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# Undocumented Migration Overview

**State-of-the-art country reports**

**Work Package 2**

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**Undocumented Worker Transitions**

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## Executive summary

Our review of the existing statistical data, literature and policy on migration, and particularly on undocumented migration, in the seven partner countries reveals:

- In all of the seven countries surveyed, migration has moved high up in the political agenda, as contradictions between differing public policy needs are played out, with growing distinctions between ‘desired’ migration, which is identified as coming from within the EU and sharing ‘characteristics’ which are observed as similar to those of the host population and ‘undesired’ migration, which consists of those not sharing these ‘characteristics’, which in reality refers to those whose skin colour is not white.
- In all of the seven countries legislative changes, particularly over the last 20 years, have generally followed similar patterns, which include a limitation of third country migration, essentially to cases of family reunion, a special permit system for high skilled workers and legislation to tighten control on illegal migration. At the same time, in relation to refugee rights of entry, the pattern in many of the partner countries is towards tighter regulation, accompanied with restrictions on freedom of movement and on the right to work.
- There is evidence of an increasing focus on ‘integration’ requiring the adoption by migrants of the languages and customs of the host country, as a fundamental requirement of permanent residence. But there are also different policies in relation to migration, with large-scale amnesties in some of the partner countries and a fundamental opposition to these as a response to illegal migration in others.
- Throughout all seven partner countries, employment rights for migrant workers from third countries, and in some cases from EU Member States, are linked to the issue of work permits of different types, with resulting different employment and residence entitlements now existing within most of the partner countries.

- All participating countries lack sufficient and reliable data on migrant workers. However, there are discernable patterns of employment. The main sectors of employment for working migrants in all countries covered by this report, with the exception of Bulgaria, are domestic services, (i.e. work in families), hotels and catering, tourism, industry (in particular, construction) and agriculture.
- Little has been written about the experiences of undocumented migrants in any of the partner countries. However, what evidence there is shows that a consistent feature is the particularly vulnerable position that undocumented migrants have in the labour market. There is also some consistency, based on the data that does exist, in relation to the sectors of employment that they work in, and participation in the informal economy.
- Concerning statistical data, often there are often varied and conflicting estimates, even of documented migrants, but particularly in relation to undocumented migration.
- In relation to access to services, undocumented migrants either have no right of access to public services, primarily health services or have restricted access. They are more reliant on services provided through NGOs or voluntary organisations.
- In countries there are many ways for migrants to become irregular, either on arrival in the country without permission or through remaining in the country beyond their permitted period of stay, or breaching the terms of their resident permit, such as by working. The ways in which irregular or undocumented migrants can then gain documented status vary in each country: Belgium, Italy and Spain have operated large-scale regularisation programmes, while other countries, such as Austria and the UK, reject this approach entirely, and Denmark and Bulgaria are reluctant to admit that undocumented migrants exist in their countries.

# 1. Introduction

The increasing flow of international migration has made it necessary to develop a common migration policy at EU level. There are two reasons for this imperative: First, the peculiarities of the socio-political situation in the past two decades have made migration a leading topic in the political agenda of many Member States, and second, although the industrialised states benefit from migration, there is still a significant public and political resistance to any liberalisation of the existing policies and regimes in this area. In order to avoid the problems resulting from the ensuing conflict, derived from the right to free movement, the governments in the host countries have been faced with the challenge of finding a balance between the conflicting positions of State, business and citizens. On the other hand, freedom of movement is one of the fundamental principles upon which the European Union was founded, although recent EU enlargement has been accompanied by a series of restrictions, introduced by the old EU Member States to set limits on prospective migration from the new Member States.

There are two key issues for the EU resulting from these contemporary developments: how to stop the illegal flow of migrants, who, having once crossed the external borders of the EU, present difficulties to the authorities in tracing them. On the other hand, there is an ongoing debate on the management of legal migration, caused by the widespread recognition that Europe needs to import foreign labour, as a consequence of demographic changes including ageing populations, low birth rates, together with the prospect of social security systems in crisis. It is quite apparent that all Member-States (even the new entrants) require labour in certain sectors to meet their economic and demographic needs – a gap that could be filled by migrant workers. This raises the following questions: How could Member States attract the workforce demanded by the labour market without putting further strains on social security systems? How best can Member States manage their responsibilities in relation to migration? To what extent should measures in the field of migration be under the control of Member-States and to what extent they should be determined at EU or at international level?

This report sets out the actual situation on migration in each participating country, focusing, in particular on undocumented workers. It presents general information and data provided by the seven partner organisations, working under the EU funded “Undocumented Worker Transitions” project. The partners are made up of six old Member States, represented by the Working Lives Research Institute, London Metropolitan University (UK); the Université Libre de Bruxelles, (Belgium); Università Ca’ Foscari Venezia, Laboratory of Training and Research on Immigration (Italy); Forschungs - und Beratungsstelle Arbeitswelt, Aspernbrueckengasse (Austria); Gabinet d'Estudis Socials, (Spain), the Roskilde University (Denmark); and one new Member State, Bulgaria, where immigration is a recent phenomenon. It is represented by the International Centre for Minority Studies and Intercultural Relations.

All seven partners produced their state of the art reports following an agreed standard template. The basic objectives of these reports were to document migration flows in the seven participating countries; to describe their existing legislative systems, including their recent history and their impact on migrant worker status and access to work; to understand the pathways into and within the countries; to review the literature on migration in each participating country to support work on expert and migrant interviews, as well as for the thematic reports; and to identify the data sources on undocumented migration in each participating country.

As a result all partners have included in their reports existing country literature on migration; available data from statistical reports, analysis and media; the impacts of migration on labour markets; the informal economy and migration; relevant policy documents on migration (legal and illegal) and its impacts. Sources of statistical data on illegal/undocumented migration include existing government and statutory agency estimates; academic reports; industry estimates; press reports; voluntary organisation/refugee/migrant organisation estimates; border and passenger data, etc.

As regards the terminologies used by the partners, it has become clear that it is not unified and that different terms are utilised in different countries. The

Platform for International Cooperation on Undocumented Migrants (PICUM) prefers the terms 'undocumented' or 'unauthorised' to 'illegal', a term which nevertheless has been commonly used in some of the participating countries. This term is not accepted by PICUM due to its association with criminality. Defining people as 'illegal' can mean that their humanity has been denied (PICUM, 2006: 1). The UK Institute for Public Policy Research uses an alternative term 'irregular migrants' and not 'undocumented', meaning 'people who are liable to be deported for issues related to immigration status' (ippr, 2006: 5)

The terms 'compliant', 'semi-compliant' and 'non-compliant' is another categorisation, developed by Ruhs and Anderson (2006), where compliant migrants are legal residents who work in full compliance with the conditions of their immigration status, non-compliant are those migrants who have no rights to reside in the host country and semi-compliant migrant refers to legally residing migrants but who are working in violation of some or all of the conditions attached to their immigration status (Ruhs and Anderson, 2006).

The glossary, which is to be developed by the project partners, is aimed at standardising the terminology of migration within the participating countries, with the aim that it will be utilised by other researchers in the future when researching migration.

## 2. EU and international legal instruments related to migration

### 2.1. International legal instruments

The Universal Declaration of Human Rights (UDHR) provides the basis for all UN human rights conventions (1948). Although the UDHR is a declaration only and is not binding on states, in 1968 the UN International Conference on Human Rights decided that it "constitutes an obligation for the members of the international community" for all persons.<sup>1</sup> Today the UDHR is considered to be part of customary international law and is thus intended to be binding on all states. Thus the International Bill of Human Rights consists of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). Other Human Rights Instruments, which are thematic or protecting of specific groups are the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). All of the Member States of the EU have ratified all of the above<sup>2</sup>, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Thus, the provisions granted in each of the human rights' conventions must be considered to be binding on all of the Member States.

### 2.2. EU legal documents

In October 1999 the European Council agreed in Tampere (Finland) to coordinate the national measures in the field of migration, aiming at the establishment of a common policy towards all migrants coming to the EU. The five-year Hague programme (2005-2010) confirmed the Tampere approach,

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<sup>1</sup> See OHCHR, Fact Sheet No 2 (Rev.1), The international Bill of Human Rights, Geneva, June 1996, (<http://www.unhcr.ch/html/menu6/2/fs2.htm>)

<sup>2</sup> The status of ratification of the different treaties can be consulted at the web page of the OHCHR, (<http://www.ohchr.org/english/bodies/docs/RatificationStatus.pdf>)



stating as its aims: to develop the EU into an area of freedom, security and justice. 2010 is the target date for the adoption of most of the legislation needed on the setting up a common migration and asylum policy for the EU Member States.

Migration became an issue of common interest and of EC competence with the **Maastricht Treaty** (1993), which established the European Union. It stated its aims *to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms* (The Maastricht Treaty: 1993). **The Treaty of Amsterdam** (1999), aimed *to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured, in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.* (The Treaty of Amsterdam, 1999). Migration policy as a consequence of this Treaty became a full EU responsibility (Article 61). It was the **Tampere European Council (October 1999)**, however, which was the first to address the development of the European Union as a unified region of freedom, security, and justice. The Tampere agenda determined the elements for a common EU migration policy.

To launch a debate with the other EU institutions and with Member States and civil society, the European Commission presented, in November 2000, a Communication to the Council and the European Parliament, which recommended a common approach to migration management. This was followed in July 2001 by another Communication, which proposed the adoption of an open method of coordination for Community migration policy, to encourage the exchange of information between the Member States on the implementation of the common policy.

The main outcomes, during the period of implementation of the Tampere programme (1999-2004), include proposals on legal migration, integration, illegal immigration, and relations with third countries:

### Documents on legal migration

- [Council Directive 2003/86/EC](#) of 22 September 2003 on the right to **family reunification**; entered into force on 3 October 2003.
- [Council Directive 2003/109/EC](#) of 25 November 2003 on a **long-term resident status** for third country nationals who have legally resided for five years in the territory of a Member State; entered into force on 23 January 2004.
- [Directive 2004/114](#) on the conditions of admission of third-country nationals for the **purposes of studies, pupil exchange, unremunerated training or voluntary service** was adopted by the Council on 13 December 2004; entered into force on 12 January 2005. Member States' legislation had to comply with the Directive by 12 January 2007.
- [Directive 2005/71](#) for the facilitation of the **admission of researchers** into the EU was adopted by the Council on 12 October 2005. Its provisions will have to be implemented by Member States by 12 October 2007.

### Documents on integration

- A policy paper was adopted by the EC in June 2003 ([COM \(2003\) 336](#)) on **migration, integration and employment** which called on EU Member States to step up their efforts to integrate migrants.
- A **network of National Contacts Points on Integration** has been set up and meets regularly to exchange and discuss best practices. The Network provided valuable input for the preparation of the **Handbook on Integration**, published in November 2004.

### Documents on illegal immigration

- On 28 February 2002, the EU Council of ministers adopted an **Action plan on illegal migration** to combat illegal migration and trafficking of human beings in the European Union.
- On 28 November 2002, the Council adopted a **Return action programme** which suggested developing a number of short, medium and long term measures, including common EU-wide minimum standards or guidelines, in relation to the return of undocumented residents.

### **Documents referring to relations with third countries**

- **Readmission agreements** have been concluded with a number of countries (Macao, Sri Lanka, Albania) and Hong Kong, and negotiations with several others are ongoing.
- **Assisting third countries** – On 10 March 2004 the European Parliament and the Council adopted a Regulation establishing a programme for financial and technical assistance to third countries in the area of migration and asylum (AENEAS).

