



Illegally Resident Third Country Nationals in EU Member States: state approaches towards them, their profile and social situation

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This [EMN Synthesis Report](#) aims to summarise and compare, within a European perspective, the findings from nine National Contact Points (**Austria, Belgium, Germany, Greece, Ireland, Italy, Sweden, The Netherlands** and the **United Kingdom**) of the European Migration Network (EMN), on the situation of the European population that does not "or no longer fulfils the conditions for entry into, presence in, or residence on the territory of the Member States of the European Union".

The [Synthesis Report](#), and the [EMN NCP Country Study](#) reports upon which it is based, may also be obtained from the EMN website: <http://www.european-migration-network.org>

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Synthesis Report

Contents

Disclaimer.....	3
Executive Summary.....	4
1. Introduction.....	9
2. Legal Framework and Policy Developments.....	11
3. Stocks and Profiles.....	13
4. Member State Approaches.....	14
4.1. Measures to Prevent Illegal Immigration.....	14
4.2. Measures of Domestic Control.....	16
4.3. Voluntary and Forced Return.....	18
4.4 Measures of Rectification and Remedy.....	20
4.4.1. Legal Status.....	20
4.4.2. Provision of Medical Care.....	21
4.4.3. Educational Facilities.....	22
4.4.4. Work.....	23
5. The Social and Economic Situations and Political Participation.....	24
5.1. The Social Situation.....	24
5.2. The Economic Situation.....	25
5.3. Political and Civic Participation.....	28
6. The Impact of Illegal Immigration.....	29
7. Summary.....	31

Disclaimer

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Executive Summary

This study by the European Migration Network (EMN) dealt with illegally resident third country nationals¹ in the European Union Member States representing the situation in 2005. The Synthesis Report presented here is based on the findings presented in Country Study reports produced by nine National Contact Points (NCPs) of the EMN, specifically from **Austria, Belgium, Germany, Greece, Ireland, Italy, The Netherlands, Sweden** and **United Kingdom**². Owing to different national policy developments in the area of international migration, as well as different methods of data collection and research, approaches vary greatly towards illegally resident third country migrants. For example, **Germany** and **Austria** are known for their rather wide-ranging established policy of fighting the causes of illegal migration, whilst **Belgium, Italy** and **Greece**, on the other hand, have documented experience in regularisation and legalisation policies. **Ireland** and **United Kingdom** are clearly in the process of institution³ building in this area, having developed systems to deal with illegal immigration and improving them further.

Legal Framework

In most of the Member States contributing to this study, the legal frameworks for dealing with illegal immigration were revised or extended over the last decade. Since the revision process is still ongoing in some of these states, it could be assumed that illegal immigration poses a threat for them due to uncontrollable migration flows. While European regulations⁴ play a central role, there is considerable variation in terms of the level of awareness of the wide-ranging international asylum schemes. For most Member States, there are new policy developments aimed at reducing the opportunities for illegal immigrants to obtain accepted and legal residence status,

¹ For the purpose of this study, the term "illegal immigrant" refers to "any person who does not, or who no longer, fulfils the conditions for entry into, presence in, or residence on the territory of the Member States of the European Union". The term is used to refer to the legal status of the person concerned only and does not connote a general or negative characterisation.

² The **United Kingdom** provided sufficient information but did not participate fully in this study.

³ The term "institution building" in this context refers to the process of establishing or developing routines and organisations.

⁴ E.g. Council Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention; Communication on a common policy on illegal immigration of 15 November 2001 (COM (2001) 672 final) and Policy Priorities in the fight against illegal immigration of third-country nationals (COM(2006) 402 final).

with many taking a preventative approach to solving the problem of illegal immigration, although this has not been completely effective.

Stocks and Profiles

Reliable data on illegal immigration are difficult to obtain, at best being based on estimations. Yet there are a wide range of data sources from national labour and immigration services containing a large sample of statistics on apprehensions and returns by different organisations. Based on these statistics, it seems that there has been a rise in illegal immigration into the European Union during the last few decades. Alternatively the increase may be due to improved detection, response or recording of the illegal migration. However, some Member States have more recently reported a stagnation or decline over the last years. When analysing the data, differences become apparent with regard to countries of settlement, nationalities, professions and types of illegality.

State Approaches: Prevention

The prevention of illegal immigration touches upon a variety of aspects. Prevention can be enforced through visa restrictions, border control, bilateral and multilateral collaboration in the area of control systems, disruption of routes and operators and the economic development of the countries of origin, especially their labour markets. Legislation must pay attention to the specific needs and circumstances of the individual Member States, which can be quite diverse. In most Member States, there are currently a variety of existing organisations with an interest in illegal immigrants, as well as institutions in the making. Additionally, technical innovations are a feature of the changes in developments, such as the use of biometrics. Another aspect of prevention is the implementation of international agreements and platforms such as Schengen⁵ and Dublin⁶. Thus there seems to be a transitional phase in institution building and in international, national and European co-operation.

⁵ The Schengen Agreement was signed in 1985 to create a European free-movement zone without controls at internal land, water and airport frontiers. In order to maintain internal security, a variety of measures have been taken, such as the co-ordination of visa controls at external borders of Member States. Although the Schengen Agreement was concluded outside the context of the European Union, it has been brought into the realm of the European Communities/European Union under the Amsterdam Treaty in 1997.

⁶ The Dublin Convention (adopted in 1990, entered into force in 1997) determines which Member State of the European Union is responsible for examining an application for asylum lodged in one of the Member States. The Convention prevents the same applicants from being examined by

State Approaches: Domestic Control

In most Member States there is a system of on-the-street identity control, including various measures, such as the checking of identification documents. Furthermore, there are collaborations between social services and the police and immigration agencies in terms of disclosing the length of stay of illegal immigrants. The networks of institutions and interdepartmental co-operation are expanding, while European-wide identification networks (e.g. Eurodac⁷, SIS⁸) are also being used. Most control seems to be taking place in the areas of illegal employment and illegal economic activities.

State Approaches: Return and Repatriation

Various return and repatriation measures and programmes have been established in all Member States. The last decade was a time of development in this regard. European co-operation also plays a role, for example, in handling problems of transport, as well as multi-national and bilateral activities, which are carried out with the help of international organisations and for identification purposes. Other important aspects of return relate to the identification of illegal immigrants, the detention system and the transport system. The forthcoming EMN report on Return will provide more detailed information on this subject.

