



CLANDESTINO



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# Report on a workshop organized by the European Commission, DG Research

Undocumented and irregular migration:  
policy developments, data and social  
implications

Brussels, BE, November 13, 2009



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

The DG Research of the European Commission, in cooperation with the Platform for International Cooperation on Undocumented Migrants (PICUM), held a workshop on 13 November 2009 in Brussels, Belgium, entitled “Undocumented and irregular migration: policy developments, data and social implications”. The Workshop aimed to disseminate the main results of the CLANDESTINO and UWT research projects on irregular migration to the policy community in Brussels. The two projects were developed in response to the Call for proposals on “Legal and illegal immigration towards the EU” that the DG Research published in 2005 aiming to tackle this knowledge deficit.

The Workshop brought together the CLANDESTINO and UWT experts with various members of the DGs of the European Commission (namely, DG JLS, DG Employment, DG RELEX, DG AIDCO, DG RTD, BEPA), and members of the EU Council, the European Socio-Economic Council, FRONTEX, EUROPOL and the Fundamental Rights Agency.

This report provides an overview of the contributions of the speakers as well as the main themes of discussion in the workshop session.

This report was prepared by PICUM.

December 2009



The CLANDESTINO and UWT projects have received funding from the DG Research of the European Commission under the framework of the Scientific Support to Policies Programme of the Sixth Framework Programme for Research and Technological Development.

The information contained herein is the sole responsibility of the author, and the Commission declines all responsibility for the use that may be made of it.

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**Acknowledgements**

PICUM would like to thank Thanos Maroukis, Anna Triandafyllidou, Eve Geddie, Anne Czichos and Nicola Flamigni for their important contributions to this report, and all of the speakers for sharing their experiences and insights on the subject of irregular migration. Special thanks to Giulia Amaducci who organized the workshop.

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The Directorate General's mission is evolving as work on the European Research Area (ERA) continues. It can be summarised as follows:

- to develop the European Union's policy in the field of research and technological development and thereby contribute to the international competitiveness of European industry;
- to coordinate European research activities with those carried out at the level of the Member States;
- to support the Union's policies in other fields such as environment, health, energy, regional development etc;
- to promote a better understanding of the role of science in modern societies and stimulate a public debate about research-related issues at European level.



PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a non-governmental organization based in Brussels, Belgium, that aims to promote respect for the human rights of undocumented migrants within Europe. PICUM also seeks dialogue with organizations and networks with similar concerns in other parts of the world.

PICUM promotes respect for the basic social rights of undocumented migrants, such as the right to health care, the right to shelter, the right to education and training, the right to a minimum subsistence, the right to family life, the right to moral and physical integrity, the right to legal aid, and the right to fair labor conditions.

## Executive Summary

### Workshop - “Undocumented and irregular migration: policy developments, data and social implications”

**Brussels, Belgium, November 13, 2009**

This report highlights key points of the discussion of the final workshop of the CLANDESTINO “*Undocumented migration: counting the uncountable, data, trends across Europe*” and the “*Undocumented Workers Transition*” (UWT) projects, two interdisciplinary initiatives funded by DG Research of the European Commission.

In 2005 DG Research, in collaboration with DG Justice, Liberties and Securities and DG Employment, Social Affairs and Equal Opportunities, had published a Call for proposal dealing with “Legal and illegal immigration towards the EU” under the “Scientific Support to Policies Programme” of the 6<sup>th</sup> Framework Programme for Research. The objective of this call was to conduct a comprehensive analysis and further develop knowledge on irregular migrants in all EU Member States; country of origin and travel routes; type of entry or residence; employment conditions; living conditions and expectations and how they contribute to the informal economy of member states; and the possible ways by which irregular residents may become regular and vice-versa.

On 13<sup>th</sup> November 2009, projects partners and policy makers joined to discuss the main finding of these two projects. The discussion included the presentation of a new database on irregular migration which provides an inventory of data and estimates on irregular migration in 12 EU countries, up to 2008.

In addition to the researchers involved in these projects, nearly 25 EU officials attended the event representing the following institutions: the European Commission (DG AIDCO, DG EMPL, DG JLS, DG RELEX, DG RTD), the Council of the EU (Visa Unit), the European Socio-Economic Council, the Fundamental Rights Agency, FRONTEX, EUROPOL and BEPA.

The first part of the event consisted of an introduction to the two projects. This was followed by a session entitled “Statistics and pathways of irregular migration”, where experts presented the main findings of the CLANDESTINO project and engaged in a brief discussion on statistics and methodology. The second session highlighted the main findings of the project UWT and was entitled “Employment and social implications concerning irregular migration”. The event concluded with a final discussion amongst participants.

### Main findings

One of the main conclusions of the CLANDESTINO project is that the aggregate country estimate for the EU indicates a much lower level of irregular residence than previously assumed for a maximum of 3.8 million instead of 8 million undocumented immigrants. Furthermore, estimates show a clear decline in the stock of irregular resident populations from 2002 to 2008 in the EU15, which declines from 3.1 to 5.3 million irregular foreign residents to 1.8 to 3.3 million.

