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Regularisation programmes for irregular migrants

Report
Committee on Migration, Refugees and Population
Rapporteur: Mr John GREENWAY, United Kingdom, European Democrat Group

Summary

At a conservative estimate there are over 5.5 million irregular migrants living within the European Union, with a further 8 million irregular migrants living in Russia.

It is becoming increasingly clear that a large proportion of these persons will remain in Europe and will not return or can not be returned to their countries of origin. It is therefore essential that member states of the Council of Europe examine how they should handle this large number of persons who live in the shadows of European society, largely tolerated but without legal status or the right to remain and often subjected to the worst forms of exploitation. One option which has been adopted by a number of member states is to implement "regularisation programmes" for irregular migrants.

In Spain in 2005 over 570,000 persons were regularised bringing to the forefront many of the arguments for and against regularisation programmes. This report examines some of the criticisms of such programmes, highlighting that they reward law breakers and may create a pull for irregular migration. The report also examines the arguments for regularisation programmes and finds that they can provide a solution for the human rights and human dignity of irregular migrants and that they can provide solutions for Europe's hungry labour market and help tackle the underground economy and promote increases in social security contributions and tax payments.

The report urges member states to examine the option of regularisation programmes and to learn from the experience of past programmes. The report urges member states carrying out such programmes, to adopt a number of accompanying measures. The report also advocates that regularisation programmes should only be considered as one part of an overall strategy for tackling irregular migration.

The report recognises that further research is needed on the impact and experience of past regularisation programmes and calls on the Committee of Ministers of the Council of Europe to carry out further research with a view to establishing guidelines or a recommendation to member states on the organisation of regularisation programmes in Europe.

A. Draft resolution

1. The Parliamentary Assembly is deeply concerned by the large number of irregular migrants in Europe. Some estimates indicate that there may be as many as 5.5 million irregular migrants in the European Union alone and a further 8 million irregular migrants living in Russia.
2. It is becoming ever more clear that a large proportion of these persons will remain in Europe and that it will not be possible to return them forcibly or voluntarily to their countries of origin.
3. The question therefore arises of how to deal with these irregular migrants who are living in Europe, to a large part tolerated but without a legal status or right to remain.
4. A number of member states of the Council of Europe have in the past undertaken so called "regularisation programmes" through which irregular migrants have been able to regularise their situation. In the last 25 years within the European Union, over 20 regularisation programmes have been carried out, providing 4 million irregular migrants with either temporary or permanent residence and work permits.
5. A range of different types of regularisation programmes have been tried. These include exceptional humanitarian programmes, family reunification programmes, permanent or continuous programmes, one-off or one-shot programmes and earned regularisation programmes.
6. Notwithstanding that dealing with irregular migration, including implementing regularisation programmes, is an issue of common concern for Europe, there has been no attempt to share European experiences or adopt a European position or guidelines on the use of such programmes within the Council of Europe or within the European Union.
7. The use of regularisation programmes has proved highly controversial. The critics claim that regularisation programmes reward lawbreakers and create a pull effect for irregular migration. They also claim that many persons who are regularised lapse back into irregularity.
8. Those in favour of regularisation programmes argue that regularisation programmes provide a solution for the human rights and human dignity concerns for those in an irregular situation. They also claim that such programmes reduce the size of the undocumented population, encourage circular migration, decrease the likelihood of exploitation of the persons concerned, reduce the size of the underground economy and have a positive impact on tax revenues and collection of social security contributions.
9. The Assembly while recognising that there are many diverging opinions on regularisation programmes, considers that a distinction can be drawn between the concept of regularisation programmes, which are often targeted towards specific groups of irregular migrants, and general amnesties, which apply to all irregular migrants. In the view of the Assembly, much greater research is needed on the impact of these programmes.
10. The Assembly notes in particular the recent regularisation programme carried out in Spain in 2005 in which over 570 000 persons were regularised, and considers that Europe can learn from this experience. Within Spain the regularisation programme has been welcomed by irregular migrants, by civil society, by employers and trade unions as well as by the majority of politicians.
11. The Assembly considers that the success of this programme can be put down to its response to a number of pressing needs. Employers and trade unions had a need to hire persons legally and escape the risk of criminal prosecutions, irregular migrants had a need to find security and a better level of protection of their human rights, and the Government had a need to tackle the shadow economy, increase social security and tax contributions and promote the rule of law.
12. One of the main failings of the Spanish regularisation programme was, however, the failure of the Spanish authorities to keep its European partners aware of its plans to carry out such a programme. This

lead to misunderstandings as to the nature of the regularisation programme and also created a backlash against regularisation programmes in a number of countries across Europe.

13. The Assembly is aware of the criticism put forward, including in Spain, that regularisation programmes have a pull effect on irregular migration. The Assembly however considers that this pull-factor may be exaggerated. If one takes the example of Spain there are a number of other important contributing factors causing irregular migration. These include Spain's geographical location, its colonial history and linguistic ties, the high level of demand for unskilled labour and its narrow front-door for regular migration. There is a further contributing factor which is the difficulty Spain has in returning irregular migrants and the fact that those irregular migrants who are not returned within 40 days of being held in detention must be released.

14. One important feature of the recent Spanish regularisation programme was that it was employer driven. The Assembly considers that as it met the needs of many irregular migrants and also Spanish society in general, this contributed greatly to its acceptance and its success.

15. The Assembly, drawing from the experience of regularisation programmes carried out in Europe to date, has a number of recommendations to make to member states on the issue of regularisation programmes. The Assembly considers that member states should seek to:

15.1. avoid having large numbers of persons living in an irregular situation in their countries. If it is not possible to return them, member states should consider the option of regularising their situation;

15.2. clarify the number of persons living in an irregular situation and analyse whether these persons are likely to return or be returned to their countries of origin, or remain in member states of the Council of Europe;

15.3. evaluate the situation of persons living in an irregular situation from a humanitarian and human rights perspective and examine the impact that regularisation of their situation might have on these persons, including in terms of integration into society and their potential return to their country of origin;

15.4. review the economic demand for migrants and consider how far this is currently being filled by irregular migrants. Furthermore, analyse the economic contribution made by irregular migrants together with the impact that regularisation of their situation would have on the informal economy, social security contributions and tax receipts.

16. The Assembly also recognises that further research is needed on the outcome of past regularisation programmes, including on issues such as the possible "pull effect" of regularisation programmes, the impact on the informal economy, the contribution to social security and tax contributions and the impact on the lives of persons who have been regularised and whether they have lapsed back into an irregular situation. The Assembly therefore recommends that member states that have carried out such programmes in the past, carry out such studies as a priority.

17. The Assembly considers that a number of accompanying measures should be adopted by member states when implementing regularisation programmes. These include:

17.1. strengthening the administration to be able to deal with the potential number of applicants for regularization;

17.2. ensuring that administrative requirements are kept to a minimum;

17.3. guaranteeing against fraudulent procedures;

17.4. preparing integration programmes for those who are regularized;

17.5. consulting employers and employees and irregular migrants and civil society in preparing and implementing the programmes;

17.6. ensuring publicity for the programmes reaches irregular migrants;

17.7. ensuring that the programmes and their benefits are explained carefully to the media and to the public in general;

17.8. keeping European partners informed of plans for regularisation programmes and their implementation.

18. The Assembly finds particularly attractive employer driven regularisation programmes as a means of meeting the needs of a large number of irregular migrants, employers, trade unions and society in general.

19. The Assembly also finds attractive a process of earned regularisation, whereby irregular migrants earn the right to regularisation through demonstrating their contribution to society through learning the local language and customs, providing evidence of work and payment of social security contributions, taxes and other steps leading towards a process of integration.

20. The Assembly considers that member states should also take steps to reduce the risk and need for recurring regularisation programmes. A number of measures should be adopted before implementing regularisation programmes if states wish to “set the counter to zero” and clear the backlog of irregular migrants. The Assembly therefore urges member states to:

20.1. Provide greater opportunities for regular migration in order to reduce the number of irregular migrants.

20.2. Combat illegal employment and accompanying exploitation, including through reinforcing the labour inspectorate and having in place systems of fines and punishments for those offering illegal employment.

20.3. Strengthening, as appropriate, border and visa controls.

20.4. Provide assistance to countries of origin of irregular migrants to tackle the push factors of irregular migration, whether these be economic or environmental, including through co-development and other measures.

20.5. Combat trafficking that is linked to irregular migration, in line with the Council of Europe Convention on *Action against Trafficking in Human Beings (CETS no. 197)*.

20.6. Protect the victims of trafficking, with a view to avoiding their double suffering as victims of trafficking, and as irregular migrant.

21. The Assembly believes that for those irregular migrants who are unable to be returned to their countries of origin, member states of the Council of Europe must offer some possibility for them to regularise their situation and integrate them into society.

22. For those irregular migrants who are unable to be returned, the Assembly reiterates its concern that they should only be returned voluntarily or in accordance with the 20 guidelines on forced return adopted by the Council of Europe’s Committee of Ministers in May 2005. For those irregular migrants that remain, they should be entitled to at least minimum rights as outlined in Parliamentary Assembly Resolution 1509 on human rights of irregular migrants until such time as they may be able to regularise their situation or are returned.

