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Spain

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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Spain

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

Irregular migration represented for a long time the main dysfunctionality of the Spanish migration regime. By neglecting the strong internal demand for foreign workers and limiting legal entry channels for labour, the Spanish migratory regime structurally encouraged the rise of irregular migration (Arango, 2000). Against this backdrop, the immigration law LO 4/2000 and its subsequent modifications and regulations of 2004, 2009 and 2022 addressed the regime's major dysfunctionalities according to the following policy priorities:

- **Creating adequate entry channels for foreign workers**
The legal regulations simplify the individual recruitment procedure under the so-called General Regime (*Régimen General*) by introducing the Catalogue of Hard-to-Find Occupations which allows the recruitment of non-EU nationals without a prior labour market check to assess the availability of native or EU workers. The Catalogue is published by the National Labour Service and revised every three months to make the labour quota system for seasonal and longer-term workers (*contingente*) more efficient.
- **Improving external/internal controls to reduce irregular entries/stays**
Along with the introduction of tougher tourist visa requirements to reduce visa overstayers and a more sophisticated border control system to monitor coastal arrivals, Spain developed bilateral agreements with the main origin and transit countries (readmission and cooperation agreements) (Echeverría, 2020; Gabrielli, 2023). In addition, conscious of the relevance of the informal economy for the development of irregular migration systems, the government strengthened the labour inspection agency to improve its performance. Between 2008 and 2021 the number of inspectors increased from 1,736 to 2,051.

- **Developing a permanent regularisation mechanism**

A key priority in the evolution of the Spanish migration regime has been the institutionalisation of individual regularisation schemes (the *arraigo*), which allow migrants in an irregular situation to get a residence permit if they are able to demonstrate either a pre-existing labour history (*arraigo laboral*) or their social integration (*arraigo social*) after two or three years of irregular residence, respectively. In 2022, the possibility of obtaining the *arraigo* for training purposes was introduced.

1.2 OVERVIEW OF THE SPANISH POLICY FRAMEWORK

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

1.2.1 Policy implementation measures

- **New additions to the *arraigo* scheme**

The Spanish legislation has kept the *arraigo* scheme as an ad hoc regularisation system which allows correcting irregularity on an individual basis for different reasons: labour, family ties, social integration, and training purposes (since 2022) (Finotelli & Rincken, 2023). Whereas the *arraigo* for family reasons is linked to a five-year residence permit, those for social and labour reasons are linked to a one-year permit. They are considered residence permits for “exceptional circumstances” and cannot be renewed, so they must be followed by a regular residence permit. Only the *arraigo* for training purposes may be extended if the training lasts more than one year.

- **Residence permit renewal procedures**

The evolution of immigration legislation shows a continuous effort to improve renewal procedures to prevent befallen irregularity. Previous regulations allowed several facilitations for renewal in the case of unemployment (Vianello et al., 2019). In the context of COVID-19, the government automatically extended all authorisations that expired during the state of alert. The recent 2022 reform allows for renewal of the initial residence permit for four years instead of two, paving the way for a smooth path to permanent residency.

