## 1. General remarks

The following countries have participated in the preparation of national reports which are referred to and discussed in this synthesis report:

- France;
- Portugal;
- Poland;
- Spain;
- United Kingdom.

These are published in two volumes – Volume III (France, Portugal, Poland) and Volume IV (Spain, United Kingdom).

Reports have followed the same format as the previous series of reports prepared in 2007 by Armenia, Germany, Greece, Italy and the Russian Federation, which have now been published by the Council of Europe. This synthesis report is intended to draw out key conclusions from each of the national reports and to outline some examples of "good practice" that may be of use to other countries considering regularisation programmes. The intention, as ever, is to ensure that an appropriate balance is struck between meeting the policy objectives of Council of Europe member states in respect of irregular migration and regularisation programmes whilst ensuring that the human rights of those directly affected are protected.

The present series of reports is once again concerned with one of the most difficult and dramatic manifestations of migratory flows. The fact that so many people choose to enter member states clandestinely is a graphic illustration of the pressures that many people feel to migrate. These pressures are many and varied – people flee from famine and war, become victims of organised crime and are trafficked, or may wish to migrate for family or economic reasons to a country that has no legitimate path by which they can enter. So in developing regularisation programmes, the key factor for the working group was the need to recall that at the end of each and every process concerning illegal migration there is a human being. The need to respect their human dignity should be paramount.

One of the key issues across the countries participating in the current round of research was the fact that the majority of irregular migrants do not pose a particular economic drain. For the most part they are in employment – albeit often in the so-called "grey economy" – so are not a direct drain on public resources. However, it stands to reason that they may not be contributing to the state either as they may not be paying taxes or social security contributions. The very nature of this "shadow economy" means there is a real risk

that individuals will not seek to access basic health care or other fundamental human rights. A notable exception is Spain, where all migrants, whether legally in the country or not, are required to register for social security provision in their locality. There are no sanctions on public authorities for providing this care, nor is there an obligation upon them to report a migrant's status to the immigration authorities. So local taxes, at least, get paid and basic services are provided for those in work. This is in sharp contrast to the United Kingdom where public authorities and employers are obliged to check the status of migrants and to ensure that they have permission to work.

In focusing on irregular immigration, the French report reviews one of the most difficult and dramatic aspects of population movements. It refers to legislation governing the reception and residence of foreign nationals in France and to discussions and investigations conducted by commissions of inquiry, the French Parliament and other bodies. It also draws on conversations with persons in charge of implementing the special policy adopted by the French Government. It places particular emphasis on the fact that while so-called irregular immigration is a concern for governments and society as a whole, it also gives rise to strife and violence from which migrants themselves are the first to suffer.

The approach in Portugal is rather similar, in that it too focuses on individuals rather than on blanket schemes. The specific policy initiative evaluated in the Portuguese report aims to allow the state the possibility, where justified by the exceptional characteristics of the specific case, to grant residence permits to foreigners effectively included in the labour market. However, this does not, under Portuguese law, create a mechanism of extraordinary regularisation, although the nature of this policy of extraordinary regularisation has had negative consequences, in that it has caused an increase in irregular immigration.

In Poland, the issue is not so much in the political spotlight, mainly because the numbers of migrants, both regular and irregular, are relatively small compared to some other countries. The main reason for irregularity there is again in respect of the labour market, with some individuals who have entered the country legally choosing to work when their visas do not allow them to do so. There have been two "classical" style regularisation programmes in Poland in recent history but these were widely criticised as having insufficient scope and for being finished too quickly. However, the lessons learned from this experience will influence any future programmes.

Poland has a unique approach to removal of persons caught in an irregular situation. It gives a significant advantage to those who choose to leave voluntarily by reducing the period for which someone who had been in an irregular situation would be excluded.

Combating irregular migration has been a key priority in Spain for many years. The government is attempting, as elsewhere, to balance the needs of the labour

market against restrictive border controls. A particular issue in Spain is the inflow of irregular migrants by boat from the African continent – a product of the particular geographical situation of the country.

There continues to be a large demand for labour in Spain, particularly unqualified or low qualified workers, primarily for temporary work in agriculture and the hotel and catering industry. Another issue for Spain is the fact that the Spanish economy comprises a proportionately high number of small enterprises: some 90 % of employers are in small enterprises. Partly as a consequence of this, the Spanish authorities have organised a number of large-scale regularisation programmes. There is a sense, though, that these have tended to exacerbate the problem of irregular migration, so no more such exercises are planned for the future.

The United Kingdom has consistently turned its back on the possibility of large-scale regularisation programmes. It has continued to strengthen its borders and has used a number of sophisticated electronic and other measures in order to do so. However, there are also real problems in removing some irregular migrants, particularly failed asylum seekers, partly because there are no practicable means of removing persons to some countries of origin, and partly because often it has taken considerable periods of time to detect irregular migrants or to determine claims to remain. The consequence of this is that often the people concerned have put down roots in the United Kingdom and perhaps have children born there. This has led to a pragmatic process of regularisation based on individual circumstances rather than mass regularisation programmes.

