Practical Measures to Reduce Irregular Migration

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This Synthesis Report summarises the main findings of the National Reports for the EMN Study on *Practical Measures to Reduce Irregular Migration* undertaken by EMN National Contact Points from 22 Member States (**Austria**, **Belgium**, **Czech Republic**, **Estonia**, **Finland**, **France**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **Netherlands**, **Poland**, **Slovak Republic**, **Slovenia**, **Spain**, **Sweden**, **United Kingdom**) plus **Norway**.

The overall purpose of this study was to provide an overview of existing approaches, mechanisms and measures to reduce irregular migration in the EU and Norway. In particular, its aim is to inform policymakers and practitioners about the practical measures that have proved effective and proportionate in addressing the issue of irregular migration and to contextualise national policies and practices within the overall EU policy framework. A further aim was to present the available statistics and the methods of data collection used by Member States to estimate the irregular migrant population.

The Synthesis Report, as well as the National Reports upon which this synthesis is based, are available from http://www.emn.europa.eu under "EMN Studies." Several of the National Reports are available in the Member States' national language, as well as in English.

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DISCLAIMER

This Synthesis Report has been produced by the European Migration Network (EMN), which collectively comprises the European Commission, assisted by its service provider (ICF GHK-COWI), and EMN National Contact Points (EMN NCPs). This report does not necessarily reflect the opinions and views of the European Commission, the EMN Service Provider (ICF GHK-COWI) or the EMN NCPs, nor are they bound by its conclusions. Similarly, the European Commission, ICF GHK-COWI and the EMN NCPs are in no way responsible for any use made of the statistics provided.

EXPLANATORY NOTE

This Synthesis Report was prepared on the basis of National Reports from 23 EMN NCPs (**Austria**, **Belgium**, **Czech Republic**, **Estonia**, **Finland**, **France**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **Netherlands**, **Poland**, **Slovak Republic**, **Slovenia**, **Spain**, **Sweden**, **United Kingdom** and **Norway**) according to common specifications[1] developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability.

The National Reports were largely based on desk analysis of existing legislation and policy documents, reports (including previous EMN outputs), academic literature, political debate, media articles, internet resources and reports and information from government agencies, NGOs and International Organisations (IOM). Statistics were available through Eurostat and from national state authorities (ministries, border guards and other law enforcement agencies) or through national databases.

It is important to note that the comments of this Report refer to the situation in the above-mentioned (Member) States up to and including 2011 and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available National Reports and it is strongly recommended that these are consulted also.

The (Member) States listed above are given in **bold** when mentioned in the Report and "(Member) States" is used to indicate the contributions from participating EU Member States plus from Norway.

EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this Study, but have done so for other EMN activities and reports.

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[1] Available, along with the various National Reports (including in a Member States' national language as well as in English), from http://www.emn.europa.eu under "EMN Studies".

EXECUTIVE SUMMARY

Key Findings

Reducing irregular migration is a policy priority of the EU and its Member States, as well as for Norway. The EU recently outlined its strategic priorities for reducing irregular migration in a Strategy Paper and almost all (Member) States have introduced legislative changes and/or policy for reducing irregularity in recent years.

The need for joint EU action and Member State cooperation in reducing irregular migration is evidenced by the fact that many of the key measures highlighted by Member States are those involving cooperation (e.g. joint returns, joint border patrols, information exchange and risk analysis).

A common EU approach is a major influence driving the implementation of Member State measures to reduce irregular migration. For examples, through Schengen obligations some (Member) States have improved their border management infrastructure; through EU funding they have been able to implement effective technical equipment at borders and to implement effective return measures; also through legislation they have reduced irregular employment and facilitated return; and, through the support of Frontex, have, amongst other measures, increased their understanding of trends in irregular migration flows to increase preparedness.

Nonetheless, (Member) States' policies tend to respond to their specific national needs. The different regions of the EU have different experiences of irregular migration. Those at the EU's external borders tend to have a greater problem with irregular entrants and in keeping the border secure; whereas other (Member) States have a greater problem with overstay and misuse of legal routes into the EU. Practical measures are thus responsive and measured, targeting specific actions with specific objectives. Such measures necessarily take into account that third-country nationals enter into an irregular situation for a range of reasons, and hence cannot be conveniently brought together into one group towards which one policy can be targeted.

Overall, statistics suggest that irregular migration is in decline in many EU (Member) States; although in some it has risen or stayed the same. The reasons for these are multiple and include indirect factors, such as EU enlargement and the economic crisis in the EU. Effective legislation, policy and implementation through practical measures are also key to reducing irregular migration. Nonetheless, Member States continue to experience differences in migratory pressure of irregular and mixed migration flows, with Southern EU Member States consistently receiving high levels of irregular migrants and recent major inflows of irregular migrants. The rising volume of "mixed migration" flows and the situation in third countries (including political unrest and economic recession) may represent future challenges to addressing irregular migration to the EU.

At national level there is some lack of evaluation of practical measures and their effectiveness in some (Member) States. For this reason, and others, this Study represents an important contribution to inform policymakers of possible ways forward in reducing irregular migration to the EU.

Factual Findings

During the past decade the EU has implemented a range of practical measures to support the prevention and reduction of irregular migration in the EU (Section 2 and Annex III). Most recently the EU Action on Migratory Pressures - a Strategic Response) outlined six strategic priority areas and identifies a number of key goals. Such actions include the adoption of legislation; the creation of EU agencies aimed specifically at supporting Member State actions in this area – notably Frontex; and the establishment of EU Funding mechanisms – i.e. the Return Fund and External

Borders Fund.

(Member) States take different approaches to irregular migration dependent on their overall policies and particular experiences of irregular migration (Section 3). For example, some frame their approach to reducing irregular migration within a national security policy, whereas others focus on tackling potential misuse of legal channels of migration, e.g. through the asylum system, family reunification, intra-EU mobility or economic migration. All Member State approaches are influenced by EU policy; although this appears to be more extensive in some Member States than others. In particular, a proactive approach to preventing irregular migration through cooperation with third countries and through an effective visa policy has been highlighted as paramount in a number of Member State policies.

Legislation (Section 3.2) provides the 'back-bone' for practical measures and is regularly updated to incorporate obligations under EU law and to adapt to the dynamics of changing migratory pressures. Legislation and – in particular – case law also ensure that the fundamental rights (e.g. the right to a private and family life, access to healthcare, and access to education) are maintained. Indeed, case law has recently had a major impact on primary legislation related to irregular migration in at least three Member States. Penalties are issued in some (Member) States to both irregular migrants and those facilitating the migration through a system of fines and – in some cases imprisonment (see Annex IV). However, there is little evidence to demonstrate the effectiveness of such measures as a preventative tool.

The EU has had a major impact on practical measures to reduce irregular migration (Section 8). The creation of the Schengen Area, and the eradication of internal borders, has placed an onus on those Member States at the EU's external borders to ensure their border management infrastructure is adequate. This has been achieved through greater cooperation between Member States – e.g. through Frontex and other inter-EU networks – and through the implementation of border management equipment, e.g. with funding from the External Borders Fund.

In order to prevent potential irregular migration before it occurs (Section 4), the provision of information on the legal requirements for entry – e.g. through websites such as the EU Immigration Portal (Annex III) and national web portals (Section 4.1) – can help prevent the irregular migration of third-country nationals due to a lack of understanding of the legal requirements for entry. Information campaigns (Section 4.1) also prevent migration by warning of the risks of migrating irregularly. These have proven to be most effective when they have specific goals and target particular 'at-risk' groups and are part of a wider strategy of prevention. Repeated campaigns may also be more effective.

All (Member) States report that an effective visa management system (Section 4.2) is a key preventative measure in reducing irregular migration. In some (Member) States the visa is pivotal to migration management, as residence / settlement permits can only be issued to third-country nationals who have entered using a visa. Consular representatives issuing visas play an important role in detecting potential irregular migrants before they leave and in detecting false documents and fraudulent claims to migration (e.g. false declarations of marriage or parenthood). In this sense consular offices, as well as Immigration Liaisons Officers (Section 4.4) play an essential communicative role in reporting back to Member State authorities to inform risk management and planning processes.

Prior to entry, cooperation with carriers has also proven particularly effective in preventing irregular migration (Section 4.3). By training carrier staff in the identification of false documents, the work of border management authorities is facilitated (See also Section 4.7). To encourage compliance of

carriers– e.g. with the provisions of Council Directive 2004/82/EC - some Member States have imposed sanctions against carriers for providing incorrect or incomplete passenger information, although others have introduced incentive schemes and fostered a closer working relationship to encourage compliance.

Ongoing analysis of migration routes (Section 4.5) and other intelligence gathering (Section 4.6) to inform risk assessments are important measures for forward planning of practice at the border and planning of long-term policy in light of any trends or upcoming risks. The Frontex Risk Analysis Network (FRAN) is highly important in this regard, as through it information can be shared between Member States – e.g. on trends in migration routes, in false documentation, and in other fraudulent means of entering Member States.

Practical measures taken at entry (Section 5) – particularly those pertaining to border controls – have proven effective to date. The decreasing number of refusals at the border (Section 5.1) may, to some extent, demonstrate a decrease in flow of (potential) irregular entrants. From 2008 to 2011 the number of refusals at the border has halved from 635 380 to 311 850 (including an overall decrease between 2010 and 2011 also). However, from 2010-2011 there was an increase in border crossings – particularly via the Eastern Mediterranean route to Greece.

By checking advanced passenger information and visa applications against EU databases such as the SIS I, VIS and EURODAC (Section 5.3), (Member) States can profile third-country nationals (passengers / visa applicants) in advance of their arrival in the EU and assess any potential risks of irregular migration. Use of the SIS II is evidenced by an increase in the number of refusals at the entry due to the issuance of an SIS alert.

With the support of EU funding (Section 8.2.2) (e.g. the External Borders Fund) and the technical support of Frontex (Section 5.6), Member States have also increased surveillance of unofficial border crossing points (so called 'green borders') (Section 5.2). At sea, patrolling systems have saved lives of persons risking dangerous sea routes to Southern EU Member States, as well as led to a major reduction (by tenfold) in the number of irregular migrants arriving by sea. Along the eastern land border, a surveillance system which detects human presence has led to a decline in irregular migration flows from Ukraine, as well as a decline in smuggling of goods.

Shared resources and networked information, such as the Interpol database of false documents and the European image-archiving system (FADO), are important tools for detecting fraudulent documents at the border (Section 5.4). Member States also share information on fraudulent documents with FRAN. In other (Member) States, special investigations are undertaken to detect and prevent the production of documents– especially where this is linked to organised crime. Other Member States have set up law enforcement units specialised in identifying false documents, to train and provide assistance to border management authorities. Biometric passports provide a possible solution to fraud. Moreover, diplomatic and consular representations abroad also play a major role in detecting forged documents (see Section 4.2).

Cooperation at the border (Section 5.5) between Member States to ensure that internal borders are kept secure, and with neighbouring third countries (e.g. joint investigations, joint patrols and other forms of cooperation) also ensure that irregular migration is prevented not only on the EU side, but at the country of origin also.

In order to assess the number of irregular migrants present at any one time, some Member States have produced estimates (Section 6.1). However a range of methods are employed to produce such estimates, which makes it difficult to compare the statistics of different (Member) States. At least

two Member States updated previously published estimates and found that the stock of irregular migrants was decreasing; indeed the number of irregular migrants may have decreased in one (Member) State by as much as tenfold from 2005 to 2011, due to the effects of the economic crisis which decreased the total influx of migrants. By contrast, national studies suggest major increases (e.g. from just under 20 000 in 2005 to over 440 000 in 2010) in other (Member) States.

To reduce irregular migration during stay (Section 6), most practical measures are focused on better tackling abuse of legal migration channels including preventing irregular work. Some (Member) States carry out ad-hoc checks (e.g. of hotels, transport links and other travel hubs) to identify irregular migrants (Section 6.2). Many (Member) States carry out inspections of workplaces (Section 6.3.1). In some, inspections that are targeted on particular sectors on the basis of intelligence and analysis, have been found to be particularly effective. However, ad-hoc checks and inspections may be costly in terms of time and staff resources and, unless these are targeted, do not always lead to many successful identifications. In addition, ad-hoc checks may in some circumstances infringe on the fundamental rights of migrants.

Statistics on apprehensions (Section 6.2.1) show there has been a notable decline throughout the EU. In the Southern Mediterranean, the number of apprehensions decreased overall between 2010 and 2011; indeed the numbers decreased in some (Member) States by 23 % and 36 %. Member States cite EU enlargement as a reason for the decrease in apprehensions. Other Member States consider that it is due to effective measures – e.g. improved training of the state border guards and other relevant authorities.

With regard to misuse of legal routes, (Member) States have invested in measures to detect and investigate marriages of convenience (Section 6.4). Cooperation between registrars and immigration authorities has proven to be central to detecting such misuse. Other (Member) States focus on preventing misuse of the student route into the EU, for instance by awarding educational institutes that comply with their obligations with greater freedoms to offer a wide range of course levels and work placement opportunities to students than those who do not. Some Member States have also implemented measures to provide opportunities for legal migration to migrants who risk becoming irregular - e.g. rejected asylum applicants or economic migrants who have lost their jobs (Section 6.4).

The actual scale of irregular migrants working in the EU remains uncertain (Section 6.3.1), as while statistics exist (e.g. number of persons identified as irregularly working following workplace inspections), it is difficult to draw conclusions from the statistics; notably because they may reflect the intensity of inspections activities rather than the prevalence of violations. Moreover, some (Member) States do not disaggregate between legally-resident migrants violating conditions of stay/work and irregular migrants employed in their statistics. Moreover, the disparity in methods and scope of the data collection means that the statistics are not comparable. The Employer Sanctions Directive (Section 6.3.2) has had some impact already in Member States, but due to its relatively recent introduction this has been limited and not all Member States have fully implemented this yet. In some Member States, the impact may also be limited as a system for sanctioning employers is already in place.

The swift and sustainable return of third-country nationals who do not have permission to stay in the EU is a priority for all Member States (Section 7). However, return is often problematic (Section 7.2.3). Member States often experience situations in which return cannot take place, e.g. if the third-country national is particularly vulnerable, if they do not have suitable documentation for return, or if there are difficulties in organising a return flight.

The Return Directive (Section 7.2.1) has had a major impact on Member State approaches to return. Following transposition, several Member States introduced new concepts (e.g. "return decision" and "entry ban"). Transposition of the Return Directive has also led in some cases to an improvement of the fundamental rights of returnees. For example, some now offer free legal assistance for those who lack sufficient resources to guarantee effective protection of the interests of the individuals concerned and the concept of a "vulnerable person" was introduced into return procedures in order to provide them with more favourable treatment. In addition, it has led to the strengthening of assisted voluntary return (AVR) within the EU, by improving conditions for AVR in some Member States and introducing it as a concept in others.

The Return Fund (Section 8.2.1) is another important instrument for achieving EU and Member State goals. For example, the Return Fund has funded assisted voluntary return schemes in a number of Member States and covers the costs of charter flights in others. In some, it has been used to train border authorities in the treatment of returnees and in others it has been used to fund projects encouraging cooperation with countries of return and follow-up activities with returnees in the country of origin. Several Member States report that the Return Fund has helped improve the overall quality of returns in the Member State.

(Member) States provide few statistics on the costs of return (Section 7.2.2); therefore it is difficult to evaluate the overall cost-effectiveness of return measures in comparison with other practical measures taken to reduce irregular migration. However, forced returns are recognised as being more costly than voluntary return, although (Member) States highlight the importance of return flights (including those co-ordinated by Frontex) in ensuring effective return, as well as in acting as a deterrent effect for future irregular migrants.

Readmission agreements (Section 8.5.1) are valued as important instruments for ensuring the swift and sustainable return of irregular migrants and have led to visible improvements in the return of irregular migrants. In some Member States they are also used as tools for strengthening international cooperation. However, many (Member) States have tended to focus on bilateral readmission agreements, over EU ones, and many have not yet established protocols for the implementation of EU readmission agreements.

1. INTRODUCTION

The overall purpose of this EMN Study on *Practical Measures to Reduce Irregular Migration* is to provide an overview of existing approaches, mechanisms and measures to reduce irregular migration in the EU and Norway. In particular, its aim is to inform policymakers and practitioners about the practical measures that have proved effective and proportionate in addressing the issue of irregular migration, both in relation to prevention and in providing pathways out of irregularity, including best practice and to contextualise national policies and practices within the overall EU policy framework. A further aim was to present the available statistics and the methods of data collection used by Member States to estimate the irregular migrant population.

The focus of this Study is <u>third-country nationals found to be irregularly present</u> in EU Member States and Norway. More specifically, this comprises persons who have:

> ➢ overstayed their visa or their maximum visa waiver period;
> ➢ those who have violated the conditions of their visa, work permit or permit to stay so that the conditions for granting the visa / permit are no longer satisfied;[2]
> ➢ persons who have not left the Member State territory upon a (final) negative decision on their application for international protection;
> ➢ persons who have absconded during the application process for international protection and did not leave the Member State / EU following a rejection of their application;
> ➢ persons who have entered using false documents;
> ➢ persons who have entered fraudulently stating the purpose of their stay (e.g. through a marriage of convenience) ; and
> ➢ persons who have entered the EU via smuggling.[3]

The study does not address human trafficking.[4] Although this is a form of irregular migration, it is a topic requiring in-depth investigation and discussion in its own right. Moreover, it differs from other types of irregular migration in that it is usually performed against the will of the migrant or by misleading him/her.[5] The Study also refrains from addressing prevention and detection measures which are an integral part of the visa issuance process, as these are addressed in the EMN study on Visa Policy as Migration Channel.[6]

The Study is structured to outline effective practical measures undertaken to address irregular migration at four stages, namely to:

> ➢ Address potential irregular migration before the migrant arrives in the host (Member) State – at **pre-entry** level (Section 4);

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[2] This could thus include third-country nationals who are, for example, working whilst they are not allowed to work or who are irregularly employed (e.g. thus violating the conditions of their visa, permit to stay and/or work).

[3] Smuggling of people has been included within the scope of this study as it represents a means by which migrants willingly enter the EU irregularly. According to Framework Decision 2002/946/JHA, Articles 1(3)-(4), any individual found to be smuggling a migrant into the EU may be punished with a custodial sentence of a minimum of 6-8 years. The Stockholm Action Plan outlines future proposals to amend this Decision by introducing actions against so-called 'facilitator packages' which supply migrants with both transportation and fraudulent documentation for entry as well as contacts and translation in their country of entry.

[4] For more on this, see the EU's Anti-Human Trafficking website: http://ec.europa.eu/anti-trafficking/

[5] Human trafficking means the "recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." *Source:* Directive 2011/36/EU (Article 1).

[6] See www.emn.europa.eu > 'Studies'

➢ Detect **entry** of irregular migrants onto Member State territory (Section 5);
➢ Monitor and ensure migrant compliance with the respective conditions of their visa and/or other permission to **stay** in a Member State in order to avoid overstay (Section 6); and
➢ Address the (legal) situation of irregular migrants by providing **ways out of irregularity** (Section 7).

Definitions and methodology used in the study are introduced next, followed by an overview of recent and ongoing studies of relevance. The EU policy context (Section 2) is then briefly introduced. (Member) State approaches to irregular migration are then outlined, along with the legislative framework, including any recent legislative changes at Member State level (Section 3). The following chapters present the practical measures undertaken by (Member) States to reduce irregular migration prior to a migrant entry (Section 4); at the external borders (Section 5); to prevent irregularity during stay (Section 6) and to provide pathways out of irregular migration (Section 7). The impact of EU policy and intra-EU cooperation (Section 8) is then addressed followed by Concluding Remarks (Section 9).

1.1 Definitions and Terminology used in the Study

This Synthesis Report uses the terms 'irregular migrant' and 'irregular migration,' as well as 'irregular entry', irregular stay' and 'irregularly-staying'. Relevant definitions are given in Annex I.[7] This is exclusive of alternative terminology such as 'illegal migrant/migration' or 'undocumented migrant/migration,' in accordance also with Recital 7 of Resolution 1509 (2006) of the Council of Europe Parliamentary Assembly.[8] Similar debates on terminology have ensued in some (Member) States (e.g. **Germany**, **Slovenia**)

Other Member States may use different terms within their National Reports. Indeed, **Germany** refers to three types of irregular migrant: clandestine migrants - i.e. those who have crossed the border irregularly as well as overstayers; pseudo-legal migrants – i.e. persons residing apparently legally in the country whose legal stay is based on false statements or identities (e.g. persons who have entered through a marriage of convenience or forged documents); and registered unauthorised migrants, which are persons without residence status who are known to the authorities (e.g. 'non-removables' or 'duldung' – see Section 7.2.3). **Italy** considers 'irregular migration' – comprising violations of the conditions of stay (including overstay) - as distinct from 'unauthorised migration,' which comprises irregular entry, however, for the purposes of this study, such differentiation is not used. **Luxembourg** refers to migrants in an "irregular administrative situation."

1.2 Methodology

The National Reports are based on common Study Specifications, developed by the EMN and followed by all EMN NCPs to ensure, to the extent possible, comparability and to facilitate the preparation of the Synthesis Report. The EMN does not normally engage in primary research, but rather collects, gathers and evaluates data and information which are already available. National Reports were thus largely based on desk analysis.

An overview of some recent and ongoing studies on irregular migration is provided in Annex II. Such studies include EMN outputs; studies on fundamental rights of irregular migrants in the EU; studies related to EU policy and legislation on irregular migration; publications outlining trends and

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[7] In addition, the EMN Glossary (available from www.emn.europa.eu > 'EMN Glossary') lists a number of terms related to irregular migration, which have been taken from the EU Acquis and which are used throughout this Study.
[8] This states that "*the Assembly prefers to use the term "irregular migrant" to other terms such as "illegal migrant" or "migrant without papers." This term is more neutral and does not carry, for example, the stigmatisation of the term "illegal." It is also the term increasingly favoured by international organisations working on migration issues.*"

risk assessments on irregular migration in the EU, including those of Frontex and ICMPD; and literature which aims to calculate the number of irregular migrants in the EU. Some Member States (**Austria**, **Finland**, **Germany**, **Ireland**, **Italy**, **Poland**, **Slovak Republic**, **Spain**) referred the *Clandestino* project in preparing their National Report (see Annex II). In particular **Austria**, **Finland**, **Germany**, **Spain** and the **United Kingdom** used Clandestino to substantiate or feed into Section 6.1 on estimates of irregular migration. **Ireland** made use of information provided in the recent FRA Study on *Fundamental Rights of Irregular Migrants* in their analysis of practical measures and their effectiveness.

Many (Member) States (**Austria**, **Belgium**, **Finland**, **Greece**, **Ireland**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **Netherlands**, **Poland**, **Spain**, **Slovak Republic**, **Sweden**, **Norway**) conducted expert interviews with state authorities, ministries and departments. Others hosted workshops (**Germany**) or carried out other consultations (**Estonia**, **France**, **Hungary**, **Slovenia**, **United Kingdom**, **Norway**).

Whilst (Member) States were able to provide an overview of practical measures, two main problems were highlighted: (i) the difficulty in evaluating policy effectiveness (**Czech Republic**, **Estonia**, **Netherlands**, **United Kingdom**) – for example, the **Czech Republic** and **Estonia** noted that measures are often implemented together and hence it is difficult to assess the impact of a measure in isolation; and (ii) a lack of existing research on the topic (**Finland**, **Slovenia**) - indeed, **Finland**, **Ireland**, **Lithuania**, **Slovak Republic** and **Norway** note that the Study sets a precedent in providing comprehensive information on this topic. In addition, (Member) States experienced challenges in presenting reliable statistics (**Czech Republic**, **Finland**, **Germany**, **Ireland**, **Lithuania**, **Slovak Republic**) or found that diverse methods had been used to estimate statistics, which hindered the quality and comparability of the figures. **Germany** noted the difficulty in assessing costs, since many practical measures are implemented for purposes other than simply addressing irregular migration (e.g. police checks and labour inspectorate visits to workplaces).

Statistics relevant to the presentation of irregular migration to the EU (e.g. third-country nationals refused entry at the border; those apprehended for being irregularly present: those found to be irregularly working, etc.) are presented throughout this Study and in Annex VII. These include statistics reported to Eurostat in accordance with Regulation 862/2007/EC.[9] In consideration of these statistics, it should be kept in mind what they actually reflect.[10] While, on the one hand, they may reflect the effectiveness, or otherwise, of policies, variations may also, on the other hand, reflect external factors – for example, EU enlargement (which has 'spread' the number of migrants to a larger number of countries and at the same time halted the flow of former irregular migrants from accession countries) or events in third-countries, such as political conflicts (e.g. as noted in Annex III, the events of the 'Arab Spring' had a major impact on irregular migration flows to Southern EU countries). Statistics may reflect trends in irregular migrant numbers, they may also – instead of or as well as – reflect trends in policy and practice – e.g. an increase in workplace investigations or improvements in border control.

