



Regularisation Policy Brief for NGO's, Activists and Campaigners





Contents

1. Introduction/ Background	2
Definitions	4
Context	5
Regularisations	6
Methodology	7
2. Regularisation Programmes (Table)	10
3. Regularisation Mechanisms (Table)	14
4. How to use these examples	16
Developing Your Ask	16
Arguments to advance your campaign/advocacy	17
Influencing Regularisation Criteria	20

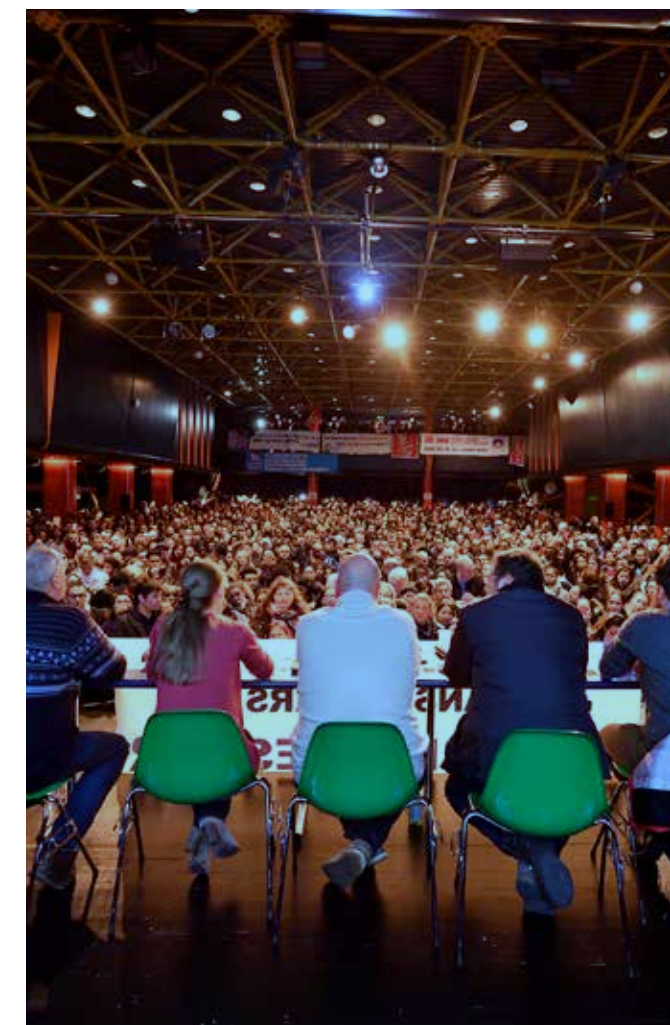
1 Introduction/ Background

This policy brief is created as part of the RISE UP (Rights, Innovation, Solutions and Evidence based policy for Undocumented People) project, funded by the European Programme for Integration and Migration (EPIM) and led by the Migrant Rights Centre Ireland (MRCI). The RISE UP project seeks to create a compelling rationale for regularisation as a sensible alternative to enforcement and detention.

It aims to increase the advocacy and campaigning capacity of civil society organisations and undocumented people across Europe. A key element of this is to address policy gaps and generate and share new analysis of regularisation models. This brief will increase the capacity of organisations and campaigners to put forward a rationale to national (or regional) government and push for broad and inclusive regularisations. The brief is intended as a resource to organisations across Europe and beyond, that advocate and campaign with and for the rights of undocumented people. It will outline new trends and show a range of regularisations taking place across Europe.



The brief will provide quick and easy access to good practice examples of regularisations across Europe. It will provide supporting statistics that can be used in campaigns and negotiations with policy makers and governments. It will highlight specific regularisations that have worked well in the past or contain some positive elements. It will also suggest how regularisation examples can be used practically as part of advocacy and campaigns to help develop regularisation proposals, secure a commitment from political targets and influence criteria chosen for regularisations.



This brief does not aim to provide an exhaustive list of all regularisations that have occurred but rather will provide an accessible list of positive examples that can be used to help win campaigns, shape narratives, and used in discussions with civil servants, political decision makers, and governments



Definitions

The definitions below have been adapted from those used in the joint report by ODIHR (The OSCE Office for Democratic Institutions and Human Rights) and PICUM (Platform for International Cooperation on Undocumented Migrants) (2021)¹ and the Regine Report (2009)²

Irregular migration

Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into, stay or exit from the State of origin, transit or destination.

Undocumented person

A person who does not have valid authorisation to stay in the country they currently reside in, usually due to expiration of their visa, residence or work permit; rejection of an application for international protection or residence status on other grounds; irregular entry; or being born to undocumented parents.