Experts identified four major paths into irregularity. Most commonly, migrants enter regularly and overstay their visas or enter regularly and breach immigration regulations by working or engaging in self-employment. Another path is related to the asylum system, notably refused asylum seekers who do not return, are not removed and/or who are de facto non-removable. Equally frequently reported are over-bureaucratic and deterring residence and work permit applications, or loss of status for various reasons, which result in irregular stay. Finally, despite what it is frequently assumed clandestine entry is the least frequent path and rather the exception than the norm.

Despite the entry into force of the EU's Directive on return that clearly states who is an irregular migrant, researchers found that, there is still no commonly agreed terminology or definition of irregular migration throughout the member states. Furthermore, the CLANDESTINO project suggests that immigration status is often not as clear-cut as one might expect, and that there are migrants who are not either regular or irregular. The framework becomes even more complicated when we consider that there are aspects in law and implementation (as for example policy gaps and bureaucracy) that provoke, facilitate or result in irregular migration situations.

According to CLANDESTINO, existing migration policies certainly succeed in limiting regular immigration, access to regular employment and public services, but continuous overstaying of those who are already in the country as well as some inflow of irregular immigrants suggests that such policies to some extent fail in stopping or reducing *irregular migration*. Instead, a significant effect of limiting regular immigration and restricting employment seems to be that some migration is driven into informal and shadow activities. The project shows that the irregularization of migrants could be avoided, and that there is scope for according improvements in policies, law and practices, for instance by addressing the shortcomings, inefficiencies, or contradictions in the migration regulations.

The UWT project agrees with CLANDESTINO main findings, but suggests that despite tightening immigration controls, undocumented migration remains relatively high. It adds that restrictive regimes grow especially in relation to welfare rights and social provisions for undocumented migrants. Migration policy emphasizes integration and cohesion, but it primarily caters to the needs of business for skilled and unskilled labor.

Both projects underlined the fact that the regularizations which occurred in Italy, Spain and Greece in recent years had a great impact in that they significantly reduced the numbers of irregular immigrants in those countries. In general, UWT suggests that the main means of regularization are marriage, departure and re-entry and application for refugee status. Regularization does not necessarily improve conditions immediately, but may do so in time. To do so what is also needed is union ability to enforce legal conditions and collective bargaining, and opportunities to move into new work and out of informal sector, where many documented workers remain.

CLANDESTINO and UWT developed a set of recommendations to support policy makers in designing new policies in relation to irregular migration. Both agreed on the need to develop new regular migration channels and sustainable regularization processes and to address labor market obstacles. In particular, UWT urges policy makers to enforce labor rights and asks civil society, including trade unions, to get more involved with undocumented migrant workers. CLANDESTINO recommendations also focused on unintended obstacles created by restrictive policy. It urges policy makers to prevent irregularization through keeping immigration instruments flexible and addressing the phenomenon of informal economy by eliminating overly bureaucratic and unduly burdening legal and fiscal regulations.

The Workshop shed light on various aspects concerning irregular migration. The following points aim to resume the main issues raised during the two sessions and the debate:

1. All participants agreed on the importance of data in this complex field, which is difficult to investigate. For the first time, there is transparent, policy-oriented country-by-country collection of data. In the discussion, this approach has been appreciated and further research in this direction was encouraged;
2. Collecting comparative estimates on undocumented migrants in the EU remains very difficult mainly due to different national systems. More resources have to be allocated in the effort of obtaining more reliable data not only on stocks, but also on flows and profiles of the undocumented migrants.
3. While the CLANDESTINO project presented figures showing that there had been a decline in the stocks of undocumented migrants in the EU15, the UWT project found that undocumented migration remained relatively high in the seven countries studied. This difference is explained by the definitions of irregular migration used, as UWT focused on undocumented workers, while CLANDESTINO used a narrower definition.
4. All participants agreed on the importance of the dissemination of the findings and especially on the need to keep the database alive through the allocation of new resources.

## Introductory Session

### Opening Remarks

**Jean Michel Baer** (Director of the Research Programme in Social Sciences and Humanities (SSH) at DG Research in the European Commission) opened the workshop by welcoming the participation of different Directorate Generals of the European Commission, the Council of the European Union and other important actors of the European institutions. Mr. Baer underlined the importance of the two projects, CLANDESTINO and Undocumented Workers in Transition (UWT), that were financed by the Scientific Support to Policies Programme of the Sixth Framework Programme, between 2006 and 2009 which focuses on problem-oriented and policy-relevant research issues. The ongoing Research Programme in the area of Social Sciences and Humanities (SSH) runs about 240 projects involving more than 2000 universities and research centers. Besides migration, research concerns various challenging subjects like durable development, democracy, growth, citizenship, political participation and geopolitical issues. Mr. Baer noted that in all these projects, the basic principle of conduct was freedom of research. He suggested that research and knowledge could advance only if they respect this basic condition.

