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Immigration in the EU: policies and politics in times of crisis 2007-2012

Tamara Jonjić and Georgia Mavrodi

Florence, November 2012

EUDO Observatory on Public Opinion,
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Report

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Abstract

The present study stems from research conducted at EUDO within the framework of the project “Puzzled by Policy”, as part of an international consortium that won a tender within the European Commission’s “Competitiveness and Innovation Framework Programme” (Objective Theme 3: ICT for Governance). In the report, we provide an overview of immigration policy developments at the EU level and in three Mediterranean member states that are project’s pilot countries: Greece, Italy, and Spain. We lay particular emphasis on changes that have taken place in the last few years, characterized by deep recession and an unfavourable climate for immigrants and EU citizens alike. However, we do not exhaust our attention on adopted legislation. Rather, we aim at a comprehensive presentation of the landscape of immigration policies and politics in the EU by including the positions and immigration policy proposals of important policy stakeholders in the countries concerned as well as at the EU level.

Disclaimer

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the Puzzled by Policy Consortium or the European Commission.



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1. INTRODUCTION

The present report stems from the research conducted at EUDO within the project “Puzzled by Policy”, as part of an international consortium that won a tender in the framework of the European Commission’s “Competitiveness and Innovation Framework Programme” (Objective Theme 3: ICT for Governance). “Puzzled by Policy” began in October 2010 and will end in September 2013. The project’s goal is to inform, consult, and empower citizens in immigration policy-making in the EU by providing high-quality information on immigration policy developments in a manner that is easy for citizens to understand, and by bringing together citizens and key policy actors to exchange ideas and policy proposals. The “Puzzled by Policy” platform can be accessed at <http://join.puzzledbypolicy.eu/>.

Currently, “Puzzled by Policy” is being implemented in four pilot countries: Greece, Hungary, Italy and Spain. EUDO has been supporting the “Puzzled by Policy” consortium by providing academic and policy expertise as well as the necessary know-how for the conceptualisation and operationalisation of the “Puzzled by Policy” platform. Within the framework of the project, research at EUDO has focused on the monitoring and analysis of immigration policy developments in the European Union as well as in the four pilot countries of the project. The present report benefits from this research while focusing on the three pilot Mediterranean countries that have been affected the most by immigration movements in the last two decades: Greece, Italy and Spain.

The relevance of immigration issues for citizen participation in policy-making in the EU is increasing year by year. According to data provided by Eurostat, in 2010 there were 20.2 million third-country nationals living in the European Union. In some member states, including Spain, Greece and Italy, the size of the immigrant population approximated 10% of the total population (Eurostat 2011). Moreover, demographic and economic forecasts suggest that the percentage of immigrants in the EU member states is likely to increase in the future (Lorant 2005; Ministero del Lavoro e delle Politiche Sociali 2011).

Further, immigration constitutes a policy domain that frequently stirs strong emotions and controversies. It is a policy area where economic, political, humanitarian, cultural and other considerations and philosophies often clash with particular force.

Finally, immigration is increasingly becoming an EU policy domain, as a result of incremental but continuous efforts to harmonize legislation in the member states and achieve cooperation in the management of immigration movements. The impact of immigration is mostly felt at the local level, where realities, opportunities and problems differ substantially; however, the policy-making competences are shared between the local, the national and the EU levels. As the division of competences is not always straightforward, this multi-level character of immigration policy-making often makes this policy domain complex and puzzling, for citizens and immigrants alike.

Since the start of the “Puzzled by Policy” project, profound changes have taken place in the pilot countries involved. The deep economic crisis that hit Greece, Italy and Spain has affected all segments of these societies. Foreign citizens, especially third-country nationals, are no exception. Immigrant employment rates reveal the particularly vulnerable position of foreign workers in European – especially southern European – societies: by the end of 2011, the unemployment rate of third-country nationals in Spain had reached 36.83% (EMN 2012a:15). For a large part of the immigrant populations in southern Europe, increasing unemployment can also alter the legal status of third-country nationals, as the latter’s employment is directly linked to the legality of residence and the protection of a series of rights. At the same time, anti-immigration rhetoric has worryingly increased. In national public or political debates, immigrants become an easy target for hard-line positions and restrictive policies within a general climate of social discontent and economic hardship. Printed and electronic media are far from immune to sensationalistic reporting about the alleged “massive influxes” of immigrants, while often associating the latter with crime and security issues (Human Rights Watch 2011). Not surprisingly, anti-immigration sentiments are on the rise in all the three countries covered in this report while the economic and social conditions of immigrants are worsening due to the heavy cuts in public resources dedicated to immigrant integration.

The economic crisis has not only affected policies and politics in the EU member states; it has also affected the pace of EU policy-making. More than ever before, EU legislative activity and politics are now focused on economic issues and the immigration policy domain is no exception to this tendency. The process of harmonization of immigration policies in the EU continues, albeit in a slower pace, but progress is frequently hindered by the diverse ways different member states apply common EU

legislation. Moreover, the joint management of immigration issues at the EU level is often very weak and solidarity in the management of immigration movements in times of crisis may be fragile. This became very clear during and after the events of the “Arab Spring”, which substantially increased the numbers of non-EU citizens arriving to the shores of southern EU member states, particularly those of Italy. The increases in new arrivals from the southern Mediterranean tested the willingness and the commitment of other member states to burden-sharing, especially when taken into account that a couple of member states temporarily reinstalled controls at their national borders under exceptional conditions or even called for a revision of the Schengen agreements (EMN 2012b:11-14).¹

1.1 The scope of the report

The multi-dimensional phenomenon of immigration movements into the EU and its member states comprises a variety of categories of entry and residence. These categories concern the motivations and intentions of movement, the legal status of the persons concerned, and the scope and duration of stay in the territory of the member states. The policy areas that are taken into consideration in this report are: a) the entry and residence of non-EU citizens for employment purposes, including the high-skilled immigrant workers; b) admission and residence of non-EU citizens for purposes of family reunification; c) admission and residence for students and researchers from non-EU countries; d) circular migration; e) clandestine immigration; and f) return and re-admission of non-EU citizens who reside without authorisation.

Further, we define “immigration policy” as the legislative outcomes of policy-making processes of institutions at the EU level and in the member states concerning the entry, residence, and return of non-EU citizens. In turn, by “legislative outcomes” we mean legal norms, policy guidelines and principles, official policy objectives, and concrete policy instruments. This report also includes positions and proposals of institutions and actors that aim to influence the legislative outcomes of immigration policy-making processes in the EU.

¹ This request, supported by the Commission, has been refused by the European Parliament (EMN 2012b:13).

The above definitions entail some conscious choices. Most importantly, some categories of human movement within the EU have been excluded from the scope of this report. The movement and settlement of EU citizens within the Union, although it accounts for a potentially significant number of foreign residents in some member states (the case of Luxembourg is a case in point here) has not been considered here, due to the special and more favourable treatment granted to EU citizens within the legal framework of EU citizenship rights. As a consequence of the resulting freedom of movement and equal treatment in other member states, the categorisation of EU citizens exercising their right of free movement within the Union as “immigrants” is debatable among scholars and policy-makers alike. The special legal regime concerning the free movement of citizens within the EU and the European Economic Area often results in the adoption of separate legal acts in the member states, separating the provisions on EU citizens and third-country nationals.

Similarly, there is a long-standing international scholarly debate as to whether asylum seekers and refugees should be considered as part of the immigration phenomenon or as a special category of human movement on their own. This debate exceeds the purposes of this report. Here it suffices to note that the international obligations of the member states to offer protection to asylum seekers and refugees relate to a developing system of international norms, based on the 1951 Geneva Convention on the status of refugees and the 1968 New York Protocol, which also involves the independent participation and action of international bodies and actors beyond the EU and its member states. In parallel, the member states and the EU institutions have been gradually building up a special regime on the treatment and rights of asylum seekers and refugees within the Union that is separate from the treatment of third-country nationals who are not in need of international protection. This separate institutional and policy framework is the reason why third-country nationals who enter and reside in the EU member states as refugees, asylum seekers, or persons awarded temporary protection have not been included in this report.

Finally, this report does not include the entry and residence of third-country nationals in the member states for a period of less than 3 months and, consequently, the policies on visas and external border controls within the Schengen system. The reasons for this choice are twofold: on the one hand, it is necessary to distinguish the

short-term movement of third-country nationals to the EU for the sole purpose of travel, tourism, recreation, or very temporary international employment activity from the entry and residence of third-country nationals that entail a reasonable prospect of social and economic participation and/or (temporary or permanent) settlement in the country of destination. On the other hand, although “immigration” within the EU is defined as the action by which a person, having previously been resident in another member state or a third country, “establishes his or her usual residence in the territory of a member state for a period that is, or expected to be, of at least 12 months”,² seasonal and temporary immigration in the EU member states for employment purposes has been growing in importance in the last two decades. Therefore, we included residence of non-EU nationals for a period less than twelve months but longer than three months, in order to account for these types of movement.

In the following sections, we provide an overview of immigration policy developments at the EU level and in three of the member states: Greece, Italy, and Spain. We lay particular emphasis on changes that have taken place in the last few years but we do not exhaust our attention on the adopted legislation. Moving beyond the usual scope of reports of this kind, we aim at a comprehensive presentation of the landscape of immigration policies and politics in the EU by including the positions and immigration policy proposals of several important policy stakeholders in the countries concerned as well as at the EU level.

We hope that this report, rich in information on the state of the art in the EU and in the countries covered, becomes a useful tool for academics, practitioners, and citizens to use while conducting their own assessments and evaluation of immigration policies and politics in Europe.

2 Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, July 2007, Article 2 §1 (b).

2. EU POLICY DEVELOPMENTS IN IMMIGRATION ISSUES 2007-2012

Already in the year 2006, the European Commission recognised that most of the EU member states had become countries of immigration while the few member states still characterised by net emigration rates³ were gradually approaching migration balance (European Commission 2006b: 12-13). In this section, we present immigration policy developments at the EU level that concern third-country nationals, with an emphasis on the legislative instruments adopted in the last five years. In the last couple of years, the pace of EU policy-making in immigration issues seems to have slowed down. Currently, most activity - with a couple of exceptions to be presented below - concerns negotiations in the Council and co-decision with the European Parliament on Commission initiatives of previous years. This phenomenon may be partly attributed to the overarching attention paid by EU institutions and member states to economic and financial policy issues and the tackling of the European economic crisis that engage resources, agendas, and political personnel primarily in these policy areas.

In the following sections, we present the most important policy developments at the EU level in the last five years. Again, we focus our attention on the five policy areas covered by our research, namely immigration for employment purposes; family reunification; student immigration; long-term residents and integration; and clandestine immigration, re-admission and return. Finally, taking into account the links between immigration, employment and economic policies, we also present relevant policy positions of the representatives of social partners at the EU level on the above-mentioned categories of immigration policy issues.

2.1. Immigration for employment purposes

The adoption of common binding EU norms on the entry and residence of third-country nationals for the purposes of employment activities has proved the most difficult task to achieve by the member states. Although non-binding Council Resolutions in this policy

3 This concerned Latvia, Lithuania and Poland.

area had been adopted in 1994 within the so-called “3rd Pillar” of the Maastricht Treaty,⁴ these were restrictive in direction, aiming at the introduction of common principles to restrict new immigration or authorise it in rather exceptional circumstances.

The Tampere Program gave new impetus concerning the definition of a common legal framework for the admission of economic migrants to the member states, stipulating the need to regulate immigration, meet the needs of the labour market in the member states, and respect the rights of third-country nationals. Accordingly, the Commission presented its *Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities* in July 2001.⁵ *Inter alia*, the proposal aimed at increasing transparency; assisting European industries with recruiting new migrant workers; simplifying recruitment by introducing a single national procedure in all member states combining both work and residence permits in a single document; providing common binding definitions and criteria for the admission of new migrant workers; and differentiating the rights of third-country national workers according to their length of (authorised) stay.

However, as the Commission noted at the outset, there was significant divergence among the national regulations in force in this policy area (European Commission 2001: 2-6). Despite the long period of negotiations, the Proposal failed to materialise into an adopted Directive. Although the European Parliament, the Committee of the Regions, and the Economic and Social Committee supported the proposal, the member states failed to reach agreement in the Council (European Commission 2007a: 3). In 2005, the Commission withdrew the Proposal in order to re-consider EU action in the field (European Commission 2005a: 12).

Agreement among the member states proved easier to achieve in the non-controversial issues of admitting researchers (Directive 2005/71/EC⁶) and high-skilled im-

4 Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons (OJ C 274 of 19 September 1996); Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment (OJ C 274 of 19 September 1996).

5 COM (2001) 386 final; 2001/0154/CNS, 11 July 2001.

6 Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, 12 October 2005.

migrant workers (Directive 2009/50/EC, the so-called “Blue Card” Directive),⁷ to meet the increasing demands for highly specialised labour in the European economies. In recent years, Commission proposals, negotiations in the Council and in the European Parliament, and adopted Directives further reveal the policy shift towards harmonizing policies in particular categories of employment. This shift primarily concerns high-skilled professionals and low-skilled seasonal workers.

Admission of high-skilled workers (the “Blue Card” Directive)⁸

By the late 2000s, there was renewed interest in the member states to open up some opportunities for legal immigration of third-country nationals, so that specific labour shortages could be met. Thus, circumstances were favourable for the Commission Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.⁹ The Proposal was presented in October 2007, aiming at improving “the EU’s ability to attract and – where necessary – retain third-country highly qualified workers so as to increase the contribution of legal immigration to enhancing the competitiveness of the EU economy” and meeting “substantial labour and skills shortages in certain sectors of the economy, which cannot be filled within the national labour markets and concern the full range of qualifications”. Indeed, the Commission described the prospects of the European labour markets as a “need scenario” at least in some member states, and noted the predominantly low- or medium-skilled immigration of third-country nationals in the EU as opposed to the high-skilled immigration to the United States and Canada (European Commission 2007a: 2-3).

Along with a common fast-track procedure for the admission and employment of highly-qualified workers, based on common definitions and criteria of employment contracts, professional qualifications and remuneration, the proposal included the policy of preferential treatment of highly-qualified third-country nationals concerning their right to move to another member state after two years of residence, their move and residence in other member states as long-term residents, and their right to family reunification (European Commission 2007a: 4, 6).

7 Not applicable to the United Kingdom, Ireland and Denmark.

8 Directive 2009/50/EC. Not applicable to the United Kingdom, Ireland and Denmark.

9 COM (2007) 637 final.

The Commission proposal also included the condition for a gross salary three times the minimum gross salary allowed in a member state for highly-qualified third-country nationals; the duration of the initial “Blue Card” was set to a minimum of two years and renewable, subject to the optional application of the principle of Community preference and labour-market tests, and would entitle its holder to entry, re-entry and residence in the member state, as well as travel within the Union (article 8 of the proposal).

The actual Directive¹⁰ (adopted in May 2009) provided for more flexible or restrictive provisions, including the duration of the initial “Blue Card” ranging from one to four years and renewable. Moreover, the remuneration ceiling for highly-qualified workers was set at 1.5 of the average gross annual salary in the member state concerned (with derogations). Additional provisions were inserted as regards to the grounds for the rejection of applications and the withdrawal of “Blue Cards”, including the case of employers sanctioned for facilitating unauthorised employment of third-country nationals (article 7 and 8 of the Directive) and the recourse to the public system of social assistance due to insufficient financial resources (article 9 of the Directive).

As regards to the transparency guarantees for the processing of applications, the Commission had proposed a maximum of sixty days deadline for the final decision on the application (article 12 of the Proposal), whereas the adopted Directive set the deadline to three months (article 11 of the Directive). The proposals of the Commission concerning the obligation of member states to inform the applicant of the reasons for the rejection of his application and to provide him with effective means of redress and appeal were upheld in the adopted Directive (article 11 of the Directive). Regarding the rights of “Blue Card” holders, the Commission proposal proved more liberal than the adopted Directive. The latter made optional the equal treatment of highly-qualified workers to the nationals of the member state concerning the full access to highly qualified employment, and introduced additional grounds of temporary unemployment for the withdrawal of “Blue Cards” (Article 13 of the Directive).

On the contrary, the Council upheld the Commission proposals (article 15 of the Proposal) on the equal treatment of “Blue Card” holders concerning working condi-

¹⁰ Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, June 2009.

tions and remuneration, freedom of association, the recognition of diplomas and professional qualifications, access to education and vocational training (with optional limitations regarding housing, tertiary education, bursaries and study loans), certain aspects of social security, and statutory pensions (article 14 of the Directive). In addition, pursuant to the proposals made by the Commission, “Blue Card” holders were exempted from the requirements of prior residence and reasonable prospects for permanent residence when applying for family reunification. Their family members were allowed free and immediate access to employment, they were exempted from meeting integration requirements prior to their entry in the EU, and they were provided with a fast-track procedure of a maximum of six months for the issuing of residence permits (article 15 of the Directive).

Moreover, the “Blue Card” Directive contained derogations from the previously adopted Directives on the right to family reunification and the status of long-term residents. Accordingly, high-skilled third-country nationals and their family members could now qualify for long-term resident status and for autonomous right of residence, respectively, after five years of legal residence in the European Union instead of one particular member state. Further, the period of continuous residence of “Blue Card” holders for acquiring the status of long-term resident was decreased, as a maximum of 18 months of absence from the Union was granted. The same happened with the period of continuous residence required for maintaining that status (a maximum of two years’ absence from the European Union was granted) and family members were granted the right to accompany the “Blue Card” holder when moving to another member state two years after his first entry into the EU (articles 15-16 and 18 of the Directive).

Six member states - Austria, Cyprus, Greece, Malta, Luxembourg, and Romania – were late in adapting their national laws to the “Blue Card” Directive by the transposition deadline (June 2011). By late February 2012, Austria, Cyprus and Greece still failed to apply fully the binding provisions of the Directive (European Commission 2012a).

A single procedure for the issuing of single residence and work permit (Directive 2011/98/EU)

A long-expected step towards a common EU immigration policy was the adoption in 2011 of the Directive *on a single procedure for the issuing of a single permit to third-country nationals to reside and work in an EU member state and on a common set of rights*

of third-country national workers. The Proposal for the Directive had been submitted by the Commission in October 2007. Initially, there were two main issues involved. On the one hand, there was the harmonisation and simplification of the procedure of issuing residence and employment permits to third-country nationals, by introducing a single procedure and document. On the other hand, there was the approximation of rights of third-country national workers in the EU member states, encompassing a harmonisation of legislation in the various member states and approximation with the rights of EU citizens. While initially involving the Commission and the Council, negotiations in 2009 became “tripartite” as the European Parliament was added to the parties. The role of the European Parliament, informal in the beginning, became fully formal following the institutional changes introduced by the Lisbon Treaty and the introduction of the co-decision procedure in all immigration policy issues. On the way to its final adoption, the draft Directive was amended to include proposals for the approximation of the rights of third-country national workers with rights of native workers in particular areas, such as social benefits.

The new Directive is, in effect, the first EU Directive that regulates first entry, residence and rights of immigrants who arrive in the EU for employment purposes other than those with special skills. It applies to non-EU nationals who wish to be admitted to an EU member state for reasons of paid employment. It also applies to those third-country nationals who have been admitted and reside in one EU member state for reasons other than employment but they have the right to be employed (such as third-country nationals originally admitted for reasons of family reunification and studying purposes). However, the Directive does not apply in the case of third-country nationals who are already posted in a member state, intra-company transferees, seasonal workers, asylum seekers, long-term residents, clandestine immigrants, and third-country nationals awaiting expulsion or removal from an EU member state.

The Single Permit Directive establishes a single residence and work permit and a single procedure for issuing it. It also provides for a common permit format, a common set of standards (including uniform deadlines and standards for the examination of applications), and a common set of rights of permit holders. These rights pertain to employment and social security, pensions, health-care, education, unemployment

benefits, crossing internal borders and movement within the EU for periods up to three months, and the provision of public goods (such as public housing).

The co-decision procedure between the Council and the European Parliament has resulted in a “watering down” of some draft provisions and a more precise definition and limitation of the scope of the Directive. Accordingly, third-country nationals in need of protection, particular occupational categories, such as sea-farers, and self-employed persons have been excluded from the scope of the Directive. Moreover, clauses that allow for derogations in the implementation of the Directive in the case of students and for those who are authorised to work in a member state for a period of less than 6 months (temporary workers) have also been added. Equal treatment of third-country national workers concerning access to goods and services has been limited to those who are in actual employment, but the European Parliament insisted that equal treatment in social security, working conditions, and freedom of association be applied also in the case of currently unemployed workers who had been employed for a period of at least six months (European Commission 2011c: 3-4).

In particular, the new single permit allows third-country nationals:

- To enter and reside in a member state (the state that issues the permit);
- To move freely within that member state;
- To pass through other member states and move/travel within the Schengen zone for a period up to three months;
- To exercise the employment activities authorised under the permit;
- To enjoy the rights accompanying the permit, i.e. equal treatment with the nationals of the member state concerning the conditions of employment, the freedom of association and membership in a labour union or professional association, education and vocational training, recognition of professional qualifications (diplomas, etc.), social security, health care, access to goods and services, including procedures for obtaining housing and the assistance afforded by employment offices, and tax benefits.

The initial restrictions included in the Commission’s proposal remain, namely that

“member states may restrict equality of treatment with regard to study grants, access to public housing and payment of unemployment benefits”. The member states “may also make access to education and vocational training conditional on appropriate competence in the language of the host country” (European Commission 2011f; European Commission 2007).

Furthermore, the initial proposal of the Commission included a draft clause that would enable the transfer of pension benefits for third-country nationals to third countries if the third-country nationals resettled in the latter. However, this draft clause was amended during the negotiations and rights of transfer of pension benefits to third countries are now subject to reciprocity and/or bilateral or multilateral agreements between EU member states and third countries. Prior to the adoption of the Directive, the International Labour Organisation (ILO) had welcomed the Directive and the norm of equal treatment contained therein. At the same time, it had also supported the re-introduction of the draft clause on transferring pension benefits to third countries the same way it is provided for the nationals of EU member states (ILO 2011: 5).

*Circular migration and seasonal employment: the Commission Proposals on seasonal workers and intra-company transfers*¹¹

With the aim to facilitate circular mobility of seasonal workers and intra-company transferees between the EU and third countries, the Commission issued in July 2010 the *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment* (COM (2010) 379 final), and the *Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer* (COM (2010) 378 final). Both were part of EU efforts to develop a comprehensive immigration policy in line with the 2004 Hague Program, achieve an effective management of migration flows, and meet the targets of the EU 2020 Strategy. Neither of the two Proposals has reached the stage of final adoption yet.

The two Proposals were rooted in the perception that Europe is in need of swift proce-

11 The assistance of Dr. Piotr Plewa in the collection of material used in this section is gratefully acknowledged.

dures for the admission of both low and high-skilled workers. In turn, the latter would help the EU compete successfully on the global labour market and decrease irregular migratory movements or, at least, better protect its foreign worker populations (European Commission 2010c: 3). Additionally, the two proposals were expected to precipitate the co-development of the EU and of the countries of origin alike. Foreign workers would provide needed labour to the EU and remittances and know-how to their countries of origin. Moreover, such a policy was not expected to have a negative effect on the countries of origin, such as brain-drain, given that workers would circulate back and forth (European Commission 2010c: 3). Finally, the Proposals should set fair and transparent rules for entry and residence while preventing that temporary stays develop into permanent settlement (European Commission 2010c: 3, 14).

By providing common definitions and criteria for granting permits, the two Proposals aimed to build fast-track procedures for the admission of third-country seasonal workers and intra-company transferees. However, none of the two specified the numbers of workers to be admitted. The member states were left free to decide on the number of admissions, the labour market sectors, and the administrative aspects of the application process. Examples include decisions as to whether applications are to be logged by the third-country national or by their prospective employer, and which national authorities will be responsible for processing the applications (European Commission 2010c: 10). However, certain common guarantees were included, such as the obligation of member states to process applications within 30 days and enable the applicant to contest a negative decision. Despite the active encouragement of immigration from third countries, the Commission upheld the principle of Community preference and the priority of employing EU nationals (European Commission, 2010c: 9).

- a) *The Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment*

Given the demand-driven character of admissions of seasonal workers in the member states, the Proposal recommended that employers should provide candidate migrant workers with a work contract or a binding job offer. To prevent exploitation and unfair competition, this contract or offer should include: (a) remuneration equal or higher to

that paid for the respective activity in the admitting member states¹²; (b) the working hours; and (c) evidence of “adequate” and “reasonably priced” accommodation during their stay. Once admitted, the third-country national worker should enjoy the same rights as nationals in a number of areas including workers’ representation, payment of statutory pensions, and access to public goods and services. Furthermore, the workers or the third parties should have access to channels to voice complaints (European Commission 2010c: 5-6).

Seasonal workers would not be able to change status while in the EU. Seasonal employment permits would be valid only for the host member state (European Commission 2010c: 11) and for a maximum of six months in a calendar year. However, multi-seasonal work permits could be issued in sectors where labour market needs remain stable over a period of time, authorizing up to three subsequent seasons of work (European Commission 2010b: 3-4). Those migrants who will not comply with the program rules could be excluded from admission for one or more subsequent years. Likewise, an employer who will breach contract obligations will be subject to sanctions and excluded from seasonal worker employment for at least one year (European Commission 2010c: 10).

By early 2012, member states in Council negotiations had agreed on the following provisions:

- A “seasonal worker” is a third-country national who has got his/her principal residence outside of the EU and applies to be admitted for seasonal employment or already resides in an EU member state for reasons of seasonal employment as shall be regulated by the adopted Directive.
- Seasonal employment is an “activity dependent on the passing of the seasons, as determined by national law and/or practice, under one or more fixed-term work contracts concluded directly between the third-country national and the employer established in that member state. The maximum duration of stay for seasonal employment in an EU member state shall not exceed a maxi-

12 European Commission (2010c: 15).

mum of five to nine months each year." Moreover, "'activity dependent on the passing of the seasons' means an activity that is tied to a certain time of the year during which required labour levels are above those necessary for usually on-going operations or during which specific operations need to be carried out;" (article 3 § b) and c)).

- Seasonal workers may extend and/or renew their seasonal employment permits or long-stay visas as well as change employer under certain conditions and within the maximum limits of stay that will be provided by the adopted Directive.
- Seasonal workers will be expected to return to their countries of origin following the end of their seasonal employment each year. In case they do not observe this rule and extend their stay without authorisation, or in case of using forged documents etc., they shall be excluded from the legal procedure for seasonal employment in subsequent years. However, upon expiration of their contracts, seasonal workers may be able to apply for and stay in the member state for reasons other than seasonal employment.
- Employers will be requested to ensure adequate accommodation for seasonal workers and observe the national legal standards of the EU member state where they are established. The latter standards concern remuneration, working conditions, and provisions of the employment contract signed with the seasonal worker. Employers who do not observe these rules or are found to employ third-country nationals illegally will be excluded from hiring seasonal workers for up to 3 years.
- Seasonal workers shall enjoy equal treatment with the nationals of the member state concerning freedom of association and membership in trade unions, payments of statutory pensions when moving to a third country, and access to public goods and services with the exception of public housing. They shall also be granted access to parts of social security, though exceptions may be allowed by member states concerning family benefits.
- Work permits or long-stay visas shall be issued to seasonal workers for a particular EU member state. Their work permits and/or long-stay visas for sea-

sonal employment shall not confer to them the right to move to another EU member state for employment.

- The right to family reunification shall not apply to seasonal workers.

These points of agreement reveal a series of NGO policy proposals that have found their way into the draft Directive. Such proposals included the detailed definition of “seasonal employment”; the provision that the procedure for hiring foreign seasonal workers be administered by public authorities of the member states; the definition of sanctions on employers who do not observe their obligations toward seasonal workers; and the freedom of seasonal workers to choose whether to reside in accommodation provided by the employer or in other accommodation of their choice.

By contrast, NGO proposals that have not been incorporated in the draft Directive include a) the inclusion of unauthorised immigrants in the scope of the Directive, b) the provision of the right to family reunification to seasonal workers, c) the provision of fully equal treatment of foreign seasonal workers to EU nationals concerning employment and social security rights, and d) the provision of the right to seasonal workers to stay in the EU after the end of their seasonal employment contracts (PICUM 2011; PICUM *et al* 2011).

As regards the current status of negotiations in the Council, since March 2012 member states have been negotiating, *inter alia*, on the details concerning the issuing of visas to prospective seasonal workers for durations of stay shorter than three months; the salary standards, the coverage of travel and return costs, and other admission criteria for foreign seasonal workers; the rights of family members of seasonal workers; the right of the member states to set minimised annual quotas for seasonal employment, if they so wish; the definition of particular economy sectors for foreign seasonal employment; and the ability of the member states to apply more favourable national provisions on seasonal employment.

- b) The Proposal for a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer

This Proposal resulted from the increasing awareness on the side of EU policy-makers that the current rules concerning intra-company transfers differ widely among mem-

ber states. They were found to lack harmonisation, transparency and simplicity, and therefore hamper the transfer of knowledge, innovation and investment by non-European companies into the EU and by EU companies to third countries (European Commission 2010b: 14). According to the Commission, streamlined intra-company transfers of employees are crucial to Europe's competitiveness in the globalizing market (European Commission 2010b: 9).