A factor that all countries involved in the present round of research have had to take into consideration is, of course, public opinion. It would be unpopular if politicians were to fly in the face of public opinion by undertaking regularisation programmes that did not have the support of the indigenous population, as this could lead to community tensions and an unwelcoming attitude to those benefiting from regularisation. Public opinion varies from country to country and this may well have affected policy decisions in relation to regularisation. It is of course important to take this into account; no regularisation policy is going to be fully effective unless it is complemented by sound policies and procedures to better integrate beneficiaries into the receiving society.

Looking at the reports in a little more detail, one of the factors that seem to guide France's current policy on immigration and the management of population flows is rejection of the idea of mass regularisation of irregular migrants, including those working without permission. Experience in France and elsewhere in Europe has shown that, on the whole, mass regularisation does not change the essential character of a country's social and economic make-up and has no influence on the reasons which prompt ever-increasing numbers of migrants to move to Europe's richer countries. So there are similarities

between the French approach and that adopted by the United Kingdom, which has a pragmatic approach to regularisation on an individual basis, rather than having policies of mass regularisations.

By giving precedence to labour immigration, the French authorities wish to readjust the components of immigration to achieve a better balance. France's aim is to take steps to ensure that over the next five years economic immigration accounts for half of all entries. Again, there are similarities with the approach taken in the United Kingdom, which has recently introduced a "points based system" for immigration. The new United Kingdom system gives clear precedence to labour market forces and is intended to address gaps both in skills and in personnel in various sectors of the labour market. However, the economic downturn at the time of writing will affect both these policies as this will severely limit the amounts of overseas labour required. There is already evidence that in order to protect the resident domestic labour force in both France and the United Kingdom, the numbers of permitted labour market migrants are reducing. Also, especially in France, there is a move to bring many manufacturing jobs, particularly in the car market, back to France from third countries. So "protectionism" may well become a feature of future regularisation policies where, in the recent past, economic development was the driving force.

## 2. Country reports

### 2.1. France

The French report describes both the conditions that can lead to the emergence of labour immigration and the measures taken by the French Government to try to deal with it through specific policies. The aim is to enable irregular migrants working in sectors and parts of the country suffering from labour shortages to get out of their illegal situation, and to help those who wish to return to their country of origin by providing them with special aid and support. One of the main aims of these measures is, subject to certain conditions, to allow irregular migrants working in sectors and parts of the country suffering from labour shortages to escape illegality. The second aim is to provide specific assistance and support for persons wishing to return to their country of origin.

A further goal of these policies is to address the reality of the situation, having regard to the political, economic and social context and taking particular account of needs and expectations in the labour and labour immigration fields. An important factor is the situation of migrants themselves and how they might be repatriated to, and reintegrated into, their countries of origin should this be necessary. France therefore intends to pursue its policy goals in the immigration field by exercising more control over migration flows and

reducing irregular immigration in favour of a more targeted, better controlled and more balanced form of immigration.

The implementation of the policy of exceptional entitlement to residence *(admission exceptionnelle au séjour)* on the basis of occupational criteria represents a step forward in the process of regularising irregular migrants, in that, subject to certain conditions, an occupational status may be granted to foreign workers residing illegally in France if they work in a sector experiencing recruitment difficulties. The restrictive nature of the criteria applied and the precarious situation of workers under this procedure – they are dependent on their employers, who have a say in the decision concerning their eligibility – admittedly constitute limiting factors where this policy is concerned. However, it also creates a largely unprecedented situation in offering such workers the opportunity to obtain a residence permit. From this point of view, the policy is designed to address a reality which is often concealed or overlooked because of its complexity and its illegal character.

Although there is a lack of detailed information on the subject, analysis of the second component of the special policy on irregular migrants and the assisted voluntary return programme shows that this has had little effect in decreasing the numbers of such migrants. There has, however, been a significant upsurge in the number of migrants returning for personal reasons, particularly European migrants from Romania and Bulgaria. Although improvements are called for, the policy is still necessary in view of the grave economic and financial crisis currently affecting all the EU countries, where unemployment and insecurity are rising significantly among nationals and foreigners with legal status.

The regularisation campaigns conducted under the measures introduced (exceptional entitlement to residence) have not yet been the subject of a detailed study to gauge their full impact and analyse any factors that may have limited their effectiveness. The findings of the reports by the various Senate commissions and the arguments expounded by certain specialists offer some pointers to answering the question of the impact of these new measures on irregular immigration.

### 2.2. Portugal

Turning to Portugal, in 2007 the parliament adopted Act 23/2007 of 4 July establishing "the conditions and procedures on the entry, permanence, exit and removal of foreign citizens from Portuguese territory, as well as the status of long-term resident".

This act aims to stimulate legal immigration by simplifying the procedures for obtaining a visa and eventually a residence permit and diminishing the number of entities involved in such procedures. On the other hand, the act aims to fight against illegal immigration, for example through the strengthening of the

sanctions applicable to those who exploit irregular migrants and the protection of the victims of human trafficking. Both objectives are framed by the guarantee of the human rights of immigrants.

Act 23/2007 concentrates the previous six categories of long-term visa into one general and comprehensive category. Of particular interest in the context of regularisation procedures is the fact that Article 109 of the act seeks to balance the fight against illegal immigration with the protection of human rights. It provides, subject to certain conditions, for the granting of a residence permit to victims of human trafficking or of an action facilitating illegal immigration. Article 183(3) punishes, with a prison sentence from two up to eight years, the act of facilitating illegal immigration.