Regularisation

Any state procedure by which an irregularly present non-national (i.e. irregularly staying or undocumented migrant) may be granted a regular residence status. Sometimes also referred to by different terms such as amnesty.

Mechanism

Mechanisms are part of the regular migration law and policy framework and are relatively permanent measures (there is no specific time limit in which to apply).

Programme

Programmes are specific measures that are not part of the regular migration law and policy framework and that run for a limited period of time. Programmes often target specific categories of people in an irregular situation.

1. REGINE Regularisations in Europe Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU (2009)
2. Regularization of Migrants in an Irregular Situation in the OSCE Region: Recent Developments, Points for Discussion and Recommendations (2021)

Context

This is a critical time for undocumented people, children, and families as we witness unprecedented levels of nationalism, racism, and xenophobia. This hate and division is enormously damaging to societies and undocumented people's lives hang in the balance.

Across Europe we see national and EU policies designed to discourage migration. Notwithstanding the response to the Ukrainian crisis, immigration policies make life extremely difficult for people crossing borders and being irregular in a country. Europe continues to lag behind on progressive policies and systems which attract people to migrate. Instead, people from outside the EU continue to be treated as a resource to support certain sectors of the economy, and not people with lives, families and needs.

People move for all kinds of reasons; for work, for education, for a better life for themselves and their families. National and regional policies simply need to keep pace with change. Better policies and laws are needed to welcome and support people to work, settle and live full, safe, and secure lives across Europe.

The partners in this project, all attest to the rigid and inflexible nature of their respective immigration systems, which are not designed with people in mind. This inevitably leads to people falling into irregularity. Irregular migration is a complex yet common outcome of modern international migration. There is no reliable updated estimate of the number of undocumented migrants in Europe; the most robust source was made more than a decade ago, although new studies are being undertaken. In 2008, between 1.9 and 3.8 million irregular migrants were estimated to reside in the EU³. The majority arrived through regular pathways – with a permit to study or work, to seek family reunification or to seek asylum – and later lost that status.

As more and more regularisations have been introduced over the past 20 years, the correlation between the use of this approach and a recognition by governments and policy makers that it is a practicable part of managed migration cannot be denied. This takes different forms in different countries, ranging from once-off programmes and schemes to permanent mechanisms.

3. CLANDESTINO PROJECT FINAL REPORT 2009 https://cordis.europa.eu/docs/results/44/44103/126625701-6_en.pdf; And The fundamental rights of migrants in an irregular situation in the European Union; FRA - European Union Agency for Fundamental Rights https://fra.europa.eu/sites/default/files/fra_uploads/1848-FRA-Factsheet-fundamental-rights-irregular-migrants_EN.pdf



Regularisations

Over the past 10 years little attention has been given to analysing fair and effective regularisations. The last major study into this area was the REGINE report on Regularisation in Europe 2009 which showed widespread use of regularisations across Europe⁴. It found 42 regularisation programmes were conducted between 1996 and 2007. It concluded “In total, our conservative estimate for the EU (27) of the number of persons involved in regularisation of one sort or another over the period 1996-2007 is between 5 and 6 million. The sheer magnitude of this figure indicates the importance of regularisation policy for the EU”.⁵

Since the REGINE Report many further regularisations are known to have taken place and new models have emerged that have not yet been analysed. In this paper we bring visibility to this important work and the positive initiatives taking place across Europe. This paper highlights some initiatives to enable learning, to make the case for and encourage more and better regularisations in the future.

4. REGINE Regularisations in Europe Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU (2009) <https://www.icmpd.org/file/download/54301/file/REGINE%2520Regularisations%2520in%2520Europe%2520-%2520Policy%2520Brief.pdf>

5. *ibid*



Methodology

The RISE UP project, through extensive desk research, identified a huge gap in research on regularisations since 2007, when REGINE research ended. As a result this project needed to make a summary of these newer regularisations to analyse what they meant in terms policy development. To assist in the mapping, gathering and collation of recent trends, we developed a framework to analyse regularisations and identify good practice. The framework took account of both programmes and mechanisms.

To populate the framework, we designed and developed a survey which was distributed widely with RISE UP partner organisations and other civil society organisations across Europe to gather information on regularisations in their national contexts. The research survey was

carried out in Autumn/Winter 2020, with national experts validating the research findings in October/November 2020. Through this process, over 100 programmes and mechanisms were identified which have been introduced or modified (including enhanced criteria) since 2007. This full list was also published separately in a report by ODIHR (Office for Democratic Institutions and Human Rights)⁶. This is in addition to those identified as part of the REGINE report.