The Proposal required that intra-company transferees be managers or specialists who have worked in the same group of undertakings for at least one year, though graduate trainees could also be included (European Commission 2010b: 11). The applicants should possess an assignment letter specifying the duration and location of the transfer, the description of their job or training, their remuneration and the employer's commitment to transfer the workers back upon completion of the contract (European Commission 2010b: 10). Furthermore, employers should provide a proof of application for sickness insurance for the transferred employees. Successful applicants should be granted a combined work and residence permit valid for up to three years. Alternatively, instead of three-year permits, the member states could facilitate the application procedure for former workers, either by requiring fewer documents or by shortening the processing time (European Commission 2010b: 15).

Due to the temporary nature of intra-corporate transfers, equal treatment with regard to education and vocational training, public housing, and counselling services from employment services were considered irrelevant. However, intra-company transferees would be granted the right to immediate family reunification (European Commission 2010b: 7, 17) and, under certain conditions, the right to work in entities located in other member states.

Negotiations in the Council on the draft Directive on intra-corporate transfers are still under way, involving the Strategic Committee on Immigration, Frontiers and Asylum, as well as the Working Party on Integration, Migration and Expulsion. Since October 2011, dense negotiations on the draft Directive have continued on a regular pace but there is still no relevant EU document that is publicly accessible. The density of meetings in the Council on the draft Directive may imply that an adoption of a Directive may be awaited rather soon

2.2. Entry and residence for studying purposes and vocational training

Already in the early 1990s, the entry and residence for studying purposes had been among the first policy areas in which EU member states agreed on common principles and norms concerning the admission of third-country nationals and the harmonisation of their national regulations.¹³ In its 2002 Proposal, the Commission noted the desirable and temporary character of student immigration, its independence from the labour market conditions in the host country, and the pro-active student recruitment policies of many EU member states (European Commission 2002b: 2). On these grounds, it is no surprise that the 2004 Council Directive on the entry and residence of third-country nationals for the purposes of studies, vocational training and voluntary service¹⁴ enjoyed wide support from all member states.

Third-country nationals can be admitted and reside for studying purposes in an EU member state when they have been accepted by an academic institution to pursue their studies and when they have sufficient financial resources to cover the costs of their subsistence, studies, and return travel to their countries of origin. When applicable in the host member state, third-country nationals may need to provide proof of their sufficient language knowledge and their payment of University fees. The Directive provides that, within the framework of intra-EU mobility in higher education and the proliferation of European student exchange programmes, third-country national students can reside in another member state in order to pursue a part of their studies. Residence permits for studying purposes are issued for one year and they are renewable. Failure to provide evidence of academic record may lead to the withdrawal of the residence permit. Students who are non-EU nationals are allowed to engage in paid employment or self-employed economic activity (at least ten hours a week), subject to some restrictions during the first year of their residence.

During the last few years, student immigration has not been high on the policy agenda at the EU level or in the countries covered by this report. Nevertheless, in some

¹³ Council Resolution of 30 November 1994 on the admission of third-country nationals to the territory of the Member States for study purposes, OJ C 274 of 19 September 1996.

¹⁴ Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, December 2004. Not applicable in the United Kingdom, Ireland and Denmark.

member states there is an open debate regarding the period awarded to foreign students to remain in the member state after the end of their studies in search for employment. Moreover, in September 2011 the European Commission published its report on the implementation of the Directive on entry and residence of third-country nationals for studying purposes (European Commission 2011a). The evaluation of the implementation of the Directive in the EU member states covered by this report is presented in the respective national chapters.

2.3. Immigration for reasons of family reunification (Directive 2003/86/EC)

One of the first binding EU policy instruments in immigration policy was Directive 2003/86/EC *on the right to family reunification*. The Directive still applies to all member states except the United Kingdom, Ireland and Denmark. The Directive was part of the Tampere Program that called for common EU policies on authorised immigration and the rights of third-country nationals.

According to this Directive, third-country nationals who reside legally in the member states for at least one year and have reasonable prospects for permanent residence (the “sponsors”) have the right to reunite with their non-EU national spouse and minor and unmarried children.¹⁵ The children of both the sponsor and the spouse are eligible for family reunification. In addition, minors who are recognised as refugees have the right to family reunification with their parents. In the case of polygamous marriages, only one spouse is allowed to join the sponsor. Spouses are granted the right to full access to the labour market, at latest one year after their reunification with the sponsor. Both the spouse and the children enjoy the right to education. Within a period of five years following reunification with the sponsor, the spouse and the children reaching majority are granted autonomous residence permits.

A number of requirements for the exercise of the right of family reunification were left at the discretion of member states. The latter adapted their national legislation to these optional provisions in different ways. The result has been a patchwork of differ-

¹⁵ Asylum seekers and persons under subsidiary or temporary protection are not covered by the provisions of this Directive.

ent degrees of liberal or restrictive implementation across the EU. Thus, the member states may authorise family reunification under certain conditions to be met by the sponsor. These conditions include the provision of adequate accommodation, sickness insurance, and the possession of stable and regular resources. In addition, family members may be subject to integration measures. Those member states that were taking into consideration their reception capacities in their authorisations for family reunification at the time of adoption of the Directive (2003) were allowed to introduce a waiting period of maximum three years before family reunification takes place.¹⁶ Furthermore, the member states that applied special provisions for the family reunification of children exceeding 16 years of age at the time of the adoption of the Directive retained that discretion.¹⁷ On the other hand, member states are allowed to grant family reunification to the unmarried partner of the sponsor if they so wish. Finally, the member states can apply a waiting period for family reunification that does not exceed two years of lawful residence of the sponsor.

In its Green Paper on the right to family reunification of November 2011 (European Commission 2011d), the Commission invited all stakeholders, organisations, EU and national institutions, and individuals to participate in the public consultation on the content and implementation of the Directive on the right to family reunification in the member states. Green Papers do not have any binding effects on current legislation at the EU level or in the member states. However, they often indicate the direction of future Commission proposals to amend the existing legal provisions in force.

In that sense, the recent Commission Green Paper on the right to family reunification has a clear direction towards awarding more rights to third-country nationals in the near future, including the option of amending the Directive now in force to that end. The Green Paper also indicates the preference of the Commission to gather reliable quantifiable data on family reunification issues, and to strengthen effective controls for the prevention of fraud in family reunification procedures (such as marriages of convenience). Further, the Commission has noted that the integration tests some member states implement prior to the entry of family members to their territories may be disproportionate and they may in fact restrict the application of the right

16 This provision concerned the case of Austria only.

17 This was the case of Germany.

to family reunification and the implementation of the Directive. Moreover, the Commission has indicated that two special derogative clauses of the Directive regarding minor children who enter a member state separately from the rest of the family (one not implemented by any member state, the second implemented only by Germany) may be abolished in the future.

2.4. Long-term resident third-country nationals in the European Union (Directive 2003/109/EC)

Together with the Directive on the right to family reunification, the Directive 2003/109/EC *concerning the status of third-country nationals who are long-term residents* was one of the founding instruments of the common EU immigration policy within the framework of the Amsterdam Treaty. The Directive applies to all member states except Great Britain, Ireland and Denmark, and covers third-country nationals who reside in a member state for purposes other than international and temporary protection, studies and vocational training, seasonal employment, and employment for providing cross-border services.

According to the Directive, third-country nationals residing continuously and lawfully in a member state for at least 5 years acquire the status of long-term resident. The status awards special rights to its beneficiaries. In particular, it provides:

- a) protection from expulsion in cases other than an actual and serious threat to public policy and public security;
- b) the right to move and reside in another member state for exercising economic activity, studies and vocational training, and other purposes;
- c) equal treatment with the nationals of the member states in employment access and employment conditions, education, vocational training, recognition of qualifications, welfare and social benefits;
- d) freedom of association and freedom to participate in and represent a union or association;
- e) freedom of movement in the hosting member state.

The Directive allows for the provision of more favourable treatment to long-term residents if the member states wish to do so in their national legislation. At the same time, member states may choose to apply certain restrictions concerning the access of long-term residents to employment, education, and to welfare and social benefits.

In September 2011, the Commission published its report on the implementation of the Directive on the status of long-term resident immigrants in the EU member states (European Commission 2011b). According to the report, Greece, Italy and Spain restrict equal treatment of long-term residents and family members to those with habitual registered residence in their territories. They also impose restrictions on the employment of long-term residents in public service. At the same time, Greece and Spain provide for national permanent resident permits to some categories of third-country nationals (ethnic or returning migrants, spouses of nationals, etc.) on more favourable terms than those in the Directive (European Commission 2011b).

Currently, there are requests for preliminary rulings pending before the Court of Justice as regards to the scope of the Directive and the exclusion of some groups of legally resident third-country nationals from it in some member states, including Greece and Italy. A request for a preliminary ruling has also been submitted to the Court of Justice by an Italian tribunal concerning the issue of equal access to housing allowances.

2.5. Irregular immigration, 18 re-admission and return policies

Establishing common EU policies on irregular immigration has been on the top of EU priorities during the last decade. In EU policy documents, “illegal immigration” is taken to mean (European Commission 2006a: 2):

1. the clandestine entry of third-country nationals in the territory of the member states by land, sea, and air;
2. the practice of third-country nationals to overstay their visas or change the pur-

18 For the purposes of this Report, the terms “illegal immigration”, “clandestine immigration”, “irregular immigration” and “unauthorised immigration” are used interchangeably.

poses of their entry and residence without permission of the authorities of the member states; and

3. the continuation of residence of rejected asylum seekers in the member states despite their obligation to leave the territory of the EU after a final negative decision on their asylum application is taken.

According to a Commission staff working document, from 2002 until 2007 approximately 450,000 irregular immigrants were apprehended annually in the EU member states. In the year 2007 only, there were 488,475 removal decisions taken and 226,179 removals executed by the member states (European Commission 2009a: 28-29). The number of removals lies steadily below that of apprehensions: between 2002 and 2004, only one third of decisions for the removal of apprehended clandestine immigrants had been actually implemented (European Commission 2006b: 17).

On the other hand, consecutive regularisation campaigns in the southern member states (namely Italy, France, Spain, Greece and Portugal) had resulted in a total of 3,752,565 regularisations between the early 1980s and 2005. Approximately 228,000 irregular immigrants were regularised in Greece in 2001; 635,000 in Italy in 2002; and 549,000 in Spain in 2005 (European Commission 2006b: 33-34).¹⁹ Morocco, Ukraine, Serbia and Montenegro, Moldova, Albania, Iraq, Belarus, Brazil and Turkey were identified as the main countries of origin of irregular immigrants. On the other hand, Greece, Spain, France, Italy, and Sweden were identified as the main destination countries of clandestine immigrants in 2007, thus revealing the over-burdening of the southern EU member states, especially in relation to the total population of the smaller among them (Malta, Cyprus and Greece) (European Commission 2009a: 30-33).

Member states and EU institutions have invested considerable efforts to establish effective policy tools for combating clandestine entry and residence of third-country nationals in the EU and achieve the effective removal and return of irregular immigrants to their countries of origin. These efforts have led to a proliferation of all kinds

¹⁹ The practice of consecutive mass regularisations in southern Europe gave rise to concerns in the rest of the EU and resulted in the establishment and operation of a mutual information system on national policy measures on immigration and asylum in 2007 (European Commission 2006a: 8).

of EU policy instruments throughout the 2000s. The broader scope of these policy developments range from the integrated management of the external borders of the EU and the use of advanced technologies in the issuing of visas and residence permits to the strengthening of information exchange among member states, the harmonisation of the criteria and procedures for expulsion and return, the tackling of the phenomena that facilitate unauthorised immigration (such as undeclared employment, trafficking in human beings, marriages of convenience, and assistance with irregular entry and residence) and the conclusion of re-admission agreements between the EU and countries of origin. The philosophy underlying such developments derives from the perceived links between authorised and irregular immigration policies, namely that the credibility and integrity of EU policies on authorised immigration and asylum depend on the formulation and implementation of an effective policy on irregular immigration, including the establishment of common minimum policy standards and the design of a Community return policy (European Commission 2003: 8-9).

The Commission has identified five main problems caused by irregular immigration. These are the continuous pressures of irregular migratory movements; the imbalanced distribution of irregular immigrants among the member states; the emergence of humanitarian crises; the exploitation of clandestine immigrants in the EU; and the continuous existence of factors in the countries of origin of immigrants that lead to their irregular immigration into the EU. To tackle these challenges, three main objectives of EU policy were set: the reduction of the size of irregular immigration into the EU, the prevention of humanitarian crises, and the reduction of criminal activities linked to irregular migration. In particular, the Commission has focused its attention on, *inter alia*, targeting the employment of irregular immigrants, assessing the impact of regularisation campaigns pursued in some member states, and accelerating cooperation among member states in return policies (European Commission 2006c: 2).

A comprehensive presentation of the vast array of policy initiatives and instruments on irregular migration at the EU level would exceed the purposes of this report and cannot be pursued here. Instead, our emphasis lies on the presentation of the most important policy initiatives and adopted measures in the last five years (2007-2012). Nevertheless, Table I provides a summary of the most significant policy instruments in this field for the period 2000-2006.

Table I: EU policy instruments on irregular immigration 2000-2006

Year

- 2001 Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149 of 2 June 2001)
- 2002 Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328 of 5 December 2002)
 Council Framework Decision 2002/496 of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328 of 5 December 2002)
- 2003 Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by Air, (OJ L 321 of 6 December 2003)
 Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation (OJ L 17 of 24 January 2004)
- 2004 Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64 of 2 of March 2004)
 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261 of 6 August 2004)
 Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261 of 6 August 2004)
 Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (OJ L 261 of 6 August 2004)
 Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation (OJ L 143 of 30 April 2004)
- 2005 Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation (OJ L 124 of 17 May 2005)
 Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation (OJ L 124 of 17 May 2005)
- 2006 Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community (OJ L 262 of 22 September 2006)
 Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol to prevent, suppress and punish trafficking in human beings, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community (OJ L 262 of 22 September 2006)

*The 2008 Directive on common standards and procedures in the member states for returning illegally staying third-country nationals (2008/115/EC)*²⁰

In September 2005, the Commission presented its proposal for a Directive on the harmonisation of principles, procedures and measures for the return of irregular immigrants (the so-called "Return Directive")²¹ with the objective to "provide for clear, transparent and fair common rules concerning return, removal, use of coercive measures, temporary custody and re-entry" of illegally resident third-country nationals, regardless of the reasons that led to irregularity and with due respect for human rights and fundamental freedoms (European Commission 2005b: 2, 6). The Commission proposed a harmonised two-steps return procedure, whereby the member states should first issue a return decision inviting for the voluntary return of an illegally resident third-country national within a period of up to four weeks. At a second stage, and if voluntary return has not taken place, the member states should issue a removal order. For the first time, a pan-European effect of national measures for the removal of illegally resident third-country nationals was proposed, since each removal order became linked to a ban of re-entry into the EU member states that may be valid for up to five years.

At the same time, the Commission Proposal contained guarantees for protection from removal, including the obligation of member states to respect non-refoulement, the right to education and the right to family unity, and the inapplicability of return decisions in the cases of on-going procedures for the renewal of residence permits. In addition, the Proposal foresaw the postponement of the implementation of return decisions in cases when and for as long as return is not possible due to technical and humanitarian reasons or in the cases of unaccompanied minors, and provided for a maximum period of six months in custody in special facilities for third-country nationals awaiting return or removal who are in risk of absconding. However, custody was made subject to guarantees for legal remedies and judicial control.

The European Parliament adopted a critical stance towards the Commission Proposal and introduced a series of amendments that focused on the more effective protec-

20 The adopted Directive does not bound the United Kingdom, Ireland and Denmark. The latter had six months to decide whether to implement the Directive in its national legal order since the Directive included provisions that built on the Schengen acquis.

21 COM (2005) 391 final.

tion of the rights of children and unaccompanied minors who are illegally resident in the member states, the strengthening of judicial remedies against return decisions or removal orders, the reduction of the maximum temporary custody to three months, the abolition of re-entry ban measures (apart from severe and exceptional cases), the provision of legal aid and health care, the prioritisation of voluntary return within an extended period of up to six weeks, and guarantees for the return of third-country nationals to their country of origin (European Parliament 2007). In the final version of the draft Directive adopted by the Council,²² some guarantees for protection from return, such as the on-going procedures of renewing residence permits and the period of preparation for voluntary return, were watered down and member states acquired greater discretion to implement return or removal measures, order the detention of third-country nationals awaiting return or removal, and impose a re-entry ban to illegally staying third-country nationals following their return. On the more liberal side, more favourable provisions concerning re-entry were added for victims of human trafficking (Directive 2004/81/EC).

With the adoption of the Directive, EU institutions assumed greater role in controlling for the implementation of the Community *acquis* in the member states and the Commission aspired to exercise more effective monitoring of the member states' legislation and practices in return policy (European Commission 2009a: 12). The "Return Directive" is accompanied by the Decision of the European Parliament and of the Council to establish the European Return Fund in 2007 (Decision No. 575/2007/EC of 23 May 2007) with a total budget of 676 million Euro for the five-year period between 2008 and 2013. According to the initial Commission proposal, the Fund was intended to introduce and improve "the organisation and implementation of integrated return management by member states", to enhance their cooperation, and to promote a uniform application of common standards on the return of illegal immigrants (European Commission 2006b: 4). Projects on return policies, including voluntary return programmes and the joint operations of removal of third-country nationals by air, are also financed (European Commission 2009a: 14). The adopted Directive entered into force in January 2009 and the deadline for its complete transposition by the member states expired in 2011.

22 OJ 348/2008 of 24 December 2008.

Human trafficking: the new Directive on preventing and combating trafficking in human beings and protecting victims (Directive 2011/36/EU)

The cornerstone of EU policy on human trafficking was provided in 2004 by the *Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*. A Group of Experts on trafficking in human beings was established by the Commission in 2007,²³ while in the years 2007 and 2008 human trafficking became the priority in the programmes on Prevention and Fight against Crime, and the Thematic Program on Migration (European Commission 2009a: 15).

In 2010, the Commission reported that all member states but Romania grant the right to employment, education and vocational training to the holders of the short-term residence permit for trafficking victims. The majority of member states provide for free legal aid, translation and interpreting services, and support in money or in kind to ensure subsistence. However, only a minority among member states chose to apply the Directive in the case of minors and offer access to additional health care while the national provisions concerning the duration of the reflection period and the issuing and withdrawal of the residence permit differ among member states. In addition, the Commission reported that the effect of the Directive has been marginal since the annual number of residence permits issued under the Directive is very low despite the high numbers of identified victims of trafficking in the EU (European Commission 2010a).

In 2009, the Commission tabled a Proposal for a new *Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA*, which was subsequently turned into a proposal for a new *Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA* (COM (2010) 95 final). The new Directive (Directive 2011/36/EU) was adopted in April 2011 and member states are required to adapt their national legislation accordingly until April 2013.

23 Commission Decision 2007/675/EC of 17 October 2007 setting up the Group of Experts on Trafficking in Human Beings, C(2007) 4695/1.

The Directive extended the definition of trafficking compared to previously adopted EU norms (Framework Decision 2002/629/JHA) and it introduced measures for the protection of all victims of human trafficking in the EU member states, irrespective of citizenship or status of residence, and with a special emphasis on protecting minors. The Directive sets a minimum of 5 years imprisonment for offences related to trafficking in human beings, and a minimum of 10 years imprisonment when these offences concern vulnerable victims (such as children and pregnant women), involve organised crime, or have caused serious harm to the victim or endangered the victim's life. The Directive includes penalties not only on natural persons but also on legal persons who commit offences related to trafficking in human beings.

Concerning the protection of and assistance to the victims of trafficking, member states shall:

- assist and support victims before, during, and for a period of time considered appropriate after the conclusion of criminal proceedings. Assistance and support shall be provided as soon as there are reasonable grounds to believe that a person might have been a victim of trafficking;
- provide assistance and support to the victims of trafficking - including safe and appropriate accommodation and subsistence, medical assistance, counselling, information on the rights of victims of trafficking and on asylum and refugee protection, and translation and interpretation services when needed – regardless of the victim's willingness to cooperate in the criminal investigation;
- pay particular attention to victims with special needs and provide immediate access to legal counselling and legal representation as well as witness protection programmes, when appropriate;
- ensure that victims are not subjected to secondary victimisation during criminal investigations and judicial proceedings;
- provide special assistance, support, and protection to children who are victims of trafficking, respecting the child's best interest and ensuring enhanced protection during criminal and judicial proceedings;

- provide special assistance and support to unaccompanied children who are victims of trafficking
- take measures to prevent and combat trafficking in human beings, including awareness campaigns, research and education, special training of officials who may come into contact with real or potential victims of human trafficking, and cooperation with civil society. IN order to discourage demand, member states may also take measures to penalise the conscious use of services that are the objects of exploitation by human trafficking networks.

Combating the irregular employment of clandestine immigrants (Directive 2009/52/EC)²⁴

In 2007, the Commission presented its proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals,²⁵ whose number it estimated to range between 4.5 and 8 million people (European Commission 2007b: 2). The purpose of this initiative was to tackle one of the root causes of clandestine immigration (a so-called “pull factor” of illegal employment), reduce exploitation of irregular immigrants, increase tax revenues in the member states, and reduce xenophobia (European Commission 2006a: 8). By the time of the presentation of the proposal, 26 out of 27 member-states already had national legislation in place concerning employer sanctions and other measures to prevent the irregular employment of non-EU citizens, of varying content and scope of implementation including criminal sanctions in 19 member states (European Commission 2007c). The Directive aimed at the harmonisation of preventive measures and sanctions and their uniform application across the EU. It concerned the unlawful employment of *irregular* immigrants and does not apply in the case of authorised resident third-country nationals, even if the latter are not granted the right to employment.²⁶

The European Parliament was supportive of the adoption of sanctions and measures against the unlawful employment of clandestine immigrants and the liability of em-

24 Not applicable in the United Kingdom, Ireland and Denmark.

25 COM (2007) 249 final.

26 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Preamble (5).

employers as well as of the uniform application and intensification of labour inspections. In its report on the draft Directive it considered the latter's scope as limited and asked for attention to the protection of rights of illegally employed third-country nationals and for the exchange of best practices among the member states in the implementation of preventive controls and sanctions. Moreover, the European Parliament supported the imposition of milder sanctions against employers who are natural persons and employ irregular immigrants for personal services and domestic help and for the limitation of liability in the case of chains of sub-contractors. Finally, it asked for more favourable treatment of illegally resident third-country nationals as regards to the payment of outstanding remuneration (European Parliament 2009: 21-23). Most of the policy positions of the European Parliament were included in the adopted version of the Directive.

The Directive prohibits the employment of irregularly resident third-country nationals and sets the obligation of employers to control for the legality of residence of their future third-country national employees by requesting the presentation of a valid residence title. Furthermore, employers are obliged to notify the national authorities of the member states of the recruitment of third-country national workers (Articles 3 & 4). Sanctions against the employers who fail to meet their obligations include financial penalties proportionate to the number of unlawfully employed immigrants, the covering of the costs of their return, the payment of outstanding remuneration of equal amount to legal minimum wages as well as the taxes and social security contributions involved therein (Articles 5 & 6). Furthermore, the employers of irregularly resident third-country nationals may be subject to

- exclusion from entitlement to public benefits, EU funding and public contracts for a period of up to five years;
- the recovery of all public and EU benefits, aid or subsidies received up to twelve months before the detection of illegal employment; and
- temporary or permanent closure of their establishments or business activities (Article 7).

In addition, the Directive provides irregularly resident third-country nationals with the right to lodge claims or initiate administrative procedures against their current or for-

mer employers for outstanding remunerations and receive the corresponding back payments (Article 4). The financial sanctions and back payments imposed on the employers are also applicable in the case of sub-contractors (Article 8) and more severe penalties are foreseen for repeated cases, for the intentional employment of irregular immigrants, and for the exploitation of minors or victims of human trafficking (Article 9 & 10).

The deadline for the full transposition of the Directive in the national legislation of the member-states expired in July 2011. In February 2012, the Commission began infringement proceedings against Belgium, Luxembourg and Sweden. The implementation of this Directive had also been delayed in four other member states (Austria, France, Germany and Malta), but the Commission suspended the legal proceedings against them after national legislation was adopted in the respective countries (European Union 2012b).

Re-admission agreements between the EU and third countries

The first re-admission agreements between the EU and third countries were signed with Macao and Hong-Kong (in 2004) and Albania and Sri Lanka (2005). In 2007, re-admission agreements were signed with Russia, Ukraine, FYR of Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, and Moldova. In the same year, negotiations were completed with Pakistan while those with Morocco reached an advanced level (European Commission 2009a: 12). The re-admission agreement with Georgia was concluded in early 2011 and entered into force on March 1st, 2011 (Council of the European Union Press Release 18/1/2011). Currently there are open negotiations with Morocco, Turkey and Cape Verde, whereas the Commission has received a mandate to pursue negotiations with China and Algeria.

Related policy areas and recent developments

Common EU policies on clandestine entry and residence of third-country nationals are often accompanied by measures in other policy areas, especially when policy linkages are considered strong and co-ordination beneficiary to the overall immigration management. Such is the case of the EU strategy on visa-liberalisation agreements with third countries. The strategy aims at exchanging incentives and opportunities for facilitated entry into the European Union for third-country nationals of neighbouring countries in exchange for a greater commitment by these countries in fighting clan-

destine migration into the EU from their territories. In February 2012, the European Commission published its reports on visa liberalisation for the Republic of Moldova and Ukraine.²⁷

During the last year, the Schengen area has also attracted EU-wide attention. On the one hand, the common area of freedom of movement now includes Lichtenstein (since December 19th, 2011).²⁸ On the other hand, public debates on Schengen intensified in April 2012, following a common proposal by the German and French Interior Ministers to amend the Schengen norms. The proposal allowed for greater discretion of the member states concerning the temporal re-introduction of internal border controls. In particular, France and Germany promoted the re-introduction of national competence in deciding to exercise controls at internal national borders for up to 30 days as a means of last resort in cases of mass influx of clandestine immigrants from third countries or from other Schengen parties that are unable to exercise effective controls at the external borders of the Schengen area.²⁹

2.6. Positions of stakeholders at the EU level: the social partners

Apart from the representatives of social partners at the national level in the EU member states, there are umbrella organisations for the representation of their interests at the EU level of policy-making. Issues of entry, residence, and rights of third-country nationals have attracted the lobbying activities of these organisations since the entry into force of the Amsterdam Treaty (1999) and especially since the mid-2000s.

UNICE (Union of Industrial and Employers' Confederations in Europe) / Business Europe is the umbrella organisation of the representatives of small, medium and large enterprises in the EU member states. It represents 40 industrial and employers' federa-

27 http://ec.europa.eu/home-affairs/news/intro/news_intro_en.htm#20110916 <accessed 3 May 2012>

28 http://ec.europa.eu/home-affairs/news/intro/news_intro_en.htm#20110916 <accessed 3 May 2012>

29 <http://www.spiegel.de/international/europe/0,1518,828676,00.html> <accessed 5 May 2012>

tions from 24 countries of the European Economic Area and the Balkans.³⁰ The issues concerning third-country national workers in the EU are dealt with by the Working Group on immigration and mobility within the Social Affairs Committee.

The European Trade Union Confederation (ETUC) is the counterpart of UNICE/Business Europe in the representation of European trade unions, comprised of 83 national trade union confederations from 36 European countries³¹ and 12 industry workers' federations. The Commission has documented the participation of both ETUC and UNICE/Business Europe in the consultation processes during the drafting of Commission proposals on authorised and irregular immigration, as in the the case of the Commission Proposal for a Directive on sanctions against employers of illegally staying third-country nationals (European Commission 2007d).

Union of Industrial and Employers' Confederations in Europe - UNICE/ Business Europe

UNICE/Business Europe has been supportive of new immigration of third-country nationals and of regulating immigration at the EU level in order to sustain economic growth in the European ageing societies and improve the competitiveness and innovation of companies within the Single Market (Business Europe 2009a: 2-3, 9). Specifically, European industries and employers' associations have supported EU regulatory action concerning the conditions and procedures of entry, residence and employment of third-country nationals in the EU member states whereas they have maintained that state discretion should continue to be respected concerning the volume of new immigration and the criteria for admission (Business Europe 2010a: 1-2).

On the Commission proposal for a Directive on intra-company transferees, Business Europe asked for speedy procedures. It criticised the requirement for the prior employment of the third-country national for a period of twelve months as too restrictive and inadequate. Instead, it proposed that the maximum period of employment with

30 Federations from Austria, Belgium, Bulgaria, Switzerland, Cyprus, Czech Republic, Germany, Denmark, Estonia, Spain, Finland, France, Greece, Croatia, Hungary, Ireland, Iceland, Italy, Lithuania, Luxembourg, Latvia, Montenegro, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Sweden, Slovenia, Slovakia, San Marino, Turkey and the United Kingdom (www.busesseurope.eu).

31 From all countries of the European Economic Area and Andorra, Monaco, Croatia and San Marino (www.etuc.org/a/82).

the company required prior to the transfer be set at six months for managers and specialists and three months for trainees. It also asked for broader definitions and scope of the Directive in order to include various categories of employees and for basic social and economic rights for intra-company transferees equal to those of posted workers (Business Europe 2010b: 1, 4-7).

As regards the Commission proposal for a Directive on seasonal employment, Business Europe supported the Commission initiative and the proposed fast-track procedures for the recruitment of seasonal workers in order to meet the needs of European companies and combat the illegal employment of immigrants. However, it asked for diversity and flexibility in the national requirements to fill seasonal job vacancies, including the possibility of exceeding the 6-months maximum period of employment proposed by the Commission, the relaxation of the labour market criteria, and the application of existing more favourable provisions on seasonal employment in some member states (Business Europe 2010c: 1-2). Further, Business Europe asked for the institutionalisation of participation of employers' associations in the assessment of labour market needs in the member states that apply labour market tests for the recruitment of seasonal workers (Business Europe 2010a: 2; Business Europe 2010c: 3-4).

