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Regularisation programmes for irregular migrants

Memorandum

Committee on Migration, Refugees and Population

Rapporteur: Mr John Greenway, United Kingdom, European Democrat Group

Following a hearing on Regularisation programmes for irregular migrants in Paris on 11 December 2006, the Rapporteur, Mr John Greenway invited the consultant, Ms Amanda Levinson (United States of America), to assist him in the preparation of his report on Regularisation programmes for irregular migrants.

A background paper has been prepared in this context by Ms Amanda Levinson, the text of which is reproduced in this document.

I. Context

1. The past two decades have seen a tremendous upsurge in the number of irregular migrants living in European nations. Seemingly overnight, many Council of Europe member states have gone from being migrant-sending countries to being top destination countries for immigrants. There are estimated to be 4.5 million irregular migrants currently living and working in EU member states¹. There are also a substantial number of irregular migrants living in the rest of Europe with one recent estimate for Russia indicating 10-12 million irregular migrants. While many of these irregular migrants currently living and working in Europe have overstayed or otherwise violated the terms of their visas, or have fallen through the cracks of the asylum system, a large number have entered illicitly and without authorisation.

2. The growing trend of irregular migration to Europe in recent years has been driven by a number of factors. Among the most important factors pushing migrants from their countries of origin are extreme poverty, lack of economic opportunities, political instability or violent conflicts, and the desire to reunite with family members living abroad. From the European side, a declining population, the robust underground economy that exists in many countries, and a continuing need for cheap labour fuel the need for irregular migration. These factors, combined with the larger forces of globalisation that continue to make capital and labour more mobile will

¹ Estimate of the Washington, D.C.-based Migration Policy Institute.

undoubtedly ensure that irregular migration will continue to be a major source of migration to Europe in the coming years. Indeed, current estimates put the numbers of irregular migrants to Europe as growing by hundreds of thousands each year, with no end in sight.

3. Clearly, the management of irregular migration is a critical issue for Europe's future. European nations have adopted a number of different measures to control irregular migration over the past two decades, including increased border controls, strict visa enforcement, increased deportation, the restriction of the rights of migrants or asylum seekers to work in a country or access social services, and regularisation programmes. Nevertheless, European states have rarely adopted a coherent set of measures designed to comprehensively manage either the flows or *de facto* presence of irregular migrants within their borders.

4. Of all the efforts to control undocumented migration, large-scale regularisation programmes, while implemented fairly frequently, have been particularly controversial in a number of Council of Europe member states. They are normally undertaken as a measure of last resort, when it is finally clear that internal and external efforts to manage migration have failed, and the unauthorised population has reached a level that is no longer permissible to ignore. Since 1981, within the European Union alone over 20 regularisation programmes have provided nearly four million irregular migrants with either temporary or permanent living and working permits.

5. Despite the fact that many countries have carried out these programmes on a fairly regular basis, there is no unified European position either at the level of the Council of Europe or the European Union on using regularisation as a means to manage irregular migration, and attitudes toward these programmes vary greatly from country to country. The reasons for such widely differing attitudes have to do with a variety of factors: each nation's history of immigration, attitudes of dominant political parties, the portrayal of such by programmes by the media, the economic situation, and general cultural attitudes. For example, Spain has been particularly open to regularisation programmes, having implemented six since 1985. In part this has to do with its relatively lax immigration policies and generous attitude toward foreigners in comparison to other European nations, but the country's demand for low-skilled foreign labour has also played an important role. Meanwhile, despite the growing numbers of irregular migrants living and working within their borders, countries like Germany and the Netherlands have remained opposed to large-scale regularisation programmes, mainly because of strong public and political opposition to such programmes.

6. Due to a lack of a coherent, unified or comprehensive policy toward regularisation, the topic has been a source of contention between member states, with those opposed arguing that the programmes will encourage further unauthorised immigration that is bound to spill over into neighbouring countries.

7. While Europe grapples to chart a common course on immigration policy in an era of increasing concern about national security, civil society organisations, and migrant groups in particular, have been mobilising to demand regularisation as a way to end the exploitative conditions in which migrants often find themselves living and working. While this was most notable in the United States this past year, when millions of immigrants took to the street to demand immigration reform, migrants in Spain, France and the Netherlands have also been mobilising in greater numbers.

8. Given the growing and urgent need for Europe to manage irregular migration, and to do so in a coordinated manner to the extent possible, regularisation programmes should be examined as one policy tool that, in conjunction with other measures (including protecting the rights of migrants, increased internal and external migration controls, individual return programmes and development partnerships with countries of origin) could be a valuable tool for managing migration.

II. Definitions

9. Regularisation refers to the process of offering migrants who are in a country illegally the opportunity to legalise or normalise their immigration status, whether it is on a temporary or permanent basis.

10. In general, the different types of regularisation programmes can be categorised as follows:

- **Exceptional humanitarian programmes**, which provide residence permits to refugees, asylum seekers, or to individuals with extraordinary health conditions that will not allow them to travel;
- **Family reunification programmes**, to allow family members to either reunite with spouses or children living abroad, or to legally remain in a country together if not all members have residency;
- **Permanent or continuous programmes**, which are done on an individual or case-by-case basis, and offer permanent status to migrants who have been residing in a country for a specified amount of time, usually a number of years.
- **One-off or one-shot programmes**, which normally provide temporary living and working permits to applicants that expire after a certain period of time. These programmes, which are often sold as exceptional, one-time programmes, seek to regularise large numbers of migrants, and are characterised by having a short application window and a strict set of criteria tied to employment and period of residence in the host country.
- **Earned regularisation programmes**, which are the newest and least experimented with form of programme. The idea behind these programmes is to provide migrants with a provisional, temporary living and working permit and to have them “earn” the right to have the permit extended or become permanent through the fulfilment of various criteria, such as knowing the language of the host country, participating in community activities, having stable employment and paying taxes.

