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France Country Brief on Irregular Migration Policy Context

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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. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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KEYWORDS

Irregular migration; policy measures; pathways into and out of irregularity

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France

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

- **Immigration Detention and Enforcement**

France has prioritised enhancing immigration detention policies, including measures to increase the detention of undocumented migrants and expedite the deportation process. These policies aim to address irregular migration and tighten border security, but they have faced criticism from human rights organisations due to concerns about human rights violations and the conditions within detention centres.

- **Selective Immigration and Points-Based System**

France is moving towards a selective immigration approach, similar to the points-based systems used in countries like Australia and Canada. This approach focuses on attracting skilled migrants based on factors such as education, work skills, and language fluency, with the goal of regulating and managing immigration more effectively.

- **Dublin Procedure and Irregular Migration Management**

France's policies centre on encouraging returns of asylum-seeking individuals who entered irregularly to the EU country of first arrival through the Dublin procedure, which allocates responsibility for asylum claims. The country also aims to combat human trafficking, identify irregular migrants, detain them, and restrict transit migration, aligning with broader EU objectives to manage migration flows and prevent irregular entries.

1.2 OVERVIEW OF THE FRENCH POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

Penalties for Unlawful Employment of Third-Country Nationals

Decree N° 2013-728, dated 12 August 2013 stipulates penalties for the unlawful employment of third-country nationals. Employers who engage in irregular employment of migrants without legal employment conditions face punitive actions. This measure aims to curb irregular migration by discouraging informal or unstable employment practices, while also “safeguarding” migrants from exploitation.

- **House Arrest for Pending Expulsion**

CESEDA (Code on Entry and Residence of Foreign Nationals) authorises house arrest as a means of ensuring the departure of foreign nationals. This measure can be implemented for both short and long terms, depending on logistical needs. Individuals under house arrest face strict conditions and potential domiciliary visits if they defy the mandate. While this policy aims to facilitate deportation, it places individuals in a legal limbo, with their continued residence subject to provisional tolerance.

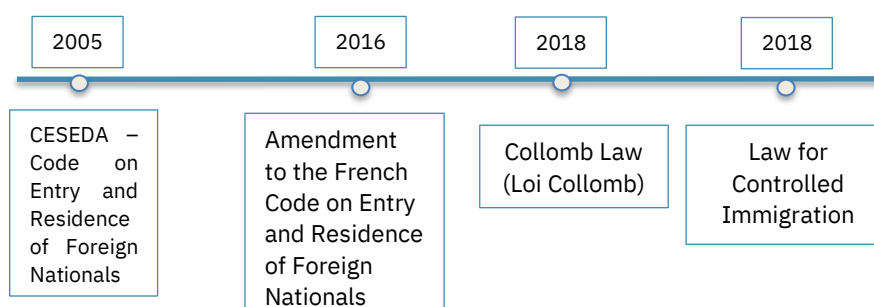
- **Penal Measures for Unauthorised Entry into France**

The Collomb Law of 2018 introduced a set of measures, including penalties for unauthorised entry into France. This law expedited the asylum application process, extended the detention duration for migrants, and established penalties for those entering the country without authorisation. The aim is to enhance both asylum and deportation efficacy while discouraging irregular entry into the country.

- **Facilities for Voluntary Return**

The establishment of facilities for return preparations (DPARs) provides an alternative to detention for irregular migrants and aims to streamline asylum procedures. While these facilities offer support and accommodation, they primarily serve those with unsuccessful asylum claims, indicating a focus on return over integration.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Stringent Policies and Limited Efficacy**

France's immigration policies, marked by increased border controls and a focus on criminalising irregular migration, have not significantly reduced the number of irregular migrants or improved return rates (Cassarino, 2020). This indicates a limited effectiveness in achieving their intended goals (Cassarino, 2015).
- **Healthcare Access Restrictions under AME**

The framework governing access to state medical aid (AME) has faced criticism (Lebano et al., 2020). The AME system, as outlined in the Code on Social Action and Families, includes certain prerequisites for entitlement, such as a stable three-month domicile and financial thresholds (May, 2021). Critics argue that these conditions disproportionately affect migrants with irregular status. They advocate for unrestricted healthcare access, especially for those facing humanitarian exigencies, to ensure that healthcare is accessible to all migrants, regardless of their legal status (May, 2021).
- **Selective Immigration and Restricted Regularisation**

Recent legislative changes reflect a shift towards selective immigration, making it harder for irregular migrants to transition into regularised status. Strict employment and integration requirements limit the avenues available for regularisation, reinforcing a discerning approach to societal integration (Rosina, 2022).
- **Advocacy Amidst Pandemic and Disillusionment**

Advocacy efforts, particularly during the COVID-19 pandemic, aimed to regularise essential workers but faced disillusionment as policy measures fell short. Despite proactive policy endeavours, the overall approach, including detention, deportation, and regularisation, has not provided effective solutions, leading to the need for collaborative efforts to address irregular migration challenges and promote productive integration (Burton-Jeangros et al., 2020).