The European Trade Union Confederation (ETUC)

ETUC has constantly supported the opening of channels for authorised immigration on the basis of labour market needs together with a vigorous observation of legal working conditions and equal treatment of third-country national workers. However, ETUC is not in favour of a mass movement of immigrant workers into the EU to address labour shortages or the demographic problem. Instead, it prioritises the training and employment of workers (nationals and immigrants) who are already resident in the EU (ETUC 2007a). Moreover, ETUC has called for the departure from the closed-border policies and repressive measures against illegal immigration and asked for the enforcement of active social policies aiming at non-discrimination of migrant workers. Its policy positions include the support for more pro-active migration and development policies at the EU level and greater attention of EU policies to "the monitoring and enforcement of minimum labour standards and protection of human rights of migrant workers". The latter include working conditions, freedom of association, and protection against forced labour, irrespective of the immigrants' legal status (ETUC 2006).

In 2007, ETUC initiated a joint action with the non-governmental organisations *SOLIDAR*³² and *PICUM* (Platform of International Cooperation on Undocumented Migrants) to articulate common positions concerning EU policies on irregular immigration. The three organisations asked, *inter alia*, for the respect of fundamental human rights and working rights of all third-country nationals irrespective of their legal status in the EU, for the opening of legal channels for further immigration as a measure to counter irregular immigration movements, and for the ratification of international instruments on migrant protection within the frameworks of the UN and the Council of Europe. Further, they asked for increased transparency and speed in the administration of residence and employment permits of third-country nationals in the EU member states, for greater flexibility of the norms regarding the issuing and renewal of residence and employment permits, more rigorous labour inspections, and the recognition of freedom of association to regular and irregular immigrant workers alike (ETUC, PICUM & SOLIDAR 2007). These positions received additional backing from the European Women's Lobby (EWM), the European Network Against Racism (ENAR), and the International Catholic Migration Commission (ICMC) (ETUC, PICUM & SOLIDAR 2007:1).

Finally, ETUC supported the adoption of sanctions and measures against the employers of clandestine immigrants and the principle of back-payment of wages to clandestinely employed immigrants within the framework of the relevant Directive (2009/52/EC). Moreover, it asked for a broader scope of liability of sanctions to cover all layers of sub-contracting firms employing irregular immigrants (ETUC 2009a).

More recently, ETUC voiced concerns that the Commission Proposal for a Directive on the single permit for foreign workers did not respect the principles of equal treatment and non-discrimination. According to ETUC, the adopted Directive will contribute to job insecurity and vulnerability of immigrant workers. Accordingly, and prior to its adoption, ETUC co-operated with Belgian non-governmental organisations in calling for the ratification of the UN Convention on migrant workers by the EU member states (ETUC 2010a) and pressed for amendments to be introduced to the draft Directive by

32 SOLIDAR is a predominantly European network of non-governmental organisations active on issues of social justice. It comprises of 52 members from the countries of the European Economic Area. Its affiliated members also include overseas organisations (http://www.solidar.org/Page_Generale.asp?DocID=14350&langue=EN <accessed 14 March 2011>.

the European Parliament on the basis of non-discrimination (ETUC 2010b).

Regarding Directive 2008/115/EC on common standards for returning illegally staying third-country nationals, ETUC criticised the Commission proposal as running counter to fundamental human rights of third-country nationals. In particular, ETUC positioned itself against the introduction of the 5-year re-entry ban for returned irregular migrants and called for the opening of regularisation channels for clandestine immigrants. ETUC also opposed the introduction of detention periods for third-country nationals awaiting return or removal, and the measures of forced return (ETUC 2008).

3.GREECE

Table II: Overview

Immigration legislation	Law 1975/1991; Law 2910/2001; Law 3386/2005; Law 3536/2007; Law 3838/2010; Law 3907/2011; Law 4084/2012
Stakeholders	
Political parties (in order of their share of votes in the June 2012 parliamentary elections)	New Democracy SYN PASOK Independent Greeks Golden Dawn Democratic Left KKE
Political parties represented in the European Parliament only	LAOS
Immigrant associations	Greek Forum of Migrants
NGOs	Hellenic League of Human Rights
Trade Unions and Social Partners	Economic & Social Committee of Greece (OKE)
Other stakeholders	The Ombudsman The Greek Orthodox Church

3.1. Immigration in Greece

Along with Spain, Italy and Portugal, Greece is considered to be among the fairly “recent” countries of immigration in the southern flank of the EU. The first immigration movements concerned the employment of Pakistani workers in the early 1970s and the entry and settlement of students from African and middle-eastern countries in the 1970s and 1980s. However, immigration movements became numerically significant in the late 1980s and early 1990s, when workers from the Balkan states (predominantly from Albania) and the former Soviet Union Republics arrived in the country, mostly without authorisation. According to the European Commission, in 1986 1.86% of the total population of Greece were legally resident foreign citizens (Commission of the European Communities 1994: 22). In 2001, the percentage of the foreign-born in the total population had reached 10.3%, the highest among the southern EU member states and close to the figures of “traditional” immigration countries such as Belgium, the Netherlands and the United Kingdom (OECD undated-a). In spite of four campaigns of mass regularisation of clandestine immigrants (1998, 2001, 2005 and 2007), a choice that has characterised the policy responses also in other southern EU member states (IOM 2010a: 121), the Greek Immigration Policy Institute estimated the number of unauthorised immigrants ranging between 172,250 and 209,402 in the year 2008 (IMEPO 2008: 105).

As regards the countries of origin diversification is low, with the vast majority of foreign nationals coming from directly neighbouring countries. The immigrant population is dominated by a single national group, namely Albanian citizens. According to the data provided by the Greek National Statistical Service (ESYE), in 2006 481.663 Albanian citizens comprised 69% of the foreign resident population (or 69.6% of non-EFTA nationals). Six countries of eastern and south-eastern Europe figure steadily among the 10 most important countries of origin (Albania, Bulgaria, Romania, Georgia, Ukraine, and Russia). In recent years, immigration from south Asia and Africa is also increasing (ESYE undated). The vast majority of foreign residents irrespective of gender have immigrated for economic purposes. Family reunification and studying purposes have been the second and third most important motivation, respectively (Table III).

Table III: Motives for immigration to Greece (2001 national census data)³³

Main reason for immigration to Greece	Men	Women	Total
Seeking employment	228,411	152,919	381,330
Family reunification	44,812	48,862	93,674
Studying purposes	9,992	9,958	19,950
Seeking asylum	5,104	4,816	9,920
Refugees	1,235	1,124	2,359
Other reasons	101,793	104,991	206,784
Combination of two or more of the above	24,021	23,775	47,796
Total	415,368	346,445	761,813

The immigrant stock in the Greek labour force reached 6.7% in 2005 (OECD undated-b) and 10% in the third trimester of 2009 (INE-GSEE 2010: 221). Despite the low levels of immigrant unemployment throughout the 1990s and 2000s, by the end of 2009 the figures began to rise considerably, reaching between 9.4% and 10.75%, to a level comparable to those of Austria and Italy (IOM 2010a: 195). An intuitive hypothesis would be that the employment of immigrants followed the economic circle, given the fact that the international economic crisis hit Greece at a later time than most members of the Euro-zone. Another factor of growing immigrant unemployment may be the increasing number of second generation immigrants who reach the age of majority and enter the labour force (INE-GSEE 2010: 222). Concerning the sectors of immigrant employment, the economic crisis seems to result in their movement away from the construction sector and into unskilled jobs, the agricultural sector, domestic services and tourism (INE-GSEE 2010: 223). Nevertheless, according to OECD data, foreign residents in working age display higher labour-market participation rates than the native-born population (74.5% and 66.6%, respectively) (OECD 2010: 208).

33 ESYE - Greek National Statistical Agency, http://www.statistics.gr/gr_tables/S1101_SAP_07_TB_DC_01_03_Y.pdf <accessed 29 November 2008>. It is unclear how many of those immigrants were co-ethnic third-country nationals. The entry, residence, employment and citizenship of co-ethnics from the former Soviet Republics – and since 2006 also for co-ethnics from Albania - have been regulated separately, and with much more favourable provisions than for third-country nationals of foreign descent (Mavrodi 2008). For the purposes of this report, we focus on Greek legislation and policy on third-country nationals of foreign descent.

In April 2008, there were 432,000 third-country nationals holding residence permits, approximately 60% of which were for employment purposes (OECD 2010: 208).

Institutional developments

A major change in the Greek institutional setting of immigration policy-making was the transfer of competence in all legal immigration issues from the Ministry of Public Order (i.e. the Greek Police) to the Ministry of Interior in 2001.³⁴ Ever since, there are three Ministries with central role in aliens issues: a) the Ministry of Foreign Affairs, responsible for the administration and issuing of visas and therefore for the controls on new entries; b) the Ministry of Interior at its various levels (central administration, the Regions, and Municipalities) that is responsible for the issuing and renewal of residence permits as well as for the naturalisation of immigrants; and c) the Ministry for the Protection of the Citizen (formerly known as Ministry of Public Order) with competence in clandestine immigration, return and re-admission. In addition, the Ministry of Foreign Affairs is responsible for Greece's representation in EU affairs, for the domestic co-ordination and formulation of coherent EU policies, as well as for overseeing the domestic implementation of EU legislation.³⁵ These competences also apply in the case of the common EU immigration policies.

For the first time in 2005, the mainstreaming of immigration policies became the scope of inter-ministerial coordination within the framework of the Inter-ministerial Committee for the Following-up of Migration Policy.³⁶ Moreover, integration policies for legally resident third-country nationals became part of Greek immigration legislation.³⁷ The aim of integration policies was defined as *"awarding third-country nationals the rights that safeguard, on the one hand, their equal participation in the economic, social and cultural life of the country, and, on the other hand, aspire to the obligation of respecting the fundamental norms and values of the Greek society (...)"*³⁸

The 2005 Immigration Law foresaw the design and implementation of Programs of

34 Law 2910/2001.

35 With the exception of economic and monetary affairs that lie in the competence of the Ministry of Economics and Finance.

36 Law 3386/2005 Article 3.

37 Law 3386/2005 Articles 85-86.

38 Law 3386/2005 Article 85 § 1, Article 86 § 2.

Action based on the principles of non-discrimination, equal treatment, and respect for fundamental rights. It was directed in particular at legally resident third-country nationals with long-term residence prospects, their family members, and the second and third generation immigrants.³⁹ The scope of these Programs of Action included certified Greek language instruction, the provision of introductory courses on Greek history and society, integration in the labour market, and social participation.⁴⁰ However, the provisions on the Programs of Action were not immediately implemented.

In 2007, the National Committee on the Social Integration of Immigrants was established in the Ministry of Interior for the co-ordination and mainstreaming of integration policy. The Committee comprised of representatives of the Ministries of Interior, Economics, Foreign Affairs, Development, Education, Employment and Social Security, Culture, and Public Order. Further members of the Committee included representatives of local government at the municipal and prefectural level, of the political parties in the Greek Parliament, the Orthodox Church, the Trade Unions, the Universities, the International Organisation of Migration (IOM), the Athens Bar Association, and the President of the Immigration Policy Institute acting as the “intermediary between the National Committee and civil society”;⁴¹ However, no representatives of immigrant associations were included in the Committee.

Recent policy developments

Since 1990, there have been five major reforms to the Greek law on Aliens (Law 1975 of 1991; Law 2910 of 2001; Law 3386 of 2005; Law 3536 of 2007; and Law 3838 of 2010). Throughout the years, Greek immigration legislation placed great emphasis on tackling clandestine immigration. With the exception of Law 3838/2010, all previous legislation adopted strict measures of immigration control. At the same time, however, more and more rights have been granted to third-country nationals who already reside in Greece, which led to greater security and continuity of residence. Until 2008, and similarly to the Spanish and Italian cases, the adoption of measures of immigration controls on new entries had been accompanied by ad-hoc, one-off mass regularisations (in 1998, 2001, 2005 and 2007), which were increasing the size of

39 Law 3386/2005 Article 85 § 2.

40 Law 3386/2005 Article 86 § 4.

41 Law 3536/2007 Article 1 § 2.

the legally resident immigrant population. Thus, notwithstanding restrictive policies on immigration control, until 2010 there had been a mid-term development in Greek immigration policy towards a more inclusive model that provides greater security of residence and more chances for immigrant integration to legally resident third-country nationals and their offspring.

Since then, however, the economic crisis has had an important destabilising effect on Greek society and politics, with important consequences for immigration issues. Greece is now second among the EU member-states in terms of high unemployment rates (21,5% of the total workforce in early 2012) (Kritikidis 2012: 2-3). Foreign workers are also hit severely by the economic crisis, not the least because unemployment has been rising rapidly in some of the sectors where concentration of immigrant workers had been high (such as constructions and tourism). According to official statistical data for the year 2011, 57% of the unemployed who used to have a job had been employed in constructions, tourism, trade and manufacturing, while these sectors continued to display the highest increases in unemployment among the young and the long-term unemployed (Kritikidis 2011: 14-15).

Importantly, the recent rise of conservative-populist and far-right political forces and their entry into the Parliament, as well as the increasing discontent of the native population with extensive clandestine immigration amidst the deepening economic crisis, are about to change the direction of Greek immigration policy change. A turn towards more restrictive legislation is expected due to the heated public discourse on tackling clandestine immigration, the emphasis of government policies on detention and expulsion measures, as well as the recent case law of the Greek Council of State concerning the Greek Citizenship Code and the voting rights of long-term resident immigrants. Recent pieces of legislation have focused on the issues of detention of irregular immigrants awaiting return or expulsion, the new Service for First Reception of unauthorised immigrants, and the transposition of EU law on the return of illegally staying third-country nationals to their countries of origin (section 3.6, this report).

3.2. Immigration for employment purposes

The 2005 Immigration Law (Law 3386/2005) defined the categories of residence per-

mits for employment purposes in great detail. Accordingly, third-country nationals can enter and reside in Greece under authorisation for employment and independent economic activity (this division had already been foreseen in the 2001 Immigration Act). The category of employment includes paid employment, the provision of services and project-work, seasonal employment, the employment of foreign businesses' staff seconded in Greece, and temporary movement of third-country national workers within the EU for the provision of services. In addition, it includes special categories of occupations such as trainers and athletes, members of international archaeological societies, members and staff of foreign diplomatic missions, researchers, foreign press correspondents, tour leaders, and artists. On the other hand, independent economic activity includes two categories: independent economic activity (self-employment) and investment activities.

a) *Paid employment*

Ever since the 1991 Immigration Act and its implementing Presidential Decrees and Ministerial Decisions, authorised entry and residence in Greece for paid employment is based on the principle of invitation by a particular employer in Greece. In theory, the number of invitations is set *a priori* for each calendar year, resulting in a kind of "annual quota" system. Although the exact rules set by different Immigration Laws (2001; 2005) have slightly differed, the basic philosophy has remained the same: third-country nationals may be authorised to enter and reside in Greece following an assessment of domestic labour needs, on the condition that they will work for a particular employer (at least for an initial period) and provided that the particular employment post cannot be filled by Greek citizens, EU citizens, or third-country nationals who already reside in Greece. In practice, the system of invitations has been implemented only partially, due to both the bureaucratic procedures that it entails and the extensive clandestine entry and residence of foreign workers.

That being said, the actual provisions concerning the residence and employment of authorised third-country nationals have been undergoing a minor gradual liberalisation from the 2005 Immigration Act onwards. Examples include the increase of duration of renewed residence permits from one to two years (in 2005), the issuing of the residence and employment permit in a single document (in 2007), the decoupling of the renewal of residence permits from the obligation to provide an employment

contract for certain categories of workers having multiple employers (such as nurses at home services and construction workers, a change introduced also in 2007), the recognition of the right to change employer and category of employment (from paid employment to the provision of services or project work and the opposite) within a year from first entry (in 2005) and the right to change place of employment following one year from first entry (in 2007).

Since 2001, the renewal of residence permits for employment purposes have been conditional on the meeting of minimum annual tax obligations and social security contributions. Due to the current economic crisis, these provisions are currently under review with the aim of lowering the social security requirements (*To Vima* 6/2/2011). At the same time, Greek legislation has maintained several restrictions concerning the right of a third-country national to change his/her economic activity and scope of residence from paid employment to independent economic activity. In 2007, this right was recognised following three years after first entry.

Trainers and professional athletes, members of international archaeological societies, members and staff of foreign diplomatic missions, and third-country nationals legally employed by enterprises in another EU member-state and sent to Greece for the provision of services are subject to more liberal provisions, including their exception from prior labour market assessments and their right to family reunification without a requirement of prior residence.

b) Self-employed economic activity

The conditions for entry and residence for exercising independent economic activity are more liberal than those for paid employment. Applicants for entry and residence for self-employed activity need to submit a business plan and proof of investment capital of at least 60,000 Euros at Greek consulates abroad, where, following assessment by Greek public authorities at the regional level, they are granted authorisation to enter Greece. They are granted a residence permit with an initial duration of 2 years and renewable, provided that the same economic activity continues and the third-country national meets his/her obligations for taxation and social security contributions. In 2007, third-country nationals of this category were recognised the right to change the scope of their economic activity following two years after their first entry.

In the case of foreign investors, new provisions were inserted in Greek immigration legislation in 2005 (Law 3386/2005). According to the latter, third-country nationals who wish to pursue major investments in Greece of at least 300,000 Euros need to submit an investment plan to the Greek Ministry of Economics and Finance, which is responsible for assessing and authorising the investment. Third-country nationals of this category and their escorting family members are granted residence permits of a three year duration and renewable, subject to the continuation of their investment activities and the meeting of their obligations for taxation and social security contributions.

Seasonal employment

Seasonal employment of third-country nationals is regulated on the basis of bilateral state agreements between Greece and countries of immigrant origin. In particular, in 1996 Greece signed agreements with Albania and Bulgaria. Their provisions remained unchanged. Following a system of in-advance annual estimation of labour market needs at the regional level, third-country nationals may apply at Greek consulates in their countries of origin for entry visas for seasonal employment up to a period of six months in each calendar year. Seasonal employment is authorised for particular employers and geographical location and is subject to financial guarantees on the side of the employer. In addition, seasonal workers must leave the country upon expiration of their residence permit in order to have the right to participate again in the scheme and they are not awarded the right to family reunification.

In practice, however, and owing to the extensive clandestine entry and residence of third-country nationals, bilateral agreements for seasonal employment have not been successful in managing economic immigration or meeting the domestic labour market needs. Following Bulgaria's accession to the European Union in 2007, the employment of Bulgarian citizens in Greece became subject to the legal norms applied to EU citizens of the central and eastern EU member-states. Furthermore, since 2007 special provisions are in force for the entry, residence and employment of foreign workers in the fisheries sector. Third-country nationals employed in fisheries are invited by a particular employer for up to ten (instead of six) months annually. As in the case of other seasonal workers, they do not have the right to change employer or place of residence and employment and are obliged to return to their country of origin follow-

ing the expiration of their residence permits. A bilateral agreement between Greece and Egypt provides special, more favourable provisions for Egyptian nationals.

3.3. Entry and residence for studying purposes

Since 1996, the scope of the legal grounds for entry and residence for student purposes expanded to include new categories of studies and vocational training. However, the general requirements for student entry and residence followed a restrictive direction.⁴² With the exception of the right to part-time employment awarded in 2001, domestic policy change led to increasing immigration controls and preventing the long-term settlement of third-country national students. A central aspect of safeguarding the temporal character of students' residence was that they are not awarded the right to family reunification, though the 2005 Immigration Act introduced some minor exceptions.⁴³

During the 1990s, the renewal of residence permits for studying purposes became subject to restrictions: it was connected to measurable minimum criteria for academic performance, including the successful completion of University exams and the setting of maximum time limit to academic studies (the official duration of studies augmented by 50%).⁴⁴ However, in 2001 third-country national students were awarded the right to part-time employment.⁴⁵ Compared to the regulation of student immigration, the provisions of the Greek Aliens Law on the entry and residence of third-country nationals for reasons of vocational training, pupil exchange and voluntary service are still underdeveloped.

42 By contrast, the changes concerning the entry and residence for employment purposes centred on discouraging new entries while enhancing the rights and stability of residence of those already admitted.

43 This is the case of medical doctors who are non-EU citizens and pursue their specialisation in Greek hospitals (Law 3386/2005).

44 Common Ministerial Decision 4803/13/4-μη/1996.

45 Law 2910/2001.

3.4. Immigration for reasons of family reunification

Since 2001, Greece recognises the right to family reunification to third-country nationals who are legally resident in Greece for at least two years prior to their submission of an application for family reunification.⁴⁶ Greece applies a restrictive scope for family reunification which covers the married spouse and their common minor and unmarried children as well as the children of the sponsor and the spouse for whom they have official parental custody. In the case of polygamous marriages, Greece does not recognise the right to family reunification for the minor children of the sponsor with a spouse other than the one who has already joined him in Greece. Necessary precondition for family reunification are that a) family relations are officially certified; b) the family members will cohabit with the sponsor; c) the sponsor proves his possession of adequate financial means amounting to an annual income that is equal to that of the legally employed unskilled worker, to which 20% is added for the spouse and 15% for each of the children, unless both spouses reside legally in Greece and they apply for reunification with their children only; d) the sponsor has adequate health insurance which can also cover the members of his family.⁴⁷

The family members have equal rights with the sponsor concerning education and access to vocational training. Within a year following their reunification they are awarded full and free access to paid employment and independent economic activity, according to the provisions of the Greek law. This right might be subject to certain labour market criteria for the first year of their residence. Residence permits for reasons of family reunification are granted for one year and they are renewable every two years.

Five years following family reunification, or upon reaching the age of majority in the case of children, the family members acquire an autonomous right to residence. The same right is awarded to them: a) in case the sponsor is deceased and the family members have already resided in Greece for at least one year prior to the event;

⁴⁶ Law 2910/2001. Under the previous framework (Law 1975/2991), family reunification had been permitted following five years of previous legal residence.

⁴⁷ Law 3386/2005 Articles 53, 54, with subsequent amendments: Κωδικοποίηση νομοθεσίας για την είσοδο, διαμονή και κοινωνική ένταξη των υπηκόων τρίτων χωρών στην ελληνική επικράτεια, http://www.synigoros.gr/allodapoi/pdfs_01/8739_1_kodikopoiisi.pdf, p. 32-32 <accessed 4 February 2011>

b) in case of divorce or marriage annulment or proved stop of marital cohabitation, provided the marriage had lasted at least three years, at least one of which was spent in Greece, or when the family member became a victim of family violence during the marriage. The autonomous residence permit for family members is granted for one year, after which the spouse can acquire a residence permit for other reasons.

In the case of the children of the sponsor who have reached majority, they can renew their autonomous residence permit annually and until their 21st year of age, after which renewal can be granted for reasons of studying, employment or other purposes. The adult children who fail to renew their legal residence status within a year after the completion of their 21st year of age are obliged to leave the country.⁴⁸ More favourable provisions concern the family members of third-country national sponsors who are co-ethnic immigrants from the countries of the former Soviet Union and Albania.⁴⁹

Finally, family members may be asked to take part in integration measures comprising of certification of the knowledge of the Greek language, the successful participation in courses on Greek history and society, the integration in the Greek labour market, and active social participation.⁵⁰

3.5. Long-term resident third-country nationals, integration and citizenship

Greece was a latecomer in providing for a long-term resident status to legally resident third-country nationals in 2005, meeting the obligation to adapt its national legisla-

48 Law 3386/2005 Articles 57-60 with subsequent amendments: Κωδικοποίηση νομοθεσίας για την είσοδο, διαμονή και κοινωνική ένταξη των υπηκόων τρίτων χωρών στην ελληνική επικράτεια, http://www.synigoros.gr/allodapoi/pdfs_01/8739_1_kodikopoiisi.pdf, p. 34-35 <accessed 4 February 2011>

49 Law 3386/2005 Article 60 with subsequent amendments: Κωδικοποίηση νομοθεσίας για την είσοδο, διαμονή και κοινωνική ένταξη των υπηκόων τρίτων χωρών στην ελληνική επικράτεια, http://www.synigoros.gr/allodapoi/pdfs_01/8739_1_kodikopoiisi.pdf, p. 35-36 <accessed 4 February 2011>

50 Law 3386/2005 Article 66 with subsequent amendments: Κωδικοποίηση νομοθεσίας για την είσοδο, διαμονή και κοινωνική ένταξη των υπηκόων τρίτων χωρών στην ελληνική επικράτεια, http://www.synigoros.gr/allodapoi/pdfs_01/8739_1_kodikopoiisi.pdf, p. 39-40 <accessed 4 February 2011>

tion to the relevant EU Directive.⁵¹ Adaptation began with the coming into force of the 2005 Immigration Act (Law 3586/2005) and was completed with the adoption of Presidential Decree 150/2006. The awarding of the status became conditional upon proof of continuous legal residence for at least five years prior to the submission of the application, sufficient annual income and health insurance for the applicant and his/her family, sufficient knowledge of the Greek language, and knowledge of elements of Greek history and culture. Previous legal residence for studying purposes or vocational training could count 50% in meeting the previous residence criterion. Knowledge of the Greek language, history and culture can be proven by completing the mandatory schooling in Greece or by successfully attending hundred hours of language instruction and twenty-five hours of Greek history and civilisation courses.⁵²

Long-term resident third-country nationals were awarded equal rights to Greek citizens concerning their access to paid and self-employed activity, working rights, social security, taxation, public housing, the recognition of educational and professional qualifications, education and vocational training including public scholarships, public services, freedom of association and participation in civic organisation and trade unions, and freedom of movement and settlement in Greece. Restrictions applied concerning particular employment positions that are reserved only for Greek citizens or EEA nationals. In addition, equal access to education and vocational training may be subject to sufficient knowledge of the Greek language. Finally, access to University education is subject to the common entry requirements provided by Law.⁵³ In 2008, a minor reform of the legal framework provided for long-term resident status for the children of legally resident third-country nationals who were born and raised in Greece, however the high application fees posed obstacles to the acquisition of the status by the potential beneficiaries (OECD 2010: 208).

Following the amendments to the Law on Aliens in 2010, the fees for long-term resident status were significantly reduced and those for the children of immigrants were effectively minimised. In addition, the new provisions on the acquisition of Greek citizenship by the children of legally resident immigrants who are born and raised

51 2003/109/EC

52 Presidential Decree 150/2006, Articles 4 and 5.

53 Presidential Decree 150/2006 Article 12.

in Greece or have been educated in the Greek schooling system for at least six years are significantly more favourable than the long-term resident status provided by the 2008 reform (see the section on naturalisation policy developments, this report). Adult long-term residents and holders of permanent residence permits were awarded the right to vote in local (municipal) elections.⁵⁴ In addition, they were awarded the right to be elected as members of the municipal councils provided that they have completed their 21st year of age and have sufficient knowledge of the Greek language.⁵⁵

Naturalisation and citizenship

A major reform of Greek citizenship law and of the status of long-term residents took place in 2010, when Law 3838/2010 was adopted by the Parliament. The new Citizenship Law foresees for the first time the acquisition of Greek citizenship on the basis of *jus soli* for the second-generation immigrants in Greece. Thus, a child born in Greece to a parent who is born and permanently resides in Greece acquires Greek citizenship automatically.⁵⁶ In addition, the children of third-country nationals who are born and continuously reside in Greece may acquire Greek citizenship three or more years after their birth upon the submission of a declaration by their parents, provided that both parents have been legally and continuously residing in Greece for at least five years prior to the submission of the declaration.⁵⁷ Finally, the children of third-country nationals can acquire Greek citizenship within three years following the successful completion of six years of Greek compulsory education, provided that they reside legally and permanently in Greece and both their parents have a legal authorisation to reside in Greece.⁵⁸

Furthermore, the recent reform of Greek citizenship law reduced the minimum period of legal residence required prior to the application for naturalisation from ten to seven years. For third-country nationals who are married to Greek citizens and have children with them, for third-country nationals who are parents to children of Greek

54 Law 3838/2010 Article 14.

55 Law 3838/2010 Article 17. However, they do not have the right to be elected as mayors or community presidents.

56 Law 3838/2010 Article 1 § 2.

57 Law 3838/2010 Article 1A § 1.

58 Law 3838/2910 Article 1A § 2, 3.

citizenship by birth, as well as for stateless adult persons, the minimum period of prior legal residence was reduced from five to three years. The requirement of seven years prior legal and continuous residence was abolished altogether for co-ethnic third-country nationals. These provisions are valid when the third-country national has valid long-term resident status or valid resident status as family member of a Greek or EU citizen, or legal residence status as parent of a minor Greek national or special residence permits for co-ethnic third-country nationals.⁵⁹

The administrative fees for the application for naturalisation became significantly lower (700 Euros instead of 1400 Euros under the 2004 Greek Citizenship Code, with more favourable provisions for co-ethnic third-country nationals and stateless persons).⁶⁰ Following the 2010 reform, the decision on naturalisation need to be issued within one year following the submission of the application⁶¹ and negative decisions on naturalisation applications need to be justified.⁶² In addition, the requirements for naturalisation include the sufficient knowledge of the Greek language and successful integration in the economic and social life.⁶³ In this sense, Greece has followed the policy developments in some other EU member-states (Germany as a pioneer, but also Austria, France, Luxembourg, The Netherlands and the U.K.) (IOM 2010a: 61).