Concerning the rights of immigrants, Article 36 establishes important limitations to the refusal of entry to a foreigner in the Portuguese territory. Article 98(2) states that "a right to family reunion is equally acknowledged with relatives who have legally entered national territory and are dependent on, or live in cohabitation with, the holder of a valid residence permit". It does not require legal permanent residence in the Portuguese territory as a condition to obtain family reunion.

Decree-Law 67/2004 of 25 March 2004 guarantees the right to health care and proper education to minors in an irregular situation.

The specific policy evaluated in the Portuguese report aims to "give the state the possibility, justified by the exceptional characteristics of the specific case, to grant a residence permit to foreigners effectively included in the labour market, in spite of not creating a mechanism of extraordinary regularisation. Because of its appellative effect, such extraordinary regularisation has the negative consequence of causing an increase of irregular immigration". According to this provision a residence permit for carrying out a specified professional activity may be granted exceptionally even if the applicant does not hold a residence visa.

Furthermore, if a person has legally entered the country, he/she will have his/her permanent residence ratified when he/she applies for a residence permit under Article 88(2) and pays the respective taxes and fines.

All foreigners entering Portugal with a visa or benefiting from a visa waiver are considered to have entered legally, even if they started to work right away in breach of their conditions of entry. This therefore excludes all immigrants that irregularly crossed Schengen external borders from benefiting from Article 88(2), namely persons that entered the country without the necessary visa.

The second condition is, however, problematic. In fact, if the immigrant remains legally in the country, has a work contract and is registered with the social security system, this means that he/she does not need the mechanism

provided by Article 88(2). It can be argued, therefore, that the term "legal permanence" established by Article 88(2) is not a genuine condition to benefit from the regime under evaluation. In practice, the criteria an immigrant must fulfil in order to benefit from Article 88(2) are not even included in the website of the Immigration and Borders Service.

If the visa or another document authorising the permanent stay of an immigrant is still in force, then the foreigner is considered to be legally in Portugal, even if he/she has begun to work. If they do not hold such an authorisation, the immigrant may exceptionally benefit from the possibility of ratifying their permanent residence under the general conditions established by Article 71(3) of Act 23/2007. According to this provision, "except in fully justified cases, the prorogation referred to in paragraph 1 may be granted provided the conditions that grounded the admission of the foreign citizen are still in place".

The Portuguese report evaluates the new policy provided by Article 88(2) of Act 23/2007. The main conclusions reached are the following.

The mechanism provided by Article 88(2) of Act 23/2007 cannot be characterised as an extraordinary regularisation. As a matter of fact, successive governments have had the power not to use the mechanism and to adapt it to their policies vis-à-vis fluctuations of the economy and labour market as well as to the social issues of the time.

Some positive aspects of the practical implementation of the policy are as follows:

- The possibility of making an application via the Internet on the one hand facilitates the analysis of all individual applications by the Immigration and Borders Service and on the other hand gives the immigrant an opportunity to easily consult his/her file. This facility also allows for the possibility of the immigrant personally presenting his/her case before a final decision is taken.
- There is a great deal of practical and fruitful co-operation between the Immigration and Borders Service, the immigrant support centres and a number of migrants' associations, which helps provide accurate and appropriate information to possible beneficiaries about this policy.
- A key priority established by the Immigration and Borders Service concerns the investigation of companies which do not give the immigrants they employ a work contract. The flexible interpretation of Article 88(2)(b), makes the mechanism established by this provision effective.
- The access to social rights by immigrants integrated into Portuguese society and contributing to the social security system is positively regarded as a measure that can improve the general welfare.
- Brazilian citizens should be mentioned. They comprise a very significant part of the totality of immigrants and they do not need a visa to

enter Portuguese territory for short stays, according to Regulation (EC) 539/2001 of the EU Council. Information campaigns and collaboration between the public authorities and the NGOs working in this area are strongly recommended in order to make sure that the fear of being deported as an illegal immigrant does not prevent them from benefiting from these rights.

## 2.3. Poland

Whilst the phenomenon of irregular migration exists in Poland it does not attract much social attention nor is it a political issue. This is mainly because the numbers are thought to be relatively low, estimated at a few tens of thousands of persons. The inflow of immigrants to Poland, including irregular migrants, started only after 1989. The phenomenon of irregular migration has various facets, depending on the reasons behind the irregularity. There are irregular migrants that have illegally crossed the border but also irregular migrants who crossed the border legally but then remained illegally. However, more often the irregularity stems from irregular work rather than from irregular stay or irregular entry. A considerable group of irregular migrants present in Poland in the 1990s were the short-term irregular workers from the East, mostly Ukraine, employed illegally in agriculture, construction, retail, and in households. Recently an attempt was made to create channels for legal short-term economic inflow from the East and the new scheme for seasonal workers (up to six months employment for nationals of Ukraine, Russia and Belarus) was put into effect between 2006 and 2008.

European influences have shaped much of the policy development since 1989. The policy was formulated by a limited circle of institutions and organisations, with very little interest from society, the media or political parties. There has been a significant input by some NGOs in the various stages of policy making. The European Union influence on the regulation of and thinking on migration in general was predominant in the 1990s and then enhanced by the EU conditionality mechanisms during the accession process.

