

Irregular Migration in Europe – Doubts about the Effectiveness of Control Strategies

The “Global Commission on International Migration”¹ has pointed to the fact that a considerable proportion of today’s roughly 200 million global migrants do not possess regular residence status. Amongst the general public and politicians, irregular immigration to Europe is associated with a large number of fears: that countries are losing control over their borders, that social systems are overstretched by unauthorised use, that indigenous workers are being pushed out of the labour market, and that criminality is growing. As a result, controlling irregular migration is one of the priorities of the European Union’s migration policy. A large number of measures to control migration with varying degrees of intervention and, at times, considerable financial expense are justified by their serving to combat illegality (for more on terminology, see box).

Irregular migrants, *sans papiers*, undocumented immigrants, aliens without residence status, clandestinos, illegals, illegalised people, illegal residents, people in hiding – all these are terms used for people staying without the necessary residence permit and without a formal statutory temporary suspension of deportation (*Duldung*) in a country of which they are not citizens. Some authors passionately defend certain terms because they perceive other expressions as either pejorative or euphemistic, while others use them more or less synonymously.² In this policy brief we generally use ‘irregular migration’³ because this term appears to be gaining acceptance in international scientific discussion. However, we also make use of official and legal terms such as ‘illegal residence’ and ‘illegal employment’, for example in our discussion of EU regulations.

This policy brief argues that the European Commission recommends extensive measures to control irregular immigration although there are justifiable doubts about the efficiency and effectiveness of these measures. On the basis of current research, we first provide a brief overview of the phenomenon as well as policy developments in selected member states. Against this background, we show that measures to control irregular migration play a central role in European migration policy. We then present a current European Commission proposal for a directive to tighten up employer sanctions, giving examples to reveal how the investment of finances and personnel in migration control is taking place without sufficient information about

its efficiency, effectiveness and impact. There is an urgent need to evaluate migration control at a European and national level.

Irregular migration: what is known about the phenomenon

The state of research into irregular migration has improved in recent years, thanks above all to a large number of smaller studies. However, there are still considerable gaps. Nevertheless, it is possible to derive the following key data about this form of migration from current research:

Ways into and out of illegality: Illegal residence may arise and end in various ways. Entering a country illegally – for example by sea to the Canary Islands or by land from the Ukraine to the Slovak Republic – is just one route to illegal residence in the European Union. Likely more frequent is when it follows legal entrance, such as when, a person stays in a country after the tourist visa has expired without a residence permit. There are indications in Italy that 75% of irregular migrants have entered the country legally, 15% have come illegally across land borders and 10% across sea borders.⁴ Various combinations of illegal and legal entry, residence and employment may arise. At the same time, numerous transitions between legality and illegality are possible. For example, a person could enter a country illegally, achieve legal residence status by applying for asylum, take up an occupation illegally while waiting legally in the country for asylum to be granted, and then stay in the country without a valid residence permit after the application has been denied. Whether and how irregular immigrants find routes into legality through individual legalisation, for example through marriage or hardship provision, or a collective regularisation programme is strongly dependent on the country and time.⁵

Duration of stay: In the case of irregular migration both limited-term stays and circular patterns of migration are found as well as people settling for an indeterminate period. Stricter border controls tend to lead to an extended period of stay because re-entering the country or moving to and fro is risky.⁶ In academic circles this type of phenomenon is also referred to as the “ratchet effect”.

Extent: Wherever possible, irregular migrants avoid contact with government agencies as they are threatened with deportation, imprisonment and often also fines or criminal penalties. For this reason it is difficult to represent them with statistics. As a result, it is only possible to estimate the extent of irregular

migration. Estimates as to the number of irregular migrants in Europe have, to date, been neither plausible nor reliable, although there have been efforts made to at least generate greater transparency.⁷ Based on estimates of varying quality, it is thought that there are between four and seven million irregular migrants in the EU, although this is at best a rough indication as to the magnitude of the phenomenon. Those states with the highest absolute numbers of irregular residents include Germany, France, Italy, Spain, Greece, Poland and the United Kingdom. For Germany the stated figures range from 100 000 to a million people.⁸

Trend: Even if it is not possible to give precise estimations as to the extent, it is at least possible to refer to various indicators in order to analyse trends. On the basis of such analyses, there has been a general worldwide assumption since the end of the 1980s that there has been a sharp increase in irregular migration, although there are certainly also countries where current estimates indicate a declining trend. Germany is one of these countries. After appraising available information and indicators, the German Federal Ministry of the Interior has come to the conclusion that since 1998 “both illegal migration and the number of illegal immigrants appear to have declined.”⁹ At EU level the development has been strongly influenced by twelve new states joining the EU since 2004. Firstly, this has reduced illegal residency, since a large proportion of irregular migration in the EU-15 countries stemmed from accession countries; secondly, it appears that illegal residency has shifted from the old to the new EU states.

Origin and motives: Irregular migrants frequently come from nearby countries with a significantly lower level of income, from countries with established historical or current ties with the receiving country, or from countries in which human rights violations or poor economic conditions cause people to emigrate.¹⁰ The same motives for migrating are found among both irregular and regular immigrants: earning and educational opportunities, love, family connections, a desire to travel, the search for protection from persecution, or fear of returning to a (former) area of war or catastrophe. Of these, the greatest importance is attributed to economic motives. Typically, young adults are overproportionally represented among irregular migrants.