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Limited Efficacy of Stringent Policies**

The first challenge is the limited effectiveness of France's stringent immigration policies, which include increased border controls and the criminalisation of irregular migration (Rosina, 2022). These policies have not significantly reduced the numbers of irregular migrants or improved return rates.
- **Balancing Return and Integration**

The second challenge involves striking a balance between promoting the return of irregular migrants and facilitating their integration (Caron, 2020). The focus on creating facilities for return preparations (DPARs) suggests an emphasis on return, potentially at the expense of integration.

- **Selective Immigration and Restricted Regularisation**

The third challenge pertains to the shift towards selective immigration policies, making it more challenging for irregular migrants to transition into regular status (Lai et al., 2020; Waldinger et al., 2023). Stricter requirements related to employment, integration, and the principle of family unity limit the avenues available for regularisation.

- **Disillusionment and Ineffectiveness**

The fourth challenge is the disillusionment among stakeholders, including organisations and government institutions, regarding the effectiveness of the policies. Despite proactive efforts and advocacy, policies such as detention, deportation, and regularisation have not produced the anticipated results and solutions for irregular migration challenges. This calls for collaborative efforts and a re-evaluation of policy approaches to ensure productive integration.

Table 1: Relevant French institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Ministry of Interior	Implements migration and asylum policies under Decree N° 2013-728 of 12 August 2013 modified by Decree N° 2018-912 of 24 October 2018. Manages: migration flows; regulations related to visas, foreign nationals' entry, stay and work in France; reception and integration support and access to nationality; the fight against illegal employment and irregular migration and asylum policies.	Link (FR)
2.	General Directorate for foreign nationals in France	Coordinates the Directorates in charge of migration and asylum and the Directorate in charge of accompanying foreign nationals and citizenship issues within the Ministry of the Interior. It also controls; the French office for immigration and integration (OFII) and the French Office for the protection of refugees and stateless persons.	Link (FR)
3.	Inter-ministerial delegate responsible for the integration and reception of refugees	Appointed in February 2018, under the authority of the French Minister of the Interior. Provides support for defining, animating, and evaluating refugee reception and integration policy. Coordinates the actions of all involved ministries and is responsible for organising the reception operations decided by the government.	Link (FR)

4.	Ambassador responsible for migration	Appointed in September 2017 by the Minister of the Interior and the Minister for Foreign Affairs to extend offers of partnerships to countries of origin and transit to better control migration flows (controlling borders, fighting against trafficking, encouraging voluntary return, or detaining people in an irregular situation, acting on the fundamental causes of forced displacement and irregular flows, and promoting legal access routes, notably in favour of those in need of protection).	Link (FR)
5.	Associations and Non-governmental Organisations (NGOs)	<p>They work as partners of the public authorities in handling reception and integration of legally staying foreign nationals and for reception and support for asylum. Some of the most prominent ones include:</p> <p><i>France Terre d'Asile</i> - This organisation provides support and protection to asylum seekers, and refugees, particularly minors. They also offer legal aid, social support, and help with integration.</p> <p><i>Caritas France (Secours Catholique)</i> - Affiliated with the international Caritas network, this organisation provides assistance to migrants, refugees, and other vulnerable groups, working to ensure their rights and well-being.</p> <p><i>Cimade</i> - Active since World War II, Cimade supports foreign nationals and migrants in France. They offer legal assistance, operate in detention centres, and advocate for the rights of migrants.</p> <p><i>Red Cross in France (Croix-Rouge française)</i> - While the Red Cross is renowned for its broader humanitarian efforts, in France, they also assist refugees and migrants, providing emergency accommodation, health services, and social support.</p> <p><i>Groupe d'information et de soutien des immigrés (GISTI)</i> - This group specialises in legal support and advice for immigrants. They also engage in advocacy and training.</p> <p><i>Forum réfugiés-Cosi</i> - This organisation is dedicated to the reception of asylum seekers, the integration of refugees, and the defence of the right to seek asylum.</p>	Link (FR)

