



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

### National contribution for the Netherlands

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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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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 supervision

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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).

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.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>4</sup> 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>.

<sup>5</sup> 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>

recent information available on the number of persons staying illegally in the EU Member States.<sup>6</sup> 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 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> In cases of

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<sup>6</sup> 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](http://clandestino.eliamep.gr/wp-content/uploads/2010/03/clandestino-final-report_-_november-2009.pdf))

<sup>7</sup> 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*).

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

<sup>9</sup> Article 6 of the Return Directive.

<sup>10</sup> 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*”

postponement of return, the Return Directive refers to a set of minimum basic rights and procedural guarantees for third-country nationals.<sup>11</sup> These ‘basic rights’ include family unity, emergency health care, basic education for minors and taking into account the needs of vulnerable persons.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> In practice, such a document is not always issued although in another case, the CJEU stated that while Member States have wide discretion concerning the form and format of the written confirmation, they must provide it to third-country nationals when there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of the Return Directive.<sup>15</sup> Lastly, the Return Directive prohibits detention where prospects for removal no longer exist.<sup>16</sup>

There is no political consensus nor harmonisation at EU level on the approach to this category of third-country nationals.<sup>17</sup> 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:<sup>18</sup>

- 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.

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*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”.*

<sup>11</sup> Article 14 of the Return Directive.

<sup>12</sup> Article 14 of the Return Directive.

<sup>13</sup> 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).

<sup>14</sup> Article 14(2) of the Return Directive.

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

<sup>16</sup> Article 15(4) of the Return Directive.

<sup>17</sup> 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.

<sup>18</sup> 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.

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.<sup>19</sup> 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 Child<sup>20</sup>, from the EU's framework on victims of trafficking in human beings.<sup>21</sup> 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 Rights<sup>22</sup> laid down further specifics on the situation of irregularly staying migrants in their decision in the case *Conference of European Churches vs. the Netherlands*.<sup>23</sup> 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;

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<sup>19</sup> 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).

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

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

<sup>22</sup> 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.

<sup>23</sup> 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-ccc-v-the-netherlands?inheritRedirect=false](https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-90-2013-conference-of-european-churches-ccc-v-the-netherlands?inheritRedirect=false)

- 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
- 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.<sup>24</sup> 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.<sup>25</sup>

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

The Study covers the period from 2015 – October 2020.

## 5 RELEVANT SOURCES AND LITERATURE

### **EMN Studies and other sources**

- EMN (2017) The effectiveness of return in the EU. Accessible: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00\\_eu\\_return\\_study\\_synthesis\\_report\\_final\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_return_study_synthesis_report_final_en.pdf)
- EMN (2016) Approaches to rejected asylum seekers. Accessible: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn-studies-00\\_synthesis\\_report\\_rejected\\_asylum\\_seekers\\_2016.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_synthesis_report_rejected_asylum_seekers_2016.pdf)
- Report EMN Expert Seminar Latvia (2017) Non-removable Returnees under European Union Law. Accessible: [http://www.emn.lv/wp-content/uploads/1.Lutz\\_non-removables-EMN-seminar-handout.pdf](http://www.emn.lv/wp-content/uploads/1.Lutz_non-removables-EMN-seminar-handout.pdf)
- EMN (2012) Practical Measures to Reduce Irregular Migration. Accessible: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/irregular-migration/00a\\_emn\\_synthesis\\_report\\_irregular\\_migration\\_october\\_2012\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/irregular-migration/00a_emn_synthesis_report_irregular_migration_october_2012_en.pdf)

### **EMN AHQs**

- EMN (2017) Ad-hoc query on the cost of a forcible removal of the irregular third country nationals. Accessible: [http://www.emnitalyncp.it/wp-content/uploads/2018/02/029\\_hr\\_ad-hoc\\_query\\_on\\_the\\_cost\\_of\\_a\\_forcible\\_removal\\_of\\_the\\_irregular\\_tcns\\_wider.pdf](http://www.emnitalyncp.it/wp-content/uploads/2018/02/029_hr_ad-hoc_query_on_the_cost_of_a_forcible_removal_of_the_irregular_tcns_wider.pdf)
- EMN (2019) Ad-hoc query on children with prolonged stay without a permanent right of residence.

### **Other policy documents, reports and studies (chronological order)**

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

<sup>25</sup> 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.

- European Commission (2020) *Compilation of national practices related to Covid-19 related extensions of legal stay*. Accessible: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/handbook-annex-41\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/handbook-annex-41_en.pdf)
- European Commission (2017) *Communication on a more effective return policy in the EU – a renewed action plan* and Recommendation (EU) 2017/432 on making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council, COM (2017)200. Accessible: <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32008L0115>
- Return Directive 2008/115/ EC, complemented by ECJ case law and the European Commission's "Return Handbook" (Commission Recommendation C(2015)6250 of 1.10.2015)
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- Taveriti, S. B. (2019) *Safe reporting of crime for victims and witnesses with irregular migration status in Italy*, Centre on Migration, Policy and Society (COMPAS), University of Oxford, Accessible: <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>
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- Hinterberger K.F. (2019) 'An EU Regularization Directive. An effective solution to the enforcement deficit in returning irregularly staying migrants', *Maastricht Journal of European and Comparative Law*, n 26, 736–769.
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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**,<sup>26</sup> version 6. Please see the table below.

<sup>26</sup> Available at: [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en).

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.
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.

Term	Definition
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. <sup>27</sup>
Voluntary departure	Compliance with the obligation to return within the time limit fixed for that purpose in the return decision.
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).

<sup>27</sup> Article 2 par.1 of the Anti-trafficking Directive

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

### National Contribution from the *Netherlands*

***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.*

#### **National legal and policy framework**

In national and regional policy and legislation in the Netherlands, no official distinction is made between 'short-term' and 'long-term' irregular staying migrants. Different categories of long-term irregular migrants are nevertheless present in the Netherlands. This issue has therefore been subject to policy and legislative debate. In a debate about the Definitive regulation for long-term resident children,<sup>28</sup> the government reached the conclusion that in the first residence application, the main aspects relevant for a stay in the Netherlands should be dealt with. Also, incentives that prolong a stay in the Netherlands should be reduced.

Another aspect of debate entailed the shelter provided to long-term irregular migrants. Illegally staying migrants are in principle excluded of shelter (except for those who are preparing for their return) and other services. The aim of this national policy is to discourage illegal stay and to stimulate return. It resulted in some municipalities facing difficulties, as a part of the illegally staying migrants ended up without proper accommodation. In 2018 an agreement was reached between national government and municipalities on the development of 5 National Immigration Facilities (LVV-pilot). These LVV-pilots are shelter and counselling facilities for migrants that are willing to work on a future perspective.

#### **Responses to end long term irregular stay**

The options to end long-term illegal stay of third-country nationals are return to the country of origin, legalisation of stay or further migration to another country. Taking into account the national policy on the prevention and discouragement of illegal stay and the obligation to depart, the option of return is prioritized if there is no ground for legalisation of stay.

#### **National policies and approaches regarding long-term irregularly staying migrants**

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<sup>28</sup> Under this regulation, minors resident in the Netherlands for at least 5 years without a right of residence could still obtain a residence under certain conditions. The DRLVK was intended for cases in which children were grounded in the Netherlands because of their long stay.

In general in the national policy on the prevention and discouragement of illegal stay, the option of return is prioritized and there is the obligation to depart. This template reflects the options that are available for some irregular staying migrants in the Netherlands and these often are exceptions to the general rule. Such as the public services accessible to irregular staying migrants in the Netherlands: accommodation, health care and legal aid. It depends per service if it is mandatory or discretionary, which authorities are involved in providing the service and if the rights and access to the services are more limited, same or more favourable than those of legal migrants or of nationals. There are specific projects in practice at local level specifically targeting the access to services for irregularly staying migrants. In the Netherlands there are also other entities or organisations involved in providing or facilitating access to services for irregularly staying migrants like various churches or the Dutch Refugee Council. This is usually on a local level and out of sight of the central government or municipalities.

With regard to COVID-19, in the Netherlands there were changes in relation to access of long-term irregular migrants to social services as consequence of measures taken in response to the COVID-19 pandemic. For example municipalities have taken various measures, especially with regard to emergency accommodation in order to be able to continue provision of services to irregular migrants.

Concerning measures adopted by authorities at central, regional and local level to provide access to services, an illustrative case is the LVV-pilot, which are shelter and counselling facilities for migrants that are willing to work on a future perspective.

Concerning measures implemented by central authorities to help regional and local authorities to anticipate and/or to respond to the situation of irregular migrants, these aforementioned LVV-pilot is also an example of information exchange between central and local authorities. Another example of information exchange between central and local authorities is the local cooperation meeting (LSO). In total ten municipalities which do not participate in the LVV-pilot have an LSO.

With regard to good practices regarding policy measures concerning long-term irregularly staying migrants, the following aspects were identified as such: healthcare, counsellors from IOM, safe reporting and the package of services provided in a non-LVV municipality. Regarding information exchange, the LSO, the (C-Mise) Working Group and Eurocities were mentioned as good practices.

### **Challenges**

Some parties involved in the study identify the collaboration between the different (multi-level government and NGO) actors involved with addressing irregular migrants as challenging at times, also due to privacy regulations. Furthermore, different challenges exist with regard to promoting return or legalisation of stay. For example, with regard to return, it can be difficult for certain migrants to really be aware that an alternative (namely return) is necessary. Also, due to COVID-19, certain conversations with the International Organisation for Migration are offered to migrants digitally instead of in person.<sup>29</sup> Some migrants therefore temporarily have less access to this.

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<sup>29</sup> Interview with Groningen municipality, 12 October 2020; Interview with the Ministry of Justice and Security, 27 August 2020.

## General remarks to the national contribution

A few general remarks should be made, regarding this national contribution. First of all, it is important to mention that often the policies and used research sources do not differentiate between 'short-term' and 'long-term' irregular migrants. In those cases general policy regarding irregularly staying migrants is described. This is indicated where possible.

Secondly, representatives of the municipalities Groningen, Tilburg and Utrecht are consulted to provide certain examples on how municipalities handle the topic of illegally staying migrants. These do not establish a general overview of existing practices on regional level (as it differs per municipality) and should therefore solely be seen as examples. Groningen and Utrecht are examples of municipalities as part of the LVV-pilot (see Q6), and Tilburg is an example of a municipality with a BBB-facility in place.

Thirdly, it should be mentioned that in certain answers, a differentiation is made between several perspectives. It concerns the government on national level, authorities on regional level and civil society, whose primary goals and perspectives do not always fully align.

Finally, it is relevant to take into account that in general in the national policy on the prevention and discouragement of illegal stay, the option of return is prioritized and there is the obligation to depart. This template reflects the options that are available for some irregular staying migrants in the Netherlands and these often are exceptions to the general rule.



## 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 <sup>30</sup>

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

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

☒ Yes, stemming from practice in municipalities<sup>31</sup>

☐ 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)? <sup>32</sup>

☒ 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)? <sup>33</sup>

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<sup>30</sup> Interview with the Ministry of Justice and Security, 27 August 2020; Interview with the Ministry of Justice and Security, 2 September 2020.

<sup>31</sup> Interview with Utrecht municipality and Tilburg municipality, 23 September 2020.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

☒ former (rejected) applicants for international protection who absconded?<sup>34</sup>

☒ third-country nationals whose short-stay visa, residence permit expired and/or was not renewed?<sup>35</sup>

☒ other irregular migrants who were not (yet) detected by national migration authorities?<sup>36</sup>

☒ Other (e.g. long-term irregular migrants with a criminal record, dependant family members) (please describe in the box below)?<sup>37</sup>

Third-country nationals who possessed a residence permit that was not extended or that was withdrawn, (for example) because of offenses or because they no longer met the conditions.<sup>38</sup>

**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 is no recent estimation available.

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

In 2015 the Research and Documentation Centre of the Ministry of Justice and Security (*Wetenschappelijk Onderzoeks- en Documentatie Centrum*, WODC) provided for an estimation on the number of illegally staying migrants in the Netherlands in the period of 2012-2013.<sup>39</sup> Additional alternative research methods were explored in a preparatory research in 2018.<sup>40</sup> The new estimation is currently being developed.

**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).*

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> This information was provided during the focus group meeting on 3 November 2020

<sup>39</sup> Research and Documentation Center (WODC) (2015), 'Schattingen illegaal in Nederland verblijvende vreemdelingen 2012-2013', <https://www.wodc.nl/onderzoeksdatabase/2402-illegalenschatting.aspx>, last accessed on 28 July 2020 (in Dutch).

<sup>40</sup> Breuer Onderzoek & Intraval Advies (2018), 'Vooronderzoek data en methoden illegalenschatting', <https://www.wodc.nl/onderzoeksdatabase/2917-vooronderzoek-bronnen-en-vreemdelingen-zonder-rechtmatig-verblijf.aspx>, last accessed on 28 July 2020 (in Dutch).

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):

Medical reasons:

The migrant is eligible for postponement of return based on medical reasons<sup>41</sup> until the medical circumstances have changed (and the migrant is medically wise able to return).<sup>42</sup> The migrant needs to file a request for postponement of return. The following conditions need to be fulfilled<sup>43</sup>:

- The migrant has proved their identity and nationality.
- The Medical Assessment Section (*Bureau Medisch Advies*, BMA) of the Immigration and Naturalisation Service (*Immigratie & Naturalisatie Dienst*, IND) needs to conclude in their advice that if the medical care is not provided for, it probably will lead to a medical emergency situation.
- The BMA needs to conclude that the medical care is not available in the country of origin. If the BMA concludes otherwise, the migrant needs to prove that in their specific case, the needed care is not accessible.
- Other reasons for granting postponement of return can be the medical circumstances that are the reason for which the migrant is not able to travel, pregnancy, tuberculosis and hospitalization.<sup>44</sup>

This procedure is based on legislation. In 2015-2019 postponement of return based on article 64 of the Aliens Act (Vw) was granted (ex officio and on application) in respectively 840 (2015), 800 (2016), 740 (2017), 690 (2018) and 620 (2019) cases per year.<sup>45</sup> Nevertheless, it is not possible to determine in how many of these cases a return decision was already issued.

After one year of postponement of return, the migrant can apply for a temporary residence permit based on medical treatment.<sup>46</sup>

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

<sup>41</sup> Art. 64 of the Aliens Act (Vw), 2000

<sup>42</sup> Repatriation and Departure Service (DT&V), 'Medische omstandigheden', <https://www.dienstterugkeerenvertrek.nl/het-terugkeerproces/bijzondere-omstandigheden/medische-omstandigheden>, last accessed on 30 September 2020 (in Dutch).

<sup>43</sup> Work instruction IND/SUA, 2018/16, 'Article 64 vw', [https://ind.nl/Documents/WI\\_2018-16.pdf](https://ind.nl/Documents/WI_2018-16.pdf), last accessed on 29 July 2020 (in Dutch).

<sup>44</sup> This information was provided during the focus group meeting on 3 November 2020

<sup>45</sup> Disclaimer: Source IND (Metis) 2015-2019 based on annual level. All numbers (both total numbers and different partial numbers) are rounded on tens. Numbers between 0-9 are indicated with <10. Because of rounding the numbers it is possible that a difference arises between the total numbers and the final sum of the different partial numbers. Numbers on the same period in previous or future reports can differentiate of the information provided here. The reason for this is that a small part of the registrations of a certain reporting period take place only after passing that period. Therefore, differentiations can exist between reports and/or editions.

<sup>46</sup> Immigration and Naturalisation Service (IND), 'Verblijfsvergunning voor medische behandeling', <https://ind.nl/Paginas/Medische-behandeling.aspx>, last accessed on 23 October 2020 (in Dutch).

Not applicable.

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

A migrant staying in the Netherlands can apply for a temporary residence permit based on his/her need to undergo a medical treatment in the Netherlands. A criterion for this residence permit is that the Netherlands is the most designated country for the research of a necessary medical treatment. This can be the case in (among others) one of the following situations<sup>47</sup>:

In case:

- the migrant has stayed in the Netherlands in the last 5 years (whether legal or not);
- the migrant has medical complaints, of which the treatment cannot take place in the country of origin or in another country where the migrant would be able to go to;
- ceasing the medical treatment causes a medical emergency situation;
- and the medical treatment takes place for at least 1 year.

Or in case:

- the migrant is staying in the Netherlands
- the migrant has medical complaints, of which the treatment cannot take place in the country of origin or in another country where the migrant would be able to go to;
- ceasing the medical treatment causes a medical emergency situation;
- and the medical treatment is expected to take place for longer than 1 year.

No residence permit, but postponement of return will be granted if the medical treatment will take place during 1 year or less in order to prevent a medical emergency situation.

In case the application has been filed after one year of postponement of return, the migrant will be exempted from fees, the criterion on sufficient means and the criterion on the finance of the medical treatment. The residence permit will however not be granted in case the migrant did not sufficiently work on getting the guarantees of medical treatment in the country of origin, or on the realization of return.

☐ Extension of the short-stay visa

Not applicable.

☐ Extension of the voluntary departure period

Not applicable.

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

Not applicable.

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<sup>47</sup> Art. 3.46 Aliens Decree (Vb) 2000; Section B8/9 of the Aliens Act Implementation Guidelines (Vc) 2000.

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

In other cases than medical circumstances as mentioned above, no form of certificate/tolerated stay/residence permit is granted.<sup>48</sup>

**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):

Not applicable.

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

Not applicable.

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

**Practical obstacles to return**

In certain situations it is possible that the return of a migrant cannot be effectuated because of practical obstacles, without it being the responsibility of the migrant. This is for example, the case if the country of origin is not issuing a (temporary) travel document (laissez-passer) in order for the migrant to enter the country of origin.<sup>49</sup> The migrant is then eligible for a residence permit on

<sup>48</sup> In the Netherlands, the non-refoulement principle is already taken into account in the asylum decision, before the return decision is issued. Therefore, this principle is not dealt with in Q2.

<sup>49</sup> Repatriation and Departure Service (DT&V), 'Bijzondere omstandigheden', <https://www.dienstterugkeerenvertrek.nl/Werkindeuitvoering/Bijzondereomstandigheden/index.aspx>, last accessed on 31 July 2020 (in Dutch).

humanitarian temporary grounds based on the no-fault policy.<sup>50</sup> The following conditions should be met<sup>51, 52</sup>:

- The migrant must have tried to return independently, and the migrant should demonstrate to have turned to the official authorities of the country of origin.
- There should be no reasonable doubts about the nationality or identity of the migrant.
- The migrant should have requested the Repatriation and Departure Service (*Dienst Terugkeer & Vetrekk*, DT&V) to mediate with regard to his or her return or to mediate in order to receive the necessary documents of the country of origin.<sup>53</sup> The mediation must be unsuccessful.
- The DT&V should have determined that, in light of all the facts and circumstances, the migrant cannot return without it being their fault. This should be based on objective, verifiable facts and circumstances that relate to the migrant.
- The migrant should be staying in the Netherlands without a right of residence and should not fulfil conditions for another residence permit or be awaiting the result of an application for another residence permit.

The migrant can file an application for this residence permit at the Immigration and Naturalisation Service (IND), but without a positive advice from the DT&V the application will be rejected. In case after a mediation procedure the DT&V determines that the policy applies, a positive advice is released to the IND. The IND can then grant a residence permit ex officio.<sup>54</sup> The residence permit is valid for one year at most and can be extended.<sup>55</sup> Nevertheless this policy forms rather an exception, as approximately ten of these permits are issued per year.<sup>56</sup> In 2017 about 10 permits were issued, in 2018 it concerned 20, and in 2019 around 30 permits.<sup>57</sup>

☐ An extension of the short-stay visa

Not applicable.