The framework allowed us to pull out examples where we could identify good practice and share useful learning with others. To enable identification and to present regularisation in a clear way, the following criteria were used and applied to both programmes and mechanisms.

1. **How long the regularisation was open**
2. **Numbers of people regularised**
3. **The criteria used (inclusive/exclusive)**
4. **Ease of application process**
5. **Outcomes for those regularised**

We then added two further columns to the table where we highlight:

1. **Good practice**
2. **Any elements of bad practice to be avoided**

6. Regularization of Migrants in an Irregular Situation in the OSCE Region: Recent Developments, Points for Discussion and Recommendations (2021)



The framework used considers two types of regularisations, mechanisms and programmes. These are defined as follows⁷:

Mechanism:

Mechanisms are part of the regular migration law and policy framework and are relatively permanent measures (there is no specific time limit in which to apply).

Programme:

Programmes are specific measures that are not part of the regular migration law and policy framework and that run for a limited period of time. Programmes often target specific categories of people in an irregular situation.

This project identified several examples of regularisation programmes and mechanisms that demonstrated good practice and can be used to advance the argument for regularisation by campaigning organisations. These are outlined in accessible tables below.

7. Regularization of Migrants in an Irregular Situation in the OSCE Region: Recent Developments, Points for Discussion and Recommendations (2021)



2 Regularisation Programmes

The following table provides what we assess as the clearest examples of large-scale regularisation programmes for undocumented people across Europe since 2009.

Country & Year Introduced	Open for	Regularised	Criteria
 Belgium 2009	3 months	<p>By end of 2011, 15,400 people regularized their status</p> <p>More than two thirds were regularised through sustainable local anchoring criteria</p>	<p>Based on: Sustainable local anchoring: i.e. period of residence of 5 years</p> <p>or</p> <p>2.5 years of residence plus employment/job offer</p> <p>Open to asylum seekers with long applications or undocumented people.</p>
 Poland 2012	6 months	9,555	Must have lived in the country at least 4 years. 2 years for refused asylum seekers.
 Italy 2012	1 month	99,000	Irregular migrants present in Italy since 31 December 2011 (1 year) and working at least 3 months; Application had to be made through employer who had to also meet criteria. Minimum salary requirement of €30,000

Application process	Fee	Status Given	Key Positive Aspects	Poor elements to avoid
Regularisation through work proved the most administratively slow and difficult	No fee	<p>Permanent Residence v Work Permit depending which criteria your application was based on.</p> <p>More positive outcome for those regularised based on local anchoring as the status given did not rely on a work relationship for renewal.</p>	<p>Broad criteria</p> <p>Option for those with lower residence through work</p>	<p>Insufficient resources meant it took a very long time to process applications, some over 2 years (and some up to 6 years).</p> <p>People regularised through work on employment permits faced isolation and exploitation, and became undocumented at a later stage, due to the immigration status they received.</p>
In person applications only in Voivodeship Offices. Not possible to lodge application online.	342 PLN (€72.45 at 2023 rate)	Residence permit (2 years) without the need for work permit. Full access to labour market (based on employment contracts) and some access to social protection	<p>Broad and inclusive criteria.</p> <p>Communication campaign led to positive uptake.</p> <p>Presumption that the stay was uninterrupted (unless something else was proven by the authorities)</p>	<p>Success rate of just 50% left many in the same situation as before.</p> <p>Authorities not prepared for large numbers of applications (excessive length of proceedings, long queues to lodge application)</p>
Through employer	€1,000 paid by the employer	Information not found	Short residence period required	Do not tie applications to an employer as it leads to lower take-up and risk of severe exploitation for the undocumented person

Regularisation Programmes (Cont)

Country & Year Introduced



Switzerland 2017

Country & Year Introduced	Open for	Registered	Criteria
Switzerland 2017	2 years	2,800	Successful applicants need to be employed, financially independent, meet a residency period (10 years, reduced to 5 years for families with school-aged children), language requirement, and have no criminal record.



Ireland 2022

Ireland 2022	6 months	TBC est 11,000	<p>Applicants</p> <p>(1) must be living undocumented in Ireland for at least 4 years</p> <p>(2) reduced to 3 years for those with children in the state.</p> <p>(Spouses, de facto partners and dependents over 18 of main applicants need at least 2 years undocumented in the state).</p> <p>(3) Separate strand for those in the international protection (IP) system for 2 years or more.</p>
--------------	----------	----------------	---