Recent developments: challenging the 2010 immigration policy reform before the Greek Council of State

Soon after the adoption of these new liberalising provisions, Greek citizens and associations challenged the constitutionality of the 2010 immigration policy reform before the Greek Council of State. In particular, the case concerned the constitutionality of the new right of third-country nationals to vote in local elections following five years of legal residence and the new norms on naturalisation and citizenship. The result of this action was the decision by the 4th Chamber of the Greek Council of State in April 2012, which unanimously ruled that awarding political rights to third-country nationals in local elections is unconstitutional. Moreover, the 4th Chamber ruled that

59 Law 3838/2010 Article 2.

60 Law 3838/2010 Article 4.

61 Law 3838/2010 Article 12.

62 Law 3838/2010 Article 6.

63 Law 3838/2010 Article 3.

the 2010 new legal norms on citizenship are also unconstitutional, in particular as regards to the introduction of *jus soli* and the liberalised criteria for naturalisation.⁶⁴ The Court ruled that third-country nationals should be awarded Greek citizenship following the application of selective criteria, on an individual basis, and especially following the evaluation of their integration in the Greek nation and their possession of Greek national consciousness.

The 4th Chamber referred the case to the Plenary of the Council of State. The hearings took place in early December 2011, though the Court's final decision has not been announced yet. In the meantime, the biggest political party in the new government coalition that resulted from the parliamentary elections in June 2012 has already declared its intention to amend Greek legislation. The aim is to agree on more restrictive provisions on naturalising third-country nationals and awarding Greek citizenship to the second generation of immigrants (section 3.7., this report).

3.6. Irregular migration, readmission and return policies

Unauthorised entry and residence of third-country nationals in Greece have been an inherent part of Greek legislation on immigration issues ever since the beginning of extensive immigrant arrivals in the early 1990s. Indeed, fighting clandestine immigration by increasing policing measures was the main focus of the first basic Immigration Act in 1991 (Law 1975/1991) while irregular migration has been a basic concern for policy makers and the Greek public opinion ever since. In 2008, research conducted by the Greek Immigration Policy Institute (IMEPO) estimated the number of irregular migrants to range between 172,250 and 209,402 persons (IMEPO 2008: 105). According to data published by the Greek Police, 619,738 apprehensions of clandestine immigrants were registered in the period 2007-2011 and 65,781 irregular immigrants were apprehended during the first nine months of the year 2012 (Greek Ministry of Public Order and Citizen Protection 2012a).

64 Greek Council of State, 4th Section, Decision No 350/2011, "Κτήση ελληνικής ιθαγένειας, συμμετοχή αλλοδαπών υπηκόων τρίτων χωρών στις εκλογές της πρωτοβάθμιας τοπικής αυτοδιοίκησης", 2 February 2011, <http://www.ste.gr/portal/page/portal/StE/ProfatesApofaseis> <accessed 5 February 2011>

Since 2007, most apprehended irregular immigrants in Greece came from Albania and Afghanistan. In recent years there seems to be an increase of irregular immigration from Pakistan, Bangladesh as well as Syria and northern Africa (Algeria, Morocco and Tunisia) whereas unauthorised entry and stay of Iraqi and Somali citizens seems to be in decline (Table IV) (Greek Ministry of Public Order and Citizen Protection 2012a).

Table IV. Apprehensions of clandestine immigrants by the Greek Police, 2007-2012

Country of citizenship	2007	2008	2009	2010	2011	2012 (Jan.-Sep.)	TOTAL
Afghanistan	11,611	25,577	17,828	28,299	28,528	838	112,681
Albania	66,818	72,454	63,563	50,175	11,733	3,613	268,356
Algeria	84	224	329	7,336	5,398	106	13,477
Bangladesh	721	1,655	1,443	3,264	5,416	943	13,442
Eritrea	375	1,566	1,486	1,628	1,172	1	6,228
Georgia	1,441	2,961	2,522	1,456	879	153	9,412
Iraq	12,549	15,940	7,662	4,968	2,863	369	44,351
Morocco	161	143	222	1,645	3,405	313	5,889
Myanmar	411	1,611	1,458	792	161	7	4,440
Pakistan	2,834	5,512	4,854	8,830	19,975	3,257	45,262
Palestinian Territories	5,135	4,593	10,763	7,561	2,065	28	30,145
Somalia	3,656	6,713	7,710	6,525	2,238	5	26,847
Syria	234	451	440	851	1,522	29	3,527
Tunisia	107	65	87	988	1,095	0	2,342

According to the International Organisation for Migration (IOM) and its data concerning the period between 2007 and 2009, the number of third-country nationals forcibly returned to their countries of origin or transit reached its pick in 2008, exceeding 20,000 people (IOM 2010b: 17). In the same year, there were 146,000 clandestine immigrants detained, a figure that signalled a 54% increase compared to the year 2006. Moreover, the number of detention centres for apprehended clandestine immigrants increased in 2009 while the maximum period of detention was extended to twelve months (OECD 2010: 208).

In December 2009, the Ministry of Citizen Protection (the Greek policing and security

authorities) launched calls for assisted voluntary returns of illegally resident third-country nationals to their countries of origin and for the planning and implementation of an information campaign to that end. The planning of the assisted voluntary return program included a small re-integration allowance to be used in the country of origin (IOM 2010b: 45). On the basis of official data by the Ministry of Interior, 146,000 clandestine third-country national immigrants were detained in the year 2008 (OECD 2010: 208). During the first nine months of the year 2012, 11,355 irregular third-country nationals were expelled to their countries of origin, mainly to Albania and Pakistan (Greek Ministry of Public Order and Citizen Protection 2012b).

In recent years, the most important piece of Greek legislation on irregular migration was the Law 3907/2011 on the *Establishment of an Asylum Service and of a Service for First Reception, adaptation of Greek legislation to the provisions of Directive 2008/115/EC "relating to the common rules and procedures in the member-states for returning third-country nationals who are illegally resident" and other provisions*. A new Service for the first reception of apprehended clandestine immigrants has been established under the competence of the Ministry of Public Order and Citizen Protection. This legal framework foresees the construction of Centres of First Reception, dispersed throughout the Greek territory, where apprehended irregular immigrants shall be registered and documented, offered housing and logging, provided with medical assistance, offered assistance if they belong to vulnerable groups, and informed about their rights and obligations as well as their access to procedures for international protection (art. 7). In particular, Law 3907/2011 defines unaccompanied minors, persons with disabilities or chronic diseases, the elderly, pregnant women or women with new-born children, single-parent families with minor children, and the victims of human trafficking, torture, and other inhuman or degrading treatment as vulnerable groups (art. 11).

The Centres for First Reception were designed to function as "filters" for the management of irregular immigration in Greece. Specifically, whereas it is provided that clandestine immigrants applying for international protection or belonging to vulnerable groups shall be directed to separate reception and legal procedures, the rest of apprehended irregular immigrants shall be re-admitted, expelled or returned to their countries of origin. A maximum of 15 days (or 25 days in special cases) is foreseen for this "filtering" procedure (art. 11). During the entire period of stay in such Centres,

exiting shall be possible by special permission only (art. 13). This means that irregular immigrants shall in effect be detained there while awaiting their access to asylum procedures, or their re-admission and return. However, irregular immigrants whose readmission or return are postponed or whose detention is not considered necessary by the Police may also be allowed to leave the Centres (art. 11)

Concerning the rights of irregular immigrants in the Centres, police authorities shall provide humane living conditions, respect family unity, and provide medical treatment and counselling. In addition, they are required to assist members of vulnerable groups, inform detainees about the rights and obligations, and allow access to legal counselling and civil society organisations (art. 13).

In October 2012, Law 3907/2011 was complemented by Law 4084/2012, which allows the Greek Police to outsource security duties at the Centres for First Reception to private security companies. While the draft law was still debated at the Permanent Parliamentary Committee on Public Administration, Public Order and Justice, the National Commission for Human Rights expressed strong criticisms on the conditions of detention of unauthorised immigrants, the primary focus of the Greek police authorities on detention of irregular aliens, and the delegation of powers from the Greek Police to private entities (EEDA 2012). The intention of the Greek police authorities to implement Law 3907/2011 and establish Centres for First Reception of clandestine immigrants all over Greece has sparked tensions in local communities and municipalities, many of which are overwhelmingly opposed to such a development, mostly for alleged security concerns. A number of Regions have also expressed their opposition to the construction and functioning of such Centres in their territories (*Ta Nea*, 26 March 2012).

Apart from the establishment of the Service for First Reception and its Centres, Law 3907/2011 also established an independent Asylum Service and transposed Directive 2008/115/EC *on common standards and procedures in Member States for returning illegally staying third-country nationals* (see section 2.5, this report).

3.7. The stakeholders

Political parties

There have been two general parliamentary elections in the year 2012, which have resulted in fundamental changes in its political landscape. The current government coalition, formed by the centre-right New Democracy, the centre-left PASOK, and the newly established reformist Democratic Left, has agreed on common programmatic principles that include immigration policy issues. According to their programmatic agreement, as it was published in the Greek press (*Ethnos* 23 June 2012), the new Greek government aims at:

- strengthening border controls;
- strengthening the mandate of FRONTEX and increasing the scope of its operations;
- cooperating with EU member-states, especially with those of southern Europe, aiming at a common EU return policy for clandestine immigrants and the renegotiation of the Dublin-II Regulation;
- dispersing clandestine immigrants in reception centres throughout the Greek territory, until the return to their countries of origin becomes possible;
- amending Greek citizenship legislation according to recent policy developments and the citizenship policies of the other southern EU member-states; and
- accelerating asylum procedures.

These programmatic guidelines notwithstanding, all political parties that are currently represented in Parliament formulate distinctive immigration policy positions, which are presented below.

3.7.1. ND (New Democracy)

New Democracy, the winner of both general parliamentary elections in 2012, is cur-

rently the leading party in the ruling government coalition. The party supported the right of long-term resident immigrants to vote in the 2010 local elections. Far beyond the mere means to secure stable residence, uncomplicated employment, and access to services in the host country, ND considered naturalisation to be the highest form of immigrant connection with and incorporation in the host country (ND 2009a). In recent years, the party's position has been that children of lawfully resident immigrants who are born in Greece should be able to acquire Greek citizenship at the age of maturity (18), provided that they have completed nine years of basic school education in Greece (ND 2010a). The party has effectively promoted new border control measures, such as the construction of a "fence" along the Greek-Turkish land border on Evros river, to curb the clandestine entry of migrants (ND 2011a).

The party's program for the 2012 general elections also included the following positions (ND 2012):

- Foreign citizens convicted for crimes in Greece should be returned to their countries of origin to serve their sentences there, on the basis of bilateral agreements.
- More effective external border controls are needed against clandestine immigration, including strengthening the FRONTEX mandate and acquiring more sophisticated technologies for border surveillance. ND opposes any regularisation of clandestine immigrants.
- Detention centres for clandestine immigrants should be established away from big cities. Irregular immigrants would be registered and kept there until their mass return to their countries of origin becomes possible, within a period not exceeding three months.
- Greece should coordinate with the rest of the southern EU member-states for a common EU policy on the re-admission and return of irregular third-country nationals to their countries of origin and transit. Policy coordination should aim at a new common EU asylum policy and a common EU policy on mass returns of irregular immigrants.
- Measures against unregistered commerce and trade activities should be

adopted, in order to eliminate the main source of irregular income of many clandestine immigrants and increase the latter's motivation to return voluntarily to their countries of origin.

3.7.2. Synaspismos - SYN (Coalition of the Left, Movements, and Ecology)

SYN (SYN 2009), is currently the main pillar of SYRIZA, a coalition of parties of the Left that scored second in votes in the 2012 parliamentary elections. SYN (SYN 2009) places outmost importance and priority on the safeguarding of migrant and refugee rights; accessing rights for all without limitation on the basis of nationality, language, religious or political beliefs, gender, and sexual orientation; and supporting the right to free & secure entry and asylum. Further, it promotes

- an open and continuous legalisation procedure for clandestine immigrants
- granting immigrants political rights, including citizenship and rights of political participation
- abolishing all detention centres for aliens, creating reception facilities, abolishing returning practices for clandestine immigrants on land and sea borders
- abolishing expulsion and detention of clandestine minors
- legalisation of unauthorised entry, residence and employment for migrant workers who are in need to meet minimum living standards
- judicial guarantees for border controls and administrative expulsions, the abolition of the EU Pact on Immigration and Asylum and the EU Directive on readmission and return of clandestine migrants
- the creation of a new type of residence permit for employment search in Greece of a 1-year duration and the abolition of the social security contribution requirement for the renewal of residence permits
- the liberalisation of legislation concerning the renewal of residence permits and the types of employment and residence permits.

As regards to legal immigration and the rights of third country nationals, SYN stands for safeguarding social and employment rights for migrants, supporting immigrant participation in trade unions, voluntary Greek language instruction to 1st generation immigrants at the local level and instruction of language and culture of the country of origin to the children of immigrants in public education when they comprise above 8% in each school class. Moreover it asks for.

- school instruction combating racism and xenophobia in public schools and the reform of school books towards promotion of multiculturalism
- acquisition of Greek citizenship for all children born in Greece to foreign parents, naturalisation of all children following completion of 3 years of education in Greece and recognition of the right of long-term residence to all children who graduate Greek basic education regardless of the status of their parents (legal or illegal residents)
- permanent residence permits for the children of immigrants studying in Greek schools, institutionalisation of the principle of residence citizenship, and voting rights in local elections for all who certify a minimum of 5 years of legal residence in Greece
- equal treatment in accessing the Greek health system regardless of residence status as well as access to health services for pregnant and post-partum women regardless of residence status
- residence permits for humanitarian reasons for those suffering from serious health problems regardless of residence status.

3.7.3. PASOK (*Panhellenic Socialist Movement*)

PASOK is currently the third biggest party in the Greek Parliament and the second partner to the ruling government coalition. The party had dominated Greek politics and the government for eight years between 1996 and 2004, and served as the biggest opposition party between 2004 and 2009. Following the 2009 general elections, PASOK returned to power for a period of two years (2009-2011). Thus, the party has

been responsible for two out of the three major immigration law reforms (2001, 2005, 2010), including the significant liberalisation of Greek citizenship law for the immigrants of second generation and the awarding of political rights in local elections to long-term resident immigrants (Law 3838/2010).

In its government program on social and employment affairs for the 2009 parliamentary elections, PASOK supported the reform of Greek migration legislation in order to achieve a reduction in the number of unauthorised employment of foreign immigrants (PASOK 2009: 43).

In particular, concerning the rules for entry, residence, rights and treatment of foreign immigrants, PASOK framed citizenship, migration and asylum policy as human rights issues and promoted the liberalisation of the Greek citizenship and naturalisation policy with the introduction of *jus soli* and the sharp reduction of prior residence requirements in the Greek Citizenship Code. PASOK also advocated the liberalisation of the rules concerning family reunification and the requirements for obtaining the long-term resident status; the promotion of social and political participation of immigrants; the formulation and implementation of social integration measures for immigrants of first and second generation, including Greek language instruction at the local level; and the institutionalisation of participation of immigrants and immigrant associations in counselling local authorities (PASOK 2009: 78). Moreover, the program promoted equal treatment of foreign immigrants in employment affairs and in housing policies in the cities (PASOK 2009: 79).

Concerning clandestine immigration, the positions included the institutionalisation of a permanent mechanism for legalizing the status of clandestine immigrants in prior possession of residence permits; increasing and more effective border controls; implementation of bilateral readmission agreements; removal of clandestine immigrants who cannot prove their strong connection to Greece; improvement of detention conditions for clandestine immigrants awaiting removal / expulsion according to international human rights standards (PASOK 22009: 79); reduction of the maximum possible period for administrative detention of clandestine immigrants; abolition of administrative detention and administrative expulsion measures for minors; annual authorised residence permits for clandestine immigrants awaiting expulsion when their return to their countries of origin is not possible; policing, controls and fighting

against international trafficking networks; and international cooperation to address root causes of emigration in countries of origin (PASOK 2009: 80).

3.7.4. Anexartiti Ellines (Independent Greeks)

Independent Greeks is a new political party established in early 2012 from former parliamentarians and members of the New Democracy party. It entered the Greek Parliament for the first time following the general elections of May 2012.

Independent Greeks are highly critical of the existing Greek immigration and citizenship legislation, which resulted from the 2010 liberalising policy reforms. The party invited an open public debate on its programmatic proposals, advocating restrictive reforms. The proposals including restrictive provisions for the acquisition of Greek citizenship; the obligatory registration of all foreign citizens in Greece with the policing authorities within a period of six months, the control of the criminal records of all immigrants, and the subsequent expulsion of all unregistered immigrants; the reinforcement of policing and border controls; and the introduction of new measures for the management of unauthorised immigration, including the re-negotiation of the Dublin II Regulation at the EU level.

Independent Greeks also support a policy of preferential treatment of immigrants from the EU, North America, and Australia and New Zealand, followed by immigrants from the rest of Europe and from Latin America. Furthermore, the party supports the expulsion and return of all unauthorised immigrants within a period of four years, the coverage of expulsion and return costs by the countries of origin and/or transit, and the setting of a maximum ceiling to the number of legally resident third-country nationals equal to 2,5% of the total Greek population (Anexartiti Ellines 2012: 23-24).

3.7.5. Hrisi Avgi (Golden Dawn)

Golden Dawn is an extreme right party that made its first entry into the Greek Parliament following the May 2012 general elections. Despite its short presence in Greek parliamentary politics, Golden Dawn has often been in the headlines due to the xeno-

phobic and racist statements of its leadership, the participation of its members and of some of its parliamentarians in frequent violent attacks against immigrants, and the organisation of public events promoting ideas against multiculturalism and in favour of full ethnic homogeneity. Most recently, parliamentary protection was lifted for three parliamentarians of Golden Dawn, after judicial procedures were initiated against them (*Kathimerini* 24 October 2012).

According to the party's published positions, Golden Dawn asks for the immediate arrest and expulsion of all clandestine immigrants. It also asks for the extradition of all foreign nationals found guilty of criminal offenses and/or their imprisonment in separate penal institutions where they should be obliged to work for the public interest. The party opposes the acquisition of political rights by any individual who is not Greek by origin and consciousness as well as any right to property by non-Greek nationals. Foreign citizens should enjoy civil rights only. Furthermore, it is an official position of the party that clandestine entry and residence of foreign citizens should be categorised as felonies and sentences should be in the form of unpaid work for the public interest. Finally, Greek citizens who employ or offer shelter to clandestine immigrants should be subjected to detention of property (Hrisi Avgi 2012).

3.7.6. *Dimokratiki Aristera - DIMAR (Democratic Left)*

DIMAR is currently the third and smallest partner to the ruling government coalition in Greece. The first party congress in 2011 noted that the high concentration of immigrants in Greece in times of severe economic crisis creates significant social problems for them and for the native population, including social tensions associated with irregular immigration, increasing poverty and unemployment, immigrant exploitation, ghettoisation, and irregular or illegal economic activities.

As a first response to these problems, DIMAR asked for the renegotiation of the common EU immigration and asylum policies and for a greater involvement of the EU in concluding re-admission agreements with third-countries, executing external border controls, receiving and integrating immigrants and asylum-seekers, and burden-sharing among EU member-states in the management of asylum and immigration. These proposals included the renegotiation of the Dublin II Regulation at the EU level

(DIMAR 2011: 51). DIMAR also urged for the mass regularisation of unauthorised immigrants who meet the criteria provided by previous Greek legislation, the return of other irregular immigrants, the implementation of integration measures for the legally resident third-country nationals, and the rigorous implementation of the provisions awarding authorised immigrants the right to vote in local elections (DIMAR 2011: 51-52).

More detailed policy proposals were contained in DIMAR's programmatic positions toward the 2012 parliamentary elections. In those, the party supported the registration of all undocumented immigrants with the public authorities with a simultaneous postponement of their expulsion or return, and the adoption of new legislation for the legalisation of third-country nationals who no longer possess a valid residence permit and for undocumented immigrants with well-established links to Greece. DIMAR was in favour of the liberal legislation on citizenship and naturalisation adopted in 2010, and asked for its continuous implementation and further strengthening of the relative provisions. Furthermore, it supported the issuing and renewal of residence permits on humanitarian grounds on an individual basis, and the promotion of voluntary return programs for clandestine immigrants (DIMAR 2012: 103).

The party opposes the construction and functioning of detention centres for undocumented immigrants. Instead, it promotes the establishment of reception centres close to the Greek borders for the registration of unauthorised immigrants entering Greece, and the establishment of special open-access reception facilities for vulnerable groups, such as unaccompanied minors, the elderly, and asylum seekers, where basic health and educational services may be provided. Finally, DIMAR continues to support the immediate return of undocumented immigrants whenever return is feasible, the strengthening of border controls, the re-negotiation of the Dublin-II regulation, and the temporary suspension of the return of undocumented third-country nationals who are victims of racist and xenophobic attacks (DIMAR 2012: 104).

3.7.7. *KKE (Communist Party of Greece)*

According to KKE's official policy positions, economic migrants and refugees are part of the workers' class of Greece. Immigrants and refugees produce wealth and, there-

fore, they must have equal economic, social and political rights. The participation of immigrants in the social movements is an “one-way street” for the reorganisation and success of the workers’ movement. Immigrant participation and action is needed in the economic crisis and must be an issue for the whole international anti-imperialistic workers’ and people’s movements. Political rights should be enjoyed by all who work and produce wealth regardless of their ethnic, national, religious or linguistic characteristics. Although these rights do not change their class position, they can serve in promoting their common class interests. At the same time, however, KKE is against cosmopolitanism, considered as the internationalisation of capital (KKE 2010a).

KKE stands for the legalisation of all immigrants living and working in Greece, the recognition of fully equal rights, and the facilitation of their movement to the rest of the EU member-states, even when this violates EU law. The party also supports the registration of the children of immigrants in the Greek public registers upon their birth and the acquisition of Greek citizenship with 18 years of age if they so wish (KKE 2010a), including the option of dual citizenship (KKE 2010b). Furthermore, naturalisation should be granted on the basis of objective criteria and immigrants should have political rights in local elections after a certain number of years of residence in Greece (KKE 2010a). The biggest part of resident immigrants should become regularised, another part should be awarded asylum, and the third part should be awarded documents enabling them to leave Greece to the destination of their choice without taking into consideration the Dublin and Schengen systems.

KKE is against the institutionalisation and operation of FRONTEX. Moreover, the party is against the cosmopolitan agenda of international organisations and NGOs, the creation of supranational identities superseding national ethnic identities, and the raise of new minority issues in Greece, including immigrant minority issues (KKE 2010b).

Finally, the party has supported the liberalisation of national regulations on residence permits and family reunification, the provision of full and stable employment to immigrants, the employment of interpreters in public administration services, the teaching of immigrants’ mother tongues and cultures in public education, and the establishment of public and free reception conditions with full and free provision of health services. KKE has advocated social security for all and fighting against the clandestine employment of immigrants, as well as respect for migrant cultural traditions. It has

asked for the establishment of the right of immigrants to transfer social security contributions to their countries of origin, for defending and extending the democratic rights of migrants and refugees, for measures against trafficking networks, and for measures to support women who are victims of trafficking and prostitution (KKE 2007).

3.7.8. LAOS (*Popular Orthodox Alarm*)

LAOS, a political party with positions in favour of strict immigration controls, was represented in the Greek Parliament for five years (2007-2012). The party failed to elect representatives at the 2012 parliamentary elections, and it is now represented in the European Parliament only.

According to the party's 2007 electoral program, strictly controlled immigration can support the ailing social security system but immigration causes the weathering of Greek cultural and national identity. Consequently, attempts to solve Greece's demographic problems by accepting immigrants are dangerous for ethnic cohesion. Greek citizens should decide by referendum on immigration legislation, and LAOS supports only authorised, economically necessary, and strictly controlled immigration of third-country nationals. The party is in favour of integration programs for legally resident immigrants without endorsing multiculturalist models, opting instead for assimilationist policies. Legally resident immigrants, and especially their children, should fully participate in Greek education with the aim of adopting Greek cultural values. At the same time, Greece should implement a strict policy of controlling clandestine immigration comparable to that of other EU member-states (LAOS 2007).

3.7.9. *Independent authorities: the Greek Ombudsman*

Ever since the establishment of the office in 2001, the Greek Ombudsman has been in favour of protecting and extending the rights of foreign immigrants in Greece. The Ombudsman has been actively involved in the public debates on immigration as well as in the actual policy-making process through day-to-day contact with third-country nationals and the Greek public administration, the publication of annual and special

reports, as well as the formulation of policy proposals. The relative interventions cover the whole range of immigration policy issues and the full presentation of policy proposals would greatly exceed the scope of this report.

Nevertheless, the Ombudsman has paid special attention to family reunification issues, especially when special ties to the country have been established for sponsors and their family members. Within this context, amendments to Greek legislation have been proposed to facilitate the legal residence of spouses of third-country nationals who lose their legal residence status as a consequence of their inability to continue the provision of adequate financial means for the subsistence of their family members (Greek Ombudsman 2009: 39). In addition, the Ombudsman asked for the provision of residence permits on family reunification grounds to the spouses of EU or Greek citizens residing in Greece, regardless of their residence status (clandestine or authorised) (Greek Ombudsman 2009: 40).

On the basis of recent rulings of the European Court of Human Rights, the Ombudsman has asked for the re-evaluation of Greek legislation concerning the detainees who submit an asylum application and for limits to detention practices (Greek Ombudsman 2009: 42). He has also proposed the issuing of special “on tolerance” residence permits to unauthorised third-country nationals, under special conditions, until their removal from the country becomes possible. In addition, he has suggested the establishment of reception facilities with adequate reception standards for clandestine immigrants. According to the Ombudsman, the effectiveness of efforts to address the social and economic problems and the humanitarian crises created by the over-concentration of unauthorised immigrants in Greece depends on the lifting of difficulties in the implementation of the expulsion measures for those aliens who do not have a legal right of residence in Greece (Greek Ombudsman 2009: 43).

3.7.10. The social partners

The common denominator of the policy positions of Greek social partners (both employers’ and workers’ associations) is provided in the Opinions of the Economic and Social Committee of Greece (OKE). The consulting role of OKE is formally institutionalised and its opinions form part of the immigration policy-making process before draft

legislation is introduced to the Greek Parliament for debate and approval. Concerning the reform of the Greek Citizenship Code and Law on Aliens in 2010, OKE supported the liberalisation of the conditions for the naturalisation of second-generation immigrants (OKE 2010a: 6) but expressed reservations as regards to the reduction of the minimum period of legal residence prior to the naturalisation of first-generation immigrants from 10 to 7 years. OKE suggested that the period should be set between 7 and 10 years (the latter being the old provision of Greek citizenship law) (OKE 2010a: 9). OKE supported the setting of guarantees for the rights of applicants and the introduction of limitations to the discretion of the administration on naturalisation decisions (OKE 2010a: 9-10).

As regards to the rest of immigration policy issues, OKE announced the following policy proposals in early 2010 (OKE 2010b: 49-53):

- Greek immigration policy should be based on the principle of equal rights and opportunities for third-country nationals, to be achieved by awarding legal resident status to the entire immigrant population and especially to second generation immigrants
- the procedures for awarding and renewing residence permits must be reformed in order to achieve the legality of residence and employment of long-term resident immigrants and their families
- the proof of social security contributions as a condition for the renewal of residence permits must be abolished
- second generation immigrants should enjoy equal treatment with Greek nationals concerning their access to social and economic rights
- the consultation with immigrant associations on immigration policy issues should be institutionalised
- more effective external border controls
- the procedures for the entry and employment of new authorised immigrants should be simplified and the geographical restrictions concerning the employment of new immigrants during their first year of employment should be abolished

- more protection and guarantees for legal residence should be provided to the victims of human trafficking with special attention to minors
- concerning the right to family reunification, the definition of family members should be extended to include the long-term unmarried partners of the sponsor when there is a “real family bond” and the residence permits of family members should be of a longer duration and equal with that of the sponsor
- concerning the status of long-term residence, the administrative fees accompanying the application for the status should be reduced, and the children of immigrants should be able to acquire the status of long-term resident regardless of their place of birth or the legal status of their parents, and Greek language instruction (since 2005 good knowledge of Greek being a prerequisite for awarding long-term resident status to third-country nationals) should be institutionalised and provided at the local level
- concerning minors, they should not be subject to detention and must be hosted in adequate reception facilities during the verification of their data and after; the administration should aim at their safe return to their country of origin when an adult guardian is found there; official procedures for the certification of the age of minor applicants should be established; and their rights and their best interest should be safeguarded by the full implementation of Greek legislation concerning the appointment of a councillor or guardian and their access to public psychological, medical, legal, and educational support.

In July 2012, OKE adopted an opinion on the socio-economic problems in the city-centre of Athens, an issue that has been high on the agenda of the media and public authorities in the last few years. Among other issues (such as the deterioration of economic conditions, the shrinking trade activities, the deterioration of the urban environment, etc.), attention was paid to the disproportionate presence of a high number of irregular immigrants in the city centre and its relation to rising criminality rates and fast ghettoisation processes. OKE expressed the opinion that the tackling of the issues related to the sharp deterioration of social and economic conditions in the centre of Athens cannot be successful if extensive irregular immigration is not contained and if the proposed solutions are not embedded in Greek policies on border controls,

authorised immigrant residence and immigrant integration at the national level (OKE 2012a: 4).

