



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

Common Template for the EMN Study 2020

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

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1 BACKGROUND AND RATIONALE FOR THE STUDY

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

However, in practice, a certain share of third-country nationals issued with a return decision do not leave the territory of Member States. National authorities might be unable to proceed with removals due to either legal or practical obstacles. Issuance of a return decision allows for a period of voluntary departure, however a third-country national could be unwilling to leave voluntarily. Forced return may be impossible to enforce without some level of co-operation from the third-country national. In other cases, national authorities postpone return to respect the principle of non-refoulement, individual circumstances or other practical reasons impeding the enforcement of a return decision.³ Additionally, there are cases of third-country nationals whose residence permits expire and renewal is not secured, or who for other reasons do not or no longer fulfil conditions for legal stay, and who were not issued a return decision for a variety of

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

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

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

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

administrative and practical reasons. In some cases, third-country nationals may disappear from the supervision of the competent authorities involved. In other cases, migrant who entered illegally remained undetected by migration authorities.

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

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

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

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

2 EU LEGAL AND POLICY CONTEXT

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

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

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

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

numbers of return decisions which could not be enforced (amounting on average to ca 60% out of 500 000 per year), one can assume that the issue concerns up to 300 000 migrants per year.⁷

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

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

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

While postponement of removal of irregular migrants is allowed under the Directive, the legal situation of this category of third-country nationals is only partially addressed.¹⁰ In cases of postponement of return, the Return Directive refers to a set of minimum basic rights and procedural guarantees for third-country nationals.¹¹ These ‘basic rights’ include family unity, emergency health care, basic education for minors and taking into account the needs of vulnerable persons.¹² In a 2014 case, the Court of Justice of the EU (CJEU) ruled that Member States must cover other basic needs to ensure that emergency health care and essential treatment of illness are in fact made available during the period in which that Member State is required to postpone removal.¹³ Additionally, according to the Return Directive, Member States should also provide a third-country national with a written document confirming the postponement of their removal, in order for that person to be able to prove his or her situation in the event of administrative controls or checks.¹⁴ In

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

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

⁹ Article 6 of the Return Directive.

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

¹¹ Article 14 of the Return Directive.

¹² Article 14 of the Return Directive.

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

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

¹⁴ Article 14(2) of the Return Directive.

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

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

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

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

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

The framework provided in the Return Directive should be read in conjunction with other legal instruments which also apply to the category of third-country nationals falling under the scope of the study. For example, national authorities’ approach to vulnerable persons should also consider obligations stemming from the 1989 UN Convention on the Rights of the Child²⁰, from the EU’s framework on victims of trafficking in human beings.²¹ Additionally, albeit the Return Directive is silent on access of irregular third-country nationals to other social assistance than emergency healthcare and access to education, other instruments may nonetheless apply. For instance, the European Committee of Social Rights²² laid down further specifics on the situation of irregularly staying migrants in their decision in the case *Conference of European Churches vs. the Netherlands*.²³ This decision made clear that, in light of its established case-law, shelter

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

¹⁶ Article 15(4) of the Return Directive.

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

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

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

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

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

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

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

must be provided not only to migrant children but also to adult migrants in an irregular situation and even when they are requested to leave the country.

3 STUDY AIMS AND PRIMARY QUESTIONS

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

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

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

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

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

4 SCOPE OF THE STUDY

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

- Third-country nationals subject to a return decision and whose return, despite the return decision becoming final, was not enforced or was postponed for legal (non-refoulement principle, medical or humanitarian reasons) or other practical reasons (e.g. non-cooperation on the part of the person concerned or of the country of origin or other administrative reasons), and
- Third-country nationals who do not or no longer fulfil conditions for entry and stay in the territory of a State (as set out in the Schengen Borders Code (Regulation (EU) 2016/399) or other conditions for entry, stay or residence in that EU Member State), and who were not issued a return decision because they were unknown to the authorities.

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

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

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

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

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

The Study covers the period from 2015 – October 2020.

5 RELEVANT SOURCES AND LITERATURE

EMN Studies and other sources

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- 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
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EMN AHQs

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Other policy documents, reports and studies (chronological order)

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- 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

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

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

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6 DEFINITIONS

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

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

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

Term	Definition
Residence permit	An authorisation issued using the format laid down in Regulation (EC) No 1030/2002 entitling its holder to stay legally on the territory of a Member State.
Return	The movement of a person going from a host country back to a country of origin, country of nationality or habitual residence usually after spending a significant period of time in the host country whether voluntary or forced, assisted or spontaneous.
Return decision	An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.
Social protection benefits	For the purpose of this study please refer to the definition of ‘core benefits’ as included in the Qualification and Long-Term Residents Directives which is understood as covering – as a minimum - income support, assistance in the case of illness, or pregnancy, and parental assistance.
Postponement of removal	(Temporary) suspension of removal of a third-country national who has received a return decision but whose removal is not possible either for humanitarian reasons (as their removal would violate the principle of non-refoulement or due to the third-country national’s physical state or mental capacity) or for technical reasons (such as lack of transport capacity or failure of the removal due to lack of identification or the country of origin’s refusal to accept the person) and for as long as a suspensory effect is granted in accordance with Art. 13(2) of Council Directive 2008/115/EC (Return Directive).
Third-country national	Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the Union right to free movement, as defined in Art. 2(5) of the Schengen Borders Code.
Trafficking in human beings	The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. ²⁷
Voluntary departure	Compliance with the obligation to return within the time limit fixed for that purpose in the return decision.
Vulnerable person	Minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Art. 21 of Directive 2013/33/EU (Recast Reception Conditions Directive).

7 ADVISORY GROUP (CORE AND WIDER GROUP)

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

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

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

Organisation	Name	Contact details
NL EMN NCP (Chair)	Hans LEMMENS	HPM.lemmens@ind.nl ;
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8 TIMETABLE

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

Date	Action
19 March 2020	Circulate first draft to ‘core’ Advisory Group members
23 March 2020	Call with core AG group
17 April 2020	Circulate first draft to all Advisory Group members
24 April 2020	<u>Deadline</u> comments Advisory Group on the first draft of the template
29 April 2020	AG meeting to discuss comments on the first draft of the template
12 May 2020	Circulate second draft to Advisory Group members
19 May 2020	<u>Deadline</u> comments Advisory Group on the second draft of the template

Date	Action
5 June 2020	Circulation of third draft to all EMN NCPs, COM and Odysseus
19 June 2020	<u>Deadline</u> for comments on third draft
30 June 2020	<u>Final draft for approval to COM</u>
17 July 2020	<u>Launch of the EMN study</u>
2 November 2020	<u>Deadline for national reports</u>

9 TEMPLATE FOR NATIONAL CONTRIBUTIONS

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

Common Template of EMN Study 2020

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

National Contribution from *Member State*^{*28}

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

Top-line factsheet [max. 1 page]

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

The European Migration Network is developing a study on the action of Member States of the European Union and Norway on illegal migrants staying in the country for a long time. This is a report that summarises information on the rights and opportunities of long-term illegal migrants in the Republic of Latvia.