Social status: Many irregular migrants have a decidedly entrepreneurial attitude. They are capable of earning their living in markets independently and they overcome material difficulties with the help of relatives, friends, acquaintances and also employers. These people form their network. The possibility of activating such networks is also referred to in academic circles as social capital. At the earlier stages, irregular migrants often do not yet have networks but instead just one or a few contacts upon which they are dependent. This makes them vulnerable to false information, deceit or violence. For longer stays, even extensive personal networks have their limits where major problems are concerned, such as accidents or serious health problems.¹¹

Criminality: In Germany, illegal residence is a criminal offence in the eyes of the law; in other countries, such as the Netherlands, it is not. When discussion turns to the association between illegality and criminality, however, generally speaking only such offences are meant as might be committed by a country's own citizens, such as robbery, assault or theft. Whereas many studies indicate that most irregular migrants avoid criminality in

this sense in order to minimize the risk of discovery,¹² a more recent study observes an increase in criminality among irregular migrants in the Netherlands. This is explained by the increasingly restricted employment opportunities resulting from more stringent laws.¹³ However, irregular migrants may also be the victims of criminality, not just perpetrators, especially in connection with human trafficking for purposes of sexual exploitation and exploitation in the workplace.¹⁴

Employment: Nowadays it can be assumed that irregular immigrants in Europe largely resort to informal markets.¹⁵ This has by no means always been the case, nor is it so now in every part of the world. It is estimated, for example, that in the USA the majority of irregular migrants with forged or borrowed papers hold legally declared jobs.¹⁶ The jobs themselves are often in the services industry and are characterised by any – or typically all – of the following factors:¹⁷ they are relatively unattractive for the indigenous workforce, are tied to one place and are difficult to monitor. Depending on the country and region, the key sectors concerned – with varying emphases – are agriculture, construction, domestic service, and the hotel and catering industry. Although people with no residence permit offer their labour within all sectors, employment opportunities are determined by employer demand within the country. Through their employment, wage earners with no residence permit typically interact closely with the legal population and economy.

Political approaches to illegal residence among member states of the European Union

Among EU member states, migration policy is increasingly framed by guidelines at the European level. However, before addressing current European initiatives on migration control, it is necessary to clarify the different ways in which individual member states currently deal with illegal residence. We shall concentrate on areas where conditions differ strongly between individual countries.

Registration and inspection of all citizens: Only people who can be identified and assigned to a country of origin can be deported.¹⁸ State practices for identifying and inspecting all citizens form the framework for options for controlling migration. The more strictly all citizens are registered and inspected, the easier and less expensive it is to control migration. The spectrum ranges from the Scandinavian countries, where everyone is accompanied from the cradle to the grave by an identification number that is registered everywhere, through to England, where there is no residential register and only since 2004 has there been a gradual introduction of compulsory identity cards. At the same time, there is less control of economic life in southern European countries than in northern European countries, as a result, for example, of the greater significance of agriculture and small business structures.

Migration history: Illegal residence is conditional upon, and influenced by, the nature and extent of previous immigration. In northern and western Europe, many states experienced high levels of immigration in the second half of the 20th century, due

to colonial immigration or recruitment programmes for migrant workers. They thus have large numbers of residents with an immigrant background who can offer a foothold to irregular migrants. By contrast, countries like the Baltic states have hardly any established immigrant groups whose experience and support new immigrants could rely on.

Current admission policy: Current admission policy determines the legal options for immigration. Anyone who can enter a country legally, for example as a migrant worker or family member with a view to gaining permanent residency status, has no need to consider an illegal route. Thus the United Kingdom is in this sense more open to labour migration than Germany and offers more legal alternatives. Temporary programmes, such as for seasonal employment, which exist in many countries, have a twofold effect. Opportunities to take up temporary employment lead to more people working legally in sectors such as agriculture and tourism. However, there is a shift towards illegality when immigrants continue to work after the limited visa has expired. Infringement of legal conditions under which a person may work with a valid visa creates a grey zone in which the migrants can indeed move about in public in the same way as other regular migrants but are threatened with deportation should the circumstances of their employment be exposed.

Border controls: Due to their geographical location, the EU member states are confronted to differing degrees by illegal border crossings. EU member states in the south and east, such as Spain or Poland, share borders with poorer countries that do not belong to the European Union. They are responsible for guarding their long land and sea borders. EU countries lying at the heart of Europe only have internal borders in the Schengen area, which are principally open.¹⁹ That does not mean, however, that there are no inspections at all there. Mobile units monitor the border area in order to be able to return illegal immigrants to a neighbouring EU country. Otherwise, in countries such as Germany, external border checkpoints are located mainly in airports. Border controls in the United Kingdom, which has not acceded to the Schengen Agreement, are traditionally strict.

Labour market and police inspections: The possibility of exposing illegal residence through internal labour and police inspections varies greatly from one member country to another. In many EU countries the police have the authority to carry out random checks,²⁰ i.e. people may be required in public to prove their identity for no specific reason. The frequency and intensity of inspections at businesses and among employees vary, however, between the member states. It is typically easier to detect migrant violations of residency law than violations against the relevant labour law on the part of employers. In the first case there is only a need to clarify residence status, whereas for the employer's offence it is necessary to prove the manner and extent of the employment relationships.²¹

Regularisation programmes: When an irregular migrant is able to make the transition to regular residence status this is termed "regularisation" or legalisation. There are forms of more or less restrictive individual regularisation in all EU member states. Particularly in the southern European – Italy, Spain and Greece – there have repeatedly been collective regularisation programmes, in which irregular migrants who register up to a

certain closing date can obtain a residence permit if they satisfy certain conditions. France, Belgium and the Netherlands have also offered regularisation programmes for aliens without residence status who have been living in the country for a long time.²² Other countries, such as Germany, have no such programmes. In Germany, regulations for dealing with so-called old cases (*Alt-fallregelung*) involving long-term residents in possession of a formal statutory temporary suspension of deportation (*Duldung*) serve a similar purpose because they concern immigrants without a regular residence permit who cannot be deported.

