



INFORMATION LEAFLET

LONG-TERM IRREGULARLY STAYING MIGRANTS: PRACTICES AND CHALLENGES IN EU MEMBER STATES AND NORWAY

- a comparative overview of practices and challenges regarding long-term irregularly staying migrants in the Republic of Croatia and the Member States of the European Union and Norway

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The European Migration Network has published a Synthesis Report of the EMN study on practices and challenges regarding long-term irregularly staying migrants based on the national contributions of the EMN NCPs for the period from 2015 to October 2020.¹ The purpose of the study is to provide an overview of existing policies and practices in the EU Member States and Norway towards third-country nationals in a prolonged situation of irregular stay. The focus of the Study is on third-country nationals subject to a return decision, but whose return was not enforced or was postponed, and those without a return decision who are unknown to the authorities. The study explores the policies and responses of central and local authorities to end those situations and mitigate the social consequences for the third-country nationals affected. Also, access of these groups to mainstream services is explored.

Statistics from this study were sourced from Eurostat, national authorities and other (national) databases.

DISCLAIMER

This Information is produced exclusively by EMN NCP Croatia in order to highlight the most important findings in the Study and to **provide a comparative overview of practices and challenges regarding long-term irregularly staying migrants the Republic of Croatia in connection to the EU Member States and Norway.**

EMN synthesis reports and more information can be found [here](#).

NATIONAL LEGAL AND POLICY FRAMEWORK

Reducing the legal uncertainty by issuing the return decisions in accordance with the Return Directive (2008/115/EC) so that physically present third-country nationals may be considered either enjoying a valid right to stay, or irregularly staying migrants, and thus be issued a return decision. However, Member States and Norway still have to deal with the situations of third-country nationals who either no longer fulfil or have never fulfilled the conditions of stay, were denied a residence permit,

or have exhausted all legal options against the enforcement of their return decision.

While none of the Member States, including the Republic of Croatia, do not distinguish between long-term and short-term irregular migrants in their definitions, Croatia and some of the other Member States however take into consideration the duration of the stay when taking into account individual circumstances.²

¹ AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SI, SK and NO.

² DE, FR, ES, HR, LU, LV and NO.

Some of the Member States do not distinguish between the different circumstances and types of irregular migrants, however in many of the Member States and Norway it is acknowledged that in practice there are many different reasons that may lead to prolonged irregular stay.³ Based on this presumption it is possible to distinguish two main categories of such migrants: (1) irregular migrants that cannot be returned for legal obstacles (such as medical reasons) or practical obstacles (such as lack of travel documents) and (2) irregular migrants who remain unknown to authorities because they were never detected or perhaps absconded during the asylum procedure or after having received a negative decision. Although Croatia reported acknowledging irregular migrants who remain unknown to authorities because they were never detected, those absconded during the asylum procedure or after receiving a negative decision are not taken into account in policy on irregularly staying migrants.

It is also possible to further distinguish subcategories of the two aforementioned main categories identified in terms of what migrants may receive in cases where a return cannot happen for legal or practical reasons. First subcategory would be issuance of a temporary authorisation or permit to stay.⁴

While temporary residence permits can be issued in 16 Member States and Norway, other forms of authorisation are issued in 10 Member States. Seven Member States, including Croatia, specified that temporary residence permits are only granted to irregular migrants who cannot be returned for humanitarian or for practical reasons.⁵

Croatia also falls under the second subcategory that can be distinguished as issuance of certificate or other written confirmation to postpone return or extend the period for voluntary departure, and these solutions are adopted for impediments of foreseeable duration.⁶

Third category would be *de facto* suspension of return without any certification issued until the return can take place.⁷ In some of the Member States this is the most common occurring situation especially due to a lack of cooperation from the third-country nationals, or other exceptional reason.⁸

None of the Member States and Norway have exact numbers of irregularly staying migrants on their territory recorded. In 15 of the Member States same types of legal possibilities are available regardless of whether or not the return could take place due to legal or to practical obstacles, and Croatia is one of those States.⁹

NATIONAL POLICIES AND APPROACHES IN SERVICE PROVISION TO LONG-TERM IRREGULARLY STAYING MIGRANTS

Access to services varies across different categories of irregular migrants, and it was pointed out that the rights and services available for this group stem primarily from international rights standards. Overall, long-term irregularly staying migrants who remain unknown to migration authorities have more limited access to services and rights than those who cannot be returned for either legal or practical reason and who may have been issued with one of several types of authorisation. It should also be emphasized that in practice access to services may be challenging to the long-term irregularly staying migrants given the fear of possible repercussions for migration status.

It is important to mention that long-term situations of illegal stay and uncertainty and deplorable living conditions, heighten the risk of homelessness, health issues, addiction issues, falling victim to organised crime or getting involved in crime which at the end negatively affects migrants, their communities and national governments.

Long-term irregular migrants in Croatia, as well as in other Member States and Norway, have right to emergency healthcare, while the other most common right is compulsory education. Other rights and accesses to services such as accommodation, social protection benefits, employment, additional education, non-emergency health care and legal aid

³ AT, BE, CZ, DE, EE, EL, FI, FR, HR, IE, LT, LU, LV, NL, PL, SE, SI, SK and NO.

⁴ AT, BE, CY, CZ, DE, EE, ES, FI, HR, HU, IT, LT, LU, LV, MT, NL, PL, SE, SI, SK and NO.

⁵ DE (except for minors/young adults), EE, HR, IT, NL, PL, SE.

⁶ BE, BG, DE, EE, HR, LT, LU, LV, NL, PL, SE, SI, SK (the written confirmation to postpone the return is interconnected with the issuance of the authorisation to remain) and NO.

