

MIRREM

Measuring Irregular Migration

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CONCEPTUALISING MIGRANT IRREGULARITY FOR MEASUREMENT PURPOSES

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Summary

The overall aim of the MIrreM project is to address the uncertainty and contested nature of evidence on irregular migration by fostering a shared understanding of basic features of the phenomenon, and in particular, its quantitative dimension, including the scope and importance of different pathways into and out of irregularity.

Developing a clear conceptual framework that transparently describes, justifies and communicates how irregular migration can be understood is a key element of such an undertaking and the focus of this paper. Specifically, this paper provides a conceptual framework for the identification of the population in an irregular situation for the purpose estimating and quantifying this population. In so doing, the paper considers both the irregular migrant population, as well as other migrants with an unstable legal status. Distinguishing between three overarching status categories (Irregular migrants; migrants with a provisional residence status or a reasonable claim to a provisional status; and mobile EU citizens with a revoked right to stay), it classifies the population of irregular migrants and related categories into different ‘classes’. In addition, we provide a typology of pathways into and out of irregularity and related mechanisms that is, of ways how migrants become or cease to be in an irregular situation.

The MIrreM classification of migrant irregularity builds on the rich body of work on migrant irregularity. Specifically, we draw on the model of migrant irregularity developed by the Clandestino project (2007-2009). In the context of the MIrreM project we propose several refinements to this classification systems, specifically also in relation to the categories of migrants considered and the ‘classes’ of migrants distinguished within the various categories.

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THE MIRREM PROJECT

MIrreM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIrreM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIrreM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom.

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1. INTRODUCTION

Over the past 20 years and more, immigration has often been ranked as the most pressing issue in terms of public policy in various surveys on the political opinions held by the population. Yet, its salience is to a large degree flavoured by an association of immigration at large with irregular migration (Eberl et al., 2018) and is typically linked to a surge in numbers of refugees and other migrants arriving, that is immigration flows (Hatton, 2021), often in the course of highly visible and mediatised episodes of increased arrivals, such as in the context of boat arrivals in Australia from 2010 onwards; during the so-called European ‘refugee crisis’ in 2015 and after; in the context of the Central American migrant caravans arriving in the United States from roughly about the same time; or the arrival, containment and pushbacks of migrants at the Polish-Belarus border in 2021 and beyond. These different ‘migration crises’ have triggered spikes in media coverage (Heidenreich et al., 2019), fuelled in important parts by actors involved in addressing these crises and the dynamics of mediatisation rather than real world developments (Collyer & King, 2016; Franko, 2021; Krzyżanowski et al., 2018). Moreover, media reports on migrants arriving during such episodes tend to frame migrants as a threat and associated with irregular migration (Eberl et al., 2018; Farris & Silber Mohamed, 2018; Krzyżanowski et al., 2018). The salience of irregular migration in the media and attitudes of the population is both reflected in and spurred on by related academic and policy-oriented knowledge production on the phenomenon, with quantifications of the phenomenon forming an important part of public narratives on irregular migration. Indeed, statistical indicators on irregular migration “have become part of the steady diet of statistics” (Alonso & Starr, 1987) that the public is served through the media and other channels by a variety of actors, including public institutions, intergovernmental organisations, NGOs, politicians, and activists. As Rose (1999, p. 212) argues, “numbers do not merely inscribe a pre-existing reality. They constitute it.”

Statistics in that context “not only serve as neutral evidence of the existence of a phenomenon and its quantity, but they also have the power to push specific dimensions of a phenomenon into the limelight and so the potential to change both public perceptions and policies” (Kraler & Reichel, 2022, p. 439). Furthermore, Rose (1999, p. 212) asserts that numbers “help to delineate ‘irreal spaces’ for the operation of government, and to mark them out by a grid of norms allowing evaluation and judgement” (see also Stenum 2012). Statistics on border apprehensions or migrant fatalities that in the European context only started to be collected on a more regular basis since the early 1990s (apprehensions) and early 2000s

(border deaths) onwards, and now are widely disseminated and routinely referenced by the media are a case in point (Heller & Pécoud, 2020).

Yet, this obsession with the ‘border spectacle’ (De Genova 2013) and the focus on highly visible forms of irregular arrival obscures a much more nuanced and complex reality, whereby irregular arrival does not necessarily imply that there is no legitimate claim to residence (such as in the case of refugees). Conversely, legal arrival or possession of a residence permit does not preclude an irregular status at a later stage (cf. van Liempt et al., 2023, 4). In contrast to the high visibility of those arriving in the course of the high-profile crises mentioned above, the unlawful entry or stay of many other migrants goes unnoticed, as a result of migrants’ own strategies, or the wilful ignorance by state actors and/or the wider society, for example, in relation to migrant domestic workers (Ambrosini, 2016). Still others may have had encounters with state authorities and thus are at least partly known to authorities but remain without a legal status altogether or only possess a limited legal recognition of their presence, such as a documentation about the temporary suspension of a return decision, known as ‘*Duldung*’ [toleration] in Germany (Castañeda, 2020). Again, public records or the lack thereof shape the (in)visibility of these categories of migrants as targets of public policy (Boswell & Badenhoop, 2021).

Making sense of this complex reality and quantifying the irregular migrant population and migrants in related situations requires a clear conceptual framework that transparently describes, justifies and communicates how migrant irregularity should be understood, what categories or ‘classes’ of migrants in an irregular or a related situation should be distinguished and on what basis they should be identified. In addition, a conceptual framework should allow to identify the mechanisms that structure this phenomenon, which in turn can be used as the criteria underlying the resulting classification system. It is these overarching aims that the conceptual framework elaborated in this paper seeks to achieve.

Importantly, the MIrreM conceptual framework for the identification of the population in an irregular situation serves *the purpose of estimating and quantifying this population*. This also implies that MIrreM takes a bird’s eye perspective and is very close to a state view from above (cf. Stenum, 2012, p. 280). While our conceptual approach may also be useful for other purposes, we do not claim to provide an overarching conceptual and theoretical framework on irregular migration at large. Our aims are more modest and, in a sense, very specific: the MIrreM conceptual framework, while informed by the broader literature on migrant irregularity, should primarily guide the identification of different categories and ‘classes’ of migrants in an irregular situation and as a corollary, the identification of quantifications of different classes of migrants in an irregular situation.

In developing the conceptual framework, the paper considers not only the irregular migrant population but also related categories of migrants with an unstable legal status, distinguishing between three overarching status categories: third country nationals in an irregular situation, third country nationals with a provisional legal status or a reasonable claim to such a status, and mobile EU citizens whose freedom of movement rights are restricted. Within these broad categories, we identify different ‘classes’ of migrants. A typology of pathways into and out of irregularity, that is, of ways how migrants become or cease to be in an irregular situation is a key element of the classification system.

The subsequent sections of this paper are organised as follows: We start with a review of conceptualisations of migrant irregularity and how it can be understood. We then move on to a review of labels and definitions used, including terms used for various so-called ‘in-between categories’. In the subsequent section, we proceed to outline the general requirements for conceptualising migrant irregularity for the specific purpose of producing estimates and the lessons-learnt from previous estimation efforts concerning the same topic. We then introduce the M_{Irre}M approach that we have developed, explaining which elements from previous models have been incorporated, but also spelling out our innovations and refinements. In the last section we summarise the content of the paper.

2. CONCEPTUALISING MIGRANT IRREGULARITY

In general terms, migrant irregularity can be understood as an outflow of the definitional power of the state to define and ascribe particular legal statuses and as a ‘social fact’ (Searle, 2011). This definitional power of the state is a reflection of a more general tenet of modern (Western) statehood and ‘governmentality’ to create all sorts of categorisations to render legible the “fluid object that is a population, a territory or other objects of power” (Kraler et al., 2015) through various techniques of power, including law and associated legal categories, statistics, maps, or various forms of standardisations (Scott, 2020). More specifically, migrant irregularity is a reflection of states’ efforts to distinguish between citizens and various categories of non-citizens and assign different legal statuses characterised by differentiated bundles of (civil, social and political) rights and obligations that bind the state and individuals (Kofman, 2002; Morris, 2002). Migrant irregularity is thus intrinsically linked to citizenship, as well as the lack thereof (De Genova 2002).