Social rights for irregular migrants: Human rights apply universally and are not dependent on residence status. Claims to fundamental human rights include the right of children to a school education, access to basic medical services and legal protection. These rights also apply de jure in all member states of the European Union. The extent to which existing rights can actually be exercised varies sharply from country to country. If schools, doctors and courts check residence and cooperate – or are forced to cooperate – with the authorities responsible for detecting and deporting irregular migrants, these migrants will be deterred from exercising their rights. Germany has the most far-reaching regulations on data forwarding and cooperation with the authorities in charge of migration control (see box). In the Netherlands, access to state services for aliens without status was severely restricted in the 1990s, although schooling, medical treatment and legal protection were expressly excluded. Irrespective of residence status, inhabitants of Spain can register with the communal authorities and thereby receive access to basic medical treatment. In Greece, Sweden and Italy, too, access to medical treatment in acute emergencies is assured regardless of residence status. Hospitals need only pass on information to police if requested in the course of an investigation to do so.²³

Germany: Legal obligation to pass on data

In Germany, public bodies have to transfer a wider range of data to the regulatory authorities than is the case in other countries. In addition to their regular responsibilities, public bodies are also required to contribute to efforts to control migration. Any public authority employee who is required to examine identity papers in the course of discharging their official duties and in so doing learns that a person is residing in the country illegally is bound by law to inform the foreigners' registration office.

Residence Act, Section 87, Sentence 2 Transfer to foreigners' authorities: Public bodies shall notify the competent foreigners' authority forthwith if they obtain knowledge of (...) the whereabouts of a foreigner who does not possess the required residence permit and whose deportation has not been suspended (...)

Thus for a foreigner without status, any contact with a public body not only involves the risk of not obtaining the required service but is also associated with the risk of discovery and ultimate deportation. In a memorandum on the humanitarian and pastoral challenges of "life in illegality", the German Bishops' Conference criticised the fact that

the obligation to transfer data in force in Germany in fact prevents irregular migrants from exercising their existing legal claims to medical treatment, school attendance for children and legal protection from exploitation in the workplace. It is therefore a central demand of churches and other non-governmental organisations to limit the obligation to transfer data and protect persons providing assistance on humanitarian grounds from the suspicion of aiding and abetting illegal residency.²⁴

The arguments put forward in favour of limiting the obligation to transfer data are both humanitarian and functional in nature. If parents do not send their children to school because they fear that their illegality will be discovered and reported, children's fundamental rights, as anchored in international and national law, are infringed upon. Additionally, these children are at risk of developing antisocial or criminal behaviour. Based on similar arguments, children without status in the USA have been guaranteed the right to state-financed schooling by the Supreme Court. Arguments in favour of providing medical treatment touch on the need to prevent and control epidemics.

In response to the demands of non-governmental organisations, the so-called "Grand Coalition" government commissioned a feasibility study into the issues surrounding illegal immigration. This study, carried out by the Federal Ministry of the Interior, sought to provide an overview of the issue and obtained an external legal opinion. Following the concluding examination of the legal and empirical facts, the Federal Ministry of the Interior recommended tightening up regulations on the transfer of data.²⁵ Thus arguments for comprehensive migration control bear more weight than human rights concerns and pragmatic approaches to child protection and health.

Controlling illegal immigration and illegal residence at the European level

The total approach to migration decided upon by the European Commission in December 2005 aims at a coherent policy that concerns the most varied aspects of migration policy and touches upon associated areas of policy, such as foreign relations, development and employment as well as justice, freedom and security. The total approach assumes firstly that potential migrants have a continuing interest in immigration, which will, if necessary, be achieved illegally ("migration pressure") and that this necessitates measures to control irregular migration. Secondly, it is assumed that, in view of an ageing and shrinking population, the EU will be reliant on immigration in order to ensure the dynamics and competitiveness of the European Economic Area.²⁶ For past and would-be immigrants, an active policy of immigration and integration is advocated and promoted by means of European initiatives.²⁷ Nonetheless, any cooperation with the countries of origin and transit for irregular migrants is to focus first and foremost on controlling irregular migration, as the following quotation indicates:

"Once certain conditions have been met, such as cooperation on illegal migration and effective mechanisms for readmission, the objective could be to agree Mobility Packages with a number of interested third countries which would enable their citizens to have better access to the EU".²⁸

In general, European migration policy is dominated by a restrictive agenda of repelling, limiting and controlling immigration. At the beginning of 2002, the cabinet of ministers had adopted a plan of action to control illegal immigration and human trafficking. Above all, it encouraged the development of a joint visa and return policy, improved exchange of information and the coordination of control authorities, the setting up of a European border police, and a tightening of sanctions.²⁹

Since then, the political line of intensifying migration control has run throughout all relevant documents. A 2006 "Communication on policy priorities in the fight against illegal immigration of third country nationals" even proposes the establishment of so-called e-borders whereby immigrants and emigrants would be registered automatically by means of electronic, biometrically supported systems. According to this proposal, the automatic exchange of data between authorities that has already been introduced in some countries is to be transferred and employed generally throughout the European Union. Some proposals have already been implemented; as a consequence, the European border police FRONTEX commenced operations in 2005. Overall, it may be said that the only proposals for binding regulations have been measures for extending and tightening controls, and these are more readily received and implemented than proposals directed towards liberalisation.³⁰

The EU has allocated a total of EUR 4 billion from its budget for the framework programme "Solidarity and Management of Migration Flows" for the period 2007 to 2013. The priorities underlying this framework programme are reflected in the relative allocation of funding: the External Frontiers Fund is to receive EUR 1,820 million, the European Return Fund EUR 676 million, the European Refugee Fund EUR 699 million, and the European Integration Fund EUR 825 million.

