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## Policy responses to the presence of irregular migrants: A typology

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## Summary

This working paper is aimed at researchers and others interested in understanding and classifying policy and practical approaches to migrant irregularity. Addressing irregular migration has become an important focus within the migration policy field. Policymakers tend to emphasise the need to address irregular arrivals, yet in fact have a wide range of policy responses at their disposal. M<sub>Irre</sub>M research has highlighted the wide range of policy responses to the presence of irregular migrants, including how policies provide pathways into and out of irregularity (Hendow et al., 2024); this working paper aims to classify them within a typology. It builds on the existing M<sub>Irre</sub>M conceptualisation of migrant irregularity (Kraler & Ahrens, 2023) , focusing on the intersection between the pathways into and out of irregularity and the stocks of irregular migrants.

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## **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.**

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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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Irregular Migration; Policy; Typology

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# 1. INTRODUCTION

What kind of policy responses do states have at their disposal, and why do they take the approaches they do?

## 1.1 Policy (response) types and policy rationales

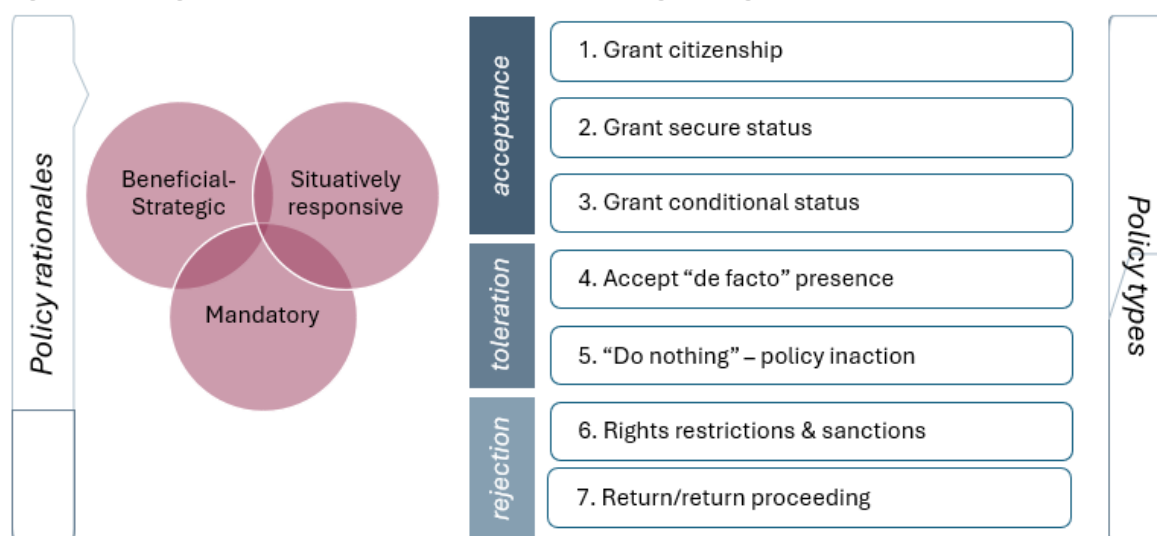
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Typologies have a long history in social sciences but gained even more importance in qualitative research over the last 30 years. They are developed “to comprehend, understand and explain complex social realities as far as possible” (Kluge, 2000). A typology is a systematic classification of observed phenomena into distinguishable categories based on common characteristics or attributes. It often provides an initial framework for a better understanding of complex social realities by describing a wealth of different observations, behavioural patterns or actors along defined types or categories.

For the purpose of this working paper, we aimed at developing a descriptive typology of policy responses to the presence of irregular migrants on state territories, based on a mapping of policies done in the M<sup>IR</sup>reM project (Hendow et al., 2024). Drawing on Bauböck and Permoser (2023), we classified a broad range of empirically observed cases according to their **level of inclusiveness** as the main attribute. We understand inclusiveness as the extent to which state policy responses provide access to rights, resources and opportunities for migrants who normally would be excluded from this access due to their irregular residence status. Our research revealed that the national-level policy responses we have identified across the 20 countries under study varied significantly in addressing the presence of irregular migrants on their territory and in applying the principle of inclusiveness.

Overall, we have identified **seven types of policy responses to the presence of irregular migrants**, ranging from the granting of citizenship to enforced return (see Figure 1). Our findings showed that states applied the full spectrum of possible responses to irregularity in their policies and measures. At the same time, they have not necessarily done so in a uniform or coherent manner. Comparable situations resulted in significantly different approaches. There therefore appear to be additional factors that cause states to favour certain types of responses from the spectrum of available options in a given situation.