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[9]Available from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF See Articles 5(1)-a, 5(1)-b, 7(1)-a and 7(1)-b. In addition, for Article 5(1)-a see relevant desegregations outlined in Article 13(5) of Regulation 562/2006.

[10] This paragraph is similar to a discussion presented in the National Report of **France.**

2. EU POLICY ON REDUCING IRREGULAR MIGRATION

Reducing irregular migration constitutes an important element within the EU's overall approach to effectively balance and manage migration flows. This includes developing policy on return, as well as on border control, with specific legislation also focussing on stay / work. A comprehensive overview of EU actions to reduce irregular migration, as well as the EU acquis in irregular migration is given in Annex III.

In April 2012, the Justice and Home Affairs Council of the European Union approved a Strategic Response for EU Action on Migratory Pressures,[11] which outlines a number of non-exhaustive Strategic Priority Areas, namely:

> ➢ Strengthening cooperation with third countries of transit and origin on migration management,
> ➢ Enhanced border management at the external borders,
> ➢ Preventing illegal immigration via the Greek-Turkish border,
> ➢ Better tackling of abuse of legal migration channels,
> ➢ Safeguarding free movement by preventing abuse by third-country nationals,
> ➢ Enhancing migration management including return.

For each priority area a number of key challenges, future goals and potential and planned measures – or actions - are outlined. The Strategy proposes that future EU Presidencies will be responsible for updating the list of actions set out in the Annex on a biannual basis, taking into account developments in relation to migratory pressures and the progress achieved by previous Presidencies. The Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) Committee will oversee the implementation and update of the list of actions.

Consistent with the role of the EMN in providing up-to-date policy-relevant material, the findings of this study are also presented with reference to their relevance for each of the six Strategy Priority Areas outlined in this strategy.

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[11] Note from the Presidency to the Council Mixed Committee of 23rd April 2012, document No. 8714/1/12 REV 1. Available at: http://register.consilium.europa.eu/pdf/en/12/st08/st08714-re01.en12.pdf.

3. NATIONAL POLICIES ON AND LEGAL FRAMEWORKS FOR REDUCING IRREGULAR MIGRATION

This Section outlines (Member) State's policy towards irregular migration and the legislative frameworks regulating these approaches. It begins by outlining the national approaches and then describes the national stakeholders involved in the drafting and implementation of policy (Section 3.1). This is followed by an overview of national legislation (Section 3.2) and recent legislative changes and their drivers (Section 3.3).

The fight against irregular migration is also a policy priority for many (Member) States. For example, in **Austria** policymakers refer to the issue as, "*one of the major international challenges for Europe and the EU.*" Member States have outlined their approach to addressing irregularity in specific policy documents (**Czech Republic**, **Greece**, **Netherlands**), or otherwise within those specifically on migration (**Belgium**, **Spain**, **Slovak Republic**), national security (**Estonia**, **Finland**), other policy areas (**Germany**, **United Kingdom**) or in general strategy documents (**Estonia**, **Luxembourg**). In other Member States (**Austria**, **Hungary**, **Italy**, **Latvia**, **Lithuania**, **Slovenia**) the approach to irregular migration is primarily mapped out in legislation.

For some Member States, the approach is highly <u>influenced by EU policy</u>. This is the case in **Estonia**, **Hungary**, **Latvia** and **Slovak Republic**.[12] Notably, **Estonia'**s approach to reducing irregularity is outlined in its *Estonian European Union Policy 2007-2011*. In relation to border controls, the **Czech Republic** has outlined some of its objectives for tackling irregular migration in its *National Schengen Plan 2011*. The **Slovak Republic** refers to the reduction of irregular migration as a "joint priority" shared with the EU, and **Hungary** describes recent moves to improve the coherence of the Hungarian legislation on migration to increase legal certainty and to facilitate the fight against irregular migration and migration-motivated abuses.

(Member) States highlight the importance of taking a proactive or preventative approach to tackling irregular migration <u>prior to the migrant's arrival</u>. For example, **Belgium** describes prevention as "*one of the corner-stones of Belgian [immigration] policy towards irregular migration.*" Others (e.g. **Greece**, **Luxembourg**, **Norway**) note the importance of international cooperation (particularly with countries of origin) in preventing irregular migration and the importance of visa policy (**Finland**, **Ireland**, **Lithuania**, **Spain**).

Focussing on <u>reducing irregular entry</u>, the **Netherlands** is currently implementing its *Innovation Border Management Renewal Programme*, which aims to modernise the current border management process through use of biometrics and other advanced technology. **Lithuania** has also recently introduced the *Draft programme of State Border Guard Development,* which outlines border policy for the period 2011–2018. Under its Internal Security Programme, **Finland** also aims to establish IT systems to aid the processing of visas and improve border management.

(Member) States may also centre their approach on better <u>tackling abuse of legal migration channels</u>. For example, **Lithuania** and the **Slovak Republic** focus on preventing employment of irregular migrants and combating the 'black economy'. **Ireland** focuses on preventing and detecting marriages of convenience; – to date it has not found evidence of a high influx of irregular migrants and especially little through irregular entry.

Regarding policies on <u>return</u>, the EU and many (Member) States promotes assisted return. **Norway** emphasises the fact that return practices must be consistent and have a high degree of predictability for the migrant. In **Greece** current legislation has a focus on forced return.

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[12] For more information on the impact of EU policy and legislation on (Member) State legislation see Section 8.

Estonia and **Finland** (also) frame their approach towards irregular migration within their policy on national security. For example, the main policy document on the topic in **Estonia** is *Main directions of the security policy until 2015* and in **Finland** the approach is most recently outlined in the *Internal Security Programme.* **The United Kingdom** recently created a dedicated Border Police force, as part of a refocused Serious Organised Crime Agency (SOCA) within the UK's Home Office, which would be charged with enhancing national security, including implementing immigration controls. **Hungary** also recognises national security as a priority in its approach to irregular migration.

Austria and **Luxembourg** focus on preventing asylum applicants from becoming irregular migrants. In 2011 **Austria** introduced its '*7-Point-Package*' of measures to combat irregular migration. Amongst other measures, the document refers to an asylum applicant's "duty to collaborate" (*Mitwirkungspflicht*) by remaining in the first reception centre for up to seven days after filing the application to prevent absconding. Between 2004 and 2009 **Luxembourg** sought to increase the speed and efficiency with which asylum applications are processed and since 2009 the approach has centred on encouraging voluntary return. **Sweden** also states that its objective is to secure long-term, sustainable migration policies that maintain the right of asylum and facilitate mobility across borders.

Spain seeks to reduce irregular migration, at least in part, through increasing the possibilities of legal migration. Indeed the link between opportunities for legal migration and the volume of irregular migration has been observed in the **Czech Republic**, as the issue of irregular migration has become more urgent there in light of the impacts of the economic crisis. **Germany** has also pointed to a symbiosis between irregular migration and other policy areas, such as education, health and social policy. In a similar vein, **Germany** also refers to the balance of approaches in its Member State between the "regulatory" position mainly maintained by the *Federal Ministry of the Interior* and the *Interior Ministries of the Federal Laender*, and the "human rights" position of the civil society representatives (churches, welfare associations, relief organisations).

3.1   **Institutional Framework**

All Member States have official institutions responsible for developing policy to reduce irregular migration at all stages (pre-entry, entry, stay and removal).[13] In most (**Austria**, **Czech Republic**, **Estonia**, **Finland**, **Germany**, **Greece**, **Italy**, **Latvia**, **Lithuania**, **Malta**, **Netherlands**, **Poland**, **Slovak Republic**, **Spain**, **United Kingdom**), it is the Ministry of Interior or Home Affairs (or other authority directly subordinated to this institution) that takes overall responsibility for migration. In **Norway**, the Ministry of Justice and Social Protection is responsible for policies in this area, as well as the overall coordination of immigration policies together with the *Directorate of Immigration* and the *Ministry of Labour*. In **Ireland**, it is the *Minister of Justice, Equality and Defence*.

In **Austria**, **Czech Republic**, **Italy**, **Netherlands**, **Poland, Slovenia**, **Slovak Republic** and **Spain** the Ministry of Labour and Social Policy (or equivalent) also plays an important role in setting the conditions for labour migration and, where relevant, work permits and the combating of irregular employment (in **Slovenia** this is the *Migration and Integration Directorate* within the *Ministry of Interior*). In other (Member) States (**Estonia**, **Finland**, **Greece, Italy**, **Latvia**, **Luxembourg**, **Lithuania**, **Slovenia**, **Slovak Republic**, **Spain**, **Sweden**, **Norway**) the Ministry of Foreign Affairs and consular offices play an important role – e.g. in setting visa policy. Other authorities that are engaged in policymaking related to reducing irregular migration include the *Ministry of Justice*

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[13] Further information on the institutional framework is provided in the institutional charts provided on the EMN website at www.emn.europa.eu > 'Asylum and Migration Policy Factsheets'.

(**Ireland**, **Latvia**, **Slovak Republic**, **Sweden**, **Norway**), *Ministry of Finance and Customs* or equivalent (**Finland**, **Slovak Republic**, **Sweden**, **Norway**), the border guard authorities (**Latvia**, **United Kingdom**), the judiciary (**Spain**), and immigration services (**Finland**, **Latvia**). **Finland** mentions a network of institutions responsible for smaller areas of policy,[14] as does **Sweden**.

In certain Member States (**Czech Republic**, **France**, **Germany**, **Sweden**) there are also country-specific institutions, e.g. *the Swedish Migration Board* in **Sweden**, *the Irish Naturalisation and Immigration Service* in **Ireland.** Some of the country-specific institutions are operating at the inter-ministerial level, e.g. *the Inter-ministerial Authority for Combating Illegal Employment of Foreign Nationals* in the **Czech Republic**, *the Inter-ministerial Committee on Immigration Control* in **France** or at regional level - e.g. *the Ministries of Interior of the Länder* in **Germany** that are responsible for the affairs relating to foreign nationals.

In addition to formal authorities, in several Member States informal actors are involved in the process of policymaking (**Germany, Greece**) and policy implementation (**Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Spain, Norway**). For example, the ombudsman and the *National Commission for Human Rights* assist in formulation and implementation of policy in **Greece**. Non-governmental organizations advise migrants on their rights in **France**, **Germany, Netherlands, Poland** and **Spain**; provide reception and integration support in **Italy** and **Poland**; and run voluntary return and reintegration programmes through the *International Organisation for Migration* (IOM) in **Estonia**, **France**, **Germany**, **Ireland**, **Italy, Latvia**, **Lithuania**, **Luxembourg**, **Netherlands**, **Slovak Republic** and **Norway** and the *Red Cross* in **Estonia**, **Lithuania** and **Luxembourg**. Other stakeholders engaged in implementation of policy on irregular migration include churches (e.g. in **Sweden**) and trade unions (**Netherlands**, **Spain**, **Sweden**), e.g. in running campaigns against irregular employment.

Several Member States (**Belgium**, **Czech Republic**, **Germany**, **Hungary**, **Lithuania**, **Netherlands**, **Poland**, **Spain**, **Sweden**) have undertaken measures to make cooperation between different institutions working in the field of combating irregular migration more effective. **Belgium**, **Hungary**, **Lithuania** and **Poland** formalised the procedure of collaboration in legislation. Others (**Czech Republic**, **Germany**, **Hungary**, **Netherlands**, **Spain**, **United Kingdom**) have inter-ministerial level institutions which coordinate cooperation (e.g. *Analytical Centre for the Protection of State Borders and Migration* in **Czech Republic**; *the Joint Analysis and Strategy Centre for Illegal Migration* in **Germany**; *the Integrated Management Centre* in **Hungary**; *the Expertise Centre for Human Trafficking and Human Smuggling* in the **Netherlands**; *the Government's Delegate Commission for Immigration Policy and Sectoral Immigration Conference* in **Spain;** and the *National Migration Group* in the **United Kingdom**). **Sweden** organises regular meetings between different institutions.

3.2   National Legislative Frameworks

The conditions under which a third-country national may enter, stay and settle in a Member State are usually regulated through a main Act (often referred to as the *Aliens Act* or *Residence Act* or *Immigration Law*). They are then updated to incorporate important changes – e.g. to transpose relevant EU legislation – on a regular basis (e.g. every 3 – 5 years). A full list of these is provided in Annex II. Other legislation, such as asylum legislation and legislation transposing EU provisions

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[14] The *Migration Department* of the prepares policy and legislation on illegal migration and human trafficking according to its political guidance; the *Ministry for Foreign Affairs* is the central authority responsible for Schengen visa matters; the *Ministry of Transport and Communications* is, in cooperation with the Russian authorities, is responsible for developing cross-border traffic arrangements, as are the *Border Guard* and *Finnish Customs*; the *Finnish Immigration Service* is responsible for decision-making on immigration, international protection and citizenship.

on the right to free movement (where separate from immigration law) are also important to preventing irregular migration. In some Member States there is also separate or supportive legislation for border control (**Estonia**, **Finland**, **Lithuania**, **Poland**, **Slovenia**, **Slovak Republic**),[15] returns / expulsions (**Estonia**, **Luxembourg**), and detention (**Luxembourg)**. For example, in **Finland** decisions concerning removal are regulated, in part, through the *Administrative Procedure Act (434/2003).* In **Poland** migration law tends to be introduced through various separate laws. The conditions under which third-country nationals may work in a (Member) State may also be outlined, or further outlined, in separate legislation – this is the case in **Austria**, **Belgium**, **Netherlands**, **Poland**, **Slovenia**, **Slovak Republic.** Criminal legislation is also relevant where irregular migration is considered a criminal offence, where the migration involves the forgery of documents, or where those facilitating irregular migration are subject to criminal proceedings (see Annex V). **Latvia** outlines its provisions on carrier's sanctions in its legislation on aviation. **Germany** and **Luxembourg** make the point that irregular migrants are often affected by legislation other than that specifically regulating migration, such as legislation related to health care, education and social welfare. For example, the **Netherlands** outlines provisions on access to such services in its *Benefit Entitlement (Residence Status) Act*. **Lithuania**, in response to an increase in migrants irregularly obtaining temporary residence permits by registering fictitious businesses, amended legislation pertaining to businesses (*Law on Companies of the Republic of Lithuania*) as a disincentive to false registration (see also Section 6.3).

Belgium, **Finland**, **Spain**, **Ireland Luxembourg** and **Sweden** specifically note the importance of respecting the fundamental rights of migrants, whatever their documentary situation, by ensuring access to healthcare and education. In addition, an irregular migrant may rent an apartment, obtain a transport pass and legally buy and sell real estate or property (subject to certain conditions). Similarly, in **Ireland** all individuals (including irregular migrants) can apply for a Personal Public Service Number (PPSN) which gives them access to certain public services. However, NGOs have stated that in practice it is sometimes difficult for irregular migrants to obtain these. In relation to healthcare, **Sweden**'s *Health and Medical Services Act* (HSL) requires county councils to provide health and medical care in response to immediate need. **Norway** has recently reviewed its regulations regarding irregular migrants and health care, with the purpose of clarifying existing rules and this has resulted in better access to healthcare. In **Luxembourg**, all children have access to the education system, independently from the administrative and legal status of their parents. However, as it is obligatory to declare the address of residence to the municipality, some irregular migrants may be deterred from using the service. **Sweden** is currently debating whether education should also be obligatorily for children awaiting return (following an order). In **Finland**, as in other Member States, irregular migrants may access legal aid. In 2011, **Norway**'s *Immigration Regulation* introduced a provision that gives certain irregular migrants who have applied for protection the right to work voluntarily and without payment.

Case law has recently impacted on policy and practice towards reducing irregular migration in at least five Member States (**Austria**, **Czech Republic**, **Finland**, **Italy**, **Netherlands**). Sometimes the case law has been driven by considerations of compliance with EU law. For example, in relation to return, **Austria**'s Administrative High Court ruled in May 2011 that exclusion orders and expulsion orders must be understood as a return decision according to the Return Directive. Through this and subsequent rulings, the competence of the Security Headquarters, which is under the power of direction of the Federal Ministry of the Interior, was significantly restricted.

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[15] From January 2012 this was no longer the case, as the **Slovak Republic**'s *Act on State Borders Protection* was merged into the new *Act on Stay of Aliens.*

In the **Czech Republic**, **Italy** and **Spain**, judgements passed by the national Constitutional Courts revoked provisions outlined in primary legislation, due to concerns for fundamental rights. In the **Czech Republic**, the Court revoked the provision of Section 171(1)(c) of the *Act on the Residence of Foreign Nationals*[16] and in **Spain** the Constitutional Court*,* expanded the *Organic Law 4/2000* to provide the right to post-compulsory education to all migrants (regardless of legal status), as well as the (previously excluded) right to assembly, association, demonstration and strike. In **Italy**, a number of amendments to *Law 94/2009* – the so-called 'Security Package' were made as a result of jurisprudence. First, the European Court of Human Rights judged the provision which introduced the 'crime of illegal entry and/or stay' as being in contradiction to the Return Directive. Second, Article 1(15) of *Law 94/2009* – which imposes stricter requirements on third-country nationals wishing to acquire Italian citizenship through marriage by providing that the applicant must show valid residence permit to the registrar in order to marry– was partially declared unconstitutional, on the basis of the European Convention of Human Rights (ECHR), by the *Italian Constitutional Court* in July 2011 following an appeal against the provision by an Italian wanting to marry an irregular migrant from Morocco.[17]

In **Finland** case law has been central to clarifying and further defining legislation related to irregular migration and misuse of the right to asylum. The judgement 'Singh v Hammond' (1988) in the **United Kingdom** set a precedent in combating overstay, by setting the legal basis on which officers may, in certain circumstances, make enquiries about the immigration status of people present there.

A variety of penalties are imposed in Member States in relation to irregular migration, depending on the nature of the offence and whether the person sanctioned is the migrant him/herself committing it, or someone facilitating the irregular migration. Some offences may be considered administrative and subject only to fines or specific actions (return orders, re-entry bans, bans on professional activity, etc.), whereas others may be considered more serious offences subject to larger fines or imprisonment and even to criminal procedure – this is almost always the case for offences such as smuggling or forgery of documents, but it also quite often the case for 'border offences' – i.e. crossing the border irregularly, and in some countries for irregular stay. A description of these penalties and further details on the types of offences and sanctions issued are provided in the National Reports. In addition, an overview of the sanctions is given in Annex V.

3.3   Recent legislative changes and their drivers

In response to EU policy developments, and to address specific national situations and concerns, Member States have also implemented notable changes in their national legislation; some of which have been described above, and their impacts will be further elaborated throughout this report.

The most common drivers of legislative changes amongst Member States are accession to the EU and changes to EU legislation (see also Section 8); as well as increasing influxes of irregular migrants (in the case of **Greece**, **Italy** and **Spain**). Other drivers include public opinion (**Spain**, **United Kingdom**) or the opinion of NGOs and associations (**Czech Republic**) in, for example, consideration of fundamental rights, and the economic crisis (**Czech Republic**, **Spain**). Global developments may also impact on (Member) States approach to irregular migration – for example, **Luxembourg** notes that, following formal recognition of the independence of Kosovo,[18] a

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[16] which excluded judicial review of a decision on administrative expulsion of a foreign national in the event that the foreign national had been staying in the territory or in the transit area of an international airport on an unauthorised basis before the proceedings on the administrative expulsion were started.

[17] Decision n. 245 of July 20th, 2011.

[18] This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion

programme was set up to encourage voluntary return to the third country.

Austria, **Italy** and the **Slovak Republic** have introduced major legislative changes. **Austria** saw changes to its *Aliens Act* in 2009 and 2011 with changes to detention, introducing the concept of 'tolerated stay' and regularisation possibilities for humanitarian reasons, as well as transposing EU law. In response to notable increases in the influx of irregular migrants, **Italy** introduced a number of legislative amendments in 2008 with respect to the removal of non-nationals (including EU citizens) and detention and in 2009 introduced a "Security Package" which *inter alia* introduced the so-called "crime of illegal immigration" (subsequently amended by the Constitutional Court – see Section 3.2.1), as well as stricter regulations regarding refusals at the border and intensified coastal patrolling and rejections at sea. The **Slovak Republic** introduced the new *Act on Stay of Aliens* which entered into force on 1 January 2012 and brought in changes to tolerated stay, administrative expulsion, offences and the imposition of fines for breaking the law. **Ireland** is currently reviewing a major draft legislation – the *Immigration, Residence and Protection Bill* - which will set out a coherent legislative framework for immigration, clarifying the concepts of irregular stay and introducing the obligation to leave if found to be irregularly present.

In relation to border control, **Sweden** and the **United Kingdom** note the importance of the introduction of biometric visas / residence permits. In 2013, the **United Kingdom** plans to introduce a new Border Police Force which aims to improve immigration controls and address trafficking of people, weapons and drugs.

In relation to irregular stay and work, in **Poland**, the Polish *National Labour Inspectorate* gained responsibility for controlling the legality of third-country national's employment in 2007 and since 2009 this responsibility has been shared with the Border Guard. The **United Kingdom** introduced civil penalties in 2006 under the *Immigration, Asylum and Nationality Act* (2006), designed to encourage employers not to employ irregular migrants / migrants working irregularly. **Germany** brought in amendments to its *General Administrative Regulation on the Residence Act* to ensure that personal data of third-country nationals found to be irregularly present and disclosed to the welfare offices in the billing process for health services, may not be used against the migrant. Other legislative changes were introduced in order to bring national legislation into line with the Employer Sanctions Directive (see Section 6.2.2) **Lithuania**, with the aim of preventing marriages of convenience, introduced provisions to make it illegal for its nationals to help a third-country national to obtain a document confirming a right to stay/reside by unlawful means.

At the return stage, **Czech Republic** introduced greater safeguards on fundamental rights during detention; whereas **Greece**, **Italy** and **Spain** increased the time limit during which third-country nationals can be detained awaiting removal from three to six months in **Greece**, from 30 days to a maximum of 18 months in **Italy** and from 40 to 60 days in **Spain**. The **United Kingdom** also made changes to its family returns procedure, driven in part by a high level of public debate around the previous system. **Austria** also made changes to its system of pre-return detention. **Sweden** has made (other) changes that reduce obstacles to return: it introduced support grants to third-country nationals returning to countries where there are limited preconditions for re-establishment.

on the Kosovo Declaration of Independence. All subsequent mentions of Kosovo are also understood to be within the context of this statement'.

4. PRE-ENTRY MEASURES

This Section outlines the practical measures undertaken by (Member) States to reduce irregular migration prior to entry – i.e. measures to prevent irregular migration from taking place at all. Some common approaches between Member States may be observed; however, the specific geographies and individual circumstances of each (Member) State also have a bearing. For example, **Spain's** approach responds in part to its efforts to guard its maritime border and land border (at Ceuta and Melilla) with Africa. Similarly, **Norway** takes a preventative approach with regard to border crossings from the Russian Federation although there is currently little evidence of irregular migration there, even with the increase in (legal) border crossings since 2009.

The main activities highlighted by Member States at pre-entry level include: information and awareness-raising campaigns (Section 4.1); pre-entry controls and checks (Section 4.2) the role of specific actors, such as carriers (Section 4.3) and immigration liaison officers (Section 4.4); the identification of irregular migration routes (Section 4.5) and other risk assessment and intelligence-gathering activities (Section 4.6) and development training and support activities (Section 4.7); as well as development activities in countries of origin aimed at preventing potential irregular migrants (Section 4.8) and cooperation activities with third countries (Section 4.9).

Box 4.1 - Pre-entry actions in the EU Action on Migratory Pressures – A Strategic Response

Three of the strategic priority areas of the Strategic Response to EU Action on Migratory Pressures list challenges and identify goals to be addressed prior to entry. These are:

- ➢ Strategic priority area I: Strengthening cooperation with third countries of transit and origin on migration management
- ➢ Strategic priority area II: Enhanced border management at the external borders
- ➢ Strategic priority area III: Preventing illegal migration via the Greek-Turkish Border

The relevant challenges and goals identified are as follows:

Challenges identified in the Strategy
- ➢ Enhancing the capacity of countries of origin and transit to manage mixed migration flows (area I)
- ➢ Prevention of illegal migration from the Southern Mediterranean Countries (area I)
- ➢ Prevention of illegal migration via the Western Balkans (area I)
- ➢ Combating irregular migration transiting Turkey to the EU (area III)

Goals identified:
- ➢ Equipping countries of first asylum with the necessary means to be able to guarantee refugee protection (area I)
- ➢ Assisting third countries in better managing mixed migration flows (area I)
- ➢ Establishing Mobility Partnerships (area I)
- ➢ Extending dialogues on migration mobility and security with the Southern Mediterranean Countries (area I)
- ➢ Strengthening the identification of irregular migration routes (area II)
- ➢ Continuing to assist relevant authorities of the Western-Balkan countries in strengthening their capacity to combat illegal migration (area I)
- ➢ Engaging with the Turkish authorities and concluding the EU-Turkey readmission agreement (area III)

4.1 Information and awareness-raising campaigns

Belgium, **Czech Republic**, **Italy**, **Latvia**, **Luxembourg**, **United Kingdom** and **Norway** describe effective information and awareness-raising campaigns in third-countries, often carefully tailored to

address specific issues, and designed to discourage irregular migration whilst raising awareness about legal channels of migration. These have tended to target particular third countries that have an established relationship or a history of irregular migration to the Member State.