The legislation of the Republic of Latvia does not include the term “long-term illegal migrant”, but it follows from legislation which determines the behaviour of the responsible authorities in relation to a third-country national who is illegally staying in the Republic of Latvia. The concept of “long-term illegal migrant” in this report applies to a person residing illegally for more than a year in the Republic of Latvia.

What are the reasons why a person's stay in the Republic of Latvia is illegal? This shall be the case where, for example, the person who is in the return procedure has not been able to identify and determine his or her nationality, when the person cannot obtain a travel document or when the third-country national cannot leave for humanitarian reasons. Both long-term illegal migrants are present in the Republic of Latvia, the expulsion of which is not possible for legitimate or practical reasons, as well as third-country nationals whose visa or residence permits have expired, as well as persons who have not taken action to determine their legal status since the re-establishment of Latvia's independence (after the collapse of the USSR), and whose legal status determination has practical obstacles. The number of these long-term illegal migrants in the Republic of Latvia is not high. The circumstances of the case of each long-term irregular migrant are assessed individually. In 2019 4 decisions have still not been executed from return decisions issued, while the legal status was established for 20 persons (citizens of the former USSR) who have long lived in Latvia and had not been registered.

The range of services available to long-term illegal migrants is not extensive, since in most cases these services are available to persons legally residing in the country. For example, for persons who have been issued a departure order but who have not been returned for legitimate or practical reasons, accommodation may be provided by local governments or non-governmental

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

organisations. Free emergency medical treatment is available for these persons, but all other medical treatment is available for a fee. State-paid medical assistance and free basic education in local government educational institutions shall be available to minors. Long-term illegal migrants have the right to receive state-paid legal assistance in the event of an appeal of a return decision, and at their own expense in any case. Persons residing illegally may not be legally employed.

Support for long-term illegal migrants can be provided by non-governmental organisations according to their work profile, such as “Asylum “Safe Home” “Latvijas Red Cross”, Centre “Marta”.

Several possibilities are available in the Republic of Latvia for the cessation of long-term illegal residence. These include a return to the country of origin or another third country in which the person is entitled to enter, issuance of a residence permit or a visa. Returning to the country of origin is prioritised because it enables a third-country national to submit documents for requesting a residence permit or a visa to the representations of the Republic of Latvia abroad.

Section 1: National legal and policy framework

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

The primary questions addressed in this section are:

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

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

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

Yes

No

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

The differences between long-term and short-term illegal migrants are not defined either by national immigration policy or by national legislation, but they are highlighted in practice and can be deduced from the provisions contained in the legislation.

In practice, the distinction is based on differences arising when examining a person's case, considering the individual circumstances of the case and deciding in a person's case. In practice, the term “long-term illegal migrant” is used when the migrant has passed certain stages of the return procedure and as a result: 1) his or her nationality cannot be identified and determined (the person hides his or her identity or the diplomatic or consular office of the third country does not cooperate); or, 2) it is impossible for him or her to obtain a travel document (the person himself or herself does not cooperate or does not cooperate with the diplomatic or consular office of the third country); or, 3) the third-country national cannot leave the country on humanitarian grounds (illness, children do to school, etc.); in such a case, the time-limit of the duty of voluntary departure is being extended or the decision on forced removal is being suspended.

Criteria resulting from legislation to view the distinction between short-term illegal migrants and long-term illegal migrants are as follow:

- 1) The return decision is issued by the Head of the Office of Citizenship and Migration Affairs (OCMA) or an official authorized by him or her, if the illegal stay of the foreigner in the Republic of Latvia is detected by an official of the OCMA or the State Boarder Guard (SBG) and the foreigner has been issued a residence permit in the Republic of Latvia or the foreigner has been staying in the Republic of Latvia for more than a year.²⁹ Since the Office can both make a return

²⁹[Immigration Law](#), Article 41 – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

decision and grant the legal status (legalize the stay), an illegal stay of at least one year can be treated as a long-term illegal stay.

- 2) According to Article 64(2) of the Administrative Procedure Law³⁰, the maximum period of examination of a case may not exceed one year. If after a year the person has not been returned or his or her stay has not been legalized, the illegal stay should be considered as a long-term illegal stay.
- 3) The maximum duration of detention is 18 months.³¹ If it is not possible to implement the removal within 18 months, the illegal stay shall be considered as a long-term illegal stay.

In the case of an illegal stay other than a long-term illegal stay, a standardised procedure is usually followed by a standardised decision; in the case of a long-term illegal stay, a search for non-standard solutions may also follow.

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

Yes

No

Q1c. If yes to Q1b, are these:

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

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

former (rejected) applicants for international protection who absconded?

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

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

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

Persons (mainly former citizens of the USSR) who have applied to the OCMA by themselves or whose residence in the Republic of Latvia has been established by the SBG and who since the collapse of the USSR have not applied to the OCMA to determine their legal status and determination of legal status of whom is practically obstructed (persons do not have a valid identity document, birth certificate, nationality is unknown, etc.).

³⁰ [Administrative Procedure Law](#), –Official gazette “Ziņotājs”, No 23, 13.12.2001 – [entered into force on 01.02.2004]

³¹ Directive [2008/115/EC](#) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. – Official Journal of the European Union L 348/98, 24.12.2008.

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).

Statistics on long-term categories of illegal migrants are not compiled in Latvia but practice show that on average up to five return decisions are not executed for a long period of time each year. On the other hand, the legal status in Latvia is determined on average 10-20 persons (citizens of the former USSR) who have not registered since the re-establishment of Latvia's independence.

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

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

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

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

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

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

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

The Head of the SBG or the Head of the OCMA or officials authorised by them may revoke or suspend the operation of the departure order or decision on forced return issued by an official of their authority and the enrolment decision and the entry ban on the Schengen territory contained therein, if the circumstances leading to the issue of the relevant administrative act have changed, including the establishment of the principle of non-refoulement, or on humanitarian grounds³².