A policy of enforcing return to the country of origin is the primary response of Poland to the presence of irregular migrants on its territory. As a rule, foreigners who violate the rules on entry, stay or work are required to leave Poland within a fixed amount of time. Regularisation of stay for foreigners who somehow broke the law is treated only as a very exceptional policy solution.

The procedures of expulsion evolved after 1989 and after some turmoil at the beginning of the 1990s, the country started to develop the legal and technical capacity to expel unwanted foreigners. The evolution of the law was twin-track. On the one hand, mechanisms and procedures to enhance the state capacity to expel were developed and the catalogue of reasons for decisions on expulsion was constantly widened. At the same time, the law on foreigners in

Poland introduced changes that aimed to secure the human rights of persons to whom a decision on expulsion was to be issued.

The rules on expulsion of foreigners are set in the Act on Aliens of 2003. According to this act, a foreigner is subject to expulsion for irregular stay, illegal entry or irregular work and can be detained by the police or border guard for up to 48 hours. Within that time the border guard or police shall make a request to the court to place the subject into a detention centre or under arrest for the purpose of expulsion. The court has up to 24 hours to make a decision. Detention is not an obligatory procedure if an expulsion decision is issued. The arrest for the purpose of expulsion is an exceptional measure and is not undertaken routinely – only if there is a fear that an alien will not observe the rules in the detention centre.

As mentioned previously, an interesting provision in Polish law is the possibility of making a decision obliging an irregular migrant to leave the territory of Poland within a specified time, not exceeding seven days. Such a decision may be issued to a foreigner instead of a decision on expulsion if the circumstances of the case indicate that the foreigner will leave Poland on a voluntary basis. Factors include possession of the necessary documents and the means to make the journey. This form of forced return is more convenient for the foreigner because they face a ban on entry to Poland only for one year, not for three or five years as in the case of expulsion.

Decisions on the obligation to leave Poland are issued in twice as many cases as decisions on expulsion, which is seen as positive. However, some "nationality" patterns can be observed. Whilst it is more likely for Ukrainians or Belarusians whose irregular stay or work is detected to be the subject of a decision to oblige the subject to leave Poland than to order expulsion, Vietnamese or Armenians will more often be subject to an expulsion decision.

In general, the implementation of expulsion decisions currently is viewed as effective and efficient from the operational perspective. The implementation of expulsion decisions amounted to 85.6 % in 2007, whereas the implementation of decisions obliging a foreigner to leave the territory of Poland amounted to 85.8 % in 2007. The problem of establishing the identity of persons subject to expulsion remains the only crucial factor hampering the effective execution of expulsion decisions. However, co-operation with countries of origin sometimes constitutes a problem. Some countries simply refuse to confirm the identity of their nationals as a rule. Readmission agreements are very important instruments in improving co-operation in returns, including forced returns.

As well as forced returns, voluntary returns programmes are available in Poland. They started only a few years ago and are carried out on the basis of an agreement between the Polish Government and the International Organization for Migration. Two major groups of migrants can apply for voluntary return: unsuccessful asylum seekers and irregular migrants (except persons to whom

a decision on expulsion was issued). Assisted voluntary return (AVR) programmes encompass not only assistance in preparations to travel and travel itself, but also, in some cases, reintegration benefits that aim to make the return durable. Currently, efforts are ongoing to increase the number of irregular migrants among the beneficiaries of AVR programmes. This solution has two main shortcomings: it is rather expensive and has a limited target group as migrants usually strive to stay in their current country of residence, and are not attracted by return.

There have been only two, very small-scale, regularisation programmes in Poland since 1989. The first was launched in September 2003 and was aimed at an indeterminate number of irregular migrants who had been in Poland for at least six years. The criteria to regularise were judged as very strict. The time span to submit an application was short – only four months – and turned out to be too short to reach the target group and for them to prepare the necessary documents. Altogether 3 500 applications for regularisation were submitted, the vast majority being Armenian (46.3 %) and Vietnamese (38.2 %). No evaluation of the effects of this regularisation programme was carried out. Data on how many of those who actually managed to regularise their stay in 2003 and still remain legally in Poland is not available.

A second regularisation programme, almost identical to the one launched in 2003, was launched in 2007. The criteria to regularise remained mostly unchanged. Consequently, the number of applications again turned out to be very low – altogether 1 200 were submitted. As was the case in 2003, the vast majority of applications came from Vietnamese and Armenian nationals – 55 % and 29.7 % respectively.

The regularisation programmes, as the answer to the presence of irregular migrants in Poland, were in general criticised as an example of policy failure as they were tailored with excessive caution. However, lessons learned during these two programmes constitute grounds for possible future discussions on another, less restrictive regularisation programme.

In Poland, readmission agreements are currently seen as a very important instrument to improve the co-operation in return, including forced return, between sending, transit and receiving countries. Since 1989, Poland has signed bilateral readmission agreements with 19 countries.

There is considerable co-operation between NGOs and government in policy creation and implementation. First, the government proposals are sent to selected organisations within the consultation process. At this stage of policy making, the Helsinki Foundation for Human Rights (HFHR) is particularly active. The HFHR naturally focuses on human rights issues and prides itself on the fact that that many of its proposals have been incorporated into the law including, for example, the right to employment without a work permit

for the foreign spouses of Polish nationals or for persons with the status of tolerated stay.

