



Dealing with illegal stay: The perpetually unfinished business of EU immigration policy?

European View

1–13

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DOI: 10.1177/17816858261439459

journals.sagepub.com/home/euv



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Abstract

Returns of people staying illegally in a country and dealing with unauthorised stay more generally constitute a lasting challenge to the EU. Manifested through the widespread tolerance of people overstaying their visas, persistently low numbers of effective returns and the dysfunctions of the Schengen zone, EU policy in this area has not worked well for at least the past two decades. If the EU takes measures to limit the abuse of visa-free regimes, puts sufficient resources in place, and coordinates internally within countries and between its members, it could address some of the problems of illegal stay more effectively. Regularisations constitute an escape route for governments in that they eliminate illegal stay, but mass regularisations are problematic from the viewpoint of a migration policy's legitimacy. Due the inherent limitations of the EU's return policy it is necessary to increase the bloc's efforts to prevent illegal departures towards the EU by sea, land and air.

Keywords

Illegal immigration, Illegal stay, Visa overstayers, Undocumented immigrants, Prevention of arrivals, Regularisation

Introduction

The presence of people in an irregular situation within the territory of a state, or within a wider jurisdiction such as the EU, is an inescapable feature of immigration in modern democracies. Illegal stay constitutes a cost of openness. A state that allows tourism

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implicitly reconciles itself with the fact that a tourist might stay for longer than he or she is permitted. A state that allows any type of immigration reconciles itself to the fact that a legal migrant who has a temporary residence permit may not leave the territory on the expiry of the permit. And no state has been able to completely close its borders to those persons who intend to cross into the country without permission.

This applies to all democracies, including the EU. Although Article 79 of the Treaty on the Functioning of the European Union stresses that preventing and combating illegal immigration fall within the competence of the Union, ‘combating’ illegal immigration has proven to be an exercise that is fraught with dilemmas and difficulties. Some of these difficulties are of a legal nature. Others are political and economic.

These difficulties, or barriers, have consequences for the EU. One factor that is often cited is the low return rates, which have not exceeded 30% since 2020. However, a return rate is a rather abstract figure that means little by itself. Much more concretely, the ‘secondary movements’ of migrants—including refugees and asylum seekers—who leave the EU country of their initial arrival to seek protection or permanent resettlement in another EU country, are a permanent source of conflict between the member states. These movements are, at least partly, due to people who have received a return order from one country deciding to travel elsewhere in the passport-free area. Secondary movements are a source of permanent strain on Schengen; all too often, member states respond to them by imposing internal border checks, thus hampering commerce and the daily lives of Europeans.

Illegal stay also has consequences for how the public perceives national migration policies. According to a YouGov survey published in December 2025, majorities or near-majorities in Denmark, France, Germany, Italy, Poland, Spain and the UK support a scenario that would see ‘a large decrease in the number of new migrants allowed to come’ to their country, while ‘still allowing some migrants to come’. Asked more specifically about which people should be sent home, 73% to 85% answered that this concerns those entering Europe through irregular means to seek asylum. Furthermore, 66% to 85% mentioned those who come without a valid work visa to work in unskilled jobs (YouGov 2025).

(Not) preventing irregularity

Preventing a problem is preferable to having to address it at a later stage. Over the past 10 years, the EU has been making considerable efforts to prevent illegal departures towards the EU, be they by sea, land or air. To this end, the bloc has concluded a battery of agreements with its southern and south-eastern neighbours. The EU has also been strengthening, with mixed results, the protection of its external land and sea borders by boosting the capacities of Frontex, the EU border agency, which operates alongside national border and coast guards.

With a watchful eye on illegal border crossings, the EU has been neglecting another more serious problem: the unlawful stay that follows legal entry. At the time of writing,

citizens of 64 non-EU countries and territories enjoy visa-free short-stay access to the Schengen area¹ for up to 90 days in any 180-day period (European Commission 2026, 2; see also European Parliament and Council 2018, Annex II). And although Eurostat data on non-EU citizens found to be illegally present do not disaggregate by mode of entry, indirect evidence strongly suggests that visa overstayers and others who have lost their legal status constitute the majority of illegal migrants, that is, irregularly staying third-country nationals. By comparing Frontex data on illegal border crossings and Eurostat data on illegally staying third-country nationals, research by the European Parliamentary Research Service concluded that ‘irregular entry is not the main cause of irregular migration in the EU’ (Dumbrava 2025, 5). Dumbrava (2024, 2–3) cited a Frontex publication which recognised this phenomenon as early as 2010.

