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Irregular Migration in the European Union since the turn of the millennium – development, economic background and discourses

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## 1. Introduction

Irregular migration has been a main focus of European Union policy making on immigration and asylum ever since the communitarisation of migration policies in the wake of the Amsterdam Treaty 1997. Intergovernmental cooperation on irregular migration at the European Union level preceded the formal communitarisation of migration and asylum policy by more than a decade. As a concern of policy makers and a topic of policy debates at the European Union level, irregular migration has been a major issue since at least the mid-1980s (Hofmann et al. 2004; Kammel 2006; Schwenken 2006: 96ff).<sup>1</sup> The combined effects of the geopolitical changes after the collapse of the communist regimes in Eastern Europe, the massive rise in immigration to the European Union in the late 1980s, and in particular the increase of asylum- and conflict-related migration made irregular migration a central concern for policy makers. In addition, the accelerating pace of European integration in the mid-1980s, pushed in particular by the adoption of the European Single Act (1986) and the Maastricht Treaty (1992), was an important factor why irregular migration became an issue on a European rather than only at the national level – and why irregular migration became an issue across Europe irrespective of the actual significance of irregular migration in individual countries. In the view of the European Commission the project of a single European market and cooperation on immigration policies were closely intertwined. In particular, the Commission saw increased – if limited – cooperation on immigration as a necessary prerequisite to lifting restrictions on free movement of persons within the European Community, particularly after the European Council of Fontainebleau (1984) agreed – in principle – on the abolition of internal border controls (see Geddes 2001: 24; and Guiraudon 2000: 254ff).

Member States, however, remained reluctant to communitarise migration policy and rejected initial attempts by the European Commission to do so (see Hailbronner 1995: 184f). In 1984, five Member States (France, Germany, Belgium, the Netherlands and Luxembourg) thus decided to pursue the dual agenda of abolition of border controls between Member States and closer cooperation on border management outside the framework of the European Community. The resulting Schengen agreement was signed in 1985, with measures combating irregular migration being a core element of the agreement (Kraler et al. 2006). In the European Community framework Member States engaged in informal intergovernmental cooperation on immigration and asylum, notably through two working groups - the Ad Hoc Working Group on Immigration and the Intergovernmental Coordinators' Group on the Free Movement of Persons, whose "Freedom of Movement of Persons Report", better known as the *Palma document* recommended various measures to combat irregular migration (Triandafyllidou & Ilies 2010).

Ministries of the Interior and enforcement authorities were the driving forces behind the pre-Amsterdam Europeanisation of migration and asylum policies. In the context of the "asylum crisis" of the early 1990s asylum and irregular migration were increasingly treated as different sides of the same coin. Although the European Commission also took an early interest in patterns of irregular migration in the European Community's Southern Member States,<sup>2</sup> which were unrelated to asylum and driven mainly by the large share of the informal economy in these countries, economic and employment aspects of irregular migration never drew the

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<sup>1</sup> As early as 1976 the European Commission had launched an (abortive) initiative to harmonize Member States' policies on irregular migration. See the proposal for a Council Directive on the harmonization of Member States' laws on irregular entry, residence and irregular employment, COM (1976) 331.

<sup>2</sup> A study commissioned by the European Union in the end of the 1980s (Werth & Körner 1991) looked into immigration patterns in Southern Member States and provided one of the first estimates of irregular immigration to these countries.

same attention as the nexus of asylum and irregular migration or illegal entry, particularly through human smuggling and trafficking. As a result of the dominance of the trafficking and human smuggling and in particular the asylum frame, irregular migration in Southern European countries became also increasingly framed in terms of human rights and protection.

Asylum policy was one of the main focuses of the ‘fight’ against irregular migration. Indeed, in the course of the 1980s asylum applications in Western Europe had considerably risen, from some 20,000 in 1976 to 158,000 in 1980 and 200,000 in 1986, with almost two thirds of asylum applications received by only two Member States – France and Germany (Uçarer 2001: 292). In this context, immigration – through asylum – became increasingly politicised across Europe and asylum presented as an alternative (and unwanted) route to immigration (Huysmans 2006: 66).

With the collapse of communism the number of asylum applications in EC and EFTA countries soared to 314,000 in 1989 and 417,000 in 1990 (ICMPD 1994). The European response, elaborated in the Ad-Hoc Working Group on Immigration, consisted of four new concepts which subsequently became core elements of European policies on asylum and arguably, irregular migration, namely the concept of country of first asylum, laid down in the Dublin Convention of 1990, the notion of ‘manifestly unfounded’ cases and the concept of ‘safe third countries’ and ‘safe countries of origin’, laid down in the non-binding London Resolution, adopted by Ministers responsible for Migration in 1992 (Kraler et al. 2006). In the mid-1990s, first common measures in regard to visa policy followed and a first regulation determining third countries whose nationals must have a visa was adopted in 1995 (Bigo/Guild 2005). Indeed, preventive measures such as visa obligations and carrier sanctions became increasingly important in the course of the 1990s (Uçarer 2006). These measures not only drew immense criticism from the UNHCR, who argued that they risked undermining the very right to seek asylum, but also from civil society organisations, who rallied around the right to asylum. While civil society organisations had a long history of cooperation on the European level – the International Catholic Migration Commission in 1951, for example, the Churches Commission for Migrants in Europe in 1964 and the European Council on Refugees and Exiles (ECRE), founded in 1974 and– the Europeanisation of asylum policy in the 1990s led to the emergence of new actors and increased international cooperation on the European level. Subsequently, asylum has remained one of the major reference frames of debates on irregular migration in the EU.

The general perception at the time was that immigration had become increasingly uncontrollable and that the share of migrants entering the European Union in an irregular manner was rapidly growing. Figures put forward for the European Union alternately spoke of 500,000 irregular annual entries (Ghosh 1998: 10) or 250,000 to 350,000 irregular entries per annum (ICMPD 1994). At the same time, similar figures were put forward for the number of women trafficked. Thus, the European Commission Communication on Trafficking in Women for the Purpose of Sexual Exploitation of 1996<sup>3</sup> gives a figure of 500,000 women trafficked into the EU each year, quoting IOM. The trafficking framework, which emphasizes the exploitation of ‘trafficked’ migrants as well as the links of traffickers to organized crime became another key frame for international debates on irregular migration. The Palermo protocols to the Convention against Transnational Crime (2000) clarified the distinction between traffickers who force or lure migrants into exploitation and smugglers who take care of the transportation of irregular migrants. Despite this, however, trafficking continues to be associated with human smuggling and irregular migration more generally in public debates. While the role of the European Commission and much more so, the European Parliament remained limited in the 1990s, several institutional structures were set up on the Council level that specifically dealt with issues related to irregular migration, including the Coordinating

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<sup>3</sup> COM(96) 567 final.

Committee ('K4-Committee'), replacing the Coordinators' Group on Free Movement of Persons, the Centre for Information, Discussion and Exchange on Asylum (CIREA) and the Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI).

But it was not until the Amsterdam Treaty and the first five year plan on policies on migration and asylum that the European Union acquired a clear mandate on migration. Thus, Article 63 (3) of the Amsterdam Treaty stipulates that the Council "*shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt...measures on immigration policy within the following areas: (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion, (b) illegal immigration and illegal residence, including repatriation of illegal residents.*"<sup>4</sup>

The term used by the Treaty – illegal immigration – also is the term usually used by subsequent legislation, notably the Schengen border code, the Return Directive and the Directive on Employer Sanctions. It is also the term most often used by EU institutions in reports and legislative proposals. More recently, however, there is a noticeable shift in the terminology used. Thus, the consolidated version of the Treaty on the Functioning of the European Union after the Lisbon Treaty now speaks of "illegal immigration and unauthorised residence", thus reserving the notion "illegal migration" to unlawful crossing of borders. On its part, the Commission increasingly uses the term "irregular migration" in the context of the so-called Global Approach on cooperation on migration with third countries. More recently, other EU institutions including the European Economic and Social Council and the European Union's Fundamental Rights agency have distanced themselves from the term "illegal migration". Thus, the European Fundamental Rights Agency (FRA) prefers the term "irregular immigration", because it is "more neutral and cannot be read as questioning someone's rights to be recognised everywhere as a person before the law."<sup>5</sup> In so doing, FRA follows the example of the Parliamentary Assembly of the Council of Europe, whose resolution 1509 (2006) on the human rights of irregular migrants contains a similar statement.

Irregular migration subsequently became a major focus of policies, informing policies on visa harmonization, legal migration and asylum and resulted in a number of policies directly concerned with irregular migration. The Amsterdam Treaty was also important in that it incorporated the Schengen convention into the Treaty. As a corollary, the Schengen Information System (SIS) was transformed into a European-wide database for law enforcement authorities. Similarly, the Dublin Convention – which only entered into force in 1997 and never became fully operational as a Convention – was incorporated into the EU framework by the so-called Dublin II directive of 2003 and now is widely applied in the European Union as well as Switzerland. The Eurodac database, created to support the implementation of the Dublin system, subsequently became established as the second major database de facto focused on irregular migration.

As a result of Europeanisation of migration and asylum policies, irregular migration became a subject of focused knowledge production on the European level (see Geddes 2005), both through reports and studies originating from European institutions themselves and through independent research. Thus, since 2004 the European Commission publishes 'annual'<sup>6</sup> reports on trends in irregular migration and the evolution of policies, while an *Annual Statistical Report on Migration and Asylum*, compiled by the European Migration Network, includes a section on irregular migration. Also, a growing number of research projects funded or

<sup>4</sup> As a result of the entering into force in 2010 of the Lisbon Treaty, the relevant provisions are now found in article 79 of the Consolidated Version of the Treaty on the Functioning of the European Union.

<sup>5</sup> FRA, Open Call for Tender D/SE/09/01, Annex A1 – Technical specifications, p.8.

