No one knows exactly how many migrants come irregularly, or live irregularly, in OECD countries. Indeed, the very nature of irregular migration makes it difficult to quantify flows or stocks of undocumented migrants. Evidence however suggests that a number of OECD countries have substantial irregular migration. Irregular migration is often associated with illegal border crossings and sometimes with document fraud. However, migrants can enter legally but still end up in the irregular population, through breaching the terms and conditions of admission and stay, through overstaying at the expiration of their visa, or by failing to obey an order to leave the territory.

This Migration Policy Debate provides a comprehensive review of alternative approaches for the prevention and deterrence of irregular migration. Many of these approaches are widely implemented, while some are recent and still under development. Others hold promise for addressing future challenges.

What are the Possible Policy Responses to Future Irregular Migration?

Introduction

Why do migrants enter or stay irregularly? In many cases, they have an economic incentive, especially where economic opportunities differ sharply between countries and legal opportunities for migration are constrained. Besides this, a broad range of factors actually underlie irregular migration, including labour demand in the informal sector in destination countries, push factors in origin countries, and ill-informed migrants.

Irregular migration, in addition to posing considerable risks for migrants themselves, is a serious policy issue for destination countries, as it threatens public safety and undermines the rule of law. Since irregular migration is influenced by a broad range of economic and social factors in origin and destination countries, no single policy lever is enough to combat it.

Border and in-country control

Border infrastructure is critical for OECD countries: it must facilitate trade and allow for fluid travel and tourism as well as legal migration, while reducing the risk of irregular entries and other forms of cross-border crime. Smart borders have the potential to greatly facilitate the enforcement of border security and change the "border experience". New surveillance technologies can also help to identify and prevent overstay. Still, human resources will remain an essential component of border and in-country control, also addressing ethical concerns raised regarding the expansion of surveillance technologies.

Innovative approaches are also required to fight increasingly sophisticated migrant smuggling networks, complemented by policies that combat corruption and money laundering (see the OECD Guiding Principles for Combatting Corruption Related to Trafficking in Persons). Transnational smuggling networks are very difficult to fight. To respond, police and justice systems must actively co-operate across borders. In Europe, the coordination between EuroPol, EuroJust and EBCGA is decisive and could serve as a basis for a broader approach.

Better identification of smugglers can also be achieved through co-operation from the smuggled migrants themselves. In many OECD countries, special visas or temporary permits are available for undocumented migrants who participate in the identification and prosecution of their smugglers. The U-Visa in the United States, for example, can be obtained by witnesses in cases of fraud in foreign labour contracting, as well as trafficking, slave trade and involuntary servitude.

Return of irregular migrants: incentives and enforcement

Amid growing public anxiety and concern for the enforcement of the rule of law, destination countries have a compelling interest in facilitating the safe and sustainable return of undocumented migrants. To date, these efforts have largely amounted to negotiating readmission agreements with the origin and transit countries (see Box 1) and offering Assisted Voluntary Return and Reintegration (AVRR) programmes. AVRR involves funding and operational support for individual returns, often implemented in co-operation with NGOs and international organisations. Voluntary returns should be preferred over forced returns because they are simpler and less costly than removal, they facilitate re-integration of the returnee and repatriation to countries with which no readmission agreement has been signed.

Although ensuring return of undocumented migrants is an essential element of migration policy, in many countries people who have received an order to leave are still in practice difficult to deport, and uninterested in AVRR. The latter can be more attractive when returns are successful and sustainable. From the destination country perspective, AVRR is usually judged successful if there is no (re-)migration after return. From the country of origin perspective, and from that of the migrant, sustainable return means that migrants are successfully reintegrated in their home country, which includes social, economic and cultural dimensions. These parameters show how difficult it is for return policies to be evaluated through exclusively quantitative indicators

Evidence shows that offering cash alone is not sufficient for people to choose AVRR. Increasing uptake of AVRR requires building partnerships in the origin and destination country to inform, counsel, support and follow returnees. Community figures and different points of outreach are necessary to make contact and destigmatise AVRR in the origin country. Some measures can be implemented during the asylum process, such as training with relevance regardless of whether the application is accepted; Germany has implemented a number of such training courses with dual scope. Other measures will largely involve finding and engaging with actors in the origin country to support a project upon return. The link with development actors is particularly important, so that returnees can contribute to the communities to which they return. The EU network on return and reintegration, ERRIN, is working on this.

Beyond AVRR, it is also crucial for OECD countries to enforce forced (involuntary) return decisions in order to maintain the credibility of legal migration channels and minimise incentives for further irregular migration. Return policy is an integral and necessary part of a comprehensive migration policy. The effectiveness of return of those who do not have the right to stay in OECD countries must remain a key objective. Low return rates undermine the credibility of the system for the public and increase incentives for irregular migration and secondary movements.

