Are Objections Against Regularisation Justified?

An Ethical, Political and Pragmatic Appraisal of Regularisation

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SUMMARY

This paper undertakes a critical appraisal of a set of independent but loosely related objections against regularisation: that it rewards deviant behaviour (rule of law concern); that it undermines the integrity of migration governance at large by sending an unwanted message to both migrants and citizens (system integrity concern), that it disadvantages migrants complying with immigration rules (fairness concern); that it incentivizes future irregular migration (pull-effect concern); that it undermines deterrent policies and undermines migration enforcement (enforcement credibility concern); that it is not sustainable as regularised migrants often fall back into irregularity (sustainability concern); and that it fosters "immigration into the welfare state", burdening already stretched welfare systems (social welfare concern).

The paper finds that these objections are weak, in ethical, economic, social and pragmatic regards. Rather than as an exceptional and the least desirable option to address the presence of irregular migrants, regularisation should be considered as part of the regular toolkit of migration governance and as an instrument that effectively prevents that the stock number of irregular residents increase continuously.

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1. INTRODUCTION

Contrary to the widespread perception that regularisation is an exceptional policy tool used infrequently and only in some countries across Europe, regularisation is a policy tool applied in many countries, even if the scale and relative role of regularisation differs greatly between different countries. Out of the 20 countries examined by the MIrreM project (12 EU countries, the UK, Canada, the US, and five transit countries in the Western Balkans, North Africa and Turkey) 15 have regularisation policies (Hendow et al. 2024, 60) In spite of its wide use (Hendow et al. 2024, 55–73), regularisation is widely considered as the least desirable policy response to the presence of irregular migrants This paper challenges commonly held objections against regularisation. Rather than considered to be a second or third best option, or an option never taken, we argue that regularisation should be considered a standard element of the migration policy toolbox (cf. Ahrens and Kraler 2025a).

Migrants can be in an irregular situation for a number of reasons, including imperfect, complex and sometimes contradictory legal and policy frameworks, lack of information, conflicting interests, the mismatch between individual aspirations and available legal pathways, individual choices and a variety of personal circumstances. A pragmatic position accepts this diversity of factors leading to migrant irregularity and focuses on solutions that enable irregular migrants to exit a situation of protracted irregularity, acknowledging that protracted irregularity has a variety of adverse consequences for both the individuals concerned and society at large (Ahrens and Kraler 2025a). In a situation when return is not feasible or desirable, regularisation may provide a pragmatic exit option to policy makers to help resolving situations of irregularity and preventing a further increase of the population of migrants in an irregular situation (Carens et al. 2009, Hendow et al. 2025).

2. ARGUMENTS AGAINST REGULARISATION AS A (STANDARD) TOOL OF MIGRATION GOVERNANCE

Opponents of regularisation mainly point to a set of independent but loosely related arguments. Regularisation is considered to reward deviant behaviour (rule of law concern) and thereby send an unwanted message to both residents and (future) migrants who are expected to comply with law, undermining the integrity of migration governance at large (system integrity concern). Regularisation is considered to disadvantage those migrants who respect migration rules and enter a territory only when they obtained or hold the required permissions (fairness concern). In practical terms, regularisation is suspected to develop a pull-effect consequently working as a driver of irregular migration (pull-effect concern). Regularisation is accused to undermine efficacy of measures to promote voluntary return or enforcement of deportation or other deterring policy measures (enforcement credibility concern). Regularization is rejected with the argument that measures are not sustainable and regularized migrants will fall back into irregularity (sustainability concern). Finally, in welfare-states, regularisation is suspected in to open the gates for immigration into the social security systems, thus burdening the systems and fueling resentments among the resident population (social welfare concern). The discursive prominence and dominance of these regularisation-sceptical caveats severely impact the public perception and acceptance of regularisation.

In the light of the broad acceptance of these reservations by national governments, political parties and other key stakeholders, the number of countries that have implemented or currently implement some kind of regularisation is striking. However, the measures are usually considered to be the least preferable and at most exceptional tools to deal with resident irregular migrants. Consequently, a transparent and permanent implementation of low-threshold regularisation policy like the Spanish arraigo mechanism is an absolute exception (Ahrens and Kraler 2025b).

When countries launch regularisation as an instrument to cope with the presence resident irregular migrants, the measures and programmes are often presented and implemented as a last resort for a limited duration with strict dead-line clauses related to the length of stay of regularisation candidates and several other conditions to be met, often requirements related to the belonging of a particular category of migrants (nationality) and to previous behaviour (e.g. clean criminal record).

