FAQ

MIGRATION POLICIES, DETENTION AND RETURN

PICUM

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

1. How many undocumented migrants are there in Europe?

There is no reliable updated estimate of the number of undocumented migrants in Europe; the most robust source was made more than a decade ago. In 2008, between 1.9 and 3.8 million irregular migrants were estimated to reside in the EU. The majority arrived through regular pathways – with a permit to study or work, to seek family reunification or to seek asylum – and later lost that status.[1] Irregular border crossings are a very small proportion of the overall migration towards the EU: in 2019, EU countries issued a total of 15 million Schengen Visas, while the number of detected irregular border crossings was 141,846. 20.9 million third country nationals were regularly residing in the EU in 2019.
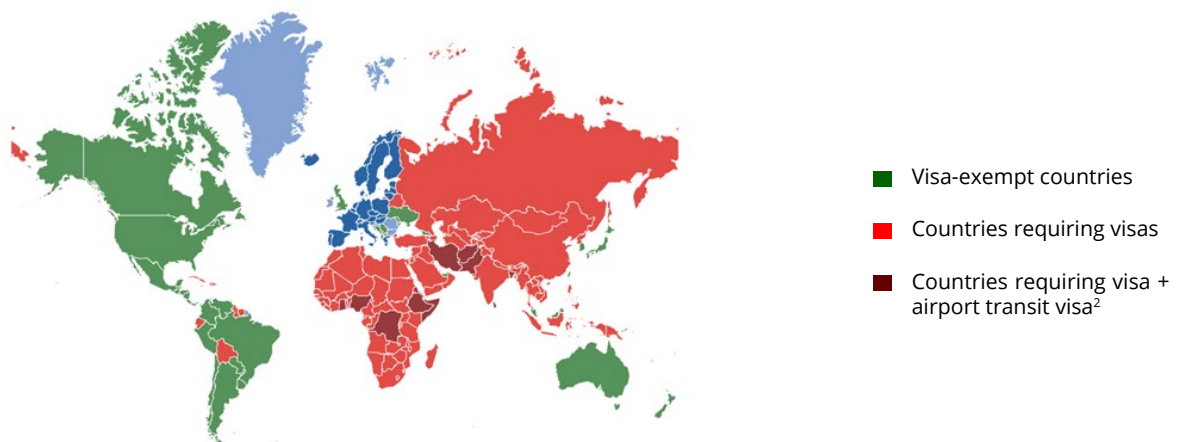
Entries in the EU (2019)

Detected irregular border crossings	141.846
Schengen visas issued	15.000.000

0   10.000.000   20.000.000
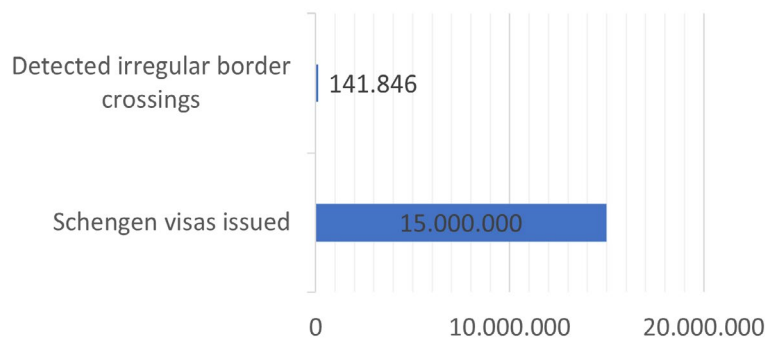
[Sources: Frontex, Risk Analysis for 2020, p. 9; European Commission, Visa statistics for consulates, 2019]

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1   Data, reports and available updates can be found at http://irregular-migration.net/. A recent attempt in 2019 by the Pew Research Center to update these figures is based on flawed data and methodology since the estimates include people with various different statuses, including asylum seekers, who are regularly residing in Europe.

2. How does one become undocumented?

The most common ways of becoming undocumented are to lose a job or other grounds for a residence permit or to be born to undocumented parents. Some people are also undocumented if they enter the EU without a visa.

Entering in the EU regularly can be particularly difficult depending on one's country of origin. Under EU law, individuals from all but two African countries (Mauritius and the Seychelles) and most Asian countries need a visa to enter in the Schengen area, even if they come for periods below 90 days.