6.	French national health insurance agency (CPAM)	Application for state medical aid (AME) for irregular migrants is addressed by the French national health insurance agency (CPAM)	Link (FR)
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1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN FRANCE: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in France

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Visa overstayer	Individuals who entered France legally (e.g., on a tourist or student visa) but did not leave upon visa expiry. Staying beyond the validity of their visa can lead to legal consequences such as fines, detention, or deportation. Temporary Work Visa Holders who enter France legally with a temporary work visa but continue to stay after their work contract ends or if the contract is terminated. If they don't secure another legal avenue for stay, they move into an irregular status.
Rejected asylum seeker	Individuals whose applications for asylum have been denied by the French authorities but who have not left French territory. Their legal stay has ended, and they face the risk of detention or deportation.
Patients on Medical Stay	Individuals who enter France legally on a short-term visa due to medical reasons and overstay, either because of extended medical treatment or other reasons. While they may seek to regularise their stay through medical grounds, if unsuccessful, they become irregular migrants.
Dublin procedure migrants	As per the Dublin Regulation (an EU regulation), asylum seekers must apply for asylum in the first EU country they enter. If they move to another EU country like France and apply for asylum, they can be sent back to the first country. Those refusing to go back might become irregular migrants.
Unaccompanied Minors	Children under 18 who arrive in France without legal documentation and without the accompaniment of a guardian or parent. Their legal situation is complex due to their vulnerability, and while some may pursue asylum, others may remain undocumented.

Most relevant categories of migrants with a reasonable claim to a provisional status	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum Seekers with Pending Applications	Individuals who have formally applied for asylum but are awaiting the decision. They have the right to remain in France until a decision is made, but their access to work and other rights may be limited. Should their application be rejected, they would need to leave unless they find another legal pathway.
Victims of Trafficking or Exploitation	Individuals who are identified as victims of human trafficking or severe exploitation may have a claim to stay in France for their protection. Their status is often provisional and contingent on cooperation with authorities in investigations or prosecutions.
Migrants eligible for regularisation	This category typically encompasses migrants who have been residing in the country for a considerable duration, those with strong familial or economic ties, and individuals who have integrated well within society. The exact conditions vary, but in many cases, steady employment, demonstrable community engagement, and an absence of a criminal record could enhance one's prospects for regularisation. Some specific groups might be exempted, especially if they have previously been rejected for asylum or have been involved in criminal activities. The implications of regularisation can be profound, leading to improved access to state services, enhanced protection under the law, and a potential pathway to permanent residency or citizenship.
British citizens post-Brexit	Following the Brexit transition, previously resident British citizens no longer enjoy the automatic right to live, work, and study in France under the freedom of movement. However, France has established procedures to ensure that British citizens legally residing in France prior to the end of the transition period can secure their residency rights. British citizens with prolonged residence in France or those with familial ties might have distinct pathways or provisions available to them.
EU citizens from another EU MS without residence rights	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
EU citizens who've lost residence rights due to crimes	EU citizens who've committed serious crimes or are considered a threat to public security might lose their residence rights. The exact nature of the crimes that could lead to such consequences is usually determined by national

	law transposing the Citizens Directive. These individuals may be subject to deportation, and their ability to return might be restricted.
EU citizens after 3 months stay	While EU citizens have the right to free movement and residence across the EU, they must fulfil certain conditions after three months in France, like being employed, studying, or being self-sufficient. Those not meeting these criteria might not have a stable long-term right to stay.

1.3.1 Pathways into and out of irregularity

Pathways into irregularity in France:

- **Clandestine Entries**
Historically, clandestine entries, facilitated by smuggling networks or individual attempts to circumvent border checks, have been a direct means leading to irregular status in France.
- **Visa Overstays**
Some individuals who initially entered France legally with valid visas may fall into irregular status by overstaying due to changes in personal circumstances, economic incentives, or socio-political disruptions in their home countries.
- **Asylum Seekers**
Asylum seekers with pending applications may face irregularity if their applications are rejected, leading them to choose to stay due to fears of persecution, lack of safe return options, or hopes for a legal revision in their asylum case.
- **Economic Factors**
Migrants on employment-based permits can fall into irregularity if they lose their jobs and fail to find new employment within a stipulated timeframe, especially in transient sectors like agriculture or seasonal tourism.
- **Family and Health Factors**
Family reunification policies may lead to irregularity if family ties dissolve due to divorce or the death of a family member. Additionally, individuals seeking medical treatment in France may become irregular if they cannot return home due to medical concerns, economic reasons, or socio-political instability.