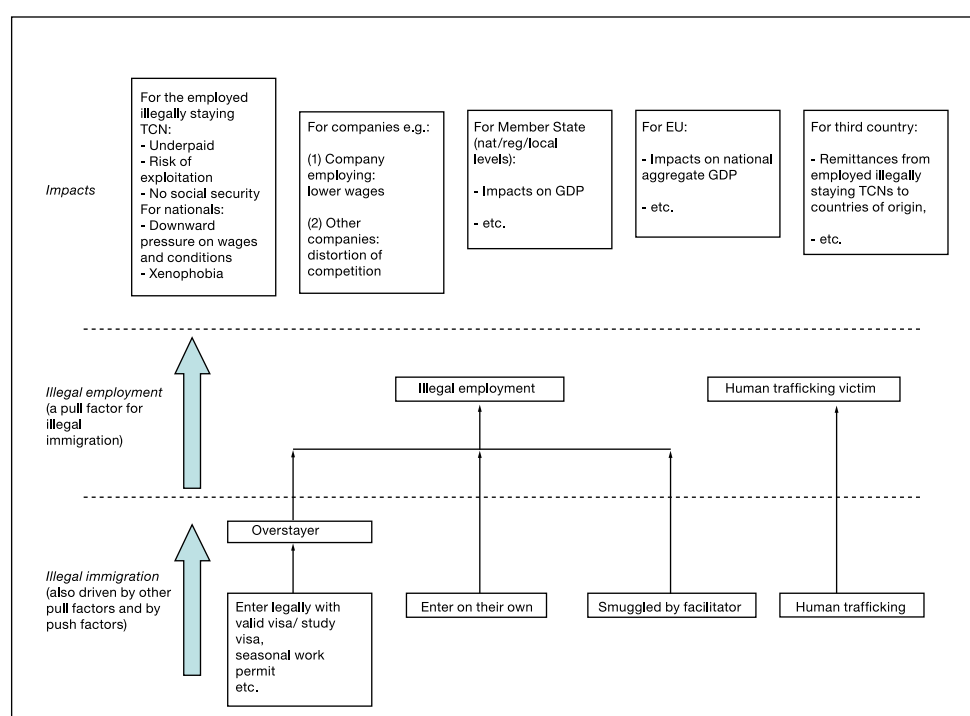
Considerable investment and expenditure on a European and nation-state level is being put into the standardisation of the border control regime required by expansion. It is by no means certain that these funds are being used effectively or efficiently as indicated by the example of the proposal for a directive providing for sanctions against employers that was presented in May 2007.

A current proposal for tightening up sanctions against employers

In May 2007 the European Commission presented a proposal for a directive³¹ containing a Europe-wide regulation for penalising employers who give undeclared employment to irregular migrants from third countries. The proposal has been presented to the Council and Parliament and is now undergoing the customary, protracted process of examination and discussion. The proposed directive aims to limit employment opportunities for irregular migrants and thereby curb irregular immigration.

The fact that the proposal places special emphasis on illegal employment and the fight against it can be explained by the fact that real and assumed earnings opportunities have been identified as an important pull factor for illegal immigration. But even irregular immigrants whose motives are essentially different generally need to earn money to support themselves. For this reason, combating illegal employment is assigned major significance in curbing irregular migration. If, due to fear of inspections and penalties, employers do not offer jobs to immigrants without a work permit, then the number of irregular migrants will fall on account of the lack of earning opportunities. Following this logic, the Commission regards sanctions against employers as a central instrument for migration control within countries.

Figure 1: Problems and impacts related to the illegal employment of third country nationals



Source: European Commission (2007)

It is possible to sum up the most important regulations contained in the proposal in three completely different groups of schemes and actions:

Extended and harmonised employers' obligations: Employers in private households and in companies are to be obliged to check the residence status of immigrants. As proof, they should be able to produce copies of residence permits or other authorisation. Companies are also to be obliged to notify control authorities. Anyone who does not comply with these obligations is to be made to pay financial penalties, any outstanding remuneration and taxes, and also to pay the costs of the employee's return. Employers are to be prosecuted under criminal law for serious infringements.

Extended inspections: Member states are to ensure that about 10% of companies established on their territory are subject to inspections within a given year to check whether they

are employing foreigners from non-EU states without regular status. According to a survey of all member states, it is estimated that about 2% of all companies are currently inspected each year. This will therefore entail a significant increase in the frequency of inspections intended to deter employers.

Extended employee rights: The proposed directive aims at the standardisation and enforcement of sanctions against employers, but indicates in the introduction that third-country citizens without residence status discovered in the course of inspections are to be urgently deported and returned to their own country. Over and above this, however, the draft contains some regulations aimed at recognising certain employee rights, which, if enforced, could reduce the attractiveness of employing irregular migrants. Member states are to ensure that

employees can lodge claims for outstanding remuneration, even if they are no longer residing within the EU. In cases of doubt, an employment relationship of six months duration is to be assumed unless the employer can prove that the employment relationship was in fact shorter (reversal of the burden of proof). Employees who are willing to cooperate are to be provided with channels for lodging a complaint (directly with a particular authority or through trade unions) and, if they have been subjected to particularly exploitative working conditions, granted a residence permit of limited duration linked to the length of the criminal proceedings in order for those concerned to act as witnesses.