Figure 1 Typology of policy responses to the presence of irregular migrants



Note: This typology examines national-level policy responses, not international (EU) or local and regional levels. Although EU law has been relevant in terms of setting the terms that affect status situations for irregular migrants at the national level, and local and regional authorities are crucial in providing access to services, only the national level has competence in terms of all policy responses identified in the research. However, there are instances where the national level may delegate its authority to local or regional entities to address irregular migrant populations. Concretely, this has occurred in two of the types identified (type 3: *granting conditional status* and type 4: *accepting ‘de facto’ presence*) and therefore is also discussed in the respective sections.

The study of concrete state practice suggests that responses to irregularity depend heavily on a number of contextual factors that determine, expand or restrict the available options for action from the decision-makers’ perspective. Such factors are manifold and include: the immediacy and urgency of the situation (e.g. sudden large-scale presence of irregular migrants due to a conflict in the neighbourhood); ‘agency’ on the side of states or dependency on others (e.g. the level of readiness of countries of origin to readmit their citizens); capacity (e.g. sufficiently equipped institutions to administer requests for residence/work permits from abroad); economic pressures (e.g. demand for informal work in the agricultural sector); legal restraints (e.g. obligation to grant access of children to education regardless of their residence status); humanitarian concerns (e.g. individual vulnerabilities or hardships not covered by legal obligations); the visibility or non-visibility of irregularity (e.g. highly-visible cases of irregular migrants engaged in crime vs. non-visible and socially accepted informal work in private settings); and/or the visibility or non-visibility of political action or inaction (e.g. external processing of asylum claims vs. laissez-faire approach towards overstaying of seasonal work permits). Although the individual or simultaneous occurrence of these factors does not directly indicate the specific response that states will give, it does define the framework of options that they will choose in certain contexts and situations. Thus, an expected positive effect of the measures on public and voter approval is a decisive factor when it comes to the choice of the type ultimately applied.

In view of this, this working paper identifies different policy types (in terms of measures to address the presence of irregular migrants) as related to different rationales engaged to support the policy choice. We summarise aspects related to these three domains under the



term ‘policy rationales’. For this working paper, we identify three main policy rationales or logics at play: Beneficial-Strategic, Situatively Responsive and Mandatory. These logics shape policies and may, as explicit rationales, be used to determine, legitimise and communicate the respective approach chosen.

**Beneficial-Strategic rationale** portrays the chosen response as beneficial for achieving broader policy goals (e.g. related to labour market, public security or external state relations) and beneficial in the context of political expediency and voters’ acceptance.

**Situatively-Responsive rationale** attributes the chosen policy response to specific contextual needs or drivers such as large-scale arrivals, a backlog of visa requests or asylum claims, or persistent obstacles to the return of irregular migrants.

**Mandatory rationale** emphasises the necessity of the chosen policy response for adhering to legal obligations stemming from international asylum, human rights or EU law.

In practice, the respective decisions in favour of a certain response type cannot always be assigned to a single rationale. However, it is possible to identify whether the aspects of a particular rationale played a role in the decision in favour of a particular policy response and, if so, how significant this role may have been in the context of a specific example.

## 2. TYPES OF POLICY RESPONSES

There are a wide range of policy responses to the presence of irregular migrants. Yet how states decide which to implement, and for which groups, depends on the policy rationale and approach they apply.

In the following, we briefly set out examples of seven identified policy responses to the presence of irregular migrants and discuss the relevant/associated policy rationales or logics. It is important to note that these types do not apply equally to all irregular migrants within a country. Instead, some types target only specific subsets of the irregular migrant population, based on specific criteria and therefore may appear in combination.

### (1) Grant citizenship

A first policy response, albeit rarely applied, is the direct granting of citizenship to migrants irregularly present. We identified only one national case in which this approach has been applied, namely in Portugal, and only for irregular migrant children. In Portugal, access to citizenship was initially provided for the children of irregular migrants who had completed primary education in the country, as well as those children born to a parent who also had been born in Portugal (regardless of whether the latter held a legal residence permit at the time of the child's birth). In 2020, this policy was expanded to include children born to parents who had lived in Portugal for at least one year at the time of birth (regardless of whether they held legal residency or not).