Measures of Rectification and Remedy: Legal Status, Regularisations

Some Member States have rather far-ranging experiences with various kinds of legalisation and sizes of regularisation activities, referring to studies that assert that legalisation and regularisation measures have been successfully implemented⁹. However, there remain widespread concerns that the long-term impact of regularisation encourages further illegal migration. In **Italy**, for example, the fact that illegal immigrants are allowed to benefit from certain social services is not for practical reasons, but is motivated by the necessity to guarantee human rights - mainly those related to health and education – to everyone, independent of their legal

several EU Member States at the same time, as well as ensuring that an asylum applicant is not re-directed from state to state simply because no one will take the responsibility for handling his/her case.

⁷ See <http://europa.eu/scadplus/leg/en/lvb/l33081.htm>

⁸ See <http://europa.eu/scadplus/leg/en/lvb/l33183.htm>

⁹ In this context, success relates to the immediate impact of reducing the number of irregular migrants in a country.

status. Other national governments are strictly opposed to such legalisation and regularisation measures. Until now a comparative evaluation of legalisation and regularisation politics has not been conducted. To understand the specific situations and opinions, it is important to consider the different geographical position of the Member States relative to the EU's border and the limits of European legislation in terms of the particular needs of these Member States.

Measures of Rectification and Remedy: Social Services, Education, Work, and Political Participation

Various international treaties and human rights considerations have been invoked as the basis for some obligations to provide social services to illegal immigrants. In some Member States, such as **Germany** or **Sweden**, NGOs or religious institutions provide such services. In **Germany**, however, providing these services may involve the risk of legal penalties for social service employees, whereas in **Belgium**, there is no consensus as to whether control mechanisms using public services as a means of detecting and controlling illegal migration, are permitted. Social organisations sometimes refuse to disclose information related to the illegal status of their clients and are, therefore, able to provide certain services. Nevertheless, illegal immigrants are fearful of their status being disclosed and of being controlled as clients of social services, educational institutions, or employment agencies. Thus it could be assumed that only those illegal immigrants who are in dire need, turn to the social services available.

The social situation of illegal immigrants seems in general to be problematic and often precarious in most Member States. It is observed that many of the illegal immigrants have social and educational capital that goes to waste in the duration of their illegal stay. However, in **Greece** for example, the majority of illegal immigrants still consider their living conditions to have improved greatly upon receiving their residence permit.

As far as political participation is concerned, it is more or less non-existent. However, different organisations have been active in supporting illegally resident immigrants through campaigns and platforms aimed at raising the awareness of the government and the general public.

The Social and Economic Impact

The impact of illegal immigration on a particular Member State has, first of all, to do with the human rights of illegal immigrants regarding medical care, shelter, housing, legal rights, etc. and, second, with the vulnerability of this immigration group, that is their inability to claim any benefits due to their illegal status and their resultant invisibility from the perspective of the government. Third, their criminality (implied by their illegal status) undermines the economic and revenue systems of all Member States. The central issue seems to be that the costs to control the social and economic impact are rather high and, in addition, there is no agreement among researchers as to the extent of the damage to the social and economic system. Although there may be evidence of a loss of tax revenue, the substitution argument diminishes the value of these claims.

No data are available on how national or European policies influence illegal migration flows, and there is no empirical evidence – although it is assumed – that a more managed immigration policy or a larger quota for immigrants would reduce illegal immigration. This is particularly true for labour migration, which is regulated by national laws and not by European legislation. The Europe-wide activities are mentioned by a number of Member States, but there is no consistent evaluation of the influence of these activities on illegal migration flows.

1. Introduction

The European Migration Network (EMN) study on "Illegally Resident Third Country Nationals in the EU Member States: state approaches towards them and their profile and social situation" investigates the situation of the European population that does not "or no longer fulfils the conditions for entry into, presence in, or residence on the territory of the Member States of the European Union"¹⁰. Although available data do not offer empirical evidence, there is at least anecdotal evidence that the number of illegal residents within the European Union has been rising. Member States, as well as European Union institutions, have developed political discourses and policy instruments to primarily counteract the flow of illegal immigration and the corresponding social effects.

This Synthesis Report aims to summarise and compare, within a European perspective, the findings from this study undertaken by nine National Contact Points (**Austria, Belgium, Germany, Greece, Ireland, Italy, Sweden, The Netherlands and the United Kingdom**) of the EMN. The aim of the Country Study produced by each contributing EMN NCP was to document, among other things, the number of persons involved in illegal movements and settlements, the sources and results of such indicators and the methodology involved in counting these persons, as well as to present an analysis regarding the validity of these figures. Note that reference to "Member States" in this report is specifically only for those contributing to this study and more detailed information on a contributing Member State may be obtained directly from the respective Country Study.

One of the long-term objectives of the European Migration Network is to deal with the legal frameworks and policy developments in this area of immigration policy. As a result of the growing awareness of irregular flows and settlements, legal frameworks have been developed and various combat and control measures have been established in order to prevent illegal immigration or to exert domestic control on illegal immigrant populations. Furthermore, most Member States have been active in

¹⁰ See Footnote 1.

establishing return policies, both voluntary and forced¹¹. These policies are under review in all Member States. In some, the settlement of illegal immigrants has been considered both a political and social problem at large. As a result, political measures have been implemented in order to meet the immigrants' basic social needs and to regularise or legalise their situation as national citizens in their host nation.

Member States have discussed and agreed on various common measures (e.g. agreements, regulations, directives, communications) within the framework of the European Union. The Schengen and Dublin Processes, as well as measures towards the establishment of a Common European Union Immigration and Asylum Policy (currently within the framework of the Hague Programme) have attempted to structure Member States' policy activities in the area of illegal immigration. Furthermore, Europe-wide platforms such as the Budapest Process¹² have become a means for establishing a common approach to combat and control the presence of illegal immigrants by some Member states.

Within the context of social, economic and political participation of illegal immigrants, social movements, developed by illegal immigrants to present their cause to the public or to political institutions, are identified. The social situation of illegal immigrants has also been described in each Country Study, as well as in research studies and media reports, enabling an overview of the situation to be presented. Generally, illegal immigrants do have fundamental rights, such as the right to educate their children at school, for example, or the right to receive aid from health and social care institutions. Although they qualify for such services, not as irregular residents but in the context of fundamental rights, they are often afraid to disclose their status.

