
Migration and Irregular Work in Europe

Literature Review

Work Package 3

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1. Introduction

This report aims to give a brief overview of the Europe-wide literature covering issues related to undocumented workers and the informal economy, gender and migration and is one of the reports prepared during the first phase of the Undocumented Worker Transitions (UWT) project. This Europe-wide review is in addition to the seven state-of-the-art national reports also written during the first phase of the project, which each contain a description of pathways of migration into each of the seven countries participating in the UWT project, together with a review of existing literature on migration in each country, including the impacts of migration on labour markets; the informal economy and migration; individual experiences as migrants and migrant workers; and a summary of immigration and employment legislative systems. All of these reports are available on the project website at: www.undocumentedmigrants.eu.

Research on irregular migrant workers has begun only recently in European countries. While in the 1970s and 1980s the 'guestworker' represented the image of migration and the model for migration policies in most, although not all, EU countries, the 1990s were dominated by 'asylum' as the central public discourse on migration, shifting to concern with the 'illegal migrant', not only residing but also working without documents in Europe (Karakayali/Tsianos 2005, p.38).

In the 1990s a number of research studies on irregular migration and the irregular employment of migrants in Europe were produced (see Düvell 2006a, pp.34-39). With the transfer of some responsibilities in the fields of migration and asylum – and in the field of irregular migration – to the level of the European Union, there is also a greater interest in comprehensive and comparative European studies on irregular migration. There are few studies trying to draw a comprehensive and comparable picture of undocumented migration and work in Europe. (e.g. EMN 2007; Düvell 2006a; Cruz Roja 2004). The European Migration Network (EMN) carried out a research study on 'Illegally resident third country nationals in EU Member States: State approaches towards them, their profile and their social situation', which was

based on nine country studies carried out in 2005 (Austria, Ireland, the Netherlands, the United Kingdom, Greece, Germany, Italy, Belgium, Sweden). An EU-level synthesis report was published in 2007 covering the legal framework and policy developments; stocks and profiles; state approaches, including measures to prevent undocumented immigration, measures of domestic control and voluntary and forced return; measures of rectification and remedy (studying the legal status, social services, educational facilities and work); the social and economic situation and political participation; and finally the impact of undocumented immigration on the host country (EMN 2007).

The existing comparative studies are mainly at a theoretical, legal or policy level, while few have collected primary empirical data (Cinar et.al. 2000). Those that have undertaken primary research are typically characterised by a regional focus, the use of qualitative methods, and relatively small sample sizes. The thematic focuses of these studies are the life situations, the precarious healthcare position or the extremely exploitative labour conditions undocumented migrants face (Engbersen 2001 and 2006; Anderson and Ruhs 2006; Bell 2002; Alt 2003; Anderson, P. 1999; Cyrus 2004). Gender perspectives are also considered, especially in studies on trafficking and on migrant domestic work (ICMPD 2007; Anderson, B. 2000, Lutz 2006).

In studies concerned with control policy, collecting data, for example on detentions and deportations, is important. With the aim of 'combating illegal immigration', their research focus is on border control and border management and on the detection of 'illegal border crossing', human smuggling and trafficking (e.g. Giraudon/Joppke 2001; OECD 2000).

Research on labour market structures (demand, segmentation, etc.) and the 'integration' of undocumented migrants into the labour market, however, is mostly lacking.

This review will focus on six main topics referred to in the literature: categorizing undocumented migration; the economics of illegality/labour market for undocumented work; data collection on undocumented migration

and work; life situations of undocumented migrants; EU policy on undocumented migration and work; and NGOs /migrants' activists perspectives on undocumented migration and work.

2. Categorizing undocumented immigration

Tapinos (1999 p.231) differentiates between clandestine, clandestine residence and clandestine workers and identifies six categories of irregular migrants:

- “A. Migrants who have entered the country legally with a legal residence permit, but who are working illegally, either because the job is not declared or because their residence permit does not allow them to work.
- B. Migrants who have entered the country legally, who are living in the country illegally (either because their work permits are invalid or have expired, or because they do not have residence permits), and who are working illegally. It is assumed that a migrant without a residence permit cannot work legally under the legislation in force.
- C. The same category as above, but covering inactive migrants.
- D. Migrants who have entered the country clandestinely, who have no residence permit, and who are working illegally.
- E. The same category as above, but covering inactive migrants.
- F. Migrants who have entered the country clandestinely, who have a residence permit (e.g. following regularisation, or by variation in their status through marriage) and are working illegally.”

In a recent study conducted by the Centre on Migration, Policy and Society at the University of Oxford (COMPAS) on the impact of EU enlargement on legal status in the UK, based on a large survey with over 500 migrants from Central and Eastern European countries as well as interviews with migrants, employers and host families, the researchers propose a similar categorisation of undocumented migrants to Tapinos (1999). However, they apply different terms for ‘undocumented’, ‘illegal’, ‘irregular’ or ‘unauthorized’ migrant and introduce the new concept of ‘compliance’. They distinguish between three levels of compliance (compliant, semi-compliant, non-compliant) and two types of compliance (residence-compliant; employment-compliant). The level of compliance indicates whether a migrant is compliant with all laws and rules governing rights in relation to employment and to immigration status or not (Anderson and Ruhs 2006, pp.6-8). Relevant examples of ‘semi-compliance’

are students working over 20 hours per week, au pairs working and earning more than allowed etc. Thus, immigrant status becomes a spectrum and not a dichotomy between 'legal' and 'illegal' status.