<sup>6</sup> Reports have been published in 2004, 2006 and 2009.

commissioned by the European Union have addressed irregular migration from a European perspective<sup>7</sup> favouring the construction of common notions of irregular migration. Indeed, it is not a priori obvious that irregular immigration in Southern Europe belongs to the same class of phenomena as the situation of rejected asylum seekers in Northern Europe or the situation of irregularly staying circular migrants in Eastern European states originating from one of the neighboring countries. Arguably, policy research has actively contributed to the construction of common notions of irregular migration, thus also providing an important legitimacy basis for related policy initiatives responding to irregular migration.

### 1.1. Patterns of irregular migration

The implicit argument in the section above has been that the evolving framework for the regulation of migration and in its recent Europeanisation have been crucial factors for the emergence and consolidation of irregular migration as ‘structural phenomenon’ in the European Union (Düvell 2006: 21). In other words, rather than only signaling changing dynamics of migration – which have indeed undergone significant changes in the past decades – the increasing importance of irregular migration indicates changes in the way migration is channelled globally and nationally into ultimately politically constructed socio-legal categories – such as asylum seekers, family members or irregular migrants.

In a sense, there has not only been a “securitization of migration”, as a result of which migration and asylum policy were subsumed under overarching security concerns and more diffuse security fears, but there has also been a closely related process of “irregularisation” of migration. This not only contributed to the rise of irregular immigration to European Union countries since the mid-1980s, but also consisted of a re-framing of certain types of migration and above all asylum-related migration as ‘irregular’ migration. But there has also been a contrasting trend of a ‘de-regularisation’ through the enlargement of the European Union, the related extension of freedom of movement rights to citizens of countries that used to be major countries of origin of irregular migrants in the EU and their re-definition as “mobile EU-citizens”, if at times unwanted. Several studies suggest that enlargement seems to have had a considerable regularisation effect (Kraler 2009), although enlargement did not necessarily change the informality of employment situations many citizens of new Member States might have been engaged in. Indeed, it seems that in many contexts citizens of new EU Member States are the main categories of migrants in irregular employment or at least make up an increasing share of migrants in the informal economy. However, while many citizens of new EU Member States might still be engaged in undeclared or illegal employment, they are no longer ‘illegal’. Although also EU citizens may in principle be removable, removal is strictly limited and above all difficult to enforce in the context of Schengen. As policing against third-country nationals in irregular employment and their employers is stepped up and citizens of new EU Member States provide a new and less policed source of informal labour, employment opportunities for irregular migrants *sensu strictu* seem to be increasingly limited to casual work and specific sectors such domestic work, which is inherently difficult to police (Wilmes 2011, see also van der Leun 2003). Given the dominance of women in the domestic sector and the lack of more stable (irregular) employment opportunities in most other sectors, men are likely to be harder hit by these changes.

Current patterns of irregular migration thus have to be seen in the context of the changing policing practices, changing modes of regulation of migration as a result of the emergence of

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<sup>7</sup> Examples of such projects include the FP5 project “Does Implementation matter? Informal administration practices and shifting immigrant strategies in four member states” (IAPASIS). See IAPASIS consortium (2003). “Undocumented Migration: Counting the Uncountable Data and Trends Across Europe (CLANDESTINO) is a response to the need for supporting policy makers in designing and implementing appropriate policies regarding undocumented migration” More at: <http://clandestino.eliamep.gr/>

a European migration regime, the related increased significance of Europe's external borders and the shifting meaning of irregularity resulting from these and other processes. But the meaning of irregular migration has not only been subject to change historically, but being in an irregular situation also means different things in different EU Member States, in terms of the reasons for becoming irregular, the opportunities available to sustain a living, and the relationship of irregularity to the asylum system and pathways out of irregularity.

The main commonality of irregular migrants is their legal status: that their entry or stay is considered unlawful. Who is considered as unlawful, however, varies greatly across European Union Member States and depends on policing practices, visa policies and general immigration legislation. On the European level, the Return Directive provides a definition of "illegal stay". Thus, according to Article 3(b) of the directive "*[I]llegal stay means the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.*" The main source of diversity of what actually is considered "illegal stay" stems from the considerable diversity of what constitutes a breach of conditions of entry or stay sufficient to classify someone as irregularly staying.

Unlawful entry and subsequent irregular stay is perhaps the most clear-cut type of irregular migration in the European Union. Irregular entries have become significant since the late 1980s and in particular in the course of the 1990s, although they are difficult to quantify. Indeed, it is difficult even to establish the overall number of detected irregular entries. In 2007, some 175,000 irregular entries were detected at EU external borders, while the overall number of apprehended irregular migrants was about 467,500 (Frontex 2008: 12, European Commission 2009b:28). While irregular migration through the Russian Federation, Belarus, Ukraine and Moldova to neighbouring EU countries (notably Poland, Slovakia and Romania) continues to be important, notably for migrants from Central Asia and the Caucasus region, it is especially the eastern, western and central Mediterranean regions where irregular entries have been quantitatively most significant. In addition, as a result of increased policing of the Mediterranean, the West African route has become more important after 2000 (Carling 2007a, Carling 2007b, de Haas 2007). However, overall trends are less clear. While the number of irregular immigrants entering the European Union at its Southern land and maritime borders has undoubtedly increased since the early 1990s, developments of irregular entries after 2000 do seem to follow a particular trend (see in more detail below). Suffice is to say that irregular entry is certainly significant in the EU's Southern Member States, but it is likely to contribute only to a relatively limited extent to stocks of irregular migrants.

In all these contexts, irregular migration consists of mixed flows. In other words, while migrants might move in an irregular manner, many among them may have legitimate claims to and indeed may intend to seek asylum. Whether they actually claim asylum or not, however, is a different question and has to do with reception conditions, migrants' own assessment of the likelihood of actually getting asylum as well as personal aspirations and future plans. As a result of lack of opportunities for further movement and a lack of legal opportunities to regularise, including low probabilities to being granted asylum, many irregular migrants in Member States with an external EU border, however, find themselves stranded and in a state of 'transit' – being neither settled nor being able to realize the migratory aspirations they may have, often opting to stay undocumented and remain in a limbo situation (see Papadopoulou-Kourkoulou 2008).

At the same time, there is wide agreement that legal entry and subsequent overstaying is quantitatively as much or even more important than irregular entry. Thus, in a Commission memo from 2008 it is estimated that about half of the overall stock of illegal migrants results from illegal entry into the territory of a Member State, while another half is due to overstaying



of visas and residence permits (European Commission 2008). Although the source of this estimate is unclear, there is research evidence supporting the general conclusion that overstaying makes up a significant share of irregular migrants in the EU, although the extent to which this happens is likely to vary considerably between EU Member States (see Kraler & Reichel 2011).

Asylum is closely linked to irregular migration also in the inner states of the European Union. Not only do the majority of asylum seekers enter destination countries in an irregular manner, usually entering from other EU Member States, but many asylum applications also end with a negative decision and consequently, result in a return decision. But only half of the return decisions issued by European Union Member States are actually effected (European Commission 2009b). This leads to a considerable number of persons who are not removed, are technically unlawfully staying and are de facto or formally tolerated. Finally, also the Dublin system creates irregularity, as a result of secondary migration of asylum seekers to other EU Member States and as a consequence of the mismatch between unilaterally identified Dublin cases on the one hand, and the actual number of bilaterally accepted Dublin cases and returned asylum seekers, on the other.

The remainder of the paper proceeds as follows. In section 2, we will describe the economic development of the European Union as a whole, with a particular focus on the evolution of employment and migrant employment. Section 3 then provides an overview of immigration into the European Union and the evolution of irregular migration. Section 4 reviews discourses on irregular migration on the European level, focusing on the framing of irregular migration by European institutions, on the one hand, and civil society actors, on the other. A third dimension of public discourses on the European level – namely the Europeanisation of national discourses on irregular migration will only be pointed at, but not dealt with in depth. The paper concludes by pointing out major research gaps and possible strategies for future research.

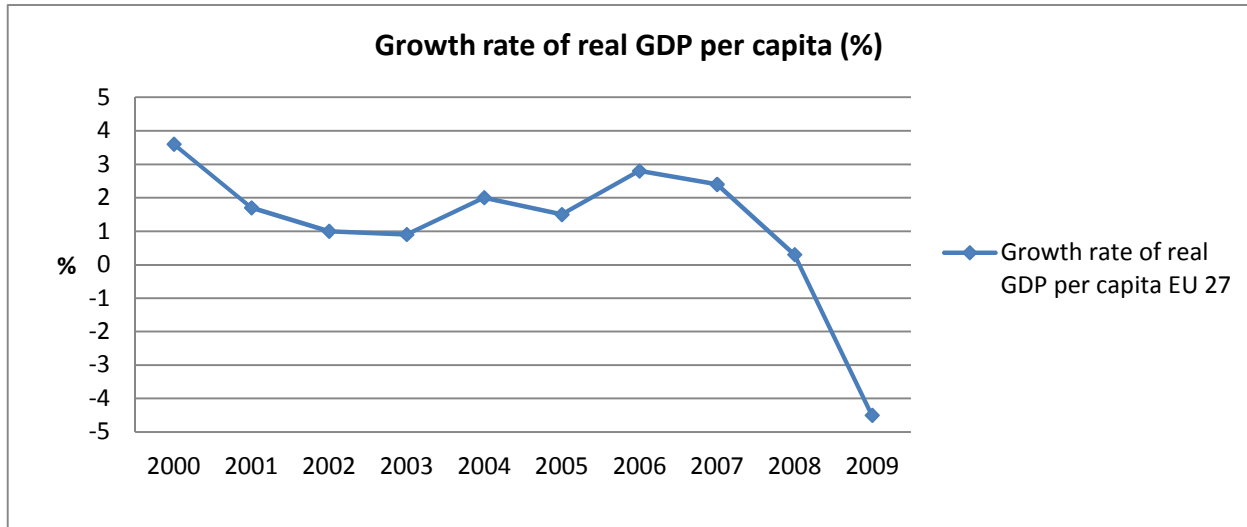
## **2 Economic background**

Between 2000 and 2010, the European Union underwent two economic cycles – a period of reduced growth between 2001 and 2003, a short period of economic recovery between 2004 and 2007, and a recession since 2008. Apart from cyclical developments, three events changed the terms of economic development in the European Union: the introduction of the Euro in 12 EU Member States in 2001, the 2004 enlargement when ten new countries joined the EU, and the 2007 enlargement when two new Member States joined the Union. In sum, enlargement considerably increased the diversity of the Union as regards the structure of the economy, employment patterns, growth dynamics, welfare state systems and economic policy preferences. The introduction of the Euro in 2001 was another important watershed, dramatically reducing the ability of states to respond to economic crises through currency devaluations or inflation and rendering European economies much more interdependent than before. The Euro subsequently became a leading currency worldwide, as the Euro zone grew from 12 states in 1999 to 16 countries in 2010 (European Commission 2010: 2).

