



European Migration Network Conference

Warsaw, 25th October 2011

Combating irregular migration: practical responses

Summary and Final Conclusions

Prepared by the Polish National Contact Point to the European Migration Network with the support of the European Commission and the EMN Service Provider (GHK-COWI)

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Summary of the EMN Conference 2011 held in Warsaw on 25th October 2011

Introduction

On 25 October 2011 in Warsaw, the National Contact Point (NCP) of the European Migration Network in Poland (PL EMN NCP) organised the European Migration Network Conference 2011, which was devoted to practical aspects of combating irregular migration. The purpose of the Conference was to allow participants to present and exchange views on this theme, which remains highly topical in political and public debate, particularly in the context of the increased inflow of irregular migrants from North Africa, witnessed this year on the southern EU external border. The themes covered during the Conference reflected one of the main priorities of the Polish Presidency of the EU Council in the area of migration, namely the issue of border protection and management. The Conference was closely aligned with the 2011 EMN Study entitled “Practical measures for reducing irregular migration,” which will be completed in early 2012.



The Conference was attended by 160 participants, including representatives from the European Commission, 27 EMN National Contact Points, many international and regional organisations (such as the Council of Europe, ICMPD, PICUM and MARRI), and from Polish National and International Academic Institutions. The Conclusions of this Conference were promoted during the Polish Presidency of the EU Council and will be provided to the European Commission.

Opening remarks

The Conference was officially opened by Mr Piotr Stachańczyk, Undersecretary of State in the Ministry of the Interior and Administration, and Ms Marta Cygan, Director for Immigration and Asylum in the European Commission's Directorate-General for Home Affairs. It was divided into two themes: one devoted to practical



measures and tools to counteract irregular migration on the southern and eastern EU external borders, and the other to examine the living conditions of irregular migrants in EU Member States, as well as actions on the part of these countries, and NGOs, to improve the situation of irregular migrants within a framework of fundamental rights. Mr Stachańczyk highlighted the challenges and risks inherent within a managed migration approach, for both transit and



destination states, and for migrants themselves, and drew attention to the need to maintain a balance between combating irregularity and ensuring the fundamental rights of migrants were met. The need for effective practical measures were increasingly a priority; how to reduce and limit irregularity; how to identify the needs of migrants; how to share and exchange good practices across Member States; and how to ensure that EU Directives were effectively implemented.

Ms Cygan stressed that, from the perspective of the Union, there was a need to address irregular migration in a comprehensive and balanced manner, but recognised that it was a phenomenon that was difficult to define and quantify. Ms Cygan identified the current migratory pressures facing Europe and cited recent statistics to provide a context for the scale of the issue of irregular migration. In 2009, for example, the number of irregularly staying persons apprehended was over 570,000, and almost half of these were returned. The EMN Study would provide more up-to-date information. The importance of tackling irregular migration in a balanced manner, through sound practical measures, and in recognising best practices across Member States, and learning from each other was also stressed. The EMN Study is expected to contribute significantly to this agenda.



In relation to EU actions to combat irregular migration, Ms Cygan discussed how Directives providing for minimum standards of sanctions and measures against employers of illegally-staying third-country nationals (2009/52/EC) and on common standards and procedures in Member States for returning illegally-staying third-country nationals (2008/115/EC) would act as key tools, by, respectively, targeting, and sanctioning, unscrupulous employers, and by facilitating clear decision-making in relation to migrant status, and returning those whose status was irregular. The European Pact on Immigration and Asylum had stated regularisation on a case-by-case basis only, rather than through mass regularisations, which was considered

to create a pull-factor. The EU was also creating positive incentives for migrants to enjoy a legal experience in Europe, for example, through the proposed Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, (COM(2010)379) in sectors prone to irregularity. Ms Cygan also stressed the challenge of finding a balance between enforcing the law and respecting the fundamental rights of migrants, and stressed that humane and dignified treatment of migrants was the only approach consistent with European values.