One manifestation of the difficulties that abuses of the visa-exempt status cause is that asylum applications from nationals of visa-exempt countries continue to place a strain on national asylum systems. The citizens of these countries now lodge one-quarter of all asylum applications in the Schengen zone (European Commission 2026, 3).

This trend seems to have been exacerbated in recent years. In 2024 nationals of four countries with visa-free access were among the top eight nationalities to apply for asylum in the EU: Venezuelans, Colombians, Peruvians and Ukrainians (Eurostat 2025a, 2026a). In 2025 Venezuelans became the second most frequent nationality to apply for asylum in the EU+,² with 91,000 applications (European Union Agency for Asylum 2026, 7).

Most citizens of the former three countries, and the many other Latin American countries that also enjoy visa-free access to the EU, tend to arrive in Spain (European Commission 2025c, 39). Others arrive in Italy and Portugal. Many Latin American arrivals apply for international protection but the vast majority of these claims are rejected. A minority of applicants, especially in Spain, receive a nationally awarded humanitarian status (European Council on Refugees and Exiles 2024); others are allowed to stay without any status. Very few are returned to their home countries.

Given this information, it would seem logical to suspend visa-exemption regimes for those countries that produce large numbers of overstayers. This does not concern Ukraine which, since 2022, has found itself the subject of military aggression waged by the Kremlin and whose nationals, in accordance with an EU rule adopted in that year, are benefiting from temporary protection in the bloc.

The situation in Venezuela has been precarious for many years. The country, ruled by an autocratic regime, started producing millions of economic emigrants in the mid-2010s. It would thus be difficult to imagine the reimposition of visa requirements on Venezuelans at the present time. Nevertheless, the European Commission has been taking measures regarding the other countries concerned. Applications from Colombia dropped by half during 2025, reportedly due to the Commission’s request that the Colombian authorities launch a communication campaign to deter travel to Europe

(European Commission 2025c, 40). With regard to the other Latin American countries that also tend to produce unfounded asylum applications (including Honduras, El Salvador and Nicaragua) and, thus, visa overstayers (see Funcas 2026), the Commission recently stated that it had pressured their governments to undertake information campaigns and ‘effective border control measures at departure points’, resulting in significant drops in asylum applications during 2025 (European Commission 2025c, 40).

It is advisable to continue these efforts. So far, the other EU members and the Commission have voiced little opposition to Spain’s (and, to a lesser degree, Italy’s) policy of extra-legal labour immigration through visa-exempt access for Latin Americans. Apparently, the Spanish government has found it easier to free-ride on EU visa rules than to create proper labour immigration channels. This is despite the fact that the arrivals to Spain have started to lodge—largely unsuccessful—asylum applications with countries such as Germany, Iceland and Poland (Eurostat 2025c).

In the absence of sustained pressure on Spain, the EU will need to reconcile itself to the fact that the visa privilege it accords to Latin Americans—and nationals of other countries, such as Georgia, who tend to arrive in France—will result in illegal migration. And although the bloc has a legal tool to suspend visa-exempt regimes, that is, to reimpose visa requirements for some or all categories of travellers, this mechanism has so far been activated only twice, with regard to Vanuatu and Georgian state officials.

The wider public is probably not aware of the scale of visa overstaying in the EU. It is symptomatic of this that this author’s search has found not a single survey that asks the European or national publics about their views of this type of illegal stay. It appears that if illegal migration does not involve unauthorised border crossings, the bloc is prepared to tolerate it.

Measuring returns

Aside from its prevention, EU law contains two pathways out of irregularity: return and regularisation, including through the transfer to a temporary status, such as that of an asylum seeker (Wagner et al. 2024, 46).

Returns, whether voluntary or forced, have, so far, not been a particularly effective method of dealing with irregular stayers. In many cases, returns cannot be realised for legal reasons. These include the prohibition on returning persons to territories dangerous to them as defined by the 1951 Refugee Convention and other international agreements.