The departure order/ decision on forced return may be followed by a decision on the extension of the period for examination of the case, if the case requires a long-term establishing of facts.³³

A foreigner who has been residing in the territory of the Republic of Latvia for a long time and who has the right to apply for legal status is primarily given the opportunity to submit documents for registration of legal status in the Republic of Latvia without issuing a return decision.

In the event that a third-country national has lost a written confirmation of the extension of return period and cannot present it to a representative of the competent authority, this information can be

³² [Immigration Law](#), Article 49 – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

³³ [Administrative Procedure Law](#), Article 64(2) – official gazette “Ziņotājs”, No 23, 13.12.2001 – [entered into force on 01.02.2004]

found in the relevant information system. The information system also includes information on the suspension of the return decision during the appeal.

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

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

The foreigner submits the documents for requiring the residence permit to the representation, which is not located in a Schengen Agreement member state, but the Head of the OCMA or an official authorized by him or her may allow a person residing in the country illegally to submit the documents for requiring the residence permit to the OCMA, where it complies to the norms of international law, the national interests of Latvia or is related to humanitarian considerations.³⁴

In cases not provided for by the Immigration Law, a temporary residence permit for a period of up to five years is granted by the Minister of the Interior, if it meets the national interests, or by the Head of the Office, if it complies with international law or is related to humanitarian considerations.³⁵

Extension of the short-stay visa

The Head of the OCMA, the Head of the SBG, the Director of the Consular Department of the Ministry of Foreign Affairs or officials authorized by them may decide to issue a visa to a foreigner who is staying illegally in the Republic of Latvia, if it complies with international law, the interests of the Republic of Latvia or is related to force majeure or humanitarian considerations.³⁶

Extension of the voluntary departure period

The official of the SBG or the OCMA who issued the departure order has the right, at the request of the foreigner, to extend the time period specified in the departure order³⁷ for a period not exceeding one year. The circumstances of each case, in particular the length of stay of the foreigner, family or social ties, having or having not a minor child attending an educational institution in the Republic of Latvia, shall be considered when deciding on the extension of the specified period of time. The foreigner is informed of the extension of the specified period of time in writing.

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

A return decision may not be issued on existing humanitarian grounds, but if it is possible to identify the person, it is immediately necessary to assess whether it is possible to establish a different legal status so that the foreigner has access to social guarantees (employment, education, health care, etc.) specified in national laws and regulations.

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

³⁴ [Immigration Law](#), Article 32(1) and 32(3) – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

³⁵ [Immigration Law](#), Article 23(3) – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

³⁶ [Immigration Law](#), Article 16(1) and 16(4) – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

³⁷ [Immigration Law](#), Article 43(1) – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

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

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

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

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

For clarifications on categories below, please refer to section 2

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

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

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

The foreigner submits the documents for requesting the residence permit to the representation, which is not located in a Schengen Agreement member state, but the Head of the OCMA or an official authorized by him or her may allow a person residing in the country illegally to submit the documents for requiring the residence permit to the OCMA, where it complies to the norms of international law, the national interests of the Republic of Latvia or is related to humanitarian considerations.³⁸

Intensified implementation in practice in the context of the spread of COVID-19 virus infection: given that several third-country nationals have objective barriers that limit the possibility of returning to their country of nationality or home country, the legal status determination is prioritised in existing circumstances. Namely documents for requesting a residence permit from third-country nationals who are illegally present in Latvia but who may have possibility to legalize their status are accepted while these persons are staying in Latvia. This applies without discrimination to all third countries nationals.

³⁸ [Immigration Law](#), Article 32(1) and 32(3) – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

In cases not provided for by the Immigration Law, a temporary residence permit for a period of up to five years is granted by the Minister of the Interior, if it meets the national interests, or by the Head of the Office, if it complies with international law or is related to humanitarian considerations.³⁹

An extension of the short-stay visa

The Head of the OCMA, the Head of the SBG, the Director of the Consular Department of the Ministry of Foreign Affairs or officials authorized by them may decide to issue a visa to a foreigner who is staying illegally in the Republic of Latvia, if it complies with international law, the interests of the Republic of Latvia or is related to force majeure or humanitarian considerations.⁴⁰

In the context of the spread of COVID-19 virus infection, the following was implemented more actively in practice: since restrictions were imposed on international passenger transport due to the spread of COVID-19 infection, persons residing illegally in the Republic of Latvia were allowed to submit documents for obtaining a visa without leaving the Republic of Latvia. If a third-country national stayed in the country illegally due to the spread of the COVID-19 virus (because it was not possible to leave for practical reasons), he or she could obtain a visa not only to stay legally until the moment of departure, but also to study or work, for example.

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

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

Exceptional case in the current migration policy:

On the basis of the order the Cabinet of Ministers “Regarding declaration of the emergency situation”⁴¹, an emergency situation was declared in Latvia in March 2020. According to the Law on the Management of the Spread of COVID-19 Infection⁴², all third-country nationals whose legal residence ended after the announcement of the emergency situation were allowed to continue to stay in Latvia and leave within two months after the end of the emergency situation.⁴³

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

³⁹ [Immigration Law](#), Article 23(3) – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

⁴⁰ [Immigration Law](#), Article 16(1) and 16(4) – official gazette “Ziņotājs”, No 169, 20.11.2002 – [entered into force on 01.05.2003]

⁴¹ Order No 103 “[Regarding declaration of the emergency situation](#)” issued by the Cabinet of Ministers on 12 March 2020 – official gazette “Latvijas Vēstnesis”, No 51A, 12.03.2020 – [entered into force on 12.03.2020, validity ended on 10.06.2020]

⁴² [Law on the Management of the Spread of COVID-19 Infection](#), Article 32(1) – official gazette “Latvijas Vēstnesis”, No 110A, 09.06.2020 – [entered into force on 10.06.2020]

⁴³ [Law on the Operation of State Authorities During the Emergency Situation Related to the Spread of COVID-19](#), Article 9 – official gazette “Latvijas Vēstnesis”, No 67B, 04.04.2020 – [entered into force on 05.04.2020, validity ended on 10.06.2020.]

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).

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).

In view of the fact that each case of a long-term illegal migrant is individual, interinstitutional meetings are convened, if necessary, with the participation of institutions and organizations at central and regional levels. Such meetings are attended by institutions involved in solving a particular issue, mainly by: the SBG, the OCMA, the Ministry of the Interior, the Ministry of Welfare, orphans' courts, municipal social services, the State Inspectorate for Protection of Children's Rights, the Ministry of Education, representatives of educational institutions, and the Ombudsman. In addition, meetings have been held with embassies of third countries, which were asked to provide support to foreigners in drawing up documents, obtaining information about the registered place of residence, as well as providing financial support.