Application process

Fee

Status Given





Key Positive Aspects

Poor elements to avoid

Individually or via a support organization (NGO or trade union), or with an attorney. Pre-determined list of documents requested as proof that all the criteria were met.	None	B permit (1 or 2 year residence and work permit, renewable) Has reckonable residence to citizenship Full access to labour market	<p>Lower residence period for children</p> <p>Open for a long time 2 years</p> <p>Safe and transparent procedure</p> <p>Standardised evidence from menu of documents</p>	<p>Not open to applicants who had gone through asylum procedure</p> <p>Strict criteria</p> <p>Limited geographical scope</p>
Simple user-friendly online application process. No requirement for solicitor or employer	<p>€550 per applicant</p> <p>€700 for family application. IP applicants free.</p> <p>Registration fee of €300</p>	Stamp 4. Full access to the labour market. and pathway to citizenship	<p>Broad and inclusive criteria</p> <p>No work requirement</p>	<p>Only undocumented residence counted. Legal residence was not permissible</p> <p>Those who reached the criteria during the lifetime of the scheme were excluded</p>

3 Regularisation Mechanisms

The following table provides what we assess as the clearest examples of large-scale regularisation mechanisms for undocumented people across Europe since 2009.

Country & Year Introduced	Regularises per year	Criteria	Fee	Application process	Status Given	Key Positive Aspects	Poor elements to avoid
 <p>Portugal 2017-2019 New criteria added (amendment Law no. 28/2019, of March 29th)</p>	26,716 (2019)	Undocumented migrants with employment, facilitating the regularization of those who are in the labor market and who have contributed to Social Security for at least one year.	For application consideration - €85.05 For the residence permit - €73.20	Foreign citizens must present an expression of interest on the SEF (Serviço de Estrangeiros e Fronteiras) website or directly at one of its regional offices, together with all the necessary documents.	The temporary residence permit for employed workers is valid for two years [and not just one] from the date of issue of the corresponding title and renewable for successive periods of three years [and not just two].	Low residence requirement.	Regularisation was tied to work which presented a risk of becoming undocumented again.
 <p>Spain 2016 (New criteria added)</p>	More than 30,000 people each year: 2019: 40,005 2018: 37,735 2017: 30,579 2016: 31,370	When there is a situation of "arraigo", where a person has developed enduring... 1. Employment (2 years of residence in Spain) 2. Social (3 years of residence in Spain) or 3. Better called Arraigo familiar (it's required affiliation with EU member) a temporary residence and work permit can be authorized.	Application fee: €38.28. TIE (residence card) fee: €16.08.	All process is done through a platform called Mercurio, which is only authorized to solicitors or social workers (a digital signature is required. Migrants do not have it). It takes around 8 months to resolve the application. Digitization has meant an increase in processing times.	Residence under exceptional circumstances. Right to work in any job. Pathway to citizenship.	Range of options Broad and inclusive criteria Guarantee of non-punitive approach for applicants.	Some of documents to present rely on others (work contract or accreditation of having work ties/sentence). Requirement to stay in Spain for 3 and 2 years before applying. There is no reduction in costs in the case of large families, or members with disabilities. To this is added the high costs for translation and issuance of criminal records from the country of origin.
 <p>France 2012 New criteria introduced in 2012 via the Valls Circular</p>	Expected increase on estimated 30,000 regularised per year before these new criteria.	Between three and five years of presence in France, between eight and twenty-four payslips, a work contract or promise of employment under indefinite contract (CDI), and a French language requirement.	Information not found.	Information not found.	If based on an indefinite work contract: 1y residence permit If based on temporary work contract: residence permit valid for duration of work contract.	Information not found.	Unrealistic requests for documentation restricts access to regularisation. Strongly tied to work/employer.
 <p>Greece 2014 "Residence permit for exceptional reasons" Adapted in the Code of Migration in 2014 (amendments in 2015, 2018, 2020)</p>	There are no particular statistics by the Ministry of Migration and Asylum about how many people are regularised per year. (In 2020-2021, when the process was suspended due to the lockdown there had been about 14,000 postponed appointments)	Two categories: • 7 years previous residence and undocumented at time of application (most common category) • To be parent of a Greek minor and being undocumented at time of application (within the other requirements a DNA test is needed to prove the relation)	€300	Online application process since April 2021 but not user-friendly. All in Greek and quite technologically challenging.	Status given 3 years residence permit Renewable for a 2 years residence permit for dependent work (From the second renewal and on at subsequent renewals? you must prove 50 days of work during last year).	Permanent scheme. Wide range of proof documents about the previous stay. The permit gives full access to labour market, and all social rights. It counts as a previous lawful residence in order somebody to apply for Greek citizenship.	Great delays in the issuance of the residence permit with no temporary rights in between (over 1.5 year of waiting after the application). Long residence requirement. Work requirement after the 2nd renewal. Cannot apply for a second time in the future if somebody loses their legal status again.