> **Box 1. Readmission agreements**
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> In standard readmission agreements, the signing parties typically commit to accepting the return of persons without requiring the usual formalities for entry. Non-standard agreements which facilitate readmission can be established through various forms, e.g. as administrative agreements, memoranda of understanding or police co-operation.
>
> Since 2004, the European Union has concluded a total of 17 readmission agreements with non-EU countries, for returns in line with the EU's 2008/115/EC Return Directive and its asylum rules.
>
> Source: [European Commission](#)

Spontaneous returns of migrants at the end of their temporary legal stay also needs to be promoted. In a labour market where temporary labour migration programmes expand to meet cyclical needs, ensuring the departure of those labour migrants is key. Selection may be based on characteristics associated with reduced overstay; Spain, for example, recruits women from rural Morocco for its temporary strawberry harvest workforce. Explicit incentives to return can also be provided notably by facilitating repeat migration of compliant temporary migrants. This is the case in Spain and a number of other OECD countries for seasonal workers who have multiple entry visas. Other examples include notably Korea and Israel, which withhold part of salary during the stay and provide the cumulative savings upon departure or once in the home country. In Israel, workers forfeit progressively larger shares of their withholdings the longer they overstay.

Regularisation programmes: clear eligibility rules

When the illegal employment of foreign workers becomes a focus of public concern or is deemed structural, regularisation programmes may be considered. They need to be designed carefully and accompanied by appropriate changes in legal labour migration channels and stronger enforcement measures. Yet, regularisation remains an ex post remedy rather than a proper strategy to address the fundamental issues behind irregular migration and the illegal employment of foreign workers.

Regularisation is a tool for reducing stocks of unauthorised immigrants and can deliver economic and social benefits by moving migrants from informal to formal employment. From that perspective it addresses the cumulative effects of a failure of labour migration policy to respond to locally unmet labour market needs.

Regularisation can also be seen to "reward illegality", as a pull effect which favours irregular migrants and penalises those following the legal channels to entry and work – if such channels exist. Regularisation, particularly on a large scale, may also appear to undermine ongoing migration control efforts. It could also encourage "speculative" irregular migration in anticipation of future regularisation programmes. OECD country experience shows that it may be preferable to offer individual regularisation on a continuous or rolling basis with clear, strict and largely unvarying eligibility rules rather than offer big one-off programmes.

Once a government has decided to conduct a regularisation programme, it must consider a number of key policy parameters:

- Frequency. Should regularisation be a one-off scheme or a continuous programme?

- Eligibility rules. Should regularisation apply to individuals or groups and with reference to migration histories and employment records?

- Additional requirements. Should further criteria be met, such as fines, fees and back taxes all being paid, proven language proficiency and demonstrable integration?

- Benefits. What form would an immigrant's newly legalised status take? Would permits be temporary or permanent?

Combatting the illegal employment of foreign workers

Illegal employment of foreign workers is a key driver of irregular migration; it undermines the migration policy framework, puts migrants at risk of exploitation, introduces unfair competitive advantage for unscrupulous employers, and can adversely impact the employment and wages of the legal workforce.

New technologies and innovative approaches can make it easier for public authorities to detect illegal employment, and for employers to verify the legal status of an applicant. Holding employers responsible for the compliance of their subcontractors can make illegal employment of migrants riskier and more costly.

Status verification involves employers checking to ensure that a foreign worker's right to work has been duly authorised. To that end, some governments provide a verification service which may be optional or mandatory for employers to use. Such systems can help raise employer awareness and facilitate inspections, though efforts to develop them are still modest in OECD countries. Nevertheless, some countries have introduced secured, free-of-charge online verification platforms (Box 2). Such systems may offer good practices to emulate or from which lessons can be drawn.

Box 2. E-Verify System

The United States' Department of Homeland Security (DHS) runs a free online service, E-Verify. It allows employers to check the eligibility of their employees to work in the United States. Employers submit information (name, social security number, alien registration number, etc.) which is then cross-checked against the databases of the Social Security Administration (SSA) and the DHS. If a final non-confirmation is issued, then the employer can find the employee is not authorised to work and terminate the employee's employment. If the employer continues to employ the employee after receiving a final non-confirmation, then the employer is subject to rebuttable presumption that it has knowingly employed an unauthorised foreign person.

Labour inspection practices in most OECD countries involve combining targeted inspections in specific sectors with broader, random controls. Inspections are generally infrequent, however, and therefore unlikely to completely deter employers from illegal employment of foreign workers. Improving the efficiency of inspections requires closer, better co-ordination and co-operation between the different government agencies in charge, e.g. the police, immigration authorities, tax and customs administration, and labour inspectorates. Nonetheless, improving the impact of workplace inspections will generally require increased frequency and better targeting, including through statistical profiling of sectors and companies as well as to raise the cost for employers to illegally recruit foreign workers, including by increasing the financial liability and reputational risk of the prime contractor in subcontractor chains.