The issue of illegal immigration is not limited to a non-regulated migration flow. In many Member States, illegal immigrants are obtaining employment in a variety of fields, such as domestic work, agriculture, construction, or entertainment. They are filling economic niches for which there seems to be a real need, and while they may

¹¹ "Return" is the subject of a further study by the EMN, which will be available early 2007.

¹² The Budapest Process is a consultative forum of more than 50 governments and 10 international organisations, aimed at developing comprehensive and sustainable systems for orderly migration. For further information see <http://www.icmpd.org/default.asp?nav=budapest&folderid=376&id=-1>.

not be completely accepted, they are at least virtually tolerated. Many of these immigrants are part of an established migration structure.

2. Legal Framework and Policy Developments

Immigration can be defined simply as the cross border influx of populations into a given nation-state. Illegal immigration may, therefore, be considered as entry into a country by an individual who is not in possession of the necessary documents or remaining after expiry of permission. The debate over this definition varies among the Member States and for most Member States, the term ‘illegal immigration’ is not defined by law. In **Germany**, for example, illegal immigration cannot be tolerated because of the principle of sovereignty of the modern state over its own territory and legal framework. Positive exceptions are **The Netherlands** and **Ireland**, which provide an official definition of illegal residency¹³. In these Member States, the primary definitions relate to entry conditions, issues of overstaying and the expiration of residence permits; all of these topics are mainly connected with illegal employment issues, but the definitions are more widely applicable.

For all participating Member States, however, illegal immigration is understood to be the negative, or opposite of, regular permitted immigration (for example linked to regulated employment or study). The subject of illegal migration has recently found solid ground within European legal frameworks¹⁴ and international law might contribute to the debate on illegal immigration as well. The debate surrounding the definition of illegal immigration and its connotations is frequently connected to various control and management approaches, for example legalisation or return policies. Less attention is paid to the restrictive nature of existing legislation governing access of illegal immigrants to the labour market or for other (legal) routes of entry into the EU.

¹³ **Ireland:** The Immigration Act 2004 elucidates that all non-national persons who are in the State without the necessary permission are unlawfully present, except for asylum seekers, convention refugees and their families and programme refugees. **The Netherlands:** Illegal Residency is defined by the Netherlands as “the presence in the Netherlands of foreign nationals who are not in possession of a valid residence permit and are therefore obliged to leave the country.”

For all Member States, illegal immigrants have basic rights or minority rights which are grounded in constitutional law or in European or international legislation. An overview of European initiatives related to illegal migration is debated in **Austria**. The international agreements and activities that grant illegal immigrants some citizenship rights are discussed in **Italy** and **Belgium**. However, awareness and the actual implementation of international agreements pertaining to illegal immigrants remain unclear, at least in some Member States.

The discussion of regularisation and legalisation processes began at different times within the Member States. The illegal immigrant issue in Europe has only moved to the centre of political debates in the early years of the current decade. Since this time, the fight against illegal immigration has achieved a rather important place in discussions about migration management, and illegal migration has increasingly been understood as a threat to social and economic stability in the EU.

For immigrants who illegally enter a Member State or overstay their permitted residency period, various possibilities exist to obtain a regular residence permit. The most common avenue is through a regularisation campaign, which a number of Member States, in particular those bordering the Mediterranean (i.e. **Greece**, **Italy** and **Spain**), have undertaken. Regularisation measures were adopted, to a lesser extent, in other Member States, such as **Belgium**, **The Netherlands**. Residence allowances may also be granted due to humanitarian considerations. Family reunification issues, such as marriage, adoption, acknowledgement of paternity, etc. also play a role. Another means available to those seeking permission to stay is the asylum application procedure¹⁵, at least temporarily, as applicants are normally granted permission to stay until the application process has been completed. All of these options are the subject of debate and, in some Member States (e.g. **Austria**), they are now being restricted.

¹⁴ See http://ec.europa.eu/justice_home/doc_centre/immigration/illegal/doc_immigration_illegal_en.htm

¹⁵ More information on such procedures are given in the EMN's study on Reception Systems (May 2006, ISBN 92-79-02660-7), available from <http://www.european-migration-network.org>.

3. Stocks and Profiles

There are demographic issues involved in the presentation of data on illegal residents in the EU. Population stocks are influenced by fertility and mortality, by continuous movements and the fallibility of data resources. Statistics are also presented by institutions with different mandates, some of which may be more or less unrelated to migration issues. Data on regularisation and legalisation provide the most representative numerical information - they document the number of immigrants that have applied for regularisation and legalisation and how these persons adapt to certain social categories. Other data are provided by border control institutions, such as border police or police institutions whose remit is to combat crimes, such as forged travel documents, smuggling, trafficking, etc. These enforcement institutions keep track of apprehensions, the number of forced removals, and people arrested on criminal charges. In some cases, these data might include a statistical breakdown of foreign nationalities. Although data on rejected asylum applicants are available, it is not always ascertainable which applicants have stayed or left the country. However, it can be presumed that a considerable number of the rejected asylum applicants have stayed illegally.

A variety of sources for statistical data have been used. In some Member States (e.g. **Germany**) labour market institutions, such as trade unions and research institutions are involved in estimating the numbers of illegal immigrants. However, owing to their background, such institutions base their statistics on their estimations. For example, some research institutions contribute qualitative data indicating the rate of failed asylum applicants who go underground, or the link between illegal immigration and legal immigration flows. In **Greece**, a labour force survey was used to present a complex picture of illegal immigration. Furthermore, estimations are made based on numbers presented by non-governmental organisations and charities. In **Germany** and **Belgium**, there are statistics on the number of illegally employed foreign labourers gathered from summary and criminal proceedings. Furthermore, illegal transit migration problems are mentioned related to illegal entries of migrants who may have intended to settle in another Member State or other countries, such as the United States of America or Canada. For all Member States, it is apparent that the

most dominant group of illegal immigrants are men aged between twenty and forty years old. But, as with all data in the field of illegal immigration, these can only be taken as indicative. Moreover, it appears that the number of female illegal immigrants is increasing. Most Member States report illegal immigrants coming from Central and Eastern Europe. Others are coming from regions with former emigration flows to Europe. If one looks at the total numbers only, illegal immigration appears to be increasing.