23. The Assembly encourages the European Commission to further its reflection on the use of regularisation programmes in the European Union, taking into account the recommendations made in this Resolution and in particular the strong human rights and humanitarian concerns relating to the situation and exploitation of irregular migrants in Europe.

24. The Assembly invites the Council of Europe Human Rights Commissioner to encourage member states to implement regularisation programmes as a means of safeguarding the human dignity and human rights of a particularly vulnerable group of persons in member states of the Council of Europe.

25. The Assembly proposes keeping the issue of regularisation programmes in member states of the Council of Europe under review noting the contribution that such programmes can make towards managing irregular migration and protecting the rights of irregular migrants.

B. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution ** (2007) on regularisation programmes for irregular migrants.

2. The Assembly is deeply concerned by the large number of irregular migrants living in Europe and recognises that many of these persons will never return to their countries of origin.

3. The Assembly notes that over the past 25 years in the European Union alone, 4 million persons have had their situation regularised through one programme or another.

4. The Assembly recognises that regularisation programmes offer the possibility for safeguarding the rights of irregular migrants who are often in a particularly vulnerable situation. They also offer the possibility for member states to tackle the underground economy and ensure that social contributions and taxes are paid. The Assembly however also recognises that there are concerns about regularisation programmes, in particular that they may create a pull effect for further irregular migration.

5. The Assembly considers that urgent analysis is required of past experiences in implementing regularisation programmes in Europe and that lessons need to be learned and recommendations made to member states that may be considering carrying out regularisation programmes. The Assembly therefore recommends that the Committee of Ministers instruct the European Committee on Migration (CDMG) to:

5.1. collect and analyse information on the number of irregular migrants living in Council of Europe member states as well as information on the number of irregular migrants entering Council of Europe member states annually;

5.2. collect and analyse information on the effectiveness of return programmes including information on the number of irregular migrants returned by member states of the Council of Europe;

5.3. carry out an analysis of member state's experiences on carrying out regularisation programmes with a view to formulating guidelines or a recommendation of the Committee of Minister to member states on organising regularisation programmes for irregular migrants;

5.4. organise a major hearing on the issue of regularisation programmes involving not only government departments but also representatives of irregular migrants, civil society, trade unions and employer organisations.

C. Explanatory memorandum by Mr John Greenway, Rapporteur

I. Introduction

1. The number of irregular migrants in Europe has, according to certain estimates, reached a figure of 5.5 million person in the European Union with a further figure of 8 million irregular migrants estimated to be living in the Russian Federation.

2. Many states have already taken steps to regularise the situation of large numbers of irregular migrants living in their countries, recognising that many of these persons will never return to their countries of origin. In the past 25 years there have been over 20 regularisation programmes in the European Union alone, affecting some 4 million persons. In 2005, Spain regularised over 570 000 persons bringing a spotlight to bear on the issue of regularisation programmes in Europe and bringing into the open both criticisms and arguments in favour of regularisation programmes.

3. This report is intended to examine some of the arguments in favour and against regularisation programmes, examining the experience of a number of member states of the Council of Europe. The report seeks to draw conclusions from the regularisation programmes carried out in the past and make recommendations to member states that may be considering organising regularisation programmes in the future. The report includes recommendations on accompanying steps that should be taken by states when carrying out regularisation programmes in the future.

4. Your rapporteur in preparing this report has been greatly assisted by Ms Amanda Levinson¹ (United State of America), who not only provided valuable assistance in preparing a hearing on Regularisation programmes for irregular migrants in Paris on 11 December 2006,² but also provided a background paper on which this report is based³.

5. Your Rapporteur had the opportunity to visit Spain on 19 March 2007 and Greece on 10 and 11 May 2007 in order to gain a better understanding of the regularisation programmes carried out in these countries. He also had the opportunity of benefitting from expert analysis during the hearing in Paris and in meetings in Strasbourg with experts from France, Greece, Italy, Russia, Spain, the United States of America as well as an expert from the European Commission. He would like to thank all the persons he met during his visits and during the various hearings and meetings for their input, expertise and advice.

II. Context

6. The past two decades have seen a tremendous upsurge in the number of irregular migrants living in member states of the Council of Europe. Seemingly overnight, many Council of Europe member states have gone from being migrant-sending countries to being top destination countries for immigrants. There are estimated to be 5.5 million irregular migrants currently living and working in EU member states⁴. There are also a substantial number of irregular migrants living in the rest of Europe with one recent estimate for Russia indicating 8 million irregular migrants.

7. The growing trend of irregular migration to Europe in recent years has been driven by a number of factors. Among the most important factors pushing migrants from their countries of origin are extreme poverty, lack of economic opportunities, political instability or violent conflicts, and the desire to reunite with family members living abroad. From the European side, a declining population, the robust

¹ Director of Policy Programmes, Hope Street Group, USA.

² Hearing on regularisation programmes for irregular migrants, Paris 11 December 2007, AS/Mig/Inf (2007) 01.

³ Regularisation programmes for irregular migrants AS/Mig (2007) 05. See also *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies*, Amanda Levinson, Centre on Migration, Policy and Society, University of Oxford, 2005.

⁴ Estimates vary greatly as it is extremely difficult to know how many irregular migrants are living in Europe due to the nature of their irregular status. The Washington D.C based Migration Policy Institute has given figures of 4.5 million irregular migrants in the European Union, NGOs working with irregular migrants in Europe give higher figures.

underground economy that exists in many countries, and a continuing need for cheap labour fuel the need for irregular migration. These factors, combined with the larger forces of globalisation that continue to make capital and labour more mobile will undoubtedly ensure that irregular migration will continue to be a major source of migration to Europe in the coming years. Indeed, current estimates put the numbers of irregular migrants to Europe as growing by hundreds of thousands each year, with no end in sight.

8. Clearly, the management of irregular migration is a critical issue for Europe's future. European nations have adopted a number of different measures to control irregular migration over the past two decades, including increased border controls, strict visa enforcement, increased deportation, the restriction of the rights of migrants or asylum seekers to work in a country or access social services, and regularisation programmes. Nevertheless, European states have rarely adopted a coherent set of measures designed to comprehensively manage either the flows or *de facto* presence of irregular migrants within their borders.

9. Of all the efforts to control undocumented migration, large-scale regularisation programmes, while implemented fairly frequently, have been particularly controversial in a number of Council of Europe member states. They are normally undertaken as a measure of last resort, when it is finally clear that internal and external efforts to manage migration have failed, and the unauthorised population has reached a level that is no longer permissible to ignore. Since 1981, within the European Union alone over 20 regularisation programmes have provided nearly four million irregular migrants with either temporary or permanent living and working permits.

10. Despite the fact that many countries have carried out these programmes on a fairly regular basis, there is no unified European position either at the level of the Council of Europe or the European Union on using regularisation as a means to manage irregular migration, and attitudes toward these programmes vary greatly from country to country. The reasons for such widely differing attitudes have to do with a variety of factors: each nation's history of immigration, attitudes of dominant political parties, the portrayal of such programmes by the media, the economic situation, and general cultural attitudes. For example, Spain has been particularly open to regularisation programmes, having implemented six since 1985. In part this has to do with its relatively lax immigration policies and generous attitude toward foreigners in comparison to other European nations, but the country's demand for low-skilled foreign labour has also played an important role. Meanwhile, despite the growing numbers of irregular migrants living and working within their borders, countries like Germany and the Netherlands have remained opposed to large-scale regularisation programmes, mainly because of strong public and political opposition to such programmes.

11. Due to a lack of a coherent, unified or comprehensive policy toward regularisation, the topic has been a source of contention between member states, with those opposed arguing that the programmes will encourage further unauthorised immigration that is bound to spill over into neighbouring countries.

12. While Europe grapples to chart a common course on immigration policy in an era of increasing concern about national security, civil society organisations, and migrant groups in particular, have been mobilising to demand regularisation as a way to end the exploitative conditions in which migrants often find themselves living and working. While this was most notable in the United States in 2006, when millions of immigrants took to the street to demand immigration reform, migrants in Spain, France and the Netherlands have also been mobilising in greater numbers.

13. Given the growing and urgent need for Europe to manage irregular migration, and to do so in a coordinated manner to the extent possible, regularisation programmes should be examined as one policy tool that, in conjunction with other measures (including protecting the rights of migrants, increased internal and external migration controls, individual return programmes and development partnerships with countries of origin) could be a valuable tool for managing migration.

III. Definitions

14. Regularisation refers to the process of offering migrants who are in a country illegally the opportunity to legalise or normalise their immigration status, whether it is on a temporary or permanent basis. In most cases regularisation should not be equated to citizenship, although regularisation may be the first step in a journey towards citizenship or conversely it may be a step which enables migrants to return home voluntarily and participate in circular migration patterns.

15. In general, the different types of regularisation programmes can be categorised as follows:

- **Exceptional humanitarian programmes**, which provide residence permits to refugees, asylum seekers, or to individuals with extraordinary health conditions that will not allow them to travel⁵;
- **Family reunification programmes**, to allow family members to either reunite with spouses or children living abroad, or to legally remain in a country together if not all members have residency;
- **Permanent or continuous programmes**, which are done on an individual or case-by-case basis, and offer permanent status to migrants who have been residing in a country for a specified amount of time, usually a number of years.
- **One-off or one-shot programmes**, which normally provide temporary living and working permits to applicants that expire after a certain period of time. These programmes, which are often sold as exceptional, one-time programmes, seek to regularise large numbers of migrants, and are characterised by having a short application window and a strict set of criteria tied to employment and period of residence in the host country.
- **Earned regularisation programmes**, which are the newest and least experimented with form of programme. The idea behind these programmes is to provide migrants with a provisional, temporary living and working permit and to have them “earn” the right to have the permit extended or become permanent through the fulfilment of various criteria, such as knowing the language of the host country, participating in community activities, having stable employment and paying taxes.

