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Policy Brief - Austria

## CLANDESTINO PROJECT OVERVIEW

### *The project aims*

The CLANDESTINO research project was designed to support policy makers in developing and implementing appropriate policies regarding undocumented migration. **The project aims** were to (a) provide an inventory of data and estimates on undocumented migration (stocks and flows) in selected EU countries, (b) analyse these data comparatively, (c) discuss the ethical and methodological issues involved in the collection of data, the elaboration of estimates and their use, (d) propose a new method for evaluating and classifying data/estimates on undocumented migration in the EU.

### *The countries studied*

**The project covered twelve EU countries** (Greece, Italy, France and Spain in southern Europe; Netherlands, UK, Germany and Austria in Western and Central Europe; Poland, Hungary, Slovakia and the Czech Republic in Central Eastern Europe) **and three non EU transit migration countries** (Turkey, Ukraine and Morocco) have been under study in this project.

### *Methods, Data and Period of Reference*

**Country reports.** Individual country reports review all relevant data sources on irregular migration, assess the validity of the different estimates given and where appropriate produce a new estimate for the country studied. The country reports cover the period between 2000 and 2007. This quantitative analysis is complemented by a critical review of qualitative studies and by interviews with key informants with a view to exploring the pathways into and out of undocumented status in each country. It is noted that the non-registered nature of irregular migration makes any quantification difficult and always produces estimates rather than hard data.

### *Classification of data & estimates*

The main output of the project is a **database** (<http://irregular-migration.hwvi.net/>) which presents and classifies (as low, medium or high quality) estimates and data on irregular migration in the European Union and in selected member states. The presentation is innovative in its consistent structuring and its carefully developed quality classification, which indicates whether estimates are more or less trustworthy. Quantitative information is accompanied by substantial background materials, both on issues of general concern and on the situation in individual countries. In addition, the database provides aggregate EU level estimates for the years 2002, 2005 and 2008.

### *Terminology*

The terms irregular (with no regular/legal status), undocumented (without the appropriate papers) and unauthorized (without legal permission for entry, stay or work) migration denote different facets of the wider phenomenon of irregular migration. These terms are accepted and used by the Clandestino consortium as synonyms. The term illegal is accepted by the consortium when referring to a condition (e.g. illegal work or illegal entry) but not in relation to a person (illegal migrant).

### *Definitions*

For this project, **irregular or undocumented residents** are defined as residents without any legal resident status in the country they are residing in, and those whose presence in the territory – if detected – may be subject to termination through an order to leave and/or an expulsion order because of their status. **Irregular entrants** are persons who cross an international border without the required valid documents, either un-inspected over land or sea, or over ports of entry. For more information see: <http://clandestino.eliamep.gr/category/irregular-migration-ethics-in-research/>

### *Trafficking & Asylum Seeking*

The Clandestino project is not concerned with Trafficking in Human Beings because it considers this as a separate even if related phenomenon. But in some countries it touches upon asylum seeking and asylum processing issues as they are related to irregular migration issues.



## IRREGULAR MIGRATION IN AUSTRIA

### Background of migration situation in Austria

Austria is located in the centre of Europe, and since the 2004 enlargement, is surrounded by EU Member States. At the beginning of 2008 the population stood at 8.3 million. Of these appr. 855,000 or 10.3 % did not hold Austrian citizenship and appr. 1,385,000 or 16.6 per cent were not born in Austria. A recent estimate based on crime statistics of the police and using a multiplier method to estimate the irregular migrant population indicates that the number of persons with an irregular residence status has decreased significantly in the past years from some estimated 78,000 in 2001 to appr. 36,000 in 2008. The recent waves of EU enlargement in 2004 and 2007 as well as the decrease of irregular inflows from third countries to Austria, which in turn is partly related to EU enlargement, are the main explanations for this decrease.

### Data sources used for estimating size & features of irregular migration

In the Austrian context, the main data sources are administrative records, which provide indirect indications or 'traces' of irregular migration. These datasets include (1) enforcement statistics of the aliens police, notably apprehension statistics and statistics on rejections at the border, expulsion orders and deportations (2) asylum statistics, notably statistics on asylum applications, discontinued procedures and negative decisions, and (3) crime statistics of the police. All available sources are subject to serious limitations, including incomparability between different datasets and partly between different years, multiple counting, close relationship to enforcement practices.