Düvell (2006a, p.171) concludes in his book 'Illegal migration in Europe. Beyond control?' that where case studies on irregular migration in UK, Germany, Greece and Italy have been conducted, 'legal and illegal immigrants cannot be clearly distinguished'. Due to the increasing proliferation of legal statuses, the lines between legal and illegal are blurred. The recent round of EU enlargement has created complex regulations and restrictions in access to the labour markets of the EU15 for citizens of the new EU countries (Favell 2006). In the United Kingdom, Anderson and Ruhs (2006) argue that the very flexibility of the UK economy has produced a flourishing demand for irregular workers that is increasingly filled by irregular or semi-legal means, for example in the form of subcontractors, or short-term fragmented irregular work.

According to Düvell, any generalisation about migrants is not justified since they can be found in all social strata of society:

"It is equally difficult to draw a clear demarcation line along the criteria of migration purposes between groups such as asylum seekers, economic migrants, family members and education migrants. (...)" (Düvell 2006a, p.171).

Two other important aspects of undocumented migration are the smuggling of migrants and trafficking in persons. The defining variable of trafficking in persons is the violation of the migrant's human rights. Victims of trafficking are exposed to physical and psychological violence and abuse, denied labour rights, and are often found in a forced and unwanted relationship of dependency with their traffickers. This dependency normally results from bondage vis-à-vis the trafficker to pay for migration and placement services. In 2005, the International Labour Office published comprehensive guidance on 'Legislation and Law Enforcement on Human Trafficking and Forced Labour Exploitation', shedding light on the labour dimensions of trafficking (International Labour Office 2005). Some of the main issues in this respect are

not only the coherence of those criminal, labour, civil and administrative laws, but also enabling these laws to allow for efficient and appropriate action by law enforcement. A recent publication by Bridget Anderson urges caution when addressing the topic of trafficking in human beings. She argues that “loose definition of terms conceals both practical and philosophical problems with framing trafficking as an immigration issue” (Anderson 2007, p.2). By using a UK case study she demonstrates how in practice states and migrants’ rights activists have very different understandings of the relation between trafficking and immigration controls.

Dowling et al (2007) carried out a literature review on the trafficking of both adults and children to the UK for the purposes of labour exploitation. They highlight the importance of clarifying the distinction between smuggling, trafficking and forced labour. Smuggling therefore implies the migrant’s “consent to be illegally transported from the country of origin to country of destination” and also “an end to the relationship between the smuggler and migrant upon entry into the country of destination, without deliberate placement into an exploitative situation“. They note that trafficking, however, “implies a non-voluntary process, with an explicit purpose of exploitation and a continuing relationship between victim and trafficker“ (Dowling et al 2007, p.2).

The Institute for Migration and Ethnic Studies (IMES) in Amsterdam has run a research project on ‘Migrant smuggling, new business premises, and the consequences for controlling migration in the context of globalisation’. The project analysed new intermediary structures that emerged as a consequence of restrictive control policies in developed countries. Also, the interplay between intermediaries and government strategies and actions to monitor and control international migration were studied (Tamas 2004). The International Centre for Migration Policy Development (ICMPD), a think tank on migration policy, has been publishing yearbooks on illegal migration, human smuggling and trafficking in Central and Eastern Europe since 2004 and provides a comprehensive survey and analysis of border management and border apprehension, with data from 20 states of CEE (ICMPD 2004-2006).

3. The economic impact of irregular migration

This chapter addresses the topic of the economics of irregular migration, its function for national economies and the global economy, and the question of who may benefit from irregular migration.

As mentioned in the introduction, scholars assume that 'illegal' or irregular immigration is a social and political construct of the late 20th century when states were formulating rules governing the entry and residence of foreigners who then could contravene those rules and consequently became 'illegal migrants' (Karakayali/Tsianos 2005, p.38; Düvell 2006b, p.148). Though a recent phenomenon, Düvell states that it became a 'historically significant and structural problem' (Düvell, 2006b, p.147) in the face of the growing numbers of people and increasing immigration controls. He said: "The emergence of large-scale undocumented migration during the 1980s, and its rise during the 1990s, is based on a complex relationship of new migrations, new socioeconomic framing conditions, new migration politics and new discourses" (Düvell 2006a, p.239). Düvell (2006a) also identifies the following reasons for the growing importance of irregular migration in European societies. Irregular Migration arises:

- from an asymmetry between an increasingly integrated world (mobility of information, capital, goods, transportation facilities) and increasing migration restrictions;
- the emergence of a global labour market as well as self-sustaining migration networks;
- an asymmetry between demand for labour and supply of legally available labour;
- an asymmetry between economic forces (business), individual aspirations (migrants) and institutional goals (state);
- an asymmetry between inflexible immigration regulations and flexible, changing migrants' life circumstances/strategies.