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

Not applicable.

<sup>50</sup> Section 3.48, sub 2 under a, Aliens Decree (Vb), 2000.

<sup>51</sup> Section B8/4 of the Aliens Act Implementation Guidelines (Vc), 2000, last accessed on 1 September 2020.

<sup>52</sup> National Ombudsman (2009), 'Rapport 2009/035', [https://www.nationaleombudsman.nl/uploads/rapporten/20090035\\_2007.10047.pdf](https://www.nationaleombudsman.nl/uploads/rapporten/20090035_2007.10047.pdf), last accessed on 31 July 2020 (in Dutch).

<sup>53</sup> Ibid.

<sup>54</sup> This information was provided during the focus group meeting on 3 November 2020.

<sup>55</sup> Section 3.58, sub 1 under q, Aliens Decree (Vb), 2000.

<sup>56</sup> National Government (2019), 'Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht', <https://www.rijksoverheid.nl/onderwerpen/migratie/documenten/rapporten/2019/06/04/onderzoekscommissie-langdurig-verblijvende-vreemdelingen-zonder-bestendig-verblijfsrecht>, last accessed on 9 October 2020 (in Dutch).

<sup>57</sup> *Appendix of Parliamentary Papers II*, 2019/20, 1934, <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/03/03/antwoorden-kamervragen-over-chun-de-man-die-niet-bestaat>, last accessed on 9 October 2020 (in Dutch).



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

In other cases than as mentioned above, no form of certificate/tolerated stay/residence permit is granted.

## SECTION 1.2: PRIORITIES AND DEBATES AT A NATIONAL LEVEL

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

☒ Yes

☐ No

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

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

Yes, the issue of long-term irregular migrants has been subject to policy and legislative debate since 2015.

### **Reducing factors that prolong the stay in the Netherlands**

In 2018 a debate about the so-called 'Definitive regulation for long-term resident children' took place. This regulation was implemented in 2013, as there was a group of children staying long-term and irregularly in the Netherlands.<sup>58</sup> The regulation stated that children -and their families- who have stayed in the Netherlands for more than five years without receiving a permanent right of residence, could apply for a permit on the basis of this regulation.<sup>59</sup> This way certain children who, because of their stay in the Netherlands, were rooted in Dutch society would be able to remain in the Netherlands, even though they did not qualify for the initial requested residence permit. It was an important debate within the government, as parties were debating whether or not the criteria for the regulation should be eased or whether the regulation should be abolished altogether.<sup>60</sup>

As a result, a new balance was sought in the coalition agreement. Other factors, such as the discretionary power of the Minister of Migration<sup>61</sup> were included in the debate (see Q6). The

<sup>58</sup> EMN Netherlands (2013), 'Beleidsverzicht 2013: migratie en asiel in Nederland', <https://emnetherlands.nl/sites/default/files/2018-02/2013-Jaaroverzicht%20Migratie-%20en%20asielbeleid%20Nederland%202013.pdf>, last accessed on 17 December 2020.

<sup>59</sup> EMN Netherlands (2020), 'Jaaroverzicht EMN Nederland: Nederland migratie-en asielbeleid in 2019', <https://emnetherlands.nl/beleidsverzicht/en/jaaroverzicht-emn-nederland-nederlands-migratie-en-asielbeleid-2019>, last accessed on 13 October 2020 (in Dutch).

<sup>60</sup> Dutch House of Representatives (2019), 'Debat over versoepeling van het kinderpardon', [https://www.tweedekamer.nl/kamerstukken/plenaire\\_verslagen/kamer\\_in\\_het\\_kort/debat-over-versoepeling-van-het-kinderpardon](https://www.tweedekamer.nl/kamerstukken/plenaire_verslagen/kamer_in_het_kort/debat-over-versoepeling-van-het-kinderpardon), last accessed on 29 November 2020 (in Dutch).

<sup>61</sup> With this power, the Minister of Justice and Security had the competence to (in the end) issue a residence permit to an applicant, although the applicant did not fulfil the criteria for an existing

government reached the agreement that in the first residence application, the main aspects relevant for a stay in the Netherlands should be dealt with.<sup>62</sup> Also, incentives that could prolong a stay in the Netherlands should be reduced. According to the government, because of the system asylum seekers might hope to be eligible for a residence permit until the last moment. The long stay could lead to a distressing situation in itself, leading to the issuance of a residence permit although there were no initial grounds for a permit. The debate resulted in a set of coherent measures being taken, that were more far-reaching than only a change of the Regulation for long-term resident children (see Q6).

### **Shelter for long-term irregular migrants by municipalities**

The topic of providing shelter to long-term irregular migrants by municipalities has been an important part of the policy debate since 2015.<sup>63</sup> It will be further discussed under Q5A.

### **Coalition Agreement and the comprehensive agenda on Migration**

Also, the coalition agreement and the comprehensive agenda on migration are both frameworks that touch-upon the issue of illegal stay (in general, not specifically with regard to long-term irregular migrants) as part of the policy and/or legislative debate. At the beginning of 2018, the government presented the 'Comprehensive Agenda on Migration', which expresses the key points of the future Dutch migration policy related to the coalition agreement.<sup>64</sup> It is comprehensive as it covers aspects relevant for all different organizations within the migration sector. One of these aspects that is dealt with is 'Less illegality, more return'. As mentioned in the Agenda, an obstacle with regard to return in some cases, is the absence of cooperation by the migrant or the country of origin. Also, the establishment of the LVV-pilots<sup>65</sup> (see further explanation under Q6) was covered in the coalition agreement.

**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).

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residence permit. It concerned exceptional cases which were identified as cases in which a distressing situation would appear if the residence permit would not be granted.

<sup>62</sup> *Parliamentary Papers II*, 2018-2019, 19637, no. 2459.

<sup>63</sup> *Parliamentary Papers II* 2015-2016, 19637, no. 2075; *Parliamentary Papers* 2015-2016, 19637, no. 2106.

<sup>64</sup> *Parliamentary Papers II*, 2017-2018, 19637, no. 30573.

<sup>65</sup> The LVV-pilots are shelter and counselling facilities for illegally staying migrants. The aim of the LVV-pilots is to find a long-term solution for migrants without a right of stay, in order to prevent illegality. The options can be independent return to the country of origin, further migration to another country or legalisation of stay in case this is applicable. The pilots are a cooperation between the national government and authorities on local level. For further information, please see Q6.

Yes, the issue of long-term irregular migrants has been subject to inter-institutional debate. The main stakeholders were the national government on central level and the municipalities and their representation in the Association of Netherlands Municipalities (*Vereniging van Nederlandse Gemeenten*, VNG) on the local level. Also NGO's<sup>66</sup>, and certain organisations and churches that offer emergency shelter were involved in the debate.<sup>67</sup>

**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.

### **Shelter for long-term irregular migrants**

The subject of discussion between the national government and municipalities was mostly about the necessity of shelter for long-term irregular migrants that have no access to national facilities.

Migrants are discouraged to stay illegally in the Netherlands and are stimulated to return. They can make use of national shelter (in the Freedom Restricted Location, (*Vrijheidsbeperkende Locatie*, VBL) when preparing for their return, in case return is expected to be possible within 12 weeks.<sup>68</sup> In case it concerns a family with (a) minor(s), shelter is offered in a family centre (*Gezinslocatie*, GL) for the duration of the minority of the child(ren), until return is possible or a residence permit becomes available for the family. The remaining group of migrants cannot or is not willing to call upon national shelter, for example because they do not cooperate in a return procedure. These illegally staying migrants are in principle excluded from other shelter.<sup>69</sup>

A part of this group does not return. It resulted in municipalities facing difficulties, as some of these migrants ended up without proper accommodation.<sup>70</sup> The European Committee of Social Rights (ECSR) took a non-binding decision<sup>71</sup>, which stated that illegally staying migrants should among others have access to shelter. Followed by decisions of regional Dutch courts, ruling that VBL-shelter was not enough to live up to those rights, municipalities established 'Bed-bath-bread' facilities (*Bed, bad brood* - BBB) to provide for shelter.<sup>72</sup> Also, municipalities felt that this was necessary because of humanitarian principles (namely not leaving people on the streets and

<sup>66</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*. <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 6 August 2020 (in Dutch).

<sup>67</sup> R. Staring (2015), 'Niemand slaapt bij ons op straat? Over de noodopvang van onrechtmatig verblijvende vreemdelingen en het steekspel tussen centrale overheid en gemeenten', *Justiciële verkenningen* (*Spanningen tussen Rijk en gemeenten*) jrg. 41, nr. 2, 2015 (in Dutch).

<sup>68</sup> Advisory Committee On Aliens Affairs (ACVZ) (2018), 'Onderzoek: Bed bad brood', <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2018/2/8/bed-bad-brood>, last accessed on 13 October 2020 (in Dutch).

<sup>69</sup> Advisory Committee On Aliens Affairs (ACVZ) (2018), 'Onderzoek: Bed bad brood', <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2018/2/8/bed-bad-brood>, last accessed on 13 October 2020 (in Dutch).

<sup>70</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 6 October 2020 (in Dutch).

<sup>71</sup> ECSR 1 July 2014, Conference of European Churches against the Netherlands, 90/2013, JV 2015/24./

<sup>72</sup> Advisory Committee On Aliens Affairs (ACVZ) (2018), 'Onderzoek: Bed bad brood', <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2018/2/8/bed-bad-brood>, last accessed on 13 October 2020 (in Dutch).

provide assistance for those in need), and/or because it was needed in order to maintain public order and public health within their municipality.<sup>73</sup> The BBB's are often established by civil society within the municipality and supported by local authorities.<sup>74</sup>

Finally in 2015 (after a provisional court ruling), two final decisions were taken by the Administrative High Court (*Centrale Raad van Beroep*) and the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*).<sup>75</sup> It was determined that (in contrast to the earlier rulings) in principle the access to the VBL-shelter with the condition that the migrant cooperates to return, was sufficient to live up to certain rights of the European Convention of Human Rights (ECHR).

Meanwhile, negotiations between the national government and local authorities continued. This was due to the discussion about the provision of (emergency) shelter by municipalities and the funding of this on the one hand, and the national policy focused on discouraging illegal stay and stimulating return on the other hand. In 2018 an agreement was reached on the establishment of pilot shelter facilities in a few major municipalities (as described in Q6)<sup>76</sup>, despite the fact that there was no judicial obligation according to the earlier rulings to provide for additional shelter next to the VBL-shelter and family shelter.

**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:

The debate has influenced policy and legislative measures concerning long-term irregular migrants since 2015. The focus was on factors that prolong the stay in the Netherlands and on cooperation between the municipalities and the national government in offering shelter for long-term irregular migrants.

**Reducing factors that prolong the stay in the Netherlands:**

As a result of the debate about a new balance within the coalition agreement in relation to the reduction of factors that prolong the stay of migrants without a right of residence, a cohesive set of different measures has been taken in 2019.<sup>77</sup> These included the following:

<sup>73</sup> Winter, H., Bex-Reimert, V., Geertsema, B. & Krol, E. 'Onderdak en opvang door Rijk en gemeenten van vertrekplichtige vreemdelingen en de invloed daarvan op terugkeer' (2018), *ProFacto*, [https://www.wodc.nl/binaries/2882\\_Volledige\\_Tekst\\_tcm28-325328.pdf](https://www.wodc.nl/binaries/2882_Volledige_Tekst_tcm28-325328.pdf), last accessed on 13 October 2020.

<sup>74</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 6 October 2020 (in Dutch).

<sup>75</sup> Centrale Raad van Beroep (CRvB), 26 november 2015, ECLI:NL:CRVB:2015:3803 en 3834; Afdeling Bestuursrechtspraak van de Raad van State (ABRvS), 26 november 2015, ECLI:NL:RVS:2015:3415.

<sup>76</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 13 October 2020 (in Dutch).

<sup>77</sup> *Government Gazette*, 2019, no. 8116.

- The discretionary power of the Minister of Migration was abolished. With this power, the Minister had the competence to (in the end) issue a residence permit to an applicant, although the applicant did not fulfil the criteria for an existing residence permit in the first place. It concerned exceptional cases which were identified as cases in which a distressing situation would appear if the residence permit would not be granted. The objective of the abolishment was to reduce the hope of asylum seekers until the last moment to nevertheless be granted a residence permit.
- Certain categories of applications that normally could be covered by the discretionary power, were now directly implemented in the regulations and eligible for a specific residence permit. This in order to prevent unwanted side effects because of the abolishment.
- Parallel to the abolishment of the discretionary power, the managing director of the IND was mandated to assess ex officio in the first residence application whether a distressing situation would exist in the event the third-country national would not be eligible for the requested residence permit. This means that (contrary to the previous discretionary power of the Minister) it is only possible to determine so within the first application procedure instead of at a later stage.
- The Definitive Regulation for Long-term Resident Children (*Definitieve regeling langdurig verblijvende kinderen*, DRLVK) was terminated. Under this regulation, minors resident in the Netherlands for a long term without a right of residence could still obtain a residence permit under certain conditions. The DRLVK was intended for cases in which children were rooted in the Netherlands because of their long stay.
- Also, a research committee had been established in 2018 to further investigate all aspects that contribute to the long stay of migrants without a permanent right of residence, in order to find solutions.<sup>78</sup>

#### **Shelter for long-term irregular migrants:**

Eventually in November 2018 an agreement was reached between national government and municipalities on the development of 5 National Immigration Facilities (*Landelijke Vreemdelingen Voorzieningen-pilot*, LVV-pilot). It concerns a cooperation between the national government, local governments and NGO's, and it is still under development. The LVV-pilots are shelter and counselling facilities for migrants that are willing to work on a future perspective and are meant to replace the BBB's. The aim of the LVV-pilots is to find a long-term solution for migrants without a right of stay, in order to end illegality of stay with no future perspective.<sup>79</sup> The options can be independent return to the country of origin, further migration to another country or legalisation of stay in case this is applicable.<sup>80</sup> The NGO's will inform the migrants about the different future perspectives and possible consequences of the different options and

<sup>78</sup> National Government (2019), 'Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht', <https://www.rijksoverheid.nl/documenten/rapporten/2019/06/04/onderzoekscommissie-langdurig-verblijvende-vreemdelingen-zonder-bestendig-verblijfsrecht>, last accessed on 6 August 2020 (in Dutch).

<sup>79</sup> Association of Netherlands Municipalities (VNG), 'Ledenbrief Samenwerkingsafspraken Landelijke Vreemdelingen Voorzieningen', [https://vng.nl/files/vng/brieven/2018/20181130\\_ledenbrief\\_ledenbrief\\_samenwerkingsafspraken-landelijke-vreemdelingen-voorzieningen.pdf](https://vng.nl/files/vng/brieven/2018/20181130_ledenbrief_ledenbrief_samenwerkingsafspraken-landelijke-vreemdelingen-voorzieningen.pdf), last accessed on 6 August 2020 (in Dutch).

<sup>80</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 6 August 2020 (in Dutch).

council them for the purpose of reaching this solution. The Immigration and Naturalisation Service (IND) is available for information about legalisation of stay and the Repatriation and Departure Service (DT&V) offers return counselling. The Aliens Police Department, Identification and Human Trafficking (*Afdeling Vreemdelingenpolitie, Identificatie en Mensenhandel*, AVIM) is mainly responsible for the registration and identification of the migrants.<sup>81</sup> Depending on the results of these pilots, the eventual aim is to achieve a national coverage of these facilities.

**Program Increasing the Flexibility of the Asylum system:**

The 'Program Increasing the Flexibility of the Asylum system' also links to overcoming the long stay of irregular migrants. In the first place it is about better anticipating to the flexible influx of asylum applications.<sup>82</sup> It is also aimed at quickly offering clarity to the migrant about the (chances of a promising) outcome of their (subsequent) application. This should contribute to a timely preparation of migrants for return in case the application was rejected.<sup>83</sup> According to the government, the longer the asylum procedure takes, the less migrants are willing to actively cooperate to return in general and the more chance there is that the travel documents will expire. As derived from research, the level of voluntary return is indeed higher when the processing time in the first asylum decision is average compared to short or long processing times. It concerns voluntary return within two years after a negative decision on the asylum application.<sup>84</sup>

**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).*

**Debate concerning long-term irregular migrants' access to services**

<sup>81</sup> Ibid.

<sup>82</sup> National Government, 'Programma Flexibilisering Asielketen', <https://www.rijksoverheid.nl/onderwerpen/migratie/programma-flexibilisering-asielketen>, last accessed on 16 October 2020 (in Dutch).

<sup>83</sup> *Parliamentary Papers II*, 2017-2018, 19673, no. 30573.

<sup>84</sup> Research and Documentation Center (WODC) (2014), 'Afgewezen en uit Nederland vertrokken?', [https://www.wodc.nl/binaries/cahier-2014-3-volledige-tekst-nw\\_tcm28-72354.pdf](https://www.wodc.nl/binaries/cahier-2014-3-volledige-tekst-nw_tcm28-72354.pdf), last accessed on 5 November 2020 (in Dutch).



A part of the public debate focuses on the situation of long-term irregular migrants in the Netherlands, which is specifically related to how certain stakeholders perceive irregular migrants to be lacking access to sufficient accommodation, proper guidance and future perspective. A first topic that **NGO's**<sup>85</sup> and **politicians** have debated has been the accommodation of irregular migrants and rejected asylum seekers and the roles of the national government and municipalities in this.<sup>86</sup> In 2016, a discussion started about whether or not the government should continue funding of the BBB facilities where this group of migrants can be sheltered. NGO's addressed the potential discontinuation of financing by the central government. For example, Stichting Inlia, an NGO in the Dutch municipality of Groningen that is active in facilitating irregular migrants, emphasized how the funding was necessary to address an issue that was in their eyes created by central level policies. According to the NGOs and local government, the BBB not only functioned as a way to give humanitarian support to irregular migrants, but was also essential to ensuring public order.<sup>87</sup> Eventually it was decided by the central government to continue funding the BBB facilities until the end of 2021, when a nationally covering network of accommodation for this group (the LVV's) is expected to be realized (even though there does not seem to be a judicial obligation according to earlier court rulings to provide additional shelter, next to the VBL-location. Please refer to Q5b).

Another group of stakeholders, academic **researchers working for universities or consultation offices**, has also been partaking in this public debate for instance by researching topics/contextes that gained attention in the media. Think here for instance of research on the *We are here* squatters-movement, which also accommodates some irregular migrants and has been discussed in the media.<sup>88</sup> Furthermore, researchers in their work also focus on evaluating current programmes for the accommodation of long-term irregular migrants and their access to services. Especially access to healthcare has been frequently reported on since 2015 and these researches point out issues with access to services including specialized and advanced care, as well as mental healthcare. Consequently, these studies often make suggestions and recommendations, for instance an increased involvement of the government in this matter.<sup>89 90</sup>

<sup>91</sup> See question 20 for more information about the details of the studies.

<sup>85</sup> BNR (2017), 'Dijkhof moet financiering bed-bad-brood-voorzieningen weer oppikken', <https://www.bnr.nl/nieuws/politiek/10316289/dijkhoff-moet-financiering-bed-bad-brood-weer-oppijken>, last accessed on 15 October 2020 (in Dutch).