Furthermore, from a legal perspective migrant irregularity can be described as a residual category, because it is generally defined in relation to legal migration. Broadly speaking, residual categories in a classification system represent classes of information that do not fit other categories. In other words, a residual category groups together what is left over once all other entities have been categorised – in statistics some typical descriptors that are used are ‘other’ or ‘not stated’. As a result, migrant irregularity for a long time remained an empty taxonomic space and lacked a comprehensive definition. In fact, at the EU level, it was not until the Return Directive (Directive 2008/115/EC) that migrant irregularity was defined for the first time. At the international level, the Global Compact on Migration (GCM) aims at governing “safe, orderly and regular migration”, but it avoids defining irregular migration beyond the national definitions in use by the respective destination countries.

From a legal standpoint, migrant irregularity remains thus inextricably linked to legal migration – reflecting a binary approach that also used to be prevalent in the social sciences. However, such dichotomous categorisations have been criticised for conflating a wide range of experiences and information. There has been an increasing realisation that there is a need for greater differentiation and specificity (Triandafyllidou & Bartolini, 2020).

Aside from the lack of residence status and (non-)citizenship, there are several other dimensions that have been analysed to gain further insights into defining features of migrant

irregularity. First, ‘employment’ is considered an important dimension of migrant irregularity (Belloni et al., 2023; Kraler, 2009; Triandafyllidou & Bartolini, 2020), and is in fact one key element that Ruhs and Anderson (2010) refer to when conceptualising ‘semi-compliance’. The term semi-compliance draws attention to situations where migrants are legally resident but working in violation of some or all of the conditions stipulated by their visa or residence permit.¹ However, it is not always the case that migrants intend to contravene the rules related to residence or work, instead cumbersome administrative procedures or labour market dynamics have also been identified as contributing factors in the production of migrant irregularity. Particular sectors, such as agriculture, domestic work and construction, have long relied on the labour of irregular migrants (Jordan & Düvell, 2002).

Second, recent scholarship has highlighted the role of local level forms of recognition of irregular migrants’ entitlements to social rights through particular forms of registration in population registers or specialised registers that may provide access to certain services (Belloni, Pastore, and Roman 2023). In theoretical terms, this can be framed as a form of ‘social citizenship’ (Marshall 1950) or, considering the geography and scale of such partial enfranchisement, ‘urban citizenship’ (Varsanyi, 2006). Similarly, research within citizenship studies has reappraised the dualistic model of ‘formal exclusion/informal inclusion’ of irregular migrants. Recently scholars have argued that irregular migrants can also benefit from processes of ‘formal inclusion’ when they accumulate official evidence of presence, or even certificates of good conduct, which in turn may decrease the likelihood of deportation and facilitate their potential regularisation. In this sense migrant irregularity has been described merely as a “handicap in a continuum of probationary citizenship” (Chauvin and Garcés-Masareñas 2012, p. 243), yet a ‘handicap’ that affects different categories of migrants in an irregular situation in extremely unevenly, depending both on their social recognition and their particular legal status. Using social recognition and formal authorisation as two axes to analyse irregular migrants’ social and legal trajectories in receiving countries, Ambrosini thus arrives at four different incorporation scenarios – exclusion, stigmatisation, toleration and integration. These scenarios in turn influence migrants’ ability to transition to a regular status through different admission devices – a) deservingness, based on migrants’ ability to show integration; b) liberal protection, based on the ability of migrants’ to demonstrate to fit the criteria of a protected category, such as unaccompanied minors, close family members, etc; and c) victimisation, based on specific vulnerability to serious harm, such as victims of trafficking, but also forced migrants fleeing persecution or other serious harm (Ambrosini, 2016, pp. 146–150).

Third, ‘documentation’ has been identified as a crucial dimension of migrant irregularity, relating in particular to migrants in some sort of administrative procedures – asylum, return, regularisation and others and not (yet) able to document any right to remain (European Union Agency for Fundamental Rights., 2011; Kraler, 2009; Kraler & Baldwin-Edwards, 2009; Lutz, 2018). At the EU level, the category of ‘non-removed migrants’ (European Union Agency for Fundamental Rights, 2011), is more abstractly conceptualised as referring to irregular

¹ The authors introduced the concept of ‘semi-compliance’, which is wedged in between the concepts ‘compliance’ and ‘non-compliance’ (Ruhs and Anderson 2010).

migrants ‘known’ and those ‘not known’ to authorities. In view of the fact, however, that refugees and other migrants arrive in so-called mixed flows, this all points to an ‘ecosystem’ in which different statuses prevail that cannot be reduced to a clear ‘unlawful’ stay category (Crawley & Skleparis, 2018). These aforementioned scholarly interventions highlight the complexity contained within and produced by migrant irregularity. It therefore has been suggested to define migrant irregularity itself as a *continuum of positions*, which are defined in relation to the level of recognition of migrants’ presence (European Union Agency for Fundamental Rights, 2011). Although the extremes of either side of the spectrum have become more clearly defined over time, many of the in-between categories are delineated differently – *de jure* and *de facto* – across member states.

Finally, another crucial consideration is the access to and the realisation of rights for irregular migrants and to this end human rights-based approaches and intersectional perspectives have been employed (Piper & Rother, 2012; Stasiulis et al., 2020). Research conducted by the TRAFIG² project on forced displacement has demonstrated that the experience of marginalising, displacing and immobilising forces can create a ‘deprivation’ of certain rights over extended periods of time (Etzold & Fechter, 2022; Ferreira et al., 2022). Whilst the migrants studied by the TRAFIG project in Europe include a variety of legal categories – migrants with some sort of protection status, asylum seekers with pending procedures as well as rejected asylum seekers who do not fully match legal definitions of forced displacement they nevertheless share common experiences that TRAFIG has analysed through the concept of ‘protracted displacement’, defined as “a particular social condition of insecurity, vulnerability and dependency, in which people who have fled across international borders might find themselves for prolonged periods of time” (Ferreira et al., 2022, p. 4436). In relation to irregular migrants in urban areas, scholars have engaged with the notion of ‘right to the city’ by Henri Lefebvre (1968) in order to analyse the interactions and tensions between undocumented migrants, local councils, national policymakers and civil society actors. Amongst others, this strand of research has highlighted the role of local level laws in shaping irregular migrants’ access to livelihoods, housing and services (Dikeç & Gilbert, 2002; Varsanyi, 2006, 2008).

In order to understand migrant irregularity, it is necessary to also pay close attention to the ‘key mechanisms’ by which migrants become irregular or, conversely, exit migrant irregularity. These obviously unfold in a broader structural context that creates the conditions for migrant irregularity to emerge and shapes the options available for exiting an irregular status (cf. Düvell, 2011). Migrant categories that experience quasi-migrant irregularity encompass some of the following examples. For instance, persons with a formal suspension of removal, in Germany are issued with a so-called ‘*Duldung*’ (which translates to ‘toleration’). Other examples include individuals such as: persons who have filed an application for a regularisation and are waiting for a decision; persons with a temporary humanitarian status after a rejection of an asylum claim; persons entitled to a legal stay but without a legal status (e.g. children of legal migrants whose parents have failed to obtain a first residence permit upon birth or immigration or failed to renew a temporary permit issued) or asylum seekers. One feature these categories share in common is that they are protected from expulsion and sometimes granted specific rights (e.g. to healthcare or material or

² www.trafig.eu.

financial support). Nevertheless, their status is time limited (and sometimes individuals have to apply and wait for renewal of their tolerated status) and they are often included as target groups of regularisations.

A relatively under-studied aspect of migrant irregularity is its '*transnational dimension*', in other words how the crossing of international borders can affect migrants' pathways into and out of migrant irregularity (Jordan & Düvell, 2002). Massey and Capoferro (2004) opted to focus on transnational migrants in the ethno-survey methodology they developed and then applied in the Mexican Migration Project. Such a transnational lens on migrant irregularity could also be beneficial in Europe, where two particular factors intertwine – namely a large number of international borders and limited freedom of movement across EU member states for the majority of third country nationals.³ Whilst legally residing third-country nationals with a national residence permit can travel to other Schengen states for up to 90 days within a 180 days period, only third country national who hold the EU long-term residence permit enjoy similar freedom of movements rights as EU citizens. However, access to a long-term residence status involves relatively high barriers, including demanding language and income criteria that are often difficult to meet. As a result, most third country nationals have restricted authorisation, or none at all, to stay in another EU country and work, e.g. asylum seekers (who have a conditional status), recognised refugees and humanitarian permit holders (need to apply for a special travel document or passport), and mobile third country nationals with a national temporary or permanent residence permit (who do not hold the EU's long-term residence permit which entitles to full free movement rights) (See Della Torre & de Lange, 2018). The rights to residence and work that mobile third-country nationals can benefit from often remain at the discretion of their current country of residence (European Migration Network Study, 2013). Despite these challenges, there are numerous migrants who seek to move to other European countries beyond the 90 days period. Whilst they may enjoy a legal residence and thus a legal anchor in one EU Member State, they are irregular from the perspective of the receiving state if they find themselves caught in mobility between a desired country of (temporary) destination and another EU country they are legally anchored in (Ahrens, 2013; Fontanari, 2018; Wyss, 2019).