Düvell (ibid, p.194) summarizes his and his colleagues' findings on irregular migration in Europe by describing the "risk biographies of Europe's labouring nomads". He points out that on the one hand, migrants and in particular irregular migrants, are negatively affected by immigration politics, racism and discrimination, marginalised by labour and housing market mechanisms and are often facing a degradation of their skills, social rights as citizens and employees and in community relations. On the other hand, he says the "individuals interviewed are extraordinary": they are highly flexible, mobile and adaptable and show strong aspirations in terms of improving their human capital. All in all, they "usually do not perceive their situation as being particularly unbearable" (ibid, p.195). Therefore, "migrants seem to satisfy ideally the demands of flexibility, adaptability and life-long learning" (ibid, p.196). Sandro Mezzadra (2007, p.184) also sees a strong relation between the demand for a increasingly flexible labour force and growing undocumented migration in Europe:

"Clandestine migrants are the subjective figure for whom the highest degree of labour flexibility, as expressed by the social attitude of migrant workers, encounters the effects arising from the brutal control of that flexibility. (...) [t]he current composition of living labour as a whole [is] articulated within a new interplay of flexibility, mobility and control on different levels."

Düvell writes of the "Irregular Migration Dilemma" in which "the gains seem mediocre: some employers improve their wins, some migrants meet their expectations, and some sections of society profit from cheap services and products" (Düvell: 2006a, p.7). To summarize, undocumented migrants display flexibility that indigenous workers lack. The potential employment of undocumented migrants in certain sectors of an increasingly deregulated economy seems to be an important pull factor for undocumented migration. These sectors are situated not only in the 'global city', attracting casualised workers for the service sector, but also in the countryside in an intensified agro-economy. The literature refers to the jobs provided as 3 D (dirty, dangerous and difficult) or/and 3 B (boring, below standard and badly paid) (e.g. EMN 2006) and extremely vulnerable to severe exploitation. It seems

that the lower ranges of work tend to be the recruitment areas for undocumented 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 craft areas (EMN 2006, p.27). The irregular labour market seems to be central for irregular migration systems in general and for the sustainability of their livelihood for irregular migrants in particular. Not all irregular migrants also work without documents: many can rely on their networks of family and friends or on public welfare entitlements in the asylum system. According to Boswell and Straubhaar (2004), some 70 per cent of irregular residents in the EU countries are estimated to be engaged in undocumented labour.

According to Karakayali/Tsianos (2005), undocumented migrants' function in the economy can be seen as a new service proletariat ('Dienstleistungsproletariat'). Here, the questions that arise relate to the connection between the policies of mobility control and the segmentation of the labour market, as well as between the legal position of migrants and their positions in the existing labour market. Koser (2005, p.4), in a publication of the Global Commission on International Migration, states:

“From an economic perspective irregular migration is actually quite functional for many destination states. As a result of deregulation, liberalisation and flexibilisation, there is demand for various forms of unskilled and semi-skilled labour, employed under precarious conditions. Irregular migrants provide a cheap source of labour and are often willing to work in sectors in which regular migrants and nationals are not.”

Irregular migrants are found in specific labour market niches, not competing with the indigenous labour force, furthermore they have no access to the formal labour market. Therefore, it is more likely that irregular migrants make a positive contribution to the fiscal system (indirect taxes, direct taxes when working on borrowed insurance cards).

On the other hand, for Nigel Harris (2004), a supporter of migration without borders, the present migration system is dysfunctional for a world labour market because:

“Governments operate as large monopsonist buyers, while private agencies recruit and distribute irregular migrants without being subject to the open competition which reveals the marginal cost/value of the work proposed. Criminalisation is inevitable in such circumstances. A global labour market requires a global exchange in which real scarcities in many different localities can be matched against the immense diversity of those offering work, and wage levels reflect those scarcities.”

Reyneri addresses the problems of Southern European countries with a segmented labour market and underground economy and the sizeable pull effects on contemporary irregular migration movements to these countries due to certain economic structures. At the same time, he argues the underground economy has important negative effects on migrants' insertion, leading to stigmatisation, criminalisation and the social exclusion of undocumented migrants (Reyneri 2003). Italy provides a good example of a highly dichotomous economic structure in which the shadow and official economies exist in parallel. 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 in Germany, for example. Generally, it seems that when a parallel economic sector is widely tolerated, as in the case of Italy, it is easier for undocumented migrants to enter into gainful employment and to remain undetected (EMN 2005, p.26).

Samers (2005) critically analyses the relationship between the apparent growth of (undocumented) immigration, new forms of political economy, and 'underground employment'. He points out that in certain sectors of the informal economy a process of substitution in favour of undocumented migrants takes place:

“Citizen workers are less available (slower demographic replacement of citizen workers) or less willing (because of poor working conditions and/or low pay) to work in *particular sectors* (especially agriculture, care, cleaning, construction, hotels, restaurants, and so forth) because above all citizen workers have found more attractive employment elsewhere.”
(Samers 2005, p.251)

With regard to the impact of migrants' undocumented work on the formal economy, opinions are quite varied. On the one hand undocumented work of migrants is seen as complementary to activities in the formal economy, while on the other hand it is argued that other (already settled) migrants in particular compete with undocumented migrants who are ready to accept far worse working conditions than 'settled' migrants or even citizens. Wage dumping and substitution processes from 'more expensive to cheaper' labour occur also within immigrant groups themselves. Furthermore, work situations seem to be undergoing a process of change due to undocumented migration. 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 into wage-oriented enterprises due to the supply of cheap undocumented workers (EMN 2005, p.28).