IV. Criteria for regularisation

16. While most EU countries that have implemented regularisation programmes have used the one-off, or one-shot model, there is still a wide range of criteria required of migrants, distinguishing these programmes from general amnesties applied to all irregular migrants. The most common criteria for regularisation are as follows:

i. Employment

17. Most one-shot programmes have either required proof of employment for a certain length of time or proof of a job offer, through receipts or otherwise. Part of the requirement for regularisation under France's 1997-98 laws, for example, required written proof of employer sponsorship. Spain's most recent programme required that employers petition directly on behalf of migrants, and to certify that they would continue to employ them for at least 6 more months, and adhere to all labour and social security laws.

ii. Family ties

18. Family reunification is a strong factor driving irregular migration. As irregular migrants settle in their host countries to live and work, they will often send for their families to join them. While providing spouses and children with regularised status is a relatively rare practice in most organised regularisation programmes, it is not unheard of. France's 1997 programme was largely for family reunification

⁵ Proposed plans in the Netherlands to regularise the situation of up to 30 000 failed asylum seekers who had applied for asylum before 2001, is one recent example of an exceptional humanitarian programme.

purposes, while Spain's new programme allows irregular migrants to obtain family reunification permits after one year. Greece has also allowed petitions for family reunification, although applicants must meet certain stringent income requirements.

iii. Length of residence

19. The number of years a migrant has been living and working in a country can sometimes be a prerequisite for regularisation, although this criterion by itself is becoming less common. The UK provides indefinite residence permits to those who have been in the country continuously for 14 years (7 years for families with children).

iv. Ethnic ties

20. Making proof of ethnic ties a criterion for regularisation is uncommon, but Greece, however, has made this a prerequisite to providing special 3-year permits for Albanian Greeks. Since 2001, the country has also awarded Greek nationality to ethnic Greeks from Georgia, Kazakhstan, Ukraine and Uzbekistan.

V. History and Demographics of Regularisations

21. Since 1981, France, Belgium, Greece, Italy, Luxembourg, Portugal, Spain and the UK have regularised nearly 4 million immigrants through over 20 regularisation programmes. Following is a brief examination of the salient aspects of each country's experience with regularisations, highlighting the most recent or successful approaches, and a description of the demographics of migrants impacted by these programmes. In the Appendix attached, a summary is provided of the various criteria, numbers applied and legalised under regularisation programmes over the past 25 years.

22. To this overview of countries is added the Russian Federation where there are an estimated 8 million irregular migrants thought to be resident. Some put the number as high as 12 million irregular migrants. The Russian Federation is particularly interesting to examine as it has recently begun to tackle the issue of regularisation as part of a revised strategy involving substantial changes to its migration laws and practices.

VI. Spain

23. Spain has implemented more regularisation programmes than any other European country. Since 1985, six programmes have regularised the status of about 1.25 million immigrants. Traditional ties with South American countries, a vigorous demand for low-skilled immigrant labour, a large informal economy, a narrow "front door" for legal immigration, and difficulties controlling irregular migration flows or deporting people has led to a growing irregular immigrant population.

24. While Spain's first five programmes were plagued by considerable bureaucratic challenges and had very little impact on managing the flows of migration, its 2005 programme has sought a new approach. At the heart of this approach has been a desire to tackle both employment issues and migration management issues. From an employment perspective it has sought to tackle the underground economy, bringing workers from the informal into the formal working sector and as a result tackling unfair competition, increasing tax receipts and social security contributions and furthermore encouraging integration of irregular migrants through employment. As part of a crack-down on the informal economy, labour inspections have been increased (with half a million promised) and fines for employers increased. From a migration standpoint, the programme has been accompanied by measures to widen the front-door to migration to feed the economy's need for workers while at the same time increasing border controls, including with the assistance of the European Union Agency FRONTEX.

25. The 2005 programme had two categories of applications. The first allowed employers to present applications on behalf of migrants, along with a guarantee that they would comply with labour and social security laws for at least six months. The second category permitted migrants who were employed part-time or had several employers to apply themselves. Furthermore, in an attempt to satisfy concerns over

national security and to make the programme less vulnerable to fraud, it also required migrants to prove their identity, prove they are qualified to perform their job duties, and provide evidence that they have a clean criminal record.

26. From the evidence available to your Rapporteur, the 2005 programme has proved to be a success, even if there have been a number of problems and issues which remain unresolved. The programme is the result of consensus building between the Government, trade unions, employers, civil society and also the regions. It has been driven by a real demand for regularisation by all parties concerned and has responded to labour market needs and the needs of society. It should in this context be noted that of those regularised, over 33% worked in domestic service, in part explaining the high level of public support for the programme as many families had the possibility of regularising their situation both as employers and employees. It should also be pointed out that the majority of irregular migrants came from South American countries with whom Spanish citizens share a common language and traditional affinity. The next largest group of persons came from central and eastern Europe, with only a relatively small group coming from sub-Saharan Africa. The picture of Spain regularising large number of highly visible boat people from Africa may be the image in the minds of Spain's European neighbours, but it is not the reality of the situation in Spain.

27. The impact of the regularisation programme in Spain on the shadow economy should also not be underestimated, with a total of over 550 000 persons brought out from the shadow economy and registered in the social security registers with corresponding increases in tax and social security revenues. Employers have also started to think twice before employing irregular migrants in view of the clampdown on employment of irregular migrants, through inspections and fines.

28. In view of the nature of regularisation programmes it is not surprising that there have been a number of criticisms made about the 2005 programme. The political opposition has raised concerns about the possible "pull effect" of the regularisation programme and also the growing concerns that the public have concerning the level of migration into Spain, with the opposition citing that 65 % of the public fear that migration could be a problem in the future. The opposition has also made the point that regularising such a large number of persons stores up problems for the future and that when the economy starts to decline, the pitfalls of such a programme will become apparent. An additional criticism put forward has been that the financial advantage from the regularisation programme has been reaped by the central authorities and not adequately shared with the regions.

29. Your Rapporteur considers it important to comment on the "pull effect". He accepts that the 2005 programme may indeed have had a pull effect, but that this should not be over estimated. There are in his view a range of other more important pull effects, including a vibrant shadow economy and possibilities for employment within the informal sector. The combined measures of tackling irregular migration, providing appropriate channels for legal migration and combatting illegal employment, have, in the view of your Rapporteur mitigated the dangers of any pull effect from the 2005 regularisation programme.

30. Your Rapporteur has noted a number of associated problems linked to the 2005 regularisation programme. There still remain in Spain a large number of irregular migrants, even if the number sometimes cited of 1 million irregular migrants appears over-inflated. Not all problems in hiring migrants legally have been sorted out, and like other countries in Europe, Spain continues to struggle in negotiating certain readmission agreements with a number of countries. On a practical level, social services have struggled to absorb such a large number of new entrants to the social security register, and indeed the exercise itself created administrative strains and strains on resources. Spain's European partners were highly critical about not being kept informed of Spain's regularisation plans and this is a criticism recognised in hindsight by the Spanish Authorities as having been an important omission.

31. Your Rapporteur considers it important to comment on concerns that regularised migrants in Spain would move to other parts of Europe, creating a burden in other member states. In the view of your Rapporteur these concerns are unfounded as regularisation in Spain gives no right to move and work elsewhere in Europe. Furthermore, a regularised migrant in Spain is unlikely to trade his or her regularised situation for an irregular situation elsewhere in Europe.

32. There are still clearly lessons to be learned from the 2005 Spanish regularisation programme, but, in the view of your Rapporteur, it has provided a response to a critical situation, balancing the human rights and humanitarian needs of a large number of irregular migrants with the economic needs and rule of law needs associated with tackling the shadow economy in Spain. Europe therefore can benefit and learn from the Spanish regularisation experience.

i. Demographics

33. South Americans, Moroccans and Romanians dominate the applicants to Spain's 2005 programme, with the largest number coming from Ecuador (21%), Romania (17%), Morocco (13%), Colombia (8%) and Bolivia (7%).⁶

VII. Italy

34. Italy has implemented five programmes regularising 1.4 million migrants over the past 25 years. As in Spain, irregular immigration is largely driven by a sizable underground economy, a robust demand for cheap foreign labour, weak immigration controls, and limited avenues for legal immigration. Between 65-75% of irregular migrants are those who have overstayed their visas or work permits. Although each programme has had the stated intention of controlling the underground economy and "wiping the slate clean" of irregular migrants, in reality these programmes have faced numerous obstacles, including bureaucratic failure to process applications in a timely manner, resistance from employers who were unwilling to sponsor migrants, weak public support, and migrants falling out of status after the expiration of their permits. In the absence of other mechanisms to control irregular migration or provide a pathway to permanent resident status, regularisation programmes have served as Italy's primary strategy to manage irregular migration.

i. Demographics

35. Migrants regularised under Italy's 2003 programmes come from diverse geographical areas. Top 15 countries of origin of migrants regularised (in descending order) were: Morocco, Romania, Albania, Ukraine, China, Philippines, Senegal, Tunisia, Ecuador, former Yugoslavia, Peru, Moldova, Nigeria, Sri Lanka, Pakistan and India.