III. Criteria for Regularisation

11. While most EU countries that have implemented regularisation programmes have used the one-off, or one-shot model, there is still a wide range of criteria required of migrants. The most common criteria for regularisation are as follows:

i. Employment

12. Most one-shot programmes have either required proof of employment for a certain length of time or proof of a job offer, through receipts or otherwise. Part of the requirement for regularisation under France’s 1997-98 laws, for example, required written proof of employer sponsorship. Spain’s most recent programme required that employers petition directly on behalf of migrants, and to certify that they would continue to employ them for at least 6 more months, and adhere to all labour and social security laws. The drawback to these programmes is that they have traditionally engendered a good deal of fraud associated with them, since migrants may be working in the underground economy and unable to produce proof of employment, or employers may be unwilling to provide official sponsorship.

ii. Family ties

13. Family reunification is a strong factor driving irregular migration. As irregular migrants settle in their host countries to live and work, they will often send for their families to join them. While providing spouses and children with regularised status is a relatively rare practice in most organised regularisation programmes, it is not unheard of. France's 1997 programme was largely for family reunification purposes, while Spain's new programme allows irregular migrants to obtain family reunification permits after one year. Greece has also allowed petitions for family reunification, although applicants must meet certain stringent income requirements.

iii. Length of residence

14. The number of years a migrant has been living and working in a country can sometimes be a prerequisite for regularisation, although this criterion by itself is becoming less common. The UK provides indefinite residence permits to those who have been in the country continuously for 14 years (7 years for families with children).

iv. Ethnic ties:

15. Making proof of ethnic ties a criterion for regularisation is uncommon, but Greece, however, has made this a prerequisite to providing special 3-year permits for Albanian Greeks. Since 2001, the country has also awarded Greek nationality to ethnic Greeks from Georgia, Kazakhstan, Ukraine and Uzbekistan.

IV. History and Demographics of Regularisations

16. Since 1981, France, Belgium, Greece, Italy, Luxembourg, Portugal, Spain and the UK have regularised nearly 4 million immigrants through over 20 regularisation programmes. Following is a brief examination of the salient aspects of each country's experience with regularisations, highlighting the most recent or successful approaches, and a description of the demographics of migrants impacted by these programmes.

V. Spain

17. Spain has implemented more regularisation programmes than any other European country. Since 1985, six programmes have regularised the status of about 1.25 million immigrants. A vigorous demand for low-skilled immigrant labour, a large informal economy, a narrow "front door" for legal immigration, and difficulties controlling irregular migration flows or deporting people has led to a growing irregular immigrant population.

18. While Spain's first five programmes were plagued by considerable bureaucratic challenges and had very little impact on managing the flows of migration (see more details on the programmes in the table below), its 2005 programme seeks a new approach toward strengthening immigration enforcement by combining a regularisation programme with increased border controls, cracking down on the informal economy and employment of irregular workers, and widening legal avenues for economic immigration. This programme had two categories of applications. The first allowed employers to present applications on behalf of migrants, along with a guarantee that they would comply with labour and social security laws for at least six months. The second category permitted migrants who were employed part-time or had several employers to apply themselves. Furthermore, in an attempt to satisfy concerns over national security and to make the programme less vulnerable to fraud, it also required migrants to prove their identity, that they are qualified to perform their job duties, and that they have a clean criminal record.

On the enforcement side, Spain has stepped up patrols near the Canary Islands, where the majority of migrants of Africa enter, and has a provision for fining employers 60,000 per employee for illegal hiring.

19. Most experts agree that while this programme seeks to resolve many of the problems endemic to previous regularisation programmes, its success will depend on its ability to reduce the size of the underground economy, and to control the flows of irregular migrants into Spain.

i. Demographics

20. South Americans, Moroccans and Romanians dominate the applicants to Spain's 2005 programme, with the largest number coming from Ecuador (21%), Romania (17%), Morocco (13%), Colombia (8%) and Bolivia (7%).²

VI. Italy

21. Italy has implemented five programmes regularising 1.4 million migrants over the past 25 years. As in Spain, irregular immigration is largely driven by a sizable underground economy, a robust demand for cheap foreign labour, weak immigration controls, and limited avenues for legal immigration. Between 65-75% of irregular migrants are those who have overstayed their visas or work permits. Although each programme has had the stated intention of controlling the underground economy and "wiping the slate clean" of irregular migrants, in reality these programmes have faced numerous obstacles, including bureaucratic failure to process applications in a timely manner, resistance from employers who were unwilling to sponsor migrants, weak public support, and migrants falling out of status after the expiration of their permits. In the absence of other mechanisms to control irregular migration or provide a pathway to permanent resident status, regularisation programmes have served as Italy's primary strategy to manage irregular migration.

i. Demographics

22. Migrants regularised under Italy's 2003 programmes come from diverse geographical areas. Top 15 countries of origin of migrants regularised (in descending order) were: Morocco, Romania, Albania, Ukraine, China, Philippines, Senegal, Tunisia, Ecuador, former Yugoslavia, Peru, Moldova, Nigeria, Sri Lanka, Pakistan and India.