It is therefore fair to say that in any conceptualisation of migrant irregularity it is necessary to consider a great diversity of situations. What is more, there are also *quasi-irregular migrants* that we consider as a category related, but not synonymous to migrants in an irregular situation, because their legal status trajectories are linked to migrant irregularity at least at specific points in time.

Mobile EU citizens whose freedom of movement rights are restricted constitute a specific category. At the EU level, the term 'illegally staying' is solely applied to third country nationals (Return Directive, Directive 115/2008/EC article 3(2)). In fact, persons enjoying the Community right of free movement, i.e. EU nationals, are explicitly excluded from the scope

³ The MAFE (Migrations between Africa and Europe) project, in fact modelled on the Mexican Migration Project, can be mentioned as one of the few quantitative studies with an interest in exploring the transnational dimensions of both regular and irregular migration (see for an analysis of pathways and consequences of irregularity of Senegalese migrants based on the MAFE survey Vickstrom 2019).

of the Return Directive.⁴ At the Member State level both legislation as enforcement practices do not necessarily make this distinction. Even at the EU level, the rights of EU citizens to freedom of movement and settlement are subject to certain limitations. Thus, according to the Citizens Directive (Directive 38/2004/EC), which governs EU citizens' rights to move and settle in other EU Member States, EU citizens may lose their right to free movement or settlement if: a) they receive a residence ban (e.g. on public order grounds or criminal charges), or b) they pose a threat to public health or security. In addition, for EU citizens settlement in another EU Member State is conditional on having sufficient income in the initial period of residence. This means that EU citizens' temporary right to residence can be terminated, in cases where they have not yet acquired a permanent right to residence and they lack sufficient means. In terms of their actual entitlements – or conversely, the deprivation of particular rights, as well as their principle deportability – such EU citizens are in a situation comparable to that of third country nationals in an irregular situation, even if important differences remain, notably in temporal perspective.

As the Clandestino study showed EU migrants made up a significant share of those informally employed in different EU Member States (See various country chapters in Triandafyllidou, 2010). To some extent, this may reflect the particular timing of the Clandestino project in the context of the 2004 and 2007 rounds of enlargement which had paradoxical impacts on different countries: in many Southern European countries with significant numbers of irregular migrants from the then accession countries enlargement functioned as a regularisation, whereas Northern European countries especially those with long transition periods for access to the labour market for citizens from the new EU countries (ending 2011 and 2013, respectively) experienced considerable 'semi-compliant' migration. Even if there have been significant changes since then, the Clandestino study and also recent studies show the continuing relevance of informal work and related legal precarity, leading some authors to speak of 'undocumented EU migrants' (Lafleur & Mescoli, 2018).

In conclusion, it is safe to argue that even if EU citizens enjoy a far wider protection from expulsion than third-country nationals and exclusion of mobile EU citizens from freedom of movement is only permitted in strictly limited circumstances, in practice EU citizens may be similarly subjected to processes of irregularisation and thus have to be considered as part of the wider context of irregular migration (Lafleur & Mescoli, 2018). Although often portrayed differently, it is in fact EU migrants who make up a significant share of informal employment in different EU Member States.

⁴ A 'boundary category' here are third-country family members of EU nationals. Thus, as the Court of Justice of the European Union had held in the *Metock* case (C-127/08 *Metock* [2008] ECR I-6235) even if having arrived irregularly, spouses benefit from family reunion rights and thus a right to stay. In case of divorce and departure of the divorcing party, a termination of the right of residence still is possible, thus subjecting the divorced and left behind third-country national to the legal framework for third-country nationals (Guild, 2016, p. 242).

3. DEFINING IRREGULAR MIGRATION

3.1. Labels and definitions

There are a multitude of labels that have been ascribed to the population in an irregular situation in Europe and beyond. Definitions vary and the use of particular labels has evolved (Düvell, 2011; Guild, 2004; Schrover, 2023). Some of these labels call attention to the journeys of the migrants, emphasising the ‘clandestine’ nature of their entry in the destination country and their tactics to avoid detection by the authorities (Düvell, 2008). Similarly, the term ‘illegal migrants’ has been used to emphasise that individuals have entered a destination country without complying with the legal requirements of entry or stay. Despite the fact that in many destination countries it is against the law to enter the country without authorisation, the sanctions against irregular migrants still vary considerably and so does the nature of the infraction, i.e. whether unlawful entry or stay is considered a minor administrative infraction or an offense under criminal law (European Union Agency for Fundamental Rights, 2016).

The term ‘illegal migration’ has been widely used to describe the broader phenomenon of unlawful entry and stay. Other terms, such as the concepts of mixed or transit migration, while not synonymous with irregular migration, aim to describe migration movements towards countries in the global North. Thus, the term ‘mixed migration’ was coined as a policy concept in response to the increasingly blurred boundaries between asylum and refugee policies on the one hand, and migration control on the other, highlighting that irregular arrival of protection seekers alongside others not eligible for international protection still obliged states to consider protection needs (Van Hear, 2009).

Analogous to ‘mixed migration’, the concept of ‘transit migration’ originates from policy debates about increasing irregular migration towards Europe, essentially referring to migrants ‘on the move’ in an irregular fashion with a presumed final destination in Europe (Düvell, 2012).

Over the last decade there has been a growing consensus in academia and international organisations, as well as in some international media outlets, that the term ‘illegal migrant’ (or ‘illegal migration’) is not a suitable label, because of its association with ‘illicit behaviour’ or ‘crime’ and its discriminatory and pejorative undertones. Other terms, such as

‘undocumented migrants’ – or ‘sans papiers’ in the French-speaking context⁵ place the emphasis on migrants’ lack of entry visa or other documentation that is required in the destination country. Often it is used as a general term for unlawfully staying migrants and thus as a more neutral synonym – and substitute – for ‘illegal migrants’. Used in a narrow sense – referring to unlawfully staying migrants without any documentation – especially demographers have criticised that the concept does not apply to migrants who do possess some sort of documentation, but are still considered unlawfully staying such as persons issued a return decision (See for a discussion of different concepts Vogel & Jandl, 2008). In the Canadian context, where the focus of much of the debate is on temporary migrants without access to permanent residence status the term ‘precarious migrants’ including both migrants in an irregular situation and legally staying migrants with a temporary status is used (Goldring & Landolt, 2013).

In the European context, there has been a shift towards the use of ‘irregular migrants’ and irregular migration especially after 2011 and the term has also increasingly been adopted by European institutions and some EU Member States (Mariani, 2021). It has been also taken up by international organisations and has become the standard term used also by the International Organization for Migration, which defines irregular migration as:

“Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination” (Sironi et al., 2019).

For the MIRreM project we similarly use the terms ‘irregular migrants’ or ‘population in an irregular situation’ and ‘irregular migration’ as overarching analytical terms, following the Clandestino understanding of ‘irregular migration’ as “denot[ing] a form of migration that is ‘not regular’, ‘unlawful’ or not according to the rules (without necessarily being ‘illegal’, ‘illicit’ or ‘criminal’ in the legal sense). Irregular migrants “therefore are migrants who, at some point during their migration project, have contravened the rules of entry or residence” (Vogel & Jandl, 2008, p. 7). Unlike the IOM definition, this definition understands the term irregular migration as an overarching term for the overall phenomenon and thus a term that can refer to both stocks and flows.

Legal definitions of irregular entry and stay will be reviewed in other MIRreM working papers. Suffice it to say that the Return Directive (Directive 2008/115/EC) provides a legal definition of ‘illegal stay’ for the EU territory. Thus article 3(b) defines ‘illegal stay’ as:

“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”.

‘Unlawful entry’ or ‘stay’ is widely used as a synonymous term for ‘illegal stay’ and thus the legal dimension of migrant irregularity in the European context. In the US, the term ‘unauthorised’ is more often used, similarly reflecting the legal and policy language used to describe the phenomenon. ‘Unauthorised’ is also the term used in a recent PEW Research

⁵ The term is sometimes also used in other languages, for example German ‘MigrantInnen ohne Papiere’ or Spanish ‘inmigrantes sin papeles’.