The social partners further proposed the penalisation of providing housing and property to unauthorised immigrants and their facilitators, as well as the introduction of new legislation for the owners of such property who do not take adequate care to prevent unauthorised immigrant residence or other unlawful uses of their property. At the same time, OKE asked for integration measures for vulnerable social groups. The proposals included immigrants and concerned their inclusion in housing, volunteering and social work programs, aiming at their social integration with the help of civil society organisations (OKE 2012a: 26, 28). Finally, OKE stressed the need to tackle the issue of irregular immigration and supported the implementation of voluntary return programs for irregular immigrants along with the re-structuring of the asylum system in Greece and in the EU. Proposals included faster asylum procedures and the re-negotiation of the “Dublin II” Regulation (OKE 2012a: 29).

OKE has been dealing with immigration issues in its reports on the implementation of Greek and EU anti-discrimination legislation. In its latest report (July 2012), it noted the vulnerable position of foreigners in the Greek labour market in terms of both their average remuneration and their average duration of employment (OKE 2012b: 3). In addition, it paid attention to additional documentation third-country nationals are often asked to provide to the Greek financial authorities in order to secure their access to employment, although this practice is not foreseen in Greek legislation (OKE 2012b: 4). Accordingly, the social partners called for the implementation of best practices in the labour market and the actual places of work, aiming at the elimination of discriminating treatment on the basis of ethnic or racial origin regarding access to employment.

Beyond the implementation of existing legislation, OKE has also called for actions aiming at the promotion of multiculturalism and of the value of diversity in economic activities and business strategies (OKE 2012b: 12), for greater protection of the especially vulnerable social groups in the labour market, including foreign citizens with disabilities (OKE 2012b: 24, 26), and for equal access of immigrants to vocational training, the public employment services, and the promotion regimes in their places of work (OKE 2012b: 24). Finally, OKE supported the opening of more reception centres

of immigrants and asylum seekers, and the design of social and professional integration programmes (OKE 2012b: 26).

3.7.11. Immigrant associations: the Greek Forum of Migrants (GMF)

The Greek Forum for Migrants is the umbrella organisation representing approximately 30 immigrant associations mostly based in the Athens area,⁶⁵ and the one that has sought to express the positions and claims of immigrant communities in Greece. Since the drafting of the 2005 Immigration Law, the GMF has been – either unofficially or officially – consulted in the drafting of new immigration legislation at the ministerial level and by political parties in Parliament. In addition, the members of the Forum have cultivated their communications and co-operation with a network of Human Rights NGOs, the labour centres (associations of private and public employees at secondary level) in the biggest cities, the General Confederation of Greek Workers (GSEE) (the representative confederation of Greek Labour Unions) and immigrant and centre-left Greek media. The GMF has considered GSEE, the Greek Ombudsman, the Athens Bar Association, Greek NGOs, and the networks /programs at the EU level where the GMF is a member to be supportive to its initiatives and role (GMF 2007).

Concerning clandestine immigration and immigration for employment purposes, the GMF has asked for the regularisation of all unauthorised immigrants in Greece and the decoupling of social security contributions from the criteria for regularisation of clandestine immigrants; greater involvement of the public administration in registering and controlling immigrant employment, and greater engagement of the trade unions and labour inspection authorities in protecting immigrant working rights; minimizing the annual period of legal employment required for the renewal of residence permits; and extending the right for the renewal of residence permits for employment purposes to unemployed immigrants.

65 On the basis of the information that the GMF makes available on their website (www.migrant.gr) <accessed 5 February 2011>, there are 23 immigrant associations and organisations listed under the category “GMF members”. However, on 3 November 2006, thirty-one immigrant associations undersigned the positions of the GMF concerning the amendments to the 2005 Immigration Law (GMF 2006).

Regarding the second generation immigrants, the GMF has called for their unconditional right to change the scope of their residence after they have reached the age of majority. As regards to family reunification, the GMF agreed with the liberalisation of the criteria for the first renewal of residence permits of family members in 2006. The GMF has also asked for the lifting of all criteria and conditions for awarding residence permits for special reasons.⁶⁶ Regarding the amendments to the 2005 Immigration Law, the GMF supported the introduction of independent language and civil education tests for the applicants for long-term resident status, and the abolition of administrative fees for residence permits for minors (GMF 2006).

3.7.12. Human rights organisations

The Hellenic League of Human Rights (HLHR)

It is one of the few NGOs that have taken an active part in institutionalised consultation and policy-making in immigration issues, mainly through their representation in the Hellenic Committee on Human Rights, which has a consultative role to the Government. Its members, mostly legal scholars and practitioners, have cared for detailed comments on a series of draft Greek immigration laws.

HLHR has welcomed the adoption of the new Citizenship Law (2010) and particularly the introduction of *jus soli* for the second generation of immigrants, the reduction of the period of required legal residence prior to naturalisation from 10 to 5 years, the obligation of the executive to provide reasoned decisions on naturalisation applications within a set time-frame, and the right of long-term resident immigrants to vote in local elections.

At the same time, the HLHR has criticised the preserved distinction between co-ethnic and foreign third-country nationals in Greek citizenship law. Furthermore, it has asked for awarding the right to be elected in local elections to long-term residents, and for

66 This is a particular provision of the Greek immigration legislation for third-country nationals who wish to reside in Greece or regularise their status without meeting the residence criteria for the purposes of employment, family reunification, studies, research, etc. Often, this category of applicants is treated as “applicants for humanitarian reasons”, broadly defined.

the reduction of administrative fees for naturalisation and long-term resident status applications (HLHR 2010). Executive members of HLHR have supported the abolition of evaluating the ethos and personality of applicants as a criterion for naturalisation (Hristopoulos, undated), the right to long-term residence status after 5 years of residence for the children of immigrants reaching majority, and equal rights in social security benefits for long-term residents (Pavlou, undated).

3.7.13. The Orthodox Church of Greece

The Greek Orthodox Church became active in immigration issues in the late 1970s, by establishing the Supporting Centre for Returning Migrants and offering assistance to the returning Greek guest workers from Western Europe (Anthis 2008). These services were continued and extended in the early 1990s by providing assistance to refugees and co-ethnic third-country nationals from the countries of eastern Europe. Since the early 2000s, the Church became active in cultivating communication channels with EU institutions and International Organisations in the field of immigration (such as the IOM) as well as other Christian Churches in the framework of the World's Council of Churches. However, it was only in 2006 that the Holy Synod created the "Special Synodic Committee on Immigrants, Refugees and Returnees" of experts to provide advice to the Church (and the Holy Synod in particular) on immigration and asylum issues (Holy Synod of the Church of Greece 2006).

The Church leadership saw an immediate need to integrate third-country nationals and especially the children of immigrants into the Greek society, by means of social dialogue and mutual efforts and on the basis of respect for commonly shared values. According to the Supporting Centre for Returning Migrants, particular services of the Church to immigrants should be provided according to the principle of equality regardless of racial and social origin or political and ideological beliefs (Papantoniou 2006).

In recent years, the Church engaged in intra-religious dialogue, especially concerning Muslim immigrant populations in the area of Athens, and the production of some research on refugee and immigration issues. It has mainly focused its attention on the issues of immigrant integration, by providing Greek language courses, vocational

training, legal assistance for regularisation, support for litigation concerning working rights, and reception services for vulnerable immigrant groups and victims of human trafficking. The Special Synodic Committee on Immigrants, Refugees and Returnees has asked for the institutionalisation of consultation processes between the public administration and the immigrant communities in immigration policy issues (Anthis 2008). Recently, it called the Greek orthodox clergy to help create a positive image of immigrants in the local communities and to support third-country nationals, regardless of the latter's religion, in their efforts to integrate in Greece (Anthis 2010).

4. ITALY

4.1. Immigration in Italy

Italy has become host to significant numbers of third-country nationals from the Southern Mediterranean since the mid-1980s, and from Eastern Europe – mainly Albania and Romania – from the early 1990s onwards. Despite the economic crisis that has hit Italy and reduced annual immigrants' quotas, immigration to Italy remains at high levels. On the basis of the data from the population register, as of January 1, 2011, the stock of foreign residents has increased by 8% on an annual basis, reaching 4.57 million persons. In 2011 immigrants accounted for 7.5% of the entire Italian population (OECD 2012:242).

At the end of 2010, the major groups of third-country nationals were Albanians (483,000) and Moroccans (452,000). However, the largest group of foreign residents in Italy were intra-EU immigrants, many of whom had been third-country nationals prior to the full accession of their countries into the EU. This group, comprised mainly of Romanian citizens, included 969,000 people in the year 2010 (OECD 2012a:242). After a slight increase in 2010 (16.4%), the number of residence permits granted to non-EU citizens declined from 599,000 to 331,000 in 2011, with 141,000 for family reunification and 119,000 for employment (OECD 2012a:242).

Public attitudes towards immigration are mixed. In a comparative international public opinion survey in 2009, the Italian public opinion ranked in the middle concerning its perception of immigration as a problem rather than an opportunity, lagging slightly behind France, Germany and The Netherlands but displaying a friendlier profile towards immigration than the USA, Spain and the UK (German Marshall Fund of the United States *et al.* 2009 cited in IOM 2010b:128-129). At the same time, some studies show that the Italian public opinion is much less open to multiculturalism than the German, French, Spanish, British and American (Pew Research Center 2009 cited in IOM 2010b: 130).

Hostile attitudes towards immigration appear to have been accentuated by the economic crisis, as well as the anti-immigration rhetoric and laws passed by the Berlusconi government (2008-2011). According to a Human Rights Watch report published in 2011, racism and xenophobia in Italy are on the increase, and so is violence motivated

by them. The report argues that a political discourse that links immigrants, Roma and Sinti to crime has helped to create and perpetuate an environment of intolerance (Human Rights Watch 2011).

Cities across Italy have witnessed mob violence and individual attacks targeting immigrants, such as the attacks against Sub-Saharan agricultural workers in Rosarno, Calabria, in January 2010; the attack of a Bengali bar in Rome in March 2010; and the killing of two Senegalese men and the injury of three others by a far-right sympathizer in Florence in December 2011 (Lentin 2011).

The negative image of immigrants is perpetuated by news reports on television. This is especially preoccupying in light of the fact that television is the main source of news for 80% of the Italian population. A study conducted by the Sapienza University of Rome in 2008 found that only 26 out of 5,684 television news stories about immigrants did not relate to crime or security issues (Human Rights Watch 2011:11). According to Human Rights Watch (2011:56), there is "a striking dissonance between the perception of government representatives of the extent of racism and racist violence in Italy, and that of members of vulnerable groups, along with nongovernmental organizations and international observers". The former tend to minimize the extent of racist violence and attribute an episodic character to it.

There have been sustained efforts in the Italian civil society to counteract these negative developments and attitudes towards immigration. These efforts have mainly been led by NGOs, charities and labour unions. Notable are the activities of some NGOs and professional associations, such as ANOLF – National Association Beyond Borders (*Associazione Nazionale Oltre le Frontiere*), which has been providing information and free legal assistance to immigrants, ASGI - the Association for Juridical Studies on Immigration (*Associazione per gli Studi Giuridici sull'Immigrazione*), which has been actively involved in monitoring, studying and advocating immigrant rights, and the Catholic Church agency Caritas and the Foundation Migrantes, which have been providing social support and humanitarian assistance to immigrants.

There have also been several large campaigns initiated by civil society organizations to promote the rights of immigrants. For instance, in March 2009 a coalition of 27 organizations, including NGOs, labour unions and Caritas, launched a campaign called

“Don’t be Afraid” (*Non Aver Paura*). The campaign collected over 80,000 signatures for a petition against racism and intolerance, and was presented to Italian President Giorgio Napolitano in October 2009 (Human Rights Watch 2011). In 2011 another important campaign was promoted under the name “I am also Italy” (*L’Italia sono anch’io*). The campaign has been sponsored by 19 organizations, including again labour unions, NGOs and Caritas, and it collected signatures for two legislative initiatives: a reform of the citizenship law, which would enable children born in Italy by immigrant parents to obtain Italian nationality (109,268 signatures collected) and a reform of the electoral law that would grant immigrants voting rights at administrative elections after five years of legal residence (106,329 signatures collected) (Polchi 2012).

In terms of policy developments, in the last couple of years Italy seems to have been moving towards the adaptation of a new *Gastarbeiter* rather than an integrationist model (IOM 2010b: 133), based on meeting labour market needs in particular economic sectors (such as domestic work and health-care services) and favouring seasonal/circular migration. In the following subchapters we will explore in detail policy developments in five areas of immigration policy: entry and residence for employment purposes; entry and residence for studying purposes; family reunification; integration, long-term residence and naturalisation policy; and illegal immigration, re-admission and return policies.

4.2. Immigration for employment purposes

Italy has introduced a quota system for the management of immigration of third-country nationals. On the basis of legislation dating back to 1998 and 2002, a programmatic immigration plan is drafted every three years by the government in cooperation with the regional and local administration, organisations and associations that are involved in immigrant affairs, trade unions and the parliament.⁶⁷ On the basis of the plan, maximum annual quotas for paid, seasonal and autonomous employment of third-country nationals are set by Decree, whereby the number of new entries for family reunification and temporary protection are also taken into account

⁶⁷ In 2011 the government failed to adopt the three-year planning document, due to contingent macroeconomic instability (EMN 2012b:18).

(Law 286/1998 Article 3; Law 189/2002 Article 3). The employers who are interested in hiring immigrant workers from third countries are required to submit a vacancy announcement to the provincial “one-stop-shop” immigration authorities.⁶⁸ The procedure for the new entry of a third-country national worker may proceed after the vacancy has not been filled by an Italian citizen, an EU national or a third-country national legally resident in Italy.

For several years during the 2000s and up until 2007, a 170,000 annual quota applied. In 2008, the latter was reduced to 150,000 home-care workers. As a response to the global economic crisis, new restrictions on Italian immigration policy were added in 2009 to protect the local labour market by reducing the annual immigration quotas for employment purposes (IOM 2010a: 124). In 2009, the quota was restricted to 10,000 places for training and apprenticeships. However, that year a regularisation was held for home and care workers. 295,000 applications were filed, most (233,000) of which had been accepted by October 2011, accounting for about half of the employment permits issued in 2010-2011 (OECD 2012:242). A non-seasonal quota was set in December 2010 to 98,000 entries, with sub-quotas by nationality and occupation. About 392,000 applications were filed, of which 65% were for domestic work and 9% for long-term care (OECD 2011a). The seasonal quota for 2010 was set at 80,000, and 21,400 permits were issued. A new seasonal quota was set in 2011 at 60,000, and in 2012 at 35,000 (OECD 2012:242). In view of the economic crisis and since 280,000 unemployed foreigners were given priority placement, in November 2011 the Italian government announced that no annual entry quotas for subordinate work will be applied for 2012 (EMN 2012b:60).

Third-country nationals who are authorised to exercise paid employment in Italy en-

68 The establishment of “one-stop-shop” immigration authorities in each province, where the requests for immigrant labour and the residence permits are processed, dates back to the 2002 Immigration Act. Another institutional innovation dating back to that Act is the Inter-Ministerial Committee for the coordination and monitoring of the policies on aliens, in which the Prime Minister’s office and the Ministries of Foreign Affairs, Interior and EU Policies have a primary role. Depending on the issues on the agenda, representatives of a series of other Ministries as well as a representative of the regions or autonomous provinces take part in the Committee. Several departments of the Ministry of Interior and representatives of other Ministries as well as regional and local authorities and Trade Unions may participate in the technical group supporting the works of the Committee.

joy equal treatment to Italian workers concerning their remuneration and working rights. In addition, third-country nationals have the right to participate in professional unions following the recognition of their professional qualifications (Law 286/1998 Article 37).

Issuance and renewal or residence permits

With the “Bossi-Fini” immigration law in 2002, the type of residence permit for employment purposes with a definite employment contract was added to the Italian legislation, thus reducing the duration of residence permits for immigrant workers from two years to one. For the other categories of employment entries, as well as for family reunification, the duration of residence permits remained set at two years (Law 189/2002, Article 5). The renewal of residence permits for some categories of employment entries was set to two or even to three months prior to their expiration instead of one, and the duration of renewed residence permits has to be equal to the initial permit. In addition, the collection of fingerprints was added to the procedure for applying for a residence permit, the employers had to provide guarantees for the costs of the return-trip of the invited workers, and the penalties for counterfeiting entry visas and residence permits were increased up to seven years imprisonment, with higher penalties for public officials (Law 189/2002 Article 5 § 1, §4 & § 8).⁶⁹ Additional penalties were inserted for the employers and hosts of third-country national workers failing to register them with the police (Law 189/2002 Article 8). On the contrary, the 2002 Immigration Law provided for special preferential quotas for third-country nationals of Italian origin (Law 189/2002 Article 17) and extended the scope of exceptions from the annual quotas to include nurses and athletes along with the previously defined categories, such as artists, academic researchers, sailors, etc. (Law 189/2002 Article 22).

As far as the cost that immigrants have to sustain in order to receive or renew residence permits is concerned, the Italian Ministry of Economy and Finance passed a Decree Law of October 6, 2011 determining the fees for different type of permits. The decree came into force on January 30, 2012. The fees for the issuance and renewal of

⁶⁹ Under the previous “Turco-Napoletano” Law 286/1998 Article 5 §4, the renewed residence permits could be issued for a period two times longer than the initial permit.

residence permits of third-country nationals who are eighteen years old or older are determined as follows (ASGI 2012a): (i) Euro 80.00 for permits to stay longer than three months but not exceeding one year; (ii) Euro 100.00 for residence permits for a period exceeding one year and less than or equal to two years; (iii) Euro 200.00 for issuing a residence permit for long-term residents and applicants under Article 27 of the Consolidated Immigration Act, paragraph 1, letter a) which refers to executives or highly specialized personnel of companies with headquarters or subsidiaries in Italy or of representative offices of foreign companies which have their headquarters in a state that is member of the World Trade Organisation, or executives of Italian companies or companies of other EU Member States which have headquarters in Italy (Article 27 of the Consolidated Immigration Act paragraph 1, letter a). To these fees there is an additional fee of 27.50 Euros for the expenses of issuing an electronic residence permit.

In a press release issued on January 4, 2012, the Minister of the Interior, Annamaria Cancellieri, and the Minister of International Cooperation and Integration, Andrea Riccardi, declared that it was necessary to consider carefully the implications of this decree. Further on, they stated that, in a moment of crisis that affects not only Italians but also immigrant workers in Italy, it would be appropriate to examine whether the contributions could be determined with respect to the income of the immigrant worker and the composition of his or her household (Ministero dell'Interno 2012). The two Ministers have not yet followed up on this proposition, and for the time being the Decree of October 6, 2011 is in force.

Seasonal employment

The Italian system of seasonal employment of a maximum of nine months in each calendar year provides incentives for circular, seasonal migration, by giving preference to third-country nationals who have previously entered Italy for seasonal employment and respected the conditions of return to their countries of origin. The latter have priority over other applicants from third countries (Law 286/1998 Article 24; Law 189/2002 Article 20). In 2002 a multiannual permit was established for seasonal workers who already entered and exited Italy in two consecutive years (Law 189/2002 Article 5). Entry of non-EU citizens for seasonal employment is also governed by annual quotas, which have been discussed earlier in this section.

Some important changes for immigrants coming under the seasonal employment framework and their employers were introduced with the Decree Law of February 9, 2012, also known as the "Simplification Act". The main novelty introduced with this decree law regards the recruitment of seasonal workers who now, after the first entry, can use the mechanism of "silent consent" for successive entries. If the One-Stop-Shop for Immigration does not respond to the request made by the employer within twenty days, the request is considered to be accepted and the employee can immediately receive the entry visa for Italy. In addition, once her/his contract has expired, the employee can sign another one and renew the permit to stay in Italy up to a maximum of nine months (Decree Law 5/2012).

4.3. Entry and residence for studying purposes

Quotas and general provisions

Third-country nationals legally resident in Italy have equal rights to Italian citizens concerning their school attendance and access to university education and vocational training. In addition, a special annual quota of entry visas and residence permits applies for foreigners who are resident abroad and wish to study in Italian universities. The quota is set in a Decree by the Ministry of Foreign Affairs. Financial guarantees for their living expenses during their studies must be provided either by the students themselves or by their sponsors in Italy, namely legal entities or persons of Italian or foreign citizenship. The multilingual government website "Study in Italy" (<http://www.studiare-in-italia.it/>), administered by the Ministry of Education and University Research, offers information about the possibilities of higher education within the country, the procedures and the exchange projects (EMN 2012b:24).

As stipulated by the Decree of the Ministry of Foreign Affairs of January 9, 2012, for the academic year 2011-2012, 48,806 visas and residence permits could be issued in favour of third-country nationals who want to study in Italy, of which 41,930 are for the access to university courses in accredited public or private universities and 6,876 for accredited courses in arts, music and dance academies.

Third-country nationals who are authorised to reside in Italy for studying purposes

have the right to family reunification after one year of residence and they may undertake paid employment or self-employment (Law 286/1998 Article 39). Since 2009, third-country nationals who graduate from Italian universities are awarded a period of 12 months for finding a job in Italy and stay for employment purposes (OECD 2010: 214).

Transposition of EU legislation

According to the European Commission *Report on the implementation of the Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service*, Italy has not fully transposed the EU legislation on student immigration. Under Article 22 of the Directive, Member States had to transpose the Directive into their law by January 12, 2007, and to communicate this information to the Commission (European Commission 2011a).

Concerning the mobility of third-country national students from one Member State to another within the framework of EU programs (Erasmus, etc.), Italy has not transposed the provision on the obligation of the first Member State to report information concerning the student's stay in its territory to the second Member State. According to the European Commission report, it is also not clear whether Italy has transposed the requirements for health insurance as a prerequisite for entry and residence of third-country national students and the criteria about public policy, public security and public health as preconditions for allowing entry. Italy has been liberal in granting to foreign students the right to self-employment in addition to the right to paid employment according to the Directive. However, Italy does not seem to make provisions for guarantees on the right of third-country nationals to legally challenge a negative decision on the awarding or renewal of student residence permits (European Commission 2011a).

4.4. Immigration for reasons of family reunification

General provisions

The 1998 Immigration Act recognised the right to family unity to third-country na-

nationals who are authorised to reside in Italy for at least one year for paid employment or autonomous economic activity, for studying purposes, or for religious reasons, whereas special and more favourable provisions apply for the family members of Italian or EU citizens (Law 286/1998, Article 39). The conditions for family reunification include the ability of the sponsor to provide adequate accommodation and a minimum annual income that increases up to three times the minimum social income in Italy if the sponsor applies to be reunited with more than four family members (Law 286/1998 Article 29). Finally, residence permits for family reunification may be issued to third-country nationals who are parents to minors of Italian citizenship resident in Italy or they are already holders of residence permits for other reasons, such as employment purposes or studies, following their marriage with a third-country national or an Italian or EU citizen resident in Italy (Law 286/1998 Article 30). The minor children are entitled to an autonomous residence permit for family reunification upon completing fourteen years of age (Law 286/1998 Article 31).

Residence permits for family reunification give their holders the same rights as those of the sponsor concerning the duration of residence and the deadlines for their renewal, the access to the labour market, the access to education and vocational training, and social assistance. Third-country nationals who are family members of Italian or EU citizens are entitled to residence permits of five years duration. In addition, family members may, following divorce or reaching the age of maturity, acquire residence permits for other reasons including paid employment or autonomous economic activity and studies (Law 286/1998 Article 30). In 2002, the scope of change of residence purposes was extended so as to include the spouses of a deceased sponsor (Law 189/2002 Article 24).

The 1998 Immigration Law had been particularly generous in defining the scope of family reunification, which included the legal and married spouse, the minor dependent and non-married or divorced children of the sponsor and of the spouse (including those born outside of marriage), the dependent parents, and the dependent relatives up to the third grade, in case they were unable to work according to Italian law (Law 286/1998 Article 29). In 2002, the latter category of beneficiaries of family reunification was abolished and the family reunification with the dependent parents became conditional on them not having other children in their country of origin or on them

being older than 65 years and their children abroad not being able to support them for well-documented health reasons. On the contrary, the 2002 Law included in the scope of family members the dependent children who have reached the age of majority but are unable to provide for themselves due to health reasons (Law 189/2002 Article 23).

According to Eurostat data, in 2010 Italy was on top of the list in Europe for having issued the largest number of residence permits for family reunification of third-country nationals (160,200), followed by the United Kingdom (103,187) and Spain (89,905) (EMN 2012b:23).

“Security Package” and further developments

The “Security Law” of 2009 (Law 94/2009) provided for more restrictive housing requirements for family reunification (IOM 2010b: 132). It also raised the administrative fees that immigrants have to pay to benefit of the right of family reunion. The fees jumped from 80 to 200 Euros, 50% of which cover the costs of the procedure and 50% cover deportation costs of other immigrants (MIPEX IIIa 2011).

Article 29 of the Security Law stipulated that an immigrant who wants to benefit of the right of family reunification has to obtain a certificate proving that he or she has a suitable place of stay and that the latter complies with health standards. Both certificates must be obtained from the competent municipal authorities. Only in the case of family reunification of a parent with a child not older than 14, it is sufficient to obtain just the consent of the owner of the apartment or the house where the child will live.

More recently, Legislative Decree 150/2011 has simplified the procedures for contesting the denial of a *nihil obstat* for family reunification and of a residence permit issued for family reasons. Moreover, the Constitutional Court, with judgment no. 245/2011 declared the constitutional illegitimacy of one of the most controversial rules introduced by the Security Package, according to which a third-country national irregularly staying in Italy is prohibited to marry, with the aim of limiting cases of abuse being used to bypass immigration rules. The Court criticized the fact that immigrants are to be treated differently with respect to the protection of inalienable rights and argued that the restrictions introduced by Law 94/2009 may give rise to unacceptable compressions of the rights of Italian citizens who want to marry third-country nationals staying irregularly, which would also imply a violation of art. 12 (right to marry) of

the European Convention of Human Rights (EMN 2012b:21-22).

4.5. Long-term resident third-country nationals, integration and citizenship

Integration and political participation

Third-country nationals who are authorised to reside in Italy for paid or autonomous employment and family reunification, as well as those awaiting naturalisation, are entitled to equal treatment with Italian citizens concerning their access to public health services and health insurance (Law 286/1998, Article 35).

However, according to MIPEX III (2011a), new policies, especially those brought about by the “Security laws” of 2008 and 2009, made conditions in the country less favourable for immigrants and for their integration in the host society. In Italy, immigrants are often presented as responsible for general social problems, with debatable statistics and without evaluations of policies’ impact on integration. While EU law slightly improved the situation, equality policies remain the weakest in Europe.

In October 2009, the issue of voting rights of third-country nationals in local elections was put on the agenda of negotiations between the two biggest political parties (*// Popolo della Liberta’* and *Partito Democratico*) and enjoyed broader political support (EURO-Citizenship 2009). However, this and other initiatives, such as the 2011 campaign “L’Italia sono anch’io”, has not resulted in any policy reform as yet.

Political participation of immigrants is very low in Italy. According to MIPEX III (2011a), the only exception is Rome, which mainstreams immigrants into local politics. In Rome non-EU nationals can run and elect Adjunct Counsellors, representing residents from Africa, Asia, America and Eastern Europe. They are part of the town council and, although they cannot vote, they make their own reports and recommendations. Rome’s Consultative Body for Foreign Communities has 32 members, who are also freely elected without state intervention from the 30 largest immigrant communities.

Other Italian immigrant consultative bodies do little to encourage participation, according to MIPEX III (2011). Authorities interfere in the selection of representatives and the latter are rarely consulted and given a meaningful role. Italy respects most basic political liberties and provides a certain amount of funding for immigrant associations. However, outdated laws stipulate that any newspaper that third-country

national create must be owned by an Italian citizen.

Education

The children of immigrants are subject to equal treatment concerning their access to public education, especially concerning the years of obligatory instruction at primary and secondary schools. Where necessary, public authorities at the local level are responsible for the provision of special Italian language classes to pupils of foreign origin, as well as for courses of formation and culture of their countries of origin (Law 286/1998, Article 38). However, according to MIPEX (2011a), standards to ensure the quality of Italian that is taught are not set. Trainings are not required for teachers to teach Italian to non-native speakers or handle diverse classrooms. Italian pupils are not encouraged to open up to immigrant peers and immigrant languages are absent from the curriculum, unlike in other EU countries.

In January 2010, the Ministry of Education adopted a protocol that set a 30% ceiling on the enrolment of foreign-born non-Italian pupils in a single classroom. Then Minister Mariastella Gelmini justified this move as an attempt to both strengthen integration of immigrant children and preserve the Italian culture and tradition (Ministero dell'Istruzione, dell'Università e della Ricerca 2010). 3% of Italian public elementary schools and 2% of secondary schools had at least 30% foreign students in 2009/2010 (OECD 2011a).

Long-term resident status and "integration contracts"

The new legislation on the long-term residence permit entered into force on February 14, 2007, as the result of the transposition process of EU Directive 2003/109. This piece of legislation replaced the previous long-term residence permit (*carta di soggiorno*) with an new EC residence permit for long-term residents (*permesso di soggiorno CE per soggiornanti di lungo periodo*). This legislation also changed some provisions for obtaining such a residence permit (Polizia di Stato 2011).