VII. Greece

23. With mass immigration a relatively new phenomenon to the country, Greece has implemented four regularisation programmes since 1998. Although Greece has some diverse immigration flows similar to its European counterparts, more than 67% of immigrants come from Albania, and Greek immigration law favours ethnic Greeks over other nationalities. A very large underground economy and restrictive immigration laws perpetuate the presence of a large population of irregular migrants. Greece's experiments with regularisation have been roundly criticised for having been poorly organised, with poor data, incompetent government oversight, and a total lack of accompanying measures to control illegal employment of immigrants, future immigration flows or to integrate immigrants into Greek society. In addition, the benefits to Greece appear to be dubious: while Greece clearly has intended to increase tax collection, it will not release this information, and these programmes appear to have had little impact on the informal economy. The impact of these programmes on migrants and their families is also questionable,

² Arango, Joaquin and Maia Jachimowicz, "Regularizing Immigrants in Spain: A New Approach," Migration Information Source, September 1, 2005.

since children born in Greece cannot acquire Greek nationality, and spouses have been required to present proof of income requirements that are much higher than the Greek minimum wage.

i. Demographics

24. Albanians account for the majority of migrants regularised under all of Greece's programmes.

VIII. Portugal

25. Having implemented three programmes since 1992, Portugal's regularisation programmes have progressively evolved to try to correct for shortcomings of each previous programme and to meet the country's evolving labour needs. As a result, while its two earlier programmes suffered from insufficient publicity and outreach to migrant communities and faced bureaucratic challenges, its 2001 programme was part of a larger attempt to promote legal immigration based on the country's labour market needs, to integrate immigrants into Portuguese society, and to combat unauthorised immigration through controlling the entry, stay and removal of undocumented foreigners. The 2001 programme also provided migrants a pathway to permanent residency after renewing permits four times. However, in 2003 the government instituted a system requiring employers to go outside of the country to recruit foreign workers, which effectively discouraged the hiring of foreign labour from within the country. This development has been criticised, as has the unseemly length of time it has taken to process many of the applications for regularisation.

i. Demographics

26. While migrants from the Portuguese-speaking African countries of Angola, Cape Verde and Guinea-Bissau have made up anywhere between 12-21 percent of residence permits granted through Portugal's 2001 regularisation programme, it is migrants from Brazil and Eastern Europe, particularly Ukraine, that have made up the majority of residence permits granted, with Brazil accounting for between 18 and 29 percent, and Eastern European countries ranging from 44 to 55 percent of all permits granted.³

IX. France

27. France has had a long history of immigration flows from its former colonies in North Africa, and it is estimated that nearly 65 percent of all migration to the country is driven by family reunification. It has implemented two large-scale regularisation programmes since 1981, both of which provided permanent legal status to large numbers of immigrants. An explicit goal of these programmes, and of French immigration policy in general, has been to facilitate the economic and social integration of immigrants in France. The 1997 Chevenement laws also aimed to provide legal status to those seeking family reunification, and to families with children. This was followed by a 1998 law that allowed foreigners who had been present in the country for 10 years or longer to apply for legal status on a case-by-case basis. However, France's new immigration law, adopted in July of 2006, abolished this system, and seeks a wholly new approach to managing migration.

28. The new law explicitly favours the recruitment of skilled migrants, limits access to residence and citizenship, and puts strict limits on immigration for the purpose of family reunification. In addition, in one of the few recent examples of an aggressive deportation strategy

³ Marques, José Carlos and Pedro Góis, "Legalization Processes of Immigrants in Portugal," in *Amnesty for Illegal Migrants?* Friedrich Heckmann and Tanja Wunderlich, eds. (Bamberg: European Forum for Migration Studies, 2005).

by an EU nation, the government has been deporting thousands of people, including many families with school-aged children, for not having the required documents.

29. The new law allows the government to recruit immigrant workers based on the needs of certain professions or geographic areas. These skilled migrants must also prove that they will be able to contribute to the economic, cultural or intellectual development of both France and their country of origin, and are provided with three-year visas. The migrant must return to his/her country of origin within six years.

30. Family reunification now requires that an immigrant must explicitly accept French values of equality between men and women, monogamy, and the secular nature of the French state. In addition, immigrant families must prove that they can support all family members, without the assistance of the state.

31. One of the key changes in the law is the abolishment of the link between time lived in France and the provision of a residence permit. Instead, permanent residency status and citizenship will be made on a case-by-case basis, and will largely be based on new integration criteria which includes having taken French language and civic courses.

32. This new law is a bold departure from the approach many EU states have taken toward immigration policy, and is worthwhile monitoring to see if France succeeds in its efforts to manage irregular migration.

i. Demographics

33. Migrants regularised in France's 1997-98 Chevenment Laws came mostly from the north African countries of Algeria (16%) and Morocco (12%), followed by China, the Democratic Republic of Congo, and Tunisia.

X. Belgium

34. Belgium's sole experiment with a large-scale regularisation programme occurred in 2000, following massive demonstrations by immigrant groups. However, unlike its Southern European counterparts, Belgium was not motivated by economic reasons, nor did it have economic criteria as a requirement for regularisation. Instead, it permitted regularisation based on the condition that a migrant had had an unresolved asylum petition pending for four years (three years for families with children), or that the applicant was seriously ill or unable to return to his/her own country for humanitarian reasons, or had been in the country for longer than six years.

i. Demographics

35. Congolese and Moroccans dominated the applications, with 17.6 percent and 12.4 percent of the applications, respectively. Rwanda, Burundi, and other countries in sub-Saharan Africa, as well as migrants from Algeria, Tunisia and Turkey were also strongly represented.

XI. Luxembourg

36. Luxembourg implemented its only large-scale regularisation programme in 2001, as a reaction to the large numbers of refugees it was receiving in the 1990s from the former Yugoslavia and Kosovo. Although it focused on regularising the status of rejected asylum seekers, it sought to do so in consultation with sectors in the country most impacted by labour shortages. By trying to meet the needs of immigrants and employers, this programme has been hailed as innovative, however, in the end it struggled to meet these expectations since the

number of actual applicants was very low and many employers were unwilling to hire immigrants, possibly due to the requirement that applicants have a passport.

i. Demographics

37. 75 percent of regularised migrants were refugees from the former Yugoslavia, followed by refugees from Kosovo.