Session 1: Theme 1 - Early findings from the EMN Study, *Practical measures to reduce irregular migration.*

Following the opening presentations, Session 1 of the Conference introduced participants to the early findings and preliminary results from some EMN NCP National Reports on 'Practical measures to reduce irregularity'. The Study has been structured to illustrate practical measures for reducing irregular migration at four stages of the 'migration cycle': **pre-entry** (i.e. prior to a migrant's entry into the country); at the **entry** stage; during **stay**; and then addressing measures taken to provide **pathways out of irregularity**.

The Synthesis Report, and published versions of all contributing National Reports, will be prepared by early 2012, and will be available at the main



website of the European Migration Network <http://www.emn.europa.eu>, and the website of the Polish EMN contact point <http://www.emn.gov.pl>).

Following an overview of emerging good practices from the National Reports received, three regional presentations were delivered, prepared jointly by the EMN NCPs in, respectively, the eastern (Estonia, Latvia and Lithuania, followed by Hungary, Poland and Slovakia) and southern (Malta, Portugal and Spain) sections of the EU's external border. Each presentation highlighted the practical measures being implemented, and the close co-operation that has developed amongst the neighbouring Member States in understanding and tackling the specific circumstances of irregularity within the three regions.

The presentations summarised preliminary analysis of the most important challenges faced by Member States and highlighted emerging examples of good practice. The Baltic Countries, Estonia, Latvia and Lithuania, are not usual countries of destination, but rather of transit. Third-country nationals found to be irregularly present are predominantly from Russia, Belarus and Ukraine (2010 data), resulting from historical consequences, existing diaspora

communities, economic ties with former Soviet bloc countries and language. Irregularity is generally the result of abuses of the legal basis for stay, and as a result, practical measures have focused on spot checks for illegal employment and accommodation checks, and importantly, co-operation between the three countries, to undertake internal border checks and joint operations and information exchange.

The benefits of cooperation were very clearly illustrated by the responses of Poland, Hungary and Slovakia to combating irregular migration to the EU's Eastern Border. Irregular migrants include citizens from Ukraine, but also from more distant countries of origin, such as Serbia, Kosovo, Vietnam, Pakistan and Afghanistan, travelling along established immigration routes. Irregularity is mainly the result of illegal border crossings, overstaying of existing conditions and abuses of tourist visas by those whose intention is to work. Practical measures that have worked best have been developed to address the specific circumstances. These include bilateral collaborations with Ukraine, operational border and consular co-operations between the member states, multilateral co-operation with Ukraine and joint operations with Frontex.

The work of the new research project "CARIM-East" of the University of Florence and the Centre of Migration Research of the University of Warsaw (CMR UW) was also highlighted. Its purpose is to create space for international



cooperation and exchange of experience in the area of migration, focused on the EU's Eastern Partnership. Initial research will focus on topics such as, amongst others, economic development, remittances and mobility; border management; circular migration; irregular migration in the region; asylum and the potential impact of climate and environmental change.

For the Southern EU border, a key issue is the diversity of migration-related challenges facing Member States. Migrations from Latin American and African countries, the challenges of working with sea borders, and the high numbers of asylum applications, particularly following the political changes in North Africa, was effectively covered by presentations by Malta, Spain and Portugal. Practical measures in each country reflect both the commonalities of their experience, and the specific national context.



Session 1: Theme 2 - Practical measures of combating irregular migration in the east and south sectors of the EU border

Session 1 Theme 2 then widened the debate to include a broader range of perspectives, and highlighted the work of Frontex, and its relationship both with the Member States, and with other EU and international agencies. Attention was devoted to analysis of the irregular migration situation on the eastern and southern EU border, including the recent events relating to the 'Arab Spring', and geo-political issues, for example, the existence of four main irregular migration routes, through the Eastern Mediterranean, Central Mediterranean, Western

Mediterranean and Western Balkans. Practical measures to combat irregularity have included a range of land, sea and air operations, as well as return operations. Measures at the EU borders, such as



front-line activities, strengthening co-operation at national level, and interagency co-operation at EU level, were set out as some of Frontex's main areas of operational support to Member States facing these issues.

