Nationals in France (DGEF), Directorate of Immigration (DIMM)

Sub-Directorate for Combating Irregular Immigration (SDLII)

Office of Legal Affairs and International Cooperation (BAJCI)

- Stéphane Gillier, Head of Office
- Mathieu Fernandez, Deputy Head of Office
- Ariane Pariente-Gibert, Head of the Legal Expertise Section
- Alain Taupin, Deputy Head of the Legal Expertise Section

Sub-Directorate for Residence and Employment (SDST)

- Simon Bertoux, Deputy Director
- Isabelle Burel, Deputy to the Deputy Director and Head of Office of Professional and Student Immigration

Office of Professional and Student Immigration (BIPE)

- Jérôme Nattes, Deputy to the Head of Office

Office of Family Immigration (BIF)

- Delphine Dufaure-Malves, Head of Office
- Sylvain Pollier, Deputy Head of Office

French Office for Immigration and Integration (OFII)

- Fabrice Blanchard, Director of Immigration, Return, Reintegration and International Affairs (DIRRI)
- Karine Dechanterac, Deputy Director
- Thomas Peguy, Deputy Director

APPENDIX 2: BIBLIOGRAPHY

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2. European Legislation

- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0115>
- European Commission, Annex to the Commission Recommendation establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks, section 1.2 "Illegal stay", <https://ec.europa.eu/transparency/regdoc/rep/3/2017/FR/C-2017-6505-F1-FR-ANNEX-1-PART-1.PDF>
- Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex%3A32016R0399>

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- Transport Code (in French), https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000023086525/LEGISCTA00023068990/#LEGISCTA000023086412

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- Law No. 2007-293 of 5 March 2007 reforming child welfare (in French), <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000823100&categorieLien=id>
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