Said revisions to the citizenship law were justified as **beneficial-strategic**, highlighting their longer-term positive impact on overall social cohesion. Specifically, the policy approach was argued to mitigate risks linked to the marginalisation stemming from growing populations of second- and third-generation (irregular) migrants on Portuguese territory without access to participatory rights and economic and social opportunities.

### (2) Grant secure status

Here, a number of policy responses that grant secure status to irregular migrants on the national territory can be identified. A crucial feature of these approaches is that the status granted is stable, not provisional, and cannot be revoked if circumstances change (as for example is the case with conditional statuses such as humanitarian protection or temporary protection). The main types of status under this category include firstly denizenship or permanent residency, and secondly non-permanent but stable status, characterised by mid- to longer-term duration and grounds for granting that cannot be easily revoked.

The key difference between the two is the temporality of the status. For example, recognized refugees may be granted long-term residence following the acceptance of their asylum claims. For non-permanent but stable residence, this includes statuses provided by regularisation programmes or mechanisms that offer access to status to those who meet a

set of specific criteria defined by the respective programme. These criteria can vary widely: they may be broad as seen in time-bound regularisation programmes (e.g. Canada 2020, Greece 2023, Ireland 2018, 2022, Italy 2020, Morocco 2013, 2016, Poland 2012) or permanent mechanisms (e.g. Portugal's 2007 *mechanism*, Spain's *Arraigo*, the Netherlands' *Children's Pardon*, France's *Valls Circular*). But they also refer to more targeted mechanisms that target specific and narrowly defined groups, such as victims of crime or spouses or children of citizens or legal residents. In Italy, for example, residence permits can be granted to victims of trafficking or domestic violence, notably without the condition of cooperation in a judicial proceeding and may later be converted to permits eligible for work purposes.

States consider different reasons for the provision of secure status, which, depending on country and situation that should be addressed, can encompass any of the three **rationales**:

One can observe the **strategic and beneficial** reasoning in cases in which strategic labour market need has led to both permanent regularisation mechanisms to ensure legal access to the labour market (e.g. Spain's *arraigo laboral* and *por formación*), as well as regularisation programmes providing status to individuals with specific skills (e.g. in Italy for those working in agriculture, domestic, and care work).

In Germany in 2022, those with long-term tolerated status were able to access regular status: given that this population could not be returned and retained a temporary and conditional status for several years, the provision of a stable status was **situatively responsive** in terms of dealing with this situation.

Ireland's two 2022 regularisation programmes of longer-term irregular migrants and those pending decisions on their international protection claim aimed to address the challenges faced by long-term undocumented migrants in the country, on the one hand, as well as to clear the backlog of asylum claims compounded by the pandemic, on the other, thus reflecting both strategic and situational reasonings for the sister regularisation programmes.

Finally, the granting of a secure status can also be the result of the third type of **mandatory** rationale, which emphasises the necessity for a certain policy response out of legal obligations. Here, an example is the provision of access to residence permits for irregular migrant parents of EU citizen children, subsequent to the EU Court of Justice *Zambrano* 2011 and *Chavez-Vilchez* 2017 rulings, which had to be then mandatorily applied within national frameworks of EU Member States.

### (3) Grant conditional status

Conditional residence statuses imply those that can be revoked, even if individuals may hold such statuses for years or even decades. They could be revoked, for example, if the situation in the country of origin changes, if the concerned individual's medical situation resolves, or if policy attitudes towards a certain group undergo change, among others. This includes provisional status provided to those whose asylum claim is under consideration, as well as status granted on humanitarian grounds, subsidiary protection, or temporary protection. In the US and Türkiye, there are examples of persons holding temporary protection statuses for over a decade. Yet, recent political wrangling in the US over rescinding Temporary Protected

Status for six countries<sup>1</sup> highlight the precarity of these statuses nonetheless. Sometimes these permits can be converted to more stable residence permits, but not always.

Narrower regularisation mechanisms, such as those providing residence status based on ‘hardship’ or ‘exceptional circumstances’ like humanitarian or medical grounds, are examples of policy responses providing conditional status on a discretionary basis. In Poland and Spain, humanitarian permits were issued to Belarusians facing risk of political persecution in 2020, and to rejected Venezuelan asylum seekers as of 2019. In Austria, Belgium, Finland, Germany, Ireland, the Netherlands, Poland, the UK and the US, there are conditional toleration statuses provided to those who cannot be returned, for factual or practical reasons. This status can be provided for **situatively responsive** reasons due to practical obstacles to enacting return or, for example in the case of Germany, for **beneficial-strategic** reasons related to labour market needs (e.g. Germany applies a toleration for asylum applicants who have started training in specific occupational fields *Ausbildungsduldung*). Provisional status provided to asylum seekers during the determination process, required for all EU Member States by law, would be an example of a conditional status being provided for **mandatory** reasons.