4. Member State Approaches

4.1. Measures to Prevent Illegal Immigration

Illegal border crossings vary in most Member States because they are dependent on the geographic nature of the border. Some Member States have coastal borders or other types of landscape that are difficult to control, while others share a long border with third states, which could lead to increased difficulties in preventing illegal border crossing. For example, this may be the case in Member States which share a border with transit countries or countries which have a long tradition of emigration. One reason illegal border crossings take place is the practice of using a neighbouring state's territory as a transit zone for illegal trafficking. An additional reason for illegal border crossings is the tradition of tolerating illegal immigration, especially in those Member States (e.g. **Italy**) that experienced an accelerated phase of economic growth and a restructuring of the labour market.

The result of these illegal immigration flows is reflected in the political or administrative awareness at the entry gates that immigrants cross. In this vein, in **Germany**, official border crossing points, visa politics, and anti-smuggling operations are debated. This is the case in other Member States as well. In **Belgium** and **United Kingdom**, the problems of crossing the English Channel to reach the British Isles are of importance. In **Greece** and **Italy**, the focus is more on employment opportunities and border control conditions, while in **Italy**, as well as in **Belgium**, the inspections conducted to counteract illegal labour are specifically discussed. They also refer to the routes of entry organised by traffickers and smugglers. As far as

other Member States are concerned, **Ireland's** position is interesting due to the existence of a common travel area agreement with the **United Kingdom**, meaning that the land border between them is, for the most part, uncontrolled with some sea and air ports unmanned.

As stated previously, the prevention of illegal immigration is first and foremost perceived as a border control problem, though there are other dimensions as well. Various institutions (such as coastal guards, customs officers, border police), are responsible for maintaining border control. Secondly, the legal framework for immigration control has developed in different ways in each Member State. These laws include visa regulations relating to the Schengen agreement, the establishment of new administrative and organisational institutions, the modification of border control mechanisms, the definition of re-entry or repeated return problems, bilateral and multilateral agreements dealing with transit issues and with special co-operation in the countries of origin. Further activities include European control agreements, involving IT-based information exchange via Eurodac, ICONet¹⁶ or the Schengen Information System SIS 1 and 2, for example, as well as various other electronic identification activities. Other initiatives include vehicle search technology, controls on truck drivers, juxtaposed controls and requiring third country national transit passengers to have visas. Numerous European platforms have been established to discuss border control and prevention, as well as a number of initiatives at EU-level.¹⁷

It is evident that the relationship between the Schengen agreement, regarding the establishment of the area of free movement for European citizens within the Union, and the establishment of a common controlled border regarding third states is important. Counter terrorism activities are an additional important area that influences visa policy, passport controls and the establishment of European border security

¹⁶ The "Information and Coordination Network for Member States' Migration Management Services (ICONet)" is a secure web-based Information and Coordination Network for the exchange of information on irregular migration, illegal entry and immigration and the return of illegal residents.(Council Decision 2005/267/EC)

¹⁷ Most recent being Communication on "Policy priorities in the fight against illegal immigration of third-country nationals" (COM(2006) 402 Final), see http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0402en01.pdf.

arrangements, especially in the aftermath of the 2001 terrorist attacks on the USA and the bombings in London (2005) and Madrid (2004).

Other particularly important topics include the extension of institutional arrangements with regard to wider border control and the control of irregular migration flows. In **Germany**, the former “Federal Border Police”, renamed the “Federal Police” in 2005, became responsible over the years not only for policing the state border but also *inter alia* for controlling trains, stations, harbours and airports. Non-state institutions have also become involved in border control mechanisms, for example, international agreements regarding airline liabilities and the partial obligation for German taxi drivers to control their passengers or to report any suspicious behaviour on the part of their passengers. Border control personnel from different Member States are also co-operating in cross-border and undercover operations, joint investigation teams, and so on.

Another development in the field of preventive measures is related to new technical innovations. First of all, Information Technology is highly important since various national and European innovations have been established. Secondly, new computer-based identification systems are now being used for border control, such as biometrics and computerised document control systems.

4.2. Measures of Domestic Control

The use of domestic control mechanisms is not uniform. For example, not all Member States possess a common identity card and registration system for citizens and aliens alike. In **Germany**, for one, there are institutions which register non-nationals. Such central registers can be found in other Member States as well. The compulsory registration of labour or social security cards, or as in **Austria**, the use of registration confirmation documents is another control method. In welfare institutions, registration differs between Member States, but there is a general trend toward developing an identity card and a social security system. Some Member States mention monitoring and reporting regimes for people involved in the legalisation process or for those who have lost their resident status.

Although registration practices vary between Member States, there are obvious similarities between **Germany** and **Austria**. On the other hand, the **United Kingdom** is still in the political phase of establishing these types of practices, for example, the proposal to introduce ID cards. With regard to the southern Member States, such as **Italy**, the expenses for domestic control are extremely high due to their geopolitical position.

Aside from the on-the-street identity controls, most institutions providing public services are required by law to inform authorities of the illegal status of individuals they encounter. This requirement may be bypassed by some institutions, such as various NGOs and religious institutions that oftentimes provide health and social services under the protection of anonymity. Educational institutions in some Member States are opposed to being used as a policing and control institution. In **Belgium**, there is a general political agreement of this nature. Nevertheless, there is a tendency in all Member States to widen indirect domestic control by co-operating with public service providers, in addition to social and health care institutions. Member State governments are also currently attempting to establish networks of co-operation between government departments, other administrations and quasi-governmental organisations in order to bring all of the available information together.

As far as interdepartmental co-operation is concerned, in **Germany**, **Austria** and in the **United Kingdom**, it is well-developed, while in other Member States (e.g. **Belgium**), it is only since the years 2000/2001 that it is being attempted. Most co-operation efforts deal with illegal labour, not only concerning illegal immigrants, but generally concerning all persons working in the black market. In most Member States, programmes have been developed to foster close co-operation between various institutions in order to control the labour market. In some, special task forces have been established to comprehensively investigate the practices of companies. In **Germany**, for example, social security information, as well as financial and other forms of data, is being cross-checked in order to obtain information on illegal employment. Special task forces have also been established to survey certain professions, such as construction, catering, agricultural and hotel industries.