VIII. Greece

36. With mass immigration a relatively new phenomenon to the country, Greece has implemented three regularisation programmes since 1998. Although Greece has some diverse immigration flows similar to its European counterparts, more than 67% of immigrants come from Albania. A very large underground economy and restrictive immigration laws have perpetuated the presence of a large population of irregular migrants. Greece's experiments with regularisation programmes have in the past been criticised for being poorly organised, with insufficient data, lack of government oversight, lack of accompanying measures to control illegal employment of irregular migrants and a lack of measures to control immigration flows and integrate migrants⁷.

37. The most recent regularisation programme in 2005 / 2006 has however shown some improvements in many of these areas. The programme itself attracted some 170 000 applications from what has been estimated to be a total irregular migrant population⁸ of between 200 000 to 400 000

⁶ Arango, Joaquin and Maia Jachimowicz, "Regularizing Immigrants in Spain: A New Approach," Migration Information Source, September 1, 2005.

⁷ For a full analysis see "Illegal immigrants in Greece: State approaches, their profile and social situation" Costas N. Kanellopoulos, Maria Gregou and Athanasios Petralias (Centre of Planning and Economic Research, EMN National Contact Point).

⁸ It should be noted in this respect that a number of persons contained within these figures may have been regularised or had a regular status in the past but have since lapsed into irregularity.

persons⁹. The aim of the recent programme, as for earlier programmes, has been to transfer employment from the irregular economy to the regular economy and at the same time improve the situation of many living in an irregular situation.

38. Some of the administrative requirements were relaxed by unifying the applications for work and residence permits, information campaigns were organised to inform migrants about the new legislation, an integrated programme of integration was adopted by the Ministry of Interior and a number of accompanying measures were taken, such as the introduction of stiff penalties on employers of irregular migrants (fines of 3 000 to 15 000 Euros and prison sentences of between 3 to 6 months).

39. There were however still many criticisms of the recent programme. Long queues were noted at offices of the local authorities responsible for processing applications, serious delays were experienced at public hospitals in obtaining health certificates, problems were experienced in obtaining social security stamps and the deadline for the programme had to be extended by 4 months to allow persons to complete all the formalities. Many persons were ineligible to apply because of restrictive conditions (documents required, high cost of insurance stamps, etc.), some of which were relaxed in the course of the exercise to allow more persons to benefit from the programme.

40. There were also criticisms about the lack of adequate accompanying measures to avoid future irregular migration. These included the lack of regular avenues for migration to deal with labour demands, lack of progress in carrying out the integration programme proposed, lack of implementation of penalties on employers of irregular migrants and difficulties in enforcing returns due to the absence of readmission agreements with a number of third countries.

41. The recent Greek regularisation programme has nonetheless been largely supported by civil society, migrants and also by the Ombudsman,¹⁰ although many consider that it did not go far enough and many irregular migrants were unable to meet the strict requirements set (such as proof of residence in the country before the cut off date of 31 December 2004). These requirements were however set as part of a balancing act to avoid encouraging a new wave of irregular migrants to the country. This balancing act could also be seen in the length of residence awarded, namely a one year permit renewable for two years and then a further two years with consideration of a long term stay permit considered thereafter. This graduated system of permits demonstrates that the regularisation programme in Greece is not to be equated with a citizenship programme and keeps all options open to migrants, including the option to stay or return to their country of origin.

i. Demographics

42. Albanians account for the majority of migrants regularised under all of Greece's programmes. Other nationalities in order of size are Bulgarians, Romanians, Pakistani and Ukrainians. The long coastline and geographical position make Greece particularly attractive for irregular migrants both as a country of destination and a country of transit.

IX. Portugal

43. Having implemented three programmes since 1992, Portugal's regularisation programmes have progressively evolved to try to correct for shortcomings of each previous programme and to meet the country's evolving labour needs. As a result, while its two earlier programmes suffered from insufficient publicity and outreach to migrant communities and faced bureaucratic challenges, its 2001 programme was part of a larger attempt to promote legal immigration based on the country's labour market needs, to integrate immigrants into Portuguese society, and to combat unauthorised immigration through controlling the entry, stay and removal of undocumented foreigners. The 2001 programme also provided migrants a

⁹ For a fuller view of the recent regularisation programme in Greece, see New elements of Greek policies concerning irregular migrants: the policy of regularisation of unauthorised migrants by Jennifer Cavounidis CDMG (2006) 56.

¹⁰ See 2005 Annual Report Summary, The Greek Ombudsman, page 10, for further comments on the new immigration law and regularisation programme.

pathway to permanent residency after renewing permits four times. However, in 2003 the government instituted a system requiring employers to go outside of the country to recruit foreign workers, which effectively discouraged the hiring of foreign labour from within the country. This development has been criticised, as has the unseemly length of time it has taken to process many of the applications for regularisation.

i. Demographics

44. While migrants from the Portuguese-speaking African countries of Angola, Cape Verde and Guinea-Bissou have made up anywhere between 12-21 percent of residence permits granted through Portugal's 2001 regularisation programme, it is migrants from Brazil and Eastern Europe, particularly Ukraine, that have made up the majority of residence permits granted, with Brazil accounting for between 18 and 29 percent, and Eastern European countries ranging from 44 to 55 percent of all permits granted.¹¹

X. France

45. France has had a long history of immigration flows from its former colonies in North Africa, and it is estimated that nearly 65 percent of all migration to the country is driven by family reunification. It has implemented two large-scale regularisation programmes since 1981, both of which provided permanent legal status to large numbers of immigrants. An explicit goal of these programmes, and of French immigration policy in general, has been to facilitate the economic and social integration of immigrants in France. The 1997 Chevenement laws also aimed to provide legal status to those seeking family reunification, and to families with children. This was followed by a 1998 law that allowed foreigners who had been present in the country for 10 years or longer to apply for legal status on a case-by-case basis. However, France's new immigration law, adopted in July of 2006, abolished this system, and seeks a wholly new approach to managing migration.

46. The new law explicitly favours the recruitment of skilled migrants, limits access to residence and citizenship, and puts strict limits on immigration for the purpose of family reunification. In addition, in one of the few recent examples of an aggressive expulsion strategy by an EU nation, the government has been expelling thousands of people, including many families with school-aged children, for not having the required documents.

47. The new law allows the government to recruit immigrant workers based on the needs of certain professions or geographic areas. These skilled migrants must also prove that they will be able to contribute to the economic, cultural or intellectual development of both France and their country of origin, and are provided with three-year visas. The migrant must return to his/her country of origin within six years.

48. Family reunification now requires that an immigrant must explicitly accept French values of equality between men and women, monogamy, and the secular nature of the French state. In addition, immigrant families must prove that they can support all family members, without the assistance of the state.

49. One of the key changes in the law is the abolition of the link between time lived in France and the provision of a residence permit. Instead, permanent residency status and citizenship will be made on a case-by-case basis, and will largely be based on new integration criteria which includes having taken French language and civic courses.

50. This new law is a bold departure from the approach many EU states have taken toward immigration policy, and is worthwhile monitoring to see if France succeeds in its efforts to manage irregular migration.

¹¹ Marques, José Carlos and Pedro Góis, "Legalization Processes of Immigrants in Portugal," in *Amnesty for Illegal Migrants?* Friedrich Heckmann and Tanja Wunderlich, eds. (Bamberg: European Forum for Migration Studies, 2005).

i. Demographics

51. Migrants regularised in France's 1997-98 Chevenment Laws came mostly from the north African countries of Algeria (16%) and Morocco (12%), followed by China, the Democratic Republic of Congo, and Tunisia.

XI. Belgium

52. Belgium's sole experiment with a large-scale regularisation programme occurred in 2000, following massive demonstrations by immigrant groups. However, unlike its Southern European counterparts, Belgium was not motivated by economic reasons, nor did it have economic criteria as a requirement for regularisation. Instead, it permitted regularisation based on the condition that a migrant had had an unresolved asylum petition pending for four years (three years for families with children), or that the applicant was seriously ill or unable to return to his/her own country for humanitarian reasons, or had been in the country for longer than six years.

i. Demographics

53. Congolese and Moroccans dominated the applications, with 17.6 percent and 12.4 percent of the applications, respectively. Rwanda, Burundi, and other countries in sub-Saharan Africa, as well as migrants from Algeria, Tunisia and Turkey were also strongly represented.

XII. Luxembourg

54. Luxembourg implemented its only large-scale regularisation programme in 2001, as a reaction to the large numbers of refugees it was receiving in the 1990s from the former Yugoslavia including Kosovo. Although it focused on regularising the status of rejected asylum seekers, it sought to do so in consultation with sectors in the country most impacted by labour shortages. By trying to meet the needs of immigrants and employers, this programme has been hailed as innovative, however, in the end it struggled to meet these expectations since the number of actual applicants was very low and many employers were unwilling to hire immigrants, possibly due to the requirement that applicants have a passport.

i. Demographics

55. 75 percent of regularised migrants were refugees from the former Yugoslavia.