Between 2000 and 2003 the growth rate of GDP per capita decreased from 3.6% to 0.9% respectively. Although it increases to 2% in the beginning of 2004, the economic activity in the EU “decelerated in the second half of 2004 because of the effect of external factors such as high and volatile oil prices, the slowdown in world trade expansion and the appreciation of the euro” (European Commission 2005: 9). However, the goal regarding the EU GDP growth rate, foreseen to reach 3% under the Lisbon strategy, was almost achieved in 2006 (2.8%). The economic crisis that followed has lasting effects on the European economies, as average deficits reached 7% of GDP in 2009 and debt reached almost 80% of GDP (European

Commission 2010: 2, 11). Consequently, the growth rate of GDP per capita decreased dramatically in 2008 to 0.3%, reaching negative growth in 2009.

Figure 1 Growth rate of real GDP per capita



Source: EUROSTAT.

Note: Data for 2009 is a forecast.

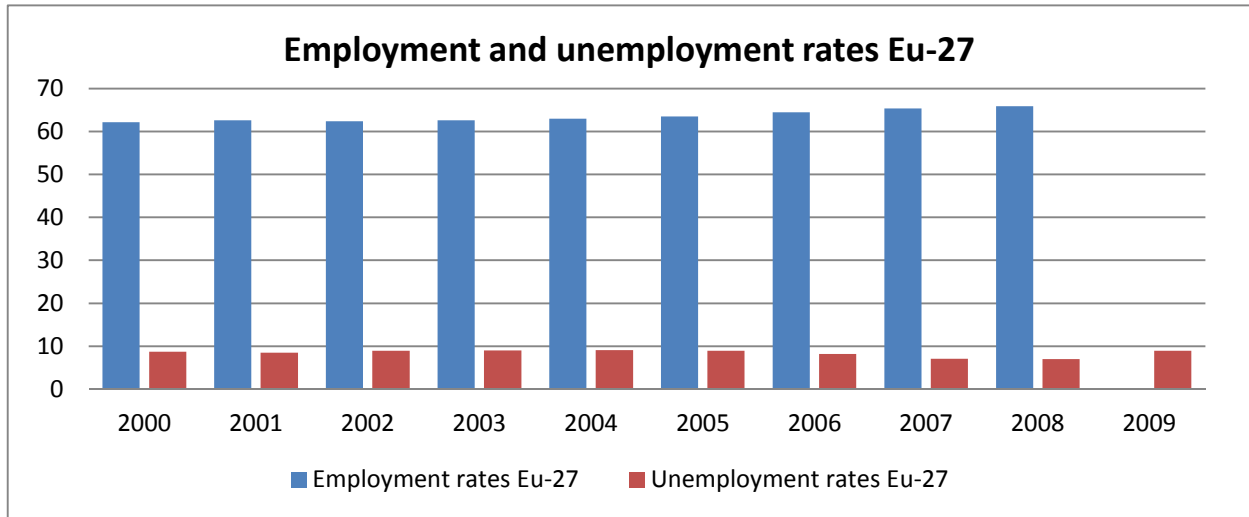
However, the crisis hit different countries differently, with the Baltic Republics (-14% in Estonia, -18.3% in Latvia and -15% in Lithuania ) being the hardest hit, followed by Slovenia (-8.8%, Finland -8.5%, Ireland -8.1%, Romania -7.2% and Hungary -6.2% (Eurostat 2010: 15). In terms of public debt the so-called “PIGS” countries (Portugal, Ireland, Greece and Spain) are the most affected, but also other countries (notably Hungary) experienced a serious crisis of public finances.

## 2.1 Development of employment

According to the original “Lisbon Strategy”, the European Union’s roadmap to economic growth and employment, the target is for the “EU to become the most dynamic and competitive knowledge-based economy in the world by 2010 capable of sustainable economic growth with more and better jobs and greater social cohesion and respect for the environment” (European Commission 2010: 2). Because of the complex structure and multiple goals to be reached the strategy was re-launched in 2005, this time with a clearer focus on growth and jobs. (European Commission 2005: 9)

One of the main employment related targets of the Lisbon strategy was to increase employment participation to 70% of the working age population by 2010. When looking at the data on employment of the entire population between 15 and 64 years old for the interval 2000-2008, this target was never attained. Employment rates generally display an only slowly increasing trend for the entire interval. From 62.2% in 2000, the employment rate in EU 27 grew to 65.9% in 2008. The period between 2005 and 2008 was characterised not only by a high increase in the employment rate (63.5% in 2005, 64.5% in 2006 and 65.4% in 2007), but also by a decrease in unemployment. The unemployment rate decreased from 8.9% in 2005 to 8.2% in 2006 and to 7% in 2008. However, with the onset of the economic crisis it dramatically increased again to 8.9% in 2009. In absolute numbers, the employment rate changes from the last years can be expressed as follows: after years of growth, with 9.7 million new jobs between 2005 and 2008, “the EU is still expected to lose some 8.5 million jobs in the period 2009-2010, with unemployment potentially reaching around 11% by 2010” (EC 2009a: 11).

Figure 2 Employment and unemployment rates EU-27



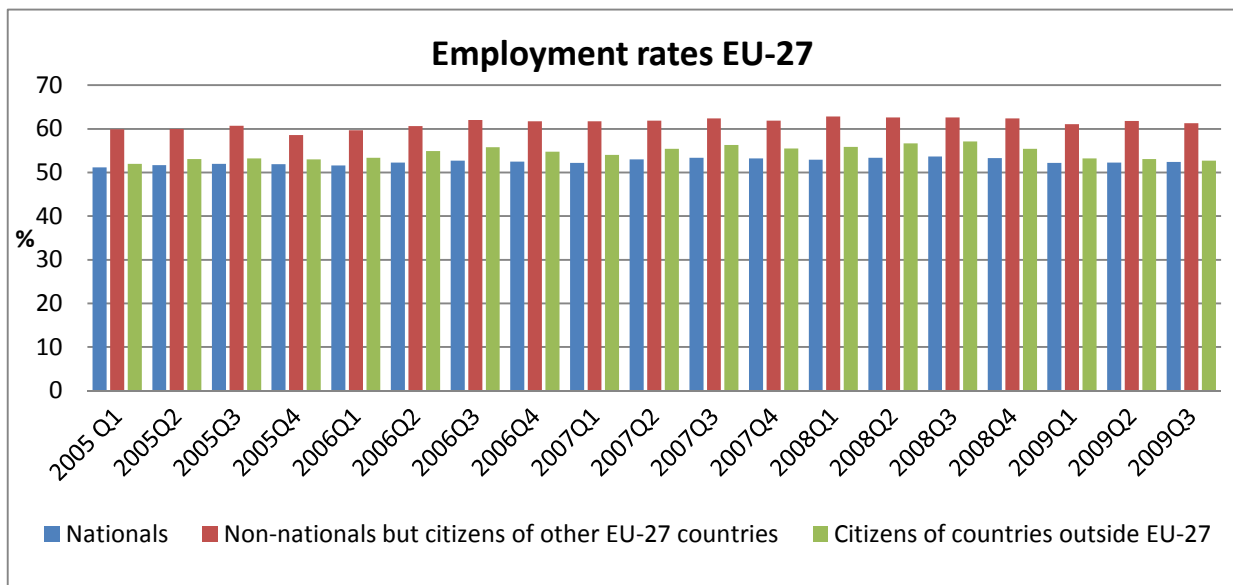
Source: EUROSTAT (LFS), own compilation.

Note: Data on employment rate for 2009 was not available at the time of drafting this report. Data refers to total population between 15 and 64 years old.

Considering the dramatic changes in employment rates in the EU, different groups of workers experience the effects of these changes in different ways. The recession has predominantly hit male-oriented sectors and manual and elementary occupations. Moreover, workers between 15 and 24 years old have been mostly affected by the current recession (European Commission 2009: 37-38).

In terms of employment rates according to nationality (for the population over the age of 15), the highest employment rate (around 60%) is recorded among non-nationals from other EU-27 countries. The lowest employment rate of this group was registered in the 4<sup>th</sup> quarter of 2005 – 58.6%. In the rest of the interval (between 1 quarter of 2005 and the 3<sup>rd</sup> quarter of 2009) the employment rate of citizens of other EU-27 remains over the value of 60%. However, the rate decreases from 62.8% to 61.3% in the 3<sup>rd</sup> quarter of 2009.

Figure 3 Employment rates EU-27



Source: EUROSTAT (LFS), own compilation.