Beyond these legal prohibitions, the EU has been struggling on other fronts. In 2016 the combined return rate for both voluntary and forced returns reached 42%. In the following years, this rate fell sharply. In the first half of the 2020s, EU governments managed to return barely more than 20% of individuals who had received a return order. The ratio of those actually returned to those who had received a return order rose to 23% in 2023 and,

reportedly, to 27% in 2025 (European Commission 2025a, 6; European Commission 2025b, 6; International Centre for Migration Policy Development 2026, 6). As another measure of this decline between 2016 and 2021, the number of effective returns³ fell from 192,000 to 68,000 (Eurostat 2026c).

It is likely that the composition of the people staying illegally has determined the fluctuation in the return rates over time. The relatively high return rates of the mid-2010s were due to the EU returning a number of individuals from those non-EU countries that cooperate on readmissions due to their prospects of EU membership. The dip in the return rates in 2020–2 was largely due the Covid-19 pandemic; the low return ratios since then can be explained by the fact that national authorities are now issuing most return orders to nationals of non-cooperative countries of origin. The fluctuations in the effectiveness of the EU return policy are a phenomenon that is well beyond the scope of this article and awaits a thorough analysis.

As an important note, Eurostat (2025c) and other sources (e.g. Dumbrava 2025) caution about the reliability of the return data, due to failings in the monitoring of return orders and differing national reporting practices. Because of these limitations, we cannot rely only on return rates; the total number of effective returns needs to be looked at when examining the success or otherwise of EU return policy. The bloc's return statistics are adequate for high-level trend analysis, but may be incomplete and not well harmonised among the member states.

Forced and voluntary returns

With these limitations in mind, the share of voluntary returns, which often are accompanied by a cash offer to the returnee, has been rising. In 2023, 43.1% of all returns were voluntary (European Parliament 2023). In the third quarter of 2025, more than 60% of returns concerned individuals who voluntarily left the territory; less than 40% were forced returns (Eurostat 2025d). Voluntary returns are much cheaper than forced returns. A 2018 study estimated that a forced return cost €3,414 whereas a voluntary departure cost €560 (van Ballegooij and Navarra 2018, 122). Voluntary returns are much less stressful on the returnee and the authorities involved, and are less likely to be followed by repeated attempts to cross EU borders illegally.

Readmission

The reasons for the lack of success on returns have been amply documented, including by the European Court of Auditors, the EU's financial watchdog (European Court of Auditors 2021); the European Commission (European Commission 2017; 2020; 2021; 2023; 2025a); and the European Parliamentary Research Service (Dumbrava and Radjenovic 2024; Pradier and Dumbrava 2024). Opinions vary, however, regarding which factors have been most significant in the failings of the EU return policy. No EU institution or agency has provided an authoritative assessment of their relative importance (Novotný 2025, 6).

There is a general consensus though that readmission is an important factor. According to international customary law, states have an obligation to readmit their own nationals (Klavert and van Seters 2012, 2; Dumbrava and Radjenovic 2024, 6). But while the EU continues to demand readmission in its dealings with non-EU countries, some non-EU governments prefer not to accept their nationals who have been found to be staying illegally in the EU. Forced returns are especially unpopular with third-country publics. The governments of non-EU countries also tend to make the readmission of their nationals conditional upon more generous EU visa policies. However, the EU is not willing to offer such visa liberalisation (Klavert and van Seters 2012, 3), citing both fears of third-country nationals not returning to their home countries upon entering the EU and security concerns.

All of this explains why the EU has, so far, concluded only 18 readmission agreements (European Commission n.d.). Ten of those are with non-EU European countries, all of which have EU membership prospects or a close association with the EU, and with whom the bloc tends to have good cooperation on migration. Countries such as Georgia, North Macedonia and Albania have particularly good records on this front.

Conversely, the EU has no readmission agreements with the countries that are currently the sources of most illegal immigration or visa overstays, including Colombia, Syria and Afghanistan.⁴ North Africans, Afghans, Syrians, Bangladeshis, Pakistanis and Nigerians are among the nationalities with which the EU has the worst return record (Pradier and Dumbrava 2024, 4).

In the absence of the prospect of EU membership or some form of association for the non-cooperative countries, it is difficult to envisage a significant change in the negative dynamic between the EU and those third countries that do not readmit their nationals. Discussions about the EU imposing migrant readmission conditionality on trade, development aid and visa agreements have, so far, not generated significant results due to entrenched blockages in EU and member state decision-making, including conflicts between home affairs and foreign policy agendas.

Similarly to addressing overstays, the EU could put its professed objective of reducing illegal immigration higher on its foreign policy agenda. It could employ its diplomatic apparatus to boost the readiness of countries of origin to accept their own nationals. However, this would likely be at the cost of straining trade and investment ties and that is something that, judging by the lack of action, the EU is not prepared to do.