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.

Interinstitutional meetings dealt with issues related to, for example, accommodation of a foreigner, provision of social services, protection and provision of the best interests of the child, continuation of the acquisition of education, payment of additional expenses, etc.

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:

As a result of interinstitutional meetings, individual solutions were found and representatives of institutions established a mechanism of cooperation for further action in the implementation of practical measures. Amendments to the regulatory enactments were not made.

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

Yes

No

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

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

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

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

No.

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

Yes, there are planned changes in law. Please explain below:

Yes, there are planned changes in policy. Please explain below:

Yes, there are planned changes in practice. Please explain below:

No.

No, amendments to the migration policy, legislation or practice are not planned.

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

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

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

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

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

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

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

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

Table 1: Rights and services available to long-term irregularly staying migrants who have been issued a return decision				
<i>Type of stay or status as identified in Q2 and/or Q3: [_____]</i>				
Type of service	Service provided ? (Y/N)	Is the provision of service mandatory or discretionary ? ⁴⁴	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to: i. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice? ii. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
Accommodation				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Accommodation <i>If yes, please briefly describe</i>	Y	<i>Depends on situation</i>	<i>The State does not guarantee illegal migrants the right to accommodation. Accommodation is provided by a municipal authority or non-governmental organizations depending on financial possibilities.</i>	<i>There are fewer rights and services are more limited compared to third-country nationals residing legally in the country.</i>
Special accommodation facilities (i.e. shelter for	Y	<i>Depends on situation</i>	<i>The State only in certain cases (victims of trafficking in human beings, minors) guarantees illegal migrants the right to accommodation. Accommodation is provided by a municipal authority or non-governmental organizations. The accommodation of minor illegal</i>	<i>It is similar in respect of both illegal migrants and legal migrants. Victims of trafficking in human beings and minors are</i>

⁴⁴ For example, in some cases a service can be accessed but the costs must be met by the individual rather than the State/national authorities.

victims of violence, children etc.) <i>If yes, please briefly describe</i>			<i>migrants is decided by the orphans' court of the relevant municipality. Victims of trafficking in human beings, if necessary, are provided by non-governmental organisations (service providers) with accommodation at expense of the State. In all other cases, the individual circumstances of the person are assessed.</i>	<i>entitled to the same amount of accommodation services.</i>
Other forms of accommodation or shelter or specialised centre	<i>Y</i>	<i>Depends on situation</i>	<i>The State does not guarantee illegal migrants the right to shelter or any other type of accommodation. Accommodation is provided by a municipal authority or non-governmental organizations depending on financial possibilities..</i>	<i>There are fewer rights and services are more limited compared to third-country nationals residing in the country legally.</i>
Healthcare				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Emergency healthcare <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>	<i>Y</i>	<i>Mandatory</i>	<i>The Republic of Latvia guarantees emergency medical assistance to any person. Emergency medical assistance is provided by health care institutions (hospitals).</i>	<i>Similar. The conditions for citizens of Latvia and third-country nationals are the same.</i>
Basic medical care <i>If yes, please briefly describe</i>	<i>Y</i>	<i>Depends on situation</i>	<i>All minors receive health care provided by the State. Other foreigners can receive health services at their own expense, or they are paid by the insurer.</i> <i>Assistance is provided by health care institutions (out-patient clinic, hospital).</i>	<i>The rights of minors are similar to the ones of citizens of Latvia. Other migrants have less rights, i.e., the service is available for a fee.</i>
Specialised care <i>If yes, please briefly describe</i>	<i>Y</i>	<i>Depends on situation</i>	<i>All minors receive health care provided by the State. Other foreigners can receive health services at their own expense, or they are paid by the insurer.</i> <i>Assistance is provided by health care institutions (out-patient clinic, hospital).</i>	<i>The rights of minors are similar to the ones of citizens of Latvia. Other migrants have less rights, i.e., the service is available for a fee.</i>
Other healthcare services <i>If yes, please briefly describe</i>	<i>Y</i>	<i>Depends on situation</i>	<i>All minors receive health care provided by the State. Other foreigners can receive health services at their own expense, or they are paid by the insurer.</i> <i>Assistance is provided by health care institutions (out-patient clinic, hospital).</i>	<i>The rights of minors are similar to the ones of citizens of Latvia. Other migrants have less rights, i.e., the service is available for a fee.</i>
Social assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>

<p>Are long-term irregularly staying migrants entitled to receive social benefits?⁴⁵</p> <p><i>If yes, please briefly describe what these benefits are</i></p>	<p>N</p>		<p><i>Legislation:</i></p> <p><i>Illegal migrants are not subject to the Council of Europe directive 2003/109/EC on the status of third-country nationals who are permanent residents of a member state and to the Law on Social Services and Social Assistance of the Republic of Latvia.</i></p> <p><i>Practice:</i></p> <p><i>Illegal migrants have no possibility to declare the address of residence. Since social benefits are provided by the municipality to those living in its territory, the municipality cannot provide social benefits to persons residing illegally in the Republic of Latvia.</i></p>	<p><i>There are less rights.</i></p>
<p>Employment</p>				<p>Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/></p>
<p>Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market?</p> <p><i>If yes, please describe any specific conditions attached to their employment.</i></p>	<p>N</p>		<p><i>In the Republic of Latvia, only third-country nationals who reside legally in the country have the right to employment.</i></p>	<p><i>There are no rights.</i></p>
<p>Education</p>				<p>Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/></p>
<p>Do (long-term irregular migrant) children have access to compulsory education?</p> <p><i>If yes, please briefly describe access.</i></p>	<p>Y</p>	<p><i>Mandatory</i></p>	<p><i>Minor third-country nationals have the right to obtain primary education during the period laid down for voluntary departure or during the period for which the removal has been suspended, as well as during their detention.</i></p> <p><i>The exercising of such rights is provided by educational institutions in the relevant territory.</i></p>	<p><i>Similar to the ones of citizens of the Republic of Latvia.</i></p>
<p>Are adult long-term irregularly staying migrants entitled to participate in</p>	<p>N</p>		<p><i>If a citizen of a third country residing illegally in the Republic of Latvia has not been detained, that person has the right to visit educational</i></p>	<p><i>There is no right to receive services at expense of the State.</i></p>

⁴⁵ 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.