<sup>86</sup> Trouw (2018), 'Uitgeprocedeerden gaan niet weg, hoe graag de politiek dat ook wil', <https://www.trouw.nl/nieuws/uitgeprocedeerden-gaan-niet-weg-hoe-graag-de-politiek-dat-ook-wil~bbf8e4fd/>, last accessed on 25 August 2020 (in Dutch).

<sup>87</sup> BNR (2017), 'Dijkhof moet financiering bed-bad-brood-voorzieningen weer oppikken', <https://www.bnr.nl/nieuws/politiek/10316289/dijkhoff-moet-financiering-bed-bad-brood-weer-oppijken>, last accessed on 15 October 2020 (in Dutch).

<sup>88</sup> This information was provided during the focus group meeting on 3 November 2020

<sup>89</sup> National Ombudsman, College for Human Rights, Advisory Committee on Aliens Affairs (2015), 'Medische zorg aan ongedocumenteerden: Aanbevelingen', <https://www.nationaleombudsman.nl/system/files/bijlage/151217%20Aanbevelingen%20Zorgeloos%20op%20straat.pdf>, last accessed on 24 August 2020 (in Dutch).

<sup>90</sup> Kennisplatform Integratie & Samenleving (2018), 'Een verkenning van medisch noodzakelijke zorg voor ongedocumenteerde migranten in Nederland. Alleen krijg je het niet voor elkaar', <https://www.kis.nl/sites/default/files/bestanden/Publicaties/alleen-krijg-je-het-niet-voor-elkaar.pdf>, last accessed on 24 August 2020 (in Dutch).

<sup>91</sup> Pharos (2019), 'Toegang tot zorg voor ongedocumenteerde migranten. Wat helpt om zorg te krijgen?', <https://www.pharos.nl/kennisbank/toegang-tot-zorg-voor-ongedocumenteerde-migrant-en-wat-helpt-om-zorg-te-krijgen/>, last accessed on 25 August 2020 (in Dutch).

## Debate concerning individual cases of longterm irregular migrants

Since 2015 (but also before that), newspapers such as *NRC*, *Volkskrant*, *Het Parool*, *het AD* etc. have not only played a part in the wider dissemination of academic findings as mentioned above, but also in placing the debate on the (political) agenda by reporting on the situation of individual long-term irregular migrants. Cases concerning decisions of forced return or deterioration in the area of mental health have particularly been placed in the media's spotlight.<sup>92</sup> An illustrative case of the former is the one of a (then) 19 year old individual of Dominican decent, who was born and raised in Amsterdam but did not possess Dutch citizenship and was illegally residing in the Netherlands. This was discovered when the individual tried to apply to higher education, for which a valid passport is necessary, after which the individual was referred to the Immigration and Naturalization Service. A return decision followed and the individual was detained in November 2019 to await return. The story of this detention and imminent forced return gained traction in the media, leading to a petition to halt the return operation and ms. Femke Halsema (mayor of Amsterdam) publicly advocating for the individual's freedom.<sup>93</sup> <sup>94</sup> Similar media attention was placed on two children (then 14 and 13 years old) of Armenian background who faced return after they had resided in the Netherlands illegally for over a decade. Eventually, then-minister of migration Harbers gave them permission to stay by using his discretionary power.<sup>95</sup> As discussed, this discretionary competence has since then been repealed, leading to further public debate in media – fueled by NGOs and municipalities who were of the opinion that the discretionary competence was essential to relieve certain pressure on the migration and asylum system.<sup>96</sup>

Yet, besides the mainstream media, other outlets give a platform to those partaking in another side of the debate concerning the perception of concerning circumstances regarding irregular migrants. News outlets such as *Geenstijl* are known for partaking in debates about migration and representing a more right-winged perspective on the matter. For instance, during the aforementioned debate on the funding of the BBBs, *GeenStijl* served as a platform for those of the opinion that funding for the BBBs should be cut completely.<sup>97</sup>

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<sup>92</sup> De Volkskrant (2015). 'Vreemdelingendetentie mag geen gevangenis zijn, maar is het wel', <https://www.volkskrant.nl/nieuws-achtergrond/vreemdelingendetentie-mag-geen-gevangenis-zijn-maar-is-het-wel~b398f1ae/>, last accessed 19 August 2020 (in Dutch).

<sup>93</sup> Trouw (2019), 'Daniël Buter mag besluit uitzetting in vrijheid afwachten.', <https://www.trouw.nl/nieuws/daniel-buter-mag-besluit-uitzetting-in-vrijheid-afwachten~b5a54563/>, last accessed on 24 August 2020 (in Dutch).

<sup>94</sup> Het Parool (2020), 'Amsterdammer Daniël Buter (19) krijgt verblijfsvergunning: "Ik ben ontzettend blij".', <https://www.parool.nl/nieuws/amsterdammer-daniel-buter-19-krijgt-verblijfsvergunning-ik-ben-ontzettend-blij~b945944e/>, last accessed 24 August 2020 (in Dutch).

<sup>95</sup> De Volkskrant (2018), 'Hoop, onrust, vlucht en uiteindelijk het goede nieuws: Lili en Howick mogen blijven', <https://www.volkskrant.nl/nieuws-achtergrond/hoop-onrust-vlucht-en-uiteindelijk-het-goede-nieuws-lili-en-howick-mogen-blijven~bc63b905/>, last accessed on 8 September 2020 (in Dutch).

<sup>96</sup> Defence for children (2019), 'Zorgen over afschaffen discretionaire bevoegdheid', <https://www.defenceforchildren.nl/actueel/nieuws/migratie/2019/zorgen-over-afschaffen-discretionaire-bevoegdheid/>, last accessed 8 September 2020 (in Dutch).

<sup>97</sup> Geenstijl (2015). 'Bed, bad en brood: "asieleisers opzouten!"', <https://www.geenstijl.nl/4398991/bbb-oorlog-gaat-door/>, last accessed 4 November 2020 (in Dutch).

**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?

#### **Public debate**

Measures have been taken to allow more accommodation for irregularly staying migrants (within the recommended guidelines provided by the government concerning Covid-19) for instance in some BBB facilities.<sup>98 99</sup> The media has played a role in highlighting the situation of long-term irregularly staying migrants throughout Covid-19, once more by focussing on humanizing and individualizing the debate and increasing the urgency of taking measures (on the political agenda) as well. A good example of this is newspaper *NRC*'s coverage of certain individual long-term irregular migrants who are losing income due to COVID-19, and consequently accommodation and access to services.<sup>100</sup>

#### **Policy debate**

Next to this public debate, there has also been a small discussion regarding the situation of irregular migrants during COVID-19. On the 20<sup>th</sup> of April, 2020, members of parliament submitted written questions about the consequences of COVID-19 measures for the organisations cooperating in the asylum process. Concerning irregular migrants that still reside in the Netherlands, parliament has been especially worried about the inability to return those who were denied a residence permit/asylum status, and the access these individuals have to any type accommodation/shelter.<sup>101</sup>

**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.

On national level, there are no concrete planned changes in law/policy/practice. Nevertheless, the planned effect evaluation<sup>102</sup> of the LVV-pilots could for example lead to future developments.<sup>103</sup>

<sup>98</sup> AD (2020), 'Bed, bad en brood vanwege corona nu voor alle daklozen', <https://www.ad.nl/eindhoven/bed-bad-en-brood-vanwege-corona-nu-voor-alle-daklozen~a9af5d27/>, last accessed 17 December 2020 (in Dutch).

<sup>99</sup> Interview with Tilburg municipality, 5 October 2020.

<sup>100</sup> NRC (2020), 'Ongedocumenteerde Patrícia verloor 80 procent van haar inkomsten', <https://www.nrc.nl/nieuws/2020/03/31/ongedocumenteerde-patricia-verloor-80-procent-van-haar-inkomsten-a3995417>, last accessed on 8 September 2020 (in Dutch).

<sup>101</sup> *Parliamentary papers II*, 2019-2020, 19637, no. 2601.

<sup>102</sup> *Parliamentary Papers II*, 2019-2020, 19637, no. 2641.

<sup>103</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

## 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.*

**PLEASE NOTE:** access to services is not organized in a uniform or centralized way in the Netherlands. While there are some national/central authorities that play a big role in the provision of services across the Netherlands, the types of services offered varies across municipalities. Per municipality, there are different NGOs, charities and/or private parties active that provide services. Since it is impossible to provide a brief description of all available services in every Dutch municipality, provided below are some examples of national and local practices/authorities providing services. This is not an exhaustive list.

**Table 1A: Rights and services available to long-term irregularly staying migrants who have been issued a return decision but return cannot be implemented for legal or practical obstacles?**

*Type of stay or status as identified in Q2 and/or Q3:*

*Legal obstacles to return:*

1. Suspension of departure for medical reasons (Art. 64 Aliens Act)
2. Residence permit humanitarian (temporary) based on medical grounds
3. Residence permit humanitarian (non-temporary) based on medical grounds

*Practical obstacles to return:*

1. No-fault policy

Type of service	Service provided? (Y/N)	Is the provision of service <b>mandatory or discretionary</b> ? <sup>104</sup>	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?
<b>Accommodation</b>				<b>Less</b> <input checked="" type="checkbox"/>   <b>Same</b> <input checked="" type="checkbox"/>   <b>More</b> <input type="checkbox"/>
<b>Accommodation</b>  <i>If yes, please briefly describe</i>	Yes	Mandatory	<b>Legal obstacles</b> <sup>105</sup> :  <ul style="list-style-type: none"> <li><b>Suspension of departure for medical reasons (Art. 64 Aliens Act):</b> migrants can stay at the reception centre of the Central Agency for the Reception of Asylum Seekers (COA).<sup>106</sup> There are a few exceptions to this. If a person does not have a history under asylum law and is awaiting a decision about their</li> </ul>	<b>Art. 64 Aliens Act:</b> the rights are less than for third-country nationals who hold a residence permit. COA will not mediate for regular housing in a municipality after stay in the facility

<sup>105</sup> The obstacles mentioned that can hinder the execution of a return decision could be considered as both legal or practical obstacles. Nevertheless, as provided for in Q2 and 3 of this template, this categorisation is made in order to make the various situations in the Member States better comparable in light of this study.

<sup>106</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.



			<p>suspension of departure on the basis of Section 64, s/he does not have a right to reception.</p> <ul style="list-style-type: none"> <li>• <b>Residence permit humanitarian (temporary /non-temporary) based on medical grounds:</b> access to accommodation is on the same basis as other legally residing third-country nationals.<sup>107</sup> Also temporary accommodation at the reception centre of COA is possible.</li> </ul> <p><b>Practical obstacles:</b></p> <p><b>No fault policy:</b> access to accommodation is on the same basis as other legally residing third-country nationals.</p>	<p>government-subsidized social housing markets.</p> <p><b>Residence permit humanitarian (temporary /non-temporary) based on medical grounds and residence permit no fault policy:</b> same rights as legally residing third-country nationals/nationals.</p>
<p><b>Special accommodation facilities (i.e. shelter for victims of violence, children etc.)</b></p> <p><i>If yes, please briefly describe</i></p>	Yes	Mandatory	Please refer to table 1B: the same special accommodation for victims of violence or human trafficking is available.	These migrants have the same rights and access to the special accommodation-types as nationals and other legally-residing migrants (including refugees granted asylum), to the extent that it is comparable.
<b>Other forms of accommodation or</b>	N/a	N/a	N/a	N/a

<sup>107</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.

shelter or specialised centre				
<b>Healthcare</b>				<b>Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/></b>
<b>Emergency healthcare</b> <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	Yes	Mandatory	Emergency healthcare in case of medical necessity is available to migrants with suspension of departure for medical reasons, a residence permit based on medical reasons or the no-fault policy. <sup>108</sup>	Migrants have the same rights and access to emergency health care as nationals and other legally-residing migrants (including refugees granted asylum).
<b>Basic medical care</b> <i>If yes, please briefly describe</i>	Yes	Mandatory	<p>Basic healthcare is available to migrants with suspension of departure for medical reasons, a residence permit based on medical reasons or the no-fault policy.</p> <p>For migrants for which return is postponed based on medical reasons (art. 64) and the right to stay at the COA location, the medical care is insured based on art. 9 (1)(e) RVA (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005).</p> <p>Migrants with a residence permit need a regular health insurance.<sup>109</sup></p>	Migrants have the same rights to basic health care as nationals and other legally-residing migrants (including refugees granted asylum).

<sup>108</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.

<sup>109</sup> National Government, 'Hoe is de zorgverzekering in Nederland geregeld' <[Hoe is de zorgverzekering in Nederland geregeld? | Zorgverzekering | Rijksoverheid.nl](https://rijksoverheid.nl/onderwerpen/zorgverzekering)>', last accessed on 8 June 2021.

<b>Specialised care</b> <i>If yes, please briefly describe</i>	Yes	Mandatory	Please refer to table 1B: specialized care is available to legal residents in the Netherlands. The degree of access depends on the health insurance and the kind of specialized care. <sup>110</sup>	Migrants have the same rights to specialized care as nationals and other legally-residing migrants (including refugees granted asylum).
<b>Other healthcare services</b> <i>If yes, please briefly describe</i>	N/a	N/a	N/a	N/a
<b>Social assistance</b>				Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/>
<b>Are long-term irregularly staying migrants entitled to receive social benefits?</b> <sup>111</sup> <i>If yes, please briefly describe what these benefits are</i>	No	Mandatory and discretionary	<b>Legal obstacles:</b> <ul style="list-style-type: none"> <li><b>Suspension of departure for medical reasons (Art. 64 Aliens Act):</b> holders of this status are entitled to the same assistance as asylum seekers.<sup>112,113</sup> This includes necessary benefits, which is different from social benefits of citizens of the Netherlands.</li> <li><b>Residence permit humanitarian (temporary) based on medical reasons):</b> holders of the temporary</li> </ul>	<b>Art. 64 and residence permit humanitarian temporary based on medical reasons:</b> migrants have more limited access to social assistance compared to nationals and other legally-residing migrants as legally residing migrants/citizens have

<sup>110</sup> Based on the comments of a focus group member.

<sup>111</sup> 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.

<sup>112</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.

<sup>113</sup> Section 3, sub 3, under f and g, and Section 9, Asylum Seekers and Other Categories of Aliens (Provisions) Regulations 2005 (Rva 2015).

			<p>medical residence permit are entitled to social assistance benefits.<sup>114</sup></p> <ul style="list-style-type: none"> <li>• <b>Residence permit humanitarian (non-temporary) based on medical reasons:</b> holders of the non-temporary residence permit are entitled to similar social benefits as Dutch citizens.<sup>115</sup></li> </ul> <p><b>Practical obstacles:</b></p> <p><b>No fault policy:</b> holders of a legal residence permit are entitled to certain social benefits.<sup>116</sup></p>	<p>access government-provided social benefits.<sup>117, 118</sup></p> <p><b>Residence permit humanitarian (non-temporary) based on medical reasons or no fault policy:</b> Migrants have similar rights to other legally residing migrants/citizens.</p> <p><u>Please note:</u> social assistance in the Netherlands (for anyone with Dutch/European citizenship or with a residence permit) largely concerns income support and compensation for health care related costs/pregnancy/child daycare related costs.</p>
<b>Employment</b>				Less <input checked="" type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/>

<sup>114</sup> Article 8, under a, b, c, d, e, and I, Aliens Act 2000 (Vw 2000).

<sup>115</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.

<sup>116</sup> Article 8, under a, b, c, d, e, and I, Aliens Act 2000 (Vw 2000).

<sup>117</sup> Chapter 2, par. 2.2, art. 11 and Chapter 5, par. 51, art 41 of the Participation Act, 2020.

<sup>118</sup> Juridisch Loket, 'Heb ik als buitenlander recht op een bijstandsuitkering?', <https://www.juridischloket.nl/werk-en-inkomen/werkloosheid-en-bijstand/bijstandsuitkering-buitenlander/>, last accessed on 16 November 2020 (in Dutch).

<p><b>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</b></p> <p><i>If yes, please describe any specific conditions attached to their employment.</i></p>	No	N/a	<p><b>Legal obstacles:</b></p> <ul style="list-style-type: none"> <li>• <b>Suspension of departure for medical reasons (Art. 64 Aliens Act):</b> no right to employment.<sup>119</sup></li> <li>• <b>Residence permit humanitarian (temporary) based on medical reasons:</b> no right to employment.<sup>120</sup></li> <li>• <b>Residence permit humanitarian (non-temporary) based on medical reasons:</b> Holders of a residence permit on the basis of residence after residence in connection with medical treatment are allowed to work in the Netherlands and do not need a work permit for third-country nationals (TWV) to do so.<sup>121,122,123</sup></li> </ul> <p><b>Practical obstacles:</b></p> <ul style="list-style-type: none"> <li>• <b>No fault policy:</b> holders of a residence permit on the basis of the no fault policy are allowed to work</li> </ul>	<p><b>Art. 64 and residence permit humanitarian temporary based on medical reasons:</b> less rights because they have no right to employment.</p> <p><b>Residence permit humanitarian non-temporary based on medical reasons or no fault policy:</b> same rights as nationals/third country nationals.</p>
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<sup>119</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.

<sup>120</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.

<sup>121</sup> IND (2017). Werkinstructie 2017/3 - Richtlijnen voor afgifte van arbeidsmarktaantekening bij verblijf langer dan drie maanden. [Work instruction 2017/3 - Guidelines for the issuance of an indication of work status upon longer residence than three months.] [https://ind.nl/Documents/WI\\_2017-3.pdf](https://ind.nl/Documents/WI_2017-3.pdf) Consulted on 18 April 2019.

<sup>122</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.

<sup>123</sup> IND, 'Aanvraag verblijfsvergunning humanitair niet-tijdelijk - voortgezet verblijf < [Aanvraag verblijfsvergunning humanitair niet-tijdelijk - voortgezet verblijf | Immigratie- en Naturalisatiedienst \(IND\)](#) >', last accessed on 8 June 2021.

			in the Netherlands and do not need a work permit for third-country nationals (TWV) to do so. <sup>124</sup>	
<b>Education</b>				<b>Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/></b>
<b>Do (long-term irregular migrant) children have access to compulsory education?</b>	Yes	Mandatory	Please refer to table 1B: Stemming from national law, all children under the age of 18 are entitled to education. <sup>125</sup>	These migrant children have the same rights and access to education as national and other migrant children.
<b>Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training?</b> <i>If yes, what types of education and under which conditions?</i>	Yes/No	N/A	Persons with lawful residence in the Netherlands may register with secondary vocational education and higher education institutions. <sup>126,127</sup> They have to fulfil the general conditions as set by the Higher Education and Research Act ( <i>Wet op het hoger onderwijs en wetenschappelijk onderzoek</i> , WHW) and the Vocational Education Act ( <i>Wet educatie en beroepsonderwijs</i> , WEB). <sup>128</sup> This is the case for all statuses mentioned in this table: Suspension of departure for medical reasons (Art. 64 Aliens Act), Residence permit humanitarian (temporary) based on medical reasons, Residence permit humanitarian (non-temporary) based on medical reasons and the No fault policy.	These migrants have the same access to education as national and other migrants.

<sup>124</sup> B8/4.2 Aliens Act Implementation Guidelines 2000 (Vc 2000) and art. 3.1 (3)(a) VV.

<sup>125</sup> Article II and IV of the Benefit Entitlement (Residence Status) Act, 1998; *Parliamentary Papers II*, 1994-95, 24233, nr.3, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzjx3zq>, last accessed on 18 December 2020.