Sometimes, authority can be delegated by the national level to a local or regional level, which has been identified in provision of conditional status. In Germany, Federal States have introduced Commissions dealing with cases of exceptional hardship, to which irregular migrants can apply for a toleration or residence permit. The final decision is nonetheless still made by the Federal Minister for Home Affairs.

#### (4) Accept ‘de facto’ presence, discretion

Within this subsequent grouping of policy responses (‘toleration’), states do not provide status of any kind, but rather tolerate the presence of irregular migrants to varying degrees. Despite this, national, regional or local governments may still have an interest in including irregular migrants, especially regarding access to services.

They may do so for **beneficial-strategic** considerations, given that understanding the size and composition of the population present is essential for effective planning and resource allocation to services in specific sectors, regardless of migration status. By incorporating such measures, governments address immediate practical needs and enhance the effectiveness of their service delivery systems, while also mitigating the potential barriers that might arise from the irregular status of some migrants. The national level may also delegate authority to the local or regional government in such cases, facilitating more nuanced responses. Here, ‘firewall’ policies are particularly relevant, especially in the health, education and housing sectors. For example, in Germany, firewalls have been introduced to exempt educational institutions from reporting irregular migrants and to ensure welfare authorities are prevented from transferring information on irregular migrants to other authorities.

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<sup>1</sup> The Trump administration terminated Temporary Protected Status for El Salvador, Haiti, Nicaragua, Sudan, Honduras, Nepal. This policy was never implemented, however, as it was pending during ongoing court challenges and was subsequently repealed under the Biden administration.

During the COVID-19 pandemic, national policies allowed access to services irrespective of status, including healthcare (e.g. vaccinations, testing, treatment) and housing, with a **situatively responsive** rationale given the unique situation. In Germany, a number of federal states launched specific initiatives to reach irregular migrants through anonymised vaccination offers or mobile vaccination teams. In England, the so-called “Everyone In” initiative encouraged local authorities to house all homeless people, regardless of immigration status.

#### (5) ‘Do nothing’ or policy inaction

As compared to the previous type, states here either turn a blind eye or decide to not enact (or postpone) any specific policy on irregular migration, although they are aware of a situation of irregularity. In the **‘do nothing’** approach, states may strategically avoid formal responses, balancing political, economic, and practical considerations. It may carry both **situative** elements (e.g. a situation cannot be addressed because of a lack of political agreement or due to sudden and unexpected events (e.g. large-scale arrivals)) and **strategic** elements (e.g. pending development of a new policy framework). The main outcome for migrants is a situation of limbo (their status is not regularised and their exit is not enforced), which can last for years or even decades, despite the principle acknowledgement by states that a situation of irregularity needs to be addressed or resolved. Even though this approach is hardly made explicit, a few examples can be identified that support the outlined hypothesis.

In the US, a number of government initiatives to regularise portions of the irregular migrant community (e.g. DACA policy) and to comprehensively reform the immigration system (e.g. under the Bush administration) have failed – the last broader reform having taken place in 1986. As a result, irregular migrants face significant obstacles in accessing status, even those who are longer-term present. In the case of Poland, in 2016 it annulled its migration policy strategy, and began development of a new strategy. Its inter-ministerial Committee on Migration proposed in mid-2021 a draft migration policy (in response to the previous migration policy that was abolished in 2016), suggesting measures to reduce the size of the irregular migrant population present in the country, which was rejected by the Council of Ministers. Moreover, also in 2021, the Ministry of Interior and Administration dissolved its own unit charged with developing Poland’s migration policy, citing “abrupt changes in Poland’s neighbourhood”, namely, the large-scale arrivals to its border with Belarus. Strategic inaction is also evident in the simplified employment procedures for certain foreign nationals in Poland, which ultimately led to repeated instances of fraud and growing public attention towards the shortfalls of insufficiently regulated policies.

In these cases, the inability to implement substantial reforms might be driven by political expediency, a desire to avoid controversy, or an overall strategy of maintaining flexibility and avoiding too rigid legal frameworks, illustrating **beneficial-strategic** rationales. Inaction in this case can serve strategic purposes directing stakeholders to a more or less intended policy of (non-)response. Inaction, however, often results in non- or ineffective delivery of migration policies and growing public concerns about the effectiveness of migration governance systems.