educational programmes and/or professional training? <i>If yes, what types of education and under which conditions?</i>			<i>institutions and participate in other full-fee educational programs by private means.</i>	
Legal aid or assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Do long-term irregular migrants have access to legal aid or assistance type of services? <i>If yes, please briefly enumerate and explain</i>	Y	Mandatory	<p><i>A third-country national who appeals a return decision to the court is entitled to legal aid provided by the State (free of charge) in the following cases:</i></p> <p><i>1) if he or she is detained and accommodated in the accommodation centre of detained foreigners,</i></p> <p><i>2) if he or she is not detained and has insufficient funds to pay for the provision of legal assistance.</i></p> <p><i>In case of granting legal aid provided by the State, it is ensured by a lawyer appointed by the Legal Aid Administration.</i></p> <p><i>In all cases other than those referred to above, a third-country national shall be entitled to legal aid at his or her own expense.</i></p>	<i>More than Latvian citizens and third-country nationals who are legally residing in the country.</i>
Other?				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Are any other rights relevant to mention here? Please describe	N			

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

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

Type of stay or status as identified in Q2 and/or Q3: [_____]

Type of service	Service provided? (Y/N)	Is the provision of service mandatory or discretionary ? ⁴⁶	Brief description Please consider for each type of services the long-term irregular migrants are entitled or have access to: i. Does this access stem from national law or practice? Does it stem from local (regional, municipal) rules or practice? ii. Which authorities are competent to provide access to services? Please indicate if access is provided by other entities (NGO, charities, private entities, etc) as service providers on behalf of the national or local authorities?	Please briefly assess and explain if the rights and access to services are more limited, same or more favourable than those of legal migrants or of nationals?
Accommodation				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Accommodation <i>If yes, please briefly describe</i>				
Special accommodation facilities (i.e. shelter for victims of violence, children etc.) <i>If yes, please briefly describe</i>				
Other forms of accommodation or shelter or specialised centre				
Healthcare				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Emergency healthcare <i>If yes please describe, as this notion can be understood in a large or restrictive way</i>				
Basic medical care <i>If yes, please briefly describe</i>				

⁴⁶ For example, in some cases a service can be accessed but the costs must be met by the individual rather than the State/national authorities.

Specialised care <i>If yes, please briefly describe</i>				
Other healthcare services <i>If yes, please briefly describe</i>				
Social assistance				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Are long-term irregularly staying migrants entitled to receive social benefits?⁴⁷ <i>If yes, please briefly describe what these benefits are</i>				
Employment				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Are there circumstances in your MS where long-term irregularly staying migrants are entitled to access to the labour market? <i>If yes, please describe any specific conditions attached to their employment.</i>				
Education				Less <input type="checkbox"/> Same <input type="checkbox"/> More <input type="checkbox"/>
Do (long-term irregular migrant) children have access to compulsory education? <i>If yes, please briefly describe access.</i>				
Are adult long-term irregularly staying migrants				

⁴⁷ 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.

entitled to participate in educational programmes and/or professional training?

If yes, what types of education and under which conditions?

Legal aid or assistance

Less | Same | More

Do long-term irregular migrants have access in legal aid or assistance type of services?

If yes, please briefly enumerate and explain

Other?

Less | Same | More

Are any other rights relevant to mention here? Please describe

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

Access to elementary education and emergency medical assistance is also possible if the identity of the person cannot be established/certified (there is no valid travel document, the person has no legal status in the country, or the person is staying illegally). In order to have access to services, in most cases a person only needs to identify himself or herself with a valid identity document. In part of such cases, when it is only necessary to certify the identity to receive the service, persons who are illegally staying in the country may be refused to receive the service, but the grounds are not the fact of the illegal residence itself, but other facts arising from the state of illegal residence in the country, for example, the declared residence in the Republic of Latvia is annulled. Such information can be retrieved from the Integrated Information System that is accessible to all state and regional institutions. There are some services that can be received only if the person stays in the country legally, thus the legal status of the person in the Republic of Latvia is verified.

If a third-country national has a health insurance policy covering the necessary services, only self-identification is required.

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

Yes

No

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

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

Yes

No

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

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

Yes

No

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

Non-governmental organisations may provide legal assistance, accommodation, nutrition and everyday household property. Certain services are provided to specific groups of migrants by NGOs such as “Asylum “Safe Home” (support is provided in cases of human trafficking or human exploitation), “Latvian Red Cross” (support is provided to any person seeking support. Clothing and other household needs may be provided, a person may be provided with a shelter in the “Latvian Red Cross” shelter, access to soup kitchens, etc.), Centre “Martha” (support is provided to women affected by violence and their children).

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?

Institutions and organisations are not obliged (either before or after the provision of the service) to report on the status of the person to the relevant competent authorities.

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**’⁴⁸ 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:

In Latvia, hotlines have been established in various areas. By calling to hotlines, persons, without revealing their identity and legal status, can report criminal offences and violence. Non-governmental organizations can also act as reliable reporting channels that inform about incidents without revealing the legal status of a person.

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)):

In the Republic of Latvia, return and reintegration support for foreigners residing illegally in the country is provided only by the International Organization for Migration, and the International Organization for Migration does not refer to any programs or services targeting only long-term illegal migrants. The main conditions for receiving a support are as follow: illegal residence and the desire

⁴⁸ <https://www.compas.ox.ac.uk/project/safe-reporting-of-crime-for-victims-and-witnesses-with-irregular-migration-status-in-the-usa-and-europe/>

to return. Within the framework of the program, the following support can be provided: accommodation of third-country nationals, provision of food, registration of a travel document, pocket money, purchase of tickets.

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.

The Ministry of the Interior, the Ministry of Welfare, local governments, orphans' courts, childcare institutions, and service providers have agreed on the provision of accommodation as well as on covering the related expenses for two categories of migrants who have not been detained, namely: 1) unaccompanied minors and 2) families with minor children.

Initially, in practice, the issue of accommodation of the above categories of foreigners was solved at the local level. The regional department of the SBG, the local authority and service providers participated in solving the accommodation issue. Consequently, there was organized:

- 1) accommodation of minor illegal migrants in municipal childcare facilities; and
- 2) accommodation of families with minor children in municipal family crisis centres.

According to the regulatory framework of the Republic of Latvia, only the residents of Latvia declared in the relevant municipality are entitled to receive these accommodation services. As a result, when accommodating these categories of foreigners, unforeseen expenses arose for municipalities. At the central level (the Ministry of the Interior, the Ministry of Welfare and the Ministry of Finance), a decision was made to cover the unforeseen expenses of the relevant municipality, which are related to the accommodation of such illegal foreigners.