<sup>126</sup> Art. 8.1.1, (1)(b)(c)(d) Vocational Education Act; Art. 7.32 (5)(b)(c)(e) Higher Education and Research Act jo. Art. 8(a)(j) and art. 14 Aliens Act; UAF (2015). *Informatie over de rechten en plichten van asielzoekers in relatie tot het hoger onderwijs*. [Information about the rights and obligations of asylum seekers with respect to higher education.]

<sup>127</sup> EMN Netherlands (2019), National template of the study 'Comparative overview of national protection statuses in the EU'.

<sup>128</sup> Appendix, *Parliamentary Papers II*, 2015-2016, no. 494.

<b>Legal aid or assistance</b>				<b>Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/></b>
<b>Do long-term irregular migrants have access to legal aid or assistance type of services?</b>  <i>If yes, please briefly enumerate and explain</i>	<i>Yes</i>	<i>Mandatory</i>	<p>In the Netherlands, anyone (with lesser means) has a right to council that is sponsored by the government (<i>rechtsbijstand</i>) if the procedure falls under Dutch jurisdiction.<sup>129</sup></p> <p>Furthermore, legal migrants also have access to the legal advice bureau <i>Het Juridisch Loket</i>. This is a foundation that offers free legal advice as a first contact point.</p> <p>This is the case for all statuses mentioned in this table: Suspension of departure for medical reasons (Art. 64 Aliens Act), Residence permit humanitarian (temporary) based on medical reasons, Residence permit humanitarian (non-temporary) based on medical reasons and the No fault policy.</p>	Migrant have similar rights to access to legal aid as nationals and other legal migrants (including refugees granted asylum).
<b>Other?</b>				<b>Other?</b>
Are any other rights relevant to mention here? Please describe	<i>No</i>	<i>N/a</i>	<i>N/a</i>	<i>N/a</i>

<sup>129</sup> Based on the comments of a focus group member.



**Table 1B: Rights and services available to long-term irregularly staying migrants who have not been issued a return decision and remained unknown to migration authorities or who have been issued a return decision but did not receive any other document/residence permit/toleration of stay**

Type of stay or status as identified in Q2 and/or Q3: [_____]				
Type of service	Service provided? (Y/N)	Is the provision of service <b>mandatory or discretionary</b> ? <sup>130</sup>	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to:  iii. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice?  iv. 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 <b>explain</b> if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
<b>Accommodation</b>				<b>Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/></b>
<b>Accommodation</b> <i>If yes, please briefly describe</i>	Yes	Mandatory	The Benefit Entitlement (Residence Status) Act ( <i>Koppelingswet</i> ), is a law that excludes irregular migrants of access to certain services. <sup>131</sup> Yet, there are various types of shelter made available to specific categories of irregular migrants in the Netherlands, stemming from either	Long-term irregular migrants have more limited rights and access to accommodation as compared to nationals and other legally-residing migrants (including refugees

<sup>131</sup> Article VIII of the Benefit Entitlement (Residence Status) Act, 1998; *Parliamentary Papers II*, 1994-95, 24233, nr.3, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzjx3zq>, last accessed on 18 December 2020.

			<p>(new/pilot-based) national law or local practice. This is however the exception to the rule.</p> <p>This access can be separated into formal (government supported) accommodation and informal accommodation provided by a network of local government, societal organizations, NGOs and private parties.</p> <p><u>National law</u></p> <ul style="list-style-type: none"> <li>• Family centres (<i>Gezinslocatie</i>; GL): type of accommodation that an underage irregular migrant has access to together with their families. These centres are available to the family as long as there is at least one child under the age of 18 residing there. When this is no longer the case, return to the home country should follow swiftly in most situations.</li> <li>• National Immigration Facilities (LVV-pilot): This pilot program targets long-term irregular migrants who do not have residency rights. The key of the program is to provide 24-hour accommodation, which includes day activities and counseling. All the organisations that are active in an LVV decide on a perspective for the migrant based on a joint analysis that will determine the migrant's future: legalization, migration to a second country, or return. Only irregular migrants who actively work on achieving the set goal have access to these facilities. If the migrant does not do this, it is possible that accommodation will be terminated.</li> </ul>	<p>granted asylum). Nationals and legally staying migrants can for instance access accommodation through the government-subsidized social housing markets.</p>
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			<ul style="list-style-type: none"> <li>Freedom restricted locations (<i>Vrijheidsbeperkende locatie</i>; VBL) officially are facilities to accommodate irregular migrants who are expected to return to their country of origin within twelve weeks. During their stay of initially twelve weeks, the focus is placed on their independent return (with which the Return &amp; Repatriation service (DT&amp;V) can assist). These locations could be considered as shelter (with the requirement for migrants to cooperate to return)<sup>132</sup>, but the locations also have a freedom restricted character. Migrants are not detained, they are allowed to leave the accommodation but have to stay within the municipalities' borders.<sup>133</sup>, <sup>134</sup>.</li> </ul> <p><u>Practice</u></p> <ul style="list-style-type: none"> <li>Bed-bath-bread facilities (<i>Bed-bad-brood voorzieningen</i>; BBB): this is emergency accommodation for irregular migrants that can no longer apply for <i>Rijksopvang</i> and who do not live in a city with an LVV pilot program. BBB is organized by societal organizations/NGOs, and is financed by central government (until 2021 as part of the transition from BBB to LVV). The type of accommodation can range from only night-time accommodation to a full 24-hour accommodation</li> </ul>	
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<sup>132</sup> See for example: Afdeling Bestuursrechtspraak van de Raad van State (ABRvS), 26 november 2015, ECLI:NL:RVS:2015:3415.

<sup>133</sup> Ibid; Return & Repatriation Service (DT&V), 'Vrijheidsbeperkende Locatie', <https://www.dienstterugkeerenvertrek.nl/het-terugkeerproces/verblijfslocaties/vrijheidsbeperkende-locatie>, last accessed 16 November 2020 (in Dutch)

<sup>134</sup> Van Alphen, Molleman, Leerkes, & Van den Hoek. 'Van bejegening tot vertrek. Een onderzoek naar de werking van vreemdelingenbewaring', *Boom Lemma*, [http://arjenleerkes.nl/Van\\_bejegening\\_tot\\_vertrek. Een onderzoek naar de werking van vreemdelingenbewaring.pdf](http://arjenleerkes.nl/Van_bejegening_tot_vertrek._Een_onderzoek_naar_de_werking_van_vreemdelingenbewaring.pdf), last accessed 20 November 2020 (in Dutch)

			<p>including guidance (also called 4B - <i>bed-bad-brood-begeleiding</i>; bed-bath-bread-guidance).</p> <ul style="list-style-type: none"> <li>The interviewed municipalities (Utrecht, Tilburg and Groningen) indicate that they have reason to believe private organizations including churches and in some cases also individuals accommodate irregular migrants. In case of accommodation in churches, this accommodation is often provided in return for services provided by the migrant.</li> </ul>	
<p><b>Special accommodation facilities (i.e. shelter for victims of violence, children etc.)</b></p> <p><i>If yes, please briefly describe</i></p>	Yes	Mandatory	<p>Concerning special accommodation for children, stemming from national law, irregularly staying <b>unaccompanied minors</b> can receive accommodation in foster families, small-scale accommodation locations or in protected reception centers for unaccompanied minors at risk. <b>Irregularly staying accompanied minors</b> receive accommodation in aforementioned family centers (<i>gezinslocaties</i>; GL) together with their family as long as they are underage, though the purpose of the GL's is to stimulate swift return.<sup>135</sup></p> <p>Concerning special accommodation for victims of violence, stemming from national law, short-term and long-term (irregularly) staying migrants who have been a victim of <b>human trafficking</b> have a right to accommodation and protection. Under the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, the</p>	<p>Irregular migrants have the same rights and access to the special accommodation-types as nationals and other legally-residing migrants (including refugees granted asylum), to the extent that it is comparable.</p> <p>Concerning special accommodation for victims of violence (including human trafficking) all migrants are sheltered in the Categorical Accommodation Victims of Human Trafficking</p>

<sup>135</sup> National Government, 'Alleenstaande Minderjarige Vreemdelingen', <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/alleenstaande-minderjarige-vreemdelingen-amv>, last accessed on 5 October 2020.

			<p>Dutch Aliens Act 2000 (<i>Vreemdelingenwet 2000</i>)<sup>136</sup> and the Dutch Aliens Act Implementation Guide (<i>Vreemdelingencirculaire</i>)<sup>137</sup>, alleged third country victims get a 3 month reflection period during which they can decide to file a police report of the crime they were a victim to or witnessed. After the police report has been filed, alleged victims who do not fall under the Dublin Regulation receive a temporary residence permit. For those who do fall under the Dublin Regulation, a more detailed evaluation-procedure determines whether or not the migrant gets a temporary residence permit. In both cases, this permit will be revoked if it is concluded not enough evidence of human trafficking can be provided and/or if the case is discontinued. During the reflection period, the migrant has a right to shelter/accommodation in the Categorical Accommodation Victims of Human Trafficking (<i>Categoriale Opvang Slachtoffers Mensenhandel</i>; COSM), which is financed by the national government, coordinated by the national authority CoMensha and provided by organizations such as Humanitas and Yadeborgh.</p> <p>Furthermore, stemming from local practice, women's shelters, as well as social and homeless shelters, also provide accommodation to irregular migrants who do not necessarily meet the criteria of being victims of abuse/human trafficking, but who do need accommodation.<sup>138</sup></p>	<p>(<i>Categoriale Opvang Slachtoffers Mensenhandel</i>; COSM), while Dutch victims are sheltered in a wide variety of shelters.<sup>139</sup></p>
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<sup>136</sup> *Vreemdelingenwet (Vw)*, 2000

<sup>137</sup> *Vreemdelingencirculaire (Vc)*, 2000

<sup>138</sup> Interview with the Ministry of Justice and Security, 27 August 2020.

<sup>139</sup> Based on Dutch input for EMN AQH 2020.58 'Definition of safe accommodation'

Other forms of accommodation or shelter or specialised centre	N/a	N/a	N/a	N/a
Healthcare				Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/>
<b>Emergency healthcare</b> <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	Yes	Mandatory	<p>In the Netherlands, irregular migrants have access to emergency healthcare in case of medical necessity. This stems from national law and is stated in the aforementioned Benefit Entitlement (Residence Status) Act (<i>Koppelingswet</i>, see Q10, “accommodation”).<sup>140, 141</sup> The Dutch Society for the promotion of medicine (<i>Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst</i>, KNMG) defines it as “health care that has been indicated necessary according to professional guidelines or standards, and which is effective, efficient and patient-oriented as well as geared towards the realistic needs of the patients.”<sup>142</sup> The Central Administration Office (<i>Centraal Administratiekantoor</i>; CAK) plays a role in supplementing information to care providers about how to interpret this definition.</p>	<p>Long-term irregular migrants have the same rights and access to emergency health care as nationals and other legally-residing migrants (including refugees granted asylum).</p>

<sup>140</sup> Article X of the Benefit Entitlement (Residence Status) Act, 1998; art. 10(2) Aliens Act.

<sup>141</sup> *Parliamentary Papers II*, 1994-95, 24233, nr.3, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzj3zq>, last accessed on 18 December 2020.

<sup>142</sup> Koninklijke Nederlandsche Maatschappij tot Bevordering der Geneeskunde (KNMG) (2007), ‘Arts en Vreemdeling’, <https://www.knmg.nl/advies-richtlijnen/knmg-publicaties/arts-en-vreemdeling-1.htm>, last accessed on 20 November 2020 (in Dutch).

<p><b>Basic medical care</b></p> <p><i>If yes, please briefly describe</i></p>	<p>Yes</p>	<p><i>Mandatory</i></p>	<p>Stemming from national law, irregular migrants have access to all health care accessible without a referral. The care provider makes a point of asking multiple times whether the migrant can pay for the care since they cannot be insured – if the answer remains no, there are special regulations in place that the care provider can appeal to have the costs reimbursed (see Q10, “other healthcare services” for further explanation). Basic medical health care includes the general practitioner, the obstetrician, maternity care, paramedical care, acute care (in the hospital) and dental care.<sup>143</sup></p>	<p>Long-term irregular migrants have the same rights to basic health care as nationals and other legally-residing migrants (including refugees granted asylum). In practice, however, in some cases irregular migrants experience more limited access to basic health care as compared to nationals and other migrants (including refugees) because irregular migrants cannot be insured, while legally residing migrants and citizens are obliged to insure themselves. This is nevertheless partially accounted for by the CAK regulation (see ‘other health care services’ in this table for further explanation). See Q33 for further explanation of other practical obstacles that this group encounters when it comes to health care access.</p>
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<sup>143</sup> Zorgwijzer, ‘Regeling onverzekerbare vreemdelingen’, <https://www.zorgwijzer.nl/fag/onverzekerbare-vreemdelingen>, last accessed 23 October 2020 (in Dutch).



<b>Specialised care</b> <i>If yes, please briefly describe</i>	Yes	Mandatory	<p>Stemming from national law, irregular migrants can access specialised care. In practice, irregular migrants have restricted access to specialized health, but this is also the case for Dutch citizens or European citizens as this type of care can only be accessed through referral of a GP or doctor. Specialized care includes care such as to the pharmacy, care in the hospital, access to mental health facilities (<i>Geestelijke Gezondheidszorg</i> - GGZ), or physiotherapy.<sup>144</sup></p> <p>Despite this, certain local parties<sup>145</sup> indicate that they are of the opinion that access to for instance mental health care is especially challenging for irregular migrants in comparison to Dutch/European citizens. This is why Amsterdam and Utrecht municipality work with a Medical accommodation project for the undocumented (<i>Medisch opvangproject ongedocumenteerden</i>; MOO). This project is aimed at providing better access for undocumented migrants with (severe) psychological problems. Furthermore, there is also a psychiatric nurse made available. Not all municipalities have comparable views and services, though.</p>	See above.

<sup>144</sup> Zorgwijzer, 'Regeling onverzekerbare vreemdelingen', <https://www.zorgwijzer.nl/fag/onverzekerbare-vreemdelingen>, last accessed 23 October 2020 (in Dutch).

<sup>145</sup> Interview with Utrecht municipality, 30 September 2020; Bloemen, E. 'Toegang tot zorg voor ongedocumenteerde migranten. Wat helpt om zorg te krijgen?' (2019), *Pharos*, <https://www.pharos.nl/kennisbank/toegang-tot-zorg-voor-ongedocumenteerde-migranten-wat-helpt-om-zorg-te-krijgen/>, last accessed 24 August 2020 (in Dutch).

<b>Other healthcare services</b>  <i>If yes, please briefly describe</i>	Yes	Discretionary	<p>The Benefit Entitlement (Residence Status) Act <sup>146</sup> states that persons without a residence permit cannot appeal to social services, which includes health care insurance. Hence, irregular migrants legally have to pay for their own medical costs. This is at times not practically attainable as these migrants sometimes do not have the financial means to do so and also cannot be insured as they are excluded from this according to the health care insurance law (<i>zorgverzekeringswet</i>)<sup>147</sup>. In such a case, to facilitate access to healthcare despite this, a care provider can appeal to the Central Administration Office (CAK) regulation for uninsured aliens and ask for a contribution for the part of the costs that the migrant is unable to pay for. There are certain requirements that the care provider has to meet for costs to be reimbursed:</p> <ul style="list-style-type: none"> <li>- The provided care falls under the basic package of the Healthcare law (<i>Zorgverzekeringswet</i>) or under the Longterm care law (<i>Wet langdurige zorg</i>)</li> <li>- The care provider has concluded that the care is medically necessary</li> <li>- There is a (partially) unpaid bill that cannot be paid by or for the patient in another manner</li> <li>- The patient is an uninsurable migrant (i.e. someone who lives in the Netherlands illegally, someone who has filed a request for a residence permit, or someone who has</li> </ul>	N/a
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<sup>146</sup> Article XXII of the Benefit Entitlement (Residence Status) Act, 1998; *Parliamentary Papers II*, 1994-95, 24233, nr.3, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzjx3zq>, last accessed on 18 December 2020.

<sup>147</sup> Chapter 2 paragraph 4 and Chapter 9 art. 122a of the Health care insurance law, 2020.

			<p>appealed a negative decision concerning a request for a regular residence permit).</p> <p>To what extent the health care provider can declare costs depends on what type of care it is and whether or not they are contracted with the CAK.<sup>148</sup> A difference is generally made between first-line and second-line care, and the amount of money that can be declared falls generally between 80% and almost full reimbursement of the costs made. An exemption to this is care provided in case of pregnancy or giving birth, as in this situation 100% of the costs can be reimbursed.</p>	
<b>Social assistance</b>				<b>Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/></b>
<p><b>Are long-term irregularly staying migrants entitled to receive social benefits?</b><sup>149</sup></p> <p><i>If yes, please briefly describe what these benefits are</i></p>	<i>No</i>	<i>Mandatory and discretionary</i>	<p>Stemming from national law (the Benefit Entitlement (Residence Status) Act)<sup>150</sup>, irregular migrants are not entitled to receive social benefits as defined in the Qualification and Long-Term Resident Directives. There is a system in place that is able to verify whether the applicant is legally allowed to do so.<sup>151</sup></p> <p>In practice, it does sporadically happen that some municipalities give <i>bijzondere bijstand</i> (special social</p>	<p>Long-term irregular migrants have more limited rights and access to social assistance compared to nationals and other legally-residing migrants (including asylum seekers granted asylum), as legally residing</p>

<sup>148</sup> For more information, see: CAK, 'Regeling onverzekerbare vreemdelingen', <https://www.hetcak.nl/zakelijk/regelingen/onverzekerbare-vreemdelingen>, last accessed on 10 December 2020 (in Dutch).

<sup>149</sup> 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.

<sup>150</sup> Articles XVIII, XIX, XX, XXI and XXII of the Benefit Entitlement (Residence Status) Act, 1998; *Parliamentary Papers II, 1994-95, 24233, nr.3*, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzjx3zq>, last accessed on 18 December 2020.

<sup>151</sup> This information was provided during the focus group meeting on 3 November 2020

			benefits) to long-term irregular migrants, despite this technically being illegal. <sup>152</sup> Furthermore, in the LVV-pilot programs, irregular migrants receive a small allowance to buy absolute necessities depending on the specific facility where they are sheltered ( <i>leefgeld</i> – living money).	migrants/citizens have access government-provided social benefits. <sup>153</sup> , <sup>154</sup>  <u>Please note:</u> social assistance in the Netherlands (for anyone with Dutch/European citizenship or with a residence permit) largely concerns income support and compensation for health care related costs/pregnancy/child daycare related costs.
<b>Employment</b>				<b>Less <input checked="" type="checkbox"/>   Same <input type="checkbox"/>   More <input type="checkbox"/></b>
<b>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</b>	<i>No</i>	<i>N/a</i>	N/a	Long-term irregular migrants have no rights and access to legal employment in comparison to nationals and other migrants.  Concerning entitlement to access the labour market,

<sup>152</sup> Interview with Utrecht municipality, 30 September 2020; Interview with Groningen municipality, 12 October 2020.

<sup>153</sup> Chapter 2, par. 2.2, art. 11 and Chapter 5, par. 51, art 41 of the Participation Act, 2020.

<sup>154</sup> Juridisch Loket, 'Heb ik als buitenlander recht op een bijstandsuitkering?', <https://www.juridischloket.nl/werk-en-inkomen/werkloosheid-en-bijstand/bijstandsuitkering-buitenlander/>, last accessed on 16 November 2020 (in Dutch).