A related issue is the fact that the policy on the employment of foreigners is undergoing fundamental changes and has been recently liberalised with a view to creating channels of legal short-term economic inflow from the neighbouring countries. The creation of legal channels – in direct opposition to the widespread phenomenon of irregular work – creates an opportunity for the inflow of migrants to become regular rather than irregular. However, the new policy – after some modification – was only introduced in February 2008 and it is therefore too early to assess its results.

Lastly, the regularisation of persons that cannot be expelled ("tolerated stay" status) might be seen as an example of best practice. Despite various doubts about possible misuses of this policy tool it is positive from the perspective of human rights of migrants and from the perspective of migration management. In addition, the exceptional visa procedure (according to Article 33 of the Act on Aliens) as a last resort enables short-term regularisation for migrants in particularly difficult personal situations.

## 2.4. Spain

In respect of the situation in Spain, the Spanish consultant underlined the fact that combating irregular migration has been a key priority of successive Spanish governments. Since 2004 the government has put in place measures to prevent the illegal entry of immigrants into the country in two directions: control of the borders and adapting the flows to the needs of the labour market, mainly through the instruments of the annual contingent, the "Catalogue of Employment Difficult to Cover" and through direct management. The measures put in place have been relatively successful in reducing inflows by boat from the African continent whilst success seems to have been more limited on the other borders. This is due to many factors amongst which are the particular geographical situation of the country and the fact that tourism is one of its main sources of income.

The consultant observed that there is a large demand for labour, particularly unqualified or low qualified workers. Existing instruments have a relatively limited impact as they have to adapt the flows to the needs of the labour market. The number of workers set each year for the contingent has been far below the real needs of the market, with one exception: the number of workers needed for temporary work, mainly in agriculture and the hotel and catering industry. Another problem is related to the specificity of the Spanish economy which comprises a proportionately high number of small enterprises. Some 90 % of employers are in small enterprises that cannot easily identify their needs in advance or recruit workers in their country of origin. Large

enterprises are better able to make use of the "Catalogue of Employment Difficult to Cover".

Further obstacles to the success of these measures have been the amount of paperwork required and the administrative delays in granting the necessary permits, although it must be said that steps have been taken by the government to simplify the procedure and to reduce the time span between the application for a permit and its concession.

The task of combating the employment of irregular foreign workers is the responsibility of the Labour and Social Security Inspectorate, which since 2004 has been making considerable efforts to increase inspections with the result that the number of detected infractions and imposed sanctions has grown significantly. In spite of these efforts, large numbers of irregular migrants remain undetected because the inspectorate does not have sufficient resources in manpower and technology which it would need in order to carry out its task more efficiently.

Protecting irregular migrant workers from social precariousness and exclusion, as well as from abuse on the part of employers, is the other dimension of the specific policy and the one in which the positive results achieved are extremely noteworthy. The Spanish report underlined the fact that the approach of Spanish tribunals had evolved and now considered a work contract as having equal validity for both parties. This has allowed irregular migrants to defend their rights as workers and not find themselves subservient to their employers.

Irregular workers have access to health, education and basic social services that is guaranteed by law. In order to have these social rights recognised, irregular immigrants must register with the municipality in which they live. There are sometimes obstacles put in the way of registration and some irregular migrants do not register because of the fear that their situation will be exposed and they will be served with expulsion orders. Returns from local authorities on the numbers of migrants registered with them are collated centrally and subtracting from this figure the number of legal migrants gives a reasonably accurate picture of the numbers of irregular migrants in Spain. This is estimated at around 1.2 million.

On the whole, irregular immigrants in Spain are in a relatively privileged position, compared with other countries, in respect of the recognition of their social rights. Despite this, however, there have been regularisation programmes, including a major one in 2005 from which some 700 000 persons benefited. The basis of regularisation was activity in the labour market: employers were given the responsibility for applying on behalf of a potential beneficiary having first given them a valid employment contract.

The Spanish report stated that there will be no further large-scale regularisation programmes. It is, however, still possible to become regularised on a

case-by-case basis under the present law, either through one years' employment and two years' residence in Spain or through "social settlement". This is defined as having been resident for at least three years, having an offer of employment and having a report from the local authority which specifies that the potential beneficiary is integrated into Spanish society. There are also possibilities through family connections and for the children of people who at one time had Spanish nationality.

## 2.5. United Kingdom

It is extremely difficult to say, with any accuracy, how many illegal migrants are in a country at any one time. In the case of the United Kingdom, the problem is compounded by the fact that departure controls are not operated on a routine basis.

A report – "Sizing the unauthorised (illegal) migrant population in the United Kingdom in 2001" – produced by the Research Development and Statistics Directorate (RDSD) of the Home Office in 2005, provided a central estimate of the total unauthorised migrant population (including failed asylum seekers) living in the United Kingdom in April 2001 as 430 000. This figure has been challenged, however, by Migration Watch, a UK-based think tank. Migration Watch argued that the Home Office estimate should be adjusted to include failed asylum seekers in subsequent years (less those removed), and the UK-born children of illegal immigrants. Taking these two factors into account Migration Watch argued that by March 2005 the number of irregular migrants was in the range 515 000 to 870 000 with a central estimate of 670 000.