It is important to note that the common EU immigration policy does not apply to **Denmark**, which opted out of Title IV of the Treaty establishing the European Community. The **UK and Ireland** decide on their involvement on a case-by-case basis (possibility of an 'opt-in').

## **2.3. Latest developments in the area of economic migration**

After a debate on the need of common rules for the admission of economic migrants, a Policy Plan on Legal Migration was adopted in December 2005 ([COM \(2005\) 669](#)), which lists the actions and legislative initiatives that the Commission intends to take in order to pursue the consistent development of EU legal migration policy; As regards the field of integration, in June 2006 the Commission presented the Second Annual Report on Migration and Integration ([SEC \(2006\) 892](#)) which provides an overview of migration trends in the European Union, analysing the changes and describing actions taken regarding the admission and integration of immigrants at national and EU level in 2004; In September 2005 the Commission adopted the communication “**A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union**” ([COM \(2005\) 389](#)). This Communication provides new suggestions for action both at EU and national level. Member States are encouraged to strengthen their efforts, with a perspective of developing comprehensive national integration strategies, while new ways of ensuring consistency between actions taken at EU and national level are proposed.

## 2.4. Undocumented migration and return

In July 2006 the Commission adopted a **Communication** on policy priorities in the fight against illegal immigration of third-country nationals ([COM \(2006\) 402](#)), which builds on the guiding principles and EU achievements and further develops new priorities. It follows a comprehensive approach, striking a balance between security and the basic rights of individuals and thus addresses measures at all stages of the undocumented migration process. It includes *cooperation with third countries* (joint patrols, surveillances and reinforced response capacity), *further strengthening the external borders* ((creation of a generalised and automated entry-exit system for registration, “e-borders” system), *fight against human trafficking* (EU plan on best practices), *regularisation of undocumented immigrants*, *Return policy* (further readmission agreements, enhanced use of joint return flights), *improved information exchange* (ICONet, Europol).

In order to fully implement the Return Action Programme agreed in 2002, the Commission adopted in September 2005 a [proposal for a Directive](#) on common standards and procedures in Member States for returning illegally staying third-country nationals. The objective of this proposal is to provide for clear, transparent and fair common rules concerning return, removal, use of coercive measures, temporary custody and re-entry, while taking into full account the respect for human rights and fundamental freedoms of the persons concerned.

In order to tackle illegal employment at EU level, the Commission adopted, in May 2007, a proposal for a Directive providing sanctions against employers of illegally staying third-country nationals. This proposal is concerned with immigration policy, not with labour or social policy. Its main objective is to sanction employers, not the illegally employed third-country nationals.

## 2.5. Migration and development

In September 2005 the Commission adopted the Communication “Migration and development: some concrete orientations” ([COM \(2005\) 390](#)). This Communication constitutes the response of the European Union to the invitations made by the Council in March 2003 and the European Council in

November 2004, to submit concrete proposals to respond to the impact of migration on economic development in countries of origin. The Communication highlights a number of concrete orientations in the following areas: remittances; facilitating the involvement of willing Diaspora members in the development of countries of origin; facilitating brain circulation; and limiting the impact of brain drain.

## **2.6. International legal documents related to refugees<sup>3</sup>**

The legal instruments for protection of refugees are based on the international system regulated in the:

- **Geneva Convention (1951) and the New York Protocol (1967)**. These determine the criteria, to which a given person should conform, in order to be recognised a refugee, including the conditions under which s/he will not be considered a refugee.
- **The Statute of the Office of the United Nations High Commissioner for Refugees and the universal international legal documents referring to the human rights' protection** are also an essential part of the legal tools of the international system for protection of refugees. The basic categories of persons who enjoy the protection of the UNHCR are refugees and asylum seekers; stateless persons, refugees who return voluntarily to the country of their nationality, internally displaced people in the country of their nationality, and people at risk.
- **The Convention of the Organisation of African Unity (OAU)** regulating the specific aspects of refugee problems in Africa (adding some more objective elements to the definition of refugee).
- **The Cartagena Declaration on refugees (1984), which distinguishes** refugees from other categories of migrants
- **European Council Regulation 343/2003** defining the responsible Member State to consider the refugee's application (Dublin II) and the EURODAC system
- **EU Council Directive 2001/55/EC** on Minimum Standards for Temporary Protection in case of mass flows of displaced people and the

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<sup>3</sup> See <http://www.unhcr.org/protect/43672f0a2.html>

measures taken for achieving a balance in the efforts of the Member States, in accepting such persons.

- **Council Directive 9/EC/2003/EC** of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
- **EU Council Directive 2004/83/EC** on minimum standards for the qualification and status of third country nationals or stateless persons, as refugees or as persons who otherwise need international protection, together with the content of the protection granted.
- **Council Directive 2005/85/EC** of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;
- UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member states for Granting and withdrawing refugee status (**Council document 14203/04**, Asile 64, of 9 Nov. 2004)
- **Schengen Implementation Agreement** for the abolition of internal border controls among the signatory states and increased control of the common external borders, June 1990.

### **3. EU Framework of employment law affecting migrant workers**

#### **3.1 Analysis of the general dispositions of EU Labour law in relation to migrants**

EU labour law is directed towards legal migrant workers only, generally through legal provisions in relation to members of minority ethnic groups, through EU policies on the integration of disadvantaged people in the field of employment.

Some specific provisions were introduced in favour of migrants and members of minority ethnic groups in the field of employment, through the Anti-discrimination legal framework, including the two EU directives and the programme against discrimination<sup>4</sup>.

In addition, the employment guidelines for 2003-2005 and 2005-08, drawn up within the context of the European Employment Strategy created in 1997, include specific guidelines concerning migrants and members of minority ethnic groups.

Several European instruments such as the European Social Fund, EQUAL, URBAN and the European Refugee Fund are dedicated to the promotion of high levels of employment and economic and social cohesion and are especially dedicated to the promotion of equal opportunities in accessing the labour market for those exposed to social exclusion. For the period 2007-2013, some specific actions will be also dedicated to integration, through the PROGRESS programme and a European Integration Fund will be created.

At national level, new provisions have been drawn up to assess the impact of National Reform Programmes on the labour-market integration of migrants. These are monitored and Member States are encouraged to develop labour-market integration policies and ensure the application of the Directives on discrimination.

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<sup>4</sup> The Commission launched a campaign in favour of diversity in 2003 for five years. The first year was dedicated to diversity in the workplace.

### 3.2. The recognition of EU labour law rights for migrants

Among the main objectives of EU migration policy, determined by the Tampere Council (1999), the equitable treatment of foreigners was the basis for a common policy for the integration of *legal* residents<sup>5</sup>. The idea was to provide a set of rights as similar as possible to the rights recognized for European citizens. As a result, several rights in EU labour law are applicable to migrants who have acquired long-term resident status after five years of residence in a Member State through the directive on long-term residents<sup>6</sup>. This text is based on the principle of equal treatment in relation to social rights. As a result, migrant workers have the right to work, both as self-employed or as employees; they also benefit from the principle of non-discrimination in access to employment, vocational training, education, social security, social help and social protection, trade-union rights and access to goods and services.

In addition, the directive enables migrants, in certain conditions, to gain access to one of the most important rights recognized for European citizens in the field of the individual labour law: freedom of movement.

The directive on family reunification, adopted in 2003<sup>7</sup>, is also of some interest because it recognizes specific social rights for certain family members, such as access to education, employment and vocational training under the same terms as the applicant.

But if all EU member states are in agreement on a common strategy to integrate migrants, to fulfil the Lisbon agenda, they are less in agreement on the adoption of a common EU legal framework on the conditions of access for new third country nationals to the EU, given that the imposition of limits on rights of entry remains the prerogative of each Member State. That is why the

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<sup>5</sup> That means that undocumented migrants are totally excluded from all EU common immigration and asylum policy.

<sup>6</sup> Council Directive [2003/109/EC](#) of 25 November 2003 concerning the status of third-country nationals who are long-term residents

<sup>7</sup> Council Directive [2003/86/EC](#) of 22 September 2003 on the right to family reunification.



[proposal for a Directive](#) concerning the conditions of entry and stay of non-EU nationals looking for employment was abandoned after lengthy negotiations between Member States who were extremely reluctant to support a European legal framework in the field of economic migration.

In order to fulfil the mandate given by the Hague Programme, the Commission adopted the [policy plan on legal migration in December 2005](#) (COM (2005) 669). The Commission plans to present a set of legislative proposals concerning the conditions of entry and residence for third-country nationals in employment. This mainly concerns certain categories of migrants, such as the highly skilled and seasonal workers, intra-corporate transferees and remunerated trainees. But these proposals will be contained within a general framework directive. They will not deal with the procedures and conditions of admission for third-country nationals in employment and Member States will remain competent to determine the levels of migration.

## **4. National migration and employment legislative systems**

### **4.1. Historical account of migration policies**

In all of the seven countries surveyed, migration has moved high up in the political agenda, as contradictions between differing public policy needs are played out. On the one hand demographic changes and an aging European population (particularly in the older EU States), require the introduction of additional labour forces, which migration can provide, and this is particularly the case in relation to lower-skilled and low-paid employment. On the other hand, a general growth in xenophobia and racism has made policy makers reluctant to be seen as positively encouraging all migration. For this reason there are growing distinctions between ‘desired’ migration, which is identified as coming from within the EU and sharing ‘characteristics’ which are observed as similar to those of the host population and ‘undesired’ migration, which consists of those not sharing these ‘characteristics’, which in reality refers to those whose skin colour is not white. In the case of the latter, there is a generalised tightening of immigration controls. In the light of this, EU migration policy, which limits the entry of third country nationals while encouraging the free movement of EU nationals, contributes to this divide. How this is played out in the seven countries is documented below.

Other observable features include the switch, in most of the partner countries, from being principally countries of outward migration, to being major inward migration destinations. In some cases State policies have been slow to respond to this change and host populations have not necessarily welcomed the change.

In the UK since the election of the New Labour government in 1997, migration has been high on the political agenda, with measures to control the numbers of asylum seekers and then a policy of “managed migration” to encourage economic migration where it is seen to benefit the UK economy.

Undocumented or “illegal” migration has also become an increasing focus of interest, with concern about the exploitation and conditions of migrants, at the

same time as increasingly stringent government policy in relation to border controls and tackling “abuse” of the immigration system.

Austria has never officially defined itself as a country of immigration, and the principle of ‘jus sanguinis’ applies to citizenship requirements. Until the 1970s migration policy was exclusively dealt with in the context of an employment policy and has been oriented to a “guest worker regime”. However, in 1974 this policy was terminated. In 1990, a quota for the employment of foreigners was introduced, defined as a maximum share of foreign workers in the total workforce (eight per cent presently). For the first time a quota for family reunification was introduced, and, since 1998, provision for the granting of a residence permit for humanitarian reasons. Since 2002 labour migration has been confined to “key workers” and temporary workers. For a maximum period of seven years, migrants from the new EU-members states are not allowed to work in paid employment independently from the Austrian quota system. The tendency has been to implement and interpret EU migration directives as restrictively as possible (König/Perchinig, 2005: 2).

Spain is a typical example of a country, which from a refugee and immigrant producing State, has turned into a major host country for migrants in Europe. Developments within the Spanish labour market definitely influenced the commencement of new waves of migration. This is a consequence of the development of the service sectors and the growing demand for domestic/household employment, as a result of the increased incorporation of woman into the labour market. At the same time the increasing level of young people’s qualifications has created labour shortages in low-skilled employment. The geographical characteristics of Spain have contributed to it becoming a key destination for migration flows. A further major flow of migrants into Spain is related to historical and economic links to Latin America. In the period 2000-2007 Spain became the Member State with highest active migration flows. Currently, the number of migrants living in Spain is over two million, representing five per cent of the total population. A study by the Foundation of the Spanish Savings Bank (FUNCAS) forecasts

over six million migrants in Spain by the year 2010. This would make Spain the country with the highest migrant population within the EU.