3. CONSEQUENCES OF NOT-REGULARISING

In the first instance, the absence of or the reluctance to regularise is first a problem for a foreign national who lives in a country without required permissions. Living in an irregular situation implies several risks for the individual who avoids contact with authorities for fear of being arrested and deported. Resident migrants in an irregular situation often believe that they do not enjoy rights and legal protection due to their more immediate deportability. Countries indeed preclude irregular migrants from key civil and social rights, and at times require authorities to prioritise enforcement over other objectives (e.g. public health) (Fox-Ruhs and Palme 2025).

Yet the exclusion from or complicated access to health care and legal protection against exploitation affects not only the individual in an irregular situation but accumulates to structural malfunctions, for example, when contagious diseases are not treated and labour exploitation becomes entrenched with impunity. When authorities turn a blind-eye or lack capacities to prevent such situations, individual risks are transformed from an individual issue to a structural economic and societal feature undermining the rule of law and creating a class of exploitable subjects (Hosein 2019, 191ff).

When societies attracting irregular migrants abstain from regularisation despite a failure to prevent irregular entries and to terminate irregular residence by means of expulsion and deportation, the population of irregular residents will inevitably increase.

The current situation in the US demonstrates the political effects of non-regularisation. The combination of ineffective border controls, limited capacity to remove irregular migrants and toleration of residents in an irregular situation has led to the emergence of a well-integrated population that lack civil and political membership. Yet the failure to reduce irregularity through regularisation has backfired and provides rhetorical ammunition for extreme right-wing anti-migration propaganda. The current irregularity-related political cleavage in the US is strongly driven by political interest groups evoking sentiments against irregular migration and regularisation. The U.S. example implicitly indicates that the implementation of regularisation can be considered as an effective tool to keep the stock number of irregular residents low when policies to prevent irregular entries and to remove irregular residents prove to be ineffective.

4. AN APPRAISAL OF OBJECTIONS AGAINST REGULARISATION

The objections against regularisation introduced above constitute important obstacles hindering the implementation of regularisation as a standard migration policy tool – and therefore it is important to engage with these objections. Yet apart from substantive arguments against regularisation there are also objections based on the political cost of regularising in a context of a polarised debate on migration, a public with strong preferences for restrictive migration policies, the increase of voter support for right wing parties, and the shift to the right of formerly mainstream parties. This paper is not concerned with the politics of regularisation. Suffice is to note that the public's view is not uniformly negative but rather depends on the problem framing and policy design (Gschwind et al. 2025, Rheinberg and Vollmer 2024).

Regularisation needs to be considered as a policy option, as states' power to expel are inherently limited. The reasons limiting the ability of states to deport migrants in an irregular situation are well-known, including the reluctance of countries of origin and transit to cooperate in effective efforts to curb cross-border movements outside the legal framework, businesses as well as the wider population benefiting from undeclared employment of irregular migrants, and the stubborness of social processes inducing and perpetuating irregular migration (Bommes and Sciortino 2011; Castles 2004; Czaika and De Haas 2013). As long as governments claim monopoly to decide on the legitimacy of cross-border movements without providing sufficient opportunities that resonate with the economic demand and social interests for immigration, migrants in an irregular situation will remain a structural feature of countries of immigration. Most critics of regularisation would accept these empirical claims, yet still raise a number of objections to regularisation, which we will discuss in more detail below.

First, regularisation is refuted with the argument that deviant behaviour will be rewarded and thus a wrong message sent to both (future) migrants and residents who are expected to comply with the law (system integrity concern). This argument relates to the principle that a democratic and constitutional state can legitimately expect citizens and residents to comply with legal regulations. But in liberal democracy, there is also an obligation of the state to provide clear, transparent and fair rules that give social actors a clear frame for their expected behaviour and which avoid sending out mixed signals. However, in democratic and constitutional states most punishable acts of misconduct come sooner or later under the statute of limitation. The limitation principle corresponds with an understanding that the

need to execute punishment reduces in the course of time and serves the purpose to regain and keep legal certainty. In addition, the limitation principle protects the legal system from overburdening. Correspondingly, the application of the limitation principle should also cover behaviour legally characterized as irregular migration (Cf. Carens et al. 2009).

Second, regularisation is considered to disadvantage those migrants who respect migration rules and enter a territory only with required permissions (fairness concern). This argument neglects that irregular migration occurs because migration policies does not offer gates of entry, restrict access with high conditions or is a long-lasting bureaucratic procedure with an uncertain outcome (Czaika and Hobolth 2016). Under such circumstances, even persons who are principally eligible for immigration (as relatives, spouses, workers or asylum seekers) choose to move without required permissions. Among irregular migrants, many would be probably eligible under better designed and more pragmatic admission policies.