<p><i>If yes, please describe any specific conditions attached to their employment.</i></p>				<p>there are some differences between the different types of legal migrants. There are <b>various permits</b> (blue card, researcher, student<sup>155</sup>, employee in Asian catering industry) that facilitate this access.</p> <p>Also, an <b>asylum seeker (in the process of gaining a residence permit)</b> is allowed to work in the Netherlands for 24 weeks per year. He or she needs a work permit (<i>tewerkstellingsvergunning</i>; TWV). This permit can only be provided if the asylum procedure has been active for longer than 6 months. Before this period of 6 months, the asylum seekers is not allowed to work.</p> <p><b>Asylum seekers who have received residence permits</b> can work in the same capacity that Dutch and</p>
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<sup>155</sup> Immigration and Naturalization Service (IND), 'Een buitenlandse werknemer aannemen', <https://ind.nl/werk/werkgever/Paginas/Een-buitenlandse-werknemer-aannemen.aspx>, last accessed on 16 October 2020 (in Dutch)

				European citizens can (without a work permit). <sup>156</sup>
<b>Education</b>				<b>Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/></b>
<b>Do (long-term irregular migrant) children have access to compulsory education?</b> <i>If yes, please briefly describe access.</i>	Yes	Mandatory	Stemming from national law, <sup>157</sup> all children (including irregular migrants) under the age of 18 are entitled to education. In order to facilitate this, irregular migrant children are given a temporary education number ( <i>onderwijsnummer</i> ) via their school, which is created for them by the Education Executive Agency ( <i>Dienst Uitvoering Onderwijs</i> , DUO) in order to enable them to go to Dutch primary and secondary school.	Long-term irregular migrant children have the same rights and access to education as national and other migrant children, as in the Netherlands, education is compulsory for all children – whether of Dutch nationality or not - between ages 5 and 16. <sup>158</sup> After 16, there is still a ‘qualification obligation’ where the child has to attain a certain beginners qualification for those who have not done so yet.

<sup>156</sup> National Government, ‘Mogen asielzoekers werken?’, <https://www.rijksoverheid.nl/onderwerpen/asielbeleid/vraag-en-antwoord/mogen-asielzoekers-werken>, last accessed 5 October 2020 (in Dutch).

<sup>157</sup> Article II and IV of the Benefit Entitlement (Residence Status) Act, 1998; *Parliamentary Papers II*, 1994-95, 24233, nr.3, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzjx3zq>, last accessed on 18 December 2020; Art. 10(2) Aliens Act.

<sup>158</sup> Chapter 2 of the Compulsory Education Act, 2020.

<p><b>Are adult long-term irregularly staying migrants entitled to participate in educational programmes and/or professional training?</b></p> <p><i>If yes, what types of education and under which conditions?</i></p>	No	N/A	<p>No, stemming from national law; the Benefit Entitlement (Residence Status) Act <sup>159</sup>). <sup>160</sup></p> <p>Yet, in practice: the abovementioned right to education ceases to exist as soon as the migrant turns 18. While this formally means that the migrant cannot finish their education, in practice there are some schools that ensure that irregular students who have just turned 18 can still finish their secondary school exams (and can thus receive a qualification). <sup>161</sup></p>	<p>Long-term irregular migrants have more limited rights and access to education as nationals and other migrants, as adult Dutch and European citizens as well as legally-residing migrants (including refugees granted asylum) have the right to pursue education that they are qualified for. They also have access to study financing. <sup>162</sup></p>
<b>Legal aid or assistance</b>				<b>Less <input type="checkbox"/>   Same <input checked="" type="checkbox"/>   More <input type="checkbox"/></b>
<p><b>Do long-term irregular migrants have access to legal aid or assistance type of services?</b></p> <p><i>If yes, please briefly enumerate and explain</i></p>	Yes	Mandatory	<p>In the Netherlands, anyone (with lesser means) has a right to council that is sponsored by the government (<i>rechtsbijstand</i>) if the procedure falls under Dutch jurisdiction. In the case of irregular migrants accessing such legal aid, the Benefit Entitlement Act applies less strictly than with other social laws. <sup>163</sup></p>	<p>Long-term irregular migrant children have similar rights to access to legal aid as nationals and other legal migrants (including refugees granted asylum).</p>

<sup>159</sup> Article V of the Benefit Entitlement (Residence Status) Act, 1998; *Parliamentary Papers II, 1994-95, 24233, nr.3*, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzjx3zq>, last accessed on 18 December 2020.

<sup>160</sup> Also see the condition of legal residence: Art. 8.1.1, (1)(b)(c)(d) Vocational Education Act; Art. 7.32 (5)(b)(c)(e) Higher Education and Research

<sup>161</sup> Interview with Utrecht municipality, 30 September 2020; interview with Ministry of Justice and Security, 27 August 2020.

<sup>162</sup> Sociaal Economische Raad (SER), 'Werkwijzer vluchtelingen – opleiding', <https://www.ser.nl/nl/thema/werkwijzer-vluchtelingen/opleiding>, last accessed 10 December 2020 (in Dutch)

<sup>163</sup> Based on the comments of a focus group member and Art. 10(2) Aliens Act.



		<p>There are certain tests that the irregular migrant (and all other Dutch citizens/legal migrants) have to go through before they can access this kind of legal aid; think of a check on income, a check on the kind of conflict and whether or not the conflict falls under Dutch jurisdiction.<sup>164</sup></p> <p>To ensure better access of irregular migrants to <i>rechtsbijstand</i>, it is possible that there is no request for a contribution of this group, as they usually have no income or capital. Proof of the financial situation is necessary.<sup>165</sup></p> <p>Furthermore, irregular migrants (and all Dutch citizens/legal migrants) also have access to the legal advice bureau <i>Het Juridisch Lokaal</i>. This is a foundation that offers free legal advice as a first contact point. Unlike <i>rechtsbijstand</i>, this legal advice bureau formally has very little obstacles to access. Theoretically, irregular migrants therefore have access to this.<sup>166</sup></p> <p>Additionally, for irregular migrants residing in the LVV-pilots<sup>167</sup> the first thing that follows the start of their LVV procedure is a legal screening. During this screening it is assessed whether all possible ways to legalize have been tried and which possibilities for return are present. If legalization turns out to still be possible, legal guidance can</p>	
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<sup>164</sup> Based on comments of an expert from the Legal aid council (*Raad voor Rechtsbijstand*)

<sup>165</sup> Raad voor Rechtsbijstand, 'Geen eigen bijdrage', <https://kenniswijzer.rvr.org/werkinstructies-toevoegen/allerechtsterreinen/financiele-beoordelingen/geen-eigen-bijdrage-artikel-6-bebr.html>, last accessed 7 January 2021.

<sup>166</sup> Based on the comments of an expert of the Legal aid council (*Raad voor Rechtsbijstand*)

<sup>167</sup> The LVV-pilots are shelter and counselling facilities for illegally staying migrants. The aim of the LVV-pilots is to find a long-term solution for migrants without a right of stay, in order to prevent illegality. The options can be independent return to the country of origin, further migration to another country or legalisation of stay in case this is applicable. The pilots are a cooperation between the national government and authorities on local level. For further information, please see Q6.

			follow to submit a new application. If return is the only possibility, guidance can follow to effectuate return. <sup>168</sup>	
<b>Other?</b>				<b>Other?</b>
Are any other rights relevant to mention here? Please describe	no	n/a	n/a	n/a

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<sup>168</sup> Based on comments of a focus group member.

**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**)?

Please note: refer to Q10. The Netherlands does not distinguish between irregular migrants who were or were not issued a return decision in the services that they can access.

**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?

With regard to providing healthcare, healthcare authorities do not need to check the migration status before providing access to this service.

With regard to the National Immigration Facilities (LVV-pilot)<sup>169</sup> there is an access procedure in place where, among other things, a verification of ID takes place before a third-country national is submitted at the LVV. In this way the migration status of the person concerned is checked and becomes clear to all partners involved.<sup>170</sup>

In other cases where the municipality is not part of the LVV-pilot, authorities may check the legal status of the third-country national before providing access to housing and before they will receive support.

For example in the municipality of Tilburg, before an irregular migrant is submitted in the bed-bath-bread shelter (BBB), certain criteria will be checked with a contact person from the municipality, under which if the person concerned applied for asylum before.<sup>171</sup>

With regard to education, stemming from national law,<sup>172</sup> all children (including irregular migrants) under the age of 18 are entitled to education. In order to facilitate this, irregular migrant children are given a temporary education number (*onderwijsnummer*) via their school, which is created for them by the Education Executive Agency (DUO) in order to enable them to go to Dutch primary and secondary school. Thus, the educational establishment will check this.

**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.

#### Accommodation

<sup>169</sup> The LVV-pilots are shelter and counselling facilities for illegally staying migrants. The aim of the LVV-pilots is to find a long-term solution for migrants without a right of stay, in order to prevent illegality. The options can be independent return to the country of origin, further migration to another country or legalisation of stay in case this is applicable. The pilots are a cooperation between the national government and authorities on local level. For further information, please see Q6.

<sup>170</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

<sup>171</sup> Interview with Utrecht municipality and Tilburg municipality, 23 September 2020.

<sup>172</sup> Chapter 2 of the Compulsory Education Act, 2020; Article II and IV of the Benefit Entitlement (Residence Status) Act, 1998; *Parliamentary Papers II*, 1994-95, 24233, nr.3, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzjx3zq>, last accessed on 18 December 2020.

- *National Immigration Facilities (LVV-pilot)*: With regard to the National Immigration Facilities (LVV-pilot), in principle, cooperation to return to the country of origin is not an obligation. However, when a person stays in the LVV a condition is that he or she cooperates in finding a durable solution and future perspective for his or her situation - this can also include return to the country of origin or legal stay. So in case the durable solution is return to the country of origin, the third-country national is required to cooperate.<sup>173</sup> Non-cooperation eventually leads to termination of access to the LVV. Please see question 6 and 18 for further information on the LVV.

- *BBB-facilities*: Irregular migrants do not have to cooperate with return to access BBB-facilities.

- *Other/Special accommodation*: Irregular migrants do not have to cooperate with return to access to special accommodation including human trafficking shelter and accommodation for children. Yet, for the VBL's, working on return is a precondition. Also in the family centers (GL), the focus is on return (but working on it is not a precondition)

#### **Healthcare**

Irregular migrants do not have to cooperate with return in order to receive healthcare.

#### **Education services**

Irregular migrant children do not have to cooperate with return in order to receive education.

#### **Legal services**

Irregular migrants do not have to cooperate with return in order to receive legal services.

#### *National Immigration facilities (LVV-Pilot)*

If any type of legal services they receive are part of their stay in an LVV-pilot facility, and it has been decided that the migrant's future will entail return to the country of origin, lack of cooperation with this perspective could possibly result in the halting of the provision of services.

**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)*

Yes, there are specific projects implemented at local level specifically targeting the access to services for irregularly staying migrants. In practice, each municipality that offers shelter for this group organizes its own network of services targeted at this group. However, a complete overview

<sup>173</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

of services provided at local level is not available and it is important to note that not all municipalities provide specifically targeted services.

For example in Utrecht (LVV-pilot, please see question 6 for more information) the NGO STIL<sup>174</sup> organizes a medical consultation, which irregular staying migrants can visit and pose their medical questions. STIL mediates in case medical care is needed, for example by informing medical care professionals about what care they can provide and how they can reimburse this. With this, STIL wants to ensure that there are no big obstacles to have access to medical care. After irregular staying migrants have received care with the help of STIL, some go to the LVV and others disappear out of sight.<sup>175</sup>

Also, for example in Tilburg (no LVV-pilot) the community shelter organisation Traverse<sup>176</sup> and the municipal health service work together in the provision of care.<sup>177</sup>

**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.*

Yes, in the Netherlands there are other entities or organisations involved in providing or facilitating access to services for irregularly staying migrants. This is usually on a local level and out of sight of the central government or municipalities.

For example in Tilburg, it is believed that the Protestant Church and the Coptic Church provide services to irregular staying migrants. The municipality of Tilburg is not involved in this.

Also in Utrecht, there are several churches which provide access to services for long term irregularly staying migrants.<sup>178</sup>

<sup>174</sup> For more information, see: STIL Utrecht, <https://www.stil-utrecht.nl/>, last accessed on 6 October 2020 (in Dutch).

<sup>175</sup> Interview with Utrecht municipality and Tilburg municipality, 23 September 2020.

<sup>176</sup> For more information, see: SMO Traverse, <https://www.smo-traverse.nl/>, last accessed on 6 October 2020 (in Dutch).

<sup>177</sup> Interview with Utrecht municipality and Tilburg municipality, 23 September 2020.

<sup>178</sup> Interview with Utrecht municipality and Tilburg municipality, 23 September 2020.

In Groningen there are also churches involved in providing services to irregular staying migrants. This happens out of sight of the municipality. Next to this, in Groningen, the Dutch Refugee Council is actively involved in the provision of services to irregular migrants.<sup>179</sup>

Finally, there are other forms of (incidental) accommodation that are not part of national or local law, but that are used to accommodate migrants in practice at a (very) small scale. An example of this are squatter movements such as the We are Here (*Wij zijn hier*) group, which provides shelter/accommodation to irregular immigrants (but they have not been very active recently).<sup>180</sup>

**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 non-governmental organisations do not need to report on the migration status before providing access to a service as they are not part of the government.

**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**'<sup>181</sup> 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:

Yes, in the Netherlands safe reporting is possible if an irregular migrant is a victim of or witness to an offence. As part of the implementation of the Directive 2012/29/EU<sup>182</sup>, the 'free in, free out' policy was introduced. This policy allows migrants with irregular status to enter into a police station to report a crime, whether as a victim or witness, and be guaranteed to be allowed to freely leave without being arrested or held in custody.<sup>183</sup>

<sup>179</sup> Interview with Groningen municipality, 12 October 2020.

<sup>180</sup> Based on the comments of a focus group member.

<sup>181</sup> <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

<sup>182</sup> Council and European Parliament Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315/56.

<sup>183</sup> Timmerman, R., Leerkes, A., & Staring, R. 'Safe reporting of crime for migrants with irregular status in the Netherlands' (2019). COMPAS: Oxford. <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-Netherlands-country-report.pdf>, last accessed 11 December 2020.



**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)):

No, however there are general AVR-programmes that also cover long-term irregular migrants.

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

- National Immigration Facilities, The Netherlands (*Landelijke Vreemdelingenvoorzieningen, LVV*)

The Ministry of Justice and Security reached an agreement on 28 November 2018 with the Dutch Association of Dutch Municipalities (VNG) on the development of National Immigration Facilities (LVV). The LVVs are intended for migrants who are not entitled to stay and who have not left the Netherlands voluntary or by force, including long-term irregularly staying migrants. Municipalities are often confronted with the impact of illegal residence, and the central government is often confronted with the fact that irregular migrants do not always return to their country of origin. With the common interest of finding a solution for illegal stay the LVVs are set up, where this specific group of migrants can be accommodated temporarily and under certain conditions. Municipalities, the Immigration and Naturalization Service (IND), the Repatriation and Departure Service (DT&V), Aliens Police (AVIM) and NGOs are therefore working together in five pilot municipalities to find a durable solution for migrants without a right of stay, in order to prevent illegality.<sup>184</sup> The aim of the LVV-pilots is to find a durable solution for migrants without a right of stay, in order to prevent illegality.<sup>185</sup> The options can be independent return to the country of origin, further migration to another country or legalisation of stay in case this is applicable.<sup>186</sup> The NGO's will inform the migrants about the different future perspectives and possible consequences of the different options and counsel them for the purpose of reaching this solution. The IND is available for information about legalisation of stay and the DT&V offers return counselling. The AVIM is

<sup>184</sup> Association of Netherlands Municipalities (VNG), 'Ledenbrief Samenwerkingsafspraken Landelijke Vreemdelingen Voorzieningen', [https://vng.nl/files/vng/brieven/2018/20181130\\_ledenbrief\\_ledenbrief\\_samenwerkingsafspraken-landelijke-vreemdelingen-voorzieningen.pdf](https://vng.nl/files/vng/brieven/2018/20181130_ledenbrief_ledenbrief_samenwerkingsafspraken-landelijke-vreemdelingen-voorzieningen.pdf), last accessed on 6 August 2020 (in Dutch).

<sup>185</sup> Ibid.

<sup>186</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*. <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 6 August 2020 (in Dutch).

mainly responsible for the registration and identification of the migrants.<sup>187</sup> Please see question 6 for further information.

**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**.

Yes, in the Netherlands there were changes in relation to access of long-term irregular migrants to social services as consequence of measures taken in response to the COVID-19 pandemic.

Municipalities have also taken various measures, especially with regard to emergency accommodation in order to be able to continue to provide services to irregular migrants.

For example, in Utrecht there was special shelter for undocumented migrants who had to be quarantined due to possible corona contamination. Also, the 24-hour shelter which is intended for homeless people was also available to undocumented migrants.

In Tilburg as well, undocumented migrants were welcome in a shelter initially intended for homeless people.<sup>188</sup>

**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.

#### **Studies conducted for/initiated by national government**

**Study 1: evaluation pilot project National Immigration Facilities – Regioplan, WODC (Mack, Verbeek & Klaver; 2020)<sup>189</sup>**

The first study evaluates pilot projects accommodating and guiding long-term irregular migrants organized in five Dutch municipalities (Amsterdam, Eindhoven, Groningen, Rotterdam and

<sup>187</sup> Ibid.

<sup>188</sup> Interview with municipalities Utrecht and Tilburg, 23 September 2020.

<sup>189</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), Regioplan beleidsonderzoek, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 25 August 2020 (in Dutch).

Utrecht). The study aims to give insight into the goals, set-up and results of the pilots, but was conducted at the very start of the developments of the pilot-LVV's and therefore only evaluated the first period following the implementation of pilot-LVV's. The used methods were desk research, interviews, conversations, literature studies, monitoring data and a work session. The study finds that in general all parties are mostly able to do their jobs well. The goal of the program is to gradually develop the LVV's to obtain better results and solve disagreements between participating organizations. Collaboration between the municipal and national authorities, which has been a considerable challenge in the past, has improved at least slightly. There is more understanding and parties reach out to one another more. Yet, the involved parties indicate dissatisfaction with the results yielded by the projects thus far, since progress in the cases brought to the accommodation facilities is perceived to be slow, especially for vulnerable cases (for instance because of lacking mental and/or physical health that is not sufficiently addressed). Solutions to known problems have not really been found. It also finds that providing services and keeping the programmes running costs a lot of time and effort for involved parties, especially for the organizations who have been given new roles compared to before the pilot. The study shows that if clear agreements have been made between local and national parties beforehand, actors are most content with the extent to which they could execute their tasks. Concerning collaboration and envisioned results, while the pilot enables better collaboration than before, there are still quite some disagreements for instance about the final goal of the pilots (stimulating return, legalization or migration to another European country), leading to a lack of successful and out-of-the-box collaboration.