XII. United Kingdom

38. Although the United Kingdom has a large population of irregular migrants, it has never sought to regularise immigrants on a large scale, preferring instead a case-by-case system of what is referred to as a “long residence concession,” which provides indefinite residence permits to those who have been in the country continuously for 14 years (7 years for families with children).

39. The United Kingdom’s exceptional one-shot programme offered permits to a small pool of domestic workers for 12 months. The very small number of applicants is most likely related to the application criteria, which required that workers have a valid passport, be able to prove that they could support themselves, and have entered the country legally and with the explicit purpose of being employed as a domestic worker.

40. Finally, it should be mentioned that when accession states in Eastern Europe joined the EU on 1 May 2004, irregular immigrants from those states who were working in the UK prior to that date were allowed to continue working in the UK if they registered to do so—a regularisation programme of convenience that allowed migrants to continue working in sectors where they were needed without the disruption of having to return to their home country.

i. Demographics

41. Domestic worker regularisation programme legalised immigrants primarily from Sri Lanka and the Philippines.

XIII. Russia and other CIS States

42. It is worth mentioning the unique situation that exists in Russia and other CIS countries since the dissolution of the Soviet Union. While no countries have undertaken the type of regularisation programmes discussed above, Russia has allowed CIS citizens to live and work within its borders for many years, and has signed bilateral agreements with all 11 CIS countries to better regulate irregular migration. Nevertheless, there are an estimated 10-12 million irregular migrants living and working in Russia from the Caucasus countries, China, Vietnam, and Central Asia. A law enacted in January 2007 seeks to cap the total number of foreign workers at 6 million by strictly enforcing registration of immigrants and giving priority to immigrants working in jobs where they do not compete with natives. By 1 April 2007, immigrants will be prohibited from working in retail trade altogether

43. Table 1, attached, provides a summary of the various criteria, numbers applied and legalised under regularisation programmes over the past 25 years.

XIV. Reasons for Regularisation Programmes

44. There are various reasons why a country might endeavour to undertake a regularisation programme, including to reduce the size of the underground economy and to increase tax and

social security contributions, to improve the social and economic situation of migrants, to gain more awareness and control over the undocumented population, to correct for shortcomings of previous programmes, to improve the rule of law, and to fill jobs that native workers are unwilling to take. An examination of each rationale in turn reveals the strength and weaknesses of these arguments, and shows where each needs more supporting evidence.

i. To reduce the size of the undocumented population

45. A primary motivation for many countries in implementing regularisation programmes is to diminish the size of the unauthorised population living within their borders. This has been a decisive factor in favour of regularisation in countries where over the course of a couple decades immigrants began making up an increasingly large percentage of the general population. For example, by 2001, Greece had a foreign population of over seven percent, compared with 1.6 percent in 1991. In Italy, the foreign population jumped from 0.6 percent in 1991 to 3.4 percent in 2004.

46. Most experts agree that any impact regularisation has on the stock of unauthorised migrants is most likely temporary. In fact, the stock of migrants is continuing to grow across Europe, with little sign of being diminished. Since the reasons for migration are largely economic and driven by networks, it is unlikely that regularisation programmes on their own could have a significant impact. Nonetheless, more research into the impact of regularisations on the size of the undocumented population is needed.

ii. To reduce the size of the underground economy and to increase tax and social security contributions

47. Countries with large underground economies tend to attract irregular migrants in search of easy access to employment, especially in Spain, Greece and Italy. The lack of employment opportunities in the EU, combined with relatively strict labour market regulation, means that the underground economy is the only option for work for even skilled irregular migrants. Regularisation programmes are often touted as a way to reduce the shadow economy, and to increase tax and social security contributions. Unfortunately, there is scant concrete evidence that regularising migrants has had an impact one way or another on the underground economies of EU countries. In Greece, it is estimated that nearly 40% of migrants stay in the underground economy despite efforts to regularise them, although this may have to do with the general economic situation of the country and negative cultural attitudes toward employing immigrants. More information on the impact of regularisation on the informal economy is necessary. Data on tax collection and social security contributions is more promising, however. The latest data from Spain's programme, for example suggests that contributions to social security have increased by three percent since its most recent regularisation programme in 2005.

iii. To improve the human rights and dignity of migrants

48. A handful of states, including France, Belgium and Luxembourg, have sought to regularise their unauthorised population for humanitarian reasons, or to facilitate the social and economic integration of migrants into their countries. However, the sheer number of migrants currently living and working in irregular situations in Council of Europe countries requires attention by member states. Migrants living and working irregularly are vulnerable to exploitation and discrimination at work. They may be forced to live in substandard housing, denied access to healthcare and other social benefits, and their children may face barriers in attending school.

49. Although it is uncommon to use human rights laws as a justification for regularisation, international human rights instruments provide the clearest statement on the rights afforded to

migrants regardless of their status, particularly in regards to non-discrimination on the basis of national origin.⁴

50. The most significant development in the protection of the rights of migrant workers is the UN Convention on the Rights of all Migrant Workers and their Families (ICMW), which came into force in April 2003. The ICMW has a wide range of purposes: to improve the conditions migrant workers and their families by expanding on international law, to emphasize the hardship that migrants face, and to recognize the rights of irregular migrants. Nonetheless, only three CoE member states (Azerbaijan, Bosnia and Herzegovina and Turkey) have ratified this convention.

