



IRREGULAR MIGRATION IN NORTHERN EUROPE: Overview and Comparison

Clandestino Project Conference

London, 27/3/2009

Franck Düvell, Centre on Migration, Policy and Society, Oxford



© Franck Düvell 2009

Kontakt:

Dr Franck Düvell

Senior Researcher

Centre on Migration, Policy and Society

University of Oxford

58 Banbury Road

Oxford OX 2 6QS

UK

T: +44 (0)1865 284980

F: +44 (0)1865 274718

E: franck.duvell@compas.ox.ac.uk

IRREGULAR MIGRATION IN NORTHERN EUROPE: Overview and Comparison¹

Key note

The Clandestino project is subtitled 'Counting the Uncountable. Data and Trends across Europe'. It concentrates on 12 EU member states in the North, UK, France, Netherlands, Germany and Austria, the East, Poland, Czech Republic and Slovakia and South, Greece, Italy and Spain and on three neighbouring non-EU countries, Ukraine, Turkey and Morocco which are known for irregular transit migration.

When the research consortium began with Clandestino it studied irregular migration under conditions of prosperity but meanwhile, the economic and political circumstances under which migration takes place have changed dramatically. Before the crisis conditions were characterised by a constant demand for migrant labour of any specification which was matched by a steady inflow of regular and irregular labour. In most countries, except maybe Sweden and Norway, irregular immigrant workers could easily find jobs and were without much difficulty integrated into the economy. It is too early to say how this is going to be affected by the crises; however, various scenarios can be envisaged both driven by different developments in the receiving and the sending countries:

- Indigenous people who are made redundant might consider types of jobs that they would have refused previously, or in case they are on benefits they might still seek some extra income by working off the books. Hence they begin to compete with regular and irregular migrants, who are eventually crowded out, as already observed in Spanish agriculture.

- Irregular migrants who lose their jobs do not normally have other means of subsistence and can only rely on their social networks, but if whole communities are affected these will be unable to support the unemployed. Hence it becomes likely that they return home. This is argued in the US where the number of irregular immigrants is decreasing.

- *Conclusion 1: For these reasons, jobs for immigrants as for everybody else seem to become scarce in the receiving countries and as a consequence economic including irregular migration might diminish and the level of immigrants decrease.*

¹ This paper is based on the country reports of the five countries covered in this conference plus some additional information given from the discussants and the subsequent workshops. Because the conference was held in London this presentation occasionally puts disproportionate focus on the UK situation.

- On the other hand, regular immigrant workers from non-EU countries normally request a visa or a combined permission to work/permission to stay. In case they are made redundant they will as a consequence often lose their immigration status, thus they are expected to leave the country. If they do not leave they will slip into irregularity and the level of irregular immigrants would increase. This is already observed in Ireland.

- A further aspect is that recent World Bank report suggests that many of those countries, from which regular and irregular immigrants originate, are affected even worse than the destination countries. When livelihoods become even scarcer in the poorer countries, competition over these could increase and indeed become nasty. This could culminate in tensions and conflicts that lead to an increase in the flow of forced migrants and refugees. Since many countries have restricted access to their territory such people would almost inevitably enter and perhaps stay irregularly. Thus, the flow of irregular immigration could increase.

- The situation analysed in the World Bank report also has consequences for irregular immigrants in the host countries. It seems plausible to assume that immigrants considering their situation might come to the conclusion that return is no option either; thus, they have nowhere to go, and basically got stuck. This could have two consequences: (a) the numbers would not fall but remain stable and (b) those who stay could become destitute.

- Another scenario is that due to job losses of indigenous people in the immigration countries their household income is likely to decrease. This could result in an increase of demand for cheap labour, for instance for low cost property maintenance or care; thus, the shadow economy could increase and this could result in even more opportunities for irregular immigrant workers.

- Finally, various governments respond to the recession by suggesting certain protectionist measures including return of migrants, such as Italy, the UK, Spain and Czech Republic. But if legal migration channels are reduced it seems likely that more would-be migrants turn to irregular strategies.

- Conclusion 2: For these reasons, and because the situation becomes more desperate in sending countries more people aim to and will leave their home countries. Thus, irregular immigration could increase and more people could find themselves in an irregular position.