Most Member States have developed a legal framework for controlling labour markets and other areas of illegal employment. An example of an initiative to control employment practices is the project "Ethical Trading Initiative (ETI)", that was developed in the **United Kingdom** and involves collaboration between companies, NGOs and trade unions to develop an ethical business procedure to improve working conditions for all workers, regardless of their migration status and to make improvements to labour practices, e.g. by encouraging organisations to avoid employing illegal migrants. The act and consequences of exploiting migrant labour by foreign firms operating in Member States, such as is the case in **Ireland**, amongst others, is a major topic currently under discussion.

For all Member States, the fight against illegal employment is related to combating trafficking. There is a general tendency to extend the policy of systematic checks in companies and private institutions and to monitor the situation of those who overstay. In **The Netherlands**, for example, the capacities of detention facilities in terms of the effectiveness of controlling and apprehending illegal immigrants are discussed. Overall, the extension of institutional provisions, i.e. use of detention centres, is mentioned by most Member States as a means of domestic control of illegal immigrants.

4.3. Voluntary and Forced Return

Policies dealing with voluntary and forced return are closely related to the problem of illegal immigration. Some basic information is provided on this topic here, since more detailed information is provided in a further EMN study, which is currently being finalised. Sometimes, there is a distinction between return policies with regard to failed asylum seekers, and to other illegally resident immigrants.

In some Member States (e.g. **Ireland**), programmes have been developed to encourage immigrants without a legal right to remain, to return voluntarily to their country of origin (in **Ireland**, once a deportation order is issued and an individual becomes "illegal", they may no longer apply for these programmes). In others (e.g. **Germany**), these special programmes have been developed through interdepartmental agreements. Concerning the inclusion of NGOs, the situation differs between Member States, with special programmes regarding country of origin

and other programmes related to former asylum seekers, etc. In all Member States, however, the IOM is co-operating with established (re-)integration programmes for (failed) asylum seekers or other government assisted repatriation programmes. In **Germany, Austria, Belgium and The Netherlands**, far-reaching co-operation between non-state institutions and government departments has been established in order to develop a common repatriation policy. In the other Member States, this co-operation of actors and institutions is still in the early stages.

There are four major issues in the area of return policy. The first is to identify the real country of origin of the returnee and co-operation with such countries is one of the central political objectives of most Member States, in terms of establishing bilateral agreements or in using their diplomatic resources in the country of origin. Other technical means have been developed to identify people on the basis of their native language, among other characteristics. The second is to establish documentation and suitability to return the migrant to their country of origin. The third issue is the co-operation between Member States regarding joint charter flights¹⁸. The fourth issue pertains to detention capacities, insofar as the lack of detention facilities in some Member States reduces the possible number of apprehensions. Special repatriation centres have been established in **Germany**.

By and large, the basis for removals is related to the Dublin and Schengen agreements, although in **Austria**, a model for monitoring the process of reintegration and related difficulties for the returnees in the countries of origin is presented by the "Association for Human Rights in Austria". Overall, however, return politics are under review for the European Union¹⁹ as a whole, as well as for most Member States.

¹⁸ 2004/573/EC: Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders, *Official Journal L 261*, 06/08/2004 P. 0028 - 0035

¹⁹ e.g. Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third country nationals (COM(2005) 391 final)

4.4. Measures of Rectification and Remedy

4.4.1. Legal Status

While voluntary or forced return represents one of the more important policy strategies available to deal with illegal migrants, other options include regularisation, which deals only with the immediate issue of migrants' status. Regularisation of immigrants who fail to present a residence permit is a complicated issue. First of all, the possibility of obtaining the status of a legal stay might vary depending on territorial restrictions or the time span of any residence permit. Some Member States (e.g. **Austria**) employ the practice of tolerating a minority of failed asylum applicants by providing them with humanitarian status with full or restricted citizenship rights. Other Member States (e.g. **Germany**) have established arrangements for asylum or residence cases that have outstanding decisions still to be made on them. In **Austria** and **Belgium**, special regulations exist for some groups of asylum applicants. As in several other cases, trafficked persons, for example, can apply for a residence permit on humanitarian grounds, yet the procedure for obtaining such a permit is not regulated as such in their Aliens' Act. Victims of trafficking, who agree to testify as a witness, receive a short residence permit for the period of the trial. Furthermore, in 1998 and 2000, displaced persons from the former Yugoslavia were able to become regularised. In the **United Kingdom** in the late 1990s, a regularisation programme was available to domestic workers (working as cleaners and nannies) who found that on leaving an exploitative domestic situation, they became illegal as their visa had been tied to a specific employment position.

The government has discretionary powers to deal with certain cases in the **United Kingdom**. Other measures, such as official legalisation campaigns exist, in **Greece**, **Italy**, **Belgium** and **The Netherlands**. For example, in 1999 in **The Netherlands**, the Secretary of State for Justice proposed a scheme for illegal aliens in employment to pay regular taxes. This scheme is partly based upon the findings of a committee of mayors of the four major cities in The Netherlands. **Belgium** also featured a rather large regularisation campaign in 2000. In the law of 22/12/1999, which has since been discontinued, it was stipulated that illegal residents could be regularised after five or six years on the basis of humanitarian grounds and/or proof of social ties with Belgium.

Regularisation has been very prominent in both **Italy** and **Greece**. **Italy** has a huge number of regularised immigrants (650,000 in 2002 and more than double since 1986), while **Greece** has a comprehensive system of immigration legalisation. The regularisation campaigns in 1998 and 2001 were problematic due to the administrative overload and the complexity of procedures among other factors. Apart from these problems, both regularisations were successful in that they improved the living conditions of the illegal immigrants and reduced the number of removals and the amount of illegal employment.

Nevertheless, in most Member States, regularisation and the legalisation of illegal immigrants continues to be discussed as a strategy of last resort, thus demonstrating the inadequacy of existing legislation. However, as mentioned earlier, the impact of regularisation programmes has not yet been studied. Therefore, it is not clear if these campaigns will act as the main driving force in influencing illegal immigration flows and politics.