### Social and demographic features of irregular migration

Apprehension statistics distinguish between persons being smuggled to Austria and persons entering or staying illegally without any help of a smuggler. In 2008 the most important country of citizenship among smuggled persons was the Russian Federation (23%), followed by Afghanistan (10%) and Serbia (8%). Among persons apprehended due to illegal entry or residence in Austria the three most important nationalities were Serbia (12%), India (6%) and Romania (5%). The impact of the EU accession of Romania (and Bulgaria) is clearly reflected in data on apprehensions – apprehensions of persons from Romania dropped from 21,293 in 2006 to 294 in 2007. More than half of the persons apprehended for illegal employment in 2008 were citizens from the 'young' EU10 countries.

The majority of persons apprehended were men with a share of 72% among smuggled persons and a share of 84% among persons staying/entering illegally in 2008. Almost half of the persons illegally staying/entering and of the smuggled persons were between 19 and 30 years old (46% and 44% respectively). Although not always determinable, the majority of persons apprehended had entered Austria from Italy.

### Numbers of persons apprehended due to being smuggled to Austria and due to illegal stay or entry

Country	Smuggled persons			Country	Persons illegally staying or entering		
	2006	2007	2008		2006	2007	2008
Russian F.	1,506	1,664	2,015	Serbia*	451	603	717
Afghanistan	220	328	881	India	93	152	344
Serbia*	2,636	1,447	730	Romania	21,293	294	283
Kosovo	-	-	559	Turkey	155	205	279
Iraq	401	547	434	China	103	125	232
Nigeria	367	271	393	Morocco	94	134	232
Georgia	476	309	312	Macedonia	113	174	224
Turkey	611	510	288	Nigeria	60	106	216
India	530	402	285	Russian F.	189	166	214
Moldava	1,250	772	253	Iraq	70	120	183
China	317	249	210	Ukraine	275	329	183
Total	12,571	9,987	8,734	Total	26,379	4,416	5,914

\* including Montenegro in 2006

Source: Ministry of the Interior

## Main Paths into and out of Irregular Status

In Austria, **five principle pathways into irregularity** can be distinguished: (1) irregular entry (irregular border crossing); (2) overstaying after the expiry of a visa or residence permit; (3) loss of status because of non-renewal of permit for not meeting the residence requirements or breaching conditions of residence; (4) absconding during the asylum procedure or failure to return after a negative decision and (5) impossibility to enforce a return decision for legal or practical reasons (toleration). The exact quantitative importance of those different ways into irregularity is not known due to a lack of appropriate data or estimates.

The available data suggest that **irregular entries** to Austria have decreased over the past years mainly due to the EU enlargement and the decrease of irregular inflows, most of which traditionally are asylum seekers, to Austria.

**Overstaying** after expiry of a short-term visa appears to be of comparably minor importance in Austria. The – presumably – minor importance of overstaying in Austria can be explained, amongst others, by the relatively strict visa issuing practices vis-à-vis third-country nationals subject to visa requirements, the substantial financial guarantees required from sponsors and/or visa applicants themselves as well as the higher level of scrutiny of visa applications in countries with ‘high migration risks’. With respect to third-country nationals certain **non-compliant forms of migration on a circular basis** are more likely to occur in Austria (e.g. irregular employment of tourists, under-declaration of employment of seasonal workers plus subsequent return and regular re-entry). A special case are citizens from the ‘young’ EU Member States whose access to the Austrian labour market is still restricted. Those persons lose their right to remain in the country in case of irregular employment, however, de-facto they hardly have to face any consequences regarding their residence as the possibilities to expel EU citizens are limited.