In **Belgium**, prevention campaigns have been carried out in specific third countries, using a range of media, including television advertisements and theatre plays. Since 2000, such campaigns have been organised, among others, in Albania, Cameroon, D. R. Congo, Guinea, India (Punjab), Kazakhstan, Kosovo, Russian Federation, South-Caucasus, Tunisia and the former Yugoslav Republic of Macedonia (FYROM). Policymakers have also been involved in such campaigns. **Belgium** highlights several good practice points, including ensuring that campaigns have specific goals and target groups, and are part of a comprehensive strategy. Repeated campaigns have also been found to have greater impact and effectiveness.

In 2008/9, the **Czech Republic** launched a media campaign, simultaneously in both Mongolia and the Czech Republic, targeting Mongolian labour migrants and focussing on the labour market and living costs in the Czech Republic, as well as the rights and responsibilities of migrants, their residence status, available support. **Luxembourg** highlights a number of awareness raising initiatives, in particular, its *'Migrate with eyes open'* project, and the mobility partnership between the EU and Cape Verde. Such initiatives aim to inform those planning to migrate to Luxembourg, particularly in relation to family reunification, about the conditions that apply, to familiarise themselves with the country's social and cultural realities, and to obtain information about return options to Cape Verde. A web portal[19] has also been established by a migrant workers' support organisation and co-financed by the *Office for Reception and Integration*, which brings together essential information for entry to and stay in Luxembourg, which is available in several languages.

In **Italy**, awareness campaigns aimed at preventing irregular migration have targeted third countries characterised by high migratory flows, including Egypt, Morocco, Albania, Moldova, Kosovo and Ukraine. Typically they have targeted specific groups, and have used a combination of channels, relevant to the groups targeted, often in collaboration with newspapers, the media and NGOs. In Egypt and Morocco, the campaigns have focussed on <u>unaccompanied minors</u>: one project in Morocco has, among other things, developed a pedagogical kit which raises awareness of the dangers of child migration, using multilingual (Arabic, Berber, French and Italian) comics and cartoons, showing the stories of children at risk. In the Ukraine, Italy has also worked with the national authorities to raise awareness of the impact of the migration of Ukrainian women on children and young people left temporarily without their mother.

4.2   Pre-entry controls and checks prior to arrival at the national border

All (Member) States reported the importance of an effective visa-management system as a key preventative measure in the fight against irregular migration.[20] This is, in part, due to the fact that visa operations predominantly take place in third countries, therefore maximising its potential as a preventative tool, and the possibility for Member States to respond to changing circumstances through adjustments to visa processes. Recognition of the specialist nature of the task of visa processing has also given rise to specific institutional and organisational innovations in some Member States (e.g. **Belgium**, **Germany**) as well as on-going and permanent staff training and support mechanisms. **Austria** notes also that the effectiveness of visa management is enhanced by additional legal and practical measures, for example, carrier sanctions. Several Member States

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[19] www.bienvenue.lu
[20] For more on this see also the EMN 2011 Study on *Visa Policy as a Migration Channel*, available at www.emn.europa.eu > 'Studies'.

(**Estonia**, **Germany**, **Greece**, **Latvia**, **Lithuania**, **Malta**, **Poland**), also refer to the future use of tools provided by the Visa Information System (VIS)[21] which are expected to play an important role in the context of reducing irregular migration.

The visa process in **Germany** is a pivotal instrument for migration management and is crucial in preventing irregular migration, as residence / settlement permits can only be issued to third-country nationals who have entered the country using an appropriate visa. **Germany** highlights a number of practical measures which have been established to reduce the risk of visa abuse, for example, a Visa Alert Database (operational in 2013) to strengthen the prevention of visa abuse and irregular entry to complement VIS, a facility for visa application data to be cross-checked against a range of national databases and registers, a Visa Information Centre, to investigate how false visas are obtained, and a special police network of document and visa advisors, attached to German Missions and active mainly in countries that are known sources of irregular migration.

Finland has developed a specific approach to tackle irregular migration in conjunction with the visa-granting process, which allows relevant authorities to assess the risk of a person's irregular entry by reviewing, for example, their ties with the home country (family, work, home). In addition, a visa applicant may be requested to present a return journey ticket as a requirement for being granted a visa. Specific processes have also been established in relation to visa processing for family reunification purposes, the aim to tackle the issue of marriages of convenience, and other areas of known misuses, for example, in relation to foster children.

Other specific measures to tackle irregular migration through the visa processes include those that have been developed by **Lithuania**, where a mechanism for consultation between diplomatic and consular representations and with the responsible authorities before a decision is made on the issuing of a visa has proved effective in allowing for the identification of misleading information. In **Poland**, on-going consultations prior to granting visas to third-country nationals take place between the Polish Border Guard and its consulates, on detected cases of misuse or of visas, fraud, falsification of documents. Polish consulates work within standards and requirements set out in the Community Code on Visas,[22] and use the computerised system of consultations (VISION) with central authorities of other Schengen states. In the **Slovak Republic**, there is regular communication between the consular departments abroad and the Ministry of Interior through information communication networks. These offices exchange information on false documents, the legitimacy of sponsors and travel agencies issuing invitations and other relevant information.

4.3   Role of carriers

A number of Member States (e.g. **Austria**, **Belgium**, **Germany**, **Estonia**, **Italy**, **Lithuania**, **Luxembourg**, **Netherlands**, **Slovak Republic**, **Spain**, **United Kingdom**), as well as **Norway**, highlight the important role of the checks and controls undertaken by carriers (e.g. airlines and ferry operators) as an important measure to complement other activities to reduce irregular migration at pre-entry stage.

Since 1999, carriers travelling to **Austria** have been examining the validity of visas of passengers at the point of departure and Austria reports this has proved a highly effective measure. **Lithuania** also notes a significant decrease in the number of persons attempting to enter without the necessary

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[21]   Council Decision 2004/512/EC of 8 June 2004 established the Visa Information System (VIS); Commission Decision 2008/602/EC of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the central VIS and the national interfaces for the development phase.

[22] Regulation (EC) No. 810/2009 of 13 July 2009 establishing a Community Code on Visas (Visa Code).

documents since the introduction of sanctions on carriers in 2008. **Germany**, fines carriers between €1 000 and €5 000 for each migrant trying to enter irregularly; in 2010, action was taken against 15 airlines, with total sanctions amounting to more than €1.5 million. In **Estonia**, where a traveller is found not to hold the required documents, the carrier is obliged to return the individual and can be liable for any costs associated with expulsion and/or detention up to €32 000. In **Norway**, airlines that carry passengers without legal travel documents may be penalised with a fine of some €3 125. In **Lithuania**, this is 11 000 to 18 000 litas (approx. €3 200 to €5 200) and again, has contributed to a significant decrease in the number of persons arriving without the required documents.

The *UK Border Agency* and the *UK Risk and Liaison Overseas Network* (RALON) in the **United Kingdom** maintain close cooperation with carriers in order to prevent the arrival of "inadequately documented arrivals" (IDAs) at the UK border. Air carriers demonstrating high standards of document and security checks at the point of embarkation, as well as a high level of cooperation with UK border authorities, may be awarded 'automatic gate check' (AGC) status which means that any fines for carrying undocumented passengers will be waived. At the time of writing, a total of 378 'AGC' stations were in place. This incentive has proven to be effective in encouraging carrier cooperation with UK authorities and the operations have contributed (along with other border security initiatives) to a decrease in the number of IDAs arriving in the UK from 31 000 in 1999 to only just over 4 000 in 2010. As part of the scheme 15 800 air carrier staff and holding agents have also been trained in forgery awareness and document security.

4.4   Immigration Liaison Officers (ILOs)

Many (Member) States (**Austria**, **Belgium**, **Czech Republic**, **Finland**, **Hungary**, **Lithuania**, **Ireland**, **Lithuania**, **Netherlands**, **Spain**, **United Kingdom** and **Norway**) draw attention to the important role of liaison officers in preventing and discouraging irregular migration and specifically to the network of Immigration Liaison Officers (ILOs)[23] posted in third countries by a Member State's immigration service or other competent authorities. ILOs establish and maintain contacts with host country authorities, in order to contribute to the prevention and combating of irregular migration, the return of irregular migrants, and the management of legal migration. Member States tend to deploy liaison officers to third countries where the need has been found to be greatest.

Practically, liaison officers may act as intermediaries between national and foreign investigations (**Austria**), and support visa decision-making processes (**Belgium**, **Czech Republic**, **Hungary**, **Finland**, **Latvia**, **Slovak Republic, Slovenia**, **Norway**). This can include advice on document and identity checking and forgery detection (**Belgium**, **Czech Republic**, **Slovenia**, **Slovak Republic**, **Norway**); and interviews with applicants (**Belgium**, **Latvia**). In **Belgium**, ILOs in some consular posts have delegated authority to grant or refuse certain types of visa.

Liaison officers also maintain contact with border guard staff, for example, to exchange intelligence (**Belgium**, **Germany**, **Finland**, **Latvia, Slovenia**, **Norway**). ILOs undertake in-country training and development of overseas staff (**Austria**, **Netherlands**, **Norway**) and in **Austria**, an annual conference of ILOs takes place, which in 2011 brought together 23 ILOs to exchange information, to share updates on political developments and to discuss organisational matters. In the **United Kingdom**, ILOs form part of the UK Risk and Liaison Overseas Network (RALON) mentioned previously, which has been highly effective in helping to reduce the number of those who arrive with inadequate documentation. In **Slovenia**, liaison officers working in Croatia, Serbia, Montenegro and Italy make use of specialist police equipment and have access to the police intranet

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[23] Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an Immigration Liaison Officers Network and Regulation (EU) No 493/2011 of 5 April 2011 amending Council Regulation (EC) No 377/2004.

and information databases, to facilitate information exchange among security authorities and the Slovenian Police involved in integrated border management. In **Germany**, the German Federal Police Border has been deploying border police liaison officers since 1992, and currently 24 liaison officers are working in 23 countries, mostly in Europe, and also in neighbouring countries. These liaison officers collect, evaluate and analyse information on the border policing situation in the various countries and exchange information with the local authorities; advising and supporting the responsible local offices; and provide advice and information on German and other countries' missions on measures to prevent irregular migration. **Hungary** and **Norway** also refer to liaison work including with the police, for example, posting police liaison officers overseas to prevent smuggling of human beings. In **Finland**, liaison officers may also participate in anti-crime operations jointly with police and liaison officers from other EU Member States on matters of irregular migration and human trafficking.

Lithuania does not have its own liaison officers, but works with ILOs from other Member States based in the Russian Federation, Belarus, Georgia – the nationals from these countries constitute the majority of their irregular migrants – which has contributed to preventing irregular migration through a continuous exchange of information on the risks of irregular migration, trends, techniques, and the use of false documents. ILOs have also been active in obtaining documents necessary for the return of irregular migrants from third-country diplomatic or consular missions. In the **Netherlands** and **Norway**, the role of the ILOs has been extended to include the facilitation and investigation of return.

4.5   Identification of irregular migration routes

Frontex (see Annex III) plays an important role in identifying migration routes into the EU, notably:[24]

> ➢ Western Mediterranean route
> ➢ Central Mediterranean Route
> ➢ Eastern Mediterranean Route
> ➢ Eastern Land Borders Route
> ➢ Western Balkans Route
> ➢ Western African Route
> ➢ Circular Route from Albania to Greece

The ICMPD i-Map project presents also 'profiles' on Irregular and Mixed Migration routes into the EU.[25] In addition to and in conjunction with Frontex and ICMPD, Member States adopt a range of practical measures to identify irregular migration routes, usually in cooperation with relevant national and international agencies.

In **Austria**, the Federal Asylum Agency and the Criminal Intelligence Service Austria cooperate to identify routes of irregular migrants, and also smugglers. In 2010 and 2011, the Balkan-Route from Turkey to **Greece**, through the Former Yugoslav Republic of Macedonia (FYROM) and Serbia to **Hungary** and then to **Austria** was identified. Other major routes to and through Austria include flows from countries of origin: (a) to Turkey and **Greece** through **Italy**, and (b) through Bulgaria and Romania to **Hungary**, and then to Austria. **Austria** also notes that migration routes change constantly, and are shaped by the situation in the countries of origin, as well as the legal framework and border control measures in the countries of transit and destination, highlighting the need for on-going intelligence and cooperation. **Ireland** highlights its use of information technology, and the

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[24] See: http://www.frontex.europa.eu/intelligence/migratory-routes
[25] www.imap-migration.org

sharing of intelligence internationally, as well as its involvement in international operations to combat irregular migration and trafficking in human beings. **Hungary** describes its work in analysing risks and challenges, and monitoring the use of motorways at borders.

4.6 (Other) Intelligence-gathering and Risk Assessment

Some (Member) States advanced their detection of irregular migrants at entry by applying intelligence and risk assessment measures (**Austria**, **Belgium**, **Czech Republic**, **Germany**, **Greece**, **Lithuania**, **Luxembourg**, **Malta**, **Poland, Sweden**, **Slovenia**, **Slovak Republic, Norway**) or integrated border management systems (**Austria**, **Germany**). In **Belgium** and **Poland**, risk assessment for irregular migration includes weekly, monthly and annual reports, as well as intelligence from the network of liaison officers. In the **Slovak Republic**, the collection of intelligence information and strategic analysis of risks are undertaken by the Risk Analysis and Coordination Department of the Bureau of Border and Aliens Police. **Germany's** approach to integrated border management, a "four pillar model," consists of the pre-emptive strategy ("pre-entry"), external border controls, compensatory measures in the country, and police cooperation. **Austria's** approach to integrated border management includes cooperation between different stakeholders and organisations (including Frontex), as well as different countries. In **Lithuania**, border guards are provided a list of risk factors to inform operations at the border and within the country.

4.7 Training and other Support Activities

Member States refer specifically to the importance of training and support to staff (e.g. border authorities, customs authorities and staff working for carriers) as a practical measure to address irregular migration at pre-entry stage, and indeed, in response to the challenges of the decentralised nature of the work, often taking place in third countries, and the use of multiple agencies. Many Member States refer to regular and on-going training and support to staff for activities relating to visas and border controls (for example, **Austria**, **Belgium**, **Germany**, **Greece**, **Latvia**, **Lithuania**, **Netherlands**, **Slovak Republic, Slovenia**, **Sweden**), and in some cases, these extend to carriers (**Belgium**, see also [Section 4.3](#)), reflecting the recognition of the role of such actors in relation to preventing irregular migration at pre-entry stage. **Belgium**, **Netherlands** and **Sweden** highlight training of personnel overseas.

Slovenia, for example, has highlighted a comprehensive approach to the training of police officers, and has developed a series of specialised training courses, covering fields relevant to the prevention of irregular migration, for example: the detection of document abuse; the use of special equipment to control state borders outside border crossing points; detection of human trafficking; work of shift managers on border crossing points; helicopter surveillance; humanitarian law, human rights and police ethics; information system; conducting interviews with irregular migrants; international protection procedures; and foreign language training.

In relation to training for carriers, **Belgium** provides information and advice to carriers (air carrier, shipping companies, road transporters) on how to identify irregular migrants, plus developed a specialised website giving information on the travel documents recognised by the Belgian authorities and the conditions to enter the Schengen area and civil penalties imposed on carriers. In 2010, training to limit irregular migration was delivered to airliners in the D. R. Congo, Cameroon and the Gambia, plus in Morocco, Turkey and India. **Belgium** also provides training to detect false travel documents to border control staff and airline companies in the countries of origin by the "air police" section of the Federal Police.

The **Netherlands** has implemented a project to establish a Regional Immigration Training Academy (RITA), which aims to expand the capacity of 600 immigration and customs officers from the East-African community. In **Sweden**, the Swedish police abroad train airport personnel, migration officers and Swedish Embassy staff on various themes, including human trafficking.

4.8   Co-operation with third countries

Several Member States (**Germany**, **Italy**, **Luxembourg**, **Netherlands**, **Slovak Republic**, **Spain**) highlight the role of preventative measures by tackling the issues in countries of origin that may result in decisions to migrate irregularly, and by opening up legal channels for migration that provide for migration and mobility. **Germany,** for example, has developed bilateral agreements permitting legal entry of nationals from third countries such as Bosnia and Herzegovina, Croatia, Serbia incl. Montenegro and Kosovo, the Former Yugoslav Republic of Macedonia (FYROM), Turkey, Albania, Russian Federation. This serves to recognise the importance of the migrants' remittances to the development of countries of origin, the potential of migration movements for knowledge transfer and innovation, as well as the positive role of migrant diasporas in development. **Germany**, **Netherlands** and **Luxembourg** participate actively in mobility partnerships; **Slovak Republic** refers to assistance and development of migration management in countries of origin and in transit through international official development aid projects, and international cooperation aimed at capacity building. **Italy** has also signed bilateral agreements with Moldova, Morocco, Egypt, and Albania (and negotiated with Tunisia) aimed at promoting labour migration through exchange of information, sharing of technical tools, drafting lists of workers in the Country of origin, with training opportunities on site including the teaching of Italian language, etc.

(Member) States have set up cooperation agreements with third countries, including police co-operation agreements (**Austria**, **Greece**, **Italy**, **Slovak Republic**); bilateral co-operation agreements on organised crime, human trafficking and irregular migration (**Austria**, **Slovak Republic**, **Lithuania**), and transfer, return and acceptance of persons irregularly staying in the territory of the respective States (**Lithuania**). Specific border agreements with third countries were highlighted by **Lithuania** (with Russian Federation and Belarus) and **Poland** (Moldova), border guard co-operation agreements (**Estonia**, **Spain**, **France**). **Austria** has highlighted a specific bilateral security agreement with Albania and Bosnia-Herzegovina, with a specific focus on supporting visa liberalisation versus procedures to prevent irregular migration, migrant smuggling and human trafficking.

Austria also refers to its 'twinning project' *Implementation of the Integrated Border Management Strategy in the Republic of Serbia*, which works in partnership with the National Police of **Hungary** as a junior partner. The main aim of this EU-funded project is to support the implementation of the Integrated Border Management Strategic Action Plan to introduce and enhance border security in the region in compliance with EU standards. The **Czech Republic** has also highlighted cooperation projects for strengthening capacities, in particular, the General Directors' Immigration Services Conference (GDISC) ERIT Ukraine project, implemented also by **Hungary**, **Netherlands**, **Poland**, **Slovak Republic** and the **United Kingdom**, which has applied the 'twinning principle' of close cooperation between the migration authorities of several Member States and those of a third country to share know-how and investments in technical infrastructure to achieve a common goal. Several Member States (**Belgium**, **Greece**, **Netherlands**, **Sweden**) refer to their joint involvement in the *Transit Migration in the Mediterranean"* (MTM) Project, coordinated by ICMPD, which ended in 2009 and brought together these Member States with third countries, including Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia to create a better understanding between the participating states and focuses on irregular migration flows. **Poland** supported Kosovo in the Framework of the Project "Strengthening the rule of law – Border and Boundary Police" and in other projects involving cooperation with Armenia and Macedonia related to migration management and the prevention of irregular migration.

Member States have implemented a range of training and assistance measures to support third countries to address irregular migration in countries of origin and transit. The **Czech Republic** approach has been to combine capacity building measures in third countries with development elements, for example, by measures to stabilise groups in the population most at risk of irregular migration. Such projects have been implemented in Ukraine, Moldova, Georgia and the countries of

the South Caucasus, particularly in cooperation with IOM Prague, NGOs and other entities. In **Germany,** a standard feature of bilateral co-operation with third countries (and other EU Member States) has been training and equipment assistance to police forces, including instruction, advisory courses and study / information visits held in Germany. The **United Kingdom** has aimed to build capacity and share technical support in the area of return; its SIREDA - Supporting Implementation of Readmission Agreements – project has funded the voluntary return and reintegration of irregular migrants in Ukraine, and has aimed to deter the use of Ukraine as a transit country for irregular migration. In a recent Joint Declaration signed by **Austria, Hungary** and Serbia**,** Ministers committed themselves to develop the capacity and efficiency of Serbian migration and asylum authorities, possibly with support of the European Asylum Office (EASO) or other EU Member States. The **Slovak Republic** participates in the international project *Building Training and Analytic Capacities on Migration in Moldova and Georgia* (GOVAC) which aims to create a basis in both countries for the development and implementation of migration partnerships by enhancing the capacities of state institutions and academia in migration management and also is engaged in cooperation with the *EU Border Assistance Mission to Moldova and Ukraine* (EUBAM).

As well as training and capacity building, Member States have highlighted measures to exchange good practices. **Poland**, for example, has exchanged good practices on returns and identification with experts from Vietnam, and held meetings with the representatives of border services of Poland and Ukraine, to exchange good practice on procedures of transfer and readmission. The projects are co-financed by the European Return Fund.

Other forms of non-legislative cooperation with other (Member) States and Third countries are referred to in other sections of the report, for example, the work of immigration liaison officers (Section 4.4); co-management of practices at borders (Section 5.5); and co-operation to aid removals (Section 7.2).

5. ENTRY MEASURES

This Section outlines (Member) State actions undertaken at entry, primarily at the borders, to control irregular migrant's entry into (Member) States' territories. As identified by Frontex (see Annex II), in addition to overstay and absconding from the asylum process, migrants may also become irregular by crossing at official border crossing points using false documents or by crossing at unofficial or irregular border crossing points – so-called 'green borders'. At both official and unofficial border crossing points, smugglers or facilitators may also play a role. In response (Member) States have introduced various measures, including using technology for surveillance of the external borders (Section 5.2); measures to improve border-management and checking of passengers (Section 5.3); and measures related to the detection of false documents (Section 5.4). Many (Member) States also highlighted the effectiveness of cross-border cooperation with other Member States and with third countries (Section 5.5). Such cooperation is further described in Section 8.4 and Section 4.9.1. Frontex supports (Member) States in a variety of measures implemented at the border, which are briefly described in Section 5.6. A statistical overview of refusals at the border is provided in Section 5.1.

Box 5.1 - Linking practical measures taken at entry to the Strategic Response

Three of the strategic priority areas of the Strategic Response to EU Action on Migratory Pressures list challenges and identify goals to be addressed on entry. These are:

- ➢ Strategic priority area II: Enhanced border management at the external borders
- ➢ Strategic priority area III: Preventing illegal migration via the Greek-Turkish Border
- ➢ Strategic priority area VI: Enhancing migration management, including cooperation on return practices

The relevant challenges and goals identified are as follows:

Challenges identified in the Strategy:
- ➢ Preventing and combating illegal immigration by ensuring strong and efficient external border control (area II)
- ➢ Ensuring effective controls are in place at the Greek-Turkish Border (area III)
- ➢ Ensuring all Member States have efficient migration management systems in place in order to be prepared for fluctuating migration pressures (area VI)

Goals identified:
- ➢ Strengthening the security and control of the Schengen external borders (area II)
- ➢ Implementation of the Frontex Regulation (area II)
- ➢ Enhancing inter-agency cooperation and cooperation between Member States (area II)
- ➢ Making greater use of Advanced Passenger Information (area II)
- ➢ Increasing the capacity of Greece by introducing sustainable measures for reducing irregular migration (area III)
- ➢ Putting in place a sustainable and credible EU policy approach to the management of migration and ensuring contingency measures are in place for unexpected flows of migration (area VI)
- ➢ Developing early warning systems based on data received from Member States (area VI).

5.1 Refusals of entry at the borders: a statistical overview

This subsection provides an overview of refusals of entry at the external borders of the EU 2008-2011. Overall the number of refusals decreased, although in some Member States notable increases from 2010 to 2011 have occurred. More detailed statistics are presented in Annex VII

Frontex, in its Risk Analysis Reports, also provides information on detected irregular crossings.