XIII. United Kingdom

56. Although the United Kingdom has a large population of irregular migrants, it has never sought to regularise immigrants on a large scale, preferring instead a case-by-case system of what is referred to as a "long residence concession," which provides indefinite residence permits to those who have been in the country continuously for 14 years (7 years for families with children).

57. The United Kingdom's exceptional one-shot programme in 1998 offered permits to a small pool of domestic workers for 12 months. The very small number of applicants is most likely related to the application criteria, which required that workers have a valid passport, be able to prove that they could support themselves, and have entered the country legally and with the explicit purpose of being employed as a domestic worker.

58. Finally, it should be mentioned that when accession states in Eastern Europe joined the EU on 1 May 2004, irregular immigrants from those states who were working in the UK prior to that date were allowed to continue working in the UK if they registered to do so—a regularisation programme of convenience that allowed migrants to continue working in sectors where they were needed without the disruption of having to return to their home country.

i. Demographics

59. Domestic worker regularisation programme legalised immigrants primarily from Sri Lanka and the Philippines.

XIV. Netherlands

60. Over the years the number of regularisation programmes and the number of regularised migrants has been very small in the Netherlands.

61. 10 416 irregular migrant workers (mainly Moroccans and Turks) were given a residence permit in 1975.

62. In the 1990s there was a regularisation programme for those who had been in the Netherlands for lengthy periods of time. Out of 1 379 applications, 679 were accepted and 700 refused.

63. In 1995 there was a second regularisation programme for the same target group. There were 1 125 applications of which 106 were accepted and 1 119 refused. This programme was continued in 1999 and received about 8 000 applications of which over 2,200 people were accepted and about 6 000 refused. Many of those rejected launched legal appeals which then ran for many years.

64. In 2003 there was a regularisation programme for asylum seekers who because of delays by the government had been waiting for five years or more for a decision on their first application. 5 800 files were examined, 2 079 people were granted a residence permit and 3 703 were rejected.

65. In June 2007 the Netherlands Parliament voted to allow about 30 000 failed asylum seekers to stay in the country. This related to persons who had applied for asylum before 2001¹².

XV. Russia and other CIS States

66. It is worth mentioning the unique situation that exists in the Russian Federation and other CIS countries since the dissolution of the Soviet Union. While no countries, apart from Russia, have undertaken the type of regularisation programmes discussed above, Russia has allowed CIS citizens to live and work within its borders for many years, and has signed bilateral agreements with all 11 CIS countries to better regulate irregular migration. Nevertheless, at a conservative estimate there are 8 million irregular migrants living and working in Russia from the Caucasus countries, China, Vietnam, and Central Asia.

67. It can be noted that Russia has been steadily regularising the situation of what its Government considers “old cases” of ex-USSR citizens who arrived in the Russian Federation in the 1990s. In 2005, for example, over 300 000 persons were regularised in this context and granted citizenship.

¹² The Parliamentary Assembly of the Council of Europe examined the situation of these persons in Resolution 1483 (2006), Policy of return for failed asylum seekers in the Netherlands. See also Document 10741, Report prepared by Mrs Zapfl-Helbling on this subject.

68. It is important to note that in the Russian Federation there has recently been a move away from fighting irregular migration to seeking to manage migration and benefit from the positive role of migration¹³. In 2005 a “concept of regularisation of irregular migrants from the CIS States which have visa free entry regimes with the Russian Federation” was approved and a decision was taken to start a small-scale pilot project for regularisation of irregular migrants in 10 provinces of the Russian Federation. This pilot project revealed a number of issues requiring attention. They included the need for additional resources for the administrations to carry out the regularisations, difficulties in solving living requirements, dangers of linking the regularisation directly to employers (tying the employee to the employer) and the lack of possibilities of the self employed to regulate their situation.

69. As a result of this new approach to managing migration, Russia has recently adopted a number of laws and regulations governing migration which aim to simplify the stay and residence procedures for foreign nationals and reduce the number of irregular migrants. These laws and regulations not only widen the door for regular migration but also provide the opportunity for regularising a large number of irregular migrants¹⁴. They are in response to overly bureaucratic procedures for work permits and unreasonable requirements for residence permits, referred to by President Putin as “notorious administrative barriers”¹⁵.

70. The outcome of the pilot project and the new laws and regulations is that a massive process of regularisation has started in the Russian Federation. By the end of April 2006, 1.4 million irregular migrants have been regularised according to a simplified procedure which involves employers vouching for the employment of irregular migrants and the payment of fines fixed at 3 000 Roubles per irregular migrant. An administrative requirement on irregular migrants has been that they show that they have been on Russian territory for at least 3 months prior to registration.

71. Russia has therefore started the process of regularising a large number of irregular migrants using new laws and regulations which the International Organization for Migration has viewed as “a major step in developing a well balanced and well-coordinated migration policy of the Russian Federation”¹⁶. It is however too early to draw conclusions from the regularisation programme under way, and your Rapporteur considers that the Committee on Migration, Refugees and Population should keep the progress of this programme under review.

XVI. Reasons for regularisation programmes

72. There are various reasons why a country might endeavour to undertake a regularisation programme, including to reduce the size of the underground economy and to increase tax and social security contributions, to improve the social and economic situation of migrants, to gain more awareness and control over the undocumented population, to correct for shortcomings of previous programmes, to improve the rule of law, and to fill jobs that native workers are unwilling to take. An examination of each rationale in turn reveals the strength and weaknesses of these arguments, and shows where each needs more supporting evidence.

i. To reduce the size of the undocumented population

73. A primary motivation for many countries in implementing regularisation programmes is to diminish the size of the unauthorised population living within their borders. This has been a decisive factor in favour of regularisation in countries where over the course of a couple decades immigrants began making up an increasingly large percentage of the general population. For example, by 2001, Greece had a

¹³ For further information see New answers to irregular migration challenges in Russia, Irina Ivakhnyuk, CDMG (2006) 67

¹⁴ For a commentary on these laws and regulations see General Comments by the International Migration Law and Legal Affairs Department of the IOM to Certain Laws and Regulations of the Russian Federation Governing Migration. (February 2007).

¹⁵ Speaking at the Russian Federation National Security Council on 17 March 2005

¹⁶ See General Comments by the International Migration Law and Legal Affairs Department of the IOM to Certain Laws and Regulations of the Russian Federation Governing Migration. (February 2007), page 14.

foreign population of over seven percent, compared with 1.6 percent in 1991. In Italy, the foreign population jumped from 0.6 percent in 1991 to 3.4 percent in 2004.

74. Most experts agree that any impact regularisation has on the stock of unauthorised migrants is most likely temporary. In fact, the stock of migrants is continuing to grow across Europe, with little sign of being diminished. Since the reasons for migration are largely economic and driven by networks, it is unlikely that regularisation programmes on their own could have a significant impact. Nonetheless, more research into the impact of regularisations on the size of the undocumented population is needed.

ii. To reduce the size of the underground economy and to increase tax and social security contributions

75. Countries with large underground economies tend to attract irregular migrants in search of easy access to employment, especially in Spain, Greece and Italy. The lack of employment opportunities in the EU through regular channels, combined with relatively strict labour market regulation, means that the underground economy is the only option for work for even skilled irregular migrants. Regularisation programmes are often touted as a way to reduce the shadow economy, and to increase tax and social security contributions. Unfortunately, there is not a great deal of evidence one way or another that regularisation programmes have had a major impact on the underground economy in the past. The recent programme in Spain as well as the onward going process of regularisation in Russia does however provide promising signs of contributing to a reduction in the underground economy in these two countries. It should however be noted that many persons, for one reason or another, stay in the underground economy and this has been witnessed in Greece where it has been estimated that nearly 40% of migrants stay in the underground economy despite efforts to regularise them. More information on the impact of regularisation on the informal economy is necessary. Nevertheless, data on tax collection and social security contributions are encouraging. The latest data from Spain's programme, for example, suggests that contributions to social security have increased by three percent since its most recent regularisation programme in 2005.

iii. To improve the human rights and dignity of migrants and reduce exploitation

76. A handful of states, including France, Belgium and Luxembourg, have sought to regularise their unauthorised population for humanitarian reasons, or to facilitate the social and economic integration of migrants into their countries. However, the sheer number of migrants currently living and working in irregular situations in Council of Europe countries requires attention by member states. Migrants living and working irregularly are vulnerable to exploitation and discrimination at work. They may be forced to live in substandard housing, denied access to healthcare and other social benefits, and their children may face barriers in attending school.

77. Although it may appear to some unusual to use human rights concerns as a justification for regularisation, international human rights instruments provide the clearest statement on the rights afforded to migrants regardless of their status, particularly in regards to non-discrimination on the basis of national origin.¹⁷

78. The most significant development in the protection of the rights of migrant workers is the UN Convention on the Rights of all Migrant Workers and their Families (ICMW), which came into force in April 2003. The ICMW has a wide range of purposes: to improve the conditions of migrant workers and their families by expanding on international law, to emphasize the hardship that migrants face, and to recognize the rights of irregular migrants. Nonetheless, only three Council of Europe member states (Azerbaijan, Bosnia and Herzegovina and Turkey) have ratified this convention.