Upcoming EU legislation is more likely to produce tangible impact. Thanks to the law on the use of the safe third country concept, adopted in February 2026 (European Parliament and Council 2026a), it will be easier for member states to send asylum seekers and migrants to willing countries different from their countries of origin, on the territory of which asylum claims might be assessed. The newly agreed EU common list of safe countries of origin (European Parliament and Council 2026b) will also limit asylum prospects for the nationals of Kosovo, Bangladesh, Colombia, Egypt, India, Morocco, Tunisia and EU candidate countries.

Domestic factors

Apart from readmission, domestic administrative and political issues in the EU have contributed to the problems with returns in recent decades. National authorities do not sufficiently invest in the enforcement and monitoring of the whereabouts of irregular migrants. The asylum and police authorities of one country may not coordinate their activities with and inform others. The caseloads within member states' return systems negatively affect overall return rates. Moreover, when returnees are aware that enforcement of a return decision is unlikely, they are generally less inclined to comply voluntarily. Absconding is a major problem (European Commission 2020). Denmark, Austria and the Netherlands stand out as countries with dedicated return agencies. In the other member states, returns are a responsibility shared between government departments. This tends to create communication, coordination, workflow and resource-related challenges.

Although not mentioned in the analyses produced by the European Commission, many EU governments prefer not to expel those migrants who have arrived illegally but are performing useful jobs in services, construction and other sectors (Fox-Ruhs and Ruhs 2022). Comprehensive EU-wide analyses of this phenomenon have yet to be published.

There are also legal shortcomings. The existing Return Directive (European Parliament and Council 2008) presents several gaps and ambiguities regarding key elements such as the issuance of return decisions, enforcement procedures, entry bans and detention measures. In its current form, the Directive grants member states considerable discretion, resulting in divergent practices concerning which third-country nationals should be returned, the modalities of return and the determination of safe return destinations (Nafize et al. 2025). Lack of cooperation between EU member states creates inefficiencies, with different governments sometimes asked to identify and readmit the same person several times.

In recent years, procedural improvements have been driving increases in both return rates in the EU and the headcounts of effective returns. Between 2022 and 2024—the most recent year for which data are available—the number of returns went up from 72,000 to 112,000 (Eurostat 2026c). The addition of the capacities of Frontex to the EU's return machinery has increased effectiveness, advanced standards and facilitated the pooling of resources. Member states and Frontex have substantially intensified their efforts to provide counselling so that third-country nationals receive accurate and timely information on the return procedure (European Commission 2025, 9–10). The introduction of the 'return alert' in the Schengen Information System in 2023 has made it possible for all Schengen states to see that the authorities of a state have issued a return order. The creation of the role of EU Return Coordinator has also facilitated practical cooperation between the various national authorities, Frontex and the European Union Agency for Asylum, and optimisation of the available resources. The operational strategy for more effective returns has been in place since March 2023 (European Commission 2023). As another helpful step, national authorities and the Commission are putting in place the new Entry/Exit System, which has started recording the time and place of entry and exit

for non-EU short-stay travellers. Among other benefits, the full entry into force of this system in October 2026 will establish a record of those new arrivals who do not leave the EU after the expiry of their permit.

As with readmissions, newly adopted legislation within the framework of the New Pact on Migration and Asylum, a large-scale reform, is likely to make a difference to return rates. When they come into effect in June 2026, the Asylum Procedure Regulation and the Return Border Procedure Regulation will allow some irregular migrants to be channelled through accelerated asylum procedures and expelled directly from certain locations on the EU's external borders.

Another piece of legislation, the Common System for the Return of Third-Country Nationals Staying Illegally in the Union (Return Regulation) is currently advancing through the legislative process. If adopted, the Return Regulation would replace the 2008 Return Directive, expand the possibilities for detention, institute an obligation to cooperate on the part of the returnee and pave the way for 'return hubs' in non-EU countries. Voluntary returns would still be preferred but subject to more detailed conditions. Voluntary departures could become more attractive once forced return has become a credible alternative. Counselling would be available to returnees. As part of the Regulation, the European Return Order would establish a framework for the mutual recognition and enforcement of return decisions (European Commission 2025b).