According to the 2012 Report,[26] in 2011, there were notable increases in irregular border crossings in the Mediterranean (following the Arab Spring), but there was a decrease in detections of Albanians irregularly crossing the border. In total the number of irregular border crossings increased from 104 000 in 2010 to 141 000 in 2011 (+35%), 46% of irregular border crossings were detected in the Southern Mediterranean (i.e. **Italy**, **Spain**) and 40% were detected in the Eastern Mediterranean (i.e. **Greece**) borders. Detections of nationals of Pakistan crossing irregularly increased from less than 4 000 in 2010 to 15 300 in 2011 mostly via the Eastern Mediterranean route. In 2011, the largest number of irregular migration crossings (57 024) were detected on the Eastern Mediterranean route – i.e. entering the EU via **Greece**, although detected irregular crossing increased also on the Western and Central Mediterranean routes. [27]

Eurostat figures for the number of refusals per (Member) State in 2011 are illustrated in Figure 5.1; the figures for 2010 are provided in Annex VII (Figure VII.1). As shown, the Member States with the largest number of refusals are (as in 2010) **Spain**, **Poland**, **United Kingdom** and **Hungary**. The number of refusals at the border in **Greece** grew significantly from 3 805 in 2010 to 11 160 in 2011 and in **Italy** from 4 215 in 2010 to 8 635 in 2011. The number of refusals in **France** 2010 to 2011also grew from almost 10 000 to just over 11 000 and in **Hungary** from around 10 500 to around 11 800. **Belgium** also saw an increase of almost 900 refusals from 1 855 to 2 730 and in **Latvia** the number of refusals grew from just over 800 in 2010 to just over 1 200 in 2011. In **Spain** there was a lower number of refusals at the border (228 000) in 2011 as compared with 2010 (290 000), although the numbers remain much higher than those of other Member States. This is largely due to the migratory pressures at the external borders of Ceuta and Melilla which are located on the African continent bordering Morocco. The decrease in numbers 2010 to 2011 is likely due to ongoing actions to reduce irregular entry at these borders.

Figure 5.1: **Third-country nationals refused entry at the external borders, by (Member) States, 2011**
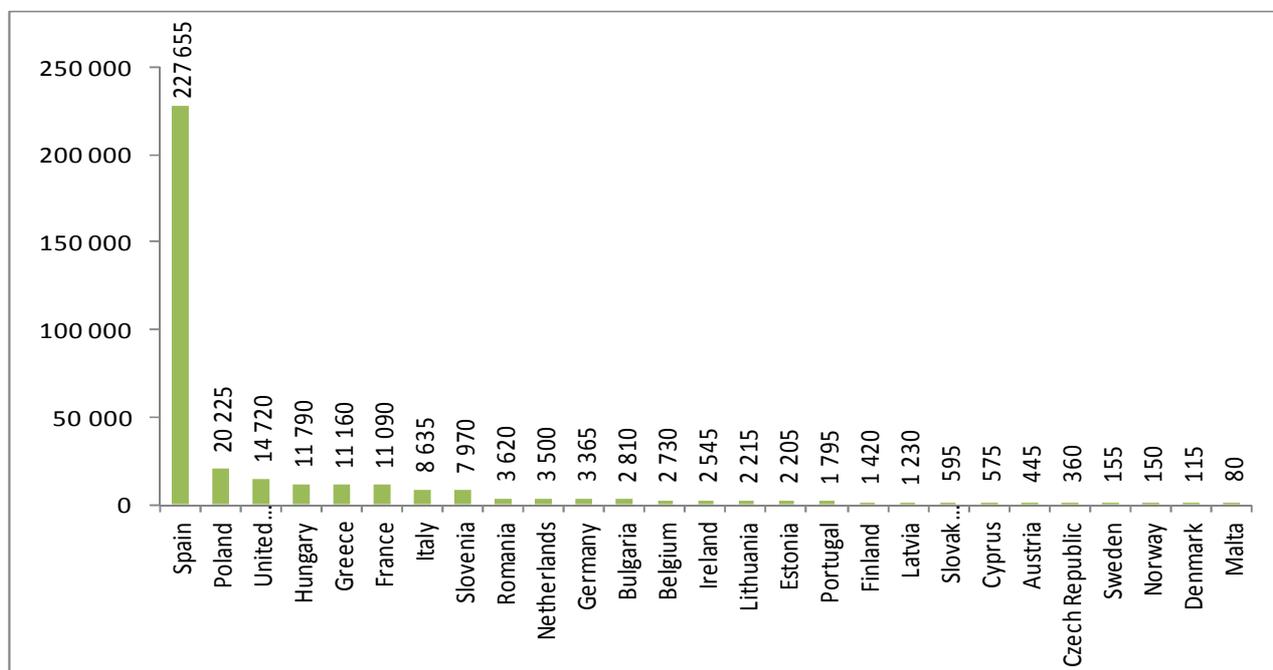
Source: Eurostat
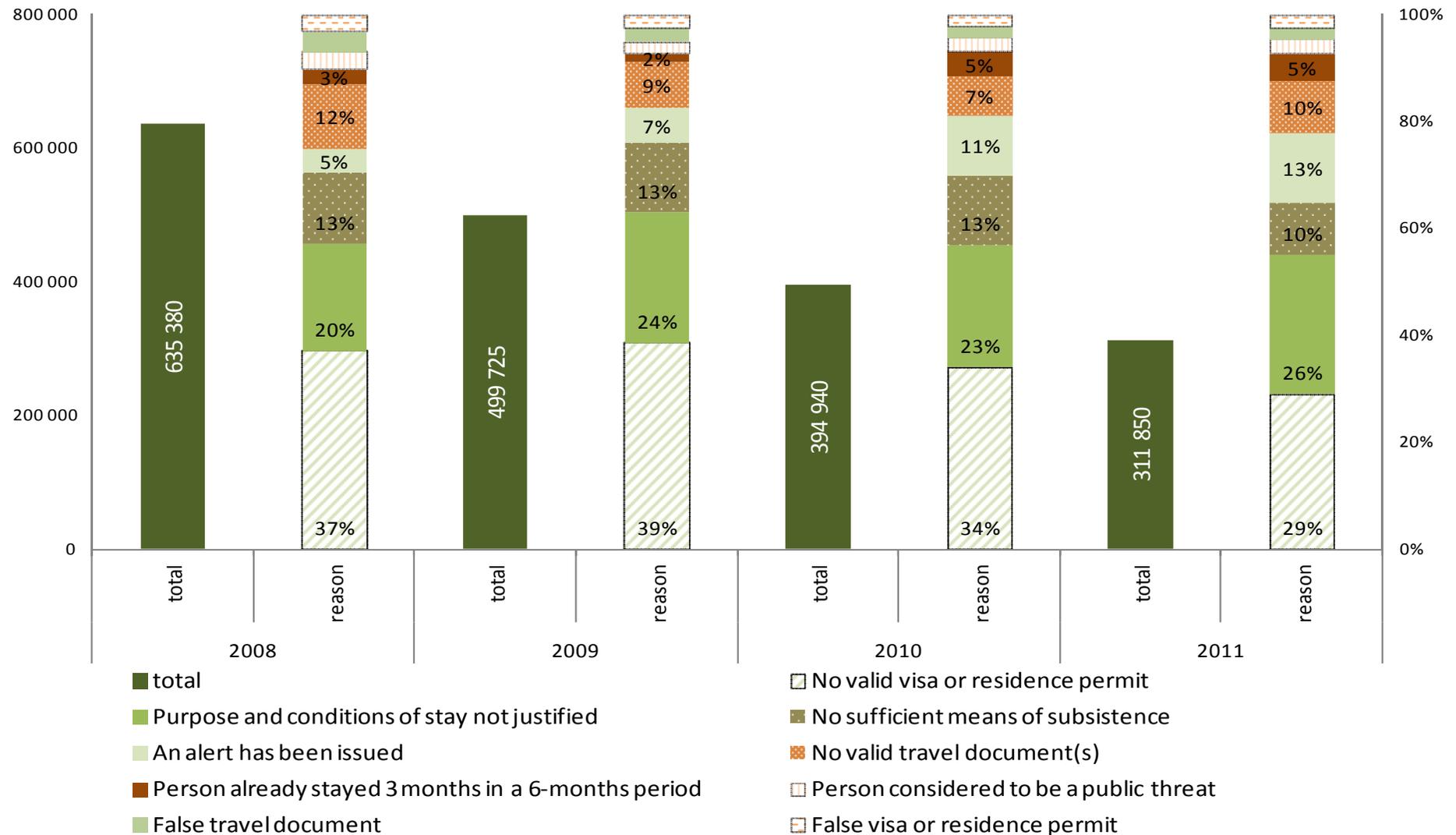**Note** : no data for Luxembourg

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[26] Available at: http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2012.pdf
[27] See: http://www.frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2012.pdf

Overall, however, the number of refusals at the border steadily decreased 2008 to 2011 (by 21% per year and 51% overall between 2008 and 2011). This is illustrated in Figure 5.2. The Figure also illustrates the main reasons for refusals which was, for each of the years 2008 to 2010, 'no valid visa or residence permit', followed by 'purpose and stay conditions not justified', then 'insufficient means of subsistence'. From 2008, following the implementation of the Schengen Information System (SIS), it became possible to register 'an alert has been issued' as a reason for refusing entry (of persons who have been entered into the SIS for non-entry due to being a threat to public policy, public security or national security, or because they have already been subject to a removal order in the EU). Since then this reason has increased in frequency as a reason for refusal. Finally, 'no valid travel document' is also a common reason for refusal. Whilst all persons refused entry at the border can be considered irregular entrants to the extent that they do not fulfil the conditions of entry, they may not all have specifically set out to enter irregularly – for example, where the entrant has 'insufficient means of subsistence' or inadequate documentation, this may also signal that the entrant was unaware of this condition of entry and did not aim to enter irregularly.

Table VII.1 in Annex VII shows the main nationalities of those refused entry at the border. The number of Moroccans refused entry is notably high (although these numbers decrease from 2008 to 2011), and this is very likely due to the migratory pressures at Ceuta and Melilla in **Spain**. In **Greece**, irregular entrants from Asia and Africa have been increasing in recent years, entering through the Greek-Bulgarian or the Greek-Turkish border. In 2010 there was a shift in the pattern of entry: the number of entrants at the Greek-Turkish sea border notably decreased from 2009 to 2010, while the number of entrants at the Greek-Turkish land border increased. This decrease is related, among other things, to the effective joint operations that Frontex, together with the Greek authorities, implemented in the Aegean Sea, shifting irregular migration flows from sea to land borders between Greece and Turkey. However refusals of Albanian citizens at the Greek borders increased (from 1 015 in 2010 to 9 000 in 2011). This has happened in parallel to an increase in the number of apprehensions of persons found to be irregularly present (see Section 6.2.1).

Figure 5.2: **Third-country nationals refused entry at the external borders, all (Member) States, total and by reason, 2008-2011**

Source: Eurostat.
Notes: No data for **Luxembourg** in 2010. Percentages for reasons calculated on the basis of refusals for which a reason is given, i.e. 22 % of total refusals in 2008, 25 % in 2009 and 29 % in 2010. **Spain** does not record reasons for refusals in about 97 % of cases.

Austria, **Estonia** and **Germany** all cite expansion of the European Union as a reason for the decrease in refusals at the border. In **Austria**, in 2005 and 2006 the two main nationalities of refused persons were Romanian and Bulgarian, hence EU enlargement meant these persons were no longer refused entry and overall numbers declined. The accession of Switzerland to the Schengen Area also had an impact on the previously large proportion of persons refused entry who were Swiss nationals. **Germany** also cites that accession of neighbouring countries (**Poland** and the **Czech Republic**) to the Schengen area increased controls of cross-border traffic and intensified border surveillance carried out there, thus reducing irregular entry. Highly specific events unrelated to irregular entry also account for rises and falls in data. For example, the increase in refusals at the sea border in **Estonia** by 350% between 2009 and 2010 was due to a lack of information on the part of Russian seamen of an administrative change which required them to carry a passport and visa which had not previously been the case. **Germany** also highlights administrative factors - namely that totally different offences were recorded in the statistics, e.g. regarding customs offences, prior to 2008 – and external factors such as the falling number of asylum-seekers entering the Member State. In **Spain** the number of irregular migrants arriving by sea (especially at the Canary Islands) has decreased significantly since 2006 when over 39 000 irregular migrants arrived, 31 678 of which arrived in the Canary Islands; in 2010 only 3 632 irregular migrants arrived in Spain via sea, only 196 of which arrived in the Canary Islands. This illustrates the effectiveness of national measures to target irregular entry via the sea borders.[28] **Greece** also attributes the comparatively small numbers of refusals at entry in recent years to improved training of passport control agencies and the work of consular authorities in effectively vetting visa applications and refusing them. The **Slovak Republic** also cites the effectiveness of policies as a reason for the decline: the number of Ukrainians refused entry at the border has declined since the policy of permitting cross-border traffic and the simplification of visa procedures for Ukrainian nationals were implemented.

5.2   Border surveillance through use of technology

Several Member States have recently made use of new technologies to improve border controls and surveillance (**Austria**, **Czech Republic**, **Estonia**, **Italy,** **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **Slovenia**, **Slovak Republic**, **United Kingdom**) – particularly across so-called "green borders" where there are no official border crossing points. Such technologies include thermal imaging equipment (**Austria**, **Germany**) and other kinds of human presence detectors (**Germany**, **Belgium**, **Ireland**, **Latvia**, **Slovak Republic**). In **Malta**, to counter the threat of irregular migration in 2011 that followed the 'Arab Spring', its Armed Forces more than doubled its offshore maritime patrolling activities. As part of this monitoring initiative, over 1 500 persons (amongst them irregular migrants) who had been trying to get to the EU through dangerous routes were rescued in 2011. The **Slovak Republic** introduced an innovative dual detection system at the northern mountainous and forested border with Ukraine, which is designed to detect humans even in inaccessible terrains, such as swamps and water flows. As the project is a pilot and costly, it is currently only implemented along 2.3km of the border. A new system of human presence detectors has also been implemented at railway and road border crossing points at the southern border with Ukraine. These detectors are able to spot the presence of a person hidden in a truck or in a wagon with 100% efficiency. According to the Slovak *Bureau of the Border and Aliens Police of the Police Force Presidium,* these combined measures have resulted in lower irregular migration pressures on the Slovak-Ukrainian external border, as well as a decline in other 'illegal cross-border activities' (e.g. smuggling of goods). In **Lithuania,** violations have also decreased along the external border sections where border monitoring systems have been installed. For example, at the

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[28] For more information on the scale of irregular migration to the Mediterranean, see EMN Ad-Hoc Query 210 on Illegal migration in the Mediterranean Sea Basin which was originally launched on March 2010 and updated October 2011.

Lithuanian-Russian border, violations more than halved between 2010 and 2011 from 175 to 78. The European external border surveillance system (EUROSUR)[29] was highlighted by some Member States (**Austria**, **Hungary**) as a future measure that will improve surveillance.

5.3   Measures to improve border-management and checking of passengers

The use of technology to facilitate the checking of passengers on entry is also highlighted as an effective practical measure by (Member) States. Technologies include X-ray and fingerprints scanners (**Belgium**, **Estonia**), e-passport scanners and user interfaces (**Austria**), automated e-gates (**Austria**, **Germany**, **Finland**), biometric visas (**Belgium**, **Germany**). **Estonia** has highlighted a wide range of devices, including microscopes, lenses for decoding invisible security elements (IPIs) of photos, devices for checking documents, authenticity control devices and document readers. **Germany** notes that the advantage of automated identity checks (e.g. those which allow the entry of passengers through recognition of biometric information, such as face gait and irises) is that human errors caused by potentially tired or distracted border guard staff can be avoided. They may also be cost-effective, as fewer staff are required.

Czech Republic, **Greece**, **Ireland**, **Netherlands** and **Spain** consider the provision and analysis of Advanced Passenger Information (API - see also [Section 4.3](#)) an effective tool in preventing the entry of irregular migrants. These are lists of passengers, which are requested from air carriers (and in some countries – e.g. **Spain** from sea carriers also) in advance of the arrival of the vessel. In the **Czech Republic**, as in other (Member) States, API is only requested from specific routes or flights coming from specific countries from which there may be greater irregular migration flows. This allows border guard staff to assess the passenger list and compare it to databases, such as the Schengen Information System and to identify any passengers which may be considered potentially irregular entrants and requiring more thorough or detailed checks on entry.

Member States (e.g. **Austria**, **Slovak Republic**) also highlight the implementation of the Schengen Information System (SIS), and Visa Information System (VIS) as important practical measures.

5.4   Measures to detect and prevent use of false documents for entry

Several Member States give specific examples concerning effective measures undertaken in relation to document checking at entry. **Ireland** check documents in the Interpol database and uses FADO (*European image-archiving system*). The **Slovak Republic** also checks documents at the border through a Central Screening Console which is interconnected to a FADO documents register amongst other systems. **Italy** has highlighted a range of practical measures used together to prevent the sale and forgery of documents. This has included creating a crime of the production of false or bogus documents to enter (Consolidated Act on Immigration (Legislative Decree 286/1998) set forth by Law 189/2002); a new procedure for issuing "biometric passports" (as required by EU Regulation 2252/2004); signing up to the Prüm Treaty; actions to prevent the falsifications of visas and 'visa trafficking', including more overseas consulates; and specific operations to uncover falsified documents.

With regard to lessons learnt, **Italy** highlights the importance of providing for the introduction of new offences, relating to increasingly sophisticated counterfeiting techniques, and also a recommendation to invest in technology. As a practical measure to address document misuse, the **United Kingdom** has also highlighted the good practice of its National Document Fraud Unit, which provides specialist officers and training to border staff to detect migrants arriving with

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[29] Communication examining the creation of a European Border Surveillance System (EUROSUR), COM(2008) 68 final of 13 February 2008. See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0068:FIN:EN:PDF.

documentation that does not allow them to enter legally. In **Malta** information on fraudulent documents found and the countries of origin of migrants attempting to use them at border crossing points is gathered at Police Headquarters and distributed to all border control officers. This information is also shared by Risk Analysis Officers at meetings of the Frontex Risk Analysis Network (FRAN).

5.5   Cross-border cooperation

Other practical measures at entry include different forms of cooperation activities (see also Section 4.9). Many Member States (**Austria**, **Belgium**, **Czech Republic**, **Estonia**, **France**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Poland**, **Slovak Republic**, **United Kingdom**) undertake activities aimed at combating irregular migration at borders together with the neighbouring countries. These activities may take the form of developing police cooperation centres, (**Austria**), joint patrols (**Austria**, **Czech Republic**), joint operations and campaigns (**Hungary**, **Latvia**), joint investigations at border crossings (**Estonia**), as well as exchange of statistics, information, experience and training, implementation of joint ventures and networks of liaison officers (**Poland**). In **Poland**, the Border Plenipotentiary System has been identified as a tool for border cooperation with the Russian Federation, Belarus and Ukraine. A Protocol on direct mutual cooperation was concluded between the respective operative border units of the **Slovak Republic** and Ukraine, involving the exchange of opinions and preparation of concrete strategic solutions for countering irregular migration. **Ireland** and the **United Kingdom** automatically share data on migrants crossing their shared border. Any adverse migration histories are therefore alerted to the Immigration Officers in each respective Member State. Finally, in **Finland** the identification and detection of irregular migration at entry is provided via cooperation between the Police, Customs and the Border Guard which carry out criminal intelligence activities.

5.6   Cooperation with Frontex

As described further in Annex III, the main purpose of Frontex is to support Member States in their commitment to provide a high and uniform level of control at the external borders of the Schengen area. Border control remains a national competence, but Frontex coordinates the deployment of additional experts and technical equipment to those border areas which find themselves under significant pressure and builds the capacity of Member States in various areas related to border control, including training and sharing of best practices.

Several Member States (**Austria**, **Greece**, **Germany**, **France**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **Netherlands**, **Poland**, **Spain**, **Slovak Republic**, **Sweden**) mention cooperation with Frontex as one of the measures undertaken to reduce irregular migration at entry. Such cooperation has included involvement in Frontex joint operations on air, land and sea borders (**Austria**, **Czech Republic**, **Germany**, **Estonia**, **France**, **Greece**, **Hungary**, **Ireland**, **Lithuania**, **Malta**, **Netherlands**, **Poland**, **Slovak Republic**, **Spain**, **United Kingdom**, **Norway**); participation in Frontex seminars and training sessions, including working groups for documentation experts (**Lithuania**, **Luxembourg**, **Malta**, **Netherlands**, **Poland**, **Norway**); and information exchange through the Frontex Risk Analysis Network (FRAN) (**Belgium**, **Czech Republic**, **Estonia**, **Germany**, **Lithuania**, **Luxembourg**, **Malta**, **Sweden**, **Slovak Republic**, **Norway**) through which mutual exchange of information takes place between Frontex and the (Member) States.

In 2010 operational headquarters of Frontex were established at Piraeus in **Greece** with the aim of (i) maintaining the operational nature of Frontex in areas facing serious and permanent migration pressures; (ii) improving the efficiency and effectiveness of ongoing joint European operations; (iii) making optimal use of operational resources of the Member States, through better awareness of the situation at the external borders of the Union.

6. MEASURES TAKEN DURING STAY IN THE (MEMBER) STATE

This Section describes practical measures undertaken by (Member) States within their borders. These include a variety of measures including those aimed at identifying migrants who may be staying or have entered irregularly (Section 6.2); those who may be in irregular employment, including those who become irregular through breaching the conditions of work (Section 6.3); persons who have entered the country through fraudulent means, e.g. marriages of convenience (Section 6.4); as well as other measures (Section 6.5). This Section also provides estimates of irregular migrants in some Member States (Section 6.1); plus statistics on apprehensions of irregular migrants (Section 6.2.1); and irregular migrants found to be irregularly employed in Member States (Section 6.3.1).

Box 6.1 - **Linking practical measures taken at entry to the Strategic Response**

Two of the strategic priority areas of the Strategic Response to EU Action on Migratory Pressures list challenges and identify goals to be addressed during stay. These are:

➢ Strategic priority area IV: Better tackling of abuse of legal migration channels
➢ Strategic priority area V: Safeguarding and protecting free movement by prevention of abuse by third country nationals

The relevant challenges and goals identified are as follows:

Challenges identified in the Strategy:
➢ Preventing unfounded asylum applications (area IV)
➢ Combating and preventing irregular migration caused by visa liberalisation (area IV)
➢ Improve understanding of the abuse of free movement rights by third-country nationals (area V)

Goals identified:
➢ Decreasing the number of unfounded asylum claims (from visa-free countries) (area IV)
➢ Decreasing the level of the irregular workforce (area IV)
➢ Gathering and analysing information on fraud and abuse at EU level (area V)
➢ Improving dissemination of information, intelligence and best practice between Member States and investigate abuse of free movement and rights (area V)
➢ Ensuring that travel documents used within the EU, including their issuance and validation, meet minimum security standards with a particular focus on ID and residence cards (area V)

6.1 Estimates of stock of irregular migrants

In recent years, a number of studies[30] have focused on calculating (estimating) the total number of irregular migrants in the EU. These studies have tended to demonstrate that, following a peak in 2008, overall numbers are decreasing although localised 'surges' of irregular migration flows - such as those which followed the 'Arab Spring' in 2011 (see Annex III) - have continued.

Austria, **Finland**, **Germany**, **Greece, Ireland**, **Italy**, **Netherlands**, **Slovak Republic**, **Spain**, **Sweden**, **United Kingdom** and **Norway** could provide estimates (Table 6.1) of the total number of

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[30] For example, Morehouse, C and M. Bloomfield (2011), Triandafyllidou (2010) and Jandl (2006). For full references of these studies see bibliography in Annex VIII. See also See Morehouse and Blomfield (2011) 'Irregular Migration in Europe' for the Migration Policy Institution, available at: http://www.migrationpolicy.org/pubs/TCMirregularmigration.pdf plus Clandestino, Prominstat projects, the Annual ICMPD Reports.

irregular migrants present between 2000 and 2011. Four of these (**Austria, Finland, Ireland, Slovak Republic**) use the statistics which was established by the Clandestino project; although **Finland** also provides estimates provided by the Finnish authorities. Both **Germany** and **Spain** have updated the Clandestino data applying, the same methodology. Studies in **Italy**, the **Netherlands** and **Norway** suggest that the number of irregular migrants is in decline; while a study in **Greece** suggests that numbers there have grown from 2007 to 2010. The details of these studies are further discussed in the National Reports.