Illegal entry is defined in Section 33(1) of the Immigration Act 1971, as amended by the Asylum and Immigration Act 1996, as a person who:

– unlawfully enters or seeks to enter in breach of a deportation order or the immigration laws; or
– enters or seeks to enter by means of deception, including deception by another person;

and includes a person who has so entered.

Illegal entrants are liable to be removed from the United Kingdom (which is the normal course, in the absence of compelling reasons for giving leave to remain), and may be detained pending removal. There are similar powers to remove people who have breached the immigration laws, for example by overstaying, or working when not authorised to do so.

The numbers of enforced removals, including voluntary departures after enforcement action had been initiated, has risen from 6 610 in 1997 to 22 840 in 2006, with fairly consistent rises, year on year, throughout that period. However, political and operational concerns remain about the unquantifiable

numbers of irregular migrants, including failed asylum seekers, remaining in the United Kingdom.

The intention, demonstrated in a (partial draft) bill in July 2008, is to simplify the law, as part of which it is proposed to introduce a single power to expel from the United Kingdom those who:

– are refused permission to enter or remain;
– have overstayed or otherwise breached conditions attached to their permission;
– obtained permission to enter or remain by deception;
– are liable to automatic expulsion following a conviction; or
– whose presence is otherwise not conducive to the public good.

The bill proposes that there should be an automatic bar from return to the United Kingdom after expulsion subject to a time period based on the reason for removal and with shorter periods for those who leave voluntarily.

Irregular migrants are not entitled to social benefits in the United Kingdom. They may, however, be able to obtain free medical treatment. Also, the children of irregular migrants are able to receive education.

Since March 2007, the United Kingdom has introduced a range of actions to stop irregular migrants from receiving benefits. These include wide-ranging arrangements for closer working with other relevant agencies, facilitated by the establishment of local teams within the UK Border Agency (UKBA), designed, amongst other things, to tackle illegal working and punish unscrupulous employers.

Clearly, official steps taken to tackle irregular migration and the costs frequently incurred by those intending to enter illegally, for example in payments to traffickers, act as some deterrent to illegal migration. However, the difference in standards of living in Third World countries as compared with developed countries continues to do much to explain the apparent attractions of migration, whether legal or irregular.

Many migrant workers tolerate low-skilled work and poor conditions because the pay is significantly better than that in their own countries. However, the part played by remittances is an additional motivating factor for migrants, including those in an irregular situation.

With effect from 30 June 2008, highly skilled workers, entrepreneurs and investors wishing to come to the United Kingdom have been able to apply for a visa under a points-based system, similar to that which has been in force for some time in Australia. From 2008, however, low-skilled workers from outside the EU will not be allowed to enter – the Seasonal Agricultural Worker Scheme being available only to nationals of Bulgaria and Romania.

Such changes, although defensible in immigration policy terms, may result in yet further people resorting to attempts at irregular migration, in order to provide support for themselves and family members.

Work permits were issued or employment approved during the period 1996 to 2005, for a wide range of services and activities. Traditionally, though, the types of employment in which irregular migrants have been engaged have been primarily the agricultural, hotel and catering trades, hospital and other health care establishments, cleaning, construction and other manual work. They are often prepared to work long hours, in posts not readily filled by the indigenous population, and employers have not always been prepared to inquire closely into their status.

Asylum had become a matter of considerable parliamentary, media and public concern in the late 1990s and early 2000s, with applications (including dependants) rising to a peak of 84 130 in 2002. By 2006 the number of asylum applications had fallen to 23 610, but there remained concerns about the numbers of asylum seekers whose applications had been refused, but who remained in the United Kingdom. Attention was drawn by the Parliamentary Home Affairs Committee in July 2006 to the need to minimise the numbers abusing the immigration system and in its formal reply, the government referred to a wide range of planned changes, including the doubling of enforcement and compliant resources by 2009/10, penalising rogue employers and removing the people who pose the greatest risk first, including foreign national prisoners.

More recently, the UKBA Business Plan set out, amongst other things, arrangements (some of which have already been implemented) to:

– check fingerprints before a visa is issued;
– introduce on-the-spot fines for employers who do not make "right-to-work checks"; and
– introduce compulsory identity cards for those foreign nationals who wish to stay in the United Kingdom, thus helping to deny privileges to those who break the rules.

In addition, the United Kingdom's policy of "exporting the border", in which requirements for visas and carriers liability legislation play important parts, has been supplemented by "juxtaposed" controls. The United Kingdom has also started delivery of its Electronic (e-) Borders programme, which aims to transform the United Kingdom's border controls, to ensure greater security, effectiveness and efficiency. To do so, it will use electronic technology to provide a way of collecting and analysing information on everyone who travels to or from the United Kingdom. Other technologies, particularly biometrics, are planned to ensure that people are identified securely and effectively.

No one aspect of immigration or asylum policy can be tackled on its own – pre-entry, on-entry, after-entry (including enforcement) issues all need to be

addressed to effect efficient and effective controls. With this in mind, there have been major structural changes in what is now the UKBA in recent years, including, from April 2007, operation of a regional structure.