How effective is the proposed directive?

To stimulate discussion, some considerations are put forward at this point for evaluating the directive proposal, without addressing analyses and discussions that have already taken place.³²

Extended and harmonised employers' obligations: The fact that private and commercial employers are to examine residence documents, and that companies are also to report the employment of foreigners will, for the main part, curb the "unintentional" employment of irregular migrants.³³ According to current studies, however, this is not a widespread phenomenon in Europe. It is generally assumed that the employment of foreigners without status goes hand in hand with undeclared employment, meaning that employers are generally aware of the fact that they are employing the migrants in question illegally. Even if this were not the case, experience in the USA shows that it is not possible to curb the employment of irregular migrants by increasing demands on employers to make checks. For the most part, the number of employed migrants with good-

quality forged documents increased.³⁴ However, the intended introduction of an obligation for companies to report employment should be judged differently. This obligation could reduce the unintentional employment of immigrants without residence permits in regular jobs. This presupposes that, after data has been compared, employers are promptly notified that the immigrant in question might not be in possession of a work permit. When an employer confronts an employee after receiving such an inquiry, the employee will likely quit because he cannot produce any real papers and will not want to face subsequent investigations.³⁵ However, increasing the obligations placed on employers will have no impact on the intentional undeclared employment of irregular immigrants. Therefore, it cannot be assumed that there will be less demand for irregular migrants to take up such employment.

Whether the imposition of greater penalties for offering illegal employment acts as a deterrent depends greatly on which sanctions can, in fact, ultimately be enforced. Frequently fines and penalties are reduced in court because it is only possible to secure convictions on minor offences in court.³⁶ Demands for additional social security contributions and taxes also tend to be underenforced. According to the German Federal Audit Office³⁷ only 10 % at most of the estimated sums for damages have been recovered.

Extended inspections: Whether increasing the intensity of inspections actually leads to a reduction in employment opportunities for irregular migrants depends on what exactly is to be inspected and, indeed, how. This is not described in more detail in the draft directive. Where estimated costs are concerned, it is assumed that inspectors need on average three days per company, including preparation and follow-up.³⁸ According to the results of studies on the inspection process in Germany, that appears to be an entirely realistic value when it comes to inspecting such places of work as restaurants or building sites.³⁹ Larger companies, however, may distribute their operations over a number of sites and have high numbers of employees; in these cases the estimated costs appear too low. Moreover, it is assumed that the inspections serve only to ascertain the employment of irregular migrants, whereas in practice inspections in Europe are frequently multi-purpose. Taking Germany as an example, inspectors are simultaneously looking for foreigners without a work permit, unemployed persons with an undeclared “job on the side” and tax fraud;⁴⁰ 70% of suspicious cases uncovered in Germany during labour market checks concern benefit fraud on the part of native employees.⁴¹ On a weak empirical basis, it is estimated that currently about 2% of all companies are inspected each year and that any extension of these inspections will incur additional costs amounting to about EUR 1.1 billion.⁴² Our calculations for Germany are likewise only approximate, but suggest that the estimated costs are too low. We calculate that the monitoring authority for illegal employment (Financial Control of Undeclared Employment, FKS)⁴³ carries out inspections on between 2.5 and 3% of companies.⁴⁴ According to the Federal Audit Office’s latest calculations, the FKS cost about EUR 386 million in 2006.⁴⁵ Judging by this, if the number of inspections remains the same, Germany would roughly have to quadruple expenditure in order to meet the EU requirements. This means that Germany alone would require as

much additional expenditure as the EU estimates the costs will be for all the member states put together.

One argument for increasing the level of inspection to a standard percentage in all member states is that this is the only way to avoid distorting competition. If we assume, however, that member states are affected to different degrees by illegal residence, on account of their geographic location, salary level and the relative economic significance of sensitive sectors, then the question arises as to whether a standardised level of inspection does not place a disproportionate burden on states in which the illegal residence of migrants is a less significant phenomenon.

Extended employee rights: Whereas the approaches discussed so far essentially increase the obligations on the employer and extend those of the responsible authorities, the extension of employee rights is based on a different premise. Employees without residence status would indeed continue to face deportation if discovered in the course of employer inspections. However, governmental and private institutions would be required to enable them to claim outstanding remuneration and to be available to act as witnesses in serious cases. This would help strengthen the employees’ legal security and ability to deal with conflict.⁴⁶ If these measures were effectively enforced, it would put the employer – and not just the employee – at risk of being penalised. There have been repeated reports of employers passing information to the control authorities in the event of conflict, in order to withhold salaries from employees without residence status; if the draft directive were implemented, employees would have an incentive to report fraudulent employers to the control authorities in order to assert their claims to remuneration. This presupposes, however, that they accept their own deportation. For the employer, this would not only increase the risk involved in employing irregular migrants, but would also reduce the incentive to exploit such migrants and cheat them out of their wages. However, due to the limited practical experience in Europe with implementing such measures, it remains uncertain as to how authorities could ensure that outstanding employee claims are asserted. Whereas quantitative benchmarks have been suggested for monitoring an increase in labour market inspections, no such benchmarks have been proposed for monitoring the extension of employee rights. One solution would be to require that towns of a specific size establish an information centre; it could also be specified that the advisory activities be extended in direct proportion to labour market inspections (i.e. one new employee advisor for each new inspector).