4 How to use these examples

This project has identified three main ways that organisations can use these regularisation tables to advance their campaigns/advocacy towards regularisation.

1. Developing your ask
2. Arguments to advance your campaign/advocacy
3. Influencing regularisation criteria

1. Developing solutions - The ask

The tables in this document can help undocumented people, organisations and campaigners to draft a proposal for regularisation in their own national context. The tables can help identify the key elements that a regularisation should have and help broadly identify and draft the elements that could be included in a regularisation in a national context. Learning from these examples can help form the basis of a proposal that can be used as part of all campaigning efforts. It can firstly help to decide the type of regularisation to be advocated for.

1. A regularisation programme can offer a life-changing immigration status to a large number of undocumented people. If broad and inclusive, it can even regularise a large percentage of the entire undocumented population at one specific point in time.

2. A regularisation mechanism can secure status for people on an ongoing basis into the future. As such it may be the more favourable for organisations to pursue, but maybe harder to win in the short term, especially if there is no history of previous regularisations or approaches.

See full graphic representation of the pros and cons of programmes and mechanisms on page 26 and 27.

Other considerations

It is important that campaigners and organisations realise that while these examples can help form the basis of a proposal, there are other elements that must be taken into account to ensure it will actually help the undocumented population and make sense in a given national context. To this end, organisations and campaigners must ensure that the lived experience of



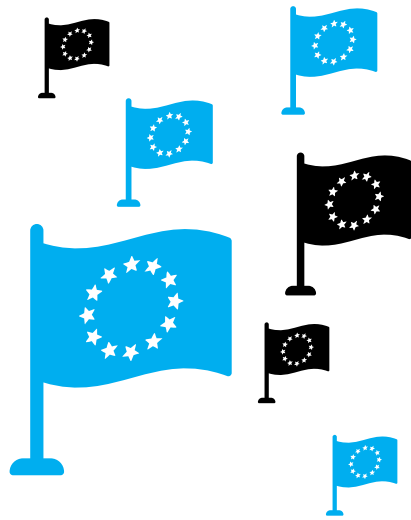
undocumented people is central to the ask and solutions being put forward. They must assess their own political context and the national history of migration to inform both a strategy and make a realistic proposal. A political strategy must also take into account the balance of what is realistically achievable and understand if there are trade-offs involved.

Some campaigns will be led by undocumented people, while others may be run with or by various civil society organisations. Ensuring the participation of undocumented people in developing policy solutions is crucial to success. Providing credible and up to date data on the undocumented population will help support a proposal. Useful data includes supporting information about the undocumented populations such as age, work, family structure, length

of time in the state, etc. realistic a proposal may be given the situation. They also need to balance what is realistically achievable versus what is idealistically ideal and understand the trade-offs involved in that.

2. Arguments to advance your campaign/advocacy

This document posits arguments to convince politicians, policy makers, allies, and the general public of the importance of regularisation, and ultimately to secure a commitment to regularisation. Again, while not an exhaustive list, the following is a number of arguments drawn from the research and the tables created.



01.

Demonstrating that Regularisations are commonplace

The first thing for campaigners and organisations to take from the research, is that regularisations are commonplace as evidenced by over 100 regularisations taking place since 2007⁸. This stresses the need for a policy approach that recognises that immigration systems are too rigid and requires governments to respond to this by finding solutions to the issues stemming from a growing undocumented population.

02.

Providing a list of countries where regularisations have happened to cite quickly and easily

Regularisations generally happen in two ways: either as a time-bound regularisation programme, or as an ongoing mechanism that allows people to regularise consistently over time.

In Europe since 2006, there have been regularisation programmes introduced in the following countries: Austria, Belgium, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Turkey and the United Kingdom.⁹

Regularisation mechanisms also exist in many countries across Europe. Countries with mechanisms based on labour market or social integration include: Portugal, Belgium, France, Greece, Italy, Spain, and Switzerland.¹⁰



8. Regularization of Migrants in an Irregular Situation in the OSCE Region: Recent Developments, Points for Discussion and Recommendations (2021); <https://www.osce.org/odihr/494251>

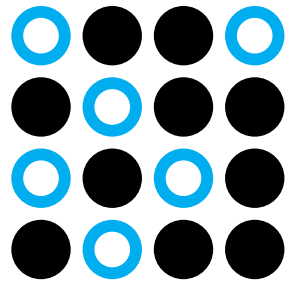
9. ibid

10. ibid

03.

Demonstrating the difference between regularisation and amnesty

For many years there has been a narrative surrounding regularisation as a 'blanket amnesty' without clear criteria. This is both false and misleading. This study, and previous research carried out across the EU¹¹ show that regularisations operate on a case-by-case basis, involve an application process, and are assessed against clear criteria agreed upon at a political level.