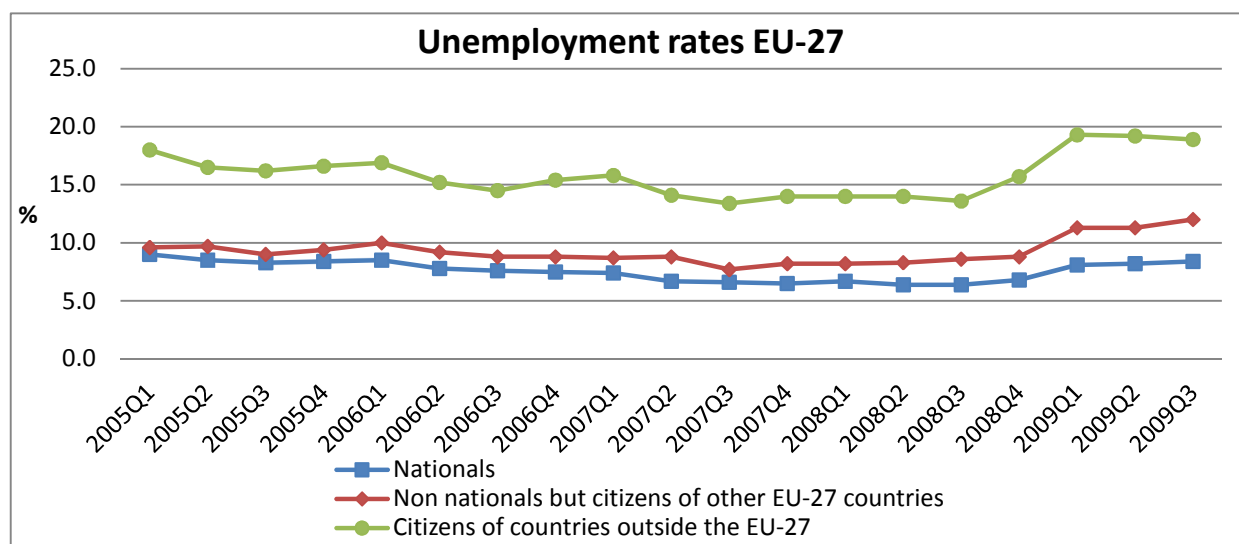
Note: Data refers to working population over the age of 15.

The employment rate of nationals fluctuates between 51.2% in the beginning of 2005 and 53.7%, the highest value of the interval, in the 3<sup>rd</sup> quarter of 2008. However, it decreased to 52.4% in the same period of 2009.

Third-country nationals experienced the highest changes in employment rates – from 52% in the beginning of 2005 to 57.1% in the 3<sup>rd</sup> quarter of 2008. However, the rate decreased progressively during 2009 reaching 52.7% in the 3<sup>rd</sup> quarter of the year.

While third-country nationals have lower employment rates than either EU nationals or nationals, they are much more affected by unemployment – and unemployment rates are more volatile. From the beginning of 2005 until the first half of 2008 the unemployment rates for nationals and EU-nationals countries fluctuate, although maintaining a general decreasing trend. The unemployment rate of nationals decreased from 9.1% in the 1<sup>st</sup> quarter of 2005 to 6.4% in the first half of 2008. Similarly, the rate for EU-nationals decreased from 9.6% to 8.2% within the same time frame. The unemployment rate for third-country nationals decreased from 18% in the beginning of 2005 to 13.4% in the second half of 2007. Only after the 3<sup>rd</sup> quarter of 2008 (8.6%) it dramatically increases to over 19% in the first half of 2009 with a slightly decrease towards the end of the year.

Figure 4 Unemployment rates EU-27



Source: EUROSTAT, own compilation.

Note: Data refers to population over the age of 15.

## 2.2 Patterns of migrant employment

In 2005, an estimated 19.4 million legal immigrants – including migrants from other EU Member States – were economically active in the EU-27, representing a share of roughly 9.3% in the total labour force. Of these 19.4 million, some 12.2 million had a foreign citizenship (Münz 2008: 9). Indeed, in the EU-15 it has been the considerable growth of migrant employment in the period from 2000 to 2005 – migrant employment grew by some 40% in this period, which has been a main factor in total growth of employment (European Commission 2009: 10).

The position of migrants on the labour market varies considerably between EU Member States as well as between different categories of migrants, not only between foreign born from third countries and foreign born originating from an EU country. As pointed out in the above section, immigrants from third countries on the whole have far lower employment rates than EU citizens. But there is also considerable variation between immigrants from third countries. Thus, immigrants from North America and Australia had one of the highest employment rates

(74.1%). By contrast, immigrants from middle and low income countries such as Turkey (47%), the Middle East and Africa (57%) and Asia (59%) had considerable lower employment rates (ibid: 11).

Generally, labour market performance as measured by employment rate of foreign nationals is significantly worse than that of immigrants, although the general situation conceals considerable differences between different migrant groups. There are particularly clear differences between non-nationals from Turkey and Maghreb countries and persons born in these countries, notably in Belgium, Denmark, France, the Netherlands, Austria and Sweden (Turks) and in France, Belgium, the Netherlands, Spain and Denmark (citizens of vs. persons born in Maghreb countries). This suggests particularly exclusionary mechanisms in the labour market in these countries, but also shows that legal status (citizenship) clearly makes a difference. Generally, employment rates and unemployment rates closely reflect general economic developments. However, available evidence suggests that employment and unemployment rates of migrants are subject to much greater variations than those of the majority population. In particular, migrants are much more vulnerable to economic downturns (Kraler et al. 2011: 45). At the same time, overall employment patterns conceal considerable differences between different cohorts of migrants, which in turn reflect differences in the characteristics of immigrants as well as differences in type of migration.

The distribution of migrants across economic sectors shows a marked concentration in specific sectors and an underrepresentation in others. Across the EU, migrants are concentrated in agriculture, industry and the service sector, albeit with marked gender differences (OECD 2008). Generally, the distribution of the migrant labour force across economic sectors is an expression of past migration patterns, skill characteristics, occupations, but importantly also economic changes and opportunity structures. In terms of occupation, migrants are overrepresented in the highly qualified and in the least skilled occupations and underrepresented in the middle spectrum of the labour market (Kraler et al. 2011: 40ff). The skill structure of the migrant population presents a similar picture: As discussed by Münz (2008), the immigrant population in the EU-27 is generally underrepresented in the medium-skilled group. Almost half of the native-born population has a medium educational attainment, according to the classification used, but only 41 per cent of the immigrant population born in another EU-27 country and 37.9 per cent of immigrants originating from countries outside EU-27.

Against this background, migrants are generally much more hit by the recent recession and they have a much higher risk to become unemployed than natives. Also, in particular recent immigrants are also less likely to have access to social benefits and hence have a higher risk than natives to become poor in times of economic crisis. But are migrants also pushed into irregularity in times of recession? Indeed, in some economic sectors – notably agriculture and domestic work, which are marked by a high extent of informal work arrangements and frequent changes from a formal to an informal employment relationship it is not implausible to assume that there are even fewer incentives to have formal work relationships in times of recession, thus potentially rendering non-nationals also irregular. But there is disagreement among specialists on the impact of recession on undeclared work more generally. Thus, Friedrich Schneider, one of the best known and at the same time one of the most disputed specialists on undeclared work argues that undeclared work rises in times of recession. According to his thesis then, the informal labour market thus represents at least a partial substitute for the formal labour market and operates in a countercyclical manner (Schneider 2009). On the other hand, a recent study by Williams and Renooy (2009) commissioned by the European Foundation for the Improvement of Living Conditions argues that evidence seems to point in a different direction – i.e. informal labour overall increases and decreases in line with overall economic developments (Williams & Renooy 2009: 15). A more likely

reason for irregularity than informalisation as a result of recession then is unemployment and the associated risk for migrants whose residence rights are tied to being in employment to lose that right in case of protracted unemployment.

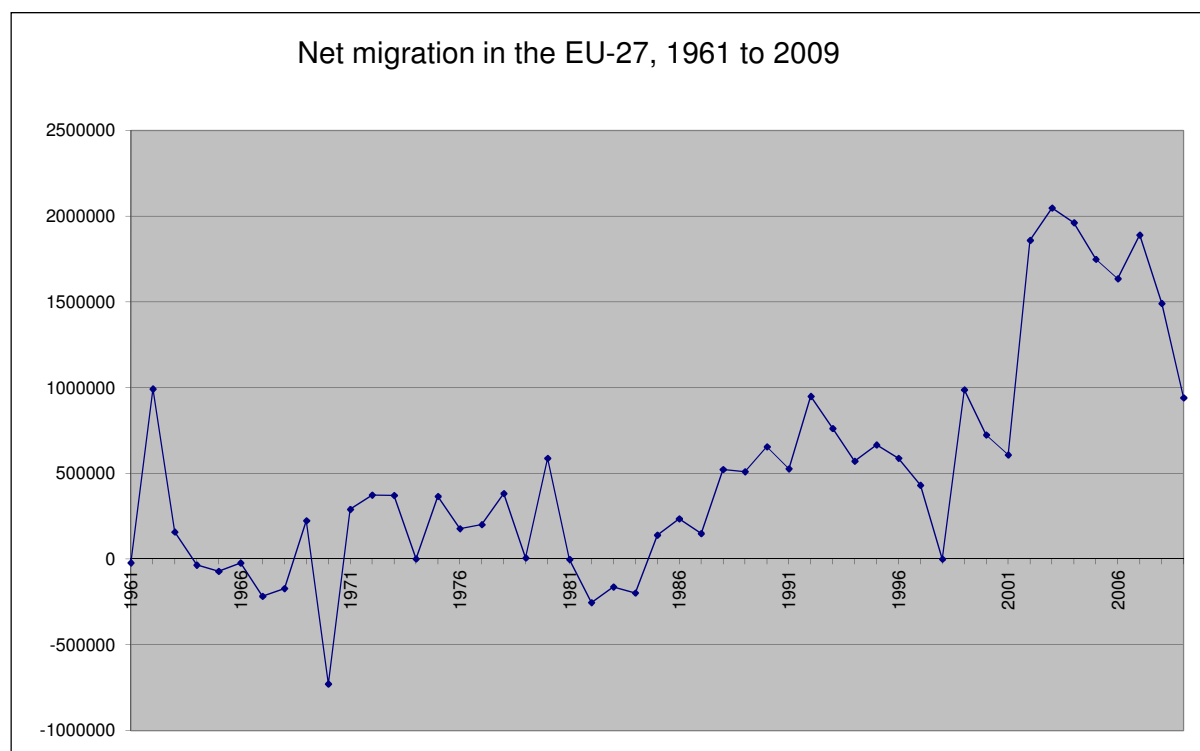
### 3 Development of migration

#### 3.1 Regular migration

In the European Union as a whole immigration has exceeded emigration since about 1962, with emigration exceeding immigration only for short periods between 1964 and 1968, 1970 and between 1981 and 1984. However, net migration has been close to zero in 1974, 1979 and 1978. All periods of declining net migration have corresponded to periods of reduced economic growth or recession.