Conclusions

In response to pressure from Ministers of the Interior from certain member states, the European Union is investing considerably in expanding border controls and plans to extend labour market inspections within the EU. In both cases, according to theoretical and empirical research, it remains to be seen whether this will actually achieve the aspired reduction in illegal immigration. Expanding border controls increases the risks and cost of entering a country illegally to the point where

there is increased danger to life and limb.⁴⁷ On the one hand, this could deter potential irregular migrants. On the other hand, this overlooks the fact that – precisely where borders remain strictly closed – exaggerated notions of the earning opportunities to be gained upon successful illegal entry may continue to spread: ideas that are also deliberately nurtured by commercial human traffickers. At the same time, the tightening of border controls reduces the incentive for migrants to return to their home countries.

According to current research, the increase in inspections within national borders may help limit opportunities for immigrants without status to engage in legal employment. However, it is doubtful whether the proposed instruments are suitable for achieving this goal. With reference to the proposed directive pertaining to employer sanctions from May 2007, we have shown that the measures proposed for restricting illegal employment (and thus illegal immigration) are based on false assumptions. Our observations indicate that extended employer obligations and inspections would for the main part prevent irregular migrants from taking up legal, taxable employment – a relatively insignificant scenario in Europe. Moreover, it is doubtful whether additional inspections of the type and to the extent recommended can in fact be implemented. According to current findings, the real difficulty currently lies in enforcing employer sanctions.

If implemented effectively, the proposed reinforcement and extension of employee rights could help to curb particularly exploitative employment relations, because in such cases it could be advantageous to employees to take legal action in pursuit of outstanding remuneration, despite the threat of deportation. This right to sue for outstanding remuneration, however, would pertain to a particularly weak and poorly informed group of employees. Without support and guidance it is unlikely that they will be able to exercise the right. Failure to exercise this right would, in turn, result in failure to meet the goal of preventing particularly blatant cases of social dumping. As the Commission's proposal observes, affected employees need the support and advice of independent bodies, but whereas there are quantitative benchmarks for increasing the intensity of inspections, that is not the case here, which could potentially render the proposal useless.

Neither at the European nor the national level has the efficiency or effectiveness of investments in the intensification of migration control been systematically evaluated. In an evaluation of German labour market inspections, the Federal Audit Office has identified a considerable and urgent need for research. Otherwise there is a danger that, by increasing monitoring, employers will be unnecessarily burdened with bureaucracy and considerable amount of public finances will be expended without achieving the declared aim of reducing incentives for illegal immigration.

Endnotes

- ¹ See GCIM (2005): 32-41.
- ² See e.g. "Europa: Illegalität – Formen, Probleme und Strategien." Newsletter, Migration und Bevölkerung, Issue 10/2006 for an example of the discussion of terminology. [http://www.focus-migration.de/Einzelansichten.1316.0.html?&tx_wilpubdb_pi1\[keyword\]=81&tx_wilpubdb_pi1\[submit\]=Suchen&tx_wilpubdb_pi1\[article\]=18&cHash=2cc0c106e1](http://www.focus-migration.de/Einzelansichten.1316.0.html?&tx_wilpubdb_pi1[keyword]=81&tx_wilpubdb_pi1[submit]=Suchen&tx_wilpubdb_pi1[article]=18&cHash=2cc0c106e1)
- ³ Irregular migrants sometimes use the illegal services of people traffickers or are brought to Germany against their will by such people. People-smuggling, human trafficking and forced labour are not discussed in further detail in this policy brief.
- ⁴ European Migration Network (2005): 17.
- ⁵ See Bruycker (2000).
- ⁶ See Massey (2002).
- ⁷ The Clandestino project aims to classify estimates according to their quality as well as improve estimation methods. For more information visit: http://www.hwwi.org/Irregular_Migration.2409.0.html?&L=0
- ⁸ See Düvell (2006: 16) for an overview and Sinn et al. for Germany (2005: 59).
- ⁹ See BMI (2007): 18
- ¹⁰ See Cyrus (2004a).
- ¹¹ See Cyrus and Vogel (2006).
- ¹² See van der Leun (2000).
- ¹³ See Broeders and Engbersen (2007).
- ¹⁴ See Cyrus (2005).
- ¹⁵ See LeVoy et al. (2005).
- ¹⁶ See Papademetriou et al. (2004).
- ¹⁷ See Leerkes, Engbersen et al. (2007): 15.
- ¹⁸ See Broeders and Engbersen (2007).
- ¹⁹ The Schengen area denotes territories of member states that are committed to joint border control and security regulations and have abolished controls on internal borders. Today this includes most member states with the exception of the United Kingdom, Ireland, Bulgaria, Romania and Cyprus.
- ²⁰ See EMN (European Migration Network) (2007).
- ²¹ The exact mode of operation depends on the form of the inspections; this has only been investigated for some, not all, countries. See Jordan, Strath et al. (2003).
- ²² See Bruycker (2000).
- ²³ See EMN (2007).
- ²⁴ See www.forum-illegalitaet.de
- ²⁵ See BMI (2007).
- ²⁶ See Commission of the European Communities (2006a).
- ²⁷ See Commission of the European Communities (2007b).
- ²⁸ See Commission of the European Communities (2006a: 8).
- ²⁹ For European Commission policy see also the item "Illegal Immigration" on the homepage of the Directorate-General for Freedom, Security and Justice. http://ec.europa.eu/justice_home/fsj/immigration/illegal/fsj_immigration_illegal_en.htm
- ³⁰ See Bendel (2006).
- ³¹ The directive and all associated documents may be found via the Commission's prelex portal. (Com (2007)249 final) http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=de&DosId=195730.
- ³² For discussion of this topic see, for example, the comments of the European NGO Picum, whose stated objective is to protect the rights of people without status. <http://www.picum.org/HOMEPAGE/PICUM%20Comments%20on%20COM%202007%20249%20final%20Employer%20Sanctions.pdf>
- ³³ See Vogel (2005).
- ³⁴ See Fix (1991).
- ³⁵ See Vogel (2001).
- ³⁶ See Abella (2000).
- ³⁷ See Federal Audit Office (2008: 24).
- ³⁸ See GHK (2007).
- ³⁹ See Cyrus and Vogel (2002).
- ⁴⁰ See Martin and Miller (2000).