■ Visa-exempt countries

■ Countries requiring visas

■ Countries requiring visa + airport transit visa[2]

[Source: European Commission, Visa Policy]

In addition, one's country of origin strongly affects the likelihood of being issued a permit for remunerated activities (including work permits and researchers): in 2018, 51 % of the permits issued for remunerated activities were issued to nationals of ten countries from Central and Eastern Europe (non-EU), while only 5 % were granted to nationals of 55 countries in Africa.

Permits issued

■ nationals of 55 countries in Africa

■ nationals of 35 countries in the Americas

■ nationals of 10 countries from Central and Estern Europe (non-EU)

■ Other
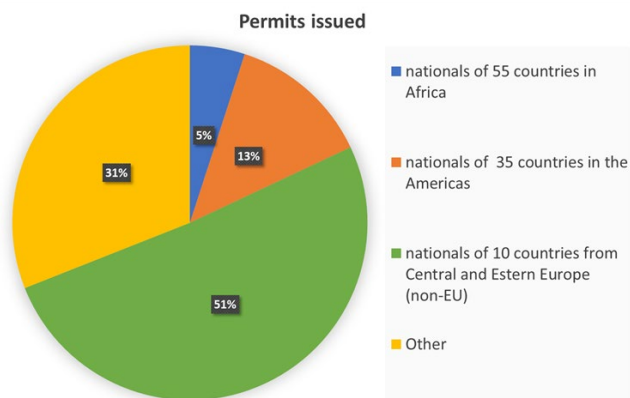
[analysis based on Eurostat data on First permits issued for remunerated activities by reason, length of validity and citizenship, last updated 22 October 2019]

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2   An Airport Transit Schengen Visa enables travellers to change flights at a Schengen airport, but does not allow them to leave the international transit area.

3. How many people are being detained across Europe?

Data collected by the Global Detention Project shows that more than 100,000 people are detained for immigration reasons each year in the European Union. However, it is difficult to identify trends as most countries only publish data every two to three years, and some countries never publish them. Based on the available data, 149,406 people were detained for immigration reasons in 2016 in 23 EU countries. In 2017, 20 countries detained 151,664 people, suggesting that the number of immigration detainees may be increasing.

These numbers include children, families, and individuals with pre-existing situations of vulnerability, such as physical or mental health diseases, disabilities, and psychological traumas. Detention is imposed, often for repeated or prolonged periods, with the more or less explicit purpose of deterring irregular migration and in order to increase returns – despite broad evidence on both its harmfulness and ineffectiveness.

The Regulation on Community statistics on migration and international protection (as amended in June 2020) invites EU Member States to establish pilot studies collecting data on the number of people in return procedures in immigration detention or subject to alternative measures (art. 9(3)(g)).

4. How many children are detained for immigration reasons?

In the 2019 Global study on children deprived of liberty, Independent Expert Manfred Nowak found that at least 330,000 children are detained throughout the world for migration-related purposes per year.

In Europe, 6,555 children were detained in 2016 in the 14 EU countries that provided data. In one case, a child was detained for 195 days. The EU Fundamental Rights Agency has found that EU member States which tend to detain children more often (France, Greece, Malta, Poland and Slovenia) witnessed an increase in child detention between 2018 and 2019.[3]

However, countries often do not collect adequate data, and even when they do, the methodologies adopted differ greatly, making any comparison very hard. For instance, in some countries, children who are detained with their parents are not counted separately.

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3   https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-fundamental-rights-report-2020_en.pdf

5. What does the EU say about the detention of undocumented migrants?

The EU Returns Directive (2008) – currently under review - states that alternatives to detention should always be applied whenever possible- In addition, the European Commission clarified that EU member states should develop and use alternatives to detention, including providing individual coaching (case management).

The Court of Justice of the European Union further clarified that detention can only be applied based on the analysis of individual circumstances and is only legitimate as long as there is a reasonable prospect of removal. Entering or staying in Europe irregularly, or the lack of identity documents, is not a sufficient ground for detention.

6. What does the law say about the detention of children?

Children should never be detained. UN experts agree that detaining children based on the children's or their parents' migration status is a human rights violation and is never in the best interests of a child. Moreover, well-established evidence shows that even short periods of detention have a long-lasting impact on children's physical and mental health and their development.