Net migration levels have been at about 240,000 on average per year in the 1970s and 198,000 in the 1980s. In the 1990s, net migration grew significantly to an average of 750,000 per year in the 1990s. With over 2 million, net migration peaked in 2003 and has since declined (Diez-Guardia/ Pichelmann 2005: 5-6, see also figure 5). However, this conceals considerable differences in net migration regarding migrants from countries outside the current EU-27 between different countries as well as considerable migration between the current Member States of the European Union. While immigration in Eastern European countries was relatively modest and emigration – apart from limited migration to other communist states and several waves of mass forced migration – almost absent, Southern European countries, Ireland and Finland were exporting labour migrants until the 1970s and 1980s while most other countries have been receiving countries since the 1950s or 1960s.

Figure 5 Net migration in the EU-27



Source: Eurostat (estimated net migration)

In 2005, the number of foreign born population in the EU stood at just over 40 million or 8.8 per cent of the total population of 495 million. Of the more than 40 million persons born abroad, two thirds have been born outside the European Union. Reflecting the very different historical trajectories of individual countries, the share of immigrants, however, varies enormously. With a share of more than 37.4 per cent, Luxembourg had the highest percentage of foreign born in 2005. In long-standing countries of immigration, the share of foreign born is between 9.1 per cent (United Kingdom) and 15.1 per cent (Austria). The foreign born population in Latvia and Estonia is roughly in the same order, with 19.5 per cent and 15.2 per cent respectively. In various Eastern European countries, including Bulgaria, Poland, Romania and Slovakia, the share of the foreign born population, by contrast is much lower and varies between 0.6 and 2.3 per cent. In the Czech Republic, Finland and Hungary the share is somewhat higher and between three and four per cent, while in the majority of the remaining countries the share of the foreign born population is just below the EU average (Münz et al. 2006, Kraler et al.2011: 11ff). Not all foreign born persons have a foreign background. Indeed, in some countries with a long history of emigration a sizable proportion of immigrants is made up of returning citizens and their descendants, for example in Poland.

The European Union's population of immigrant origin is also diverse in terms of legal status. While a sizable share of immigrants possess the citizenship of their current country of residence, some 28 million migrants or descendants of migrants had a foreign citizenship in 2007, of which some 17 million had a citizenship of a country outside the European Union.

These legally staying third-country nationals have different legal status too. Presumably, a majority of these have secure long-term residence permits in the meaning of EC/2003/109 (Long-term residence directive). A large share of migrants admitted for permanent residence has been admitted for family reasons. Including also freedom of movement related migration in the total count and covering 13 EU countries, OECD statistics show that the share of family related migration in all permanent type migration ranges from relatively low – 18 per cent in the case of Denmark and the UK – to 62 per cent in the case of Portugal, averaging about 37 per cent. Employment is an important reason for admission only in Southern European countries and in the UK. More important in the European context is freedom of movement related migration, i.e. intra-European level, which in terms of migration reason covers all grounds of stay (SOPEMI 2008). Humanitarian migration makes up an important share of permanent immigration in Sweden, due to a large extent to Sweden's intake of resettled refugees. Counting all first permits issued to third-country nationals and excluding asylum, recent Eurostat figures show that about 35 per cent of all permits issued in the EU-25 are issued for family-related reasons, followed by employment with 33 per cent. Other reasons make up 18 per cent and educational another 14 per cent (see table 1). Comparing OECD statistics to Eurostat statistics a substantial share of first permits issued seems to be of a temporary kind, notably employment-related permits.

Table 1 First permits issued to third-country nationals (2008)

	BE	BG	CZ	DK	DE	ES	IE	GR	ES	FR	IT	CY	LV
Family reasons	20,320	1,545	10,700	4,230	49,640	1,400	3,410	21,855	150,100	85,475	76,765	335	2,465
Education	6,745	1,170	4,220	19,280	29,985	340	12,540	1,450	21,665	52,225	12,510	8,750	345
Employment	7,095	775	43,280	7,420	20,295	965	5,810	15,610	96,320	21,785	142,890	32,705	1,825
Other Reason	12,040	445	3,150	725	14,365	1,175	7,170	1,500	131,740	29,240	9,395	12,020	3,075
	LT	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	Total
Family reasons	660	8,405	955	23,880	14,400	8,920	26,115	6,110	3,960	1,225	7,170	36,625	<b>428,240</b>
Education	445	7,760	200	9,175	2,855	6,145	3,755	2,970	245	450	4,440	11,695	<b>171,225</b>
Employment	4,140	16,875	950	9,285	3,095	18,665	23,380	9,040	24,955	3,985	5,720	14,260	<b>396,775</b>
Other Reason	50	3,560	2,885	25,335	1,435	7,175	1,580	1,235	55	2,370	4,540	21,565	<b>226,040</b>

Source: Eurostat.

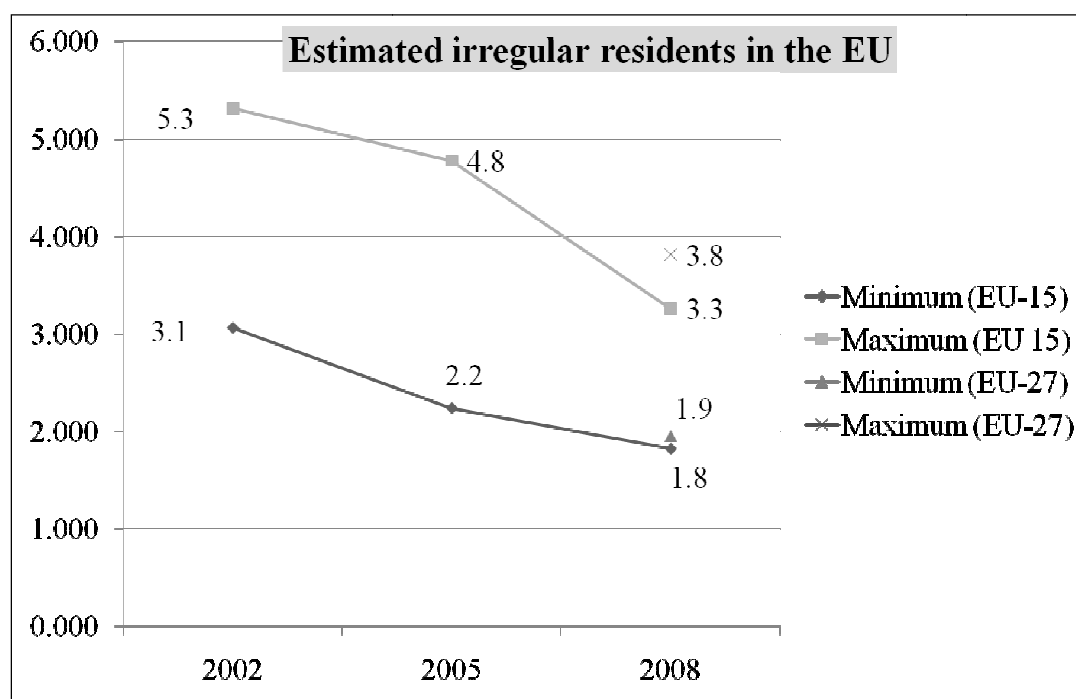
In general, the composition of residence permits issued to third-country nationals in the EU in the past decade seems to have been relatively stable (see Kraler 2010, chapter 3), and only occasional large-scale regularisations in Southern European countries have tipped the balance in favour of employment-related admission grounds.

### 3.2 Irregular migration

If the 1990s were marked by a considerable rise in irregular forms of migration, including asylum, the decade after 2000 is characterised by a remarkable decline of both irregular flows and stocks of irregular migrants. Thus, in 1998 the total number of recorded apprehended aliens made up a record number of 700,000 (see Gédap & BIVS 2003), declining to just under 400,000 in 2004. Although figures subsequently rose again to over 516,000 in 2006 apprehensions declined again subsequently (European Commission 2009) and total apprehension levels are currently about two thirds of what they used to be in the late 1990s.

The development of the estimated irregular migrant stock tells a similar story and suggests an even more pronounced decline of the irregular migrant population (see figure 6).

Figure 6 Estimated irregular residents in the EU



Source: own presentation based on Clandestino results, <http://www.irregular-migration.net>.

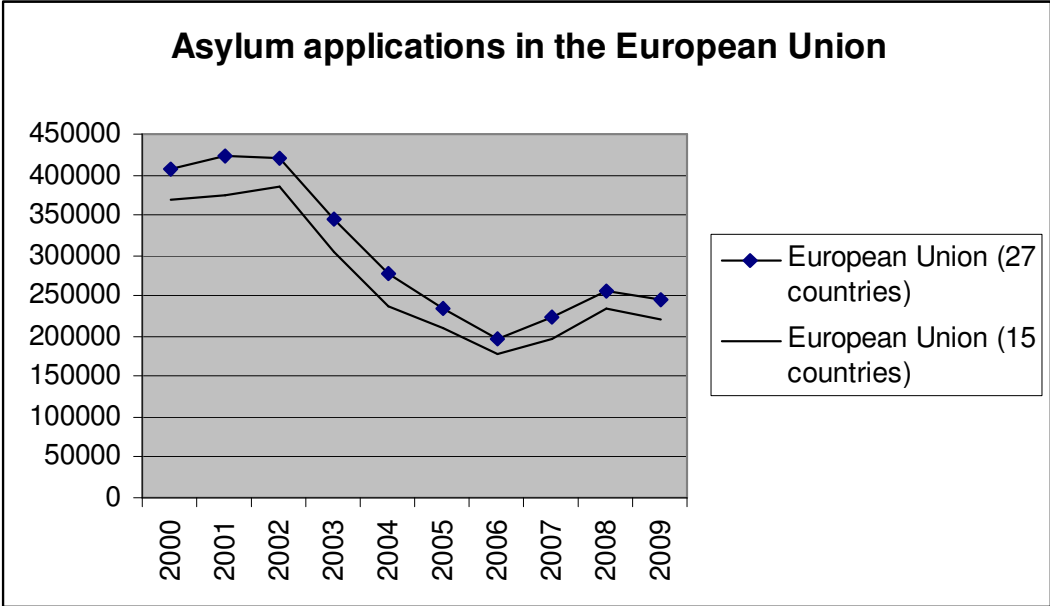
The reasons for this decline are threefold: first, EU enlargement seems to have a major regularisation effect, turning many formerly irregular migrants into EU citizens with (initially limited) freedom of movement rights. Secondly, at least 1.8 million persons were regularised between 2002 and 2008 in the framework of national regularisation programmes, significantly reducing the stocks of irregular migrants in the European Union (see Kraler 2009, statistical annex).