The migration of hundreds of thousands of people from Libya, following the onset of Civil War, many of whom were migrant workers from third countries, served to illustrate how

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international co-operation and effective practical measures, helped to reduce the impact of a major humanitarian crisis. Some 5 million migrant workers were believed to be staying in Libya during the crisis, mainly from neighbouring countries, but also from further afield, for example, Bangladesh. The collaboration of international governments and agencies, NGOs, aid agencies and other donors, resulted in an estimated 96% of migrants leaving Libya safely, with 4% risking their lives at sea. Following the immediate crisis, a wide range of issues then had to be tackled: border support to Libya, as a potential transit country for irregular migration; protecting remaining migrants within Libya; and the integration of returnees to third countries, facing the double impact of the loss of remittances and the return of workers with no immediate employment prospects. The presentation helped to illustrate the complexity of relationships and impact between countries united by migration, and the role of effective international collaboration and co-operation



The final presentation of the session provided a fresh perspective on the facts and figures of irregular migration in the EU, by reflecting on the relative situation of Europe within a global context, and specifically in comparison with the USA. The stock of irregular migrants in Europe was reported to be falling, due to the accession of some sending countries, regularisation, improved border controls, and as a consequence of the economic down-turn, and is currently estimated at about 8 million. Member States were not alone as destination countries: irregular migration was an aspect of non-European populations too, Russia, Turkey, Morocco, and Libya, for example. On comparison with the US, it was suggested that the EU had lower relative levels of irregularity, resulting from strict border controls, and more legal migration.

Session 2 Theme 1 Balancing practical measure to address irregular migration and individual rights

Session 2 Theme 1 then turned to the question of good practice in balancing practical measures to address irregular migration with non-discrimination and respect for the individual rights of migrants in an irregular situation, where positive developments were taking place. Speakers from the Fundamental Rights Agency, the Council of Europe and the Migration, Asylum and Refugees Regional Initiative Regional Centre (MARRI) highlighted their recent work, and provided insights into a key question: which practical policy or legislative responses are needed to address the protection gaps?

The Fundamental Rights Agency welcomed the positive switch to a more balanced approach in relation to migrants' fundamental rights, and shared the initial results of an extensive study on the fundamental rights situation of irregular migrants in the country of stay (FRIM, available through the FRA website: www.fra.europa.eu), focusing on rights to healthcare, employment-related rights, education, family life, an adequate standard of living, and immigration law enforcement and practice. The study had found that in practice, access to healthcare, education and employment in the



country of stay were limited for irregular migrants, due to barriers such as unclear rules in service provision, lack of awareness of entitlements from both providers and migrants, and, for the migrant, fear of detection. To improve the situation for irregular migrants, recommendations included ensuring access to necessary healthcare, legislating for access to education for the children of irregular migrants, raising awareness about the rights of irregular migrants, and encouraging the role of Civil Society in supporting access to justice. A ban on detection, reporting and data exchange practices that might deter migrants in an irregular situation from taking up services was proposed. And finally, the study called for an end to the



'legal limbo' for non-removed irregular migrants, recognising in particular, the difficult situation of some irregular migrants given a return decision, but who could not be removed. Irregular migration was also the subject of the Conference organised by the EU Fundamental Rights Agency (FRA) and the Ministry of Foreign Affairs of the Republic of Poland on 21 and 22 November 2011 in Warsaw entitled "Dignity and rights of irregular migrants."



A further perspective on the access of irregular migrants to human and social rights was then presented by the Council of Europe, whose approach was framed by two main legal instruments, the European Convention on Human Rights (ECHR) and the European Social Charter (ESC). The presentation highlighted that the ECHR applies to everyone within a member state, irrespective of their legal status, and that the human rights of irregular migrants should

therefore be protected in the same way as the rights of citizens and legally-resident migrants. An attempt had been made by the Council to establish a set of minimum rights, but it had proved challenging to apply, due to the variety of situations in which irregular migrants can find themselves, which also influence the rights that can be granted. The presentation concluded that, within the legal instruments, irregular migrants should have access to basic social rights; under the ESC, those without adequate resources have the right to social and medical assistance, and under the ECHR (Protocol 1), children, including those of irregular migrants, should have the right to free education, and under ESC (Article 17) to social, legal and economic assistance.

