



February 2022

FAQ

REGULARISATION AND ACCESS TO A SECURE RESIDENCE STATUS



SOME DEFINITIONS

'Undocumented people' or 'undocumented migrants' are people whose residence is not recognized by the country they live in. They have not yet been able to obtain a residence permit or citizenship because of restrictive migration and residence policies. Many have had residence permissions linked to employment, study, family, or international protection, but those permits were either temporary or very precarious and their validity expired. There are also children who are born to undocumented parents and inherit this precarious residence status.

'Regularisation' refers to any process or procedure through which someone can obtain a residence status from a relevant government authority authorising – 'regularising' – their stay in the country they residence in. The person applies for these procedures from inside the country, including when residing irregularly, in contrast to residence and work permits which have to be applied for from another country. Two main subsets exist: programmes, which have a limited time period in which to apply, and ongoing mechanisms, with applications accepted on a rolling basis.

'Regularisation' is also the moment that an undocumented person obtains a residence status for the country they live in.

1. Why is regularisation important?

Undocumented people are part of our communities. Chances are everyone has met undocumented people, even if they did not realise it. Undocumented people are neighbours and classmates, parents, spouses and children, breadwinners and caretakers.

But because undocumented people live without a regular residence status, they face forms of exclusion and risk which are harmful to their well-being. Undocumented people live, and usually work, for years while experiencing insecure housing, abuse at work, poverty and fear. Living and growing up undocumented requires a tremendous amount of [resilience](#), and the uncertainty about the future, constant stress of making ends meet and risks of being uprooted from their lives, negatively impacts people's health. [Growing up undocumented](#) affects all aspects of a child's life, from education, to housing, to family dynamics, and can have long-term effects on the child's wellbeing and development. Being excluded from the rites of passage that are part of the transition to adulthood – graduating, learning how to drive, getting married, making enough to take care of your family – impact young people's well-being, identity and [sense of belonging](#) at a crucial time for their development.

Governments and policy makers urgently need to address the harm experienced by people when they are undocumented. One of the key policy tools is regularisation. It is necessary for countries to have a range of residence procedures that can be applied for from within the country, to respond to the real and diverse needs of migrants and society alike. In-country residence procedures, including regularisation mechanisms and programmes, are a necessary part of a fair, humane, and effective migration system and a welcoming, vibrant, and just society.

Getting a secure residence status is the primary concern of most undocumented people. It is rightly seen as the most direct way to living a life of dignity and safety. It should not surprise anyone that regularisation is a priority demand of undocumented communities and civil society alike.

2. What happens to people who are regularised?

Regularisation is a life-changing event. Once regularised, a person can work officially, study at university and go to the doctor when they're sick. They can go for a coffee or do something as ordinary as take the bus without worrying it could lead to a life-changing confrontation with law enforcement. They can stand up for themselves and others when someone tries to abuse or exploit them, without fearing it will lead to detention and deportation. Children can go on a school trip abroad, go to university, get a student job and progress through life at the same pace their friends do.

Living and [growing up](#) undocumented means living under stress and uncertainty, and, once regularised, people are able to breathe, plan their lives and build their future.

However, a lot depends on the provisions attached to the regularisation. If only a temporary residence permit is issued, this relief can be short-lived as people may become undocumented once again. If the permit is attached to a particular employer, there can be risks of exploitation. If family members are not regularised at the same time, the anxiety for them and risks of family separation continue to weigh on people's mental health. Regularisation procedures have to be well-designed and implemented for the benefits to be enjoyed by all (see question 8).

3. What happens to society when people are regularised?

In addition to the direct impact on people's lives, prospects and well-being, governments and society at large also benefit. Regularising undocumented people reduces inequality and social exclusion because people are more able to participate in all the economic, social and cultural facets of the society they live in. They feel safe watching their children put down roots and bond with their peers. It also provides governments with information about the resident population and labour market, and strengthens trust in state authorities among migrant communities.

Countries' finances also benefit from regularising undocumented people. [Operation Papyrus](#), a 2017-2018 programme that regularised 1,663 adults and 727 children in the Swiss canton of Geneva, generated a benefit of at least [5.7 million Swiss francs](#) (approximately 5.2 million euros) for the cantonal social insurances by the end of 2019.

When a government fails to introduce fair and effective regularisation procedures, it leads to unnecessary bureaucracy and pressure on the courts systems. When people cannot apply for regularisation and can only appeal against orders to leave the territory, judges must then process these appeals. People may be applying for residence permits that are not meant for them, simply because it is the only one available to them. This also causes people who are undocumented unnecessary anxiety, has a massive impact on their wellbeing and the wellbeing of their children, and wastes their time and financial resources. In short, when countries have good-quality regularisation procedures in place, they benefit by having stronger connections to local communities and communities that trust they will be treated fairly.

4. What European countries have already regularised undocumented people?

The most comprehensive study on regularisation programmes and mechanisms in the EU is the [REGINE study](#) (2009), which identified that 24 of the 27 EU Member States implemented regularisation programmes or mechanisms between 1996 and 2008, and some several times. An estimated total of 5.5 to 6 million people were regularised in that time. 43 regularisation programmes were implemented in 17 EU Member States in those twelve years, involving 4.7 million applicants, of which at least 3.2 million were regularised.