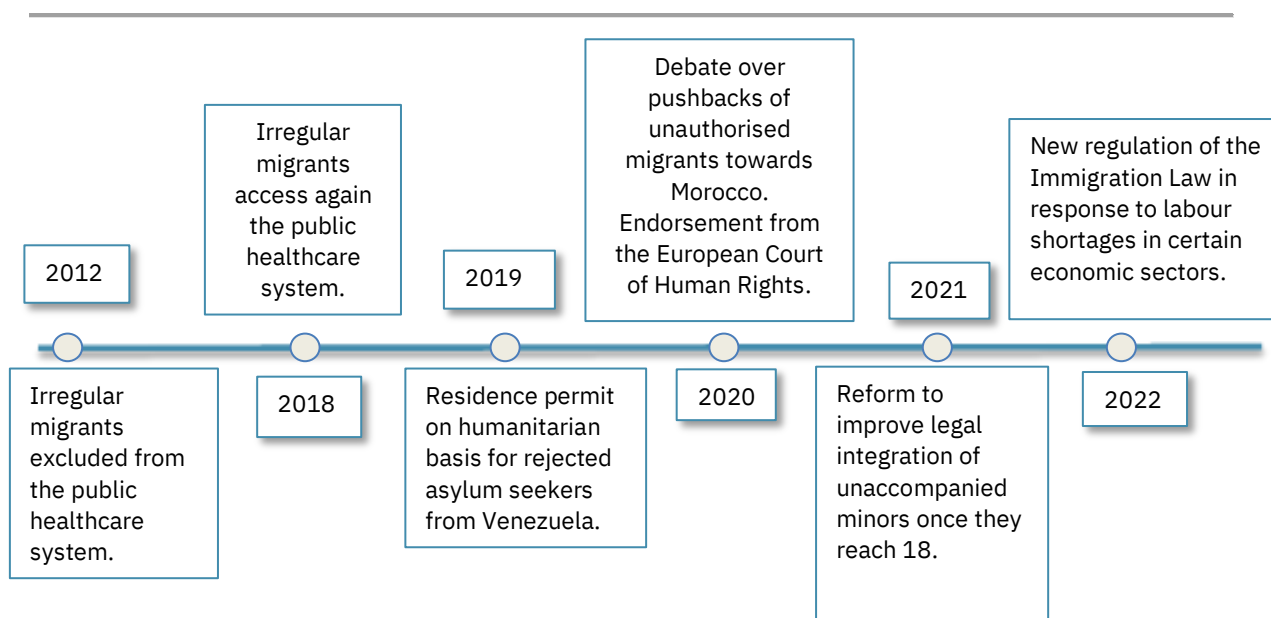
- **International protection**

A 2019 resolution grants one-year residence and work permits, on a humanitarian basis, to all Venezuelan citizens who had their asylum requests rejected since 2014. This further confirms the crucial role of stabilisation and employment rather than securitisation and defensive regulation in the Spanish migration regime. Another special case is the temporary protection status for displaced Ukrainian citizens, which was extended also for those living in Spain in an irregular situation before 24 February 2022.

- **Unaccompanied minors**

In 2021, a new reform improved the paths for social integration of unaccompanied minors. The new measures refine the conditions of unaccompanied minors' authorisations under the protection system and help them to avoid irregularity. The initial authorisation lasts for two years instead of one and explicitly states that they are allowed to work if they are 16 years old. Furthermore, this authorisation does not expire if the minor turns 18, and is renewed for three years if the circumstances that prompted its issuance in the first instance persist.

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- **Reduction of irregular migration (stocks)**

Even though “zero irregular migration” is not a realistic policy objective, the introduction and implementation of the *arraigo* has certainly contributed to reducing the presence of irregular migrants on Spanish territory (Finotelli & Rincken, 2023). Thanks to this policy measure, as recent statistics indicate, the rate of irregular migrants in 2020 oscillates between 8.7% and 9.5% of the foreign-born population (Fanjul & Gálvez Iniesta, 2022), a percentage far below the irregularity rates at the beginning of the 21st century .

- **More effective labour migration channels**

The Shortage Occupation List (Catalogo de ocupaciones de difícil cobertura) has allowed, at least to a certain extent, for better assessment of labour market demand

in certain economic sectors (Finotelli & Echeverría, 2017), while a more efficient organisation of seasonal workers together with the recently introduced cooperation schemes has reduced the employment of irregular workers in the agricultural sector.

- **Prevention of befallen irregularity**

The flexibility in renewing residence permits in the Spanish context, together with the recent extension of the duration of first and second renewals from two to four years are crucial to avoid befallen irregularity and to provide an important impulse to the gradual stabilisation of migrants' residence status.