51. The Parliamentary Assembly is particularly concerned about the need to safeguard the rights of irregular migrants and clarify the rights that they enjoy. In this respect the Assembly adopted Resolution 1509 (2006) and Recommendation 1755 (2006) on rights of irregular migrants⁵. In this the Assembly recognised that regularisation programmes offered one solution for safeguarding the rights of persons in an irregular situation⁶.

iv. To gain more awareness and control over the undocumented population:

52. Regularisation programmes can provide important information about the demographics and labour market participation of migrants. Such information can assist countries in planning future migration management strategies and target social service programmes.

v. To correct for shortcomings of previous programmes

53. Some countries, most notably Greece, Italy, Portugal, and Spain, have needed to resort to recurring legalisation programmes when previous ones failed to meet their desired outcomes. While not an optimal reason for implementing a programme, recurring regularisations give states another chance to “get it right.”

vi. To improve the rule of law and national security

54. National security has become a paramount concern to European nation, and an irregular population that lives in the shadows is more likely to escape detection if involved in criminal activities. At the same time, a migrant's irregular status might force him to engage in illegal activities if it is the only means of making a living. Through accounting for the irregular population, regularisation can be an important tool for supporting national security efforts. By bringing a population out of the shadows, these programmes can also reduce criminality among the irregular migrant population. In addition, migrants often take the jobs that natives will not—the dirtiest, most dangerous and most precarious jobs that pay little, have few or no benefits, and/or put them at a high risk of injury or death. Regularisation programmes can force employers to follow regulations, making these jobs safer for migrants.

vii. To fill local labour market needs

55. The aging population of working-age adults in OECD member countries, combined with low birth rates, has meant acute labour shortages in various industries, most notably domestic service, agriculture, and low-skilled manufacturing work. Regularisation programmes can assist host countries in legally filling labour shortages, while giving employers an alternative to hiring workers illegally.

⁴ See in particular *Universal Declaration of Human Rights (UDHR)*, Articles 2 and 7; *International Covenant on Civil and Political Rights (ICCPR)*, Article 26, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Article 2; *European Convention on Human Rights (ECHR)*, Article 14 and *Protocol 12 of the ECHR*

⁵ See also Report of the Committee on Migration, Refugees and Population on Rights of irregular migrants, Rapporteur, Ed van Thijn, (Netherlands, SOC), Doc 10924

⁶ Resolution 1509 (2006) on rights of irregular migrants, para 16.5

XV. Impact of Regularisation on Migrants

56. The benefits of regularisation do not only accrue to the host country; can also have positive impacts on the social and economic position of migrants by:

i. Reducing employer exploitation of workers

57. As indicated above, unregulated or dangerous working conditions, as well as underpayment and nonpayment of wages, are widespread and serious problems for irregular migrants. If migrants are formally employed, they not only have more avenues to make formal grievances against unscrupulous employers, but employers will be less likely to engage in exploitative behaviour.

ii. Allowing migrants to better compete for higher-paying jobs or enhance work skills

58. Even if migrants are skilled, the perceived or actual threat of being deported can lead them to accept employment in sectors that are low-paying. Since wages for irregular migrants are usually lower than those of natives or legalized migrants, if migrants are allowed to work legally, they are more likely to be able to use their human capital to compete for higher-paying jobs, or to use the opportunity to learn new work skills that could be an asset to their host country. However, much of their ability or to learn new work skills depends on the resources available for training in the host country as well as the type of permit they receive—migrants with temporary or very short permits will be less likely to have the motivation to improve their job skills.

iii. Reducing delinquency

59. Taking illegality out of a migrant's status means that they will be less likely to resort to criminal activities to support themselves.

iv. Improving upward mobility, social integration and language skills

60. Well-organized regularisation programmes, especially those that provide permanent or long-term residence permits, can have a positive impact on the social integration and language skills of migrants, paving the way for upward mobility of future generations. While most definitive studies in this area have been done on regularised immigrants in the U.S., the results are encouraging. Research shows that the 1986 legalisation programme has had a positive impact on the wages and occupational mobility of many migrants, and has had an even greater positive impact on their children's educational attainment. More research should be done in Council of Europe member states to see how the impacts correlate there as well.

61. On the other hand, regularisation programmes pose a difficult challenge for family members, particularly spouses and children, if they are not provided residence permits as well. The provision of permits based on family ties, whether based on the need for reunification or the regularisation of family that is already present in the host country, is a controversial topic within the debate over regularisation. As previously indicated, family reunification measures are rare, and in addition, unlike the United States, which automatically confers citizenship to every baby born within its borders, very few EU states grant automatic residency or citizenship by birthright alone. Since family-driven migration is a strong pull factor to host countries, more sustained attention and consideration of this issue is needed.

XVI. Criticisms of Regularisation Programmes

62. Many politicians and the public are opposed to regularising immigrants on the grounds that to do so would be to reward "lawbreakers"—those migrants who entered the country illicitly,

providing them with opportunities to work. This is a dead-end argument that provides no solutions to the problem of what to do with a population that is already living and working within the country. It also denies the reasons why irregular migrants are present in the first place: failure of migration controls, either through neglect or powerlessness, and the strong economic factors that drive migration.

63. However, the main argument against regularisation programmes is that they are unable to “set the meter to zero,” and actually encourage further irregular migration. This claim is hotly contested, and most studies on this issue have examined the experience of the US. While some show that the large-scale amnesty implemented in 1986 has not reduced, but rather increased, undocumented migration to the US, since it established new migration flows due to networks and family ties, others show that flows have in fact remained largely the same. In Europe, political parties opposed to immigration have long argued that regularisation programmes in Spain and Italy have attracted more undocumented immigration. However, research in this area is largely anecdotal and indeterminate, since most studies rely on interviews with migrants apprehended en route to their destination country as to their reason for migrating. Most migration experts assert that economic factors, not regularisation, are the primary pull factors in irregular migration, although it cannot be ignored the establishment of family and social networks that occurs as a result of regularisation may attract further migration.