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**.

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.

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)

The SBG does not carry out continuous monitoring; instead, it solves problems in the regions with the involvement of regional departments of the SBG.

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 regional departments of the SBG inform the central authority of problems that cannot be solved at regional and local level.

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

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

Other measure(s)

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

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.

Each case of a long-term illegal migrant is individual and is dealt with on a case-by-case basis, with the involvement of a number of institutions and organisations at both horizontal and vertical levels of cooperation. Special programs for solving the situation are not being prepared, but best practice is being developed. If deficiencies in regulatory enactments that do not allow finding a solution are detected, amendments to national regulatory enactments are initiated.

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

Yes

No

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

SECTION 2.3: GOOD PRACTICES

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

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

Providing services (housing, health care, other measures)

Please provide a brief explanation:

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

Please provide a brief explanation:

In the exchange of information in the Republic of Latvia, we use national information systems (the Interior Integrated Information System, the Administrative Violation Process Support System, the Single Migration Information System, the National Visa Information System, etc.) and their interconnections, which facilitate and accelerate the exchange of information between State and local authorities.

The Republic of Latvia has a register of expelled foreigners and entry prohibitions, in which information regarding illegal migrants detected in the Republic of Latvia and the direction of their case is available. This information system enables the rapid exchange of information between the authorities concerned.

Inter-institutional meetings shall be organised where necessary.

Exchanging information between Member States?

Please provide a brief explanation:

In accordance with the Return Directive, the Return Handbook for the Member States of the European Union, and the legislation of the Republic of Latvia, the authorities of the Republic of Latvia need to monitor the implementation of return decisions. Until now, the necessary information on the fact of departure of third-country nationals who had been illegally staying in the Republic of Latvia and to whom departure orders have been issued, and whose departure from the territory of the European Union was intended in transit through another Member State of the European Union, was requested by the OCMA to the State Border Guard, which further requested it to the competent authorities of other Member States. Replies to requests for information on the departure of the persons described above have so far been provided, information has been received, and cooperation has been effective. At present, certain Member States show no willingness to cooperate in meeting the conditions of the Return Directive, show no interest in providing or do not provide that information, and justify such not providing by the protection of personal data.

The SBG considers that the exchange of information between the EU Member States through the National Coordination Centres of the Member States established under the conditions of Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (EUROSUR) could be considered as an example of the best practice. Currently, the exchange of information between the EU Member States is not possible due to the entry into force of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

At the moment, no other alternative solutions have been found for the exchange of information between the EU Member States on the grounds for the stay of foreigners (legal or illegal), its duration, as well as entry and exit from EU territory.

Other good practices

Please provide a brief explanation:

When dealing with long-term illegal migrants, the OCMA and the SBG are actively involved in obtaining information on the legal status of a person in a third country and on return opportunities. The OCMA and the SBG always provide support for long-term illegal migrants in the direction of the case, as the competent authorities of third countries tend to refuse to provide assistance to the person. The information obtained by OCMA or SBG is the basis for resolving the case.

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?

The options for stopping long-term illegal stay are as follow: return to the country of origin or to other third country where the person has the right to enter, obtaining a residence permit or visa.

First, it should be noted that each case is assessed individually. According to the legislation of the Republic of Latvia, if there are no such circumstances in a person's case due to which a departure would entail significant restrictions on family and private life or violations of human rights, or there are no significant practical obstacles to the departure, then return is prioritized. This is justified by the condition that third-country nationals must submit documents for applying for a residence permit or visa to the representation of the Republic of Latvia abroad (according to the territorial affiliation) and documents for applying for a residence permit or visa can be submitted in Latvia only with the permission of the Head of the OCMA.

SECTION 3.1. MEASURES TO PROMOTE RETURN OR DISCOURAGE ILLEGAL STAY

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

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

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

Due to the fact that the concept of such a long-term illegal migrant is not stipulated in the legislation of the Republic of Latvia, it does not provide for specific conditions concerning the facilitation of the return of long-term illegal migrants and the prevention of illegal stay. For this group of illegal migrants, common regulatory provisions apply.

The rights of such migrants to use the services and basic guarantees provided for in the laws and regulations are not limited; specific programs and cooperation measures for this group of migrants in the Republic of Latvia have not been developed. In the situation of each illegal migrant institutions try to search for the most appropriate solutions.

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

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

The SBG, as the institution implementing the return procedure, considers that the following cooperation measures may be recognised as the best practices that facilitate removal and prevent illegal stay:

- 1) cooperation of the SBG with the illegal migrant himself or herself – the persons directing the foreigner's case often communicate with the foreigner, provide him or her with support in communication with the embassy of his or her citizenship or home country;
- 2) the SBG involves the embassy of the country of citizenship or home country of the foreigner, liaison officers and international organizations (IOM, UNHCR);
- 3) the SBG cooperates with the competent authorities of third countries in the framework of bilateral cooperation agreements.

Through these cooperation instruments, there is an opportunity to obtain information that facilitates the identification of a foreigner, the acquisition of a travel document and the implementation of a quick and effective return.

In the case of persons who, during their long-term stay in Latvia, did not formalize their legal status (ex-citizens of the USSR) are given the opportunity to formalize the legal status (e.g., of a stateless person) in the territory of the Republic of Latvia. OCMA supports obtaining information from the competent authorities of other countries, such as registration of birth, receipt of identity documents and the existence/absence of citizenship

The above measures are considered to be the best practice, because in each case special instruments and channels of information exchange are used, which allow to obtain more detailed information that is able to facilitate the return of a foreigner and to end the illegal stay in the Republic of Latvia.

During the Covid-19 pandemic, the rapid and efficient return of third-country nationals to their countries of citizenship was ensured by the repatriation flights organised with the support of third-country embassies. It was found that during the pandemic, these repatriation flights were also used as a new tool of return by long-term illegal migrants who showed a desire to return to their country of origin to their relatives.