Centre study estimating the irregular migrant population in Europe and comparing it to those in the US. ‘Unauthorised’ in that study is understood very much as unauthorised *entry*, thus hinging on the lack of legal authorisation before or upon entry, irrespective of any legal claims to at least temporary residence after entry. Consequently, but very controversially so, asylum seekers were also included in the main definition⁶ used by the study – although the study contains both numbers with and without asylum seekers (Connor & Passel, 2019). In addition, in deciding who should count as an ‘unauthorised’ the Pew Research Centre study took into account both the status at entry and potential pathways to permanent residence.

Table 1: M^{IR}reM definition of migrants in an irregular situation

<p>In M^{IR}reM irregular migration is defined as a form of migration that is not ‘regular’, ‘unlawful’ or not according to the rules.</p> <p>Building on the Clandestino definition of the irregular migrant population irregular residents are defined as:</p> <ul style="list-style-type: none"> • Those (in the EU context: third-country nationals) without any legal residence status in the country they are residing in. • Those (in the EU context: third-country nationals) although possessing an authorisation of some sort whose presence in the territory – if detected – may be subject to termination through an order to leave and/or an expulsion order because of their activities. <p>The latter, for instance, include visa-free citizens engaging in work, students working more than allowed or persons with falsified documents.</p>
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Source: own elaboration based on Vogel and Jandl 2008

3.2 Dealing with in-between categories and changes of status

Several scholars have drawn attention to various in-between categories highlighting that many migrants in an irregular situation often do possess some form of documentation and may even have a type of residence permit, but that a breach of the conditions of their stay may lead to a termination of their residence should they be detected. Concepts such as ‘semi-compliance’ (Ruhs & Anderson, 2010), ‘quasi-legal’ (Düvell, 2008) and ‘semi-legal’ (Ahrens, 2013; Kubal, 2013) attempt to capture these often blurred realities. Meanwhile research into ‘mixed-status families’ (Bonjour & de Hart, 2021; Fix & Zimmermann, 2001)

⁶ “Unauthorized immigrants in Europe are noncitizens living in a European Union or European Free Trade Association country who do not have a residency permit. Most of these immigrants entered one of these European countries without authorisation, overstayed a visa, failed to leave after being ordered to do so or have had their deportation order temporarily stayed. Other groups counted as unauthorised immigrants in Europe include those born in Europe to unauthorised immigrant parents (because most European countries do not have birthright citizenship), and asylum seekers with a pending decision.” (Connor & Passel, 2019)

has highlighted the diversity of statuses within migrant households, as well as the strong interconnections between citizenship and family migration law.

Aside from that, scholarship on ‘urban citizenship’ has illustrated how the multi-level governance of migration has an impact on migrant irregularity (Spencer 2018). More concretely the global Sanctuary Cities movement has effectively shown how irregular migrants can benefit from (partial) enfranchisement and access to services at the local level, despite their lack of status at the national level (Delgado, 2018). Accordingly, a recent analysis of migrant irregularity in Italy and the Netherlands considers registration of residence as an additional defining feature of migrant irregularity, alongside legal status under migration law and rights to employment (Belloni et al., 2023). Finally, research into ‘status mobility’ and ‘migrant categories’ has highlighted how migrants can shift across different legal statuses and migrant categories over the duration of their migration project (Crawley & Skleparis, 2018; Schuster, 2005).

Nevertheless, from a legal perspective migrant irregularity remains clearcut, given that the state can only assign a migrant to one particular status at any given time. The defining feature of migrant irregularity within national legal frameworks generally is irregular stay. This refers both to situations where individuals lack a valid visa or residence permit and importantly, where individuals breach the conditions of their stay, such as being employed even though their permit does not allow them to work or being engaged in informal employment. Whether breaches of residence conditions are sufficient to lead to a termination of residence, however, is subject to considerable variations in both law and law-in-practice and additionally is constrained by human rights law and related jurisprudence. In both cases – migrants without any authorisation to stay and migrants breaching conditions of their stay – migrants whose residence is terminated usually will be issued with an order to leave or are forcibly returned to their country of origin – or a previous ‘safe country’ of stay.

Notwithstanding, there is ample evidence that even migrants who are assigned the same status experience considerable variation concerning their lived realities as irregular migrants due to a variety of factors. First, the pathways into and out of migrant irregularity are often determined differently across nation states and also evolve over time. Second, it is necessary to acknowledge that these various categories of irregular migrants have different temporal perspectives for staying in the destination countries – and/ or for staying in an irregular situation. Third, at the individual level, the everyday experiences of irregular migrants also are structured by the individuals’ social identity markers, such as race, ethnicity, gender, (dis)ability, etc., which also intersect in manifold ways (Stasiulis et al., 2020).

Finally, irregular migrants are also perceived differently by the receiving societies which in turn impacts their lived experiences, for example whether they have to constantly fear random checks, denunciation by landlords or neighbours, or whether they are able to move relatively freely and indeed, taking up the metaphor introduced by Chauvin and Garcés-Mascareñas (2012) experience an irregular status only as a ‘light’ handicap. This too, is interlinked with individuals’ social identity markers, but arguably linked to the broader dimension of social recognition of migrant irregularity which Ambrosini (2016) has identified as a second key axes within the construction of migrant irregularity, alongside legal status.

4. CONCEPTUALISING MIGRANT IRREGULARITY FOR MEASUREMENT PURPOSES

4.1 BUILDING A CLASSIFICATION OF MIGRANT IRREGULARITY

4.1.1 Categorisation and classification

The particular objective of this paper is to develop a classification of migrant irregularity for measurement and estimation purposes. Following Jacob (2004)⁷, we distinguish between categorisation and classification. According to Jacob, categorisation refers to the “process of dividing the world into groups of entities whose members are in some way similar to each other” (2004, p. 518). By contrast, and based on insights from linguistics, categorisations usually result in categories that are graded and whose boundaries are not fixed. In other words, there is not necessarily “an explicit inclusion/exclusion relationship between an entity and a category” (Jacob, 2004, p. 522). Classification is a related, but distinct operation and “involves the orderly and systematic assignment of [an] entity to one and only one class within a system of mutually exclusive and non-overlapping classes” (ibid). Whereas categorisation is a creative process of drawing associations between entities “that are based not on a set of predetermined principles but the simple recognition of similarities that exist across a set of entities”, and is inductive and contextual, classification divides a universe of entities into an arbitrary system of mutually exclusive and nonoverlapping classes that are arranged within the conceptual context established by a set of established principles” (Jacob, 2004, p. 528). It is thus lawful and systematic and “mandates consistent application of these principles within the framework of a prescribed ordering of reality” (Jacob, 2004, p. 522).

For the MIRreM classification system, we apply both operations: we categorise migrants in an irregular or an otherwise doubtful legal status into three main categories: (1) migrants in an irregular situation; (2) migrants with a provisional status or a reasonable claim to a provisional status, and (3) EU citizens from other EU Member States without a right to residence and subsequently interpret them as classes, even though we have arrived at these through categorisation and slightly different criteria are used to build these classes.

This is not consistent with Jacob’s juxtaposition of categorisation, on the one hand, and classification on the other. Partly, this is a reflection of the fact that classification requires

⁷ We thank Norbert Cyrus for bringing this article to our attention.

good knowledge about individual entities that are classified into one or another class. The exercise undertaken in this paper, however, is a theoretical exercise. While informed by previous research on the topic, it is not based on an empirical analysis of actual legal status positions – that analysis will be undertaken in a separate paper. In other words, what this paper offers, is a preliminary classification system, a typology on the basis of which a more comprehensive classification can be developed, based on the analysis of the features of the entities that need to be classified.