Indeed, in the Polish case, recent exposure of the misuse of simplified employment procedures and related visa fraud have led the Polish government to adjust its approach with

more stringent visa policies, demonstrating a reactive stance to emerging issues and irregularities. In the US, a web of patchwork policies of temporary status (Temporary Protected Status, Deferred Enforced Deportation, parole in place, etc.) have grown over the past nearly four decades, along with broader issues of ineffectiveness of the immigration system (e.g. backlogs). In both cases the lack of a comprehensive national policy, the strategic approach to ‘do nothing’, lead into the need for certain **situatively responsive** approaches.

#### (6) Rights restrictions and sanctions

Within this grouping of policy responses to the presence of irregular migrants – ‘rejection’ – the prevailing rationale that applies has been **beneficial-strategic**, often for political expediency reasons and in parallel with more negative public sentiment towards irregular arrivals. The main arguments provided by states for this type and the next one are the preservation of the legitimacy and credibility of migration (and protection) regimes that have to distinguish between regular and irregular statuses, in which they acknowledge safeguards that exist to protect (also irregular) migrants’ rights, but ultimately ‘have to’ revert to enforcement in order for migration policies to function and deliver in the eye of electorates.

Thus, rights restrictions and sanctions carry a strong communicative element, aimed at convincing the public that states are willing (and able) to enforce migration regimes and discouraging migrants from irregularly arriving and continued irregular residence. Under this type of policy response, states impose restrictions on migrants’ rights and issue sanctions to them or others deemed as ‘facilitating’ their presence. The UK’s ‘hostile environment’ and ‘compliant environment’ policies (including “no recourse to public funds”) are designed to prevent irregular migrants from accessing any public services, as well as making it difficult for them to use banking services, rent housing and find work. It does so by inter alia applying sanctions to landlords and employers for housing or employing irregular migrants. More expansive approaches to detention policies (restricting freedom of movement of irregular migrants) are another example, often in conjunction with return facilitation. As an example, the Austrian Asylum Summit of 2016 prioritised extending detention periods in the context of return. In Italy, recent policies have implemented sanctions against boat drivers transporting irregular migrants, increased maximum detention periods, and established new detention centres, including for asylum seekers at the border (See Cutro Law as the most recent example).

#### (7) Enforced return and return proceedings

Finally, states also implement return policies to support the removal of irregular migrants on the territory. While the previous type does of course implement policy aiming to promote migrants to return or ‘self deport’, in this case the state actively promotes and expands its return policy. Often the two types work in tandem under a broader migration policy approach. Regularly, the emphasis on enforcing returns is based on **strategic** considerations to reach cross-party consensus or shut down criticism by the political opposition, as can be observed in the increased deportations implemented under President Obama in the US and President Macron in France. Similarly, the German Coalition government introduced legal initiatives to

strengthen deportations of irregular migrants, responding to political pressure from right-wing parties.

Readmission agreements with countries of transit and origin have been important policy measures by which states aim to fast-track return processes. The 2016 EU-Türkiye agreement was considered important for political leaders across Europe at the time as a measure to reduce and manage irregular migration, although it has been criticised by civil society actors and questioned regarding its actual impact on arrivals and stocks of irregular migrants.

Given the challenges in implementing forced return processes, policy measures promoting assisted voluntary return programmes play an important role as well, not least as a way to increase the acceptance of return on side of countries of origin and to improve overall return rates. They have become a regular feature of EU Member States migration governance, but are also implemented by third countries on the EU's external borders, such as Bosnia and Herzegovina, Morocco, and Tunisia. The latter have been criticised as not rooted in such countries' own interests but in a distinct form of externalisation of the EU's migration policy that aims at a trade-off between approximation to the EU and third countries' readiness to prevent certain migrant categories, including asylum seekers, from reaching intended destinations in the EU. Consequently, deepened cooperation between the EU and neighbouring countries on return and externalisation of border management can be considered as falling under the **beneficiary-strategic** rationale, both in terms of EU migration control, and the more general geopolitical positioning of neighbouring countries vis-à-vis the EU.

### 3. CONCLUSIONS

Our analysis of state responses to the presence of irregular migrants reveals a **more complex and differentiated picture than one might expect**. While parts of the public and the political spectrum may emphasise policies of rejection in recent years, there are actually a wider range of policy options available and applied, and for more varied reasons. In the political as well as the academic debate, it often appears as if regularisation or expulsion are the only instruments that states attempt to use in such situations. But this is not the case. After analysing a broad number of empirical observations, we see these two rather as end poles along a continuum of responses to irregularity that include a number of other response types, such as granting of citizenship, granting of secure statuses, granting of conditional statuses, accepting of ‘de facto’ presence, ‘doing nothing’, restricting of rights and benefits, imposing of sanctions, promoting voluntary return and enforcing return and return proceedings.