XVII. Past Challenges with Regularisation

64. Regularisation programmes have faced numerous challenges in both the planning and implementation stages. The most common reasons for programme failure or weakness include:

i. Reversion to undocumented status

65. Many regularisation programmes that only provide temporary work or residence permits have had a large percentage of migrants fall out of regular status once their permits expire. Since few countries have either the resources or the will to track and remove all of those migrants who revert to undocumented status, this can perpetuate an endogenous cycle of undocumented migration, necessitating future regularisation programmes. Italy and Spain have both had significant numbers of applications coming from permit holders who had participated in a previous regularisation programme.

66. Greece's 2001 regularisation programme sought to break this cycle by allowing migrants who had consecutively renewed their two-year residence permits over the course of 10 years to apply for permanent residence status. And in Portugal, migrants are eligible for permanent residence after renewing their initial one-year permit four times. Spain's most recent regularisation programme also provides an eventual pathway to permanent residency.

ii. Lack of administrative preparedness

67. A state may not have the capacity to handle administrative demands that regularisation programmes require. Large numbers of applicants, combined with staffing shortages, led to backlogs, slow application processing, and, ultimately, weak or ineffective programmes in the UK, Greece, Italy, Spain, and Belgium. In many countries, requirements have needed to be changed or relaxed during a programme.

iii. Lack of publicity

68. Lack of publicity in migrant communities can mean a low turnout of applicants, as it did in some of Spain's, Italy's, Portugal's and the UK's regularisation programmes. Alternately, strong publicity and coordination with migrant organizations and media was critical to high turnouts of migrants in the 1981-1982 programme in France, and in Spain's most recent 2005 programme.

iv. Overly strict requirements and application fraud

69. Since many migrants work informally and without contracts, and/or may have fled hastily from their home countries, requiring proof of employment, long presence in the country, and even identification such as passports can make the results of a regularisation programme weak. This has been cited as a reason for programme failure or delay in the UK's migrant domestic worker regularisation programme, as well as in Portugal in 1992-1993, Luxembourg in 2001, and in Greece.

70. The inability of migrants to meet the requirements of the programmes has also led to the falsification of applications in several programmes. In the US, for example, some estimates put application fraud as high as 73 percent for all applications submitted under the Immigration Reform and Control Act (IRCA), which only covered undocumented migrants who had been living in the country prior to 1982. Similar application fraud has also been a problem in Italy, Greece, and Portugal, as has corruption of public officials, who reportedly sold illegitimate work permits to migrants with incomplete applications, or to those seeking to expedite the process.

71. Most of these challenges are largely bureaucratic in nature, however, and if given proper attention, funding and oversight, could possibly be improved upon. A greater challenge with regularisation programmes is that they have been largely designed and carried out as stand-alone policy efforts to control irregular migration, and then without attention to the realities of the labour market needs of employers, nor to the behaviours of migrants. As a stand-alone policy to control migration, regularisation programmes are doomed to failure, since they deal with current and possibly future flows of migrants, not the control mechanisms that prevent them from entering in the first place. These problems are exacerbated by an overall lack of formal evaluations of the benefits and shortcomings of previous programmes, which means that many of the problems cited above are doomed to repeat themselves.

XVIII. What Happens after Regularisation?

72. As previously indicated, one of the great challenges of temporary regularisation programmes is determining what to do after the permits expire and the migrants fall out of regular status. In general, states have not had the resources, nor, some would argue, the will, to track and deport those migrants who stay on. In terms of employment, migrants who fall out of status may lose their jobs and be forced back into the underground economy in order to make a living, or employers may continue to employ them, but illegally. There is very little data about the fate of migrants after they lose their status, other than that a large percentage of them may apply again if the host country undertakes another regularisation programme.

73. In addition, no regularisation programme approves 100% of applications. However, while migrants may technically be required to leave if their applications are rejected, there is little evidence that host countries have been able to forcibly remove all failed applicants.

XIX. EU Position on Regularisation

74. The European Union has no official position on regularisation, and its approach toward migration management has focused more on agreements on policies toward asylum seekers and refugees. The Hague Program is the closest the EU has come to agreeing on a common immigration policy, which charts a course based on the following elements:

- A common asylum system
- Fighting terrorism
- Legal migration, with an emphasis on the fight against illegal employment

- Integration policies
- Partnering with countries of origin and transit
- Managing migration flows

75. However, within this Program there is no focus on using regularisation as a tool for migration management.

76. The European Commission intends to launch a study on regularisation programmes, with the intention of elucidating best practices, however, this study will likely not have a focus on human rights. It is therefore critical that the Council of Europe and the Parliamentary Assembly maintain an emphasis on the human rights of irregular migrants through the recommendations proposed.

XX. Recommendations

77. Regularisation programmes must be undertaken as part of a comprehensive strategy to manage migration. As such, it is important to look at ways in which the programmes themselves can be improved upon, accompanying measures that states should consider undertaking as part of a holistic approach to migration management, and to explore alternative policies like earned regularisation that depart from the standard one-shot programmes of the past.

i. Improving the bureaucracy of regularisation programmes

78. Regularisation programmes have the potential to be a powerful tool for helping countries to manage migration. However, as we have seen, many programmes suffer from similar shortcomings and weaknesses. The programmes themselves could be strengthened if countries take the following measures:

a. Comprehensive review of best practices and impacts of regularisation programmes

79. Despite the number of regularisation programmes undertaken by member states of the Council of Europe over the past 25 years, there have been few evaluations of the strengths and weaknesses of these programmes, except by academics or by non-governmental think-tanks. Countries that have implemented these programmes should undertake comprehensive evaluations of these programmes, assessing everything from administrative preparedness to labour market impacts to the socio-economic effects of regularisation on migrants, not to mention the impact on the stock of undocumented immigrants themselves. Such reviews will develop a set of "best practices" for countries seeking information on the design and implementation of regularisation programmes.