⁴¹ See Federal Audit Office (2008).

⁴² See GHK (2007).

⁴³ The Financial Control of Undeclared Employment (FKS) is part of customs and therefore under the control of the Ministry of Finance. With 6,500 employees, it carries out inspections on employers and employees in order to uncover undeclared employment, illegal employment of foreigners and related criminal offences. http://www.zoll.de/d0_zoll_im_einsatz/b0_finanzzkontrolle/index.html

⁴⁴ For 2004 the Federal Statistical Office listed 3,426,612 registered companies. According to the FKS, 104,965 employers were inspected in the same year.

⁴⁵ See Federal Audit Office (2008).

⁴⁶ See Cyrus (2004b).

⁴⁷ See Cornelius (2001).

About the authors:

Dr. Dita Vogel is a researcher at the Hamburg Institute of International Economics (HWWI) and director of the EU project CLANDESTINO (Irregular Migration: Counting the Uncountable, Data and Trends Across Europe).

Dr. Norbert Cyrus is a researcher at the Carl-von-Ossi-etzky University in Oldenburg and director of the EU project WinAct (Winning Immigrants as Active Members).

References and further reading

- Abella, M. (2000): "Migration and Employment of Undocumented Workers: Do Sanctions and Amnesties Work?" In: D. Cinar, A. Gächter and H. Waldrauch (Eds.), *Irregular Migration: Dynamics, Impact, Policy Options*. Wien, European Centre Vienna: 205-215.
- Bendel, P. (2006): "Neue Chance für die EU-Migrationspolitik? Die Europäische Union im Spagat zwischen Sicherheits-, Entwicklungs- und Außenpolitik." In: C. Butterwegge and G. Hentges (Eds.), *Zuwanderung im Zeichen der Globalisierung*. Verlag für Sozialwissenschaften: 123-134.
- Bundesrechnungshof (2008): Bericht nach § 99 BHO über die Organisation und Arbeitsweise der Finanzkontrolle Schwarzarbeit (FKS). Bonn, Bundesrechnungshof.
- BMI – Bundesministerium des Innern (2007): *Illegal aufhältige Migranten in Deutschland. Datenlage, Rechtslage, Handlungsoptionen*. Bericht des Bundesministeriums des Innern zum Prüfauftrag „Illegalität“ aus der Koalitionsvereinbarung vom 11. November 2005, Kapitel VIII 1.2, (unpublished). Berlin, BMI.
- Broeders, D. and G. Engbersen (2007): "The fight against illegal migration: Identification policies and immigrants' counterstrategies." In: *American Behavioral Scientist* 50 (12): 1592-1609.
- Bruycker, P. (Ed.) (2000): *Regularisations of Illegal Immigrants in the European Union*. Brussels, Bruylant.
- Commission of the European Communities (2007a): *Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals*. Brussels, 16.5.2007 COM(2007) 249 final and related documents http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=195730.
- Commission of the European Communities (2007b): *Third Annual Report on Migration and Integration*. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Brussels, European Commission. COM(2007)512 as of 11.9.2007 http://ec.europa.eu/justice_home/fsj/immigration/docs/com_2007_512_de.pdf.
- Commission of the European Communities (2006a): *The Global Approach to Migration one year on: Towards a comprehensive European migration policy*. Communication from the Commission to the Council and the European Parliament. Brussels, European Commission KOM(2006) 735 final as of 30.11.2006. http://eur-lex.europa.eu/LexUriServ/site/de/com/2006/com2006_0735de01.pdf
- Commission of the European Communities (2006b): *Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals*. COM 2006 402 final. Brussels. http://eur-lex.europa.eu/LexUriServ/site/de/com/2006/com2006_0402de01.pdf.
- Cornelius, W. A. (2001): "Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy." *Population and Development Review* 27 (4): 661-685.
- Cyrus, N. (2004a): *Aufenthaltsrechtliche Illegalität in Deutschland. Sozialstrukturbildung - Wechselwirkungen - Politische Optionen*. Bericht für den Sachverständigenrat für Zuwanderung und Integration. Download from http://www.forum-illegalitaet.de/Materialien/04_Expertise_Sachverst_ndigenrat_Cyrus.pdf.
- Cyrus, N. (2004b): "Representing Undocumented Migrant Workers in Industrial Tribunals: Stimulating NGO Experiences from Germany." In: M. LeVoy et al. (Eds.), *Undocumented Migrant Workers in Europe*. Brussels, HIVA: 107-112.
- Cyrus, N. (2005): *Trafficking for Labour and Sexual Exploitation in Germany*. Geneva: ILO.
- Cyrus, N. and Vogel, D. (2002): "Ausländerdiskriminierung durch Außenkontrollen im Arbeitsmarkt? Fallstudienbefunde - Herausforderungen - Gestaltungsoptionen." *Mitteilungen aus der Arbeitsmarkt- und Berufsforschung* 35 (2): 254-270.
- Cyrus, N. and Vogel, D. (2006): "Managing Access to the German Labour Market: Opportunities and Restrictions." In: F. Düvell (Ed.), *Illegal Immigration in Europe Beyond Control?*. Houndsmill, New York, Palgrave Macmillan: 75-105.
- Düvell, F. (Ed.) (2006): *Undocumented Migration in Europe - Beyond Control?* Houndsmill, New York, Palgrave Macmillan.
- European Migration Network (2007): *Illegally Resident Third Country Nationals in EU Member States: state approaches towards them, their profile and social situation*. European Migration Network. EMN downloads http://www.bamf.de/cIn_011/nn_712114/SharedDocs/Anlagen/DE/Migration/Downloads/EMN/EMNandere/emn_illegally_resident.html
- European Migration Network (2005): *Illegally Resident Third Country Nationals in Italy*, European Migration Network. Download von <http://www.emnitaly.it/down/pilotstudy2-english.pdf>.