### Introduction

**Anna Triandafyllidou**, project coordinator of CLANDESTINO, from the Hellenic Foundation for European and Foreign Policy (ELIAMEP), gave an overview of the two projects (CLANDESTINO and UWT) and their common themes. Both projects responded to a call for proposal asking researchers to enquire into irregular migration in the EU and in particular, explore who irregular migrants were; find out their countries of origin, transit and destination, their travel routes and how they entered the EU; where they worked and lived; the possible ways by which irregular residents may become regular and vice-versa. Responding to the same call CLANDESTINO and UWT have also proven to be complementary initiatives.

The CLANDESTINO project focused on producing estimates regarding the number of irregular migrants, but also on achieving a better understanding of the phenomenon of irregular migration. ELIAMEP coordinated the project and core partners included the Centre for International Relations (CIR) in Warsaw, Poland; the Hamburg Institute of International Economics (HWWI), Hamburg, Germany; the Centre for the Study of Migration Policy and Society (COMPAS), Oxford, UK; the International Centre for Migration Policy Development (ICMPD), Vienna, Austria; and the Platform for International Cooperation on Undocumented Migrants (PICUM), Brussels, Belgium.

The project focused on 12 EU countries (Greece, Italy, Spain, Austria, France, Germany, the Netherlands, UK, the Czech Republic, Hungary, Poland and Slovakia) and three non-EU transit migration countries (Turkey, Ukraine and Morocco).

The research methodology involved the collection of all available quantitative data and estimates for the period 2000-2007, and included the review of literature and sources, interviews with key experts, policy makers and NGOs in each country and the preparation of country reports.

Prof. Triandafyllidou explained that in responding to a particular concern of the call, the CLANDESTINO project discussed and assessed the different methods used to estimate the irregular migrant populations in Europe, which, like any other type of non-registered population, were very difficult to identify and study. Considering this difficulty, the most sophisticated methods identified by experts were the “capture-recapture” method and the “centre sampling technique”. In their simplest form, capture-recapture methods are a sort of multiplier method where the multiplier is developed through repeated sampling of the same population. To illustrate, consider the following application of the principle to the estimation of the stock of fish in a pond. First, capture 1,000 fish, mark them, and let them free again. Then, capture another 1,000 fish and examine them. If 100 of them are marked

(recaptured), you can deduce that the 1,000 marked fish statistically make up 10% of the total, so there are – presumably – 10,000 fish in the pond. One version of the capture-recapture method is applied in the Netherlands with considerable success.

The “centre sampling technique” was applied by researchers in Northern Italy. The main idea of the Centre Sampling method (CS) relies on the fact that all (undocumented) migrants residing in one area visit some of the local meeting points (centres) for migrants which exist in the area. Once a sufficiently wide and heterogeneous set of ‘centres’ is identified, instead of randomly sampling  $n$  individuals from the unknown population of  $N$  (undocumented) migrants, it is possible to select  $m$  centres (among the whole set of  $M$  “gathering centres”) and then to randomly choose the interviews among those that visit the “centre”. They are also asked to list all the “centres” that they usually visit. The more centres each individual visits, the larger the inclusion probability and the lower the weight, on the other hand, the larger and more visited the centre, the smaller the inclusion probability, and the higher the weight. These are two of the sophisticated methods used in different countries to estimate the total irregular migrant population. However, it depends on the conditions for applicability in different contexts, whether such sophisticated methods or more rough approaches using multiplier and residual techniques deliver best results.

Another concern raised by the project was the ethical aspect of researching irregular migrants and vulnerable populations in general. Prof. Triandafyllidou explained that since irregular migration is a highly charged political issue, experts whose research is funded by private or public bodies could be subject to external pressures, with regards to both producing and publishing estimates. Furthermore, the researchers felt an ethical responsibility towards the subjects of their research and consequently

identified four rules to be respected; firstly to cause no harm to the vulnerable population being researched; secondly that researchers avoid exposing themselves to risky or illegal situations; thirdly that researchers have to be very careful to protect undocumented children and adolescents while conducting interviews; and finally, that researchers must follow guidelines, but at the same time they need to exercise their own critical capabilities and sense of ethics in making decisions as not all situations are foreseeable. The CLANDESTINO project produced a report and a policy brief on these ethical issues.

The most important output of CLANDESTINO was the construction of a **database on irregular migration in Europe** that includes country reports and policy briefs on the twelve selected EU countries as well as an overall estimate of irregular migration in the EU27. The policy briefs look at the size and main demographic features of irregular migration, as well as the geographical, demographic and status-related flows in and out of irregularity, the ways existing policies affect irregular migration and finally relevant policy recommendations.

Key findings on the three transit migration countries to the European Union (Turkey, Ukraine and Morocco) were also presented. Prof. Triandafyllidou noted that as a new area of research, the situation in these countries has not yet been examined in depth. The first issue which arose in the investigations of these three countries was the problem of definitions as it was difficult to assess when a migrant is in transit or not. While it was difficult to produce high-quality estimates in EU countries, this was even more so for non-EU countries as no reliable estimates existed. However, it appeared that the overall number of migrants in transit to the EU was decreasing due to new employment opportunities in transit countries and to the restrictive measures taken by the EU. In addition, Prof. Triandafyllidou stressed that these



neighboring countries are not only transition or countries of origin, but also destination countries. CLANDESTINO has started a very useful debate regarding the role of these countries, a discussion which Prof. Triandafyllidou hopes that will be continued.