Table 6.1: **Estimates of stock of irregular migrants in (Member) States**

(Member) State	Year of estimate	Source of estimate	Estimate (range, where given)	Estimate (single / central figure, where given)
Austria	2008	Clandestino	25 174 - 73 838	49 506
Finland	2011	National Bureau of Investigation estimates		4 000
Germany	2008	EMN National Report (based on Clandestino method)	190 000- 420 000	
	2009		140 000 - 340 000	
Greece	2008	EMN National Report		249 108
	2010			443 800
Ireland	2008	Clandestino	30 000 - 62 000	
Italy	2009	Initiatives and Studies on Multi-ethnicity (ISMU) Foundation		560 000
	2010			544 000
	2011			< 500 000
Netherlands	2009	Research and Documentation Centre (WODC)	60 667 – 133 624	97 145
Slovak Republic	2008	Clandestino	15 000 - 20 000	
Spain	2011	EMN National Report		93 000
Sweden	2010	Swedish Migration Board		8 000
	2011	Swedish Police		16 000
United Kingdom	Late 2007		417 000 to 863 000	618 000
Norway	2006	Statistics Norway	10 000 - 32 000	18 000

Source: EMN National Reports

6.2 Identification of irregular migrants on the territory

The most common way in which a migrant becomes irregular is through breaching the conditions of stay in the (Member) State. For this reason, Member States place emphasis on identifying irregular migrants, either by 'seeking out' irregular migrants through targeted checks and inspections or by imposing administrative obligations, such as reporting duties, on those working in the public and, in some cases, the private sector.

Austria, **Belgium**, **Czech Republic**, **Estonia**, **Greece**, **Netherlands**, **Slovak Republic**, **Spain and Norway** carry out inspections of accommodation, e.g. hotels, but also private residences; **Austria**, **Belgium**, **Germany**, **Slovak Republic** carry out checks on the streets; and **Austria**, **Belgium**, **Czech Republic**, **Estonia**, **Germany**, **Hungary**, **Lithuania**, **Netherlands, Slovak Republic, Norway** undertake them in public places, such as airports, roads or railways.

In **Hungary** the basic method to identify irregular migrants is through unexpected checks in different places and at various times, particularly on major traffic routes, junctions, or other public places. When carrying out such checks in **Germany**, the police are obliged, in case of identity checks, to also verify the person's residence status. In the **Slovak Republic**, upon carrying out such residence controls, the police are entitled to enter places designed for business, employment or study, as well as the premises of hotels, and to request identity documents, as well as to further question any persons present. Checks on residence control can be random – e.g. carried out by

mobile police units at different checkpoints; carried out more frequently – e.g. regular preventative/security controls according to type plans at selected check-points with where a greater number of third-country nationals is expected to be present, such as motorway rest areas, bus and railway stations, accommodation facilities and market places; or be 'hidden' carried out by search groups as part of regular traffic operations on motorways and roads of international importance. The **Netherlands** has developed a system for carrying out targeted checks on vehicles on the main roads leading to and from **Belgium** and **Germany** on the basis of traffic monitoring and the profiling of vehicles. **Spain** increased police controls in places known for prostitution, as well as at job centres. Similarly, **Norway** has been targeting the illicit drug market in Oslo, and evidence shows both that some apprehended drug dealers will present an asylum application, and that some failed asylum applicants becoming irregular have turned to drug dealing.

Estonia, **Germany** and **Italy** impose so-called mandatory reporting duties for public bodies to inform immigration authorities of irregular migrants using their services. Healthcare providers are, however, exempted from such duties. In **Estonia**, the Aliens Act establishes for the third-country national, employer, educational institution, sponsor as well as the person providing housing for the third-country national, the obligation to notify the Police and Border Guard Board of the circumstances that may cause expiry of the legal basis for the person's stay in the country, or of his or her irregular status.

6.2.1 Apprehensions of third-country nationals found to be irregularly present

Figure 6.1 shows the number of apprehensions per Member State in 2011. The five Member States with the highest numbers of third-country nationals found to be irregularly present (in order) are **Greece**, **Spain**, **France**, **United Kingdom** and **Germany** followed by **Italy**, **Sweden**, **Austria**, **Belgium** and **Portugal**. While the number of apprehensions may be indicative of effective detection and law enforcement methods, they can also be indicative of high(er) numbers of irregular migrants in the Member State.

**Figure 6.1:** **Third-country nationals found to be irregularly present, by (Member) State, 2011**
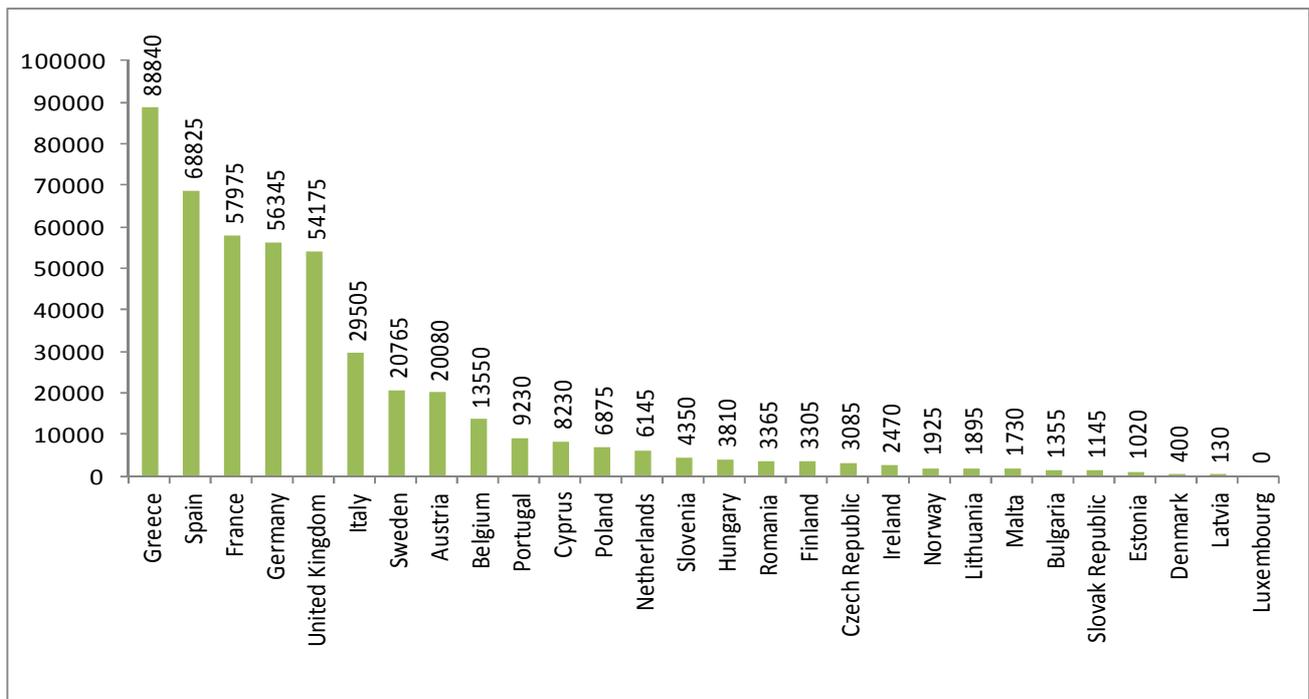
Source: Eurostat

Overall there has been a decrease in the number of apprehensions 2008-2011. This is demonstrated

in Figure 6.2, which presents the trends 2008-2011[31] of the ten main Member States that had the highest number of apprehensions in 2011.

Figure 6.2: **Third-country nationals found to be irregularly present, ten main (Member) States, in 1 000s, 2008-2011**
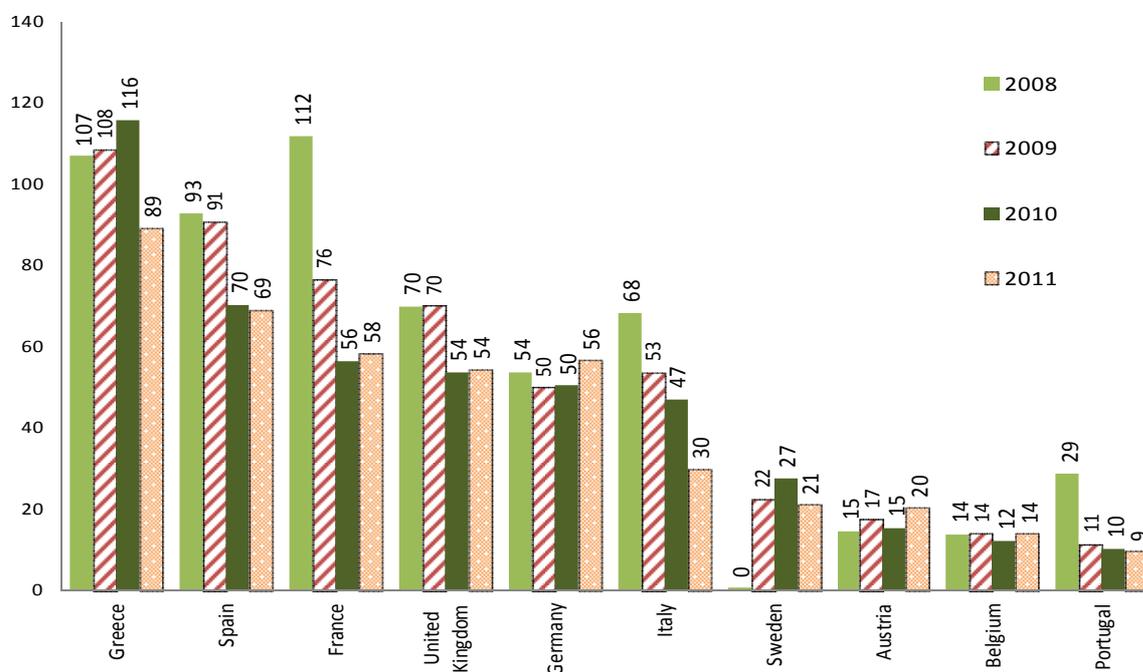
Source: Eurostat
Note: Figure for Sweden in 2008 is below 1000 (440) and is therefore represented as a 0 in the graph above

In **Italy, Portugal, Spain** and **Greece** the number of apprehensions has decreased overall; indeed the decrease was quite dramatic in **Greece** and **Italy** between 2010 and 2011 when the number of apprehensions decreased by around 27 000 (23%) from 2010 2011 in **Greece** and by around 17 000 (36%) from 2010 to 2011 in **Italy**. In **Spain** between 2009 and 2010 the number of apprehensions decreased by around 21 000 (23%) from 2009 to 2011. In **Portugal,** the number of apprehensions declined to around a third of the 2008 total in 2009, 2010 and 2011.

Similarly, there was a notable decrease in apprehensions in **France** from 112 000 in 2008 to 56 000 in 2010 and in the **United Kingdom** from 70 000 to 54 000, although the number of third-country nationals found to be irregularly present in both these Member States rose slightly again in 2011. To a lesser extent there has also been some decline in the number of apprehensions in **Sweden.**

In **Austria** the numbers have waivered around 17 000 and around 50 000 in **Germany**, although there was an increase in apprehensions in both of these Member States in 2011. **Greece** suggests that the increase in apprehensions is indicative that legislative and practical measures taken have not yet yielded the expected results. **Lithuania** and the **Netherlands** report that since 2008 the number of apprehensions has been more or less stable

Possible causes for the decrease in apprehensions are described in Annex VII. Reasons cited include indirect causes (e.g. measures aimed at reducing irregular migration) such as EU enlargement

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[31] Statistics extracted on 16.04.12 and 28.06.2012. Eurostat statistics are available for 2011 for all Member States and **Norway**, except for **Luxembourg**.

(**Austria**, **Belgium**); changes to national legislation and provisions on residence permits (**Estonia**); and trends in asylum applications (**Finland**). Conversely, **Latvia, Poland, Slovak Republic** and **Spain** cite the effectives/improvement of operations as causative factors.

Information on the main twenty nationalities of those apprehended is presented in Annex VII. The most common countries of origin of third-country nationals found to be irregularly present in the EU overall are Albania, Afghanistan, Morocco, Iraq and Pakistan. From 2008 to 2010, the number of Albanians apprehended was much higher than that of any other nationality, but in 2011 the number rapidly declined, largely due to a decrease in refusals at the border in **Greece**. By contrast, in 2011 the number of Pakistanis apprehended was much higher than in the three previous years - again this appears to be related to the number of apprehensions in particular (Member) States. The number of Tunisians apprehended also increased from 2010 to 2011.

Apprehended irregular migrants are predominantly men aged 18-34 years. Whilst the number of females found to be irregularly present has slightly increased from 2008 to 2010, this does not appear to be statistically significant. Further information on the characteristics of those apprehended is provided in Annex VII.

6.3   Measures to prevent employment of irregular migrants

All (Member) States implement measures to prevent the employment of irregular migrants. Often these are implemented as part of general measures to prevent irregular work (including the evasion of tax and exploitative conditions). They also often necessarily entail cooperation of immigration authorities with labour inspectorates, ministries of labour or equivalent and trade unions (see Section 3.1) and include the – often targeted - investigation of workplaces (Section 6.3.1); sanctioning of employers (Section 6.3.2) and information campaigns and other measures (Section 6.3.3). The impact of the Employer Sanctions Directive is also addressed (Section 6.3.2).

6.3.1 Workplace inspections

Work place inspections as a measure to prevent irregular work are undertaken in **Austria**, **Belgium**, **Estonia**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Netherlands**, **Poland**, **Slovak Republic**, **Spain**, **Sweden**, **United Kingdom** and **Norway**. In **Sweden**, the Police are not entitled to make random checks and they may only carry out an inspection when they have received information that provides sufficient grounds to carry out a workplace investigation. In the **Slovak Republic**, the police, the Office of Labour, Social Affairs and Family and the Labour Inspectorate carry out inspection activities in cooperation with district, trade licensing and tax offices and with the Slovak Trade Inspection, initiated by competent authorities at the local level. Any third-country national adult found in exploitative working conditions, or any irregularly employed minor, may be granted tolerated stay. In the **Netherlands** inspections are targeted at particular sectors which have been identified as 'risky' on the basis of intelligence and analysis. An increase in the proportion of violations detected through inspections from 16% of all inspections in 2008 to 18% of all inspections in 2010 may reflect the fact that the inspections performed have been increasingly more targeted on the basis of risk analysis.[32] Table 6.2 presents statistics on third-country nationals detected as irregularly employed through workplace inspections in nine Member States (**Austria**, **Belgium**, **Czech Republic**, **Estonia**, **Germany**, **Latvia**, **Poland**, **Slovak Republic**, **Slovenia**).

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[32] The number of irregular employees detected rose from 2 010 in 2008 to 2 400 in 2010; however, these figures include nationals of Bulgaria and Romania also and so are not included in Table 6.1.

Table 6.2: **Third-country nationals detected as irregularly employed (irregular migrants in employment and legal migrants working outside of conditions of residence) in Member States**

Member State	Indicator measured	Source of statistics	2005	2006	2007	2008	2009	2010
Austria	Total detected violations related to employment of third-country nationals	Control Unit for Illegal Foreign Employment (KIAB)	:	:	:	:	11 890	:
Belgium	Total detected violations related to employment of third-country nationals	Department of Information and Social Research (Service d'Information et de Recherche Sociale/ Sociale Inlichtingen- en Opsporingsdienst)	:	:	2 885	2 695	2 805	3 650
	Irregular migrants in employment (detections)		:	:	2 285	2 310	2 180	2 880
	Legally staying third-country nationals irregularly employed (detections)		:	:	600	385	625	770
Czech Republic	Total violations related to employment of non-nationals	Ministry of Labour and Social Affairs	:	:	:	2 940	3 595	2 770
	Third-country nationals requiring a work permit detected as working without one		:	:	:	2 340	3 170	1 795
	Employment of third-country nationals not reported to the State (undocumented work)		:	:	:	600	425	975
Estonia	Completed misdemeanour procedures regarding irregular employment of third-country nationals	Police and Border Guard Board	495	530	260	235	215	115

Member State	Indicator measured	Source of statistics	2005	2006	2007	2008	2009	2010
Germany	Third-country nationals charged with "illegal stay" following detection in the workplace	Vogler/Aßner 2011	:	:	:	:	:	1 175
	Non-nationals (incl. some EU citizens) requiring work permit charged for employment without work permit		:	:	:	:	:	10 010
Latvia	Total detected violations related to employment of third-country nationals	State Border Guard	30	130	100	150	25	20
Poland	Total detected violations related to employment of third-country nationals	State Border Guard, National Labour Inspectorate	2 025	1 355	1 595	1 235	1 590	1700
Slovak Republic	Total detected violations related to employment of third-country nationals	National Labour Inspectorate	:	:	:	135	485	90
Slovenia	Total detected violations related to employment of third-country nationals	National Labour Inspectorate	405	485	420	320	340	225
	Irregular migrants in employment (detections)		330	405	340	230	260	165
	Legally staying third-country nationals irregularly employed (detections)		75	80	80	90	80	60

Source: EMN National Report.
Notes: Numbers rounded up to the nearest five. ":" signals "no value"

In 2009, **Austria** identified the highest number of irregularly-working third-country nationals (11 890), as compared to 27 in **Latvia.** Comparatively high numbers of irregularly-working third-country nationals (i.e. over a thousand) were also detected in **Belgium**, **Czech Republic** and **Poland**. In **Greece** the number of detected offences related to irregular employment is low (less than 7 a year in 2009/10 and around 29 in 2007/08), but these statistics refer only to inspections related to secondary and tertiary sectors of economic activities (e.g. industry, services) and most irregular migrants are employed in other forms of economic activity difficult to identify (e.g. housekeeping, agriculture).

With regard to trends, the number of detections remained more or less constant in **Belgium** from 2007 to 2009, but peaked in 2010, whereas detections declined in **Estonia**, **Latvia**, **Slovenia** and **Slovak Republic**. It is difficult to draw conclusions about the extent of the phenomenon of irregularly employed migrants from these figures, however, since they might reflect more the intensity of inspections activities rather than the prevalence of violations.

Some Member States (**Belgium**, **Germany**, **Slovenia**) disaggregate the statistics according to legally-resident migrants violating conditions of stay/work and irregular migrants employed. In **Germany**, the problem of irregular employment of legally residing migrants is greater than that of employment of irregularly-residing migrants. In 2010, 1 173 third-country nationals detected in workplaces in 2010 were charged with "illegal stay" compared with 10 010 persons (including EU citizens from more recently acceded countries, which have been subjected to initially restricted access to employment in other Member States) charged for "working without work permits". By contrast, in **Belgium** and **Slovenia** the proportion of non-nationals with legal stay breaching the conditions of work appear to be smaller: 21% of all violations involving non-nationals in **Belgium** in 2010, and around 27% in **Slovenia** in 2010. **Czech Republic** collects statistics on both third-country nationals identified as working without a permit and those in employment who have not declared this to the State authorities.

Irregularly employed third-country nationals are often detected during workplace inspections aimed at uncovering a range of abuses, including irregular employment of nationals and other tax and regulatory offences. Thus the main aim is not always to identify irregular migrants, although it should be noted that, in comparison to the number of irregular migrants detected, the number of inspections are very high. For example, in **Austria** for every irregular migrant identified in 2009, 2.25 companies (26 787 in total) were inspected. Similarly, in **Germany** out of 510 425 persons checked at workplaces, only 1 173 were found to be irregular.

Finland is active in monitoring third-country nationals for the purposes of preventing irregular employment. In 2011 it held a national monitoring week with a focus on seasonal workers and the construction section. During the monitoring sweep, the permits of a total of 1 906 persons were inspected, of which 553 were at construction sites and 716 in traffic inspections. The inspections led to a total of 11 persons residing irregularly, as well as 18 irregular workers, 8 other third-country nationals who failed to meet the requirements for residing in the country and 2 persons with a warrant for the enforcement of deportation. **France** also carries out operations biannually to tackle irregular employment of third-country nationals. In total, 1 501 operations were carried out in 2010, 23 830 persons were checked, 586 employers of foreign nationals were implicated, 761 irregular migrants were discovered, over a quarter (26.15%) of whom were actually removed, which is an increase of 25.2% compared to 2009 (159 removals). During these operations special attention was paid to restaurants (480 operations), construction work (445 operations) and the caretaking sector (68 operations). In **Ireland**, between 1 October to 15 November 2011, labour inspectors inspected

441 employer's premises and 88 were found to be in breach of employment permits legislation. Inspections are often carried out at night as businesses open at night (predominantly in the services sector) tend to have a higher proportion of migrant workers.[33]

Most cases of irregular employment in **Slovak Republic** are in the restaurant, wholesale, retail and construction sectors. In **Belgium**, irregularly employed migrants are also mainly found in the cleaning, catering and construction sectors. In **Slovenia** the decline in numbers of irregularly employed migrants detected is due both to the effectiveness of detection measures, but also to the crisis in the construction sector. In **Estonia** the Police and Border Guard Board carry out inspections based on annual risk analysis – the majority of visits are made in the accommodation and commerce sector, as well as catering, building, service and light industry sectors.

Third-country nationals found to be irregularly employed in **Belgium** are primarily from Brazil and Morocco; and in the **Czech Republic**, **Poland** and **Slovak Republic**, Ukraine. **Poland** further specifies that short-term durations (circular migration) characterise the irregular work performed by Ukrainian nationals. In the **Slovak Republic,** high proportions of Vietnamese and Chinese and are also detected. In **Latvia**, Russian nationals are mainly detected.

6.3.2 Sanctioning of employers

Many (Member) States have now introduced provisions to sanction employers employing irregular migrants or irregularly employing legal migrants. In 2011, **Lithuania** supplemented its Criminal Code with an article stipulating criminal liability for employers who employ irregularly staying third-country nationals. **Italy** introduced the crime of 'illicit brokering and labour exploitation' into its Penal Code and brought in other provisions to punish the "gangmaster system" of irregular hiring with imprisonment of 5 to 8 years. The **United Kingdom** introduced a civil penalty regime for employers irregularly employing migrants in 2008. Under the scheme, employers found to be irregularly employing a migrant worker may be issued a Notice of Potential Liability for a Civil Penalty – which they are able to appeal – but which may be up to £10,000 (approx. €12 400) per irregular worker. Since the beginning of the civil penalty regime in February 2008 until the end of October 2011, the UK *Border Agency* has issued 6 767 civil penalties to employers and collected over £16.3 million (approx. €20.1 million) in penalty payments.

The Employer Sanctions Directive (see <u>Annex III</u>) is also likely to have an impact on the way that Member States deal with persons employing irregular migrants. Although its relatively recent introduction has meant that there has been limited time to measure its impact on Member States to date. **Ireland** and the **United Kingdom** have not opted in to the Sanctions Directive and in **Norway**, the EEA Commission in the Ministry of Foreign Affairs has judged the Directive as not EEA-relevant, and therefore will not implement it. Other Member States (**Belgium**, **Finland**, **Czech Republic**, **Lithuania**, **Sweden**) have not yet transposed its provisions into national legislation.[34] The Directive has, however, already had some impact in **Austria**, **Estonia**, **Germany**, **Italy**, **Netherlands**, **Latvia**, **Luxembourg**, **Slovak Republic** and **Spain**, where relevant provisions had already been provided for in their national legislation.

In **Austria**, the Alien's Police Act was changed to define that a contractor who knowingly tolerated irregular employment is liable for any resulting costs in case a return decision, return ban or an exclusion order is issued against the irregular migrant on account of irregular employment. Multiple legislative changes were observed in **Estonia** where the Estonian Code of Criminal Procedure was

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[33] Due to the small, targeted sample of employers no overall conclusion regarding the level of compliance can be drawn.
[34] **Greece** transposed the Directive through Law 4052/12 in April 2012.

amended to foresee criminal punishment to be imposed on an employer who knowingly tolerated employment of an irregular migrant, additional requirements were imposed on the employer, i.e. to notify the Police and Border Guard in case of any changes in the circumstances related to the employment of an alien, and to abolish its previous practice of granting a residence permit to a victim or witness who was irregularly employed. By transposing the Employers Sanctions Directive in 2011 administrative and criminal responsibility for irregular employment of migrants has been set in **Latvia**. In such cases the applicable punishment is deprivation of liberty, or community service, or a fine not exceeding two hundred times the monthly wage.

Germany's 'Social Law' already provided for imposition of penalties against employers who employ irregular migrants, with a maximum fine of up to €500 000. However, following the transposition of the Employer Sanctions Directive, an irregular migrant who has been in irregular employment may be granted a residence permit provided they are willing to testify in court. Further amendments relate to the liability of the costs for removal of an irregular migrant, creation of new types of charges in criminal law, the obligation to pay the agreed remuneration to an irregular employee and access to the labour courts. Similarly, **Spain** amended its Aliens Act to stipulate that employment of an irregular migrant shall constitute a very serious offence for which penalties can be imposed on both the main contractor as well as on the subcontractors who had knowledge of the irregular employment. The **Netherlands**, although not yet having fully implemented the Directive, is almost fully compliant, and cases of irregular employment, once detected, result in a possible sanction or fine. Provisions which still need to be implemented relate to the obligation for employers to notify relevant authorities and the sequential liability for back wages, with failure of notification resulting in a fine.