Prior to the late 1950s Denmark had a net emigration, due to relatively high levels of unemployment in the post war era. By the end of 1960s there was a notable net immigration to Denmark of a few thousand people, mainly from Turkey, Yugoslavia and Pakistan. These migrants have filled gaps in labour market as a consequence of important structural changes, but their participation in civic life was extremely poor and limited. After 1973 migration continued, mainly through family reunification. Since the beginning of 1990s more restrictive immigration policies have been introduced. Taking all together, more than one third of the 1985 Danish migrants originated from neighbouring/ western countries, but this share has reduced to 15 per cent by 2006. Amendments to asylum laws and legislation on family reunification have brought about a considerable decline in family reunification inflows. Very recently a tightening of the requirements for permanent residence has been introduced. A perceived value conflict between a migrant culture (that is widely identified as Islamic) and the standards of a democratic society has moved from organisational level to the nation wide policy arena (Goli, 2007).<sup>8</sup>

Italy, a traditional country of emigration, has had a positive migration balance only since 1973. Until the late 1970s the immigrant population in this country was essentially stable (200,000 immigrants) and it was only in the late 1990s that migration became a “mass phenomenon”. Today, with over three million documented migrants (including 20,675 refugees) and approximately 760,000 undocumented, Italy has the fifth largest migrant community within the EU and ranks first where undocumented immigrants are concerned. Thus migrants have become a structural component of Italian society. In the dominant discourse migration has been represented either as a threat to national

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<sup>8</sup> Immigrants and descendants whose origin is from Muslim countries make up a majority of migrants and their descendants, but specifically a majority among migrants and descendants from third countries. When speaking of migrant related ‘problems’ in Denmark, the debate is almost exclusively addressed to the issue of migrants originating from Muslim countries and their descendants. (Goli, 2002) There is no register information on the number of Muslims in Denmark. Statistics in Denmark estimated that there were approximately 120,000 Muslims in Denmark as of 1 January 1999, but has carried out no calculations since that time. Researchers estimate that there are currently some 210,000 Muslims in Denmark.

security or as a vital resource for the economy and as a response to weak demographic growth. These two representations aim at the inferiorisation of the migrants and hierarchisation between the host and migrant workers and between the migrants themselves. These processes of inferiorisation and hierarchisation have then been institutionalised by migration policies themselves.

Belgium was more a country of emigration than immigration during the 19th century, but saw the first waves of migration of workers from Italy, Eastern Europe and the Maghreb from 1920. Following the Second World War, and until the 1970s, Belgium signed eight bilateral labour agreements with Italy, Spain, Greece, Morocco, Turkey, Tunisia, Algeria and Yugoslavia. However, in 1974 labour migration was officially ended in Belgium, except for very specialist labour not present in the Belgian labour market. Through successive reforms, the right to live in and enter the country were restricted to family reunification (1984), foreign students (1982, 1984), and tourism (visas have been required since 1986).

Migration is a much more recent phenomenon in Bulgaria and the number of migrants is small compared to other European countries. Nevertheless, regulation and control of the processes of migration is one of the priorities of the Bulgarian government. Bulgaria's new migration policy is aimed at achieving an optimal balance between the freedom of movement of people and the control of illegal immigration, while respecting fundamental human rights and freedoms.

## **4.2. Overview of current immigration legal framework**

In all of the seven countries legislative changes, particularly over the last 20 years, have generally followed similar patterns, which include a limitation of third country migration, essentially to cases of family reunion, a special permit system for high skilled workers and legislation to tighten control on illegal migration. At the same time, in relation to refugee rights of entry, the pattern in many of the partner countries is towards tighter regulation, accompanied with restrictions on freedom of movement and on the right to work. There is also evidence of an increasing focus on 'integration' requiring the adoption, by

migrants, of the languages and customs of the host country, as a fundamental requirement of permanent residence. But there are also different policies in relation to migration, with large-scale amnesties in some of the partner countries and a fundamental opposition to these as a response to illegal migration in others.

In the UK legislation to control immigration was introduced in the 1960s and in the Immigration Act of 1971. Since the 70s only strictly limited economic migration has been permitted for skilled workers through the work permit scheme and further requirements for family reunification. At the same time the government has been taking an increasingly “tough” approach to border controls and illegal migration.

When the Labour government came to power in the UK in 1997, asylum and immigration procedures were considered to be failing, so they began a ‘modernisation’ of migration policy, concentrating on improving administrative procedures while at the same time deterring asylum seekers with the Asylum and Immigration Act 1999 (Flynn, 2005). The government’s *Secure Borders, Safe Haven* White Paper in 2002 (Home Office, 2002) went further in developing its policies on ‘managed migration’, referring to the economic and social benefits of migration. But it also talked about the need for the social integration of migrants, community cohesion and for routes to gaining UK citizenship. Flynn (2005) argues, though, that migration policy was being shaped by the needs of business, both for skilled labour and unskilled labour, whose rights in relation to length of stay, family reunification etc., varied according to the scheme under which they entered and depending on employer demand for labour.

The legislative reforms initiated by the Austrian government in the 90s, covered all areas related to migration, including entry, residence, employment, and asylum. These reforms must be regarded as a substantial change in the Austrian migration regime, moving from a system of flexible reaction towards the demands of the labour market to a strictly regulated and limited system of migration. (König/Stadler: 2004). Austrian legislation allows different kinds of residence permits for third country nationals: temporary residence permits;

settlement permits for key personnel; permanent residence - European Community; visas for less than six months for third country nationals working temporarily; and permits for domestic work in an Austrian family. In 1998 an amendment to the Aliens Act differentiated between temporary stay and the settlement of migrants in Austria. A system of consolidation of residence (*Aufenthaltsverfestigung*) was established, resulting in an incremental improvement of living conditions and residence of long-term migrants in Austria. The possibility of issuing a residence permit for humanitarian reasons was introduced in 1998 as well, offering one of the few ways for residents without documents to attain a legal status.

In Spain regulation of entry and residence of migrants, until the mid-eighties, was very open and legal residence could be obtained relatively easily. Migration issues were almost non-existent in the institutional framework, until 1986 with the entrance of Spain into the EC. In 1984 the Law of Asylum came into force, followed, in 1985, by the Law of Rights and Obligations for Foreigners, the so-called Foreigners' Law. Thus, Spain began to be defined as a host country for migrants while trying to rebuild its impoverished labour market. The basic document that regulated the stay of migrants in Spain up to 1999 was the Organic Law 7/1985. A new Immigration Law came into force in 2000 but was amended three times by the then governing Popular Party (PP), with the main aim of tightening further the asylum regulations and restricting entry. In 2004, the socialist government announced a new regularisation campaign for undocumented migrants in Spain and on 30 of December the law was reformed under Royal Decree 2393/2004 of the Organic Law 4/2000. The approval of this Decree was the result of converging efforts to try and make migration legal. Its main objective is to speed up the authorisations to fill those employment vacancies that cannot be filled by workers currently resident in Spain. On 7 January 2005 the State published the Royal Decree that amended the Law of Foreigners, creating a period of three months for the regularisation of undocumented workers. This came into force on 7 February 2005.

Currently, migrants in Denmark generally receive a permanent residence permit if they have lived in Denmark for seven years, completed an introduction programme and passed a Danish-language competency test. Under the rules of family reunification, foreign nationals with relatives in Denmark can be granted residence permits. Since July 2005, such applicants must sign a “declaration of integration”. Spouses or registered partners must be over 24 years of age. The so-called “combined attachment” of the couple to Denmark must be greater than the attachment to the country of origin of the spouse. This requirement is waived if the individual, already resident in Denmark, has had Danish citizenship for 28 years or more, or was born and has lived in the country for 28 years. Section 8 of the Aliens Act specifically stipulates that, in addition to an individual’s needs, language ability, educational background, etc., and motivation should also be taken into account in the selection of quota refugees. Denmark has a dispersal policy - refugees with proper status are distributed across the country, by means of quotas per region (counties), and then broken down to the level of the municipality.

In Italy, Law 943/86 permitted amnesties, while Law 39/90 (Martelli Law) allowed the “governing” of migration through flow decrees. This legislation prescribes that only the employer can undertake procedures to authorize an entry and hence the migrant worker is excluded from requesting a residence permit. The annual setting of entry quotas and the cyclical recourse to amnesties have been fully assimilated by Law 40/98 (Turco-Napolitano Law), which can be considered the first organic law on migration in Italy. In the latest Law 189/2002 the sponsor mechanism was abolished; maximum terms of validity of residence permits and of unemployment were reduced; maximum terms of detention in the temporary accommodation centres were doubled; income and residence parameters for family reunification were raised; access to public housing was limited to migrants holding documented employment and a residence card, or residence permit for at least two years; the penal offence of “illegal re-entry” was introduced. The system of annual entry quotas for seasonal workers has been structured in a “selective” manner, reminiscent of the old *Gastarbeiter* model.



Compared to other nations, refugee status has been granted to very few applicants in Italy (only 20,675). This situation is due to the fact that “Italy continues to be the only member state of the European Union that has no organic law on the right to asylum” (UNHCR, 2005). The relevant legislation is: Law 39/90, which established some forms of assistance for asylum seekers and refugees and withdrew the geographical reserve stipulated in the ratification of the Geneva Convention; Law 286/98, which instituted a residence permit for humanitarian reasons and for temporary protection; Law 189/2002, which decentralized the procedures for the recognition of refugee status, and introduced the accommodation of asylum seekers in “identification centres”. A person has no right to work until refugee status has been granted and thus asylum seekers seek work within the underground or shadow economy.

In Belgium the main legislation affecting migrants is the Law of 15 December 1980 on entry to the country, rights to stay, settlement and removal of foreigners. This law controls the administrative status of migrants at all stages of their stay in Belgium. Asylum seekers’ and refugees’ rights were curtailed by the law of 1987 that reinforced border controls; the law of 1991 allowing the detention of asylum seekers at the border; and in 1993, the first detention centres were created. But two major legislative changes occurred in 2006, mainly to comply with EU directives on migration and asylum, but also to deal with the accumulation of asylum seeker applications. These introduced a new kind of protection for asylum seekers, called subsidiary protection, which applies when an asylum seeker does not meet the Geneva Convention criteria, but fears persecution, such as the death penalty or execution, torture or ill-treatment, or violence in the case of armed conflict.

The Belgian Citizenship Act of 1984, which was reformed several times (in 1991, 1995, 1998) in order to facilitate access to citizenship, is seen as the best way to integrate migrants into Belgian society (Carlier and Rea, 2001). The reform of 1 March 2000 allows foreigners to apply for Belgian nationality after seven years of legal residence, without any condition on integration.

Belgium has had two regularisation operations: the first was carried out in 1974, following the decision to close the borders, and the second began in January 2000 and lasted more than 24 months. During this time applicants for regularisation did not receive any financial or material assistance from the authorities, but due to pressure from NGOs, the Belgian Minister of Labour made a decree granting a provisional work permit to candidates for regularisation.

To harmonise national legislation with existing EU laws, Bulgaria has amended its acting laws as regards foreign citizens, immigrants and refugees. According to the Foreigners in the Republic of Bulgaria Act (FRBA) of 1998 there are three possible regimes for foreigners to stay in Bulgaria: short-term residence permits (up to 90 days); long-term residence permits up to one year; and permanent residence with unlimited terms. Individuals granted humanitarian protection come under the rules applying to foreigners with permanent residence permits. Bulgarian citizenship applies to all born to parents, at least one of whom has Bulgarian citizenship. A person born within the territory of the Republic of Bulgaria may acquire Bulgarian citizenship only if she/he does not acquire other citizenship by virtue of origin. The possibility for naturalisation is envisaged as well, with a facilitated procedure for persons of Bulgarian origin.