b. Designing programmes to take into account both the concern of employers and migrants

80. Regularisation programmes must take into account the reality of a migratory situation in the host country at any given time, and all that that implies in terms of meeting the needs of employers and migrants alike. Designing programmes with the input of employers is critical to helping fight illegal employment. However, it is also important for countries to understand the labour market behaviour and reason for migrating of the migrants themselves. Studies of employer and migrants' needs could yield valuable information about what kind of permits (temporary, permanent, etc.) would be the best solution for all the stakeholders involved.

c. Increase/improve publicity efforts

81. Many programmes suffered from a lack of publicity efforts to migrant communities in the preparatory stage, leading to weak outcomes. Broad promotion of the administrative requirements of the programmes should involve the coordination of government, media and immigrant associations.

d. Administrative preparedness

82. Lack of bureaucratic preparedness appears to be nearly endemic to regularisation programmes. Governments must properly fund and staff these programmes to combat fraud and to ensure that applications are processed in a timely fashion.

ii. Accompanying measures by states

83. Regardless of how well regularisation programmes are designed, on their own they are bound to be limited in their capacity to reduce the size of the underground economy or of the undocumented population. To accomplish this, countries should consider implementing them in conjunction with the following measures:

a. Combating irregular employment and the informal economy

84. The presence of a large underground economy is a major reason for the perpetuation of irregular migration, as it provides informal and unregulated jobs to migrants. While cracking down on the underground economy is easier said than done, it is important for countries to take seriously the strict enforcement of labour laws and worksite inspections, and to capacitate the proper entities to carry them out. Fining employers is another method states have turned to in order to combat irregular employment and reduce the size of the informal economy. Spain's current regularisation programme includes a provision for fining employers 60,000 per employee for illegal hiring.

b. Integration programmes

85. Strategies to encourage the integration of irregular immigrants into the host country should be undertaken as part of a holistic immigration policy. Language and civic courses, while important, are just two aspects of an integration programme. Since integration is a two-way street, host countries must endeavour to develop programmes aimed at the meaningful social inclusion of immigrants in politics, work, education and community life.

c. Working with countries of origin

86. From facilitating the orderly return of migrants to implementing development initiatives, regularisation needs to be part of a greater strategy involving cooperation with sending countries. This is particularly important in light of the considerable evidence that co-development is not as effective as remittances, and as such policies that aim to reduce the need to emigrate through development initiatives alone will have limited success. Spain, Italy and France have been experimenting with providing aid and debt forgiveness to sending countries in the hope that it will reduce migration pressure, as well as developing bilateral repatriation agreements. Nevertheless, much more experimentation with different collaborative approaches is needed.

d. Tightened visa and/or border controls

87. An essential component of a successful migration management strategy is to increase interior and exterior migration enforcement. This is often critical for achieving public support for

the programmes, but stepped up inspections should not merely be symbolic—real resources must be devoted to these efforts.

e. Widen the front door to regular migration:

88. More open admission policies that increase legal access to labour markets are important to reducing irregular migration. Some countries have attempted to do this by cataloguing labour shortages in certain geographical areas or industries. Such programmes should be flexible and responsive to both current and projected labour market needs.

f. Impact on families

89. The impact of migration enforcement on families, especially forced removals and deportations, deserves special attention as a humanitarian concern. However, the perpetuation of irregular status on the second generation of immigrant families can also have pernicious effects on the educational attainment, potential income earnings, health, and integration of children into the host country. Migration management discussions should take this into serious consideration.

g. Cooperation with other governments to harmonize policies:

90. To the extent possible, the Council of Europe and the European Union should work toward a common policy on principles of regularisation that will incorporate the preceding recommendations.

iii. Earned Regularisation

91. Finally, it is worth considering the idea of earned regularisation as an option that departs from the established one-shot methods described above. Earned regularisation is an idea that is gaining increased currency in the world of migration policy is that of earned regularisation programmes. Such a programme would provide a pathway to permanent residency or citizenship for migrants through a points system. Points would be awarded on an individual basis to migrants through knowing the language of their host country, paying taxes, having stable employment, participating in community life, or any number of requirements determined by the host country. It has been pointed out that one of the benefits to such a program is that it has the potential to be self-selecting, since only those migrants who were truly motivated to stay would earn enough points, while those who were not would be forced to return home.⁷ Another benefit to earned regularisation is that it eliminates the need for large-scale one-shot programmes, since each individual country would determine who would be regularised on a case-by-case basis. These programmes could be flexible, adaptive and responsive to local labour market needs and demographic realities.

XXI. Summary and Conclusion

92. While widely used, regularisation programmes have not yet reached their potential. This has led to widespread scepticism and criticism of the ability of these programmes to reduce irregular migration. However, it is important to acknowledge that regularisation programmes are not a panacea for solving irregular migration and all the problems associated with it.

93. Indeed, regularisation programmes should be viewed as a single tool for managing migration, not as a stand-alone policy. By thoughtfully designing a programme that takes into account the migratory, labour market and demographic needs of a country, and by implementing

⁷ See Demetrious Papdemetriou, "The 'Regularization' Option in Managing Illegal Migration More Effectively: A Comparative Perspective," Migration Policy Institute Policy Brief No. 4, September 2005.

the programme in conjunction with other migration control and security measures, regularisation programmes can help a country achieve its migration management objectives. They can also be carried out in a humane way that respects the rights of migrants and their families.

94. Attitudes toward regularisation are bound to be guided by each country's unique political, social, cultural and economic characteristics, and while it would be ideal for Council of Europe member states to agree on a broad set of principles regarding regularisation, it is important to recognise that one size does not fit all, and that each country will need to design a programme to meet its own needs.