The EC residence permit for long-term residents may be requested by third-country nationals who are legally residing in Italy for at least 5 years, who hold a valid permit of stay, who can prove to have an income of at least that of the annual social security benefits and who have passed an Italian language test. The permit can be requested

also for dependents, such as minor children, adult children who for objective reasons can not provide for their needs because of 100% disability, dependent parents and parents of over 65 years of age. The costs of the procedure for obtaining the residence permit for EC long-term residents are set at 200 Euros. In addition to that, the applicant needs to pay also the contributions for the stamp, the shipping and the issuance of the permit in electronic form (Progetto Melting Pot Italiano 2010).

The 2009 Security Law (Law 94/2009) introduced a language test as a requirement for the award of long-term resident status and made successful integration a precondition for the continuation of authorised stay (OECD 2010: 214). Thus, as of 2011, the EC long-term residence permit is granted only to immigrants who have proven to possess adequate Italian language skills at a test organised by the provincial representative of the Ministry of the Interior or by presenting other documentation (OECD 2011a).

Moreover, with the Presidential Decree n. 179 published on September, 4, 2011 (which entered into force on March 10, 2012) an Integration Contract was made compulsory for most new permits⁷⁰. The regulation applies to third-country nationals of 16 years or above who enter the country for the first time and request a permit of stay of the duration of not less than one year. These immigrants are now required to sign the integration agreement at the One-stop-shop for Immigration at the Prefecture (*Sportello Unico per l'Immigrazione*) or at the Provincial Police Headquarters (*Questura*).

By signing the agreement, immigrants commit themselves that within two years they will learn the Italian language at least to an A2 level (slightly higher than the basic level) and that they will acquire sufficient knowledge of the fundamental principles of the Italian Constitution and the organization and functioning of public institutions and civic life in Italy, as well as that they will ensure that their children will complete compulsory education and that they will adhere to the Charter of the values of citizenship and integration.

70 Unaccompanied minors and victims of human trafficking, violence or other forms of exploitation do not need to sign the integration contract.

The level of integration is measured using credits. Upon the signature of the agreement, the immigrant is awarded sixteen credits. Other credits are obtained by demonstrating knowledge of Italian language, taking courses and educational qualifications, as well as by a number of other activities, which demonstrate the integration of the immigrant into the economic and social life of Italy. There are also actions that make an immigrant lose points, such as receiving a criminal sentence, being a threat to public security and committing administrative and tax offences.

With the agreement, the State commits itself to support the process of integration of immigrants in collaboration with regional and local authorities, as well as with centres for adult education, for instance, by providing free training sessions on the civic life in Italy and providing study materials translated in different languages.

A month before the expiry of the agreement, the one-stop-shop for immigration examines all the documents submitted by the immigrant, such as the certificates of courses that were attended. The immigrant who fails to submit the certificates has to undergo a test. In both cases, s/he is awarded points. An immigrant who obtains at least 30 points is considered to have fulfilled the requirements of the integration agreement, while an immigrant who obtains between 1 and 29 points is given a year to do everything possible to obtain at least 30 points. An immigrant who loses all the points will be expelled from the country (Pasca 2012).

National transposition of EU legislation on the status of long-term residents

According to the European Commission Report on the implementation of the Directive on the status of long-term residents (European Commission 2011b), Italy excludes groups of legally resident third-country nationals from the scope of the Directive by rendering their stay “temporary” although their residence permits can be renewed for a total period of longer than 5 years and thus restricts the correct implementation of the Directive. Moreover, Italy does not fully comply with the Directive in that it does not recognise some forms of lawful residence, such as periods of lawful residence as a result of a visa, as part of the five-year period of lawful and continuous residence for granting long-term residence status. On the other hand, Italy has been liberal in allowing for periods of interruption of continuous legal residence for grounded / serious reasons.

Furthermore, the report states that Italy is more restrictive and does not comply with the Directive in that it requires additional documentation for the applications for long-term resident status. It also violates the provisions of the Directive on the intra-EU mobility of long-term residents in that it subjects long-term residents of another Member States to annual immigration quotas on the basis of nationality. Italy also imposes stricter income requirements for long-term residents in another Member State exercising their intra-EU mobility rights and thus does not fully comply with the Directive (European Commission 2011b).

Italy has yet to transpose the provision of the Directive that prohibits the refusal of a residence permit (by the so-called "second" Member State) to a long-term resident of another Member State (the so-called "first" Member State) in case s/he has contracted a disease after his/her status as long-term resident in that other Member State was granted. Italy imposes additional restrictive accommodation requirements on the family reunification rights of long-term residents of another Member State who exercise their right of mobility to Italy, which create problems of correct transposition. Italy also continues to violate the Directive in that it imposes restrictions on the access to employment by long-term residents of another Member State who have exercised their right of mobility to Italy for longer than a year. Italy has provided for liberal time-frames for the examination of applications for long-term resident status (three months instead of the maximum six months provided by the Directive), but in practice the waiting period is reported to be much longer. In addition, Italy has not transposed the provision of the Directive concerning the setting of consequences in the event of no decision taken by public authorities of a Member State on an application for long-term resident status. Italy also restricts equal treatment of long-term residents and family members to those with habitual registered residence in their territories. It also imposes restrictions on the employment of long-term residents in public service (European Commission 2011b).

Naturalisation

Naturalisation provisions in Italy are based on the 1992 Citizenship Act, itself based on *jus sanguinis*, with minor amendments over the years. Third-country nationals may acquire Italian citizenship following ten years of continuous legal residence in Italy. More favourable provisions are in force for stateless persons (5 years) and co-ethnic

third-country nationals, both adults (3 years) and minors (2 years) (Zincone & Basili 2010:11). In May 2009, a bi-partisan initiative of parliamentarians from the two biggest political parties (*Il Popolo della Libertà* and *Partito Democratico*) suggested the reduction of the minimum period of legal residence prior to the application for naturalisation from ten to five years. This initiative also contained proposals for the naturalisation of the children of immigrants who are born and/or educated in Italy. However, similarly to earlier liberalising attempts in the second half of the 2000s, this initiative did not succeed in becoming part of legislation (EUDO Citizenship 2009). On the contrary, a restrictive amendment was adopted in July 2009. Accordingly, the minimum period of legal residence in Italy for third-country nationals following marriage to an Italian citizen was increased from six months to two years while for spouses of an Italian citizen who reside abroad the previous requirement of three years was upheld (Zincone & Basili 2010: 2, 12). If, however, there is a child born to the Italian spouse, these periods are halved (Porfido 2009).

Overall, it could be said that eligibility criteria for citizenship are far more restrictive in Italy than in nearly all major countries of immigration, including EU countries. For instance, Italian-born children of immigrants can only declare themselves Italian after 18 years of legal registration and uninterrupted residence. Their residence is easily interrupted by spending too long time with family abroad, which causes inevitable administrative problems (MIPEX III 2011). Law 94/09 (Article 1) also introduced a change in the application procedure for citizenship. The latter is not any more free of charge, but is subject to a payment of a 200 Euros fee (Porfido 2009).

In November 2011, the President of the Italian Republic, Giorgio Napolitano, stated the necessity of reviewing the existing regulations on citizenship, arguing that Italy now had hundreds of thousands of immigrant children to whom the elementary right of becoming citizens was denied, while at the same time the Italian society was becoming more and more aged, if not sclerotic. At political level, the debate touched on the principles of *jus soli* and of *jus sanguinis*, and the Minister of Interior, Anna Maria Cancellieri, expressed herself favourably in regard to *jus soli*, provided it is combined with a certain number of years of residence in Italy of the parents. The Minister for International Cooperation and Integration, Andrea Riccardi, suggested that, in the analysis of the requisites for acquiring the citizenship, the concept of *jus culturae* should

also be taken into consideration, starting in this manner to grant citizenship also to minors who have studied in Italy (EMN 2012b:14).

According to the data released by the Italian Ministry of the Interior, in 2010 there were 40,223 procedures for granting Italian citizenship. Residence in Italy was the first reason for granting citizenship (21,630 proceedings). The number of citizenships granted following marriage was slightly lower, 18,593. The number of naturalisations were similar to the previous years, with +0.34% compared to 2009, while the proceedings that concluded negatively showed a considerable increase of +90.22% (from 859 they increased to 1,634). Compared to the EU average, Italy has a lower number of naturalisations (EMN 2012b:30).

4.6. Irregular migration, readmission and return policies

General provisions

The “Turco-Napoletano” immigration law of 1998 (Law 286/1998) included provisions for the fighting against clandestine entry and residence in Italy. The immigration law reforms in 2002 raised the penalties for the facilitators of multiple unauthorised immigrant entries, especially in cases of inhuman conditions and in situations when clandestine entry and residence pose a threat to the life or the physical integrity of the immigrants involved. In the latter cases, penalties can exceed twelve years of imprisonment. Heavier penalties of up to fifteen years of imprisonment were foreseen for the facilitation of clandestine entry aiming at forced prostitution and sexual exploitation of women and minors, and the military naval forces acquired competence in controlling ships suspect of transporting clandestine immigrants (Law 286/1998 Article 12; Law 189/2002 Article 1). The 2002 law also tightened the conditions for expulsion of third-country nationals with unauthorised residence in Italy, facilitated their deportation and prolonged their periods of detention prior to expulsion (IOM 2004:199).

In response to an increasing number of exploitation reports and a steady number of workplace fatalities, the government passed the Decree Law 138/2011, which introduced the crime of “illicit brokering and labour exploitation” (the so-called *caporalato*

or “gangmaster system”). The crime is committed by those “performing brokerage services, recruiting labour or organizing exploitative labour practices, due to threats and use of violence, or intimidation, to take advantage of the state of need or the needs of workers” and is now punished with the recruiter’s imprisonment from five to eight years and a fine ranging from 1,000 to 2,000 Euros for each worker recruited (EMN 2012b:67).

Regarding the issue of rights of illegally staying third-country nationals in Italy, the latter enjoy free access to public health services for medical emergencies and hospitalisation if they lack the financial means to cover the cost of their treatment. They also enjoy equal treatment with Italian citizens concerning their access to health services in case of pregnancy and maternity treatment, vaccinations, international prevention measures, and the prevention, diagnosis and treatment of infectious diseases. Finally, the institutions providing medical treatment to clandestine residents are generally exempted from the obligation to refer them to public authorities (Law 286/1998 Article 35).

Security package and the criminalisation of irregular immigration

The year 2008 marked a turnaround in Italian immigration policy towards a more restrictive direction. The then Ministry of the Interior announced a new security-focused approach to immigration. This involved the passage of a series of laws, decrees and regulations called the “Security Package” (*Pacchetto Sicurezza*). In July 2008 the Parliament approved the first security act, Law 125/2008, which made the status of undocumented migrant an aggravating circumstance in criminal sentencing, requiring judges to increase any sentence by one third. It also imposed mandatory prison detention on migrants who ignore administrative expulsion orders. Both provisions were subsequently overturned by court rulings (The Open Society Justice Initiative 2012).

In July 2009 Parliament approved the second security act, Law 94/2009, which re-framed clandestine entry and residence as criminal offenses and raised the penalties for clandestine immigration. The act also tripled the maximum detention period for undocumented foreigners to 180 days. Moreover, the act required third-country nationals to show their permit of stay in order to access any public service, including getting married. This provision was later on also struck down by the Italian Constitu-

tional Court (OECD 2011a).

In addition, a tighter policy of interception of clandestine immigrants in international waters and a bilateral agreement with Libya in May 2009 substantially reduced illegal migration across the Straits of Sicily. While 37,000 migrants were intercepted along the Italian coast in 2008, the number fell to 9,600 in 2009 and to less than 3,000 in 2010 (OECD 2011a).

In 2009, a regularisation campaign was undertaken for domestic and health-care workers who were employed without authorisation in Italy since April 2009. There were 295,000 applications for regularisation, predominantly by domestic female workers (OECD 2010: 214). 295,000 applications were filed, 233,000 of which were accepted by October 2011 (OECD 2012:242).

Policy responses to the North African emergency

The situation changed considerably with the unrest in North Africa following the onset of the “Arab Spring” in late 2010 and early 2011. Because of a massive influx, via sea, of citizens from the countries of North Africa, a state of emergency was proclaimed on February 12, 2011 by decree of the Prime Minister.⁷¹

These migrants from North Africa were neither considered irregular nor subject to international protection by the Italian authorities, but as people to whom a temporary residence permit was due pursuant to art. 20 of the Immigration Law. The Italian Government requested the EU to activate the burden sharing procedure laid down in Directive 2001/55/EC.⁷² The Italian Government also requested other actions from the EU, such as the transformation FRONTEX into an operative agency dedicated to the control of the borders and to the management of the identification and expulsion centres created at European level and a contribution of 100 million Euros for the first phase of the emergency management cycle (EMN 2012b:11-13).

71 In 2011 the number of landings in Italy increased substantially with respect to the preceding year. The overall number of landed third-country nationals during the “Arab Spring” was equal to 62,692, of which 28,123 Tunisians, 24,431 Libyans and 1,620 Egyptians (EMN 2012b:33).

72 Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

On October 6, 2011, the state of emergency was prolonged until December 31, 2012. The Northern African refugees that came to Italy were given a six-month permit of stay for humanitarian purposes, which was later prolonged for another six months. According to figures provided by the Ministry of the Interior in March 2012, 11,006 residence permits were issued for humanitarian reasons, and 3,510 of them were converted into permits for work purposes. However, all these permits have now expired and at the time of writing of this report it is uncertain what will happen with the refugees (Polchi 2012).

In August 2011 the Italian Government set up a new program of voluntary return with a budget of 904,792 Euros (OPCM 2011). It entrusted the International Organization for Migration (IOM) to manage the repatriation of 600 refugees from North Africa arrived in Italy after January 1, 2011. The program provides for the cost of their return ticket as well as for a travel allowance of 200 Euros for each refugee.

Implementation of EU Directive 2009/52/CE and the 2012 regularisation

On July 16, 2012 the Italian Government passed the Legislative Decree n. 109 on the implementation of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The directive is aimed at boosting cooperation between Member States against illegal immigration by banning the employment of foreign workers without regular permits and providing for sanctions against the transgressors. Under the measures introduced by the decree, harsher sanctions are imposed against those employing more than three irregular workers, minors under 16, or for exploiting workers under Italy's criminal law. Exploited workers are given the chance to apply for a six-month humanitarian permit, which can be renewed for a year or for a longer period in case of a criminal trial.

Under the decree, employers also had a one-time chance to legalize immigrants who are illegally employed by filing an application between September 15 and October 15, 2012 and paying a flat rate of 1,000 Euros per employee plus six months worth of salaries, welfare and taxes. Excluded from this possibility were the employers who had been found guilty in the past five years of crimes connected to illegal employment, illicit brokering or exploitation of foreigners or those who had denounced for-

eign workers but subsequently failed to legalize them.

In order to benefit from this regularisation, third-country nationals had to prove that they had been living in Italy, without interruption, at least since December 31, 2011, and their presence had to be attested by presenting documents issued from public bodies. They had to be employed full time, except in the area of domestic work, where also part-time workers could be regularised, provided that they worked for not less than 20 hours a week. The regularisation did not include foreign workers who had been expelled in the past for public security reasons or on charges for participating in terrorist activity, nor those found guilty of crimes for which Italian law provides for mandatory arrest (Sportello Immigrazione 2012).

The norms regulating the 2012 regularisation were criticized on many grounds, including the excessive costs that the immigrant workers would have to bear; the differential treatment between illegal employers and employees (only the former could start the procedure for regularisation); the exclusion from regularisation of part-time workers except those in the domestic sector; and the fact that illegal immigrants had to prove their presence in Italy on December 31, 2011, with documents issued by public bodies (ASGI 2012c). On October 4, the State Attorney issued a clarification on what it meant to possess a proof of presence in Italy issued by public bodies – one of the obstacles for application of many unauthorised workers. The interpretation given by the State Attorney was very broad, and accepted as proofs of presence even documents such as public transport subscriptions, mobile phone card subscriptions or any fine or medical receipt that includes the name of the irregular immigrant (Polchi 2012c). The first data from the regularisation indicate a number of just over 130,000 applications, less than the initially predicted 400,000 requests (Ministero dell'Interno 2012b).

Expulsion and re-admission policies

In Italy there are both administrative and judicial expulsions of third-country nationals and expelled immigrants are prohibited from re-entering Italy for a number of years. Failure to comply with this prohibition is penalised with imprisonment (IOM 2004: 205). In general, the removal of a third-country national is foreseen for administrative reasons, for reasons of public order and security, as replacing imprisonment

sanctions for certain categories of criminal charges and for clandestine entry and residence (IOM 2004: 204). On the basis of the 2002 Act, there are two types of expulsion orders issued by Italian authorities at the prefectural level: one to leave Italy within fifteen days on the third-country national's own will; and the other to deport a third-country national immediately to the border when s/he poses a threat to public order or security (IOM 2004: 202).

Italy has signed bilateral repatriation agreements with its neighbouring countries and with countries of origin of unauthorised immigrants, including Albania, Algeria, Bosnia and Herzegovina, Croatia, Egypt, Philippines, Georgia, Macedonia, Morocco, Moldova, Nigeria, Pakistan, Serbia, Sri Lanka, Switzerland and Tunisia (EMN 2012b:54). In addition, Italy reserves preferential treatment within the annual immigration quotas for the citizens of third countries that are known to be countries of origin of unauthorised immigrants with the aim of winning the cooperation of these countries in strengthening their emigration controls and re-admitting their citizens who are resident in Italy without authorisation (IOM 2004: 205).

In August 2011 the Italian Parliament ratified the Decree Law n. 89/2011 aimed at bringing Italy's legislation in line with the European Union's Returns Directive of 2008 (Directive 2008/115/EC), which sought to standardise procedures for dealing with undocumented immigrants across the EU. This decree law restores immediate compulsory expulsion procedure for all illegal immigrants who represent a threat to public order and security; are at risk of flight; are expelled by court order; violate safeguard measures imposed by the police; violate the deadline for voluntary departure. The decree law also extends the maximum period of administrative detention in Centres for Identification and Expulsion from 6 month to 18 months.

Centres for Identification and Expulsion (CIE)

Centres for Identification and Expulsion of Migrants (CIE) have been a contested issue for many years, following numerous accusations of violence, beatings and other violations of human rights in these facilities (ASGI 2012b; Cosentino 2012).

With Circular n. 1305 of April 1, 2011 the then Minister Roberto Maroni imposed a moratorium on the entry of journalists, lawyers and representatives of NGOs in Centres of Identification and Expulsion, justifying this measure as an emergency follow-

ing the influx of refugees from North Africa and the fact that journalists were an “obstruction” to the functioning of the Centres. On July 25, 2011, several parliamentary political forces, regional councillors, journalists, trade union representatives and representatives of civil society associations demonstrated against the ban that, according to some views, gave green light to systematic abuses of human rights in these centres. After the change of government, in December 2011 Minister Anna Maria Cancellieri removed the ban on access to all Centres of Identification and Expulsion and all Centres for the Reception of Asylum Seekers (ASGI 2012b).

4.7. The stakeholders

The following section reviews some of the major stakeholders that influence immigration policies in Italy, including political parties, labour unions, employers’ federations, immigrant associations, as well as some other organizations.

Political parties

Il Popolo della Libertà - PdL (The People of Freedom)

The People of Freedom is, together with the Democratic Party, the major political party in the Italian party system. In the 2008 Parliamentary elections, which were the last general elections that took place in Italy, The People of Freedom won 37.4% of the popular votes, which allowed it to form a winning coalition government together with the Northern League, which won 8.3% of the votes. On the basis of its Manifesto for the 2008 parliamentary elections, the Party of Freedom favours the following programmatic actions in the field of immigration policy (Il Popolo della Libertà 2008):

- opening of new Centres of temporary stay for the purpose of identification and expulsion of illegal immigrants;
- countering illegal immigration through collaboration between European governments and countries of origin and transit of immigrants;
- countering abusive nomad settlements and ousting of those without legal means of support and legal residence;

- giving precedence to legal immigration of workers from countries that guarantee the reciprocity of rights, that prevent the departure of illegal immigrants from their territories and accept common programs of professional training in their countries;
- affirming the link established in the Bossi-Fini Law between residence permit and employment contract and fighting illegal exploitation of immigrant labour;
- providing incentives to NGOs, schools and parishes to promote teaching of Italian language, culture and laws to immigrants.

Consistently with what proclaimed in the Manifesto, as the leading party of the governing coalition from May 2008 to November 2011 (when the government of technocrats led by Mario Monti took over), the People of Freedom pursued a relatively hard-line immigration policy. As seen in the previous paragraphs, among other restrictive measures, the Berlusconi Government reframed clandestine entry and residence as criminal offenses and raised the penalties for clandestine immigration, as well as for their employers and for those who rent houses or flats to illegal immigrants. It also embraced a tighter policy of interception of illegal immigrants in international waters, thanks also to a bilateral cooperation agreement with the Libyan authorities (Governo Berlusconi 2010).

Recently, The People of Freedom has expressed negative positions with respect to a possible reform of the citizenship law that would facilitate the acquisition of Italian citizenship, especially by second-generation immigrants (Corsaro 2011), as well as very critical stances on the 2012 regularisation (Galeazzi and Portanova 2012, Stranieri in Italia 2012a).

Partito Democratico (Democratic Party)

The Democratic Party is the main opposition party. In the last parliamentary elections, the most important positions with respect to immigration policy expressed in the Democratic Party Manifesto were the following (Partito Democratico 2008):

- The Bossi-Fini law produces illegal immigration. A new modality of entry of immigrants needs to be introduced, which would be sponsored and guaran-

teed by certified associations and by local authorities, and would allow the search of work within pre-established time frames. Immigration policy should especially encourage the inflow of qualified workers.

- The duration of permits of stay needs to be extended, renewal procedures need to be simplified and administrative procedures made more efficient and timely. The responsibility over renewals should be transferred to municipalities.
- A “citizenship pact” with immigrants is needed, based on a clear system of rights and duties and on the founding values of the Italian Constitution. Upon request, after a period of legal stay (five years) in Italy, immigrants should be granted administrative voting rights. A reform of citizenship laws is also necessary, which would introduce the principle of *jus soli*, so that children born and raised in Italy are granted Italian citizenship.
- While legal entry and stay in Italy should be favoured, illegal immigration and criminality should be combated. The procedures for expulsion should be made more efficient and a system for combating illegal immigrants should be organized that would comprise Centres for Identification and Guarantee responsible for determining the identity of illegal immigrants, in order to enable their repatriation. The latter should be supported also by programs for voluntary repatriation financed by the Fund for Repatriation. Third-country women who report family violence should be able to get a permit of stay on the grounds of human rights protection.

Some of these programmatic positions were developed into legislative proposals. Thus, in 2009 the Democratic Party proposed to the Parliament its Amendments to the Citizenship Law (Law 91/92) which would lower the time frames for granting citizenship to third-country nationals from 10 to 5 years (providing that they pass a language/integration test) and would make automatic the granting of Italian citizenship to second generation immigrants born in Italy (providing that their parents declare themselves in favour of this option upon birth). The Amendments would also greatly facilitate the acquisition of Italian citizenship for immigrant children who came to Italy before the age of 5 and who completed schooling/professional formation in Italy and

do not renounce the automatic acquisition of Italian citizenship upon reaching the age of maturity (Partito Democratico 2009). Other legislative proposals included the Draft law on active and passive electoral rights at administrative elections for third-country nationals legally staying in Italy (Partito Democratico 2010a), the Draft law on the promotion of the participation of young immigrants in the national civil service (Partito Democratico 2010c), the Draft law on preventing labour exploitation and on prolonging permits of stay for the purpose of job search (Partito Democratico 2010d).

In the 2010 programmatic proposal dealing with immigration, entitled “Let’s learn to live together” (*Impariamo a vivere assieme*), the Democratic Party insisted on the positive impact of immigrants on the Italian economy and welfare. Immigrants occupy jobs that Italians do not want but that are important for the economy and the welfare of citizens. They also have a positive demographic impact on the aging Italian population (Partito Democratico 2010b).

The 2010 programmatic proposals reinforced the priorities already outlined in the Manifesto and added a few more, such as the need to publicly support immigrants in the learning of the Italian language and culture; the guarantee of freedom of worship, including the allowance of mosques for Muslim immigrants; the right of immigrant workers who lose their job to benefit from the same kind of safety nets as those available to Italian workers; the right to submit a request for asylum through the UNHCR - In case of accompaniment and expulsion to the country of origin/transit (Partito Democratico 2010b).

In 2011 the Democratic Party expressed concerns about the Berlusconi government’s policy on Arab Spring refugees from North Africa, calling for an agreement with Tunisia, the implementation of EU Directive 2001/55/EC⁷³ and for the abandonment of a policy centred around the building of massive camps policy (“*Tendopoli*”), in favour of a policy envisaging a more active participation of regional and local authorities and civil society organizations in the management of influxes (Partito Democratico 2011). More recently, the Democratic Party has also expressed some positive stances on the 2012 regularisation (Stranieri in Italia 2012b).

73 EU Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balanced effort between Member States in receiving such persons and bearing the consequences thereof.

Lega Nord (North League)

The North League has traditionally been the party most hostile to immigration and liberal immigration policies. The election Manifesto of the North League outlined the following priorities in the field of immigration (Lega Nord 2008):

- Extending the powers of mayors in order to make the fight against illegal immigration more efficient and targeted to different local realities and to guarantee a real control of the territory; granting mayors powers over expulsion of illegal immigrants.
- Strengthening the requirements for entry of third-country nationals, making permit of stay and renewal of permit of stay dependent on the photodactyloscopic recording of fingerprints and on the passing of a test of knowledge of Italian language, culture and traditions.
- Making sure that third-country nationals serve their sentences in the countries of origin.
- Making sure that the language used in the mosques is the Italian language.
- Allowing family reunification only upon results of a DNA test proving unambiguously the family relation of the applicants.
- Not granting voting rights to third-country nationals for administrative and political elections.
- Granting of citizenship only to immigrants with an uninterrupted period of stay of at least ten years in Italy, and only to those who have passed an exam of Italian language, culture and traditions proving their effective integration in the host community.
- Banning the celebrations of weddings absent permits of stay.
- Making the building or enlargement of mosques and similar centres of worship subject to referenda by local populations, as well as subject to rigorous urban planning and hygienic-sanitary controls.
- Employing military forces to guard Italian borders with the aim of hindering

the entry of illegal immigrants.

- Increasing the number of Centres for Identification and Expulsion.
- Introducing sanctions against countries that do not respect bilateral agreements [on immigration policy].

Subjecting all those who enter the Italian territory to sanitary inspections.

Recently, the North League has reaffirmed its positions on citizenship, claiming that citizenship is not an instrument to facilitate integration, but the final step in the process of integration of immigrants in the host society. The North League therefore not only strongly rejects any proposal to shorten the time frames for obtaining Italian citizenship to a period of less than 10 years, but also demands that additional requirements for obtaining citizenship be imposed on third-country nationals, such as the passing of a test of Italian language, history and institutions, the proof of adequate income and the renouncement of the citizenship of the country of origin. The League reaffirmed its opposition to the granting of administrative voting rights to third-country nationals (Lega Nord 2012). The North League also expressed very negative attitudes towards the 2012 regularisation (Stranieri in Italia 2012b).

Smaller parties

The Union of Christian and Centre Democrats (*Unione dei Democratici Cristiani e di Centro* or *Unione di Centro - UDC*) got 5.6% of the popular vote in the last general elections (2008). The election Manifesto of the Union of Christian and Centre Democrats had relatively restrictive stances in the field of immigration policies, outlining the following priorities (Unione dei Democratici Cristiani e di Centro 2008): (i) increasing control over immigration; (ii) making immigration conditional on the availability of work, lodging and fiscal regularisation; (iii) ensuring that integration of immigrants does not only imply the respect of Italian laws, but also of the Italian culture and tradition; and (iv) ensuring efficient and timely expulsion of immigrants who have committed crimes. Recently the UDC has displayed more liberal attitudes towards immigration, favouring *jus soli* that would give Italian citizenship to immigrant children born in Italy (Pier Ferdinando Casini 2011).

Italy of Values (*Italia dei Valori*) got 4.4% of the popular vote in the 2008 parliamen-

tary elections. Its election manifesto (Italia dei Valori 2008a, 2008b) expressed the following positions with respect to immigration: (i) third-country nationals who are permanent residents in Italy and possess a valid permit of stay should be granted voting rights at administrative elections; (ii) the Centres for Identification and Expulsion for illegal immigrants should be replaced by admission facilities that would not be of a prison-like type and the periods of stay of illegal immigrants in these facilities should be drastically reduced; and (iii) convicted illegal immigrants should be obliged to serve their sentence in the countries of origin. In 2011 the Tuscan fraction of Italy of Values took part in the popular initiative “We are also Italians” (*L'Italia sono anch'io*), supporting the granting of voting rights to immigrants and the granting of Italian citizenship to immigrant children (Papi and Valenti 2011). Recently Italy of Values pleaded for a more humanitarian policy towards refugees coming to Italy via sea (Italia dei Valori 2012).

Future and Freedom for Italy (*Futuro e Libertà per l'Italia*) is a relatively new centre-right political party founded in 2011 by Gianfranco Fini and his followers as the result of a split from the governing The People of Freedom Party in July 2010. Future and Freedom is therefore a quite new party, the programmatic priorities of which have not yet been systematically presented. However, in the last few years, in terms of immigration policies, the party leader Gianfranco Fini exhibited a more liberal stance than his formal colleagues from The People of Freedom and the North League. The party also voted against the Berlusconi government on immigration issues (Blitz Quotidiano 2010; Redazione Tiscali 2010). For instance, Fini proclaimed to be in favour of granting voting rights to immigrants and Italian citizenship for second-generation immigrants (Di Caro 2009; Futuro e Libertà 2012).