To a certain degree, however, it also reflects the fact that we did accept certain legal-political frameworks as granted, notably the division between irregularly staying third-country nationals and mobile EU citizens without a right to stay. If deportability is taken as a key feature of migrant irregularity, both categories could and perhaps should be considered as part of the same class, as in fact, the Clandestino project did. The difference between EU citizens and third-country nationals thus is mainly that EU citizens can only experience status loss – and reacquisition of residence right under the Citizens Directive at a later stage, but they cannot enter a country irregularly, or only as a result of a previous loss of residence rights. Yet, there are also good reasons to treat EU citizens differently, some of which are strategic and political. Indeed, there is a strong political interest to keep third country nationals and EU citizens (including their family members, whatever their nationality) apart

4.1.2 Adjusting the Clandestino model of irregular migration flows and stocks

For the MIRreM classification system we build on the work carried out by the Clandestino project (Undocumented Migration: Counting the Uncountable: Data and Trends across Europe).⁸ Clandestino was the first ever EU-funded project to gather data and produce estimates on the undocumented population in Europe. It used the model of ‘demographic balance’ to distinguish between stocks of irregular migrants, and various inflows and outflows of irregular migrants that can affect the stock (Vogel & Jandl, 2008). While following the general logic of ‘demographic balance’, we have opted to adjust the model by separating out particular categories (or “classes”) of migrants that in the Clandestino model were either subsumed under the irregular migrant population or the legally resident migrant population. Thus, EU citizens with restricted free movement rights were subsumed under the irregular migrant population in Clandestino and now form a separate category, whereas persons whose removal was formally suspended and whose provisional residence was recognised were simply subsumed under the legal migrants and thus not further considered. In our view this group should belong to neither group. Indeed, in France those who cannot be removed but do not obtain a legal status are called ‘ni-ni’ – those who can neither be regularised nor be expelled (‘ni régularisables ni expulsables’) (El Qadim, 2019).

We describe both categories as ‘related categories’: they share some potential links with migrant irregularity but are not synonymous with irregularity.

Legal status, irrespective of how this is differentiated, is essentially about taxonomic classification. Such a classification requires a definition – or a set of definitions –

⁸ See <https://cordis.europa.eu/project/id/44103>. The MIRreM project involves several institutional partners as well as individual researchers previously involved in the Clandestino project.

demarcating the boundaries between one or another class. When carrying out a classification exercise the relationship of different classes and subclasses is clear *a priori* – the main challenge consists in how to classify particular entities.

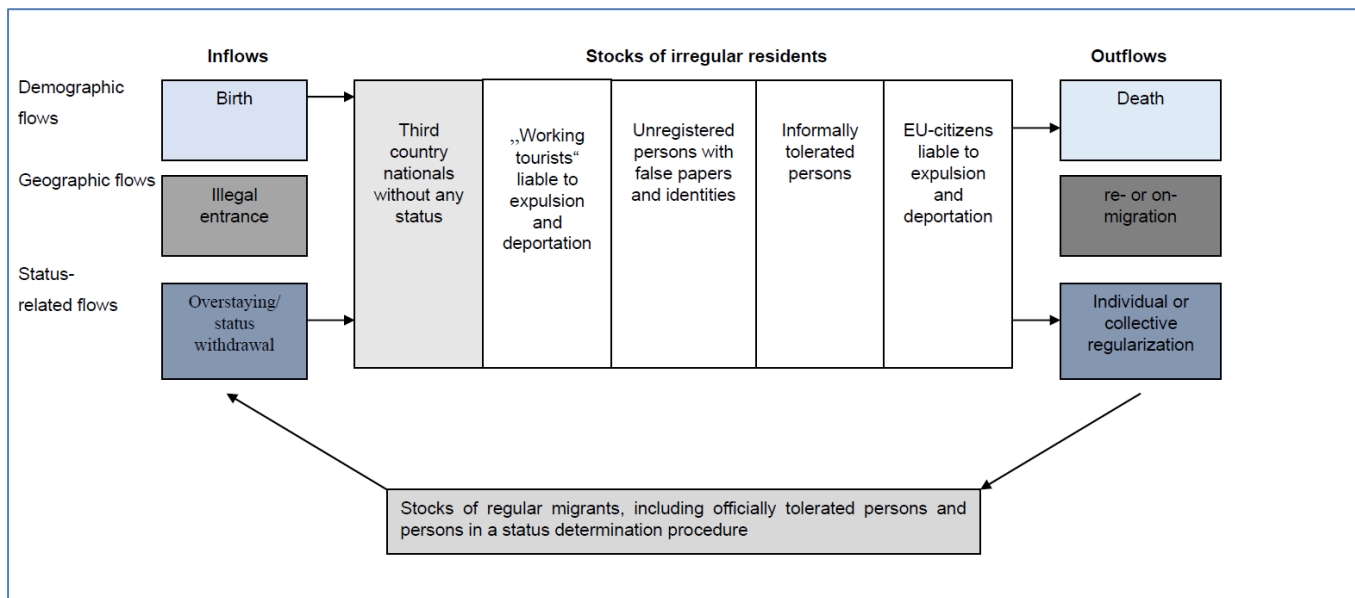
In statistical jargon, it is common to talk in terms of nominal scales, that is, about attributing individuals to one or another category. Utilising such an approach for the quantification of migrant irregularity may appear to come at the expense of showing the ‘grey zones’ and the fluidity highlighted by the literature on migrant irregularity. While there is the possibility to develop some sort of index, for instance, by assigning values to different entities, there are also inherent risks of opting for such an approach. First, an index creates an illusion of comparability across countries that may not hold empirically. Similarly, assigning values to particular status categories also creates the illusion of a clear, quantifiable hierarchy, and those statuses assigned similar values, equivalence between legal status. Third, another drawback is that an index may also result in an excessive number of categories (cf. the overview of different constellations of irregularity presented in the REGINE study Kraler & Baldwin-Edwards, 2009, p. 6).

Yet, the conceptual problem posed by ‘grey zones’ and the ‘fluidity’ of legal status positions identified in the literature can also be resolved by interpreting these as the result of an apparently seamless, but in fact discrete change of status positions over time. Analysing legal status trajectories over time is an altogether different operation that we do not engage in. When measuring a population at a given point in time, then, we are primarily interested in the status position a person holds at the point of measurement, when some time criterion could be added (e.g. minimum period of residence, etc.). At the same time, a status position that may appear as seemingly in the ‘grey zone’ could still be described as a distinct class in a classification system. Consider, for example, an asylum seeker who lodged his or her intention to seek asylum but has not yet been registered as such, pending his or her first interview. This situation could undoubtedly be described as a limbo situation, but it is not ‘grey’ in the sense of the impossibility to assign such a case to one or another ‘class’ within the classification system.

Important insights have been provided by the research into ‘hierarchies of rights’ (cf. literature on ‘civic stratification’ such as Kofman 2002; Morris 2002). According to Morris’ definition, civic stratification describes “a system of inequality based on the relationship between different categories of individuals and the state, and the rights thereby granted and denied” (Morris 2002: 79). Our classification system is able to accommodate such complexity conceptually as we consider a particular legal status which is defined by a particular set of rights granted. For example, a person whose removal is suspended enjoys a restricted right to residence and certain other rights defined in the Return Directive.

In order to conceptualise migrant irregularity for measurement purposes, we therefore have opted to extend and refine the ‘demographic balance’ approach taken by the Clandestino project (Vogel & Jandl 2008). Clandestino utilises stocks and in- and outflows of the population of concern as the main analytical categories.

Figure 1: Clandestino model of irregular migration stocks and flows



Source: Vogel & Jandl 2008, 11

Clandestino defines ‘irregular or undocumented residents’ as “residents without any legal residence status in the country they are residing in, and those whose presence in the territory – if detected – may be subject to termination through an ‘order to leave’ and/or an ‘expulsion order’ because of their activities” (Vogel and Jandl 2008: 7).

Analytically the Clandestino model has some conceptual flaws. For example, Clandestino counts as part of the class of irregular residents those individuals who have received a removal order, but who are not removed (so-called ‘informal toleration’) without considering the fact that statistical records exist on these, while those whose removal is suspended are simply counted as part of the legal resident population. Conversely, in the statistical records of immigration authorities neither class is usually counted as part of the legally resident migrant population, but they are also not necessarily considered as unlawfully staying. In this particular case there is also insufficient empirical data on how suspensions of removals are enacted in different countries (e.g. whether individuals get a formal document suspending their removal for a certain amount of time, whether there is a decision not to pursue removal procedures for a particular time without any documentation, or whether suspension is a matter of mere inaction of authorities). Whether different counting methods create discrete, or overlapping population categories is ultimately an empirical question, but one that needs to be considered when trying to place a particular indicator in relation to others.