04.

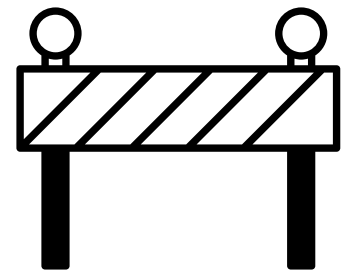
Showing that regularisations can be implemented quite easily, often without the need for new legislation

The examples in the tables above show that regularisations often fall under existing laws and frameworks rather than requiring the introduction of new legislation. This may be very important in order to secure commitment in a national context and to avoid unnecessary delays.

05.

Combating barrier of European Obligations

One barrier that is often put in place around regularisations is the outdated 2008 European Pact on Immigration and Asylum. This non-binding pact only calls for a case-by-case approach to regularisation rather than blanket amnesties. As the research shows all regularisations are done on a case-by-case basis. Clear criteria are created, and applicants are assessed on these and regularised if a person meets the criteria. This does not mean we cannot secure broad and inclusive regularisations. It just means some simple, objective, and transparent criteria are required.



11. Regularization of Migrants in an Irregular Situation in the OSCE Region: Recent Developments, Points for Discussion and Recommendations (2021); <https://www.osce.org/odihr/494251>
Regularisation mechanisms and programmes: Why they matter and how to design them: PICUM (January 2023) https://picum.org/wp-content/uploads/2023/01/Regularisation-mechanisms-and-programmes_Why-they-matter-and-how-to-design-them_EN.pdf

06.

Combating myths of unknown populations and pull factor

These are often major barriers to succeeding in securing regularisations. The examples in this brief can allay the fears of civil servants when it comes to an unknown population expected to regularise and a potential pull factor post regularisation. Campaigners can point to specific examples and show that undocumented populations were not underestimated and that no significant pull factor was reported.



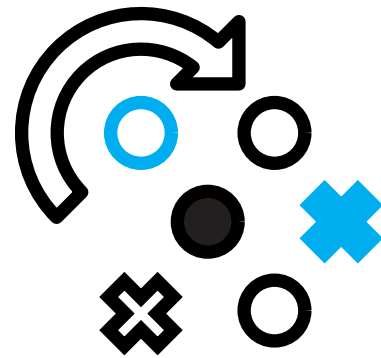
07.

Normalising regularisation for political targets

Many political representatives are unfamiliar with the concept of regularisation. As such they are often unsure of the viability and concerned about potential legal barriers, or potential consequences that the introduction of a regularisation could have. It is hugely useful to be able to show that regularisations happen regularly, are relatively easy to introduce, often don't require legislation and have been put in place by a large number of countries across Europe.

Quick accessible examples from the tables above can therefore serve to allay the fear of government or politicians by making it clear that large scale regularisation programmes and ongoing regularisation mechanisms are being implemented across Europe. This gives decision-makers a clear idea of which countries are implementing them and how they can be achieved.

Nevertheless, a balance must be struck between showing where regularisations are happening and encouraging government to look closely at an example that contains poor practice.



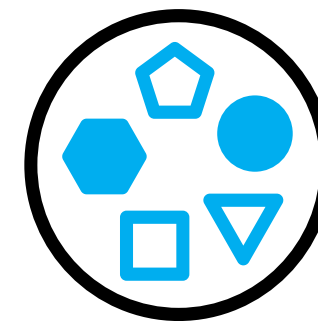
3. Influencing Regularisation Criteria

Campaigners and organisations should note that we are not promoting regularisation policies in the tables above as best practice examples. In fact, there are issues with the process in many of them. However, we believe these examples can still be very useful in influencing regularisation criteria in a positive way.

The research has been unable to identify a single example that provides what we would describe as best practice. There are certainly elements of good practice contained in many of the examples we present. Using these and project partners

experience and analysis, we have created a list of good practice recommendations that can be used for either once off programmes or ongoing mechanisms.

The detail of the examples above and the good practice elements identified in some of the regularisations provide excellent examples to be used during the process. As key decisions are made around certain elements of regularisation (e.g. work requirement, residence requirement) being able to cite examples of past regularisations can be very useful in convincing officials to use similar criteria. We have created a list for campaigners of the most important elements to strive for in any regularisation.



01.

Broad and Inclusive

For campaigners and organisations, the goal should be to introduce a regularisation that is as broad and inclusive as possible. The aim should always be to include as many people as possible in a fair and transparent way which is led by and informed by undocumented people.

Examples to cite: Spanish Mechanism, Irish Programme. Italian programme for low residence requirement only.