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

Yes

No

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

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

It is possible to provide information on a number of examples of good practice in termination of illegal stay:

1. The OCMA and the embassy of the country of citizenship of the third-country national together created the conditions for a person to legalize the legal status in the Republic of Latvia. The third-country national did not have a valid travel document and the validity of the visa had expired more than a year ago, but at the same time the person was the spouse of a citizen of the Republic of Latvia. The territorial division of the OCMA requested support from the central division of the OCMA. This third-country citizen was given the opportunity, without leaving the Republic of Latvia, to apply to the embassy of the country of his citizenship for a travel document (passport). Also, this person was given a permission to submit documents for applying for a residence permit after obtaining a valid passport without leaving the Republic of Latvia. At the same time, the person was informed that if he does not wish to obtain a residence permit in the Republic of Latvia and wants to return voluntarily to his country of citizenship, the person can receive return and reintegration support provided by the International Organization for Migration. As this third-country national is a person who may be considered to be low-income, the OCMA requested support from the embassy of the third country concerned in order to cooperate and to find an opportunity for the person to draw up a valid travel document. The embassy agreed to provide support and make a travel document (passport) for the person free of charge. The person has applied to the embassy of the country concerned and submitted documents for obtaining a new travel document. The final solution of the case has not yet been reached and ways are being searched to facilitate the exit of a person after receiving a valid travel document or to encourage a person to legalize his status in the Republic of Latvia by obtaining a residence permit. Since the person is staying illegally in the Republic of Latvia, it is not possible for the person to receive social payments from the state of citizenship. The aim is to involve the foreign embassy in the solution of the case in order to ensure the return of the person to his country of citizenship or legalization of the legal status in the Republic of Latvia.
2. A person without identity documents got to a psychiatric hospital and could not name the data by himself/herself. The competent authorities of the Republic of Latvia (SBG, OCMA, Ombudsman) exchanged information about the person at the central, regional and local level and took measures that facilitated the registration of documents and legal status of the person.
3. A person could not be removed for several years, since she did not have an identity document and a document confirming citizenship. From the country of citizenship of the person it was not possible to obtain information about the place of residence and registration of the person in the country of citizenship, as well as her citizenship, because according to the information provided by the competent authority of the country of citizenship, the person's house no longer exists and the archive data on the person's registration of residence have burned down. As a result, the removal of the person was facilitated by the assistance provided in the return case by the official representative of the competent authority of the third country working at the embassy in the

Republic of Latvia (the Official Representative of the Russian Embassy on Migration Issues). The officials managed to identify the person, clarify the nationality and return successfully to the country of citizenship.

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 is no possibility of formalization of the legal status, which would be available only to third-country nationals whose illegal residence in Latvia has been prolonged. The possibility of legalizing the person's legal status in Latvia is available to every migrant if the requirements specified in regulatory enactments are fulfilled.

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).

Third-country nationals for whom permanent residence permits have been revoked because documents for the registration of a permanent residence permit have not been submitted in time and whose illegal residence in the Republic of Latvia has been prolonged may ask the OCMA to restore the procedural time limit for submission of documents for registration of a permanent residence permit, indicating the reason for non-registration and justifying it with the relevant documents. This allows the person to renew the procedure for registering a permanent residence permit and stay in the Republic of Latvia with a permanent residence permit and not a temporary residence permit (differences in the frequency of registration and the price of the service) and avoid the return procedure.

The opportunity to meet with the Head of the OCMA in person to give a full outline of the situation and to seek the best solution to the case.

Possibility to obtain permission from the Head of the OCMA to submit documents for visa or residence permit without leaving the Republic of Latvia. This enables initiating the procedure for obtaining a residence permit or visa without the return procedure.

The possibility of receiving OCMA support for requesting the necessary information from third country compliant authorities.

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

Yes

No

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

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

The OCMA, the Ministry of the Interior, the Ombudsman, the municipal orphans court, the municipal social service, and the Probation Service were looking for the most appropriate solution in the case of illegal residence of a third-country national in Latvia, so as not to violate the person's right to family life when implementing the national immigration policy.

In respect of the spouse of a citizen of the Republic of Latvia who has minor children in the Republic of Latvia and who had stayed in the Republic of Latvia with a temporary residence permit that was revoked after his release from prison, a decision was made on the forced removal of the person and the establishment of a ban on entry into the Republic of Latvia and the Schengen territory for 3 years. By the decision of the orphans' court, the rights of custody of the person over the children were terminated and the children were placed in foster care. The person appealed to the orphans' court of the municipality concerned to restore the rights of custody over the children and challenged the decision on forced removal issued by the OCMA. The orphans' court had to decide on the restoration or non-restoration of custody rights within a year, but in order for the orphans' court to take a decision favourable to the person in the case, the person had to conclude a cooperation agreement with the municipal social service and cooperate with other municipal authorities (probation service, social service), be able to financially provide both himself and children, restore the psychosocial connection with children etc. The OCMA, in order to respect the person's right to family life, extended the period of examination of the case since the case required a long-term establishing of facts. The OCMA extended the decision for a year, or until the final decision in the case on the restoration or non-restoration of the right of custody is taken by the orphans' court. The OCMA repeatedly sent requests for information and contacted the authorities concerned by telephone to receive information on the progress of the case, on the performance of the person's co-operation duties, on the person's cooperation with the social service, on the results of his psychosocial work and on the person's progress in restoring emotional connection with children. Since a decision on forced removal was made in relation to the person, the person was deprived of the travel document and also did not have the right to be employed. The person did not have any other financial sources and therefore it was not possible to meet the conditions laid down in the cooperation agreement concluded with the social service, since one of the basic conditions for restoring custody rights over children is to be able to take care of themselves and children financially. As this was the main condition of the cooperation agreement which the person was unable to fulfil, the OCMA applied to the orphans' court to find out whether it was possible for the orphans' court to derogate from that requirement in its decision. Similarly, the orphans court and the social service appealed to the OCMA, stating that a person needs to work to fulfil the conditions of the contract. The person, in order to implement his interests and

rights, addressed the Head of the OCMA and the Ombudsman's Office with an application. A meeting was held between the representatives of the Ministry of the Interior, the OCMA and the Ombudsman's Office and a joint solution was found, which provided that a person would be given the opportunity, without leaving the Republic of Latvia, to obtain a visa on the basis of employment with a certain employer. A regulatory enactment of the Republic of Latvia⁴⁹ provides that the salary of a foreigner who is to be employed in the Republic of Latvia should be at least the average monthly gross wage of employees working in the Republic of Latvia in the previous year, if the foreigner receives a visa and the right to employment. Since the COVID-19 pandemic and the labour market crisis began, a person could not find a job suitable for the above conditions. The person repeatedly appealed to the OCMA and the Ombudsman's Office, stating that he could not find a job that would meet the conditions set above, and asked to find a solution to the person's case by allowing him to be employed for a lower wage. A repeated meeting was held between the Ministry of the Interior and the OCMA and it was decided to give the person the opportunity to obtain a visa as a foreigner employed in seasonal work. In addition, in order not to infringe the person's right to family life, the parties agreed that if the person does not receive a visa before the final deadline for the adoption of the OCMA decision (one year from the date of extension of the decision), the execution of the decision on forced removal will be suspended until the orphans' court takes the final decision on the restoration or non-restoration of custody rights. Since there was an obvious demand for workers in seasonal jobs in the labour market, the OCMA officer collected all relevant seasonal job vacancies found and sent them to the person. The person found the employer, drew up all the necessary documents, and the person was issued a visa. The orphans' court decided on the restoration of custody rights over children. The person was issued a residence permit according to humanitarian conditions.