**Study 2: Access of (long-term) irregular migrants to health care – Advisory Council for Aliens Affairs (ACVZ) (2015).<sup>190</sup>**

In June, 2015, the ACVZ, the National Ombudsman and the Human Rights College organized a meeting between the three of them discussing the provision of healthcare to irregular staying migrants. The meeting was organized because the involved actors kept observing problems that undocumented migrants experience when (trying to) access and receive medical care. The meeting observed the following bottlenecks and problems: (1) There is a lack of knowledge and awareness concerning the right to receive medically necessary care amongst some healthcare professionals. (2) There is a lack of knowledge and awareness concerning the right to receive medically necessary care amongst some undocumented migrants (3) Health care professionals are not always aware of rules and regulations pertaining to administration and providing care to undocumented migrants (4) Interpretations of 'medically necessary care' differ. (5) The automatic equating of medically necessary care to the care provided in the basic care package means that e.g. abortion, palliative care, certain medicines, dental care for adults, physiotherapy, does not fall under the definition of medical necessity. (6) The undocumented migrant often does not have accommodation, enough food or access to a translator, meaning that becoming/staying healthy (again) remains difficult. (7) There is tension between health care and migration law, leading to the (often wrong) perception of undocumented migrants that being ill will make the road to longer stay easier. (8) Intermediary organizations, such as NGOs, lack the necessary means to reach all undocumented migrants but feel like they have to keep assisting as they feel government (which is responsible for providing health care for uninsured individuals) is not doing its job. (9) Health care continuity is often lacking,

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<sup>190</sup> Adviescommissie voor Vreemdelingenzaken (ACVZ), National Ombudsman & Human Rights College. 'Verslag van de bijeenkomst 'Zorgeloos op straat' op 16 juni 2015' (2015), <https://www.adviescommissievoorvreemdelingenzaken.nl/publicaties/publicaties/2015/12/17/zorgeloos-op-straat>, last accessed 24 August 2020 (in Dutch).

e.g. because physiotherapy is not considered medically necessary care. (10) There remains confusion about who is responsible for pointing health care providers to the fact that they have to provide emergency medical care, or who is responsible for representing irregular migrants (since this group is not very able to influence politics or organize themselves).

**Study 3: Access of (long-term) irregular migrants to accommodation, and the effect of this on return – Pro Facto (2018) <sup>191</sup>**

This study researched which kinds of accommodation and shelter exists for irregular migrants who have been presented with a return decision, and how this relates to successful return. The methods used were a literature study, interviews with relevant governmental organizations, NGOs and municipalities, work visits, and data analysis. The study concludes that in 'bed-bath-bread' facilities (BBB) where this group is at times housed, information regarding return and options for (voluntary or obligatory) leaving the facility, is often of poor quality. It furthermore finds that the types of individuals (for instance based on their country of origin) differs greatly between the different types of facilities (BBB-facilities, Family Locations (GL) and freedom restricted locations (VBL). The study recommends that in order for the irregular migrant to be able to successfully cooperate in a return scenario, their living situation needs to be stable (both mentally and physically). For this, the study concludes based on mostly interviews with municipalities, only night-time accommodation is not sufficient. Activation and guidance is recommended and should be part of the accommodation. For this to work well, the study states that first all opportunities to legalize stay in the Netherlands are addressed. In light of this, the study also highlights that it is important that the migrant trusts the legal guidance given to them during legalization applications (such as regarding asylum). If return does turn out to be the only option, the study highlights the importance of the migrant becoming convinced that return to the country of origin will mean a sustainable future – which can be stimulated by governmental organizations and NGOs through providing starters capital or education.

**Study 4: Report of the research committee long term staying irregular migrants without (robust) residence permit - National Government (2019)<sup>192</sup>**

This research committee that wrote this report was appointed by former Minister of Migration Mark Harbers to research all aspects contributing to irregular migrants staying long term in the Netherlands, despite their request for a residence being denied and their consequential return obligation. In the study, special attention was paid to the design and time span of residence right/permit procedures, the influence of national and local services on willingness to return, and the existing possibilities to realize return in practice. To research this, the committee conducted formal interviews with stakeholders, document studies, working visits, case studies and quantitative data. The study provides descriptions of various procedures that exist to gain rightful

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<sup>191</sup> Winter, H., Bex-Reimert, V., Geertsema, B. & Krol, E. 'Onderdak en opvang door Rijk en gemeenten van vertrekplichtige vreemdelingen en de invloed daarvan op terugkeer' (2018), *ProFacto*, [https://www.wodc.nl/binaries/2882\\_Volledige\\_Tekst\\_tcm28-325328.pdf](https://www.wodc.nl/binaries/2882_Volledige_Tekst_tcm28-325328.pdf), last accessed on 13 October 2020.

<sup>192</sup> National Government. 'Onderzoekscommissie langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht' (2019), <https://www.rijksoverheid.nl/documenten/rapporten/2019/06/04/onderzoekscommissie-langdurig-verblijvende-vreemdelingen-zonder-bestendig-verblijfsrecht>, last accessed 8 December 2020 (in Dutch).

residence in the Netherlands, as well as which return options existed. It also identifies problems and makes recommendations accordingly. These include: 1) Focus on speedy and timely processing and waiting periods in residence permits procedures (for instance with enough financing and personnel for executive institutions). 2) Invest in the careful processing of the first asylum application. 3) Include children as much as possible in (hearings in) asylum procedures for their own case and those of their parent(s). 4) Increase return by making it a normal part of the conversation with the migrant, providing enough facilities for voluntary return.

### **Studies initiated by NGOs**

#### **Study 5: Accommodation for (long-term) irregular migrants – Amnesty International Nederland (2017)<sup>193</sup>**

This study examines the history and current (problematic) circumstances of accommodation for (long-term) irregularly staying migrants in the Netherlands. The methods used focus on the collection of quantitative and qualitative data, for instance through data analysis and interviews. The study examines four different kinds of accommodation provided by Dutch municipalities (night shelter without further guidance, specialized 24 hour care, a combination of night shelter and additional services, and accommodation in the migrant's own network). It sets out to examine a variety of themes in which vulnerability, (mental) health, future perspectives and guidance/counselling are central. The study finds that many interviewees are experiencing their situation to be very stressful, especially if they cannot go to a 24 hour accommodation and if they do not receive specialized guidance there. The study finds that the absence of feelings of stability, to which specialized guidance, proper accommodation and having the option to work can be of major benefit, can lead to lacking mental and physical health that prevents the individual from working on their future – in the Netherlands or elsewhere. The study also finds that individuals are more willing to accept their denied asylum application when they feel they receive and have received proper guidance and support in their asylum application trajectory. As a result of these findings the study provides recommendations at both central and local government levels. For the former, this includes amongst others: refraining from making basic things such as food and accommodation dependent on an individual's willingness to cooperate in return; giving municipalities and NGOs space to (continue) giving support; halting the sanctioning of those providing support and accommodation to those without residence permit. For the latter, this includes amongst others: creating accommodation with enough stability to work on a future (so: not only night shelters), and investing in guidance specifically attuned to this target group.

#### **Study 6: Access of (long-term) irregular migrants to health care - Pharos (2019)<sup>194</sup>**

This study looked into how counsellors and organizations contribute to the successful provision of care for irregular migrants. The methods used were a literature study and interviews with representatives of supporting organizations providing reception and guidance to undocumented

<sup>193</sup> Koppes, S. 'Valse hoop of bittere noodzaak. Opvang van mensen zonder verblijfsrecht' (2017), *Amnesty International Nederland & Stichting LOS*, [https://www.amnesty.nl/content/uploads/2017/05/Def-AMN\\_17\\_13\\_Rapport-Opvang-mensen-zonder-verblijfsrecht\\_WEB-1.pdf?x33919](https://www.amnesty.nl/content/uploads/2017/05/Def-AMN_17_13_Rapport-Opvang-mensen-zonder-verblijfsrecht_WEB-1.pdf?x33919), last accessed 24 August 2020 (in Dutch).

<sup>194</sup> Bloemen, E. 'Toegang tot zorg voor ongedocumenteerde migranten. Wat helpt om zorg te krijgen?' (2019), *Pharos*, <https://www.pharos.nl/kennisbank/toegang-tot-zorg-voor-ongedocumenteerde-migranten-wat-helpt-om-zorg-te-krijgen/>, last accessed 24 August 2020 (in Dutch).

migrants. The study finds that access for undocumented migrants to certain types of medical care (General Practitioner, pharmacy, OB-GYN and hospital) is good on average, while access to other types of medical care (specifically the dentist and mental health care (GGZ) is lacking or not available at all. Furthermore, the extent to which access to healthcare is satisfactory depends on different factors that are prevalent to change, such as who the involved guidance counsellors are (which can change overtime), changes in regulations, availability of subsidies and gifts for care providers, and the extent to which health care workers are willing to provide care. Furthermore, access to care is also dependent on the region. The study suggests that the understanding amongst health care professionals concerning the medical necessity of accessible health care plays a central role in the accessibility of health care services.

## 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)*

With regard to the LVV-pilots, when a person is placed with the LVV, progress of this person is periodically evaluated in collaboration with the relevant parties. This is done to check whether the person is still cooperating with regard to their future perspective (please see question 6 and 18 for additional information on the LVV-pilot).<sup>195</sup> Outside of this pilot, no such mechanisms exist.

☒ 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 LVV-pilot is an example of information exchange between central and local authorities and the pilot consists of 5 municipalities (please see question 6, 18 and 20 for additional information on the LVV-pilots). This information exchange is legally sanctioned by formally extending the mandate of central government of local government<sup>196</sup>, enabling local organisations to lawfully collect and process the relevant case information.

<sup>195</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

<sup>196</sup> Article 1-8 of the Mandating order and authorization LVV (Mandaatbesluit en Machtiging LVV), 2019.



Another example of information exchange between central and local authorities is the local cooperation meeting (*Lokaal stedelijk overleg*, LSO). In total ten municipalities which do not participate in the LVV-pilot have LSOs. During an LSO, the IND, DT&V, AVIM, municipalities and NGO's can discuss individual cases and request for assistance when needed.<sup>197</sup>

With regard to the Repatriation and Departure Service (DT&V), the DT&V maintains good contact with municipalities that do not participate in the LVV-pilot. This can be during an LSO, or via ad-hoc informal information exchanges. If those municipalities experience problems from irregular migrants, the DT&V can offer support if needed. Together with the Immigration and Naturalisation Service (IND), the municipalities and the DT&V the possible solutions are examined. If the irregular migrant needs to return, the DT&V could provide support.<sup>198</sup>

☐ 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)*

Not applicable.

☐ 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)*

Not applicable.

**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.

- Yes, as mentioned in question 21, an example of a horizontal cooperation network is the local cooperation meeting (LSO). In total ten municipalities which do not participate in the LVV Pilot Project have an LSO. During an LSO, the IND, DT&V, AVIM, municipalities and NGO's can discuss individual cases and request for assistance when needed.

<sup>197</sup> Vreemdelingenvisie, 'De LVV-pilot: gezamenlijk zoeken naar oplossingen', <https://www.vreemdelingenvisie.nl/vreemdelingenvisie/2019/12/lvv>, last accessed on 8 December 2020 (in Dutch).

<sup>198</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

- The LVV-pilot is also an example of a horizontal cooperation network (please see question 6 and 18 for additional information on the LVV-pilot).
- Several municipalities<sup>199</sup> not part of the LVV-pilot participate in a network of cities which provide for Bed, Bath, Bread (BBB). Please see question 5 for additional information on BBB facilities.

**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:

The study by Regioplan (2020)<sup>200</sup> mentioned above in Q20 is a study researching the effectiveness of the measures mentioned in Q21. It evaluates the collaboration and information exchange between the local and national levels of government in 5 pilot projects aimed at improving the accommodation and guidance of irregular migrants. Please refer to Q20 for a more extensive overview of the aims, methods and results of the study.

### 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:

There are several good practices regarding policy measures concerning irregular migrants to Identify.

#### **Health care**

Irregular migrants have access to emergency healthcare where the care provider can declare the costs. This is stated in the Benefit Entitlement (Residence Status) Act (*Koppelingswet*). The Act states that persons without a residence permit cannot appeal to social services, which includes

<sup>199</sup> Currently these are 25 municipalities.

<sup>200</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 25 August 2020 (in Dutch).



health insurance. Hence, irregular migrants in principle have to pay for their own medical costs. This is often not practically attainable as these migrants possibly do not have the financial means to do so and also cannot be insured as they are excluded from this according to the health insurance law (*zorgverzekeringswet*).<sup>201</sup> In such a case, to facilitate access to healthcare despite this, a care provider can appeal to the Central Administration Office (CAK) regulation for uninsured aliens and ask for a contribution for the part of the costs that the migrant is unable to pay for. To what extent the health care provider can declare costs depends on what type of care it is and whether or not they are contracted with the CAK.<sup>202</sup> A difference is generally made between first-line and second-line care, and the amount of money that can be declared falls generally between 80% and almost full reimbursement of the costs made. An exemption to this is care provided in case of pregnancy or giving birth, as in this situation 100% of the costs can be reimbursed.

There are also good practices regarding services to be identified by municipalities. In practice, each municipality that offers shelter for irregular staying migrants organizes its own network of services targeted at this group. An example: according to the municipality of Utrecht (LVV-pilot) there is a good practice concerning healthcare. As mentioned in Q14, the NGO STIL<sup>203</sup> organizes a medical consultation, which irregular staying third-country nationals can visit and pose their medical questions.<sup>204</sup> Please see question 14 for further information.

### **Counsellors from IOM (International Organisation for Migration)**

According to experts interviewed for this study, the counsellors provided by IOM can also be considered a good practice. IOM has counsellors who can assist and help irregular migrants. For the irregular migrant this contact is easy accessible and the counsellor speaks the same language. All counsellors at IOM speak Dutch and English. In addition, IOM has counsellors who speak a variety of native languages of the irregular migrant.<sup>205</sup>

### **Safe reporting**

Research shows that in the Netherlands safe reporting is possible if an irregular migrant is a victim of or witness to an offence. As part of the implementation of the Directive 2012/29/EU<sup>206</sup>, the 'free in, free out' policy was introduced. This policy allows migrants with irregular status to enter into a police station to report a crime, whether as a victim or witness, and be guaranteed to be allowed to freely leave without being arrested or held in custody.<sup>207</sup>

### **Other/general**

<sup>201</sup> Chapter 2 paragraph 4 and Chapter 9 art. 122a of the Health care insurance law, 2020.

<sup>202</sup> For more information, see: CAK, 'Regeling onverzekerbare vreemdelingen', <https://www.hetcak.nl/zakelijk/regelingen/onverzekerbare-vreemdelingen>, last accessed 10 December 2020 (in Dutch).

<sup>203</sup> For more information, see: STIL Utrecht, <https://www.stil-utrecht.nl/>, last accessed on 6 October 2020 (in Dutch).

<sup>204</sup> Interview with Utrecht municipality and Tilburg municipality, 23 September 2020.

<sup>205</sup> This information was provided during the focus group meeting on 3 November 2020

<sup>206</sup> Council and European Parliament Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315/56.

<sup>207</sup> Timmerman, R., Leerkes, A., & Staring, R. 'Safe reporting of crime for migrants with irregular status in the Netherlands' (2019). COMPAS: Oxford. <https://www.compas.ox.ac.uk/wp-content/uploads/SR19-Netherlands-country-report.pdf>, last accessed 11 December 2020.

An expert from the municipality of Tilburg (no LVV-pilot), mentions the **package of services** that is offered in relation to the community shelter organisation Traverse as a good practice.<sup>208</sup> In addition to in the bed-bath-bread shelter (BBB), there is also access to healthcare in cooperation with the Dutch Refugee Council in the municipality of Tilburg. This is mainly basic care and medication. The package of shelter and healthcare is available to everyone who is in the shelter.<sup>209</sup>

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

Please provide a brief explanation:

Mentioned by an expert from the Repatriation and Departure Service (DT&V), an example of a good practice regarding information exchange between central and local authorities is the **local cooperation meeting** ((LSO), please see question 21). In total ten municipalities which do not participate in the LVV-pilot have an LSO. During an LSO, the IND, DT&V, AVIM, municipalities and NGO's can discuss individual cases and request for assistance when needed.<sup>210</sup>

☒ Exchanging information between Member States?

Please provide a brief explanation:

An expert from the municipality of Utrecht mentioned the City Initiative on Migrants with Irregular Status in Europe (**C-MISE**) **Working Group** as an example of a good practice regarding information exchange between Member States. The C-MISE Working Group is a working group of eleven cities from ten European countries chaired by Utrecht municipality, which meet to share their experience, policies and practices.<sup>211</sup> The exchange of information between different European cities which deal with the same issues is a good practice. The municipality of Utrecht participates in this network. Other cities engaged in the C-MISE initiative are: Athens, Barcelona, Frankfurt, Ghent, Gothenburg, Lisbon, Oslo and Stockholm. Helsinki and Zurich are Associate Members.

Also the network of **EUROCITIES** can be identified as a good practice regarding information exchange between Member States. EUROCITIES was founded in 1986 by the mayors of six large cities: Barcelona, Birmingham, Frankfurt, Lyon, Milan and Rotterdam. It brings together the local governments of over 140 of Europe's largest cities and over 45 partner cities. Through six thematic forums, a wide range of working groups, projects, activities and events, knowledge can be shared and ideas be exchanged.<sup>212</sup>

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<sup>208</sup> For more information, see: SMO Traverse, <https://www.smo-traverse.nl/>, last accessed on 20 October 2020 (in Dutch).

<sup>209</sup> Interview with Utrecht municipality and Tilburg municipality, 23 September 2020.

<sup>210</sup> Vreemdelingenvisie, 'De LVV-pilot: gezamenlijk zoeken naar oplossingen', <https://www.vreemdelingenvisie.nl/vreemdelingenvisie/2019/12/lvv>, last accessed on 8 December 2020 (in Dutch).

<sup>211</sup> For more information, see: Delvino, N., & Spencer, S (on behalf of C-MISE). 'Migrants with irregular status in Europe: Guidance for municipalities' (2019), *Global Exchange on Migration & Diversity*, <https://www.compas.ox.ac.uk/project/city-initiative-on-irregular-migrants-in-europe-c-mise/>, last accessed 11 December 2020.

<sup>212</sup> For more information, see: Eurocities, 'About EUROCITIES', [http://wsdomino.eurocities.eu/eurocities/about\\_us](http://wsdomino.eurocities.eu/eurocities/about_us), last accessed 11 December 2020.

☐ Other good practices

Please provide a brief explanation:

Not applicable.

### 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?

There are several options to end long-term illegal stay of third-country nationals. This can be return to the country of origin (via return counselling and support provided for by the Return and Repatriation Service (DT&V) or IOM), legalisation of stay (via a subsequent asylum application founded on new grounds or via an application for another purpose of stay) or further migration to another country. Taking into account the national policy on the prevention and discouragement of illegal stay and the obligation to depart, the option of return is prioritized.

Specifically with regard to the LVV-pilots<sup>213</sup>, the aim is to find a sustainable future perspective on the basis of the merits of the case (whether it be return, legalisation of stay or further migration to another country) rather than prioritizing one solution as a default.<sup>214</sup> These perspectives are prepared and decided upon by the local LVV partners including the Immigration and Naturalisation Service (IND), DT&V and discussed by the NGO with the migrant.

#### 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.*

<sup>213</sup> The LVV-pilots are shelter and counselling facilities for illegally staying migrants. The aim of the LVV-pilots is to find a long-term solution for migrants without a right of stay, in order to prevent illegality. The options can be independent return to the country of origin, further migration to another country or legalisation of stay in case this is applicable. The pilots are a cooperation between the national government and authorities on local level. For further information, please see Q6.

<sup>214</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), Regioplan beleidsonderzoek, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 6 August 2020 (in Dutch).

*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 following examples of measures to discourage illegal stay and promote return exist. Nevertheless, it concerns policy measures for which no direct distinction is made between 'short-term' and 'long-term' illegally staying migrants.