In relation to the UWT (Undocumented Workers in Transition) project, Prof. Triandafyllidou said that it was more focused on qualitative analysis while CLANDESTINO was based more on quantitative research. UWT involved six universities and research centers in six different EU countries: the London Metropolitan University (LMU), London, UK; the Working Life Research Centre (FORBA), Vienna, Austria; the Free University (ULB), Brussels, Belgium; the International Centre for Minority Studies and Intercultural Relations (IMIR), Sofia, Bulgaria; the Roskilde University, Roskilde, Denmark and the “Ca’ Foscari” University, Venice, Italy.

Prof. Triandafyllidou described the methodological approach that the UWT project adopted. In particular, it consisted of literature reviews as well as in-depth interviews with 70 key experts both at national and EU level and 211 migrants who either were, or had been, undocumented at the time of interview. This approach enabled the development of a detailed database on the working experiences of undocumented migrant interviewees and the development of a glossary of migration terms.

The UWT project focused on the impact of irregular migration on labor markets. In particular, Prof. Triandafyllidou noted that the sectors involving a greater risk of informal work are those where the practice of subcontracting is common. Secondly, she pointed out that the decline of the welfare state in Europe is producing a private care market that affects further the dynamics of irregular migration.

**Prof. Triandafyllidou noted one of the most important findings of the project; namely, that the motivation of the migrant mainly depends on the employment opportunities. It is not so much the legal status possibilities but the employment opportunities in the country of destination.**

The UWT found that there has been an increase in restrictive measures towards irregular migrant workers throughout Europe. However, contrary to the expected results, these measures have not been effective in encouraging migrants to leave or to stop coming. Instead, increasingly restrictive regimes have been pushing irregular migrants further underground, into situations where they were forced to accept harsher conditions of work and life. Prof. Triandafyllidou noted one of the most important findings of the project, namely, that the motivation of the migrant mainly depends on the employment opportunities. It is not so much the legal status possibilities but the employment opportunities in the country of destination

Concerning the links between a migrant’s labor market position and legal status, Prof. Triandafyllidou highlighted that migrant workers are not protected by labor law in many countries mainly because they are first seen as migrants and then as workers. Furthermore, the procedure to receive a stay permit is both complicated and bureaucratic. Regularity often constitutes a precarious status and, overall, falling from regularity to irregularity is easier than the opposite.

## First Session: Statistics and pathways to irregular migration

This session was chaired by Giulia Amaducci who gave the floor to CLANDESTINO researchers Ms. Dita Vogel and Mr. Franck Düvell.

**Dita Vogel**, from the Hamburg Institute of International Economics (HWWI), Hamburg, Germany, gave a presentation on the estimates of irregular migrants noting that her colleague Franck Düvell would then explain the context in which these estimates were developed. Dr. Vogel firstly talked about the reasons for estimating the size of irregular migrants residing in Europe. To start with, she stressed that numbers are frequently used in “legitimization and scandalization” discourses. For example, they could be quoted to justify increased expenditures for migration control. Secondly, she noted that concrete enforcement measures can neither be justified nor discredited merely with estimates regarding the rise and decline of irregular migration, and that focused evaluations are needed in order to analyze the contribution of concrete policy measures to these developments. Furthermore, estimates are of particular relevance for policies aimed at the inclusion of irregular migrants with regards to health care, schooling, legal assistance and regularization. Dr. Vogel also noted that if governments planned to change their policies or practices, they would need an indication of the implications with regard to costs and organization.

Dr. Vogel explained that the starting point of the CLANDESTINO research project was to look at the numbers which were previously quoted at the European level. As an example, she reported a press release of the European Commission concerning the employer sanctions Directive, which stated that “Precise figures are difficult to obtain but recent estimates of illegal migrants in

the EU range between 4.5 million and 8 million”.<sup>1</sup> The second step was to review the sources of these numbers and what the researchers found out was that estimates were neither recent nor did they have any empirical foundation.

The aggregated approach developed by the researchers was explained by Dr. Vogel who highlighted its main characteristics. The CLANDESTINO project 1) attempted to aggregate data from all countries (in particular, the countries directly studied by CLANDESTINO covered more than 80 percent of the total population in the EU), 2) reached approximate comparability when absolute comparability was not feasible (using a range of estimates, coming as close as possible to a consistent definition of Irregular Foreign Residents, developing ‘periodisation’ criteria like a check for substantial policy changes, adjusting discretely any substantial deviations of national level estimates), 3) used differentiated quality assessment (developing criteria for high, medium and low quality estimations), 4) ensured transparent documentation by creating a database on irregular migration with general overviews, countries profiles, detailed tables and detailed background information and 5) encouraged that scientific dialogue among experts in Europe.