In addition, however, there seems to have been an overall decline of irregular inflows, including asylum applications. The latter are not only often initially recorded simultaneously as apprehensions, but subsequently – through absconding and rejected asylum cases contribute to the stocks of irregular inflows. Technically, asylum applications are like applications for regularisation and can be interpreted as applications for a status determination of migrants otherwise not eligible for a legal stay. Even if problematic, asylum applications thus can be interpreted as indicators of irregular inflows. As shown below (see figure 7), the



number of asylum applications has considerably decreased since 2000, although there has been some limited increase recently.

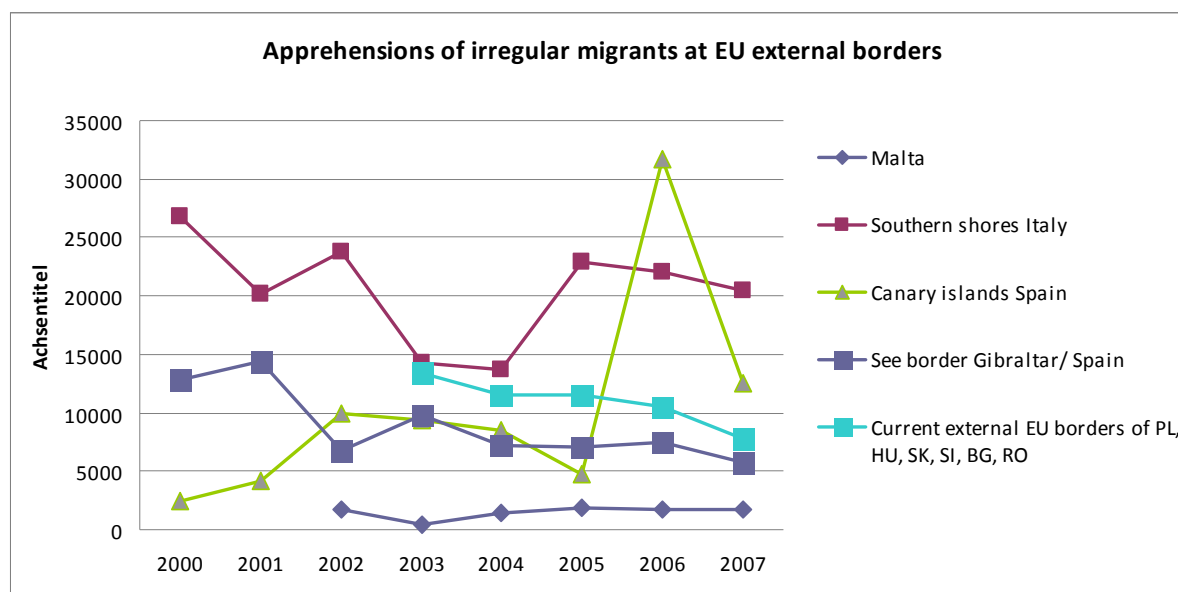
Figure 7 Asylum applications in the EU



Source: Eurostat.

Looking only at apprehensions at the EU’s external borders, the picture becomes more complex. While apprehensions at external EU borders in Eastern Europe have significantly declined, apprehensions at southern European maritime borders have declined at the turn of the century, but seem to have greatly increased since 2003 – from just under 40,000 in 2003 to more than 70,000 in 2006 (see figure 8). If apprehension statistics at southern maritime borders are disaggregated by place of apprehension, however, it becomes clear that the overall increase of apprehensions at southern borders is entirely due to the short-lived increase of irregular entries at Italy’s southern shores between 2003 and 2005 and the significant inflows recorded at the Canary Islands in 2006, both of which can be interpreted as exceptional events. The overall trend, therefore, also seems to point towards a decrease of irregular entries at the EU’s southern borders. Nevertheless, it is these – in many ways exceptional trends – which seem to make the headline news, and not the more plausible decline of irregular migration in the past decade.

Figure 8 Apprehensions of irregular migrants at EU external borders



Source: own presentation based on ICMPD compilation of border police data from different sources for the purposes of the CLANDESTINO project.

### 3.3 (Irregular) Migration and economic developments

Overall, the evolution of net migration in the European Union since the 1960s seems to largely follow economic cycles, with a decrease in net migration largely corresponding to economic slumps and increases corresponding to periods of economic growth. However, the amplitude of change is likely to be heavily influenced by policy cycles and concrete policy measures, while non-economic and non-policy factors (chain migration, networks, family reasons, etc.) undoubtedly also play role.

By contrast, the evolution of irregular migration over the past decade described above suggests that irregular migration trends are much less related to economic developments. While at first sight this might seem surprising, given that the ‘economics of migration’ should also apply to irregular forms of movement, it is less surprising if “irregular migration” is interpreted as an essentially political construction. Indeed, the political nature of the very category of irregular migration effectively renders it a malleable and elusive category which is not only difficult to nail down but also makes it responsive much more to political measures – such as enlargement or regularisations – than to any economic developments. Having said this, irregular inflows undoubtedly are expressions of broader global mobility patterns. In the context of mixed flows composed of bona fide refugees, economic migrants and others migrating for various other reasons irregular inflows do to some degree reflect global patterns of forced migration and are therefore closely related to conflict cycles, although (new) barriers to movement at EU borders and in transit countries as a result of the externalisation of migration policies are an important factor too.

But economics do play a role. As recent analyses have shown, recession may reduce irregular inflows, although in the case of irregular migrants who have already made considerable investments and are temporarily stranded in a country of transit it seems likely that migration decisions are only postponed, until the economy catches up and sufficient funds for the onward journey is obtained (see Frontex 2009, Papadimitrou et al. 2009). Impact on return, on the other hand, is likely to be much more limited, given the fact that irregular migrants are often “blocked” in their countries of residence and cannot easily return.

## 4 Public Discourses

### 4.1 Scientific studies of public discourse on the European level

Studies on public discourses of irregular migration at the EU level are rather scarce. There is a relatively large body of studies analyzing how irregular migration features in general national debates on migration, both through case studies and in comparative perspective (see for instance Triandafyllidou, 2000; Wodak & van Dijk 2000), although irregular migration is rarely a focus (but see for example Laubenthal 2006 on regularisation movements and national debates on regularisation). In addition, there are a large number of studies that address the discursive framing of migration as part of a broader policy analysis (see for instance, Triandafyllidou & Gropas 2007, Zincone et al. 2011). Most available studies are designed as analyses of discourses on migration in general. Thus although irregular migration frequently features as a topos of these debates (and the related analyses), irregular migration is rarely the focus of the analysis itself. In addition, available studies usually address migration from different states' perspectives. Thus, the CLANDESTINO project provides a useful but limited analysis of public discourses on irregular migration in twelve European countries, but does not analyse discourses on the European level, nor how European developments influence national debates. What is largely absent, therefore, are studies that would analyse the framing of irregular migration by actors at the European level or, conversely, studies that would investigate the Europeanisation of national debates. But in particular the latter seems to be of major importance (see Arduç 2002). Indeed, events such as the dramatic incidences in Melilla or Ceuta in 2005, when several hundred African migrants tried to enter the fenced territory of these Spanish exclaves or the fate of "boat refugees" arriving each year at maritime borders of the Canary Islands, Lampedusa and Malta have become a major symbol for "fortress Europe" and not only are regularly reported in the media, but have become subject to movies, documentaries, radio features, exhibitions, novels, travel reports, autobiographies, performances, and even operas. The mere quantity of publications and other "products" around irregular immigration that have emerged in very different places across Europe is significant in itself and points to the power of the images associated to irregular migration.

To date, there is no serious comparative study on the Europeanisation of discourses on irregular migration. However, a study of parliamentary debates on migration and asylum policy in seven European states conducted in the second half of the 1990s (Arduç 2002, Wodak & Dijk 2000), provides some interesting results. Thus, the study shows how asylum, irregular migration and crime became linked in several of the states, but also the extent to which debates on asylum and irregular migration were Europeanised even before the European Union formally acquired a legislative competence on migration and asylum. The study also shows that comparisons with other EU Member States and "European standards" as well as number games are an important part of parliamentary debates.

Amongst the few studies that have taken up discourses on irregular migration on the European level are studies emanating from the research group "Transit migration" (see Transit Migration Forschungsgruppe 2007), whose analysis however is largely limited to the analysis of discourses of selected dominant international actors such as IOM and the assumed rather than proven influence of these actors on discourses and government policies on irregular migration in the European Union.

In addition, there is an excellent analysis of civil society mobilisation around irregular migration in the European Union by Helen Schwenken (2006). Taking the mobilisation around the closure of the Sangatte refugee camp, a campaign of irregular domestic workers in the UK and nascent campaigning around domestic work on the European level as case studies, Schwenken identifies several frames that have been used by actors, including advocacy

organisations and migrants themselves in their mobilisation for residence rights. In the case of Sangatte she identifies two frames: one that she calls the “autonomy of migration” and whose main impetus is to emphasise migrants rights to movement and freedom of choice in selecting their destination country and which operates in an oppositional mode; and a second frame of “refugee protection”, used mainly by advocacy groups in France, but only to a lesser extent by migrants themselves. In the case of domestic workers, the campaigns by advocacy and migrant groups analysed by Schwenken framed demands for regularisation in terms of workers’ rights, thus also countering the dominant trafficking and “domestic slavery” discourses while at the same time avoiding the migration control and enforcement frames.