6.3.3 Other practical measure to reduce employment of irregular migrants

Other practical measures to reduce the employment of irregular migrants / prevent irregular employment of legally resident migrants include quotas on the issuing of work permits and use of information campaigns. In **Slovenia** the government can limit issuing work permits for some or for all employment and work of third-country nationals who do not obtain a residence permit (except for individuals subject to International Treaties), through quotas. Additionally, the government can also limit the number of self-employed third-country nationals and issue restrictions or prohibit employment and work of third-country nationals.

The **Czech Republic**, **Finland** and **Ireland** have carried out information campaigns to prevent irregular work. In the **Czech Republic** this was aimed specifically Mongolian and Ukrainian labour migrants. In **Finland** the authorities and labour unions jointly launched a website campaign with the main objective of informing young people of the social impacts and consequences of employment in the grey economy. The campaign in **Ireland** targeted employers. **Italy** initiated vocational training courses through the RELAR 2011 Project which trains third-country nationals, EU and Italian citizens in the construction, agriculture and tourism sectors on how to avoid irregular work. The project was found to be effective in preventing irregular migration from participating countries.

6.4   Detection and prevention of fraudulent means of staying on the Member State territory

Another way in which third-country migrants may irregularly enter and reside in the EU is through fraudulent declarations or registration (e.g. marriages of convenience and false declarations of parenthood) or through the forging of documents. **France**, **Germany**, **Latvia**, **Lithuania**, **Slovak Republic**, **Spain**, **Sweden** and **Norway** describe measures aimed at detecting fraudulent means of staying.

Concerning the prevention and detection of marriages of convenience,[35] **Belgium**, **Ireland**, **Latvia**, **Lithuania**, **Malta**, **Poland**, **Spain**, **Sweden** and **Norway** reported on actions taken to prevent marriages of convenience. In **Ireland** such marriages have become more of a challenge following the Mettock judgement of the ECJ (Case C-127/08), which concerned interpretation of Directive 2004/38/EC on free movement. Issues have been detected in relation to residence applications based on EU Treaty Rights from, for example, Pakistani and Nigerian nationals and unsuccessful asylum applicants married to EU nationals from, for example, **Latvia**, **Lithuania** and **Poland**. Practical measures have included *inter alia* specific operations, updated guidelines to registrars for marriage notification, including stricter conditions on proof of identity. **Germany** issues around 30 000 visas every year to spouses reunifying with persons legally residing in the Member State and some of its larger municipal authorities have established working groups with staff specialised in investigating potential misuse. The Munich working group processes approximately 150 to 200 suspected cases each year and around 30 of these usually suggest the involvement of organised crime, possibly related to forced marriage. In **Norway** the police may conduct home visits and in-depth interviews with persons applying for family reunification or for renewals; however, the problem is small: in 2009 the number of applications rejected on the grounds of suspected fraud reached a peak of 2% of all applications decided. In **Malta** the Public Registry cooperates with the Attorney General's Office, the Department of Citizenship and Expatriate Affairs and the Police Immigration on such matters. If the registrar has suspicions about the genuineness of a marriage, the couple may be asked to attend individual interviews. Unless these suspicions are satisfied the Registrar shall not allow the marriage to take place by refusing to issue the certificate of banns.

In relation to actions against fraudulent documents, **Belgium** implemented the "Europa Project" in which local authorities, the Federal Police and the Immigration Office cooperate to combat abuses committed by third-country nationals who use false or forged EU identity documents to register in its municipalities. The Federal Police will check the authenticity of documents if the municipal authorities suspect the use of forged documents (e.g. identity documents, marriage contract). Actions that could be undertaken in the case of unlawful acts (e.g. forgery, use of false documents, fraud) are judicial and administrative proceedings and the removal of this person will be treated with priority. In **Germany**, the Federal Police officers are assisted by stationary and mobile inspection devices as well as by automated document reading and inspection systems.

In **Lithuania** third-country nationals were found to be establishing fictitious companies to legalise their presence in the Member State, by taking advantage of the legal provision which facilitates the granting of residence permits for third-country nationals setting up companies. In response, the Lithuanian authorities introduced amendments to legislation in 2009, stipulating that when a business is established by more than one third-country national, the nominal value of the share capital must be at least 50,000 litai (approx. €14 500); whereas previously the contribution was only 10,000 litai (approx. €2 900) which could be paid by an unlimited number of co-owners. Following these amendments, the number of decisions to issue or replace residence permits to persons wishing to engage in legal activities and establish a company decreased two-fold (from 826 decisions in 2009 to 383 decisions in 2010). In spite of this decrease, however, it is not known for certain whether this was a result of the amendments, economic conditions, or other factors.

France, **Greece**, **Italy** and **Spain** implemented actions against organised crime groups. For instance, the SEBEKE Operation by **Italy** and **France** of November 2009, coordinated by Eurojust

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[35] Further information on the extent of misuse of family reunification and practical measures to prevent and detect it is provided in the recent EMN Study *Misuse of the Right to Family Reunification: Marriages of Convenience and False Declarations of Parenthood* available from: www.emneuropa.eu > 'Studies'.

and Europol and for **Italy** by the Central Operation Service of the State Police, resulted in the arrest of two groups belonging to an international organisation aiding irregular immigration in Rome and in Crotone. The investigations, started by the French police, led the arrest of different members of an organisation, whose network covered **Belgium**, **France**, **Germany**, **Greece**, **Netherlands**, **United Kingdom** and in Scandinavia. **Greece** places much emphasis on dismantling trafficking networks by conducting thorough preliminary investigation of cases involving the smuggling of migrants and also intensified checks for the legality of stay of migrants in order to identify the possible existence of detention places of criminal organisations in order to blackmail them or their families. In **Spain**, law enforcement agencies have dedicated substantial resources to the prosecution of networks that promote irregular immigration, sexual exploitation and/or the provision of false documents. In 2001, the Unit to Combat Immigration and Document Falsification Networks was created in the National Police Force, acting on complaints received, and mainly concerned with the pursuit of irregular migration, human trafficking and document falsification networks.

6.5 Other practical measures undertaken

(Member) States also highlighted the importance of information sharing and cooperation between authorities and other relevant actors in implementing practical measures (**Belgium**, **Germany**, **Lithuania**, **Latvia**, **Netherlands**, **Poland**, **Slovak Republic**, **Slovenia** and **Norway**). For example, in **Poland** cooperation with other institutions and entities is in place for disclosing cases of irregular stay of third-country nationals, including rectors of universities, headmasters of schools, directors of detention centres for foreigners, directors of institutions for minors. In **Slovenia**, at operational level, the Police cooperate with other competent authorities including in particular inspection services, administrative units, health insurance institutes, employment services and other bodies involved in proceedings related to the residence of third-country nationals. Working groups for investigating criminal offences in relation to obtaining residence have been established to detect specific forms of abuse. Also **Norway** notes that cooperation between different authorities and institutions is of paramount importance, in particular for the detection of marriages of convenience.

The **United Kingdom** in March 2010 introduced the Highly Trusted Sponsor scheme, which awards a higher rating to education providers that have demonstrated the highest levels of compliance with their duties. In return, the sponsors are allowed to offer a wider range of course level and work placement opportunities to students. Following a public consultation in 2011 the government also made changes to its *Points Based System* of issuing visas, aimed at tackling abuse of the immigration system by non-EU students.

Spain implemented specific measures to prevent irregularity resulting among legally resident persons who, because of the economic crisis, have lost their jobs. The Aliens Regulation of 2011 introduces new provisions that allow, subject to certain conditions, the renewal of the residence and work permit when the third-country national does not have an employment contract. Furthermore, if one member of a couple becomes unemployed and the other shows that he/she can support the other, the unemployed person's residence permit shall be renewed without requiring first the return to the country of origin to begin family reunification application procedures.

7. PATHWAYS OUT OF IRREGULARITY

This Section provides more information on practical measures implemented in (Member) States to provide a pathway out of irregularity. Once a migrant is identified as irregularly present in a (Member) State, there remain very few options for third-country nationals to pursue. Article 6 of the Return Directive (2008/115/EC) provides that a migrant found to be irregularly resident must return to his/her country of origin, unless there are grounds to grant him/her an autonomous residence permit or other authorisation offering a right to stay (see also Articles 2 and 5). This section looks at these possibilities, and others, which are available in (Member) States. First, the section discusses ways of obtaining legal status (Section 7.1) and then looks at alternatives to regularisation, namely the different forms of return (Section 7.2) . The Section then describes the impact of the Return Directive (Section 7.3) and some of the financial costs of return and removal (Section 7.4). Finally, it discusses situations in which it might not be possible to return a third-country national and what happens in these situations (Section 7.5). Readmission agreements are also considered an effective tool which supports the return of irregular migrants in some – though not all – (Member) States; these are discussed in Section 8.5.

Box 7.1 - Linking practical measures to provide a pathway out of irregularity to the Strategic Response

Two of the strategic priority areas of the Strategic Response to EU Action on Migratory Pressures list challenges and identify goals to be addressed to provide a pathway out of irregularity. This is:

> ➤ Strategic priority area VI: Enhancing migration management, including cooperation on return practices

The relevant challenges and goals identified are as follows:

Challenges identified in the Strategy:
> ➤ Maximising the potentials of a common EU approach in the field of return, both voluntary and forced, in compliance with the existing EU acquis.

Goals identified:
> ➤ To increase the numbers of returns of irregular migrants and to develop swift, sustainable and effective return using a common EU approach, including more effective joint return.

7.1   Obtaining legal status (regularisation)

Member States make use of procedures that may be said to represent regularisation,[36] based on case-by-case individual considerations and the type, the frequency and the conditions set for such procedures vary between Member States,[37] also because this is a national competence with no EU acquis. **Austria**, **Belgium**, **Czech Republic**, **Estonia**, **France**, **Germany**, **Latvia**, **Lithuania**, **Luxembourg**, **Netherlands**, **Poland**, **Slovak Republic**, **Slovenia**, **Spain**, **Sweden**, **United Kingdom** and **Norway** maintain case-by-case regularisations. In addition, **Austria**, **Belgium**, **France**, **Italy**, **Luxembourg**, **Netherlands** and **Spain** carried out exceptional or mass regularisations in the past.

In the European Pact on Immigration and Asylum (see Annex III), the Member States agreed to,

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[36] Regularisation is defined, in the EU context, as a state procedure by which illegally staying third-country nationals are awarded a legal status. See the EMN Glossary for this and further definitions: www.emn.europa.eu > 'EMN Glossary'

[37] See also *REGINE Regularisations in Europe. A study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the European Union*, http://research.icmpd.org/1184.html.

"*use only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons.*" Case-by-case regularisations target a precise group of irregular migrants and are subject to specific conditions, such as humanitarian grounds (**Belgium**, **Finland**, **Germany**, **Luxembourg**, **Netherlands**, **Spain**, **United Kingdom** and **Norway**), satisfying labour demand (**Italy**, **Luxembourg**, **Sweden**, **France**), length of residence period (**Lithuania**, **Luxembourg**, **United Kingdom**, **France**), family ties (**Austria**, **France**, **Spain**) or family reunification (**Lithuania**, **Norway**) or a combination of these conditions. In the **United Kingdom** irregular migrants can apply for "leave to remain" or "indefinite leave to remain" if they can demonstrate that they have continuously resided for fourteen years or longer or on the basis that their removal would contravene their rights under European Convention on Human Rights (ECHR). The **United Kingdom** is however currently reviewing the use of the *"fourteen year rule"* and it is proposed that regularisation should be available only to those applying on the basis of Art. 8 of the ECHR. In **Germany** a suspension of removal may be granted on humanitarian grounds or to uphold the political interest of Germany for a period of six months. Further suspension of removal may also be granted – this usually leads to a permit for temporary residence.

Other Member States have mechanisms in place that allow well integrated third-country nationals to obtain a legal status, which is the case in, for example, **Austria** and **Germany**. **Austria** may grant a settlement permit or "Red-White-Red Card plus" to irregular migrants who are well integrated taking into account the ability of self-preservation, education and vocational training, employment and knowledge of the German language. In **Germany** the *"Act to Combat Forced Marriages"* may grant a residence permit to young people whose removal has been suspended for many years, who attend or have successfully completed school and whose prognosis for integration is positive.

The exceptional or mass regularisations that some Member States have carried out stem from the desire to satisfy labour demand (**Italy**, **Luxembourg**), for humanitarian reasons (**Belgium**, **Luxembourg**) or to regularise the situation of those who had been living in the country for a number of years or to clear the backlog of asylum decisions (**Belgium**, **Luxembourg**), or a combination of these conditions (**Netherlands**). Although **Austria** carried out such amnesties in the past, policymakers now express reservations about such regularisation programmes and their effectiveness. They point out that such programmes might instigate future irregular migration and experience elsewhere shows that regularisations have to be repeated in order to achieve a sustainable decrease in the number of irregular migrants. By contrast, **Poland**'s third regularisation programme entered into force on 1st January 2012. The amnesty allows migrants, who have been living in Poland irregularly since at least 20th December 2007 and those who were refused asylum before 1st January 2012 but are still residing there, to regularise their stay. During the past years, various societal actors have called for a subsequent regularisation programme as they considered that it would bring about a number of economic and demographic advantages to the Polish economy and society, in addition to humanitarian considerations.

Belgium, **Luxembourg**, **Netherlands** and **Sweden** provide statistics on regularisations. In **Luxembourg** in 2009, 75 persons were regularised on a case-by-case basis; of these 33 were from Kosovo. **Sweden**, between 15 November 2005 and 31 March 2006, provided residence permits to around 17 000 third-country nationals who had previously stayed in the country on an undocumented basis. In **Belgium**, more than 80 000 people were regularised during the period 2005-2010 and in the **Netherlands** almost 30 000 people were regularised as part of an amnesty in 2007.

7.2   Return[38]

The return of irregular migrants has been a priority of EU migration policy now for over a decade[39] and *enhancing migration management including return* is listed amongst the strategic responses of the Strategic Response for EU Action on Migratory Pressures.

Austria, **Belgium**, **Lithuania**, **Luxembourg**, **Malta**, **Poland**, **Slovak Republic** and **Norway** reported on the assisted voluntary return programmes that they have in place and **Germany**, **France** and the **Netherlands** reported on reintegration support that they offer to returnees, such as free travel as well as travel and start-up subsidies. **Germany** offers this reintegration support in particular to nationals from countries that are of particular importance for their migration policy. **Poland** perceived a growing interest from third-country nationals for departure through assisted voluntary return programmes. Whereas 962 persons participated in assisted voluntary return programmes in 2008, this increased to 1 565 persons in 2009 and 1 622 in 2010.

Sweden cooperates with **Netherlands**, **Sweden**, **United Kingdom** and **Norway** on the cooperative project *"European Return Platform for Unaccompanied Minors (ERPUM)"* which is aimed at creating a platform for direct cooperation with third countries' authorities in the practical work in returning unaccompanied minors, primarily from Afghanistan and Iraq, to their parents, guardians or other forms of organised reception in the country of origin.

Although Member States consider voluntary return as the preferred option, forced returns, in some cases combined with detention pending removal, are considered by some as inevitable to deal with persons who do not wish to leave. **Austria**, **Belgium**, **Estonia**, **France**, **Germany**, **Greece**, **Italy**, **Lithuania**, **Luxembourg**, **Netherlands**, **Slovak Republic**, **Slovenia** and **Spain**, as well as Norway describe such practices in their National Reports. Frontex plays an important role in coordinating joint return flights and these are noted as important in a range of (Member) States (e.g. **Belgium**, **Estonia**, **Germany**, **Greece**, **Latvia**, **Netherlands**, **Poland**, **Norway**). In recent years **Greece** has been participating more frequently in joint operations and, for example, participated in four return flights to Nigeria and Gambia organised by **Austria**; two to Nigeria, led by **Italy**; two flights to Georgia, organised by **Spain**, and a flight to Syria organised by Cyprus.

Austria, **Belgium**, **Estonia**, **Greece**, **Lithuania**, **Netherlands**, **Slovak Republic** and **Spain** reported on the practice of detention pending removal. **Estonia** and **Greece** detain third-country nationals if removal is particularly difficult, although in **Estonia** it may include a precept to legalise, and in **Italy** such persons are placed in the "Identification and Expulsion Centres" until they may be returned. The period of detention prior to removal varies significantly between Member States. In **Spain** irregular migrants may be held in a detention centre until removal can be enforced, although this period may not exceed 60 days, in **Greece** irregular migrants may be held in temporary detention for a period no longer than six months although this period can be extended to 12 months only in case of a delayed removal, whereas in **Lithuania** the Law on the Legal Status of Aliens stipulated that third-country national may only be detained for longer than 48 hours subject to court decision. In practice persons are usually detained for 3 months at the Foreigners Registration Centre, although the detention period may be extended if the removal cannot be

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[38] 'Further information on return – and particularly on assisted voluntary return schemes is provided in the EMN Study on *EU Programmes and Strategies fostering assisted return to and reintegration in third countries*, available at: www.emn.europa.eu > 'Studies'.

[39] For example, the *Green Paper on a Community Return Policy for illegal residents, focusing on forced and assisted return of illegally resident migrants in the EU* was adopted in 2002. See: http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0175en01.pdf.

enforced. In **Estonia** a person can be placed in an expulsion centre for no longer than two months, although it can be extended by court decision to maximum 18 months if the removal cannot be completed within 48 hours from the apprehension of the person. Civil society actors and human rights defenders highly criticise the detention of third-country nationals. For example, **Belgium** reported that they have been highly criticised by civil society groups and human rights defenders in addition to two condemnations by the ECHR for their detention practices, in particular the detention of children, the use of transit zone detention centres and inadequate information to detainees about their legal rights. In accordance with EU policy, **Belgium** has created a commission for complaints intended exactly to receive complaints of people kept in detention centres.

In terms of effectiveness, in the **Netherlands** the *"Improved Asylum Procedure,"* which entered into force on 1st July 2010, included improvements to the asylum procedure that would facilitate return by starting the investigation of identity and nationality at an early stage in the application process. The improved procedure aims at a faster and more careful processing of asylum applications. It was anticipated that the number of repeated applications would decrease as a result of the changes to the procedure.

7.2.1   The impact of the Return Directive : (Directive 2008/115/EC)

Most Member States reported more profound changes with regard to the Return Directive (**Austria**, **Belgium**, **Czech Republic**, **France**, **Germany**, **Estonia**, **Greece**, **Hungary**, **Italy**, **Latvia**, **Luxembourg**, **Netherlands**, **Slovak Republic**, **Spain**) and **Norway.** Denmark, **Ireland** and the **United Kingdom** have not 'opted into' the Return Directive. Several Member States (**Austria**, **Germany**, **Estonia**, **Greece**) did not previously have a concept of "return decision" and this was only introduced by transposing the Return Directive. **France** abolished the APRF (order to escort to the border), and created the OQTF (obligation to leave French Territory) as a return decision, and, moreover, added three new grounds for third-country nationals to the return decision: no proof of having entered legally, non-compliance with the entry conditions, and where there was no request for renewal of a residence permit. Finally, the return decision must currently also specify the country to which the third-country national is removed to, in case of an automatic execution of the decision. The **Czech Republic** differentiates between a "decision on the obligation to leave the territory" and "administrative expulsion," specifying that the former does not contain any sanction in the form of an entry ban, whereas the latter is generally accompanied by an entry-ban valid for the entire EU.

In transposing the Return Directive, **Greece** and **Spain** introduced the notion of assisted voluntary return, as it previously did not exist in their respective national legislation. In **Italy** assisted voluntary return had previously only been available for asylum seekers, refugees and holders of a residence permit for humanitarian aid, and people under the Dublin Convention. However, its application was expanded to cover irregular migrants following transposition of the Return Directive. **Belgium** prolonged the voluntary departure period to allow for a better preparation for assisted voluntary return or independent return, as did **Lithuania** in their *draft* Law amending the *Law on the Legal Status of Aliens* which will transpose the Directive. In contrast, **Estonia** reduced the period for voluntary departure from its previous term of 15-60 days to 7-30 days as stipulated by the Directive.

Several Member States (**Austria**, **Belgium**, **Czech Republic**, **France**, **Estonia**, **Latvia**, **Netherlands**) further introduced an "entry ban" as a new concept in national legislation. The **Czech Republic** modified its provisions on breaches of obligations in order to bring it in line with the duration of the entry ban as stipulated by the Directive. **Latvia** reduced the maximum term of entry prohibition, in accordance with the Directive, valid for a period of 30 days to three years instead of the previous national term of three to five years. The **Netherlands** previously did not provide for an entry ban, but issued exclusion orders under its Aliens Act instead. Following introduction of an entry ban, exclusion orders will continue to exist as a national measure and will only apply to third-

country nationals who do not fall under the scope of the Return Directive, such as EU nationals. **Norway** reduced the minimum re-entry ban period to one year from two years. **Spain** raised the minimum period for entry bans from three years to five, while maintaining the maximum at 10 years.

Articles 15 to 18 of the Return Directive outline the conditions under which third-country nationals may be detained prior to removal. This is only possible if (a) there is a risk of absconding; or (b) the third-country national concerned avoids or hampers the preparation of return or the removal process. The Directive provides for Member States to set a limited period of detention, which may not exceed six months. Several Member States (**Czech Republic**, **France**, **Estonia**, **Greece**, **Luxembourg**, **Netherlands**, **Spain**) and **Norway** made changes in relation to detention provisions. **Austria**, **Czech Republic** and the **Netherlands** restructured the grounds for detention to bring them in line with the Directive. For example, the **Netherlands** introduced as an additional detention ground; the risk of going into hiding. With regard to the period of detention, Member States have wide-ranging maximum detention periods in place: **France** increased the maximum detention period from 32 to 45 days, **Spain** from 40 to 60 days; the period of detention in **Greece** and **Netherlands** can take up to 12 months depending on specific circumstances, whilst **Estonia** and **Norway** stipulate a maximum term of 18 months. The **Czech Republic**, **France**, **Latvia**, **Luxembourg** and the **Slovak Republic**, present alternative measures in addition to the possibility of detention. The **Czech Republic** also offers the possibility of depositing a financial guarantee, whilst obliging the third-country national to report on his or her whereabouts. Similarly, the **Slovak Republic** offers the possibility of regular reporting (in place of detention) as long as the third-country national proves that s/he has sufficient financial measures of subsistence and accommodation and is not considered a threat to public security, order or health. Under immigration law in **Latvia** third-country nationals can register themselves or submit their travel and other documents to the State Border Guard. **Luxembourg** allows for the possibility of 'house detention' and **France** may issue an alternative compulsory residence order of 45 days.

Austria, **Estonia** and **Greece** introduced free legal assistance for those who lack sufficient resources to guarantee effective protection of the interests of the individuals concerned. **Estonia** specifies that free legal aid is available to those who want to contest the decision on the precept to leave. For that purpose, the Ministry of Interior and the Police and Border Guard Board have been granted the authority to conclude contracts with private legal entities. The **Slovak Republic** extends legal aid provided to third-country nationals not only by lawyer's representation but also by any other representative a third-country national may choose. This duty is mostly fulfilled by representatives of non-governmental organisations, or by the *Legal Aid Centre*. The **Czech Republic** reviewed its rules on judicial review by stipulating that a court must decide on a legal action against a decision on detention within 7 working days from the delivery of the case file. In **Estonia**, a supervisory authority is appointed in order to monitor whether the authority performing expulsion follows the correct procedural requirements and when necessary provides opinions and recommendations.

With regard to practical changes and debate about irregular migration, in particular in relation to the Return Directive, it is noteworthy that **Latvia** defined, for the first time, the notion of "illegal stay," resulting in a considerable change in the day-to-day activities of the State Border Guards and the Office of Citizenship and Migration Affairs. In **Lithuania** the concept of a "vulnerable person" was introduced in order to provide them with more favourable treatment. In the **Netherlands**, there has been continuous debate on different interpretations of the provisions of certain EU Directives, including the Return Directive. Debate focuses on asylum applications at the Schengen external border, as the Netherlands has received increasingly more criticism on its practices of detaining asylum applicants at the border with a view to undertake a prompt return if the application is rejected.