Thus, there are mixed trends and at this point, is it impossible to forecast how these will sum up, which trend will finally dominate and whether the future irregular net migration balance will be positive or negative. All this admittedly is speculative.

Next, this paper will instead turn to what is known and in brief report from the Clandestino project and from the reports that were received from the national experts.

Four aspects of irregular migration were studied and these will be analysed one by one:

- (1) the size of the irregular immigrant population,
- (2) paths into and out of irregularity,
- (3) public discourses,
- (4) and policy implications.

There are many aspects to irregular migration but these were not covered in the research of this project.

(1) Size:

First, the project assessed the quality of existing estimates, these are basically all figures found in the media, policy reports and scientific publications. Across the Northern EU countries the available data and its quality is rather diverse. There are comparably useful methods resulting in what we assess as medium quality data in the UK, France and in the Netherlands, and that is amongst the best levels of quality we found in the EU. In contrast, the national experts found that estimates in Germany and Austria are based on no, undisclosed or unsuitable methods and that quality of data is poor. This does not mean that the calculations made in the UK are more accurate than the guesstimates made in Germany. Comparably good methods can still produce wrong results, for instance when the data sets used are problematic, and simple guesstimates may happen to hit the point.

Further to this there are problems with all existing data sets and estimates: A common problem is questionable definitions of the phenomenon to be measured. In Germany and Austria, legally residing citizens from other EU countries who are engaged in undeclared employment are sometimes included in the 'irregular immigrants' category. In the UK, some estimates include failed asylum seekers even though they might be non-removable and still on the system; whilst in Germany they would often have a toleration status and be excluded from the estimates. Another problem is that for various reasons, irregular immigrants are sometimes double counted (UK, Germany). In some countries exit is counted too. And in France, figures by the various autonomous state agencies differ widely.

From the data the researchers found useful the conclusion it that the level of irregular migration in the EU seems to be lower than commonly assumed, and not between 4.5-8 million but in the range is 2.8 to 6 million. This does not imply that the centre estimate is the most likely level; instead, this could be around 5 million, or even higher. There are three reasons for this lower level: (a) flows have decreased, notably irregular transit migration from countries further afield through the non-EU neighbouring countries, as through Morocco, Turkey and Ukraine, the countries studied. (b) Another reason is that various countries that were previously sending large numbers of irregular immigrants, Poland, Lithuania and Romania became member states and movements of the citizens of these countries are no longer irregular. (c) This trend is further strengthened by the effect of regularisation programmes in several countries. Finally, when comparing situation in the EU with the US it is found that the proportion of irregular immigrants of the total population in the EU is around 1 % whereas in the US the proportion is 3.8 %. Thus, the EU is comparably less affected by irregular migration and the message for the EU as a whole and for the UK in particular could be 'Don't panic!'

In detail, in France there are 2-400,000 irregular immigrants, that is 0.3-0.6 % of the population and 4-8 % of the immigrant population, In Germany there are 500,000 to 1 million irregular immigrants, 0.6-1.2 % of the population and 7-15 % of the immigrant population. And in the UK, there are between 400,000-725,000 irregular immigrants, 0.6-1.2 percent of the population and 8-11 % of the foreign born population.

Table 1: Size and proportion of irregular immigrants in Northern Europe, 2005

	Population	Immigrants (foreign born)	% of pop	Irregular Immigrants	% of immigrants	% of pop.	Regularized
Austria	8,200,000	789,000	9.6	62-88,000	8-11	0.76-1.08	
France	63,000,000	5,000,000	8.1	2-400,000	4-8	0.32-0.64	269,000
Germany	82,000,000	6,700,000	8.2	5-1,000,000	7.5-15	0.61-1.22	n/k
Netherlands	16,400,000	1.732.000	10.6	60-150,000	3.5-8.7	0.37-0.92	29,300
UK (2001/9)	60,000,000	4.9-6.500,000	8.3-10.8	4-725,000	8.1-11.1	0.6-1.21	n/k
EU-25	461,000,000	40,000.000	8.7	2.8-6,000,000	7-15	0.61-1.3	4,000,000

A couple of features shall be highlighted in this paper.