An example was then given of regional cooperation in the context of a joint initiative of Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia, where measures to reduce irregular migration were balanced within a framework of non-discrimination. MARRI has been set up to ensure effective migration management within the region, including the key priorities of regular and irregular migration, asylum and refugees, combating smuggling, implementing readmission agreements, document security, border management and consular cooperation. The presentation focused on the practical measures implemented to address the Western Balkans' distinctive irregular migration flows, in its position as an entry point to the EU. These included transit flows from Greece, the mis-use of the asylum system; circular migration flows from Albania; and misuse of visa liberalization policy. The presentation concluded by highlighting that the issue of non-discrimination was also very important, and the standards and capacities in the member countries were well developed, including provision for the education of state officials, police officers, public prosecutors and judges in how to react with foreigners, accommodation facilities, meals, health care, translators, psychological and social workers, education for children and translation facilities.

Session 2 Theme 2 Question and answer session

The session opened with two short, complementary presentations, providing feedback from two recent EMN events focused on irregular migration. The first presentation, by the UK EMN NCP, highlighted the workshop '[Irregular migration: perspectives from both countries of origin and destination](#)', prepared by the Austrian, French and UK EMN NCPs at the 16th International Metropolis Conference: '[Migration Futures: Perspectives on Global Changes](#)'. The workshop had illustrated how international collaboration had helped to reduce irregular migration through three separate case studies, which examined the circumstances for and the evolution of, co-operation between three destination and origin countries: the UK and Pakistan; France and Tunisia; and Austria and Serbia. Each highlighted, in different ways, the benefits of such co-operation, for example, capacity building in third countries, co-operation on trafficking and human smuggling; and improving responsiveness to specific events.

The key conclusions from the Conference 'Pathways out of irregularity' held in Norway were then presented by the NO EMN NCP. The Conference had highlighted return and readmission as the preferred options of politicians, had considered issues such as voluntary and forced return, return migration and children and safe returns, and had then turned to the consequences and challenges of continued irregularity, and regularisation as a pathway out of irregularity. Conclusions had focused on consideration of a number of 'known unknowns', including the effects of forced returns on individuals, their families and communities; the number of irregularly present migrants and their situation, and the impacts of regularisation on (unjustified) asylum applications.

Following the presentations, observations and questions focused on how to ensure geopolitical differences in the Member States were taken into account in relation to combating irregular migration; how to ensure good practices were effectively shared, for example, awareness-raising in countries of origin and transit; how best to reduce the gap between regular and irregular migrants, accepting that in many cases, the motivations of both regular and irregular migrants were exactly the same, for example, by increasing legal avenues (the seasonal workers' Directive was considered as an excellent example, in a sector marked by high levels of irregularity); and how best to approach the challenging issue of estimating numbers of irregular migrants.

The EMN Service Provider presented a brief resume of the proceedings of the Conference, and highlighted two persistent themes, the first relating to the crucial importance of the availability of credible, reliable and comparable information on the actual situation of irregular migrants, as a basis for effective policy and practice; and that effective cooperation, at all levels, can bring significant benefits.

Concluding Remarks and Close

Ms Fiona Kinsman, Deputy Head of the Immigration and Integration Unit in the European Commission's Directorate-General for Home Affairs thanked the Conference participants for a fascinating day, and welcomed the range and depth of topics covered, and their many facets. Ms Kinsman noted that there had always been irregular migration and that the dividing line, in relation to motivation and aspiration, with legal migration, was very thin. However, it remained a topic of immense significance and political importance, and the contributions from the Conference would provide the basis for further discussion and debate. Ms Kinsman noted that the Conference had demonstrated, through facts and figures, a perspective on the scale



and scope of irregular migration, that was at odds with a situation that was consistently overestimated in the minds of the general public, leading to a negative and pessimistic perspective, and called for a rationalisation of the debate in the future, within a framework of respect for the dignity and rights of irregular migrants.