What is clear, is that we need to apply a clear territorial reference as a key premise for applying this model of demographic balance, meaning that we essentially need to accept ‘methodological nationalism’ (Wimmer & Glick Schiller, 2002). This may make it difficult to capture transnational aspects, unless they are already classified as specific instances in regard to the stock of irregular migrants. When considering, for example, holders of an Italian

humanitarian stay permit in Italy who opt to reside in France or Germany, would simply appear as irregular in their current country of residence (and possibly as absconded in Italy at some point in the future). However, in a classification system, persons holding a legal status in another EU Member state could be represented as a separate class or as separate classes. Even if holding a permit elsewhere is irrelevant for the legal status in the country of measurement, the ability to draw on a legal anchorage somewhere else may be a relevant factor and in principle measurable. Dublin cases are an example of such a ‘class’ of migrants considered unlawfully staying but with a legal link to another EU/Schengen associated country, namely the (presumption) of an asylum seekers status in another country deemed responsible to assess the asylum claim. In the case of Dublin cases, the distinction is relevant as specific procedures are in place to deal with such cases – in other words, those identified as already having submitted an asylum claim elsewhere or as having been fingerprinted and entered into the Eurodac-database are not like any other migrants found irregularly staying, but considered the responsibility of the country which first has received an asylum application from this person or at least has registered the person.

Importantly, both the Clandestino model and the MIRreM classification scheme that builds on it do not explicitly consider the temporal dimension. Yet time, that is duration of stay is a fundamental element of the definition of migration, distinguishing it from other forms of mobility such as commuting, tourism and other types of short duration. The main reason to not explicitly consider time is that most available statistical indicators or estimates do simply not allow evaluating the temporal dimension. Thus, statistical indicators such as apprehensions essentially record events and it is impossible, except in rare cases where different databases are linked and cohort data is available to assess how long individuals have been staying in those cases they are registered and, for example, are subject to a return procedure.⁹ Any interpretation of relevant data needs to carefully assess increased flows measured by available flow indicators lead to an increase of the stocks.¹⁰ Yet also estimates often only allow a snapshot estimate of the migrant population in an irregular situation at a particular point in time, depending on the methodology used.

4.2 THE MIRREM CONCEPTUAL APPROACH FOR ESTIMATING MIGRANTS IN AN IRREGULAR SITUATION

We developed the MIRreM classification system for the purpose of estimating the population in an irregular situation in Europe.¹¹ Building on the Clandestino approach, our classification

⁹ As counts of events (i.e. border crossings) statistics of border apprehensions collected by Frontex thus have been shown to double-count migrants en route from Greece to Western Europe, as they were counted crossing external borders at least twice (Sigona, 2015). Event-based counting also applies that the same person may be counted several times in a given period, additionally inflating numbers.

¹⁰ The case of Hungary in 2015/2016 is a case in point. While a record number of migrants transiting Hungary were recorded, only a small fraction submitted an asylum claim and even fewer actually stayed on in Hungary.

¹¹ More precisely, our conceptual approach focuses on the European Union. The approach can also be implemented elsewhere – only the category of mobile EU citizens then would be irrelevant.

also considers the stock of the irregular migrant population, alongside the inflows that increase that stock and outflows that reduce it. However, we also decided to introduce several modifications and refinements to the Clandestino model of ‘demographic balance’.

First and foremost, our classification system distinguishes between three types of situations in relation to the dimension of irregular stay (see Table 2). As already outlined, only one ‘class’ strictly concerns migrants in an irregular situation in the narrow sense, namely that of non-nationals (i.e. third-country nationals in the EU) without residence rights. We nonetheless argue that the two other ‘classes’ are important to consider as well (i.e. ‘migrants with a provisional residence status’ and ‘mobile EU citizens with a revoked right to stay’) given the (potential) interaction of these different classes. The last category is related to free movement law and thus is not relevant outside the EU and Schengen associated states. Also, some specific subclasses may be specific to EU countries and do not exist in other contexts.

Table 2: Definitions of irregular migrants and related classes

	Class	Definition	Subclass examples
Irregular migrants	Migrants without residence rights	Non-nationals (i.e. third-country in the EU) without any legal residence status in the country they are residing in, including those whose presence in the territory – if detected – may be subject to termination through an order to leave and/or an expulsion order because of their activities.	Non-nationals (i.e. third-country nationals in the EU) without any status
			Non-nationals (i.e. third-country nationals in the EU) Persons engaged in an activity that violates the terms of their permission to remain in the country, which, if detected could result in the revocation of their permission to remain in the country and/or their expulsion from it.
			Unregistered persons with false papers and identities Persons issued with a return decision who do not return
Related classes to irregular migrants	Migrants with a provisional residence status or a reasonable claim to a provisional status	Non-nationals (i.e. third-country in the EU) who enjoy a provisional right to stay subject to a review of their case	Persons whose removal has been formally suspended
			Individuals awaiting status determination
			Unaccompanied minors whose asylum claim has been rejected Third-country nationals in the EU who are victims of trafficking or exploitation with a provisional permit to stay
	Mobile EU citizens with a revoked right to stay	Mobile EU citizens who have lost residence rights and no longer enjoy the right to movement	Mobile EU citizens with a residence ban on public order or security grounds or criminal charges

	Class	Definition	Subclass examples
		and/or settlement in the EU and are liable to be removed	Mobile EU citizens without a long-term residence and without sufficient means

Source: own elaboration

Thinking ahead towards the phase of the MIRreM project when we will categorise the collected data and estimates, we are aware that the data may not fit these classes perfectly. For example, data on those found illegally employed (which could mean both employment of persons not entitled to work and informal employment (employment for which no taxes and social security contributions are deducted) might not allow differentiating between different legal categories, or indeed may not allow any differentiation at all.

As described above, we also consider two related classes, namely third-country nationals who enjoy a provisional right to stay subject to review of their case, and mobile EU citizens who have lost residence rights and do not or no longer enjoy the right to movement and/ or settlement in the EU. We define those in a provisional status as persons whose status may be subject to review and who are in principle not entitled to a pathway to regular long-term residence and eventually, citizenship. These ‘related classes’ include, amongst others:

- EU citizens from other EU Member States who are at risk of being issued a removal order and/or residence ban on public order grounds, public security or public policy or EU citizens that do not meet the residence requirements of the Citizens Directive (Directive 2004/38/EC), notably the sufficient means requirements and do not yet enjoy the right to permanent residence.
- Third-country nationals whose removal has been formally suspended (*‘Duldung’*, i.e. so-called toleration in Germany).
- Victims of trafficking from third countries holding a temporary permit on the grounds of trafficking.
- Unaccompanied minors who may enjoy protection from expulsion despite a negative asylum claim.
- Individuals who have lost their residence rights, but who in principle may be entitled to residence (e.g. children of legal migrants who have failed to renew their permits; EU citizens who are ordered to leave when they apply for social assistance; etc.).
- Asylum seekers temporarily admitted for the duration of their procedures.

Although we are not interested in asylum seekers *per se*, we will gather information about potentially ‘related status changes’ (e.g. negative decisions, termination of procedures, which in turn may signal absconding or onward migration). Similarly, we are interested in asylum applications as a potential indicator of irregular entry. Whether such indicators are useful or are used in practice needs to be checked with relevant experts and, if available, relevant studies. Thus, we interpret asylum as linked, but not coterminous with irregular migration.

In terms of the different various flows in the respective national territories under study in the MIRreM project, we distinguish between geographic flows (i.e. in or out-movements),

demographic flows (birth and death) and status-related flows (falling into irregularity or acquisition of a legal status). Factoring in the various flows that can affect the stocks provides a more comprehensive view of migrant irregularity, and ultimately will also increase the quality and reliability of the estimates of the stocks.

An important new addition for explaining the stocks and the flows in the MIRreM conceptualisation of migrant irregularity are the ‘key mechanisms’ by which migrants become irregular (or exit irregularity). The aim is to use the information about these key mechanism as the basis for distinguishing between different in- and outflows. Importantly, ‘mechanisms’ denote a transformative process of ‘becoming’ (from the perspective of migrants) or ‘turning into’ (from a state perspective).

Another modification relates to the introduction of ‘visibility’ as a separate dimension which may be the result of ‘detection’ by the authorities, but furthermore, as we would like to stress, could also be the result of ‘self-reporting’ irregular presence to the authorities or ‘registration’ of an asylum claim. The reasoning behind introducing visibility is that it allows us to link irregular migration to relevant data traces, therefore making certain migrants in an irregular situation visible. At the same, considering visibility also spells out clearly those particular classes of irregular migrants who are currently ‘invisible’ to the authorities.