The Asylum and Refugees Act (ARA) of 2002 provides for the types of specific protection procedures, and for the conditions for the granting of asylum and refugee status to foreigners in Bulgaria. The provisions of the ARA pay special attention to individuals with specific needs, including women and unaccompanied minors.

### **4.3. Employment law framework in the participating countries**

Throughout all seven partner countries, employment rights for migrant workers from third countries, and in some cases from EU Member States, are linked to the issue of work permits. What is notable is the preponderance of

different types of permit, with resulting different employment and residence entitlements now existing within most of the partner countries.

In the UK the national employment law framework is based on the existence of a valid and legally enforceable employment contract and this contract remains the primary determinant of entitlement to statutory employment rights. Under UK law migrants working with authority have access to the same employment rights as UK workers. However, for migrants who are non-compliant or semi-compliant (working without or beyond their authorisation), their employment contracts are 'illegal' and therefore not enforceable. The fact that in the UK employment rights are dependent on employment status and on the type of contract under which employment occurs, means that some workers are excluded from basic rights like those to protection over matters like dismissal, redundancy, maternity, paternity and parental rights. People working under illegal contracts were most likely to be paid less than the national minimum (McKay et al, 2006). Furthermore, whether or not a worker can enforce employment rights is dependent on the level of support and information available to the worker and is premised on knowledge of rights. Although this applies generally to all workers, given their labour market vulnerability, unauthorised migrants are disproportionately affected by the general failure of UK employment law to guarantee basic employment rights to all workers.

In 2005 the UK government published its five-year strategy for asylum and immigration (Home Office, 2005). It proposed the replacement of all visa and work permit procedures with a single points-based system. Thus, skilled workers will be further prioritised in the UK from 2008, when there will be a single points-based system, made up of five tiers: highly-skilled professionals and entrepreneurs; skilled workers; low-skilled workers; students; youth mobility schemes and temporary workers who are allowed into the UK for cultural, charitable, religious or international development reasons (Home Office, 2006a). However, it is only skilled workers who will be offered routes to settle in the UK.

The Work Permits system is currently the main mechanism for labour migration in the UK. Other schemes are the Highly Skilled Migrant Programme (HSMP); Seasonal Agricultural Workers' Scheme (SAWS) with an overall annual quota; Working Holiday Makers' Scheme, which allows Commonwealth citizens aged between 17 and 30 to come to the UK for an extended holiday of up to two years; Worker Registration Scheme (WRS), which was introduced on 1 May 2004 when the A8 countries of Central and Eastern Europe joined the EU and were granted the right to work in the UK. In May 2003 the Sectors-Based Scheme (SBS) was introduced, to address shortages in lower skilled occupations, but is being phased out. Domestic workers can come with their employer to the UK, and are normally given permission to stay for six to 12 months. Students have the right to work for a limited number of hours.

The employment of migrants in Austria is regulated under the Alien employment law. In principle an employer may only employ a foreigner if he/she has been granted an employment permit by the Austrian Employment Service or if the foreigner possesses an entitlement according to the Alien employment law (e.g. work permit, certificate of exemption, confirmation of freedom of movement etc.) or the Residence and Settlement Act (e.g. unlimited settlement permit, "permanent residence – European Community" etc.). The following work permits can be granted by the Austrian Employment Service or, according to the Alien employment law, to third country nationals: temporary work permits; work permits; certificate of exemption for five years. The Federal Ministry of Economics and Labour may, by means of a decree, permit the short-term employment of third country nationals (up to six months). Students from third countries may work in minor employment, i.e. they may work less than 12 hours per month or with a monthly salary of less than 333.16 Euro (2006). Unemployed migrants are eligible for unemployment benefits if they have the right to be employed. Most social security system benefits are only granted after five years of regular residence.

In Spain there are different measures regulating the employment relationships of migrants and the labour market, and these are related to access to

employment; to promotion within employment; and to training and employment. Working migrants in Spain are regulated by the same Law as the indigenous working population. The main differences arise before acquiring fully compliant working permits. Once migrants acquire a work permit, the law establishes that their working conditions cannot be worse than those for Spanish nationals, including the right to a minimum wage. Hence, in Spain, the main debate is not about the rights of migrant workers, but about the right to access work permits.

The aim of the current Spanish legislation is that it should apply to foreign workers who are undertaking the jobs that nationals do not want or cannot cover (Aguilera, 2006). However, in practice there are many migrants who enter and remain undocumented in the country, and work without having the legal documentation. As Aguilera also explains, a great number of migrant workers access the labour market by non-compliant channels - mainly into the submerged and semi-submerged economies. This highlights the failures of the national policies on migration.

Labour Migration in Denmark is regulated by one Ministry dealing with almost every aspect of integration and immigration. According to the first Integration Act of 1999, the responsibility of integration was transferred from the Danish Refugee Council to the municipalities. Work permits are issued for a limited time period. For certain professions permits are granted for three years at a time, and after seven years work permits become permanent. In July 2002, a job-card scheme was established to facilitate the recruitment of people with professional qualifications. Students can extend their permits for three months after termination of their studies and may stay if they find a job. In April 2006, plans were announced to extend this period to six months, by means of the so-called "Green Cards".

Currently social assistance comes in three different forms: "cash aid"; "introduction contribution"; and "start aid". The general idea behind differentiating social assistance is that reduced benefits constitute an incentive to find a job.

In Italy, the institutionalisation of labour market stratification and the levelling downwards of workers' living and working conditions go back to Law 863/84. Furthermore, Law 146/1990 introduced limitations on the right to strike. These measures were systemised in Law 196/97, designed to flexibilise labour-market hiring mechanisms. Law 30/2003 was aimed also at (de) regulating the labour market. The evolution of migration and labour market policies are linked by, on the one hand, the tendency to institutionalise the processes of flexibilization, hierarchization, and competition between workers - as single individuals and as "racialized" individuals - already operating in the labour market; and, on the other, the tendency to extend, to the entire body of the working class, the forms of casualisation that have been previewed precisely on the backs of migrant workers. The combination of these two trends is leading to an extreme individualisation of employment relationships, which is reflected in the current social relations between workers, expressing themselves in "specific" forms of discrimination, such as racism, sexism, religious discrimination, etc. Objectively, then, this process of casualisation has very precise political outcomes, which consist in undermining the conditions of resistance and the united struggles of workers.

In Belgium there is a clear distinction between migrants' access to work in the private and public sectors. Employment in the private sector is regulated by two laws, one for salaried and the other for self-employed workers. In 2003, two ordinances simplified procedures and facilitated access to the labour market for migrants and refugees. The main changes concerned the link between the right to stay and the right to work: foreigners who have the right to stay for an unlimited period automatically obtain the right to work without the need for a work permit. All other migrants, such as regularised migrants or victims of human trafficking, obtain a limited work permit for a maximum of 12 months. It also introduced a new work permit: permit C. Three categories of work permit now exist: *permit A*, a long-term permit valid for all employers and all sectors; *permit B*, a short-term permit for one or several employers; and *permit C*, a one-year permit only for one employer. The latter is available to those staying legally and temporarily in Belgium for a reason other than work (i.e. eligible asylum seekers or students).

Public sector employment was strictly reserved for Belgian citizens, although EU citizens gained access to these jobs in 1968. But since 2002 migrants have had access to regional civil service employment, although not in all roles.

Citizens of the new Eastern European EU member States require a work permit for an interim period of seven years, from 1 May 2004. However, from 1 May 2006, access to the labour market became easier, particularly in certain sectors of labour shortage. In 2006, two Belgian reports (Centre pour l'Égalité des Chances et la Lutte contre le Racisme, 2006; Conseil Supérieur de l'Emploi, 2006) and an EU Communication<sup>9</sup> suggested abandoning these transitional measures to respect the principle of free movement of European citizens and due to the fact that migratory flows had been controlled during the first transitional period.

Labour migration in Bulgaria is regulated through the domestic legislative acts. An important act in this field is the Regulation on the Terms and Procedures for Issue, Denial and Withdrawal of Work Permits of Foreigners. Bulgaria adheres strictly to the principle of the equal treatment of those foreigners who have been employed, with regard to work conditions, payment, holidays, dismissal, etc. Migrants in Bulgaria may work if they have permanent residence permits and they are under the regime applicable for the Bulgarian citizens. Those falling under the other two regimes of residence (long-term or short-term residence permits) may work as well, but only *after receiving permission* from the Ministry of Labour and Social Policy and they can work *only for the employer and for the term* determined in the permission for work. An important note is that the very expression of will by a foreigner to work after receiving permission serves as a ground for that person to receive a long-term residence permit. Foreigners working in Bulgaria have all rights and obligations that Bulgarian citizens have, save where the internal legislation or international treaties do not explicitly provide otherwise.

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<sup>9</sup> Commission des Communautés européennes, COM (2006) 48: « Rapport sur le fonctionnement des dispositions transitoires visées au traité d'adhésion de 2003 (période du 1er mai 2004 au 30 avril 2006) », 2006.



The Bulgarian employment law framework includes the Income Taxes on Natural Persons Act, in which it is explicitly stated that people who have been granted asylum can benefit from tax concessions for their children. The Employment Promotion Act establishes legal guarantees for direct or indirect discrimination and for the equal treatment of legally employed foreigners in terms of labour conditions, payment, dismissals, etc.

#### **4.4. Details of migrant registration and control processes**

In all partner countries there are state authorities responsible for migrant registration and control processes. In general these are linked to the internal or Home Office ministries but also have close links with the State security police.

In April 2007 the Border and Immigration Agency in the UK took over responsibility for immigration control, work permits, nationality and asylum from the Immigration and Nationality Directorate, but it remains part of the Home Office. Both indigenous workers and migrants require a National Insurance Number in order to work, which are allocated by the Department for Work and Pensions. Although the UK government is opposed to one-off amnesties for undocumented workers, there is a permanent system of regularisation for those who have been in the country continuously for 14 years, regardless of legal status, and for families with small children who have been in the country for seven years. In 1998, 5,900 long residence concessions were granted. A domestic worker regularisation programme ran between July 1998 and October 1999. However, less than 200 took advantage of regularisation, due to requirements that were difficult for many to meet (Levinson, 2005).

The Austrian Federal Ministry of the Interior is responsible for the regulation of inflow and resident status of migrants, both long and short-term, and the Federal Ministry of Economic Affairs and Labour regulates access to the labour market. The Aliens Police is in charge of enforcement of the Aliens Act, and the provincial governments are responsible for residence, settlement permits and granting of citizenship. Civil Registry offices do not forward any



information on illegal residence on their own initiative to the Aliens police, but are obliged to assist if asked. The Employment Service supervises the access of migrants to the labour market and is in charge of issuing work permits. Asylum policies belong to the realm of the Ministry of the Interior. The KIAB (Kontrolle illegaler Arbeitnehmerbeschäftigung - Central Taskforce for the Prevention of Illegal Employment) is responsible for the identification of illegally employed workers.

In Spain the Home Office and specifically the Immigration service are responsible for dealing with border controls. Migrants enter Spain in many ways. Many Latin Americans arrive with tourist visas, often through other EU countries (Amsterdam is a common entry point), while most migrants from Africa cross the 14-km wide Strait of Gibraltar in small boats (*pateras*). The Spanish police arrested over 18,000 migrants in *pateras* in 2002, up from 3,600 in 1999, and the Moroccan authorities arrested an additional 15,000. Spanish police boats patrol the Strait, and estimate they catch one in four migrants attempting entry into Spain. Asians arrive via many routes, including via Schengen visas issued by countries such as Greece or other Schengen-member countries.