More information and the full presentations may be found on the EMN website <http://www.emn.europa.eu>.

Conclusions of the EMN Conference 2011

Framework for the EMN Conference

The purpose of the European Migration Network Conference was to present a timely opportunity to consider the practical responses applied by Member States to address the issue of irregular migration as an important element of the Stockholm Programme, and in light of the entry into force of the Directive providing for minimum standards of sanctions and measures against employers of illegally staying third-country nationals (2009/52/EC) and the Directive on common standards and procedures in Member States for returning illegally-staying third-country nationals (2008/115/EC). The Conference highlighted emerging good practices, and drew attention to the practical measures that have been applied by Member States to combat irregular migration, working individually, or with other Member States, with EU and other international entities, and with third countries. The Conference brought out the following tentative conclusions, in advance of the completion of the EMN Study “Practical measures for reducing irregular migration.”

Challenges remain in identifying and studying the issues of irregular migration and irregular migrants.

The term irregular migration refers to entry to or residence in the territory of a given state by non-nationals who breach this state’s regulations on receiving non-nationals. In accordance with Article 3(2) of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348/98 , 24.12.2008), the term “illegal stay” means “the presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils, the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.” This definition includes non-nationals who entered a receiving country illegally, and were staying illegally in the country, as well as non-nationals whose entry was legal, but whose stay became irregular due to failure to apply for a residents permit, or where such an application was rejected. The notion of irregularity may extend to a non-national who is legally entitled to stay in a given country, but whose purpose of stay is different than that which was sanctioned; for example, a person may hold a tourist/student visa, but in reality is employed.

Due to its nature and complexity, estimating the scale of irregular migration is a difficult task. The most reliable available statistical data which can be used as indicators to illustrate the scale of the phenomenon are likely to include:

- a. numbers of visa application rejections/refusals of entry from third country nationals (estimating the migration pressure);
- b. numbers of cases of refused entry at state borders;

- c. numbers of apprehensions;
- d. numbers of returns / removals ;
- e. numbers of irregularly staying third country nationals who legalize their stay, for example, within the framework of regularisation.

However, in reality, assessing the scale of irregular migration can only ever be an approximation. A further point to emerge from the Conference was that there are benefits to contextualising the scale of irregular migration flows to EU Member States within a wider perspective of global migration flows, and by comparing flows to the EU with other regions, for example, the USA.

Effective tools have been developed that are impacting on the scale of irregular migration of third-country nationals in the EU Member States

Significant progress has been made in the development of effective migration management solutions, which are now being implemented by national governments, supported by regional and EU institutions, and underpinned by policy and legal instruments, for example, the 2011 EU Communication on Migration¹, the Directive on preventing and combating trafficking in human beings and protecting its victims², and the Return Directive 2008/115/EC.³

Specific tools for reducing irregular migration include: cooperation with countries of transit and of origin; activities launched both at EU borders and within states' territory; common visa policy; common provisions regarding apprehension and removal of foreigners; voluntary and forced returns, joint flights for removals of foreigners; and sanctions for employers who hire foreigners illegally. Regularisation programmes can also serve as an effective tool, provided that this is done on a case-by-case basis, rather than by mass-regularisation, which may in turn encourage irregular migration. Such approaches are



complemented by various international initiatives (the Söderköping Process⁴, the Mediterranean Migration Dialogue (MTM)⁵ and tools (e.g. readmission agreements, liaison officers, EU Border Assistance Mission to Moldova and Ukraine (EUBAM)). The EU's Frontex

¹<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0248:FIN:EN:PDF>

²<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

³<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN>

⁴<http://soderkoping.org.ua/page2864.html>. Since 2012 will be developed further within the Eastern Partnership platform.