The dimension of ‘visibility’ has first been introduced in a report by the EU Fundamental Rights Agency (FRA) in 2011 (European Union Agency for Fundamental Rights, 2011).¹² The report distinguished between whether migrants were known to immigration authorities or not known to authorities. As ‘known’ or ‘not known’ is ambiguous – authorities may well know about the presence of irregular migrants and the identity of persons but not act upon it, in our scheme we speak of ‘registered by [immigration] authorities’ or ‘not registered by [immigration] authorities’, i.e. referring to situations where no *recorded* contact with authorities has taken place). Any recorded contact, so our assumption, will leave data traces. These may be one-off (e.g. when an irregular migrant is apprehended and realised with a return decision indicating a time period for voluntary departure and the decision is not followed up) or a reflection of a particular status (e.g. when a person is issued a formal suspension of a removal order and this suspension is regularly reviewed). ‘Visibility’ used in this specific sense then is a dimension related to different pathways into and out of irregularity (‘flows’) as well as different classes we distinguish within stocks.

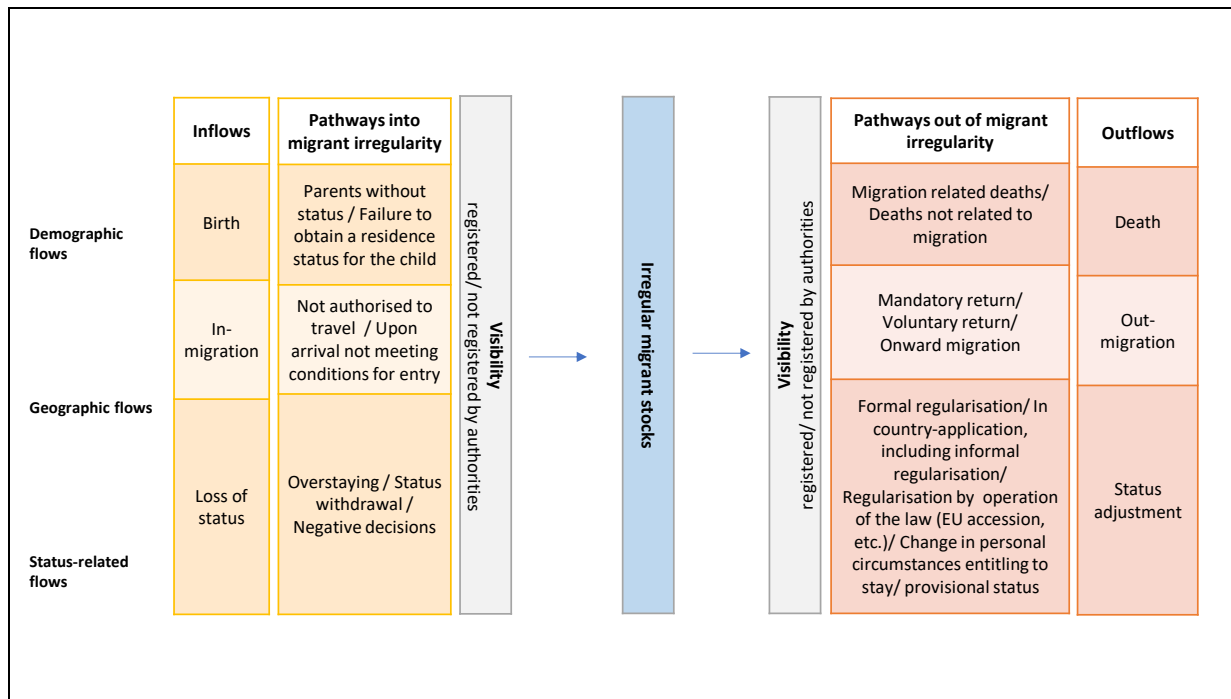
4.3. In- and Outflows

Figure 2 below presents our model in relation to in and outflows. As noted above, in- and outflows explain why and how migrants become or cease to be irregular and add to or reduce the stock of the irregular migrant population. At the same time, in- and outflows and the more detailed pathways into and out of irregularity can also be described as ‘classes’ that provide a systematic classification of overarching types of inflows and related subcategories.

¹² The consortium undertaking the research on behalf of the FRA involved several institutions and individual researchers also involved in Clandestino, some of which are also involved in the MIRreM project.

The 'visibility' of 'classes' and 'subclasses' defined in the boxes below, i.e. whether some form of record is available is ultimately an empirical question.

Figure 2: Visibility and mechanisms of migrant irregularity



Source: own elaboration, using Vogel and Jandl (2008: 11) as a model

4.3.1 Pathways into irregularity

In the following subsections, we provide some further explanations regarding in- and outflows.

As noted above, we distinguish a set of generic pathways into irregularity and more specific types of such mechanism, pictured on the left-hand side of the figure. Pathways into migrant irregularity describe mechanisms of how migrants become irregular in a particular country and add to the stock of the irregular migrant population. They do not describe the stock of the irregular migrant population, but explain why a person is in an irregular situation.

We distinguish the following flows and related mechanisms:

- Demographic inflows: In the case of births, we identify two possible mechanisms that may lead to an irregular status of the child:
 - The transmission of an irregular status from the parents, and

- Failure to obtain a residence status for a child even if parents are legally residing.
- Geographic inflows: In the case of irregular entry, we similarly distinguish two possible cases:
 - that a person is not authorised to travel, for example a migrant crossing a green border clandestinely, or hiding in a truck when crossing a border crossing point.
 - The second ‘class’ concerns persons not meeting conditions at entry, for example persons refused entry because of lack of necessary documents (visa, valid passport, etc.). It also includes persons with a travel authorisation (a visa), who cannot provide proof of sufficient financial means, or who do not meet some other conditions of entry.
- Status-related inflows: In relation to status-related flows, we distinguish between three principle situations:
 - overstaying the duration of ones’ visa or residence permit, including the duration of visa-free travel in the case of visa-exempt states;
 - the withdrawal of a residence status, for example because conditions are no longer met. This also includes the failure to renew a residence permit because deadlines are missed, etc.;
 - a negative decision of a review of what we call a ‘provisional status’.

4.3.2 Pathways out of irregularity

Generic pathways out irregularity and more specific types of such mechanisms are shown on the right-hand side of Figure 2. Pathways out of irregularity describe mechanism why migrants in an irregular situation cease to be in an irregular situation and thus are no longer part of the stock of the irregular migrant population.

- Demographic outflows: Death of a person in an irregular situation reduces the stock of migrants in an irregular situation. From a demographic point of view, there is a standardised way to distinguish between different causes of death, which is not of concern for us here. We distinguish between two primary types of exits from irregularity through death:
 - Deaths not related to migration; and
 - Migration-related deaths. In this context, we understand migration-related as deaths related to an irregular status. This includes, for example, border deaths, deaths in detention or deaths during removal, but also avoidable deaths for which individual’s legal migration status and the associated lack of access to health care or fear of accessing health care was a reason why death could not be avoided. While we

are aware that data or estimates may not easily be available, there have been increasing efforts to collect relevant data, such as through IOM's Missing Migrants Project.¹³

- Geographic outflows: We distinguish between three types of outmigration:
 - Mandatory returns (sometimes also referred to as compulsory returns); this includes a voluntary departure after a return decision, including assisted voluntary return as well as forced removals;
 - Voluntary return to the country of origin or a country of previous residence, and
 - Onward migration to another destination.
- Status related outflows: Here we distinguish between five major types:
 - Regularisation measures explicitly aimed at regularisation of irregular migrants, whether through time-limited programmes or permanent mechanisms;
 - In-country application for an ordinary residence permit, including informal regularisations. The requirement to submit an application for a residence permit from abroad is an almost universal requirement for first time permit holders, and specifically non-nationals only possessing a limited right to stay (e.g. under a tourist visa) or without any right to stay. Yet sometimes options for in-country applications exist, or are exceptionally used, and sometimes arranged by authorities, even if not necessarily foreseen by the law, something which we call 'informal regularisation'¹⁴;
 - Regularisation by operation of the law, that is a collective change of the status of a category of persons – EU accession and Temporary Protection could serve as examples;
 - Regularisation as a result of changes of personal circumstances entitling to a right stay, for example the formation of a family and related entitlements to a residence status, available notably for third-country national family members of EU citizens who have used their freedom of movement rights.
 - The transition to a provisional status, e.g. by lodging an asylum claim or being identified as a victim of trafficking, etc.

¹³ <https://missingmigrants.iom.int/>. Importantly, data from the missing migrant project cannot be directly mapped onto our scheme based on a model of demographic balance, as we are only interested in the deaths insofar they reduce the stock of a population, which presumes a certain duration of stay.

¹⁴ An example is the use of the quota system for the admission of labour migrants in Italy which has been used in the past for irregular migrants in the country (Cuttitta, 2008).

4.4 Stocks of irregular migrants, related classes and flows

In this section we briefly discuss the different ‘classes’ of migrants in an irregular situation and those of the two related classes we distinguish.