The social partners

CGIL, the Italian General Confederation of Labour (*Confederazione Generale Italiana del Lavoro*) is the most important Italian trade union with a membership of over 5.5 million. Other major trade unions include CISL, the Italian Confederation of Trade Unions (*Confederazione Italiana Sindacati Lavoratori*), and UIL, the Italian Labour Union (*Unione Italiana del Lavoro*). Along with their other activities, trade unions are engaged in defending the position of immigrant workers in Italy.

In 2009 the three major trade unions submitted a report to the International Labour Organization (ILO) dealing with the situation of immigrants, Roma and Sinti population in Italy (CGIL, CISL and UIL, 2009; Pasca, 2009). They argued that Italy discriminates against immigrant workers and does not respect the obligations taken at the international level, referring to the ILO convention n. 143 of 1975 dedicated to illegal immigrants and parity of opportunities and treatment of foreign workers. Among the many examples of infringement of this convention that the report mentions are the failure to guarantee religious freedom, the denial of political and administrative voting rights to immigrants and the discriminatory aspect of Italian laws with respect to access to public sector employment, which is only possible for Italian citizens.

In terms of urgent policy measures, the major Italian trade union CGIL (2011) proposed ensuring that the permits of stay remain valid for those who lost their jobs in the economic crisis; changing the system of decrees on immigrant entries; regularizing the status of clandestine workers and introducing new norms to counteract illegal hiring; rethinking the appropriateness of associating the status of irregularity with crime; granting citizenship to children of immigrant workers; and granting administrative voting rights to immigrants.

CGIL (2012a) has recently expressed concerns over the conditions for family reunification, which, following a Ministry of Interior circular from April 17, 2012, include certificates about the suitability of lodging for family reunification that must be issued by the competent municipal offices. Since self-certificates are not possible any more, the time for obtaining permits are potentially considerably prolonged, which, according to CIGL, represents a form of discrimination towards immigrants.

CGIL (2012b) has also reaffirmed the need to regularise the position of more than 500,000 immigrant workers who lost their jobs and consequently their residence permits during the crisis, to treat in a more humanitarian way the refugees from North Africa, to publicly finance the teaching of Italian language to immigrants, to simplify the bureaucratic norms that regulate immigrant issues, as well as to decrease the fees of the permits of stay.

CGIL, CISL and UIL have also stressed the need to transpose as soon as possible the EU Directive 2009/CE/52, which sanctions the exploitation of irregular immigrant work-

ers. However, according to the three organizations, a transitory norm must be passed, which would enable the “emersion” of irregular workers from the state of irregularity in order not to penalize the firms and families that employ them (CGIL 2012c).

Confindustria is the Italian employers’ federation, grouping together more than 113,000 voluntary member companies. Confindustria has voiced its opinions on immigration policy issues on multiple occasions, especially with respect to the impact of immigration on the Italian job market and economy. In general, Confindustria tends to have a liberal position on immigration, viewing it as a resource for Italy. It argued that the current system of quotas is too rigid and inflexible to satisfy the needs for immigrant workers by companies and private persons and that the procedures for obtaining permits of stay should be speeded up and job-search visas for immigrants introduced (Cipiciani 2010; Confindustria 2005, 2007).

According to Confindustria (2005, 2007), Italy also needs to redefine radically its approach to migration, by giving precedence to an “integrationist” model of immigration, rather than to the current “guest worker” model that sees the immigrant as a worker but not as a citizen. It is for instance necessary to reduce the time frames for obtaining Italian citizenship and to recognize voting rights at administrative elections to immigrant workers who have been in Italy a certain number of years.

Confindustria argued that illegal immigration and hiring should be combated and sanctions against them increased because they distort competition and produce malfunctioning of the internal market. It also argued that the government decision to block immigration fluxes, justified on the grounds that there were no jobs for Italians, was a decision that would feed clandestine immigration, because there were demands on the job market that the Italian labour force did not meet (Cipiciani 2010).

Immigrant associations

The National Association Beyond Borders (*Associazione Nazionale Oltre Le Frontiere - ANOLF*) is an Italian association of immigrants of various ethnicities, aimed at assisting and informing immigrants, and helping their integration in the host society. Anolf is present all over Italy, with 20 regional centres, 101 provincial centres and 10 territorial centres. Anolf has voiced numerous positions with respect to immigration policy and law and it has been (Anolf 2010a, 2010b, 2010c, 2011a, 2011b):

- critical towards the Bossi-Fini Law and of the 94/2009 Security Law, pleading the Italian Parliament not to ratify them;
- in favour of the introduction of *jus soli* citizenship;
- in favour of the granting of voting rights to immigrants;
- critical towards the Italian-Libyan agreement on the interception of illegal immigrants;
- in favour of a new regularisation of the position of illegal immigrants in those sectors that are forced to use illegal immigrants because current laws do not allow their regularisation;
- in favour of tough measures against employers who exploit the labour of illegal immigrants.

Other stakeholders

The Catholic Church and its various organizations have in different ways been involved with immigrants and immigration problems. The Vatican has a Pontifical Council for the Pastoral Care of Migrants and Itinerant People, which is dedicated to the spiritual welfare of migrant and itinerant people, promotes a climate of acceptance and understanding of immigrants in host societies and brings the pastoral concern of the Church to bear on the special needs of immigrants and refugees. While usually not openly interfering in immigration policies and recognizing the right of the states to control their borders and the entry of persons in their territory, the Catholic Church has often warned that this right should not come in conflict with the right of migrants to be treated with the respect owed to every human person. Archbishop Agostino Marchetto, Secretary Emeritus of the Pontifical Council for the Pastoral Care of Migrants and Itinerant People criticized the agreements concluded between Italy and Libya and the Italian policy of intercepting boats of illegal immigrants on the Mediterranean and send them back to Libya (La Repubblica 2010). The Pope appealed for policies that favour the regularisation of the status of immigrants and the right to family reunification (Stranieri in Italia 2010). The Pope has also criticized the exploitation of impoverished immigrants desperate for work (Squires 2010).

Caritas Italiana, the Pastoral Body created by the Italian Episcopal Conference to promote charity commitment of the Italian ecclesiastical community, has also an Office for Immigration dedicated to assisting immigrants and helping them to integrate in the Italian society. The Director of the Caritas Office for Immigration Oliviero Forti criticized heavily the 2009 Security Law, especially the introduction of the criminal offence of clandestine entry and/or residence and the policy of interception of Northern African immigrant boats and the expulsion of immigrants to their countries of origin/transit without any guarantee for their human rights protection. He also argued in favour of naturalising immigrants who have resided at least 5 years in Italy and granting citizenship to immigrants' children born in Italy (Caritas Italiana 2010).

The Foundation Migrantes (*Fondazione Migrantes*) is a body established by the Italian Episcopal Conference to provide pastoral care to migrants, both Italians abroad and third-country nationals who come to Italy. The foundation also produces a series of publications on immigration.

In a recent interview, the Director of the Migrantes Foundation, Monsignor Giancarlo Perego, outlined five priorities that should guide a new immigration law in Italy or the reform of the old ones: (i) transferring to municipalities the competences over the renewal of residence permits; (ii) putting more care into introducing immigrants to public services such as schooling and health; (iii) emphasizing interculturality; (iv) extending voting rights at administrative elections to immigrants and civil service to young immigrants as instruments of civic education and active participation in community life; and (v) better matching of demand and supply of labour that would be based on sustainable quotas and overcome the rigidity of the current annual flows, for instance by reintroducing permits of stay for job search (Materozzi, Galieni and Riccio 2012).

According to Perego (Materozzi, Galieni and Riccio 2012), the current system of rigid annual flows has not worked - as evidenced by seven successive regularisations - and has produced thousands of illegal immigrants, as well as insecurity and exploitation. He is also critical towards the current mechanism for family reunification. In Italy family reunification requires longer time frames (7 to 8 years) than in other European countries. More resources should be invested in family reunification, family housing, the integration of immigrant children in school life and the prevention of their drop-

ping out from school.

Other priorities, according to Perego, include the shortening of the procedure for obtaining Italian citizenship from ten to five years, and the introduction of *jus soli*, recognizing Italian citizenship to children born in Italy or who have completed the first cycle of education in the country. Finally, there is an absolute need to reform the Centres of Identification and Expulsion, to protect the dignity of migrants. CIEs must be transformed into places of welcome, care, protection and support for a safe return, argues Perego (Materozzi, Galieni and Riccio 2012).

5. SPAIN

5.1. Immigration in Spain

In the 2000s immigration to Spain increased dramatically. Spain accounted for about one third of all new migratory flows to Europe and it was the second most popular destination in the OECD after the US. The growth of migration to Spain was the strongest between 2000 and 2003 and in 2005 (Ferrero-Turrión 2010). In 2008, the foreign population in Spain accounted for 14% of the total population, compared to 4.9% as recently as in 2000. According to the data from the Spanish National Institute of Statistics (Instituto Nacional de Estadística 2012:1-6), in June 2012 there were 5,333,805 foreigners with a registration certificate or a residence card in the country. Of these, 2,597,754 were EU citizens and 2,736,051 were third-country nationals. Among the former, the largest group by far were the Romanians (908,769). Among third-country nationals, the major national groups were the Moroccans (819,249), the Ecuadorians (364,605) and the Colombians (221,797).

However, as a consequence of the economic downturn which hit Spain particularly hard, migration inflows to Spain decreased in 2009 and 2010. In 2010 around 431,000 entries were recorded, 8% less than in 2009 and 40% less than in 2008. At the same time, migration outflows continued to increase, from 290,000 in 2009 to almost 340,000 in 2010. Those trends led to a net inflow of less than 95,000 people in 2010, almost half the 2009 level (OECD 2012b:272). During 2011, the number of immigrant arrivals in Spain further fell. According to figures published by the National Statistics Institute, in 2011 there was for the first time a reduction in the number of foreign nationals (-0.7%) (EMN 2012a:9).

As a response to one of the highest unemployment rates in Europe, in July 2011 Spain invoked a “safeguard clause” and introduced temporary restrictions on Romanians seeking to work in the country. After analysing the Spanish situation, the European Commission authorized Spain to temporarily suspend EU law on free movement of workers and re-introduce work visa requirements on Romanians coming to Spanish territory until the end of 2012 (European Commission 2011c).

Another consequence of the economic crisis was a sharp deterioration of the em-

ployment situation of immigrants in Spain. According to data reported by the Labour Force Survey, by the end of 2010, the total number of unemployed in Spain was 4.7 million, one million of which were foreigners. The unemployment rate of foreigners reached 32% in mid-2011 (OECD 2012b :272). According to figures from the Spanish National Institute of Statistics, by the end of 2011 the unemployment rate in Spain reached 22.85%, while the figure for third-country nationals was as high as 36.83% (EMN 2012a:15).

In September 2008, the government passed the Voluntary Return Plan (*Programa de Retorno Voluntario de Trabajadores Extranjeros no Comunitarios*), with the Royal Decree 1800/2008. About 16,000 immigrants, out of which 4,000 were family members of principal applicants, returned to their countries of origin under the assisted return programme between November 2008 and July 2010. The main countries of return were Ecuador, Columbia, Argentina and Peru. More than 4,000 persons returned also within the framework of the *Plan de Retorno Social* for refugees, irregular migrants, failed asylum seekers, etc., which is managed by non-governmental organisations and the International Organisation for Migration (OECD 2011b).

As far as societal attitudes towards immigration are concerned, the positions of the Spanish population are mixed. On the one hand, according to a 2011 survey carried out by the German Marshall Fund of the United States (GMF 2011:5-8), immigration is perceived more as a problem than as an opportunity by 58% of Spanish respondents, the second highest score after the UK. Moreover, 48% of Spaniards thought there were too many immigrants in their country.

On the other hand, the majority of respondents in Spain were sympathetic to the plight of migrants forced to flee their homes because of poor economic conditions and other problems. They showed the highest rates of support for migrants seeking to avoid poverty, with 76% of Spaniards supporting the entry of such migrants compared to a 58% European average. Respondents in Spain were also optimistic about the integration of immigrants, with the important exception of the integration of Muslim immigrants. The GMF results reflected strong concern about Muslim integration, with only 29% of Spanish respondents saying Muslim immigrants are well integrated, compared to a European average of 40%. Nevertheless, over double that proportion, 62%, believed immigrants in general are well integrated, compared to a

52% European average. Spanish respondents were also very supportive of lowering trade barriers (86%) and providing development aid to regions affected by emigration (85%). 41% of Spaniards thought that foreign assistance was the best means to reduce illegal immigration (41%) (GMF 2011).

In terms of policy developments in the last couple of years, probably also as the result of the economic crisis and the decreased immigration rates, legislative activity in the immigration area has somewhat slowed down. Most new policies deal with the integration of immigrants that are already in the country and with illegal immigrants. In the following sections we explore in detail policy developments in five areas of immigration policy, with a particular emphasis on the last few years: entry and residence for employment purposes; entry and residence for studying purposes; family reunification; integration, long-term residence and naturalisation policy; and illegal immigration, re-admission and return policies.

5.2. Immigration for employment purposes

General framework

The current Spanish migration system is based on Organic Law 2/2009. The law was passed in the midst of the recession and included a number of provisions to offset the negative effects of the economic crisis. However, the law was primarily meant to constitute a much needed reform of the outdated 4/2000 law and its subsequent reforms. Among the reasons for the passage of the law were the outgrowth of EU migration-related directives and the inevitable need for the Spanish legislation to adjust to them.

The 2/2009 law consisted of four parts. The first part concerned the rights and obligations of migrants, in some cases including those with irregular status: the right to vote in municipal elections (only for authorised residents) (art. 6); the right to assembly (art. 8), manifestation, association, and strike (art. 11); free education (and obligation to undergo schooling until 16 years old) (art. 9); health care (for regular migrants) (art. 12, 14); and free judicial assistance.

The second part included provisions precipitated by EU directives. It focused on stabilizing the status of long-term resident foreign nationals, preventing irregular mi-

gration (including the protection of women who are subject to violence and who are willing to denounce violence against them), and managing migration (including foreign worker recruitment). The third part focused on combating migration-related infractions (such as marriages of convenience and document falsification) by, inter alia, higher financial penalties and prolonged detention (from 40 to 60 days), voluntary and forced returns. The fourth part focused on the reinforcement of cooperation on migration issues between various public administration offices, labour unions and employer organizations. Among others, the legislation institutionalised the role of the Tripartite Labour Commission as a legitimate forum for the migration dialogue between the representatives of government, labour unions and employer organizations (Organic Law 2/2009).

Since 2004, one of the basic tenets of Spain's immigration policy has been to manage the intake of third-country workers on the basis of the manpower needs of the labour market which cannot be met by workers and residents in Spain. This is done through two tools for managing migration flows: the National Shortage Occupation List, which is published quarterly and keeps a record of those occupations in which Public Employment Services have had difficulty managing job offers sent to them by employers, and the Collective Management of Hiring in the Countries of Origin, which enables the hiring of workers not resident in Spain, selected in their countries of origin from the general offers sent by employers. As a result of the crisis and the increase in the rate of unemployment in Spain, there has been a sharp decline in the number of occupations contained in the Catalogue of Difficult to Cover Occupations (from 488 in the first quarter of 2008 to 98 in the fourth quarter of 2009) and in the number of recruitment applications through the General Scheme (from 154,101 between January and June 2007 to 14,961 in the same period in 2009) and acceptances approved (EMN 2010:29).⁷⁴

On July 23, 2009, the Spanish government issued a decree modifying some aspects of its immigration policy (Royal Decree 1162/2009 modifying Royal Decree 4/2000

74 However, the decline in numbers in 2009 is not solely due to the national employment situation; there is also the fact that there are no data relating to nationals from Romania and Bulgaria for that year (although there are for previous years), two of the main countries of origin for immigration in Spain (EMN 2010:29).

concerning the rights and liberties of foreigners in Spain and their social integration). Among others it exempted foreign workers with residence permits from working in the same sector and part of the country. The government hoped that the reform would allow foreign workers already present in Spain to take up jobs in any sector and any part of the country, thereby decreasing the need for labour recruitment abroad and unemployment in Spain. The new law also aimed to facilitate the renewal of residence permits for workers who can prove that they have worked for nine out of twelve months and for those with family ties in Spain (Ferrero-Turrión 2010: 108).

The most important legislative activity in 2011 was the passage of Royal Decree 557/2011 of April 20, 2011, resulting in the approval of Implementing Regulation of Organic Law 4/2000, of January 11, 2000, on the rights and freedoms of foreign nationals in Spain and their social integration, as amended by Law 2/2009, of December 11, 2009. The new Implementing Regulation explains and simplifies administrative procedures for third-country nationals, adapting Spanish law to the EU *acquis*. The main changes concerning legally established migration include improvement and transparency in the renewal of residence and work permits and measures to promote the integration of the immigrant population (EMN 2012a:9-10). The Implementing Regulation also specifically takes into account rights of persons, especially those in a particularly vulnerable situation, such as minors, female victims of gender violence, victims of human trafficking, etc., to ensure their protection. It also covers in the procedures the right to legal assistance and, where appropriate, the right to free legal assistance (EMN 2012a:16-17).

The 2011 Implementing Regulation of Organic Law 4/2000 paid special attention to encouraging the hiring of skilled labour abroad, trying to incorporate a flexible mechanism for attracting such workers to favour the competitiveness of the Spanish economy in the international market and within the framework of European immigration policy. The new regulation resulted in the creation of a new admission procedure for foreign researchers, the main features of which are its speed (maximum of 45 days for terminating the procedure, when in general it is 3 months), the regulation of the specific aspects of family reunification (family members may be reunited without the worker having to wait the previous one-year residence period generally required for these purposes) and researcher mobility within the European Union (EMN 2012a:21).

Seasonal employment

Spanish legislation includes clauses which favour circular migration through recruitment from third countries for seasonal work. This type of recruitment allows for those workers who are not in Spain to be recruited in a programmed and orderly manner, with the commitment from them to return to their country of origin. If seasonal workers fulfil the commitment to return home, they receive preferential treatment in future recruitments, by being offered jobs directly. If they do not return home, their future applications for temporary work and residence permits may be denied (EMN 2011:64-65).

The 2011 Implementing Regulation of Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration, as amended by Law 2/2009, aims at consolidating this circular migration model by clarifying and speeding up the procedure and by guaranteeing its use in different economic and labour market scenarios. It also strengthens the rights of seasonal workers, by laying down provisions relating to the components of the work contract and to the employer's obligations to provide decent accommodation for the workers and to organise the arrival and return journeys, paying the cost of the incoming journey (EMN 2011:64-65).

The direct recruitment of seasonal workers tripled from about 16,000 to over 46,000 between 2007 and 2008 (OECD, 2010: 240). However, following the onset of the economic crisis, the number of foreign-born seasonal workers showed a pronounced decline, from 42,000 in 2008 to only 6,000 in 2009 (OECD 2011b).

5.3. Entry and residence for studying purposes

With respect to students, Article 40 of the Organic Law 4/2000 of January 11, 2000, on the rights and freedoms of foreign nationals in Spain and their social integration, allows for admission and granting of permits of stay for students admitted to officially recognized public or private educational institutions. The duration of stay equals the duration of the course that has been enrolled and is prolonged annually if the candidate fulfils the requirements of the educational institution in question.

Spain provides third-country national students with social security rights under the

same conditions as for Spanish citizens (European Commission 2011). It also allows the students' family members to stay with them from the moment of the students' arrival to Spain and under the same permit conditions (EMN 2012a:63). Moreover, Royal Decree 2393/2004 provides for the possibility that a national of a third country who has remained for three years studying in Spain accesses a residence and work permit directly, without a visa. However, this possibility is excluded in the cases of students who have been recipients of scholarships or subsidized by public or private agencies as part of a cooperation or development programme in the country of origin (EMN 2010:32).

The 2011 Implementing Regulation of Organic Law 4/2000 on the rights and freedoms of foreign nationals in Spain and their social integration, as amended by Law 2/2009, devotes Chapter II of Title III to the authorisation of stay for study purposes, student mobility, unpaid work experience or voluntary work. The new aspects of the regulation refer to participation in student mobility programmes and unremunerated training and voluntary service, implementing the Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. Procedural rules are also simplified and renewals established for study purposes, as well as the possibility of carrying out self-employed activities and paid employment. However, the 2011 Implementing Regulation maintains the provision that the income earned cannot be considered a necessary resource for maintenance or stay of third-country students, nor shall it be considered within the framework of the renewals procedure (EMN 2012a:27).

According to the European Commission *Report on the implementation of the Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service*. Spain has not yet fully transposed the EU legislation on student immigration (European Commission, 2011a).⁷⁵ Concerning the mobility of third-country

⁷⁵ Under Article 22 of the Directive, Member States had to transpose the Directive into their law by January 12, 2007, and to communicate this information to the Commission.

national students from one Member State to the other within the framework of EU programs (Erasmus, etc.), Spain has not transposed the provision on the obligation of the first Member State to report information concerning the student's stay in its territory to the second Member State.

5.4. Immigration for reasons of family reunification

In the 2/2009 Law that entered into force in December 2009 the right to family reunification was limited to the "nuclear" family, although the notion of "nuclear" family encompassed common law spouses, and included the right of family members to take up immediate employment (art. 19). In order to be eligible for family reunion, the parents of migrants had to be over 65 (art. 17) and the sponsor needed to meet minimal financial and housing requirements (art. 18). Sponsors must prove either long-term residence or urgent care/humanitarian needs. The rationale is to encourage ascendants to work in countries of origin and discourage new burdens on the Spanish labour market and welfare state (MIPEX III 2011). The 2/2009 Law granted the authorization to work upon arrival to all reunified persons over the age of 16 (previously, a one year waiting period applied). This reform aimed to reduce household dependence on a single earner (Ferrero-Turrión 2010: 108).

Under the Royal Decree 557/2011 (the Implementing Regulation) the requirements that a third-country national has to fulfil in order to benefit of the right of family reunification are the following:

1. having a legal status in Spain;
2. having no criminal record in Spain and in previous countries of residence for offenses existing under the Spanish legislation;
3. not being prohibited from entering Spain and not being listed as "objectionable" in the Member States of the Schengen area;
4. having health insurance under the social security program or a private insurer;
5. not having any of the diseases that can have a serious public health impact

in accordance with the provisions of the International Health Regulations 2005;

6. not having made a commitment not to return to Spain that third-country nationals have to make in order to apply for a voluntary return program;
7. having sufficient financial means to provide for the needs of the family, that is, a monthly amount that represents 150% of the Multipurpose Public Income Indicator (IPREM) in the case of the first family member (in 2011 this amounted to 799 Euros), and 50% of the IPREM for each of the remaining members that make up a nuclear family (266 Euros in 2012);
8. having adequate housing;
9. the applicant must have resided in Spain for at least one year and have requested permission to reside for at least another year.

Unlike in Italy, where applicants have to pay 200 Euros, in Spain the procedure costs only 10.20 Euros (the rate for temporary residence for family reunification). The deadline for processing applications is also relatively short: 45 days (Marin Zarza 2012).

Under the General Regime, on December 31, 2010, 224,812 third-country nationals held a temporary residence permit due to family reunification (EMN 2010b:25).

5.5. Long-term resident third-country nationals, integration and citizenship

The Strategic Plan for Citizenship and Integration

On September 23, 2011, the Council of Ministers approved the Strategic Plan for Citizenship and Integration 2011-2014 (*Plan Estratégico de Ciudadanía e Integración 2011-2014*) whose main aim is to strengthen social cohesion in a new social context characterized by reduced immigration flows. This Plan is a follow-up of the previous Strategic Plan on Citizenship and Integration 2007-2010, with a budget of over 200 million Euros dedicated to managing migration flows and integration processes (this fund was reduced in 2010). The 2007-2010 Strategic Plan was seen as a response to the changes that within a relatively short amount of time transformed Spain from a country of emigration to a

country of immigration. Its philosophy was that policymakers must take action to move society towards integration. Underpinning the Plan was not only the idea that society at large must be addressed, meaning both immigrants and the autochthonous populations, but also the idea that integration policies must be tackled proactively, in a comprehensive, holistic way (Ministerio de Trabajo y Asuntos Sociales 2007).

Similarly, the Strategic Plan for Citizenship and Integration 2011-2014 is based on the idea that the integration of immigrants is one of the most important challenges facing Spanish society. The plan views integration as a process of mutual adaptation, and supports policies that target all citizens, both immigrants and nationals. It sets out new measures to address challenges such as managing diversity, strengthening human capital and equal opportunities to ensure social cohesion (Ministerio de Trabajo e Inmigración 2011).

The Strategic Plan outlines a set of measures that are aimed at recognizing immigrants the same rights and obligations as those that Spanish nationals have. It is based on the logic of equal treatment and non-discrimination along the lines set by EU Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and by EU Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Ministerio de Trabajo e Inmigración 2011).

The Plan is operationalised through multi-annual regional programs. These include: (i) a programme for the management of diversity in enterprises; (ii) a programme for the promotion of intercultural coexistence in neighbourhoods; (iii) an agenda for languages teaching; (iv) a comprehensive action plan against racism and xenophobia: extension of anti-discrimination offices; (v) a training programme for civil servants in managing diversity; (vi) a training programme for the third sector in intercultural community intervention; (vii) a programme for the promotion of citizen participation and association; (viii) a programme for the development of a system of indicators for integration, citizenship and coexistence (Ministerio de Trabajo e Inmigración 2011).

The Plan for Citizenship and Integration contains numerous policy measures, such as the setting up of an action plan to boost the learning of languages; local support programs for enterprises and micro-enterprises owned by Spanish citizens and third-

country nationals; the streamlining of procedures for obtaining and renewing work permits; support actions aimed at including foreign-born workers in sectors where they are underrepresented; decreasing school segregation and concentration; facilitating immigrant children access to education; promoting the development of support materials for adult education that integrate the intercultural perspective (Ministerio de Trabajo e Inmigración 2011).

The Plan is based on consensus and participation of all actors involved in the management of integration. Among the institutions that participated in its preparation are the Autonomous Communities, the municipalities, the social partners, migrant associations, NGOs and experts in the field of academia. Prior to its finalization, the Plan was also subjected to a process of consultation, open to all citizens.

Until recently, one of the major sources of funding of integration activities was the Support Fund for the Integration of Immigrants (*Fondo para la Integración de Inmigrantes en España*). The Fund was established in 2004 to support the reception and integration of immigrants, and it has been financing training, employment creation and intercultural mediation programmes carried out by NGOs, autonomous regional governments and municipal councils. In 2010 and 2011 the Fund was trimmed down in response to budget reduction measures in the context of the economic crisis and a lower flow of immigrants who arrived in Spain (Benítez 2012).

However, an ever greater blow to the Support Fund for the Integration of Immigrants came in the very end of March 2012, when the Ministry of Labour and Social Security eliminated the fund's entire resource allocation in the 2012 general budget, approved on March 30 by the government of Prime Minister Mariano Rajoy, putting in serious question the funding for social insertion, employment and education programmes for the immigrant community (Benítez 2012).

According to the Spanish NGO SOS Racismo "the suppression of the Support Fund is one of the hardest blows delivered to public policies for integration in recent years" (cited in Benítez 2012). SOS Racismo further stated that the disappearance of the fund would paralyse hundreds of municipal and regional integration plans and that it contravened European Union agreements, such as the European Agenda for the Integration of Third-Country Nationals, established in July 2011 (SOS Racismo 2012a).

Anti-discrimination

According to MIPEX III (2011b), Spain is slightly less prepared to fight discrimination than the average European country because of nationality discrimination (Spain's average definitions and enforcement mechanisms protect victims of ethnic, racial and religious discrimination, but not nationality discrimination) and the weak Council for Promotion of Equality and Non-Discrimination. The latter, which is operational only since September 2009, was not modelled on Europe's strong and fully independent equality bodies and its assistance to victims stops at advice and investigations (MIPEX III 2011b).

Upon a proposal of the Minister of Labour and Immigration, on November 4, 2011, the Council of Ministers adopted an "Agreement approving the Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia, and Related Intolerance". The strategy is based on the acknowledgement that discriminatory attitudes and acts of racially or ethnically motivated violence and hatred persist in the Spanish society, and that this poses a risk to harmonious interaction, cohesion and social peace (Ministry of Labour and Immigration 2011).

Following a series of technical consultations with the Ministry of Labour and Immigration's Spanish Observatory on Racism and Xenophobia, the Ministry of the Interior introduced a raft of changes to the Crime Statistics System in line with international requirements on gathering and publishing statistics on racist incidents. The aim is to obtain accurate, reliable records of any act that may be qualified as racist or xenophobic from the National Police Force and Civil Guard (Ministry of Labour and Immigration 2011).

Moreover, a Collaboration Protocol was signed between the Secretariat of State for Security and the Secretariat of State for Immigration and Emigration. The Protocol intends to foster joint efforts between the Ministry of the Interior and the Ministry of Labour and Immigration to combat racism, racial discrimination, xenophobia and related intolerance. It includes various training programmes such as training days on racism, xenophobia and discrimination in law enforcement authorities (Ministry of Labour and Immigration 2011).