- **Solving asylum crises**

The decision to issue one-year humanitarian permits to rejected asylum seekers from Venezuela whose application was rejected between January 2014 and February 2019 points to the flexibility of the Spanish migration regime in allowing the transition from the humanitarian into the economic immigration channel as a strategy to address unexpected asylum crises such as the one caused by the number of asylum seekers from Venezuela, which skyrocketed from 124 in 2014 to 40,884 in 2019 (Finotelli & Rincken, 2023). Many countries, particularly those in Northern Europe, have rigorously differentiated between the humanitarian and economic pathways, barring rejected asylum seekers from transitioning to the economic path. Spain, in contrast, has consistently permitted such transitions.

- **Guarantee of access to basic rights**

The decision to exclude irregular migrants from access to the public healthcare sector has been considered a turning point in the regulation of access of irregular migrants to basic rights. Yet, the return to the status quo in 2018 suggests that access to basic rights for irregular migrants is a pillar of the Spanish migration regime.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Reducing the gap between the legal framework and legal praxis in terms of access to rights**

Spain's legal framework is protective. Yet, representatives of the third sector in particular highlight the persistent need of ensuring its enforcement and overcoming the barriers to the effective access to rights that many (irregular) migrants face. Complaints relate in particular to the possibility of applying for international protection at the border, the implementation of minors' access to education, or the opportunity to have access to social services in practice.

- **Efficiently matching labour market offer and demand**

Despite the improvement of legal labour migration channels in recent years (Finotelli & Echeverría, 2017), labour recruitment instruments need to be adapted to a labour market in constant evolution, with a demand for new types of workers on the one hand, and the demand for labour subject to deep economic fluctuations (such as in the construction sector) on the other.

- Strengthening of labour market inspections**
 Given the relevance of the informal economy as a pull factor for irregular migration in Spain, there is a widespread need to provide the still understaffed Labour and Social Security Inspectorate with resources in order to make labour market controls more efficient and discourage employers from hiring irregular migrant workers.
- Enforcement of internal controls**
 Readmission schemes have, at least to a certain extent, facilitated cooperation with origin and transit countries (Gabielli, 2023). Yet, the persistent lack of cooperation from several countries of origin as well as a lack of resources weakens Spain's capacity to enforce expulsions and suggests that there is need to rethink the current logic of the Spanish internal control system (Sainz de la Maza Quintanal, 2015).
- Improving cooperation and coordination between different administration levels**
 The reinforcement of workplace inspections, the enforcement of internal controls, and the design of more efficient labour immigration schemes require improving cooperation and information exchange between different public organisations at different administration levels.

Table 1: Relevant Spanish institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Ministry of Interior	Border Controls, Police Controls on the Territory, Asylum Applications and other forms of International Protection, Expulsions.	Link (ES)
2.	Ministry of Inclusion, Social Security and Migration	Design and implementation of entry policies for family and labour purposes, renewal of residence permits, organisation of statistical information about immigrants in Spain.	Link (EN)
3.	Ministry of Territorial Policy	Processing of applications for <i>arraigo</i> for training purposes.	Link (ES)
4.	Ministry of Labour	Workplace inspections.	Link (ES)
5.	Municipalities / Offices of the Padron Municipal	They are responsible for the registration of immigrants in the Municipal Registry and for the provision of access to healthcare and education.	n/a

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN SPAIN: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Spain

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)
Overstayer	<p>A person who has legally entered but then stayed in an EU Member State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and /or residence permit.</p> <p>De facto, penalty would include deportation only in the case that the administrative infraction of irregular stay goes along with conviction for other types of penal infractions, committed inside or outside the country, that constitute a crime punishable by imprisonment for more than one year in Spain.</p>
Rejected asylum seeker	<p>A person whose application for international protection has been definitively rejected, including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period. The non-admission or rejection of applications for international protection will determine, as appropriate, the return, expulsion, compulsory departure from Spanish territory or transfer to the territory of the State responsible for the examination of the asylum application of the person who applied for asylum. However, the stay or residence in Spain may be authorised when the person concerned meets the requirements to remain in this situation or for humanitarian reasons.</p>
Befallen irregular migrant	<p>A person who had a residence permit and was unable to renew it.</p>
Irregular entry (clandestine migration)	<p>A person who entered the country without an entry permit such as a tourist visa.</p>