In **Germany**, from around 2006, it is noted that irregular immigration has decreased considerably from its peak in 1998 and stabilized on a rather modest level with a size of ½ to 1 million irregular immigrants. A third of the apprehended migrants are women and 20 % are above the age of 40. This

figure would be much higher if rejected asylum seekers would not be tolerated, which amounts to another 200,000 individuals. One study suggests that only a quarter of all irregular immigrant workers lack 'leave to remain' whilst three quarters have permission to stay but not to work. Most irregular immigrant workers work in private households and only a quarter in businesses.

Evidence from **Austria** too suggests that the stock of persons without any or without valid residence titles has considerably declined over the past several years. This is a consequence of a drop of irregular entries due to EU-enlargement and of asylum related migration from non-EU countries. Simultaneously, the number of persons who are 'legally' staying but who are in irregular employment has possibly increased (at least temporarily).

In **France**, figures are comparably low; this must be understood in light of 270,000 regularizations which effectively reduced the overall irregular immigrant population considerably. Furthermore, the report highlights that the proportion of unaccompanied minors is increasing and that in 2006 10-20,000 of the irregular immigrants were children, this is 2.5-10% of the entire group.

In the **Netherlands**, 80% of the total irregular immigrants are workers, 85% are male and 20 % are above age 40.

Table 2: Composition, main nationalities

	Main countries/regions of origin		
Austria (apprehension)	Russia/Ukraine	Serbia	Moldova
France	Maghreb	Iran/Iraq	Pakistan
Germany (suspects)	Turkey	Russia/Ukraine	Serbia
Netherlands	Turkey	Morocco	China
UK (detention)	Indian Subcontinent	Nigeria/Ghana	Jamaica

From this comparison it can be concluded that (1) the UK's irregular immigrant population is around the EU average, and (2) that a smaller proportion of the UK's immigrants is irregular than in EU average.

(2) Paths:

The second theme of the project is to study how migrants become irregular and how they can (re-) regularise their position.

In **Germany**, the team leader argues that there are immigration law related and labour market law related paths into irregularity. Until 2004, visa-free entry followed by unauthorized stay and undeclared employment was probably the most important path into irregularity. Whilst 'unauthorised entry' has increased disproportionately its absolute level has considerably decreased by around 40 %, equally smuggling is down by 2/3 and even use of falsified documents seems to decrease. It is not known how many refused asylum seekers abscond though numbers seem 'not that high'. Instead, the large majority either appeals or receives subsidiary status whilst those who cannot be removed, are formally tolerated, receive according documents and remain in the system. Meanwhile, marriages of convenience could be the only category that has increased.

In the **UK** too the majority of irregular migrants actually enters the country overtly and legally, or at least seemingly legally, and subsequently moves into irregular status. The most common forms of irregularity are 'overstaying' the expiry date of visa or 'leave to enter', working without permission, or working longer hours/in jobs other than permitted. An interesting pattern mentioned in one of the workshops is that regular migrants, notably students, who are working are paid low wages, even below the statutory minimum wage. Because of this they are compelled to work more than the 20 hours permitted. According to the law this would qualify them as irregular immigrants, thus they are driven into irregularity. The extent to which irregular immigrants receive assistance and whether this can be qualified as smuggling is disputed. Finally, only a small minority, however, enters clandestinely.

In legal or judicial terms all this is denoted as 'illegal entry'; accordingly, 'illegal entrants' are persons who: 1) unlawfully enter or seek to enter in breach of the immigration laws or of a (previous) deportation order or 2) enter or seek to enter by means which include deception. The latter is particular vague, as it covers clandestine border crossing as well as overt entry for purposes other than declared. Illegal entry is also assumed in case conditions of 'leave to enter' are violated, such as purpose of stay, length of stay, employment restrictions, or access to benefits. A special group is rejected asylum seekers who discontinue to register at the given reporting centre and who are assumed to be still residing in the UK (so-called 'absconded asylum seekers'). Many of those, in case of being apprehended could nevertheless not be deported but put on the system again, in no-choice accommodation and receive section 4 benefits by NASS (National Asylum Support Service). This is kind of a tolerated or waiting-for-removal status.