## 4.2 Views of European Union institutions

In the following, we provide a brief review of views and positions of European Union institutions. For the purpose of this limited analysis we have screened official documents of the European Commission, the European Parliament, and the European Economic and Social Committee between 2000 and 2010 and for this purpose have fed relevant documents into qualitative data analysis software and constructed a simple code tree.

For pragmatic reasons, we have left aside statements issued by the Council in our analysis. In addition to pragmatic considerations, Council statements also largely reflect the line of the Commission and also usually refer to and build on Commission statements. As the Commission has the monopoly on legislative proposals and therefore is the dominant actor for the framing of debates on irregular migration, the present section largely refers to Commission communications. With the growing importance of the European Parliament however, the Parliament’s voice is likely to become increasingly important and likely to be increasingly reflected in legislation and other documents at the EU level.

As already noted above, the main term used by the Commission to describe irregular migration is “illegal migration” and in its early communications the Commission exclusively used this term, because “illegal resident is used following the legal terminology of Article 63(3) of the Treaty of the European Community” (COM (2002) 564). However, from 2005 onwards, the Commission increasingly uses the term “irregular” to refer to the situation of unlawfully staying third-country nationals (COM (2005) 184).

By contrast, the Economic and Social Committee – an arguably less important institution – has distanced itself earlier from this terminology, emphasising that “the term “illegal” should be used in particular to refer to smuggling, trafficking or exploitative activities, so that those engaging in and profiting from such activities are considered “illegal.” Moreover, the Committee underlines that migration per se should not be seen as illegal, but entering the territory of a country without the required documents is unlawful. “Lumping together irregular immigration and crime, as the media frequently do, distorts the facts and breeds fear-driven and racist attitudes among the general public. Irregular immigrants are not criminals, even though their situation is not legal” (CES 527/2002).

The Commission has been a major promotor of more open migration policies. In one of its first communications (from 2000) on migration policy after the Amsterdam Treaty, the Commission thus reasons “that there is a growing recognition that the ‘zero’ immigration policies of the past 30 years are no longer appropriate” (COM (2000)757). Recognising migration as an a priori phenomenon, the Commission considers that irregular migration is strongly connected to economic developments. Access of third-country nationals to irregular employment is seen as a pull-factor which endangers the entire economic situation – “bringing the issue of labour migration into the discussion on the development of economic and social policy for the EU, would also provide an opportunity to reinforce policies to

combat irregular work and the economic exploitation of migrants which are at present fuelling unfair competition in the Union” (COM (2000)757).

The Communication frames solutions to irregular migration in humanitarian terms, associating irregular migration with human smuggling, human trafficking and exploitation and justifying measures against irregular migration as ultimately being in the interest of irregular migrants. According to the Communication, illegally employed migrants risk to be exploited or work in “slavery-like conditions, which cannot be tolerated in the European Union. Such conditions are not limited to cases where organised crime is involved. Illegal employment prevents workers from benefiting from social welfare and creates an uneven playing field for employers” (COM (2006)402).

For the Commission, policies on legal migration and combating irregular migration are inextricably linked. Thus, the Communication sees policies on illegal migration as a prerequisite for the development of more open policies on legal migration. The communication highlights the complexity of illegal migration and stresses the need for a comprehensive approach, addressing all different stages of the migration process: “The phenomenon of illegal immigration consists of a number of interlinked phases and each has to be tackled systematically with specific measures. These include action in source and transit countries, police co-operation to pool knowledge of trafficking operations which by their nature are international, action at the point of entry including border controls and visa policies, legislation against traffickers, help for victims and their humane repatriation.”

Although repeatedly referring to regularisations, the communication refrains from an evaluation of whether regularisation can be an effective policy tool to address irregular migration. By contrast, the Commission communication on a common policy on illegal migration adopted in 2001 seems to suggest that, generally, regularisations are not an appropriate policy instrument and provides principled arguments that “[i]llegal entry or residence should not lead to the desired stable form of residence.” (COM (2001) 672, see also Baldwin-Edwards & Kraler 2009: 115). In a similar vein, a communication adopted in 2003 argues that the obligation to return [in case of irregular migrants] is seen as a major factor for “the credibility and integrity of the legal immigration [...] policies” (COM (2003) 323). Since then, attitudes of the Commission on regularisation have – with the exception of the “study on the links between legal and illegal migration” further hardened, although the Commission has more recently reconsidered its position on regularisation after a study commissioned in 2008.

In contrast to the Commission and the Council, the Economic and Social Committee is in favour of regularisation. Thus, it “considers that there should be no discussion of repatriation unless two conditions are met: firstly, any humanitarian factors must be looked at before proceeding to repatriation; secondly, in each case all the possibilities for legalisation of status offered by legislation must have been exhausted prior to repatriation. However, voluntary repatriation should always be sought.” Thus, the Committee sees regularizations as a desirable approach, and opposes the Commission proposal of forced return meant to protect the European immigration policy. Moreover, the Committee emphasizes the human rights approach, as “the final aim is for these people [irregular migrants], who are present in European society, to enjoy the fundamental human rights laid down by international treaties covering the Member States”, while “the [Commission’s] communication does not view illegal immigrants as persons whose rights should be guaranteed” (CES 938/2001).

Also in the opinions of the European Parliament a human rights perspective dominates. Thus, the Parliament considers “[i]llegal immigration into the Member States of the European Union is continually increasing and is being exacerbated by trafficking in and the smuggling of human beings” (EP 302.262, 2001). And, according to the Parliament “it is up to us as humans, it is up to us as Europeans, to close off this route to hell, to put an end to illegal immigration. At the same time we must ensure that only immigrants using legal channels can

reach the territory of the European Union, and that effort is then made to enable them to integrate into our societies” (PE 406.003/2008).

Enforcement, by contrast, should target the “criminal networks” [who] are responsible for the death of hundreds of people whose lives are lost at sea every year”. In this context, the Parliament “recalls that, in accordance with international obligations, Member States have a shared responsibility to save lives at sea” and “calls, therefore, on the Commission and on Council to redouble their efforts in the fight against organised crime, human trafficking and smuggling which occur in various parts of the EU, and particularly to try to dismantle all the networks by tackling not only the people smugglers, who are merely the visible linchpin, but those who, at the top of the ladder, derive the most advantage from these criminal operations” (PE 418.858/2009).”

Interestingly, asylum and irregular migration are treated as strictly separate issues in most Commission communications. Indeed, asylum is mostly in separate communications, while illegal migration has initially been dealt with mostly jointly with other immigration issues. While many of the measures adopted in the asylum framework, notably the Dublin rules and the Eurodac database etc. are effectively intended as instruments to combat “asylum abuse” and irregular migration, their rationale is framed in terms of protection and human rights. While irregular migration may be the tacit subtext of asylum policy, the connection between asylum and irregular migration is thus hardly made. The framing of irregular migration as a protection issue therefore largely takes place in the trafficking framework and, for example in respect to the employer sanctions directive, in the framework of labour exploitation more generally.

#### *Theories on the development of irregular migration*

In the beginning of the period under review, the main cause of irregular migration is, according to the Commission, the economic factor, whereas towards the middle of the interval considered in this analysis “decisions to migrate are based on an individual assessment of a number of push factors such as unemployment or permanent low-wage levels; natural disasters or ecological devastation and of pull factors such as informal sector and employment with higher level of wages; political stability, maintenance of the rule of law and effective protection of human rights; different labour market conditions. Illegal migrants make their decisions despite various other factors, which have a deterrent effect, such as high costs for facilitation services, and risk of interception and prosecution by border authorities, amongst others” (COM (2004)412). Moreover, “the reasons that push third-countries nationals to seek to immigrate illegally are so wide and complex that it would be unrealistic to believe that illegal immigration flows can be completely stopped” (COM (2006)402).

Regarding policies to combat irregular migration, regularisation was not regarded as a solution in 2001, whereas in 2003 the Commission states that these regularisation programmes might be also seen “as a factor which enables the integration process to develop”, as the situation of those already in an irregular status on the territory of Member States has to be addressed (COM (2003)336). However, it is still emphasised that such programmes demonstrate “the current limits of the measures in place to manage the existing channels for legal immigration” (COM (2004)412).

#### *Implicitly assumed or explicitly explained assumption about the link between economic developments and irregular migration*

In 2000 the Commission explicitly states that immigrants have a positive impact on the economies of host countries. However, although irregular migration makes a contribution to the economy on short-term, it “hinder[s] the implementation of structural changes which are

necessary for long-term growth” (COM (2000)757). Thus, it is implicitly assumed that growth has been already delayed by irregular migration.

Interestingly, the Commission provides later on for results of different studies on migration around the world (from the ILO, IMF, OECD), acknowledging also the positive effect of irregular migration of social development on the long term– “it seems that the large waves of legal and illegal immigration into the US since the late 1980's is the main reason why the ageing trajectory of the US has markedly improved by comparison to, and now differs substantially from, that of Europe” (COM (2003)336). However, in the same communication it is stated that “the presence of large numbers of illegal residents has a negative influence – as a source of cheap labour, liable to exploitation and in the long-term preventing necessary structural reform and thereby contributing to the inefficiency of the labour market.” These negative effects are mainly used to justify the Europeanization of migration policies, “as immigration is caused by multiple factors which can be beyond the scope of any single public authority”.