Dr. Vogel reported that **according to CLANDESTINO the total aggregate estimate for the European Union in 2008 was 1.9 million to 3.8 million irregular foreign residents**. This was considerably lower than previous estimates and corresponded to 0.4 to 0.8 percent of the official EU population on 1 January 2008.

Commenting on table 1, Dr. Vogel noted that between 2002 and 2008 the aggregate country

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1 IP/07/678 of 16 May 2007 <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/678>

estimate showed a clear decline in the stock of this population, from a range of 3.1 to 5.3 million to a range of 1.8 to 3.3 million. Part of the decline could have reflected methodological changes, but these are unlikely to dominate the result. A declining or relatively stable irregular resident population was estimated for most Member States.

**Table 1: Irregular resident population in the EU15 - changes over time**

Year	Minimum estimate (in million)	Maximum estimate (in million)
2002	3.1	5.3
2005	2.2	4.8
2008	1.8	3.3

Source: HWWI calculation tables 2002, 2005, 2008, draft paper with Vesela Kovacheva and Hannah Prescott

Dr. Vogel continued by explaining the reasons behind these findings. She argued that flows and not only stocks of migration had to be taken into account when the investigations were made. However, information on flows was even more difficult to interpret than information on stocks. Nevertheless, she provided a tentative summary overview. Concerning demographic flows, hardly any reliable information existed regarding births and deaths of persons without status, while experts gave minor importance to this variable. Dr. Vogel pointed out that a more important variable was represented by the status-related flows, which concerned changes between regular and irregular status in the same region. Major regularization programs occurred mainly in Southern countries, and EU enlargement in the northern countries had a considerable legalization effect (e.g. unregistered Polish citizens in Germany are considered irregular foreign residents before but not after Poland joined the EU in 2004).

Moreover, Dr. Vogel argued that inflows over borders receive most public attention because of tragedies at the border, but the importance in media and policy debates does not correspond to their contribution to the total flows. Finally, she explained that in total there were more status-related outflows in the form of some sort of regularization than new inflows into irregularity from other sources (geographic, demographic). UK is an exception because of major backlog of asylum application leading to inflow of irregular status.

Dr. Vogel finished her intervention by highlighting the **key messages**. The first was that the aggregate country estimate for the EU indicated a much lower level of irregular residence than previously assumed for **a maximum of 3.8 million instead of 8 million undocumented immigrants**. Secondly, **estimates showed a declining trend**. Thirdly, she stressed that more reliable country level estimates and EU estimates could be achieved with limited budgets. Fourthly, the CLANDESTINO project made an important first step in this direction.

**Franck Düvell**, from the Centre on Migration, Policy and Society of the University of Oxford, UK, introduced the qualitative dimension of irregular migration in Europe as investigated by CLANDESTINO; in particular, the legal and political construction of irregularity; which policies and politics lay the preconditions for irregular migration; how irregular migration was defined by law and finally, how and why migrants become irregular. Firstly, Dr. Düvell commented on the assumption that irregular migration was the result of individual migrants' choice; one has to keep in mind that they indeed take decisions but within certain limits. On the other hand, it is equally problematic to depict migrants as victims of wider processes. The truth lies in between the two arguments.

**Employers require workers and if these are not legally available, some of them turn to irregular supply. States negotiate between public opinion and cultural and political considerations and, frequently, an asymmetry is created between demand and supply of labor. He suggested that there was scope for improving the balance of all three forces.**

Dr. Düvell gave a brief overview of the main reasons for irregular migration. He highlighted that the three major forces were human agency, economic forces, and politics. He explained that individuals may wish to emigrate and prohibitions do not necessarily deter them from doing so. Employers require workers and if these are not legally available, some of them turn to irregular supply. States negotiate between public opinion and cultural and political considerations and, frequently, an asymmetry is created between demand and supply of labor. He suggested that there was scope for improving the balance of all three forces.

He continued by explaining the nexus between migration policy and irregular migration. On the one hand, the EU accession in 2004 and 2007 has decreased substantially the number of irregular migrants in the Member States. On the other, in many countries legal migration channels were limited, such as in Austria and the Eastern countries; in other countries legal channels exist but procedures are often cumbersome, as in Greece. Sometimes quotas are low (Spain) or are used to regularize those already in the country (Italy). Finally, in various countries (Slovakia, Spain and Greece) severe problems exist with the asylum system, such as unfair and non-transparent application procedures or huge backlogs. All the above contribute to the emergence of irregular migration.

Another main focus of CLANDESTINO was to study the main patterns in irregular migration. Dr. Düvell argued that, despite common impressions regarding irregular border entry, **legal entry - from visa and visa-free countries - and overstaying, or legal entry and stay whilst working or engaging in self-employment in breach of immigration regulations, are in fact the main paths into irregularity.** Another important pathway is related to the asylum system, notably refused asylum seekers who do not return, are not removed and/or who are de facto non-removable. Also frequently reported are over-bureaucratic residence and work permit applications, inefficient renewal and appeal procedures or withdrawal or loss of status for various reasons which result in irregular stay. In fact, clandestine entry - often of individuals who subsequently apply for asylum - was the least frequent pathway and rather the exception than the norm.