In essence, any movement or action that is not explicitly allowed within the terms and conditions of a respective immigration status is denoted as 'illegal'. The complex, rigid and sometimes inflexible immigration legislation provides for numerous pitfalls. The expression 'illegal entrant' gradually

became a legal 'umbrella-category' which embraces very different types of irregularities. But because it covers those who *enter* in breach, those who *stay* in breach or those who work in breach of the immigration regulations and conditions it is misleading. It is also misleading because the majority enters legally and subsequently moves into an irregular status.

The **French** report implies that because it is made difficult for asylum seekers to arrive legally and for migrants to reunite with their families, therefore irregular immigration and stay is the consequence. It was also argued by a lawyer that the law is so complicated and constantly changing that 'it is made almost impossible to comply'. Some immigrants enter clandestinely, mostly through the land borders with Italy or Spain. However, the majority enters on a visa but does not return after the visa expired; for example, 80% of Algerian irregular immigrants fall into this category. A specific category refers to those irregular immigrants, denoted as 'legal illegals', who cannot be removed because they have family but who nevertheless not granted a status. France also records irregular transit migrants who aim to go to the UK. It was also argued in one of the workshops that rigid immigration law deters or prevents migrants from leaving the country and returning home as in case they wish they would not be able to come back to France. Thus, they rather stay on and become irregular. Finally, it is interesting that most irregular immigrants seem to be known to the authorities because they are either registered with the Medical aid system or at some point interrogated by the police. And as in other countries some rejected asylum seekers remain in the system, for instance because they stay in state funded accommodation.

The **Dutch** report also shows that most irregularly residing immigrants have entered legally and that the main source of irregularity in the Netherlands is *overstaying*. The largest group are labour migrants followed by refused asylum seekers. The latter is because recognition rates are low, a toleration status not available and removal only partially enforced by the authorities. In the workshop another patterns was mentioned referring to immigrants who lose their status because they fail to extend their permit, miss deadlines, documents get lost in the mail et cetera. In particular the case of asylum seekers implies that being tough on immigration and on asylum seekers whilst remaining lax on enforcement creates kind of a de facto toleration and contributes to the emergence of an irregular immigrant population.

The **Austrian** report demonstrates that withdrawal and loss of status but not irregular entry or overstaying are perhaps the most important pathways into irregularity. This highlights the crucial role of state practices and regulations in producing irregularity. One such group are rejected asylum seekers who fail to return. This is followed by non-compliant forms of migration on a circular basis, mostly tourists working in breach.

Table 3: Main paths into irregularity in 2008, according to reports

	Main categories		
Austria	Withdrawal/Loss of status	Working in breach	
France	Overstaying		Irregular entry
Germany	Overstaying/Working in breach	Unauthorised entry	Refused asylum seekers
Netherlands	Overstaying	Refused asylum seekers	Loss of status
UK	Overstaying	Working in breach	Refused asylum seekers

All reports suggest that often status is not as clear-cut as one might expect, and that migrants are not either regular or irregular. Instead, the migrants' statuses are a mix of regular and irregular aspects. This is described and interpreted as semi-compliance (Ruhs and Anderson 2006), semi-legality (Düvell 2006), semi-undocumented, or formal informality (Erdemir and Vasta 2007). For instance, migrants might have residence status but work in the absence of permission to work. This is regularly reported from all countries as major patterns.

From these country studies it can be concluded that in Northern Europe there are four major paths into irregularity, these shall be ordered according to their relevance:

- (1) Regular entry and working in breach or visa overstaying;
- (2) Refused asylum seekers who do not leave or who are de facto non-removable;
- (3) Withdrawal or loss of status for various reasons;
- (4) Clandestine entry .

This is a rough picture which includes considerable overlap, notably between the 'refused asylum seeker' and 'loss of status' category and between the 'clandestine entry' and the asylum seekers categories.

Finally, a large proportion of irregular immigrants seem to be known to the authorities. This raises various questions, such as why they are not removed, or alternatively why they are not put back on the system.