¹⁷ See in particular Universal Declaration of Human Rights (UDHR), Articles 2 and 7; International Covenant on Civil and Political Rights (ICCPR), Article 26, International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2; European Convention on Human Rights (ECHR), Article 14 and Protocol 12 of the ECHR.

79. The Parliamentary Assembly is particularly concerned about the need to safeguard the rights of irregular migrants and clarify the rights that they enjoy. In this respect the Assembly adopted Resolution 1509 (2006) and Recommendation 1755 (2006) on rights of irregular migrants¹⁸. In this the Assembly recognised that regularisation programmes offered a potent safeguard for protecting the rights of persons in an irregular situation¹⁹.

iv. To gain more awareness and control over the undocumented population:

80. Regularisation programmes can provide important information about the demographics and labour market participation of migrants. Such information can assist countries in planning future migration management strategies and target social service programmes.

v. To correct for shortcomings of previous programmes

81. Some countries, most notably Greece, Italy, Portugal, and Spain, have needed to resort to recurring legalisation programmes when previous ones failed to meet their desired outcomes. While not an optimal reason for implementing a programme, recurring regularisations give states another chance to “get it right.”

vi. To improve the rule of law and national security

82. National security has become a paramount concern to European nations, and an irregular population that lives in the shadows is more likely to escape detection if involved in criminal activities. At the same time, a migrant’s irregular status might force him or her to engage in illegal activities if it is the only means of making a living. Through accounting for the irregular population, regularisation can be an important tool for supporting national security efforts. By bringing a population out of the shadows, these programmes can also reduce criminality among the irregular migrant population. In addition, migrants often take the jobs that natives will not - the dirtiest, most dangerous and most precarious jobs that pay little, have few or no benefits, and/or put them at risk of injury or death. Regularisation programmes can force employers to follow regulations, making these jobs safer for migrants.

vii. To fill local labour market needs

83. The ageing population of working-age adults in OECD member States of the Council of Europe, combined with low birth rates, has meant acute labour shortages in various industries, most notably domestic service, agriculture, and low-skilled manufacturing work. Regularisation programmes can assist host countries in legally filling labour shortages, while giving employers an alternative to hiring workers illegally.

XVII. Impact of regularisation on migrants

84. The benefits of regularisation do not just accrue to the host country. They can also have a positive impact on the social and economic position of migrants themselves by:

i. Reducing employer exploitation of workers

85. As indicated above, unregulated or dangerous working conditions, as well as underpayment and nonpayment of wages, are widespread and serious problems for irregular migrants. If migrants are formally employed, they not only have more avenues to make formal grievances against unscrupulous employers, but employers will be less likely to engage in exploitative behaviour.

¹⁸ See also Report of the Committee on Migration, Refugees and Population on Rights of irregular migrants, Rapporteur, Ed van Thijn, (Netherlands, SOC), Doc 10924.

¹⁹ Resolution 1509 (2006) on rights of irregular migrants, para 16.5.

ii. Allowing migrants to better compete for higher-paying jobs or enhance work skills

86. Even if migrants are skilled, the perceived or actual threat of being deported can lead them to accept employment in sectors that are low-paying. Since wages for irregular migrants are usually lower than those of natives or legalized migrants, if migrants are allowed to work legally, they are more likely to be able to use their human capital to compete for higher-paying jobs, or to use the opportunity to learn new work skills that could be an asset to their host country. However, much of their ability to learn new work skills depends on the resources available for training in the host country as well as the type of permit they receive - migrants with temporary or very short permits will be less likely to have the motivation to improve their job skills.

iii. Reducing delinquency

87. Taking illegality out of a migrant's status means that they will find it easier to obtain regular work to support themselves making it less likely that they will have to turn to crime as a last resort in order to make ends meet.

iv. Improving upward mobility, social integration and language skills

88. Well-organized regularisation programmes, especially those that provide permanent or long-term residence permits, can have a positive impact on the social integration and language skills of migrants, paving the way for upward mobility of future generations. While most definitive studies in this area have been done on regularised immigrants in the U.S., the results are encouraging. Research shows that the 1986 legalisation programme has had a positive impact on the wages and occupational mobility of many migrants, and has had an even greater positive impact on their children's educational attainment. More research should be done in Council of Europe member states to see how the impacts correlate in Europe.

89. On the other hand, regularisation programmes pose a difficult challenge for family members, particularly spouses and children, if they are not provided residence permits as well. The provision of permits based on family ties, whether based on the need for reunification or the regularisation of family that is already present in the host country, is a controversial topic within the debate over regularisation. As previously indicated, family reunification measures are rare, and in addition, unlike the United States, which automatically confers citizenship to every baby born within its borders, very few EU states grant automatic residency or citizenship by birthright alone. Since family-driven migration is a strong pull factor to host countries, more sustained attention and consideration of this issue is needed.

iv. Encouraging circular migration

90. Many migrants in an irregular situation are unwilling to return to their country of origin as they fear not being able to return to their host country. Regularisation has the impact of allowing them to come and go, thus encouraging circular migration.

XVIII. Criticisms of regularisation programmes

91. Many politicians and the public are opposed to regularising immigrants on the grounds that to do so would be to reward "lawbreakers" – those migrants who entered the country illicitly, providing them with opportunities to work. This is a dead-end argument that provides no solutions to the problem of what to do with a population that is already living and working within the country. It also denies the reasons why irregular migrants are present in the first place: failure of migration controls, either through neglect or powerlessness, and the strong economic factors that drive migration.

92. However, the main argument against regularisation programmes is that they are unable to "set the meter to zero," and actually encourage further irregular migration. This claim is hotly contested, and most studies on this issue have examined the experience of the US. While some show that the large-scale amnesty implemented in 1986 has not reduced, but rather increased, undocumented migration to the US, since it established new migration flows due to networks and family ties, others show that flows

have in fact remained largely the same. In Europe, political parties opposed to immigration have long argued that regularisation programmes in Spain and Italy have attracted more undocumented immigration. However, research in this area is largely anecdotal and indeterminate, since most studies rely on interviews with migrants apprehended *en route* to their destination country as to their reason for migrating. Most migration experts assert that economic factors such as the great demands for labour in certain countries, not regularisation, are the primary pull factors in irregular migration, although there is some evidence that the establishment of family and social networks that occur as a result of regularisation may attract further migration.

XIX. Past challenges with regularisation

93. Regularisation programmes have faced numerous challenges in both the planning and implementation stages. The most common reasons for programme failure or weakness include:

i. Reversion to undocumented status

94. Many regularisation programmes that only provide temporary work or residence permits have had a large percentage of migrants fall out of regular status once their permits expire. Since few countries have either the resources or the will to track and remove all of those migrants who revert to undocumented status, this can perpetuate an endogenous cycle of undocumented migration, necessitating future regularisation programmes. Italy and Spain have both had significant numbers of applications coming from permit holders who had participated in a previous regularisation programme.

95. Greece's 2001 regularisation programme sought to break this cycle by allowing migrants who had consecutively renewed their two-year residence permits over the course of 10 years to apply for permanent residence status. In Portugal, migrants are eligible for permanent residence after renewing their initial one-year permit four times. Spain's most recent regularisation programme also provides an eventual pathway to permanent residency.

ii. Lack of administrative preparedness

96. A state may not have the capacity to handle administrative demands that regularisation programmes require. Large numbers of applicants, combined with staffing shortages, led to backlogs, slow application processing, and, ultimately, weak or ineffective programmes in several countries including in the UK, Greece, Italy, Spain, and Belgium. In many countries, requirements have needed to be changed or relaxed during a programme.

iii. Lack of publicity

97. Lack of publicity in migrant communities can mean a low turnout of applicants, as occurred in regularisation programmes in Spain, Italy, Portugal and the United Kingdom. Alternately, strong publicity and coordination with migrant organisations and media was critical to high turnouts of migrants in the 1981-1982 programme in France, and in Spain's most recent 2005 programme.

iv. Overly strict requirements and application fraud

98. Since many migrants work informally and without contracts, and/or may have fled hastily from their home countries, requiring proof of employment, long presence in the country, and even identification such as passports can make the results of a regularisation programme weak. This has been cited as a reason for programme failure or delay in the UK's migrant domestic worker regularisation programme, as well as in Portugal in 1992-1993, Luxembourg in 2001, and in Greece.

99. The inability of migrants to meet the requirements of the programmes has also led to the falsification of applications in several programmes. In the US, for example, some estimates put application fraud as high as 73 percent for all applications submitted under the Immigration Reform and Control Act (IRCA), which only covered undocumented migrants who had been living in the country prior

to 1982. Similar application fraud has also been a problem in Italy, Greece, and Portugal, as has corruption of public officials, who reportedly sold illegitimate work permits to migrants with incomplete applications, or to those seeking to expedite the process.

100. Most of these challenges are largely bureaucratic in nature, however, and if given proper attention, funding and supervision, could possibly be improved upon.

XX. What happens after regularisation?

101. As previously indicated, one of the great challenges of temporary regularisation programmes is determining what to do after the permits expire and the migrants fall out of regular status. In general, states have not had the resources, nor, some would argue, the will, to track and deport those migrants who stay on. In terms of employment, migrants who fall out of status may lose their jobs and be forced back into the underground economy in order to make a living, or employers may continue to employ them, but illegally. There is very little data about the fate of migrants after they lose their status, other than that a large percentage of them may apply again if the host country undertakes another regularisation programme.