7.2.2 Costs of return / removal

The costs of carrying out forced returns in **Czech Republic** were CZK 14 854 570 (around €577 200) in 2010. According to the financial statements of the Ministry of the Interior in **Finland**, the cost of removal and related transportation in 2010 was €2.5 million and there was a proposal to increase the budget to €3.5 million for 2011. In **Latvia** the costs of expulsions rose from2005 to 2010.In 2010 the costs of removal was 42 025 LVL (approx. €60 263).

In addition, the police in **Finland** incurred total costs of €2.13 million from enforcing the return of foreign nationals in 2009. Other costs related to return in Finland include the cost of detention (€2.65 million)[40] and the cost of interpreter services used during asylum investigations (€1.04 million). In the 2012 national budget, the **Netherlands** have estimated the costs of detention of irregular migrants to be around €4.2 million and the costs of returning irregular migrants to be almost €20.7 million. By comparison, it is estimated that the total costs of entry, admission and reception for legal immigration and asylum will be over €761.3 million. The cost of the Innovation Border Management Renewal Programme has been estimated at €8.39 million for 2012.[41] In **Malta**, the cost of returns in 2009 (forced and voluntary) amounted to €878 865. On average, in recent years, **Spain** has spent 22 million euro per year on the forced return flights of irregular migrants, an amount that does not include airline tickets and allowances for the officers who must escort the migrants.

7.2.3 Situations in which removal is difficult and practical responses to this

A number of Member States reported on practical responses to situations in which removal of irregular migrants is difficult. Removal is particularly difficult when there is a lack of cooperation with the country of origin (as reported by the **Czech Republic**, **Estonia**, **Germany**, **Greece**, **Italy**, **Luxembourg**, **Netherlands**, **Spain**); for example, an unwillingness of the country of origin to readmit its citizens (**Czech Republic**). Both **Estonia** and **Spain** indicated that removal is particularly difficult when there is an absence of readmission agreements or a failure to perform it by the third country. Difficulties in establishing the person's identity complicate removal (e.g. in **Belgium**, **Czech Republic**, **Finland**, **Germany**, **Italy**)[42] as do a lack of travel documents (as reported by **Czech Republic**, **Finland**, **Luxembourg**, **Sweden**) or counterfeit documents (e.g. **Finland**) which makes it difficult to identify the country of origin for return. Unwillingness from the concerned individual to cooperate in the removal process was mentioned by the **Czech Republic**, **Finland**, **Greece** and the **Netherlands**. **Finland** further specified that the number of persons resisting return through physical resistance has grown slightly in recent years. This phenomenon, combined with airlines taking a tougher stance on returnees, has resulted in an increased need for joint return flights on chartered aircraft.

Belgium, **Germany** and **Italy** noted that a lack of transport capacity or closed airports can complicate removal and the **Netherlands**, **Poland** and **Norway** indicated that removal to particular countries of origin was complicated. **Norway** mentioned that, in practice, forced return to some countries is not possible, e.g. because there is not a functioning central government to issue passports or verify the identity of the person, and thus to accept the return. Other countries only

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[40] Based on a calculation of €66 300 for each of the 40 detention rooms in the Metsälä detention centre, which is generally fully occupied.

[41] It should be noted that the programme is not aimed solely at the reduction of irregular migration, but also at the facilitation of bona fide travellers.

[42] In 2012 the EMN will undertake a second focussed Study on difficulties associated with identifying the nationality of third-country nationals.

accept voluntary applications for passports, and others will not accept "laissez-passer" documents issued only for one return. The competent authorities in **Belgium** take into account that "non-removable" does not always mean that the person in question cannot return on an independent basis; some third-country nationals make themselves "non-removable" (for instance in the case of identity concealment).

Return is also particularly complicated if it concerns the return of minors (**Greece**, **Italy**, **Poland**), unaccompanied minors (**Lithuania**, **Luxembourg**, **Netherlands**, **Sweden**), pregnant women (**Greece**, **Italy**), elderly migrants (**Greece**, **Netherlands**) or persons with diseases (**Germany**, **Netherlands**). In **Greece** the removal of minors, pregnant women and elderly migrants is prohibited by law. In the case of unaccompanied minors, **Lithuania** may grant them the right to stay if the individual cannot be returned. **Poland** also specified that minors will only be removed if they will be cared for by parents, other adults or care institutions in the country of origin.

In order to deal with these circumstances in which it proves particularly difficult to return persons to their country of origin, Member States have certain approaches in place. For example, **Belgium**, **Luxembourg Poland** and **Slovak Republic** offer the possibility for tolerated stay[43] to third-country nationals, which is similar to "leave to remain" in the **Czech Republic** or "suspension of removal" in **Germany**. In **Malta** "temporary humanitarian protection" may be granted for up to one year (with the possibility of renewal) to former applicants for international protection who did not fulfil the criteria to be granted this status, but who nonetheless could not be returned to their country of origin due to legal or factual reasons and through no fault of their own. In **Belgium** non-removable persons do not receive a residence permit although some receive a suspension of their removal. During this period of 'tolerated stay,' irregular migrants are only allowed to benefit from minimal basic rights and in principle are not entitled to social aid. In **Germany** the suspension of removal as such does not entitle residence in the country; rather the obligation to leave the country forthwith continues to apply. In **Luxembourg**, in transposing the Return Directive, 'tolerated stay' was replaced with a 'suspension of removal' measure. This measure provides for the possibility to postpone the removal decision for a determined period of time, if the third-country national can justify that he/she is not able to leave the territory for reasons beyond his/her control or if the removal will breach the principle of "*non-refoulement*." It is furthermore possible to obtain a so-called "*temporary authorisation of occupation*" in line with the duration of the suspension of removal which allows for the right to stay on the territory without being allowed to reside.

In **Poland** a foreigner can be granted a tolerated stay up to one year if, for example, there is a risk to their right to life, liberty and personal security or violation of the right to family life or violate the rights of the child. The **Netherlands** may impose a "*temporary stop on departures*" if the situation in the country of origin has changed to such an extent that it is uncertain whether it is possible to remove persons. Such a temporary stop on departures provides lawful residence to the persons concerned. The *Act Stay of Aliens,* which entered into force in the **Slovak Republic** at the start of 2012, introduced provisions for tolerated stay for a maximum of 180 days with the possibility of extension mainly where removal is difficult, if there are considerations of the fundamental right to private and family life, or if the third-country national has been a victim of trafficking in human beings or of exploitation (e.g. exploitative working conditions). A person may also obtain legal status in **Austria**, **Slovenia** and **Slovak Republic** by a permit for tolerated stay (see Section 3.4.5), whereas in **Austria** there is a view to regularisation after one year. In the **Czech Republic** a third-country national can obtain an "exception leave to remain" if an obstacle beyond the person's

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[43] In **Belgium**, tolerated irregulars' is not an official term.

control prevents departure. The leave to remain can be converted into a long-term residence permit if the obstacle still exists after one year. **Lithuania** grants temporary residence permit to persons if they cannot be expelled within a year. When the circumstances disappear and expulsion becomes possible it is implemented immediately. The Supreme Court in **Estonia** has also passed judgements on temporary stay for migrants who cannot be removed.

Concerning other measures undertaken, the authorities **Spain** have made efforts to increase the number readmission agreements. **Norway** will not forcibly return to countries without a functioning government, but will instead provide "escorted voluntary return," which provides returnees with financial support, similar to the assisted voluntary return programmes. Such returns are carried out to Gaza and Somalia.

8.   EU AND EUROPEAN COOPERATION

This Section provides further analysis on the role of EU-level legislation and mechanisms in reducing irregular migration. An overview of EU actions in this area is presented in Annex III and the impact of specific legislation, namely Employer Sanctions Directive (Section 6.3.2) and the Return Directive (Section 7.3), has been addressed previously.

Austria, **Belgium**, **Czech Republic**, **Estonia**, **Greece**, **Latvia**, **Netherlands**, **Poland**, **Slovenia**, **Slovak Republic** and the **United Kingdom** note that there has been a significant impact of EU legislation, whereas others (**Lithuania**, **Norway**) note less of an impact, or only a limited impact (**Finland**, **Ireland**, **Spain**).

Legislation in **Spain** already contained many aspects similar to the content of EU legislation and policies on irregular migration. They have also been one of the main advocates for greater intra-European collaboration, by having promoted the establishment of Frontex, endowment of a European Return Fund, conclusion of European Readmission Agreements, as well as the drafting of the Global Approach to Migration and Mobility with the resulting EU Mobility Partnerships. Likewise, **Finland**'s national laws are similar in content to corresponding EU policy and legislation on irregular migration and consequently only introduced minor changes following, for example, the introduction of the EU Return and Employer Sanctions Directives.

Ireland comments that EU law in respect of EU citizenship and free movement of EU citizens has had an indirect impact on Irish immigration law and policy. In particular, the Free Movement Directive and Articles 20 and 21 of the TFEU have required Ireland to adapt certain domestic laws and policies to facilitate rights of entry and residence in the State for non-EU national family members. **Ireland** notes that there are some concerns about misuse of the right to family reunification through application of the Free Movement Directive.[44]

The Section begins by providing a discussion of the impact that Schengen has had on irregular migration (Section 8.1). It then describes how EU Solidarity Funds are being used in Member States to implement practical measures to reduce irregular migration (Section 8.2) – specifically the European Return Fund (Section 8.2.1) and the External Borders Fund (Section 8.2.2). The Section then looks at the role of cooperation between Member States and EU or international organisations (Section 8.3), followed by forms of legislative cooperation – namely EU and bilateral readmission agreements (Section 8.4).

8.1   The impact of Schengen

One of the most important impacts that the EU has had on Member State's approach to irregular migration is the creation of the common Schengen area, which created the concepts of 'internal' and 'external' borders. Indeed, the **Czech Republic** and **Estonia** have stated that membership of the Schengen area necessitates not only increased cooperation between Member States for the protection of external borders, but also greatly influences practical measures to prevent irregular migration. **Estonia** amended its national legislation in the field of migration, improved its infrastructure, established new procedures, trained officials, and improved cooperation efforts with neighbouring countries. **Hungary** notes that, from 2010 onwards, it introduced 'aliens police'.

Estonia joined the common Schengen visa area on 21 December 2007, and this brought significant changes for the authorities involved in migration and asylum issues as well as legal acts and

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[44] See Irish National Report for more information. See also the EMN Focussed Study on 'Misuse of the Right to Family Reunification' available at www.emn.europa.eu > 'Studies'.

procedures. **Latvia** transposing law Amendments to Immigration Law came into force on 23 January 2008, changing the work of the state border guard and the procedure for refusing entry, as well as the visa system. **Slovenia** set up an inter-ministerial working group to deal specifically with migration policy in 2009, a key task being to assess how best to align with the EU acquis. **Poland** also changed the scope of tasks and level of authorisation of the border guard. **Lithuania** also restructured its state border guard units, moving over 70% of staff from land borders - which had become internal borders – to external control points, e.g. at airports.

The **Slovak Republic** underlines that accession to the EU and Schengen Area was a major driver of changes to national legislation and policy by which the Member State was obliged to adopt and implement stricter legislation relating to third-country nationals. Following EU accession and preparations to join the Schengen area, a significant reduction in the number of irregular migrants in the years 2004 to 2007 took place, as well as a significant decline of irregular crossings and smuggling via the Slovak-Ukrainian border. In **Poland**, following the elimination of internal borders, the Border Guard intensified control checks on legal stay and work of foreigners, although border controls remained their main focus of activity.

The **United Kingdom**, although not signatory to the Schengen Agreement, notes the impact of the creation of the Schengen area. For example, the lack of internal border controls across the Schengen area was one of the contributing factors that led to the introduction of juxtaposed controls in **France** and **Belgium**.

8.2   The impact of the EU Solidarity Funds (RF and EBF)

This section provides an outline of the impacts of the European Return Fund (RF) and the External Borders Fund (EBF) in (Member) States. Details on Member States' specific project titles and objectives funded by the RF and the EBF are summarised in <u>Annex VI</u>.

8.2.1 *European Return Fund (RF)*

The **Czech Republic**, **Ireland** and **Lithuania** use funding to finance the activities of the IOM, which assist irregular migrants to return to their country of origin. The **Czech Republic** additionally offers irregular migrants advice on return and reintegration processes whilst stimulating such processes by offering financial incentives. **Ireland** and **Greece** used funding to cover actual costs of (charter) return flights, with **Greece** additionally focusing on training activities. Similarly, **Poland** considers training to improve qualifications of border guards as essential elements in the return process. For this purpose, **Poland** has established a Border Guard Training Centre in Koszalin to improve the quality of competent Polish authorities involved in return activities. In the **United Kingdom** the Return Fund part finances the *Voluntary Assisted Return and Reintegration Programme* (VAARP), as well as two voluntary return programmes and a facilitated return programme for foreign national offenders (see below).

Finland, **Latvia** and the **Slovak Republic** focus on the overall quality of the return processes. For example, **Finland** used funding from the RF to finance projects to improve the effectiveness and development of police operations in enforcing return decisions, and to develop a country of origin system to disseminate information both to irregular migrants and to organisations involved in return to Iraq. **Latvia** has developed several training projects, including language training to improve communication skills of diplomatic and consular employees and has further organised several seminars with other Member States to exchange best practices with regard to voluntary return and forced expulsion. The **Slovak Republic**, in cooperation with the IOM, aims to provide for humane, organised and cost-effective return and reintegration through assisted voluntary returns. Similarly, for forced returns, the special needs of third-country nationals, especially vulnerable groups, are taken into account. Irregular migrants are, for example, well informed about the possibility of health care and translation services. **Germany** and **Estonia** mainly use the funds to finance activities which aim to improve practical cooperation with relevant authorities of source countries for

irregular migration.

Belgium, **Lithuania**, **Slovak Republic** and **United Kingdom** not only facilitate high quality return measures, but also focus on follow-up activities in the countries of return. For example, **Belgium** developed sustainable projects for families in their country of origin. **Lithuania** and the **Slovak Republic** developed reintegration programs, implemented by the IOM, for third-country nationals in their country of return to prevent re-migration. In the **United Kingdom**, the facilitated return scheme for foreign national offenders (FNOs) offers the possibility of voluntary (rather than enforced) return with the offer of assistance to reintegrate to their own society when returned. Since 1 October 2010, the amount of assistance available under the scheme is up to £1 500 (approx. 1 860 euro) if the FNO is still serving a prison sentence, or up to £750 (approx. 930 euro) if they have served their sentence. Recent *UK Border Agency* analysis has shown the scheme to be more-cost effective than forced return, as there are no costs for escorting to the border and costs related to appeals and non-compliance are omitted. The scheme also provides an opportunity for investment in the country of return through business start-ups or further education, which may also prevent further irregular migration in the future. The Return Fund has also financed the *Global Calais* project in the **United Kingdom**, which is an awareness campaign aimed at informing irregular migrants in the Calais area about the dangers of crossing the English Channel irregularly; the Assisted Voluntary Return and Reintegration (AVRR) options available to them; and the reality of life as an irregular migrant.

Germany, **Greece** and **Latvia** have evaluated the effectiveness of activities funded by the RF. An interim evaluation will be carried out in the **Netherlands** in 2012. In **Germany**, activities which focused on improving cooperation have indeed been a success as illustrated by an increase in the number of passports or substitute passports issued to irregular migrants. Cooperation has been successful to the extent that source countries of irregular migration are no longer regarded as problematic. Noteworthy is that Germany discovered that, despite willingness to cooperate, border guards in certain third-countries simply lack equipment to prevent irregular migration. This discovery underpins current strategy of providing material assistance in the form of supplying equipment and providing for special trainings. **Greece** noted that its training activities have been effective as well, since in 2009, compared to 2008, the number of irregular migrants declined by 13.8%. Furthermore, forced return measures had a preventive effect by giving out a discouraging message to prospective migrants and traffickers. **Latvia** stated that implementation of projects funded by the RF has increased the overall quality of the procedures targeted at preventing irregular migration, in particular by raising qualifications of personnel. By contrast, the **Netherlands** notes that the contribution of the funds for activities to prevent irregular migration is relatively small: RF funding only constitutes a fraction of the amount spent by the Dutch government.

8.2.2 External Border Fund (EBF)

Most Member States consider funding from the European External Border Fund (EBF) essential for the protection of EU external borders to better manage migration flows. Funding contributes to the improvement of national practical measures aiming to prevent irregular border crossings. Most practical measures implemented by Member States include supply and improvement of technical equipment (**Belgium**, **Czech Republic**, **Estonia**, **Germany**, **Greece**, **Italy**, **Finland**, **Latvia**, **Lithuania**, **Luxembourg**, **Netherlands**, **Norway**, **Poland**, **Slovak Republic**), organisation of trainings for border guards to more efficiently use the equipment and improve their capabilities in detecting irregular migrants (**Germany**, **Greece**, **Finland**, **Luxembourg**, **Slovak Republic**) and improvement of information and monitoring systems (**Belgium**, **Estonia**, **Germany**, **Finland**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Netherlands**, **Poland**, **Slovak Republic**). **France** and **Spain** also make use of this Fund.

Germany, for example, uses the funds for procurement of equipment for helicopters at the European sea borders, training in personnel in document examination techniques and equipment, as

well as investments in the development of VIS and SIS-II. **Luxembourg** utilises the funds to purchase equipment enabling border guards to detect falsified travel documents, improve conditions of visa issuing, adapt control devices and computer systems to make them more compatible with statutory requirements by implementation of the SIS and VIS, and to train personnel responsible for border control. A joint project was launched in 2010 between **Finland**, **Latvia** and **Lithuania** aiming to ensure a link between the state border guard electronic information system (REIS) and the VIS, as well as to upgrade border and migration control procedures.

Finland and **Norway** fund many projects through EBF, with Norway having currently 35 ongoing or planned projects and Finland 40 projects. Projects implemented by **Norway** aim to strengthen the border surveillance capacity at the Norwegian-Russian border. This border is of particular importance due to the easing of visa requirements with the Russian Federation from end May 2012 for residents in the border region. Examples of measures include the supply of equipment to the police and armed forces to enhance surveillance and reaction capacity, mobility traces, and vehicles for police controls. One of the most recent projects implemented by **Finland** aims to improve border security by enhancing skills and situation management for Border Guard officers and special units by constructing a building that can be used for tactical training. Other projects relate to, for example, improving the Border Guard's capacity to carry out security tasks by replacing ageing patrol boats with new higher performance boats, improving operating capacity of the surveillance system and monitoring the EU's external sea borders, efficiently processing visa applications, implementation of VIS, integration of an information system. In **Lithuania,** funding was used to install modern border monitoring systems along the most vulnerable stretches of the external border. As a consequence, the number of irregular border crossings dropped significantly at the border with Kaliningrad region, Russian Federation.

Few Member States commented on the effectiveness of the activities mainly because implementation reports of Member States' projects funded by the EBF are not required until the end of 2012. **Luxembourg** states that the expected results of, for example, its activities on the extension of the SIS program will be improved access to alerts and data and an increase of positive hits. The quality of responses is also likely to improve through the use of document readers (which mean that there are fewer errors caused by manual data entry). **Poland** explicitly states that the fund constitutes an essential support tool for, in particular, the Polish Border Guards by equipping them with better material, and improving information technology in order to more efficiently protect the external border.

8.3   Cooperation with EU Agencies or international organisations

In terms of EU cooperation, all Member States and Norway have referred to co-operation activity with Frontex (see Annex III). Several Member States make reference to the value of shared EU resources, such as the FADO (False and Authentic Documents Online, an EU image-archiving system set up to help combat irregular immigration and organised crime (**France**, **Ireland**, **Slovak Republic**). Member States also refer to co-operation with EUROPOL, the European Police Office, (**Hungary**), CEPOL, the European Police Academy and MEPA, the Central European Police College (**Slovak Republic).** Other (Member) States (**Ireland**, **Lithuania**, **Malta**, **Norway**, **United Kingdom**) mention their involvement in the networks described in Table 8.1 below. More information is provided in National Reports.

Table 8.1: <u>European Networks and forums addressing irregular migration</u>

Network / organisation	Purpose and activities
General Directors' Immigration Services Conference (GDISC) network	Established to facilitate practical co-operation on immigration matters
Strategic Committee for Immigration, Frontiers and Asylum (SCIFA)	A forum for exchange of information among EU Member States in the fields of asylum, immigration and frontiers
Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI)[45]	Aimed at assisting the Member States in effectively studying legal immigration, in preventing illegal immigration and facilitator networks, in better detecting forged documents and in improving expulsion practice
Intergovernmental Consultation on Migration, Asylum and Refugees (IGC)	An informal, non-decision-making forum for intergovernmental information exchange and policy debate on issues of relevance to the management of international migratory flows
Mediterranean Transit Migration Network (IOM)	An inter-regional inter-governmental consultative forum aimed at collecting and exchanging information and experiences on topics such as irregular and mixed migration and migration and development.

(Member) States also refer to participation in a number of EU projects and financial instruments that have facilitated cooperation to tackle irregular migration. In **Austria**, for example, the EU-funded project *"Establishment of International Law Enforcement Coordination Units"* (ILECUs), 2008-2011, established such units in the countries of the Western Balkans to improve strategic and operative cooperation. The main goals of the project were to increase information and data exchange and to simplify procedures and processes.

The majority of Member States and Norway cooperate also with <u>non-EU international organisations</u>, in the fight against irregular migration. **Belgium**, **Czech Republic**, **Estonia**, **Latvia**, **Lithuania**, **Luxembourg**, **Netherlands** and the **Slovak Republic** highlighted their cooperation with the International Organization for Migration (IOM), undertaking joint projects, for example, to facilitate assisted voluntary return and reintegration (**Belgium**, **Estonia**, **Latvia**, **Norway, Slovak Republic**), irregular migration prevention campaigns (**Belgium**), attending events and seminars to exchange experience (**Latvia**), and participation in the activities of the IOM Migration Information Centre (**Slovak Republic**). The **Slovak Republic** refers to cooperation with the International Centre for Migration Policies Development (ICMPD) on a range of issues to tackle irregular migration, as well as via its secretariat role for two inter-governmental forums – the Budapest Process and the Dialogue on Transit Migration in the Mediterranean.

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[45] CIREFI was abolished in December 2009, as a consequence of the entry into force of the Lisbon Treaty, and its functions transferred to FRONTEX.

Member States also refer to cooperation with the various agencies of the United Nations. These include the UN High Commission for Refugees (UNHCR), where cooperation was highlighted by **Greece**, **Hungary**, **Latvia** (including the signing of a cooperation agreement); **Lithuania**, **France** who cite their work with the United Nation Office on Drug and Crime (UNODC); and **Latvia** has worked with the United Nations Development Programme (UNDP) to implement the *"Support to Integrated Border Management Systems in the South Caucasus (SCIBM)"* project, specifically to provide support to Georgia, Armenia and Azerbaijan. **Estonia** and **Lithuania** have cooperated with the International Red Cross, for example, for the supervision of expulsions.

Other international organisations cited include Interpol (**Poland**, **Slovak Republic**), the Organisation for Economic Co-operation and Development (OECD) (**Norway**), and international civil aviation forums, e.g. ICAO and IATA, which set recommended practices and guidelines on passenger facilitation, including procedures for addressing irregular migration, false documentation and the removal of inadmissible people (**United Kingdom**).

8.4   Cooperation between Member States

Many Member States (**Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, Slovenia, Spain, United Kingdom**) have set up cooperation agreements between themselves to tackle irregular migration. These include those establishing joint police cooperation (**Austria, Belgium, Bulgaria, France**); on cooperation between the police forces of neighbouring countries (**Germany, Greece**); and a specific Police and Customs Cooperation Agreement, signed by **Belgium**, **France**, **Germany** and **Luxembourg**. Other Member States reported cooperation agreements with border guards and on joint patrols (**Estonia**, **Latvia**, **Lithuania**); agreements on regulating common borders (**Austria**, **Czech Republic**, **Estonia**, **Hungary**, **Latvia**, **Lithuania** **Poland**, **Slovak Republic**); and agreements on cooperation in combating organised crime (**Cyprus**, **Czech Republic**, **Germany**, **Hungary**, **Italy**, **Lithuania**, **Malta**, **Poland**, **Romania**, **Slovak Republic**, **Slovenia**, **Spain**, **United Kingdom**).