It is well established internationally, that there is a need to secure the right balance between service and control in immigration control issues. This has been approached in the United Kingdom by staff training and appropriate gathering of information, to ensure that only legitimate inquiries are conducted, with the aim of avoiding disruption to individuals, employers and educational establishments. A policy of making known the requirements for entry and leave to remain, and the responsibilities of other stakeholders, has also been a key factor.

There is little benefit to be derived from identifying and apprehending irregular migrants if they cannot be removed (assuming that they have no compelling reason to be granted leave to remain). Having sufficient, appropriate detention space is vital to this, and the UKBA announced, in May 2008, plans for some 1 300 to 1 500 places to become available, starting from next year, on a phased basis. There is also a need to reduce periods in detention, which are often extended currently by difficulties in securing travel documents. As part of this, for example, a Memorandum of Understanding between China and the United Kingdom, signed in December 2007, on the Facilitation of Legitimate Travel and Cooperation to Combat Illegal Immigration should contribute to the documentation of Chinese nationals for removal purposes. It has to be acknowledged, however, that real difficulties do still remain, especially when the person liable to be removed refuses to co-operate in the documentation process.

While combating irregular migration would normally be accepted as in the broad public interest, securing the understanding and co-operation of community groups, on what they may perceive as unduly harsh policies, may be difficult to achieve. Good communication can play an important part in this.

As a part of this it has become common practice for the United Kingdom Government to consult with interested parties, including NGOs, on proposed legislative and policy changes. There are a number of examples of this in the immigration and citizenship area.

The government position is that there are currently no formal regularisation programmes. However, there have been two formal amnesties in the United Kingdom, which had been announced by the government, as such. These were in 1974 and 1977, and followed passing of the Immigration Act 1971 on 1 January 1973.

In addition, there have been a number of programmes, to which detailed reference is made in Section 5 of the United Kingdom report, under which people

who have entered or remained in the United Kingdom unlawfully have been allowed to remain. These may be described broadly as follows:

– The 10 and 14 Year Rules give conditions under which people who have been in the United Kingdom illegally for extended periods are allowed to remain (in the absence of countervailing factors) under provisions now incorporated into the Statement of Immigration Rules.

– Regularisation of overstayers refers to conditions under which overstayers, whose right of appeal before removal had been removed by a provision in the Immigration and Asylum Act 1999, were able to apply to be dealt with under a special arrangement, reinstating that right of appeal, if application was made by 1 October 2000.

– The Domestic Worker programme related to domestic workers who had entered the United Kingdom under concessionary arrangements allowing employers to bring them from abroad when entering the United Kingdom. As a result of a withdrawal of the concessionary arrangements many domestic workers found themselves in an irregular situation – they were unable to change employer even if subjected to abusive or unreasonable treatment. Under this programme, they were able to apply to have their situation regularised within a specified period.

– Concessionary treatment of people with spouses or children in the United Kingdom was a long running arrangement under which (subject to certain conditions) people in the United Kingdom unlawfully, but with spouses or children there, could be allowed to remain. However, on 24 April 2008, the Minister for Borders and Immigration announced that the arrangements were to be withdrawn.

– The "Clearing the Decks" exercise in 2003 was announced in October 2003 as an exercise to "clear the decks" for tough new asylum measures. It was to be a one-off exercise for families and would apply to those who sought asylum in the United Kingdom before 2 October 2000, had children before that date and who had suffered from "historical delays" in the system. By the end of 2005, 70 135 applicants and dependants had been granted indefinite leave to remain (settlement) with 20 000 cases still to be decided.

– The UKBA Case Resolution Directorate (CRD) is a directorate specifically established, within the UKBA, in April 2007, to deal with a backlog of asylum cases – a caseload of around 400 000 to 450 000 electronic and paper records. The government position is that the work done by the CRD does not amount to an amnesty or regularisation. The aim is to remain within existing policy, with all relevant factors taken into account in reaching decisions.

There are wide-ranging views as to whether regularisation is warranted in the United Kingdom, some of which were expressed in evidence before the

Parliamentary Home Affairs Committee (HAC), prior to submission of its report in July 2006.

Prior to giving evidence before the HAC the Institute for Public Policy Research (IPPR) had prepared a paper – "Irregular migration in the United Kingdom", in which it included what it termed policy options, and set out what it saw as the advantages and disadvantages of regularisation. In concluding that there was a case for regularisation, the IPPR argued that there was potential for raising extra revenue from the income taxes that irregular migrant workers could be paying. This was put at a minimum of £485 million per annum, but with around £1 billion as the likely true figure. The IPPR further argued that the forced removal of irregular migrants could cost around £4.7 billion.

The arguments advanced by the IPPR were challenged strongly by Migration Watch, who also gave evidence to the HAC. Amongst other things, Migration Watch argued that it was wrong in principle to reward illegal behaviour; that amnesties had not worked in other EU countries; and that the financial case advanced by IPPR was seriously flawed.

The Global Commission for International Migration, again in evidence to the HAC, drew attention to the "magnet" effect that knowledge of a planned regularisation programme could cause.

In a paper of July 2006, the Joint Council for the Welfare of Immigrants (JCWI) acknowledged that a regularisation scheme alone would not solve irregular migration and labour migration, and that regularisation is not without disadvantages. It believed, however, that one could mitigate these disadvantages, with a view to capitalising on cost benefits and ensuring social justice. The JCWI argued further that a one-off general regularisation could make a significant contribution to managing migration, reducing labour exploitation and improving social cohesion.