In contrast, there are very few paths out of irregularity. The **UK** granted an amnesty for asylum seeker families; there are also opportunities for concessionary regularisation after a 14-years stay.

Germany granted a temporary and renewable status to a quarter of its tolerated migrants, mostly rejected asylum seekers. **France** regularised irregular immigrants in 1997-1999 and a much smaller number in 2007, irregular workers can apply for regularisation if they work in a shortage profession, some counties are more relaxed and accept any job offer; meanwhile, the 10-year concession was abandoned in 2006. The **Netherlands** only offered a one-off regularisation in 2007. Further to this, a recent change in the law offers the opportunity to reinstate status once it was lost for a period of two years after this occurred. Finally, several thousand failed but vulnerable asylum seekers (women, families) are supported by NGOs who are funded by local governments. This is interpreted as a form of de-facto toleration. Finally, **Austria** grants an odd ‘deportation adjournment’, a kind of non-status, to rejected though non-removable asylum seekers; alternatively, sometimes subsidiary protection is granted, though there also exists a discretionary humanitarian residence status.

Table 4: Main paths out of irregularity

	Main measures		
Austria	Adjourned deportation	Subsidiary protection	Regularisation for EU-8 care workers
France	Regularisation	Shortage profession regularisation	10-years concession (abandoned in 2006)
Germany	Toleration	Backlog clearance	
Netherlands	Regularisation	Reinstating lost status	
UK	Family exercise	14-years concession	

(3) Discourse:

In the Netherlands, there is a general focus on immigration politics, and the same is true in the UK. In Germany and the Netherlands the main discourses seem to be on issues to do with integration, respectively assumed failures and thus on ‘parallel worlds’; in France and the Netherlands this is paired with concerns over religious matters, with Muslim immigration and with perceived fundamentalism. In Austria the public focus is on issues to do with refugees and the asylum system. Neither in Germany or Austria nor in France or Netherlands plays irregular migration a significant role in the public discourse. But when irregular migration becomes a theme, the public debate is framed by two positions, *humanitarian concerns* or *public order issues*, as in Germany, and thus becomes a sensitive issue for public authorities, or it is related to crime, such as fraud, survival crime and human trafficking, as in the Netherlands. Thus, only in the UK irregular migration frequently

becomes a hot issue, high on the agenda and framed as failure of the authorities. This could be explained with a specific insular perspective and related ideas of invaders and ‘clandestine intruders’ to ‘this small and densely populated island’.

Table 5: Main discourses

	Main discourses/frames		
Austria	Refugees/Asylum	Security	
France	Immigration	Muslim extremism	Enforcement
Germany	Integration/parallel worlds	Tax evasion	Public order/humanitarian concerns
Netherlands	Immigration	Integration/Muslims	Enforcement
UK	(Labour) Immigration	Failure of immigration control	

(4) Politics

In this work package the research consortium considered policy responses, implications and recommendations.

In four of the countries studied, recent policy shifts put greater emphasis on more rigid immigration controls, on deterrence and on enforcement.

In the **Netherlands**, immigration policies with regard to irregular migrants were redefined with an emphasis on deterrence, exclusion and removal. This has been tempered lately by the regularisation programme of 2007.

In the **UK**, for the past couple of years an increase of protectionist immigration legislation and a principle shift from a previously relatively liberal approach to a tough enforcement ethos can be observed. On the one hand, the Home Office was reformed and a new UK Border Agency set up, on the other hand internal surveillance was enhanced and ID cards for immigrants introduced. The UK also tightens enforcement by deploying more staff to borders and territory, by drawing more police officers into immigration operations and by increasing the number of enforcement operations, such as work place raids. So far however, almost exclusively ethnic businesses were targeted. Efforts are continued to ‘join-up’ different government agencies and exchange data.

Meanwhile, in **France**, internal immigration status controls are increased, access to public services linked to immigration status and irregular immigrants excluded from these. A combined biometric

visa/database systems was introduced last year. Workplace raids were increased and 30,000 controls conducted in 2007. As a result almost 900 employers and 1,000 irregular immigrant workers were arrested. Further to this deportation quota were raised to 26,000 deportations in 2008.