The basic state institution dealing with registration of migrants and refugees in Denmark is the Integration Ministry (The Ministry of Refugees, Immigrants and Integration), which deals with almost every aspect of immigration and integration. There are two different types of passports available to foreigners: the Convention passport - for those who have been granted asylum, and the Danish alien passport for all other foreigners who have received residence permits. In Denmark religion and state are not totally separated, which means that even if the faith of a citizen is Buddhism or Islam, s/he is still required to register with the offices of the Christian-Lutheran Church.

In Italy the Ministry of Interior is responsible for control and registration procedures of migrants and refugees. Law 40/98 instituted some administrative measures (such as the "permanent residence card"), delegated to the regional and local Administrations, and designed to include documented migrants. It also introduced the right to access to the national

health system for documented migrants and guaranteed undocumented migrants the right to urgent out-patient and hospital treatment, provided by public or accredited services. Only 396,470 immigrants (21.8 per cent of documented migrants) held permanent residence cards on 31 December 2005, out of a total of 1,200,000 who had the required number of years of residence. Law 40/98 introduced “temporary accommodation centres” ( “administrative” detention centres) as a measure to combat illegal entries. The measure of 2005 decrees that the employer must *guarantee the housing* and repatriation expenses of migrant workers, which “residence contract” means migrant workers are in a situation of greater dependence on employers.

In Belgium several state institutions deal with the registration of migrants and refugees. The Register of the population records individuals who have the right to live in Belgium; as Belgians, EU citizens and non-EU legal residents and refugees who been in Belgium for five years. The national Register contains data on individuals, including nationality. These data come from the Population Register (all Belgians), the Foreigners’ Register (all legal foreigners) and Refugees’ Register. Another Register (BCSS) includes all persons who are not registered, or no longer registered, in the general population Register, for example, those who have left Belgium or transborder workers.

A law passed in 2006 introduced a new system of registration in order to better control the employment of foreign workers (independent, employees, student or trainee) who come to Belgium for a short time for work. Declaration should be made to the National Office of Social Security (ONSS) before starting work.

Recent developments involve the institutionalisation of measures to combat ‘illegal working’ and social welfare fraud. The law of 3 May 2003 provides a co-ordinated institutional framework for policies to combat illegal work and social services’ fraud through, for example, a focus on prevention measures, the presentation of proposals to Ministers, and the establishment of recommendations for legal changes in relation to the fight against illegal work.

In Bulgaria the Ministry of Interior Act was amended to establish a Migration Directorate within the Ministry, which carries out administrative control over foreigners in Bulgaria. Its duties include the issuing, denial and withdrawal of permits for both short-term and long-term residence in Bulgaria, collecting and analysing information on migration processes and proposing measures for regulating them, as well as taking measures against illegal immigrants. Immigration control is implemented also by the National Border Police Service. There are special Anti-Trafficking Task Forces responsible for gathering intelligence information on illegal trafficking.

#### **4.5. Support by institutions**

In the UK, Austria, Denmark, and Italy government policies have resisted the reforms advocated by some humanitarian organisations. Trade union organisations as well as religiously based organisations have played a key role in the protection of the rights of migrant workers. In addition, in many countries there are organisations specifically focused on the rights of migrants and refugees. In the UK, for example, organisations such as the Joint Council for the Welfare of Immigrants (JCWI) and the Institute of Employment Rights (IER) call for according explicit rights to migrant workers and for a regularisation programme for irregular migrants. The UK trade unions increasingly work to support and recruit migrant workers, and the Trades Union Congress has supported a range of initiatives for migrant workers, many of which work with migrant or minority ethnic community organisations.

In Austria the system of Social Partnership (comprising the Austrian Chamber of Labour, the Austrian Federal Trade Union and the Austrian Federal Economic Chamber/ Association of Industrialists) is strongly involved in policy-making. The Chamber of Labour and the trade unions provide counselling in workers' rights, though, irregular migrant workers are not covered by this service. IOM Austria serves as the National Contact Point for Austria within the framework of the "European Migration Network". Advice centres for migrants are run by NGOs providing confidential support.

The small boats travelling between Spain and Morocco have been the focus of recent control efforts under SIVE (an integrated system of surveillance). As

an Amnesty International report notes, many of the people who arrive at the Moroccan frontier with Ceuta (the closest Spanish city to Africa), come from countries where grave human rights violations are known to take place. Once these migrants arrive in Ceuta they are often forced to live in poverty in the streets due to the overcrowding of reception centres, where living conditions are extremely poor. The institution supporting migrants in such cases is the Spanish Commission for the Help of Refugees. The Spanish government has persistently received formal complaints from human rights organisations in relation to allegations of police brutality against refugees who sleep on the beaches. Some NGOs and the church also support migrants in Spain.

Criticism of Danish immigration and integration policy stems from many sources, including the Danish Institute of Human Rights, the MS Danish Association for International Co-operation, some migrant organisations and private research institutes like the Centre for Alternative Social Analysis (CASA).

In Italy the main institutions supporting immigrants are trade unions, NGOs and the Church. Migrant workers themselves have also resisted labour exploitation, principally through two channels: associations and trade unions. Some associations - such as the Immigrants in Italy Committee - have been able to overcome "national barriers" and organise themselves as genuinely multinational associations. Today migrant workers can be seen as a fundamental component of the trade union base, both as members (526,000 in 2006) and as delegates. Migration, bringing to light both the contradictions and the potential of associations and of trade unions, is proving to be a powerful factor of social transformation.

In Belgium the organisation with the main responsibility for the integration of migrants in employment is the Centre for Equal Opportunities and the Fight against Racism, created in 1993. It runs specific programmes, for example, on the integration of migrant women into the labour market. However, it is difficult to evaluate the impacts of such measures which some (Martens, Verhoeven, 2006) say is due to the lack of a coherent system of registration and monitoring of members of minority ethnic groups. There is a debate about the

whether to start ethnic monitoring in Belgium (Ouali, 2004). The Centre's aims also include the observation and evaluation of the conditions of detention and expulsion of undocumented migrants in the light of their fundamental rights, and the fight against human trafficking.

The main Bulgarian institutions dealing with migrants and refugees are the State Agency for Refugees, the Ministry of Labour and Social Policy, the labour offices and the regional employment offices. They work in close co-operation with the Sofia office of the UNHCR, the Refugee migration service with the Bulgarian Red Cross and some NGOs, such as the Assistance Centre for Torture Survivors (ACET), which deals with victims of torture, including migrants and refugees, and the Bulgarian Helsinki Committee, defending violations of migrants' human rights. There are labour and social integration programmes relating to migrants and refugees, providing social support, financial benefits, and assistance in the process of registration in the labour market or enrolment of children at schools. An Integration Centre for Refugees has been functioning since 2001, where refugees can acquire language skills and vocational training.

## 5. Review of statistical data on migration

### 5.1. Migration data from statistical reports

All participating countries lack sufficient and reliable data on migrant workers. However, there are discernable patterns of employment. The main sectors of employment for working migrants in all countries covered by this report, with the exception of Bulgaria, are domestic services, (i.e. work in families), hotels and catering, tourism, industry (in particular, construction) and agriculture.

In relation to the statistical data often there are often varied and conflicting estimates, even in relation to documented migrants. In the UK, for example, there is no single, comprehensive source of data on migration or migrant workers. The overall trend since the 1990s has been for a net increase in migration to the UK, with the number of people arriving to live in the UK in 2005 estimated at 565,000, compared to the 380,000 estimated to be leaving the UK for at least a year, leaving a net inflow of 185,000. The largest inflow in 2005 was of EU citizens (of which 80,200 were from the A8 countries), and the largest number of those leaving were British citizens. The largest numbers of both those coming to the UK and leaving were aged between 25 and 44 (246,000 in and 175,000 out), but the greatest net inflow was among 15 to 24 year-olds (124,000). Among those aged over 45 there was a net outflow (Salt, 2006: table 1.5).

In 2006 the Labour Force Survey (LFS) showed an increase in the numbers of foreign nationals in the UK to 3.35 million, accounting for 5.7 per cent of the total UK population of 58.6 million. Among the UK workforce, foreign nationals accounted for 6.2 per cent (1.75 million) of the total UK workforce of 28.1 million. Europeans made up 44.8 per cent of the foreign workforce, with growing numbers of Central and Eastern Europeans, who accounted for 16.7 per cent of foreign workers in 2006. Asian nationals were 22.2 per cent, with Indians making up 8.1 per cent, while 16.1 per cent were African nationals (including 4.4 per cent from South Africa) (Salt, 2006: table 4.4). Men account for 54.5 per cent of foreign nationals working in the UK, both among Europeans and non-Europeans (although this not significantly different from

UK nationals, in which the proportion of males is 53.2 per cent) (Salt, 2006: table 4.3).

In Austria the population was approaching 8.3 million by 2006, including a non-citizen population of about 814,000 (10 per cent of the total population) and a naturalized population of around 770,000, together constituting about 19.2 per cent of the resident population. In 2006, about 37 per cent of the population without Austrian citizenship had origins in one of the post-Yugoslav countries; those with Turkish citizenship accounted for 14 per cent; German citizens were 12.8 per cent; 5.8 per cent were citizens of other old EU States, 9.5 per cent were citizens of 2004 EU enlargement countries—, 6.5 per cent were citizens of Asian countries; and -, and 2.6 per cent came from African countries. The number of non-nationals in the workforce is 432,886 (of whom 171, 619 are women), of whom 320,000 are from non EEA-countries. A total of 215,000 workers have a third-country national work permit. Migrants are more likely to be affected by unemployment (9.7 per cent in 2006) than Austrian citizens (6.8 per cent) and also experience discrimination in terms of career opportunities and remuneration.

At the beginning of the 1990s the government introduced more restrictive regulation of asylum seekers. The rate of granting asylum seeker status was 40 per cent in 2006, varying by country: 84 per cent of Russian nationals (Chechens) were accepted as refugees, whereas Indians and Nigerians were only accepted as refugees in 0.5 per cent and 3 per cent of cases respectively.

Estimates of the number of migrants in Spain varied on 31 December 2006 from 3,021,808 (Permanent Observatory on Immigration) to 4,225,900 (EPA - Labour Force Survey). The foreign workforce is 2,461,100, accounting for 14.4 percent of the workforce. The main sectors of employment for migrant workers are the construction industry and domestic service, although there has been a recent increase in employment in the industrial, agricultural, hotel and tourism sectors.

In Denmark, migrants and their descendents represented 8.5 per cent of the population in 2006 (463,235 people), an increase from 5.3 per cent in 1995. Most were from non-Western countries (327,511): the main countries of origin being Turkey (55,550), Iraq (26,922), Bosnia and Herzegovina (20,952), Lebanon (22,509), Pakistan (19,284), Somalia (16,564) and other Asian countries (63,073). In 2005 migrants were engaged mainly in business activities (18,198), or in hotels and restaurants (11,670), social work (9,922) and retail (9,537). Since the peak in 1995, when 20,347 people received refugee and other status, the number receiving such status has decreased substantially, amounting to only 1,147 in 2005. More than half (55 per cent) of migrants from non-western countries were in the workforce on 1 January 2005; compared to 63 per cent among descendants of migrants, and 80 per cent of Danes.