#### *Which quantified developments are quoted to frame and support arguments?*

The numbers quoted are used, in the Commission’s texts, mainly to support common action against irregular migration, trafficking and smuggling. In 2000 the Commission states that “there is substantial illegal immigration into the EU which Europol estimates at 500,000 people per annum. [...] Given such numbers and the practical difficulties of returning people to the countries from which they came, several Member States have resorted to regularisation or amnesty measures and the total number of those permitted to stay legally as a result is estimated at approximately 1,8 million since the 1970's” (COM (2000)757). Moreover, as “these [organised crime] networks have mushroomed in recent years, controlling a worldwide operation worth some US \$ 13,000 million a year, the fight against illegal trafficking networks must be stepped up”. Similarly, in the proposal on the sanctions imposed to employers of irregular migrants in 2007, the Commission estimates that the number of third-country nationals illegally staying in the EU varies between 4.5 to 8 million.

### **4.3 NGOs views**

In the scope of this paper, it has not been possible to systematically screen NGO views on irregular migration in Europe. This section is therefore largely based on a questionnaire based survey of opinions of NGOs on regularisation measures conducted in the framework of a broader study on regularisation practices in the EU-27 (Baldwin-Edwards & Kraler 2009). The information collected by this study allows to draw only limited conclusions as to theories of the causes of irregular migration held by NGOs, nor can we say much about what NGOs think about the link of irregular migration to the economy or which figures they draw on to argue their case. We limit ourselves therefore to a limited review of NGO positions.

Non-governmental organisations have long had a pivotal role in representing migrants’ interests, promoting migrant rights and providing services to migrant communities, and in particular also undocumented migrants with or without limited access to public services. However, other civil society actors have been important too, notably faith communities – in particular those associated to Protestant and Catholic churches as well as trade unions – and to a lesser extent business organisations. In addition to national NGOs, a large number of European level NGOs have become important voices in debates on migration and asylum – and irregular migration. These include various Church organisations such as Caritas Europa, the Churches Commission for Migrants in Europe (CCME), the Commission of the Bishops’ Conferences of the European Community’s Working group on Migration (COMECE), the International Catholic Migration Commission (ICMC), the Jesuit Refugee Service Europe (JRS-Europe) and the Quaker Council for European Affairs (QCEA). The European Council

on Refugees and Exiles (ECRE), the European Network Against Racism (ENAR), the European Coordination for Foreigners' Rights to Family Life, the Platform on International Cooperation on Undocumented Migrants (PICUM), Solidar and the campaign for the adoption of the UN Migrant Convention - December 18 - are probably the most relevant non-denominational European level NGOs focusing on migrant issues. But also human rights NGOs with a broader remit have become important participants in debates on irregular migration in Europe, and organisations such as Amnesty International or Human Rights Watch have put out various reports on migration related issues. In addition, specialised issue oriented NGOs such as Medecins sans Frontières or Medecins du Monde have looked at specific areas of rights.

Most NGOs follow a rights based approach and focus on particular rights related issues and as a corollary on what they see as obligations of states towards irregular migrants as human beings. Thus, most NGOs do refrain from an evaluation of the causes of irregular migration, although the view that global economic asymmetries, poverty, unjust trade relations with third world countries, lack of opportunities for legal migration are often put forward as causes for irregular migration. And many NGOs take the view that irregular migration will always exist, given that it is unlikely that states do away with migration control altogether and that policies on migration control always produce exclusion. Thus, in a questionnaire based survey of NGO views on regularisations (Baldwin-Edwards & Kraler 2009, chapter 5.3) a number of NGOs pointed out the related need to adopt a human rights framework that would at least ensure that irregular migrants have access to basic rights. Vulnerability of migrants is also a major reason why NGOs favour regularisation measures. NGOs in Southern Europe often take a broader stance and emphasize the important economic contribution irregular migrants make to their host countries and thus see regularisation as a way to honour this contribution and to promote the integration of de facto resident populations. But most NGOs surveyed also emphasise the limits of regularisation and argue for a more comprehensive review of migration and asylum policies. Indeed, protection gaps as a result of current asylum policies and the general restrictionist impetus of policies on legal migration are seen as major causes why irregular migration occurs. As one Belgian NGO argues “(...) pursuing a policy of closure and tight border controls in an era of globalizing economic and social interactions and exchanges must be regarded as inappropriate”<sup>8</sup>

#### **4.4 Expertise, epistemic communities, advocacy coalitions and European Union policy making**

Both civil society actors and European Union institutions represent a special domain of public discourse. They do not represent public discourse as such. Apart from the often noted absence of a truly European public sphere that would resemble the public sphere in individual countries, notably, in terms of institutions and structures (e.g. in the sense of European media, a European demos organised on a transnational European basis, etc.) public discourses are perhaps better represented by Europeanised national debates than they are by the specialised expert discourse such as the statements issued by European institutions, civil society actors and other stakeholders on migration. However, both set of actors here analysed – European institutions on the one hand, and civil society stakeholders on the other – clearly have an impact on perception of and policies on irregular migration. And they do so because of the specific structure, institutionalisation and dynamics of European policy making. In stark contrast to the national arena, where public opinion in the form of the media, opinion polls and the vote is the key driver of policy, the common currency of politics in the European Union is expertise, and not public opinion (See Puntischer-Riekmann 1998, Geddes 2005).

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<sup>8</sup> Centre des Immigrés Namur-Luxembourg ASBL (Antenne de Libramont), response, ICMPD NGO Questionnaire, 5 May 2008 quoted in Baldwin-Edwards/Kraler 2009: 92



The implication of this specific mode of governance is that actors participating in policy dialogues do have to show expertise. And indeed, both set of actors extensively draw on research and share – irrespective of different political positions eventually adopted – many common assumptions. In fact, NGOs to some degree can engage with European Union institutions and national governments only because of European funding. Whatever the different role of NGO actors, governmental actors and actors from within EU institutions are, a common baseline exists that in a way amounts to an advocacy coalition, composed of academics, civil society activists and policy makers. Andrew Geddes (2000) has shown how the European Commission – through funding instruments and strategic networking – has helped to strengthen civil society actors as important counterparts in migration and asylum policy, although its initial plans of a common NGO coalition – the so-called Starting Line Initiative – collapsed after few years. The recent establishment of the European Forum on Integration is another example of how the European Commission actively shapes its counterparts in the civil society, which – of course – is not disinterested. In regard to irregular migration, similar advocacy coalitions can be observed, although the mode of governance and knowledge production is probably more oppositional, due to the influence and specific role of actors associated to enforcement agencies.

Perhaps more important than the content of discourses about irregular migration on the European level therefore are the specific conditions of expert discourse on the European level, the conditions and forms of knowledge production and knowledge circulation and the emergence of epistemic communities, which do not only share many common assumptions but also are interconnected in many ways on a personal and institutional level. These networks link actors from a wide array of different backgrounds - European Union officials, academics, civil society actors and representatives of international organisations such as UNHCR, ILO or the Council of Europe and they also reach out to what may appear to be unlikely counterparts – officials of enforcement institutions.

## **5 Key issues and research perspectives**

### *Studying the framing of irregular migration on the European level*

The politically constructed nature of irregular migration is now widely accepted. However, little is known about the processes that lead to certain constructions of irregularity which in turn impact on public debates. As this paper has shown, the significance that the topos of irregular migration in the EU has acquired since the 1990s is closely related with the emergence of migration and asylum policy on the European level and its institutionalisation with the Amsterdam Treaty. Given the specific mode of governance at the European level, the construction of irregular migration as a “problem of Europe” (Geddes 2005) as well as the specific content of this construction, however, is not simply an expression of dominant views within ministries of interior as the main actors responsible for migration issues on the national level and in the Justice and Home Affairs Council at the European level, nor is it simply an expression of Commission thinking. Rather, it is the result of a complex interplay of actors in which experts, academics, NGO activists, and others all play a role. How this all plays out in regard to irregular migration, however, has not been studied in depth so far and could be one of the possible topics that could be taken up in future research. Different actors’ perspectives do not automatically add up to one or several dominant views of irregular migration. Rather, they are a result of strategic interventions, networking, framing and re-framing of issues as well specific advocacy coalitions. Thus, what should be studied on the European level is perhaps less the content of debates on irregular migration but rather the broader frames used to address this issue as well as the structure and dynamics of policy processes and the role of expert communities. This would also entail to investigate the instruments used by European

institutions to generate relevant expert knowledge or support emerging actors, or conversely, how emerging actors use European funding to further their interests.

*Studying the Europeanisation of debates on irregular migration*

Irregular migration has emerged as a key European topic in two ways: it has been picked up by actors on the European level, but irregular migration is also picked up by national actors and framed as European issue. While dramatic events such as Melilla and Ceuta or the massive inflows to the Canary islands, which are perhaps the most drastic examples, there are numerous other examples of how events related to irregular migration have been taken up by national media. While the Europeanisation of debates on migration and asylum in general is now increasingly reflected in relevant studies, processes of Europeanisation of debates on irregular migration have so far not been studied in depth. The Europeanisation of debates on irregular migration on the national level raises a number of issues, including the events taken up by media in other EU member states, the role of such references to events in other Member States or developments at the European level in national debates, the frames used to describe irregular migration and how the national debates react to the expert led debates on the European level.

*The economics of irregular migration*

The economics of irregular migration can be looked at in several ways. First, it can be analysed in terms of the relationship of irregular migration dynamics to economic developments as in section 3.3. As has been argued above, there is no straightforward relationship between economic developments and irregular migration, although such a relationship exists in terms of overall migration patterns. But it would be perhaps more appropriate to focus on the “politics of irregular migration” and how these link up with economic developments.

Secondly, and related to the first perspective, the economics of irregular migration can be analysed in the terms of the beliefs relevant actors hold regarding the first dimension. Given the specific nature of the European governance, these beliefs, however, are likely to reflect mainstream academic debates – much in contrast to the national arena.

And third, and perhaps most interesting, discourses on irregular migration can be analysed in terms of discourses over global justice and global economic asymmetries. In this context irregular migration becomes a symbol of global injustices and the selfish impetus of European Union migration policies, which in turn gives rise to legitimacy debates and new (or newly found) strategies such as migration and development and the European Union’s global approach.

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