In a report of 2005, subsequently reflected in an article published by the Migration Policy Institute (MPI), a review was conducted of regularisation programmes in Belgium, France, Italy, Greece, Luxembourg, Portugal, Spain, the United Kingdom and the USA. The MPI article argued, amongst other things, that when migrants are employed irregularly, countries lose their ability to understand and regulate the labour market, and to collect social security and tax revenues. It suggested that regularisation programmes can yield valuable information about the demographics and labour market participation of migrants, which might assist in planning how to control future irregular migration.

Strong arguments in favour of regularisation were advanced by a group entitled "Strangers into Citizens", which is supported by major migrant NGOs in the United Kingdom, and which enjoyed a degree of political support.

The Home Affairs Committee observed in its fifth report at paragraph 479 that having considered the arguments, it did not consider that an amnesty would be appropriate in the current situation.

Similarly, the position of the United Kingdom Government was made clear in July 2008, in a United Kingdom Border Agency document entitled: "Making change stick: an introduction to the Immigration and Citizenship Bill", saying: "We rule out an amnesty."

Having considered carefully the arguments for and against regularisation, and in particular the observations of the HAC, based on the evidence before it from a range of different parties, the United Kingdom report concludes that the government decision to rule out an amnesty at present is wholly understandable. It is considered possible, however, that if steps are taken and planned to tighten border security, and to make enforcement against those who have breached the immigration laws more effective, a different approach could be taken in the future.

The reductions in the numbers of people seeking asylum in the United Kingdom in recent years are significant. However, the United Kingdom Border Agency's published strategies, business plans and the draft legislation introduced in July 2008 are clear indications that there is still much more to be done. There were substantial rises in removals from 1997 to 2006, but there are still major concerns about the numbers of failed asylum seekers remaining in the United Kingdom.

There are various external means by which the policies and practices of the UKBA are evaluated. These include National Audit Office reports, examination by the Home Affairs Committee, reports by the Chief Inspector of Prisons on Immigration Removal (Detention) Centres and public consultation exercises undertaken.

Examples of best practice identified include the following:

- The United Kingdom has a comprehensive approach to immigration controls, before, on and after entry.
- The case has been made for working closely with the police to combat immigration crime. Less clear is the case for integrating parts of HM Revenue and Customs into a border and immigration agency, which may well result in an unwieldy organisation, which will be difficult to manage, and may make it difficult for training to be delivered efficiently and effectively.
- That said, the action taken by the UKBA to work closely with other government departments, local authorities and indeed with private sector organisations, with a view to tackling irregular migration, is considered to be in the general public interest and likely to contribute to the identification and apprehension of offenders against the immigration laws.

- The measures taken to ensure full consultation on important legislative, policy and operational issues are to be welcomed.
- Similarly, efforts made by ministers and the UKBA to heighten public awareness about planned changes, including the introduction of revised legislation are worthy of note.
- The steps taken to place obligations on employers and those responsible for the administration of educational establishments are considered to be wholly valid.
- Setting out clear aims, objectives and targets in published documents, for example in the UKBA Business Plan, is to be applauded.

In terms of lessons learned, and proposals for the future, the following observations are made.

Irregular migration is and will continue to be an issue attracting close parliamentary, media and public interest – this is particularly so when the question of regularisation arises. It is considered to be essential that the government's position on this is clearly stated and implemented. It follows that it must make clear what is and what is not a regularisation programme. Lessons in this respect may be drawn from the handling of previous exercises, such as the "regularisation" of overstayers under the act of 1999, which was perceived, perhaps understandably, to be some form of amnesty. However, it was not and the "Clearing the Decks" exercise in 2003, which was clearly a form of regularisation, was not announced as such. Similarly, the current work of the Case Resolution Directorate has been seen by some, including in the media, as regularisation, whereas the government position is that it is not, with each case being decided on its own merits.

Think tanks and other bodies with a close interest in the ways in which irregular migration is tackled, and in the question of whether some form of regularisation should be allowed, often put forward compelling arguments to support their case. The government should be prepared to meet their arguments in a direct and "up-front" way, rebutting, as necessary, claims that it does not accept.

## 3. Conclusions

It is difficult to summarise the rich and varied content of these reports in a few words but the fact that there has been such a variety of approaches is in itself significant. This shows that national situations vary tremendously and that a detailed analysis of the situation is essential before embarking on any regularisation process or indeed deciding not to do so. Factors that have been taken into account include public opinion, the economic situation of the country concerned, historical ties with other countries, operational pressures and the labour market situation. The so-called "shadow economy" is also a factor, with various sanctions applied to employers who do not follow the

appropriate procedures. But sometimes the need to match labour supply with demand has been a factor in deciding to offer a regularisation programme. Sometimes there have been mass regularisation programmes, sometimes they have been done on a case-by-case basis; clearly the potential numbers involved will be a factor in deciding which approach is the better one.

This all leads to the conclusion that with regularisation programmes there is no "one size fits all" solution. However, the present series of reports, like the last, has thrown up some examples of good practice and some instances where the very best of intentions have not achieved the desired policy outcomes. But other countries considering regularisation programmes can learn from the experiences of others and these reports contain a huge amount of practical information on which others can draw in determining what is best for them.