#### **Measures to discourage illegal stay**

- The Benefit Entitlement (Residence Status) Act applies to all irregular staying migrants (both long-term and short-term irregular migrants). This Act excludes these migrants from benefiting of certain social services, and therefore has a discouraging effect on staying illegally in the Netherlands.<sup>215</sup> The consequence for migrants already staying illegally, is that it limits their rights and therefore creates other challenges.<sup>216</sup>
- Migrants have an independent obligation to return. Illegal stay is discouraged by the fact that the right of reception in a reception center ends when an asylum application is rejected. Also, illegal labour is combatted and employers who let migrants work illegally are subject to fines.<sup>217</sup>
- As a consequence of opening the LVV-pilots, some BBB's are being closed or apply a restrictive access policy as part of the transition from the BBB's to the LVV system. The LVV-pilots are more focused on finding a future perspective/solution for the migrant, and therefore do demand a certain cooperation of the migrant in order for them to get shelter. In certain BBB's this is less the case. According to the government, the existence of BBB's could undermine the effectiveness of the LVV-pilots.<sup>218</sup> The question remains whether changing from BBB's to a national coverage of LVV's would decrease the pull-factor of shelter options for migrants.

#### **Measures to promote return**

- The LVV-pilots are a cooperation between the national government and authorities on local level. The future oriented support to migrants in the LVV-pilots can be related to return. The LVV's are not exclusively directed to long-term irregular migrants, but there is nevertheless a focus on this group. According to the involved NGO's 'pushing' the migrant to return will not be effective and it would damage the relationship of trust that has been build.<sup>219</sup> Instead, the conversations should lead to the realization by the migrant that there is not a real perspective

<sup>215</sup> Benefit Entitlement (Residence Status) Act, 1998; Interview with the Ministry of Justice and Security, 27 August 2020; Interview with the Ministry of Justice and Security, 2 September 2020; *Parliamentary Papers II, 1994-95, 24233, nr.3*, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vi3afpzjx3zq>, last accessed on 18 December 2020.

<sup>216</sup> This information was provided during the focus group meeting on 3 November 2020

<sup>217</sup> Inspectorate SZW, 'Boetebedragen bij overtreden Wet arbeid vreemdelingen (Wav)', <https://www.inspectieszw.nl/inspectie-szw/sancties-en-handhavingsmethoden/boete/boetes-wav>, last accessed on 27 October 2020 (in Dutch).

<sup>218</sup> *Parliamentary Papers II, 2016-2017, 19637, no. 2259.*

<sup>219</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 6 August 2020 (in Dutch).

in the Netherlands. On the other side one could say that the possibility of forced return can also activate certain migrant to concretely consider voluntary return instead.<sup>220</sup> In case the migrant decides to return to the country of origin, return counselling is provided for by the NGO's.

- In the LVV-pilots, the Repatriation and Departure Service (DT&V) is from the start involved in the procedure of the migrants. This in order to think about durable, future solutions with a supervisor departure with a return perspective and expertise.<sup>221</sup> The DT&V could for example also contact embassies in case certain problems occur.<sup>222</sup>
- Also outside the LVV-pilots, there are certain NGO's that are more focused on providing support to return, next to the counselling by the International Organization for Migration (IOM).<sup>223</sup> These NGO's often have experience with addressing specific groups of migrants of certain countries of origin, which makes it easier for them to reach out to certain migrants.

**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).*

First of all, it must be mentioned that it is difficult to connect certain policy measures directly with (for example) a decrease/increase of numbers of return. Also, with regard to the LVV-pilot, it is still too early to say whether or not it can be identified as a good practice. Next to this, the good practices mentioned concern measures that are both available to 'short-term' and 'long-term' irregularly staying migrants.

**Promoting return**

- AVR-Programmes are mentioned as a good practice by an expert of the Repatriation and Departure Service (DT&V).<sup>224</sup> These programmes are accessible for both short-term or long-term illegally staying migrants, but frequently migrants participate that have stayed in the Netherlands for a longer period of time.
- The availability of the International Organization for Migration (IOM) to support migrants (including long-term irregular staying migrants) in their return procedure and subsidised by the government, is considered a good practice, according to a policy maker at the Ministry of Justice and Security.<sup>225</sup> IOM is present in a lot of cities and facilities. They provide for

<sup>220</sup> Based on comments of a focus group member.

<sup>221</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

<sup>222</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 6 August 2020 (in Dutch).

<sup>223</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

<sup>224</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

<sup>225</sup> Interview with the Ministry of Justice and Security, 27 August 2020.

consultation hours to provide information. They also have native counsellors employed who speak (next to Dutch and English), a range of native languages such as Arabic, Farsi and French.<sup>226</sup> Nevertheless, it still concerns the voluntary return procedure to which the migrant is not obliged.

Also the involvement of a smaller group of specialized NGO's subsidized by municipalities (such as Bridge to Better or *GoedWerk* Foundation) can be mentioned here.<sup>227</sup> The effectiveness nevertheless depends on the execution of the support and can differ per NGO.<sup>228</sup> According to a representative of the municipality of Utrecht, this involvement can contribute to the cooperation with organisations in country of origin, but the financing can be complex.

**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.

There is a range of research available on return in general (not specifying long-term irregular migrants). The following three are examples, with the first study relating specifically to the long stay of irregularly staying migrants. The first two studies have also been covered under Q20.

**Study 1: National Government (2019)<sup>229</sup>**

A special committee was established in order to do research on aspects that prolong the stay of migrants. In this research the asylum procedure and the return procedure were therefore examined. A recommendation related to return, was putting effort on increasing demonstrable departure, promote voluntarily return with enough facilities for asylum seekers and to have the option of forced return if necessary. Also, the recommendations were made to conclude agreements with countries of origin that do not yet cooperate on forced return and to set up the

<sup>226</sup> Based on comments of a focus group member.

<sup>227</sup> This information was provided during the focus group meeting on 3 November 2020

<sup>228</sup> Ibid.

<sup>229</sup> National Government (2019), 'Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht', <https://www.rijksoverheid.nl/onderwerpen/migratie/documenten/rapporten/2019/06/04/onderzoekscommissie-langdurig-verblijvende-vreemdelingen-zonder-bestendig-verblijfsrecht>, last accessed on 9 October 2020 (in Dutch).



facilities in shelter locations for migrants who exhausted the legal means, which are more clearly focussed on return.

### **Study 2: Regioplan at the request of Research and Documentation Centre (WODC) (2018)<sup>230</sup>**

In order to stimulate voluntary return, research has been conducted on behavioral interventions within the return process, as requested by the Minister for Migration.<sup>231</sup> It covered conscious behavioral influence and nudges. Several hindering attitudes and perceptions of practical obstacles have been identified. Often these are solved with practical solutions, such as providing information and support to the migrant. Nevertheless, the reasons for the unwillingness to return often lay deeper.

Certain interventions were researched, of which a few elements were important for the return process. First of all, the working relationship between the migrant and the counsellor is essential. It should be based on trust, in which the migrant is not seen as a victim, but as someone who can give direction in his own return process. Secondly, support and the use of targeted methods are necessary for the motivation and changing attitude of the migrant towards return. Also, it was concluded that nudges probably have a small impact on stimulating voluntary return. Reason for this is that nudges do not change the deep attitudes of migrants towards return. Nudges are more useful to encourage people to act in a certain way that they already wanted, but never did. Concluding, supporting and motivating migrants to return takes time and experience by counsellors.

### **Study 3: Pro facto (2018)<sup>232</sup>**

In this research, the influence of reception and support on the eventual outflow was examined. A few plausible assumptions were made, based on interviews with experts. A few municipalities had been working on intensive support to migrants in order to realize sustainable outflow. The first step was to stabilize the living situation of the migrant. It will enable the migrant to think about his/her future, as the medical and psychological conditions will get on a more stable level. This means reception and support also during the day, not only at night. It was noted that migrants often want to cooperate when the legal means for legal stay are exhausted. Trust is an important aspect of this cooperation. If the migrant feels that the supporting party is primarily focused on return, the migrant might still assume that legalization is possible. Lastly, if return is the only option, the migrant needs to get convinced that the country of origin offers a sustainable future perspective. With regard to obstacles seen by the migrant in relation to safety and health, it is often more difficult to take these worries away.

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<sup>230</sup>Klaver, J., Telli, S., & Witvliet, M. 'Terugkeer van vertrekplichtige vreemdelingen. Een verkenning van interventies om zelfstandige terugkeer te stimuleren' (2015), *Regioplan*, [https://www.eerstekamer.nl/eu/overig/20151006/rapport\\_terugkeer\\_van/document](https://www.eerstekamer.nl/eu/overig/20151006/rapport_terugkeer_van/document), last accessed 11 December 2020.

<sup>231</sup> *Parliamentary Papers II*, 2012-2013, 19637, nr. 1721.

<sup>232</sup> Winter, H., Bex-Reimert, V., Geertsema, B. & Krol, E. 'Onderdak en opvang door Rijk en gemeenten van vertrekplichtige vreemdelingen en de invloed daarvan op terugkeer' (2018), *ProFacto*, [https://www.wodc.nl/binaries/2882\\_Volledige\\_Tekst\\_tcm28-325328.pdf](https://www.wodc.nl/binaries/2882_Volledige_Tekst_tcm28-325328.pdf), last accessed on 13 October 2020.

**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):

A case as described in the newspaper 'Het Parool' can be an illustrative example of responses to promote return.<sup>233</sup> It concerns a man who is staying in one of the LVV-pilots. Together with the so called 'case-manager' he investigates whether a new asylum application is possible or whether they will work on his return. Eventually he decided together with his case-manager to return, with financial support from the government and IOM to finance the return trip. This is an illustrative example of support and counselling to return.

### 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):

No, there are no longer options for legalisation of stay specifically open to long-term irregular migrants. Until the beginning of 2019, two options for legalisation of stay existed which were also applicable to long-term illegally staying migrants. First of all, the Minister of Migration had discretionary power. The Minister had the competence to issue a residence permit, although the applicant did not fulfil the criteria for an existing residence permit. It concerned exceptional cases which were identified as cases in which a distressing situation would appear if the residence permit would not be granted.<sup>234</sup>

The second option was the Definitive Regulation for Long-term Resident Children (DRLVK). Under this regulation, minors resident in the Netherlands for at least 5 years without a right of residence could still obtain a residence under certain conditions.<sup>235</sup> The DRLVK was intended for cases in which children were rooted in the Netherlands because of their long stay. An important conditions was the 'cooperation-criterion', namely the full cooperation of the migrant to return in the period before. In 2019 the discretionary power was abolished and the Definitive Regulation for Long-term

<sup>233</sup> Het Parool (2020), 'Dit project moet ongedocumenteerden toekomstperspectief bieden', last accessed on 10 December 2020.

<sup>234</sup> EMN Netherlands (2020), 'Annual Report 2019, Migration and Asylum in the Netherlands', <https://emnetherlands.nl/beleidsoverzichten/emn-jaaroverzicht-europees-migratie-en-asielbeleid-2019>, last accessed 11 December 2020.

<sup>235</sup> EMN Netherlands (2020), 'Annual Report 2019, Migration and Asylum in the Netherlands', <https://emnetherlands.nl/beleidsoverzichten/emn-jaaroverzicht-europees-migratie-en-asielbeleid-2019>, last accessed 11 December 2020.



Resident Children was terminated as part of a new balance within the coalition agreement (see Q6).

**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).*

**The following good practices were identified**

- *As an example on the local level:* a representative of the municipality of Utrecht has mentioned the judicial support provided to carefully review the case as a good practice.<sup>236</sup> This support is provided by NGO's, commissioned by municipalities. Sometimes certain aspects of the case have been missed that are nevertheless relevant for the application.<sup>237</sup> The effectiveness of this also depends on the execution of this support and differs per NGO.<sup>238</sup> Also, in cases with no prospects, such support could influence the willingness to return. For certain migrants it can nevertheless be necessary to conduct the analysis on whether prospects exist within their case, in order to realize that there might be no options left.<sup>239</sup>

**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.

The following research was conducted specifically regarding legalisation of stay in relation to irregularly staying migrants. This study has also been covered under Q20 and Q27b.

<sup>236</sup> Interview with Utrecht municipality and Tilburg municipality, 23 September 2020.

<sup>237</sup> Nourozi, S. 'Opvang van uitgeprocedeerde asielzoekers, een inventarisatie bij gemeenten' (2015), Movisie, <https://www.movisie.nl/sites/movisie.nl/files/publication-attachment/Rapport-inventarisatie-uitgeprocedeerde-asielzoekers%20%5BMOV-6290498-1.0%5D.pdf>, last accessed 11 December 2020.

<sup>238</sup> This information was provided during the focus group meeting on 3 November 2020.

<sup>239</sup> This information was provided during the focus group meeting on 3 November 2020.

**National Government (2019)<sup>240</sup>**

A special committee was established in order to do research on aspects that prolong the stay of migrants. In this research the topic of the discretionary powers and the dilemma that the competence created, were addressed. Namely on the one hand the inequality that it could lead to, also under pressure from the media, social organisations and other parts of the authority. And on the other hand, the need for certain exemptions in distressing situations in the asylum system. Also, it was mentioned that the use of the discretionary power or the Regulation for Long-term Resident Children (see Q 29) at the end of a procedure are counterproductive to the willingness of migrants to return.<sup>241</sup>

**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):

An example of a response related to legalisation of stay (that also received a lot of media attention), was the case of two children with an Armenian background. It nevertheless concerns a rather exceptional case, but it illustrates that the discretionary power could be used also in those cases. The two Armenian children were actually supposed to be returned after having gone through years of different procedures, even though they grew up in the Netherlands. There was a lot of political and social pressure to let them stay in the Netherlands.<sup>242</sup> During the night of their planned return, they disappeared. With their safety kept in mind, the Minister for Migration granted them a residence permit by means of his discretionary power. Not long after that, the discretionary power has been abolished, in combination with another set of measures (see Q6 and 7).

**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.

<sup>240</sup> National Government (2019), 'Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht', <https://www.rijksoverheid.nl/documenten/rapporten/2019/06/04/onderzoekscommissie-langdurig-verblijvende-vreemdelingen-zonder-bestendig-verblijfsrecht>, last accessed on 6 August 2020 (in Dutch).

<sup>241</sup> With this power, the Minister had the competence to issue a residence permit to an applicant, although the applicant did not fulfil the criteria for an existing residence permit. It concerned exceptional cases which were identified as cases in which a distressing situation would appear if the residence permit would not be granted.

<sup>242</sup> Inspectorate of Justice and Security (2019), 'Wantrouwen en onvoldoende regie in terugkeerproces Armeense kinderen', <https://www.inspectie-jenv.nl/actueel/nieuws/2019/11/05/onvoldoende-regie-en-wantrouwen-in-terugkeerproces-armeense-kinderen>, last accessed on 15 October 2020 (in Dutch).

The following examples were measures taken to end the situation of long-term irregular migrants specifically in connection to the responses to and impacts of COVID-19:

- According to a policy officer of the Repatriation and Departure Service (DT&V), there had been more requests for voluntary return by migrants in the beginning of the spread of COVID-19 in the Netherlands.<sup>243</sup> It concerned a group of migrants that had not been known to the authorities before. A possible explanation would be that due to the pandemic, the rate of unemployment was higher. Migrants working illegally could be the first group to lose their jobs in such developments. The DT&V decided to facilitate the voluntary return of this group.
- The municipalities have offered additional shelter for illegal staying migrants in for example homeless shelters and have gotten more financial support by the government.<sup>244</sup> For example, the municipality of Groningen provided additional shelter that had a corona-proof set-up.<sup>245</sup>

#### 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:

First, it is important to mention that the challenges below can be case-specific – meaning that they can be a challenge experienced by one local party (such as an NGO or municipality), while another local or national party does not experience it as such. When reading the challenges mentioned below, it is therefore good to keep in mind that there tend to be different perspectives on what constitutes a challenge when it comes to long-term staying irregular migrants. Also, only the views of a limited selection of municipalities could be collected, which is not representative for all municipalities in the Netherlands.

#### **Challenges identified in the interviews conducted by EMN Netherlands concerning the provision of services for all irregular migrants**

Some national and local actors<sup>246</sup> who work with irregular migrants identify the following as a challenge when it comes to providing services: for a certain number of irregular migrants in the Netherlands, there is **no sustainable future** possible when following the law. There is no chance of

<sup>243</sup> Interview with the Ministry of Justice and Security, 2 September 2020.

<sup>244</sup> Interview with the Ministry of Justice and Security, 27 August 2020.

<sup>245</sup> Based on comments of a focus group member.

<sup>246</sup> Interview with the Ministry of Justice and Security, 27 August 2020; Interview with Utrecht municipality, 30 September 2020; Interview with Groningen municipality, 12 October 2020; Interview with Tilburg municipality, 5 October 2020.

legalization, and return might neither be desired nor possible due to non-cooperation of the third-country national in question and/or the country of origin, leaving the migrant and involved parties “stuck”. Furthermore, some local parties indicate that access to certain services for irregular migrants occasionally can be difficult. Limited access to education or employment does not improve the future perspective of the migrant – be that in the home country or in the Netherlands.

Furthermore, pertaining to the specific provision of **health care**, in Q10 it has been detailed that a care provider can provide and declare care to a long-term irregularly staying migrant if they deem it a medical necessity to do so. Yet, in practice, this means that the notion of ‘medical necessity’ can be understood in a broad or restrictive way depending on the care provider. Some NGOs indicate<sup>247</sup> that they are of the opinion that in practice, this leads to divergence in available care, as they find that not all care providers and institutions use the same definition.<sup>248</sup> Furthermore, some actors (Utrecht municipality and NGOs/the advisory council for alien affairs)<sup>249</sup> indicate that they are of the opinion that in practice access to emergency and non-emergency care can be challenging for irregular migrants. According to them, this is because a variety of reasons, for example:

- Some doctors are not always familiar with the rights of the irregular migrant (mentioned above).
- Some migrants do not always trust the health care provider, for instance due to fear of being ‘discovered’ as an illegal migrant (despite hospitals indicating that they only provide care, and will not disclose any information pertaining to the illegality of the migrant to the authorities).
- Some migrants are not in the financial position to pay for the costs themselves and is therefore unwilling to go to the hospital

This is why for instance Utrecht municipality indicates that they have chosen to finance STIL, a local NGO for individuals without a residence permit. STIL for instance organizes a medical consultation hour, and mediates between healthcare givers and migrants.<sup>250</sup>

#### **Challenges identified in the interviews conducted by EMN Netherlands concerning the provision of services for irregular migrants participating in the National Immigration Facilities (LNV) pilots**

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<sup>247</sup> See for example the studies in Q20 for further information

<sup>248</sup> Pharos (2019), ‘Toegang tot zorg voor ongedocumenteerde migranten. Wat helpt om zorg te krijgen?’, <https://www.pharos.nl/kennisbank/toegang-tot-zorg-voor-ongedocumenteerde-migranten-wat-helpt-om-zorg-te-krijgen/>, last accessed on 16 October 2020 (in Dutch).

<sup>249</sup> Interview with Utrecht municipality, 30 September 2020; Pharos (2019), ‘Toegang tot zorg voor ongedocumenteerde migranten. Wat helpt om zorg te krijgen?’, <https://www.pharos.nl/kennisbank/toegang-tot-zorg-voor-ongedocumenteerde-migranten-wat-helpt-om-zorg-te-krijgen/>, last accessed on 16 October 2020 (in Dutch); Adviescommissie voor Vreemdelingen zaken (ACVZ), National Ombudsman & Human Rights College. ‘Verslag van de bijeenkomst ‘Zorgeloos op straat’ op 16 juni 2015’ (2015), <https://www.adviescommissievoorvreemdelingen-zaken.nl/publicaties/publicaties/2015/12/17/zorgeloos-op-saat>, last accessed 24 August 2020 (in Dutch).