More recently, a [study](#) by the European Commission's European Migration Network found that 60 'national protection procedures' (as distinct from international protection, and most of which we would call regularisation mechanisms) existed in the 24 EU Member States, the UK and Norway surveyed at the end of 2018. The survey included procedures based on humanitarian grounds, exceptional circumstances, medical grounds, childhood, non-refoulement and climate change. It did not include residence statuses for [victims of crime](#) or [trafficking](#).

Regularisations, especially regularisation programmes, have been used with different objectives in mind and often reflect the government's broader approaches to equality, migration management or the economy. Regularisation has, for instance, been used both as a response to an acute economic challenge and as a response to a failing of the wider migration system. [Italy's 2020 regularisation programme](#) for agricultural workers in the face of the Covid-19 pandemic is an example of a government response to the economy, while Sweden's regularisation programme for aged-out unaccompanied children and [Ireland's 2022 regularisation programme](#) are examples of a program addressing a broader migration policy issue.

Countries neighbouring the European Union have also regularised undocumented people, including [in the OSCE region](#). For instance, Kazakhstan regularised approximately 165,000 undocumented workers from Commonwealth of Independent States (CIS) countries through a 2006 programme.

It is clear that governments across Europe have seen regularisation as a legitimate, proactive policy measure to meet their social and developmental objectives, as well as human rights obligations. However, many of the schemes showed flaws in their design that created new challenges and suffering or meant they did not reach the people they were supposed to. Learning from past regularisations, there are clear ways to avoid such pitfalls and have inclusive and successful regularisations (see question 8).

5. Does the EU allow regularisation of undocumented people?

Yes, European Union law allows Member States to regularise the residence status of anyone on their territory. More specifically, the 2008 [Return Directive](#), one of the main EU laws addressing the situation of undocumented people, underlines that undocumented migrants can at any moment be granted an “autonomous residence permit (...) offering a right to stay for compassionate, humanitarian or other reasons” by Member States (art. 6). This was important to provide EU-wide legal recognition and space for the whole range of regularisation programmes and mechanisms that different governments implement (see questions 4 and 7). Importantly, in 2019, the European Parliament [encouraged](#) Member States to provide residence permits to people stuck in “administrative limbo.”

In addition, the following EU directives include provisions for residence permits for certain undocumented people who have been victimised:

- Survivors of conjugal violence with dependent status: the 2004 [Citizens’ Rights Directive](#) and the 2003 [Family Reunification Directive](#)
- Victims of human trafficking: the 2004 [Residence Permit Directive](#)
- Victims of severe labour exploitation: [Employer Sanctions Directive](#)

For more on residence permits for victims of crime in Belgium, France, Germany, Greece, the Netherlands, Italy, Poland, Spain, Switzerland and the United Kingdom, see our 2020 report [Insecure Justice? Residence permits for victims of crime in Europe](#).

Have any EU countries regularised undocumented people due to the COVID-19 pandemic?

For undocumented people, the COVID-19 pandemic and the lockdown measures have exacerbated the many challenges undocumented people already faced. PICUM's [2020 survey](#) shows that the main concern for undocumented people during the pandemic was the loss of income due to the interruption of work, combined with the impossibility to access state support like unemployment benefits. This meant savings quickly ran out and people depended (solely) on grassroots support, like food parcels, financial gifts, etc. Another prevalent concern was the impossibility to keep social distance, as many undocumented people live in crowded precarious settings, including small private housing, informal settlements, and detention centres.

At least three countries – Italy, [Portugal](#), and Spain – have implemented temporary regularisation measures or made existing regularisation procedures more flexible because of the COVID-19 pandemic.

For a detailed explanation of what they did and an overview of other measures taken by countries because of COVID-19, see our [March to August 2020 overview](#) and our blogpost on the [Italian programme](#). For more information on COVID-19 and undocumented people, visit our [dedicated webpage](#).

When can somebody be regularised?

As countries have the prerogative to establish in-country residence procedures and regularisation schemes (see question 5), they also have the prerogative to establish their grounds, conditions and the overall design of the procedure (see question 8).

Broadly speaking, we can distinguish three types of grounds: those that are based on economic activities (i.e., existing or potential employment of the undocumented person), long residence, integration and connections with society, and other human rights-related grounds. The latter groups a non-exhaustive set of grounds, from respecting the principle of non-refoulement, to medical grounds, to the best interests of the child, family unity, or being a victim of crime.

Most countries do not have residence statuses on each of these grounds but have some of them or combine several grounds for regularisation into one type of permit and procedure.

For more on regularisation schemes available to children, families or youth in Belgium, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Spain and the United Kingdom, see our 2018 [Manual on regularisations for children, young people and families](#). The manual also includes methods for change and policy recommendations.