OECD countries adopt very different approaches to sanctions and penalties against illegal employment of foreign workers, with the amounts of fines and the severity of criminal charges varying widely. Nevertheless, sanctions against employers are a crucial part of efforts to deter them from hiring foreign workers with irregular legal status. How effective sanctions are depends both on their severity and whether employers believe they are likely to be enforced.

The role of regular migration pathways

Well functioning pathways for regular migration are necessary for efficiently fighting against smuggling networks and irregular migration. These pathways should reflect the diversity of potential migrants as well as socio-demographic and labour market realities of destination countries. Humanitarian regular pathways typically include resettlement programmes, humanitarian visas and private sponsorship programmes. Other non-humanitarian regular pathways would encompass labour, international study and family categories. A successful example is the German Western Balkan Labour Migration programme (Box 3).

Opening the "front door" does not however imply that all people will stop using the "back door". Imbalances between migration pressure and actual opportunities might be an impediment. Similarly, skills mismatch between potential migrants and the nature of the labour demand in destination countries may limit this relationship. Nonetheless, creating labour migration channels clearly has an effect.

Skills Mobility Partnerships may be useful to adapt the offer for regular migration and reduce incentives for irregular movements. In Skills Mobility Partnerships, migrants acquire professional skills, while the costs are at least partially borne by the destination country and/or employers. Pilot programmes involving aid-funded training in the origin country have been used in partnerships between Spain and Morocco, for example. Other examples in Finland, Germany,

Italy and Norway include sectoral recruitment programmes in nursing, which ensure training to specific requirements.

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Box 3. Germany's Western Balkan Labour Migration Prog.

In 2015, Germany received many applications for asylum from people arriving from the Western Balkan area. They comprised 41% of all first-time applicants during the first nine months of 2015, but only 0.3% met the conditions for protection. In October 2015, Germany introduced a Western Balkan labour migration programme.

Asylum seekers from the region who withdrew their application immediately and left Germany became eligible to re-enter under the new labour migration pathway. From 2016 to 2020, people of Western Balkan states (Albania, Bosnia and Herzegovina, Kosovo*, North Macedonia, Montenegro and Serbia) can work in Germany – irrespective of their formal qualification and German language level. Migrants need a labour-market tested job offer and have to apply for their visa at a German diplomatic mission in their country of origin.

The programme was the centrepiece of a set of interventions to shift flows from the Western Balkans away from the asylum channel. Following its introduction, the number of first time asylum applications from nationals of Western Balkan states in Germany declined from 121 000 in 2015 to a mere 5 000 in 2018. From 2016-2018, several hundred thousand applied for the labour migration programme under the new regulations, and around 65 000 visas were issued. The programme appears to provide a regular alternative to use of the asylum system.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence. Hereafter referred to as Kosovo.

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It is also particularly important to identify and address regulatory gaps that contribute to increase the risk of overstay. There may indeed be cases where stringent regulations regarding status changes, unannounced or retroactive changes in eligibility, or administrative delays in renewals or changes of status, push migrants into overstay even in cases of good faith. To reduce these risks, sound migration management systems should try to announce changes in advance, process applications in a timely way, and address changes in the labour market which can affect eligibility.

Preventive measures in origin and transit countries

In co-operation with origin countries or transit countries, destination countries can take initiatives that might prevent further migrants from leaving irregularly. This would include co-operation regarding border controls and exchange of information as well as readmission agreements but should not be limited to these aspects.

Potential migrants in origin countries, as well as migrants in an irregular situation in transit countries, are often ill-informed and too easily influenced by rumours that serve the interests of smuggling networks. Prevention and information campaigns in origin countries can help to reduce the risk that would-be migrants are misled by unrealistic promises of life in destination countries. To achieve this, the campaigns have to ensure that the information they spread is perceived as credible - potential migrants might distrust official information but might trust migrant organisations.

Root causes of migration also need to be addressed collectively. Excluding cases where people are fleeing to save their lives, migrants are typically better off and often less averse to risk than the general population in origin countries. They are not the usual target group for classic development programmes, which focus on the poor. More needs to be done to understand this target group, how they differ from those who do not migrate and to what types of development programmes they would better respond.

What is more, stability and security should be considered not only at the national level but also from a regional perspective. This is especially important in regions where migration is facilitated by free mobility agreements. Finally, international cooperation is key for preventing conflicts and violence as well as for addressing the possible effects of environmental changes on international migration.

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