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 waiting for a response to the application	Persons that have presented an asylum application and are waiting for a response. For six months following the application, asylum seekers are not allowed to work.
Rejected asylum seekers from Venezuela (until 2019)	Asylum seekers whose asylum request was rejected between 2014 and 2019 are eligible for a residence permit for humanitarian reasons under exceptional circumstances.
Migrants with renewal procedure in progress	Migrants who have applied for renewal and are waiting for their renewed residence document. The waiting time is generally three months and during this period they are not counted as irregular migrants.
Victims of gender-based violence and human trafficking	Victims of gender-based violence who have a protection order are entitled to a provisional residence and work permit for exceptional circumstances. The same conditions apply to persons officially identified by the police as victims of human trafficking.
Migrants that collaborate with the police against criminal organisations	Irregular migrants that collaborate with the police against criminal organisations are eligible for a residence permit for exceptional circumstances of the duration of one year.
Irregular migrants with at least 2-3 years of registered residence in the Spanish Municipal Registry	Irregular migrants who have been living in Spain for at least two to three years depending on the type of <i>arraigo</i> are eligible for regularisation if they can demonstrate the existence of an employment relationship, family ties, social integration or a training offer.
Unaccompanied minors	Irregular migrants younger than 18 years old are eligible for residence authorisation once under the protection system. They can then turn their permit into a residence permit for exceptional circumstances as soon as they reach the full age.
British citizens after Brexit	British citizens without a residence certificate or a residence card for family reasons had to demonstrate that they were residing in Spain before 31 December 2020 to obtain a residence card under the Withdrawal Agreement and stay regularly on the Spanish territory.

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 in case of public order grounds or national security	The right of entry and residence of EU citizens can be limited on public order and public security grounds. An expulsion order can be issued and executed, for those who have acquired the right of permanent residence, if there are serious reasons of public order or public security. Before adopting this decision, several aspects will be taken into account: duration of residence, social integration, age, state of health, family and economic situation, and links with the country of origin. In addition, for EU citizens in Spain who exceed a 3-month stay without engagement in employment or education and lack sufficient resources for subsistence, the singular avenue for potential expulsion is contingent upon grounds associated with public order (RD 240/2007, Art. 15).

1.3.1 Pathways into and out of irregularity

- **Irregular entry**

The main irregular entries concern arrivals by sea, as well as bypassing of the fences in Ceuta and Melilla. Despite the media focus on this phenomenon, clandestine migrants that enter without any type of visa represent a minority of irregular migrants.

- **Overstaying**

Overstayers usually enter with a tourist visa and remain in the country of destination after the expiration of this permit. The introduction of visa requirements at the beginning of the new century has certainly reduced Spain's "pull effect" (Finotelli & Arango, 2011). Yet, visa overstaying can still be considered the most important category of irregular migrant.

- **Asylum rejection**

Migrants can become irregular after the rejection of an asylum application. Yet, the Spanish regime has foreseen the possibility to prevent the "irregularisation" of Venezuelan asylum seekers, who represent an important percentage of rejected asylum seekers, providing them with access to a residence permit for humanitarian reasons.

- **Regularisation**

The main pathway out of irregularity in the Spanish context is a request for regularisation, described further below.

1.3.2 Regularisation

- [Temporary residence authorisation for exceptional circumstances \(arraigo scheme\), ongoing](#)

Eligibility criteria

- Not be a citizen of an EU Member State.
- Not have a criminal record in Spain.
- Not be banned from entering Spain.
- Not be, where applicable, within the period of commitment of no return to Spain. This refers to the commitment not to return to Spain, in the context of voluntary return programs.

[For work reasons:](#)

- Have stayed continuously in Spain for a minimum period of two years.
- Be able to demonstrate the existence of an employment relationship lasting no less than six months (employment *arraigo*).

[For social reasons:](#)

- Have stayed continuously in Spain for a minimum period of three years.
- Have family ties with other resident foreigners or, alternatively, present a report of roots that accredits their social integration.
- Have an employment contract signed by the worker and employer.