There seems to be a close relationship between seasonal demands for labour and the short-term stay of illegal immigrants. In Italy a whole system of seasonal movements exists, enabling clandestine migrant workers to be employed from season to season, depending on the different harvests throughout the various regions of southern Italy (EMN 2005, p.27).

3.1 Sectors

In general, the following areas are mentioned as significant for the undocumented employment of foreigners: construction and associated businesses; hotels and restaurants; cleaning of industrial facilities and buildings; agriculture and forestry; food, beverage and tobacco industry; transportation of persons and goods; metal processing industries; and businesses in the entertainment sector (bars, nightclubs, amusement arcades). Also in private households and on private building sites, it is considered particularly likely that illegally employed labour is hired (Le Voy 2004; Düvell 2005 and 2006a; EMN 2006).

Undocumented migrants *seem* to make up only a small percentage of the larger category of undocumented employed workers (see Samers 2005; Schneider 2007a, 2007b). Many documented residents are illegally employed due to difficulties associated with entering the official labour market. For undocumented migrants, however, there are no options other than working under precarious and informal conditions. There are indications that the proportion of undocumented workers in the informal labour force is generally larger in specific industries such as construction, agriculture, tourism, sex industry and domestic services (Düvell 2006a; Samers 2005). According to a DELPHI study conducted by the International Centre for Migration Policy Development (the MIGIWE project) in 2006 in which numerous experts in the field of migration studies and migration policies were interviewed about the undocumented employment of migrants in Austria, the main sectors of informal economic activity among migrants are similar: construction; the hotel and restaurant industry; cleaning/childcare/domestic work; the health care sector; agriculture and entertainment; as well as trade, in particular ethnic-minority owned businesses.

There is noticeable gender segregation in the informal labour market. Women are mostly engaged in health care and cleaning in private households as well as in entertainment. Men's employment is foremost in the construction sector and agriculture. Both seem to work in the hotel and restaurant industry. In terms of numbers, it seems that women are catching up since there is increased demand for services regarded as "female labour". Whereas employment in most of the sectors offering the possibility of work for migrants are strongly linked to seasonal demand, female-dominated sectors (health care, domestic work and entertainment) show a more continuous and steadier course.

Elwert (2002) describes irregular labour markets as highly fragmented, and he highlights the importance of social and family networks for the organisation of this labour market and for providing information on job opportunities. At the same time, however, ethnic networks can also serve as a means of exploitation leading to a dependency that devalues more recently arrived

migrants' qualifications by 'trapping' them in low-skilled jobs in their communities (Anderson, P. 1999, p.174; Vasta 2004). Recruitment possibilities range from private (cross border) networks to immigrant community institutions, such as coffee houses and shops, to (professional) recruitment agencies and individuals. Additionally, labour market institutions are advertising in the media at an increasing rate and are, therefore, becoming a more significant form of recruitment, which is highly important in niches like seasonal work, entertainment, the construction sector or even prostitution, for example (EMN 2005, p.27).

According to the literature, the following factors seem to be the most relevant characteristics of undocumented economic activity: a standardised qualification profile (low-skilled jobs); seasonal or generally high turnover of workers; labour intensive jobs that are hard to mechanize; and a relatively low risk of detection. Moreover, it has been argued that – besides private households – it is mainly small and medium-sized businesses which use the services of irregular migrants, that is businesses whose production methods are labour-intensive and who are not able to outsource production to low-wage countries (Düvell 2006a, Alt 2003; EMN 2006, p.26, Cyrus 2004).

With regard to the spatial distribution of irregular migrants, Engbersen et al (2006) identify four important factors in the residential patterns of irregular migrants in the city of The Hague: 1) existing social capital and network effects through legally established co-ethnic migrants; 2) economic opportunities for irregular migrants, which are partially provided in migrant-specific facilities (mosques, shops, hairdressers, coffee houses, etc.); 3) the availability of cheap and safe accommodation; and 4) patterns of relationships with the native population (e.g. as spouses, partners, servants, cleaners, etc.). One reason why irregular migrants are thought to prefer to live in larger cities rather than smaller ones (or even the countryside) is that the anonymity of the city offers a form of protection against detection; living in bigger cities minimizes the risk of apprehension by enforcement. Another argument is provided by the higher availability of irregular work opportunities in larger cities, which is thought to contribute to a concentration of irregular migrants

mainly in urban areas. Furthermore, the 'global city' is described as a 'strategic space' for economic processes and new forms of political protagonists not necessarily bound to a formal citizenship (Sassen 2007). Others, however, have pointed out that irregular migrants are seen to be present also in rural areas, in so far as employment opportunities, mostly of a seasonal nature in agriculture or related industries, exist (Cyrus 2005).