Third, a core argument against regularisation is the allegation that it does not contribute to solve the problem but enhance it due to the message that there will be subsequent regularisations and thus incite and motivate irregular migration (pull-effect concern). However, there is no evidence provided for such a pull-effect mechanism and the extant literature has by and large not found evidence (Czaika et al. 2024). On the contrary, irregular migration is driven by disparities. Moreover, the function of regularisation is not to deter future irregular migration but to offer an exit out of irregularity. Regularisation is very effective and successful in this regard. When irregular migration continues, this is not a failure of regularisation but of ineffective policies and measures serving the purpose to deter and prevent irregular migration. In order to prevent irregular migration, it is more promising to consider and implement policies that deals more practically with irregular border crossing and stay. In this vein, it is worth to remind that the most effective tool for reducing irregular applied by the European Union was the introduction of free movement for citizens of new member states from Eastern Europe, which constituted a de-facto large-scale regularisation programme providing an at least temporary legal right to remain for large numbers of migrants from new Member States (Kraler 2009).

Fourth, another objection against regularisation is that migrants may fall back into irregularity, as seen in Spain (Sabater & Domingo, 2012). While this objection raises a valid point, it is essentially a question of how regularisation policies are designed and thus can – in principle – be addressed by designing policies in a way that the risk of regularised migrants falling back into irregularity is minimised, for example by ensuring people can change jobs without losing their residence permit, or foreseeing realistic income, housing and other conditions that allow the renewal of residence permits. Indeed the ‘probationary’ design of the majority of regularisation policies in the EU, with short term permits being the most prevalent form of permits issued leaves regularised migrants in a precarious condition (Cacciapaglia et al. 2025).

Finally, regularisation is suspected in welfare states to open the gates for immigration into the social security systems, thus burdening the systems and fueling resentments among the resident population. However, it is more convincing to consider that the refusal to regularize

the stay of migrants who cannot be removed is an even more serious mechanism pushing migrants into social welfare or informal economy. In fact, a policy that prioritises to keep foreign nationals obliged to depart but cannot be removed in a legal limbo and does not allow access to employment, increases the social welfare burden. The priority to scare away non-deportable irregular migrants known to authorities by obstructing access to employment increase social welfare costs. Thus, offering a way out of irregularity through regularisation is a tool that allows migrants to participate in the formal economy, to pay taxes and contribute to social welfare system (cf. on Portugal Urbano de Sousa 2025).

5. APPRAISAL OF ARGUMENTS IN FAVOUR OF REGULARISATION

Our appraisal of objections against regularisation indicate that they are weak in ethical, economic, social and pragmatic perspectives. Political theorists argue that irregular migrants acquire a moral claim to remain in the course of time, due to increasing development of social bonds with the host society (Carens et al. 2009, Carens 2013, 150). In practical terms, acceptance of regularisation as a pragmatic response is reasonable because the chance to remove an irregular migrant reduces significantly with the passage of time, as the case of Germany shows (Peitz 2025). Regularisation thus should not be conceived as an alternative to return, but rather as a response to non-return and leaving migrants with an obligation to leave in a limbo indefinitely (Kraler 2025). In order to avoid that non-deportable foreign nationals remain in a legal limbo and depend on social assistance for an unlimited time, it is reasonable to make a new beginning and offer a residence status. This logic is already inherent in the applicable European law. The Return Directive stipulates that a residence permit has to be issued in cases when authorities expect that departure cannot be realized within 18 months. Thus, regularisation is a principally accepted policy tool both in European and national contexts. Even a country like the UK that harshly seeks to scare away irregular migrants by depriving them of rights, offers on amnesty for individuals who have been living in the UK for twenty years (Jolly 2024). The examples of countries offering regularisation at a large scale, notably Spain and Germany, show that regularisation does not stir-up severe concerns among the resident population. On the contrary, it is the increase of the stock number of irregular migrants induced by the failure to implement effective regularisation programmes and measures that facilitate hooks for extreme right-wing populist anti-migration propaganda. What is more, evidence shows that regularisation can have a wide range of positive effects, including on migrants' formal labour force participation, well-being and access to health (Kraler 2025a).

To sum up, since governments claim to govern migration but fail to do so, regularisation should be included in the toolkit of migration governance as an accepted instrument that effectively prevent that the stock number of irregular residents increase continuously.

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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.

More information on the project is available at www.irregularmigration.eu.

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