4.4.2. Provision of Medical Care

In all Member States, emergency medical care is considered to be a human right regardless of immigration status. Within this context, however, there appears to be a problem with healthcare, owing to the fact that in most Member States medical care can only be obtained through a public institution, although some religious institutions and NGOs do provide emergency healthcare services. The central problem is the debate surrounding its definition, especially in **The Netherlands**, where they are examining what "necessary medical treatment" might mean. Medical care is, in most Member States, difficult for illegal immigrants to obtain without risking disclosure of their residence status. For some Member States (e.g. **Germany**), medical personnel are required to disclose an illegal immigrants' address to the police. As a result, immigrants tend to forgo preventive medical care in all but life-threatening cases. They, therefore, do not always seek help for mental illnesses or infectious diseases.

In **Germany**, there is a general problem related to the legal provision that makes punishable acts that foster the illegal stay of foreigners. This can contradict the obligation of medical personnel to assist in health emergencies and can further contradict public obligations to fight against epidemics, although doctors can treat

patients pending removal. Municipal health offices in **Germany** provide counselling, while promising anonymity, but only for epidemic diseases (e.g. HIV, tuberculosis, hepatitis). In **Ireland**, there is no structured method of information-sharing between the medical and immigration authorities. In **Sweden, Greece** and **Italy** it is required that full healthcare be provided to all children below 18 years old, irrespective of their immigration status. In these Member States, adult illegal residents may also receive general emergency care. Information only has to be disclosed to police institutions within the framework of certain investigations. This means that disclosure occurs only if the police conduct a specific investigation, whereby a Swedish clinic or a hospital must reveal information about whether or not an immigrant has been treated there, although this does not entail, for example, providing information about the persons' whereabouts. Most of these issues apply to other Member States as well.

4.4.3. Educational Facilities

In terms of the educational situation of children of illegal immigrants, there is little concrete information available. It is true, though, that in most Member States, school attendance and primary education are mandatory for all children. In **Austria**, however, regulations are quite strict and the school attendance of undocumented residents is prohibited.

In all Member States, the main common problem is the disclosure of an illegal resident's status through educational establishments or police departments. In **The Netherlands**, such disclosures are prohibited. In **Belgium**, head teachers do not inform the police about the status of their students. In **Germany**, head teachers are responsible for dealing with the enrolment of pupils with an illegal immigrant background. From the point of view of human rights, a far-reaching debate is taking place in **Germany** related to the relationship between the human rights obligation to include all children into the school system and the obligation to collaborate with public agencies and to report to the police or the aliens departments. However, collaboration between schools and educational agencies is not imperative in all federal states - the practice varies considerably. Practices vary all over the EU to such an extent that there exist different degrees of integration of children from illegal immigration backgrounds into the school system. In **Belgium**, a large number of such children are integrated, and in **Italy**, all minors can benefit from health care services

and school education. In other Member States, however, there is a tendency towards little or no integration.

The educational situation of illegal immigrants is more commonly marked by non-attendance. Non-attendance in educational institutions is not only a problem caused by the risk of disclosure to the police. There are other issues at stake, such as frequently changing one's place of residence, ignorance of educational possibilities, social stigmatisation at school, or the lack of educational funds. In most Member States, participants in debates about this issue include local action groups, NGOs, and local and provincial governments.

Regarding further education, tertiary or secondary education, as well as language or vocational training, attendance in educational institutions seems to be dependent on the contextual and institutional structures in each Member State. For example, in **Austria**, it is possible to receive vocational and language training without documentation as long as it is not funded by the state. Furthermore, in **Belgium** no regulation forbids access to education for undocumented adults, except for official vocational training.

4.4.4. Work

One of the most basic principles in the issue of illegal immigration is that an illegal immigrant is legally not allowed to work in any Member State. In the **United Kingdom**, the Immigration Nationality Directorate (IND) has discretionary powers to allow someone given temporary admission (e.g. an asylum seeker who has waited over a year for a decision) to work. However, this occurs only in exceptional circumstances. It is particularly difficult to obtain information about economic activities of immigrants within the context of illegal immigration. Nevertheless, it seems true that illegal migrants make up only a small percentage of the larger category of illegally employed workers. However, this and other available data are merely estimations, as there are no exact figures available. Furthermore, irregular economic sectors are dynamic and therefore difficult to describe quantitatively or to regulate.

The status of illegal workers may depend on the place of employment. For **Ireland**, it is mentioned that some work permit holders may become illegally employed through the failure of their employer to renew the necessary documents. Many documented residents are illegally employed due to difficulties associated with entering the official labour market. However, for illegal immigrants there is no possibility other than working under illegal conditions. In **Belgium**, the motivation behind illegal migration is analysed, that is, in many cases employment-oriented migration is established in order to fill employment gaps in a particular Member State.

Migration networks are important for illegal immigrants with, for example, ethnic communities or family members already settled in a particular Member State, providing information or a place to stay. Individual activities in the area of illegal employment are also mentioned, such as public advertisements seeking illegal immigrant labour. Other notable phenomena are trafficking and smuggling activities related to certain sectors of the economy. Labour market inspection units control illegal employment. The structural dynamics of illegal labour is an area in which there is almost no knowledge or research, although in **Belgium** and **Germany** various studies have been undertaken. Despite this fact, there is still a significant need to gather information in this field, especially in terms of acquiring comparative data for understanding the phenomenon of illegal labour in the EU as a whole. In many Member States, non-governmental organisations and human rights groups are active in monitoring and discussing the issue.

5. The Social and Economic Situations and Political Participation

5.1. The Social Situation

The dominant factor characterising the social situation of illegal immigrants is that they live in constant fear of being disclosed to the authorities. Hence the illegal status of immigrants increases their risk of being blackmailed or exploited.

Most Member States agree that the social situation of illegal immigrants is difficult and that living conditions are harsh. For most, housing is not provided, other than a

general obligation to provide emergency shelter, and so they tend to live with family and friends. Another possibility is that illegal immigrants are exploited by economic entrepreneurs who offer alternative accommodation, e.g. illegal immigrants working in domestic services reside in their place of work. The worst-case examples regarding the quality of accommodation are illegal workers in the sex and agricultural industries, at least as far as those who were illegally smuggled or trafficked are concerned. For **Belgium** and **The Netherlands**, it is argued that the social situation is more or less based on strategies of survival, meaning that these, and a variety of other illegal measures, are undertaken simply in order to survive.