The most important aspects of migrant workers' employment in the informal economy are their – compared to official working arrangements – lower wages, the possibility of tax evasion and evasion of payments for workers' social security as cost advantages for employers. The necessity for migrant workers to engage in the informal economy and accept far worse working conditions than their 'legal colleagues' results primarily from employment prohibitions due to their nationality, but also from language difficulties, from discrimination towards migrants in the formal labour market, and from the non-recognition of foreign diplomas and migrants' weak negotiating position, especially in countries where undocumented workers are not represented by any organisation (EMN 2005, p.27). The synthesis report of EMN reveals the low wages of undocumented workers. In Greece, for instance, the wages of undocumented immigrants amount to half or two-thirds of the average income of Greek citizens. Generally, however, income seems to differ and is related to the country of origin and the sectoral niches in which the work is being carried out (EMN 2005, p.28).

3.1.1 Agriculture

The European Civic Forum, a transnational network of NGOs from all European countries (<http://www.forumcivique.org/>), has carried out extensive studies on the exploitation of migrants in European agriculture (Leroy 2004; Bell 2002). They highlight that the employment of irregular migrants in this sector "has to be seen within the context of the development of a highly intensified, industrial and competitive form of agriculture producing poor quality food for consumers seeking the lowest prices and unaware of the social and environmental conditions in which the production takes place" (LeVoy 2004, p. 41). The demand for migrant labour in agriculture, especially

in the fruit and vegetable sector, is a Europe-wide phenomenon. In Spain it is estimated that 150,000 undocumented migrants, predominantly from Maghreb and sub-Saharan Africa, are working in the sector. In the UK the 'gangmaster system' seems to supply a large number of workers, many of them from Eastern Europe, needed at peak picking times. Gangmasters, who are in direct contact with recruiters 'organising' undocumented migrant labour, fix wage levels and working conditions and are paid for this service by the farmers. In the Netherlands about one third of all undocumented migrants work in agriculture. They are often hired only for a few hours or days and recruited by agencies run by members of ethnic communities living there (LeVoy 2004, p.43). In Germany, as well as in Austria, 'saisonniers' and harvest helpers are recruited temporarily to meet demand at peak picking times.

3.1.2 Construction

The construction sector seems to be one of the biggest employers of undocumented migrant workers, also due to the fact that it is one of the most important sectors of the informal economy in Europe. Part of the sector's workforce consists of residents and migrants holding a work permit, but undocumented migrant workers also perform informal activities in construction. Some are overstayers, some are smuggled, and some are self-employed and perform small construction jobs for private customers on a day-to-day basis. The bulk, however, are working under the control of construction gangmasters and employers (Le Voy 2004, p.47). Unskilled workers especially are predominantly hired and employed by subcontractors offering their services to the general contractor. Subcontracting often goes hand-in-hand with fraud of social insurance contributions, taxes, and with the denial of fundamental rights for the workforce (e.g. minimum wages, paid holidays, working hours, health and safety etc.). In the German construction labour market, hourly wages for undocumented migrant workers range from one Euro to six Euros (legal workers earn between nine to 17 Euros; the minimum wage in 2004 was 10.12 Euros). The same differences in wages can be found all over the European Union: even in Romania and Bulgaria resident construction workers are increasingly replaced by cheaper undocumented

migrant workers (Le Voy 2004, p.49). Some undocumented migrant workers are even victims of debt bonded labour, having to pay high rents for their accommodation and commission to gangmasters.

3.1.3 Domestic work – Cleaning and Caring

Cleaning and caring in private households is one of the most important sources of employment for undocumented migrant women all over Europe. Some of the reasons for employing (undocumented) migrants are long hours for low wages, flexibility and flexible availability of workers, but also racist stereotypes about the appropriateness of certain kinds of women for this type of labour. Domestic workers seem to be one of the best studied groups of undocumented migrant labour. There is a range of case studies and also comparative literature on this topic; also conferences have been organized discussing this feature of undocumented migrant work (Lutz forthcoming 2007; Cruz Roja 2004; Lutz 2006; Anderson 2000; Andall 2000; Gather 2002; ETUC, 2005).

4. Estimates of undocumented migration

Irregularity in migrant work is defined and conditioned by differing and constantly changing national laws and regulations on residence rights, access to work, employment laws, etc. So, precise estimations and general statements about irregularity always need to be treated with caution, as irregularity is extremely context-specific and changes over time.

Notwithstanding this, some information is available from a number of sources which provide some indications about the extent of the phenomenon, the countries of origin, the possible trends, etc. The annual statistics report on Migration and Asylum of the European Commission gives a general overview of the main migratory developments during the year 2003, with synthesis information covering 29 European countries (EU15+EU10+Iceland and Norway + Romania and Bulgaria) and analysis of the European developments in the context of globalisation of migratory flows¹. In a working document of the European Commission (Commission of the European Communities 2006a, 2006b), four different sets of data on migration are presented, ranging from net migration in the EU, statistics on removals and return decisions, statistics on refusals at the external borders and apprehensions in the EU of illegally present third-country nationals, to data on regularisations in selected EU Member States.