Unfortunately, the text of the Regulation as it currently stands does not fundamentally change the national focus of return operations; the scope for collective action is not as wide as it could be. It is therefore imperative that the member states implement this legislation in a uniform manner and coordinate on matters such as cash payments for voluntary return, so as to minimise perverse incentives for returnees.

Regularisation

Where returns or expulsions do not occur for whatever reason, regularisations present a 'second best' solution to the problem of irregular stays. Although the 2008 Return Directive (European Parliament and Council 2008, art. 6(4)) specifically mentions regularisation as a pathway out of irregularity, European law does not provide further guidance on the matter. The question of whether to legalise a person without a status, and under what circumstances, is solely one for each EU member state. In reality, not all member states grant temporary or permanent residence permits to third-country nationals who cannot be removed or whom the member state does not want to remove. Whereas Germany, Belgium and France tend to regularise migrants individually, Poland and southern European countries such as Italy, Spain and Portugal have tended to resort to mass regularisations.

In addition, EU member states including Germany, Poland, Slovakia and Hungary have adopted the useful legal instrument of the tolerated stay (European Migration Network 2020). The tolerated stay is explicitly not a residence title, but it confirms that

deportation is currently suspended, thus eliminating irregularity. It entitles the recipient to basic social assistance. Other countries (including France) simply tolerate irregularity.

Returning to regularisation, its greater use ‘would reduce the glaring gap between the number of return decisions issued and the number effected’ (Wagner et al. 2024, 3). Individual regularisations will often be the only way to grant a legal status to a person who cannot be returned. Authors such as Beilfuss and Koopmans (2021) state that the existing evidence is inconclusive as to whether mass regularisation measures constitute a ‘pull factor’, encouraging additional irregular migration from third countries. Nevertheless, newspaper accounts from 2007 claimed that the Portuguese government abruptly stopped that year’s mass regularisation following an influx of irregular migrants from Spain and Italy (Spongenberg 2007). In addition, a newly released report by the Mixed Migration Centre found that many Bangladeshi respondents identified Italy’s previous regularisation campaigns as a significant factor shaping their migration decisions (Malakooti 2026). It is difficult to escape the conclusion that mass regularisations, although lawful in principle, may fuel the perception that illegal immigration is tolerated, thus undermining the credibility of immigration policy.

Conclusion

Addressing irregularity is essential to maintaining the legitimacy of immigration policies in the EU. Many obstacles stand in the way of this process, including the need for labour and the huge demand on internal resources that migrant returns place on the national and EU authorities. In foreign policy, the EU and its members have been reluctant to sacrifice their trade and security ties for the objective of combating illegal immigration as mandated by the treaties. In sharp contrast to political rhetoric, the member states themselves have not always been in a hurry to expel individuals illegally staying on their territories. Visa overstaying has been a widely tolerated elephant in the room of EU immigration policy. The pending recognition of Colombia as an EU safe country of origin might be the first attempt to call the animal by its name.

These political and economic considerations aside, to implement a stronger return policy it is imperative that the national asylum and police authorities invest in their personnel and logistical capacities. But such a capacity increase is not going to occur where governments are overwhelmed by asylum claims. The need to further reduce irregular arrivals logically follows.

Regularising illegal stay will always remain an option for national authorities. Unlike individual regularisations, mass regularisations are questionable, as their announcement may convey the message of a *de facto* open border. If resorting to mass regularisations, member states should at least inform other EU countries in advance of these as they may affect secondary movements.

Acknowledgements

Gabriele Scalise and Mihael Koščak assisted with background research for the returns section.

Funding

The author received no financial support for the research, authorship and/or publication of this article.

Declaration of conflicting interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Notes

1. The Schengen area is also the EU's common visa zone.
2. The EU's 27 member states, plus Norway and Switzerland.
3. A return rate is a percentage indicator, while the number of effective returns is an absolute headcount.
4. Eurostat does not feature any Latin American nationality in the 'Top 20 citizenship of third-country nationals found to be illegally present in the EU, 2017–2024' (Eurostat 2025b). Eurostat data do indicate, that in 2024, 84,690 people were found to be illegally staying in Spain (Eurostat 2026b). However, an estimate by the Spanish think tank Funcas found that the number of foreigners residing in Spain in an irregular situation had reached 840,000 on 1 January 2025 (Funcas 2026). Colombians and Peruvians featured prominently. Such data discrepancies exist in all EU countries but tend to be particularly pronounced in Spain.

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