- Fix, M. (1991): The Paper Curtain: Employer Sanctions' Implementation, Impact, and Reform. Washington, D.C., Urban Institute.
- GCIM (Global Commission on International Migration) (2005): Migration in an Interconnected World: New Directions for Action. Geneva, GCIM. Download: <http://www.gcim.org/attachements/gcim-complete-report-2005.pdf>.
- GHK Consulting Ltd. (2007): Impact Assessment on a Community instrument laying down sanctions for employers of third-country nationals with no or limited rights to work that are exceeded. European Commission, Impact Assessment. London, GHK. Download: http://ec.europa.eu/dgs/justice_home/doc/final_report_impact_assessment_employer_sanctions_29_04_07_annexes.pdf.
- Jordan, B., Strath, B., Triandafyllidou, A. (2003): Journal of Ethnic and Migration Studies. Special Issue: From guardians to managers: Immigration policy implementation in Europe. Vol. 29, No.2.
- Leerkes, A., Engbersen G., et al. (2007): „Shadow Places: Patterns of Spatial Concentration and Incorporation of Irregular Immigrants in the Netherlands.” Urban Studies 44 (8): 1-26.
- Leun, J. v. d. (2000): “Modes of Incorporation. Undocumented Migrants in an Advanced Welfare State. The Case of the Netherlands.” In: D. Cinar, A. Gächter and H. Waldrauch (Eds.), Irregular Migration: Dynamics, Impact, Policy Options. Wien, European Centre Vienna: 31-54.
- LeVoy, M. and Verbruggen, N. (2005): Ten Ways To Protect Undocumented Migrant Workers. Brussels, PICUM.
- Martin, P. L. and Miller, M. (2000): “Employer sanctions. French, German and US experiences.” In: International Migration Papers. Geneva, International Labour Organisation.
- Massey, D. S. (2002): Fortress Construction as National Policy: Lessons from the United States. University of Pennsylvania. Population Studies Center.
- Papademetriou, D. G.G., O'Neil, K., Jachimowicz, M. (2004): Observations on Regularisation and the Labour Market Performance of Unauthorized and Regularized Immigrants. Paper Prepared for the European Commission, DG Employment and Social Affairs, Washington: Migration Policy Institute.

Download: http://ec.europa.eu/employment_social/employment_analysis/docs/regularisation5.pdf.

- Sinn, A., et al., (2005): Illegal aufhältige Drittstaatsangehörige in Deutschland. Staatliche Ansätze, Profil und soziale Situation. Nürnberg: BAMF Download: <http://www.asti.lu/pdf/illegalBRD.pdf>.
- Vogel, D. (2001): “Identifying Unauthorized Foreign Workers in the German Labour Market.” In: J. Caplan and J. Torpey (Eds.), Individual Identity: The Development of State Practices in the Modern World. Princeton Oxford, Princeton University Press: 328-344.
- Vogel, D. (2005): “Employer Sanctions”. In: M. Gibney and R. Hansen (Eds.): Immigration and Asylum. From 1900 to the Present. Santa Barbara, Cal. Denver, Col. Oxford, Engl., ABC Clio. 1: 170-173.

Internet sources

- Overview of the subject of illegality on the European Commission's website:
http://ec.europa.eu/justice_home/fsj/immigration/illegal/fsj_immigration_illegal_en.htm
- Final and associated documents relating to directive proposal Com (2007) 249:
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=de&DosId=195730.
- Non-governmental European organisation for the protection of the rights of people without status:
<http://www.picum.org>
- Information on the subject of illegality in Germany:
www.forum-illegalitaet.de

ABOUT FOCUS MIGRATION

Publisher: Hamburg Institute of International Economics (HWWI), Heimhuder Strasse 71, 20148 Hamburg, Tel.: +49 (0)40 34 05 76-0, Fax: +49 (0)40 34 05 76-776, E-Mail: info@hwwi.org
In cooperation with: The German Federal Agency for Civic Education (bpj) and Network Migration in Europe e.V.

Editorial staff: Jennifer Elrick (head), Barbara Bils, Tanja El-Cherkeh, Gunnar Geyer, Rainer Münz, Antje Scheidler (Network Migration in Europe e.V.), Jan Schneider (on behalf of the bpj)

focus Migration country profiles (ISSN 1864-6220) and policy briefs (ISSN 1864-5704) are published with the support of the German Federal Agency for Civic Education (bpj).

The information contained in these publications does not necessarily reflect the opinions of the bpj and HWWI. Partial reproduction and citation are authorised, provided the source is acknowledged.

Further online resources: www.hwwi.org, www.bpj.de, www.network-migration.org, www.migration-info.de

Our country profiles and policy briefs are available online at: www.focus-migration.de