In general the social situation of illegal immigrants is difficult and may be considered repressive. In **Greece** in particular, the main issues presented have to do with the difficulty in obtaining residence permits, and adjusting to unfamiliar social conditions. However, in **Italy**, there is evidence to the contrary with a study indicating that many of these immigrants experienced an improvement in their well-being when compared to their country of origin. For example, more than 73% claimed that their health condition is very good, based on self-assessments. Even though the migration itself was expensive and often dangerous, the conditions in their country of origin (natural disasters, social conflicts, unemployment or economic crises) forced these immigrants to leave (the so-called "push-factor").

In order to focus on the positive aspects of the social situation of illegal immigrants, it is important to focus on the possibility of establishing institutions within ethnic communities that would provide aid and help within the informal sectors of life. This community structure helps NGOs and mediators to improve the social life of illegal immigrants. However, as yet there have not been enough social studies conducted to give a comprehensive overview of the settlement of illegal immigrants in Europe.

5.2. The Economic Situation

The economic situation of illegal immigrants is highly dependent on the structure of a Member States' economy. **Italy**, for example, provides a good example of a highly dichotomous economic structure in which the shadow and official economies exist parallel to one another. In other Member States, the shadow or underground economy is more or less considered to be an offence against the legal structure of

society, as can be observed in **Germany**, for example. Generally, it seems that when a parallel economic sector is widely tolerated, like in the case of **Italy**, it is easier for illegal immigrants to enter into gainful employment and to remain undetected.

The second structural feature of the economic situation of illegal immigrants is the variety of clandestine niches available. Private households and domestic service providers are important employers for illegal workers, particularly in **Italy** and **Greece**. The construction industry and its associated sectors, the hotel, restaurant and catering industries, the cleaning and transport industries and the entertainment sectors are also important areas available to illegal employees, but surprisingly, also the metal and other related industries tend to be similarly significant.

The third structural feature relates to the seemingly close relationship between seasonal demands for labour and the short-term stay of illegal immigrants. This point is elaborated upon for **Italy**, namely that a whole system of seasonal movement exists, enabling clandestine migrant workers to be employed from season to season depending on the different harvests throughout the various regions of southern Italy.

Due to the diverse economic structure between the Member States, there are various recruitment possibilities which tend to influence the economic situation of the illegal immigrants. First of all, there are private networks available, both organised in the Member State and related, for example, to certain families or population groups. There are also cross border networks which function based on seasonal employment activities or the activities of certain population groups. Also of apparent importance are immigrant community institutions, such as coffee houses and shops, among others, which seem to serve as working agencies and job providers for the identified target group. Recruitment agencies and individuals are also active in this field and may extend their activities beyond the legally allowed parameters. Additionally, labour market institutions are advertising in the media at an increasing rate and are, therefore, becoming a more significant means of recruitment, which is highly important in niches like seasonal work, entertainment, the construction sector or even prostitution, for example.

Most Member States acknowledge that the labour situation is problematic. In **Ireland**, there is reference to a study which observed that illegally resident immigrants tend to

take up 'the 3-D jobs (Dirty, Difficult and Dangerous) and the 3-B jobs (Boring, Below standard and Badly paid)'. It seems that the lower ranges of work tend to be the recruitment areas for illegal workers. Yet, there are exceptions in the case of highly qualified workers or areas in which a high demand for qualified workers exists, as is the case in certain trades and handicraft areas, for example.

Nevertheless, as far as income is concerned, wages remain rather low. The labour survey in **Greece**, for instance, presents clear figures on the wages of illegal immigrants amounting to half or two thirds of the average income of Greek citizens. Generally, however, income seems to differ and is relative to the country of origin and the sectoral niches in which the work is being completed. There are, furthermore, a wide variety of niches available depending on the particular immigrant groups. In some areas, there seems to be continuous substitution processes influencing the economic situation of illegal immigrants. New economic sectors are also emerging, as is mentioned for **Austria**. This is evident in particular in caring for the elderly, an area where wages tend to be very low and the demand for labour high.

Another factor to bear in mind is that it is not unusual that illegal, as well as legal, immigrants accept jobs in their country of settlement that are in fact sub-standard and beneath their skills level, based on the level of education attained in their country of origin. One can speak, therefore, of the general problem of "brain waste" in Member States which are in need of qualified persons. Illegal immigration is one reason for the phenomenon of brain waste, in addition to language difficulties, discrimination, non-recognition of foreign diplomas, and so on. This seems to point to a general social dilemma. But undocumented migrants may also be employed because of the possibility of tax evasion and their weak negotiating position ("a DDD-job or no job"). It cannot be concluded definitively, however, that if they would stay legally they would be employed according to their level of education.

Another problem that is still present is the trafficking and smuggling of persons, which is mainly due to economic reasons linked with exploiting the personal situation of illegal immigrants. This is particularly relevant for undocumented migrants who have restricted avenues to defend themselves from falling victim to blackmail and forced labour, owing to their fears of being discovered and controlled.

Furthermore, work situations seem to be undergoing a process of change due to illegal immigration. There is a very close employer-employee relationship in domestic services, as well as in various other small businesses. Small businesses, especially in the agricultural sector and/or family-run, are increasingly developing more into wage-oriented enterprises due to the supply of cheap illegal workers.

5.3. Political and Civic Participation

In all Member States, there are limited opportunities for illegal immigrants to participate in politics. Whilst illegal immigrants are generally not allowed to participate in political processes and may turn to alternative platforms (such as demonstrations and solidarity movements), the platforms that do offer immigrants the option to participate also presents a danger of their being disclosed to the police or migration management institutions. Illegal immigrants seem to be even more vulnerable in the political field than in the economic and social areas, causing most forms of political participation to be informal and dependent on political networks and institutional arrangements.

Once again, these conditions have to do with the duration of illegal stay. If illegal immigrants are just related to seasonal work or seasonal stays, there is presumably no or little political activity. If they are part of an immigrant group with a long-established community behind them, then they might have a better chance of being involved in political activities and are better able to articulate their interests, be heard, and further attempt to improve their life situation through their political participation. Religious institutions may also play an important role, although this is not addressed by the Member States contributing to this study.