There were 3,035,144 documented migrants in Italy on 31 December 2005, according to the estimates of the latest Dossier Caritas, accounting for 5.2 per cent of the population. Nearly half the country's migrants are concentrated in three regions (Lombardy - 23.5 per cent; Lazio - 13.1 per cent; and Veneto - 11.1 per cent); while, at the provincial level, over one fifth are located in just two provinces - Rome (11.4 per cent) and Milan (10.9 per cent). In recent years there has been a steady rise in the number of migrant women: from 45.8 per cent of the migrant population in 2000 to 49.9 per cent today. The number of minors and newborn children also increased: there were 585,496 minors on 31 December 2005, who made up 21.9 per cent of the total number of documented immigrants. Over a half (55.6 per cent) were born in Italy.

Over the past ten years in Italy there has been a marked increase in the population from Eastern Europe. The greatest number of migrants is from Europe (48.8 per cent of the total), followed by Africa (23.1 per cent), Asia (17.4 per cent) and the Americas (10.6 per cent). The seven largest populations making up about one half of all documented migrants are from Romania (11.9 per cent), Albania (11.3 per cent), Morocco (10.3 per cent), the Ukraine (5.2 per cent), China (4.9 per cent), the Philippines (3.4 per cent) and Poland (3.2 per cent).



At the end of 2005, working migrants from non-EU countries were working in: services - 57.8 per cent (11.9 per cent in services for companies; 10.8 per cent working in families; and 9.5 per cent in hotels and catering); industry - 37.8 per cent (construction, 14.5 per cent; metalworking, 7.6 per cent); and agriculture - 5.3 per cent. Workers from the newly-admitted EU Member States are mainly in agriculture (26.9 per cent), hotels and catering (16.5 per cent) and domestic labour (13 per cent). Most migrant workers are employed in small and medium firms. The proportion of permanent job contracts among legally employed migrants (85 per cent at 31/12/2006) is slightly lower than among the whole employed population (86.8 per cent). At the end of 2005, the number of migrant workers with a residence permit and a work permit was 2,078,396, which is 11.9 per cent of total workforce.

On 1 January 2004 there were 860,287 legal foreigners in Belgium, one of the highest proportions of foreigners in the population in the EU (8.3 per cent). Most are European citizens (68 per cent), mainly from EU15 States (66 per cent are Italian, French or Dutch). Among migrants from the new EU member States, Polish citizens are the largest group. Among non-EU citizens, Moroccans, Turks and Congolese are the largest groups.

The rate of economic activity for migrants (48 per cent) was lower than for the Belgian population (69 per cent) in 2004. The employment rate was also higher for Belgians (62 per cent) than for foreigners (50 per cent), while the unemployment rate was much higher for foreigners (25 per cent) than for Belgians (12 per cent).

The migrant labour market in Belgium is segmented and segregated: ethnic minorities and foreign men and women are over-represented in a few sectors and professions, as revealed through statistical analysis by Vertommen et al. (2006). It shows that Moroccans are strong over-represented in 'industrial cleaning', 'hotels and restaurants' and 'temporary employment': compared to native Belgians, Belgian Moroccan (naturalised) men are 24 times more likely to work in 'industrial cleaning'. A similar pattern is found for Turkish workers, who are over-represented in 'industrial sectors', 'industrial cleaning', 'agriculture' and 'temporary employment'. Turkish employees are even less

represented in public and/or high-wage sectors than the Moroccan working population. Sub-Saharan Africans, both men and women, work to a large extent in 'hotels and restaurants', health and social work' and 'temporary employment'. This last sector is the largest sector of employment for new Belgian and foreign men.

According to official data of the Bulgarian Ministry of Interior, the total number of non-Bulgarians in 2006 was 94,703, or 1.2 per cent of the total population of 7,679,290 at the end of 2006. There were 67,607 people with a long-term residence permit, 5,474 with a permanent residence permit, based on marriage to a Bulgarian or foreign citizen, and 7,343 allowed to reside on the basis of trade activities. The number of students with short-term residence permits was 14,279. Most of those with a permanent residence permit have settled in the larger cities, which provide better opportunities to find work or start a business (MI: 2007). According to the data of the National Statistical Institute, those from European countries outside the EU represent 69.8 per cent of the migrants with permanent status, followed by citizens of Asian countries (13.9 per cent), those from North and South America (1.2 per cent) and Africa (1 per cent). The majority of the permanent foreign residents in December 2004 were from the CIS (61.6 per cent), the Russian Federation in particular. This was due to the former patterns of migration from East to East. During the period 1991 to 2007 migrants with long-term and permanent residence came mainly from Turkey (7,671), the Russian Federation (4,358) and China (1,766) (MI: 2007).

There has been a change in flows between new and old EU Member States: while the number of people from EU CEE member states who would like to settle in Bulgaria has decreased, the number from Western Europe who would like to permanently settle in Bulgaria has increased. Nevertheless, the EU citizens represent only 8 per cent of those who were granted of permanent resident status in Bulgaria in 2004. Migrants from neighbouring countries account for 9.5 per cent of all those with permanent residence; and people without citizenship make up around 3 per cent of permanently residing migrants (mainly Kurds and Palestinians) (NSI: 2005). Among legally residing

migrants, including refugees, 74 per cent (or 73,778) are working in Bulgaria (BHC, 2006), which represents 3.8 per cent of working people in the private sector. Employment rates are high among all migrant groups, especially among those with permanent residence permits (83.3 per cent) and naturalised Bulgarian citizens (83.9 per cent). Among refugees, including those with humanitarian status and temporary protection, 63.5 per cent are employed.

## **5.2. Estimates of undocumented migration**

In all countries covered by this report it has been difficult to identify existing reliable data on undocumented migration. Very different estimates have been produced, based on previous research or on existing government data, the latter mainly collated from the security services' detection of undocumented migrants. In none of the partner countries is there data that we can confidently cite with any degree of accuracy. It should therefore be noted that the following data reflect a variety of definitions and sources.

The only UK government estimate of the number of unauthorised migrants ranged from a lowest estimate of 310,000 (0.5 per cent of the UK population) to 570,000 at the highest (1 per cent), with a midpoint of 430,000 (0.7 per cent) (Woodbridge, 2005). This estimate used the residual method to deduce the number of unauthorised migrants, by taking the total foreign-born population recorded in the 2001 Census and subtracting an estimate of the foreign-born population residing legally. Based on these figures, the IPPR estimates that there would be around 216,850 irregular migrants in work (IPPR, 2006).

Some indication of the profile of undocumented migrants in the UK is provided in Black et al's (2005) study of illegally resident migrants in detention centres. It found that their average age was 29 years, and 88 per cent were male. Over half of all respondents had completed secondary school, and 17 out of 83 had a college or university education.

In Austria the number of "full-time illegal workers" in 2004 was put at 789,000 Austrians and 114,000 foreigners by Schneider (2004), while Biffli considered

that approximately 50,000 to 70,000 migrants were engaged in informal employment (Biffi, 2002: 363). Others estimate that between 60,000 and 170,000 persons are working in the informal domestic service sector alone (Haidinger, 2005). Biffi found that 5,000 to –7,000 more children (aged 6-15 years) were registered at school than recorded by demographic surveys (Biffi, 2002: 102-127).

Since July 2002 the KIAB (Central Taskforce for the Prevention of Illegal Employment) has not collected data on the nationality of undocumented workers. Up to 2002, most illicit<sup>10</sup> migrant workers (around 60 per cent) came from central Europe (e.g. Poland and Slovakia) and the successor states of the former Yugoslavia. Around 20 per cent were from Turkey and a further 10 per cent from the CIS (Jandl, 2004). Most undocumented migrant workers were found living in Vienna and the surrounding province of Lower Austria (BMWA, 2002). In 2003 the sectors with the highest share of 'illicit' labour were catering (26 per cent), the building industry (21 per cent) and sub-contracted construction work (17 per cent). In 2006 the KIAB carried out 18,021 operations, detecting 5,942 illegally employed non-Austrian citizens.

The foreign population in Spain, registered in the *Padrón* (a continuously updated Census), at the end of 2006 was 3.88 million and the number of residents (with residence permit or authorisation card) was 2.74 millions, indicating that there could be 1,145,641 undocumented individuals. However, this calculation is far from accurate, because of the unreliability of the actual numbers included in the *Padrón*, and the fact that many undocumented migrants do not register, and has given rise to different interpretations (1,640,000 according to the Partido Popular, and 440,000 according to the government). This makes establishing the number of undocumented migrant workers an even more complex task. If data from the Labour Survey and the data from the social security records are compared, it can be seen that, by the

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<sup>10</sup> In Austria, the terms 'illicit' or 'undeclared' work describe three different areas of the 'hidden economy': the employment of workers who, illegally, are not registered or wrongly registered by the employer with the statutory social insurance bodies; business activities that firms, illegally, leave out of their accounts, thereby defrauding the tax authorities; and paid work carried out - without a formal business-operating licence - by and for individuals beyond an (unclear) threshold of simple 'neighbourly' help (AT0202203F).

end of 2006, there were around 777,826 migrant workers not registered with the social security system, who must work in the Spanish informal economy.

Research on illegal migration in Denmark is almost non-existent. Estimates (not based on any scientific methodology) have suggested there are “somewhere between 1,000 and 5,000 illegal immigrants” (Helle Stenum, Radioavisen, Dato: 31.12.2006, Kilde: Infopaq System Id: 5981641). This estimate is probably based on data from researchers and the media on the number of refugees whose application for asylum has been turned down, but who have not left the country. According to information from 2006 alone, 1,600 refugees disappeared<sup>11</sup>. Border police at the southern border of Denmark detained 241 undocumented migrants in the period 1 January 2007 to –10 February 2007. A recent report from the Integration Ministry indicates that about 1,400 Ukrainian students are residing and working without permission.

Some research has shown that in recent years the Danish informal economy includes both native Danes and migrants. Research on undocumented work by Rockwool Fond’s Research Unit, shows that undeclared work exists in many sectors, but particularly in agriculture, building, manufacture and construction]. Other research by the University of Roskilde (Rezaei & Goli :2006 ) shows that undeclared work makes up about 20 per cent of working hours among migrant-owned businesses.

There are no primary sources on numbers of undocumented migrants in Italy. It is nonetheless possible to produce general estimates based on secondary sources. Data on regularisations also provide some figures on undocumented migrants: the most recent estimates by the Fondazione ISMU are of 760,000 undocumented migrants in Italy on 1 July 2006, while the Eurispes estimate is 800,000. The Fondazione ISMU put the figure at 541,000 in 2005, which suggests a 25 per cent increase in a single year.

The Italian Ministry of the Interior reports that the majority of undocumented migrants are overstayers (60 per cent in 2005; 63 per cent for the first quarter

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<sup>11</sup> G:/forkon-e/diverse/redegørelse for status på arbejdet med udsendelse af afvist asylansøgere, Den 6. oktober 2006 J. nr.: 2004-5141-83-JKP151 + bilag

of 2006) or persons who entered Italy from other Schengen area countries (25 per cent in 2005; 24 per cent for the first quarter of 2006). Thus those entering “illegally” are a small part of the total.

Very different estimates of undocumented migrants have been made in Belgium. The Flemish federation of small and medium-sized companies in the construction industry (Bouwunie) estimated that in 2001 between 80,000 and 135,000 undocumented migrants were working in Belgium, compared to the figure of 1,669 from the inspectorate of the Ministry of Social Security. The disparity between the figures can be explained by the fact that the figures from Bouwunie are based on an estimate, whereas those of the Ministry are based on data from inspection controls, carried as a result of tackling trafficking in human beings.