[For family reasons:](#)

- Being a parent or guardian of a minor of Spanish nationality.
- Being a person who provides support to a Spanish person with a disability or who requires support measures for the exercise of his or her legal capacity.
- Being the spouse or accredited unmarried partner of a Spanish citizen, an ascendant over 65 years of age or dependant under 65 years of age, a descendant under 21 years of age or dependant over 21 years of age of a Spanish citizen, or of his/her spouse or unmarried partner.
- Be children of a father or mother who were originally Spanish.

[For training reasons:](#)

- Have stayed continuously in Spain for a minimum period of two years prior to the application for authorisation.
- Commitment to undertake regulated training:
 - for employment or to obtain a professional certificate or a certificate of technical aptitude or professional qualification necessary for the exercise of a specific occupation or one promoted by the Public Employment Services.
 - or, within the scope of lifelong learning at universities, to undertake courses to broaden or update training or professional competencies and skills, as well as other lifelong learning courses.

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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 source
1	LO 4/2000	2000	Organic Law on the rights and freedoms of foreigners in Spain and their social integration (Foreigners Law). This law defines in Title III the infractions in the matter of foreigners and the sanctioning regime.	Link (ES)
2	LO 8/2000	2001	Modification to the LO 4/2000. Title III is modified, relating to the infringements in the matter of foreigners and its sanctioning regime. Measures are introduced to fight against “illegal immigration“ (sanctions to transport companies and to those who organize human trafficking networks). Irregular stay in the territory is considered an infraction punishable by expulsion.	Link (ES)
3	RD 864/2001	2001	Regulation of the LO 4/2000. Chapter IV regulates infractions and administrative sanctioning procedres. Residence permits are granted for collaboration against organized networks. It develops the processes of enforcement of fines and expulsions (assumptions, precautionary measures, effects and enforcement). Section II regulates the functioning of Detention Centers for Foreigners (Centros de Internamiento de Extranjeros).	Link (ES)
4	LO 11/2003	2003	LO 11/2003 which establishes concrete measures on issues of citizens’ security, domestic violence, and the social integration of foreigners.	Link (ES)

5	LO 14/2003	2003	Modification to the LO 4/2000. This amendment strengthens the instruments to fight against “illegal immigration”; it regulates the internal regime of the Detention Centers for Foreigners and guarantees the right of communication of the inmates; it incorporates new obligations of information for the transport companies in the countries of origin/destination and it adapts the carrier sanctions and the mutual recognition of the expulsion decisions to European directives.	Link (ES)
6	RD 2393/2004	2004	Regulation of the LO 2393/2004. approves the Regulation of the Organic Law 4/2000, of January 11, on the rights and freedoms of foreigners in Spain and their social integration. (Repealed by RD 557/2011).	Link (ES)
7	LO 02/2009	2009	Modification to the LO 4/2000. It incorporates the jurisprudence of the Constitutional Court that recognizes the fundamental rights to foreigners without legal residence. It updates the legal system in accordance with the European Directives on immigration pending transposition. It reinforces the fight against irregular immigration, establishes new offences for fraudulent actions and increases economic sanctions, (marriages of convenience, promotion of irregular immigration, falsification of data for registration). It extends the period of detention (from 40 to 60 days), granting a period of voluntary compliance with the expulsion order.	Link (ES)
8	RD 557/2011	2011	Implementation Regulation of the LO 4/2000 (repeals RD 2393/2004). It shortens the duration of the employment relationship that is required for the " <i>arraigo laboral</i> " and introduces the figure of " <i>arraigo familiar</i> " for parents of Spanish minors. It develops the specific aspects of the sanctioning procedures for the	Link (ES)

			imposition of the infractions of expulsion and fines.	
9	European Court for Human Rights. N.D. and N.T. v. Spain [GC] - 8675/15 and 8697/15	2020	Information Note on the Court's case-law 237, concluding no violation in the case of Immediate and forcible return of aliens from a land border, following an attempt by a large number of migrants to cross it in an unauthorised manner and <i>en masse</i> .	Link (ES)
10	RD 903/2021	2021	Regulation of the LO 4/2000 which repeals RD 557/2011 in matters of unaccompanied minors.	Link (ES)
11	RD 629/2022	2022	Regulation of the LO 4/2000 which repeals RD 557/2011. It addresses the needs of the labor market, and the existence of people in an irregular situation who wish to work and who resort to the <i>arraigo</i> scheme, improving some requirements and introducing new figures (<i>arraigo</i> for training purposes).	Link (ES)