For more on residence permits for victims of crime in Belgium, France, Germany, Greece, the Netherlands, Italy, Poland, Spain, Switzerland and the United Kingdom, see our 2020 report [Insecure Justice? Residence permits for victims of crime in Europe](#).

8

Why do we need regularisation procedures on other grounds? Are asylum procedures not enough?

No, asylum procedures are not enough. The refugee status determination procedure, which is the core of international protection (asylum) procedures, evaluates whether the person has been or has a risk of persecution because of their “race, religion, nationality, membership of a particular social group or political opinion,” or would suffer serious harm as defined by article 15 of the [EU Qualification Directive](#).

What is usually not considered in the refugee status determination procedure is:

- whether it’s in the best interests of the child’s development and long-term well-being to live in the country or a third country;
- whether people might face risks of serious harm in the country to which they would be returned (which might not be their country of origin) (i.e principle of non-refoulement);
- whether their health might prevent their return or whether (their) serious health needs can be met in the country of return;
- whether they might have strong private or family ties in the country (in particular, but not only, for people who have been living in the EU for years);
- whether they might qualify for other national-level residence permits; or
- their skills, previous employment, and potential to participate in the labour market.

In short: asylum procedures should not be the only in-country residence procedure because they serve a very limited purpose.



Do the existing regularisation schemes work well or not?

For a regularisation scheme to work effectively, quickly, humanely and be fair, it must have the below characteristics. This applies to both temporary programmes and structural mechanisms.

1. **Undocumented people themselves should be able to apply, and the permit itself should not depend on others**, like a spouse, parent or employer. This will reduce dependency on employers and risks of exploitative or violent relationships.
2. **Civil society, including migrants' associations**, are crucial partners for the successful implementation of any scheme. They **should be involved** from the design to the implementation and evaluation of the scheme.
3. Decisions should be based on clear, **objective criteria**. Reasons for refusal should be documented and argued.
 - Wholly discretionary procedures create confusion and may give false hope or, conversely, deter people from applying, because it is not clear who could benefit. They also tend to be applied differently depending on the political inclination of the government in power.
 - A number of years of residence should be sufficient grounds for regularisation. When deciding how long that should be, governments should consider a shorter period for children, families with children and those who have grown up in the country.
 - Other complementary criteria should be developed in consultation with local civil society to meet local realities and needs.
4. **Decisions should be made in an independent and impartial way and be informed by experts** relevant to the criteria to be assessed.
 - For instance, doctors with the relevant specialisation should be involved in decisions on regularisation claims based on medical grounds, while country of origin experts should be involved in the assessment whether the person runs the risk of human rights violations in the country of return (cf. grounds for stay based on non-returnability because of a risk of refoulement).
5. The procedure needs to be accessible in practice. That means that **a good procedure is not bureaucratic, burdensome or expensive**.
 - It should be feasible and reasonable for undocumented people to produce the proof that the government requires. Given that undocumented people try to limit their exposure to government instances for fear of deportation, governments should also be flexible when defining what constitutes proof, especially of stay or work. For instance, a previous employment relationship could be demonstrated through a combination of messages, photos, testimonies, and knowledge, when formal proof like a written contract or social security payments are not available.
 - Governments routinely require a fee to be paid by the applicant or the employer upon application. However, most undocumented people experience poverty, and fees –

especially high fees – make them vulnerable to predatory lenders and exploitative employers. Fees should be minimal and affordable for someone with income below the minimum wage. Fee waivers should also be in place; [Belgium](#), for instance, waives the application fee for children.

6. Several **procedural safeguards should be in place**, including free legal aid and information on the criteria and process should be provided throughout; the procedure should include the possibility to appeal; and adults and children should be heard (or have the possibility to be heard).
7. Undocumented people usually have very restricted access to services because of their status. They may also fear that their irregular immigration status could be transmitted by service providers or the justice system to immigration authorities if they try to access services or justice. **A temporary status that grants access to services, justice and the labour market should be provided during the application process to prevent and alleviate suffering and promote inclusion.**
8. **The resulting residence permit should be secure and long-term**, and count towards citizenship. It should not depend on anyone else, like a spouse, parent or employer.
9. Regularisation programmes should be flanked by permanent mechanisms and **accompanied by measures to support the applicants and address the causes for irregular stay and work.**
 - For instance, the Swiss [Operation Papyrus](#) included public campaigns to encourage formal employment of domestic workers, labour market controls to ensure working conditions were being met once workers were regularised, and measures to ensure that those regularised would not remain isolated but have support, for example to find affordable French classes.

10. If I would like to know more, what can I read?

- PICUM, 2020, [Insecure Justice? Residence permits for victims or crime in Europe](#)
- PICUM, 2018, [Manual on regularisation for children, young people and families](#)
- PICUM, 2018, [Talking points to argue for the regularisation of children, young people and families](#)
- PICUM, 2009, [Undocumented and seriously ill: Residence permits for medical reasons in Europe](#)
- PICUM, 2022, [Turning 18 and undocumented: Supporting children in their transition into adulthood](#)
- PICUM, 2022, [Barriers to return: Protection in international, EU and national frameworks](#)

**Do you have any
question?**

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