Pathways out of irregularity in France:

- **Case-by-Case Regularisation:**
France has employed case-by-case regularisation, where criteria such as duration of stay, familial ties, and employment status are considered to provide irregular migrants with avenues to formalise their status.
 - **Regularisation based on Familial Links**
France recognises the right to family life, allowing parents of children born in France or attending French schools to find pathways for regularisation under the principle of ‘family unity’.

- **Regularisation for Labour Purposes**

Under specific conditions and criteria, workers can be regularised, especially if they are employed in sectors facing labour shortages.
- **Health Considerations**

France acknowledges the right to reside for foreigners with health conditions that cannot be treated in their home countries, reflecting the country's commitment to human rights. This provision allows individuals in irregular situations due to their health conditions to apply for regularisation, offering them a legal pathway to reside in France. By doing so, France ensures that these individuals are not returned to situations where they cannot access necessary medical care, thus providing them a chance to step out of irregularity based on humanitarian grounds.
- **Victims of trafficking**

Victims of trafficking can also seek protection and regularisation under specific legal provisions.
- **Postgraduate Students**

Non-EU postgraduate students in France can transition to working professional status after their studies if they meet certain conditions related to their employment prospects. For instance, they may be required to secure a job offer that is related to their field of study and meets a minimum salary threshold. Additionally, the position should typically be for a duration of at least one year. Some students might also benefit from grace periods allowing them a specified time frame to look for relevant employment post-study, ensuring their stay aligns with their professional development and France's labour market needs.

1.3.2 Regularisation

- 2012, Valls circular

Purpose and Context: Introduced in 2012, the Valls Circular provided a clear legal framework formalising and centralising existing regularisation practices for persons in an irregular situation in France. It sought to alleviate some conditions for those seeking residence based on employment.

Mechanisms for Regularisation:

 - Based on Employment:
 - Eligibility: Applicants must have stayed in France for at least five years with an employment contract or a promise of future employment. They should have worked for at least 8 months within the last two years or 30 months in the last five years. However, those residing in France for three years who have worked for a minimum of two years are also considered.
 - Documentation: Proof of previous employment, predominantly through salary statements.
 - Outcome: Eligible applicants are granted a renewable residence permit with a one-year maximum validity, allowing employment without a labour market test. In certain cases, even without a promise of employment, applicants may receive a temporary permit for job-seeking.

- Based on Private and Family Life:
 - o Eligibility: Targeted towards parents with children in school, partners of regular migrants, minors turning eighteen with family links or pursuing education in France. Some foreigners with exceptional talent or societal contributions can also apply.
 - o Special Provisions: Emphasis is given to human trafficking victims cooperating with authorities and victims of domestic violence. They receive a one-year renewable residence permit.
 - o Outcome: Qualifying individuals are issued a temporary residence permit labelled “private and family life.”
- Victims of Human Trafficking:
 - o Eligibility and Process: the CESEDA also provides for the regularisation of human trafficking victims. To assist criminal proceedings, victims might get a residence permit with a six-month duration, renewable as the process continues. This permit grants access to the labour market, education, and the social security system. Upon a suspect's conviction, the victim can obtain a ten-year residence permit.
 - o Restrictions: Both employment and private/family life-based regularisations strictly exclude individuals posing a public order risk or those involved in polygamous marriages in France.
- Data Clarity Issues: Although the Valls Circular explicitly outlines the criteria for regularisation, obtaining precise data on the frequency of these mechanisms is challenging. Official statistics usually classify permits by type rather than the reasons for their issuance. Thus, the exact number of irregular residents receiving such permits remains uncertain.