102. In addition, no regularisation programme approves 100% of applications. However, while migrants may technically be required to leave if their applications are rejected, there is little evidence that host countries have been able to forcibly remove all failed applicants.

XXI. EU position on regularisation

103. The European Union has no official position on regularisation programmes, nor legislation on this particular issue. However, a number of European Commission communications and recently adopted legislation are somewhat linked to the issue. The Communication on the links between legal and illegal migration (July 2004)²⁰ studied, among other issues, the impact of "regularisation procedures" and concluded that they had both positive and negative effects and that more mutual information and transparency was needed with a view to identifying and comparing the different national practices and their impact on migratory flows. It is envisaged that at a later stage common criteria could be drawn up leading to the development of a common approach to regularisation programmes so that wide-scale regularisation measures could be avoided or limited to exceptional situations.

104. In 2006, the Council of the EU adopted a Decision establishing a mutual information mechanism²¹. The mechanism requests EU Member States to communicate to other Member States and to the Commission information concerning national measures in the areas of asylum and immigration likely to have a significant impact on Member States or on the European Union as a whole. Such information is communicated through a web-based network run by the Commission. It is expected that this mechanism will enhance trust among Member States and will facilitate the adoption of coordinated approaches to solve questions of mutual interest, including the issue of regularisation programmes.

105. Finally, the Commission Communication on policy priorities in the fight against illegal immigration²² (July 2006) has also looked into the issue of regularisation programmes. The Commission has proposed in this communication that, in order to address the lack of sound evidence and up-to-date information, a study should be launched in 2007 on current practices, effects and impacts of regularisation measures in EU Member States. This study will constitute the basis for future discussion, including on whether there is a need for a common legal framework on regularisation programmes and measures at EU level. However, this study is not likely to have a focus on human rights. It is therefore critical that the Council of Europe and the Parliamentary Assembly maintain an emphasis on the human rights of irregular migrants through the recommendations proposed.

²⁰ COM (2004) 412.

²¹ Council Decision 2006/688/EC.

²² COM (2006) 402.

XXII. Recommendations

106. Regularisation programmes must be undertaken as part of a comprehensive strategy to manage migration. As such, it is important to look at ways in which the programmes themselves can be improved upon, accompanying measures that states should consider undertaking as part of a holistic approach to migration management, which has in the past been all too lacking, and to explore alternative policies like earned regularisation that depart from the standard one-shot programmes of the past.

i. Improving the bureaucracy of regularisation programmes

107. Regularisation programmes have the potential to be a powerful tool for helping countries to manage migration. However, as noted by your Rapporteur many programmes suffer from several shortcomings and weaknesses. The programmes themselves could be strengthened if countries take the following measures:

a. Comprehensive review of best practices and impacts of regularisation programmes

108. Despite the number of regularisation programmes undertaken by member states of the Council of Europe over the past 25 years, there have been few evaluations of the strengths and weaknesses of these programmes, except by academics or by non-governmental think-tanks. Countries that have implemented these programmes should undertake comprehensive evaluations of these programmes, assessing everything from administrative preparedness to labour market impacts to the socio-economic effects of regularisation on migrants, not to mention the impact on the stock of undocumented immigrants themselves. Such reviews will develop a set of “best practices” for countries seeking information on the design and implementation of regularisation programmes.

b. Designing programmes to take into account both the concern of employers and migrants

109. Regularisation programmes must take into account the reality of a migratory situation in the host country at any given time, and all that that implies in terms of meeting the needs of employers and migrants alike. Designing programmes with the input of employers is critical to helping fight illegal employment. However, it is also important for countries to understand the labour market behaviour and reason for migrating of the migrants themselves. Studies of employer and migrants’ needs could yield valuable information about what kind of permits (temporary, permanent, etc.) would be the best solution for all the stakeholders involved.

c. Increase/improve publicity efforts

110. Many programmes suffered from a lack of publicity efforts to migrant communities in the preparatory stage, leading to weak outcomes. Broad promotion of the administrative requirements of the programmes should involve the coordination of government, media and immigrant associations.

d. Administrative preparedness

111. Lack of bureaucratic preparedness appears to be nearly endemic to regularisation programmes. Governments must properly fund and staff these programmes to combat fraud and to ensure that applications are processed in a timely fashion.

ii. Accompanying measures by states

112. Regardless of how well regularisation programmes are designed, on their own they are bound to be limited in their capacity to reduce the size of the underground economy or of the undocumented population. To accomplish this, countries should consider implementing them in conjunction with the following measures:

a. *Combating irregular employment and the informal economy*

113. The presence of a large underground economy is a major reason for the perpetuation of irregular migration, as it provides informal and unregulated jobs to migrants. While cracking down on the underground economy is easier said than done, it is important for countries to take seriously the strict enforcement of labour laws and worksite inspections, and to create the necessary capacity to carry them out. Fining employers is another method states have turned to in order to combat irregular employment and reduce the size of the informal economy.

b. *Integration programmes*

114. Strategies to encourage the integration of irregular immigrants into the host country should be undertaken as part of a holistic immigration policy. Language and civic courses, while important, are just two aspects of an integration programme. Since integration is a two-way street, host countries must endeavour to develop programmes aimed at the meaningful social inclusion of immigrants in politics, work, education and community life.

c. *Working with countries of origin*

115. From facilitating the orderly return of migrants to implementing development initiatives, regularisation needs to be part of a greater strategy involving cooperation with sending countries. This is particularly important in light of the considerable evidence that co-development is not as effective as remittances, and as such policies that aim to reduce the need to emigrate through development initiatives alone will have limited success. Spain, Italy and France have been experimenting with providing aid and debt cancellation for sending countries in the hope that it will reduce migration pressure, as well as developing bilateral repatriation agreements. Nevertheless, much more experimentation with different collaborative approaches is needed. It will also be increasingly important to work with countries of origin experiencing environmental changes as these will increasingly lead to the migration and displacement of large numbers of persons including towards Europe.

d. *Tightened visa and/or border controls*

116. An essential component of a successful migration management strategy is to increase interior and exterior migration enforcement. This is often critical for achieving public support for the programmes, but stepped up inspections should not merely be symbolic - real resources must be devoted to these efforts.

e. *Widen the front door to regular migration:*

117. More open admission policies that increase legal access to labour markets are important for reducing irregular migration. Some countries have attempted to do this by cataloguing labour shortages in certain geographical areas or industries. Such programmes should be flexible and responsive to both current and projected labour market needs.

f. *Impact on families*

118. The impact of migration enforcement on families, especially forced removals and deportations, deserves special attention as a humanitarian concern. However, the perpetuation of irregular status on the second generation of immigrant families can also have pernicious effects on the educational attainment, potential income earnings, health, and integration of children into the host country. Migration management discussions should give serious consideration to this aspect.

g. Cooperation with other governments to harmonise policies:

119. To the extent possible, the Council of Europe and the European Union should work toward establishing a common principle of regularisation that will incorporate the preceding recommendations.

iii. Earned regularisation

120. Finally, it is worth considering the idea of earned regularisation as an option that departs from the established one-shot methods described above. Earned regularisation is an idea that is gaining increased currency in the world of migration policy. Such a programme would provide a pathway to permanent residency or citizenship for migrants through a points system. Points would be awarded on an individual basis to migrants through knowing the language of their host country, paying taxes, having stable employment, participating in community life, or any number of requirements determined by the host country. It has been pointed out that one of the benefits to such a program is that it has the potential to be self-selecting, since only those migrants who were truly motivated to stay would earn enough points, while those who were not would be forced to return home.²³ Another benefit to earned regularisation is that it eliminates the need for large-scale one-shot programmes, since each individual country would determine who would be regularised on a case-by-case basis. These programmes could be flexible, adaptive and responsive to local labour market needs and demographic realities.

XXIII. Summary and conclusion

121. Although widely adopted in some countries, regularisation programmes have not yet reached their potential. The recent Spanish regularisation programme would, however, on the evidence available to your Rapporteur, appear to be a positive experience from which many European states can learn. However, it is important to acknowledge that regularisation programmes are not a panacea for solving irregular migration and all the problems associated with it.

122. Indeed, regularisation programmes should be viewed only as one among many tools for managing migration, not as a stand-alone policy. By thoughtfully designing a programme that takes into account the migratory, labour market and demographic needs of a country, and by implementing the programme in conjunction with other migration control and security measures, regularisation programmes can help a country achieve its migration management objectives. They can also be carried out in a humane way that respects the rights of migrants and their families.

123. Attitudes toward regularisation are bound to be guided by each country's unique political, social, cultural and economic characteristics, and while it would be ideal for Council of Europe member states to agree on a broad set of principles regarding regularisation, it is important to recognise that one size does not fit all, and that each country will need to design a programme to meet its own needs.

²³ See Demetrious Papdemetriou, "The 'Regularization' Option in Managing Illegal Migration More Effectively: A Comparative Perspective," Migration Policy Institute Policy Brief No. 4, September 2005.