Appendix I

Table 1: Summary of Regularisation Programmes in EU Member States, 1981-2006

Country	Year of programme	Number Applied	Number Regularised	Approval rate	Type of permit offered	Programme requirements
France	1981-82	150,000	130,000	87%	Permanent residence	<ul style="list-style-type: none"> • Presence before 1 Jan. 1981, proof of stable employment or work contract—eventually expanded to include many other categories
	1997-98	150,000	87,000	--	Permanent residence	<ul style="list-style-type: none"> • Continuous residence in France for 7 years and real family ties or letter with employer's intention to hire, real family ties and 5 years residence in France.
Belgium	2000	50,000	unknown		Long-term residence	<ul style="list-style-type: none"> • Presence in Belgium prior to October 1, 1999 and to have had an asylum application pending for a long time; or to not be able to return home for humanitarian reasons, Serious illness; and to have lived in the country for six years.
Greece	1998-“White card” “Green card”	370,000	370,000	100%	6 month residence	<ul style="list-style-type: none"> • Presence in Greece since 27 November 1997.
		228,000	220,000	96%	1-5 year work and residence	<ul style="list-style-type: none"> • Legal employment since 1 Jan 1998; • Employment for 40 days at minimum wage with social security contribution;
	368,000	228,000	62%	2-year work and residence	<ul style="list-style-type: none"> • Proof of legal status or continuous residence in the country for one year. 	

Table 1: Summary of Regularisation Programmes in EU Member States, 1981-2006

	2005	139,000	unknown		12 month residence	<ul style="list-style-type: none"> • Proof of employment and social security contributions
Italy	2005	195,500	unknown		12-month residence	<ul style="list-style-type: none"> • Employer sponsor. • Presence in Italy prior to 27 Jan. 1987.
	1986	unknown	118,700		Temporary work permit	<ul style="list-style-type: none"> • Worker and students present before Dec. 31 1989.
	1990	unknown	235,000	93%	2-year residence	<ul style="list-style-type: none"> • Residence in Italy; • Employed during past six months or job offer from employer; • Have paid 3 months of social security.
	1995	256,000	238,000	63%	1 or 2 year residence	<ul style="list-style-type: none"> • Presence in country prior to 27 March 1998; • Proof of housing; • Employers must pay taxes on wages
	1998	308,323	193,200	91%	Temporary work permit	<ul style="list-style-type: none"> • Proof of 3 months of pension contribution; • Proof of continued employment.
	2002	700,000	634,728		Temporary 1-year permit	
Luxembourg	2001	2,894	1,839	64%	6-month residence permit to allow applicant to find employment, after which there is a possibility of longer-term residence permits	<ul style="list-style-type: none"> • Presence in country prior to 1 July 1998; or working illegally prior to 1 January 2000; or if refugees, to have arrived before 1 January 2000

Table 1: Summary of Regularisation Programmes in EU Member States, 1981-2006

Portugal	1992-93	80,000	38,364	48%	Temporary residence	<ul style="list-style-type: none"> • Open to workers and non-workers who had been in the country prior to 15 April 1992.
	1996	35,000	31,000	89%	Temporary residence	<ul style="list-style-type: none"> • Proof of involvement in professional activity; • Basic ability to speak Portuguese; • Housing; • Had not committed a crime
	2001	unknown	170,000		1-year residence permit, with possibility of renewing up to four times. After 5 years, applicant becomes eligible automatically for permanent residence.	<ul style="list-style-type: none"> • Presence in country; • Valid work permit.
Spain	1985	44,000	23,000	52%	1-year renewable residence and work permit	<ul style="list-style-type: none"> • Presence in country before 24 July 1985; • Applicants must have job offer
	1991	135,393	109,135	81%	3-year residence	<ul style="list-style-type: none"> • Residence and employment in Spain since 15 May 1991; • Asylum seekers whose applications had been rejected or were pending
	1996	25,000	21,300	85%	5-year residence	<ul style="list-style-type: none"> • Employment in country since 1 January 1996; OR • Have a working or residence permit

Table 1: Summary of Regularisation Programmes in EU Member States, 1981-2006

2000	247,598	153,463	62%	1-year temporary residence/work	<p>issued after May 1996; OR</p> <ul style="list-style-type: none"> • Be a member of the family of a migrant living in Spain before January 1996 • Residence before June 1 1999; • Work permit or residence permit in previous three years; OR • Application for work or residence permit.
2001	350,000	221,083	63%	1-year temporary residence	<ul style="list-style-type: none"> • Presence in Spain before 23 January 2001; • Proof of incorporation into the labor market, family ties with Spanish citizen or foreign residents, no charges pending.
2005	691,655	577,159	83.4%	Initial 1-year living and working permit, followed by two-year renewal permit, after which permanent residency is possible.	<p>For employers:</p> <ul style="list-style-type: none"> • demonstrate that they are enrolled in and paying into Social Security • Proof that they have no history of breaking immigration laws in the previous 12 months, • Proof that they haven't been sanctioned for violating the rights of workers or immigrants.

Table 1: Summary of Regularisation Programmes in EU Member States, 1981-2006

United Kingdom	1998	unknown	200				<p>For immigrants:</p> <ul style="list-style-type: none"> • proof of registration with a local municipality in Spain before August 7, 2004 and presence in Spain at the time of application. • Proof of work contract. • Clean criminal record.
						1 year temporary work permit	<ul style="list-style-type: none"> • Entrance before 23 July 1998; • Valid passport; • Current employment as domestic worker; • Proof of ability to support oneself

Source: Amanda Levinson, "The Regularisation of Unauthorised Migrants: Literature Survey and Case Studies" (Oxford University: Centre on Migration, Policy and Society, 2005)