A number of specific examples of formal agreements were reported. The *"Prüm Treaty"* for example, was signed by **Austria**, **Belgium**, **France**, **Germany**, **Italy**, **Luxembourg**, **Netherlands** and **Spain**, with one of its objectives being the intensification of cross-border cooperation to combat irregular migration. To this end, the treaty provides for the automatic exchange of DNA, fingerprint, and motor vehicle registration data. A treaty between **France** and the **United Kingdom** concerning the Implementation of Frontier Controls at the Sea Ports on the Channel and North Sea came into force in 2004. The **United Kingdom** also mentions the *'Evian Agreement'* with **France** which includes the establishment of a Joint Operational Co-ordination Centre (JOCC) improving efforts to reduce irregular migration by more co-ordinated and coherent activities. In addition, the **United Kingdom** and **Ireland** (with the Isle of Man and the Channel Islands) have established a Common Travel Area (CTA) which permits minimal internal border controls through extensive co-operation to safeguard external borders. A number of agreements between the Nordic countries also exist. These include the Nordic Police Cooperation Agreement, which permits Nordic Authorities (Denmark, **Finland**, **Sweden**, Iceland, **Norway)** such as the Police Authorities, to contact each other directly without recourse to central authorities, in order to facilitate the exchange of information, and the *Öresund Agreement* (**Sweden**, Denmark) which permits the exchange of information between Swedish and Danish police.

Member States also refer to projects to tackle specific issues, for example, Denmark, **Netherlands**, **Sweden**, the **United Kingdom** and **Norway**, have initiated a cooperation which, among other things, aims at finding the parents of the unaccompanied minors. The *'European Initiative on Integrated Return Management Project'*, (EURINT) is a cooperation project between the **Netherlands**, **Belgium**, and Romania, which has the object of implementing (i) joint actions in approaching authorities of third countries to improve cooperation in the area of return; (ii) joint task

forces focused on improving the identification process of the third-country national; and, (iii) between some participating Member States, joint removals.

8.5 Legislative cooperation with third countries (including EU Readmission Agreements)

All Member States (except **Slovenia**) have concluded readmission agreements to address the issue of irregular migration either with other (Member) States and/or with third countries.

8.5.1 EU Readmission Agreements

Since 1999 the EU has had competence to set up such agreements[46]and - so far - thirteen EU Readmission Agreements are in force, with Hong Kong, Macao, Sri Lanka, Albania, the Russian Federation, Ukraine, the Former Yugoslav Republic of Macedonia (FYROM), Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan and Georgia. On-going negotiations are continuing with Morocco, Cape Verde, China and Algeria. All, except for Hong Kong, Macao and Sri Lanka, include a visa facilitation agreement. According to the recent evaluation of EU Readmission Agreements,[47] "*a majority of Member States apply EU [Readmission Agreements (EURAs)] for all their returns, but others still use their bilateral arrangements which existed before the EURA entered into force ... the reasons given for non-application of EURAs are the absence of a bilateral implementing protocol and/or that EURAs are used only if they facilitate returns*".

In some cases, e.g. the EU Readmission Agreement with the Russian Federation, it is mandatory for a Member State to have an implementing protocol in place before it can make use of an EU Readmission Agreement. However, in other cases, EU Readmission Agreements are "self-standing" directly operational instruments which do not necessarily require the conclusion of bilateral implementing protocols with the third country.[48] Table 8.2 below outline the Member States which have concluded implementing protocols in support of EU Readmission Agreements.[49]

The **United Kingdom** has opted into several EU Readmission Agreements and reports that there are benefits in establishing common standards on returns that have helped foster practical cooperation efforts on return. Other Member States are, however, more critical with regard to the concluded EU Readmission Agreements (**Czech Republic**, **Finland**, **Germany**, **Latvia**, **Malta**, **Poland**). The **Czech Republic**, for example, refers to a controversy between the EU Readmission Agreements and the Return Directive because irregular migrants often try to prolong their stay by utilising every option to postpone enforceability of the return decision. **Finland** notes that the expulsion decisions in Finland are not based on EU Readmission Agreements, but rather on international police cooperation. In a similar vein, **Germany** notes that cooperation with third countries with which the EU has concluded EU Readmission Agreements has not improved. **Malta** states that, in practice, EU readmission agreements concluded so far have had very little impact on the irregular migration scenario in Malta as they have not been concluded with the third countries from which irregular migrants to Malta mainly originate. **Poland** refers to several third-countries which have rarely cooperated with Poland despite the existence of EU Readmission Agreement.

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[46] See Commission Communication on the Evaluation of EU Readmission Agreements COM (2011) 76 final, available at: http://ec.europa.eu/home-affairs/news/intro/docs/COMM_PDF_COM_2011_0076_F_EN_COMMUNICATION.pdf

[47] COM(2011) 76 final. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF.

[48] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0076:FIN:EN:PDF.

[49]More information is available in the Commission Communication on the Evaluation of EU Readmission Agreements. - Implementing protocols signed/concluded by the MS under the EU readmission agreements in force.

Table 8.2: <u>EU Readmission Agreements and Member States with implementing protocols</u>

Third Country	Member States with an implementing protocol in place
Hong Kong	Germany
Macao	*No implementing protocols to date*
Sri Lanka	*No implementing protocols to date*
Albania	Austria, Belgium, Hungary, Italy, Luxembourg, Netherlands, Slovak Republic
The former Yugoslav Republic of Macedonia (FYROM)	Austria, Estonia
The Russian Federation	Austria, Belgium, Estonia, Finland, France, Latvia, Poland, Slovak Republic, Spain
Ukraine	Lithuania, Poland
Bosnia and Herzegovina	Estonia, Malta,
Montenegro	Czech Republic, Malta, Slovenia
Serbia	Austria, France, Estonia, Italy, Poland, Serbia, Slovak Republic, United Kingdom
Moldova	Austria, Czech Republic. Estonia, Latvia, Hungary, Malta, Germany, Poland, Romania, Slovak Republic
Pakistan	*No implementing protocols to date*
Georgia	*No implementing protocols to date*

Source: EMN National Reports and COM (2011) 212

8.5.2 Bilateral readmission agreements

In addition to EU Readmission Agreements, Member States may set up bilateral readmission agreements. Some of the most common third countries having bilateral agreements with Member States are outlined in Table 8.3 below, although the list is not exhaustive.[50] The main purpose of such agreements is to encourage greater cooperation from authorities in third countries in readmitting nationals who (no longer) have permission to stay in the (Member) State and have been ordered to leave, but fail to do so voluntarily. However, the agreements may have other purposes. For example, readmission agreements are often tied to visa-facilitation agreements. Some agreements – such as **Germany's** bilateral agreement with Vietnam - contain provisions concerning technical procedures – e.g. for determining nationality and to issuing travelling letters. **Germany**'s readmission agreements with Bosnia and Herzegovina, Kosovo, Croatia, Former Yugoslav Republic of Macedonia (FYROM), Serbia, and Montenegro were set up for the purpose of returning refugees and their spouses and descendants.

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[50] Further information on the conclusion and impact of readmission agreements is provided in National Reports to the Study, as well as in the EMN Annual Policy Reports, both available on the EMN website: www.emn.europa.eu.

Table 8.3: **Bilateral readmission agreements between (Member) States and Third Countries**

Third Country[51]	(Member) States holding bilateral readmission agreement
Algeria and Morocco	Germany, Spain, Italy
Armenia	Czech Republic, Estonia (draft), Sweden, *Benelux* countries (Belgium, Luxembourg Netherlands – although not yet ratified by Belgium), Norway
Bosnia-Herzegovina	*Benelux* countries (Belgium, Luxembourg Netherlands), Italy, Sweden, Norway
Croatia	Czech Republic, Italy, Poland, Slovak Republic, *Benelux* countries (Belgium, Luxembourg Netherlands), Norway, Sweden
Egypt	Italy
The former Yugoslav Republic of Macedonia (FYROM)	*Benelux* countries (Belgium, Luxembourg Netherlands), Italy, Sweden
Kazakhstan	Estonia, Lithuania
Kosovo	*Benelux* countries (Belgium, Luxembourg Netherlands)Estonia - under negotiation, and Latvia and Lithuania - under negotiation, Norway
Moldova	Italy
Nigeria	Italy, Ireland[52] Spain
Philippines	Italy
Russian Federation	Estonia, Latvia, Lithuania, Norway
Sri Lanka	Italy
Tunisia	Italy
Ukraine	Estonia, Latvia, Lithuania, Poland, Slovak Republic Norway,
Vietnam	Belgium, Czech Republic, Germany, Poland, Slovak Republic, Sweden Norway,

Source: EMN National Reports

Many Member States (e.g. **Austria**, **Belgium**, **Czech Republic**, **Estonia**, **Italy**, **Netherlands**, **Norway, Slovak Republic**, **United Kingdom**) value Readmission Agreements as important instruments to reducing irregular migration, as they underpin the national legal framework for ensuring speedy return measures and facilitating return procedures of irregular migrants (see also Section 7.2). For example, **Estonia** notes that readmission agreements have facilitated faster and simplified compulsory return and exchange of information. Of particular importance for **Estonia** are the Readmission Agreements with the Russian Federation, Ukraine, Georgia and Moldova, as these countries constitute the main source countries of irregular migration. The **Netherlands** notes that cooperation with concerned third countries has improved through implementation of Readmission Agreements. The **Slovak Republic** illustrates the positive impact that its bilateral readmission agreement with Ukraine[53] has had on reducing irregular migration: in 2002, 1 130 out of 1 195 persons were refused valid readmission. Comparable numbers were perceived in 2003 and

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[51] The following Member States also have a readmission agreement with Switzerland (**Austria, Czech Republic, Greece, Poland, Slovak Republic, Sweden,** *Benelux* countries (**Belgium**, **Luxembourg Netherlands).**

[52] The agreement has not yet been formally ratified by the Nigerian Government yet.

[53] *The Agreement between the Governments of the **Slovak Republic** and Ukraine on the Issue and Receipt of Persons through the Joint State Borders Agreement.*

2004. However, in 2005 the number of persons refused by the Ukrainian authorities numbered 192 out of 292 as a result of the renewed application of the Readmission Agreement. **Lithuania** reports that the return of irregular residents in accordance with readmission agreements is not particularly common. However agreements with the Russian Federation and Georgia have proven useful.

Malta notes the importance of Article 13 ("Migration") of the Cotonou Agreement[54], which states, among other provisions, that, "each of the ACP States shall accept the return and readmission of any of its nationals who are irregularly present on the territory of a Member State of the European Union," particularly as many third countries from which irregular migrants to Malta originate are signatory, and proposes that the EU should do more to implement this.

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[54] Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part ("Cotonou Agreement"), signed in Cotonou on 23 June 2000.

9. CONCLUDING REMARKS

Reducing irregular migration is a policy priority both at EU level (see Annex III and Section 8) and national level (see Section 3). This is evidenced by the fact, for example, that almost all (Member) States (**Austria**, **Czech Republic**, **Finland**, **Estonia**, **Germany**, **Greece**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Netherlands**, **Poland**, **Slovak Republic**, **Slovenia**, **Spain**, **Sweden**, **United Kingdom**, **Norway**) have introduced legislative changes for reducing irregularity in recent years (see Section 3.4). This Section outlines the results achieved by (Member) States in reducing irregular migration (Section 9.1). The effectiveness of practical measures are then described (Section 9.2), followed by the impact of EU legislation Section 9.3. The Section ends by looking at barriers to reducing irregular migration (Section 9.4), lessons learnt (Section 9.5) and suggestions for the future (Section 9.6).

One feature arising from this study is that there is not one single 'type' of irregular migrant; rather people enter into an irregular situation for a range of reasons, and hence cannot be conveniently brought together into one group towards which one policy can be targeted. For example, a migrant refused entry at the border for lack of visa or travel documents, may have made the conscious decision to migrate without these documents (i.e. irregularly) or this may have been due to an unconscious mistake due to lack of information about the criteria for entry; or indeed, the national situation within the country of origin may not provide for the types of documentation sought by Member States to permit entry, for example, to prove a family relationship in association with an application for family reunification. Hence it is essential that the range of statistics that are available are carefully examined and understood with as much detail and context as possible by policymakers and practitioners to ensure that policy and practice are effectively targeted to address the wide range of individual circumstances that may result in irregular situation.

9.1 Statistical Analysis

The statistics presented throughout this Study (see Section 5.1 and Section 6.2.1, for example) suggest that irregular migration is in decline in many (Member) States; although in some it has risen (**Greece** and **Malta**) or stayed the same (**Lithuania**). A range of reasons account for this overall reduction: EU enlargement is a notable one (see Section 9.3 below), and the impact of the economic crisis another (i.e. in decreasing the attractiveness of EU countries as targets for irregular migration). The disparity of national statistics makes it difficult to obtain a 'single figure' at national or EU level for irregular migration, although statistics can contribute considerably to an understanding of the effectiveness of policy and can highlight the gaps where measures may need to be taken. Moreover the range of statistics used to understand the status quo also reflect the nature of irregular migration –Trends in statistics relating to irregular migration must also be treated with caution. While such statistics may reflect trends in irregular migrant numbers, they may also – instead of or as well as – reflect trends in policy and practice. For example, an increase in apprehensions in the workplace may represent an increase in the numbers of irregular migrants reported as working irregularly, but it may just as likely demonstrate a 'push' in labour inspectorate activities and a 'crackdown' on irregular employment rather than an actual increase in the numbers of people working irregularly overall. Equally, trends in the numbers of migrants entering irregularly may be indicative of the scale of inflows of irregular migrants and/or more effective border control. Finally, the irregular migration population is dynamic – it consists of inflows and outflows; groups which remain and those which are in transit; and therefore it is difficult to capture a comprehensive picture that is accurate.[55]

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[55] See National Report of **Germany** for more on this final point.

9.2   The effectiveness of practical measures

Considering practical measures in relation to pre-entry (Section 4), entry (Section 5), stay (Section 6) and return (Section 7) stages helps to highlight the importance of shaping legislation, policy and practice to the specific circumstances of individuals in an irregular situation at each stage, and the circumstances of the (Member) State. Data and information relating to the specific circumstances of Member States in each situation can help to develop appropriate – and proportional – responses. For example, significant investment in technology at the border will be unnecessary, if information on irregularity identifies visa-overstay as the biggest reason for irregularity in the territory.

There is a notable lack of evaluations of the effectiveness of policy and practice to reduce irregular migration in Member States. For example, the **Netherlands** notes that many measures have been evaluated extremely summarily or not at all. Even where practice is evaluated it may be difficult to link results (i.e. a reduction in overall irregular migration) to a single policy or practice. Nevertheless, (Member) States have indicated some practices that have worked better than others, outlined below.

Above all, most (Member) States highlight the importance of pre-entry measures as key to reducing irregular migration (see Section 4). Once a third-country national is in an irregular situation in the (Member) State, and obtains legal entitlements on the basis of false documents, it becomes much more difficult and costly for the authorities to apprehend and address the irregularity. Hence, it remains a policy priority to prevent the irregular migration from happening in the first place, and this is reflected in (Member) States' policy approach.

Prior to entry, the obligation of carriers to provide advance passenger information (API) as required under Council Directive 2004/82/EC, has proven to be useful in screening for irregular situations, so that individuals are not permitted to enter a (Member) State, or preparations can be made to deal with them on arrival of the carrier. Several Member States have highlighted API and the role of carriers to be a key success in fighting irregular migration in the EU, and it is recognised as an additional tool to complement others in preventing irregular migration from taking place. Some (Member) States work closely with airlines to ensure the processes are effectively implemented and carrier staff receives all necessary training and briefings. (Member) States also highlight the effectiveness of Immigration Liaison Officers (ILOs) and police liaison officers in bridging the work of policymakers in the EU and those implementing such policies in detached situations, for example, in countries of origin. Their role in communicating risk analysis information and information on irregular migration routes back to the EU is essential. At least three Member States highlight visa policy as one of the most effective tools in reducing irregular migration. **Greece** attributes its reduction in refusals at entry to improved training of consular staff in preventing entry with false documents. However, **Poland** notes that visa policy should be supported with other mechanisms, such as road maps and cooperation between liaison officers.

In relation to border controls, **Ireland**, **Italy** and the **United Kingdom** underline the importance of document checking and the use of specific systems for the detection of fraudulent documents. For example, the **United Kingdom** recently established a *Document Fraud Unit* specifically for this purpose. Indeed, the decline in refusals at the border may be evidence of the effectiveness of border measures. Cooperation with other (Member) States – such as that of 'juxtaposed controls' implemented by **Belgium**, **France** and **United Kingdom** - and with neighbouring third countries (e.g. joint investigations, joint patrols and other forms of cooperation) also ensure that irregular migration is prevented not only on the EU side, but at the country of origin also. A particular 'success story' in practical measures at the border is that of **Spain**'s implementation of Spanish Border Surveillance System (SIVE) in the Canary Islands and south of the Iberian Peninsula (see Section 5.1). The **Slovak Republic** has also evaluated its border policy as having a significant impact on the reduction in the number of irregular migrants who were detained or refused entry on the border. **Malta** notes that the large influxes of irregular migrants (as well as asylum applicants)

arriving at its borders , in proportion to the geographical size and limited absorption capacity of its labour market, place a disproportionate strain on the authorities' capacity to implement practices effectively.

During <u>stay</u>, the effectiveness of penalties is unclear; although (Member) States implement a variety of penalties according to the offence committed (see Section 3.3). Some (Member) States carry out random or targeted spot-checks or impose reporting duties on public service providers (see Section 6.2). However, there are some concerns regarding the impact on fundamental rights of these measures. Furthermore, the cost and effort in implementing such measures may not be proportionate to the results obtained. Other measures focus more on taking action against individuals who profit from them, such as exploitative employers and / or organised crime groups. In **France**, out of 1 501 places of employment checked in 2010, 586 employers were implicated for employing irregular migrants. In the **United Kingdom**, amongst other (Member) States, immigration authorities work with rectors and registrars to prevent fraudulent marriages. **Spain** and **Sweden** provide opportunities for legal migration (see Section 6.4). For example, **Sweden** provides further options for obtaining a work permit after rejection of an asylum application under certain circumstances. However, this is often difficult (as noted by **Spain**) and requires strengthening other types of incentives offered to countries of origin or transit of irregular immigration. **Germany** also argues that there is insufficient evidence to demonstrate that such measures effectively prevent irregular migration flows.

In providing a <u>pathway out of irregularity</u>, the **Netherlands** and **Spain** refer to the effectiveness of regularisation. The **Netherlands** argues that its 2007 regularisation undoubtedly influenced the scope of the population of irregular migrants and, although politicians predicted that the regularisation would attract further migrants, this has not been proven by research. In **Norway**, return is recognised as the only pathway out of irregularity, focussing on voluntary assisted return programmes for most nationalities (except those defined as '48-hour procedure cases'). These programmes, such as those facilitated by IOM, have led to a substantial increase in returns. **Latvia** also highlights the importance of promoting voluntary return and expanding support to assisted voluntary return programmes, particularly in light of the growing costs of forced removal. **Belgium** also states that return is key to implementing effective measures and emphasises that further support should be given to AVR programmes and to pursue more cooperation with countries of origin and transit.

Belgium, **Spain** and **Greece** highlight the importance of return flights (including those co-ordinated by Frontex) in ensuring effective return, but also in acting as a deterrent effect for future irregular migrants. In **Finland**, removals of asylum applicants receiving a final negative decision have helped to decrease the number of failed asylum applicants who then go on to apply for asylum in other EU Member States in 2010 and 2011.[56] Most (Member) States implement detention prior to return / removal, although these practices have been criticised (e.g. in **Luxembourg**). Similarly, a report by the IOM cited by the **Netherlands** argues that detention has no effect on the willingness of irregular migrants to return and hence, while the Dutch authorities consider it an essential tool for effective return, it may not be as effective as intended. **Germany** describes the effectiveness of national and regional policy in curbing repeated renewals of temporary removal stays ("chain suspensions"), evidenced by increasingly (and significantly) lower number of third-country nationals staying in Germany with a residence title in the form of a "Duldung" (suspension of removal). **Sweden** notes the importance of providing assistance in reintegrating in the country of return and **Norway**

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[56] The Dublin Regulation provides that a third-country national who has applied for and failed to obtain asylum in a Member State may not then subsequently apply for asylum in another Member State.

highlights the establishment of readmission agreements as major factors influencing the success or otherwise of return policy.

9.3   The impact of EU legislation

As noted in Section 8, EU legislation and policy has had a major impact on national approaches and practical measures towards irregular migration, as well as an impact on the scale of irregular migration arriving and apprehended. In Section 6.2.1 (and Annex VII), (Member) States cite EU enlargement and the creation of the Schengen Area as a reason for the reduction in irregular migrants staying in the Member State and those arriving at the borders. Moreover, legislation introduced through the Regulation of the Schengen Borders Code has also had a notable impact on reducing the number of 'false tourists' and visits to relatives or friends in order to stay irregularly. With regard to national legislation and institutions, the Return Directive has had a significant impact on national concepts and approaches – e.g. with almost a quarter of Member States newly introducing the concept of 'return decision' and others introducing the concept of voluntary return for the first time. The EU has also been instrumental in funding practical measures to reduce irregular migration, such as equipment, training and return programmes.

9.4   Barriers to effectiveness

There may also be obstacles to reducing irregular migration. For example, **Greece** notes difficulties in implementing readmission protocols with some third countries, and while cooperation between **Spain** and African countries has – to date – been mainly successful, many agreements are 'de facto' and require further institutionalisation and support from the EU as an international actor. **Finland** highlights differences in administrative cultures and practices, e.g. in the interpretation of visa regulations, across EU Member States as a "particular challenge" in preventing irregular migration to the EU. A lack of accurate data may also be an obstacle to monitoring future policy needs – this is pointed out as an issue in **Ireland** and **Luxembourg**, for example. A range of obstacles to effective return were outlined in Section 7.2.3).

9.5   Lessons learnt

Many (Member) States (**Austria**, **Belgium**, **Germany**, **Greece**, **Italy**, **Latvia**, **Lithuania**, **Slovak Republic**, **Slovenia**, **Spain** and **Norway**,) argue that cooperation with third countries is one of the most effective measures for reducing irregular migration. **Germany** states that cooperation through the provision of training and equipment support in order to improve border surveillance is particularly useful. **Austria** highlights the fact that the political, socioeconomic and cultural setting of countries of origin has an impact on irregular migration flows and hence it is important to address these. **Spain's** cooperation with West Africa and the Maghreb has increased monitoring of and prevention of the exit of ships transporting migrants and for the readmission of irregular migrants. The **Slovak Republic** focuses its cooperation on Ukraine as the only third country with which it shares a border and the most dominant country of nationality amongst its irregular migrants.

Large-scale information systems are also central to reducing numbers. For example, **Ireland** notes the usefulness of such systems for cross-checking data. However, **Hungary** notes the challenges of implementing large-scale technologies – such as biometric documents - and the subsequent funding needed. **Greece** notes the importance of using translators for identification and investigation.

(Member) State practical measures are responsive and measured, targeting specific actions at particular problem areas with specific objectives. For example, in 2010 **Finland** intensified its focus on reducing the number of third-country national criminals; preliminary results for 2011 show these targets have been mostly met. In **Luxembourg**, a readmission agreement has been signed with Serbia and a Memorandum of Understanding with Nigeria because there is a proportionally higher presence of irregular migrants from these two countries. However, **Luxembourg** highlights the fact

that legislative and administrative provisions define what is regular and what is irregular migration, and hence, perhaps more weight should be given to assessing State measures, rather than focusing on the actions of the migrant alone. The proportionality of measures in comparison to results must also be considered.

Hungary notes a number of future challenges to the reduction of irregular migration; namely, the rising volume of "mixed migration," economic recession in neighbouring countries; and visa liberalisation. **Italy** also notes that immigration flows to the EU are likely to grow as the African continent becomes more developed, but notes also that countries such as China, with rapidly developing economies, are also more likely to attract increasing migration flows in the future. Similarly the **Netherlands** argues that developments in the scale and nature of irregular migration are difficult to predict, as numerous factors are involved. Amongst the most decisive of these might be the demand for labour and the presence of an already established diaspora.

9.6   Additional measures identified

As a pre-entry measure, **Greece** suggested increasing awareness amongst persons in third-countries of the risks of migrating irregularly and putting more pressure on the diplomatic authorities of countries of origin of irregular migrants for the issuance of travel documents as other measures which could be effective.

On entry, as the proportion of forged personal identification documents and visas is still high in **Latvia**, the State Border Guard identifies a need to continue its cooperation with the Latvian diplomatic and consular representations abroad, as well as the border control and immigration control services of the respective third countries states.

During stay, **Italy** suggests that there should be greater opportunity for residence while job searching, under specific and harmonized conditions, in order to facilitate legal stay and to combat the irregular labour market. **Poland** considers that a change in focus from border control to the prevention of irregular stay could be effective, although it might require changes in law, organisation and logistics.

In order to improve access to pathways out of irregularity, **Italy** argues that irregular migrants should be given a reasonable period of time for complying voluntarily with a removal order as well as offering assistance with the programmes of assisted return. **Greece** also suggests that returns be increased by giving greater focus to voluntary return, but also to forced removals by organising more charter flights to the countries of origin especially to those where there is no air link.

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