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

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

No

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:

⁴⁹ Regulation No 225 “[Regulations regarding the amount of financial means necessary for a foreigner and the determination of the existence of financial means](#)” adopted by the Cabinet of Ministers on 25 April 2017 – official gazette “Latvijas Vēstnesis”, No 97, 18.05.2017 – [entered into force on 19.05.2017]

For long-term illegal migrants, only emergency medical assistance is available free of charge. Left without shelter/ living space, these persons do not have the right to be accommodated in social housing, there are problems in obtaining the necessary services in nursing homes and health care institutions.

There is no access to secondary education and higher education.

It is impossible to open a bank account, which means that it is impossible to receive a pension, other social benefits and revenues from the authorities of the country of the person's citizenship.

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

Please provide a brief explanation:

Challenges exchanging information between Member States?

Please provide a brief explanation:

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

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

For long-term illegal migrants, it is difficult to receive medical services related to COVID-19 (COVID-19 tests, treatment).

When applying for the COVID-19 test, everyone is required to provide personal data. To carry out the COVID-19 test, a person must identify himself or herself by presenting a valid identity/travel document. Information about persons who have a COVID-19 positive test is transferred to the State Police, which provides monitoring of the person's self-isolation.

In view of the foregoing, there is a possibility that illegal migrants, knowing that they will be required to indicate personal data / present an identity document before carrying out the COVID-19 test and that in case of a positive COVID-19 test, self-isolation monitoring of the sick person will be carried out by the State Police officials, do not apply for the COVID-19 test even if the person has COVID-19 symptoms. Consequently, illegal migrants (not just long-term illegal migrants) can be considered a risk group for the spread of COVID-19.

Apart from those illegal migrants whose illegal residence has been established by the SBG and who have undergone the COVID-19 test before being placed in the accommodation centre of detained foreigners, there are no known cases where persons residing illegally in the Republic of Latvia have undergone the COVID-19 test.

For those illegal migrants who are placed in the accommodation centre of detained foreigners, COVID-19 tests are conducted at expense of the State. Consequently, there is a situation in which long-term illegal migrants who cooperate with the SBG officials and to whom an alternative mean of detention has been applied are at a disadvantage as regards the availability of COVID-19 tests compared to the ones who do not cooperate or regarding of whom there is a reason to believe that there is a possibility of escape and who, for these reasons, are placed in an accommodation centre of detained foreigners.

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

During the Covid-19 pandemic, problems with facilitating return and preventing illegal stays were mainly related to the closure of external borders and the termination of air traffic. During the spread of the COVID-19 virus, some long-term illegal migrants show a willingness to voluntarily leave because they have lost their source of income.

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

Ensuring that persons whose illegal residence is prolonged can obtain a travel document. Since COVID-19 caused temporary changes in the work of embassies in third countries (currently the embassies work in normal mode), this was a potential obstacle to the preparation and receipt of a new travel document. Unplanned restrictions on movement within the EU are possible.

Providing services and procedures for legalising the stay of third-country nationals in the Republic of Latvia. Due to COVID-19, changes in and restrictions to the work of institutions and the availability of certain procedures were made – the possibility of issuing a call/invitation only electronically, submitting documents confirmed by a secure electronic signature or through the portal www.latvija.lv (restrictions on the receipt of the service, if the person does not have an internet bank or if the person has no possibility to sign documents with a secure electronic signature).

Providing an opportunity to hear out the views of the parties concerned in person. The Head of the OCMA has terminated seeing visitors in person for an indefinite period of time.

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).

To establish travel corridors so that illegal migrants staying in a Member State of the European Union without a valid travel document can apply to the embassy of the country of their citizenship located in another Member State for the drawing up of the travel document. At present, such “corridors” are special travel exclusions, which, as far as possible, are created and implemented by the responsible authorities of the Member States of the European Union in mutual cooperation. However, not all Member States, when a special exceptional case arises and the need for a third-country national to apply to the embassy of their country of citizenship in the territory of another Member State, refer to the implementation of such “corridors”. The fact that such a proposal is an improvement of migration policy at European level is based on the assessment of experts in the field of return of Latvia and third-country nationals who have problems with the receipt of travel documents.

To ensure successful exchange of information between the Member States of the European Union on illegal migrants continues.

The SBG considers that at the EU level it is necessary to establish a procedure for third-country nationals to travel from one EU Member State (country A) to another EU Member State (country B) in transit through the territory of other EU Member States (country C) with a view to visiting the embassy of their country of citizenship, to draw up a travel document or to participate in identification activities. Such procedure could be provided for under the condition that the Member State of departure (country A) will oblige taking back this third-country national in the event of undue delay in the host Member State (country B) or in the EU Member State of transit (country C). In addition, the SBG considers it necessary to develop closer cooperation with the embassies of third countries with a view to continuing the use of repatriation flights for the departure of third-country nationals from the EU territory.

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

By providing answers to the questions of this study, it is concluded that the problem with long-term illegal migrants in Latvia is not acute, since the number of such migrants is very small. This situation is due to the fact that Latvia is not a target country for illegal migrants, but a transit country.

The Ministry of Health of the Republic of Latvia does not support the possibility of expanding the range of persons who are entitled to receive health care services at the expense of the State.

For long-term illegal migrants, minimum guarantees are provided in accordance with the national regulatory framework.

Recently, the SBG has faced such a problematic situation that the EU Member States refuse to exchange information on the grounds for the stay of foreigners (legal or illegal), its duration, entry or exit from the EU territory, including when executing return decisions. The competent authorities of the EU Member States justify their refusal by restrictions on the provision of information to the authorities of another EU Member State in connection with the entry into force of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC. This makes it difficult to ascertain the circumstances of the case and the implementation of the return procedure, as well as the fulfilment of the conditions of the Return Directive (e.g. affecting the obligation of the EU Member States to monitor the implementation of return decisions).