The EU is still far from implementing these recommendations in its law, and a number of existing and proposed instruments, including the new EU Pact on Migration, still allow child detention, including potentially for prolonged periods of time.

7. Are there any alternatives to detention? Do they work?

Alternatives to detention which allow people to remain in the community while working on their migration procedures are more effective, humane and cheaper than detention.

Individuals are more likely to comply with migration decisions if they are treated fairly, they can meet their basic needs and all available options have been considered. Case management allows migrants to receive holistic support and receive the information they need to take active steps towards case resolution. The evaluation of three pilot projects applying case management-based alternatives in Bulgaria, Cyprus and Poland has showed positive results in terms of compliance, with 86% of individuals remaining engaged with immigration procedures and 99 % reporting improved ability to participate in informed decision making.

8. How many people have been returned to their countries of origin?

In 2019, 162,278 people were returned from EU member states to third countries (EU28).[4]

The European Border and Coast Guard Agency (Frontex), assisted EU member states in the deportation of over 50,000 people between 2007 and 2019, including to conflict-ridden countries such as Afghanistan and Iraq. There are plans for Frontex to coordinate the deportation of 50,000 people per year from 2024 onwards. To make it possible, Frontex's budget has been constantly increasing over the past years, from 6 million Euro in 2005 to 460 million in 2020. In 2027, it is expected that Frontex will have received 5,6 billion Euro by European taxpayers.

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4   See Eurostat datasets on Asylum and Managed Migration. Please note that the dataset on voluntary returns (migr_eirt_vol) does not include the people who leave on their own accord/outside of assisted voluntary return programmes.

9. What does the EU say about the returns of undocumented migrants?

Over the past years, the EU has been consistently focusing on increasing returns. To give an example, the term "return" appears more than 100 times in the Commission Communication on the EU Pact on Migration and Asylum – while the term "rights" appears only 14 times.

This approach fails to recognise that for many undocumented people, return is not the only option – in fact, in some cases it cannot be an option at all. According to European Commission estimates, every year 300,000 people cannot be returned. This can be for a number of reasons, including because of:

- Prohibition in international law to return people to countries where they risk irreparable harm (principle of non-refoulement),

- Family reasons (the right to private and family life),

- Children's rights,

- Health reasons,

- People not being recognised as a citizen by any state (statelessness), and

- Practical reasons (including lack of travel documents, when the third country doesn't accept returns).

The EU focus on returns is not a realistic response to the complexities of migration, and will likely only lead to an increase in irregularity.[5] On the contrary, ensuring access to alternative ways to solve their migration status is key to address a complex reality, allow people to integrate in the community and avoid situations of legal limbo and exclusion from basic rights.

Providing individualised support and counselling (case management) can help people assess the different options and solve their migration status, be it through return, moving to a third country or regularising their position. A programme in Utrecht, The Netherlands, that supports undocumented people to solve their migration case, has shown that 91 % of participants have resolved their status: 59 % were regularised and integrated in the local community, and 19% were returned.[6]

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5   This has already happened in Italy, where the abrogation of the humanitarian permits by the Salvini Decrees in 2019 pushed 120.000 to 140.000 people into irregularity.

6   Jan Braat (2019), Presentation at the International Conference organised jointly by the Council of Europe, the European Commission and the European Migration Network, 4 April 2019, in Agora, Council of Europe, Strasbourg, France. Available here.

10. What happens after forced returns?

Forced return (or deportation) is an extreme and often harmful measure that breaks economic, social and family ties. Civil society organisations and researchers have noted a major gap in understanding of what happens to people after they are deported[7].

What we do know is that the experience of deportation has an impact on the lives of parents and children, on future choices and opportunities. PICUM has collected testimonies of people who have been returned from the EU to African countries. This collection includes stories of children deported alone to countries they have no memory of, people sent to countries where they had never been in their life, and parents left unable to provide for their children.

Do you have more questions?

Get in touch with us or go to:

www.picum.org/press

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7   Existing research almost exclusively focuses on voluntary returns. See, for instance: World Bank Group (2019) "Supporting the Effective Reintegration of Roma Returnees in the Western Balkans", available here.