**Legal terminology and definition of irregular migration** were two other important points raised by Dr. Düvell. In particular, he noted that each member state has its own legislation, point of reference and definition. Existing definitions are usually based on a mix of references to irregular border crossing, entry and stay; lack of residence and/or work permits; obligation to leave the territory or violation of expulsion orders. Sometimes, there was no clear definition of irregular migration; instead it was the result of what was defined as regular, as in Spain. In other cases definitions are blurred and either conflate entry with stay (for instance UK and Austria) or regular with irregular immigrant (Germany, Netherlands, and Austria).

Franck Düvell suggested that a person's immigration status is often not as clear-cut as one may expect. Instead, migrants' statuses are often a mix of regular and irregular aspects. For instance, migrants might have had residence status but continue to work in the absence of a renewed work

permit. Or migrants fell somewhere on a scale between regularity and irregularity, for instance, because they have a work permit but work on another job or longer hours than permitted. Often, the threshold between regularity and irregularity (e.g. the number of hours worked) is unclear or a matter of (legal) dispute. This legal ambivalence was described and interpreted as semi-legality or semi-compliance.

Dr. Düvell went on to discuss the aspects in law and implementation that provoke, facilitate or result in irregular migration situations, which are encountered more or less in all member states. He explained that sometimes, it is small deviations from law which lead migrants into irregular status, such as working longer hours than permitted or switching employer or job. Also barriers to family reunification, notably requests on the sponsor for a minimum income or housing, limit legal migration opportunities and in turn provoke irregular migration. In several countries, certain social emergencies, such as loss of employment, homelessness, receiving benefits or breakdown of marriage within a certain period after immigration result in withdrawal of immigration status. In Spain, renewing residence permits may delay so long that in the meantime the applicant's status expires and the person becomes irregular. In Greece, work permit applications could take 12-18 months.

**The CLANDESTINO project suggested that irregular entry is a comparably minor incidence** and 50% or more of all clandestine entrants who are apprehended or report themselves to the authorities applied for asylum and thus regularized temporarily their position. The majority of irregular immigrants were regular at some point and only become irregular due to a whole set of

mechanisms. Dr. Düvell argued, in particular, that existing migration policies certainly succeed in limiting regular immigration, access to regular employment, and public services. Moreover, the continuous overstaying of those who are already in the country as well as some inflow of irregular immigrants suggests that migration policies have largely failed in stopping or reducing irregular migration. A significant (unintended) effect of limiting immigration and restricting employment is that migrants are driven into informal activities.

**The CLANDESTINO project showed that the 'irregularization' of migrants could be avoided, and that there is scope for improvements in politics, law and implementation, for instance, by addressing the inefficiencies, or contradictions in the migration regulations.**

Dr. Düvell concluded his presentation with a list of policy recommendations listed below:

1. *Prevent irregularization* through the introduction of more legal migration channels, keeping immigration regulations flexible, allowing adequate resources for permit issuing and appealing authorities, and finally, addressing the informal economy by eliminating unduly legal, bureaucratic and fiscal barriers for foreign workers.
2. *Reverse irregularization*, for example, by granting legal status, either temporarily or permanently to those who are not or cannot be removed;
3. *Improve enforcement measures* and ensure temporary migrants do not overstay.
4. *Avoid in-activity and long-term de facto toleration and ideological battles and instead seek pragmatic solutions.*

## Debate

The first comment related to the issue of terminology; a representative of DG JLS noted that since December 2008, when the Directive on return was approved, the EU has agreed on a definition of “illegally staying” foreigners that leaves little space to interpretation. In fact there are two options of dealing with irregular migrants are two for member states: either expel the irregular migrants or legalize their status. Dr Düvell commented on this point by saying that one of the disadvantages of such research was that by the time it went public some findings could become outdated because of changes in the policy agenda. Nevertheless, he argued that there are Member States that had not yet taken into account the definition-related developments at the EU level.

Then the argumentation that using the term “illegal” fosters criminalization was questioned. It was argued that the term “illegal” was used in the Treaty of Lisbon and there was no obligation for the member states to introduce criminal sanctions. Dr. Düvell argued that terminology in policy and law is different from the one used in science because of the different purposes that each serve. He went on to say that CLANDESTINO found that the reference to “illegal” migration had a discriminating and denouncing effect and was contributing to the already disadvantageous situation of the group studied. Therefore, he recommended the adoption of a more neutral and descriptive term, like undocumented or irregular.

Another participant asked what measures were taken to avoid double counting, assuming that irregular migrants may move between member states. Dita Vogel replied that researchers took stock estimates in one point at a certain time and tried to avoid the use of sources like borders apprehension data which are susceptible to double counting.