⁵<http://www.icmpd.org/MTM.1558.o.html>

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Agency has also served as an effective frontline support mechanism to EU Member States for preventing irregular migration of third-country nationals.

Practical measures applied must be sensitive to the geopolitical factors that influence irregular migration, and take account of differences across regions



The Conference illustrated the range of practical measures that have been applied, highlighting regional differences, developed according to the main geopolitical factors affecting irregular migration on the northern, southern and eastern borders of the EU. The Conference highlighted a number of known routes for irregular migration, including the

Eastern, Central and Western Mediterranean routes, and the Western Balkans, with the Central Mediterranean route recently emerging as highly sensitive to political and economic changes in migrants' countries of origin. The geographical location of EU Member States has been a key factor affecting the content of programmes developed by EU actors aiming to limit the scale of illegal migration. Examples of these programmes include:

- a. land operations (Joint Operations (JO) NEPTUNE, JO JUPITER, JO POSEIDON), sea operations (European Patrols Network (EPN) HERA, EPN HERMES, EPN POSEIDON) and air operations (Focal Points) implemented by Frontex;
- b. activities in migrants' countries of origin (bilateral cooperation, ILO, projects co-financed by the EU, activities of regional organizations – MARRI); and
- c. activities on the state border (inter-institutional cooperation of EU agencies, bilateral cooperation of neighbour and regional states, e.g. MARRI).

For the Baltic Countries, Estonia, Latvia and Lithuania, a very different set of geopolitical factors have emerged, resulting in irregularities stemming from abuses of the legal basis for stay, and which have demanded a different response, for example, spot checks for illegal employment and accommodation checks. Whilst practical measures to address irregular migration can be shared across Member States, approaches must be sensitive, and tailored, to the geopolitical factors that apply.

Balancing the need to take action to address irregular migration whilst respecting migrants' dignity and rights

The Conference concluded that combatting irregular migration and its negative effects was a challenge that required balancing the need to take difficult administrative actions towards

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people who breach immigration regulations, and the need to respect the dignity and rights of irregular immigrants (including the children of irregular migrants) when undertaking such actions. Key areas identified connected with improving irregular migrants' standards of living were:

- a. access to health services;
- b. access to education for children and adults;
- c. access to the labour market;
- d. reducing exploitation of migrants irregularly in the labour market;
- e. addressing the situation of children with unregulated legal status in their country of stay; and
- f. granting social assistance to irregular migrants.

In terms of practical implementation of measures to improve the living conditions of irregular migrants, key conclusions from FRA included the need to ensure awareness-raising amongst migrants and service providers in relation to migrant's rights and entitlements, and a movement away from detection, reporting and data exchange practices that could act as a deterrent to the uptake of services by migrants in an irregular situation.

Combating irregular migration is best approached through cooperation.

Throughout the Conference, the significance of cooperation amongst Member States was emphasised many times, as well as joint actions by state border authorities and by Frontex and cooperation with countries of origin of irregular migrants. The practical forms of such cooperation included concluding readmission agreements, robust management of returns of irregular migrants, pursuing a unified visa policy, appointing liaison officers of border services in countries of migration risk and supporting transitioning out of irregularity, for example, through regularisation, and co-operation with NGOs and Civil Society organisations to better understand the specific needs of irregular migrants.

Credible, reliable and comparable information on the actual situation of irregular migration is the most effective basis for policymaking and implementation.

The Conference has drawn extensively on the work of research organisation and agencies in providing information on irregular migration and irregular migrants, as a basis for effective, evidence-based policymaking. These include CARIM (East), Clandestino, COMPAS, Frontex, MARRI, FRA and the Council of Europe. The role of the EMN, as both a provider of information, and a network to promote co-operation amongst Member States, should also be emphasised. By making available objective, reliable and comparable information, and by analysing and harmonising best practices gained from national perspectives, the EMN has a clear role in supporting the activities of the Commission and other EU entities involved in migration policy management, to combat the irregular migration of third country nationals to the EU Member States.



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