Another estimate was based on data from the 2001 regularisation campaign. An NGO and academic researchers carried out a survey of 340 undocumented migrants to discover how many had requested regularization. It appeared that more than half (57 per cent) had submitted a claim. This percentage was then used to establish an estimate of the number of undocumented migrants in Belgium, which came to 87,700. However, this estimate must be put in context, considering the small sample size (340 people) and the fact that the migrants were in contact with NGOs, which increased the chances that they had submitted a regularization claim.

The lack of systematic and officially accessible statistics on the number of migrants in Bulgaria makes it even more difficult to determine numbers of undocumented migrants. According to the Ministry of the Interior (2007), there are no estimates of the total number of undocumented migrants residing in Bulgaria, but they have provided our researchers with figures for 2004-2006 of 386 from Afghanistan, 495 from Turkey, and 310 from Armenia. There were 5,769 people detained on the border during 2003-2006 (MI: 2007). Based on statistical techniques it would be possible to estimate the number of undocumented migrants in Bulgaria at about 13 per cent of total number of migrants, or about 13,000 people (see Annex 6, Bulgarian report)

According to the Bulgarian Helsinki Committee, the rate of employment among migrants in Bulgaria is 74 per cent). (73,778). Using statistical techniques (see Annex 6, Bulgarian report) the provisional estimate of the number of the undocumented working migrants is 9,620.

## **6. The impact and experience of undocumented migration**

There has been little research into the experiences of undocumented migrants in all the countries covered by this report. This section looks at what evidence there is of the role of undocumented migrants in the informal economy, and their experiences of employment, as well as accessing to services such as health and education. It also considers research showing how migrants can make the transition both into and out of irregular status.

### **6.1. The impact of undocumented migrant labour**

Many undocumented migrants work in the informal economy, although in each of the participating countries they account for only a part of the informal sector. The informal economies in some countries, such as the UK, Italy, Spain and Bulgaria, preceded undocumented migration, and the two processes have contributed to the deepening of the process of casualisation. The main sectors in which undocumented migrants work are: construction, agriculture, textiles, hotels and restaurants, cleaning, care and domestic work. It is difficult to measure the proportion of undocumented migrants in the informal sector. A UK study aiming to measure the size of the informal economy in the inner London Borough of Haringey (Community Links, 2006), found that 23 per cent of the sample had been involved in the informal economy in the last year, two-thirds of whom were male. The study did not discuss migration status, but 45 per cent were from the UK and 27 per cent were from Western Europe, and so can be presumed to have no restrictions on working in the UK. Another 14 per cent were born in Africa and 7 per cent from Asia (ibid: table 17).

Undocumented migrants appear to be only a small percentage of irregularly employed workers in Austria (Schneider; Biffi, 2002). The main sectors of informal economic activity of migrants include construction, hotel and restaurant industry, cleaning/childcare/domestic work, the health care sector, agriculture and entertainment, and minority ethnic-owned businesses. Women are mostly engaged in health care and cleaning in private households, as well as entertainment. Male employment is mostly in the construction sector and



agriculture. Some experts regard undocumented migrant work as complementary to the formal economy, while others argue that other migrants – already settled in Austria – compete with undocumented migrants, who are willing to accept far worse working conditions than ‘settled’ migrants or Austrian citizens. The need for migrant workers to engage in the informal economy results primarily from employment prohibitions due to their nationality, but also from language difficulties, discrimination towards migrants in the Austrian labour market, the non-recognition of foreign qualifications and migrants’ weak negotiating position. Highly qualified migrants have to accept work in low income sectors, where their qualifications are not relevant. Migrants are more likely to be affected by unemployment (9.7 per cent in 2006) than Austrian citizens (6.8 per cent) and also experience discrimination in terms of career opportunities and remuneration.

Undocumented migrants in Spain will most likely work in the informal economy, having the hardest and most insecure jobs, with the worst working conditions. Often they have no contract, work on a temporary basis and receive the lowest incomes.

Recent research in Denmark indicates that one of the major impacts of undocumented and undeclared work among migrants is a cycle of upward socio-economic mobility, specifically when the formal structure is rigid (Rezaei & Goli, 2006). This occurs when undocumented and undeclared labour is provided by recent migrants (those who have considerably shorter length of residence, are often not naturalised and are without a permanent residence permit) and used by longer-term migrants, who have been residing in the country for several years, most of whom are naturalised or with permanent residence.

In Italy the informal economy is a significant part of the economy: in 2004 it produced an added value equal to 17.7 per cent of GDP with 2,794,000 undocumented units of labour, corresponding to a rate of irregularity of 11.5 per cent (the proportion of all labour that was irregular) (ISTAT, 2006a). In 2003, 21.8 per cent of the added value produced in services was produced by the informal economy, with 20.5 per cent in agriculture and 10.7 per cent in

industry (including construction). The rate of irregularity was 13.5 per cent in services (18.4 per cent in commerce, in hotel services, in public commercial concerns, in transport); 5.7 per cent in industry (3.8 per cent in industry proper, 11.2 per cent in the construction industry); and 18.3 per cent in agriculture.

The exact scale of the informal economy is not known in Belgium, but several methods suggest that it may be expected to account for between 15.3 per cent and 20.8 per cent of Gross National Product. Most undeclared employment is undertaken by Belgian nationals (making a bit on the side in addition to their regular working hours or while claiming benefits). There are no precise figures on the percentage of undocumented or documented migrants working in the informal sector.

The informal economy exists, however, in various sectors of the Belgian economy. The Social Inspectorate identifies several sectors where human trafficking and economic exploitation are likely to develop, and found regional differences (MERI, 2003). The high-risk sectors for informal work are minority ethnic restaurants (in particular Chinese restaurants and kebab shops, generally Turkish or Lebanese), the construction industry (in particular renovation), minority ethnic retail outlets, night shops and phone shops.

In Bulgaria, recent amendments to labour legislation have resulted in a clear reduction in the number of workers employed without contracts, from 4.8 per cent in 2000 to 4.0 per cent in 2003 for the whole economy, and particularly in the private sector – from 10.6 per cent in 2000 to 6.3 per cent in 2003. This tendency has continued and we can assume that presently no more than 5 per cent are working without a contract. At the same time it is difficult to say how many migrant workers are without contracts, some of whom may also be undocumented, as many Bulgarian workers and employees also work without labour contracts. The statistics do not account for those residing without authorisation who are employed by private foreign companies and are not subject to the law or the tax authorities, and very unlikely to be in trade unions.

## **6.2. The experiences of undocumented migrants**

Across all the countries covered by this report, little has been written about the experiences of undocumented migrants. What we do know, and what is a consistent feature of undocumented migration in all partner countries, is the particularly vulnerable position that undocumented migrants have in the labour market. There is also some consistency, based on the data that does exist, in relation to the sectors of employment that they work in. There are also common difficulties in getting access to services such as health and education.

### **6.2.1 Work**

A number of UK studies of migrant workers reveal exploitative working conditions, with undocumented workers at the sharp end (e.g. Wright and Pollert, 2006; McKay et al, 2006). Problems identified included: misleading recruitment of workers in their own country, on false promises of good pay, conditions, and housing. In practice what they encountered were extremely long hours, low gross rates of pay and sub-standard accommodation; excessive deductions from pay for accommodation, transport to work, and repayment of the cost of travel to the UK; uncertainty and confusion about who is actually the worker's employer and non-payment (by the employer) of tax and insurance contributions; and the summary dismissal, and eviction from any associated accommodation, of workers who assert their legal rights (CAB, 2004).

Increasing attention is being paid in the UK to the issues of forced labour and trafficking. A report on forced labour published by the Trades Union Congress (Anderson and Rogaly, 2005) argues that a focus on trafficking (which is often associated with sexual exploitation) emphasises immigration rather than employment issues. The report identified four sectors as being of particular concern: care, construction, agriculture and contract cleaning. It found many forms of coercion used to retain workers, such as physical and sexual violence, threats of violence, debt bondage, threats and intimidation based on immigration status, blackmailing, and confiscation of identity documents or withholding of payments. Irregular immigration status was found to put

workers at greater risk of forced labour (Anderson and Rogaly, 2005). A live-in arrangement makes migrants (particularly women) very dependent on their employer and the provision of room and board helps justify their extremely low wages.

Studies have shown that in Austria undocumented migrants are a particularly vulnerable group, lacking legal and social support from the authorities. Scholars (Anderson 2000: 39, Cruz Roja, 2004) have argued that live-in domestic work can be a rational choice for recently arrived migrant women, but at the same time the live-in arrangement makes them very dependent on the employer, and the provision of accommodation and board is used to justify extremely low wages.

Much of the Spanish literature focuses on the diverse trajectories of migrants into the labour market, while some concentrates on specific geographical areas. There are also studies that discuss the socio-demographic characteristics of irregular migrants. There are also studies on particular communities, for example the Chinese, the Ecuadorian community, Latin American migrants in general, and Moroccans. Further publications refer to undocumented migrants in different sectors of employment, such as the catering sector. Undocumented migration has also been studied from the perspective of the informal economy, and there is literature that focuses on the processes of regularisation.

Historically, migrants in Denmark have been characterised as representing a 'burden' on the State, although recently there has been a change in attitudes towards qualified migrants. Danish policy is aimed at both a reduction and an increase in the number of migrants, offering favourable conditions for those the country is perceived to need and creating barriers for those deemed not useful to the economy. Migrants are traditionally concentrated in major city areas, and are strongly under-represented in the public sector. Self-employed migrants run businesses where hard work, low earnings and poor working conditions are the norm.

In Italy, the experiences of documented and undocumented have been characterised as follows:

“Immigrants are generally employed as unskilled workers with no real vertical mobility, crushed into the lowest wage and professional brackets. Discrimination against migrant workers is also seen in their long working hours, heavy workloads, accidents at work, the risks they face, and even in their under-representation in trade unions” (Laboratorio sull'Immigrazione - Università Ca' Foscari, 2006d).

The employment of undocumented migrant workers in the shadow economy tends to be concentrated within a few specific sectors in Italy: domestic labour and care work, the construction industry, and agriculture. According to the most recent estimates by the Ministry of the Interior and by INPS, of the 1,300,000 migrant women working in domestic labour and care work, only 745,000 have proper employment contracts. In 2005, according to FILLEA-CGIL estimates, the incidence of irregular work among construction workers was from 16 to 25 per cent. Approximately 12,000 undocumented migrants work in agriculture all year round, moving (in a form of circular migration) from one region to another, according to the harvest times of specific fruits and vegetables.

Several studies on undocumented migrants in Belgium have been carried out over the last seven years. Some deal with migration experiences, in terms of trajectories and networks, and with illegal work. The most recent study is a survey of around 130 undocumented people in eight large cities in Belgium, carried out between April 2000-June 2001 (Adam et al 2002). The study distinguishes two kinds of migrants: the ones who entered the country illegally and those who became ‘illegal’ when their legal stay expired. The latter had lived in Belgium for several years and had developed many links in the host country. Another study (Slimane, 1995) on undocumented migration in Belgium indicates that undocumented workers usually have to cope with deskilling, in particular recent migrants, who often have higher levels of qualifications than previous generations.

A study on undocumented migrant women in Belgium (Colfen, 2001) collected accounts and tried to identify the reasons which led them to emigrate to Belgium: sexual and physical violence, divorce, family rejection, family oppression and religion, war, poverty, forced prostitution, political reasons etc. In their accounts of their migratory paths, women also recalled their arrival in Belgium, their difficulties with procedures and confinement in detention centres. The authors evoke the uncertainty of the migratory project due to the difficulty of finding work, and different forms of exploitation faced: economic exploitation, human trafficking and prostitution. The very harsh living conditions of migrant women in detention centres is also mentioned (Colfen, 2001).