The second relevant factor is the close relationship of immigrants to local networks and municipal institutions. Some groups of illegal immigrants have established autonomous organisations, which might be related to the clan and family structures. For example, the Roma organisation in **Belgium**; or churches and their members' interest in improving the health care for immigrants, as well as in improving asylum procedures, in **Sweden**. Trade unions are also mentioned as a lobby group for illegal immigrants. Various non-governmental organisations are active, but in **Greece**, research has identified problems associated with such involvement, going so far as

to refer to them as being paternalistic. Nevertheless, anti-racist or migration rights organisations are acting as mediators and lobbyists for illegal immigrants. Many Member States refer to the activities carried out in this area by NGOs, human rights groups and foundations. An additional factor – European-level co-operation – is addressed by **Austria** in particular. In this regard, there seems to be an influence from Europe-oriented activities observable, for example, through European NGOs (like PICUM²⁰), churches, committees, or the Red Cross.

Many Member States present research and scientific studies, as well as other media, contributing to the discussion and discourses with wider society. In **Italy**, various facts about illegal immigration, which convey the problems associated with illegal immigration to the wider public, are debated. In **Greece**, festivals in favour of immigrants are mentioned, and for **Austria**, artistic events are described, which are the basis for discourses on illegal immigrants.

As mentioned previously, most of the debates centre on the level of delivering help and care. Others are dealing with human rights issues. Even government institutions on the local and national levels are involved, as well as juridical courts and political parties. Overall, however, illegal immigrants do not seem to be involved in any far-ranging decisions about their fate and future. Most Member States refer mainly to the social, political and cultural capital that illegal immigrants bring with them and how this capital might be used for organisation and articulation in the political sphere in the future.

6. The Impact of Illegal Immigration

Few data exist on the impact of illegal immigration on European society, even rough estimations are missing or – if presented – are contradictory. Generally, illegal immigrants are primarily perceived as a social threat. This perception could have many reasons, for example, feelings of social and residential insecurity, fear of a

²⁰ The Platform for International Cooperation on Undocumented Migrants (PICUM) aims at promoting respect for the human rights of undocumented migrants within Europe. See <http://www.picum.org>.

higher crime rate, xenophobic tendencies, etc. but, as mentioned previously, there is a lack of evidence to support such theories.

Another perception is the awareness of this kind of immigrant group as being vulnerable. Here, discussions about the costs of such immigration generally abound, but a variety of actors are also articulating the problem of possible care and aid options. On the one hand, it is a problem of security and immigration policy, and, on the other hand, it is a problem of social care and human rights. With regard to costs, **Italy** has provided information comparing the costs of measures to tackle illegal immigration with that for integration. In 2003, €164.7 million, and in 2004, €115.6 million was spent on tackling illegal immigration, with, in 2003, the budget for expulsion being €12.7 million. By comparison, the budget in 2004 for the integration of immigrants was €29 million.

With regard to the economic situation in the Member States, there is indeed evidence of wage dumping (i.e. paying illegal immigrants less than the wage paid to legal workers), which is partly even debated with regard to immigration groups themselves, so that one immigration group is substituted by the other, supplying labour at lower wages. However, there is almost no research on this, although there are some case studies on economic cost benefit analysis.

The costs and benefits ratio is dependent on cycles and fluctuations of immigrants and on the differentiation of various economic niches and immigration groups. One can indeed speak of the large degree of taxes lost through illegal work and of education spending. But as mentioned above, the educational integration of children with illegal residence background is rather low in most Member States. This has an impact on employment and the problems of achieving an economic balance in the national economy with regard to filling niches and occupations in demand.

7. Summary

Illegal immigration has become an important topic in Europe. First of all, a phase of transition can be observed in this field: this refers to legal, governmental and administrative structures, the collection of data and information, as well as institution-building processes in general. Secondly, in all Member States, illegal immigration is perceived as a threat undermining state authority, security, coherence, safety and economics on the one side, and as a problem pertaining to the settlement of a vulnerable and uncontrollable immigration population on the other.

The degree of prevention and control of illegal third-country immigrants differs between Member States, with **Italy** investing a huge amount of state budgeted money into this field, and **Germany** and **Austria** seeming to be the two Member States with the most money and activities invested in the security and control arrangements. In all Member States, arrangements and measures are still not fully implemented. Several international legal framework conventions and treaties are guaranteeing the basic rights of illegal immigrants, which are mainly articulated by NGOs, human rights groups and other such agencies.

Government co-operation, institutional framework activities, co-operation, and the institutionalisation of new measures, are wide-ranging and difficult to characterise. Here too, investigations and information-collecting are considered necessary. All Member States have developed their frameworks and invested in checks and controls. These controls include external state actions, such as the imposition of visas and tighter border controls, domestic actions with residence and work permits, and with co-operative efforts within the Member States. Furthermore, data systems and IT installations have been developed and used in most Member States. There are also bilateral co-operations regarding border data and border controls. Furthermore, various bilateral and multilateral treaties have been improving co-operation with the countries of origin and transit. In particular, for **Germany**, various co-operations of local, regional and federal administrations in increasing the effectiveness of control are mentioned.

In most Member States, a central security issue relates to human trafficking and smuggling. Here, co-operative measures on various levels have been implemented. In conclusion, however, it must be affirmed that the situation in each Member State is different and, due to the lack of data, it is difficult to make comparisons. References are made regarding stocks and profiles of illegal immigrants with regard to certain case studies and estimations. However, in **Greece** for example, there are even labour market studies which include illegal immigrants. Return policies have been established on various levels and with various instruments, but are mainly in the discussion phase as far as becoming European legislation is concerned.

The general problem with illegal immigrants is their fear of being discovered and controlled, leading them to rarely access social services and educational facilities. Despite the above-mentioned international agreements guaranteeing basic rights of illegal immigrants, national policies in favour of illegal immigrants are nearly non-existent, although in some Member States there are, for example, restrictions on controls in the area of educational services.

The social situation of illegal immigrants is precarious, though it differs according to the region and Member State, as well as to the immigrant groups examined and their social and cultural baggage, such as problems pertaining to their economic situation. Illegal immigrants work under rather precarious conditions or are at least under threat of being discovered, blackmailed, or eventually removed from the Member State. Political participation is more or less non-existent in the Member States. However, there are organisations active in the area and several platforms available offering participation possibilities for illegal immigrants.

The impact of illegal immigration on a particular Member State is outlined. This has to do with the problems of humanitarian rights and vulnerability of these immigration groups. Most data are not representative but show that the costs of controlling illegal immigration are rather high. The welfare system might have been included in dealing with, for example, educational obligations, but even here the costs are marginal.