List of migration agreements on readmission or cooperation

Sr. n.	Country of Agreement	Date	Description	Weblink to source
1	Morocco	1992	Formal readmission agreement.	Link (ES)
2	Argelia	2002	Protocol with Argelia on the circulation of people.	Link (ES)
3	Guinea-Bissau	2003	Formal agreement on immigration issues.	Link (ES)
4	Mauritania	2003	Formal agreement on immigration issues.	Link (ES)
5	Guinea-Bissau	2003	Formal agreement on immigration issues.	Link (ES)
6	Ghana	2005	Informal agreement (memorandum of understanding).	n/a *

7	Nigeria	2005	Informal agreement (memorandum of understanding) on migration control [+ readmission agreement signed in 2001].	n/a *
8	Senegal	2006	Memorandum of understanding on readmissions + larger agreement on migratory cooperation (both informal) + agreement on minors.	Link (ES)
9	Gambia	2006	Formal agreement on migration control (including development issues).	Link (ES)
10	Guinea-Conakry	2006	Formal agreement on migration control (including development issues).	Link (ES)
11	Mauritania	2007	Informal agreement (memorandum of understanding) on migratory cooperation [+ formal agreement on readmission of signature and third country citizens signed on 7/2003].	n/a *
12	Mali	2007	Formal agreement on migration control (including development issues).	Link (ES)
13	Cabo Verde	2007	Formal agreement on migration control (including development issues).	Link (ES)
14	Guinea Bissau	2008	Formal agreement on migration control (including development issues) [+ informal agreement on readmission signed on 2/2003].	Link (ES)
15	Nigeria	2008	Formal agreement on migration control (including development issues).	Link (ES)
16	Gambia	2010	Informal agreement (memorandum of understanding) on migratory cooperation.	n/a *

Source: Gabrielli, 2023

* informal agreements cannot be traced in the sources of formal legislation

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	Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local	1985	The law regulates the functioning of Municipalities and establishes, among others, that a valid passport is sufficient for foreigners to register in the Municipal Registry and to get access to the public	Link (ES)

			services provided within the municipality (Art. 16 and Art. 18).	
2	Law 16/2003 on Cohesion and Quality of the National Health System	2003	The law establishes cooperation and coordination between public health administrations, guaranteeing equity, quality, equality and social participation in the national health system. Article 3 of the law establishes that people without residence permit can have access to public healthcare if they are enrolled in the municipal registry.	Link (ES)
3	LO 12/2009	2009	Regulation of the right to asylum and subsidiary protection.	Link (ES)
4	Instruction of 5 July 2013, of the Directorate General of Registries and Notaries	2013	Intensive plan for the processing of the applications backlog for the acquisition of Spanish nationality by residence.	Link (ES)
5	RD 16/2012	2012	Urgent measures to guarantee the sustainability of the National Health System and improve the quality and safety of its services. One of the norms introduced by this legislation was the exclusion of irregular migrants from the public healthcare sector.	Link (ES)
6	RD 7/2018	2018	Universal access to the National Health System. Allows access of irregular migrants to public healthcare services again.	Link (ES)
7	Resolution of the Ministry of Interior of 28th December 2019	2019	Administrative memo that establishes that asylum seekers from Venezuela whose application was rejected after January 2014 to get a residence permit for humanitarian reasons.	Link (ES)
8	Resolution de 17 de febrero de 2020	2021	Resolution with technical instructions for the inscription in the municipal registry.	Link (ES)

9	RD 220/2022	2022	Regulation on the reception system for international protection.	Link (ES)
10	RD 889/2022	2022	University Law that regulates the recognition of university degrees.	Link (ES)

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