Belgium was one of the first EU countries to adopt a law against human trafficking in 1995, which has been recently reformed to conform to EU requirements. The law punishes trafficking in human beings as well as human exploitation (sexual or economic exploitation). A Protocol of collaboration, to fight the trade in human trafficking, was concluded between the social inspectorate of the Minister of the Social Security and the social inspectorate of the Minister of Employment, which increased enforcement in the most affected sectors, such as cleaning, restaurants and prostitution.

There are no studies specifically on the experiences of undocumented migrants in Bulgaria. However, there is evidence that public attitudes to migrant communities in Bulgaria are changing. Surveys conducted in 2003 and 2006 by Manfred Wörner Foundation (2006) on public attitudes towards migrant communities showed that the number of Bulgarians working with non-Bulgarian national colleagues (at work or in universities) increased from 5 per cent in 2003 to 7 per cent in 2006. The percentage of people who had friends who were migrants increased from 3 per cent to 10 per cent and the number of people with migrant neighbours grew from 1 per cent to 4 per cent. While Bulgarians say they feel sympathetic towards West Europeans, Russians, Serbs, Americans, Greeks, Jews, Chinese and Turks, antipathy towards Arabs, Afghans, Albanians and Kosovans persists, with the purported reason

being the increasing threat of terrorism, associated in the public perception with Islamic fundamentalism, Chechens and Albanians.

Among migrants themselves, 38 per cent of migrants surveyed claimed that they felt 'successfully integrated' into Bulgarian society, and 10 per cent stated that they lived "very well". Another 37 per cent felt they were partially integrated, but were not satisfied with their status. But a final group considered themselves as a marginalised community: they do not speak Bulgarian, have no regular job and income, their life is restricted to the migrant community and they are ready to leave the country at the first opportunity. Migrants from poorer countries felt worse off in Bulgaria than migrants from the more developed countries. 64 per cent claimed that Bulgarian legislation in relation to foreigners is good and guarantees their rights, and almost 63 per cent said that they knew the most important Bulgarian laws. However 46 per cent said that even if they had equal rights with Bulgarians, foreigners are discriminated against (Manfred Wörner Foundation: 2006).

### **6.2.2 Access to services**

Undocumented migrants either have no right of access to public services, primarily health services or have restricted access. They are more reliant on services provided through NGOs or voluntary organisations.

Historically, migrants have had access to health services in the UK, without checks on their immigration status. Similarly in education, there has been a strong reluctance to enforce immigration checks when admitting pupils (Anderson, undated). However, this situation is changing in the UK, and the government is putting greater emphasis on denying access to services for those that it considers are not in the UK legitimately (Home Office, 2007b). The government has also recently announced plans to cut access to free English language classes for asylum seekers and others, proposals, which have been vigorously opposed by the University and College Lecturers' Union, contradicting its own policies on urging migrants to learn English.

In Austria, illegally resident foreign nationals are not eligible to access the social security system. Social and medical care for them is in most cases

limited to urgent medical aid, which has to be paid privately. Mostly private ambulances and surgeries, run by NGOs or religious orders, are used by undocumented migrants. It is also common practice that NGOs providing language trainings for migrants do not ask for the residence status of their clients.

A lack of legal papers makes it impossible in Denmark to have access to services of any kind without risking repatriation. It is assumed, however, that the existence of the so-called parallel society<sup>12</sup> and close minority ethnic networks make access to certain kinds of services possible (Goli & Rezaei, 2006 & 2007).

Equality of access to the national health system in Italy for migrants with residence permits was introduced in 1998, while guaranteeing undocumented migrants the right, in cases of illness or injury, to urgent – including ongoing - out-patient and hospital treatment provided by public or accredited services (Progetto Equal "Tante Tinte," 2004), and recognised the right to education for the school-age children of undocumented migrants.

Undocumented foreign residents in Bulgaria are not eligible to access the social security system, and social or medical care is in most cases limited to urgent medical aid, which has to be paid for privately.

### **6.3 Migration status transitions**

The reports show that in all partner countries there are several ways for migrants to become irregular, either on arrival in the country without permission or through remaining in the country beyond their permitted period of stay, or breaching the terms of their resident permit, such as by working. The ways in which irregular or undocumented migrants can then gain documented status vary in each country, with Belgium, Italy and Spain having operated large-scale regularisation programmes, while other countries such as Austria and the UK reject this approach entirely.

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<sup>12</sup> Migrant informally organised and institutionalised networks that compete with the institutions of mainstream society in creating opportunities for socio-economic mobility, specifically in situations where formal institutions have failed to bring about equal opportunities to progress. The parallel society is, among other things, characterised by alternative modes of solidarity and trust.



In the UK, Black et al's (2005) study of 83 migrants who had been arrested and were in detention, found that more than half had entered the UK illegally, although 28 then claimed asylum, while 33 had entered legally but overstayed their visa. The sample is not representative of the illegally resident population in the UK in terms of country of origin, as some groups are more likely to be detained than others, but only of the population in detention at that time, with 20 per cent coming from Central and Eastern Europe, 18 per cent from West Africa, 16 per cent from South Asia, 16 per cent from the Caribbean and 14 per cent from the Balkans. Agents had been used by 46 of the respondents to assist them in coming to the UK. Some Chinese agents charged between £10,000 and £20,000, generally taking the form of a loan to be repaid on arrival. Indian and Pakistani respondents reported smaller sums paid to agents of £4,000 to £6,000.

Another study of undocumented migrants in the UK from Brazil, Poland and Turkey (Jordan and Düvell, 2002) found different routes of entry and status transitions. Most Brazilians came as tourists and then applied for student visas through language schools. Some then gained European passports and a few women married EU citizens. The Poles (the study was undertaken before 2004) arrived as tourists, and only three applied for asylum. A few women married EU citizens, but most, if they were returned to Poland, simply got new passports and came back. Migrants from Turkey arrived through a variety of means, and about three-quarters applied for asylum, but most remained without permission for a time, and had worked informally.

Although the UK government is opposed to one-off amnesties for undocumented workers (JCWI, 2006), there is a permanent system of regularisation for those who have been in the country continuously for 14 years, regardless of legal status, and for families with small children who have been in the country for seven years (Levinson, 2005). These applicants are given indefinite leave to remain, with exceptions made only where there are serious concerns, such as a criminal history. In 1998, 5,900 long residence concessions were granted (Guild, 2000, cited in Levinson, 2005).

In Austria there are many ways of becoming undocumented - from non-compliance with the integration agreement, lacking a means of support, being caught in informal employment, being rejected as an asylum seeker and failure to observe the time-limits for application. Under the current provisions, unemployment can lead also to expulsion from Austria. And since 2006 artists and sex workers no longer have the right to an unlimited residence permit. The main State approaches to dealing with undocumented migration are voluntary repatriation and forced return (deportation), combating trafficking, combating "fictitious" marriages and adoptions, domestic control through on-the-street identity controls and inter-departmental cooperation. The focus is on preventive measures, such as border controls, anti-smuggling operations and restrictive visa politics.

For undocumented migrants in Austria, there are only a few ways of becoming legalised, i.e. applying for humanitarian residence under certain circumstances; applying for citizenship after a certain number of years; adoption by or marriage with an EEA citizen (although these routes have been curtailed in the latest amendment to the Aliens Law in 2006). A third way is to be accepted as an asylum seeker. Regularisations, however, are not discussed as part of Austrian policy.

Undocumented migrants arrive in Spain in several ways. Many Latin Americans enter with tourist visas, often via other EU countries, and go into employment, while most migrants from Africa cross the 14-km wide Strait of Gibraltar in small boats called "pateras". Spanish police boats patrol the Strait, and estimate they catch one in four migrants attempting entry into Spain. Those caught are taken to detention centres in Spain, while those who succeed usually head towards the intensive-agriculture areas of Almeria, Murcia and Huelva. An Amnesty International report (2005) noted that many of those who arrive at the Moroccan frontier with Ceuta - the closest Spanish city to Africa - arrive from countries where grave human rights violations are known to take place, such as Algeria, Côte d'Ivoire, Congo, Iraq, Liberia, Democratic Republic of Congo and Sudan. The Canary Islands is also a main gateway for Spain and Europe, and in 2006 around 24,000 undocumented

migrants arrived in the Canary Islands, arriving mainly from West African and sub-Saharan countries such as Senegal and Mali. The situation in the Canary Islands has also been denounced last year by human rights organisations that described the policy as a breach of the Geneva Convention on the treatment of refugees (Amnesty International, 2006).

Once undocumented migrants have arrived in Spain without detection by the police, there are two ways they can acquire documentation. The first one is a procedure that was introduced with law LO 4/2000 (Art. 31) in 2001, that grants a special temporary residence and work permit after a long period of irregular stay in Spain. The second and more common way is through the so-called regularisation processes, the latest of which took place in 2005. There were 691,655 applications under the 2005 regularisation process, of which over 83 per cent were granted. At the beginning of March 2006 the number of people who had been regularised was approximately 576,000. The percentage of documented migrants grew by 38.5 per cent, reaching a total of 2,738,932.

The Danish government, together with the political establishment, have until very recently believed that undocumented migration is a phenomenon that hardly exists in Denmark, and that an individual that is not properly authorised would find it difficult to make a living. However it is recognised by others that entering the country as asylum seekers, students and those on tourist visas who overstay, or simply crossing the borders illegally, are the main ways in which people can become undocumented migrants in the country.

It is argued that in Italy, during the last twenty years, immigration legislation and the deregulation of the labour market have converged to institutionalise casualisation as a structural element of the economy, which also includes the systematic production of “illegality” among migrants (Basso and Perocco, 2003). One instrument in the creation of “illegality” has been the law that made provision for amnesties to regularise situations of previous illegality, which had come about precisely because, until then, Italy did not have legislation to regulate the entry and residence of migrant workers, apart from a

few ministerial memorandums. To date, six amnesties have been decreed. Another element in the creation of undocumented status has been the “governing” of migration movements through decrees that annually set an upper limit on the number of entries for the purpose of work. For many years the decrees made provision for very few entries and, in some years, none were issued, resulting in migrants entering Italy illegally or, more frequently, falling into illegality as “overstayers”. While a law passed in 1998 recognised immigration as a structural part of Italian society and introduced measures such as residence card, further changes have introduced restrictive requirements that can push workers further into irregular status, for example, the “residence contract” that says that the employer must guarantee the migrant worker’s housing and possible repatriation expenses.

A study of undocumented migration in Belgium (Slimane, 1995) found two major issues of concern for undocumented migrants who arrived illegally in Belgium: moving from their undocumented status and avoiding arrest and expulsion. They try to develop formal strategies for obtaining a residence permit (through regularisation or naturalisation), which require a minimum of resources, knowledge and links. They also develop formal strategies, such as marriage or adoption. Informal strategies consist of help from a third party who will be able to have an influence on the undocumented migrant’s position (lawyer, school, NGO, trade unions etc.).

In Belgium, the two regularisation operations of 1974 and 2000 did not resolve the question of undocumented migrants, with many are demanding a continuous regularisation process. In February 2006, 10,000 people demonstrated in Brussels to support the claims of undocumented migrants.

The right to work legally in Bulgaria for migrants is limited by the work permit rules that say that non-nationals can only be given permits for positions which do not have a mandatory requirement of Bulgarian nationality, that are in the interests of the national labour market; and that the total number of non-nationals hired by the employer does not exceed 10 per cent of the average number of the people on the payroll. It is thought that 10 to 15 per cent of

migrants are residing without authorisation in Bulgaria, many of whom will work in the informal economy. However, there are few routes to legal status for them.

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