IOM (2003) estimated that “there is a stock of at least three million irregular migrants in the European Union, up from two million a decade ago, despite moves to legalize half of them. However, this figure can be regarded as an educated guess in the absence of any official count“. Within the European Union, irregular migration was estimated at approximately 500,000 persons per year in 1999, a nine-fold increase over a period of six years. Asylum seekers totalled nearly 400,000 in 2000; with approval rates declining, many rejected asylum seekers go underground, while others opt for an irregular entry route outside the asylum system from the start. Approximately one million irregular migrants have applied for amnesties or regularization during the last five years. Another indicator is the number of persons detected trying

1 http://ec.europa.eu/justice_home/doc_centre/asylum/statistics/doc_annual_report_2003_en.htm

to evade border control, which in the United Kingdom alone rose from 3,300 in 1990 to over 47,000 in 2000.

Most irregular migrants arrive through the Mediterranean region and Eastern Europe. A few examples of estimates of flows and stocks of irregular migrants were provided in the World Migration Report 2003:

- in 2001 alone, close to 10,000 irregular migrants were intercepted near or along the coast of Tarifa (Cadiz) in Spain;
- the German Police Trade Union believes that some 100,000 irregulars are smuggled into Germany each year;
- some 95,000 Albanians, Romanians and Iraqis are illegally entering Greece each year;
- Belgium's anti-racism centre estimates the number of irregular migrants at around 90,000;
- Irish Police estimates that some 10,000 irregular immigrants are working in the country;
- it is estimated that there are some 500,000 irregular migrants in France and some 60,000 in Portugal. (IOM 2003, p.253).

Five countries in the EU set up schemes to legalize the status of illegal arrivals. IOM and the Organization for Economic Cooperation and Development (OECD) estimated that these schemes affected about 1.5 million people during the 1990s: Italy regularized 716,000 irregular migrants in three waves; Greece accepted 370,000 people in 1997-1998, mainly from the Balkans and Eastern Europe; Spain effectively regularized 260,000 immigrants mainly from Africa and Latin America; Portugal legalized 61,000 migrants. Furthermore, rough estimates suggest some 700,000 persons, especially women and children, are trafficked each year across international borders, and approximately 120,000 are trafficked into the EU yearly, mostly through the Balkans. (IOM 2003, p.255)

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' (2006) investigated the situation of undocumented migrants in Europe and concluded that:

“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“.

Kraler and Jandl discuss theoretical and empirical estimations of undocumented migration, based on statistical observations and suggest that “the total volume of illegal migration flows to Europe in 2001 was estimated at 650,000 for the EU15 and at 800,000 for the (now) EU25“ (Jandl and Kraler 2006, p.355). Düvell makes an estimation of 4 to 7 million irregular migrants within Europe and presents an overview of different estimates in certain European countries (Düvell 2006b, p.146-147).

5. The experience of undocumented migrants

What emerges from the available literature is a very diverse picture reflecting the heterogeneity of life situations and survival strategies of irregular migrants in European countries (see: Transit Migration Forschungsgruppe 2007; Düvell 2006a; Le Voy 2004; Anderson and Ruhs 2006; EMN 2007). Nevertheless, it has been said that:

“For many illegal immigrants, their illegal status is nonetheless a master status, that is to say, it is a dominant social characteristic, overshadowing all other personal characteristics” (Engbersen 2001, p. 240).

The vulnerability of undocumented migrants takes different forms: first and foremost, the constant fear of being disclosed to the authorities and being deported is the most obvious and decisive factor of living illegally. Besides domestic police control, the worksite is also a place of potential disclosure when becoming subject to labour inspection (Engbersen 2001).

Scholars (Anderson 2000, p.39; Cruz Roja 2004) have argued that live-in domestic work (where living space and workplace are one) can be a rational choice for recently arrived migrant women. This option not only provides her with a roof over her head, it also keeps her out of sight of the authorities, an important point of consideration for women without a residence permit. She can live inconspicuously in her employer's home, where she works and spends most of her time. At the same time however, the live-in arrangement makes her very dependent on her employer. Her work, her housing and her chances of being able to remain in the country are all primarily enabled and determined by the cooperation and goodwill of her employer who has the power to bring everything to a sudden end. Moreover, in the long run, live-in domestic work does not provide sufficient financial security for the women involved. The provision of room and board helps justify their extremely low wages, thus keeping them financially dependent on their employer. In this position of compounded dependency, it is difficult for these women to resist abuses of power. These kinds of live-in arrangements do not only appear in domestic and care work. Everywhere where living costs are connected to

wages – as occurs in the agricultural sector and also in hotels and restaurants – employees lose control over their wages and tend to be worse off than in labour arrangements where accommodation and wages are not tied to each other. Other important housing arrangements include shared flats, ‘mass accommodation’ in whole apartment buildings, and commuting.

As an important source of information regarding not just housing but also the availability of jobs, ethnic communities, as well as churches, play a crucial role. Ethnic networks not only function as communication and information systems, but are also an important safety net providing social assistance (Boyd 1989). Nevertheless, hierarchies between and within ethnic communities exist: long-term residence/settlement entitlements are considered as a means of exercising power, for example by providing access to employment or assisting in accommodation and welfare, over other migrants in a weaker position (Parrenas 2001; Portes 1997).