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to the source
1	Ordinance No. 45-2659 of 2 November 1945	1945	Ordinance No. 45-2659 of 2 November 1945 on the conditions of entry and residence of foreigners in France.	Link (FR)
2	Code of entry and residence of foreigners and of right to asylum (CESEDA)	2005	This code repealed and replaced Ordinance No. 45-2659 of 2 November 1945, which pertained to the conditions of entry and residence of foreigners in France. The CESEDA took effect on 1 March 2005, with its regulatory part being published on November 15, 2006. A subsequent codification came into force on 1 May 2021.	Link (FR)
3	“Sanctions” Directive	2011	The Law of 16 June 2011 on immigration, integration, and nationality, which transposes the Sanctions Directive of 18 June 2009 into domestic law, introduced and strengthened sanctions against employers employing irregular migrants, while establishing provisions aiming to guarantee social and pecuniary rights to foreign nationals working illegally.	Link (FR)
4	Valls circular	2012	This policy prioritised the regularisation of undocumented migrants based on specific criteria, including the duration of their stay in France, family ties, employment, and integration into French society. The Valls 2012 policy aimed to balance the humane treatment of long-standing undocumented residents with the need to control and manage migration effectively.	Link (FR)

5	Circular on the organisation of education for migrant children	2012	Circulaire REDE1236614C n° 2012-143, dated 2 October 2012, provides guidelines on the organisation of Academic Centers for the schooling of newly arrived migrants and traveling children.	Link (FR)
6	Code of entry and residence of foreigners and of right to asylum (CESEDA) – Amendment 2013	2013	Under the auspices of Decree N° 2013-728 of 12 August 2013, the CESEDA implemented policies pertaining to migration and asylum. The focus of this iteration was on managing migration flows, detailing regulations related to visas, overseeing the entry, stay, and work of foreign nationals in France, and organizing the reception and support for integration and access to nationality. Additionally, it emphasized the fight against illegal employment, illegal migration, and established asylum policies.	Link (FR)
7	Code of entry and residence of foreigners and of right to asylum (CESEDA) – Amendment 2018	2018	This version of the CESEDA is encapsulated by Law n. 2018-778 of 10 September 2018, which aimed at promoting managed migration, ensuring an effective asylum law, and fostering successful integration.	Link (FR)
8	Collomb Law - Law No. 2018-778 of 10 September 2018	2018	The Collomb Law, passed in 2018, shortened the deadline for asylum applications, doubled the time migrants could be detained and introduced a one-year prison sentence for anyone found to have entered France illegally, to speed up the asylum process and make the deportation system more efficient.	Link (FR)
9	Code of entry and residence of foreigners and right to asylum (CESEDA) – Amendment 2019	2019	The CESEDA underwent a significant legislative change through Law n. 2018-187 in March 2019. This amendment was focused on facilitating the sound application of the European asylum system.	Link (FR)

10	Law proposal: Ban on the regularization of foreigners in an irregular situation	2020	A law proposal was submitted in February 2020 to prohibit the regularisation of foreign nationals in an irregular situation. The administration is prohibited from regularising foreign nationals in an irregular situation, to reduce applications for immigration and to comply with French laws in force and to reward those who comply with them.	Link (EN)
12	Code of entry and residence of foreigners and right to asylum (CESEDA) – Amendment 2022	2022	The Decree number 2022-1703 of December 2022 introduced measures relating to the establishment of the office for combating migrant smuggling.	Link (FR)
13	Bill to control immigration, improve integration	2023	The 2023 bill creates a one-year residence permit "working in professions in shortage". Irregular workers will be able to request regularisation under this new card which will be issued automatically, under certain conditions (length of stay of at least three years in France, experience of eight months during the last 24 months in a profession or geographical area in tension). This card will be tested until the end of 2026, before its possible sustainability. Asylum seekers from the countries most at risk (applicants benefiting from a high rate of protection in France) will be able to work immediately.	Link (FR)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Law No. 2016-274 of 7 March 2016 and Law No. 2020-734 of 17 June 2020 – voluntary return	2006	Law No. 2016-274 of 7 March 2016 and Law No. 2020-734 of 17 June 2020 “foreign nationals who are required to leave France have a period of thirty days from the date of notification of the obligation to leave France to do so voluntarily.”	Link (EN)
2	Code on Social Action and Families (CAFS) - Articles L251-1 to L2521-3, Articles L252-1 to L252-5, Article L254-1 and L254-2, Article R251-1, and R251-2	2019	State medical aid requests are primarily submitted by applicants to health insurance organisations, which handle them on the State's behalf. Exceptions include cases involving unaccompanied minors or those with reduced mobility.	Link (FR)
3	Code on Social Action and Families (CAFS) - Article L 345-22	2021	Article L 345-22 of the code on social action and families (CASF), any person without shelter and in a situation of medical, mental, or social distress has access at any time to emergency accommodation, including irregular migrants. The right to access emergency accommodation is identical for nationals and migrants, and migrants in a regular situation as well as for migrants in an irregular situation.	Link (FR)

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