**Dr. Vogel replied by explaining that the profile of persons without regular status differed strongly between countries and nationalities. In general, the male population had been overestimated in the past. Still in many countries there may be more irregular migrant men than women, but certainly not for certain regions.**

Another participant asked more information about the profile of irregular migrants. To this question, Dr. Vogel replied by explaining that the profile of persons without regular status differed strongly between countries and nationalities. In general, the male population had been overestimated in the past. Still in many countries there may be more irregular migrant men than women, but certainly not for certain regions. CLANDESTINO did not look at qualification levels of irregular migrants education but it is known from other studies that **it is misleading to associate low level of status employment with low level of education.**

Another question concerned the methods used in the United States to estimate irregular population. The participant asked if researchers came across some other methods of estimation that would be based on the labor market. Dr. Vogel answered by highlighting that US methods relied on regular comparisons between census and immigration data, something which is hardly possible across European countries. For example, there is no census in Germany. On the other hand, comparable methods are used in countries like UK and Spain. Concerning labor market productivity methods, there was a study in Germany that compared the number of crops harvested in agriculture with the number of regular workers. The number of undocumented workers was calculated on the basis of the number of the exceeding crops. But this system cannot be applied comprehensively, for example it is not applicable for work in private homes.

**Anna Triandafyllidou** made a remark on the implementation of the EU Directives, particularly on the return of migrants to their countries of origin. She argued that migrants receive expulsion orders which however are not executed so they remain. It may also happen that people cannot be sent expelled because they come from a war-torn country and fall into a legal limbo.

**Albert Kraller** made a remark on the regularization issue. He said that the EU funded project REGINE **didn't find any systematic evidence of the regularization representing a "pull factor" from outside the EU**, contrary to what many state authorities insist based on information from border guards. On the other hand, Mr. Kraller argued that there is evidence that regularization represents a "pull factor" within the EU (e.g. people who lived in Belgium and then went to live in the Netherlands came back to Belgium for the regularization). Regularization is not a "pull factor" because it is never unconditional. People have to prove that they have fulfilled the requirements to be granted a stay/work permit. There are indications that there are, after all, less frauds in recent years than in the past. The fact that migrants are aware that they need to fulfill conditions renders the argumentation of the 'pull effect' implausible.



## Second session: Employment and social implications concerning irregular migration

**Tessa Wright**, from the London Metropolitan University, UK, gave an overview of the UWT project complementing the introductory presentation made by Anna Triandafyllidou. The UWT project lasted two years, from March 2007 to February 2009 and focused on seven EU countries: Austria, Belgium, Bulgaria, Denmark, Italy, Spain and UK. This choice was made in order to include both old and new Member States and States with and without a history of regularization.

The UWT project aimed to:

1. Deepen understanding of the impact of migration flows on EU labor markets;
2. Theorize the relationship between the presence of “informal” or “shadow” labor markets and migration flows;
3. Map and model migrant and refugee pathways into and within the EU;
4. Deepen knowledge of how legal status interacts with migrant labor market positions;
5. Investigate key theories concerning human capital and social capital in relation to migration;
6. Explore the particular consequences of migration for women workers.

Interviews and literature reviews were the main research instruments. Research outputs included a glossary of undocumented migrant terms, seven “state of the art” country reports, a European literature review, thematic reports on five key themes, workshops in each country, a final report and an international conference. Thematic reports concerned undocumented migrant labor, and in particular, the relationship between legal status and working conditions, migrant labor in the underground economy, human capital and social capital, and female migrants.

The 211 migrant interviews conducted were divided equally in each country. Migrants’ origins varied across 61 countries from Africa, Asia, Europe and Latin America. 53% of the interviewed were male and 47% female. 41% were from 35 to 49 years old

and 39% from 25 to 34. Working sectors included agriculture, catering, construction, domestic work, healthcare and care work, the entertainment sector and security.

UWT main findings were summarized in four points, as following:

1. Despite tightening immigration controls, undocumented migration remains relatively high;
2. Policies push undocumented workers further underground, often into the most dangerous jobs;
3. Migration policy emphasizes integration and cohesion but in practice it divides between migrants with rights to citizenship and those not, skilled and unskilled labor;
4. Development of restrictive regimes in relation to welfare rights and social provisions for undocumented migrants; and increase of vulnerability due to changes in entry and work rules.

Concerning status transitions, Dr. Wright said that most interviewees changed status since migration. The main means of regularization were marriage, departure and re-entry and application for refugee status. She noted that regularizations in Spain and Italy and EU enlargement also played a big role. There were more cases where regular migrants lost their regular status than cases where irregular migrants became regularized. This was mainly due to the expiration of work permits and states’ changes to entry and work rules.

Dr. Wright highlighted that there is a correlation between undocumented work and poor working conditions. There was evidence of employers abusing the undocumented status of migrants by paying them less than the minimum wage and

**Nevertheless, Dr. Wright added that the gap between undocumented and documented migrants is narrowing especially where labor shortages exist and pay and conditions are already at the lowest level.**



**Female migration was often the result of extreme economic necessity, particularly for women with children. A majority of undocumented women work in the care sector, especially in private homes.**

putting them at risk. Nevertheless, Dr. Wright added that the gap between undocumented and documented migrants is narrowing especially where labor shortages exist and pay and conditions are already at the lowest level.