5.1 The rights of undocumented migrants

Undocumented immigrants may have access to 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, though in some countries (such as the UK) the provision of fundamental rights being discussed and under threat. Although they qualify for such services in the context of fundamental rights, they are often afraid to disclose their status (EMN 2007). Various international treaties and human rights’ considerations have been invoked as the basis for some obligation to provide social services to undocumented immigrants (LeVoy 2004, p.81). In some Member States, such as Austria, Germany or Sweden, NGOs or religious institutions provide such services, due to the lack of responsibility of official institutions in observing fundamental rights. Using those semi-public services, however, may expose the migrant to control mechanisms for detecting and controlling undocumented migration. So, social and medical care for undocumented migrants is in most cases limited to urgent medical aid.

In some member states undocumented migrants are entitled to legal protection. Italy, for example, grants full legal inclusion, while in Sweden and

the UK undocumented workers are subject to legal exclusion in practice since courts and tribunals do not enforce invalid work contracts (LeVoy 2004, p.31). PICUM gives a brief overview of protective and repressive measures towards undocumented migrant workers in some European countries, comparing availability of work contracts, entitlements from illegal employment, representation of claims by third parties; focuses and approaches used by governments in combating undocumented labour (PICUM 2003, p.32).

At the conference 'Undocumented Migrants Have Rights! Workshop on Protection and Gaps Under the International Human Rights Framework' organised by PICUM, the problem of claiming basic rights for undocumented migrants was addressed (for details see www.picum.org). Undocumented migrants suffer discrimination in regard to their human rights, including: the right to adequate housing; the right to health care; the right to education and training; the right to family life; the right to a minimum subsistence; the right not to be arbitrarily arrested; rights during detention or imprisonment; the right of equality with nationals before the courts; the right to due process; the prohibition of collective expulsion; and the right to fair working conditions, embodied by the right to a minimum wage, the right to compensation in cases of workplace accidents, injury or death, the right to equality before the law (e.g. in employment-related cases), and the right to organize. Due to the widespread lack of legal protection and to their 'exchangeability' in the informal labour market, undocumented migrant workers find themselves in precarious employment conditions, as they usually lack any power and status and are in a very weak position when they have to negotiate with their employers (EMN 2007; LeVoy 2004; Anderson, P. 1999 for the UK).

Related to the 'room for manoeuvre' that individual migrants may have is also the periodicity of irregular migration. From the perspective of individual migrants, illegality is often seen as a temporary and passing state (even though it may last for several years). In many European countries, the circularity of irregular labour migration plays an important role, especially in countries and regions where irregular migrants from Central and Eastern Europe make up the largest share of the undocumented workforce, as has

been argued for Germany and Austria (Morokvasic 2007, p.10; Cyrus 2004; Gendera and Haidinger 2007). Migrants “tend to ‘settle within mobility,’ staying mobile ‘as long as they can’ in order to improve or maintain the quality of life at home. Their experience of migration thus becomes their lifestyle, their leaving home and going away, paradoxically, a strategy of staying at home, and, thus, an alternative to what migration is usually considered to be – emigration/immigration” (Morokvasic 2004, p.7). Kindler (2004) draws attention to the fact that migrant sending countries are often also significant destination countries for irregular migrant workers. Based on qualitative interviews and participant observation methods, she describes the significance of temporary (pendular) irregular migration from Ukraine to Poland.

Kofman (2006) considers how the immigration policies of specific countries in the EU “reflect a differential valuation of sectors and skills, forms of immigration, and the relationship of immigration, racialised exclusion and national identity, all of which are profoundly gendered“. Whilst immigration policies categorise migrants according to status, economic utility and entitlements, the nature of the welfare regime is also important in generating migrant livelihoods in particular sectors. The proliferation and polarisation of statuses affects both men and women migrants and refugees but its impact on women is different to that of men, due to the channels through which they enter and the gendered division of labour.

6. EU Policy

As a result of the growing awareness of irregular flows and settlements in the European Union, legal frameworks have been developed and various combat and control measures have been established in order to prevent undocumented immigration or to exert domestic control of undocumented migrant populations (e.g. establishing a Community-wide fingerprinting system for asylum applicants). Furthermore, most Member States have been active in establishing voluntary and forced return policies. 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, and Europe-wide platforms such as the Budapest Process, have attempted to coordinate Member States' policy activities in the area of undocumented immigration (Commission of the European Communities 2006a,b). The new EU border regime challenges the cross-border economy between countries of the European Union and neighbouring countries. Policy measures have led to a selective inclusion of specific groups of migrants (e.g. highly educated or seasonal workers) and an increased 'illegalization' of movements. For example, new visa requirements between Poland, Ukraine, Russia and Belarus 'illegalized' population movements which were formerly considered lawful.

State policy instruments addressing irregular migration can be classified into: pre-frontier measures (e.g. visa requirements, information campaigns, carrier sanctions, punitive measures against human smugglers etc.); measures relating to border management (strengthened physical borders, border controls and inspections, documentation with enhanced security features, biometric data, training border guards); and post-entry measures (detention, workplace inspections, internal ID inspections, employer sanctions, dispersal and restrictions on mobility, and restrictions on the right to work etc.) (Koser 2005, p.15). These enforcement measures are directed towards irregular migration and migration in general. Other responses to the phenomenon of irregular migration can be the strengthening of legal migration options by migration management, since both the need for work from traditional countries

of origin and the need for workers in the EU will build up and irregular migration will be likely to expand despite stronger enforcement measures. Though there are few examples of new labour migration schemes targeting unskilled foreign workers, some countries (Spain, Italy, Portugal, Belgium, France, UK, Greece) have experience of the regularisation of undocumented migrants (IOM 2003, Chapter 13; Le Voy 2004; ICMPD 2004-2006).