02.

Simple & Clear Criteria

It is very important that any regularisation follows very simple and clear criteria. While it may be sensible to apply a level of discretion during appeals, for the application process itself it is important to have clearly defined criteria. This ensures that an undocumented person can tell very easily in advance if they meet the criteria or not. This may lead to greater uptake and a more successful regularisation.

Example to cite: Polish Programme. Irish Programme

03.

Low fees approach

For the greatest uptake, a low or no fee approach is critical, so that undocumented people can regularise without difficulty. Undocumented people often work in unregulated and low paid jobs and cannot afford high application and registration fees. Normally a low fee can easily cover the limited cost of implementing a regularisation programme or mechanism..

Example to cite: Swiss Programme and Belgian Programme: no fee



04.

Power in hands of those applying

Several programmes and mechanisms identified require proof of employment or employers apply on behalf of the undocumented person (e.g. Italy 2012). This is not good practice. It leads to low uptake and makes the undocumented person overly dependent on this one employer. It can often lead to poor terms and conditions and exploitation for the worker. This project recommends putting power in the hands of those applying.

Examples to cite: Portuguese Mechanism, Irish Programme, Swiss Programme



05.

Realistic documentation requests

Undocumented people face serious difficulties in providing specific evidence as to their time spent in the state. This is due to the very nature of being undocumented. It often means not having a tax record, lease, or utility bills in your name and usually no social security number, although this varies by country.

There are many reasonable ways to prove time spent in the state. A flexible and low-threshold approach to proving residency should be taken. It is important also to keep number of documents as low as possible.

Consideration must also be given to people who have lost or do not have full access to a set of documents (e.g. a lost and/or surrendered passport, tax records, etc.) and provisions must be made to accept alternative evidence to be made on behalf of the applicant.

A menu-based and pragmatic approach in terms of documentation requirements will deliver success. States should provide a non-exhaustive list of acceptable documents, so that other acceptable evidence can be provided (the list can include utility bills, money transfers [Western Union or similar], doctor/hospital/clinic records, bank statements, evidence of employment).

Applications should not be rejected where they do not provide sufficient documentation in the first instance. There are a variety of reasons why people may be unable to submit sufficient evidence with their initial applications including time constraints, language barriers, or difficulty accessing documents. Those processing applications should contact applicants and provide them with an opportunity to add additional evidence, as in the Irish Programme

Examples to cite: Irish Programme, Swiss Programme, Spanish Mechanism

06.

Simple application process



Using a simple, user-friendly application process is critical to success. This includes the use of plain language and a process that can be undertaken by the individual applicant without the need for legal support. Many undocumented people who work in low-paid and precarious jobs cannot afford to retain legal representation to avail of a regularisation.

IT systems can be used to manage the application process, once sufficient resources are put in place to ensure the system is simple and user-friendly. It is important to note the digital divide and the need for alternative options for those who do not have the relevant IT skills. Additional supports may also be needed to ensure everyone eligible is in a position to apply.

Efforts should be made to share information with undocumented communities, NGOs, and community organisations in advance of the regularisation opening, so that they are well-equipped to support people in applying from day one.

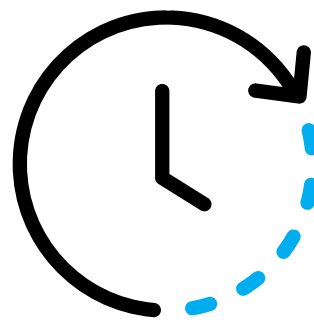
Examples to cite: Irish Programme, Swiss Programme

07.

Open for sufficient time

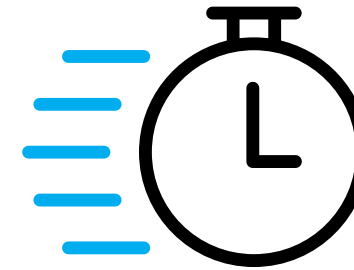
It is vitally important that regularisation programmes are open for a sufficient period of time. Ideally, there should also be a lead in time between the announcement of the scheme and the opening date for applications. The reason for this is to allow word to spread within undocumented communities and to reach the most isolated people who may be able to avail of the scheme. This allows sufficient time for undocumented people to gather documentation required for their application. This does not apply to mechanisms which by their nature are ongoing and not time-bound.

Examples to cite: Swiss Programme (2 years) that was open for a full 2 years, Polish & Irish Programmes (6 months)



08.

Fast processing times



Fast processing times are important for those applying so that they can secure their status in the timeliest way possible. However, they are also very important for building confidence in the programme. Many undocumented people fear making an application of this kind. By seeing positive results at an early stage, it ensures people have trust in the system and contributes to a greater uptake of the programme by eligible applicants.