Only **Germany**, as it seems, did not make recent efforts to improve enforcement. This appears quite surprising as Germany is the country with the highest level, both in absolute in relative terms, of irregular immigrants. One reason, however, could be that Germany (a) still restricts migration from the EU-8 countries and (b) already has one of the best developed intelligence, data gathering, exchange and enforcement politics. For instance, in 2006, 19,000 foreigners were deported or returned; also the level of labour market inspections is high, and in 2006 430,000 individuals were controlled, of these, however, only 2,500 lacked residence permit and another 10,500 lacked permission to work.

Table 6: (Recent) Major policies

	Recent major policies		
Austria	more rigid controls, deterrence and enforcement		
France	more rigid controls, deterrence and enforcement	biometrics/central data base	deportation
Germany	central data base/data exchange	workplace raids	deportation
Netherlands	more rigid controls, deterrence and enforcement		deportation
UK	more rigid controls, deterrence and enforcement	workplace raids	deportation

However, implementation is a very different matter as found in all reports. For example, in France, the discrepancy between deportation orders and enforcements is high. Hence, in 2004, out of 64,221 pronounced orders, only 12,729 were effectively executed and more than 50,000 people remained on the French territory irregularly. This is about the annual average. The same seems to be true for the Netherlands and the UK and the Netherlands were removal is only partially enforced. These examples demonstrate that irregular immigrants are not generally deportable; in fact often they are not!

Subsequently, voluntary return is sometimes talked about though is not usually applied to irregular immigrants.

Conclusion

Finally, the suggestions made by the authors of the country studies will be briefly listed. These fall into four categories: (1) a more nuanced debate, (2) access to social services, (3) measures to reverse irregularisation and (4) prevention of irregularisation.

- More careful, accurate and sensitive discussion of the issue (UK);
- Do not exploit migration control debates as an ideological battlefield but search for pragmatic solutions that could be more favourable to migrants and the receiving society (G),
- Clarifying legal categories and provide comprehensive and differentiated data (UK);

- Address death and injury of migrants and refugees both at and within the borders (F):
- Open certain public services for irregular immigrants (G);

- Find a solution for those who are not deported, not regularised nor leave the country (NL);
- Avoid in-activity and long-term de facto toleration; instead consider regularisation (A);

- Introduce more legal migration channels (G, UK);
- Flexible immigration regulations (UK);
- Avoid legal insecurity and putting persons at risk of falling into irregularity (A);
- Consider legal access for asylum seekers (all);
- Avoid restricting family reunification (F).

References:

- Cyrus, Norbert, 2008, Country report – Germany, http://clandestino.eliamep.gr/wp-content/uploads/2009/02/clandestino_report_germany_final_1.pdf.
- Düvell, Franck (ed.), 2006, *Illegal immigration in Europe: Beyond control?* Houndmills: Palgrave/MacMillan.
- Erdemir, Aydin, Vasta, Ellie, 2007, Differentiating irregularity and solidarity: Turkish Immigrants at work in London. Working paper 07-42, London: COMPAS, <http://www.compas.ox.ac.uk/publications/Working%20papers/wp-07-42.shtml>
- Henry Courau, 2008, Country report – France, see http://clandestino.eliamep.gr/wp-content/uploads/2009/02/clandestino_report_france_final_1.pdf.
- Kraler, Albert, Reichel, David and Hollomey, Christina, 2008, Country report – Austria, <http://clandestino.eliamep.gr/wp-content/uploads/2009/02/austria2.pdf>.
- Leun, Joanne van der and Ilies, Maria, 2008, Country report - The Netherlands, <http://clandestino.eliamep.gr/wp-content/uploads/2009/02/netherlands.pdf>.
- Ruhs, Martin, Anderson, Bridget, 2006, The origins and functions of illegality in migrant labour markets: An analysis of migrants, employers and the state in the UK, Working paper 06-30a, Oxford: COMPAS, http://www.compas.ox.ac.uk/publications/Working%20papers/WP0630_Ruhs_Anderson_a.pdf.
- Vollmer, Bastian, 2008, Country report - United Kingdom, http://clandestino.eliamep.gr/wp-content/uploads/2009/02/clandestino_report_united-kingdom_final_1.pdf.