The synthesis report of the EMN (2005) summarises policy options of the member states: Germany and Austria are known for their wide-ranging established policy of fighting the causes of undocumented migration, whilst Belgium, Italy and Greece, on the other hand, have documented experience of regularisation and legalisation policies. Ireland and the United Kingdom are in the process of institution building in this area, having developed systems to deal with undocumented immigration. Düvell (2006a, p.171) notes that “countries with less strict internal controls such as UK, the Netherlands, Belgium and Spain host quasi-legal ‘illegals’. In contrast countries with a comprehensive internal control system and who enforce a strict rule of law such as Germany do not admit this feature”.

Comparing the migration policies in relation to undocumented migration and the living and working conditions of undocumented migrants in UK and Germany, Cyrus, Düvell and Vogel conclude that the two different migration regimes have very distinct effects on the lives, employment and social situation of undocumented migrants. They present two possible alternatives to the management of undocumented migration in a common European Union, one pointing at very restrictive migration policies where undocumented migrants do not even have the basic rights (Germany), the other pointing at a liberal alternative where the flexibility of the migrant labour force is appreciated (Cyrus *et. al.* 2004).

Godfried Engbersen (2001) shows in his study on irregular migrants in the Netherlands how strategies to enter and reside in the country are related to the restrictive (Dutch) migration policy. He finds four residence strategies of irregular migrants: the mobilisation of social capital; marriages; manipulation of one’s own identity and nationality and operating strategically in the public

sphere. European governments try to influence these residence strategies through immigration and also the criminal law. Engbersen states that 'panopticon Europe' evokes unanticipated effects with its restrictive policy towards immigrants: "First, it generates its own crimes to subsequently combat these with advanced identification systems". This results in a growing informal economy where irregular migrants work as well as in a rising delinquency of irregular migrants in order to survive. "Secondly the restrictive policy has a negative effect on the self-regulating capacity of ethnic groups in order to support illegal immigrants. (...) Third, the strengthening of the internal border control (...) has the effect that some illegal immigrants do not exercise the rights they – or their children - actually do have." (Engbersen 2001, pp. 242-243)

7. Migrant activists' perspectives and NGOs

This last section deals with policy options and the (political) movements of irregular migrants themselves, as well as with NGO support structures.

Most NGOs are not concerned with the governance of irregular migration but with protection and the promotion of the rights of irregular migrants. One example at the European level is the Platform for International Cooperation on Undocumented Migrants (PICUM), which has produced a series of reports and has regular newsletters, mainly concerned with the social rights of irregular migrants in Europe. Another is the Platform for European Red Cross Cooperation on Refugees, Asylum-Seekers and Migrants (PERCO), which has a Working Group on Irregular Migration that has recently produced a report which recommends awareness-raising, advocacy, emergency aid, health care, legal and social counselling, educational facilities, tracing services, contact points, specific services for victims of smuggling and trafficking, and information dissemination in countries of origin (Koser 2005).

In all Member States, there are limited opportunities for undocumented migrants to participate in political processes - most forms of political participation are informal and dependent on political networks and institutional arrangements. There are however alternative platforms (such as demonstrations and solidarity movements) and migrants' organisations offering migrants the option to participate. However, using the public sphere for political activism also presents a danger of their being disclosed to the police or migration management institutions (EMN 2005, p.29). Most of the public debates centre on the problems with delivering help and care. Others deal with human rights' issues and the right of residence based on humanitarian grounds. Here, even government institutions, at local and national levels are involved, as well as juridical courts and political parties.

The project 'Without Papers in Europe. Illegalisation of Migration – Self-organisation and Projects of Support in Europe' deals with the situation of undocumented refugees and migrants throughout Europe. It is concerned with the circumstances surrounding their entry and residence, attempts at self-

organization, and support projects. It aims at calling attention to the systematic deprivation of rights suffered by refugees and migrants, and knowledge of their resistance and struggles, as well as the initiatives launched by anti-racist groups (AutorInnenkollektiv 2000).

In the series published by COMPAS, Silverman (2005) wrote a paper on the 'Complications of Organizing Irregular Workers without legal rights'. She sought to address whether it is possible to support irregular workers in their present situation (e.g. irregular status), limit their exploitation but still maintain the competitive advantage that provides them employment – taking labour struggles in the US construction industry as an example. Also the PICUM Publication (LeVoy 2004) devotes some chapters to the support given by trade unions to irregular migrant workers.

Another interesting approach for making visible and embedding the struggles of migrants in a theoretical framework of contemporary migration is the notion of 'Autonomy of Migration' (Mezzadra 2007; Bojadžijev 2005; Transit Migration Forschungsgruppe 2007). Migration is seen as a new type of social movement, which occupies and opens up a new social space and new fields of conflict. Thus, while mobility in the form of labour migration is the source of exploitation insofar as capitalism relies on labour force mobility, mobility is at the same time "the source of escape from relations of exploitation and dominance" (Bojadžijev 2005).

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