<sup>250</sup> Interview with Utrecht municipality, 30 September 2020

There have been a number of challenges identified by some individuals involved in organizing the LVV pilot at the municipal level and who were interviewed for the purpose of this EMN study:

1. For some municipalities, it is more difficult to find suitable shelter accommodations given the housing situation in Dutch cities. During interviews with the Municipality Utrecht, it was indicated by the interviewees that the **sheltering** of migrants in the Utrecht LVV-pilot happens in small shelter locations, which are harder to find and finance for the municipal and NGO workers in charge of this. This is especially the case for special situations (such as an immigrant in a wheel chair).
2. Furthermore, during interviews with representatives of the Municipality Utrecht and especially Groningen, it was indicated by interviewees that even for those in the LVV-pilots (who do have access to shelter, (certain) medical care, social assistance), access to **employment** is unlawful, and the possibilities for education are limited. This is a challenge for some municipal and NGO workers, as they are challenged with the fact that they are unable to help an individual gain knowledge and skills that might come in handy in the future.<sup>251</sup> Yet, it should be noted that this is not considered a problem by all municipal and NGO workers (nor all workers of central government), as some are of the opinion that the provision of services such as education and employment could diminish the migrant's willingness to return to their home country.<sup>252</sup>

#### **Challenges identified in the Regioplan (2020) study evaluating the start of the National Immigration Facilities (LVV) pilots<sup>253</sup>**

There have been a number of challenges identified by people who work for or with the LVV-pilot and were asked to provide input for the Regioplan (2020) study. The following points explain what exactly these challenges are and why the provision of services in the LVV-pilots is considered a challenge by them. Please note that these challenges are more present in some of the LVV-pilot municipalities than others, and that the evaluation was carried out at the start of the pilots. Some of the challenges mentioned here may have been solved in the meantime:<sup>254</sup>

1. Some parties involved in the LVV (also at national, policy-making level) state that providing services in the LVV takes quite some time. This is especially the case in Groningen and Amsterdam, the two municipalities with the largest number of irregular migrants in their LVV-pilots. There, **work pressure and capacity problems** were present at the time of the evaluation – making provision of services a challenge for the staff of the LVV-pilots.

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<sup>251</sup> Interview with Groningen municipality, 12 October 2020 especially raised this point.

<sup>252</sup> Based on comments of a focus group member.

<sup>253</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 25 August 2020. Please refer to Q20 for a summary of the study (in Dutch).

<sup>254</sup> Please note that the National Immigration Facilities experts who joined the focus group for this EMN study pointed out that the things described in this section regard the early stages of the LVV pilot projects and that since then, the situation may have changed. Furthermore, according to the experts, the respondents to the Regioplan study (2020) were largely NGO's and based at the local level, which might give a skewed representation of the situation at hand.

2. Furthermore, the Regioplan study states that respondents who work with migrants directly (so not the national actors) have indicated that they are of the opinion that the amount of time given for **counselling** the migrant in some of the LVV-pilots is too little (especially in Rotterdam and Amsterdam). They indicate this makes it challenging to fully provide services such as a complete legal screening. Furthermore, in line with what has previously been discussed in this question, respondents indicate that some irregular migrants in the LVV-pilots suffer from **health problems** that are difficult to address.<sup>255</sup>
3. Respondents indicate that while active **cooperation** is a requirement of being part of the LVV-pilots, whether someone is willing to cooperate is not easy to determine and also depends on the assessor. This can lead to unclear situations and debates between various multi-level actors assessing the migrant. It furthermore can create a difficult situation if it has to be decided whether the migrant is cooperating and should no longer be part of the LVV-pilot.

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

Please provide a brief explanation:

First, it is important to mention that the challenges below can be case-specific – meaning that they can be a challenge experienced by one local party (such as an NGO or municipality), while another local or national party does not experience it as such. When reading the challenges mentioned below, it is therefore good to keep in mind that there tend to be different perspectives on what constitutes a challenge when it comes to long-term staying irregular migrants.

### Challenges concerning exchanging information on irregular migrants

Several actors (Immigration and Naturalization Service, the Repatriation and Departure Service, NGOs, the alien police, and some municipalities) have indicated that in working together on irregular migrants, the exchange of information has become more complicated due to privacy concerns regarding information pertaining to the migrant. Within the National Immigration Facilities (LVV-pilot), agreements concerning the proportionality of sharing/not sharing information have been made that sharing is easier, but still there are some restrictions.<sup>256</sup> Involved actors for instance indicate that they are of the opinion that perceived restrictions in information sharing can be due to conflicting interests of the parties sharing the information that can skew or colour the provided information in a certain way.<sup>257</sup> In non-LVV municipalities, this information sharing can

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<sup>255</sup> Please also refer to Q10 and Q24, in which good practices that address these challenges are discussed.

<sup>256</sup> Interview with Utrecht municipality, 30 September 2020 especially raised this point, while interview with Groningen municipality, 12 October 2020 indicated it did not experience this as such.

<sup>257</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 25 August 2020 (in Dutch).

be more challenging as there are less agreements counterbalancing the Dutch General Data Protection Regulation (*Algemene Verordening Gegevensbescherming*; AVG)<sup>258</sup>

### Challenges concerning cooperation

Cooperation between the local and national levels used to be difficult, as in some particular cases these levels both had very different views on how to approach the issue of irregular migrants (and were not able to reconcile these differences).<sup>259</sup> The LVV-pilots changed this to a certain extent, and as has been indicated in Q24, improved the extent to which actors from different levels (of government) collaborated. This has improved more in some of the pilot municipalities than in others.<sup>260</sup>

Depending on the extent to which local views differ from national policy, collaboration is therefore more a challenge for some municipalities (especially Utrecht and Eindhoven<sup>261</sup>) than others. Furthermore, interviews with Utrecht and Tilburg municipality also highlighted how the political climates at national and local level can influence national and local policy.

☒ Challenges exchanging information between Member States?

Please provide a brief explanation:

There is no significant exchange of information between Member States, with a few exceptions concerning (very limited and more informal) information exchange with Belgium and previously Germany. This is considered a challenge by some as there is few insight in what other countries are doing to address the problem of long-term irregular migrants, especially when it comes to possible similar programs such as the LVV-pilots. This has been pointed out as a challenge by LVV-experts from the Ministry of Justice and Security, as well as experts from the municipality Utrecht, who have emphasized that this is also why this study is so important. Yet, most of the interviewed participants did not indicate that this was a challenge when asked.

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

Not applicable.

**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**?

<sup>258</sup> Interview with Tilburg municipality, 5 October 2020; Interview with Ministry of Justice and Security, 2 September 2020

<sup>259</sup> Indicated in (amongst others) interview Utrecht municipality, 30 September 2020

<sup>260</sup> Please note that Tilburg, a non-LVV pilot municipality, has indicated in an interview (5 October 2020) that (despite there not being an LVV pilot) collaboration with the national level of government is going quite well.

<sup>261</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 25 August 2020 (in Dutch).



An example of a challenge regarding the provision of services linked to responses to and impacts of COVID-19, is that certain long-term irregular migrants have lost a considerable part (if not all) of their income that they earn illegally due to the impacts of COVID-19. Since they are not entitled to social benefits or legal employment as indicated in Q10, they sometimes can for example no longer afford (illegal) housing. Some municipalities are trying to accommodate this group, for instance by giving them a special kind of social assistance (*bijzondere bijstand*), yet this is illegal according to the aforementioned Benefit Entitlement (Residence Status) Act.<sup>262</sup> Municipalities are hence confronted with the choice between aiding this group of people or facing the consequences of not doing so (for instance related to the influence this might have on public order).

**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 responses to and impacts of the **COVID-19 pandemic**?

A few challenges have been identified with regard to promoting return and discouraging illegal stay. These concern mostly challenges that apply to irregular staying migrants in general.

**The following challenges were identified within this study:**

- According to a representative of the DT&V, it can be difficult that certain long-term illegally staying migrants do not come into sight of the government until certain situations appear (such as concerns about health issues or safety by the municipality).<sup>263</sup>
- Another challenge as identified by the representative of the DT&V, concerns the complexity of forced return because of the conjunction of criteria that should be met simultaneously.<sup>264</sup> Forced return could for example take place in case the migrant is not willing to cooperate in the return procedure in the first place. The complexity of forced return makes that it sometimes temporarily is not possible to execute. For example, if a country of origin does not want to issue travel documents, return stays impossible.
- A representative of the municipality of Groningen mentioned that it is important to keep good contact with the migrant when promoting return.<sup>265</sup> It can be difficult for some migrants to really be aware that in some cases return is necessary, even in case all three parties (the IND, DT&V and NGO) made clear that legalisation is no option. In a research about the LVV-pilot it is mentioned that it is key to communicate clearly, and unambiguously by all parties involved.<sup>266</sup> In practice, it showed that if this was not the case, it could lead to the migrant holding on to the signals of a possibility to receive a right of residence. There is a category of migrants that can not or is not willing to return and for whom no future perspective seems to suit. If they do not

<sup>262</sup> Interview with Ministry of Security and Justice, 27 August 2020.

<sup>263</sup> Based on comments of a focus group member.

<sup>264</sup> Ibid.

<sup>265</sup> Interview with Groningen municipality, 12 October 2020.

<sup>266</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 25 August 2020 (in Dutch).



cooperate on a future perspective within the LVV-pilot, the provided shelter ends. Sometimes, migrants therefore leave on their own with an unknown destination instead.<sup>267</sup>

- As reported in a research on the LVV-pilots, according to NGO's there lays a challenge in health issues, that applies to the guidance in general (irrespective of whether the future perspective is legalisation of stay or return). In case a migrant suffers from serious physical and/or psychological health issues, the situation can hinder counselling by the NGO. The NGO state that the migrant is in that case not able to focus on a future perspective. According to NGO's it is therefore first key to take into account which health issues appeared and which treatment is necessary. However, there is often a waiting list for the necessary treatment.<sup>268</sup>

- Finally, in practice, it occurs (albeit infrequently) that some migrants are repeatedly placed in immigration detention, but then not able to be returned, after which they are released again.<sup>269</sup>

**The following examples of challenges were identified specifically in relation to COVID-19:**

- Also, due to COVID-19, certain conversations with the International Organisation for Migration are offered to migrants digitally instead of in person.<sup>270</sup> Some therefore temporarily have less access to this.
- Certain delays occurred with regard to the return of migrants, as flights were cancelled or consulates and embassies were closed.<sup>271</sup> Also, countries of origin sometimes have strict test and quarantine regulations in place, which can hinder the return procedure.<sup>272</sup> For example, if the migrant is required to take a test before taking the airport, while in the Netherlands this can not be forced upon someone. This challenge therefore also relates to the willingness and cooperation of the migrant to return.

**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 responses to and impacts of the **COVID-19 pandemic**?

**The following challenges were identified:**

<sup>267</sup> Interview with Groningen municipality, 12 October 2020.

<sup>268</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 25 August 2020 (in Dutch).

<sup>269</sup> Based on the comments of a focus group member. See: Leerkes, A., Kox, 'Pressured into Preference to Leave? A study on the 'Specific' Deterrent Effects and Perceived Legitimacy of Immigration Detention' (2017).

<sup>270</sup> Interview with Groningen municipality, 12 October 2020; Interview with the Ministry of Justice and Security, 27 August 2020.

<sup>271</sup> Interview with the Ministry of Justice and Security, 27 August 2020.

<sup>272</sup> This information was provided during the focus group meeting on 3 November 2020

- In the Netherlands, it is not possible for irregular staying migrants to get in the end a right of residence on legal migration grounds (in contrast to asylum). The migrant would need to return to the country of origin first, and should be issued a visa to enter the Netherlands in order to legalise their stay on legal migration based grounds.<sup>273</sup> Family reunification can be excepted from this.<sup>274</sup>
- A representative of the municipality of Groningen mentioned that the abolishment of the discretionary power is a challenge for the legalisation of stay of long-term irregular migrants. The asylum system can become under certain pressure, and the discretionary power was the way this pressure could be reduced.<sup>275</sup> The representative mentioned that regularly applications were made by migrants in Groningen under this former regulation. Nevertheless only a limited number of cases were in the end covered under the discretionary power. Also in a study on the LVV-pilots, the abolishment of the discretionary power was mentioned as limiting options.<sup>276</sup> It could also have a negative effect on the cooperation between the different parties within the LVV-pilot. There are less sustainable solutions for these distressing cases, putting more pressure on other perspectives and partners. Nevertheless, another study pointed out that the use of the discretionary power at the end of a procedure is counterproductive for the willingness of migrants to return.<sup>277</sup>

**The following challenge was identified specifically in relation to COVID-19:**

- Some services by the Immigration and Naturalisation Service (IND) were temporarily put on hold during the first few months of the outbreak of COVID-19. As the IND is the responsible organisation for examining the residence applications, legalisation of stay was therefore temporarily hindered.<sup>278</sup> Nevertheless, solutions were found in a foreseeable period of time.<sup>279</sup>

**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).*

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<sup>273</sup> Interview with the Ministry of Justice and Security, 27 August 2020.

<sup>274</sup> This information was provided during the focus group meeting on 3 November 2020

<sup>275</sup> Interview with Groningen municipality, 12 October 2020.

<sup>276</sup> Mack, A., Verbeek, E., & Klaver, J. 'Plan- en procesevaluatie Landelijke Vreemdelingen Voorzieningen' (2020), *Regioplan beleidsonderzoek*, <https://www.regioplan.nl/project/procesevaluatie-en-monitoring-pilot-landelijke-vreemdelingen-voorzieningen-lvv/>, last accessed 25 August 2020.

<sup>277</sup> With this power, the Minister had the competence to issue a residence permit to an applicant, although the applicant did not fulfil the criteria for an existing residence permit. It concerned exceptional cases which were identified as cases in which a distressing situation would appear if the residence permit would not be granted.

<sup>278</sup> Interview with the Ministry of Justice and Security, 27 August 2020; Interview with Groningen municipality, 12 October 2020.

<sup>279</sup> This information was provided during the focus group meeting on 3 November 2020

An action that could be taken at EU level is that the EU could facilitate regular discussion between Member States about how Member States deal with this group of long-term irregular staying migrants in their country.<sup>280</sup>

## Section 5: Conclusions

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

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

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

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

### Political and policy debate

Two main topics within the political and policy debate on long-term irregularly staying migrants are included in this study. First of all, there was debate about the 'Definitive regulation for long-term resident children', which in the end became more far reaching than solely the regulation itself. The government reached the conclusion that in the first residence application, the main aspects relevant for a stay in the Netherlands should be dealt with. Also, incentives that prolong a stay in the Netherlands should be reduced. The debate led to a cohesive set of measures.

Another aspect of debate entailed the shelter provided to long-term irregular migrants. These migrants are in principle excluded from shelter, except for those who are preparing for their return (who can stay at the VBL or family shelter). The aim of this national policy is to discourage illegal stay and to stimulate return. Nevertheless, there is a part of migrants who cannot or are not willing to call upon national shelter, for example because they do not cooperate in a return procedure. Some municipalities were facing difficulties, as these migrants ended up without proper accommodation. After certain court decisions municipalities provided shelter nonetheless. 'Bed-bath-bread' facilities (*Bed, bad brood* - BBB) were therefore established. Finally in 2015 two final court decisions were taken by the highest Dutch courts that determined that (in contrast to the earlier rulings) the access to the VBL-shelter with the condition that the migrant cooperates to return, was sufficient to live up to certain rights of the ECHR. Meanwhile, negotiations between the national government and local authorities continued. This was due to the discussion about the

<sup>280</sup> This information was provided during the focus group meeting on 3 November 2020

provision of (emergency) shelter by municipalities and the funding of this on the one hand and the national policy focused on discouraging illegal stay and stimulating return on the other hand. In 2018 an agreement was reached on the establishment of pilot shelter facilities in a few major municipalities, despite the fact that there was no judicial obligation according to the rulings to provide for additional shelter next to the VBL-shelter and family shelter.

The issue of long-term irregularly staying migrants in the Netherlands is therefore definitely apparent, as it has been part of (political) discussions for a longer period of time and it concerns a complex issue with different parties on several levels involved. It is difficult to connect certain policy measures directly with (for example) a decrease/increase of numbers of return. With regard to the LVV-pilot, it is still too early to say to what degree it offers the aimed outcome.

### **National policies and approaches regarding long-term irregularly staying migrants**

In general in the national policy on the prevention and discouragement of illegal stay, the option of return is prioritized and there is the obligation to depart. This template reflects the options that are available for some irregular staying migrants in the Netherlands and these often are exceptions to the general rule. Such as the public services accessible to irregular staying migrants in the Netherlands: accommodation, health care and legal aid. It depends per service if it is mandatory or discretionary, which authorities are involved in providing the service and if the rights and access to the services are more limited, same or more favourable than those of legal migrants or of nationals.

There are specific projects implemented at local level specifically targeting the access to services for irregularly staying migrants either by municipalities, NGOs, but also other entities or organisations are involved such as various churches or the Dutch Refugee Council.

With regard to COVID-19, in the Netherlands there were changes in relation to access of long-term irregular migrants to municipalities have taken various measures, especially with regard to emergency accommodation in order to be able to continue to provide services to irregular migrants.

Concerning measures adopted by authorities at central, regional and local level to provide access to services, an illustrative case is the LVV-pilot, which are shelter and counselling facilities for migrants that are willing to work on a future perspective.

With regard to good practices regarding policy measures concerning long-term irregularly staying migrants, the following aspects were identified as such: healthcare, counsellors from IOM, safe reporting and the package of services provided in a non-LVV municipality. Regarding information exchange, the LSO, the (C-Mise) Working Group and Eurocities were mentioned as good practices.

### **Challenges**

Different challenges exist with regard to promoting return or legalisation of stay. For example, with regard to **return**, it can be difficult for certain migrants to really be aware that an alternative (namely return) is necessary. Also, due to COVID-19, certain conversations with the International Organisation for Migration are offered to migrants digitally instead of in person.<sup>281</sup> Some migrants therefore temporarily have less access to this.

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<sup>281</sup> Interview with Groningen municipality, 12 October 2020; Interview with the Ministry of Justice and Security, 27 August 2020.

With regard to **legalisation of stay**, two options existed specifically addressing long-term irregularly staying migrants; the discretionary power of the Minister of Migration and Definitive Regulation for Long-term Resident Children. Both regulations were abolished as a result of the political debate. According to a representative of the Municipality of Groningen, the discretionary power could reduce certain pressure within the asylum system.<sup>282</sup> However, another study pointed out that the use of the discretionary power or the Regulation for Long-term Resident Children at the end of a procedure is counterproductive to the willingness of migrants to return.<sup>283</sup>

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<sup>282</sup> Interview with Groningen municipality, 12 October 2020.

<sup>283</sup> National Government (2019), 'Onderzoekscommissie Langdurig verblijvende vreemdelingen zonder bestendig verblijfsrecht', <https://www.rijksoverheid.nl/documenten/rapporten/2019/06/04/onderzoekscommissie-langdurig-verblijvende-vreemdelingen-zonder-bestendig-verblijfsrecht>, last accessed on 6 August 2020 (in Dutch).