Example to cite: No appropriate example found

09.

Non punitive approach

It is recommended to provide assurances that any regularisation will be non-punitive. This is key in allaying fears and ensuring that applicants will come forward. A guarantee should be provided that information gained as part of the application process will not be used by authorities to pursue unsuccessful applicants and issue intention to deport notifications. This is the situation in Spain as part of the Arraigo application. An absence of such an assurance could lead to a low take-up of the regularisation, due to a fear of negative consequences.

We also recommend a non-punitive approach for employers who have employed undocumented people. Employers may be required to verify a person's employment for the purposes of validating time spent in the state, and must be assured that there will be no negative consequences in doing so.

Example to cite: Spanish Mechanism

10.

Stable and secure status



It is very important to grant a stable and secure long-term and renewable status as part of any regularisation so that people do not fall back into irregularity and so that the regularisation can have a real and lasting positive impact on their lives. This immigration permission should allow the person to work in any job and not be restricted to any sector or employer. It should count towards citizenship and grant the right to family reunion.

Examples to cite: Portuguese Mechanism, Irish Programme, Swiss Programme

5 Programmes V Mechanisms

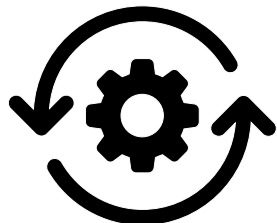
Programmes

Some potential advantages of once off time bound programmes

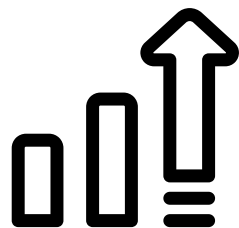


They may be easier to secure

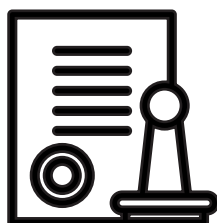
They may require less resources to implement and run



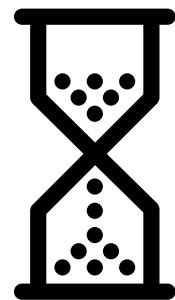
They may enable you to secure more favourable criteria if government know they are short term



They may be more acceptable to government

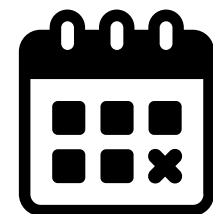


Some potential disadvantages of once off time bound programmes



They are only open for a short period of time

Some eligible undocumented people may not learn about the programme before it is closed



They do not protect people who reach the criteria into the future

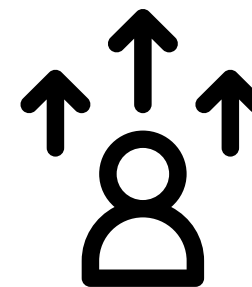
Undocumented population may build up again and need further programme in the future



Mechanisms

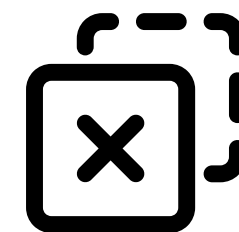
Some advantages of ongoing mechanisms

They offer a permanent solution and therefore protect undocumented people into the future



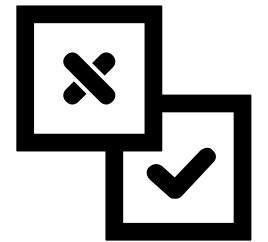
Over time they will allow greater numbers of undocumented people to regularise

They can remove the need for further regularisation campaigns to secure once off programmes



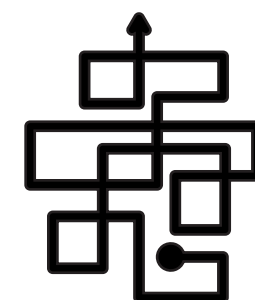
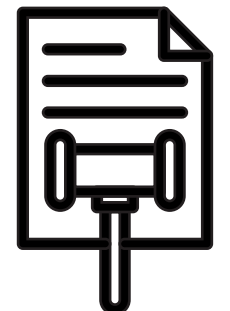
Some disadvantages of ongoing mechanisms

May be seen as too radical



May be more difficult to secure

May require change in legislation



May tend to have more difficult criteria to meet



This publication is part of the RISE UP project funded by EPIM, The European Programme for Integration and Migration.

The sole responsibility for the content lies with the author(s) and the content may not necessarily reflect the positions of NEF, EPIM, or the Partner Foundations.

RISE UP stands for Rights, Innovation, Solutions and Evidence based policy for Undocumented People.

Publication Date: 04/04/2023