She noted that regularization does not necessarily improve conditions immediately, but does so in time. Trade unions ability to enforce legal conditions and collective bargaining could accelerate the process and offer more opportunities to move into new work and out of the informal sector, where many documented and undocumented workers remain.

Female migration was often the result of extreme economic necessity, particularly for women with children. A majority of undocumented women work in the care sector, especially in private homes. This condition offers both positive relations with employers and vulnerability to exploitation, while it protects from detection by authorities.

In conclusion, the UWT urges policy makers to:

- Separate migration status and employment rights and allow all workers to benefit from labor protection laws;
- Enforce labor rights and standards, to the benefit of all workers, including undocumented and documented migrants;
- Conduct more research on women migrants working in private homes or in more “hidden” conditions identify the sources of arising problems and formulate practical suggestions;
- Consider the language used: terms like “illegal” and “criminals” are inappropriate and fuel racist discourses;

- Ask civil society, such as trade unions, to get more involved with migrant workers;
- Develop legal migration channels and address labor market obstacles;

Concerning regularization, UWT suggests:

- Sustainable regularization processes to enable undocumented workers to gain regular status, through a “pathway to citizenship”;
- Better relations between state institutions and migrant networks;
- Extensions of “labor search permits” (as used in Spain) to allow a period of looking for work.

On social welfare, UWT suggests:

- Improved healthcare and education for migrants and the partners/families that accompany them;
- Improved access to information on welfare and health services, emergency accommodation, language courses, civic engagement and support networks;
- The ratification of the UN Convention on the Protection of Migrant Workers and their Families.

## Debate

Several comments highlighted the importance of projects that for the first time allowed the EC to look at reliable data on undocumented migration. A participant shared her experience of being involved fifteen years ago in the production of statistics for EUROSTAT. At that time, the collection of data was less policy-oriented. She said that with these two projects the Commission has demonstrated that it has improved its methods giving adequate resources to the right people who ask the right questions.

A participant from DG RTD addressed a few points regarding the future of research in this field. He suggested that three new research fields could be opened. The first one regards the *segregation of undocumented migrants* in the labor market. The

second one concerns the *education and health care systems*, where the problem of irregularity becomes more relevant. The participant also suggested that research should also focus on the issue of enlargement to find out *if enlargement actually increased or decreased irregular migration*. On the same issue, Prof. Triandafyllidou **put forward the question of universal access to healthcare and education**. She argued that it would be very useful if policy makers commissioned a feasibility study on the cost of providing and not providing such healthcare and education to irregular migrants in a number of countries. She added that there is no study that compares the overall costs of total healthcare coverage for irregular migrants to the overall costs of emergency care in systems where undocumented migrants do not have access to healthcare. She argued that, from a strictly economic point of view, it would be interesting to examine if it is economically advantageous to only address irregular migrants' health problems through the emergency care system or if standard healthcare coverage could save money in the medium to long term.

Another participant from DG Employment said he often read recommendations demanding more open paths to legal migration under the assumption that this would have a positive effect on dealing with irregular migration. Hence, he wondered if the demand for highly qualified workers could be met by undocumented migrants that are now working in the shadow economy. Moreover, he wondered if the European labor market was organized in a way that could allocate irregular migrants workers out of the shadow market. Prof. Triandafyllidou answered that **the labor market was more dynamic than the administration system, which usually does not allow migrants who come to work in one sector to change to another**.

Dr. Dita Vogel made a remark on the issue of discrepancy between the two projects findings. While CLANDESTINO suggested a decreasing trend on the number of irregular migrants in the EU15, the UWT showed a steady situation despite

**Dr. Vogel also added that interviewing migrants only in receiving countries could be misleading, since researchers interview only those not deterred and not returned, while additional interviews made in the countries of origin who be needed to get a more comprehensive picture on the effects of policy measures.**

the tightening of immigration control. Dr. Vogel explained that this could be due to the different operational definitions of undocumented migrants used. CLANDESTINO definition was closer to the definition of the Directive on Return and for this reason it regards a more limited group. The UWT project included the irregular foreign worker in their definition while CLANDESTINO referred only to the irregular foreign resident (irregular foreign workers involve for example citizens from EU member states who are working irregularly but as EU citizens, are not eligible for deportation if detected). Dr. Vogel also added that interviewing migrants only in receiving countries could be misleading, since researchers interview only those not deterred and not returned, while additional interviews made in the countries of origin who be needed to get a more comprehensive picture on the effects of policy measures.

A participant asked what kind of data was available on flows. Researchers answered that there were some data, but they were very unreliable and incomplete. What was found could be more easily misinterpreted rather than be useful for policy makers. Researchers suggested that collecting data on flows will be a future challenge.

In her concluding remarks, Giulia Amaducci expressed her gratitude that all of the DGs concerned with the issue of irregular migration were present. She was confident that the two projects would serve to open the debate on a very complex issue and hoped that the dialogue would continue.



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