We also found that **comparable situations** of the presence of irregular migrants may well lead to **different policy outcomes** and argue that this observation seems closely linked to a number of situational circumstances that define the margins of potentially successful responses, but also to the respective ‘rationale’ states want to apply when selecting and justifying a specific response type. Rationale refers to typical situational contexts as related to the selection of policy response type, as well as explicit and implicit reasons for decision-making and communicative aspects vis-à-vis political audiences. We found that states employ three main rationales. Beneficial-Strategic rationale portrays the respective type as a contribution to achieving broader policy goals and as beneficial in the context of political expediency and voters’ acceptance. Situatively-Responsive rationale attributes the chosen type to specific contextual needs that often root in sudden and unexpected events or lacking alternatives for dealing with the situation. Mandatory rationale argues that the chosen response type is necessary to adhere to broader obligations stemming from international or EU law.

Our findings also provoke the question of relevance both for migrants who are in an irregular situation or for states that need to find political and practical answers to such situations on their territory, and why research should take a greater interest in the topic. A first argument for its relevance is the major impact that the choice of a specific type taken by states has on the concrete situation of irregular migrants. The empirical examples presented in this working paper demonstrate that states respond to comparable situations in very different ways, resulting in different outcomes for irregular migrants in terms of residence, but also equally in terms of access to other rights and benefits.

Moreover, empirical evidence reveals numerous linkages, overlaps and movement between the respective types, often the ‘neighbouring’ ones. The granting of a conditional status, for



example, may serve as a pathway to a secure status at a later stage. At the same time, access to status (stable or conditional) can still lead to the complete loss of any legal status. In the case of conditional status, once the initial basis for granting a provisional status ceases to exist, migrants may fall into irregularity again. For those affected, the diverging impact of the actual response type on residence status and other rights is accompanied by a great degree of uncertainty about their future situation, negatively affecting psychosocial wellbeing and individual integration trajectories. The potential withdrawal of a conditional status is only one regularly observed example in this realm, we have also identified a considerable number of cases of states ‘doing nothing’, policy inaction or fragmenting residence and employments rights, exposing migrants to extended periods of ‘limbo’ and/or the constant threat of losing residence because of participating in the labour market without the necessary permission. If more differentiated policies create a more complex and often more fragmented structural environment in which irregularity is responded to, it would be important to research in more detail which effects the different response types have on the objective situation of irregular migrants present in a country, as well as on irregular migrants’ subjective assessment of their situation and prospects for the future.

For states, the observed range of possible response types can also bring additional challenges. On the one hand, the different types add flexibility to state action and provide a stronger set of instruments. On the other hand, they can also bely uncertainty about the effectiveness of the chosen approach and the difficulty to successfully communicate to electorates why a particular measure was chosen. As stated above, the political, public and academic discourses tend to mainly focus on two of the possible response types to the presence of irregular migrants, namely regularisation and expulsion/return. Regularisation take place quite frequently (either by programmes or mechanisms) yet are hardly ever advertised by states as a successful measure, as they are seen critically by the public, are perceived as contradicting the principle of migration regimes to strictly distinguish between regular and irregular migration and/or are seen as a potential ‘push factor’ incentive for new irregular arrivals. Programmes on expulsion and return resonate more positively with the public and media and consequently are much more frequently quoted in official state communication. Their actual effectiveness, however, rarely lives up to the political promises made at the times of their initiation. When strong political rhetoric on expulsion does not translate into corresponding large numbers on return, as is often the case, it turns into an empty promise that adds to a further erosion of public trust in government capacity and the functioning of migration regimes.

Against the backdrop of one of our main conclusions, namely that in reality states apply a more diverse and nuanced set of measures in response to the presence of irregular migrants on their territory, it would be worthwhile to test our typology on a number of additional cases of state practice to identify *what* response they had chosen (*type*), *why* they had chosen it and *how* they had communicated their choice to political audiences and subsequently perceived the success or non-success of the chosen approach (*rationale*). This would deepen the understanding of the real effects of state policies on the social realities of irregular migration but also provide a stronger empirical basis on the impacts of the various policies on public acceptance and perceptions of the legitimacy of migration regimes.

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