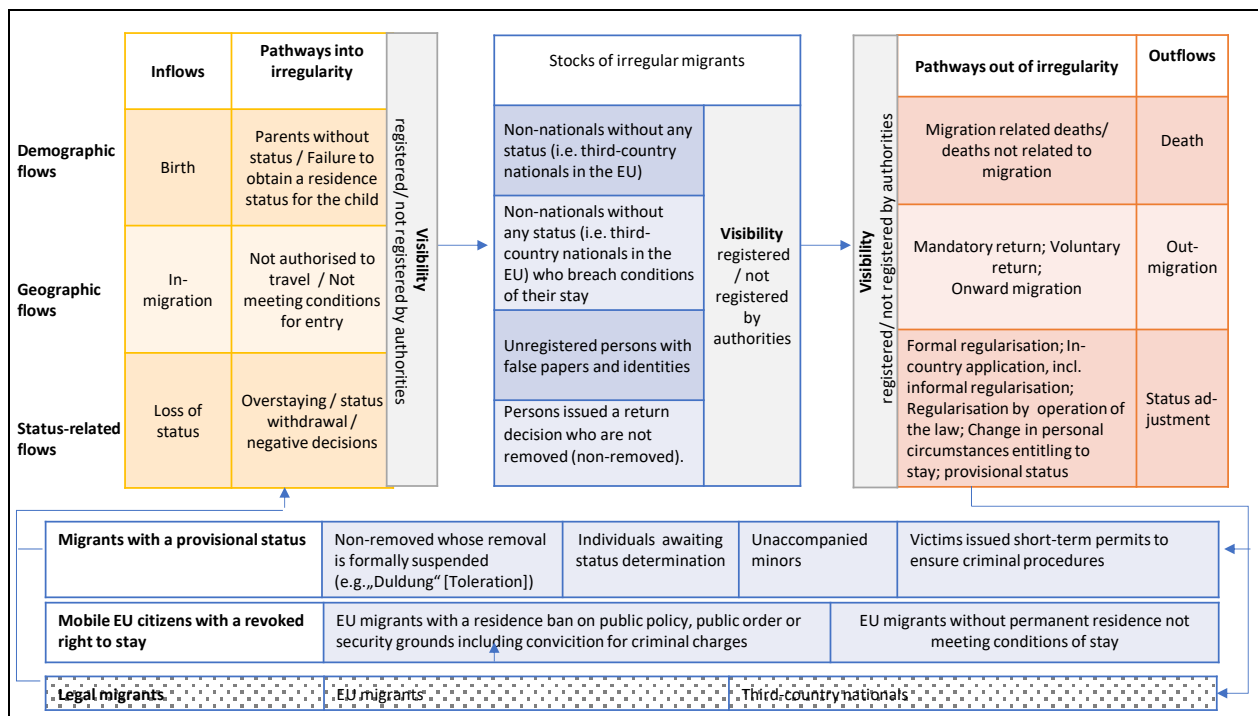
Amongst irregular migrants we distinguish the following classes.

- Non-nationals (third-country nationals in the EU) without any legal status: This class is the classical category of irregular migrants described as undocumented or ‘sans papiers’. Usually, such migrants will not have been registered by authorities, or if so, they may have registered once (e.g. upon being issued a visa), but their current status may not be officially known to authorities and few, if any data traces will exist for them. In regard to overstayers overstaying their visas (but not residence permit holders) the planned Entry-Exit system¹⁵ and the ETIAS travel authorisation system¹⁶ are partly aimed to produce such data.
- Lawfully staying persons engaged in activities that violates the terms of their permission to remain in the country, which if detected could result in the revocation of their permission to remain in the country and/or their expulsion from it. Examples include persons on tourist visas working, spouses not cohabiting (if required by the law), or students working more than permitted.
- Unregistered persons with false papers or assumed identities. We distinguish this category of persons from the former because they can largely live like regular migrants if the quality of the papers is good and if they dispose the right supplementary documents enabling them to perform activities such as formally renting accommodation, working in formal jobs, that are the key ingredients of a “normal” life. Those with poor quality papers with high risk of detection belong to the first class.
- Persons with a return decision who are not removed: This class refers to migrants who have received a return decision, which is not followed up, due to inaction on the side of the authorities or practical obstacles to return. Migrants who receive a formal suspension of return decision are not included in this class – they are part of the class with a provisional status. The main difference to the first class is that the identities, and often also the presence of such persons are known to authorities and therefore data traces exist. Migrants who are given a deadline for ‘voluntary’ departure, but do not return and go underground become part of the first class again.

¹⁵ https://travel-europe.europa.eu/ees_en

¹⁶ https://travel-europe.europa.eu/etias_en

Figure 3: MirreM model of irregular migrant stocks and flows



Source: own elaboration, using Vogel and Jandl (2008: 11) as a model

As explained above, we have added two related classes: mobile EU citizens with a revoked right to stay, and migrants (third country nationals in the EU) with a provisional status. The latter are formally distinct both from the irregular migrant population and from legal migrants who have been admitted on the basis of the regular legal pathways available to their country of residence.

Within the class of mobile EU citizens without a right to stay, we distinguish the following subclasses:

- persons excluded on grounds of public policy, public order or public security who have re-entered or never left the country. Migrants in this category will have been issued an order to leave following a procedure or as part of other procedures, for example criminal proceedings.
- EU migrants without permanent residence and without sufficient means. This class includes EU migrants who lack sufficient means and thus may be subject to removal. As they have not yet acquired a more stable residence status under the Residence Directive and do not meet the residence conditions set out in the Directive their removal is subject to fewer constraints.

Finally, we distinguish migrants with a provisional status or a reasonable claim to a provisional status both from the irregular migrant population and from legal migrants who have been admitted on the basis of the regular legal pathways available in any given country.

This class is thus half-way in-between a regular and an irregular situation. We distinguish the following sub-classes.

- Non-removed migrants whose removal is formally suspended and are provided with documentation on the suspension of the removal procedure known as ‘Duldung’ in German (literally translated as ‘toleration’). They are different from non-removed migrants whose cases are not followed-up by authorities who are part of the irregular migrant population, but we do not consider them legally staying either, as they may face restrictions of movement, such as those under Duldung in Germany whose residence is restricted to an assigned district.
- Individuals awaiting status determination includes a broader range of categories, including asylum seekers or persons who have applied for regularisation. We also include persons with a reasonable claim to a provisional status, notably asylum seekers who are not yet registered.
- Unaccompanied minors: Unaccompanied minors are subject to specific protections in the EU and may be issued temporary residence while still under the age of 18 years.
- The last class distinguished refers to non-EU migrants who are victims of trafficking or labour exploitation who may be issued short term permits to ensure criminal proceedings against perpetrators. In some countries such permits may be longer term or renewable, which we then would count under the legal population.¹⁷

Importantly, migrants with a provisional status are directly linked to the population in an irregular situation, largely by being moved ‘up’ from an irregular status to a provisional status. But those in a provisional status may also include migrants who have experienced a loss of a legal status and moved to a provisional one, for example when refugee status is revoked and migrants are not returned.

¹⁷ See the Residence Permit Directive (Council Directive 2004/81/) and the Employer Sanctions Directive (Directive 2009/52/EC).

5. SUMMARY AND CONCLUSION

By developing this classification system for migrant irregularity, we provide a comprehensive and standardised framework for identifying and classifying different irregular migrants. This classification system will be complemented by the MIRreM taxonomy which explores how different possible indicators relate to this classification. Taken together, the classification and the taxonomy lay the groundwork for a systematic collection of data and for producing estimates about the population in an irregular situation.

In defining migrant irregularity, the MIRreM classification system is organised around the legal status of residence of migrants. This means that certain other dimensions, for example specific experiences of irregular migrants such as being victim of labour exploitation or trafficking, or victim of abuses by human smugglers, etc. are not considered in relation to the experience, but only insofar such experiences provide a basis for a provisional status, such as in the case of trafficking victims. Other dimensions found relevant in the literature on migrant irregularity such as employment, differentiated rights, or citizenship too are not the focus of this classification, but are implied in some of the classes distinguished and the construction of the three overarching categories.

By further developing the MIRreM classification system and the taxonomy we hope to exchange knowledge with policymakers, researchers and other stakeholders to better define the possible indicators and scope of this phenomenon. Moreover, the classification system can also help to draw attention to particular irregular situations, and in consultation with key stakeholders may lead to the development of targeted policy measures, such as regularisations.

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