Appendix I²⁴

Table 1: Summary of Regularisation Programmes in the EU Member States, 1981-2006

Country	Year of programme	Number Applied	Number Regularised	Approval rate	Type of permit offered	Programme requirements
France	1981-82	150,000	130,000	87%	Permanent residence	<ul style="list-style-type: none"> • Presence before 1 Jan. 1981, proof of stable employment or work contract – eventually expanded to include many other categories
	1997-98	150,000	87,000		Permanent residence	<ul style="list-style-type: none"> • Continuous residence in France for 7 years and real family ties or letter with employer's intention to hire, real family ties and 5 years residence in France
Belgium	2000	50,000	Unknown		Long-term residence	<ul style="list-style-type: none"> • Presence in Belgium prior to October 1, 1999 and to have had an asylum application pending for a long time; or to not be able to return home for humanitarian reasons, serious illness; and to have lived in the country for six years
Greece	1998 "White card"	370,000	370,000	100%	6 month residence	<ul style="list-style-type: none"> • Presence in Greece since 27 November 1997
	"Green card"	228,000	220,000	96%	1-5 year work and residence	<ul style="list-style-type: none"> • Legal employment since 1 Jan 1998 • Employment for 40 days at minimum wage with social security contribution
	2001	368,000	228,000	62%	2 year work and residence	<ul style="list-style-type: none"> • Proof of legal status or continuous residence in the country for one year
	2005	139,000	Unknown		12 month residence	<ul style="list-style-type: none"> • Proof of employment and social security contributions
	2005	195,000	Unknown		12 month residence	

²⁴ Information in the Appendix provided by Ms Amanda Levinson, Director of Policy Programmes, Hope Street Group, USA.

Country	Year of programme	Number Applied	Number Regularised	Approval rate	Type of permit offered	Programme requirements
Italy	1986	Unknown	118,700		Temporary work permit	<ul style="list-style-type: none"> • Employer sponsor • Presence in Italy prior to 27 Jan. 1987
	1990	Unknown	235,000	93%	2 – year residence	<ul style="list-style-type: none"> • Worker and students present before Dec. 31 1989
	1995	256,000	238,000	63%	1 or 2 year residence	<ul style="list-style-type: none"> • Residence in Italy; • Employed during past six months or job offer from employer • Have paid 3 months of social security
	1998	308,323	193,200	91%	Temporary work permit	<ul style="list-style-type: none"> • Presence in country prior to 27 March 1998 • Proof of housing • Employers must pay taxes on wages
	2002	700,000	634,728		Temporary 1-year permit	<ul style="list-style-type: none"> • Proof of 3 months of pension contribution • Proof of continued employment
Luxembourg	2001	2,894	1,839	64%	6 month residence permit to allow applicant to find employment, after which there is a possibility of longer-term residence permits	<ul style="list-style-type: none"> • Presence in country prior to 1 July 1998; or working illegally prior to 1 January 2000; or if refugees, to have arrived before 1 January 2000

Country	Year of programme	Number Applied	Number Regularised	Approval rate	Type of permit offered	Programme requirements
Portugal	1992-93	80,00	38,364	48%	Temporary residence	<ul style="list-style-type: none"> •Open to workers and non-workers who had been in the country prior to 15 April 1992
	1996	35,000	31,000	89%	Temporary residence	<ul style="list-style-type: none"> •Proof of involvement in professional activity •Basic ability to speak Portuguese •Housing •Had not committed a crime
	2001	Unknown	170,000		1 year residence permit with possibility of renewing up to four times. After 5 years applicant becomes eligible automatically for permanent residence	<ul style="list-style-type: none"> •Presence in country •Valid work permit
Spain	1985	44,000	23,000	52%	1 – year renewable residence and work permit	<ul style="list-style-type: none"> •Presence in country before 24 July 1985 •Applicants must have job offer
	1991	135,393	109,135	81%	3 year residence	<ul style="list-style-type: none"> •Residence and employment in Spain since 15 May 1991 •Asylum seekers whose applications had been rejected or were pending
	1996	25,000	21,300	85%	5 – year residence	<ul style="list-style-type: none"> •Employment in country since 1 January 1996 OR • Have a working or residence permit issued after May 1996; OR • Be a member of the family of a migrant living in Spain before January 1996

Country	Year of programme	Number Applied	Number Regularised	Approval rate	Type of permit offered	Programme requirements
Spain	2000	247,598	153,463	62%	1 – year temporary residence / permit	<ul style="list-style-type: none"> ●Residence before June 1 1999 ●Work permit or residence permit in previous three years; OR ●Application for work or residence permit
	2001	350,000	221,083	63%	1 – year temporary residence	<ul style="list-style-type: none"> ●Presence in Spain before 23 January 2001 ●Proof of incorporation into the labour market, family ties with Spanish citizen or foreign residents, no charges pending
	2005	691,655	577,159	83.4%	Initial 1 – year living and working permit followed by two-year renewal permit, after which permanent residency is possible	<p>For employers:</p> <ul style="list-style-type: none"> ●demonstrate that they are enrolled in and paying into Social Security ●Proof that they have no history of breaking immigration laws in the previous 12 months ●Proof that they haven't been sanctioned for violating the rights of workers or immigrants <p>For immigrants:</p> <ul style="list-style-type: none"> ●proof of registration with a local municipality in Spain before August 7, 2004 and presence in Spain at the time of application ● Proof of work contract ●Clean criminal record

Country	Year of programme	Number Applied	Number Regularised	Approval rate	Type of permit offered	Programme requirements
United Kindgom	1998	Unkown	200		1 year temporary work permit	<ul style="list-style-type: none"> ●Entrance before 23 July 1998 ●Valid passport ●Current employment as domestic worker ●Proof of ability to support oneself

Source: Amanda Levinson, "The Regularisation of Unauthorised Migrants: Literature Survey and Case Studies" (Oxford University: Centre on Migration, Policy and Society, 2005)

Reporting committee: Committee on Migration, Refugees and Population

Reference to Committee: Doc. 10910, Reference No. 3241 of 26 June 2006

Draft Resolution and draft recommendation unanimously adopted by the Committee on 25 June 2007

Members of the Committee: Mr Mevlüt **Çavuşoğlu** (Chairperson), Mr Jean-Guy Branger (1st Vice-Chairperson), Mr Doug **Henderson** (2nd Vice-Chairperson), Mr Ibrahim **Özal** (3rd Vice-Chairperson), Mrs Tina Acketoft, Mr Pedro **Agramunt**, Ms Donka **Banović**, Mr Ryszard **Bender**, Mr Akhmed Bilalov, Mr Italo Bocchino, Mrs Olena Bondarenko, Mrs Mimount Bousakla (alternate: Mr Paul **Wille**), Mr Márton **Braun**, Lord **Burlison**, Mr Sergej Chelemendik, Mr Christopher Chope (alternate: Mr Michael **Hancock**), Mr Boriss Cilevičs, Mrs Minodora Cliveti, Mr Ivica **Dačić**, Mr Joseph Debono Grech, Mr Taulant Dedja, Mr Nikolaos Dendias, Mr Karl Donabauer, Mrs Lydie Err, Mr Valeriy Fedorov, Mr Oleksandr Feldman, Mrs Gunn Karin **Gjul**, Mrs Angelika **Graf**, Mr John **Greenway**, Mr Andrzej Grzyb (alternate: Mr Piotr **Gadzinowski**), Mr Ali Riza **Gülçiçek**, Mr Michael **Hagberg**, Mrs Gultakin **Hajiyeva**, Mr Jürgen Herrmann, Mr Bernd Heynemann, Mr Ilie **Ilaşcu**, Mrs Iliana Iotova, Mr Tadeusz **Iwiński**, Mr Mustafa Jemilev, Mr Tomáš **Jirsa**, Mrs Corien W.A. **Jonker**, Mr Reijo Kallio, Mrs Eleonora Katseli, Mr Hakki Keskin, Mr Dimitrij **Kovačič**, Mr Andros **Kyprianou**, Mr Geert Lambert, Mr Jean-Marie Le Guen, Mr Massimo Livi Bacci, Mr Younal Loutfi, Mr Jorge Machado, Mr Andrija Mandić, Mr Jean-Pierre Masseret, Mr Slavko Matić, Mr Giorgio Mele, Mrs Ana Catarina Mendonça, Mr Morten **Messerschmidt**, Mr Paschal Mooney, Mr Gebhard **Negele**, Mrs Vera **Oskina**, Mr Grigore Petrenko, Mr Leo **Platvoet**, Mrs María Josefa Porteiro Garcia, Mr Cezar Florin Preda, Mr Gabino Puche (alternate: Mr Adolfo **Fernández Aguilar**), Mr Milorad Pupovac, Mrs Mailis **Reps**, Mr Marc Reymann, Mr Alessandro Rossi, Mr Richard Sequens (alternate: Mr Walter **Bartoš**), Mr Samad Seyidov, Mr Steingrímur J. Sigfússon, Mr Luzi Stamm, Mrs Terezija **Stoisits**, Mr Giacomo Stucchi, Mr Vilmos Szabó, Mrs Elene Tevdoradze, Mr Tigran Torosyan, Mrs Ruth-Gaby **Vermot-Mangold**, Mr Andrej Zernovski, Mr Vladimir Zhirinovsky, Mr Emanuelis Zingeris

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretaries of the Committee: Mr Lervik, Mr Neville, Ms Karanjac, Ms Kostenko