Political participation

The rights of immigrants to vote in municipal elections have been extended via reciprocity agreements with certain countries of origin of immigrants. On the basis of bi-

lateral treaties signed in 2009, third-country nationals from Colombia, Peru, Ecuador, Chile, Paraguay, New Zealand and Bolivia had the right to participate in the municipal elections of May 2011 (OECD 2011b). Bilateral voting agreements have been offered also to some other countries, but they haven't been ratified because parliament deemed conditions not reciprocal enough. Reciprocity is thus not possible for several key immigrant home-countries such as Brazil, Mexico and Morocco (MIPEX III 2011b). In 2011, two new agreements on reciprocal participation in municipal elections came into force: Cape Verde and Republic of Korea (EMN 2012a:30). These agreements together with the extension of the deadline for submitting applications by nationals of countries that have agreements with Spain on the electoral register, resulted in the Electoral Roll for Foreign Residents in Spain increasing by around 50,000 citizens (EMN 2012a:31).

Despite these positive developments, according to MIPEX III (2011b), Spain's non-EU residents cannot effectively participate in public life. The various consultative bodies have strong powers, but immigrant representatives are not directly elected. Immigrants organise with some State funding, but are often unaware of all the political opportunities.

Education

The amount of foreign pupils in the Spanish educational system has undergone a significant growth in the last decade. According to the data of the Ministry of Education, foreign pupils represented 9.53% of school-goers in the scholastic year 2009/10 (Ministero de Educación 2011:2). Schools' new needs and opportunities are now the major challenges for Spain's Autonomous Communities. There are very few systematic legal entitlements for pupils, parents, and teachers. Autonomous Communities have some introduction and language courses, but overall funding is limited (MIPEX III 2011b).

In January 2009 Education for Citizenship and Human Rights became mandatory for all pupils. It is a four-year program consisting of thirty-five classroom hours of instruction each academic year for all pupils between the ages of ten and sixteen. Pupils must acquire a specific skill set and understanding of citizenship rights and obligations, diversity and global social problems. While the former government's position with respect to the Education for Citizenship and Human Rights program was that

the latter enabled pupils to become successful and sensitive members of society, many parents, representatives of the Catholic Church and some other organizations believed that the program represented an anti-religious and socialist indoctrination. The Spanish government refused to permit conscientious exemptions for the attendance of this program. Although many lower courts have granted these exemptions, the Spanish Supreme Court repealed their rulings and upheld the constitutionality of Education for Citizenship in a November 2009 decision (Griffith 2011; Lázaro 2009).

On January 31, 2012, the education minister of the new government, José Ignacio Wert, announced that the program would be replaced by another one called Civic and Constitutional Education, which would be “free of controversial issues” and “not susceptible to ideological indoctrination” (Barcala 2012). With the Royal Decree 1190/201 of August 3, 2012, some of the content of the Education for Citizenship has been modified, although the name of the program has been kept.

Long term residence and naturalisation

As with family reunification, the provision for long-term residence are more favourable in Spain than in most European countries because of the 2009 immigration law’s use of EU standards. Once non-EU residents have five years of residence and a basic income like any Spanish resident, the procedure is relatively short and simple (MIPEX III 2011b).

Under the Royal Decree 557/2011 the requirements that a third-country national has to fulfil in order to be granted the status of a long-term resident are the following: having a legal status in Spain; having no criminal record in Spain and in previous countries of residence for offenses existing under the Spanish legislation; not being prohibited from entering Spain and not being listed as “objectionable” in the Member States of the Schengen area; not having made a commitment not to return to Spain that third-country nationals have to make in order to apply for a voluntary return program; and having resided legally and continuously in Spain for five years. The cost of the procedure is 20.40 Euros and the deadline for processing applications is three months (Paraimigrantes 2011).

Unlike long-term residence, Spain has less favourable provisions for obtaining citizenship. The waiting period for citizenship is 10 years in Spain, while in established

immigration countries is around 4 to 6 years. Moreover, in Spain citizenship at birth is granted after two generations, instead of one, as in some immigration countries (MIPEX III 2011b).

Transposition of EU legislation

According to the European Commission Report on the implementation of the Directive on the status of long-term residents (European Commission 2011b), Spain has been liberal in allowing for periods of interruption of continuous legal residence for serious reasons. However, Spain does not fully guarantee the extra safeguarding conditions for permitting long-term residents to stay concerning public security, public policy, etc. and it imposes additional restrictive accommodation requirements on the family reunification rights of long-term residents of another Member State who exercise their right of mobility to Spain, which create problems of correct transposition of the Directive. Spain also does not provide for specific threats to public security and public policy as extra guarantees against the expulsion of long-term residents. On the other hand, Spain has provided for liberal time-frames for the examination of applications for long-term resident status (3 months instead of the maximum 6 months provided by the Directive).

Spain restricts equal treatment of long-term residents and family members to those with habitual registered residence in their territories. It also imposes restrictions on the employment of long-term residents in public service. At the same time, Spain provides for national permanent resident permits to some categories of third-country nationals (ethnic or returning migrants, spouses of nationals, etc.) on more favourable terms than those in the Directive (European Commission 2011b).

5.6. Irregular migration, readmission and return policies

General policies

The major feature of immigration policy since 1992 has been the admission of foreign workers and periodic regularisation campaigns. Since Regulation 2393/2004 came into force and following the last and largest regularisation campaign in 2005 that resulted in the acquisition of legal status by approximately 550,000 third-country

nationals, the Spanish government has been regularizing on an on-going case by case basis only those immigrants who prove their labour market or social integration. These rules have not been amended since the economic crisis, nor are any amendments planned for the future. In 2008, around 63,500 residence permits of this type were granted (EMN 2010a:49).

Law 2/2009 introduced some changes to the mechanism of controlling illegal immigration. For instance, along with the offence of working without a permit, which was already mentioned in Law 4/2000, other offences were added, such as: not registering a foreign worker with Social Security (offence on the part of the employer); entering into a fraudulent marriage (marriage of convenience); and helping an irregular immigrant to remain illegally in Spain, or consenting to his/her registration in the Municipal Register using a dwelling that is not his/her real address (offence on the part of the dwelling owner). In addition to these offences, the penalties have been increased and they range from 501 to 10,000 Euros, compared with fines of between 301 and 6,000 Euros before the amendment. Serious offences were also extended and penalties were raised to up to 100,000 Euros (EMN 2010a:22-23).

In the last few years, there has been a significant reduction in illegal migratory flows, especially in the case of the Canary Islands. The number of irregular migrants arriving by boat and apprehended at Spanish borders decreased from 13,000 in 2008 to about 7,000 in 2009 and less than 4,000 in 2010 (OECD 2011b). This decline has been attributed to the positive results of the cooperation with countries of origin and transit and the joint efforts of cooperative border management together with effective measures on returns and readmissions (EMN 2012a: 32). Spain signed bilateral readmission agreements with Algeria, Bulgaria, Slovakia, Estonia, Former Yugoslav Republic of Macedonia, France, Italy, Latvia, Lithuania, Morocco, Mauritania, Nigeria, Poland, Portugal, Rumania, Switzerland, Ghana and Bosnia and Herzegovina. The objectives of these agreements include strengthening the cooperation between the contracting parties on tackling illegal immigration, improving the identification and return process for illegally resident third-country nationals and treating these people with dignity and safeguarding their human rights (EMN 2010a:54).

The improved cooperation with the countries of origin of illegal immigrants went hand in hand with greater physical control of the border and the support to the Euro-

pean border enforcement agency – FRONTEX (EMN 2010a:23). In 2011 the Integrated External Surveillance System (SIVE), a technology that facilitates better control of the Spanish coastline, was further deployed. In addition, the Advanced Passenger Information (API) system, which requires transportation companies to submit information on any of their passengers whose flight of origin is outside the Schengen area, continued to be used successfully and further work went into implementing the Automated Border Control (ABC) system, which was first deployed in May 2010 in the Madrid and Barcelona airports (EMN 2012a:39-40).

According to the 2012 figures for repatriations, returns and refusals of entry, the number of repatriated immigrants in 2011 was 30,792, 629 more than in 2010. Refusals of entry rose by 17.30% in 2011 and readmissions rose by 34.76%. The number of people returned when they tried to enter the Spanish territory through non-authorised border crossing points dropped by 3.19% in 2011, while the number of expulsions of illegally staying third-country nationals fell by 0.84% in 2011 (EMN 2012a:34).

So far, it does not seem that the crisis has created a greater volume of illegal employment of third-country nationals. On the contrary, illegal employment has even slightly declined in the last two years. However, Social Security and LFS data suggest that there was still a significant number of illegal third-country workers in mid-2011 – not less than 600,000, representing 25% of employed third-country nationals (OECD 2012b).

Rights of irregular immigrants

Illegal immigrants are one of the most vulnerable groups in Europe (Carrera Merlino 2009). Although the Spanish laws and policies recognizes that, there have recently been changes that go in the direction of limiting the social rights of irregular immigrants.

Organisations defending immigrants' rights have for instance, been concerned about the treatment of irregular immigrants in Internment Centres for Immigrants run by the Interior Ministry (*Centro de Internamiento de Extranjeros - CIE*), where undocumented persons are held until they are expelled from the country⁷⁶. According to

76 The 2009 Law amended the maximum retention period in these centres from 40 to 60 days (EMN 2010a:15).

NGOs, there are over 16,000 detainees in the nine CIEs in Spain, but only 49% end up being expelled. Internment is thus not only a precautionary measure to ensure expulsion, but also a punishment. NGOs request that CIEs become more regulated, because currently they operate in a discretionary fashion. NGOs also claim that harassment and abuse are common in CIEs, and access to these centres is often denied to civil right groups (Figueredo 2012; París 2012).

Still on the subject of rights of irregular immigrants, at a meeting held on April 20, 2012 the Council of Ministers proposed a Decree on urgent measures to ensure the sustainability of the national health system, which includes a modification of the current immigration law to introduce legal residence as a requirement for access to health (SOS Racismo 2012b). The right to health in its present form comes from the current Organic Law 4/2000 and is based on the idea of universal access to health care, independent of the administrative status of an individual.

On September 1, 2012, Royal Decree 16/2012 came into force and the health card, previously obtained in most cases upon registration, is no longer valid for those who are in an irregular situation in Spain, except in certain cases such as accidents, serious illness, pregnancy and child care. The Autonomous Communities are the ones who have competences to apply these new norms and some of them, like Andalucía, have declared themselves contrary to them, claiming that they would keep the health system free to all. On the other hand, the Canary Islands, which host a lot of immigrants, including illegal ones, confirmed that they would limit the access to health services to immigrants who are regularly present on the territory, an exception being cases of urgency or involving minors and pregnant women. In the latter case, free health would be available to all (El Mundo 2012; Marin 2012; Parainmigrantes 2012).

Measures against human trafficking and gender violence

According to the data of the Spanish Ministry of the Interior, over 90% of victims of trafficking and sexual exploitation identified in 2010 were women; 93% were of foreign origin and, of them, some 30% had no legal status in the country (Ministry of Labour and Immigration 2011).

In the last four years, there have been attempts to step up institutional resources to tackle trafficking in persons. First, a Reform of the 2010 Criminal Code was imple-

mented to consider trafficking a crime in its own right, rather than an aggravating circumstance of the crime of illegal trafficking of immigrants pursuant to the Criminal Code prior to this reform. In order to clearly differentiate between the two, a Title VII (a) *On the Trafficking of Persons* was included. This reform also reinforced the criminal liability of legal persons, established norms on the seizure and confiscation of the proceeds of organised crime, and increased protection of victims of sexual exploitation and child pornography (Ministry of Labour and Immigration 2011).

Second, in December 2009 amendments of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and on their social integration came into force and entailed a new article (59bis), which aims to guarantee enforcement of Article 10 of the Council of Europe Convention of 16 May 2005 on Action against Trafficking in Human Beings. Hence, further measures were introduced to protect and promote the rights of foreign victims, regardless of their legal status and ensuring gender equality (Ministry of Labour and Immigration 2011).

Third, Royal Decree 557/2011 of 20 April was approved. Articles 131-134 of this regulation expand upon Article 31bis, which deals with protection of non-Spanish women who are victims of gender violence by ensuring greater protection for the woman and any children she may have who are under the age of eighteen or have a disability (Ministry of Labour and Immigration 2011). Articles 140-146 of the regulation expand upon Article 59bis of Organic Law 4/2000 on Protecting Victims of Trafficking in Persons. This legislation covers the entire process (from identifying potential victims to granting them a residence permit and job, when applicable, or assisting in their voluntary return to their country of origin). Article 140 of the same Regulation also provides for the adoption of a framework protocol on protecting victims of trafficking in persons (Ministry of Labour and Immigration 2011).

On July 14, 2011, the Parliament unanimously adopted a further reform of Articles 31bis and 59bis of Organic Law 4/2000 to provide better protection of both female immigrants without legal status who are victims of gender violence, and victims of trafficking. With regard to gender violence, the amendment seeks to reinforce the rights of immigrant women by not enforcing any expulsion orders, including any expulsion order that may already have been filed against them. Moreover, irregular immigrant women who have been granted a protection order or a report from the

prosecution service for gender violence, are entitled to apply for a five-year residence and work permit both for themselves and for any children they have who are under eighteen or have a disability. Likewise, immigrant women who have joined their spouse in the country and who have been granted a protection order or a report from the prosecution service for gender violence are also entitled to apply for an independent five-year residence and work permit (Ministry of Labour and Immigration 2011).

5.7. The stakeholders

The following section reviews some of the major stakeholders that influence immigration policies in Spain, including political parties, labour unions, employers' federations, immigrant associations, as well as some other organizations.

Political parties

Partido Popular (People's Party)

Partido Popular (PP) is currently the ruling party in Spain and, together with the Partido Socialista Obrero Español (PSOE), it is one of the two major parties in the country. In their 2011-2015 program, PP argued that irregular migration was the consequence of PSOE's inability to guarantee legal migration during their years in government, until November 2011. According to PP, some 900,000 irregular migrants could have accumulated in Spain since the 2005 regularisation. These illegal and unemployed migrants exert pressures on the scarce resources, thereby negatively affecting Spanish citizens. To stem irregular migration, the PP proposed to discontinue with massive regularisations and limit family reunifications; repatriate unauthorized migrants, including minors, where possible; reinforce border control and anti-trafficking measures; increase irregular migrants' detainment; and integrate legally resident migrants by clearly defining what their rights and responsibilities are, according to the European Pact on immigration and asylum (PP 2011a). PP committed itself to protect the rights of migrant women and children (PP 2011c: 49).

PP supports genuine "circular migration", whereby migrants come to work in Spain when needed and leave as soon as their contracts are over. To encourage circulation, Spanish migration law should guarantee that those engaged in periodic employment

could accumulate their temporary residence periods, in case they wanted to adjust their status in the future (PP 2011b; 2011c: 49).

In its program, PP proposed the streamlining of Spanish migration policy with the EU directives; combating illegal migration, especially human trafficking; linking new admissions to Spain's demand for labour and ability to integrate migrants; and removing barriers on migrants' geographical mobility in order to enable them to find work in the context of the crisis (PP 2011c).

Partido Socialista Obrero Español (Spanish Socialist Workers' Party)

The *Partido Socialista Obrero Español* (PSOE) is one of the two major parties in Spain, and it was the ruling party until November 2011. In the general election of 2008, immigration was a prominent topic in the PSOE's electoral program. PSOE stressed that it was necessary to adjust Spanish migration policy to international imperatives and justified its migration policy proposals with frequent references to the policy development at the EU level (PSOE 2008:44). It maintained that immigrant admissions should be linked to labour market needs and the ability of the Spanish society to integrate them. It favoured family reunification and aimed to provide the legally admitted migrants with relatively extensive rights, among others, through ratification of international conventions (PSOE 2008: 44). Among other 2008 integration objectives, PSOE promised to ameliorate migrants' access to better educational and sanitary services (PSOE 2008: 45). However, in order to grant more rights to legal migrants, PSOE stressed that it was necessary to prevent irregular migration through a combination of measures including strengthened borders, prolonged detainment of unauthorized migrants, anti-trafficker measures, and migrant repatriation. PSOE also considered that it was necessary to coordinate state administration of migration matters, *inter alia* through the expansion of competences of Autonomous Communities and the dialogue with the principal migration stakeholders, i.e. the so-called "social partners" (PSOE 2008).

In the 2011 political program, PSOE stressed that thanks to the approach to immigrant integration embraced by the PSOE government, Spain has become an international example of coexistence (PSOE 2011:128). However, it maintained that further efforts needed to be put in integration, multiculturalism and the promotion of diversity in

schools. PSOE also committed itself to targets such as the portability of social rights of third-country nationals, improving health education among immigrant women in issues related to family planning, fighting xenophobic and racist attitudes and recognition of qualifications and job skills acquired by immigrants in their country of origin or third countries (PSOE 2011:134-135).

Smaller parties

The United Left or IU (*Izquierda Unida - IU*) got 6.92% of the popular vote in the last general elections (2011). In their 2011 political program, the IU stressed that its programmatic proposals in the field of immigration stemmed from a very negative assessment of the current evolution of immigration policies in the EU and in Spain. According to IU, notwithstanding the rhetoric, there is no real common immigration policy at the EU level, and those policies that exist are skewed towards control and restrictive measures. This repressive policy has been especially visible during the Arab Spring crisis. The IU held that the Spanish Government blocked any immigration flows that were not in tune with labour market imperatives and made it more difficult for immigrants to benefit from family reunification and other rights. Many immigrants, especially those in irregular situation, have been subjected to exploitation by unscrupulous employers, claimed the IU. Moreover, the official policies that promote marginalization and criminalization of immigrants have contributed to creating a climate of social rejection and xenophobia. The United Left believes that immigration must be addressed as a structural phenomenon that transforms and enriches the host society, and that immigration policies need to favour inclusive citizenship and the principles of the universality of human rights and multiculturalism (Izquierda Unida-Los Verdes (2011:62-65).

Among the urgent measures that the IU proposed in immigration policy are the following (Izquierda Unida-Los Verdes (2011:62-65): the ratification of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; removing the penalty of expulsion as a punishment for being in an irregular situation; closure of the Centres of Internment and Expulsion (CIEs), and while this does not occur, strict compliance with human rights standards and maximum transparency in the operation of these centres; facilitating immigrants' access to passive and active electoral rights to immigrants; facilitating the acquisition of

Spanish citizenship by immigrants; and developing a true “bill of rights and freedoms” for third-country nationals, as well as a comprehensive bill of equal treatment and non-discrimination.

The Union, Progress and Democracy party or UPyD (*Unión Progreso y Democracia - UPyD*) won 4.70% of the popular vote in the last general elections (2011). In their 2011 electoral programme, UPyD outlined the following priorities in the field of immigration (Unión Progreso y Democracia 2011):

- Immigration policy should be harmonized at the EU level. UPyD proposes the transfer of competences over the management of EU citizenship and immigration policies to a European Immigration Service, which would issue common visas and implement policies of integration.
- EU countries should cooperate more strongly in fighting the perpetrators of illegal immigration, human trafficking and organized crime, through instruments such as Europol and Interpol. Penalties for such offenses should be increased.
- More efforts should be put in improving the social integration of immigrants and their families through better cooperation between the national, regional and local level in implementing integration measures, such as language courses for immigrants and the members of their families.
- Immigration legislation should be amended in order to facilitate the access of third-country nationals to work and residence permits and in order to guarantee the equality of rights.
- Centres of Internment and Expulsion should be reformed, removing their “penitentiary” character and assuring better treatment of immigrants and their communication with the outside world.

The Convergence and Union party or CiU (*Convergència i Unió*, CiU) is the centre-right electoral alliance in Catalonia and it got 4.17% of the popular vote in the last general elections (2011). In their 2010 political programme (Convergència i Unió 2010:42-43) CiU held that immigration policies must be geared towards the creation of a more cohesive society. Immigrants have to be conferred both rights and obligations in order to acquire citizenship and integrate in the host societies. Mechanisms aimed at con-

trolling illegal immigration and fighting illegal hiring and the underground economy need to be strengthened. The same holds true for mechanisms aimed at combating racism and xenophobia and at promoting mutual understanding and respect for all cultures. The process of ensuring decent housing conditions of immigrants also needs to be strengthened, in order to avoid overcrowding and ghettoisation. The municipal administration should have the competence to ensure adequate housing standards and punish the owners of the persons who benefit financially from abusing the vulnerability of immigrants when providing housing. In general, a better coordination between the regional and the local level in immigration issues is also needed.

The Ombudsman

The Spanish Ombudsman (*Defensor del Pueblo*) prepares regular reports and communications about the situation of immigrants in Spain, where she reports concerns about the human rights situation of immigrants in Spain, irregularities in employment authorization and in the granting of visas as well as in foreigners' registration, human trafficking, difficulties in family reunification, etc. In 2010 and 2011, the Spanish Ombudsman dealt with more than 2000 migration cases, i.e. 30 percent more than in 2009. The Ombudsman associated the rise in the number of complaints with the growing role of migration in the Spanish society.

Among the positions expressed by the Ombudsman are the following:

1. Spain has elaborated migration laws in a piecemeal fashion copying parts of the Western European laws without reflection upon their applicability in the current Spanish context, particularly the settlement of migrants in the Spanish society. Spain today continues to repeat the post-war mistakes of many Western European countries assuming that migrants would not settle and therefore not need comprehensive integration –including family reunification - policies. Even if integration measures have been developed, they continue to exist on paper only with their practical applications being obstructed by the lack of coordination between various state administrative units and the overall bureaucracy (Defensor del Pueblo 2010b: 37, 39).
2. The biggest challenge concerns the rights of settled migrants to family reunification. According to the Ombudsman most migrants have chances

for family reunification around 2.5 years after leaving their countries, sometimes much longer due to their dependence on bureaucratic processes. Such a long period of time has a destructive impact on the family coherence (Defensor del Pueblo 2010b: 37) and has often led to family members of Spanish citizens falling into an illegal status while in Spain or inability to return to Spain from abroad (Defensor del Pueblo 2010b: 38-9).

3. Irregular migrants who are parents of minor Spanish citizens should be granted residence permits (Defensor del Pueblo 2010b: 44).
4. Migrants with irregular status should be granted protected status if they are willing to help officials nail down crime perpetrators. This provision was included in the 2/2009 law (art. 59bis), but according to the Ombudsman, this was done insufficiently as it largely limited itself to the victims of extensive human trafficking networks (with the victims of minor human trafficking networks and other crimes excluded from the right to receive a residence permit) (Defensor del Pueblo 2010b: 45).
5. Migrants subject to repatriation but not repatriated (as is often the case for an extended period of time due to the difficulties in ascertaining their personal data and country of origin or due to the lack of funds) should be granted temporary work permits to facilitate their integration and prevent them from working irregularly or recurring to crime in the meantime (Defensor del Pueblo 2010b: 48-50).
6. The Spanish state should consider a new regularisation (Defensor del Pueblo 2010b: 50)
7. Spain should take greater responsibility in controlling its borders by its own as opposed to externalizing migration control to third countries (Defensor del Pueblo, 2010b: 51)

Based on the Ombudsman's past recommendations, Law 2/2009 gave migrants the right to free legal aid. Recently the Ombudsman has stressed the need to improve the condition of the Centres of Internment of Foreigners (CIEs), especially the sanitary conditions of these facilities, which are often very deficient (El País 2012).

The social partners

There are two major labour unions in Spain: the General Union of Workers - *Unión General de Trabajadores* (UGT) and the Workers' Commissions - *Comisiones Obreras* (CCOO). Both of them have migration units. Despite slight differences, they cooperate with each other and represent the "labour voice" in the Tripartite State Commission on International Migration (along with the employer organizations CEOE and CEPYME). The two major employer organizations in Spain are CEOE (*Confederación Española de Organizaciones Empresariales* - Spanish Confederation of Employers) and CEPYME (*Confederación Española de la Pequeña y Mediana Empresa* - Spanish Confederation of Small and Medium-Sized Employers). All these organizations have offices in Brussels in order to exercise influence on the relevant policy issues at the EU level.

In their jointly published statement (UGT, 2011), the UGT, CCOO, CEPYME and CEOE expressed satisfaction with most of the draft provisions of Law 2/2009. According to the joint statement, Law 2/2009 law was an important step to guaranteeing migration policy which could both respond to Spanish employers' needs and the Spanish society ability to integrate migrants.

According to the joint statement, positive developments include (UGT, 2011):

- Ameliorating labour migration policy through a streamlined system of foreign worker contracting in their countries of origin. This included a better system of assessing labour shortages (a new methodology for the elaboration of labour shortage lists as well as an extended period of the labour market test) so as to maximize the chance that a job could be taken by a worker already residing in Spain.
- Improving the conditions of foreign workers and their families. Law 2/2009 made it obligatory for employers and workers to sign work contracts. It also made possible, under certain conditions, for unemployed workers to stay in Spain and look for a new job for a period of 3 months. The law raised financial requirements for family reunification, which the UGT considered positive as it was going to make it easier for the incoming family members to integrate themselves.

- Facilitating the renewal of work and residence permits so as to minimize the number of workers falling into illegality during the economic crisis.
- Adjusting the contracting of foreign workers in Spain with the EU policy initiatives in this area, such as the “Blue Card” Directive.
- Providing ways for irregular migrants to regularise their status.
- Widening the social partners’ ability to influence migration legislation through the tripartite committee.

More recently, trade unions (CCOO 2012; UGT 2012a; UGT 20012b) have criticized the increasingly restrictive politics towards immigrants in Spain, claiming that the PP government is making the life of immigrants in Spain more and more difficult. In particular, they criticized the new measures that deny free healthcare to illegal immigrants, arguing that the measure was not in tune with the current model of universal public healthcare and that it violated the principle of solidarity.

On the other hand, the president of the employers’ organization CEOE, Juan Rosell, has recently stated that opening the doors to immigration a few years ago when the Spanish unemployment rate was low - at levels of 8% - was a mistake that now makes it difficult to achieve recovery in employment levels in Spain. According to Rosell, this 8% unemployment rate was not real and the Spanish economy could not assume the flow of around 500,000 or 600,000 immigrants per year (EuropaPress 2012a).

Other stakeholders

Spain has many non-government organizations that are actively involved in the promotion of immigrant rights. ACCEM, for instance, promotes the social and labour integration of migrants and multiculturalism on the basis of human rights. It aims to facilitate migration related dialogue between different social actors. ACCEM’s programmes aim at supporting migrant integration through bilingual education awareness-rising campaigns or the facilitation of migrant voluntary return. ACCEM has focused on providing assistance to vulnerable migrants, especially from Sub-Saharan Africa, such as victims of human trafficking, refugees and irregular migrants. CEPAIM is a Spanish foundation aiming to promote both integration of migrants in the Spanish labour market and society, and the development of their countries of origin. *Inter*

alia, it supports migrants' reception, the promotion of diversity, and co-development. CEPAIM has cooperated with a number of migrants' and human rights organizations, universities, and the Spanish government. It has assumed an important role in administering voluntary return programmes. Similarly, the *Movimiento por la Paz* (MPDL - the Pro-Peace Movement) is a Spanish NGO that aims at fostering migrants' social and labour integration through free counselling, increasing tolerance of migrants by the Spanish society and supporting the development of their countries of origin. SOS Racismo is another non-governmental association for the promotion of democracy and human rights, which has often alerted about the precarious situation in which immigrants find themselves in Spain, including the more recent problems related to the cutting of funds for immigrant integration and the denial of free healthcare for irregular immigrants (SOS Racismo 2012a; SOS Racismo 2012b).

Another important stakeholder in immigration issues is the Catholic Church of Spain. The Spanish Episcopate observes migration trends with close attention and is engaged in issues of integration. Spain is a host both to Catholic migrants from Latin America and parts of Central Europe and to Muslim, animist and Orthodox migrants from Africa and Eastern Europe. The Episcopate's influence on migration policy has been stemmed by the secularity of Spanish politics. The Spanish Church thus focuses on human rights rather than the Christian-Catholic religion. The Spanish Episcopate has advocated aid to the countries of origin so that their nationals do not feel forced to migrate and supported the fight against the exploitation of migrants and human trafficking (CEE 2007: 68).

In March 2011, Cáritas Spain published a report on "The social situation of immigrants assisted by Cáritas", prepared by the Centre of Social Reality of Cáritas. The report is based on data provided by 54 out of 68 of the Diocesan Cáritas units across the country and it analyses the social impact of the crisis on immigrants who have benefited from the various programmes and services of Cáritas in Spain. The report addresses issues such as the increasing difficulties that immigrants have in accessing basic rights, such as housing, health, education and family reunification; the harshening of political discourse with respect to immigration issues and the substantial cuts in resource allocated to integration; and the rising negative perceptions of immigrants in society, whereby they are blamed for the current economic and social insecurity (Cáritas Spain 2012).

In the report, Cáritas Spain (2012) also highlights the following policy recommendations:

- developing a comprehensive plan to fight trafficking of human beings for labour exploitation;
- ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- reforming the mortgage system in order to facilitate immigrants' access to mortgages;
- taking measures to decrease the state of vulnerability and helplessness in which irregular immigrants find themselves by ensuring a package of basic rights;
- ensuring strict compliance with the law in carrying out selective controls of immigrants. The state of being undocumented should not be associated with crime;
- limiting access of security forces to Cáritas facilities; Cáritas is a place of welcome, shelter, listening, and security for citizens and immigrants alike;
- increasing the funds for integration of immigrants;
- eliminating anti-immigration rhetoric from election campaigns.

More recently, the Secretary General of Cáritas Spain, Sebastian Mora, has expressed concerns about the impact that the healthcare reform might have on illegal immigrants. He stated that, if the Government considered that there were abuses of the health system (e.g. "health tourism"), it would have been better to design measures to prevent such abuses, rather than to curb the right to universal healthcare (EuropaPress 2012b).

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