**‘Loss’ of regular residence status** is another important pathway into irregularity. While there are only very few persons whose status is withdrawn (largely for a criminal offense), a larger but still relatively small number of persons fail to renew their permits because they do not or no longer meet residence requirements. It can be estimated that this affects some 400 to 600 persons annually. In addition, changes of the legal framework can lead to ‘creation’ of irregularity in the sense that migrants legally staying find that they cannot meet new requirements or, under new regulations, are no longer eligible for a residence permit. Thus, as a consequence of the new Settlement and Residence Act 2005 a significant number of persons and their families could not meet the new income requirements and failed to renew their permits. Although an expulsion was found inadmissible in most cases, many applicants were left without a status for some time. In addition, the new law - in force since 2006 - stipulated that persons applying for family reunification need to have entered the country legally. Consequently, the applications of around a thousand persons who applied for family reunification before 2006 but were processed under the new law slipped into an irregular status.

The **failure to return or leave the country** after a negative decision on an asylum application or the **discontinuation of an asylum procedure** presumably is a major pathway into irregularity in Austria, although hard facts are again not available. However, the share of discontinued asylum procedures as well as the share of rejected asylum applications suggests that there is considerable scope for absconding. Thus, in 2008 52% of all asylum procedures (excluding subsidiary protection) ended with a negative decision and 23.5% were discontinued. Although there are no data on returns or onward movements of rejected asylum seekers, it is safe to assume that not all persons concerned (can) return to their country of origin.

Finally, **non-enforceability of return/ deportation** constitutes a fifth pathway into irregularity. Persons in a removal procedure whose expulsion is found inadmissible or otherwise not enforceable are issued an ‘adjournment of deportation’ for a maximum period of one year, after which the case is re-examined. At the same time, however, an adjournment of deportation is not a legal status and does not change the unlawful nature of the person’s stay in Austria. No data on adjournments of deportation is released by authorities, however.

Austria opposes regularisation as a policy tool on principle grounds and return to the country of origin or to a secure third country is the preferred option. However, there is a limited regularisation mechanism in the form of residence titles issued for

humanitarian reasons. With the recent reform of the humanitarian status, humanitarian residence titles can be applied for and at least in theory provide a systematic mechanism to address the situation of irregular migrants who had been staying in Austria for an extended period of time and those who cannot be deported on grounds of Article 8 ECHR (private and family life).

### **Key Messages for Policy Makers**

The main conclusion from the CLANDESTINO study on Austria – namely that irregular migration is likely to have significantly declined in recent years, both in terms of stocks and flows – seems to support a pragmatic approach. At the same time the complexity of the phenomenon demands a comprehensive approach including a review of the overall framework for legal migration, prevention and control, avoidance of putting persons at risk of falling into irregularity, measures regarding the irregular resident population (return and regularisation), as well as monitoring and analysis.

#### **Measures directed at the overall framework for legal migration**

Although the relationship between legal opportunities for migration and irregular migration is contested, the creation of new opportunities for legal immigration for employment provide legal alternatives in particular for migrants from the near abroad, notably the Western Balkans. In addition, as the quota system – the very core of admission policy in Austria – is now largely obsolete a new basis for managing migration has to be found.

#### **Avoidance of risks**

Immigration regulations often unwittingly put migrants at risk of falling into irregularity. The following measures could help to avoid these risks: Principal labour market access for all persons possessing a regular residence status; strengthening and expanding the principle of long term residence, including automatic acquisition of the status; critical appraisal and evaluation of income requirements regarding its consequences for certain groups.

#### **Measures targeting the irregular resident population**

For a variety of reasons return is often not a viable option over a longer period of time. Such persons need to be given a clearly defined legal status for the duration of their stay in Austria and in certain cases of long-term non-enforceability regularisation should be considered as a pragmatic solution.

#### **Monitoring and analysis**

Existing monitoring tools such as apprehension data, statistics on return, asylum data and statistics on persons found illegally employed should be further developed to better understand both patterns of irregular migration and state responses to irregularity, notably to measure the effectiveness of state policies.

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All Project Reports and Policy Briefs as well as the Database are available through the project's web site <http://clandestino.eliamep.gr>

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**CLANDESTINO** You may also visit the Social Sciences and Humanities Research Programme of the European Commission: [http://ec.europa.eu/research/social-sciences/index\\_en.html](http://ec.europa.eu/research/social-sciences/index_en.html)