⁷ AT, CY, ES, HU, IE, FI, FR, LU, LT, LV, NL, PT, SE.

⁸ FI, FR, NL, SE.

⁹ AT, BE, BG, CY, DE, EE, EL, ES, FI, FR, HR, LU, LV, MT, SI, SK.

may be available but are dependent on the framework of each Member State, as well as individual situation and the type of the service. For an example compulsory education is granted in all of the Member States and Norway, except Bulgaria, while Malta is the only Member State where irregular migrants have access to employment provided they applied for asylum in the past.

Irregularly staying migrants subject to a return decision that cannot be implemented may receive different types of authorisation of their stay. Fourteen Member States and Norway, including Croatia, allow the same access to rights and services regardless of the type of the authorisation to stay or the reasons for non-return.¹⁰

For long-term irregular migrants the competent authorities providing access to services and rights are national authorities and municipalities, with NGOs collaborating as service providers in some of

the cases. In 20 of the Member States and Norway NGOs provide or facilitate access to autonomous or complementary services for long-term irregular migrants.¹¹ Regional and local authorities in most of the Member States are obliged to report on the migration status of the beneficiaries of their services, including authorities in Croatia.¹²

Several Member States have identified good practices in national policies and approaches to long-term irregularly staying migrants: practices that facilitate dialogue between the authorities and irregular migrants for an example in healthcare, or in the area of education.¹³ Allowing the children of irregular migrants to access public schools and facilitating contact between schools and migrants, is one of the good practices in the area of education which was recognized by Croatia, as well as facilitation of the exchange of information between national, regional and local authorities.

RESPONSES TO END LONG-TERM IRREGULAR STAY

The main policy priority reported was ensuring the return of irregularly staying migrants in almost all of the Member States and Norway, including in Croatia.¹⁴ Voluntary return solution was prioritized over other solutions in several Member States and Norway, as it is considered the most cost-effective and humane approach, and so various incentives such as counselling and return packages are offered.¹⁵ Thirteen Member States and Norway have put policies in place to promote the return of irregular migrants.¹⁶ However, many of the return measures are not tailored to the long-term irregular migrants. Some of the Member States and Norway reported having specific measures to discourage irregular stay or encourage return.¹⁷

The fight against undeclared work is indirectly used to discourage migrants from staying irregularly on their territory. Member States and Norway, including Croatia, reported having their efforts to combat undeclared work by targeting employers employing irregular migrants.¹⁸

Regularisation was not seen as a policy priority, and only few Member States have regularisation policies targeting long term irregular migrants. The most notable types of regularisation are recognized as for humanitarian and medical purposes, or either employment-based or integration achievements recognition, and finally granting of the right of residence.

¹⁰ BE, CY, CZ (with the exception of persons granted visa for a stay of over 90 days as special leave to stay who may be granted work permit and, if working, may access some other social benefits), EE, ES, FI, FR, HR, HU, IE (residents in reception centres only), IT, LV, PL, SE (healthcare is the same regardless of the authorisation, however not accommodation nor financial support) and NO.

¹¹ AT, BE, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PT, SE, SI, SK and NO.

¹² AT, BG, DE, EE, HR, HU, IE (generally not applied in practice), LU, LV, MT, NL, PL, PT, SK.

¹³ BE, DE, FR, LT, MT, NL, SE.

¹⁴ AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, IE, IT, LT, LU, LV, MT, NL, PL, SE, SI, SK and NO.

¹⁵ AT, BE, CY, CZ, DE, EE, ES, IE, LU, LV, NL and NO.

¹⁶ AT, BE, CY, CZ, DE, EE, FR, FI, IE, LV, NL, SE, SI and NO.

¹⁷ BG, DE, EE, IT, LT, LU, NL, SE, SK and NO.

¹⁸ BG, DE, EE, FR, HR, IT, LU, LV, NL, SE and NO.

CHALLENGES AND SUGGESTED ACTIVITIES TO BE UNDERTAKEN AT EU LEVEL

Most Member States and Norway identified challenges in their policies regarding the issues of the long-term irregularly staying migrants. Some of the Member States reported having no challenges mostly due to small numbers of cases, and Croatia is one of those Member States.¹⁹

Reported challenges are related to the provision of services, accommodation, healthcare, social security and welfare, labour market and education. Some of the difficulties identified in these challenges are based on the fact that the group is not well quantified, identified, or understood, the local and national authorities are missing cooperation and information exchange, slow processing in the asylum systems and limitation of incentives to the return of irregular migrants.

A few Member States reported challenges in the exchange of information between Member States.²⁰ Three of the Member States noted that the challenges relate to faster asylum procedures and making voluntary return more attractive for asylum seekers whose applications have been rejected.²¹

Additionally, it is important to note that the main challenges mentioned by the Member States and Norway in promoting and assisting the return of irregular migrants relate to the restrictions on travel caused by the COVID-19, which has significantly slowed or stopped return flights.²²

Several Member States suggested activities at EU level that could help tackle the issue of migrants staying in prolonged irregularity on the EU territory.²³ Many of them focus on the necessary improvements to the effectiveness of return policies and systems, including recommendations of contracting readmission agreements, boosting cooperation between the EU and countries of origin, further harmonising rules and procedures for return, implementation of more joint voluntary return activities, and improvement of information exchange.

¹⁹ CY, CZ, HR, LT.

²⁰ BE, DE, FI, LU, MT, NL, PL, SK.

²¹ BE, DE, FI.

²² AT, BE, DE, EE, FR, HR, LT, LU, LV, MT, N, PL, SE, SK.

²³ AT, BE, EE, CZ, FI, HU, LT, LU, LV, MT, SE, SK.